

1960

c 203 Lakes and Rivers Improvement Act

Ontario

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CHAPTER 203

The Lakes and Rivers Improvement Act

INTERPRETATION

1. In this Act,

Interpre-
tation

- (a) "dam" means a dam or other work forwarding, holding back or diverting water;
- (b) "Department" means the Department of Lands and Forests;
- (c) "floating of timber" includes transmission of timber;
- (d) "lake" includes a pond;
- (e) "Minister" means the Minister of Lands and Forests;
- (f) "regulations" means the regulations made under this Act;
- (g) "river" includes a creek and a stream;
- (h) "timber" includes rafts and crafts, saw logs, posts, ties, cordwood, pulpwood, masts, staves, deals, boards, and all sawed and manufactured lumber. R.S.O. 1950, c. 195, s. 1, *amended*.

GENERAL PROVISIONS

2.—(1) The Lieutenant Governor in Council may make Regulations
regulations,

- (a) for the safe and orderly floating of timber down lakes and rivers, and for preventing the use of the lakes and rivers for navigation by vessels and boats being unnecessarily impeded or interfered with by the timber;
- (b) respecting generally the use under this Act of lakes and rivers and waters therein;
- (c) prescribing penalties for contravention of the regulations. R.S.O. 1950, c. 195, s. 2 (1); 1955, c. 39, s. 1.

(2) The regulations may be general in their application, or
be applicable to any particular Part of this Act or to any par-

Scope of
regulations

ticular lake or river or to any particular dam or work. R.S.O. 1950, c. 195, s. 2 (2).

Compliance
with Part
VI

3. Every person making use of a lake or river upon which works are constructed under this or any other Act for the purpose of floating timber shall comply with the requirements of Part VI as to timber driving. R.S.O. 1950, c. 195, s. 3.

County or
district
judge sole
arbitrator
for deter-
mining
claims

4. Where in this Act any claim for compensation for land, property or works taken or injuriously affected or a claim or dispute is to be determined by arbitration, a judge of the county or district court of the county or district in which the land, property or works are situate or in which the claim or dispute arises or, in the case of a claim under Part VI, in which the timber in connection with which the claim or part of the claim is made or the greater part of such timber is situate at the time of the service of the notice of claim, shall be the sole arbitrator for such purpose and *The Arbitrations Act* otherwise applies. R.S.O. 1950, c. 195, s. 4.

R.S.O. 1960,
o. 18

Where com-
pensation
for flooding
or injury by
dam made
before grant
from the
Crown

5. Where land is overflowed or otherwise injured by the maintenance of a dam that was erected before the land was granted by the Crown and the grantee or any person under whom he derived title obtained a reduction in the price of the land on account of, or was otherwise indemnified for, its being overflowed or otherwise injured by the dam, no subsequent owner of the land is entitled to maintain an action against the owner or occupier of the dam for damages for any overflowing or injury to the land due to the continuance of the dam. R.S.O. 1950, c. 195, s. 5.

Restrictions
upon
operations

6. Nothing in this Act authorizes any person to obstruct any waters already navigable or to collect tolls other than those upon timber. R.S.O. 1950, c. 195, s. 6.

Rights of
parties as to
water
powers
created

7. If, by reason of a dam erected for the floating of timber, any water power is created, the owner of the dam does not have any title or claim to the use of such water power, but, if the owner or occupier of the adjoining land claims compensation for damages arising from such dam, the claim shall be determined by arbitration and the arbitrator may take into account the increased value of his land by reason of the water power so created. R.S.O. 1950, c. 195, s. 7.

PART I

CONSTRUCTION, REPAIR AND USE OF DAMS

Interpre-
tation

8. In this Part,

(a) "engineer" means an engineer designated by the Minister;

- (b) "owner" means an owner of a dam, and includes the person constructing, maintaining or operating it.
R.S.O. 1950, c. 195, s. 8, *amended*.

9.—(1) A dam shall not be constructed on any lake or river unless the site and plans and specifications thereof have been approved by the Minister, and such approval shall be deemed to be of an administrative and not of a legislative nature.

Approval
of plans
of dams

(2) Application for such approval shall be made in writing to the Minister and shall be accompanied by,

Application
for approval

- (a) complete copies of the plans and a report of the engineer in charge of the work showing full details of the construction of sluice-gates, spillways and other works connected with the dam and the height at which the water is to be held;
- (b) a map of the watershed affected which shall show the area of the watershed above the dam with the estimated elevation of high water caused by the spring, summer and autumn freshets, where the water level is raised by the dam, and the submerged areas at low, normal and high water periods, in different colours;
- (c) particulars as to the nature of the bottom or foundation on which the dam is to be constructed with reports of all boring or test pits;
- (d) such other particulars as the Minister requires,

but nothing in this section prevents or applies to the construction of an emergency dam where such construction is considered necessary for the prevention of loss or damage, but in such case the owner shall immediately give notice to the Minister that he is proceeding with the construction of the dam and shall thereafter comply with any directions of the Minister as to the precautions to be taken in maintaining the dam or its removal when the purpose for which it was constructed has been served.

(3) The approval of the Minister shall not be given until an engineer has examined the plans, documents and other information and recommended the approval of the proposed dam.

Engineer to
examine
plans

(4) Upon the request of the Minister made either before or after the construction thereof, every such dam hereafter constructed shall be provided with a fishway that will permit the free and unobstructed passage of fish up and down stream at any season of the year. R.S.O. 1950, c. 195, s. 9.

Fishway

Approval
of plans
and specifi-
cations

10. Where a dam has heretofore been or is hereafter constructed in a lake or river and it is proposed to make improvements to the dam, the improvements shall not be proceeded with until complete copies of the plans and specifications have been approved by the Minister, and such approval shall be deemed to be of an administrative and not of a legislative nature. R.S.O. 1950, c. 195, s. 10.

Requiring
production
of plans on
report of
engineer

11.—(1) Where a dam has heretofore been or is hereafter constructed in a lake or river and an engineer or other officer of the Department reports that by reason of the construction or condition of the dam water may be held, released or diverted in sufficient volume to cause personal injury or damage to property, the Minister may require the owner of the dam to furnish within a given time the plans and other particulars mentioned in subsection 2 of section 9. R.S.O. 1950, c. 195, s. 11 (1).

Failure to
furnish
plans

(2) Upon failure on the part of the owner to furnish such plans and other particulars within the time specified, the Minister may require the engineer to make an examination and report on the dam, and the expenses incurred in making the examination and report shall be in debt due by the owner to the Crown, and the amount thereof as certified by the Minister is recoverable with costs in any court of competent jurisdiction. R.S.O. 1950, c. 195, s. 11 (2), *amended*.

Engineer
to have
free access

(3) For the purpose of making the report, the engineer shall have free access to all parts of the dam and to the adjoining or neighbouring lands and to all plans, books, accounts, documents and reports relating to the construction of the dam.

Order to
repair,
improve,
etc.

(4) On the report of the engineer, the Minister may make such order as he deems necessary to ensure the safety of the public or of persons whose lands and property may be endangered by the dam, and for such purpose may order the owner to repair, improve, open up or remove it, and may fix the time within which such repairs, improvements, opening up or removal are to be completed. R.S.O. 1950, c. 195, s. 11 (3, 4).

Effect of
non-com-
pliance with
order

(5) Upon non-compliance with the order within the time limited or in case the Minister deems that the repairs, improvements, opening up or removal ordered is immediately required in an emergency, the Minister may do or cause to be done whatever is necessary, and the cost of any such work, as certified by him, is a debt due by the owner to the Crown and is recoverable with costs in any court of competent jurisdiction. R.S.O. 1950, c. 195, s. 11 (5), *amended*.

(6) Where any dam heretofore constructed has not been provided with a fishway, the Minister may direct that the owner of the dam shall forthwith provide a fishway that will permit the free and unobstructed passage of fish up and down stream at any season of the year. R.S.O. 1950, c. 195, s. 11 (6).

Direction
for fishway
to be
provided

12.—(1) Where water has been impounded for power development or storage purposes, the Minister may order the owner of any dam that impounds the water,

Clearing
flooded
areas

- (a) to clear timber, slash or debris from the lands that are or were flooded; and
- (b) to remove any timber, slash or debris that has escaped from the flooded lands to any lake or river,

within the time specified in the order.

(2) Where the owner of a dam fails to comply with an order made under subsection 1 within the time specified in the order, the Minister may cause to be done whatever is necessary to achieve the result intended by the order, and the cost thereof, as certified by him, is a debt due by the owner to the Crown and is recoverable with costs in any court of competent jurisdiction. 1960, c. 55, s. 1.

Idem

13.—(1) The Minister may authorize the engineer to inspect or cause an inspection to be made of any dam or other structure or work for the development, improvement or utilization of the waters of any lake or river and report in writing upon the state of repair of the dam or other structure or work. R.S.O. 1950, c. 195, s. 13 (1).

Minister
may
authorize
inspection

(2) If the Minister deems it necessary or expedient in the public interest, he may, after the receipt of the report of the engineer, order the owner of the dam or other structure or work to repair, reconstruct or remove the same within the time specified in the order. R.S.O. 1950, c. 195, s. 13 (2); 1953, c. 53, s. 1 (1).

Repair or
reconstruc-
tion

(3) Where the owner fails to comply with an order made under this section within the time specified in the order, the Minister may cause a plan and description of the site of the dam or other structure or work prepared and signed by an Ontario land surveyor and signed by the Minister to be deposited in the proper registry or land titles office and thereupon such site and the dam or other structure or work and all rights incidental thereto are forfeited to the Crown without it making compensation therefor.

Non-com-
pliance
with order

Rights of
Crown to
repair, etc.

(4) Where a site and the rights of the owner in a dam or other structure or work have been forfeited to the Crown under this section, the Crown has over the adjoining and neighbouring lands such rights as may be necessary to repair or reconstruct and maintain and operate or to remove the dam or other structure or work. 1953, c. 53, s. 1 (2).

Offences

14.—(1) Every person who,

- (a) constructs or maintains a dam in contravention of this Part;
- (b) refuses or neglects to comply with an order, requirement or direction of the Minister made under this Part; or
- (c) hinders or obstructs the engineer in the performance of his duties under this Part, or refuses or neglects to produce any plans, accounts, documents or report relating to the construction of a dam when required by the engineer,

is guilty of an offence and on summary conviction is liable to a fine of not more than \$500, and if after conviction such default continues, such person is liable to a further fine of \$10 for each day upon which the default continues.

Liability
not affected
by con-
viction

(2) The conviction of a person under subsection 1 does not affect his liability for damages or otherwise either at common law or under any statute in force in Ontario. R.S.O. 1950, c. 195, s. 14, *amended*.

Plans, etc.,
to be kept
on file in
Department

15. All plans, orders and reports furnished or made under this Part shall be kept on file in the Department. R.S.O. 1950, c. 195, s. 15.

Disputes
as to user

16. Where it appears expedient in the public interest, or where a conflict or dispute arises between persons having a right to use a lake or river or any works or other improvements thereon for floating timber or between such persons and any other persons having the right to use a lake or river for any other purpose, the Minister may appoint an officer or officers with such powers and duties as are deemed expedient to be in charge of the lake or river or any works or improvements thereon and to regulate the use of the lake or river or any works or improvements thereon in such manner as seems best calculated to afford to persons having diverse interests on the lake or river or in the works or improvements a fair and reasonable use of the waters of the lake or river, but where any alterations of the level of international boundary waters is involved, such regulation, powers and duties shall conform

to any order or recommendation that the International Joint Commission may make under the terms and authority of the International Boundary Waters Treaty between Great Britain and the United States. R.S.O. 1950, c. 195, s. 16.

17.—(1) Where a dam or other structure or work has been heretofore or is hereafter constructed on a lake or river and the Minister deems it necessary or expedient in the public interest, he may order the owner of the dam or other structure or work to take such steps within the time specified in the order as may be necessary to maintain the level of the water of the lake or river or to raise or lower such level as the order provides. Regulation of water levels

(2) Where the owner fails to comply with an order made under this section within the time specified in the order, the Minister may cause to be done whatever is necessary to achieve the result intended by the order, and the cost thereof, as certified by him, is a debt due by the owner to the Crown and is recoverable with costs in any court of competent jurisdiction at the suit of the Treasurer of Ontario. Non-compliance with order

(3) This section does not apply to any lake or river over which the International Joint Commission established under the Boundary Waters Treaty of 1909 or any public authority exercising jurisdiction under the Parliament of Canada or The Lake of the Woods Control Board established under *The Lake of the Woods Control Board Act, 1922* has jurisdiction with respect to the level of the water. 1953, c. 53, s. 2. Where section not to apply
1922, c. 21

18. Subject to compensation being made as provided by *The Public Works Act* for any damages sustained by reason thereof, the Minister may authorize any engineer, agent, workman or servant employed by or under him to enter into and upon any land and remove any rocks, stones, gravel, slab or timber jam, dam or part of any dam, rubbish of any kind or other obstruction in any lake or river, the removal of which he deems necessary or expedient in the public interest. R.S.O. 1950, c. 195, s. 18. Removal of obstructions dams, etc., on order of Minister
R.S.O. 1960, c. 338

19.—(1) A judge of the county or district court of the county or district in which any part of any works used for floating timber is situate, on the complaint of any person interested in the floating of timber down any lake or river, through or over the works upon which tolls are collected, that the works are clearly inadequate by reason of being out of repair, shall appoint an inspector to examine the works and to report on the state of repair thereof. Works out of repair

(2) The judge shall, after report of the inspector, order the repairs that are necessary and that shall be made by the owner of the works, and the time by which the repairs shall be made and completed. Order to repair

When
person
interested
may repair

(3) If the owner does not comply with the order, the person so interested may make the repairs, and the cost thereof, or such portion of them as the judge determines, shall be paid by the owner and is a lien and charge in favour of such person on the works and tolls.

Deposit to
cover fees

(4) The judge may require the applicant to deposit with the clerk of the court such sum as will, in the opinion of the judge, be sufficient to pay the fees and expenses of the inspector, to be allowed by the judge at a rate of not more than \$10 per day and actual travelling expenses, and such sum, when the works are found to be clearly inadequate by reason of being out of repair, may, in the discretion of the judge, be made a lien or charge in favour of the person paying the same on the works and tolls.

Bond to
cover costs

(5) The applicant shall, before the application comes on to be heard, file with the judge a bond signed by himself in the sum of \$100 and by two sufficient sureties, who shall duly qualify, each in the sum of \$50, conditioned to pay to the owner such costs connected with the application and subsequent proceedings as the owner may become entitled to.

Notice

(6) Four days notice of the application is sufficient and the notice may be served upon the owner, or, in the case of a company, upon the president, secretary or superintendent, manager or acting manager thereof.

Costs

(7) The costs incidental to the application shall be upon the county court or division court scale, as the judge directs.

Interpre-
tation

(8) In this section, "inspector" means a person appointed by the Lieutenant Governor in Council to act as inspector of works constructed for the floating of timber. R.S.O. 1950, c. 195, s. 19.

Provision
for passage
of timber

20. Where a dam is now or is hereafter erected on or across any lake or river down which timber is usually floated, such dam shall at all times be provided with a slide or apron for the passage of timber of such description and dimensions as are approved by the Minister and such approval shall be deemed to be of an administrative and not of a legislative nature. R.S.O. 1950, c. 195, s. 20; 1955, c. 39, s. 2.

Apron to
admit of
timber
passing

21. Every such apron shall be so constructed and maintained as to afford a depth of water sufficient to admit of the passage over it of such timber as is usually floated down the lake or river on which the dam is erected. R.S.O. 1950, c. 195, s. 21.

Offence

22.—(1) The owner and occupier of a dam who does not provide, maintain and keep in repair a slide or apron thereto in accordance with such description and dimensions as are approved by the Minister under section 20 is guilty of an

offence and on summary conviction is liable to a fine of \$50 for each day on which the default occurs or during which it continues. 1955, c. 39, s. 3.

(2) Where the apron is carried away, destroyed or damaged by flood or otherwise, the owner or occupier of the dam is not liable to the fine provided by subsection 1 if the apron is repaired or reconstructed as soon as the state of the lake or river safely permits. R.S.O. 1950, c. 195, s. 22 (2). ^{Where apron carried away, fine suspended}

PART II

PROCLAMATION CONTROLLING NAMED LAKE OR RIVER

23. The Lieutenant Governor in Council may declare that any lake or river is subject to this Part. R.S.O. 1950, c. 195, s. 23. ^{Control by Order in Council}

24.—(1) From and after a date named in the declaration made under section 23, all questions arising in relation to the lake or river, ^{Jurisdiction of Minister}

- (a) as to the right to construct or use works or improvements thereon;
- (b) as to the respective rights of persons using the lake or river for the purpose of floating timber thereon;
- (c) as to the right to interfere with, alter or obstruct in any manner the flow of the water in the lake or river,

shall be determined by the Minister upon application to him by any of the parties concerned, and after such notice to other parties interested as the Minister directs, and no action or other proceeding lies or shall be taken in any court with respect to any such matter.

(2) The order of the Minister given in writing is final and is not subject to appeal. ^{Decision final}

(3) Any such order may be filed in the office of the Registrar of the Supreme Court, or in the office of the local registrar or deputy registrar, and upon being so filed it becomes an order of the Supreme Court and may be enforced in the same manner and by the like process as if it had been made by that court. ^{Enforcement of order of Minister}

(4) The like fees are payable as upon an order made by a judge of the Supreme Court in the exercise of his ordinary jurisdiction. ^{Fees on filing order}

(5) The order shall be entered in the same manner as a judgment of the court. R.S.O. 1950, c. 195, s. 24. ^{Entry of order}

PART III

PUBLIC RIGHTS IN LAKES AND RIVERS

Application **25.** This Part is subject to Parts I and II. R.S.O. 1950, c. 195, s. 25.

Right to float timber **26.**—(1) Subject to this Part, all persons may float timber down all lakes and rivers during the spring, summer and autumn freshets.

Duty not to obstruct (2) No person shall, by felling trees or placing any other obstruction in or across a lake or river, prevent the floating of timber.

Right to remove obstructions and to construct works (3) If it is necessary to remove an obstruction from a lake or river, or to construct a dam, apron, slide, gate, lock, boom or other work therein or thereon in order to facilitate the floating of timber down the lake or river, the person requiring so to float the timber may remove the obstruction, and may construct the dam, apron, slide, gate, lock, boom or other work, doing no unnecessary damage to the lake or river or to its banks.

Right of persons driving timber, etc., to go on banks (4) All persons driving timber down a lake or river have the right to go along the banks of the lake or river for the purpose of assisting and to assist the floating of the timber by all means usual with lumbermen, doing no unnecessary damage to the banks of the lake or river. R.S.O. 1950, c. 195, s. 26.

Right of public to use works and improvements **27.** A person who has constructed in or upon a lake or river, which was not navigable or floatable before the same was constructed, a dam, apron, slide, gate, lock, boom or other work necessary to facilitate the floating of timber down the lake or river, or blasts rocks or removes shoals or other impediments from or otherwise improves the floatability of the lake or river, does not have the exclusive right to the use of the lake or river or of the works or improvements, but all persons, subject to the payment of tolls fixed under Part V, have the right during the spring, summer and autumn freshets to float timber down the lake or river and through and over such works and improvements, doing no unnecessary damage. R.S.O. 1950, c. 195, s. 27.

Act to apply whether land patented or not **28.** All the rights conferred by this Part extend and apply to all works and improvements heretofore or hereafter made, on a lake or river, whether the bed of the lake or river has been granted by the Crown or not. R.S.O. 1950, c. 195, s. 28.

29.—(1) Where the course of a river enters or widens into a lake or other considerable body of water, every person using the river for the purpose of floating timber shall provide proper and adequate means by a steam tug or otherwise to move his timber across the lake or body of water with expedition.

Moving timber across lakes, etc.

(2) The Minister may by his order in writing direct the kind of power or appliance that is to be used in moving timber across the lake or body of water from the place of entrance to the outlet.

Minister may order use of power

(3) Every person who contravenes or neglects to obey the terms of such an order is guilty of an offence and on summary conviction is liable to a fine of not more than \$500. R.S.O. 1950, c. 195, s. 29.

Offence

OBSTRUCTIONS IN LAKES AND RIVERS

30.—(1) Every person who cuts and fells, and the employer of every person who cuts and fells, any tree into a lake or river down which timber is usually floated, or upon such parts of the banks of it as are usually overflowed in the spring, summer or autumn freshets, without lopping off the branches of the tree and cutting up the trunk into lengths of not more than eighteen feet before the tree is allowed to be floated or cast into the lake or river is guilty of an offence and on summary conviction is liable to a fine of not more than \$10.

Fine for not lopping off branches of trees, etc.

(2) Subsection 1 does not apply to timber prepared for transportation to market. R.S.O. 1950, c. 195, s. 30.

Exception

31. Where an officer of the Department finds that any tree, part of a tree, refuse, substance or matter has been thrown or deposited into a lake or river or on the shores or banks thereof in such a manner as in his opinion impairs the natural beauty of the lake or river, he may, if authorized by the Minister to do so, order the person who committed or caused the commission of such act to take such steps within the time specified in the order as are necessary to remove the tree, part of a tree, refuse, substance or matter from the lake or river or from the shores or banks thereof, and any person who fails to comply with any such order is guilty of an offence and on summary conviction is liable to a fine of \$50 for each day that he does not comply with the order. 1955, c. 39, s. 4.

Throwing trees, etc., into lake or river prohibited

32. In sections 33 and 34, "mill" means a plant or works in which logs or wood-bolts are processed, and includes a saw mill, a pulp mill, and a pulp and paper mill. 1953, c. 53, s. 3, *part.*

Interpretation

Prohibition
against
throwing
refuse into
lake or
river, etc.

33.—(1) No person shall throw, deposit or discharge, or permit the throwing, depositing or discharging of, any refuse, sawdust, chemical, substance or matter from any mill into a lake or river, or on the shores or banks thereof.

Offence

(2) Every person who contravenes subsection 1 is guilty of an offence and on summary conviction is liable to a fine of not less than \$200.

Non-
compliance
with order

(3) Where an officer of the Department finds that any refuse, sawdust, chemical, substance or matter from a mill is being thrown, deposited or discharged into a lake or river, or on the shores or banks thereof, he may, if authorized by the Minister to do so, order the owner or occupier of the mill to cause such throwing, depositing or discharging to cease, and may order, where in his opinion it is practicable to do so, that such owner or occupier take such steps within the time specified in the order as may be necessary to remove the refuse, sawdust, chemical, substance, or matter from the lake or river or from the shores or banks thereof, and any owner or occupier who fails to comply with any such order is guilty of an offence and on summary conviction is liable to a fine of \$50 for each day that he does not comply with the order. 1953, c. 53, s. 3, *part.*

DISCRETIONARY POWER OF COURT

Discretion of
court as to
granting of
injunction
in certain
cases

34.—(1) Where in an action or proceeding a person claims, and but for this section would be entitled to, an injunction against the owner or occupier of a mill for an injury or damage, direct or consequential, sustained by such person, or for any interference directly or indirectly with any rights of such person as riparian proprietor or otherwise, by reason or in consequence of the throwing, depositing or discharging, or permitting the throwing, depositing or discharging of any refuse, sawdust, chemical, substance or matter from the mill or from it and other mills into a lake or river, or by reason or in consequence of any odour arising from any such refuse, sawdust, chemical, substance or matter so thrown, deposited or discharged or so permitted to be thrown, deposited or discharged, the court or judge may,

- (a) refuse to grant an injunction if it is proved that having regard to all the circumstances and taking into consideration the importance of the operation of the mill to the locality in which it operates and the benefit and advantage, direct and consequential, which the operation of the mill confers on that locality and on the inhabitants of that locality, and weighing the same against the private injury, damage or interference complained of, it is on the whole proper and expedient not to grant the injunction; or

- (b) grant an injunction to take effect after such lapse of time or upon such terms and conditions or subject to such limitations or restrictions as are deemed proper; or
- (c) in lieu of granting an injunction, direct that the owner or occupant of the mill take such measures or perform such acts to prevent, avoid, lessen or diminish the injury, damage or interference complained of as are deemed proper.

(2) Nothing in subsection 1 affects any right of the person claiming the injunction to damages against the owner or occupier of the mill for any such injury, damage or interference. Right to damages not affected

(3) Where damage from the same cause continues, the person entitled to the damages may apply from time to time in the same action or proceeding for the assessment of subsequent damages or for any other relief to which by subsequent events he from time to time becomes entitled. Subsequent damages

(4) This section applies whether the injury, damage or interference is or is not a continuing one, and whether the person claiming the injunction in the action or proceeding is a plaintiff or is a defendant proceeding by way of counterclaim. Application of section
R.S.O. 1950, c. 195, s. 32 (2-5).

PART IV

TIMBER SLIDE COMPANIES

35. In this Part, "works" means a dam, slide, pier, boom or other work constructed or proposed to be constructed in or upon a lake or river in order to facilitate the floating of timber down the lake or river and any improvements made or proposed to be made to the floatability of a lake or river by the blasting of rocks or dredging or the removal of shoals or other impediments or otherwise. R.S.O. 1950, c. 195, s. 33. Interpretation

36. A company may be incorporated under *The Corporations Act* for the purpose of acquiring or constructing and maintaining and operating works upon a lake or river in Ontario, and every such company thereupon becomes subject to this Part. R.S.O. 1950, c. 195, s. 34. Powers to be granted to companies R.S.O. 1960, c. 71

37. The application for the letters patent shall give, Application for letters patent

- (a) a detailed description of the works proposed to be undertaken and an estimate of their cost; and

- (b) an estimate from the best available sources of the quantity of different kinds of timber expected to come down the lake or river yearly after the works have been completed. R.S.O. 1950, c. 195, s. 35.

When letters patent may be issued

38. The letters patent incorporating a company for any of the purposes mentioned in section 36 shall not be issued until proof has been furnished to the Minister,

- (a) that the proposed capital is sufficient to carry out the objects for which the company is to be incorporated, that such capital has been subscribed or underwritten and that the applicants are likely to command public trust and confidence in the undertaking; and
- (b) that notice of the application for the letters patent has been served upon all timber licensees and other persons known to be interested in the works proposed to be constructed,

nor until approval of the proposed work has been obtained under Part I, and the Minister has certified to the Provincial Secretary that, in his opinion, it is proper that they should be issued. R.S.O. 1950, c. 195, s. 36.

Rate of dividend

39. Letters patent may state a rate of dividend, not exceeding 12 per cent per annum that the company may pay to the shareholders, if the revenues of the company otherwise justify such payment. R.S.O. 1950, c. 195, s. 37, *amended*.

Limitation of company's existence

40. The existence of the company may be limited to a term of years, not exceeding twenty-one, to be fixed by the letters patent. R.S.O. 1950, c. 195, s. 38.

Property vests in the Crown on expiration of company's existence

41. Upon the expiration of the period limited for the existence of the company, all the works constructed by it become the property of Her Majesty for the public uses of Ontario, and shall be under the control of the Department and the company, or the shareholders thereof, have no right to compensation therefor. R.S.O. 1950, c. 195, s. 39.

Company's existence to continue for the purpose of winding up

42. Notwithstanding the expiration of the period limited for the existence of the company, it shall continue to exist for the purpose of taking such proceedings as may be requisite for winding up and settling its affairs, and for getting in its assets and distributing them among its shareholders, and the company may, for those purposes, sue and be sued as if the period of its corporate existence had not expired, but after such period the words "in liquidation" shall be added to the name of the company and are a part of its name. R.S.O. 1950, c. 195, s. 40.

43. No distribution of capital shall be made under section 42 until three years after the expiration of the period limited for the existence of the company, but this does not prevent the distribution among the shareholders of the annual profits received from investments, and after such three years section 61 of *The Corporations Act* does not apply. R.S.O. 1950, c. 195, s. 41. ^{Distribution of capital and profits R.S.O. 1930, c. 71}

44. The directors of a company formed under this Part shall annually, in the month of January, make to the Minister a report, verified by the oath of the treasurer of the company, specifying, ^{Yearly report to the Minister}

- (a) the cost of the works;
- (b) the amount of all money expended;
- (c) the amount of the capital stock, and the amount paid in;
- (d) the whole amount of tolls expended on the works;
- (e) the amount received during the year from tolls and all other sources, stating each separately, and distinguishing the tolls on different kinds of timber;
- (f) the amount of dividends paid;
- (g) the amount expended for repairs;
- (h) the amount of the debts due by the company, stating the objects for which they were respectively incurred; and
- (i) a detailed description of any extension or improvement of the works or of any new works proposed to be undertaken in the following year, together with an estimate of the cost thereof. R.S.O. 1950, c. 195, s. 42.

45. The company shall keep proper books of account containing full and true statements of, ^{Books of account}

- (a) its financial transactions;
- (b) its assets;
- (c) the sums received and expended by it and the matters in respect of which the receipt or expenditure took place; and
- (d) its credits and liabilities,

and such books shall be at all times open to the inspection and examination of any shareholder. R.S.O. 1950, c. 195, s. 43.

Rights of
expropria-
tion

46.—(1) The company has the right to expropriate any land, right or easement requisite for the purpose of its undertaking, and the amount of compensation therefor shall be determined by arbitration.

Ascertaining
compen-
sation

(2) In ascertaining the amount of the compensation, due regard shall be had to the benefits that will accrue to the person claiming compensation from the construction of the intended works. R.S.O. 1950, c. 195, s. 44.

Interference
with
property
of others

47. No company formed under this Part shall construct its works over or upon or otherwise interfere with or injure any private property or the property of Her Majesty, without first having obtained the consent of the owner or occupier thereof, or of Her Majesty, except as is provided in this Part. R.S.O. 1950, c. 195, s. 45.

Compensa-
tion for
existing
works
taken over

48.—(1) If there is already established by any person, other than a company formed under this Part or under any Act of the Legislature, any works on a lake or river for the improvement of which a company is formed under this Part, such company may with the approval of the Minister take possession of the works, and the owners thereof, or, if the works have been constructed on the property of Her Majesty, the person at whose cost they have been constructed, is entitled to compensation for the value of the works, either in money or in stock of the company, at the option of the owner or the person at whose cost the works were constructed, and may become a shareholder in the company for an amount equal to the value of the works, such value to be ascertained by arbitration.

Formalities
to be
observed by
company
acquiring
existing
works

(2) Where the company purchases or takes possession of the works and does not make or construct any works other than those so acquired, the company shall furnish the Minister with a detailed description of such works and the amount of the purchase price or compensation. R.S.O. 1950, c. 195, s. 46.

Mill sites,
etc., not to
be taken
without
consent of
owner

49.—(1) Nothing in this Act authorizes a company formed under this Part to take possession of or injure any mill site upon which there are existing mills or machinery, or hydraulic works other than those intended to facilitate the passage of timber, and no such company shall commence any work that interferes with or endangers such occupied mill site without the consent in writing of the owner, or unless it is determined by arbitration that the proposed works will not injure such mill site.

Registering
consent
or award

(2) The consent or award shall be registered in the same manner as the instrument of incorporation of the company. R.S.O. 1950, c. 195, s. 47.

50.—(1) The company shall, within two years from its incorporation, complete every work undertaken by it and mentioned in the application for the letters patent, and for the completion of which the company is incorporated, in default of which the company is liable to forfeit the right to all the corporate and other powers and authority that it has acquired, and the Attorney General may cause proceedings to be taken in the name of Her Majesty to set aside the charter by serving notice upon the company, and the Lieutenant Governor in Council may, after an opportunity to be heard has been given to the company, declare that its corporate powers cease and determine at a date to be named in the order in council.

Time for
completion
of works

(2) From and after that date, all the corporate powers of the company cease and determine unless, prior to the taking of proceedings by the Attorney General, further time is granted by the Minister or the completion of the works appears to be unnecessary and is dispensed with by him.

Cessor of
corporate
powers

(3) If in the opinion of the Minister the company has abandoned for one year any works completed by it so that the works are not in sufficient repair and cannot be used for the purpose for which they were undertaken, the Minister may by his order in writing declare that the corporate powers of the company cease and determine to the extent set out in the order. R.S.O. 1950, c. 195, s. 48.

Default in
completing
works

51. Any two companies formed for the construction of works on contiguous waters may unite and form one consolidated company on such terms as to them seem meet, and the name of the company to be then assumed shall thenceforth be its corporate name, and letters patent may, subject to the approval of the Minister, be issued to it, and, when issued, the consolidated company may exercise and enjoy all the rights and is subject to all the liabilities of other companies formed under this Part, and which the separate companies had and enjoyed or were subject or liable to before their union. R.S.O. 1950, c. 195, s. 49.

When
companies
may be
united

52. Where the Lieutenant Governor in Council deems it expedient for the public service, he may declare any company formed under this Part dissolved, and may declare all its works to be public works upon payment to it of the then actual value of the works to be determined in accordance with *The Public Works Act*. R.S.O. 1950, c. 195, s. 50.

Where the
Lieutenant
Governor
in council
may declare
a company
dissolved
R.S.O. 1960,
c. 338

53. Where a company incorporated under chapter 153 of the Revised Statutes of Ontario, 1877, or under chapter 68 of the Consolidated Statutes of Canada, 1859, applies for the issue of letters patent under *The Corporations Act*, letters patent may, subject to the approval of the Minister, be issued

Letters
patent may
limit term
of existence
of certain
companies
R.S.O. 1960
c. 71

conferring upon the company any of the powers authorized by this Part, and by such letters patent the term of existence of the company may be limited and the company shall be subject to this Part. R.S.O. 1950, c. 195, s. 51.

Extension
of existence
of company

54.—(1) The term of existence of a company incorporated for a limited period may be extended for such a number of years as the Lieutenant Governor in Council, before the expiry of such period, directs.

Extension of
charter after
expiry of
term of
company's
existence

(2) Where the term of existence of a company incorporated for a limited period has expired but the company has continued to carry on business and it appears to the Lieutenant Governor in Council that the company has acted in good faith, the Lieutenant Governor in Council, notwithstanding the expiry of such period, may, by supplementary letters patent, extend the term of existence of the company as from the date of the expiry, and thereupon the company shall be deemed to have continued in existence from such date and the works constructed by the company shall not be deemed to have become the property of Her Majesty, but to have remained vested in the company for the period named in such supplementary letters patent.

Issue of
supplement-
ary letters
patent for
extensions
or improve-
ments

(3) Where any extension or improvement of the works or any new works proposed to be undertaken are approved by the Minister, supplementary letters patent may be issued authorizing the construction of the extension or improvement or the new works, as the case may be. R.S.O. 1950, c. 195, s. 52.

PART V

TOLLS

Interpre-
tation

55. In this Part,

- (a) "operator" means the owner or occupier of the works;
- (b) "works" means works as defined in Part IV that have been constructed. R.S.O. 1950, c. 195, s. 53.

Right
to tolls

56. The operator may demand and receive the lawful tolls upon all timber passing through or over his works, and shall have free access to such timber for the purpose of measuring or counting it. R.S.O. 1950, c. 195, s. 54.

Publication
of schedule
of tolls

57.—(1) In each year, before the 1st day of March, the operator shall publish once a week for four successive weeks in a newspaper published in the county or district in which the works are situate, a schedule of the tolls proposed to be

charged, together with a notice stating that on a day and hour named he will apply to a judge of such county or district for the approval of such tolls.

(2) Before publishing the schedule of tolls, the operator shall apply to a judge of such county or district to fix the time for the hearing of the application so that it may be inserted in the notice, and the judge shall at the time so fixed hear the application and approve of the schedule of tolls after making such changes therein as he thinks proper.

Time for
hearing
application

(3) In fixing the tolls, the judge shall have regard to and take into consideration the original cost of the works and improvements, the amount required to maintain them and to cover interest upon the original cost, as well as such other matters as under all the circumstances are deemed just and equitable.

Basis on
which tolls
to be fixed

(4) The judge may on the hearing require the production of all books of account of the operator for the purpose of ascertaining the state of the affairs of the operator, and may, if he thinks it necessary, appoint some person to inspect such books and make a report to him on the affairs of the operator for the purpose of determining the tolls that should be charged.

Production
of books of
account

(5) The schedule of tolls as approved by the judge are final and binding and there is no appeal from his decision.

No appeal

(6) If the schedule of tolls is amended, then the tolls as so amended shall be published once a week for two successive weeks in a newspaper published in the county or district in which the works are situate.

Publication
of tolls as
approved

(7) The operator shall forthwith after the schedule of tolls has been approved by the judge send a copy of it certified by the judge to the Minister so that it may be filed in the Department, and, on failure to do so, he is guilty of an offence and on summary conviction is liable to a fine of not more than \$20.

Copy of
tolls to be
sent to
Department

58.—(1) The operator may demand from the owner of any timber intended to be passed over or through any part of the works, or from the person in charge of the timber, a written statement of the quantity of every kind of timber and of its destination, and of the parts of the works over or through which it is intended to pass, and if no written statement is given when required, or if a false statement is given, the whole of the timber, or such part of it as has been omitted by a false statement, is liable to double toll.

Demanding
of owner
statement
of quantity
of timber
liable to toll

When false estimate is given as to quantity liable to toll, extra tolls may be collected

(2) If any owner or person in charge of such timber knowingly or wilfully returns a larger quantity than it is his intention to pass over or through the works, the operator is entitled, in addition to any other remedy he may have, to collect tolls on the difference between the quantity so falsely estimated and the quantity actually passing over or through the works. R.S.O. 1950, c. 195, s. 56.

May sue for tolls

59. If the tolls are not paid on demand, they may be recovered by action. R.S.O. 1950, c. 195, s. 57.

Tolls to be apportioned to the extent of the works used

60. If timber has come through or over part only of the works, the owner of the timber is liable to pay tolls only for such parts of the whole works as he has made use of if, in the schedule of tolls, the works are divided into parts, and if not, to pay such a portion of the whole tolls as the distance the timber has come through or over the works bears to the whole distance for which the works extend. R.S.O. 1950, c. 195, s. 58.

Lien of operator for tolls

61.—(1) The operator has a lien upon the timber passing through or over the works for the amount of the tolls, ranking next after the lien of the Crown for dues in respect of the timber.

Seizure of timber for tolls

(2) If the tolls are not paid, any justice of the peace having jurisdiction within or adjoining the locality in which the works are situate, upon the oath of the operator or of his agent being made that the just tolls have not been paid, shall issue a warrant for the seizure of the timber or so much of it as he deems sufficient to satisfy the tolls.

Warrant to seize and proceedings thereon

(3) The warrant may be directed to any constable or to any person sworn as a special constable for that purpose at the discretion of the justice, and it shall authorize the person to whom it is directed, if the tolls are not paid within fourteen days from the date of the warrant, to sell the timber subject to any lien of the Crown for dues, and out of the proceeds to pay the tolls, together with the costs of the warrant and sale, rendering the surplus on demand to the owner.

When warrant not to be issued

(4) A warrant shall not be issued after the expiration of one month from the time of the passage of the timber through or over any of the works. R.S.O. 1950, c. 195, s. 59.

Rules by operator

62.—(1) The operator may make rules for regulating the safe and orderly floating of timber over or through the works, but no such rules have any force or effect until approved by the Minister who may alter or amend them before giving his approval, and the Minister may revoke and cancel any rules

so made and approved, and from time to time approve of new rules which the operator may make.

(2) Every person who resists or impedes the operator or any of his servants in the floating of timber through or over any such works, or in carrying out any such rules or resists him or his servants who may require access to any timber to ascertain the just tolls thereon, or in any way molests him or his servants in the exercise of any rights conferred upon them by this Part, is guilty of an offence and on summary conviction is liable to a fine of not less than \$1 and not more than \$10.

(3) In any prosecution under this section, the summons may be served either personally or by leaving a copy of it at the usual place of abode of the person named in it or with any adult person belonging to the raft to which the person named is attached.

(4) The fines when collected shall be paid to the operator for his own use. R.S.O. 1950, c. 195, s. 60.

PART VI

DRIVING OF TIMBER

63. Any person putting or causing to be put timber into any water for the purpose of floating it in, upon or down the water shall make adequate provision and put on a sufficient force of men to break, and shall make all reasonable endeavours to break, jams of the timber and clear the timber from the banks and shores of the water with reasonable dispatch, and shall run and drive the timber so as not unnecessarily to delay or hinder the removal, floating, running or driving of other timber or unnecessarily to obstruct the floating or navigation of the water. R.S.O. 1950, c. 195, s. 61.

64. If any person neglects to comply with section 63, it is lawful for any other person desiring to float, run or drive timber in, upon or down such water, and whose timber would be obstructed by such jams, to cause them to be broken and the timber to be cleared from the banks and shores of the water, and to be floated, run and driven in, upon or down the water. R.S.O. 1950, c. 195, s. 62.

65.—(1) The person who causes the jams to be broken or timber to be cleared, floated, run or driven, pursuant to section 64, shall do it with reasonable economy and dispatch, and shall take reasonable care not to leave timber on the banks or shores, and he has a lien upon the timber in the jams or

upon the timber so cleared, floated, run or driven for the reasonable charges and expenses of breaking the jams and the clearing, floating, running, driving, booming and keeping possession of the timber, and may take and keep possession of it or so much thereof as is reasonably necessary to satisfy the amount of such charges and expenses pending the determination thereof by arbitration.

Idem

(2) The person taking possession of timber under this section shall use all reasonable care not to take it beyond the place of its original destination, if known, but may securely boom and keep possession of it at or above such place.

Notifying owner

(3) The owner or person controlling such timber, if known, shall be forthwith notified of its whereabouts, and, if satisfactory security is given for the amount of such charges and expenses, possession of the timber shall be given up. R.S.O. 1950, c. 195, s. 63.

Provision when timber of several owners cannot conveniently be separated

66. When timber of any person upon or in any water or the banks or shores of the water are so intermixed with timber of another person that it cannot be conveniently separated for the purpose of being floated in, upon or down the water, the several persons owning or controlling the intermixed timber shall respectively make adequate provision and put on a fair proportion of the men required to break jams of the intermixed timber, and to clear it from the banks and shores of the water with reasonable dispatch, and to float, run and drive it in, upon or down the water, and the costs and expenses thereof shall be borne by the parties in such proportions as they agree upon, and, in default of agreement, as are determined by arbitration. R.S.O. 1950, c. 195, s. 64.

Provision when owner of any portion of timber is in default

67. If any person neglects to comply with section 66, it is lawful for any other person whose timber is intermixed to put on a sufficient number of men to supply the deficiency and break jams of the intermixed timber and to clear it from the banks and shores of the water, and to float, run and drive all the intermixed timber in, upon or down the water. R.S.O. 1950, c. 195, s. 65.

Duty and lien of person supplying deficiency

68.—(1) The person supplying such deficiency and causing such jams to be broken, or such intermixed timber to be cleared, floated, run or driven, pursuant to section 67, shall do it with reasonable economy and dispatch, and shall take reasonable care not to leave timber on the banks or shores, and he has a lien upon the timber owned or controlled by the person guilty of such neglect for a fair proportion of the charges and expenses of breaking the jams, and the clearing, floating, running, driving, booming, and keeping possession of such

intermixed timber, and may take and keep possession of such timber or so much thereof as is reasonably necessary to satisfy the amount of such fair proportion of such charges and expenses pending the determination of the amount by arbitration.

(2) The person taking possession of timber under this section shall use all reasonable care not to take it beyond the place of its original destination, if known, but may securely boom and keep possession of it at or above such place. Duty of holder

(3) The owner or person controlling such timber, if known, shall be forthwith notified of its whereabouts, and, if satisfactory security is given for the amount of such proportion of charges and expenses, possession of the timber shall be given up. Notifying owner R.S.O. 1950, c. 195, s. 66.

69. Where timber of any person upon or in any water or the banks or shores of the water is intermixed with timber of another person, any of the persons whose timber is intermixed may at any time during the drive require his timber to be separated from the other timber at some suitable and convenient place, and after such separation he shall secure his timber at his own cost and expense in such manner as to allow free passage for the other timber, but when any timber reaches its place of original destination, if known, so intermixed, it shall be there separated from the other timber, and after such separation each owner shall secure his timber at his own cost and expense. Right of owner to separation of timber R.S.O. 1950, c. 195, s. 67.

70. The several persons owning or controlling the intermixed timber shall respectively make adequate provision and put on a fair proportion of the men required to make the separation, and the cost and expense of such separation shall be borne by the parties in such proportions as they agree upon, and, in default of agreement, as are determined by arbitration. Expenses of separation to be shared R.S.O. 1950, c. 195, s. 68.

71.—(1) If any person neglects to comply with section 70, it is lawful for any other person whose timber is intermixed to put on a sufficient number of men to supply the deficiency, and the timber owned or controlled by the person guilty of such neglect is subject to a lien in favour of the person supplying the deficiency for a fair proportion of the charges and expenses of making the separation, and for the reasonable charges and expenses of booming and keeping possession, and such person may take and keep possession of such timber or so much thereof as is reasonably necessary to satisfy the amount of such fair proportion of charges and expenses pending determination of the amount by arbitration. When owner does not provide for his share of work

Duty of holder

(2) The person taking possession of timber under this section shall use all reasonable care not to take it beyond the place of its original destination, if known, but may securely boom and keep possession of it at or above such place.

Notifying owner

(3) The owner or person controlling such timber, if known, shall be forthwith notified of its whereabouts, and, if satisfactory security is given for the amount of such proportion of charges and expenses, possession of the timber shall be given up. R.S.O. 1950, c. 195, s. 69.

Form of security

72. The security referred to in sections 65, 68 and 71 may be by bond (Form 1) or by deposit of money, or in such other way as the parties agree upon. R.S.O. 1950, c. 195, s. 70.

Damages when timber wrongfully detained

73. If it is determined by arbitration that any person acting under the assumed authority of this Part has without just cause taken possession of or detained or caused to be taken possession of or detained timber of another person, or has after offer of security that the arbitrator thinks should have been accepted, detained such timber, or has through want of reasonable care left timber of another person on the banks or shores of a lake or river, or has taken timber of another person beyond the place of its original destination contrary to sections 65, 68 and 71, such first-mentioned person shall pay to such last-mentioned person such damages as the arbitrator determines. R.S.O. 1950, c. 195, s. 71.

Lien under ss. 65, 68 and 71, subject to lien for tolls

74. The lien given by sections 65, 68 and 71 is subject to the lien, if any, of any person for tolls for the use of any works or improvements made use of in running or driving timber. R.S.O. 1950, c. 195, s. 72.

Rights of Crown not affected

75. Nothing in this Part affects the lien or rights of the Crown upon or in respect of any timber. R.S.O. 1950, c. 195, s. 73.

Arbitration

76. All claims, disputes and differences arising from any act or omission under this Part or by reason of failure to perform any duty or obligation imposed by this Part shall be determined by arbitration and not by action. R.S.O. 1950, c. 195, s. 74.

Notice of claim

77. The person claiming that another person has not complied with this Part, or claiming payment of any charges or expenses under this Part, or claiming a lien upon any timber, or claiming damages under section 73, shall give to such other person notice in writing stating the substance and amount of the claims made. R.S.O. 1950, c. 195, s. 75.

78. The person on whom a claim is made, at any time before the arbitration is entered upon or with leave of the arbitrator during the arbitration, may give the claimant notice in writing by way of counterclaim, stating the substance of any claim arising under this Part that such person may have against the claimant, and such counterclaim, unless barred under section 81, shall be determined in the arbitration. R.S.O. 1950, c. 195, s. 76. Counter-claim

79.—(1) The person having a lien upon timber by virtue of this Part may with the approval of the arbitrator sell the timber or a sufficient part thereof in order to realize the amount of the lien, and of the costs, charges and expenses connected with the sale. Sale by person having lien

(2) The arbitrator shall determine either by the award or by a separate document the time, place and manner of the sale, and may from time to time give directions in writing respecting the sale and the realization of the lien and of the costs, charges and expenses connected therewith. R.S.O. 1950, c. 195, s. 77. Direction by arbitrator

80. The award and directions in writing of the arbitrator are final and binding and are not subject to appeal. R.S.O. 1950, c. 195, s. 78. Finality of award

81.—(1) All claims arising under this Part shall be made within one year after they have arisen, otherwise they shall be barred, but in the event of such claims arising between the same parties in two successive seasons, they shall be so made within one year after the last of such claims has arisen. Limitation of time for making claims

(2) Where a claim is submitted to arbitration and a counterclaim is set up, the counterclaim shall be deemed to have been brought at the date of the service of the claim. R.S.O. 1950, c. 195, s. 79. Counter-claim

82. The Lieutenant Governor in Council may from time to time declare that any part of Ontario or any water therein is, until further declaration, exempt from the operation of this Part, and thereupon the same is exempt accordingly. R.S.O. 1950, c. 195, s. 80. Exemption of territory from operation of Part

83. Any part of Ontario or any water exempted by declaration from the operation of this Part may, by declaration, be again brought within its operation until further declaration, and so on from time to time. R.S.O. 1950, c. 195, s. 81. Bringing exempted territory again under Part

PART VII

WATER PRIVILEGES

Application **84.** This Part is subject to Parts I and II. R.S.O. 1950, c. 195, s. 82.

Interpre-
tation **85.** In this Part, "occupied water privilege" means a mill privilege, or water power, that has been or is in use for mechanical, manufacturing, milling or hydraulic purposes, or for the use of which for any of such purposes the necessary works are *bona fide* in course of construction. R.S.O. 1950, c. 195, s. 83.

Protection
of occupied
water
privilege **86.** Subject to section 91, an occupied water privilege shall not be in any manner interfered with or encroached upon under the authority of this Part without the consent of the owner. R.S.O. 1950, c. 195, s. 84.

Right of
owner of
water
privilege to
enter on and
survey lands **87.**—(1) A person desiring to use or improve a water privilege, of which or a part of which he is the owner or legal occupant, for any mechanical, manufacturing, milling or hydraulic purposes by erecting a dam and creating a pond of water, increasing the head of water in any existing pond or extending its area, diverting the waters of any stream, pond or lake into any other channel, constructing any raceway or other erection or work that he requires in connection with the improvement and use of the privilege, or by altering, renewing, extending, improving, repairing or maintaining any such dam, raceway, erection or work, or any part thereof, may enter upon any land that he deems necessary to be examined and to make an examination and survey thereof, doing no unnecessary damage and making compensation for any actual damage done.

Acquisition
of lands
for water
privilege (2) If, upon an application to a judge of the county or district court, as hereinafter provided, such person obtains authority, he may take, acquire, hold and use such parts of the land so examined or such rights over or in respect thereof as the judge deems necessary for the completion, improvement or maintenance of the water privilege and works in connection therewith.

Trans-
mission line (3) The building of a transmission line for the transmission of electrical power or energy generated by an occupied water privilege shall be deemed to be a use or improvement of a water privilege within the meaning of this section. R.S.O. 1950, c. 195, s. 85.

88.—(1) A person desiring to exercise the powers mentioned in section 87, or any of them, shall cause, Proceedings

- (a) surveys and levels to be made and taken of the land sought to be taken, used or otherwise affected, and a map or plan thereof to be prepared;
- (b) a statement to be prepared giving,
 - (i) a general description of the land to be taken and of the powers intended to be exercised with regard to any land, describing it,
 - (ii) the names of the owners and occupiers of the land, so far as they can be ascertained, and
 - (iii) everything necessary for the right understanding of the map or plan, including a registrar's certified abstract of the titles to all the land to be affected by the application;
- (c) the map or plan and the statement to be filed in the office of the clerk of the county or district court of the county or district in which the land or part thereof is situate.

(2) He may then apply to the judge of such county or district court for an order empowering him to exercise the powers or such of them as he desires. R.S.O. 1950, c. 195, s. 86. Application of judge

89. In addition to any other notice that the judge directs to be given, public notice of the application, stating the time and place when and where it is to be heard, shall be inserted for such period as the judge directs in a newspaper published in the county or district or one of the counties or districts in which the proposed works are to be constructed or any of the land affected is situate. R.S.O. 1950, c. 195, s. 87. Public notice of application

90. If the judge is of the opinion that the allowance of the application in whole or in part is in the public interest and is proper and just under all the circumstances of the case, he may make an order empowering the applicant to exercise such of the powers as the judge deems expedient, for such time and on such terms and conditions as he determines, and the land affected shall be described in the order. R.S.O. 1950, c. 195, s. 88. Order, when deemed proper and just

91. Where evidence is produced that satisfies the judge that the owner of a water privilege which has been but is not then in use for any of the purposes mentioned in subsection 1 of section 87 is holding it with the intention of again using it for mechanical, manufacturing, milling or hydraulic purposes, the judge may make an order fixing the time within which the Order as to privilege not in actual use

necessary works for the actual use of such water privilege shall be constructed and actually used, and, unless such evidence is produced or the terms of such order are complied with, the water privilege shall not be deemed to be an occupied water privilege within the meaning of this Part. R.S.O. 1950, c. 195, s. 89.

Case of two
or more
claimants

92. Where two or more persons claim to exercise the powers conferred by this Part in respect of the same water privilege, or any part thereof, the judge may impose such terms as he deems just, and may also limit a time within which the person whose application he allows shall construct the necessary works and actually use such water privilege. R.S.O. 1950, c. 195, s. 90.

Limit of
size of
ponds

93. No pond shall be authorized to be made or enlarged so as to exceed twenty acres in extent, unless the judge for special reasons otherwise directs. R.S.O. 1950, c. 195, s. 91.

What to be
stated in
order

94.—(1) The judge shall in the order state the height to which the water may be raised and fix the extent of the pond.

Compensation for
injury

(2) The judge shall also assess the sum to be paid as the value of the land to be taken or used or of the powers to be exercised, and the damages, if any, to be paid as compensation by the applicant for any injury that may be occasioned by the proposed works, and may make such order as to costs as he deems just.

Costs

(3) The costs shall be the same as in ordinary proceedings in the county court and shall be taxed by the clerk. R.S.O. 1950, c. 195, s. 92.

Payment of
amount
awarded

95.—(1) The sums so assessed and the costs shall be paid to the persons entitled thereto or into the Supreme Court as the judge directs before the powers or any of them are exercised and within sixty days after the order is made.

Enforcing or
setting aside
order
R.S.O. 1960,
c. 196

(2) If the same are not so paid, the order may be enforced under *The Judges' Orders Enforcement Act*, or, at the option of any of the persons entitled to receive a sum so assessed, may, on application to the judge, be set aside and vacated as to him, and in such case the judge may make such order as to the costs of the proceedings and of the application as he deems just. R.S.O. 1950, c. 195, s. 93.

Conveyance
of land

96. Upon the payment of the sums assessed and costs, the applicant is entitled to a conveyance, to be settled by the judge in case of a dispute, of the land or rights mentioned in the order in respect of which payment is so made, and is further

entitled to have and exercise such of the powers mentioned in section 87 as he is authorized by the order to exercise. R.S.O. 1950, c. 195, s. 94.

97. For the purpose of registration, the order shall be deemed a judgment of the court to which the judge belongs. ^{Registration of judge's order} R.S.O. 1950, c. 195, s. 95.

98. The judge has all the powers possessed by him or by a county or district court in an action. ^{Judge's powers} R.S.O. 1950, c. 195, s. 96.

99. The judge is entitled for his services to the like fees as are allowed to arbitrators. ^{Judge's fees} R.S.O. 1950, c. 195, s. 97.

100.—(1) By leave of a judge of the Supreme Court, an appeal lies to the Court of Appeal from the order of the judge ^{Appeal from county judge} on any application under this Part.

(2) On such appeal the decision of the judge upon questions of fact and all other questions are open to review. ^{Review of decision}

(3) The application for leave to appeal shall be made within ten days from the day on which the order appealed from was made, or within such further time as a judge of the Supreme Court allows. ^{Application for leave to appeal}

(4) The judge to whom the application is made shall determine the time within which the appeal shall be set down to be heard, the persons upon whom notice of the appeal shall be served, and all such other matters as he deems necessary for the most speedy and least expensive determination of the appeal. ^{Terms}

(5) If the appeal is not set down to be heard within the time limited, or if any other condition imposed is not complied with, the appeal shall, unless otherwise ordered by a judge of the Supreme Court, be deemed to have been abandoned. ^{Effect of non-compliance with conditions of appeal}

(6) The practice and procedure upon the appeal, except so far as is in this section, or by the judge to whom the application for leave is made, otherwise provided, shall be the same as upon an appeal from a county court. ^{Practice on appeal} R.S.O. 1950, c. 195, s. 98.

FORM 1

(Section 72)

Know all men by these presents that we (*here insert names of obligors, being the owner of the timber and at least one sufficient surety or, if the signature of the owner cannot be obtained without unreasonable delay, then being two sureties*)..... are held and firmly bound unto *A. B.* (*here insert the name of the person claiming the lien*) in the penal sum of (*double the amount of the claim*) \$..... to be paid to the said *A. B.* his executors, administrators and assigns for which payment well and truly to be made we and each of us, bind ourselves, and each of us our and each of our executors and administrators jointly and severally, firmly by these presents, sealed with our seals, and signed by us this....., 19.....

Whereas the said *A. B.* claiming to act under Part VI of *The Lakes and Rivers Improvement Act* has taken possession of certain (timber) owned or controlled by..... and claims a lien thereon for the sum of \$....., under section 65, 68 or 71 (*as the case may be*) of the said Act.

And whereas this bond is given as security for payment to the said *A. B.*, of such sum as he may be held entitled to by arbitration pursuant to the said Act, and of any costs and expenses of the arbitration that may become payable to him.

Now the condition of the above obligation is such that if the said....., his executors or administrators to pay to the said *A. B.*, his executors, administrators or assigns, such sum as is determined by arbitration pursuant to the said Act to be payable to the said *A. B.*, his executors, administrators or assigns for charges and expenses, and also such sum as become payable to the said *A. B.*, his executors, administrators or assigns, for costs and expenses of such arbitration, then the above obligation to be void, otherwise to remain in full force.

C. D. (SEAL)

F. G. (SEAL)

Signed, sealed and delivered }
in the presence of X.Y. }

R.S.O. 1950, c. 195, Form 1.