BRITISH COLUMBIA EXPROPRIATION ASSOCIATION

2003 FALL SEMINAR

NOTEWORTHY DECISIONS – 2002/2003

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Decisions

Rock Resources Inc.* v. *HMTQ, 2003 BCCA 374 (June 3, 2003)

A far-reaching decision, by far the most significant of the past year. The case involved mineral claims (not Crown granted) near Nakusp. In 1995, the *Park Amendment Act (1995)* was passed by the B.C. Legislature. The Act created the Goat Range Park and in doing so, prevented the Plaintiff from exploiting some of its mineral claims. The Act was silent as to compensation. In earlier decisions, similar mineral claims had been characterized as chattels, and no compensation had been found payable if they were "taken" by the imposition of a park.

Despite vigorous argument by the Plaintiff and lengthy analysis, the Court ruled that the mineral claims were, as found before, chattels. The Court, however, went on to rule that the passage of the *Park Amendment Act (1995)* constituted a taking of the mineral claims and, furthermore, that compensation for this taking was payable by the Crown.

In reaching its decisions, the Court made a number of novel rulings:

1) there is a presumption that compensation is payable for the taking of a chattel;
2) to negate that presumption, clear contrary intention is required in the legislation;
3) legislation can effect a compensable taking, even where that legislation is silent on compensation;
4) compensation for takings of mineral claims is to be based on "the value of rights lost" and determined by the E.C.B.

There was a dissent – by Huddart J.A. She did not accept that the Court could create a right to compensation where the legislature did not evince any intention to compensate for the taking or provide a mechanism for doing so.

415528 B.C. Ltd.* v. *Greater Vancouver Sewage and Drainage District, (2003) 79 L.C.R. 81 (December 19, 2002)

This compensation claim arose from a 1994 taking from single family development land for a statutory right of way (SRW) for a pre-existing sewage interceptor. The land was

ripe for subdivision and was subdivided into 30 lots in 1994/95. The claimant then built houses on the lots and sold them.

The Board concluded that:

1) there was compensable delay totaling four months attributable to the taking and presence of the SRW;
2) without the SRW, 31 lots could have been developed;
3) for the purposes of section 31(1) of the *Expropriation Act* and the rule in *Horn* v. *Sunderland Corporation*, a 31-lot subdivision is not a different highest and best use from a 30-lot subdivision;
4) there were extra administration and management caused by the taking of $20,000 – an invoice for $71,500 which was presented to the Board for these alleged expenses was viewed by the Board as raising "serious concerns" and being "grossly excessive";
5) the before and after method using subdivision development approach was appropriate to value the loss in land value;
6) the loss in land value, which incorporated the delay and extra administrative and management costs, totaled $165,073;
7) in addition, as this was a completed development and results were known, loss in profit from the eight affected lots was awarded in the amount of $43,703.

Benny Kwun Construction Ltd.* v. *City of Richmond, E.C.B. 11/98/239 (June 16, 2003)

This was a total taking of land improved with a two-storey commercial building. The appropriate valuation method was the income approach. A practice tip for appraisers – it is not satisfactory simply to accept stated capitalization rates in listing descriptions – it is necessary to verify data with individuals involved in the transactions.

The claimant also claimed that three properties it had purchased were replacement properties and that it was entitled to direct transaction costs and property purchase tax in connection with these purchases. The Board concluded that only two of the properties were replacement properties for which compensation was payable. It based this finding on a comparison of the purchase prices for the replacement properties with the market value of the taken property.

The Board also awarded "extraordinary property management expenses" claimed in connection with the two replacement properties in the amount of $9,000 approximately.

Chivers* v. *HMTQ, E.C.B. 12/00/240 (August 12, 2003)

This claim arose from a road widening on the Yellowhead Highway north of Kamloops. A small strip was taken from a hobby ranch owned by Mr. and Mrs. Chivers. The value

of the land taken (and improvements on it) was about $11,000. This amount was paid by Highways and accepted by the claimants.

The hearing lasted eight days during which time the claimants advanced claims totaling just over $340,000. The claims were for injurious affection and for business loss in the operation of the ranch. With the exception of a somewhat questionable claim for additional fencing of $6,000, which was not advanced until the hearing and which Highways conceded, all claims were dismissed.

Highways made no advance payment in relation to the fencing – the claim was not advanced until the hearing. As a result of the award (for this claim) and the provisions of the Act concerning entitlement to costs, the Board awarded the claimants their costs.

Appeals

Campbell River Woodworkers' and Builders' Supply (1966) Ltd.* v. *HMTQ

The claimant obtained leave to appeal the Board's ruling disallowing a claim for compensation based on special economic advantage and from the Board's ruling that it had discretion as to whether to award costs by virtue of an advance payment made less than ten days before the commencement of the hearing. The Court dismissed the first appeal and allowed the second. The issue of whether the claimant/appellant should obtain special costs in the Court of Appeal on the second appeal is pending before the Court.

Chivers* v. *HMTQ

Leave to appeal pending.

***Eckervogt* v. MEI**

Leave granted to claimant. Issue is whether there was a reasonable apprehension of bias by virtue of panel member, Julian Greenwood, accepting a position with Crown Counsel during deliberations. Appellant's Factum filed, Crown's Factum pending.

Gorman Bros. Lumber Ltd.* v. *HMTQ

Leave to appeal the Board's disallowance of above market value cost to purchase adjoining land dismissed.

Pay Less Gas Co. (1972) Ltd.* v. *HMTQ

Leave to appeal compensation decision and costs entitlement decision pending.

Rock Resources Inc.* v. *HMTQ

Leave to appeal by the Province to the Supreme Court of Canada pending, arguments filed.

Whitechapel Estates Ltd.* v. *MoTH

Leave granted on various issues on appeal and cross appeal. All facta filed; no hearing date set.