

# Expropriations: What you need to know!



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## What is “Expropriation”?

The right to own property is thought by some to be a fundamental human right. Despite this importance, however, the government still has the power to take your property. The term expropriate means to ‘take property without the consent of the owner’. The authority to do so comes from a small but mighty piece of legislation called The Expropriations Act [the Act]. So long as the taking of property is for a ‘public purpose’ the government can act unilaterally without the property owner’s permission or consent.

We find ourselves in a period of booming infrastructure spending, with tremendous growth in the public sector to build roads, schools, railways, hospitals, and to modernize public services. The need for property is ever-growing as the government strives to meet the demands of population and aging public infrastructure. If you are suffering the consequences of an expropriation, you will want to know your rights.

## How does the expropriation process work?

To take property, the government must first have a public purpose for doing so. If there is a ‘public purpose’, the government can exercise its authority to expropriate by serving the property owner with a Notice of Expropriation.

## Who is impacted by an Expropriation Notice?

The Act contemplates claims by not only the property owner but also from others who may be affected. For example, a property owner may lease space to a retail tenant who will be forced to move his/her business. The tenant business owner would be entitled to make claims for their losses. Also, nearby properties adversely affected by the government’s activities may also make claims. For example, the building of a road may hurt adjacent business owners owing to reduced traffic flow during construction. These business owners can claim damages too.

## How do I make a claim?

The government takes property all the time. Sadly, they do not always advise you of your

rights and have been known to exceed their authority and/or fail to offer fair compensation to those affected. When this happens, those impacted can object to the Local Planning Appeal Tribunal, the administrative tribunal with jurisdiction over expropriations. From there, if still unsatisfied with their outcome, the impacted party can seek review from the Court.

## Do I have to accept the government’s offer?

The government must make the property owner an offer (called a Section 25 offer) within 90 days of their Notice of Expropriation. The offer must represent “fair market value”, the amount that the property might be expected to sell for in the open market. Section 25 offers are usually low and based on the government’s evaluation only. Fortunately, the property owner can seek advice from a qualified lawyer and accept the offer, receive the money, and still continue their claim for more.

## How does someone impacted by an Expropriation Notice ensure full and fair compensation for their losses?

*There are 4 types of claims that can be made following an expropriation:*

### 1. The market value of the property:

The market value of the property is how much is the property worth. What would a buyer pay, and a seller accept in an open market transaction?

### 2. The Damages Attributable to Disturbance:

Disturbance damages are amounts incurred by the property owner as a consequence of moving off the property and could include costs of finding a new property, increased taxes at a new property or the expense to connect services at a new property.

### 3. Damages for Injurious Affection:

Damages for injurious affection are available to both property owners and non-property owners adversely impacted by the expropriation. This can include the reduced market value of adjacent properties as a consequence of the taking or the lost business income of nearby businesses who suffer financial loss.

### 4. Any Special Difficulties in Relocation:

These damages contemplate the special value of a property to its owner above its market value. This added value is usually based on the actual use to which the property is put or a feature of the property that is of special economic value to the property owner that would not be valued on the open market. This could include a home modified for disability access. These

modifications would have added value to the disabled property owner but would likely detract from the property value on the open market

## Can I recover my costs?

The Act also provides for the payment of reasonable legal, appraisal and other costs incurred by the owner to determine the compensation payable.

## Protect your rights!

Expropriation law is a little known, highly specialized legal market. The lawyers who specialize in this area know what the government authorities can and cannot do in the taking of property. They represent the check and balance in what is otherwise the ultimate exercise of governmental authority.

The government has virtually unlimited resources to support the taking of your property. They can retain as many experts as they need to support their valuations of the claims made. It is the proverbial David and Goliath scenario with the average property owner unable to fight on equal footing.

## How can BridgePoint help?

An unfortunate reality is that many legal outcomes are determined by the ability of each side to afford the litigation. In expropriation law this includes not just the upfront legal costs incurred by the affected party, but their ability to withstand the loss of business or other income as a result of the expropriation. BridgePoint Financial is Canada’s leading provider of funding solutions in the highly specialized legal finance market. We offer bridge financing to plaintiffs awaiting the resolution of their legal claims, giving them and their lawyers the time to negotiate full and fair settlements for their cases.

**Access to funding significantly increases the value of the claim by allowing business owners to retain legal counsel without being forced to settle for less.** Funds can also assist with the costs associated with loss of revenue including legal fees, business relocation, business interruption and impairment of goodwill at little cost to you. BridgePoint also provides access to legal specialists in expropriation.

## Learn more by contacting us at:

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