

# **EXPROPRIATION CASE REVIEW**

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**BRITISH COLUMBIA EXPROPRIATION  
ASSOCIATION 2000 FALL SEMINAR**

**1. Name: Daflos v. School District No. 42**

**Facts:** Fee simple taking from a two acre residential property for use as a school maintenance facility.

**Interesting**

**Issues:** Penalty Interest - Board confirms that it has a broad discretion to award penalty interest when the circumstances support such an award.

Disturbance Damages - Board rejects large claim for disturbance damages on the grounds that Section 31(1) embraces all forms of damage, whether resulting in double recovery or not.

Appraisal approach - Board criticizes appraisers who fail to take a very systematic approach (adjustment tables etc.) and again essentially completes its own appraisal. Board favours raw lot value in general, but references lack of planning evidence to provide lot yield.

**2. Name: Reti v. Sicamous**

**Facts:** Acquisition by the authority for a sewage treatment facility. Compensation claims for pure injurious affection (no land taken from the Claimants).

**Interesting**

**Issues:** Pure Injurious Affection - The Board confirms a broader approach to pure injurious affection claims, particularly where damage caused by the construction or use of the project. In calculating loss, the Board rejects the cost approach as being unhelpful. Board encourages a scientific approach, but then ends up simply "weighing all of the evidence" and then giving a value.

Limitation Issues - Board generally rejects the limitation arguments advanced by the authority. The Board confirms there is an ongoing nuisance claim that is compensable, but the claim depends on what damages occurred before and after the date the Claimants had a "real apprehension" of the loss caused by the project. The construction rule is found not to apply to this project.

**3. Name: Richards v. Maple Ridge (District)**

Facts: Final cost review under Section 45.

Interesting

Issues: One of the few Board decisions where the Board found that the Respondent had overpaid the Claimants by way of advance payments towards costs.

**4. Name: Service Corporation International (Canada) Inc. v. Burnaby (City)**

Facts: Claim for constructive expropriation arising out of land use bylaws imposing significant setbacks within cemeteries owned by the Claimant.

Interesting

Issues: Constructive Expropriation - Court rejected improper purpose claims and found that the bylaws had been adopted for a proper purpose, thus no expropriation.

Section 911 of the Municipal Act - Court found that the Claimants' use of the subject lands were entirely protected from the new setback areas by Section 911.

**5. Name: Morse v. Ministry of Transportation and Highways**

Facts: Fee simple taking of industrial property currently being used for residential purposes.

Interesting

Issues: Highest and Best Use - Board rejects designation of property as "major public open space" for valuation purposes but finds no causal connection between the enactment of bylaws and the project. Planning evidence, which may have been useful, was not called in this case.

Disturbance Damages - although possible, the Board rejects a claim for disturbance damages due to lack of evidence and causal connection.

Appraisal Evidence - Board finds that a sale to the Respondent in the area for this project was a good comparable, despite the Respondent's objections.

**6. Name: Sequoia Springs West Development Corp. v. Ministry of Transportation and Highways**

Facts: Partial taking for a highway.

Interesting

Issues: Disturbance Damages - although some disturbance damages were awarded by the Board, consistent with Dell Holdings' principles, the majority of the claims were significantly reduced or rejected outright by the Board. In particular, the Board found that the Claimant had failed to meet its onus of proving causation for most of the expenses thrown away claims. With respect to delay, the Board finds some delay, although not all of it resulted in a delay for the project. An arbitrary award of \$125,000 is then made by the Board for these claims. Leave to appeal has been granted.

Appraisal - the Board again indicated its reluctance to use the development approach, and uses the direct comparison approach for before value. However, the Board recognizes that the development approach is appropriate for the after scenario.

**7. Name: Reti v. Sicamous**

Facts: Cost claims for case involving purse injurious affection.

Issues: Costs - the Board awarded the Claimants 90% of their costs, as certain claims and evidence were not accepted by the Board.

**8. Name: Canada Mortgage and Housing Corp. v. North Vancouver (District)**

Facts: Appeal from a Supreme Court decision refusing to set aside several District Bylaws.

Interesting

Issues: Public Use Zoning - Court confirms the broad power of a municipality to effectively downzone property. In this case, although there was some evidence that some council members were motivated to keep the subject land for park

space, there was no bad faith or otherwise established and the zoning itself did not zone the land exclusively for public uses

**9. Name: Morriss v. British Columbia**

Facts: Claim for compensation for mineral loss claims within a park.

Interesting

Issues: Constructive Expropriation - Court confirmed earlier cases that mineral claims were chattel interests, and thus no compensation required. On an application to dismiss an action, the Court makes it clear that Plaintiffs should plead material facts in support of bare claims such as bad faith.

Limitation Period - the Court applies the maximum 10- year limitation period and finds the claims to be statute barred in any event.

**10. Name: Reon Management Services Inc. v. Ministry of Transportation and Highways**

Facts: Application by the Claimant for a determination as to whether the Board had jurisdiction to adjudicate the Claimants' application to determine compensation.

Interesting

Issues: Jurisdiction - the Board determined that there was sufficient independence (due to fixed terms under the applicable statute) and thus it had jurisdiction to hear the subject claims. Leave to appeal has been granted.

**11. Name: C.R. All Trucks Ltd. v. Ministry of Transportation and Highways**

Facts: First reported interim cost decision to discuss new cost tariff.

Interesting

Issues: Tariff - as the Board finds that no conflict exists between the Tariff and the Act, and that the Tariff does not take away any vested rights from the Claimant, it is applicable to the costs claimed by the Claimant. The Board also establishes a format for bills submitted to the Respondent for reimbursement.

**12. Name: Horsley v. Ministry of Transportation and Highways**

Facts: Fee simple taking of residential properties for the Nanaimo Parkway.

Interesting

Issues: Highest and Best Use - Claimants' approach was rejected (as not being a real possibility or there being a reasonable expectation), with the Board awarding less than the amount advanced by the Respondent (although 90% of costs were still awarded).

**13. Name: Ingham v. Creston (Town)**

Facts: Final Cost Review for this ongoing saga.

Interesting

Issues: Section 45 Costs - more costs, same results. Interest and costs were awarded to the Claimants.

**14. Name: Hansen v. Ministry of Transportation and Highways**

Facts: Appeal from the Board which had ruled that a Claimant was not out of time due to the Authority's actions.

Interesting

Issues: Estoppel/Limitation Issues - although the Court may not have agreed with the Board if they heard the case at first instance, the Court still found there was sufficient evidence for the Board to base its decision.

**15. Name: Reon Management Services Inc. v. Ministry of Transportation and Highways**

Facts: Issues surrounding an alleged settlement of compensation claims.

**Interesting**

**Issues:** Settlement - the Board found that a settlement was reached and that penalty interest was payable under the plain meaning of the of the settlement agreement. Leave to appeal granted.

**16. Name: Casamiro Resource Corp. v. British Columbia**

**Facts:** Appeal from a very old compensation award made by the Board arising out of a constructive expropriation.

**Interesting**

**Issues:** Standard of Review - the Court of Appeal confirmed that it has no greater power to review the Board's decisions than a lower Court.

Appraisal Methods - the Court upheld the Board's rejection of much of the Claimant's expert evidence as being speculative and unsuitable under the circumstances. As well, the Crown was entitled to refuse entry to the Claimants to prove their claims and no adverse inference should be drawn. However, no argument was addressed on the issue as to whether the Board had the power to compel the Crown to grant access.

**17. Name: Ingham v. Creston (Town)**

**Facts:** Reconsideration of previous Board decision, as directed by Court of Appeal.

**Interesting**

**Issues:** Injurious Affection - Board exercise its discretion not to receive new evidence filed by the Respondent. Board rejects the cost approach and uses a percentage of building value, 15%, to calculate injurious affection.

**18. Name: Sequoia Springs West Development Corp. v. Ministry of Transportation and Highways**

**Facts:** Claim for costs.

**Interesting**

**Issues:** Costs - No discretion to the Board as it found that the expenses were not covered by Section 34(3) and thus not excluded from calculation for cost entitlement.

**19. Name: Yue v. Surrey (City)**

Facts: First reported section 48 cost review under the tariff.

Interesting

Issues: Format - Board critical of presentation. Scale 2 appears to be the usual default scale. Some evidence should be presented to establish the unit entitlement under each of the categories.

**20. Name: Glendale Trading Ltd. et al v. Ministry of Transportation and Highways**

Facts: Acquisition of a strip of land from the front of a residential property for road upgrading.

Interesting

Issues: Appraisal - no award for reduction in market value as no evidence of any decrease in value suffered by the owner.