

Expropriation in Alberta

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EXPROPRIATION IN ALBERTA

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Various terms are used to describe the right of government to take private property for public purposes. In the United Kingdom the terms “compulsory taking or purchase” are used, while in the United States “eminent domain” describes the right and “condemnation” the taking. In the US, under the Fifth Amendment, land owners have constitutional protection to due process and just compensation. In Canada we use the term “expropriation” and it refers to both the right to take real property and the reciprocal right of the owner to be compensated for the loss.¹ This paper will discuss the process of taking real property in Alberta pursuant to the *Expropriation Act*² and the principles which govern compensation from a practical perspective.

The jurisdiction to take land in Alberta is found in a number of enabling statutes. Various ministers in the Alberta government have the power to acquire lands for provincial purposes such as schools, roads and other forms of infrastructure. In addition, operators of railways³, power plants and transmission facilities⁴, irrigation districts⁵, regional services commissions⁶ and municipalities⁷ have the power to expropriate for certain purposes.

All entities that take land pursuant to the *Expropriation Act* must comply with the same requirements and all affected owners have the same rights. This paper, however, will focus on the processes employed by a municipality in exercising its powers under the *Expropriation Act*.

¹ K. Boyd, *Expropriation in Canada- A Practitioner’s Guide*, (Aurora: Canada Law Book Inc., 1988).

² *Expropriation Act*, R.S.A. 2000, c. E-13 [hereinafter *Expropriation Act*]

³ *Railway Act*, R.S.A. 2000, c. R-4, s.6 and s.8.

⁴ *Hydro and Electric Energy Act*, R.S.A. 2000, c.H-16, s.37

⁵ *Irrigation Districts Act*, R.S.A. 2000,c.I-11, section 9

⁶ *Municipal Government Act*, R.S.A. 2000, c.M-26, s.602.13

⁷ *Municipal Government Act*, R.S.A. 2000, c.M-26, s.14

A municipal council must stay within its jurisdiction for the purposes enumerated in the *Municipal Government Act*⁸ and make the decision to exercise this power properly, or the decision could be quashed on judicial review by the courts.

Municipal councils wear two statutory hats under the *Expropriation Act*; as Expropriating Authority to approve the commencement of an expropriation, and as an Approving Authority to approve the taking itself (individually and collectively the “Authority”). As an Authority, the municipality must fulfill the procedural requirements set out in the expropriation legislation. The expropriation can be invalidated and the land owner is eligible to bring an action for damages against the Authority if it failed to follow the prescribed process. Expropriation legislation is strictly construed against the taker, and any ambiguity about what the Authority must do is interpreted in favour of the land owner.⁹

THE PROCESS

Municipalities are permitted to take any estate or interest in land including fee simple and lesser interests, including but not limited to leases, easements and rights of way. The taking can be permanent or temporary but excludes mines and minerals unless the enabling statute expressly permits it. In the case of a partial taking, a municipality is also permitted to take the whole or a larger portion of any parcel of land which may be expropriated if it is of the opinion that it derives some benefit or advantage in doing so.¹⁰

An owner under the *Expropriation Act* is very broadly defined, and includes any person registered on title having any type of interest in the lands, any person in possession or occupation of the lands, and any other person known by the Authority to have an interest in the lands (“Owner”).¹¹

A municipal council, exercising its statutory authority, must pass a resolution to commence the taking. An expropriation is formally commenced upon the registration of a Notice of Intention to Expropriate (“NOITE”) by an Authority on the title to the impacted lands. As an approving authority under the *Expropriation Act*, upon receiving proof the statutory steps respecting notice and publication have been met, a municipal council may approve or disapprove the proposed taking. Approving authorities must make this final decision within legislated timeframes.

⁸ *Ibid*

⁹ *Toronto Area Transit Operating Authority v. Dell Holdings Ltd.*, [1997] 1 S.C.R. 32 at para 20; 1997 CarswellOnt 78 [hereinafter *Dell Holdings* cited to Carswell].

¹⁰ *Municipal Government Act*, R.S.A. 2000, c.M-26, s.14(5)

¹¹ *Expropriation Act*, s.1(k)