

THIRD SESSION

THIRTY-SECOND LEGISLATURE

NATIONAL ASSEMBLY OF QUÉBEC

Bill 49

An Act respecting public agricultural lands

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EXPLANATORY NOTES

This bill consolidates the legislation dealing with colonization lands and replaces the Colonization Land Sales Act, the Act respecting the acquisition of colonization lands, the Colonization Societies Act, the Settlers Protection Act and the Pioneering Merit Act.

The main intent of the bill is to modernize and simplify the administration of public lands under the authority of the Minister of Agriculture, Fisheries and Food.

It is designed to confirm acquired rights of holders of land under location tickets and facilitate the issue of letters patent.

Certain exceptional situations are regularized: henceforth it will be possible to issue letters patent for lands granted between 1820 and 1830 in the Baie des Chaleurs area by James Crawford who pretended to be an authorized agent of the Crown Lands Commissioner, and easier to issue letters patent for lands granted without right by federal authority by way of location tickets, or by letters patent in the territory of former Indian reserves (Nédelec, Ouatichouan) between 1900 and 1920, whereas that territory is part of the territory of Québec under the Canadian constitution.

As the validity of a great number of letters patent resulting from dubious administrative practices and various litigious orders in council could be questioned, all existing letters patent are validated by the bill to provide clear titles of ownership to lands granted by the Government. However, it provides that these letters patent may be cancelled by the courts if they were obtained fraudulently. The Minister will be empowered, despite the validation, to rectify letters patent containing clerical errors, incorrect descriptions of areas or mistakes in names.

In order to simplify the administration of agricultural public lands, this bill sets up a simple scheme for the sale or leasing of land for agricultural, maritime fisheries or food purposes. Under the scheme, sales will be made directly, without the intermediary of the location tickets. Furthermore, there will be no need to apply to the

Lieutenant Governor and to the Attorney General to obtain letters patent, as they will henceforth be issued by the Minister.

Finally, the bill enables the Minister to regularize the situation of certain persons (squatters) who occupy public agricultural lands without having a title. This measure applies only to persons occupying such land at the coming into force of the Act and to their assignees.

Bill 49

An Act respecting public agricultural lands

HER MAJESTY, with the advice and consent of the National Assembly of Québec, enacts as follows:

CHAPTER I

DIVISION I

SCOPE

1. This Act applies to any agricultural public land hereinafter referred to as “ungranted land”

(1) that, on *(insert here the date of the day before the coming into force of section 57)*, according to the register contemplated in section 4, is not under concession and is subject to the Colonization Land Sales Act (R.S.Q., chapter T-8) or is leased out by the Minister pursuant to that Act;

(2) that has been put under the authority of the Minister after *(insert here the date of the coming into force of this section)* pursuant to section 23 of the Lands and Forests Act (R.S.Q., chapter T-9);

(3) that is subject to this Act pursuant to section 8; or

(4) that was reacquired under the Act for the acquiring of certain lands for colonization purposes (1935, chapter 37) or the Act to strengthen the colonization movement by the extension and the consolidation of existing parishes (1938, chapter 43) and that, on *(insert here the date of the coming into force of this section)*, according to the register contemplated in section 4, is not under concession or is no longer so, the grant having been cancelled before that date.

2. This Act applies also to any agricultural public land hereinafter referred to as “land under concession” that, on *(insert here the date of the day before the coming into force of section 57)*, according to the register contemplated in section 4,

(1) is granted land subject to the Colonization Land Sales Act, but for which letters patent have not been issued; or

(2) is land reacquired under an Act referred to in paragraph 4 of section 1 and granted under the Colonization Land Sales Act, but for which neither letters patent nor a notarial title deed have been granted.

DIVISION II

ADMINISTRATION

3. The Minister of Agriculture, Fisheries and Food is responsible for the administration of agricultural public lands.

4. The Minister shall register summarily in the register of rights granted on public lands under his authority or in such other register as he may designate, every acquisition made, alienation effected, lease, servitude or any other right granted or cancellation ordered by him under this Act.

The Minister shall also enter in the register every servitude or right granted by a grantee of land pursuant to section 29.

5. The Minister may in the cases determined by regulation exempt a person from the payment of the duties fixed by regulation for preparing documents, making any registration required under this Act or obtaining copy of documents or of written information relating to any land that is subject to this Act or for which letters patent have been issued.

6. No person may cut timber on ungranted land or on land under concession unless he is authorized to do so by the Minister, subject to paragraph 3 of section 47, or if he fails to meet the conditions and to pay the duties prescribed by regulation.

7. The Minister may with the authorization of the Government acquire by agreement, exchange, or expropriate land to make it subject to the provisions of this Act that are applicable to ungranted land if he considers the acquisition, exchange or expropriation to be in the interests of agriculture.

8. The Minister may by notice make subject to this Act any land put under his authority pursuant to another Act. He may also exempt any ungranted land from the application of this Act to make it subject to another Act under his administration.

CHAPTER II

RULES APPLICABLE TO UNGRANTED LANDS

DIVISION I

ALIENATION AND LEASING

9. The Minister may alienate or lease out any ungranted land for such purposes as he may consider to be in the interests of agriculture, fisheries or food supply.

He may also alienate an ungranted land in favour of the person occupying it without a title on (*insert here the date of the coming into force of this section*), or to the transferee where such is the case.

The Government shall by regulation determine the price and conditions of alienation or leasing for each category of land and each category of acquirers or lessees that it determines.

The Minister may in the cases provided for by regulation exempt a person from the payment of the price of alienation of ungranted land.

10. Alienation is made by notarial deed *en minute* or by the issue of letters patent.

Leasing is made by notarial deed *en minute* or by private deed.

11. The Minister, on such conditions as he may determine and if he considers it appropriate, may grant a servitude or right on ungranted land.

12. The Minister grants a servitude or right by notarial deed *en minute*, private deed or the issue of letters patent.

13. Section 18 of the Lands and Forests Act applies to ungranted lands.

DIVISION II

CANCELLATION OF LEASES

14. The Minister may cancel a lease of ungranted land at any time where the lessee contravenes this Act or a regulation thereunder or does not observe the conditions of the lease.

The Minister may also cancel a lease if it was granted in error or through fraud or if the lessee renounces it or cannot be found.

15. The Minister shall send notice of his intention to cancel the lease to the lessee by registered or certified mail, not later than thirty days before the cancellation. The notice is sent to the last address known to the department.

The Minister shall also cause a notice of his intention to order the cancellation to be posted on a public immoveable situated near the land concerned; the notice must reproduce section 16 and be posted not later than thirty days before the date of the cancellation.

16. Any person wishing to oppose the cancellation of a lease shall make his opposition known to the Minister within thirty days of the date of posting of the notice.

Opposition to the cancellation must be in writing and be substantiated.

17. The time limits provided in sections 15 and 16 are sixty days in cases where the Minister intends to order a cancellation on the sole ground that the lessee cannot be found.

18. Amounts paid to the Minister concerning the leased land and improvements made to the land are confiscated by the Minister from the cancellation.

If the Minister considers it appropriate, he may pay an indemnity as a refund of any amount paid.

19. If, after the cancellation of the lease by the Minister, the lessee refuses to leave the land, the Attorney General may, by a petition duly served on the lessee with a notice of not less than ten clear days of the date of its presentation, apply to the court having jurisdiction in the judicial district in which the land is situated for an order in the nature of a writ of possession.

The petition is heard and decided by preference.

20. On proof that the lease has been cancelled and that the lessee is wrongfully in possession of the land, the judge shall grant an order on the lessee to leave the land and deliver up possession of it to the Minister.

The order has the same effect as a writ of possession and the sheriff or any bailiff or person to whom the order may be entrusted by the Minister for execution must execute it in the manner provided for a writ of execution in an action for ejectment or in a possessory action.

21. Thirty days after the expiry of the period for execution, all constructions and improvements made on the land described in the

order as well as any moveable property found on it form part of the public domain, without indemnity.

22. The proceedings contemplated in sections 19 and 20 are deemed summary matters and the costs are those of a first class action in the Provincial Court.

23. Sections 19 to 22 apply *mutatis mutandis* to every person who occupies ungranted land contrary to this Act or the regulations.

DIVISION III

LETTERS PATENT

24. Letters patent granted over the signature of the Minister or of a civil servant authorized by regulation have the same force as if they had been signed by the Lieutenant-Governor and countersigned and granted by the Attorney General under the Great Seal.

The Minister shall summarily register the letters patent in the register contemplated in section 4.

25. Letters patent must be registered by the Minister of Justice in accordance with Division III of the Act respecting the Ministère de la justice (R.S.Q., chapter M-19).

The Minister may give copy or furnish a certificate of the registration in accordance with the said division.

26. The Minister may, except in case of opposition by a third party vested with rights on the land contemplated, cancel defective letters patent and issue corrected letters patent bearing the date of those cancelled, if they have been issued to a person not entitled to them or if they contain an error concerning the area or designation of the land contemplated, a mistake in the beneficiary's name or any other clerical error.

However, if a required correction can be made in the letters patent without cancelling them, the Minister may make it and give notice of it to the registrar of Québec, to have an entry of it made in their registration.

27. The Minister shall notify the registrar of the registration division concerned and the registrar of Québec of any cancellation of letters patent pursuant to Title Five of Book Five of the Code of Civil Procedure.

CHAPTER III

RULES APPLICABLE TO LANDS
UNDER CONCESSION

DIVISION I

RIGHTS AND OBLIGATIONS OF GRANTEES

28. Any grant of public agricultural land existing on (*insert here the date of the day before the coming into force of section 57*) remains valid.

The person whose name is entered as grantee in the register contemplated in section 4 has the rights and obligations of an owner.

He shall exercise those rights in accordance with this Act until letters patent are issued.

29. The grantee of land may grant a servitude or a right on the land with the approval of and on the conditions fixed by the Minister.

The beneficiary of the servitude or right must pay the duties prescribed by regulation and furnish any information or document deemed necessary by the Minister.

30. In no case may the grantee of land hypothecate the land or encumber it with any real charge except a servitude or right granted in accordance with section 29.

Any deed made in contravention of the first paragraph is null.

DIVISION II

REGISTRATION

31. On the filing of a deed of conveyance made by the grantee relating to a land under concession, or part of that land, the Minister shall substitute the name of the assignee for that of the grantee in the register contemplated in section 4.

The preceding paragraph also applies upon the filing of a deed relating to a judicial sale or a sale for real estate taxes pertaining to such a land or relating to a transmission of rights owing to the death of the grantee.

32. In the absence of a deed referred to in section 31, the Minister may, on proof that he considers sufficient, recognize the person making an application therefor to be the holder of a land under

concession or part of that land and substitute that person's name for that of the grantee in the register.

33. Where a deed referred to in section 31 is a private deed, it must be made in the presence of two witnesses and be accompanied with the oath or solemn affirmation of one of them. The deed must indicate the place and date it was made and the name and address of each witness.

34. A person who requires that his name be substituted for the name of a grantee must pay the duties prescribed by regulation and furnish any information or document deemed necessary by the Minister.

DIVISION III

CANCELLATION OF CONCESSIONS

35. The Minister may cancel a grant of land at any time where the grantee contravenes this Act or a regulation thereunder.

The Minister may also cancel a concession if it was granted unlawfully, or in error or through fraud, or if the grantee renounces it or cannot be found.

The Minister shall enter the cancellation summarily in the register contemplated in section 4.

36. Sections 15 to 22 apply to a cancellation made pursuant to section 35, *mutatis mutandis*.

37. Cancellation does not affect a servitude or right granted in accordance with section 29 and does not prevent the application of the Mining Act (R.S.Q., chapter M-13).

38. If the cancellation of a grant of colonization land ordered pursuant to the Colonization Land Sales Act was rescinded before (*insert here the date of the coming into force of this section*), it is deemed never to have had effect.

39. Land under concession that is subject to a cancellation pursuant to section 35 becomes subject to the provisions of this Act that are applicable to ungranted land.

40. The Minister shall notify the secretary-treasurer of the county corporation or regional county municipality of any cancellation of a grant of land situated in the county.

DIVISION IV

ISSUE OF LETTERS PATENT

41. The Minister shall, on demand, issue the letters patent relating to a land under concession in favour of the person whose name is entered in the register as grantee on the mere payment of the price of the grant.

The letters patent have effect in favour of their beneficiary from the date of the grant.

42. The Minister shall enter in the register contemplated in section 4 the name of any person who furnishes him with sufficient proof that he occupies land forming part of an Indian reserve appropriated as such and having been the subject of a title granted without right by federal authority.

The Minister shall issue to the person the letters patent relating to the land on the mere payment of any balance due under the title granted by federal authority.

Letters patent issued in accordance with this section have effect in favour of their beneficiary from the date of the title granted by federal authority.

43. The Minister shall substitute for the name of the grantee in the register contemplated in section 4 the name of the person who furnishes him with sufficient proof that he holds land conceded by James Crawford prior to the date of the coming into force of the Act for the disposal of Public Lands (S. C., 1841, chapter 100), and issue letters patent to him.

The letters patent have effect in favour of their beneficiary from the date of the grant of the land by James Crawford.

44. Division III of Chapter II applies to this division and the power of the Minister to rectify letters patent extends to those issued for colonization purposes or for any other purpose deemed to be in the interests of agriculture and colonization before 19 March 1921 and to letters patent issued under the Colonization Land Sales Act before (*insert here the date of the coming into force of section 57*).

DIVISION V

MISCELLANEOUS PROVISIONS

45. Section 18 of the Lands and Forests Act applies to lands granted after 15 February 1924.

46. The Minister may, *ex officio* or on demand, cancel a deed of concession of land if the deed contains an error in the area or designation of the land granted, an error in the name of the grantee or any other clerical error, and issue another deed of concession to replace it.

The new deed of concession has effect from the date of the cancelled deed of concession.

CHAPTER IV

REGULATIONS

47. The Government may, by regulation,

(1) determine categories of ungranted lands and of acquirers and lessees, and provide for each category the conditions and price relating to the leasing or alienation of the lands;

(2) determine the cases where the Minister may exempt a person from the payment of the price of ungranted land;

(3) determine the conditions and, where applicable, the rights relating to the cutting of timber on ungranted land or on land under concession and the cases where the authorization of the Minister is not required;

(4) establish a tariff of fees for the preparation of documents, for any registration required under this Act and for obtaining copy of documents or written information relating to lands subject to this Act or for which letters patent have been issued, and determine the cases of exemption from payment of such fees;

(5) authorize a civil servant to sign letters patent;

(6) prescribe any transitional measure calculated to permit the application of this Act.

48. Regulations come into force on the date of their publication in the *Gazette officielle du Québec* or on any later date indicated in the regulations.

CHAPTER V

PENAL PROVISIONS

49. Every person who occupies ungranted land or enters, stays or erects a structure on such land otherwise than in the exercise of a right conferred or duty imposed by law is guilty of an offence.

50. Every person who cuts timber on ungranted land or on land under concession in contravention of this Act or a regulation is guilty of an offence.

51. Every person who is guilty of an offence contemplated in this division is liable, in addition to costs,

(1) for a first offence, to a fine of not less than \$100 nor more than \$1 000 in the case of a natural person, and, on failure to pay, to imprisonment for not more than three months, or in the case of an artificial person, to a fine of not less than \$500 nor more than \$5 000;

(2) for any subsequent offence, to a fine of not less than \$200 nor more than \$2 000 in the case of a natural person, and on failure to pay, to imprisonment for not more than six months, or in the case of an artificial person, to a fine of not less than \$1 000 nor more than \$10 000.

52. Proceedings under this division are taken in accordance with the Summary Convictions Act (R.S.Q., chapter P-15) by the Attorney General or by a person generally or specially authorized by him for that purpose.

CHAPTER VI

TRANSITIONAL AND FINAL PROVISIONS

53. Any lease relating to an ungranted land granted under a former Act and existing at the coming into force of this Act remains valid for the term for which it was granted and the holder of the lease shall exercise the rights arising from it, in accordance with Chapter II.

54. Every regulation, order in council or order made under the Colonization Land Sales Act continues to be in force until it is repealed or replaced.

55. Letters patent issued before (*insert here the date of the coming into force of section 57*) under the Colonization Land Sales Act and those for which the authority of the Minister has been substituted for that of the Minister of Energy and Resources under section 55 of the said Act are hereby declared valid.

In no case may the letters patent be cancelled except by reason of fraud or to be replaced in accordance with section 44.

The letters patent have effect in favour of their beneficiaries from the date of the grant.

This section applies to pending cases.

56. Every beneficiary of letters patent granted by the Government and concerning reserved land appropriated for religious premises and burial grounds in accordance with section 62 of the Colonization Land Sales Act may alienate the land for any purpose without the authorization of the Minister.

Every alienation made without the authorization provided for in section 62 of the said Act is hereby approved.

57. This Act replaces the Colonization Land Sales Act (R.S.Q., chapter T-8).

58. The Act respecting the Ministère de l'agriculture, des pêcheries et de l'alimentation (R.S.Q., chapter M-14) is amended by striking out the words "and colonization societies" in paragraph 4 of section 2 and the words "colonization society" in section 16, respectively, and by striking out the words "or settlers" in paragraph 6 of section 2.

59. Section 2 of the said Act is amended by adding, after paragraph 6.1, the following paragraph:

"(6.2) he shall be responsible for making the entries in the register of rights granted on public lands under his authority. He may order the keeping of any new register;"

60. Sections 5 and 6 of the said Act are repealed.

61. The said Act is amended by inserting, after section 14, the following section:

"**14.1** Section 6 and sections 19 to 22 and 49 to 52 of the Act respecting public agricultural lands (1982, chapter (*insert here the chapter number of Bill 49*)) apply, *mutatis mutandis*, to all lands under the authority of the Minister."

62. Section 15 of the said Act is replaced by the following section:

"**15.** Sections 82 to 87 of the Lands and Forests Act (R.S.Q., chapter T-9) apply, *mutatis mutandis*, to lands under the authority of the Minister and the powers conferred therein are exercised by the Minister or by any employee of the department generally or specially authorized by him for that purpose."

63. The said Act is amended by inserting, after section 15, the following section:

“15.1 No member of the personnel of the department may directly or indirectly acquire any public land under the authority of the Minister unless he is authorized to do so by order of the Government.”

64. Section 24 of the said Act is amended by replacing the third and fourth paragraphs by the following paragraphs:

“For such purposes, the Minister may, in particular, acquire any immovable under concession that is subject to the Act respecting agricultural public lands (1982, chapter *insert here the chapter number of Bill 49*), and, from such acquisition, that concession is cancelled of right and the cancellation has the same effect as if it had been made by the Minister under Division III of Chapter III of that Act. From that acquisition, such an immovable is no longer subject to that Act. This paragraph has effect from 22 December 1969 in respect of any immovable under concession that is then subject to the Colonization Lands Sales Act and which has been thus acquired.

He may also, by a notice, exempt an immovable from a program to bring it under another program or place it in the arable land bank established under Division VII, or exempt an immovable from the arable land bank to bring it under a program.”

65. The Act respecting the acquisition of colonization lands (R.S.Q., chapter A-4) is repealed.

66. The Colonization Societies Act (Revised Statutes, 1964, chapter 104) is repealed.

67. The Pioneering Merit Act (Revised Statutes, 1964, chapter 107) is repealed.

68. The Settlers Protection Act (R.S.Q., chapter P-38) is repealed.

69. The Lands and Forests Act (R.S.Q., chapter T-9) is amended by replacing, wherever they appear, the words “colonization land” by the words “public agricultural land”, the words “colonization purposes” by the words “agricultural purposes”, the words “interest of colonization” by the words “interests of agriculture” and the word “colonization” by the word “agriculture”, and making the necessary adaptations.

70. Sections 23, 24 and 25 of the said Act are replaced by the following sections:

“23. The Minister of Energy and Resources may by order transfer to the Minister of Agriculture, Fisheries and Food the

jurisdiction over any public land that he considers by its nature or situation to be suitable for agricultural purposes. Land thus transferred is subject to the Act respecting public agricultural lands (1982, chapter *insert here the chapter number of Bill 49*) and ceases to be subject to any forest operation permit.

“24. The Minister of Agriculture, Fisheries and Food may by order transfer jurisdiction over any public land to the Minister of Energy and Resources where he considers the land no longer suitable for agricultural purposes.

“24.1 The transfers of jurisdiction contemplated in sections 23 and 24 take effect from the date of the Minister’s order evidencing the transfer.

“25. No sale of public land may be made for agricultural purposes, except of land under the authority of the Minister of Agriculture, Fisheries and Food.”

71. Section 55 of the said Act is repealed.

72. The Minister of Agriculture, Fisheries and Food is entrusted with the application of this Act.

73. This Act will come into force on the date to be fixed by proclamation of the Government, except the provisions excluded by such proclamation, which will come into force on a later date to be fixed by proclamation of the Government.

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