

Bill No. 103 of 1952.

A BILL TO PROVIDE FOR THE EXERCISE OF ANY
RIGHT OF ENTRY AND FOR THE DETERMINATION
OF COMPENSATION TO BE PAID THEREFOR.

NOTE.

This Bill enacts a new Act to be known as "*The Right of Entry Arbitration Act, 1952*". The new Act repeals and replaces *The Right of Entry Arbitration Act*, being chapter 24 of the Statutes of Alberta, 1947.

The arrangement of the new Act parallels that of *The Right of Entry Arbitration Act* and nearly all the provisions of the old Act are carried forward. Some of the provisions, however, are altered in substance and a number of others are changed or expanded where the light of experience has indicated they might be clarified or presented in greater detail.

Sections 4 to 9 of the new Act are grouped under the heading "Appointment and Powers of the Board". It provides as did the old Act for the appointment of a Board of Arbitration of not more than three members by the Lieutenant Governor in Council. The Board is given the necessary powers to carry out its duties under the Act, and the functions of the chairman and of single members of the Board are indicated. Under the same heading the duties of the secretary which were formerly outlined in an order in council are now incorporated into the Act.

Section 10 contains what might be considered the key provisions of the Act, and states that the operator of mineral rights shall not have the right to enter on the surface of land for the purpose of working his minerals unless he either has the consent of the owner and occupant of the surface or is entitled to entry pursuant to an order of the Board of Arbitration. Subsections (2) and (3) are new and clarify points upon which a reading of the former Act might have left doubt. In the case where the same person owns the surface and the minerals and he granted a lease to work the minerals, it was argued formerly that he by implication also granted the right to use the surface of the land in recovering the minerals. Subsection (2) of the new Act provides that the right to use the surface in working the minerals is not granted in such a case unless provision is made for a specific, separate sum in consideration of the use of the surface. Subsection (3) defines the extent of the land upon which right of entry may be granted by the Board.

Sections 11 to 13 are procedural. They provide for an application to the Board for an order for right of entry,

a notice of the hearing to be held by the Board, and the procedure at the hearing.

Section 14 is designed to prevent undue delay in the development of the minerals by providing for an interim order for right of entry to be granted pending final decision on the matter of the award, upon the operator providing sufficient security to protect the rights of those affected.

Section 15 sets out the points to be determined by the Board in its order, and the points to be considered by the Board in determining the amount of compensation.

Section 16 states that the order of the Board is final.

Section 17 provides for the filing of the Board's award and order in the Land Titles Office, or in the case of Crown lands with the Deputy Minister of the Department concerned.

Section 18 provides that an order of the Board may be enforced in the same way as a writ of possession.

Section 19 states that the Board order need not show on its face that the Board had jurisdiction.

Section 20 provides for the re-hearing of an application and the changing of an order.

Section 21 deals with costs of proceedings before the Board.

Section 22 deals with the termination of the right of entry granted by an order. A new provision added to this section permits the termination of an order for right of entry made pursuant to the old *The Provincial Lands Act*. Previously there had been no machinery for terminating such order since 1947.

The remaining sections are of a general nature and provide for the admission of Board orders as evidence, filing of Board orders with the Clerk of the Supreme Court, the right of the Board to obtain searches and certificates from the Land Titles Office and other Government offices without fees, liability for trespass upon improper exercise of a right of entry, the overriding of provisions in documents that are in conflict with the Act, and the repeal of *The Right of Entry Arbitration Act*.

This Bill comes into force on the 1st day of July, 1952.

J. W. RYAN,
Acting Legislative Counsel.

(This note does not form any part of the Bill but is offered in explanation of its provisions.)

BILL

No. 103 of 1952.

An Act to Provide for the Exercise of any Right of Entry
and for the Determination of Compensation to
be Paid Therefor.

(Assented to _____, 1952.)

HER MAJESTY, by and with the advice and consent of
the Legislative Assembly of the Province of Alberta,
enacts as follows:

Short Title.

1. This Act may be cited as "*The Right of Entry Arbitration Act, 1952.*" Short title

Interpretation.

- 2.** In this Act, unless the context otherwise requires,— Interpreta-
tion
- (a) "Board" means the Board of Arbitration appointed pursuant to this Act; "Board"
 - (b) "local authority" means the council of any city town, village, municipal district or county, the divisional board of a school division, the board of trustees of a school district not being a school district included in a school division or a county, the board of trustees of a municipal hospital district and the board of trustees of an irrigation district or a drainage district; "local
authority"
 - (c) "minerals" means all mines and minerals, and without derogating from the generality of the foregoing includes gold, silver, platinum, uranium, pitchblende and other minerals from which radium is or may be obtained, precious stones, copper, iron, titanium, tin, zinc, asbestos, salt, sulphur, petroleum, oil, asphalt, tar sands, natural gas, coal, limestone, granite, slate, shale, marble, sandstone, and any other stone which is or may be quarried or otherwise mined for any purpose, sand, gravel, gypsum, clay, marl and volcanic ash, but does not include sand and gravel that belong to the owner of the surface of land under *The Sand and Gravel Act*; "minerals"
 - (d) "Minister" means the Minister of Mines and Minerals; "Minister"
 - (e) "occupant" means any person other than the owner who is in actual possession of the land, or any person entitled to enter, use or take the surface of the land pursuant to an order of the Board; "occupant"

- "operator" (f) "operator" means any person, company, syndicate or partnership having the right to a mineral or the right to work the same, or the agent thereof;
- "owner" (g) "owner" means the person who is registered under *The Land Titles Act* as the owner.

Application of Act.

- Application of Act **3.** This Act applies to all lands in the Province of Alberta.

Appointment and Powers of Board.

- Constitution of Board **4.** (1) There shall be a board to be styled the Board of Arbitration which shall consist of not more than three members appointed by the Lieutenant Governor in Council, one of whom shall be appointed as chairman.

- Remuneration (2) The chairman and each other member of the Board shall receive such remuneration as may be fixed by the Lieutenant Governor in Council.

- Absence or inability of a member **5.** (1) In the case of the absence of any member of the Board or of his inability to act, or in the case of any vacancy on the Board, the member or members of the Board present may exercise all the jurisdictions and powers of the Board.

- Member may act for chairman (2) In the case of the absence or disability of the chairman, all orders, rules, regulations and other documents may be signed by any one member and when so signed shall have the like effect as if signed by the chairman.

- (3) Whenever it appears that a member, other than the chairman, has acted for and in the place of the chairman, it shall be presumed conclusively that he has acted in the absence or disability of the chairman.

- Hearing by single member **6.** Any application which may be heard by the Board under this Act, may be heard by a single member of the Board who, after the hearing, shall report his findings to the Board, and the Board thereupon may deal with the application as if the hearing had been before the full Board.

- Secretary, officers and clerks **7.** Subject to the provisions of *The Public Service Act, 1947*, and of *The Department of Mines and Minerals Act*, the Lieutenant Governor in Council may appoint a secretary and such other officers and clerks as may be required to carry on the business of the Board.

- Board shall,— make rules of procedure **8.** (1) The Board shall,—
(a) make rules of procedure and practice governing the hearings and proceedings before it and regulating the places and times of its sittings, and the rules shall come into force from the date of their publication in *The Alberta Gazette*;

- (b) have the powers and duties given to it by this Act and such further powers and duties as may be determined by the Lieutenant Governor in Council; have powers and duties
- (c) have all powers which may be conferred upon a commissioner pursuant to *The Public Inquiries Act*; have powers of commissioner pursuant to *The Public Inquiries Act*
- (d) submit to the Minister in the month of January in each year a report showing briefly,—
 - (i) applications to the Board and dispositions thereof received or made during the preceding year; and
 - (ii) such other matters as the Minister from time to time may direct.submit annual report to Minister
- (2) The Board may,—
 - (a) hold its sittings at such place or places in the Province as it may deem expedient from time to time; Board may,— hold sittings
 - (b) enter upon, or authorize any person to enter upon, and inspect any place, building, works or other property; inspect property
 - (c) appoint or direct any person to make an inquiry and report upon any matter before the Board. direct an inquiry
- (3) In the absence of the secretary, the Board may appoint a secretary *pro tempore* who shall act in the place of the secretary. Board may appoint an acting secretary
- (4) Where the sittings of the Board or of a member thereof are appointed to be held in a city, town or place in which a court house is situated, the member presiding at the sittings shall have the same authority in all respects as a judge of the Supreme Court with regard to the use of the court house and other buildings or apartments set apart in the judicial district for the administration of justice; but subject to the prior right of the court and of the judicial and administrative offices to use the buildings and apartments for the purposes of the administration of justice. Use of court houses by Board

9. The secretary shall,—

- (a) keep a record of all proceedings conducted before the Board; Duties of secretary
- (b) keep properly authenticated copies of every regulation and order made by the Board;
- (c) have the custody and care of all records and documents belonging to or pertaining to the Board and filed in his office;
- (d) see that every regulation or order made by the Board is drawn pursuant to the direction of the Board, properly authenticated and filed in his office;
- (e) deliver, upon the application of any person and upon payment of the prescribed fees, to the applicant a certified copy of any regulation or order made by the Board;

- (f) sign and issue on behalf of the Board, in the event of the absence or disability of all members of the Board, an order giving the operator leave to enter forthwith, when leave has been applied for pursuant to the provisions of section 14 of the Act pending the hearing and disposition of the operator's application to the Board;
- (g) perform such other duties as from time to time may be assigned or allocated to him by the Board;
- (h) obey all rules or directions given by the Board or a member of the Board touching his duties of office.

Right of Entry.

No right of
entry without
consent or
order

10. (1) No operator shall have the right of entry, user or taking of the surface of any land for,—

- (a) the removal of minerals contained in or underlying the surface of such land or for or incidental to any mining or drilling operations;
- (b) the laying of pipe lines for or in connection with any mining or drilling operations or the production of minerals;
- (c) the erection of tanks, stations and structures for or in connection with any mining or drilling operations or the production of minerals;

until he shall have obtained the consent of the owner of the surface and the occupant thereof, or shall become entitled to entry by reason of an order of the Board made pursuant to this Act.

Consent shall
not be
implied

(2) Notwithstanding anything contained in any grant, conveyance, lease, license or other instrument, whether made before or after the coming into force of this Act, pertaining to the acquisition of an interest in a mineral, the operator thereby shall not obtain the right of entry, user or taking of the surface of any land unless the grant, conveyance, lease, license or other instrument provides for a specific, separate sum in consideration for the right of entry, user or taking of the surface required for his operations.

(3) The order of the Board may grant the right of entry, user or taking of the surface of the land in which the operator or his principal has the right to a mineral or the right to work the same and of such further land as, in the opinion of the Board, is necessary,—

- (a) for a pipe line or a road to connect the operator's mining or drilling operations located on adjacent lands and to permit them to be operated jointly, and for the tanks, stations and structures to be used in such operations;
- (b) to give the operator access to his mining or drilling operations from a public roadway or other public way and egress from the operations to the public roadway or other public way.

(4) Where the operator in his application represents that subsidence of the surface of the land may result from the mining of coal, the order of the Board may grant the right to disturb or interfere with the surface of the land irrespective of whether or not the operator will enter upon the surface in conducting his operations.

(5) This Act does not apply to any pipe line which is subject to the provisions of *The Pipe Line Act, 1952*. Non-application of Act

11. (1) Where surface rights required by an operator for any of the purposes mentioned in this Act are vested in some person other than the Crown and the operator cannot acquire by agreement the right of entry upon the said surface rights so required, the operator may make application to the Board for the acquisition of such interest in the surface rights as may be necessary for the efficient and economical performance of his operations, and the operator shall serve a copy of the application upon the owner of the land, and upon the occupant thereof. Application to Board for right of entry

(2) Where surface rights required by an operator are held under a lease or other form of terminable grant from the Crown, or have been disposed of by the Crown pursuant to any Act or regulation which contemplates the issue of a notification for such surface rights, the operator shall make application to the Board for the acquisition of such interest in the surface rights as may be necessary for the efficient and economical performance of his operations, and a copy of the application shall be filed by the operator with the Deputy Minister of Lands and Forests, or in the case of lands in a special area with the Deputy Minister of Municipal Affairs, and in the case of lands on the title for which another Department is shown to have an interest with the Deputy Minister of that Department, and the operator shall serve a copy of the application upon the occupant of the land. Application with respect to Crown lands

(3) Where the surface rights required by an operator are held by the Crown and no person other than the Crown has any interest therein, the operator shall make application to the Board for the acquisition of such interest in the surface rights as may be necessary for the efficient and economical performance of his operations, and a copy of the application shall be filed by the operator with the Deputy Minister of Lands and Forests, or in the case of lands in a special area with the Deputy Minister of Municipal Affairs, and in the case of lands on the title for which another Department is shown to have an interest with the Deputy Minister of that Department. Application with respect to lands in which only the Crown is interested

12. (1) Upon the receipt of an application, the Board shall fix a date for the hearing, and may require the operator to give such notice of the hearing in such manner as the Board may direct to,— Notice of hearing

(a) any person registered in the Land Titles Office as having an interest in the land;

- (b) any lessee or occupant of the land;
- (c) any other person.

Notice of
hearing in
case of
Crown lands

(2) Notice in writing shall be given to the Deputy Minister of Lands and Forests, or in the case of lands in a special area to the Deputy Minister of Municipal Affairs, and in the case of lands on the title for which another Department is shown as having an interest to the Deputy Minister of that Department, five days before the hearing of any application relating to Crown lands or to lands held under a lease or other form of terminable grant from the Crown or to lands disposed of by the Crown pursuant to any Act or regulation which contemplates the issue of a notification.

Procedure
at hearing

13. (1) The Board shall hear the application and shall proceed in accordance with its rules of procedure and practice.

Evidence

(2) The Board shall not be bound by the rules of legal evidence.

Submissions
of Depart-
ments

(3) At a hearing, the submissions and evidence of the Department of Lands and Forests or of the Department of Municipal Affairs or of another Department, as the case may be, may be given either verbally by a representative present at the hearing, or in writing.

Adjourn-
ments

(4) The Board may adjourn an application from time to time for such length of time as the Board in its discretion deems expedient or advisable.

Interim Right of Entry.

Application
for immedi-
ate entry

14. (1) Notwithstanding anything contained in this Act or in the rules of procedure and practice of the Board, at any time after the commencement of the proceedings before the Board, the operator, upon giving all persons affected seven clear days' notice of his application, may apply to the Board for leave to enter forthwith upon and use the surface for any or all the purposes set forth in section 10.

Board may
require
security

(2) The Board, if it deems proper to do so, may grant the application upon the operator providing security sufficient in the opinion of the Board to protect all the rights and privileges of the owner and the occupant of the surface.

Waiver of
notice

(3) A person affected by the application may waive in writing the notice prescribed by subsection (1) or may agree in writing to a shorter notice.

(4) In a case where the operator proves to the satisfaction of the Board that he is unable to give any person affected seven clear days' notice of his application as required by subsection (1), he may make his application to the Board after serving upon such person such notice as may be prescribed in writing by the Board; and the period of such substituted notice shall not be less than fourteen days and, if the Board so directs, the notice may be served by registered mail addressed in accordance with the direction of the Board.

Award and Order of the Board.

- 15.** (1) The Board shall determine,—
- (a) what portion of the surface rights the operator requires for or incidental to the efficient and economical performance of the operations;
 - (b) the exact position thereof;
 - (c) the amount of compensation which shall be payable and the person to whom such payment shall be made; and
 - (d) such other conditions as the Board may deem necessary in connection with the granting of the right of entry.
- (2) The Board, in determining the amount of compensation, may consider,—
- (a) the value of the land;
 - (b) the amount of land which may be damaged permanently by the operations of the operator;
 - (c) the adverse effect of the right of entry on the remaining land;
 - (d) compensation for severance;
 - (e) compensation for nuisance, inconvenience and noise which may be caused by or arise from or in connection with the operations;
 - (f) such other factors as the Board may deem proper, relevant or applicable.
- 16.** The award and order of the Board made in writing shall be final and there shall be no appeal therefrom.
- 17.** (1) In the case of lands other than Crown lands, upon the filing of the award and order of the Board with the Registrar of the Land Registration District in which the land is situate, there shall be vested in the operator such interest in the land other than the fee simple as is set out in the said award and order, and the Registrar, upon such filing and upon payment of the proper fees, shall make an entry of the award and order on the certificate of title and do all such other things as shall be necessary to give effect to the award and order.
- (2) In the case of Crown lands or lands held under a lease or other form of terminable grant from the Crown or lands disposed of by the Crown pursuant to any Act or regulation which contemplates the issue of a notification, upon the filing of the award and order of the Board with the Deputy Minister of Lands and Forests, or Deputy Minister of Municipal Affairs, as the case may be, and in the case of lands on the title for which another Department is shown to have an interest, with the Deputy Minister of that Department, there shall be vested in the operator such interest in the lands other than the fee simple as is set out in the

Powers of Board in dealing with the application

No appeal from award of Board

Effect of filing award and order in Land Titles Office

Effect of filing award and order with Deputy Minister

said award and order, and the Deputy Minister, upon such filing and upon payment of the proper fees, shall do all such things as shall be necessary to give effect to the award and order.

Entry on
Crown lands
subject to
further
conditions

(3) In the case of the Board granting a right of entry on Crown lands, whether or not the lands,—

(a) are held under lease or other form of terminable grant from the Crown; or

(b) are disposed of by the Crown pursuant to an Act or regulation which contemplates the issue of a notification;

it is a condition of the award and order that the operator and the persons engaged in his operations shall comply with the provisions of *The Public Lands Act*, *The Forest Reserves Act* or *The Provincial Parks Act*, as the case may be, and of Part III of *The Forests Act*, and of regulations made pursuant to any of the said Acts.

Enforcement
of order
granting
right of
entry

18. An order of the Board granting a right of entry may be enforced by the sheriff or the sheriff's bailiff or any other person under his written direction in the same manner as a writ of possession issued upon the order of a court or judge.

Order need
not show
jurisdiction

19. An order of the Board need not show upon its face that any proceedings or notice was had or taken, or that any circumstances existed, necessary to give it jurisdiction to make the order.

Board may
review,
rescind, etc.,
any decision
or order

20. The Board may re-hear an application before deciding it and may review, rescind, change, alter or vary any decision or order made by it.

Costs

21. (1) The costs of and incidental to any proceeding before the Board, except as herein otherwise provided, shall be in the discretion of the Board, and may be fixed in any case at a sum certain or may be taxed.

(2) The Board may order by whom and to whom any costs are to be paid, and by whom the same are to be taxed and allowed.

(3) The Board may prescribe a scale under which such costs shall be taxed.

(4) In a case where the Board has granted an order giving a right of entry to an operator and the owner or occupant has refused to allow the operator to enter upon and use the lands to which he is entitled as described in the order, the operator may apply to the Board to deduct from the compensation awarded to the owner or occupant the costs incurred by the operator of and incidental to obtaining entry upon and use of the land pursuant to the provisions of the order, and the amount to be deducted, if any, shall be in the discretion of the Board.

Termination of Right of Entry.

22. (1) If at any time after the expiration of two months from the date of an order of the Board granting a right of entry, the operator has ceased to use the land for the removal of minerals or for or incidental to his mining or drilling operations, the operator, the owner or the occupant of the land may apply to the Board for an order terminating the right of entry.

Application
to terminate
right of
entry

(2) Upon the receipt of any such application, the Board shall fix the date for the hearing and may require the applicant to give such notice to such persons and in such manner as the Board may direct.

Notice of
hearing

(3) The Board shall hear the application, and may,—

Board may
direct,—
restoration
of land

(a) direct the operator to restore the lands as nearly as possible to the same condition that they were in prior to the exercise of the right of entry, and for that purpose may direct the operator to remove structures, fill excavations and do all such other things as the Board may deem proper; and

(b) impose a penalty on the operator for failure to perform the directions of the Board.

payment of
penalty

(4) Upon being satisfied that the directions, if any, given under subsection (3) have been carried out by the operator, the Board may make an order terminating the right of entry.

Order
terminating
right of
entry

(5) If it is indicated to the Board that the termination of a right of entry granted by order should be considered, it may inquire into the matter, and if in its opinion the circumstances warrant, may make an order terminating the right of entry on such terms and conditions as it may deem proper.

(6) An order made by the Board terminating a right of entry may be filed with the Registrar of the Land Registration District in which the land is situate, or the Deputy Minister of Lands and Forests, or the Deputy Minister of Municipal Affairs, and other Deputy Minister, as the case may be, and upon filing and upon payment of the proper fees, the Registrar or Deputy Minister shall make all necessary entries and do all such things as may be necessary to give effect to the order.

Filing of
order

(7) The Board upon application, may make an order terminating a right of entry granted before the thirty-first day of March, 1947, pursuant to subsection (2) of section 44 of *The Provincial Lands Act*, and the provisions of this section regarding applications and orders terminating a right of entry granted by an order of the Board shall apply.

General.

23. A certified copy of an order of the Board, signed by the chairman, a member of the Board or the secretary,

Certified
copy of order
shall be
evidence

shall be admitted as evidence of the order by the Board, and of any award made thereby, without any proof of the authenticity of the signature or any proof whatsoever.

Order filed
in Supreme
Court
enforceable
as judgment

24. A certified copy of an order of the Board may be filed in the office of the Supreme Court, and upon payment to the Clerk of the said Court of the proper fees, the order shall be entered as a judgment of the Supreme Court and may be enforced according to the ordinary procedure for enforcement of a judgment of the Supreme Court.

No fees
chargeable
to Board by
Government
departments

25. Every Registrar of Land Titles and every department of the Government shall furnish, without charge, to the Board, any certificates and certified copies of documents that the Board may require in writing, and the Board or a person duly authorized in writing by the Board may search at any time in the public records of a Land Titles Office without charge.

Exercise of
right of
entry in
contraven-
tion of Act
a trespass

26. A person who, in the exercise of any right of entry, user or taking, enters upon, uses or takes any of the surface of land in contravention of any of the provisions of this Act, shall be deemed to have committed thereby a trespass and shall be liable in damages or otherwise for the trespass to any person who is the owner or the occupant entitled to the possession of the surface of the land.

Provisions
of Act over-
ride any
grant, lease,
etc., with
respect to
right of
entry

27. In case there is any conflict between the provisions of this Act and anything contained in any grant, conveyance, lease, license or other instrument, whether made before or after the coming into force of this Act, with respect to the right of entry, user or taking of the surface of any land incidental to any mining or drilling operations as aforesaid, the provisions of this Act shall prevail.

Repeal

28. *The Right of Entry Arbitration Act*, being chapter 24 of the Statutes of Alberta, 1947, is hereby repealed.

Coming
into force

29. This Act shall come into force on the first day of July, 1952.

No. 103.

FIFTH SESSION
ELEVENTH LEGISLATURE

1 Elizabeth II

1952

BILL

An Act to Provide for the Exercise of
any Right of Entry and for the
Determination of Compensation
to be paid therefor.

Received and read the

First time

Second time.....

Third time.....

HON. MR. TANNER.
