

British Columbia Expropriation Association

Who is an “Owner”?

Annual Conference

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Authorities

- ❑ *Actton Petroleum Sales Ltd. v. British Columbia (Min. of Trans. & High.)*, 1996 CarswellBC 3075 (BCECB)
- ❑ *Actton Petroleum Sales Ltd. v. British Columbia (Min. of Trans. & High.)*, [1998] B.C.J. No. 1244 (BCCA)
- ❑ *Al's Auto Wrecking Ltd. v. Surrey (City)*, 2006 CarswellBC 646 (BCECB)
- ❑ *Anderson v. British Columbia (Min. of Trans. & High.)*, 1995 CarswellBC 2585 (BCECB)
- ❑ *British Columbia v. Schneider*, [1996] B.C.J. No. 1977 (QL) (BCCA)
- ❑ *Captain's Square Holdings Ltd. v. British Columbia (Min. of Trans. & High.)*, 1997 CarswellBC 3149
- ❑ *Daflos v. Maple Ridge - Pitt Meadows School District No. 42*, 2001 CarswellBC 3267
- ❑ *Douglas Lake Cattle Co. v. British Columbia*, 1990 CarswellBC 1486 (BCSC), aff'd CarswellBC 1485 (BCCA)
- ❑ *El & El Investments Ltd. v. Surrey School District No. 36*, 1995 CarswellBC 2574
- ❑ *Holdom v. British Columbia Transit*, 2006 BCCA 282

Authorities cont.

- ❑ *Langdale Landing Properties Ltd. v. British Columbia*, 2003 CarswellBC 3556 (BCECB)
- ❑ *Linear Construction Corp. v. British Columbia (Min. of Trans. & High.)*, 1997 CarswellBC 2874 (BCCA)
- ❑ *M.C.A. Land Development Corp. v. British Columbia (Trans. & Infra.)*, 2013 BCSC 1625
- ❑ *Maddocks v. Surrey (City)*, 2001 CarswellBC 3278 (BCECB)
- ❑ *McPhail's Equipment Co. v. Surrey (City)*, 1995 CarswellBC 2593 (BCCA)
- ❑ *Pentecostal Assemblies of Canada v. British Columbia (Min. of Trans. & High.)*, 1999 CarswellBC 1710, 66 L.C.R. 275 (BCECB)
- ❑ *Van Kam Freightways Ltd. v. Kelowna (City)* 2007 BCCA 287
- ❑ *Vancouver Marina (1971) Ltd. v. British Columbia (Min. of Trans. & High.)*, 2000 CarswellBC 2883 (BCECB)

- ❑ Coates, John A., Stephen F. Waque, *New Law of Expropriation*, Carswell
- ❑ Warner La Forest, Anne, *Anger & Honsberger Law of Real Property*, 3d ed, Canada Law Book

"Owner" Defined

- *Expropriation Act*, RSBC 1996 c. 125

"**owner**", in relation to land, means

(a) a person who has an **estate, interest, right or title** in or to the land including a person who holds a subsisting judgment or builder's lien, ...

or

(c) a person who is in **legal possession or occupation** of land, other than a person who leases residential premises under an agreement that has a term of less than one year

Concept 1 – “Estate, Interest, Right, Title”

- Freehold Estates:
 - Fee Simple
 - Life Estate
 - with reversionary or remainder interest

- Leasehold Estates:
 - Term of Years
 - Year to Year Tenancy
 - Tenancy at Will

- Legal & Equitable Interests – e.g. trusts

Concept 1 – “Estate, Interest, Right, Title”

- Leases: subpara. (a) or (c)
 - Interest in land?
 - Personal contracts – “chattels real”

- If interest in land then subpara. (a)

- If not an interest in land then subpara. (c) by virtue of possession or occupation
 - Any gaps in application of subpara. (c)?

Concept 1 – “Estate, Interest, Right, Title”

- Co-Ownership Interests
 - Joint Tenancy
 - Tenancy in Common

Concept 1 – “Estate, Interest, Right, Title”

- Incorporeal and Other Interests:
 - Covenants
 - Licences
 - Incorporeal Hereditaments
 - Easements
 - Rights of Way
 - *Profits à Prendre*
 - Rent Charge

Concept 2 – “Legal Possession/Occupation”

- *Douglas Lake Cattle Co. (BCSC), aff’d (BCCA)*
 - Area subject to a Crown grazing licence
 - Non-exclusive by its terms
 - Staging area for highway construction
 - Crown admission in parallel compensation proceedings re: “owner” under s. 1

Concept 2 – “Legal Possession/Occupation”

- *Douglas Lake Cattle Co. cont.*
 - Para. 17: BCSC reviewed definition
 - “Owner” not requiring exclusive occupancy
 - BCCA:
 - Affirmed BCSC
 - Chose to make no comment re: *Expropriation Act*

Concept 2 – “Legal Possession/Occupation”

- *Linear Construction Corp. (BCCA)*
 - Linear/landowner contract - build multi-resid. units
 - Land then expropriated
 - CBL failed - filed after the Notice of Expropriation
 - Linear sought declaration it was “owner”
 - ECB held Linear an “owner” under subpara. (c)

Concept 2 – “Legal Possession/Occupation”

- *Linear Construction Corp. cont.*
 - ECB overturned by Court of Appeal
 - Linear’s rights found in the construction contract
 - Sufficient possession to complete work
 - No exclusive possession

Concept 2 – “Legal Possession/Occupation”

□ *Linear Construction Corp. cont.*

- Para. 25 - "legal possession or occupation of land" in subpara. (c):

“... something more than a mere right to be on the land ... or a degree of control over it ... [requires] ... entitlement ... close or akin to an interest in land ... a person cannot be said to be in legal possession or occupation within the meaning of the Act unless ... enjoy some benefit derived from the property itself.”

- Para. 26 – Linear’s benefit was from contract – not the land

Concept 2 – “Legal Possession/Occupation”

- *Actton Petroleum Sales Ltd.* (BCECB)
 - Occupier of the subject property had irrevocable licence
 - Para. 34:
 - Interests, other than leasehold interests, may fall under subparagraph (c)
 - Can include contractual interests, e.g. irrevocable licences

Concept 2 – “Legal Possession/Occupation”

- *Al's Auto Wrecking Ltd.* (BCECB)
 - Al's Auto Wrecking owned the properties
 - A-Central (related company) used properties too
 - A-Central had no formal ownership interest
 - No written agreement
 - Irrevocable licence nonetheless

- Held: A-Central an “owner” under subpara. (c)

Selection of Cases

Owner/Tenant Viewed as One

- *Actton Petroleum Sales Ltd.* (B.C.C.A.)
 - Irrevocable licence as an interest in land
 - “Group enterprise theory”?
 - Lifting corporate veil

Owner/Tenant Viewed as One cont.

- *M.C.A. Land Development Corp.* (BCSC)
 - Lessee as "owner"
 - Two owners but business in conjunction - intertwined
 - *Actton* distinguished?
 - Owner's recovery of expenses relating to relocating a lessee on to replacement property

Owned & Leased Parcels Viewed as One

□ *Holdom* (BCCA)

- Chevron fee simple parcel
- Chevron adjacent leasehold interest
- Treated as unified ownership

Trust Arrangement & Owner cont.

- *Pentecostal Assemblies of Canada* (BCECB)
 - Occupier = North Douglas Pentecostal Tabernacle occupied [NDPT]
 - Registered owner = Pentecostal Assemblies of Canada Beneficial [PAOC]
 - ECB held PAOC owner but any award in trust for NDPT
 - Franchisee/franchisor analogy and business loss

Unregistered Interests

- *Van Kam Freightways Ltd.* (BCCA)
 - Owner of unrecorded leasehold interest not given notice of expropriation & no advance payment
 - Contested the expropriation on that basis
 - Among other things, CA held:
 - Time limits for claims only where advance payment made

Unregistered Interests

- *Van Kam Freightways Ltd. cont.*
 - If potential unrecorded owner – entitlement issues:
 - Expropriating Authority can apply to court for directions
 - Expropriating Authority can request information from any owner
 - CA rejects submission that only recorded owners entitled to advance payment and subsequent notices

Unregistered Interests

□ *Schneider* (BCCA)

- Unregistered beneficial owner not served with notice of expropriation
- No requirement to serve unregistered owners

Unregistered Interests cont.

□ *Maddocks* (BCECB)

- Unregistered lease of the subject property was valid
- Constituted an interest in the subject property
- Actual occupation so subpara. (a) and (c) of the definition of "owner" applied
- Lease was for an initial term of two years with automatic renewals

Unregistered Interests cont.

- *Captain's Square Holdings Ltd.* (BCECB)
 - Subdivision of parcel but same ownership
 - No registered access easement
 - ECB found implied easement in favour of the claimant
 - No possessory interest but there was an interest in land qualifying the claimant under subparagraph (a) of the definition of "owner"

Profit à Prendre

- *McPhail's Equipment Co.* (BCCA)
 - *Profit à prendre* an incorporeal hereditament
 - An interest in land

- *Langdale Landing Properties Ltd.* (BCECB)
 - *Profit à prendre* is a legal interest in land

Licences/Occupation/Possession cont.

- *Anderson* (BCECB)
 - Restaurant operator occupying pursuant to a lease
 - No express right of use to the parking lot
 - Not an "owner" of the affected parking lot

Licences/Occupation/Possession cont.

- *Vancouver Marina (1971) Ltd.* (BCECB)
 - Claimant occupied a waterlot pursuant to a sub-lease
 - Formalities of subletting not observed
 - Claimant still an “owner”

"Residential Leases < 1 Year"

- *El & El Investments Ltd.* (BCECB)
 - Residential agreement for a 1 year term informally renewed annually for 20 years
 - Subpara. (c) exclusion n/a to husband (original tenant)
 - Wife not an "owner" – rights obtained by contract – not as party to original agreement

Security Interests

- *Daflos* (BCECB)

- Holder of a third mortgage registered against title is an "owner"