

Federal Court of Appeal



Cour d'appel fédérale

Date: 20230613

Docket: A-44-22

Citation: 2023 FCA 138

**CORAM: PELLETIER J.A.
RIVOALEN J.A.
ROUSSEL J.A.**

BETWEEN:

SHAWN SOMERVILLE MILNE

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard by online video conference hosted by the Registry on November 22, 2022.

Judgment delivered at Ottawa, Ontario, on June 13, 2023.

REASONS FOR JUDGMENT BY:

PELLETIER J.A.

CONCURRED IN BY:

**RIVOALEN J.A.
ROUSSEL J.A.**

Federal Court of Appeal



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REASONS FOR JUDGMENT

PELLETIER J.A

[1] This is an appeal from the Federal Court's decision on costs reported as 2022 FC 63, following the dismissal of Mr. Milne's claim for compensation for disturbance and injurious affection as a result of the expropriation of a part of his land to permit the expansion of an existing railway corridor. The Federal Court found that Mr. Milne had not proved that the expansion of the corridor had a perceptible increase on the noise level at his residence.

[2] In reasons released concurrently with these, this Court, having found that the increased noise from the expansion of the railway corridor had a severe impact at Mr. Milne's residence, allowed his appeal from the dismissal of his claim for relief and returned the matter to the Federal Court for a redetermination of his claim.

[3] The Federal Court's decision on costs turned, in part, on the failure of Mr. Milne's claim for relief and, in part, on the Court's view that Mr. Milne's claim for relief was unreasonable.

[4] Given that Mr. Milne's claim for relief is being returned to the Federal Court for redetermination, the Federal Court's view of Mr. Milne's claim and its reasonableness may change following the redetermination. This may affect the Court's view of Mr. Milne's entitlement to costs under the special regime set out in the *Expropriation Act*, R.S.C. 1985, c. E-21.

[5] As a result, it would be inappropriate to deal with the matter of the costs of the expropriation proceedings before they are finalized. Therefore, this appeal will be allowed and the Federal Court's costs award will be set aside, subject to a fresh determination as to costs being made at the conclusion of the Federal Court's redetermination of the amount of compensation to which Mr. Milne is entitled is completed.

[6] For the same reasons given in the appeal on Mr. Milne's entitlement to compensation, I would award Mr. Milne his costs to be assessed at the high end of Column IV.

"J.D. Denis Pelletier"

J.A.

"I agree.

Marianne Rivoalen J.A."

"I agree.

Sylvie E. Roussel J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-44-22

STYLE OF CAUSE: SHAWN SOMERVILLE MILNE
v. HIS MAJESTY THE KING

PLACE OF HEARING: BY ONLINE VIDEO
CONFERENCE

DATE OF HEARING: NOVEMBER 22, 2022

REASONS FOR JUDGMENT BY: PELLETIER J.A.

CONCURRED IN BY: RIVOALEN J.A.
ROUSSEL J.A.

DATED: JUNE 13, 2023

APPEARANCES:

Sean Gosnell
Ian Mathany

FOR THE APPELLANT

Jacqueline Dais-Visca
Wendy Wright

FOR THE RESPONDENT

SOLICITORS OF RECORD:

M&H LLP
Toronto, Ontario

FOR THE APPELLANT

Shalene Curtis-Micallef
Deputy Attorney General of Canada

FOR THE RESPONDENT