

New OLT rules for expropriation matters

October 26, 2023

The Ontario Land Tribunal (OLT) has published new rules for proceedings under the [Expropriations Act](#). Specifically, the OLT has revised Part II (Expropriation Proceedings) of the OLT's [Rules of Practice and Procedure](#) (the Rules). The new Rules are in effect as of Oct. 13, 2023.

Key changes

There are four key changes to Part II of the Rules to keep in mind for your next expropriation proceeding:

1. **Appraisals due 15 days before discoveries:** Significantly, any appraisal report that a party intends to rely on must be served at least 15 days before **examinations for discovery** (Rule 26.21). Previously, appraisals were required to be served 15 days prior to **the hearing**. We understand that in order to revise an appraisal report following discoveries, a party will need to file a motion (likely written) setting out its rationale for requiring those revisions. If a party fails to follow this rule, the implication is that a party will not be entitled to rely on that report at a hearing. It is interesting to note that other professional reports that will be relied upon are not required to be filed before discoveries.
2. **Mediation continues to be encouraged:** Changes throughout Part II reflect the shift from the former Board of Negotiation process to a Tribunal-led mediation process for expropriation proceedings, read harmoniously with Part I, Rule 18 regarding mediation, for example:
 - o Clarification that the Tribunal, or either party may terminate a mediation (Rules 26.8 and 26.9); and
 - o Creation of an "*Expropriation Mediation Request Form*" (Rule 26.5).
3. **Clearer process following failed mediation:** The Tribunal's ability to issue directions (including to file pleadings or attend a case management conference) following a terminated expropriation mediation has been clarified (Rule 26.10).
4. **Notice of acceptance of settlement offer:** Parties must notify the Tribunal within 30 days of accepting a settlement offer in an expropriation proceeding, and the Tribunal's file will be closed "[u]pon payment of compensation due ... subject to determination of costs and interest" or other Tribunal directions (Rule 26.30).

Why now?

Over the summer months, the OLT published an earlier draft of proposed changes to Part II for [public consultation](#).

In 2021, the *Expropriations Act* itself underwent a [number of changes](#) for the first time in decades, including limiting the availability of hearings of necessity, providing new access rights associated with priority projects, and amending the governing provisions with respect to interest and costs.

One notable change included re-inventing the Board of Negotiation in the form of Tribunal-led mediation. That change was reflected in the 2021 draft of the Rules.

The continued importance of early mediation opportunities in expropriation proceedings continues to be reflected in the current changes to Part II. In its [news release](#), the OLT indicated that the revisions to the Rules “facilitate active case management and encourage the use of mediation for expropriation matters”.

Practical implications

Appraisals 15 days before discoveries (Rule 26.21)

Appraisers will now be asked to produce hearing-ready appraisals earlier in the process, so that they can be served 15 days in advance of discoveries.

There is no requirement to serve any other type of report, such as a business valuation report, prior to discoveries. Discoveries may still provide an opportunity to evaluate the necessity and underpinnings of such reports.

This may be a welcome change for authorities, since they will ordinarily have a Section 25 appraisal report in hand and will now receive claimants’ appraisals 15 days in advance of discoveries (as opposed to the old regime, which was 15 days in advance of the hearing).

Claimants and claimant-side appraisers may find this challenging if they typically wait on facts revealed in discoveries to inform their appraisal reports.

But given the Tribunal’s encouragement of mediation, reports may have already been exchanged (albeit on a without prejudice basis) by the time discoveries occur. The Tribunal’s expropriation mediation arm, and previously the Board of Negotiation, in practice, has applied various requirements over the years with respect to delivery of reports. For example, in 2018, delivery of reports was a pre-condition to even scheduling a negotiation date. More recently, the requirement has been relaxed and the general expectation is that reports to be relied upon are provided to the Tribunal’s mediation coordinator before the mediation.

Requiring hearing-ready appraisals before discoveries may avoid the premature scheduling of discoveries or last-minute cancellations. It may also ensure that the discoveries that do proceed are better informed and more focused, potentially resulting in time and cost savings.

Notice of accepted settlements (Rule 26.30)

All parties should be aware of the duty to inform the Tribunal of accepted settlement offers within 30 days. In addition, parties should be clear with the Tribunal about any directions required with respect to determination of interest and costs before the file is administratively closed.

Conclusion

We will wait to see how these changes to Part II of the Rules play out in practice. Should you have any questions about these changes to the Rules impacting expropriation proceedings, reach out to one of our expropriation lawyers.

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