

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF NOVA SCOTIA)**

BETWEEN:

ANNAPOLIS GROUP INC.

APPELLANT
(Appellant)

- and -

HALIFAX REGIONAL MUNICIPALITY

RESPONDENT
(Respondent)

- and -

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**FACTUM OF THE INTERVENER,
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(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*, S.O.R./2002-156)

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PART I. OVERVIEW

1. The Canadian Constitution Foundation (“CCF”) intervenes in this appeal in order to propose a reformulated test for *de facto* expropriation. In the CCF’s submission, a *de facto* expropriation takes place whenever government action results in a fundamental deprivation of the enjoyment of the attributes of ownership.¹ There are two distinct ways in which government action can have this effect: 1) by denying the owner’s right to exclusive possession, or 2) by denying the owner’s right to the beneficial use of the property.

2. Firstly, a *de facto* expropriation occurs when government action fundamentally denies an owner’s right to exclusive possession. This will be the case where an owner of an exclusive property interest has been permanently or indefinitely denied access to the property, or where the government has permanently or indefinitely occupied the property.

3. Secondly, a *de facto* expropriation occurs when government action fundamentally denies an owner’s right to the beneficial use of the property. The appropriate standard for a *de facto* expropriation under this branch is whether government action deprives an owner of all reasonable uses of the property. An owner’s right to use property is closely intertwined with her right to benefit from the property. Accordingly, the reasonableness of uses left to an owner under this branch of the test should be assessed in light of the *benefits* those uses permit the owner to derive from the property. A *de facto* expropriation should presumptively be established where government action deprives the owner of all or substantially all of the economic value of the property. An owner who is left with notional uses of property, none of which has any economic value, has in most cases been fundamentally denied the right to the beneficial use of her property. In these cases, a *de facto* expropriation should be found unless the government can show that the uses remaining are nonetheless reasonable under the circumstances. Relevant circumstances include the reasonable expectations of the owner, considered in light of the character of the government action.

4. This test is grounded in the common law tradition of protecting property rights in a manner consistent with Parliamentary supremacy. It is also broadly aligned with the Québec doctrine of disguised expropriation, as well as international law standards relating to the “indirect

¹ *Lorraine (Ville) v 2646-8926 Québec inc*, 2018 SCC 35 at para 1 [*Lorraine*].

expropriation” of the property of foreign nationals. Finally, this approach is justified in terms of fairness, fundamental rights, and public policy considerations.

5. The CCF adopts the statement of facts of the Appellant.

PART II. POSITION OF THE CCF

6. The CCF submits that the Court should revisit the test for *de facto* expropriation established in *Canadian Pacific Railway v Vancouver*, and that the Court should adopt the CCF’s proposed test.²

PART III. STATEMENT OF ARGUMENT

There Is a Common Law Right to Compensation for Expropriation

7. In the common law tradition, all government taking of property must be validly authorized, either by the clear terms of a statute, or under the Crown prerogative relating to the defence of the realm.³ Regardless of whether it is authorized by a statute or under the Crown prerogative, expropriation triggers a presumptive common law right to compensation that can only be rebutted by clear statutory language to the contrary.⁴ While it has occasionally been suggested that any right to compensation must be grounded in a statute, that position is clearly inconsistent with this Court’s jurisprudence. In *Manitoba Fisheries*, the Court held that the federal government owed compensation for the goodwill in the appellant company’s business, despite the fact that there were no statutory provisions requiring the federal government to pay such compensation, either in the

² 2006 SCC 5 [CPR].

³ *The King’s Prerogative in Saltpetre* (1606), 12 Co Rep 12, 77 ER 1294, CCF Book of Authorities (“CCF BOA”) Tab 6; *Western Counties v Windsor and Annapolis* (1882), 7 AC 178 at 188 (PC), CCF BOA Tab 8; *BC Medical Assn v R in Right of BC*, 1984 CanLII 262 at para 17, 58 BCLR 361 (BC CA); Paul A Warchuk, “Rethinking Compensation for Expropriation” (2015) 48:2 UBC L Rev 655 at 660-2.

⁴ *Attorney-General v De Keyser’s Royal Hotel*, [1920] AC 508 at 542 (Lord Atkinson), 576, 579 (Lord Parmoor) (HL), CCF BOA Tab 2; *Belfast Corporation v O D Cars Ltd*, [1960] AC 490 at 523 (Lord Radcliffe) (HL), CCF BOA Tab 3; *Burmah Oil Co Ltd v Lord Advocate*, [1965] AC 75 at 97-113 (Lord Reid), 143-163 (Lord Pearce), 163-171 (Lord Upjohn) (UK HL) [*Burmah Oil*], CCF BOA Tab 4; *Manitoba Fisheries Ltd v The Queen*, [1979] 1 SCR 101 at 109-110, 118 [*Manitoba Fisheries*]; *Rock Resources Inc v British Columbia*, 2003 BCCA 324 at para 136 [*Rock Resources*]; Warchuk, *ibid* at 684-91.

Freshwater Fish Marketing Act or in the federal *Expropriation Act* (which dealt only with interests in land).⁵ Moreover, the decision in *CPR* lays down a test for compensation “at common law”, without any reference to the need to ground the claim in a statute.⁶ Finally, the fact that compensation is required even when property is taken under the Crown prerogative reveals that the requirement to compensate must be based on the common law rather than statutory authority.⁷

The Test for *De Facto* Expropriation Should Focus on the Effect on the Owner’s Rights

8. The doctrine of *de facto* expropriation reinforces common law protections for property rights by preventing governments from doing through indirect means what they cannot do directly—namely, expropriating without compensation in the absence of statutory language clearly authorizing that result. The basic idea behind *de facto* expropriation is that government action can be tantamount to an expropriation, even in cases where there is no formal transfer of title.

9. The assessment of whether a *de facto* expropriation has taken place should focus on the effect of the government measure on the rights of the owner, not what was acquired by the government. A focus on the impact on the owner’s rights is in keeping with the origins of *de facto* expropriation as part of the common law’s broader commitment to protecting the rights of the subject vis-à-vis the state.⁸ While the Court in *CPR* did require the acquisition of a “beneficial interest” in the property or flowing from it as part of the test for *de facto* expropriation, this requirement is best understood broadly, to encompass any entitlement to a benefit accruing to the government or the public at large. The case law supports such a broad interpretation. The majority decision in *Tener* relies primarily on the “value” acquired by the government and the general public as a result of restrictions on mineral development in a provincial park, which amounted to the reacquisition of “a part of” the private mineral rights.⁹ Moreover, while the Court in *Manitoba*

⁵ *Manitoba Fisheries*, *ibid* at 118; *Freshwater Fish Marketing Act*, RSC 1970, c F-13, ss 20-25 (in force 1971-1988), CCF BOA Tab 10; *Expropriation Act*, RSC 1970, c 16 (1st Supp), ss 3, 5, 23 (in force 1971-1988), CCF BOA Tab 9.

⁶ *CPR*, *supra* note 2 at para 30.

⁷ *Burmah Oil*, *supra* note 4, CCF BOA Tab 4.

⁸ Gérard V La Forest, "The Canadian Charter of Rights and Freedoms: An Overview" (1983) 61 *Can Bar Rev* 19 at 20; *Belfast Corporation v O D Cars Ltd*, *supra* note 4 at 523 (Lord Radcliffe), CCF BOA Tab 3.

⁹ *R v Tener*, [1985] 1 SCR 533 at 563-5 (Estey J) (emphasis added) [*Tener*].

Fisheries held that the government acquired the appellant company's goodwill, this was something of a simplified legal fiction.¹⁰ It would have been more accurate to say that the government acquired a statutory monopoly that entitled it to *benefits* that would otherwise have flowed to the company in light of its existing goodwill. When properly understood in these broad terms, the "beneficial interest" requirement in the *CPR* test is largely superfluous. It may generally be presumed that when a government acts to restrict the rights of property owners, it does so in order to secure benefits for the government or the general public. The appropriate focus of the test for *de facto* expropriation, therefore, is on the effect of a measure on the rights of the owner.

The Court Should Adopt the CCF's Proposed Test

10. This Court recently defined expropriation in the following terms: "The concept of expropriation concerns the power of a public authority to deprive a property owner of the enjoyment of the attributes of his or her right of ownership."¹¹ Accordingly, in determining whether a government measure's effects on an owner are tantamount to an expropriation, the key inquiry is whether the measure fundamentally deprives an owner of the enjoyment of the attributes of the right of ownership. This question, in turn, depends on a proper understanding of what the essential attributes of ownership are. In the CCF's submission, there are two such attributes: 1) the right to exclusive possession; and 2) the right to beneficial use. Both of these attributes have long been understood as fundamental to the concept of ownership.¹² A denial of either amounts to a fundamental deprivation of an owner's property rights. Based on these two essential attributes of ownership, there are two distinct ways in which a *de facto* expropriation can occur.

11. Firstly, a *de facto* expropriation occurs when government action fundamentally denies an owner's right to exclusive possession. This standard will be met where an owner of an exclusive property interest has been permanently or indefinitely denied access to the property, or where the government has permanently or indefinitely occupied the property. Existing case law already recognizes the significance of a fundamental denial of the right to exclusive possession. In a recent

¹⁰ *Manitoba Fisheries*, *supra* note 4 at 110.

¹¹ *Lorraine*, *supra* note 1 at para 1.

¹² William Blackstone, *Commentaries on the Laws of England* (Oxford: Clarendon Press, 1765-1769), vol 1 at 134, vol 2 at 2, CCF BOA Tab 11; Thomas W Merrill, "Property and the Right to Exclude" (1998) 77:4 Neb L Rev 730 at 734-7, CCF BOA Tab 16.

case in which a municipality built a public road across private land, the court held that this act of physical occupation amounted to a *de facto* expropriation (despite the fact that the *CPR* “reasonable use” standard may not have been met with respect to the entire parcel of land).¹³ Similarly, under the Québec civil law doctrine of disguised expropriation, it is well established that one of the ways in which government action can amount to a disguised expropriation is through occupation of an owner’s land.¹⁴

12. Secondly, a *de facto* expropriation occurs when government action fundamentally denies an owner’s right to the beneficial use of the property. The appropriate standard for a *de facto* expropriation under this branch is whether government action deprives an owner of all reasonable uses of the property. An owner’s right to use property is closely intertwined with her right to benefit from the property. Accordingly, the reasonableness of uses left to an owner should be assessed in light of the *benefits* those uses permit the owner to derive from the property. Economic value provides a strong indication of the benefits associated with permitted uses.¹⁵ A *de facto* expropriation should presumptively be established where government action deprives the owner of all or substantially all of the economic value of the property. An owner who is left with notional uses of property, none of which has any economic value, has in most cases been fundamentally denied the right to the beneficial use of her property. In these cases, a finding of a *de facto* expropriation should be presumed unless the government can show that the remaining uses are nonetheless reasonable under the circumstances. Relevant circumstances include the reasonable expectations of the owner, considered in light of the character of the government action.

13. The reasonable expectations of the owner include expectations formed on the basis of background principles of common law, as well as existing public law regulatory regimes. If the government restricts the use of land, but in so doing only prohibits uses that would have constituted actionable nuisance at common law, then the restrictions are in keeping with the reasonable expectations of the owner. Similarly, where an owner acquires land that is already subject to significant restrictions on use under a regulatory regime, those pre-existing restrictions may inform

¹³ *Sun Construction Company Limited v Conception Bay South (Town)*, 2019 NLSC 102 at para 15.

¹⁴ *Ville de Québec c Rivard*, 2020 QCCA 146 at para 65; *Dupras c Ville de Mascouche*, 2020 QCCS 2538 at para 110.

¹⁵ *Tener*, *supra* note 9 at 563-5 (Estey J); *Rock Resources*, *supra* note 4 at paras 48-57.

the owner's reasonable expectations. The character of the government action may also inform the assessment of reasonable expectations. Government measures imposed in good faith, as part of a general policy framework rather than one targeting a particular owner, and in a manner that pursues an important public policy objective, are more likely to accord with an owner's reasonable expectations, particularly if the owner had notice of the existence of the relevant restrictions at the time the property was acquired. Where government measures restrict uses in a manner consistent with the reasonable expectations of the owner, the remaining uses may be held to be reasonable under the circumstances even if they leave the owner with little economic value.

14. The second branch of the proposed test provides a compelling explanation for cases in which use restrictions have been found to constitute a *de facto* expropriation. Those cases include *Manitoba Fisheries*, in which legislation prevented a company from using the goodwill in its business to derive economic value;¹⁶ *R v Tener* and other cases in which mineral owners were prevented from developing their minerals;¹⁷ and *Lynch v St John's*, in which a landowner was effectively required to leave land in its natural state.¹⁸

15. The proposed second branch of the test would also serve to align the common law of *de facto* expropriation with trends in Québec's disguised expropriation jurisprudence. This Court has held that a disguised expropriation occurs when a government "limits the enjoyment of the attributes of the right of ownership of property to such a degree that the person entitled to enjoy those attributes is *de facto* expropriated from them."¹⁹ While this is an open-ended and contextual inquiry, there is nevertheless a clear trend in the case law: a disguised expropriation is generally found in cases in which the uses left to the owner have no economic value.²⁰ Uses may be restricted in significant ways without giving rise to a disguised expropriation, as long as the permitted uses provide some economic value to the owner. For instance, courts have found that restrictions limiting uses to a golf course and related activities, or to a single-family home set back from the

¹⁶ *Supra* note 4.

¹⁷ *Tener, supra* note 9; *Rock Resources, supra* note 4; *Casamiro Resource Corp v British Columbia (Attorney General)*, 55 BCLR (2d) 346, 1991 CanLII 211 (BC CA).

¹⁸ *Lynch v St. John's (City)*, 2016 NLCA 35.

¹⁹ *Lorraine, supra* note 1 at para 27.

²⁰ Malcolm Lavoie, "Canadian Common Law and Civil Law Approaches to Constructive Takings: A Comparative Economic Approach" (2011) 42:2 Ottawa L Rev 231 at 243-5, CCF BOA Tab 15.

main road, are not disguised expropriations.²¹ By contrast, in cases where the economic value left to the owner is negligible or non-existent, the restrictions are generally found to be a disguised expropriation. Zoning land for conservation, parks, or “institutional” uses, like schools and municipal buildings, generally constitutes a disguised expropriation.²² This is highly intuitive. While these restrictions may leave an owner with notional permitted uses, they are not uses from which an owner can expect to derive meaningful benefits. In other words, the owner’s right to beneficial use has been fundamentally denied.

The CCF’s Proposed Test Aligns with Principles of International Law

16. The CCF’s proposed test is broadly aligned with the concept of “indirect” expropriation in international law. Canada is bound by dozens of foreign investment and free trade agreements that provide protection for the property rights of foreign investors in Canada.²³ These treaties require compensation for both direct and indirect expropriation.²⁴ Indirect expropriation is typically defined in a manner that focuses on the effects of a government measure. The *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (“CPATPP”) between Canada and 10 other countries, for instance, defines indirect expropriation as occurring when “an action or series of actions by a Party has *an effect* equivalent to direct expropriation without formal transfer of title or outright seizure.”²⁵ The CPATPP then sets out three factors relevant to determining whether a measure constitutes an indirect expropriation: (i) the economic impact of the measure; (ii) the extent of interference with reasonable, investment-backed expectations; and (iii) the character of the measure.²⁶ These factors, typical of international trade and investment agreements in force in Canada and around the world, are derived from the US case of *Penn Central Transportation Co v*

²¹ *Municipalité de Saint-Colomban c Boutique de golf Gilles Gareau inc*, 2019 QCCA 1402 at para 82; *Ville de Québec c Rivard*, 2020 QCCA 146 at para 68.

²² *Sula c Duvernay (Cité de)*, [1970] RJQ 234 (CA), CCF BOA Tab 7; *Donnacona (Ville de) c Gagné-Lambert*, [1976] RJQ 503 (CA), CCF BOA Tab 5; *Montréal (Ville de) c Benjamin*, [2004] JQ no 12943 (CA); *Dupras c Ville de Mascouche*, 2020 QCCS 2538; *Ville de Saint-Rémi c. 9120-4883 Québec inc*, 2021 QCCA 630.

²³ Government of Canada, *Trade and Investment Agreements* (updated 18 July 2021).

²⁴ See, e.g., *Comprehensive and Progressive Agreement for Trans-Pacific Partnership*, 8 March 2018, UNTS No 56101, art 9.8, Annex 9-B (entered into force 30 December 2018).

²⁵ *Ibid*, Annex 9-B, art 3 (emphasis added).

²⁶ *Ibid*, Annex 9-B, art 3(a).

New York City.²⁷ A separate clause in the CPATPP further clarifies the scope of indirect expropriation under the agreement: “Non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety and the environment, do not constitute indirect expropriations, except in rare circumstances.”²⁸ While this clause affirms the regulatory power of states, it also expressly acknowledges that regulatory measures enacted in the pursuit of legitimate public policy objectives may still constitute indirect expropriation, for instance where the economic impact is sufficiently severe. In this respect, the clause reflects the more general principle that the character of the government measure should be considered alongside other factors, including its economic impact and the extent of interference with investment-backed expectations. The acquisition of an interest by the state is notably not a required element of an indirect expropriation under these provisions, or under international law more generally.²⁹ In international arbitration jurisprudence, government measures that deprive the owner of all or substantially all of the economic value of the property have generally been found to constitute indirect expropriation.³⁰

17. In addition to the relevant treaty provisions, there is also a requirement under customary international law that states must not expropriate the property of foreign nationals, directly or indirectly, without appropriate compensation.³¹ Rules of customary international law are

²⁷ 438 US 104 (1978) [*Penn Central*].

²⁸ *Ibid*, Annex 9-B, art 3(b). Compare also the different language in:

Canada-European Union Comprehensive Economic and Trade Agreement, 30 October 2016, Annex 8-A, art 3 (entered into force provisionally 21 September 2017; investment provisions not yet in force); *Agreement Between the Government of Canada and the Government of the People's Republic of China for the Promotion and Reciprocal Protection of Investments*, 9 September 2021, Can TS 2014 No 26, Annex B.10, art 3.

²⁹ Rudolf Dolzer & Christoph Schreuer, *Principles of International Investment Law*, 2nd ed (Oxford: OUP, 2012) at 112-5, CCF BOA Tab 14.

³⁰ Dolzer & Schreuer, *ibid* at 112, CCF BOA Tab 14; *Metalclad Corp v United Mexican States* (2000), 119 ILR 615 (August 2000 Award) at paras 102-112; *Tecnicas Medioambientales Tecmed SA v The United Mexican States*, ICSID Case No ARB (AF)/00/2 (May 2003 Award) at para 115; *Bear Creek Mining Corporation v Republic of Peru* (2017), ICSID Case No ARB/14/21 (November 2017 Award) at paras 368-416.

³¹ James Crawford, *Brownlie's Principles of Public International Law*, 9th ed (Oxford: OUP, 2019) at 603-5, CCF BOA Tab 13; Malcolm N Shaw, *International Law*, 8th ed (Cambridge: CUP, 2017) at 628-637, CCF BOA Tab 18; Andrew Newcombe, “The Boundaries of Regulatory Expropriation in International Law” (2005) 20 *ICSID Review* 1 at 23-4, CCF BOA Tab 17; Russell Brown, “Legal

automatically incorporated as part of Canadian common law.³² Accordingly, the scope of indirect expropriation protection for foreign nationals is not necessarily limited to parties from the many states with which Canada has an applicable trade or investment treaty.

18. The concept of indirect expropriation under international law provides a valuable model for the Court to look to in developing the common law. All things being equal, the Court should prefer an approach to the common law that aligns it with international law.³³ Further, by aligning the Canadian common law of *de facto* expropriation with the international law standards applicable in Canada, the Court would bring greater coherence to Canadian law. Under the current *CPR* test, the standard for a common law *de facto* expropriation is arguably more stringent than the standard for indirect expropriation under international law. As then-Professor Russell Brown previously argued, this is nothing short of incoherent.³⁴ There is no morally compelling reason why the property interests of foreign investors should enjoy stronger legal protection than the property interests of Canadians. The CCF’s proposed test would raise the level of protection afforded to Canadian property owners to a level comparable to the standard for foreign investors, while avoiding some of the uncertainty associated with a multi-factor balancing test.

The CCF’s Test Is Justified by Considerations of Fairness, Rights and Public Policy

19. The CCF’s proposed test is justified on the grounds of: 1) fairness; 2) fundamental rights; and 3) public policy. Firstly, the CCF’s test addresses the unfairness associated with asking a single property owner to suffer a total loss of value for a policy that benefits the public at large. A presumptive right to compensation thus amounts to a presumption against a fundamentally unfair outcome.

20. Secondly, the CCF’s proposed test protects the fundamental rights of property owners. The requirement that the legislature must expressly authorize any uncompensated expropriation—*de jure* or *de facto*—provides a measure of rights protection for property owners, prompting

Incoherence and the Extra-Constitutional Law of Regulatory Takings: The Canadian Experience” (2009) 1:3 Int’l J of Law in the Built Environment 179 at 183 [Brown, “Incoherence”], CCF BOA Tab 12.

³² *Nevsun Resources Ltd v Araya*, 2020 SCC 5 at paras 86-95.

³³ *Ahmad v ILEA*, [1978] 1 QB 36 (Eng CA) at 48, CCF BOA Tab 1.

³⁴ Brown, “Incoherence”, *supra* note 31 at 182-6, CCF BOA Tab 12.

legislators to deliberate on the question of whether such a significant rights infringement is justified. Justice Gérard La Forest once put it this way, writing extrajudicially:

The authors of our system of parliamentary democracy were actuated by a philosophy of individual freedom, a philosophy that continues to inform our fundamental political institutions. The courts through a series of presumptions designed ‘as protection against interference by the state with the liberty or property of the subject’ interpret statutes so as to ensure that individual freedom or private rights of property are not arbitrarily restricted or abridged. In doing this the courts exercise what is in essence a constitutional function. They are working along with the legislative branch to ensure the preservation of our fundamental political values. The legislature can, of course, by clear language overturn the court's ruling, but by insisting on such clarity the courts help to promote second thought and public debate, a debate that all recognize as an essential safeguard in a parliamentary democracy.³⁵

21. Finally, the CCF’s approach is justified on public policy grounds. The CCF’s proposed test serves to lower the risk faced by property owners of a total loss of value, while at the same time preserving governments’ flexibility to regulate in the public interest. Only regulatory measures with extreme impacts on an owner’s rights are captured by the proposed test. The vast majority of regulatory measures, including zoning laws, would be unaffected.


PART IV. SUBMISSIONS CONCERNING COSTS

22. The CCF requests that no costs be awarded either for it or against it.

PART V. ORDER SOUGHT

23. The CCF takes no position on the disposition of this appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of November, 2021.



 Malcolm Lavoie
 Adrienne Funk

³⁵ La Forest, *supra* note 8 at 20.

PART VI. TABLE OF AUTHORITIES

	Case Law	Paragraph(s) Referenced in Factum
1.	<i>Ahmad v ILEA</i> , [1978] 1 QB 36 (Eng CA) [Book of Authorities Tab 1]	18
2.	<i>Attorney-General v De Keyser's Royal Hotel</i> , [1920] AC 508 (HL) [Book of Authorities Tab 2]	7
3.	<i>BC Medical Assn v R in Right of BC</i> , 1984 CanLII 262, 58 BCLR 361 (BC CA)	7
4.	<i>Bear Creek Mining Corporation v Republic of Peru</i> (2017), ICSID Case No ARB/14/21 (November 2017 Award)	16
5.	<i>Belfast Corporation v O D Cars Ltd</i> , [1960] AC 490 (HL) [Book of Authorities Tab 3]	7, 9
6.	<i>Burmah Oil Co Ltd v Lord Advocate</i> , [1965] AC 75 (UK HL) [Book of Authorities Tab 4]	7
7.	<i>Canadian Pacific Railway v. Vancouver</i> , 2006 SCC 5	6, 7, 9, 18
8.	<i>Casamiro Resource Corp v British Columbia (Attorney General)</i> , 55 BCLR (2d) 346 , 1991 CanLII 211 (BC CA)	14
9.	<i>Donnacona (Ville de) c Gagné-Lambert</i> , [1976] RJQ 503 (CA) [Book of Authorities Tab 5]	15
10.	<i>Dupras c Ville de Mascouche</i> , 2020 QCCS 2538	11, 15
11.	<i>The King's Prerogative in Saltpetre</i> (1606), 12 Co Rep 12, 77 ER 1294 [Book of Authorities Tab 6]	7
12.	<i>Lorraine (Ville) v. 2646-8926 Quebec inc</i> , 2018 SCC 35	1, 10, 15
13.	<i>Lynch v St. John's (City)</i> , 2016 NLCA 35	14
14.	<i>Manitoba Fisheries Ltd. v. The Queen</i> , [1979] 1 SCR 101	7, 9
15.	<i>Metalclad Corp v United Mexican States</i> (2000), 119 ILR 615 (August 2000 Award)	16
16.	<i>Montréal (Ville de) c Benjamin</i> , [2004] JQ no 12943 (CA)	15

17.	<i>Municipalité de Saint-Colomban c Boutique de golf Gilles Gareau inc</i> , 2019 QCCA 1402	15
18.	<i>Nevsun Resources Ltd v Araya</i> , 2020 SCC 5	17
19.	<i>Penn Central Transportation Co v New York City</i> , 438 US 104 (1978)	16
20.	<i>R v Tener</i> , [1985] 1 SCR 533	9, 12, 14
21.	<i>Rock Resources Inc v British Columbia</i> , 2003 BCCA 324	7, 12, 14
22.	<i>Sula c Duvernay (Cité de)</i> , [1970] RJQ 234 (CA) [Book of Authorities Tab 7]	15
23.	<i>Sun Construction Company Limited v Conception Bay South (Town)</i> , 2019 NLSC 102	11
24.	<i>Tecnicas Medioambientales Tecmed SA v The United Mexican States</i> , ICSID Case No ARB (AF)/00/2 (May 2003 Award)	16
25.	<i>Ville de Québec c Rivard</i> , 2020 QCCA 146	11, 15
26.	<i>Ville de Saint-Rémi c. 9120-4883 Québec inc</i> , 2021 QCCA 630	15
27.	<i>Western Counties v Windsor and Annapolis</i> (1882), 7 AC 178 (PC) [Book of Authorities Tab 8]	7
	Statutory Authorities	
28.	<i>Expropriation Act</i> , RSC 1970, c 16 (1 st Supp), ss 3, 5, 23 (in force 1971-1988) [Book of Authorities Tab 9]	7
29.	<i>Freshwater Fish Marketing Act</i> , RSC 1970, c F-13, ss 20-25 (in force 1971-1988) [Book of Authorities Tab 10]	7
	Other Sources	
30.	<i>Agreement between the Government of Canada and the Government of the People's Republic of China for the Promotion and Reciprocal Protection of Investments</i> , Canada and China, 9 September 2012, Can TS 2014 No 26 (entered into force 1 October 2014)	16
31.	William Blackstone, <i>Commentaries on the Laws of England</i> (Oxford: Clarendon Press, 1765-1769) vol 1 at 134, vol 2 at 2 [Book of Authorities Tab 11]	10

32.	Russell Brown, "Legal Incoherence and the Extra-Constitutional Law of Regulatory Takings: The Canadian Experience" (2009) 1:3 Int'l Journal of Law in the Built Environment 179 at 182-6 [Book of Authorities Tab 12]	17, 18
33.	Canada-European Union Comprehensive Economic and Trade Agreement , 30 October 2016 (entered into force provisionally 21 September 2017)	16
34.	Comprehensive and Progressive Agreement for Trans-Pacific Partnership , 8 March 2018, UNTS No 56101 (entered into force 30 December 2018).	16
35.	James Crawford, <i>Brownlie's Principles of Public International Law</i> , 9 th ed (Oxford: OUP, 2019) at 603-605 [Book of Authorities Tab 13]	17
36.	Rudolf Dolzer & Christoph Schreuer, <i>Principles of International Investment Law</i> , 2 nd ed (Oxford: OUP, 2012) at 112-5 [Book of Authorities Tab 14]	16
37.	Government of Canada, Trade and Investment Agreements (updated 18 July 2021)	16
38.	G�rard V. La Forest, "The Canadian Charter of Rights and Freedoms: An Overview" (1983) 61 Can Bar Rev 19	9, 20
39.	Malcolm Lavoie, "Canadian Common Law and Civil Law Approaches to Constructive Takings: A Comparative Economic Approach" (2011) 42:2 Ottawa L Rev 231 at 243-5 [Book of Authorities Tab 15]	15
40.	Thomas W Merrill, "Property and the Right to Exclude" (1998) 77:4 Neb L Rev 730 at 734-7 [Book of Authorities Tab 16]	10
41.	Andrew Newcombe, "The Boundaries of Regulatory Expropriation in International Law" (2005) 20 <i>ICSID Review</i> 1 at 23-4 [Book of Authorities Tab 17]	17
42.	Malcolm N Shaw, <i>International Law</i> , 8 th ed (Cambridge: CUP, 2017) at 628-637 [Book of Authorities Tab 18]	17
43.	Paul A Warchuk, "Rethinking Compensation for Expropriation" (2015) 48:2 UBC L Rev 655 at 660-2, 684-91	7