CASE COMMENTS AND NOTES

URBAN RENEWAL—THE STATUTES AND THEIR EFFECT

There are probably few areas of municipal endeavour which cause more hardships and inequities under the guise of improvement and civic good than do urban renewal projects. The legislation lacks proper safeguards; the application thereof by the civic civil service often verges on the oppressive and in reality the end result is not urban renewal but urban destruction.

The first inequity is to be found in the enabling statute, *The Alberta Housing Act*, S.A. 1968, c. 44, which provides:

> 15. (2) With the approval of the Province, a municipality may enter into agreements with the Corporation and with the Province for the preparation of an urban renewal scheme and the carrying out of an urban renewal scheme.
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> 16. (1) A municipality, with the approval of the Province, may prepare and carry out an urban renewal scheme for a blighted or substandard area of the municipality.

When the practitioner considers the words ". . . a blighted or substandard area . . ." several questions immediately spring to mind. Who makes the decision? Upon what information is it based? What standards or yardsticks are used? What objective does the decision maker have in mind? What voice does the property owner in the area have? What right of appeal is there from the decision? The legislation is silent upon all of these points and there is no help to be found in the reported cases. The one certainty, and what is above referred to as "the first inequity," is that the property owner or occupier in the "blighted or substandard" area has no voice in a decision which in practice inevitably results in his being dispossessed. Furthermore, he has no right of appeal from the decision. So easily is a fundamental right destroyed.

Section 16 (2) of the Act gives to a municipality certain powers in addition to powers it already has under other statutes. Included in the additional powers is the power to "acquire and clear" land within the urban renewal area. The power to negotiate and to expropriate for urban renewal purposes is given in a later section:

> 20. (1) Land may be acquired by a municipality under sections 8, 10, 12 and 16 by purchase, expropriation or otherwise and it may be acquired before it is actually needed for and in anticipation of any project or scheme mentioned in this Act.
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> (2) . . .
>
> (3) A municipality may delegate to a committee established by the council the authority to enter into (on behalf of the council) agreements for the acquisition by purchase of any land within an approved urban renewal area.

The first step towards acquiring properties seems to be taken by a committee composed of one representative of the Province, one from the municipality and one from Central Mortgage and Housing Corporation, which retains an appraiser to determine the market value of each property in the urban renewal area. A municipal employee, presumably acting as agent for the committee, then attends upon the property owner to arrange for acquisition. The problem that arises at

this stage is that the agent seems to have little, if any, power to negotiate. Experience indicates that if the party concerned does not accept the offer based upon the committee's appraisal report, expropriation follows automatically with consequent substantial costs to both parties. Here then is the second inequity. The expropriated party is deprived of the benefit which might accrue to him if he were in the position of negotiating with an anxious buyer, and this would be his position and a benefit running with his property, if the party desiring to acquire did not have expropriating powers.

At this point the party to be expropriated must face up to another factor—cost. If he refuses the offer made to him, expropriation will result and he will have to incur the expense of legal and appraiser's fees to establish the amount of his compensation. A very large proportion of the persons affected by urban renewal of a "blighted or substandard" area are in an income bracket little, if at all, above the subsistence level. Few can afford the expense of resistance to the municipality with its huge reserves of money and staff. Therefore, a degree of oppression creeps in because the party to be expropriated, while not satisfied with the offer, often has to accept, for he cannot afford to do otherwise.

If the interested party does not accept the agent's offer, whether by reason of honest difference of opinion as to compensation, or because of factors bearing upon value but unknown to the appraiser, or because of financial loss through business interruption or destruction, or because of the impossibility of relocating at the price offered, or for any reason, the municipality then invokes the powers given to it under *The Expropriation Procedure Act*, S.A. 1961, c. 30, which states:

> 22. (1) Where a municipality is empowered to acquire land by expropriation, the land may be expropriated in the manner described by this part and not otherwise.

Expropriation is accomplished by means of a by-law presented to the municipal council for enactment after compliance with the conditions precedent specified in section 24 of *The Expropriation Procedure Act*. A notice must be served upon the party whose interest is to be expropriated and the notice must specify, among other things, what the municipality is ready to pay (this is usually what has already been offered and refused), the date upon which the by-law will be presented to council and the right of the owner of the interest to appear before council to make representations in opposition to passage of the by-law. To appear before council is an interesting but fruitless exercise. Agreements having been entered into with the Province and C.M.H.C., money having been appropriated, plans having been prepared, publicity material having been prepared and circulated, and other properties having been acquired by purchase or expropriation, the municipal council is not going to halt or reverse the process regardless of the force or persuasiveness of the arguments put to it. The right to appear is, therefore, of little value unless the circumstances are so infamous that the public conscience is aroused by what is revealed.

When the by-law has been passed and, together with a plan of survey, registered in the Land Titles Office, the interest of the expropriated party is automatically extinguished and in its place he has a statutory right to compensation. This is set forth in section 26 of *The Expropriation Procedure Act*:

> 26. (1) When a certified copy of the by-law authorizing the expropriation and the plan of survey, if any, are registered in the land registry, the land, subject to subsection (2) becomes and is vested in the municipality.
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> (2) . . .
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> (3) Upon the registration of the by-law and the plan of survey, if any, in the land registry, all actions and claims in respect of the expropriation are barred except that the former owner of the land has a right to compensation therefor in the manner prescribed by this Act.

Once the by-law has been registered the expropriated party is in an invidious position indeed. Whereas if he had been the vendor in a sale he would have received the purchase price before or coincident with the cancellation of his ownership, under expropriation his title has been extinguished and he has no money; all he has is a right to compensation. If he continues to occupy the property he does so on sufferance only, for section 29 of the Act provides that:

> . . . the municipality may exercise every right acquired in the expropriated land and may occupy and use the same for the purpose of its works.

All too often the municipality demands immediate possession. There is little the occupant or resident can do but give possession, for if resistance is offered to the municipality in the exercise of its rights it may apply under section 47 of the Act for a warrant for possession and, having obtained it, require the Sheriff to exercise the warrant.

The practice in the City of Calgary has been to tender to the expropriated party, at the time of taking possession or evicting, 75 per cent of the amount which has already been offered and refused, pending final determination of the amount of the compensation. At this point the expropriated party, in the majority of cases, is, as the saying goes, between a rock and a hard spot. Obviously, even if the amount which was originally offered is fair, 75 per cent is insufficient to replace what has been taken. Equally obviously, if the expropriated party has depended on the property for a livelihood as is the case with many large old houses used as owner-occupied lodging houses and is the case with many small retail businesses in older communities, or if the expropriated property is the residence of a person with a fixed income at or little in excess of subsistence level as is frequently the case, the 75 per cent will have to be used to stay alive until compensation has been finally determined and paid. Unless the compensation is determined and paid almost immediately, therefore, by the time the expropriated party receives his money he has consumed part of his capital staying alive during the interim period. Here, then, is a serious hardship. Whereas prior to expropriation the capital was in being and the income there from supported the expropriated party, by the time he receives his compensation he has lost both the income and part of the capital.

Before turning to the question of compensation it is appropriate to ask why an urban renewal project necessarily leads to dispossession. The answer is that to this date, in Alberta, the urban renewal concept has evidently been interpreted in practice to be a license for urban destruction. The writer is not aware of any project under which the technique of rehabilitation of structures on a selective basis has been put into effect or is even planned. It is axiomatic that even in the poorest communities there are many buildings which are still structurally sound and could be renovated without the necessity of destroying the entire community and forcibly displacing the residents. Nonetheless the plan-

ners seem unable to resist the prospect of razing whole blocks regardless of the effect upon those most concerned. One is led, with good reason, to the conclusion that what is really happening is that the concept of urban renewal is being misused for purposes of urban core revitalization without sufficient or any regard being given to side effects, i.e., social upheaval, community destruction, reduction of low cost housing which is already in short supply, and so on.

In any event, as pointed out above, the sole right of the expropriated party is the right to compensation. If he is not prepared to accept what is offered how is his compensation determined? Section 228 of *The Expropriation Procedure Act* requires the municipality to apply to the Public Utilities Board, within three months of registering the expropriating by-law, for an order fixing the compensation. The Board is then directed to fix a date for a hearing and at the hearing:

> 28. (4) The Board shall proceed to hear and determine the application and, upon the conclusion of the hearing, or as soon as conveniently may be, the Board shall dispose of the application and make an order declaring
> (a) the amount of money payable by the municipality to an owner for the land expropriated by the municipality,
> (b) the amount of money payable to an owner for injurious affection caused by or arising out of the expropriation or construction of the works, and
> the costs of and incidental to the application and by whom payable.

In respect to the Public Utilities Board hearing, the expropriated party is faced with two serious factors—time and cost. The date of the hearing depends upon when the municipality applies and upon when the Board can sit, which, in turn, depends upon its other commitments. In practice, one can expect a hearing within about one to two months of passage of the by-law. Frequently the Board requests written arguments and this can delay final determination for another three or four weeks. When the Board order is issued there is a further delay while the municipal bureaucracy goes through its procedures for payment. In one of the more recent cases which the writer handled there was a time lapse of six weeks between receipt of the Board order and the cheque from the municipality. The expropriated party can therefore, even if he is prepared to abide by the Board award, anticipate a waiting-period of three to five months between registration of the by-law and receipt of the compensation.

While hearings before the Public Utilities Board are informal in contrast to those before a court, they are nonetheless contests which are decided upon the basis of the evidence presented. The expropriated party is expected to establish the amount of money he should receive. The municipality invariably produces an appraiser to testify that their offer was fair and reasonable. In order to establish his position the expropriated party will have to retain experts to perform a study and give evidence on his behalf. This is his first item of cost. The second cost item is that of counsel. His case must be presented; the municipal experts must be cross-examined, and argument must be made on his behalf including the citation of authorities. This is a task for expert counsel and, as in a court, it is a rare person who not being a counsel, is equipped by training or experience to handle his own case. The municipality on the other hand, has ample resources from which to pay experts for services in preparing and giving evidence and it has expert

counsel on its payroll or, if it has not, it has equally ample resources from which to pay counsel.

If the expropriated party is not satisfied with the Board award, he has a right of appeal under *The Expropriation Procedure Act*:

> 52. Where an order under Part I, II, III or IV fixes compensation in the sum of one thousand dollars or more, and in all other cases by leave of a judge of the Appellate Division of the Supreme Court, an appeal lies to the Appellate Division of the Supreme Court in respect of the amount of the compensation.

In fact, however, whether this right is of any value or practical use turns almost wholly upon his economic circumstances for he is again faced with the factors of time and cost.

The time loss occurs largely as a result of the Appellate Division calendar. It could be as long as four to five months before the Appellate Division decision is issued—this would have been the result in 1967 if a Board award had been made in early May, for the first sittings of the Appellate Division at which an appeal could have been heard would have been that which commenced on October 7. On the other hand it could be as short at one and one-half to two months dependent upon the date of the Board award.

The cost factor for an appeal to the Appellate Division is usually as serious as, and often more serious than for a Public Utilities Board hearing. Appeal books must be ordered and paid for. A factum must be prepared and filed. The appeal must be prepared for and argued. Anyone with experience before the Appellate Division will readily understand the expense involved in this procedure. As is the case before the Public Utilities Board, the expropriated party is faced with the obligation to pay these costs from his own often meagre resources whereas his opponent has unlimited resources to draw upon. If the expropriated party could look forward to being completely indemnified for his costs as part of the compensation award, he could face the contest with relative equanimity. However, this is not the case. Both the Public Utilities Board and the courts follow the practice of awarding costs on a party-party rather than a solicitor-client basis.

It is the writer's opinion that present urban renewal legislation and practice in Alberta is a hardship upon and oppressive to large numbers of people who are not able to defend themselves. In many aspects their rights as individuals, as citizens and as property owners are destroyed by the legislation and practice, and the rights that are reserved to them are, for very many cases, unenforcible because of the time and cost factors. Even in the case of those who are in a position to object and resist, the process has many of the frightening aspects of a runaway railway train. The end result is inevitable once the train is set in motion. It is the writer's further opinion that a new approach is long overdue and that the first step should be by way of redrafting the legislation to protect basic rights and to afford to the persons to be affected, including the general body of municipal taxpayers, the opportunity to scrutinize and criticize before the process has passed beyond the point of no return. The legislation would be more palatable and more equitable if it were provided that:

1. The decision as to whether a proposed urban renewal area was blighted or substandard was made by an independent board as, for example, the Public Utilities Board or the Local Authorities Board, or by a court, after a public

hearing notice of which was given to all property owners and occupiers within the proposed area and by advertisement to the municipal taxpayers at large.

2. No owner or occupant could be forced to deliver up possession until a reasonable time, say three months, after compensation has been determined and paid.
3. Compensation must be on a replacement or, as it is sometimes called, "a house for house" basis and must include complete indemnification for loss of income, moving expenses, business interruption and, if the award by the Public Utilities Board or the Appellate Division is greater than the offer made by the municipality, complete indemnification for the costs of expert witnesses and counsel.
4. The prime objective must be renewal by way of rehabilitation or renovation, and there can only be wholesale destruction as a last resort and then only if more than 50 per cent of the structures in the proposed area are uninhabitable or unusable and beyond rehabilitation.

These suggested changes in the legislation would remedy only the most glaring inequities. There are no doubt many other changes which could be and should be made in the interests of natural justice.

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FOREIGN CORPORATIONS—ABILITY TO SUE AND TO BE SUED IN ALBERTA.

Despite the number of foreign corporations carrying on business in the Province of Alberta, the law on the ability of such corporations to sue and be sued is unfortunately marred by aspects of uncertainty and harshness which may work hardship on both foreign corporations and residents of the Province doing business with such corporations. It is proposed that a short review of the authorities be attempted, to the end of summarizing those issues which are settled and indicating, with suggestions for resolution, those points on which ambiguity or deserved dissatisfaction remains.

I. THE RIGHT OF A FOREIGN CORPORATION TO SUE

It is a basic principle of private international law that the right of a person to sue is conferred by the law of the jurisdiction in which the suit is brought. This principle applies to corporations as well as to natural persons: *C.P.R.* v. *Western Union Telegraph Co.*[1] The result is that in most cases one must look to the law of the Province in which suit is desired. The chief exception is an action in the Exchequer Court, which admits suit by a foreign corporation, wherever registered, on matters within its jurisdiction.

Unfortunately, there is little uniformity in the requirements of the various provinces for suit by a foreign company.

The Alberta Companies Act[2] provides that all foreign companies carrying on business in the Province must be registered there. Section 161(1) further provides that a company which under section 147(1) ought to be registered may not while unregistered commence or maintain an action. Thus, generally speaking, it would seem that to bring an action in Alberta, a foreign corporation must be registered here.

1 (1889), 17 S.C.R. 151.
2 R.S.A. 1955, c. 53, s. 147(1).