NEW ZEALAND INSTITUTE OF VALUERS

Incorporated by Act of Parliament

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South Canterbury	M. A. McSkimming, Box 6, Timaru.
Otago.....	K. R. Taylor, Box 1082, Dunedin.
Southland	G. Parker, Box 399, Invercargill.

PAST PRESIDENTS:

1938	1940	N. H. Mackie, Palmerston North.	1960	1962	J. W. Gellatly, Wellington.
1940	1943	G. B. Osmond, Auckland.	1962	1964	S. Morris Jones, Wellington.
1943	1947	- A. W. A. Sweetman, Auckland.	1964	1966	M. B. Cooke, Christchurch.
1947	1949	O. F. Baker, Christchurch.	1966	1968	D. G. Morrison, Whangarei.
1949.	1950	J. A. Wilson, Dunedin.	1968	1970	A. R. Wilson, Napier.
1950-1951-		O. Monrad, Palmerston North.	1970	1971	- J. M. Harcourt, Wellington.
1951-1952		L. E. Brooker, Wellington.	1971	-1974	R. S. Gardner, Auckland.
1952	1953	L. A. McAlister, Wellington.	1974	1976	G. M. Niederer, Invercargill.
1953	1954	W. G. Lyons, Palmerston North.	1976	1977	L. M. Sole, Rotorua.
1954	1955	S. E. Bennett, Auckland.	1977	1978	- E. J. Babe, Wellington.
1955	1957	R. J. Maclachlan, Wellington.	1978	1979	P. G. Cooke, Nelson.
1957	1958	V. W. Cox, Napier.	1979	1981	- P. E. Tierney, Tauranga.
1958	1960	G. C. R. Green, Dunedin.	1981	-1983	R. M. McGough, Auckland.

LIFE MEMBERS:

S. Morris Jones (1968)	R. J. Maclachlan (1970)	J. D. Mahoney (1977)
M. B. Cooke (1970)	J. Bruce Brown (1970)	E. J. Babe (1982)
	D. G. Morrison (1976)	

HONORARY MEMBERS:

N. H. Chapman	J. P. McVeagh	J. S. H. Robertson
A. D. Thompson	D. W. Spring	M. Aldred
Sir William Rodger	J. A. B. O'Keefe	R. Aldred
	F. B. Hunt	

The New Zealand
Valuer

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Editorial Comment

COMPETITION COMPULSORY ASSOCIATION.

TWO IMPORTANT ISSUES.

The removal of Clause 16(1)K of the Valuers Act came into force on Ist July, 1984. By the time this issue of the Journal is to hand the mandatory minimum N.Z.I.V. scale fee which has been the basis of valuers' charges since 1948 will have been withdrawn.

The Institute has an obligation to its members and to the public to provide guidelines on fee setting to ensure that service to the public is given, and that ethical and professional standards are maintained.

From 1st July, 1984 the legislative change permits competitive charging. Prospective clients may ask for and be given quotations. The rules and Code of Ethics of the Institute have been changed in accordance with notice of motion (2) passed at the Annual General Meeting in Rotorua. Although there is no set fee level branch committees have the power to examine and render an opinion as to the appropriateness of charges in the event of a complaint, and members must charge on a fair and equitable basis.

Our profession must adapt to this change in fundamental thinking. Make no mistake, there will be considerable variations in fee levels, both by geographical location and within the metropolitan areas. The country practice can work economically on a far lower fee base than the large centrally-based city practice. Both must charge in a manner which is acceptable to their clientele and which provides the valuer with a fair remuneration. There will also be the young energetic valuer in the new practice prepared, at first, to provide his services for a lesser fee than his competitors.

There is a second area of self examination to be considered by practitioners and the Institute. Mr G. W. F. Thompson, M.P., Parliamentary Under-Secretary to the Minister of Internal Affairs, left members attending the Rotorua seminar in no doubt that other winds of change will affect all professional bodies in the near future. The functions, structure, funding base and trade practices of the five major compulsory professional associations are being examined. These associations are the lawyers, accountants, surveyors, pharmacists and valuers.

The principal justification for the existence of compulsory professional associations is public protection - to ensure a high standard of service and professional competence by a person possessing expert knowledge. In terms of the compulsory unionism issue, the reasons advanced for retaining compulsory professional associations are based on the fundamental differences between professional associations and unions. Put simply these differences are:

- *Unions demand the freedom to associate, to provide independence of choice and collective bargaining.*
- *Professional associations only admit members having a special degree of knowledge who serve the public.*

Professional associations demand of their members high ethical and professional standards.

It is unlikely that a Government would remove the compulsion for qualified persons to be part of a professional association which maintains as its primary objective - public protection and self-regulation to the extent that:

1. *It practises self-discipline of members.*
2. *It actively demands that its members undergo a continuing education process and*
3. *It insists on high ethical and professional standards.*

The danger is that professional organisations have mixed functions and they may be seen as concentrating on activities other than their primary objective. At present, compulsory membership of the Institute follows from compulsory registration by the Valuers Registration Board. This may change when the Act is reviewed in 1985.

The question must be posed:

Is it in the public interest that valuers have two compulsory bodies?

If the answer is yes, then the Institute must demonstrate its case to Government in the light of the three points outlined above.

Citation for Fellowship

Thomas Charles Barnett

Tom Barnett is currently Supervising Valuer (Southern Region) in the Valuation Department having been appointed to that position in April, 1977, some seven years ago.

Tom was born in 1927, attended Lincoln College in 1946-47, and obtained his Diploma in Agriculture. Tom then went to the West Coast and acted as a guide on the Glaciers for a period, then worked on farms in South Westland in the 1948-50 period. He joined the Valuation De= partment at Hokitika as a wage worker in October 1951, working principally in the Grey County. Tom then transferred to Christchurch in August, 1952, and was appointed to the permanent staff as Assistant Valuer in October, 1952. In 1953 he completed his Diploma in Valuation and Farm Management at Lincoln College and transferred to Invercargill shortly thereafter. Tom was registered as a Valuer on the 20th September, 1958.

In 1959 he was appointed Senior Valuer in Invercargill and remained in that position for eight years during which time he was Secretary-Treasurer for the Southland Branch for one year and a Branch Committee member from 1960 to 1965. For a short period on the Committee Tom was Branch Chairman in the 1961-62 period. He was admitted as. an Associate of the New Zealand Institute of Valuers on 6th July, 1966.

In 1967 Tom was promoted to District Valuer, Southland, in the Valuation Department and held that position for ten years until his elevation to Supervising Valuer. During his term as District Valuer Tom acted as an Examiner for the Institute's Practical and Oral examination and also was involved in Branch panel discussions in Southland.

In his current capacity as Supervising Valuer (Southern Region), based in Christchurch, Tom is responsible for Valuation Department activities in Canterbury, South Canterbury, Westland, Otago, Southland, Stewart Island and Chatham Islands. In his department capacity Tom is also responsible for valuing all of the coalmines in the region and is also a member in the South Island of the Maori Land Use Advisory Committee. He also gave evidence before the Commission of Enquiry on Pastoral Lands with respect to changes in legislation on pastoral land leases.

During his time in Southland and subsequently throughout the Southern Region he has always been held in high regard by both the professional people and members of the public alike with whom he came in contact in the course of his work. Tom has clearly served the profession well and is held in high esteem by members of the Institute. The Canterbury/Westland Branch unanimously supports Mr Tom Barnett's elevation to that of a Fellow within our Insttiute.

Citation for Fellowship

Roger Ernest Hallinan

Roger is a senior partner in the Christchurch firm of Telfer, Hallinan, Johnston and Co.

He was born in Christchurch and educated at Shirley Boys' High School.

Following his appointment to the Valuation Department as an Urban Field Cadet in 1963 he proceeded to Auckland University where he completed the Diploma in Urban Valuation in 1966.

He was posted to the Invercargill Branch of the Department in 1967, during that year he completed the Real Estate Institute examinations and became an Associate member of that Institute.

Roger was transferred to the Christchurch Branch of the Valuation Department in 1968,.

became registered as a Valuer in September, 1970, and was advanced to Associate status within the Institute in December, 1970.

At a relatively early age in July, 1971, he was promoted to Senior Valuer with the Department in Hokitika but resigned shortly afterwards to take up an appointment with the valuation practice of Moyle, Fright and Telfer.

Roger has been very active in the Institute affairs, was Canterbury/Westland Branch Secretary from April, 1970, until his transfer to Hokitika, elected to the Branch Committee in 1975 then to the position of Branch Councillor in 1979. At the 1983 Council meeting he was elected Junior Vice-President of the Institute.

He is held in the highest esteem by his colleagues in the local branch and has gained a reputation amongst business and professional people for his competent and thorough approach to valuation assignments. Roger has been involved in Arbitration and Court work and has been appointed Umpire in major arbitrations conducted in other centres.

He has a particular interest in the Insurance Valuation field and has delivered papers on this and other subjects both here and overseas.

The Canterbury/Westland Branch Committee are proud of Roger's appointment as Junior Vice-President and unanimously support his advancement to the status of Fellow of the Institute.

Citation for Fellowship

John Patrick Larmer

John Patrick Larmer is a principal of the ifrm Larmer and Associates, Registered Valuers and Property Consultants of New Plymouth. He received.his tertiary education at Lincoln College where he completed his Diploma of Agriculture in 1965 and Diploma of Valuation and Farm Management in 1966.

Mr Larmer entered the Valuation Profession with the State Advances Corporation later to become the Rural Banking and Finance Corporation in Whangarei in 1967 subsequently transferring to New Plymouth where he held the position of Senior Farm Appraiser.

In 1973 he resigned from the Corporation to enter private practice as a Registered Valuer and Farm Management Consultant and became the first full-time professional in this field in Taranaki. By virtue of his integrity, competence, and diligence his practice has expanded to include two further partners.

Elevated to Associate status in 1970, his ser= vice to the Institute has been substantial, serving for eight years on the Branch Committee and holding the positions of Deputy Chairman and Chairman. When volunteering to stand down from the committee in favour of younger members, he took the task of editor of the Branch Newsletter and since relinquishing that position has remained a regular contributor to Branch activities.

He has been a Rural Examiner for six years and in 1983 hs was the Institute nominee on the Government appointed Committee of Enquiry on Gas Pipeline Compensation, and represented the Institute with distinction, which has marked all of his service.

In recent years he has developed his four hectare small holding into one of the better Kiwi fruit orchards in the district.

John Larmer's success and high professional standing is due to his integrity and expertise, and his refusal to compromise his standards has been a major factor in the high reputation and standing which he has earned within the profession and throughout the business community.

John Larmer's contribution and conduct have enhanced the standing of the Institute of Valuers in this province and the Taranaki Branch Committee unanimously supports the recommendation for Mr Larmer's advancement to the status of Fellow of the New Zealand Institute of Valuers.

Citation for Fellowship

Donn James Armstrong

Donn Armstrong, one of South Canterbury's leading public valuers, was born in Opotiki in 1943. After completing Diplomas in Agriculture and Valuation and Farm Management at Lincoln College between 1964 and 1966 he worked in the State Advances Corporation in Rotorua and Timaru for three. years before joining a Farm Management and Consultancy firm in Timaru.

In 1974 he set up his own Valuation and Farm Management Practice which covers diverse properties ranging from high country runs to intensive horticultural units. His practice encompasses loan valuations and recommendations, land compensation claims, investment analysis relating to rural property, appearance in the High Court relating to land administration, and general property supervision.

Donn who was advanced to Associate Status in 1971 was first elected to the South Canterbury Branch Committee in 1971 and served on it until 1981. He was Newsletter Editor 1971-78, Chairman 1975-76, Tariff Committee member 1976-82 and on the panel of examiners from 1977 to 1982.

In 1979 Donn was appointed to The Valuers Registration Board, and is currently in his second term. He has represented the Board at Australasian conferences in 1981 and 1983.

As well as running his own practice Donn farms a 100 hectare property (on which he lives) near Pleasant Point. The unit is intensively farmed with conventional crops, plus 30 hectares of horticulture and a 50 sow piggery.

In between all the activities associated with his practice and farm Donn finds time to be a Strathallan County Councillor, having been elected in 1977, has served on that body as Administration and Finance Chairman for three years, is currently a Ward representative, and in 1983 was elected unopposed for a further threeyear term.

Donn has always taken an active interest in the affairs of the Institute both at local and national level, and over the years has built up a well deserved reputation as a valuer who upholds and maintains high professional standards. He is a credit to the Institute and his recommendation for advancement to Fellowship status is unanimously supported by the South Canterbury Branch Committee.

Report on the 45th Council Meeting and Annual General Meeting of the New Zealand Institute of Valuers

by the Editor

The 45th Council Meeting, Annual General Meeting and Valuation Seminar was held at the Sheraton Hotel, Rotorua, April 14th-17th, 1984.

This year's Council Meeting was attended by all Councillors and executive members, with the exception of Mr R. J. Maclachlan, whose apology was noted.

The President, Mr R. M. Donaldson, welcomed those present, including the new Councillors, Mr R. D. Speedy of Hawkes Bay, and Mr R. L. Jefferies of Auckland. Mr G. J. Horsley of Wellington and Mr W. A. F. Burgess of Northland were welcomed back as re-elected Councillors.

THE ELECTION OF VICE-PRESIDENT:

Mr G. J. Horsley (Wellington) was re-elected Senior Vice-President. Mr R. E. Hallinan (Canterbury/Westland) continues as the Junior Vice-President.

LIFE MEMBERSHIPS:

No life memberships were conferred.

HONORARY MEMBERSHIPS:

Honorary membership was conferred on Mr F. B. Hunt, who retired as General Secretary in December 1983, after giving seven active and conscientious years to the Institute.

ADVANCEMENTS TO FELLOWSHIP:

The following members were elevated to the status, Fellow of the New Zealand Institute of Valuers:

Roger Ernest Hallinan Canterbury/Westland

Thomas Charles Barnett Canterbury/Westland

John Patrick Larmer Taranaki

Donn James Armstrong South Canterbury.

JOHN HARCOURT MEMORIAL AWARD:

No award has been made for the current year.

REPORTS:

As in the past, reports were received from the various committees of the Institute and circulated to Councillors prior to the meeting.

(a) Executive:

Mr A. L. McAlister, Chairman of the Executive Committee, alluded to the continuing heavy workload and the support given him by his fellow committee members over the past twelve months. At the request of Executive, Council supported the motion that the public be made aware of a valuer's name which was struck off the register.

(b) Education Committee:

Mr S. W. A. Ralston, Chairman of the Education Committee and Board of Examiners indicated that the remaining candidates for the old N.Z.I.V. qualification will have a final opportunity to complete their practical and oral examination in July 1984.

No firm publication date has been set for the second volume of "Urban Valuation in New Zealand" and there are a number of chapters yet to be completed.

Mr Squire Speedy has completed the text for another publication entitled "Valuation of Compensation for Land Taken for Public Works". The publishing rights have been passed over to the Institute and printing should be in hand shortly.

The Committee was unable to make an award for the N.Z.I.V. Scholarship for the second year in succession, and is currently investigating the alternative of making an award in respect of research into a defined area or topic of interest and value to the Institute.

After some discussion on the difficulty students are experiencing in obtaining employment, Council agreed that the Education Committee should be asked to examine means by which the Institute might assist graduates in this area.

(c) Statistical Bureau:

The Chairman of the Statistical Bureau Committee, Mr J. N. B. Wall, referred in his report to the continuing activities of the Bureau over the past twelve months. As in the past, the greater proportion of work and time has related to the sales of the Micro Fiche System.

There has been no alteration to the format of the micro fiche although investigation into the grouping of various urban sales categories is currently being considered. Implementation of groupings will be undertaken with the approval of Councillors and the acceptance of branches, when the number of subscribers remaining on the micro fiche system is known.

Council agreed twelve months ago to implement new charges from June 1983, although these charges could not be imposed until the second quarter of 1984. Current charges are as outlined in the June 1983 issue of The Valuer.

Council approved a motion that any further review of charges be deferred until the April 1985 Council Meeting.

The Modal House Schedule of Quantities and Specifications was published in a single booklet form in 1983, and the new handbook will be published in 1984.

(d) New Technology Committee Report:

Mr K. M. Allan reported as Chairman of this committee, indicating that Valpak (trademark protected to N.Z.I.V.) has been developed and comprises a sales data retrieval package. A user manual is currently being printed and a suitable sales/licence agreement is being prepared. Valpak has been tested at a number of sites since the new year and some sales have already been made. Demonstrations, marketing and exposure will proceed during the current year.

The Institute is now in a position to sell I.C.L. equipment direct to valuers with delivery effected by dealers throughout New Zealand. The equipment provided will have a three-month warranty, and staff training together with installation, checking and de-bugging will be carried out by the dealer. Servicing contracts of the equipment are available through the dealers.

The new technology committee intends to look at other fields of interest to valuers in the computing area over the next twelve months, with the intention of utilising their equipment on a wider basis.

(e) N.Z.I.V. Services Limited:

Council ratified the formation of N.Z.I.V. Services Limited and the approval of the current Directors, Messrs Horsley, Wall and Kirkcaldie. N.Z.I.V. Services Limited will own, licence and sell Valpak.

(f) Assets Valuation Standards Committee:

Mr K. J. Cooper, Chairman of this committee, presented what he termed his Final Report for the year ended 31st December 1983. This report is reproduced below in full as it will be of interest to members to follow developments which have occurred over the past 12 months.

"Report of the Assets Valuation Standards Committee for the year ended 31st December 1983 by the Chairman, Mr K. J. Cooper:

It is intended that this be the final report of the Assets Valuation Standards Committee as it is recommended the work of this Committee be absorbed within the Education Committee.

The Committee's workload has seen a steady decrease in activity over the last year, which is one reason it is recommended to go "out of business" as a separate entity.

After a period of several years of pushing for the acceptance of standards in this area of valuation work, it is thought now appropriate to merge this function in with the general area of valuation standards and methodology.

Part of the rundown in activity can be attributed to the widespread non-adoption by listed companies of the joint Society of Accountants - Stock Exchange requirement that they prepare and publish CCA (Current Cost Accounts) from 1 April 1982. Attached is an excerpt from the latest Accountants' Journal showing the results of a Society survey of compliance.

It must be pointed out, however, that notwithstanding our original aim to become part of what was thought to be the introduction of the CCA system to New Zealand, with its very slow introduction, the emphasis over the last two years has changed to the full range of valuations prepared for accounting purposes. Increasingly important have become valuations prepared for use by companies and other business enterprises for the purpose of raising loan money or equity capital. In this class of valuation, there is an increasing need for standards which are accepted and an independence in the assessment role. There has been media comment on this recently and clearly valuers need to be mindful of the criticisms that have been made. The Institute itself may need to do some policing in this area.

At the international level, considerable progress has been made over the last few years with the generation of a number of international standards for valuation work in financial statements. Twenty-six (26) countries are now members of the International Assets Valuation Standards Committee. The standards that it has now produced are sufficiently advanced to warrant publication as a series by the Institute shortly.

The third meeting of the International Assets Valuation Standards Committee was held in Kuala Lumpur on 21-23 August 1983 at the same time as the Pan Pacific Congress. New Zealand was represented by Peter Mahoney and Graeme Horsley, and our thanks are due to them for their efforts. Ten (10) countries, including New Zealand, attended. The next meeting of the TIAVSC is scheduled for May 1984 and is to be held in London. It is probable one, or more, New Zealanders will be able to attend as official representatives.

It would be appropriate to take this opportunity to thank the other two members of my Committee, Messrs Hallinan and McGough for their counsel and contribution. With the demise of this Committee a particular mention must be made of Mr Rod Jefferies for the substantial work he did in preparing a New Zealand standard on asset valuation for CCA in 1980."

"Comments from Accountants' Journal March 1984.

(1) Very few companies. have complied with the requirements of CCA-1 to produce supplementary current cost accounts. The compliance rate is only 8.2 per cent of the 147 companies surveyed.

(2) The main reasons given for non-compliance were:

(i) The lack of relevance of the accounts

(ii) The subjectivity and complexity of the accounts

(iii) The accounts are not mandatory and are not recognised for taxation and pricing purposes

(iv) The accounts are not generally accepted

(v) The new system would cost too much to implement.

(3) Although most auditors complied with the Society's recommendation to comment on the fact that companies failed to comply with CCA-1, in ten instances the recommendation was ignored."

Council recorded a vote of thanks to Kelvin for his excellent work on the Assets Valuation Standards Committee over the years.

(g) Publicity and Public Relations Committee:

The Chairman of this Committee, Mr G. Kirkcaldie, indicated that the principal activities over the past 12 months related to:

- Preparation of the state of the market report (printed in this issue of the Valuer).
- Press releases.
- Information brochures.
- Advertising in connection with charitable donations.
- Future opportunities.

The State of the Market report was released in mid-March and hopefully it will be released at an earlier date in future years. The State of the Market report is the major activity of this committee and provides an historical record as well as publicity for the Institute.

The pilot brochure titled "The Valuation of Land as a Profession" became available early in 1984.

Council passed a motion that the Publicity and Public Relations Committee bring down a cost benefit paper on the benefits of the Institute retaining a public relation consultant, this being a recommendation of the committee in view of the Institute hosting the Pan-Pacific Congress in 1988.

(h) New Zealand Valuer:

Your Editor indicated that there is sufficient material on hand for the June issue and as in the past the September issue would be devoted to the publication of seminar proceedings. A number of branches have been most helpful with copy over the past 12 months, particularly Hawkes Bay and Wellington. Any topical items of copy should be forwarded to the Editor through the General Secretary.

The professional directory has continued to grow slowly, with 53 listings as at December 1983. Council approved an alteration to the method of charging for directory listings for the current year as follows:

3cm deep listing $80.00 per annum (no change)

Each additional cm or part thereof $10 per annum.

The cost of the Valuer to members will be $15 per annum for the next 12 months period.

(i) Tariff Committee:

The Valuers' Act has now been amended and the words of Section 16 Subsection (1) (k) have been altered by deleting the words "and prescribing scale of charges". This will come into effect on the 1st July 1984. This gave rise to the Notice of Motion (2) presented at the Annual General Meeting and reprinted in that report.

Council approved the suggestion that the initial ideas of the sub-committee on this matter should be sent to sub-branches to invite their comment and reply.

(j) Westbrook Commercial Properties:

Council approved the reappointment of the N.Z.I.V. Director, Mr K. M. Allan. The N.Z.I.V. interest is 24,000 of the 221,600 issued and paid shares

PAN PACIFIC CONGRESS 1986:

This will be held in Hawaii, 9th-13th February 1986.

PAN PACIFIC CONGRESS 1988:

Council passed an unanimous resolution that the 1988 Congress in New Zealand be held at Christchurch. Executive is yet to approve the date of the Congress, and consideration was given to dates running between the end of March and early April.

COUNCIL OF LAND RELATED PROFESSIONS:

Mr R. M. McGough provided a brief report as one of the two Institute representatives. Current members are the Quantity Surveyors Institute, Surveyors Institute, N.Z. Institute of Valuers, Property Management Institute and Real Estate Institute. Mr R. M. McGough and Mr S. N. Dean were reappointed as the Institute's representatives on the Council.

Mr McGough indicated that the Institute's tasks for the current year are to investigate:

Collating legal decisions relating to land.
- Monitoring legislation.

LAND PROFESSIONALS MUTUAL SOCIETY (INC.):

Your Institute became involved with the L.P.M.S.I. in July 1983, and participation over the past 12 months has fully justified the Institute's move into this area. Previously, there were 165 principals and 68 valuers insured, and now 187 principals and 72 valuers are insured with the L.P.M.S.I. Twenty-eight firms previously uninsured have joined the scheme. There have been no valuer claims over the past 12 months period. Council reappointed as the valuers' representatives Mr A. L. McAlister, Mr E. F. Gordon, Mr F. E. Tierney and Mr I. R. Telfer.

FINANCIAL:

The Statement of Annual Accounts for 1983 and the Budget for 1984 were received and approved. A notice of motion (1) was tabled. Council supported the motion as amended. A further motion was passed that subscriptions for affiliates be the same as for non-practising valuers, and student subscriptions be the current cost of the Valuer ($15.00) plus $5.00 as a contribution towards branch capitation.

APPOINTMENT OF OFFICERS AND COMMITTEES:

(a) Executive:

McAlister A. L. (Chairman),
Cooper K. J.
McLachlan R. J.
Ralston S. W. A.
Fear A. B.

The following Chairmen were appointed to the various committees of the Institute:

Education & Board of Examiners
Mr S. W. A. Ralston.
Statistical Bureau Mr J. N. B. Wall.
Publicity and Public Relations
Mr G. Kirkcaldie.
"Professional Practices" subcommittee
Mr G. J. Horsley.
Technology Committee Mr K. A. Allan.

Executive was given approval to appoint members to the various committees for the current year only. The current Executive were reappointed for the ensuing year.

(b) Valuers Registration Board Representatives:

Mr R. P. Young's term expires on the 30th April 1985.

Council passed a motion that the Institute's other nominee, Mr P. E. Tierney, be put forward to the Board.

1985 COUNCIL AND A.G.M.:

This will be at Palmerston North from 13th to 16th April 1985.

ANNUAL GENERAL MEETING:

The 45th Annual General Meeting was held on the 16th April 1984 at the Hotel Sheraton, chaired by the President, Mr R. M. Donaldson.

The meeting was well attended, the Annual Report and Statement of Accounts was taken as read and the President highlighted areas of the Institute's activities as outlined by him in his report.

The President formally moved the adoption of the report and statement of accounts and this was passed by the meeting.

The new councillors and re-elected councillors were introduced to the meeting.

The names of the four new Fellows of the Institute were announced, and they stood to acclamation by the meeting.

Mr N. H. Chapman was reappointed the Institute's Auditor for the succeeding year.

The two notices of motion were introduced, discussed and passed in their amended form. They are reprinted below:

Notice of Motion (1):

"That pursuant to Rule 137, Rule 16 of the Institute Rules be amended as indicated hereunder".

Students and Affiliates of the Institute

Rule 16 (4) be amended to read.

Students shall be enrolled for a course of study leading to a recognised certificate in the profession of land valuing.

Rule 16 (9) be amended to read:

The Council may at any time terminate the studentship of any person at its absolute discretion or who ceases to be enrolled for a course of study in (4) above.

Rule 16 be amended by the insertion of the following new Rule.

Rule 16A

(1) The Council may from time to time admit suitable persons as affiliates of the Institute.

(2) Every applicant for admission as an affiliate of the Institute shall:-

(a) Satisfy the Council that he is of good character and reputation.

(b) Have attained such educational standard as the Council prescribes.

(c) (i) Be engaged as an assistant to a Registered Valuer in the production of valuations and reports or

(ii) Be engaged either full or part-time in the valuation of property other than land to the satisfaction of Council or

(iii) Be engaged either full or part-time in the tutoring of valuation or in a related field of research or

(iv) Be engaged in a field relating to valuation and who, in the view of the Council, has made or is in a position to make a contribution to the profession of valuing and meets such other criteria as the Council determines, or

(v) Conforms to such other conditions as the Council may from time to time determine.

(3) Affiliates may be required to pay such annual subscriptions as the Council from time to time prescribes.

(4) Affiliates shall be entitled to attend general meetings of the Institute and of any Branch, but shall not be entitled to vote thereat nor to hold office.

(5) Subject to the provisions of this Rule, affiliates shall enjoy such other privileges as may be extended to them from time to time by the Council or by any Branch.

(6) No affiliate shall be deemed to be a member of the Institute or be entitled to describe himself as a member of the Institute.

(7) No affiliate may attain membership of the Institute except through qualifying by attaining a recognised certificate.

(8) The Council may at any time terminate the affiliateship of any person at its absolute discretion.

Notice of Motion (2):

(Changes to N.Z.I.V. Rules and Code of Ethics resulting from changes to Valuers Act)

"That pursuant to Rule 137, the Rules of the Institute and the Code of Ethics be amended as indicated hereunder".

(A) Rule 4 (Powers)

Existing 4(k) to be amended to read:

"(k) To prepare and publish recommended guidelines for professional charges."

(B) Rule 69 (Powers and Duties of Branch Committees

Existing Rule 69 (f) be repealed and the following new Rule be inserted:

"(f) It shall at its first meeting in each year appoint a sub-committee consisting of three public valuers who are members of the Branch, of whom any two shall constitute a quorum, with power to examine any matter relating to professional charges referred to it by a member of the Institute or by a member of the public and, following any enquiries made by it, the Committee may render an opinion as to the appropriateness of the particular charges in question."

(C) Clause 5: Code of Ethics (Professional Fees)

Clause 5 be repealed and the following new Clause inserted:

"5 No member shall in respect of his professional work levy a fee to his client that is other than fair and equitable in all the circumstances. The member shall make known the basis of his fee if requested by the client."

During the general business session, Council was asked to look at the cumbersome Rule passed relating to the students and affiliates of the Institute. The President advised that a rewriting of the rules was required and that the matter would be looked at, at that time.

In closing the meeting, Mr Donaldson expressed the appreciation of the Institute to the Rotorua/Bay of Plenty Branch for their excellent hospitality over the preceding four days and to the high standard of the Seminar proceedings.

(The Seminar Papers will be printed in the September 1984 issue of "The Valuer".)

Important Court of Appeal Decision

CONSUMER PRICE INDEX ADOPTED FOR INFLATION ADJUSTMENT IN ASSESSING FULL COMPENSATION (C.A. 124/81.)

The consumer price index was adopted on appeal in the case Morrow and another v. The Minister of Works and Development, being an appeal against the decision of the High Court in Drower, Morrow, Morrow and Murphy v. The Minister of Works and Development reported in the N.Z. Valuer, March 1981 at page 756.

In those four cases the High Court had to determine what further sums were required to be paid to the claimants in order that they might receive full compensation as provided by s.42 Public Works Act 1923 - in other words what allowance was to be made for the inflation which had occurred and for interest over a period of approximately five years in which they had been held out of part of the compensation money for the land. The Court after considering six possible approaches adopted the Coomber approach using a rate of 10% per annum compound of which 9% represented inflation and 1% represented 2% true interest less national tax of 50%.

Against this decision both W. Morrow and W. J. G. Morrow appealed. The hearing before Woodhouse, P., Somers, J. and Roper, J. was on 26 July, 1982 and the majority decision of Woodhouse, P. and Roper, J. delivered on 7 December 1983 allowed the appeals. In respect of inflation the judgment said:

> *"We would hold therefore that when there is a need to make an adjustment for inflation within the assessment of full compensation under the Public Works Act, calculations should be based on the consumer price index."*

In respect of interest the judgment adopted a basis of true interest once inflation had been taken care of at a rate of 2% per annum applied to "the capital amount of compensation due after adjustment of the nominal sum for inflation."

In a minority judgment Somers, J. was of the opinion that the appellants were entitled only to simple interest on the amount of compensation outstanding as had been contended by the Crown at the High Court hearing. The interest rate, which would have been at the ordinary commercial rates payable on first class securities such as first mortgages, may have reached 15% per annum or even higher and may be expected to take account of the only real risk namely that of loss of value. (i.e. the interest rate would have made allowance for inflation).

The two judgments are printed in this issue of the Valuer.

- R. J. Maclachlan.

Membership

ADMITTED TO INTERMEDIATE:

Akuhata, W.	Auckland.
Amselmi, A. M.	Waikato.
Beacham, S. J.	Rotorua.
Borthwick, C. W.	Waikato.
Boyes, R. J.	Hawke's Bay.
Bragan J. D.	Otago.
Bulmer, G. W.	Rotorua/Bay of Plenty.
Carmichael, A. L.	Wellington.
Chapman, A. G.	Otago.
Chapman, R. O.	Canterbury/Westland.
Cook, G. J.	Waikato.
Corbett, S. F. B.	Northland.
Diack, A. G.	Gisborne.
Fea, D. B.	Southland.
Fechney, B. R. H.	South Canterbury.
Fincher, R. W.	Auckland.
Forrester, P. R.	Central Districts.
Gaskell, S. G.	Northland.
Gould, R. N.	Southland.
Gifford, A. G.	Canterbury/Westland.
Gladwell, B. C.	Auckland.
Gunning, M. F.	Central Districts.
Guscott, P. J.	Central Districts.

Hales, M. D.	Northland.
Hancock, J. L.	Canterbury/Westland.
Hinton, M. A.	Northland.
Howey, M. A. C, ...	Southland.
Kensington, B. G.	Central Districts.
Kerr, B. J.	Waikato.
King, S. W. J.	South Canterbury.
Kitchin, T. W.	Hawke's Bay.
Mackay, S. E.	Wellington.
Martyn, P. B.	Rotorua/Bay of Plenty.
Mason, R. T.	Taranaki.
McIntosh, S. R.	Auckland.
Mclvor, G. W.	Canterbury.
McLaughlin, P. W.....	Canterbury/Westland.
McNally, S. R.	Rotorua/Bay of Plenty.
Murchison, R. K. S.	Central Districts.
Myers, M. A.	Taranaki.
Neal, D. J.....	Hawke's Bay.
Pawson, K. D.	Central Districts.
Pedlow, H. B.	South Canterbury.
Pevreal, S. G.	Waikato.
Reid, J. W.	Hawke's Bay.
Reid, W. J. M.	Otago.
Ryan, J. M.	Auckland.
Rhodes, J. B.	Auckland.
Saxton, O. C.	Auckland.
Shalders, G. R.	Central Districts.
Stigter, F.	Wellington.
Thompson, R. G.	Auckland.
Trolove, W. G.	Canterbury/Westland.
Verstappen, P. C.	Rotorua/Bay of Plenty.
Waddell, R. L.	Northland.
Waller, E. E.	Canterbury.
Ward, T. P.	Waikato.
Weaver, C. J.	Otago.
Webster, J. C.	Rotorua/Bay of Plenty.
Whelan, J. R.	Otago,
Williams, R. R.	Canterbury/Westland.
Wrenn, K. P.	Waikato.
Wright, T. M.	Otago.

ADVANCED TO ASSOCIATE:

Ashby, M. P.	Northland.
Banner, T. N.	Wellington.
Beattie, C. H. M.	Wellington.
Beggs, B. J.	Hawke's Bay.
Brick, M. T.....	Rotorua.
Dooney, C. J.	Auckland.
Eady, G. L.	Northland.
Gaskell, J. N.	Auckland.
Gibbons, R. W.	Canterbury/Westland.
Harrey, J. N.	Nelson/Marlborough.
Hills, R. J.....	Rotorua/Bay of Plenty.
Kingstone, J. M.	Auckland.
Maclndoe, G. H.	Rotorua.
Munro, G. R.	Rotorua.
Rankin, D. H.	Canterbury.
Roberts, S. H.	Auckland.
Ryan, J. J.	Canterbury/Westland.
Steur, M. J. G.	Auckland.

DECEASED:

Atkinson, R. R.	}..	Waikato.
Dodd, J. E.		Rotorua/Bay of Plenty.
Matthews, J. M.		Gisborne.
Wilson, C. R.		Central Districts.
Young, P. J.		Auckland.

RE-ADMITTED TO MEMBERSHIP:

Edwards, D. J.	Overseas.
Parker, D. G.	Central Districts.
Sisley, J. C.	Waikato.

REVERTED TO NON-PRACTISING:

Faherty, M. P.	Wellington.
Innes, A. C.	Central Districts.
Parata, A. H.	Otago.
McFarlane, R. N.	Auckland.
Milburn, D. G.	Northland.
Sweeney, J. L.	Waikato.

RETIRED:

Beattie, R. A.	Auckland - Rule 14(2).
Fisher, W. H.	Rotorua/Bay of Plenty - Rule 14(2).
Lovett, R. E.	Taranaki - Rule 14(1).
McClintock, L. L.	Auckland - Rule 14(1).
Morton, H. A.	South Canterbury (As from Dec., '84).
Neilson, P. C.	Wellington - Rule 14(2).
Robinson, P. R.	Auckland - Rule 14(1).
Wallace, R. J.	Waikato - Rule 14(2).

RESIGNED:

Durry, F. G.	Otago.
Jenkins, K. M.	South Canterbury.
Kissell, G. H.	Canterbury/Westland.
Niederer, G. M.	Overseas.
Perkins, F. H. T.	Otago.
Polson, P. F.	South Canterbury.
Renouf, C. G.	Auckland.
Weller, J. R.	Western Australia.

Wellington City Council

CITY VALUER

Applications are invited from persons suitably qualified in the field of Urban Valuation to fill this important position.

A wide experience in all aspects of the profession as it affects a large local authority is required. Also experience in organising and controlling qualified supporting staff.

The commencing salary is within the range $25,000 $30,197, depending on the experience of the appointee. Advancement is on merit.

For further information contact the City Solicitor, telephone 724-599 extension 848.

Application forms, conditions of appointment and schedule of duties, may be obtained from the Town Clerk's Office, P.O. Box 2199, Wellington, telephone 724-599 ext. 876.

Applications will close with the Town Clerk on Tuesday, 7th August, 1984.

D. NIVEN,
Town Clerk

New Zealand Real Estate Market Report 1983

by New Zealand Institute of Valuers-R. M. Donaldson, President.

The rural real estate market in 1983 in New Zealand was generally quiet, with sale volumes for some property types declining to almost a record extent while values showed little if any growth, and on occasions resales were effected at figures below purchase prices during the 1981 market high point. These results are considered to reflect poor returns from overseas markets, a lessening in confidence for the future of wool, meat and dairy products, less city sourced investment in horticultural and farmland development, following revisions to income tax structures, but concurrently, some increased turnover in small holdings suitable for deer farming, in selected areas.

Residentially the major centres followed predictable patterns with at least modest growth continuing for well located properties, an increase in the volume of section sales and section prices reflecting the advantage for home builders of stabilised building costs under the Price Freeze and when unrestrained by the provisions of the Rent Freeze Regulations, relatively normal growth in residential rentals.

The most significant trend in commercial real estate appeared to have been the public issue of shares for property owning companies, which added stimulus to the commercial real estate market in Auckland, Christchurch and Wellington, while other factors include substantial key money payments for prime retail first lettings even in some of the smaller centres. Main street retail rentals continued to show high growth rates throughout the country.

By the year's end some rural commentators within the thirteen districts monitored by the N.Z.I. V. were suggesting that the control in interest rates may see a return to farm financing, although the same controls appeared to be causing at least a temporary flat point in the urban market, while financiers took stock of the situation.

Residential House and Section Market.

House prices remained fairly static in Northland during 1983, and while sales in excess of $100,000 have increased, overall market activity declined by approximately 43.0%. Declines and turnover rates were also noted in Taranaki during the first six months, reflecting a limit in the supply of mortgage funds, but were showing an improvement by late year. Executive home prices in New Plymouth regularly exceeded $100,000 but showed a ceiling at about $140,000.

In Hamilton the volume of sales rose by approximately 25% over the 1982 year, although the only notable movement in prices - by about 10% - occurred in the lower price range in the final six months of the year. In that city it appeared that there were large numbers of houses on the market and resale prices for superior homes did not always recapture earlier levels. Sections however showed good price increases in the early part of the year, by as much as 25%, but by the end of the year there was a scarcity of low and mid price sections.

In Gisborne sales were slow to steady but the 1983 volumes were down by an estimated 20% on 1982, although there appeared to be some improvement in volume towards the end of the year, there remained uncertainty as to its likely continuation. Prices were fairly consistent but were moving up towards the end of the year.

Slightly further south in Hawke's Bay there was an adequate supply of homes available for purchase and house sales in Napier and Hastings (monitored separately) were steady on 1982 results but significantly down on 1981, while section sales, buoyant in Napier in 1981 showed only a modest lift in numbers over 1982, a complete reversal of the trend in Hastings, where a massive increase to 230 section sales in 1983 compared with 194 in 1982 and only 127 in 1981. Average house prices had moved firmly into the $50,000 - $60,000 range in Napier during 1983 but upper market levels appear to have reached a ceiling. Sections in the Napier City Council Greenmeadows East subdivision sold in a range $11,000 to $13,000, while sections in Flaxmere, Hastings, showed sharp price increases in 1983, by up to 50% in some instances. Demand for sections appears to have been strong throughout the region with one elevated site in a Taradale subdivision realising $33,000, and Housing Corporation sites released in Hastings in June being in very strong demand in the $14,000 to $16,000 range.

The Central Districts region (centring on Wanganui and Palmerston North) of the Institute reported little activity through to mid year, but a dramatic improvement during the third quarter

with significantly increased prices. Values for housing showed steady growth with a noticeable lift in the lowest price ranges, while demand for vacant sections in the larger urban centres increased in 1983 and sites in the better localities showed value growth. Overall the region was finding residential property finance in limited supply by the end of the year and the Institute noted that the internal financing control policy was having a progressively more apparent and instant effect on urban property prices.

Early 1983 was a buyers' market in Nelson and buyers in the executive home market (ranging $90,000 to $150,000) were selective, often securing properties at 10% to 1501o below the asking price. By September/October prices had risen between 7% to 10% on the previous six months, but the market paused in November while vendors and purchasers attempted to analyse the new interest rate regulations, and determine their respective positions. Building a new house was considered a viable alternative to buying an existing home in the region, during 1983 (reflecting some advantage from the price freeze) and the situation was expected to continue into early 1984, if sufficient mortgage funds were available.

Neighbouring Marlborough (main centre Blenheim) showed a considerable drop in the volume of developed residential property sales in 1983, although vacant sections proved popular and there was a shortage in the supply by late year. The County towns reflected either stable or substantial reductions in the volume of developed section sales (falling 50 % in Picton and 75 % in Kaikoura). Picton values appear to have stabilised on somewhat historic levels, reflecting a decline in the port activity while low priced homes in Blenheim now range $35,000 to $40,000 (maximum increases of 15% over the 1982 levels), 3000 sm lots on the Borough boundary have shown a 30% increase (to $30,000). Ownership flats are reported as recording some increase in Blenheim in spite of a significant reduction in the number of units sold while in Nelson mid market priced units sold with more regularity than either low priced ($30,000 to $40,000) or higher prices ($85,000 to $125,000) units. Fully detached houses and attached or semi-detached units were clearly more popular in 1983.

Cheap housing in South Canterbury was in strong demand during 1983, lying in the $30,000 to $50,000 range in the main centres of Ashburton and Timaru. Throughout the region residential values, particularly for improved properties, continued an upward movement and while the value of sales fell some 60% in Timaru City for the first half of 1983, the volume was increasing later in the year.

The Southland Branch of the N.Z. Institute of Valuers reported that 1983 residential sales volumes were in line with 1982. Most demand was for modem homes up to $60,000 financed for first home buyers who had Home Ownership Accounts with the Post Office, Southland Savings Bank and Southland Building Society. Older, high maintenance homes fell back by up to 15% in value and were harder to sell. Prices generally did not exceed 1981 levels.

Residential market activity and value patterns in the main centres of the country varied quite significantly with the Canterbury/Westland Branch of the Institute noting that the market was relatively stable throughout 1983 in comparison with the buoyant activity of late 1981 and throughout the 1982 year; whereas Auckland reported a steady increase in values in all areas (balancing less real growth in 1982 which was considered to be a year of virtual recession in that region) with few single residences priced under $45,000, sales in excess of $100,000 common over a wide range of locations and some frequency of transactions for properties in the better areas between $250,000 and $500,000. Auckland's residential highlight for 1983 appears to have been the auction sale of a twelve roomed Remuera house on a 7572 sm (1.87 acre) site, with a variety of development possibilities in late November, at $1,172,000.

Dunedin's top residential sale (in Thorbury Road) during 1983 is reported as being at $270,000 for a quality old two storied rambling house on an excellent site. A good average single house site usually realised between $11,000 and $20,000 in that city during 1983 but improved property sales recorded during the first half of the year had fallen in volume (by comparison with the same period in 1982) by 20%. However both Oamaru and Alexandra concurrently reported volume declines of up to 50% during the same period.

Demand for vacant sites in Christchurch was reasonable to mid 1983 (up 2501o on the previous six months) with average prices rising by 13%.

The close city residential sectors of Wellington are now showing redevelopment for ownership apartments with some units selling well in excess of $400,000 according to the Wellington Branch return. More conventional but superior specifcation properties were regularly achieving $200,000 with a number of sales in excess of $300,000 having been recorded during the year. However turnover rates throughout the Wellington region fluctuated in 1983, in all main urban centres (Wellington City, Lower Hutt and Porirua) showing a decline of 59% in the first three months, a trend which had reversed by the third quarter to a 27% increase over the equivalent 1982 period.

Residential Rental Market.

First lettings for flats and houses showed dramatic increases during 1983 in Christchurch with tidy two bedroom flats in reasonable areas readily fetching up to $90 per week, and three/four bedroom houses often ranging $120 to $140 per week. A very rundown cottage with outside toilet in an eastern suburb let on the first day of offering at $65 per week, and a small (two-bedroom but bach-like) house also in poor condition was let for $85 in the same area. Major factors contributing to the increase in rentals in Christchurch included the sale of rental properties, subdivision and individual resale of rental flats in apartment blocks, the continued trend in matrimonial breakdown, and a reluctance by investors to construct new rental accommodation because of uneconomic returns.

Similar trends were reported in New Plymouth where rental levels were increasing during 1983 for first lettings at up to $100 per week for two bedroom flats, $150 per week for three bedroom dwellings, and some executive houses letting in the vicinity of $200 per week. In Gisborne house and flat rentals were reported as having continued to increase in spite of the rent freeze and had climbed in the order of $30 per week over the 1982-1983 period, and this may encourage some return to investment in residential rental property in that sector.

While there is still an acute shortage of rental accommodation in Hawke's Bay this has been eased somewhat by both private and local authority development. Residential rentals in the sector were found to have stabilised on 1982 levels reflecting the rent freeze provisions and ramifications of any unauthorised increase.

As predicted in the 1982 regional report for Manawatu an under-supply of residential rental accommodation has seen increased developer activity such as the resiting and renovating of older homes with up to four houses being placed on a standard residential section.

The Blenheim region reported residential rental ranges of between $50 per week for one bedroom accommodation to a barrier for long term accommodation of $100 per week, but on-site caravans at $30 per week; whereas in Southland, the past seasonal demand for flats picked up only marginally at the beginning of the meat processing season, and in general rentals were thought to have hardened, ranging from $45 per week for a converted but basic one bedroom flat to $85 per week for a purpose built two bedroom flat, and in excess of $100 per week for a well appointed unfurnished but three bedroom house in a good locality. Dunedin reported a lack of rental unit construction, and in spite of a controlled environment, two bedroom flats of reasonable quality had shown rental levels well up on 1982 now lying in a range $55 per week to $95 per week, while one bedroom and three bedroom flats were showing ceilings of $55 per week and $100 per week respectively. In Auckland in spite of the rent freeze there was an obvious increase in residential rentals reflecting an excess of demand over supply in 1983, and a strong suspicion that market rentals were being sought on new lettings where there was little chance of communication between outgoing and incoming tenants. This led to difficulty in judging the true rental level, however it was felt that reliable landlords who followed the letter of the rent freeze regulations had suffered economically, through increasing outgoings such as rates, management and maintenance expenses, and these factors coupled with the tax claw-back on mortgage interest, were combining to make residential rental investment properties less attractive.

Commercial Property Market.

Auckland City saw very strong demand for commercial and industrial properties during 1983, a trend expected to continue with the growth in property owning companies. Office construction has proceeded apace with the highest central city rentals now ranging to $150 per square metre per annum inclusive of outgoings, with even fringe areas commanding $110 p.s.m. p.a. Office blocks on the outer perimeter were found to be increasing in popularity, reflecting easier car parking. Top industrial rentals in the region now range to $40 p.s.m. p.a. for large areas (in excess of 1000 sm) but for smaller areas (up to 500 sm) rentals are structured at a range up to $50 p.s.m. p.a.

A good demand for new building occupations was reported in Whangarei in 1983, while Hamilton was a sellers' market with a scarcity of good investment properties in all fields, and yields for prime entities falling from 10.5% to 9.5% Potential rental increases for retail occupations (the actual rentals being restrained by the rent freeze regulations) were expected to show increases of 60% to 100% over three years in some instances, but lesser increases were being experienced in the industrial sector. In Gisborne a trend to net leasing evolved during 1983, and key money was sought and obtained for new leases as well as renewals.

In the Central Districts area 1983 saw a firm commercial and industrial market in the larger centres but industrial demand weakened during the year in smaller towns. However, a record number of commercial property sales were reported during the second half of the year on Palmerston North, with emphasis being placed in large lfoor areas and prime locations. Industrial properties in that city reflected outside investment with purchasers seeking single tenancies or lease-back operations.

The Hawke's Bay Branch of the Institute noted that commercial and industrial properties capable of showing good returns were still favoured but the rent freeze regulations were proving restrictive. Most prudent investors sought returns of 11.0% or more after paying rates and insurances.

During 1983 progressive demand raised rentals and values for nearly all categories of commercial and industrial property in New Plymouth, however surrounding Taranaki areas were less buoyant. Central industrial properties were highly sought after with auctions showing competitive bidding and rates of return normally ranging between 10.0% and 11.0%. Retail property sales in New Plymouth showed sharp price rises particularly during the last six months of 1983 and on occasions key money payments of up to $35,000 were obtained in prime areas.

Only slow value and rental gains were shown in the smaller centres such as Inglewood, Stratford, Eltham, and Opunake, although some limited new lease-back development has been undertaken in Hawera in the recent past.

Retail rentals in some of Wellington's new shopping malls now exceed $700 p.s.m. p.a., while semi-fringe retail shops were still in demand in spite of rumours of an over-supply of retail accommodation. Upper market office rental levels are predicted as likely to escalate to $200 p.s.m. or more by the end of 1984, and the sale of note for the city for 1983 was considered to be the Stewart Dawson Building in August, at $660,000 for refurbishment.

Across Cook Strait in the Marlborough region and particularly Blenheim, retail rentals now range from $48 p.s.m. in poor locations to $130

p.s.m. for small shops in good areas; while office rentals range up to $170 p.s.m. p.a. for ground lfoor space in central positions, favoured by banks and finance companies. Light industrial land sales fell by two thirds in volume during 1983 but prices remained buoyant for well located sites.

Outside investors contributed to a record volume of central city property transactions in Nelson during 1982/83, with a number of the nation's larger retail operators amongst the purchasers. Other stimulus to the market has included the provision of car parking, and an infusion of local family trust money derived from take-overs and mergers. Static building costs in the city have fostered competitively priced design and build projects with three shopping arcades under development during the year. Wide variances in rentals between new lettings and theoretical existing space rent reviews were highlighted by the region's report, as a disparity caused by the rent freeze regulations. Meanwhile small industrial properties were proving popular, with rentals ranging to in excess of $40 p.s.m. p.a. However the sudden upsurge in interest in Tahunanui waned then recovered by the year's end.

Very few redevelopment sites. were offered for sale in the central city sector of Christchurch during 1983 although those sites available were found to be under strong demand where well located retail shops could be developed. Only a relatively weak demand has been reported for first floor speciality shops, although ground floor retail rentals in Christchurch continued to escalate in both new developments and previously leased properties when not subject to the rent freeze regulations. Well designed modern office accommodation was keenly sought after during 1983 in the city, however the economics of office space development remained marginal due to the relatively high cost of building in relation to rental structures in Christchurch. Meanwhile suburban shopping centres strengthened their position during 1983 and the necessity for convenient customer parking was apparent. Small commercial investments sold readily at ranges up to $250,000 and it is thought that this sector of the market has performed better in terms of value growth during the past 10 years than any other. Concurrently, industrial land market was somewhat weak, although there was some evidence that small sites of less than 2000 sm were improving in demand particularly if located on the periphery or just inside the inner four avenues of the city. There is no firm indication of a lowering in yield rates during 1983 although an overall lowering in the near future was thought possible.

In Timaru and Ashburton retail tenants were prepared to pay considerable premiums above normal market levels for first term lettings in new developments and a similar trend with demand exceeding supply appeared evident for retail space to the northern end of Dunedin. Key money payments were also reported as quite normal in that sector, and in George Street strong demand has produced a dramatic rise in values, with other trends including redevelopment. However zone changes could affect the distribution of value structures in the future. Office rentals in Dunedin ranged up to $75 p.s.m. for heated and carpeted space and middle market rentals showed a small increase during the year. Industrially, there were no significant changes determined by the Institute's Otago Branch, although they reported a demand for large vacant blocks of over one hectare if and when available. In Invercargill a keen demand for central city commercial property was evident in 1983, with amongst the sales of note, the Western Building Society building in Esk Street which sold for $240,000 (income of approximately $30,000), the Marac Building Society building at $250,000 with a current rental of $22,000. Key money payments for vacant retail premises of up to $30,000 were reported as being obtained, and prime retail space rentals approached $140 p.s.m. p.a. during 1983. Long term office leases ranging up to $75 p.s.m. p.a. or slightly more were obtained in the city, however older homes and converted flats on the city fringe were also proving popular for professional offices etc. Values appeared static in warehouse sales, with rentals for that form of accommodation ranging from $30 to $60 p.s.m. p.a., the upper level being obtained for good show room space. A number of large workshops and warehouses were being subdivided into small tenancies during the year, with as a consequence, some improvement in earning capacity being achieved. Industrial properties sales and rental demand was reported as being quiet since the end of TY Smelter expansion contracts with small space rentals ranging up to $35 p.s.m. p.a.

The Southland Branch regional report also highlighted the income tax claw-back clause as having had a detrimental effect on the volume of sales and redevelopment of commercial and industrial properties. By the year's end the interest rate regulations were being felt in the sector on most classes of urban property.

Rural Property Market.

Branches within the N.Z. Institute of Valuers which have a rural hinterland reported in 1983, almost without exception, a slowing in demand and turnover (on occasions by record reductions) and a firming in price for almost all property types - such trends caused for horticultural land by the limits on development cost tax deductibility, for grazing and fattening land types by uncertainties in overseas markets and prices for primary produce, coupled with increasing ownership and servicing costs, and viticultural land through an overabundant grape harvest. However some sectors reported firmer prices relatively and more demand for small (usually uneconomic) holdings or marginal dairy units with a potential for deer farming. Forestry land purchasers were reported as becoming more selective in their bare land purchases.

1981 rural land prices were almost impossible to recapture during 1983 and a flow of investment funds into rural enterprises had fallen away sharply by the year's end. This trend in combination with poor trading patterns for most rural activities, a tightening in the supply of mortgage money from private sources, and significant deductions in cheap Government development loans, resulted in an element of uncertainty as to future prospects.

There seems to be a growing awareness of the relatively poor profitability of the primary industry in regard to the inordinately large amounts of capital involved when compared to normal business returns. This factor, coupled with the interest claw-back provisions under amended taxation regulations are likely to mean that city based farm investors may no longer be competitive purchasers, and that genuine farmers who occupy their landholdings will again become the major parties to transactions.

The Nelson area report to the Institute of Valuers showed the total of farmland sales from 1st January, 1983 to 31st December, 1983 to be in the order of 144, a reduction of over 21 % on the preceding year, although a slight improvement in turnover was recorded in the second half of the year. Economic pastoral units were in least demand with only 5 sales being transacted. Withdrawal of development and incentive loans coupled with falling export prices led to a weakening in values of fattening and grazing units in the district of 5% to 7% on 1982 levels, and similar reductions for dairy holdings. Meanwhile Nelson area sales of remote grazing and forestry blocks showed average increases of 1501o, a similar maximum being achieved for some horticultural land. A satisfactory export season for pip fruits helped demand for orchard properties particularly those at the lower end of the market, with stable or modest value growth being recorded.

In nearby Marlborough 1983 was extremely quiet in all sectors for fully economic holdings, and most other rural properties if over $200,000. While purchasers for vineyard development were noticeably absent horticultural blocks suited to stone and pip fruit development continued to sell slowly at prices on a par with 1982. Demand for afforestation land was still evident although the buyers were regarded as more educated as to the essentials of a good tree growing site and were not interested in gorsey hills. A high proportion of privately planted holdings are now owned by the State or large companies after buying out small owners who could not afford the labour or capital in-puts for silviculture.

The Canterbury/Westland Branch of the N.Z.I.V. noted a greatly reduced value of sales in all categories of economic farm units and in particular meat and wool properties orientated around dry land and grassland farming where value reductions of up to 15% were evident, although very few autonomous economic cropping properties were sold in 1983, as well. However there was no concrete evidence of a universal reduction in values for farm properties in the region, and the report felt that a "holding game" was being played by many individual owners who, because of poor physical performance and increased costs needed increasing seasonal financial assistance, with hard core debt now being put on term loan arrangements. A few forced sales were thought to have been recorded as a consequence of these circumstances. Farmer investors were found to be returning to the urban centres to seek investment opportunities in commercial and industrial property, however the Branch forecast that the late year and forced interest rate reductions might slightly restimulate rural market activity and prices in the foreseeable future.

In South Canterbury rural prices were described as "just holding" on previous levels and that the supply of farms for sale far exceeded the demand, with actual transactions taking longer to finalise than in the 1980-81 high activity period and several large units which had sold two to three years previously under the high interest structure were found to be back on the market during 1982 at reduced asking prices. While the easing in interest rates was assisting market activity by late year in South Canterbury, the prospective removal of the Price Freeze and consequential internal cost increases were causing concern.

A slight reduction in the total volume of rural sales activity was evident in Otago in the second six months of 1982 but in the succeeding six months (to June 1983) sales fell dramatically by 36% to 126. Meanwhile fattening farms showed a modest average sale price increase based on the total sum realised and sale price per stock unit (but a significantly higher sale price per hectare). Horticultural land sales, although fewer in volume, showed a close consistency in the region over the eighteen month period January 1982 to June 1983. Recent sales in the Clutha County were reported at a level of 20 to 25% below the July 1982 Government Valuation. At the same time smallholdings/farmlets were in strong demand and included a 10 hectare block in Mosgiel with an old but tidy villa selling late in 1983 at $125,000; and a vacant 20 hectare block on the Otago Peninsula, steep with some scrub but good views and potential building site at $50,000.

The general slow market, stable to slightly falling value structure for rural property was also reported from Southland, where by December 1983, finance was extremely tight and first mortgage money almost impossible to obtain following the announcement of regulated interest rates. Prices levelled following a slight downward trend on larger properties while values for smaller properties were reported as holding. However enquiry revealed that more properties (some of which would be suitable for rural bank funding) were likely to come on the market as excessive debt servicing resulted in a deterioration in individual liquidity. Analysis of sales revealed a range in value per stock unit for sheep country in the Te Anau, Mossburn, Castle Rock sectors at $140 to $150 (per stock unit) to upper market results in the South Hill End, head and bush areas for sheep and cropping land at $250 to $260 (per stock unit).

While prices remained firm on historical levels the Wellington Branch observed little rural activity of particular note apart from a good level of demand for smaller holdings. Further north in Central Districts the rural market was particularly slow in 1983 for economic units and a number of sales effected appeared to have an element of vendor finance. While the Branch review could not pinpoint actual resales at reduced levels, general trends suggested a significant reduction in estimated price levels for all except the most diversified units. Smallholdings in horticultural blocks firmed at 1982 levels but fewer properties actually sold during 1983 in the Central Districts.

The Taranaki area recorded its lowest level in rural sales activity during 1983 for the last 30 years, a significant reversal on the situation in the latter part of 1980 and throughout 1981, when demand for all classes of rural land was excessive and turnover of properties high. The regional report highlights a lack of economic sheep unit sales and a 50% reduction in dairy farm sales for Taranaki, and little interest in small blocks. Through 1983 dairy farm prices barely held at the previous year's level while hill country prices dropped between 10% and 30% depending upon the class of property. While the call for a reduction in mortgage interest rates late in the year was thought likely to assist rural financing other factors such as pessimism in the sheep and beef markets and doubt of the real prospects for the dairy industry resulted in one of the more uncertain eras in Taranaki rural property for some time.

To the east in Hawke's Bay most of the rural sales completed in 1983 were for small blocks of pastoral land or undeveloped parcels of horticultural land, while demand was reported at well down on previous years, and the actual number of completed rural sales approximately 50% below the 1982 returns. Concurrently, prices, which began falling in the previous year continued to drop in 1983 for all types of farm land, reaching a low point by mid year to be in general terms 250/,, to 30% below the peak of late 1981 in Hawke's Bay. Some resales. could not recapture 1981 levels.

The East Coast area, centring on Gisborne, reported generally similar trends with rural property turnover rates estimated to be down by as much as 40% with prices after showing dramatic rises in 1981 and into 1982 now stabilised, although there was no indication of an oversupply. Reduced tax incentives for development were noted to have produced a dramatic effect on investment in the rural scene particularly in horticultural sectors.

During the first six months of 1983 very few sales for fattening and grazing properties were recorded in the Waikato and the full year showed a decline in the total number of sales transacted for all classes of farmland in the region. It was felt that some horticultural properties were being offered for sale as their first production crops had not been up to expectation, however that industry is still considered to be in its infancy in the Waikato, and the demand for productive units yet to be established. Concurrently, activity for smaller uneconomic farmlets and marginal dairy units increased during 1983, with growth in deer farming. Prices for Waikato farmland generally steadied during 1983 but were expected to show slight increases towards the end of the year. Dairy and fattening farm sales were affected by the lack of funding and growth in the dairy industry during the year and conversions from fattening and maize landholdings accordingly ceased.

1983 was a very quiet year for sales of economic sheep and beef units in Northland, with the main interest being shown by forestry companies consolidating their holdings. Most dairy farm sales were thought to have been to first farm buyers with Rural Bank backing and final contract prices often contained reductions. While there appeared to have only been a slight drop in selling prices over 1982, the asking prices seemed to have been fixed for rural property in Northland at more realistic levels, but confusion was evident in the horticultural market, with sales being recorded on either side of established levels.

Book Review

THE PRINCIPLES AND PRACTICE OF RATING AND RATING VALUATIONS IN NEW ZEALAND.

by J. A. B. O'Keefe, B.A. (Lond.), M.Phil. (Lond.), L.L.M. (Auck.).
Barrister at Law and Honorary Member of the New Zealand Institute of Valuers.

Rating, unlike taxation in New Zealand, has never produced a crop of text books. A Ryde on Rating has never appeared for this country, nor any volume equivalent to it. For this reason valuers, local body men and their legal advisers will be delighted that J. A. B. O'Keefe's latest work fills this significant gap with a critical study of Rating and Rating Valuations.

There are other reasons for welcoming this book. It delves deeply into valuation law as it affects rating and the many issues arising from the effect of rating on land and improvements on land.

It includes such relatively untrodden fields as the liability of the first mortgagee to pay rates on mortgaged land, discretions to diminish rates, rates postponement, uniform annual charges and statutory debts.

The ghost of unimproved value clings to some pages of this book, as indeed it still clings to almost any discussion on the philosophy of valuation. The legislators who put its neck under the guillotine in 1970 had no idea that it would take so long to die.

The marriage of Land Value to rates has produced a happy union in urban areas, where there is no major item for clearing. In the rural field, the absorption of a high cost for clearing bush in historical times remains significant, and a distorting factor.

The book has an innovative practical approach to its subject, and provides a clear guide through the labyrinth of legal decisions (nearly 600 cited in the volume) in both valuation issues and rating problems.

The author's twin qualifications, of barrister and valuer, were both needed and leave a clear stamp in the book. There is an exposition of every fundamental principle and an explanation of all the major techniques in the subject. The leading English decisions are cited, but there is a strong emphasis on New Zealand authorities.

The controversial valuation field as it affects rating is covered in detail, and while not all valuers will agree with every conclusion of the. author; yet, like Captain Kirk, he boldly goes where no man has gone before and exposes many controversial issues with a surgical *eye*. It is this quality which lends the book particular interest, and provides fundamental research for law reform.

First generation legal works tend to be more vulnerable to criticism than those which follow a well marked path, but this book might be easily overlooked because of its unpretentious appearance and the fact that it has been produced in non-letter press form to meet students' pockets.

The page size of the volume is foolscap, it contains 314 pages of text, 40 pages of reference and 5 pages of index. Five appendices provide reference to special rating provisions. Its price is $23.

The author has set his hand to work that needed to be done, and he achieves his purpose with this addition to the line of works he has already written. I believe that this book will become the bible of local body officers and those who advise them.

- E. D. Morgan, M.B.E., LL.M., Tauranga.

Editor's note: Byron O'Keefe has gifted the royalties of this publication to the New Zealand Institute of Valuers and dedicated the book to it J. Maclachan. See publications of the N.Z.I.V. A brief note on this publicatiol appeared in the December 1982 issue of the Valuer, Vol. 25, Not 4.

Book Review

ANALYSIS OF SOME COMPUTER ASSISTED VALUATION PROCEDURES.

by Robert Vernon Hargreaves.

Thesis of 177 pages presented for a degree of Master of Agricultural Business and Administration and Valuation at Massey University.

The author, Bob Hargreaves, is a registered valuer lecturing in valuation at Massey and he also has a Bachelor of Science from Berkeley (U.S.A.) where he first became involved in computer assisted valuations.

Compared to the normal academic type thesis this one is characterised by the author's practical experience and thorough knowledge of the valuing profession.

The title could just as easily be called "Every Valuer's Guide on Computers". A comprehensive list of references is also given relating to computers and is a valuable base for future study.

Despite his enthusiasm for working with computers the author gives a balanced view of their capabilities and limitations particularly with the private valuer in mind. For many valuers, storage and retrieval of sales information could be the only real economic benefit. However, computer assistance for investment analyses, optimum building design and subdivision development could enhance the services provided by valuers.

Many valuers throughout the country are currently assessing the economic advantages of purchasing a micro computer. In view of the high capital cost and investment of time required to learn how to use computers it is strongly recommended that valuers study this thesis before making a decision.

Copies are available at the Institute in Wellington or through the library at Massey University.

- Graham A. Halstead, Wellington.

Abstract.

The objective of the thesis is to examine computer applications to the sales, income, and cost approaches to valuation. The author describes and evaluates computer programmes suitable for the storage and retrieval of sales data, the analysis of `net rate' information for houses, and the adjustment of land sales for size variations.

The use of multiple regression analysis in the sales approach to valuation is reviewed, and this methodology is then applied to the valuation of a group of home units and single family homes. Variables were selected from the Valuation Department sales data base and multiple listing information. The inclusion of the existing rating valuation significantly improved the predictive ability of the regression equations.

Several microcomputer applications to the income approach to valuation are discussed in the context of discounted cash flow. These include programmes that compute residual land value for hypothetical developments and the optimum building for a site. A case study approach is used to demonstrate the application of net present value, internal rate of return, and financial management rate of return approaches to valuation.

Two computer programmes designed to estimate the replacement cost of buildings utilise costing information based on the New Zealand Institute of Valuers modal house. One of these programmes calculates the replacement cost of a variety of farm sheds, and the other programme calculates the replacement cost of houses.

The author concludes that computer assistance offers considerable potential benefits to valuers for the storage and retrieval of sales information and for automating many aspects of the valuation process.

Preparation and Presentation of Evidence-in-Chief

by S. S. Williams.

A paper presented at the Wellington Branch Seminar on Courtroom Preparation and Procedures, March 1984.

Mr S. S. Williams is a partner in the legal practice of Young, Swan, Morison and McKay, Wellington. He is a senior litigation partner in the practice and is a specialist in construction and civil engineering procedings.

Mr Williams has prepared legal opinions for the Institute of Valuers over the past two years and has acted for the Institute in disciplinary matters.

Introduction

1. Evidence-in-chief is the evidence given by a witness in any judicial proceedings when he is under direct examination by the party who called him. The evidence-in-chief given by the witnesses is normally the most important part of the proceedings leading to the ultimate decision of the Court, Tribunal or arbitrator. If you can imagine a case which one party to litigation is trying to establish as a structure made up of building blocks. The objective is to establish to the satisfaction of the Judge the ultimate issue which is the building block on the top of the structure. To get that block in place a lawyer has to build the structure with every other block being a necessary step or a necessary ingredient to achieve that end. And he builds that structure with the evidence-in-chief of his witnesses.

2. It is the job of the cross-examiner to try and stop your lawyer getting that final block in place by knocking out some of the other blocks. But he doesn't have to knock them out if your lawyer doesn't get them there in the first place. So evidence-in-chief must build the structure and it must build it solidly so that the blocks can't be dislodged. The purpose of evidence-in-chief is to establish your own case and to establish it strongly so that it is immune to attack. So point one by way of introduction is that evidence-in-chief is crucial to a party's case and whenever you are called as a witness in any litigation you can assume that you are not being called simply to add some prestige to the case or because the lawyer feels sorry for you and wants to give you some work, but because your evidence, and normally your opinion, is an essential element in the case which the lawyer is trying to establish.

3. The second point by way of introduction is that a valuer is normally called to give evidence as an expert witness. Because of this, unlike most witnesses who can only testify as to facts as they have observed them, a valuer is able to give evidence of his opinion. As I will mention later, this puts him in somewhat of a privileged position as far as the Court or Tribunal is concerned and he must be especially careful to ensure that his evidence is objective and may be relied upon by the Court. At the other end of the evidential spectrum it is also worth mentioning that there are some facts which are so commonplace or notorious as not to require proof. Of these facts the Court will take what is called judicial notice. For a somewhat facetious example, if you are valuing a high-rise building where the architect forgot to put in a lift you can say that there will be less rental demand for the upper floors because the building hasn't got a lift, without needing to establish that the vast majority of people prefer to use a lift rather than walk up more than a couple of flights of stairs.

4. As valuers there is a strong likelihood that from time to time you will be asked to give evidence of your opinion before some judicial body or another. There are various possibilities. There are the High Court and the District Court, the Land Valuation Tribunal, the Planning Tribunal, possibly the Valuers Registration Board and there are arbitrations under the Arbitration Act. There are numerous other tribunals and bodies which hear direct evidence, including local authority planning committees, water boards and various others, but the ones I have mentioned specifically' are the major ones you will encounter. Sometimes evidence is given orally or, as lawve,-,, will say, viva voce, and sometimes it is produced as a written statement and simply read by the witness. Sometimes your written statement may have to be prepared in the

form of a sworn affidavit in which case you don't need to attend the Court at all unless the other side want to cross-examine you. On occasions, if you have already done a valuation report you will simply be asked to produce and read the report and to confirm that it accurately states your opinion. But in talking about preparation of evidence I will largely ignore this last-mentioned situation because presumably you will have prepared your report in the usual way and all you're doing in Court is producing and reading it.

5. Obviously you need to check with the lawyer calling you as to whether your evidence is to be given orally or in writing. In terms of preparation though it makes little difference because, even if your evidence is to be given orally, you will need to do a report for the lawyer calling you which he will treat as a "brief" of your evidence. You won't be able to have this in front of you when giving evidence but the lawyer will use it to prompt him as to the questions he needs to ask you in the witness box to elicit your evidence from you. In preparing such a brief, it is preferable for you to prepare it as if it were a written statement of evidence and by that I mean that you should start it off by introducing yourself, reciting the fact that you have been asked to give your opinion on such and such a matter and then setting the rest out in a narrative form which may be a little different from the way it would be set out if it were an ordinary valuation report.

Preparation

6. As far as preparation of evidence-in-chief is concerned, I want to mention a number of things which you can and cannot, or should and should not, do.

   (a) First, you should start by stating your full name, address and occupation. Then state your qualifications and experience which make you an expert. It is only by virtue of being an expert that you are entitled to express your opinion (at least in Court). So you have to satisfy the Court that you have the necessary qualifications and experience to qualify you as an expert. That is not to say for instance, that you have to list the titles to all the contributions you have made to the New Zealand Valuer, but you do need to state your academic qualifications, say how long you have been in practice as a valuer, what firm you are with and state any relevant experience. For example, if you are specialised in rural valuations and the case is concerned with a rural valuation then obviously your experience should be mentioned.

   (b) Secondly, your statement or, brief should be written in the first person singular. It is your opinion which the Court wishes to hear and not that of your firm or your partner or employee. Acordingly, any valuation which you propose to put forward in evidence must be done by yourself or, at the very least, you must have checked it. It is not acceptable for someone else in your office to do the valuation and then for you simply to present it. If someone else does the preparatory work or even prepares a draft for you, you must have studied it or checked it to an extent which enables you to say that it represents your opinion in every respect. And of course you must know enough to be able to answer questions about it under cross-examination.

   (c) Thirdly, you should check what in fact you have been asked to do. In other words, find out exactly what it is you have been asked to express your opinion on. Find out the assumptions, if any, on which your opinion is to be based. In preparing your evidence, start by reciting what you have been asked to do. It is the lawyer's job, and his responsibility, to define clearly the question on which your opinion is sought. He should know what he needs to prove and it should not be left to you to decide that. You should also state in your evidence the assumptions on which your evidence is based, just as you would in any valuation report. If you are giving evidence in a matrimonial property case there is no point in valuing the former matrimonial home in its present state when the lawyer instructing you wants you to say what its value would have been a year ago when the parties separated and before the husband turned the spare bedroom into a sauna. So find out what assumptions you are supposed to make and clearly record them.

   (d) Fourthly, set your evidence out in a logical order and in a way which is easy to follow. If there's a particular point likely to have a bearing on the way the rest of your evidence is understood, mention it at the beginning. Evidence which is set out clearly and logically has greater impact than evidence which is all mixed up and, if the Court or Tribunal want to re-read the evidence later, the clear and logical statement encourages re-reading whilst the mixed up evidence discourages it. Use paragraph numbers and section headings. Make sure the important points you are making are prominent and are not concealed amongst a mass of detail. If the evidence is lengthy, do not hesitate to incorporate a table of contents or a summary of the main points made.

   (e) Fifthly, don't just baldly state your opinion as to the value of a property. Give as much data as you can to back up your opinion. By the same token, don't just present a mass of data without bringing it all together and reaching a conclusion and explaining how that conclusion has been reached on the basis of the data presented. Remember that the Judge may not be familiar with valuation principles and some of your terminology, and he will

want to understand it all before he relies on your opinion. He might not understand what you mean by a "1.7 multiple". So you might have to explain things to him. On the other hand, before specialist valuation tribunals, such as the Land Valuation Tribunal, obviously you don't need to explain valuation principles and terminology. The same is true of arbitrations where the arbitrator is a valuer. I should also add that there will no doubt be some cases where data is not called for perhaps because it's not available. An example might be your opinion as to how the value of a certain property might be affected by a development on a neighbouring site. But obviously you still have to give reasons.

(f) Sixthly, where evidence is given orally, it is acceptable for you to produce sales figures, calculations and similar data in writing and in fact it is desirable that you should do so. You are not expected to remember that sort of information and you shouldn't trust your memory. And it helps the Judge to have that sort of information in writing.

(g) Seventhly, as a general rule you should avoid hearsay evidence. By hearsay evidence I mean stating something which someone else has told you for the purposes of establishing its truth. For example, if you were to say "I didn't see it but my partner who is also familiar with the property says it's got borer", that would be hearsay. You can't even say `my partner and I both inspected this property and he agrees with me that it's got borer." That's hearsay too. The rules of evidence which apply in the Courts in fact prohibit hearsay evidence except in certain circumstances such as where the original maker of the statement is dead or out of the country or is physically or mentally unable to give evidence or cannot with reasonable diligence be found. Some tribunals are empowered to govern their own procedure, and evidence in an arbitration is always subject to the arbitration agreement between the parties, and in both cases the tribunal or arbitrator may not be bound by the strict rules of evidence and hearsay may be permitted. But even in cases where hearsay is technically admissible, it will always be given such weight as the Tribunal or arbitrator considers appropriate and generally this is less weight then is given to evidence of which the witness has direct knowledge. There are some statements you might wish to make in your evidence which, at first sight, might appear to be hearsay. For instance, the fact that a property is zoned commercial in a District Scheme might be thought to be hearsay because it is only what the local authority is telling you through its District Scheme. Similarly, the records of transfers at the Land Transfer Office. However, these are all public documents and the contents of a public document is another one of the exceptions to the rule against hearsay evidence. Actually it's probably the one exception you would have occasion to take advantage of the most. But strictly speaking, you do have to check the details of the transactions you are putting forward for comparison purposes so that they become within your own personal knowledge and so that you can give evidence as to the fact of those transactions before expressing your opinion based on them. You shouldn't just relate what you've been told by another valuer or by someone else.

(h) Eighthly, do not attempt to express an opinion on something not in your field of expertise. It is only because you are an expert in your field that you are entitled to express your opinion at all and it must be limited to your field of expertise. It affects your credibility as a witness if you start to express opinions on other matters. And make sure that everything you say is relevant either to your opinion or to the issues before the Court. I was involved in a case just the other day where a witness devoted about a third of his admittedly short evidence to saying what a nice fellow the other party in the case was. It was quite irrelevant and apart from putting the other party in a good light it showed that the witness didn't understand the issues and it was also a waste of time. And you should definitely avoid wasting time which detracts from the impact of your evidence and usually annoys the Court.

(i) Ninthly, at some stage in the preparation of your evidence you should spend time with the lawyer calling you to ensure that he has a sufficient grasp of what you're saying and the nature of the valuation issues generally. He needs to have this so that in opening his case he can deal with the issues clearly, fully and intelligently and so that he can lead your evidence effectively. You and he should both be tuned into the same wave-length as far as your evidence is concerned so that he knows what questions to ask you, you know what questions he is going to ask and you both know the answers you are going to give. You may also be able to give him some clues as to the valuation principles and arguments likely to be relied on by the other side so that he can cross-examine their valuation witness affectively.

(j) Tenthly, you yourself should also try and anticipate points which the other side in the case may be going to argue, and deal with these in your evidence-in-chief. It is normally a safe bet that if there is a point which is possibly contrary to the opinion you are expressing, the other side will raise it. It is far better to show that you

yourself have thought of the point and dismissed it, or have given it little weight for one reason or another. Not only does that show that you are objective and aware of all the factors which may be relevant to *your* opinion, but it lessens the impact of the point when it is eventually raised by the other side.

(k) Eleventhly, in most litigation, there is a procedure called discovery of documents. This procedure involves each party disclosing to the other all documents, correspondence, memoranda, or any other written material which he has, or has had, and which is in any way relevant to the issues in the proceedings. The documents you prepare in the preparation of your evidence are privileged and do not have to be disclosed but something to watch for is the situation where you have already given a valuation report in respect of the property with which the ligitation is concerned and which was given before the litigation was contemplated. If this was given to one of the parties to the litigation, it will have to be disclosed. Even if it was given to someone else, it is not beyond the realms of possibility that the other side could get hold of it. And they may use it against you. So you need to check that you have not valued the same property before and, if you have, you should be careful in your evidence not to say anything which contradicts or is at variance with what was said before unless you explain the contradiction or variation.

(1) Twelfthly, be impartial. I cannot emphasise this enough. The Court is in effect relying on you, as an expert witness, to instruct it in a technical field and you must not do anything to mislead the Court. Refer to factors which may be unfavourable to your opinion and then say why you have ignored them or given them less weight than other factors. Do not compromise your own integrity. Not only is that contrary to your own interests and to the interests of justice, but in the long term it is also contrary to your client's interests because, even if your evidence is accepted on the first occasion, you will soon acquire a reputation as being someone who is not objective and on whose evidence the Court cannot generally rely.

(m) Finally on preparation, the most important advice I can give you is to prepare thoroughly. There is no substitution for homework. And make sure that what you have said in your brief or statement of evidence makes sense. Ask that question about every sentence, and then about every paragraph and then about the evidence as a whole. Make sure that you haven't said something somewhere which contradicts what you have said somewhere else. If you prepare your evidence thoroughly, you will find the time well spent because when it comes to presenting your evidence you will feel more confident and relaxed and you will create a far better impression than if your evidence is only half-prepared and you find yourself having to back down on a particular point or to explain some inconsistency or to explain what you meant by something you have stated vaguely and which you might not have thought about enough.

Presentation

7. As far as presentation of evidence-in-chief is concerned, again I mention a number of do's and don'ts:

(a) In relation to dress, I can asure you that, rightly or wrongly, you will be looked at sideways if you don't wear a jacket and tie. It is largely a matter of respect for the Court, particularly as far as the High Court is concerned, but with any Tribunal, coming along in casual dress conveys an impression of casualness of approach which detracts from the persuasiveness of your evidence.

(b) As to addressing, as distinct from dressing, you can refer to Judges in the High or District Court, or any Tribunal which is chaired by a Judge, as "Your Honour" if you want to be formal. Otherwise "Sir" is perfectly acceptable and that mode of address should even be used in an arbitration even though you may know the arbitrator well and would never dream of calling him "Sir" outside the arbitration. Again, it is a matter of maintaining the dignity of the judicial process and respect for the Judge or other person adjudicating.

(c) When you are called to give evidence, you will normally be sworn on the Bible, or if you object to that, you may make an affirmation that you will tell the truth. If the Tribunal is one in which written statements of evidence-in-chief are read, copies of your statement will be handed out to everybody and you will then be asked to read it. In Courts and Tribunals where evidence is given orally, your evidence will be given in response to questions asked by the lawyer calling you except in those cases where you are asked simply to produce your valuation report.

(d) It is important to remember that in leading your evidence, the lawyer calling you is not allowed to ask what is called a "leading question". A leading question is a question which, by the way it is asked, suggest the answer. "Is it not true that you valued this property at a million dollars?" is a leading question and is not permitted. "What did you value this property at?" is not a leading question and is acceptable. Because you can't be asked leading questions in examination-in-chief you must be alert to what the lawyer is getting at when he asks a question which, at first sight, might appear to be unspeci-

fic and perhaps missing the point. By the same token, when the lawyer asks you if you are John Brown (and leading questions on formal matters like that which are not in dispute are perfectly acceptable) that is not the time for you to agree and then launch into the whole of your evidence without further invitation. Your evidence should be taken in stages with the lawyer each time asking a non-leading question which introduces that stage of your evidence.

(e) Speak clearly, loudly and slowly, particlarly if your evidence is not being given in writing because normally in such a case it will be taken down by a stenographer or sometimes recorded on a sound recorder.

(f) When giving evidence, you should not refer to your file or to any other notes without first obtaining the permission of the Judge or Tribunal. Even then, you may only refer to your file or to other notes for the purposes of refreshing your memory. You can say "Now when I see that note on my file I am reminded that I inspected the property on 1st July" but strictly speaking, you cannot say "That note on my file says I inspected the property on 1st July so I must have done so". The distinction is between, on the one hand, refreshing your memory so that you can yourself say that something happened, and on the other hand, presenting the note, with nothing more, as evidence that it did happen. They must be your notes or notes made in your presence so that you can identify them and vouch for their authenticity and they must be contemporaneous notes, that is to say they must not be notes made long after the event which they purport to record. And finally, if you do refer to your file or to your notes, you may have to make them available for inspection by the Court and the other side. So bear that in mind when actually making the notes.

(g) You may refer to text books, reports or learned articles for the purposes of confirming the principles upon which you rely.

(h) If you produce any document try and produce the original. This rule is fairly flexible, particularly as far as producing extracts from public documents is concerned and it applies mainly to things like correspondence. If you are producing a letter, you should produce the original, if it is in your possession, rather than a copy.

(i) Do not give the impression that you are taking sides. Do not give the impression that you are all fired up over the strength of your own client's case. Don't get emotional about your evidence. No matter how good you think it may be, present it firmly but not arrogantly.

(j) If you are reading your evidence, don't interpolate too much. You shouldn't normally have to interpolate if you have prepared it properly, but if you want to add something which is not in your written evidence, for instance in reply to something which has arisen during the hearing, tell the Court that you're interpolating. Otherwise it's difficult for others to know whether you're reading or interpolating. And if you are reading and want to interpolate, or your written evidence is interrupted for other reasons, it is a good idea to mark with a pen the spot where you left off so that you are not fumbling around trying to find the spot when you come back to it.

(k) And finally, try to avoid displaying any annoying habits. Do not click your ball point pen. Do not rattle coins in your pocket. These things both annoy and distract. And don't make jokes. Leave those to the Judge.

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hTe Valuer and Cross Examination

by M. R. Camp.

A paper presented at the Wellington Branch Seminar on Courtroom Preparation and Procedures, March 1984.

Mr M. R. Camp is a senior partner in the Wellington law practice of Phillips, Shayle. George & Co.

Mr Camp is a well known and experienced courtroom lawyer, a member of the Wellington District Law Society Committee and acts for a number of prominent property investors.

I understand I should talk about how to crossexamine and how to be cross-examined because valuers have the distinction of being on both sides of the fence at times. I will deal first, somewhat reluctantly, with how to crossexamine.

A. HOW TO CROSS EXAMINE

1. The reason for my reluctance is really just to say with a note of caution that all the ways of adducing evidence from a witness including evidence in chief cross-examination and re-examination, are tied up with the whole of the law relating to evidence and also with other elements of civil procedure together with whatever is the area of substantive law that is relevant to the issues before the Court. Cross-examination is something one grafts on to the top of that body of information and to just talk about cross-examination in isolation from that body of information is a bit like explaining how a head manages to walk around whilst trying not to mention that it is attached to a body. I suppose I am really just discouraging valuers, along with any other groups that take part in litigation but are not legally qualified, from spending too much time scratching the surface of the topic. You will be best off aiming for simplicity of approach on the basis of the basic principles. What I have just said is also to underline that what I am going to cover is pretty simplistic. There is a sizeable body of law relating to evidence. It relates to all evidence including cross examination and there is very little of it in my paper.

2. Purpose of Cross-Examination

If you look at either Volume 17 of the 4th Edition of Halsbury's Laws of England or the New Zealand Edition of Cross on Evidence you will find that cross-examination is directed to:

(1) Credibility of the witness;

(2) The facts to which he has deposed in chief including the cross-examiner's version of them;

(3) The facts to which the witness has not deposed but which the cross-examiner thinks he is able to depose;

(4) The cross-examiner must put to each of his opponent's witnesses so much of his own case in substance as concerns that particular witness and in which that witness had any share. Failure to do so may be held to imply acceptance of the evidence in chief.

That last requirement may well have much less significance in valuation arbitrations than in other disputes. First of all if a valuer is giving evidence as an expert rather than in relation to a matter of fact, the rule as to putting the opponent's case applies with less force. Secondly, valuers should have exchanged copies of their reports in advance and if they have done so that will have largely met the requirements.

3. Section 14 of the Evidence Act 1908 provides:

"The Court shall forbid any question it regards as:-

(a) Indecent or scandalous, although such question may have some bearing on the case before the Court, unless the question relates to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed; or

(b) Intended to insult or annoy or needlessly offensive in form notwithstanding that such questions may be proper in itself."

The propriety referred to in (b) above really means that the topic or subject matter of the question might be very relevant to what is being dealt with but that is no reason to put it in an offensive manner.

4. Those are the bare bones of matters of law. There are some other subsidiary matters of law and useful points that I'll deal with briefly:

4.1 You have a much freer hand when you are cross-examining than with evidence in chief. You may and you often should ask leading questions although witnesses' answers to leading questions are not always treated as being as convincing as where the witnesses really volunteered the answer rather than having the answer put to them. You may also branch out on to collateral matters and not be confined to the facts in issue. For instance you could pass doubts on credibility by reminding a witness how he has been wrong before.

4.2 I think the golden rule is to rather do too little than do too much and an illustration of that is that there is absolutely no point in just taking a witness back right through the whole of his evidence in chief section by section and putting another question to him on top of it. A good witness will just appear to be stronger in cross examination than he was in evidence in chief because he will be able to give all sorts of little extra explanations reinforcements and so on.

4.3 It is really part of the. last topic to point out that what might have been inadmissible in chief is admissible in cross-examination. I separated off because it is very important and probably particularly so for valuers. You cannot give hearsay evidence in chief. In fact this rule is frequently relaxed, bent or ignored in arbitration but correctly you cannot say in evidence in chief that you know the rental of a particular property is such-and-such because somebody else told you. If, however, in cross-examination you are asked a question which casts doubt on something you said in evidence in chief you have the freedom to give otherwise inadmissible evidence to justify the evidence you gave in chief. In such a situation you could go on and cover everything you knew about the topic no matter how distant a type of hearsay it was.

4.4 A rule you should try to follow is to only ask the question if you know the answer. Because in cross-examination inadmissible evidence can be given in answer it can be extraordinarily dangerous to move into an area where there might be an answer that advances your case because there might equally be an answer that does extraordinary damage to it.

4.5 Ask one question at a time. The question "the building is let as offices and it is in a very run down condition isn't it?" has got two questions in it. This is actually a lot harder than it sounds. Most lay people ask questions that have got several inherent assumptions in them and you need to strip it down to one at a time.

5. On a purely practical note I have a few thoughts:

5.1 I don't think I've ever seen anyone cross-examine adequately that was having to deal with it in the first person because they were directly involved so if one valuer is trying to cross-examine the one on the other side I would not expect it to be at all easy.

5.2 I think it is imperative for the opposite side to see the evidence in advance because it narrows the need for cross-examination.

5.3 I would always talk over before the hearing with my valuer what I thought the central issues were going to be and the differences between the two sides' approaches. It is harder to do that with yourself but it is worth giving it a bit of thought.

5.4 Apart from the provisions of Section 14 of the Evidence Act I think cross-examination is an occasion for the utmost fairness and politeness. If there is any substance in what you are asking then the point would become apparent regardless of staying scrupulously within the rules and if there is no substance to it then jumping up and down and shouting is unlikely to disguise it. Cross-examination is taking place within an already existing dispute that needs solving so it is worth avoiding making it the occasion for yet another dispute.

B. HOW TO BE CROSS-EXAMINED

I can see this being somewhat different depending on whether we are talking about a court case where the strict rules of evidence are likely to be applied or whether it may be a more relaxed format in front of an umpire who may not be legally qualified and may in any event be allowing a greater latitude in evidence because of the parties' agreement or the terms of the arbitration submission. Much of what I have already covered is relevant to the topic anyway. As well as that I suggest:

1. It is very important to know your evidence and your back up material. I am quite sure that it is very easy for an expert with other pressures on him to have done an initial valuation report in some haste, to have added a bit to it over the phone to the solicitor when it turns out it might be going to Court and then just to turn up. It is important to be completely on top of the facts of the occasion. You are busy enough giving evidence working out exactly how you want to express it and dealing with the fact that you are being questioned without having to dive around in your papers to check up on bits of information. Equally you want to sit back and scrutinise it beforehand. Minor inconsistencies are likely to turn out quite unsatisfactorily.

2. I always try to talk through the evidence with my valuer to get our case to an irreducible minimum that we are agreed on and we can then say that that minimum is our prime proposition and that so long as cross-examination is dealt with by reference to that there is no need to bother where the individual questions are going.

3. You should remember that you can strengthen your evidence in chief in cross-examination if the opportunity is given to you in relation to hearsay or other matters but do not artificially create the opportunity.

4. Remember that the presentation or how you say it is often as important as what you are saying. That may not apply as much with experts as with ordinary witnesses as to fact but if the person sitting listening to you has to make an assessment of credibility or an assessment as to whether he prefers one set of evidence over another, he is going to try to use all possible yardsticks in making that evaluation and that will include how you look, how you sound, and so on.

5. Driect answers are very helpful. They are helpful in relation to the topic I have just covered and they are also helpful so that people can understand you. It is far better to answer to question "yes, but" or "no, but" and so give a direct answer followed by a qualification than to do it the other way round. Many witnesses think they are going to answer a question, they start their answer with some extreme tangent that is so far away from the topic the people listening think the witness has gone off into some private dissertation. The answer can often then go on and on, sometimes appear to come close to answering the question and eventually conclude with the witness thinking that he might have dealt with the topic comfortably and everybody else thinking he hasn't dealt with it at all. When that happens to me I just put the question again and ask for it to be answered.

6. If you are asked questions that do have two questions in them then deal with it as such if you see it as at all important. Otherwise you can be stuck with the record showing you said yes to something you really didn't mean to.

7. Finally, remember that cross-examination is an opportunity for the other side to make inroads into your evidence. If you come out of it in as good a shape as you went into it that is a victory. Don't look for more. Sometimes there will be more but that's a bonus. If your evidence is undented at the end you couldn't really ask for more and I hope that's what happens.

The Valuer as a Witness

N.Z.I.V. WELLINTON BRANCH SEMINAR THURSDAY 15 MARCH, 1984.

by Mr R. J. Maclachlan, C.B.E., F.N.Z.LV., Life Member N.Z.I.V.

A paper presented at the Wellington Branch Seminar on Courtroom Preparation and Procedures, March 1984.

Mr R. J. (Bob) Maclachlan is a long standing member of the Institute's Executive Committee, and has been an Associate Member of the Administrative Division of the High Court for 10 years.

Bob Maclachlan needs little introduction to members having completed a long, varied and distinguished public service career which included the posts of Valuer-General 1957-59, Public Service Commissioner 1959-62 and Director-General of Lands.

The topic of the valuer as a witness has been a popular one over the years. The first reference to it in the N.Z. Valuer is a paper which Dr O. C. Mazengarb, Q.C. delivered to the Wellington Branch in the late 1940's. Subsequent papers published were from A. G. Neill, Q.C. at Dunedin and L. P. Leary, Q.C. at Auckland. Then at the

1963 Pan Pacific Real Estate Appraisal Conference at Wellington, Judge K. G. Archer delivered a paper entitled "The presentation of valuation cases in New Zealand". To me that paper based on his 17 years association with the Land Valuation Court (formerly the Land Sales Court) it, the text book on the subject and can be founa in a special issue of the N.Z. Valuer, Vol. 18 No. 6. In 1978 at an Institute national seminar at Auckland I delivered a paper on "The court and the valuer as an expert witness". So much has now been written that it is difficult to add anything new. In my 91 years as an associate member of the Administrative Division of the High Court I have sat with a number of Judges including two Chief Justices at Whangarei, Auckland, Hamilton, Wellington, Christchurch and Dunedin. I have during this time seen a good cross section of registered valuers and in this paper I endeavour to draw on that experience.

A valuer may be called to appear as a witness in a number of places. Principally my remarks apply to appearing before a Land Valuation Tribunal or the Administrative Division of the High Court but apply with equal weight to appearances at Planning or similar Tribunals or before an umpire or arbitrators. Throughout this paper for convenience I use the word `court' to cover all these areas.

Some valuers attempt to avoid appearing as an expert witness. I agree it can be a traumatic experience but if the valuer has the competence to make a valuation he should also have the competence and the fortitude to present it before a court. The first time up is always the worst. I well remember my own first appearance as a witness. It was before the Wellington Land Sales Committee exactly 40 years ago and concerned the sale price of a vacant section in Cecil Road, Wadestown. From memory the price sought was £275 and my valuation was £200. I had a dry mouth and clammy hands and I am sure I was visibly trembling. A few days later on another case I was asked how long I had been a valuer and did I really consider my evidence could be preferred to that of the two opposing valuers. One of these was Jack Gellatly's father and the other was the original Dunbar Sloane. I managed to side step the question by quipping that they were valuing long before I was born.

Age should not be a factor when a valuer appears as a witness. What is more important is how well he has done his homework. A well prepared valuer will always triumph over one who relies on his experience and has not bothered to give adequate detailed attention to his valuation. Again I recall a case before the Land Sales Committee concerning a back section. A valuer of quite long experience when asked the basis of his valuation said that he had dug his heel in the dirt and asked himself what he thought the section would sell for. He had no sales, he had not bothered to check what sales evidence there was and he therefore should not have been surprised when his evidence was completely ignored.

When a valuer gives evidence he is appearing as an `expert' witness. This allows him to remain in the court while others give their evidence and he is allowed to take his notes and papers into the witness box with him and to refer to these as required. He is also entitled to offer opinions within the competence of his expertise.

Demeanour in the witness box is very important. A smart appearance suggests an air of efficiency. I am surprised on occasions at the way the valuer is dressed. Sloppy clothes don't create a good impression. (Let me hasten to add that I have yet to see a lady valuer in the witness box.) The valuer's stance should be erect, voice firm, speaking clearly and facing the bench if possible when reading his report or when replying to questions. Sometimes a speaker system is in use and may require the witness to face the microphones. I must stress that the impression the witness gives can be so very important.

I turn now to the valuer's written report and valuation which he will read to the court. This is his principal means of communicating to the court what he regards as the key matters of method and valuation. A verbose report is not required, in fact a wordy report can be to the valuer's disadvantage. What is required is a succinct, pithy report clearly setting out the basic facts, information and evidence probably running to half a dozen pages with supplementary material such as sales lists, sales analyses, rental information and the like attached as appendices for the court to refer to at their leisure or as required on examination or cross examination. The actual length of the report will of course depend on the particular case. What should be clear from the report is how the valuer arrived at his valuation, what method he used, why he used it and whether he has checked his valuation by other methods.

The valuer must be able to substantiate the method or methods he has relied on in his valuation. There are well recognised principles of valuation and these should not be disregarded. A valuer wishing to try something new will have to convince the court of the soundness of his approach.

I can assure you that when the hearing is finished and the decision reserved, the valuers' reports will be referred to over and over again by members of the court as they move towards a decision. This is why all that is important should be in the report and easily understood.

When the valuer enters the witness box he may be examined and cross examined on any matter in his report and of course also on any matter he has not included. The valuer should therefore check and double check every statement made. If it concerns matters of planning, zoning, drainage or availability of services, the valuer should have personally made the check with the appropriate local authority. Particularly must he avoid giving `hearsay' evidence. It can be damaging to a valuer's case to have to admit that somebody told him and he had not checked it for himself.

With sales and rental evidence, the accuracy of the figures should be checked. This may involve searching at the Land Transfer Office or having rental information confirmed in writing.

With office rentals it is essential that accurate information as to floor area and to all the terms .and conditions of the lease be obtained. The valuer should also have made some kind of physical inspection of sale or rental properties, short perhaps of a detailed inspection which is usually not possible anyway. It is embarrassing -for a valuer quoting a sale in evidence to have to admit that he hasn't made some sort of inspection of the property even if only over the fence. This means that the valuer should include in his list of sales or rentals only those properties on which he can competently answer questions. And if he is going to exclude any sale or rental, he must produce an adequate reason for doing so. That it didn't suit his case is of course not an acceptable one although it may be the real reason.

It is also essential that the valuer check the arithmetic in his report, the additions, the multiplication. Do columns add up? It is surprising -how often a valuer has to admit some mistake in his figures. In one case I can recall, the valuer had confused index numbers and percentages and as a result had made a bad mistake in calculating percentages which were vital to his valuation. As an example he had calculated that $25,000 was an increase of 250% on $10,000 and not 150%. When the mistake was pointed out he had to re-calculate his valuation and the worth of his evidence was completely destroyed.

The valuer must give honest replies to the -questions put to him. If he doesn't know the answer to a question, it is better for him to say so than to endeavour to bluff his way through. No valuer is so good that he has the answer to every question. If on cross examination he can answer nine out of ten he is doing exceedingly well.

When making his valuation the valuer must be quite clear what Act of Parliament governs it. It may be the Valuation of Land Act 1951, the Land Act 1948, the Public Works Act 1981, the Petroleum Act 1937 or some similar legislation. In some cases such as an arbitration the basis of the valuation may be set out in the lease or other documents. He should know and understand the definition of such terms as land, capital value, land value, improvements and value of improvements which apply to his valuation. In the case of compensation valuations under the Public Works Act, he will need to understand such terms as `the prospect of the work', 'injurious affection' and `disturbance'.

He must also have a basic knowledge of case law and should know how to apply the principles laid down by the Courts. For example he should know not to use the hypothetical subdivisional method where the urban potential of the land cannot be realised within a reasonable time in the future. He should know what the principal cases have said about subdivisional calculations especially those relating to profit and risk.

And if it is a compensation valuation he should understand how the Court has allowed for inflation adjustments. (It should be noted that a Court of Appeal decision in December 1983 - Morrow v. Minister of Works and Development C.A.124/81 - has altered the High Court decision at Hamilton in the Drower, Morrow &c. Cases.)

The valuer must remember he is an expert witness and not an advocate. Judge Archer expressed this so well when he said:-

> "The besetting sin of the expert is to confuse his position as a witness with that of an advocate. While it is true that expert witnesses are mainly called to support a client's case, they should remember that their function extends no further than to state the facts and to give such opinions as they are entitled as experts to offer. It is no part of the valuer's function to argue a case"

The independence of the valuer must also be stressed. He must make his valuation without being influenced by the person engaging him as to assumptions on which his valuation should be based. Once again using a quote from Judge Archer:-

> "The valuer's duty is to make an honest and unbiased valuation uninfluenced by the wishes of his client."

It is an unfortunate fact of life that an advocate calls only those witnesses who are going to support his case and does not disclose that he holds other valuations which do not help him. I have even heard it rumoured in a compensation case that the claimant has shopped around to get valuations which support his case. A valuer should never be a party to producing a valuation to order in this way.

Finally I wish to touch briefly on the Institute's Code of Ethics as it relates to this topic.

Clause I requires the valuer as his first duty to render service with absolute fidelity and to practice his profession with devotion to high ideals of integrity, honour and courtesy and in a spirit of goodwill to his fellow valuers.

Clause 2 requires him to so order his conduct as to uphold the reputation of the Institute and the dignity of the profession.

Clause 3 requires that no valuer should undertake any valuing work for which he is not qualified and where he is in any doubt as to the adequacy of his professional experience to undertake the work.

Clause 15 is concerned with false, incorrect or misleading statements and with omissions or the suppression of material facts.

Clause 16 points out the reliance placed on accuracy and good faith in maintaining the standard of the profession.

The standing of the Institute and the valuing profession will be judged by the valuer's performance as a witness.

Pre Hearing Preparation for Valuation

Expert Witness Some Points to Consider

by Samuel J. McKim, III.

Mr McKim is an attorney with Miller, Canfield Paddock and Stone of Birmingham, Michigan.

In drafting an outline for this article, I have relied not only upon my own experience with expert valuation witnesses, but also upon the suggestions and comments of several defense-oriented Michigan colleagues. The suggestions which follow are by no means comprehensive, but rather reflect some lessons learned from watching expert valuation witnesses who had not properly prepared for testimony. What follows is, accordingly, a list of some of the things which a valuation witness may wish to consider when preparing for testimony. This list is obviously by no means exclusive, and witnesses with greater experience would in many areas need less pre-hearing preparation than those less-frequently called upon to testify. In fact, in reviewing my notes, I find that instances come to mind in which I assisted in preparing valuation witnesses and did not follow all of the suggestions I am making here. There is, perhaps, no better way to learn something oneself than to attempt to explain it to someone else.

The unquestionable key to successful testimony as an expert valuation witness is embodied in the requirement for all trial lawyers: preparation, preparation, and more preparation. Any time I have doubted the validity of this and the seemingly unnecessary, time-consuming work involved, I have discovered soon thereafter that thorough and meticulous preparation is the only reliable formula for success.

Obviously, some matters are not of sufficient dollar import to merit the time and expense involved with thorough and careful preparation. For our purposes here, I am assuming that the expert valuation witnesses are preparing for testimony in a hearing which involves differences of opinion of substantial dollar import.

"THE UNQUESTIONABLE KEY TO SUCCESSFUL TESTIMONY AS AN EXPERT VALUATION WITNESS IS EMBODIED IN THE REQUIREMENT FOR ALL TRIAL LAWYERS: PREPARATION, PREPARATION AND MORE PREPARATION."

A. Review the objective of testimony; determine the choice of witnesses and sequence of testimony.

1. Determine exactly what you need to establish through expert testimony.

Much depends on the jurisdiction and procedures applicable. In some instances, the exact assessment must be defended; in others, the assessment will be affirmed if testimony establishes a value at or above that upon which the assessment is premised; and in others, the tribunal will increase the assessment if it is satisfied that this is required. In some instances, an excessive assessment can be lowered by the tribunal to what it believes to be the appropriate value; and in others, the matter must be remanded to another agency or entity for further proceedings. It is important to know precisely what is desired to be accomplished by the valuation testimony in the tribunal involved. It is also important to determine whether the facts to be established are those customarily and routinely expected in such proceedings, or whether they are unusual or extraordinary.

2. Which witness or witnesses are needed to testify to the facts which are necessary to establish?

(a) Determine the identity of "primary valuation witness."

(b) Consider use of "back-up" valuation witnesses, "theory" valuation witnesses, and factual witnesses.

It is usually not necessary, and frequently not advisable, to attempt to establish all necessary facts through the same witness. In difficult or controversial cases, the use of several supporting witnesses with interlocking testimony may be advisable. The "primary valuation witness" is the witness who will have done the most work and who will be relied upon to give the basic valuation opinion. The "back-up valuation witness" could be a witness who arrived at the same conclusion through a somewhat different approach, or who would support some but not all of the conclusions of the primary witness. The back-up witness might be an assistant and/or a superior of the primary witness. The "theory" valuation witness could be an outsider, perhaps an independent and highly qualified appraiser, who would have done none of the ground work and would not testify to actual value, but who would testify to the correct valuation approaches in his opinion, perhaps applying the same to a hypothetical example to illustrate the application of correct appraisal theory. The "factual witness" might be someone who does not express an opinion as to value, but who is used to establish facts upon which one of the valuation witnesses relied. The valuation witness should not expose himself to embarrassing

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cross-examination by attempting to testify to matters of which he has little knowledge or understanding.

3. Determine the sequence of testimony from various witnesses.

If more than one valuation or factual witness is used, particularly in unusual or controversial areas, it may be well to use the outside expert "theory" witness first, letting him establish the basic valuation theory and concepts and also bearing the brunt of cross-examination on the same. The primary valuation witness, while relying upon the same concepts and theory, will learn from watching and listening. The "back-up" witness can be held in reserve, to be used if needed, care being taken to avoid the appearance of unduly repetitive testimony. The witnesses following the "theory" valuation witness can rely upon his testimony, and his explanation of the basis for the concepts and approaches recommended.

4. Prepare the witness for the possibility of being called out of order.

In some tribunals, the appealing party is permitted to call persons affiliated with the defense as "adverse witnesses" for cross-examination. Where this is permissible, all witnesses should be prepared. Persons not prepared to testify at that time, who have not been subpoenaed or otherwise requested to be present, should not be present. Where this possibility exists, thorough preparation is extremely important.

B. Review of applicable legal principles.

1. Old law.

(a) What are the hearing procedures of the tribunal involved?

(b) What evidentiary rules are in effect in the tribunal involved, and how do they bear on expert valuation testimony?

(c) Exactly what presumptions benefit the assessment, and what is necessary to rebut the same?

(d) Exactly what is the burden of proof necessary, and when is it relevant?

(e) What is the statutory/case law definition of value in this situation and how has it traditionally been applied?

There is no excuse for the expert witness not being familiar with the procedures to be encountered at the hearing, such as whether he can be called by his opponent, whether the tribunal "judge" can be expected to frequently examine the witness himself, whether it is common for the witness's credentials to be challenged, etc. Unanticipated surprises on procedural points can have a devastating effect on otherwise well-planned testimony. Likewise, the evidentiary rules in effect should also be reviewed. What is an expert appraiser permitted to rely upon? What must be established to submit copies of documentary evidence or other materials utilized? To what extent can the witness be led by his own counsel. An expert witness should not have to be concerned about, or surprised by, fine points in the rules of evidence

Lastly, valuation witnesses, particularly assessors, sometimes misunderstand the so-called "presumption of validity" and/or "burden of proof" rules, which frequently favor the assessment. These concepts should be thoroughly understood and carefully reviewed.

2. New law.

(a) Recent statutory or rule changes.

(b) Recent decisions or appellate review of earlier decisions.

The valuation witness should not be expected to be up-to-date at all times as to possible pertinent opinions, statutory changes, and the like. Counsel must assume this responsibility and should make certain that any statutes, rules, and/or opinions relied upon by the assessor in his approach have been carefully checked, both when the appraisal was in formulation and immediately prior to hearing. It is inexcusable for an expert witness to base his testimony upon an earlier decision and/or statutory provision only to learn during cross-examination that the same was reversed on appeal or qualified by a subsequent decision, and/or that a statutory amendment unknown to the assessor was enacted.

C. Work on and rework your own appraisal.

1. The witness's own written appraisal should be reviewed and re-thought several times.

2. All calculations should be re-checked both in theory and arithmetically.

3. The appraisal should be updated with respect to the intervening period prior to hearing.

The witness should be totally familiar with, and totally satisfied with his own written appraisal. He must familiarize himself with its weak points, and prepare to explain and justify the same, including the possible presentation of additional evidence not referred to in the appraisal. If other than the "customary approach" is used, the witness should be carefully prepared to explain why the selected approach was used, and why the "customary approach" was not. The witness should also be careful to review all "boilerplate" found in the appraisal, and be able to explain precisely what the same means and why it was used. The assessor should also attempt to update the material relied upon, so that he will not be surprised on cross-examination by events which took place after the appraisal was "put to bed."

4. The witness must be prepared to describe in detail the verification procedure for factual information relied upon.

(a) Gather documents of sale and other value documents. Read for unusual terms.

(b) Note persons with whom sales data were confirmed, with dates, telephone numbers, title, or position, etc.

(c) Be familiar with the comparables. View and inspect whenever possible.

(d) Have a drawing or sketch of comparables, showing details on size, shape, improvements, utilities, etc.

(e) List points of adjustment and note how each comparable compares and why. Be prepared to testify as to the zoning of each comparable, highway access, utilities available, etc.

"WITNESSES ARE FREQUENTLY DISCREDITED BECAUSE THEY CANNOT ESTABLISH THAT THEY VERIFIED SALES DATA OR WERE FAMILIAR WITH THE POINTS OF COMPARABILITY."

(f) Verify income/expense data, understanding what the taxpayer included and how accounting procedures were used. Confirm your understanding in writing with the taxpayer, if possible.

(g) Check data supplied by the taxpayer against other similar properties for which you have data, and with respect to industry data generally. Be able to explain any apparent material differences.

(h) Consider carefully the explanation to be given with respect to the computation of depreciation, including physical deterioration as well as functional and economic obsolescence, curable and otherwise.

Vigorous cross-examination on the points noted above, and similar points must be anticipated. Material relied upon by the assessor, perhaps months before, in preparing his appraisal should be reviewed immediately before hearing. Notes and documents relied upon should be present. Witnesses are frequently discredited because they cannot establish that they verified sales data or were familiar with the points of comparability.

5. Prepare to testify on any work done by others.

(a) All such work should be done-or verified after the fact-under the witness's supervision.

(b) The witness should completely understand and be able to describe procedures used and calculations made.

(c) The witness must have verified to his satisfaction that the described procedures were followed.

(d) The witness must be familiar with the facts underlying any conclusions stated in the appraisal, and with the work sheets and notes prepared by others.

(e) On key points, the witness should attempt to acquire personal knowledge, even after the appraisal was completed. Important comparables should be viewed and inspected, along with the subject property, whenever possible.

(f) Persons upon whose work the witness has relied should be available (although perhaps not present) and prepared to offer supplemental testimony, if necessary.

Witnesses are too often discredited because they do not have an adequate understanding or present knowledge of what was done in connection with the appraisal by others. All work should be done under their supervision, or verified under their supervision. If the witness can't discuss the facts and/or procedures underlying conclusions in the appraisal, his opinion may be given little value.

D. Review your opponent's appraisal, where available.

1. Arithmetically check all calculations.

2. Check all theories and approaches used.

3. Prepare to explain any differences in: (a) approach or theory, (b) conclusions, (c) comparables selected, (d) different capitalization factors used, and (e) different depreciation approaches used, etc.

In many forums, the witness will be asked, either under direct or cross-examination, to comment upon the approach of an opposing valuation expert. This testimony should be carefully considered and prepared in advance. Obviously, any major differences between appraisals should be itemized and reviewed in advance, and explanations must be ready.

E. Be prepared to establish and support your own expertise.

1. Determine what is needed. Prepare qualifications. Do not overstate.

In many forms, the valuation witness must be qualified as an "expert" to give opinion testimony. The witness's qualifications should be carefully compiled in advance, and committed in writing in "resume" form wherever possible. The witness should be prepared to review his qualifications on direct examination, neither minimizing them nor overstating. The witness need not testify (on direct or cross-examination) that he is an expert, for example, in the application of the capitalization of income analysis if the valuation problem precludes the application of this approach.

2. Shore up weak points in credentials.

(a) Familiarise yourself with texts if you are lacking in prior experience on any particular point.

(b) Discuss concepts and approaches in detail with acknowledged experts and "theory" witnesses.

(c) Call or visit persons compiling unusual indexes, etc., to gain first-hand understanding.

3. Prepare "back-up" for unusual approaches.

4. Don't pretend to be something you are not (if expertise is thin, this is a good place for a "theory witness").

Frequently, assessments must be defended by witnesses with less impressive credentials than those of the appraisers retained by the taxpayer. If the valuation problem is particularly difficult or unique, and the primary witness's credentials are thin in this area, a "theory witness" with ample credentials should be considered. The primary witness, however, should concede his lack of experience but be prepared to testify as to what he has done to gain the necessary expertise to offer opinion testimony. Most tribunals will sympathize with a defense witness in this position if an honest and sincere effort has been made to acquire expertise for the appraisal in question, and if the witness exhibits understanding of the theory and approaches used.

F. Review of the basics.

1. Review applicable appraisal theory. Be prepared to describe basic appraisal principles applicable.

2. Review applicable basic definitions. Be prepared to define all terminology used.

3. Review instructions and explanations in manuals and/or indexes relied upon. Be prepared to explain the procedures recommended and the basis for each manual's calculations.

Some attorneys delight in cross-examining witnesses on extremely basic points and/or definitions to challenge competence. The witness should not be caught unable to define a term he has used, or the basis for calculations taken by him from a manual upon which he relied. A "review of the basics" prior to the hearing will enable the witness to better testify to these points while under attack. Such a review often enables the witness to be more comfortable during cross-examination.

G. Prepare visual aids when possible.

1. Where applicable, good, quality visual aids and/or exhibits can be extremely important. It is important to make sure that these are accurate.

2. Witnesses must be thoroughly familiar with all visual aids and/or exhibits.

The witness must either prepare or be thoroughly familiar with all visual aids used, whether as exhibits or otherwise, and with all exhibits to be offered. Even the most competent witness's testimony is seriously shadowed if the visual aid prepared by another and used in connection with his testimony has been misunderstood or is inaccurate. Likewise, all exhibits used in defense, or which it is anticipated may be used by the appellant, should have been carefully reviewed by the witness. Any legalese or other provisions not understood should be explained by counsel, and/or counsel should instruct the witness if it is not relevant to his deliberations.

H. Witnesses should coordinate testimony.

1. If more than one valuation witness is used, testimony, including facts, conclusions, and approaches, should be co-ordinated.

2. All persons who may be called as adverse witnesses by the other side should also be coordinated in advance, to avoid possible contradictions.

In any proceeding where more than one witness from a particular side may be testifying, it is essential that witnesses be sufficiently familiar with each other's approaches and the facts relied upon, to avoid contradictions. The witnesses should have discussed the appraisal problem and their various roles carefully with each other.

1. Prepare your attorney.

1. Be certain counsel has reviewed and understands both appraisals.

2. Go through a checklist such as this with him.

3. Practice responding to the attorney's direct examination (with and without leading). Know what the attorney expects and be familiar with his terminology.

4. Ask your attorney to practice cross-examination on you. Play devil's advocate. Familiarize him with the concepts and theories involved, and acclimatize yourself to harsh and harassing questions.

5. Make certain the attorney clearly understands any differences between your approach, facts, and/or conclusions, and those of the opposing expert witness.

In many instances, the witness must prepare the attorney, rather than the reverse. Although this is often not within the witness's control, asking the attorney to practice direct examination with the witness and/or to expose the witness to typical types of cross-examination, can be of benefit.

J. Mentally review basic points to remember while testifying. You may wish to add to this list.

1. Review the question asked in your mind. Be certain you understand it, and ask that it be repeated if there is any doubt.

Never answer a question you do not fully understand. Never answer before carefully reviewing and making certain you understand the question. If a question is ambiguous, do not assume you know what the questioner meant. Instead, ask for a clarification.

2. Consider your answer carefully before giving it.

Do not begin your answer before you have decided what you will say. It is easier to think while you are not talking. One excellent public utility CPA witness takes from ten seconds to two or three minutes to consider each question. His testimony is much respected. It is apparent that his answers are well considered.

3. Review your own appraisal notes and back-up documents prior to hearing.

Be familiar with the materials you take with you to the witness stand. Remember that any documents relied upon must be supplied to the cross-examiner for inspection upon request. Take what you need and nothing more.

4. Talk to the judge and/or jury, not to the attorneys.

Do not be concerned by the facial expressions of the cross-examining attorney. Rather, watch the judge or jury (if there is one), to ascertain if your answer is understood. Do not rely upon your counsel for signals or assurance. It is improper for counsel to communicate with the witness in this manner.

5. Keep answers short on cross-examination.

Unless you are absolutely certain the cross-examiner has asked a question the answer to which he does not wish to hear, answer his questions with as few words as possible. A common cross-examination technique is to permit the witness to ramble on, exposing himself to greater possibility of inconsistencies and/or contradictions. If direct examination was properly done, it usually does not benefit the defense for its witnesses to educate the cross-examiner with lengthy and far-ranging answers.

6. Never guess at answers.

An expert witness, if properly prepared, will never have to guess in stating his opinion and/or the support for the same. He should never guess at an answer on cross-examination. If he does not know, or does not remember, he should state this. Guesses can lead to embarrassment.

7. Never lose your temper and/or become overly emotionally involved. Keep cool.

"IN ONE OF THE FIRST TRIAL-ORIENTED COURSES I TOOK IN LAW SCHOOL, I WAS TOLD THAT TRIAL LAWYERS MUST VIEW THEIR PROFESSION AS IF IT WERE A GAME"

Some cross-examiners attempt to involve the witness's emotions. In anger, fear, embarrassment, pride, or even amusement, most witnesses think less carefully and less clearly when their emotions are not under complete control. Attempt to avoid emotional responses of any nature.

8. Always pause to give your attorney a chance to object to questions asked, and when you see your attorney rising or objecting, wait for ruling on the objection.

Do not permit cross-examination to become so heated or rapid as to preclude your attorney from interposing appropriate objections. Always wait for the complete objection and for the ruling. The best-placed objection accomplishes nothing if the witness has already blurted out the answer.

9. Watch for double questions.

If the cross-examiner asks two questions in one, and your counsel does not object, state the question to which you are giving an answer. Do not simply give an answer and permit it to be misunderstood later.

10. If caught with a mistake, admit it and correct it. Do not defend the indefensible.

All too frequently, arithmetical and other errors are uncovered on cross-examination. The witness should not attempt to defend obvious errors, as skillful cross-examination can force him to dig a very deep hole indeed. Rather, the error should be acknowledged and a correct calculation proferred.

11. Be positive in approach.

Notwithstanding the possibility of harassing cross-examination, the witness should not give tentative answers, such as "I think I used," or "possibly I considered," or "I believe I remember." Such answers seriously detract from the witness's opinion conclusions. Such responses should be avoided whenever possible. Careful preparation plays an important role here.

13. Testify honestly and sincerely.

Maintain a sincere and earnest demeanor. Do not appear to enjoy obvious discomfort on the part of the cross-examiner and remember "honesty is always the best policy."

K. Attempt to plant some "booby traps" for your opponent.

To make life interesting for the cross-examiner, it is always helpful to attempt to anticipate points of attack and to prepare "surprise" answers. Most cross-examiners know the rule "you should never ask a question on cross-examination unless you know the answer." An unanticipated and damaging answer will do to the cross-examiner what he is attempting to do to you. As an example of such a "booby trap," in a recent trial involving the defense of the valuation of Michigan's largest hydroelectric project, the county equalization director, testifying as the primary valuation witness with very little experience in valuing hydroelectric projects, relied in substantial detail on the "Handy-Whitman Index" to trend original construction costs. The index is relatively specialized and the publishers do not supply a great deal of descriptive material. This was a key point in the witness's appraisal approach. Before the hearing, we took the witness to Baltimore, Maryland, to spend a day with the people who compiled the Handy-Whitman Index, and to thoroughly ensure that he understood the philosophy, techniques, computations, and so forth, going into the index. This was not expected by the cross-examiner, who, predictably, had attempted to demonstrate the witness's small knowledge of what the Handy-Whitman Index was all about. The answer was, of course, devastating.

In one of the first trial-oriented courses I took in law school, I was told that trial lawyers must view their profession as if it were a game. A very serious game, and one in which one must do one's best to prevail, but a game nevertheless. Such an approach enables you to retain your objectivity and control your emotions. With proper preparation, it can even sometimes be enjoyable.

New Zealand Leisure Land Use and Development

by R. P. Young, B.Com., Dip. U.V., F.N.Z.I.V., M.P.M.1.

Paper delivered at the 12th Pan Pacific Congress of Valuers, Appraisers and Real Estate Counsellors at Kuala Lumpur, August 1983.

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In recent years Peter Young has been retained by a number of large insurance companies, trusts, and superannuation funds as adviser on investments and rental structures in Central Auckland.

The Congress theme is `Land Resources - Challenges Ahead' and this Workshop paper is entitled `Leisure Land Use and Development'. The paper has been allocated to New Zealand and it must therefore have a heavy New Zealand emphasis. This particular topic has presumably been allocated to New Zealand because of our country's international reputation for a great variety and wealth of scenic beauty ranging from coastal beach and deep sea fishing resorts which are (almost) sub-tropical in summer months, to spectacular thermal areas and associated spa resorts, to world renowned fresh water trout fishing lakes and rivers and on through the temperature scale to alpine lakes, glaciers and ski resorts. In between is a whole range of scenic attraction centred on the country's spectacular -oastline, wild rivers and virgin forest.

From the point of view of many New Zealand residents and most overseas tourists, New Zealand's main attraction is its unspoilt and undeveloped scenic beauty and therefore many people including those associated with the New Zealand Tourist Industry, would probably prefer to see this paper retitled `Leisure Land Use and Undevelopment'. Overdevelompent of much of our leisure land could destroy many of the features which are attracting the present flow of tourism and in these areas of natural scenic beauty. The only development which most of us wish to see is that necessary to provide tourists with accommodation and acess to these areas, both undertaken in the most unobtrusive manner possible.

In order to set the scene for those of you who are not familiar with New Zealand, a few brief facts and figures will help to put things into perspective.

New Zealand is a small island South Pacific nation having a total land area of 268,000 km2 to the three main islands plus numerous small off-shore islands. The islands run in a north-south direction through approximately 1600 km and no part of New Zealand is more than 110 km from the sea. The country therefore has a very extensive coastline relative to its total area and the climate is essentially temperate and maritime in nature.

The country is rather mountainous, particularly in the larger South Island which is dominated by its alpine backbone which contains nineteen peaks exceeding 3000m in height.

The population is only 3.231 million or approximately 1/7th of the population of the State of California or of Canada. Although most of the population now lives in five or six main cities, the wealth of the nation still lies essentially in its primary industry sector, a fact which is demonstrated by a sheep population of 70 million and a cattle population of approximately 8 million. By international standards, New Zealand is not industrialised. At the present time the major growth industries are tourism, energy, electronics and the horticultural section of the agricultural industry. Again by international standards the country is a reasonably affluent one with a relatively low level of unemployment, but a level which has substantially increased in recent years. 86% of the population are of European origin (the great majority being New Zealand born) and 9% of the population are descendants of the pre-European inhabitants, the Maoris, who are of Polynesian origin. New Zealand is a Constituent member of the British Commonwealth and the political system is Democratic.

Volume of Leisure Land:

Per head of population, New Zealand probably has a larger area of National Parks and Forest Wilderness Reserve than any other developed country. Early land administrators laid the basis for the setting aside of National Parks, Forest Parks and Forestry Protection. Royal instructions issued to New Zealand's first Governor - Captain William Hobson - who reached the country in 1840, included the concept of reserv-

ing land for public use and enjoyment. Under various pieces of general and special legislation a progressive policy of preserving and maintaining open natural and recreational areas for the people has been a facet of the land use policy and administration of the Central Government. In recent years there has been much activity on the part of Central Government, and to a lesser extent Regional and Local Government Authorities, to secure in public ownership those areas where most New Zealanders take their holidays - i.e. at the beach. Along the north and northeastern coasts, where the climate is best and the population densest, there has been considerable recent public acquisition of coastal land and offshore islands.

Th National Park system in New Zealand had its origin in 1887 when To Heuheu Tukino and other Maori Chiefs gifted to the Crown the land containing and surrounding their sacred mountains of Ruapehu, Ngauruhoe and Tongariro. Land now held and administered by the Central Government in National Parks, Scenic Reserves, Historic Reserves, Nature Reserves, Recreation Reserves and Scientific Reserves amounts to 2.7 million hectares (6.7 million acres) or slightly more than 10% of the total area of New Zealand. In addition, there are large areas of recreation land in public ownership and available for public use via regional and local government authorities. The New Zealand Forest Service owns a further 1.86 million hectares (4.6 million acres) of State forest parks plus other recreation and ecologically important land to which the public has freedom of entry. In total therefore, something approaching 20% of New Zealand's area is in publicly owned "Leisure Land".

Of the 2.7 million hectares noted above, 2.16 million hectares are in National Parks and development within this area is strictly controlled but allows the provision of camping grounds, huts, hostels, acommodation houses, ski tows and similar facilities, parking areas, road and tracks. In `wilderness areas' development is restricted to foot track access and the erection of huts for essential wild animal control operations or to facilitate scientific research.

Under the New Zealand Walkways Act 1975 walking tracks over public and private land have been developed in order to facilitate foot access to the countryside for the benefit of physical recreation and the enjoyment of the outdoor environment.

Over 1.6 million hectares of State Forest is set aside in nineteeen forest parks and 1.4 million hectares is designated as open indigenous forest, a total of 3 million hectares available for recreation and public entry without permit except when carrying fire-arms. Six recreational hunting areas have been gazetted and several more are in the process of being established.

In recent years there is growing evidence that tourists (both domestic and international) are increasingly choosing holidays that allow them to be an active participant rather than a passive one. The package tour including accommodation and a bus transporting sightseers from A to B is losing ground to independent arrangements or tours that allow people to `do things' such as tramping, skiing, sailing, white water rafting, etc. This trend is not peculiar to New Zealand but is a world wide one. It is however, a trend which New Zealand is ideally suited to capitalise on.

The Tourist Industry - A General Overview:

Since 1970 the number of overseas visitors arriving in New Zealand annually has increased from 155,000 to 472,000. By the 1990's as many as one million visitors are expected annually. However, as an international tourist destination, New Zealand continues to suffer from relative isolation and the high travel costs faced by tourists who decide to come here. It is therefore not surprising that 46% of overseas tourists come from Australia, our nearest neighbour, with 197 coming from the USA, 14% from Europe, *5010* from Japan and 16% from other countries. Although only 5% of the current market, the Japanese component is the fastest growing and appears to have the greatest potential for future growth. Total expenditure on tourism within New Zealand is now estimated at approximately $900 million per annum, split approximately 2/3rds domestic and 1/3rd international. As an earner of overseas exchange, tourism contributes between $350 million and $400 million per annum, including Air New Zealand's travel earnings. This is approximately *6%* of the total value of exports in the year ended 31st March, 1982. Other economic benefits of tourism include the fact that it is a high generator of employment, an efficient earner of foreign exchange and a low import user.

Nature has endowed New Zealand with many natural features which have become the basis of its tourist industry. In spite of these advantages the industry is however still faced with several problems, the main ones being as follows:

1. The relatively high travel costs faced by overseas tourists in getting to New Zealand.
2. The very small size of the domestic market. The economic viability of such things as large hotels is therefore somewhat more dependent on international tourists than would be the case in countries having a much larger domestic market.
3. The highly seasonal nature of many of our attractions. For example, our ski resorts now attract many Australian tourists but for only a four to six month season, and accommodation occupancy rates in the off-season are very low.
4. The relatively small amount spent on overseas tourist promotion.
5. The fragmented nature of the local industry with little internal co-ordination.

Obviously, some of these problems can and are being progressively overcome. However, some of these problems will continue to cause difficulties. For exeample, the small size of the domestic market is probably one of the reasons why average New Zealand hotel room occupancy rates are currently at about 61% (hotels with over 100 rooms) compared with average rates of

68 % in the USA, 71% in Europe, 69% in Canada and 85% in South East Asia.

Investment in the Tourist Industry:

Investment in such tourist oriented fields as major tourist hotel development is regarded in New Zealand as being very much in the high risk field. The traditional and major investors in New Zealand are the Life Insurance Companies and Societies, Mutual Funds, Superannuation Funds and the recently established Property Companies and Property Trusts. None of these major investors have a significant percentage of their portfolio in hotel/motel or other tourist oriented fields. Within the Auckland metropolitan area (New Zealand's largest city and entry point of 70% of all overseas tourists) I am aware of only two hotels owned by major Life Insurance Companies and both of these are leased to the International Travelodge group.

The lack of interest by private investors and financial institutions is a long standing problem and many years ago the New Zealand Government, through the Tourist Hotel Corporation, developed hotels which now provide high quality tourist accommodation in those parts of New Zealand which contain outstanding scenic attractions but where marginal returns have not attracted private investment. The Tourist Hotel Corporation is totally Government owned and owns twelve such hotels many of which provide a high and modern standard of accommodation.

In more recent years Government involvement and encouragement in the tourist industry has been promoted through the Government owned Development Finance Corporation which has now become the major investor in the tourist industry. Over the last three or four years the Development Finance Corporation has invested $86.5 million in the tourist industry and this industry is now the Corporation's second largest field of involvement.

As mentioned above Auckland is New Zealand's largest metropolitan area with a population of approximately 800,000. However, in the past fifteen years only one genuinely up-market and large international hotel has been built in Auckland City and this development would not have occurred without significant Government financial support. The hotel is the Sheraton, completed in April, 1983 and having 422 guest rooms. The entire development cost approximately $47 million including all furnishings and the hotel is owned 40% by the Development Finance Corporation; 40% by Air New Zealand (the New Zealand Government owned international Airline) and 20% by the Sheraton Organisation which also has the management contract. The Development Finance Corporation also provided substantial mortgage finance and has endeavoured to attract a New Zealand or overseas based investor to take a financial interest in the property. This hotel development was promoted by the Development Finance Corporation, essentially on behalf of the New Zealand Government and in the interests of the tourist industry. The Corporation has been instrumental in establishing a Sheraton Hotel in Rotorua and hopes to establish further such hotels in other centres. In order to complete this programme the Corporation would welcome the interest of local or offshore investors. This Corporation has also provided financial assistance to other sectors of the tourist industry in the form of term loans, loan guarantees, equity investment, hire purchase and lease financing.

In addition to its involvement through the Tourist Hotel Corporation and Development Finance Corporation, the New Zealand Government has established several incentives designed to assist and attract investors seeking to develop tourism related projects. These incentives have been introduced in order to ensure that adequate facilities are available to accommodate the anticipated growth in tourism over the next ten to twelve years.

Incentives include heavy first year depreciation allowances for tax purposes, or alternatively a tax-free cash grant of 9.5% of capital cost for selected hotel projects of more than 200 rooms situated in Auckland. Loans at concessionary interest rates are available to assist in the provision of accommodation in the middle to above average price bracket and there are Regional Development incentives and grants available through Regional Development Schemes. There are several other incentives applying to the tourist industry.

I am sure that the Government would be happy to reduce its direct involvement in this field, in favour of heavier private sector investment. A very recent and encouraging development in hotel investment has occurred in Auckland, with the commencement of construction of a Regent Hotel to contain 330 rooms. This will be a very high quality hotel and is owned by the Hong Kong based Eastern Prime Line. The Regent Group operates nineteen hotels, generally in the Pacific area.

The recently completed Sheraton Hotel and the new Regent Hotel will add 752 guest rooms to the Auckland market, an increase of 42% in only two developments. In a small economy, one or two major investment decisions can have a very large impact. The owners of existing major hotels (the main one being the Travelodge and Hyatt chain) will probably be very anxious about the immediate impact of these two recent developments. However, the establishment in New Zealand of more international operators should encourage more co-ordinated group tours incorporating Australia, New Zealand and Fiji in a comprehensive package tour. The Travelodge, Hyatt, Sheraton and Regent Groups all operate in these areas.

Recent Leisure Development A Case Study:

Having provided an over view of the tourist industry and the availability of leisure land in New Zealand, I will now focus attention on a specific resort development, recently undertaken by a New Zealand company. The major part of this development took place on land within the Tongariro National Park. The development is the Turoa Ski Field, undertaken by a small division of Alex Harvey Industries Ltd.

The Tongariro National Park is situated in the centre of the North Island of New Zealand and contains three volcanic peaks, Ruapehu 2797m in height, Ngauruhoe 2291m in height and Tongariro 1968m in height. Ruapehu is the largest in mass as well as in height and it now cony tains the two major North Island Ski Fields. The first of these to be developed is at Whakapapa on the northern slopes and the first ski club was established in this location in 1923, after skiing had been introduced into New Zealand some ten years earlier. As a leisure activity, skiing expanded rapidly during the 1960's and this expansion is continuing. Saturation at the Whakapapa field became inevitable and on the south-west side of the mountain Alex Harvey Industries Turoa development was opened for the winter of 1979. Prior to that date the Turoa field had been a very small local field with only rope tows and very limited facilities.

In the 1979 winter the Turoa field attracted 40,000 skier days (i.e. one skier for one day or part thereof). This increased to 60,000 in 1980, 87,500 in 1981 and 107,500 in 1982. The company has invested a total of approximately $10 million in the development, of which $9 million has been spent on the mountain ski field and a further $1 million in the nearby Ohakune township, the latter being in the provision of residential and club accommodation, offices and a large ski hire shop. Turoa is now the second largest ski field in New Zealand with a 1983 capacity to handle 7,000 skiers per hour on two chairlifts and two T bar lifts, or 8,000 per hour if one includes shorter rope tows. The largest ski field is the original Ruapehu Whakapapa field which now has a capacity to handle 12,000 skiers per hour on a total of four chair lifts and six T bar lifts. In addition, Whakapapa contains eight rope tows.

Development of the Turoa Ski Field became a possibility when, in 1970, the Tongariro Park Board invited applications from developers both in New Zealand and overseas. A Swiss company became very interested in this development and would probably have proceeded, but withdrew its interest in 1976 when the New Zealand Government of the day decided that the development should go to a New Zealand based organisation. At this time it appeared that the possible development of the ski field would collapse but Alex Harvey Industries Ltd. then became interested and managed to open the ski field in the winter of 1979 after overcoming the environmental and other restraints which are generally encountered when developing publicly owned and controlled land.

The development of a tourist based ski resort by Alex Harvey Industries Ltd. was very much out of character with that company's traditional field of operation. The Company's major involvement is in packaging products and systems, glass manufacture, building products including aluminium joinery and roofing tiles, other aluminium products, engineering and plastics. Traditionally, the company has had no involvement in the tourist industry apart from a short lived investment in a hotel company. As at 31st March, 1982 the Company had recorded annual sales of $442.3 million with a profit of $25.5 million on total assets of $336.4 million and shareholders' funds of $163.8 million, The investment of $10 million in the Turoa Ski Field is a very minor percentage of the company's activity. In the company's anual report for the year ended 31st March, 1982 the Managing Director, when dealing with the financial success of the Turoa operation, noted only that `a major lift in operating results was achieved and financial returns are fully in line with comparable new ventures overseas.' The General Manager of Turoa Ski Fields advises that in the 1982 year the operation became profitable even after writing off heavy depreciation allowances. This was the fourth year of operation.

AHI obtained from the Tongariro Park Board a licence to occupy an extensive area of the mountain land on which the ski field is situated, this licence extending for a period of forty five years at a rental of 2 the company on the ski fields portion of thea% of the gross receipts of operation. Under the terms of this licence no residential accommodation is to be constructed on the mountain and all residential accommodation is located in the small town of Ohakune which is situated at the foot of the mountain some 17 kilometres drive from the actual ski field. Development on the ski field currently comprises two chair lifts and two T bars; three restaurants including one at the top of each chair lift; ticket sales booths, administration building, toilet and first aid facilities, creche, service building and car parks. Two snow grooming machines operate through the season during the night.

The field has a top elevation of 2320m (7610 ft) and a base of 1600m (5250 ft) giving it a vertical rise of 720m with the longest run being 4.25 kilometres. Current lift day pass costs are $16.00 per adult and $12.00 per child and there is no charge for car parking. In spite of New Zealand's rather unpredictable weather conditions, the owners claim that during the 1981 season Turoa had more open days than any other ski field in New Zealand or Australia. It is also generally claimed in New Zealand that Australians can enjoy a skiing holiday in New Zealand at a cheaper price than they can by going to Thredbo or other Australian ski fields, New Zealand ski operators claim that New Zealand snow conditions are generally superior and the ski season more reliable than in Australia.

Queuing times in New Zealand are generally shorter than on European ski fields with maximum capacity weekend queue times up to three-quarters of an hour at the base of the field but reduced to around fifteen minutes at the more elevated chair lifts and T bars. During 1982 at Turoa queuing time became too long too often but some relief is expected with the construction of a new T bar during the 1982/83 summer.

Turoa is within approximately four hours driving time of most North Island centres and since the North Island contains 70% of the population of New Zealand, the Ruapehu ski fields cater essentially for a local market. South Island ski

fields are now heavily dependent upon overseas skiers for economic viability and it is estimated that more than 50% of the patronage on South Island ski fields comes from Australia. Turoa is pursuing the Australian market but is not dependent on it and since it caters mainly for the local North Island market, most of its business is done in the weekends. It is estimated that during the 1982 winter, on a good weekend there were 2900 to 3000 skiers on the field whereas on a good mid-week day there will only be around 1200 skiers per day. Economic break-even is about 1000 skiers per day so that the management is keen to increase mid-week use, having almost reached saturation point on weekend use. The ski field operators have found that they receive more adverse reaction from skiers as a result of long queuing waits than they do as a result of the daily cost of skiing. In general the industry is not price sensitive.

Within the area licensed from the Park Board, AHI has the capacity to double its present operation on the mountain, providing a lifting capacity for 16,000 to 20,000 persons per hour, catering for 8,000 to 10,000 skiers per day. The limitations on this expansion arise mainly from the capacity of the access road and parking areas at the base of the ski field. These limitations may prove difficult to overcome but would probably not be insurmountable provided demand and profits justify additional expenditure.

Almost all skiers using the Turoa field find residential accommodation in Ohakune. This small township was originally developed some 100 years ago as a railway settlement and to service the local indigenous forest industries. There is also a small but thriving market garden industry centred on the town. With declining forestry and railway activity, the town was very dormant until development of the ski resort commenced in the late 1970's. Although the permanent population of the Borough has not changed significantly between 1971 and 1981 (increase from 1418 to 1481), building activity has expanded significantly between 1975 and 1983. Prior to 1977 there were no more than seven or eight new dwellings constructed in the Borough per anum. From the 1977/78 financial year to the 1982/83 financial year the number of new dwellings constructed has increased to an average of thirty five per annum and in addition premises have been constructed for twenty six ski clubs. Very old boarding houses originally constructed for railway patronage, together with a former railway social club, have been converted and upgraded to provide low to medium priced hotel accommodation but only four new motels have been built and no major tourist hotel. The development company (AHI) has investigated the possibility of a hotel development but, not surprisingly, has found the economic viability somewhat less than marginal. In addition, several restaurants, ski hire shops and other businesses have been established.

Property values in Ohakune have escalated as a result of this activity and standard sized residential sites now cost in the vicinity of $18,000 each, compared with prices of around $6,000 to $7,000 for a standard residential site in nearby Raetihi, another small township some eleven kilometres away. Small home units in Ohakune are now being purchased by out of town families as winter `ski chalets' at around $40,000 to $45,000 each.

When ART commenced development of the ski ifeld its main problem was to provide more beds in Ohakune and the company purchased 160 caravans and developed a caravan park. Many of these have been sold as more permanent residential accommodation has been constructed.

The development company also purchased 20 hectares (50 acres) of land in the Borough which it has subdivided to provide sites for ski club lodges, motels, a future major hotel plus standard residential and home unit sites. The Company has provided some financial assistance in the development of these buildings and has itself constructed and sold thirty small home units or chalets. This small development known as `Turoa Village' now has approximately 1000 beds and a capacity to accommodate up to 2000 beds. The company has purchased an adjoining block of 4.5 hectares (11 acres) for future expansion to the Turoa Village. From an economic point of view, the development of the Turoa Village has done little more than break even for the company up to the present time but its main object was to provide accommodation for patrons of the ski field development where the major investment was being made. The management is confident that good profits can be made by the company on future land development within the Ohakune Borough.

Although the Ohakune Borough is now heavily dependent upon business turnover generated during the ski season, it has many summer recreation activities available within a short distance. These include good trout fishing, canoeing, white water rafting, tramping and mountain climbing plus a good 18-hole golf course together with a small 9-hole course developed as part of the AHI Turoa Village. These summer leisure activities will obviously need to be promoted so as to give the local investors a broader economic base.

Ohakune had a very good sewerage and water reticulation infrastructure and a reasonable good roading system prior to the ski field development commencing. The ski field developer has also benefited from the fact that the road between Ohakune and the ski field is officially a `County Road' which is maintained by the local County Council.

Conclusion:

The Turoa development, involving a capital expenditure in the region of $10 million, by New Zealand standards is a fairly large investment in a single leisure activity. This type of investment is relatively rare, particularly on National Park land. The National Parks Act requires that the parks shall be preserved in perpetuity, for their intrinsic worth as areas of New Zealand that contain scenery of such distinctive quality, ecological systems or natural features so beautiful, unique or scientifically important that their preservation is in the national interest. The Act provides that parks shall be preserved as far as

possible in their natural state. A fairly recent inclusion in the National Parks Act provides that amenities areas may be set apart where the development and operation of recreational and public amenities may be authorised and that in these amenity areas such development may take place in spite of the over-riding principles to be applied in National Parks.

The Turoa development has necessitated co-operation between a National Park Board and the Management of a large public company. The reconciliation of the aspirations of two such bodies is not always easy and sometimes impossible, The venture would probably not have proceeded or succeeded had the ski field not been close to an existing township which was already linked to the mountain by a road maintained by the Waimarino County Council.

The natural feature of the ski field has of course always been there but the fact that it can now be used and enjoyed by many thousands of skiers each winter has come to pass because the developer has had the courage to put up the capital and the management skills necessary to overcome the numerous difficulties which must have been encountered. The Park Board has also had the foresight to allow part of its land to be developed in a controlled fashion. Such a venture must involve the tying together of numerous necessary elements, the absence of any one of which could make the project untenable.

I am pleased to acknowledge the assistance, information and co-operation provided by the following organisations:

Turoa Ski Fields Division of Alex *Harvey* Industries Ltd.

Lands and Survey Department including National Parks and Reserves Division (Tongariro National Park).

Development Finance Corporation of New Zealand.

New Zealand Tourist and Publicity Department.

Town Clerk, Ohakune Borough Council.

COMPUTER WISE

DOES THE COMPUTER HAVE A PLACE IN YOUR OFFICE?

by R. V. Hargreaves.

PART II: COMPUTER PROGRAMMING CONSIDERATIONS.

Bob Hargreaves is a Senior Lecturer in Valuation at Massey University, Palmerston North. He is also the Councillor for Central Districts and is a member of the New Technology Committee.

This is the second article in the current series of three. The third will be published later in the year.

The first article in this series provided an overview of the main uses of computers in every day valuation work. This article considers software (computer programming requirements).

Having decided that one or more computer applications justifies further investigation the valuer will start looking at the availability of computer programmes (software) and computer equipment (hardware). As the price of computers continues to decline it seems very likely, in the business environment, that software costs will soon exceed hardware costs. Experienced computer analysts point out that as a general rule users should first look at the availability of suitable software, and then look for a suitable machine to run that software. Software costs are likely to remain high since computer programming is very labour intensive and good programmers are expensive.

Programming Languages.

There is a wide variety of languages that are currently used to programme computers. Early computers were programmed in what is called `machine language' but this has been superseded because it was simply too time consuming. These days the most common language found on microcomputers is called `BASIC' (beginners all purpose symbolic instruction code). BASIC is a `high level' language that is relatively easy to learn, being fairly close to simple English and algebra. BASIC is sometimes criticised by professional computer programmers because its lack of structure can cause difficulties with complex programmes.

"FORTRAN' is a computer language originally designed for engineering and scientific use that is now largely superseded for business use by other languages such as `COBOL' and `PASCAL.'

For a computer to understand a high level language it needs a device called an interpreter to translate the high level language into the machine code. Most computers have available built in or add-on interpreters to handle all the main programming languages. Valuers should note that within the programming languages there are various dialects. For example, the version of BASIC language used on one brand of computer will probably not run on another brand of computer without some modifications.

A valuer does not need to be able to programme in order to use a computer and it would be a mistake for most valuers to contemplate writing business programmes. However, a knowledge of elementary programming is useful in both understanding how a programme works and making minor changes to existing programmes.

Operating Systems.

The master programme that controls the function of a computer is known as the operating system. The operating system may be contained on a chip in the ROM (read only memory) inside the computer or it may be read into the computer from a storage device such as a floppy disc, or there may be a combination of these two approaches. Since most brands of computers use different operating systems there is not an industry standard between machines. This means that a programme that has been designed for one type of machine will probably not run on another type of machine without some modification. Manufacturers of small business computers have generally deliberately devised operating systems that make their equipment incompatible with that of their competitors. This approach has been very frustrating for computer users. An,.operating system known as CP/M (control programme/ microcomputer) has been devised to overcome this problem and many small computers have CP/M capability.

Up until 1983 it appeared as if CP/M would become the de facto industry standard operating system for small business computers based on an eight-bit processor (silicon chip). It now seems unlikely that CP/M system will become the long lasting industry standard because most new microcomputers are based on 16 bit or 32 bit processors and IBM use an operating system called `MS-DOS' for the IBM personal computer. Such is the market dominance of IBM that their operating system is likely to become the industry standard. Several competing microcomputer manufacturers have now developed technically superior and less expensive machines that are `IBM compatible'. (While it is technically feasible to develop a machine which is completely IBM compatible, this is in fact unlikely to occur because of the laws relating to copyright).

The best choice of software is usually associated with the top-selling machines since this is the area where software companies can make the highest profits. Conversely machines with low sales on the world market often don't have available a very good choice of software.

Some valuers may be contemplating the purchase of computers that allow more than one person to use the machine at the same time. This is called a multi-user machine and it will have two or more keyboards and visual display units. There are several operating systems used in multi-user machines with perhaps the best known of these being `MP/M' and `Unix'. At this stage Unix (which was developed by the American Telephone and Telegraph Co.) looks like becoming the industry standard.

Software Options.

There are two broad options that users have when acquiring programmes to run on computers. They can either purchase pre-written, existing software, or they can develop software for their own particular needs. Pre-written software can be either application specific or generated so that the operator can modify to suit particular individual requirements without having to learn a high level language.

Pre-written Programmes.

A common criticism of many new computer users is that they spend a lot of time and money `re-inventing the wheel'. The first rule regarding software is always to look around to see if someone else has developed a programme to do what you want to do. It may not do exactly what you want to do but it may go most of the way, and it may be an inexpensive solution. It is almost always better to buy an existing package written by a reputable software house than to develop a custom programme. Existing packages can be tested and the valuer may be able to talk to people who already use the package. There are very good existing programmes available for word processing, accounting, general data base management, statistical analysis, graphics, electronic spreadsheets, and tele-communications.

Several of the best selling electronic spreadsheet and data base programmes have been designed so that inexperienced computer users can quickly learn to customise parts of the programme for their particular needs.

The large market for pre-written programmes means that they are usually a bargain when compared with what it would cost to develop a similar product. For example, an electronic spreadsheet package that might cost say $500 could have cost $250,000 to develop and test.

There are a surprisingly large number of valuation programmes already available. A survey by the Texas Real Estate Research Centre' showed that over 100 U.S. companies and individuals were supplying real estate related computer programmes and more than 20 of these were directly related to valuation. A more recent survey by the National Association of Realtors in the U.S.' shows an even larger number of real estate related programmes that are now available. Some of these U.S. programmes have been extensively

tested in the commercial field as they are used in a large number of installations. The author' 4 s has described a number of programmes written for New Zealand valuation practice.

Custom Programmes.

If the valuer has looked at all the existing software that is available and found that none of it is suitable for a specific application, then it may be necessary to have a programme developed.

For the inexperienced, having a custom package developed can be a very challenging task. It is a minefield literally full of potential hazards for the uninitiated. Some of the common pitfalls are as follows:

1. Failure to specify exactly what is required: there is a potential communication problem between the valuer and the computer programmer. The computer programmer invariably knows a lot about computers but almost nothing about valuation. Similarly, the valuer is likely to know a lot about valuation but almost nothing about programming. Somehow, the two have to communicate and the valuer has to be able to tell the programmer exactly what it is that he wants the programmer to do. Spending time writing a clear set of specifications is always time well spent and will reduce programming costs. In addition, writing specifications will give the valuer an idea about the capability of computers, what can be done and at what cost, and what simply is not feasible.
2. Failure to settle upon an agreed price: computer programming has been likened to horticulture in that both can absorb vast amounts of money for development. The desire of the computer programmer to write a perfect programme has to be balanced against cost effectiveness. A contract where there is no upper limit on the amount of money that can be spent, is likely to end up as a very expensive programme.
3. Changing the specifications as the programme is being developed: this is analagous to altering a building contract as a new house is being constructed. The end result is usually increased cost and potential dissatisfaction on the part of both parties.
4. Overly optimistic time frame: most custom written computer programmes take far longer to deliver than was originally envisaged. This is because people are usually too optimistic in estimating the time it will take to write a computer programme. Time also needs to be devoted to a proper testing and debugging of a programme. All new computer programmes will have bugs (faults) in them and extensive testing will often be required to discover all the defects and time will be needed to correct them. Most programmes go through a number of modifications during the development phase.
5. Safe keeping of the source code: if a valuer has a custom written programme developed he should make sure that the source code (high level language version) is held either by his office or by a third party so that in the event of anything happening to the original programmer another programmer can deal with the programme.
6. Do it yourself programming: there may be a temptation to `save' the cost of employing a professional programmer and for the valuer to write custom programmes. In general this will simply not be a viable alternative. Computer programming is highly skilled and valuers should leave it to the experts.
7. Inadequate written documentation: computer programmers are often not very good at writing understandable manuals to go with the programmes they develop. Poor documentation can make it difficult to use custom written programmes.

Which Programme to Purchase?

The computer programming industry is in a volatile state. There are many competing software houses offering a wide variety of packages and it is easy to get confused about the advantages and disadvantages of the packages that are available. There are also a lot of poor programmes around. Often these are programmes that have been developed by hobbyists and are not well tested or documented.

The potential user has to somehow sort out the best programmes. One method is to talk to other valuers who are using the programmes and see the programme working. Better still sit down and actually use the programme. Although `hands on' experience can be time consuming it is the best way to evaluate how easy the programme is to use and its capabilities. One of the traps for beginning purchasers is to purchase a programme before actually using it, as sometimes good demonstrations are used to cover up bad programmes.

Overseas the trend is for specialised shops to sell computer software. These software shops usually have a variety of computers available within the shop and potential purchasers can sit down and thoroughly test any programme that they are interested in purchasing.

The degree of after sales support offered by the software house is another important consideration. For example, a valuer in Whangarei may feel more comfortable using a programme that is supported by a local dealer rather than having to wait for someone to come from say Wellington to `debug' the programme.

The Role of the N.Z.I.V.

One of the functions of the Technology Committee of the N.Z.I.V. is to co-ordinate the development of specialised valuation programmes that will be required both now and in the future. A first step towards achieving this objective is the development of the data management programme called the `VALPAK' (sales retrieval) package. Other computer applications that the Technology Committee may look at in the future are programmes which analyse sales data, and the development of a replacement cost building programme based on the modal house.

What is User Friendly?

The term `user friendly' is widely used in advertisements for various computer systems. Although the current generation of computers are a lot easier to use than earlier generations there is still a considerable way to go. "User friendly" normally means that the user interacts directly with the computer and does not have to wait for the computer to process information and that the programmes are polite and helpful. "User friendly" also depends on the ease of following the manual that comes with the programme.

The difficulty for many New Zealand valuers in using computers is that efficient use of computers usually requires good keyboard skills and because most valuers don't type very well, they get frustrated using the keyboard.

Fortunately help is on the way! Apple Computers have pioneered the concept of a `mouse' which is a small device that points to a particular position on the computer screen and greatly reduces the amount of typing when using a computer. The mouse concept has other advantages in that the user does not have to learn a whole series of commands in order to operate various programmes. It is possible to simply point the mouse to the appropriate function, press a button, and the computer performs that particular task. Another approach to user friendliness in small computers has been pioneered for microcomputers by Hewlett-Packard who have developed a touch sensitive screen. Touching part of the screen, which has been sensitised to human fingers, achieves the same effect as the mouse concept. In the author's opinion, computers will not truly be "user friendly" until they get to the stage of being able to recognise human voices. Computers with a limited ability to recognise verbal commands are available but it will be some years before they are widely used in the business world. These "user friendly" developments are made possible by very sophisticated programming.

How to Prepare for the Computer Revolution.?

1. Attend a computer awareness course: two such courses have been sponsored by the N.Z.I.V. over the last two years. It may also be possible to attend a generalised computer awareness course at a local high school, technical institute, or university.
2. Buy the children a home computer and learn to play the games with them! The cost of home computers has dramatically decreased and some of these machines that can be bought for under $1000 are actually very powerful computers.
3. Go out and buy a suitable business computer and learn to use it. In the long run there is actually no substitute for `hands on' experience.
4. Spend time with the `early adopters', i.e. valuers already using computers.
5. Delegate somebody in the firm to become the computer expert. In some this may not be the valuer and could be an administrator or secretary.
6. Read some of the specialist computer magazines. Byte magazine is probably the most comprehensive but it may be too technical for some beginning users. Most bookshops will have numerous computer publications to choose from. On the local scene Interface (published by the New Zealand Computer Society) is largely orientated towards the business audience. Bits and Bytes and New Zealand Computer Scene cater for both business and personal computing readership.

1. The Texas Real Estate Research Centre (1982) "Summary of Computer Hardware/Software Companies with Real Estate Applications", Texas A. & M. University, College Station, Texas.
2. National Association of Realtors (1983) "Computer Software Reference Library Manual", National Association of Realtors, Chicago, Illinois.
3. Hargreaves, R. V. (1981) "Some Microcomputer Applications to the Valuation Process", Occasional Paper No. 10, Department of Agricultural Economics and Farm Management, Massey University, Palmerston North.
4. Hargreaves, R. V. (1983) "Some Computer Applications to the Replacement Cost Method of Valuation", New Technology Committee Publication No. 2, New Zealand Institute of Valuers.
5. Hargreaves, R. V. (1983) "Some Further Computer Applications to the Valuation Process", New Technology Committee, Publication No. 3, New Zealand Institute of Valuers.

Valuations for Company Prospectus and Revaluation Purposes

Statement of New Zealand Institute of Valuers.

by K. M. Allan, General Secretary.

In response to comments recently made about the actions of valuers in performing valuations for corporate business purposes the Institute of Valuers advises that it has already made submissions to the New Zealand Society of Accountants on the exposure drafts dealing with the

treatment of valuations for property and other company reporting. Last year the Institute (of Valuers) made a clear statement advocating the use of independent registered valuers for assest revaluation purposes suggesting that external valuers be engaged at least every third year to revalue all or part of a portfolio.

It is considered essential that reports are available and are independent of the company management, staff or directorate particularly so where the `profit' from such revaluations is intended to be carried into a profit and loss account and distributed at some stage to shareholders.

The Institute would be concerned in a situation where a registered valuer's report is abridged, edited or altered by the exclusion of accompanying statements or qualifications. In a number of instances it is both essential and desirable that the valuer include some qualifying remarks with his report.

On the question of independence, the valuer is entitled to obtain explanation or clarification of any points from the company directorate but is also bound to check the validity of such input from other sources where and when available. Asa general principle the Institute of Valuers favours the situation in which little or no qualifications are required to attach to the report and that the document is complete in its valuation figure and conclusion.

The public will be interested to learn that the Institute some time ago opened discussions with the New Zealand Stock Exchange on the need or desirability of setting guidelines or standards for the inclusion of registered valuers' reports in company prospectus documents. The Institute would be pleased to learn of any instance of a valuer's alleged unprofessional performance of his duties in this area including apparent `non independence'.

Contact also exists with sister appraisal professions overseas and the Institute is aware of trends and standards in those areas.

Furthermore, the New Zealand Institute of Valuers is an active member of TIAVSC (The International Assets Valuation Standards Committee), a worldwide grouping of valuation bodies with the specific tasks of formulating, publishing and monitoring the reporting standards of real estate assets for domestic and international consumption. This grouping of nearly forty countries has the backing of accounting professions, governments, the UN as well as the multinational companies who themselves are looking for a degree of standardisation.

It is fair to say therefore that a great deal is already being done in the important area of new standards for the public use of valuers' reports. The Institute of Valuers remains aware of recent calls for more inter-professional co-operation on these -matters.

Legal Decisions

CASES RECEIVED.

Notice of cases received are given for members' information. They will be printed in the "Valuer" as space permits and normally in date sequence.

The Assistant Commissioner of Crown Lands, and Associated Taverns Ltd. M 214/82 Judgment 30th August, 1983.

The Wellington Rugby Union Incorporated, and The Valuer General and The Maori Trustee M. No. 128183 Judgment 25th May, 1984.

Anthony Haereroa Parata and Others and the Valuer-General LVP 111, 112, 113, 114 115/82 Judgment May, 1984.

CASES NOTED.

Cases `noted' will not normally be published in the "Valuer".
Copies of cases `received' and `noted' may be obtained from the Registrar of the Court under whose jurisdiction the cases were heard. (A charge is normally made for photocopying.)

DECISION OF VALUERS ACT BOARD OF APPEAL.

Editor's note: The following report has flowed from the full judgment rendered by the Board of Appeal. This would appear to be the first time a non-registration decision has been taken to appeal. The Board's view was upheld.

This was an appeal against the decision of the Valuers Registration Board to decline an applicant for registration on the grounds that his practical experience did not equate to three years full time valuation work.

Section 19 (1) of the Valuers Act 1948 requires an applicant to have had "not less than three years practical experience in New Zealand in the valuing of land within the ten years immediately preceeding the making of his application".

In the view of the Appeal Board this may be:

(i) A block of three years continuous experience or

(ii) An accumulation of periods totalling three years in the aggregate or

(iii) A period (or an accumulation of periods) of work which in duration is in excess of three years but which is not all strictly valuation work and is thus only to be equated with three years' experience in the valuing of land.

While the nature of the appellant's work involved the making of valuations he had additional duties which were not strictly valuation work and which thus diluted the period of his practical experience. At the date of the hearing the appellant had been engaged in such duties for a continuous period exceeding four years. The Appeal Board was of the opinion that the valuation content during that period equated to less than three years full time experience and in a decision dated 16 December, 1983 disallowed the appeal.

1. That he being an agent of the proprietors of certain lands made a contract on behalf of his principal the said proprietors in respect of stock purchased from "A" without disclosing to such principal at the time of the making of the contract or as soon as possible thereafter the existence of a pecuniary interest which he had in the making of the Contract. Secret Commissions Act 1910, Section 5.

2. That he being an agent of the proprietors of certain lands made a contract on behalf of his principal the said proprietors in respect of stock purchased from "B" without disclosing to such principal at the time of the making of the contract or as soon as possible thereafter the existence of a pecuniary interest which he had in the making of the Contract. Secret Commissions Act 1910, Section 5.

3. That he being an agent of the proprietors of certain lands did deliver or present to his principal the said proprietors a document in relation to the business or affairs of such principal, namely a debit note in relation to wether lambs purchased on behalf of his principal the said proprietors which to his knowledge was false in a material particular, namely, that the purchase price for such lambs stated in the debit note was higher than the purchase price which had actually been paid. Secret Commissions Act 1910, Section 7.

II. Under Section 31 (1) (b) of the Valuers Act 1948 the Valuer had been convicted (subsequent to the date of his registration as a Valuer under the Valuers Act 1948) of offences which tend to dishonour him in the public estimation, namely the information set out under 1, 2 and 3 in Charge I.

These charges arose from the Valuer's conviction on the offences enumerated, in the High Court.

In presenting the case for the prosecution, prosecuting Counsel called the Valuer-General who produced his written report to the Board, concerning his investigation of the matter. He also produced a certifcate from the Deputy Registrar of the High Court containing confirmation of the charges against the Valuer, his conviction and the penalty fixed namely ifnes of $750 on each of the three counts in respect of which he had been found guilty. Counsel drew the Board's attention to a letter from the Court Registrar which was included as Attachment "C" to the Valuer-General's report and which contained the statement that: "the maximum penalty prescribed by statute for these offences is imprisonment for a period not exceeding two years or a fine not exceeding $1,000 on each charge."

Counsel for the Valuer stated that the convictions were a matter of record and did not dispute them. He was very helpful to the Board, however, in presenting a typed and fully detailed statement of submissions covering matters generally favourable to the Valuer's position.

In respect of the trial, which lasted some 10 days, it appears adequate and appropriate to quote Counsel's summary: "In summary, there were three convictions on seven charges, relating to only two incidents, and those more than five years ago. The convictions were against a relatively obscure enactment (Sections 5 and 7 Secret Commissions Act 1910), and all charges

brought under the Crimes Act 1961 were dismissed. The trial Judge accepted that there was not shown to have been any intention to defraud. The only penalties imposed were three relatively small fines." (The words in brackets have been inserted by the Board).

Counsel also pointed out that no order was made for costs or restitution. He went on in some detail to indicate that the Valuer is a man from a respectable background, with a commendable life history who has held a number of eminent appointments. It appears noteworthy that, since his conviction, his reappointment to at least one of these positions has been confirmed and he has been re-elected to other trusts and committees within the district.

Prosecuting Counsel posed the question to the Board as to whether a finding against integrity and propriety would require any *more* than conviction *by jury of* such an indictable offence, and submitted that it is more a matter of how the Board should express its censure.

At the conclusion of the Hearing the Board gave the following oral decision:

> "As regards the charges laid under Section 31 (1) (a) the Board finds the Valuer guilty, and as to penalty on this charge the Board acting under the powers vested in it by Section 33 of the Valuers Act 1948 determines that the Valuer shall be reprimanded. In regard to the charges laid under Section 31 (1) (b) the Board finds the Valuer not guilty."

In reaching this decision the Board was conscious of the fact that this is the first case brought under Section 31 (1) (a) of the Act and that the Valuer may be considered unfortunate that under it he was liable for prosecution by one day only. It was also conscious of the difficuty of deliberating, at least in part, on the findings of a Court and jury based on evidence traversed over a ten day hearing. The Board considers itself fortunate that both Counsel in this case were also involved in that hearing and is grateful for their assistance.

IN THE COURT OF APPEAL OF NEW ZEALAND.

C.A. 124/81.

BETWEEN WILLIAM MORROW and WILLIAM JAMES GORDON MORROW both of Hamilton, farmers.

Appellants.

AND THE MINISTER OF WORKS AND DEVELOPMENT.

Respondent.

Coram: Woodhouse, P.
Somers, J.
Roper, J.

Hearing: 26th July, 1982.

Counsel: D. L. Tompkins, Q.C., and R. Wilson for appellants.
V. R. Jamieson for respondent.

Judgment: 7th December, 1983.

JUDGMENT OF WOODHOUSE, P. AND ROPER, J. DELIVERED BY WOODHOUSE, P.

These two appeals were heard together because they involve similar facts and depend upon the same legal principles. The single question they raise is what is the correct way of providing for the eroding factor of inflation when there is delayed payment of compensation for land earlier acquired under the Public Works Act 1928.

There are a number of decisions of the Administrative Division of the High Court which hold that the inlfation factor is to be taken into account in such circumstances in order to satisfy an entitlement to the "full" compensation described by the Act. That principle was unsuccessfully challenged on behalf of the Respondent Minister when the present cases were heard but there is no cross-appeal on his behalf and no attempt was made to argue in this Court that in point of principle there should be no adjustment for inflaton. Nor was it contended that on the facts there was no case for such provision. Instead we were simply asked whether the High Court had sufficiently or appropriately made provision for inflation and if not how the adjustment should be made. In its simplest form the appellants argued that the High Court wrongly used an interest-type calculation rather than a formula based upon one or other of the statistical indices which purport to demonstrate the changing values of money from time to time.

After the appeal was heard it became necessary to ask counsel to confirm that the issue was to be limited to the method of calculation which should be used to provide for inflation and on the agreed basis that in point of principle as well as on the facts this was a factor to be provided for when calculating the compensation due to the respective appellants. Regrettably there has been a long delay in dealing with the appeals. In part this is due to the fact that two members of the Court were overseas for some months and the answers of counsel were provided during that period.

The accepted position upon which the appeals are to be decided has been established by the memorandum prepared by counsel for the Respondent Minister. In that memorandum it is said -

> "Before the High Court the Respondent argued that adequate recognition could be given to that factor in this case by a simple interest addition to the land value. That submission was rejected by the High Court and the Respondent did not choose to appeal against that rejection. Reference nevertheless was made to that approach in the submissions of Counsel before the Court of Appeal. The Respondent recognises that factors of delay and inflation can, if established, affect the assessment of full compensation and in the instant case accepted that there was evidence of inflation."

It may be mentioned that the specialized kind of jurisdiction to deal with such cases has been given over to the Administrative Division as a matter of deliberate policy; and the first half of that last sentence may be regarded as acceptance by the Minister Respondent that although this Court has never been asked to consider the inflation issue in the context of the Public Works Act the several decisions already mentioned as well as the cases under appeal have been correctly decided by the Division. The memorandum continues -

> "In the result therefore, in this case, the Respondent does not attempt to argue. that no attention should be given to the factor of inflation. Accordingly, Counsel for the Respondent is agreed that for the particular purposes of this case the Court may accept that provision should be made for inflation when assessing compensation in favour of the claims, and that the only issue before the Court is the correct means of giving effect to that factor."

Naturally counsel for each of the appellants has confirmed that this is their position as well. In this situation the question of principle as to whether provision is to be made for inflation should be left open because it may need to receive considered attention on some future occasion; and this judgment proceeds on the agreed basis concerning that point and for the purpose of finding the correct method of making the consequential adjustment to allow for the inflation factor within the statutory concept of full compensation.

The one claim. (which may be regarded as typical of the other) relates to 41.5 acres of land taken by proclamation in August 1975 for housing and motorway purposes, William Morrow, the owner, made an initial claim in respect of it amounting to $158,000 although he gave credit for a sum of $95,000 which had been paid to him on account on 29th May 1975

when he had given up possession. So that in the High Court the amount he claimed was the balance of $63,000. In addition he sought an adjustment against that balance for the factor of inflation assessed to cover a period from June 1975 until the date of payment of the balance due to him. There was also a further claim for interest at 7.5% per annum and for reimbursement of certain legal expenses. By the time the case came before the High Court for hearing agreement had been reached by the parties upon the value of the land as at the time it was taken and a balance of compensation amounting to $34,750 for that land value after deducting payments made on account.

The High Court had before it six possible approaches to the inflation issue. But before consideration can be given to the practical method of dealing with the matter it is necessary to say something about the reason and purpose of such an adjustment against the background of the statutory provisions for compensation in such cases as these. By reason of s.42 of the Public Works Act there is an entitlement to what is described as "full compensation" for the land taken. And despite the breadth of that phrase it was said on behalf of the Respondent that the basic concept of "compensation" is. something less than restitution: that it does not involve "complete replacement" as counsel put it, and that the adjective cannot alter or add anything to that concept. But we are unable to agree, either with the premise or the conclusion. In the ordinary use of language the nature of compensation involves rendering something equal to what has been lost. It is the provision of recompense: cf. Nelunkaloc Pty. Ltd. v. The Commonwealth [1948] 75 C.L.R. 495 per Dixon, J. at 571. And the word "full" has the added purpose of emphasizing that a claimant is entitled to receive the complete equivalent of that which has been taken away from him. It implies a direction that the entitlement must not be whittled down in any respect.

For present purposes the other relevant provision is s.29 of the Finance Act (No. 3) 1944. That section provides for the date to which the assessment of the land value must be related: "the. value of land shall be taken to be the amount which the land if sold in the open market by a willing seller on the specified date might be expected to realize". The "specified date" may be regarded for the purposes of these appeals as the date of acquisition in 1975. In parenthesis it should be mentioned that while the 1981 Act does not of course control the present claims it contains provisions (see ss.60 and 62) which are to the same general effect.

In Coomber v. Birkenhead Borough Council [1980] 2 N.Z.L.R. 681, a judgment delivered on 3 April, 1979, it was held by the High Court, when dealing as a matter of principle with the problem of inflation, that if the plaintiff concerned was "to be awarded full compensation, it must be a sum in 1979 money which puts him where he might reasonably have been expected to be if paid in 1974": at p.689. We are in general agreement with that statement and its implications since it appears to be made on the basis that s.29 of the Finance Act does no more than settle the time at which the land value is to be assessed (in terms of the willing seller/willing purchaser test) while leaving the controlling provisions of s.42 of the Public Works Act to ensure that the compensation when it is actually paid to the claimant in the form of a capital sum will be "full compensation". Indeed, that conclusion of the Court in Coomber is immediately preceded by two sentences which distinguish an award of interest for a delayed payment from the different need to make a fair adjustment for inflation and the decrease in the value of money. "Past practice", it is said, "has been to award interest. In our view, however, that is not the remedy." Then follows the sentence already quoted. And a little later the point is emphasized by the statement - . it is unreal to award interest on the fictional basis that he has lost income. What he has lost is the value that the land, or the money in lieu thereof, would have resulted in his hands today".

To the extent that there has been an earlier practice to resolve the inflation problem by an award of interest it has probably arisen from a confusion of two separate functions of the currency. On the one hand there is a practical and obvious advantage to a holder in having a fund of money in hand because of its immediate worth to him as a means of exchange. For that reason if the holder is not the owner but a borrower of the fund he will usually have to pay in the form of interest for the benefit it provides him. On the other hand, when the currency is applied as a convenient yardstick for the purpose of measuring the value of land or anything else this collateral but quite differentusethatis made of it will be reliable over a periodoftimeonly if it is truly a constant in terms ofitsowninherent value. Once its own purchasing power or the worth it has within itself is allowedto run free and become variable then any historicalassessment which has been made use of it to measure the value of something else must be up-dated to accord with the current worth of that earlier money assessment. If this is not done in such a situation as the one now under review the earlier figure will be inaccurate as a mirror of real value; and rights on the one side and obligations on the other will be left in a condition of imbalance. On the other hand when it is done no change is made to the 1975 land value nor to the true money equivalent which must be used to balance it.

All this is elementary enough but unfortunately even now the theory of the matter does not seem to have prevented the use of income approaches to remedy what clearly is a capital problem. As we have attempted to show, an income payment in the form of interest is entirely appropriate to take care of delayed access to and so the use of a capital sum that continues to be owed but is quite inappropriate as a means either of assessing or making up for what otherwise would be a capital shortfall due to inflation. So much is explained by Lord Wilberforce in the clearest terms in a short passage to be found in Pickett v. British Rail Engineering Ltd. [1980] A.C. at p. 151. After remarking upon a theory that "as damages are now normally subject to increase to take account of inflation, there is no occasion to award interest as well", he said: "I find this argument, with respect, fallacious. Increase for inflation is designed to preserve the `real' value of money: interest to compensate for being kept out of that `real' value. The one has no relation to the other. If the damages claimed remained, nominally, the same, because there was no inflation, interest would normally be given. The same should follow if the damages remain in real terms the same." Lord Salmon expressly agreed with that statement (at p. 158). We would repeat that where the nominal purchasing power of money falls by reason of inflation the rights and responsibilities of claimant and respondent in such cases as these are not varied by making an appropriate and fair adjustment to the nominal figure. When it is done neither of them gains or loses anything: all that has happened is that the money sum used to measure the unaltered earlier value of the land is made to reflect the land's true worth at that time and so the delayed compensation to be paid. In the Pickett case the same kind of point is made by both Lord Edmund Davies and Lord Scarman who have spoken of the fallacy in assuming that a payment is of greater value at the time of trial because it is increased for reasons of inflation than it would be had the assessment been made earlier (at pp. 164 and 173).

For the general reasons outlined we are satisfied that to provide for inflation in cases of the present kind what is required by s.42 of the Public Works Act is an adjustment to maintain an equivalent payment in terms of capital. It is necessary to provide payment of a sum certain in the sense not of the same nominal but faded money amount but in terms of real and actual value. As we say, that can only be achieved by ensuring that the value of the 1975 money figure is maintained by reference to what has aptly been described as "today's money": see for example Wright v. British Railways Board [1983] 2 All E.R. 698 per Lord Diplock at 700. In doing so at least the calculation will not be involved with any speculative attempt to peer into the future, as for example where damages are sought for lost future income; instead the present problem involves an historical situation

and an erosion which has already taken place in the worth of money and which is capable of actual measurement.

It has been mentioned that in the Coomber case the Court was critical of a past practice involving an award of interest in order to deal with the inflation factor. However, when it came to resolve the issue itself the chosen formula was no more than an interest calculation. A compounding figure of 10% per annum was considered to leave the claimant "fully compensated". No direct reason was given for dealing with the matter in this way although the approach may reflect an earlier statement. The Court has said that if the claimant were to be awarded full compensation it must be a sum "which puts him where he might reasonably have been expected to be if paid in 1974"; and that is then explained by the view that the matter had to be looked at subjectively, that is, by particular reference to what the claimant himself would have been likely to do with compensation provided at that earlier time. In that regard it is said: "He should not be given the benefit of hindsight by assuming in his favour he would have made the best use of such proper compensation as he ought then to have received". But if that kind of test was actually applied in the Coomber case to arrive at what clearly is an interest-type solution then we would simply remark that it has had the effect of diverting the Court from the principle it had already discussed. As a matter of economic theory it is certainly possible to build an inflation component into an interest calculation but not with any reasonable accuracy unless the level of current inflation has itself been independently measured; and as well it is an approach which tends to disguise the need under this head to ensure that what the claimant is to be paid is a money sum equivalent for what the land was actually worth at the earlier date.

When the present case was being dealt with in the High Court consideration was given to a submission that the problem of inflation should be the subject of "a completely subjective approach" and that it was necessary to ascertain from the various claimants what they individually would have done with the money. That argument was rejected by the Court for three general reasons. First: "to allow the subjective approach would enable claimants to now base their claims on hindsight and to claim uses of their money which would have returned the best investment over the period". The second reason is that to deal with the issue in such a way would involve an examination of intention in each individual case. And third, that this would inevitably lead to uncertainty prior to a hearing in Court and "seriously inhibit settlements of compensation claims". We would agree that those are good practical reasons for rejecting the argument apart altogether from the central reason of principle already mentioned. But although disapproval of the subjective approach was expressed by the Court in this way it then proceeded to consider what the claimants might have been able to do with any monies paid to them at the earlier time and in particular whether any amounts not expended on consumer items could have been invested in such a way as to leave them protected against depreciation by inflation. It is said:

> "What must be looked at are the avenues of expenditure which might have been open to claimants had their moneys been paid to them in 1975."

And then -

> "If the claimants had received their money in 1975 we ask, would they have invested it, or used it in some way which would have rendered it completely proof against depreciation by inflation as well as gain 2 per cent per annum as true interest for being out of their money? What sort of investment could have produced this result?"

On grounds that this was unlikely to have been achieved the judgment then proceeded to adopt the same general method of calculation used in the Coomber case in order to settle the compensation due to the respective claimants. In adopting the same calculation of 10% per annum compounded it was explained that an allowance of 9% had been made for the degree of "inflation proofing which might reasonably have been achieved by the claimants had they had their money in 1975" together with 2% to "represent true interest which, after tax was paid at 50'%, would leave 1%".

The other alternatives put before the Court were the use of a straight-out simple interest calculation; a modification of the Coomber method by increasing the interest rate before compounding to 13$%; the application to the capital amount assessed in 1975 money values of the consumer price index (with or without a supplement in the form of interest to provide for the lost use of capital); and finally reference to current property values at the time of the hearing. That last matter was properly regarded as inappropriate on grounds that the statute requires the value of land to be assessed as at the time of taking and accordingly it would be wrong to look at the changing value of land itself. Already we have given reasons why any form of interest approach is inappropriate. There only remains resort to such a statistical table as the consumer price index.

In discussion of that approach to the problem the High Court recognized that the method was advanced on the basis that it would give the claimants the equivalent in 1980 currency of the purchasing power of the amounts assessed as at the relevant date in 1975; but then it was said -

> "The fallacy in the arguments advanced in support of this approach is that it seeks to simply increase the value of money owing in 1975 by the amount of inflation as determined by the CPI whereas in fact the true purpose of compensation is to place the claimants in the position where they might reasonably have expected to have been if they had in fact been paid their monies in 1975."

In essence the second half of that sentence is then interpreted by reference to the observations of the Court concerning what was thought to be the inability of the claimants to have protected any earlier payment of capital against subsequent inflation. But with respect we cannot accept the fallacy because we are unable to accept the test provided in the second half of the sentence which is said to demonstrate it. The reference to the position the claimants might reasonably have been in if paid in 1975 is not intended to point to the position they could properly expect to achieve at that time, the only relevant time. Instead it is used to enquire where they would be by now had they received payment at the earlier time. So much is made plain by the explanatory statement already mentioned concerning the allowance "for inflation-proofing which might reasonably have been achieved by the claimants had they had their money in 1975" As the judgment makes plain, the Court was of the opinion that they would have been unable to fully protect any fund if it had been paid to them. But the enquiry is to find the money equivalent today of the 1975 land value and any use or investment of the amount which might have been possible following payment cannot affect the need to produce that fair equivalent sum.

Within the considerable evidence given in the case concerning the various alternatives put before the Court there are practical and logical reasons which support use of the consumer price index as a means of having the value of the land at the earlier time correctly reflected in today's money. There are other indices but we are satisfied that it provides a simple, an accessible and an adequate guide to the changing worth of money over a period; and already it has been given a conventional use for this purpose in the case of inflation-proofed -government bonds which protect the capital sum by direct resort to the consumer price index while allowing a supplement of 2% per annum as true interest. Evidence upon the point was given by Professor G. J. Schmidt, Dean of the School of Management Studies at the University of Waikato. He said -

> "If `full compensation' is to include compensation for `erosion of money', then there should be no assumption that the amount concerned would have been applied at time of taking in a particular way - for example, in investment in an attempt to derive income or a capital gain - and not in some

other way - such as purchase of a new house or a car or a vacation.

On this approach, it would be recognised that receipt of the additional moneys at the relevant time would have enabled the claimants to make purchases of goods and services of their choice, at prices ruling at that time. To be fully compensated for `erosion of money' the claimants should, therefore, be enabled to make an equivalent quantum of purchases, with equal freedom of choice, at prices ruling at the date of final settlement.

There is, in fact, no index of general purchasing power that is ideal, but the Consumer Price Index (CPI) is the best that can be proposed, and it is considered adequate for the purpose . . . To the extent that `full compensation' is concerned with compensation for `erosion of money' I consider that the CPI should be used for indexing."

We would accept that evidence. We would hold therefore that when there is a need to make an adjustment for inflation within the assessment of full compensation under the Public Works Act calculations should be based on the consumer price index.

There remains the question as to what provision if any should be regarded as appropriate in order to deal fairly with the matter of true interest: the payment to be made to the claimants because they have been kept out of part of the capital funds which they were entitled to receive and use in 1975. Obviously enough they ceased to have the use of their lands at that time and certainly the balance of compensation due in respect of that loss has remained outstanding. So they have had neither. As indicated, it was submitted on their behalf that in addition to a calculation which would use the consumer price index to adjust the capital sum to correctly reflect the real 1975 values, it would be necessary in fairness for them to receive an interest payment on the amount involved. It was pointed out by Professor Schmidt that if they were to receive protection against the eroding effect of inflation so far as the capital sum is concerned a payment for interest would need to be calculated at a rate which disregarded as a component the inflation risk faced by conventional lenders of money. In his view a true interest rate of 2% would be fair and appropriate provided that rate itself were indexed to provide for the fact that during the intervening years interest had not been paid. The rate suggested by Professor Schmidt is of course a low one but in cases of this kind we would accept it as sufficient provided the preceding adjustment for inflation has been designed to provide without compromise for that factor. Of course such an approach is precisely what is contemplated by the statutory requirement of full compensation which is contained in s.42 of the Public Works Act. In this regard the figure of 10% used by the High Court on a compounded basis to cover both the inflation factor and true interest needs to be compared with the evidence in the case that during the relevant period of approximately five years inflation alone was compounding at an average rate of 15% per annum. In any event it is not without interest that Professor Schmidt's figure of 2% put forward by him in December 1980 is precisely the rate adopted by the House of Lords two and a half years later as the basis of a fair true interest calculation once inflation has been taken care of (see Wright v. British Railways Board (supra)).

There were figures before the High Court which show that if the straight-out interest rate of 2% had been itself indexed against inflation for the relevant period then a series of annual adjustments would ifnally produce a figure of $5,049 rather than $3,707 (we think that last figure was intended to read $3,507). In our opinion there can be no less reason for providing in real terms for the interest payment to be made at the end of the period than the capital. In the ordinary way the lender of money receives the interest due to him at regular intervals, sometimes quarterly within each year but rarely at longer intervals than annually. So that some appropriate adjustment is needed to deal in the area of interest with the same factor of inflation as it affects this entitlement. However we think it should be possible to find alternatives which do not depend upon the somewhat complicated process of indexing the 2% rate from time to time and which allow a rather more direct calculation. Taking into account the relatively modest amounts that are likely to be produced in the interest part of compensation a fair and much more straightforward process would apply that same figure of 2% per annum to the capital amount of compensation due after adjustment of the nominal sum for inflation. We would adopt that alternative. In the present case it appears to produce an amount for interest of $7,449.

A final comment should be made concerning the opinion of the High Court that a deduction was needed in terms of the income tax principle discussed in such cases as British Transport Commission v. Gourley [1956] A.C. 185. The increased capital sum referable to the inflation factor cannot be affected by this principle since the amount is properly to be regarded as a capital and not an income payment. And whatever may be said about the incidence of income tax in so far as any true interest component is concerned it is not a matter which could be counted in favour of the respondent in such cases as this: see for example North Island Wholesale Groceries Ltd. v. Hewin (unreported C.A. 45/82 judgments delivered 6 December 1982).

We would allow the appeals and order reassessment of compensation in accord with the conclusions we express in this judgment. If the parties were to be unable to agree upon the practical result we think that each of the cases should be remitted to the High Court for reassessment on the basis outlined of the inflation factor on the one hard and interest upon the balance of compensation then found to be due on the other.

In accord with the decision of the maiority the appeals are allowed. There will be orders remitting each of the cases to the High Court on the basis proposed in that judgment should it happen that the parties concerned are unable to reach agreement upon the balance due in each case. The appellants are entitled to costs which are fixed together in the sum of $1,000 with reasonable disbursements and the travelling and accommodation expenses of both counsel.

IN THE COURT OF APPEAL OF NEW ZEALAND.

C.A. 124/81.

IN THE MATTER of the Public Works Act 1928

AND

IN THE MATTER of the Land Valuation Proceedings Act 1948

BETWEEN WILLIAM MORROW and WILLIAM JAMES GORDON MORROW both of Hamilton, farmers.

Appellants.

AND THE MINISTER OF WORKS AND DEVELOPMENT.

Respondent.

Coram: Woodhouse, P.
Somers, J.
Roper, J.
Hearing: 26th July, 1982.
Counsel: D. L. Tompkins, Q.C., and Mrs Ruth Wilson for appellants.
V. R. Jamieson for respondent.
Judgment: 7th December, 1983.

JUDGMENT OF SOMERS, J.

This is yet another case in which the effect of inflation has made it necessary to examine an area of the law which in more stable times gave rise to little difficulty.

Although there are two appellants it is sufficient to state the material facts about one for they do not differ in principle. The case shows that on 26 February 1975 Mr William Morrow entered into an agreement with the Ministry of Works and Development, presumably under s.32(1) of the Public Works Act 1928, permitting the Ministry to take certain farm land without complying with the provisions of ss.22 and 23(c)(iii) of the Act. The agreement must have left compensation to be determined under Part III of the Act. Mr Morrow was paid $95,000 on account of compensation on 29 May 1975 and the case indicates that the Ministry took possession of the land on 1 June 1975. The Proclamation taking the lands was made on 7 August 1975. A claim for compensation was first made on 26 February 1976. An amended claim was *made on* 16 November 1979 as follows:

> .. the sum of $133,396.20 as compensation for all loss arising out of the taking of the aforesaid land for the aforesaid public work which sum is made up as follows:
>
> | | $ | S |
> |---|---|---|
> | 1. 1.5 acres of land taken..... | 158,000 | |
> | Less Paid on account | 95,000 | 63,000.00 |
> | Adjustment for inflation from June 1975 to September 1979 (77.99%) - -- | | 49,133.70 |
> | Interest on $158,000 at 7.5% from 2nd June 1975 to 2nd December 1979 | | 21,262.50 |
> | | | $133,396.20 |
>
> In addition to the above the claimant also claims all legal expenses of and incidental to the taking of the said land to date, including those relating to any further proceedings in relation to this claim and any application made pursuant thereto.
>
> The claimant also claims interest at 7.5% from the 2nd December 1979 to the date of payment and a further adjustment for inflation from the 30th September 1979 to the date of payment."

Subsequently, on a date which is not specified, the claimant and the Crown agreed that the value of the lands taken as at the date of the Proclamation was $129,750, that is to say, $34,750 *more* than had been paid on account in May 1975. The remaining claims referred to in the claimant's amended notice, principally for adjustment for inflation and interest, were heard in the Administrative Division of the High Court at Hamilton on 8 and 9 December 1980. The Court comprised the Chief Justice and two members, both valuers, appointed pursuant to the provisions of s.48A of the Public Works Act 1928 and ss.3 and 28 of the Land Valuation Proceedings Act 1948. Judgment was given on 11 December 1980.

The High Court stated the issue in this way -

> "In essence, the Court is asked to determine how the claimants are to be compensated for being out of part of their compensation moneys (for the land) for varying periods of approximately five years."

Evidence was given on behalf of the claimants of the movement of the Consumer Price Index between June 1975 and September 1980. The relevant base index numbers, were said to be 695 and 1438 and demonstrative of an average rate of increase of 15% compounded. That Index is published by the Department of Statistics as authorised by ss.4(1) and 14(a) of the Statistics Act 1975. As an accurate measure of inlfation it is open to the criticisms mentioned in Lowe v. Commissioner of Inland Revenue [1981] 1 N.Z.L.R. 326, 351. But it affords a sufficient guide for present purposes.

The evidence for the claimants postulated a compensatable loss arising from inflation and referred to six possible modes of assessing such loss. They were - (1) An additional sum being the product of 10% p.a. compound of the unpaid land value. This is what was awarded in Coomber v. Birkenhead Borough Council [1980] 2 N.Z.L.R. 681; (2) The same method but using a compounding factor of 13$% - the additional 3,'%o corresponding to the increase in the interest rate provided by the Judicature (Interest on Debts and Damages) Order 1980 (Serial No. 1980 (54) since Coomber was decided; (3) Consumer Price Index. This is to bring to present purchasing power the balance of the land value as at 1975 by applying to the latter the *percentage* increase in prices shown *over* the period by the Index; (4) This is a variant of (3) providing additionally for interest on the land value at 2% per annum for loss of use of the land value such interest being itself annually adjusted by reference to the Consumer Price Index; (5) Property Value. Land having been taken reference should be had to increases in land values since the taking to determine what is full land value; (6) Interest. The suggestion under this head is that to the extent a claimant has had to borrow money to take the place of that which he has not been paid adjustment should be made in the shape of interest paid such interest being adjusted by the Consumer Price Index.

The High Court determined that the claimants were entitled to receive, in addition to the agreed land value, a further sum representing 10% p.a. of the land value compounded. It reached this figure by allowing 9% annually as representing the effect of inflation plus a further 1% p.a. compounded as interest, the latter ifgure being a `true rate' of interest at 2% p.a. less a notional tax of 50%.

It is evident from the determination of the High Court that it accepted that loss of purchasing power of money was a compensatable item. That the judgment contains no discussion of any juridical basis for that conclusion is not surprising for on that and on the mode of assessment the Court followed the decision in Coomber v. Birkenhead Borough Council [1980] 2 N.Z.L.R. 68. In that case it was held that while a claim based on inflation was not within the scope of recognised awards for interest or disturbance nevertheless such a claim was meritorious in the circumstances and that the words "full compensation" in the Statute warranted the award of "a sum in 1979 money, which puts [the claimant] where he might reasonably have expected to be if paid in 1974". (The earlier of those dates is the date of the proclamation, the later is the date of hearing).

Both in the High Court and in this Court the appellants contended for the fourth approach - that both the erosion of the value of money and its loss of use by the claimants should be compensated. On this approach the first is not put as an element of an award of interest or as a sum added to the unpaid land value but in substance as a revaluation of the agreed balance of the land value as at 1975, viz., $34,750. The Crown in the High Court submitted that simple interest on the unpaid compensation moneys was appropriate. The Crown has not cross-appealed and expressly concedes that factors of delav in payment and inflation can affect the assessment of full compensation and identifies the issue for determination as the correct means of giving effect to an established inflation.

The question of whether, and if so how, inflation is to be reflected in an award of compensation under the Public Works Act is one of law. It follows that the Crown concession is of the same character. As this is a civil case and the legal concession is by reason of the decision in Coomber v. Birkenhead Borough Council [1980] 2 N.Z.L.R. 681 ex facie plausible I think the case may be disposed of upon the agreed footing. But it will of course be no authority for the proposition that inflation is comoensatable under the Public Works Act for the point has been neither argued nor determined. In the event, as will be seen, the issue of how inflation is to be compensated necessarily involves some excursion into the conceded matter.

The starting point is obviously the statute. It is the Public Works Act 1928 for the Act of 1981 has no application - see s.419 of the Public Works Act 1981. Section 42(1) of the Public Works Act 1928 provided -

> "Every person having any estate of interest in any lands taken under this Act for any public works, or injuriously affected thereby, or suffering any damage from the exercise of any of the powers hereby shall be entitled to full compensation for the same from the Minister or local authority, as the case may be, by whose authority such works may be

executed or power exercised."

It repeats corresponding provisions in the enactments of 1882, s.27; 1894, s.34; 1905, s.35(1); and 1901, s.35(1) and is similar to the original enactment s.33 of the Public Works Act 1876. So the words "full compensation" have a long history.

The concept involved in the term compensation is well understood. The owner of land taken receives the equivalent in money. There is no diminution in the amount of his property - it has changed its form by compulsion from land to money. See New Zealand and Australian Land Co. v. Minister of Lands (1895) 13 N.Z.L.R. 714; Russell v. Minister of Lands (1898) 17 N.Z.L.R. 241, 251; In re an Arbitration between Lucas and Chesterfield Gas and Water Board [1909] 1 K.B. 16, 29; Tawa Central Ltd. Y. Minister of Public Works [1934] N.Z.L.R. 341, 847-849 per Myers, C. J.

Does the word "full" which describes compensation add to what may be awarded? As the statute now stands I doubt whether it does more than emphasise that which is inherent in the word compensation itself. It was mentioned in Russell v. Minister of Lands at 253-4 as justifying a liberal estimation - the Court thought it might warrant an additional 10%- Parliament put an end to that by s.29 (1)(a) of the Finance Act (No. 3), 1944. But one of the questions before the Supreme Court in Russell was whether the Compensation Court had authority to award "such further sums of money as will fully compensate the claim ants for the expenses and loss from delay which in the judgment of the Compensation Court will be incurred in reinvesting the moneys awarded as compensation." Pennefather, J. delivering the judgment of the Full Court said -

> . compensation to the dispossessed owners must include compensation for their expense and loss from delay which in the judgment of the Com pensation Court will be incurred in reinvesting the money awarded." (254).

That I think must in substance be interest. The cases on that tonic are reviewed in Marshall v. Commissioner of Texas [1953] N.Z.L.R. 335. The weight of opinion is that the provisions of the Public Works Act 1928 as to full compensation authorise an a dried sum for loss or damage occasioned by the claimant being without both land and compensation. There was dis cussion in Marshall's case as to whether interest eo nomine can be awarded. There seems little substance in such issues of nomenclature.

The matters for which compensation is provided are set out in s.42. Some provisions affecting, its measure, but not relevant to this case are contained in s.81. 3) 1944 provided Section 29(1) of the Finance Act (No. that in determining the amounts of compensation to be awarded the tribunal was to act in accordance with five rule,. Of these the rule relevant to the present case is (b) -

> "The value of land shall. subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller on the specified date might be expected to realise:
>
> Provided that the provisions of this paragraph shall not affect the assessment of compensation for any matter which is not directly based on the value of land and in respect of which a right to compensation is conferred under the principal Act or any other Act:"

(The specified date relevantly means the date of the Proclamation.)

In the face of that legislative direction it is obviously not possible to value land at other than the date of its taking. Can the amount so ascertained itself be revalued or reappraised? For the appellants' submission to succeed that question must be answered in the affirmative.

It is no doubt true that nominalism as a theory is under stress today. Denning L. 1. spoke of it as a verity in respect of domestic transactions in Treseder-Griffin v. Co-operative Insurance Society Ltd. [19561 2 Q.B. 127, 144 and in In re United Railways of Havana and Reglia Warehouses Ltd. [1961] A.C. 1007, 1069-70 considered the international stability of sterling justified the proposition that a judgment in England could only be given in that currency. Fourteen years later his view of the stability of English currency had changed: see Schorsh Meier G.m.b.H. v. Rennin [19751 1 Q.B. 416, 424. Now in a proper case judgment can be entered (in England at least) in a foreign currency: Miliangos v. George Frank (Textiles) Ltd. [1976] A.C. 443. The Despina R. [1979] A.C. 685.

The recognition of the effect of currency values in those cases is of no real assistance in the instant case. It is one thing to say that a procedural rule requiring English judgments to be given in sterling must give way when such currency has lost that international stability which supported its retention. It is a wholly different thing to take the nominal amount of money at which land was valued at the date required by the Public Works Act and to "revalue" that sum by according to it a greater nominal figure.

There are other cases in which the Courts have remarked upon the effect of inflation and been able to reach conclusions which have avoided injustice. Thus damages in lieu of specific performance to which a purchaser is entitled have been assessed at the date of the hearing: Wroth v. Tyler [1974] 1 Ch. 30; damages to property have been assessed at the cost of repair at the date of hearing; Dodd Properties Ltd. v. Canterbury City Council [1980] 1 W.L.R. 433; damages for personal injuries in those jurisdictions where such actions are permissible are assessed at the date of hearing and the calculation of damages for future losses has the effect of making some allowance for inflation by adopting a low discount rate: see e.g. Cookson Y. Knowles [1979] A.C. 556; Todorovic v. Waller (1981) 37 A.L.R. 481; and in the field of compensation for compulsory taking the House of Lords has held under the English legislation that value may be assessed at a reasonable reinstatement date and not the date of the notice to treat: Birmingham Corporation v. West Midland Baptist Association [1970] A.C. 874.

But there are no cases of which I am aware in which a sum of money payable has been increased to a larger nominal sum because of the depreciating effect of inflation between the date of assessment and actual payment. The variable in such situations has proved to be the date of assessment of the sum payable - a variation which the rule as to assessment contained in the Public Works Act precludes in the instant case.

In Miliangos v. George Frank (Textiles) Ltd. [1976] A.C. 443 at 469-470 Lord Wilberforce remarked that in a proper case a judge-made law might be re-examined and given a new direction referring to the Birmingham Corporation case as an example. In each case the assumption of the stability of money which had supported earlier rules was no longer true. Some limits were suggested to changes to judge-made law - where the rule is so deeply entrenched as to infect the whole legal system or the choice of a new rule involves more far-reaching research than courts can carry out. The present case scarcely involves judge-made law: to the extent it does I would consider the first of the restraints as wholly precluding the revaluation here sought.

No reason is suggested, save for the description of compensation as "full", why the valorisation sought by the appellants should not apply to any case of damages or debt or even to the price of land in a vendor's action for specific performance or in any case where a purchase price is not paid on the contractual date for payment. Nominalism here is too deeply entrenched in the law. The attack on it was rejected in Lowe v. Commissioner of Inland Revenue [1981] 1 N.Z.L.R. 326 on similar grounds and was rejected by the High Court in The Commonwealth v. Milledge (1953) 90 C.L.R. 157, 162-164 and 168. I would reject it here.

Direct revaluation of the sum found for land value as at 1975 not being possible the question remains whether the effect of inflation may be allowed for by way of some other added sum.

Assuming that there is no or only a minimal risk of loss of capital or non-payment (which is the instant case), interest in times of stability is compensation for loss of use of money and in inflationary times includes a return for the loss or risk of loss in real value due to that factor. So in times of inflation interest rates

increase. This hardly needs reference to authority but is mentioned by Lords Wilberforce and Scarman in Pickett v. British Rail Engineering Ltd. [1980] A.C. 136, 151, 173, is referred to in Haldane v. Haldane [1981] 1 N.Z.L.R. 554,565, 571, in the Australian cases of Pennant Hills Restaurants Pty. Ltd. v. Bartell Insurances Pty. Ltd. (1981) 55 A.I.J.R. 258 and Todorovic v. Waller (1981) 37 A.L.R. 181 and more recently in Wright v. British Railways Board [1983] 3 W.L.R. 211 (a case concerned with interest for loss of use of damages).

If the appellants' case be put in terms of interest it requires inclusion of the actual sustained loss of value of their money plus recompense for the lass of its use. Subject to the qualifications inherent in the Consumers Price index or other mode of ascertainment the present case is concerned with a known or ascertainable diminution in value due to inflation. Normally in the assessment of damages actual events, even though occurring after the breach of contract or date of the tort, will not be ignored: See e.g. Curwen v. James [1963] 1 W.L.R. 748 Re Bradberry [1943] Ch. 35, 42. It is this aspect of the present case which has given me the greatest difficulty.

In the end I have reached these conclusions. To allow the appellants total recovery of the ascertained or ascertainable loss of value since 1975, whether under the name of interest or as fulfilling compensation, is but to do indirectly that which cannot be done directly. An allowance of that sort has never to my knowledge been made in cognate cases of judgment in debt, damages or price and there is no adequate reason why land compensation cases should stand on any different footing. The novelty of such a course seems to have been recognised in Canada - see the article Compensation for the Lost Value of Money: A Canadian Proposal by M. R. Grant Hammond in (1983) 99 L.Q.R. 68.

In my judgment the relief to which the appellants were entitled was interest at the ordinary commercial rates payable on first class securities such as first mortgages, in each year since the sums in question ought to have been paid. Those rates may themselves be expected to take account of the only real risk namely that of loss of value. What those rates may have been at the relevant times is a matter of evidence - they may have reached 15% p.a. or even higher. Such interest may not correspond with the actual loss of value plus return for loss of use for the interest rate is a commercial estimate for the future. But it will at least be equivalent to that which the appellants' capital may have earned had it been paid on the date of taking.

Two other matters may be mentioned. First I do not consider the present a case for compound interest. The occasions for an award of compound interest are properly to be confined to cases of fraud or actual commercial use of the principal by the person to be condemned to pay such interest.

Secondly it seems clear that any sum awarded the appellants over and above the 1975 land values will, by whatever name it is called, be taxable in their hands - cf. Marshall v. Commissioner of Taxes [1953] N.Z.L.R. 335. Accordingly even if the principles enunciated in British Transport Commission v. Gourley [1956] A.C. 185 are applicable in New Zealand - see the reflections on that case in North Island Wholesale Groceries Ltd. v. Hewin [1982] 2 N.Z.L.R. 176 - no ground would exist to deduct income tax from the interest content of the amount payable by the Crown in the present case.

What should happen to the present appeal? The appellants cannot in my view recover on the basis they desire. They were entitled to simple interest as the Crown contended. The Crown has not appealed. Yet the award which I consider ought to have been made may in fact be more than the appellants have been awarded.

In that state of affairs I would afford the parties an opportunity to make submissions as to the order which should be made. The appellants should in any event pay the costs of the appeal.

VALUERS REGISTRATION BOARD

Valuer Reprimanded Following Inquiry into Conviction on Indictable Offences

HEARD BEFORE: Mr L. M. Sole (inquiry Chairman), Messrs D. J. Armstrong and M. R. Hanna.

DATE OF HEARING: 6th July, 1983.

In a decision given on 27 October, 1983 the Valuers Registration Board reprimanded a registered valuer who they found guilty of charges brought under section 31 (1) (a) of the Valuers Act arising from his conviction of indictable offences.

The Hearing was held to investigate charges laid by the Valuer-General in terms of section 32, as follows:

1. That under section 31 (1) (a) of the Valuers Act 1948 the Valuer had been convicted (subsequent to the date of his registration as a Valuer under the Valuers Act 1948) of indictable offences punishable by imprisonment for a term of two years or upwards, namely:

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