

Publisher's Note

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Coates and Waqué

New Law of Expropriation

Release Highlights

This release updates the legislation, commentary and case law in the Nova Scotia chapter and also provides updates to the Canada and Ontario chapters.

Case Law Highlights

Nova Scotia — Expropriation Act — Definitions — “Statutory authority”
— **S. 3(1)(p):** Where a restaurant brought an action for injurious affection under s. 30(1) and s. 3(1)(h)(ii)(B) of the Act for business damages arising out of the construction of a multi-purpose development complex for which two of the three respondents — the Province of Nova Scotia; the Halifax Regional Municipality (HRM); and the Halifax Convention Centre Corporation (HCCC) — had provided financial contributions, the Nova Scotia Utility and Review Board concluded at the preliminary hearing that none of the respondents was a “statutory authority” with respect to construction of the complex, which would have brought the action under the jurisdiction of the Board. A body was not a “statutory authority” under the Act merely because the entity or level of government was incorporated by statute or that the entity was empowered by statute to expend money, incur debt, or enter into a contract respecting the construction of works. As required under s. 3(1)(p) of the Act, in order to comprise a “statutory authority,” the entity must specifically be “empowered by statute to expropriate land or cause injurious affection.” The Board

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considered that such empowerment could be express or implied, but the power conferred on the authority must specifically contemplate the construction of the works that were the subject-matter of the claim. Moreover, there must be authority under the statute for compensation to be paid for damage caused by injurious affection: *Porridge Pot Foods Inc., Re* (2017), 7 L.C.R. (2d) 269, 2017 CarswellNS 706, 2017 NSUARB 155 (N.S.U.R.B.).

Nova Scotia — Expropriation Act — Not to be considered in land valuation — S. 33: Where a Village’s contractors built a pump station outside the Village’s easement on property that was subsequently expropriated, the Board did not decrease the value of the expropriated land to reflect the reduced market value caused by the public work, the pump station. The pump station was larger than most of the other pump stations in the Village and required a large concrete enclosure that extended a further 5 to 15 feet onto the property. Additionally, the Village was unaware that high voltage wires, which would hinder development, were placed underground across the property up to 84 ft. from the property line. The Village argued that the market value of the land should be reduced because of the pump station since s. 33(c) refers to value before expropriation and therefore did not apply since the public work was constructed before the expropriation. In rejecting this argument, the Board stated (1) that the Village had constructed the pump station by trespassing on Peckford’s land beyond its easement and the Act “does not anticipate the construction of a public work outside of the lands the Village is permitted to build on. In other words, the Act does not anticipate or address any or all illegal activities”; (2) “reading the *Expropriation Act* as a whole and giving it a broad, liberal and purposive interpretation, the market value of the expropriated land is not to include any increase or decrease in the value of the land resulting from the anticipation of, knowledge of, or the purpose for which the lands are expropriated. Consequently, the increase or decrease in market value of the land as a result of the public work is not to be included”; and (3) “the fact the public project was completed before the lands were expropriated is because of the error of the Village’s engineers and contractor in constructing the pump station outside the easement and onto Peckford’s property, rendering Lot No. 1 useless for development. The emphasis in ss. 33(c) is not the timing of the completion of the work (before or after the expropriation), but rather the purpose of the expropriation and public work cannot affect the market value compensation provided to the landowner”: *Peckford Holdings Inc., Re*, 2017 CarswellNS 865, 2017 NSUARB 186 (N.S. Utility & Review Bd.).

Legislative Highlights

- *Canada, Expropriation Act*, R.S.C. 1985, c. E-21, as amended by the *Cree Nation of Eeyou Istchee Governance Agreement Act*, S.C. 2018, c. 4, s. 128, effective March 29, 2018.

- Nova Scotia, *Utility and Review Board Act*, S.N.S. 1992, c. 11, as amended by the *Education Reform (2018) Act*, S.N.S. 2018, c. 1, Sched. A, s. 153, effective April 1, 2018.

