

EXPROPRIATION CASE LAW UPDATE – ONTARIO BAR ASSOCIATION

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Irene Wong (Scargall Owen-King Lavictoire LLP) and Sarah Spitz (Rayman Harris LLP)

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Procedural and Discovery Motions

The Tribunal heard procedural motions in about 11 cases this past year, with some cases having multiple procedural motions. We have observed a few trends and key takeaways as follows:

- The Tribunal is not bound to strictly apply the Rules of Civil Procedure (See: StorageVault)
- The Tribunal does not generally award costs of procedural or interim motions (See: TSCC 2991 v Metrolinx, but see Virk Home Furnishing, above);
- Leave to amend pleadings will generally be granted, but there may be limitations on the scope of the permitted amendment (See: Craigholme Estates; Pietrangelo Family);
- Screening out the scheme under s. 14(4)(b) does not mean the parties cannot ask questions about the nature and scope of the scheme on discovery within reason (Singh v Waterloo)
- Documents referenced in pleadings or expert reports must be produced (See: Craft Kingsmen, Pietrangelo Family);
- Proportionality is not an automatically overriding consideration in discovery for expropriation cases. If proportionality is raised, there must be supporting evidence (See: StorageVault)
- Collateral Superior Court proceedings to determine rights between the parties do not necessarily impact the Tribunal's ability and jurisdiction to determine compensation (See: Singh v Waterloo)
- There is still reluctance to grant confidentiality/sealing orders, but they may be ordered if there is genuine and current confidential information to be filed with the Tribunal (See: Shell Canada, Craft Kingsmen);
- The Tribunal's power to control its own proceedings remains broad and the overriding principle is what process will achieve the most expeditious, fair and just result (Emros Developments, Globe Wholesale Meats, Tagumpay Trading Company)

Toronto Standard Condominium Corporation No. 2291 v Metrolinx, 2025 CanLII 106937 (ON LT)

This decision was a motion by the Claimant seeking an order that Metrolinx provide a detailed and particularized Schedule “B” to its Affidavit of Documents. While the parties were able to resolve the substance of the motion, the Claimant asked the Tribunal to order costs of the motion.

The Tribunal commented that while there is “no doubt” that Claimants are often entitled to “what is generally understood to be recovery of reasonable costs on a scale closer to a ‘full indemnity standard’ (para 5) section 32 is best applied following the determination of compensation by adjudication or settlement (para 6).

The Tribunal expressed its view that dealing with incremental costs of multiple steps in an expropriation proceeding is “very costly, time-consuming and may unfortunately serve to foster ongoing ‘litigation conflict’ between the parties” (para 8).

The Tribunal declined to order costs of the motion.

Craigholme Estates Ltd. v Thames Valley District School Board, 2025 CanLII 88165 (ON LT)

The Claimant brought a motion for leave to amend its Notice of Arbitration and Statement of Claim. The amendment sought to include a claim for \$48 million as compensation for injurious affection, as well as disturbance damages for development delays, increased engineering and servicing costs to the remaining lands caused by the expropriation, the particulars of which the Claimant stated in its proposed amended pleading were not known. At the time of the motion in August 2025, the merits hearing was set for February 2026.

The Respondent opposed the motion to amend the Claim on the basis of an allegation that the damages pleaded were barred by section 22 of the *Expropriations Act*, which requires a Claimant to provide notice of a claim within one year of the damage becoming known. In considering the Respondent’s argument, the Tribunal found the pleading of injurious affection was not statute barred. The Claimant provided evidence that delay to development only occurred after the OLT claim was filed in 2023 and was based on the municipality’s refusal to enter into a development agreement until servicing of the lands was complete. The Claimant’s evidence was also that it had only received appraisal advice concerning injurious affection in July 2025, which was provided to the Respondent almost immediately (para 11).

The Tribunal emphasized in its analysis well-established case law that the Tribunal should be extremely cautious to deny a claim based on the expiry of a limitation period (para 12).

The Claimant was ultimately permitted to amend its claim, but not in the form proposed. The Tribunal required the Claimant to plead further particulars of the damages alleged and the factual basis for those damages (para 20).

***Mostafavi v Toronto (City)*, 2025 CanLII 68211 (ON LT)**

The City brought a motion stemming from the Claimant's failure to answer certain undertakings and refusals. The Claimant did not strongly oppose the motion, but indicated in responding materials that he was unable to locate further documents at that time.

The Tribunal noted that the Claimant had not produced documents to support a claim for lost rental income and had not demonstrated the basis for his injurious affection Claim. The Tribunal held it was not a proper response for the Claimant to say there was no further information at that time, and that the Claimant was required to either produce the requested information or abandon the claim (paras 7-8).

The Tribunal also held the City was entitled to compel the Claimant to re-attend for discovery on the answers and documentation produced (para 9).

***Tagumpay Trading Company Limited v Metrolinx*, 2025 CanLII 74686 (ON LT)**

Metrolinx brought a motion to attempt to have proceedings to determine compensation for the expropriations of 453 Queen Street West, 455 Queen Street West, and 449 Queen Street West heard together, one after another. All three Claimants opposed the motion. Metrolinx argued that the matters were appropriate for hearing together as it would be more efficient and there would be common issues of fact and law (paras 7-8).

The Claimants opposed the requested order and raised that hearing the matters together would create delay and inefficiency due to the different stages of the claims' advancement and the differences in types of compensation claimed.

The Tribunal applied Rule 16 of the OLT Rules and framed its decision based on the factors enumerated by Vice-Chair Braun in *Southwest Georgetown Landowners Group Inc. v Halton Hills (Town)*, [2023 CanLII 12228 \(ON LT\)](#):

1. Are there common facts, common issues and common law?
2. What would constitute the most efficient use of the Tribunal's resources?
3. Is there prejudice that may result to any party as a result of the consolidation or hearing together?
4. What is most fair to all parties?
5. Is there a possibility that a decision in one matter may predetermine a subsequent matter before the Tribunal or result in the possibility of contradictory Tribunal decisions?

6. What is the ability and jurisdiction of the Tribunal to deal with all of the issues affective a proposal in a comprehensive manner?

The Tribunal refused to make the order Metrolinx requested for the following reasons:

- The order resulted in delay for one of the Claimants and efficiency only for Metrolinx;
- The Claimants had not expressed desire to pool resources regarding counsel and experts;
- Counsel for two of the Claimants were unavailable during the January 2026 hearing dates; and
- The January 2026 hearing dates set provided insufficient time to address all three claims.

It was ultimately not sufficient that the joining of hearings would be more convenient and efficient for Metrolinx and the motion was dismissed. There were no costs awarded.

Craft Kingsmen Rail (East) Corp. v Metrolinx, 2025 CanLII 101541 (ON LT)

The Claimant brought a motion seeking the production of a certain confidential document Metrolinx argued ought to be protected on the basis of solicitor-client privilege.

The Tribunal directed Metrolinx to provide the document on a confidential basis only for the Tribunal's review (para 10).

The Tribunal determined that the memorandum, which was prepared by Metrolinx's Chief Legal Officer, was not privileged as it primarily provided business advice rather than legal advice (para 13) and ordered production of the memorandum. There was no order as to costs of the motion.

It is also noted that while not the subject of the motion, the Tribunal commented that the presence of a private arbitration clause in easement agreements underlying the dispute did not in its view oust or limit the Tribunal's jurisdiction with respect to the determination of compensation under the *Expropriations Act*. The Tribunal directed the parties to raise any questions as to jurisdiction by way of motion (paras 5-6).

There are two further decisions from the OLT in this case from 2025, both dealing with production issues.

In *Craft Kingsmen Rail (East) Corp. v Metrolinx*, [2025 CanLII 110382](#), the Tribunal granted the Claimant's motion to compel further answers to questions arising from examination for discovery of Metrolinx's witness. This included requiring Metrolinx to provide details

as to which documents it claimed were privileged and directions not to redact documents for being ‘commercially sensitive or confidential’

In *Craft Kingsmen Rail (East) Corp. v Metrolinx*, [2025 CanLII 113862](#) (ON LT) the Tribunal ordered Metrolinx to produce several documents referred to in one of its expert’s reports. Metrolinx initially refused production on the basis of confidentiality but by the time of filing its reply materials agreed to produce most of what was requested. The Tribunal found that the construction contracts at issue were to be produced because they were ‘at least implicitly referred to and relied on by [Metrolinx’s expert]’ (para 20). The Tribunal found it was premature to consider any sealing order or confidentiality order as nothing had been filed with the Tribunal.

***Singh v Waterloo (City)*, 2025 CanLII 29950 (ON LT)**

The City brought motion seeking to vacate hearing dates pending determination of a Superior Court action commenced by the City in 2019. The City’s action sought specific performance of the terms of a planning settlement and an order requesting Claimant to convey disputed lands to the City.

The Claimant opposed the motion was defending the City’s Superior Court action on the basis that planning settlement had lapsed, and Claimants never developed the land at issue despite the City expropriating what Claimant would have been required to convey as part of planning settlement.

The Tribunal did not agree that Superior Court action needed to be determined first and found that determination of whether the planning settlement was breached or not was irrelevant to the determination of compensation arising from the City’s expropriation.

Following this decision, the Tribunal also released its decision on a discovery motion in the same case: [2025 CanLII 37597](#) (ON LT). The Claimant sought to compel the City to answer questions about its offers to purchase the Claimant’s lands in 2018 (two years prior to the expropriation). These questions related both to the expropriated property and to other properties owned by the Claimant that were not expropriated. The Tribunal found that questions about offers to purchase the expropriated property may be relevant and need be answered, but questions about offers to purchase the Claimant’s other lands were not relevant. The Tribunal rejected the City’s arguments that the offers were not relevant because they would relate to the ‘scheme’ of the expropriation (paras 12-13) and noted that “reasonable questions related to the scheme and to matters under section 14(4)(b) at examinations for discovery are always relevant in every expropriation case” (para 13).

The Tribunal also commented that the scope of the scheme is a matter solely for the Tribunal to determine at the hearing.

The OLT also found that the City's offers made in advance of the expropriation were not settlement privileged or litigation privileged as claimed (paras 16-25). Notably, the Tribunal was critical of the City for not including a detailed Schedule "B" to its Affidavit of Documents (paras 24-25).

Globe Wholesale Meats Inc. et al. v Metrolinx, 2025 CanLII 21801 (ON LT)

The Tribunal directed a written motion to deal with various disputes concerning documentary production by the Claimant, issues with Metrolinx's Reply, and scheduling of a mediation.

The Tribunal ordered the Claimant to produce proper financial records, permitted Metrolinx to amend its Reply and directed the parties to confer regarding mediation. In dealing with these procedural issues, the Tribunal made a few notable comments. With respect to adjournments, the Tribunal stated: "the Tribunal will no longer entertain adjournments of hearing dates in expropriation matters except pursuant to a settlement or a motion properly brought under Rule 17 of the Tribunal's Rules of Practice and Procedure" (para 3).

With respect to the Procedural Orders, the Tribunal commented: "A PO is never 'set in stone' once issued. It is within the express and inherent jurisdiction of the Tribunal – under both OLTA and the OLT Rules – to control its proceedings and to revise a PO at any reasonable stage of a proceeding. As noted above, sometimes this occurs at the request of one or both of the parties and sometimes this is done on the initiative of the Tribunal exercising its case management mandate" (para 15).

Pietrangelo Family v The Regional Municipality of Niagara, 2025 CanLII 113853 (ON LT)

The Tribunal granted the Region's motion to compel the Claimant to produce an appraisal report that was referenced in the Claimant's pleading. The Claimant had refused on the basis of privilege and sought to amend the pleading to remove reference to the appraisal report. The Claimant had previously provided the report to the Region on a without prejudice basis.

The Tribunal permitted the Claimant to amend the pleading to revise its position on market value, but stated that it would not permit an amendment that would entirely remove the reference to the first appraisal report as this would be prejudicial to the Region (para 10). However, the Tribunal noted that the Claimant may lead (and plead) evidence from a new and different expert which may prove convincing the Tribunal at the hearing. The Tribunal noted it was not bound by the conclusions of the earlier appraisal and would weigh available evidence at the hearing (para 11).

536555 Ontario Ltd. & Emros Developments Corp. v Ottawa (City), 2025 CanLII 110383 (ON LT)

The Tribunal previously ordered a rehearing of certain issues following a request for review of a Tribunal decision under Rule 25.2 of the OLT's Rules of Practice and Procedure. A dispute arose between the parties as to the appropriate scope of the re-hearing as the Claimant had also filed an appeal with the Divisional Court.

The Tribunal found that since the order directing a re-hearing of certain issues included discretion to revisit other issues raised in the case, it would permit further evidence and hearing as to Highest and Best Use, notwithstanding that the request for reconsideration did not explicitly provide for a re-hearing as to the issue of Highest and Best Use.

The Tribunal rejected the Respondent's argument that it was '*functus officio*' with respect to Highest and Best Use and accepted the Claimant's arguments that it retained flexibility to reopen proceedings in order to discharge the functions set out in its enabling legislation (para 14). The Tribunal followed existing case law in other administrative law contexts that an adjudicator is not '*functus officio*' when it remains seized of an issue (para 14).

Shell Canada Limited v Regional Municipality of York, 2025 CanLII 18343 (ON LT)

The Claimant sought a confidentiality order from the Tribunal. The Region did not take a position.

Despite recent case law demonstrating the Tribunal's reluctance to make confidentiality orders (summarized by the Tribunal in para 26), the Claimant was successful in obtaining the order. The Tribunal considered the following factors in granting the order, set out in paragraph 27:

- The proceeding was on the eve of a hearing;
- The Respondent did not oppose the motion;
- There was a confidentiality agreement in place as between the parties with respect to disclosure of the information;
- The scope of the sealing order was clearly articulated;
- The information to be protected included information of non-parties;
- The information to be protected included current sensitive financial data.

StorageVault Canada Inc. v Metrolinx, 2025 CanLII 21784 (ON LT)

The Tribunal granted a motion by Metrolinx seeking further productions and answers from the Claimant following discovery. The Claimant, in opposing the motion, raised concerns regarding the proportionality of Metrolinx's questions. The Tribunal rejected this contention for two reasons. First, it said it was not bound to follow Rule 29.2.03 of the *Rules*

of *Civil Procedure* except in very limited circumstances (para 6). Second, it said that an allegation as to the proportionality of questions required evidence and the Claimant led none to support its position (para 7).

Costs Decisions

City of Ottawa v MacEwen Petroleum Inc, [2025 ONSC 6955 \(CanLII\)](#)

The City expropriated property in which MacEwen was a lessee. All compensation issues were settled except costs, which were determined by the Tribunal. In January 2025, the Tribunal fixed costs at \$356,755.45 and ordered the City to pay interest on costs from the date MacEwen submitted its Bill of Costs (November 1, 2023).

The City appealed the decision on the basis that interest cannot be awarded from a date prior to the Tribunal's Order for costs. MacEwen cross-appealed seeking interest from the date of settlement (September 28, 2023) on the basis that this date was intended by the Tribunal.

The central question on appeal was whether the Ontario Land Tribunal had legal authority to award interest on legal costs from a date before its costs order was made.

The Court held that the Tribunal erred; interest cannot run from any date before the Tribunal issues its costs order, for the following reasons:

- No authority under the *Expropriations Act*: The Court reviewed Sections 32 and 33 of the *Expropriations Act*, and found that the *Expropriations Act* allows interest only on market value of the land and injurious affection. It does not permit interest on costs, and the relevant costs provision is silent on interest. The Court held that the Act is effectively a complete code on interest, leaving no authority to impose interest on costs prior to the Tribunal's order.
- No authority under the *Courts of Justice Act (CJA)*: The Tribunal could rely on the CJA for post-judgment interest but not prejudgment interest on costs. The key provisions are:
 - CJA, s 129(1): Costs “bear interest ... from the date of the order.”
 - CJA, s. 128(4)(c): Prejudgment interest cannot be awarded on costs.
 - CJA, s. 130(1)(c): Allows flexibility only *within the boundaries* of ss. 128 and 129; cannot override the explicit prohibition on prejudgment interest.

The Court emphasized that multiple appellate decisions (e.g., *Yemec* and *Rajic v. Spivak*) confirm interest on costs cannot start before the date of the costs order.

The Court acknowledged that there remain two possibilities for achieving an interest award on costs prior to receiving an order from the Tribunal:

1. Compensation for interest that has already been *paid* by a party (including a solicitor’s account) pursuant to Section 32 of the *Expropriations Act*; and,
2. Parties may agree upon interest owing as part of settlement negotiations.

Cynthia Lynch v Regional Municipality of Halton, 2025 CanLII 59840 [Rule 26]

The parties negotiated a full and final settlement of the Owner’s claim. Under the Final Agreement, the Region also agreed to pay the Owner’s reasonable legal and other costs and related disbursements incurred to determine the compensation payable under the agreement in accordance with [section 32](#) of the [Act](#).

The parties’ requests regarding costs (as summarized by the Region) is set out below:

	Claimant’s Request	Region’s Request
Legal costs (WeirFoulds LLP)	\$253,469.64	\$235,889.67 (\$17,579.97 reduction)
Legal costs (Thorsteinssons LLP)	\$46,387.94	\$0
Appraisal costs (Altus Group, gsi Real Estate & Planning, Robson Associates Inc.)	\$46,057.87	\$23,028.94 (\$23,028.93 reduction)
Planning costs (Ruth Victor & Associates Inc.)	\$36,348.09	\$33,648.09 (\$2,700 reduction)
TOTAL (inclusive of HST):	\$382,263.54	\$292,566.70

The key areas of dispute were resolved by the Tribunal as follows:

- **Tax Advice Costs:** The Region’s position was that the tax advice was unrelated to the determination of compensation. The Tribunal considered and applied *Smith v Alliance*, which supports the principle of full recovery by expropriation claimants, to conclude that the full costs of the tax work could not be seen as reasonably related to the determination of compensation; however, it was reasonable for owner to seek tax advice in relation to a clearance certificate required by the Region to release funds to the owner and, more generally, as to how her approach to

settlement and quantum may be impacted by her status as a non-resident. On this basis, the Tribunal determined \$26,000 is a reasonable amount for tax advice costs.

- Reduction to Legal Costs Invoices: A portion of the costs submitted were related to a Hearing of Necessity, which did not take place. The Tribunal agreed that a reduction in the amount of \$7,000 is warranted.
- Reduction to Planning and Appraisal Fees: The reductions sought by the Region to the expert accounts were not found reasonable by the Tribunal. The planning and appraisal fees were not reduced.
- Interest on Costs Entitlement: The Claimant sought interest on costs on the same basis awarded in the Tribunal's decision in *Kareem George Saikaley v Ottawa (City)* OLT-21-001312, 2025 CanLII 5384 (ON LT). As the *Saikaley* decision was subject of a Notice of Appeal at the time of this decision, the Tribunal deferred its determination regarding interest until the appeal is determined.

Gabriel Khater Operating as House of Pizza v Ottawa (City), 2025 CanLII 110387 (ON LT) [Rule 26]

The Claimant brought a motion for the adjudication of costs pursuant to Section 32 of the *Expropriations Act*, and Rules 26.19, 26.20 and 26.21 of the Tribunal's *Rules of Practice and Procedure*. The City sought to reduce the Claimant's costs as well as and Order against the Claimant for the City's own costs.

The Claimant's claims for damages arising from the City's expropriation were settled in July 2024, by the Claimant's acceptance of the City's offer of compensation which was originally made on December 5, 2023. The City's offer provided for the reimbursement of the Claimant's reasonable legal, appraisal and other costs pursuant to Section 32 of the *Expropriations Act*, and did not mention any liability of the Claimant for the City's costs.

The Tribunal's key findings are summarized below:

- The City cannot claim its own costs: The accepted 2023 settlement offer promised only to pay Claimant's costs and did not reserve any right for the City to recover its own. The Tribunal will not imply new terms into a settlement contract.
- Section 32(2) of the Expropriations Act does not apply: No compensation hearing occurred, meaning no "ultimate award" exists for comparison. *Shergar* is distinguishable because it followed a full hearing with a Tribunal-made award.
- The Tribunal cannot re-litigate the merits: The City's allegations about speculative claims and unreasonable conduct rely on disputed facts not tested in a hearing. The

Tribunal notes that costs motions **after settlement** must rely on **objective, neutral facts, not advocacy narratives** (para 25).

The Tribunal accepted a majority of the Claimant's costs, with three reductions: a flat "technology fee", 75 hours of the business loss consultant's time, and 50 hours of the two law firms' time attributed to duplication/inefficiency.

The Claimant sought interest on costs pursuant to the *Courts of Justice Act* from the date of settlement in July 2024. As the *Saikaley* decision was subject of a Notice of Appeal at the time of this decision, the Tribunal deferred its determination regarding interest until the appeal is determined.

2090396 Ontario Limited v Regional Municipality of York, 2025 CanLII 110375 [Rule 26]

This motion for costs arose following the final determination on the compensation claim made by the Tribunal on April 17, 2025 (the "Merit Decision"). The Region appealed the Tribunal's decision to the Divisional Court on May 29, 2025, and accordingly requested that the Tribunal adjourn the assessment of costs until the Divisional Court renders its decision on the appeal.

The Tribunal relied on Rule 63.03(2) of *Rules of Civil Procedure*, which provides for an automatic stay of the decision, but not to the assessment of costs. Further, the Tribunal suggested that it may be inferred from Rules 63.01(5), 63.02(1)(b), 63.02(3) and 63.03(1)(a) that the requested relief should have been sought from the Divisional Court.

The Tribunal concluded that assessing the costs without postponement was the best opportunity for a "fair, just, expeditious and resolution of the issue" (para 16), as it:

- reduces the costs for both parties, more efficiently uses the Tribunal's resources;
- a postponement would unduly delay resolution of the costs issue, and require the Claimant to pay its consultants and carry the costs of financing those payments
- as the costs proceeding had already commenced, delaying would result in duplication and inefficiencies and further costs claims by the Claimant, response by the Region and adjudication by the Tribunal;
- the Divisional Court's decision on the Region's Appeal may not result in any finality;
- the Claimant would still be entitled to costs even if the Region's Appeal were ultimately successful (See *Shergar*).

The Tribunal conducted a detailed review of the Claimant's Bill of Costs, resulting in minor reductions in the costs claimed for unrelated legal fees for the negotiation of an aerial easement with a utility company, and costs associated with a discovery motion for which the order provided that no costs would be awarded.

The Claimant sought interest on costs from the date of the Merit Decision; the Region requested that the determination of interest be delayed pending the appeal of the *Saikaley* decision to the Divisional Court.

Despite the Tribunal electing to delay the determination of interest on costs in other matters (see *Lynch* and *Gabriel Khater* above), the Tribunal found that the Claimant's entitlement to costs crystallized as of the date of the Merit Decision, and calculating interest from the date of the Merit Decision was consistent with the principle of indemnification central to expropriation proceedings. Leave was given to the Claimant to bring forward evidence to seek a higher post-judgment interest rate to ensure it is made economically whole with respect to costs.

***Camborda v Toronto (City)*, 2025 CanLII 121101 (ON LT) [Rule 26]**

The Tribunal considered an application for costs brought by Ana Jessica Camborda against the City of Toronto under the *Expropriations Act* and the Tribunal's *Rules of Practice and Procedure*. The Claimant sought \$198,670.53, plus the costs of bringing the application.

The parties had settled the non-costs compensation on March 10, 2025, and agreed that the Claimant was entitled to costs pursuant to Section 32(1) of the *Expropriations Act*.

The Tribunal granted most of the Claimant's costs, awarded post-judgment interest on the Bill of Costs along with costs of the application, made strong comments about the City's conduct, and dismissed the City's cross-request for costs.

The decision reinforces:

- The strong cost-indemnity protections for expropriated owners under s. 32(1).
- The Tribunal's unwillingness to:
 - Re-litigate settled compensation issues,
 - Permit comparisons to other expropriations without meaningful context,
 - Accept or reward unprofessional advocacy by counsel. The City's submissions were noted by the Tribunal as including what amounted to

personal accusations against Claimant’s counsel, which were “extremely ill-advised in both tone and content”, and not helpful to the Tribunal.

***The Estate of Argiro Papanagnostou, et al v Metrolinx*, [2025 CanLII 124739 \(ON LT\)](#)**

The Tribunal convened a status conference in relation to the Claimant’s failure to deliver expert reports and witness statements in accordance with a Procedural Order. Following discussions regarding the likelihood that the parties would be prepared to proceed with a full hearing, as scheduled, the Tribunal determined that the hearing date should be rescheduled for a later commencement date.

Counsel for Metrolinx requested that the Tribunal award costs in the amount of \$2,500 against the Claimant for its failure to comply with the Procedural Order in the “absence of circumstances of exigency or of any reasonable explanation”.

The Tribunal refused and clarified its ability to make costs awards at interlocutory steps. The Tribunal acknowledged its discretion under the *Expropriations Act* and the *Ontario Land Tribunal Act*, to prescribe rules governing its practices and procedures. While the Tribunal could consider the conduct of the parties during a proceeding and whether to assess or fix costs, it prefers to do so following a hearing or pursuant to a request for costs made under the provisions of Rule 26 following a settlement between the parties. In declining to award costs, the Tribunal notes that consideration of costs on an interim basis risks the encouragement of practices that will not promote the cost-effective and expeditious resolution of claims.

***1380268 Ontario Inc. and 2244214 Ontario Ltd. o/a Virk Home Furnishing v Metrolinx*, [2025 CanLII 24788 \(ON LT\)](#)**

This motion arises from Metrolinx seeking an Order from the Tribunal that the Claimant answer certain undertakings and questions refused or taken under advisement. The Claimant took the position that some of the undertakings and questions taken under advisement were partially answered, and the remaining disputed questions were properly refused on the basis of relevance and proportionality.

The Tribunal concluded that the answers provided no particulars of the Claimant’s claim for business loss, and that all of the questions refused were proper, relevant and should be answered. The Tribunal ordered the Claimant to responsively and fully answer all the undertakings incompletely answered, questions taken under advisement and questions refused for which answers are being sought by the Respondent.

The Respondent also sought an Order for the payment of its costs of the motion.

The Tribunal found that the motion was “only necessary due to the Claimants’ failure to plead any particulars whatsoever regarding the calculation of the amounts claimed, followed by the Claimants’ failure to provide fulsome and responsive answers to its undertakings and the unreasonable and continued refusal to answer proper and relevant questions, all of which arise from the Claimants’ framing of their prayer for relief.”

The Tribunal applied Rule 57 of the *Rules of Civil Procedure*, and found that as the Respondent was fully successful on its motion, an Order of costs was warranted in the fixed amount of \$7,500.

***Paciorka Leaseholds Limited v Windsor (City)*, [2025 CanLII 29953 \(ON LT\)](#)**

This decision arises from a motion brought by the parties for the determination of:

- (1) The Claimants’ entitlement to post-judgment interest on their settled costs; and,
- (2) Whether a setoff is available to the Respondent for costs awards of the Court of Appeal and Supreme Court in its favour.

Post-Judgment Interest

The parties settled the amount of the Claimants’ cost entitlements in accordance with section 32(1) of the *Expropriations Act* in April 2024. On these settled amounts, the Claimants were seeking post-judgment interest from the date of the Tribunal’s decision at the hearing on the merits in 2020 (the “**2020 Decision**”). The Respondent had appealed the Tribunal’s decision to the Divisional Court (dismissed on March 31, 2021) and sought leave to appeal the Divisional Court’s decision to the Court of Appeal (dismissed on October 14, 2021).

Based on a review of Section 129(1) of the *Courts of Justice Act*, along with the Court of Appeal’s decision in *Ministry of Transportation v Tripp*, the Tribunal concluded that an award of costs under section 32 of the *Expropriations Act* can attract post-judgment interest, provided that a copy of the decision by the Tribunal awarding costs is filed with the Superior Court and enforced as a judgment.

As the parties reached a private settlement on costs, an order for the payment of costs was not made by the Tribunal in the 2020 Decision, and post-judgment interest did not accrue.

Set-Off

The Court of Appeal and the Supreme Court ordered that the Claimants pay costs to the Respondent. At the time of the motion, the costs ordered had not been paid.

While the Tribunal agreed with counsel for the Claimants' submission that the Tribunal has comprehensive jurisdiction under the *Ontario Land Tribunal Act* and the *Expropriations Act* to fully determine costs in any expropriation proceeding, the Tribunal concluded that the Claimants' request to be relieved of its obligations to pay costs as ordered by the Court of Appeal and the Supreme Court, amounted to a request that the Tribunal amend those Appellate Court Orders. The Tribunal concluded that it has no jurisdiction to make such an Order.

Highest and Best Use

There are three significant cases from the OLT involving determination of Highest and Best Use and applying the Supreme Court of Canada's recent decision in *St. John's (City) v Lynch*. We have summarized them here but also encourage you to review blog posts summarizing these cases from the Ontario Expropriation Association Newsletter:

- [*Screening Out the Scheme in Urban Transit Expropriations*](#) by Jonathan Marun-Batista and Anna Lu (Aird & Berlis LLP)
- [*Applying Recent Guidance from the Supreme Court on "Screening out the Scheme"*](#) by Sarah Spitz and Leah Cummings (Rayman Harris LLP)

1255870 Ontario Limited v Metrolinx, 2025 CanLII 50810 (ON LT)

This case involved the determination of compensation for Metrolinx's expropriation of 68-70 Parliament Street, Toronto for the purpose of the Ontario Line.

The key issues were:

- **Scope of the Scheme:** Metrolinx argued that the scheme to be screened out pursuant to section 14(4)(b) of the *Expropriations Act* included earlier transit planning of the Downtown Relief Line and that the long planning history of that project over 20 years should be disregarded in the determination of value. The Claimant maintained the Ontario Line was a distinct and recent project unrelated to the Downtown Relief Line. The Tribunal held that the scheme commenced in 2019 when the Ontario Line was announced. In any event, there was no evidence that high-density approvals in downtown Toronto were influenced by more than 20 years of discussing a potential subway prior to the Ontario Line's announcement (para 54).

Leasehold Encumbrance: Metrolinx argued that there should be a deduction from market value of \$14 million arising from the long-term lease held by the tenant, who franchised a Porsche dealership on the property. It also sought to deduct relocation expenses paid to the tenant from compensation to the fee simple owner.

The Tenant had signed a release of market value in favour of Metrolinx and was also a non-arms length entity from the fee simple owner. The Tribunal declined to make a deduction because there would be no true cost borne by the Claimant to relocate the tenant in the event of redevelopment and it would be unreasonable to artificially reward Metrolinx by way of market value reduction (para 108). The Tribunal commented: “Tribunal does not accept that there is a basis for a reduction based on the Lease encumbrance and is further dissatisfied with the lack of evidence and foundation to support the large reduction from market value sought by Metrolinx as outlined above” (para 111).

- **Ministerial Zoning Orders:** Metrolinx argued that the Minister’s Zoning Order and any related Transit-Oriented Community was part of the scheme and must be screened out. However, it encouraged the Tribunal to rely on the density cap imposed by the MZO for the block as a ‘reasonableness check’ for the Claimant’s proposal. The Tribunal found—per Metrolinx’s own position—that the MZO was part of the scheme and could no be relied on. There was further no evidence that the TOC plans were maximally productive or represented Highest and Best Use of the lands (paras 79-83).

1289777 Ontario Limited v Metrolinx, [2025 CanLII 19723](#) (ON LT)

This case involved the determination of market value arising from the expropriation of two adjacent properties in Liberty Village for the Ontario Line Exhibition Station.

The key issues were:

- **Scope of the Scheme:** The Claimant argued that Liberty New Street, a planned public road alignment across the southern portion of the properties, was part of the scheme, which the parties otherwise agreed included the Ontario Line and the Exhibition Transit-Oriented Community. Metrolinx disagreed and argued Liberty New Street was not part of the scheme. The Tribunal found that Liberty New Street was inextricably linked to the Ontario Line and associated works and was therefore part of the scheme (para 90)
- **Environmental Contamination:** Metrolinx was entitled to a ‘credit’ for market value due to contamination of the Subject Property.
- **Highest and Best Use:** The Tribunal found the Claimant’s proposal was neither approvable nor financially feasible (paras 45-46). The Tribunal followed the Divisional Court’s decision in *1353837 Ontario Inc v City of Stratford, 2022 ONSC 6347* at para 21 for the proposition that the four tests for highest and best use must be satisfied and must be considered sequentially. The Claimant’s proposal included

an office component that was found not to be financially feasible nor likely to be approved from a planning perspective.

***2090396 Ontario Limited v Regional Municipality of York*, [2025 CanLII 34622](#) (ON LT)**

This case involved the determination of compensation arising from the expropriation of 1500 Centre Street in Vaughan. The purpose of the expropriation was to accommodate road improvements that enabled the construction of a bus rapid transit system involving dedicated bus lanes called the vivaNEXT rapidway. This decision has been appealed to the Divisional Court and the appeal has not yet been heard.

The key issues (at the trial level) were:

- **Highest and Best Use:** The Region argued that the Highest and Best Use of the property was for a continuation of its existing low-rise commercial development use. The Claimant argued that it could be redeveloped absent the expropriation with a 12-storey mixed-use building;
- **Scope of the Scheme:** The Region argued that screening out the scheme required the Tribunal to screen out all land use planning and urban design policies that were ‘influenced by’ the imminent development of the BRT. The Claimant argued this was an overly broad application of section 14(4)(b) of the *Expropriations Act*, relying on the Supreme Court of Canada’s recent decision in *Lynch*. The Tribunal applied *Lynch* and the Ontario Court of Appeal’s decision in *Windsor (City) v Paciorka Leaseholds Limited* and found that the impugned policies and regulations were of a general scope and did not target specific properties or corridors, therefore were not enacted ‘with a view’ to the expropriation. The Tribunal also found that there was a lack of evidence to connect the policies at issue with the expropriation, and relied on evidence from the Claimant’s planner that even without the impugned policies the Claimant would be entitled to rely on other policies that supported higher order development at the site (i.e., the Vaughan Official Plan and the 2006 Growth Plan) (see paras 41-46).

On appeal, we understand that the findings with respect to the scheme are at issue and will be decided by the Court.

Appeals and Superior Court of Justice Applications

***New Sunlight Inc v Ontario (Minister of Infrastructure)*, 2025 ONSC 638 (CanLII)
(Leave to appeal granted by the Court of Appeal)**

New Sunlight Inc. sought judicial review to quash two Orders in Council (OICs) designating its East Harbour lands as Transit-Oriented Communities land and authorizing

expropriation. The First OIC (June 2024) designated all New Sunlight lands as “transit-oriented community land,” removing the right to a hearing of necessity. The Second OIC (October 2024) authorized expropriation of all New Sunlight lands for major transit, housing, and community infrastructure projects.

New Sunlight argued the OICs were arbitrary, discriminatory, unnecessary, unreasonable, and enacted in bad faith, based on incomplete and inaccurate briefing materials.

The Court applied the *Auer* reasonableness test, which focuses on whether subordinate legislation is within the scope of statutory authority, rather than whether Cabinet had perfect information or made optimal policy choices.

The Court held that both OICs were within Cabinet’s broad statutory discretion under the *Transit-Oriented Communities Act* and the *Ministry of Infrastructure Act* and aligned with the TOC Program’s transit-oriented development objectives. The applicant’s allegations of bad faith failed; New Sunlight did not meet the high burden of proving improper motive or intent to harm.

The application was dismissed, and New Sunlight was ordered to pay \$45,000 in costs to Ontario. Leave to appeal has been granted by the Court of Appeal.

***Hydro One Networks Inc v Drew et al*, [2025 ONSC 4869 \(CanLII\)](#)**

Hydro One Networks Inc. applied to adjust the date of possession in its Notices of Possession pursuant to Section 39(3) of the *Expropriations Act*, abbreviating the possession date by thirty-two days to accommodate construction timelines for the Waasigan Transmission Line Project.

Only one self-represented owner, Mr. Richard Boudreau, appeared to oppose the request on the basis that he hoped a delay in possession may “incentivize” Hydro One in the negotiations for compensation. Mr. Boudreau was aware that the abbreviation of the possession timelines would not affect his right to compensation, and was unable to describe what, if any, prejudice he would suffer if Hydro One’s request was granted.

In allowing the application and granting the abbreviation of the possession date, the Court considered:

- The scope of the Project, being the construction of 360 km of electricity transmission lines in Northwestern Ontario, with the result of supplying an additional 350 MW to the region, creating approximately 400 jobs during

construction and being owned and operated in partnership with First Nations communities (para 7);

- The expropriation decision found that the expropriation was in the public interest, that the lands were necessary for the construction of the Project and that the land expropriated was the minimum amount of land required for the Project (para 10); and,
- Construction of the Project was scheduled to begin on October 1, 2025, with affidavit evidence establishing the necessity of obtaining access to the lands by September 22, 2025 for construction to begin on time (para 12).

The Court accordingly determined that adjustment of the date of possession was **in the public interest**, and there was **no demonstrated prejudice** to Mr. Boudreau or any other landowner.