

The Surface Rights Acquisition and Compensation Act

being

Chapter S-65 of *The Revised Statutes of Saskatchewan, 1978* (effective February 26, 1979) as amended by *The Revised Statutes of Saskatchewan, 1978 (Supplement)*, [c.72](#), and the *Statutes of Saskatchewan*, 1979-80, c.92; 1980-81, c.76 and 86; 1982-83, c.1; 1989-90, c.20 and 54; 1998, c.P-12.1 and P-42.1; 2000, c.L-5.1; 2004, c.65; 2013, c.27; 2015, c.21, 2016, c.P-31.1; and 2018, c.42.

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

Table of Contents

	SHORT TITLE		
1	Short title	29	Determination of compensation
	INTERPRETATION	30	Operator to file agreement with board
2	Interpretation	31	Application to board for hearing
	PART I	32	Service of notice
	Purpose and Application of Act	33	Fixing date of hearing
3	Purpose of Act	34	Notice and hearing of disputes
4	Application	35	No duplicate compensation
5	Provisions of Act to prevail	36	Security deposit
6	Separate consideration for surface rights	37	Payment out of deposit within thirty days
7	Certain rights not already exercised to be exercised only in accordance with Act	38	Application for review of compensation
	PART II	39	Same
	The Board of Arbitration	40	Board to determine compensation
8	Board of Arbitration		PART V
9	Powers of board members		Acquisition of Surface Rights for Flow Lines and Service Lines
10	Signatures of orders	41	Application of sections 42 to 52
11	Appointment of another person in cases of interest, sickness, etc.	42	Right of entry, right to land, etc.
12	Appointment of board secretary	43	Application to board for certain surface rights
13	Rules of board	44	Board may by order grant rights
14	Sittings of and inspection by board	45	Application to board for hearing
15	Form of notice	46	Compensation to be paid by operator
16	Duty to keep records	47	Determination of compensation
17	Deposits with board	48	No duplicate compensation
	PART III	49	Security deposit
	Mediation Officer	50	Subsequent disturbance of surface
18	Appointment	51	Operator to file agreement with board
19	Remuneration and allowances	52	Grant of interest in land for right of way
20	Application of Acts to mediation officer		PART VI
21	Appointment of Public and Private Rights Board to act as a mediation officer		Abandonment, Surrender and Restoration
22	Members of board, etc., not to be appointed	53	Abandonment and surrender of rights
	PART IV	54	Service of notice to abandon or surrender to owner and occupant
	Acquisition of Surface Rights for Well Sites, Roadways, Battery Sites and Power Lines	55	Restoration to original condition as nearly as possible
23	Application of sections 24 to 38	56	Application for order to restore if owner or occupant dissatisfied
24	Right of entry, right to land, etc.	57	Restoration by owner or occupant and payment by operator
25	Application to board for surface rights	58	Order to be served on owner and occupant
26	Board may by order grant rights	59	Payment of cost of restoration
27	Granting of rights with respect to adjacent or other lands		
28	Compensation to be paid by operator		

PART VII
Liability for Tortious Acts

- 60 Interpretation
- 61 Liability for certain tortious acts
- 62 Notice of loss or damage to operator
- 63 Determination of compensation where amount not agreed upon
- 64 *Prima facie* evidence of liability of tortious act

PART VIII
Functions and Duties of Mediation Officer

- 65 Matters may be referred to mediation officer for settlement, etc.
- 66 Investigation, etc., of matter by mediation officer
- 67 Agreement of settlement
- 68 Discontinuation of investigation or negotiation by mediation officer
- 69 Continuation of proceedings before board
- 70 Certain evidence not admissible; officer not compellable witness, etc.

PART IX
Appeal

- 71 Appeal to Court of Appeal
- 72 Leave to appeal
- 73 Stay of proceedings

PART X
General

- 74 Where owner or occupant is unascertainable or his whereabouts is unknown
- 75 Compensation payment

- 76 Compensation for certain rights deemed to be included in certain grants, determination and review of compensation
- 77 Review of rights granted by agreement
- 78 Where application made after three years
- 79 Board to consider application, etc.
- 80 Form of application under Act, duties of board respecting hearing
- 81 Rehearing of application by owner, etc. in respect of compensation only
- 82 Applications under former section 90, 95 and 96 of *The Petroleum and Natural Gas Regulations* deemed to be under Act
- 83 Transfer of deposits to board
- 84 Applications for review of compensation under lease, agreement or award
- 85 Operator's responsibility to cut down weeds
- 86 Termination of right of entry
- 87 Enforcement of board order
- 88 Order of board may be filed and enforced as order of court
- 89 Order of board need not show board's jurisdiction
- 90 Order of board as evidence
- 91 Assignment of order
- 92 Registration of an interest based on the order
- 93 Discharge of interest
- 94 No fees chargeable to board by government departments
- 95 Power to make regulations and orders

CHAPTER S-65

An Act respecting the Acquisition of Surface Rights to Land and the Determination and Payment of Compensation therefor

SHORT TITLE

Short title

- 1 This Act may be cited as *The Surface Rights Acquisition and Compensation Act*.

INTERPRETATION

Interpretation

- 2 In this Act:

- (a) **“battery site”** means that portion of the surface of land, other than a well site or roadway, required for access to and to accommodate separators, treaters, dehydrators, storage tanks, surface reservoirs, pumps and other equipment, including above ground pressure maintenance facilities, that are necessary to measure, separate or store prior to shipping to market or disposal, or necessary to produce, the fluids, minerals and water, or any of them, from wells;
- (b) **“board”** means The Board of Arbitration appointed pursuant to this Act;
- (c) **“flow line”** means a pipe or conduit of pipes used for the transportation, gathering or conduct of a mineral from a well head to a separator, treater, dehydrator, tank or tank battery or surface reservoir;
- (d) **“lease”** means a surface lease and includes a mineral lease where surface rights are included in the mineral lease;
- (e) **“mineral”** means petroleum and natural gas, or either of them, and any other substance that the Lieutenant Governor in Council may by regulation, publish in *The Saskatchewan Gazette*, declare to be a mineral;
- (f) **“occupant”** means a person or tenant, other than the owner, who is in actual and lawful possession of land;
- (g) **“operator”** means a person, company, syndicate or partnership or the agent of any of them that has the right to a mineral or the right to drill for or produce or recover a mineral;
- (h) **“order”**, except where the context otherwise requires, means an order of the board;
- (i) **“owner”** means:
 - (i) the person or the executor, administrator, successor or other legal or authorized representative of that person, who is the registered owner of a surface title issued pursuant to *The Land Titles Act, 2000*;

SURFACE RIGHTS ACQUISITION
AND COMPENSATION

- (ii) in the case of Crown land, the department of the government of the province or other body administering the land;
 - (iii) the successor in interest or assignee under a *bona fide* agreement for sale or otherwise from an owner as defined in subclause (i) or (ii); or
 - (iv) any person entitled to receive compensation for the acquisition of surface rights;
- (j) **“power line”** means an electric power line or that portion thereof that is constructed or is to be constructed by an operator for the exclusive purpose of any operations for drilling for, producing or recovering a mineral;
- (k) **“roadway”** means that portion of the surface of land required for access to a well site;
- (l) **“service line”** means a pipe or conduit of pipes, other than a flow line, used for the transportation, gathering or conduct of a mineral or water or other fluid in connection with the producing operations of an operator;
- (m) **“surface rights”** means:
- (i) the land or any portion thereof or any interest therein, except mineral commodities within the meaning of *The Land Titles Act, 2000*, or a right of entry thereon, required by an operator for the purpose of drilling for, producing or recovering a mineral;
 - (i.1) the right to establish, install or operate any machinery, equipment or apparatus that is specified in the regulations for use exclusively for or in connection with the drilling, completion or producing operations of a well on a well site;
 - (ii) the right to condition, maintain, reclaim or restore the surface of land where the land has been or is being held incidental to or in connection with either or both of:
 - (A) the drilling for, producing or recovering a mineral;
 - (B) the laying, constructing, operating, maintaining or servicing a flow line, service line or power line;
- (n) **“well”** means any opening in the ground, except seismic shot holes or structure test holes, made or being made by drilling, boring or in any other manner through which a mineral is obtained or is obtainable, or for the purpose of obtaining a mineral, or for the injection of any fluid in an underground reservoir for the purpose of obtaining a mineral;
- (o) **“well site”** means:
- (i) that portion of the surface of land required for the conduct of drilling or completion operations of a well during the period next following the initial entry upon the land until the well is abandoned or completed; or
 - (ii) that portion of the surface of land required for the conduct of producing operations of a well commencing from the completion date of the well.

PART I
Purpose and Application of Act

Purpose of Act

3 The purposes of this Act are:

- (a) to provide for a comprehensive procedure for acquiring surface rights;
- (b) to provide for the payment of just and equitable compensation for the acquisition of surface rights;
- (c) to provide for the maintenance and reclamation of the surface of land acquired in connection with surface rights acquired under this Act.

R.S.S. 1978, c.S-65, s.3.

Application

4 This Act applies to the Crown.

R.S.S. 1978, c.S-65, s.4.

Provisions of Act to prevail

5 Where there is any conflict between the provisions of this Act and the provisions of *The Mineral Resources Act, The Pipe Lines Act, 1998* or *The Provincial Lands Act, 2016* or in the regulations made under any of those Acts with respect to surface rights, the provisions of this Act prevail.

R.S.S. 1978, c.S-65, s.5; 1998, c.P-12.1, s.33;
2016, c P-31.1, s.11-22.

Separate consideration for surface rights

6(1) Notwithstanding anything contained in any grant, conveyance, lease, licence, permit or other instrument or document, whether made before or after the coming into force of this Act and pertaining to the acquisition of an interest in a mineral, but, subject to subsection (2) of section 7, an operator does not thereby obtain the right of entry upon the surface of any land or the right to use, occupy or take the surface of any land or interest therein unless the grant, conveyance, lease, licence, permit or other instrument or document provides a specific separate sum of money in accordance with the provisions of this Act as consideration for the right to enter, use, occupy or take the surface of the land or interest therein required for the operations of the operator.

(2) Subsection (1) does not apply where an operator has, prior to the coming into force of this Act, for any of the purposes mentioned in this Act, exercised the right to enter, use, occupy or take the surface of the land or interest therein in accordance with the provisions of a grant, conveyance, lease, licence, permit or other instrument or document.

R.S.S. 1978, c.S-65, s.6.

SURFACE RIGHTS ACQUISITION
AND COMPENSATION

Certain rights not already exercised to be exercised only in accordance with Act

7 Notwithstanding anything contained in a lease, agreement or other instrument heretofore executed whereby an operator has been granted surface rights and those rights or any of them have not been exercised prior to the coming into force of this Act, the operator may exercise any of the rights that have not been so exercised only in accordance with the provisions of this Act unless the owner and occupant, if any, otherwise agree in writing with the operator by a separate instrument made subsequent to the coming into force of this Act.

R.S.S. 1978, c.S-65, s.7.

PART II
The Board of Arbitration

Board of Arbitration

8(1) There shall be a board called "The Board of Arbitration" consisting of at least three members.

(2) The Lieutenant Governor in Council shall appoint the members of the Board and shall appoint one of them as chairperson.

(3) The members of the board shall hold office for such term as may be determined by the Lieutenant Governor in Council.

(4) In addition to the powers conferred on them by this Act every member of the board, including the chairperson thereof, has all the powers conferred on a commission by sections 11, 15 and 25 of *The Public Inquiries Act, 2013*.

(5) The chairperson and each other member of the board shall receive such remuneration as may be fixed by the Lieutenant Governor in Council and shall perform the duties set forth in this Act.

(6) The chairperson and each other member of the board shall:

- (a) forthwith, if appointed a member of the board before this subsection comes into force;
- (b) before entering upon his or her duties, if appointed a member of the board after this subsection comes into force;

take and subscribe the following oath:

I, _____, do swear that I will well and truly serve our Sovereign Lady the Queen in the office of chairperson (or member) of The Board of Arbitration under *The Surface Rights Acquisition and Compensation Act*, and that I will duly, faithfully and according to the best of my skill and knowledge exercise the powers and trusts imposed upon me as chairperson (or member) of The Board of Arbitration.

(7) The oath required by subsection (6) shall be administered to the chairperson and each other member of the board by the Clerk of the Legislative Assembly or by the Clerk of the Executive Council and shall be filed with the Clerk of the Executive Council.

R.S.S. 1978, c.S-65, s.8; 2013, c.27, s.40; 2015,
c.21, s.56 and s.64.

SURFACE RIGHTS ACQUISITION
AND COMPENSATION

cS-65

Powers of board members

9(1) Three members of the board or a majority of the members, whichever is less, shall constitute a quorum and may perform the functions of the board.

(1.1) A decision or order of a majority of the members of the board who are present at a meeting of the board shall be the decision of the board and, in the event of an equality of votes, the chairperson shall have a casting vote.

(2) Where the parties involved have consented thereto in writing one member of the board may perform the functions of the board:

(a) where the other member or members of the board cannot act by reason of sickness, absence or disability and no person has been appointed pursuant to subsection (2) of section 11;

(b) in dealing with an application under or making an order pursuant to either or both of sections 31 and 45;

(c) in making an order terminating a right of entry pursuant to section 86;

and in performing such function that member has all the powers and jurisdiction of the board.

R.S.S. 1978, c.S-65, s.9; R.S.S. 1978 (Supp.),
c.72, s.4; 2015, c.21, s.64.

Signatures of orders

10(1) All orders, rules, directions and other documents issued by the board shall be signed by the chairperson of the board and, in the absence or disability of the chairperson, they may be signed by the acting chairperson, the secretary or any one member of the board and when so signed have the effect as if they were signed by the chairperson.

(2) Whenever it appears that a member of the board, other than the chairperson, has acted for and in the place of the chairperson, it shall be presumed conclusively that the member acted in the absence or disability of the chairperson.

(3) The decisions of the board and the reasons therefor shall be in writing.

R.S.S. 1978, c.S-65, s.10; R.S.S. 1978 (Supp.),
c.72, s.5; 2015, c.21, s.64.

Appointment of another person in cases of interest, sickness, etc.

11(1) Notwithstanding section 8, the Lieutenant Governor in Council may, where a member of the board is interested in a matter that is before the board, appoint some disinterested person to act as a member of the board in place of the interested member with respect to that matter only.

(2) The Lieutenant Governor in Council may appoint a person to act as a member of the board during the sickness, absence or disability of a member.

R.S.S. 1978, c.S-65, s.11.

SURFACE RIGHTS ACQUISITION
AND COMPENSATION

Appointment of board secretary

12(1) The Lieutenant Governor in Council may appoint a secretary and such other officers and persons as may be deemed necessary for the proper conduct of the business of the board and prescribe their duties, conditions of employment and remuneration.

(2) In the absence of the secretary, the board may appoint a person to act as secretary.

R.S.S. 1978, c.S-65, s.12.

Rules of board

13(1) The board may, subject to the approval of the Lieutenant Governor in Council, make rules governing the practice and procedure and governing the business of the board.

(2) The rules made under subsection (1) shall be published in the *Gazette* and shall come into force on the date of their publication.

R.S.S. 1978, c.S-65, s.13.

Sittings of and inspection by board

14 The board may:

- (a) hold sittings from time to time at such times and places in the province as it may deem expedient;
- (b) enter upon and inspect or authorize any member of the board or other person to enter upon and inspect any place, building, works or other property directly or indirectly involved in any matter before the board;
- (c) appoint or direct any person to inquire into and report upon any matter before the board.

R.S.S. 1978, c.S-65, s.14.

Form of notice

15 Unless otherwise provided in this Act, every application authorized to be made under this Act to the board shall be in writing in a form prescribed by the board.

R.S.S. 1978, c.S-65, s.15.

Duty to keep records

16 The board shall:

- (a) keep or cause to be kept a record of all applications and proceedings filed with or heard and determined by the board or a member thereof;
- (b) keep or cause to be kept and issue upon request and payment of such fees as may be fixed by the board, certified copies of any order or rule made by the board;
- (c) have the custody and care of all records and documents filed with the board.

R.S.S. 1978, c.S-65, s.16.

Deposits with board

17 All moneys deposited with the board shall be deposited and disbursed in accordance with the rules made under section 13, and shall be disbursed only upon an order of the board.

R.S.S. 1978, c.S-65, s.17.

**PART III
Mediation Officer**

Appointment

18 The Lieutenant Governor in Council, for the purposes of this Act, may appoint a person as a mediation officer who shall hold office during pleasure.

R.S.S. 1978, c.S-65, s.18.

Remuneration and allowances

19 The mediation officer shall receive such remuneration for his services and allowances for travelling and other expenses as the Lieutenant Governor in Council may determine.

R.S.S. 1978, c.S-65, s.19.

Application of Acts to mediation officer

20 *The Public Service Act, 1998* and *The Public Service Superannuation Act* apply to a person appointed as a mediation officer.

R.S.S. 1978, c.S-65, s.20; 1998, c.P-42.1, s.42.

Appointment of Public and Private Rights Board to act as a mediation officer

21 The Lieutenant Governor in Council, instead of appointing a person as a mediation officer under section 18, may appoint the Public and Private Rights Board established pursuant to subsection (1) of section 6 of *The Expropriation Procedure Act*, to exercise the powers and perform the duties and functions of a mediation officer, and may at any time revoke the appointment.

R.S.S. 1978, c.S-65, s.21.

Members of board, etc., not to be appointed

22 No member or officer or other employee of the board shall be appointed as a mediation officer.

R.S.S. 1978, c.S-65, s.22.

SURFACE RIGHTS ACQUISITION
AND COMPENSATION

PART IV
Acquisition of Surface Rights for Well Sites, Roadways,
Battery Sites and Power Lines

Application of sections 24 to 38

23 Sections 24 to 38 apply in connection with the drilling for, producing, recovering or gathering of a mineral, and to the acquisition by an operator of:

- (a) the right to enter upon land for the purpose of drilling for a mineral;
- (b) land for a well site and roadway;
- (b.1) the right to establish, install or operate on a well site any machinery, equipment or apparatus that is specified in the regulations for use exclusively for or in connection with the drilling, completion or producing operations of a well on a well site;
- (c) the right to enter upon, use, occupy or take land for the purpose of constructing a power line; and
- (d) land for a battery site.

R.S.S. 1978, c.S-65, s.23; 1980-81, c.86, s.4.

Right of entry, right to land, etc.

24(1) Unless expressly authorized under an order of the board, together with a sketch plan of survey attached thereto, no operator has a right to enter upon, use, occupy or take the surface of any land or the right to acquire land or any interest therein for any purpose mentioned in section 23 until he has obtained the written consent as to the rights specified therein of the owner and occupant, if any, of the surface of the land.

(2) The written consent referred to in subsection (1) may be in the following form:

"I, _____
(name of owner or occupant)

of _____
hereby consent to the entry upon, use, occupancy or taking of the surface of the following land or interest therein described on the sketch plan of survey attached hereto by _____ for the purpose of _____
(herein specify the right or rights granted)

"It is understood that execution by me of this consent does not in any way affect my rights to compensation.

Dated at the _____ of _____ in the Province of _____ ,
this _____ day of _____ 19_____

Witness: _____ Signed: _____
_____ " .

(3) Notwithstanding the provisions of *The Homesteads Act, 1989*, a consent signed substantially in the form set forth in subsection (2) is a valid consent.

R.S.S. 1978, c.S-65, s.24; 1989-90, c.20, s.10.

Application to board for surface rights

25 Where surface rights such as those mentioned in section 23 or any of them are required by an operator but those rights are owned by the Crown or any other person and the operator cannot by agreement acquire the rights, the operator may apply to the board for an order granting the rights applied for.

R.S.S. 1978, c.S-65, s.25.

Board may by order grant rights

26(1) The board may by order, subject to the payment of compensation as hereinafter provided, grant to an operator any one or more of the rights mentioned in section 23 and applied for by the operator.

(2) An order under subsection (1) shall specify the rights granted and the term during which such rights may be enjoyed; and an accurate description of the land or a plan thereof shall be attached to the order for determining the area or portion of the land or the interest therein with respect to which the rights are granted.

R.S.S. 1978, c.S-65, s.26.

Granting of rights with respect to adjacent or other lands

27 The board may by order, subject to the payment of compensation as hereinafter provided, grant to the operator any one or more of the rights mentioned in section 23 with respect to adjacent or other land as in the opinion of the board is necessary to permit operations to be carried on and to give the operator access to and egress from his operations.

R.S.S. 1978, c.S-65, s.27.

Compensation to be paid by operator

28(1) Every operator shall pay compensation for any of the rights mentioned in section 23 and acquired by him, in accordance with section 29.

(2) Where the operator and the owner or the operator and the occupant are unable to agree upon the compensation, such compensation shall be determined by the board under this Act.

R.S.S. 1978, c.S-65, s.28.

Determination of compensation

29(1) For the purpose of determining the compensation to be paid for surface rights acquired by an operator, the board shall consider the following matters:

- (a) the value of the land and the loss of use of the land or an interest therein acquired by the operator;
- (b) the area of land that is or may be permanently or temporarily damaged by the operations of the operator;

SURFACE RIGHTS ACQUISITION
AND COMPENSATION

- (b.1) the nature, type and quantity of any machinery, equipment and apparatus mentioned in clause 23(b.1) to be established, installed or operated by the operator;
 - (c) payment or allowance for severance;
 - (d) the adverse effect of the right of entry on the remaining land by reason of severance;
 - (e) payment or allowance for nuisance, inconvenience, disturbance or noise, to the owner and occupant, if any, or to the remaining land, that might be caused by, arise from or likely to arise from or in connection with the operations of the operator;
 - (f) where applicable in the opinion of the board, interest at a rate to be fixed by the board;
 - (g) any other matter peculiar to each case, including the cumulative effect, if any, of the surface rights previously acquired by the operator or by any other operators under a lease, agreement or right of entry existing at the time of acquisition of the surface rights with respect to the land;
 - (h) such other factors as the board deems proper, relevant and applicable.
- (2) The board may allow to the owner or occupant, if any, reasonable costs and expenses incurred by the owner or occupant relating to the hearing with respect to the acquisition of the surface rights and where the board allows to the owner or occupant such costs and expenses it shall fix the amounts thereof.

R.S.S. 1978, c.S-65, s.29; 1980-81, c.86, s.5.

Operator to file agreement with board

30 Every agreement entered into after the coming into force of this Act between an operator and an owner or between an operator and the occupant, if any, with respect to compensation for any surface right mentioned in section 23 shall be in writing and a copy of the agreement shall be filed by the operator with the board within thirty days after the date of execution thereof.

R.S.S. 1978, c.S-65, s.30.

Application to board for hearing

31(1) Where an operator and the owner or an operator and the occupant, if any, are unable to agree upon any surface rights mentioned in section 23 that may be required by the operator, or upon the compensation to be paid therefor, the operator, owner or occupant, as the case may be, may serve a notice of his intention to have those matters determined by the board upon each of the parties involved and file a copy of the notice with the board.

- (2) The notice mentioned in subsection (1) shall include:
- (a) the description of the land to be acquired by the operator or a plan showing the location of the area required;
 - (b) the compensation claimed by the owner and occupant, if any;

- (c) the compensation that the operator is prepared to pay to the owner and occupant, if any;
 - (d) the nature of the objections of the operator, owner or occupant, as the case may be;
 - (e) an address for service where the applicant may be served with any notice required to be served under this Act;
 - (f) where applicable, a copy of the application for an immediate right of entry.
- (3) The filing of a notice mentioned in subsection (1) with proof of service thereof on the operator, owner or occupant, as the case may be, shall be deemed to be a submission to the board to hear and determine the matters in dispute set forth in the notice.
- (4) In addition to the notice of intention mentioned in subsection (1), where the applicant is an operator, he may also file with the board an application for an order of the board for an immediate right of entry at the expiration of seven days from the date of service of the notice and thereupon no further notice is required to be served by the operator.
- (5) Notwithstanding subsections (4) and (6), where the disagreement or objection between the parties is in respect of compensation only, the owner and occupant, if any, may grant an immediate right of entry without prejudice to any claim for compensation or to the right to a hearing before the board in respect of such compensation.
- (6) Where, pursuant to this section, the board receives a notice of intention mentioned in subsection (1) with or without an application mentioned in subsection (4) and the board is satisfied that the notice or application or both the notice and the application where applicable have been duly served on all the parties involved, the board may, subject to subsection (7), issue an order granting an immediate right to enter, use, occupy or take the surface of the land upon such terms and conditions as to it seems advisable in the circumstances.
- (7) Notwithstanding subsection (6), if within the seven day period mentioned in subsection (4) the board receives at its office in Regina, Saskatchewan, personal or written representation objecting to the issuing of an order granting an immediate right of entry, the board shall, within twenty-one days after the date of the receipt of the notice of intention, hold a hearing to determine whether or not the board should issue the order granting an immediate right of entry.

R.S.S. 1978, c.S-65, s.31.

Service of notice

- 32(1)** A notice to be served pursuant to this Act may be served personally or by registered or certified mail to the last known address of the person to be served.
- (2) A notice sent by registered or certified mail shall be deemed to have been served on the day of the date of the receipt of the postmaster for the envelope containing the notice.

R.S.S. 1978, c.S-65, s.32; R.S.S. 1978 (Supp.),
c.72, s.6.

SURFACE RIGHTS ACQUISITION
AND COMPENSATION

Fixing date of hearing

33(1) Where, pursuant to section 31, a hearing is to be held by the board it shall fix a date and place for the hearing of the matters in dispute and shall serve the operator, owner and occupant, if any, with written notice thereof not less than seven days before the date so fixed.

(2) On the date fixed under subsection (1) for a hearing, the parties involved are entitled to appear before the board and to be represented by counsel; and the board may, after consideration of all the evidence adduced before it at the hearing and such other matter as it considers relevant, issue an order:

- (a) granting part or all of the rights applied for;
- (b) refusing part or all of the rights applied for;
- (c) fixing the compensation to be paid by an operator for the rights granted to him;
- (d) where rights are granted, specifying those rights in detail together with a full description or a plan of the land involved in the order; or
- (e) prescribing the terms and conditions that go with the order.

(3) Notwithstanding subsection (2), the board may defer to a later date the determination of the compensation to be paid by the operator and any other matter that the board considers advisable.

R.S.S. 1978, c.S-65, s.33.

Notice and hearing of disputes

34(1) As soon as an operator completes the drilling operations of a well in respect of which the question of compensation or any other matter was deferred by the board and the well drilled is a dry hole or a well not producing in commercial quantities or a well producing in commercial quantities, the operator, subject to subsection (2), shall:

- (a) if it is a dry hole or if the production from the well is not in commercial quantities, notify the board thereof in writing of the completion of the drilling operations and of the operator's intentions as to the future operations thereof;
- (b) if it is a well producing in commercial quantities, notify the board thereof in writing and with the notice submit plans for the receiving, gathering, storing and transporting of the production and other services, and the land or interest therein required for those purposes;
- (c) notify the owner and occupant, if any, in writing regarding the operator's intentions to continue to use and occupy the land on which the operations took place, or a portion thereof, specifying the same, or to abandon the land or interest therein after removing his installations and restoring the surface.

(2) The operator, unless he consents to do so, shall not be required to submit any information with respect to the well that may be kept confidential under any Act or regulations of the province.

SURFACE RIGHTS ACQUISITION
AND COMPENSATION

cS-65

(3) Upon receipt of a notice mentioned in clause (a) or (b) of subsection (1), the board shall fix a date and place for the hearing and determination of the compensation to be paid and for the determination of any other matter that may arise, and shall serve the operator and the owner and occupant, if any, with written notice thereof not less than seven days before the date so fixed.

R.S.S. 1978, c.S-65, s.34.

No duplicate compensation

35 Where the board finds that the owner and also the occupant are entitled to compensation, the board shall determine the compensation to be paid to both the owner and the occupant but not so as to require the operator to pay duplicate compensation with respect to any element of compensation to be determined by it.

R.S.S. 1978, c.S-65, s.35.

Security deposit

36(1) Where the operator applies for immediate right of entry under subsection (4) of section 31, he shall, at the time of application, deposit with the board \$1,200 as security for payment of any compensation that may be payable and the deposit shall stand charged with and is available for the payment of compensation as the board may determine.

(2) Notwithstanding subsection (1), the operator may, in lieu of the deposit mentioned in subsection (1), deposit with the board a guarantee bond of \$10,000 or bearer bonds of the province or of Canada having a cash surrender value of \$10,000 as security for payment of any compensation that the operator may be required to pay for the acquisition of surface rights under this Act.

(3) The board may make advance payments out of the deposit made under subsection (1) to the owner or occupant in such amounts that the board may consider just and proper under the circumstances.

(4) In the event that the operator has deposited a guarantee bond or bearer bonds under subsection (2), the board shall, in the first instance, request the operator to pay the amount of any advance payments to the owner or occupant that the board may consider just and proper under the circumstances; and if the operator fails to pay any amount so requested by the board, it may at its discretion pay the amount out of the operator's guarantee bond or bearer bonds.

(5) Where the operator satisfies the board that he has met all his obligations for which the guarantee bond or bearer bonds have been deposited pursuant to subsection (2), the bond or bonds, as the case may be, shall be returned to the operator upon written request therefor.

(6) The amount of security required under subsection (1) does not in any way limit or determine the amount of compensation that the board may ultimately order to be paid.

R.S.S. 1978, c.S-65, s.36.

SURFACE RIGHTS ACQUISITION
AND COMPENSATION**Payment out of deposit within thirty days**

37(1) Where the amount deposited by an operator under subsection (1) of section 36 is sufficient to satisfy the amount of compensation payable to the owner or to the occupant, or to both, as determined by the board, the board shall, within thirty days after the date of its order determining the compensation, pay to the owner or to the occupant, or to both, as the case may be, from and out of the deposit moneys the compensation so determined and payable and any surplus remaining shall be returned to the operator.

(2) Where the amount deposited by an operator under subsection (1) of section 36 is not sufficient to satisfy the amount of compensation payable to the owner or the occupant, or to both, as determined by the board, the board shall order the operator to pay and the operator shall pay to the owner or to the occupant, or to both, as the case may be, the difference required to satisfy the amount of compensation ordered to be paid by the board within thirty days from the date of the order.

(3) Where the security deposited by an operator is a guarantee bond or bearer bonds as mentioned in subsection (2) of section 36, the board shall order the operator to pay to the owner or to the occupant, or to both, the amount of compensation as determined by the board within thirty days after the date of the order; and if the operator fails or refuses to pay the amount so ordered, the board shall pay the amount out of the guarantee bond or bearer bonds, as the case may be.

R.S.S. 1978, c.S-65, s.37.

Application for review of compensation

38(1) An owner, occupant or operator who is affected by a compensation order of the board under this Part may apply to the board for a review of the compensation determined by the order.

(2) An owner, occupant or operator who entered into, or who is affected by, an agreement granting surface rights mentioned in this Part pursuant to which agreement:

(a) provision is made for the determination of compensation for the surface rights granted; and

(b) provision is not made for a periodic review of the compensation determined for the surface rights granted;

may apply to the board for a review of the compensation determined for the surface rights.

(3) An owner, occupant or operator who entered into, or who is affected by, an agreement granting surface rights mentioned in this Part pursuant to which agreement compensation in respect of the surface rights has not been determined may apply to the board to determine the compensation to be paid for the surface rights.

SURFACE RIGHTS ACQUISITION
AND COMPENSATION

cS-65

(4) An application under this section for a review or determination of compensation may be made to the board within six months after this section comes into force and within three months before or three months after the expiration of each succeeding five year interval following the day on which this section comes into force.

R.S.S. 1978, c.S-65, s.38.

Same

39 Where an owner, occupant or operator mentioned in section 38 has, prior to the day on which this section comes into force, entered into an agreement providing for the determination or review of compensation in respect of surface rights mentioned in this Part, the owner, occupant or operator, notwithstanding anything in the agreement, may apply to the board to review the compensation within three months before or three months after the expiration of five years after the date of the agreement and within three months before or three months after the expiration of each succeeding five year interval thereafter.

R.S.S. 1978, c.S-65, s.39.

Board to determine compensation

40 Upon receipt of an application under section 38 or 39 the board shall determine the compensation to be paid in accordance with the provisions of section 29 insofar as they relate to such determination.

R.S.S. 1978, c.S-65, s.40.

PART V

Acquisition of Surface Rights for Flow Lines and Service Lines

Application of sections 42 to 52

41 Sections 42 to 52 apply to the acquisition of the following rights and land or interest therein that are required by an operator in respect of the surface of the land outside the well site, battery site and roadway:

- (a) the right of entry upon lands lying upon the intended route of a flow line or service line for the purpose of making surveys, examinations and other necessary arrangements for fixing the site of the right of way for such line;
- (b) the right to enter upon, use, occupy or take land or an interest therein for the purpose of laying, constructing, maintaining and repairing a flow line or service line.

R.S.S. 1978, c.S-65, s.41.

Right of entry, right to land, etc.

42(1) Unless expressly authorized under an order of the board, together with a sketch plan of survey attached thereto, no operator has a right to enter upon, use, occupy or take the surface of any land or the right to acquire land or any interest therein for any purpose mentioned in section 41 until he has obtained the written consent as to the rights specified therein of the owner and occupant, if any, of the surface of the land.

SURFACE RIGHTS ACQUISITION
AND COMPENSATION

(2) The written consent of the owner or occupant referred to in subsection (1) may be in the form set out in section 24.

(3) Notwithstanding the provisions of *The Homesteads Act, 1989*, a consent signed substantially in the form set forth in subsection (2) of section 24 is a valid consent.

R.S.S. 1978, c.S-65, s.42.; 1989-90, c.20, s.10.

Application to board for certain surface rights

43 Where surface rights such as those mentioned in section 41, or any of them, are required by an operator but those rights are owned by the Crown or any other person and the operator cannot by agreement acquire the rights, the operator may apply to the board for an order granting the rights applied for.

R.S.S. 1978, c.S-65, s.43.

Board may by order grant rights

44 The board may by order grant to an operator any one or more of the rights mentioned in section 41 and the order shall specify the rights granted, the term during which such rights may be enjoyed and an accurate description of the land or a plan thereof shall be attached to the order for determining the area or portion of the land or the interest therein with respect to which such rights are granted.

R.S.S. 1978, c.S-65, s.44.

Application to board for hearing

45 Where an operator and the owner or an operator and the occupant, if any, are unable to agree upon any surface rights mentioned in section 41 that may be required by the operator or upon the compensation to be paid therefor, the operator, owner or occupant, as the case may be, may serve a notice of his intention to have those matters determined by the board upon each of the parties involved and file a copy of the notice with the board; and in such a case the provisions of subsection (2) to (7) of section 31 and section 32, *mutatis mutandis*, apply to a notice filed under this section with the board.

R.S.S. 1978, c.S-65, s.45.

Compensation to be paid by operator

46(1) The operator shall compensate the owner and occupant, if any, for the right of entry such as is mentioned in clause (a) of section 41 whether the right is obtained under a written consent of the owner and occupant, if any, or under an order of the board.

(2) Where an operator acquires a right such as is mentioned in clause (b) of section 41; whether under a written consent of the owner and occupant, if any, or under an order of the board, he shall compensate the owner and occupant, if any, in compliance with the considerations set out in section 47.

R.S.S. 1978, c.S-65, s.46.

SURFACE RIGHTS ACQUISITION
AND COMPENSATION

cS-65

Determination of compensation

47(1) Where the board is required to determine the compensation payable for rights acquired within the meaning of section 41, it shall:

- (a) determine the compensation to be paid under clauses (a) and (b) of that section separately;
 - (b) in determining the compensation payable with respect to any surface rights acquired or to be acquired by the operator under clause (b) of section 41, consider the following:
 - (i) the value of the land and the loss of use of the land or an interest therein acquired by the operator;
 - (ii) the area of land that is or may be permanently or temporarily damaged by the operations of the operator;
 - (iii) payment or allowance for severance;
 - (iv) the adverse effect on the remaining land by reason of severance;
 - (v) where an easement or other interest only in land is acquired, the value of the land included in the right of way or other interest determined according to subclause (i) less the value of any rights of use or possession remaining to the owner with respect to such land;
 - (vi) payment or allowance for nuisance, inconvenience, disturbance or noise to the owner that might be caused by arise from or in connection with the operations of the operator and damage, if any, to any adjoining land of the owner, and any other damage arising out of the acquisition of the land or interest therein or in conducting the operations of the operator, including damage to or loss of crop, pasture, fences and livestock;
 - (vii) damage or loss to the occupant, if any, for any of the factors mentioned in subclauses (i) to (vi) insofar as they relate thereto.
- (2) The board may award to the owner and occupant, if any, additional compensation by way of annual rent for each year commencing with the anniversary date of the order of the board for a period not exceeding three years, an amount each year not exceeding fifty per cent of the total compensation as determined under subsection (1).
- (3) The board may allow to the owner or occupant, if any, reasonable costs and expenses incurred by the owner or occupant relating to the hearing with respect to the acquisition of the rights mentioned in clause (b) of section 41 and shall fix the amounts thereof.

R.S.S. 1978, c.S-65, s.47.

No duplicate compensation

48 Where the board finds that the owner and also the occupant are entitled to compensation, the board shall determine the compensation to be paid to both the owner and the occupant but not so as to require the operator to pay duplicate compensation with respect to any element of compensation to be determined by it.

R.S.S. 1978, c.S-65, s.48.

SURFACE RIGHTS ACQUISITION
AND COMPENSATION**Security deposit**

49 Where an operator applies for immediate right of entry under section 45, he shall, at the time of application, deposit with the board such amount of money as the board deems proper as security for payment of any compensation that may be payable and the deposit shall stand charged with and is available for the payment of compensation as the board may determine; and in such a case subsections (2) to (6) of section 36 and section 37 apply *mutatis mutandis*.

R.S.S. 1978, c.S-65, s.49.

Subsequent disturbance of surface

50(1) Unless the owner and occupant, if any, expressly agree thereto in writing with the operator or unless the operator obtains an order from the board for that purpose, no operator shall, except in accordance with subsection (2), disturb the surface of land of a right of way more than once by subsequently laying or constructing a flow line or service line or removing any flow line or service line within, upon or under the land of such right of way.

(2) The operator shall compensate the owner and occupant, if any, for all damage done for each subsequent disturbance of the surface in laying or constructing each subsequent flow line or service line or in removing any flow line or service line and, if the parties are unable to agree thereto, the compensation shall be determined by the board.

R.S.S. 1978, c.S-65, s.50.

Operator to file agreement with board

51 Every agreement entered into after the coming into force of this Act between an operator and an owner or between an operator and an occupant with respect to compensation for any surface rights mentioned in section 41 shall be in writing and a copy of the agreement shall be filed by the operator with the board within thirty days after the date of execution thereof.

R.S.S. 1978, c.S-65, s.51.

Grant of interest in land for right of way

52(1) Every agreement between an operator and an owner and between an operator and an occupant and every order of the board, with respect to the acquisition by the operator of an interest in land for a right of way of a flow line or service line, shall be deemed to grant to the operator, subject to section 50, a right to enter upon the right of way at any time for the purposes of repairing, maintaining, replacing or inspecting the flow line or service line constructed under the right of way.

(2) The operator shall pay compensation to the owner and occupant, if any, for all damage suffered by the owner or occupant as a result of the exercise by the operator of any of the rights referred to in subsection (1).

(3) Where the operator and the owner, or the operator and the occupant, are unable to agree upon the compensation payable under this section, the compensation shall be determined by the board.

R.S.S. 1978, c.S-65, s.52.

PART VI
Abandonment, Surrender and Restoration

Abandonment and surrender of rights

53 Subject to the provisions of this Act, an operator may abandon or surrender part or all of any right acquired by him under this Act either with respect to the use or occupation of any surface of land, land or interest in land.

R.S.S. 1978, c.S-65, s.53.

Service of notice to abandon or surrender to owner and occupant

54(1) A notice of intention to abandon or surrender part or all of any right pursuant to section 55 shall be served by the operator on the owner and occupant, if any, and a copy thereof shall be filed with the board.

(2) The operator shall also file with the board proof of service of the notice on the owner and occupant, if any, within thirty days of such filing.

R.S.S. 1978, c.S-65, s.54.

Restoration to original condition as nearly as possible

55 Where a notice has been served under section 54, the operator shall forthwith restore the surface of the land involved as nearly as possible to its original condition; but the operator and the owner and occupant, if any, may mutually agree in lieu of such restoration to a payment in cash by the operator to the owner or occupant, if any, and such payment shall operate as a complete release to the operator in respect of the obligations of the operator under this section.

R.S.S. 1978, c.S-65, s.55.

Application for order to restore if owner or occupant dissatisfied

56(1) Where an owner or occupant is dissatisfied with the state or condition of restoration and the operator is not relieved of his obligations to restore the surface of the land involved, the owner or occupant may apply to the board within five years from the date of service of the notice mentioned in section 54 or, where no such notice was required by virtue of abandonment or surrender prior to the coming into force of this Act, within five years from the date of coming into force of this Act, for an order requiring the operator to comply with section 55.

(2) Where the five-year period mentioned in subsection (1) has expired and the board has not received an application pursuant to subsection (1), the board shall, upon the request of the operator, provide a certificate to that effect.

(3) Where an operator files a certificate mentioned in subsection (2) with the Department of Energy and Mines, the department shall refund to the operator any deposit that he has paid to the department with respect to the rights abandoned, surrendered or restored.

R.S.S. 1978, c.S-65, s.56; R.S.S. 1978 (Supp.),
c.72, s.7; 1982-83, c.1, s.12.

SURFACE RIGHTS ACQUISITION
AND COMPENSATION

Restoration by owner or occupant and payment by operator

57(1) Upon receipt of an application under section 56, the board may inspect or cause to be inspected the land involved and if it is satisfied that there is reasonable cause for complaint by the owner or occupant, the board shall, after serving notice to the operator and to the owner and occupant, if any, hear and determine the complaint.

(2) The board may order the operator to restore the surface in such manner as may be set forth in such order or may authorize the owner or occupant to so restore the surface and, in the latter event, the board shall order the operator to pay to the owner or occupant, as the case may be, the cost of the restoration.

(3) The board may order payment of a sum of money in lieu of restoration.

R.S.S. 1978, c.S-65, s.57.

Order to be served on owner and occupant

58 Every order made by the board under section 56 shall be served on the operator within seven days after the date thereof and a copy of the order shall also be mailed to the owner and occupant, if any.

R.S.S. 1978, c.S-65, s.58.

Payment of cost of restoration

59 Where the operator is ordered by the board to pay the cost of restoration or compensation in lieu of restoration under section 57, he shall make such payment within thirty days from the date of the order.

R.S.S. 1978, c.S-65, s.59.

**PART VII
Liability for Tortious Acts**

Interpretation

60 In this Part “**tortious act**” means a wrongful, injurious or illegal act that results in:

- (a) loss or damage to the land of an owner or occupant, as the case may be, that is not situated within the surface rights acquired or to be acquired by an operator; and
- (b) any other loss or damage suffered by the owner or occupant arising out of such act.

R.S.S. 1978, c.S-65, s.60.

SURFACE RIGHTS ACQUISITION
AND COMPENSATION

cS-65

Liability for certain tortious acts

61(1) Every operator who has acquired or is about to acquire any surface rights, well site, battery site, roadway or power line right of way, or any one or more of them, is primarily liable to the owner or to the occupant, as the case may be, of the land for all tortious acts committed:

- (a) by a person in the course of his employment with the operator;
- (b) by any other person who performed work or provided services to or for the benefit of the operator pursuant to a contract entered into with the operator or with any other person with respect to the operations or any of them for which the rights, site, roadway or right of way was or is about to be acquired.

(2) The operator is liable to the owner or occupant, as the case may be, for any tortious act committed as provided in subsection (1) notwithstanding that the operator has assigned or transferred to any other person the surface lease or the surface rights acquired under this or any other Act or any regulation thereunder.

R.S.S. 1978, c.S-65, s.61.

Notice of loss or damage to operator

62(1) The owner or occupant, as the case may be, shall within thirty days after the discovery by him of any loss or damage sustained by him notify the board in writing of the acts complained of and of the amount of compensation or damages claimed by him and the board shall forthwith send a copy of the notice to the operator.

(2) A notice under subsection (1) may include one or more claims for compensation or damages.

R.S.S. 1978, c.S-65, s.62.

Determination of compensation where amount not agreed upon

63(1) Where an owner or occupant, as the case may be, and an operator are unable to agree upon the amount of loss or damage sustained by the owner or occupant as a result of a tortious act for which the operator is liable, the owner, occupant or operator may apply to the board in writing to determine the amount thereof and upon receipt of the application the board shall hear and determine the merits of the claim and the amount of compensation or damages, if any, to be paid by the operator to the owner or occupant.

(2) Section 33 applies, *mutatis mutandis*, in respect of a hearing by the board under subsection (1).

(3) No application shall be made to the board under subsection (1) after six months from the date of the service of the notice mentioned in subsection (1) of section 62.

(4) If no application is made by the owner or occupant under subsection (1) within the time limited by subsection (3) the claim of the owner or occupant against the operator for the loss or damage resulting from the tortious act for which the operator is liable under this Act is barred.

(5) This section does not apply where the claim of an owner or occupant for loss or damage as a result of a tortious act exceeds \$1,000.

R.S.S. 1978, c.S-65, s.63.

***Prima facie* evidence of liability of tortious act**

64 In any proceeding taken under this Part or in any action at law to recover damages or compensation for loss or damage resulting from a tortious act, proof by the owner or occupant of ownership or occupancy of the lands, as the case requires, that the operator or his assignee is carrying on or is about to carry on operations with respect to the lands under this Act and evidence of the tortious act complained of is *prima facie* evidence of the liability of the operator for the tortious act.

R.S.S. 1978, c.S-65, s.64.

PART VIII
Functions and Duties of Mediation Officer

Matters may be referred to mediation officer for settlement, etc.

65(1) An owner or occupant may lodge a complaint in writing with the board concerning the operations of the operator on or adjoining the surface rights, well site, battery site, roadway or power line, or any one or more of them, acquired by the operator and request that the complaint be referred to a mediation officer; or

(2) Where a matter in dispute under this Act is pending a determination by the board, the board may, of its own volition or upon the written request of an owner, occupant or operator, refer the matter to a mediation officer.

(3) Where the board has referred a matter to a mediation officer, further proceedings pending before the board with respect to that matter shall be stayed until the mediation officer to whom the matter is referred has made his report to the board pursuant to section 68.

(4) **Repealed.** R.S.S. 1978 (Supp.), c.72, s.8.

R.S.S. 1978, c.S-65, s.65; R.S.S. 1978 (Supp.),
c.72, s.8.

Investigation, etc., of matter by mediation officer

66 The mediation officer shall, immediately after the receipt by him of a complaint or request, investigate the matter complained of or that is in dispute and for that purpose the mediation officer may interview such persons as he deems necessary or desirable, inspect any land or other property of the owner or occupant, if any, that is involved, examine the operations of the operator relevant to the complaint or matter of dispute and, if possible, arrange for the parties or their representatives to meet with him and endeavour to negotiate a settlement between the parties.

R.S.S. 1978, c.S-65, s.66.

Agreement of settlement

67(1) If the mediation officer succeeds in effecting a settlement of the complaint or the matter of dispute, he shall reduce or cause to be reduced to writing the terms and conditions of the agreement of settlement to be observed, kept or performed by each of the parties concerned and if the payment of money is involved the mediation officer shall include in the writing or cause to be included in the writing the amount of money to be paid, the name of the payer and the payee and the time of payment of the money or, if the money is to be paid by instalment, the amount of each instalment and the dates when each instalment is to be paid.

(2) The agreement of settlement shall be executed by each of the parties to the settlement or, if one of the parties is a corporation, by the proper officers of the corporation or the duly authorized agent of the corporation, which execution shall be attested by a subscribing witness; and the mediation officer shall deliver or send a copy of the executed agreement by registered mail, postage prepaid, to each of the parties to the agreement of settlement and shall file one copy of the executed agreement with the board together with his report.

(3) Upon receipt of the report of the mediation officer, the chairperson of the board shall make an order in writing incorporating the terms of the agreement filed with the report and shall serve a copy of the order upon each of the parties affected by the order.

(4) An order of the chairperson of the board made pursuant to subsection (3) is binding upon the parties affected by the order and has the same force and effect as a decision or award of the board made under this Act except that no appeal lies under Part IX from such order.

R.S.S. 1978, c.S-65, s.67; 2015, c.21, s.64.

Discontinuation of investigation or negotiation by mediation officer

68 If the mediation officer is unable to effect a settlement between the parties concerned within a reasonable time he may refuse to continue the investigations or negotiations and where he does so, he shall forthwith in writing notify the parties to the dispute and the board of his refusal.

R.S.S. 1978, c.S-65, s.68.

Continuation of proceedings before board

69 If the mediation officer reports, with respect to a request under subsection (2) of section 65, that no settlement has been effected between the parties, the board shall continue the proceedings pending before it and that were stayed as if no such request had been made.

R.S.S. 1978, c.S-65, s.69.

Certain evidence not admissible; officer not compellable witness, etc.

70 No statement or admission made by or on behalf of any party to the mediation officer during the investigations or negotiations conducted by the mediation officer pursuant to section 66 are admissible in evidence in any proceedings taken or continued under this Act or in any action taken with respect to the matter complained of or in dispute and the mediation officer is not a competent or compellable witness in any such proceedings or action.

R.S.S. 1978, c.S-65, s.70.

PART IX
Appeal**Appeal to Court of Appeal**

71 Any person affected by an order, decision or determination of the board other than an order conferring a right of entry, or any person affected by an award of compensation made by the board, may:

- (a) within:
 - (i) thirty days after the date on which the order, decision, determination or award is made; or
 - (ii) such further time, not exceeding thirty days, as a judge of the Court of Appeal may allow upon an application made within thirty days after the date on which the order, decision, determination or award is made; and
- (b) with leave of a judge of the Court of Appeal;

appeal to the Court of Appeal against the order, decision, determination or award on a question of law or on a question concerning the jurisdiction of the board.

R.S.S. 1978, c.S-65, s.71.

Leave to appeal

72(1) The appellant shall, within the period provided in subclause (i) of clause (a) of section 71, serve notice of the application for leave to appeal on the board and the board shall, forthwith upon receipt of the notice, transmit to the registrar of the Court of Appeal a copy of the order, decision, determination or award appealed from, duly certified by the chairperson or secretary of the board, together with all documents filed with the board in connection with the subject-matter of the appeal.

- (2) An order granting leave to appeal shall:
 - (a) for the purposes of any appeal under section 71 be deemed to be a notice of appeal;
 - (b) state the grounds of the appeal; and
 - (c) be served upon the respondent or his solicitor within fifteen days from the date of the order giving leave to appeal.
- (3) Subject to the provisions of this section and sections 71 and 73, the rules of the Court of Appeal shall apply *mutatis mutandis* to an appeal under section 71 as if it were an appeal from a judge of the Court of Queen's Bench, but no appeal books shall be required.

R.S.S. 1978, c.S-65, s.72; 2015, c.21, s.64.

Stay of proceedings

73 All proceedings under an order, decision, determination or award appealed from pursuant to section 71 shall be stayed upon the filing of the application for leave to appeal with the registrar of the Court of Appeal until the application has been disposed of and if leave to appeal is granted the stay shall continue until the appeal has been disposed of.

R.S.S. 1978, c.S-65, s.73.

PART X
General

Where owner or occupant is unascertainable or his whereabouts is unknown

74(1) Where upon application to the board it is proved to the satisfaction of the board that, because the owner or occupant of the land in respect of which the surface rights are required is unascertainable or is a person whose whereabouts is unknown, or because of other special circumstances, the operator is unable to negotiate a lease for the required surface rights without unduly delaying the operations of the operator, the board may by order grant permission to the operator to enter upon the land and use any portion thereof required by the operator for any of the purposes mentioned in this Act if the operator deposits with the board a sum of money fixed by the board.

(2) Where the operator who is granted a right of entry pursuant to subsection (1) is, in respect of the surface rights acquired by the operator, unable to negotiate a lease within six months from the date of the order of the board granting such right of entry, the operator shall forthwith at the end of such six months apply to the board for a hearing to determine the compensation for the surface rights.

(3) The deposit made by the operator pursuant to subsection (1) shall be retained by the board until a lease has been executed by the operator, owner and occupant, if any, or until the board has, after a hearing under subsection (2), determined the compensation for the surface rights acquired by the operator.

R.S.S. 1978, c.S-65, s.74.

Compensation payment

75(1) Where the board, after a hearing under section 74, fixes the compensation and orders the payment thereof, the board shall charge the compensation payable against the deposit made under subsection (1) of section 74.

(2) Where the amount deposited by an operator under subsection (1) of section 74 exceeds the amount compensation payable as fixed by the board, the board shall forthwith return the excess to the operator; but where the amount of compensation fixed by the board exceeds the amount deposited by the operator, the operator shall forthwith pay over to the board the amount by which the compensation exceeds the deposit.

(3) The money paid by an operator as compensation for the acquisition of surface rights under this Part shall be held by the board in trust for the owner or other person entitled thereto and shall be disbursed only upon and in accordance with an order of the board.

R.S.S. 1978, c.S-65, s.75.

**Compensation for certain rights deemed to be included in certain grants,
determination and review of compensation**

76(1) Every subsisting surface right and right of entry granted to an operator:

- (a) prior to the twenty-fourth day of May, 1968, by the Minister of Energy and Mines pursuant to *The Petroleum and Natural Gas Regulations* from time to time made under *The Mineral Resources Act*;

SURFACE RIGHTS ACQUISITION
AND COMPENSATION

(b) prior to the twenty-fourth day of May, 1968, pursuant to an agreement between the owner or occupant and the operator entered into under *The Petroleum and Natural Gas Regulations* from time to time made under *The Mineral Resources Act*;

(c) prior to the thirtieth day of March, 1972, by the Minister of Energy and Mines pursuant to subsection (2) of section 26 of *The Pipe Line Act*;

shall be deemed to include and to have always included the right of the owner or occupant to be paid compensation therefor by the operator.

(2) Where compensation with respect to any surface right or right of entry mentioned in subsection (1):

(a) has been reviewed in the three years prior to the day on which this subsection comes into force, the operator or the owner and occupant, if any, may, within three months before or within three months after the expiration of three years from the day on which the compensation was reviewed, and within three months before or within three months after the expiration of each succeeding three-year interval;

(b) has not been reviewed in the three years prior to the day on which this subsection comes into force, the operator or the owner and occupant, if any, may, within six months after this subsection comes into force, and within three months before or within three months after the expiration of each succeeding three-year interval after this subsection comes into force;

apply to the board to review and determine the compensation to be paid by the operator to the owner or occupant.

(3) to (5) **Repealed.** 1980-81, c.86, s.7.

R.S.S. 1978, c.S-65, s.76; 1980-81, c.86, s.7;
1982-83, c.1, s.12.

Review of rights granted by agreement

77 Notwithstanding any provision with respect to review of compensation in any agreement, where compensation with respect to any surface right or right of entry which has been arrived at by agreement or determined by the board either before or after this section comes into force:

(a) has been reviewed in the three years prior to the day on which this section comes into force, the operator or the owner and occupant, if any, may, within three months before or within three months after the expiration of three years from the day on which the compensation was reviewed, and within three months before or within three months after the expiration of each succeeding three-year interval;

SURFACE RIGHTS ACQUISITION
AND COMPENSATION

cS-65

(b) has not been reviewed in the three years prior to the day on which this section comes into force, the operator or the owner and occupant, if any, may, within six months after this section comes into force, and within three months before and within three months after the expiration of each succeeding three-year interval after this section comes into force;

apply to the board to review and determine the compensation to be paid by the operator to the owner or occupant.

1980-81, c.86, s.8.

Where application made after three years

78 Where an application for a review and determination of compensation is made after three months following the expiration of a three-year interval, the board shall review and determine the compensation, but any revision and determination of compensation made by the board is not effective until one year after the expiration of the three-year interval.

1980-81, c.86, s.9.

Board to consider application, etc.

79(1) Upon receipt of an application under section 76 or 77, the board shall determine the compensation to be paid or review the compensation, as the case requires.

(2) Section 29, subsections (1), (2) and (3) of section 31, section 33 except clauses (a), (b) and (d) of subsection (2) thereof and sections 47 and 48 apply *mutatis mutandis* in respect of an application for a determination or a review of compensation under subsection (1).

R.S.S. 1978, c.S-65, s.79.

Form of application under Act, duties of board respecting hearing

80(1) An application to the board under this Act shall be in writing signed by the applicant, or his solicitor if any, and shall be filed with the board.

(2) The applicant shall in his application set forth his name and address, the name and address of the owner, occupant or operator, as the case requires and his address, the description of the land with respect to which the surface right or right of entry concerned has been granted and the nature of the relief claimed.

(3) The board shall forthwith acknowledge receipt of the application and shall send a notice by registered mail to the owner, occupant or operator, as the case requires, affected by the application advising him of the receipt by the board of the application.

(4) Where a hearing is to be held by the board to consider the application, the board shall fix a date and place for the hearing of the matters in dispute and shall serve the parties concerned with written notice of the hearing not less than seven days before the date so fixed.

R.S.S. 1978, c.S-65, s.80.

SURFACE RIGHTS ACQUISITION
AND COMPENSATION

Rehearing of application by owner, etc. in respect of compensation only

81 Notwithstanding anything contained in section 74 or 75, the owner or occupant, if any, or the personal representative of his or their estate may, within six months after the making of an order made under section 74 comes to his or their attention, either accept the compensation awarded or apply to the board for a rehearing of the application regarding compensation only; and upon receipt of the application the board shall fix a date for a rehearing, give notice thereof to the parties concerned and make such order as it deems just and proper in the circumstances.

R.S.S. 1978, c.S-65, s.81.

Applications under former section 90, 95 and 96 of The Petroleum and Natural Gas Regulations deemed to be under Act

82 Every application for arbitration filed with the Minister of Energy and Mines under sections 90, 95 and 96 of *The Petroleum and Natural Gas Regulations, 1963*, or corresponding sections of any former *Petroleum and Natural Gas Regulations* that have not been disposed of by any former arbitration board on surface rights and are pending when this Act comes into force, shall be deemed to be applications for determining the matters in dispute under this Act, and shall be heard and determined by the board appointed hereunder and in accordance with the provisions of this Act.

R.S.S. 1978, c.S-65, s.82; 1982-83, c.1, s.12.

Transfer of deposits to board

83 Deposits made by operators with the Minister of Energy and Mines pursuant to sections 95 and 96 of *The Petroleum and Natural Gas Regulations, 1963*, or corresponding section of any former *Petroleum and Natural Gas Regulations* shall be transferred to the board and shall be disbursed only in accordance with an order of the board.

R.S.S. 1978, c.S-65, s.83; 1982-83, c.1, s.12.

Applications for review of compensation under lease, agreement or award

84 Every application by an owner or operator for a review of compensation payable under the terms of a lease, agreement or an award made by any former arbitration board on surface rights under *The Petroleum and Natural Gas Regulations, 1963*, or any former *Petroleum and Natural Gas Regulations* that has not been heard and determined before this Act comes into force, shall be deemed to be an application under this Act and shall be heard and determined by the board.

R.S.S. 1978, c.S-65, s.84.

Operator's responsibility to cut down weeds

85(1) Unless the operator and the owner and occupant, if any, otherwise agree, every operator shall cut down or otherwise control all weeds growing on the land on which the operations of the operator are being carried on and the operator shall cut down or root out and destroy such weeds each year before they have sufficiently matured to seed.

SURFACE RIGHTS ACQUISITION
AND COMPENSATION

cS-65

(2) Where an operator fails or neglects to comply with subsection (1), the owner or occupant may do so and for that purpose may enter upon the land on which the operations of the operator are being carried on, or the owner or occupant may apply to the board for an order requiring the operator to comply with that subsection.

(3) The board may by order direct the operator to cut down or root out and destroy the weeds within a time fixed by the order, or, if the owner or occupant has done so, the board may award the owner or occupant compensation therefor and the operator shall pay such compensation forthwith.

(4) No application under subsection (2) shall be heard if it is made after the expiration of three months after the owner or occupant first became entitled in the opinion of the board to make such application.

(5) Where an application is made under subsection (2) and it appears to the board that more than one operator may be liable, the board may adjourn the hearing and direct notice thereof to be served on all operators that may be liable and may by order determine and apportion the compensation to be paid by each of such operators.

R.S.S. 1978, c.S-65, s.85.

Termination of right of entry

86(1) Where at any time after the expiration of three months from the date of an order granting to an operator a right of entry upon land, the operator has not commenced to exercise the right granted to him or the operator has ceased to use the land or interest therein for the purposes granted by the order, the owner or occupant may apply to the board for the termination of the right.

(2) Upon receipt of an application under subsection (1) the board shall fix a date for a hearing of the application and shall serve notice thereof on all parties concerned in such manner as the board deems proper.

(3) The board may, after the hearing pursuant to subsection (2), make an order terminating the right of entry on the land or any part thereof, but no such order shall be made until the operator has complied with sections 53 to 59 insofar as they are applicable.

R.S.S. 1978, c.S-65, s.86.

Enforcement of board order

87 An order of the board made under section 31 or 45 with respect to the right to enter, use, occupy or take land therein described or an interest in land shall, if requested by one of the parties involved, be enforced by the sheriff or his bailiff, or any other person under the written authority and direction of the sheriff in the same manner as a writ of possession issued upon an order of a court or judge.

R.S.S. 1978, c.S-65, s.87.

SURFACE RIGHTS ACQUISITION
AND COMPENSATION

Order of board may be filed and enforced as order of court

88(1) An order of the board, or a copy thereof certified to be a true copy by the chairperson or a member of the board, requiring an owner, occupant or operator to do any act or thing or to pay any compensation or damages to the board or to the owner or occupant, as the case may be, may be filed in the office of the local registrar of the Court of Queen's Bench at the judicial centre nearest to the land involved.

(2) Where the order requires only that the operator make payment of compensation or damages to the owner or occupant, as the case may be, the person to whom payment has not been made as required by the order may file an affidavit with the local registrar setting out the fact of non-payment of the whole or part of the compensation or damages and thereupon the order shall be entered as a judgment of the Court of Queen's Bench by the local registrar for the appropriate amount in favour of the owner or occupant, as the case may be, against the operator and may be enforced as a judgment of the court.

(3) If the order requires the owner, occupant or operator to do or perform any act or thing other than the payment of compensation or damages, the owner, occupant or operator may apply to a judge of the Court of Queen's Bench at which the order is filed to enforce the order and the judge may grant such relief as the judge thinks fit and proper.

(4) Sections 23 and 24 of *The Queen's Bench Act, 1998* and The Queen's Bench Rules apply, *mutatis mutandis*, to an application under subsection (3).

(5) The judge may hear and determine the matter of an application under subsection (3) in a summary way or he may direct that the matter be heard in open court and determined by *viva voce* evidence.

(6) **Repealed.** 1979-80, c.92, s.92.

(7) The costs of and incidental to any proceeding under subsection (3) are in the discretion of the judge.

R.S.S. 1978, c.S-65, s.88; 1979-80, c.92, s.92;
1980-81, c.76, s.16; 2004, c.65, s.32; 2015, c.21,
s.64; 2018, c.42, s.65.

Order of board need not show board's jurisdiction

89 An order of the board need not show upon its face that any proceedings were taken or that any notice was served or that any circumstances existed that were necessary to give the board jurisdiction to make the order.

R.S.S. 1978, c.S-65, s.89.

Order of board as evidence

90 A copy of an order of the board, certified by the chairperson, another member of the board or secretary of the board to be an order of the board is *prima facie* evidence of the order without proof of the authenticity of the signature or other proof whatsoever.

R.S.S. 1978, c.S-65, s.90; 2015, c.21, s.64.

Assignment of order

91 An order of the board or court is assignable by filing a certified copy of the assignment with the board and serving notice of the assignment on the other parties named in the order or in any previous assignment of the order.

R.S.S. 1978, c.S-65, s.91.

Registration of an interest based on the order

92(1) An interest based on an order of the board or court may be registered in the Land Titles Registry against the affected titles.

(2) An application to register the interest mentioned in subsection (1) must:

- (a) be accompanied by:
 - (i) the order of the board or court; or
 - (ii) a certified copy of the order of the board or court; and
- (b) set out the address for service for the operator.

2000, c.L-5.1, s.512.

Discharge of interest

93(1) Where the rights of an operator pursuant to an order of the board or court have ceased or have been cancelled or abandoned by the operator, the operator shall discharge any interest registered pursuant to section 92 based on that order.

(2) Where an operator fails to discharge the interest pursuant to subsection (1), the interest may be discharged pursuant to section 63 of *The Land Titles Act, 2000* at the expense of the operator.

2000, c.L-5.1, s.512.

No fees chargeable to board by government departments

94(1) The Land Titles Registry and every department of the government of the province shall furnish the board, without charge, any certificate or certified copies of documents that the board may require.

(2) The board or a person duly authorized in writing by the chairperson of the board may, for the purpose of carrying out the duties of the board, search the public records of the Land Titles Registry without charge.

R.S.S. 1978, c.S-65, s.94; 2000, c.L-5.1, s.513;
2015, c.21, s.64.

SURFACE RIGHTS ACQUISITION
AND COMPENSATION**Power to make regulations and orders**

95 For the purpose of carrying out the provisions of this Act according to their intent, the Lieutenant Governor in Council may make such regulations as are ancillary thereto and are not inconsistent therewith; and every regulation made under and in accordance with the authority granted by this section has the force of law; and, without restricting the generality of the foregoing, the Lieutenant Governor in Council may make such regulations, not inconsistent with any other provision of this Act:

- (a) providing for a formula for the determination of compensation under this Act;
- (b) providing for a surface lease;
- (c) specifying machinery, equipment or apparatus for the purpose of subclause 2(m)(i.1).

R.S.S. 1978, c.S-65, s.95; 1980-81, c.86, s.11.