

NISGA'A EXPROPRIATION ACT

NISGA'A LISIMS GOVERNMENT

WILP SI'AYUUKHL NISGA'A

NISGA'A EXPROPRIATION ACT

Wilp Si'ayuukhl Nisga'a enacted this legislation on _____.

Signed _____
H. Mitchell Stevens, President of the Nisga'a Nation

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PART 1 – INTERPRETATION**Definitions**

1. In this Act:

“**arbitration**” means an arbitration under Part 4;

“**arbitrator**” means an arbitrator appointed under section 14(2) or (3);

“**charge**” means a charge as defined in the *Nisga'a Land Title Act*;

“**compensation determination**” means the written decision of an arbitrator referred to in section 16;

“**compensation payment**” means the payment or transfer by an expropriating Nisga'a government to an owner of compensation for a proposed expropriation of an interest in land, as referred to in section 10(1) or in an analogous section of a regulation made under section 29(1);

“**court**” means the Supreme Court of British Columbia;

“**Crown road**” means a Crown road as defined in the Nisga'a Treaty;

“**entitlement**” means a Nisga'a Village entitlement or a Nisga'a Nation entitlement;

“**expropriate**”, in relation to an interest in land, means to take the interest in land under this Act without the consent of the owner but, for greater certainty, does not include to exercise any interest, right, privilege or title referred to in section 9 of the *Nisga'a Land Act*;

“**expropriated interest**” means an interest in land that is to be expropriated, as identified in a notice of expropriation;

“**expropriating Nisga'a Government**” means a Nisga'a Government that has filed a notice of expropriation;

“**interest**”, in relation to land, includes all or any part of any title, estate, interest or right in or to the land, including, for greater certainty, any entitlement to the land;

“**Lisims land**” means Lisims land as defined in the *Nisga'a Land Act*;

“**Lisims land registry**” means the Lisims land registry established under the *Nisga'a Land Act*;

“**Nisga'a Government**” means the Executive or a Nisga'a Village Government;

“Nisga’a Nation entitlement” means a Nisga’a Nation entitlement as defined in the *Nisga’a Nation Entitlement Act*;

“Nisga’a Nation interest” means

- (a) an interest in land owned or held by the Nisga’a Nation, including, for greater certainty, an interest excepted or reserved to the Nisga’a Nation in the original Nisga’a grant of the land or in any other disposition made by the Nisga’a Nation, and
- (b) an interest in land, other than an entitlement, granted by the Nisga’a Nation to another person;

“Nisga’a Village entitlement” means a Nisga’a Village entitlement as defined in the *Nisga’a Village Entitlement Act*;

“Nisga’a Village OCP Act” means a Nisga’a Village OCP Act as defined in the *Nisga’a Community Planning and Zoning Enabling Act*;

“Nisga’a Village Zoning Act” means a Nisga’a Village Zoning Act as defined in the *Nisga’a Community Planning and Zoning Enabling Act*;

“notice of arbitration” means a notice referred to in section 14(1)(b);

“notice of expropriation” means a notice referred to in section 6(a) or 9(1) or in an analogous section of a regulation made under section 29(1), and includes any document or plan filed with the notice;

“notice of vesting” means a notice referred to in section 10(1);

“offer of compensation” means an offer referred to in section 13(1);

“official community plan” means an official community plan as defined in the *Nisga’a Community Planning and Zoning Enabling Act*;

“owner”, in relation to land, means

- (a) a person who has an interest in the land,
- (b) a committee under the *Patients Property Act* (British Columbia) of a person referred to in paragraph (a),
- (c) an attorney under Part 2 of the *Power of Attorney Act* (British Columbia) of a

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person referred to in paragraph (a), or

- (d) a person who is in legal possession or occupation of the land, other than a person who leases or occupies residential premises under an agreement that has a term of less than one year;

“parcel” means a parcel as defined in the *Nisga'a Land Title Act*;

“register” means register as defined in the *Nisga'a Land Title Act*;

“registrar” means the Registrar appointed under the *Nisga'a Land Title Act*;

“security interest” means

- (a) a charge registered against an interest in land being expropriated, or
- (b) an interest in land recorded in the Lisims land registry and encumbering an interest in Lisims land being expropriated

that is owned or held by a person solely as security for the payment of money;

“subdivide”, in relation to land, means to divide the land into two or more parcels, whether by plan, metes and bounds description, or otherwise;

“surviving charge” means an interest in land identified in a notice of expropriation as not subject to the proposed expropriation;

“time of expropriation”, in relation to the expropriation of an interest in land, means the date on which the notice of expropriation of the interest is filed

- (a) under section 6(a),
- (b) in the case of an interest added to an expropriation by modification, under section 9(1), or
- (c) in the case of an interest in Lisims land, under an analogous section of a regulation made under section 29(1).

PART 2 – AUTHORITY**Authority of the Executive**

2. (1) Subject to subsection (2), the Executive may expropriate an interest in land within Nisga'a Lands that it determines is required for public works or public purposes.
- (2) The Executive may not
 - (a) expropriate an interest in land described in paragraph 50(c)(i), (iii) or (iv) of the Nisga'a Government Chapter of the Nisga'a Treaty, or
 - (b) except with the prior approval of Wilp Si'ayuukhl Nisga'a, expropriate an interest in land within a Nisga'a Village with a surface area greater than 5 ha under any one notice of expropriation.

Authority of Nisga'a Village Governments

3. (1) Subject to subsection (2), a Nisga'a Village Government may expropriate an interest in land within the Nisga'a Village under its jurisdiction that it determines is required for public works or public purposes.
- (2) A Nisga'a Village Government may not expropriate
 - (a) an interest in land described in paragraph 50(c)(i), (iii) or (iv) of the Nisga'a Government Chapter of the Nisga'a Treaty,
 - (b) a Nisga'a Nation interest, or
 - (c) an interest in land in respect of which a notice of expropriation filed by the Executive remains uncanceled.

Limitation on dispute

4. No person may dispute
 - (a) the right of an expropriating Nisga'a Government to have recourse to expropriation, or
 - (b) without limiting paragraph (a), a determination by an expropriating Nisga'a Government that an interest in land is required to be expropriated for public works

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or public purposes.

PART 3 – EXPROPRIATION PROCEDURE**Application of Part**

5. This Part applies to the expropriation of interests in land located within a Nisga'a Village or otherwise registered in the Nisga'a land title office.

Notice of expropriation

6. A Nisga'a Government that intends to expropriate an interest in land must
- (a) file in the Nisga'a land title office a notice in the prescribed form containing or identifying
 - (i) the name and address of the Nisga'a Government,
 - (ii) an indication of the public work or public purpose for which the interest is being expropriated,
 - (iii) the nature of the interest being expropriated,
 - (iv) if the interest is being expropriated for a limited time, the time period,
 - (v) the legal description of each parcel in respect of which, in whole or in part, the interest is being expropriated,
 - (vi) if the interest is being expropriated in respect of land that forms only part of a parcel or is not within a parcel,
 - (A) a plan that is sufficient, in the opinion of the registrar, to identify the land in the records of the Nisga'a land title office, or
 - (B) in the case of expropriation of the fee simple interest or an entitlement from part of a parcel, an explanatory plan or reference plan that, in the opinion of the registrar, is sufficient to subdivide the parcel in the records of the Nisga'a land title office,
 - (vii) any surviving charge on the land in respect of which the interest is being expropriated, and
 - (viii) any other prescribed information,
 - (b) serve a copy of the notice on each owner whose registered interest in land is to be

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expropriated, and

- (c) post or erect in the prescribed manner, on the land in respect of which the interest is to be expropriated, a sign containing a copy of the notice.

Subdivisions adjacent to Crown roads

- 7. If a proposed expropriation involves the subdivision of land adjacent to a Crown road, the Nisga'a Government proposing the expropriation must, before filing a notice of the expropriation under section 6(a),
 - (a) refer a plan of the subdivision to British Columbia for review, and
 - (b) consider the requirements of any regulation by British Columbia referred to in paragraph 43 of the Roads and Rights of Way Chapter of the Nisga'a Treaty.

Nisga'a land title office notation

- 8. On the filing of a notice of expropriation under section 6(a), the registrar
 - (a) must endorse in the register of the Nisga'a land title office a notation of the proposed expropriation, and
 - (b) must not, while the notice remains uncanceled,
 - (i) accept for deposit, filing or registration any other instrument affecting the expropriated interest, other than
 - (A) a court order,
 - (B) a certificate of pending litigation, or
 - (C) any prescribed instrument, or
 - (ii) allow any change in the boundaries of land affecting the expropriated interest

except in accordance with this Act.

Modification of expropriation

- 9. (1) At any time after serving a notice of expropriation under section 6(b) on the owner of an

interest in land being expropriated and before making a compensation payment to the owner, an expropriating Nisga'a Government may modify the proposed expropriation, including by

- (a) adding an interest in land to the expropriation or deleting an interest in land from the expropriation, or
- (b) changing the land in respect of which an interest is being expropriated,

by filing in the Nisga'a land title office a modified notice of expropriation.

- (2) On the filing of a modified notice of expropriation under subsection (1),
 - (a) the registrar must take any steps the registrar considers necessary to ensure the modification is reflected in the register, including by amending or cancelling and replacing the notation that the registrar endorsed in the register when the original notice was filed,
 - (b) the expropriating Nisga'a Government must serve a copy of the modified notice on
 - (i) all persons on whom the expropriating Nisga'a Government was required to serve the original notice of expropriation, and
 - (ii) any other owner of a registered interest in land affected by the modification, and
 - (c) any offer of compensation made by the expropriating Nisga'a Government to an owner in respect of the original notice of expropriation is deemed to be null and void, regardless of whether the offer has been or is subsequently accepted by the owner, unless the expropriating Nisga'a Government and the owner otherwise agree in writing.
- (3) If the modification of a proposed expropriation under subsection (1) includes the deletion of an interest in land from the expropriation, the expropriating Nisga'a Government must pay any reasonable legal, appraisal or other costs directly attributable to the originally proposed expropriation of the deleted interest and incurred by the owner of the deleted interest up to the time of the service of the notice of modification on that owner under subsection (2)(b).

Vesting of expropriated interest

- 10. (1) If, after serving a notice of expropriation on the owner of an interest in land being expropriated, an expropriating Nisga'a Government pays or transfers to the owner

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compensation for the expropriation

- (a) set out in an offer of compensation made by the expropriating Nisga'a Government and accepted by the owner in writing,
- (b) otherwise agreed to in writing between the expropriating Nisga'a Government and the owner, or
- (c) set out in a compensation determination,

the expropriating Nisga'a Government must file in the Nisga'a land title office a notice in the prescribed form and serve a copy of the notice on the owner.

(2) On the filing of a notice of vesting under subsection (1), the registrar must

- (a) cancel the notice of expropriation applicable to the expropriated interest in land, and
- (b) cancel the notation endorsed in the register in respect of that notice of expropriation.

(3) If a notice of vesting of a fee simple interest is filed under subsection (1),

- (a) the registrar must
 - (i) if the vesting is of the fee simple interest in
 - (A) part of a parcel, take such steps as are necessary to constitute that part of the parcel as a new subdivided parcel, or
 - (B) land outside of a parcel, take such steps as are necessary to constitute that land as a new parcelin the records of the Nisga'a land title office,
 - (ii) if the notice of vesting is filed by
 - (A) the Executive, register the Nisga'a Nation, or
 - (B) a Nisga'a Village Government, register the applicable Nisga'a Village

as the holder of the fee simple interest in the existing or newly constituted parcel, as the case may be, and

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- (iii) cancel the registration of any charge registered against the fee simple interest in the existing or newly constituted parcel, as the case may be, other than
 - (A) a surviving charge, or
 - (B) if the notice of vesting is filed by a Nisga'a Village Government, a Nisga'a Nation interest, and
 - (b) the fee simple interest in the existing or newly constituted parcel, as the case may be, vests in
 - (i) the Nisga'a Nation, if the notice of vesting is filed by the Executive, or
 - (ii) the applicable Nisga'a Village, if the notice of vesting is filed by a Nisga'a Village Government,free and clear of any charge, other than
 - (iii) a surviving charge, or
 - (iv) if the notice of vesting is filed by a Nisga'a Village Government, a Nisga'a Nation interest.
 - (4) If a notice of vesting of an entitlement is filed under subsection (1),
 - (a) the registrar must
 - (i) if the vesting is of an entitlement to part of a parcel, take such steps as are necessary to constitute the part of the parcel as a new subdivided parcel in the records of the Nisga'a land title office,
 - (ii) if the notice of vesting is filed by
 - (A) the Executive, register the Nisga'a Nation, or
 - (B) a Nisga'a Village Government, register the applicable Nisga'a Villageas the holder of the entitlement in whole or to the new subdivided parcel, as the case may be, and
 - (iii) cancel the registration of any charge registered against the entitlement in whole or to the new subdivided parcel, as the case may be, other than

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- (A) a surviving charge, or
- (B) if the notice of vesting is filed by a Nisga'a Village Government, a Nisga'a Nation interest, and
- (b) the entitlement in whole or to the new subdivided parcel, as the case may be, vests in
 - (i) the Nisga'a Nation, if the notice of vesting is filed by the Executive, or
 - (ii) the applicable Nisga'a Village, if the notice of vesting is filed by a Nisga'a Village Government,

free and clear of any charge, other than

 - (iii) a surviving charge, or
 - (iv) if the notice of vesting is filed by a Nisga'a Village Government, a Nisga'a Nation interest, and

with priority over any other charge registered or endorsed against the land that is affected by the entitlement, other than

 - (v) a surviving charge, or
 - (vi) if the notice of vesting is filed by a Nisga'a Village Government, a Nisga'a Nation interest.
- (5) If a notice of vesting of an interest in land other than a fee simple interest or an entitlement is filed under subsection (1),
 - (a) the registrar must register
 - (i) the Nisga'a Nation, if the notice of vesting is filed by the Executive, or
 - (ii) the applicable Nisga'a Village, if the notice of vesting is filed by a Nisga'a Village Government

as the holder of the expropriated interest, and
 - (b) the interest vests in
 - (i) the Nisga'a Nation, if the notice of vesting is filed by the Executive, or
 - (ii) the applicable Nisga'a Village, if the notice of vesting is filed by a Nisga'a

Village Government,

free and clear of any charge, other than

- (iii) a surviving charge, or
- (iv) if the notice of vesting is filed by a Nisga'a Village Government, a Nisga'a Nation interest, and

with priority over any other charge registered or endorsed against the land that is affected by the interest, other than

- (v) a surviving charge, or
 - (vi) if the notice of vesting is filed by a Nisga'a Village Government, a Nisga'a Nation interest.
- (6) On the filing of a notice of vesting of an interest in land under subsection (1), and subject to any agreement between the Nisga'a Government that filed the notice and the former owner of the interest,
- (a) the Nisga'a Nation, if the notice was filed by the Executive, or
 - (b) the applicable Nisga'a Village, if the notice was filed by a Nisga'a Village Government

is entitled to possession of the land to the extent permitted by the interest, regardless of whether the notice has been served on the former owner.

Abandonment of expropriation

- 11.** (1) At any time after serving a notice of expropriation on the owner of an interest in land being expropriated and before making a compensation payment to the owner, an expropriating Nisga'a Government may abandon the proposed expropriation by
- (a) filing a notice in the prescribed form in the Nisga'a land title office, and
 - (b) serving a copy of the notice on all persons on whom the expropriating Nisga'a Government was required to serve the applicable notice of expropriation.
- (2) On the filing of a notice of abandonment under subsection (1),
- (a) the registrar must

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- (i) cancel the applicable notice of expropriation, and
 - (ii) cancel the notation endorsed in the register in respect of that notice of expropriation,
- (b) any offer of compensation made by the expropriating Nisga'a Government to an owner in respect of the notice of expropriation is deemed to be null and void, regardless of whether the offer has been or is subsequently accepted by the owner, and
- (c) the expropriating Nisga'a Government must pay any reasonable legal, appraisal or other costs directly attributable to the proposed expropriation and incurred by the owner up to the time of service of the notice under subsection (1)(b).

Deemed abandonment

- 12.** (1) A proposed expropriation of an interest in land is deemed to have been abandoned if
- (a) within nine months after the expropriating Nisga'a Government files a notice of expropriation of the interest
 - (i) under section 6(a), or
 - (ii) if the interest is added to the proposed expropriation by modification, under section 9(1),

the expropriating Nisga'a Government does not

 - (iii) file a notice of vesting of the interest under section 10(1),
 - (iv) file a notice of abandonment of the expropriation under section 11(1), or
 - (v) serve a notice of arbitration on the owner of the interest under section 14(1), or
 - (b) within three months after
 - (i) the expropriating Nisga'a Government and the owner agree in writing, by offer and acceptance or otherwise, on compensation payable by the expropriating Nisga'a Government to the owner for the proposed expropriation,
 - (ii) an arbitrator serves on the expropriating Nisga'a Government and the owner a compensation determination in respect of the expropriation under

section 16(1), or

- (iii) an application in accordance with section 16(2) for judicial review of a compensation determination in respect of the expropriation is settled, discontinued, abandoned or finally determined by the court,

the expropriating Nisga'a Government does not

- (iv) file a notice of vesting of the interest under section 10(1), or
- (v) file a notice of abandonment of the expropriation under section 11(1).

- (2) Subsection (1)(b)(ii) does not apply if the expropriating Nisga'a Government or the owner of the interest applies for judicial review of the compensation determination in accordance with section 16(2).
- (3) If a proposed expropriation of an interest in land is deemed to have been abandoned under subsection (1),
 - (a) the owner of the interest may apply to the registrar in the prescribed form for cancellation of
 - (i) the applicable notice of expropriation, and
 - (ii) the notation endorsed in the register in respect of that notice of expropriation,
 - (b) on receiving an application under paragraph (a), the registrar
 - (i) must give notice of the application to the expropriating Nisga'a Government,
 - (ii) may require the owner or the expropriating Nisga'a Government to file or produce any instrument or information that the registrar considers relevant to the application, and
 - (iii) must, if the registrar determines to the registrar's satisfaction that the proposed expropriation of the interest is deemed to have been abandoned under subsection (1),
 - (A) cancel the applicable notice of expropriation and the notation endorsed in the register in respect of that notice of expropriation, and
 - (B) serve notice of the cancellations on the owner, the expropriating

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Nisga'a Government and all other persons on whom the expropriating Nisga'a Government was required to serve the notice of expropriation,

- (c) any offer of compensation made by the expropriating Nisga'a Government to the owner in respect of the notice of expropriation is deemed to be null and void, regardless of whether the offer has been or is subsequently accepted by the owner, and
- (d) the expropriating Nisga'a Government must pay any reasonable legal, appraisal or other costs directly attributable to the proposed expropriation and incurred by the owner up to the time of service of the notice of the cancellation under paragraph (b)(iii)(B).

PART 4 – SETTLING COMPENSATION**Offer of compensation**

- 13.** (1) Within 60 days after filing a notice of expropriation in respect of an interest in land, an expropriating Nisga'a Government must serve on the owner of the interest
- (a) an offer in the prescribed form setting out the amount of compensation that the expropriating Nisga'a Government estimates to be payable to the owner under Part 5 in respect of the proposed expropriation, and
 - (b) a copy of the appraisal or any other report on which the offer referred to in paragraph (a) is based.
- (2) On the written request of an expropriating Nisga'a Government, an owner of an interest in land being expropriated must provide the expropriating Nisga'a Government with any information relevant to the estimation of the compensation payable to the owner under Part 5 in respect of the proposed expropriation.
- (3) An owner who fails to provide information requested under subsection (2) is deemed to have waived their entitlement to any relief from the payment of fees, costs or expenses that otherwise might be awarded to them under section 17(2).

Appointment of arbitrator

- 14.** (1) If within 30 days after an offer of compensation is served under section 13(1) the expropriating Nisga'a Government and the owner have not agreed in writing on the amount of compensation payable by the expropriating Nisga'a Government to the owner in respect of the proposed expropriation,
- (a) the amount of that compensation must be determined by an arbitrator, and
 - (b) the expropriating Nisga'a Government must as soon as practicable commence the arbitration process by serving the owner with a notice in the prescribed form setting out
 - (i) a proposed arbitrator or choice of arbitrators, and
 - (ii) any other prescribed information.
- (2) Within 10 days after a notice of arbitration is served under subsection (1)(b), the expropriating Nisga'a Government and the owner may by agreement in writing appoint an arbitrator to determine the amount of compensation payable by the expropriating

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- Nisga'a Government to the owner in respect of the proposed expropriation.
- (3) If within 10 days after a notice of arbitration is served under subsection (1)(b) the expropriating Nisga'a Government and the owner have not appointed an arbitrator under subsection (2), the expropriating Nisga'a Government must as soon as practicable apply to
- (a) the British Columbia International Commercial Arbitration Centre, or
 - (b) if the Centre is unavailable, any other independent and impartial body analogous to the Centre,
- to appoint an arbitrator to determine the amount of compensation payable by the expropriating Nisga'a Government to the owner in respect of the proposed expropriation.
- (4) An arbitrator
- (a) must be and remain at all times independent and impartial,
 - (b) must be a person
 - (i) designated A.A.C.I. by the Appraisal Institute of Canada,
 - (ii) designated RI by the Real Estate Institute of British Columbia, or
 - (iii) otherwise, with the education, training or experience necessary to determine the compensation or elements of the compensation at issue between the expropriating Nisga'a Government and the owner,
 - (c) must apply the principles set out in Part 5 in determining the amount of compensation payable by the expropriating Nisga'a Government to the owner in respect of the proposed expropriation, and
 - (d) has exclusive jurisdiction to finally and conclusively inquire into, hear and determine all matters and questions of fact, law and discretion arising or required to be determined in an arbitration under this Part.
- (5) Despite any other provision of this Part, at any time after a notice of arbitration is served under subsection (1)(b) the expropriating Nisga'a Government and the owner may by agreement in writing determine the amount of compensation payable by the expropriating Nisga'a Government to the owner in respect of the proposed expropriation.

Arbitration

- 15.** (1) Subject to this Part, an arbitrator may conduct an arbitration in the manner the arbitrator considers appropriate.
- (2) The parties to an arbitration are
- (a) the owner on whom the notice of arbitration commencing the arbitration is served, and
 - (b) either
 - (i) the Nisga'a Nation, if the notice is served on the owner by the Executive, or
 - (ii) the applicable Nisga'a Village, if the notice is served on the owner by a Nisga'a Village Government.
- (3) Each party to an arbitration must be treated fairly and given a full opportunity to present their case.
- (4) If an arbitrator determines that an oral hearing is required for an arbitration, the hearing must be conducted at
- (a) a location on which the parties to the arbitration agree in writing within the time set for such an agreement by the arbitrator, or
 - (b) in the absence of an agreement referred to in paragraph (a), a location within Nisga'a Lands designated by the arbitrator.
- (5) The parties to an arbitration may be represented by legal counsel or an agent.

Decision of arbitrator

- 16.** (1) Within 60 days after the conclusion of an arbitration, the arbitrator must serve on each party to the arbitration, in writing, the arbitrator's decision as to the amount of compensation payable by the expropriating Nisga'a Government to the owner in respect of the proposed expropriation and reasons for the decision.
- (2) An application for judicial review of a compensation determination must be made within 30 days after service of the compensation determination under subsection (1).

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Costs of arbitration

17. (1) Subject to subsection (2), each party to an arbitration is responsible for paying
- (a) the costs and expenses they incur in preparing and presenting their case in the arbitration, and
 - (b) one-half of
 - (i) the fees of the arbitrator for conducting the arbitration, and
 - (ii) the costs and expenses incurred by the arbitrator in conducting the arbitration.
- (2) Subject to section 13(3), an arbitrator may, having regard to
- (a) the reasonableness of the costs and expenses incurred by a party in preparing and presenting their case in an arbitration, and
 - (b) the difference, if any, between the amount of compensation set out in
 - (i) the offer of compensation served by the expropriating Nisga'a Government on the owner prior to the arbitration, and
 - (ii) the compensation determination made by the arbitrator in the arbitration,
- order a party to the arbitration to pay any or all of the costs, expenses and fees that the other party to the arbitration would otherwise be required to pay under subsection (1).
- (3) If
- (a) under subsection (2) an arbitrator orders an owner to pay any amount that an expropriating Nisga'a Government would otherwise be required to pay under subsection (1), or
 - (b) in the absence of an order under subsection (2) an expropriating Nisga'a Government pays any amount that an owner would otherwise be required to pay under subsection (1)(b),
- that amount is deemed be paid by the expropriating Nisga'a Government to the owner on the date on which the expropriating Nisga'a Government pays the owner the compensation set out in the compensation determination, as part of that compensation.

PART 5 – PRINCIPLES OF COMPENSATION**Right to compensation**

- 18.** (1) Every owner of an interest in land that is expropriated is entitled to compensation, to be determined in accordance with this Part.
- (2) Subject to this Part or a written agreement between the owner of an expropriated interest in land and the expropriating Nisga'a Government, the compensation referred to in subsection (1) is
- (a) the greater of
 - (i) the market value of the expropriated interest based on the use of the land at the time of expropriation plus disturbance damages under section 22, and
 - (ii) the market value of the expropriated interest based on the highest and best use of the applicable land at the time of expropriation,
 - (b) in the case of the expropriation of a security interest, the market value of the security interest plus disturbance damages under section 22, or
 - (c) in the case of the expropriation of part of an owner's interest, the market value of the expropriated part of the interest based on the use of the applicable land at the time of expropriation plus any applicable amount under section 23(1)(b).
- (3) By agreement with the owner of an interest in land that is being expropriated, the expropriating Nisga'a Government may, in complete or partial satisfaction of the owner's claim for compensation under this Act, grant to the owner an interest in land other than the expropriated interest.

Separate valuations

- 19.** If more than one separate interest in land is being expropriated, the value of each interest must, if practical, be established separately in accordance with this Part.

Determining market value

- 20.** (1) Subject to this Part or a written agreement between the owner and the expropriating Nisga'a Government, the market value of an expropriated interest is to be determined as of the time of expropriation.

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- (2) Subject to section 21, the market value of an expropriated interest in land is the aggregate of
- (a) the amount that would have been paid for the interest if it had been sold in the open market of eligible recipients by a willing seller to a willing buyer,
 - (b) the value of any special economic advantage to an owner arising out of the owner's occupation or use of the land, and
 - (c) the value of improvements made by an owner occupying a residence located on the land and lost as a result of the expropriation.
- (3) In determining the market value of an expropriated interest in land, account must not be taken of
- (a) the anticipated or actual use of the land by the expropriating Nisga'a Government at any time after the expropriation,
 - (b) any increase or decrease in the value of the interest resulting from the development or prospect of the development in respect of which the interest is being expropriated,
 - (c) any increase or decrease in the value of the interest resulting from any expropriation or prospect of expropriation,
 - (d) any increase or decrease in the value of the interest resulting from
 - (i) the enactment or amendment of a Nisga'a Village OCP Act, Nisga'a Village Zoning Act or analogous Nisga'a enactment, or
 - (ii) the adoption or amendment of an official community plan or analogous document
 made with a view to the development in respect of which the interest is being expropriated, or
 - (e) any increase in the value of the interest resulting from a use of the land that is prohibited by law or capable of being restrained by a court.

Valuation of security interests

- 21.** (1) If an expropriated interest is subject to a security interest at the time of expropriation, the market value of the expropriated interest is

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- (a) the market value of the expropriated interest determined under sections 18 and 20 as if it were not subject to any security interest, plus
- (b) the amount of any loss suffered or anticipated to be suffered by the owner of the expropriated interest resulting from a difference between
- (i) the rate of interest payable on any principal amount under the security interest at the time of expropriation, and
- (ii) the rate of interest determined to be the prevailing rate payable on principal amounts under equivalent security interests at the time of expropriation,
- to the extent that no other provision is made by this Part for the inclusion of an amount in respect of that loss or anticipated loss in the market value of the expropriated interest, minus
- (c) the market value of the security interest determined in accordance with subsections (2) to (5).
- (2) Subject to subsections (3) to (5), if an expropriated interest is subject to a security interest at the time of expropriation, the market value of the security interest is
- (a) any principal amount outstanding, plus
- (b) any interest due or accrued due
- under the terms of the security interest on the date on which the security interest is expropriated.
- (3) If an expropriated interest is subject to a single security interest at the time of expropriation, the market value of the security interest must not exceed the market value of the expropriated interest determined under sections 18 and 20 as if it were not subject to any security interest.
- (4) If an expropriated interest is subject to more than one security interest at the time of expropriation, the market value of each such security interest
- (a) must be determined in order of its priority, and
- (b) must not exceed
- (i) the market value of the expropriated interest determined under sections 18 and 20 as if it were not subject to any security interest, minus

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- (ii) the aggregate of the market values of all such security interests having a higher priority than the applicable security interest.
- (5) If only a part of an expropriated interest is subject to a security interest at the time of expropriation, the market value of the security interest is the market value that would be attributed to the security interest under this section if the whole of the expropriated interest were subject to it, multiplied by the percentage obtained by dividing
- (a) the market value of the part of the expropriated interest subject to the security interest determined under sections 18 and 20 if it were a separate expropriated interest not subject to any security interest, by
 - (b) the market value of the whole of the expropriated interest determined under sections 18 and 20 as if it were not subject to any security interest.

Damages for disturbance

22. (1) Subject to subsections (2) to (4), the owner of an interest in land that is expropriated is entitled to disturbance damages consisting of the following:
- (a) reasonable costs, expenses and financial losses that are incurred by the owner and are directly attributable to the disturbance caused to the owner by the expropriation;
 - (b) reasonable costs of relocating on other land that are incurred by the owner, including reasonable moving costs and reasonable legal and survey costs that are necessarily incurred by the owner in acquiring a similar interest in other land.
- (2) If
- (a) the owner of an interest in land that is expropriated would at the time of expropriation be entitled to a grant under the *Nisga'a Home Owner Grant Act* in respect of a residence located on the land, and
 - (b) that residence was not being offered for sale at the time of expropriation,
- the owner is entitled to disturbance damages, in addition to those determined under subsection (1), in an amount equivalent to 5% of the market value of the expropriated interest.
- (3) The holder of a security interest that is expropriated is entitled to disturbance damages in an amount equal to three months' interest payable on a principal amount under the security interest on the date on which the security interest is expropriated.

- (4) The owner of an interest in land only part of which is expropriated is not entitled to disturbance damages under this section.

Partial takings

- 23.** (1) If only part of an owner's interest in land is expropriated, the owner is entitled to compensation for
- (a) the market value of the expropriated part of the interest, determined in accordance with sections 18 and 20, and
 - (b) the following, if and to the extent they are directly attributable to the expropriation or result from the development in respect of which the interest was expropriated:
 - (i) the reduction in the market value of the owner's remaining interest in the land;
 - (ii) reasonable costs, expenses and financial losses incurred by the owner.
- (2) The amount of the reduction in the market value of an owner's remaining interest in land as referred to in subsection (1)(b)(i), if any, is equal to
- (a) the market value of all of the owner's interest in the land immediately before the time of expropriation, determined in accordance with sections 18 and 20, minus
 - (b) the aggregate of
 - (i) the market value of the expropriated interest at the time of expropriation, determined in accordance with sections 18 and 20, and
 - (ii) the market value of the owner's remaining interest in the land at the time of expropriation, determined in accordance with sections 18 and 20.
- (3) For the purposes of this section, expropriation of part of an owner's interest in land occurs only if
- (a) the owner retains an interest in land which is contiguous to the land in respect of which the interest was expropriated, or
 - (b) the owner owns an interest in land close to the land in respect of which the interest was expropriated, the value of which was enhanced by the unified ownership of the two interests.

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Frustration of leases

- 24.** (1) A lease is deemed to be frustrated on the date on which an expropriation takes place if
- (a) a lessee's entire interest in land under the lease is expropriated, or
 - (b) part of a lessee's interest in land under the lease is expropriated and the expropriation renders the lessee's remaining interest unfit for the purposes of the lease.
- (2) Subject to subsection (1), if part of a lessee's interest in land is expropriated, the obligation of the lessee to pay rent under the lease is, to the extent of that interest, abated.
- (3) If there is an inconsistency between a provision of a lease and subsection (1) or (2), then subsection (1) or (2), as applicable, prevails.

PART 6 – GENERAL**Service**

- 25.** (1) If under this Act a notice or other document is required to be served, a copy of the notice or other document may be served
- (a) personally,
 - (b) by registered mail addressed to the person's last known address, or
 - (c) if personal service is impracticable and the person's address is unknown, by posting a copy of the notice or other document on a notice board accessible to the public at the principal administrative office of Nisga'a Lisims Government, the principal administrative offices of the Nisga'a Village Governments and the Nisga'a Urban Local Offices.
- (2) A notice or other document is deemed to have been served under this Act
- (a) on the date of service, if the notice or other document is personally served, or
 - (b) 14 days after the date
 - (i) on which it is mailed, if the notice or other document is served by registered mail, or
 - (ii) on which it is posted, if the notice or other document is posted at the principal administrative office of Nisga'a Lisims Government, the principal administrative offices of the Nisga'a Village Governments and the Nisga'a Urban Local Offices.

Right of entry

- 26.** (1) A person authorized by a Nisga'a Government may, before or after a notice of expropriation is filed, enter land
- (a) during daylight hours, and
 - (b) after taking reasonable steps to advise the owner or occupier of the land,
for the purpose of
 - (c) making or performing surveys, inspections, examinations, soil tests or other things

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that are necessary to

- (i) determine the location of any public works proposed by the Nisga'a Government that may result in an expropriation,
 - (ii) determine the description of an interest in land that the Nisga'a Government proposes to expropriate, or
 - (iii) complete an appraisal of an interest in land that the Nisga'a Government proposes to expropriate,
- (d) cutting down any trees or brush on the land that obstructs the running of survey lines, or
- (e) posting or erecting any sign required under section 6(c).
- (2) A Nisga'a Government must pay compensation for damages that it causes by the exercise of its powers under subsection (1) and that are not otherwise compensable under this Act.

Property taxes not affected

27. The expropriation of an owner's interest in land does not affect the owner's liability to pay tax in respect of the land under the *Nisga'a Real Property Tax Act*.

Enforcement by civil proceedings

28. (1) If the Nisga'a Nation or a Nisga'a Village is entitled to possession of land in respect of which an interest has been expropriated, the Nisga'a Nation or Nisga'a Village, as the case may be, may make an application to the court for an order for possession.
- (2) If, on an application of the Nisga'a Nation or a Nisga'a Village, the court determines that a person is doing anything on or to land in respect of which an interest has been or is being expropriated that the court considers will harm the condition of the land or anything on it, the court may grant an injunction restraining the harmful activity.

Lisims land

29. (1) The Executive may make regulations setting out the procedures that are to be followed in carrying out the expropriation of an interest in Lisims land, in place of the procedures set out in Part 3.
- (2) Without limiting subsection (1), the regulations referred to in that subsection may

incorporate provisions of Part 3 with or without modification.

Regulations

- 30.** (1) The Executive may make regulations it considers necessary or advisable for the purposes of this Act.
- (2) Without limiting subsection (1), the Executive may make regulations as follows:
- (a) prescribing forms for documents or notices to be filed or served under this Act;
 - (b) prescribing information to be included in a notice of expropriation;
 - (c) prescribing the size, type, form, appearance and location of any signs required to be posted or erected under this Act;
 - (d) prescribing the instruments affecting an expropriated interest which the registrar must not accept for deposit, filing or registration while a notice of expropriation remains uncanceled;
 - (e) prescribing information to be included in a notice of arbitration.

Consequential amendments

- 31.** (1) The *Nisga'a Village Entitlement Act* is amended by
- (a) repealing sections 7, 8 and 16(c), and
 - (b) striking out "7 or" in section 16(d).
- (2) The *Nisga'a Nation Entitlement Act* is amended by
- (a) repealing sections 7, 8 and 15(c), and
 - (b) striking out "7 or" in section 15(d).

Commencement

- 32.** This Act comes into force by regulation of the Executive.