



## CHAPTER 69.

An Act to ratify and confirm an Agreement between the Corporation of the City of Victoria and The Esquimalt Water Works Company, providing for the Expropriation of the Undertaking of the Water Works Company.

[Assented to 19th December, 1925.]

**W**HEREAS the Municipal Corporation of the City of Victoria Preamble  
and The Esquimalt Water Works Company have joined in a petition praying for the enactment of legislation empowering the Corporation of the City of Victoria to carry out and complete an expropriation of the undertaking of The Esquimalt Water Works Company on terms providing for payment of instalments over a term of years, subject to the creation during such term of years of a Sinking Fund to pay off the purchase price, and also for the enactment of legislation vesting in the said Corporation all the franchises and corporate rights, powers, and privileges of the said Company, subject only to due payment of the agreed purchase price therefor:

And whereas it is expedient to grant the prayer of the said petition:

Therefore, His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

1. This Act may be cited as "The Esquimalt Water Works Short title  
Company Winding-up Act, 1925."

2. The following Notice of Expropriation is hereby validated and Validation of  
notice  
declared to have been and to be lawfully and validly given and delivered as the act of the Corporation of the City of Victoria and its Water Commissioner, and to have full force and effect according

to the tenor and effect thereof, but subject to the provisions of sections 9 and 10 hereof, that is to say:—

Notice of  
expropriation.

Pursuant to the statutory powers in that behalf vested in me, as Water Commissioner of the City of Victoria, by Acts of the Legislature of British Columbia, notice is hereby given that I, as Water Commissioner, and for the Municipal Corporation of the City of Victoria, hereby expropriate and take the undertaking of The Esquimalt Water Works Company (except revenue and accounts receivable and bills and accounts payable as at August 1st, 1925, and bonds and cash on hand) on the terms, price, and conditions following, that is to say:—

The total price is \$1,450,000 on the following terms and conditions:—

- (a.) The City to assume the mortgage to the Royal Trust Company of \$625,000, which falls due about 12 years from date.
- (b.) The City to take all the revenue of the Esquimalt Water Works system as from this day, 1st August, 1925, and to pay to your Company:—

1. The sum of \$40,000 per annum during the currency of the mortgage.

2. Thereafter the City to make semi-annual payments of \$40,000, of which \$21,656.25 is to be allotted to your Company and \$18,343.75 to a Trust Sinking Fund to be handled by your Company. When the Sinking Fund amounts to \$25,000, the principal sum shall be paid to your Company. The undertaking of your Company shall have been fully paid for by the City and all your Company's assets, rights, and privileges under your charter or by-law shall be transferred and assigned to the City, and your Company shall be shall be wound up, if requested by the City of Victoria.

3. The City to have the right to pay off your Company with \$25,000 at any time by giving three months' notice in writing, and on said payment all your Company's assets, rights, and privileges under your charter or by law shall be transferred and assigned to the City, and your Company shall be wound up, if requested by the City of Victoria.

4. The Company will join with the City of Victoria in applying to the Provincial Legislature (if requested by the City of Victoria) for an Act of Parliament for the purpose of confirming to the City of Victoria all the rights, powers, privileges, and undertakings of your Company; and for the purpose of winding up the Company (if desired by the City of Victoria).

- (c.) As minor conditions of the agreement to purchase it will be provided:—

1. All the moneys receivable from sale of timber during the year 1925 and subsequently shall be applied in reduction of the mortgage and thereby enure to the benefit of the City.

2. The Colwood Golf & Country Club shall have water, to capacity of present connections, for their own use for the purpose of maintaining the golf links and for no other purpose, for 10 years at \$500 per year.

3. Mr. E. B. Halsall, manager of The Esquimalt Water Works Company, will be transferred to the employ of the City of Victoria at \$175 per month, for a period of three years from August 1st, 1925.

For the purpose of carrying out the appropriation and the intention herein expressed, I shall make such entry upon the said lands and give such further notices as may be advised, but such entry and such notice shall be subject to the understandings herein set out.

Dated at Victoria, B.C., this 4th day of August, 1925.

(Signed) F. M. PRESTON,

*Water Commissioner.*

3. The undertaking of The Esquimalt Water Works Company is declared to be expropriated, bound by, and taken over by the said Notice of Expropriation, subject only to the due making by the Corporation of the City of Victoria of the payments in and by the said Notice of Expropriation prescribed and provided for, and subject to the provisions of section 10 hereof.

Undertaking  
declared  
expropriated

4. The Corporation of the City of Victoria is hereby given and invested with full power and authority, subject to the provisions of section 10 hereof, to carry out, perform, and fulfil all and singular all the terms and provisions of the said Notice of Expropriation, and to take over and operate the undertaking of The Esquimalt Water Works Company, and to receive all the revenues, incomes, and profits of the said undertaking, and to pay all the operating and maintenance and extension expenses thereof, and, subject as aforesaid, to have, hold, exercise, and enjoy all and singular all the franchises and all the corporate rights, powers, and privileges of The Esquimalt Water Works Company, and to make payments to The Esquimalt Waterworks Company pursuant to the terms and provisions of the said Notice of Expropriation, and upon the full completion of the making of such payments all and singular the undertaking, franchises, and corporate rights, powers, and privileges aforesaid shall be vested in the Corporation of the City of Victoria absolutely and for ever, but subject to the provisions of section 10 hereof.

Power to carry out  
terms of  
expropriation.

5. During the period covered by the making of the payments by the Corporation of the City of Victoria called for by the said Notice of Expropriation. The Esquimalt Water Works Company shall not exercise any other corporate powers than such as are necessary to deal with and dispose of the moneys received from the City of Victoria in the premises, and to proceed for and recover all or any part of such moneys by action in any Court of competent jurisdiction should any default in payment be made by the City of Victoria for any period of default exceeding three calendar months, and for and in aid of such recovery The Esquimalt Water Works Company shall have a vendor's lien.

Powers of  
Company limited

6. Upon payment of the principal and interest moneys due and to accrue due to the Royal Trust Company under the securities

Termination of  
Company

mentioned in section 10 hereof, and upon the due making of the final payment by the Corporation of the City of Victoria pursuant to this Act, The Esquimalt Water Works Company shall cease to have existence, subject only to power to divide such final payment among the persons or corporations entitled thereto.

Conveyances in  
escrow pending  
final payments.

7. The Esquimalt Water Works Company shall execute and deliver to the custodian chosen for the Sinking Fund provided for in the said Notice of Expropriation all such grants and conveyances of its undertaking and assets (except bonds, cash on hand, and accounts receivable up to the first day of August, 1925) as by the Corporation of the City of Victoria may be reasonably required and tendered for execution, and all such grants and conveyances shall be held in escrow pending completion of payments pursuant to the said Notice of Expropriation.

Assets and powers  
of Company  
transferred to City.

8. Unless and until defaults be made in payment and unless and until The Esquimalt Water Works Company exercises its vendor's lien and subject to the provisions of section 10 hereof, the Corporation of the City of Victoria shall be and shall be deemed to have been the owner of the lands and assets of The Esquimalt Water Works Company and of all the franchises and all the corporate rights, powers, and privileges of The Esquimalt Water Works Company as from the first day of August, 1925, and the benefit of all contracts made by The Esquimalt Water Works Company for the sale or use of water for consumption or for power or for any other use or purpose whatsoever shall be and is hereby vested in the Corporation of the City of Victoria absolutely, and the City of Victoria may carry out, fulfil, and enforce and recover upon every such contract in its own name as though originally named therein as party thereto instead of The Esquimalt Water Works Company.

Interpretation of  
Sinking Fund  
requirements

9. (a.) The Trust Sinking Fund provided for in and by clause 2 of the Notice of Expropriation and all moneys forming part of such Sinking Fund shall be invested in and upon such securities lawful for trust funds in the Province of British Columbia, as shall be approved by resolution of the Municipal Council of the Corporation of the City of Victoria, and all earnings and accretions of income shall be added to the corpus and invested as part thereof until the sum at credit of the Sinking Fund amounts to eight hundred and twenty-five thousand dollars, it being the true intent and meaning that all interim earnings and profits on moneys standing to the credit of the Sinking Fund shall be added to, and shorten completion of, the accumulation of the agreed sum of eight hundred and twenty-five thousand dollars. In the event of the payment into the Sinking Fund at any time of a sum sufficient to bring the amount

paid into the Sinking Fund including interest earned up to the agreed sum of eight hundred and twenty-five thousand dollars, the undertaking of The Esquimalt Water Works Company shall have been fully paid for, subject to the fulfilment of the provisions of section 6 of this Act, and in computing the amount at the credit of the Sinking Fund at any time the valuation to be placed on any securities held in the said fund shall be the market price at that time. In the event of payment of the said agreed sum to The Esquimalt Water Works Company prior to the liquidation of the said mortgage, the payments referred to in clause numbered 1 of the said Notice of Expropriation shall cease.

(b.) The Corporation of the City of Victoria and The Esquimalt Water Works Company are hereby given and invested with full powers and authorities to make and carry out all such agreements as may be necessary to give full force and effect to and secure full performance of all and singular the terms and provisions of the said Notice of Expropriation, subject to every statutory obligation, provision, and requirement as to a supply of water to the Town of Esquimalt and to the peninsula bounded by the Victoria Arm and Harbour, Straits of Fuca, and Esquimalt Harbour, and without prejudice thereto.

Parties empowered  
to carry out terms  
of expropriation

10. Nothing in this Act or in the said Notice of Expropriation contained shall release The Esquimalt Water Works Company from the payment of the principal, interest, and other moneys due and to accrue due to The Royal Trust Company, its successors or assigns, under the following indentures and agreements, or in any manner prejudice or affect the rights, remedies, and powers of The Royal Trust Company, its successors or assigns thereunder or in respect thereof, or against The Esquimalt Water Works Company, all of which rights, remedies, and powers are hereby expressly reserved:—

Powers of Royal  
Trust Company  
reserved

- (a.) Indenture of Mortgage dated the twenty-third day of June, 1909, between The Esquimalt Water Works Company of the one part and the late James Dunsmuir of the other part, to secure the sum of five hundred and fifty thousand dollars and interest:
- (b.) Indenture by way of further charge dated the twenty-third day of August, 1910, between The Esquimalt Water Works Company of the one part and the late James Dunsmuir of the other part, to secure the sum of seventy-five thousand dollars and interest:
- (c.) Indenture dated the seventh day of July, 1925, between The Esquimalt Water Works Company of the one part and The Royal Trust Company of the other part, securing the annual sums therein mentioned:
- (d.) Agreement dated the tenth day of June, 1925, between The Esquimalt Water Works Company of the one part and

Alston Fairservice and Edward Francis Gierin of the other part:

- (e.) Indenture dated the tenth day of June, 1925, between The Esquimalt Water Works Company of the first part, Alston Fairservice and Edwin Francis Gierin of the second part, and The Royal Trust Company of the third part.

City to be subject  
to certain  
agreements.

11. The Corporation of the City of Victoria or any other person, corporation, or body politic which shall take over the land and assets of The Esquimalt Water Works Company shall be bound by and subject to the following agreements:—

- (a.) A certain agreement entered into by the said The Esquimalt Water Works Company on the one part and the British Columbia Electric Railway Company, Limited, of the other part, and dated the thirtieth day of June, 1915:
- (b.) A certain agreement entered into by the said The Esquimalt Water Works Company of the one part and the late James Dunsmuir of the other part, and dated the twenty-third day of June, 1909.

Optional method of  
payments.

12. Notwithstanding anything in this Act contained, and notwithstanding the terms of the said Notice of Expropriation, instead of providing for the creation of, or payments into, a Trust Sinking Fund referred to in this Act, the Corporation of the City of Victoria shall have the option of paying off the said agreed principal sum of eight hundred and twenty-five thousand dollars to The Esquimalt Water Works Company in the following manner, namely:—

The sum of forty thousand dollars on the first day of August in each of the years 1926 to 1937, inclusive, as interest on the said principal sum of eight hundred and twenty-five thousand dollars to the first day of August, 1937:

Thereafter the sum of forty thousand dollars on the first days of February and August in each and every year, each said sum of forty thousand dollars to be applied first in payment of interest at the rate of five and one-quarter per cent. per annum on so much of the said principal sum remaining unpaid at the said respective dates of payment; and the balance of each said sum of forty thousand dollars (after deduction of interest aforesaid) to be applied as payment in reduction of the said principal sum so remaining unpaid from time to time, until the whole of the said principal sum with interest thereon at the rate aforesaid shall have been fully paid:

Provided, however, that the said Corporation shall have the right under this section to pay off at any time the unpaid balance of the said principal sum with interest thereon aforesaid to date of payment, and upon such payment, off the undertaking of The Esquimalt

Water Works Company shall have been fully paid for, subject to the fulfilment of the provisions of section 6 of this Act:

Provided further that if the said Corporation shall exercise the option granted by this section the payments made thereunder shall be deemed to be and to have been made according to the tenor and effect of the said Notice of Expropriation.

**13.** The Corporation of the City of Victoria shall be empowered Price of water and shall supply water to any adjoining municipality owning its own distribution system, or to any duly constituted water authority having powers to distribute water by retail, within North Saanich or elsewhere within the area set out in section 6 of the "Victoria Water Works Act, 1873," in so far as the water-pressure will allow, if requested by the Municipal Council of such municipality or by such authority, and shall be entitled to demand and receive from any such municipality or authority, and every such municipality or authority making such request shall pay to the said Corporation per thousand gallons for all water delivered in bulk at some point on the municipal boundary of the City of Victoria or at such other point on the main pipe line conveying water to the City of Victoria as may be most convenient and advantageous, a sum not exceeding five per cent. in excess of gross cost.

Notwithstanding anything in this Act contained, the Corporation of the City of Victoria shall be empowered to make special water rates at less than gross cost to any municipality or said water authority or any corporation or person for agricultural or industrial purposes.

In the event of any dispute with any adjoining municipality or water authority aforesaid as to the gross cost of water, the same shall be submitted to arbitration, such arbitration to be governed by the provisions of the "Arbitration Act," and for the purposes of arriving at the gross cost of water the arbitrators shall allow cost of collection, storage, and carriage to the point of delivery aforesaid, maintenance, interest, sinking fund, and serial debenture requirements, and reasonable amount for depreciation and for a contingencies fund.

The price so fixed by arbitration or agreed upon between the parties shall be binding and have effect for the period of three years from the date of such arbitration or agreement.

The arbitration provisions of this section shall not apply to the sale of water to any private consumer.

**14. (a.)** During the time that the distribution system in the municipal limits of the Township of Esquimalt is owned by the City of Victoria, the rate charged for domestic or municipal purposes shall be the same as may be charged or rated in the City of

Provisions relating  
to Township of  
Esquimalt

Victoria, but in no event shall the charge for fire-hydrant purposes exceed four dollars per hydrant per month :

Provided that in cases where new connections shall be installed, the Corporation of the City of Victoria shall have the power to make a special charge of forty cents per front foot on the property to be served :

Provided further that no charge in lieu of frontage rates shall be made by the said City on those properties for which a frontage charge has been contributed to The Esquimalt Water Works Company, or on properties fronting on trunk mains already laid.

(b.) During the time that the said distribution system in the municipal limits of the Township of Esquimalt is owned by the City of Victoria, the Corporation of the Township of Esquimalt, notwithstanding any Act to the contrary, shall not have the power to assess or tax the lands and improvements, pipes, fittings, water-mains, or material forming that portion of the said waterworks within the said municipality.

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VICTORIA, B.C.

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