B.C. EXPROPRIATION ASSOCIATION 2004 FALL SEMINAR

A DISCUSSION OF EVIDENTIARY ISSUES IN COMPENSATION CLAIMS

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Barry Williamson

LIDSTONE YOUNG ANDERSON
Barristers & Solicitors
Suite 207, Ricco Plaza
1441 Ellis Street
Kelowna, B.C. V1Y 2A3
Telephone: (250) 712-1130
Fax: (250) 712-1180
E-mail: williamson@lya.bc.ca

THE PASSING OF THE EXPROPRIATION COMPENSATION BOARD – A NEW ERA IN COMPENSATION LAW?

> "I'm pleased to introduce Bill 67, the *Expropriation Amendment Act*. Bill 67 will provide the Supreme Court of British Columbia with jurisdiction over expropriation and related matters. That jurisdiction is currently held by the Expropriation Compensation Board. This bill will dissolve that board.
>
> The Expropriation Compensation Board has a relatively low caseload and formal, often protracted proceedings. Its decisions are frequently appealed. Moving the board's jurisdiction to the courts will avoid duplication and will streamline *Expropriation Act* proceedings."

With these words Attorney General Geoff Plant signaled that the British Columbia Expropriation Compensation Board would cease to function.

It will be some time before it can be seen whether the transfer of the Board's jurisdiction to the Supreme Court of B.C. will result in less formal, shorter proceedings, less likely to be appealed as implied by the Attorney General. However, the end of the ECB may provide new opportunities for counsel and expert witnesses to break free of certain perceived shackles imposed by the Board.

A. Start at the End – Appeals

Bill 67, the *Expropriation Amendment Act,* 2004, repeals Section 28 of the *Expropriation Act* which required that leave be obtained to appeal a determination or order of the Board to the Court of Appeal. The elimination of leave will serve to streamline the appeal process. Counsel will no longer feel compelled to seek leave on every argument, including those of questionable merit, for fear of leaving something valuable on the "cutting floor" that they will later regret. With only the main appeal to be concerned about, counsel may find it easier to concentrate on fewer appeal grounds with better prospect of success.

The passing of the ECB will put an end to the debate as to what the appropriate standard of review should be of Board decisions. While it was relatively clear that, on questions of law on the interpretation of the statute, the Board's decisions were reviewed on a standard of correctness, the Court of Appeal's views on the standard for reviewing questions of fact or mixed fact and law was not so clear.

In *Accton Petroleum Sales Ltd. v. British Columbia (Minister of Transportation and Highways) (1998), 64 L.C.R. 161* the court, per Finch J.A., set out the principles of review as follows:

> "[12] In my view, except for matters of pure law (such as the interpretation of a constituent statute), the proper standard of review is that of "reasonableness": see *Canada (Director of Investigation and Research) v. Southam Inc., [1997] 1 S.C.R. 748*. In order to succeed on factual issues, or on issues of mixed fact and

> law the complainants must show that the Board's award is unreasonable, or is supported by reasons which cannot bear scrutiny, either for lack of an evidentiary foundation or for some defect in the process by which conclusions were drawn from the evidence."

Earlier in the court's reasons, it acknowledged that previous decisions had stressed the Board's status as a specialized tribunal entitling it some degree of deference.

In *Campbell River Woodworkers v. British Columbia (MoTH) 2003 BCCA 121* the court endorsed the view expressed earlier by Southin J.A. in *Casamiro Resources v. BC 2000 BCCA 407* that the court should have in mind the standard applied in appeals from orders in civil litigation. (at para. 12). Later in the *Campbell River* decision, Smith J.A. qualified this by reference to the Board's expertise:

> "[22] In my view, the essence of the appellant's submission is that the Board came to a wrong conclusion on these matters. As I have already noted, the standard of review on these questions is reasonableness and the Board is entitled to considerable deference on matters of valuation, which are at the core of its expertise."

What is the significance of this in light of the forthcoming transition to matters of compensation being decided by the court in the first instance?

Are trial judge's decisions on compensation more likely to be overturned than decisions of the Board because trial judges are not possessed of any particular expertise on valuation matters? Probably not. The impact is more likely to be felt at the trial level.

To the extent that the Board was able to develop a consistent approach to various valuation issues which was unlikely to be disturbed by the Court of Appeal, judges hearing compensation cases need not feel constrained to take the same approach as the Board. Should judges find a particular valuation methodology, for example, more appealing than the Board or that certain types of losses should be recognized as proper disturbance damages, there is some basis for thinking that the Court of Appeal will not interfere.

What are some of the areas where change may occur?

B. Valuation Methodology

The subdivision development approach was certainly never wholeheartedly endorsed by the Board. Indeed it recognized its use only grudgingly. In *Double Alpha Holdings Corp. v. Pacific Coast Energy Corporation (1998), 65 L.C.R. 99* the Board was faced with a decision by both appraisers to rely substantially on the subdivision development approach. The Board set the stage with this quote from Professor Todd's *The Law of Expropriation and Compensation in Canada, 2nd ed.* (Toronto, 1992) at page 219:

> "Courts and tribunals are usually reluctant to rely on the land development (subdivision) approach for two reasons. First, unless a proposed subdivision has actually been officially approved there is always some degree of uncertainty as to whether, and under what conditions, the subdivision would ever have materialized...
>
> Second, it is recognized that the approach is "volatile" in the sense that a comparatively minor change, for example in the costing of services, can produce a figure in the end result which will significantly affect the residual value."

The Board quoted Todd as observing that "courts and tribunals frequently reject this approach on the basis of the availability of reliable comparable sales data, the conclusion that the subject property was not ripe for development at the date of expropriation, or a determination that the various factors such as servicing, engineering and other development costs were not based on solid, factual evidence."

Further reason for not supporting the subdivision approach was found in the Appraisal Institute's *The Appraisal of Real Estate, Canadian Edition* (1992):

> "... bona fide sales data provide a better indication of value than a subdivision development prospectus. The reliability of the approach is determined by the accuracy of the lot yield, absorption rate, sale prices, servicing costs and soft cost estimates."

Additional emphasis was provided by reference to the Board's decision in *McKinnon v. School District No.36 (Surrey)* and another quote from Professor Todd to the effect that it was appropriate to use the subdivision development approach only where "there is a paucity of comparable sales."

As noted earlier there was no direct comparison basis offered and the Board clearly was uncomfortable with the predicament it was left with:

> "As for the availability of suitable comparable sales, since neither of the proffered appraisal reports estimated the loss on a direct comparison basis, we are not in a position to conclude whether or not such comparables were available. ...
>
> We are also of the view, however, that the many variables that must be capable of accurate estimation in order to permit a reliable subdivision development valuation are not so in this case. The difficult situation in which we find ourselves here is that if we do not accept the subdivision development approach as put forward by both expert appraisers, we will not have any appraisal evidence before us other than Davies' estimate in his 1990 appraisal report, based on a value per raw lot and a lost lot total based only on the percentage of the area of the strip taken against the area of the larger parcel.

> Although the preferred method of valuation here may have been the direct comparison method, if adequate comparable data were available, what we have instead are two expert reports using the subdivision development approach and extensive planning and engineering evidence in support of those reports. We do not believe that we would be adequately addressing the valuation evidence if we looked only to the direct comparison analysis of Davies in 1990, which was not even entered into evidence by the party for whom it was prepared. Doing the best that we can in these circumstances, we shall proceed to determine this claim based primarily on a review of the subdivision development valuations."

While the Board has shown a great reluctance to see the subdivision development approach employed except in limited circumstances, this does not constitute a legal principle that a trier of fact may not use this valuation approach in cases where there may be directly comparable sales. Unless the court can be said to have erred in the application of governing legal principles, there will be little scope for challenging decisions on valuation matters.

The Board restated its lack of confidence in the subdivision development approach in two cases following *Double Alpha*; *Sequoia Springs West Development Corp. v. MoTH (2000,) 69 L.C.R. 1,* and *Whitechapel Estates v. MoTH (2002), 78 L.C.R. 32*. Both cases involved large tracts of land where the highest and best use was for residential development. In *Sequoia Springs* the Board relied on the direct comparison approach over the subdivision development approach for the before scenario and not having been provided with any direct comparison evidence for the after valuation the Board, citing *Double Alpha*, reluctantly relied on the subdivision development approach. In *Whitechapel Estates* the Board found that there were simply too many uncertainties in the development approach employed by the Ministry's appraiser and accordingly relied on the direct comparison approach.

The subdivision development approach was employed by both appraisers in *415528 B.C. Ltd. v. GVWS&DD (2002), 79 L.C.R. 81* with no adverse comment on the choice of methodology but the case involved land that was subdivided shortly after the taking. Despite relying on the subdivision method the Board still found shortcomings in the appraiser's analysis.

Most recently in *Greatbanks and TNL Construction Ltd. v. MoTH (2003), 82 L.C.R. 1* the Board, noting that it had little else to rely on, again reluctantly accepted that it would have to accept the choice of the appraisers to rely on subdivision valuations. The Board could not let the matter pass though without observing:

> "Although the preferred method of valuation here <u>may</u> have been the direct comparison method, if adequate comparable data were available, what we have instead are two expert reports using the subdivision development approach..."

In compensation disputes involving larger tracts of land, it is likely that Supreme Court judges, while noting the Board's criticism of the subdivision development approach, will be less troubled by basing their awards on this method now that the Board has paved the way with several decisions that have relied on it. Once the door has been opened, there is likely to be no going

back. A trial judge's decision to rely on the subdivision development method should be equally immune from being overturned on appeal as any decision of the Board to reject the use of the subdivision development approach.

Some mention should be made here of the general trend of appellate review of fact based decisions, of which valuation decisions are one type. Culminating in its recent decision in *Housen v. Nikolaisen, [2002] 2 S.C.R. 235*, the Supreme Court of Canada has repeatedly emphasized that appellate courts must not interfere with the decisions of trial judges simply because they may take a different view of the evidence or would have decided the case differently had they heard the trial. Findings of fact may only be overturned where the trial judge has made a "palpable and overriding error" which is one that is "plainly seen." So long as trial judges provide some reasoned analysis of the methodology used by appraisers, and where they differ, a rationale for choosing one over the other – the error committed by the trial judge in *First National Properties v. McMinn and District of Highlands 2001 B.C.C.A. 305* – their judgments will be upheld on appeal.

C. Problems of Proof

Hearsay evidence has long been recognized as a basis for the opinion evidence of experts and its importance in the appraisal field receives special recognition, as noted in CLE BC's publication "Expert Evidence in British Columbia Civil Proceedings" at para 8.20:

> "Although hearsay may be admissible as a foundation for an expert report, the hearsay evidence does not become evidence at trial merely because it forms the foundation of the report. The hearsay may need to be separately proved before the opinion is entitled to any weight. In some cases, such as appraisal reports, where the hearsay evidence forms the basis of the opinion but is available to all other appraisers, it may not."

Professor Todd's text cites the following passage from *Saint John (City) v. Irving Oil, 58 D.L.R. (2d) 414 (SCC)*:

> "If the rule were otherwise [that an appraiser's opinion was rendered inadmissible by reason of reliance on hearsay] proceedings to establish the value of land would take on an endless character as each of the appraiser's informants whose views had contributed to the ultimate formation of his opinion would have to be individually called. To characterize the opinion evidence of a qualified appraiser as inadmissible because it is based on something that he has bee told is, in my opinion, to treat the matter as if the direct facts of each of the comparable transactions which he has investigated were at issue whereas what is in truth at issue is the value of his opinion.

> The nature of the source upon which such an opinion is based cannot, in my view, have any effect on the admissibility of the opinion itself. Any frailties which may be alleged concerning the information upon which the opinion was founded are in my view only relevant in assessing the weight to be attached to that opinion."

On occasion the Board has shown a reluctance to accept hearsay evidence in light of its general acceptability. In *Pay Less Gas Co. (1972) v. British Columbia (MoTH) (2001), 74 L.C.R. 81* an issue arose as to the location of the septic tank and field for the service station. The Board's reasons report that all of the appraisers had made an assumption that it was located on the "improved" site as opposed to the "vacant" site. After the claimant's appraiser testified that he had never identified the location of the septic tank and field, the Ministry's appraiser contacted one of the previous owners of the property who advised him that, contrary to the assumption of the appraisers, the septic tank was located on the vacant site. This was a significant point in affecting the valuations.

The Board concluded there was "insufficient evidence" to allow the Board to draw a firm conclusion as to the true location of the septic disposal system. It commented on the fact that the hearsay evidence had been provided "late in the day" and that there were not records in the files of the local government or the Ministry to support the evidence. The Board concluded:

> "Given the continuing uncertainty, the Board considers that the benefit of the doubt should favour the expropriated party, Pay Less, and is not prepared to reverse the earlier assumptions made by the appraisers with respect to this question."

The reasoning is curious. In the face of the hearsay evidence based on comments from a person that had a connection to the property, the Board instead opted for mere assumptions of the appraisers as to the location of the septic system. An assumption though is no evidence, unless it can be said to be an inference drawn from other established facts. It is difficult for litigants to know how to approach a case if the basic operative premise that hearsay evidence is to be accepted can be set aside so readily.

The *Pay Less* decision also involved an interesting discussion of the need for evidence to substantiate reliance on a transaction involving the subject property. The Ministry attempted to place some reliance on a transaction two years earlier at a value substantially below the value estimate of its appraiser in the hope of showing that this valuation had not erred on the low side. The Board disregarded the evidence of the earlier transaction, noting the claimant's objection that there was no evidence to show the earlier price had been reflective of market value:

> "[153] Pay Less and the vendors of the subject lands were, prior to the purchase, in the position of lessor and lessee. On the one hand, there was no evidence to suggest that the June, 1988 purchase and sale of the real estate was other than an arms-length market transaction. On the other hand, there was also no evidence of the negotiations which took place leading to the purchase and sale, and no appraisal evidence as to the state of the market at that time. In these

> circumstances, the board considers that it would be unsafe to view this transaction as somehow confirming the validity, or even generosity, of Mr. Nilsen's market valuation of the subject lands as at September 30, 1990."

One could argue in the case of a transaction involving the claimant, that there should have been a presumption that the transaction (in which the respondent was not involved) was representative of market value at the time, rebuttable upon evidence which would indicate otherwise.

D. Uncertainty, Risk and Contingencies

The Board's decision in *Sequoia Springs* was appealed on the basis that the Board had erred in accepting adjustments to the key comparable to reflect the prospect of recovering off-site development costs from other developers. The claimant said this was only a possibility at the date of acquisition and the Board had erred in taking into account "hindsight" evidence as to the recovery of these costs. The Court of Appeal disagreed:

> "[21] So the question for this Court is whether it was reasonable for the Expropriation Compensation Board to consider that a purchaser buying the Hilchey Road property would not have estimated the price on, in its words, "the most pessimistic assumptions". In other words, was it reasonable on the evidence for the Expropriation Compensation Board to conclude that it should adjust the price of the Hilchey Road property for possible contributions from others to its off-site expenses, such receipt of monies effectively lowering the actual cost to the purchaser of the property?
>
> [22] Although Sequoia Springs vigorously contends that the Expropriation Compensation Board demonstrated error in considering events that would mitigate a purchase price, in my view that is not so, provided that it is reasonable on the evidence to conclude both that some consideration would have been given by parties to a transaction to the possibility of recovery and that the possibility would be reflected in the purchase price. Where the evidence establishes that a purchaser could expect such receipts to mitigate its cost, that contingency should be reflected in the decision, consistent with the evidence that was accepted."

The Court found that sufficient evidence for the Board's conclusion existed in, amongst other things, similar off-site cost adjustments having been made in previous appraisals for the claimant of its own land .

Contrast the underlined passage from the court's reasons in *Sequoia* with how the Board dealt with the prospect of a bonus density adding to market value in *Gonev v. Richmond (2000) 71 L.C.R. 251*:

> "[74] At the date of the expropriation no one knew how much bonus density might be granted or what it might cost either in cash or in concessions. There was some evidence that in the end the developers did not have to pay that much to achieve a density bonus. However, this evidence would not have been available to the potential purchaser at the relevant time and therefore cannot be considered. See *Double Alpha.* ...
>
> We concur with Wollenberg that "developers do not typically 'pay in advance' for a density bonus by paying more for land, unless it is clear that the density can be achieved at negligible cost". A similar principle has been enunciated in *Farlinger Developments Ltd. v. Borough of East York* (1975), 8 L.C.R. 112 (Ont. C.A.). If the highest and best use of an expropriated property is based on re-zoning potential, or in this case its bonusing density potential, there must be a probability or a reasonable expectation that such a change in the land use will be approved. Purchasers are unlikely to pay any increment for relatively uncertain possibilities. In our opinion, a prudent developer purchaser would have not have been prepared to pay a much higher price, if any, for a particular potential bonus density on a raw lot in February 1997."

The principle in *Farlinger Developments* was applied by the Board in *Devick v. MoTH (1994), 52 L.C.R. 212* in relation to s. 32 (now s. 33) of the *Expropriation Act*. The Board framed the task for the claimant as follows

> "If the failure to obtain rezoning can be traced to the respondent, and was based solely on the respondent's intention to re-align and reconstruct the highway, then the failure of the application must be disregarded."

On the appeal the court concluded that the Board erred in rejecting any increase in value based on a potential for commercial development because the claimant had failed to establish that, in the absence of the project, a rezoning application would have been granted; *Devick v. B.C. (1998), 47 B.C.L.R. 14*. Esson J.A. reasoned that the onus the Board placed on the claimant could practically never be met. Instead the court considered the appropriate approach was whether on a balance of probabilities there would have been a market for commercial development "which would have given some greater value".

The *Farlinger* principle resurfaced in the Board's recent decision in *Fritz v. Sicamous (August 19, 2004)*. There the question was whether the prospect of the claimants obtaining a "homesite severance" from the Agricultural Land Commission added to the value of the property to the claimants as a special economic advantage. The claimants relied on the Board's decision in *McPhail's Equipment v. Surrey (1995), 57 L.C.R. 57* where it was said that account must be taken of "the value of the land with all its potentialities". The Board rejected the argument stating:

> "[103] In our view, the claimants have confused the issues of highest and best use based on 'probabilities' and the calculation of compensation which can involve

'potentialities'. The first task is to determine highest and best use based on the probable use to which the property could be put. It is in that context that the board must consider whether there is evidence to demonstrate the *probability* that approval for severance would be granted by the appropriate authority. If the board determines that it was a probable use, then the board would consider the impact on value.

[104] It is in the context of determining compensation that the courts have referred to the *potentialities*. In *Farlinger* at para. 51, the Court stated:

> Before an owner of expropriated land is entitled to compensation on the basis of a higher and better use, the probability of such use must be clearly established.
>
> ... Having determined the highest and best use of the property the next task is to fix the compensation to be awarded to the owner based on such use. The market value of the land to be determined under s. 14(1) of The Expropriations Act should reflect the present value of the potentialities of such land.

[105] The board agrees with the Respondent that the appropriate test for highest and best use is that set out by the Court in the *Farlinger* case:

From these authorities it would seem to be established that the highest and best use must be based on something more than a possibility of rezoning. There must be a probability or reasonable expectation that such rezoning will take place. It is not enough that the lands have the capability of rezoning. In my opinion probability connotes something higher than a 50% possibility. "

The Board followed with a reference to the previously quoted excerpt from the *Gonev* decision and concluded that the prospect of obtaining the homesite severance was too remote and speculative to be taken into account in valuing the property.

It is interesting to consider the Board's acceptance of a loss of "speculative development potential" in the *Greatbanks* decision in light of the decisions referred to above. The absence of any reference to the *Farlinger* principle or any real discussion of the appropriateness of making an award for a speculative potential may be explained by the fact that the Ministry's appraiser included this as part of his valuation. The taking was said to have resulted in the loss of speculative potential to the "west acreage" of the Greatbanks property as a result of access limitations. Valuation of the loss was a difficult exercise. There was no substantial market evidence to measure the speculative subdivision potential, therefore a percentage reduction in the range of 5 – 10% was applied to reflect an additional negative perception in the marketplace.

Compensating an owner for a loss of development potential, even if speculative, is consistent with the approach that the courts take generally to awarding damages for loss of a chance.

Although the particular discussion turned on the question of proof of disturbance, the Court of Appeal's judgment in *Sequoia Springs* is helpful:

> "[43] Although it may be difficult to quantify that loss, this is no reason to deny the claim in its entirety. In ***B.C. Hydro and Power Authority***, *supra*, Mr. Justice Seaton for this Court held at p. 424:
>
> > This is not a case of there not being proof of a loss. There is proof of a loss but it is one that is difficult to quantify. The court has an obligation to do so, keeping in mind that the onus is on the plaintiff. Reference is often made to Chaplin v. Hicks, [1911] 2 K.B. 786 (C.A.), where it is said that if a loss has been established and the quantum is not capable of specific proof it is not only permissible but necessary for the trial judge to do the best he can.
>
> [44] The principle of ***B.C. Hydro and Power Authority***, in my view, is applicable to expropriation, to the effect that upon proof of a reasonable business loss, some award must be made in compensation."

While the Board may have been concerned in its decisions that recognizing value in speculative opportunities might be an invitation to open the floodgates, the fact that it is difficult to put a precise value on the loss is not a reason for rejecting a claim as unproven. It is submitted that the courts are likely to be more willing to make awards for potentialities that have not reached the probability level, given the court's track record in applying the *Chaplin v. Hicks* formula; see *Pan-Asia Development Corp. v. Smith, [1996] BCJ No. 1919.*

E. Disturbance Damages

The Board has taken a cautious approach to awards for disturbance damages. In a partial taking case, *Bayview Builder's Supply v. B.C. (1999), 66 B.C.L.R. 94*, the Court of Appeal allowed an appeal from the denial of disturbance damages where the Board had interpreted the "directly attributable" causation standard as meaning that the onus on the claimant was to demonstrate that the expropriation was the sole cause of the loss. On the re-hearing the claimant was unsuccessful in recovering for the cost of a proposed reconfiguration of the property; *(2001), 75 L.C.R. 95.*

The claimant argued that the principles of causation in the Supreme Court of Canada's decision in *Athey v. Leonati, [1996] 3 S.C.R. 458* should govern. *Athey* is authority that the plaintiff need not establish that the defendant's negligence was the sole cause of the injury. As long as the defendant's conduct is part of the cause of the injury, the defendant is liable even if his act alone was not enough to create the injury. Defendants are liable for all injury caused or contributed to by their negligence. Ultimately the Board rejected the claim for the costs of reconfiguration. It applied the "pre-existing condition" exception articulated in *Athey* that would excuse a defendant from being responsible for all of the injuries suffered after the "event". The site configuration

prior to the project was certain to deteriorate with the general increase in traffic. In addition, the Board considered that there was a significant aspect of betterment in the claimant's reconfiguration plan that MoTH could not be expected to bear. The Board confirmed its previous decision to award damages for the reduction in market value.

The decision in *Bayview* is very much fact driven. The lack of success by the claimant should not be taken as an indication that similar claims will fail in the future. The *Athey* principle of compensation is gaining greater currency in the courts and will likely be applied in future expropriation cases.

Claims for executive time have a dismal history before the Board. The cases were summarized by the Board in the *Pay Less* decision as establishing that there must be a corresponding loss or expense, or one must be able reasonably to infer a consequential loss, as a result of the time expended by an individual. *Pay Less* was one of the few instances where a claim succeeded, the Board framed its conclusion as follows:

> "[295] None of the foregoing decisions since *L'Abri,* which has denied claims for lost executive time on the basis that there was no evidence of a corresponding loss or expense, has gone on to consider expressly whether such a loss or expense might reasonably be inferred from the circumstances. In the present instance, the board is of the view that it is reasonable to infer from the evidence as to Mr. Sikora's efforts on expropriation and relocation matters that the diversion of his paid time from normal real estate and development duties represented a cost or expense to Pay Less even if it was not somehow reflected as a loss in the claimant company's financial statements. With respect to the other main reason why the board has denied claims for compensation for loss of executive time based on its concern around double recovery, the board in this instance observes that Pay Less' claims for business loss do not encompass the kind of cost or expense associated with the diversion of Mr. Sikora's time.

Subsequently in *415528 BC Ltd*, the Board, while criticizing the invoicing of executive time as grossly excessive, made an award for the executive time associated with the pre and post-taking delays. A claim for directors' fees failed in *Greatbanks* (see paragraphs 740 – 742).

Will claimants fare any better in attempts to recover for executive time before the courts? In *Wiebe v. Gunderson 2004 BCCA 456* the court reviewed a damages award in a fraud case, one component of which was $90,000 for "out of pocket expenses". In separate reasons Madam Justice Southin considered the award could not be upheld on the basis of the trial judge's reasoning but that, as an expenditure in mitigation, it could. She observed that the plaintiff has expended much time and effort in attempting to solve one of the problems that had been concealed by the defendant. She continued:

> "His time is worth money, even though no witness put a value on his time."

Declining to send the matter back to the trial judge on the question of, as she put it, the "how much" and concluded:

> "Sometimes a little rough justice is the right thing to administer and I would award under this head to the respondents the sum of $30,000 for each of the years 1995, 1996 and 1997, for a total sum of $90,000."

While this comment cannot be taken as an invitation to trial judges to waive usual evidentiary standards for claims for owner's or executive time, it may foretell a greater willingness on the part of the courts to make awards for this type of claim by the Board.

Conclusion

This paper is by no means intended to be an exhaustive survey of evidentiary issues in compensation proceedings. The issues that have been highlighted may be addressed differently by courts hearing compensation matters. Whether the courts will meet the Attorney General's goal expressed in the Legislature on second reading that Bill 67 will "provide British Columbia with the most appropriate, effective and efficient framework for the independent adjudication of expropriation compensation" remains to be seen. However, the transition to the courts represents an opportunity to leave behind some of the constraints imposed by the Board.