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NEW LAW OF EXPROPRIATION

Coates and Waqué

Release No. 1, August 2026

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Highlights

This release includes updates to the legislation in Chapters 2 (Ontario) and 8 (British Columbia).

ONTARIO – SECTION 13 COMPENSATION – PROVISO UNDER SUBSECTION 13(2) – CASES – Metrolinx had expropriated two adjacent commercial parking lots in the Liberty Village area of Toronto for the construction of the future Exhibition Ontario Line Station, and where the larger of the two properties had been improved with two leased electronic billboard signs, the loss of which had been compensated by way of a separate agreement and release made pursuant to section 24 of the Act in the sum of $22,861,096.20. Metrolinx argued in the alternative that, if the Tribunal accepted the Claimant's proposed mixed-use highest and best use, which would have required removal of the billboards in the course of construction, the proviso to subsection 13(2) would preclude any compensation for the loss of the income stream from the billboard signs, and the amount paid under the section 24 agreement should be deducted from the market value of the property. The Tribunal rejected the Claimant's proposed mixed-use highest and best use on grounds of feasibility and approvability, and held that, because the highest and best use it accepted (a lower-density development proposed by Metrolinx) would have permitted the continued operation of the billboard signs, the proviso to subsection 13(2) was not engaged, and there would be no deduction from the market value on account of the billboard sign compensation already paid: *1289777 Ontario Limited v. Metrolinx*, 2025 CarswellOnt 3232, 2025 CanLII 19723 (Ont. Land Tribunal).

ONTARIO – MARKET VALUE – FACTORS EXCLUDED FROM DETERMINATION OF MARKET VALUE – The parties' land use planners both agreed that the transit scheme for the Ottawa Light Rail Transit project commenced in November 2013 with a new City transportation master plan. The planners, however, disagreed on the reasonably probable amount of development density that could be achieved on the site, absent the scheme. The City's planner took the position that 178,962 ft2 buildable could be achieved whereas the claimant's planner took the position that 262,177 ft2 was probable (para. 62). The City argued that the claimant's position on highest and best use was scheme-influenced because it vastly exceeded a prior development proposal submitted prior to the TMP announcement that the Tribunal agreed was not scheme influenced (para. 81). The Tribunal agreed with the City that the density opined by the claimant's planner was not reasonably probable and preferred the evidence of the City's planner (para. 89): *Emros Developments Corp. v. Ottawa (City)*, 2024 CarswellOnt 11806, 2024 CanLII 74379 (Ont. Land Tribunal).