

PROVINCE OF BRITISH COLUMBIA

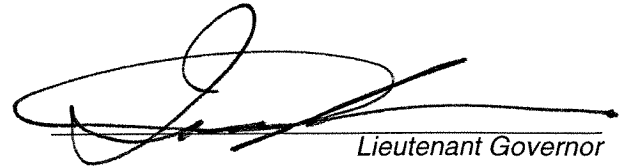
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. \_\_\_\_\_

214

, Approved and Ordered

MAR 17 2005

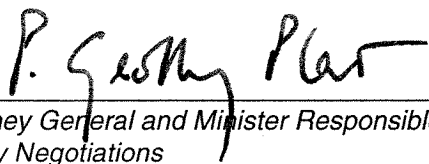


Lieutenant Governor

Executive Council Chambers, Victoria

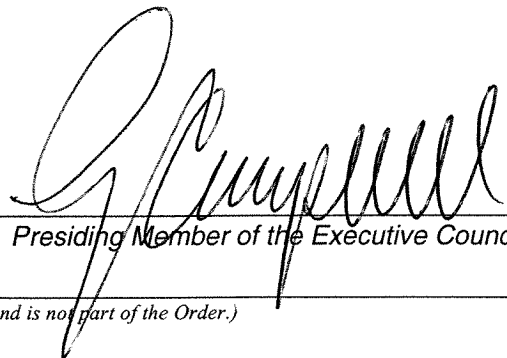
On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective March 18, 2005,

- (a) the Expropriation Compensation Board Practice and Procedure Regulation, B.C. Reg. 452/87, is repealed, and
- (b) the attached Compensation Action Procedure Rule is made.



P. George Plax

Attorney General and Minister Responsible for Treaty Negotiations



Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section:- Expropriation Act, R.S.B.C. 1996, c. 125, sections 27 (1) and 54;  
Expropriation Amendment Act, S.B.C. 2004, c. 61, s. 21

Other (specify):- \_\_\_\_\_

March 11, 2005

383 /2005/7

# COMPENSATION ACTION PROCEDURE RULE

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## **FORM 1**

## **Application**

### **Definitions**

- (1) In this rule:
  - “**Act**” means the *Expropriation Act*;
  - “**board**” means the Expropriation Compensation Board;
  - “**board proceeding**” means a proceeding that was brought by filing a Form A or other application with the board under section 2 of the Expropriation Procedure Regulation before March 18, 2005;
  - “**compensation action**” means
    - (a) a proceeding brought under subrule (7) or (10),
    - (b) a proceeding in which an included claim is made, or
    - (c) an unset board proceeding that is deemed to be a compensation action under subrule (12) or (15);

**“compensation decision”** means a determination under section 26 (1) of the Act, and includes a determination of the entitlement to, and the scale of, the costs that are or may be payable in relation to the proceeding in which the determination is made;

**“compensation hearing”** means a hearing for the purpose of arriving at a compensation decision, but does not include

- (a) a pre-hearing conference,
- (b) an interlocutory hearing, or
- (c) a hearing under section 45 or 48 of the Act;

**“court”** means the Supreme Court;

**“Expropriation Procedure Regulation”** means the Expropriation Compensation Board Practice and Procedure Regulation, B.C. Reg. 452/87;

**“Form A”** means a Form A under the Expropriation Procedure Regulation;

**“Form B”** means a Form B under the Expropriation Procedure Regulation;

**“included claim”** means a claim for compensation under any of the following:

- (a) section 33 (3) (b) or 50 (4) (a) of the *Community Charter*;
- (b) section 101 (3) (b) of the *Water Act*;
- (c) section 21 of the *Health Act*;
- (d) section 16 (9) or 20 (2) of the *Hydro and Power Authority Act*;
- (e) section 312 (3) (b) or 749 (2) of the *Local Government Act*;
- (f) section 33 (4) or 53 (1) of the *Railway Act*;
- (g) section 9 (4) of the *Transportation Act*;

**“in-progress board proceeding”** means a board proceeding if one of the following applies:

- (a) the board held a compensation hearing in the board proceeding after August 1, 2004 and before March 18, 2005 and the board has not yet rendered its compensation decision in that proceeding;
- (b) there has been an appeal to the Court of Appeal in relation to the board proceeding and the appeal has been heard, in whole or in part, before March 18, 2005;
- (c) before March 18, 2005, a hearing in the board proceeding was scheduled to commence after March 17, 2005 and before January 1, 2006;

**“Supreme Court Rules”** means the Supreme Court Rules, B.C. Reg. 221/90;

**“unset board proceeding”** means a board proceeding that is not an in-progress board proceeding.

#### **Court may dispense with this rule**

(2) The court may, if the court considers it just and convenient to do so, do one or both of the following in relation to a compensation action:

- (a) extend or shorten any period of time provided for in this rule or in an order of the court, whether or not the application for the extension or the order granting the extension is made after the period of time has expired;

- (b) on application and if all parties to the compensation action agree, order that any provision of this rule does not apply to the compensation action.

**This rule prevails in event of a conflict**

- (3) The Supreme Court Rules apply to a compensation action except that, in the event of a conflict between this rule and the Supreme Court Rules, this rule prevails.

**Certain rules do not apply**

- (4) Rules 17, 25 and 37 of the Supreme Court Rules do not apply to a compensation action.

**Trial without jury**

- (5) A trial in a compensation action must be heard by the court without a jury.

**Style of proceeding for compensation actions**

- (6) The style of proceeding for a compensation action must include the words “Subject to the Compensation Action Procedure Rule” immediately below the listed parties.

**Initiating Actions Under This Rule**

**Commencing action on a claim**

- (7) A person wishing to make an included claim or a claim for compensation under the Act must file in a registry of the court a writ of summons to which is attached a statement of claim.

**Service of pleadings**

- (8) A person who files a writ of summons under subrule (7) must serve that pleading on the defendants within 10 days after the date on which the writ of summons was filed or within such longer period as the court may order.

**Expropriating authority may seek determination**

- (9) If a person who is entitled to claim compensation under an enactment referred to in the definition of “**included claim**” does not make a claim for that compensation within 60 days after the right to make that claim first arises, the expropriating authority against whom the claim may be made may seek an order of the court to determine the amount of compensation to which the person is entitled.

**Expropriating authority’s pleadings**

- (10) An expropriating authority wishing to obtain a determination under subrule (9) must file in a registry of the court a writ of summons to which is attached a statement of claim and, for that purpose, the pleadings may claim, as the relief required, a determination of the amount of compensation, if any, to which the person referred to in subrule (9) is or may be entitled.

## Unresolved Board Proceedings

### Notice required

- (11) No step, including, without limitation, an assessment of costs, may be taken in an unset board proceeding until
- (a) the person who initiated that proceeding, or the respondent to that proceeding, has
    - (i) completed Part 1 of a Request to Transfer Proceedings to the Supreme Court in Form 1 to request that the board's files pertaining to the board proceeding be transferred to the court, and
    - (ii) filed that request with the Deputy Attorney General,
  - (b) the Deputy Attorney General has transferred, to the court registry identified in the request,
    - (i) the request, and
    - (ii) the board's files pertaining to the board proceeding,
  - (c) the court registry to which the board's files pertaining to the board proceeding has been transferred has
    - (i) accepted those files,
    - (ii) completed Part 2 of the request to confirm that acceptance, and
    - (iii) filed the completed request, and
  - (d) the person who filed the unset board proceeding request with the Deputy Attorney General under paragraph (a) has
    - (i) served a copy of the filed request on each other party to the proceeding and on each other person on whom the application in the board proceeding had been, or ought to have been, served, and
    - (ii) filed proof of that service in the court.

### This rule applies to unset board proceedings

- (12) After subrule (11) has been complied with in respect of an unset board proceeding, the proceeding is deemed to be a compensation action and, for that purpose,
- (a) the Form A or other document by which the board proceeding was initiated is deemed to be the writ of summons and statement of claim in the compensation action,
  - (b) the following person is deemed to be the plaintiff in the compensation action referred to in that subrule:
    - (i) subject to subparagraph (ii), the person identified as the claimant on the Form A that initiated the board proceeding;
    - (ii) if the board proceeding was initiated by an application other than a Form A, the person who initiated the board proceeding,
  - (c) the Form B, if any, filed with the board in response to the application referred to in paragraph (a) is deemed to be the appearance and statement of defence in the compensation action, and
  - (d) each person who filed a Form B with the board is deemed to be a defendant in the compensation action.

**Previous address for delivery**

- (13) For the purposes of Rule 11 (6) of the Supreme Court Rules as it relates to a compensation action referred to in subrule (12), until a new address for delivery is provided for a party in the compensation action under the Supreme Court Rules, the party is deemed to have, as an address for delivery in the compensation action, the address set out for that party on the latest document that
- (a) was filed by that party with the board in relation to the board proceeding, and
  - (b) contains an address for that party.

**If no Form B filed**

- (14) If no Form B had been filed with the board in a board proceeding that has been deemed to be a compensation action under subrule (12), a person on whom a copy of the filed request is served under subrule (11) (d) (i) who wishes to respond to or defend against one or more of the claims in that compensation action must
- (a) file and deliver a statement of defence and any counterclaim to the plaintiff in the compensation action within 21 days after the service of the filed request, and Rule 21 of the Supreme Court Rules, other than Rule 21 (5), applies, and
  - (b) include in the statement of defence that person's address for delivery.

**In-progress board proceedings not concluded by December 31, 2005**

- (15) Subrules (11) to (14) apply to an in-progress board proceeding as if it were an unset board proceeding if the board has not, by December 31, 2005, completed all of the hearings necessary to allow it to render its compensation decision in the proceeding.

**Costs****Costs for actions brought under this rule**

- (16) Subject to subrules (17) and (18), if legal costs are payable to a party to a compensation action, those legal costs must be assessed as party and party costs under Appendix B of the Supreme Court Rules, and Rule 57 of those rules, other than Rule 57 (1), (3), (5) and (10), applies.

**Costs for proceedings brought under the Expropriation Procedure Regulation**

- (17) If legal costs are payable to a party to a board proceeding, whether or not that proceeding becomes a compensation action under subrule (12), those costs must be assessed,
- (a) if the legal costs were incurred before June 28, 1999, under section 45 (7) (a) of the Act,
  - (b) if the legal costs were incurred on or after June 28, 1999 in an in-progress board proceeding, under the Tariff of Costs Regulation, B.C. Reg. 189/99, and
  - (c) if the legal costs were incurred on or after June 28, 1999 in an unset board proceeding, under the Expropriation Proceeding Costs Regulation.

**Appraisal costs**

- (18) If real estate appraisal costs are payable in relation to a board proceeding or in relation to a compensation action brought under subrule (7) or (10), those costs must be assessed,
- (a) if the costs were incurred before June 28, 1999, under section 45 (7) (a) of the Act,
  - (b) if the costs were incurred on or after June 28, 1999 in an in-progress board proceeding, under the Tariff of Costs Regulation, B.C. Reg. 189/99, and
  - (c) if the costs were incurred
    - (i) in an unset board proceeding, or
    - (ii) in a compensation action brought under subrule (7) or (10), under the Expropriation Proceeding Costs Regulation.

FORM 1  
**REQUEST TO TRANSFER PROCEEDINGS TO THE  
SUPREME COURT**

**PART 1**

.....[*name*]....., the Claimant/Respondent in Expropriation Board Proceeding  
..... v. ...., Expropriation Compensation Board File # ....., requests  
that the Deputy Attorney General transfer all of the Expropriation Compensation Board's files relating to  
the above noted proceeding, along with a completed version of this form, to the  
.....[*location*]..... Registry of the Supreme Court of British Columbia.

.....  
Party's Signature Dated

The following is to be completed by the Deputy Attorney General or designate

.....  
Date files sent out Signature of Deputy Attorney General or designate

**PART 2**

The files relating to Expropriation Board proceeding ..... v. ...., Expropriation  
Compensation Board File #....., have been accepted for filing at the  
.....[*location*].....Registry of the Supreme Court of British Columbia at  
.....[*address*].....

As a result of the receipt and acceptance of those files, the proceeding is deemed, under the Compensation  
Action Procedure Rule, to be a compensation action within the meaning of that rule and will continue as  
an action in the Supreme Court with the following style of proceedings:



No. ....

..... Registry

In the Supreme Court of British Columbia

Between

Plaintiff(s)

and

Defendant(s)

Subject To The Compensation Action Procedure Rule

.....  
Date of receipt of files

.....  
Deputy Registrar

**Notice to Defendant:**

As a result of the transfer of the files relating to above-noted Expropriation Compensation Board proceeding, the proceeding is deemed to be a compensation action and the Compensation Action Procedure Rule and the Supreme Court Rules now apply to that action in the manner set out in the Compensation Action Procedure Rule.

If you have filed a Form B with the Expropriation Compensation Board in response to the above noted Expropriation Board proceeding, the Form B is deemed to be the appearance and statement of defence in the compensation action and you are now deemed to be a defendant in that compensation action.

If you have not filed a Form B with the Expropriation Compensation Board in response to the above noted Expropriation Board proceeding, you must, if you wish to respond to or defend against one or more of the claims made in that proceeding,

- (a) file and deliver a statement of defence and any counterclaim to the plaintiff in the compensation action within 21 days after being served with this Request, and Rule 21 of the Supreme Court Rules, other than Rule 21 (5), applies, and
- (b) include in that statement of defence your address for delivery.