Federal Court of Appeal  Cour d'appel fédérale

Date: 20180606

Docket: A-210-17

Citation: 2018 FCA 113

CORAM: **NEAR J.A.**
GLEASON J.A.
LASKIN J.A.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Appellant

and

SHAWN SOMERVILLE MILNE

Respondent

Heard at Toronto, Ontario, on May 29, 2018.

Judgment delivered at Ottawa, Ontario, on June 6, 2018.

REASONS FOR JUDGMENT BY: LASKIN J.A.

CONCURRED IN BY: NEAR J.A.
GLEASON J.A.

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REASONS FOR JUDGMENT

LASKIN J.A.

[1] The Crown appeals from the order of Gleeson J. of the Federal Court (2017 FC 569). In that order, the motion judge dismissed the Crown's motion for summary judgment dismissing Mr. Milne's action in the Federal Court for damages under the *Expropriation Act*, R.S.C. 1985, c. E-21, arising from an expropriation of land in Belleville, Ontario.

[2] The motion was based on the assertion that the action was statute-barred, because it was commenced more than two years after the Attorney General of Canada registered a notice of confirmation of the expropriation in the land registry office. The Crown argued that by subsection 39(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, Ontario limitation of actions law (the *Limitations Act, 2002*, S.O. 2002, c. 24, Sch. B) applied, and established a two-year limitation period. Subsection 39(1) renders the laws relating to prescription and the limitation of actions in force in a province between subject and subject applicable to proceedings in the Federal Court in respect of a cause of action arising in that province, except as expressly provided by any other Act.

[3] The central issue before the motion judge was the proper interpretation of subparagraph 31(1)(*a*)(i) of the *Expropriation Act* – whether it provides that there is no limitation period, and thus ousts the operation of subsection 39(1) of the *Federal Courts Act*, or merely establishes a point in time after which an action may be commenced, subject to the limitation period determined in accordance with subsection 39(1) (in this case the limitation period prescribed by the Ontario Act). Paragraph 31(1)(*a*) of the *Expropriation Act* reads as follows (underlining added):

31 (1) Subject to section 30,	31 (1) Sous réserve de l'article 30:
(*a*) a person entitled to compensation in respect of an expropriated interest or right may,	*a*) une personne qui a droit à une indemnité pour un droit ou intérêt exproprié peut:
(i) <u>at any time</u> after the registration of the notice of confirmation, if no offer under section 16 has been accepted by him, and	(i) <u>après</u> l'enregistrement de l'avis de confirmation, si elle n'a accepté aucune offre faite en vertu de l'article 16,

(ii) within one year after the acceptance of the offer, in any other case,	(ii) dans un délai d'un an à compter de l'acceptation de l'offre, dans tout autre cas,
commence proceedings in the Court by statement of claim for the recovery of the amount of the compensation to which he is then entitled; or	engager des procédures devant le tribunal par voie d'exposé de la demande pour le recouvrement du montant de l'indemnité à laquelle elle a alors droit;

[4] The motion judge applied the "modern approach" to statutory interpretation endorsed by the Supreme Court in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21, 1998 CanLII 837. He read the words used in subparagraph 31(1)(*a*)(i) – "at any time after" – in their statutory context and in light of the object and purpose of expropriation legislation.

[5] Applying this approach, he found the words to be clear and unambiguous. He noted the Supreme Court's holding in *Toronto Area Transit Operating Authority v. Dell Holdings Ltd.*, [1997] 1 S.C.R. 32 at 46, 1997 CanLII 400, that expropriation legislation (there the Ontario statute) "should be read in a broad and purposive manner in order to comply with the aim of the Act to fully compensate a land owner whose property has been taken," and observed that if accepted, the Crown's position could deprive a land owner of compensation. He interpreted the provision as expressly stating that no limitation period applies, so that subsection 39(1) of the *Federal Courts Act* does not incorporate Ontario limitations legislation by reference. He also took into account the decision of the Alberta Court of Appeal in *Calgary (City) v. Lafarge Canada Inc.*, 1995 ABCA 313 at para. 15, 169 A.R. 363, in which the Court gave the same meaning to the phrase "at any time" as it appeared in Alberta expropriation legislation. He therefore determined that the action was not statute-barred.

[6] In addition, the motion judge considered whether there is a discrepancy between the English text of subparagraph 31(1)(*a*)(i), which uses the phrase "at any time after," and the French text, which uses "après." Relying on dictionary definitions, he concluded that there is no discrepancy: both texts convey the meaning of "whatever time." He therefore found it unnecessary to apply the rules, set out in *R. v. Daoust*, 2004 SCC 6 at paras. 26-31, [2004] 1 S.C.R. 217, that govern the interpretation of bilingual legislation where the two versions are discordant.

[7] The Crown now appeals to this Court, submitting that the motion judge erred in interpreting subparagraph 31(1)(*a*)(i) as providing that there is no limitation period, and in failing to interpret it as merely establishing the point after which an action for compensation may be commenced, subject to the limitation period incorporated by subsection 39(1) of the *Federal Courts Act*. The issue of statutory interpretation raised by the appeal is an issue of law, subject to the correctness standard of appellate review.

[8] In my view the conclusion of the motion judge was correct, substantially for the reasons that he gave. I will briefly address only one element of his reasons, as well as one aspect of the Crown's submissions in this Court that represents a change in position from that argued before the motion judge.

[9] The element of the motion judge's reasons on which I will comment is his conclusion that there is no discordance between the two versions of subparagraph 31(1)(*a*)(i). I would not necessarily have concluded that "at any time after" and "après" convey on their face the same

meaning, especially when Parliament has, in some statutes in which the English version uses “at any time after,” used in the French version not just “après” but the phrase “à tout moment après” (for example, in subsection 88(1) of the *Marine Liability Act*, S.C. 2001, c. 6) or the phrase “en tout temps après” (for example, in section 71 of the *Excise Act*, R.S.C. 1985, c. E-14).

[10] However, the Crown did not take issue with this element of the reasons, and I am satisfied that applying the rules that govern the interpretation of bilingual legislation where the two versions are discordant would have yielded the same result: see, for example, *Alexander College Corp. v. Canada*, 2016 FCA 269 at paras. 16-19, [2017] 2 F.C.R. 527.

[11] Before the motion judge, the Crown argued that the limitation period incorporated by subsection 39(1) of the *Federal Courts Act* applies not only to a land owner’s entitlement to commence an action for compensation, but also to the land owner’s entitlement to accept an offer of compensation under section 16 of the *Expropriation Act* (referred to in subparagraphs 31(1)(*a*)(i) and (ii) of the Act), which the Act obliges the Minister to make. Before this Court, the Crown resiled from that position, and acknowledged that entitlement to accept a section 16 offer was not subject to a limitation period. The Crown suggested that this should allay the concern expressed by the motion judge that the Crown’s interpretation of subparagraph 31(1)(*a*)(i) could deprive a land owner of compensation.

[12] I do not agree. As the Supreme Court stated in *Dell Holdings*, above, the purpose of expropriation legislation is to provide not just compensation, but full compensation. That the

land owner remains entitled to accept the section 16 offer fails to ensure that this purpose is met in any case where the offer falls short of providing full compensation.

[13] I would therefore dismiss the appeal. I would award costs of the appeal to Mr. Milne, to be determined by the trial judge in accordance with subsection 39(2) of the *Expropriation Act*.

"J.B. Laskin"
J.A.

“I agree.
D. G. Near J.A.”

“I agree.
Mary J. L. Gleason J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-210-17
(APPEAL FROM AN ORDER OF THE HONOURABLE JUSTICE GLEESON DATED JUNE 9, 2017, DOCKET NO. T-697-16)	
STYLE OF CAUSE:	HER MAJESTY THE QUEEN IN RIGHT OF CANADA v. SHAWN SOMERVILLE MILNE
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MAY 29, 2018
REASONS FOR JUDGMENT BY:	LASKIN J.A.
CONCURRED IN BY:	NEAR J.A. GLEASON J.A.
DATED:	JUNE 6, 2018

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