

Amendments to the *Expropriations Act* Proposed Under Bill 245

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The Ontario government has proposed a number of changes to the *Expropriations Act* under Bill 245, the "Accelerating Access to Justice Act, 2021".

Bill 245 would enact the *Ontario Land Tribunal Act, 2021* (the "**OLTA**"). Together, Bill 245 and the *OLTA* itself would provide for a number of amendments to the *Expropriations Act*. The three most important changes are:

- (i) Hearings of Necessity may be curtailed;
- (ii) the Board of Negotiation will be eliminated; and,
- (iii) the interest rate of 6% on unpaid compensation will be changed to an annual, prescribed rate.

Hearings of Necessity

Under the *Expropriations Act*, landowners have the right to request a Hearing of Necessity before their land is expropriated. A Hearing of Necessity is an oral hearing, usually with witnesses, presided over by a provincially appointed Inquiry Officer who considers and reports on whether a proposed expropriation is fair, sound, and reasonably necessary. The Inquiry Officer's report is not binding on the authority that approves the application to expropriate (usually a municipal council or provincial ministry). The approval authority need only consider the report of the inquiry officer and is then at liberty to approve or not approve the application to expropriate or approve the proposed expropriation with such modifications as the approving authority considers proper.

Bill 245 proposes the addition of section 8.1 to the *Expropriations Act*, which would provide for an alternative process to replace the Hearing of Necessity through the enactment of regulations. Under the proposed amendment, the Hearing of Necessity procedure will not apply if the government makes regulations establishing and governing a process for owners to provide comments respecting a proposed expropriation to the approval authority, and for the approval authority to consider those comments and make a determination respecting the proposed expropriation to which the *Expropriations Act* applies.

The *Expropriations Act* currently provides for the appointment of an inquiry officer to preside over Hearings of Necessity. The proposed amendments to the *Expropriations Act* would see Hearings of Necessity presided over by a member of the Ontario Land Tribunal. Otherwise, the provisions of the *Expropriations Act* related to Hearings of Necessity (where still available) would be largely unchanged.

Currently, the right to a Hearing of Necessity is not universal. Already, the Province has the power to dispense with a Hearing of Necessity where "it considers it necessary or expedient in the public interest to do so." Also, the current government in 2020

enacted the *Building Transit Faster Act, 2020*, which eliminated the right to request a Hearing of Necessity with respect to four priority transit projects in the GTA, namely: (i) the Ontario Line; (ii) the Scarborough subway extension; (iii) the Yonge North subway extension; and (iv) the Eglinton Crosstown West extension. ([Click here to read our March 2, 2020 article titled "Clearing the Track: Ontario's Proposals to Speed Transit Construction in the Building Transit Faster Act"](#))

Board of Negotiation

Bill 245 eliminates the Board of Negotiation (the “**BON**”) as well as the requirement of mediation prior to the initiation of arbitration proceedings to determine compensation for the expropriation of land. Currently under the *Expropriations Act*, two separate administrative bodies hear mediations and arbitrations. Under section 2 of the *OLTA*, the BON, which presides over mediations, and the Local Planning Appeal Tribunal, which presides over arbitrations, would be continued as the Ontario Land Tribunal, which would hear both mediations and arbitrations.

The *Expropriations Act* requires that an owner and expropriating authority attend before the BON as a precondition to commencing arbitration proceedings to determine compensation, which are more like typical litigation proceedings. Currently, it is the role of the BON to meet with the parties on a without prejudice basis and proceed in a summary and informal matter to negotiate a settlement of the compensation. The parties may agree to dispense with mediation before the Board, but typically they do not. In our experience, a significant percentage of proceedings settle at or shortly after a mediation at the Board of Negotiation.

In our experience, the current requirement that parties attend mandatory mediation before commencing arbitration proceedings is very helpful in focusing the parties on resolution at the early stage of a proceeding. Early mediation saves costs. Early mediation provides an opportunity for the parties to receive an informed opinion from experienced neutral parties on the appropriate compensation. In contrast to typical litigation, early resolution is particularly appropriate in expropriation proceedings where the facts are typically not in dispute, where issues of liability are typically not in play, and where the evidence and expert reports can often be compiled early on.

Although the proposed amendments would eliminate both the BON and the requirement of mediation as a pre-condition to arbitration, it is not known whether the OLT may implement a procedure similar to the Board of Negotiation requirement. The proposed amendment to the *Expropriations Act* provides the right to apply to the Tribunal for the determination of compensation by way of a hearing **or as otherwise provided for under the OLTA**. Under the *OLTA*, the Tribunal may make rules providing for mandatory mediation in a proceeding.

Statutory Interest

Amendments are also proposed with respect to the calculation of statutory interest. Currently, the *Expropriations Act* prescribes a default interest rate of 6% per annum on compensation for the market value of the expropriated lands and any injurious affection to the remaining lands. The proposed amendment would instead prescribe interest at an annual rate set by regulation prescribing rates of interest or methods for determining rates of interest. While not expressly set out in the bill, it is presumed that those rates will hew closer to the prevailing interest rate.

Under the current *Expropriations Act*, the amount of interest may either be reduced below six percent per annum if the Tribunal finds the owner has delayed or be increased up to 12 percent per annum if the Tribunal finds the expropriating authority has delayed. Under the proposed amendments, the reduced rate would be less than whatever rate was prescribed by regulation, and the maximum rate would be set by regulation.

If you have any questions regarding Bill 245 and how it may impact you, please do not hesitate to reach out to [Sean Foran](#) or [Micah Goldstein](#) to discuss further.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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