



# THE LAWRENCES<sup>®</sup> LETTER

News and information for clients and friends of Lawrence, Lawrence, Stevenson LLP

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## EXPROPRIATED!

### What to Do Before the Bulldozers Get to the Gate

#### Edwin G. Upenieks

Mike and Joe run a small trucking company. Their office and yard where they keep their trucks and equipment are conveniently located beside the highway. They have just leased part of their property to a neighbouring business for parking. This morning, their office administrator greets them at the door with a Notice of Expropriation from the Ministry of Transportation: the province is widening the highway. What now?

As the Region of Peel grows and new roads are being built or existing roads widened, many property owners (both individuals and business owners) are receiving Notices of Expropriation. The first step on receiving such a notice is to determine what is involved: will all of your property be taken, or only part of it? Will you be able to remain? If so, will you still be able to carry on business? The next step is to seek legal advice from an experienced expropriations lawyer to protect your interests and maximize your financial recovery.

Sometimes, an expropriating authority will attempt to negotiate the purchase of your property even before the expropriation process is launched. The negotiator will show up with a survey of the proposed expropriation and an Offer to Sell Agreement and Release in hand. Do not sign this agreement! It may limit your entitlement to compensation. Discuss the terms with your lawyer, because you may also be able to claim for such other items as:

- compensation for loss of trees or landscaping.
- business losses.
- disturbance damages.
- loss in value of the rest of your property.

#### Can You Challenge an Expropriation?

Land expropriations must be in the public interest. A landowner may request a Hearing of Necessity to determine whether taking the owner's land is "fair, sound and reasonably necessary" in achieving the expropriating authority's objectives. In some instances, it may be possible to negotiate limits on the taking or move the boundaries to accommodate the owner's circumstances.

Under Section 25 of the *Expropriation Act*, the expropriating authority must serve an offer in two



forms, Offer A and Offer B. Offer A is all-inclusive, requiring the landowner to provide a Full and Final Release in return for the specified funds, with no further negotiation permitted. An Offer B is usually for a lesser amount, but permits the landowner to accept a prepayment while a claim for a larger amount proceeds. In most cases, Offer B is the preferred course.

#### What is Involved in an Expropriation?

The expropriating authority is required to serve the Notice of Application for Approval to Expropriate Lands on each registered owner and must also publish the notice in a newspaper with general circulation.

Expropriations differ, but a complex case may involve numerous steps beginning with a Hearing of Necessity, through negotiations, all the way to an Ontario Municipal Board (OMB) Hearing and possibly an Appeal to the Divisional Court. In such a case, it may be necessary to retain an appraiser with the required AACI designation, a traffic engineer, a noise consultant, a planner, and a business valuator.

Timing ranges from a few months for simpler cases or where the expropriating authority has an incentive to settle early, to several years if the case goes to the OMB. Interest does accrue on most components of the claim, at 6% per annum. The landowner is typically compensated for all reasonable legal, appraisal, or other expert costs. If there is a shortfall in the payment for legal, appraisal and other expert costs, the landowner is responsible for the difference.

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