



LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: AW Holdings Corp. v Edmonton (City), 2022 ABLPRT 1365

Date: 2022-10-17

File No. NM2022.0001 (Related File No. DC2021.0010)

Order No. LPRT2022/EX1365

The Land Compensation Board (“LCB”) is continued under the name Land and Property Rights Tribunal (“Tribunal”), and any reference to Land Compensation Board or Board is a reference to the Tribunal.

In the matter of a proceeding commenced under the *Expropriation Act*, RSA 2000, Chapter E-13 (the “*Act*”)

And in the matter of a Joint Application by Notice of Motion

BETWEEN:

AW Holdings Corp.,
Booster Juice Inc.

Applicants (Claimants)

- and -

The City of Edmonton

Applicant (Respondent)

BEFORE: Donald Roberts, Chair
Mary-Kay Brook, K.C.
Ivan Weleschuk
(the “Panel”)

ORDER

APPEARANCES

Written Submissions only were filed by:

For the Applicants (Claimants): Kim D. Wakefield, K.C., Dentons Canada LLP

For the Applicant (Respondent): Michael S. Gunther, The City of Edmonton Law Branch

Introduction

[1] Throughout this Order, section (“s.”) references are to the *Act*, unless otherwise stated.

The Land:

[2] Since 2001, a Booster Juice franchise outlet (“the franchise outlet”) was operated on premises known as Unity Square in the City of Edmonton, legally described as: Plan 9422589, Lot 1, with a municipal address of Unit 11838-104 Avenue, Edmonton (“the Land”). The Land is the subject of a proposed expropriation.

The Corporations and their Relationships in this Application:

[3] Although not all parties to this proceeding, the following corporations, and their relationships to each other are relevant to this Decision:

- a) AW Holdings Corp. (“AW” or “Franchisor”) is the franchisor of a Booster Juice outlet operated by 1154264 Alberta Ltd. (“Franchisee”) pursuant to a franchise agreement dated February 1, 2016, which was in effect to 2021, with a right of extension to 2026 (“Franchise Agreement”).
- b) Sun Life Assurance Company of Canada (“Sun Life” or “freehold owner”) owns the Land and leased the Land to Booster Juice Inc. (“Booster”).
- c) Booster is in the business of acquiring, leasing, and subletting premises for Booster Juice outlets. In accordance with the Franchise Agreement and the lease, Franchisee subleased the Land from Booster.
- d) The City of Edmonton (“Edmonton”) entered into an agreement, dated March 31, 2020, with the Franchisee pursuant to s. 30 (“section 30 Agreement”) under which Edmonton acquired the sublease with Booster. Edmonton acknowledges Sun Life and Booster as claimants under the *Act*.
- e) Franchisor also signed the section 30 Agreement and provided it to Edmonton.
- f) AW and Booster served Edmonton with an Application for Determination of Compensation (“ADC”) claiming compensation as owners under the *Act* for their possession of or interest in the Land and claiming compensation under the *Act* for losses. Edmonton’s Reply to ADC states that AW is not an owner under the *Act*.

Issue in Dispute:

[4] AW claims it is an “owner” defined in s. 1(k) via its interest in the franchise outlet under its Franchise Agreement with Franchisee and asks the Tribunal to find it is an owner and therefore a proper claimant for compensation under the *Act*. Edmonton disputes this claim and asks the Tribunal to deny AW’s claim and find AW is not a proper claimant for compensation under the *Act*. Both AW and Booster, and Edmonton, asked for costs.

[5] Edmonton acknowledges Sun Life, Booster and Franchisee are each “owners” as defined in the *Act* and are proper claimants for compensation under the *Act*. This is not in dispute.

This Decision:

[6] This decision addresses a question of statutory interpretation and does not address the merits of the claim for compensation. This decision only makes the necessary findings of fact to determine whether AW is an owner within the meaning of s. 1(k) and is a proper claimant for compensation under the *Act*. This decision does not decide on the issues of entitlement or the quantification of compensation, if any, to which AW may be entitled under the *Act*.

[7] Although AW and Booster, and Edmonton, claim costs, none supplied submissions to support their claim.

Background

[8] This is a joint Application by Notice of Motion by the Claimants and the Respondent to be heard by written submissions. The parties filed written submissions that include Affidavits as well as excerpts from the cross examination of the Affidavits of AW and Booster. Costs were requested but no submissions on costs were filed with the Tribunal.

[9] The Notice of Motion filed by the parties (Tab 1 of AW submission) states the parties would provide an Agreed Statement of Facts. Although there was no Agreed Statement of Facts provided, Edmonton agreed to some facts submitted by AW and Booster.

[10] The Panel summarized the following facts from the submissions. These facts are not in dispute and are the facts most relevant to this Order:

- (a) AW is a corporation. AW owns the Booster Juice franchise and is in the business of either operating Booster Juice outlets or providing franchisee opportunities to third parties to operate a Booster Juice franchise outlet, subject to the terms of the Franchise Agreement.
- (b) Booster is a corporation in the business of acquiring and operating premises for Booster Juice outlets.
- (c) AW is the franchisor under a Franchise Agreement with Franchisee, which authorizes Franchisee to operate the franchise outlet on the Land. This arrangement has been in place since 2001.
- (d) Sun Life leased the Land to Booster, who in turn subleased the Land to Franchisee. The Franchise Agreement provides:

Clause 2(a): Subject to all of the terms and condition herein, Franchisor grants to Franchisee the non-exclusive right to operate one (1) Booster Juice franchised business (the "Unit") and to use the Booster Juice System and Licensed Marks in connection therewith solely at [the Land] (the "Premises") ...

Clause 4(a): If Franchisor or any corporation or Person linked with the Booster Juice System (including Booster Juice Inc.) enters into the lease for the Premises, Franchisee shall execute a sublease with Franchisor or such other corporation or person in Franchisor's standard form attached ...

- (e) The most recent extension of the Franchise Agreement and sub-lease dated February 1, 2016, was

in effect to 2021, with a right of extension to 2026. Franchisee occupied and operated a franchise outlet on the Land, pursuant to the Franchise Agreement and the sublease authorized by the Franchise Agreement.

- (f) On March 31, 2020, Edmonton acquired Franchisee's sublease for the Land by the section 30 Agreement, which AW signed and forwarded to Edmonton.
- (g) AW and Booster served an ADC on Edmonton.

Issues

[11] The Panel considered the following issues:

1. Is AW an "owner" defined in s. 1(k)?
2. Is AW a proper claimant for compensation under the *Act*?
3. Should the costs of this application be ordered and if so, to whom?

Decision

[12] The Panel decides:

1. AW is an owner as defined in s. 1(k).
2. AW is a proper claimant for compensation under the *Act*.
3. Costs for this application are payable by Edmonton to AW and Booster. The amount of costs shall be determined when the merits of the claim are heard.

Submissions of the Parties

Position of AW and Booster

[13] The submissions of AW and Booster are summarized as follows:

- (a) The Franchise Agreement relates to conditions of operation of the franchise outlet and Franchisee business on the Land. Under the Franchise Agreement, AW can stipulate the form of the lease agreement the Franchisee must sign, in this case, a sublease with Booster.
- (b) On the Land, Franchisee operated a business pursuant to the Franchise Agreement, and under which AW also had a business interest in the Land.
- (c) S. 1(k)(iii) defines "owner" as: "any other person who is in possession or occupation of the land." AW submits the concept of "owner" in this definition is much broader than the concept under the *Land Titles Act*, and cited *Edmonton (City) v Business Care Corp*, 2019 ABQB 724 ("*Business Care*") and *Hudson's Bay Co. v Calgary (City)*, 1978 Carswell Alta 501, 16 L.C.R 296, 23 AR 128 ("*Hudson's Bay*") to support this

submission. AW submits *Business Care* held that for the purposes of the *Act* possession or occupation is sufficient to become an owner. Further, Hudson's Bay was the operating company which occupied the premises owned by Rupert's Land Trading Company without any formal lease agreement and the Tribunal found Hudson's Bay was entitled to disturbance damages and business loss in those circumstances. Pursuant to the Franchise Agreement AW submits it had (a) a right to possession of the Land and (b) exercised control over the Land.

- (d) The Franchise Agreement gives AW control over the premises of the franchise outlet in that it governs the day-to-day business operations of the franchise outlet through the requirements of using the Franchisor's system ("System"). AW controls the form of lease signed by Franchisee, which the freehold owner gave up, and control of the Land if circumstances warrant under the Franchise Agreement.
- (e) S. 1(k)(iv) defines "owner" as: "any other person who is known by the expropriating authority [here Edmonton] to have an interest in the land", which is broader than defined in the *Land Titles Act*. The Franchise Agreement gives AW control over the operation of the business of Franchisee by enabling Franchisee to use the System in the franchise outlet operation for which AW is paid a fee. The System and the business arrangements with Franchisee under the Franchise Agreement is a business interest of AW in the franchise business located on the Land.
- (f) AW has an interest in Franchisee's business pursuant to the Franchise Agreement. Further, s. 1(k) is mutually reinforcing of s. 53.
- (g) Edmonton presented the section 30 Agreement to Franchisee to consent to acquisition of the Land. Pursuant to the Franchise Agreement with Franchisee, AW signed the section 30 Agreement and provided it to Edmonton with notice of its interest and expectation of compensation. Only the owner may consent to the section 30 Agreement. AW signed as an "owner" defined under s. 1(k)(iv) and AW is known to Edmonton.
- (h) AW cited *Toronto Area Transit Operating Authority v Dell Holdings Ltd.*, [1997] 1 S.C.R 32 ("*Dell Holdings*") which held that the purpose of the *Act* is to make those affected by expropriation "whole" therefore expropriation legislation is to be interpreted liberally in favour of those affected.
- (i) Giving s. 1(k) a liberal interpretation in favour of AW as a person affected by the proposed expropriation of the Land, AW is an "owner" as defined both in s. 1(k)(iii), as AW has possession and control of the Land, and in (iv), as AW has a business interest in the business of Franchisee located on the Land.
- (j) As an owner defined in s. 1(k), AW is a proper claimant for compensation under the *Act*.

Position of Edmonton

[14] The submissions of Edmonton are summarized as follows:

- (a) The *Act* is remedial, the scope of "owner[s]" is limited to the five enumerated situations in s. 1(k) and is not open-ended in scope. Practically speaking, the *Act* also provides legislative certainty to municipalities on the scope of damages that might be payable on any particular expropriation.

- (b) Whether AW is an “owner” appears to primarily turn on whether it is in “possession of the land” (as the term is found in s. 1(k)(iii)). The concept of “possession” is a legal concept rooted in several hundred years of property law. In this case, the legal analysis also involves the consideration of three foundational doctrines of property, contract, and corporate law, specifically: possession at Canadian law will involve two elements – an “intention to possess” (*animus possidendi*) and “physical control” (*factum* or *corpus*). Edmonton denies AW is an owner as it is neither in possession nor control of the Land.
- (c) AW is not an owner because it does not have possession of the Land. As franchisor, AW entered a Franchise Agreement with Franchisee for the operation of a franchise outlet on the Land. The Land was subleased to Franchisee by Booster, a separate corporation. Booster is not party to the Franchise Agreement. AW is not party to either the Booster lease or sublease to Franchisee and was not granted possession or control of the Land by the freehold owner. The freehold owner kept control of the Land and did not grant control over the Land to AW, Booster or Franchisee, who was in possession of the Land under the sublease.
- (d) AW and Booster are separate entities undertaking different business activities and are separate and distinct from one another. *Salomon v Salomon*, [1897] A.C. 22 (H.L.) holds that a corporation is a legal entity distinct from its shareholders. *Acton Petroleum Sales Ltd. v British Columbia (Minister of Transportation and Highways)*, [1998] 161 DLR (4th) 481 (BCCA) (“*Acton Petroleum*”) holds that related corporations, even those with a sole shareholder are different entities in the eyes of the law. *Century 21 Canada Limited Partnership v Rogers Communications Inc.*, 2011 BCSC 1196 holds that a corporation is an independent legal entity not to be identified with its shareholders. Citing *Kosmopoulos v Constitution Insurance Co.*, [1987] 1 S.C.R. 2 (SCC), notwithstanding that both AW and Booster have the same sole shareholder, that shareholder has no legal or equitable interests in the assets of a company of which they are the sole owner.
- (e) *Meredith v Canada (Attorney General)*, 2002 FCA 258, at paragraph 12 states in part,
- “... court cannot re-characterize the *bona fide* relationships on the basis of what it deems to be the economic realities underlying those relationships...”
- (f) AW cannot claim possession and control under the Franchise Agreement for the purpose of s. 1(k)(iii) and AW does not clarify its interest in the Land for the purpose of s. 1(k)(iv).
- (g) AW’s statutory entitlement to compensation turns on whether it is an “owner” under s. 1(k)(iii). Because of the corporate structure created by AW and Booster, as defined by law, AW is neither in possession nor control of the Land formerly occupied by Franchisee and cannot claim possession and control of the Land under the Franchise Agreement.
- (h) AW’s evidence does not demonstrate an “intention to possess the land” as described in the law of property and cases such as *Acton Petroleum*. To the contrary, the sole shareholder intentionally structured its business so that AW would not be in possession of the Land. AW’s role is functionally an operating company with no “interest in the Land”. Conversely, the real estate assets – including the lease and sublease on the Lands – are held by Booster. Related corporations, even those with a common sole shareholder, are

different entities in the eyes of the law.

- (i) The circumstances in *Hudson's Bay* are not like the situation at hand. Hudson's Bay Company was the physical occupant of that property and Rupert's Land Trading Company held a leasehold interest, therefore each had a legal interest that fit the definition of "owners".
- (j) *Century 21 Real Estate Canada Ltd. v Tri-Town Realty Ltd. et al.* [1989] 99 N.B.R. (2d) 370 (NBQB) ("*Century 21*") held that a franchise agreement granting an exclusive right to operate a franchise on a specific property did not create an interest in land in that property but amounted to a contractual relationship that would be enforced in the nature of a personal obligation.
- (k) Under the law, AW does not have an interest that comes within the scope of the proposed expropriation and therefore, AW is not an owner under s. 1(k)(iv).
- (l) Since AW is not an owner defined in the *Act*, it is not a proper claimant for compensation under the *Act*.

Findings

[15] The evidence of AW confirms it signed a copy of the section 30 Agreement. Although there is a dispute regarding how AW's signature was obtained on the section 30 Agreement the Panel is satisfied that AW consented to the section 30 Agreement. The authority for the Tribunal to determine compensation follows an expropriation of the land. Here section 30(4) is relevant as it provides that the Tribunal shall determine compensation *as if the land were expropriated*. The fact of the section 30 Agreement is not in dispute, so the Tribunal does not need to make a finding on how the consent of AW was obtained on the section 30 Agreement.

[16] In expropriation, owner, as defined in s. 1(k), is much wider than defined in the *Land Titles Act*. The purpose of the *Act* is to compensate, to make whole, owners who suffer loss because of expropriation.

[17] The interpretation of "possession" and "interest" used in s. 1(k) is different to use of the terms in the context of legal ownership in property law, which does not address the much broader context of expropriation. In the context of expropriation, and the *Act*, "possession" includes the right of a franchisor to control the premises in which a franchisee operates under the strict terms of the Franchise Agreement as well as control over the form of sublease Franchisee could enter for the Land.

[18] Likewise, in the context of expropriation, and the *Act*, an "interest" is much broader than a recognized property ownership interest. When considered in the context of the whole *Act*, especially s. 48 and s. 53,

S. 48 recognizes there may be more than one separate interest in the Land, which shall be established separately. This speaks to the separate interests of AW as franchisor and Booster as sublessor.

S. 53 recognizes "interest", including a business interest, which is not tied to the property ownership *per se* but is an interest connected to the business located on the Land (here the franchise outlet). S. 53 does not limit who can claim under it, unlike s. 50. In this case, interest includes the business interest of AW as Franchisor in the business of Franchisee located on the Land.

[19] In this broader sense, AW is in possession under the Franchise Agreement as it provides a degree of control over the franchise outlet business to AW.

[20] Similarly, AW has an interest in the business, the franchise outlet, located on the Land and is entitled to compensation by the Franchisee for the authority to operate the franchise outlet. The definition of “franchise” in s. 1(1)(d) of the *Franchises Act*, R.S.A. 2000, c. F-23 (“*Franchises Act*”) confirms the nature of AW’s interest under the Franchise Agreement.

“franchise” in s. 1(1)(d) of the *Franchises Act* is defined as “**a right to engage in a business**”:

- (i) in which goods or services are sold or offered for sale or are distributed under a marketing or business plan prescribed in substantial part by the franchisor or its associate,
- (ii) that is substantially associated with a trademark, service mark, trade name, logotype or advertising of the franchisor or its associate or designating the franchisor or its associate, and
- (iii) that involves

(A) **a continuing financial obligation to the franchisor or its associate by the franchisee and significant continuing operational controls by the franchisor or its associate on the operations of the franchised business, or**

(B) the payment of a franchise fee,

and includes a master franchise and a subfranchise.

“franchise agreement” means any agreement that relates to a franchise between

- (i) a franchisor or its associate, and
- (ii) a franchisee or prospective franchisee; [Emphasis added]

[21] The franchise business in this case is located on the Land, and the Franchise Agreement demonstrates AW’s significant continuing interest in the business, and operational controls of the Franchisor. Thus, AW has an interest in the Land upon which the Franchisee business operates as an owner under the *Act*.

[22] Lastly, Edmonton has knowledge of the Franchise Agreement and the fact that the Franchise business was operated on the Land pursuant to the Franchise Agreement and the sublease – which is *knowledge* of AW’s interest in the Land. Thus, AW is a person, known to Edmonton to have an interest in the Land within the scope of “owner” defined under s. 1(k)(iv).

[23] AW is an owner under the *Act* and therefore may institute proceedings as a claimant for compensation under the *Act*.

Analysis

Burden:

[24] This is a joint application to determine the legal interpretation and application of statutory provisions to agreed facts. AW is trying to establish how, on the facts, it meets the definition of “owner”. Edmonton is trying to establish how, on the facts, AW is not an “owner” as defined.

[25] The Panel must make an Order based on these joint submissions and finds the parties share a common and equal burden.

Statutory interpretation:

[26] The parties did not refer the Panel to any cases where an expropriation is considered on similar facts to this case in relation to the definition of owner under the *Act*.

[27] It is well established law that: “[T]he words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.” (*Rizzo & Rizzo Shoes Ltd. (Re)* [1998] 1 SCR 27). This is also reflected in s. 10 of the *Interpretation Act*, RSA 2000, c. I-8 which provides that an enactment shall be given the fair, large and liberal construction and interpretation th

[28] at best ensures the attainment of its objects.

[29] A governing principle of statutory interpretation is the presumption of coherence, that the provisions of legislation are meant to work together, both logically and teleologically, as parts of a functioning whole. Because the legislation has a purpose, the parts work together dynamically, each contributing something toward accomplishing the intended purpose of the *Act* (see: *Canada v. Canada North Group Inc.*, 2019 ABCA 314, “the correct approach to statutory interpretation” at paras. 26 and 27). The Panel adopts this approach to interpret “owner” defined in the *Act*.

[30] The parties referred the Panel to an Alberta Queen’s Bench decision, *Business Care*, which the Panel finds does not have identical facts to this proceeding although they are similar, and the Panel finds the analysis provides direction in determining the object of the *Act* and the intention of the Legislature when defining “owner” in the *Act*. The parties do not refer the Panel to this case: *Edmonton (City) v Can-West Corporate Air Charters Ltd.*, 2018 ABLCB 3 (CanLII). It also has different facts from this case, but it supports the Panels’ interpretation of “owner”. (See for example para. 38)

[31] Although the facts of these cases are different, the analysis and interpretation of the legislation is relevant as they consider the definition of owner and make it clear that the *Act* is to be interpreted broadly. (Per *Dell Holdings*)

Purpose of the Act:

[32] As set out in *Dell Holdings*, the purpose of expropriation legislation is to provide compensation when expropriation occurs. There is a presumption that upon expropriation compensation will be paid unless words of the statute clearly demand compensation will not be paid. *Dell Holdings* also directs the Panel to interpret the *Act* strictly in favour of claimants, here AW.

[33] The public policy underlying the *Act* is to ensure those who are subject to expropriation are properly compensated. The rights, obligations and proceedings under the *Act* enacts this public policy. The Tribunal is established to determine compensation in the event the parties cannot agree. This determination may only be done within the express boundaries of the *Act* and the *Expropriation Act Rules of Procedure and Practice* (“the Rules”), which include the power to determine if a person is an “owner” defined, if the claimant meets the requirements of s. 42, and if they have a claim separate in interest from other claimants under s. 48.

[34] The nature of expropriation and the principles of statutory interpretation do not support Edmonton’s submissions that AW is not an “owner” as defined. The interpretation and application of s.

1(k) goes to the core of the purpose of the *Act*, to determine who is entitled to claim compensation in the event of expropriation.

[35] The purpose of expropriation legislation is to repair the injury caused to individuals by expropriation for the public good, and to minimize the loss, inconvenience, and disturbance to those individuals as much as possible. The expropriation of property is one of the ultimate exercises of government authority. It flows that the power of an expropriating authority should be strictly construed in favour of those whose rights have been affected. (Per *Dell Holdings* at para. 20)

[36] The invasive nature of expropriation imputes a presumption that compensation will be paid. The presumption is only rebutted when the “words of the statute clearly so demand” (See *British Columbia v Tener*, [1985] 1 S.C.R. 533, at p. 559).

[37] As the only recourse to expropriation is compensation, the determination of “owner” and proper claimants go to the heart of the purpose of the *Act* – and the fundamental purpose of the Tribunal – to determine compensation. Interpreting the range of persons who are “owners” broadly is consistent with the purpose of the *Act*, particularly considering the obvious intention of the Legislature to expand the definition beyond the concept expressed in the *Land Titles Act* and covered in s. 1(k)(i) and (ii), as opposed to the additional categories set out in s. 1(k)(iii) and (iv), under consideration here. To find otherwise would be logically inconsistent with the statutory scheme and would not give effect to the intention of the Legislature. This interpretation is supported by *Business Care*. (See para. 13)

[38] With respect, the Panel does not agree with Edmonton’s submission that the *Act* provides legislative certainty to municipalities on the scope of damages that might be payable on an expropriation. While the *Act* sets out the procedure to be followed by the expropriating authority, the Panel agrees with the Court in para. 14 of *Business Care* that the plain meaning of the definition of owner in the *Act* is not to be limited for the sake of convenience of Edmonton. The scope and extent of damages is determined by the Tribunal acting in accordance with the *Act* if the parties do not agree.

[39] The Panel finds Edmonton has misconstrued s. 1(k)(iii) and (iv) within the context of the *Act* as a whole. As previously discussed, the object or purpose of the *Act* is to ensure compensation to owners, as defined, when their interests are taken without their consent (See *Dell Holdings* paras. 17-23 applied in *Business Care* at para. 13) in the event of expropriation. This is also codified in s. 61. It is not, as submitted by Edmonton, to give certainty to an expropriating authority. To meet this object and to give s. 1(k) a fair and liberal interpretation, the Panel finds the Legislature meant to include in the class of “owner” a broader group than is limited by the strictures of legal ownership in the context of property law. It is clear those kinds of ownership are expressed in clauses 1(k)(i) and (ii).

[40] In this case, the words in s. 1(k)(iii) and (iv) are broad. The Panel applies the findings in *Business Care* (see para. 12) that this definition is much broader than the types of estates of ownership and interests recognized under the *Land Titles Act*. The Panel finds the submissions of Edmonton reflect the formal law of property that addresses the interests in, and ownership of land protected by the *Land Titles Act*.

[41] There are five subclauses to s. 1(k). The Panel agrees with Edmonton that if AW is an “owner” it must come within the bounds of one of these five subclauses.

[42] Subclauses (i) and (ii) expressly address ownership and estates or interests in “land”. Distinctly different, subclauses (iii) and (iv) expressly address possession, occupation, and interests in or on “the land”. The Legislature clearly intended the term “land” and “the land” to mean different things and must be interpreted as distinct within the context of the purpose and structure of the whole *Act*. These provisions must be interpreted broadly and strictly construed in favour of claimants and to limit their scope as suggested by Edmonton is to limit the intended scope of the *Act*.

[43] Subclause 1(h) defines “land” as “any estate or interest in land”. This definition is not tied to the kinds of estates or interests defined and protected by the *Land Titles Act*, or it would have been expressed that way.

[44] The Panel finds for the purposes of subclauses (iii) and (iv) the Legislature intended to ensure compensation for the expanded concept of possession and interest to refer to any interest in the land, not just possession or interest in the expropriated premises. This would include loss of the contractual right to possession or loss of a business interest and not be limited to a legal estate or interest, as submitted by Edmonton.

Possession in s. 1(k)(iii):

[45] S. 1(k)(iii) defines “owner” as: *any other person who is in possession or occupation of the land*. It is clear. If a person can show possession or occupation of the land, they are an owner. In this case, AW submits the powers it reserved to itself under the Franchise Agreement gives it:

- (a) control over the Land, because it can and did, dictate the terms of the sublease on the Land, and
- (b) gives it the right to possession of the Land if the circumstances under the Franchise Agreement arise.

The Panel agrees with AW.

[46] The parties argued extensively about the historical meaning of “possession” in property law. Edmonton submitted, the freehold owner, Sun Life, did not grant control over the Lands to AW. Therefore, AW has not shown it is in control of the Lands. The Panel disagrees with Edmonton, as this is not the test for possession in s. 1(k)(iii). The cases Edmonton refers to all relate to possession in leasehold or other formal legal property relationships.

[47] Respectfully, the Panel finds this context is too narrow. The context of expropriation clearly contemplates relationships that could give rise to possession or occupation other than those through the chain of legal ownership of property. The context of the *Act* includes for example s. 48, which expressly contemplates more than one interest in the land and the Tribunal is required to value each separate interest. Edmonton’s narrow interpretation of “possession” does not reflect the clear intention of the *Act* to recognize a range of lesser interests, which might be expropriated. See for example s. 3.

- a) *Acton Petroleum* case involved two related companies who argued each should have a right to claim business losses related to an expropriation. Acton Petroleum owned the property and provided the fuel to Acton Super-Save, which purchased the fuel and resold it as a commissioned agent. The two companies argued that they operated as a “group enterprise” controlled by the same individual and that it was unfair to limit business losses only to Acton Super-Save. The BC Expropriation Compensation Board held that Acton Petroleum was entitled to the value of the land compensation and the Acton Super-Save was entitled to business losses as it was the only entity carrying on a business on the property. The court upheld this decision and confirmed that each company was its own separate entity and therefore rejected the “group enterprise” argument. This case is distinguishable from the matter at hand in that AW is the Franchisor in the Franchise Agreement with the Franchisee. The Panel relies on this decision and applies it to this proceeding: AW and Booster are separate corporations with distinct interests in the Land. Booster as the sublessor and AW as

having a business interest, pursuant to its control over the business operations of the Franchisee, in the Franchisee's business located on the Land.

- b) *Century 21* case related to use of Century 21 Real Estate Ltd. real estate listings by Zoocasa Inc., which created and operated a real estate search engine that was available to the public. The central issue related to ownership of copyright and breach of a copyright license agreement. This case is distinguishable from these proceedings in that the case addresses a copyright license agreement not a franchise agreement, and the issue before the Panel relates to an expropriation issue not a copyright issue.
- c) *Business Care* case facts are distinguishable from those in this proceeding (as noted in para. [30]), but the Panel agrees with and applies the reasoning in paras. 12-14 of *Business Care*, which read in part:

[12] ... This, of course, takes us beyond the definition of land in s 1(h) quoted above and well beyond interests contemplated by the *Land Titles Act*.

[13] The *Interpretation Act* requires that legislation be interpreted remedially. The purposes of the *Land Titles Act* and the *Expropriation Act* are different. The purpose of the *Land Titles Act* is to give certainty of title and interest. The purpose for the *Expropriation Act* is to compensate 'owners', as defined, when their interests are taken without their consent (See *Dell Holdings* at paras 17-23).

[14] I acknowledge that there are pragmatic considerations in favour of the interpretation sought by the City. However, the purpose of the two *Acts* is quite different and I am not willing to limit what appears to be the plain meaning of the definition of ownership in s 1(k) of the *Expropriation Act*, for the sake of convenience of the expropriating authority.

and the Panel finds that AW did not have to have a legal freehold, leasehold, or other legal estate in the Land to have possession as used in s. 1(k)(iii).

[48] The term "possession" must be given a broad, usual, and purposive meaning in the context of the whole *Act*. To do this, the Panel refers to the dictionary to aid in determining the common or usual usage of "possession". The Panel notes AW submitted several definitions from legal dictionaries and cases, but finds these definitions are too narrow in the context in which the term is used in the *Act*.

[49] Therefore, the Panel looked to the definition of possession in a commonly used English language dictionary. In the Merriam Webster dictionary, "possession" is defined as:

1 a: the act of having or taking into control

b: control or occupancy of property without regard to ownership

[50] AW submits s. 53 does not require an interest in land supported by the interpretation of "possession" in s. 1(k)(iii). There is no requirement in s. 53 that a business have an estate or legal interest in the Land. It is sufficient that a business is located on the Land.

[51] The Panel finds possession in the broadest sense is sufficient. The Franchise Agreement clearly

gives AW a degree of control over the Land, distinct from the legal ownership of freehold owner or the legal interests of the lessee or sublessee. Possession arises by virtue of the non-exclusive rights of Franchisee to use the System in the operation of the franchise outlet, and the control exercised by AW over the System, including control over the form of sublease, pursuant to the Franchise Agreement which provides for **continuing financial obligation by the franchisee and significant continuing operational controls by the franchisor on the operations of the franchised business** as defined in the *Franchises Act*. [Emphasis added]

Interest in s. 1(k)(iv):

[52] S. 1(k)(iv) defines “owner” as: *any other person who is known by the expropriating authority [here the Respondent] to have an interest in the Land [emphasis added]*. It is clear. If a person, who is known to the expropriating authority (here AW), has an interest in the Land that is different from the interests already identified in subclause (i) and (ii), they are an owner for the purposes of the *Act*.

[53] In this case, AW confirms it is not a legal owner in the sense used in clauses (i) and (ii), but it submits “interest” used in this section is broader than defined in the *Land Titles Act*. AW submits the powers it reserved to itself under the Franchise Agreement gives it control over the business operations of the Franchisee, and through control of the System, control over the use of the Land by the Franchisee under the terms of the Franchise Agreement. In effect, AW’s interest under the Franchise Agreement gives it participation in the business of Franchisee located on the Land.

[54] The Panel agrees with AW and finds AW had a business interest in the franchised business and had significant control of the operation of the franchised business located on the Land. There are many examples of interests or rights in land that are less than those forming estates, such as easements, licenses, profits, and restrictive covenants.

[55] The parties argued about the historical meaning of “interest” in property law. Again, the reasoning in *Business Care*, per para. [46] above, comes into play when interpreting “interest” in this definition of “owner”. The freehold owner did not grant a legal interest or estate in the Land to AW; however, this is not the test for interest in the land in s. 1(k)(iv) of the *Act*.

[56] The usual or common meaning of the word “interest” is key to the interpretation of this definition. It is clearly different and broader than the narrow sense of interest protected by the *Land Titles Act*, as set out in clauses 1(k)(i) and (ii). In ordinary understanding, “interest” means a stake, share, or involvement in an undertaking, especially a financial one (see Oxford Languages Dictionary). This broader definition is confirmed by reference to lesser interests in s. 3 – “profit, easement, right, privilege, or benefit in, over or derived from the land.” S. 3 confirms the definition is intended to be broad and fits best in the context of the whole *Act*. AW’s submission respecting the interpretation of possession in the context of s. 53 (see para. [50] above) is equally applicable to the interpretation of “interest” in s. 1(k)(iv).

[57] Edmonton submits AW did not identify the interest it has to bring within the meaning of s. 1(k)(iv). The Panel respectfully disagrees.

[58] AW submits it has an interest in the business operated by the Franchisee on the Land, pursuant to the Franchise Agreement. This interest is different and separate from an interest as Franchisee and as sublessor (Booster). Based on its interest, AW is entitled to control over the business activities of the Franchisee and to income for the use of the System, authorized by the Franchise Agreement. The Panel agrees.

[59] AW submits, and the Panel agrees, Edmonton has taken issue with AW’s right to be a claimant for compensation for its business loss which AW allegedly suffered because of the forced departure of the

Franchisee under the section 30 Agreement. The section 30 Agreement regarding the leasehold interest of Franchisee resulted in the stoppage of the operation of the Franchisee on the Land and the section 30 Agreement is treated as an expropriation per s. 30(4) and s. 61. This claim arises from the section 30 agreement for which AW and Booster made and served an ADC under the *Act*. Having found that AW is an owner under the broad definition of the *Act* it may proceed with its claim as a proper claimant under the *Act*. This Panel makes no finding on the merits of the claim.

Is AW a proper claimant for compensation under the Act?

[60] Section 61 provides a right to compensation for any estate or interest acquired or taken under the *Act*. Having found the section 30 Agreement regarding the interest of AW was executed, section 36(1) provides, if the parties do not agree, either Edmonton or AW may apply to the Tribunal to determine compensation. Section 42 and Rule. 1(d) of the *Rules* prescribe the principles and process for determination of compensation under the *Act*.

[61] As an “owner” defined in s. 1, the Panel finds AW is a proper claimant under the *Act* and is entitled to compensation it can prove under the *Act*.

Costs:

[62] At its discretion, the Tribunal may award reasonable costs that the owner incurs in relation to Tribunal proceedings to determine compensation payable. Section 39 of the *Act* outlines the Tribunal’s authority to award costs:

39(1) The reasonable legal, appraisal and other costs actually incurred by the owner for the purposes of determining the compensation payable shall be paid by the expropriating authority, unless the Tribunal determines that special circumstances exist ...

[63] In the context of expropriation law, Canadian jurisprudence demonstrates that “costs on a solicitor-client basis should generally be given”. In *Hill v Nova Scotia (Attorney General)*, 1997 CanLII 17810 (SCC), the SCC awarded the solicitor-client costs because there was no doubt that the action arose because of the expropriation of an interest in land. The Tribunal’s discretionary power is upheld in *Smith v Alliance Pipeline Ltd*, 2011 SCC 7 (“*Smith*”) at para. [31] as follows:

...in fixing the costs that must be paid by expropriating parties, the Committee has been expressly endowed by Parliament with a wide “margin of appreciation within the range of acceptable and rational solutions...”

[64] At para. [6] of *Smith*, the SCC stated that in the context of expropriation legislation, the owner is usually entitled to solicitor-client costs. The Court affirmed legal principles that an expropriated person has a right to be made “economically whole” and that the expropriating legislation should be read in a broad and purposive manner with the aim to fully compensate landowners whose property has been taken.

[65] In this proceeding, the application is joint and involves the resolution of a question of interest to both parties. Also, typically, costs are awarded to the claimant for compensation under the *Act*. In this case, the parties asked for costs but made no submissions. No exceptional circumstances are argued and therefore, none apply, for not awarding costs to AW and Booster.

[66] The Panel finds AW is a proper claimant for compensation under the *Act*, and Edmonton improperly stated that AW is not an owner or a proper claimant. The Panel awards the costs of this

application to AW and Booster, payable by Edmonton, the amount to be determined as part of the merit hearing on the ADC.

Order

1. AW is an owner as defined in s. 1(k).
2. AW is a proper claimant for compensation under the *Act*.
3. Costs for this application are payable by Edmonton to AW and Booster. The amount of costs shall be determined when the merits of the claim are heard.

Dated at the City of Edmonton in the Province of Alberta this 17th day of October, 2022.

LAND AND PROPERTY RIGHTS TRIBUNAL



Mary-Kay Brook, K.C, Member