

Escheats Act

CHAPTER 151 OF THE REVISED STATUTES, 1989

as amended by

2001, c. 6, s. 104



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CHAPTER 151 OF THE REVISED STATUTES, 1989
amended 2001, c. 6, s. 104

**An Act for Escheating Lands
Forfeited to the Crown**

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(The table of contents is not part of the statute)

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Short title

1 This Act may be cited as the *Escheats Act*. R.S., c. 151, s. 1.

MARCH 24, 2003

PROCEEDINGS FOR FORFEITURE

Proceeding to revest in Crown

2 The Governor in Council may direct the Attorney General to take proceedings to revest in the Crown

(a) any lands comprised in any grant, or any part thereof, which have become forfeited to the Crown for non-fulfilment of the condition in the grant;

(b) any or all lands of persons dying intestate and leaving no heirs or persons entitled to the said lands under the laws of the Province. R.S., c. 151, s. 2.

Filing of information

3 (1) The Attorney General may thereupon file in the office of the prothonotary of the Supreme Court an information which may be in Form A or C in the Schedule to this Act as the nature of the case may require, or to the like effect.

(2) Where the lands are sought to be revested pursuant to clause (b) of Section 2, there shall be filed with the information a certificate of the registrar of deeds for the registration district in which the lands lie setting forth all the encumbrances registered against the lands, and all documents or instruments of record affecting or purporting to affect the title to the lands or any interests in or concerning the same. R.S., c. 151, s. 3.

Notice of filed information

4 (1) A notice of the information so filed, with a brief description of the land therein mentioned, and specifying the date for appearance and pleading, shall be published at least twice in the Royal Gazette and in one or more newspapers published in the Province, and shall, for at least thirty days, be posted upon or near the door of the court house, and in five other conspicuous places in the county in which the lands lie.

(2) If any person is residing on the land, or any part thereof, that person shall be personally served with a copy of the notice, or the same shall be left at that person's place of abode with some person apparently above the age of sixteen years, and if no person is residing on the land, or any part thereof, a copy of the notice shall be posted up in some conspicuous place on the land.

(3) A copy of the notice shall be served upon each and every person appearing upon the certificate of the registrar of deeds as an encumbrancer or as entitled to any interest in the lands, by delivering such notice to the person personally or by leaving the same at the person's place of abode with some person apparently above the age of sixteen years, or if such service cannot be so effected, in such other manner as the Court or judge may direct.

(3A) Where the real property is registered pursuant to the *Land Registration Act*, a copy of the notice shall be served upon each and every person

appearing on the register of the parcel as holding any interest in the parcel, by delivering the notice to the person personally or by leaving the same at the person's place of abode with some person apparently above the age of sixteen years, or if such service cannot be so effected, in such other manner as the court or a judge may direct.

(4) The notice shall be posted and served by the sheriff of the county who shall, for his services, receive the fees mentioned in the *Costs and Fees Act*. R.S., c. 151, s. 4; 2001, c. 6, s. 104.

Time for appearance

5 A time shall be specified in such notice for appearance and pleading to the information, which time shall not be less than thirty days from the date

- (a) of the first appearance of the notice in the Royal Gazette;
- (b) of the posting of the notices;
- (c) of such personal service; or
- (d) of the leaving of the notice at the place of abode,

whichever date shall be last. R.S., c. 151, s. 5.

PROCEEDINGS ON DEFENCE OR DEFAULT

Defence

6 (1) Any person who has the right to traverse the information so filed may enter and serve an appearance and statement of defence thereto at any time within the time specified, or any such additional time as is allowed by the Attorney General, or the Court or a judge.

(2) The statement of defence traversing the information shall be confined to a simple denial of the liability to forfeiture under the terms of the grant or of this Act, or of both, and no other defence shall be allowed except by leave of a judge save that any person appearing on the certificate of the registrar of deeds, in cases where such certificate is required to be filed, as an encumbrancer, may in that person's defence plead the right to be reimbursed out of the said lands to the amount of such registered encumbrance. R.S., c. 151, s. 6.

Trial of action

7 If such appearance and statement of defence are entered and served, the action shall be tried in the Trial Division of the Supreme Court, in the same way as an ordinary action. R.S., c. 151, s. 7.

Costs

8 (1) If the action is tried and the defence fails, judgment shall be given revesting the lands, or part thereof, in the Crown, and the defendant may be ordered to pay the costs, to be taxed.

(2) If the Attorney General discontinues the action, or if judgment is given for the defendant, with costs, the defendant may tax his costs, which costs shall be paid out of the Consolidated Fund. R.S., c. 151, s. 8.

Proceeding under Section 2(b)

9 (1) Where lands are sought to be revested pursuant to clause (b) of Section 2, and an appearance and statement of defence have been entered and served within the time specified by any person whose name appears on the certificate of the registrar of deeds, as an encumbrancer, claiming an interest in the lands sought to be revested as such encumbrancer, the Court or judge may proceed to try and determine the question of the rights of such person as such encumbrancer, and if it is made to appear to the Court or judge by satisfactory evidence that such person is entitled to a charge upon the lands in question, the Court or judge may order that the lands in question be sold at public auction by the sheriff of the county in which the lands lie, upon such terms and conditions as to advertisement as to the Court or judge may seem fit.

(2) Where lands are sold pursuant to subsection (1), the procedure to be followed shall be the same as that provided under the rules of the Supreme Court of Nova Scotia in foreclosure proceedings so far as the same are applicable, save that no encumbrancer who, after service as hereinbefore provided, has failed to enter and serve an appearance and statement of defence within the time specified, shall be entitled to notice or to share in the distribution of the proceeds of such sale, save by leave of the Attorney General for the time being of the Province.

(3) Where lands are sold pursuant to subsection (1), the proceeds thereof shall be paid into Court, and the Court or judge may order that, the costs of the proceedings had and of the sale being first taxed and paid thereout, the proceeds be distributed among such encumbrancers as have appeared to the information to the extent of their respective claims and according to their respective priorities, and that the surplus then remaining, if any, be declared forfeited to the Crown and be paid into the Consolidated Fund.

(4) If no appearance and statement of defence are entered and served within the time specified, the Attorney General may apply to the Court for judgment.

(5) In Halifax such application may be made to the Appeal Division of the Supreme Court, or to a judge sitting in Court or in chambers.

(6) If the land is situated in any county other than Halifax, such application may be made to a judge of the Trial Division of the Supreme Court sitting for the trial of causes in the county or to a judge in chambers at Halifax. R.S., c. 151, s. 9.

Default judgment

10 Judgment shall be given revesting such land in the Crown if it is established by affidavit to the satisfaction of the Court or judge

- (a) that the information has been duly filed with the prothonotary;
- (b) that notices have been published and posted up and, in cases in which personal service is required, served as directed in this Act;
- (c) that no appearance or statement of defence has been entered or served. R.S., c. 151, s. 10.

Order

11 (1) The order for judgment may be in Form B in the Schedule to this Act, or to the like effect.

(2) The original order shall be filed with the papers in the cause in the prothonotary's office, and the prothonotary shall furnish certified copies of such order to the Minister of Lands and Forests, to be filed in the department, and to the registrar of deeds for the registration district in which the lands lie, to be registered by the registrar.

(3) Where the real property is registered pursuant to the *Land Registration Act*, the prothonotary shall furnish a certified copy of the original order to the Minister to be filed in the department and to the land registration office for the district in which the lands lie for recording in the register of each parcel affected by the order. R.S., c. 151, s. 11; 2001, c. 6, s. 104.

Penalty on tenant of land

12 If a tenant residing on land sought to be revested, and receiving notice of the proceedings, fails to give information of the notice to the tenant's landlord, if such landlord is within the Province, or to the landlord's known solicitor, or agent, if the landlord is absent therefrom, the tenant shall forfeit a sum not exceeding four hundred dollars, to be recovered by such landlord. R.S., c. 151, s. 12.

If several parcels of land in same county

13 Several parcels of land within the same county may be included in the same information, but the traverses and, unless otherwise agreed, the trials, shall be separate. R.S., c. 151, s. 13.

Forfeiture where several lots in one grant

14 Where one grant includes several lots of land, or where, under one grant, separate allotments are subsequently assigned to grantees, or their assigns, the liability to forfeiture of each lot shall depend upon the performance of the conditions with respect to that particular lot. R.S., c. 151, s. 14.

OPENING UP JUDGMENT**Regrant after default judgment**

15 No land, for the revesting of which a judgment has passed *ex parte* and without defence, shall be granted to any person before the expiration of one

year from the date of the order for revesting, except to the original owner of such land, his heirs, or assigns. R.S., c. 151, s. 15.

Opening up judgment

16 During such year, any person claiming a right or interest in such land, or any part thereof, may enter an appearance and statement of defence traversing the information, and such appearance, and a copy of the defence, shall be served upon the Attorney General, and thereupon such judgment shall be opened up, and the action shall be tried as if it had originally been defended, save that no person whose name appears on the certificate of the registrar of deeds in cases where such certificate is required to be filed as an encumbrancer, and who has been duly served as hereinbefore provided and who has failed to enter and serve an appearance and defence, shall be at liberty to come in and defend after judgment has passed. R.S., c. 151, s. 16.

Opening up judgment with leave

17 (1) Any person claiming an interest in any land revested in the Crown by judgment in default of appearance and defence may, at any time within three years from the date of the judgment and notwithstanding the land has been granted by the Crown to third persons, apply to a judge of the Trial Division of the Supreme Court for leave to enter an appearance and defence, and to have the action tried, save that no person whose name appears on the certificate of the registrar of deeds in cases where such certificate is required to be filed as an encumbrancer, and who has been duly served as hereinbefore provided and who has failed to enter and serve an appearance and defence, shall be at liberty to come in and defend after judgment has passed.

(2) If the applicant satisfies the judge by affidavit that the applicant was not aware, before the judgment passed, of the proceedings to revest such land, and that there has been no unnecessary delay in making the application, and that the applicant has a good and meritorious defence to the information, and that the interests of justice require that such judgment be opened up, the judge may grant a summons, calling upon the Attorney General to appear and show cause why the judgment should not be opened up, and the applicant have leave to appear and traverse the information and a copy of the summons shall be served upon the Attorney General, and if the land has been granted to any other person, a copy of the summons shall be served upon that person, and that person shall have the right to be heard on the application. R.S., c. 151, s. 17.

Failure to oppose application for leave

18 If, on the return day of the summons, no one appears to oppose it, an order shall pass according to the tenor of the summons, and the applicant shall then file and serve his appearance and defence within ten days, and the action may thereupon be tried as if it had originally been defended. R.S., c. 151, s. 18.

If application opposed

19 If, on the return day of the summons, the application is opposed, affidavits may be read in answer to those used by the applicant and, after hearing the parties, the judge may order the judgment to be opened up, or refuse to do so, and the judgment of the judge shall be final. R.S., c. 151, s. 19.

GENERAL PROVISIONS

Protection of land if reversion proceeding

20 Upon the filing of an information to reversion any land, such land shall be deemed to be vested in the Crown for all purposes connected with the protection of such land from trespasses, and for the punishment of any person trespassing thereon, and for the recovery of any timber or other property taken therefrom, and all proceedings with respect to any matter in this Section referred to shall and may be taken in the name of Her Majesty. R.S., c. 151, s. 20.

Granting of reversioned land

21 (1) Subject to Section 15, the Governor in Council may grant any land which has reversioned in the Crown pursuant to this Act, or any part thereof or interest therein, to

(a) a person who, in the opinion of the Governor in Council, had a legal or moral claim upon the person to whom the land belonged immediately prior to reversion in the Crown or a just or natural right or claim to succeed to the land, or any part thereof or interest therein;

(b) carry into effect any disposition thereof that the Governor in Council believes the person to whom the land belonged immediately prior to it reversion in the Crown may have intended;

(c) reward a person making discovery of the property to the Crown.

(2) Any such grant may be made without actual entry or taking possession of the property or inquisition being first made, and, if possession of the property is withheld, the person to whom the grant is made may institute proceedings for the recovery thereof in any court of competent jurisdiction.

(3) In each year in which the Governor in Council grants land pursuant to this Section, the Attorney General shall table in the House of Assembly a report setting forth the particulars of such grant. R.S., c. 151, s. 21.

Reversion order prior to 1890

22 It is hereby declared that all orders made before the fifteenth day of April, 1890, for reversioning land in the Crown, are legal and valid, and that such orders absolutely vested the land mentioned therein in the Crown, and no title to any land so reversioned and afterwards granted to other persons shall be called in question in any court in this Province on any ground of want of form, irregularity or invalid-

ity in the order for revesting, or in any proceedings in respect thereto. R.S., c. 151, s. 22.

Rules of procedure

23 The judges of the Supreme Court may make rules regulating the procedure under this Act. R.S., c. 151, s. 23.

SCHEDULE

Form A

(Section 3)

INFORMATION

Nova Scotia,
County of SS.

In the Trial Division of the Supreme Court, 19.

Before the Honourable, on the day of, in the year of our Lord one thousand nine hundred and, and in the year of the reign of our Sovereign Lady Elizabeth the Second, by the Grace of God of the United Kingdom, Canada and Her Other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith, comes, Esquire, Attorney General of our said Lady the Queen, within Her Province of Nova Scotia, and being present in his own person, for and in behalf of our Lady the Queen, informs the Court here that some time past, to wit, on the day of, in the year of our Lord one thousand hundred and, His Honour, Lieutenant Governor in and over Her Majesty's said Province acting in the name and on behalf of the Crown, executed and made a certain grant and patent, whereby a certain tract of land containing acres, situate, lying and being in the County of, in the Province aforesaid, was given and granted unto

And the said Attorney General, for and on behalf of Her Majesty the Queen, states that the said grant or patent so mentioned to have been made and executed as aforesaid, was made and executed upon and under the consideration following, that is to say:

Such grant was made subject to the following several conditions, that is to say: (set forth the conditions concisely)

As in and by the said grant, reference thereto being had, will more fully and at large appear.

And the said Attorney General, on behalf of Her Majesty, also states that the said grantees, to whom the said tract was granted, as aforesaid, their heirs and assigns, have not, nor have any or either of them, nor has any person or persons on behalf of them, or any of them, in any manner performed or kept the said several conditions or covenants by or on behalf of them, or any of them respectively, to be performed and fulfilled in respect to the said tract of land hereinbefore described, but from the date of the said grant to the filing of this information have refused and neglected to perform, fulfil, or keep the same, and the said

tract of land hereinbefore described thereupon becomes liable to escheat and forfeiture, and to revert to our Lady the Queen, and the said grant thereof made to be adjudged null and void in every respect.

And the said Attorney General thereupon, on the part and behalf of Her Majesty, and by the express directions of His Honour the Governor in Council, prays that, all due and legal proceedings being thereon had, the said grant or patent, or such portion of the said tract of land as is liable to escheat and forfeiture, so far as concerns the said land hereinbefore described and granted to the said grantees, may for the non-performance of the covenants and conditions on which the same was made, be declared to be null and void, and the said land therein mentioned and described and granted, and every part thereof, be forfeited to Her Majesty, Her heirs and successors, fully to all intents and purposes.

Form B
(Section 11)
Judgment

In the (Trial Division or Appeal Division) of the Supreme Court, 19. . . .

Between

Her Majesty the Queen, Plaintiff

and

., Defendants

On reading the information herein, dated and filed the day of, 19. . . . the notice of such information published in the Royal Gazette newspaper, the affidavit of the Attorney General (or some other person knowing the facts), with the exhibits therein referred to; the affidavit of (the sheriff or his deputy), and the exhibit or exhibits in such affidavit referred to, and (it appearing that no appearance or defence has been entered herein) on motion (no one opposing). It is ordered and adjudged that the land mentioned in such information be and is hereby revested in Her Majesty the Queen.

Form C
(Section 3)

Nova Scotia,
County of SS.

In the Trial Division of the Supreme Court, 19. . . .

Before the Honourable, on the day of, in the year of our Lord one thousand nine hundred and, and in the year of the reign of our Sovereign Lady Elizabeth the Second, by the Grace of God of the United Kingdom, Canada and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith comes Esquire, Attorney General of our said Lady the Queen within her Province of Nova Scotia, and being present in his own person, for and on

behalf of our Lady the Queen, informs the Court here that some time past, to wit, on the
 day of in the year of our Lord, one thousand hundred and
 (A.B.) late of in the County (occupation), deceased, was seised
 and possessed of certain lands situate in the County of, in the Province aforesaid
 and more particularly described as follows: (description of lands)

And the said Attorney General on behalf of Her Majesty also states that the said
 (A.B.) on or about the day of in the year of our Lord one thousand . .
 hundred and departed this life intestate, and leaving no heirs or persons
 entitled to the said lands under the laws, of the Province, wherefore the said lands have
 become liable to escheat and forfeiture and to revert to our Lady the Queen, Her heirs and
 successors.

And the said Attorney General thereupon, on the part and behalf of Her Majesty, and
 by the express directions of His Honour the Governor in Council, prays that, all due and legal
 proceedings being thereon had, the said lands so liable to escheat and forfeiture, and every
 part thereof, may be declared and be forfeited to Her Majesty, Her heirs and successors fully
 to all intents and purposes.

R.S., c. 151, Sch.
