

A PRIMER ON EXPROPRIATION

ARE YOU MISSING ELEMENTS OF COMPENSATION?

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INTRODUCTION

I would like to acknowledge the assistance of Stéphanie Messner in the preparation of this paper. Appendix A and B were current as of May 1, 2009 and represent a compilation of compensation provisions across Canada. Given the variations in the wording of those compensation provisions, it is prudent to verify whether a case from a different Province or Territory would be applicable in your particular Province. It is hoped that this paper is of assistance in providing added value to clients - whether they may be owners or the expropriating authority - in identifying items, in addition to market value which may be payable in the event of a compulsory acquisition.

Expropriation is defined as the government's right to take the whole or part of privately owned land for public use and benefit, upon the obligation to pay just compensation to the owner.¹ Depending on the nature of the taking and the applicable legislation, the owner of the property can receive compensation in the form of market value of the property, injurious affection, disturbance, and special value. Interest and consulting costs are also commonly awarded in the owner's compensation package.

This paper serves as a refresher on basic principles of expropriation and compensation. The main focus of this paper is to provide a checklist of due compensation for the category of "disturbance" which is generally broadly defined to include any costs, expenses and losses arising of or incidental to the expropriation.

¹ Kenneth J. Boyd, *Expropriation in Canada: A Practitioner's Guide* (Ontario: Canada Law Book Inc., 1988) at 1.

1. History / Interpretation

Canadian expropriation statutes initially were modeled on the English statute, *The Acquisition of Land (Assessment of Compensation) Act*, 1919. The Act changed the basis of compensation from "value to the owner" to "open market value", and set out a clear and defined list of other compensable and non-compensable items.²

Until the late 1960s, procedures regarding expropriation varied widely across Canada. The various statutes authorizing expropriation in the provinces were inconsistent, at best. Hearings were conducted before a wide spectrum of forums, ranging from ad hoc arbitration boards to the Federal Court.

The first Federal statute on expropriation, *The Expropriation Act*, 1886³, which later became known as *The Expropriation Act*, 1952⁴, remained in force until its repeal in 1970. Until that date, the Canadian law on expropriation had remained virtually the same since its beginning. The current federal Expropriation Act⁵, modelled on the Ontario Act⁶, was enacted to clarify the subjective system of expropriation and remove the arbitrary features associated with the existing law.⁷

Each province has its own Expropriation Act. The purpose of these remedial statutes is to adequately compensate the owner of land, which is taken from him to serve the public interest. In

² Eric C.E. Todd, *The Law of Expropriation and Compensation in Canada* (Ontario: Carswell, 1992) at 6.

³ *Expropriation Act, 1886*, R.S.C. 1886, c.39.

⁴ *Expropriation Act, 1952*, R.S.C. 1952, c.106; R.S.C. 1970, c. E-19.

⁵ *Expropriation Act, 1985*, R.S.C. 1985, c. E-21.

⁶ *Expropriations Act, 1968-69*, S.O. 1968-69, c. 36, now R.S.O. 1990, c. E.26.

⁷ *Supra* note 2 at 12, see also R.B. Robinson, *Report on The Expropriations Act*, October 11, 1974 (Ontario, Ministry of the Attorney General); 1967 Report of The Ontario Law Reform Commission on *The Basis for Compensation on Expropriation*.

*Dell*⁸, the S.C.C. reconfirmed that "the power of an expropriating authority should be strictly construed in favour of those whose rights have been affected".⁹ The statute as a whole ought to be given a broad and liberal interpretation, consistent with its purpose. Though the right to compensation must be set out in the statute, where land has been taken away from the owner, the statute will be construed in light of a presumption favouring compensation.¹⁰

2. Relevant Statutory Provisions on Compensation

The path of legislative reform of the law of expropriation in Canada has spread out over half a century's time. Thus, the basis of compensation in most provinces has returned to the basic system that has operated in England since 1919.¹¹ The "value to the owner" is still the approach to compensation used in the Provinces of Prince Edward Island, Québec, and Saskatchewan, while the "market value" approach is applied widely in the remaining seven Provinces, as well as the three Territories. However, as Todd explains, "if the concept of value to the owner is applied correctly, the final result is not much different from that which is reached by taking the market value concept and adding thereto those items which are enumerated in most expropriation statutes".¹²

The relevant statutory provisions of each Province and Territory's respective Act, as well as the Federal Act's relevant sections on compensation, have been set out in Appendix A. The Quebec Court of Appeal, in *Montréal (Ville de) c. 150460 Canada inc.*, 2008 QCCA 1807

⁸ *Dell Holdings Limited v. Toronto Area Transit Operating Authority*, 1997 SCC 400, [1997] 1 S.C.R. 32, 142 D.L.R. (4th) 206, (hereinafter referred to as "Dell"); see also *Montréal (Ville de) c. 150460 Canada inc.*, 2008 QCCA 1807 which confirms that the Quebec Court of Appeal follows the principles set forth in *Dell*.

⁹ *Ibid* at para 20.

¹⁰ *Supra* note 2 at 35-36.

¹¹ *Ibid.* at 6.

¹² *Ibid.* at 6-7.

confirms, at paragraphs 45 to 52 that the purpose of the Québec Act¹³ is one of indemnity. *Prima facie* no legitimate claim for damages is rejected provided there is a causal link to the expropriation.

a. Special Provisions with respect to Compensation on Homes and Leased Properties

One of the most frequently heard criticisms on the law of expropriation and compensation is that it can cause serious economic hardship to homeowners¹⁴ and/or tenants. Such hardship can arise when the compensation provided for in the statute (usually based on the market value of the home) and the cost of moving, do not economically allow an owner to put himself in the same position that he was in had the expropriation not taken place. Thus, the owner may have to purchase a smaller home, or a comparable home at an additional personal cost. However, in provinces where compensation is determined based on the value of the home to the owner, the owner may receive sufficient compensation to allow for relocation in similar accommodations.¹⁵

In rising markets, the issue arises as to valuation date should be chosen for the replacement home. A time period of 5 months from the date the owner received an advance was held to be a reasonable time period.¹⁶

In the *Leblanc*¹⁷ case, the owner whose home was expropriated was awarded compensation on the basis of "special value". The court awarded compensation on the grounds of

¹³ *Expropriation Act*, R.S.Q. c. E-24.

¹⁴ *Supra* note 2 at 256.

¹⁵ *Ibid.*

¹⁶ *Owens v. Calgary (City)*, (2009) 96 L.C.R. 304 at 319 (Alta.L.C.B.) A large 100 year old tree in the front yard; Easy access to the river which was about 200 feet away; Central location near his workplace; and
• Period finishing in the house such as stained glass and hardwood base boards; \$87,500 additional compensation awarded for home for a home.

¹⁷ *Leblanc v. Halifax (City)*, (1967) 66 D.L.R. (2d) 15 (N.S.C.A.).

equivalent reinstatement: "compensation was awarded not on the basis of market value of the house in its actual location [...] but on the basis of what its market value would have been had it been located in another area to which, on the facts, the owner would have to move in order to acquire comparable accommodations".¹⁸ The concept of special value will be discussed further in the paper.

The *Leblanc* case was decided before most jurisdictions, where the statutory basis of compensation is market value, enacted special statutory provisions to deal with compensation on homes and leased properties: "these provisions are hybrids of the value to the owner and reinstatement principles".¹⁹ The first province to enact such a provision was Newfoundland.²⁰ Now, every Canadian expropriation code, except those of Québec, Saskatchewan and P.E.I., has what is known as a "home for a home" provision. As Todd explains, the purpose of these provisions is similar, however the Canada Act section is narrower than the provincial provisions.

A list of the relevant special provisions dealing with compensation for homes and leased properties is set out in Appendix B.

3. Market Value

The concept of market value can be defined as "the present value of all possible utility reached in a competitive field"²¹ and "the price on which a prudent and willing vendor and a similar purchaser would agree".²² More simply stated, market value is the amount that the land

¹⁸ *Supra* note 2 at 257.

¹⁹ *Ibid.* at 257.

²⁰ See the *Family Homes Expropriation Act*, R.S.N. 1990, c. F-1.

²¹ *R. v. Northumberland* [1945] 3 D.L.R. 145, [1945] S.C.R.

²² *Gagetown Lumber Co. v. R.* 6 D.L.R. (2d) 657, 661, [1957] S.C.R. 44, 51.

would be worth if it was sold on the open market.²³ While the Courts generally accept the Appraisal Institute's approach to and definition of market value, one should always check the definition in the applicable statute.

In the Ontario, Alberta, Newfoundland and Labrador, Yukon and Manitoba Acts, market value is defined as "the amount that the land might be expected to realize if sold in the open market by a willing seller to a willing buyer".²⁴ Similarly, the Canada, New Brunswick, Nova Scotia and British Columbia Acts defined market value as "the amount that would have been paid for the interest if, at the time of its taking, it had been sold in the open market by a willing seller to a willing buyer".²⁵ In the Northwest Territories and Nunavut, the definition reads as follows: "market value", in relation to an expropriated interest, means the amount that would have been paid for the interest if, at the time of its taking, it had been sold in the open market by a willing seller to a willing buyer and fully paid for in cash.²⁶

a. Equivalent Reinstatement

As discussed above, compensation will generally be assessed based on the market value, or the value to the owner, in addition to any losses caused by the owner of the land due to disturbance. The owner can then decide to obtain other land and reinstate the use to which he had put the land taken from him by force.²⁷ However, where the owner puts the land to a use for which there is no market, "its open market value can not be ascertained by reference to sales of

²³ *Supra* note 2 at 132.

²⁴ Ont. s. 14(1); Alta. s. 41. Yukon s. 8 (a); Man. s. 27(1) omits the word "expropriated" and inserts "reasonably" before the word "expected", Nfld. s. 27(1)(b) adds "...but the board is entitled to consider all returns and assessments of capital value for taxation made or acquiesced in by the owner of the land".

²⁵ Can. s. 26(2); N.B. s. 39(1); N.S. s. 27(2); B.C. s. 31.

²⁶ Northwest Territories s. 26(1).

²⁷ Compulsory Purchase & Compensation Service I, Tottel Publishing, June 2006.

similar property, and reinstatement might not be achieved merely by the claimant purchasing premises put to a similar use elsewhere".²⁸

Therefore, the rule of equivalent reinstatement provides that:

Where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the Lands Tribunal is satisfied that reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement.²⁹

For this rule to apply, there are certain conditions that must be met: (1) the land must be devoted to a purpose for which there is no general demand or market for; (2) if the land had not been expropriated, it would have continued to be devoted to that purpose; and (3) the owner has a true intention to reinstate the purpose somewhere else.³⁰

4. Injurious Affection

The term injurious affection describes an effect of expropriation. To be injuriously affected means "hurtfully affected".³¹ When land is "hurt" due to expropriation, the owner may obtain compensation through the actions of trespass, nuisance or negligence, but common law action may only be taken after the owner has resorted to the remedy which is expressly or impliedly provided for in the statute.³²

²⁸ *Ibid.* at 1601.

²⁹ *Ibid.* at 1601-1602; see also Todd at 228 to 256.

³⁰ *Ibid.* at 1602, see also Todd at 228 to 256.

³¹ *Supra* note 2 at 328.

³² *Ibid.*

Regardless of how a claim for injurious affection is brought forth, it must be based on some statutory provision.³³ Most Canadian statutes that provide for compensation for injurious affection do so in very broad and general terms. Thus, the Canada Act does not even refer to the term "injuriously affected", whereas in Ontario, New Brunswick and Nova Scotia the Acts require that a statutory authority compensate the owner of land for loss or damage caused by injurious affection, that the claim be filed within one year of the damage sustained, and that any advantage to the owner's remaining land be set off against the affection.³⁴

An example of an instance where a claim for injurious affection may be filed is when a part of the owner's land is expropriated, the piece of land remaining may be considered less valuable. This often occurs when a strip of land is taken from a larger piece of land for a road, pipeline, or railway.³⁵ In these types of situations, the owner of the land may claim compensation not only for the value of the expropriated piece of land, but also for the severance damage to the remaining portion of the land.³⁶

5. Disturbance

The term disturbance may be defined generally as "economic loss suffered by an owner by reason of having to vacate expropriated property".³⁷ The concept of disturbance appeared for the first time in 1919, when the basis of compensation in England evolved from the value to the owner, to market value. In the *Thomas*³⁸ case, the court said that compensation for disturbances

³³ *Ibid.*

³⁴ Ont. s. 1(1) and 22 and 23; N.B. s. 1 and 47 and 48; N.S. s. 3(1)(h) and 31(1) and 32.

³⁵ *McGregor v. Alberta* (1982) 26 L.C.R. 304, 306 (Alta. Q.B.).

³⁶ *Supra* note 2 at 332.

³⁷ *Ibid.* at 274.

³⁸ *R. v. Thomas Lawson & Sons Ltd.* [1948] 3 D.L.R. 334, [1948] Ex. C.R. 44, 55, 62 C.R.T. 227.

can be awarded in a variety of cases, "including the cost of moving to new premises, the depreciation in value of machinery, equipment of other chattels through necessary removal or sale, the increased cost of doing business in the new premises, the disturbance or loss of business or the chance of making profits or the loss or diminution in value of good will".³⁹

Perhaps one of the greatest challenges in the law of expropriation is determining whether any particular item is compensable as a disturbance damage. This will depend on the statutory provisions, the facts, and the evidence in any given case.⁴⁰ Each Act defines disturbance damages differently. For example, the Ontario Act provides that disturbance damages are those "reasonable costs [which] are the natural and reasonable consequences of the expropriation".⁴¹

There are two Supreme Court of Canada cases which provide considerable guidance on the tests to be applied. The first is the *Laidlaw*⁴² case decided 30 years ago. The owner had recently constructed a 540 square foot extension to a residence at a cost of \$26,000.00. The owner was paid for the market value of the residence. The appraisers were of the opinion that this \$26,000.00 extension only increased the market value by \$10,000.00. When faced with similar claims, it is my experience that authorities are of the view that, the owner can go in the market and purchase a replacement home with the market value award. Therefore it is the position of the authority that the owner is not suffering a loss. The owner in *Laidlaw* felt this was unfair because she could not enjoy the fruit of her expenditure. The S.C.C. agreed that she should receive a "disturbance damage" and held:

³⁹ *Ibid.* at 348.

⁴⁰ *Supra* note 2 at 277.

⁴¹ *Supra* note 6 at s. 18(1).

⁴² *Laidlaw v. Municipality of Metro Toronto* (1978), 15 L.C.R. 24 (S.C.C.)

The appellant had spent the \$26,000.00. Due solely to the expropriation, she could not enjoy the fruit of that expenditure. If she could only recover the market value she would only be reimbursed to the extent of \$10,000. The balance of \$16,000 was a loss to her and a direct cost of the expropriation.

Although there is a specific section in Ontario entitling the owner of a residence to an award with respect to improvements not reflected in market value, the S.C.C. held that the award was entitled to succeed based on a “disturbance damage” award. Therefore this principle applies to any category of property - residential, agricultural, commercial and industrial.

The second leading case by the S.C.C. on the issue is also from Ontario. It is the *Dell*⁴³ case decided 12 years ago. There is an excellent article on this case written by Adjunct Professor Ken Strong who teaches at the University of Western Ontario entitled *Dell Holdings, Disturbance Damages, and the Temptations of Palm Tree Justice*⁴⁴.

Dell Holdings Ltd. suffered damages because its development business was curtailed for more than two years while the authority determined which portion of its land was needed for the GO Station. There were increased costs of Dell’s development business during the waiting period between the announcement of potential expropriation and the actual taking of the land. The Ontario Municipal Board found that Dell was entitled to be paid for these increased development costs. The Toronto Area Transit Operating Authority won its appeal to the Ontario Divisional Court which agreed with a restrictive interpretation of what constituted “disturbance”. The Divisional Court was of the view that disturbance damages were restricted to relocation and moving costs and damages caused to a business or undertaking being carried on the premises.

⁴³ *Supra*, note 8.

⁴⁴ (2005) 10 M.P.L.R. (4th) 207 and (2005) 33 R.P.R 173.

Dell Holdings Ltd. appealed to the Court of Appeal but lost its appeal. It further appealed to the S.C.C.

Dell Holdings Ltd. won its appeal at the S.C.C. Although the decision is based on the wording of the *Expropriation Act* of Ontario, Courts across the country follow the general principles established in *Dell*.

First, the S.C.C. rejected the authority's contention that disturbance damages are only available if they arise in relation to the expropriated land itself and not to adjoining land which the owner retained after the expropriation⁴⁵.

Second, the S.C.C. established that where land has been taken, Expropriation Acts will be construed in light of a presumption in favour of compensation.⁴⁶

Third, the S.C.C. held that the approach to damages flowing from expropriation should not be a temporal one; rather it should be based upon causation. Thus damages may be claimed for a time period preceding the actual taking of land by the authority.⁴⁷ Losses incurred in anticipation of expropriation and because of the threat which expropriation presents, are to be regarded as losses caused by the expropriation as much as losses arising after the expropriation.

Fourth, the S.C.C. held that owners have a duty to mitigate and that all steps taken in order to mitigate the damages will be compensable in expropriation cases.⁴⁸

⁴⁵ *Supra* note 8 at para. 29.

⁴⁶ *Ibid.* at para. 34.

⁴⁷ *Ibid.* at para. 38.

⁴⁸ *Ibid.* at para. 40.

Last, the losses must not be too remote.⁴⁹ An example of losses which were denied as being too remote were estimates of permanent increases in business taxes, property taxes and utility costs with respect to a relocation site which had not yet been built.⁵⁰ The Court did however indicate that the owner was entitled to resubmit its claim after the move and after the owner had operated in the retrofitted premises.⁵¹

Appendix C sets out a list of the more usual disturbance items which have been considered by the courts and tribunals. Reference is made to selected cases in which the award was granted or rejected.⁵² Appendix C also contains lists of selected cases on various other issues such as permanent increased costs.

6. Special Value

When there is a special economic advantage to the owner of the land that arises out of or incidental to his actual occupation of the land, he may be compensated for special value.⁵³ In *Schooley*⁵⁴, the court held “special value refers to the present use of land, and means its added worth to the owners for the actual and particular use to which it is being put, and for which it is specially fit”.⁵⁵ Todd explains that special value is a concept used to illustrate a feature of the

⁴⁹ *Ibid.* at para. 44.

⁵⁰ *Rebel Holdings Ltd. et al. v. Division Scolaire Franco-Manitobaine*, 2008 MBCA 65 (CanLII), [2008] 9 W.W.R. 19 • (2008), 228 Man. R. (2d) 157.

⁵¹ *Ibid.* para. 185.

⁵² Note that though these cases may be influential, they are not necessarily binding in your jurisdiction.

⁵³ *Supra* note 2 at 113-114.

⁵⁴ *Schooley v. Lake Erie & Nor. Ry.* (1915) 25 D.L.R. 537, *vrld.* 30 D.L.R. 289, (1916) 53 S.C.R. 416.

⁵⁵ *Ibid.* at 541.

expropriated interest that is of a special economic value to the owner of the land, but which does not improve the market value of the interest.⁵⁶

The most often cited situation where special value is applied is where a business can no longer continue on the land to equal advantage on another site, or at all.⁵⁷ Other cases involving special value could be for example, where a quadraplegic person may have made alterations to her residence, such as built ramps, lowered countertops or widened entrances and doorways, to accommodate her disability: “such alterations may detract from, rather than add to, the market value of the property in the hands of anyone other than a person with the same type of disability. Upon expropriation the owner should recover the proven economic value to him or her of the structural alterations”.⁵⁸

In *Canada (National Capital Commission) v. Hobbs*⁵⁹, the Supreme Court of Canada said that:

Where it is claimed that a property has a special value to the owner over and above its market value, the owner must adduce the facts necessary to prove this value, which must be such that it can be measured in terms of money. It is not sufficient for a claimant to say that he would pay a certain amount of money rather than be deprived of his property. There must be proof that the land had special advantages that have it a special economic value for the expropriated party, and no value should be attributed for sentimental attachment.⁶⁰

Special value can be described as a value to the owner of the land, beyond what it would be in similar use by somebody else.⁶¹

⁵⁶ *Supra* note 2 at 114.

⁵⁷ *Pastoral Finance Assoc. Ltd. v. Minister* [1914] A.C. 1083 (P.C.) & *Gagetown Lumber Co. v. R.* 6 D.L.R. (2d) 657, [1957] S.C.R. 44.

⁵⁸ *Supra* note 2 at 116.

⁵⁹ *Canada (National Capital Commission) v. Hobbs* (1970) 10 D.L.R. (3d) 11 (S.C.C.).

⁶⁰ *Ibid.* at 13.

⁶¹ *Ibid.*

In the *Campbell River Woodworkers*⁶² case, the British Columbia Court of Appeal, in interpreting the special economic advantage section, held:

“Special economic advantage, as that phrase is used in the current statute, must, as the statute says, be something that is not incorporated in market value. **In my view, it must be something that accrues peculiarly to the owner or to a limited number of purchasers. This provision allows the owner to be compensated for advantages that have no or only a limited market such that their value to the owner cannot be obtained in part or in whole in a sale on the open market**”. (emphasis added)

In *NTJB Investments Ltd.*⁶³, the Saskatchewan District Court considered a claim by a long established physiotherapy business. The basis of compensation was the price paid for comparables properties, as adjusted to the subject property, **plus the estimated cost of providing facilities necessary for the operation of the business in a manner comparable to previous operations.**

In *Merrithew*⁶⁴, the New Brunswick Court of Appeal in considering special value to the owner, measured the economic value thereof by the cost of the development of an alternate site. The court also made a disturbance award to compensate the owner for increased operating costs. The owner of a property is entitled to its special value to him, and it is not essential that the building be a special purpose building⁶⁵.

In *Bank of Nova Scotia*⁶⁶, the Nova Scotia Court of Appeal, in interpreting its section, adopted a statement from various appellate cases including one of its own cases which had been affirmed by the Supreme Court of Canada (see the reference to *POW Investments* at paragraph 62 of the decision) in which it held:

⁶² *Campbell River Woodworkers v. British Columbia* 2003 BCCA 121 at page 6, paragraph 16.

⁶³ *NTJB Investments Ltd. et al. v. Province of Saskatchewan* (1978), 14 L.C.R. 98 (Sask. Dist. Ct.).

⁶⁴ *Merrithew v. Minister of Highways* (1974), 7 L.C.R. 275 (N.B.C.A.).

⁶⁵ *Norris and City of Kitchener* (1962), O.R. 490 (C.A.) pp.493 and 494.

⁶⁶ *Bank of Nova Scotia, Woodlawn Farms Ltd., W. Eric Whebby Ltd., Portland Estates Ltd., Morash, Morash, Morash and Morash v. Province of Nova Scotia*, [1977] N.S.J. No. 539 (C.A.).

Special value, as I understand it, arises when the owner is actually putting the property to some use for which it is especially well suited.

A general review of cases in this area of law confirms that cases in which the concept of special value applies are far and few between. Often owners, through an award on disturbance which allows the retrofitting of replacement premises, end up being compensated for special features of the property which is expropriated.

7. Income Tax Considerations

In *Todd*⁶⁷ at pages 560 to 562, the author explains that “Claims for compensation to indemnify the expropriated owner for the income tax consequences of the receipt of compensation and claims to be compensated for tax benefits allegedly lost as a result of expropriation are invariably denied”. As it will be further explained, some of these cases are based on authorities which were overruled. This may change the result and older cases ought to be carefully scrutinized.

The authorities cited by *Todd* precede the S.C.C.’s 1997 decision in *Dell* which expanded the previous view of what was included in a disturbance award. They generally deal with capital gains tax which can be avoided if a replacement property is purchased⁶⁸. Second, some cases are based on a personal injury case of the S.C.C. decided some 43 years ago which has since been overruled.

It is submitted that generally a three step approach in *Dell* should be applied. The first question is whether there is a loss or cost with respect to income tax caused by the expropriation. The second question is whether the owner is able to mitigate his loss. For example, can or will the owner avoid the loss or cost by the purchase of a replacement property thus deferring indefinitely the loss or cost? Finally, is the loss or cost too remote?

⁶⁷ *Supra*, note 1.

⁶⁸ See also cases such as *Gardiner Burton Agencies Ltd. v. N.S. Power Corp.* 1986 CarswellNS 136 (N.S.T.D.).

The *Hebron* case⁶⁹ and in the *Hilger* case⁷⁰, which are two decisions quoted by *Todd*, were based on the *Jennings*⁷¹ case of the S.C.C. which held that, in assessing damages for personal injuries, the estimated amount of income tax on future earnings should be ignored. The current law should now be applied.

In personal injury damage awards, the S.C.C. had initially refused to allow for an income tax gross up because of the perceived difficulty in predicting the actual tax burden. *Watkins v. Olafson*, [1989] 2 S.C.R. 750 reversed this line of authorities and established 3 principles which apply to this case. First, although the exercise of assessing future damages over a period of decades is fraught with uncertainty, the courts must do their best to calculate an appropriate award and must make an allowance for taxation (p.767). Second, the claimant is entitled to a lump sum award instead of a reviewable periodic payment which would bind it in an uneasy and unterminated (sic) relationship (p.763). Third, if no allowance is made for the tax, the award will prove insufficient (p.764)⁷².

In *Townsend v. Kroppmanns*, [2004] 1 S.C.R. 315 the Court restated principles of damage awards. Compensation aims at restoring the claimant to the position it would have been in had no loss occurred. Since it is impossible to calculate the exact amount of money that will be needed in the future, courts should assess damages relying on actuarial evidence (p.323, para.19). Damages are awarded in a lump sum in order to respect the principle of finality (p.324, para.20). The claimant has property of the award and is free to do whatever it wants with the sum of money awarded (p.325, para.21).

Some tribunals and courts have begun to make awards for accelerated tax consequences. In a British Columbia case, after reviewing the evolution in law in personal injury cases, the Expropriation Compensation Board, in *Corner's Pride*⁷³, held:

⁶⁹ *Hebron Investments Ltd. v. Scarborough Board of Education* (1972), 3 L.C.R. 356 (Ont. L.C.B.).

⁷⁰ *Manitoba v. Hilger* (1982), L.C.R. 308 (Man. Q.B.).

⁷¹ *The Queen in the Right of the Province of Ontario v. Jennings* (1966), 57 D.L.R. (2d) 644 (S.C.C.).

⁷² see also C.E.D. (West) Damages Volume 11, pp.217/218.

⁷³ *Corner's Pride Farms Ltd. v. British Columbia (Minister of Transportation &Highways)* 1994 CarswellBC 2735, 52 L.C.R. 15 (B.C. Exp. Bd.).

Thus, the question is not whether an allowance should be made for the impact of taxation, but whether there is evidence to support such allowance. The doctrine would appear to be just as applicable to awards of compensation following expropriation as it is to the cost of future care in an action for damages. The question is one of proof. Is there evidence to support the claimant's contention that the income to defray taxation will be taxed at 44.84 per cent?

In Nova Scotia, it appears that in some cases⁷⁴ the Board waits until the effect of taxation is known. The Nova Scotia Court of Appeal has held⁷⁵:

An award for lost future income presumably involves income tax considerations. The impact of taxation cannot be known with certainty until payment of compensation and its assessment by the taxing authority. Neither the Expropriation Act nor the Utility and Review Board Act preclude the Board from retaining jurisdiction to deal with tax concerns should they arise, and it is reasonable that the Board should do so.

Appraisers should recommend to owners that they seek appropriate tax advice. Generally speaking, compensation received from an expropriation can fall into three general categories - Income, Capital Gains and a windfall. Windfalls are not taxable.

Thus in *Bellingham*⁷⁶, the Federal Court of Appeal taxed ordinary interest as income and punitive additional interest was not taxed because it was held to be a windfall. Although CRA takes the position that a payment in respect of damages occasioned as a result of the inability of the owner to relocate would now be taxable, as a result of legislative changes, the Federal Court of Appeal, in the *Toronto Refiners*⁷⁷ case held that a \$9,000,000 payment was not taxable. There may continue to be significant tax planning opportunities depending on the particular facts of the case.

The bigger surprises which owners wish to avoid are:

⁷⁴ *Nova Scotia (Attorney General) v. Williams* 1996 CarswellINS 256, 59 L.C.R. 81, 152 N.S.R. (2d) 291, 442 A.P.R. 291 (N.S.C.A.); *Johnson v. Nova Scotia* 2003 CarswellINS 622 at para. 288 to 290, 2003 NSUARB 154.

⁷⁵ *Nova Scotia (Attorney General) v. Williams* 1996 CarswellINS 256, 59 L.C.R. 81, 152 N.S.R. (2d) 291, 442 A.P.R. 291 (N.S.C.A.).

⁷⁶ *Bellingham v. Canada (C.A.)*, [1996] 1 F.C. 613 • (1995), 130 D.L.R. (4th) 585 • (1995), 50 D.T.C. 6075 • (1995), [1996] 1 C.T.C. 187 • (1995), 104 F.T.R. 159.

⁷⁷ *Canada v. Toronto Refiners and Smelters Ltd.*, (2002), 57 D.T.C. 5001 • (2002), [2003] 1 C.T.C. 365

1. having an amount taxed as income instead of capital gain;
2. having a capital gain which cannot be deferred; or
3. receiving a lump sum with respect to a permanent increase in operating costs without receiving the necessary gross up which takes into account the effect of income tax.

One should not assume that purchasing a replacement property will always result in a deferral. For example, the replacement of a vacant building lot owned by someone who intended to build a home on it will not necessarily result in a deferral of tax. In a recent case which I settled, there was a payment for the immediate adverse tax consequence which occurred as a result of the expropriation of a building lot.

CONCLUSION

The power of expropriation is recognized as an important component of government. However, its exercise almost always results in a traumatic experience for the property owner.⁷⁸ As we have seen, depending on the nature of the taking, the owner of the property can receive compensation in the form of market value of the property, injurious affection, disturbance, and special value. The affected party may also receive interest and costs.

The purpose of this paper was to provide a refresher on basic principles of expropriation and compensation. The law of expropriation has developed significantly over the past 20 years, and in most Canadian jurisdictions the law has undergone a complete restructuring.⁷⁹ Almost all expropriation statutes across the provinces now provide for generous compensation and reasonable procedures.

⁷⁸ *Thompson v. R.* (1978) 16 L.C.R. 131, 135, 89 D.L.R. (3d) 217 (Man. Q.B.).

⁷⁹ *Supra* note 2 at 2.

APPENDIX A

RELEVANT PROVISIONS - DUE COMPENSATION

Province / Territory	Relevant Statutory Provisions
Ontario ⁸⁰	<p data-bbox="516 384 708 415"><u>Compensation</u></p> <p data-bbox="516 457 1425 814">13. (2) Where the land of an owner is expropriated, the compensation payable to the owner shall be based upon, (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, but, where the market value is based upon a use of the land other than the existing use, no compensation shall be paid under clause (b) for damages attributable to disturbance that would have been incurred by the owner in using the land for such other use.</p> <p data-bbox="516 856 691 888"><u>Market value</u></p> <p data-bbox="516 930 1425 1035">14. (1) The market value of land expropriated is the amount that the land might be expected to realize if sold in the open market by a willing seller to a willing buyer.</p> <p data-bbox="516 1077 1425 1255">(2) Where the land expropriated is devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, and the owner genuinely intends to relocate in similar premises, the market value shall be deemed to be the reasonable cost of equivalent reinstatement.</p> <p data-bbox="516 1297 1425 1728">(4) In determining the market value of land, no account shall be taken of, (a) the special use to which the expropriating authority will put the land; (b) any increase or decrease in the value of the land resulting from the development or the imminence of the development in respect of which the expropriation is made or from any expropriation or imminent prospect of expropriation; or (c) any increase in the value of the land resulting from the land being put to a use that could be restrained by any court or is contrary to law or is detrimental to the health of the occupants of the land or to the public health.</p> <p data-bbox="516 1770 1425 1833">(5) Where two or more expropriating authorities, including Her Majesty the Queen in right of Canada, participate in a development or</p>

⁸⁰ *Supra* note 6.

a number of related developments, the Lieutenant Governor in Council may, by regulation, designate such development or developments as a co-operative development and subsection (4) shall apply to the determination of the market value of any land expropriated by any of the participating provincial expropriating authorities for any aspect or part of the co-operative development as if the entire co-operative development was a single development being carried out by that expropriating authority.

Increase by Board

15. Upon application therefor, 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.

Separate interests

16. Where there are more separate interests than one in land, other than the interest of a security holder or a vendor under an agreement for sale, the market value of each such separate interest shall be valued separately.

Allowance for disturbance

Owner other than tenant

18. (1) The expropriating authority shall pay to an owner other than a tenant, in respect of disturbance, such reasonable costs as are the natural and reasonable consequences of the expropriation, including,

- (a) where the premises taken include the owner's residence,
 - (i) an allowance to compensate for inconvenience and the cost of finding another residence of 5 per cent of the compensation payable in respect of the market value of that part of the land expropriated that is used by the owner for residential purposes, provided that such part was not being offered for sale on the date of the expropriation, and
 - (ii) an allowance for improvements the value of which is not reflected in the market value of the land;
- (b) where the premises taken do not include the owner's residence, the owner's costs of finding premises to replace those expropriated, provided that the lands were not being offered for

sale on the date of expropriation; and
(c) relocation costs, including,
(i) the moving costs, and
(ii) the legal and survey costs and other non-recoverable expenditures incurred in acquiring other premises.

Business on expropriated land

Business loss

19. (1) Where a business is located on the land expropriated, the expropriating authority shall pay compensation for business loss resulting from the relocation of the business made necessary by the expropriation and, unless the owner and the expropriating authority otherwise agree, the business losses shall not be determined until the business has moved and been in operation for six months or until a three-year period has elapsed, whichever occurs first.

Good will

(2) The Board may, in determining compensation on the application of the expropriating authority or an owner, include an amount not exceeding the value of the good will of a business where the land is valued on the basis of its existing use and, in the opinion of the Board, it is not feasible for the owner to relocate.

Compensation for injurious affection

21. A statutory authority shall compensate the owner of land for loss or damage caused by injurious affection.

Claim for compensation for injurious affection

22. (1) Subject to subsection (2), a claim for compensation for injurious affection shall be made by the person suffering the damage or loss in writing with particulars of the claim within one year after the damage was sustained or after it became known to the person, and, if not so made, the right to compensation is forever barred.

Idem, where owner under disability

(2) Where the person who is injuriously affected is a minor, a mental incompetent or a person incapable of managing his or her affairs, the claim for compensation shall be made within one year after he or she

	<p>ceased to be under the disability or, in the case of death while under the disability, within one year after his or her death, and, if not so made, the right to compensation is forever barred.</p> <p><u>Set-off against damages</u></p> <p>23. The value of any advantage to the land or remaining land of an owner derived from any work for which land was expropriated or by which land was injuriously affected shall be set off only against the amount of the damages for injurious affection to the owner's land or remaining lands.</p>
British Columbia ⁸¹	<p><u>Right to compensation</u></p> <p><u>Basic formula</u></p> <p>31 (1) The court must award as compensation to an owner the market value of the owner's estate or interest in the expropriated land plus reasonable damages for disturbance but, if the market value is based on a use of the land other than its use at the date of expropriation, the compensation payable is the greater of</p> <ul style="list-style-type: none">(a) the market value of the land based on its use at the date of expropriation plus reasonable damages under section 34, and(b) the market value of the land based on its highest and best use at the date of expropriation. <p>(2) If not included in the market value of land determined in accordance with section 32, the following must be added to that market value:</p> <ul style="list-style-type: none">(a) the value of a special economic advantage to the owner arising out of his or her occupation or use of the land;(b) the value of improvements made by an owner occupying a residence located on the land. <p>(3) If there is more than one separate interest in the land expropriated, the value of each interest must, if practical, be established separately.</p> <p><u>Definition of market value</u></p> <p>32 The market value of an estate or interest in land is the amount that would have been paid for it if it had been sold at the date of expropriation in the open market by a willing seller to a willing buyer.</p>

⁸¹ *Expropriation Act*, R.S.B.C. 1996, c. 125.

	<p><u>Disturbance damages generally</u></p> <p>34 (1) An owner whose land is expropriated is entitled to disturbance damages consisting of the following:</p> <ul style="list-style-type: none">(a) reasonable costs, expenses and financial losses that are directly attributable to the disturbance caused to the owner by the expropriation;(b) reasonable costs of relocating on other land, including reasonable moving, legal and survey costs that are necessarily incurred in acquiring a similar interest or estate in the other land. <p>(2) If a cost, expense or loss is claimed as a disturbance damage and that cost, expense or loss has not yet been incurred, either the claimant or the expropriating authority may, with the consent of the court, elect to have the cost, expense or loss determined at the time, not more than 6 months after the date of expropriation, that the cost, expense or loss is incurred.</p> <p>(3) If an owner whose land is expropriated carried on a business on that land at the date of expropriation and, after the date of expropriation, relocates the business to and operates it from other land, reasonable business losses directly attributable to the expropriation must not, unless that person and the expropriating authority otherwise agree, be determined until the earlier of</p> <ul style="list-style-type: none">(a) 6 months after the owner has operated the business from the other land, and(b) one year after the date of the expropriation. <p>(4) If the court determines that it is not feasible for an owner to relocate his or her business, there may be included in the compensation that is otherwise payable, an additional amount not exceeding the value of the goodwill of the business.</p>
Alberta ⁸²	<p><u>Determination of market value</u></p> <p>41 The market value of land expropriated is the amount the land might be expected to realize if sold in the open market by a willing seller to a willing buyer.</p> <p><u>Principles of compensation</u></p> <p>42(1) When land is expropriated, the expropriating authority shall pay the owner the compensation as is determined in accordance with this Act.</p>

⁸² *Expropriation Act*, R.S.A. 2000, c. E-13.

(2) When land is expropriated, the compensation payable to the owner must be based on

- (a) the market value of the land,
- (b) the damages attributable to disturbance,
- (c) the value to the owner of any element of special economic advantage to the owner arising out of or incidental to the owner's occupation of the land to the extent that no other provision is made for its inclusion, and
- (d) damages for injurious affection.

Value of occupied land

43 If the owner of the land that is being or was expropriated is or was in occupation and as a result of the expropriation it is or was necessary for the owner to give up occupation of the land, the value of the land is the greater of

- (a) the market value of the land determined as set out in section 41, or
- (b) the aggregate of
 - (i) the market value of the land determined on the basis that the use to which the expropriated land was being put at the time of its taking was its highest and best use, and
 - (ii) damages for disturbance.

Compulsory acquisition

44 In determining the amount of compensation payable, no allowance shall be made on account of the acquisition being compulsory except where unusual circumstances exist for which no provision for compensation is contained in this Act.

Determining value of land

45 In determining the value of the land, no account may be taken of

- (a) any anticipated or actual use of the land by the expropriating authority at any time after the expropriation;
- (b) any value established or claimed to be established by or by reference to any transaction or agreement involving the sale, lease or other disposition of the land, if that transaction or agreement was entered into after the commencement of expropriation proceedings;
- (c) any increase or decrease in the value of the land resulting from the development or the imminence of the development in respect of which the expropriation is made or from any expropriation or imminent prospect of expropriation;
- (d) any increase or decrease in the value of the land due to the

development of other land that forms part of the development for which the expropriated land is taken;

(e) any increase or decrease in value that results from the imposition or amendment of a land use bylaw, land use classification or analogous enactment made with a view to the development under which the land is expropriated.

Disturbance compensation to owner

50 The expropriating authority shall pay to an owner other than a tenant, in respect of disturbance, such reasonable costs and expenses as are the natural and reasonable consequences of the expropriation, including,

(a) when the premises taken include the owner's residence,

(i) an allowance of

(A) 5% of the compensation payable in respect of the market value of that part of the land expropriated that is used by the owner for residential purposes, or

(B) the actual amount proved with respect to those items,

whichever is the greater, to compensate for inconvenience and the costs of finding another residence, if the part of the land so used was not being offered for sale on the date of the expropriation, and

(ii) a reasonable allowance for improvements, the value of which is not reflected in the market value of the land;

(b) when the premises taken do not include the owner's residence, the owner's costs of finding premises to replace those expropriated, if the lands were not being offered for sale on the date of the expropriation;

(c) relocation costs, to the extent that they are not covered in clause (a) or (b), including

(i) moving costs, and

(ii) legal and survey costs and other non-recoverable expenditures incurred in acquiring other premises.

Business losses

53 When a business is located on the land expropriated, the expropriating authority shall pay compensation for business loss resulting from the relocation of the business because of the expropriation and the Board may defer determination of the business losses until the business has moved and been in operation for 6 months or until a 3 year period has elapsed, whichever occurs first.

Compensation for good will

54 The Board may, on the application of the expropriating authority or an owner, include in determining compensation an amount not exceeding the value of the good will of a business when the land is valued on the basis of its existing use and, in the opinion of the Board, it is not feasible for the owner to relocate.

Partial expropriation

55 When only part of an owner's land is expropriated and as a result of the expropriation the value of the remaining land is increased, the owner is nevertheless entitled to the market value of the land expropriated.

RSA 1980 cE16 s55

Injurious affection and incidental damage

56 When only part of an owner's land is taken, compensation shall be given for

(a) injurious affection, including

(i) severance damage, and

(ii) any reduction in market value to the remaining land,
and

(b) incidental damages,

if the injurious affection and incidental damages result from or are likely to result from the taking or from the construction or use of the works for which the land is acquired.

Easement or right of way

57 On the expropriation of an easement or right of way, the Board, in making its award for the value of the interest taken, may ignore the residual value to the owner.

Compensation for damages

58 When the expropriation is of an easement or right of way, the Board may determine the amount of compensation payable by the expropriating authority for

(a) damage caused by or arising out of the operation of the expropriating authority to any land of the owner or occupant other than the area expropriated,

(b) the loss of or damage to livestock or other personal property of the owner or occupant caused by or arising out of the operations of the expropriating authority, and

(c) time spent or expense incurred by the owner or occupant in

	<p>repairing or recovering any of the owner's or occupant's personal property, or in recovering any of the owner's or occupant's livestock that have strayed, due to an act or omission of the expropriating authority, and shall direct the person to whom the compensation is payable.</p>
Manitoba ⁸³	<p><u>Due compensation for land</u></p> <p>26(1) Where land is expropriated, the due compensation payable to the owner therefor shall be the aggregate of</p> <ul style="list-style-type: none">(a) the market value of the land determined as hereinafter set forth;(b) the reasonable costs, expenses and losses arising out of or incidental to the owner's disturbance determined as hereinafter set forth;(c) damages for injurious affection as hereinafter set forth; and(d) the value to the owner of any special economic advantage to him arising out of or incidental to his actual occupation of the land, to the extent that no other provision is made therefor in due compensation. <p><u>Market value defined</u></p> <p>27(1) The market value of land is the amount that the land might reasonably be expected to realize if sold in the open market by a willing seller to a willing buyer.</p> <p><u>Factors not considered</u></p> <p>27(2) In determining the due compensation payable to the owner no account shall be taken of</p> <ul style="list-style-type: none">(a) the special use to which the authority will put the land; or(b) any increase or decrease in the value of the land resulting from the imminence of the development in respect of which the expropriation is made or from any imminent prospect of expropriation; or(c) any depreciation of the value of the land which is attributable to the fact that, whether by way of designation, allocation or other particulars contained in a development plan published by any government or government authority or whether by any other means, an indication has been given that the land is, or is likely, to be acquired by any authority; or

⁸³ *Expropriation Act*, C.C.S.M. c. E190.

(d) any increase in the value of the land resulting from the land being put to a use that could be restrained by any court or is contrary to law or is detrimental to the health of the occupants of the land or to the public health.

Determining market value in certain partial takings

27(3) Where only part of the land of an owner is expropriated, and that part is of a size or shape for which there is no general demand or market, the market value of the part taken and the injurious affection of the remainder caused by the taking of the part may be determined as being the market value of the whole of the owner's land less the market value of the remainder.

Unit value of land in certain cases

27(4) Where an authority expropriates for a highway or a drain a part of a parcel of land that is not within an incorporated city, town or village and that is undeveloped or used for agricultural purposes, the compensation payable to the owner of the parcel in respect of the value of the land expropriated, not including the value of any buildings, fixtures or improvements expropriated or damages for injurious affection or disturbance,

(a) shall be determined, if the part expropriated is less than 5% of the area of the entire parcel; and

(b) may be determined if the part expropriated is 5% or more of the area of the entire parcel;

as the value of the land taken based on a unit price of the value of all the land in the parcel that is of equivalent physical character to the land taken and that, at the date as of which due compensation for the land is to be determined, was actually used for purposes similar to those for which the land taken was used, except that no consideration shall be given to any greater or lesser value of any part of the parcel by reason of the proximity to the work for which the right-of-way is required and excluding the value of any buildings, improvements or fixtures in the parcel.

Compensation for disturbance of owner

28(1) Subject to subsection (3), the authority shall pay to an owner in respect of disturbance, such reasonable costs, expenses and losses as arise out of or are incidental to the expropriation, including

(a) where the land includes the residence of an owner, other

than a tenant, an allowance to compensate for the inconvenience and the cost of finding another residence in the amount of five per cent of the compensation payable in respect of the market value of that part of the land expropriated that is used by the owner for residential purposes, if that part was not being offered for sale on the date the declaration was signed;

(b) where the land taken does not include the owner's residence, the owner's costs of finding premises to replace those expropriated, if the lands were not being offered for sale on the date the declaration was signed;

(c) relocation expenses, including

- (i) moving costs, and
- (ii) legal fees, land survey costs and other expenses reasonably incurred in acquiring other lands; and

(d) where the land is subject to a security interest, the amount of any loss he is likely to sustain as a result of the acceleration of payment thereof due to the expropriation where the prevailing rate of interest for an equivalent security is greater than the rate of interest provided for by the security interest on the land.

No disturbance considered in certain cases

28(2) Where the market value of the land is determined upon the basis of a use of the land other than the existing use, the due compensation for the land shall not include compensation for any damages attributable to disturbance that would have been sustained by the owner in putting the land to that other use.

Loss of goodwill of business

29(1) Where the commission is satisfied that an owner does not intend to relocate any business carried on upon the land expropriated, and that the relocation thereof would not be feasible, and if the owner's interest in the land has not been valued on a basis inconsistent with its use for the purposes of the business, due compensation may include compensation for the extinction of the goodwill of the business.

Determination of business loss may be deferred

29(2) Where a claim for compensation for disturbance includes any amount for business loss alleged to result from the relocation or intended relocation of a business from the land expropriated, the determination of the compensation in respect of the business loss

shall, unless the authority and the owner otherwise agree, be deferred until the business has been relocated and in operation for six months; and the operating experience of the business following its relocation may be considered inter alia in determining the compensation.

Injurious affection in partial takings

30(1) Compensation for injurious affection where an authority expropriates part of the land of an owner shall consist of the amount of

- (a) any reduction in market value of the remaining land of the owner caused by the expropriation of the part;
- (b) the damages sustained by the owner as a result of the existence and the use but not the construction of the works upon the part of the land expropriated; and
- (c) such other damages sustained by the owner as a result of the existence, but not the construction or use, of the works as the authority would otherwise be responsible for in law if the existence of the works were not under the authority of a statute.

Partial taking defined

30(2) For the purposes of this section it shall be deemed that part of the lands of an owner is expropriated only where the owner from whom land is expropriated retains land contiguous to that expropriated or retains land of which the value was enhanced by unified ownership and unity of use with that expropriated.

Due compensation to include amount for injurious affection

30(3) Compensation under this section shall be determined in the proceedings for the determination of and as part of the due compensation payable for the land expropriated.

Injurious affection where no land taken

31(1) Due compensation for injurious affection where an authority does not acquire part of the land of an owner shall consist of the amount of such damages sustained by the owner, including any reduction in the market value of the land, as are the result of the existence, but not the construction or use, of the works and for which the authority would be responsible in law if the works were maintained otherwise than pursuant to the authority of a statute.

	<p><u>Time for making claim limited</u></p> <p>31(2) Subject to subsection (3), a claim for due compensation under this section shall be made by the person suffering the damage or loss by application to the court within two years after the work is first used for the purpose for which it was constructed or acquired or after it has been substantially completed, and if not so made the right to compensation is forever barred.</p> <p><u>Saving rights of persons under disability</u></p> <p>31(3) Where the person whose land is injuriously affected is an infant, a mental incompetent, or a person incapable of managing his or her affairs, the person's claim for compensation shall be made before the expiration of two years after the disability ceases, or where the person dies while under the disability, within two years after the death, and, if not so made, the right to compensation is forever barred.</p>
Saskatchewan ⁸⁴	<p><u>Method of Determining Compensation</u></p> <p><u>Procedure to be adopted</u></p> <p>10(1) The arbitrator, in deciding on such compensation or damages shall take into consideration the increased value, beyond the increased value common to all lands in the locality, that will be given to any lands of the opposite party by reason of the construction and maintenance of authorized works or undertakings, and shall set off the increased value against the inconvenience, loss or damage that might be suffered or sustained by reason of the applicant taking possession of or using then said lands.</p> <p>(2) The date with reference to which compensation or damages shall be ascertained shall be the date on which notice of readiness to pay compensation is given; provided that if the applicant does not actually acquire title to the lands within one year from the said date, then the date of such acquisition shall be the date with reference to which compensation or damages shall be ascertained.</p> <p><u>Expropriation</u></p> <p>(3) The arbitrator may include in the award an allowance for interest on the compensation or damages from the date on which notice of readiness to pay compensation is given or for such shorter time as he deems proper.</p>

⁸⁴ *Expropriation Act*, R.S.S. 1978, c. E-15.

	<p><i>Planning and Development Act, 2007, S.S. 2007, c. P-13.2</i></p> <p><u>Expropriation</u></p> <p>42(1) If the council cannot purchase the land at a fair price or cannot otherwise acquire the land by agreement with the owner, it may expropriate the land. (2) The price to be paid for land expropriated pursuant to subsection (1) is required to be determined by arbitration, and The Municipal Expropriation Act applies, with any necessary modification, to that expropriation. 2007, c.P-13.2, s.42.</p> <p><i>Expropriation Procedure Act, R.S.S. 1978, c. E-16</i></p> <p>Compensation by expropriating authority</p> <p>49(1) An expropriating authority shall make due compensation to the owner of land expropriated by the expropriating authority in the exercise of its statutory powers beyond any special advantage that the owner may derive from any public improvement for which the land was expropriated.</p> <p>(1.1) Subject to subsection (1), in an action for compensation the judge, in determining the value of the land expropriated, shall not take into account:</p> <ul style="list-style-type: none">(a) any anticipated or actual use by the expropriating authority of the land expropriated at any time after expropriation; or(b) any increase or decrease in the value of the land expropriated resulting from the anticipation of expropriation by the expropriating authority or from any knowledge or expectation, prior to the expropriation, of the purpose for which the land was expropriated. <p>(2) Compensation for land expropriated shall be ascertained as of the day on which the expropriating authority takes possession of the land or dedicates the land or the day on which the declaration of expropriation respecting the land is submitted to the Land Titles Registry pursuant to section 10 or 12, whichever is the earliest.</p>
Nova Scotia ⁸⁵	<p><u>Rules to determine land value</u></p> <p>25 (2) The value of land expropriated shall be the value of that land at the time the expropriation documents are deposited at the office of the</p>

⁸⁵ *Expropriation Act, R.S.N.S. 1989, c. 156.*

	<p>registrar of deeds.</p> <p><u>Aggregate of items to be compensated</u></p> <p>26 The due compensation payable to the owner for lands expropriated shall be the aggregate of</p> <ul style="list-style-type: none">(a) the market value of the land or a family home for a family home determined as hereinafter set forth;(b) the reasonable costs, expenses and losses arising out of or incidental to the owner's disturbance determined as hereinafter set forth;(c) damages for injurious affection as hereinafter set forth; and(d) the value to the owner of any special economic advantage to him arising out of or incidental to his actual occupation of the land, to the extent that no other provision is made therefore in due compensation. <p><u>Value</u></p> <p>27 (1) In this Section and Section 28, "bonus" means the amount by which the amount secured under a mortgage exceeds the amount actually advanced and does not include accrued interest outstanding and unpaid.</p> <p>(2) Subject to this Section, the value of land expropriated is the market value thereof, that is to say, the amount that would have been paid for the land if, at the time of its taking, it had been sold in the open market by a willing seller to a willing buyer.</p> <p>(3) Where the owner of land expropriated was in occupation of the land at the time the expropriation document was deposited in the registry of deeds and, as a result of the expropriation, it has been necessary for him to give up occupation of the land, the value of the land expropriated is the greater of</p> <ul style="list-style-type: none">(a) the market value thereof determined as set forth in subsection (2); and(b) the aggregate of<ul style="list-style-type: none">(i) the market value thereof determined on the basis that the use to which the land expropriated was being put at the time of its taking was its highest and best use, and(ii) the costs, expenses and losses arising out of or incidental to the owner's disturbance including moving to other premises but if such cannot practically be estimated or determined, there may be allowed in lieu thereof a
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	<p>percentage, not exceeding fifteen, of the market value determined as set forth in subclause (i), plus the value to the owner of any element of special economic advantage to him arising out of or incidental to his occupation of the land, to the extent that no other provision is made by this clause for the inclusion thereof in determining the value of the land expropriated.</p> <p>(5) Where only part of the land of an owner is taken and such part is of a size, shape or nature for which there is no general demand or market, the market value and the injurious affection caused by the taking may be determined by determining the market value of the whole of the owner's land and deducting therefrom the market value of the owner's land after the taking.</p> <p>(8) For the purposes of subclause (ii) of clause (b) of subsection (3) consideration shall be given to the time and circumstances in which an owner was allowed to continue in occupation of the land after the expropriating authority became entitled to take physical possession or make use thereof, and to any assistance given by the expropriating authority to enable such owner to seek and obtain alternative premises.</p> <p>(10) Security holders shall be paid the amount of principal and interest outstanding against the security out of the market value of the land and any damages for injurious affection payable in respect of the land subject to the security in accordance with their priorities, whether or not such principal and interest is due, and subject to subsections (11) and (12).</p> <p>(11) Where land is subject to a mortgage and the amount payable to the mortgagee under subsection (10) is insufficient to satisfy the mortgage in full,</p> <ul style="list-style-type: none">(a) where the mortgage is a purchase-money mortgage the mortgage shall, to the extent that the mortgage affects title to the land, be deemed to be fully paid, satisfied and discharged for all purposes upon payment of the amount payable to the mortgagee under subsection (10); and(b) where the mortgage is not a purchase-money mortgage and includes a bonus,<ul style="list-style-type: none">(i) the amount by which the amount payable to the mortgagee under subsection (10) is insufficient to pay the amount remaining unpaid under the mortgage, or(ii) the amount of the bonus,
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	<p>whichever is the lesser, shall, to the extent that the mortgage affects title to the land, be deemed to be fully paid and satisfied for all purposes upon payment of the amount payable to the mortgagee under subsection (10).</p> <p>(12) No amount shall be paid in respect of a bonus until all security holders have been paid all amounts payable other than any bonus.</p> <p>(13) Where land held as security is expropriated in part or is injuriously affected, a security holder is entitled to be paid to the extent possible in accordance with his priority, out of the market value portion of the compensation and any damages for injurious affection therefor, as the case may be, a sum that is in the same ratio to such portion of the compensation and damages as the balance outstanding on the security at the date of the expropriation or injurious affection is to the market value of the entire land, provided however that the sum so determined shall be reduced by the amount of any payments made to the security holder by the owner after the date of expropriation or injurious affection.</p> <p>29 (1) Where a business is located on the land expropriated, the statutory authority shall pay compensation for business loss resulting from the relocation of the business made necessary by the expropriation and, unless the owner and the statutory authority otherwise agree, the business losses shall not be determined until the business has moved and been in operation for twelve months or until a three-year period has elapsed from the date of the expropriation, whichever occurs first.</p> <p>(2) Where it is not feasible for the owner of a business to relocate, there shall be included in the compensation payable an amount for the loss of the business where the compensation for the land taken is based on the existing value of the land.</p> <p>(3) For the purpose of determining the compensation for loss of goodwill, the value of the goodwill shall be determined in accordance with generally accepted accounting principles. <i>R.S., c. 156, s. 29; 1995-96, c. 19, s. 5.</i></p> <p>30 (1) A statutory authority shall compensate the owner of land for loss or damage caused by injurious affection.</p> <p>(2) No compensation is payable for the loss of access to land or egress from land, or both, where the loss is the result of a designation</p>
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	<p>pursuant to the Public Highways Act of a highway or land as a controlled access highway, if other access to the land or egress from the land, as the case may be, is available as a result of a service or land access road being provided. <i>R.S., c. 156, s. 30; 1995-96, c. 19, s. 6.</i></p> <p>32 The value of any advantage to the land or remaining land of an owner derived from any work for which land was expropriated or by which land was injuriously affected shall be set-off only against the amount of the damages for injurious affection to the owner's land or remaining land. <i>R.S., c. 156, s. 32.</i></p> <p>33 In determining the value of land expropriated, no account shall be taken of</p> <p>(a) any anticipated or actual use by the expropriating authority of the land at any time after the depositing of the expropriation document in the registry of deeds;</p> <p>(b) any value established or claimed to be established by or by reference to any transaction or agreement involving the sale, lease or other disposition of the interest or any part thereof, where such transaction or agreement was entered into after the deposit of the expropriation document in the registry of deeds;</p> <p>(c) any increase or decrease in the value of the land resulting from the anticipation of expropriation by the expropriating authority or from any knowledge or expectation, prior to the expropriation, of the purpose for which the land was expropriated; or</p> <p>(d) any increase in the value of the land resulting from its having been put to a use that was contrary to law. <i>R.S., c. 156, s. 33.</i></p>
New Brunswick ⁸⁶	<p>38(1) Where the land of an owner is expropriated, the compensation to the owner shall be based upon</p> <p>(a) the market value of the land,</p> <p>(b) damages attributable to disturbance,</p> <p>(c) damages for injurious affection,</p> <p>(d) any special economic advantage arising out of his occupation of the land that is not reflected in the market value of the land, but where the market value is based upon a use of</p>

⁸⁶ *Expropriation Act*, R.S.N.B. 1973, c. E-14.

	<p>the land other than the existing use, compensation under paragraphs (a) and (b) shall not exceed the greater of</p> <ul style="list-style-type: none">(e) the amount based upon the existing use to which the land is being put and disturbance damages, or(f) the amount based upon the highest and best use to which the land may be put, and no compensation shall be awarded under paragraph (d). <p>38(2) Where property other than land is taken, interfered with or injured, in the absence of a specific direction in the statute authorizing it, compensation shall be based upon the market value of the property, or any reduction therein, and damages for disturbance.</p> <p>38(3) No compensation shall be paid in respect of improvements made to land by an owner after a copy of a notice of intention to expropriate or an application for an expropriation is served upon the owner pursuant to this Act.</p> <p>39(1) The market value of land expropriated is the amount that would have been paid for the land if it had been sold on the date of expropriation in the open market by a willing seller to a willing buyer.</p> <p>39(3) Where only part of the land of an owner is taken and such part is of a size, shape or nature for which there is no general demand or market, the market value and the injurious affection caused by the taking may be determined by determining the market value of the whole of the owner's land and deducting therefrom the market value of the owner's land after the taking.</p> <p>39(4) In determining the market value of the land, no account shall be taken of</p> <ul style="list-style-type: none">(a) any anticipated or actual use to which the expropriating authority will put the land;(b) any increase or decrease in the value of the land resulting from the imminence of the development in respect of which the expropriation is made or from any imminent prospect of expropriation; or(c) any increase in the value of the land resulting from the land being put to a use that could be restrained by any court or is contrary to law or is detrimental to the health of the occupants of the land or to the public health.
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<p>Newfoundland and Labrador⁸⁷</p>	<p><u>Rule for Assessing Compensation</u></p> <p>27. (1) In fixing the amount of compensation to be paid under this Act the board shall act in accordance with the following rules:</p> <ul style="list-style-type: none">(a) the compensation shall be an amount based on the fair market value of the land and on existing use value at the time of the beginning of expropriation proceedings and no account shall be taken of the compulsory acquisition of the land, the disturbance of the owner or occupier, or other detrimental effect;(b) the fair market value of the land shall be taken to be the amount that the land, if sold in the open market by a willing seller, might be expected to realize but the board is entitled to consider all returns and assessments of capital value for taxation made or acquiesced in by the owner of the land;(c) the special suitability or adaptability of the land for a purpose shall not be taken into account where that purpose is one to which the land could be applied only as a result of the authority of an Act or one for which there is not a market apart from the special needs of a particular purchaser or the requirements for which the land is expropriated, but an offer in good faith for the purchase of the land made before the beginning of the expropriation proceedings that may be brought to the notice of the board shall be taken into account;(d) where the value of the land is increased because of the use of it or of premises on the land in a manner that could be restrained by a court or is contrary to law or which because of overcrowding or for another reason is detrimental to the health of the occupants of the premises or to the health of the public, the amount of that increase shall not be taken into account;(g) in all cases an advantage that the owner may derive or be likely to derive directly or indirectly from the contemplated work and operations for which the land is expropriated shall be taken into account in reduction of the amount of the compensation; <p>(2) Where, in the opinion of the board, it is proper to make an award, in respect of the expropriation of land, for the disturbance to the owner or occupier or for another detrimental effect properly the subject of compensation, the board may in addition to the amount awarded in accordance with subsection (1) make an award of a sum that it may fix.</p>
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⁸⁷ *Expropriation Act*, R.S.N.L. 1990, c. E-19.

Prince Edward Island ⁸⁸	<p><u>Compensation</u></p> <p>11. The Minister shall make to the owner of land entered upon, taken or payable by Minister used by him, or injuriously affected by the exercise of any of the powers conferred by this Act, due compensation for any damages necessarily resulting from the exercise of such powers, beyond any advantage which the owner may derive from the contemplated work, and any claim for the compensation not mutually agreed upon shall be determined as hereinafter provided.</p>
Quebec ⁸⁹	<p><u>INDEMNITY</u></p> <p><u>How indemnity fixed.</u></p> <p>58. The indemnity shall be fixed according to the value of the property expropriated and the damage directly caused by the expropriation.</p> <p>1973, c. 38, s. 57; 1999, c. 40, s. 131.</p> <p>58. L'indemnité est fixée d'après la valeur du bien exproprié et du préjudice directement causé par l'expropriation.</p> <p><u>Increased value.</u></p> <p>59. When, following the expropriation of a part of an immovable or a group of adjacent immovables intended for or used as a joint undertaking, the remaining part acquires a particular increased value resulting from the construction of works or improvements carried out by the expropriating party, the increased value, to the extent thereof, is offset against the indemnity owing to the expropriated party.</p> <p>1973, c. 38, s. 58; 1983, c. 21, s. 14.</p> <p><u>Removal of structure.</u></p> <p>60. When it appears that a structure situated on land which is the object of expropriation may appropriately be removed and placed on neighbouring land owned by the expropriated party or the expropriating party and such removal will reduce the cost of the expropriation, the Tribunal may order the expropriated party to remove the structure to the place it determines and within the time it fixes.</p>

⁸⁸ *Expropriation Act*, R.S.P.E.I. 1988, c. E-13.

⁸⁹ *Expropriation Act*, R.S.Q. c. E-24

	<p>1973, c. 38, s. 59; 1983, c. 21, s. 14; 1986, c. 61, s. 15; 1997, c. 43, s. 249.</p> <p><u>Removal of structure.</u></p> <p>60.1. When the expropriating party requests the removal of the structure to land owned by him, he shall accompany his motion with an offer of sale of the land offered. If the Tribunal grants the request, it shall rule on the value of the land, which value will be deducted from the indemnity.</p> <p>1983, c. 21, s. 14; 1986, c. 61, s. 15; 1997, c. 43, s. 249.</p> <p><u>Partial expropriation.</u></p> <p>65. Following the partial expropriation of an immovable, the expropriating party or the expropriated party may, by a motion, request the Tribunal to order total or partial expropriation of the remaining part of the immovable if that part is no longer suitable for use in whole or in part. The same applies in the case of a farm if the partial expropriation seriously jeopardizes its operation.</p> <p>1973, c. 38, s. 64; 1983, c. 21, s. 16; 1986, c. 49, s. 2; 1986, c. 61, s. 15; 1997, c. 43, s. 249.</p>
Northwest Territories ⁹⁰	<p>26. (1) In this Part,</p> <p>"market value", in relation to an expropriated interest, means the amount that would have been paid for the interest if, at the time of its taking, it had been sold in the open market by a willing seller to a willing buyer and fully paid for in cash; (<i>valeur marchande</i>)</p> <p>(2) For the purposes of this Part, the time of the taking of an expropriated interest is,</p> <p>(a) where an election has been made under subsection 27(3) by the owner of the expropriated interest, the time specified by the owner in the election; or</p> <p>(b) in any other case, the time when the notice of confirmation is registered.</p> <p><u>Amount of Compensation</u></p> <p>27 (2) The amount of compensation referred to in subsection (1) shall</p>

⁹⁰ *Expropriation Act*, R.S.N.W.T. 1988, c. E-11.

	<p>be equal to the aggregate of</p> <ul style="list-style-type: none">(a) the value of the expropriated interest at the time of its taking; and(b) the amount of any decrease in value of the remaining property of the owner, as determined under section 34. <p><u>Determination of Market Value</u></p> <p>28 (1) Subsection (2) and sections 29 to 33 shall be applied in determining the value of an expropriated interest.</p> <p>(2) Subject to sections 29 to 33, the value of an expropriated interest is the market value of the expropriated interest.</p> <p>29. (1) Where the owner of an expropriated interest was in actual occupation of land at the time the notice of confirmation was registered and, as a result of the expropriation, had to give up occupation of the land, the value of the expropriated interest is the greater of</p> <ul style="list-style-type: none">(a) the market value of the expropriated interest; and(b) the aggregate of<ul style="list-style-type: none">(i) the market value of the expropriated interest determined on the basis that the use to which the expropriated interest was being put at the time of its taking was its highest and best use, and(ii) the costs, expenses and losses arising out of or incidental to the disturbance of the owner, including moving to other premises,plus the value to the owner of any element of special economic advantage to the owner arising out of or incidental to his or her occupation of the land, to the extent that no other provision is made by this paragraph for the inclusion of that in determining the value of the expropriated interest <p>(2) If the costs, expenses and losses referred to in subparagraph (1)(b)(ii) cannot practicably be estimated or determined, a percentage of the market value determined under subparagraph (1)(b)(i), not exceeding 15%, may be allowed in place of the costs, expenses and losses.</p> <p>(5) For the purposes of subparagraphs (1)(b)(ii) and (3)(b)(ii), consideration shall be given to</p> <ul style="list-style-type: none">(a) the time and circumstances in which a former owner was allowed to continue in occupation of the land after the expropriating authority became entitled to take physical
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	<p>possession or make use of the land; and</p> <p>(b) any assistance given by the expropriating authority to enable the former owner to seek and obtain alternative premises.</p> <p>(6) Where an expropriating authority has taken physical possession or made use of the land referred to in subsection (1) or (3) on the expiration of a period of notice to the owner that is less than the 90 days referred to in subsection 18(2), an amount of 10% of the value of the expropriated interest, as calculated under this section and sections 30 to 33, shall be added to that value.</p> <p>33 In determining the value of an expropriated interest, no account shall be taken of</p> <p>(a) any use to which the expropriating authority has or may put the land after the expropriation;</p> <p>(b) any value established or claimed to be established by or by reference to a transaction or agreement involving the sale, lease or other disposition of the interest or part of the interest, where the transaction or agreement was entered into after the registration of the notice of intention;</p> <p>(c) any increase or decrease in the value of the interest or in the demand or market for the interest for a particular purpose, resulting from</p> <p>(i) its anticipated or actual expropriation, or</p> <p>(ii) any anticipated or actual use of the interest for any purpose for which it is or may be lawfully required by the expropriating authority; or</p> <p>(d) any increase in the value of the interest resulting from its having been put to a use that was contrary to law.</p> <p>34. (1) The amount of any decrease in value of the remaining property of an owner is the value of all of his or her interests in land immediately before the time of the taking of the expropriated interest, as determined under sections 29 to 33, minus the aggregate of</p> <p>(a) the value of the expropriated interest; and</p> <p>(b) the value of all the remaining interests of the owner in the land immediately after the time of the taking of the expropriated interest.</p> <p>(2) For the purpose of paragraph (1)(b), the value of the remaining interests of the owner in the land shall be determined as provided in sections 29 to 33, except that in determining the value, account shall be taken of any increase or decrease in the value of any remaining interest in the land of the owner that immediately before the registration of the notice of confirmation was held by the owner</p>
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	<p>together with the expropriated interest, resulting from the construction or use or anticipated construction or use of any work on the land to which the notice relates or from the use or anticipated use of that land for any lawful purpose.</p>
Yukon ⁹¹	<p>7(1) If land is expropriated or is injuriously affected by an expropriating authority in the exercise of its statutory powers, the expropriating authority shall make due compensation to the owner of the land for the land expropriated or for any damage necessarily resulting from the exercise of those powers, as the case may be, beyond any advantage that the owner may derive from any work for which the land was expropriated or injuriously affected.</p> <p><u>Compensation Assessed</u></p> <p>8 Compensation in respect of any compulsory acquisition shall be assessed in accordance with the following rules</p> <ul style="list-style-type: none">(a) the value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller to a willing buyer might be expected to realize;(b) an allowance may be made on account of the acquisition being compulsory;(c) the special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirement of any authority possessing compulsory purchase powers;(d) if the value of the land is increased because of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the occupants of the premises or to the public health, the amount of that increase shall not be taken into account;(f) the provisions of paragraph (a) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of land;(g) no account shall be taken of any change or anticipated change in the value of land attributable to the carrying out or the prospect of carrying out a development for the purpose of which the land is being acquired.

⁹¹ *Expropriation Act*, R.S.Y. 2002, c. 81.

Nunavut ⁹²	See relevant statutory provisions for the Northwest Territories.
Canada (Federal) ⁹³	<p><u>Right to compensation</u></p> <p>25. (1) Compensation shall be paid by the Crown to each person who, immediately before the registration of a notice of confirmation, was the owner of a right, estate or interest in the land to which the notice relates, to the extent of his expropriated interest, the amount of which compensation shall be equal to the aggregate of</p> <ul style="list-style-type: none">(a) the value of the expropriated interest at the time of its taking, and(b) the amount of any decrease in value of the remaining property of the owner, determined as provided in section 27. <p><u>Rules for determining value</u></p> <p>26. (1) The rules set out in this section shall be applied in determining the value of an expropriated interest.</p> <p><u>Market value defined</u></p> <p>(2) Subject to this section, the value of an expropriated interest is the market value thereof, that is to say, the amount that would have been paid for the interest if, at the time of its taking, it had been sold in the open market by a willing seller to a willing buyer.</p> <p><u>Where owner required to give up occupation</u></p> <p>(3) Where the owner of an expropriated interest was in occupation of any land at the time the notice of confirmation was registered and, as a result of the expropriation, it has been necessary for him to give up occupation of the land, the value of the expropriated interest is the greater of</p> <ul style="list-style-type: none">(a) the market value thereof determined as set out in subsection (2), and(b) the aggregate of<ul style="list-style-type: none">(i) the market value thereof determined on the basis that the use to which the expropriated interest was being put at the time of its taking was its highest and best use, and(ii) the costs, expenses and losses arising out of or incidental to the owner's disturbance, including moving to other premises, but if those costs, expenses and losses

⁹² *Supra* note 24.

⁹³ *Supra* note 5.

	<p>cannot practically be estimated or determined, there may be allowed in lieu thereof a percentage, not exceeding fifteen, of the market value determined as set out in subparagraph (i), plus the value to the owner of any element of special economic advantage to him arising out of or incidental to his occupation of the land, to the extent that no other provision is made by this paragraph for the inclusion thereof in determining the value of the expropriated interest.</p> <p><u>Where Crown has taken physical possession of land</u></p> <p>(4) In any case where the Crown has taken physical possession or made use of the land referred to in subsection (3) on the expiration of a period of notice to the owner shorter than the ninety days mentioned in paragraph 19(1)(c), there shall be added to the value of the expropriated interest otherwise determined under this section an additional amount equal to ten per cent thereof.</p> <p><u>Where Crown has taken physical possession of land</u></p> <p>(6) In any case where the Crown has taken physical possession or made use of the parcel of land referred to in subsection (5) on the expiration of a period of notice to the owner shorter than the ninety days mentioned in paragraph 19(1)(c), there shall be added to the value of the expropriated interest otherwise determined under this section an additional amount equal to ten per cent thereof.</p> <p><u>Additional factors</u></p> <p>(7) For the purposes of subparagraphs (3)(b)(ii) and (5)(b)(ii), consideration shall be given to the time and circumstances in which a former owner was allowed to continue in occupation of the land after the Crown became entitled to take physical possession or make use thereof, and to any assistance given by the Minister to enable the former owner to seek and obtain alternative premises.</p> <p><u>Land subject to security interest</u></p> <p>(10) Where an expropriated interest was, immediately before the registration of a notice of confirmation, subject to an interest in land that was held by the owner thereof as security only, in this subsection called a “security interest”,</p>
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	<p>(a) the value of the expropriated interest is the aggregate of</p> <ul style="list-style-type: none">(i) the value thereof otherwise determined under this section as though it had not been subject to any security interest, and(ii) the amount of any loss or anticipated loss to the owner of the expropriated interest resulting from a difference in rates of interest during the remainder of the period for which any principal amount payable under the terms of the security was advanced, that difference to be calculated on the basis of an assumed rate of interest not in excess of the prevailing rate of interest for an equivalent security, to the extent that no other provision is made by this section for the inclusion of an amount in respect of the loss or anticipated loss in determining the value of the expropriated interest, less the value of each security interest to which the expropriated interest was subject, determined as provided in paragraph (b) but as though no amount were included therein by virtue of subparagraph (ii) of that paragraph; <p>(b) the value of the security interest is the aggregate of</p> <ul style="list-style-type: none">(i) the principal amount outstanding under the terms of the security, and any interest due or accrued thereunder, at the time of the registration of the notice of confirmation, and(ii) an amount equal to three times the interest element, calculated as a monthly amount, of any payment of interest or of principal and interest payable under the terms of the security at the rate in effect thereunder immediately before the registration of the notice of confirmation, and where the expropriated interest was subject to more than one security interest, the value of each security interest shall be determined in the order of its priority but in no case shall the value of any security interest to which an expropriated interest was subject exceed the value of the expropriated interest otherwise determined under this section as though it had not been subject to any security interest, less the value of each other security interest the value of which is required by this subsection to be determined in priority thereto; and <p>(c) where part only of the interest that was subject to a security interest was expropriated, the value of the security interest is that proportion of the value thereof otherwise determined under this subsection as though the whole of the interest subject to the security interest had been expropriated, that</p> <ul style="list-style-type: none">(i) the value of the part only of the interest, otherwise
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	<p>determined under this subsection as though it had not been subject to any security interest, is of (ii) the value of the whole of the interest otherwise determined under this subsection as though it had not been subject to any security interest, less the same proportion of the interest element of any payment made under the terms of the security, between the time of the registration of the notice of confirmation and the time of payment of any compensation in respect of the security interest, otherwise than pursuant to any offer made to the owner thereof under section 16.</p> <p><u>Factors not to be taken into account</u></p> <p>(11) In determining the value of an expropriated interest, no account shall be taken of</p> <ul style="list-style-type: none">(a) any anticipated or actual use by the Crown of the land at any time after the expropriation;(b) any value established or claimed to be established by or by reference to any transaction or agreement involving the sale, lease or other disposition of the interest or any part thereof, where the transaction or agreement was entered into after the registration of the notice of intention to expropriate;(c) any increase or decrease in the value of the interest resulting from the anticipation of expropriation by the Crown or from any knowledge or expectation, prior to the expropriation, of the public work or other public purpose for which the interest was expropriated; or(d) any increase in the value of the interest resulting from its having been put to a use that was contrary to law. <p><u>Decrease in value of remaining property where severance</u></p> <p>27. (1) The amount of the decrease in value, if any, of the remaining property of an owner is the value of all of his interests in land immediately before the time of the taking of the expropriated interest, determined as provided in section 26, minus the aggregate of</p> <ul style="list-style-type: none">(a) the value of the expropriated interest; and(b) the value of all his remaining interests in land immediately after the time of the taking of the expropriated interest.
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	<p><u>Injurious affection, etc., as factor in determining change in value of remaining property</u></p> <p>(2) For the purpose of paragraph (1)(b), the value of the remaining interests in land of an owner immediately after the time of the taking of the expropriated interest shall be determined as provided in section 26, except that in determining that value account shall be taken of any increase or decrease in the value of any remaining interest in land of the owner, that immediately before the registration of the notice of confirmation was held by him together with the expropriated interest, resulting from the construction or use or anticipated construction or use of any public work on the land to which the notice relates or from the use or anticipated use of that land for any public purpose.</p> <p>R.S., c. 16(1st Supp.), s. 25.</p>
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APPENDIX B

SPECIAL PROVISIONS ON SPECIAL PURPOSE AND LIMITED MARKET PROPERTIES,
HOMES AND LEASED PROPERTIES

Province / Territory	Relevant Statutory Provisions
Ontario ⁹⁴	<p>14. (3) Where only part of the land of an owner is taken and such part is of a size, shape or nature for which there is no general demand or market, the market value and the injurious affection caused by the taking may be determined by determining the market value of the whole of the owner's land and deducting therefrom the market value of the owner's land after the taking.</p> <p><u>Increase by Broad</u></p> <p>15. Upon application therefor, 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.</p> <p><u>Tenant</u></p> <p>18. (2) The expropriating authority shall pay to a tenant occupying expropriated land in respect of disturbance so much of the cost referred to in subsection (1) as is appropriate having regard to,</p> <ul style="list-style-type: none">(a) the length of the term;(b) the portion of the term remaining;(c) any rights to renew the tenancy or the reasonable prospects of renewal;(d) in the case of a business, the nature of the business; and(e) the extent of the tenant's investment in the land. <p><u>Abatement of rent</u></p> <p>34. (1) Subject to subsection (2), where only part of the interest of a lessee is expropriated, the lessee's obligation to pay rent under the lease shall be abated proportionately, as determined by the Board.</p> <p><u>Frustration of lease</u></p> <p>(2) Where all the interest of a lessee in land is expropriated or where part of the lessee's interest is expropriated and the expropriation</p>

⁹⁴ *Supra* note 6.

	<p>renders the remaining part of the lessee's interest unfit for the purposes of the lease, as determined by the Board, the lease shall be deemed to be frustrated from the date of the expropriation.</p>
British Columbia ⁹⁵	<p><u>Limited market — churches, hospitals, schools, etc.</u></p> <p>35 (1) Unless an owner elects to be paid compensation in accordance with the other provisions of this Part, the market value of the owner's estate or interest in the land is deemed to be the reasonable cost of equivalent reinstatement if, at the date of expropriation,</p> <ul style="list-style-type: none">(a) the land is used for a church, hospital, school or similar use for which there is no general demand or market, and(b) the owner undertakes with the expropriating authority that it will relocate and continue the same use on other land. <p>(2) In determining the reasonable cost of equivalent reinstatement under subsection (1), depreciation of a building on the expropriated land must not be taken into account if the building was being used for the particular use referred to in subsection (1) on the date the expropriation notice under section 6(1)(a) or order under section 5(4)(a) was served.</p> <p>(3) For the purposes of this section, the reasonable cost of equivalent reinstatement must be determined as of the date that the owner obtains, through purchase or construction, reasonably equivalent lands and improvements, but in no case later than one year after the date of expropriation.</p> <p><u>Frustration of leases</u></p> <p>36 (1) A lease is deemed to be frustrated if, at the date of expropriation,</p> <ul style="list-style-type: none">(a) the entire interest or estate of a lessee in land is expropriated, or(b) part of the interest or estate of a lessee in land is expropriated, and the expropriation renders the remaining interest or estate of the lessee unfit for the purposes of the lease. <p>(2) Subject to subsection (1), if part of the interest or estate in land of a lessee is expropriated, the obligation of the lessee to pay rent under the lease is, to the extent of the interest or estate expropriated, abated.</p> <p>(3) If there is an inconsistency between a provision of a lease and</p>

⁹⁵ *Expropriation Act*, R.S.B.C. 1996, c. 125.

subsection (1) or (2), that subsection prevails.

Market value of security interests

37 If land subject to a security interest is expropriated, compensation must be determined in the manner and amounts prescribed.

Occupiers and lessees

38 (1) If expropriated land includes a residence that is
(a) occupied by a person who, in respect of that residence, would be entitled to a grant under the *Home Owner Grant Act*, and
(b) not being offered for sale by him or her on the date the expropriation notice under section 6(1)(a) or order under section 5(4)(a) was served on him or her,
the person is entitled to be paid, in addition to the amount required to be paid to him or her under section 34, an amount equivalent to 5% of the market value of his or her estate or interest in that part of the land, not exceeding 0.5 ha, that is used personally by him or her for residential purposes.

(2) If expropriated land includes a rental unit as defined in the *Residential Tenancy Act* or a manufactured home site as defined in the *Manufactured Home Park Tenancy Act*, a person who leases or occupies the unit or site under an agreement that has a term of less than one year is entitled to be paid
(a) an amount that is equivalent to 3 months' rent for the rental unit or manufactured home site, and
(b) reasonable moving costs.

Disturbance damages for lessees

39 If land that is subject to a lease having a term greater than one year is expropriated, the lessee, whether or not he or she is an occupant of the land, is entitled to reasonable disturbance damages in an amount to be determined by the court by having regard to
(a) the length of the term of the lease,
(b) the length of the unexpired term of the lease,
(c) any rights to renew or the reasonable prospect of renewal,
(d) the nature of the business, if any, carried out on the land under the lease, and
(e) the extent of the lessee's investment in the land that the lessee cannot reasonably recover.

Alberta ⁹⁶	<p><u>Special purpose structures</u></p> <p>46(1) If any land has a building or other structure erected on it that was specially designed for use for the purpose of a school, hospital, municipal institution or religious or charitable institution or for any similar purpose, and the use of the building or other structure for that purpose by the owner has been rendered impracticable as a result of the expropriation, the value of the expropriated interest is, if the expropriated interest was and, but for the expropriation, would have continued to be used for that purpose and if at the time of its taking there was no general demand or market for the building or structure to be used for that purpose, the greater of</p> <ul style="list-style-type: none">(a) the market value of the expropriated interest determined as set out in section 41;(b) the aggregate of<ul style="list-style-type: none">(i) the cost of any reasonable alternative interest in land for that purpose, and(ii) the cost, expenses and losses arising out of or incidental to moving to and re-establishment on other premises, minus the amount by which the owner has improved, or may reasonably be expected to improve, the owner's position through re-establishment on other premises. <p>(2) For the purposes of subsection (1)(b), the cost of any reasonable alternative interest in land shall be computed as of the date at which construction of the new building or the structure could reasonably be begun.</p> <p><u>Relocation of residence</u></p> <p>47(1) On application therefor, the Board shall, after fixing the market value of land used for the principal residence of the owner, award such additional amount of compensation as, in the opinion of the Board, is necessary to enable the owner to relocate the owner's residence in accommodation that is at least equivalent to the accommodation expropriated, and in fixing the additional amount of compensation the Board shall include the increase in cost between the time of expropriation and the time when the new accommodation could reasonably be obtained.</p> <p>(2) In this section, "owner" means a registered owner or purchaser and does not include a tenant.</p>
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⁹⁶Expropriation Act, R.S.A. 2000, c. E-13.

	<p><u>Disturbance compensation to tenant</u></p> <p>51(1) The expropriating authority shall pay to a tenant occupying expropriated land, in respect of disturbance, so much of the cost referred to in section 50 as is appropriate having regard to</p> <ul style="list-style-type: none">(a) the length of the term,(b) the portion of the term remaining,(c) any rights to renew the tenancy or the reasonable prospects of renewal,(d) in the case of a business, the nature of the business, and(e) the extent of the tenant's investment in the land. <p>(2) The tenant's right to compensation under this section is not affected by the premature determination of the lease as a result of the expropriation.</p> <p><u>Expropriation of lessee's interest</u></p> <p>71(1) Subject to subsection (2), when only part of the interest of a lessee is expropriated, the lessee's obligation to pay rent under the lease shall be abated to the extent that the parties agree or, failing agreement, as determined by the Board.</p> <p>(2) When all the interest of a lessee in land is expropriated or when part of the lessee's interest is expropriated and the expropriation renders the remaining part of the lessee's interest unfit for the purposes of the lease, as determined by the Board, the lease is deemed to be frustrated from the date of the expropriation.</p>
Manitoba ⁹⁷	<p><u>Special value of residence of owner</u></p> <p>26(2) Where the land expropriated includes a building occupied by the owner thereof as his residence, the due compensation payable for the land shall include</p> <ul style="list-style-type: none">(a) compensation for the value of any improvements made to the land that is not adequately reflected in the market value of the land, and(b) an amount, in addition to the market value of the land and any amount for improvements under clause (a), necessary to enable the owner to acquire other land that will afford him residential accommodation at least equivalent to that afforded by the land expropriated.

⁹⁷ Expropriation Act, C.C.S.M. c. E190.

	<p><u>Equivalent reinstatement in certain cases</u></p> <p>26(3) Where land is devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, and the owner intends in good faith to relocate in some other place, the due compensation shall be assessed on the basis of the reasonable cost of equivalent reinstatement.</p> <p><u>Compensation for disturbance of lessee</u></p> <p>28(3) Where the interest of an owner is a leasehold interest the compensation for disturbance of the owner shall be assessed having regard to</p> <ul style="list-style-type: none"> (a) the length of the term of the lease under which the owner is in possession of the land; (b) the portion of the term remaining; (c) any right of renewal of the lease; (d) in the case of a business, the nature of the business; and (e) the value of the tenant's improvements in the land; <p>but in no case shall compensation for disturbance be less than the amount of the moving costs reasonably incurred by the owner.</p> <p><u>Rent may be abated</u></p> <p>46(1) Subject to subsection (2), where part only of the interest of a lessee is expropriated, the lessee's obligation to pay rent under the lease shall be abated pro tanto, as determined by the court.</p> <p><u>Frustration of lease</u></p> <p>46(2) Where all the interest of a lessee in land is expropriated or where part of the lessee's interest is expropriated and the expropriation renders the remaining part of the lessee's interest unfit for the purposes of the lease, as determined by the court, the lease shall be deemed to be frustrated from the date the lessee went out of possession.</p>
Saskatchewan	There are no specific statutory provisions. Common law principles are applicable.
Nova Scotia ⁹⁸	<p><u>Purpose of Act</u></p> <p>2 (2) Further, it is the intent and purpose of this Act that where a family home is expropriated the position of the owner in regards to</p>

⁹⁸ *Expropriation Act*, R.S.N.S. 1989, c. 156.

	<p>compensation shall be such that he will be substantially in the same position after the expropriation as compared with his position before the expropriation.</p> <p>2 (3) Recognizing that strict market value is not in all cases a true compensation for a family home that is expropriated since it may not provide equivalent accommodation to the owner of the family home, this Act shall be interpreted broadly in respect of the expropriation of a family home so that effect is given to the intent and purpose set forth in subsection (2).</p> <p>2 (4) The protection given by subsections (2) and (3) shall not extend to any person whose land is a money asset or investment and not a family home.</p> <p><u>Aggregate of items to be compensated</u></p> <p>26 The due compensation payable to the owner for lands expropriated shall be the aggregate of</p> <ul style="list-style-type: none">(a) the market value of the land or a family home for a family home determined as hereinafter set forth;(b) the reasonable costs, expenses and losses arising out of or incidental to the owner's disturbance determined as hereinafter set forth;(c) damages for injurious affection as hereinafter set forth; and(d) the value to the owner of any special economic advantage to him arising out of or incidental to his actual occupation of the land, to the extent that no other provision is made therefor in due compensation. <p><u>Value</u></p> <p>27 (4) Where the land expropriated is devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, and the owner intends in good faith to relocate for that purpose, the market value shall be deemed to be the reasonable cost of equivalent reinstatement.</p> <p>27 (6) Notwithstanding subsection (3), where any land expropriated is, at the time the expropriation document was deposited in the registry of deeds, used as a family home by the owner the value of the land expropriated shall be such value as will at current costs and prices put the owner in a position to acquire by purchase or construction a home reasonably equivalent to that which was expropriated.</p>
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	<p>27 (7) Persons negotiating or determining a case under subsection (6) shall consider the question whether the reasonably equivalent home can be acquired by purchase, or whether it is certainly or probably impracticable in the state of the market so to acquire it, in which latter case it may be necessary for them to award sufficient compensation for its construction in lieu of current market value.</p> <p>27 (9) The expropriating authority shall pay to a tenant occupying land expropriated in respect of disturbance so much of the cost referred to in subclause (ii) of clause (b) of subsection (3) as is appropriate having regard to</p> <ul style="list-style-type: none">(a) the length of the term of the lease and the portion of the term remaining at the time at which the determination is relevant;(b) any right or reasonable prospect of renewal of the term that the tenant had; and(c) any investment in the land by the tenant and the nature of any business carried on by him thereon. <p><u>Not to be considered in land valuation</u></p> <p>33 In determining the value of land expropriated, no account shall be taken of</p> <ul style="list-style-type: none">(a) any anticipated or actual use by the expropriating authority of the land at any time after the depositing of the expropriation document in the registry of deeds;(b) any value established or claimed to be established by or by reference to any transaction or agreement involving the sale, lease or other disposition of the interest or any part thereof, where such transaction or agreement was entered into after the deposit of the expropriation document in the registry of deeds;(c) any increase or decrease in the value of the land resulting from the anticipation of expropriation by the expropriating authority or from any knowledge or expectation, prior to the expropriation, of the purpose for which the land was expropriated; or(d) any increase in the value of the land resulting from its having been put to a use that was contrary to law. <p><u>Abatement of rent</u></p> <p>54 (1) Subject to subsection (2), where only part of the interest of a lessee is expropriated, the lessee's obligation to pay rent under the lease shall be abated pro tanto, as determined by the Board.</p>
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	<p>(2) Where all the interest of a lessee in land is expropriated or where part of the lessee's interest is expropriated and the expropriation renders the remaining part of the lessee's interest unfit for the purposes of the lease, as determined by the Board, the lease shall be deemed to be frustrated from the date of the expropriation.</p>
New Brunswick ⁹⁹	<p>39(2) Where the land expropriated had a building erected thereon that was used for purposes of a school, hospital facility or religious or charitable institution, or for similar purposes, and</p> <ul style="list-style-type: none">(a) the use for that purpose would have continued but for the expropriation,(b) there is no general demand or market for the land and building for that purpose, and(c) the owner intends in good faith to relocate in similar premises, the market value shall, at the option of the owner, be deemed to be the reasonable cost of equivalent reinstatement less the amount by which the owner will have improved or may reasonably be expected to improve his position through relocation on other premises. <p>40 Where the Court has fixed the market value of land used for residential purposes and is of the opinion that</p> <ul style="list-style-type: none">(a) the amount fixed is insufficient to enable the owner to relocate his residence in accommodation that is at least equivalent to the accommodation expropriated, and(b) a special hardship will be imposed upon the owner in obtaining accommodation suitable to his needs, upon application therefor, the Court may award the owner such additional amount of compensation as, in the opinion of the Court, is necessary to relocate his residence in accommodation that is at least equivalent to the accommodation expropriated.
Newfoundland and Labrador ¹⁰⁰	<p><u>Rules for assessing compensation</u></p> <p>27 (e) Where a house or premises are in a condition that constitutes a nuisance or are in a state of defective sanitation or are not in reasonably good repair, the value of the house or premises shall be an amount that would be estimated as the value if the nuisance were abated or if the house or premises were put into a sanitary condition or into reasonably good repair, after deducting the estimated expense of abating the nuisance or putting the house or premises into that condition and repair;</p>

⁹⁹ *Expropriation Act*, R.S.N.B. 1973, c. E-14.

¹⁰⁰ *Expropriation Act*, R.S.N.L. 1990, c. E-19.

(f) Where a house or premises are in the opinion of the board unfit and not reasonably capable of being made fit for human habitation, compensation shall not be paid in respect of them;

(h) where land is, and, but for the expropriation would continue to be, devoted to a purpose of such a nature that there is no general demand or market for the land for that purpose, the amount of the compensation may, where the board is satisfied that reinstatement in some other place is in good faith intended, be assessed on the basis of the reasonable cost of equivalent reinstatement.

Leasehold land

29 (1) Where land subject to a lease or sublease for a term of not less than 1 year is expropriated the board shall apportion the compensation fixed in respect of the land between the lessor and lessee and sublessee or the assigns of either in a manner that in its absolute discretion seems appropriate.

(2) Where part only of the land referred to in subsection (1) is expropriated the board shall, in addition, apportion the rent payable in respect of the land between the land expropriated and the residue of the land and after the apportionment the lessee or sublessee or their assigns shall, as to all future accruing rent, be liable only for so much of the rent as is apportioned in respect of the land not expropriated.

(3) In respect of the land not expropriated and as against the lessee and sublessee or their assigns the lessor has all the same rights and remedies for the recovery of the portion of rent as previously to the apportionment he or she had for the recovery of the whole rent reserved by the lease, and all the covenants, conditions and agreements of the lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land that is not expropriated in the same manner as they would have done where that part only of the land had been included in the lease or sublease.

Family Homes Expropriation Act, R.S.N.L. 1990, c. F-1

Act prevails

2. Where under an Act enabling expropriation of private property it is decided to expropriate a family home the provisions of this Act shall have effect and shall prevail over the provisions of all other Acts dealing with expropriation.

	<p>RSN1970 c123 s2 <u>Family home</u> 3. (1) For the purpose of this Act a family home shall be a house which is and has for a reasonable time been the home of a family unit together with land immediately appurtenant to the house not exceeding 6,000 square metres and all immediately appurtenant outbuildings. (2) The nature of a family unit is defined or indicated in the Schedule. RSN1970 c123 s3; 1977 c84 Sch <u>Compensation payable</u> 4. In the case of an expropriation to which this Act applies and notwithstanding a rule or provision for the assessment of values set out in the Act under which the expropriation is made, the principle of assessment shall be that the owner of the family home shall receive an amount in compensation that will at current costs and prices put him or her in a position to acquire by purchase or construction a home reasonably equivalent to that which is being expropriated. RSN1970 c123 s4</p>
<p>Prince Edward Island</p>	<p>There are no specific statutory provisions. Common law principles are applicable. The general statutory provision requires “due compensation”.</p>
<p>Quebec¹⁰¹</p>	<p><u>Fixing lessee's indemnity.</u> 66. The indemnity due to a lessee or occupant in good faith shall be fixed according to the damage directly caused by the expropriation, subject to the other provisions of this Act. 1973, c. 38, s. 65; 1999, c. 40, s. 131. <u>Lump indemnity for lessee or occupant of residence.</u> 67. In the case of a lessee or occupant who occupies a residence, the indemnity shall be fixed as a lump sum equal to three months' rent and moving expenses, unless the lessee or occupant establishes that the damages occasioned by the injury he has sustained attain a greater amount. 1973, c. 38, s. 66; 1999, c. 40, s. 131.</p>
<p>Northwest Territories¹⁰²</p>	<p>29 (3) Notwithstanding subsections (1), (2) and (6), where a parcel of land to which a notice of confirmation relates has a building</p>

¹⁰¹ Expropriation Act, R.S.Q. c. E-24

	<p>or other structure erected on it that was specially designed for use as a school, hospital or religious institution or for any similar purpose and that use of the building or structure by the owner is rendered impracticable as a result of the expropriation, the value of the expropriated interest, if it was and, but for the expropriation, would have continued to be used for that purpose and at the time of its taking there was no general demand or market for the interest for that purpose, is the greater of</p> <ul style="list-style-type: none">(a) the market value of the expropriated interest; and(b) the aggregate of<ul style="list-style-type: none">(i) the cost of any reasonably alternative interest in land for that purpose, and(ii) the cost, expenses and losses of the owner arising out of or incidental to moving to and re-establishment on other premises, minus the amount by which the owner has improved, or may reasonably be expected to improve his or her position through re-establishment on other premises. <p>(4) If the costs, expenses or losses referred to in subparagraph (3)(b)(ii) cannot be practicably estimated or determined, a percentage of the cost determined under subparagraph (3)(b)(i), not exceeding 15%, may be allowed in place of the costs, expenses or losses.</p> <p>(5) For the purposes of subparagraphs (1)(b)(ii) and (3)(b)(ii), consideration shall be given to</p> <ul style="list-style-type: none">(a) the time and circumstances in which a former owner was allowed to continue in occupation of the land after the expropriating authority became entitled to take physical possession or make use of the land; and(b) any assistance given by the expropriating authority to enable the former owner to seek and obtain alternative premises. <p>(6) Where an expropriating authority has taken physical possession or made use of the land referred to in subsection (1) or (3) on the expiration of a period of notice to the owner that is less than the 90 days referred to in subsection 18(2), an amount of 10% of the value of the expropriated interest, as calculated under this section and sections 30 to 33, shall be added to that value.</p> <p>30. Where, immediately before the registration of a notice of confirmation, an expropriated interest was used by the owner as his or her residence and the value of the expropriated interest otherwise determined under section 29 and sections 31 to 33 is less than the</p>
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¹⁰² *Expropriation Act*, R.S.N.W.T. 1988, c. E-11.

	<p>minimum amount sufficient to enable the owner to relocate his or her residence in or on premises reasonably equivalent to the premises expropriated at the earlier of</p> <ul style="list-style-type: none">(a) the time of payment to the owner of any compensation in respect of the expropriated interest, otherwise than under an offer made to the owner, or(b) the time when the expropriating authority became entitled to take physical possession or make use of the land to the extent of the expropriated interest, <p>there shall be added to the value of the expropriated interest otherwise determined under section 29 and sections 31 to 33 the amount by which that minimum amount exceeds the value.</p> <p><u>Expropriation of Leasehold Interest</u></p> <p>31 Where, immediately before the registration of a notice of confirmation, an expropriated interest was owned by the owner as a leasehold interest, there shall be substituted for the amount determined under subparagraph 29(1)(b)(ii) or 29(3)(b)(ii) or section 30, the part of that amount as is appropriate having regard to</p> <ul style="list-style-type: none">(a) the length of the term of the leasehold interest and the portion of the term remaining at the time at which the determination is relevant;(b) any right or reasonable prospect of renewal of the term that the owner of the leasehold interest had; and(c) any investment in the land by the owner of the leasehold interest and the nature of any business carried on by the owner on the land.
Yukon ¹⁰³	<p>8 (e) if land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the tribunal is satisfied that reinstatement in some other place is <i>bona fide</i> intended, be assessed on the basis of the reasonable cost of equivalent reinstatement;</p> <p><u>Application to home</u></p> <p>9(1)The provisions of this section shall apply to the expropriation of any home.</p> <p>(2)A home is a house which is and has been for a reasonable time the</p>

¹⁰³ Expropriation Act, R.S.Y. 2002, c. 81.

	<p>home of a person with the land immediately appurtenant thereto not exceeding one and one-half acres and any immediately appurtenant outbuildings.</p> <p>(3) In the case of any such expropriation, the principle of assessment shall be that the owner of the home shall receive the compensation that will at current costs and prices put the owner in a position to acquire by purchase or construction a home reasonably equivalent to that which is being expropriated.</p>
Nunavutt	See relevant statutory provisions for the Northwest Territories.
Canada (Federal) ¹⁰⁴	<p>26 (5) Notwithstanding subsection (3), where any parcel of land to which a notice of confirmation relates had any building or other structure erected thereon that was specially designed for use for the purpose of a school, hospital, municipal institution or religious or charitable institution or for any similar purpose, the use of which building or other structure for that purpose by the owner has been rendered impracticable as a result of the expropriation, the value of the expropriated interest is, if the expropriated interest was and, but for the expropriation, would have continued to be used for that purpose and at the time of its taking there was no general demand or market therefor for that purpose, the greater of</p> <ul style="list-style-type: none"> (a) the market value of the expropriated interest determined as set out in subsection (2), and (b) the aggregate of <ul style="list-style-type: none"> (i) the cost of any reasonably alternative interest in land for that purpose, and (ii) the cost, expenses and losses arising out of or incidental to moving to and re-establishment on other premises, but if those costs, expenses and losses cannot practically be estimated or determined, there may be allowed in lieu thereof a percentage, not exceeding fifteen, of the cost determined under subparagraph (i), minus the amount by which the owner has improved, or may reasonably be expected to improve, his position through re-establishment on other premises. <p><u>Land used for residence</u></p> <p>26 (8) Where an expropriated interest was, immediately before the registration of a notice of confirmation, being used by the owner thereof for the purposes of his residence and the value of the interest</p>

¹⁰⁴ *Supra* note 5.

	<p>otherwise determined under this section is less than the minimum amount sufficient to enable the owner, at the earlier of</p> <ul style="list-style-type: none">(a) the time of payment to him of any compensation in respect of the interest, otherwise than pursuant to any offer made to him under section 16, and(b) the time when the Crown became entitled to take physical possession or make use of the land to the extent of the interest expropriated, to relocate his residence in or on premises reasonably equivalent to the premises expropriated, there shall be added to the value of the interest otherwise determined under this section the amount by which that minimum amount exceeds that value. <p><u>Moving and relocation expenses of owner of leasehold interest</u></p> <p>26 (9) Where an expropriated interest was, immediately before the registration of a notice of confirmation, owned by the owner thereof as a leasehold interest, there shall be substituted for the amount determined under subparagraph (3)(b)(ii) or (5)(b)(ii), or the amount by which the minimum amount referred to in subsection (8) exceeds the value of the interest referred to therein otherwise determined under this section, as the case may be, such part of that amount as is appropriate having regard to</p> <ul style="list-style-type: none">(a) the length of the term of the leasehold interest and the portion of the term remaining at the time at which the determination is relevant;(b) any right or reasonable prospect of renewal of the term that the owner of the leasehold interest had; and(c) any investment in the land by the owner of the leasehold interest and the nature of any business carried on by him thereon.
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APPENDIX C

CHECKLIST OF TYPES OF DISTURBANCE AWARDS

RESIDENTIAL

- ✓ 5% allowance in addition to relocation expenses¹⁰⁵
- ✓ Basement suite - new construction - replacement property not having one¹⁰⁶
- ✓ Build up residence pad¹⁰⁷
- ✓ Cabin¹⁰⁸
- ✓ Cost of acquiring new premises (including professional's opinion)¹⁰⁹
- ✓ Curtains / Drapes¹¹⁰
- ✓ Demolition of old house prior to reconstruction of replacement home¹¹¹
- ✓ Double move¹¹²
- ✓ Double carrying costs on finance¹¹³
- ✓ Driveway (repairing)¹¹⁴
- ✓ Driveway (loss of crushed stone)¹¹⁵
- ✓ Driveway (new driveway)¹¹⁶
- ✓ Excavation of replacement dugout and connection of dugout to house¹¹⁷
- ✓ Fees for professional engineer¹¹⁸
- ✓ Garage (new construction - replacement property not having one)¹¹⁹
- ✓ Garden¹²⁰
- ✓ Improvement not reflected in market value¹²¹
- ✓ Kennelling of dog¹²²

¹⁰⁵ *McDonough v. Calgary (City)* (2007), 92 L.C.R. 136 (Alta. L.C.B.) at 167.

¹⁰⁶ *Gibeault v. Edmonton (City)* (2001), 74 L.C.R. 313 (Alta. L.C.B.).

¹⁰⁷ *Kennedy v. Manitoba* (2005), 86 L.C.R. 28 (L.V.A.C.) at 34.

¹⁰⁸ *Barrick v. Ontario* (1991), 46 L.C.R. 222 (Ont. M.B.).

¹⁰⁹ *Canada (National Capital Commission) v. Millen*, [1951] 2 D.L.R. 465; *Harvey v. Crawley Dev. Corpon.*, [1957] 1 Q.B. 485; *R. v. Spencer*, [1940] 1 D.L.R. 575 (Ex. Ct.)

¹¹⁰ *Reimer et al. v. Manitoba* (2001), 73 L.C.R. 216 (L.V.A.C.); *McNaughton v. Cardston Municipal Hospital (No. 1)* (1979), 19 L.C.R. 163 (Alta. L.C.B.) at 177 (reduced from \$4,507.50 to \$2,000.00 to reflect age).

¹¹¹ *McNaughton v. Cardston Municipal Hospital (No. 1)* (1979), 19 L.C.R. 163 (Alta. L.C.B.) at 176.

¹¹² *McDonough v. Calgary (City)* (2007), 92 L.C.R. 136 (Alta. L.C.B.) at 169; *Bean v. City of Waterloo* (1971), 1 L.C.R. 362 (Ont. L.C.B.) at 368; contra. *Schacht v. City of Edmonton* (1979), 18 L.C.R. 214 (Alta.L.C.B.).

¹¹³ *Reimer et al. v. Manitoba* (2001), 73 L.C.R. 216 (L.V.A.C.).

¹¹⁴ *Kennedy v. Manitoba* (2005), 86 L.C.R. 28 (L.V.A.C.) at 34.

¹¹⁵ *Robert v. Manitoba* (1988), 40 L.C.R. 194 (L.V.A.C.).

¹¹⁶ *Barrick v. Ontario* (1991), 46 L.C.R. 222 (Ont. M.B.).

¹¹⁷ *Kennedy v. Manitoba* (2005), 86 L.C.R. 28 (L.V.A.C.) at 34.

¹¹⁸ *Kennedy v. Manitoba* (2005), 86 L.C.R. 28 (L.V.A.C.) at 34.

¹¹⁹ *Gibeault v. Edmonton (City)* (2001), 74 L.C.R. 313 (Alta. L.C.B.).

¹²⁰ *Kennedy v. Manitoba* (2005), 86 L.C.R. 28 (L.V.A.C.) at 34.

¹²¹ *Laidlaw v. Municipality of Metro Toronto* (1978), 15 L.C.R. 24 (S.C.C.) - 540 square foot extension to house; *Barabulea v. City of Hamilton* (1969), 1 L.C.R. 61 (Ont. Mun. Bd.) - basement wall and wine cellar, concrete work in back yard, storage closets,, workshop, shed in rear; *Madsen v. Municipality of Metropolitan Toronto* (1970), 1 L.C.R. 27 (Ont. C.A.) at 39 - special wood panelling applied to the walls, special doors, a special copper hood over the stove; *Reimer et al. v. Manitoba* (2001), 73 L.C.R. 216 (L.V.A.C.) Flood repairs to existing home not considered an improvement.

- ✓ Landscaping of yard at replacement property¹²³
- ✓ Laneway to house¹²⁴
- ✓ Lawn¹²⁵
- ✓ Legal, survey and other costs involved in purchasing a replacement property¹²⁶
- ✓ Machinery costs¹²⁷
- ✓ Mortgage discharge fee¹²⁸
- ✓ Mortgage discharge registration fee¹²⁹
- ✓ Moving estimate¹³⁰
- ✓ Moving expenses¹³¹
- ✓ New water line¹³²
- ✓ Non-conforming uses - loss of¹³³
- ✓ Personal Effort / General disruption of family life¹³⁴
- ✓ Post Office Change of Address¹³⁵
- ✓ Reconnect fees - Natural gas, videon, telephone¹³⁶
- ✓ Renovations **denied** where no evidence that replacement home was not reasonably equivalent¹³⁷
- ✓ Rental van, Uhaul¹³⁸
- ✓ Renting interim accommodation¹³⁹

¹²² *Esler v. Winnipeg (City)* (1994) 54 L.C.R. 54 (L.V.A.C.).

¹²³ *Gibeault v. Edmonton (City)* (2001), 74 L.C.R. 313 (Alta. L.C.B.); *McNaughton v. Cardston Municipal Hospital (No. 1)* (1979), 19 L.C.R. 163 (Alta. L.C.B.) at 176; *Forsyth et al. v. The Queen* (1975) 9 L.C.R. 12 (Fed. Ct. T.D.) at 24 (\$15,000 re land not reasonably equivalent).

¹²⁴ *Reimer et al. v. Manitoba* (2001), 73 L.C.R. 216 (L.V.A.C.); *Comeau et al. v. Nova Scotia* (1997), 63 L.C.R. 63 (N.S.U.R.B.) at 74.

¹²⁵ *Reimer et al. v. Manitoba* (2001), 73 L.C.R. 216 (L.V.A.C.).

¹²⁶ *Esler v. Winnipeg (City)* (1994) 54 L.C.R. 54 (L.V.A.C.); (legal fees) *Johnson v. The Queen (Ontario)* (1981), 22 L.C.R. 133 (Fed. Ct. T.D.); *McNaughton v. Cardston Municipal Hospital (No. 1)* (1979), 19 L.C.R. 163 (Alta. L.C.B.) at 178 (survey costs and plans for replacement house); *Judson v. Governors of the University of Toronto* (1970), 1 L.C.R. 67 (Ont. C.A.) at 75 and (S.C.C.) at 221; *Barabulea v. City of Hamilton* (1969), 1 L.C.R. 61 (Ont. Mun. Bd.) at 63.

¹²⁷ *Kennedy v. Manitoba* (2005), 86 L.C.R. 28 (L.V.A.C.).

¹²⁸ *Reimer et al. v. Manitoba* (2001), 73 L.C.R. 216 (L.V.A.C.); *McDonough v. Calgary (City)* (2007), 92 L.C.R. 136 (Alta. L.C.B.).

¹²⁹ *Reimer et al. v. Manitoba* (2001), 73 L.C.R. 216 (L.V.A.C.).

¹³⁰ *Reimer et al. v. Manitoba* (2001), 73 L.C.R. 216 (L.V.A.C.).

¹³¹ *Reimer et al. v. Manitoba* (2001), 73 L.C.R. 216 (L.V.A.C.); *Esler v. Winnipeg (City)* (1994) 54 L.C.R. 54 (L.V.A.C.); *McNaughton v. Cardston Municipal Hospital (No. 1)* (1979), 19 L.C.R. 163 (Alta. L.C.B.) at 177; *Judson v. Governors of the University of Toronto* (1970), 1 L.C.R. 67 (Ont. C.A.) at 75 and (S.C.C.) at 221; *Barabulea v. City of Hamilton* (1969), 1 L.C.R. 61 (Ont. Mun. Bd.) at 63.

¹³² *Jackson v. Foothills (Municipal District) No. 31* (1995), 57 L.C.R. 112 (Alta. L.C.B.).

¹³³ *Judson v. Governors of the University of Toronto* (1970), 1 L.C.R. 67 (Ont. C.A.) re loss of non-conforming uses to keep bees and stabling and pasturing their saddle horses.

¹³⁴ *Canada (National Capital Commission) v. Omanique* (1973), 4 L.C.R. 168 (Fed. Ct. T.D.).

¹³⁵ *Gibeault v. Edmonton (City)* (2001), 74 L.C.R. 313 (Alta. L.C.B.).

¹³⁶ *Gibeault v. Edmonton (City)* (2001), 74 L.C.R. 313 (Alta. L.C.B.).

¹³⁷ *McDonough v. Calgary (City)* (2007), 92 L.C.R. 136 (Alta. L.C.B.) at 165.

¹³⁸ *McDonough v. Calgary (City)* (2007), 92 L.C.R. 136 (Alta. L.C.B.).

¹³⁹ *McDonough v. Calgary (City)* (2007), 92 L.C.R. 136 (Alta. L.C.B.) at 168; *Hage v. City of Calgary* (1990), 44 L.C.R. 180 (Alta. L.C.B.).

- ✓ Rental - loss of for six months¹⁴⁰
- ✓ Rewiring fences¹⁴¹
- ✓ Shelving - -new in basement to accommodate special hobbies of claimant¹⁴²
- ✓ Sod and site preparation¹⁴³
- ✓ Stigma of being adjacent to waste water treatment plant - 5%¹⁴⁴
- ✓ Storage expense¹⁴⁵
- ✓ Temporary interim accommodation¹⁴⁶
- ✓ Time / Personal inconvenience **denied**¹⁴⁷
- ✓ Trees and shrubs (cost of buying new and cost of moving old)¹⁴⁸
- ✓ Vehicle damages due to an accident during reconstruction and inconvenience and cost of finding another residence not mandatory - **claim denied**¹⁴⁹

AGRICULTURAL

- ✓ Additional row of evergreens for noise buffer¹⁵⁰
- ✓ Adequate supply of water for farm purposes - **claim denied**¹⁵¹
- ✓ Auction expenses¹⁵²
- ✓ Catch pens¹⁵³
- ✓ Construction of corrals and loading chute¹⁵⁴
- ✓ Continuing fixed machinery costs¹⁵⁵
- ✓ Cost of new calving shed¹⁵⁶
- ✓ Cost of relocation of well¹⁵⁷
- ✓ Disruptive process of severing a ranch during a busy season - **claim denied**¹⁵⁸
- ✓ Drilling, casing and frost proofing of well¹⁵⁹

¹⁴⁰ *McNaughton v. Cardston Municipal Hospital (No. 1)* (1979), 19 L.C.R. 163 (Alta. L.C.B.) at 177.

¹⁴¹ *Jackson v. Foothills (Municipal District) No. 31* (1995), 57 L.C.R. 112 (Alta. L.C.B.).

¹⁴² *Barabulea v. City of Hamilton* (1969), 1 L.C.R. 61 (Ont. Mun. Bd.) at 63.

¹⁴³ *Reimer et al. v. Manitoba* (2001), 73 L.C.R. 216 (L.V.A.C.).

¹⁴⁴ *Fritz v. B.C.* (2004), 83 L.C.R. 286 (B.C. Exp. C.B.).

¹⁴⁵ *Esler v. Winnipeg (City)* (1994) 54 L.C.R. 54 (L.V.A.C.). *McDonough v. Calgary (City)* (2007), 92 L.C.R. 136 (Alta. L.C.B.).

¹⁴⁶ *Esler v. Winnipeg (City)* (1994) 54 L.C.R. 54 (L.V.A.C.).

¹⁴⁷ *Kennedy v. Manitoba* (2005), 86 L.C.R. 28 (L.V.A.C.).

¹⁴⁸ *Kennedy v. Manitoba* (2005), 86 L.C.R. 28 (L.V.A.C.); *Robert v. Manitoba* (1988), 40 L.C.R. 194 (L.V.A.C.).

¹⁴⁹ *Jackson v. Foothills (Municipal District) No. 31* (1995), 57 L.C.R. 112 (Alta. L.C.B.).

¹⁵⁰ *Gustafson v. The Queen (Alberta)* (1987), 37 L.C.R. 45 (Alta. L.C.B.).

¹⁵¹ *Malmberg v. Alberta* (1995), 57 L.C.R. 86 (Alta. L.C.B.) claim denied because the well development claim is not the natural and reasonable consequence of the expropriation.

¹⁵² *Koziol v. Alberta* (2000), 71 L.C.R. 298 (Alta. L.C.B.).

¹⁵³ *Malmberg v. Alberta* (1995), 57 L.C.R. 86 (Alta. L.C.B.).

¹⁵⁴ *Malin et al. v. Alberta* (1988), 41 L.C.R. 143 (Alta. L.C.B.).

¹⁵⁵ *Wythe v. Manitoba* (1995), 55 L.C.R. 271 (L.V.A.C.).

¹⁵⁶ *Macdougall v. Minister of Transportation (Alberta)* (1989), 42 L.C.R. 205 (Alta. L.C.B.).

¹⁵⁷ *Malmberg v. Alberta* (1995), 57 L.C.R. 86 (Alta. L.C.B.) claim denied because the well development claim is not the natural and reasonable consequence of the expropriation.

¹⁵⁸ *Malmberg v. Alberta* (1995), 57 L.C.R. 86 (Alta. L.C.B.).

¹⁵⁹ *Malmberg v. Alberta* (1995), 57 L.C.R. 86 (Alta. L.C.B.).

- ✓ Earth work (each end of the cattle underpass)¹⁶⁰
- ✓ Escape of cattle¹⁶¹
- ✓ Extra mileage to check on cattle¹⁶²
- ✓ Feed bunks¹⁶³
- ✓ Fence repairs¹⁶⁴
- ✓ Gravel¹⁶⁵
- ✓ Hydraulic report¹⁶⁶
- ✓ Impact no profitability¹⁶⁷
- ✓ Inconvenience / Loss of time¹⁶⁸
- ✓ Insurance and Interest¹⁶⁹
- ✓ Loss of crop and loss of access¹⁷⁰
- ✓ Loss of cultivated land and trees¹⁷¹
- ✓ Loss of pasture rental - **claim denied**¹⁷²
- ✓ Maintenance and replacement of fence¹⁷³
- ✓ Moving and related damages¹⁷⁴
- ✓ Noise during the three-month construction period (based on value of milk loss)¹⁷⁵
- ✓ Passive movements of cattle¹⁷⁶
- ✓ Productivity of land¹⁷⁷
- ✓ Relocation of double wide trailer¹⁷⁸
- ✓ Relocation of the power supply¹⁷⁹
- ✓ Relocation of zebra enclosure¹⁸⁰
- ✓ Replacement of water-supply system¹⁸¹
- ✓ Restoration of property¹⁸²

¹⁶⁰ *Malmberg v. Alberta* (1995), 57 L.C.R. 86 (Alta. L.C.B.).

¹⁶¹ *Malin et al. v. Alberta* (1988), 41 L.C.R. 143 (Alta. L.C.B.).

¹⁶² *Malin et al. v. Alberta* (1988), 41 L.C.R. 143 (Alta. L.C.B.).

¹⁶³ *Malmberg v. Alberta* (1995), 57 L.C.R. 86 (Alta. L.C.B.).

¹⁶⁴ *Malmberg v. Alberta* (1995), 57 L.C.R. 86 (Alta. L.C.B.).

¹⁶⁵ *Morck v. The Queen (Alberta)* (1989) 42 L.C.R. 218 (Alta. L.C.B.).

¹⁶⁶ *Wythe v. Manitoba* (1995), 55 L.C.R. 271 (L.V.A.C.).

¹⁶⁷ *Malmberg v. Alberta* (1995), 57 L.C.R. 86 (Alta. L.C.B.).

¹⁶⁸ *Malmberg v. Alberta* (1995), 57 L.C.R. 86 (Alta. L.C.B.) (general inconvenience).

¹⁶⁹ *Miller v. Ontario* (1992), 48 L.C.R. 268 (Ont. M.B.).

¹⁷⁰ *Bannon et al. v. Ontario* (1975), 8 L.C.R. 288 (Ont. L.C.B.).

¹⁷¹ *Malin et al. v. Alberta* (1988), 41 L.C.R. 143 (Alta. L.C.B.).

¹⁷² *Malmberg v. Alberta* (1995), 57 L.C.R. 86 (Alta. L.C.B.) denied because covered under “injurious affection”.

¹⁷³ *Malmberg v. Alberta* (1995), 57 L.C.R. 86 (Alta. L.C.B.).

¹⁷⁴ *Koziol v. Alberta* (2000), 71 L.C.R. 298 (Alta. L.C.B.).

¹⁷⁵ *Malin et al. v. Alberta* (1988), 41 L.C.R. 143 (Alta. L.C.B.).

¹⁷⁶ *Malmberg v. Alberta* (1995), 57 L.C.R. 86 (Alta. L.C.B.).

¹⁷⁷ *Cokato Dairy & Stock Farms Ltd. v. B.C.* (1994), 54 L.C.R. 199 (B.C. Exp. Com. Bd.); *Malmberg v. Alberta* (1995), 57 L.C.R. 86 (Alta. L.C.B.).

¹⁷⁸ *Malin et al. v. Alberta* (1988), 41 L.C.R. 143 (Alta. L.C.B.).

¹⁷⁹ *Malin et al. v. Alberta* (1988), 41 L.C.R. 143 (Alta. L.C.B.).

¹⁸⁰ *Gustafson v. The Queen (Alberta)* (1987), 37 L.C.R. 45 (Alta. L.C.B.).

¹⁸¹ *Gustafson v. The Queen (Alberta)* (1987), 37 L.C.R. 45 (Alta. L.C.B.).

¹⁸² *Cokato Dairy & Stock Farms Ltd. v. B.C.* (1994), 54 L.C.R. 199 (B.C. Exp. Com. Bd.).

- ✓ Seed areas to grass¹⁸³
- ✓ Snow fences¹⁸⁴
- ✓ Surplus water¹⁸⁵
- ✓ Telephone costs¹⁸⁶
- ✓ Time spent on relocation of mobile home and well¹⁸⁷
- ✓ Transportation of cattle¹⁸⁸
- ✓ Travel costs¹⁸⁹
- ✓ Trees¹⁹⁰
- ✓ Weed control costs¹⁹¹
- ✓ Wind-break fence¹⁹²

INDUSTRIAL

- ✓ Additional rent¹⁹³
- ✓ Additional telephone and delivery charges arising from the company's location¹⁹⁴
- ✓ Buildings (office, warehouse, scow shed, tank shed)¹⁹⁵
- ✓ Business disturbance¹⁹⁶
- ✓ Claimant's time¹⁹⁷
- ✓ Cost incurred during shut-down of business¹⁹⁸
- ✓ Cost of advertising the move to the new location¹⁹⁹
- ✓ Cost of moving²⁰⁰
- ✓ Cost of storage for inventory and chattels - **claim denied**²⁰¹

¹⁸³ *Malmberg v. Alberta* (1995), 57 L.C.R. 86 (Alta. L.C.B.).

¹⁸⁴ *Malmberg v. Alberta* (1995), 57 L.C.R. 86 (Alta. L.C.B.).

¹⁸⁵ *Gustafson v. The Queen (Alberta)* (1987), 37 L.C.R. 45 (Alta. L.C.B.).

¹⁸⁶ *Wythe v. Manitoba* (1995), 55 L.C.R. 271 (L.V.A.C.); *Malmberg v. Alberta* (1995), 57 L.C.R. 86 (Alta. L.C.B.).

¹⁸⁷ *Koziol v. Alberta* (2000), 71 L.C.R. 298 (Alta. L.C.B.).

¹⁸⁸ *Malmberg v. Alberta* (1995), 57 L.C.R. 86 (Alta. L.C.B.).

¹⁸⁹ *Gustafson v. The Queen (Alberta)* (1987), 37 L.C.R. 45 (Alta. L.C.B.).

¹⁹⁰ *Creasy v. Min. of Hwys. and Public Works (BC)* (1980), 23 L.C.R. 150 (B.C. Arb.Bd.); *Harcaroy Farms Ltd. v. The Minister of the Environment (Ontario)* (1975), 8 L.C.R. 248 (O.L.C.B.); *Malin et al. v. Alberta* (1988), 41 L.C.R. 143 (Alta. L.C.B.).

¹⁹¹ *Cokato Dairy & Stock Farms Ltd. v. B.C.* (1994), 54 L.C.R. 199 (B.C. Exp. Com. Bd.).

¹⁹² *Macdougall v. Minister of Transportation (Alberta)* (1989), 42 L.C.R. 205 (Alta. L.C.B.).

¹⁹³ *Greene, Gamble & Taylor v. Department of Urban Affairs (Manitoba)* (1986), 36 L.C.R. 272 (L.V.A.C.).

¹⁹⁴ *Samuel, Son & Co. v. Metropolitan Toronto (Municipality)*, [1962] O.R. 463 (Ont. C.A.).

¹⁹⁵ *McCormack and Zatzman Lyd. v. New Brunswick* (1975), 9 L.C.R. 72 (N.B. Land Comp. Bd.).

¹⁹⁶ *McCormack and Zatzman Lyd. v. New Brunswick* (1975), 9 L.C.R. 72 (N.B. Land Comp. Bd.).

¹⁹⁷ *Greene, Gamble & Taylor v. Department of Urban Affairs (Manitoba)* (1986), 36 L.C.R. 272 (L.V.A.C.).

¹⁹⁸ *Pans Social & Recreation Club of Halifax v. Dartmouth (City)* (1983) 59 N.S.R. (2d) 92 (N.S.S.C.).

¹⁹⁹ *Pans Social & Recreation Club of Halifax v. Dartmouth (City)* (1983) 59 N.S.R. (2d) 92 (N.S.S.C.); *Samuel, Son & Co. v. Metropolitan Toronto (Municipality)*, [1962] O.R. 463 (Ont. C.A.).

²⁰⁰ *Greene, Gamble & Taylor v. Department of Urban Affairs (Manitoba)* (1986), 36 L.C.R. 272 (L.V.A.C.); *Samuel, Son & Co. v. Metropolitan Toronto (Municipality)*, [1962] O.R. 463 (Ont. C.A.).

²⁰¹ *Roadmaster Auto Centre Ltd. v. Burnaby (City)* (1997), 62 L.C.R. 124 (B.C. Exp. Com. Bd.) (claim denied because the owner of the business had no intention to relocate his business after the expropriation).

- ✓ Cost of relocation in temporary accommodations while the permanent location is being prepared²⁰²
- ✓ Cost of removing a railway siding on vacating the property²⁰³
- ✓ Double rent²⁰⁴
- ✓ Electrical code upgrades²⁰⁵
- ✓ Electrical installations²⁰⁶
- ✓ Equipment²⁰⁷
- ✓ Excavation²⁰⁸
- ✓ Extra staff time²⁰⁹
- ✓ Fees of chartered accountant²¹⁰
- ✓ Fire protection²¹¹
- ✓ Fittings and fixtures²¹²
- ✓ Foundation²¹³
- ✓ Grade beams²¹⁴
- ✓ Intercom system²¹⁵
- ✓ Leasehold improvements to office space²¹⁶
- ✓ Lighting²¹⁷
- ✓ Loss of advertising value of the old site where the company had its name affixed to its building in a very prominent position²¹⁸
- ✓ Loss of employees' time in the moving operation²¹⁹
- ✓ Loss of furniture²²⁰
- ✓ Loss of income allowed for period between termination of possession and commencement of new job (amount based on new salary)²²¹
- ✓ Loss of pick-up business and counter sales attributable to the former location²²²
- ✓ Moving costs²²³

²⁰² *Halifax (City) v. S. Cunard & Co.* (1974), 5 L.C.R. 81 (S.C.C.).

²⁰³ *Samuel, Son & Co. v. Metropolitan Toronto (Municipality)*, [1962] O.R. 463 (Ont. C.A.).

²⁰⁴ *Greene, Gamble & Taylor v. Department of Urban Affairs (Manitoba)* (1986), 36 L.C.R. 272 (L.V.A.C.).

²⁰⁵ *Rebel Holdings Ltd. v. Division Scolaire Franco-Manitobaine* (2006), 91 L.C.R. 316 (L.V.A.C.).

²⁰⁶ *Greene, Gamble & Taylor v. Department of Urban Affairs (Manitoba)* (1986), 36 L.C.R. 272 (L.V.A.C.).

²⁰⁷ *Rebel Holdings Ltd. v. Division Scolaire Franco-Manitobaine* (2006), 91 L.C.R. 316 (L.V.A.C.).

²⁰⁸ *Rebel Holdings Ltd. v. Division Scolaire Franco-Manitobaine* (2006), 91 L.C.R. 316 (L.V.A.C.).

²⁰⁹ *Pentecostal Assemblies of Canada, in Trust et al. v. B.C.* (1999), 66 L.C.R. 275 (B.C. Exp. Comp. Bd.).

²¹⁰ *Pans Social & Recreation Club of Halifax v. Dartmouth (City)* (1983) 59 N.S.R. (2d) 92 (N.S.S.C.).

²¹¹ *Rebel Holdings Ltd. v. Division Scolaire Franco-Manitobaine* (2006), 91 L.C.R. 316 (L.V.A.C.).

²¹² *Rebel Holdings Ltd. v. Division Scolaire Franco-Manitobaine* (2006), 91 L.C.R. 316 (L.V.A.C.).

²¹³ *Rebel Holdings Ltd. v. Division Scolaire Franco-Manitobaine* (2006), 91 L.C.R. 316 (L.V.A.C.).

²¹⁴ *Rebel Holdings Ltd. v. Division Scolaire Franco-Manitobaine* (2006), 91 L.C.R. 316 (L.V.A.C.).

²¹⁵ *Greene, Gamble & Taylor v. Department of Urban Affairs (Manitoba)* (1986), 36 L.C.R. 272 (L.V.A.C.).

²¹⁶ *Greene, Gamble & Taylor v. Department of Urban Affairs (Manitoba)* (1986), 36 L.C.R. 272 (L.V.A.C.).

²¹⁷ *Rebel Holdings Ltd. v. Division Scolaire Franco-Manitobaine* (2006), 91 L.C.R. 316 (L.V.A.C.).

²¹⁸ *Samuel, Son & Co. v. Metropolitan Toronto (Municipality)*, [1962] O.R. 463 (Ont. C.A.).

²¹⁹ *Rebel Holdings Ltd. v. Division Scolaire Franco-Manitobaine* (2006), 91 L.C.R. 316 (L.V.A.C.); *Samuel, Son & Co. v. Metropolitan Toronto (Municipality)*, [1962] O.R. 463 (Ont. C.A.).

²²⁰ *Belanger v. Ottawa (Ont.)* (1976), 10 L.C.R. 101 (N.B. Sup. Ct.).

²²¹ *Collier v. RM Ottawa-Carleton (Ontario)* (1977), 13 L.C.R. 261 (L.C.B.).

²²² *Samuel, Son & Co. v. Metropolitan Toronto (Municipality)*, [1962] O.R. 463 (Ont. C.A.).

- ✓ New slab²²⁴
- ✓ Office expenses²²⁵
- ✓ Plumbing²²⁶
- ✓ Refrigeration and electrical equipment²²⁷
- ✓ Relocation costs (moving, legal)²²⁸
- ✓ Replacement of concrete foundation²²⁹
- ✓ Roof covering²³⁰
- ✓ Room dividers purchased²³¹
- ✓ Search for and evaluating relocation sites²³²
- ✓ Site work (i.e. grading and excavation, paving, concrete curbs, etc.)²³³
- ✓ Telephone, advertising and stationary costs²³⁴
- ✓ Temporary loss of profits²³⁵
- ✓ Time spent preparing a compensation claim or attending a hearing to give evidence regarding a compensation claim - **claim denied**²³⁶
- ✓ Truck rental²³⁷
- ✓ Vats and tanks²³⁸
- ✓ Windows and entrances²³⁹
- ✓ Work of accountant and employees of owner on construction and design of new club premises - **claim denied**²⁴⁰

COMMERCIAL

- ✓ Additional cost of business tax²⁴¹
- ✓ Advertising costs²⁴²

²²³ *Rebel Holdings Ltd. v. Division Scolaire Franco-Manitobaine* (2006), 91 L.C.R. 316 (L.V.A.C.).

²²⁴ *Rebel Holdings Ltd. v. Division Scolaire Franco-Manitobaine* (2006), 91 L.C.R. 316 (L.V.A.C.).

²²⁵ *McCormack and Zatzman Lyd. v. New Brunswick* (1975), 9 L.C.R. 72 (N.B. Land Comp. Bd.).

²²⁶ *Rebel Holdings Ltd. v. Division Scolaire Franco-Manitobaine* (2006), 91 L.C.R. 316 (L.V.A.C.).

²²⁷ *McCormack and Zatzman Lyd. v. New Brunswick* (1975), 9 L.C.R. 72 (N.B. Land Comp. Bd.).

²²⁸ *Pans Social & Recreation Club of Halifax v. Dartmouth (City)* (1983) 59 N.S.R. (2d) 92 (N.S.S.C.); *Rebel Holdings Ltd. v. Division Scolaire Franco-Manitobaine* (2006), 91 L.C.R. 316 (L.V.A.C.).

²²⁹ *Smith-Roles Ltd. v. Saskatoon (City)* [1978] 5 W.W.R. 79 (S.C.C.).

²³⁰ *Rebel Holdings Ltd. v. Division Scolaire Franco-Manitobaine* (2006), 91 L.C.R. 316 (L.V.A.C.).

²³¹ *Greene, Gamble & Taylor v. Department of Urban Affairs (Manitoba)* (1986), 36 L.C.R. 272 (L.V.A.C.).

²³² *Rebel Holdings Ltd. v. Division Scolaire Franco-Manitobaine* (2006), 91 L.C.R. 316 (L.V.A.C.).

²³³ *Rebel Holdings Ltd. v. Division Scolaire Franco-Manitobaine* (2006), 91 L.C.R. 316 (L.V.A.C.).

²³⁴ *Greene, Gamble & Taylor v. Department of Urban Affairs (Manitoba)* (1986), 36 L.C.R. 272 (L.V.A.C.).

²³⁵ *Samuel, Son & Co. v. Metropolitan Toronto (Municipality)*, [1962] O.R. 463 (Ont. C.A.).

²³⁶ *Associated Building Credits Ltd. v. British Columbia (Minister of Transportation & Highways)* [2006] B.C.W.L.D. 2919 (B.C. Exp. Comp. Bd.).

²³⁷ *Rebel Holdings Ltd. v. Division Scolaire Franco-Manitobaine* (2006), 91 L.C.R. 316 (L.V.A.C.).

²³⁸ *McCormack and Zatzman Lyd. v. New Brunswick* (1975), 9 L.C.R. 72 (N.B. Land Comp. Bd.).

²³⁹ *Rebel Holdings Ltd. v. Division Scolaire Franco-Manitobaine* (2006), 91 L.C.R. 316 (L.V.A.C.).

²⁴⁰ *Pans Social & Recreation Club of Halifax v. Dartmouth (City)* (1983) 59 N.S.R. (2d) 92 (N.S.S.C.).

²⁴¹ *Kaplan v. Dept. of Gov't Services (Manitoba)* (1990), 43 L.C.R. 289 (L.V.A.C.).

²⁴² *Kaplan v. Dept. of Gov't Services (Manitoba)* (1990), 43 L.C.R. 289 (L.V.A.C.); *Leather Ranch v. Dept. of Urban Affairs (Manitoba)* (1985), 35 L.C.R. 233.

- ✓ Air conditioning²⁴³
- ✓ Alarm system²⁴⁴
- ✓ All costs incidental to re-establishing the business²⁴⁵
- ✓ Alleged failure by church to double its congregation - **claim denied**²⁴⁶
- ✓ Apprehended depreciation in the profitability of the business resulting from the change of location²⁴⁷
- ✓ Architect²⁴⁸
- ✓ Building permit²⁴⁹
- ✓ Business loss (fixed overhead, interim financing costs and loss of profits)²⁵⁰
- ✓ Business loss during move²⁵¹
- ✓ Carpeting²⁵²
- ✓ Cash registers²⁵³
- ✓ Cellular telephone²⁵⁴
- ✓ Claimant's time²⁵⁵
- ✓ Contractor's fee²⁵⁶
- ✓ Consulting costs²⁵⁷
- ✓ Cost to relocate hole on golf course (tee box, grass seeding, new green, earth moving, irrigation, move trees, new trees)²⁵⁸
- ✓ Cost for plumbing, welding, and painting at new premises²⁵⁹
- ✓ Cost of finding equally suitable business premises²⁶⁰
- ✓ Cost of materials to install service counter at new premises²⁶¹
- ✓ Cost of transferring business (moving expenses)²⁶²
- ✓ Cost to find other premises²⁶³

²⁴³ *Lee Brothers et al. v. Ontario* (2004), 84 L.C.R. 49 (Ont. Mun. Bd.).

²⁴⁴ *Kaplan v. Dept. of Gov't Services (Manitoba)* (1990), 43 L.C.R. 289 (L.V.A.C.).

²⁴⁵ *Lee Brothers et al. v. Ontario* (2004), 84 L.C.R. 49 (Ont. Mun. Bd.).

²⁴⁶ *Calvary Temple First Pentecostal Church of Kamloops v. Kamloops (City)* (1988), 41 L.C.R. 55 (B.C. Arbitration Board).

²⁴⁷ *Calvary Temple First Pentecostal Church of Kamloops v. Kamloops (City)* (1988), 41 L.C.R. 55 (B.C. Arbitration Board).

²⁴⁸ *Lee Brothers et al. v. Ontario* (2004), 84 L.C.R. 49 (Ont. Mun. Bd.).

²⁴⁹ *Lee Brothers et al. v. Ontario* (2004), 84 L.C.R. 49 (Ont. Mun. Bd.); *Surrey Animal Hospital v. B.C.* (1993), 51 L.C.R. 37 (B.C.C.A.).

²⁵⁰ *Karaffa v. Calgary (Alberta)* (1981), 22 L.C.R. 50 (Alta. L.C.B.).

²⁵¹ *Kaplan v. Dept. of Gov't Services (Manitoba)* (1990), 43 L.C.R. 289 (L.V.A.C.).

²⁵² *Lee Brothers et al. v. Ontario* (2004), 84 L.C.R. 49 (Ont. Mun. Bd.).

²⁵³ *Lee Brothers et al. v. Ontario* (2004), 84 L.C.R. 49 (Ont. Mun. Bd.).

²⁵⁴ *Lee Brothers et al. v. Ontario* (2004), 84 L.C.R. 49 (Ont. Mun. Bd.).

²⁵⁵ *Kaplan v. Dept. of Gov't Services (Manitoba)* (1990), 43 L.C.R. 289 (L.V.A.C.).

²⁵⁶ *Lee Brothers et al. v. Ontario* (2004), 84 L.C.R. 49 (Ont. Mun. Bd.).

²⁵⁷ *Kaplan v. Dept. of Gov't Services (Manitoba)* (1990), 43 L.C.R. 289 (L.V.A.C.).

²⁵⁸ *Canyon Meadows Golf v. City of Calgary (Alberta)* (1976), 11 L.C.R. 23 (Alta. L.C.B.).

²⁵⁹ *Lee Brothers et al. v. Ontario* (2004), 84 L.C.R. 49 (Ont. Mun. Bd.).

²⁶⁰ *Kaplan v. Dept. of Gov't Services (Manitoba)* (1990), 43 L.C.R. 289 (L.V.A.C.).

²⁶¹ *Lee Brothers et al. v. Ontario* (2004), 84 L.C.R. 49 (Ont. Mun. Bd.).

²⁶² *Kaplan v. Dept. of Gov't Services (Manitoba)* (1990), 43 L.C.R. 289 (L.V.A.C.).

²⁶³ *Leather Ranch vs. Dept. of Urban Affairs (Manitoba)* (1985), 35 L.C.R. 233 (L.V.A.C.).

- ✓ Cost to install exhaust fans, not at old premises, but required by regulations on the new premises²⁶⁴
- ✓ Equipment²⁶⁵
- ✓ Fire protection²⁶⁶
- ✓ Garage²⁶⁷
- ✓ HVAC²⁶⁸
- ✓ Increased costs during the transitional period²⁶⁹
- ✓ Interior design²⁷⁰
- ✓ Leasehold improvements²⁷¹
- ✓ Legal fees related to leasing new premises²⁷²
- ✓ Lessee's time²⁷³
- ✓ Loss of claimant's time and travel expenses related to the taking²⁷⁴
- ✓ Loss of leasehold improvements²⁷⁵
- ✓ Loss on sale of inventory²⁷⁶
- ✓ Mailing to clients²⁷⁷
- ✓ Maintenance²⁷⁸
- ✓ Moving and packing expenses²⁷⁹
- ✓ New roof²⁸⁰
- ✓ New safe²⁸¹
- ✓ Occupancy permit²⁸²
- ✓ Office space²⁸³
- ✓ Permanent financial loss²⁸⁴
- ✓ Pest control²⁸⁵
- ✓ Plumbing²⁸⁶

²⁶⁴ *Leather Ranch vs. Dept. of Urban Affairs (Manitoba)* (1985), 35 L.C.R. 233 (L.V.A.C.).

²⁶⁵ *Kaplan v. Dept. of Gov't Services (Manitoba)* (1990), 43 L.C.R. 289 (L.V.A.C.).

²⁶⁶ *Lee Brothers et al. v. Ontario* (2004), 84 L.C.R. 49 (Ont. Mun. Bd.).

²⁶⁷ *Hanlon et al. v. Ontario* (1975), 9 L.C.R. 63; *Pischiutta v. New Brunswick* (1998), 65 L.C.R. 299.

²⁶⁸ *Lee Brothers et al. v. Ontario* (2004), 84 L.C.R. 49 (Ont. Mun. Bd.).

²⁶⁹ *Leather Ranch vs. Dept. of Urban Affairs (Manitoba)* (1985), 35 L.C.R. 233 (L.V.A.C.).

²⁷⁰ *Lee Brothers et al. v. Ontario* (2004), 84 L.C.R. 49 (Ont. Mun. Bd.).

²⁷¹ *Kaplan v. Dept. of Gov't Services (Manitoba)* (1990), 43 L.C.R. 289 (L.V.A.C.); *Saftiuk et al. v. Manitoba* (1989), 44 L.C.R. 144.

²⁷² *Lee Brothers et al. v. Ontario* (2004), 84 L.C.R. 49 (Ont. Mun. Bd.).

²⁷³ *Kaplan v. Dept. of Gov't Services (Manitoba)* (1990), 43 L.C.R. 289 (L.V.A.C.).

²⁷⁴ *Kaplan v. Dept. of Gov't Services (Manitoba)* (1990), 43 L.C.R. 289 (L.V.A.C.).

²⁷⁵ *Canyon Meadows Golf v. City of Calgary (Alberta)* (1976), 11 L.C.R. 23 (Alta. L.C.B.).

²⁷⁶ *Esposito et al. v. Alberta* (1981), 23 L.C.R. 81 (Alta. L.C.B.).

²⁷⁷ *Lee Brothers et al. v. Ontario* (2004), 84 L.C.R. 49 (Ont. Mun. Bd.).

²⁷⁸ *Kaplan v. Dept. of Gov't Services (Manitoba)* (1990), 43 L.C.R. 289 (L.V.A.C.).

²⁷⁹ *Esposito et al. v. Alberta* (1981), 23 L.C.R. 81 (Alta. L.C.B.).

²⁸⁰ *Lee Brothers et al. v. Ontario* (2004), 84 L.C.R. 49 (Ont. Mun. Bd.).

²⁸¹ *Lee Brothers et al. v. Ontario* (2004), 84 L.C.R. 49 (Ont. Mun. Bd.).

²⁸² *Lee Brothers et al. v. Ontario* (2004), 84 L.C.R. 49 (Ont. Mun. Bd.).

²⁸³ *Golden Lantern Hotel v. Regina (Saskatchewan)* (1991), 46 L.C.R. 150 (Q.B.).

²⁸⁴ *Golden Lantern Hotel v. Regina (Saskatchewan)* (1991), 46 L.C.R. 150 (Q.B.).

²⁸⁵ *Lee Brothers et al. v. Ontario* (2004), 84 L.C.R. 49 (Ont. Mun. Bd.).

- ✓ Potential loss of business²⁸⁷
- ✓ Professional fees²⁸⁸
- ✓ Relocation expenses²⁸⁹
- ✓ Removal, storage and reinstallation of sign²⁹⁰
- ✓ Renovations²⁹¹
- ✓ Rent differential²⁹²
- ✓ Rent duplication²⁹³
- ✓ Signage²⁹⁴
- ✓ Site preparation and replacement costs²⁹⁵
- ✓ Sound and light²⁹⁶
- ✓ Start-up / relocation expenses²⁹⁷
- ✓ Stationary and other redundant chattels²⁹⁸
- ✓ Storage²⁹⁹
- ✓ Telephone³⁰⁰
- ✓ Temporary financial loss³⁰¹
- ✓ Time to find and negotiate replacement property³⁰²
- ✓ Trees (moved and new)³⁰³
- ✓ Trench drain, wiring, installation of hoists used in the business at the new premises³⁰⁴
- ✓ Unsaleable items³⁰⁵
- ✓ Wasted inventory³⁰⁶
- ✓ Welding³⁰⁷

²⁸⁶ *Lee Brothers et al. v. Ontario* (2004), 84 L.C.R. 49 (Ont. Mun. Bd.).

²⁸⁷ *Kaplan v. Dept. of Gov't Services (Manitoba)* (1990), 43 L.C.R. 289 (L.V.A.C.).

²⁸⁸ *Kaplan v. Dept. of Gov't Services (Manitoba)* (1990), 43 L.C.R. 289 (L.V.A.C.).

²⁸⁹ *Golden Lantern Hotel v. Regina (Saskatchewan)* (1991), 46 L.C.R. 150 (Q.B.).

²⁹⁰ *Lee Brothers et al. v. Ontario* (2004), 84 L.C.R. 49 (Ont. Mun. Bd.).

²⁹¹ *Lee Brothers et al. v. Ontario* (2004), 84 L.C.R. 49 (Ont. Mun. Bd.).

²⁹² *Kaplan v. Dept. of Gov't Services (Manitoba)* (1990), 43 L.C.R. 289 (L.V.A.C.).

²⁹³ *Kaplan v. Dept. of Gov't Services (Manitoba)* (1990), 43 L.C.R. 289 (L.V.A.C.).

²⁹⁴ *Lee Brothers et al. v. Ontario* (2004), 84 L.C.R. 49 (Ont. Mun. Bd.).

²⁹⁵ *Shell v. Min. of Transportation and Utilities (Alberta)* (1991), 46 L.C.R. 133.

²⁹⁶ *Lee Brothers et al. v. Ontario* (2004), 84 L.C.R. 49 (Ont. Mun. Bd.).

²⁹⁷ *Kaplan v. Dept. of Gov't Services (Manitoba)* (1990), 43 L.C.R. 289 (L.V.A.C.).

²⁹⁸ *Kaplan v. Dept. of Gov't Services (Manitoba)* (1990), 43 L.C.R. 289 (L.V.A.C.).

²⁹⁹ *Lee Brothers et al. v. Ontario* (2004), 84 L.C.R. 49 (Ont. Mun. Bd.).

³⁰⁰ *Kaplan v. Dept. of Gov't Services (Manitoba)* (1990), 43 L.C.R. 289 (L.V.A.C.); *Lee Brothers et al. v. Ontario* (2004), 84 L.C.R. 49 (Ont. Mun. Bd.).

³⁰¹ *Lee Brothers et al. v. Ontario* (2004), 84 L.C.R. 49 (Ont. Mun. Bd.).

³⁰² *Canyon Meadows Golf v. City of Calgary (Alberta)* (1976), 11 L.C.R. 23 (Alta. L.C.B.).

³⁰³ *Canyon Meadows Golf v. City of Calgary (Alberta)* (1976), 11 L.C.R. 23 (Alta. L.C.B.).

³⁰⁴ *Canyon Meadows Golf v. City of Calgary (Alberta)* (1976), 11 L.C.R. 23 (Alta. L.C.B.).

³⁰⁵ *Esposito et al. v. Alberta* (1981), 23 L.C.R. 81 (Alta. L.C.B.).

³⁰⁶ *Kaplan v. Dept. of Gov't Services (Manitoba)* (1990), 43 L.C.R. 289 (L.V.A.C.).

³⁰⁷ *Lee Brothers et al. v. Ontario* (2004), 84 L.C.R. 49 (Ont. Mun. Bd.).

DEVELOPMENTS

- ✓ Additional employee salary³⁰⁸
- ✓ Advertising³⁰⁹
- ✓ Annoyance (noise, dust, vibration)³¹⁰
- ✓ Business loss and increased overhead³¹¹
- ✓ Cleaning awnings³¹²
- ✓ Cleaning carpets³¹³
- ✓ Computer related damages³¹⁴
- ✓ Cost of operating out of two locations³¹⁵
- ✓ Cost of site preparation³¹⁶
- ✓ Development costs³¹⁷
- ✓ Extraordinary property management expenses³¹⁸
- ✓ Improvements³¹⁹
- ✓ Inconvenience allowance³²⁰
- ✓ Increased cost of development - **claim denied**³²¹
- ✓ Legal costs³²²
- ✓ Limited easement³²³
- ✓ Loss of executive time³²⁴
- ✓ Loss of income³²⁵
- ✓ Loss of developer's profit - **claim denied**³²⁶
- ✓ Loss of builder's profit during delay period³²⁷
- ✓ Loss of rental income³²⁸

³⁰⁸ *Mount Lawn Industries Ltd. v. Alberta* (1999), 69 L.C.R. 50 (Alta. L.C.B.).

³⁰⁹ *Bill's Frontier Restaurant Ltd. et al. v. B.C.* (1994) 53 L.C.R. 175 (B.C. Exp. Comp. Bd.).

³¹⁰ *Enpee Enterprises Inc. v. Ontario* (1997), 63 L.C.R. 76 (Ont. Mun. Bd.).

³¹¹ *Mount Lawn Industries Ltd. v. Alberta* (1999), 69 L.C.R. 50 (Alta. L.C.B.).

³¹² *Bill's Frontier Restaurant Ltd. et al. v. B.C.* (1994) 53 L.C.R. 175 (B.C. Exp. Comp. Bd.).

³¹³ *Bill's Frontier Restaurant Ltd. et al. v. B.C.* (1994) 53 L.C.R. 175 (B.C. Exp. Comp. Bd.).

³¹⁴ *Enpee Enterprises Inc. v. Ontario* (1997), 63 L.C.R. 76 (Ont. Mun. Bd.).

³¹⁵ *Mount Lawn Industries Ltd. v. Alberta* (1999), 69 L.C.R. 50 (Alta. L.C.B.).

³¹⁶ *Mount Lawn Industries Ltd. v. Alberta* (1999), 69 L.C.R. 50 (Alta. L.C.B.).

³¹⁷ *Mount Lawn Industries Ltd. v. Alberta* (1999), 69 L.C.R. 50 (Alta. L.C.B.).

³¹⁸ *Benny Kwun Construction Ltd. v. B.C.* (2003), 81 L.C.R. 32.

³¹⁹ *Barabulea v. Ontario* (1969), 1 L.C.R. 61 (Ont. Mun. Bd.).

³²⁰ *Barabulea v. Ontario* (1969), 1 L.C.R. 61 (Ont. Mun. Bd.).

³²¹ *Dell Holdings Limited v. Toronto Area Transit Operating Authority*, 1997 SCC 400, [1997] 1 S.C.R. 32, 142 D.L.R. (4th) 206, (hereinafter referred to as "Dell"); see also *Montréal (Ville de) c. 150460 Canada inc.*, 2008 QCCA 1807 which confirms that the Quebec Court of Appeal follows the principles set forth in *Dell*.

³²² *Dell Holdings Limited v. Toronto Area Transit Operating Authority*, 1997 SCC 400, [1997] 1 S.C.R. 32, 142 D.L.R. (4th) 206, (hereinafter referred to as "Dell"); see also *Montréal (Ville de) c. 150460 Canada inc.*, 2008 QCCA 1807 which confirms that the Quebec Court of Appeal follows the principles set forth in *Dell*.

³²³ *Enpee Enterprises Inc. v. Ontario* (1997), 63 L.C.R. 76 (Ont. Mun. Bd.).

³²⁴ *Mount Lawn Industries Ltd. v. Alberta* (1999), 69 L.C.R. 50 (Alta. L.C.B.).

³²⁵ *Enpee Enterprises Inc. v. Ontario* (1997), 63 L.C.R. 76 (Ont. Mun. Bd.).

³²⁶ *747926 Ontario Ltd. v. Upper Grand District School* (2001), 56 O.R. (3d) 108 (O.N.C.A.).

³²⁷ *Bernard Homes Ltd. et al. v. York Catholic District School Board (Ontario)* (2001), 75 L.C.R. 147 (Ont. M.B.).

³²⁸ *Mount Lawn Industries Ltd. v. Alberta* (1999), 69 L.C.R. 50 (Alta. L.C.B.).

- ✓ Moving expenses³²⁹
- ✓ Painting highway sign³³⁰
- ✓ Paving parking lot³³¹
- ✓ Planning and legal services³³²
- ✓ Property transfer tax³³³
- ✓ Property taxes during delay period³³⁴
- ✓ Reconstruction of shelving and workshop facilities³³⁵
- ✓ Removing and reinstalling electric sign³³⁶
- ✓ Roof repairs³³⁷
- ✓ Weed cutting during delay period³³⁸

PERMANENT INCREASED COSTS

Pre-statutory code where amount is not segregated as a disturbance item

4. *Montreal v. ILGWU Centre Inc.* [1974] S.C.R. 59. The Court held at paragraph 49:

The exemption from taxes enjoyed by respondent for an indefinite period lapsed as a result of the expropriation of the property for which it was granted. According to the evidence, the municipal administration of Montreal has never withdrawn an exemption so granted; thus it was an important advantage of which respondent was definitely deprived as a consequence of the expropriation. No reason was advanced as to why this very real loss should not form the basis of some compensation.

Post Statutory code authorities

5. *Boyd*, Expropriation in Canada, (1988, Canada Law Book Inc.) p. 96 re damages of a continuing nature.

³²⁹ *Mount Lawn Industries Ltd. v. Alberta* (1999), 69 L.C.R. 50 (Alta. L.C.B.).

³³⁰ *Bill's Frontier Restaurant Ltd. et al. v. B.C.* (1994) 53 L.C.R. 175 (B.C. Exp. Comp. Bd.).

³³¹ *Bill's Frontier Restaurant Ltd. et al. v. B.C.* (1994) 53 L.C.R. 175 (B.C. Exp. Comp. Bd.).

³³² *Bernard Homes Ltd. et al. v. York Catholic District School Board (Ontario)* (2001), 75 L.C.R. 147 (Ont. M.B.).

³³³ *Mount Lawn Industries Ltd. v. Alberta* (1999), 69 L.C.R. 50 (Alta. L.C.B.).

³³⁴ *Bernard Homes Ltd. et al. v. York Catholic District School Board (Ontario)* (2001), 75 L.C.R. 147 (Ont. M.B.).

³³⁵ *Mount Lawn Industries Ltd. v. Alberta* (1999), 69 L.C.R. 50 (Alta. L.C.B.).

³³⁶ *Bill's Frontier Restaurant Ltd. et al. v. B.C.* (1994) 53 L.C.R. 175 (B.C. Exp. Comp. Bd.).

³³⁷ *Bill's Frontier Restaurant Ltd. et al. v. B.C.* (1994) 53 L.C.R. 175 (B.C. Exp. Comp. Bd.).

³³⁸ *Bernard Homes Ltd. et al. v. York Catholic District School Board (Ontario)* (2001), 75 L.C.R. 147 (Ont. M.B.).

6. January, 1981 memo from LVAC Chairman, Cameron Harvey, with respect to continuing fixed costs awards setting out its policy with respect to partial takings of cultivated land, native hay land and waste land.

Selected Manitoba cases

7. *Smith v. Manitoba* (1993) 49 L.C.R. 206 (Man. L.V.A.C.) - 10% of market value for fixed machinery costs awarded to a tenant.

8. *Genoway v. Department of Highways and Transportation* (1995) 55 LCR, 241 (Man. L.V.A.C.) - 10% of market value for fixed machinery costs for farmer not farming the subject parcel plus present worth of the cost license for two trucks for 10 years (\$1,500).

9. *Bodner v. Manitoba* (2003) 83 L.C.R. 71 (Man. L.V.A.C.) - 20% of market value for fixed machinery costs plus award of permanent increase and extra travel costs in the amount of \$10,500 based on an annual cost of \$1,290.00 for a 10 year period at 5%..

Selected Alberta cases

10. *Berry v. R.* (1979) 17 L.C.R. 131 (Alta Land Comp. Bd.) fixed costs for 20 years capitalized at 5% plus general disturbance damages of \$500.

11. *McGregor v. Province of Alberta* (1982) 26 L.C.R. 304 (Alta. Q.B.) re \$3,000 for inconvenience, \$2,000 for trespass exposure, \$1,333 for additional insurance and \$3,500 for fixed machinery costs for a 20 year period.

12. *Malin v. R.* (1988) 41 L.C.R. 143 (Alta. Land Comp. Bd.) - disturbance costs for increased permanent costs of a transportation of cattle (\$6,365), checking of cattle (\$14,424), maintenance and replacement of fencing for 30 years (\$3,200), present worth of permanent fixed machinery costs (\$7,925).

13. *Malmberg v. Cardston* (1997) 63 L.C.R. 8 (Alta. C.A.). Leave to Appeal refused at [1998] 1 S.C.R. xi - cost of maintaining improvements where the authority is responsible for the cost of the improvements.

Manitoba case - non agricultural permanent costs

14. *Genstar Corp. v. Department of Urban Affairs (No. 2)* (1986) 35 L.C.R. 253 (Man L.V.A.C.) - award for annual increased operating costs of getting aggregate (5 years at a 12% discount rate).

U.K Authorities

15. *Alfred Golightly Ltd. v. Durham CC* [1981] EGD 632 (England, Lands Tribunal) - tax, which, but for the expropriation, the owner would not have been required to pay.

16. *Mogridge (W.J.) Ltd. v. Bristol Corp.* (1956) [8 P. & C.R.] 78 - payment for increased cost of rents, rates and other costs.

17. In *R. v. Superior Propane*, 2004 NSCA 73, a business in operation for 44 years, based on the evidence adduced, was awarded damages with respect to increased property taxes calculated over 38 years. The parties had agreed that if there was a claim “for the value of increased property taxes ... such claim shall be determined by the Nova Scotia Utility and Review Board pursuant to the *Act*.” (p.4) In issue were the method of calculating compensation, if any, and the appropriate time period. The Nova Scotia Court of Appeal, citing the *Dell* case held (p.7/8):

“The Board did not err in law by awarding disturbance damages for the increased tax liability without first finding that Superior had suffered a loss of overall profitability. No such requirement is found in the *Act* and to impose such a requirement in this case would defeat the clear intention of the parties as expressed in their agreement and be contrary to the broad and purposive manner of interpreting expropriation legislation favouring full compensation to the land owner ...

We are not persuaded that the Board erred in law either in interpreting the *Act* or in construing the contract”.

18. In *Jones v. City of Fernie* (1994), L.C.R. 285 (B.C. Exprop. Comp. Bd.), a farmer was awarded damages for increased operating costs for 50 years.

19. In *Tarani Rebuilders Inc. v. Edmonton (City)* (2000), 69 L.C.R. 161 (Alta. Comp. Bd.), the owner stated he intended on being in business for 15 years and claimed \$19,000/yr for increased property taxes, insurance, maintenance and repairs. The City of Edmonton submitted

the proper amount was \$2,937/yr. The Alberta Compensation Board granted \$15,580/yr for 15 years (p.192/193).

20. In *Bartle & Gibson Co. v. Edmonton (City)* (1995), 58 L.C.R. 36 (Alta. C.A.), the Court of Appeal awarded increases in property taxes, business taxes, utility and maintenance costs.

EMPLOYEE, CLAIMANT AND EXECUTIVE TIME

1. In Todd, The Law of Expropriation, executive's loss of time is listed as a typical disturbance damage (see p.290).

2. In Manitoba, the LVAC will only award payment to a claimant for actual wage losses. Time spent by management employees who get paid a salary without overtime is not reimbursed. Nominal compensation is paid to self employed claimants and to management employees of claimants to recognize extraordinary efforts³³⁹. In Nova Scotia, the Court of Appeal has ruled that an owner's time to prepare the case is not claimable as a disturbance claim where there is only a partial taking. However, time with respect to an owner's appearance at the hearing and with respect to the owner time spent on relocation is recoverable³⁴⁰.

3. Examples of cases applying this indemnity approach for management employees and owners, instead of nominal compensation, include: *GWH Developments Ltd. v. The Queen* (1981), 21 L.C.R. 193 (Fed. Ct. Trial Div.) at p.214 - \$41,949.08; *Lauzon v. City of Windsor* (1974), 7 L.C.R. 11 (Ont. Land Compensation Board) at p.26; *Loblaws v. City of Toronto* (1979),

³³⁹ *Kennedy v. Manitoba* (2005), 86 L.C.R. 28 (L.V.A.C.) at 33

³⁴⁰ *Johnson v. Nova Scotia* 2005 CarswellNS 278, 2005 NSCA 99, 256 D.L.R. (4th) 105, 87 L.C.R. 82, 234 N.S.R. (2d) 260, 745 A.P.R. 260 at paras. 199 to 203.

18 L.C.R. 363 (Ont. L.C.Bd.) at p.374; *Parkins v. Ministry of Transportation and Communications* (1985), 32 L.C.R. 182 (Ont. L.C.Bd.) at p.205 - even non-wage earners are compensated in Ontario ; *Foothills Pipe Lines (Alta.) Ltd. v. Rowe* (1982), 25 L.C.R. 95 (Alta. Q.B.) at p.105; *Captain Developments Ltd. v. Ontario* (1993), 50 L.C.R. 176 (Ont. L.C.Bd.) pp.187/198 - \$26,865 claimed and awarded. Included 239.25 hours of executive time at \$100 per hour ; *Woodbine Realty Ltd. v. Metropolitan Toronto* (1994), 53 L.C.R. 255 (Ont. Mun. Bd.) pp.268/269.