

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: April 04, 2025

CASE NO(S):

OLT-23-001203

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

Claimant:	Lajendra Singh
Claimant:	Kissoondai Ramdayal
Respondent	City of Waterloo
Description:	Determination of compensation
Property Address:	275 Lester Street
Municipality/UT:	Waterloo/Waterloo
OLT Case No:	OLT-23-001203
OLT Lead Case No:	OLT-23-001203
OLT Case Name:	Singh v. Waterloo (City)

PROCEEDING COMMENCED UNDER subsection 9(1) of the *Ontario Land Tribunal Act, 2021*, S.O. 2021, c. 4, Sched. 6

Request by:	City of Waterloo
Request for:	Request for Directions

Heard: In writing

APPEARANCES:

Parties

Lajendra Singh and
Kissoondai Ramdayal

City of Waterloo

Counsel

John Doherty
Jonathan Minnes
Kevin Dias

Peter A. Hertz
Michael A. van Bodegom

DECISION DELIVERED BY BITA M. RAJAE AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] The matter before the Tribunal relates to a claim for compensation pursuant to s. 26(1) of the *Expropriation Act*, R.S.O. 1990, c. E.26, as amended (“Act”), by Lajendra Singh and Kissoondai Ramdayal (“Claimants”), the former owners of the lands municipally described as 275 Lester Street (“Subject Property”) in the City of Waterloo (“City”), against the City, resulting from an expropriation that was registered on the Subject Property on December 4, 2020, by way of Expropriation Plan WR1302632. The purpose of the expropriation was for the creation of parkland and a pedestrian corridor. The entirety of the Subject Property was expropriated.

[2] Two Case Management Conferences (“CMC”) have taken place on this matter, on April 9, 2024 and October 28, 2024. At the first CMC, the Tribunal scheduled an 8-day Expropriation Hearing, from **May 20 to 29, 2025** (“Hearing Dates”).

[3] The City has brought a motion seeking an Order of the Tribunal that the Hearing Dates be vacated, and that this proceeding be adjourned pending the determination of a Superior Court Action commenced by the City and contained in Waterloo Region Court File No. CV-19-192 (“Civil Action”). The Claimants oppose the motion and seek an Order of the Tribunal dismissing the City’s requested relief.

ISSUE TO BE DETERMINED ON THIS MOTION

[4] The issue to be determined on this motion is whether the Tribunal has jurisdiction to address the Expropriation Proceeding while the Civil Action is taking place and prior to a decision from the Superior Court? Should the Tribunal proceeding be adjourned while the Civil Action is ongoing?

DECISION OF THE TRIBUNAL

[5] The Tribunal has exclusive jurisdiction over expropriation proceedings, including this one. In this case, the Civil Action and the Expropriation Proceeding are dealing with entirely different issues and can proceed concurrently. The Tribunal will not make determinations relating to the matters in dispute in the Civil Action.

BACKGROUND

[6] This matter has a fulsome history. The relevant prior events to this Motions are:

2012	The City approved an Official Plan Amendment and a Zoning By-law Amendment, which the Claimants appealed pursuant to sections 17(36) and 34(19) of the <i>Planning Act</i> to the Tribunal's predecessor.
2014	The appeal resulted in a settlement between the Parties, which was approved by the Tribunal ("Planning Settlement"). Part of the Planning Settlement was that the Claimants would give a 2.5 metres ("m") pedestrian corridor and a 1 m easement ("Disputed Land") to the City within three years of the date of the Minutes of Settlement and prior to the issuance of a building permit.
2017	The City told the Claimants that if the Disputed Land was not conveyed by the deadline, the Planning Settlement becomes a "nullity." In the same year (August 20 and September 9), the Planning Settlement expired (the Claimants did not proceed with a development) and the planning permissions lapsed.
February 15, 2019	The City commenced the Civil Action seeking specific performance of the terms of the Planning Settlement and an Order requiring the

	Claimants to convey the Disputed Land to the City. In the alternative, the City seeks damages for breach of the settlement in the sum of \$1,500,000.
December 4, 2020	Expropriation Plan WR1302632 was registered, thus vesting title in the Subject Property in the City.
May 1, 2021	The City took possession of the Subject Property.
November 30, 2023	The Claimants commenced the Expropriation Proceeding currently before the Tribunal by filing a Notice of Arbitration.
February 6, 2024	The City filed the Reply to the Notice of Arbitration and stated one of the issues in dispute at paragraph 9 as follows: "The City denies that the Claimants are entitled to compensation in respect of the interests that they were required to convey to the City pursuant to the Minutes of Settlement."

POSITION OF THE PARTIES

[7] Voluminous documents were submitted by both sides, along with numerous cases from each side.

[8] The City's position is that, due to the Planning Settlement, the Disputed Land rightfully belonged to the City, even before the Expropriation. The Civil Action is dealing with this question, and will determine whether the Disputed Land belonged to the City. As a result, the City alleges that there is a title issue in dispute. In the Expropriation Proceeding, the Claimants are seeking compensation for the Subject Property and have prepared a report outlining the highest and best use of the entire Subject Property (including the Disputed Land). However, the Claimants may not be entitled to market value compensation for the *entirety* of the Subject Property, as the Civil Action may find

that the Disputed Land did not belong to the Claimants. The Tribunal does not have jurisdiction over issues of title. According to the City, therefore, the Tribunal cannot determine compensation for lands that may not have belonged to the Claimants. In the alternative, if the Tribunal does have jurisdiction to hear this, the determination by the Superior Court is foundational to the ability of the Tribunal to carry out its function. Thus, the Civil Action must first be resolved before the Expropriation Proceeding can be definitively determined.

[9] The Claimants' position is that the Planning Settlement was rendered null and void since the Claimants never proceeded with their development, and the Planning Settlement lapsed. As a result, the Disputed Lands did not need to be conveyed to the City. Regardless of that, the City has expropriated the entire Subject Property, and therefore currently has title to the whole Subject Property. Thus, there is no title dispute here, and in fact, the Civil Action has been rendered moot by the expropriation. Indeed, it is the Expropriation Proceeding that will inform the Civil Action, and not the other way around. The Claimants submit that the Tribunal does have jurisdiction to interpret the Planning Settlement and make a determination regarding the ownership issue, as that issue is incidental to the compensation issue and the Tribunal can make decisions regarding facts and law that are relevant to the Expropriation Proceeding.

ANALYSIS AND FINDINGS

Tribunal's Jurisdiction Over Expropriation Proceedings

[10] The Tribunal has exclusive jurisdiction over its proceedings, including specifically over Expropriation Proceedings. This has been conferred in the *Ontario Land Tribunals Act*, and particularly in the following sections:

Ontario Land Tribunal

2 The board of negotiation continued under the *Expropriations Act*, the Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are

amalgamated and continued as the Ontario Land Tribunal in English and Tribunal ontarien de l'aménagement du territoire in French.

Exclusive jurisdiction

8 (1) The Tribunal has exclusive jurisdiction in respect of all matters in which jurisdiction is conferred on it by this or any other Act.

Same

(2) The Tribunal has authority to hear and determine all questions of law and fact with respect to all matters within its jurisdiction, unless limited by this or any other Act.

Orders

9 (1) The Tribunal has authority to make orders or give directions as may be necessary or incidental to the exercise of the powers conferred on the Tribunal under this or any other Act.

[Emphasis added by Tribunal.]

[11] The sections quoted above confirm that the Tribunal has exclusive jurisdiction to hear and determine expropriation matters, and to address all questions of fact and law in those instances.

[12] The Act further confirms this exclusive jurisdiction in the following sections:

Application, if compensation not agreed to

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*. 2021, c. 4, Sched. 6, s. 48 (6).

Duties of Tribunal on application

29 The Tribunal shall determine any compensation in respect of which an application is made under section 26 and, in the absence of an agreement made under section 24, shall determine any other matter required by this or any other Act to be determined by the Tribunal. 2021, c. 4, Sched. 6, s. 48 (7).

[Emphasis added by the Tribunal.]

[13] Thus, the Tribunal's jurisdiction with respect to Expropriation Proceedings is undisputed. Despite the City's assertion (requesting a "clear determination as to

jurisdiction”), there is no jurisdictional issue here, as the Tribunal retains exclusive jurisdiction in these matters. In other words, the question to be addressed is not whether the Tribunal has jurisdiction to hear this matter – since it indeed does regardless of the presence of any contract or Planning Settlement – but, rather, whether it is precluded from doing so at this time until the Civil Action is resolved. To address that question, the Tribunal must consider whether, in this case, there is a question of title that must be determined before the Expropriation compensation can be addressed, which is discussed further below.

Ownership / Title Issues

[14] The City claims that the Planning Settlement has led to the presence of a contract that has now created a question of title that must be determined by the Superior Court before the Expropriation Proceeding can occur. Specifically, as the City outlined at paragraph 47 of its Factum, “The fundamental issue engaged in the Civil Action is whether the Claimants were properly obliged to undertake the Transfers to the City pursuant to the Minutes of Settlement.” The City argues that the Planning Settlement gave rise to a trust or equitable relationship, whereby the transferor (the City) holds the lands in trust for the transferee pending the conveyance. The Claimants disagree, stating that the contract was null and void, and no transfer of lands was required. The Superior Court will make this determination.

[15] The Tribunal agrees that it is the Superior Court that has exclusive jurisdiction in determining the issues outlined in the Civil Action. However, the Tribunal finds that those arguments are irrelevant to the Expropriation Proceeding. The Tribunal’s jurisdiction is exclusive in determining compensation, and there is no need here for the Tribunal to determine issues of title, which are now appropriately the subject of the Civil Action. The Tribunal does not adjudicate contract actions for damages and does not need to do so as part of this Expropriation Proceeding.

[16] In this subject case, when determining the Expropriation Proceeding, the Tribunal will not have to make a decision pertaining to land title or equitable remedies, in order to be able to make a determination on compensation. The boundaries of the Subject Property have not changed and the legal description of the Subject Property has never been in dispute. The City referred to the case of *Gadzala v. Toronto (City)*, 2002 CarswellOnt 4789 (“Gadzala”), wherein the Tribunal’s predecessor, the Ontario Municipal Board (“OMB”), treated a title issue as a condition precedent to the exercise of its jurisdiction. However, the Tribunal agrees with the Claimants that, in the present case, there is no “new land” appearing, for example on a lakebed through accretion, as there was in the *Gadzala* decision. The entire boundaries of the Subject Property have always been fixed and defined. Moreover, the ownership is clear in that, prior to the expropriation, it was owned by the Claimants, and since the expropriation, it is now owned by the City. There is no other Party involved or making claims over the Subject Property.

[17] Thus, the Tribunal agrees with the Claimants that the Subject Property before it is quite clearly what it is (no disputes over boundaries) and quite clear in its ownership. The Tribunal will not have to address such a question. The title is not at issue. The Tribunal is persuaded by the argument of the Claimants that *neither* the Superior Court *nor* the Tribunal are in a position now to issue an order that the City *has* an equitable interest in the Subject Property for the simple reason that the City owns in fee simple the entirety of the Subject Property due to the expropriation.

[18] As a result, the issue of the Planning Settlement is irrelevant to the issue of determining compensation for the expropriation. The Tribunal, in the Expropriation Proceeding, will be determining what compensation is payable to the Claimant pursuant to the Act. Prior issues of title and what part of that land may or may not have been subject to a contractual claim by the City are not relevant in the determination of compensation under the Act. The City’s claim for any compensation or damages arising from the alleged contractual breaches by the Claimant will be determined by the Superior Court and not by the Tribunal. The City has appropriately sought that remedy

from the Superior Court in the Civil Action. Thus, while a significant number of arguments were presented in the motion, from both sides, regarding interpretation of the Planning Settlement and the subsequent actions of the City with regards to the Disputed Lands, those are not relevant to the consideration of the issues in the Expropriation Proceeding.

[19] The Tribunal will treat the Subject Property as a whole, determining compensation owed, if any, under the Act, and the Superior Court will separately decide whether any damages are owed to the City arising from the Planning Settlement. As the Claimants pointed out in their Factum, the Planning Settlement does not appear to have any effect on the highest and best use and compensation owing to the Claimants as the Disputed Land may not physically prohibit the redevelopment of the Subject Property to its highest and best use. Moreover, as stated at paragraph 45 of the Claimants' Factum:

The City's own land use planner, Tanja Curic, provided an opinion that the 2014 Planning Settlement, which contemplated re-development of the Subject Property with 40 bedrooms including with the existence of a pedestrian walkway, represented good planning in the public interest.

[Emphasis added by the Tribunal.]

[20] As noted (although this is not a matter for the Tribunal to determine), the City appears to have an entirely separate monetary damages claim against the Claimants, which is unrelated to the Expropriation Proceeding. Due to the expropriation, it would appear that the remedy can no longer be an 'ordered conveyance' or 'specific performance.' The findings to be made in the Civil Action and in the Expropriation Proceeding are not dependent on each other, nor is there a risk of inconsistent decisions.

[21] Of note, the Claimants sought a dismissal of the City's motion, but also sought the following Order, as outlined at paragraph 1 of the Claimants' Factum:

(c) an Order that the Tribunal has exclusive jurisdiction to determine all matters of fact and law related to compensation arising from the City's

expropriation of the Claimants' land, including the Tribunal's authority to decide whether a *Planning Act* appeal settlement agreement (the "2014 Planning Settlement") approved on August 20, 2014 by the Tribunal's predecessor, the Ontario Municipal Board ("OMB"), could impact the market value of the expropriated land;...

[Emphasis added by Tribunal.]

[22] Moreover, throughout the Claimants' motion materials, the Claimants made arguments as to why the Tribunal should in fact find that the Planning Settlement had lapsed. The Claimants stated that addressing compensation matters in this case "includes interpreting whether the 2014 Planning Settlement can provide the City with the relief it seeks (*i.e.*, whether the City *had* any form of ownership interest in a portion of the Subject Property, and if this impacts market value compensation)." At paragraph 91 of their Factum, the Claimants indicate that the Tribunal should determine that interpreting the Planning Settlement is within its jurisdiction and "the City should thereafter discontinue the Civil Action...given that it is moot."

[23] However, for the same reasons stated above, the Tribunal does not intend to make any such findings since the matters described above fall squarely within the issues to be dealt with by the Superior Court in the Civil Action. The Tribunal is not the proper forum in which to litigate these matters of contract interpretation, breach and damages and the Tribunal ought not to make any ruling that it 'retains jurisdiction' in relation to the Planning Settlement.

[24] As a final note, the Tribunal has reviewed the caselaw provided by the Parties relating to past instances where the Tribunal dealt with questions of equitable interest in lands subject to planning proceedings. However, in this Tribunal's view, that jurisprudence is distinguishable and cannot be interpreted to support the theory that the Tribunal, rather than the Court, ought to rule upon the claims set out in the Civil Action. Moreover, those cases relate to instances where the interpretation of the contract is truly incidental to an assessment of compensation. In this case, however, the Civil Action could have and would have taken place even if the Expropriation never occurred.

In fact, the Civil Action was commenced in February 2019, and the expropriation was not registered until December 2020. The two are entirely separate from each other and can proceed concurrently.

Conclusion

[25] The Tribunal has exclusive jurisdiction to determine questions of facts and law pertaining to determining compensation in Expropriation Proceedings. In this particular case, the questions of facts and law relate to determining the market value of the Subject Property. There is a question regarding the interpretation of the Planning Settlement, and that has been brought by the City to the Superior Court. The Superior Court will determine whether any remedy is available to the City as a result of the events surrounding the Planning Settlement. The Tribunal will conduct the Expropriation Proceeding without needing to address the issues alleged in the Civil Action. While there may be situations where the Tribunal might be required to interpret and consider a contract, this is not one of those cases.

[26] In conclusion, in answer to the City's questions in this motion, the Tribunal finds:

- a. The Tribunal has exclusive jurisdiction to determine all questions of fact and law related to the Claimants' claims for compensation under the Act;
- b. There is no title issue that must be dealt with in the Expropriation Proceeding since the City has acquired the full fee simple interest in the Subject Property by virtue of the expropriation;
- c. The Tribunal will not deal with the contractual dispute between the Parties concerning the Planning Settlement – that dispute is clearly the subject matter of the Civil Action; and

- d. The Expropriation Proceeding does not need to await the conclusion of the Civil Action.

Costs

[27] In their Factum, the Claimants ask that the Tribunal dismiss the City's motion with costs per section 32(1) of the Act. In light of the unique issues raised and argued in this motion, no costs order will be made.

ORDER

[28] **THE TRIBUNAL ORDERS** that the City's motion is dismissed on a without costs basis. The dates currently scheduled for the Hearing will not be vacated.

"Bita M. Rajae"

BITA M. RAJAE
MEMBER

Ontario Land Tribunal

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