
OFA Policy Advisory Council Memo July 16, 2024

Expropriation

Along with proximity to public infrastructure, such as transit, healthcare, or highways, is the risk of expropriation to ensure sufficient land is available. Farmers should be aware of the possibility of expropriation, be familiar with the process, and know their rights under notice of expropriation.

Expropriation is an act by Government or Legislated Proponent to acquire private property from landowners for a public purpose. It is the Government exercising the power of Eminent Domain, governed by the [Expropriations Act, Ontario](#), or the [Expropriation Act, Canada](#).

Expropriation can be an incredible inconvenience for a landowner. In addition to the difficulty of losing a portion of property, landowners can experience adversities in trying to navigate an appeal and compensation negotiation process.

For roads, highways, and energy infrastructure, if the parties fail to reach a voluntary settlement by the end of the review period, the formal offer expires, and the project proponent may file an application to seek Expropriation Authority. In Ontario, [Ontario Energy Board Act, Sec. 99](#) outlines the expropriation authority for natural gas distributions and electricity infrastructure.

The first step is formal notice served on landowners of the Government's intention to seek expropriation. An inquiry officer conducts a review and prepares a report for the Expropriating Body. They could find the expropriation necessary and still recognize that the landowner may not be satisfied with those findings. Once approved and registered, the plan of expropriation is served to the landowner.

The Expropriating Authority conducts an independent appraisal to determine expropriated land FMV. While it will comply with the compensation requirements of the Expropriations Act, it may not include compensation incentives designed to achieve early voluntary property settlements.

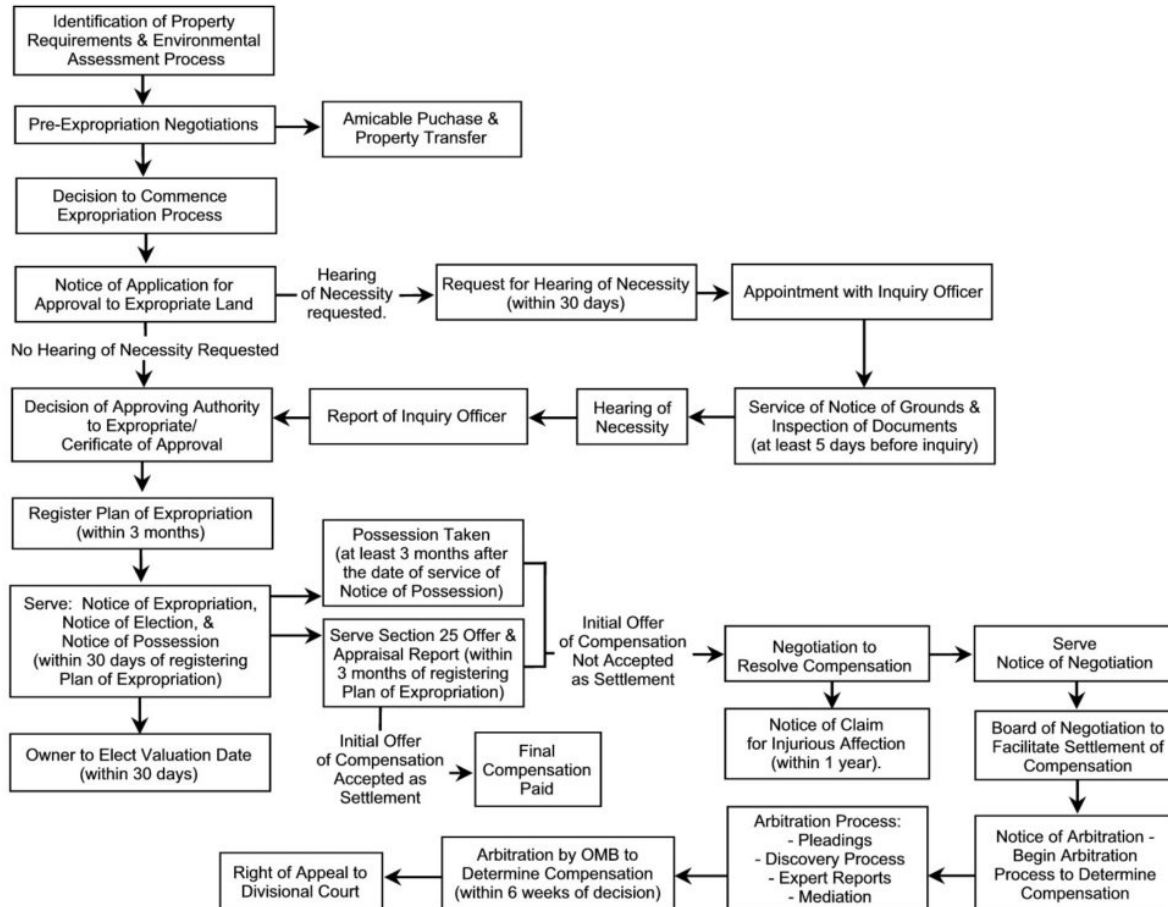
The owner can accept the offer or choose to accept the offer "Without Prejudice." In this case, the owner can receive compensation, but reserves their right to claim more than the amount offered through negotiation or appeal. Landowners can request an appeal to a divisional court, and for municipal expropriation, also request an appeal to the Local Planning Appeal Tribunal.

Should the landowner accept the offer, expropriation can be completed in as little as 4 months, often with a premium negotiated in favour of the owner. Expropriation Compensation can be based on FMV taken for the land as-is, without considering value added improvements, or the possible decrease in value remaining property due to the nature of the disturbance.

This compensation may also include Damages for Disturbance: relocation compensation, moving expense reimbursements (about 5% of FMV) plus compensation for difficulties to relocate (for example, if a new residence needs wheelchair accessible), damages for Injurious Affection

(remaining land value decline following expropriation), and other reasonable costs, such as legal fees, disbursements incurred in negotiating, and appealing expropriation.

Expropriation Flowchart – [Ontario Expropriation Association](#)



Regulators

Depending on the type of project, federal or provincial authorities regulate land access, and all stages of a project from pre- construction, through decommissioning of the infrastructure.

The Canada Energy Regulator (CER) regulates electricity transmission border crossings, and pipelines. The Ontario Energy Board (OEB) regulates natural gas distribution, and electricity transmission and distribution projects.

Innovation, Science and Economic Development (ISED) Canada regulates telecommunications towers. A combination of federal and provincial regulations guide cell and wireless internet towers and technology assets added to existing utility infrastructure.

While pipelines, electrical and roadway infrastructure could result in expropriation, if telecom tower projects do not reach needed land access agreements, there is no right-of-entry or expropriation process. Tower site options are not as constrained as other infrastructure projects.

Other telecom assets often attach to electricity infrastructure, where telecoms rent space in existing rights-of-way, and there is no additional easement for the telecom infrastructure. For example, on poles that already carry distribution lines, the right granted to a telecom company is access presumed to not interfere with the operation of the power poles. Landowners in the easement must act in good faith with a telecom company renting pole space. For this reason, while negotiating a utility agreement, consider including a 'reasonable access' clause with nominal compensation, to manage the situation, should it occur, to ensure the same care for property by the telecom, as agreed to by the electrical company in the underlying easement agreement.

The role of the OEB on telecoms towers can be confusing. OEB makes decisions on electricity and substation applications, but the communications tower falls under ISED authority. Normally developers will use the ISED Canada consultation process and the OEB's consultation process.

Disputes and Resolutions

Pipelines and international power transmission lines, visit <http://www.cer-rec.gc.ca>.

[CER Land Matters Advisory Service](#)

Email LMAS@cer-rec.gc.ca

[CER Alternative Dispute Resolution](#)

Email ADR-RED@cer-rec.gc.ca

[CER Complaint Resolution Process](#)

[CER Landowner Guide](#)

[Land Use Compensation Disputes](#)

Natural gas and Electricity, visit <https://www.oeb.ca/>. Utility policies on landowner access are based on the [CER Landowner Guide](#). To learn about regulated company agreement requirements, see [Ontario Energy Board Act Section 97](#).

For telecom agreement disputes visit www.ontario.ca/page/consumer-protection-ontario or contact Consumer Protection Ontario at consumer@ontario.ca.