

No. 58

4th Session, 13th Legislature, Alberta
6 Elizabeth II, 1958

BILL 58

A Bill to amend The Public Lands Act (1)

HON. MR. WILLMORE

Explanatory Note

2. The new subsection (1a) establishes a minimum rent where twenty-five per cent or more of the land in a cultivation lease is under cultivation.

3. Section 61 is amended by replacing the present subsection (1). In the present Act the rent is set at 12½% of the forage value of the lands in a grazing lease. It is considered that the percentage should not be fixed at 12½% but should rather be determined by the Lieutenant Governor in Council. This would allow for more flexibility. In the original 1949 Act the percentage was established by Order in Council but changed to the 12½% in 1950.

4. Section 72 is substituted by an entirely new section and in effect establishes a new policy with respect to grazing lease assignments. It is found that the present sections are rather restrictive and do not meet the variety of situations which arise with respect to grazing lease assignments. In order to provide more flexibility in this matter the Lieutenant Governor in Council is authorized to make certain regulations.

A new section 72a is added and relates to grazing leases held by a personal representative of the deceased lessee. It often happens that a grazing lease is held by the estate for an unnecessarily long time. The intention of this section is to provide machinery to speed up the assignment of leases from the personal representative to the beneficiaries or to such other assignee as the beneficiaries may agree upon.

BILL

No. 58 of 1958

An Act to amend The Public Lands Act (1)

(Assented to , 1958)

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

1. *The Public Lands Act*, being chapter 259 of the Revised Statutes of Alberta, 1955, is hereby amended.

2. Section 52 is amended by adding immediately after subsection (1) the following new subsection :

“(1a) Where twenty-five per cent or more of the land contained in a cultivation lease is under cultivation, the sum referred to in clause (a) of subsection (1) shall not be less than thirty cents per acre of land contained in the cultivation lease.”.

3. Section 61 is amended by striking out subsection (1) and by substituting the following :

“61. (1) Every grazing lessee shall pay to the Minister an annual rent, which shall be such percentage of the forage value of the lands contained in the grazing lease as may be fixed from time to time by the Lieutenant Governor in Council.”.

4. Section 72 is struck out and the following is substituted :

“72. (1) No person shall assign a grazing lease without the consent of the Minister and any assignment without the consent of the Minister is void.

“(2) The Minister may refuse to consent to any assignment of a grazing lease.

“(3) The Lieutenant Governor in Council may make regulations

“(a) prescribing circumstances under which the Minister shall refuse to consent to an assignment of a grazing lease, and

“(b) governing any other matter that relates to the assignment of grazing leases.

“72a. (1) Where the holder of a grazing lease dies and the personal representative of his estate does not, within

5. Section 80 is amended in order to provide for cancellation of a lease held by more than one person in the case where one of the lessees ceases to use the lands for the grazing of his own stock.

6. Section 93 is amended by adding a new subsection (6). This new subsection is intended to take care of the situation where a person applies for land upon which clearing or breaking has been done by a former lessee with the aid of a homestead lease loan that has not been repaid in full.

7. Section 100 is amended by replacing the present subsection (1). The present subsection (1) allows for the withdrawal of the whole or any part of a lease upon three years' notice where the withdrawal is considered by the Minister to be in the public interest. The section is seldom, if ever, used, or if it is used it is usually for the purpose of withdrawing land for a roadway or a similar public work.

two years of the date of death of the lessee, obtain the consent of the Minister to an assignment of the grazing lease, the Minister may give notice to the personal representative to submit to him an assignment of the grazing lease within the time specified in the notice.

“(2) The Minister from time to time may extend the time specified in the notice referred to in subsection (1).

“(3) Where a notice has been given pursuant to subsection (1), the submission by the personal representative of an assignment of a grazing lease

“(a) which the Minister may properly refuse for registration pursuant to subsection (3) of section 13 of *The Department of Lands and Forests Act*, or

“(b) which is made under circumstances prescribed by the Lieutenant Governor in Council as circumstances under which the Minister is required to refuse his consent to the assignment,

is not a compliance with the notice.

“(4) Where the personal representative does not comply with a notice given to him pursuant to subsection (1), the Minister may cancel the grazing lease.”.

5. Section 80 is struck out and the following is substituted:

“80. The Minister in his discretion may cancel a grazing lease

“(a) where the land contained in the grazing lease is not being used for the purpose for which it is leased, or

“(b) in the case of a lease granted to two or more persons, where one or more of the lessees ceased to use the lands contained in the grazing lease for the purpose of grazing his or their own stock.”.

6. Section 93 is amended by adding immediately after subsection (5) the following subsection:

“(6) Where an application is made for a lease of land on which clearing or breaking has been done by a former lessee with the aid of a loan made pursuant to *The Homestead Lease Loan Act*, and the loan has not been repaid in full, the applicant shall pay for such clearing or breaking, where it is considered an improvement, in the manner directed by the Minister.”.

7. Section 100 is amended by striking out subsection (1) and by substituting the following:

“100. (1) The Minister may, upon giving the lessee one year's notice, withdraw the whole or any part of lands that are the subject of a lease, other than a homestead lease, where the land withdrawn is required for the purposes of a public work as defined by *The Surveys and Expropriation Act*.”.

8. The contents of the present clause (r) are covered by clauses (t) and (u) of section 119, and it is therefore repealed as unnecessary. The proposed new clause authorizes the Minister to dispose of land in cases not otherwise provided for. Sections 84 to 107 contain conditions relating to agricultural leases that should not be applicable to leases for industrial or other purposes.

9. Section 147 is amended by adding a new subsection (3). This subsection is intended to clarify the position with respect to dispositions which by error duplicate one another. The present section allows for certain relief measures to be taken where this occurs but nothing at present clarifies the position with respect to the later disposition. The Forests Act contains a similar provision.

10. Section 150 is replaced. Subsection (1) will make the use of seals unnecessary except in the case of corporations. The use of seals generally is the source of much delay, particularly in the case of assignments of leases and agreements of sale. In a great number of cases assignments have to be returned to the parties for the sole purpose of having them affix their seals. The intention of the subsection is to make the document as valid without the use of a seal as it would be if it were under seal. Subsection (3) is substantially a re-enactment of the present section 150.

11. Section 168 is amended by replacing the present subsections (2), (3) and (4). The primary reason for this is an administrative one. It has been found that it is much simpler from an accounting viewpoint to apply the application fee to the first instalment of purchase price rather than hold it in a special account in suspense to be applied against the last payment of the purchase price. The new subsections (2) and (3) will simplify the situation by having the fee refunded to the applicant upon rejection of his application, or, if his application is accepted, by having it applied to the first instalment of purchase price.

8. Section 119 is amended by striking out clause (r) and by substituting the following:

“(r) authorize the Minister to make any disposition of public lands in cases not otherwise provided for by this Act or the regulations, and in the case of a lease, may authorize the waiver of compliance with or the application of any of the provisions of sections 84 to 107.”.

9. Section 147 is amended

- (a) as to subsection (2) by striking out the words “this section” and by substituting the word and figure “subsection (1)”,
- (b) by adding immediately after subsection (2) the following subsection:

“(3) Where, in consequence of any error in survey or of any other error or cause, a disposition is found to include lands that are the subject of a disposition made previously, the disposition made later in time is void in so far as it conflicts with the earlier disposition.”.

10. Section 150 is struck out and the following is substituted:

“150. (1) A disposition or an assignment of a disposition that would otherwise by law be required to be executed under seal is valid to the same extent as if it were under seal, if it is executed by the parties by the making of their signatures and without the use of seals.

“(2) Subsection (1) does not apply where the person executing a disposition or an assignment of a disposition is a corporation.

“(3) For the purposes of this Act, a disposition or an assignment of a disposition shall, in the case of a body corporate, be deemed to be sufficiently executed if sealed with its corporate seal and countersigned by one of its authorized signing officers or by two of its directors, notwithstanding anything to the contrary contained in any statute, charter of incorporation, memorandum of association or articles of association.”.

11. Section 168 is amended by striking out subsections (2), (3) and (4) and by substituting the following:

“(2) The fee shall be refunded to the applicant where the Director rejects his application.

“(3) Where the Minister enters into a homestead sale with the applicant with respect to the land applied for, the fee shall be applied toward payment of the first instalment of purchase price.”.

12. Section 174 is amended by striking out clause (b) of subsection (2). This clause made it prohibitory for the Minister to accept an application for a substitutional sale where the purchaser owed money under a homestead lease loan. This restriction will be removed because it has caused a hardship in many cases.

Subsection (3) is added to take care of situations that arise where a purchaser wishing to enter into a substitutional sale owes money on a homestead lease loan.

13. Section 180 is amended in the same manner as section 174. It relates to the substitution of a homestead sale for a homestead lease rather than to the substitution of one homestead sale for another. See note to clause 12.

14. Section 184 is amended by replacing subsection (2). The purpose of the amendment is essentially one of clarification. The present subsection (2) has caused some difficulty where the homestead sale is executed in the last half of the year.

12. Section 174 is amended

- (a) as to subsection (2)
 - (i) by adding immediately at the end of clause (a) the word "or",
 - (ii) by striking out clause (b),
 - (iii) by relettering clause (c) as clause (b),
- (b) by adding immediately after subsection (2) the following subsection:

"(3) Where an application is made pursuant to subsection (1) by a purchaser who has not repaid in full any moneys loaned to him under a loan made pursuant to *The Homestead Lease Loan Act*, the Minister may make his acceptance of the application subject to such conditions as he deems necessary with respect to repayment of the loan.".

13. Section 180 is amended

- (a) as to subsection (2)
 - (i) by adding immediately at the end of clause (c) the word "or",
 - (ii) by striking out clause (d),
 - (iii) by relettering clause (e) as clause (d),
- (b) by adding immediately after subsection (3) the following subsection:

"(4) Where an application is made pursuant to subsection (1) by a homestead lessee who has not repaid in full any moneys loaned to him under a loan made pursuant to *The Homestead Lease Loan Act*, the Minister may make his acceptance of the application subject to such conditions as he deems necessary with respect to repayment of the loan.".

14. Section 184 is amended by striking out subsection (2) and by substituting the following:

"(2) Where a homestead lessee makes an application under section 180 during the fourth or any subsequent year of the term of the homestead lease, the Minister shall determine whether the first instalment under the homestead sale shall be paid

- "(a) on or before the date of execution of the homestead sale or on the first day of January in the next succeeding year, where the homestead sale is executed on or before the thirtieth day of June, or
- "(b) on the first day of January in the next succeeding year, or on the first day of January in the second succeeding year, where the homestead sale is executed on or after the first day of July.".

15. This Act comes into force on the day upon which it is assented to.

No. 58

FOURTH SESSION

THIRTEENTH LEGISLATURE

6 ELIZABETH II

1958

BILL

An Act to amend The Public Lands
Act (1)

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. WILLMORE
