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The booming business of expropriation; Infrastructure spending binge is good for lawyers who specialize in advising governments or landowners in land-grab cases

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Seven generations of his family have farmed the same land near Walkerton, Ont., and John Wilkin has no intention of leaving the place where he and his son raise beef cattle, about 200 kilometres northwest of Toronto.

But Mr. Wilkin's farm, and his son's across the road, are in the path of one of the largest infrastructure projects in the country. Ontario's Hydro One power utility is building a 180-kilometre, 500,000-volt power line to connect the Bruce Nuclear Generating Station on the shores of Lake Huron to a switching station in Milton, Ont.

The line, meant to be a backup for a parallel existing line built 30 years ago, has forced Hydro One to seek to acquire or expropriate scores of farms or other lands along the route. Mr. Wilkin says an initial offer to buy his property was so low it was an "insult." So he has decided to stay, meaning the utility will take a strip of his land, and the hydro corridor will cut across the front of his farm.

"I am not interested - and you can cut that in stone - I am not interested in selling a square foot ... that I don't have to," says Mr. Wilkin, 56, who is haggling with Hydro One over offers to move a farmhouse and a barn away from the power line. "And I think that's understandable. We've been here a long time and we want to stay here."

His expropriation fight is a common tale, as the recent federal economic stimulus program accelerated infrastructure spending already under way by local and provincial governments.

Lawyers who specialize in expropriation cases say they have never been busier, as almost every infrastructure project involves acquiring land from homeowners or businesses.

In Toronto, homeowners have protested against plans to expropriate houses for the Toronto Transit Commission's plan to upgrade some subway stations. Others are concerned about possible expropriations to make way for a rail link from the downtown to Pearson International Airport, being built by the provincial transportation agency Metrolinx.

Sean Foran, a lawyer at WeirFoulds LLP in Toronto, said the increase over the past three years in road construction, transit projects and redevelopment of rundown neighbourhoods has been a boon to lawyers

who specialize in advising governments or landowners in expropriation cases. He says he used to spend about a quarter of his time on expropriations, but now they take up closer to half of his practice.

"Those of us who practice in this area have seen an increase in public projects in the last few years that sometimes result in expropriations," said **Mr. Foran**, whose firm acts for Hydro One.

Shane Rayman, a lawyer with Rueter Scargall Bennett LLP in Toronto who does nothing but expropriation cases, agrees that, especially in the greater Toronto area, business has never been more brisk: "It's been a very, very busy time. Remarkably busy."

He said about half of his cases usually end in a settlement before a formal expropriation takes place. Of the roughly 40 landowners that he represents in the path of the eastward expansion of Highway 407 north of Toronto, about 20 have settled. He also represents farmers and other landowners along the Hydro One power line.

"When I work for [landowners], my job isn't just to get them the sun and the moon and the stars, it's to make sure they're treated fairly," said Mr. Rayman, president of the Ontario Expropriation Association.

He acknowledges that a slowdown in spending, as governments bring in austerity measures, could mean less business. But expropriation cases can drag on for years, he noted, meaning lots of work for lawyers even after the financing for new projects dwindles.

Landowners who challenge an expropriation have almost no hope of blocking it, but in most provinces they can have their demands for better compensation adjudicated by a quasi-judicial body.

In Ontario, these cases are handled by the Ontario Municipal Board (OMB). If a landowner's business suffers, or the value of their remaining land is expected to sink drastically, he or she can also demand extra compensation.

Most government agencies seeking to expropriate lands want to avoid the costs of the formal expropriation process by offering landowners good prices up front, lawyers say. In most cases in Ontario, the agency must pay most of the landowner's legal bills in a challenge before the OMB, provided the awarded price comes to at least 85 per cent of the original offer for the land.

James Goulden, a partner with Bull, Housser & Tupper LLP in Vancouver who handles expropriations, said work has steadily increases as British Columbia has built new bridges, highways and transit lines over the last several years.

But in B.C., challenges to expropriations are heard in the courts, not by a tribunal, after the province abolished its Expropriation Compensation Board in 2004. Now, landowners fighting an expropriation are much less likely to see all of their legal costs covered, Mr. Goulden said: "You're going to be out of pocket. So you've really got to justify going ahead with the case."

The number of expropriations across the country is not tracked officially. According to the OMB's 2008-2009 annual report, the tribunal handled 29 land- compensation files in Ontario that year, down from 47 in 2006-2007. But most cases never make it to the tribunal.

Near Mr. Wilkin's farm, the new hydro towers are already installed on nearby properties, awaiting the high-voltage power lines.

Hydro One spokeswoman Laura Cooke said she could not discuss individual cases. But she said the utility had engaged in three years of public consultations on the project. And she said Hydro One has committed to giving landowners facing expropriation not just fair market value for their land as required, but also extra financial incentives in order to resolve matters as quickly as possible.

"We recognize that there is an impact on people's lives," Ms. Cooke said.

Mr. Wilkin has retained Durham, Ont., lawyer Peter Fallis, who also represented land owners 30 years ago when the other major nearby hydro line went through, to try to make sure he gets the best deal possible.

"If it crossed the back 40 or something like that, you know, and so they cut a few trees down or whatever, big deal. You get sent some money," Mr. Wilkins said. "... But in our case, where it goes down through, it takes out a house and a barn. The fronts of our farms here are going to be a hydro corridor, and that's all there is to it."

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