

Parting Gift: Franchisor Entitled to Compensation in Alberta Expropriation Case

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In *AW Holdings Corp. v Edmonton (City)*,¹ held that a franchisor that (a) was not the property owner, and (b) not a party to the lease, was still an “owner” for the purposes of the *Expropriation Act* (the Act)² and was entitled to compensation for expropriation of a leased franchise location.

Background

On February 1, 2016, 1154264 Alberta Ltd. (the Franchisee) and AW Holdings Corp. (the Franchisor) entered into a franchise agreement (the Franchise Agreement) for a Booster Juice outlet (the Outlet). The Franchise Agreement was in effect until 2021 with a right of extension until 2026. The Franchise Agreement provided that:

Clause 2(a): Subject to all of the terms and conditions 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 ...

The Outlet in issue was located on land owned by Sun Life Assurance Company of Canada and initially leased to Booster Juice Inc. The Franchisee subleased the premises directly from Booster Juice Inc. in accordance with Clause 4(a) of the Franchise Agreement. The Franchisor was not a party to the lease.

Before the end of the Franchise Agreement, the City of Edmonton (Edmonton) acquired the Franchisee's sublease with Booster Juice Inc. under section 30 of the Act, which provides for acquisition where the owner consents, with compensation for expropriation to be determined by the Tribunal.

Booster Juice Inc. and the Franchisor served Edmonton with an Application for Determination of Compensation under the Act. Edmonton acknowledged Sun Life (the freehold owner), Booster Juice Inc. (the lessor), and the Franchisee as claimants, but not the separate corporation that was the Franchisor (AW Holdings Corp.). The Franchisor claimed compensation on the basis that it was an “owner” of the land

through its interest in the Outlet under the Franchise Agreement.

The Definition of "Owner"

The Tribunal noted that the definition of “owner” under the Act includes, among other criteria, any person who: (1) "is in possession or occupation of the land;"³ or (2) "is known by the expropriating authority to have an interest in the land."⁴ The Tribunal found that the definition of “owner” in the Act is much broader than under the *Land Titles Act* and addressed both potential criteria.

With respect to the first criterion, the Tribunal found that the Franchisor had some control over the land, as it had dictated the terms of the sublease, and had possession of the land in specific circumstances under the Franchise Agreement. Though Edmonton tried to advance a narrow interpretation of "possession," the Tribunal rejected it given the broad remedial purpose of the Act.

With respect to the second criterion, the Tribunal noted that the Act recognizes broad interest in land, including those that are not tied to property ownership. The Franchisor had a degree of control over the operation and a continuing interest in the business and, therefore, an interest in the land being expropriated. And, because Edmonton had knowledge of the Franchise Agreement, the Franchisor met the definition of "owner" and was eligible to make a claim for compensation under the Act.

Conclusion

Franchisors have a clear business interest in the continued operations of franchises. In very specific circumstances, this interest in continued operations can be extended to impute possession of or interest in the land itself for the purposes of compensation for expropriation. Through carefully-drafted franchise agreements, franchisors can ensure these interests are protected.

¹ *AW Holdings Corp v Edmonton (City)*, 2022 ABLPRT 1365 [*AW Holdings*].

² *Expropriation Act*, RSA 2000, c E-13.

³ *Expropriation Act*, s 1(k)(iii).

⁴ *Expropriation Act*, s 1(k)(iv).