

**An Act to protect the rights of persons to their property**

**PROPERTY RIGHTS ACT**

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PREAMBLE

Preamble

Whereas:

Secure property rights underpin economic development by creating confidence that investments and improvements will not be arbitrarily lost;

Communities in which property is secure display higher levels of co-operation, mutual trust and long-term planning, which are the foundations of social order and civic peace;

Civil authorities may tax or regulate private property for public purposes, provided they act justly and proportionately;

Where the public good requires expropriation, fairness demands just compensation so that the costs of public projects are shared by society as a whole;

The costs of achieving public objectives through regulation should be shared across society and not fall disproportionately on individual owners;

Enhanced property protections requiring compensation for deprivations improve government accountability by providing an incentive to find more creative and less burdensome ways to achieve public goals while minimizing unnecessary interference with property rights;

Therefore, His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of \_\_\_\_\_, enacts as follows:

INTERPRETATION

Definitions

1. The following definitions apply in this Act.

“enactment” means a statute, regulation or other statutory instrument of the Province.

“property” includes real and personal property.

“Province” means the Province of \_\_\_\_.<sup>1</sup>

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<sup>1</sup> This definition would not likely be needed in the end product, as the *Interpretation Act* of a province would likely provide this as a standard definition. It is included here to make the model law more transparent to readers who might not be aware of this fact.

(2) For the purposes of this Act, property is taken if

- (a) ownership of the property is transferred without the consent of the owner;
- (b) an owner of property is deprived of all reasonable uses of the property;<sup>2</sup> or
- (c) restrictions in an enactment eliminate all economically beneficial use of the property.<sup>3</sup>

(3) The property of a person is not considered to be taken if it is forfeited, in accordance with an enactment and section 10, as the proceeds of crime after the person is convicted of an offence under the *Criminal Code* of Canada.

Binding on Crown

**2.** This Act is binding on the Crown.

Conflict with other laws

**3.** Except where expressly provided, in the event of any inconsistency or conflict between this Act and any other law of the Province, this Act prevails to the extent of the inconsistency or conflict.

Inherent right to property

**4.** Every person has a right to the peaceful enjoyment and free disposition of his or her property, except as expressly provided by an Act of the Province.<sup>4</sup>

Operation of laws

**5.** No law is to be construed to authorize the taking of property without compensation unless that intention is clearly expressed by an Act<sup>5</sup> of the Province.

Limit on takings

**6.** (1) An enactment that authorizes the taking of property shall be construed to authorize the taking of property only to the extent necessary for the purposes of the enactment and must be demonstrably necessary to achieve those purposes.

(2) An authority that is authorized to take property shall, before exercising that authority, provide a notice in writing to the owner of the property to be taken specifying the public purpose for which the property is to be taken and identifying a rational connection between the taking and that purpose.

(3) The extent to which the taking of a property is necessary for the purposes of an enactment is a question of law that is reviewable before the courts.

Amount of compensation payable

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<sup>2</sup> Based on Alberta Bill of Rights definition.

<sup>3</sup> Based on *Lucas v South Carolina Coastal Council*, 505 US 1003 (1992)

<sup>4</sup> Based on s. 6 of Québec's *Charter of Human Rights and Freedoms*.

<sup>5</sup> This should preclude any use of a regulation for this purpose.

7. (1) Where an enactment authorizes the taking of property that is used as a residence by the owner of the property,<sup>6</sup> the amount of compensation payable to the owner shall be the fair market value of the property, plus 25% of that value to compensate the owner for associated expenses and the resulting disruption.

(2) Where an enactment authorizes the taking of any other property, the amount of compensation payable to the owner shall be the fair market value of the property, plus 10% of that value to compensate the owner for associated expenses and the resulting disruption.

Administrative takings

**8. Where**

(a) a planning change related to public functions is enacted that substantially reduces the value of a property; or

(b) a request for a permit for an otherwise authorized use of a property is refused or granted subject to onerous conditions, or is granted and subsequently revoked, rendering the property incapable of any reasonably beneficial use;

the owner may serve a notice on the public authority in question requiring it to acquire the property in the same manner as a taking.

Reduction in value

**9.** Where an enactment reduces the value of a property by 75% or more, the owner of the property is entitled to compensation equal to the value of the reduction.

Forfeiture requirements

**10.** (1) An enactment that authorizes the forfeiture of property shall be deemed to require

(a) the giving of at least 30 days' notice to the owner of the property prior to the forfeiture, unless, on an *ex parte* application, the court considers that there is a substantial risk of destruction or removal of the property and orders that the property be preserved pending a forfeiture hearing;

(b) a hearing before a court of competent jurisdiction to justify the forfeiture; and

(c) proof that the forfeited property was derived from an unlawful activity or was an instrument used to facilitate an unlawful activity.

(2) An enactment that authorizes the seizure of property, or that prohibits its use, shall be deemed to require

(a) a hearing before a court of competent jurisdiction within 7 days of a seizure or prohibition to justify the seizure or prohibition; and

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<sup>6</sup> This would exclude rental properties owned for investment purposes.

(b) proof that the property was derived from an illegal activity or was an instrument used to facilitate an illegal activity.

(3) In a hearing under subsection (1) or (2),

(a) the authority effecting the forfeiture, seizure or prohibition has the burden of proving that the property was derived from, or used in, an unlawful activity and that the owner of the property knowingly participated in, consented to, or was wilfully blind to, the unlawful activity;

(b) the court shall consider the seriousness of the alleged illegal activity, the property's connection to that activity, the impact on innocent third parties and the relationship between the property's value and the harm caused; and

(c) the court shall not approve a forfeiture, seizure or prohibition in relation to a major asset that was triggered by a minor regulatory violation or approve a forfeiture or seizure of property, or a prohibition on its use, based on speculation that it would likely be used to facilitate future criminal activity.

Report by Minister

**11.** Within 3 years of the coming into force of this Act, the Minister of \_\_\_ shall provide a report to the legislature identifying any laws of the Province that conflict with, or are inconsistent with, the provisions of this Act, and recommend amendments to such laws to bring them into conformity with this Act.<sup>7</sup>

Coming into force

**12.** This Act comes into force on the day on which it receives royal assent.

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<sup>7</sup> Adding a provision of this sort might spur the amendment of conflicting statutes, which would reduce the potential for litigation necessary to clarify the interaction of this Act with other provincial statutes.