

LAW REFORM COMMISSION OF BRITISH COLUMBIA

c/o British Columbia Law Institute
1822 East Mall, University of British Columbia
Vancouver, British Columbia V6T 1Z1
Voice: (604) 822 0142 Fax: (604) 822 0144 E-mail: bcli@bcli.org
Website: www.bcli.org

Backgrounder

LRC 5—Report on Expropriation

Date: December 1971

Expropriation is the lawful acquisition of one person's property by another person without the former's consent. An expropriation involves the compulsory transfer of property rights—one person acquires those rights and another is deprived of them. Either personal property or real property (land) may be expropriated. In British Columbia, the vast majority of cases of expropriation involve land that is taken by the government or a government agency for a public purpose. Expropriation exists because there are cases where the interests of the community must override those of the individual. There are instances where the community, to achieve a public benefit, must be able to acquire private property even if the owner of that property is unwilling to sell. But there should be adequate procedural safeguards to protect the individual from the abusive exercise of expropriation powers. In addition, the individual should be entitled to receive compensation providing a full indemnification of the losses resulting from expropriation.

This report is primarily focussed on proposals to reform the procedure and basis for compensation of land expropriation. Excluding the introduction and conclusion, the report contains 15 chapters. These chapters are organized in three parts. Part One sets out the existing position of the law; Part Two describes the commission's proposed new expropriation procedure; Part Three describes the basis for compensation under the commission's proposed statute.

After a brief chapter discussing the scope of the report, Part One begins by surveying the powers of expropriation in existence at the time of the report. The power of the provincial government or a government agency to expropriate must be set out in a provincial statute. Expropriation powers are spread through a wide variety of statutes. The commission's study indicates that the terminology used in these statutes is far from consistent. The commission recommended that it be harmonized, using the word "expropriate" wherever possible. The chapter lists the various expropriation powers in tabular form.

Chapter 3 examines statutory provisions authorizing only the entry onto and use of property, but not expropriation. By definition, expropriation is confined to the taking of *interests* in property. Property interests in general are confined to a limited range of traditional clas-

sifications, and this range is even more limited when only interests in land are concerned. In the commission's view, a modern expropriation statute should not be limited by traditional legal categories. It should embrace rights of entry and use. This chapter in the report analyzes such rights of entry and use in existing legislation. After reviewing a number of examples of rights of entry and use in British Columbia legislation, the commission concludes that compensation under the proposed legislation in this report should be available in these cases and that such compensation claims should be within the exclusive jurisdiction of the tribunal proposed in this report.

Chapter 4 examines a series of statutory provisions that are classified as miscellaneous situations. These provisions do not fit into the previously discussed categories of expropriation proper and rights of entry and use, but they do share characteristics with statutory provisions in those categories. Each miscellaneous provision is evaluated to determine whether or not it should be subject to the commission's proposed legislation.

Chapters 5 to 9 set out in detail the procedural elements of the commission's proposed legislation. Chapter 5 discusses the general principles that inform the commission's proposals. The key principle is that the multiplicity of statutory provisions be replaced with one general statute on expropriation, which creates a single expropriation tribunal. That tribunal would be a specialized board that only deals with expropriation.

Chapter 6 deals with initial procedures before the tribunal, such as the approval of an expropriation and the holding of an inquiry to hear objections to a proposed expropriation. Chapter 7 describes the negotiation procedure. The commission proposes that the statute contain a formal procedure for settling disputes by negotiation, which may be invoked by either party.

Chapter 8 briefly describes the compensation tribunal procedure with respect to hearing location, board staff, evidence, and availability of reasons for a decision. Chapter 9 sets out the basic procedural steps and timing for a case before the tribunal. The following eight basic steps are proposed: (1) notice of intention to expropriate; (2) inquiry (optional); (3) approval; (4) expropriation; (5) statutory offer and payment; (6) negotiation (optional); (7) arbitration; and (8) possession.

Chapters 10 to 15 describe in detail the commission's proposed basis for compensation in expropriation cases. Chapter 10 sets out the general principles underlying this proposal. The fundamental principle guiding the commission in this area is that an expropriated owner is entitled to economic reinstatement. This principle is translated into a basic formula for compensation that takes into account (1) the market value of the property expropriated, (2) damages attributable to the disturbance, and (3) damages for injurious affection. Chapter 11 discusses a number of problems relating to the market-value component of the commission's basic formula for compensation.

Chapter 12 examines disturbance damages. The commission's general position is that compensation should be paid for all costs, expenses, and losses reasonably attributable to the disturbance. Chapter 13 considers the concept of injurious affection. "Injurious affection" is

compensation that is recoverable in certain circumstances for damage to other property that is consequential upon expropriation. Chapter 14 looks at “home for a home” legislation, and recommends that a version of this concept be included in the proposed legislation. Chapter 15 considers a series of miscellaneous issues.

Further Developments

See *Expropriation Act*, S.B.C. 1987, c. 23 (now *Expropriation Act*, R.S.B.C. 1996, c. 125).