

# The Inquiry Process

Phong Phan and Alan Hincks

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# Inquiries

sections 10 – 17 of the *Expropriation Act*

Linear Developments

The Appointment Process

A Hearing of “Necessity”

The Hearing process

# What is the inquiry process?

Per s. 10(2), an owner whose land is included in an expropriation notice (Form 1) can request a public inquiry.

The purpose of the inquiry is to determine whether the proposed expropriation is “necessary” to achieve the objectives of the expropriation.

# Note

Per s. 14(2), the necessity for the project or work for which the expropriation is sought must not be considered at the inquiry.

# Who are the parties?

10(2) – The owner whose land is included in an expropriation notice and makes the request.

12(3) – The participants in the inquiry are:

- the expropriating authority
- every person who served a notice of request (and not refused)
- all persons who are added under section 15 (a).

15(a) – An inquiry officer may add as a participant any person who the inquiry officer considers would be entitled to request an inquiry under section 10(2).

# Form 2 Requirements

Per s. 10(3)(b), the Notice of Request for Inquiry must contain:

- the name of the person making the request
- their address
- a description of their interest in the land to be expropriated
- their reasons for requesting an inquiry

# Form 2

## *Expropriation Act*

[am. B.C. Reg. 96/2005, s. 5.]

(Section 10 (3) )

### *Notice of Request for Inquiry*

TO: The Attorney General and Minister Responsible for Treaty Negotiations

AND TO: *[Name and address of Expropriating Authority]*

TAKE NOTICE that *[Name, address]*, being an owner whose land is included in an Expropriation Notice dated *[month, day]*, 20....., hereby requests that the minister appoint an inquiry officer to conduct an inquiry under section 10 of the *Expropriation Act*.

AND FURTHER TAKE NOTICE that the particulars in support of this request are as follows:

1. *[Legal description of land to be expropriated.]*
2. *[Describe interest owner has in land to be expropriated.]*
3. *[State reasons for requesting inquiry.]*

NOTE: This notice must be served on the minister and the expropriating authority within 30 days after the date the Expropriation Notice was served on the owner.

DATED at ..... this ..... day of ....., 20..... .

*[Name of Owner or Agent]*

*[Address]*

*[Telephone Number]*

By: .....  
*(Authorized Signatory)*

# The “Linear Development” Exception

No public inquiry is available where the expropriation is for the construction, extension or alteration of a “linear development”.



What is a “linear development”?

Section 10(1)

“Linear Development” includes a highway, a railway, a hydro or other electric transmission or distribution line, a pipeline or a sewer, water or drainage line or main.







# Why is there exception?

- This exception exists to prevent a single “owner” along an linear project from holding up the process.
- Authorities were concerned that requests along linear developments would cause additional expense and delay for projects for which no other route was possible (paraphrased from Hansard).
- Typically, a plain reading of the Form 1 is sufficient to determine whether the proposed expropriation relates to a linear development
- In some cases, however, it can be ambiguous...

# Atco Lumber Ltd. v. Kootenay Boundary (Regional District), 2014 BCSC 524 (BCSC)

The Minister concluded that an access road to a water treatment plant formed part of a linear development.

At para. 53, the Court noted that the legislation is clear that unless the request pertains to the construction, extension or alteration of a linear development, the Minister must appoint an inquiry officer. This logically and necessarily implies that the Minister must determine whether the exception applies.

At para. 66, the Court affirmed that the Minister's conclusion was "a possible and acceptable outcome, defensible in respect of the facts and law."

Is this a linear development?



## *Fatt and Rogers v. MoTI,* 1992 ECB Control No.: 14/92

The remaining words in article 3, ". . . and other works of public utility and convenience" in my opinion relate to those structures that are and will be an integral part of the highway system.

The interpretation of the word "highway" . . . is sufficiently wide to accommodate the underpinnings for any structure that is contemplated to span a highway including a walkway or other public way, and specifically, a pedestrian overpass.

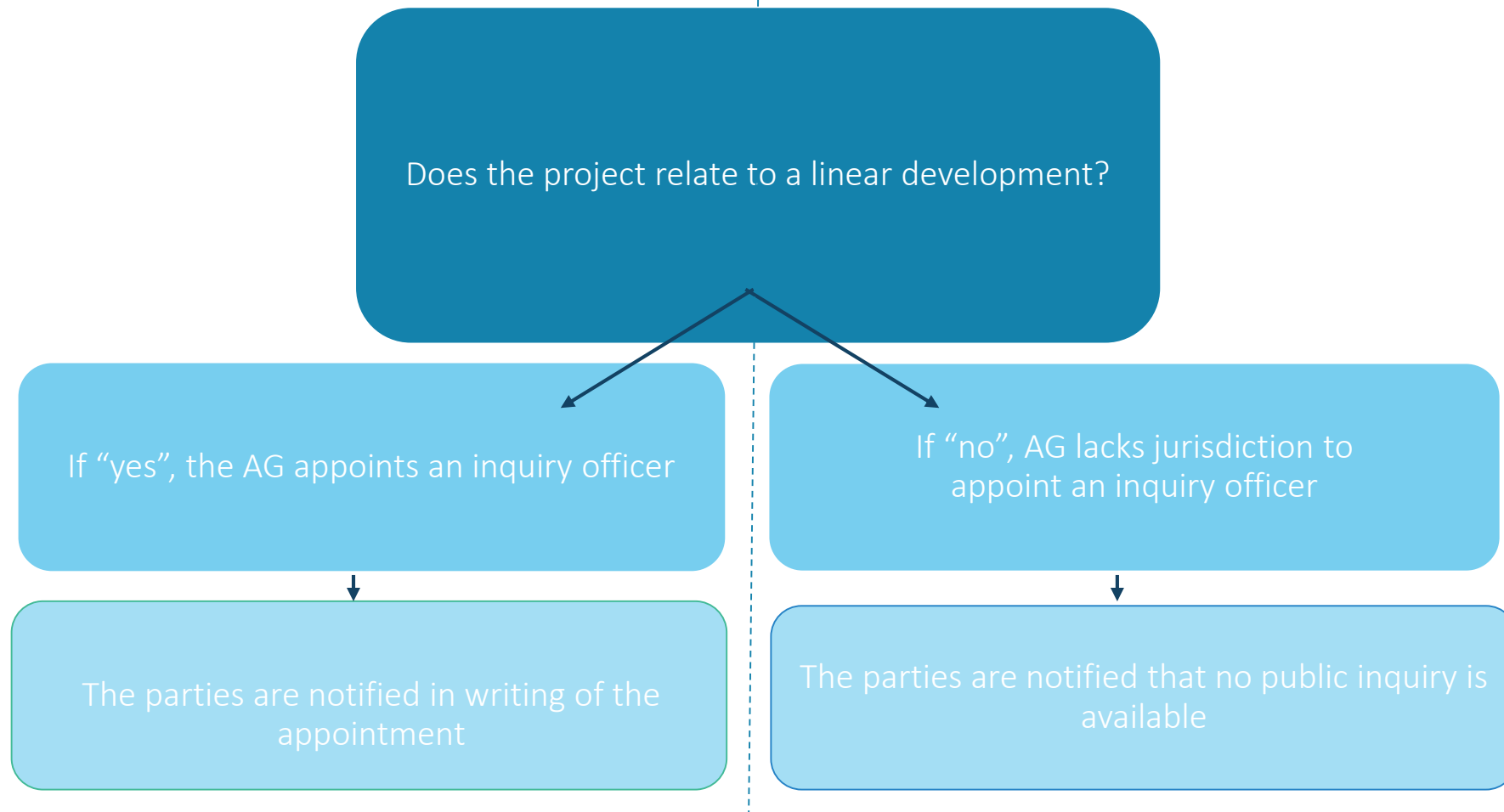


# What if there is ambiguity?

*Pacific Forestry Products Ltd. v. BC (1994)*, 53 LCR 198 (BCECB) – where the expropriation notice was not clear, the Expropriation Compensation Board had jurisdiction to initiate an inquiry process, receive evidence and make a decision based on that evidence.

Post-ECB...

*Atco Lumber* – Minister (AG) has jurisdiction to determine the issue. In this case, the Minister invited submissions from the parties, and then made a determination.



# General Process

# What is the inquiry officer's mandate?

## Section 14

To determine whether the proposed expropriation is necessary to achieve the objectives of the expropriating authority with respect to the proposed work or project, or whether those objectives could be better achieved by:

- An alternate site; or

- Varying the amount of land to be taken of the nature of the interest in the land to be taken

NOTE: the necessity of the project or work is not to be considered

# Powers and duties of the Inquiry Officer

Section 11 – refuse to hold an inquiry if

- The request is frivolous, vexatious or not made in good faith
- The request is based solely on a claim for compensation
- The requestor previously had the “substantially the same” opportunity to object to the expropriation

Section 14(3) – combine 2 or more inquiries that are related

Section 15 –

- Add participants
- Inspect land

# The Hearing

*Viva voce* evidence vs. written submissions

Time to commence hearing – section 12(2).

Notification of other parties – all those served with the expropriation notice (sections 12(2) and 6(1)(a)).

“Necessity” of the expropriation in section 14(1) has been held to be limited to an “... examination of evidence which satisfies it [the Inquiry] that the specific alternatives in sections 14(1)(a) [alternative site] and/or (b) [varying amount of land taken or nature of interest to be taken] would better achieve the Respondent’s objectives”.

Onus at the hearing – the decisions have held that there is a preliminary onus on the expropriating authority to adduce the objectives of the project in question, so the inquiry can properly analyze the “necessity” of the expropriation in light of the alternatives in sections 14(1)(a) and/or (b). In order to recommend against the expropriation, the Applicant has a tactical burden to adduce evidence that there are “better” alternatives.

# Extensions of Time

## Section 17

- Minister can extend the time for the deadline of the inquiry officer's written report

## Section 50 – court application required to extend time for

- Service of notice of request for inquiry
- Appointing an inquiry officer
- Setting the date for the inquiry
- The adjournment period for adding a participant
- The deadline for the written report (which the Minister can also extend)

# The Inquiry Officer's Report

Section 17 requires a written report from the Inquiry Officer setting out findings of fact and recommendations with respect to the proposed expropriation.

Within 30 day of the first day of the inquiry, unless extended, the report must be submitted to the approving authority and every participant.

# A Recommendation to the Approving Authority

Section 18 requires the approving authority to “consider” the report of the Inquiry Officer before approving, approving with modifications or rejecting the expropriation.



# Costs

Section 45(1) empowers an Inquiry Officer to require the expropriating authority to pay “reasonable costs” incurred by the participant for the purpose of participating in the inquiry.

Decisions where costs have been considered:

- *EL & EL Investments v Surrey School Board (Inquiry Officer and ECB)*
- *Sun Wave v. Prince Rupert (Inquiry Officer).*



Questions?