
British Columbia Enacts New Expropriation Legislation



British Columbia reinforces its land expropriation policy of fairness, accessibility, and political accountability

■ DOUGLAS HARBICHT, SR/WA

In December 1987, the province of British Columbia proclaimed a new Expropriation Act providing a uniform code for all compulsory acquisitions by public authorities which have the statutory authority to expropriate land.

This legislation is the culmination of some 16 years of effort, beginning with the Law Reform Commission report of 1971, which in addition to a myriad of legal and procedural details, advocated a philosophical thrust encompassing equality of treatment, clarity and accessibility, openness, fairness and political accountability.

The new statute is based on recommendations by members of the bar, acquisition authorities, and special interest groups such as the International Right of Way Association and the Appraisal Institute of Canada. The legislation modernizes a variety of outdated, inadequate, and inconsistent expropriation laws and procedures by incorporating within one act and its supporting regulations, the law and procedures fundamental to all expropriations falling under provincial jurisdiction.

The legislation strikes a delicate balance between the right of the public to acquire private lands, and the right of the affected owner to be treated equitably concerning the amount of property required and the amount of compensation paid. The power to expropriate is neither increased nor

Among the more substantive changes involves assessment of compensation to landowners.

diminished; however, every acquisition agency must on an individual basis exercise this power subject to the approval of an elected official. The decision to expropriate or not expropriate is an administrative function, and the authority is politically answerable to the electorate and not to the courts for compulsory acquisitions.

One of the most substantive changes effected by the new law relates to the quantum of compensation. The concept of value to the owner is abandoned and replaced with a statutory definition of marked value.

The market value of an estate or interest in land is the amount that would have been paid for it if it had been sold at the date of expropriation in the open market by a willing seller to a willing buyer.

The basic formula for assessing compensation provides that an owner will receive the *greater* of market value plus damages where market value is based on the current use of the land at the date of expropriation, or the market value based on the land's highest and best use and no compensation for damages.

One of the most controversial aspects of the new Act concerns the right to claim damages when no land is taken.

Compensation for injurious affection where there is a partial taking is not materially changed from current precedent, although the scope of issues considered is somewhat broadened to include reductions in market value of the owner's remaining land, personal and business losses directly attributable to the construction, and/or use of the public works on the land expropriated.

One of the most controversial aspects of the new Act involves the statutory right to claim damages where no land is taken. Considerable concern was expressed that expropriating authorities would be overwhelmed with claims for injurious affection and proximity damages relative to such public works as highways, hydro lines, urban transit, and mass transit systems. The new Act reaches a compromise solution by deeming no change to the current entitlements to compensation and relies on precedent as its guide.

The single most progressive step in the new Act provides that ad hoc arbitrators will be replaced by an appointed tribunal known as the Expropriation Compensation

Board. The ECB is composed of a chairperson who is appointed for 5 years and other members who are appointed on a part-time basis for 3 years. All compensation hearings under provincial jurisdiction will be governed by uniform procedures falling under the purview of the ECB. In my view, this will lead to a consistency and stability in compensation awards historically not evident in prior arbitrations.

From the landowner's standpoint the new Act provides for substantial and uniformly applied procedural benefits. For example, the expropriating authority must pay the owner its estimate of compensation before the owner gives up possession of his or her land. Accompanying this payment must be all appraisal and/or other reports the expropriating authority used as its basis for determining the advance payment. This allows the owner, without prejudice to his or her right to claim further compensation, the ability to replace land taken and/or to initiate proceedings to obtain greater compensation amounts.

In addition to the foregoing, the Act provides for interim payment by the expropriating authority of the owner's reasonable legal and appraisal and related costs before the actual hearing by the ECB. The expropriating authority can either pay these costs directly or have them taxed by the ECB. In determining costs the chairperson will consider such issues as the number and complexity of issues and the probable amount involved with respect to resolution of these issues.

As a final note, the new Act provides a legislated formula determining the owner's entitlement to costs by comparing the ECB award to the expropriating authority's payment before vesting of the owner's land. When the compensation award is 115% or less of the amount paid by the expropriat-

ing authority, the ECB has the discretion to award all or part of the owner's costs. When the compensation award is greater than 115% of the amount paid earlier, the owner is entitled to his costs.

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During the draft stages of the legislation, various professional groups were able to overcome the temptation to promote their individual self-interest over the best interest of the public. Trite lip service is often paid to the public interest, but when you cut through all the rhetoric many professional organizations are seen to be totally devoted to the self-interest of their members.

During the development of the Expropriation Act, representatives of the Appraisal Institute of Canada cooperated fully with representatives from the International Right of Way Association, having a common goal in assisting in the preparation of the best possible legislation for approval by our elected representatives. The net result of this cooperation is reflected in section 19 dealing with the expropriation authority's advance payment, and in particular 19(2), which specifies that:

The appraisal report shall be prepared by a person who has been accredited by an institute or body prescribed by the Lieutenant Governor in Council.

Passage of the appropriate legislation was subsequently followed by Order in Council No. 119 and British Columbia Regulation No. 25/88 included verbatim as follows:

B.C. Reg. 25/88, deposited January 29, 1988, pursuant to the **Expropriation Act** [Sections 19(2), 53(1)]. Order of Council 119 approved and ordered January 28, 1988.

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that the Expropriation Act General Regulation, B.C. Reg. 451/87, is amended by adding the following section:

Appraisal Report


8. For the purpose of section 19(2) of

the Act, the following persons may prepare appraisal reports:

- (a) a person designated A.A.C.I. by the Appraisal Institute of Canada;
- (b) a person designated as a Certified Appraiser R.I.(B.C.) by the Real Estate Institute of British Columbia;
- (c) in respect of partial takings only, a person designated SR/WA by the International Right of Way Association.

Brian R.D. Smith, Attorney General; E.N. Veitch, Presiding Member of the Executive Council.

I would like to congratulate both groups for a job well done and hope that in the future, areas of common interest may be treated in a similar fashion.

If you would like more detailed information on British Columbia's new expropriation legislation, please contact: Expropriation Compensation Board, 514 Government St., Victoria, B.C. Canada V8V 2L7. 

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