

Inquiries and Judicial Reviews: A Primer in the Context of Expropriation



21 October 2022

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A PRESENTATION TO THE BRITISH COLUMBIA
EXPROPRIATION ASSOCIATION, VANCOUVER, B.C.

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Part 1

Land Acquisition Strategy

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Authority Strategy

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Authorities are generally reluctant to use expropriation powers.

Authority Strategy

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A negotiated purchase is almost always seen as the preferable outcome.

Authority Strategy

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The next best outcome - “Section 3 Agreement”.

Expropriation Act, RSBC 1996, c. 125

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3 (1) If an owner or, if there is more than one owner, all owners agree to transfer or dedicate land to an expropriating authority without expropriation, but cannot agree with the expropriating authority on the compensation to be paid,

Expropriation Act, RSBC 1996, c. 125

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**(a) Parts 2 to 4, other than section 20,
do not apply,**

**(b) the court must determine the
compensation to be paid to the owner
as if the land had been expropriated
under this Act, and**

Expropriation Act, RSBC 1996, c. 125

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(c) unless the parties to the agreement otherwise agree, compensation must be determined effective the date the owner agreed to transfer or dedicate the land to the expropriating authority.

Authority Strategy

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Expropriation is the option of last resort.

Part 2

Statutory Authority to Expropriate

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Vancouver Charter, SBC 1953, c. 55

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532. If, in the exercise of any of its powers of acquiring real property, the City fails to come to an agreement with its owner as to the terms of acquisition, the City may, by by-law or resolution of the council, expropriate such real property.

Community Charter, SBC 2003, c. 26

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31(1) For the purpose of exercising or performing its powers, duties and functions, a municipality may expropriate real property or works, or an interest in them, in accordance with the expropriation act.

Community Charter, SBC 2003, c. 26

Authority to enter on and use property

32(1) Without limiting section 31 (expropriation power), a municipality may, for the purposes of one or more services of the municipality,

(a) Enter on, break up, alter, take or enter into possess of and use real property, and

(b) Construct works through, under or over real property.

Community Charter, SBC 2003, c. 26

33(2) If a municipality,

(a) Exercises a power to enter on...any property, or injuriously affects property by the exercise of its power, and

(b) Exercises a power referred to in paragraph (a) that does not constitute an expropriation within the meaning of the Expropriation Act,

compensation is payable for any loss or damage caused by the exercise of its power.

Community Charter, SBC 2003, c. 26

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33(3) for the purposes of subsection (2), compensation must be paid as soon as reasonably possible in an amount set

- (a) By agreement between the person claiming compensation and the municipality, and**
- (b) If no agreement is reached, by the supreme court.**

Transportation Act, SBC 2004, c. 44

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10. The Minister may expropriate land for any of the purposes in section 8(2)(a) or (c).

School Act, RSBC 1996, c. 412

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96(2) A board may, for education purposes, including the provision of housing accommodations for students or employees, board offices and outdoor activities or for the purposes of section 98(2),

(a) acquire and hold land or improvements, or both, within its school district,

(b) with the approval of the minister, acquire and hold land or improvements, or both, in another school district, and

(c) expropriate land or improvements, or both, within its school district.

Water Sustainability Act, SBC 2014, c. 15

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32(1) A licensee has the right to expropriate any land reasonably required for the construction, maintenance, improvement or operation of works authorized or necessarily required under the license.

Part 3

Linear Developments - Refresher

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What Constitutes “Linear”?

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“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.

What Constitutes “Linear”?

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**Self-evident policy for exempting
“linear developments” from the Inquiry
process.**

What Constitutes “Linear”?

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Definition is inclusive, not exhaustive.

But, use of the adjective “linear” can be limiting.

What Constitutes “Linear”?

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For example, is a “dyking and floodplain naturalization project” a linear development?

Part 4

Expropriation Inquiry Process

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Expropriation Act, RSBC 1996, c. 125

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Request for inquiry

s.10(1)in this section, "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.

Expropriation Act, RSBC 1996, c. 125

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10(2)an owner whose land is included in an expropriation notice, other than an expropriation notice in respect of an expropriation for the construction, extension or alteration of a linear development, may request an inquiry by serving the minister with a notice of request for an inquiry.

Expropriation Act, RSBC 1996, c. 125

10(3)A notice of request for an inquiry must

(a) be in writing,

(b) contain the name and address of the person making the request, his or her interest in the land to be expropriated and his or her reasons for requesting an inquiry, and

(c) be served on the minister and the expropriating authority within 30 days after the date the expropriation notice is served under section 6 (1) (a).

Expropriation Act, RSBC 1996, c. 125

Power to refuse to hold public inquiry

11(1) the inquiry officer may, by order, refuse to hold a public inquiry if, on the application of the expropriating authority and after granting both parties the opportunity to be heard, the inquiry officer considers that

(a) the request for an inquiry is

(i) frivolous, vexatious or not made in good faith, or

(ii) based solely on a claim for compensation, or

Expropriation Act, RSBC 1996, c. 125

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(b) the person who requested the inquiry has, at a previous hearing or otherwise, already had substantially the same opportunity to object to the expropriation that he or she would have at an inquiry under this act.

11 (2) if the inquiry officer makes an order under subsection (1), the inquiry officer must promptly serve a copy of the order, together with the reasons for making it, on the person who requested the inquiry and on the expropriating authority.

Expropriation Act, RSBC 1996, c. 125

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Setting down the inquiry

12(1)if the minister receives a request under section 10, the minister must, within 21 days after service under section 10 (3) (c), appoint an inquiry officer who, subject to section 11, must hold a public inquiry.

Expropriation Act, RSBC 1996, c. 125

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12(2) the inquiry officer must set a date, that is not more than 21 days after the date of his or her appointment, a time and a place for the inquiry and must serve notice of the date, time and place on

- (a) the persons served under section 6 (1)(a),**
- (b) the expropriating authority, and**
- (c) every person who served a notice of**

request under section 10 whose request was not refused under section 11.

Expropriation Act, RSBC 1996, c. 125

Inquiry

14(1) Subject to section 11, the inquiry officer must hold a public hearing for the purpose of inquiring into whether the proposed expropriation of the land is necessary to achieve the objectives of the expropriating authority with respect to the proposed project or work, or whether those objectives could be better achieved by

- (a) an alternative site, or**
- (b) varying the amount of land to be taken or the nature of the interest in the land to be taken.**

Expropriation Act, RSBC 1996, c. 125

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Powers and duties of inquiry officer

15 an inquiry officer may

(a) add as a participant in the inquiry any person who the inquiry officer considers would be entitled to request an inquiry under section 10 (2), and

(b) inspect any land.

Expropriation Act, RSBC 1996, c. 125

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Modification of expropriation

s.16 (1) before the conclusion of the inquiry, the expropriating authority may alter the expropriation by adding or deleting land from it.

Expropriation Act, RSBC 1996, c. 125

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16(2) if the expropriation is altered, the expropriating authority must file in the land title office an amended expropriation notice in accordance with section 6 (4) and serve it on

- (a) the inquiry officer,**
- (b) every participant in the inquiry,**
- (c) each owner of land added or deleted by the amendment, and**
- (d) the approving authority**

Expropriation Act, RSBC 1996, c. 125

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16(3)a person served under subsection (2) (c) may become a participant in the inquiry, and the inquiry officer may adjourn the inquiry for a period not exceeding 30 days from the time the person was served.

Expropriation Act, RSBC 1996, c. 125

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Report of inquiry officer

s.17 subject to an adjournment under section 16 (3), unless the time is extended by the minister, an inquiry officer must, within 30 days after the first day of the inquiry, submit to the approving authority and every participant in the inquiry, a written report of the inquiry officer's findings of fact and recommendations with respect to the proposed expropriation.

Expropriation Act, RSBC 1996, c. 125

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Decision of approving authority

18 (1) After considering the report submitted under section 17, the approving authority must approve, approve with modifications or reject the expropriation, but an expropriation must not be modified so as to affect land of a person who was not a participant in the inquiry.

Expropriation Act, RSBC 1996, c. 125

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(2) If

(A) an inquiry is not requested or has been refused,

or

(B) an owner is not, under section 10 (2), entitled to request an inquiry,

The approving authority must

(C) approve the expropriation, and

(D) notify the expropriating authority and each owner of the approval in writing.

Expropriation Act, RSBC 1996, c. 125

(3) If an inquiry was held, the approving authority must, not later than 30 days after receiving the report submitted under section 17, serve his or her decision, with written reasons, on every participant and every owner of the land expropriated.

(4) If a request for an inquiry is withdrawn, the approving authority may proceed as though the request had not been made.

Expropriation Act, RSBC 1996, c. 125

(5) If the approving authority modifies the expropriation under subsection (1), the expropriating authority must

(A) file in the land title office an amended expropriation notice in accordance with the modification, and section 6 (4) applies, and

(B) notify each owner of the modified approval in writing and accompany the notice with a copy of the amended expropriation notice.

Expropriation Act, RSBC 1996, c. 125

(6) If the approving authority rejects the expropriation,

(a) the expropriating authority must file in the land title office a notice of cancellation in the prescribed form, and

(b) on receiving the notice of cancellation, the registrar must cancel the expropriation notice filed and endorsed under section 7 (1).

Part 5

Judicial Review

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Judicial Review Procedure Act, RSBC 1996, c. 241 s.2

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Application for judicial review

2(1)An application for judicial review must be brought by way of a petition proceeding.

2(2)On an application for judicial review, the court may grant any relief that the applicant would be entitled to in any one or more of the proceedings for:

Judicial Review Procedure Act,
RSBC 1996, c. 241, s.2

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(a) relief in the nature of mandamus, prohibition or certiorari;

(b) a declaration or injunction, or both, in relation to the exercise, refusal to exercise, or proposed or purported exercise, of a statutory power.

Judicial Review Procedure Act, RSBC 1996, c. 241 s.7

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Power to set aside decision

s.7 If an applicant is entitled to a declaration that a decision made in the exercise of a statutory power of decision is unauthorized or otherwise invalid, the court may set aside the decision instead of making a declaration.

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

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Para [117]:

“The regional district is, through this statutory right of way expropriation, attempting to impose a number of positive and personal covenants upon Atco. Such covenants are impermissible. They are incapable of forming an interest in land and, therefore, the regional district has exceeded its power in expropriating them.”

Expropriation Act, RSBC 1996, c. 125

Limitation

51 (1) Legal proceedings to challenge the validity of an expropriation must not be brought after land vests under section 23.

(2) Subject to subsection (1), an application under the Judicial Review Procedure Act must be brought within 30 days after the order or determination subject to review is made.

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

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Para [71]

“First, in order to determine whether s. 51(1) of the EA applies, the acts complained of by Atco must render the expropriation voidable, as opposed to void.”

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

Para.[72]

“The distinction between a voidable act and one which is void is critical in a case where a limitation provision applies. Where an act by a public authority is void, the fact that the applicant failed to challenge it within the requisite timeframe will not serve to validate it. A limitation cannot apply to a void act: *Camp Development Corporation v. Greater Vancouver Transportation Authority*, 2010 BCCA 284 at para. 17.”

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

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Para [92]

“I find that in the unusual facts of this case, the petitioner’s challenge to the validity of the expropriation are not barred by operation of s. 51 of the Expropriation Act.”

Bowlin v. BCTFA, 2018 BCCA 411

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Headnote:

An appeal from an order made on judicial review. The order set aside an expropriation notice, advance payment, and vesting notice, and giving certain directions, in the matter of an expropriation for highway improvements, a linear development, under the expropriation act, R.S.B.C. 1996, c. 125.

The dispute, at its heart, challenges the expropriating authority's treatment of the gravel bearing nature of the expropriated property. The judge engaged in judicial review notwithstanding the act's comprehensive scheme for resolution of compensation disputes.

Bowlin v. BCTFA, 2018 BCCA 411

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Held:

Appeal allowed. There is an adequate alternative remedy to judicial review in the act's compensation resolution scheme, and judicial review should not have been engaged.

The judge misapprehended the evidence in saying the advance payment did not include consideration of the gravel bearing nature of the property and in requiring the expropriating authority to obtain reports additional to the appraisal reports it had.

The two notices should not have been set aside.

Part 6

Any Questions?

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Presenters

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