Court File No. CV-22-00000074-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

ELSIE KALU

Plaintiff / Respondent

- and -

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ONTARIO represented by THE ATTORNEY GENERAL OF ONTARIO

Defendant / Moving Party

Proceeding under the *Class Proceedings Act, 1992*

FACTUM OF THE MOVING PARTY
(Motion Returnable September 22, 2023)

August 9, 2023

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PART I – OVERVIEW

1. This claim should be struck without leave to amend because it contains a radical defect: it fails to adequately plead the necessary elements of the *de facto* expropriation cause of action that it advances. Most notably, the Crown is not alleged to have acquired anything on the facts as pled.

2. This proposed class action seeks compensation in an amount to be determined as against the moving party, His Majesty the King in right of Ontario (the "**Crown**")[1].

3. According to the Amended Statement of Claim (the "**Claim**"), delays in proceedings before the Landlord and Tenant Board (the "**LTB**") together with the regulatory scheme enacted pursuant to the *Residential Tenancies Act*, 2006, SO 2006, c 17 (the "***RTA***") have effected *de facto* expropriations of the landlord class members' rental properties.

4. It is plain and obvious that the Claim discloses no reasonable cause of action against the Crown. At its heart, the Claim arises from disputes between landlords and their tenants. There is no reasonable cause of action as against the Crown in these circumstances.

5. Furthermore, notice of the claim was not provided to the Crown as required by section 18 of the *Crown Liability and Proceedings Act, 2019*, SO 2019, c 7, Sch 17

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[1] Improperly named as "His Majesty the King in right of the Province of Ontario represented by the Attorney General of Ontario" in the Amended Statement of Claim ("The Claim"), Moving Party's Motion Record (**"MPMR**"), Tab 2, p 16, see *Crown Liability and Proceedings Act, 2019*, SO 2019, c 7, Sch 17 ("**CLPA**"), s 14.

("**CLPA**"). As a question of law, this proceeding is a nullity. Finally, the Claim demands compensation "in an amount to be determined". The Rules require the Claim to specify the nature of the relief sought. Without knowing the nature of the relief sought, the Crown is unable to determine which facts as pled are material.

PART II – FACTS

The History of This Proceeding

6. This proposed class action is at the pleadings stage. The Statement of Claim was issued on December 22, 2022 and was amended on December 30, 2022.[2]

7. The Claim was served on the Crown on January 5, 2023.[3]

8. Counsel for the plaintiff did not deliver any notice to the Crown of this proceeding before the Claim was served on the Crown on January 5, 2023.[4]

The Proposed Representative Plaintiff and Class

9. Elsie Kalu (the "**Plaintiff**") advances this claim on behalf of all residential landlords in Ontario who were or are party to eviction proceedings before the the LTB "within the relevant limitation period" [5] (the "**Class**").

10. The Plaintiff is a landlord in respect of the property at 6390 Nuggett Drive in

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[2] The Claim, MPMR, Tab 2, p 16.

[3] Affidavit of Lori Blaskavitch, sworn May 17, 2023 ("**Crown Affidavit**"), MPMR, Tab 4, p 61, at para 2.

[4] Crown Affidavit, MPMR, Tab 4, at para 3.

[5] The Claim, MPMR, Tab 2, at para 22.

Ottawa.[6] On May 10, 2022 the Plaintiff filed an application with the LTB to evict the tenant residing at this property. [7]

11. The Claim pleads that as of the date of issuance (December 22, 2022), the Plaintiff had not had her LTB matter heard.[8] An LTB order, incorporated by reference into the response to the Crown's demand for particulars, confirms the LTB heard the Plaintiff's application on February 1, 2023.[9]

The Nature of the Claim

12. The Claim pleads that the Crown has expropriated the property of class member landlords in Ontario by:

1) enacting the *RTA*; and

2) permitting "perpetual undue delay" by the LTB.[10]

13. The plaintiff claims compensation in a sum to be determined for this alleged *de facto* expropriation of the lands owned by class members.[11] No other cause of action is pled.

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[6] The Claim, MPMR, Tab 2, at para 1 (under "THE REPRESENTATIVE PLAINTIFF" heading).

[7] The Claim, MPMR, Tab 2, at para 14.

[8] The Claim, MPMR, Tab 2, at paras 3, 21.

[9] LTB Order, February 23, 2023, MPMR, Tab 3A.

[10] The Claim, MPMR, Tab 2, at paras 29-30.

[11] The Claim, MPMR, Tab 2, at para 1(b).

PART III – ISSUES & ARGUMENT

14. The issues to be determined on this motion are whether this claim should be struck without leave to amend because:

1) it discloses no cause of action in *de facto* expropriation;

2) the nature of the relief claimed is not specified; or

3) no notice was provided under the CLPA.

1. The Claim Discloses No Reasonable Cause of Action

15. The Crown moves for an order striking the Claim without leave to amend pursuant to Rule 21.01(1)(b)[12], on the grounds that the Claim discloses no reasonable cause of action.

16. In *Imperial Tobacco* the Supreme Court of Canada emphasized the importance of resolving issues where possible at an early stage of the proceeding:

> The power to strike out claims that have no reasonable prospect of success is a valuable housekeeping measure essential to effective and fair litigation. It unclutters the proceedings, weeding out the hopeless claims and ensuring that those that have some chance of success go on to trial.
>
> This promotes two goods – efficiency in the conduct of the litigation and correct results. Striking out claims that have no reasonable prospect of success promotes litigation efficiency, reducing time and cost [. . .][13]

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[12] *Rules of Civil Procedure*, RRO 1990, Reg 194 ["***Rules***"].

[13] *R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 ["***Imperial Tobacco***"], at para 19 and para 20.

17. The Supreme Court reiterated this point more recently in *Atlantic Lottery*:

> [. . .T]his Court has recognized in *Hryniak v. Mauldin* the need for a culture shift to promote "timely and affordable access to the civil justice system". Where possible, therefore, courts should resolve legal disputes promptly, rather than referring them to a full trial. This includes resolving questions of law by striking claims that have no reasonable chance of success [. . .][14]

18. A claim will be struck without leave to amend where it contains a "radical defect" that cannot be cured by an amendment.[15] Leave to amend a statement of claim should be denied only in the clearest of cases.[16]

19. This is one of those clear cases where leave to amend should be denied, because the allegations in the Claim cannot support the necessary elements of the *de facto* expropriation cause of action asserted against the Crown. On the facts of this case no amendments can cure these deficiencies; in particular, the Crown cannot be said to have received a benefit or advantage in this case.

The cause of action test

20. The proper approach to a Rule 21.01(1)(b) motion is well settled. The facts asserted in the statement of claim are taken to be true unless they are patently incapable of proof,[17] bald conclusory statements of fact or allegations of legal conclusion

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[14] *Atlantic Lottery Corp Inc v Babstock*, 2020 SCC 19 at para 18 (internal citations omitted) ["***Atlantic Lottery***"].

[15] *Piedra v Copper Mesa Mining Corporation*, 2011 ONCA 191 at para 36 and para 94 ["***Piedra***"].

[16] *Piedra*, at para 94.

[17] *Leroux v Ontario*, 2023 ONCA 314 at para 38 [*"**Leroux***"].

unsupported by material facts. [18]

21. The statement of claim is to be read generously. The question to be answered is whether it is plain and obvious, assuming the facts pleaded to be true, that each of the plaintiffs' pleaded claims disclose no reasonable cause of action.[19]

22. Furthermore, the motion judge is entitled to examine documents that form part of the pleading as part of the material facts that are pleaded and accepted for the purpose of the motion. [20]

The elements of *de facto* expropriation

23. The Supreme Court of Canada's decision in *Annapolis* is the leading authority on the elements of a *de facto* expropriation cause of action.[21] Per *Annapolis*, the test to establish *de facto* expropriation by the Crown requires the Court to find that:

1) the Crown has acquired a beneficial interest in the class members' rental properties, or flowing from these properties (i.e., an advantage); and

2) state action on the part of the Crown has removed all reasonable uses of these properties.[22]

24. The facts as pled in the Claim, even if taken to be true and read generously, fail to

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[18] *Das v George Weston Limited*, 2018 ONCA 1053 at para 74 ["***Das***"].

[19] *Leroux*, at para 38.

[20] *Das*, at para 74.

[21] *Annapolis Group Inc v Halifax Regional Municipality*, 2022 SCC 36 ["***Annapolis***"]. The Court in *Annapolis* refers to *de facto* expropriation as "constructive taking" throughout its decision (see para 1 and para 17). The terms "*de facto* expropriation" and "constructive taking" can be used interchangeably (see the Claim, MPMR, Tab 2, at para 28). For the purposes of this motion the Crown will apply the "*de facto* expropriation" term as it appears in para 1(b) of the Claim.

[22] *Annapolis*, at para 44.

establish each of these elements of a *de facto* expropriation claim.

25. The most notable of these is a failure to plead any acquisition by the Crown. However, as outlined below, the Claim also fails to adequately plead a beneficial interest or advantage, state action or removal of all reasonable uses of the properties.

26. To reiterate, each of these elements are necessary to establish a *de facto* expropriation claim. The Claim discloses no reasonable cause of action if any of these elements are not pled[23], or if the pleaded elements are unsupported by material facts.[24]

The Claim fails to plead an acquisition by the Crown

27. Even if the facts as pled in the Claim are taken as true, there is no acquisition by the Crown of a beneficial interest in class members' rental properties, nor is there an advantage flowing from these properties to the Crown as a result of the application of the *RTA*. This alone should dispose of the Claim.

28. To the extent class members' tenants are enjoying a benefit in occupying a property while their matters are pending before the LTB, that benefit is flowing to the tenants.

29. In this respect, the present claim is indistinguishable from the claims at issue in *A & L Investments*.[25] In that case, the Ontario Court of Appeal considered two actions

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[23] *Yan v Hutchinson*, 2023 ONCA 97 at para 12.

[24] *Kaissieh v Done*, 2022 ONSC 425 at para 17 ["***Kaissieh***"].

[25] *A & L Investments Ltd v Ontario*, 1997 CanLII 3115, citations to 1997 CarswellOnt 5236 (ONCA) for paragraph numbers ["***A & L Investments***"], Moving Party's Abbreviated Book of Authorities (**"MBOA**"), Tab 1. This decision pre-dates *Annapolis*, which refined the *de facto* expropriation test, but the required element of an acquisition on the part of the Crown or government actor has remained consistent.

brought by a large number of plaintiff landlords seeking compensation from the Crown for losses caused by the passage of rent control legislation.

30. The Court of Appeal concluded that it was plain and obvious that these claims could not succeed where no property rights were acquired by the Crown:

> While the property rights of the plaintiffs voided by the [rent control legislation] may, in one sense, be said to have been taken from the plaintiffs, **in no sense can they be said to have been acquired by the Crown. The Crown transferred no property from the plaintiffs to itself by means of this legislation**.[26]

31. The Supreme Court of Canada denied leave to appeal.[27]

32. The claims in *A & L Investments* were framed in alleged "statutory taking" of the landlords' property[28], as opposed to *de facto* expropriation. However, as in this action, these claims could only succeed if the legislation created what was in essence an expropriation of the plaintiffs' property by the state.[29] The claims arose from the effects of rent control legislation, which voided previously issued orders giving landlords the right to charge rent increases into the future. The plaintiffs claimed this amounted to a statutory taking of their property requiring compensation.[30]

33. The Court rejected the argument that rent control legislation could be said to be an expropriation because it transferred property from landlords to tenants, reiterating firstly

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[26] *A & L Investments*, at paras 28, 31, MBOA, Tab 1 [emphasis added].

[27] *A & L Investments Ltd et al v Ontario (Minister of Housing)*, [1997] SCCA No 657, MBOA, Tab 2.

[28] *A & L Investments*, at para 13, MBOA, Tab 1.

[29] *A & L Investments*, at para 27, MBOA, Tab 1.

[30] *A & L Investments*, at para 13, MBOA, Tab 1.

that expropriation requires a transfer of the citizen's property to the state, rather than to another citizen, and secondly:

> [. . .W]hile the [rent control legislation] voids orders obtained by landlords and in that sense takes their property, that property is not transferred to tenants. **At most, the legislation creates economic advantages for tenants**. The 1991 Act does not effect an expropriation **but rather regulates in a way that affects both landlords and their tenants**. The fact that the effect on landlords may be said to be significant and, indeed, unusual in its retroactivity, cannot turn the legislation into an act of expropriation. [31]

34. The Court concluded that the rent control legislation at issue was not an act of expropriation, but rather an exercise of the Crown's regulatory authority.[32]

35. As in *A & L Investments*, the Claim does not plead that the Crown has made an acquisition as described in *Annapolis*[33]. As such, it is "plain and obvious" the Claim at issue on this motion cannot succeed and must be struck.[34]

<u>The Claim as pled does not concern a beneficial interest or advantage</u>

36. The Claim does not identify the "beneficial interest" that the Crown is supposed to have acquired by enacting the *RTA*.

37. *Annapolis* provides four examples of an advantage constituting a beneficial interest. A generous reading of the Claim suggests the first and fourth of these types of

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[31] *A & L Investments*, at para 30, MBOA, Tab 1 [emphasis added].

[32] *A & L Investments*, at para 29, MBOA, Tab 1.

[33] *Annapolis*, at para 44.

[34] *A & L Investments*, at para 31, MBOA, Tab 1.

advantage are relevant to assessing whether the Claim discloses a reasonable cause of action:

1) permanent or indefinite denial of access to the property; and

4) confining the uses of private land to public purposes, such as conservation, recreation, or institutional uses such as parks, schools, or municipal buildings.[35]

38. However, even on a generous reading, these beneficial interests are not adequately pled.

No permanent or indefinite denial of access to property:

39. There are two allegations in the Claim that, read generously, might speak to a "permanent or indefinite denial of access to property" advantage that may in turn address the "beneficial interest" element of the *de facto* expropriation cause of action. At paragraph 18, the Claim pleads the Plaintiff's LTB hearing was cancelled, "pending an indeterminate period"[36], and at paragraph 33 the Claim pleads the application of the *RTA* regulatory scheme "eliminates all reasonable uses of the leased properties by their owners for an indefinite and indeterminable period".[37]

40. These "indefinite" and "indeterminate" pleadings are bald, conclusory statements, which are not assumed to be true for the purposes of a motion to strike.[38] These pleadings should be struck, given that they do little more than identify the elements of a *de facto*

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[35] *Annapolis*, at para 45.

[36] The Claim, MPMR, Tab 2, at para 18.

[37] The Claim, MPMR, Tab 2, at para 33.

[38] *Das*, at para 74.

cause of action, unsupported by material facts.[39]

41. Furthermore, a review of the LTB order incorporated by reference into the response to demands for particulars (as permitted on a motion to strike)[40] confirms that the Plaintiff was given access to her property on or before July 31, 2023.[41] This same LTB order indicates the Plaintiff's application proceeded to hearing on February 1, 2023. Accepting these facts as true, LTB hearings are proceeding and orders are being issued, albeit following a delay.

42. This is consistent with the facts as pled at paragraph 31 and 32 of the Claim, which speak to "delays" and "wait times" for hearings. Again, hearings are proceeding, following a delay. These delays as pled do not amount to a "permanent or indefinite denial of access to property".

43. It is, therefore, plain and obvious that the pleadings do not disclose a "permanent or indefinite denial of access to property" nor any advantage that would satisfy the "beneficial interest" element of a *de facto* expropriation cause of action.

No public use of private land

44. The allegations in the Claim likewise do not establish that the Crown has confined the uses of private land to public purposes so as to satisfy the "beneficial interest" element of the *de facto* expropriation cause of action.

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[39] *Kaissieh*, at para 17, para 26 and para 27.

[40] *Darmar Farms Inc v Syngenta Canada Inc*, 2019 ONCA 789 at para 44.

[41] LTB Order, February 23, 2023, MPMR, Tab 3A.

45. The reasoning in *Annapolis* noted an advantage flowing to the Crown might include "confining the uses of private land to public purposes".[42] At paragraph 25, the Claim pleads that class members' rental properties are being expropriated "in the public interest". In an attempt to mirror the language in *Annapolis,* the Plaintiff has misconstrued how *de facto* expropriation claims are to be analyzed.

46. If the allegations in the Claim are true, the *RTA* restricts the use of property in the public interest.[43] The allegations in the Claim do not, however, describe the *RTA* as "confining the uses of private land to public purposes" as was the case in *Annapolis*[44].

47. **Regulating in the public interest is not confining land use to a "public purpose"**: If anything, if the facts as pled are true regarding the Plaintiff's own property and LTB application, the *RTA* regulates the use of class members' property for private purposes, namely renting to a tenant. In contrast, in *Annapolis* the state actor allegedly enjoyed the advantage of having the lands at issue "reserved for its own purposes"[45], namely a public park.[46]

48. **Advancing a public policy objective is not an expropriation:** Furthermore, when reviewed under the *Annapolis* framework, the facts as pled at paragraphs 25 and 30 of the Claim establish that the *RTA* does not effect a *de facto* expropriation.

49. According to *Annapolis*, assessing the nature of the government action at issue is

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[42] *Annapolis*, at para 45.

[43] The Claim, MPMR, Tab 2, at para 35.

[44] *Annapolis*, at para 45.

[45] *Annapolis*, at para 70.

[46] *Annapolis*, at para 9.

necessary in assessing a *de facto* expropriation claim. This includes considering whether the government action "targets a specific owner or more generally advances an important public policy objective". [47]

50. If true, the facts as pled at paragraphs 25 and 30 of the Claim would establish the *RTA* advances an important policy objective, which is inconsistent with a *de facto* expropriation.

51. **Regulating in the public interest does not effect an expropriation:** It is common for the state to regulate private property in the public interest. As noted by the Nova Scotia Court of Appeal, "[i]n modern Canada, extensive land use regulation is the norm and it should not be assumed that ownership carries with it any exemption from such regulation."[48]

52. Regulating in the public interest does not amount to restricting the use of property to public purposes. If it did, the *Fire*[49] and *Building*[50] codes would satisfy this element of the *de facto* expropriation test – an absurd result. Given that the pleading fails to assert the necessary beneficial interest or advantage, it is therefore plain and obvious that the Claim discloses no reasonable cause of action in *de facto* expropriation.

The Claim does not plead "State Action"

53. The Plaintiff also fails to plead the required state action element of the cause of

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[47] *Annapolis*, at para 45.

[48] *Mariner Real Estate Ltd v Nova Scotia (Attorney General)*, 1999 NSCA 98 at para 49 ["***Mariner***"].

[49] *Fire Code*, O Reg 213/07, s 1.4.1.2, s 2.1.2.2, s 2.1.3.1.

[50] *Building Code*, O Reg 332/12, s 1.4.1.2, s 3.1.3.2.

action. The Claim complains of harms suffered as a result of delays in proceedings before the LTB.[51] However, the Claim does not plead facts that would make the Crown liable or responsible for these delays.

54. It is apparent from the statutes governing the LTB that scheduling, adjournments, rescheduling, and requests for extension or abridgment of time lie squarely within the administrative functions of the LTB.[52]

55. The LTB is an independent, quasi-judicial tribunal and its tribunal members act independently of the Crown.[53] As in *Daly*, it is plain and obvious that the Claim has no chance of success against the Crown, as the Crown cannot be vicariously liable for anything done by the LTB or its tribunal members.

56. Furthermore, as the Court of Appeal noted in the appeal of *Daly*, the Crown is not liable for anything done or omitted to be done by a person while discharging or purporting to discharge responsibilities of a judicial nature.[54] As in *Daly*, it is plain and obvious that the Claim has no chance of success against the Crown.

The Claim does not properly plead that all reasonable uses have been removed

57. As noted in *Annapolis*, not every instance of regulation of the use of property will amount to a constructive taking. The line between a valid regulation and constructive

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[51] The Claim, MPMR, Tab 2, at paras 21, 32.

[52] *Residential Tenancies Act, 2006*, SO 2006, c 17, s 183, s 184; *Statutory Powers and Procedures Act*, RSO 1990, c S.22, s 6, s 16.2, s 25.0.1, s 25.1(1); *Landlord and Tenant Board Rules of Procedure*, Rules, s 1, s 16, s 21.

[53] *Daly v Ontario (Landlord Tenant Board)*, 2022 ONSC 2434 at para 35, aff'd 2023 ONCA 152.

[54] *Daly v Ontario (Landlord and Tenant Board)*, 2023 ONCA 152 at para 7.

taking is crossed where the effect of the regulatory activity deprives a party of use and enjoyment of the property in a substantial or unreasonable way.[55]

58. In other words, Canadian courts generally require a "total loss of the plaintiff's interest in property for the Crown's action to constitute a taking."[56]

59. The allegations at paragraphs 15, 21, 29 and 33 of the Claim plead that the Plaintiff or class members are unable to make any reasonable use of their property. However, as with the "permanent or indefinite denial of access to property" element analyzed at paragraph 40, above:

1) These are bald conclusory statements, which are not assumed to be true for the purposes of a motion to strike;'[57] and

2) Any restrictions on the Plaintiff and class members' use of their property is temporary, pending LTB adjudication of applications, as the Plaintiff's LTB order[58] and pleadings at paragraph 31 of the Claim conclusively demonstrate.

60. In other words, since the facts as pled establish that class members may apply to the LTB for orders authorizing the uses they wish to make of their residential rental properties (i.e., evicting their tenants for personal use), they cannot be said to be deprived of the use and enjoyment of their property in a substantial or unreasonable way.

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[55] *Annapolis*, at para 19.

[56] *Annapolis*, at para 20.

[57] *Das*, at para 74.

[58] LTB Order, February 23, 2023, MPMR, Tab 3A, p 2, at para 3.

61. This is in keeping with precedent decisions, which have declined to find a *de facto* expropriation where property owners may apply for a license permitting the desired use of their property,[59] or which rejected an expropriation claim where the claimants had not shown that they would be denied permits with respect to reasonable or traditional uses of the lands.[60]

Leave to amend should not be given

62. The Claim should be struck without leave to amend because it discloses no cause of action. This defect cannot be put right or improved by amendment.[61] The dispute at the heart of the Claim is between the class member landlords and their tenants. Fundamentally, there is no claim as against the Crown in these circumstances.

63. Striking a claim, even a novel one, that is doomed to fail is "beneficial, and indeed critical to the viability of civil justice and public access thereto" since it avoids protracted and expensive proceedings.[62]

64. The Claim has no reasonable prospect of success; it should not be allowed to proceed to trial.[63]

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[59] *FortisBC Energy Inc v Surrey (City)*, 2013 BCSC 2382 at para 418.

[60] *Mariner*, at para 89.

[61] *McHale v Lewis*, 2018 ONCA 1048 at para 6, citing *Aristocrat Restaurants Ltd (cob Tony's East) v Ontario*, [2003] OJ No 5331, 2003 CarswellOnt 5574 (SCJ).

[62] *FNF Enterprises Inc v Wag and Train Inc*, 2023 ONCA 92 at para 30 ["***FNF Enterprises Inc***"], citing *Atlantic Lottery*, at para 14.

[63] *FNF Enterprises Inc*, at para 12, citing *Atlantic Lottery*, at para 14.

2. The Nature of the Relief Claimed is Not Specified

65. The Claim must also be struck because it does not comply with the rules of pleadings. Rule 25.06 sets out these requirements. Rule 25.06(9) states that "where a pleading contains a claim for relief, the nature of the relief claimed shall be specified and, where damages are claimed,

> (a) the amount claimed for each claimant in respect of each claim shall be stated; and
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> (b) the amounts and particulars of special damages need only be pleaded to the extent that they are known at the date of the pleading, but notice of any further amounts and particulars shall be delivered forthwith after they become known and, in any event, not less than ten days before trial."[64]

66. The Claim seeks relief in the form of "compensation in a sum to be determined, or such sum as this Court finds appropriate for the *de facto* expropriation of the lands owned by the Class members".[65] This prayer for relief does not comply with Rule 25.06(9) because it fails to specify the nature of the relief claimed and fails to specify any amount of damages.[66]

67. In the Claim, there is no description of what would constitute "compensation". The only amount quantified in the entire Claim is contained in a statement that the proposed Plaintiff spent $150,000 to maintain her property.[67] It is unclear whether that amount is a

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[64] Rule 25.06(9).

[65] The Claim, MPMR, Tab 2, at para 1(b).

[66] *Obonsawin v Canada,* 2001 CanLII 28431 (ONSC) at para 45.

[67] The Claim, MPMR, Tab 2, at para 21.

material fact because the Claim does not specify whether the Plaintiff is claiming that amount (or even maintenance costs in general) as part of the "compensation" sought in the prayer for relief.

68. As explained by the court in *Blatt Holdings Ltd v Traders General Insurance Co,* "the intent and requirement of Rule 25.06(9) is met when the claim for relief in a class action sets forth a quantification of the general, compensatory damages claimed for the class."[68] Even though a pleading is not required to quantify the proposed representative plaintiff's claim by a dollar amount, there is a requirement to sufficiently particularize a description of the loss and damages claimed by the Plaintiff and class members.

69. The Claim should also be struck pursuant to Rule 25.11 because it may prejudice or delay the fair trial of this action. A fair trial requires that the defendant be able to put forward a full defence.[69] The Crown cannot put forward a full defence when the Claim does not adequately define the matters at issue by failing to particularize the nature of the relief sought or the amount of damages claimed (or even a method for quantifying the alleged damages).

3. No CLPA Notice Was Provided of the Claim as Required

70. In the alternative, the Crown moves for an order to strike this Claim under Rule 21.01(1)(a) because as a question of law, this proceeding is a nullity pursuant to section

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[68] *Blatt Holdings Ltd v Traders General Insurance Co,* 2001 CarswellOnt 1822 (ONSC) at para 15, MBOA, Tab 3.

[69] *Quizno's Canada Restaurant Corp v Kileel Developments Ltd,* 2008 ONCA 644 at para 16.

18 of the CLPA for failure to provide notice.[70]

71. Proper notice is a necessary pre-condition to the right to sue the Crown. [71] The CLPA has a mandatory notice requirement under section 18(1) which states:

> No proceeding that includes a claim for damages may be brought against the Crown unless, at least 60 days before the commencement of the proceeding, the claimant serves on the Crown, in accordance with section 15, notice of the claim containing sufficient particulars to identify the occasion out of which the claim arose.[72]

72. The CLPA applies to this proceeding because the Plaintiff seeks damages from the Crown. A "proceeding" is defined in the CLPA under section 1(1) to mean "an action or application for damages and any other civil proceeding in respect of damages to which the rules of court apply."[73]

73. Although the Claim does not explicitly refer to damages, the Claim seeks "compensation in a sum to be determined". A claim for a "sum" of "compensation" (*i.e.*, a sum of money) is, in substance, a claim for damages. The term "damages" includes pecuniary compensation awarded by the courts for "loss, detriment, or injury" to a person or their property flowing from unlawful acts.[74] This definition encompasses the relief sought in the Claim. The use of the word "compensation" does not shield the Claim from the application of the CLPA.

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[70] Rule 21.01(1)(a); CLPA, s 18(1).

[71] *Beardsley v Ontario*, 2001 CanLII 8621 (ONCA) at para 10. *Beardsley* was decided under the Crown liability legislation that preceded the CLPA, the *Proceedings Against the Crown Act*, RSO 1990, C P.27 (see Schedule B at page 33 below).

[72] CLPA, s 18(1).

[73] CLPA, s 1(1) "proceeding".

[74] *The Corporation of the City of Belleville v Gore Mutual Insurance Company*, 2021 ONSC 3854 at para 64, citing *Black's Law Dictionary,* 6th ed (St. Paul, MN: West Publishing Co, 1990).

74. Pursuant to CLPA section 6(a), the CLPA does not apply and is subject to the *Expropriations Act*.[75] However, the *Expropriations Act* only applies to *de jure* takings (*i.e.*, formal expropriation of title); *de facto* expropriation claims fall outside the provisions of the *Expropriations Act.*[76]

75. A proceeding commenced against the Crown without providing the required statutory notice under the CLPA is rendered a nullity under section 18(6).[77] The CLPA notice requirement cannot be waived or abridged.[78]

76. The Claim is a nullity because the Plaintiff failed to serve the Crown with any notice of the Claim before it was issued on December 22, 2022, as is required pursuant to section 18(1) of the CLPA.

77. The Claim was issued on December 22, 2022 and was amended on December 30, 2022.[79] The Amended Statement of Claim was served on the Crown on January 5, 2023.[80] The Plaintiff did not deliver any notice to the Crown of this proceeding before the Amended Statement of Claim was served on the Crown on January 5, 2023.[81]

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[75] CLPA, s 6(a); *Expropriations Act,* RSO 1990, c E.26 s 2, s 4, s 5, s 6, s 7 and s 8.

[76] *Morin v Ottawa,* 2020 CanLII 26193 (ON LPAT) at paras 35, 40; John A. Coates & Stephen F. Waqué, *New Law of Expropriation* (Carswell, 2022), ch 2.II(A) at s 2:5, MBOA, Tab 4: "The *Expropriations Act* will not assist landowners who suffer injury for a taking that occurs outside the express provisions of the legislation. A taking in the nature of a deemed expropriation takes place outside the provisions of the Act."

[77] CLPA, s 18(6).

[78] *Corrigan v Ontario*, 2023 ONCA 39 at paras 13-15.

[79] The Claim, MPMR, Tab 2.

[80] Crown Affidavit, MPMR, Tab 4, at para 2.

[81] Crown Affidavit, MPMR, Tab 4, at para 3.

PART IV – RELIEF REQUESTED

78. The Crown respectfully requests:

1) An Order striking this Claim without leave to amend; and

2) An Order awarding costs of this motion to the moving party.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

August 9, 2023

Sarah Pottle, LSO# 59586M

Bhavini Lekhi, LSO# 81514S

Counsel for the Defendant and Moving Party

SCHEDULE "A" – AUTHORITIES

CASE LAW

1.	*A & L Investments Ltd v Ontario*, 1997 CanLII 3115, 1997 CarswellOnt 5236 (ONCA).
2.	*A & L Investments Ltd et al v Ontario (Minister of Housing)*, [1997] SCCA No 657.
3.	*Annapolis Group Inc v Halifax Regional Municipality*, 2022 SCC 36.
4.	*Atlantic Lottery Corp Inc v Babstock*, 2020 SCC 19.
5.	*Beardsley v Ontario*, 2001 CanLII 8621 (ONCA).
6.	*Blatt Holdings Ltd v Traders General Insurance Co,* 2001 CarswellOnt 1822 (ONSC).
7.	*Corrigan v Ontario*, 2023 ONCA 39.
8.	*Daly v Ontario (Landlord Tenant Board)*, 2022 ONSC 2434.
9.	*Daly v Ontario (Landlord and Tenant Board)*, 2023 ONCA 152.
10.	*Darmar Farms Inc v Syngenta Canada Inc*, 2019 ONCA 789.
11.	*Das v George Weston Limited*, 2018 ONCA 1053.
12.	*FNF Enterprises Inc v Wag and Train Inc,* 2023 ONCA 92.
13.	*FortisBC Energy Inc v Surrey (City)*, 2013 BCSC 2382.
14.	*Kaissieh v Done*, 2022 ONSC 425.

15.	*Leroux v Ontario*, 2023 ONCA 314.
16.	*Mariner Real Estate Ltd v Nova Scotia (Attorney General)*, 1999 NSCA 98.
17.	*McHale v Lewis*, 2018 ONCA 1048.
18.	*Morin v Ottawa,* 2020 CanLII 26193 (ON LPAT).
19.	*Obonsawin v Canada,* 2001 CanLII 28431 (ONSC).
20.	*Piedra v Copper Mesa Mining Corporation*, 2011 ONCA 191.
21.	*Quizno's Canada Restaurant Corp v Kileel Developments Ltd*, 2008 ONCA 644.
22.	*R v Imperial Tobacco Canada Ltd*, 2011 SCC 42.
23.	*The Corporation of the City of Belleville v Gore Mutual Insurance Company*, 2021 ONSC 3854.
24.	*Yan v Hutchinson*, 2023 ONCA 97.

LEGAL TEXTS & REFERENCE MATERIALS

25.	John A. Coates & Stephen F. Waqué, *New Law of Expropriation* (Carswell, 2022), ch 2.II(A), s 2:5.

SCHEDULE "B" – LEGISLATION

1. *BUILDING CODE*, O REG 332/12

Section 1.4. Terms and Abbreviations

1.4.1.1. Non-defined Terms

(1) Definitions of words and phrases used in this Code that are not included in the list of definitions in Articles 1.4.1.2., 1.4.1.3. and 1.4.1.4. and are not defined in another provision of this Code shall have the meanings that are commonly assigned to them in the context in which they are used, taking into account the specialized use of terms by the various trades and professions to which the terminology applies.

1.4.1.2. Defined Terms

[. . .]

Combustible means that a material fails to meet the acceptance criteria of CAN/ULC-S114, "Test for Determination of Non-Combustibility in Building Materials".

[. . .]

High hazard industrial occupancy (Group F, Division 1) means an *industrial occupancy* containing sufficient quantities of highly *combustible* and flammable or explosive materials to constitute a special fire hazard because of their inherent characteristics.

[. . .]

Industrial occupancy means the *occupancy* or use of a *building* or part of a *building* for the assembling, fabricating, manufacturing, processing, repairing or storing of goods or materials.

[. . .]

Major occupancy means the principal *occupancy* for which a *building* or part of a *building* is used or intended to be used, and is deemed to include the subsidiary *occupancies* that are an integral part of the principal *occupancy*. The *major occupancy* classifications used in this Code are as follows:

[. . .] (h) Group C - *Residential occupancies* [. . .]

(k) Group F, Division 1 - *High hazard industrial occupancies*,

(l) Group F, Division 2 - *Medium hazard industrial occupancies*

[. . .]

Occupancy means the use or intended use of a *building* or part of a *building* for the shelter or support of persons, animals or property.

[. . .]

Residential occupancy means an *occupancy* in which sleeping accommodation is provided to residents who are not harboured for the purpose of receiving special care or treatment and are not involuntarily detained and includes an *occupancy* in which sleeping accommodation is provided to residents of a *retirement home*.

[. . .]

3.1.3.2. Prohibition of Occupancy Combinations

(1) No *major occupancy* of Group F, Division 1 shall be contained within a *building* with any *occupancy* classified as Group A, B or C.

(2) Except as provided in Sentence (4) and Sentence 3.10.2.4.(9), not more than one *suite* of *residential occupancy* shall be contained within a *building* classified as a Group F, Division 2 *major occupancy*.

(3) A sleeping room or sleeping area shall not open directly into a room or area where food is intended to be stored, prepared, processed, distributed, served, sold or offered for sale.

(4) A Group F, Division 2 *major occupancy* is permitted in a *building* containing only *live/work units* if the *occupancy* is for the exclusive use of the occupants of the *live/work units*.

2. *CROWN LIABILITY AND PROCEEDINGS ACT, 2019*, SO 2019, C 7, SCH 17

S. 1 Definitions

1 (1) In this Act,

…

“proceeding” means an action or application for damages and any other civil proceeding in respect of damages to which the rules of court apply[.]

Acts not affected

6 This Act does not affect and is subject to,

(a) the *Expropriations Act*;

(b) the *Public Transportation and Highway Improvement Act*;

(c) the *Land Titles Act* and the *Registry Act*, in relation to claims against The Land Titles Assurance Fund;

(d) the *Motor Vehicle Accident Claims Act*;

(e) Parts V.1 and VI of the *Electricity Act, 1998*;

(f) the *Workplace Safety and Insurance Act, 1997*; and

(g) every statute that imposes a tax payable to the Crown or the Minister of Finance.

S. 14 Designation of Crown

In a proceeding to which the Crown is a party, the Crown shall be designated “Her Majesty the Queen in right of Ontario” or “Sa Majesté du chef de l’Ontario”.

S. 15 Service on the Crown

A document to be served personally on the Crown in a proceeding to which it is a party shall be served by leaving a copy of the document with an employee of the Crown at the Crown Law Office (Civil Law) of the Ministry of the Attorney General.

S. 18 Notice of claim for damages required

18 (1) No proceeding that includes a claim for damages may be brought against the Crown unless, at least 60 days before the commencement of the proceeding, the claimant serves on the Crown, in accordance with section 15, notice of the claim containing sufficient particulars to identify the occasion out of which the claim arose. 2019, c. 7, Sched. 17, s. 18 (1).

3. *EXPROPRIATIONS ACT*, RSO 1990, C E.26

Interpretation

Definitions

1 (1) In this Act,

"approving authority" means the approving authority as determined under section 5; ("autorité d'approbation")

"expropriate" means the taking of land without the consent of the owner by an expropriating authority in the exercise of its statutory powers; ("exproprier")

"expropriating authority" means the Crown or any person empowered by statute to expropriate land; ("autorité expropriante")

[. . .]

"Tribunal" means the Ontario Land Tribunal. ("Tribunal") R.S.O. 1990, c. E.26, s. 1 (1); 1992, c. 32, s. 11; 2002, c. 17, Sched. F, Table; 2002, c. 18, Sched. A, s. 9 (1); 2017, c. 23, Sched. 5, s. 28; 2021, c. 4, Sched. 6, s. 48 (1).

Application of Act

2 (1) Despite any general or special Act, where land is expropriated or injurious affection is caused by a statutory authority, this Act applies. R.S.O. 1990, c. E.26, s. 2 (1).

[. . .]

Approval of intention to expropriate

4 (1) An expropriating authority shall not expropriate land without the approval of the approving authority. R.S.O. 1990, c. E.26, s. 4 (1).

[. . .]

Approving authority

5 (1) Subject to subsections (4), (5) and (6), the approving authority in respect of an expropriation shall be the Minister responsible for the administration of the Act in which the power to expropriate is granted, except that,

(a) where a municipality or a local board thereof, other than an elected school board, expropriates lands for municipal purposes, the approving authority shall be the council of the municipality; and

(b) where an elected school board expropriates lands, the approving authority shall be the school board. R.S.O. 1990, c. E.26, s. 5 (1).

(2) Repealed: 1997, c. 31, s. 150.

[. . .]

Idem, other cases

(6) The approving authority in any case not provided for in this section shall be the Attorney General. R.S.O. 1990, c. E.26, s. 5 (6).

Notice of intention to expropriate

6 (1) Upon applying for an approval under section 4, an expropriating authority shall serve a notice of its application for approval to expropriate upon each registered owner of the lands to be expropriated and shall publish the notice once a week for three consecutive weeks in a newspaper having general circulation in the locality in which the lands are situate. R.S.O. 1990, c. E.26, s. 6 (1).

Notification for hearing

(2) Any owner of lands in respect of which notice is given under subsection (1) who desires a hearing shall so notify the approving authority in writing,

[. . .]

Hearings following notice under s. 6 (2)

7 (1) An approving authority that receives notice under subsection 6 (2) shall refer the matter to the Tribunal for a hearing by a single member of the Tribunal. 2021, c. 4, Sched. 6, s. 48 (3).

[. . .]

Decision of approving authority

8 (1) The approving authority shall consider every report it receives under subsection 7 (6) respecting a hearing, and shall,

(a) approve the proposed expropriation;

(b) not approve the proposed expropriation; or

(c) approve the proposed expropriation with such modifications as the approving authority considers proper, as long as the modifications do not affect the lands of a registered owner who was not a party to the hearing. 2021, c. 4, Sched. 6, s. 48 (3).

4. *FIRE CODE*, O REG 213/07

Section 1.4 TERMS AND ABBREVIATIONS

Defined terms

[. . .]

Approved means approved by the **Chief Fire Official**.

[. . .]

Building means any structure used or intended for supporting or sheltering any use or **occupancy**.

[. . .]

Chief Fire Official means the assistant to the Fire Marshal who is the Municipal Fire Chief or a member or members of the **fire department** appointed by the Municipal Fire Chief under Article 1.1.1.2. of Division C or a person appointed by the Fire Marshal under Article 1.1.1.1. of Division C.

[. . .]

Fire department means a group of firefighters authorized to provide fire protection services by a municipality, group of municipalities or by an agreement made under section 3 of the **Fire Protection and Prevention Act, 1997**.

[. . .]

High hazard industrial occupancy means an **industrial occupancy** that contains sufficient quantities of highly combustible and flammable or explosive materials that, because of their inherent characteristics, constitute a special fire hazard.

[. . .]

Major occupancy means the principal **occupancy** for which a **building** or part thereof is used or intended to be used, and includes the subsidiary **occupancies** that are an integral part of the principal **occupancy**.

[. . .]

Residential occupancy means an **occupancy** in which sleeping accommodation is provided to residents who are not harboured for the purpose of receiving special care or treatment and are not involuntarily detained.

[. . .]

Occupancy means the use or intended use of a **building** or part thereof for the shelter or support of persons, animals or property.

[. . .]

SECTION 2.1 GENERAL

Hazardous activities

2.1.2.2. Activities that create a hazard and that are not allowed for in the original design shall not be carried out in a **building** unless **approved** provisions are made to control the hazard.

Prohibited combinations of occupancies

2.1.3.1. A **building** containing a **major occupancy** that is classified as an **assembly occupancy**, a **care occupancy**, a **care and treatment occupancy**, a **detention occupancy** or a **residential occupancy** shall not contain a **major occupancy** that is classified as a **high hazard industrial occupancy**.

5. *Landlord and Tenant Board Rules of Procedure*

Effective September 1, 2021

Rule 1 - General Rules

[. . .]

Powers of the LTB

1.4 The LTB will decide how a matter will proceed, may reschedule proceedings on its own initiative, may make procedural directions or orders at any time and may impose any conditions that are appropriate and fair.

[. . .]

1.6 In order to provide the most expeditious and fair determination of the questions arising in any proceeding the LTB may:

a. waive or vary any provision in these Rules and may lengthen or extend any time limit except where prohibited by legislation or a specific Rule;

[. . .]

q. take any other action the LTB considers appropriate in the circumstances.

1.7 In addition to the powers provided for in the RTA, a LTB Hearing Officer may hold a hearing and make an order for:

a. any landlord application about arrears of rent,

b. any application where the applicant does not appear at the time scheduled for the CMH or hearing; or

c. any application where the parties have consented to the terms of the order.

Rule 16 - Request to Extend or Shorten Time

16.1 Except where an extension of time is prohibited by the RTA, the LTB may consider a request to extend or shorten time for doing anything if the request is:

a. in writing;

b. provides reasons in support of the request; and

c. filed as required by these Rules.

[. . .]

16.4 The following factors may be considered in deciding requests to extend or shorten any time requirement under the RTA or these Rules:

a. the length of the delay, and the reason for it;

b. any prejudice a party may experience;

c. whether any potential prejudice may be remedied;

d. whether the request is made in good faith; and

e. any other relevant factors.

16.5 A request to extend or shorten time may be decided without requesting submissions from other parties to the application.

16.6 Where a request to extend or shorten time is denied, the requesting party may not make further requests to extend or shorten the same time requirement, unless there has been a significant change in circumstances.

16.7 If the request to extend or shorten time is granted, the document is deemed to be received on the date on which the party filed it.

Rule 21 - Rescheduling and Adjournments

Rescheduling

21.1 Parties may agree to ask the LTB to reschedule a CMH or hearing prior to the scheduled date. The request to reschedule must be on consent of all parties and received by the LTB as soon as reasonably possible and **not less than 5 business days** before the scheduled date. Consent is required even where the notice of hearing and application have not been delivered to the responding parties.

21.2 A request to reschedule a CMH or hearing received by the LTB less than 5 business days prior to the scheduled date or not on consent of all the parties may be granted if a Member or Hearing Officer is satisfied that it was not reasonably possible for the party making the request to comply with Rule 21.1.

21.3 The party requesting rescheduling must file a list of the dates each party and any representative is unavailable to attend a CMH or hearing in the three-month period after the date of the scheduled date.

21.4 Parties must contact the LTB to learn whether the request is granted and, if granted, the date of the rescheduled CMH or hearing. If the request is denied, the CMH or hearing will proceed on the scheduled date.

21.5 If the LTB receives a request to reschedule a CMH, the LTB may instead of granting the request cancel the CMH and schedule a hearing.

21.6 A request to reschedule a CMH or a hearing for an application made under section 126 of the RTA will only be considered in exceptional circumstances.

Adjournments

21.7 A party may request an adjournment at the beginning of a CMH or hearing.

21.8 A CMH or hearing may be adjourned at the discretion of a Hearing Officer or Member where satisfied that an adjournment is required to permit an adequate hearing to be held. Relevant factors the LTB may consider in deciding the request include:

a. the reason for the adjournment and position of the parties;

b. the issues in the application;

c. any prejudice that may result from granting or denying the request;

d. the history of the proceeding including other adjournments or rescheduling; and

e. the LTB's obligation to adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter.

21.9 A request to adjourn a CMH or a hearing for an application made under section 126 of the RTA will only be considered in exceptional circumstances.

6. *PROCEEDINGS AGAINST THE CROWN ACT,* RSO 1990, C P.27

Notice of claim

7. (1) Subject to subsection (3), except in the case of a counterclaim or claim by way of set-off, no action for a claim shall be commenced against the Crown unless the claimant has, at least sixty days before the commencement of the action, served on the Crown a notice of the claim containing sufficient particulars to identify the occasion out of which the claim arose, and the Attorney General may require such additional particulars as in his or her opinion are necessary to enable the claim to be investigated.

[. . .]

Notice of claim for breach of duty respecting property

(3) No proceeding shall be brought against the Crown under clause 5 (1) (c) unless the notice required by subsection (1) is served on the Crown within ten days after the claim arose. R.S.O. 1990, c. P.27, s. 7.

7. *RESIDENTIAL TENANCIES ACT, 2006,* SO 2006, C 17

Interpretation

2 (1) In this Act,

"Board" means the Landlord and Tenant Board; ("Commission")

[. .]

Expeditious procedures

183 The Board shall adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter. 2006, c. 17, s. 183.

SPPA applies

184 (1) The *Statutory Powers Procedure Act* applies with respect to all proceedings before the Board. 2006, c. 17, s. 184 (1).

8. *RULES OF CIVIL PROCEDURE*, RRO 1990, REG 194

RULE 21: Determination of an issue before trial

Where Available

To Any Party on a Question of Law

21.01 (1) A party may move before a judge,

> (a) for the determination, before trial, of a question of law raised by a pleading in an action where the determination of the question may dispose of all or part of the action, substantially shorten the trial or result in a substantial saving of costs; or
>
> (b) to strike out a pleading on the ground that it discloses no reasonable cause of action or defence,

and the judge may make an order or grant judgment accordingly. R.R.O. 1990, Reg. 194, r. 21.01 (1).

(2) No evidence is admissible on a motion,

(a) under clause (1) (a), except with leave of a judge or on consent of the parties;

(b) under clause (1) (b). R.R.O. 1990, Reg. 194, r. 21.01 (2).

Rules of Pleading — Applicable to all Pleadings

Material Facts

25.06 (1) Every pleading shall contain a concise statement of the material facts on which the party relies for the claim or defence, but not the evidence by which those facts are to be proved. R.R.O. 1990, Reg. 194, r. 25.06 (1).

[. . .]

Claim for Relief

(9) Where a pleading contains a claim for relief, the nature of the relief claimed shall be specified and, where damages are claimed,

(a) the amount claimed for each claimant in respect of each claim shall be stated; and

(b) the amounts and particulars of special damages need only be pleaded to the extent that they are known at the date of the pleading, but notice of any further amounts and particulars shall be delivered forthwith after they become known and, in any event, not less than ten days before trial. R.R.O. 1990, Reg. 194, r. 25.06 (9).

Striking out a Pleading or Other Document

25.11 The court may strike out or expunge all or part of a pleading or other document, with or without leave to amend, on the ground that the pleading or other document,

(a) may prejudice or delay the fair trial of the action;

(b) is scandalous, frivolous or vexatious; or

(c) is an abuse of the process of the court. R.R.O. 1990, Reg. 194, r. 25.11.

9. *STATUTORY POWERS PROCEDURE ACT*, RSO 1990, C S.22

Notice of hearing

6 (1) The parties to a proceeding shall be given reasonable notice of the hearing by the tribunal. R.S.O. 1990, c. S.22, s. 6 (1).

Statutory authority

(2) A notice of a hearing shall include a reference to the statutory authority under which the hearing will be held.

Oral hearing

(3) A notice of an oral hearing shall include,

(a) a statement of the time, place and purpose of the hearing; and

(b) a statement that if the party notified does not attend at the hearing, the tribunal may proceed in the party's absence and the party will not be entitled to any further notice in the proceeding. 1994, c. 27, s. 56 (13).

Written hearing

(4) A notice of a written hearing shall include,

(a) a statement of the date and purpose of the hearing, and details about the manner in which the hearing will be held;

(b) a statement that the hearing shall not be held as a written hearing if the party satisfies the tribunal that there is good reason for not holding a written hearing (in which case the tribunal is required to hold it as an electronic or oral hearing) and an indication of the procedure to be followed for that purpose;

(c) a statement that if the party notified neither acts under clause (b) nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party will not be entitled to any further notice in the proceeding. 1994, c. 27, s. 56 (13); 1997, c. 23, s. 13 (13); 1999, c. 12, Sched. B, s. 16 (5).

Electronic hearing

(5) A notice of an electronic hearing shall include,

(a) a statement of the time and purpose of the hearing, and details about the manner in which the hearing will be held;

(b) a statement that the only purpose of the hearing is to deal with procedural matters, if that is the case;

(c) if clause (b) does not apply, a statement that the party notified may, by satisfying the tribunal that holding the hearing as an electronic hearing is likely to cause the party significant prejudice, require the tribunal to hold the hearing as an oral hearing, and an indication of the procedure to be followed for that purpose; and

(d) a statement that if the party notified neither acts under clause (c), if applicable, nor participates in the hearing in accordance with the notice, the tribunal may proceed without

the party's participation and the party will not be entitled to any further notice in the proceeding. 1994, c. 27, s. 56 (13).

[. . .]

Time frames

16.2 A tribunal shall establish guidelines setting out the usual time frame for completing proceedings that come before the tribunal and for completing the procedural steps within those proceedings. 1999, c. 12, Sched. B, s. 16 (6).

[. . .]

Control of process

25.0.1 A tribunal has the power to determine its own procedures and practices and may for that purpose,

(a) make orders with respect to the procedures and practices that apply in any particular proceeding; and

(b) establish rules under section 25.1. 1999, c. 12, Sched. B, s. 16 (8).

Rules

25.1 (1) A tribunal may make rules governing the practice and procedure before it. 1994, c. 27, s. 56 (38).

ELSIE KALU Plaintiff	and	HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ONTARIO Defendant	Court File No. CV-21-00000074-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings commenced at Cayuga

FACTUM OF THE MOVING PARTY
(Motion Returnable September 22, 2023)

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