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R.S.Q., chapter E-24

EXPROPRIATION ACT

TITLE I

Repealed, 1997, c. 43, s. 247.

CHAPTER I

Repealed, 1997, c. 43, s. 247.

1. *(Repealed).*

1973, c. 38, s. 1; 1986, c. 61, s. 3; 1988, c. 21, s. 88; 1997, c. 43, s. 247.

1.1. *(Repealed).*

1988, c. 21, s. 88; 1997, c. 43, s. 247.

1.2. *(Repealed).*

1988, c. 21, s. 88; 1997, c. 43, s. 247.

1.3. *(Repealed).*

1988, c. 21, s. 88; 1997, c. 43, s. 247.

1.4. *(Repealed).*

1988, c. 21, s. 88; 1997, c. 43, s. 247.

1.5. *(Repealed).*

1988, c. 21, s. 88; 1997, c. 43, s. 247.

1.6. *(Repealed).*

1988, c. 21, s. 88; 1997, c. 43, s. 247.

1.7. *(Repealed).*

1988, c. 21, s. 88; 1997, c. 43, s. 247.

1.8. *(Repealed).*

1988, c. 21, s. 88; 1997, c. 43, s. 247.

1.9. *(Repealed).*

1988, c. 21, s. 88; 1997, c. 43, s. 247.

1.10. *(Repealed).*

1988, c. 21, s. 88; 1997, c. 43, s. 247.

CHAPTER II

Repealed, 1997, c. 43, s. 247.

1.11. *(Repealed).*

1988, c. 21, s. 88; 1997, c. 43, s. 247.

2. *(Repealed).*

1973, c. 38, s. 2; 1986, c. 61, s. 3; 1997, c. 43, s. 247.

3. *(Repealed).*

1973, c. 38, s. 3; 1973, c. 39, s. 1; 1986, c. 61, s. 3; 1997, c. 43, s. 247.

4. *(Repealed).*

1973, c. 38, s. 4; 1978, c. 19, s. 50; 1983, c. 21, s. 1; 1986, c. 61, s. 3; 1988, c. 21, s. 89; 1997, c. 43, s. 247.

4.1. *(Replaced).*

1983, c. 21, s. 2; 1986, c. 61, s. 3.

5. *(Repealed).*

1973, c. 38, s. 5; 1986, c. 61, s. 3; 1992, c. 61, s. 305; 1997, c. 43, s. 247.

6. *(Repealed).*

1973, c. 38, s. 6; 1986, c. 61, s. 3; 1997, c. 43, s. 247.

7. *(Repealed).*

1973, c. 38, s. 7; 1986, c. 61, s. 3; 1997, c. 43, s. 247.

8. (Repealed).

1973, c. 38, s. 8; 1973, c. 39, s. 2; 1986, c. 61, s. 3; 1997, c. 43, s. 247.

9. (Repealed).

1973, c. 38, s. 9; 1986, c. 61, s. 3; 1997, c. 43, s. 247.

10. (Repealed).

1973, c. 39, s. 3; 1983, c. 21, s. 3; 1986, c. 61, s. 3; 1997, c. 43, s. 247.

11. (Repealed).

1973, c. 38, s. 10; 1986, c. 61, s. 3; 1997, c. 43, s. 247.

12. (Repealed).

1973, c. 38, s. 11; 1983, c. 21, s. 4; 1986, c. 61, s. 3; 1997, c. 43, s. 247.

13. (Repealed).

1973, c. 38, s. 12; 1979, c. 37, s. 43; 1986, c. 61, s. 3; 1997, c. 43, s. 247.

14. (Repealed).

1973, c. 38, s. 13; 1986, c. 61, s. 3; 1997, c. 43, s. 247.

15. (Repealed).

1973, c. 38, s. 14; 1986, c. 61, s. 3; 1997, c. 43, s. 247.

16. (Repealed).

1973, c. 38, s. 15; 1986, c. 61, s. 3; 1997, c. 43, s. 247.

CHAPTER III

Repealed, 1997, c. 43, s. 247.

17. (Repealed).

1973, c. 38, s. 16; 1983, c. 21, s. 5; 1986, c. 61, s. 3; 1997, c. 43, s. 247.

18. *(Repealed).*

1973, c. 38, s. 17; 1978, c. 15, s. 140; 1983, c. 55, s. 161; 1986, c. 61, s. 3; 1997, c. 43, s. 247.

19. *(Repealed).*

1973, c. 38, s. 18; 1986, c. 61, s. 3; 1997, c. 43, s. 247.

20. *(Repealed).*

1973, c. 38, s. 19; 1986, c. 61, s. 3; 1997, c. 43, s. 247.

21. *(Repealed).*

1973, c. 38, s. 20; 1986, c. 61, s. 3; 1997, c. 43, s. 247.

22. *(Replaced).*

1973, c. 38, s. 21; 1986, c. 61, s. 3.

23. *(Replaced).*

1973, c. 38, s. 22; 1986, c. 61, s. 3.

24. *(Replaced).*

1973, c. 38, s. 23; 1986, c. 61, s. 3.

25. *(Replaced).*

1973, c. 38, s. 24; 1986, c. 61, s. 3.

26. *(Replaced).*

1973, c. 38, s. 25; 1974, c. 13, s. 36; 1986, c. 61, s. 3.

27. *(Replaced).*

1973, c. 38, s. 26; 1986, c. 61, s. 3.

28. *(Replaced).*

1973, c. 38, s. 27; 1986, c. 61, s. 3.

29. *(Replaced).*

1973, c. 38, s. 28; 1986, c. 61, s. 3.

30. *(Replaced).*

1973, c. 38, s. 29; 1986, c. 61, s. 3.

31. *(Replaced).*

1973, c. 38, s. 30; 1983, c. 21, s. 6; 1986, c. 61, s. 3.

32. *(Replaced).*

1973, c. 38, s. 31; 1979, c. 37, s. 43; 1983, c. 21, s. 7; 1986, c. 61, s. 3.

32.1. *(Replaced).*

1983, c. 21, s. 7; 1986, c. 61, s. 3.

32.2. *(Replaced).*

1983, c. 21, s. 7; 1986, c. 61, s. 3.

33. *(Replaced).*

1973, c. 38, s. 32; 1986, c. 61, s. 3.

34. *(Replaced).*

1973, c. 38, s. 33; 1986, c. 61, s. 3.

TITLE II

EXPROPRIATION

CHAPTER I

EXPROPRIATION PROCEDURE

DIVISION I

GENERAL PROVISIONS

Application of title.

35. This title applies to all expropriations authorized by the laws of Québec and prevails over the inconsistent provisions of any general law or special act.

1973, c. 38, s. 34.

Authorization.

36. Every expropriation must be decided or, as the case may be, previously authorized by the Government on the conditions it determines.

Authorization.

No other authorization shall be required, notwithstanding any law.

Conditions not binding.

Nor shall it be necessary to fulfil the conditions prior to expropriation which are provided by other Acts.

Exception.

This section does not apply to a municipality, metropolitan community, intermunicipal board or school board.

1973, c. 38, s. 35; 1975, c. 47, s. 1; 1996, c. 2, s. 679; 2000, c. 56, s. 218.

37. *(Repealed).*

1973, c. 38, s. 36; 1977, c. 5, s. 14; 1979, c. 83, s. 9; 1988, c. 84, s. 612; 1990, c. 85, s. 123; 1996, c. 2, s. 680.

Moveable property.

38. Expropriation may relate to moveable property accessory to the immovable to be expropriated.

1973, c. 38, s. 37.

DIVISION II

EXPROPRIATION PROCEEDINGS

Filing.

39. Before serving notice of expropriation, the expropriating party shall file with the Administrative Tribunal of Québec 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.

1973, c. 38, s. 38; 1983, c. 21, s. 8; 1986, c. 61, s. 4; 1997, c. 43, s. 248.

Notice.

40. Expropriation proceedings commence by service, on the owner of the immovable or the holder of the immovable real right

to be expropriated, of 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.

Content.

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

1973, c. 38, s. 39; 1983, c. 21, s. 8; 1986, c. 61, s. 15; 1997, c. 43, s. 249.

Service.

40.1. The service of the notice of expropriation must be made in accordance with articles 120 to 146.02 of the Code of Civil Procedure (chapter C-25). Where that Code provides that a mode of service requires authorization, it may be obtained from a member of the Tribunal.

1983, c. 21, s. 8; 1986, c. 61, s. 15; 1988, c. 21, s. 91; 1997, c. 43, s. 249; 1999, c. 40, s. 131.

Appearance.

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.

1973, c. 38, s. 40; 1983, c. 21, s. 8; 1986, c. 61, s. 15; 1997, c. 43, s. 249.

Registration.

42. Within 20 days of service of the notice of expropriation, the expropriating party shall register it in the land register, 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.

1973, c. 38, s. 41; 1983, c. 21, s. 8; 1999, c. 40, s. 131; 2000, c. 42, s. 167.

Filing.

42.1. Within 20 days of registration of the notice of expropriation, the expropriating party shall file with the Tribunal a duplicate of the notice of expropriation served inscribed with a certificate of service and a certified statement of registration.

1983, c. 21, s. 8; 1986, c. 61, s. 5; 1997, c. 43, s. 249; 2000, c. 42, s. 168.

Proceedings.

43. When the notice of expropriation has been filed with 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.

1973, c. 38, s. 42; 1983, c. 21, s. 8; 1986, c. 61, s. 6; 1997, c. 43, s. 249.

Contestation.

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.

Stay of proceedings.

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

1973, c. 38, s. 43; 1983, c. 21, s. 8; 1986, c. 61, s. 15; 1997, c. 43, s. 249.

Urgency.

44.1. Notwithstanding the second paragraph of section 44, the expropriating party may, upon a motion served on the expropriated party which must be heard and decided by preference, request authorization to continue expropriation proceedings from the Superior Court if there is urgency of such a nature that any delay would entail considerable prejudice to the expropriating party, provided that the expropriated party not suffer any irreparable prejudice thereby.

Judgment.

The judgment is final and without appeal.

1983, c. 21, s. 8.

Appeal on leave.

44.2. 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.

Preference.

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

1983, c. 21, s. 8.

Recourse of the expropriated party.

44.3. Where the Superior Court maintains the motion of the expropriated party contesting the right to expropriate, the expropriated party has a recourse against the expropriating party if he suffered damage as a result of the continuance of the expropriation proceedings authorized under section 44.1.

1983, c. 21, s. 8; 1999, c. 40, s. 131.

Notice to lessees.

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.

1973, c. 38, s. 44; 1983, c. 21, s. 8; 1986, c. 61, s. 15; 1997, c. 43, s. 249.

Filing declaration of offer or claim.

46. The expropriating party, expropriated party, lessee or occupant in good faith may, at any time before expiry of the time granted to the expropriated party to contest the right to expropriate or the date on which the contestation has been dismissed, and must, within 30 days after expiry of such time, file in the record a declaration setting forth in detail the amount he offers or claims, as the case may be; if he fails to file the declaration within the 30 days, the other party may proceed by default.

1973, c. 38, s. 45; 1999, c. 40, s. 131.

47. (Repealed).

1973, c. 38, s. 46; 1973, c. 39, s. 4; 1975, c. 47, s. 2; 1986, c. 61, s. 7; 1997, c. 43, s. 250.

Burden of proof.

48. 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.

1973, c. 38, s. 47; 1983, c. 21, s. 9; 1986, c. 61, s. 8; 1988, c. 21, s. 92; 1997, c. 43, s. 251.

49. (Repealed).

1973, c. 38, s. 48; 1979, c. 72, s. 332; 1983, c. 21, s. 10.

50. (Repealed).

1973, c. 38, s. 49; 1983, c. 21, s. 10.

51. (Repealed).

1973, c. 38, s. 50; 1983, c. 21, s. 10.

52. (Repealed).

1973, c. 38, s. 51; 1997, c. 43, s. 252.

Discontinuance.

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 in the land register. The expropriating party shall inform the expropriated party, lessee and occupant in good faith of the discontinuance.

Damages.

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 where appropriate, award damages for any injury, resulting from the discontinuance.

1983, c. 21, s. 11; 1986, c. 61, s. 15; 1997, c. 43, s. 249; 1999, c. 40, s. 131; 2000, c. 42, s. 169.

DIVISION III

TRANSFER OF TITLE

Transfer.

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 order of the Tribunal accompanied with a certificate of the clerk of the Superior Court attesting to the deposit of the order in the office of that court.

1973, c. 38, s. 52; 1983, c. 21, s. 12; 1986, c. 61, s. 9; 1997, c. 43, s. 249.

§ 1. — *Notice of transfer of title*

Transfer of ownership.

53.1. An expropriating party becomes owner of the expropriated property on the registration of a notice of transfer of title in the land register.

1983, c. 21, s. 12; 1999, c. 40, s. 131; 2000, c. 42, s. 170.

Notice.

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.

1983, c. 21, s. 12.

Content.

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.

1983, c. 21, s. 12.

Registration.

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.

1983, c. 21, s. 12.

Service.

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

1983, c. 21, s. 12.

Deposit.

53.5.1. The notice of transfer of title must, after being registered, be deposited with the Tribunal.

1986, c. 49, s. 1; 1986, c. 61, s. 10; 1997, c. 43, s. 249.

Registration prohibited.

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.

1983, c. 21, s. 12.

Liability.

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 liable in damages for any injury sustained by the expropriated party, lessee or occupant in good faith as a result of his inaction.

1983, c. 21, s. 12; 1999, c. 40, s. 131.

Content of notice.

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.

1983, c. 21, s. 12.

Provisional indemnity.

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.

1983, c. 21, s. 12.

Objection prohibited.

53.10. Excepting a lessee whose lease is registered, no lessee or occupant in good faith whose name and address have 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.

Liability.

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

1983, c. 21, s. 12; 1999, c. 40, s. 131.

Amount of indemnity.

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.

Municipal 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, Sports and Recreation under the Act respecting municipal taxation (chapter F-2.1).

Fragmented right of ownership.

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.

1983, c. 21, s. 12; 1999, c. 43, s. 13; 2003, c. 19, s. 250.

Lump sum.

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.

1983, c. 21, s. 12.

Amount fixed by the Tribunal.

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.

1983, c. 21, s. 12; 1986, c. 61, s. 15; 1997, c. 43, s. 249.

Motion to remain in possession.

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.

Preference.

The motion must be heard and decided by preference.

Rent.

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

1983, c. 21, s. 12.

Duties of the clerk.

53.15. When the expropriating party deposits the provisional indemnity in the office of the Superior Court, the clerk shall without delay give notice of the deposit to the municipality and to the school board responsible for collecting property taxes for the territory in which the expropriated property is situated. He shall also obtain from the registrar, at the expense of the expropriating party, the certified statement provided for in articles 703 to 707 of the Code of Civil Procedure (chapter C-25). However, the expropriated party being the owner of the property may furnish the necessary documents to the clerk of his own motion.

Provisional indemnity.

Where the clerk 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 collocation of law costs and, if the amount to be distributed does not exceed \$1 000, without the formality of a scheme of collocation.

Notice.

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

Cancellation of real rights.

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

1983, c. 21, s. 12; 1988, c. 84, s. 700; 1990, c. 85, s. 122; 1996, c. 2, s. 681; 1999, c. 40, s. 131; 2000, c. 56, s. 222.

Payment to creditors.

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.

1983, c. 21, s. 12.

Extinction on registration.

53.17. The effects of any forfeiture of term clause, including 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.

1983, c. 21, s. 12; 1992, c. 57, s. 574.

§ 2. — Procedure in urgent cases

Transfer of title 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 motion is heard and decided by preference and the decision rendered is final.

Possession.

The registration in the land register of the judgment authorizing the transfer of title of the expropriated property allows the expropriating party to take possession of it.

1973, c. 38, s. 53; 1975, c. 47, s. 3; 1983, c. 21, s. 12; 1999, c. 40, s. 131; 2000, c. 42, s. 171.

Applicability.

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

1983, c. 21, s. 12.

§ 3. — Homologated order

Registration of 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 of a copy of the order of the Tribunal in the land register, accompanied with a certificate of the clerk of the Superior Court attesting to the deposit of the order in the office of that court.

Accompanying documents.

The copy of the order must also 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.

1973, c. 38, s. 54; 1983, c. 21, s. 12; 1986, c. 61, s. 11; 1997, c. 43, s. 249; 1999, c. 40, s. 131; 2000, c. 42, s. 172.

Possession.

55.1. The expropriating party may take possession of the expropriated property 15 days after registration contemplated in section 55.

1983, c. 21, s. 12; 1986, c. 61, s. 12.

Discharge of real rights.

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.

Cancellation.

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

1983, c. 21, s. 12.

Deposit of balance of indemnity.

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 clerk shall continue the distribution in the manner prescribed in section 53.15.

1983, c. 21, s. 12.

DIVISION IV

FORCED TAKING OF POSSESSION

Expulsion.

56. In case of resistance to the taking of possession, the expropriating party may, on a motion, obtain from a judge of the Superior Court 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.

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.

Executory judgment.

The judgment is executory immediately and is without appeal.

1973, c. 38, s. 55; 1983, c. 21, s. 13.

57. *(Replaced).*

1973, c. 38, s. 56; 1983, c. 21, s. 13.

CHAPTER II

INDEMNITY

How indemnity fixed.

58. The indemnity shall be fixed according to the value of the property expropriated and the damage directly caused by the expropriation.

1973, c. 38, s. 57; 1999, c. 40, s. 131.

Increased value.

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 a particular 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.

1973, c. 38, s. 58; 1983, c. 21, s. 14.

Removal of structure.

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.

1973, c. 38, s. 59; 1983, c. 21, s. 14; 1986, c. 61, s. 15; 1997, c. 43, s. 249.

Removal of structure.

60.1. When the expropriating party requests the removal of the structure to land owned by him, he shall accompany his motion with an offer of sale of the land offered. If the Tribunal grants the request, it shall rule on the value of the land, which value will be deducted from the indemnity.

1983, c. 21, s. 14; 1986, c. 61, s. 15; 1997, c. 43, s. 249.

Homologation.

60.2. The order of the Tribunal ordering the removal of the structure to land owned by the expropriating party is homologated. The registration in the land register of the order of the Tribunal accompanied with a certificate of the clerk of the Superior Court attesting to the deposit of the order in the office of that court effects transfer of title.

1983, c. 21, s. 14; 1986, c. 61, s. 13; 1997, c. 43, s. 249; 2000, c. 42, s. 173.

Removal of structure outside right of way to reduce cost.

61. If the structure on the expropriated right of way has dependencies outside the right of way, if it is a dependency of a principal immovable outside the right of way, or if it forms part of a group of structures all designed to be a joint undertaking, the Tribunal may order the removal of the structures situated outside the right of way to other land owned by the expropriated party, to enable the reorganization of the group formed by such structures, if such removal reduces the cost of the expropriation.

1973, c. 38, s. 60; 1986, c. 61, s. 15; 1997, c. 43, s. 249.

Fixing indemnity for removal.

62. The Tribunal shall fix the amount of the indemnity to which the expropriated party is entitled for the removal contemplated in section 60 or 61. One-half of the indemnity must be paid to the expropriated party before the removal and the other half immediately afterwards.

Revision.

Such indemnity is provisional and may be revised, if need be, at judgment or final settlement.

1973, c. 38, s. 61; 1986, c. 61, s. 15; 1997, c. 43, s. 249.

Forced removal upon failure to comply.

63. If the expropriated party fails to comply with the order of the Tribunal made under section 60 or 61 within the time fixed, the expropriating party may himself have the work of removal done and have the structure of the expropriated party placed where the Tribunal determines; for that purpose, he may have recourse to the procedure of execution provided in section 56.

Remittance of part of indemnity.

When the expropriating party has paid the indemnity prior to removal while being, nevertheless, obliged to do the work of removal himself, the Tribunal shall determine the portion of the expropriation indemnity which must be remitted by the expropriated party.

Removal indemnity offset against total amount.

The amounts paid as a removal indemnity and the costs and damages for any injury caused to the person who had to make the removal himself shall be offset by the sole operation of law against the total amount of the expropriation indemnity due to the expropriated party, to the extent of that amount.

1973, c. 38, s. 62; 1983, c. 21, s. 15; 1986, c. 61, s. 15; 1997, c. 43, s. 249; 1999, c. 40, s. 131.

Offer of another immovable in lieu of indemnity.

64. The expropriating party may, when expropriating a property, offer to the expropriated party, to reduce the total cost of the expropriation and in lieu of indemnity, in whole or in part, another immovable owned by him and capable of being used to put the expropriated party in the same position as he was before the expropriation. The expropriating party may for that purpose, subject to the other provisions of this act, expropriate and adjacent immovable.

1973, c. 38, s. 63.

Partial expropriation.

65. Following the partial expropriation of an immovable, the expropriating party or the expropriated party may, by a motion, request the Tribunal to order total or partial expropriation of the remaining part of the immovable if that part is no longer suitable for use in whole or in part. The same applies in the case of a farm if the partial expropriation seriously jeopardizes its operation.

1973, c. 38, s. 64; 1983, c. 21, s. 16; 1986, c. 49, s. 2; 1986, c. 61, s. 15; 1997, c. 43, s. 249.

Fixing lessee's indemnity.

66. The indemnity due to a lessee or occupant in good faith shall be fixed according to the damage directly caused by the expropriation, subject to the other provisions of this act.

1973, c. 38, s. 65; 1999, c. 40, s. 131.

Lump indemnity for lessee or occupant of residence.

67. In the case of a lessee or occupant who occupies a residence, the indemnity shall be fixed as a lump sum equal to three months' rent and moving expenses, unless the lessee or occupant establishes that the damages occasioned by the injury he has sustained attain a greater amount.

1973, c. 38, s. 66; 1999, c. 40, s. 131.

Owner's responsibility.

67.1. No person becoming a new lessee or new 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

damage resulting from his failure to inform the person of the existence of expropriation proceedings.

1983, c. 21, s. 17; 1999, c. 40, s. 131.

Decision on final indemnity.

68. The Tribunal shall fix the amount of the final indemnity and adjudicate as to costs by a decision giving the reasons therefor, and must send a copy forthwith to the clerk.

Restitution.

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.

Awarding further indemnity.

There may be added to the amount so awarded an indemnity computed by applying to such amount, from the date of taking possession of the expropriated property or from the date of homologation of the order, whichever is earlier, a percentage equal to the excess of the rate of interest fixed under section 28 of the Act respecting the Ministère du Revenu (chapter M-31) over the legal rate of interest.

Homologation.

The order shall be homologated by the Superior Court, at the request of either party.

1973, c. 38, s. 67; 1983, c. 21, s. 18; 1986, c. 61, s. 14; 1997, c. 43, s. 253.

TITLE III

RESERVES FOR PUBLIC PURPOSES

CHAPTER I

GENERAL PROVISIONS

Construction prohibited in reserve.

69. A reserve shall prohibit, during its term, any construction, improvement or addition on the immovable affected by it, except repairs. If the immovable is expropriated before the expiry of the term, the appraisal for indemnity must be established according to the date of the expropriation, but without taking into account the increased value attributable to the establishment of the reserve, the expropriation or the carrying out of the public works following the expropriation.

Servitude of prohibition of access.

The object of the reserve may also be the establishment of a servitude of prohibition of access or other real servitude. The damages occasioned by the subsequent establishment of the servitude are determined on the date of the establishment of the reserve.

1973, c. 38, s. 68; 1999, c. 40, s. 131.

Structures not to be considered.

70. No account shall be taken, in the fixing of an indemnity for a reserve or expropriation, of the structures, improvements or additions made from the date of establishment of the reserve until its expiry nor of the leases granted while the reserve lasts, to the extent that their term exceeds the time to run before the expiry of the reserve.

1973, c. 38, s. 69; 1975, c. 47, s. 4.

Prohibition on domain of the State.

71. No reserve may be established on an immovable forming part of the domain of the State.

1973, c. 38, s. 70; 1999, c. 40, s. 131.

Purposes of reserve.

72. The reserve must specify the purposes for which it is established.

1973, c. 38, s. 71.

Duration of reserve.

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.

1973, c. 38, s. 72; 1983, c. 21, s. 19.

74. *(Replaced).*

1973, c. 38, s. 73; 1983, c. 21, s. 19.

CHAPTER II

POWER TO ESTABLISH RESERVES

Power to establish reserves.

75. Any person authorized by law to expropriate property may, to the same extent, establish a reserve on it, for the same purposes and with the same authorizations.

1973, c. 38, s. 74.

Transfer of benefit of reserve.

76. The benefit of a reserve may be transferred by its holder to any person who would be entitled to establish such reserve for the same purposes himself. The transfer must be authorized by the Government in all cases where it may be established only with such authorization.

Formalities.

The formalities provided by law for the transfer of an immoveable right apply to the transfer of a reserve.

1973, c. 38, s. 75.

Reserved property.

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

1973, c. 38, s. 76; 1983, c. 21, s. 20.

Acquisition of the benefit of a reserve.

77.1. Notwithstanding sections 76 and 77, the Government or a Minister of the Government or a mandatary of the State 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.

Effect.

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.

1983, c. 21, s. 20; 1999, c. 40, s. 131.

Delay to reserve again.

78. Property reserved for public purposes shall not again be reserved before a period of two years has elapsed from the expiry of the preceding reserve.

1973, c. 38, s. 77.

CHAPTER III

PROCEDURE FOR ESTABLISHING RESERVES

Establishment of a reserve.

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.

Applicable provision.

Section 40.1 applies to the establishment of a reserve.

1973, c. 38, s. 78; 1975, c. 47, s. 5; 1983, c. 21, s. 21.

Information.

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.

1983, c. 21, s. 21.

Registration.

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.

1983, c. 21, s. 21.

Contestation.

80. The validity of the reserve is contested in the manner provided in sections 44 and 44.2.

Cancellation.

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.

1973, c. 38, s. 79; 1983, c. 21, s. 22.

Judgment.

81. The judgment maintaining or cancelling the reserve must be registered in the land register.

1973, c. 38, s. 80; 1999, c. 40, s. 131; 2000, c. 42, s. 174.

Notice of registration.

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.

1983, c. 21, s. 23.

Renewal.

81.2. A reserve is renewed by registering a notice of renewal of reserve in the land register; the notice must have been served on the owner and on the holder of the real right subject to the reserve.

Contestation.

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

Notice of registration.

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

1983, c. 21, s. 23; 1999, c. 40, s. 131; 2000, c. 42, s. 175.

CHAPTER IV

EXPIRY OF THE RESERVE AND INDEMNITY

82. *(Repealed).*

1973, c. 38, s. 81; 1983, c. 21, s. 24.

Declaration of abandonment.

83. A reserve may be abandoned in whole or in part by the person who established it. The abandonment of a reserve is effected by having a declaration to that effect served on the owner and by filing a declaration in the land register.

1973, c. 38, s. 82; 1983, c. 21, s. 25; 1999, c. 40, s. 131; 2000, c. 42, s. 176.

Lapse of reserve.

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.

Lapse of reserve.

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

1983, c. 21, s. 26.

Notice.

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

1983, c. 21, s. 26.

Cancellation.

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.

Costs.

The costs of cancellation shall, in all cases, be charged to the person who established the reserve.

1973, c. 38, s. 83; 1983, c. 21, s. 27.

How indemnity computed.

85. The establishment of a reserve allows indemnity which is computed according to the damage actually sustained and directly caused by the establishment of the reserve.

Fixing of indemnity.

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

Amount not included.

The indemnity payable following the establishment of a reserve may not include an amount for the use which the owner of the reserved property could have made without such reserve.

1973, c. 38, s. 84; 1975, c. 47, s. 6; 1983, c. 21, s. 28; 1986, c. 61, s. 15; 1997, c. 43, s. 249.

Filing of notice of reserve.

86. Where a motion for the fixing of an indemnity is presented, the person who has established the reserve shall, within 15 days from the date on which it is served upon him, file with the Tribunal the notice of establishment of the reserve and the copy of the plan and description, or of the general plan in the case of several immovables.

Filing in record.

If the reserve is followed by an expropriation, such documents shall be filed in the record of the expropriation.

1975, c. 47, s. 7; 1986, c. 61, s. 15; 1997, c. 43, s. 249.

Exclusive jurisdiction of Tribunal.

87. The Tribunal shall have exclusive jurisdiction to fix the indemnities payable following the establishment of a reserve.

1973, c. 38, s. 85; 1986, c. 61, s. 15; 1997, c. 43, s. 254.

Rules to apply.

88. The rules provided by this Act for fixing expropriation indemnities apply with the necessary modifications to the fixing of the indemnity payable following the establishment of a reserve.

1973, c. 38, s. 86.

Order fixing indemnity to clerk.

89. Every order of the Tribunal fixing an indemnity following the establishment of a reserve must be sent by it to the clerk; it shall be homologated by the Superior Court at the request of either party.

1973, c. 38, s. 87; 1986, c. 61, s. 15; 1997, c. 43, s. 249.

TITLE III.1

HOMOLOGATION

Deposit.

89.1. The homologation of an order of the Tribunal by the Superior Court, where required by law, is obtained by the deposit, by a party, of a certified true copy of the order at the clerk's office of the Superior Court in the district in which the expropriated property is situated.

Notice.

Prior notice of the date of deposit must be served on the other parties.

Effect.

An order so deposited has the same force and effect as a judgment of the Superior Court and it may be executed as such.

1997, c. 43, s. 255.

Appeal.

89.2. No appeal lies from a homologated order.

1997, c. 43, s. 255.

TITLE IV

FINAL PROVISIONS

Application of Titles II and III.

90. The Minister of Transport is entrusted with the application of Titles II and III of this Act.

1973, c. 38, s. 152; 1997, c. 43, s. 256.

91. *(This section ceased to have effect on 17 April 1987).*

1982, c. 21, s. 1; U. K., 1982, c. 11, Sch. B, Part I, s. 33.

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.

1983, c. 21, s. 29.

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 time 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 time 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.

1983, c. 21, s. 29; 1999, c. 40, s. 131.

REPEAL SCHEDULES

In accordance with section 17 of the Act respecting the consolidation of the statutes (chapter R-3), chapter 38 of the statutes of 1973, in force on 31 December 1977, is repealed, except sections 89, 90, 93, 132 to 136, 139 to 141, 143 to 151 and 153, effective from the coming into force of chapter E-24 of the Revised Statutes.

In accordance with section 17 of the Act respecting the consolidation of the statutes and regulations (chapter R-3), sections 139 to 141 of chapter 38 of the statutes of 1973, in force on 1 November 1980, are repealed effective from the coming into force of the updating to 1 November 1980 of chapter E-24 of the Revised Statutes.

In accordance with section 17 of the Act respecting the consolidation of the statutes and regulations (chapter R-3), sections 89 and 90 of chapter 38 of the statutes of 1973, in force on 1 January 1984, are repealed effective from the coming into force of the updating to 1 January 1984 of chapter E-24 of the Revised Statutes.