LIBERTY IN THE TIME OF COVID-19:
Belated Longing for Compensation That May Never Arrive[1]

By: Shane Rayman and Conner Harris, Rayman Beitchman LLP[2]

INTRODUCTION/OVERVIEW

At the onset of 2020, few in the world would have anticipated the extent to which our lives would be upended by a novel coronavirus discovered mere weeks before.[3] Six months later: millions have been infected with COVID-19; international travel has all but stopped; huge swathes of the world economy have been shuttered to stop the spread of the disease; and, tragically, hundreds of thousands have died. Public health and economic consequences have been devastating. Life as we have known it may never return to normal.

As with any public health emergency, the economic impacts have been nearly as prominent as the public health consequences. Property rights, in particular, have been significantly affected. All levels of government in Canada have enacted measures to protect public health and enforce social distancing to curb the spread of the virus. Significant business closures and restrictions have been imposed, and travel, even to personal recreational properties within the same province, has been discouraged. Significant sacrifices of liberty, health, and economic well-being have been required from all Canadians.

---

[1] Paraphrasing Gabriel Garcia Marquez, *Love in the Time of Cholera* (New York: Alfred A. Knopf, a division of Random House, Inc., 1988).

[2] The authors wish to thank Brynn Leger, Rayman Beitchman LLP, for her outstanding assistance and research associated with this paper.

[3] The Telegraph, "'A fantastic year ahead' – Boris Johnson's New Year's Message" (December 31, 2019), online: *YouTube.com/TelegraphTV*, <https://www.youtube.com/watch?v=M2AM2rxkNK4>.

These restrictions and sacrifices give rise to unique legal questions concerning property rights. Immediate public health measures are aimed at addressing health and safety as a primary concern; even if property rights suffer potential harm in the short-term. Faced with the loss of the ability to enjoy property or operate businesses, property owners cry out for redress or compensation for the economic harm they have suffered.

This paper will explore the rights and obligations of property owners in situations of national or local emergencies. It will also discuss the governing legislative and common law regimes that have developed to address these situations, and potential avenues for compensation or other recourse for the loss of property rights suffered by private owners. It is hoped that this analysis and review will provide guidance to property owners facing an unprecedented deprivation of their property rights for the public good.[4]

INTERFERENCE WITH PROPERTY IN HISTORIC PUBLIC EMERGENCIES

The COVID-19 pandemic is not the first time that Canada has endured a national or international emergency. Previous emergencies have required extraordinary use of governmental authority like that seen in the present pandemic. The media and political leaders have likened the response to the pandemic as akin to wartime measures.[5] These comparisons are apt - social and governmental mobilization to prevent and mitigate the

[4] The authors are cognizant that this paper is being written in the midst of a rapidly evolving situation that is changing on a day-to-day basis. The analysis focuses on property rights in the event of exigent emergencies, while reviewing by analogy specific situations that may arise during this crisis.

[5] Lee Berthiaume, *The Canadian Press*, "'This is a war: Military fight against COVID-19 will be anything but easy" (April 11, 2020), online: *CTV News* <https://www.ctvnews.ca/health/coronavirus/this-is-a-war-military-fight-against-covid-19-will-be-anything-but-easy-1.4892130>; Marwan Bishara, "The pandemic as a war and Trump, the 'medic-in-chief'" (April 27, 2020), online: *Al Jazeera* <https://www.aljazeera.com/indepth/opinion/pandemic-war-trump-medic-chief-200427105106026.html>; Constanza Musu, "War Metaphors Used for COVID-19 Are Compelling but Also Dangerous" (April 14, 2020), online: *Centre for International Policy Studies*, <https://www.cips-cepi.ca/2020/04/14/war-metaphors-used-for-covid-19-are-compelling-but-also-dangerous/>.

spread of COVID-19 has been occurring on a level that has not been experienced since the two World Wars.

Part of that mobilization has involved the invocation of emergency powers to restrict individual liberty. These restrictions have included not only limitations on the use of public facilities, but widespread limitations that have shut down entire sections of the economy. Many businesses have found themselves either unable to operate, or able to maintain only limited operations. This has led to widespread impacts on private property and the rights of property owners. While significant, the impacts tend to be of a more indirect nature than a typical expropriation: business interruption losses, for example, or interference with leases and missed payments or deferrals of mortgages. To date, there appears to have been little to no direct governmental interference with private property such as through acquisition, confiscation or expropriation.

This is the starkest contrast between the current pandemic and previous experiences during wartime. Canada's (and the world's) response to both World Wars required the extensive public acquisition of private property, both real and personal, to serve the war effort. That, in turn, led to much litigation. The jurisprudence arising from these emergencies provides insight into the legal framework applicable to potential property losses in response to COVID-19.

The government's exercise of extraordinary powers during national emergencies has typically occurred under the guise of legislation crafted specifically for that purpose. In the past this has been the notorious *War Measures Act*.[6] When invoked, the *War Measures Act* provided sweeping powers to the federal government to requisition,

[6] *War Measures Act*, S.C. 1914, 2nd Sess., c. 2; *War Measures Act*, R.S.C. 1927, ch. 206.

confiscate, acquire, or use private property (among other powers) for a public purpose. To act quickly in response to the exigencies of the situation, it allowed the government to interfere with private property rights without resort to the procedural protections typically provided by statutes like the *Expropriations Act*.

Those procedural protections can delay the acquisition of property and interfere with the governmental ability to act as quickly as may be necessary to address an emergency. The government's emergency powers under the *War Measures Act* allowed for the rapid requisition of property for public use to respond to emergencies. It facilitated, among other things, the requisitioning of private vessels to assist in the war effort;[7] expanding the ambit of the *Expropriation Act* to allow for the acquisition of real property *as well as* the operations occurring on it;[8] and use of patents for the manufacturing of war material.[9] Such powers may be employed in the present situation, where medical or pharmaceutical facilities are sought for the benefit of public health and safety.

Despite the expansive nature of the government's power to acquire or utilize private property under its emergency powers, the right of the property owner to compensation was often preserved. The common law right to compensation for the governmental acquisition of property was affirmed in a leading case arising from the exercise of emergency powers in wartime: *Attorney-General v De Keyser's Royal Hotel*[10]. In that case, the British government requisitioned a luxury hotel in London for use as military accommodation. The House of Lords confirmed that "unless the words of the statute so

---

[7] *Gaston, Williams & Wigmore of Canada Ltd. v. R.* (1922), 21 Ex. C.R. 370, 66 D.L.R. 242, at paras 3-4 ["*Gaston"*].
[8] *R. v. Halifax Graving Dock Co.* (1920), 20 Ex. C.R. 44, 56 D.L.R. 21, at para 9 ["*Halifax Graving Dock"*].
[9] *R. v. Irving Air Chute Inc.*, [1949] 2 S.C.R. 613, 10 C.P.R. 1 ["*Irving Air Chute"*].
[10] *Attorney-General v De Keyser's Royal Hotel Ltd.*, [1920] AC 508, [1920] All E.R. Rep. 80 (UK H.L.).

demand, a statute is not to be construed so as to take away the property of a subject without compensation."[11] Where a property owner is deprived of property by government action, the owner is presumed to be entitled to compensation – even if the governing legislation is silent on the matter.

That presumption, which has become a guiding principle of land compensation law,[12] is rooted in interference with private property in times of emergency. It has been applied in subsequent emergency situations. In World War I the government used its powers under the *War Measures Act* to expand the ambit of the *Expropriation Act* and allow for:

> the compulsory taking, during and for any reason arising out of, the present war, of any property real or personal belonging or appurtenant to, or acquired, had, used or possessed in connection with any arms or munition factory, machinery or plant, or other factory, mills, machinery or plant whatsoever which is being operated as a going concern, The *Expropriation Act* shall, subject to all the provisions thereof, extend and apply not only to the taking and acquisition of the land, if any intended to be taken, but also to all buildings, fixtures, machinery, plant, tools, materials, appliances, supplies, goods, chattels, contract rights, accrued or accruing, choses in action and personal property of any description whatsoever possessed, acquired, had, owned, used, appropriated, or intended for use or consumption for, or in connection with or for any of the purposes of any such factory, mills, machinery or plant as aforesaid, or the operations or business theretofore carried on or intended to be carried on in or about or in connection with the same, and as fully and effectually to all intents and purposes as if the same were specified as included in the definition of land under the said Act.[13]

This was a significant expansion of the power of expropriation. It allowed for the compulsory acquisition of land *and businesses or physical operations carried out on it*. This contrasts with the typical power to acquire only land for use as necessary by the authority.

---

[11] *Ibid*, at 542.
[12] *Dell Holdings Ltd. v. Toronto Area Transit Operating Authority*, [1997] S.C.J. No. 6, 142 D.L.R. (4th) 206, at para 22 ["*Dell Holdings*"**]**.
[13] *Halifax Graving Dock*, *supra*, note 8, at para 9.

The Federal government exercised the expanded expropriation power to acquire an existing graving dock (rather than acquiring a property on which to build its own dock) in Halifax in response to the unrestricted submarine warfare occurring at the time, and to cope with the aftermath of the war as it concerned shipping. As the taking occurred under a version of the Federal *Expropriation Act* that was modified (but not repealed) by the *War Measures Act*, the property owner was entitled to pursue a claim for compensation for the value of the property taken. It did so, and after an assessment by the Exchequer Court of the value of the property (including the docking operations on it), was awarded compensation accordingly.[14]

The use of the expanded ambit of the *Expropriation Act* allowed the government to *permanently* acquire the property at issue. That was a relative rarity, as most cases of requisitioning property under the *War Measures Act* were of a more temporary nature: use of a ship when needed,[15] or use of a patent to manufacture necessary materials for the war effort.[16]

Even when private property was used on a temporary basis compensation was typically paid to the owner. When a ship was utilized by the government, the owner was compensated based on the Court's assessment of a reasonable market rate for the duration of the vessel's use.[17] The owner of five patents for the manufacture of parachute components was, likewise, compensated under the *Patent Act* for what the Court assessed

[14] *Ibid*, at para 34.
[15] *Gaston*, *supra*, note 7.
[16] *Irving Air Chute*, *supra*, note 9.
[17] *Gaston*, *supra* note 7, at paras 34-35.

to be a reasonable royalty rate for the government's use of the patents in furtherance of the war effort.[18]

For compensation to flow in these circumstances there must be an actual use or interference with an owner's property rights by the government. The enactment of emergency orders or directives is not, on its own, sufficient to ground compensation. Where an owner suffers the same "as any other citizen suffers from the restrictions imposed by the necessities of the hour", they will not be entitled to compensation for prejudice that they have experienced which falls outside the governing legislative or common law regime.[19] This imports a similar analysis to that which governs whenever compensation for the use of private property for a public purpose is analyzed.[20]

EMERGENCY TAKINGS UNDER THE ONTARIO *EXPROPRIATIONS ACT*

When public authorities require private property, they often first seek to acquire it through negotiations for an amicable purchase. Where those attempts are not successful, they can employ the power of expropriation in accordance with federal or provincial legislation.[21] That ability is not hindered by emergency situations. At times, however, the ordinary practice of the legislation may not provide an adequate means for the timely acquisition of property in an emergency.

---

[18] *Irving Air Chute*, *supra*, note 9, at para 2.
[19] *R. v. Halin*, [1944] S.C.R. 119, 1 DLR 625, at para 30 ["*Halin*"].
[20] *Antrim Truck Center Ltd. v. Ontario (Ministry of Transportation)*, 2013 SCC 13, [2013] 1 S.C.R. 594, at para 2 ["*Antrim*"].
[21] See e.g. *Expropriations Act*, R.S.O. 1990 c. E. 26, as amended [the "*Expropriations Act*"]; *Expropriation Act*, R.S.C. 1985 c. E-21, as amended.

For ease of reference this paper will focus on the procedures and provisions of the Ontario *Expropriations Act*. Many of that legislation's provincial or federal counterparts are similar.[22]

The *Expropriations Act* provides that a landowner can request an Inquiry (Hearing of Necessity) into the fairness, soundness, and reasonable necessity of a proposed expropriation.[23] The Inquiry process usually requires between four to seven months to complete before the approval of an expropriation is possible. In the event of an emergency, the delay from the Inquiry process could be impractical for the authority that requires property on an urgent basis.

The *Expropriations Act* does contain provisions that allow for the process to be shortened. They are rarely used but could be useful when responding to an emergency. The Governor-in-Council (the Provincial Cabinet) has the power to dispense with the Inquiry/Hearing of Necessity process where it is considered to be in the public interest to do so.[24] This allows an expropriating authority to seek approval of an expropriation, without the delay of a Hearing of Necessity. A public emergency likely fulfills the public interest requirement that would allow the Governor-in-Council to dispense with Hearings of Necessity when acquiring necessary property.

Even after an expropriation is approved and the required notices are served, the expropriating authority ordinarily must wait at least 90 days to take possession of the

---

[22] *Expropriation Act*, R.S.B.C. 1996, c. 125; *Expropriation Act*, R.S.A 2000, c. E-13; *The Expropriation* Act, R.S.S. 1978, c. E-15; *The Expropriation Act*, C.C.S.M. c. E190; *Expropriation Act*, R.S.N.B. 1973, c. E-14; *Expropriation Act*, R.S.N.S. 1989, c. 156; *Expropriation Act*, R.S.N.L. 1990, c. E-19; *Expropriation Act*, R.S.P.E.I 1988, c. E-13; *Expropriation Act*, R.S.Y. 2002, c. 81; *Expropriation Act*, R.S.N.W.T. 1988, c. E-11; *Expropriation Act*, R.S.N.W.T. (Nu) 1988, c. E-11.

[23] *Expropriations Act*, *supra*, note 21, s. 7.

[24] *Ibid*, s. 6(3).

property. During this time it is also required to serve a statutory offer of compensation, supported by an appraisal report.[25] The *Expropriations Act* grants authorities the power to apply to the Ontario Superior Court of Justice to abridge the timeline for taking possession of the expropriated property.[26] The Court is entitled to take account of all surrounding circumstances, including emergencies, when determining whether to abridge the timeline for taking possession of the property. An urgent application to dispense with the ordinary timeline for possession and to allow an expropriating authority to acquire land it needs to respond to an emergency is likely to be granted. Although not specifically referenced in the *Expropriations Act*, it would also appear to be within the Court's power to dispense with the requirement to serve a Section 25 Offer of Compensation and supporting appraisal report before possession is taken, where emergency circumstances warrant the taking of possession without delay.

An additional tool at the disposal of expropriating authorities and property owners is the Section 30 Agreement. These agreements could facilitate the immediate acquisition of property without the need for intervention by the Governor-in-Council or the Superior Court, while reserving the property owner's rights to a fair determination of compensation. Parties to such an agreement could consent not only to the acquisition of property, but to the immediate possession of property that is required for urgent public purposes. The flexibility afforded by agreements pursuant to section 30 of the *Expropriations Act* would streamline the acquisition process and avoid the expenditure of unnecessary resources on a contested process for the acquisition of land. Property

[25] *Ibid*, ss. 25(1) and 39.
[26] *Ibid*, s. 39(3).

owners would also benefit from the certainty afforded by the protection of their rights to have compensation determined under the *Expropriations Act*.

Section 30 Agreements must, by their nature, be voluntary. They cannot be imposed on the parties. While they make good practical sense and could have benefits to all parties, there is the potential that owners or authorities may, for either legitimate or questionable purposes, refuse to participate in such an agreement.

Both expedited expropriations and Section 30 Agreements afford avenues which would allow expropriating authorities to acquire property needed to respond to an emergency within a very short time period. Affected landowners would retain their right to claim full and fair compensation within the normal procedures set out under the *Expropriations Act*.[27] These avenues are separate from the emergency powers available to governments under other legislation.

ACQUISITION OF PROPERTY UNDER EMERGENCY LEGISLATION

There are scenarios where the tools already available under the *Expropriations Act* are not sufficient to address the immediate public need for property. The federal government, and all provinces, have enacted legislation governing national or local emergencies and setting out their powers to address them. At the federal level, the *War Measures Act* has been replaced by the *Emergencies Act*.[28] It applies to defined emergency situations: Public Welfare Emergencies;[29] Public Order Emergencies;[30] International Emergencies;[31] and War Emergencies.[32] A public welfare emergency includes one caused by a "real or

[27] *Expropriations Act*, *supra*, note 21, s. 13; see e.g. *Dell Holdings*, *supra*, note 12.
[28] RSC 1985, c 22 (4th Supp.) ["*Emergencies Act*"].
[29] *Ibid*, s. 5.
[30] *Ibid*, s. 15.
[31] *Ibid*, s. 27.
[32] *Ibid*, s. 37.

imminent … disease in human beings, plants or animals … that results or may result in a danger … so serious as to be a national emergency".[33] The COVID-19 pandemic would classify as a public welfare emergency under this definition – though no such emergency has yet been declared at the federal level.

Where a public welfare emergency is declared by the federal government, it is authorized to make orders or regulations for the "requisition, use or disposition of property".[34] The powers available under the *Emergencies Act* may only be exercised while the declaration of a public welfare emergency is in effect.[35] The powers conferred by the *Emergencies Act* are expressly subject to the *Charter of Rights and Freedoms* and do not authorize the violation of constitutional rights.[36] This does not assist property owners as private property rights are not protected by the *Charter*.[37]

The *Emergencies Act* also directs that the federal government "shall award reasonable compensation to any person who suffers loss, injury or damage as a result of anything done, or purported to be done" under the authority of the *Act*.[38] Regulations may be enacted to proscribe the features of the process for determining compensation and the ambit of the compensation payable.[39] The *Act* also directs that an Assessor and Deputy Assessors are to be appointed from among the Judges of the Federal Court to hear appeals from compensation provided by the government for the exercise of its emergency powers.[40]

---

[33] *Ibid*, s. 5.
[34] *Ibid*, s. 8(1)(c).
[35] *Ibid*, s. 8(1).
[36] *Ibid*, Preamble.
[37] *Quebec (Attorney General) v Laroche*, 2002 SCC 72, [2003] 3 SCR 708, at paras 52-53.
[38] *Emergencies Act*, *supra*, note 28, s. 48.
[39] *Ibid*, s. 49.
[40] *Ibid*, s. 50.

Provincial governments throughout the country have enacted their own emergency legislation to address scenarios like those covered by the *Emergencies Act*. These statutes have been triggered in response to COVID-19, with every provincial and territorial government declaring an emergency under their respective emergency statutes.[41]

The scenarios governed, and powers afforded, by these statutes are similar in nature to the *Emergencies Act*. An exhaustive review of each provincial jurisdiction is beyond the scope of this paper. We will focus on Ontario's legislation, the *Emergency Management and Civil Protection Act*,[42] as an illustrative example. The *Emergency Management and Civil Protection Act* grants the Government of Ontario extraordinary powers to respond to an "emergency", defined as a "situation or an impending situation that constitutes a danger of major proportions that could result in serious harms to persons or substantial damage to property and that is caused by the forces of nature, a disease or other health risk, an accident or an act whether intentional or otherwise".[43] Ontario declared an emergency under the *Act* in respect of COVID-19 on March 17, 2020.[44]

The declaration of an emergency grants the government extraordinary powers to respond to it. This includes interference with property rights, including by regulating or prohibiting travel or movement and closing any public or private place (including

[41]Tyler Dawson, "As the COVID-19 pandemic hit, provinces declared states of emergency. Now many are up for renewal" (April 15, 2020), online: *National Post*, <https://nationalpost.com/news/provincial-states-of-emergencies-were-issued-a-month-ago-most-are-coming-up-for-renewal>.
[42] RSO 1990, c E-9 ["*EMCPA*"].
[43] *Ibid*, s. 1.
[44]Gabby Rodrigues, "Ontario government declares state of emergency amid coronavirus pandemic" (March 17, 2020), online: *Global News*, < https://globalnews.ca/news/6688074/ontario-doug-ford-coronavirus-covid-19-march-17/>; *Declaration of Emergency*, O Reg 50/20.

businesses).[45] The powers can only be exercised while the declaration of an emergency is in effect, which shall only be as long as is "reasonably necessary".[46]

Most significantly the *Act* grants powers "[t]o prevent, respond to or alleviate the effects of the emergency, [by] constructing works, restoring necessary facilities and appropriating, using, destroying, removing or disposing of property".[47] It goes on to provide that no action taken in response to an emergency constitutes an expropriation or injurious affection pursuant to the *Expropriations Act*.[48] No compensation is available for the loss, including the taking of real or personal property, except in accordance with the provisions of the *Emergency Management and Civil Protection Act*.

Subsection 13.1(3) goes on to provide that the government *may* authorize the payment of "reasonable compensation" for loss suffered because of the exercise of emergency powers under the *Act*, including the taking of real or personal property. The directive to pay compensation is discretionary and is expressly excluded from the framework of the *Expropriations Act*.

Under both federal and provincial emergencies legislation, compensation may be available for harm suffered by property owners because of interference with their property rights in addressing an emergency. As compensation is not expressly precluded, it is likely protected by the common law's presumption of compensation where property is taken.[49] That compensation would, however, be subject to the edicts of the particular legislation it is provided under and subject to the guidelines enacted by the government to determine it. The framework applicable to the acquisition of property under the

---

[45] *EMCPA, supra,* note 42, ss. 7.02(4)2 and 7.02(4)5.
[46] *Ibid*, s. 7.02(3)3.
[47] *Ibid*, s. 7.02(4)6.
[48] *Ibid*, s. 13.1(1).
[49] *Dell Holdings, supra*, note 12, at para 22.

Expropriations Act does not apply and, in the case of Ontario, is expressly precluded. It is arguable whether the discretionary nature of compensation under the Ontario *Emergency Management and Civil Protection Act* is sufficient to displace the common law presumption of compensation.

Under emergency legislation, compensation claimed must be "reasonable". Governments at both levels are granted authority to set out a framework for the determination of that compensation where it is applicable. Previous jurisprudence indicates that the principles of assessing the market value of the property right interfered with (i.e. a reasonable rental rate or reasonable commission) are broadly applicable when determining compensation for the interference with property rights under emergency powers. This framework will be applied strictly. Even if compensation is presumed to be owed, Courts will not hesitate to find that no amount is payable by the authority if the value of property interfered with is found to be nil.[50]

The existing jurisprudence also indicates, however, that a level of specificity in the impact of the government's action must be present to justify compensation. Claims are typically successful where a particular piece of property is acquired or interfered with by the government: a dock is expropriated,[51] a ship requisitioned,[52] or a patent utilized.[53] This will be of little assistance to private property owners experiencing the types of indirect interference prevalent during the COVID-19 pandemic. Compensation claims are likely to be subject to the balance between compensating those who are harmed and the

[50] *Lovibond v. Grand Trunk Railway*, [1939] O.R. 305, [1939] 2 D.L.R. 562, at para 7. [C.A.].
[51] *Halifax Graving Dock*, *supra*, note 8.
[52] *Gaston*, *supra*, note 7.
[53] *Irving Air Chute*, *supra*, note 9.

widespread impacts citizens must suffer due to managing an emergency by taking actions in the public good.[54]

That balancing exercise will be familiar to those practicing with any regularity in the field of property rights litigation. It is a difficult burden to meet in ordinary circumstances.[55] The specific and disproportionate nature of the impact required to establish an entitlement to compensation is a threshold that is challenging to meet with respect to governmental action taken in the course of ordinary projects in the public good.[56] The threshold is likely to be higher when the actions at issue are taken to protect public health and welfare from an extraordinary threat. Under these circumstances, virtually everyone must endure personal and economic sacrifices.

Widespread lockdowns and the shutdown of most non-essential businesses and travel undoubtedly impacts property owners and their property rights. Those impacts have the potential to be devastating.[57] Their near-ubiquitous nature likely renders them non-compensable, however. All citizens, to some degree or another, are suffering prejudice due to the extraordinary actions taken in response to COVID-19. Only where those actions have a specific impact on a property owner's rights, beyond what citizens are expected to bear to advance the public good of curbing this pandemic, will compensation be available. Even when such specific impacts are present it is not a given that the owner will be entitled to compensation.

---

[54] *Halin*, *supra*, note 19.
[55] *Antrim*, *supra*, note 20, at para 38; *R. Jordan Greenhouses Ltd. v Grimsby,* 2015 CarswellOnt 2187, 114 L.C.R. 249, at para 118 ["*R. Jordan Greenhouses*"].
[56] *Willies Car & Van Wash Limited v County of Simcoe,* 2015 CanLII 28465 (ON LPAT), at paras 24-26; *Davoodian v Dufferin Wind Power Inc.,* 2019 CarswellOnt 13042, 11 L.R.R. (2d) 35 (ON LPAT), at paras 47-51.
[57] Canadian Federation of Independent Businesses, "Investigating the impact of COVID-19 on independent business" (June 1, 2020), online: *CFIB*, <https://www.cfib-fcei.ca/en/research/survey-results/investigating-the-impact-of-covid-19-on-independent-business>.

This is not to say that governments are entitled to act with impunity in response to public emergencies. Compensation is available where authorized and where a property owner is specifically and disproportionately harmed. Property owners seeking compensation under either federal or provincial emergency legislation must be careful to craft their case in a way that addresses this requirement and ensures necessary evidence in support of it is preserved so that it can be marshalled before the necessary decision-maker.

POLICE POWER TO INTERFERE WITH PROPERTY RIGHTS

In addition to emergency legislation authorizing interference with private property rights in exigent circumstances, the traditional police power has long provided a legal basis for specific organs of the state (the police) to interfere with an owner's property. As the entity tasked with ensuring public safety in a free and democratic society, it has long been recognized that police may be required to interfere with individual liberty.[58] This sometimes includes interference with private property rights. Police powers traditionally arise at common law. More recently, they have been outlined in legislation.[59] Where police are required to interfere with individual freedom or liberty in carrying out their duties, the source of their powers must be found in one of these sources.[60] If they act without such authority then their actions are unlawful. The analysis is a strict one favouring the protection of individual rights. Police are authorized only "to interfere with the liberty or property of the citizen to the extent authorized by law".[61] It recognizes the fundamental social, legal, and political principles underlying criminal law in this country

[58] *Fleming v Ontario*, 2019 SCC 45, [2019] S.C.J. No. 45, at para 38 ["*Fleming*"].
[59] *Fleming, supra,* note 58, at para 39; *Criminal Code*, R.S.C., 1985, c. C-46.
[60] *R. v. Dedman*, [1985] 2 S.C.R. 2, 51 O.R. (2d) 703, at para 14.
[61] *Ibid*.

as "the right of an individual to be left alone, to be free of public or private restraint, save as the law provides otherwise".[62]

Governing legislation does not set out a complete framework for the police power. Much of it has been, and continues to be, traditionally defined at common law through what is known as the "ancillary powers doctrine".[63] Within the context of interfering with property rights, police powers such as safety searches and home entry in response to an emergency are well-established.[64] Additional powers may be recognized where they are ancillary to the fulfillment of recognized police duties.[65]

The Supreme Court of Canada has set out the analysis to determine whether the exercise of police powers in interfering with individual rights (such as property rights) is lawful. The preliminary stage of the analysis requires the definition of both the police power being asserted and the liberty interests that are at stake.[66] Once those interests have been defined the analysis involves two steps:

1) Does the police action at issue fall within the general scope of a statutory or common law police duty?

2) Does the action involve a justifiable exercise of police powers associated with that duty?[67]

---

[62] *R. v. Biron*, [1976] S.C.J. No. 64, [1976] 2 S.C.R. 56, at para 54.
[63] *Fleming, supra*, note 58, at para 43.
[64] *R. v. MacDonald* 2014 SCC 3, [2014] 1 S.C.R. 37 ["*MacDonald*"]; *R. v. Godoy* [1999] 1 SCR 311, 117 O.A.C. 127.
[65] *Fleming, supra*, note 58, at para 45.
[66] *Figueiras v Toronto Police Services Board* 2015 ONCA 208, 124 O.R. (3d) 641, at paras 55-66.
[67] *MacDonald*, *supra*, note 64, at paras 35-36.

To determine whether the second stage of the analysis is met, three factors must be weighed to consider whether the police actions were reasonably necessary for the fulfillment of their duty:

1) The importance of the duty to the public good;
2) The necessity of the interference with individual liberty for the performance of the duty; and
3) The extent of the interference with individual liberty.[68]

Proportionality of the actions taken and minimal impairment of the rights at issue are incorporated into the three factors.[69] The onus throughout the analysis is on the party claiming the power to justify the existence of the powers claimed and the interference with liberty.[70] "Liberty" includes both the rights and freedoms provided for under the constitution and traditional common law civil liberties (including property rights).[71]

Where the police exercise powers interfering with property rights in an emergency, this analysis must be applied. Police may, for example, conduct a "safety search" of private property. They may only do so where they have reasonable grounds to believe that safety is at stake.[72] If such reasonable grounds do not exist, the ancillary powers test is not met, and the actions are not lawful.

Striking a balance between the ability of police to do what is necessary to perform their duties and individual liberty is inherent to the analysis.[73] Interference with private

---

[68] *Ibid*, at para 37.
[69] *Fleming, supra*, note 58, at para 54.
[70] *Ibid*, at para 48.
[71] *Ibid*, at para 46.
[72] *MacDonald*, *supra*, note 64, at para 41.
[73] *Fleming, supra*, note 58, at para 55.

property rights incidental to the police power is typically minimal and time-limited – such as a temporary search. It is possible that in an emergency such as a pandemic, governments would take additional actions under the police power to interfere more severely with individual private property rights. This could include the seizure of property or restrictions on travel and access to properties. The availability of emergency legislation has largely rendered the exercise of the police power unnecessary in these circumstances.

The analysis of the exercise of police power in an emergency is highly context specific and is decided on a case-by-case basis. There is little previous precedent on the issue. Were such powers to be exercised, they must be tied to a police duty such as protecting public safety. They must also be justifiable when balancing the public good advanced and the severity of the interference with individual property rights. This is a high threshold and the burden remains on the government to meet it. If it cannot do so, then their exercise of power is considered unlawful.

Unlawful action would not necessarily be considered a taking or an expropriation *per se*, depending on the nature of the conduct. It would instead be an unlawful exercise of power that can be remedied through traditional civil remedies. These include the potential for a claim in tort (such as trespass in the context of property rights) and potentially damages pursuant to subsection 24(1) of the *Charter* for, as an example, an unlawful seizure.[74] The damages awarded are compensatory in nature and will again be determined on case-by-case basis in light of the severity of the harm suffered by the property owner.

[74] *Ibid*, at paras 23 and 28.

Other remedies such as injunctive relief to compel the return of seized property may also be available.

EMERGENCY POWERS CONSTITUTING A *DE FACTO* EXPROPRIATION

Those who have suffered the indirect deprivation of their property rights due to actions taken by various levels of government in response to an emergency may also consider the remedy of a claim for a regulatory taking or *de facto* expropriation. With respect to the COVID-19 pandemic specifically, this could include: business owners forced to close their operations because of public health orders; commercial landlords whose tenants cannot or will not pay their rent; owners of rental properties who are unable to secure tenants (residential, short-term, or otherwise); and owners of vacation properties unable to use or travel to them. These owners do not suffer the type of direct interference with their property rights that would entitle them to compensation under governing emergency legislation. This section considers whether a claim for regulatory or *de facto* expropriation is an avenue for them to seek compensation for the deprivation of their rights.

This discussion is not meant to address those who would disagree with, or challenge, the actions taken in response to the pandemic or any other emergency. It is instead meant to canvass the potential avenues that may be available to these owners to compensate for their loss or deprivation.

The enactment of legislation, orders, regulations, or similar steps are typically not compensable in the context of an acquisition under the *Expropriations Act*.[75] Where the government's actions interfere with private property to a sufficient level, they have the

[75] *Halin*, *supra*, note 19, at para 30.

potential to be characterized as a regulatory taking.[76] Compensation is owed to the owner as though the property was acquired, even though the statutory entitlements of the *Expropriations Act* may not apply depending on the property type at issue.[77]

A claim for a regulatory taking does not require a formal acquisition or transfer of title. It instead focuses on whether the restrictions placed on the property at issue rise to a level where compensation is warranted.[78] These types of regulatory taking claims are more common in the United States where owners have a constitutional protection for governmental action regulating the use of land that results in a taking of property.[79] Such claims have recently been advanced by business owners in various states as a means to seek redress against governments for widespread business shutdowns due to the COVID-19 pandemic.[80] To date the claims have been unsuccessful.

The authors are not aware of any such claims initiated in Canada in light of COVID-19. That being said, the effects on business and property owners of government action to curb the spread of the virus has been devastating.[81] Even when restrictions are loosened it

---

[76] *Canadian Pacific Railway Co. v. Vancouver (City)*, 2006 SCC 5, [2006] 1 S.C.R. 227, at paras 30-34 ["*Canadian Pacific Railway*"].
[77] *Manitoba Fisheries Ltd. v. R.*, [1978] S.C.J. No. 78, [1979] 1 S.C.R. 101, at paras 12-15.
[78] *Ibid*, at para 36.
[79] U.S. Const. amend. V; *Knick v Township of Scott, Pennsylvania*, 588 U.S. 139 S. Ct. 2162; 204 L. Ed. 2d 558 at 7-11. See also: Robert Thomas, "Evaluating Emergency Takings: Flattening the Economic Curve" (May 7, 2020), online: *SSRN*, <https://ssrn.com/abstract=3593789>.
[80] *Friends of Danny DeVito v Wolf*, No. 68 MM 2020 (Pa. Apr 13, 2020); *Calvary Chapel Lone Mountain v. Sisolak*, No. 2:20-CV-009007 (D. Nev. May 20, 2020); *Pearson v. Pritzker*, No. 1:20-CV-02888 (N.D. III. May 13, 2020); *Prof. Beauty Federation of California v. Newson*, No. 2:20-CV-042775 (C.D. Cal. May 12, 2020); *Behar v Murphy*, No. 3:20-CV-05206 (D. N.J. Apr. 28, 2020); *Martinko v. Whitmer*, No. 2:20-CV-10931 (E.D. Mich. Apr. 13, 2020), *Lawrence v. State of Colorado*, No. 1:20-CV-00862 (D. Colo. Mar. 30, 2020); *Hoganwillig, PLLC v. James*, No. 1:20-CV-00577 (W.D.N.Y. May 13, 2020); *Elmsford Apt. Assoc, LLC v. Cuomo*, No. 1:20-CV-04062 (S.D.N.Y. May 27, 2020). See also: Robert Thomas, "Latest Coronavirus Complaint: NY State's Order Suspending Evictions is a Taking" (May 28, 2020), online: *InverseCondemnation.com*, <https://www.inversecondemnation.com/inversecondemnation/2020/05/latest-coronavirus-complaint-ny-states-order-suspending-evictions-is-a-taking.html>.
[81] Statistics Canada, "Canadian Survey on Business Conditions: Impact of COVID-19 on businesses in Canada, March 2020" (April 29, 2020), online: *Statistics Canada*, <https://www150.statcan.gc.ca/n1/daily-quotidien/200429/dq200429a-eng.htm>; Daniel Tencer, "Forced Selling May be Headed for Canada's

is likely that some restrictions on business and property use may remain in place for a significant period of time.[82] Business owners who feel that they have not been adequately compensated for their losses through current government programs may look to other avenues for redress. The nature of a regulatory taking or *de facto* expropriation claim could present an option to those struggling with the economic effects of this pandemic.

It would be a long and challenging road. The test to successfully establish a regulatory taking is notoriously strict in Canadian law.[83] It aims to strike a balance between allowing government the freedom to reasonably regulate the use of property, while affording property owners protection of their rights and compensation for the loss of them.[84] Many scholars have commented that the law has found no balance at all, and the analysis is tilted too far in favour of protecting governmental action.[85]

To be successful on a regulatory taking claim a property owner is required to establish two elements flowing from the government's actions:

1) An acquisition of a beneficial interest in the property, or flowing from it; and

2) Removal of all reasonable uses of the property.[86]

It is not enough for the government's action to restrict, even severely, the use of a property. It is not even enough that the value of the land decline due to those

---

Housing Market" (April 22, 2020), online: *Huffington Post*, <https://www.huffingtonpost.ca/entry/home-sales-coronavirus-crisis_ca_5ea08222c5b69150246c77e4>.

[82] Government of Ontario, "A Framework for Reopening our Province" (April 27, 2020) at 8-10, online: *Ontario.ca* <https://files.ontario.ca/mof-framework-for-reopening-our-province-en-2020-04-27.pdf>.

[83] Russell Brown, "Legal incoherence and the extra-constitutional law of regulatory takings: The Canadian experience," (2009) 1:3 *International Journal of Law in the Built Environment* 179.

[84] Douglas C. Harris, "A Railway, a City, and the Public Regulation of Private Property: CPR v City of Vancouver" in Eric Tucker, James Muir & Bruce Ziff eds., *Property on Trial: Canadian cases in context* (Toronto: Osgoode Society and Irwin Law, 2012) 455.

[85] Russell Brown, "The Constructive Taking at the Supreme Court of Canada: Once More, Without Feeling" (2007) 40 UBC L Rev 315, at 332-334.

[86] *Canadian Pacific Railway*, *supra*, note 76, at para 30.

restrictions.[87] In order to successfully ground a claim for *de facto* expropriation the owner must show that the governmental entity acquired some type of beneficial interest from the owner. This requires more than merely a loss to the owner; there must also be a corresponding benefit or enhancement to the governmental entity because of the regulatory scheme at issue.[88]

This requirement would pose a challenge for a property pursuing a regulatory takings claim because of restrictions on the use of their property to address the COVID-19 pandemic. The restrictions are widespread and comprehensive. Entire sectors of the Canadian economy have shut down. Many businesses are prevented from operating or can continue to do so under very narrow limitations.[89]

This is undoubtedly a restriction on property rights for the owners of those properties and businesses that represents some form deprivation or loss. A claimant would be hard pressed to demonstrate some corresponding benefit or gain to the governments imposing these measures. Public bodies imposing these restrictions do not gain any "beneficial interest" in the properties being restricted that could ground a successful claim. The benefits flowing from the restrictions are for the safety of the public at large and the protection of public health and welfare. These are concepts that are likely too amorphous to ground a claim and arise from a host of public health measures; not just those affecting property owners. Any such benefits are not comparable to any interest in property and

---

[87] *Mariner Real Estate Ltd. v. Nova Scotia (Attorney General)*, (1998) 177 DLR (4th) 696, 178 N.S.R. (2d) 294 [C.A.] at para 71 ["*Mariner*"].
[88] *Canadian Pacific Railway*, *supra*, note 76, at para 32; *Mariner*, *supra* note 87, at para 94; *R v. Tener*, [1985] 1 S.C.R. 533, 17 DLR (4th) 1, at paras 35-37, 47-48.
[89] Retail Council of Canada, "COVID-19 Measures by Region" (n.d.), online: *Retail Council of Canada* <https://www.retailcouncil.org/coronavirus-info-for-retailers/provincial-covid-19-resources-and-updates/>.

therefore are unlikely to fulfill the requirement of an acquisition of a beneficial interest by the regulating body.[90]

The unfortunate situation of these property owners is analogous to business owners in specific sectors that have seen their operations decline or evaporate due to regulatory actions. Groups as diverse as dairy farmers and fish packers have, in the past, brought claims against various levels of government seeking compensation for regulatory changes that negatively affected their business.[91] These claims have largely been rejected by the Courts on the basis that no beneficial interest was acquired by the regulating entity. Business or property owners affected by COVID-19 restrictions face an analogous situation – regulatory action that alters the paradigm of their operations and causes them economic loss. Without a corresponding acquisition of a beneficial interest by the regulating body, the claim cannot be successful.

Compounding that difficulty is the second branch of the regulatory takings test; removal of *all* reasonable uses of the property.[92] This requirement has not been fully explored in the case law but is noted by scholars to be strict.[93] It requires regulation "so broad in its scope that it effectively denudes the property of all reasonably anticipated private uses" and is "tantamount to expropriation".[94]

This factor of the analysis contemplates an almost complete stripping of the owner's rights use their property. Several factors in the present crisis make this threshold difficult

---

[90] *Canadian Pacific Railway*, *supra*, note 76, at paras 32-33; *Mariner*, *supra*, note 87, at paras 105-106.
[91] *Taylor v Dairy Farmers of Nova Scotia*, 2010, NSSC 426, 298 NSR (2d) 116, aff'd 2012 NSCA 1, 311 NSR (2d) 300; *Calwell Fishing Ltd. v Canada*, 2016 FC 312.
[92] *Canadian Pacific Railway*, *supra*, note 76, at paras 30, 34.
[93] Eran Kaplinsky & David R. Percy, "The Impairment of Subsurface Resource Rights by Government as a 'Taking' of Property: a Canadian Perspective," in Bjorn Hoops et. al. (eds.), *Rethinking Expropriation Law II: Context, Criteria, and Consequences of Expropriation* (The Netherlands: Eleven International Publishing, 2015), at 239.
[94] Brown, "Legal Incoherence," *supra*, note 83, at 180.

to meet. The most significant is that, at least at present, the restrictions are temporary.[95] Government officials at various levels talk frequently of an eventual "return to normal" when these restrictions will be curtailed and business can resume.[96] Any removal of an affected owner's rights is temporary in scope and therefore, arguably, does not constitute removal of all reasonable uses of the property. This concept has not been explored in the case law at length but would likely preclude a successful regulatory taking claim.

Beyond that, the current COVID-19 restrictions do not necessarily preclude all reasonable uses of affected properties. A property leased for a commercial operation can be repurposed for other productive uses. A business may modify its operations to continue operating despite restrictions. It may shift to a different focus. Any of these possibilities would nullify the second branch of the regulatory taking analysis.

Given the right factual matrix, it may be possible to support a regulatory taking claim arising from the current restrictions. The current legal framework governing regulatory takings in Canada has been subject to significant academic criticism.[97] This could represent an area of the law ripe for change, and the current circumstances may be ripe to change it. A particularly tenacious and determined property owner affected by the current crisis could represent the catalyst needed for that change. They would require compelling and sympathetic facts in their favour to justify even proceeding with a claim, and a high

---

[95] *EMCPA*, *supra*, note 42, at ss.7.0.7 and 7.08; *Order Made under the Act – Extensions and Renewals of Orders*, O. Reg. 106/20.

[96] Clarrie Feinstein, "Ontario to announce plans for next stage of reopening the economy next week" (June 5, 2020), online: *Daily Hive* <https://dailyhive.com/toronto/ontario-stage-2-reopening-economy-next-week?auto=true>; City of Toronto, "City of Toronto advises two large business sectors – restaurants and personal service settings – to prepare for safe reopening" (June 5, 2020), online: *City of Toronto* <https://www.toronto.ca/news/city-of-toronto-advises-two-large-business-sectors-restaurants-and-personal-service-settings-to-prepare-for-safe-reopening/>; Mia Robson, "Trudeau offers premiers $14B to help restart economies after coronavirus shutdowns" (June 5, 2020), online: *Global News* <https://globalnews.ca/news/7029514/coronavirus-canada-provinces-reopening/>.

[97] Brown, "Legal Incoherence," *supra*, note 83; Harris, "A Railway, A City", *supra*, note 84; Kaplinsky & Percy, "Impairment of Subsurface Resource Rights," *supra*, note 93.

tolerance for risk. A claim premised on changing the law, particularly recent law, is a daunting proposition.

INJURIOUS AFFECTION WHERE NO LAND IS TAKEN

In addition to regulatory takings, there are times when property owners have the right to claim compensation in accordance with the *Expropriations Act* when land is not actually expropriated. Such claims arise under section 1 of the *Expropriations Act*, subject to the following requirements:

1. Injury to the value of land, or personal and business losses suffered, on account of works carried out under statutory authority (the *Statutory Authority Rule*);
2. Damages arising from the construction, but not the use, of the works carried out under statutory authority (the *Construction But Not the Use Rule*); and
3. The works, but for statutory authority, would give rise to a common law cause of action (the *Actionable Rule*).[98]

One of the threshold requirements that is often easily satisfied requires actual works carried out by a governmental entity cloaked with Statutory Authority. This is most often some form of physical construction, even if it is not carried out on the lands at issue.[99] Restrictions or regulations pursuant to emergency measures may not fall into this category, as any damages arise from something other than physical works. Claims for injurious affection where no land is taken appear to contemplate physical works giving rise to economic damages.

Although there has been relatively little jurisprudence interpreting the meaning of "the works", the Local Planning Appeal Tribunal (LPAT) recently addressed the issue in

[98] *Expropriations Act*, *supra*, note 21, s. 1(1); *Antrim*, *supra*, note 20, at para 5.
[99] *R. Jordan Greenhouses*, *supra*, note 55, at paras 126, 129*; Antrim*, *supra*, note 20, at para 2.

Morin v. Ottawa (City).[100] The Province of Ontario brought a motion opposing LPAT's jurisdiction to consider a claim against it for injurious affection where no land is taken based on a "constructive expropriation". The property owner's claim was premised on the Province permitting certain water or flood levels that affected their property. In dismissing the claim against the Province LPAT found that because the Province had not undertaken any *construction activities* in the vicinity of the owner's property, the claim was not properly brought under the *Expropriations Act*. It went on to find that it did not have jurisdiction to consider the claim and dismissed it. It did note that recourse for the flooding may exist in the form of a claim for trespass or nuisance before the Superior Court of Justice.

The Ontario Municipal Board came to a similar conclusion in *Beniuk v. Leamington.*[101] It dismissed a claim for injurious affection where no land was taken based on the use of a roadway constructed 90 years before the complaint was made. The Board found that the Claimant failed to satisfy the "Statutory Authority" branch of the applicable test as the claim arose from *inaction*, rather than *action*, by the respondent municipality. This further demonstrates the limited interpretation that may be applicable to what works will give rise to claims for injurious affection where no land is taken.

The appropriateness of claims for injurious affection where no land is taken in emergency situations is further hampered by the Actionable Rule. Claims for injurious affection where no land is taken typically satisfy the Actionable Rule based on the tort of private nuisance. The legal test for private nuisance evaluates the reasonableness of the

[100] *Morin v. Ottawa (City)*, 2020 CarswellOnt 4844, 2020 CanlII 26193 (LPAT).
[101] *Beniuk v. Leamington (Municipality)*, (2017) 1 O.M.T.R. 99, 7 L.M.R. (2d) 51.

interference with an owner's property in light of all surrounding circumstances.[102] This requires a balance of interests and accounts for the conduct of the party causing the interference. When applied to emergency powers enacted in the interest of public health and safety, this would be a challenging threshold for a claimant to overcome. They would have to establish that the interference required them to bear more than their fair share of the cost of achieving the associated public benefit.

At a time when virtually everyone is enduring significant sacrifices (both in terms of health and economic issues) in response to a pandemic, it may be far more difficult than usual to establish that one particular owner is bearing greater than their fair share of the cost of that response. A claim based on private nuisance would require a very substantial and severe interference with an owner's property rights that is disproportionate to what most others are suffering. This would be a challenging threshold to overcome in all but the most extreme circumstances.

Certain property owners may be able to satisfy the Actionable Rule based on other causes of action, such as trespass by statutory authorities in their efforts to implement emergency efforts for the public benefit. Unlike claims based on private nuisance, trespass does not involve the same balancing of interests to satisfy the Actionable Rule. The applicability of such a claim would be strictly circumscribed based on the factual matrix at issue.

Considerable caution should be exercised in advancing no land taken claims arising from temporary emergency measures. A court or LPAT would give consideration to the overall circumstances and be less inclined to make findings in favour of compensation than it would be in situations where a single individual is suffering an economic loss in the context of an infrastructure project. Part of the rationale for claims for compensation

[102] *Antrim, supra*, note 20, at paras 25-26.

where no land is taken arises from the potential economic benefit that the works confers on the authority who constructs it.[103] That economic benefit for the proponent of infrastructure projects is absent when emergency measures are being undertaken for public health and safety.

CONCLUSION

As the events giving rise to this analysis remain in progress and are evolving rapidly, it is difficult to provide conclusions with respect to how the law will interpret claims for compensation. It appears, however, that governments will likely endeavour to compensate property owners for land acquired. The primary and initial focus of government, however, will be on the acquisition of property interests on an expedited basis to achieve urgent public objectives. This may require practices that deviate from ordinary protocols under the *Expropriations Act*.

If there is no formal taking, it seems unlikely that there is a right to compensation for the majority of economic losses incurred by those with an interest in property whose use has been compromised. Arguably this is part of all individuals bearing their "fair share" of loss and hardship during these times. For any claims (other than those for actual expropriations or direct interference with property) to succeed, there will be a high threshold to meet for the payment of compensation by public authorities.

---

[103] *Hammersmith and City Railway Co. v. Brand*, (1867) L.R.2 Q.B. 223, 230-231 [Exchequer Chamber]: Baron Bramwell stated, "By the ordinary working of a railway line. . . a nuisance was created to the occupiers of the plaintiff's premises, which would have been actionable at common law. As presumably this nuisance will continue, the premises are permanently depreciated in value to sell, let, or occupy. . .. It seems impossible that it can have been enacted that this damage can be done without any compensation. . .. It is said that the railway and the working of it are for the public benefit, and therefore the damage must be done and *be uncompensated*. Admitting the damage must be done for the public benefit, that is no reason why no compensation should be given. It is to be remembered that that compensation comes from the public which gets the benefit. It comes from those who do the damage, but ultimately from the public in the fares they pay. If the fares will not pay for this damage, and a fair profit on the companies' capital, the speculation is a losing one, as all the gain does not pay all the loss and leave a fair profit. Either, therefore, the railway ought not to be made, or the damage may well be paid for."

It is advisable for both property owners and public authorities to endeavour to work cooperatively to address immediate issues, while reserving rights for full and fair compensation in accordance with the *Expropriations Act* or other legislation. Such claims for compensation can be resolved at a later date when further resources can be dedicated to this determination, allowing for the immediate focus on emergency measures.