

The Disposition of Expropriation Costs Without the Tribunal Determining the Compensation

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Expropriation claims are typically resolved between an expropriated owner and an expropriating authority without the need for the Ontario Land Tribunal to decide the compensation.

The parties then typically negotiate the resolution of the costs as a second step. Again, in most cases, the parties reach a settlement without the need for the Tribunal (or a court assessment officer) to decide the costs. However, given recent rule changes, the Tribunal is increasingly deciding the costs after the parties have settled the compensation between themselves.

It is clear from recent Tribunal decisions that the disposition of costs where the compensation was settled without a hearing is a somewhat new and undeveloped area of expropriation law that appears to be causing understandable difficulties for expropriating authorities.

1) Costs Typically Analyzed In Relation to Hearings on the Merits

In the alternative situation, where the Tribunal has determined the compensation on the merits, the parties have much clearer guidance as to how the costs may be decided.

Section 32 of the *Expropriations Act* provides for the payment of costs in relation to whether the costs were reasonable and incurred for the purposes of determining the compensation payable *as awarded by the Tribunal*.^[1] Obviously, having a decision of the Tribunal aids in the determination of whether the costs incurred were reasonable and related to the determination of the compensation.

The parties have other guides as to how the costs may be decided after a hearing on the merits. Rule 49 of the Rules of Civil Procedure has been applied in expropriation proceedings and provides for the award of costs in relation to whether an offer was more or less favourable than the Tribunal's determination of the compensation.^[2] Rule 57 of the Rules of Civil Procedure provides a list of considerations that can inform an award of costs, many of which would need to be informed by the final decision after a hearing on the merits of the claim.^[3] Furthermore, in recent years, the Tribunal has released two significant decisions as to the disposition of costs after a hearing on the merits of the compensation claim, namely, *Shergar Development Inc. v. Windsor (City)*^[4] and *1353837 Ontario Incorporated v. Stratford (City)*.^[5] Parties would understandably look to the foregoing to inform legal arguments with respect to costs.

2) Easier Access to Costs Via Written Submissions

Recent rule changes have provided easier access to the Tribunal to determine costs.

As of December 2, 2024, costs can be disposed of in writing under the new Rules 26.19 to 26.26 of the Tribunal's Rules of Practice and Procedure.^[6] Parties can now have expropriation costs determined by a written motion at any time after the compensation is settled, even if litigation has not been started under the *Expropriations Act*.

Prior to its new rules, the ability to have costs determined by the Tribunal was much more difficult. Costs that could not be resolved amicably between the parties would rarely be determined by the Tribunal. Costs were more typically referred to an assessment officer of the Ontario Superior Court, which involved a slow and costly process that was difficult to access and rarely used.

In contrast, the updated rules have been a welcome change.

The Tribunal has been able to deliver decisions on costs quite rapidly, sometimes within approximately one month. Written decisions have been comprehensive and have provided helpful guidance. The new rules have provided for the expeditious and cost-effective determination of costs and increased access to justice.

That said, these recent costs decisions, which have been decided where the parties settled the compensation without a hearing on the merits, seem to be creating some understandable difficulties for expropriating authorities.

3) House of Pizza

The issue of not having a determination of the compensation to ground the disposition of the costs recently played out in *Gabriel Khater Operating as House of Pizza v. Ottawa (City)* ("**House of Pizza**").^[7]

In *House of Pizza*, the Tribunal emphasized that, when the compensation arising from an expropriation has been settled without a hearing of the merits of the compensation claim, expropriating authorities should not seek a reduction of the Claimant's costs by arguing the underlying compensation claims on their merits. This is at least the third time that the Tribunal has rejected the reduction of a claimant's costs on the basis that it would require a procedurally unfair determination of the merits of the claims for compensation. It is worth referring to those previous cases before further discussion of the *House of Pizza* decision.

a) Other Recent Tribunal Decisions Regarding Costs

In its costs decision in *Kareem George Saikaley v Ottawa (City)*,^[8] issued on January 24, 2025, the Tribunal declined to make its costs decision based on a determination of the merits of a compensation claim that had been settled:

The Tribunal must emphasize that a motion for the determination of costs payable in an expropriation case is not an opportunity for the Parties to relitigate the issues. Here the Parties have settled the compensation claim, but it is clear from the materials that neither party agrees with the positions taken by the other on this motion for costs adjudication. However, although it appears that the underlying, now resolved expropriation claim related to business loss claims, there were complex environmental issues at play as well as positions taken by the City that necessitated certain responses from the Claimant. Much time and effort was expended by counsel for both Parties to analyze the positions taken and defended in the underlying litigation, but the Tribunal does not intend to offer any detailed evaluation of those positions. Simply put, it is unnecessary to do so in order to determine the proper quantum of costs payable to the Claimant. ^[9]

As well, in its costs decision in *Camborda v. Toronto (City)*,^[10] issued on November 17, 2025, the Tribunal provided the following admonition, replete with nautical and bridge engineering metaphors to emphasize the point, against authorities seeking a reduction of

costs by arguing the merits of the compensation claim:

Some of the arguments put forward by the City amount to an attempt to litigate the merits and the value of the compensation claimed by the Claimant, even though both Parties agreed on an amount to be paid under the Settlement Agreement. In the Tribunal's view, it is not appropriate to attempt to litigate the merits of an expropriation claim after a settlement has been agreed upon. Either the Parties have agreed to settle a claim or they have not. If they have, as in this case, then the relative merits of the position of either the Claimant or the City is not only water under the bridge, it is water several kilometres downstream. The Tribunal ought not navigate down those waters. The settlement has put an end to the debate, except for the quantum of the costs to be awarded. If an expropriation authority wishes to litigate the merit of an expropriation claim, it should have done well not to settle. [\[11\]](#)

It is understandable that the merits of a compensation claim should not be litigated after the compensation has been settled without a hearing. A similar approach is taken in the Superior Court where the parties seek the determination of costs following a settlement. The Courts decline to conduct what they consider to be "phantom trials". [\[12\]](#)

That said, the proscription against "phantom trials" may also create some understandable difficulties for an expropriating authority that appear to have played out in the *House of Pizza* costs decision.

b) Background of *House of Pizza*

The claimant, Gabriel Khater operating as House of Pizza (the "Claimant"), was a commercial tenant in a strip plaza located at 747 Richmond Road in Ottawa. In November 2017, the City of Ottawa (the "City") expropriated the entire plaza. The Claimant relocated its business and commenced operations in January 2020. In 2022, the Claimant commenced arbitration proceedings under the *Expropriations Act*.[\[13\]](#)

The parties each delivered settlement offers. Of particular significance was the City's offer dated December 15, 2023, in which it proposed to settle the Claimant's compensation claim for \$50,000 plus costs (the "2023 Offer"). The Claimant ultimately accepted the 2023 Offer on July 9, 2024, which was six days before the scheduled hearing.[\[14\]](#)

c) The Costs Claims

The Claimant sought to recover legal, appraisal, disbursements and other professional costs, totalling \$401,387.18, plus interest.[\[15\]](#)

The City argued that the Claimant's costs should be reduced to \$249,658.16. In addition, the City sought an order requiring that the Claimant pay the City's costs either (a) in the amount of \$108,673.43, on a substantial-indemnity basis; or, in the alternative (b) in the amount of \$72,448.96 on a partial-indemnity basis, payable from the date of the 2023 Offer to the settlement date.[\[16\]](#)

d) The City's Costs Were Not Contractually Agreed to Be Paid

The Tribunal first dealt with the issue of whether the City had the right to claim its costs. The Tribunal found that it did not. [\[17\]](#)

The Tribunal found that the parties were bound by the terms of the 2023 Offer, which the Claimant accepted. Below is the text of the 2023 Offer, with emphasis added by the Tribunal:[\[18\]](#)

1. The City will make a payment to the Claimant in the amount of \$50,000 as full compensation for any amounts to which the Claimant was entitled upon the City's expropriation of the Property.
2. The City will pay the Claimant's reasonable legal, appraisal and other costs, pursuant to Section 32 of the *Expropriations Act* (the

“Costs”).

3. The Claimant will submit a detailed bill of costs to the City including detailed time and task descriptions within 30 days of acceptance of this offer.

4. If the parties cannot agree upon the quantum of the Costs, the accounts shall be referred to an assessment officer in accordance with Section 32 of the *Expropriations Act*.

This offer will also remain open until one (1) minute after the commencement of any arbitration hearing before the Ontario Land Tribunal for the purposes of determining compensation arising from the expropriation, unless otherwise withdrawn by the City in writing. [19]

The Tribunal found that the terms of the settlement agreement between the parties did not include any provisions which entitled the City to seek its costs. The City could have included a term providing for the payment of the City’s costs in the 2023 Offer but did not do so. The Tribunal declined to read in an implied right for the City to seek its costs. [20]

The Tribunal drew a contrast to a case decided on its merits, in which the expropriating authority would be at liberty to claim for costs, compared to a settled matter, in which the parties would have to agree that the authority had the right to claim for its own costs. [21]

e) The City’s Costs Argument

The City’s main issue with respect to the costs appears to have been that, in the City’s view, the Claimant pursued a speculative claim that was unrelated to any losses. [22]

In particular, the City contended that the Claimant purchased a new property to relocate its business to after learning of the City’s plans, which the Claimant acquired prior to the registration of the expropriation plan. As such, the Claimant had acquired a relocation property well in advance of needing to relocate. [23]

The City further contended that the Claimant then unreasonably advanced a claim for compensation contrary to the facts. The City argued that the Claimant advanced a claim for special difficulties in relocation that were never experienced. As well, the City contended that the claim was based on hypothetical loss scenarios that ignored 2.5 years of financial results showing that the business had become more profitable at its new location. The City also argued that the business had saved on rents that were never accounted for. The City contended that the Claimant’s business loss report failed to incorporate the foregoing factual matters in its analysis, and instead examined hypotheticals, even though the true information had been available for several years. [24]

The City contended that the Tribunal needed to evaluate the compensation claim on its merits to determine whether the Claimant was reasonable in initiating and advancing its claim given contemporaneous information available to the Claimant, its lawyers, and its business loss consultant. The City argued that it was not seeking to “relitigate issues” because the Claimant’s claim was entirely speculative, in contrast to a claim for the market value of a taking, which would inherently be based on real and undisputed underlying facts arising from the expropriation. [25]

The City argued that the *Shergar* decision required that the Tribunal consider the Claimant’s pursuit of what the City contended was an unreasonable claim, and that to promote the efficient resolution of claims required negative costs consequences for the Claimant. [26]

f) The Tribunal Declined to Consider the Underlying Merits

The Tribunal reiterated its approach from previous decisions that it would not engage in a substantive consideration of the merits of the Claimant's damages claim in order to decide whether it was reasonable for the Claimant to advance its claims. [27]

The Tribunal held that it would be procedurally unfair, if, following a settlement of the compensation, the Tribunal were to then decide the costs on the basis of the City's position on the underlying business loss claim. The Tribunal held that it would effectively be required to relitigate "that which was never litigated before" and to make determinations on evidence not subjected to cross-examination. In the absence of such Tribunal-made findings of fact, there was no factual basis upon which to argue that the Claimant failed to reasonably advance its claim. The facts otherwise remained disputed by the parties. [28]

The Tribunal then found that there was no evidence before it that would show that the Claimant's conduct was unreasonable in advancing its claims. [29]

On its own initiative, the Tribunal reduced some of the Claimant's costs purely on the basis of reasonableness, which included a reduction of the hours spent by the lawyers and the business loss consultant. [30]

The foregoing suggests that in the determination of costs under section 32 of the *Expropriations Act* where there has been no hearing of the compensation on the merits, the Tribunal is likely to focus on the overall reasonableness of the costs, including with respect to the appropriate time spent on the work.

That said, the Tribunal clarified that it is not entirely constrained with respect to the facts it may consider when adjudicating costs following a settlement. While it cannot rely on disputed allegations, it may consider "neutral" or "objective" facts. The Tribunal set out the following non-exhaustive framework of permissible facts it could consider:

- (a) Actual amounts shown in a settlement document;
- (b) Uncontested dates relating to communications between the parties' counsel or events in the proceeding;
- (c) Findings actually made by the Tribunal in a decision arising from motion practice or other pre-hearing matters;
- (d) Facts shown to have been admitted on discovery as evident from discovery transcripts tendered in Motion materials;
- (e) Facts confirmed by counsel during written correspondence that are uncontested or are otherwise not open to varying interpretations; and
- (f) Facts stemming from a bill of costs or other report, or evidence delivered in the materials filed for a Rule 26 motion for costs adjudication. [31]

4) Takeaways

From a practical perspective, we see two key takeaways from *House of Pizza*:

- (1) Absent express wording agreed to between the parties, where the compensation has been settled without a hearing, the Tribunal will not presume that an expropriating authority has the right to claim some or all of its costs.
- (2) Where an expropriation claim has settled, the Tribunal will not make determinations on the merits of an underlying claim for compensation in order to decide the costs. The Tribunal may rely on uncontroversial facts.

There are clear benefits to the Tribunal determining costs in writing where the claims for compensation have settled. The Tribunal can continue to provide expeditious and fulsome written decisions, which promotes access to justice. Requiring the Tribunal to determine the underlying merits of a compensation claim in order to address the costs would be procedurally unfair, contrary to the compensation settlement between the parties, and likely defeat the purpose of the Tribunal deciding costs in writing.

However, *House of Pizza* may be challenging for expropriating authorities going forward.

As a first issue, the authority may be faced with a situation in which, by settling the compensation, it is entirely precluded from claiming its own costs, unless it specifically has made a settlement offer preserving that right. However, if an authority hinges a settlement on the right to claim its own costs, it will likely discourage the settlement of the claim for compensation.

As a second issue, if the parties settle a claim on its merits, an authority may be faced with the almost certain prospect of paying costs despite the authority's view that the costs were incurred contrary to the principles of indemnity and efficiency. An authority will be faced with the near certainty of paying costs despite the authority's view that, (i) the costs incurred did not logically connect to a claim for compensation; (ii) the claimant spent years pursuing a claim when clear evidence indicated that it had no losses; and (iii) the expert evidence did not seem to follow a logical methodology or account for up-to-date facts, which if accounted for, would have indicated that a claim should not have been pursued.

Leading cases on costs such as *Shergar Development Inc. v. Windsor (City)* and *1353837 Ontario Incorporated v. Stratford (City)* may be of limited assistance to an authority when the compensation has been settled.

An authority in a *House of Pizza* situation may simply be left with the Tribunal's words in *Camborda v. Toronto (City)*: "If an expropriation authority wishes to litigate the merit of an expropriation claim, it should have done well not to settle".^[32]

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.

[1] *Expropriations Act*, RSO 1990, c E.26, s 32, <<https://canlii.ca/t/2c7#sec32>>.

[2] *Rules of Civil Procedure*, RRO 1990, Reg 194, s 49.10, <<https://canlii.ca/t/t8m#sec49.10>>.

[3] *Rules of Civil Procedure*, s 57.01, <<https://canlii.ca/t/t8m#sec57.01>>.

[4] *Shergar Development Inc. v. Windsor (City)*, 2020 ONCA 490 (CanLII), <<https://canlii.ca/t/j919h>>.

[5] *1353837 Ontario Incorporated v Stratford (City)*, 2024 CanLII 19686 (ON LT), <<https://canlii.ca/t/k3d18>>.

[6] *Ontario Land Tribunal Rules of Practice and Procedure*, made under subsection 13(1) of the *Ontario land Tribunal Act*, 2021, effective: February 17, 2026, Rules 26.19 to 26.26.

[7] *Gabriel Khater Operating as House of Pizza v Ottawa (City)*, 2025 CanLII 110387 (ON LT), <<https://canlii.ca/t/kg671>>.

[8] *Kareem George Saikaley v Ottawa (City)*, 2025 CanLII 5384 (ON LT), <<https://canlii.ca/t/k96lh>>.

[9] *Kareem George Saikaley v Ottawa (City)*, 2025 CanLII 5384 (ON LT), at para 32, <https://canlii.ca/t/k96lh#par32>..

[10] *Camborda v Toronto (City)*, 2025 CanLII 121101 (ON LT), <<https://canlii.ca/t/kgnlz>>.

[11] *Camborda v Toronto (City)*, 2025 CanLII 121101 (ON LT), at para 14, <<https://canlii.ca/t/kgnlz#par14>>.

[12] *Lacaria v. Lacaria*, 2026 ONSC 591 (CanLII), at para 17, <<https://canlii.ca/t/khx7x#par17>>.

[13] *House of Pizza* at paras 1, 7, 10, and 35.

[14] *Ibid* at paras 9 to 10.

[15] *Ibid* at para 4.

[16] *Ibid* at paras 5 to 6.

[17] *Ibid* at paras 11 to 13 and 15.

[18] *Ibid* at para 10.

[19] *Ibid* at para 10.

[20] *Ibid* at paras 11 to 13 and 15.

[21] *Ibid* at para 14.

[22] *Ibid* at paras 19 and 40.

[23] *Ibid* at paras 19 and 40.

[24] *Ibid* at paras 19 and 40.

[25] *Ibid* at para 41.

[26] *Ibid* at para 19.

[27] *Ibid* at paras 20 to 24.

[28] *Ibid* at paras 20 to 24.

[29] *Ibid* at paras 44 to 46.

[30] *Ibid* at para 47.

[31] *Ibid* at para 25.

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