

Expropriation and Property Acquisition by the Province for the Ontario Line

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By Micah Goldstein

The Ontario government is continuing with property acquisitions for its Ontario Line project, which Infrastructure Ontario describes as “a 15.6-kilometre stand-alone rapid transit line that will connect the Ontario Science Centre to Exhibition/Ontario Place”.

Metrolinx and Infrastructure Ontario are acquiring land for the Ontario Line Project through both expropriation and agreements entered into with owners under the *Expropriations Act*. They are both agents of the Ontario provincial government. The Province is acquiring some properties in their entirety and others only partially.

We regularly act against Metrolinx and Infrastructure Ontario in expropriation matters, including for numerous owners whose lands are subject to acquisition for the Ontario Line. We have over 100 years of collective experience in expropriations law.

In many cases, Metrolinx is acquiring entire properties from owners, who are often forced to search for and relocate to a replacement property. Owners often find this situation highly disruptive and seemingly out of their control. Owners may have a family network or business that they need to be close to. We often see cases where the location of a home is tied to the care of a family member.

Through agreements made under the *Expropriations Act*, we have assisted homeowners, business owners, and tenants in negotiating and facilitating their relocation in an orderly manner so that they are fairly compensated, while also maintaining their family or business network. Such agreements can bring owners a measure of control over their relocation, rather than awaiting the expropriation process, which timing can be difficult to predict.

As part of the expropriation process, commercial and residential property owners will be offered compensation for their property based on an appraisal prepared for Metrolinx or Infrastructure Ontario. For the Ontario Line, the expropriating authority will typically have a significant number of appraisals prepared at the same time, which may have been prepared without the benefit of an interior inspection or other information relevant to a property's value. Owners will often observe that offers that they receive do not reflect the particular attributes of their property and are not consistent with their knowledge of the market. We routinely assist owners in such situations.

In our experience representing owners, Metrolinx or its land agents normally contact property owners and tenants directly to facilitate their relocation well in advance of an expropriation occurring. When Metrolinx or Infrastructure Ontario seek to relocate owners and tenants for the Ontario Line, the impacts to these owners should ultimately be compensable under the *Expropriations Act*. The impacts become compensable once Metrolinx or Infrastructure Ontario expropriates or enters into an agreement under the *Expropriations Act*, but not before. We actively assist owners and tenants during the pre-expropriation period so that they are compensated for their pre-expropriation losses.

It is also important to note that, once the expropriation has occurred or there is an agreement, the legal, appraisal, and other costs of

an owner are subject to reimbursement by Metrolinx, so long as such costs are reasonable and incurred for the purposes of determining the compensation. Owners are ultimately not responsible for paying the reasonable costs properly incurred. The reimbursement typically happens after the compensation has been settled or decided by the Ontario Land Tribunal. We are highly experienced in managing files such that costs incurred are reasonable and subject to reimbursement.

An expropriation may involve the relocation of tenants. We act for landowners who have suffered losses as a result of tenants vacating in advance of Metrolinx's acquisition of their property. We also act for tenants who are required to relocate or whose businesses have been ended as a result of Metrolinx acquiring an entire property. Business losses suffered prior to and after Metrolinx takes a property are compensable. We assist clients in documenting and supporting claims for such losses.

Metrolinx may also acquire part of an owner's land, rather than the entire parcel. Such partial acquisitions could be property interests located entirely underground or an easement entitling Metrolinx to perform work at the front of an owner's property. Such takings may create ongoing impacts that would entitle an owner to compensation, including for business losses incurred during construction.

Expropriation law is a complicated and expanding practice area that increasingly requires a multi-disciplinary approach in order to address the multitude of issues faced by expropriated owners. Among the intersecting issues that we have advised clients on are the following:

- the termination of employees in the full taking of a business;
- real estate law considerations where an owner enters into an agreement to sell their property to Metrolinx;
- insurance law considerations related to Metrolinx taking ownership but not possession of an owner's property;
- the tax treatment of costs and of different kinds of compensation;
- construction law considerations with respect to whether a project has been carried out reasonably;
- commercial leasing issues for owners with complicated and intersecting business arrangements;
- estate law matters where an expropriated owner is represented by a trustee;
- environmental law considerations with respect to contamination issues raised by expropriating authorities in the valuation of property; and
- planning law considerations with respect to determining the market value of an owner's property.

Advancing an expropriation claim may require assembling a team of outside consultants to provide expert evidence. Our role includes selecting and coordinating such a team. As a large law firm with diverse but interconnected practice areas, we have a broad pool of experts to draw from.

If Metrolinx or Infrastructure Ontario have or are in the process of acquiring land interests from a property that you have an interest in, we can assist. Please contact Micah Goldstein at mgoldstein@weirfoulds.com or at 647-217-1862.

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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