

Ontario Further Reduces Hearings of Necessity for Expropriations

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Among the many changes introduced by the provincial government in Bill 197, *COVID-19 Economic Recovery Act, 2020*, are significant reforms to the expropriations process for a large subset of future takings of property rights in Ontario in support of infrastructure projects.

If passed, the Bill may greatly reduce landowners' ability to challenge expropriations proposed for provincial public roads and certain transit projects. This follows shortly after the *Building Transit Faster Act, 2020*, which eliminated hearings of necessity for expropriations related to the construction of specified priority transit projects. This Bill demonstrates a continued erosion of property owners' rights to challenge proposed expropriations.

Hearings of Necessity

The first question a landowner often asks with respect to a proposed or pending expropriation of their property rights is how to challenge the proposed taking. The rights to challenge an expropriation are limited, but typically there is a statutory right to an independent hearing on the issue.

For most landowners, the most effective recourse is a hearing of necessity. Under section 6(2) of the Ontario *Expropriations Act*, a landowner facing expropriation may request a hearing of necessity by notifying the Ministry within 30 days of receiving a notice of expropriation. The hearing is an inquiry into whether the expropriation is "fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority."

The hearing is heard by an Inquiry Officer, who then prepares a report summarizing the application and providing an opinion on the merits of the expropriation. The report is non-binding, but may be persuasive on the approval or give a landowner more credibility in the court of public opinion.

Unlike the determination of compensation owing from an expropriation, a landowner's costs, including legal fees, are statutorily limited for the hearing of necessity process. The Inquiry Officer may *recommend* but not *compel* the expropriating authority to pay a maximum of \$250 of costs for the hearing of necessity.

Bill 197, *COVID-19 Economic Recovery Act, 2020*

Bill 197 eliminates two classes of hearings of necessity. First, it eliminates hearings of necessity for any expropriation made under the *Public Transportation and Highway Improvement Act*, which governs the construction of provincial highways by the provincial ministry of transportation. Importantly, it does not govern the construction or expansion of municipal roadways. Second, it builds upon the *Building Transit Faster Act, 2020* by eliminating hearings of necessity for the construction of transit stations on specified priority transit lines. The priority transit lines listed in Bill 197 are the Ontario Line, the Scarborough Subway Extension, the Yonge Subway Extension, and the Eglinton Crosstown LRT. Additionally, Bill 197 allows the Cabinet of Ontario to declare lands transit-oriented community lands. These would be lands used for priority transit lines and would be subject to the expropriation rules for priority transit projects.

Bill 197 does allow for alternative processes for comment to be created. A new process could be used to replace hearings of necessity in an effective fashion, but there is no indication of what such a process would look like. It will rest with the Ministry to determine how the alternative comment process will work, if there is one at all.

The effect of these changes will be significant. Public highway and road projects undertaken by the Ministry of Transportation are one of the most common sources of expropriations in Ontario. Although hearings of necessity were not overly effective in fighting an expropriation, they provided a structural check on the government's expropriation power. With no objective third party assessment of the necessity of an expropriation, landowners have fewer ways to try to prevent expropriation of their land. The absence of a fair independent process may also serve to reduce the public and landowner's perception of the legitimacy of certain expropriations. The justification for this is that it will speed up the construction of many infrastructure projects, which is most likely true. However, the cost to landowners should not be overlooked. Efficiency can mean that poor decisions are made, and it could mean that land is unnecessarily expropriated.

Removing hearings of necessity for priority transit stations could also raise significant concerns. Given the number of stations needed for the priority projects, there could be a large amount of land expropriated under the new system.

Bill 197 covers a number of different issues and statutes and could take quite a while to be enacted into law. However, once it becomes enacted, landowners across Ontario can expect expropriations to move at a faster rate for certain projects. This could mean the quicker construction of major infrastructure projects. It may also mean that many landowners will be all but unable to fight the expropriation of their land.

With that said, landowners facing expropriations for provincial public roadways or priority transit projects can still fight the assessment of their land's value. In many cases, landowners are able to get significantly more money than was originally offered by challenging assessments.

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 197 or the expropriation process in general.

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