
CANADA / JUDGMENT

Tanex Industries Ltd. v. Greater Vancouver Water District

2019 BCSC 74

COURT

Supreme Court of British Columbia

DECIDED

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2019 BCSC 74 Tanex Industries Ltd. v. Greater Vancouver Water District

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Tanex Industries Ltd. v. Greater Vancouver Water District,

2019 BCSC 74

Date: 20190123

Docket: S179675

Registry: Vancouver

Between:

Tanex Industries Ltd., Marie Jang, and Ronald Jang

Plaintiffs

And

Greater Vancouver Water District

Defendant

Before: The Honourable Mr. Justice Walker

Reasons for Judgment

Counsel for the Plaintiffs:

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Counsel for the Defendant:

J. Goulden

S. McCalla

Place and Date of Hearing:

Vancouver, B.C.

December 6, 2018

Place and Date of Judgment:

Vancouver, B.C.

January 23, 2019

Introduction

- [1] In this action, the plaintiffs advance a claim for compensation consequent upon the expropriation of their property in 2016 by the defendant, the Greater Vancouver Water District ("GVWD"). The property in issue is located at 1031/1035 Quebec Street, New Westminster, B.C. ("Property"). The trial of the action is scheduled to proceed in May 2019.
- [2] GVWD made an advance payment to the plaintiffs upon expropriation. The corporate plaintiff, Tanex Industries Ltd. ("Tanex"), was paid an amount that GVWD determined represented market value less what it concluded to be the lower end of the range of anticipated costs to remediate environmental contamination on the Property. Tanex complains that GVWD had no right to make that deduction under its authorizing statute and in any event, points out that there has yet to be any determination that the Property is contaminated.
- [3] Tanex brings this application, pursuant to Rule 9-4(1) of the Supreme Court Civil Rules [Rules], to determine whether as a matter of law, GVWD has the statutory authority to make the deduction. GVWD consented to Tanex bringing this application as it agrees that Tanex has appropriately raised a point of law concerning the Expropriation Act, R.S.B.C. 1996, c. 125, and that the point of law is raised and clearly defined by the pleadings. I did not find that to be the case in view of the complex manner in which the notice of civil claim is framed. However, in its submissions, Tanex described the point of law to be as framed in para. 19 of its notice of civil claim:
19. There is no legal basis for the GVWD to deduct the Remediation Estimate from the Advance Payment and therefore the GVWD has wrongfully deducted the Remediation Estimate.
- [4] Tanex further elaborated on the point of law for determination, describing it as whether in law in this province, an expropriator of real property can deduct anticipated remediation costs of environmental contamination in respect of expropriated property.

- [5] Tanex's position is that the potential or actual presence of contamination and associated remediation costs should never be taken into account when determining compensation under the Expropriation Act.
- [6] GVWD's position is that it is always open to an expropriating authority to make the deduction of anticipated remediation costs from what it determines is the property's market value. GVWD submits that if the owner of the expropriated property is dissatisfied with the payment amount, then it may challenge it in proceedings before the Court, and if it does, then the ultimate compensation amount is determined at trial based on the evidence (in particular, expert appraisal evidence).
- [7] I was advised by counsel that the specific point of law raised by Tanex is a case of first instance.
- [8] Submissions on this application also engaged for consideration the potential intersection of the Environmental Management Act, S.B.C. 2003, c. 53 [EMA], specifically the effect of possible recovery claims that may be advanced as recovery actions against responsible persons under that statute.
- [9] After hearing the extremely focused and well-argued submissions of counsel, I agree that the issue raised by Tanex is appropriate for determination as a point of law under R. 9-4(1) since it can be decided on undisputed facts and the outcome will be decisive of a substantial issue raised in the action: *Alcan Smelters & Chemicals Ltd. v. C.A.S.A.W., Local 1* (1977), 3 B.C.L.R. 163 at 165 (S.C.); *Can-Dive Services Ltd. v. Pacific Coast Energy Corp.* (1993), 77 B.C.L.R. (2d) 128 at paras. 22-23 (C.A.).
- [10] However, Tanex must amend its notice of civil claim to succinctly state the point of law articulated in its submissions, which is as described in para. 19 of its current notice of civil claim and as described in para. 4 of these reasons.

Facts

- [11] The facts are not in dispute.
- [12] Prior to expropriation, Tanex was the registered owner of the Property and made use of much of it for its mill working business. The personal plaintiffs, Marie and Ronald Jang, resided in the upstairs portion of the premises on the Property. Three units on the Property were also rented to commercial tenants. GVWD required the Property to erect, construct, and maintain a linear water works line or main and ancillary equipment known as the "Annacis Water Supply Tunnel". GVWD effected expropriation on December 15, 2016 when it filed a Vesting Notice in the Land Title Office, which vested Tanex's fee simple interest in the Property to GVWD.

- [13] GVWD was required under the Expropriation Act to make a payment of its estimate of the market value of the Property to Tanex upon filing of the Vesting Notice. GVWD refers to this as the advance payment.
- [14] GVWD estimated the market value of the Property at the time of expropriation to be \$2,750,000. However, since it understood that the Property was contaminated, it withheld \$500,000 based upon its view of the low end of the range (based on advice from an environmental remediation expert) to be the cost to remediate. GVWD also paid out a mortgage registered on the Property in favour of the Hong Kong Service Bank of Canada in the amount of \$150,646.92. As a consequence, Tanex received the net sum of \$2,099,353 from GVWD as the advance payment. It is the deduction of \$500,000 that is in issue on this application.
- [15] GVWD's advance payment does not preclude Tanex from challenging GVWD's estimate of market value and from seeking greater compensation. Under the Expropriation Act, Tanex has the right to do so in this Court and has done so in this action.
- [16] No determination has been made by this Court or any regulatory authority, such as the Director empowered under the EMA, that the Property is in fact contaminated. GVWD's determination of market value, that the Property is contaminated, and the cost to remediate it, is based on its own assessment guided by independent professionals (i.e., property appraisal and environmental consultants). Tanex has not agreed that the Property is contaminated.

The Statutory Expropriation Scheme in British Columbia

- [17] The legislative scheme established by the provincial legislature is wholly encompassed in the Expropriation Act. In the event of any inconsistencies between the provisions of that statute and any other enactment respecting expropriation, the provisions of the Expropriation Act apply: s. 2(1).
- [18] Compensation awarded for lost property interests is to be determined in accordance with the Expropriation Act. Section 30 provides:

Right to Compensation

30. (1) Every owner of land that is expropriated is entitled to compensation, to be determined in accordance with this Act.
- [19] Compensation is premised on the property's market value. Market value is defined in s. 32 to be the price that a willing seller would sell to a willing buyer in the open market:

Determination of market value

32. The market value of an estate or interest in land is the amount that would have been paid for it if it had been sold at the date of expropriation in the open market by a willing seller to a willing buyer.

[20] An owner may also be compensated for other losses, such as costs to relocate, which are known as "disturbance" damages:

Disturbance damages generally

34. (1) An owner whose land is expropriated is entitled to disturbance damages consisting of the following:

- (a) reasonable costs, expenses and financial losses that are directly attributable to the disturbance caused to the owner by the expropriation;
- (b) reasonable costs of relocating on other land, including reasonable moving, legal and survey costs that are necessarily incurred in acquiring a similar interest or estate in other land.

[21] In this case, GVWD made an advance payment of \$100,000 to the personal plaintiffs on account of disturbance damages. The amount of that payment is not in issue on this application.

[22] Two different approaches may be taken by the court determining the compensation award for expropriated property. They are provided for in s. 31 and both are premised on market value. In either case, determining market value involves a finding of the highest and best use of the expropriated property.

[23] The first approach is to assess market value premised on its current use at the time of expropriation. If the determination of market value does not include the value of any special economic advantage or improvements, then that value will be determined and included as part of the compensation award.

[24] The second approach is used when the highest and best use of the property at the time of expropriation is not its best use. In that event, compensation is the greater of market value based on current use plus disturbance damages, on the one hand, and its highest and best use as of the expropriation date on the other hand.

[25] The formula prescribed in the statute is contained in s. 31:

Basic Formula

31. (1) The court must award as compensation to an owner the market value of the owner's estate or interest in the expropriated land plus reasonable damages for disturbance but, if the market value is based on a use of the land other than its use at the date of expropriation, the compensation payable is the greater of

- (a) the market value of the land based on its use at the date of expropriation plus reasonable damages under section 34 [disturbance damages], and
- (b) the market value of the land based on its highest and best use at the date of expropriation.
- (2) If not included in the market value of land determined in accordance with section 32, the following must be added to that market value:
 - (a) the value of a special economic advantage to the owner arising out of his or her occupation or use of the land;
 - (b) the value of improvements made by an owner occupying a residence located on the land.

[Emphasis added]

- [26] Tanex's overarching position on the application is that as a matter of law, and quite apart from the fact that there has been no formal determination of contamination, the Expropriation Act requires GVWD to pay market value for the Property as if any contamination on it had been remediated without regard to the cost to remediate. To do otherwise, it submits, will result in an unfair compensation award and expose it to additional non compensable losses if it becomes a party to a recovery action for remediation costs brought under the EMA.
- [27] Its position is broken down into the following points.
- [28] First, deducting anticipated costs of potential contamination from market value unfairly strips it of its right to remediate and to be compensated for any increased value of the Property that might result.
- [29] Second, as a result of the expropriation, it has lost its right to seek recovery of any such remediation costs under an EMA recovery action from those responsible.
- [30] Third, those rights, both of which it argues have value, were included in the basket of interests it held as an owner of the Property in fee simple prior to the expropriation.
- [31] Fourth, it will suffer additional unfairness if it is subsequently sued in a recovery action by the GVWD brought against it (as a potentially responsible person) along with others should GVWD pay to remediate the Property. Not only will it have lost the value of the \$500,000 deducted by GVWD in the expropriation, Tanex argues that even if its liability is limited on an allocation analysis amongst defendants in a recovery action, it is nonetheless jointly and separately liable (per s. 47 of the EMA) and potentially responsible to pay for the entire judgment if other defendants lack the financial means to pay: *Dolinsky v. Wingfield*, 2015 BCSC 238 at paras. 39-44.

[32] Tanex relies quite heavily on the remarks of Mr. Justice Cory in *Toronto Area Transit Operating Authority v. Dell Holdings Ltd.*, [1997] 1 S.C.R. 32 in support of its position that in every case, full and fair compensation must be paid for loss and damages which are the natural and reasonable consequence of the expropriation.

[33] In *Dell Holdings*, Mr. Justice Cory wrote that expropriation statutes should be strictly construed in favour of those whose rights have been affected:

20 The expropriation of property is one of the ultimate exercises of governmental authority. To take all or part of a person's property constitutes a severe loss and a very significant interference with a citizen's private property rights. It follows that the power of an expropriating authority should be strictly construed in favour of those whose rights have been affected. This principle has been stressed by eminent writers and emphasized in decisions of this Court [case references and citations omitted].

21 Further, since the Expropriations Act is a remedial statute, it must be given a broad and liberal interpretation consistent with its purpose. Substance, not form, is the governing factor. [case reference and citation omitted]. In *Laidlaw v. Municipality of Metropolitan Toronto* [citation omitted], it was observed that "[a] remedial statute should not be interpreted, in the event of an ambiguity, to deprive one of common law rights unless that is the plain provision of the statute".

23 It follows that the Expropriations Act should be read in a broad and purposive manner in order to comply with the aim of the Act to fully compensate a land owner whose property has been taken.

27 The words of the section should be given their natural and ordinary meaning in the context of the clear purpose of the legislation to provide fair indemnity to the expropriated owner for losses suffered as a result of the expropriation.

[34] Thus, the effect of the \$500,000 deduction, Tanex says, is unfair and off-side the dicta in *Dell Holdings*.

[35] The case concerned *Dell Holding's* claim for losses caused by the delay in the expropriation process, which it characterized as disturbance damages, and whether they were compensable under Ontario's expropriation statute. The reasons did not deal with definitions of market value. Further, I do not read the Court's discussion of fairness in *Dell Holdings* to support the position taken by Tanex on this application. The approach to be taken is mandated by the legislature of this province in the clear and plain provisions of the Expropriation Act.

[36] Tanex also points to the decision of Madam Justice Sharma in *Caven v. British Columbia Hydro and Power Authority*, 2016 BCSC 122, as adopting the reasoning in *Dell* when dealing with a compensation claim made under the Expropriation Act. However, Sharma J. cited *Dell Holdings* when determining *Caven's* claim for disturbance damages. The case did not concern or touch upon the point raised on this application.

- [37] In arguing issues of fairness and just compensation, Tanex took me in its submissions to cases decided by certain state courts in the United States which have excluded the effect of contamination and remediation costs from market value assessments in expropriation cases on the basis that it would be unjust to the party who lost its land unwillingly to also forfeit its right to remediate (which in turn would increase market value and hence, the compensation award).
- [38] As I read those cases, which apply what is known in the United States as the "exclusionary rule", the analysis and outcomes turned on different statutory schemes in the states in which the disputes arose, ones which involve constitutional considerations for property rights and provide for "just compensation" that have no application in Canada. The holdings in those cases are clear that the legislative schemes in issue provide for an assessment of compensation that extends beyond the market value approach provided for in the Expropriation Act: see, e.g., *Aladdin Inc. v. Black Hawk County*, 1997 Iowa Sup. LEXIS 136 at 2,3,7 (Iowa Sup. Ct.); *Moorhead Economic Development Authority v. Anda*, 2010 Minn. LEXIS 534 at 10, 11-12 (Minn. Sup. Ct.); *Department of Transportation v. Parr*, 1994 Ill. App LEXIS 579 at 13-14 (Ill. App. Ct.).
- [39] I will also observe that the exclusionary rule decisions cited by Tanex reflect the minority view of state court decisions. The majority view, as set out in other state court decisions, adopts the "inclusionary rule" on the rationale that "excluding contamination as a matter of law is likely to result in a fictional property value": see, e.g., *Northeast Conn. Econ Alliance v. Atc Partnership*, 2001 Conn. LEXIS 285 at 8, 9-10 (Conn. Sup. Ct.); *260 N. 12th St., LLC v. State DOT*, 2011 Wisc. LEXIS 752 at 7-8 (Wisc. Sup. Ct.).
- [40] I agree with GVWD's submission that the "exclusionary rule" appears to be somewhat similar to the former "value to owner" approach that was judicially determined to apply under predecessor legislation in this province, and is not aligned with the current market value approach established in the Expropriation Act.
- [41] GVWD took me to the recommendations of the Law Reform Commission published in 1971, where the Commission summarized its recommendations for a change away from value to owner to market value premised on a formula. The following extract is taken from the Commission's report, found at Law Reform Commission of British Columbia, Report on Expropriation (1971) at 122-123:

The basic principle on which compensation [was then paid] in British Columbia is "value to the owner". It is a judge-made concept, developed in an attempt to do justice to expropriated owners.

The provision of a statement, in the proposed statute, of the elements which should compose the compensation payable would avoid much of the uncertainty and confusion that now exists. That statement should be based on a formula of market value and damages for disturbance.

[Emphasis added]

[42] Thus, my determination of the issue on this application must rest on an analysis of the meaning of market value in the Expropriation Act.

Determination

Expropriation Act

[43] I have concluded that the Expropriation Act does not permit a rule of universal application as argued by Tanex. The determination of whether to deduct remediation costs and if so, the amount, depends on the evidence.

[44] I will begin this part of the analysis by repeating the definition of market value in s. 32 of the Expropriation Act:

32. The market value of an estate or interest in land is the amount that would have been paid for it if it had been sold at the date of expropriation in the open market by a willing seller to a willing buyer.

[45] In interpreting the statute, it is highly instructive to consider the analysis found in the leading text authored by Professor Eric C.E. Todd, *The Law of Expropriation and Compensation in Canada*, 2d ed. (Scarborough, Ont.: Carswell, 1992) at 131-132, 177-178:

The concept of market value is readily understood. It has been defined as "the present value of all possible utility reached in a competitive field" and "the price on which a prudent and willing vendor and similar purchaser would agree."

The estimated market value of expropriated property is the hypothetical sale price at a hypothetical sale. The expropriated property is deemed to have been sold by a willing seller to a willing buyer on the relevant date of valuation. Market value is deemed to be the price for which the subject property might have been sold at the relevant time.

[46] Market value is typically determined with the assistance of expert appraisal evidence to determine the market value based on the highest and best use of the property. In seeking to determine market value, appraisers usually employ one or more of the following methods: (a) a direct sales comparison approach; (b) an income approach measuring the income generated or that may be generated from the property; and (c) the cost approach: Todd at 177-178; Caven at paras. 25-29, 32-98. In Caven, determining market value was highly dependent on the evidence. In that case, Sharma J. engaged in a detailed analysis of the competing appraisal evidence and considered both the current use and other potential uses of the property when determining highest and best use and market value.

[47] As Madam Justice Russell explained in *Lulu Island Holdings Ltd. v. GVSDD*, 2007 BCSC 938 at para. 38, the "market value of a property is highly dependent on the classification of its highest and best use." In her reasons, she described highest and best use as follows:

[40] The Board approved of the following definition of highest and best use, and set out the four requirements of the highest and best use, recently approved by the Appraisal Institute of Canada, at para. 95:

The reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, financially feasible, and that results in the highest value.

There are four criteria embodied in this definition: legal permissibility, physical possibility, financial feasibility and maximum profitability.

[48] A property's highest and best use may not necessarily be the use at the time of expropriation. If it is not, then the costs to elevate its use to that point can be taken into account in a compensation award: *Nguyen v. British Columbia (Transportation and Infrastructure)*, 2018 BCSC 192 at paras. 117-122.

[49] GVWD drew to my attention cases from this province and Ontario determining market value in non-expropriation legislation cases as well as non-binding but, it submitted, highly persuasive decisions from provincial expropriation compensation boards, where remediation costs were considered in assessing market value based on highest and best use: *Owen Sound (City) v. Melancthon Investments Ltd.* (2006), 70 L.C.R. 220 at 223-224 (Ont. Div. Ct.); *O'Connor v. Fleck*, 2000 BCSC 1147 at para. 255; *Lotzkar v. Lotskar*, 2003 BCCA 581 at paras. 32-33; *Burnaby/New Westminster Assessor, Area No. 10 v. Haggerty Equipment Co.*, 1997 CarswellBC 1453 at para. 19 (S.C.); *Masae Ltd. v. Toronto (Metropolitan)* (1992), 49 L.C.R. 1 at 43-45 (Ont. M.B.); *Simone Group Properties Ltd. v. Toronto (City)* (2012), 106 L.C.R. 101 at paras. 122-128 (Ont. M.B.), *aff'd* 2013 ONSC 341; *Pay Less Gas Co. (1972) v. British Columbia (Minister of Transportation and Highways)* (2001), 74 L.C.R. 81 at paras. 167-172 (B.C.E.C.B.). *Lulu Island* establishes at para. 35 that compensation board decisions can be "highly persuasive in considering the applicable principles".

[50] In those cases, the court or tribunal considered whether remediation costs would promote the highest and best of the property in issue when determining market value. The determination depended on the evidence and whether remediation was necessary.

[51] In *Nguyen*, which was a case involving development costs as opposed to remediation, Mr. Justice Armstrong determined that if there are significant redevelopment costs necessary to establish the property's highest and best use, those costs should be taken into account and subtracted from any compensation award:

[117] The first question to be answered is what [is] the highest and best use of the property.

[118] When considering the highest and best use of property, the court should take into account a number of factors that may influence considerations of probable versus possible uses of the property at the time of taking.

- [119] If significant costs are associated with the redevelopment of property, they must be subtracted from the allowable compensation because market value would ordinarily be a function of those costs: see *Vision Homes Ltd. v. Nanaimo (City)*, [1996] B.C.J. No. 1327, 59 L.C.R. 106.
- [122] In *Holdom*, the Court of Appeal accepted that a marginal probability sufficed to prove that development was more probable than not.
- [Emphasis added]
- [52] I see no difference in principle or logic to the approach to be taken concerning remediation costs. Applying the holding in *Nguyen* to this case, I conclude that it is always open for the trial judge to deduct remediation costs where appropriate. If remediation costs affect or promote a property's market value, deduction may be made. Where remediation costs will not do so, or where there is no properly quantifiable basis on the evidence to determine an appropriate deduction, it is open for the trial judge to conclude that no deduction ought to be made: see also *Owen Sound*; *O'Connor*; *Lotzkar*; *Lulu Island*; *Masae*; *Haggerty Equipment*; *Simone*; *Pay Less*.
- [53] Whether a deduction is on a dollar for dollar basis or some lesser amount depends on the evidence. Guidance from expert appraisal opinion evidence concerning the effect of the anticipated remediation costs on market value is critical to the analysis. So, too, is evidence concerning the necessity and appropriateness of the proposed costs.
- [54] In all, the assessment and determination of the compensation award is premised on market value in accordance with ss. 31 and 32 of the Expropriation Act, and is one that must be made on the facts of each case. It would inappropriately constrain the trier of fact and would be contrary to the provisions of the Expropriation Act if an exclusionary rule of universal application, such as the one sought by *Tanex*, were to be imposed.

Potential Intersection with the EMA

- [55] Section 47(1) of the EMA makes any person who is responsible for remediation to be liable to a person for reasonably incurred costs of remediation. *Tanex* is concerned that it has lost that right due to the expropriation. By way of example, it says that if the remediation costs of \$500,000 deducted in the advance payment are ultimately imposed upon it by the trial judge in this action, it will be unable to pursue recovery against responsible persons.
- [56] I will observe that it is not clear whether *Tanex* has lost that right. Whether *Tanex* has standing to bring a recovery action for deducted remediation costs arising from this action depends on the interpretation to be given to s. 47(5). That section provides that any person who incurs costs in carrying out remediation may bring a recovery action. If a deduction for \$500,000 for remediation costs is imposed on *Tanex* in this action and the remediation is carried out by GVWD, it is not clear whether *Tanex* can maintain that it falls within s. 47 because it incurred those costs, albeit carried out by another, by operation of law. I am not

satisfied that the issue was sufficiently addressed in submissions. It is an issue that should be determined on another day, when it is appropriately raised on the facts, and following fulsome submissions.

- [57] If Tanex has lost the right to bring a recovery action due to the expropriation, then Tanex's claim for the lost value of any potential recovery action may be considered by the judge determining compensation based upon sufficient evidence of value of that right, but only insofar as it impacts upon market value because the statute permits compensation solely on that basis.
- [58] Tanex's concern that it could face the prospect of double payment should it be found to be a responsible person under the EMA and liable for remediation costs in any action brought against it (for example, by the GVWD), is answered, in my opinion, by the Contaminated Site Regulation, B.C. Reg. 375/96, s. 35. In my opinion, the regulation affords Tanex grounds to deduct from the quantum of any award made against it any remediation costs deducted by the trial judge in this proceeding. That section provides:

Determining compensation under section 47(5) of the [EMA]

35 (1) For the purpose of determining compensation payable under section 47(5) of the [EMA], a defendant named in a cost recovery action under that section may assert all legal and equitable defences, including any right to obtain relief under an agreement, other legislation or the common law.

- (2) In an action between 2 or more responsible persons under section 47(5) of the [EMA], the following factors must be considered when determining the reasonably incurred costs of remediation:
- (f) other factors relevant to a fair and just allocation.

[Emphasis added]

- [59] Tanex's submission that without a rule akin to the exclusionary rule, it is saddled with the extra costs of addressing the contamination issue in this action, has been addressed by the legislature. It has decided that a successful claimant challenging an advance payment may only recover partial indemnity for its legal costs. On June 28, 1999, the Tariff of Costs Regulation, B.C. Reg. 189/99 was deposited. That regulation provided that a successful litigant may recover its legal and appraisal costs based on tariffs found within it. However, in 2005, the legislature limited a litigant's right to recover legal costs in an expropriation proceeding to partial indemnity based on party and party costs found in Appendix B and what was then Rule 57 of the Rules: Compensation Action Procedure Rule, B.C. Reg. 100/2005, s. 16. Thus, the necessity to incur legal fees and the cost of appraisal evidence to challenge an advance payment by an expropriator does not provide a basis to read in any other interpretation to compensation other than that specifically provided for in the Expropriation Act.

Conclusion

[60] Under the Expropriation Act, compensation to an owner whose interest in land has been expropriated is based upon the property's market value. Remediation costs may be taken into account when the judge assessing a compensation award determines market value based in part on the property's highest and best use. To impose a rule of universal application that requires the judge to assess market value on the basis that the property is remediated without considering remediation costs is inconsistent with the Expropriation Act and would inappropriately fetter the judge's fact finding role.

[61] It is a useful reminder that the Expropriation Act mandates in s. 30(1) that compensation is to be determined in accordance with the statute. There is no other basis in which to do so. The statute does not permit incorporation of an exclusionary rule adopted in minority decisions in certain state courts of the United States.

"Walker J."

The Honourable Mr. Justice Walker

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