# PART II

RULE 26

EXPROPRIATION PROCEEDINGS

* 1. **Application of Rule** This Rule applies to Tribunal proceedings under the *Expropriations Act*.
  2. **Application of Part I of the Rules** Part I of the Rules applies with necessary modifications.
  3. **The *Rules of Civil Procedure*** Subject to the Tribunal’s discretion under Rules 1.4 and 1.6, the *Rules of Civil Procedure* apply to Tribunal proceedings under the *Expropriations Act* where these Rules do not provide for a matter of procedure.
  4. **Additional Definitions** The following definitions are applicable to proceedings under Part II:

*“Act”* means the *Expropriations Act,* R.S.O. 1990, c. E.26, as amended;

*“claim”* means a claim for compensation under the Act*;*

*“claimant”* means an owner as defined in the Act;

“*Request to Mediate*” means a request to the Tribunal from the claimant or respondent to mediate a dispute over the compensation payable under the Act;

“*pleadings*” mean the Notice of Arbitration and Statement of Claim, Notice of Arbitration, Statement of Claim for Compensation or Reply; and

*“respondent”* means an expropriating authority or a statutory authority as defined in the Act.

Mediation

* 1. **Request to Mediate** A claimant or a respondent may file with the Registrar a Request to Mediate at any stage of a proceeding under the Act, including both before and/or after the service of pleadings.
  2. **Parties to Confer** The Tribunal may, at any stage of a proceeding under the Act, direct the parties to discuss participating in mediation for the purpose of resolving all or part of a claim. Rule 18 shall apply with necessary modifications.
  3. **Tribunal Direction** The Tribunal will give notice to the parties of any direction under Rule 26.6 requiring the parties to discuss participating in mediation. Within 15 days of receipt of a Notice issued by the Tribunal under this Rule, the parties shall file with the Tribunal written submissions regarding (a) the proposed scheduling of a mediation and/or (b) the reasons why the party believes that holding a mediation would be unlikely to result in the resolution of all or part of the claim. Upon consideration of the parties’ submissions, the Tribunal may direct the parties to participate in mediation pursuant to Rule 18, schedule a case management conference under Rule 19, or order otherwise as the Tribunal deems appropriate. The Tribunal’s direction with respect to mediation under Rules 26.6 and 26.7 is final and not subject to review under Rule 25 or section 23 of the OLT Act.
  4. **Termination of Mediation by a Party** Upon notice to the Tribunal, the claimant or respondent that terminates a mediation held before the service of pleadings may proceed to resolve the dispute over the compensation payable under the Act by filing a Notice of Arbitration and Statement of Claim, or a Notice of Arbitration, as appropriate and within any applicable statutory claim period.
  5. **Termination of Mediation by the Tribunal** The Tribunal may terminate the mediation upon notice to the claimant and respondent at any time and for any reason, including failure of the claimant or respondent to comply with a Tribunal direction.
  6. **Tribunal Direction following Termination of Mediation** Following the termination of mediation, the Tribunal may issue any directions to the parties as the Tribunal deems appropriate, including requiring the filing of a Notice of Arbitration and Statement of Claim or Reply, scheduling a case management conference under Rule 19, establishing the terms of a procedural order and scheduling dates for arbitration.

Pleadings

* 1. **Notice of Arbitration and Statement of Claim by Claimant** A claimant seeking compensation shall serve a combined Notice of Arbitration and Statement of Claim on the respondent and shall file with the Tribunal proof of service of the Notice within 10 days of the date of service. The Notice and Statement must be filed in electronic form (pursuant to Rule 5) and set out:

1. the amount claimed;
2. the basis upon which the amount is calculated; and
3. the facts in support of each element of compensation claimed.
   1. **Reply to Notice of Arbitration** The respondent shall serve a Reply on the claimant within 20 days after service of the Notice of Arbitration. Within 10 days of the date of service, the respondent shall file with the Tribunal a copy of the Reply in electronic form along with proof of service on the claimant.
   2. **Notice of Arbitration by Respondent** Where a claimant has not served a Notice of Arbitration under Rule 26.12, the respondent may serve on the claimant a Notice of Arbitration. Within 10 days of the date of service, the respondent shall file with the Tribunal a copy of the Notice of Arbitration in electronic form (pursuant to Rule 5) along with proof of service on the claimant.
   3. **Service of Statement of Claim for Compensation** Where a Notice of Arbitration has been served by the respondent, the claimant shall have 20 days to serve a Statement of Claim for Compensation, unless a different time period is directed by the Tribunal. Within 10 days of the date of service, the claimant shall file with the Tribunal a copy of the Statement of Claim for Compensation in electronic form along with proof of service on the respondent. The Tribunal will not schedule the hearing of the arbitration until the claimant has filed with the Tribunal and served on the respondent a Statement of Claim for Compensation within the time required by the Tribunal, unless the Tribunal determines otherwise.
   4. **Service of Reply to Statement of Claim for Compensation** Where a claimant has served a Statement of Claim for Compensation under Rule 26.14, the respondent shall serve a Reply within 20 days after being served with the Statement of Claim for Compensation. Within 10 days of the date of service, the respondent shall file with the Tribunal a copy of the Reply in electronic form along with proof of service on the claimant.
   5. **Denial to be Raised in Reply** Where a respondent denies that a claimant is entitled to any compensation on the grounds:
4. that the claimant has no interest in the land expropriated or injuriously affected;
5. that no compensation is payable with respect to the interest of the claimant in such land; or
6. that the claim is barred by a provision in the Act or any statute,

It must raise such denial in its Reply, setting out the relevant facts and statutory provisions relied on. If this is not done, the respondent may not make such denial at the hearing of the arbitration, unless otherwise permitted by the Tribunal.

* 1. **Forms** An offer of compensation and acceptance of an offer of compensation made under section 25 of the Act may be in the Forms in R.R.O. 1990, Regulation 363. An acceptance may be served upon the person named in the offer of compensation to receive it.
  2. **General Rule for Service of Documents** Service of documents may be made, in addition to the methods set out in subsection 1(2) of the Act:

1. in the case of His Majesty the King in right of the Province of Ontario, in the manner set out in section 15 of the *Crown Liability and Proceedings Act, 2019*, S.O. 2019, c. 7, Sched. 17, as amended; and
2. in the case of a municipal or other corporation, partnership or individual, on the persons prescribed by the *Rules of Civil Procedure*.
   1. **Required Pleadings** The only pleadings required in an arbitration to determine compensation are a Notice of Arbitration and Statement of Claim and a Reply, or in the case of a matter under Rule 26.13, a Notice of Arbitration, a Statement of Claim for Compensation and a Reply, unless the Tribunal orders otherwise.

Examinations

* 1. **Examination of Representative by Opposing Party** A person appointed under section 37 of the Act to represent an owner of land may be examined or cross-examined by an opposing party in the place of the owner.
  2. **Examinations for Discovery**No Tribunal order is required for examinations for discovery or documents. Appraisal reports to be relied upon by either party shall be served at least 15 days prior to examinations for discovery, unless the Tribunal orders otherwise. The *Rules of Civil Procedure* apply to examinations for discovery.

Hearing Events

* 1. **Case Management Conference** The Tribunal may, on its own initiative or at the request of the claimant or respondent, direct the parties to attend a case management conference. Rule 19 applies with necessary modifications.
  2. **Time for Hearing** The Tribunal may schedule the hearing of the arbitration upon receipt of the notice of readiness for hearing, signed by or on behalf of all parties; or by an order following an in person or electronic motion or a case management conference.
  3. **Motions Heard in Other Locations** If the owner of land located outside of the City of Toronto consents, in person motions may be heard at the Tribunal’s offices in Toronto, or in any municipality reasonably close to where the lands are located.
  4. **Notice of Hearing** The Registrar will mail a notice of the time and place for the arbitration to the respondent.
  5. **Verbatim Reporter** The expropriating authority shall arrange, at the expense of the expropriating authority, for the attendance of a qualified verbatim reporter to record, in writing, all oral evidence submitted before the Tribunal.
  6. **Service of Notice of Hearing** Upon receipt of the Notice of Hearing, the respondent shall, at least 20 days before the hearing, serve a copy of the notice of hearing upon all registered owners, and also upon any person known to the respondent to be an owner as defined in the Act, or who is claiming to be entitled to any part of the compensation which may be awarded at an arbitration under the Act.
  7. **Filing of Documents** At the commencement of a hearing to determine compensation, the respondent shall file a copy of the certificate of approval of expropriation under the Act, the plan of the expropriated land and proof of its registration in accordance with section 9 of the Act, where applicable; and an affidavit proving service of the notice of hearing under Rule 26.27 and that the persons served are all the persons required to be served.

Settlement

* 1. **Settlement Offer** If an offer to settle is made and it is not dealt with in the Act, the *Rules of Civil Procedure* apply.
  2. **Acceptance of Settlement Offer** The parties shall notify the Tribunal in writing within 30 days following the claimant’s acceptance of an offer of settlement made by the respondent. Upon the payment of compensation due under such settlement, and subject to the determination of costs and interest under the Act, the arbitration before the Tribunal shall be closed subject to any directions or orders from the Tribunal.

Expropriation Order

* 1. **Form of Expropriation Order** An order issued under this part shall be in the form of an order pursuant to R.R.O. 1990, Regulation 363.

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