Misc.: Reports, legal precedents, memorandum
[1948]

1-17

The second proposition is based upon a passage in the Judgment of the Supreme Court of Canada in Untermeyer Vs. Premier Gold Mining Co.(1929) S.C.R. 84, and is expressed by Counsel in these terms, i.e., "In considering fair market value one must be satisfied that the conditions of the market are reasonably normal." The passage at page 91 of the Judgment delivered by Mignault J., speaking for the Court, in my opinion has particular reference to "market price", for the Learned Judge says: "I think that the market price "in a case like that under consideration (i.e. the value of "shares quoted on a stock exchange) where it is shewn to "have been consistent determines the market value of the shares.' The quoted passage I take to be the governing principle which is to be extracted from this Judgment, and is one which I have adopted under No.10. The Judgment, in my opinion, is not authority for the proposition advanced by Counsel in the terms above quoted. I do not consider that either the Untermeyer or the Smyth Judgments provide any extension of the principles which for convenience I have numbered 1 to 20.

H. I. BIRD
Commissioner.

Misc.: Reports, legal precedents, memorandums
1-17
[1934] 87

STATEMENT OF RECEIPTS & DISBURSEMENTS, SHOWING BREAKDOWN & BALANCE DUE OR OWING

RECEIPTS

Received - Toronto Committee	$36,438.27
" - Vanc. Consultative Council	773.72
" - Greenwood Committee	300.00
	$37,511.99

	Billed	Contribution Vanc. C.C.	Outside Liabilities	Paid-to be Reimbursed	Total
Interpreters	$748.56				748.56
Supplies	142.50		100.00	230.50	473.00
Steno. & clerical	66.05			1,993.00	2,059.05
Leckie	8,172.54				8,172.54
Bank Exchange	41.68			4.28	45.96
Searches	1,060.90		250.00	(estimated)	1,310.90
Witness Fees	138.60				138.60
Telegraph & 'phone	290.83				290.83
Postage	18.39			131.61	150.00
Transportation	815.02				815.02
Trav.Exps.	2,320.14				2,320.14
Appraisals	14,032.29	773.72	1,217.28		16,023.29
Statistical	308.79		1,850.00	2,500.00	
Norris & McLennan (1st Greenwood interview)	109.50				109.50
	28,265.79	773.72	3,417.28	4,859.39	37,316.18
Fees to A.McDonald	400.00				
Brewin Advance	10.00				
	28,675.79				
Retainer our firm	8,000.00				
	36,675.79				
Bal. on hand	62.48				
	36,738.27				
Contribution (col. #2)	773.72				
	$37,511.99				

SUMMARY - BALANCE DUE

Outside Liabilities	$3,417.28
Paid by this firm to be reimbursed	4,859.39
	$ 8,276.67
Credit balance on hand	
Balance due	$ 8,214.19

Misc.: Reports, Legal Precedents, Memorandum

[1987]

	Total brought forward	$5,050.00
6.	British Columbia JCCA General Secretary - 4 mons., Oct., 1947, to Jan., 1948	600.00

(Attending to the complete distribution of claims forms and related material to B. C. claimants. Attending to numerous detailed matters pertaining to the providing of direct assistance to claimants in the filing of claims throughout the Province.)

7.	B. C. JCCA President - 21 days, during November, 1947, @ $8.00 per day	168.00

(Travelling throughout British Columbia attending claimants meetings to fully inform and explain the Terms of Reference and related matters pertaining to the submission of claims for property losses to the Commission).

8.	B. C. JCCA General Secretary - 3 mons., Jan., 1948, to June, 1948	450.00

(Attending to the work of providing assistance to claimants prior to claimants' hearings before the Commission including the providing of interpreters and enabling the function of the B. C. JCCA machinery which has greatly assisted the work of the Commission during claimants' hearings).

TOTAL	$6,268.00

GT/nf

Misc.: Reports, Legal precedents, Memorandums
L 1987

Copy for D. A. Brewin

THE CO-OPERATIVE COMMITTEE ON JAPANESE CANADIANS

STATEMENTS OF CASH RECEIPTS AND DISBURSEMENTS

GENERAL ACCOUNT AND CLAIMS FUND
FOR THE PERIODS JULY 1, 1947 to AUGUST 31, 1948
AND
NOVEMBER 8, 1947 to AUGUST 31, 1948 RESPECTIVELY

III J.C.: Reports, legal precedents, memorandum
L 1987

THE CO-OPERATIVE COMMITTEE ON JAPANESE CANADIANS

GENERAL ACCOUNT

STATEMENT OF CASH RECEIPTS AND DISBURSEMENTS

FOR THE FOURTEEN MONTH PERIOD JULY 1, 1947 to AUGUST 31, 1948

Cash on hand and in bank July 1, 1947		$3,370.68
RECEIPTS		
Contributions:		
Individuals	41.00	
	$3,411.68	
DISBURSEMENTS		
Expenses:		
Secretarial salaries	$1,083.33	
Legal	518.60	
Supplies and printing	331.35	
Travelling	91.45	
Audits	35.00	
Office expense	79.74	
Postage	19.29	$1,958.76
Balance, August 31, 1948:		
Petty cash on hand	$ 25.00	
Cash in bank	1,427.92	1,452.92
		$3,411.68

We have compared the above general account statement with the books of account and vouchers of the Committee and have found them to be in agreement therewith.

P S Ross & Son

Chartered Accountants.

TORONTO, Ont. November 4, 1948.

Misc.: Reports, Legal precedents, Memorandum
E/1948J
1-17

THE CO-OPERATIVE COMMITTEE ON JAPANESE CANADIANS

CLAIMS FUND

STATEMENT OF CASH RECEIPTS AND DISBURSEMENTS

FOR THE PERIOD NOVEMBER 8, 1947 to AUGUST 31, 1948

RECEIPTS

Retainer fees from claimants:		
British Columbia	$17,053.04	
Alberta	3,684.68	
Saskatchewan	201.86	
Manitoba	1,771.00	
Ontario	7,404.86	
Quebec	910.43	$31,025.87
		$31,025.87

DISBURSEMENTS

Expenses:		
Solicitors' fees	$ 7,750.00	
Solicitors' expenses	6,233.72	
Valuation fees	3,801.45	
Stationery, express, etc.	362.62	
Reimbursement of affiliated associations for assistance to claimants	986.64	
J.C.C.A. - tabulating claims	212.50	
Ontario hearings:	150.00	
Honoraria - secretarial and legal assistance	150.00	
Interpreter	48.20	$19,675.13
Bank charges		
Balance August 31, 1948:		11,350.74
Cash in bank		$31,025.87

We have compared the above Claims Fund Statement with the books of account and vouchers of the Committee and have found them to be in agreement therewith.

Chartered Accountants.

TORONTO, Ont. November 4, 1948.

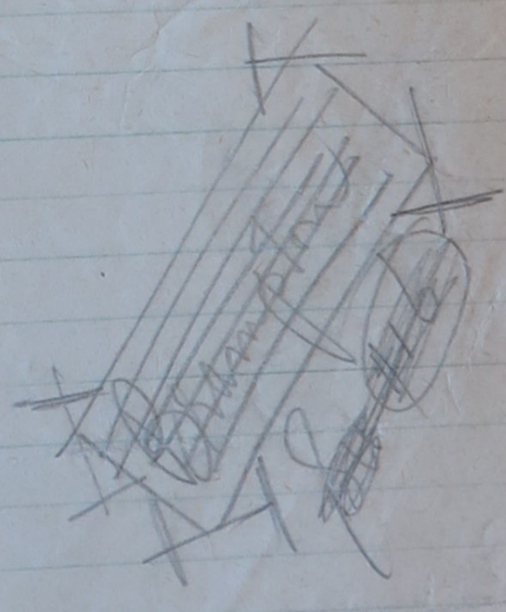
Misc.: Reports, legal precedents, memorandum
L/194-87
1-17

out-of-town to be notified specially. — these are out-of-town cases which ~~in~~ written evidence should be submitted if poss.

~~Kofa~~

MIZUGUCHI, Masako - Box 24, Chapleau, Ontario
NAKASHIMA, Fusato - Box 24, Chapleau, Ontario
OBAYASHI, Matsuzo - Box 24, Chapleau, Ont.
OBAYASHI, Sawaichi - Box 380, Chapleau, Ont
OIKAWA, Yoemon (Crow Creek) Opasatika, Ont.
TAKATA, Morikichi, c/o Spruce Falls Pulp & Paper Co., Opasatika, Ont.
TSUYUKI Itaro, c/o S.F.P & P Co, Crow Creek, Opasatika, Ont

CHIBA, Mrs. Matsuko. c/o Mount Forrest Basket Co., Mt. Forrest, Ont.



Misc.: Reports, legal memorandums
[1945-87]

~~3000~~ —

3477 Bank Acct

3000 Lee Investors

~~Capital~~

3000 Virtue ?

9477

Liabilities

Best	$500	
Hudaka	$150	
Reed Scott	$150	
Gilbert	$250	
Leckie	2000	
Valentons		
Hewer	2000	
Nor Pet		
Investors	5000	10,050

Misc.: Reports, legal documents, memorandums

L/1487

1-17

Succession Duty Cases.

Prop. value defined as fair market value at date of death.

Best possible price = Ellesmere vs Com'rs of Inland Revenue 1918 2 KB. 735.

of some value because of facts. in estimating value must decide it up-
in way a prudent vendor willing but not anxious would do

potential.
may only be one purchaser. with special purpose. Pyrocheria 1939 2 AC 322
Com's of Inld Revenue vs Clay 1914. 3 KB 466.

~~Ghani vs Comrs~~.

Estate of Henry E Huntingdon 36 Board of Tax Appeal 698
Rentals important ben Ag Alle v Loyal Trust 1985 SCR. 267
per Estey. at 288.

NB where market cannot be found. then must construct market.

Pearce v Calgary. 54 SCR. 1.

Smythe vs Revenue Com'rs. 1931. Ir. R. 643 The Court agreed that.
any inquiry as to market value should proceed on the assumption
that all types of purchasers are in the field including those who seek
to purchase the property in its entirety as well as those who would be prepared
to buy smaller parcels.

after
Untermeyer v AG for BC. 1929 SCR. 84. 1928 2 WWR. 209 39 BC. R 533
1928. 3 DLR 311.
Judgment in Court below clearly recognises.
that normal conditions predicated.

Workmen vs Workmen 1939 SCR. 37.
even stock market value not conclusive

Guggenheim vs Rasquin. 312 U.S. 254 It is not necessary that there be a
market or sale to determine the fair market value.

Lucas v Alexander. 279 US. 573.

687 fully as entitled
Selby Estate for Foreign Affairs v Charlesworth. 1901 AC. 373

Temporary depression. Kohl v US 91 US 367
~~Rodger v R. 38 SCR 149~~
~~R v Lamoll 56 SCR 376~~
20 CJ. 727 sec note 29. 730 pender. 771.

Misc.: Reports, legal precedents, memorandum
[1985]

1 Sato. agreement to be bound by evidence of joint owner.

2. Furuya. take notes + discuss with Sakamoto + Ukon Heguchi.

3. Shoji. Ruling.

→ 600,000 ~~200,000~~ × 30%

20 shares — 3.50.

100 — 50

500 — 50 =

500 - 50

Payton

M. Furuya + Co. Limited. 25 Ross Street

Ownership.	Pref.	Comm	
Cumberbatch.	10.		
Naturalised	3.	12	
Nationals	177.	241	
Ebony Ltd Syst	10	45	
Cumberbatch	-	2	
	200	300.	

Report on investigation 30th April 1942
Furuya
General Grocery Business. Retail + Wholesale
318 Powell St. 3 retail stores at Hemmings
Russian + Hammond St also Little Mill + Warehouse
at 992 Powell St. — No general ledger

Current assets Cash 4267.44
Accts Receivable 11980.11
Inventory Inventory 54,907.23
Current Liabilities. Bank Overdraft 2345.34
Bank Loan 2830
Trade Creditors 16,995.99
Accrued Wages 614
Interdepartmental
Yokohama Mill & Furuya Co. 23,519.47
46,457.09

Bankoverdraft, Loan pd off March 1942
Trade Creditors - March 25 1942 - 11,000.00
Three individuals financed from: U. Heguchi 23,000
H Sakamoto 5000
M Matsumoto 1000
29,000

Balance to Yokohama 23519.47
funds disbursed
Celone & Co. 15,195.44
Loan payment at 318 Powell St (repres Rent) 8179.46
992 Powell St 5625.03

Misc.: Reports, legal precedents, memorandum
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Condepreciation

Fixed Assets Book Cost Office & Store equipment 2626.50

Delivery Trucks 2 two ton Chevrolet 4477.
one truck relining to dealer
Vancouver Motors Ltd. + other order

$5 Heaters on hand 12

Miscellaneous Asst 2900

Fluorescent Lighting Fixtures

Rice Mill Machinery 2548.00

1 elevator 1 Fanbrowler Swell, Rice Huller 2 Elevator Motor etc as per statement of repair

Chemainus Branch Store equipment 350

Store equipment (Refrigerator Cabinet + Bore Proof Safe + Safe) 460.50

Land + Bldg 1400.

Nanaimo Branch. Store equipment 225.00

Land + Bldg Located at 318 Powell St purchased from Corporation title Nov 25th 1939. $30000

mtge $9,500 Balance on mtge at Feb 24 1942 14.477.08

Assessed value land 7500 Bldg 30,200.00 upper floors rent

922 Powell St Lease option $5250 basement dwelling Peter Tollpell 13 1942

taline 2907.58 Appraised that option is valuable + should be exercised

Value probably $4670

Report 10th July 46. Mr Twigg

Rice Mill machinery 1 unit of spare equipment disposed of + delivery trucks

Book value 11.765.13 realize 9253.69

All else of harvest equipment sold with Mr Higuchi app

Real estate 922 warehouse rent by Corporation at 125 a month 318 rents at $150 a month

upstairs 125 a month store general

~~Vendor~~ Hammond property appraised Munyer 950. sold from Richmond 1075

appraised by Reeve 250. sold to Van Snellenberg $400

316 Powell enlargement additions including freight elevator appraised by Douglas

Reeve 13000 Campbell + Parkinson in behalf of Chinese offered $15,000 sold

Feb 19th 1944.

922 Appraised Douglas Reeve 10.000. sold Reid + Reed 15900

Recommendation as to disposal of employees balance of 20.971.44

Credit to defence aud of co.	3.000
Instalments for small bals	844
A Galloway	5000
V Higuchi	12126.72
	20971 44

Misc.: Reports, legal precedents, memorandum
E 1945 87

Balance Sheet as at 30th June 1946

Cash -		21.155.07
Cust Lev		5890.91
		27.045.98
Liabilities - ~~Work Payments~~		
Work Payments	267.43	
Members Cr	268.70	
Employers Amount	20.971.44	
Workmens Insurance	700.00	22,207.57
Capital	20.000	
Reserve	30.0000	
	50000	
Profit Amount	45.161.59	4838.41
		27045.98

Misc.: Reports, legal documents, memorandums

[1948]

1-17

日系カナダ人の為のコーペラチヴ・コミテーの起源
性質及びその仕事に関する説明書
一九五〇年四月、賠償要求者に対して発表

木容

(一) 緒言　(二) コーペラチヴ・コミテーの起源と性質
(三) 初期に於ける努力――△會合△請願△パンフレット△資金
募集△法律的行動△首相に対する文書
(四) ロイヤル・コミッション――代表者派遣△吾々の側の弁護士
(五) 解決方法――コミッショナーの、解決に方式決定△受諾を進言
した理由△スペシアル・ケース
(六) 評價の証據を得るに用いた方法――△漁船△漁網△自動車とトラック△晩香坂の
土地局扱い関係△コミッショナーの調査條件解釋が制限されたことから生じた
財産△コミッショナーの調査條件解釋が制限されたことから生じた
影響△帰還兵土地局扱い以外の地方の財産
(七) 結論　(八) 財政――△會計監査報告△支出の内訳
△弁護依頼費用未納者に対する訴え

要求者各位

總移動から起った日系カナダ人の損害に関するロイヤル・コミッションの調査結果は
近く政府に提出されることと予期されている。すでに全加日系市協から可なり詳細に
亘った報告書が最近発表されたのであるが、コーペラチヴ・コミテーに於てもそれを
更に補足するステートメントを出すことになった。正義を守ろうとする多数のカナダ
人の聲と行動を代表する機関としてコーペラチヴ・コミテーが生れてから既に六年に
なる。この重大なる毎月の間に於て、吾々の力の入れどころは、生起そくる
色々な問題から問題へと轉換されたけれども、基本的には その関心事は
日系カナダ人の完全なる市民權ということにあったのである。

日系人のためのコーペラチヴ・コミテーは一九四三年六月に組織された。その
當時、トロントの、主としてワイタブル・エーエーブロックによって、日系カナダ人の敵會等の代表者をも含む會に
まで拡大された。一方、この委員會の運営は、日系カナダ人な二つの
小委員會――男子と婦人別々のーを組織して、彼等の必要について コー
ペラチヴ・コミテーに助言することになった。後でこの二つの小委員會は
双方合同してトロントの日系カナダ人デモクラシー委員會 となった。
最初コーペラチヴ・コミテーは、トロントに住居
ソクリエーション等を置くことに努力を集中した。しかし下ら間もなく彼等な

Misc.: Reports, legal records, memorandums
[1948?]

個々人に援助を与えて解決を行なうだけではなく、組織的運動の全事態に関する情報を集めることに着手した。

一九四三年九月、コーペラチヴ・コミテーは、ノーマン・ブラック博士の書いた「愛国主義と経綸に対する挑戦」と題するパンフレットを一万部印刷して各方面に配布した。これはインテリや・タウンにおける日系カナダ人の状態に注意を喚起させたものである。一九四四年六月になって、コーペラチヴ・コミテーは日系カナダ人デモクラシー委員会と共に、戦争中あらゆる日系人の選挙権を剥奪しようとした議案第一三五号の修正運動をした。

追放反対運動

一九四五年の春、オタワ政府の「自発的帰国申請」計画が起されて、一万餘人の日系カナダ人が追放に直面したとき、コーペラチヴ・コミテーは大いに憤慨して更に組織を拡大し、政府のおしる追放方針を再考慮せよと要求する運動を開始した。委員会は「帰国申請書」にどういう風にしてサインが行われたかに関する宣誓したステートメントを集めて公表し、ビーレーサのハワード・ノーマン氏の書いた「日系カナダ人は、こんな国に留ってよいのか？」と題するパンフレットを一万部印刷して各方面に配布した。これは「日系人」と題する二つのパンフレットをオレット故授の書いた「日系カナダ人」配布し、「市民から避難民へ」それはここで起りつつある！」と題するリーフレット七万五千部を印刷して配布した。コーペラチヴ・コミテーのこれらのパンフレットは、カナダ中に大へん配布されたのであるが、これによって、日系カナダ人に対する敵愾心の偏見は大いに打破されたのである。

この頃には、コーペラチヴ・コミテーは、四十の地方的及び全国的グループの代表機関にまで進展した。これらのグループの中には、バプテスト、カソリック、合同、エヴァンゼリカル等の各教会、ワイエムシーエー、ワイダブルシーエー、トロント市民自由協会、トロント労働会議、労働組合、青年団、セーレーデー（日系人デモクラシー委員会）及びその他の日系カナダ人委員会があり、ヴァンクーヴァー、エドモントン、カルガリー、レスブリッヂ、レスカソツン、ウイニペッヂ、オタワ、モントリオル、グエルフ、ブラントフォード、ハミルトン、ロンドン等にも支部をもって、その役員は日系カナダ人に対する正義が行われることを欲する人々総ての熱誠の協力を代表する様実となった。

主としてこの委員会の努力の結果こそ、全国いたるところで数多くの有力な新聞が社説を書き、強制的追放に抗議する手紙は、首相のオフイスになだれこんだ。このパブリックの輿論の反対にも拘らず、政府は追放令を発表したのでコーペラチヴ・コミテーでは法律的手段に出ることを決定した。カナダ政府の検事総長に対して令が合法的であるかどうかを試訴する文書を提出した。委員会の代表者が法相代理と会見したとき、政府は追放令を大審院に廻付らそれが有効であるかどうかを裁定することに同意した。そこでコーペラチヴ・コミテーは、国内全土の国体や個人に訴えて、訴訟費用を集めたが、一ヶ月以内に

M.sc.: Reports, legal records, memorandums
[1944-87]

二万弗を、すべてで約二万弗を集めた。

㈢ 追放反対の訴訟

カナダ大審院の判決は、部分的にしか満足できなかったので、コーペラティヴ・コミテーでは英国の枢密院にまで上訴した。一方では敵育運動を続けて、市民であって追放されるべき流刑者ではない」と迫するリーフレットや、エディス・フォークス氏の書いた「日系カナダ人」と題するパンフレットを五万枚配布し、追放令に関する覚え書きを印刷してメンバーに送付した。その努力は実を結んで、追放令の有効性な確認さえたけれども、政府自身は、追放に関する論点を取り消した。

ついでコーペラティヴ・コミテーはその注意を、持主の同意なくして売却された「日系カナダ人の戦産投資賠償問題に向けた。一九四六年十月、トロントに於て日系人デモクラシー委員会が行った経済的損害調査によって得た、日系人の損害に関する詳細なるステートメントの多数を受取った。この調査は、ついてカナダ全国になぞらえたのであるがその結果、莫大なる損害あることが判明したので、コーペラティヴ・コミテーは一九四七年五月に、首相に直接交渉して「総移動命令のために起こる賠償を見出す権能を持つたコミッションによって損害を全面的に調査する」ことを主張し要請した。(一九四七年六月、コーペラティヴ・コミテーは、在来のような大きな委員会は最早や必要がないと感じて、最初の十のグループのメンバーに新しい弁事及び弁護士を加えた、委員会を存続することになった。その当時、委員会の機能は、諮問機関だと考えられたのであったが、一九四七年の秋に、協同的な行動をとることが考慮されたとき、その機能は執行機関としての責任をとることになった。)

㈣ 首相及び議会のパブリック・アカウント委員会への代表者派遣

漸くにして、マッケンジー・キング首相は、日系カナダ人がビーバー沿岸から移動した時に蒙った財産損害に対する賠償問題を考慮することを発表した。そこでコーペラティヴ・コミテーは、この約束を遂行させるために行動することになった。先ず国務相と会見することが出来て、損害調査の権能を持つコミッションを設置すべきであることを主張した。議会のパブリック・アカウント委員会は、カストダアンのやって来た仕事を調査し、一九四七年五月二十七日、コーペラティヴ・コミテーのブリューイン弁護士とミセス・マクミラン弁事及び日系カナダ人デモクラシー委員会の田中ミスター三氏から成る代表団の陳述を聴取し、フリーで裁判官のコミッションを任命することを進言した。

調査会法によってバード判事がコミッションナーに任命された最初の調査条件は非常に不満足なものであった。コーペラティヴ・コミテーは時を移さず政府当路と会見する取りきめをして、コミッションナーは只単にカストダアンの至らざる点によって生じた損害に対してのみ賠償することを進言するかも知れないという、多くの不満足を

Misc.: Reports, Legal Precedents, Memorandum
[1947]
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表明した。その当時、プリューイン弁護士、ウィルスレー司法相及びギブソン国務相と意見の交換をした。

五〇年の調査修正を拡大して、移動する自身が所有する財産損害すべてを調査できるようにすることを主張した。政府では、そこまで修正するにはかなりの程度にまで修正した。修正された修正法は、コミッショナーに対して、カナダに居住する日系人にとって動産、不動産とも、公正なる市価以下でカストダアンから売却され、或はカストダアン以外の或る人に世話をまかせて、持主として管理することになっていた方は除かれる。）紛失、破壊又は盗難によって起こった損害を調査することを命じている。修正された修正法は、コミッショナーに対して、カナダに居住する日系人にとっては十分に吟味して考慮した後にその修正を抗議つきで受諾することを勧告するのが賢明であると決定した。

㈣ ローヤル・コミッション

こうしてローヤル・コミッションが設置された。このコミッションは、カナダの活躍史上から言って比類のないものである。公共の目的のために財産が収用されたことにおいて、政府を相手に賠償を要求し、裁判官のコミッションによって広範囲にわたる財産の価値を調査した事件は、もちろん数多くある。しかしながら、カナダ全土に散在して居住する多数の人々の、多くの異った種類の財産の価値を調査する必要が起こってきたということは最初の例である。これは大きな仕事であることが立証された。先ず第一の仕事として、これを遂行することは大きな仕事を意味そこで、コミッショナーはカナダ中を廻って多数の要求書の提出すべき証拠を簡明にするために、財産に関する質問条項の必要なる詳細を書式にまとめて示す用意を、五名の弁護士、要求者を支持して、政府側の弁護士、要求書を提示した。

㈤ 五〇〇の側の辯護士

アルバータ州の多数のグループが、ヴァチュア弁護士によって代表されたのを除いては、要求者の殆ど全部はコーペラティブ・コミテーの弁護士によって代表された。コーペラティブ・コミテーを代表した弁護士は、ブリアンクーウァーのマクマスター、マクレナン両氏、アルバータのターコット、ハックヴェール両氏、サスカチワンのシュミアツケヤー、マキアロフ三氏（

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マニトバのナヤーニアク氏、オンタリオのブリューイン、ベスト両氏、ケベックのウイメー氏等である。そして証拠書類作製の用意や要求者の会見等の骨の折れる仕事は、レキー、バート両氏や、その協力を絶対的に必要とした同市協の代表等によってなされ、弁護士等は大きな援助を得たのである。

バード判事が下ぎの様な態度を示してくれたという印象を要求者たちも受けたであろうことを吾々は感ずるのである。時間の実際上からコミッショナー一回例ですべての要求者の証拠を聴取することは不可能であることを見出したので、方々の区裁判所の判事が代ってこれを聴取するために任命された。あらゆる困難があったにもかかわらず、コミッショナーの前に事実が持ち出されて効果的に証拠が提示されたのは注目すべきことである。

あらゆるケースの評価についてはこれを専門家の意見が必要とされたが、公正なる市価を設定するためには、専門の土地委員評価者から証言が与えられねばならなかった。コーペラティブ・コミッテーではバンクーバーの一般的証拠、会社関係から提出した要求、特別種類の要求について詳細な評価証拠を得るために同じ方法の手続によってこれを聴取した。

コミッショナーは政府側及要求者側双方の弁護士から提出した実例ある代表的なケースについて詳細な評価を聴取した。証言は、政府側、要求者側双方によって提出された。これらの代表的なケースについて、種類別に分類された。特別な特徴を含むものは再調査されて、種類別に分類された。特別な特徴を含むものは更に別個に再調査された。

㈣ 解決の種類別方法

一九四九年の春、コミッショナーによって、要求者、政府側双方の弁護士から一般的証拠が聴取されたのち、若し、コミッショナーが各々の個々のケースに当って一々証拠を聴取することになれば、多くの反復をくり返して手続きは長引くことが明らかとなってきた。ここで、手続きは、普通たらセツトルメント（解決）と呼ばれた方法によることによって、有利に短縮することが出来た。コミッショナーは、各々の別個の種類の要求ー即ちフレザーバレーの修道共土地局扱いの農地、バンクーバーの戦産、自動車類、漁船、漁網、競売された道具類等々ーに関して弁論を聴取し、その上で各々の種類に適用し得る賠償の一般的妥当を設定すべきであることがコミッショナーから提議された。特別な証拠乃至は特別な特徴ある要求については、要求者又政府側双方の弁護士は、特別証拠を提出し、又は要求者のために特別賠償を要求することが許された。

㈤ コミッショナーの実際上の解決方式決定

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政府側及要求者側双方の弁護士は、各しかるべき特別要求の形式において、特別証拠を提出することを許す現行規定があるならば、コミッショナーに提出した十分なる証拠によって、賠償の一般的方式を作り出すことのできるだろうと考えた。コーペラティヴ・コミテーの弁護士は、このヨオバーオール』提議を、コミッショナーから提議そのまま、種類別にした要求に関して考慮していた賠償歩合表に、注意ぶかく考慮した。

政府側でも、方式がどういうものであるべきかについて或る種の提議をした。コーペラティヴ・コミテーの弁護士もまた、吾々の側の事件を基礎とした提議をした。吾々はしないから、よって得た評価の証拠を基礎とせずに決定した。コミッショナーは、実際の方式は、弁護士からの提議を基礎とせずに決定した。彼自身の手許にある証拠にもとづく、彼自身の意見によって決定した。コミッショナーが決定した歩合制の方式なると提議された方法と共に、やがて要求者に提示された。要求者の大多数は、條件つきでこれに賛成を表明した。ここで弁護士は、提議お断りした方法をとることになったのである。

要求者にとっては、一口のケースが、あらゆる詳細に亘って調査されたより利益だったと考えている。実際の賠償額については、コーペラティヴ・コミテール弁護士は、その當時は何ら承諾はしていなかったのである。歩合は、証拠や辯論によってコミッショナーが判定したところである。特別ケースの分は修正されることになっていたのである。

◎受諾を勧告した理由

コーペラティヴ・コミテーでは、コミッショナー及び司法相の双方に対して、コミッショナーの提議した数字の或る部分、特に強硬なる不満を表明した。しかしながら、總体としては、要求者の利益のために、この提議を受諾すべきであると感じた。提議を拒否することは、更に解決が長びき、要求者として費用がかさみ、むしろ少額しか得られないという結果になるであろうと、吾々は考えた。

(多くのケースではそしてまた、ヨリ高い価値を証拠立てて、正當なる取扱いを受ける権利を與えられている人々に対する正義を阻害することになると考えた。

吾々は、多くの人々が失望するであろうことを認めたのではあるが、しかしながら、独裁の調査條件と証拠立ての困難さとを心に留めて、總ての要求者にとって最善の結果を得るように努力するのが、吾々の責任だと感じたのである。その當時でも、また今なおでも、要求者に対して事情の下に於ては、最も賢明なものであったことを、吾々の勧告は、こうした行った吾々は疑わない。また、提議された方法に対する意見を求めたのに対して、上記のごとく條件つきで賛同したのであった。

◎スペシアル・ケース

その時から殆ど一ケ年にわたり、ロアンクーヴァーにいるコーペラティヴ・

M.sc.: Reports, legal records, memorandums
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コミテーの弁護士は、各々のケースをコミッショナーの方式に照らし合せて、詳細に調べ、スペシアル・ケースの証拠を集めて提示し、コミッショナーの前において之れを弁論してきたが、その結果について報告こそ出ている。

と共に妥当な報告こそ出ている。

◎評価証拠を得るために用いた方法

コミッショナーは今や、すべての要求者の提出した証拠を聴取した。この証拠は、要求の限界をきめ、どの財産たおする要求であるかを見分けるに必要があるのである。裁判では、公正なる市価決定の上に、大した重味を表明し得る専門家の意見を要求するのである。各々の財産の価値に対する意見

差異はあるが、カストゲアンの支却価格の、凡そ五〇パーセントから二五〇パーセントになっている。或る特別ケースを除いて、平均すると八〇パーセントになるであろう。それらの財産のうち特異な性質のものの及び特に強い証拠を得られた分は、特別賠償が得られる。特別ケースとして増加した賠償額は、帰還兵士地局扱いの八〇パーセントの外に約五万弗になろう。

㈢ 漁船（フィッシング・ボート）

ボートの場合は、造船の費用が増加しているという一般的な情報以外には専門家の情報を得ることが出来なかった。総務部の前に日本人が所有そうたような型のボートが、ボート仲買人の手を通ったのはごく少数しかなかった。だから此の方面の専門家の意見は得られなかった。カストゲアンの手に渡った多くの古い船があった。カストゲアンがボートを接取する前に、海軍が押収した際に、手荒い扱い方をしたり、破壊したりしたのが、どの程度であったかを証拠立てることは困難であった。

吾々はボートの扱い方や支却に関して、政府側の証人を反対訊問して、その程度の情報を得ることが出来たが、これは有用なものであった。吾々な調査係の範囲外に於ては、ネルソン兄弟商会に委託されたボートに対しては二三・五パーセントを、その他すべてに対しては二八・五パーセントの賠償を進言するように、コミッショナーを説得することが出来た。政府側では最初、僅かに一五パーセント

㈣ 漁網（ネット）

ネットに関しては、カストゲアンは評価者を雇って、その種類、原価、使用年数、価値低下等を基礎にした方式を作製させた。吾々の方では、日本人に好意を示している西洋人漁者と、日本人漁者を雇って、此の方式を調べて貰ったが、彼等の意見では、カストゲアンの作った方式は、可なり公正なものだということであった。吾々はまた、この方式を色々なケースに当てはめてみたが、吾々の専門家の意見では、これは可なり公正に適用できることを発見した。同時に吾々は、他の日本人漁者の意見を求めたが、吾々の専門家の意見は公正であると確認された。

然しながら、ネットに関する吾々の主たる困難の一つは、ネットに附けてあった名札が、屢々ちぎれたり又は取り換えられたりしていて、カストゲアンの支却したネットを個々別々の基礎に於て取扱うことは不可能であった。そこで、ここに於ては、ネットに対する要求の可なり多数の見本に、上記の定式を基礎にしたところの、総体的な賠償額となり、約六分の五の七十弗を受取るべきであると処理することを進言したのである。こうしてネットは個々別々の

Misc.: Reports, Legal Proceedings, Memorandum
[1948?]

Misc.: Reports, legal precedents, memorandum

[1987]

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ったりしたことがあるが、それは、ほとんどの場合、ドライバーの不注意によるものであった。

(三) 自動車とトラックの衝突

自動車ストライクに関しては、当日の天候や路面の状態、ブレーキの効き具合、ドライバーの視界等が問題となる。

(四) 自動車と歩行者

自動車と歩行者の事故は、当日の天候や路面の状態、ドライバーの視界等が問題となる。

(五) 自動車と自転車

自動車と自転車の事故は、当日の天候や路面の状態、ドライバーの視界等が問題となる。

(六) 自動車と動物

自動車と動物の事故は、当日の天候や路面の状態、ドライバーの視界等が問題となる。

(七) 自動車と固定物

自動車と固定物の事故は、当日の天候や路面の状態、ドライバーの視界等が問題となる。

(八) 自動車と列車

自動車と列車の事故は、当日の天候や路面の状態、ドライバーの視界等が問題となる。

(九) 自動車と航空機

自動車と航空機の事故は、当日の天候や路面の状態、ドライバーの視界等が問題となる。

(十) 自動車と船舶

自動車と船舶の事故は、当日の天候や路面の状態、ドライバーの視界等が問題となる。

(十一) 自動車と建物

自動車と建物の事故は、当日の天候や路面の状態、ドライバーの視界等が問題となる。

(十二) 自動車と電柱

自動車と電柱の事故は、当日の天候や路面の状態、ドライバーの視界等が問題となる。

(十三) 自動車と橋

自動車と橋の事故は、当日の天候や路面の状態、ドライバーの視界等が問題となる。

(十四) 自動車とトンネル

自動車とトンネルの事故は、当日の天候や路面の状態、ドライバーの視界等が問題となる。

(十五) 自動車と踏切

自動車と踏切の事故は、当日の天候や路面の状態、ドライバーの視界等が問題となる。

(十六) 自動車と信号機

自動車と信号機の事故は、当日の天候や路面の状態、ドライバーの視界等が問題となる。

(十七) 自動車と標識

自動車と標識の事故は、当日の天候や路面の状態、ドライバーの視界等が問題となる。

(十八) 自動車と看板

自動車と看板の事故は、当日の天候や路面の状態、ドライバーの視界等が問題となる。

(十九) 自動車と広告塔

自動車と広告塔の事故は、当日の天候や路面の状態、ドライバーの視界等が問題となる。

(二十) 自動車とその他

自動車とその他の事故は、当日の天候や路面の状態、ドライバーの視界等が問題となる。

Misc.: Reports, legal precedents, memorandum

[illegible]

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ところである。しかしながら、吾々は、市の課税のための評価者を呼んで証言させたか、彼の意見では、一九四三、四、五年の賃貸価額は、評価額を越えているというにあった。一方、カストゲアンは、日本人財産の大部分を評価額以下で売ったのである。評価者の証言が判事な、内証処理についてそれのであることを吾々は認めなければならないけれども、なお且つ元は或る程度の力になると吾々は考えた。ところが判事な、内証処理についてこのことに価値を持たせることは出来ないと、ハッキリ述べた。グアンクーヴァーの財産に関しては吾々は、他に二人の土地売買業者を呼んで、カストゲアンが証言では、公正なる市価を出すことは出来ないというのが彼等の意見によってあった。むか、判事は二人におよそ、カストゲアンの座った評価者の証言の方に、より大きな重味を持たせたらしかった。吾々は大グアンクーヴァーの財産の外と全部たおよそ、吾々旬旬の評価者により評価を行わせたのであったが、その結果報告では、彼等の意見によってより大きな回収を証拠立てることは出来ないということであった。

要求者、并渡土双方ともかかる予期できなかった一つの困難な判事に、よって、内容全の解釈が制限されたために、それがグアンクーヴァーの財産の公正なる市価は、財産が売られた時における財産の状態に影響したということである。判事は、カストゲアンによって売られた財産よって決定しなければならぬというように、調査条件をこういうような解釈されるなら、グアンクーヴァーの財産なに関しては、最も強い打撃を及ぼしたのである。

日本人が移動したために値おちが下ったことをもし、そのままの条件で吾々が認めなければならぬということになるのみならず、レント規定に従う以外には借家人を立ちのかせることが出来ない状態にあった財産以外、その悪条件のままのものを認めなければならぬということになるからである。

カストゲアンが大グアンクーヴァーの財産を売っていた期間は、レント規定な、六ヶ月間の通告を与えなければ借家人を立ちのかせることが出来ないという点をはじめとして、レントをなお押さないとか、心なべき借家人でない限りは、これを立ち退かせることが出来ないような事態にあった為に吾々の評価者は、カストゲアンが家を引渡させることが可能だったという事態になかった為に多くの場合、価値はずっと五パーセント、或る場合には、更に大きな額の実を生じたという意見であった。要求者が買うならば、そのままの状態で買いそれの値段を基礎とするものだと、吾々はあらゆる解釈のために、妥当の大部分は、ほとんどあらゆる場合に於て、除外されたことを知らなければならない。

Misc.: Reports, legal precedents, memorandum
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コミッショナーは、カストディアンからクレームの提出を受けた場合、それを公正なる市場で妥当なものと認めたならば、それを提示できるそういう立場を開けた。そして約三十件について、今計る一万八千弗の特別賠償をコミッショナーは認めた。市の財産の実却価額総額と賠償総額とを合計すると、公正なる市場そのものに当る。それは勿論遠島地区ないの合の合せた歩合関係と実際上で一致する。

㈢ 晩香坡市以外の財産（帰還兵土地局扱い以外の分）

この財産に関して、新西院の諮問委員会を通して、カストディアンによって処理された。そのうちの大地面なステヴストンのであり、その財産の大多数は、遠隔の地域、即ち晩香坡島西海岸のガルフ・アイランドの漁村、フリンス・ルパート及び北方沿岸の遠隔孤立の村にあった。これらに対してコミッショナーは、カストディアン側が適正なる評価をすることが困難なのを認めて一〇パーセントの大ハー・オール（全般的な）賠償を進言する用意をしていた。ステヴストンとプレザー・バレーの財産に関しては、吾々は評価をしたが、相当な回収が出来ると認めたナ数の例を除いては、これらの遠隔不便な地にある財産の大多数は、評価の費用の方が回収よりも遥かにタタくかかると考えた。その一例を示すと、遠隔の地にある二つのスペシアル・ケースの評価をするために百五十弗以上の費用がかかったのである。その他のあらゆる不動産の場合と同じく、吾々は土地登記所に於て、最近の購入ないしは、その後に於て又売り急ぎの証拠を見出すことにつとめた。こうした証拠が発見された場合は、特別ケースとしてコミッショナーに持ち出した。特別賠償は約四十ケースで総額二万六千弗にのぼった。回収合計、即ち売人賠償に賠償額を加えたものを要求額と関連させて見ると、その結果は帰還兵土地局扱いの財産の方が有利である。

結論

コミッショナーは彼の報告を政府に提出した。吾々は既に同法律に含見なる必要なる法律を通過するか、又は今議会に於て追加立案を是認するかして、賠償を速やかにすべきだと要請した。吾々はまた、要求者が賠償金を多年手に亘って使用できなかったことに対する損失を補うために、売却が行われた日にさかのぼって、政府が利子を支払うべきであることを主張した。これは、政府が財産を収用する場合に行われるならわしであって、若し政府がこれを認めれば、その額は相当なものになるであろう。金が要求者に支払われるよりもすべきだと要請した。これを受取るためにサインすることを拒むその或る種の手続きが必要となる事もあろう。吾々は出来るだけ、煩雑な手続きはさけるよう取り計らうであろう。

そのほか、コミッショナーの報告書や

その報告を全面的に、公正に、速やかに実行して、要求者にチェーへうけ取ってもらうよう、恐らくまたコミッショナーの配慮

Misc.: Reports, legal proceedings, memorandums
[1948?]

この報告を全面的に、公正に、速やかに実行して、要求者に支払いを行うために、恐らくまた、コーペラティヴ・コミテーの配慮を必要とすることがあるであろう。

コーペラティヴ・コミテーとしては、これまでやって来た総てのことに関して同じく、これからの事についても、援助を求めている。すべての人々の福利のために最善をつくして奉仕するのである。

収入

一九四九年八月三十一日現在の賠償要求費用決算

一九四八年九月一日現在銀行預金	二三、四六六弗七二仙
要求者の支払った費用（掛戻一四一弗二〇仙を除く）	二〇、四六六弗七四仙
アルバータ中央委員会の評価費分担金	三、〇〇〇弗〇〇仙
計	三四、八一七弗四六仙

支出

弁護士費用料金	九、〇〇〇弗〇〇仙
評価の費用	九、八二四・四三仙
調査会の費用	七、三〇九・六六
バンクの費用	一、一二〇・八〇
印刷物及紙代等	三一・一九
雑費	二九四・二五
計	大九二・七八
差引残金（銀行預金）	二八、二七三弗一一仙
	六、五四四弗三五仙

（一九五〇年三月二十三日、トロント市のピー・エス・ロッス計理士が監査済み）

支出の内訳

弁護士料金

ベスト氏五百弗ムマイレナン氏千弗ムキャンベル・ブレヤー・フイッド・ムクマスター・ブリューイン 二千五百弗ムカメロン・ムチャーニアック三四三・五〇ムカメロン 一、一五六・ルニムキャンベル 四八一五・〇〇ムスコット一五〇・〇〇ムライメー五六・〇〇 九、〇〇〇・〇〇

評価の費用

ヒューワー（一九四八年七月） 一、一六四・一三
〃（一九四八年十月） 三、一二〇・八七
〃（一九四九年一月―四九年三月） 三、〇二四・六六

ヒーヤリング（調査会）費用
　通訳とホンヤク　六四一・六六
　下調べ今る兒三七・六二
　電報書　三十・九七
　電信電話　五六・一〇〇
雑費
　安ボ有へ挿房し一四一・二〇
　ラバースタンプ四・七五
　会計報告一五・一二
　メーリング七三・二六
　タイプライター修理六・〇〇
　ファイル屋迄参　二・六二
　デンワ二・一〇
　旅費　五四三・五五
　（二四ヶ月　一六・〇〇）
印刷又諸用紙代
　カデミープレス（書式五千枚）一三七・五〇
　エンブロープ（スタンプド・二千枚）八六・一〇
　信販の手紙多　二・〇〇
　ルステンシル二五・二〇
　ハンコレット　一七・二八
銀行手数料

計　一、一二〇・八〇

二九四・二五

三一・一九

二八、三八四・九三

賊政安寧会のステートメント
一九四九年九月一日から一九五〇年三月廿一日まで

一九四九年九月一日現在銀行預金
并渡料として次の
計。

支出
并渡士の参列用　五、六八五・九一
雑費（旅費、印刷文房）四九〇・二一

六、一七六・一二

四一八・六一

差引残金（一九五〇年三月廿一日
現在銀行預金）

Misc.: Reports, legal proceedings, memorandums
[1948]

The King v Edwards [1946] Ex C.R 311

Expropriation - Expropriation Act, R.S.C. 1927, C.64 s.9 - Exchequer Court Act, RSC 1927, C. 34, SS 19(a), 47 - Compensation money to be measured by value of the land - Fair market value to be estimated on value for most advantageous use - Evidence of sales of other property useful if property comparable and proper account taken of change in value - Court must value property as a whole - Value to owner is realizable money value - Limited market does not justify departure from valuation on basis of market value - Where property has higher value as a site for other than residential use purposes than for such purposes buildings have no economic value - Award of compensation on basis of generosity erroneous - Owner has no separate claim for damages for disturbance - No claim for additional compensation where value of property for other than residential purposes exceeds value for such purposes by more than owner's loss by disturbance - Owner left in possession not entitled to interest.

Headnote

Plaintiff expropriated certain property, in the City of Ottawa, on which there was a large private residence. The action is taken to have the amount of the owner's compensation determined by the Court.

Held: That the standard for measuring the amount of compensation money to be paid to the owner of expropriated property has been set by section 47 of the Exchequer Court Act as the value of the land at the time when it was taken.

2. That such value is to be estimated as its value for its most advantageous use.

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3. That evidence of sales of property near the expropriated property affords an excellent basis for arriving at its market value provided the sales are of property comparable with it. and were made at a time near the date of expropriation, and there to been no change in value in the interval. Evidence of sales made at one time under certain conditions cannot be proof of value at a different time when the conditions are not similar.
The King v. Halin (1944) SCR 119 followed.
Evidence of sales reasonably near the date of expropriation is not without probative value provided proper account is taken of changes in conditions and any intervening changes in value.

4. That the Court should not estimate the value of the land and buildings separately but must estimate the market value of the property as a whole The King v Nemuel (1915) 15 Ex CR 381 followed.

5. That the value of expropriated property to the owner is not an imaginary value in the mind of the owner or its intrinsic value but its realizable money value and cannot be dissociated from or exceed the price which a possible purchaser would be willing to pay for it. Cedars Rapids Manufacturing and Power Company v LACOSTE (1914) A.C. 569 and Pastoral Finance Association, Limited v. The Minister (1914) A.C. 1083 followed.

6. That there is no justification in departing from these principles in the case of a property with a large residence on it.

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[1954] 87
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such as that of the defendant, because of the limited market for such a property. Re King v. Spencer (1939) Ca C A 340 disapproved.

7. That where a property on which there is a residence has a higher value as a site for other than residential use purposes than it has for such purposes, the buildings on it, since they are no longer an adequate development of the property or well adapted to the land and its location, having regard to its higher value for other purposes, do not enhance the value of the land or the property as a whole for such other purposes and have no economic value.

8. That the Court has no right to be generous to the former owner of expropriated property. Re King v. Toronto (1918) 56 Can SCR 376 followed. It is the duty of the Court to be fair and measure the owner's compensation by the standard set by Parliament - the value of the land to them, no less but no more.

9. That the owner of expropriated property has no separate claim for damages for disturbance and where the value of the property for other than residential use purposes exceed its value for such purposes by more than the amount of the owner's loss by disturbance of his residential use the owner is not entitled to any additional compensation for such loss. Horne Sutherland Corporation (1941) 2 KB 26 followed.

Misc.: Reports, legal precedents, memorandum
1-17
[1948]

11 That where the owner of expropriated property has been left in undisturbed possession of it since the date of its expropriation he is not entitled to any allowance of interest

De Krieg v Manuel [1915] 15 Ex C.R. 381 followed.

Misc.: Reports, legal precedents, memorandum
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[1948]

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CO-OPERATIVE COMMITTEE
67 Riverdale Ave.,
Toronto 6, Ont.

VIA AIR MAIL



Mr. F. A. Brewin,
c/o Messrs. Campbell, Brazier,
Fisher & McMaster,
Royal Bank Building,
675 West Hastings St.,
VANCOUVER, B.C.



SPECIAL DELIVERY
EXPRÈS
SD-B
19-3-47

6 c 1
5a

94

1. List of cases. Discuss with Registrar. Order - Argument.
   S Categories. General evidence.
2. Call Norris Interview re. Kaptzu -
   (1) Test of questions
   (2) Date of hearing. ✓
   (3) Witnesses.
   (4) Documents. required.
3. Financial Position. Discuss with Hunter. Send J further levy. ✓
   Letter to Virtue. Get revised estimate ✓
4. Questions of law
   = Preparation. } ✓
5. Possible settlement by percentage adjustment
   (a) chattels. sold by auction }
   (b) cars.
6. Case on. Commissions — Ontario —. Test ✗
7. Fishing Vessels.
8. Nets.
9. Radios.

Approximate $1200 a month Registrar Armstrong + expenses + stenographer

Agreement. $1250.

50%

50%

$1000, Insurance

$ 3000 = 1/5 of production

500 000

5000 100

tour

$1000 pd to students Group

Witness fees

D

Misc.: Reports, legal precedents, memorandum

L/1987

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MEMO OF CONSIDERATIONS TO BE TAKEN
INTO ACCOUNT IN VALUATION OF PROPERTY

1. Comparable sale in past.

2. Comparable sales after relevant date.

3. Uses to which land is adapted and might in reason be applied, other than use to which put at time of taking.

4. What men of prudence and wisdom having adequate means would be prepared to pay.

5. Assessment Value not reliable, but some check.

6. Structural value of buildings and improvements for test of enhanced value of property due to construction of buildings and improvements.

7. Trend of real estate sales for some time past in district.

8. Market value is value under "ordinary conditions or circumstances".

9. Market value is not panic value, auction value nor value fixed by depression or inflated prices.

10. Generality in element of value which a prudent purchaser would consider.

11. Opinion and evidence of qualified experts.

12 Replacement Cost less depreciation where comparable properties not available (R. v. Spencer) 1939 Ex.R. 340

13 Amount paid by purchaser of land is of great importance but not conclusive Federal Hydro-Electric Power Commission of Ontario 1940. Ex.R. 115

Misc.: Reports, Legal precedents; memorandum
L 19487

Rec'd Mar. 11/48.

SUMMARY OF CLAIMS FILED THROUGH CO-OPERATIVE COMMITTEE

British Columbia	449
Alberta	134
Saskatchewan	8
Manitoba	151
Ontario	304
Quebec	47
Total	1,093

RECEIPTS

Remitted to date		$ 22,258.47
* Balance for B.C.		8,575.49
* Balance for Man. & Ft.William		2,886.40
		33,720.36

DISBURSEMENTS TO DATE

Exchange on deposits	33.88	
Travelling Expenses(Brewin)	344.60	
" " (Tamaki)	185.77	
Advance- B.C. Solicitors	2,000.00	
B.C. J.C.C.A.	300.00	
		2,864. 25
BALANCE		$ 30,856. 11

* As per recent advice.

Misc.: Reports, legal precedents, memorandum [1947]

IN the Matter of the Application of the Board of Water Supply of the City of New York, Respondent, to Acquire Real Estate.

EZRA EMPT et al., Appellants 277 N.Y. 452.

New York Court of Appeals

RIPPEY, J. The extent, nature of the estate to be acquired, and the occasion of taking private property for public use rest in the discretion of the Legislature (Matter of City of New York, 190 N.Y. 350) within the limitations established by article I, sections 6 and 7, of the State Constitution (People v. Adirondack Ry. Co., 160 N.Y. 225; affd., 176 U.S. 335), although the right of eminent domain is an inherent attribute of sovereignty (Heyward v. Mayor, 7 N.Y. 314). The power may be delegated to a municipal corporation (People ex rel. Burhans v. City of New York, 198 N.Y. 439). Such power was delegated by the Legislature by chapter 724 of the Laws of 1905, as amended, to the City of New York for the purposes of the construction of the Lackawack Dam and of the Delaware Aqueduct and appurtenances in the vicinity of Lackawack. Acting under the authority thus given, the city of New York filed a real property map in Ulster County Clerk's office on July 24, 1936, of what is known as "Delaware Section No. 6," which included therein the property of Ezra Empt and wife described as parcel No. 1254, and took the property for the purposes specified in such act on November 16, 1936. In condemnation proceedings, the commissioners made an award to the owners which was confirmed by the Special Term but set aside by the Appellate Division as matter of law on the ground that incompetent testimony as to value was received and considered by the commissioners in fixing the amount of the award. The sole question certified for our consideration is whether it was "reversible error for the commission to receive and consider evidence as to the market value of the parcel as of October, 1930." We think that question involves a determination of no question of fact and may be answered without passing beyond the limits of our jurisdiction as established by law.

It is asserted by the city that the acceptance and consideration of evidence of market value as of the nearest earlier date when the property had a market value within the legal meaning of that expression will establish a new rule by which compensation for property taken by power of eminent domain may be measured and will destroy time-tested standards of measurement. If such were the

Misc.: Reports, Legal precedents, memorandums [1948] 87

only evidence considered by the commissioners and it constituted the sole basis for making an award there would be force to respondent's contention, but such is not the situation in the case at bar.

The Constitution (Art. I-6) prohibits the taking of private property for public use without just compensation. Just compensation has been measured in cases of this kind by the fair market value of the property taken as of the date of taking (Orgel on Valuation under the Law of Eminent Domain, 16; Matter of Van Etten v. City of New York, 226 N.Y. 483, 489; Brooks-Scanlon Corp. v. United States, 265 U.S. 106, 123). It includes the market value of the premises actually taken and also any damages resulting to the residue, including those which will be sustained by reason of the use to which the portion taken is to be put by those acquiring it (South Buffalo Ry. Co. v. Kirkover, 176 N.Y. 301). Generally speaking, that is still doubtless the general rule, but even that must yield to exceptional circumstances, for "each case necessarily involves different facts and must be considered by itself" (Banner Milling Co. v. State of New York, 240 N.Y. 533, 546) The Legislature has recognized as a matter of public policy this patent fact in enacting section 1083-a of the Civil Practice Act, where the rule is laid down that in cases where there is no market at the date when value should be determined, value must be fixed at "such nearest earlier date as there shall have been any market value thereof," and this court in commenting upon that act and affirming the earlier definition of market value said in Heiman v. Bishop (272 N.Y. 83, at p.86), "Prior to the depression, the method of determining the market value of real property was fairly well established by the decision of the courts. In a general way, the market value of real property is the amount which one desiring but not compelled to purchase will pay under ordinary conditions to a seller who desires but is not compelled to sell." It is further observed in that case "that in the various definitions of market value of real property stated by the courts there appears the words 'under ordinary conditions' or 'under ordinary circumstances' or words of like import. Certainly, during the depression, ordinary conditions have not existed in the real property market. Con-

Misc.: Reports, Legal precedents, memorandums [1945]

ditions in that market have been extraordinary and unprecedented." This court laid down the rule in People ex rel. Amalgamated Properties, Inc. v. Sutton (274 N.Y. 309, at p.311) that "the effect of the financial depression since 1929, which the referee considered, is also a proper element of present market value," and in Matter of New York Title & Mortgage Co. (277 N.Y. 66) we indicated the proper method of fixing the value of mortgages during the period of the depression of which judicial notice must be taken. In all of those later cases this court has indicated, in so far as the questions involved required such indication, the elements that might be taken into consideration in fixing market value as of a definite date.

Indications of the elements that may be considered by the authority fixing value, whether in condemnation cases or in other cases, do not abrogate or destroy the general rule that value must be fixed as of the time when the property was converted or taken. Rules are merely laid down as to the type or character of evidence admissible properly for the consideration of the value-fixing authority in determining the value of property on a particular date.

No hard and fast rule can be laid down that will cover every case or fix in advance the limit of the matters that may be taken into consideration by the commissioners in any particular case. Evidence of such matters, of course, must be relevant. Here, it must be relevant to the question of what constitutes "just compensation" required by the Constitution and "just and equitable compensation which ought justly to be made by the city of New York to the owners or the persons interested in the real estate sought to be acquired or affected," as required by the terms of the act authorizing the taking (Laws of 1905, ch. 724-12) as of the date of taking.

Speaking generally, it may be said that, in condemnation cases, evidence as to the age, location, condition, productiveness or lack thereof, cost and adaptable uses of the property taken or affected by the taking properly has been held relevant to the issue. Evidence of reproduction cost of structures affected less depreciation, improvements made on the property, consequential damage to

Misc.: Reports, Legal precedents, memoranda
[1947]

portions not appropriated, and the fair market value of the property taken as of the date of appropriation may be relevant, according to the situation in a particular case. There may be many other matters open for consideration by the commissioners. Omission of an attempt to enumerate all is of no consequence here. It would be a difficult and unsatisfactory venture. No single element standing alone is decisive.

In any solution by the commissioners in condemnation proceedings of the question up for determination, there is involved to an appreciable extent a problem of valuation. Neither in the Constitution nor in the act before us is "value" specified in terms as the criterion of just and equitable compensation for the appropriation of real property. Such compensation, however, cannot be less than the "fair market value" of the property taken in terms of cash as of the particular date of taking plus consequential damages to the owner (South Buffalo Ry. Co. v. Kirkover, supra; Smith v. Commonwealth, 210 Mass. 259,261). "Fair market value" means neither panic value, auction value, speculative value, ~~speculative value~~, nor a value fixed by depressed or inflated prices. A fair market value is not established by sales where prices offered are so small that only sellers forced to sell will accept them. The mere absence of competitive buyers does not establish lack of a real market. But a market in fact may be established only where there are willing buyers and sellers in substantial numbers. When there is no real market as of a particular date, some indication of the intrinsic eceonomic and commercial value of the property to the owner and of his loss from the appropriation as of that date may be shown by evidence of the "fair market value" of the property, if in substantially the same condition, at the nearest earlier date when there was a fair market. "Fair market value" of property actually taken as of the date of appropriation resides in an estimate and a determination of what is the fair, economic, just and equitable value under normal conditions (Howell v. State Highway Dept., 167 S.C. 217). All elements of value that inhere in the property should be considered (Heiman v. Bishop, supra; Olson v. United States, 292 U.S. 246, 255, 256).

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In the case at bar, evidence was admitted which indicated that appellants' property had no market value on November 16, 1936, and that there was not then and had not been since the fall of 1930 any fair market for real property in the locality where the property in question was situate. The record contains a description of the general financial and economic conditions and market conditions for real estate existing over a period of ten years preceding the date of taking. A witness testified that there had been no substantial change in the physical condition of appellants' property as a whole since the fall of 1930. He gave evidence of its fair market value as of that date. Another witness was permitted to testify as to its fair market value at that time. The award was much lower than the 1930 value fixed by either witness. The city objected to the admission of the testimony of the 1930 value. No error is presented on the record before us in the admission of such evidence. It tended to show what was the intrinsic commercial value of the property as of that date. It was proper for consideration by the commissioners, in connection with the other evidence in the case, on the question as to what was the just and equitable compensation that must be made to the owner under the constitutional mandate and under the statutory requirement (Laws of 1905, ch. 724 - 12) for property taken from him for public use.

The order of the Appellate Division so far as appealed from should be reversed and the order of the Special Term affirmed, with costs in the Appellate Division and in this court. The question certified should be ansered in the negative.

Crane, Ch.J., Lehman, O'Brien, Hubbs, Loughran and Finch, J.J., concur.

Ordered accordingly.

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The King v W.D. Thomis Realty. 1943 Ex R. 140
The King v Thomas Lawson 1938 Ex R 44.
Pyrcherla v The Revenue 1939 AC. 302

THE KING VS EDWARDS (1946) En. C.R. 311

Expropriation--Expropriation Act, R.S.C. 1927, C. 64 S. 9--Exchequer Court Act, R.S.C. 1927, C. 34, SS 19(a), 47--Compensation money to be measured by value of the land--Fair market value to be estimated on value for most advantageous use--Evidence of sales of other property useful if property comparable and proper account taken of change in value--Court must value property as a whole--Value to owner is realizable money value--Limited market does not justify departure from valuation on basis of market value--Where property has higher value as a site for other than residential use purposes than for such purposes buildings have no economic value--Award of compensation on basis of generosity erroneous--Owner has no separate claim for damages for disturbance--No claim for additional compensation where value of property for other than residential purpose exceeds value for such purposes by more than owner's loss by disturbance--Owner left in possession not entitled to interest.

HEAD NOTE

Plaintiff expropriated certain property, in the City of Ottawa, on which there was a large private residence. The action is taken to have the amount of the owner's compensation determined by the Court.

HELD:

That the standard for measuring the amount of compensation money to be paid to the owner of expropriated property has been set by section 47 of the Exchequer Court Act as the value of the land at the time when it was taken.

2 That such value is its fair market value estimated on its value for its most advantageous use.

3 That evidence of sales of property near the expropriated property affords an excellent basis for arriving at its market value provided the sales are of property comparable with it, and were made at a time near the date of expropriation, and there has been no change in value in the interval. Evidence of sales made at one time under certain conditions cannot be proof of value at a different time when the conditions are

Misc.: Reports, Legal precedents, memorandum
[1944-87]
1-17

similar. The King vs. Halin (1944) S.C.R. 119 followed. Evidence of sales reasonably near the date of expropriation is not without probative value provided proper account is taken of changes in value.

4 That the Court should not estimate the value of the land and buildings separately but must estimate the the market value of the property as a whole The King vs Manuel (1915) 15 En C.R. 381 followed.

5 That the value of expropriated property to the owner is not an imaginary value in the mind of the owner or its intrinsic value but its realizable money value and cannot be dissociated from or exceed the price which a possible purchaser would be willing to pay for it. Cedoro Rapids Manufacturing Company, Lacoste (1914) A.C. 569 and Pastoral Finance Association, Limited vs. The Minister (1914) A.C. 1083 followed.

6 That there is no justification in departing from these principles in the case of a property with a large residence on it, such as that of the defendant, because of the limited market for such a property. The King vs. Spencer (1939) En. C.R. 340 disapproved.

7 That where a property on which there is a residence has a higher value as a site for other than residential use purposes than it has for such purposes, the buildings on it, since they are no longer an adequate development of the property or well adopted to the land and its location, having regard to its higher value for other purposes, do not enhance the value of the land or the property as a whole for such other purposes and have no economic value.

8 That the Court has no right to be generous to the former owner of expropriated property. The King vs. Lorivee (1918) 56 Con S.C.R. 376 followed. It is the duty of the Court to be fair and measure to owner's compensation by the standard set by Parliament--the value of the land taken, no less but no more.

9 That the owner of expropriated property has no separate claim for damages for disturbance and where the value

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of the property for other than residential use purposes exceeds its value for such purposes by more than the amount of the owner's loss by disturbance of his residential use the owner is not entitled to any additional compensation for such loss. Horn vs. Sutherland Corporation (1941) 2K.B. 26 followed.

10 That where the owner of expropriated property has been left in undisturbed possession of it since the date of its expropriation he is not entitled to any allowance of interest. The King vs. Manuel (1915) 15 En. C, R. 381 followed.

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THE KING VS EDWARDS (1946) En. C.R. 311

Expropriation--Expropriation Act, R.S.C. 1927, C. 64 S. 9--Exchequer Court Act, R.S.C. 1927, C. 34, SS 19(a), 47--Compensation money to be measured by value of the land--Fair market value to be estimated on value for most advantageous use--Evidence of sales of other property useful if property comparable and proper account taken of change in value--Court must value property as a whole--Value to owner is realizable money value--Limited market does not justify departure from valuation on basis of market value--Where property has higher value as a site for other than residential use purposes than for such purposes buildings have no economic value--Award of compensation on basis of generosity erroneous--Owner has no separate claim for damages for disturbance--No claim for additional compensation where value of property for other than residential purpose exceeds value for such purposes by more than owner's loss by disturbance--Owner left in possession not entitled to interest.

HEAD NOTE

Plaintiff expropriated certain property, in the City of Ottawa, on which there was a large private residence. The action is taken to have the amount of the owner's compensation determined by the Court.

HELD:

That the standard for measuring the amount of compensation money to be paid to the owner of expropriated property has been set by section 47 of the Exchequer Court Act as the value of the land at the time when it was taken.

2 That such value is its fair market value estimated on its value for its most advantageous use.

3 That evidence of sales of property near the expropriated property affords an excellent basis for arriving at its market value provided the sales are of property comparable with it, and were made at a time near the date of expropriation, and there has been no change in value in the interval. Evidence of sales made at one time under certain conditions cannot be proof of value at a different time when the conditions are not

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similar. The King vs. Halin (1944) S.C.R. 119 followed. Evidence of sales reasonably near the date of expropriation is not without probative value provided proper account is taken of changes in value.

4 That the Court should not estimate the value of the land and buildings separately but must estimate the the market value of the property as a whole The King vs Manuel (1915) 15 En C.R. 381 followed.

5 That the value of expropriated property to the owner is not an imaginary value in the mind of the owner or its intrinsic value but its realizable money value and cannot be dissociated from or exceed the price which a possible purchaser would be willing to pay for it. Cedoro Rapids Manufacturing Company, Lacoste (1914) A.C. 569 and Pastoral Finance Association, Limited vs. The Minister (1914) A.C. 1083 followed.

6 That there is no justification in departing from these principles in the case of a property with a large residence on it, such as that of the defendant, because of the limited market for such a property. The King vs. Spencer (1939) En. C.R. 340 disapproved.

7 That where a property on which there is a residence has a higher value as a site for other than residential use purposes than it has for such purposes, the buildings on it, since they are no longer an adequate development of the property or well adopted to the land and its location, having regard to its higher value for other purposes, do not enhance the value of the land or the property as a whole for such other purposes and have no economic value.

8 That the Court has no right to be generous to the former owner of expropriated property. The King vs. Lorivee (1918) 56 Con S.C.R. 376 followed. It is the duty of the Court to be fair and measure to owner's compensation by the standard set by Parliament--the value of the land taken, no less but no more.

9 That the owner of expropriated property has no separate claim for damages for disturbance and where the value

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[1948?]

of the property for other than residential use purposes exceeds its value for such purposes by more than the amount of the owner's loss by disturbance of his residential use the owner is not entitled to any additional compensation for such loss. Horn vs. Sutherland Corporation (1941) 2K.B. 26 followed.

10 That where the owner of expropriated property has been left in undisturbed possession of it since the date of its expropriation he is not entitled to any allowance of interest. The King vs. Manuel (1915) 15 En. C, R. 381 followed.

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Jan 1

6000 ✓ Mukerjee
3000 Valuator

Jukie 350 × 6 = 2100
400
Jun 500 =
Aug
3000 ✓
12,000

600,000 VLA
25%

Owners
of Theaters
& Employees
afternoon

150,000
50,000 Charlie
15000

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EL 9269

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Take No. 62.

F. A. Brewin

IN THE MATTER OF THE "INQUIRIES ACT"

PART 1. REVISED STATUTES OF CANADA 1927, CHAPTER 99.

JAPANESE PROPERTY CLAIMS COMMISSION

B E F O R E

(THE HONOURABLE MR. JUSTICE H. I. BIRD, COMMISSIONER).

Vancouver, B. C.

November 19th, 1948 10.00 A.M.

IN THE MATTER OF THE CLAIM OF

CHISATO KINASHITA

PROCEEDINGS AT HEARING

APPEARANCES:

J. W. G. HUNTER, Esq., appearing for the Dominion Government.

F. A. BREWIN, Esq., appearing for the Claimant.

A. WATSON, Esq., Secretary,

T. P. HORROBIN, Esq., Official Reporter.

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MR. BREWIN: My lord, there is only one further matter; I spoke to your lordship about the late application in the claim of Chisato Kinashita, and my friend didn't seriously oppose the motion, but said we should file an affidavit, and I have an affidavit explaining the circumstances, and I think my friend is satisfied, so I won't waste your lordship's time by discussing it further.

THE COMMISSIONER: Is he the returned soldier chap?

MR. BREWIN: No. This was the case, my lord, I am afraid where the Japanese Canadian Association was at fault.

THE COMMISSIONER: Oh yes, I recall it now. You are not opposing the application to have it heard now?

MR. HUNTER: No, my lord.

THE COMMISSIONER: How about the records getting to Toronto so that it can be heard there?

MR. BREWIN: Well, my friend pointed out quite correctly that the chattel claim is somewhat vague, and as soon as I get back I will try and have the particulars sent out.

In the meantime my friend is proceeding to investigate the real estate claim, and I will send out to him the details of the chattels with all possible speed.

THE COMMISSIONER: As I understand it, the Toronto sub-commission will wind up in the first week of December. Is that your information, Mr. Secretary?

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THE SECRETARY: Yes, not later than the first week.

THE COMMISSIONER: You have not very much time, Mr. Brewin.

MR. BREWIN: No, I appreciate that.

THE SECRETARY: Have you the claim, Mr. Brewin?

MR. BREWIN: Well, I gave my friend one copy of the claim, and I have another copy.

THE COMMISSIONER: Maybe you have it, Mr. Secretary?

THE SECRETARY: I haven't it. I gave it back to Mr. Brewin.

(PROCEEDINGS ADJOURNED SINE DIE)

I hereby certify the foregoing to be a true and accurate report of the said proceedings.

J. P. Harrobin
Deputy Official Stenographer

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FULLER MEMORANDUM OF AUTHORITIES AS TO VALUATION

1. The value of land in general can also be measured by consideration of the prices that have been obtained in the past for land of similar quality and in similar positions, and this is what must be meant in general by the "market value" (in Section 23) per Lord Romer in Vyricherla vs The Revenue 1939 A.C. at 312.

also reported 55 TLR 563

2. Market value means "amount of money which a purchaser, willing but not obliged to buy the property, would pay to an owner, willing but not obliged to sell, but taking into consideration of use to which the land was adapted and might in reason be applied. Nichols on Eminent Domain, second edition, page 658 adopted by Thorson, J. in The King vs Edwards, 1946 ExR. 315, and from the same work at 665 quoted by Thorson, J at the same page, "the value (to be taken into consideration) for the use to which men of prudence and wisdom and having adequate means would devote the property if owned by them must be taken as the ultimate test."

3. Evidence of sales of property near expropriated property affords an excellant basis for arriving at its market value, provided the sales are comparable with it and were made near the time of expropriation.

4. Sales made subsequently may be considered where there is no change in value during intervening period. Later sales have probative value. Thorson, J. The King vs Edwards Supra page 320.

p329 of transcript

To be assumed that subsequent sales may also be considered despite change in value when the extent of such change can be established.

The King v Edwards Found 1946 Ex CR 115 also authority for Exchequer Court decisions considered

5. ~~Assumption~~ Assessment value not proof of market value, but some check. W. D. Morris Realty 1943 Ex R. 140.

6. Evidence as to structural value of buildings and improvements may afford a test of the extent to which construction of the buildings and improvements has enhanced the value of the property as a whole. (I.B.I.D.)

7. Evidence of trend of real estate values in Ottawa District from 1929 to 1943 was reviewed by Thorson, J. in The King vs Edwards Supra in pursuance of his statement that the the value of expropri-

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ated property must be considered in the light of conditions existing as at June 12th 1943.

8. The definition of the market value of real property includes the qualification that it is the price that could be secured in the market "under ordinary circumstances" or "under ordinary conditions" and not "extraordinary or unprecedented conditions". The fair market value means neither panic value, auction value, speculative value nor a value fixed by depressions or inflated prices, re Empt 277 N.Y. 452 referred to in Words and Phrases.

This also seems to be recognized by the following quotation from Mr Neignault, J, in Untermeyer vs A.G. for B.C., 1928 S.C.R. at 91. In that case he was dealing with shares of stock, the value of which can usually be estimated by the quotations on stock exchanges. Further he states, "it may perhaps be open to question whether the expression "fair" adds anything to the meaning of the words "market value" except possibly to this extent, the market price must have some consistency, and not be the effect of a transient move or sudden panic in the market."

9. Every element and indication of value which a prudent purchaser would consider must be taken into account, W.D. Morris page 149. N.B.- This may be a useful statement in enabling us to get in the evidence of Dean Clement.

10. In fixing fair market value, one must exclude the needs of expropriating party; value and compensation to be neither increased nor decreased by importance of value of purpose to which land will be put. W.D. Morris, Supra page 148.

This statement seems to be of particular importance in regard to the V.L.A. deal. The form used by appraisers of the Soldier Settlement Board seems itself to indicate that these appraisers did not take into account possible alternative uses, and did take into account the special needs of returned men who might wish to settle there; e.g. the inquiry on the form as to the amount required to repair the buildings and make them habitable, (b) questions as to its value for agricultural purposes. There is no indication on the form, in fact quite the reverse is true, that the valuators were instructed to consider possible alternative uses. This point can also be sub-

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stantiated in respect to the actual valuations made in individual cases.

11. The owner is entitled to have every element of value of the property to him, taken into consideration. W. D. Morris Realty Supra page 148.

12. The market price and market value are not the same thing. per Thorson, J. in The King vs Lawson 1948 Exchequer Reports at page 80 and 81. Market "price" assumes an existing available market. Market price is a fact if market exists. Market "value" is a matter of assumption and opinion based upon the surrounding relevant circumstances.

This distinction seems to be of some importance to us as the Government seem to be ~~asking~~ arguing that whatever price was in fact achieved by sales on the market, was the fair market value.

It might be agreed that these sales indicated the market price. It is submitted that a fair market value includes other considerations and is a theoretical process in which elements of value which may in fact not have been considered, and which could not be considered in the circumstances, can be taken into account.



XX International Rly Land 1937 2 WWR 641.

reference to value
(to be fixed by replacement value
less depreciation.

what was useful in Construction
while being railway equipment etc

Asset been extended in Canada

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protected area, of any specified articles and to require the delivery up by any such persons aforesaid of any such specified articles to the Royal Canadian Mounted Police;

(e) To authorize the detention, in such place and under such conditions as he may from time to time direct, of any or all persons ordinarily resident or actually present in such protected area;

(f) To authorize the release, upon such conditions as he may specify, of any person ordered to be detained or any article delivered up pursuant to this Regulation.

(SGD)

A.D.P. HEENEY

Clerk of the Privy Council

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other qualified persons, to inquire into any matter within the scope of the commission as may be directed by the commissioners.

3. The persons so deputed, when authorized by Order in Council, shall have the same powers which the commissioners have to take evidence, issue subpoenas, enforce the attendance of witnesses, compel them to give evidence, and otherwise conduct the inquiry.

4. The persons so deputed shall report the evidence and their findings, if any, thereon to the commissioners. 1912,c.28, s.1.

Section - 12.

The commissioners may allow any person whose conduct is being investigated under this Act, and shall allow any person against whom any charge is made in the course of such investigation, to be represented by counsel. 1912, c.28, s.1.

Section - 13.

No report shall be made against any person until reasonable notice shall have been given to him of the charge of misconduct alleged against him and he shall have been allowed full opportunity to be heard in person or by counsel. 1912,c.28,s.1.

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