

## ***Antrim Truck Stop v. Ontario (Transportation)***



On March 7, 2013 the Supreme Court released a decision granting damages to a company that suffered serious damages to its business as a result of the Ministry of Transportation's (MTO) decision to build a new highway which resulted in traffic bypassing the business. In *Antrim Truck Centre Ltd. v. Ontario (Transportation)*, 2013 SCC 13, the Supreme Court of Canada, in a unanimous ruling, overturned the Ontario Court of Appeal decision and awarded the Antrim Truck Centre Ltd. (commonly referred to as the Antrim Truck Stop) \$393,000 for injurious affection under Ontario's *Expropriation Act*, R.S.O. 1990, c. E. 26 (the *Act*). These damages compensated the Antrim Truck Stop for business losses and loss in market value of its land. The Antrim Truck Stop was also awarded a portion of its legal costs at the Court of Appeal and the Supreme Court of Canada, which were no doubt considerable.

From 1978 until 2004, Antrim Truck Stop operated a restaurant and gas bar in a very small town in the Ottawa Valley on Highway 17. Antrim Truck Stop's business relied heavily on drivers travelling along the highway for its profits. The MTO opened a new section of Highway 417 in September 2004 that ran parallel to Highway 17 in Antrim. As a result, the traffic on Highway 17 was significantly altered and access to the Antrim Truck Stop was severely inhibited. Motorists on the new section of Highway 417 had no access to the Antrim Truck Stop and it was put out of business in that location.

The Antrim Truck Stop claimed against the MTO for "injurious affection" under the *Act* even though no land had been expropriated from the Truck Stop. The *Act* provides that where none of the claimant's land is expropriated, the affected party still has a right to compensation for "such reduction in the market value of the land to the owner, and ... such personal and business damages, resulting from the construction and not the use of the works by the statutory authority as the statutory authority would be liable for if the construction were not under the authority of a statute". In order to meet this test, the affected party must meet three statutory requirements:

- (i) the damage must result from action taken under statutory authority;
- (ii) the action would give rise to liability but for that statutory authority; and
- (iii) the damage must result from the construction and not the use of the works.

Only the second requirement was at issue in *Antrim Truck Centre*. The Antrim Truck Stop argued that it had an action against the MTO for damages in private nuisance.

Originally, the Ontario Municipal Board decided in favour of the plaintiff and awarded him \$58,000 for business losses, and \$335,000 for loss in market value. The MTO

appealed the decision. The Ontario Court of Appeal set aside the OMB decision and determined that compensation was “unreasonable” due to the fact that it was in the public interest to construct the new highway. The case then made its way to Canada’s highest court, the Supreme Court of Canada, who restored the compensation.

The Supreme Court of Canada reviewed the common law test of private nuisance and found that in order for a landowner to have a claim for private nuisance the interference with the owner’s use or enjoyment of land must be both *substantial* and *unreasonable*. A substantial interference with property is one that is non-trivial. Where this threshold is met, a judge will then consider if the interference is unreasonable. Not every interference with land is actionable nuisance; some interference must be accepted as part of living in a community with others. The main question addressed by the Supreme Court was not whether the interference was substantial (as the Antrim Truck Stop had been put out of business) but how “reasonableness” should be assessed when the activity causing the interference with the land is carried out by a public authority acting in the greater public good.

In balancing the interests of the land or business owner with an expropriating authority, the question to be asked is whether, in all circumstances, the individual claimant has shouldered a greater share of the burden of the construction than it would be reasonable to expect individuals to bear without compensation. The focus is on whether the interference suffered by the landowner is unreasonable and not on whether the nature of the party conducting the alleged nuisance is unreasonable. Generally speaking, the actions taken by a public authority will often have significant utility for the public. In short, the question is whether the damage flowing from the interference should be properly viewed as a cost of “running the system” and therefore borne by the public generally, or as the type of interference that should properly be accepted by an individual as part of the cost of living in an organized society.

The Supreme Court went on to apply the law to the facts and found that the Court of Appeal erred in reversing the decision of the Municipal Board, which had initially granted the Antrim Truck Stop damages. The Supreme Court found that the Board applied the correct law to determine whether, having regard to all the circumstances, it was unreasonable for the Antrim Truck Stop to suffer the interference caused by the expropriation without any compensation. The Board also understood the purpose of the compensation scheme in the *Expropriation Act* for injurious affection which was described by the Supreme Court as “to ensure that individuals do not have to bear a disproportionate burden of damage flowing from interference with the use and enjoyment of land caused by the construction of a public work.” The Supreme Court found that it was reasonable for the Board to conclude, in all of the circumstances, that the Antrim Truck Stop should be expected to endure a permanent interference with the use of its land that caused a significant diminution of its market value in order to serve the greater public good.

Overall, this is an important case in relation to the area of expropriation law. The decision that was made is expected to have implications in relation to the costs of infrastructure projects but only in those situations where a landowner suffers disproportionate harm like in this case, which is not common.

*The content of this article is intended to provide a general guide to the subject matter. The information does not constitute legal advice and a solicitor and client relationship is not created.*

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