

# Relocation in Canadian Expropriation Law

by Eric R. Finn

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As a matter of public policy, various institutional entities have been granted the mandate to acquire property without the consent of the owner. When an institution chooses to exercise this mandate and expropriates the interest of an owner, depending on the jurisdiction, the owner, pursuant to the appropriate governing legislation, may be vested with certain rights. The extent of such rights will largely depend on the philosophical and political nature of the jurisdiction involved.

In most democratic countries, when an owner is deprived of his property rights, legislation has been enacted to provide the owner with a "bundle" of rights generally intended to replace the "bundle" of property rights that have been acquired by the expropriating authority, and to make the owner whole.

One issue, as to the level any jurisdiction may succeed in making the owner whole, is the manner and extent to which that jurisdiction may choose to ensure that an owner who has been deprived of physical accommodation is able to acquire a replacement facility, so as to relocate.

In the United States, federal regulations prescribe positive obligations on an expropriating authority to physically assist an owner in relocating. For example, before displacing a homeowner there is a positive obligation to ensure that there is a replacement residence available.<sup>1</sup>

In Canada, the approach is strictly one of providing dollars to compensate the owner, rather than imposing on the

expropriating authority a positive duty to assist in the relocation<sup>2</sup>. Although not specifically referred to as compensation for relocation, generally four concepts have been developed to assist the owner with relocation, in a monetary sense:

- The home-for-a-home concept when dealing with residences,
- "Equivalent reinstatement" when dealing with unusual uses,
- Disturbance damages arising out of the relocation, and
- Additional compensation to reflect the value of improvements not reflected in the market value of the property, to deal with unusual improvements.

Before dealing with each of these concepts, a brief historical analysis is useful to illustrate the basis for the Canadian philosophical approach to relocation, adopted at both the federal and provincial levels, that monetary assistance is to be provided rather than physical assistance.

## Historical Analysis

In the development of expropriation law in Canada, it is generally understood that the statutory schemes of compensation used at the federal level and in most provinces are modeled on the Ontario scheme enacted in 1968. Before the enactment of the Ontario Expropriations Act, there had been, however, a great deal of commentary by both the Ontario Law Reform Commission<sup>3</sup> and a Royal Commission looking into civil rights in the province.<sup>4</sup> The latter had dealt primarily with procedural matters to ensure that an expropriation statute protected the rights of individuals who were about to lose their property rights. The former dealt

with compensation issues and is of more relevance for present purposes.

One issue that the Law Reform Commission had to deal with was the expropriation of large areas of blighted land in municipalities for urban redevelopment. The City of Toronto had already been involved in such an undertaking and the Law Reform Commission retained a professor to conduct a study of the displaced residents of the area to obtain their views on the approach taken by the municipality and the compensation received. The study came to two general conclusions:

- Market values in areas which become subject to urban renewal programmes may well become depressed, with the result that the compensation paid will not be sufficient to purchase comparable housing elsewhere; and
- The market value of housing on the periphery of the renewal area may rise relatively to the market value of other alternative housing, as a substantial number of expropriated owners will wish to stay in the same general neighborhood and become potential purchasers of the housing for sale on the periphery.<sup>5</sup>

The government dealt with the effect on market value of the proposed scheme by enacting legislation stating that no effect on the market value by the development scheme was to be taken into account in determining the value of the expropriated property.<sup>6</sup> The issue of the relocation of displaced residents was a more difficult one. The existing legislation did not provide a means for compensating the owner who was required to move from a residential community where market values were depressed to an area where the cost of equivalent accommodation exceeded the compensa-

tion that the expropriating authority was required to pay.

The Law Reform Commission did refer to one instance where legislation had been enacted to assist displaced homeowners in a redevelopment scheme. Faced with a large redevelopment in the city of St. John's, the government of Newfoundland, in 1964, enacted the Family Homes Expropriation Act<sup>7</sup>, which provided that "the principle of assessment shall be that the owner of the family home shall receive such compensation as will at current costs and prices put him in a position to acquire by purchase or construction a home reasonably equivalent to that which is being expropriated."<sup>8</sup>

This provision resulted in the expropriating authority paying nearly double the amount of compensation it would have paid had the legislation not been enacted. Instead of the estimate of \$2,000,000 for compensation the total paid amounted to \$3,700,000.

The Law Reform Commission concluded that a problem existed but that it was really beyond its mandate to recommend relocation assistance programs. It did go on, however, to make some recommendations relating to the issue:

- In addition to providing fair compensation for property expropriated and damages for disturbance as recom-

mended in this Report, the legislation should require expropriating authorities to ensure that financial relocation programmes are available to meet the special needs of persons being dispossessed in urban renewal projects;

- Such financial relocation programs should be available to persons dispossessed by other types of expropriation where like problems arise.<sup>9</sup>

The government of the day decided not to adopt these recommendations but chose to deal with this problem by enacting a provision that became known as the home-for-a-home provision. Section 15 of the present Ontario Expropriations Act reads as follows:

Upon application therefore, the board shall, by order, after fixing the market value of lands used for residential purposes of the owner under Subsection 14 (1), award such additional amount of compensation as, in the opinion of the Board, is necessary to enable the owner to relocate his or her residence in accommodation that is at least equivalent to the accommodation expropriated.<sup>10</sup>

The section would be subject to such interpretation, as set out below, but clearly the Ontario legislature had decided that there was a need to provide the owners of residences (and by definition that includes tenants) with suffi-

cient funds to enable them to relocate in equivalent accommodation even if it did mean that the owner was, in fact, receiving a premium over and above the actual market value of the residence taken. There was a perceived need to provide individuals with housing and, rather than rely on specific housing assistance programs, the compensation provisions of the Expropriations Act were to be used to provide such assistance.

To understand the home-for-a-home concept, as well as the other provisions for relocation compensation found in the present legislation, it is necessary to examine the entire scheme of compensation that the legislation has provided. As indicated, most Canadian jurisdictions followed the scheme provided for in the Ontario legislation. Section 13 of the Ontario Expropriations Act provides for compensation to be paid under four headings.

- (a) the market value of the land;
- (b) the damages attributable to disturbance;
- (c) damages for injurious affection; and
- (d) any special difficulties in relocation.<sup>11</sup>

Each of these four headings has been defined; thus, for example, market value is defined in Section 14 and, as we have seen, Section 15 provides for an

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