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Major Expropriation Reform in Québec

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The Act *respecting expropriation* was adopted on November 29, 2023. It applies to expropriations initiated by the Government of Québec and municipal bodies.

The Act provides for important changes, notably with regards to contesting the right to expropriation as well as to the procedural and evidence rules before the *Tribunal administratif du Québec*. Most importantly, the Act considerably modifies the methods for determining the indemnities payable to the expropriated, potentially reducing payments to property owners significantly in certain cases.

We present the key takeaways below.

Compensation Approaches

The Act outlines "compensation approaches" in various situations, some of which mark a substantial change in the determination of the indemnity payable to expropriated parties. This is the case, for example, for the approach in the case of an expropriation of vacant land, where the indemnity is *based on the cost of acquisition of the expropriated property*.

Therefore, the immovable indemnity (which corresponds to the value of the expropriated property) will now be based on the property's market value. This value is established according to the highest and best use, which must, among other things:

- be authorized, including by municipal by-laws, at the time of expropriation; and
- be likely to be realized (and not just possible) within three years of the expropriation.

The Act thus sets aside the long-established principle of compensation based on the *value to the owner*, which reflected *all present or future advantages that the expropriated property possesses*, including a use that was not authorized at the time of expropriation that gave the property a higher value.

Moreover, a municipal by-law adopted to allow the expropriating body's project to be carried out or whose purpose is to reduce the expropriation indemnity will not be taken into account in determining the indemnity. The Act thus codifies the jurisprudential principle that a public body cannot reduce the value of a property by modifying the by-laws that apply to it for the purposes of its expropriation.

Compensation for Damages Resulting from the Expropriation

The Act imposes several important restrictions on the awarding of damages to expropriated parties. In particular, it provides that losses related to a development project can only be compensated when, among other things:

- construction work is scheduled to begin within three years of the date of expropriation;
- no contingency can prevent, delay or make conditional the completion of the project;
- all permits have been obtained; and
- the expropriated party cannot carry out its project on another property.

These changes will undoubtedly result in significant decreases in the amounts payable to certain expropriated parties, particularly real estate developers.

Entry Into Force

The Act will come into force on December 29, 2023. It will not apply to expropriation processes initiated under the previous regime.

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