
NATIONAL ASSEMBLY

THIRTY-SECOND LEGISLATURE

FOURTH SESSION

Bill 15

An Act to amend the Expropriation Act and the Civil Code

First reading



Introduced by
Mr Michel Clair
Minister of Transport

EXPLANATORY NOTES

This bill proposes several amendments to the Expropriation Act and to the Civil Code.

In the first place, the bill reaffirms the status of the chairman of the expropriation tribunal as chief executive of the agency and specifies that the vice-chairman exercises his powers under the authority of the chairman.

It amends the rules concerning appeals from orders made by the expropriation tribunal and also provides that not only the orders homologated but all the orders of the tribunal are subject to appeal.

The bill also amends the procedure for commencing expropriation proceedings in order to make it more similar to the procedure ordinarily followed in courts of justice.

The rules for contesting the right to expropriate are modified in order to provide that henceforth contestation will suspend expropriation proceedings. As regard the expropriation of a dismemberment of the right of ownership, the expropriating party will be permitted to apply to the Superior Court to request that the suspension be lifted. Furthermore, a judgment of the Superior Court concerning the right to expropriate will be subject to appeal only with leave of the Court of Appeal.

The bill replaces the taking possession of the expropriated property by a prior transfer of title and provides a procedure for allocating the provisional indemnity where the property is encumbered by real rights. It adapts the rules governing expropriation in urgent cases and those governing the transfer of title that occurs after registration of the homologated order of the tribunal, to make them consistent with the new transfer of title procedure.

The bill also revises the mode of imposition of reserves for public purposes and limits the period of imposition to a maximum of four years. It also enables lessees and occupants in good faith to claim indemnity for damage they may have incurred.

Other amendments are made to certain provisions in order to clarify their application and permit them to meet the purposes for which they were adopted.

Lastly, the bill amends the Civil Code, first for concordance purposes and secondly to provide that expropriation terminates every lease from the date the expropriating party may take possession of the expropriated property.

Bill 15

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THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 4 of the Expropriation Act (R.S.Q., chapter E-24) is amended by replacing the words “have the same status and” in the first and second lines by the word “are”.

2. The said Act is amended by inserting, after section 4, the following section:

“**4.1** The chairman is responsible for the administration of the tribunal and the direction of its staff.

The vice-chairman exercises his powers under the authority of the chairman.”

3. Section 10 of the said Act is replaced by the following section:

“**10.** A member of the tribunal who is a judge shall hear and decide alone in chambers any procedural matter not presented during the hearing of a case.”

4. Section 12 of the said Act is replaced by the following section:

“**12.** Except on a question of jurisdiction, no extraordinary recourse contemplated in articles 834 to 850 of the Code of Civil Procedure (R.S.Q., chapter C-25) may be exercised nor any injunction granted against the tribunal or its members acting in their official capacity.”

5. Section 17 of the said Act is replaced by the following section:

17. If the chairman is absent or unable to act, he is replaced, in order, by the vice-chairman, the assistant chairman, the assistant vice-chairman or a person temporarily appointed for that purpose by the Government.

However, in respect of matters contemplated in sections 7 and 16, the chairman is replaced, in order, by the assistant chairman or a person temporarily appointed for that purpose by the Government, and the vice-chairman is replaced, in order, by the assistant vice-chairman or a person temporarily appointed for that purpose by the Government.

The Government shall determine the remuneration of any person it appoints temporarily under this section."

6. Section 31 of the said Act is replaced by the following section:

31. No appeal lies from the judgment pronouncing homologation."

7. Section 32 of the said Act is replaced by the following sections:

32. The homologated order of the tribunal may be appealed from when the indemnity is at least \$1 000 less than the amount claimed or when it is at least \$1 000 more than the amount offered.

32.1 Any order of the tribunal on a question of law or jurisdiction may also be appealed from with leave of a judge of the Court of Appeal.

32.2 Articles 491 to 525 of the Code of Civil Procedure apply, *mutatis mutandis*, to an appeal contemplated by this Act. Article 29 of the said Code also applies to an incidental order of the tribunal."

8. Sections 39 to 45 of the said Act are replaced by the following sections:

39. Before serving notice of expropriation, the expropriating party shall file, in the office of the section of the tribunal having jurisdiction, a plan and description of the immovable or immovable real right to be expropriated signed by a land surveyor; if several immovables are to be expropriated, the expropriating party may, instead, file a general plan signed by a land surveyor.

40. Expropriation proceedings commence by service, on the owner of the immovable or the holder of the immovable real right to be expropriated, a notice of expropriation containing the following particulars:

(1) an indication of the numbers of the lots to which rights are acquired by expropriation;

(2) a precise statement of the purposes of the expropriation;

(3) a notification that the expropriated party has 15 days to appear before the tribunal, and 30 days to contest the right to expropriate before the Superior Court;

(4) a request that the expropriated party within 15 days of the notice of expropriation indicate in writing to the expropriating party the names and addresses of his lessees, the nature, date and term of and the rent for each lease and the names and addresses of occupants in good faith and the conditions on which they occupy the premises.

The notice must also reproduce the text set forth in Schedule I.

“40.1 If the expropriating party cannot, from the entries in the registers in the registry office or otherwise, determine the identity of the persons on whom notice should be served or find their addresses, he may ask a member of the tribunal who is a judge to prescribe a special mode of service.

“41. The expropriated party must, within 15 days following the date of service of the notice of expropriation, appear before the tribunal. He must also within the same period furnish the expropriating party in writing with the particulars required in subparagraph 4 of the first paragraph of section 40.

“42. Within 20 days of service of the notice of expropriation, the expropriating party shall register it by deposit in the registry office of the registration division where the property to be expropriated is situated, together with the documents mentioned in section 39 and an authentic copy of the deed authorizing the expropriation. If the expropriating party fails to observe these conditions, any interested party may move cancellation of the registration.

“42.1 Within 20 days of registration of the notice of expropriation, the expropriating party shall file in the office of the tribunal a duplicate of the notice of expropriation served inscribed with a certificate of service and a certificate of registration.

“43. When the notice of expropriation has been filed in the office of the tribunal, the proceedings are continued against the expropriated party unless the person who becomes the holder of a right in the immovable being expropriated resumes proceedings or intervenes.

“44. The expropriated party may, within 30 days following the date of service of the notice of expropriation, contest the right of the expropriating party to expropriate, by motion to the Superior Court of the district in which the immovable to be expropriated is situated. Such motion must be served on the expropriating party and the tribunal, and must be heard and decided by preference.

The contestation of the right to expropriate suspends the expropriation proceedings other than the registration provided for in section 42.

“44.1 An appeal lies from a judgment rendered on a motion presented under section 44 only on leave of a judge of the Court of Appeal. It is subject to the rules applicable to a final judgment in Superior Court; however, the appellant must file his factum with the office of the court and serve it on the respondent within 15 days of filing the inscription for appeal, and the respondent is not required to file a factum.

Unless otherwise decided by the chief justice, the appeal is heard by preference, at the first sitting which follows the filing of the factum.

“45. The expropriating party must, within 15 days of receiving the information contemplated in section 41, notify the lessees and occupants in good faith of the existence of expropriation proceedings and notify them to appear before the tribunal within 15 days.”

9. Section 48 of the said Act is amended by replacing the third paragraph by the following paragraph:

“The burden of proof is upon the expropriating party as regards the part of the indemnity relating to the value of the immovable or the immovable real right expropriated. The burden of proof is upon the expropriated party, lessee or occupant in good faith as regards any other part of the indemnity.”

10. Sections 49 to 51 of the said Act are repealed.

11. The said Act is amended by inserting, after section 52, the following section:

“52.1 Before payment of the provisional indemnity contemplated in section 53.11 or section 53.13, the tribunal may, upon a motion of the expropriating party served on the expropriated party, allow the expropriating party to discontinue his suit totally or partially. The order of the tribunal must be registered by deposit in the registry office where the notice of expropriation had been registered. The expropriating party shall inform the expropriated party, lessee and occupant in good faith of the discontinuance.

Upon a motion of the expropriated party, lessee or occupant in good faith served within 90 days of receiving notification of the discontinuance, the tribunal shall award damages, if any, resulting from the discontinuance.”

12. Division III of Chapter I of Title II of the said Act, including sections 53 to 55, is replaced by the following division:

"DIVISION III

"TRANSFER OF TITLE

"**53.** Transfer of title to expropriated property is made

(1) by registration of a notice of transfer of title effected in accordance with subdivision 1;

(2) in case of urgency, by judgment of the Superior Court authorizing the transfer; or

(3) by registration of a copy of the judgment homologating the order of the tribunal.

"§ 1.—*Notice of transfer of title*

"**53.1** An expropriating party becomes owner of the expropriated property on the registration by deposit of a notice of transfer of title in the registry office of the registration division in which the property is located.

"**53.2** Prior notice of transfer of title is required to be served on the expropriated party. In no case may the notice be registered until 90 days, or, in case of expropriation of a fragmentation of the right of ownership, 30 days after registration of the notice of expropriation, provided that the provisional indemnity contemplated in section 53.11 or in section 53.13 has been paid.

"**53.3** A notice of transfer of title must indicate the amount of the expropriating party's offer made under section 46, reproduce the text set forth in Schedule II and indicate the date on which the expropriating party is to take possession of the property. That date must be at least 15 days after the date of registration of the notice.

"**53.4** To be registered, the notice must be accompanied with

(1) documents which establish that the provisional indemnity has been paid to the expropriated party or deposited on his behalf in the office of the Superior Court;

(2) proof that the notice of transfer of title has been served on the expropriated party.

"**53.5** Section 40.1 applies to the service of the notice of transfer of title.

"**53.6** The Superior Court may, on a motion of the expropriated party served within 15 days of receipt of the notice of transfer of title and made without delay, prohibit registration of the notice or, if it has

been registered, order it cancelled if the conditions provided in sections 53.2 to 53.4 have not been complied with. The motion must be heard and decided by preference and the decision rendered is final.

“53.7 If the expropriating party fails to register the notice of transfer of title within 60 days of service on the expropriated party, he is responsible for any damage sustained by the expropriated party, lessee or occupant in good faith as a result of his inaction.

“53.8 Before registering the notice of transfer of title, the expropriating party shall notify the lessee and occupant in good faith of his intention to register such a notice and shall indicate the date on which he is to take possession of the property. The notice given to the lessee and to the occupant in good faith must reproduce the text set forth in Schedule II.

“53.9 In no case may the expropriating party take possession of the property before paying the provisional indemnity contemplated in section 53.12 or section 53.13 to the lessee and occupant in good faith, or depositing it on their behalf in the office of the Superior Court.

“53.10 Excepting a lessee whose lease is registered, no lessee or occupant in good faith whose name and address has not been given to the expropriating party in accordance with section 41 may object to the taking of possession on the ground that the provisional indemnity has not been paid or deposited.

In such a case, the expropriated party is responsible towards the lessee or the occupant in good faith for any damage that may result from his failure to act.

“53.11 The amount of the provisional indemnity to be paid to the expropriated party must be not less than 70% of the expropriating party's offer or not less than 70% of the municipal assessment of the expropriated immovable, whichever is greater, or, in case of expropriation of only part of the immovable, of the corresponding part of the assessment.

The municipal assessment of the expropriated immovable is determined by multiplying the value entered on the municipality's assessment roll by the factor established for the roll by the Minister of Municipal Affairs under the Act respecting municipal taxation (R.S.Q., chapter F-2.1).

In the case of fragmentation of the right of ownership, the amount of the provisional indemnity must be equal to at least 70% of the expropriating party's offer.

“53.12 In the case of a lessee or occupant in good faith, the provisional indemnity is a lump sum equivalent to three month's rent.

“53.13 Notwithstanding sections 53.11 and 53.12, in the case of an agricultural operation, a business or an industrial concern, the provisional indemnity is summarily fixed by the tribunal, on a motion by the expropriating party. The motion must be heard and decided by preference.

“53.14 The Superior Court may, on a motion by the expropriated party served within 15 days of receipt of the notice of transfer of title or on a motion by the lessee or occupant in good faith served within 15 days of receipt of the notice provided for in section 53.8, for serious reasons and if there is not for the expropriating party any urgency of such a nature that any delay in taking possession would entail serious prejudice to him, allow the applicant to remain in possession of the property for such period and on such conditions as it may determine. In no case may the period exceed six months, however, and the decision rendered is final.

The motion must be heard and decided by preference.

The Superior Court shall fix the rent owing to the expropriating party for the occupation of the premises during that period.

“53.15 When the expropriating party deposits the provisional indemnity in the office of the Superior Court, the prothonotary shall without delay give notice of the deposit to the municipal corporation or urban or regional community and to the school corporation responsible for collecting real estate taxes for the territory in which the expropriated property is located. He shall also obtain from the registrar, at the expense of the expropriating party, the certificate provided for in sections 703 to 707 of the Code of Civil Procedure.

Where the prothonotary finds no debts affecting the expropriated property, the expropriated party may withdraw the provisional indemnity. Otherwise, the provisional indemnity shall be distributed to the creditors according to the rules provided in the case of a seizure in execution of immovable property without, however, any collection of law costs and, if the amount to be distributed does not exceed \$1 000, without the formality of a scheme of collocation.

When distribution has been completed, the prothonotary shall notify the expropriating party and the expropriated party and the latter may withdraw the surplus, if any.

The registrar shall cancel any registered real rights when it appears by a certificate of the prothonotary that the distribution of the provisional indemnity has extinguished all debts.

“53.16 A payment made under this Act to a creditor of the expropriated party does not constitute advance repayment for which the creditor may claim compensation.

“53.17 The effects of any forfeiture of term clause, including a giving in payment clause and a resolutive clause, are extinguished by the registration of the notice of transfer of title. In addition, the expropriating party who has obtained transfer of title and who is in possession of the property may, for the purposes of the expropriation, carry out any required work or alienate the property.

“§ 2.—Procedure in urgent cases

“54. The Superior Court may, on a motion by the expropriating party, authorize the transfer of title before the expiry of the 90 days provided for in section 53.2 if there is for the expropriating party an urgency of such a nature that any delay in transfer of title would entail considerable prejudice to him, provided that the expropriated party, lessee or occupant in good faith does not suffer any irreparable prejudice thereby and that the provisional indemnity is paid or deposited. The petition is heard and decided by preference and the decision rendered is final.

The registration by deposit of the judgment authorizing the transfer of title of the expropriated property allows the expropriating party to take possession of it.

“54.1 In the case provided for in section 54, sections 53.10 to 53.13 and 53.15 to 53.17 apply.

“§ 3.—Homologated order

“55. If the expropriating party has not availed himself of section 53.1 or section 54, he becomes owner of the expropriated property on registration by deposit of a copy of the judgment of the Superior Court homologating the order of the tribunal in the registration division in which the property is situated.

The copy of the judgment must be accompanied with documents which establish that the amount of the indemnity has been paid to the expropriated party or deposited on his behalf in the office of the Superior Court.

“55.1 The expropriating party may take possession of the expropriated property 15 days after registration of a copy of the judgment of the Superior Court.

“55.2 When the expropriated property is affected by registered real rights and the expropriating party deposits the indemnity in the office of the Superior Court, such real rights shall be discharged by registration of the receipt for such deposit, as shall be actions in dissolution, in revendication and other real actions which shall be converted into personal claims against the expropriated party.

The registrar is required to cancel the rights so discharged. The prothonotary shall distribute the indemnity in the manner provided in section 53.15, and section 53.16 applies to this distribution.

“55.3 If the expropriating party availed himself of section 53.15 or section 54.1 and the deposit of the provisional indemnity was not sufficient to discharge the debts secured by registered real rights, the expropriating party may deposit the balance of the indemnity in the office of the Superior Court. In such case, section 55.2 applies and the prothonotary shall continue the distribution in the manner prescribed in section 53.15.”

13. Sections 56 and 57 of the said Act are replaced by the following section:

“56. In case of resistance to the taking of possession, the expropriating party may, on a motion, obtain the right to take possession of the property under a writ ordering the expulsion of the expropriated party, lessee or any occupant from the premises.

Service of the motion is required unless the judge gives an exemption from all service. The judge may allow the motion to be contested according to the ordinary rules, and may require any proof he considers necessary.

The judgment is executory immediately and is without appeal.”

14. Sections 59 and 60 of the said Act are replaced by the following sections:

“59. When, following the expropriation of a part of an immovable or a group of adjacent immovables intended for or used as a joint undertaking, the remaining part acquires increased value resulting from the construction of works or improvements carried out by the expropriating party, the increased value, to the extent thereof, is offset against the indemnity owing to the expropriated party.

“60. When it appears that a structure situated on land which is the object of expropriation may appropriately be removed and placed on neighbouring land owned by the expropriated party or the expropriating party and such removal will reduce the cost of the expropriation, the tribunal may order the expropriated party to remove the structure to the place it determines and within the time it fixes.”

15. Section 63 of the said Act is amended by replacing the words “in section 56 and 57” at the end of the first paragraph, by the words “in section 56”.

16. Section 65 of the said Act is replaced by the following section:

“65. Following the expropriation of a part of an immovable, if the remaining part may no longer be appropriately used, the expropriated party or the expropriating party may request the tribunal to order expropriation of the whole immovable. The same applies in the case of a farm if the partial expropriation seriously jeopardizes its operation.”

17. The said Act is amended by inserting, after section 67, the following section:

“67.1 No person becoming a lessee or occupant in good faith of an immovable after the owner has received the notice of expropriation may claim any indemnity from the expropriating party. The owner alone is responsible for any damages resulting from his failure to inform the person of the existence of expropriation proceedings.”

18. Section 68 of the said Act is amended

(1) by inserting, after the first paragraph, the following paragraph:

“Where the amount of the expropriation indemnity is less than the amount of the provisional indemnity, the tribunal shall order the restitution of the difference.”;

(2) by replacing, in the French text, the words “la sentence” in the third and fourth paragraphs by the words “l’ordonnance”.

19. Sections 73 and 74 of the said Act are replaced by the following section:

“73. A reserve for public purposes shall remain in force for an initial term of two years and, on renewal, for a term of two more years.”

20. Section 77 of the said Act is replaced by the following sections:

“77. No reserved property may be expropriated except by the person who established or acquired the reserve.

“77.1 Notwithstanding sections 76 and 77, the Government or a Minister or mandatarly thereof may, even for purposes other than those for which the reserve was established, acquire the benefit of a reserve or expropriate the property subject to the reserve.

The benefit of a reserve is acquired in the manner provided for the establishment of the reserve, and has effect from the date of registration of the notice of establishment of the initial reserve. It may be renewed in accordance with section 81.2.”

21. Section 79 of the said Act is replaced by the following sections:

“79. A reserve for public purposes is established by serving a notice of establishment of a reserve, containing the particulars provided for in section 40, upon the owner of the immovable and the holder of the immovable real right.

Section 40.1 applies to the establishment of a reserve.

“79.1 The owner, within 15 days of service of the notice of establishment of the reserve, shall give the particulars required by section 41 to the person establishing the reserve.

“79.2 The notice of establishment of the reserve is registered in the manner provided in section 42, and the reserve has effect from the date of registration.”

22. Section 80 of the said Act is replaced by the following section:

“80. The validity of the reserve is contested in the manner provided in sections 44 and 44.1.

A reserve may be cancelled if the person establishing it is not empowered to do so or if the procedure provided by this Act to establish it was not followed and the defect not remedied.”

23. The said Act is amended by inserting, after section 81, the following sections:

“81.1 Notice of the registration of the reserve and of the judgment maintaining or cancelling the reserve must be given to the lessee and to the occupant in good faith.

“81.2 A reserve is renewed by registering a notice of renewal of reserve, by deposit in the registry office of the registration division where the property is situated; the notice must have been served on the owner and on the holder of the real right subject to the reserve.

In no case may the renewal of a reserve be contested.

Notice of the registration must be given to the lessee and to the occupant in good faith.”

24. The said Act is amended by striking out section 82.

25. Section 83 of the said Act is amended by striking out, at the end, the words “and in the office of the division of the tribunal having jurisdiction”.

26. The said Act is amended by inserting, after section 83, the following sections:

“83.1 The reserve lapses on the date of registration of the declaration of abandonment or at the end of the period for which it was established.

The reserve also lapses by registration of a notice of expropriation.

“83.2 Notice of the expropriation of the reserve must be given to the lessee and the occupant in good faith.”

27. Section 84 of the said Act is amended by replacing the first paragraph by the following paragraph:

“84. Where the reserve lapses at the end of the period for which it was established, the registrar must, at the request of any interested person, cancel it after assuring himself that the period has ended.”

28. Section 85 of the said Act is amended by replacing the second paragraph by the following paragraph:

“The indemnity is fixed after the reserve has expired, on a motion to the tribunal by the owner, the holder of the real right, the lessee or the occupant in good faith.”

29. The said Act is amended by inserting, at the end, the following schedules:

“SCHEDULE I

(1) It is very important that you send, in writing, to the expropriating party, within 15 days from receipt of this document, the names and addresses of all your lessees, giving the nature, the date, the term and the amount of each lease.

(2) If premises owned by you are occupied by persons who do not hold a lease, you must also give their names and addresses, and indicate the conditions under which they occupy the premises.

(3) Furthermore, you must, from now on, advise every new lessee or any other person who wishes to occupy premises owned by you that expropriation proceedings have been taken against your property.

(4) Failing your compliance with the above obligations, you expose yourself to prosecution if a lessee or an occupant suffers damage.

“SCHEDULE II

(1) This document indicates that the expropriating party intends to become the owner of the property affected by the expropriation and to take possession of it on the date indicated therein.

(2) You must vacate the premises for the said date.

(3) If you have *serious reasons* to urge for extending the delay for taking possession, you must, within 15 days from the date of receipt of this document, file a motion, personally or through an advocate, in the Superior Court.

(4) The Superior Court may extend the delay for taking possession for a maximum period of six months if there is not, for the expropriating party, any urgency of such a nature that any delay in taking possession would entail serious prejudice to him.

(5) The Superior Court, if it accedes to your request, will fix the rent you must pay during the extension period.”

30. Articles 1589 to 1591 of the Civil Code are replaced by the following articles:

“**1589.** Where property is required for purposes of public utility, the owner may be expropriated by the authority of law.

“**1590.** Expropriation extinguishes the hypothecs and other charges affecting the property expropriated as provided in the Expropriation Act (R.S.Q., chapter E-24). In no case may the expropriating party be evicted, and the creditors shall enjoy the rights granted to them under the said Act.

“**1591.** The rules concerning the formalities and proceedings in judicial and other forced sales are contained in the Code of Civil Procedure and in the Acts relating to municipalities and legal persons; such sales are subject to the rules generally applicable to the contract of sale, when these are not inconsistent with special Acts or any article of this Code.”

31. Article 1649 of the said Code, replaced by section 1 of chapter 74 of the statutes of 1973, is again replaced by the following article:

“**1649.** Expropriation terminates the lease on the date the expropriating party may take possession of the expropriated property in accordance with the Expropriation Act (R.S.Q., chapter E-24).

In the case of partial expropriation, the lessee may, according to the circumstances, obtain a reduction of rent or the cancellation of the lease.”

32. Article 1661.3 of the said Code, enacted by section 111 of chapter 48 of the statutes of 1979, is repealed.

33. Sections 1 to 7, 9, 11, 13 to 16 and 18 apply to cases pending which, in other respects, as in the case of the existing reserves, continue

to be governed by the Expropriation Act as it read before the adoption of this Act.

34. This Act shall operate notwithstanding the provisions of section 2 and 7 to 15 of the Constitution Act, 1982 (Schedule B of the Canada Act, chapter 11 in the 1982 volume of the Acts of the Parliament of the United Kingdom).

35. Sections 1 to 7, 9, 11, 13 to 16, 18, 33 and 34 come into force on the day of sanction of this Act.

36. Subject to section 35, this Act comes into force on the date fixed by proclamation of the Government, except the provisions excluded by the proclamation, which will come into force, in whole or in part, on any later date that may be fixed by proclamation of the Government.