

CERTIFICATION OF TITLE TO EXPROPRIATED LAND

Almost all levels of government, such as the federal and provincial governments and municipalities, and many x. crown agencies, such as the Nova Scotia Power Corporation, frequently acquire land by expropriation.

The Expropriation Act, Stats. N.S., 1973, c. 7 provides that when certain documents are deposited at the office of the appropriate registrar of deeds "the land expropriated becomes and is absolutely vested in the expropriating authority".

Is it safe, therefore, to rely on the filing of the expropriating documents, on their face, as a valid root of title?

The answer to this question is clearly no.

It must be remembered that the power to expropriate is purely statutory; expropriation is a compulsory taking of land and a unilateral extinguishing of rights in property and therefore it is necessary to make sure, before concluding that an expropriation has perfected the title that

(a) the body which has filed the documents has, in fact, statutory authority to expropriate;

(b) all steps prescribed by the authorizing statute prerequisite to the vesting of title have been taken; and

(c) the authorizing statute contains a provision, like subsection 11(2) of the Expropriation Act, to the effect that the expropriating authority does have perfect title when the expropriation procedure, as prescribed by the statute, is completed.

Let us take as an example an expropriation by the Nova Scotia Power Corporation. When is it safe to rely on an expropriation by the Nova Scotia Power Corporation as a **root of** title?

The first inquiry must be this: does the Power Corporation have the authority to expropriate? It is not safe to assume that it has the power to expropriate simply because it is a crown agency. The authority of the Power Corporation to expropriate is found in subsection 9(1) of the Power Corporation Act, R.S.N.S., 1967, c. 233 which provides as follows:

"9(1) The corporation may expropriate any land which it deems necessary or useful for the attainment of its objects."

The next step is to check and make sure that all prerequisites to the vesting of title, as prescribed by the statute, have been followed. Subsection 9(2) of the Power Corporation Act provides that the land to be expropriated vests in the Corporation upon a plan and description of the land, signed by the Chairman or President of the Corporation, being deposited in the office of the registrar of deeds for the registration district in which the land is situated.

At this point, I refer to the Expropriation Act. It is necessary, when checking whether an expropriation by any authority is valid to make sure not only that the procedure outlined in the authorizing statute has been followed, but also that the requirements of the Expropriation Act have been followed. This is so because the Expropriation Act contains certain provisions which apply to an expropriation by any "expropriating authority". Clause 3(1)(e) of the Expropriation Act defines "expropriating authority" as "Her Majesty the Queen in the right of the Province and in all other cases any person or body empowered by statute to expropriate land". In addition, subsection 4(3) of the Expropriation Act provides that where there is a conflict between the provisions of the Expropriation Act and the provisions of any other general or special Act, the provisions of the Expropriation Act prevail.

The effect of the Expropriation Act, therefore, is to superimpose certain additional

requirements for a valid expropriation over and above the requirements imposed by the statute giving a particular authority the power to expropriate.

Returning to my example, it will be recalled that subsection 9(2) of the Power Corporation Act **provides that** the title to land being expropriated vests in the Corporation upon a plan and description of the land, signed by the Chairman or the President of the Corporation, being deposited in the Registry of Deeds for the registration district in which the land is situated.

However, the Expropriation Act which, in my view, overrides the Power Corporation Act provides, by Section 11, that an expropriating authority shall file in the registry not only a description of the land but also a document or documents setting forth

- (a) a plan of the land;
- (b) the nature of the interest intended to be expropriated and whether such interest is intended to be subject to any existing interest in the land;
- (c) the statutory purpose for which the land is expropriated; and
- (d) a certificate of approval executed by the approving authority or a true copy thereof.

Subsection 11(2) makes it clear that these requirements must be met before title is vested in the expropriating authority providing, as it does, that title vests "upon the documents being deposited at the office the appropriate registrar of deeds".

I also draw your attention to Section 7 of the Expropriation Act which provides as follows:

7(1) Notwithstanding Section 6, an expropriating authority shall not expropriate land without the approval of the approving authority.

(2) Any expropriation of land without the approval of the approving authority shall be null and void.

This is yet another requirement in addition to the requirements in the particular statute giving the authority to expropriate, which must be met before an expropriation is valid.

Section 8 of the Expropriation Act provides what the "approving authority" is for the body which expropriates. This Section provides as follows:

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For the purposes of this Act, approving authority means

- (a) the Governor in Council in respect of land expropriated by
 - (i) Her Majesty the Queen in **the right** of the Province,
 - (ii) the Nova Scotia Power Corporation,
 - (iii) Maritime Telegraph and Telephone Company Limited,
 - (iv) the Halifax-Dartmouth Bridge Commission;
- (b) the municipal council in respect of land expropriated by a municipality;
- (c) the town council in respect of land expropriated by a town;
- (d) the village commissioners in respect of land expropriated by a village;

- (e) the appropriate city council in respect of land expropriated by
 - (i) the City of Halifax,
 - (ii) the City of Dartmouth,
 - (iii) the City of Sydney;
- (f) the city council of Halifax in respect of land expropriated by the Halifax Public Service Commission;
- (g) the elected political body to which it is responsible in respect of land expropriated by any corporation, commission or body not coming within the above clauses except that in the case of Her Majesty the Queen in the right of the Province, the Governor in Council; and
- (h) any case not provided for herein, the Attorney General."

Again returning to our example, it is clear that, because of Section 8 of the Expropriation Act, an expropriation by the Nova Scotia Power Corporation is not valid unless the approval of the Governor in Council is given, and the approval is attached to the expropriating documents filed in the registry of deeds.

It must also be remembered that the power to expropriate is normally given, by statute, only for certain purposes. In the case of the Power Corporation, an expropriation may only be made by the Corporation where the Corporation deems the land necessary or useful for the attainment of its objects. Taking one other example, the Public Service Commission of Halifax, subsection 15(1) of the Halifax Public Service Commission Act, Stats. N.S., 1963, c. 55 provides that the Commission may expropriate land, but only when the Commission requires the land for the protection of the watershed area or for the development of the transmission and distribution system of the Commission.

In closing, I should say a word about what effect, if any, an expropriation under the authority of a provincial statute has on property owned by the federal Crown.

Since, it will be recalled, the authority to expropriate is purely statutory, the first question which must be asked is whether the specific statute which grants the authority and the Nova Scotia Expropriation Act apply to the federal Crown.

Although I have not looked at all statutes which give a particular body power to expropriate, those which I have looked at do not expressly provide that they apply to the Crown. Since Section 13 of the Interpretation Act, R.S.N.S., 1967, c. 151 provides that no enactment is binding on Her Majesty unless it is expressly stated therein, those particular statutes are not be binding on the federal Crown.

It is true that Section 5 of the Nova Scotia Expropriation Act provides that the Act binds Her Majesty, but that Section only makes the Act binding on Her Majesty the Queen in the right of the Province.

In the result, it is my view that a purported expropriation of property of the federal Crown made pursuant to a provincial statute is invalid.

The federal power to expropriate land is given under the Expropriation Act (Canada). This Act is not expressed to be binding on Her Majesty and therefore it is my view that in the case of a federal expropriation the converse is true, and that a federal expropriation has no effect on land owned by the Crown in the right of the Province.