

# VALUERS' JOURNAL

JUNE 1989

# NEW ZEALAND INSTITUTE OF VALUERS

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R S Gardner (1977)	K J Cooper (1981)	M E L Gamby (1989)
R L Jefferies (1979)	S L Speedy (1983)	

# The New Zealand VALUERS' JOURNAL

JUNE 1989

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Contributions with a biographical note of the author should be typewritten and sent to the Editor, PO Box 27146, Wellington, who reserves the right to accept, decline or modify material. Views expressed by the editors and contributors are not necessarily endorsed by the New Zealand Institute of Valuers. Copies of manuscript should be retained by the author as they cannot be returned. Deadline: two months prior. Business letters, subscriptions and advice of changed address should be sent to the General Secretary. The mode of citation of this volume of *The New Zealand Valuers' Journal* is 1989 N.Z. Val. J. June 1989 (page).

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# Editorial Comment

## The Prudent Person and the Independent Valuer

Recent changes in legislation affecting mortgage lending and valuation procedures on real property have focussed attention on two previously rather obscure figures – the Prudent Person and the Independent Valuer.

The Trustee Amendment Act 1988 amends substantially the Trustee Act 1956 and introduces the concept of the Prudent Person to the responsibilities of the Trustee. The Prudent Person approach was developed in the American Courts from the 1830s in a case involving Harvard College. The case arose out of an action by two charitable organisations against Trustees of an estate which had been left on Trust to pay income to a widow with the capital passing to charities on her death. The charities sought to recover from the Trustees the amount of losses sustained on investments in shares of insurance and manufacturing companies. The Court decision was in favour of the Trustees and stated the following principle.

"All that can be required of a Trustee to invest, is, that he shall conduct himself faithfully and exercise a sound discretion. He is to observe how men of prudence, discretion and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds considering the probably income, as well as the probable safety of capital to be invested."

The amendments to the Act have widened the responsibilities of the Trustee by removing the list of authorised Trustee investments. The Trustees may now invest in a much wider range of investment within the discretion of the prudent person but the Trustee has a duty of care to ensure that the proposed mortgagor will have a foreseeable ability to repay the mortgage advance within the specified period.

Contrary to some opinions expressed, however, the changes in legislation do not appear to require that the valuer should, as part of the valuation process, ascertain that the proposed mortgagor has the foreseeable ability to pay. But the responsibilities of the valuer have been widened by the amendment with the removal of statutory recommendations of valuations margins on lending limits. The valuer must now make sound judgement on what margin of the valuation should be recommended for mortgage lending taking into account all factors involved in the property and the valuer can no longer rely on the former statutory limit as a "fall-back" position.

The Solicitors Nominee Company Rules 1988 and

the Securities Act (Contributory Mortgage) Regulations 1988 focus attention on the Independent Registered Valuer. The rules require a declaration of independence in the report by the valuer. This is considered to be a timely change in emphasis as the uncertainties in the commercial real estate market since the October 1987 share market crash, the publicity given to the unsatisfactory professional performances of a few valuers and the more recent collapse of a number of large property investment companies in New Zealand has surely made mortgage lenders more aware of the need to entrust the valuations of properties to independent valuers with appropriate expertise. There can be no doubt that the independence of a valuer together with relevant experience for specific valuation assignments should be the criteria used by mortgage lending authorities in the selection of a valuer for any instruction. The dangers of selecting a "tame" valuer or one who has a reputation for particularly high or particularly low valuations to suit specific instructions must now be apparent to all mortgage lenders. A valuation carried out by an independent valuer should assure mortgage lenders and trustees that the instruction will be carried out without "fear or favour" for the ultimate benefit and protection of all parties.

The fact that the Prudent Person and the Independent Valuer have been brought into focus at about the same time and in a period of considerable uncertainty in the real estate market has prompted some commentators to suggest that prudence should also extend to the valuer. However it would seem preferable that Trustees and mortgage lenders should expect competence rather than prudence from a valuer.

It is considered that in the interests of their practice and their profession, all registered valuers should make themselves thoroughly familiar with these recent changes in legislation and implement the statutory requirements into their daily practice. It can only be assumed that Trustees and lending authorities acting as prudent persons are much more likely to instruct an independent registered valuer who they know is fully informed of the statutory requirements and who provides valuation reports that fully comply with all facets of the statutes and rules. *Trevor Croot.*

Valuers are competent to appraise loan proposals under the "Prudent Person" rules. If we don't accept this challenge, then others will.

W O Harrington. FNZIV.

The Trustees Executors and Agency Co of NZ. Ltd.  
Dunedin.

## Jubilee Issue of Journal

Sir,

As I am in semi-retirement (90% retired), I have sufficient time to peruse numerous periodical publications and have found the New Zealand Valuer's Journal very good in all respects.

But until receiving the March Jubilee issue I had not felt it necessary to write: now I do to congratulate the Editor and the Jubilee Issue Editors on an excellent job resulting in an interesting, impressive, dignified (but not dull) publication. You may well be proud of the Institute, its members and its standards. I share that pride.

All good wishes for the next fifty years and beyond.

John Powdrell.

*Editor's note: John Powdrell was editor of The New Zealand Valuer from 1966 to 1968 and then moved to practice in Sydney, Australia where he now lives in semi-retirement.*

## Trustee Act Amendment

Sir,

I can understand the apprehension some Valuers must feel towards the extra responsibilities now placed upon them by the Trustee Act Amendment.

No longer is it simply a matter of compiling a five or six page report, devoting half a page to some obscure mathematical calculations to arrive at a C.M.V., simply stating that 66.6% of my valuation is OK for a loan, throwing as many disclaimers as one can think of at the client and then pocketing a nice little fee for a task that even a Real Estate Agent could do.

The Trustee Act Amendment now places a much greater responsibility on the Valuer. Contrary to the comments expressed in the General Secretary's newsletter, I believe that Valuers are competent and are capable of investigating an applicant's ability to service. To suggest that Valuers should opt out of that responsibility is doing a great disservice to our profession.

Certainly there are some situations (e.g. residential homes, bare land) where cash surplus for debt servicing cannot be easily calculated but the old rule of thumb of 25% to 30% of gross income is still a fairly safe guideline.

Valuers must not overlook the fact that the instructing Trustee must be prepared to advise the Valuer of the terms upon which it is intended to loan the funds. The Trustee should, as a matter of course, obtain from the applicant details of any prior or subsequent borrowing and other charges. Ideally, all this information should be supplied to the Valuer at the time of instruction. If not, the Valuer must ask for it. If still not forthcoming then, and only then, might the Valuer have grounds to disclaim partial responsibility for his/her recommendation.

Few rural Valuers will have any problems. Most accept budgetary and/or accounts analysis as part and parcel of the appraisal package. Urban and commercial Valuers, who it seems commonly use a capitalisation approach, should likewise find little difficulty in extending their calculations to arrive at a cash surplus margin for debt servicing.

The Trustee Act Amendment is now commonly referred to as "The Prudent Person" approach. Such an approach is both timely and appropriate for present-day economic conditions. The test to both Trustees and Valuers should always be "How much of my own funds would I lend to this mortgagor on this security for the term and the conditions of this loan?"

## Waitangi Tribunal

Sir,

Opinions may differ concerning the merits of the Waitangi Tribunal. Regardless of the pros and cons there seems to be one unfortunate flaw in the legislation governing the process of making claims for alleged past injustices.

The Treat of Waitangi Act 1975 (as amended in 1985) established the Tribunal to hear and make recommendations to the Crown on claims by Maori New Zealanders that they might have been prejudicially affected as a result of government legislation, policies or practices instituted at any time from February 6 1840.

The unfortunate flaw, it is submitted, lies in there being no ultimate deadline for the submission of claims relating to the past and known to exist at the date of the Amending Act in 1985. There have been suggestions that claim might follow claim...

The then British Labour government, by means of the Town and Country Planning Act 1947, nationalised all property development rights. The same Act recognised an entitlement to compensation for owners deprived of the value of development potential. The point about this nationalisation and the Waitangi Tribunal is that the English Act set a terminal date for the lodgement of claims to the Central Land Board for compensation. Any property owner who felt entitled to compensation had to lodge a claim by midnight on June 30 1949. This was approximately 23 months after the Act came into force.

Failure to lodge a claim, however sketchy, by the specified date meant that no compensation was claimable.

Once all claims were lodged they were negotiated by valuers and, if justified, were quantified and agreed. This process set the total amount of all the claims for the whole country. It was intended as a once and for always exercise. Either you had submitted your claim in time, or you had not. If not you automatically forfeited your rights.

Surely the claims upon this nation through the Waitangi Tribunal should also be placed into a current or future time frame as well as a past one? Surely there must be a deadline beyond which claims relating to the distant past should no longer be entertained? Such a deadline may well increase the likelihood of a flood of claims in the present. But, equally, it would put a stop to claims relating to the past being submitted for ever and ever without end.

The tribunal also has functions which are of a continuing nature and it is not proposed that its jurisdiction be restricted in respect of these, or that claims arising out of present or future actions be constrained. The suggestion is only that when the period was extended backward to 1840 then there should also have been a forward time limit on the submission of such claims. This can still be done by the legislature and should harm nobody.

This nation has to stop looking backward. We cannot afford the consequences either financially or emotionally. Legitimate claims must be recognised, assessed and settled. Justice must be done and be seen to be done. At some time, sooner rather than later, we have to close the books: we need to know where we stand. All of us.

W K S Christiansen,

Associate Professor of Property Administration,  
School of Architecture, University of Auckland.

The John M Harcourt Memorial Award Committee comprising the President and the two Vice-presidents, in terms of the rules governing this Award, have pleasure in announcing the bestowing of this Award on: MICHAEL !EVAN LEIGH GAMBY a Fellow of the Auckland Branch of the New Zealand Institute of Valuers.

The Award Rules identify the term "outstanding service to the profession" as being the principal criteria for this Award.

The Award committee is unanimous in their view that Evan Gamby has indeed rendered outstanding service to the profession as Editor of the *New Zealand Valuers' Journal*.

Evan. was Assistant Honorary Editor between March 1973 and June 1974. He took up the position of Honorary Editor from March 1982 and continued in that capacity up to and including the September 1988 issue of the *New Zealand*

*Valuers' Journal* - a period of some seven and a half years, or 30 quarterly journals.

A very substantial contribution made by Evan is evidenced by the continued enhancement of the Journal in terms of content, presentation and format to the current point where it is a well-respected professional journal with a wide circulation outside of the profession as well as to all members of the New Zealand Institute of Valuers. Evan was elevated to Fellow of the Institute in April 1986 and full biographical details are contained within that citation

which was published in the June 1986 *New Zealand Valuers' Journal*. He is currently a Director of Robertson Young Telfer (Northern) Limited. He continues his association with the Journal as a member of the Editorial Board.

The Award Committee is satisfied Evan Gambys award - the eighth recipient of the John M Harcourt Memorial Award.

## Citations for fellowship

### Guy William Hardy Scholefield

Guy Scholefield is a Registered Valuer and Farm Management Consultant based in Warkworth, who is currently Chairman of the Auckland Branch.

He was born on 24.1.1945 from a Southland farming background and completed a Diploma in Valuation and Farm

Management at Lincoln College in 1969, beginning his valuation career in the Valuation Department in Tokai before moving to Takapuna.

He was admitted to the Institute as an Intermediate member in 1970, obtained Registration in 1971 and was advanced to Associate status in 1973. He joined Ray Hollis, a rural valuer and farm management consultant at Weisford in 1978, forming a partnership, Hollis & Scholefield and opening an office in Warkworth, where he has established a very high reputation as a skilled and capable primarily rural, but also urban, valuer.

He is well respected in the local community as a leading valuer and has been a member of the Warkworth Rotary Club for many years. His practice is primarily in the Rodney County but he has carried out valuation assignments as far afield as South Auckland and the Bay of Islands. He is also in demand as a farm management consultant, having also an interest in a horticultural partnership, at Point Wells specialising in nashi (asian) pears, squash, and kiwifruit.

Guy is well respected by all members of the Auckland Branch and many city firms refer rural (and local urban) work in his direction, knowing his independence and professional attention can be relied upon.

He is currently the longest serving member of the Auckland Branch Committee, joining the committee in 1982, serving

mainly on the town planning and new legislation sub-committees, becoming Vice-Chairman in 1988.

He and his wife, Shirley, have two children, and he is a keen and competitive sportsman, having played squash competitively and more recently moving to tennis, but interested in all ball sports including soccer.

To recognise his attainments in the profession, his services to the Auckland branch over a long period and for the esteem in which he is held both in the profession and the Warkworth community, the members of the Branch unanimously endorse his elevation to the status of a Fellow of the Institute.

### Trevor James Croot

Trevor Croot is a director of the Dunedin practice of Robertson Young Telfer (Otago-Southland) Limited.

Trevor was born in Dunedin in 1942 and educated at Otago Boys High School. After completing an apprenticeship in carpentry he joined the Valuation Department as a valuer in

1965 and completed studies through N Z Technical Correspondence Institute for Valuation Professional qualification, gaining registration in 1972.

Trevor commenced public practice in 1973, being employed as a valuer with N & E S Paterson Ltd, real estate agents and valuers, then in 1976 joined Kevin Davey to commence operating as the partnership of Croot & Davey. The partnership practice was merged with the practice of A P Laing in 1987 and began trading as a private company under the name Landco Appraisal Ltd. This company, which has recently joined the Robertson Young Telfer Group of Companies, now trades under

the name of Robertson Young Telfer (Otago-Southland) Ltd.

Trevor was first elected to the Otago Branch Committee in 1973 and has served continuously on the committee since that time.

He also acted as a branch examiner for the Institute urban practical and oral examinations from 1975 through to the final examination for candidates in 1986. Trevor will have completed two years as Chairman of Branch Committee in January 1989. In August 1988 Trevor was appointed Editor of the *N Z Valuers' Journal*.

Public duties have included involvement with the Parent Teachers Association at Mornington Primary school for a period of six years, serving a term of two years as Chairman. Trevor was also elected to two terms on the School Committee at Mornington, serving as Chairman for one of the two-year terms. An involvement in Jaycees for a ten-year period with the Kaikorai Chapter led to an strong interest in debating, and the position of secretary for two years.

Trevor and his wife Jan have one son and two daughters. Recreation activities involve a keen interest in tramping and other outdoor pursuits, particularly gardening and house renovations.

Trevor has earned the professional respect and high esteem of his fellow valuers in the Otago Branch. His considerable contribution to the profession over the years is greatly valued and in return the Otago Branch Committee unanimously supports his nomination for advancement to a Fellow of the Institute.

### Edward Thomas Fitzgerald

Ted Fitzgerald was born in Gisborne in 1944. His valuation training started at Lincoln College where he graduated with a Diploma of Valuation and Farm Management in 1966.

Ted then began seven years in commerce, entering the valuation profession during 1972.

ation profession during 1972.

In 1976 he became dual qualified and entered into practice in Timaru, establishing Fitzgerald and Associates. This practice involves a wide variety of valuation work, including urban and rural.

Ted was elected onto the local Committee during 1977 and became Chairman during 1981 and 1982. He was elected to Council in 1985 where he currently represents the South Canterbury Branch. He is also presently a member of the South Canterbury Valuation Tribunal.

Ted is involved in NZIV Services, where he is presently Chairman. He has spent a considerable amount of time and energy developing computerised facilities for the New Zealand Institute of Valuers through NZIV Services.

Other activities Ted has been involved in, in Timaru, include Rotary of which he is a Past President of the Timaru North Rotary Club.

Ted has always taken an active interest in the affairs of the Institute, both at a local and national level, his contribution and effort have been thoroughly appreciated, and the South Canterbury Branch Committee, unanimously support this recommendation for Ted Fitzgerald's advancement to the status of Fellow of the NZ Institute of Valuers.

### Peter John Cook

Peter Cook is joint managing director of W E Simes & Co Ltd Christchurch, a Christchurch real estate firm with a strong valuation division.

Born in Christchurch in July 1941, Peter Cook was admitted to the Institute of Valuers in June 1976. He was registered as a valuer a short time thereafter and became an associate in September 1976. He qualified academically with Val. Prof. (Urban).

Peter was educated at Christchurch Boys High School and commenced his working career with a stock firm in Christchurch. He soon rose to the ranks of a stock agent for Pyne Gould Guinness Ltd servicing the North Canterbury district. Along with a partner he took over ownership of W E Simes & Co, in 1970.

Peter Cook is currently immediate Past President of the Real Estate Institute of New Zealand, having been National President during 1987-88. He is a Fellow of that Institute and a past board member of the Christchurch Multiple Listing Bureau. He is also a member of the Board of the Housing Corporation of New Zealand and is well known nationally in that capacity.

Outside of the profession, Peter is a past Vice President of the Canterbury/Westland Branch of the Crippled Children's Society. He is married with four daughters aged between 13 and 22 years.

Peter has always been a strong supporter of the Valuers Institute and was on the Branch Committee in the Canterbury/Westland Branch for about four years. He stepped down just prior to becoming President of REINZ so that he was able to devote his full energies to that task.

He is held in particularly high regard in the Branch by his fellow members and is often called upon to act as Umpire in arbitrations due to his impartiality, fairness and competence. He acts personally as a valuer for an impressive client list and is widely respected by the business community in Canterbury. He is also a leading real estate auctioneer.

The Canterbury/Westland Branch is unanimous in their view that Peter Cook justly deserves advancement to Fellow of the Institute.

### Graeme Kirkcaldie

Graeme Kirkcaldie is known to all Councillors having served on Council committees for a number of years and for the past fifteen months representing the Wellington Branch as its Councillor.

The nominee first gained student membership of the New Zealand Institute of Valuers some 22 years ago upon appointment to an assistant valuer in the City Valuer's office of the Wellington City Council. He commenced studying for the NZIV Urban Professional examination successfully completing that qualification in 1971. His experience at that time ranged over a diversity of valuation and property matters relating the City affairs and equipped him well

for formal admission to the Institute in early 1972 and enabled his almost immediate registration as a valuer in June of that year. Graeme left Council to join a city valuing practice, later forming his own partnership with a Wellington colleague and some three-and-a-half years ago joined the Darroch valuing group as an associate partner.

His contribution to Branch affairs commenced in the early 1970s as student representative on the Branch committee and later as a full and active member through the early 1980s. He was accorded Associate membership on 1972. In 1981 Graeme was invited to serve on the publicity and public relations committee of the Institute and two years later assumed the chairmanship of this important Council Committee.

The work of this committee expanded in a number of important directions at a time when both the Institute and all the professions were seeking a higher public profile; a number of the measures which he initiated have enabled the Institute to sell itself to both its own membership and the public. This has often involved an enormous personal input and proven time consum-

ing in terms of dealing with consultants, the media etc.

With the close ongoing relationship between subcommittees and the Executive, it was almost inevitable that Graeme would be co-opted onto the Executive committee and Council ratified that appointment in 1986. His desire to relinquish direct active involvement in publicity affairs is consequent upon his being elected as Branch Councillor for Wellington in February 1988.

Graeme's influence and meticulous devotion to detail are evident in all tasks which he assumes and his relationships with colleagues, the industry and his inter-professional associates first-class. He has been a good ambassador for the profession both at Branch and national level and participated in the organisation of a number of very successful Branch and national seminars.

Graeme Kirkcaldie is regarded by his colleagues and the profession in Wellington as an individual of undoubted integrity, professional ability and unquestioned reliability; the Branch committee is unanimous in endorsing Graeme's nomination for the advancement to Fellow of the Institute.

## Membership Variations

### Intermediate Status

Allen Ross McD	South Canterbury
Almao Raymond J	Tauranga
Eastoe Robert G	Overseas
Finnigan Blake	Wellington
Humphries Dean	Auckland
Lai Wendy W.	Auckland
Lissaman Richard G	Nelson/Marlborough
McCulloch Murray I	Auckland
Morris Graham W	Canterbury/Westland
Nicol Linda C	Hawkes Bay
Ottrey Lisa St C	Hawkes Bay
Sheppard Jerome G	Otago
Watson Stuart D	Southland

### Re Admission as Intermediate

Gra William Fy	Central Districts
Leijh Deborah A	Overseas
Newberry Simon E J	Auckland

### Advancement to Associate Status

Aldis John C	Otago
Blackmore Ross F	Auckland
Edney Tony E	Overseas
Grinlinton Mark W	Rotorua/Bay of Plenty
Marinovich Michael I	Auckland
Ong Beng T	Overseas
Pevreal Stuart G	Waikato
Quirke Monica A	Rotorua/Bay of Plenty
Seah Keat S	Overseas
Sloan Alison E	Waikato
Tierney Michelle K.	Auckland
Whitaker Brian J.	Wellington

### Retired Status

Beacham P P (14.1)	Hawkes Bay
Day G P (14.2)	Waikato
Farrell J P (14.2)	Hawkes Bay
Flux P A (14.2)	Otago
Greenwood W K (14.1)	Auckland
Holmes P R (14.2)	Wellington
Macpherson J o (14.2)	Otago
Smith T J (14.2)	Rotorua/Bay of Plenty

### Resignation

Aitken C J	Otago
Cairncross M	Central Districts
Crean P P	Canterbury/Westland
Da Prato NR	Auckland
Ewing M B	Overseas
Etwell EJ	Auckland
Gilmore R	Nelson/Marlborough
Hobson D	Auckland
Holmes D J	Otago
Johnston K J	Auckland
Kenyon M W	Canterbury/Westland
Leeburn W H E	Canterbury/Westland
Leijh D A	Overseas
Lucas K A	Auckland
Morrison I Mc	Nelson/Marlborough
Parcell J P	Auckland
Pyne J F	Canterbury/Westland
Stewart J F	Auckland
Stone B L	Auckland
Sweet M W	Overseas
Vegar M T	Wellington

### Deceased (Noted with regret)

Ash J S	Auckland
Carter G W	Auckland
Christiansen T F	Canterbury/Westland
Hill J	Central Districts

# Report on the April Council Meeting 1989

The meeting of the Council of the New Zealand Institute of Valuers for the 50th Jubilee year was held in the Dorset Suite of the West Plaza Hotel, Wellington on Saturday and Sunday 8-9 April 1989.

The President, Mr R E Hallinan welcomed the full representation of Councillors and invited guests including members of executive and Mr G McNamara, AIVLA President as an overseas delegate.

## John Harcourt Memorial Award

Evan Gamby of Auckland Branch was awarded the Harcourt Memorial Award for his outstanding service as editor of the *New Zealand Valuers' Journal*.

## Advancement to Fellowship

The following members were elevated to the status of "Fellow of the New Zealand Institute of Valuers".

E T Fitzgerald	South Canterbury
P J Cook	Canterbury/Westland
G W H Scholefield	Auckland
T J Croot	Otago
G Kirkcaldie	Wellington.

## Professional Commitment Award

The proposal to introduce a Professional Commitment Award was supported by the majority of Counsellors but it is to be referred to the Publicity and Promotion Committee for consideration. The award is intended to be given by Branches to members who have shown commitment to the profession by encouraging fellow practitioners with career counselling, participation in Institute affairs and promotion of the Valuation Profession.

## Committee Reports Received and Discussed.

Services Review Committee.

Mr E T Fitzgerald presented a plan for restructuring the trading activities of the Institute and Council adopted the proposal which will place all trading operations under a Services Committee to be headed by a services manager. The committee will be required to maximise income from services to assist with the funding of the institute. Council agreed in principle to the appointment of a services manager.

The diary-directory proposal is still under review and is to be considered by Services Committee.

Executive Committee

Mr J N B Wall confirmed that all activities of Executive Committee have been fully reported in circulated minutes and advised that Council and wider membership of the Institute had been involved with Executive in reviews of legislation and in making representations to Government Ministers and other authorities on matters concerning the valuation profession.

Education Board

Mr W A Cleghorn reported that progress is being made with the compilation of Valuation II textbook and publication could be expected by the end of this year. The Valuation I textbook is to be revised in 1990.

A Research Centre in Valuation and Property Management is to be established at Lincoln College and Council supported this proposal. Massey University is seeking assistance to iden-

tify suitable experienced registered valuers located throughout New Zealand to provide practical tutoring in Applied Valuation 11 for Extra mural students and Council agreed to assist.

Editorial Board

Mr A P Laing reported that a special issue of *The New Zealand Valuers' Journal* has been published in March 1989 to mark the 50th Jubilee of the Institute and it comprised a selection of articles from previous issues over the 50 years. A continuous index for the Journal is being prepared for publication as a Jubilee project but there is some concern at the cost to date which is well in excess of budget. A sponsored address is being promoted by the Board to provide articles for the Journal. An annual article competition for members is being promoted with a cash prize of \$1000.

The Board decision not to publish all decisions of the Valuers Registration Board was discussed by Council and the matter is to be raised again in general discussion with the Valuers Registration Board.

Mr T J Croot, Editor of the *NZ Valuers' Journal* reported on the satisfactory production of the Journal with the professional assistance of production editors Vicki Jayne and Tom Frewen and Devon Colour Printers Ltd. Costs have generally been within budget and the volume and quality of material being received is considered to be satisfactory.

Statistical Bureau

Mr J N B Wall advised that the affairs of the Statistical Bureau are becoming more closely related to the activities of NZIV Services Ltd. He invited comments on the format and content of the Statistical Bulletin being produced by J G Gibson, General Secretary. Concern was expressed by Mr Gibson about the future availability of Modal House costs from Housing Corporation sources.

Mr J P Larmer, Chairman of the Goods and Services Tax Committee reported that there had been little support from other land based professions or from the Accountants' Society for joint submissions to Government on zero rating for all property transactions. Council agreed that the committee should prepare a submission to the Minister requesting a higher level of clarification of GST content in property transactions.

The application for a grant of \$10,000 to develop a valuation and feasibility analysis computer programme for Mr A Beverly was referred to the Valuation Services Committee.

Land Professionals Mutual Society Inc

Mr A L McAlister reported that membership of LPMSI includes 155 valuers or valuer firms. Since 31 May 1988, 16 claims files have been opened for valuers but five of the files relate to notification of a possible claim only. Nine of the claims relate to over-valuation. Mr McAlister expressed confidence that premium levels are being held to competitive levels. Mr McAlister was re-elected as NZIV representative on LPMSI.

Publicity and Public Relations

Mr G Kirkcaldie advised of the range of publicity tasks undertaken by Consultus, the public relations consultants engaged by the Institute since November 1988. These included marketing of services and preparation of representations to Ministers and preparation of an overview of all Institute publications. Some



# 1 e the Annual General Meeting

The 50th Annual General Meeting of the NZ Institute of Valuers was held on Monday 10 April 1989 at the Plaza International Hotel, Wakefield Street Wellington at 4.35pm.

The meeting was attended by President R E Hallinan, President-Elect R L Jeffries, Vice Presidents and 80 members. The retiring President chaired the meeting.

The minutes of the 49th Annual General Meeting were read and confirmed. The 50th Annual Report and Statement of Accounts were adopted and approved.

The appointment of Mr N H Chapman as Institute Auditor was approved.

The chairman read a citation for Mr M E L Gamby as recipient of the John M Harcourt Memorial Award for his

outstanding contribution to the *New Zealand Valuers' Journal* having been editor for more than seven years. Mr Gamby was present to receive the Award and the presentation was warmly acknowledged by acclamation.

A number of rule changes as advised in the Notices of Motion were widely discussed and passed as proposed or with some amendment to wording. Changes to the Code of Ethics as proposed promoted deep discussion with some being adopted but others being lost to the vote.

Before closing the meeting, the Chairman moved a vote of thanks to the Wellington Branch for their organisation of the AGM and Seminar and particularly referred to the work done by Messrs Kirkcaldie, McGregor and Tiller. *Editor*

## Address by the Honorable Peter Tapsell, Minister in charge of the Valuation Department to the 50th Jubilee Seminar of the NZ Institute of Valuers Monday 10 April 1989

May I thank the New Zealand Institute of Valuers for their invitation to address this seminar and I congratulate the Institute on attaining 50 years of operations.

As Minister in charge of the Valuation Department I have become involved with the valuing profession through the valuers Act, the Valuers Registration Board and considering proposed institute rule changes.

New Zealand's development has been tied to the land and to a greater extent than most Western countries it continues to remain a principal factor of production and the basis of the nation's wealth.

The modern practice of valuation in New Zealand is as old as European settlement of this country. I note from early valuation history that in 1843 a valuer was called upon to give evidence as to market value. The property concerned was in the vicinity of Woodward Street and Lambton Quay, Wellington.

The acquisition of large tracts of New Zealand by land companies, Crown grants and other similar procedures during the middle and late 1800s led the government of the day to introduce a tax on land. It was to provide revenue for the government and encourage economic land development. New Zealand was developing quickly at that time. The Government sought some recompense for the community at large.

In order to tax the value of land, a valuation of each parcel was essential. In 1882 a valuation of all property owned by European settlers was completed by a team of valuers employed by the property tax department.

On reflection this was a tremendous effort when considering the physical conditions of the time, not to mention the valuers were essentially untrained, inexperienced and lacked basic education in valuation methods. It was natural then that the valuers of the day came under attack from property owners, the courts and the press. The wide differences of opinion between valuers was of great concern and the situation eventually led to

the creation of the New Zealand Valuation Department in 1896. The Department, now known as Valuation New Zealand, led the way in establishing valuation standards in this country. That followed on to the wider valuing community.

In the early years the department was not without its critics. But as training and valuation standards improved so did the credibility of the valuations produced. During the 1920s the association of Government valuers was formed with the objective of providing education programmes and to improve valuation standards. At the same time other associations had been started the North Island Land Valuers Association and the Auckland Valuers and Arbitrators Association.

The circumstances in New Zealand between World War 1 and World War 2 were difficult and with the passage of land related legislation and the settlement of servicemen from World War 1, an increasing need for valuers and valuation skills became apparent.

The need for the co-ordination of valuer education and common valuation standards was again very important and this of course led to the formation of the New Zealand Institute of Valuers in 1939. The formation of the Institute brought together for the first time the various associations of valuers around the country and established a group with common goals and objectives.

The strength of the new institute was tested very early on with the passing of the Land Sales legislation during World War 2 and the administration of various servicemen settlement schemes that followed.

In 1948 the Valuers Act was passed by Parliament. This was the first statutory recognition of the valuing profession. The Valuers Act put in place the Valuers Registration Board, legislated for the institute and provided the framework which the profession has worked within over the past 40 years.

The Valuers Act was at the forefront of professional regula-

tion of valuers internationally and has stood the test of time very well. Although changes and amendment are now thought to be necessary, essentially the act still serves a very good purpose in the changing times we live in.

During the 1980s deregulation and new Government programmes have touched every aspect of industry and commerce including the scrutiny of professions and occupational groups.

Deregulation and changes to the Commerce Act and the Fair Trading Act has brought about the removal of constraints on professional advertising and the use of a fixed minimum scale of fees.

These changes have benefited the consumer. They have allowed for more competition between professionals and have meant an improvement in services to clients.

The objective of occupational regulation is to maximise consumer welfare. Consumers need to be confident that the goods or services they are buying are safe, of reasonable quality and are fairly priced.

As you know, Government has established a working group on occupational regulation and the task of this group is to undertake and review specific statutes. The Valuers Act has been referred to the group and they have consulted with interested groups including the Institute.

There have been a number of publications written on the subject of occupational regulation and the most recent contribution was produced last month by the working group titled "Occupational Regulation - the Issues".

The economic development commission paper of December 1988 has raised a number of issues concerning occupational regulation. I note that out of 64 groups studied by the Commission the valuers, along with 17 other groups, are the only occupations requiring statutory registration in the commission's view.

The valuing profession provides an important service to the public in a number of different ways. Valuations are used for the sale and purchase of property, for mortgage lending, the taxing of property and for financial reporting of assets, as well as many other purposes. It is clear that valuations completed by members of the valuing profession play a significant role in the day to day activities of a commercial world both here in New Zealand and overseas. The valuing profession internationally has recently come under serious attack from the financial and business sectors in the wake of some major problems involving financial institutions. Much of the criticism has been blamed on poor valuation practices. The complaints involve negligence, incompetence and fraud.

I have become increasingly aware that New Zealand has not been without its problems and complaints against valuers in this country have clearly increased over the past two years.

It appears that the activities of a small number of registered valuers has brought a great deal of discredit on the valuing profession and your Institute. I am well aware that the Institute has done everything in its power to improve standards and the levels of education over the years. What we have occurring at the present time is a stem test for the profession as a whole.

It is clear from advice I have received that most problem valuations arise from the assumptions valuers have used, or were asked to use by their clients. The valuations based on assumptions of course may not be realised in the open market, yet such valuations may be accepted by the lending institutions.

To be fair to the valuers, statements relating to assumptions always appears somewhere in the valuation report, but little effort is made to highlight these assumptions. Quite often lending institutions choose not to be too careful in seeking out these

statements in a voluminous report and they are more interested in the bottom line valuations and loan recommendation.

I wonder if the criticism of the valuing profession in recent years could have been minimised if valuers were required to explain and justify how they arrive at their final valuation figures.

In light of these complaints against registered valuers, I have reconvened the Valuers Act Review Committee whose membership contains representatives from the Institute.

The Review Committee will reconsider the Valuers Act and advise me on any changes they think necessary taking into account changing circumstances.

I have specifically asked the Review Committee to consider various aspects concerning the operation of the Valuers Registration Board and to advise me on such matters as:

- increasing the registration board's membership to include lay people
- developing methods of auditing individual registered valuers
- a requirement for registered valuers to carry professional indemnity insurance
- the overall funding of the Registration Board's activities.

In my discussions with the Review Committee, other matters have emerged, such as:

1. Should registered valuers hold compulsory membership of the Institute of Valuers?
2. Should the term "registered valuer" continue to have statutory protection?
3. Should the term "valuer" also be protected by statute?
4. Should continuing education programmes be compulsory?

The Review Committee has yet to complete its task. However, I am confident that in the near future some of these important matters will be resolved.

The financial community and the client public are seriously beginning to question the quality of valuer education, valuation standards and the professional code of conduct. It is not enough to say "a few bad apples, but the rest are good" because this is of little comfort to the massive losses the community has suffered. The future holds many challenges and opportunities for the valuing profession. In particular the New Zealand Institute of Valuers needs to promote the quality of members' valuations and the steps it is taking to support and justify the quality of valuations generally.

Prevention is better than cure, and I urge you to give more attention to quality education programmes and the continuing education of your members, as well as giving guidance on acceptable valuation standards and insisting on a good professional code of conduct.

I know the Institute has had a good record over the years in providing education and guidance as to valuation standards, but are your standards relevant in today's world and do you obtain good membership support?

Before I finish, may I note the presence here of the President of the Australian Institute of Valuers and Land Administrators, Mr Greg McNamara, from Tasmania. In these days of closer economic relations, it has become increasingly important for our professional organisations to also work closely together.

Valuers have recognised this need for some time and there have been regular meetings of the New Zealand, Australian and New Guinea Valuers' Registration Boards.

Thank you for the opportunity to address you, and I wish you well in your year of celebration. May the future years be full of success and achievement. A

# Address by S W A Ralston OBE, FNZIV to the 50th Jubilee dinner of the NZ Institute of Valuers held in Wellington, Monday 10 April 1989

When I started my working life as an urban field cadet in the Dunedin office of the State Advances Corporation in April 1947, little did I realise that 42 years on I would be present at an assembly of this nature discoursing on its history.

Nor did I realise at that time that the Institute to which I was quickly introduced as a student member by one Chas Green, District Property Supervisor and my controlling officer, was less than 10 years old. The Otago Branch in those days was flourishing. I can recall a constant series of general meetings and field days all well attended and of considerable educational benefit. I might add that after completion of training and qualification in Auckland in 1953 I returned to Dunedin where I served as Branch Secretary from then until 1958. So began what was to be a lifelong interest in the profession, as my career took me around a number of branch districts until posting to Wellington 20 years ago.

This brief discourse is not however about myself. I was honoured when approached by Tim Bemau on behalf of Council in mid 1988 to compile a history of the Institute for this our Jubilee Year. My only regret has been that time has not permitted more extensive research and reporting, in particular in respect of the lives and personal contribution of so many members whose collective efforts led to the formation of our Institute as we know it today, and who were responsible for its effective creation and its even more effective consolidation with the passing of the Valuers Act in 1948.

Allowing for the intervention and disruption of the Second World War, progress at that time, viewed retrospectively was surely remarkable. And all of this without a Corporate Plan. It is patently obvious that amongst our founding members there were men of vision. I have no doubt they would be delighted if they could have been with us today to survey the results of their pioneering efforts of the 1930s and 40s.

For the benefit of our guests I will briefly recount the sequence of events which we are this year celebrating. The first recorded regular association of valuers was the Real Estate Valuers' Association of Auckland formed in 1910. It was reformed after the first world war and in 1925 became known as the Auckland Valuers' and Arbitrators' Association. In 1923 a professional society, the North Island Land Valuers Association with headquarters in Palmerston North was established. In 1935 valuers employed in Government Departments, who had largely remained aloof from these associations formed their own group and called it The New Zealand Government Valuers Institute.

It is not surprising that those associations which had similar objectives should have been having thoughts of amalgamation. Some far-sighted people had been having such thoughts as early as 1929. The stage was not formally set however until a meeting of representatives of all interested parties occurred in Wellington on 18 August 1938 at which it was agreed that a new association which was later given the name of The New Zealand Institute of Valuers be formed. A subsequent meeting held in November 1938 approved a set of rules etc.

The formal incorporation of the Institute was formally approved by the Registrar of Friendly Societies on 26 April 1939.

This is not the time or place to embark upon an historical discourse. You will all have the printed record in your hands within the next few days and I commend its reading to you.

*Stan WA Ralston lives in retirement in Wellington. He is a Fellow of the NZ Institute of Valuers and was the recipient of the 'Harcourt Memorial Award' in 1980 in recognition of his outstanding contribution to the field of education within the Institute. Mr Ralston had a long career as a valuer in the public service beginning work as an urban field cadet with State Advances Corporation in Dunedin in 1947. He transferred to the Valuation Department as District Valuer at Hamilton in 1964 and then returned to State Advances Corporation as Chief Valuer at head office, Wellington in 1969. In 1974 he was appointed Chief Valuer, at the Valuation Department head office and rose through the office of Deputy Valuer General to become Valuer General in 1984 from which position he retired in 1988.*

There will inevitably be some shortcomings in it - I am conscious of some myself. Naturally its content has been dictated to some extent by the availability, or lack of, source material. In particular it does scant justice to the dedication and contribution of so many individuals to whom we owe gratitude for the profession's most eminent position today. I propose in the balance of these remarks to make some mention of the contributions to which I refer. The selection of those named is random.

It is my hope that during this our Jubilee Year further notes of an historical nature covering early members of the Institute will appear in the Valuers' Journal.

The March issue of the Journal in itself augments our history in a very appropriate way. The guest editorial article by R J Maclachlan is a remarkably concise historical survey, reflecting its author's detailed knowledge and retentive memory spanning his own personal involvement with the entire 50 years of our history. It would be interesting to record the comments of the other 23 members who like RJM can also celebrate 50 years of membership.

The names of those members are recorded here for publication and were for the most part very well known personalities of the profession.

List of Foundation Members 1939, still Members 1988

Besley, H M	Taupo
Boswell, W G	Auckland
Brand, J G	Hamilton
Brittenden, G H	Tauranga
Brown, J Bruce	Wellington
Burgess, G C	Auckland
Casenberg, A E	Wellington
Cooke, M B	Christchurch
Garton, E H	Whangerei
Gray, A	Christchurch
Harris, A R	Dunedin
Hodgson, J N	Palmerston North
Hunt, D M Leigh	Wellington
Jones S M	Tauranga
Maclachlan R J	Wellington
McDonald, M S	Auckland
Pearse, H C H	Feilding
Perryman, N M	Canterton
Raven, R T	Papamoa

Rowse, G W	Waikanae
Sceats, E R	Christchurch
Sharp, G H	New Plymouth
Sharp, W A	Dunedin
Tolhurst, R E	Wellington
Yearsley, W R	Auckland

The name of W G Boswell should be known to most. "Bos" as he is affectionately known to his friends, was editor of the NZ Valuers' Journal (as it was then known) from December 1945 until June 1955. Interestingly, his successor in this position, E J Babe, served in this position also for 10 years from September 1955 until December 1965. Each however in their own way contributed much more than this to the overall benefit of the profession.

"Bos", now 79, can claim 62 years' association with the profession, from the age of 15 until he retired from active practice two years ago at the age of 77. Beginning his career as "office boy" to the then Valuer-General, Mr F W Flanagan, in 1925, he became Secretary of the NZ Government Valuer's Institute on its formation in 1935 and subsequently featured as one of the Institute's three representatives at the negotiations which led to the formation of the NZ Institute of Valuers. Mr Boswell became the second lecturer in urban valuation for the Dip Urb Valuation course at Auckland University.

Mr Boswell's predecessor as lecturer at Auckland University and indeed the inaugural lecturer was Mr W G McClintock, who at the time of his retirement in 1949 had attained the position of Deputy Valuer-General, having joined the department as a cadet in 1908. At the outbreak of war in 1914 he went to Samoa, returned to New Zealand and then went overseas with the NZ Artillery. He was awarded the Military Medal for gallantry at Messines and gained commissioned rank after a course in England. He subsequently resumed his career as a valuer and was responsible for the tuition and guidance of many of the younger members of the profession at that time.

His shy unassuming manner kept him from the limelight, yet probably no man exerted a greater influence during the formative years of the Institute. He was one of the stalwarts of the Government Valuers Institute and, on the formation of the NZ Institute in 1938, became a member of the Auckland-based national executive committee. When transferred to Wellington in 1945, he continued as a member of this committee until shortly before his retirement in 1949. His major contribution was in the field of education. He can truly be called the founder of urban valuation techniques in New Zealand.

In 1940 he became the first lecturer in Urban Valuation at the University of Auckland for the newly-established Diploma in Urban Valuation. He had to start from scratch and deliver lectures suitable for students in a subject never previously taught in this country. As one of his students in that 1940 class, Bob MacLachlan can vouch for his ability as a teacher. Bob recounts how he was also a cadet under Mr McClintock's personal supervision and benefitted from his innate ability to impart his own knowledge to others.

Mr McClintock was closely associated with *the New Zealand Valuer* from its beginnings as a cyclostyled bulletin in February 1942 until his transfer from Auckland in 1945. Although history records that Mr Alan D Thomson, the then Registrar compiled the first issue of the *Bulletin*, Mr McClintock undoubtedly prepared the material for publication and is recorded as being the editor from December 1943 until September 1945. Following retirement Mr McClintock served for a period of years as a member of the Land Valuation Court.

At the risk of being considered biased I want to consider briefly the role which some Valuers-General have played in

respect of the Institute, a factor not apparent in our recorded history. I am sure Mr R J MacLachlan will not be offended that I do not dwell on his very significant contribution here, it is recorded elsewhere and summarised most recently in the March 1989 issue of the Valuer's Journal. What should be said though is the fact that as Valuer-General, Mr MacLachlan was the first qualified valuer and officer from within the department to serve in that position.

His successor, Mr J Bruce Brown, also a valuer, occupied the position for the lengthy term of 12 years, commencing in 1959. I do not intend to recount all his achievements and biographical details here. These are recorded in other places, including earlier issues of the *NZ Valuer*. What is to be emphasised is the unique contribution which he made during his term as Valuer-General in encouraging the NZ Institute of Valuers to move into the international arena. At the time of his appointment as Valuer-General he was Chairman of Executive Committee, and Chairman of the Education Committee and Board of Examiners. Together with GCR Green, President of NZ Institute of Valuers he attended the first Pan-Pacific Congress in Sydney in March 1959 as an official delegate. In all, Bruce represented New Zealand at the first six congresses as official co-ordinator and together with the late John F Child of Honolulu and other prominent representatives of the valuing profession in USA and Australia came to be regarded as one of the founders of the concept of the Pan Pacific Congress as we know it today. Bruce has attended most Congresses held since then, including the most recent held in Christchurch, the thirteenth. He was Chairman Co-ordinator of the Fifth congress held in Sydney in 1969.

Mr Brown represented the NZ Institute of Valuers at the

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inaugural meeting of the Commonwealth Association of Surveying and Land Economy, CASLE, held in Georgetown, Guyana, in December 1969. This association was founded to strengthen professional links between Commonwealth countries by assisting each one to achieve the scale, quality and integrity of surveying services it requires, and also to foster the reciprocal recognition of professional qualification within the Commonwealth and to facilitate the mobility of professional skills. Mr Brown was appointed Chairman of the Education sub-committee of CASLE. New Zealand subsequently hosted the assembly of CASLE in Wellington in 1973.

Shortly after this the Institute made a decision to withdraw from CASLE on the grounds that the profession's international interest lay more within the Pacific basin and to concentrate on this area.

It should also be recorded that during J Bruce Brown's term as Valuer-General, in 1964, the Valuation Department agreed to make available to the Institute the sales details of all property sold in New Zealand, and so began what is now taken for granted by all a unique service known to few other countries in the world - national sales record. This service was enhanced during Mr M R Mander's term as Valuer-General, when in 1981 the department introduced a computerised system of sales recording, and output was made available to the profession per medium of microfiche. The profession now had direct on-line access to Valuation New Zealand's sales data-base and also to its main district valuation roll data-base.

Time does not permit the inclusion of detail of as many of our early brethren, as I would like. I shall make brief mention of several of the foundation officers of the Institute since their names are recorded in several places in the History.

o F Baker of Christchurch was one of the original councillors appointed in 1935. He represented the interests of South Island valuers at the preliminary meetings and negotiations which culminated in the creating of the Institute. He was to serve as Councillor for the Canterbury/Westland branch until 1959 - an unprecedented term of 21 years. Born in 1888, he was associated with Baker Brothers, a firm established by his father from whom he assumed control in 1910. He played a prominent role in the Real Estate Institute of which body he was national president in 1937-38. He became 4th President of the NZ Institute of Valuers serving from 1947-49. Life membership was conferred upon him in 1956 for distinguished service. Mr Baker's obituary was recorded in the NZ Valuer in 1972.

The name of Gregory Benmore Osmond features regularly in minute books and early records of the Institute but I can find little record of any details of the man himself, other than what is

contained in the citation for life membership, of which honour he was the first recipient in 1947, coinciding with his retirement from Council and the Auckland Branch Board.

I quote: "Mr Osmond was the main driving force in the statesmanlike negotiations which culminated in the founding of the Institute in 1938 and in the absorption of the local Associations hitherto existing in various parts of New Zealand.

He was Branch Board member and Auckland Councillor for the inception and both of these posts he has held ever since with a vigour unsurpassed in the history of the Institute. As one-time chairman of the Auckland Branch and President of the Institute in the difficult years 1940 to 1943, he displayed tenacity of purpose and firm adherence to his ambition to set the Institute on a high professional plane."

Mr Oscar Monrad was another whose name appears regularly in the early historical records. He was born in 1871 of an early, well-known Manawatu farming family and at the age of 36 moved from farming to become Manager of the Land Department of Abraham & Williams. Twenty years later he established an independent valuation practice in conjunction with his son.

On formation of the North Island Land Valuers Association in 1923, he was elected a foundation member and its first President. From the inception of the Institute Mr Monrad was an enthusiastic member with a strong desire to ensure the elevation of valuation to professional status. He served for some years as Chairman of the Central Districts Committee and also as a national councillor, being elected President of the Institute 1950-51. He had life membership conferred upon him in 1957.

I could continue in this vein for some time. I hope I have said enough to convince you that these men, typical of so many of our founding members were without exception, men of undoubted ability and of exceptional character and vision. So far as the skills of valuation were concerned they were self-taught, united in a desire to ensure uniformity of practice on a national scale and the elevation of the practice of valuation to a fully professional status.

My recent researches have revealed that all too little has been recorded of their individual lives and contributions to the profession. I challenge all Councillors to ensure that their respective branches, as a Jubilee Year project, record the history of each Branch and the contribution of its members as individuals for the benefit of posterity.

*At the completion of his address Mr Ralston presented the President of the Institute, Mr R L Jefferies, an inscribed copy of the History of the NZ Institute of Valuers which he had recently compiled and expressed the hope that other members of the Institute will add to it for the next 50 years. A*

## PROMINENT FIGURES IN THE INSTITUTE'S HISTORY

### 1. W. Gellatly Wellington

Mr Gellatly had a lifetime association with the profession and was a foundation member of the Institute. He had a deep interest in the administration of the profession and a particular interest in statistical matters. He was appointed to the Statistical Bureau Committee in 1946 and became Chairman in 1948, a position he held for an unprecedented 21 years. He then continued to serve on the committee until 1978. He also served as President of the Institute in the period 1960-62. His drive and enthusiasm were responsible for the growth of this important activity from elementary beginnings to the sophisticated services currently available.

W. G. Boswell - *Auckland*

Mr Boswell's association with the profession began in 1925 with his appointment to the Valuer-General's office, a career which was to extend for 62 years. Mr Boswell was a member and secretary of the N.Z. Government Valuers' Association, a body incorporated in 1936. He participated in the negotiations which led to the amalgamation of the N.Z. Government Valuers' Institute, the North Island Valuers' Association and the Auckland Valuers' and Arbitrators' Association and the creation of the N.Z. Institute of Valuers in 1938.

He was later to serve as a part-time lecturer in valuation topics at Auckland University and was Editor of the N.Z. Valuer from December 1945 until June 1955.

O. F. Baker - *Christchurch*

Mr Baker was one of the founders of the Institute in 1938 and represented the interests of South Island valuers. He was the first Councillor of the Canterbury/Westland Branch, a position he held for 21 years. He became the fourth President of the Institute, serving from 1947-1949, during which time the Valuers Act became law.

# Computer Assisted Mass Appraisal of Rural Property in New Zealand

*by Bethia Gibson*

It is generally accepted that there are three traditional approaches to valuation. They are the replacement cost or summation method, the market or sales comparison technique, and the income or productive valuation method.

It is also accepted that the sales comparison approach is the best means of valuing rural property, and that the summation approach can provide a useful check. Accordingly, rural valuers generally use these two techniques when valuing individual rural properties. But, when a large number of properties have to be valued in a relatively short period of time, these methods become time-consuming and tedious to apply.

As an aid to valuers in such "mass appraisal" situations, mass appraisal techniques have been developed. In the development of such techniques, mass appraisal has been defined as the process of valuing a universe of properties as of a given date, in a uniform order, utilising standard methodology, employing a common reference for date, and allowing for statistical testing (International Association of Assessing Officers, 1977).

Given this definition, the term mass appraisal can really only be applied in New Zealand to the work done by Valuation New Zealand when it revalues all properties within a local authority as required by the Valuation of Land Act 1951.

## Computer Assisted Mass Appraisal Techniques

There are a number of computer assisted mass appraisal techniques, the most simple of which is to index property values. That is, percentage changes are applied to properties to incorpo-

*Bethia Gibson: graduated B Com (VPM) from Lincoln College in 1987 and has recently completed the requirements of a Master of Commerce (VPM) degree. She is employed as a valuer, in operations at the head office of Valuation New Zealand in Wellington.*

rate the average price change which has been noted for a given type of property in a given location over a set period of time.

At the other extreme, complex formulae can be developed

The most simple computer mass appraisal technique is to index property values.

using non-linear transformations, specialised regression techniques, or artificial intelligence. These formulae are then applied to obtain estimates of property value.

In this report, only those techniques utilised in my thesis, (which set out to determine the applicability of computer assisted mass appraisal techniques as a means of estimating the rateable value of rural property in New Zealand) shall be discussed. That is, the techniques of multiple regression analysis and adaptive estimation shall be discussed before the models which were developed are detailed, and conclusions drawn.

### Multiple Regression Analysis

Multiple regression analysis is considered the traditional mass appraisal technique as it was firstly used by GC Haas in Minnesota, USA, in 1922. In that study, Haas used multiple regression analysis to estimate rural land sale prices in Blue Earth County, Minnesota.

Although the model included only six independent variables, it was developed prior to the advent of the computer. Consequently the methodology was considered too complex for regular use and little recognition was given to the value of this study. As computers became more readily available in the 1960s, new studies were made into the use of statistical techniques as a means of estimating property values.

## Multiple regression analysis is based on the theory that property is a bundle of resources.

Multiple regression analysis is based on the theory that a property consists of a bundle of resources, each of which contributes something to the value of that property. The aim in developing a regression model is thus to develop a strong predictive relationship between those property characteristics and value, such that a value estimate can be derived for any property by applying the resulting equation to the characteristics observed for that property. (International Association of Assessing Officers 1978).

Given this objective, it could be said multiple regression analysis is a formal mathematical version of the sale comparison technique. That is, in both techniques the features of each property are noted and the similarities and differences considered, before the data is formulated into a final estimate of value. Regression analysis is, however, a much more mathematically rigid means of making these judgements.

### Adaptive Estimation

Adaptive estimation (or Feedback as it is often known) is considered a modern technique for estimating property value as it was only developed in 1975.

In this technique, the value of a property is estimated by summing estimates of value of the land and improvement components of that property. These component values are determined after consideration is given to both the quantitative and the qualitative features of a property.

The quantitative features of a property are those which affect value in an additive way, while quantitative factors contribute to value in percentage terms. For example, the area of a property would be considered a quantitative feature as increasing the area of a property would generally increase the value of the property in an additive way.

The quality of improvements would, on the other hand, be

treated as a qualitative factor as it affects value in percentage terms.

The coefficients assigned to each quantitative and qualitative factor are determined by a curve tracking algorithm which uses a systemised trial and error approach to learn the contribution of each factor.

## Feedback is an automated version of the sales comparison technique.

Although the methodology of this approach is significantly different to that of multiple regression analysis, both methods aim to generate estimates of value as a function of objectively measured property characteristics. It thus could be concluded that feedback is also an automated version of the sales comparison technique.

### Research aims and methods

In my research both multiple regression analysis and adaptive estimation were used to determine the applicability of computer assisted mass appraisal techniques as a means of estimating the rateable value of rural property in New Zealand. To support this research, Capital Value and Land Value models were developed for the Central Canterbury region (Malvern, Ellesmere, and Paparua counties) of the South Island.

As my aim was to estimate rateable values as against fair market values, the definitions of Capital Value and Land Value given in Section 2 of the Valuation of Land Act 1951, as amended by Section 28, were used as the basis of the models which were developed. (Briefly, Section 28 excludes trees and minerals, other than those which the land owner is getting the benefit of, from the fair market value of a property. Chattels, plant and machinery are excluded by the Rating Act 1967.)

### Models Developed

The first task in the development of statistical models is to identify and record the most significant factors thought to be influencing the dependent variable (the rateable value of rural property in the Central Canterbury area).

To make the variable definition process more simple, the determinants of value were considered under the following four headings:

1. physical characteristics;
2. environmental and location characteristics;
3. institutional factors;
4. market factors.

The most important variables influencing value were found to be sale date, property size, location of the property relative to different urban centres, the distance to the local primary school, floor area of the principal dwelling, soil type, the presence of irrigation, the floor area of the main farm buildings, the average mortgage interest rate prevailing at time of sale, and the presence of large other improvements such as a swimming pool or tennis court.

Initially models were developed for the Central Canterbury region as a whole, but the degree of accuracy achieved was not considered adequate, so stratification techniques were employed to define more homogenous sub-area. Models were then developed for each of these areas.

In the remainder of this paper, each Capital Value model shall be discussed, and the methods of stratification detailed.

## Regional Model

In the first regional regression model, it was hypothesised that the Capital Value of properties was a function of sale date, property size, soil type, land classification, the presence of irrigation or shelter, area and effective age of the principal dwelling, the number of garages, the presence of a cottage, the areas of any farm buildings, the highest and best use of the property, water source, the presence of large other improvements, the distance to the local primary school and to selected urban centres, and the average annual mortgage interest rate.

Although this model had an adjusted coefficient of determination (adj R<sup>2</sup>) of 85.1%, it was found that the model was being adversely affected by a number of outliers in the model. (The R<sup>2</sup> or coefficient of determination measures the percentage of variation in value around the mean value which has been accounted for by the model. That is, the R<sup>2</sup> measures the degree of systematic fit in a model. The adjusted R<sup>2</sup> is also used to measure goodness of fit, but is different from the R<sup>2</sup> in that it is adjusted according to the degrees of freedom in the model. This allows the comparison of models which have been developed using different numbers of independent variables.)

Outliers are generally non bona fide sales and can be recognised by calculating and plotting the difference between the observed sale price and the estimated sale price of a property, the residual error. For example, if most estimates were within +/- \$50,000 of actual sale price, and some property had a residual error of \$75,000, it would be considered an outlier. It would then be given closer scrutiny to determine whether it is in fact bona fide.

After the outliers were investigated and deleted, a final regression model was developed. This model had an adjusted R, of 89.98%, but when used to estimate sale prices, only 30.39% of all prices were estimated to within +/- 10% of actual sale price. Although no definite guidelines have been set, this level of prediction is considered unacceptable as one would hope to develop a model estimates property values such that 90-95% of all estimates were within +/- 10% of actual sale price.

Applying adaptive estimation to the same sales set did not result in a more accurate estimating model. In fact, the final feedback model estimated only 24.39% of all sales within the acceptable range. A number of reasons can be given for the poor predictive ability of theregional models. Firstly, there was much uncertainty in both the economy and the rural property market over the time of study (1 July 1985 to 31 October 1987) which affected both the volume and the nature of the sales which did occur.

A second reason for the poor predictive ability of the regional models is that the Central Canterbury region is very large and heterogenous (containing many properties of different sizes, uses, etc.) thus the regional models were having to cope with much variability. For example, the properties being modelled together ranged from 12 hectares to 11,269 hectares in size, and achieved sale prices in the range \$30,000 to \$2,500,000.

A third reason for the poor results is that the models were not an accurate reflection of the action of purchasers in the rural property market. That is, farmers would not normally look at buying "a farm", but more realistically would look at buying a specific type of farm. Consequently, rural property purchasers typically deal within one of the many sub-markets which exist within the rural property market.

The first method of stratification used in this study was based on this final explanation. That is, the Central Canterbury region was stratified on the basis of the highest and best use of each property.

## Highest and Best Use Models

The highest and best use of each property was defined according to the property category which had been assigned to each property by Valuation New Zealand as being the "best" use of that property. Subgroups were then to be defined on this basis. However, a lack of sales in some categories meant that models could not be developed for every use type.

To ensure that the models developed covered as many properties as possible, some composite groupings were formed. Models were developed for the following groups:

1. Cropping properties- this category included land which was recognised as being suitable for arable cropping, possibly with some stock. This grouping excluded market gardens.
2. Fattening and grazing properties this group included properties which were considered suitable for store stock, fat lamb and beef production, and stock breeding.
3. Specialist properties this composite group included land suitable for horticulture, specialist livestock enterprise such as poultry farms, racing stables or horse studs, and small holdings.

Again both multiple regression analysis and adaptive estimation were used to develop models for each subgroup. The predictive ability of each of these models is given below:

TABLE 1  
Results of highest and best use models

Stratified model	Multiple Regression Adaptive Estimation	
	% within +/-10%	% within +/-10%
cropping	58.97	36.67
fattening	26.92	24.44
specialist	34.17	31.51

The only highest and best land use model which appears as though it may be useful is that developed using regression analysis for the arable properties, as the model estimated nearly 60% of all sales to within +/- 10% of actual sale price. Unfortunately, these results are misleading, as the cropping model has a very low ratio of sales to variables (1.86 sales per variable) and consequently is biased.

The low degree of predictive accuracy achieved by each model suggested that farm purchasers were motivated by factors other than the highest and best use of a property. These results also highlighted the need to identify these factors, if accurate estimates of value were to be produced by statistical means.

## Geographically Defined Models

After discussions with farmers and valuers working in the Canterbury region, it was concluded that buyers consider the location of a property as very important, and in many cases, may weight location almost as highly as the highest and best use of that property. Accordingly, the Central Canterbury area was re-stratified geographically so that properties of similar sizes, on similar soils, and thus of similar uses were grouped together.

This resulted in the development of the six sub-areas:

1. Christchurch area this is the small holding territory circling Christchurch.
2. Urban fringe area this is the outer limit of the small holdings and includes horticulture land and specialist properties, as well as small cropping and fattening units.
3. Sheffield-Greendale-Leeston area - this group comprises three physically separate, yet very similar areas.

They contain mainly good cropping land as well as some dairy land near Lake Ellesmere.

4. **Darfield-Dunsandel area** this group comprises two physically separate areas which are used mainly for fattening purposes. Some 'medium' cropping properties were also included in this area, but the economic situation prevailing during the study period was forcing many owners of properties in these areas to change to fattening enterprises.
5. **Burnham-Te Pirita area** - again physically separate areas used mainly for fattening purposes. These properties could not be combined with the Darfield-Dunsandel properties as the soil types in this area are much poorer.
6. **Foothills** the distinctive features of this area are the rolling contour and a higher annual rainfall. Most properties are used for fattening purposes, with some land being used for grazing purposes.

A lack of sales prevented the development of models in the Darfield-Dunsandel area and for the Foothill properties, but multiple regression analysis and adaptive estimation were used to develop models for the other sub-areas. The predictive ability of each of these models is shown below:

TABLE 2  
Results of geographic models

Stratified model	Multiple Regression % within +/- 10%	Adaptive Estimation % within +/-10%
Christchurch	34.78	42.11
Urban fringe	40.00	20.69
Sheffield..	39.54	32.50
Burnham..	28.00	40.91

The results achieved from geographic stratification are also disappointing as the best model estimated only 42% of all values to within the acceptable range of +/-10% sale price. This result is somewhat surprising as most models had a relatively low sales to variable ratio, and thus could be expected to be favourably biased.

### Model Comparison

Although the results achieved from both attempts at stratification were not as good as had been hoped, it was considered necessary to compare the predictive abilities of each group of models.

A weighted average prediction ratio was developed to allow such comparisons to be made. This ratio was calculated as follows:

$$\text{RATIO} = \frac{\sum_{i=1}^j n_i P_i}{N}$$

In the above formula:

$j$  is the number of sub-areas which have been modelled

$n_i$  is the number of sales in each model

$P_j$  is the proportion of estimates within the accepted accuracy range

$N$  is the total number of sales.

The ratios which were calculated for each group of models is shown below:

TABLE 3  
Weighted average prediction ratio for each model

Model	Regression Analysis	Adaptive Estimation
Regional	30.39	24.39
H & B Use	37.64	30.41
Geographic	36.24	34.11

Table three above shows that the best estimates of value will be achieved by applying multiple regression analysis to properties grouped according to their highest and best use, as these models will, on average, estimate 37.64% of all sales to within +/- 10% of actual sale price.

### Summary

It is apparent from the above results that the computer assisted mass appraisal techniques of multiple regression analysis and adaptive estimation are not truly applicable in the rural property market which currently prevails in New Zealand. That is, it has been shown that although these techniques can be applied correctly, they are not sufficiently accurate to be of use to valuers, as the estimates they produce are erroneous 60% of the time.

## The results show that computer mass appraisal techniques are not applicable in the rural property market.

This result is very interesting, as most similar studies have reported the level of goodness-of-fit achieved rather than the actual degree of predictive accuracy achieved. As a means of comparison, the adjusted R2 which was calculated for each regression model is shown below.

TABLE 4  
Adjusted coefficient of determination

Regression Model	Adjusted R2 (%)
Regional	89.98
Highest and best use - cropping	95.84
- fattening & grazing - specialist properties	98.10 87.88
Geographic areas	
- Christchurch area	88.43
- Urban fringe area	97.13
- Sheffield-Greendale...	88.25
- Burnham-Te Pirita	98.09

As these results indicate a close degree of goodness-of-fit, it is logical for one to expect a high degree of predictive ability

from each model. But, as shown earlier, this expectation has not been realised although the adjusted coefficients of determination shown above are comparable with those achieved by other studies.

This trade-off brings into question the validity of reporting models statistically, as although they appear to be extremely accurate, they may not be of any real use. It is possible that this trade-off is particular to the rural property market, but it is more likely that previous researchers have not reported the actual degree of accuracy achieved by their models. Whatever the reason, this abnormality shows that real world data does not behave as rationally as statisticians assume, thus statistical techniques are not valid in the estimation of rural property values.

### Conclusions gained from research

Although this study did not prove the applicability of computer assisted mass appraisal techniques in the valuation of rural property, this study has been useful in other respects. That is, it has helped isolate the more important determinants of value for rural property in New Zealand, and has highlighted a need for better recording of the highest and best use of properties.

This study has also isolated several other areas for future research. For example, there is an apparent need for the devel-

opment of tests to validate the results achieved by adaptive estimation models. Other computer assisted mass appraisal techniques such as non-linear regression and seemingly unrelated regression may also be worth investigating.

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# Winston Churchill Memorial Trust

## Fellowships

Since 1965, the Winston Churchill Memorial Trust Board has granted up to 25 fellowships annual- to enable New Zealanders to undertake a variety of projects overseas. The awards are financed from the income derived from the invested trust fund which was raised in memory to the late Sir Winston Churchill, PC, CH, OM.

## What are the aims of the awards?

The purpose of the awards is to finance some study, investigation or activity by New Zealand citizens who, by reason of the award, can contribute to the advancement of their trade, calling, or profession, or to the benefit in general of New Zealand, or to the maintenance of the Commonwealth as a beneficial influence in world affairs.

## Who can apply?

Any New Zealand citizen may apply to the Board for financial help to enable him or her to undertake a project overseas or perhaps complete one in New Zealand. Because it has only limited funds available the Board generally prefers to make awards to persons who would not be eligible for a grant from some other source. The Board therefore welcomes applications from persons in such categories as tradesmen and technicians. But the field is wide open and anybody may apply.

## What are the conditions?

There are only three conditions under which the awards are made. Firstly the recipients must be New Zealand citizens either by birth or by naturalisation. Secondly recipients must return to New

Zealand on completion of their projects. Thirdly, the recipients must also submit on their return to New Zealand a full report to the Board on the benefit their findings have for New Zealand, their trade, calling or profession

## Who gets a fellowship?

Awardees in the past have been selected in a very wide range of occupational fields and professions. They have included:

- \* A Dunedin man employed by the National Safety Association who studied industrial accident prevention in Canada.
- \* An Upper Hutt woman kindergarten director who studied preschool education in the United States.
- \* A Rotorua man employed by the Maori Arts and Crafts Institute, who studied the arts and crafts industry of Polynesia.
- \* A Feilding religious sister, who studied the teaching of the deaf in England, Sweden and the Netherlands.
- \* An Otahuhu boilermaker who studied boiler making and welding techniques in England.

If you are interested in applying for one of these awards write now to:

The Secretary  
Winston Churchill Memorial Trust  
P O Box 10-345  
Wellington North

NOTE: The closing date for applications is July 31, and awards are usually announced in November each year.

# Valuers Registration Board Prizes

The Valuers' Registration Board's prizes for the 1988 academic year have been awarded to:

Auckland University:	J K Ginespie of Auckland
Massey University:	S A Evans of Palmertson North
Lincoln College:	M J Paul of Timaru

The awards, currently \$500 each, are made by the University Councils on the recommendation of the appropriate Faculty of Professorial Board to the students showing the greatest promise of being successful valuers.

Squire Speedy Prize in Property Administration

The Squire Speedy Prize in Property Administration for 1988 was awarded to :  
Cherie Megson of Auckland.

## Awards, Grants, Manuscripts Offered and Held by the NZ Institute of Valuers

The NZ Institute of Valuers, through its Education Board, offers to graduates and undergraduates at valuation teaching universities in New Zealand, awards grants towards post-graduate research and undergraduate research.

Postgraduate research is encouraged by the "NZ Institute of Valuers' Post Graduate Scholarship in Valuation". Full conditions of this Award which is valued up to \$3,000, may be obtained from the General Secretary, NZ Institute of Valuers, Box 27-146, Wellington. Only one Award is given in any one year.

The undergraduate award is for assistances towards the research papers/topics which undergraduates must complete as part of their studies in their final years. Full details of this award which is valued at \$200 per award may be obtained from the General Secretary of the NZ Institute of Valuers. More than one award may be made.

As part of the conditions of the award, copies of the works are held in the NZ Institute of Valuers' Library and we now advise that the following works are held:  
Post Graduate Thesis

1986	J L Comely <i>An Investigation into Methods of Valuing Horticultural Properties</i>
1987	L M Freeman <i>A New Approach to the Feasibility Analysis of Commercial Property Investments</i>
1988	B M Gibson <i>Computer-Based Mass Appraisal for Rural Property - A case Study in Central Canterbury, New Zealand.</i>

### Undergraduate Awards

1988	D B Rainham (BPA) <i>An Overview of Transferable Development Rights</i>
1988	D Humphries <i>Valuation of Tourist Hotels and Taverns in New Zealand</i>
1988	I Parsons <i>Analysis of Trends in Coastal Rural Land Values in Whangarei County</i>

A 1989 Post-graduate award has been made to Ms L J Stuart of Canterbury, for assistance toward her thesis *The Demand Factors Affecting House Prices in Christchurch.*

## EM.

A "wait and see" attitude prevailed over the New Zealand property market this year as many prospective property buyers and investors assessed the situation following the stock market crash in October 1987.

The lack of job security, rising unemployment and general economic uncertainty meant that property values and, in most areas, volumes of property transactions, remained fairly static.

### *The Residential market*

There was increased activity in the first-home buyer market, which was dominated by purchasers in the lower to medium price range. This was assisted by the drop in home mortgage rates, the new Housing Corporation Home Loan scheme assisting lower income family groups, and the increased availability of finance from the trading banks and other sources.

The top end of the housing market saw a small amount of activity, although the number of properties selling for more than \$1 million was significantly smaller than in 1987.

In all areas of the residential housing market supply far outweighed demand, which resulted in a wide choice for prospective house buyers. A noticeable trend developed in a number of Auckland suburbs where houses were put on the market by people leaving New Zealand permanently - many for Australia.

Little activity was seen from building speculators. There was a marked oversupply of new town houses and apartments, particularly in the larger cities. And there was an increasing trend towards the renovation and upgrading of existing housing, at the expense of building new houses.

Overall, house values remained static, even in areas that experienced a reasonable volume of transactions.

### *Commercial and industrial markets*

The commercial and industrial markets were adversely affected by the slow-down of business growth in all areas of New Zealand over the past year. There was little interest in older buildings, particularly those on the edge of central business districts.

Tenant incentives such as rent-free periods, contributions to fit-out costs, and cash contributions, became more common. However, as the market returns to a more stable position these should no longer be required.

Amendments to tax exemptions on superannuation and life insurance resulted in a drop in demand for investment property from superannuation and insurance funds. In turn, this led to many development projects particularly in Auckland, being deferred. However, a reduction in the number of new commercial building projects makes the previously expected glut of office space less likely to eventuate.

Many developers were left with sites not earning income, and unlikely to see development for some time. The value of these sites remained static and generally dropped below the peak levels achieved in 1987.

### *The rural market*

The rural property market was dominated by the significant downturn in the rural economy. Demand for most classes of

farms virtually vanished! However, demand did increase for dairy farms, although not in all regions. This increase in demand was clearly related to the anticipated increase in milkfat payouts for the coming season, and the further expectation of continued good returns.

While the price for most other rural properties was static at around 1987 prices, the horticultural market was very depressed. This market saw major drops in property values over the past year.

The drop related directly to difficulties in debt servicing experienced by many horticulturalists, especially in the kiwifruit industry.

Maori land claims lent an air of uncertainty to the land values in a number of regions throughout New Zealand.

Floods, drought conditions and Cyclone Bola ravaged most parts of New Zealand during the year, contributing to the difficulties farmers and horticulturalists have had with the physical state of their land, and its value.

There were increased demand for small life-style properties, close to cities. Values increased also for those properties with good location and property improvements.

## Northland

### *Residential*

The minimum price level in Northland rose to around \$60,000 during 1988, only the lower and top ends of the property market showed much activity.

An increase in the volume of house sales at the top end of the market (\$200,000 and over) was experienced, compared to only a handful of similar sales in 1987.

Section prices remained stable, ranging between \$18,000 and \$35,000, with a fair choice available to prospective buyers.

Rental accommodation commanded a high level of demand, with rents ranging between \$75.00 per week for a one-bedroom unit, to \$150.00 a week for a four-bedroom house. Demand for own-your-own flats was at a similar level to that in 1987.

### *Commercial*

Demand for rental properties in Northland's retail centres remained stable during 1988, although Whangarei city experienced a rise of up to 10% in rental levels.

The most significant property sale in Whangarei was one situated between John and James Street, with a frontage of approximately 40 metres on each street. The Whangarei City Council paid \$1 million (plus GST) for the 2338 square metre site, which is tagged for multi-storey redevelopment. No developers have, as yet, shown any interest in the site.

A keen demand for new office accommodation was evident in the office rental market, and the gap between old and new accommodation values widened. Rentals of around \$130.00 a square metre were common for new office space with carpets

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and air conditioning. Several new proposals are expected to achieve up to \$150.00 a square metre.

### *Industrial*

Rental levels for larger workshops and warehouses in outlying areas remained stable over the year. Rental levels for semi-industrial and commercial properties close to the city increased at a nominal rate.

### *Rural*

Confidence grew in Northland's rural market over the year, with an increased turnover of properties in most farm classes. Dairy farms experienced the most activity in terms of volumes of sales and the prices achieved.

Milkfat prices ranged between \$13.00 and \$15.00 a kilogram on average dairy units. Last year's prices generally ranged from \$11.00 to \$14.00 a kilogram.

The anticipated increase in milkfat payouts was responsible for the growing interest in dairy units, although this year's production may be lower than expected due to the dry season.

A 105 hectare property north of Whangarei which had a government valuation of \$385,000, sold for \$410,000 in October. This farm showed a return of \$14.00 a kilogram of milkfat.

Another 105.5 hectare property, this time south of Whangarei, sold in August for \$350,000. This property had a government valuation of \$302,000 set in July 1987, and produced a return of almost \$17.00 a kilogram.

Sheep farms were not in demand, other than well managed and presented properties. The loss of development tax write-offs may have influenced buyers to look predominantly at fully developed units, for which a premium was paid.

A 260 hectare property south of Whangarei sold in July for \$305,000. The government valuation set in July 1987, was for \$355,000 on 3200 stock units.

A 216 hectare north-Kerikeri property sold in August for \$600,000, including \$15,000 chattels. It had a government valuation of \$555,000 and 2800 stock units.

Coastal properties showed little activity during 1988, although there appeared to be more activity from November onwards.

A coastal property north of the Bay of Islands, with a 1983 government valuation of \$761,000, sold in October for more than twice that amount \$1,850,000. The property was 592 hectares and was carrying 3400 stock units at the time of sale.

Horticultural property sales were insignificant during 1988 as there was almost no demand for either developed or undeveloped blocks.

## **Auckland**

### *Residential*

Low demand and, consequently, a low volume of house sales continued to mar the Auckland market during 1988. Prices generally remained static or, in some cases decreased on the levels achieved at the peak of the property market in late 1987.

Ten properties sold for more than \$1,000,000 during the year, although this was definitely not typical of the overall state of the market.

An oversupply of new town houses particularly in the Eastern suburbs and Remuera areas, led to many speculator builders withdrawing from the market. Section prices remained static.

#### *North Shore*

A drop of 25% in the volume of house sales, compared to 1987 figures, was experienced in the first six months of 1988. Vendors were forced to become more realistic in their asking prices, as an oversupply of residential properties occurred.

The top-end of the market (\$500,000 plus) experienced a

considerable decrease in sales activity, although there was steady interest in family homes and flats at the lower end of the market (\$40,000 to \$150,000).

Two Muriwai Road sites on Milford Beach were bought in May 1987 for \$2,375,000 and resold in March 1987 for \$1,800,000. A superior quality dwelling in Takapuna's Minnehaha Avenue sold in May for \$3,000,000 while a 34 hectare block adjoining Tindalls Bay on the Whangaparaoa Peninsula, sold for \$2,913,750 in February.

#### *West Auckland*

A contracted property market, in both volume and price levels, was felt in West Auckland during 1988 compared to the high levels of late 1987.

The top end of the market was most noticeably affected. This was reflected by the auction of a quality home of a six hectare lifestyle block in Grassmere Road, Henderson Valley. The property was purchased in December 1986 for \$470,000, and reached only \$398,500 at auction in August.

The recent liberalisation of town planning ordinances by Waitemata City, permitting subdivision down to 300 square metres in the main residential zones, appeared to meet with an immediate market response in the lower priced end of the market.

Rental units with high rent levels were resisted by the market which left many units vacant for long periods. Rent levels generally increased early in 1988, and prices ranged between \$120.00 to \$150.00 a week for one bedroom flats to \$150.00 to \$200.00 a week for two bedroom flats. The rental for three bedroom houses started at around \$250.00 a week.

#### *Central Auckland*

A drop of between 10% and 20% in house prices was experienced for superior dwellings, compared to 1987 levels, in Remuera, Epsom and Eastern suburbs. Valuations also dropped in Mission Bay and Orakei by as much as 15%, the June average was \$323,000.

Units and town house sales remained static with developers often finding it hard to make sales.

A reduction in rental rates for superior properties occurred with longer vacancy periods and a higher volume of rental properties on the market.

#### *South Auckland*

Demand for housing in this area by first home buyers held prices to 1987 levels. Houses in the \$200,000 to \$400,000 price range generally dropped by 10%-15% on late 1987 prices. Several properties were sold at prices below their Government valuations, which were set as of July 1, 1987.

Many vendors, unable to sell houses before departing for overseas, attempted to rent their properties on long term tenancies. The subsequent glut on the rental market caused a drop in rental levels.

#### *Central Business District*

Expansion plans were hurriedly re-assessed by many Auckland businesses early in 1988, and some even tried to off-load space they were committed to. Responding to this, many financial institutions increased the level of firm commitment they required from lessees before lending against a development project.

Demand for investment property was well down on 1987 figures, particularly from superannuation and insurance funds. A number of deferrals were made to development projects in the central business district.

An over-supply of office space is predicted for the 1989/1990 year, but this will be offset to some extent by the slow down in construction of commercial building projects. Tenants are

becoming very aware of the impending increase in occupancy costs as a result of the substantial land tax increases which will flow through during the 1989 year. The major impact will be felt by owners of underdeveloped sites and buildings off Queen Street and on Auckland Harbour leasehold land.

Development on the edge of the central business district was also affected by the slow down in the area with some developers left with non-income earning redevelopment sites.

Few sales were recorded in the higher price range for commercial and investment properties during 1988, although a few Japanese investors have increased their interests in the market recently.

Some Australian interest was also felt in the central business district this year with the favourable exchange rates.

Very few inner city property sales were recorded; and were confined, in the main, to adjoining allotment sales such as 62-64 Queen Street, which sold to the adjoining property owner and 17 Federal Street, again sold to an adjoining property owner who paid \$6,120,000 for the site, including an adjoining owner premium.

Land values in the central business district fell between 25% and 30% over the past 12 months.

Rental rates for new developments ranged between \$330.00 a square metre to \$365.00 a square metre, plus outgoings, for prime space. However, three major buildings around the Mayoral Drive areas were still vacant at the end of the year, and rentals are likely to remain very competitive in this area.

Tenant incentives continued throughout the year, including rent-free periods, payment of fit-out costs, and in some cases, cash contributions.

Demand for strata title floors in strata title developments fell away during 1988 and many negotiated sales were not completed. A Waterloo Quadrant Strata flow which sold in 1987 for \$790,000 is currently under agreement for \$725,000.

### *Suburban Commercial*

Rents increased between 7%-10% during 1988, although the rental market slowed considerably. Tenant incentives continued throughout the year with a good supply of office space available.

The first evidence of overseas investment in this area of the property market was seen in the sale of Goldcorp House in Parnell at an equivalent yield of 9% on market rents.

Two suburban high rise office buildings were commissioned in 1988 Takapuna Towers and Byron Towers. Government tenants were the prime users of this space, vacating secondary rental space into a tight market.

Owners of retail rental space felt the effects of a slow economy with little increase in rental levels. Many retail properties experienced tenant movement through the year as tenants shopped around for lower rent levels.

The proposed K-mart development will enhance retail facilities in Henderson and all of the shops in the Mace development at New market were leased during the year at between \$400 and \$450 a square metre, with one tenant being found for a major part of the office space at \$220 a square metre.

Manukau experienced a slow down to the extensive office park and retail development period which had existed with projects such as the AA Mutual office development and the Hawkins development in Cavendish Drive.

Tenants conscious of costs were, and are continuing to be, attracted to the environmentally integrated suburban office parks, such as the Pacific Business Park on the Mt Wellington motorway, and West Park in New Lynn.

The key to leasing these complexes was their good exposure and proximity to motorway transport systems, but West Park did

not fare as well as the Pacific Park in this respect.

### *Industrial*

Both tenant and investor demand in the Auckland industrial market was lower in 1988 than at any other time in the last decade. Major factors that contributed to this decline were the October sharemarket crash, fluctuating exchange rates, the entry into the market of new competitive players from Asia and the effect of the freed-up trade relationship with Australia.

Major rationalisation within many large industries occurred during the year and looks likely to continue. This will result in continued low investor and tenant demand in localities traditionally recognised as suitable for large manufacturing concerns.

Central city land zoned industrial ranged from \$1000.00 to \$1500.00 a square metre, which was a reduction from last year's level of up to \$2000.00 a square metre.

Demand was strongest on the North Shore while areas such as Onehunga and Wiri, Mt Wellington, West Auckland and East Tamaki all experienced reduced demand throughout the year.

### *Rural*

Demand was negligible for rural land during 1988, although occasional sales occurred with relatively good prices.

Small holdings close to the city were popular, and prospective buyers had a good range to choose from. This was particularly evident to the south of Manukau City where the limited number of sales ensured the continued rise to value levels.

A 5.4 hectare property at Whitford, with sea views, easy contours, a dwelling and associated improvements, sold in May for \$520,000. This indicated an increase of some 25% over the past 12 months.

Large numbers of vacant blocks from the subdivision of rural land in both Rodney and Franklin counties, were met with little demand during the year. Values appeared to decline up to 15% resulting in vendors being forced into more negotiations for sales.

A 7.9 hectare block of rolling grassland near Warkworth was first put on the market in 1987 for \$175,000 (including GST). It finally sold in May this year for \$137,500 (including GST).

It was a very poor year for farming units of all kinds, including horticultural blocks. Dairying was the only farm class to have increased activity, and expectations are rising for next year.

## **Hamilton**

### *Residential*

A steady demand was seen in Hamilton for well maintained houses in the \$80,000 to \$110,000 price range, with many being bought for rental purposes, with rent levels between \$150.00 and \$170.00 a week.

The demand for houses priced at more than \$150,000 was low, although a few sales were recorded in the \$2000,000-plus price range.

Very little new house construction was apparent. Neither was there significant demand for residential sections on the edge of Hamilton.

A steady market was experienced in most Waikato townships during the year. An increase in interest around dairying areas resulted from the increased confidence in this farming sector.

### *Commercial and Industrial*

Very limited activity was experienced in these areas, with virtually no new developments being undertaken, except for a few large industrial buildings on a pre-let basis.

There was limited demand during the year for vacant retail

shops, office space and industrial premises, with a slight increase in enquiries towards the latter part of the year.

A general over-supply of space coupled with the economic climate were viewed as the causes of this situation.

A new office development by Fletcher Developments, nearing completion, was 50% pre-let to the Housing Corporation during the year, although little interest has been shown in the remainder of the building. Insignificant growth in rental levels resulted in a two-tiered rental system developing over the year, whereby vacant premises were rented at lower levels than those already occupied.

More evidence became available that, as well as normal monetary considerations, property transactions included trading and swapping properties and shares.

Industrial rentals were generally between \$62 and \$64.00 a square metre for newer buildings of around 900 square metres. Smaller workshops and showroom-type buildings attracted rentals of between \$80 and \$95.00 a square metre.

### *Rural*

Confidence rose in the Waikato's rural sector during 1988 resulting from perceptions of the continued decline of interest rates, the New Zealand dollar and the rate of inflation.

The dairy sector's prospects improved during the year, due particularly to the milkfat payout of \$4.20 a kilogram, and the expected payout for next year of \$5.00 a kilogram.

Land prices rose accordingly, from the expected \$15.00 a kilogram of milkfat, to \$20.00 and even \$22.00 a kilogram towards the latter part of the year.

Land in good condition and well located received consistent market, while land of poor quality and remote location created little demand.

Mortgage sales were common during the year, and price levels varied according to the quality, location and property type.

Only limited optimism was expressed for fattening and grazing land, even on good quality country in reasonable locations, although a small increase was experienced for better properties.

The hill country market remained depressed. Returns failed to support any possible rise in price level and held steady at between \$80.00 and \$120.00 a unit of stock.

Horticultural properties also remained difficult to sell with the crops, whether they were trees, canes or vines, perceived as being of little or no value.

Only the very well managed and prosperous properties saw much interest from prospective buyers.

## **Rotorua/Bay of Plenty**

### *Residential*

The top end of the residential market (\$140,000 to \$200,000) was fairly active during 1988, although little movement in price levels was achieved.

A significant decline was experienced late in the year in the volume of auctions and registered sales of properties, combined with a modest decline in price levels for top quality lakeside properties in Rotorua.

An over-supply of rental accommodation occurred, and rent levels fell from around \$140.00 a week, to \$130.00 a week.

Tauranga experienced an increase in the volume of residential sales, but again with little increase in price levels.

Whakatane, on the other hand, experienced an increase in both volume and price levels of residential sales, especially at Ohope Beach. Price increases of up to 30% were paid during the year.

One property, sold in 1987 for \$150,000 sold for \$195,000

in 1988, while another realised a \$30,000 increase over the \$125,000 price paid in 1987.

Sales in Taupo increased in volume, but with no rise in price level.

### *Commercial and Industrial*

The commercial market in the Bay of Plenty was rather depressed during the year. Rotorua did show some buoyancy which was injected by overseas financiers and developers. And there was renewed interest shown in Mount Maunganui's older retail area.

Vacant retail shops were apparent in all centres, although in Tauranga's central and suburban shopping areas, interest increased in the newer developments. The Mid-City complex was reported as having sold for \$5,000,000, this showed a reasonably good yield rate of between 9%-9.25%.

Motels were plagued by poor occupancy rates and low turnovers during the year, although two new complexes in Mt Maunganui reported good occupancy rates. Three motels in Taupo went into receivership during 1988 as a result of the depressed situation.

### *Rural*

Dairying gained in confidence as the year progressed and optimism began climbing, along with the milkfat payouts.

Australian interests bought two properties in the Reporoa region as going-concerns, for more than \$1,000,000 each this year showing an increase of 21%. This raised the price from \$11 to \$14 a kilogram of milkfat.

Sheep farms suitable for conversion to dairying received some interest, although generally the scene was depressed for these properties.

Orchards and other horticultural units held little interest for buyers, due to the depressed nature of the industry. Few sales were concluded during the year, and low prices were generally received for those properties that did sell.

A high quality Tauranga orchard, with a government valuation of \$1.8 million, sold for only \$400,000 including land and buildings, but excluding plant. A further sale in Te Puke for \$350,000 had a government valuation of \$715,000.

It appeared that overseas interests were behind some of the sales, and many purchasers were keen to buy properties adjoining other recently purchased land.

## **Gisborne**

### *Residential*

House sales rose in volume by 8% during 1988 with the average price being \$62,000, a slight increase over last year's prices.

Poor quality homes sold for less than last year's prices by approximately 10%.

Wainui Beach experienced an increase in demand for properties in the mid to high price range.

Vacant sections were not popular other than at Wainui Beach, where prices ranged from \$40,000 to \$70,000 for sections with direct beach access.

### *Commercial and Industrial*

Retail rent levels increased up to 10%, ranging from \$75 to \$170 a square metre although values remained static.

The Kaiti Mall sold in July for \$950,000, which showed an increase in price over the \$938,500 June 1988 Government valuation. Office rents remained stable and the construction of two major office complexes by the Crown do not appear to have affected the interest in office rentals.

The downturn in the rural economy continued to affect the servicing industries and resulted in a low number of sales at greatly discounted levels.

## *Rural*

Undeveloped horticultural land dropped in value compared to 1987 levels. Good quality blocks (ten to 20 hectares) sold for \$6,000 a hectare, and smaller units (four hectares) sold for \$4,000 a hectare during the year.

Life-style blocks with quality dwelling included, were also difficult to sell. Heavy discounting of kiwifruit properties did nothing to encourage interest from buyers or investors.

Low levels of interest were experienced for other farm classes, and this included hill country and grazing properties.

## **Napier and Hastings**

### *Residential*

Hastings experienced a continued drop in volumes of house sales while Napier and Havelock North showed a level similar to that of 1987.

Prices were generally stable, with some reductions in Hastings. Only 11 house sales reached more than \$200,000 in the areas, with four of these in Napier and seven in Havelock North. Hastings had three sales in excess of \$150,000.

Vacant sections did not raise much interest nor did new home construction. Westshore was the only area which boasted a healthy interest in vacant sections and these were all prime, seaside locations.

### *Commercial and Industrial*

Low volumes and stable prices were experienced in 1988, compared to the buoyancy experienced in 1987. Only 18 sales were recorded during the year compared to 36 similar sales last year. Increased office vacancies and little construction reflected the economic situation of the area.

Significant sales, however, included the Angus Motor Inn complex in Hastings, which sold for \$4,500,000 plus \$800,000 chattels and the resale of the Cosmopolitan Club site in Napier, originally bought in 1986 for \$1.25 million, sold for \$950,000 and then more recently for \$900,000.

### *Rural*

Prices remained depressed, particularly for poor quality land, although prices remained stable for well-developed horticultural properties.

The removal of taxation incentives, and long term market uncertainty, reduced demand for horticultural properties, especially in the apple industry with the pending removal of the stabilisation fund by the Apple and Pear Board.

Renewed interest in grapes was a bright note for the region, and sales indicated that increased prices were paid for land carrying preferred varieties.

## **Taranaki**

### *Residential*

Increased sales volumes were the good news for New Plymouth's residential market in 1988, although values in the mid to low range remained static.

Sales volumes increased, especially at the top end of the market, for homes that sold above the \$200,000 mark.

Taranaki's rural townships continued to feel the affects of the economic situation, which resulted in a "non-spending" farming community with a low demand for residential housing.

Interest in vacant sections was also generally down on previous years, although good locations close to the city centre were in quite high demand. Oakura, a beach resort some 15 kms from New Plymouth, saw strong demand for sections, with a high proportion of sales in the \$30,000 to \$40,000 range and very desirable sites sold for up to \$52,000.

### *Commercial and Industrial*

The completion of the Centre City complex in New Ply-

mouth, at a reported cost of \$27 million, was the most significant event in the commercial sector during 1988. The complex increased the number of specialty shops in New Plymouth by 50 and added a supermarket, a department store and a 750-space car park to retailing facilities.

The completion of the complex led to a "squaring up" effect for New Plymouth's retail centre, that resulted in much of the eastern section of the centre experiencing increased vacancies and depressed rental levels.

Commercial property sales were low in volume in 1988, although a significant number of sites sold for more than \$1 million. The most substantial site sold for \$4.3 million, showing a net yield of 11.8%.

Retail rental levels in central New Plymouth, including the Centre City complex, ranged from \$45 to \$95 a metre of frontage per week, with many lying between \$60 and \$75 per week.

Construction of further office space was at an unprecedented high level during the year, with two office blocks under way that will provide more than 10,000 square metres (net) for two government tenants. These buildings are expected to be finished in 1989. Other smaller office buildings are under way also, and will possibly lead to an over-supply situation in the near future, particularly of older office accommodation.

Rental levels for modern showroom and warehouse space ranged between \$60 and \$100 a square metre per year, whereas rent levels further out, at Bell Block, generally ranged between \$41 and \$49 a square metre. Some new lettings were, however, down as low as \$21 a square metre, with attached offices from \$75 a square metre.

As expected, volumes of commercial and industrial property sales in rural areas were low. The prices were often below government valuations, a reflection of the low demand.

### *Rural*

The rural market's performance was consistent with that of 1987, and showed an increase in the volume of transactions, but with little increase in values.

Dairy land proved to be the most sought after farm class, where the main investors were: syndicate purchasers who looked for well located units producing a minimum of 40,000 kilograms of milkfat; farmers wishing to purchase adjoining property and sharemilkers wishing to capitalise on increased stock values.

Value levels appeared to rise over the year, although many sales were of a "conditional" nature.

Sheep and cattle units were more difficult to sell, with few sales recorded for hill country properties. Better located, smaller units, suitable for conversion to dairying, increased in popularity over the year.

Horticultural units followed similar trends to other North Island areas, with low demand and depressed value levels. A 62 hectare syndicated kiwifruit venture purchased in 1983, with more than \$2 million spent on development, sold at public auction for less than half the initial purchase price. Cyclone Bola was a major cause in the devastation of the property that led to such a poor return.

## **Manawatu**

### *Residential*

The first home market was the most active in Palmerton North in 1988, while other areas remained relatively quiet. Potential buyers were able to be very selective in all price ranges. This extended to sections, and a slow down in townhouse construction.

Levin enjoyed a rather buoyant year, especially at the lower end of the house market.

### *Commercial and Industrial*

A lack of interest in this market area predominated in 1988, with little activity in either rental or development areas.

Rental levels for industrial and commercial space leveled off at 1987 rates, although demand increased somewhat for secondary locations with high traffic flows.

One-off requirements for construction sites were the only new developments, such as a four-storey office building for the Department of Inland Revenue.

### *Rural*

There was little change in values compared with 1987 and a reasonable demand for well located and well kept properties.

Small holdings continued to sell well throughout the year with similar price levels to 1987.

## Wanganui

### *Residential*

Prices remained stable but fewer transactions took place over the year. Vacant land sales declined although some small increases were obtained in price, where the average price rose from \$14,536 to \$16,746.

### *Commercial and Industrial*

Commercial activity dropped from 24 sales to December 1987 down to eight sales up to June 1988. Prices remained static in the inner city although an increase of between 10%- 12% was felt on properties that edged the central business district. Little activity was experienced in suburban areas.

Office rentals remained static, with a small over-supply situation occurring due to Government departments being re-structured.

### *Rural*

No significant movement in prices was recorded during the year, with a slow turnover of properties experienced. Small holdings, close to the city, continued to sell, but with a decline in volume and prices remained static.

## Wellington

### *Residential*

Well established amenities and public transport availability were key factors in the moderate capital appreciation experienced throughout the Wellington region during 1988.

Of significance, was the drop in activity from speculative builders, while renovation and restoration levels of existing houses increased.

Market activity was assisted by increased availability of mortgage finance and lower interest rates, especially in the first home market.

House prices rose by up to 15% in areas such as Wainuiomata, Titahi Bay and the southern and eastern suburbs. The majority of sales in the Wainuiomata area fell within the \$70,000 to \$95,000 price range, whereas a typical three-bedroom house in the southern or eastern suburbs sold between \$100,000 and \$200,000.

Tawa, a locality particularly interesting to first home buyers, continued to be active throughout the year, and values showed moderate increase, although demand for larger, semi-superior homes was limited. Prices generally fell in the \$120,000 to \$200,000 range for a three-bedroom house.

Values in the Whitby, Paremata and Plimmerton areas remained stable, with a reduction in the volume of speculative houses being built. Typical three-bedroom houses sold between \$100,000 and \$200,000 with superior homes up to \$450,000.

Raumati, Paraparaumu and Waikanae maintained momentum in the new house building area with a wide range of quality, size and value available.

A new high for the area was set with the sale of a property for \$600,000.

Lower Hutt experienced a reduced demand for houses of all classes, especially those with values in excess of \$300,000.

Upper Hutt continued its role as a predominantly dormitory suburb of the Wellington region, with the majority of the workforce commuting to other areas for work. An increase in the volume of properties for sale resulted in market conditions that favoured purchasers.

Property values stabilised during the year, to where a typical three-bedroom house sold for between \$110,000 and \$130,000.

Areas such as Newlands, Khandallah and Ngaio remained popular, with house prices in the \$100,000 to \$200,000 range at the low-to mid end of the market, and prices between \$300,000 and \$500,000 for the top end of the market. Some speculative housing activity continued in areas such as Churton Park, with prices that ranged from \$270,000 to \$350,000.

Karori showed a moderate increase in property values over the year. Areas such as Thomdon, Wadestown, Kelburn and Oriental Bay recorded often substantial decreases in sale prices received for large superior homes compared to 1987 levels, sometimes as much as 30%. Two first floor superior apartment units situated on Oriental Parade were sold for a reported \$1.1 million each, after being vacant for two years.

No new developments occurred during the year, although some projects were abandoned.

Rental accommodation declined in popularity over the year, with more people in the first home market, and rental type flats became uneconomic to build. Rental levels generally decreased or at least, stabilised, during the year following the pre-crash boom of late 1987.

### *Central Business District*

A market slow down in building activity was seen in Wellington's central business district in 1988. A significant vacancy factor emerged for the first time, particularly for older style office accommodation and fringe retail premises.

Tenant inducements took the form of rent-free periods, fit-out contributions and sometimes, cash contributions.

The Government revaluation of Wellington City caused heavy impact for inner city building owners and tenants alike.

This, combined with the Wellington City Council's change from land value to capital value rating and the Government's land tax, caused a substantial increase in occupancy costs for premises occupied by way of net leases. There was a decrease also in the net maintainable income for buildings leased in the older gross manner.

An example of this was shown in the owner's recoverable operating expenses for a major Wellington landmark, which increased from \$81.97 to \$148.23 a square metre for the years ending 1987 and 1988. Another two-year-old building's outgoings increased from \$48.95 to \$81.39 a square metre as a direct result of the increase in land tax and the change to capital value rating.

No recorded sales of redevelopment land occurred during the year in the central business district. Values of land on the edge of the district fell by between 30%-50%.

Reduced sales activity was evident, with the majority of transactions in the \$1 million to \$2 million price range, with yields that increased generally, by one or two percentage points.

An increase was seen in sales activity in the \$10 million to \$70 million value range over the latter part of 1988. Many settlements favoured the purchaser, and included benefits such as rental guarantees, deferred settlements and the availability of concessional vendor finance.

Rental growth was limited for retail premises and increased vacancy levels became evident, particularly in malls and first floor premises.

### *Commercial and industrial infringe locations*

Increased vacancies appeared in areas such as Upper Hutt and Porirua for all classes of property, especially for large manufacturing plants.

Retail rental rates stabilised in Porirua, between \$500 and \$550 a square metre. A number of national tenants withdrew from the city centre over the year, because of the continued deterioration of the area's appearance.

Warehouse demand slowed, with rentals stabilised between \$65 and \$80 a square metre, plus rates and insurances.

A vacancy factor was evident for the first time in the Petone area, predominantly of older style warehouse buildings from the 1940/50 period.

Rental rates were in the \$70 to \$95 a square metre range, plus outgoings.

A number of small manufacturing plants closed during the year, as well as the Ford motor vehicle assembly plant at Seaview, and resulted in an increased vacancy factor for premises in excess of 2,000 square metres.

Central Lower Hutt saw a number of medium-rise office buildings opened in mid-1988, and although the rentals gained were approximately \$200 a square metre less than in central Wellington, difficulty was experienced in attracting tenants.

Upper Hutt rental levels were well below those obtained in Lower Hutt, with many small retail premises and industrial buildings unoccupied.

### *Rural*

Reduced demand was evident for all classes of farms in 1988, other than small four hectare type units close to Wellington City. A number of these units sold in the \$500,000 to \$600,000 price range.

Conversely, there was limited demand for larger land units in excess of 50 hectares. A few sales were made to owners of adjoining land, or land suitable for sub-division into smaller rural blocks.

A decline in the sale of economic farm units was noticeable during the year, although a 150 hectare dairy farm sold early in 1988 for \$400,000 plus chattels. It had a 1985 government valuation of \$340,000.

Cash sales of economic units were increasingly common as a direct result of reducing returns from conventional farming and the high cost of mortgage finance.

## Nelson

### *Residential*

Section values decreased in Nelson, especially for hillside and townhouse development sections. A small volume of section sales were recorded for Atawhai and Richmond. A new subdivision in Stoke recorded almost half of the 30 sections sold only two months after they were released for sale. These sections ranged in price between the upper \$30,000s and \$45,000.

There was limited building activity in all areas of the Nelson residential market. The market remained strong for first home buyers in the \$60,000 to \$75,000 price range although the upper end of the market was affected by an uncertain employment situation. Those buyers looking to the top end of the market were very selective, and many properties remained on the market for some time before they finally sold.

Rental levels held firm towards the end of the year, with an over-supply of rental accommodation in rather poor conditions. Many tenants who wished to shift to better accommodation were not prepared to pay higher rents, and this led to growing con-

cerns regarding the quality of available tenants.

### *Commercial and Industrial*

Sound commercial investment properties attracted some interest, but only for those properties that had reliable existing tenants on long term leases, and in prime locations.

A prime property showed a return of approximately 9%, while those on the edge of the central business district only managed a return of between 11%-13%.

Little demand was seen for industrial premises, again with returns softened by more than 1% in most cases.

Motels suffered significant drops in gross turnover and two mortgagee sales took place during the year. There were more motels in financial difficulty while lessors could expect only minimal, if any, increases in rentals at review time.

### *Rural*

A very slow market was experienced in Nelson during 1988 with only 56 market freehold transactions recorded up to July 1988. A further 110 smallholding transactions were also recorded.

Declining values for sheep farms in remote locations, and only small increases for those in better located areas, were experienced.

Prices ranged from \$80 to \$90 a stock unit for poorer properties, to \$120 to \$130 a stock unit for better quality properties.

Dairy farms found a very mixed market in 1988 with values that ranged from \$8.30 up to \$20 a kilogram of milkfat.

Forestry had a very quiet year with no sales recorded for vacant land, and very few sales for established forests, as timber mills waited for the sale of the Forestry Corporation.

Horticulture properties also had a mixed year. Pip fruit units sold at slightly higher prices than those experienced in 1987, and berry and kiwifruit units often sold at discounted prices, very close to actual land values.

Small holdings sold in line with the increases in residential sales, with a good demand recorded for suitable properties.

## Marlborough

### *Residential*

Blenheim borough was one of the few areas to have markedly increased the volume of residential section sales over the past 12 months. A rise of 40% was recorded in the first six months of 1988, compared to 1987 figures. The highest volume occurred in the lower to medium price range, between \$17,000 and \$27,000.

The top end of the residential section market (up to \$45,000 for 1012 square metres) became active in prime locations, particularly in areas suitable for multi-unit development.

Also well up on 1987 figures were sales of dwellings and ownership flats, although this increase slowed during the third quarter, mainly due to uncertainty about employment and the economy.

Both vacant and improved residential sales volumes were firm on last year's levels in the Picton borough.

Increased house building activity was reported from Blenheim and Picton.

Rental accommodation received steady demand over the 12 month period, with greatest emphasis on two-bedroom units. Only modest rent increases were achieved however.

### *Commercial and industrial*

Blenheim's central business district attracted little interest during 1988 for investors in commercial or industrial property. Picton achieved two sales in excess of \$1 million—the Whalers Inn and the Americano Motel.

Most commercial redevelopment was postponed during the

year, although a small amount continued and several small owner-occupied light industrial sites were developed.

Retailers experienced rather difficult trading times throughout the year. However, Blenheim had virtually no vacant space, while Picton's more seasonal orientation experienced up to 10% of retail vacancies.

General office space met with good demand if it was well appointed and in good condition, and received between \$110 and \$120 a square metre. Smaller office spaces provided rentals of between \$65 and \$80 a square metre.

### *Rural*

An air of uncertainty surrounded Marlborough's rural property market during 1988. Prices fluctuated in all classes of farming and horticulture.

Grazing and fattening farm units sold reasonably well with values ranging from \$100 an average stock unit, to \$150 a stock unit for good, small units or well located properties.

Dairy farms were not popular, and prices ranged between \$10 \$16 a kilogram of milkfat. Incentives introduced towards the year-end look set to improve this area of farming.

Forestry expansion and planning continued with large areas being planted mid-year, although the industry is likely to rationalise developments because of the long term costs associated with selecting future forestry sites.

Horticultural and viticultural property saw the largest growth area in the grape industry in 1988. Marlborough wines were extremely popular which boosted the industry and resulted in many new-comers to the area. Some blocks as large as 60 hectares were planted during the year, and previously unused side-valleys were also planted.

Rural/residential type properties continued to be attractive despite harder economic conditions, especially for a few properties close to Blenheim and the Marlborough Sounds.

## Canterbury

### *Residential*

Values continued to increase in Christchurch during 1988, although at a slower rate than in 1987. However, a period of consolidation was experienced, rather than one where home owners trade up and thereby increased their mortgage payments. This resulted in a decline in the volume of house sales.

Few residential properties were for sale for less than \$50,000, although the lower end of the market was steady.

A moderate improvement was felt in the mid range of properties with a reasonable demand for those up to \$150,000 but with no noticeable change to prices.

A notable change was seen, however, in the top end of the market where prices eased considerably, with sales slow, particularly in the \$1 million plus range. Three properties in the \$700,000 \$900,000 range sold, however, in late 1988.

It was a slow year for domestic builders, especially in the speculative building market where heavy competition kept costs steady throughout the year.

A modest increase in section prices occurred but with lower sales volumes. A steady increase also occurred in the domestic rental market with one bedroom units renting for \$80 to \$90 a week, three bedroom houses for between \$150 and \$170 a week, and four-bedroom houses from \$170 onwards.

Of significance were the number of blocks of rental units that were converted to composite titles and sold separately, thus reducing the volume of available rental accommodation.

Limited growth was experienced in outlying areas such as Rangiora, Rolleston and Darfield.

### *Central Business District*

The buoyant market of 1987 was reversed in 1988 with an

over-supply of office accommodation in the central business district and also at the fringe of the central business district. This depressed property values, with few confirmed sales throughout the year and increased property yields of between 1%-2%.

Tower cranes continued to dominate the city skyline with major construction sites being Robert Jones House at the intersection of Colombo and Armagh Streets overlooking Victoria Square, the Advantage Corporation Building in Armagh Street, the United Building Society building at the intersection of High Street and Cashel Mall and the Don Forbes Building in Cashel Street. Thereo-fitting of the BNZ office building also occurred during the year.

Tenant-inducement packages, similar to those offered in other large cities in New Zealand during the year, were also offered in Christchurch. Benefits offered included rent-free periods, cash offers, free fit-out and sometimes offers to take over the lease of existing premises.

Of note was the sale of the Clarendon Building, on the banks of the Avon river, to a Japanese company for \$38 million; the price was considered to be much lower than the expected price for the building. The building offers Christchurch a large office space plus retail accommodation at ground floor level, a restaurant and bar at first floor level and carparking facilities.

Owners of older office buildings experienced a lean time during the year with many forced to curb rental reviews in an effort to retain occupancy rates. Government land tax and increased rates will no doubt have a further effect on this situation.

Intense competition from suburban retailers was experienced by many inner city retailers, and this resulted in active promotion of the inner city in an attempt to entice customers. Parking problems were alleviated with the opening of the coupon carpark on the proposed Sheraton Hotel site in Worcester Street, the new city council carpark in the basement of the new Park Royal Hotel, and extensions to the city council's carpark in Lichfield Street.

The tourist industry was focussed on during the year with the completion of a number of projects such as The Pavillions tourist hotel in Papanui Road, and the new Park Royal Hotel adjacent to the Christchurch Town Hall.

Other tourist accommodation and restaurant complexes also undertook refurbishment programmes during the year, such as Noah's and the Quality Inn Chateau Hotel overlooking Hagley Park.

### *Suburban Commercial Areas*

Continued development of the major suburban areas of Christchurch occurred with attention focussed principally on Riccarton.

The old Woolworth's supermarket building was refurbished as a banking chamber for the National Bank during the year, and plans were got under way also for redevelopment of the old Taylors Dry Cleaning site as a new office and retail building.

A new DEKA development, in conjunction with speciality shops, was begun at the western end of Riccarton Road, adjacent to the Bush Inn Hotel. This will provide strong competition for the nearby Riccarton Mall and will complement the existing retail development in Upper Riccarton.

### *Industrial*

Many new warehouse and light industrial developments were undertaken in 1987 which proved difficult to lease in 1988, and caused an over-supply of vacant industrial accommodation in the city.

The city council proposed to zone the inner city area as a business zone which would allow a wider range of uses for the

land. This, however, had little effect on the values in the inner city as there was no increased demand from tenants or investors.

The Riccarton Industrial Park in Mandeville Street was one of the more successful developments of 1988, where the Amuri Corporation developed a large block of land into a showroom/office park complex. Although a reasonable amount of the space was pre-leased, there was still a steady demand for industrial accommodation in this area of the city.

Yields increased over the year, from between 1%-2%, depending on the quality of the premises. Limited investor interest was evident.

The total industrial sales in Christchurch showed a drop of 12% over 1987 figures, with 222 sales recorded. The average value of improved properties only increased by 3.5% whereas the 1987 increment was up to 50%.

### *Rural*

The city influence of Christchurch held land values at a relatively higher level than experienced elsewhere in the South Island during 1988. While there was a large volume of rural properties for sale over the period, there was a shortage of good properties on the market. A slight drop in farm values occurred, compared to 1987 figures.

Arable land experienced a modest decline of 10% over the year. A consolidating effect took place and compressed the range between poor and high quality production units.

The capability of running Merinos was the "saving grace" for much of the light land fattening properties on the plains in 1988, as this buoyed up the prices somewhat.

High fine wool prices and an unprecedented demand for replacement stock created a largely unsatisfied demand for high country freehold properties, with starting values at \$100 a stock unit. Few such properties have been available at any one time.

Little interest was shown in pastoral land leases as a result of the much publicised Ngai Tahu land claim, which created a feeling of uncertainty of tenure in the high country.

Dairy farms maintained their values although few sales occurred during the year, with the average price being around \$15 a kilogram of milkfat.

Location was the key to saleability, especially with respect to small holdings close to the city. Values generally declined slightly in 1988, although well located and improved land actually increased in value.

A severe drought throughout many areas of the region was a major problem for many farmers, with much stock being sold at discounted prices.

## Westland

### *Residential*

Depression in the domestic construction market continued during 1988 as replacement costs continued to exceed current market values by up to 20% in isolated localities. Dwellings that were constructed tended to have a considerable owner-labour input, with no formal building contracts in evidence.

Section sales and value were static throughout the West Coast region, with a limited availability of freehold building sites and no demand for sub-divisional development.

Greymouth experienced an increase in demand for freehold sections considered high and dry, since the flooding during the year forced many to relocate and upgrade existing damaged homes.

Average section prices ranged from between \$4,000 and \$6,000 in Reefton, to between \$25,000 and \$27,000 in central Greymouth and South Beach.

Demand remained strong in Greymouth and Hokitika for existing houses in the medium price range, which tended to lift

properties in the \$50,000 category. This was accelerated in October as flood victims sought to take advantage of the Housing Corporation's disaster mortgage assistance to purchase housing outside the flood-damaged area.

Reefton remained inactive while Westport had no shortage of listings although activity increased slowly in this area. The rental market experienced an upward movement in both Greymouth and Hokitika where good quality accommodation remained scarce.

### *Commercial and industrial*

Minimal industrial activity occurred on the West Coast with the majority of industrial space being owner operated and related to the servicing of machinery in association with extractive industries (coal and gold mining), transport and vehicle operations. Good quality and well located industrial space for rent was difficult to find. However, rental rates for this space ranged between \$30 \$50 a square metre.

Greymouth values were drastically affected by the flood damage and were generally unavailable, although some flood stock losses were valued at more than the value of land and buildings.

Westport was the most active of the West Coast centres, with the development of a Mitre 10 store, a garden centre, craft outlet and restaurant. This compared favourably with the stagnant situation of 18 months ago.

Hokitika experienced no new development activity following Department of Conservation redundancies and company receiverships.

Reefton was similar in a general lack of activity, especially following forestry redundancies. Many projects were on hold in 1988, such as Westport's deep sea port, forestry logging at Reefton, tourist development projects at Greymouth, Hokitika and Moana and the Rapaho coalfield, although the latter is due to restart in 1989.

## Mid South Canterbury

### *Residential*

Reduced levels of new housing development continued in Mid and South Canterbury during 1988, but so too did the volume of vacant sections available.

Prices, however, remained reasonably steady and both Timaru and Ashburton experienced demand for good, prestigious sections in the \$35,000 to \$50,000 range.

Prestigious existing housing in the \$150,000 to \$250,000 range, received also a steady demand in Timaru, as did the demand for lower cost housing.

Overall, though, there was little growth in values.

Ashburton experienced some market weakness in the lower range of the housing market but with steady demand in the mid to upper ranges.

Easing interest rates assisted market levels, but little appreciation was experienced in house values, and properties with detracting features sold generally at discounted prices.

### *Commercial and industrial*

Timaru's central business district continued to experience a steady demand for property, but with little value increase.

The fringe of the central business district weakened in value and demand.

The industrial centre maintained values, although little growth in demand was experienced, and some properties declined in value if hurried sales were required.

Where strong tenancies existed in well leased properties, a steady demand was experienced. Typical yields were between

11.5%-12.5% in prime retail areas, and rose to between 13%-15% in the fringe areas.

The best located and well tenanted service properties received yields of between 12.4% and 14%, while the industrial properties of less calibre maintained yields of between 14%-18%.

A few excellent investment opportunities presented themselves towards the year end at values that reflected reasonably the full attributes of the properties, particularly where a high quality tenancy was established.

### *Rural*

A fragile rural market was formed in 1988, exacerbated by the severe drought conditions experienced on the mid and coastal plain, and in certain inland areas.

These conditions forced an exodus of both trading and capital stock from the district, which set back many traditional farming enterprises that were already faced with economic hardship.

Many farm transactions undertaken were in forced circumstances, although there were relatively few mortgage sales.

Arable land continued to weaken in value although the prospect of better grain prices relieved the situation somewhat.

Irrigated property suitable for dairy farming attracted some interest but dry sheep farms remained in a declining market. Fattening farms struggled to maintain their value levels between \$90 and \$130 a stock unit, especially under the drought conditions.

## Otago

### *Residential*

A steady year was experienced in the residential property market in Dunedin during 1988.

Significant factors occurred during the year such as a townhouse redevelopment site, where two-bedroom units sold for between \$75,000 and \$95,000 and single units for between \$45,000 and \$60,000.

Homes in the mid price range between \$65,000 and \$100,000, were the strongest sellers. There was a lot of activity within established value levels, although no specific move in those levels was recognised.

A number of properties in the \$120,000 to \$170,000 price range sold without much effect on the overall market situation, and properties at the top end of the market (\$200,000 plus) sold reasonably well.

The residential investment market situated in the north end of Dunedin was most active over the year. This was an area dominated by student housing servicing the local university and houses generally rented on a per room basis. Rentals attracted between \$50-\$55/room a week for older villas, while new developments attracted premium rentals.

Often, contracts were bought and sold prior to settlement, which emphasised the vibrant nature of activity in the area.

### *Commercial*

With the exception of one building complex which was redeveloped and extended for further office accommodation, there was little multi-storey development in the central business district.

A surplus of office accommodation (up to 10% of the modern, multi-storey buildings available) was in evidence. Generally, office rentals were maintained, although small, specifically designed projects sometimes increased.

Three significant multi-storey building sales took place during the year. In March, Cargill House sold for \$6.7 million; in July, the Government Life Building sold for \$5.8 million; and in September, the National Insurance Building sold for \$3,570,000.

In the prime George Street retail sector, rentals generally moved up to between \$125 and \$135 a metre of frontage, or \$500 to \$550 a square metre plus rates. Those premises designed specifically for a tenant, often paid a premium rental.

Investor confidence was relatively steady, with the above sales indicating an increase required investor return of between 1%-1.5%.

Carparking space remained in high demand with considerable interest expressed for parking in a building redevelopment project near Dowling Street. Rentals were reported to be set at between \$25-\$30 a week.

## Queenstown

### *Residential*

A steady market saw house and section prices rise to the levels of two years ago, with a reasonable demand for both vacant and improved properties.

Good residential houses attracted prices of around \$250,000 with condominiums settling between \$200,000 and \$250,000.

Good sections maintained their values at around \$70,000 while average to poor sections (between \$30,000 to \$40,000) fell by up to 50% over the past two years.

### *Commercial*

Consolidation was the main focus of 1988 in the commercial sector in Queenstown, with retailers finding the economic conditions particularly difficult due to a very poor tourist season.

Retail shop rentals attracted between \$250 and \$300 a square metre, representing a reduction in return on capital once the implications of land tax and rating changes were taken into account.

The expected yields were between 9%-10.5% showing outward movement of some 2%.

### *Industrial*

Rentals dropped considerably with space ranging from \$40 - \$80 a square metre. There was a significant vacancy factor in the area, and tenants were able to negotiate rentals at more favourable terms.

Little sales evidence was recorded and asking prices showed a return rate of between 11% - 13%.

### *Tourism*

It was a difficult year for the area with significant tourist complexes either for sale, in receivership or up for auction and tender.

Two sales were particularly interesting. The Lakeland Regency (182 rooms) sold at \$15.5 million to an Australian based company. The Country Lodge sold to a local consortium at between \$5-\$6 million.

An air of opportunity was felt in the area, although it appeared that only overseas companies were sufficiently motivated to take advantage of the properties on the market.

### *Rural*

A two-tier market became evident during 1988 for fattening farms, with better properties in good localities selling readily for prices up to \$120 a stock unit.

Fine wool properties continued to sell well, largely due to the good wool prices, although there were few sales throughout the year. A 3,048 hectare fine wool producing unit under pastoral lease was purchased by owners of adjoining land for \$1 million, at \$111 a stock unit.

With the improved outlook for dairying, this industry became more attractive to investors. Investment companies purchased a number of irrigated properties in North Otago for around \$9 a kilogram of milkfat.

A 193 hectare dairy unit on the Waitaki Plains with full spray

irrigation and good improvements sold for \$465,000 at \$8.94 a stock unit.

The drought conditions experienced in North Otago gave a rather gloomy outlook to the region, especially for small dryland units.

Many forced sales are predicted, although many farmers will make use of the drought relief package announced towards the end of the year.

## Southland

### *Residential*

A steady demand for residential property in Invercargill continued despite a slight drop in population.

A fall in demand was experienced in the lower-priced house market, with many sales recorded between \$12,000 and \$18,000 showing a reduction in values.

Houses that were capable of sustaining Housing Corporation finance created a steady demand, and maintained values.

There was a good demand for well presented homes in the \$65,000 to \$90,000 price range, with reasonable value increases, particularly for well presented character dwellings in the Richmond and Windsor suburbs.

Strong demand was experienced for modern superior homes throughout the city which caused a shortage of supply. This increased the values of those homes on the market.

Ownership flats and townhouses recorded moderate demand in the lower priced market with strong demand for modern superior units.

Purpose built flats and flat-converted dwellings did not sell well due to limited rental growth combined with continually rising ownership costs. Sales generally showed net returns of 15% plus.

Lower priced sections were not popular although there was steady demand for mid-high priced sites. A slight fall was recognised in section values overall.

The larger rural townships experienced a drop in both demand and value for residential properties, due especially to the northward drift of the population.

### *Commercial*

A strong commercial market existed in Invercargill during 1988, due largely to increased interest in alternative investments such as industrial warehouses, suburban retail shops and residential flats in the central business district.

The market for properties with inferior locations remained weak, especially for those sold with vacant possession or without the security of a strong lease to a major tenant.

A number of retail shops became vacant over the year, but with other businesses quickly taking over the leases for well located sites. A moderate amount of business expansion and new business establishment was recognised.

A marked increase in building activity was also experienced, with projects currently under way for Telecom, National Australia Bank and other smaller companies as well as a new city library on the old Broad Small site. Some renovation and reconstruction work was undertaken in the central business district,

which provided more office space and retail outlets for the city.

Retail shop rentals continued to show a reasonable growth, with top rentals tending to be located in arcade situations at between \$220 \$240 a square metre.

Strong growth was experienced for good quality, well located and modern office space, with rental levels between \$170 and \$220 for air-conditioned office accommodation currently being constructed. Older style offices, without carparking, continued to be difficult to let, with rentals as low as \$25 a square metre.

Resistance to increased rentals was experienced in suburban locations so that nil increases were often accepted by landlords. Rentals fell between \$60 and \$120 a square metre, with those in the south city showing between \$200 and \$225 a square metre.

There was little demand for suburban shops as investments.

### *Industrial*

A strong demand remained for single tenancy modern showroom/warehouse buildings. The construction of two new buildings began in Clyde Street for NZ Safety and Bob Atley Ltd while other buildings in the city were modernised. Rentals gained were generally between \$60 to \$85 a square metre.

The market for large vacant industrial buildings continued to harden, with some properties being sold for between 33.3% and 50% of their 1987 government valuations. Rentals for these larger properties tended to be in the \$11 to \$12.5 a square metre range.

The market in provincial towns was depressed, although there was some renewed interest from owner/occupiers repositioning to larger, more modern premises.

Notable sales during the year included the sale of Woolworth's Waikiwi superstore for \$2.4 million, and a centrally located multi-storey office building for \$2.25 million. A vacant sale of note was the Crawford House site at \$440,000.

### *Rural*

Prices generally held over the year for well presented and located properties. Properties with gorse problems were difficult to sell. Dairy farms were in short supply with increased confidence in the industry. Demand was good for larger units in good locations, with conversion from sheep to large scale dairy operations increasing.

Grazing farms declined in value, with little recognition for property potential. Most sales were in the 1800 to 2000 stock unit category with few sales of more than 3000 stock units. The majority of buyers were established farmers and farmers' sons, with very few new farmers entering the industry. Purchasers appeared to be increasing the size of their properties by either gaining adjoining land or leasing land between \$10 and \$11 a stock unit. Owners of the land paid the rates and insurance.

In more remote areas, lease rates were between \$7 and \$9 a stock unit. Cropping land leased for around \$250 a hectare, but there was little interest in purchases for this category. Sale prices for improved farms in good localities were between \$90 and \$120 a stock unit with the majority between \$100 to \$105 a stock unit. Hill country farms were more difficult to sell at between \$70 and \$90 a stock unit, with little demand evident. A

# The Trustee Amendment Act 1988

By N John Carter

## The Old Law

1. The Trustee Act 1956. The scheme of s.4 of that Act was to authorise specific trustee investments. The section authorised the investment of trust funds on mortgages which were divided into three categories:

- a. A mortgage of an estate in fee simple or a first sub-mortgage of such a first mortgage including a first mortgage over the interest of the leasee of any land administered by the Land Settlement Board or any Maori land or deferred payment licence under certain provisions of the Land Act 1948 or under a lease with a perpetual right of renewal and the lease was not liable to forfeiture for any default and the lessee was entitled to compensation or adequate protection in respect of all improvements on the land;
- b. A first mortgage of a lessee's interest in land provided that the lease was granted under the Public Bodies Leases Act 1969, was registered under the Land Transfer Act, was not liable to forfeiture in the event of a bankruptcy or winding up or on the taking in execution of the lessee's interest and did not require periodic reviews of rent at intervals of less than seven years and in certain cases conferred upon the outgoing lessee the right of payment of the value of all buildings and other improvements belonging to the lessee;
- c. A first mortgage of a stratum estate in freehold under the Unit Titles Act or certain stratum estates in leasehold and a mortgage redemption policy is taken out under s.39 of the Unit Titles Act.

2. Under the Trustee Act 1956 the trustee was protected if the trustee was acting upon a report as to the value of the property by a person whom he reasonably believed to be competent to value the property, being a person instructed and employed independently of the owner of the property. In respect of mortgage advances over leasehold interest the amount of the advance could not exceed one half of the value of the lessee's interest as stated in the valuer's report and in respect of mortgages of other land interests the amount of the loan could not exceed two thirds of the value of the property as stated in the report.

In both cases the loan had to be "made under the advice of the valuer expressed in the report."

There are other provisions in respect of mortgages of leasehold interest that had to be complied with.

3. At common law a trustee was under a general duty to act with reasonable diligence and to conduct the trust's affairs in the same manner as an ordinary prudent man of business would conduct his own affairs, but beyond this he is not bound to adopt further precautions. A higher duty of care was due from a trust corporation or similar body. In cases of doubt or difficulty a trustee is expected to take legal advice and will probably be relieved of responsibility if it was reasonable for the trustee to act on such advice.

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## The New Law

4. The Trustee Amendment Act 1988. All the old technical investment rules are swept away and have been replaced by sections 13A,B and C as follows:

13A Power to invest (1) A trustee may invest any trust funds, whether at the time in a state of investment or not, in any property.

(2) Any such investment may be varied from time to time.

13B Duty of trustee to invest prudently Subject to sections 13C and 13D of this Act, a trustee exercising any power of investment shall exercise the care, diligence, and skill that a prudent person of business would exercise in managing the affairs of others.

13C Duty of certain persons to exercise special skill Subject to section 13D of this Act, where a trustee's profession, employment, or business is or includes acting as a trustee or investing money on behalf of others, the trustee, in exercising any power of investment, shall exercise the care, diligence and skill that a prudent person engaged in that profession, employment, or business would exercise in managing the affairs of others.

...the duty of care for the ordinary trustee is now higher than under the common law...

5. You will note that the duty of care for the ordinary trustee is now higher than under the common law. The objective standard is no longer that of an ordinary prudent man of business in the conduct of his own affairs but is now "in managing the affairs of others."

6. In respect of professional trustees the statutory duty now seems akin to the existing common law duty.

7. The Trustee Amendment Act has caused a huge stir in the legal profession and in the trust management industry. In reality not a lot has changed. In addition most wills and trust instruments contain provisions protecting trustees from liability except in the case of dishonesty. Such a provision will

continue to protect trustees against breaches under the Trustee Amendment Act 1988. I set out 13D.

13D Provisions in trust instrument relating to duty of investing trustees- (1) The duty imposed on a trustee by section 13B or section 13C of this Act shall apply to a trustee if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust or any Act, and shall have effect subject to the terms of that instrument or Act.

(2) Any rules and principles of law relating to any provision in an instrument that purports to exempt or limit the liability of a trustee in respect of any breach of trust, or to indemnify a trustee in respect of any breach of trust, shall remain in force and apply in respect of any provision in a trust instrument that expresses a contrary intention for the purposes of subsection (1) of this section.

8. S.13E now contains suggestions as to what matters a trustee should take into account in exercising his powers of investment.

13E Matters to which trustee may have regard in exercising power of investment - Without limiting the matters that a trustee may take into account, a trustee exercising any power of investment may have regard to the following matters so far as they are appropriate to the circumstances of the trust:

- (a) The desirability of diversifying trust investments;
- (b) The nature of existing trust investment and other trust property;
- (c) The need to maintain the real value of the capital or income of the trust;
- (d) The risk of capital loss or depreciation;
- (e) The potential for capital appreciation;
- (f) The likely income return;
- (g) The length of the term of the proposed investment;
- (h) The probable duration of the trust;
- (i) The marketability of the proposed investment during and on the determination of, the term of the proposed investment;
- (j) The aggregate value of the trust estate;
- (k) The effect of the proposed investment in relation to the tax liability of the trust;
- (l) The likelihood of inflation affecting the value of the proposed investment or other trust property.

9. The Amendment Act does not affect the trustees other legal duties, s.13 f and g.

13G Duty to comply with requirements of trust instrument or statute as to consents or directions- A trustee exercising any power of investment shall comply with any requirements of the instrument, if any, creating the trust or of statute that are binding on the trustee and that relate to the obtaining of any consent or compliance with any direction with respect to the investment of trust funds.

13F Trustee's duties at law preserved- All rules and principles of law which impose any duty on a trustee exercising a power of investment, including, without limiting the generality of the foregoing, all rules and principle which impose:

- (a) Any duty to exercise the powers of a trustee in the best interests of all present and future beneficiaries of the trust;
- (b) Any duty to act impartially towards beneficiaries and between different classes of beneficiaries;
- (c) Any duty to take advice,- shall remain in force and apply in respect of any exercise of any power of investment, except so far as they are altered by or are inconsistent with this Act or any code enactment or the instrument, if any, creating the trust.

10. Existing investments are protected, s. 1311:

13H Power to retain investments-A trustee shall not be liable for breach of trust by reason only of continuing to hold an investment which has ceased to be:

- (a) An investment authorised by the trust instrument; or
- (b) An investment that a trustee could properly make in exercising any power of investment: or
- (c) An investment authorised by section 4 of this Act before the repeal of that section by section 3 of the Trustee Amendment Act 1988; or
- (d) An investment authorised by any other Act.

11. The court may take into account investment strategies in any action for a breach of trust, s. 13M:

13M Court may take into account investment strategy in action for breach of trust-In considering whether a trustee is liable, in respect of any investment made by that trustee, for any breach of trust in respect of any duty-

- (a) To exercise the care, diligence, and skill that a prudent person of business would exercise in managing the affairs of others; or
- (b) To exercise the care, diligence, and skill that a prudent person engaged in a profession employment, or business that is or includes acting as a trustee or investing money on behalf of others would exercise in managing the affairs of others,- the Court may, if it thinks it appropriate, take into account-
- (c) Whether the trust investments have been diversified, so far as is appropriate to the circumstances of the trust; and
- (d) Whether the investment was made pursuant to any investment strategy formulated in accordance with the duty referred to in paragraph (a) or paragraph (b) or this section as may be applicable.

12. In respect of mortgage loans on property a trustee will not be liable for a breach of trust if s.13N is complied with:

13N. Certain loans and investments by trustees not chargeable as breaches of trust- (1) A trustee lending money on the security of any property on which the trustee can properly lend shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, if it appears to the Court

- (a) That in making the loan the trustee was acting upon a report as to the value of the property made by a person whom the trustee reasonably believed to be competent to value the property by reason of his or her profession or occupation and his or her personal expertise and experience, being a person instructed and employed independently of any owner of the property; and
- (b) That the amount of the loan does not exceed the proportion of the value of the property stated in the report as the maximum proportion that the valuer considers that it would be prudent to lend on that property; and
- (c) That the loan was made on the advice of the valuer as expressed in the report.

(2) A trustee lending money on the security of any leasehold property shall not be chargeable with breach of trust only upon the ground that in making the loan the trustee dispensed either wholly or partly with the production or investigation of the lessor's title.

...trustees will still be looking for the usual recommendation of the valuer...

13. You will see that the scheme of the section is similar to the old s. 10 except that instead of there being specific 50% and 662/3% cut off figures for leasehold and other land interests the percentage is now "the maximum proportion that the valuer considers that it would be prudent to lend on that property. You will also note that trustees will still be looking for "the advice" ie. the usual recommendation of the valuer for the amount of the loan.

### Relevant Specific Questions

14. Do valuers have to make a mortgage recommendation and if so what are their liabilities?

Under s. 13N(c) solicitors and other trustees will be continuing to insist on a mortgage recommendation.

The standard of care required of a valuer was recently restated by the Court of Appeal.

First, what in law is the standard of care required? In the circumstances of this case negligence is the doing of something which a reasonably prudent registered valuer would not do, or the failure to do something which a reasonably prudent valuer would do, under circumstances similar to those shown by the evidence. It is the failure to use ordinary or reasonable care. The amount of caution required of a valuer in the exercise of ordinary care depends upon the conditions apparent to him, or that should have been apparent to a reasonably prudent valuer under circumstances similar to those shown by the evidence. See generally *McLaren Maycroft & Co v Fletcher Development Co Ltd* (1973) 2 NZLR 100, *Richmond J* at p108, *Gold Star Insurance Co Ltd v Dominion Adjusters Ltd* (1982) 2 NZLR 38, *Whitehouse v Jordan* (1981) 1 All ER 267 (HL) Lord Edmund-Davies at p 277 citing *Bolam v Friem Hospital Management Committee* (1957) 2 All ER 118,121, *Ashcroft v Regional Health Authority* (1983) 2 All ER 245, 247 and *Clark v MacLennan* (1983) 1 All ER 416. The plaintiff called Peter James Mahoney, a registered valuer, to give expert evidence of standards and valuations of the subject land. On standards it could be said his evidence clearly implied Mr B arraough had not reached standards of ordinary skill and care in the valuation of 21 October 1974.

15. With the removal of set percentage mortgage recommendations on current market values for both freehold and leasehold land, what would a prudent valuer be expected to recommend?

16. You will be liable if you depart from the standard of a reasonably prudent valuer. G B Shaw in *Man and Superman* said:

*The reasonable man adapts himself to the world: the unreasonable one persists in trying to adapt the world to himself. Therefore all progress depends on the unreasonable man.*

Until a reasonable valuer sets new different standards you would probably be well advised to stick to the old 50% and 662/3% rule of thumb.

17. This is my personal view. Since I have been in legal practice some 20 years, the New Zealand economy and land values have gone through several boom and bust cycles. It seems that our politicians of either party are not capable of comfortable alignment for longer than three years at a time. It seems to me therefore that boom and bust cycles are likely to continue. I think the valuers should take this into account in making mortgage recommendations. It also seems likely, that New Zealand may achieve a NIL or small inflation

trend. If that happens, valuations with marginal recommendations will not be saved by the passage of time as they have been in the past. It is my personal view that valuers, in making mortgage recommendations, might be well advised to take into account a future market reverse and the effect on a mortgage security. This problem is accentuated with unusual properties. For example I have seen a particular valuation of a tourist facility at the height of the boom which largely relied on an accountant's assessment of profitability. In turn this was based on unproved room occupancy and restaurant and bar turnovers supplied to the chartered accountant by the owner but with the usual accountant's disclaimer that his calculations were based on information supplied by the owner and he accepted no responsibility for them. In that instance there will be a substantial shortfall for the mortgage lenders. Where should responsibility lie? With the owner (now gone to Australia) who supplied the turnover figures? With the accountant who extended them into profit forecasts but with a disclaimer of liability? With the valuer who simply adopted them? With the lawyer who relied on the valuation and invested client funds? With the investors?

### ...valuations with marginal recommendations will not be saved by the passage of time...

18. What effect will the amendments have on recommending mortgages on leasehold land, notably leases with less than seven year review terms?

19. I do not know the reason why the 1956 Act prescribed mortgages of leases with periodic rent reviews of less than seven years. Why seven years? Do leases with longer rent reviews hold their values? Do leases with lesser rent reviews decrease in value?

20. I cannot in the context of this address give you a legal opinion. If the consensus of reasonably prudent valuers is that the seven year period is meaningless then you would probably be safe in discarding it. If leases with such short rent reviews do have a habit of going through a decreasing cycle in value you may be well advised to heed the old rule.

21. Who can make a trustee valuation?

22. The answer is set out in s.10(a).

A person whom the trustee reasonably believed to be competent to value the property by reasons of his or her profession or occupation and his or her personal expertise and experience, being a person instructed and employed independently of any owner of the property.

### ...the trustee must not have any personal adverse knowledge of the competency of the valuer...

23. You will note that the trustee must reasonably believe the valuer to be competent. So the trustee must not have any personal adverse knowledge of the competency of the valuer. If for example a solicitor acting for a mortgagee trustee (and with the interests of his client/owner at heart) deliber-

ately seeks out a valuer who he knows will exercisably value the property then the trustee may not be protected simply because he relied on that valuation report.

You will note that the valuer need not be a registered valuer but you will note that the test is that the valuer must be competently reason of profession or occupation and personal expertise and experience. Someone fresh out of valuation school will not do.

I think we are all aware that the valuer must be independent of the owner.

### The relationship between valuers and solicitors

24. Solicitors of course have an overriding professional duty to their mortgagee clients independently of the Trustee Act. A solicitor's duty of care may and I suspect often will be higher than simply obtaining and relying on a report which complies with s. 13N of the Trustee Amendment Act.
25. The case of *Kendell Wilson Securities Limited v Barraclough* (1986) NZLR 576, a decision of our Court of Appeal is an interesting example of the relationship between our two professions. The facts briefly were as follows:

In December 1974, a solicitors' nominee company advanced \$150,000 to Mercantile Developments Ltd on security of a memorandum of mortgage over a property of about 20 acres. Before the loan was made, the solicitors for Mercantile showed Sturm, one of the nominee company's solicitor/directors, a valuation of the property dated 21 October 1974. This valuation stated that the property was zoned rural, but that the Manukau City Council were contemplating a change of zoning to industrial and the valuer was satisfied, as a result of discussions with the local body's engineers, that the scheme change would go ahead. The valuer considered that the value of the land as potential industrial land was \$295,000. The valuation certified that the property offered sufficient security for the advance of trust funds to the amount of \$150,000 for up to five years at current rates of interest. Mercantile defaulted under the mortgage. After unsuccessful attempts to sell the property, the partnership of solicitors finally took a transfer of it in November 1978 at a current valuation of \$98,000. The nominee company sued the valuer in negligence for moneys due under the mortgage in November 1978 less the transfer price, a total of \$94,183.20.

26. The extract from this case includes Jeffries J comments on the valuer's standard of care and finds the valuer to be in breach of that duty by giving a positive recommendation based on a zoning which the valuer confidently expected to be implemented but which never became a fact. The judge went on to consider the responsibility of the solicitor who invested client funds based on the valuation report.

The judge said "he briefly read a fairly complicated report and without assessment, analysis as to its true meaning, or further investigation of any kind made an immediate substantial advance of trust funds. The shortest period of calm, detached appraisal of the valuer's report would have revealed its speculative, flawed reasoning to its final recommendations.

I also hold Mr Sturm's failure to make a detached and professional investigation of the financial viability of the borrowing company a contributing cause to the damage. I find the proportion to be attached to the negligence of Mr Sturm to be high and I fix it at 60%.

27. The case went to the Court of Appeal, largely on the question

of the relative degree of responsibility as between the valuer and the solicitor. The Court of Appeal held unanimously that the solicitor was entitled to rely on the valuation report. Cooke J said "Mr Joyce was able to demonstrate, I think, in his argument in this court that on its face the reasoning in the report was not flawed. The final recommendations even appear conservative by comparison with the potential industrial value of \$295,000 which in turn might appear conservative by comparison with a full industrial value of more than \$425,000.

Everything turned of course on the scheme change, and any competent solicitor would know that this could not be guaranteed. But the valuer was very experienced and had gone as far as to say that he was satisfied from discussions with the engineers that it would go ahead. There was no evidence of professional practice to the effect that a reasonably prudent solicitor would not rely on such a report. I cannot avoid the conclusion that Mr Sturm was entitled to rely on it and that the finding on this head cannot stand."

McMullin J said "There may be cases where a lender or solicitor acting for a lender may be negligent in failing to pick up some mistake or erroneous assessment or assumption in a valuation even though it contains a recommendation for a trustee investment which on its face would justify the amount advanced. But in the present case I cannot see that Mr Sturm was remiss in accepting the valuation and the certificate included in it. Although he may have had some experience in land dealing he was not a valuer, there is no reason why he should have doubted Mr Barraclough's proficiency and experience as a valuer, and there is no reason why he should have queried the anticipated zoning which was an assessment said to have been made upon a factual enquiry made by the valuer. For these reasons I think there

## Solicitors are entitled to rely on valuations...

was no basis for finding that Mr Sturm was negligent in this respect."

28. Solicitors are therefore entitled to rely on valuations unless there is some obvious mistake or erroneous assessment or assumption.
29. Jeffries J had held that the solicitor was negligent in recommending the advance to this particular borrower Mercantile Developments Limited, because of Mercantile's poor financial situation.

Cooke J in the Court of Appeal said "I think that there was enough in the evidence to support the judge's obvious opinion that some reasonably possible investigation of Mercantile's affairs by Mr Sturm would have revealed less than assured financial position. Jeffries J was entitled to find that reasonable prudence dictated such an investigation rather than total reliance on the security. In the light of all the evidence just touched on, I would not disturb the finding of contributory negligence on the second head. McMullin J said " A personal covenant is an integral part of a mortgage, and where the mortgagor is a corporate entity it may be important "

30. The Court of Appeal held that the valuer was two-thirds liable for the loss and the solicitor one-third. A

# The Importance To Valuers Of The Solicitors' Nominee Company Rules 1988

by Rob Wills

## Introduction The Operation of a Solicitors' Nominee Company

A Solicitors' Nominee Company (which I shall refer to in this article as "the Nominee Company") is operated by the partners of a legal firm to act as a bare trustee for investors' funds. It is a nominee to hold mortgages and other securities and cannot carry on business of any kind but may act for the investors in exercising and enforcing the rights, powers and remedies resulting from holding the securities. The first use of the Nominee Company was in 1969. The operation of the Nominee Company is a convenient way to bring together a number of investors and to invest their funds in one name using the vehicle of the Nominee Company as custodial trustee. Its operation avoids having to record each investor's name on the security documents and the additional work involved in completing transfers and other documentation when individual investors are replaced or repaid.

The solicitor places investors' funds in advances through the Nominee Company in accordance with a specific or general authority given by the investor. Accounting and other legal procedures are strictly governed and solicitors must comply with rigid procedural steps involved when advancing or repaying through the Nominee Company.

## The New Rules

The Solicitors Nominee Company Rules 1988 (which I shall refer to as "the Rules") came into effect on 1 January 1989. It is important to distinguish the rules from the Securities Act (Contributory Mortgage) Regulations 1988 which govern contributory mortgage lending in the commercial sector. The operation of the Nominee Company is specifically exempted from the requirements under the Securities Act (Contributory Mortgage) Regulations 1988 and valuers must be aware of the specific requirements in respect of valuations prepared for lending under the Rules.

## Valuation Requirements under the Rules

Valuers will be familiar with most of the information which is required to be contained in a valuation report submitted for the purpose of lending through the Nominee Company. The information is:

1. The name and address of the registered valuer and a brief description of that registered valuer's qualifications.
2. A statement that the valuation report is made by the registered valuer as an independent registered valuer within the meaning of Rule 2 of these rules.
3. The situation, description and area of the land that is, or is to be charged as security for the mortgage.
4. A list of encumbrances appearing on the certificate of title for the land as at the date of the valuation report and, if the registered valuer has been instructed by the practitioner or the mortgagor that any of the encumbrances are to be discharged before registration of the mortgage, a statement to that effect.
5. The land value and the capital value of the land as shown

*Rob Wills is a property partner practising commercial and property conveyancing with the Auckland legal practice of McElroy Milne. From an address to the Auckland Branch of the NZIV*

on the most recent Government Valuation of the land and the date of that valuation.

6. The present use of the land and, if known to the registered valuer, the proposed use of the land.
7. The opinion of the registered valuer as to the land value of the land and free of encumbrances.
8. The nature and value of any improvements situated on the land.
9. The opinion of the registered valuer as to the capital value of the land free of encumbrances.
10. In the case of a development mortgage
  - (a) The opinion of the registered valuer as to the modified land value of the land: and
  - (b) A description of the development and the opinion of the registered valuer as to the capital value of the land free of encumbrances after completion of the development.
11. The basis upon which the valuation is made and any assumptions used in making the valuation.
12. If the land is, or to the knowledge of the registered valuer is proposed to be, used for the purpose of producing income, a statement by the registered valuer as to the amount of income that the land can be reasonably expected to produce on an annual basis under conditions prevailing at the time that the report is made.
13. The registered valuer's recommendation as to the amount for which the land provides adequate security for loan on first mortgage free of encumbrances.
14. If the registered valuer has been instructed that the land is to remain or become, subject to any encumbrances which will rank in priority to, or pass with, the mortgage, a statement to that effect, particulars of those encumbrances and the registered valuer's recommendation as to the amount for which the land subject to those encumbrances provides, or would provide, adequate security for a loan on mortgage ranking pari passu with, or subject to, them, as the case may be.
15. A statement by the registered valuer that:
  - (a) The valuation has been prepared for use by intending lenders; and
  - (b) The registered valuer has consented to the distribution of the report to the intending lenders and that, as at the date of the valuation report, the registered

valuer has not withdrawn that consent.

16. The date as at which the report is prepared.

Most of the requirements are self explanatory and will already be commonly provided in valuation reports. It is particularly important to ensure that valuations contain:

(a) A statement that the valuer is an independent registered valuer. An "independent registered valuer" is defined in the rules as:

*...a registered valuer instructed and employed independently of any mortgagor under the mortgage and any owner of the property to be charged and who has no relationship with or interest in or with the mortgagor or the practitioner acting for the mortgagor that is likely to influence the judgement of the registered valuer.*

- (b) Details of the most recent Government Valuation of the land;
- (c) Details of the present use and proposed use (if known) of the land;
- (d) A statement as to the amount of income that the land can be reasonably expected to produce if the land is to be used for the purpose of producing income;
- (e) A statement that the valuation has been prepared for use by intending lenders and consent to the distribution of the report to intending lenders with an acknowledgement that the consent has not been withdrawn as at the date of the report.

In the four months that the new Rules have been in operation, I have found that the most commonly omitted information from reports is the statement referred to in (e) above. Many valuation reports also omit details of the Government Valuation.

## It is important for valuers to enquire whether the report is required for nominee company lending.

It is important for valuers to ensure when accepting instructions that enquiry is made whether or not the report is required for lending through the Nominee Company. Solicitors for their part should similarly ensure that valuers are advised that the lending is intended to be carried out through the Nominee Company.

A major change under the Rules concerns the mandatory distribution of the valuation report to investors. This is a new requirement which necessitates brevity in the valuation report. Valuers have traditionally produced an extensive and detailed report and now that this report must be distributed to investors there is a requirement for conciseness. Valuers will not be thanked by solicitors if a lengthy valuation report is submitted and this report is in turn required to be distributed to 10 or more investors in the Nominee Company advance.

## A second brief report is suggested

The suggested approach is for valuers to produce an abbreviated report of one or two pages, together with a separate full report. The abbreviated report must contain the appropriate

information required to be contained in all reports required for Nominee Company lending. It may also refer to the full report which the valuer should submit for the purpose of providing additional information to substantiate the correctness of the value assessed based on the valuer's research and calculations. I believe that the full report is necessary to allow the solicitor to properly appraise the security offered and to protect the valuer in the event of subsequent enquiries.

### Updated Valuation Reports

Solicitors will require increased assistance from valuers in order to comply with the Rules. This is because:

- (a) If there is a proposed withdrawal of an investor from the Nominee Company mortgage no new investor may be introduced unless the new investor authorises the placement and is provided with an independent registered valuer's report which is not more than four months old. The solicitor is entitled to rely on a report which is up to 12 months old but only if the solicitor is satisfied that there are no matters which have arisen since the date of the valuation which effect the security or render the valuation report inaccurate or unreliable. Many solicitors will not be prepared to assume that responsibility. As an alternative solicitors may accept the Government Valuation of the property if the advance does not exceed two thirds of the capital value and the age of the Government Valuation complies with the same limitation on date required for an independent registered valuer's report;
- (b) A partial release of a security cannot be given unless there is a valuation report which states that in the opinion of the valuer, the value of the balance of the land to remain charged after the partial release will provide adequate security for the principal sum secured;
- (c) There is a requirement for a valuation in respect of the swapping of security for a Nominee Company mortgage. In that event a report will be required in respect of the property which is to provide the new security for the advance.

## Automatic annual update of valuations suggested

To ensure that solicitors are able to comply with these strict valuation requirements it is likely that solicitors will require from valuers at the time of the initial instruction that there be an automatic updated report provided after 12 months, the cost being included in the valuer's initial fee. Although this will not at all times ensure that solicitors are able to operate the Nominee Company within the valuation date restraints imposed by the Rules, it will in many cases allow the solicitor to act without the need to specifically request a new or updated valuation report at that time.

### Development Mortgages

In general terms a development mortgage is one where the mortgage is secured over land where the mortgagor :

- (a) is applying the whole or part of the principal sum towards the cost of subdividing or improving the land or erecting or developing buildings on the land; and
- (b) the principal sum together with other prior charges exceeds two thirds of the modified land value (the land value after deduction of costs of removal or demolition

of any building or improvements) shown in a valuation report; and

- (c) The cost of subdividing or improving the land or erecting or developing buildings exceeds five per cent of the capital value of the land after completion of the development as stated in a valuation report.

Valuers are required to provide additional information in these circumstances including a brief description of the development or proposed development of the land and the capital value of the land after completion of the development together with a valuation of the amount of adequate security at the date of the valuation. Solicitors may well request an updated valuation report each time a progress payment is to be made under a development mortgage.

Solicitors are required to hold in trust before making the initial advance under a development mortgage the whole of the principal sum and no advance may be made unless the valuation report supports the retention of funds which are at all times adequate to complete the development on the basis of the

valuation report.

The operation of the Nominee Company has never been sufficiently flexible to adequately cater for the development mortgage and it is likely that solicitors will increasingly avoid advancing on this type of security.

### Conclusion

The Rules will generally mean an increased number of instructions from solicitors to valuers. Provided that valuers are adequately prepared, the provisions in the Rules insofar as they affect valuers should not be onerous. A valuer accepting instructions should always make initial enquiry of the solicitor whether or not the report is required for lending through a Nominee Company.

This enquiry will avoid unremunerative and time consuming amendments to the report initially submitted. Valuers are invited to submit a clear and brief report and this will improve the working relationship between the instructing solicitor and the valuer. A

# A Commentary: Trustee Amendment Act 1988 and Contributory Mortgage Regulations 1988

by G A Halstead

## Trustee Amendment Act 1988

(Part H of Trustee Act 1956 repealed)

The old rules of trustees lending on freehold properties and restricted leasehold securities have been scrapped in the latest amendment to the Trustee Act. The hallowed two-thirds rule has also disappeared.

The new rule is that trustees can advance trust funds on any property, freehold or leasehold, depending on the advice of the valuer. The most important section for trustees lending mortgage money is the new section 13N.

13N. Certain loans and investments by trustees not chargeable as breaches of trust (1) A trustee lending money on the security of any property on which the trustee can properly lend shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, if it appears to the Court-

(a) That in making the loan the trustee was acting upon a report as to the value of the property made by a person whom the trustee reasonably believed to be competent to value the property by reason of his or her profession or occupation and his or her personal expertise and experience, being a person instructed and employed independently of any owner of the property; and

(b) That the amount of the loan does not exceed the proportion of the value of the property stated in the report as the maximum proportion that the valuer considers that it would be prudent to lend on that property; and

(c) That the loan was made on the advice of the valuer as expressed in the report.

- (2) A trustee lending money on the security of any leasehold property shall not be chargeable with breach of trust only upon the ground that in making the loan the trustee dispensed either

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wholly or partly with the production or investigation of the lessor's title.

The new section 13N replaced the old section 10 which used to be quoted in many valuer's mortgage recommendations. Contrary to traditional belief valuers were not bound by the old section 10 and likewise the valuer is not bound by the new section 13N. The responsibility lies with the Trustee. Prior to the amendment, trustees were limited to lending on first mortgages up to two-thirds of the value of the property. Allowing second and subsequent mortgages is not unreasonable but time will tell whether the deletion of the two-thirds rule was wise.

Some recognised lending institutions are now lending 70% or even up to 90% on house mortgages. If valuers start making recommendations up to these levels, losses on forced sales could be more prevalent. The two-thirds rule has stood the test of time and should have been retained.

Valuer's reports for trustee lending purposes do not have to contain any particular information such as is now required under the Contributory Mortgage Regulations 1988.

# Valuer's reports do not have to contain specified information for trustee lending

## The Securities Act (Contributory Mortgage Regulations) 1988

In stark contrast to the loosening up of mortgage lending under the Trustee Act 1956, the new Contributory Mortgage Regulations 1988 introduce a number of strict rules affecting mortgage brokers and valuers.

From the valuer's point of view, the three main points are as follows:

1. Valuations for contributory mortgage purposes must be obtained from an independent registered valuer.
2. Under a general authority to invest, the maximum aggregate of principal sum secured by mortgage shall not exceed two-thirds of the capital value of the land.
3. Registered valuers must provide valuation reports and include a minimum of 16 items as set out in the Third Schedule of the Regulations.

A contributory mortgage is defined as a mortgage of land that secures money to two or more persons or to a nominee on behalf of two or more persons.

The Regulations took effect from 1 January 1989 and apply to contributory mortgage brokers or brokers' nominee companies. An exemption has been given to solicitors' nominee companies but solicitors' nominee companies will have to comply with new rules administered by the Law Society. The solicitors' nominee company rules have more or less parallel provisions to those in the Contributory Mortgage Regulations, the main difference being that they are administered by the Law Society not the Justice Department.

### Valuer's Report

Clause 5 defines a valuation report as (a) being prepared and signed by an independent registered valuer, and (b) is not more than four months old at the time of advancing mortgage money; and (c) contains the information specified in the Third Schedule.

What is required of the valuer is to produce the three statutory valuations under the Valuation of Land Act 1951. Having to produce statutory land values is of no real relevance to most mortgage lending and, of course, there are difficulties in coming up with accurate or meaningful land values for farm valuations or strata title valuations.

The use of the word "encumbrances" could be confusing. Valuations are to be based on the land being free of encumbrances. What about a lease of land or buildings? We cannot ignore the existence of a lease in our valuations for market value and mortgage lending purposes. The only commonsense interpretation is to treat the word encumbrances as meaning mortgages or other charges secured.

On the other hand, if we follow the definitions of land value and capital value we have to value the "owner's estate or interest therein, if unencumbered by any mortgage or other charge.. If

## The valuer's mortgage recommendation is a most important part of the Regulations

the property is subject to a lease, then I believe it is the "owner's interest" we have to value.

To add to the confusion, Valuation New Zealand (Valuation Department) prepares its district valuation roll on the basis of freehold properties, and no account is taken of leasehold interests, leases and lessees' improvements.

The valuer's mortgage recommendation is a most important part of the Regulations. The recommendation must be for a first mortgage and can be for any percentage the valuer thinks fit. However, if a contributor has signed a general authority for investment (Fourth Schedule) mortgages can be first, second or subsequent mortgages, providing the total charges do not exceed two-thirds of the capital value but of course still subject to the maximum recommended by the valuer.

If a contributor has signed a special authority for investment (fifth schedule), meaning that the authority to invest is tied to a mortgage on a specified property, there is no specific limit on the percentage of mortgage money advanced against the security of the property. It would appear that the broker or mortgage contributor is not obliged to follow the valuer's mortgage recommendation, but of course would be foolish to go beyond the valuer's recommendation.

### Other parts of Regulations

The Regulations set out the requirements for registration of contributory mortgage brokers, auditing of trust accounts and books every three months, and information to be contained in broker's annual report.

In respect of contributors signing a general authority for investment, brokers must give a "document of information including valuer's report, to the contributor within seven days of the contributor's money being advanced to a mortgagor.

The procedure is different for special authorities. Before contributors sign a special authority for investment, brokers must supply a document of information, including valuer's report.

The Regulations include special provision for "development mortgages" which are contributory mortgages secured against property and land being developed or subdivided. Total mortgages and charges cannot exceed two-thirds of the "modified land value".

Auditing of mortgage brokers once every three months is a valuable safeguard for investors, but there is still potential for fraud and mismanagement and irresponsible lending between audits.

## An Institute standard report form could be appropriate for Third Schedule regulations.

A deficiency with the Regulations appears to be that the document of information supplied to mortgage contributors has no requirement to include details of the the mortgagor's financial position, wages or income, family commitments and other outgoings. All this is left to the broker who "shall take reasonable steps to ensure.. that there are assets available.. to discharge the amounts payable under the contributory mortgage as they become due.."

Is the broker in a position to verify financial details provided by the applicant for mortgage money?

Requiring registered valuers to include certain information in their reports will ensure that mortgage contributors are acquainted with basic details of the property over which the mortgage is to be secured.

A special report form prepared by the Institute could be appropriate for covering the information required by the Third Schedule of the Regulations. A brief and easily read report would seem more desirable than a valuer's more detailed report for the purpose of supplying information to mortgage contributors. Having to produce statutory defined government valuations is completely unnecessary - market value or value would have been perfectly adequate and more relevant.

Advancing mortgage funds under a special authority to

invest is not limited to the two-thirds rule as is the case for development mortgages and investing under a general authority. It would have been safer and consistent to have the two thirds rule applied to all contributory mortgage lending.

On the whole, the Contributory Mortgage Regulations will go some way to make contributory mortgage investing a little safer but like any investment there is a degree of risk, and the security of that investment will largely depend on the integrity of the people at the top who manage the investment funds.

## *The New Zealand Valuers' Journal* Annual Manuscript Competition

### Conditions of Entry

*The New Zealand Valuers' Journal* Editorial Board offers an annual Award for a leading article to be published in the Journal.

The Award has a value of NZ\$1000 and shall be paid to the successful applicant who meets the following conditions:

1. The competition is open to any author of an original work based on research into or comment on a topic related to the valuation of real property and entries should be submitted to the General Secretary, New Zealand Institute of Valuers, P O Box 27-146, Wellington.
2. The article shall not have been submitted to any other journal or publisher prior to being submitted for entry into the competition.
3. The article shall not exceed 10,000 words including any equivalent space where illustrations, diagrams, schedules or appendices are included.
4. The manuscript shall be typewritten.
5. The author shall supply a short synopsis of the article, setting out the main thesis, findings, or comments contained in the article.
6. The author shall provide a brief biographical note which may be published.
7. The closing date for submission of manuscripts shall be 31 December in each year and any winning article shall be published in the Journal.
8. Judging shall be by the Editorial Board and shall be on the basis of the relevancy, quality, research and originality of the article to the principles and practice of valuation. The judges decision shall be final and binding. The Editorial Board shall not be bound to make an award in any year if no article meets an acceptable standard.
9. The winning manuscript shall become the property of the New Zealand Institute of Valuers and the author shall agree as a condition of receiving the award, to pass copyright to the Institute and no reprinting of the article shall take place without the express consent, in writing, of the Editor of *The New Zealand Valuers' Journal*.
10. All unsuccessful applicants for the Award shall be advised.
12. The decisions of the Editorial Board on any matter relating to the competition and Award shall be non-reviewable and correspondence shall not be entered into nor reasons given for the decisions of the Board.

## APPRAISING THE SINGLE FAMILY RESIDENCE

GEORGE F BLOOM & HENRY S HARRISON

This extensive work of 510 pages is published by the American Institute of Real Estate Appraisers and not surprisingly has a distinct American bent. Nevertheless, the topic is given a most comprehensive treatment making the book a thoroughly worthwhile reference work. Chapter headings comprise:

- The Appraiser & the Appraisal Profession
- The Nature of Real Property & Value
- The Appraisal Process
- Metropolitan Area Economic Analysis
- Analysis of the Single Family Residential Market
- Neighbourhood Analysis
- Residential Site Data & Analysis
- Site Valuation
- Improvement Description & Analysis

The Income Approach  
The Cost Approach  
The Market Data Approach  
Financing & the Valuation of Single Family Residences  
Reconciliation & Final Value Estimate  
Special Kinds of Residences  
In addition there is a section on the mathematics of appraising and a section containing model reports.

Some interesting parts of the book include a discussion of the valuation of solar houses, log cabins, modular houses, time-shares, and other specialised residential forms.

This is overall a well written, comprehensive and sensible valuation reference text. Its only drawback would be the use of American planning tax and law which in some cases is quite different from New Zealand law. This drawback is, however, minor when weighed against the worth of the book as a whole and its usefulness as part of the Practitioners' Reference Library.  
*G M Cheyne.*

### New Acquisitions to NZ Institute of Valuers' Library

Publications of the International Association of Assessing Officers, 1313 East 60th Street, Chicago, Illinois 60637, USA.

Bibliographic Series No. 9 (1985)

*The Valuation of Commercial Services Property* The foreword to this bibliography states:

This bibliography contains 402 main references to printed works. The scope of this bibliography is assessment and appraisal literature, serial and monographic, published in the two decades from January 1965 through June 1984, a period long enough to cover most of the fashion changes in commercial property valuation literature. Some works from earlier years are included if necessary to list an important work, to include a kind of property that would otherwise be excluded, or to complete the coverage of a particular type of property. Books and journals from the United States, Canada, England, Australia, and New Zealand are the source of the works cited.

Collected and arranged in 10 chapters covering:

- 11 Commercial districts & commercial property appraisal with, under the heading commercial property the entries:
  - General
  - Depreciation
  - Distressed, damaged, & flawed property
  - Leases
  - Real & personal property
- Airports
- Banks
- Commercial condominiums
- Commercial recreation property (bowling centres, theatres, sports arenas, race tracks, clubs)
- Grain elevators
- Office buildings
- Outdoor advertising
- Parking lots & garages
- Warehouses & waterfront property

Bibliographic Series No.10

*The Valuation of Commercial Sales Property.* (Companion volume to Series No.9) The contents of this volume include:

- Stores & shops
- Shopping centres & pedestrian malls
- Motor vehicle sales & service
- Food & Beverage service & franchised businesses.

The NZ Institute of Valuers is pleased to advise of the following additions to its Library, donated by the Appraisal Institute of Canada.

REAL ESTATE APPRAISING IN CANADA 3rd Edition 1987  
Published by the Appraisal Institute of Canada

REAL ESTATE INVESTMENT ANALYSIS AND VALUATION  
(Second Edition) by Lincoln W North  
Published by Saults & Pollard Ltd

Compiled by Leonie Freeman

In recognition of the increasing use and need for computers in the valuation profession the Editorial Board are introducing to the Valuers Journal a "Computer; Forum".

We would anticipate the forum will include relevant articles on computers and their use within our profession, together with a question and answer section for specific enquiries. It is proposed that these articles and, will be answered by a small group of computer users within the profession together with outside consultants when required.

The Editorial Board have conducted a mail survey which went to all valuation firms in the country and questioned them on the type of computer hardware and software that is currently being used, customised applications which have been developed in-house, utilisation of "Provides", and areas of interest for future articles. Possible ideas for articles include: various types of hardware, stand-alone system versus office networks, comparison of software packages including spreadsheets, word processing, accounting and databases, how to set up a new computer system, the latest with Valpak and Provides and customised valuation models.

The results of this survey will help formulate areas of interest and the direction for future articles in the forum. The

conclusions of the survey will be published in the next issue.

We are also interested in establishing a loose-knit group of computer users of all levels within the Institute. An application for membership will be included in the next *Computer Forum* publication. The objective is to identify computer users and their levels of expertise within the Institute and improve communications between members with respect to computers and their potential applications!

If you have comments, questions or enquiries regarding computers or this proposed Forum, or any thoughts for potential articles, please write care of the General Secretary, P O Box 27146, Wellington..;

Leonie Freeman, Editorial Board NZ Valuers' Journal.

## Development of Computer Models for Valuation Use

by Leonie Freeman, Anthony Beverley and Terry Boyd

Property professionals deal with a heterogeneous product of great value which has few "ground rules". They serve an industry which is clamouring for sophisticated and accurate answers to difficult questions.

In particular the decisions of property professionals are affected by the uncertainty and risk prevalent in the market place. This uncertainty is caused primarily by a combination of the unpredictability of future events and conditions and the reliability and type of data utilised.

In any valuation exercise or feasibility study it is therefore important not only to focus on the most likely outcome but to recognise that there is a range of possible outcomes and alternatives, that is the "what if" scenarios. This requires an analysis of the sensitivity of variables influencing fixed property.

However, with this increased level of sensitivity analysis, the amount of computations increases exponentially. This is especially true if analysing projects and cash flows over time.

With the advent of computer technology, the use of spreadsheets, and other computer programmes one can now do all this quickly and efficiently. The programmes can easily be structured to consider the following factors:

1. To examine the effects of uncertainties, for example, if valuing an income producing property where the income levels are known, the effect of varying capitalisation rates on the property can easily be gauged.

2. To examine the impact of incorporating time in an exercise by developing cash flows over pre-determined periods.

With the transition to this approach comes the need for analytical tools capable of facilitating this type of analysis and methodology on a day-to-day basis.

While certain major valuation practices have developed in-house programmes, it would appear that most property professionals do not have the assistance of an appropriate, simple and locally developed software package. Consequently a comprehensive computer package for valuers, consultants and property professionals is currently being developed.

The basic design of the models will follow a multi-solver type format whereby known information is entered to solve for the unknown.

The model will provide for flexibility of analysis detail whereby the data entered for each field can simply be lump sum items or can be built up via schedules to the desirable level of detail or accuracy. The model is being designed to enable data to be examined or expanded over time within a comprehensive discounted cash flow analysis.

A further major design feature will be the ability to perform comprehensive sensitivity studies on important key facts.

The system is being developed in stages, with stage one comprising separate valuation and feasibility modules. The initial valuation module will include a direct capitalisation model, a range of discounted cash flow models, a detailed sales analysis model, and a full insurance model. The feasibility module provides a land residual model together with a range of feasibility analysis models for both commercial and industrial property.

After the initial development, further development will be extended to include a comprehensive portfolio analysis system which will allow for portfolio valuations, performance monitoring and risk analysis of portfolios. Ongoing development by way of upgrades of existing models is planned. The system is being developed on "Advanced Revelation", a powerful applications development system designed for microcomputer environments. Primary features of Advanced Revelation include:

- a powerful database system featuring both variable length and multi-valued fields

- a menu driven applications development generator
- an interactive database query capability
- a sophisticated internal programming language and programme tool kit.

The power of this development environment means that the valuation/feasibility system extends beyond the limitations inherent in spreadsheet environments.

Potential exists for example, for the system to link to other systems and packages such as Valpak/Valdat, Rentpak/Rentdat, or to import/export directly to Lotus 123, Database 3, graphics packages and the like.

This package has the potential to become the central base or link to the majority of programmes within an existing office system.

It is anticipated that the initial valuation/feasibility model will be available in July of this year. The models are being developed by the three authors of this article in conjunction with the NZ Institute of Valuers. Further information will be made available when the programme is ready and available to be marketed. A

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## A Report from World Congress III On Computer Assisted Valuation and Land Information Systems

by Bethia Gibson

The Third World Congress on computer assisted valuation and land information systems was held at the Harvard Law School, Boston in August 1988.

Three New Zealanders, Bob Hargreaves (Massey University), Allen Pegler (Valuation New Zealand), and Bethia Gibson (Lincoln College and Valuation New Zealand), were present at this five-day congress which was attended by 250 delegates representing 35 countries.

### Introduction

A number of issues were addressed at the Congress, ranging

from the refinement of the more traditional computer assisted mass appraisal techniques such as multiple regression analysis, to practical case studies, and the state of the art of automated valuation procedures and land information systems.

Although most of the conference centred on formal discussion, educational field trips were also conducted. Participants had the opportunity of visiting the Massachusetts Institute of

Technology Athena Project, the Boston Redevelopment Authority or the City of Boston Assessing Department.

The MIT Athena project is a \$20 million computer project which links various data bases and is designed to provide information pooled from a variety of sources. The aim of this shared data base is to enable problem solving by a variety of people in many different land related professions.

The Boston Redevelopment Authority is the authority responsible for the planning and implementation of the city's future physical development. It is thus concerned with the social and economic impacts of future land use changes and is in charge of several large-scale downtown urban design and redevelopment projects.

The City of Boston Assessing Department is the Local Authority equivalent of New Zealand's Valuation Department. In addition to its regular revaluation role, the Assessing Department plays a major part in the provision of property information and mapping.

This paper highlights some of the techniques, issues and case studies presented at Congress 111.

### The Base Home

The Base Home approach discussed by Hargreaves (1986) is still being developed in parts of the USA. This approach is effectively a computerised cost approach which relates a given house to the Base Home - the American equivalent of New Zealand's Modal House.

The Base Home approach has been described as a repackaging of the regression based model in tabular form (Chizewsky, 1988) as a table containing regression coefficients, the base home description and net adjustments for physical differences between the subject and the base home is used to estimate the value of the subject property.

Attributes such as the presence of a double garage are quantified as two times the single garage factor, while factors such as heating are weighted according to dwelling type. Similarly size of dwelling is adjusted according to quality and age. Thus, the value of a residential property may be calculated as:

$$\text{Value} = \text{constant} + (X_1 \times \text{area} \times \text{quality class} \times \text{age}) + (X_2 \times \text{heating} \\ \times \text{dwelling type}) + (X_3 \times \text{garages}) + (X_4 \times \text{presence of} \\ \text{swimming pool}) + (X_5 \times \text{Section area})$$

In the above equation, the constant is the value of the base home, and  $X_n$  is the regression coefficient which has been calculated for each factor being considered. Note that each factor is measured as the difference between the base home and the subject, thus if the base home has two garages and the subject one, the number of garages will be recorded as 1.

### Comparable sales selection and laser video disks.

Hargreaves (1986) also discussed methods of automating the selection of comparable sales by way of a dissimilarity index. This automated selection process has now been further enhanced by the interfacing of database programmes with word processors. This allows the selection of a set of comparable sales and extraction of meaningful information to develop descriptive and analytical sections for a narrative appraisal report.

A further technological advance is the linking of computerised comparable selection with computerised imagery such as laser video disks. This combination has obvious advantages in routine revaluations and is a real bonus from the public relations

point of view when dealing with enquiries.

Although an automated comparable sales selection process could be of value to many valuation firms in New Zealand, it is questionable whether the benefit of using laser video disks or similar computerised imagery would exceed the cost of establishing such a data base.

### Computerised mapping systems

Laser video disks are not the only automated visual aid being used by valuers overseas. Extensive use is also being made of computerised mapping systems.

Such maps are often made up of several layers of information which may include the surveyed boundaries and legal description of the site; street address; the position of any electricity lines or water, sewer, or gas pipes; the contour of the site; the position and nature of any improvements; and the line and nature of any easements.

As this data is often sought by other groups interested in property, most mapping systems have been developed so that only the layers of information specified by the user are extracted. For example, the fire or police departments may be interested in the owner's name and street address of a property, and the nature and position of improvements on that property, while property developers may be more interested in site contour and easements affecting the land.

Three-dimensional maps which relate value to locations are also being used by some mass appraisers as an objective means of determining areas of similar value.

This information is then used to stratify an area into several more homogeneous sub areas prior to statistically estimating property values. Such information is very useful in a mass appraisal system as it is recognised that successful stratification is the key to successfully estimating value by statistical means.

### Artificial intelligence and expert systems.

The expert systems aspect of artificial intelligence is a relatively new field of study, consequently its applications to valuation is only just beginning to be investigated.

The aim in developing an expert system is to get the computer to replicate the decision making process of the valuer. Thus, once such a system is established, the computer is able to estimate property values by simulating the valuer, instead of by applying some mathematical model.

Although valuers are currently working on the development of such systems, they are not aiming to make themselves redundant. Instead they can see that such a system would be of great assistance in the mass appraisal of property as it would allow each property to be considered as an individual, rather than being considered on an average basis as is common with the more traditional computer assisted mass appraisal techniques.

### Generic software versus package programmes.

There are two main types of computer software - generic software and package programmes. Generic software is essentially designer software as it is nonspecific and application free, and is used to write programmes which suit a particular client's situation. In contrast, package programmes are designed for some general purpose and are used by clients in their commercial form. Many of these packages are able to be modelled slightly to suit a given use. For example, macros can be used within a spreadsheet package to develop templates.

Supporters of both types of software were present at World Congress 111. Those favouring package programmes recommended the use of a data base, a word processor, a statistical package, and a spreadsheet, along with some form of communication link between each package.

Generic software buffs were more in favour of the development of sophisticated systems which could cope with almost every eventuality, but which were designed around the users' most common procedures.

Despite a bias towards one type of software or the other, most agreed that an organisation should carefully consider both options in light of the nature and scale of their operation, and the likely cost-benefit of each option before making their final choice of software.

### Personal computer systems versus mainframes and micros

Another interesting discussion developed around the available computer systems, that is, centralised computer systems (main frames and microcomputers ) versus personal computers.

At present, centralised computer systems appear to be more commonly used as they have a much greater processing power and a larger memory, although they are much more expensive to buy.

Advance in technology has now facilitated easy communication between the two, making it possible for them to work together. For example, data collectors and valuers can now use hand-held computers in the field, and then transmit the data collected to the main database via a communications network. Such a system has the obvious advantage of reducing the number of people required to handle data and thus reduces the room for transcription errors.

### Case Studies

Case studies detailing actual research and applications of computer assisted mass appraisal were also presented at the Congress.

For example, the method of distributing nationwide real estate sales information via Valuation New Zealand's Provides system was discussed (Hargreaves 1988) as was the state of land information in Kenya (Kiamba 1988).

The development and implementation of a small sample equalisation survey appraisal update system for New York State, based on Adaptive Estimation, was also detailed (Underwood and Green, 1988), as was the estimation of rental values in Hong Kong (Stevenson 1988).

Other case studies looked at the possibility of using computer assisted mass appraisal systems to value rural property in New Zealand (Gibson, 1988), the system of land administration and management in Nigeria (Nuhu Koko, 1988), and the valuation of large-scale landscapes in the Gates of the Arctic National Park, Alaska (Robbins and Hungerford, 1988).

### Summary

Throughout World Congress 111 it was apparent that 'computer

assisted mass appraisal' means different things to different people. It could be concluded that the interpretation given appears to depend upon the degree of automation one is used to working with.

Highly computerised nations such as the USA and Sweden are, for example, interested in refining existing techniques and applying specialised methodology such as Ridge Regression and using non-linear transformations.

In contrast, less developed nations are overwhelmed at the ability to store property data in a computer and to be able to retrieve that data quickly and easily.

But where does New Zealand fit into this scale? As computer assisted mass appraisal techniques are really only being employed by Valuation New Zealand, I can only comment on their operations.

The property and sales data base in use by the Department is one of the best in the world as it offers nationwide coverage and allows the stored data to be accessed simply by a number of fields.

The techniques being employed by Valuation New Zealand to provide estimates of property value are not as sophisticated as some of those being used in parts of USA and Sweden, but they achieve the desired purpose of providing valuers in the field with extra statistical information on which to base their informed judgement of the worth of a property.

On this basis, it is apparent that Valuation New Zealand, though not a world leader, is up with the best in the world.

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IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY

IN THE MATTER of the Arbitration Act 1908  
BETWEEN Harbour City Realities Ltd (Applicant)  
AND Hoosons Menswear Ltd (Respondent)

Hearing: 7 November 1988

Counsel: M R Camp for the Applicant  
L J Taylor and M Howard for the respondent

Judgement: 20 December 1988

JUDGEMENT OF HERON J

This is an application brought pursuant to s. 6(2) of the Arbitration Act 1908. Both parties have appointed arbitrators pursuant

to a provision in a deed of lease with a view to fixing the rental for a lease of shop premises in the Harbour City Centre in downtown Wellington.

The lease is for a term of six years, and rental is reviewed every three years. There is one right of renewal for a term of three years. The procedure for reviewing the rent is set out in the deed and provides in summary as follows:

1. The lessor to give the lessee notice of the lessor's estimate of full market rent.
2. If the lessee considers the lessor's estimate not to be full market rent the lessee may require the rent to be determined by two arbitrators being persons competent in rental valuations, one appointed by each party.
3. The two arbitrators are then to determine the full market rent.
4. If they are unable to agree then an umpire appointed by the two arbitrators is to determine the rent.

The two arbitrators cannot agree. His said that their disagreement concerns a number of matters of valuation principle, but primarily it is a question of the incidence of ground rental and its impact on the determination of the full market rent.

The landlord suggests that a lawyer should be appointed umpire, the tenant requires a person competent in rental valuations similar to the qualification required of the individual arbitrators as provided in the lease.

Whilst the legal issue which is said to be a problem in this case, was not exhaustively defined, I understand it to be that notwithstanding that the review clause requires the fixing of the full market rent, clause 7.4 (b)(iii), it is to be suggested and argued by the landlord as a matter of interpretation that the full market rent is to be fixed without regard to the level of outgoings which the tenant shares.

The particular provision relating to additional payments provides:

"73 The lessee covenants to pay to the lessor as additional rent payable under this lease the lessee's share of the operating expenses of the building calculated and payable in the manner provided in the second schedule."

Operating expenses include:

"The total cost of all outgoings, costs and expenses of the lessor now or hereafter properly and reasonably assessed judged or payable or otherwise incurred or paid in respect of the operation, conduct and management of the retail element of the building... and shall include all ground rental payable."

As I understand it the question will be as to whether the full market rental will be determined by ignoring the incidence of outgoings as a matter of construction, or whether in fixing that rental the impact of ground rent will be allowed for. I do not at this stage comment on the merits of the construction argument, because that may be a matter for further consideration. The question, however, is whether in light of that likely argument a lawyer, rather than a valuer, should be the umpire. If the umpire in determining the full market rental has regard to the incidence of ground rental payment and reduces or otherwise allows for them in his assessment of rental, presumably that will be obvious from his findings. In that way no doubt the issue, if it is one, will be capable of being isolated.

In my view the umpire should be a valuer. I take that from the emphasis placed on the qualifications of the two arbitrators as

requested by the lease in reaching that view, and the statement in Russell on Arbitration, 20th edition 236, to the effect:

"An umpire is a person appointed to take over the reference from arbitrators who are unable to agree amongst themselves. In general, he is in the same position as a sole arbitrator, must be appointed in the same way and have the same qualifications or absence of qualifications."

I think in the specialist area of commercial rental valuations it is essential to have a valuer as an arbitrator. What is being argued for by the landlord is that there is a quirk in respect of this lease which requires a different approach to the valuation. It must be remembered however that this is an inquiry into the full market rent.

That word means the price people will pay and accept for this commodity in the open market. It is common ground that this requires a knowledge of other rentals fixed in the marketplace, either by agreement or by other arbitration, and applying a series of distinguishing factors or factors of similarity in arriving at the appropriate rental to be paid for this particular property. The analysis of those other examples is best left, in my view, to a person trained in valuation methodology and principle.

If the lease itself entitles the landlord to a particular benefit then the umpire will have to come to grips with that if he thinks it impinges on the full market rental. In doing so he will be required to give reasons, and if the interpretation argued by the landlord is the correct one, and the umpire has not paid due regard to it, then no doubt this Court can correct.

These proceedings are brought on behalf of a number of tenants.

The matter is, I can see at this stage, one which will involve a considerable amount of money. It is important that the parties get the best valuation determination they can in fixing the full market rental and that matters of interpretation are in the first instance left to the umpire, to give whatever consideration he considers appropriate after hearing much more detailed argument about them than I have.

In the end they will have a bearing on the assessment he makes as to the full market rental. I think it would be an unhappy state of affairs if two valuers, not having been able to agree on matters of valuation were to have their arguments resolved by a lawyer at this stage.

The authorities are not determinative in the exercise of a discretion of the kind contained in s.6(2). Those cited to me tend to favour valuers. The only cases where lawyers seem to play a part are where there are easily recognisable questions of construction, or where provisions of the Public Bodies Leases Act 1969 apply.

Paragraphs 7 to 11 of the first schedule of the Public Bodies Leases Act 1969 have a degree of formality about them somewhat different from the arrangements in the present lease, and as a matter of practice the arbitrator and umpire sit together and hear evidence in a judicial setting, not envisaged, as I understand it, in this case.

I was not asked to appoint the umpire by name, I am informed that on an indication given a suitable individual will be selected, and accordingly I make no formal order. I give the parties leave to apply further if it is necessary to name the umpire.

The tenant is entitled to costs which I will fix if required.

## BUSINESS TENANCIES

QUEENS BENCH DIVISION: COMMERCIAL COURT  
November 24 1983  
(Before Justice STAUGHTON)

SEGAMA NV v PENNY LE ROY LTD  
(The Estates Gazette January 28 1984)

Landlord and tenant. Issues arising out of rent review clause in lease Applications by landlords under Arbitration Act 1979 for leave to appeal against arbitrator's award.

- First issue as to admissibility in evidence of "post review date comparables", ie rents of comparable properties agreed after review date Second issue as to whether it was proper for arbitrator to consider evidence of rents agreed between landlords of comparable properties and their sitting tenants or whether evidence should be confined to rents agreed for premises with vacant possession Held on the first issue, after a review of the authorities, that the arbitrator acted correctly in treating evidence of rents agreed after the review date as admissible Held on the second issue that the arbitrator was entitled to have regard to rents agreed between landlords and sitting tenants; it was a matter for the arbitrator to decide how far such evidence was of assistance

- The court had, however, to consider the applications of section 1 (4) of the Arbitration act 1979 in the light of guidelines given by the House of Lords and Court of Appeal

- Although both the above issues were of some general importance, and determination of the second issue could substantially affect the rights of the parties, in neither instance had a strong prima facie case been established that the arbitrator might well have been wrong; in fact in the court's view he was right-Accordingly leave would not be granted to the landlords to appeal against the award.

This was an application by landlords, Segama NV, of a ground floor shop and cellar at 43 Sloane Street, London SW 1, for leave to appeal under section 1(3) of the Arbitration Act 1979 against the award of an arbitrator, Peter Henry Clarke LLB FRICS ACI Arb determining the revised rent under a rent review clause. The tenants, respondents to the applications, were Penny le Roy Ltd.

Kenneth Bagnall QC and Kirk Reynolds (instructed by Lovegrove & Durant, of Windsor) appeared on behalf of the applicants; Miss Joanne Moss (instructed by Rabir Leacock & Partners) represented the respondents.

Giving judgement, STAUGHTON J said: The applicants are the landlords, or more accurately, mesne landlords, of a ground-floor shop and cellar at 43 Sloane Street, London SW1, I shall call them "the landlords". The respondents ("the tenants") are tenants under a lease of those premises for a term of 10 years from October 1 1977. The lease provided, in clause 5, as follows:

1. The lessors may require the rent payable hereunder to be revised by serving upon the lessees notice in writing to that effect not more than twelve nor less than three months before the expiration of the said term (hereinafter referred to as "the review date") and as and from the review date the revised rents calculated and determined in accordance with the following provisions of this clause shall become payable in all respects as the rents hereby reserved.
2. The revised rents shall be the greater of either

- (i) the rent payable hereunder at the time of the service of the notice requiring the rent to be revised; or
- (ii) the market rent of the demised premises at the review date.

3. The expression "the market rent" shall be deemed in this clause to be the yearly rental value of the demised premises, having regard to rental values current at the relevant time for similar property used for any purpose within the same use class under the Town and Country Planning (Use Classes) Order 1963 as that which includes the use of the demised premises permitted hereunder, let with vacant possession, without premium and subject to provisions similar to those contained in the lease, taking no account of

- (a) any goodwill attributable to the demised premises by reason of any trade or business carried on therein, and
- (b) any improvements carried out to the demised premises by the lessee otherwise than in pursuance of an obligation under this lease.

4. The market rent shall be determined by agreement between the parties hereto, but if they shall fail to agree such rent within three months after the service of the notice by the lessors requiring the rent to be revised the amount of the rent payable shall be determined by reference to the arbitration of an arbitrator nominated by the President for the time being of the Royal Institution of Chartered Surveyors on the applications either of the lessor or of the lessee, and the cost of such arbitration shall be in the award of the arbitrator, whose decision shall be final and binding on the parties hereto.

By a supplemental lease dated September 11 1979 additional premises comprising part of the ground floor were demised from August 18 1978 for the residue of the term of the main lease, upon the same terms and with the same rights, reservations and covenants as expressed in the main lease, save as to the premises demised, the term of years and the rents reserved. The rents payable initially under the main lease and the supplementary lease totalled £11,000 per annum.

There was disagreement between the parties as to what revised rent was appropriate from October 1 1982. Accordingly, the president of the Royal Institution of Chartered Surveyors, on March 11 1983, appointed Peter Henry Clarke LLB FRICS ACI Arb as arbitrator to determine the revised rent. At the hearing of the arbitration the tenants contended for a revised rent of either £13,600 or £16,000; the landlords' figure was £35,500. The arbitrator, in a reasoned interim award dated July 21 1983 determined the revised rent at £18,250 per annum.

The landlords now apply under section 1(3) of the Arbitration Act 1979 for leave to appeal against the award. The subject-matter of the dispute is plainly not within the ordinary jurisdiction of the Commercial Court; but as in the first instance it is the law relating to arbitration which has to be applied, the applications for leave to appeal is made, in accordance with the Rules of the Supreme Court, Order 73 rule 6, and the current practice, to a judge of the Commercial Court. If leave to appeal is granted, it then has to be determined whether the appeal itself should be heard in this court or elsewhere. The application was heard in chambers; at the request of both parties I give judgement in open court.

In clause 5(3) of the lease, which I have already quoted, it was provided that the market rent should be deemed to mean "the yearly rental value of the demised premises having regard to rental values current at the relevant time for similar property..

let with vacant possession". It was agreed, before meat any rate, that "the relevant time" means in this instance October 1 1982. The parties, as is customary, referred the arbitrator to rents agreed for comparable properties on or before that date. But by the time that the matter came before him, there were also available rents agreed for comparable properties after October 1 1982. Paragraph 1 of the arbitrator's award reads as follows:

The only issue of law which arose in this reference was the admissibility of post-review date comparables, that is to say rents of comparable properties agreed after the review date for the subject premises.

That is the first and main question of law which I have to consider on this application. It is plain to me that the point is of general importance to landlords and tenants. No doubt there are a great many leases containing similar clauses and raising the same problem. In the *Handbook of Rent Review* by Bernstein and Reynolds there is this passage at p 941:

Whether evidence of transactions occurring after the review date is admissible, and, if so, for what purpose and to what extent, is controversial.

It is certainly not a one-off case.

The second question raised by the landlords before me is whether evidence was properly considered by the arbitrator as to rents of comparable premises agreed between existing landlords and existing tenants, or whether the evidence should have been confined to rents agreed by tenants who had not previously occupied the premises in question. Evidence of the former class was put before the arbitrator, and he clearly attached importance to it. I cannot detect in the award any suggestion that the relevance of that evidence depended on any question of law. But there are indications in it that the arbitrator had in mind that there might be a distinction between evidence of agreements with existing tenants and evidence of agreements with new tenants. Accordingly, I am prepared to assume that the landlords argued for such a distinction at the arbitration.

This second question is also, I think, one of some general importance. If indeed it is a question of law (which was not apparent to the arbitrator) it will probably affect a good many cases besides that presently before me.

I shall consider each of the two questions that I have mentioned in turn; and then a third point, that is whether the determination of either or both of them could, in terms of section 1

(4) "substantially affect the rights of one or more of the parties to the arbitration agreement".

#### (1) Evidence of rents agreed after the review date

The arbitrator has set out the contentions of the parties and his own conclusions with care, clarity and concision (in the second sense of that word). He held that the evidence was admissible; and he added (in para 17):

I accept that the further away from the review date one progresses then the rental evidence will become progressively unreliable as evidence of rental values at that date. This is, however, a question of weight and not admissibility and is a matter for me to consider when reviewing the evidence.

I wholly agree with his conclusions. But the point is one of law; it was argued at some length before me; and it is of general importance. So I must state my own reasons.

Essentially the question is one of construction and divides into two parts. First, what is meant by "rental values current at the relevant time"? Does that phrase mean only rents actually

agreed or does it mean the current worth of premises in terms of rent? No customary or technical meaning was proposed, save in so far as one may appear from the authorities. I shall consider the cases later. As a matter of ordinary English, the word "value" is more consistent with the notion of worth than with the narrower concept of rents actually agreed. Since it is the worth of the demised premises at the relevant date that has to be ascertained, in terms of market rent, it seems to me entirely plausible that the arbitrator should be enjoined to have regard to the worth of similar property whether demonstrated by evidence of agreements reached before or after the relevant date. When the clause speaks of the rental value of the demised premises", it evidently refers to worth rather than to an agreed rent.

Why should the words "rental value" later in the same sentence, have a different meaning.

The second part of the question is whether, even if the arbitrator is directed by the clause to have regard to rents agreed for similar property on or before the relevant date, he is thereby precluded from having regard to any rents agreed subsequently. The rule that the expression of one of two things is the exclusion of the other might suggest that he is. But it requires more than such prima facie inference as that rule provides to exclude evidence which is otherwise relevant and admissible. See *WN Lindsay & Co Ltd v European Grain & Shipping Agency Ltd* (1963) 1 Lloyd's Rep 437, per Diplock LJ at p 445:

Any clause in a contract relied upon as excluding evidence which would ordinarily be admissible is to be strictly construed.

There are six cases which are said to be in some degree relevant to this point. The first is *Bwllfa & Merthyr Dare Steam Collieries (1891) Ltd v Pontypridd Waterworks Co* (1903) A C 426. At any rate the arbitrator thought the case relevant, although Miss Moss, for the tenants, expressly disclaimed its aid before me. There a dispute arose as to the statutory compensation payable to the owners of a mine, because the undertakers of a waterworks served them with notice requiring them not to work coal under a certain parcel of land. Evidence was tendered that the value of coal rose after the date of the notice. It was held by the House of Lords that the evidence was admissible. The principle behind the decision is said to be found in the speech of Lord Macnaghten at p 431:

If the question goes to arbitration, the arbitrator's duty is to determine the amount of compensation payable. In order to enable him to come to a just conclusion it is his duty, I think, to avail himself of all the information at hand at the time of making his award which may be laid before him. Why should he listen to conjecture on a matter which has become an accomplished fact? Why should he guess if he can calculate? With the light before him, why should he shut his eyes and grope in the dark?

I agree with both counsel that the decision is not relevant to the present case. The task of the arbitrator in that case was to assess, at the date of the notice, a fact which at the time lay in the future; he had to discover what profit the owners of the mine would have made by working the coal in question. The headnote itself says so. If new material was available by the time of the hearing to answer that question with greater certainty, he should have had regard to it. Similar problems arise when a tribunal is required to forecast, as at a given date, how likely it is that some future event will occur. Such a determination is often required in the law of contract. In connection with the doctrine of frustration, Lord Sumner said, in *Bank Line Ltd v Arthur Capel & Co* (1919) A C 435 at p 454:

What happens afterwards may assist in showing what the probabilities really were, if they had been reasonably forecast.

In each of those two situations, when the task is to make a finding as to some fact which lies in the future, or to assess the probability of some future event occurring, the *Bwlifa* case is powerful authority that evidence of later facts will be relevant. But I do not, with respect, see that it touches, one way or the other, on the question whether later events are relevant to the determination of the existing market rent on a given date.

In *Melwood Units Pty Ltd v Commissioners of Main Roads* (1979) AC 426 it was necessary to assess compensation for the compulsory acquisition by the respondent of land for the purposes of an expressway. Compensation had to be assessed as at September 1965. At that date there had already been a grant of planning permission, in principle, for development of adjacent land as a drive-in shopping centre. After September 1965, two further events occurred. Definitive planning permission was granted; and a purchaser agreed to buy the adjacent land at \$40,000 per acre. It was held that those events had been wrongly rejected as irrelevant to the assessment of compensation. Lord Russell of Killowen, delivering the advice of the Judicial Committee, said (at p 436):

Now it is plain that in assessing values for the purpose of compensation for resumption on compulsory acquisition a tribunal is not required to shut its mind to transactions subsequent to the date of resumption. They may well be relevant or of assistance to a greater or lesser degree, and in the instant case the figure paid by David Jones Ltd was the only figure available at the date of assessment of the value of adjacent land to a person wishing to develop the land for its "highest and best use".

Mr Bagnall sought to distinguish that case on the ground that it was concerned with compensation, which must be fair, as opposed to a market rent which is what tenants are prepared to pay and landlords to accept. For my part, I do not at first sight find the distinction very compelling.

The case of *Ponsford v HMS Aerosols Ltd* (1976), decided by Whitford J, is recorded by a brief note in the *Handbook of Rent Review* at p 1769. It was likewise a rent review case. The learned judge said this:

Now an assertion has been made on the defendants' side that in coming to a conclusion as to what would be the appropriate rent for the period starting on June 25 1975 the person making the assessment is entitled to consider not only the state of the market up to that date but also the way in which the market has subsequently moved... I think that the only sensible way to give effect to what was agreed between the parties is to hold, as the plaintiffs have suggested that I should hold, that the assessment should be made in the light of the assessor's knowledge as to the state of the market up to the period when the new rent was due to come into effect, but that there should be omitted from consideration any developments that may have taken place subsequent to that date.

So far as I can tell from that meagre evidence, the case was concerned with movement of the market, or with "developments", after the relevant date. I can readily understand why those should be left out of account: the issue was about the market rent on the relevant date, and not what it became thereafter in consequence of change, or movement, or developments. If the landlord or the tenant submitted that in fairness those factors should be taken into account, one can see why that contention failed.

*Industrial Properties (Barton Hill) Ltd v Associated Electrical Industries Ltd*, undated and unreported but also recorded in

the *Handbook of Rent Review* (p 1749) was decided by Judge Fay QC. The learned judge said this:

Clearly the major problem I have to solve in arriving at a decision on value is the yield properly to be taken into account as at December 25 1973. About this I have a good deal of evidence...! accept that at Christmas 1973 there were virtually no property sales being effected, and when later in 1974 the market redeveloped, it was at values considerably lower and yields considerably higher than prior to December 1973.

His Honour then referred to *Curling v Jones* (1963) 1 WLR 748; *Bwlifa & Merthyr Dare Steam Collieries v Pontypridd Waterworks Co* (1903) AC 426; *Re Bradberry* (1943) 1 Ch 5, and continued:

If I were dealing with quoted shares instead of land the position would be clear enough. If shares had to be valued as at a certain day, for example for estate duty purposes, the value is the mid-market price on that day and it would be idle to urge that six months later that price was halved, or that on the day of valuation they were on a downward trend because of apprehensions which later were found to be well-founded. No, I must ask myself what a skilled valuer would have done at Christmas 1973 knowing all that had happened up to then but denied full knowledge of the catastrophes of 1974.

Again it appears to me that the judge was considering changes which occurred in the market after the relevant date, and not later evidence as a guide to what the market rent on the relevant date had been.

*Duvan Estates Ltd v Rossett Sunshine Savouries Ltd* (1982) 261 ESTATES GAZETTE 364 was an application for leave to appeal under the Arbitration Act 1979, decided by Robert Goff J. The learned judge said this (at p 365):

The point in broad terms... is that in considering a valuation of this kind it is proper to have regard to the relevant facts existing as at the review date, which is July 17 1978, and not to have regard to facts and events existing after that date. In support of that proposition he relied upon a passage at the end of the judgement of Whitford J in *Ponsford v HMS Aerosols Ltd*, a case which went on appeal (1979) AC 63: (1978) 247 Estates Gazette 1171. But I was provided with a transcript of Whitford J's judgement because on this point, apparently, the appeal was not pursued.

As a general principle I entirely accept that; indeed, I do not understand that Mr Cohen on behalf of the landlord contested the principle as such.

However, he went on to hold that the arbitrator had not relied upon the disputed evidence in reaching his conclusion. "In those circumstances", the judge continued, "I do not think, on a bare reading of the reasons of the award, that the arbitrator was infringing the principle which both parties accept should be applicable". The material which the judge was referring to in those passages was indeed evidence of rents agreed after the review date. Thereafter he went on to consider other evidence subsequent to the review date, of a different nature. In relation to that evidence he did find an error of law on the part of the arbitrator. but as it was not one which could substantially affect the rights of the parties, he refused leave to appeal.

It can, I think, be said of the learned judge's conclusion, which is relevant to the present case, first that it was *obiter*; secondly, that the point was apparently conceded; and thirdly that the *Melwood* case was not cited.

Finally there is the decision of Judge Finlay QC, sitting as a judge of the Chancery Division, in *Gaze v Holden* (1983) 266 ESTATES GAZETTE 998. There a testator had by will granted

an option to purchase a farm at a fair market value, "such value to be ascertained by a valuation in the usual way". At the date when the options was exercised the farm had been subject to a subsisting lease. The question was whether the arbitrator would be entitled to take into account the fact that the lease had been surrendered, if that should occur before the arbitrator made his determination. The learned judge said this (at p 1004):

Mr Wood, as I understand it, was disposed to accept that the prices obtained, for example, on subsequent sales could be looked at as they furnished evidence of what the state of the market was at the date when the property fell to be valued. He instanced the case where the prices obtained on a subsequent sale might indicate whether the hypothesis that the market trend was a rising one or a falling one was well or ill-founded. But subject to that exception that subsequent events may furnish evidence of what the value was at the relevant date, his submission was that you were not entitled to look at subsequent events for the purpose of determining what weight should be given to contingencies which at the relevant date, for the purposes of the valuation remained unresolved.

So the point in issue here was again conceded, but the concession was the opposite to that made in the *Duvan Estates* case. The judge continued:

I have come to the conclusion that "valuation in the usual way" means taking into account events which have happened at the date when the property falls to be valued, in this case February 8 1980, and taking into account not only the actualities at that date but the possibilities in relation to all the circumstances; and that the valuer has, as best he can, to form his own judgement as to how these possibilities and various prospects that are inherent in the then existing situation affect the value of the property as at that date; but he is not entitled to take into account events which happened subsequently and which resolve how these various possibilities and prospects in fact turn out. To do so would be to introduce into the valuation a species of foreknowledge which would not be available to any willing buyer or willing seller entering into a contract as at the date on which the property falls to be valued.

The real exercise which the valuer is carrying out in making a valuation in accordance with the principles laid down by the testator in the first schedule of his will is the exercise of determining, applying to the problem all the skill and experience which he has, what a willing seller would be prepared to accept as a price and what a willing buyer would be prepared to pay. To endow either buyer or seller, or both of them with foreknowledge of how events were going to turn out would make that exercise one which was entirely different in character to that which the testator had indicated as the appropriate method of valuation.

In reaching that conclusion I am fortified, on reconsidering the authorities to which I have referred, by the fact that in the very first of them (the *Bwillfa* case) it is made clear that the House of Lords was not dealing with the matter as a case of valuation but as a case of determination of compensation. I have come to the conclusion (fortified, as I say, in that way) that the *Bwillfa* principle does not apply to the valuation that has to be effected for the purposes of administering the testator's estate in relation to this option.

It is apparent that the judge was considering the same type of problem as arose in the *Bwillfa* case and not the problem that arises in this case. He was considering whether later evidence could be taken into account in assessing, at the date of the valuation, how likely it was that some future event would occur. That is not the problem which arises here since otherwise the case could have been decided on counsel's concession and I say no more about it. I do not regard *Gaze's* case as having any direct bearing on the present case.

In that state of the authorities the arbitrator was, in my

judgement, entitled to hold that the evidence as to rents agreed after the relevant date was admissible, and I consider that he was right to reach that conclusion. If rent of comparable premises had been agreed on the day after the relevant date, I cannot see that such an agreement would be of no relevance whatever to what the market rent was at the relevant date itself. If the lapse of time before the agreement for comparable premises becomes greater then, as the arbitrator said, the evidence will become progressively unreliable as evidence of rental values at the relevant date. The same is no doubt true of rents agreed some time before the relevant date: but nobody suggested to me that those should be excluded. So, too, political or economic events may have caused a change in market rents, either before or after the relevant date. All those factors must be considered by the arbitrator in assessing the weight to be attached to a rent agreed for similar premises, whether before or after the relevant date. It may happen that no rents of comparable premises that were agreed on the relevant date, or for months beforehand, can be found, but a great number very shortly thereafter. It does not seem right to me that the arbitrator would be bound to disregard them. I recognise that different judges may take different views on this issue; but, for my part, I feel bound to say that I consider that the arbitrator's conclusion was right.

#### *(2) Evidence of rents agreed between existing tenants and landlords.*

The question of law here is, according to Mr Bagnall, whether "market rent" means open market rent, or whether it includes rent agreed between a landlord and a sitting tenant. He points to the words in the lease:

...having regard to rental values current at the relevant time for similar property... let with vacant possession.

In my judgement, this is not the right question. I suspect that the market rent, to be ascertained for the demised premises, must be a rent which would be paid in the market for those premises with vacant possession. But even if that is right, it does not follow that the arbitrator must exclude from consideration any rents agreed for similar property between an existing landlord and an existing tenant. He may think it right, as one of the steps in his determination, to adjust any such rent to what it would have been for vacant possession; whether the adjustment would be up or down, or none at all, I do not know, and Mr Bagnall put nothing before me to suggest an answer. I can see that an adjustment may be required. But I do not consider that such evidence must as a matter of law be altogether excluded.

My reasons for reaching that conclusion are essentially the same as I have already set out in connection with the construction of clause 5(3) under the first issue. First, what the arbitrator must have regard to is the *worth*, in terms of rent, of similar property let with vacant possession at the relevant time. In ascertaining that worth, he can have regard to the rents agreed at a different time, for similar property not let with vacant possession. But he must consider how far evidence of rents so agreed helps him to determine the answer to the actual question which is before him.

Secondly, even if such evidence were not within the category which the arbitrator is required to take into account, it is not expressly or by implication excluded from his consideration, for the reasons which I have already given. Accordingly, I consider that the arbitrator was right on this issue also. Furthermore, it is not an issue upon which, as far as I am aware, different judges are likely to take different views.

#### *(3) "Substantially affect the rights of one or more of the parties to the arbitration agreement."*

This arises under section 1(4) of the Arbitration Act 1979.

# PEM , VEME M/Afff, M/Effl/Eff/E

BE

Issue (1), on the findings of the arbitrator, made a difference only to the extent that the rent would have been £19,250 per annum instead of £18,250 if he had decided it in a different sense. The arbitrator does not expressly say how different his award would have been if he had decided issue (2) otherwise than he did; but it is clear that the difference could well have been substantial.

The landlords say in their notice of motion that they are also landlords of 44 and 45 Sloane Street, where rent review is pending before the same arbitrator. That the case is of some importance to the landlords can be inferred from the fact that they appeared before me by leading counsel, but should I take their other rights and interests into account in deciding whether to grant leave to appeal in this case? Mr Bagnall points out that section 1(4) refers to "the rights of one or more of the parties to the arbitration agreement". He argues that if the rights of one party only are substantially affected, the question of law qualifies under section 1(4).

If the other two properties are taken into account, I have no reason of knowing how substantially the rights of the landlord will be affected. Issue (1) makes a difference of £ 1,000 a year for five years in relation to 43 Sloane Street. In the context of a rent of £18,250 a year that is not substantial. In the absence of any other information, I suppose that I must assume figures of a similar order for 44 and 45. The total amount in issue would then be £15,000 instead of £5,000. That is bordering on substantial in the context of this case. but I do not accept that it is right to take the other two properties into account. That a point of law is of general public importance has to be considered in deciding whether the discretion should be exercised in favour of granting leave to appeal. I do not consider that the general importance of the point to one of the parties is also relevant under section 1(4). The subsection provides that leave shall not be granted unless:

The determination of the question of law concerned could substantially affect the rights of one or more of the parties to the arbitration agreement.

That is an important protection to the party who has succeeded in the arbitration (in this case the tenants). He is not to be harried further upon insubstantial matters. I think that the subsection refers to a question the determination of which on appeal will directly affect the rights of one or more of the parties, and not one which will indirectly affect one of the parties if the determination is used as a precedent.

## Conclusion

Both the issues in this case are of some general importance. The appropriate guideline is , accordingly, that provided by Lord Diplock in *Pioneer Shipping Ltd v BTP Tioxide Ltd (The Nema)* (1982) AC 724 at p 743:

Leave should not be given ..... unless the judge considered that a strong prima facie case had been made out that the arbitrator had been wrong in his conclusion.

That was said in the context of a commercial contract where it could be assumed that the parties had decided, for good or evil, to make the arbitrator the final judge of fact and law in their dispute, subject only to the rights which are conferred by the Arbitration Act 1979. But the same wisdom applies, not merely to commercial contracts but to an agreement such as the present where landlords and tenants of premises in Sloane Street agreed that the rents payable on a review should be determined by the arbitrator.

Lord Diplock's guideline has recently been interpreted by the Master of the Rolls, Sir John Donaldson, in *Antaios Compania Naviera SA v Salen Redienna AB* (1983) unreported, at p 3 of the transcript:

I am, of course, construing Lord Diplock's speech as if it had read "But leave should not be given, even in such a case, unless the judge considered that a strong prima facie case had been made out that the arbitrator might well have been wrong in his construction" rather than "the arbitrator had been wrong in his construction". I think that this must have been his intention as otherwise where there are known to be differences of judicial opinion on a matter such as this, whether leave to appeal was granted or refused would depend upon the accident of whether the judge hearing the application did or did not take the same view as the particular arbitrator. This cannot have been the intention of Parliament. If I am wrong in so construing Lord Diplock's speech, then I think that this is one of those cases in which it is permissible to remind oneself that the speeches in *The Nema* were intended to provide guidelines rather than to remove the discretion granted to the judge hearing the application, and that guidelines, by definition, permit of exceptions, albeit great care must be exercised to ensure that the exceptions do not become so numerous as to blur the edges of the guidelines or even render them invisible.

Later, the learned Master of the Rolls said this, at p 9:

It is quite different if there are known to be differing schools of thought each claiming their adherents among the judiciary, and the Court of Appeal, given the chance, might support either the school of thought to which the judge belongs or another school of thought. In such a case leave to appeal to the High Court should be given provided that the resolution of the issue would substantially affect the rights of the parties (section 1(4) of the 1979 act) and the case qualified for leave to appeal to the Court of Appeal under section (7) of the 1979 Act, as no doubt it usually would.

Ackner LJ at pp 21-22 and Fox v at p 24 made observations to the same effect.

On issue (1) in this case, the relevance of rents agreed after the review date, so far from considering there to be a strong prima facie case that the arbitrator was wrong, I consider that he was right. But this is a point upon which there may well be different schools of thought among the judiciary. It is also a point of general importance. So it qualifies in that respect as a question of law for which leave to appeal should be granted.

The problem is that it does not, in this case, affect the rights of one or more of the parties substantially. So it is caught by what Lord Diplock called "the ban imposed by the first part of section 1

(4)", which exists, as I have said, for the benefit of the successful party in the arbitration. Much as I might consider it advantageous to the public if the issue were settled by a decision of the Court of Appeal, I cannot grant leave.

Issue (2), the relevance of rents agreed between existing landlords and tenants, does affect the rights of the parties substantially, or, at any rate, may well do so. It is also a point of general importance. but again I do not consider there to be a strong prima facie case that the arbitrator was wrong, and I do not consider that he was right.

And in this instance there is no material to suggest that different schools of thought exist among the judiciary. (It might be argued that this issue is infected with doubt, because I decided it by a similar process of reasoning to that which I adopted on issue (1), where there are or may be different schools of thought. I do not find such an argument convincing.) Accordingly, whether I follow the precise words of Lord Diplock in *The Nema* or the explanation of the Court of Appeal in the *Antaios* case, I ought not to grant leave to appeal on issue (2).

The application is dismissed.

The landlords' application was dismissed with costs. Leave to appeal was refused.

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