

Expropriation and You

This document* is provided by way of assistance only and is not to be construed as a legal interpretation of the *Expropriation Act*.

This document will introduce you to some of the provisions and procedures of the *Expropriation Act*. The *Act* was passed into law in July 1970 and is now known as Chapter E-21 of the *Revised Statutes of Canada* 1985.

This document provides a summary of the main aspects of the *Expropriation Act*. Should you receive a Notice of Intention to Expropriate from Public Services and Procurement Canada (PSPC) (under its legal name Public Works and Government Services Canada) and want further information on the matter, please communicate with the PSPC office in your area. The address and telephone number will be on the letter accompanying the Notice of Intention to Expropriate.

What is expropriation?

Expropriation is the compulsory taking of property by a lawfully constituted body. PSPC is the department which undertakes expropriation for all departments and some agencies of the federal government.

Why does PSPC expropriate?

The Minister of Public Services and Procurement (the Minister) expropriates interests in land only when they are of the opinion that they are required for a public work or other public purposes.

At PSPC, we make every attempt to acquire real property through direct negotiations. Expropriation is only considered in rare situations where negotiations have reached an impasse. Expropriation may also be used to avoid land speculation.

What can be expropriated?

Any legal interest in real property can be expropriated.

Steps in Expropriation

The decision to expropriate is initiated by the Minister. Once the decision has been made, a series of detailed steps—as laid out in the *Expropriation Act*—is undertaken by PSPC. The main steps are as follows:

Step 1: Notice of Intention to Expropriate

This is the first formal notice you will receive that your property is being considered for expropriation. The *Expropriation Act* requires that the notice be:

- Registered in the local land registry/titles office or in the Registre foncier in Quebec;
- Published in Part 1 of the *Canada Gazette***;
- Sent to every person having a legal interest in the property; and
- Published in the local newspaper(s).

The registration and publication of the Notice of Intention to Expropriate does not change the title of the property, but merely establishes the Crown's intention to expropriate.

You may find it advisable to contact your legal counsel upon being notified officially of an expropriation. PSPC will deal directly with you or, at your request, with your legal counsel.

Upon producing the proper identification—which you should insist on seeing—any person authorized in writing by the Minister may enter your property for the purpose of making an appraisal. Refusing entry to authorized individuals is punishable by law.

If the expropriation is confirmed, all reasonable legal costs incurred by you pertaining to the expropriation will be paid by the federal government.

Step 2: Objections***

If you wish to object to the intended expropriation, you have 30 days from the date on which the notice appears in the *Canada Gazette* to do so. The publication date is indicated in the letter received. The objection must be made to the Minister in writing and contain the following:

- Your name and address;
- The nature of your objection;
- The grounds on which the objection is based; and
- The nature of your interest in the intended expropriation.

This is not yet the time to raise the issue of compensation. This issue is addressed later in this document.

Step 3: Public Hearing

If the Minister receives at least one objection, they must order that a public hearing be conducted. They will ask the Attorney General of Canada to appoint a hearing officer (who is not a public servant) to conduct the hearing. Notice of the hearing will be published in the local newspaper(s) and sent to everyone who has been advised of the intention to expropriate and to each other person who served an objection. The objectors will be heard in public by the hearing officer who will prepare and submit their report, within 30 days, to the Minister. The hearing officer is not bound to hear objections judged by them to be frivolous or vexatious.

After receiving and considering the report of the hearing officer, the Minister will decide to either:

- Confirm their intention to expropriate;
- Confirm the expropriation of a more limited interest; or
- Abandon the intention to expropriate.

Within prescribed tariffs, you will be reimbursed for any costs incurred by you in asserting a written objection and considered reasonable by the hearing officer.

* Real Property Services, Public Services and Procurement Canada (January, 2023)

** Part 1 of the *Canada Gazette* lists public notices issued by the federal government. It is published every Saturday and can be found in most public libraries.

***An objector need not necessarily have a legal interest in the real property subject to expropriation proceedings.



Step 4: Confirmation of an Intention to Expropriate or Abandonment

If, after considering the hearing officer's report, the Minister decides to confirm their intention to expropriate, a Notice of Confirmation of an Intention to Expropriate is registered in the local land registry/titles office, and copies are sent to each person identified as having a legal interest in the land and to each other person who served an objection. The registration of the Notice of Confirmation vests title in the Crown as of that date, which then becomes the normal date of valuation for purposes of compensation.

The Minister may decide to abandon the expropriation in which case you will receive further notice, details and instructions from PSPC.

If the Minister fails to register a Notice of Confirmation within 120 days from the date of publication of the Notice of Intention to Expropriate in the *Canada Gazette*, they will be deemed to have abandoned their intention to expropriate your interest.

If the expropriation is abandoned, in whole or in part, you may be entitled to compensation for any loss you may have sustained as a result of the registration of such notice.

Offer of Compensation

Within 90 days after the day on which the Notice of Confirmation is registered, PSPC will make you an offer, without prejudice, of an amount it considers to be compensation for your interest in the expropriated property. The offer must be accompanied by an appraisal report that forms the basis for the offer. You, in turn, have the right to a valuation of your property by an appraiser of your choice. Any reasonable costs for such a valuation will be reimbursed to you. If you accept the offer, you are entitled to receive payment in full of the amount specified. To accept payment does not deprive you of the right to claim additional compensation at a later date. However, any such claim must be initiated in federal court within one year of the date of your acceptance of the offer. There could be other elements of value of which PSPC is unaware at the time of the Notice of Confirmation. You may accept payment on the initial offer and subsequently:

- Negotiate to seek further compensation;
- Request, within 60 days of the date of the offer of compensation, that an independent negotiator be appointed to mediate a final settlement (PSPC also has that right); and
- Claim additional compensation in the Federal Court, within one year of the date of your acceptance of the offer.

Notice of Possession

If you are in occupation of your property, a Notice of Possession will normally be sent to you 90 days in advance of the Crown taking physical possession of your property. PSPC must make the offer of compensation prior to taking physical possession.

In the event that physical possession of your property is urgently required by the Crown, and that the Governor in Council has authorized the Minister to take early possession, the actual date of possession will be indicated in the Notice of Possession. In such case, an additional amount of 10% will be added to the value of your interest.

Federal Court

If, for any reasons, both parties (PSPC and you) cannot reach an agreement on a final settlement regarding compensation, either you or PSPC can take the matter before the Federal Court. Application to the Court must be made *within one year* of the initial offer of compensation being accepted or, alternatively, the Crown may begin proceedings to determine the final compensation at any time.

Compensation

The *Expropriation Act* sets out in considerable detail the principles to be applied in determining the amount of compensation to which you are entitled.

While it is not possible to set out in a document of this size all the relevant points, you should especially note the following:

- You will be offered the market value of your property and, where appropriate, any costs, expenses or losses arising out of, or incidental to, your disturbance, including moving to other premises if you are in occupation of the property.
- Each interest in your property (the mortgagee, for example) will be valued and compensated separately.
- If, immediately before the registration of the Notice of Intention to Expropriate, your expropriated interest was being used by you as your residence, you may be paid the minimum amount sufficient to enable you to buy a residence that is reasonably equivalent to the one you left.

In addition to the compensation for the value of your interest, you will be reimbursed for:

1. Legal costs for asserting written objection in a hearing deemed reasonable by the hearing officer;
2. Legal costs in asserting a claim for compensation, except any costs incurred after you institute any proceedings in the Federal Court.

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