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Major Expropriation Reform on the Horizon in Québec

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On May 25, 2023, the Québec government tabled a bill to replace the current *Expropriation Act*. Like the current law, the bill will apply to expropriations initiated by both the provincial and municipal governments.

The bill provides for major changes related to:

- contesting the right to expropriation
- procedural rules and required evidence before the *Tribunal administratif du Québec*
- methods for determining the compensation payable to the expropriated, potentially reducing payments to property owners significantly

Compensation Approaches

The bill outlines “compensation approaches” in various situations, some of which mark a radical change in the determination of the compensation payable to expropriated owners.

For example, the approach imposed in the case of expropriation of vacant land, *based on the cost of acquisition of the expropriated property*, implies, as defined by the legislator, a major change for the expropriated.

Immovable indemnity, which corresponds to the value of the expropriated property itself (to which additional compensation may be added for prejudice suffered), would now be established according to the property’s market value, based on the authorized uses at the date of expropriation. The bill thus sets aside the long-established principle of compensation based on the *value to the owner*, which reflects *all present or future advantages that the expropriated property possesses*, including a potential use that gives the property a higher value than that derived from its current use. This change is expected to result in significant reductions in the amounts payable to certain expropriated parties, particularly real estate developers.

Disguised Expropriation

The bill also frames and modifies remedies available to owners who have been *de facto* dispossessed of their property, or whose reasonable use has been suppressed, by a municipal resolution or by-law (“disguised expropriation”).

On the one hand, it confirms that proceedings may be instituted before the Superior Court within three years of the date of coming into force of the municipal act in question. On the other hand, it proposes to eliminate the possibility for owners in the case of a disguised expropriation to choose their recourse in the matter by giving the municipal body, within a minimum of six months following the judgment, the choice to either cease the disguised expropriation or acquire the property by paying the indemnity determined by the court.

Entry Into Force

The new framework will not apply until several months after it has been sanctioned and will have no retroactive effect.

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