

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Chen v. Langley (Township)*,
2026 BCSC 437

Date: 20260302
Docket: S06048
Registry: Abbotsford

Between:

Xing Chen

Plaintiff

And

The Corporation of the Township of Langley

Defendant

Before: The Honourable Justice J. Hughes

Oral Reasons for Judgment

In Chambers

The Plaintiff, appearing on his own behalf:

X. Chen

Counsel for the Defendant:

S.J. McCalla
T. Udwadia

Place and Date of Hearing:

Abbotsford, B.C.
March 2, 2026

Place and Date of Judgment:

Abbotsford, B.C.
March 2, 2026

[1] **THE COURT:** This application arises out of a partial expropriation of the plaintiff Xing Chen’s property by the defendant, the Corporation of the Township of Langley (the “Township”). The plaintiff’s property is located at 20790 72 Avenue, which is at the intersection of 208 Street and 72 Avenue in Langley, British Columbia. In November 2023, the Township effected a partial expropriation of the plaintiff’s lands for the purpose of the 208th Street widening greenway and public infrastructure project.

[2] The plaintiff does not take issue with the expropriation itself. Indeed, in the underlying notice of civil claim filed August 19, 2024, he pleads the fact of the expropriation at Part 1, paragraph 10, and seeks compensation therefor under s. 40 of the *Expropriation Act*, Part 2.

[3] Rather, the plaintiff takes issue with the method by which the Township’s expropriation was effected—which was by way of a statutory right-of-way and covenant under s. 219—rather than by the Township acquiring a fee simple interest in the expropriated lands. The plaintiff says that since the lands were expropriated for highway purposes, the Township should have acquired a fee simple interest in the expropriated portion, and that that portion of the lands needs to be removed from his title.

[4] Consequently, the plaintiff has brought this application within his *Expropriation Act* claim seeking the following orders:

- a) first, an order that the land title for Lot 20, PID 008-922-616, be corrected under s. 384.1 of the *Land Title Act* to remove the erroneous November 21, 2023, Form C registration (statutory right-of-way and covenant) registered against land that has already vested in the Township on October 31, 2023;
- b) second, a declaration that the Township’s filing of Form C on November 21, 2023, was invalid under the *Expropriation Act*, including s. 23(4),

because a statutory right-of-way cannot be registered against land which has been vested in fee simple as a highway;

- c) third, an order directing the Registrar of Land Titles to restore the title to the correct post-vesting state, consistent with the October 31, 2023, Form 9 vesting notice; and
- d) fourth, costs of this application in any event of the cause.

[5] The underlying facts are largely undisputed. On June 13, 2023, the Township’s council was presented with the option of proceeding with the expropriation of the lands necessary for the 208th Street project by way of statutory right-of-way and covenant or fee simple expropriation—other affected owners apparently preferred the option of expropriation by way of statutory right-of-way, because that allowed them to retain density from the areas being expropriated upon redevelopment. The Township council (“Council”) decided to proceed with expropriation by way of statutory right-of-way and covenant.

[6] A notice of expropriation for the property was filed in the Land Title Office on September 22, 2023. The stated purpose was the construction, extension, and alteration of the linear highway and associated works, namely the 208th Street infrastructure project described above. The expropriation was to be effected by way of a statutory right-of-way and s. 219 covenant.

[7] The expropriation was approved by Council on October 23, 2023. While both the *Expropriation Act* and the *Land Title Act* contemplate the Township having the ability to expropriate a fee simple interest in land, that is not what occurred here. Council decided to proceed by way of a statutory right-of-way and covenant, as Ms. Roche testified, at the request of most affected landowners who wished to retain density associated with the expropriated lands. This was not the plaintiff’s preferred method of expropriation, but Council decided to proceed in that manner, and the plaintiff has not challenged Council’s decision, a point I will return to later.

[8] Vesting notices were signed on October 31, 2023. An advance payment of \$264,000 was made to the plaintiff via letter dated November 6, 2023, and in paragraph 7 of the notice of civil claim, the plaintiff pleads receipt of these funds. The vesting notices, one for each of the statutory right-of-way and covenant, were filed with the Land Title Office on November 21, 2023. The interest described therein was, as in the expropriation notice—a statutory right-of-way and s. 219 covenant—vested in the Township.

[9] Having considered the submissions of both parties and the record before me on this application, I conclude that the plaintiff’s application is misconceived and improperly brought within the underlying civil claim, and therefore must be dismissed. There is no basis in the *Expropriation Act*, the *Land Title Act*, or otherwise upon which to grant the orders sought by the plaintiff.

[10] First, the plaintiff’s issue is with the Township’s decision to proceed with the expropriation by way of a statutory right-of-way and covenant instead of acquiring his lands in fee simple. However, the plaintiff cannot challenge the right of the expropriating authority in proceedings under the *Expropriation Act*, which these are. This arises from s. 4(2) of the *Expropriation Act*, which provides as follows:

4(2) A person may not, in any proceedings under this Act, dispute the right of an expropriating authority to have recourse to expropriation.

[11] The underlying proceeding is a compensation proceeding brought by the plaintiff pursuant to s. 40 of the *Expropriation Act* and is predicated on the expropriation in issue having occurred. The plaintiff cannot challenge the expropriation, which is the effect of what he is trying to do on this application, in a compensation action. Put differently, he cannot do indirectly what is not permissible to be done directly.

[12] This court’s decision in *Seaside Acres Ltd. v. Pacific Coast Energy Corporation*, [1992] B.C.J. No. 2923, 1992 CarswellBC 2874 (S.C.), aff’d 1994 CarswellBC 107 (C.A.) is also instructive. In that decision, the court noted as follows:

[9] Secondly, counsel for the petitioner conceded that Seaside brought the petition under the provisions of the *Judicial Review Procedure Act*. According to s. 50(2) of the *Expropriation Act* such a petition had to be filed within 30 days of 31 August 1990 when the Minister granted the certificate of approval. Since Seaside waited to file its petition until 6 September 1991, the application for relief is also out of time by around 11 1/2 months.

[13] Accordingly, the proper means of challenging the Township's decision to proceed to expropriate by way of statutory right-of-way and covenant, rather than fee simple, is by way of judicial review. An application for judicial review of Council's decision is out of time by operation of s. 51 of the *Expropriation Act*. Section 51 provides as follows (see also *Seaside* at page 3):

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.

[14] By consequence, any application for judicial review of the Township's decision ought to have been brought within 30 days after the order subject to review was made. Thus, by operation of s. 51 of the *Expropriation Act*, if the plaintiff seeks to challenge or sought to challenge the expropriation, he ought to have filed a judicial review within 30 days, at the latest, of Council's October 23, 2023, approval of the expropriation, and was barred from doing so after November 21, 2023, when the vesting notices were filed.

[15] Having failed to take the necessary steps to challenge the Township's decision to expropriate by way of statutory right-of-way within the timeline set out in the *Expropriation Act*, the plaintiff cannot now attempt to do indirectly, by way of an application in his expropriation compensation action, that which he is no longer permitted to do directly by way of judicial review.

[16] This issue alone provides sufficient grounds upon which to dismiss the plaintiff's application. However, for completeness, I will also address the plaintiff's submissions to illustrate why, even if this application was properly conceived, I would nonetheless find that it needs to be dismissed.

[17] First, the plaintiff's submission that the Township improperly expropriated a fee simple interest in lands prior to expropriating the statutory right-of-way, contrary to s. 23 of the *Expropriation Act*, is predicated on a misconception of the underlying facts as to the timing of the registration of the statutory right-of-way and covenant on title, and misinterpretation of the legislative provisions he relies on. In this respect, s. 23(2), (3), and (4) of the *Expropriation Act* are apposite:

(2) If a fee simple interest is expropriated, the registrar must file the vesting notice, and, on filing, the land expropriated vests in the expropriating authority free and clear of all charges, as defined in the *Land Title Act*, that are registered or endorsed against the lands covered by the order or notice filed under section 7 (1) other than

(a) the subsisting conditions, provisos, restrictions, exceptions and reservations, including royalties, contained in the original grant or contained in any other grant or disposition from the government,

(b) a registered charge in respect of an interest in

(i) minerals, as defined in the *Mineral Tenure Act*,

(ii) coal,

(iii) petroleum, as defined in the *Petroleum and Natural Gas Act*, and

(iv) gas or gases, and

(c) a charge, specified in the vesting notice, that the expropriating authority directs the registrar not to cancel.

(3) If an estate, right, title or interest less than the fee simple is expropriated,

(a) the estate, right, title or interest in the land covered by the order or notice filed under section 7 (1) vests in the expropriating authority with priority over all charges, as defined in the *Land Title Act*, that are registered or endorsed against the land, and

(b) the registrar must register the estate, right, title or interest of the expropriating authority against the land that is affected by it.

(4) If the order or notice filed under section 7 (1) refers to land that is intended to become a highway, an indefeasible title must not be registered for the land covered by the order or notice, and the title to that land ceases to be registered under the *Land Title Act*.

[18] Mr. Chen says that s. 23(2) ought to apply. However, the Township says that the evidence establishes that it was subsection (3) that applies here, and pursuant to

which the expropriation was effected. The evidence is, as the Township suggests, that the Township did not expropriate a fee simple interest in lands prior to expropriating the statutory right-of-way. The fact that the vesting notices were signed in October 2023 but not filed with the Land Title Office until November 2023 does not effect the result the plaintiff contends in this respect.

[19] Second, the plaintiff submits that ss. 107 and 115 of the *Land Title Act* allow the court to grant the relief he seeks. However, in oral submissions, the plaintiff properly conceded that s. 107 does not apply. Section 115 similarly does not apply. It provides an option to use a statutory right-of-way to register a fee simple, but it is not mandatory and the Township is not required to proceed in that manner. In fact, the evidence before me establishes that the expropriation here was effected by way of a s. 113 statutory right-of-way plan, which is consistent with the filings and the notice of expropriation.

[20] Third, I am not satisfied that I have the jurisdiction to direct the Registrar of the Land Title Office to “restore title to the correct post-vesting state”. The plaintiff relies on s. 383 of the *Land Title Act*. That section deals with what a registrar of the Land Title Office can do, not the court. That section is inapplicable on the present facts. Further, as set out in *Basque Improvement District v. Lischka*, 2003 BCSC 117 [*Basque*] at para. 19, there is no appeal from a registrar’s refusal to exercise discretion under s. 383 of the *Land Title Act*. As the court noted in *Basque*:

[19] ... This is a discretion that is not exercisable on application by any party but a limited power to correct errors without prejudicing rights acquired in good faith and for value.

[21] I am not persuaded by the plaintiff’s submissions that the fact that *Basque* dealt with the registration of a right-of-way, not an expropriation by way of a statutory right-of-way, means it has no application here.

[22] Section 383 of the *Land Title Act* thus does not give the Plaintiff the ability to seek or the court the ability to grant the relief he seeks on this application. The statutory right-of-way and covenant were validly registered against title under the

Expropriation Act, and there is no basis under the *Land Title Act* to “correct” title to the plaintiff’s lands by removing the statutory right-of-way from title and removing those portions of the land subject to the statutory right-of-way from his title to those lands—e.g., to grant them to someone else in fee simple as he suggests ought to be done.

[23] In the result, the plaintiff’s application is dismissed.

[24] The issue of the plaintiff’s claim for compensation under s. 40 of the *Expropriation Act* remains extant, as set out in the underlying notice of civil claim which the parties advise is set for trial in June.

[25] The Township is entitled to its cost of this application at Scale B. I order that those costs are payable in any event of the cause, as this application was misconceived and improperly brought within the underlying civil claim.

“Hughes J.”