

BACKGROUND

“Expropriation” means taking of land without the consent of the owner by an expropriating authority in the exercise of its statutory powers. (1) “Expropriating authority” means the Crown, or any person empowered to acquire land by expropriation.(2) "The right of expropriation ..., is wholly statutory, must be strictly construed, and all formalities strictly observed." (3)

The (Alberta) Expropriation Act (the "Act") applies to any expropriation authorized by the law of Alberta. The Act binds the provincial Crown and prevails over all other provincial statutes or parts of statutes except those outlined in the Schedule to the Act which exempts, among others, orders of reclamation pursuant to section 12 of the Agricultural Service Board Act, R.S.A. 2000, c. A-10, and orders under the Surface Rights Act, R.S.A. 2000, c. S-24. (4)

To effect the expropriation, the expropriating authority must register a notice of intention to expropriate. Then, the appropriate approving authority must comply with the provisions of the Act in respect of the conducting of an enquiry. If the expropriation is approved, a certificate of approval is issued. Its registration vests title to the land in the expropriating authority as to the interest specified. (5) A claim to or an encumbrance on the expropriated estate or interest is converted to a claim for compensation against the expropriating authority. (6)

The ownership of mines and minerals is in no way affected by the registration of a certificate of approval except where the governing Act expressly authorizes their expropriation. In that case, the certificate of approval must specify the estate or interest acquired in the mines and minerals, otherwise no estate or interest in the mines and minerals passes on the expropriation. (7)

REGISTRATION PROCEDURE

1. **Notice of Intention to Expropriate** - A notice must contain the following:
 - a) the name of the expropriating authority,
 - b) the description of the land to be expropriated (If part of a title is being expropriated, it is acceptable to attach a sketch showing the affected area. However a plan of survey will be required to be registered at the time of registration of the certificate of approval.),
 - c) the nature of the interest intended to be expropriated,
 - d) an indication of the work or purpose for which the interest is required,
 - e) a statement of the provisions of sections 6 and 10 of the Act with respect to a notice of objection by an owner,
 - f) the name and address of the approving authority, and

g) a statement that a person affected by the proposed expropriation need not serve an objection to the expropriation in order to preserve his right to have the amount of compensation payable determined by the Board or Court, as the case may be. (8)

It must be signed and sealed by an official of the expropriating authority.

Tariff item 11(6) is charged for the notices and Tariff item 13 is charged for each endorsement after the first. If the registrant is the provincial Crown, no fee is charged pursuant to Tariff item 2.

A notice is valid for 120 days from its date of registration (9) unless an extension order granted by the Deputy Minister of Justice and Deputy Attorney General has been registered.

2. **Extension Order** - Prior to the expiry of the 120-day time period for the notice of intention to expropriate, the Deputy Minister of Justice and Deputy Attorney General (or designate) may
- a) extend the time for appointing the inquiry officer by an additional 5 days,
 - b) extend the time for the inquiry officer to report by an additional 30 days, or
 - c) extend the time for the approving authority to make its decision by an additional 30 days and register an extension order extending the time for the registration of certificate of approval for an equivalent number of days.

As the order must be registered within a fixed time period, it should be sent to the registration area in a red folder.

The legal description in the order must be consistent with the legal description in the notice of intention to expropriate. The order must be signed by the Deputy Minister of Justice and the Deputy Attorney General (or designate). (10) The following sample memorandum is endorsed against the certificate of title (use PF16 particulars to show additional time):

"EXTENSION ORDER RE NOTICE 841123456 (30 DAYS ADDITIONAL TIME)".

Tariff item 11(6) is charged for the registration of the order and Tariff item 13 is charged for each endorsement after the first. If the registrant is the provincial Crown, no fee is charged pursuant to Tariff item 2.

3. **Certificate of Approval** - As there is also a registration time limit, certificates should come to the registration area in red folders. The particulars in a certificate of approval must correspond with the particulars in the Notice of Intention to Expropriate and clearly outline who the expropriating authority is and what land or interest is being expropriated. It must contain a proper legal description or be accompanied by a plan of survey. (11) It must be signed and sealed by an official of the approving authority and be registered prior to the expiration of 120 days from the date of the registration of the notice of intention unless an extension order has been registered in which case, it must

be registered within the extended time period. (12) Approving authorities are in the case of an expropriation by the Crown or a Crown agent, the Minister responsible for the administration of the authorizing Act, or in the case of a municipality, the municipal council or in any other case, the Land Compensation Board or the Surface Rights Board. (13) In the case of expropriation by a municipality, a certified copy of the resolution or bylaw approving the expropriation must be attached to the certificate. (14)

If a fee simple interest in all of the land in the title has been expropriated the old certificate of title is cancelled and a new certificate of title is issued in the name of the expropriating authority. If a certificate of title is in respect of a fee simple interest of a portion of the land in a title, the approval of the Surveys section must be obtained. A new certificate of title is issued to the expropriating authority for the expropriated land, except in the case of roads for which no titles are issued. (15) In both cases the new title is issued free and clear of all instruments and caveats other than those that the certificate of approval specifically states the title is subject to. (16) The notice of intention to expropriate and any extension order is also dropped from the remainder title. (17)

Subdivision approval is not required for the expropriation of a portion of the land described in a certificate of title. (18)

A certificate of approval for a utility right of way or an easement must be approved by the Surveys section. Its registration number is used to discharge the notice of intention to expropriate and any extension order.

Tariff items 11(6) and 13 are charged for the registration of a certificate of approval except if the registration results in the change or amendment of the registered ownership or parcel description in the certificate of title affected, in which case Tariff item 11(4) is charged for the first title affected and Tariff items 12 and 13 are charged for each certificate of title after the first affected. If the registrant is the provincial Crown, no fee is charged pursuant to Tariff item 2.

4. **Amended Certificate of Approval** - Before or after the registration of a certificate of approval, an approving authority may vary the size, location or boundary of the expropriated land within the boundaries of the parcel from which the land was expropriated. An amended certificate of approval issued by the approving authority may be registered and replaces the original certificate of approval. (19) The fees listed in item 3 above are charged.

5. **Expropriation of Untitled Land** - A fee simple estate in untitled land may be expropriated by the registration of a certificate of approval. A certificate of title may then be issued to the expropriating authority. (20) Surveys section approval is required.

6. **Abandonment of Expropriation** - At any time prior to the registration of the certificate of approval, an expropriating authority may wholly or partially abandon its intention to expropriate. The legal description and expropriating authority listed on the notice of abandonment must correspond to those listed on the notice of intention to

expropriate. (21) The notice must be signed by an official of the expropriating authority. The notice is registered and its registration number is used to wholly or partially discharge the notice of intention to expropriate and any extension order. [Tariff items 11\(5\) and 13](#) are charged except if the registrant is the provincial Crown in which case no fee is charged pursuant to [Tariff item 2](#).

7. **Lapse of Notice of Intention** - If a certificate of approval is not registered within 120 days or within the time period specified in a registered extension order, the memorandum of the notice of intention, and any extension order, can be cancelled without charge upon request. Use document type Expiry (EXPI) to discharge the notice.

8. **Revesting of an Expropriated Right of Way** - The expropriating authority or its successor, or the former owner of the expropriated land, or his successor in title may apply to the Court or Board which originally authorized the expropriation to revest the right of way where its use has been discontinued. Upon the registration of the revesting order, the right of way memorandum is discharged and the expropriated estate or interest is revested in the person from whom it was expropriated or vested in any other person named in the order. (22)

[Tariff items 11\(6\) and 13](#) are charged for the registration of the order except if the registration results in the change or amendment of the registered ownership or parcel description in the certificate of title affected, in which case [Tariff item 11\(4\)](#) is charged for the first title affected and [Tariff items 12 and 13](#) are charged for each certificate of title affected after the first. If the registrant is the provincial Crown, no fee is charged pursuant to [Tariff item 2](#).

STATUTE AND CASE REFERENCES

Statute references are to the Expropriation Act, R.S.A. 2000, c. E-13, unless otherwise indicated.

1. s. 1(f)
2. s. 1(e)
3. DiCastri, V., *Thom's Canadian Torrens System*, 2nd ed., p. 59
4. s. 2, Surface Rights Act, R.S.A. 2000, c. S-24
5. s. 19; s. 82, Land Titles Act, R.S.A. 2000, c. L-4
6. s. 61
7. s. 4; s. 82(5), Land Titles Act
8. s. 8(5)
9. s. 20
10. s. 23
11. s. 19
12. s. 20
13. s. 7 and 27
14. Form 4, Expropriation Act Forms Regulation 188/2001
15. s. 82(3), Land Titles Act
16. s. 61

- 17. s. 55, Land Titles Act
- 18. s. 2(1) and 3
- 19. s. 21
- 20. s. 62
- 21. s. 24
- 22. s. 70