Ontario Land Tribunal
Tribunal ontarien de l'aménagement du territoire

ISSUE DATE: October 24, 2025 **CASE NO(S).:** OLT-22-004867

PROCEEDING COMMENCED UNDER subsection 26(1) of the *Expropriations Act*, R.S.O. 1990, c. E.26, as amended

Claimant:	Gabriel Khater Operating as House of Pizza
Respondent	City of Ottawa
Description:	Determination of Compensation
Property Address:	747 Richmond Road, Unit 5
Municipality/UT:	Ottawa/Ottawa
OLT Case No:	OLT-22-004867
OLT Case Name:	Gabriel Khater Operating as House of Pizza v. Ottawa (City)

PROCEEDING COMMENCED UNDER section 32 of the Expropriations Act, RSO 1990, c. E. 26

Request by:	Gabriel Khater o/a House of Pizza
Request for:	Request for an Order Awarding Costs
Costs sought against:	City of Ottawa

Heard: October 6, 2025, In Writing Only

APPEARANCES:

Parties	**Counsel**
Gabriel Khater o/a House of Pizza ("Claimant")	R. Aburto, A. Mihailescu
City of Ottawa ("City")	E. Blanchard, L. Robinson

DECISION DELIVERED BY WILLIAM R. MIDDLETON AND FINAL ORDER OF THE TRIBUNAL

Link to Order

INTRODUCTION

[1] This motion for the adjudication of costs ("Motion") is made by the Claimant pursuant to section 32 of the *Expropriations Act*, RSO 1990, c E.26 ("Act") and Rule 26.19, 26.20 and 26.21 of the Tribunal's *Rules of Practice and Procedure* ("Rules"). The circumstances underlying the Motion involve the settlement of the Claimant's claims for compensable damages arising from the expropriation carried out by the City ("Expropriation") pertaining to the property located at 747 Richmond Road in Ottawa, Ontario ("747 Richmond"), on November 27, 2017, where the Claimant operated a restaurant as a commercial tenant under a lease.

[2] The Claimant's action under the Act was settled in July 2024 on all issues except the determination of costs under the above-noted Rules. Thus, no hearing was ever held by the Tribunal to determine the non-costs compensation owed under the Act.

[3] The materials delivered for the Motion were:

(a) Claimant's Notice of Request for Expropriation Costs, comprising 57 pages;

(b) Affidavit of Roberto Aburto, comprising 3212 pages;

(c) Affidavit of Dawson Coneybeare, comprising 911 pages;

(d) Claimant's Book of Authorities, comprising 46 pages;

(e) City's Notice of Response, comprising 44 pages;

(f) City's Affidavit, comprising 419 pages;

(g) City's Book of Authorities, comprising 304 pages;

(h) Claimant's Reply Submissions, comprising 28 pages;

(i) Claimant's Reply Affidavit, comprising 26 pages; and

(j) City's Response to Reply, comprising 4 pages.

ISSUES AND ANALYSIS

Outline of Relief Sought on the Motion

[4] The Claimant seeks recovery of legal, appraisal and other costs, and disbursements, up to and including July 5, 2024, totalling $401,387.18 (inclusive of HST), plus interest pursuant to the *Courts of Justice Act*, RSO 1990, c C.43, from the date of the settlement in July 2024. The Claimant also seeks an Order for payment of fees and costs incurred in relation to this Motion.

[5] The City seeks to reduce the Claimant's alleged entitlement of $401,387.18 to the lesser amount of $249,658.16. However, the City also claims for an Order against the Claimant for the City's own costs as follows:

> …the amount of $108,673.43, representing its legal fees inclusive of HST on a substantial indemnity basis from December 16, 2023 to July 9, 2024 ($77,017.61), and representing its consultant costs inclusive of HST on a substantial indemnity basis ($31,655.82).

[6] In the alternative to the costs Order described in paragraph [5], the City requests a lower amount as follows:

> …an order for its costs against the Claimant in the amount of $72,448.96, representing its legal fees inclusive of HST on a partial indemnity basis for the same period of time ($51,345.08), and its consultant costs inclusive of HST on a partial indemnity basis ($21,103.88). The City's costs of this proceeding are set out in the City's Bill of Costs, and the calculations underpinning the relief requested in this motion are as follows:

	Actual Fees Incurred	Substantial Indemnity Costs	Partial Indemnity Costs
Legal Fees, Dec 16, 2023 to July 9, 2024 (inc. HST)[2]	**$85,575.13** *($75,730.20 + HST)*	**$77,017.61** *($68,157.18 + HST)*	**$51,345.08** *($45,438.12 + HST)*
Consultant Fees, 2023-2024 (inc. HST)[3]	**$35,173.13**	**$31,655.82**	**$21,103.88**
	Total Claimed:	**$108,673.43**	**$72,448.96**

Background Prior to the Motion

[7] The Claimant was a commercial tenant in a strip plaza occupied by several other different businesses who also leased premises. On February 23, 2018, after the City commenced the Expropriation, it made a 'zero dollar' offer to the Claimant pursuant to its obligation under section 25 of the Act. Less than one month later on March 19, 2018, the City then decided to make identical settlement offers to all commercial tenants, including the Claimant, for $100,000 all-inclusive of damages, interest, and legal costs ("2018 Offer"). The City later concluded settlements on that basis with all tenants, save and except for the Claimant, and the City has described the 2018 Offer as being:

> …designed to ensure that tenants could seek and obtain any professional advice required to help them understand their rights and the expropriation process, together with any assistance to identify and complete a relocation to new premises, and still have a substantial sum leftover.

[8] Much later after it had retained expropriation counsel for advice and also various experts to develop its case after filing its Statement of Claim for compensation under the Act, the Claimant made an offer to settle on September 9, 2022 for $250,000 plus costs determined under section 32 of the Act. The Claimant's counsel also sought mediation which was refused by counsel for the City, who instead suggested that the Claimant

should simply serve a Statement of Claim for compensation under the Act – in written argument for this Motion, counsel for the Claimant alleges that this was the first time in over 200 prior expropriation cases where he had encountered such a refusal to mediate.

[9] The various offers and counteroffers made by both the Claimant and the City after 2022 were as follows:

(a) On July 27, 2023, the Claimant wrote to the City with respect to its refusal to mediate, and made an offer to settle the compensation claim for $250,000 plus costs, pursuant to section 32 of the Act (the “July 2023 Offer”);

(b) On December 15, 2023, the City made an offer to settle the compensation claim for $50,000 plus costs, pursuant to section 32 of the Act (the “December 2023 Offer”);

(c) The Claimant made a further offer to settle to the City on May 13, 2024, for $150,000 plus costs, pursuant to section 32 of the Act (the “May 2024 Offer”);

(d) On July 5, 2024, the Claimant made an offer to settle the compensation claim for $80,000 plus costs, pursuant to section 32 of the Act (the “July 2024 Offer”);

(e) On July 8, 2024, the City rejected the Claimant’s offer, noting that the December 2023 Offer remained open, and extending a new all-inclusive offer of $150,000 (the “July 2024 Counter Offer”); and

(f) The Claimant accepted the December 2023 Offer of $50,000 plus costs pursuant to section 32 of the Act on July 9, 2024.

[10] In the end, as noted above, the Claimant accepted on July 9, 2024, 6 days prior to a scheduled Tribunal Hearing, the City offer made on December 15, 2023, for the amount of $50,000 plus costs, as agreed upon or assessed ("2023 Offer"). The actual text of the 2023 Offer as accepted was as follows (below emphasis added):

> 1. The City will make a payment to the Claimant in the amount of $50,000 as full compensation for any amounts to which the Claimant was entitled upon the City's expropriation of the Property.
>
> 2. The City will pay the Claimant's reasonable legal, appraisal and other costs, pursuant to Section 32 of the *Expropriations Act* (the "Costs").
>
> 3. The Claimant will submit a detailed bill of costs to the City including detailed time and task descriptions within 30 days of acceptance of this offer.
>
> 4. If the parties cannot agree upon the quantum of the Costs, the accounts shall be referred to an assessment officer in accordance with Section 32 of the *Expropriations Act*.
>
> This offer will also remain open until one (1) minute after the commencement of any arbitration hearing before the Ontario Land Tribunal for the purposes of determining compensation arising from the expropriation, unless otherwise withdrawn by the City in writing.

Costs Adjudication under the Act and Rule 26

(i) The Contract of Settlement

[11] Interestingly, in light of the City's claim for its own costs in its Response to this Motion, there is no mention in the accepted 2023 Offer described in paragraph [10] above of:

(a) any liability of the Claimant in respect of the City's costs;

(b) any resultant requirement for the City to submit a bill of costs to the Claimant for which the Claimant would be potentially liable to pay; or

(c) any agreed referral to the Ontario Land Tribunal ("OLT") or to 'an assessment officer' concerning the determination of the City's costs.

[12] In the Tribunal's view, this is significant given that both the City, as an expropriating authority, and its highly experienced law firm are sophisticated in expropriation matters and authored the 2023 Offer.

[13] Had the City wanted to preserve a right to pursue its costs as part of the settlement agreement, it could have incorporated this concept in the 2023 Offer. Now, the City seeks to instead rely on the general scheme set out in the Act and in the OLT Rules as the foundation for an 'implied right' to recover its own costs and/or, in essence, to amend its settlement contract with the Claimant.

[14] The City's pursuance of its own costs might be more understandable in a situation where subsequent to a hearing to determine damages owed under the Act, the Tribunal was then asked to adjudicate the costs entitlements of *both* Parties. Yet here, no such hearing was ever held. It was reasonable for the Claimant to presume that the City set out all terms of a proposed settlement that were agreeable to the City in its 2023 Offer – which was then duly accepted by the Claimant as described above. As noted, that offer makes no mention of the City's claim for costs being pursued in response to this Motion or at any time.

[15] In the Tribunal's view, it is incumbent on the Parties in expropriation proceedings to clearly draft their private contracts of settlement in a fulsome manner. Neither party should expect the Tribunal to interpret their private agreements or to add 'implied' terms that are fundamental in nature. Here, the proposed modification of the City's agreement to pay the Claimant's costs to permit a de facto set-off of the City's costs is very fundamental.

[16] The Tribunal therefore rejects the notion that the terms of the accepted 2023 Offer require the Tribunal to determine what costs are payable to the City by the

Claimant. The Tribunal can find no terms in the 2023 Offer that mandate this. As explained below in part (ii), the Tribunal also disagrees that there is any provision in the Act that permits it to 'read into' the Parties' settlement agreement a term requiring the Claimant to pay the City's costs.

[17] As an aside, although it was not argued to the contrary here, the Parties agreement to 'refer to an assessment officer' obviously predates the Tribunal's amendment of Rule 26, pursuant to its powers under section 12(2) of the Ontario Land Tribunal Act, S.O. 2021 ("OLTA"). This term does not oust the jurisdiction of this Tribunal to adjudicate this Motion and to determine costs under the Act. Those amendments became effective once the Rules were amended. The Tribunal's broad jurisdiction under the Act was made clear in two recent Decisions of this Tribunal: in *Jackson* v *Metrolinx*, 2024 CanLII 17002 (ON LT) and also received comment in *Kareem Saikaley* v. *City of Ottawa*, 2025 CanLII 5384 (ON LT).

(ii) Is the City Otherwise Entitled to Claim Costs from the Claimant under the Act?

[18] Much of the City's Response, Reply, and Response to Reply arguments are focussed on its criticisms of the Claimant's claims under the Act and its pursuance of this proceeding. Then, in support of its contention that it is entitled to costs on this Motion, the City asks this Tribunal to conclude that the Claimant's conduct was unreasonable and that this separately entitles it to receive "*an order for its legal costs from the date of the 2023 Offer, and its consultant costs throughout the proceeding, each on a substantial indemnity basis*".

[19] Counsel for the City relies in this regard on the Decision of the Court of Appeal in Shergar Development Inc. v. Windsor 2020 ONCA 490 ("*Shergar*"). The following paragraphs of the City's written submissions detail its arguments (all emphasis added):

> 100. An important policy objective of the *Act* is to encourage settlement of claims at as early a stage as possible. The Court of Appeal has confirmed that the *Act's* other objectives, of ensuring full and fair compensation to owners impacted by an

expropriation, cannot be divorced from the objective of the efficient resolution of claims. The *Act* incentivizes authorities to make early settlement offers that fairly compensate owners for their interests. In turn, expropriation authorities are granted potential costs protection where a fair offer is made and the claimant refuses to accept the offer and elects to instead proceed with an unnecessary arbitration. The Court of Appeal makes clear that the *Act* does not provide a blank cheque that permits a claimant to act unreasonably, such as "running up legal costs", without the potential for adverse cost consequences.

101. The City seeks the benefit of that protection in this case. The City made the 2018 Offer early in this process, intending to place the Claimant in a better financial position than if the Former Owners exercised their rights under the Lease. The 2018 Offer was open for acceptance at all times after March 2018. The City made the 2023 Offer as a further offer to ensure the Claimant received some measure of compensation, even though at that time the Claimant's financial records demonstrated his business had become more profitable after the Expropriation. The primary purpose of compensation pursuant to the *Act* is to put the owner whose land has been taken in the same position financially as he was prior to the taking. Both the 2018 Offer and 2023 Offer put the Claimant in a better position financially than he was in prior to the taking, particularly when the value of the Rent Savings is considered.

102. The City repeatedly disputed the merits of the Claimant's hypothetical damages claim, and communicated that it did not intend to improve the settlement offers open for acceptance. Had the Claimant reasonably evaluated the merits of its claim in November 2022, and/or re-evaluated the merits of its claim as of December 2023, it would have accepted either the 2018 Offer or the 2023 Offer at that time.

103. As a specific example: despite the Claimant choosing to purchase an alternative property within 3 months of service of the Notice of Intent, before the Expropriation Plan had been registered, he pursued a claim for special difficulties in relocation up to the date of settlement. This required the City to engage Mr. Paddison to provide opinion evidence on the commercial real estate market and alternative sites available for lease had the Claimant wishes to replace his takeout pizza establishment with like, directly resulting in increased cost to the public.

104. The Claimant's prosecution of a speculative damages claim, and its delayed acceptance of the December 2023 Offer on July 9, 2024, was wasteful of public funds. It required the City to produce expert reports from two experts and incur substantial legal and consultant costs preparing up to the eve of the hearing. It is appropriate for the Tribunal to award costs to the City for its legal fees incurred after December 16, 2023, and for the consultant fees incurred throughout, both on a substantial indemnity basis in the amount of $108,673.43 inclusive of HST.

> 105. In the alternative: the City seeks reimbursement of those costs on a partial indemnity basis in the amount of $72,448.96 inclusive of HST.

[20] There are several problems stemming from the detailed arguments of the City set out in its Motion materials:

1. The factual allegations relied upon by the City are not based on actual determinations made by this Tribunal at a hearing or otherwise, but instead are based on the City's positions and interpretations of the applicable law;

2. Each of the allegations made by the City's counsel are challenged and countered by counsel for the Claimant – the Tribunal is therefore being asked to accept one set of alleged facts / lawyer advocacy v. another version. Neither set of factual allegations has been subjected to cross-examination;

3. The City's arguments could be seen as a request that this Tribunal on a costs adjudication Motion under Rule 26 should determine how the Claimant would have fared with its damages case at a hearing to determine compensation payable under the Act – a 're-litigation' of that which was never before litigated; and

4. It would be both impractical and procedurally unfair for the Tribunal to opine on what compensation might have been awarded at a hearing as no expert opinion evidence or factual testimony has been delivered and then tested through the normal rigours of the hearing process.

[21] The Court of Appeal's decision in *Shergar* was rendered in entirely different circumstances and is therefore wholly distinguishable. In this regard, the Tribunal agrees with the submissions made by counsel for the Claimant.

[22] As already noted, there was no “ultimate arbitration award” made here – the Parties settled their case but for the issue of costs payable to the Claimant. In *Shergar*, however, the former Ontario Municipal Board conducted a hearing in 2016 which led to a determination of land value in the amount of $710,000 – after that, the entire ongoing dispute between the Parties there concerned interest and costs only. It is clear from other passages in *Shergar* that the policy underpinning and commentary made in that decision must be understood as relating to facts established after a full hearing and an ultimate award has been made (below emphasis added):

> …A claimant receives all of its reasonable costs even if awarded as little as 85 per cent of what the statutory authority offered. To potentially lose this entitlement, a claimant must reject an offer that significantly exceeded the ultimate award…
>
> Thus, it has long been contemplated that a claimant who unreasonably refuses an offer of settlement may be ordered to pay costs to a statutory authority… Further, this case serves as an example of why the OMB must retain discretion to award costs against a claimant. It is undeniable that the appellant frustrated and delayed the determination of the issue of the appropriate compensation to be awarded for the expropriation of the Subject Lands. In addition, the appellant inexplicably refused an offer that was equivalent in value to $1,208,155, when its interest was limited to $266,832… This conduct is worthy of censure. The appellant's actions resulted in significant delay and obfuscation, wasting the OMB's valuable time. Suggesting that the OMB cannot control its processes by awarding costs against a claimant in these circumstances would be contrary to the Act's policy objective of encouraging early settlement of claims on an equitable basis…

[23] Simply put, given that here the Parties fashioned their own settlement but for the issue of costs payable by the City, there are no “undeniable” facts related to the Claimant’s development of its damages case (they are instead hotly contested). On this Motion there is also no uncontested “significant delay and obfuscation” that “wasted” the Tribunal’s valuable time.

[24] For the reasons already described above, the request that this Tribunal make any of the findings of fact that underpin the City’s arguments is simply untenable. Parties to a settlement agreement should not be asking the Tribunal to adjudicate based on a record comprised of legal argument and lawyers’ affidavit evidence recounting a disputed ‘blow by blow’ version of what happened before the Parties resolved the

compensation case. This is particularly so for when no term of the settlement agreement ‘reserves’ those matters to be adjudicated by the Tribunal on a costs Motion.

[25] The above analysis does not mean that this Tribunal ought not to take account of the conduct of the Parties – or settlement offers made – when adjudicating a costs entitlement under the Act pursuant to section 32 of the Act and Rule 26 of the OLT Rules. However, the Tribunal must be exceedingly careful in considering what facts it may properly rely upon in this respect in a Motion like this. Without intending to promulgate any rigid rules that would apply to every costs adjudication sought after a settlement is reached, in the absence of agreed facts, the Tribunal ought to limit its reliance to solely ‘neutral’ or ‘objective’ facts such as, by way of example only:

(a) Actual amounts shown in a settlement document;

(b) Uncontested dates relating to communications between the Parties’ counsel or events in the proceeding;

(c) Findings actually made by the Tribunal in a Decision arising from motion practice or other pre-hearing matters;

(d) Facts shown to have been admitted on discovery as evident from discovery transcripts tendered in Motion materials;

(e) Facts confirmed by counsel during written correspondence that are uncontested or are otherwise not open to varying interpretations; and

(f) Facts stemming from a bill of costs or other report, or evidence delivered in the materials filed for a Rule 26 motion for costs adjudication.

[26] Needless to say, the positions taken by counsel for the City in its Response and its aggressively argued characterizations of events, facts, and views as to the merits of

the Claimant's compensation claims do not fall into the category of 'neutral' or 'objective facts'. Of course, the very same can be said about the counter-assertions and arguments made by counsel for the Claimant. As already noted above, the Parties' counsel here have essentially sought to litigate by way of summary written argument the very matters that their clients agreed to forego by settling the proceeding without a hearing.

[27] The City seeks to rely upon section 32(2) of the Act but the Tribunal disagrees that this subsection is a basis for awarding costs in favour of the City on this Motion. Subsection 32(2) of the Act states (below emphasis added):

> (2) Where the amount to which an owner is entitled upon an expropriation or claim for injurious affection is determined by the Tribunal and the amount awarded by the Tribunal is less than 85 per cent of the amount offered by the statutory authority, the Tribunal may make such order, if any, for the payment of costs as it considers appropriate, and may fix the costs in a lump sum or may order that the determination of the amount of such costs be referred to an assessment officer who shall assess and allow the costs in accordance with the order and the tariffs and rules prescribed under clause 44 (d) in like manner to the assessment of costs awarded on a party and party basis.

[28] Again, no determination of a claim for injurious affection or other compensation was made here by the Tribunal and no award was ever made – because the Parties settled before the hearing commenced. The Tribunal notes that counsel for the City has not pointed to any jurisprudence to support the contention that subsection 32(2) of the Act is applicable in these circumstances where an offer of compensation has been accepted prior to a hearing with costs to be agreed upon or adjudicated. Unlike where a hearing has been held and a compensation determination has been made by the Tribunal, there are no available Tribunal-made findings of fact and law. There is also no mention in the December 2023 Offer drafted by the City of the 85% rule concept set out in subsection 32(2) of the Act.. The Tribunal also disagrees that an "all-inclusive" settlement offer made by one party can be equated to a Tribunal ruling on damages.

[29] When the Parties settle a case on damages compensation leaving costs payable to a claimant to be agreed upon or dealt with by the Tribunal pursuant to section 32 of

the Act, then either party may initiate a Motion under Rule 26.19 b. to determine 'expropriation costs' which are defined as costs under section 32 of the Act. However, unless the parties have expressly stated that the costs of both parties are to be adjudicated by the Tribunal, then solely the claimant's costs will be determined. The relevant provisions of section 32 then are simply those that empower the Tribunal, at its discretion, to fix or assess the reasonableness of the costs sought, or to order an assessment to be carried out by an assessment officer of the Superior Court.

[30] Unless following their settlement the Parties deliver a detailed agreed statement of applicable facts and law or request a full hearing on damages – both extremely unlikely events – the Tribunal has little in the way of proper evidence upon which to evaluate the actual settlement amount and how it might relate to the quantum of costs payable to a claimant. It can only fix or assess the *reasonableness* of the costs requested. The whole point of a settlement is to achieve a resolution that does not depend on an adjudicative determination after hearing extensive competing evidence about how the settlement amount was arrived at.

[31] Subsection 26(1) of the Act would also seem relevant here (below emphasis added) – because it speaks to what shall occur in the event of no agreement being reached on compensation:

> 26 (1) If the statutory authority and the owner do not agree on the compensation payable under this Act, the statutory authority or the owner may, subject to subsection (2), apply to the Tribunal for the determination of compensation by way of a hearing or as otherwise provided for under the *Ontario Land Tribunal Act, 2021*.

[32] In this proceeding, the Parties *do agree* on the substantive compensation payable under the Act – because they have presented a very simple accepted settlement as part of the Motion materials. There is no direct request that the Tribunal determine damages, and such a hearing request may not be pursued under the guise of a costs adjudication under Rule 26 of the OLT Rules. Had the Parties intended

otherwise, then this should have been clearly agreed upon and stated in the terms of the settlement agreement.

[33] Where a full hearing of an Application has been actually been conducted by the Tribunal, then a claimant or a respondent may request expropriation costs under Rule 26.19 a. – in that situation, depending on the circumstances, the provisions of either section 32(1) or 32(2) of the Act could become applicable relating to prior offers made by statutory authorities that were either less or greater than 85 percent of the amount awarded by the Tribunal. This is so, because once the Tribunal has conducted a full hearing and having based its determinations of compensation on the applicable facts, opinion evidence, and law, it can then consider and evaluate the costs entitlements of the Parties in light of that context.

[34] As a final point, none of the comments made above should be construed as a ruling by the Tribunal that offers to settle made before an accepted settlement concluded prior to a hearing can never be relevant to the determination of costs entitlements under Rule 26 or section 32 of the Act. Relevance will be determined in relation to the circumstances of each case. The discussion in paragraph [33] should also not be interpreted as a definitive ruling by the Tribunal as to how and when subsections 32(1) and 32(2) are applicable – such a ruling is not required to be made on this Motion.

The Claimant's Motion Alleges Overall Reasonableness of Costs Claimed

[35] The Claimant retained counsel in 2017 and soon thereafter retained through its counsel damages experts to analyze and prepare its claims. The Claimant's counsel contends that the damages only materialized after the Claimant relocated his business and commenced operations in January 2020. It is further argued that this was a complicated move because the Claimant moved from a leased space to purchasing a new location, and then renovated it from a general commercial to a restaurant use. The Claimant's counsel further argued that betterment was factored out of the Claimant's

claim for damages, but knowledge of and supporting financial information related to this complicated move was required for its damages experts to perform a business loss analysis.

[36] The basic outline of offers exchanges has been summarized above. A hearing was initially scheduled for March 2024, but was adjourned at the City's request. The five-day hearing was ultimately scheduled to proceed beginning on July 15, 2024, with nine witnesses being called to testify. The Claimant then accepted the City's December 2023 Offer of $50,000 plus costs on July 9, 2024, which the Claimant's counsel argues was "*the only offer for compensation made by the City throughout this matter that would compensate costs pursuant to the Act*."

[37] Counsel for the Claimants stated in its Motion materials that their client accepted the City's offer because:

> … The Claimant was concerned that the costs associated with a hearing scheduled for five days, that may not be completed in that timeframe, would far exceed any recovery, and that the risks in recovering costs, notwithstanding that they form part of the compensation in an expropriation, were too great….

[38] In the Tribunal's view, it is unnecessary to pass judgment on the reasons underlying the Claimant's decision to accept the City's offer or the timing of that acceptance. The reality is that inexperienced claimants may often differ in their assessment of risks associated with a hearing, notwithstanding the advice that they may receive from their lawyers. It can be anticipated that a business owner will fear the prospect of spending significant sums on legal expenses for a hearing when it has no 100% guarantee of recovery of those costs. The aggressive defence conducted by the City – as was certainly its right – may have informed the Claimant's decision-making in this regard.

[39] The Tribunal notes that counsel for the Claimant points out:

> Years of work occurred to realize and quantify the impact of the Expropriation. The parties were on the eve of a hearing. As a part of the process, the parties engaged in the exchange of documents in March 2023, examinations for discovery and responses to undertakings from April to October of 2023, and the exchange and analysis of witness statements and replies from March to June of 2024. Indeed, it was not until the exchange of witness statements in March 2024, mere months before the scheduled hearing, that the City first produced any expert reports, despite being in receipt of the Claimant's expert report in September 2022.

The City's Position is Mostly Based on Fundamental Critiques of the Claimant's Underlying Compensation Claims

[40] The City robustly criticizes the nature and extent of the Claimant's damages case:

> …the Claimant's counsel and consultants developed and refused to abandon speculative claims unsupported by the facts or in law, in the face of information that the Claimant was substantially better off financially after relocating after the Expropriation…
>
> … the Claimant retained RSM, a business loss consultant, to (1) research and estimate hypothetical replacement costs of the existing equipment, (2) investigate costs for equipment and leasehold improvements for "a comparable pizza franchise operating a limited-service takeout model", and (3) complete detailed calculations based on these hypothetical scenarios. The hypothetical relocation costs were quantified as $203,832 in the RSM Report…
>
> …The Claimant also sought "past lost profits" for the five month period between August and December 2019 that he was not operating, quantified as $64,885 in the RSM Report… There was no consideration of the Rent Savings, or comment on the profitability of the business at the New Location. By the time the Claim was filed, the Gabby House of Pizza business had been operating for 2.5 years at the New Location and was demonstrably more profitable. The financial information required to assess whether the business was more or less profitable existed as of 2022. RSM Report nevertheless failed to address the profitability of the new pizza business at the New Location…

[41] Counsel for the City also pursued an aggressive approach on this Motion, putting forward a position (below emphasis added) that the Tribunal in its analysis above has already partly addressed:

> …Assessing of the reasonableness of the Claimant's cost claim requires the Tribunal to engage in a substantive consideration and evaluation of the merits of its Claim. This is because the reasonableness of the Claimant's decision to initiate this Claim, and incur substantial legal and consultant costs to prosecute it, must be considered based on the facts and case law known to the Claimant and/or its counsel and consultants at the time the Claim was initiated…
>
> … The question of whether the Claimant acted reasonably in initiating and advancing this claim is central to this costs assessment…
>
> … This case is distinguishable from an ordinary expropriation matter, where a claimant seeks market value or reimbursement of costs incurred, and the parties disagree on the monetary value of that claim… The City acknowledges that, in that context, the Tribunal recently held that a costs motion is not "an opportunity for the Parties to relitigate the issues."82 However, in this particular case, the City contests the reasonableness of the Claimant pursuing a "hypothetical" compensation claim, up to the point of accepting the December 2023 Offer six days prior to the start of the merits hearing in July 2024.

[42] Certainly, the City's counsel cannot be criticized for its clever, able and forceful arguments aimed at minimizing its client's liability for the Claimant's costs – and to thereby protect the 'public purse' of the City funded by its taxpayers. However, the tests articulated by counsel for the City as contended in paragraph [41] are not the proper tests that must be applied on this Motion.

[43] This Tribunal is not in a position to 'engage in a substantive consideration and evaluation of the merits of' the Claimant's damages claim or the "reasonableness of the Claimant's decision to initiate this Claim and incur substantial legal and consultant costs to prosecute it". In the Tribunal's opinion, this type of evaluative exercise can only be carried out during and after a full hearing to determine compensation. On this Motion, the Tribunal cannot be expected to review all competing written damages reports and to make such assessments based on legal argument without the opportunity to consider and weigh the opposing experts' testimony under both direct and cross-examination – to do so would be both impractical in the extreme and, as previously noted, procedurally unfair.

[44] Even if the tests urged by the City's counsel were applicable, upon a careful consideration of the arguments and evidence tendered on this Motion by the Parties, the Tribunal accepts and prefers the contentions made by counsel for the Claimant, including but not limited to the following:

(a) The Act provides that a claimant ought to have proper legal counsel and appropriate experts to assess their case. They ought not be punished for reasonably retaining counsel, analyzing their claim, and moving it forward promptly once all information is available;

(b) Contested facts and differing expert opinions does not demonstrate that the Claimant's case had no merit, and that therefore only limited costs should be awarded – that scenario is typical for most expropriation cases that proceed to a hearing;

(c) While the City attempts to rely on certain facts to suggest that its position in the compensation claim was reasonable, and the Claimant's actions throughout the matter were unreasonable and justify reduced costs, those facts are vigorously disputed;

(d) The fact that the Parties settled the compensation claim because the Claimant accepted the City's settlement offer, does not mean that the Claimant would have not been successful at a hearing;

(e) Expenses relating to relocation of a business that is forced to do so as a result of an expropriation, may be properly claimed as disturbance damages under section 18 of the Act, where they are the natural and reasonable consequence of the expropriation; and

(f) RSM's approach to betterment is not a methodology that has been conclusively rejected in the past, and opposing experts often appropriately apply different professional approaches in different circumstances.

[45] Finally, upon conducting a detailed review of the materials filed by both the City and the Claimant on this Motion, the Tribunal does not discern any convincing evidence of any unreasonable conduct on the part of the Claimant or its counsel that would lead this Tribunal to discount the costs claim on that basis. After a careful review of the history of offers made in the history of the proceeding in light of the circumstances that existed, the Tribunal is also not convinced that the failure to accept any offer made by the City prior to the December 2023 Offer was unreasonable and ought to serve to limit the costs entitlement of the Claimant.

[46] After a thorough review of the circumstances set out in the Motion materials filed, the Tribunal is unconvinced that the efforts of the Claimant's counsel and retained experts to review possible impacts and/or develop its damages analysis, conduct discovery and prepare for a final hearing were substantially unnecessary, wasteful, exaggerated or unreasonable. It has been the Tribunal's experience that it is not uncommon for either party to a lengthy expropriation proceeding to have incurred total costs in the hundreds of thousands of dollars, or even much more, prior to commencement of the final hearing. It can also be expected that often the total expenditure of time and effort will be greater on behalf of an unsophisticated claimant versus that of an experienced expropriating authority.

Overall Reasonableness of the Costs Claims

[47] The Tribunal has considered the City's additional arguments concerning the reasonableness of the Claimant's costs and seeking to limit those costs to 'the partial indemnity scale'. The Tribunal notes that the City did not propose detailed reductions of time and costs linked to a specific line-by-line analysis of all dockets and billings presented by the Claimants. However, the Tribunal has nonetheless conducted a

thorough review of the Claimant's bill of costs and has concluded that the following reductions should be made to account for certain excessive – and therefore unreasonable – fees and costs:

(a) Reduction of $5,556.73 for the 'technology fee' charged counsel for the Claimant as a flat percentage fee;

(b) Reduction of 75 hours from the total time recorded by RSM Canada Consulting LP of 300.2 hours; and

(c) Reduction of 50 hours from the total time recorded by Dentons & Gowlings, to account for duplication of effort by numerous docketing lawyers, internal conferences and research.

ORDER

[48] **THE TRIBUNAL ORDERS THAT:**

(a) The City of Ottawa ("City") shall pay to Gabriel Khater / House of Pizza ("Claimant") costs in the amount of $401,387.18, LESS than the amounts corresponding to the following reductions:

(i) Reduction of $5,556.73 for the 'technology fee' charged as a flat percentage fee by counsel for the Claimant;

(ii) Reduction of 75 hours from the total time recorded by RSM Canada Consulting LP of 300.2 hours calculated on the basis of an average of all hourly rates docketed; and

(iii) Reduction of 50 hours from the total time recorded by Dentons & Gowlings, counsel for the Claimant, calculated on the basis of an average of all lawyer hourly rates docketed.

(b) The City shall pay to the Claimant its reasonable costs of this Motion proceeding, in an amount to be agreed upon by the Parties or as adjudicated by this Tribunal in a further written Motion under Rule 26.19 of the Tribunal's *Rules of Practice and Procedure*;

(c) The issue of whether interest is payable by the City to the Claimant on any portion of the amounts described in this paragraph [48] shall be deferred until such time as the Divisional Court of the Superior Court of Ontario renders a decision in the case of *Kareem George Saikaley v. Ottawa (City)*, 2025 CanLII 5384 (OLT); and

(d) This Vice Chair shall remain seized of all matters arising from the above Orders and any continued motions or hearings in this proceeding.

"William R. Middleton"

WILLIAM R. MIDDLETON
VICE-CHAIR