

Annapolis Group Inc. v. Halifax Regional Municipality, 2022 SCC 36

The Supreme Court of Canada's decision in *Annapolis Group Inc. v. Halifax Regional Municipality, 2022 SCC 36* represents a significant milestone in the law of constructive taking of property by government regulation (commonly referred to as *de facto* expropriation). The majority of the Supreme Court of Canada clarified the test for constructive taking and crucially, identified that an actual taking of property is not required. The claimant need only show that the effect of the regulatory measure was that the government entity received a benefit from the property.

Municipalities should carefully consider this decision and its impacts on their land use planning. Land use planning is a core part of municipalities function. The line between valid regulation and construction taking may be crossed where the *effect* of the regulatory activity deprives a claimant of the use and enjoyment of its property in a substantial and unreasonable way, or effectively confiscates the property.

Summary

Annapolis Group Inc. claimed that the Halifax Regional Municipality had improperly used its regulatory powers to constructively take approximately 965 acres of lands from it for use as a public park. Annapolis made several attempts to develop the lands which were refused by Halifax. Halifax sought summary dismissal of Annapolis's claim for constructive taking, which was denied at first instance but allowed by the Court of Appeal. The Supreme Court of Canada overturned the Court of Appeal's decision to summarily dismiss Annapolis's claim for constructive taking and Annapolis's claim of constructive taking is allowed to proceed to trial.

A constructive taking of private property will occur where there is:

1. An acquisition by the government entity of a beneficial interest in the property or flowing from it; and
2. Removal of all reasonable uses of the property.

A beneficial interest does not require that the government entity has actually acquired the property. The Court's analysis of a beneficial interest looks to the effect of the regulatory measure and the advantage acquired from that measure by the government entity. A court must conduct a realistic assessment of each case depending on the particular circumstances. The Supreme Court identified some of the circumstances which may be relevant to the assessment of the effect of the regulatory measure and the advantage acquired by the government entity:

- **The nature of the government action:**
 - Does the government action target a particular owner or a broader public policy objective;
 - If there was notice to the owner of the restrictions at the time the property was acquired; and
 - Whether the government measures restrict the uses of the property in a manner consistent with the owner's reasonable expectations.

- **The nature of the land and its historical or current uses:**
 - When land is undeveloped, the prohibition of all potential reasonable uses may amount to a constructive taking; and
 - A mere reduction in land value due to land use regulation, on its own, would not suffice.

The substance of the alleged advantage:

- An advantage may take various forms - permanent or indefinite denial of access to the property or the government's permanent or indefinite occupation of the property would constitute a taking.
- Regulations that leave a rights holder with only notional use of the land, deprived of all economic value, would constitute a taking.
- Confining the uses of private land to public purposes, such as conservation, recreation, or institutional uses such as parks, schools, or municipal buildings may constitute a taking. Note, Alberta has a statutory provision which codifies a private land owners right to compensation where a municipality designates land for use as a municipal public building, school facility, park or recreation facility in [s. 644 of the *Municipal Government Act*](#).

The test for a claim of constructive taking is not met where there is regulation which is a significant limitation on use of property or causes reduction in the value of property. Rather, a claimant taking must show that all reasonable uses of the property have been removed.