IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Amix Real Estate Holdings Ltd. v. British Columbia (Minister of Transportation),* 2025 BCSC 1149

Date: 20250528
Docket: S205309
Registry: Vancouver

Between:

Amix Real Estate Holdings Ltd., Amix Marine Projects Ltd., Amix Marine Salvage Ltd., Amix Marine Services Ltd., and Amix Marine Holding Company Ltd.

Plaintiffs

And

His Majesty the King in Right of the Province of British Columbia as Represented by the Minister of Transportation

Defendant

Before: The Honourable Justice Giaschi

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiffs:	V.G. Critchley, K.C.
Counsel for the Defendant:	P. Phan T.J. Quirk
Place and Date of Hearing:	Vancouver, B.C. May 20, 2025
Place and Date of Judgment:	Vancouver, B.C. May 28, 2025

Table of Contents

Introduction

[1] We are here today for me to deliver my reasons in this matter. I reserve the right to amend these reasons for grammar and clarity and to provide full citations and quotations.

[2] By notice of application filed March 14, 2025, the plaintiffs apply for an order adding Amix Recycling Ltd (“Amix Recycling”) as a plaintiff to this action and for leave to file and serve an amended notice of civil claim. The application is opposed by the respondent (“the Province”).

[3] I shall adopt the nomenclature used in the notice of civil claim and response to civil claim by generally referring to Amix Real Estate Holdings Co. as "Holdings" and to the other named plaintiffs as the "Operating Companies". I will refer to the proposed new plaintiff simply as Amix Recycling.

Background

[4] The named plaintiffs and Amix Recycling are related companies in the sense that they are all under the ownership or control of Mr. Willie Jackson.

[5] Prior to 2011, Holdings, then named Amix Salvage and Sales Ltd., operated a metal recycling business, as well as various marine-related businesses, including marine transportation, marine salvage, and marine construction.

[6] Effective March 10, 2011, Holdings sold its metal recycling business to Schnitzer Steel Canada. A term of that agreement of sale prohibited Holdings and any subsidiaries from operating a scrap metal recycling business until after March 8, 2018.

[7] Following the sale of the metal recycling business to Schnitzer Steel, Holdings purchased 12009 and 12031 Musqueam Drive, Surrey ("the Lands") and became the real estate holding company for the Amix Group. Its other businesses are alleged to have been transferred to the Operating Companies and relocated to the Lands.

[8] By March 2018, the expropriation of the Lands for the Pattullo Bridge replacement project was under discussion between the parties.

[9] The named plaintiffs and the Province entered into an agreement dated June 28, 2019, pursuant to s. 3 of the *Expropriation Act*, R.S.B.C. 1996, c 125 (the "*Act*"). Pursuant to this agreement, Holdings agreed to transfer the Lands to the Province in exchange for an advance payment to it of approximately $12 million. The parties further agreed, *inter alia*, that:

a) It was in dispute whether the Related Entities, a defined term in the agreement meaning the Operating Companies, were entitled to any compensation under the Act;

b) Any party could commence an action or apply to the court for a determination of whether the Operating Companies were owners under the Act and entitled to compensation; and

c) Compensation payable to Holdings or the Operating Companies would be determined as if the Lands had been expropriated May 1, 2019.

[10] The plaintiffs commenced the underlying action for declarations the Operating Companies are owners within the meaning of the Act and for compensation under the Act. The notice of civil claim included the following allegations:

a) Holdings was the registered owner of the Lands;

b) The Operating Companies carried on business on the Lands;

c) Each of the plaintiffs is an owner under the *Expropriation Act*;

d) The Advance Payment was inadequate compensation for Holdings' interest in the Land, as required by s. 31 of the Act; and

e) The Operating Companies have suffered disturbance damages within the meaning of s. 34 of the *Expropriation Act*.

[11] The response to civil claim was filed September 29, 2024. In it, the Province pleads:

a) The Operating Companies were not owners of the Lands;

b) None of the Operating Companies operated a business on the Lands;

c) Holdings' prior leasehold interest was conditional on the express agreement the leases could be terminated for transportation improvements;

d) Magna Transload Ltd. was the licensee to the Lands and conducted virtually all business operations on the Lands, and

e) By agreement dated April 27, 2019, between the Province and Magna, Magna was compensated as an owner and occupant of the Lands.

[12] I note that the underlying action also raises issues concerning foreshore lands and water lot leases, referred to in the pleadings as “Adjacent Lands”, but none of this is relevant to the issues on this application.

The Proposed Plaintiff and Amended Notice of Civil Claim

[13] The proposed amended notice of civil claim (“ANOCC”) adds Amix Recycling as a plaintiff and pleads that it is an owner of the Lands within the meaning of s. 1 of the *Act*. Notably, at the new para. 17, it is pleaded that at the time the Province advised of the expropriation, Amix Recycling was preparing to commence operations on the Lands, but was prevented from doing so by the expropriation.

> 17. At the time that the Defendant advised the plaintiffs of the intended expropriation, Amix Recycling Ltd. was preparing to commence operations on the Amix Lands and the Adjacent Lands. Amix Recycling Ltd. was prevented by the intended expropriation from commencing operations on the Amix Lands and the Adjacent Lands.

[14] Mr. Jackson's Affidavit #1 makes clear that Amix Recycling did not operate any business on the Lands at the time the s. 3 agreement was entered into. In particular, he deposes that:

a) Amix Recycling was incorporated as 0979755 B.C. Ltd. in 2013, and operated various lines of businesses under different names until named Amix Recycling in April 2018;

b) Amix Group always intended to restart the metal recycling business on the Lands after the non-compete clause in the Schnitzer Steel agreement expired in March 2018;

c) Given that Amix Group expected that the Lands might be expropriated, an alternative site was found for the metal recycling business at 11698 140th Street, Surrey; and

d) Amix Recycling commenced metal recycling operations at the Surrey location on March 1, 2019.

[15] Mr. Jackson also deposes to the reasons why Amix Recycling was not originally included as a plaintiff and for the delay in the application to add it as a plaintiff. In essence, he deposes that it was not originally included because he was given advice its losses were too speculative, and it was not known whether operating at the Surrey location would be costlier than operating at the Lands. He more specifically deposes:

a) On April 18, 2019, at a meeting with KPMG to discuss the preparation of an expert report to value the business losses suffered by the Amix Group as a result of the expropriation, he was advised the recycling business should not be included in the report as it was too speculative;

b) Amix Recycling was not included as a party to the s. 3 Agreement, because it had never operated on the expropriated lands, although that had been the original intention, and because of KPMG's advice not to include the company in the business loss report;

c) Amix Recycling was not originally included as a plaintiff in this action because it was not a party to the s. 3 agreement and because it was not known whether it would suffer any loss;

d) In late 2020, KPMG was asked to reconsider whether Amix Recycling had suffered any losses;

e) In June 2022, KPMG was again asked to consider any business losses suffered by Amix Recycling;

f) On April 13, 2023, KPMG advised their preliminary calculations showed a business loss for Amix Recycling as a result of it operating at the Surrey location rather than at the Lands, but there was more work to be done to finalize the calculation; and

g) On March 15, 2024, KPMG completed their report which discloses a loss of approximately $5.5 million as a result of operating at the Surrey location rather than at the Lands.

Positions of the Parties

[16] The plaintiffs submit that Amix Recycling should be added as a party as there is an issue between it and the Province that is related to or connected with the issues in the action and there has not been excessive delay in bringing the application. They submit that the issues as between Amix Recycling and the Province are not frivolous. To the extent those issues involve an interpretation of the *Act*, they say the *Act* must be liberally interpreted and that they should be permitted to pursue a novel claim.

[17] The Province forcefully submits that the claims of Amix Recycling advanced in the proposed ANOCC are frivolous. Specifically, the Province says that Amix Recycling does not have a cause of action because it was not a party to the s. 3 agreement and it is not an owner within the meaning of the *Act*, since it never occupied the Lands or conducted any business from the Lands. They additionally

submit that the plaintiffs are estopped from asserting that Amix Recycling is an owner within the meaning of the *Act*.

[18] The parties additionally made submissions concerning the limitation period. The plaintiffs submit the limitation period is governed by s. 6 of the *Limitation Act*, S.B.C. 2012, c 13, that the claim was not discoverable until late 2021 at the earliest, and that the limitation period did not expire until mid 2024. They further rely on s. 22 of the *Limitation Act* which allows a plaintiff to be added to an existing action notwithstanding the expiry of a limitation period.

[19] The Province submits that the limitation period is the one year from the date of the deemed expropriation as set out in s. 25 of the *Act*. Alternatively, it says that under the *Limitation Act*, the limitation period expired on August 1, 2021, two years after the Province took possession of the Lands.

Legal Principles

Adding Parties

[20] The test for adding a party is governed by Rule 6-2(7)(c) of the *Supreme Court Civil Rules*. It provides:

> (7) At any stage of a proceeding, the court, on application by any person, may, subject to subrules (9) and (10),
>
> …
>
> (c) order that a person be added as a party if there may exist, between the person and any party to the proceeding, a question or issue relating to or connected with
>
> (i) any relief claimed in the proceeding, or
>
> (ii) the subject matter of the proceeding
>
> that, in the opinion of the court, it would be just and convenient to determine as between the person and that party.

[21] The test for adding a party under Rule 6-2(7) is not disputed by the parties. It is the two-part test that was recently affirmed by Justice Iyer in *Ridley Island Energy Export Facility Limited Partnership v. Trigon Pacific Terminals*, 2024 BCCA 398 at paras. 21-23:

> [21] In *Smithe Residences Ltd. v. 4 Corners Properties Ltd.*, 2020 BCCA 227, this Court summarized the two conditions that must be met for a judge to exercise the discretion in R. 6-2(7)(c):
>
> > [49] The judge may order a person be added as a party if two conditions are met: first, there may exist between the person and any party to the proceeding a question or issue relating to or connected with (i) any relief claimed in the proceeding or (ii) the subject matter of the proceeding; and second, that in the opinion of the court, it would be just and convenient to determine that question or issue.
> >
> > [Emphasis in original.]
>
> [22] The threshold for the first condition is low: *Smithe Residences* at para. 50. It is confined to determining that the question or issue is real, rather than frivolous. There is no assessment of the merits of the claim: Madadi at para. 45.
>
> [23] The second condition, which requires assessment of justice and convenience, is a fact-specific inquiry. In my view, the following non-exhaustive list of factors can be distilled from the authorities:
>
> > • The extent of, reasons for, and any prejudice caused by delay in bringing the application;
> >
> > • The extent of the connection between the existing claims and the party seeking to be added;
> >
> > • The nature of the proceeding;
> >
> > • The plaintiff's position on the proposed addition; and
> >
> > • The impact on the action of adding the proposed party, including uncertainty, expense, and delay.

[22] In *Madadi v. Nichols*, 2021 BCCA 10 at paras. 22-23, Justice Fisher addressed in more detail what constitutes a frivolous action under the first part of the test, what evidence is required, and how the court should evaluate the evidence:

> [22] … It is generally expressed as establishing a real issue between the parties that is not frivolous, or that the plaintiff has a possible cause of action against the proposed defendant: *The Owners, Strata Plan No. VIS3578 v. John A. Neilson Architects Inc.*, 2010 BCCA 329 at para. 45 [Neilson Architects]; *Strata Plan LMS 1816 v. Acastina Investments Ltd.*, 2004 BCCA 578 [Acastina]; and *MacMillan Bloedel Ltd. v. Binstead et al.* (1981), 1984 CanLII 351 (BC CA), 58 B.C.L.R. 173 (C.A.) [*Binstead*]. I would define a frivolous issue as an issue that does not go to establishing the cause of action, does not advance a claim known to law, or serves no useful purpose and would be a waste of the court's time and public resources. This is similar to the considerations for determining whether a claim should be struck as "unnecessary, scandalous, frivolous or vexatious" under Rule 9-5(1)(b): see, for example, *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5 at paras. 65, citing in *Willow v. Chong*, 2013 BCSC 1083 at para. 20. [Emphasis added.]

> [23] This threshold requirement is usually met solely on the basis of the proposed pleadings, but the parties may provide affidavit evidence addressing it. If evidence is provided, the court is limited to examining it only to the extent necessary to determine if the required issue between the parties exists; it is not to weigh the evidence and assess whether the plaintiff could prove the allegations: *Neilson Architects* at para. 45, citing *Acastina* and *Binstead*. Whether or not evidence is provided, it is necessary for the court to examine the pleadings in order to determine whether the plaintiff has a possible cause of action against the proposed defendants. The pleadings must set out material facts sufficient to establish a real and not frivolous issue between the plaintiff and the proposed defendants: *Neilson Architects* at paras. 60, 62, and 75.

[23] At para. 25 of *Madadi*, Fisher J. also addressed the importance of a limitation defence as a factor in the assessment of whether it is just and convenient to add the new party:

> [25] The existence of a limitation defence is an important factor, as such a defence is extinguished if the proposed defendant is added: *Limitation Act*, R.S.B.C. 1996, c. 266, s. 4(1)(d), repealed and replaced with *Limitation Act*, S.B.C. 2012, c. 13, s. 22(1)(d); and *Anonson v. North Vancouver (City)*, 2017 BCCA 205 at para. 13. However, this is not determinative. In *Neilson Architects*, this court adopted the following approach to considering a limitation defence (at para. 47):
>
> > If it is clear there is an accrued limitation defence, the question is whether it will nevertheless be just and convenient to add the party, notwithstanding it will lose that defence. The answer to that question will emerge from consideration of the factors set out in *Letvad*.

The *Expropriation Act*

[24] The expropriation of real property in British Columbia is generally governed by the *Expropriation Act*, subject to certain exceptions that are not relevant to this application. The *Act* provides a process by which owners of land can be compensated in two circumstances, namely: (1) if the land is actually expropriated; or (2) if the owner agrees to transfer the land without expropriation but the parties cannot agree on the compensation to be paid. In either case, pursuant to s. 20 of the *Act*, the expropriating authority must pay to the owner an advance payment in an amount it estimates is or will be payable to that owner as compensation.

[25] Parts 2-4 of the *Act* address the procedure and requirements under the first scenario, actual expropriation. I need not address these provisions as they are not relevant.

[26] Section 3 of the *Act* addresses the second scenario, it provides:

> 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,
>
> 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
>
> (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.
>
> (2) An agreement under subsection (1) must be in writing and must state
>
> (a) that the owner consents to the transfer or dedication,
>
> (b) that compensation must be determined by the court,
>
> (c) the date set for possession of the land,
>
> (d) that the owner must take the necessary steps to transfer or dedicate the land to the expropriating authority, and
>
> (e) that the expropriating authority must make an advance payment under section 20.

[27] The term "owner" is defined under the *Act* as follows:

> "**owner**", in relation to land, means
>
> (a) a person who has an estate, interest, right or title in or to the land including a person who holds a subsisting judgment or builder's lien,
>
> … or
>
> (c) a person who is in legal possession or occupation of land, other than a person who leases residential premises under an agreement that has a term of less than one year;

[28] The procedure for the owner to obtain additional compensation beyond the advance payment is set out in Part 5 of the *Act*. Pursuant to s. 25, the owner must make an application to the court for compensation within one year of the date of the

advance payment or the owner is deemed to have accepted that payment in full settlement of the owner's claim for compensation.

[29] Part 6 of the *Act* addresses the compensation to which an owner is entitled.

[30] Section 30 of the *Act* gives every owner of expropriated land the right to compensation.

> 30(1) Every owner of land that is expropriated is entitled to compensation, to be determined in accordance with this Act.
>
> (2) If the amount of compensation determined under this Act is less than
>
> (a) the amount paid under section 20, or
>
> (b) any other amount paid by the expropriating authority on account of compensation,
>
> the court must order the amount of the difference as payable to the expropriating authority by the owner to whom the overpayment was made.
>
> …

[31] Section 31 sets out the basic compensation to which an owner is entitled.

> 3(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, 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 the owner's occupation or use of the land;
>
> (b) the value of improvements made by an owner occupying a residence located on the land.
>
> (3) If there is more than one separate interest in the land expropriated, the value of each interest must, if practical, be established separately.

[32] Section 34 of the *Act* provides for disturbance damages to be paid to the owner, including reasonable costs, expenses, and financial losses directly attributable to the expropriation and the reasonable costs of relocating:

> 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 the other land.
>
> (2) If a cost, expense or loss is claimed as a disturbance damage and that cost, expense or loss has not yet been incurred, either the claimant or the expropriating authority may, with the consent of the court, elect to have the cost, expense or loss determined at the time, not more than 6 months after the date of expropriation, that the cost, expense or loss is incurred.
>
> (3) If an owner whose land is expropriated carried on a business on that land at the date of expropriation and, after the date of expropriation, relocates the business to and operates it from other land, reasonable business losses directly attributable to the expropriation must not, unless that person and the expropriating authority otherwise agree, be determined until the earlier of
>
> > (a) 6 months after the owner has operated the business from the other land, and
> >
> > (b) one year after the date of the expropriation.
>
> (4) If the court determines that it is not feasible for an owner to relocate the owner's business, there may be included in the compensation that is otherwise payable, an additional amount not exceeding the value of the goodwill of the business.

[33] In *Toronto Area Transit Operating Authority v. Dell Holdings*, 1997 CanLII 400, at paras. 20-23, the Supreme Court of Canada has said that the objective of expropriation statutes is to ensure the owner of expropriated property is fully compensated for the property taken. The court further directed that such statutes are to be given a broad and liberal interpretation and strictly construed in favour of owners of expropriated land to comply with this objective:

> 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. See P.-A. Côté, *The Interpretation of Legislation in Canada* (2nd ed. 1991), at p. 402; E. Todd, *The Law of Expropriation and Compensation in Canada* (2nd ed. 1992), at p. 26; *Manitoba Fisheries Ltd. v. The Queen*, 1978 CanLII 22 (SCC), [1979] 1 S.C.R. 101, at pp. 109-10; *Diggon-Hibben Ltd. v. The King*, 1949 CanLII 50 (SCC), [1949] S.C.R. 712, at

> p. 715; and *Imperial Oil Ltd. v. The Queen*, 1973 CanLII 155 (SCC), [1974] S.C.R. 623.
>
> 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. See *Pacific Coast Coin Exchange of Canada Ltd. v. Ontario Securities Commission*, 1977 CanLII 37 (SCC), [1978] 2 S.C.R. 112, at p. 127. In *Laidlaw v. Municipality of Metropolitan Toronto*, 1978 CanLII 32 (SCC), [1978] 2 S.C.R. 736, at p. 748, 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".
>
> 22. The application of these principles has resulted in the presumption that whenever land is expropriated, compensation will be paid. This has been the consistent approach of this Court…
>
> 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.

[34] Similarly, in *Lee v. British Columbia (Transportation)*, 2011 BCSC 281, at para.33, Justice Willcock, as he then was, wrote:

> [33] Where there is ambiguity in the provisions of the *Expropriation Act* describing the circumstances in which damages must be paid, describing the manner in which compensation is calculated, or limiting an individual's right to challenge the assessment of damages or compensation, that provision should be read liberally in favour of the subject of the expropriation. The Crown in this case does not challenge that proposition…

Issues

[35] Broadly speaking, the issues on this application are:

a) Is there a non-frivolous issue or question between Amex Recycling and any party to the proceeding related to or connected with (i) any relief claimed in the proceeding; or (ii) the subject matter of the proceeding; and

b) If so, is it just and convenient that Amix Recycling be added as a plaintiff.

Analysis

Is there a non-frivolous issue relating to or connected with the relief claimed or the subject matter of the proceeding?

[36] Turning to the first issue, as I have indicated, the Province submits that the claim of Amix Recycling is frivolous because it was not a party to the s. 3 agreement, the Lands were not expropriated, and it is not an owner within the meaning of the *Expropriation Act*, having never occupied or conducted any business on the Lands. The plaintiffs counter this submission by reminding me that expropriation statutes are remedial and are to be given a broad and liberal interpretation in favour of persons whose property is taken. The plaintiffs say they have pleaded Amix Recycling is an owner and whether it is in fact an owner is an issue for trial.

[37] I agree with the submissions of the Province.

[38] There are only two grounds upon which Amix Recycling can have a claim for compensation under the *Expropriation Act*. The first is on the basis that it is a party to a s. 3 agreement, the basis upon which the other plaintiffs advance their claims. However, it is undisputed that Amix Recycling is not a party to that agreement and it has not pleaded entitlement to compensation based on such an agreement.

[39] The second basis upon which Amix Recycling can and does claim compensation is as an “owner” of expropriated property. There are two problems with this claim.

[40] First, the Lands were not expropriated. They were transferred willingly to the Province pursuant to the s. 3 Agreement. Such a transfer is not an expropriation: *Del's Machinery Ltd. v. B.C. (Minister of Transportation)*, 2011 BCSC 754 at para. 12, citing *Williams v. British Columbia (Minister of Transportation & Highways)* (2001), 75 L.C.R. 61 (B.C.E.C.B.), at para. 25.

[41] Second, to come within the definition of “owner”, Amix Recycling must either have an estate, interest, right, or title in or to the Lands, or be a person who is in legal possession or occupation of the Lands. Other than baldly pleading it is an

"owner" within the meaning of the *Act*, Amix Recycling has not pleaded a recognizable estate, interest, right, or title in or to the land, and has not pleaded it was in possession or occupation of the Lands. To the contrary, it expressly pleads that it "was preparing to commence operations on the Amix Lands" and that it "was prevented by the intended expropriation from commencing operation on the Amix Lands". The necessary implication of this pleading is that Amix Recycling was not in legal possession or occupation of the Lands and did not have any estate, interest, right, or title in or to the Land. This implication is confirmed by the affidavit evidence of Mr. Jackson. It is clear from his evidence that the Amix Group merely intended to restart the metal recycling business on the Lands, but did not proceed with that intention because of the threatened expropriation.

[42] The plaintiffs submit that the issue of whether Amix Recycling was in occupation or possession of the Lands is a factual issue that should be left for the trial. I disagree. As I have indicated, the proposed pleading does not raise this as an issue of fact as the proposed pleading is inconsistent with Amix Recycling being in occupation or possession of the Lands.

[43] In submissions, the plaintiffs suggested that Amix Recycling might have some sort of licence to use the Lands and that this was sufficient to come within the definition of "owner". The plaintiffs referred me to *Actton Petroleum Sales v. British Columbia*, 1996 CarswellBC 3075, aff'd in part 1996 CanLII 1917 (BC CA) [*Actton*], as authority for the proposition that a licensee can be an owner within the meaning of the *Act*. The plaintiffs rely in particular on para. 34 where the Board wrote:

> 34 The board in this case agrees with the analysis in Linear Construction. Possession and occupation need not be exclusive under subparagraph (c) of the definition of owner in s. 1 of the Act. The board agrees with the broader view taken by Houghton L.J.S.C. in Douglas Lake Cattle Co. Ltd. and also agrees with the finding in Linear Construction that interests, other than leasehold interests, may fall under subparagraph (c). This could include contractual interests such as the irrevocable licence which the board has found was held by Gas. [Emphasis added.]

[44] However, this paragraph is taken out of context. At paras. 28-29 of *Actton*, the Board expressly rejected the notion that a licensee had an estate, interest, right, or

title in or to the land under subparagraph (a) of the definition of "owner". The Board then went on to consider whether the claimant in that case came within subparagraph (c) of the definition of "owner", and the Board concluded it did at para. 36 on the basis that it had possession.

> 28 The board accepts the reasoning in Ashburn Anstalt that a contractual licence, in this case the licence held by Gas, does not create a property interest. By extension, it also does not create an estate, interest, right or title in or to land. By further extension, it does not create an equitable interest in the property. The analyses of equitable interests in DHN and the case of Marino v. Minister of Transportation and Communications (1 982), 26 L.C.R. 372, (Ont. L.C.B.) also cited by the claimants, were specific to the facts of those cases and are not applicable here.
>
> 29 The board concludes, that, insofar as subparagraph (a) of the definition of owner is concerned, Gas has no estate, interest, right or title in or to the property. However, the wording in subparagraph (c) of the definition of owner is much broader and does not require that a claimant have an estate, interest, right or title in or to the property, only that a claimant be in legal possession or occupation of it. The board has concluded that Gas had an irrevocable licence to occupy and conduct its business on the property. The issue is whether that was sufficient to make Gas an owner under subparagraph (c) of the definition of owner. …
>
> 36 The position of Gas in relation to the land was substantially different from the positions of both Read Marketing and PhilVan. Gas was the marketing arm of the Actton Group and conducted the Station No. 23 retail gasoline operations. Gas not only had possession of the property, but possession sufficient to exclude others from possession and to permit others, in this case PhilVan, to occupy the property for the purpose of carrying on Gas's business. The board finds the irrevocable licence held by Gas to be sufficient to qualify Gas as an owner under subparagraph (c) of the definition in the Act.
>
> [Emphasis added.]

[45] The plaintiffs also referred me to *AI's Auto Wrecking Ltd. v. Surrey (City),* 2006 CarswellBC 646 (B.C.E.C.B.) in support of the proposition that a licensee is an owner within the meaning of the *Act*. Again, however, the proposed claimant, A-Central, actually used the land by storing its vehicles on the land (see para. 18). The court concluded this actual use, combined with a common corporate ownership, was sufficient to come within subparagraph (c) of the definition of "owner".

> 28 In the present case, the board is satisfied that A-Central's use of Lots 1 to 4 also gave rise to an irrevocable licence. The common ownership and control of the claimant and A-Central meant that as long as it was in A-Central's interest to conduct operations from Lots 1 to 4, it would have been

> in a position to do so without being concerned about termination of its right to do so.
>
> 29 The board, accordingly, concludes that A-Central is an owner pursuant to s. 1(c) of the Act.

[46] *Actton* and *AI's Auto Wrecking* merely stand for the proposition that a licensee in possession of the land or that actually uses or occupies the land is an owner within the meaning of the *Act*. None of this assists the plaintiffs because Amix Recycling is not pleaded to be a licensee in possession or occupation of the Lands, and the evidence does not even suggest it had a licence or contractual right of any sort to possess, occupy, or use the Lands.

[47] The plaintiffs also submit that this is a novel claim and that it ought to be allowed to proceed, especially given the liberal, broad, and purposive interpretation to be applied to expropriation statutes. Although I agree that the *Expropriation Act* is to be given a broad, liberal, and generous interpretation, the *Act* expressly limits the persons who may make claims for compensations to “owners” as defined. To interpret "owner" as including a person who merely intended to use or occupy the Lands would be to rewrite the statute and expand it beyond its objectives and purposes. There is simply nothing in the *Act* or in its objectives or purposes suggesting that persons who merely intended to use or occupy the Lands in an undisclosed capacity are to be compensated.

[48] Accordingly, the claim of Amix Recycling as pleaded is bound to fail. The lands were not expropriated, the proposed pleading alleges facts inconsistent with it being an owner of the Lands within the meaning of the *Expropriation Act* and the evidence of Mr. Jackson does not support it being an owner of the Lands, in any capacity, within the meaning of the *Expropriation Act*. It follows that the claim is frivolous and the first branch of the test for adding a party has not been met.

[49] In view of my conclusions on the first branch of the test, I do not need to consider the second branch of the test or the limitation period issues.

Order

[50] The application is therefore dismissed.

[51] Any submissions on costs?

[52] CNSL P. PHAN: In the application response, the Province seeks its costs in any event of the cause based on the authority from *Nguyen v. B.C.* But under the circumstances, I am going to abandon the submission for costs that's in the application response. So no submissions for costs from the Province.

[53] THE COURT: So the Province does not want its costs?

[54] CNSL P. PHAN: No.

[55] THE COURT: Then there will be no order as to costs.

"Giaschi J."