

Expropriations Act

R.S.O. 1990, CHAPTER E.26

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Interpretation

Definitions

1. (1) In this Act,
“approving authority” means the approving authority as determined under section 5; (“autorité d’approbation”)
“Board” means the Ontario Municipal Board; (“Commission”)
“expropriate” means the taking of land without the consent of the owner by an expropriating authority in the exercise of its statutory powers; (“exproprier”)
“expropriating authority” means the Crown or any person empowered by statute to expropriate land; (“autorité expropriante”)
“injurious affection” means,
(a) where a statutory authority acquires part of the land of an owner,

(i) the reduction in market value thereby caused to the remaining land of the owner by the acquisition or by the construction of the works thereon or by the use of the works thereon or any combination of them, and

(ii) such personal and business damages, resulting from the construction or use, or both, of the works as the statutory authority would be liable for if the construction or use were not under the authority of a statute,

(b) where the statutory authority does not acquire part of the land of an owner,

(i) such reduction in the market value of the land of the owner, and

(ii) such personal and business damages,

resulting from the construction and not the use of the works by the statutory authority, as the statutory authority would be liable for if the construction were not under the authority of a statute, and for the purposes of this clause, part of the lands of an owner shall be deemed to have been acquired where the owner from whom lands are acquired retains lands contiguous to those acquired or retains lands of which the use is enhanced by unified ownership with those acquired; (“effet préjudiciable”)

“judge”, except where otherwise described, means a judge of the Superior Court of Justice; (“juge”)

“land” includes any estate, term, easement, right or interest in, to, over or affecting land; (“bien-fonds”)

“owner” includes a mortgagee, tenant, execution creditor, a person entitled to a limited estate or interest in land, a guardian of property, and a guardian, executor, administrator or trustee in whom land is vested;

(“propriétaire”)

“prescribed” means prescribed by the regulations made under this Act; (“prescrit”)

“purchase-money mortgage” means a mortgage given by a purchaser of land to the vendor of the land or the vendor’s nominee as security for the payment of all or part of the consideration for the sale; (“hypothèque garantissant le prix d’achat”)

“registered owner” means an owner of land whose interest in the land is defined and whose name is specified in an instrument in the proper land registry or sheriff’s office, and includes a person shown as a tenant of land on the last revised assessment roll; (“propriétaire enregistré”)

“security holder” means a person who has an interest in land as security for the payment of money; (“titulaire de la sûreté”, “titulaire d’une sûreté”)

“statutory authority” means the Crown or any person empowered by statute to expropriate land or cause injurious affection; (“autorité légalement compétente”)

“tenant” means a lessee or occupant occupying premises under any tenancy whether written, oral or implied. (“locataire”) R.S.O. 1990, c. E.26, s. 1 (1); 1992, c. 32, s. 11; 2002, c. 17, Sched. F, Table; 2002, c. 18, Sched. A, s. 9 (1).

Service

(2) Any document required by this Act to be served may be served personally or by registered mail addressed to the person to be served at the person’s last known address, or if that person or person’s address is unknown, by publication once a week for three weeks in a newspaper having general circulation in the locality in which the land concerned is situate and service shall be deemed to be made,

(a) in the case of service by registered mail, on the second day after the day of mailing; and

(b) in the case of service by publication, on the date of the third publication. R.S.O. 1990, c.

E.26, s. 1 (2).

Application of Act

2. (1) Despite any general or special Act, where land is expropriated or injurious affection is caused by a statutory authority, this Act applies. R.S.O. 1990, c. E.26, s. 2 (1).

References in other Acts

(2) The provisions of any general or special Act providing procedures with respect to the expropriation of land or the compensation payable for land expropriated or for injurious affection that refer to another Act shall be deemed to refer to this Act and not to the other Act. 2002, c. 17, Sched. F, Table.

Application to drainage works

(3) This Act does not apply to the use of or injury to land authorized under the Drainage Act for the purposes of a drainage works constructed under that Act or to any proceedings in connection therewith. R.S.O. 1990, c. E.26, s. 2 (3).

Conflict

(4) Where there is conflict between a provision of this Act and a provision of any other general or special Act, the provision of this Act prevails. R.S.O. 1990, c. E.26, s. 2 (4).

Crown bound by Act

3. This Act binds the Crown. R.S.O. 1990, c. E.26, s. 3.

Approval of intention to expropriate

4. (1) An expropriating authority shall not expropriate land without the approval of the approving authority. R.S.O. 1990, c. E.26, s. 4 (1).

Gas storage areas excepted

(2) Subsection (1) does not apply to an authorization of the Ontario Energy Board under the Ontario Energy Board Act, 1998 in respect of storage of gas in a gas storage area or to an expropriation authorized under section 99 of that Act. R.S.O. 1990, c. E.26, s. 4 (2); 1998, c. 15, Sched. E, s. 11 (1).

Approving authority

5. (1) Subject to subsections (4), (5) and (6), the approving authority in respect of an expropriation shall be the Minister responsible for the administration of the Act in which the power to expropriate is granted, except that,

(a) where a municipality or a local board thereof, other than an elected school board, expropriates lands for municipal purposes, the approving authority shall be the council of the municipality; and

(b) where an elected school board expropriates lands, the approving authority shall be the school board. R.S.O. 1990, c. E.26, s. 5 (1).

(2) REPEALED: 1997, c. 31, s. 150.

Idem, private Acts

(3) Where the power to expropriate is granted in a private Act, the approving authority shall be,

(a) in the case of universities or other educational institutions, the Minister of Colleges and Universities;

(b) in the case of hospitals or other medical or health institutions, the Minister of Health and Long-Term Care; and

(c) in the case of all other corporations, the Attorney General. R.S.O. 1990, c. E.26, s. 5 (3); 2006, c. 19, Sched. B, s. 8.

Idem, public works

(4) Where an expropriation is made under the Ministry of Infrastructure Act, 2011 for the benefit of a ministry or agency of the Ontario Government, the approving authority shall be the Minister for the ministry or responsible for the agency for the benefit of which the land is expropriated. R.S.O. 1990, c. E.26, s. 5 (4); 2011, c. 9, Sched. 27, s. 25.

Same, OEB

(5) Where an expropriation is made under the Ontario Energy Board Act, 1998, the approving authority is the Ontario Energy Board. 1998, c. 15, Sched. E, s. 11 (2).

Idem, other cases

(6) The approving authority in any case not provided for in this section shall be the Attorney General. R.S.O. 1990, c. E.26, s. 5 (6).

Steps before inquiry

Notice of intention to expropriate

6. (1) Upon applying for an approval under section 4, an expropriating authority shall serve a notice of its application for approval to expropriate upon each registered owner of the lands to be expropriated and shall publish the notice once a week for three consecutive weeks in a newspaper having general circulation in the locality in which the lands are situate. R.S.O. 1990, c. E.26, s. 6 (1).

Notification for hearing

(2) Any owner of lands in respect of which notice is given under subsection (1) who desires a hearing shall so notify the approving authority in writing,

(a) in the case of a registered owner, served personally or by registered mail, within thirty days after the registered owner is served with the notice, or, where the registered owner is being served with the notice by publication, within thirty days after the first publication of the notice;

(b) in the case of an owner who is not a registered owner, within thirty days after the first publication of the notice. R.S.O. 1990, c. E.26, s. 6 (2).

Order dispensing with inquiry

(3) The Lieutenant Governor in Council may, in special circumstances where the Lieutenant Governor in Council considers it necessary or expedient in the public interest to do so, direct that an intended expropriation shall proceed without the inquiry procedure and thereupon subsections (1) and (2) of this section, section 7 and subsections 8 (1) and (2) do not apply thereto. R.S.O. 1990, c. E.26, s. 6 (3).

Service of order

(4) Where an order is made under subsection (3), the expropriating authority shall forthwith serve a copy of the order on each registered owner affected by the intended expropriation. R.S.O. 1990, c. E.26, s. 6 (4).

Report to Assembly

(5) The Attorney General shall, within thirty days after the commencement of each session of the Legislative Assembly, lay before the Assembly a copy of each order made theretofore under subsection (3) and not previously laid before the Assembly. R.S.O. 1990, c. E.26, s. 6 (5).

Inquiry

Appointment of inquiry officers

7. (1) The Attorney General shall appoint a chief inquiry officer and such inquiry officers as he or she considers necessary. R.S.O. 1990, c. E.26, s. 7 (1).

Duties of chief inquiry officer

(2) The chief inquiry officer shall have general supervision and direction over inquiry officers and the assignment of their duties. R.S.O. 1990, c. E.26, s. 7 (2).

Time, place and notice of hearing

(3) Where a notification is made under subsection 6 (2), the approving authority shall refer the matter to the chief inquiry officer who shall forthwith assign an inquiry officer who shall fix a time and place for a hearing and who shall cause notice of the hearing to be served upon each party to the inquiry. R.S.O. 1990, c. E.26, s. 7 (3).

Notice of grounds

(4) At least five days before the date fixed for the hearing, the expropriating authority shall serve upon each party to the inquiry a notice indicating the grounds upon which it intends to rely at the hearing and shall make available for inspection by the parties any documents, including maps and plans, that the expropriating authority intends to use at the hearing. R.S.O. 1990, c. E.26, s. 7 (4).

Hearing by means of inquiry

(5) The hearing shall be by means of an inquiry conducted by the inquiry officer who shall inquire into whether the taking of the lands or any part of the lands of an owner or of more than one owner of the same lands is fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority. R.S.O. 1990, c. E.26, s. 7 (5).

Report

(6) The inquiry officer shall give the approving authority and the parties to the hearing a report containing,

- (a) a summary of the evidence and arguments advanced by the parties;
- (b) the inquiry officer's findings of fact; and
- (c) the inquiry officer's opinion on the merits of the application for approval, and the reasons for the opinion. 2002, c. 18, Sched. A, s. 9 (2).

Combined inquiries

(7) The inquiry officer may combine two or more related inquiries and conduct them in all respects and for all purposes as one inquiry. R.S.O. 1990, c. E.26, s. 7 (7).

Parties

(8) The expropriating authority, each owner who notifies the approving authority that the owner desires a hearing in respect of the lands intended to be expropriated and any owner added as a party by the inquiry officer are parties to the inquiry. R.S.O. 1990, c. E.26, s. 7 (8).

Powers and duties of inquiry officer

- (9) The inquiry officer,
- (a) may add any owner whose land would be affected by the expropriation of the lands concerned in the inquiry or any modification thereof as a party to the inquiry;
 - (b) shall give every party to the inquiry an opportunity to present evidence and argument and to examine and cross-examine witnesses, either personally or by a person authorized under the Law Society Act to represent the party;
 - (c) is not bound by the legal rules of evidence; and
 - (d) may inspect the lands concerned either alone or in the presence of the parties. R.S.O. 1990, c. E.26, s. 7 (9); 2006, c. 21, Sched. C, s. 109.

Costs

(10) The inquiry officer may recommend to the approving authority that a party to the inquiry be paid a fixed amount for the party's costs of the inquiry not to exceed \$200 and the approving authority may in its discretion order the expropriating authority to pay such costs forthwith. R.S.O. 1990, c. E.26, s. 7 (10).
Approval

Powers and duties of approving authority

8. (1) The approving authority shall consider the report of the inquiry officer and shall approve or not approve the proposed expropriation or approve the proposed expropriation with such modifications as the approving authority considers proper, but an approval with modifications shall not affect the lands of a registered owner who is not or has not been made a party to the hearing. R.S.O. 1990, c. E.26, s. 8 (1).

Reasons, service of decision

(2) The approving authority shall give written reasons for its decision and shall cause the decision and reasons to be served on all the parties and on the inquiry officer within 90 days after the date on which the approving authority receives the report of the inquiry officer. 2002, c. 18, Sched. A, s. 9 (3).

Certificate

(3) The approving authority shall certify its approval in the prescribed form. R.S.O. 1990, c. E.26, s. 8 (3).

Registration of plan

9. (1) Where a proposed expropriation has been approved under this Act or under the Ontario Energy Board Act, 1998, the expropriating authority shall register, within three months after the granting of the approval, in the proper land registry office a plan of the land signed by the expropriating authority and by an Ontario land surveyor, and thereupon, but not otherwise, the land vests in the expropriating authority. R.S.O. 1990, c. E.26, s. 9 (1); 1998, c. 15, Sched. E, s. 11 (3).

Where land required temporarily, etc.

(2) Where the land is required for a limited time only or only a limited estate, right or interest therein is required, the plan registered under this section shall indicate by appropriate words thereon that the land is taken for such limited time only or that only such limited estate, right or interest therein is taken, and, by the registration in such case, the land for such limited time or such limited estate, right or interest therein vests in the expropriating authority. R.S.O. 1990, c. E.26, s. 9 (2).

Correction of errors

(3) In the case of an omission, misstatement or erroneous description in a plan registered under this section, the expropriating authority may register in the proper land registry office a plan replacing or amending the original plan and signed by the expropriating authority and by an Ontario land surveyor, and a plan registered under this subsection shall be marked to show the nature of the replacement or amendment and is of the same force and effect as, and is in substitution for, the original plan to the extent that such plan is replaced or amended thereby. R.S.O. 1990, c. E.26, s. 9 (3).

Presumption as to signing

(4) Where a plan purports to have been signed by an expropriating authority under this section, it shall be presumed to have been signed by the expropriating authority without proof of the signature or official character of the person appearing to have signed it, unless otherwise directed by a court or the Board. R.S.O. 1990, c. E.26, s. 9 (4).

Electrical transmission or distribution lines

(5) Where a limited estate, right or interest in land is being taken under the Ontario Energy Board Act, 1998 for an electrical transmission or distribution line carried on single poles, a transmitter or distributor within the meaning of Part V of that Act may, before registering a plan under subsection (1), register in the proper land registry office a preliminary plan, to be known as and marked "Preliminary Plan/Plan préliminaire" and being a plan with or without local description, signed by the secretary of the Corporation and illustrating the location of the proposed line and indicating by appropriate words thereon the nature of the estate, right or interest being taken, and such preliminary plan when registered has the same force and effect as a plan registered under subsection (1), but a plan in accordance with subsection (1) shall be registered within two years after the registration of the preliminary plan in substitution for the preliminary plan. R.S.O. 1990, c. E.26, s. 9 (5); 1998, c. 15, Sched. E, s. 11 (4).

Notice of expropriation

10. (1) Where a plan has been registered under section 9 and no agreement as to compensation has been made with the owner, the expropriating authority may serve the owner, and shall serve the registered owner, within thirty days after the date of registration of the plan, with a notice of expropriation of the

owner's land, in the prescribed form, but failure to serve the notice does not invalidate the expropriation. R.S.O. 1990, c. E.26, s. 10 (1).

Election of date for compensation

(2) Where a plan has been registered under section 9, the registered owner may elect, by notice in writing served upon the expropriating authority, within thirty days after the owner was served with the notice under subsection (1), to have the compensation to which the owner is entitled assessed,

- (a) where there has been an inquiry, as of the date the notice of hearing was served;
- (b) as of the date of the registration of the plan; or
- (c) as of the date on which the owner was served with the notice of expropriation,

and, where the election is not made within the prescribed time, the owner shall be deemed to have elected to have the compensation assessed as of the date of the registration of the plan. R.S.O. 1990, c. E.26, s. 10 (2); 2002, c. 18, Sched. A, s. 9 (4).

Inquiry officer or joint board

(2.1) Clause (2) (a) applies whether the hearing is conducted by an inquiry officer or by a joint board established under the Consolidated Hearings Act. 2002, c. 18, Sched. A, s. 9 (5).

Entry on land for appraisal

(3) An expropriating authority may, after it has served notice of expropriation on the owner in possession of the lands expropriated, and with the consent of the said owner, enter on the expropriated lands for the purposes of viewing for appraisal, but, where the consent of the owner is not given, the expropriating authority may apply to the Board which may, by order, authorize the entry upon such terms and conditions as may be specified in the order. R.S.O. 1990, c. E.26, s. 10 (3).

Reparation

11. Where land is expropriated or is injuriously affected by a statutory authority, the statutory authority may, before the compensation is agreed upon or determined, undertake to make alterations or additions or to construct additional work or to grant other lands, in which case, the compensation shall be determined having regard to such undertaking, and, if the undertaking has not already been carried out, the Board may declare that, in addition to the compensation determined, if any, the owner is entitled to have such alteration or addition made or such additional work constructed or such grant made to the owner.

R.S.O. 1990, c. E.26, s. 11.

Gas storage areas

12. Section 38 of the Ontario Energy Board Act, 1998 applies in respect of the use of designated gas storage areas. R.S.O. 1990, c. E.26, s. 12; 1998, c. 15, Sched. E, s. 11 (5).

Compensation

13. (1) Where land is expropriated, the expropriating authority shall pay the owner such compensation as is determined in accordance with this Act. R.S.O. 1990, c. E.26, s. 13 (1).

Idem

(2) Where the land of an owner is expropriated, the compensation payable to the owner shall be based upon,

- (a) the market value of the land;
- (b) the damages attributable to disturbance;
- (c) damages for injurious affection; and
- (d) any special difficulties in relocation,

but, where the market value is based upon a use of the land other than the existing use, no compensation shall be paid under clause (b) for damages attributable to disturbance that would have been incurred by the owner in using the land for such other use. R.S.O. 1990, c. E.26, s. 13 (2).

Market value

14. (1) The market value of land expropriated is the amount that the land might be expected to realize if sold in the open market by a willing seller to a willing buyer. R.S.O. 1990, c. E.26, s. 14 (1).

Idem

(2) Where the land expropriated is devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, and the owner genuinely intends to relocate in similar premises, the market value shall be deemed to be the reasonable cost of equivalent reinstatement. R.S.O. 1990, c. E.26, s. 14 (2).

Idem

(3) Where only part of the land of an owner is taken and such part is of a size, shape or nature for which there is no general demand or market, the market value and the injurious affection caused by the

taking may be determined by determining the market value of the whole of the owner's land and deducting therefrom the market value of the owner's land after the taking. R.S.O. 1990, c. E.26, s. 14 (3).

Idem

(4) In determining the market value of land, no account shall be taken of,

(a) the special use to which the expropriating authority will put the land;

(b) any increase or decrease in the value of the land resulting from the development or the imminence of the development in respect of which the expropriation is made or from any expropriation or imminent prospect of expropriation; or

(c) any increase in the value of the land resulting from the land being put to a use that could be restrained by any court or is contrary to law or is detrimental to the health of the occupants of the land or to the public health. R.S.O. 1990, c. E.26, s. 14 (4).

Co-operative developments

(5) Where two or more expropriating authorities, including Her Majesty the Queen in right of Canada, participate in a development or a number of related developments, the Lieutenant Governor in Council may, by regulation, designate such development or developments as a co-operative development and subsection (4) shall apply to the determination of the market value of any land expropriated by any of the participating provincial expropriating authorities for any aspect or part of the co-operative development as if the entire co-operative development was a single development being carried out by that expropriating authority. R.S.O. 1990, c. E.26, s. 14 (5).

Increase by Board

15. Upon application therefor, the Board shall, by order, after fixing the market value of lands used for residential purposes of the owner under subsection 14 (1), award such additional amount of compensation as, in the opinion of the Board, is necessary to enable the owner to relocate his or her residence in accommodation that is at least equivalent to the accommodation expropriated. R.S.O. 1990, c. E.26, s. 15.

Separate interests

16. Where there are more separate interests than one in land, other than the interest of a security holder or a vendor under an agreement for sale, the market value of each such separate interest shall be valued separately. R.S.O. 1990, c. E.26, s. 16.

Interests of security holders

Definition

17. (1) In this section,

“bonus” means the amount by which the amount secured under a mortgage exceeds the amount actually advanced. R.S.O. 1990, c. E.26, s. 17 (1).

Determining value

(2) Where land is subject to a security interest,

(a) the value of the interest of the security holder shall be determined in accordance with this section and section 20 and not otherwise; and

(b) the market value of the land shall be determined without regard to the interest of the security holder and the amount of such market value plus any damages for injurious affection shall stand in place of the land for the purposes of the security. R.S.O. 1990, c. E.26, s. 17 (2).

Payment out of market value

(3) Security holders shall be paid the amount of principal and interest outstanding against the security out of the market value of the land and any damages for injurious affection payable in respect of the land subject to the security, in accordance with their priorities, whether or not such principal and interest is due, and subject to subsections (4) and (5). R.S.O. 1990, c. E.26, s. 17 (3).

Bonus

(4) Where the land is subject to a mortgage and the amount payable to the mortgagee under subsection (3) is insufficient to satisfy the mortgage in full,

(a) where the mortgage is a purchase-money mortgage, the mortgage shall be deemed to be fully paid, satisfied and discharged for all purposes; and

(b) where the mortgage is not a purchase-money mortgage and includes a bonus,

(i) the amount by which the amount payable to the mortgagee under subsection (3) is insufficient to pay the amount remaining unpaid under the mortgage, or

(ii) the amount of the bonus,

whichever is the lesser, shall be deemed to be fully paid and satisfied for all purposes. R.S.O. 1990, c. E.26, s. 17 (4).

Idem

(5) No amount shall be paid in respect of a bonus until all security holders have been paid all amounts payable other than any bonus. R.S.O. 1990, c. E.26, s. 17 (5).

Payment out of market value

(6) Where land held as security is expropriated in part or is injuriously affected, a security holder is entitled to be paid to the extent possible in accordance with the security holder's priority, out of the market value portion of the compensation and any damages for injurious affection therefor, as the case may be, a sum that is in the same ratio to such portion of the compensation and damages as the balance outstanding on the security at the date of the expropriation or injurious affection is to the market value of the entire land, provided however that the sum so determined shall be reduced by the amount of any payments made to the security holder by the owner after the date of expropriation or injurious affection. R.S.O. 1990, c. E.26, s. 17 (6).

Allowance for disturbance

Owner other than tenant

18. (1) The expropriating authority shall pay to an owner other than a tenant, in respect of disturbance, such reasonable costs as are the natural and reasonable consequences of the expropriation, including,

- (a) where the premises taken include the owner's residence,
 - (i) an allowance to compensate for inconvenience and the cost of finding another residence of 5 per cent of the compensation payable in respect of the market value of that part of the land expropriated that is used by the owner for residential purposes, provided that such part was not being offered for sale on the date of the expropriation, and
 - (ii) an allowance for improvements the value of which is not reflected in the market value of the land;
- (b) where the premises taken do not include the owner's residence, the owner's costs of finding premises to replace those expropriated, provided that the lands were not being offered for sale on the date of expropriation; and
- (c) relocation costs, including,
 - (i) the moving costs, and
 - (ii) the legal and survey costs and other non-recoverable expenditures incurred in acquiring other premises. R.S.O. 1990, c. E.26, s. 18 (1).

Tenant

(2) The expropriating authority shall pay to a tenant occupying expropriated land in respect of disturbance so much of the cost referred to in subsection (1) as is appropriate having regard to,

- (a) the length of the term;
- (b) the portion of the term remaining;
- (c) any rights to renew the tenancy or the reasonable prospects of renewal;
- (d) in the case of a business, the nature of the business; and
- (e) the extent of the tenant's investment in the land. R.S.O. 1990, c. E.26, s. 18 (2).

Business on expropriated land

Business loss

19. (1) Where a business is located on the land expropriated, the expropriating authority shall pay compensation for business loss resulting from the relocation of the business made necessary by the expropriation and, unless the owner and the expropriating authority otherwise agree, the business losses shall not be determined until the business has moved and been in operation for six months or until a three-year period has elapsed, whichever occurs first. R.S.O. 1990, c. E.26, s. 19 (1).

Good will

(2) The Board may, in determining compensation on the application of the expropriating authority or an owner, include an amount not exceeding the value of the good will of a business where the land is valued on the basis of its existing use and, in the opinion of the Board, it is not feasible for the owner to relocate. R.S.O. 1990, c. E.26, s. 19 (2).

Prepayment of mortgage

20. Where a statutory authority prepays a mortgage in whole or in part, the statutory authority,
- (a) shall pay to the mortgagee a bonus in respect of the prepayment amounting to,

(i) three months interest on the amount of principal prepaid at the rate of 6 per cent a year or at such other rate as is prescribed by the Lieutenant Governor in Council by regulation, or

(ii) the value of any notice or bonus for prepayment provided for in the mortgage, whichever is the lesser;

(b) shall pay to the mortgagee where,

(i) the prevailing interest rate for an equivalent investment is lower than the rate under the mortgage, and

(ii) there is no provision in the mortgage permitting prepayment at the date of the expropriation, an amount to compensate for the difference in the interest rates for the period for which the amount of principal prepaid has been advanced, not to exceed five years; and

(c) shall pay to the mortgagor whose interest is expropriated an amount to compensate for any loss incurred by reason of a difference in the interest rates during the period for which the payment of principal provided for in the mortgage has been advanced, but such difference shall not be calculated on a new interest rate any greater than the prevailing interest rate for an equivalent mortgage. R.S.O. 1990, c. E.26, s. 20.

Compensation for injurious affection

21. A statutory authority shall compensate the owner of land for loss or damage caused by injurious affection. R.S.O. 1990, c. E.26, s. 21.

Claim for compensation for injurious affection

22. (1) Subject to subsection (2), a claim for compensation for injurious affection shall be made by the person suffering the damage or loss in writing with particulars of the claim within one year after the damage was sustained or after it became known to the person, and, if not so made, the right to compensation is forever barred. R.S.O. 1990, c. E.26, s. 22 (1).

Same, minor or incapable person

(2) Where the person who is injuriously affected is a minor or a person who is incapable as defined in the Substitute Decisions Act, 1992, whether or not the person has a guardian, the claim for compensation shall be made within one year after he or she ceased to be a minor or incapable or, in the case of death while a minor or incapable, within one year after his or her death, and, if not so made, the right to compensation is forever barred. R.S.O. 1990, c. E.26, s. 22 (2); 2009, c. 33, Sched. 2, s. 33 (1).

Set-off against damages

23. The value of any advantage to the land or remaining land of an owner derived from any work for which land was expropriated or by which land was injuriously affected shall be set off only against the amount of the damages for injurious affection to the owner's land or remaining lands. R.S.O. 1990, c. E.26, s. 23.

Agreements

24. A statutory authority has the authority to make and perform an agreement with an owner in respect of any claim of the owner under this Act, including any costs of the owner despite the fact that this Act requires the claim to be determined by the Board. R.S.O. 1990, c. E.26, s. 24.

Offer

25. (1) Where no agreement as to compensation has been made with the owner, the expropriating authority shall, within three months after the registration of a plan under section 9 and before taking possession of the land,

(a) serve upon the registered owner,

(i) an offer of an amount in full compensation for the registered owner's interest, and

(ii) where the registered owner is not a tenant, a statement of the total compensation being

offered for all interests in the land,

excepting compensation for business loss for which the determination is postponed under subsection 19 (1); and

(b) offer the registered owner immediate payment of 100 per cent of the amount of the market value of the owner's land as estimated by the expropriating authority, and the payment and receipt of that sum is without prejudice to the rights conferred by this Act in respect of the determination of compensation and is subject to adjustment in accordance with any compensation that may subsequently be determined in accordance with this Act or agreed upon. R.S.O. 1990, c. E.26, s. 25 (1); 1993, c. 27, Sched.

Furnishing appraisal report

(2) The expropriating authority shall base its offer of compensation made under subsection (1) upon a report appraising the market value of the lands being taken and damages for injurious affection, and shall

serve a copy of the appraisal report upon the owner at the time the offer is made. R.S.O. 1990, c. E.26, s. 25 (2).

Extension of time

(3) The expropriating authority may, within the period mentioned in subsection (1) and before taking possession of the land, upon giving at least two days notice to the registered owner, apply to the judge for an order extending the time referred to in subsection (1), and the judge may in his or her order authorize the statutory authority to take possession of the land before the expiration of the extended time for serving the offer or statement under clause (1) (a) upon such conditions as may be specified in the order. R.S.O. 1990, c. E.26, s. 25 (3).

Failure to serve

(4) If any registered owner is not served with the offer required to be served on the owner under subsection (1) within the time limited by subsection (1) or by an order of a judge under subsection (3) or by agreement, the failure does not invalidate the expropriation but interest upon the unpaid portion of any compensation payable to such registered owner shall be calculated from the date of registration of the plan. R.S.O. 1990, c. E.26, s. 25 (4).

Choice of proceedings, negotiation or arbitration

26. Where the statutory authority and the owner have not agreed upon the compensation payable under this Act and, in the case of injurious affection, section 22 has been complied with, or, in the case of expropriation, section 25 has been complied with, or the time for complying therewith has expired,

(a) the statutory authority or the owner may serve notice of negotiation upon the other of them and upon the board of negotiation stating that the authority or the owner, as the case may be, requires the compensation to be negotiated under section 27; or

(b) where the statutory authority and the owner have agreed to dispense with negotiation proceedings, the statutory authority or the owner may serve notice of arbitration upon the other of them and upon the Board to have the compensation determined by arbitration. R.S.O. 1990, c. E.26, s. 26.

Negotiation proceedings

Board of negotiation

27. (1) The board of negotiation is continued and shall consist of two or more members appointed by the Lieutenant Governor in Council, one of whom may be designated as chair. R.S.O. 1990, c. E.26, s. 27 (1).

Quorum

(2) Any two of the members of the board of negotiation constitute a quorum and are sufficient to perform all the functions of the board on behalf of the board. R.S.O. 1990, c. E.26, s. 27 (2).

Place of sitting

(3) The board of negotiation may sit at any place in Ontario. R.S.O. 1990, c. E.26, s. 27 (3).

Negotiation of amount of compensation

(4) In any case in which a notice of negotiation is served, the board of negotiation shall, upon reasonable notice to the statutory authority and the owner, meet with them and, without prejudice to any subsequent proceedings, proceed in a summary and informal manner to negotiate a settlement of the compensation. R.S.O. 1990, c. E.26, s. 27 (4).

Inspection of land

(5) Before or during the negotiation proceedings, the board of negotiation shall inspect the land that has been expropriated or injuriously affected. R.S.O. 1990, c. E.26, s. 27 (5).

Where no settlement reached

(6) If the negotiation proceedings do not result in a settlement of the compensation, the statutory authority or the owner may serve notice of arbitration upon the other of them, and upon the Board, stating that the authority or the owner, as the case may be, requires the compensation to be determined by arbitration as though the negotiation proceedings had not taken place. R.S.O. 1990, c. E.26, s. 27 (6).

Protection from personal liability

(7) No action or other proceeding shall be instituted against a member of the board of negotiation or an employee appointed under Part III of the Public Service of Ontario Act, 2006 to work for the board of negotiation as a result of any act done in good faith in the performance or intended performance of any duty under any Act or in the exercise or intended exercise of any power under any Act, or of any alleged neglect or default in the performance or exercise in good faith of such duty or power. 2009, c. 33, Sched. 2, s. 33 (2).

Exception

(8) Subsection (7) does not apply in the case of an application for judicial review or an action or proceeding that is specifically provided for under an Act with respect to a person referred to in that subsection. 2009, c. 33, Sched. 2, s. 33 (2).

Crown liability

(9) Subsection (7) does not, by reason of subsections 5 (2) and (4) of the Proceedings Against the Crown Act, relieve the Crown of liability in respect of a tort committed by an agent or servant of the Crown to which it would otherwise be subject. 2009, c. 33, Sched. 2, s. 33 (2).

Reports and expert evidence

Service of appraisal reports

28. (1) At least fifteen days before the date fixed for the hearing of an application before the Board, any party to the application shall serve upon each other party a copy of any appraisal report upon which it intends to rely at the hearing. R.S.O. 1990, c. E.26, s. 28 (1).

Expert evidence as to compensation

(2) Where it is intended by a party to adduce evidence as to compensation by persons entitled by law or custom to give opinion evidence, not more than three such persons may be called by either party without the leave of the Board. R.S.O. 1990, c. E.26, s. 28 (2).

Ontario Municipal Board

Duties of Board

29. (1) The Board shall determine any compensation in respect of which a notice of arbitration has been served upon it under section 26 or 27, and, in the absence of agreement, determine any other matter required by this or any other Act to be determined by the Board. R.S.O. 1990, c. E.26, s. 29 (1).

Record

(2) All oral evidence submitted before the Board shall be taken down in writing and, together with such documentary evidence and things as are received in evidence by the Board, form the record. R.S.O. 1990, c. E.26, s. 29 (2).

Reasons

(3) The Board shall prepare and furnish the parties to an application with written reasons for its decision. R.S.O. 1990, c. E.26, s. 29 (3).

Reports

(4) The Board may prepare and periodically publish a summary of such of its decisions and the reasons therefor as the Board considers to be of general public significance. R.S.O. 1990, c. E.26, s. 29 (4).

Arbitration where no expropriation

30. Where the owner of land consents to the acquisition of the land by a statutory authority, the statutory authority or the owner, with the consent of the other, may apply to the Board for the determination of the compensation to which the owner would be entitled by this Act if the land were expropriated, and the Board may determine the compensation and the provisions of this Act and the regulations respecting the determination of compensation, hearings and procedures, including costs and appeals, apply thereto in the same manner as if the land had been expropriated and for the purpose, subject to any agreement of the parties, the compensation shall be assessed as of the date on which the consent to the acquisition is given. R.S.O. 1990, c. E.26, s. 30.

Appeals

31. (1) An appeal lies to the Divisional Court from any decision or order of the Board in accordance with the rules of court, except that the appeal may be taken at any time within six weeks from the day the decision or order was served on the parties, and the period of any vacation of the court shall not be reckoned in computing such six weeks. R.S.O. 1990, c. E.26, s. 31 (1).

Powers of court

(2) An appeal under subsection (1) may be made on questions of law or fact or both and the Divisional Court,

(a) may refer any matter back to the Board; or

(b) may make any decision or order that the Board has power to make. R.S.O. 1990, c. E.26, s.

31 (2).

Extension of time for appeal

(3) A judge of the Divisional Court may extend the time for appeal for such period as the judge considers proper. R.S.O. 1990, c. E.26, s. 31 (3).

Procedure

(4) Section 96 of the Ontario Municipal Board Act does not apply to a decision or order of the Board made under this Act. R.S.O. 1990, c. E.26, s. 31 (4); 2009, c. 33, Sched. 2, s. 33 (3).

Costs

32. (1) Where the amount to which an owner is entitled upon an expropriation or claim for injurious affection is determined by the Board and the amount awarded by the Board is 85 per cent, or more, of the amount offered by the statutory authority, the Board shall make an order directing the statutory authority to pay the reasonable legal, appraisal and other costs actually incurred by the owner for the purposes of determining the compensation payable, and may fix the costs in a lump sum or may order that the determination of the amount of such costs be referred to an assessment officer who shall assess and allow the costs in accordance with this subsection and the tariffs and rules prescribed under clause 44 (d). R.S.O. 1990, c. E.26, s. 32 (1).

Idem

(2) Where the amount to which an owner is entitled upon an expropriation or claim for injurious affection is determined by the Board and the amount awarded by the Board is less than 85 per cent of the amount offered by the statutory authority, the Board may make such order, if any, for the payment of costs as it considers appropriate, and may fix the costs in a lump sum or may order that the determination of the amount of such costs be referred to an assessment officer who shall assess and allow the costs in accordance with the order and the tariffs and rules prescribed under clause 44 (d) in like manner to the assessment of costs awarded on a party and party basis. R.S.O. 1990, c. E.26, s. 32 (2).

Interest

33. (1) Subject to subsection 25 (4), the owner of lands expropriated is entitled to be paid interest on the portion of the market value of the owner's interest in the land and on the portion of any allowance for injurious affection to which the owner is entitled, outstanding from time to time, at the rate of 6 per cent a year calculated from the date the owner ceases to reside on or make productive use of the lands. R.S.O. 1990, c. E.26, s. 33 (1).

Variation of interest

(2) Subject to subsection (3), where the Board is of the opinion that any delay in determining the compensation is attributable in whole or in part to the owner, it may refuse to allow the owner interest for the whole or any part of the time for which the owner might otherwise be entitled to interest, or may allow interest at such rate less than 6 per cent a year as appears reasonable. R.S.O. 1990, c. E.26, s. 33 (2).

Idem

(3) The interest to which an owner is entitled under subsection (1) shall not be reduced for the reason only that the owner did not accept the offer made by the expropriating authority, although the compensation as finally determined is less than the offer. R.S.O. 1990, c. E.26, s. 33 (3).

Idem

(4) Where the Board is of the opinion that any delay in determining compensation is attributable in whole or in part to the expropriating authority, the Board may order the expropriating authority to pay to the owner interest under subsection (1) at a rate exceeding 6 per cent a year but not exceeding 12 per cent a year. R.S.O. 1990, c. E.26, s. 33 (4).

Abatement of rent

34. (1) Subject to subsection (2), where only part of the interest of a lessee is expropriated, the lessee's obligation to pay rent under the lease shall be abated proportionately, as determined by the Board. R.S.O. 1990, c. E.26, s. 34 (1).

Frustration of lease

(2) Where all the interest of a lessee in land is expropriated or where part of the lessee's interest is expropriated and the expropriation renders the remaining part of the lessee's interest unfit for the purposes of the lease, as determined by the Board, the lease shall be deemed to be frustrated from the date of the expropriation. R.S.O. 1990, c. E.26, s. 34 (2).

Character of compensation

35. Where land has been expropriated, the compensation stands in the stead of the land, and any claim to or encumbrance on the land is, as respects the expropriating authority, converted into a claim to or upon the compensation and no longer affects the land. R.S.O. 1990, c. E.26, s. 35.

Payment of compensation not exceeding \$1,000

36. Where the owner who is entitled to convey the land that has been expropriated or injuriously affected and the statutory authority agree as to the compensation or the compensation has been determined

and in either case it does not exceed \$1,000, the statutory authority may pay the compensation to the owner who is entitled to convey the land, saving always the rights of any other person to the compensation as against the person receiving it, and such payment discharges the statutory authority from all liability in respect of the compensation. R.S.O. 1990, c. E.26, s. 36.

Representative

37. Where an owner of the land is unknown, is under a disability or for any other reason is not represented, a judge may, after due notice to the persons interested, appoint a person to represent such owner for any of the purposes of this Act, and any action of a person so appointed is binding on the person whom the person appointed represents. R.S.O. 1990, c. E.26, s. 37.

Compensation paid into court

Payment into court

38. (1) In any case where the statutory authority considers it advisable, it may without an order, pay the compensation agreed upon or determined into the office of the Accountant of the Superior Court of Justice together with a sum equal to the interest thereon at the rate of 6 per cent a year for six months. R.S.O. 1990, c. E.26, s. 38 (1); 2002, c. 18, Sched. A, s. 9 (6).

Payment out of court

(2) Upon an application for payment out of court of compensation paid into court, a judge may direct that such notice of the application be given by publication or otherwise as the judge considers proper and may direct the trial of an issue or make such order with respect to the payment out of court of compensation and as to costs as the judge considers reasonable. R.S.O. 1990, c. E.26, s. 38 (2).

Adjustment of interest

(3) Where an order is obtained under subsection (2) in less than six months after the payment of the compensation into court, the judge making the order may direct that a proportionate part of the interest be returned to the statutory authority. R.S.O. 1990, c. E.26, s. 38 (3).

Where unborn issue interested

(4) Where unborn issue or an unascertained person or class is interested in compensation paid into court, a judge may appoint such person as he or she considers proper to represent them, and any order made under this section is binding on them. R.S.O. 1990, c. E.26, s. 38 (4).

Possession of expropriated land

39. (1) Where land that has been expropriated is vested in an expropriating authority and the expropriating authority has served the registered owner with a notice that it requires possession of the land on the date specified therein, the expropriating authority, subject to any agreement to the contrary and if no application is made under subsection (3), shall take possession of the land on the date specified in the notice. R.S.O. 1990, c. E.26, s. 39 (1).

Date for possession

(2) Subject to subsection (3), the date for possession shall be at least three months after the date of the serving of the notice of possession. R.S.O. 1990, c. E.26, s. 39 (2).

Application for adjustment of date of possession

(3) A registered owner or an expropriating authority may, upon such notice as the judge may direct, apply to a judge for an adjustment of the date for possession specified in the notice of possession, and the judge, if he or she considers that under all the circumstances the application should be granted, may order that the date for possession shall be on such earlier or later date as the judge may specify in the order. R.S.O. 1990, c. E.26, s. 39 (3).

Warrant to put down resistance to entry, etc.

40. (1) Where resistance or opposition is made to the expropriating authority or any person authorized by it in entering upon, using or taking possession of land when it is entitled so to do, it may apply to a judge for a warrant directing the sheriff to put down the resistance or opposition. R.S.O. 1990, c. E.26, s. 40 (1).

Hearing

(2) The judge shall, in writing, appoint a time and place for the hearing of the application and in the appointment may direct that it shall be served upon such person as the judge may prescribe. R.S.O. 1990, c. E.26, s. 40 (2).

Issue of warrant

(3) On proof of the resistance or opposition, the judge may issue a warrant. R.S.O. 1990, c. E.26, s. 40 (3).

Return

(4) The sheriff shall forthwith execute the warrant and make a return to the judge of the execution thereof. R.S.O. 1990, c. E.26, s. 40 (4).

Abandonment of expropriated land

41. (1) Where, at any time before the compensation upon an expropriation is paid in full, the land or any part thereof is found to be unnecessary for the purposes of the expropriating authority or if it is found that a more limited estate or interest therein only is required, the expropriating authority shall so notify each owner of the abandoned land, or estate or interest, who is served or entitled to be served with the notice of expropriation, who may, by election in writing,

(a) take the land, estate or interest back, in which case the owner has the right to compensation for consequential damages; or

(b) require the expropriating authority to retain the land, estate or interest, in which case the owner has the right to full compensation therefor. R.S.O. 1990, c. E.26, s. 41 (1).

Revesting

(2) Where all the owners elect to take the land, estate or interest back under clause (1) (a), the expropriating authority may, by an instrument signed by it and registered in the proper land registry office and served on each owner, declare that the land or part thereof is not required and is abandoned by the expropriating authority or that it is intended to retain only such limited estate or interest as is mentioned in the instrument, and thereupon,

(a) the land declared to be abandoned reverts in the owner from whom it was expropriated and those entitled to claim under the owner; or

(b) in the event of a limited estate or interest only being retained by the expropriating authority, the land so reverts subject to such limited estate or interest. R.S.O. 1990, c. E.26, s. 41 (2).

Disposal of expropriated lands

42. Where lands that have been expropriated and are in the possession of the expropriating authority are found by the expropriating authority to be no longer required for its purposes, the expropriating authority shall not, without the approval of the approving authority, dispose of the lands without giving the owners from whom the land was taken the first chance to repurchase the lands on the terms of the best offer received by the expropriating authority. R.S.O. 1990, c. E.26, s. 42.

Time for application

43. Any application to set aside or quash any proceeding or step taken under this Act shall be made within thirty days after the proceeding or step in respect of which the application is made, but this section does not apply where the applicant was entitled to and not given notice of the proceeding or step or where the proceeding or step was a nullity. R.S.O. 1990, c. E.26, s. 43.

Regulations

44. The Lieutenant Governor in Council may make regulations,

(a) prescribing rates of interest for the purposes of section 20;

(b) prescribing forms for the purposes of this Act and providing for their use;

(c) prescribing procedures respecting applications to and hearings by inquiry officers and boards of negotiation;

(d) prescribing tariffs of costs and rules to be applied by assessment officers for the purposes of section 32. R.S.O. 1990, c. E.26, s. 44.
