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NEW LAW OF EXPROPRIATION

Coates and Waqué

Release No. 3, December 2021

Publisher's Special Release Note 2021

The pages in this work were reissued in August 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the August 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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Release Highlights

This release updates Chapters 2 (Ontario) and 3 (Alberta).

Legislative and Commentary Highlights

The Ontario Expropriations Act, R.S.O. 1990, c. C.26, has been amended by the *Accelerating Access to Justice Act, 2021*, S.O. 2021, c. 4, Sched. 5, ss. 1 to 5 (not in force at date of publication), and Sched. 6, the *Ontario Land Tribunal Act, 2021* (OLTA), s. 48 (in force June 1, 2021).

The commentary has been updated to reflect the changes effected by the above-noted Acts and to note the limits to the application of the *Expropriations Act* effected by Bill 171, the *Building Transit Faster Act, 2020*, S.O. 2020, c. 12 (in force July 8, 2020), and Bill 197, *COVID-19 Economic Recovery Act, 2020*, S.O. 2020, c. 18, Schedules 19 and 20 (in force July 21, 2020). Significant changes are summarized below.

- Effective June 1, 2021, the *Ontario Land Tribunal Act, 2021* (OLTA), S.O. 2021, c. 4, Sched. 6, s. 59(1), repealed the *Local Planning Appeal Tribunal Act, 2017*, S.O. 2017, c. 23, Sched. 1. Under the OLTA, the Local Planning Appeal Tribunal, the Board of Negotiation under the *Expropriations Act*, the Conservation Review Board, the Environmental Review Tribunal and the Mining and Lands Tribunal were amalgamated and continued as the Ontario Land Tribunal, effective June 1, 2021, with the coming into force of the OLTA. The Ontario Land Tribunal has issued new *Rules of Practice and Procedure*, also effective June 1, 2021.
- Section 7 (as re-enacted by s. 48(3) of the OLTA) came into force June 1, 2021, and introduced the Tribunal as a body to issue a report on the merits of the application for approval. Under subsection 7(5), the Ontario Land Tribunal (formerly the Inquiry Officer) is directed to inquire whether the taking is “fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority.” The test previously addressed by the Inquiry Officer of reasonable necessity set out in subsection 7(5) has not changed. Subsection 7(8) now provides for the enactment of regulations to increase the longstanding \$200 limit on costs.
- Importantly, in 2020, other legislation limited the situations where the process under the *Expropriations Act* applies at all.
- The requirement for an inquiry was first limited by Bill 171, the *Building Transit Faster Act, 2020*, S.O. 2020, c. 12 (in force July 8, 2020), which exempted certain “priority transit projects” in the Greater Toronto Area from the then Hearing

of Necessity requirement where the land proposed to be taken has been designated by Order in Council as “transit corridor land.” The four “priority transit projects” at present are the Ontario Line, Scarborough Subway Extension, Yonge North Subway Extension and Eglinton Crosstown West Extension.

- Also in July 2020, the Legislature extended the above exemption to: (1) provincial highway projects under the *Public Transportation and Highway Improvement Act*, R.S.O. 1990, c. P.50, and (2) land designated as “transit-oriented community land” in support of “transit-oriented community projects” associated with priority transit projects under the *Transit-Oriented Communities Act, 2020*, S.O. 2020, c. 18, Sched. 20: see Bill 197, *COVID-19 Economic Recovery Act, 2020*, S.O. 2020, c. 18, Schedules 19 and 20, effective July 21, 2020.
- Under the above 2020 amendments in Bills 171 and 197, the Minister may establish a process for receiving comments from owners regarding a proposed expropriation, and may make regulations regarding that process. See *Public Transportation and Highway Improvement Act*, s. 11.2, and *Transit-Oriented Communities Act, 2020*, s. 3(3)-(5).
- In December 2020, the government enacted Bill 222, *Ontario Rebuilding and Recovery Act*, S.O. 2020, c. 35, which amended both the *Building Transit Faster Act, 2020* and the *Transit-Oriented Communities Act, 2020* to broaden the potential exemption from the hearing of necessity process, from the current four priority transit projects to any other prescribed provincial transit project. The Minister can now make regulations prescribing additional provincial transit projects.

Alberta — Expropriation Act, R.S.A. 2000, c. E-13

Effective June 2, 2021, the Province of Alberta amalgamated the former Land Compensation Board (LCB), Municipal Government Board, Surface Rights Board, and New Home Buyer Protection Board into the new Land and Property Rights Tribunal (LPRT). This was done through a series of revisions introduced under Bill 48, the *Red Tape Reduction Implementation Act, 2020 (No. 2)*, S.A. 2020, c. 39. The new *Land and Property Rights Tribunal Act*, S.A. 2020, c. L-2.3, introduced in Bill 48 and effective as of June 2, 2021, amends and replaces sections of the *Expropriation Act* to replace the jurisdiction of the old LCB with the new LPRT. In effect, the LPRT adopted all aspects of the former Boards’ jurisdictions, including the LCB’s. Section 21(d) of the *Land and Property Rights Tribunal Act* makes clear that “any decision, determination, or order” made before June 2, 2021 by the former Boards, including the LCB, is deemed to be a decision and order of the Tribunal.

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