

SQ'EWÁ:LXW FIRST NATION

EXPROPRIATION LAW



PREAMBLE

WHEREAS the Sq'ewá:lxw First Nation has an inherent right to self-government which emanates from its people, culture, language, and land and which is recognized and affirmed by section 35 of the *Constitution Act, 1982*;

WHEREAS our Nation, as an aspect of our inherent right of self-government, has the jurisdiction to address real property issues such as expropriation, and this inherent right has not been extinguished;

WHEREAS our Nation has chosen to assume control of its Indian reserve lands pursuant to the *First Nation Lands Management Act*, S.C. 1999, c. 24 by entering into the *Individual Agreement on First Nation Land Management between Sq'ewá:lxw First Nation and Her Majesty the Queen in Right of Canada* and by adopting the *Sq'ewá:lxw First Nation Land Code*;

WHEREAS section 69 of the *Sq'ewá:lxw First Nation Land Code* permits our Nation to enact a law for the purposes of establishing the rights and procedures for community expropriations.

THEREFORE BE IT RESOLVED THAT the Sq'ewá:lxw First Nation hereby enacts the following law:

PART 1 - INTERPRETATION

Short Title

- 1 This Law may be cited as the "Sq'ewá:lxw First Nation Expropriation Law".

Interpretation

- 2 For the purposes of this Law, the following definitions shall apply:

"appraisal report" means the written report prepared by the qualified land appraiser in accordance with section 26;

"certificate of possession" means documentary evidence issued under the Land Code or formerly issued under s. 20(2) of the *Indian Act* of a member's allotment of part of the land described thereon;

"community purpose" means a purpose the achievement of which will directly or indirectly benefit the Sq'ewá:lxw, members or persons residing on Sq'ewá:lxw land;

"community works" means the establishment or continuation of works which will directly or indirectly benefit the Sq'ewá:lxw, members or persons residing on Sq'ewá:lxw land;

"Council" means the Chief and Council of the Sq'ewá:lxw;

"court" means the Federal Court (Trial Division);

"fair compensation" means, in the context of expropriation, compensation that takes into consideration the following:

- (1) the market value of the interest that is being expropriated;
- (2) the replacement value of any improvement to the land that is being expropriated;
- (3) the damages attributable to any disturbance; and
- (4) damages for any reduction in the value of a remaining interest.

“First Nations Land Management Act” means the *First Nations Land Management Act (Canada)*, S.C. 1999, c. 24;

“Framework Agreement” means the *Framework Agreement on First Nation Land Management* initially entered into between the Minister of Indian and Northern Affairs and the Chiefs of thirteen First Nations on February 12, 1996, as amended, and entered into by the Sq’ewá:lxw on March 6, 2008;

“Indian Act” means the *Indian Act*, R.S.C. 1985, c. I-5;

“interest” means, in relation to the land, an interest as defined in the *First Nations Land Management Act*;

“interest holder” means a holder of an interest or a licence in relation to Sq’ewá:lxw land, including a holder of a certificate of possession;

“land” means Sq’ewá:lxw Indian Reserve No. 1 and Ruby Creek Indian Reserve No. 2 ;

“Land Code” means the Sq’ewá:lxw Land Code and any amendment thereto;

“Lands Advisory Committee” means the Lands Advisory Committee established pursuant to the Land Code;

“law” means any law enacted pursuant to the Land Code;

“lessee” means a lessee, tenant or occupier under or lease or tenancy agreement in existence in relation to the interest or licence in relation to the land being expropriated as at the date the expropriation notice under section 13 is delivered, as more particularly set out in sections 31 and 32;

“licence” means, in relation to Sq’ewá:lxw land, a licence as defined in the *First Nations Land Management Act*;

“market value” means the amount that would have been paid for the interest if it had been sold on the reserve by a willing seller to a willing buyer under no duress;

“member” means a person whose name appears or is entitled to appear on the Sq’ewá:lxw band membership list;

“qualified land appraiser” means a person who has received the AACI designation by the Appraisal Institute of Canada;

“panel” means the Dispute Resolution Panel established pursuant to Schedule B of the Land Code;

“**power**” includes a right, privilege and authority;

“**Province**” means her Majesty the Queen in Right of the Province of British Columbia;

“**registered interest**” means an interest on the land registered in the First Nation Land Register;

“**resolution**” means a resolution of the Council;

“**Sq’ewá:lxw**” means the Sq’ewá:lxw First Nation, a band within the meaning given to “band” in subsection 2(1) of the *Indian Act*.

PART 2 - APPLICATION

Paramountcy

- 3** If the Sq’ewá:lxw proposes to expropriate an interest or licence in relation to the land, this Expropriation Law applies to the expropriation, and if there is an inconsistency between any provisions of this Expropriation Law and any other enactment respecting the expropriation, the provisions of this Expropriation Law will apply.
- 4** Despite section 3, if there is a conflict between this Expropriation Law and the Land Code, the Land Code will apply.

If Interest Holder agrees to Transfer Interest

- 5** If an interest holder, or if there is more than one interest holder, all interests holders agree to transfer their interest or licence in relation to the land to the Sq’ewá:lxw without expropriation, but cannot agree with the Sq’ewá:lxw on the compensation to be paid,
 - (a) Part 5 of this Expropriation Law does not apply;
 - (b) compensation to be paid to the interest holder or interest holders will be determined as if the interest had been expropriated under this Expropriation Law; and
 - (c) unless the parties otherwise agree, compensation must be determined effective on the date the interest holder or holders agree to transfer the interest or licence in relation to the land to the Sq’ewá:lxw.
- 6** An agreement under section 5 must be in writing and must state:
 - (a) that the interest holder or holders agree to the transfer of the interest in the lands;
 - (b) that compensation must be determined in accordance with Parts 6 and 7 of this Expropriation Law;
 - (c) the date set for possession of the land subject to the expropriation;
 - (d) that the interest holder or holders must take the necessary steps to transfer the interest or the licence in relation to the land, to the Sq’ewá:lxw; and

- (e) that the Sq'ewá:lxw must make compensation payments to the interest holder or holders in accordance with Part 8 of this Expropriation Law.

PART 3 - LAND ADMINISTRATION AND AUTHORITY

- 7** Except as otherwise provided in this Expropriation Law, the Land Code, or the *First Nations Land Management Act*, the Sq'ewá:lxw acts through Council in exercising its powers and functions under this Expropriation Law.
- 8** Council must exercise its powers and functions in accordance with this Expropriation Law, the Land Code and all other applicable laws.

PART 4 - EXPROPRIATION

Rights and interests that may be expropriated

- 9** Except for an interest of Her Majesty or an interest obtained under section 35 of the *Indian Act* the Sq'ewá:lxw may expropriate all or part of an interest in or licence in relation to the land.
- 10** A person may not, in any proceedings dispute the right of the Sq'ewá:lxw to have recourse to the expropriation.

Limits on expropriation

- 11** An expropriation must be commenced by a resolution of council, passed at a duly convened meeting of council, following a written recommendation from the Lands Advisory Committee.
- 12** An expropriation under this Expropriation Law must be:
 - (a) of the smallest estate or interest necessary,
 - (b) exercised only after a reasonable effort in good faith has been made to acquire the interest in the lands from the interest holder or holders;
 - (c) necessary for community works or a community purpose; and
 - (d) carried out with community approval in accordance with section 13(a) if the interest holder of the interest or licence being expropriated is a member.

PART 5 - PRE-EXPROPRIATION PROCEDURES

Expropriation Notice and Community Approval

- 13** Where Sq'ewá:lxw intends to expropriate an interest or licence in relation to the land it must:
 - (a) where the interest holder of the interest or licence in relation to land being expropriated is a member, obtain community approval of the expropriation in accordance with the Land Code prior to serving the expropriation notice under paragraph (b);

- (b) serve an expropriation notice on each interest holder; and
- (c) serve each interest holder referred to in paragraph 13(b) with a copy of this Expropriation Law; and
- (d) register the expropriation notice in the First Nations Land Register.

Method of Notice

14 The expropriation notice must be served personally or by registered mail.

Contents of Notice

15 The expropriation notice must contain:

- (a) the name and address of the designated Sq'ewá:lxw office manager;
- (b) a description and plan of the interest or licence in relation to the land to be expropriated sufficient to identify the interest or licence in the First Nation Land Register;
- (c) the purpose for which expropriation is required;
- (d) if:
 - (i) the interest or licence being expropriated is required for a limited time, or
 - (ii) a limited interest in the interest or licence is required,

the time period or the nature of the limited interest that is being taken.

Substituted Service

16 If the person or persons to whom a notice is required to be served under section 13 cannot be located, Sq'ewá:lxw may apply to court for an order for substituted service.

Notice on all registered interest holders

17 Sq'ewá:lxw must serve a copy of the expropriation notice on all persons who have, at the time the expropriation notice is served, registered an interest in the lands in question in the First Nations Land Register.

Entry for Limited Purposes

18 In addition to any powers under the Land Code or the Framework Agreement or any law, a person authorized by the Sq'ewá:lxw may, after serving the expropriation notice under section 13,

- (a) during daylight hours, and
- (b) after making reasonable efforts to notify the interest holder or holders of the interest or licence in relation to the land,

enter any land for the purposes of:

- (c) making surveys, inspections, examinations, soil test or doing other things that are necessary to determine:
 - (i) the location of the proposed community works, or
 - (ii) the description of the lands that the Sq'ewá:lxw intend to expropriate, and
 - (d) completing an appraisal of the value of the interest in the land.
- 19** The person authorized may, on entering the lands, cut down any trees or brush that obstructs the running of survey lines.
- 20** Sq'ewá:lxw must pay compensation for damages that it causes by the exercise of its rights under sections 18 and 19, including any damages caused to adjoining lands, in accordance with such policies and procedures established by Council in accordance with the Land Code.

PART 6 - COMPENSATION

Right to Compensation

- 21** Every interest holder of an interest or licence in relation to the land that is being expropriated is entitled to fair compensation from the Sq'ewá:lxw, to be determined in accordance with this Expropriation Law.

PART 7 - BASIS FOR COMPENSATION

Basic Formula

- 22** The Sq'ewá:lxw must pay as fair compensation to the interest holder or holders of the interest or licence in relation to the land being expropriated,
- (a) the market value of the interest or licence in relation to the land being expropriated as determined by a qualified land appraiser in accordance with sections 24 and 25;
 - (b) subject to section 23, where there is a partial taking, the amount of any decrease in market value of the remaining interest or licence in relation to the land; determined by a qualified land appraiser in accordance with sections 24 and 25; and
 - (c) the replacement value of any improvement to the land that is being expropriated determined by a qualified land appraiser; and
 - (d) disturbance damages caused by the expropriation as more specifically set out in section 27.

Partial Takings

- 23** Where the qualified land appraiser, acting reasonably concludes that the remaining interest or license will be of nominal value as determined in accordance with sections 24, and 25, and the interest holder or holders agree, then the remaining interest or licence will be included in the interest or licence being expropriated, and compensation will be based on the value of the whole interest or license being expropriated, determined in accordance with sections 24 and 25.

Determination of Market Value

- 24** The market value of the interest or partial interest being expropriated will be determined by a qualified land appraiser,
- (a) appointed by agreement between the Sq'ewá:lxw and the interest holder or holders, or
 - (b) appointed by the Sq'ewá:lxw if there is no agreement under paragraph (a) within 30 days of delivery of the expropriation notice under section 13,
- based on the factors set out in this Part 7.

Exclusions from Market Value

- 25** In determining the market value of the interest, the qualified land appraiser must not take account of,
- (a) the purpose for which the Sq'ewá:lxw intends to use the lands;
 - (b) an increase in the value of the interest resulting from improvements made to the land after the notice of expropriation was delivered under section 13;
 - (c) any increase or decrease in the value of the interest resulting from the development or prospect of the development for which the expropriated interest in the land is made,
 - (d) any increase or decrease in the values of the interest resulting from any expropriation or prospect of expropriation;
 - (e) any increase or decrease in the value of the interest due to development of other land that forms part of the development for which the expropriated interest is taken; or
 - (f) any increase or decrease in the value of the interest that results from the enactment or amendment of any laws made with a view to the development in respect of which the expropriated interest is taken.

Appraisal Report

- 26** Not later than 30 days following the appointment of the qualified land appraiser pursuant to section 24, the qualified land appraiser will deliver to the Sq'ewá:lxw and the interest holder, and lessee, if applicable, a written appraisal report setting out:

- (a) the market value of the interest or licence in relation to the land being expropriated;
- (b) where there is a partial taking, the amount of any decrease in market value of the remaining interest or licence in relation to the land;
- (c) the replacement value of any improvement to the land that is being expropriated; and
- (d) the reasonable disturbance damages payable to the lessee, if applicable, pursuant to section 32.

Disturbance Damages

- 27** An interest holder or holders whose interest or licence in relation to the land is expropriated is entitled to disturbance damages consisting of the following:
- (a) reasonable costs, expenses and financial losses that are directly attributable to the disturbance caused to the interest holder by the expropriation;
 - (b) reasonable costs of relocating on other land, including reasonable moving, legal and survey costs that are necessarily incurred in acquiring a similar interest in the other land; and
 - (c) reasonable business losses, if applicable, in accordance with section 29.
- 28** If a cost, expense or loss is claimed as a disturbance damage and that cost, expense or loss has not yet been incurred, either the interest holder may, with the consent of the Sq'ewá:lxw, elect to have the cost, expense or loss determined at the time, not more than 6 months after the date of after the notice of expropriation was delivered under section 13, provided however, that no cost, expense, or loss may be claimed as a disturbance damage following the date that is 6 months after the notice of expropriation was delivered under section 13.
- 29** If an interest holder whose interest or licence in relation to the land is expropriated carried on a business on that land at the date the notice of expropriation was delivered under section 13 and, after the date of expropriation, relocates the business to and operates it from other land, reasonable business losses directly attributable to the expropriation must not, unless that person and the Sq'ewá:lxw otherwise agree, be determined until the earlier of:
- (a) 6 months after the interest holder has operated the business from the other land, and
 - (b) one year after the date the notice of expropriation was delivered under section 13,

provided however, that no claim for business losses may be made following the date that is one year after the notice of expropriation was delivered under section 13.

- 30** If an interest holder or holders, acting reasonably, determines that it is not feasible to relocate the business referred to in section 29, the Sq'ewá:lxw may include in the compensation that is otherwise payable to the interest holder or holders, an additional amount not exceeding the value of the goodwill of the business.

Short Term Lessees

- 31** If, at the time the expropriation notice under section 13 is delivered, the interest or licence in relation to the land being expropriated is subject to a lease or tenancy agreement that has a term of less than one year, the Sq'ewá:lxw will pay to the lessee under such lease or tenancy agreement:
- (a) an amount that is equivalent to 3 months rent payable by the lessee under said lease or tenancy agreement; and
 - (b) reasonable moving costs.

Long Term Lessees

- 32** If, at the time the expropriation notice under section 13 is delivered, the interest or licence in relation to the land being expropriated is subject to a lease that has a term greater than one year, the lessee under such lease, is entitled to reasonable disturbance damages in an amount to be determined by the qualified land appraiser having regard to:
- (a) the length of the term of the lease,
 - (b) the length of the unexpired term of the lease,
 - (c) any rights to renew or the reasonable prospect of renewal,
 - (d) the nature of the business, if any, carried out on the land under the lease, and
 - (e) the extent of the lessee's investment in the land that the lessee cannot reasonably recover.

Policies and Procedures

- 33** Council will, in accordance with the Land Code establish policies and procedures with regards to eligibility and criteria governing disturbance damages under sections 27 and 28, business losses under sections 29 and 30, and damages payable to lessees under sections 31 and 32.

Substituted Land

- 34** If the Sq'ewá:lxw and the interest holder or holders whose interest or licence in relation to the land is being expropriated agree, the Sq'ewá:lxw may grant an interest or license in relation to other land to that interest holder or holders, in complete or partial satisfaction of the interest holder or holders claim for compensation.

PART 8 - PAYMENT OF COMPENSATION

Payment Dates

- 35** Subject to section 36, the Sq'ewá:lxw will pay to the interest holder or holders whose interest or licence in relation to the land has been expropriated, or to the lessees or occupiers under sections 31 or 32, if applicable, the following:
- (1) Market value and value of improvements and referred to in sections 22 (a), (b) and (c), together with damages to the lessee pursuant to section 32, if applicable, as determined by the qualified land appraiser and set out in the appraisal report, not later than 30 days after delivery of the appraisal report in accordance with section 26.
 - (2) Disturbance damages not later than 30 days after the date such disturbance damages are determined by the Sq'ewá:lxw in accordance with sections 27 and 28;
 - (3) Business losses, if applicable, not later than 30 days after the date such business losses are determined by the Sq'ewá:lxw in accordance with sections 29 and 30; and
 - (4) Damages to short term tenants or lessees, if applicable, not later than 30 days after the date such damages are determined by the Sq'ewá:lxw in accordance with section 31.

Payment Dates Where Compensation Disputed

- 36** Where an interest holder disputes the amount of compensation payable pursuant to this Expropriation Law, and such dispute has been referred to the panel in accordance with Part 10, the Sq'ewá:lxw will pay to the interest holder such compensation as is determined by the panel, not later than 30 days following the decision of the panel.

PART 9 - EFFECTIVE DATE OF EXPROPRIATION

Transfer of Interest

- 37** Within 90 days after:
- (1) the expropriation notice under section 13 is delivered to the interest holder or holders; or
 - (2) an agreement is made under sections 5 and 6;

the Sq'ewá:lxw will file a notice of transfer of interest in the First Nation Land Register.

Effective Date

- 38** Upon filing the notice of transfer of interest under section 37, the interest or licence in relation to the land will be expropriated.

PART 10 - DISPUTE RESOLUTION

No Disputing Expropriation

- 39** No interest holder or any person may, in any proceedings dispute the right of the Sq'ewá:lxw to have recourse to the expropriation.

Disputing Compensation

- 40** Where an interest holder or holders , or lessee disputes the amount of compensation payable under this Expropriation Law, the matter will be referred to the panel pursuant to Schedule B of the Land Code for determination.

Limitations

- 41** All disputes under this Expropriation Act must be referred to the panel in accordance with section 40 within one year of the date the expropriation notice was delivered under section 13, but not afterwards.
- 42** If an application is not made to the panel to review compensation within one year of the date the expropriation notice was delivered under section 13, the lessee or the interest holder or holders whose interest or license in relation to the land was expropriated is deemed to have accepted the payments made by the Sq'ewá:lxw pursuant to Part 8 of this Expropriation Law as fair compensation for the interest or licence in relation to the land so expropriated.

PART 11 - FORMS

- 43** Council may, in accordance with the Land Code and by resolution at a duly convened meeting, establish, correct, revise or update the terms of any applicable schedules, forms, protocols, policies, procedures or other related documentation which complement and support this Expropriation Law.

PART 12 - AMENDMENT

Amendments to this Law

- 44** An amendment or repeal of this Expropriation Law must only be made by Council, in accordance with the Land Code.