

Roeland v. Manitoba

Matthew Owen-King

416.597.5421

Matthew.Owen-King@sokllp.com

Ashley Metallo

416.869.2206

Ashley.Metallo@sokllp.com

Introduction

The Manitoba Court of Appeal recently questioned the "soundness" of an Ontario court decision that is often cited in support of claims by expropriated owners for disturbance damages in circumstances where such awards are otherwise precluded by the *Expropriations Act*.

The Limit on Claims for Disturbance Damages

The common law rule at the crux of these decisions was laid out in the English Court of Appeal case of *Horn v. Sunderland Corp.* The issue is that disturbance damages are generally not recoverable by an expropriated owner with respect to land that is found to have a higher market value for a use other than what the land is being used for at the time of the taking by the authority. This principle is reflected a like in sections 13(2) and 28(2) of the expropriations legislation in Ontario and Manitoba respectively.

The "Exception" in Pike

In *Pike v. Ontario (Minister of Housing)* (1979), 20 L.C.R. 166 (Ont. Div. Ct.), a dairy and cash crop farm was expropriated in connection with development plans in respect of a planned airport in Pickering. In that case, the Ontario Divisional Court ruled on the application of the statutory provisions otherwise operating to limit claims for disturbance damages. In *Pike*, the court held that where land is "ripe" for development to a higher use, section 13(2) of the *Ontario Expropriations Act* does apply, and where land is being used as a holding for future Development and therefore "not ripe" for redevelopment, the limiting provisions of the statute do not apply. The Ontario court applied this reasoning to award the expropriated land owner disturbance damages arising from the taking of farmland in its current use, in addition to market value that reflected the property's potential for future development at a higher use.

Manitoba Treatment of the "Exception" to the Rule

In *Roeland v. Manitoba* (2013), 109 L.C.R. 1 (Man. C.A.), farmland was expropriated to accommodate the twinning of a major highway. In a fashion similar to *Pike*, the expropriated land in the recent Manitoba case was recognized as having speculative value as development land. In *Roeland*, the decision of the Land Value Appraisal Commission, which applied the rationale in *Pike* in awarding disturbance

damages to the land owner, was appealed to the high court.

On appeal, the property owner submitted that although the land was "premium farmland", it was still just "farmland" and the determination of value was therefore not based on a use "other than the existing use." In allowing the authority's appeal, the Manitoba court drew a distinction between land that is "simply farmland" and land that is "speculative farmland." The court reasoned that since the subject property had a higher market value due to its speculative potential, it had in fact been valued at a use "other than the existing use," and disturbance damages were disallowed by operation of the statutory restrictions.

In addressing the claims for disturbance damages asserted in *Roeland*, the Manitoba court considered the "exception" to the statutory rule created by the Ontario court in *Pike*. In reviewing *Pike*, the high court in Manitoba expressed "doubts" concerning the integrity of the reasoning in the Ontario case. In particular, the Manitoba court expressed concern respecting the award of disturbance damages in *Pike* for a property that the Ontario court found to have "retained the same use, but with a twist."

Conclusion

In its final analysis, the Manitoba Court of Appeal determined that it was not reasonable for the Land Value Appraisal Commission to have applied the principles that were set out by the Ontario court in *Pike*, to the circumstances in *Roeland* in this manner, the court in Manitoba rendered its decision without detailed analysis of the "*Pike* exception". Therefore, the court's questioning of the "soundness" of the decision in *Pike* was only incidental to the ultimate disposition of the matter at issue in *Roeland*.

It may be interesting to see whether future treatment in this Province of the *Pike* decision and the so-called "exception" it created will be impacted as a result of its "soundness" being questioned by a high court outside of Ontario.

