Hearings of Necessity Eliminated for Certain Transit Priority Projects
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By Ajay Gajaria, Matthew Helfand and David P. Neligan

Introduction

If a provincially-authorized statutory authority in Ontario decides to proceed with an expropriation of privately-owned land, there is not much that a landowner can do to halt the proceedings. While the Ontario Expropriations Act, R.S.O. 1990, c. E.26 (the “Expropriations Act”) is designed to ensure that an owner is fully and fairly compensated for the taking of land, the Ontario Expropriations Act provides only a limited opportunity for a landowner to challenge the expropriation through a “hearing of necessity.”

Under the Ontario Expropriations Act, a landowner facing expropriation may request a hearing of necessity, which is an inquiry into whether lands are necessary for the purpose for which they are to be expropriated. New legislation introduced by the Government of Ontario proposes to eliminate hearings of necessity in specific circumstances to promote the construction of priority transit projects in addition to other significant proposed changes.

The Building Transit Faster Act, 2020

On February 18, 2020, the Ontario government introduced for first reading Bill 171, An Act to Enact the Building Transit Faster Act, 2020 and make related amendments to other Acts. Ontario’s Minister of Transportation, introducing Bill 171 to the Ontario Legislature, identified that the purpose is to modernize the province’s ability to assemble [transit] project lands and to minimize the prospect for delays … while still treating landowners fairly and respecting property rights.

Bill 171, if passed, will allow the Lieutenant Governor in Council to designate land as transit corridor land if it is or may be required for a ‘priority transit project.’ Priority transit projects are identified as the following:

1. the Ontario Line located in the City of Toronto;
2. the Scarborough Subway Extension, also known as the Line 2 East Extension, located in the City of Toronto;
3. the Yonge Subway Extension extending from the City of Toronto to the Regional Municipality of York; and
4. the Eglinton Crosstown West Extension located in the cities of Toronto and Mississauga.

Bill 171 introduces a number of measures to speed up the process of constructing these priority transit projects and may result in significant impacts on property owners, including:

- Requiring landowners to obtain a ‘corridor development permit’ from the Minister for new development activity on, under or within 30 m of transit corridor lands;
- Permitting the Ministry of Transportation, Metrolinx and its contractors and other prescribed public bodies to inspect, alter or remove obstructions located on private property (such as parts of buildings, other structures, trees or other prescribed things) that are on or near transit corridor lands. Before this legislation, such actions would be considered expropriations with statutory rights and protections; following this legislation, this can be done without the consent on an expedited timeline and with uncertainty whether the owner will receive their reasonable costs to determine rightful compensation;
Permitting Metrolinx to take up, remove or change the location of a utility company’s utility infrastructure if it is necessary for a priority transit project; and

Eliminating hearings of necessity for expropriations of land along transit corridors, if the expropriations are for the purpose of a priority transit project.

Hearing of Necessity, Generally

Pursuant to subsection 6(2) of the Expropriations Act, an owner who has been served with a notice of intention to expropriate may request a hearing of necessity. The owner of land, who is given notice of the Ministry’s application to expropriate, may request a hearing of necessity by so notifying the Ministry within 30 days. The hearing of necessity is an inquiry into whether the taking of the property is “fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority.”

If a hearing of necessity is requested, the matter must be referred to the Chief Inquiry Officer, who shall forthwith assign an Inquiry Officer to administer and conduct the hearing. Following a hearing of necessity, the inquiry officer responsible for the hearing prepares a report summarizing the application and providing an opinion on the merits of the expropriation.

Although the authority is required to consider the report of the inquiry officer pursuant to subsection 8(1) of the Expropriations Act, the report is not binding.

Bill 171 does provide at subsection 45 (1) that the “Minister may establish a process for receiving comments from property owners about a proposed expropriation and for considering those comments.” However, given the purpose of Bill 171, it can be expected that this alternative process, if utilized by the Minister, will likely be more summary than a hearing of necessity.

It should also be noted that pursuant to section 6(3) of the Expropriations Act, in “special circumstances,” the Lieutenant Governor in Council may direct an expropriation to proceed without a hearing of necessity where he or she considers it necessary or expedient in the public interest. To that extent, Bill 171 expands on a power that the Ontario government already has.

Aird & Berlis has experience acting on behalf of property owners and expropriating authorities in both simple and complex transit and infrastructure undertakings. A member of the firm’s Expropriation Law Group would be happy to answer any questions you may have about Bill 171 or the expropriation process in general.

Authors

Ajay Gajaria
Associate
T 416.865.3065
agajaria@airdberlis.com

Matthew Helfand
Associate
T 416.865.4624
mhelfand@airdberlis.com

David P. Neligan
Associate
T 416.865.7751
dneligan@airdberlis.com

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