

**SUBMISSIONS TO THE STANDING COMMITTEE ON SOCIAL POLICY**

**RE: BILL 171, AN ACT TO ENACT THE BUILDING TRANSIT FASTER ACT, 2020**

**Submitted by:**

**Mary Anne McKellar**

**Christina Ayllon**

## **Main Conclusion and Recommendation**

We urge the Committee to recommend that Bill 171 be amended to remove Part III, which is of questionable legal validity, and which unjustifiably eliminates the right of property owners to question in a hearing the basis on which their property is earmarked for expropriation, with no evidence whatsoever that permitting such hearings would delay the completion of the transit projects, but where their elimination would prevent public scrutiny of controversial decisions surrounding the design and location of the Ontario Line (and the other transit projects), and would insulate the government decision makers from political accountability for those decisions.

## **Background & Scope**

We are homeowners who live on Booth Avenue in Toronto. Our property faces Jimmie Simpson Park and community centre. Jimmie Simpson Park is bounded to the west by the easternmost side of the existing fenced-in railway lands (“the Existing Corridor”) used by GO Transit and by Via Rail. The Ontario Line, which is one of the transit projects that is subject to Bill 171, is proposed to run from the Ontario Science Centre to Ontario Place. Much of it is an underground subway, but it is slated to run overground at elevation from Gerrard Street/Carlaw to just west of the Don River on or adjacent to the Existing Corridor. We will refer to this portion of the Ontario Line as the Riverdale/Riverside section. It is also proposed to run overground in the Thorncliffe Park and Flemingdon Park area and for a short distance in the west end of the City, where it connects to the GO train station at Exhibition, but our

submissions do not relate to any impacts on those neighbourhoods, with which we are not familiar.

### **Our Neighbourhood**

The location and the design of the Ontario Line in general, and of the Riverdale/Riverside section in particular are controversial. This is one of oldest built areas of the City, and it is dense mix of Victorian row houses and factories that have been repurposed to house a variety of small businesses or transformed into residential apartments, as well as new mixed-use condominium projects. The unique historical nature of the area has been recognized by its designation as a Heritage Conservation District. Small row houses in this area commonly sell for well in excess of \$1M. The Existing Corridor is in close proximity to many of the dwellings and businesses that occupy these historic properties, as well as bounded by existing parkland or other public facilities. Considering only that portion with which we are most familiar – the Existing Corridor as it runs from Logan/Dundas south to Eastern/Saulter -- four parks (Jimmie Simpson, Bruce MacKey, McGee, and Saulter Street) and two community centres (Jimmie Simpson and Macreadie (part of Ray McLeary Towers) abut it. These parks and community centres offer the following amenities: playgrounds, a wading pool, a baseball diamond, a soccer pitch, basketball courts, tennis courts, a swimming pool, a skating rink, and a walking path. All are heavily used. More than 60 houses are located within 30 metres of the existing corridor, as are two seniors' residences (The Mustard Seed and Ray McLeary Towers).

The Riverdale/Riverside section of the Ontario Line as proposed would provide for connections to the TTC's Gerrard/College streetcar service and its Queen streetcar service, as well as to the Pape bus (at Carlaw Gerrard). These connections would require passengers to ascend/descend

from one vehicle to another because of the elevation of the Riverdale/Riverside section which crosses all streets in the area via bridges built to accommodate the width of the Existing Corridor.

The City of Toronto's proposed a Relief Line similar to the Ontario Line, but proposed that in the Riverdale/Riverside area it would run entirely underground two blocks to the east of the Existing Corridor, down Carlaw Avenue to Eastern. We believe that the City's Relief Line would better serve the needs of the residents of east Toronto, and would be less disruptive of established communities, both in its construction and operation. We appreciate that we have not been offered this opportunity to make submissions in order to express our views on the design and location of the Ontario Line, but this context is essential to appreciating why we are opposed to the inclusion of certain provisions in Bill 171.

### **The *Expropriations Act* and Bill 171**

Our principal concern with respect to Bill 171 are the provisions that purport to render inapplicable certain sections of the *Expropriations Act* ("the Act"). The scheme of the Act that is relevant for our purposes can be described briefly. It is an act that is binding on the Crown (section 3). The Act (section 5) provides certain government actors (the province, municipalities and their boards, and school boards) with the authority to approve the expropriation of private property. It is very clear that *only* those government actors may exercise that authority, and they may only do so after providing the property owners with written notice (section 6(1)) of their intention to do so. Property owners may request a hearing within 30 days of receiving notice of the proposed expropriation (section 6(2)). The hearing is conducted pursuant to

section 7 of the Act by an Inquiry Office who is charged with determining on the evidence whether the proposed expropriation is “fair, sound and reasonably necessary”. The government actor must set out in writing in advance of the hearing, its grounds for the expropriation, and must make available for inspection all the documents and reports on which it relies to support its decision. There is an explicit authority in the Act for the Inquiry Officer to combine hearing requests and deal with multiple objections in a single hearing, as for example where multiple homeowners face an expropriation notice in respect of the same project. The hearing process must permit the calling and cross-examining of witnesses. The Inquiry Officer may recommend that the proposed expropriation is not defensible, taking into account among other things, historical or other characteristics of properties that may be injuriously affected by it. The Inquiry Officer must issue a written report including a summary of the parties’ positions and arguments, the factual findings, and the reasons for the recommendation or opinion. Notwithstanding that the Inquiry Officer may recommend that the expropriation not proceed, the government actor may nevertheless choose to proceed, but it must set out in writing its reasons for doing so, and provide them to the affected parties. The Act contemplates that, in “special circumstances”, the Lieutenant Governor in Council may dispense with the hearing, but notice of such decision must be provided to the affected persons. Finally, the Act contains what is known as a paramountcy provision (section 2), stating that its terms apply regardless of the provisions of any other Act, and that in the case of a conflict with another Act, its provisions prevail:

2.(1) Despite any general or special Act, where land is expropriated or injurious affection is caused by a statutory authority, this Act applies.

(2) The provisions of any general or special Act providing procedures with respect to the expropriation of land or the compensation payable for land expropriated or for injurious affection that refer to another Act shall be deemed to refer to this Act and not to the other Act.

(3) This Act does not apply to the use of or injury to land authorized under the Drainage Act for the purposes of a drainage works constructed under that Act or to any proceedings in connection therewith.

(4) Where there is conflict between a provision of this Act and a provision of any other general or special Act, the provision of this Act prevails.

PART III of Bill 171 deals with expropriation. It provides as follows:

44 (1) Subsections 6 (2) to (5), section 7 and subsections 8 (1) and (2) of the Expropriations Act do not apply to an expropriation of land, within the meaning of that Act, if,

(a) the land is at least partly on transit corridor land; and

(b) the expropriation is for a priority transit project.

This section prevails

(2) Subsection (1) of this section applies despite subsection 2 (4) of the Expropriations Act.

45 (1) The Minister may establish a process for receiving comments from property owners about a proposed expropriation and for considering those comments.

(2) The Minister may establish the process by regulation or by another means.

The actual scope of the above provision is not at all clear because Bill 171 contains no definition of “transit corridor” other than to say it is what the Minister will designate it to be. What is clear is that the Existing Corridor is not sufficiently wide to accommodate the additional tracks that the Ontario Line will require, so that some portion of the existing Riverdale/Riverside residential properties, parklands and community centres will be on “transit corridor land”. Bill 171 also restricts certain activities within 30 metres of the transit corridor, which is why these

submissions have detailed the nature or the properties or amenities within 30 metres of the Existing Corridor.

Property owners and community residents who might be injuriously affected by an intended expropriation to create the transit corridor will receive notice of the intended expropriation under section 6(1) of the Act. Bill 171, however, purports to deprive them of the rest of the safeguards in section 6: the right to request a hearing, and the accompanying provisions respecting the conduct of that hearing and the communication of the conclusions reached.. We pause to note that it is not at all clear that Bill 171 can actually effect this result, given the Act's paramountcy clause, and the fact that section 2(2) (the right to a hearing in accordance with the Act's procedures regardless of what any special statute might say) continues to apply. That issue might well be expected to form the basis of a legal challenge to Part III of Bill 171, but for the purposes of this submission we will assume that Part III is valid legislation.

The construction of the Ontario Line will take many years, at least until 2027 according to the latest projections. Metrolinx is still securing core samples from the Riverdale/Riverside neighbourhood to determine the stability of the ground on which the transit lines and expanded bridges may be built. There is no reasonable justification on the basis of "building transit faster" for a blanket denial of the right to a hearing for those affected by an expropriation to establish the "transit corridor", nor indeed to have the right to any input, since the Minister "may" (and conversely "may not") even establish a process for receiving "comments". An Inquiry Officer has the tools necessary in the Act, and as a consequence of the

generally-recognized ability to control one's own proceeding, and pursuant to the *Statutory Powers Procedure Act* to expedite the hearing process by engaging in case management, requiring the exchange of written briefs and by combining hearings to deal with all similarly situated applicants for a hearing in a single proceeding. Further, the Attorney General has the authority under the Act to appoint as many Inquiry Officers as might be necessary to deal with the hearing volume. In short, it is entirely within the government's control to provide the necessary resources and tools to permit hearings to proceed expeditiously so as not to unduly delay transit construction. As a last resort, in truly "special circumstances", that is on a case by case basis, there is the possibility of dispensing with a hearing.

In consideration of the observations we have made above, our view is that the proffered justification (building transit faster) for a blanket elimination of the right to expropriation hearings is not compelling, even if it is legally valid. It is hard to resist the conclusion that it is intended to achieve what will clearly be its effects: to insulate the decision making around the design and location of the Ontario Line (and the other transit projects to which Bill 171 applies) from public scrutiny; and to protect the government from political accountability and the need to justify proceeding with what might potentially (in whole or in part) be found to be an unreasonable or unfair basis for expropriation.

With respect to the Riverdale/Riverside section of the proposed Ontario Line, property owners entitled to a hearing might well raise as issues and expect answers to the following:

- Why is the size of the designated “transit corridor” (whenever it is determined) necessary to the project?
- Why is the Riverdale/Riverside section of the Ontario Line routed through the very middle of a densely populated residential neighbourhood and adjoining parkland instead of two blocks to the east down a wide street corridor, given the identical transit connections would be available there?
- How does the direct financial cost of putting the Ontario Line underground compared to the cost of building it at elevation, considering the cost of rebuilding bridges and the costs of compensating property owners at fair market value for expropriated property, and compensating others whose use of their property may be injuriously affected?
- Can the loss of historical or architecturally-significant built structures be reasonable or fair, and how can it ever be truly compensated?
- Can the unnecessary loss (or partial loss) of public spaces such as parks and community centres be reasonable or fair when they could be saved by building the transit line two blocks east, and how can such losses ever be truly compensated when parkland is scarce commodity?
- If a stated goal of effective transit (as Metrolinx has claimed) is to make passenger transfers from one vehicle to another seamless by allowing them to occur without the need to walk far or change levels, why is an elevated line preferable to an underground one given neither is at grade?
- How does the CoVid-19 pandemic affect anticipated transit use, and should consideration not be given to also facilitating pedestrian and bicycle commuting along

transit lines by, retaining parkland and other public spaces, creating multi-use pathways in the Existing Corridor, and burying the Ontario Line and/or moving it to the street corridor on Carlaw?

## **Conclusion**

We urge the Committee to recommend that Bill 171 be amended to remove Part III, which is of questionable legal validity, and which unjustifiably eliminates the right of property owners to question in a hearing the basis on which their property is earmarked for expropriation, with no evidence whatsoever that permitting such hearings would delay the completion of the transit projects, but where their elimination would prevent public scrutiny of controversial decisions surrounding the design and location of the Ontario Line (and the other transit projects), and would insulate the government decision makers from political accountability for those decisions.

Finally, as a noteworthy mention, it is unfair to the residents of Riverdale/Riverside whose lives will be significantly impacted by the Ontario Line, but who do not have the legal training to fully understand the true impact of Bill 171. As a result, it is certain that many are at a loss in how to proceed to truly voice their position with respect to Bill 171, although they would be able to raise their concerns about the transit project itself in a hearing process. They would ask the government to justify why it seeks to destroy outdoor space for the people of Toronto to enjoy in an urban setting when there is a solution (build underground or build on Carlaw) that can meet both the objective of preserving public space and providing relief from transit congestion.

We look forward to a thorough consideration of these submissions. Thank you for the opportunity to make them.

Thank you,

Mary Anne McKellar

Christina Ayllon

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