



# Private Ways Act

CHAPTER 358

OF THE

REVISED STATUTES, 1989

amended 2011, c. 25

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## An Act Relating to Necessary Private Ways

### Short title

1 This Act may be cited as the Private Ways Act. R.S., c. 358, s. 1.

### PART I

#### AUTHORITY OF GOVERNOR IN COUNCIL

### Petition for right of way

2 (1) Every owner or occupier of any mine, mill, quarry, farm or factory who is desirous of transporting the produce of such mine, mill, quarry, farm or factory to a railway or public way, or to tidal or other waters or elsewhere, and every owner or occupier of any timber lands who desires to enter upon such lands and cut the timber or wood thereon and remove the same to a mill, railway or public way, or tidal or other waters or elsewhere, and who is unable to agree for a right of way with the owner or owners of any lands which it is necessary to cross in order to effect such entry or transportation, may present a petition to the Governor in Council.

(2) Such petition shall set forth

- (a) the nature of the business which such owner or occupier is desirous of carrying on;
- (b) a description of the property over which it is sought to obtain a right of way;
- (c) the width of such right of way;
- (d) the nature and extent of the right required; and

(e) the amount which such owner or occupier has offered to pay the owner or owners of the lands sought to be crossed for a right of way across the same,

and shall pray that proceedings be taken under this Part to enable the petitioner to acquire a right of way across such land. *R.S., c. 358, s. 2.*

### **Commissioner and powers on inquiry**

3 (1) Upon the presentation of the petition the Governor in Council may appoint a commissioner who, for the purposes of the inquiry herein provided, has power to summon before him any persons and to require them to give evidence on oath or affirmation and produce such documents and things as such commissioner deems requisite.

(2) Upon such presentation, the Attorney General shall forthwith, at the expense of the petitioner, cause the owner of the land over which it is sought to obtain a right of way to be served with a copy of the petition, together with a notice that a commissioner appointed by the Governor in Council will, at a time and place to be named in such notice, hear the application for such right of way and any objections thereto, and the petition and notice shall be so served not less than twenty days before the day so appointed.

(3) If such owner is absent from the Province, service on him of such petition and notice may be made by publishing the same in a newspaper published in the county in which such lands lie for at least four issues of such newspaper. *R.S., c. 358, s. 3.*

### **Hearing and orders**

4 (1) At the time and place so named, such commissioner shall hear such application and all objections thereto and report the evidence taken by him to the Governor in Council.

(2) The Governor in Council, if satisfied that the right of way sought to be obtained is actually necessary for the purposes for which it is sought and that it is otherwise just and reasonable that the same should be obtained, shall thereupon by order in council declare that the petitioner is entitled to acquire under this Part a right of way over the lands mentioned in the petition or a part thereof.

(3) Such order shall define the boundaries of such right of way and shall specify the nature and extent of the right and whether the right is to be acquired in perpetuity or for a term of years. *R.S., c. 358, s. 4.*

### **No right of way through building or orchard**

5 Where the commissioner finds on examination that the proposed right of way runs through any house, building, orchard or garden, he shall, without further inquiry, so report to the Governor in Council and no further proceeding shall take place on such petition. *R.S., c. 358, s. 5.*

### **Remuneration of commissioner**

6 The petitioner shall pay such commissioner for his services such sum as is determined by the Governor in Council and the Governor in Council may make the payment of such sum a condition precedent to the making of the order in council declaring the petitioner entitled to acquire a right of way. *R.S., c. 358, s. 6.*

### **Costs**

7 Where the application of the petitioner is refused, the Governor in Council may order such petitioner to pay to the owner of the land, to defray the expenses incurred by such owner in opposing the application, such sum as the Governor in Council determines. *R.S., c. 358, s. 7.*

### **Deposit**

8 Before such commissioner is appointed, the petitioner shall deposit with the Attorney General the sum of one hundred dollars, towards the payment of the commissioner for his services, and of any expenses incurred by the Governor in Council

in connection with such petition, and of any sum ordered to be paid by the petitioner to the owner of the lands over which the right of way is sought in case of the application being refused. *R.S., c. 358, s. 8.*

### **Notice to appoint arbitrator**

9 Within thirty days after the making of such order in council, the petitioner shall serve a notice on the owner of the land over which it is sought to acquire a right of way, stating the name of one arbitrator, and requiring such owner to name another arbitrator, for the purpose of assessing the compensation and damages to be paid to the owner of such lands on account of the right of way sought to be acquired and, if such owner refuses or fails to notify the petitioner of the appointment of an arbitrator within ten days after service of such notice, a judge of the Trial Division of the Supreme Court or of a county court may appoint such arbitrator. *R.S., c. 358, s. 9.*

### **Appointment of third arbitrator**

10 The two arbitrators so appointed shall be notified by the petitioner of their appointment and within twenty days after such notice choose a third arbitrator and, if they fail to choose such third arbitrator within twenty days after such notice to them, such third arbitrator shall be appointed by the Governor in Council. *R.S., c. 358, s. 10.*

### **Duty of arbitrators**

11 Such arbitrators shall, without delay, proceed to assess the compensation to be paid with respect to the lands over which such right of way is acquired, and for the damages, if any, occasioned by the acquisition of such right of way, and shall file their award with the Attorney General. *R.S., c. 358, s. 11.*

### **Vesting of right of way**

12 On payment to such owner of the amount so awarded, a right of way as in the said order in council defined shall vest in the petitioner. *R.S., c. 358, s. 12.*

### **Registration of copy of order and award**

13 (1) A copy of the order in council and of the award, certified under the hand of the Attorney General, shall be registered in the registry of deeds for the registration district in which is situated the land over which the right of way is acquired.

(2) The fees for such registration shall be those provided for the registration of deeds and shall be paid by the petitioner. *R.S., c. 358, s. 13.*

### **Insufficient deposit**

14 If the amount deposited by the petitioner with the Attorney General is insufficient for the purposes for which the same is required to be deposited, he shall pay any deficiency before any award is made by the arbitrators. *R.S., c. 358, s. 14.*

### **Application of Part to sluice**

15 This Part shall apply to a right of way for and a right to build a sluice by which to convey, transport, or remove the produce, timber and wood mentioned in Section 2 by water or otherwise. *R.S., c. 358, s. 15.*

## **PART II**

### **AUTHORITY OF MUNICIPAL COUNCIL**

### **Interpretation**

16 In this Part,

(a) "commissioner" means the person appointed by the council under this Part;

- (b) "council" means the council for the municipality in which the road, alteration, landing or work is situated;
- (c) "land" includes any easement or right in land;
- (d) "owner" includes any person having an interest in land or in an easement or right in land;
- (e) "road" includes a bridge or approach to a bridge, except in the provision prescribing the width of a road;
- (f) "warden" means the warden for the municipality in which the road, alteration, landing or work is situated. *R.S., c. 358, s. 16.*

### **Petition for private way or road**

- 17 (1) Any freeholder or freeholders of any municipality may present a petition to the council praying for the obtaining and laying out of a private way or road, either open or pent.
- (2) Where the council is satisfied that the application should be granted, it shall order a precept to be issued to a competent person as a commissioner, directing him, within a convenient time, to
- (a) examine whether the proposed private way or road is the most practicable and reasonable means of access for the person or persons petitioning for the way or road to his or their lands or property or rights;
  - (b) if satisfied with respect thereto, lay out the same in the manner most advantageous to the person or persons applying for the way or road and least detrimental to the owner or owners of the land through which the same shall pass; and
  - (c) mark out the same on the land. *R.S., c. 358, s. 17.*

### **Further duties of commissioner**

- 18 (1) If the commissioner considers that the proposed way or road is reasonable and practicable and requisite for the purposes of the person or persons applying therefor, he may lay out and mark the same and make plans thereof, in duplicate, and if he considers otherwise he shall so report to the council.
- (2) Such way or road shall be not more than twenty-five feet in width. *R.S., c. 358, s. 18.*

### **Agreement for compensation**

- 19 (1) The commissioner may make an agreement in writing as to the compensation therefor with the owners of the land, the use of which is required for the purposes of the proposed private way or road.
- (2) Such agreement shall contain a description of such land, a reference to the plan and the amount agreed upon for compensation.
- (3) The commissioner shall transmit to the municipal clerk, to be laid before the council with his precept, such agreement and a full report of his proceedings thereon. *R.S., c. 358, s. 19.*

### **Appointment of arbitrators**

- 20 Where no agreement for compensation is made, arbitrators to appraise the same shall be appointed in the following manner:
- (a) one arbitrator shall be appointed by the commissioner, another by the owner of the land and a third by the warden;
  - (b) the county court judge for the district in which the dispute arises may appoint an arbitrator to act on behalf of any owner, who is under disability, or absent from the Province, or who fails to appoint an arbitrator in his own behalf, after three days notice to him when he is within the municipality and fifteen days notice when he is not within the municipality but is within the Province;

(c) such notice may be given by the commissioner and may be served by delivering the same to the owner or, if he is not within the municipality, by mailing the same to his last known address, postage prepaid;

(d) no notice shall be necessary in the case of the disability of the owner or of his absence from the Province. *R.S., c. 358, s. 20.*

### **Joint appointment of arbitrator and failure to appoint**

21 (1) Where the land of more than one owner is required, the owners with whom no agreement has been made, instead of each appointing an arbitrator, may join in the appointment of one arbitrator to act with the two arbitrators appointed as hereinbefore provided in appraising the amount of the compensation to be paid to each of the owners represented by such arbitrator.

2) If any of the owners fails to join in making such appointment after seven days notice by the commissioner to do so, the county court judge for the district in which the dispute arises shall appoint an arbitrator to act on behalf of those who do not so join, and such appointment is as valid as if they had joined in making such appointment. *R.S., c. 358, s. 21.*

### **Oath**

22 The three arbitrators, before entering upon their duties, shall take an oath before a justice of the peace that they will faithfully and impartially discharge the same. *R.S., c. 358, s. 22.*

### **Appraisal by arbitrators**

23 (1) The arbitrators shall enter upon the land and appraise the compensation payable to the owner in respect thereto.

(2) The award of the majority of such arbitrators is valid and binding.

(3) The precept, with the report of the commissioner and the award, accompanied by a plan and containing or referring to a description of the land, shall be transmitted to the municipal clerk to be laid before the council. *R.S., c. 358, s. 23.*

### **Notice to interested person**

24 After the report of the commissioner, with an agreement or award for compensation, is transmitted to the clerk, he shall, not less than thirty days previous to the next meeting of the council, serve a notice containing the substance of such report, agreement or award, upon each of the persons interested in the lands through which the way or road is proposed to be laid out, and service of such notice may be effected by mailing the same to the last known address of each of the persons, postage prepaid and registered. *R.S., c. 358, s. 24.*

### **Consideration of report**

25 At the meeting of the council next after the receipt of the report, or at any subsequent meeting to which the consideration of the same is adjourned, the report, with the agreement or award for compensation, and any objections thereto shall be considered. *R.S., c. 358, s. 25.*

### **Decision of council**

26 (1) The council may confirm or disallow the report and, if it is satisfied that the amount of the compensation is either insufficient or excessive, it may disallow and set aside the agreement or award and direct a new appraisal of the compensation to be made, unless an agreement is entered into in respect thereto, and may delay action on the precept until a new agreement or award is made and transmitted.

(2) The council may also either confirm or disallow the new agreement or award. *R.S., c. 358, s. 26.*

### **Filing of documents**

27 If any agreement or award is confirmed, the municipal clerk shall file the same, and the papers in connection therewith, and shall enter the fact of such confirmation in a book to be kept by him for that purpose. *R.S., c. 358, s. 27.*

### **Calculation of compensation**

28 The compensation to which an owner shall be entitled shall include the value of the use of the land so taken, if any, and the damages to the land of the owner directly caused by such private way or road. *R.S., c. 358, s. 28.*

### **Payment of compensation and expenses**

29 The compensation ascertained by the agreement or by the appraisal of the arbitrators, and the expenses incurred in respect thereto, shall be paid by the council, and may be charged against and recovered from any polling district in which such private way or road is made, or in whole or in part from the applicant or applicants therefor, as the council may direct. *R.S., c. 358, s. 29.*

### **Council by-laws**

29A (1) The council may make by-laws respecting the payment of compensation charged against the polling district in which a private way or road is made, or in whole or in part against the applicant or applicants therefor.

(2) A by-law passed pursuant to subsection (1) may provide

(a) that the charges may be chargeable according to a plan or method set out in the by-law;

(b) when the charges are payable;

(c) that the charges are first liens on the real property in the polling district or belonging to the applicant or applicants, and may be collected in the same manner as other taxes;

(d) that the charges be collectable in the same manner as taxes and, at the option of the Treasurer, be collectable at the same time, and by the same proceedings, as taxes;

(e) a means of determining when the lien becomes effective or when the charges become due and payable;

(f) that the amount payable may, at the option of the owner of the property, be paid in the number of annual instalments set out in the by-law and, upon default of payment of any instalment, the balance becomes due and payable; and

(g) that interest is payable annually on the entire amount outstanding and unpaid, regardless of whether the owner has elected to pay by instalments, at a rate and beginning on a date fixed by the by-law. *2011, c. 25, s. 1.*

### **Entry on land**

30 (1) No ascertainment or tender of the amount of compensation is necessary before entering upon land required for a private way or road.

(2) When the amount is ascertained, the municipal clerk shall, under his hand, give such owner notice in writing that such amount is subject to his order in the hands of the municipal treasurer.

(3) Such notice may be mailed to his last known address, postage prepaid, and, if he resides out of the Province and his address is not known, no notice or tender shall be necessary. *R.S., c. 358, s. 30.*

### **Registration of documents and effect**

31 One of the plans and the agreement or, if there is no agreement, a copy of the award shall be registered in the registry of deeds for the registration district in which the land lies, and such registration shall be held to vest the title as an easement to the land or rights of the person or persons applying for such private way or road. *R.S., c. 358, s. 31.*

## **Appeal**

32 (1) Any person petitioning for a private way or road, and any person who is interested in the lands through or over which such way or road is to be laid out, may, within ten days after the decision of the council, appeal from the decision of the council to the county court in the county wherein it is proposed to lay out such way or road, by giving notice thereof to the warden or municipal clerk, in writing, stating the grounds of appeal.

(2) The municipal clerk shall thereupon transmit the proceedings to the clerk of such court.

(3) The appeal shall be heard at the next sittings of the court in the said county or, if it sits in more than one place in the county, then at the next sittings held at the place nearest by the usual route of travel to the proposed private way or road.

(4) After hearing the appellant, the other parties interested and the municipal council, and any witnesses produced, the court shall finally determine the questions raised, and either allow the appeal and quash, set aside or reverse the decision of the council, or confirm the same, either with or without costs, in the discretion of the court. *R.S., c. 358, s. 32.*

## **Gate on private way or road**

33 (1) The council may direct gates to be placed on private ways or roads, and make regulations respecting the placing and keeping thereof.

(2) Every person guilty of a breach of such regulations shall, for every offence, be liable to a penalty of not less than one dollar and not more than eight dollars. *R.S., c. 358, s. 33.*

## **Remuneration of commissioner**

34 The commissioner shall, for his services, receive such remuneration as the council allows. *R.S., c. 358, s. 34.*

## **Petition to shut up altered or abandoned way or road**

35 (1) Where a private way or road or any part thereof has been altered or abandoned, any person interested therein or any of the owners of land adjoining the same may, by petition stating the facts and the names of all persons interested in the way or road and in the lands on either side thereof, apply to the council to shut up or otherwise dispose of the same.

(2) At least thirty days previous notice in writing of the application shall be given to the persons interested and posted up on two conspicuous places near the way or road and the petition shall be accompanied by an affidavit proving that such notice has been so given and posted.

(3) The council shall hear the person or persons making the application, the persons who have been notified and any witnesses produced on behalf of any such persons and shall make an order either dismissing the application or granting the same in whole or in part. *R.S., c. 358, s. 35.*

## PART III

## GENERAL

## **Expropriation Act does not apply**

36 For greater certainty,

(a) an order, award or decision made or any other action taken pursuant to this Act is not an expropriation for the purpose of the Expropriation Act or at common law or otherwise; and

(b) the Expropriation Act does not apply to this Act or to any order, award, decision or any other action made or taken pursuant to this Act. *2011, c. 25, s. 2.*



