



The Supreme Court clarifies how zoning regulations and other restrictions on land use affect how owners of expropriated property are compensated.

Expropriation is a forcible acquisition by the Crown of privately-owned property for public purposes. A “constructive expropriation” happens when a public authority acquires private property by using its regulatory powers. In such cases, the owners can be entitled to compensation based on the property’s market value.

At issue in this case was the Lynch family’s property in the Broad Cove River watershed in Newfoundland. Groundwater within the watershed drains towards the Broad Cove River, which is used by the City of St. John’s for the local water supply. Pursuant to the *City of St. John’s Act*, the Lynch property is subject to the City’s pollution control and expropriation powers. In 1994, the Lynch property was zoned as watershed (the “watershed zoning”). Within the watershed zone, the City’s permission is required for any use of the land, and it may only be granted for three discretionary uses: agriculture, forestry and public utility.

Since at least the 1990s, the Lynch family has tried to obtain permission to develop the property. In 2013, the City rejected a formal application to develop a residential subdivision on the property, citing its authority under the *City of St. John’s Act* and the property’s designation as part of the watershed zone. Following that refusal, the Lynch family turned to the Newfoundland and Labrador Court of Appeal, which declared that the City had expropriated the Lynch property when it refused to permit any development on it. The court’s decision meant that the Lynch family was entitled to compensation from the City.

The City asked the Board of Commissioners of Public Utilities to assess how much the Lynch family was owed. In turn, the Board sought the opinion of the Supreme Court of Newfoundland and Labrador to determine whether compensation should be assessed based on the watershed zoning or whether the watershed zoning should be ignored and the value determined as if residential development were allowed. This question was important because valuation according to the watershed zoning would diminish the market value of the property compared to the Lynch family’s desire to use it for residential development. As a result, taking the watershed zoning into account would reduce the compensation owed to the Lynch family.

The judge applied a legal principle according to which changes in value resulting from the expropriation scheme itself are ignored in the compensation assessment. As such, the question became whether the watershed zoning was made with a view to expropriating the Lynch property. The judge ruled that the watershed zoning was an independent enactment and not part of the expropriation scheme. This meant that it could operate to influence the market value of the Lynch property and was not to be ignored for the purpose of determining compensation.

The Newfoundland and Labrador Court of Appeal allowed the Lynch family’s appeal. It disagreed with the first judge and concluded that the watershed zoning was connected to the expropriation. As such, it ordered the Board to determine compensation without reference to the watershed zoning. The City appealed to the Supreme Court of Canada.

The Supreme Court has allowed the appeal.

The watershed zoning was independent from the expropriation scheme.

Writing for a unanimous Court, Justice Martin held that the Lynch family was entitled to fair compensation but not more than fair compensation for the City’s constructive expropriation of the property. She agreed with the first judge’s finding that the watershed zoning was an independent enactment and not made with a view to expropriation. As such, Justice Martin determined that the market value assessment for the property must take into account the fact that the watershed zoning limits use of the property to discretionary agriculture, forestry and public utility. To ignore the watershed zoning would compensate the Lynch family for something they never would have had absent the expropriation: unencumbered land to develop residential housing. For these reasons, Justice Martin allowed the appeal, set aside the order of the Court of Appeal and restored the first judge’s order.

Breakdown of the decision: *Unanimous*: Justice [Martin](#) allowed the appeal (Justices [Karakatsanis](#), [Côté](#), [Rowe](#), [Kasirer](#), [Jamal](#) and [O'Bonsawin](#) agreed)

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