



ENERGY REGULATORY REPORT

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ALBERTA COURT OF APPEAL

Sabo v AltaLink Management Ltd., 2024 ABCA 179 *Authority – Compensation Award*

Application

On appeal from AltaLink Management Ltd. (“AML”), the Alberta Court of Appeal (“ABCA”) considered whether the Land and Property Rights Tribunal (the “Board”) had the authority under s 25(1)(d) of the *Surface Rights Act* (“SRA”) to award compensation arising from power transmission line structures that are not located on the area granted to the operator under a right of entry (“ROE”) order (“ROE Order”).

The Board concluded that it did not have authority under s 25(1)(d) of the SRA to award compensation arising from power transmission line structures that are not located on the ROE lands. The Board’s decision was reversed on appeal by the Court of King’s Bench.

Decision

The ABCA agreed with the hearing judge that the Board erred in its conclusion on the scope of its authority. The ABCA also found that the hearing judge erred in the manner in which he determined compensation. As a result, the ABCA allowed the appeal in that regard and returned the question to the Board to determine compensation in accordance with the principle enunciated in this decision, namely that compensation under s 25(1)(d) of the SRA for “nuisance, inconvenience and noise that might be

caused by or arise from or in connection with the operations of the operator” is not restricted to operations on the area granted to the operator under the ROE Orders.

Pertinent Issues

The appellant AML is the operator of a power transmission line. The Board granted AML ROE Orders in respect of land owned by the respondent landowners. AML built the power transmission line structures on land that is adjacent to the land subject to the ROE Orders. The transmission structures are not located on the land subject to the ROE Orders (with one negligible exception).

The Board ordered compensation for amounts agreed upon by the parties. For example, some parties agreed to the amount of compensation for the value of the land taken by the ROE Orders. The parties did not agree on the compensation to be awarded under section 25(1)(d) of the SRA.

The ABCA held that it was necessary to consider the specific words used in the SRA to determine the proper interpretation of s 25(1)(d). According to the ABCA, the Board’s line of reasoning hinged on its view that “injurious affection” is a subset of “adverse effect,” even though “injurious affection” is not specifically mentioned or defined in the SRA. This resulted in the Board failing to consider the specific words of the statute, which error led the Board to



ABCA re *Sabo v AltaLink*

misinterpret the scope of its authority to award compensation under section 25(1)(d) of the *SRA*.

The ABCA reviewed the relevant case law, including the Board's past decisions, and found that a person's statutory entitlement to compensation for "injurious affection" will depend on the specific statute at issue. Some statutes provide for compensation for "injurious affection" in general terms, in which cases it may be necessary to look to case law for the rules prescribing the circumstances where compensation can be recovered. However, the tests or pre-conditions developed in the case law dealing with claims of "injurious affection" are often created in the course of interpreting specific statutory language. As a result, it is generally unhelpful to look at how the term "injurious affection" has been interpreted by courts in other cases because the meaning ascribed to the term is necessarily statute and jurisdiction specific.

For the purposes of this appeal, the ABCA placed little significance on the term "injurious affection" since the term is not found within the *SRA* itself. The ultimate question for the court was whether, in determining what factors it may consider in awarding compensation, the Board's interpretation of s 25(1)(d) of the *SRA* was correct. In the ABCA's view, the Board's use of the term "injurious affection" steered the Board into error and caused it to depart from its statutory mandate to implement the express words of the statute. The Board and the courts must interpret s

25(1)(d) of the *SRA* by applying the ordinary rules of statutory interpretation with regard to the specific words used by the legislature. In this case, the court determined that the Board's reasoning was divorced from the words chosen by the legislature.

The ABCA concluded that, based on the ordinary meaning of the words, there are two components to section 25(1)(d) of the *SRA*. The first component, namely "the adverse effect of the area granted to the operator on the remaining land of the owner or occupant," is restricted to adverse effects that are attributable to the area granted to the operator. However, no such restriction is placed on the compensation that may be awarded under the second component, namely "the nuisance, inconvenience and noise that might be caused by or arise from or in connection with the operations of the operator."

In summary, when considering compensation under section 25(1)(d) of the *SRA*, the Board has authority to consider matters arising from the operations of the operator on the lands that are not subject to the ROE order in question. The authority for that is found in the second component of section 25(1)(d) which provides that the Board may consider as a factor when awarding compensation, "the nuisance, inconvenience and noise that might be caused by or arise from or in connection with the operations of the operator."