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Claiming Damages Prior to a Formal Expropriation Under the Expropriations Act

By Jeff Goldstein, Principal Lawyer at Goldstein Law Firm.

In the case of [City of Toronto v. Simone Group Properties Limited 2013 ONSC 341](#), the Local Planning Appeal Tribunal (formerly the Ontario Municipal Board) assessed compensation issues related to the market value of property expropriated given the presence of environmental contaminants at the expropriated property site. It is also awarded and considered damages related to business losses, related to an extensive delay (approximately 7 years of time) by the City in carrying out the expropriation.

Where Authorities Delay in Carrying Out an Expropriation, A Property Owner or Business Owner Can Claim Damages

The property owner claimed disturbance damages for business losses incurred as a result of a pre-expropriation delay. The Board accepted a claim for business losses for 7 years. These losses, more particularly rental income losses, related to the fact that *diminished rents and protracted vacancy period for the subject property was the result of the property owners inability to secure a long term tenant because of uncertainty about the City's expropriation plan.*

In the context of a pending expropriation, the Board concluded that it is reasonable to assume that a long-term tenant would not have opted to occupy the property. The property owner managed to attract a tenant at a sub-market value rate, and the Board calculated the difference between that rate and the reasonable market lease rate as the quantum of damages attributable to that particular period.

In *Toronto Area Transit Operating Authority v. Dell Holdings* 1997 CanLII 400 (SCC), the Board noted that in order to be entitled to an award for disturbance damages, the claimant must bear the burden of proving that damages are the natural and reasonable consequence of the expropriation. The Supreme Court of Canada has made it clear that disturbance damages can be incurred in a period prior to the start of the expropriation process.

In the *Dell Holdings* case, the transit authorities were planning to construct a GO Transit station on one of the property owners sites. The municipality refused to provide approvals for a development of the land until the transit authority decided on the location of the project site. This occurred 3 years later. As a result of the delayed expropriation, the property owner suffered financial loss due to the failure to proceed with development approvals. Such losses were a natural and reasonable consequence of the expropriation.

What Happens If I Receive a Notice of Intention for Application to Expropriate Land?

Where an authority intends to build a project that encroaches on private property, approval by the local municipal council (also referred to as the “approving authority”) under the Expropriations Act is required. Obtaining such approval, and the subsequent steps, including sending out formal Notices of Expropriation, registering the expropriation plan, and taking formal possession of the property can often be delayed by several months or years. Though prior to the formal invocation of expropriation proceedings, property owner and business owner claimants can qualify for compensation during this “pre-expropriation” time period, if it can be shown that damages that are a natural and reasonable consequence of the pending expropriation, or the delay related thereto, has been sustained.

Accordingly, it is important to contact an expropriation lawyer at an early stage to ensure all required documents are in place and organized, and that the claimant understands their legal rights to claim compensation from the authorities for a full taking, partial taking, or interference (i.e., injurious affection) with their land.

About the Author

Jeff Goldstein is an experienced employment law and expropriation law lawyer operating across Ontario. In addition to his law practice, he consults in expropriation finance matters, assists entrepreneurs in growing their businesses, and is a frequent investor in technology companies. Contact www.goldsteinlawyers.ca or 647-838-6740.