



**Ontario Land Tribunal's  
*Rules of Practice & Procedure***

**Proposed Rule 26 - Expropriation Proceedings**

**Submitted to:** Ontario Land Tribunal  
**Submitted by:** Ontario Bar Association  
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## Executive Summary

The Ontario Bar Association (“**OBA**”) appreciates the opportunity to provide comments on the proposed revisions to Rule 26 (Expropriation Proceedings) in the Ontario Land Tribunal’s *Rules of Practice and Procedure*. The following is a summary of the OBA’s comments on draft Rule 26, which are more fully set out below:

- Clarifying that Rule 26.7 mediations would be consistent with general mediation provisions in Rule 18, including the requirement for parties to consent to participate, and querying the conformity of the last sentence in the proposed Rule to legislation.
- Amending draft Rules 26.8 and 26.9 to also permit the termination by a party of a mediation after the service of pleadings, with no time limit.
- Amending the reference to the “Notice of Arbitration and Statement of Claim” in draft Rules 26.11 and 26.12 (and other references in the draft Rules) to the “Notice of Arbitration and Statement of Claim [for Compensation](#)”.
- Revising the apparent typo in the cross-reference to the claimant’s pleading in draft Rule 26.13.
- The timing for delivery of expert reports may be an item best assessed on a case-by-case basis, rather than through a blanket rule applicable to all expropriation proceedings. We would suggest that the Tribunal remove or reconsider that aspect of draft Rule 26.21.
- There may be other expert reports worthy of reference in draft Rule 26.21, and the draft Rule should acknowledge and provide a mechanism for amendment, revision, or supplementing of such reports following examinations for discovery.
- In Draft Rule 26.30, we suggest that more general language should be used to capture potential offers made by the claimant to the respondent.



## **Ontario Bar Association**

Established in 1907, the OBA is the largest and most diverse volunteer lawyer association in Ontario, with close to 16,000 members, practicing in every area of law in every region of the province. Each year, through the work of our 40 practice sections, the OBA provides advice to assist legislators and other key decision-makers in the interests of both the profession and the public and we deliver over 325 in-person and online professional development programs to an audience of over 20,000 lawyers, judges, students, and professors.

This submission was prepared and reviewed by the OBA's Municipal, Administrative, Construction & Infrastructure, and Environmental Law sections, and was reviewed by the OBA Board of Directors. Members of these sections practice in every region of the province, and include leading experts in their respective fields, representing expropriating authorities and agencies, expropriated landowners, municipalities, residents, developers, companies, and other stakeholders. Members of these sections often advocate before the Ontario Land Tribunal, municipal councils and committees, and all levels of court in the Province of Ontario. Members of these sections represent a broad spectrum of clients with diverse and sometimes competing interests, which have been considered and are reflected in this submission.

## **Comments & Recommendations**

Expropriation proceedings pose unique challenges at the Ontario Land Tribunal (“**OLT**”). To provide clarity and improve processes, the OLT is considering revisions to Rule 26, which would include expanding the application of the Rules to various stages in expropriation proceedings, and the recognition of the prominence of mediation in these proceedings.

In our view, the level of guidance provided in the draft rules is appropriate. Further, the headings, the categories of the proposed rules, and the order of the categories (Interpretation/General, Mediation, Pleadings, Examinations, Hearing Events, Settlement, Expropriation order) are logical for expropriation proceedings.



## 1. Mediation: Rule 26.7 (Tribunal Direction)

Draft Rule 26.7 (Tribunal Direction) should clarify that Rule 26.7 mediations are consistent with the general mediation provisions in Rule 18, including the requirement that parties consent to participation.

The OLT may wish to consider whether the last sentence of the Rule, as drafted, conforms to the legislation, including, in particular, Section 23 of the *Ontario Land Tribunal Act, 2021*, S.O. 2021, c. 4, Sched. 6, which states, “*Unless another Act specifies otherwise, the Tribunal may review, rescind or vary any order or decision made by it in accordance with the rules.*”:

**26.7 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, ~~subject to~~ ~~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.** [emphasis added]

## 2. Mediation: Rules 26.8 & 26.9 (Termination of Mediation by a Party or the Tribunal)

Draft Rule 26.8 would permit a party to terminate a mediation held before pleadings are served, but the draft rules do not appear to offer the same option for a mediation held *after* the service of pleadings. The OLT may wish to consider revising the wording by removing the temporal reference to permit the termination by a party of a mediation after the service of pleadings. The OLT may also consider whether the last sentence is intended to limit the time period for terminating mediation. As Rule 18 requires voluntary mediation, the mediation could be terminated by either party at any time. The OLT might also want to consider amending Rule 26.9, as indicated in, to permit such a request, subject to the Tribunal’s discretion:

**26.8 Termination of Mediation by a Party** Upon notice to the Tribunal, the claimant and/or respondent ~~may that~~ ~~terminates~~ a mediation ~~held before the~~



~~service of pleadings~~ [and](#) may proceed to resolve the dispute over the compensation payable under the Act by filing a Notice of Arbitration and Statement of Claim [for Compensation](#), or a Notice of Arbitration, as appropriate and within any applicable statutory claim period.

**26.9 Termination of Mediation by the Tribunal** The Tribunal may, [including at the request of the claimant and/or the respondent](#), 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.

### 3. Pleadings: Rule 26.12 (Reply to Notice of Arbitration)

For clarity and consistency, the drafters might consider amending the reference to the “Notice of Arbitration and Statement of Claim” in draft Rules 26.11 and 26.12 (and other references in the draft Rules) to the “Notice of Arbitration and Statement of Claim [for Compensation](#)”, to be consistent with the definition of “pleadings”, as follows (or alternatively, remove “for Compensation” from that definition, as well as the references in draft Rules 26.14, 26.15 and 26.19):

**26.10 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 [for Compensation](#) or Reply, scheduling a case management conference under Rule 19, establishing the terms of a procedural order and scheduling dates for arbitration.

**26.11 Notice of Arbitration and Statement of Claim [for Compensation](#) by Claimant** A claimant seeking compensation shall serve a combined Notice of Arbitration and Statement of Claim [for Compensation](#) 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 [of Arbitration](#) and Statement [of Claim for Compensation](#) must be filed in electronic form (pursuant to Rule 5) and set out:

- the amount claimed;
- the basis upon which the amount is calculated; and
- the facts in support of each element of compensation claimed.

**26.12 Reply to Notice of Arbitration [and Statement of Claim for Compensation](#)**  
The respondent shall serve a Reply on the claimant within 20 days after service of the Notice of Arbitration [and 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.

**26.19 Required Pleadings** The only pleadings required in an arbitration to determine compensation are a Notice of Arbitration and Statement of Claim [for Compensation](#) 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.

#### 4. Pleadings: Rule 26.13 (Notice of Arbitration by Respondent)

We identified an apparent typo in the cross-reference to the claimant's pleading in draft Rule 26.13:

**26.13 Notice of Arbitration by Respondent** Where a claimant has not served a Notice of Arbitration [and Statement of Claim for Compensation](#) under Rule ~~26.12~~ [26.11](#), 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.

#### 5. Examinations: Rule 26.21 (Examinations for Discovery)

The proposed wording of Rule 26.21 proposes a significant change whereby appraisal reports to be relied upon would be required to be served 15 days in advance of examinations for discovery. This raises the following concerns:

- There may be other expert reports in addition to appraisals, such as valuation reports, relevant to the proceeding;
- The factual findings discovered at examinations for discovery very often form the foundation of expert reports; in such cases it would be inappropriate to require the service of reports prior to discoveries, when doing so would necessitate subsequent revisions to the expert reports; and
- Even if mandated advance service of expert reports were appropriate,
  - 15 days before may be too close to the examinations to have the desired impact; and
  - There should be a corresponding provision for the amendment or revision of expert reports, or supplementary reports, following examinations for discovery.



The timing for delivery of expert reports may be an item best assessed on a case-by-case basis (such as through a procedural order or a case management conference), rather than through a blanket rule applicable to all expropriation proceedings. Accordingly, we suggest that the Tribunal remove or reconsider that aspect of draft Rule 26.21:

**26.21 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.

## 6. Settlement: Rule 26.30 (Acceptance of Settlement Offer)

As drafted, the OLT may wish to consider using more general language in Rule 26.30 to better capture potential offers made by the claimant to the respondent. For example:

**26.30 Acceptance of Settlement Offer** The parties shall notify the Tribunal in writing within 30 days following a party's ~~the claimant's~~ acceptance of an offer of settlement made by the other party ~~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.

*The OBA would welcome the opportunity to provide further assistance as required through the consultation process.*