

BETWEEN:

LAKE LOUISE SKI LODGE LIMITED,
ALFRED COOPER and MARY
BOYLE

SUPPLIANTS;

Calgary
1967
March 29-31
Apr. 3-7
Ottawa
Apr. 25

AND

HER MAJESTY THE QUEEN.....RESPONDENT.

Expropriation—Crown—Agreement to compensate subject—Exchequer Court Act, R.S.C. 1952, c. 98, s. 18(1)(g)—Concept of “value to the owner”—Subject property—No value beyond “market value”—Sole criteria was “market value” at the date of the expropriation.

The respondent expropriated on the 2nd of August 1956 certain parcels of lands in the Lower Lake Louise area in Banff National Park, Alberta, of which the suppliants were the owners prior thereto.

The suppliants sought to establish that their claim for compensation arising out of their expropriation should be based on the concept of “value to the owner”; and adduced evidence through expert witnesses, *inter alia*, of a possible substantial development on the subject lands.

The respondent sought to establish that the subject property had no value beyond “market value”.

Held, on the evidence that there was proof that there was a market for the subject properties, but there was no proof given of any special adaptability or use of any of the subject properties and therefore there was no special value to the suppliants within the meaning of the decided cases and as a consequence “market value” was the sole criteria of the values of the subject properties as of the date of the expropriation.

Held also, that the evidence of certain expert witnesses in this case, who prepared certain grandiose possible schemes of development for the main parcel of the subject properties, had little or no weight for the purpose of this adjudication of the compensation payable, because such schemes of development were not factors in the market at the date of expropriation.

EXPROPRIATION.

E. M. Woolliams, Q.C. and *D. G. Korman* for suppliants.

Ross A. MacKimmie, Q.C. and *P. M. Troop* for respondent.

GIBSON J.:—The suppliants in this action claim damages against the respondent arising out of an expropriation on the 2nd of August, 1956 of certain lands in the Lower Lake Louise area in Banff National Park, Alberta.

1967
 LAKE LOUISE
 SKI LODGE
 LTD. *et al.*
 v.
 THE QUEEN
 Gibson J.

The respective subject lands formerly owned by the sup-
 plants were as follows, *viz*:

1. J. Stanley Boyle was the owner of a triangular piece of land located on the north side of the Banff Jasper Highway about 500 feet west of the original road allowance between sections 27 and 28 having frontage of approximately 600 feet and an area of approximately 2.0 acres. (This is referred to and identified as parcel B on Exhibit S-8 and on the plan attached to Exhibit R-5.)
2. Alfred Cooper was the owner of a piece of land adjoining and it also fronts on the Banff Jasper Highway and its easterly boundary is formed by the original road allowance between sections 27 and 28 and its highway frontage is approximately 650 feet and it has an area of approximately 4.40 acres. (This property is referred to and identified as parcel C on Exhibit S-8 and on the plan attached to Exhibit R-5.)
3. Lake Louise Ski Lodge Limited was the owner of two parcels of land, that is to say:

One parcel (which is the principal parcel) consisted of an irregular area bounded on the north and west by Pipestone Creek and on the south by the Canadian Pacific Railway. A tongue of land 40 feet wide on the western limit of the property extends west from across the Pipestone Creek to the Banff Jasper Highway. The Pipestone Creek divides this tongue of land from the remainder of this parcel. The parcel is relatively flat, level with the C.P.R. tracks at the south limit and about 6 feet above the Pipestone Creek. And a portion of the property consists of an island in the Creek which is low-lying and is about 2 to 3 feet above the Creek. The area in this parcel is approximately 51.89 acres. (This property is referred to and identified as A on Exhibit S-8 and also on the plan attached to Exhibit R-5.)

The second parcel is essentially two pieces of land joined by an unopened road allowance in respect of which the Lake Louise Ski Lodge Limited held a licence of occupation. These two small pieces of

land plus the area covered by the licence of occupation form a triangle of approximately 1.95 acres and the same is bounded by the confluence of the Bow River and Pipestone Creek and by the road to Lake Louise Station. (This parcel is referred to and identified as AA on Exhibit S-8 and on the plan attached to Exhibit R-5.)

1967
 LAKE LOUISE
 SKI LODGE
 LTD. *et al.*
v.
 THE QUEEN
 Gibson J.

An Agreed Statement as to Facts was executed by the parties to this action and it was filed as Exhibit S-1 at this trial.

In paragraph 3 of the said Agreed Statement as to Facts the subject lands are described by their metes and bounds descriptions as set out in their respective title documents registered in the Land Titles Office of the Province of Alberta. The title of all the subject properties, it is agreed, is subject to the terms and conditions of agreements referred to in Caveat 6160 FE (being a Notice of Agreement between C.P.R. and Lake Louise Ski Lodge Limited) and Caveat 2446 FJ.

By Order of this Court dated 3 March, A.D. 1967, *inter alia*, it was provided "That the issue to be tried is the value of the properties expropriated as of the dates of their expropriation."

And the said Order also further provided that:

The Suppliants will contend that as to the lands subject of Action No. 162332 were, at the time of expropriation, worth at least:—

(a) Lake Louise Ski Lodge parcels	\$450,000.00
(b) Alfred Cooper parcel	15,500.00
(c) J. Stanley Boyle parcel	7,000.00
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Total	\$472,500.00

The Respondent denies such valuations.

The Respondent will contend that as to the lands subject of Action No. 162332 were, at the time of expropriation, worth not more than:—

(a) Lake Louise Ski Lodge parcels	\$ 25,000.00
(b) Alfred Cooper parcel	5,800.00
(c) J. Stanley Boyle parcel	2,400.00
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Total	\$ 33,200.00

The Suppliants deny such valuations.

1967
 LAKE LOUISE
 SKI LODGE
 LTD. *et al.*
 v.
 THE QUEEN
 Gibson J

The suppliants in evidence sought to establish the following values of their respective property as of the date of their expropriation, namely:

- (a) J. Stanley Boyle\$ 7,000
- (b) Alfred Cooper\$ 15,500
- (c) Lake Louise Ski Lodge Limited
 - (1) as to the main parcel\$ 87,000 or \$270,000
or \$280,000
 - (11) as to the small parcel\$ 6,000

The respondent in evidence sought to establish the values of the said properties expropriated as of their dates of expropriation as follows:

- (a) J. Stanley Boyle \$ 2,400
- (b) Alfred Cooper\$ 5,800
- (c) Lake Louise Ski Lodge Limited
 - (1) main parcel\$ 20,000
 - (11) small parcel\$ 5,000

It was common ground between the parties that (a) the subject properties lie in the area in the Banff National Park known as the Lower Lake Louise area; (b) that the area referred to as Upper Lake Louise area is about 2 miles west, north-west of Lower Lake Louise area; (c) that Lower Lake Louise area is about 36 miles north-west of the Town of Banff which is also in the Banff National Park; (d) that proceeding from Calgary north-west by highway the Town of Banff is first reached, being about approximately 74 miles and that proceeding further west and north-west Lower Lake Louise is about another 36 miles; (e) that (as admitted giving numbers, in paragraph 11 of the said Agreed Statement as to Facts, Exhibit S-1) the number of people visiting the Banff National Park was very substantial in the period 1955-56 being in the number of 701,199 people and that the numbers have been in substantial escalation since, and that such would occur was an inference that probably could have been made in 1956; (f) that the total expenditures for the administration and improvement of the Banff National Park area generally by the Department of Northern Affairs and National Resources each year from 1952 has been most substantial and has also been in escalation; and (g) that similar comments apply to the expenditures on the Trans-Canada highway running through the Banff National Park.

It was also common ground between the parties that there were very few sales of freehold property or transfers of leasehold properties of raw land in Lower Lake Louise to use as comparatives to assist the respective valuers of the parties to come to the conclusions they did as to the values of the expropriated properties at the date of expropriation in 1956.

1967
 LAKE LOUISE
 SKI LODGE
 LTD. *et al.*
 v.
 THE QUEEN
 Gibson J.

At this trial, the whole of the evidence consisted of the said Agreed Statement as to Facts, certain questions and answers read in by the suppliants of the discovery of one Coleman, an officer of the respondent, certain deeds and other documents and plans and reports, all of which were admitted without further formal proof, and certain oral evidence, and a visit by the Court, (on motion of counsel and granted) of the Lower Lake Louise area, viewing the subject properties in particular, the highway to the Town of Banff and the Town of Banff.

The oral evidence of the suppliants was given by Mr. James Boyce, who with Alfred Cooper and J. Stanley Boyle owned all the shares in Lake Louise Ski Lodge Limited, Mrs. J. Stanley Boyle, widow and sole executrix and beneficiary of the estate of J. Stanley Boyle now deceased, and three witnesses who gave opinion evidence, namely, G. I. M. Young, a real estate appraiser of the firm of Stewart, Young and Mason, Toronto, Mr. G. E. Gordon of the firm of Underwood, McLellan and Associates Limited, Calgary, Consulting Professional Engineers and Land Surveyors, and Mr. Neville F. Bothwell of the same firm, Calgary, a Land Development Engineer.

The oral evidence of the respondent consisted of the evidence of Mr. Henry Bell-Irving, a real estate appraiser and real estate broker of Vancouver, B.C.

Before assessing the evidence as to value particularly, one general conclusion from the evidence may now be stated.

Counsel for the suppliants submitted that at the material time other purchasers could have purchased the subject lands and put them to the same use as the expropriating authority. Counsel for the respondent agrees there was in existence a market for the subject lands at that material time, but disagrees that the expropriating authority contemplated at the material time, or now is putting the lands to the same use that a possible purchaser or the former owners might have.

1967
 LAKE LOUISE
 SKI LODGE
 LTD. *et al.*
 v.
 THE QUEEN
 Gibson J.

In my opinion, considering the whole of the evidence adduced in this case, there was proof that there was a market for these subject properties but there was no proof given of any special adaptability or use of any of the subject properties. It follows therefore, that there is no special value to the suppliants within the meaning of the decided cases and as a consequence, market value in this case is the sole criterion of the values of the subject properties as of the date of expropriation. In this connection, the words of Rand J. in *Gagetown Lumber Co. Ltd. v. The Queen and Attorney-General for New Brunswick*¹ are apt:

Market value, that is, the price at which a prudent and willing vendor and a similar purchaser would agree on, may be the sole determinant, exhausting compensation, but it may not be. Where the position of the owner *vis-à-vis* the land is not different from that of any purchaser, that value is the measure; where the owner is in special relations to the land, as in the case of an established business, the measure is the value to him as a prudent man, what he would pay, as the price of the land, rather than be dispossessed, that price thereafter, in effect, representing the capital cost of the business to which the profits would be related. But evidence of those relations issuing in special injury upon extrusion and their value in terms of money must be adduced. It is in this comprehensive view that in *Woods Mfg. Co. v. The King*, (1951), 2 D.L.R. 465, S.C.R. 504, 67 C.R.T.C. 87, by a unanimous judgment, the rule for compensation under the existing law was laid down definitively by this Court.

The evidence of the suppliants of market value of the subject properties as of the date of expropriation was put forward in this way.

Mr. G. I. M. Young, the real estate appraiser of the suppliant, made his evaluations in 1966 and employed two methods of evaluation in respect to the principal or main parcel formerly owned by the Lake Louise Ski Lodge Limited. (He employed only his first method, hereinafter referred to, in valuing the other subject properties.) This resulted, as above noted, in a range of value for the main parcel found by him of \$87,000 using one method and \$270,000 or \$280,000 using the second method.

The first method he employed from which he made a valuation of \$87,000 was one based upon other transactions of raw land alleged by him to be comparable to the subject property.

¹ (1957) 6 D.L.R. (2d) 657 at 661-62.

The second method he employed from which he made a valuation of \$270,000 or \$280,000, resulted in an estimate of value based upon the potentialities of the subject property for development purposes which in turn was based upon a scheme of development prepared in 1966 by Underwood, McLellan and Associates Limited, and described in oral evidence by the said engineers Messrs. G. E. Gordon and Neville F. Bothwell.

1967
 LAKE LOUISE
 SKI LODGE
 LTD. *et al.*
 v.
 THE QUEEN
 Gibson J.

In making his evaluation by the first method, namely, based upon comparable transactions of raw land, Mr. Young found difficulty finding many sales of freehold property or transfers of any leasehold property in the Lower Lake Louise area with which to compare the subject property. To make up for this deficiency, he used two properties just outside the town site of Banff, which is approximately 36 miles away from the subject property, *viz*, the lands on which there were built subsequently respectively, the Archway Motel, and the Bel-Plaza Motel (Items I and II respectively, Appendix "B", Exhibit S-93).

Mr. Young stated that this method would have been the sole one he would have employed in this case if there had been a greater number of transactions which he could have used as comparisons. But since there was this scarcity of alleged comparables, he advised counsel for the suppliants in 1966 to employ someone to prepare a possible scheme of development for the subject lands and for this purpose, Messrs. Gordon and Bothwell of the firm of Underwood, McLellan and Associates Limited were employed.

These latter gentlemen prepared a possible scheme of development for the subject lands in 1966 and gave evidence of it. Mr. Gordon's report was filed as Exhibit S-52 and also appears as Appendix "C" to the report of Mr. Young, Exhibit S-93.

Mr. Bothwell's report was filed as Exhibit S-62.

The elaborate plans of possible development for the subject lands made by Mr. Bothwell were also filed as exhibits. Exhibit S-63 is called Plan 1; Exhibit S-65 is called Plan 2; Exhibit S-64 is called Plan 3; Exhibit S-67 is called Plan 4; Exhibit S-66 is called Plan 5; and Exhibit S-68 is called Plan 6.

Basically, Plans 3 and 4 were plans of development of the subject lands without taking into consideration the

1967
 LAKE LOUISE
 SKI LODGE
 LTD. *et al.*
 v.
 THE QUEEN
 Gibson J.

crossing of the subject property by the Trans-Canada Highway in 1962 and Plans 5 and 6 were plans of development taking such into account.

These plans of development of Messrs. Gordon and Bothwell did not (a) take into account in any way the economic feasibility of the same and (b) did not establish that the probability of any person implementing such plans or some variation thereof, was a factor actually in the market in 1956.

Mr. Young, in employing these possible schemes of development of the subject property (i.e. of the main parcel formerly owned by Lake Louise Ski Lodge Limited) in doing his second method of evaluation also ignored entirely the economic feasibilities of the same. He also purported to compare theoretical sales of property in this scheme of development with actual sales of parcels of land in the town site of Banff, 36 miles away, which took place from 1955 to 1965. Mr. Young also accepted the figures of estimates of cost of construction of implementing of the said plans of Messrs. Gordon and Bothwell. He also said that the question of economic feasibility was one for the purchaser and not one with which he should be concerned.

Employing his second method, Mr. Young arrived at his said valuations of the subject property of Lake Louise Ski Lodge Limited main parcel, that is \$280,000, based on Plans 3 and 4, and \$270,000 based on said Plans 5 and 6, both as of the date of expropriation.

The suppliants, Lake Louise Ski Lodge Limited, in my view, from the evidence, clearly had none of such schemes in mind at the material time; and in addition, the evidence generally indicates that no one in the Lower Lake Louise area had either. Indeed, no evidence was adduced that any of such schemes would be economically feasible even to-day.

In my view, therefore, any evaluation of the subject property of Lake Louise Ski Lodge Limited main parcel, based on this second method of evaluation by Mr. Young, is of no assistance to the Court in determining what the market value of this property was at the date of expropriation. In fact, because there was no evidence adduced showing that the opinions of Messrs. Gordon and Bothwell and Mr. Young's opinion based on these two opinions were actually factors in the market in 1956, such evidence in

respect thereto may be inadmissible *in toto*. (Compare Cattanach J. in *Molly James et al v. Canadian National Railway Company*²; *Raja Vyricherla Narayana Gajapatiraju v. The Revenue Divisional Officer, Vizagapatam*³; see also *Re Jupiter Estates Ltd. and Board of School Trustees, School District No. 61 of Greater Victoria*⁴ per Davey J.A.; and *Pawson v. The City of Sudbury*⁵ per Roach J.A.) In any event, if these opinions are admissible, they have such little weight that I am disregarding them in arriving at the findings I make in this action.

1967
 LAKE LOUISE
 SKI LODGE
 LTD. et al.
 v.
 THE QUEEN
 Gibson J.

The award states that it is based primarily upon the unanimous opinion that, if it had not been for the intervention of the expropriation, the land would have been legally subdivided into building lots at the date of the expropriation. From that it seems that the arbitrators concluded on the evidence, as they were entitled to do, that there were no legal or practical difficulties that might have prevented the subdivision of the 723 acres along the lines proposed. But the land had not been subdivided; it was still in acreage, and as acreage it ought to have been valued, but as acreage that was eminently suitable and ripe for immediate subdivision. However, that value could not be fixed by taking the aggregate of the selling value of the individual lots, and deducting future physical development costs, because that would merely give the highest amount that might eventually be realized from the sale of all the lots. No owner would pay to forestall expropriation of acreage the total amount he hoped to realize from an intended subdivision, because that sum would make no allowance for all the elements of cost and the business risks involved, such as actual cost of development exceeding the estimates; change in economic conditions that might depress prices, or slow, or prevent sales; interest on the cost of development, and on the capital invested in the project; the cost of selling; allowance for profit, without the prospect of which no owner would undertake the scheme; and the other substantial business risks inherent in any project requiring the investment of considerable sums of money.

For the purpose of completing the record, however, I am admitting the report of Mr. Young which contains not only his first said method of evaluation, but also his second method of evaluation. The registrar has numbered it Exhibit No. S-93.

In considering the suppliants' opinion evidence as to market value, therefore, I am taking into consideration only the evidence of Mr. Young in relation to his first method of evaluation based upon comparable sales of raw land.

² [1965] 1 Ex. C.R. 71 at 76.

⁴ (1966) 56 D.L.R. (2d) 414 at 419.

³ [1939] A.C. 302.

⁵ [1953] O.R. 988.

1967
 LAKE LOUISE
 SKI LODGE
 LTD. *et al.*
 v.
 THE QUEEN
 Gibson J.

In this connection, as mentioned, it will be recalled that Mr. Young in valuing the main parcel of Lake Louise Ski Lodge Limited, used as alleged comparables not only the transactions he found in the Lower Lake Louise area, but also two transactions in the area just outside the Town of Banff, 36 miles away from the subject property, namely, the said motel properties upon which were built later respectively, the Archway Motel and the Bel-Plaza Motel.

In relation to the other subject properties, namely, (1) the other and such parcel formerly owned by Lake Louise Ski Lodge Limited, (2) the Cooper property, and (3) the Boyle property, Mr. Young employed his first method only in arriving at his valuation of the same as of the date of expropriation.

The respondent's witness as to value, Mr. H. Bell-Irving used two methods of evaluation, namely, firstly a value estimate made by market comparison and secondly (in relation only to the main parcel formerly owned by the Lake Louise Ski Lodge Limited) an estimate of land value based on the capitalization of projected net income from a theoretical development on the subject property of four successive twenty unit motel sites.

In employing his market comparison approach, Mr. Bell-Irving examined all the transactions in the Lower Lake Louise area and, like Mr. Young, found that there were relatively few freehold sales or leasehold transfers from which to make a comparison. He also examined freehold sales and leasehold transfers in the town site of Banff, 36 miles away, and in the area immediately adjoining the Banff town site. But he came to the conclusion that he must reject all these latter transactions in the Town of Banff site and adjoining it because, in his view, such properties were not comparable to the subject lands in Lower Lake Louise or indeed, to any property in Lower Lake Louise area.

In this latter respect, the data employed by Mr. Bell-Irving in his market comparison approach differ materially from Mr. Young's.

In one other respect the opinion of Mr. Young is based on data different than that used by Mr. Bell-Irving, namely, the fact that Mr. Young made no allowance for the C.P.R. covenants which the title to the subject properties were

qualified referred to in Caveat numbered 6160 FE being Exhibit R-1, being a contract between the C.P.R. and Lake Louise Ski Lodge Limited.

1967
LAKE LOUISE
SKI LODGE
LTD. *et al.*
v.
THE QUEEN
Gibson J.

Now before discussing the values respectively found through the market comparison approach by Mr. Young and Mr. Bell-Irving, three things are said.

First of all, I am of the opinion that it is not possible to compare sales of freehold and leasehold transfers in Lower Lake Louise area with such in the Town of Banff site or in the surrounding area, 36 miles away, for a number of reasons. Among such reasons are the fact that the Town of Banff has many more amenities which would cause the public to visit and live there in preference to Lower Lake Louise area. Such amenities for example, are a first class golf course, sulphur springs, an art school and all the usual shopping and eating facilities of a well-developed resort town.

Secondly, there is much flat land owned by the Crown in the Banff National Park between Eisenhower Junction, just north-west of the Town of Banff and the Lower Lake Louise area which is comparable to the Lower Lake Louise area, and which if demand warranted it, the Crown probably would lease in parcels to third parties for uses compatible with the Banff National Park regulations and policies.

The third thing that should be mentioned is that in approaching value, regard must be had to the existence of the covenants contained in the Agreement, Exhibit R-1, Caveat 6160 FE, registered at Calgary Land Titles Office on the 9th of July, 1943. (These are the same covenants which are contained in the documents Exhibits 34A and 34, see particularly Clauses 10 and 17). (Clause 17⁶, *inter alia*, requires

⁶ 17. The Company, to the intent that the burden of the following covenants may run with the land, and the Purchaser for himself, his executors, administrators, heirs, assigns and successors in title, respectfully covenant and agree with each other as follows:

(a) The Purchaser agrees that he will in the erection of the Lodge and tourist cabins herein provided for, comply with all regulations imposed by the Government of the Dominion of Canada in relation to the construction, erection or maintenance of buildings in the National Parks of the Dominion of Canada.

(b) Without in any way relieving the Purchaser from any liability under the Provisions of the immediately preceding paragraph hereof, the Purchaser will before erecting any building on the said property submit to the Superintendent of Sales, Department of Natural

1967
 LAKE LOUISE
 SKI LODGE
 LTD. *et al.*
 v.
 THE QUEEN
 Gibson J.

the purchaser of the subject lands to maintain a 25 foot set back of buildings and also to build not more than one lodge or hotel at any one time, such to contain not more than 20 rooms.)

As to these covenants, counsel for the suppliants addressed argument with supporting authorities that the same were null and void.

As to this, it may or may not be that in an action in which the validity of such covenants were put in issue, that such would be the decision of the Court. But because it is not in issue before this Court in this trial to decide whether these covenants are enforceable or not, including whether they are restrictive covenants or personal covenants, it is not necessary for me to make any adjudication in respect to such submission by counsel for the suppliants.

But in any event, as to the alleged invalidity of these covenants, there was no evidence put before this Court. Only the documents themselves were filed as exhibits. There was, however, evidence put in on the cross-examination of Mr. Bell-Irving as to the validity of such covenants. He was asked whether in making his evaluation he had asked for any legal opinion as to whether these covenants referred in this said Caveat were binding or not on a possible purchaser of the subject lands and on such lands,

Resources of the Company at Calgary, Alberta, a sketch plan showing the type of construction of such building, and the manner in which the exterior of proposed buildings is to be finished, and will not commence the construction of such buildings until the approval in writing of the Superintendent of Sales has been obtained.

(c) Not more than one Lodge or hotel shall be built upon the said land at any one time, nor shall such lodge or hotel when built contain more than twenty rooms.

(d) The said lands, or any buildings to be erected thereon, shall not at any time be used for the purpose of a livery stable, blacksmith shop, lumber yard, hot dog or hamburger stand, or boarding house.

(e) That no building, nor its verandah, porch, bay windows or steps erected on the said lands shall be nearer than twenty-five feet from the front line of the said property.

(f) The Company for itself, its successors and assigns, covenants and agrees with the Purchaser that it will not for a period of ten years from the date hereof, permit any person, firm or corporation to erect, build or operate a Tourist Camp on those portions of Sections Twenty-seven (27) and Twenty-eight (28) in Township Twenty-six (26), Range Sixteen (16) West of the Fifth Meridian, not included in the lands herein sold.

to which he replied that he had contacted the Legal Department of the C.P.R. and they had told him that the covenants meant what they said.

1967
LAKE LOUISE
SKI LODGE
LTD. *et al.*
v.
THE QUEEN
Gibson J.

Be that as it may, the validity of the covenants, as stated, is not something this Court has to decide in this action, and a prospective purchaser in 1956 would, in my view, take into consideration that there existed a notice of these restrictions as to the use of the subject lands and would give such fact the weight he considered appropriate.

Dealing specifically with the relative comparative sales used respectively by Mr. Young and Mr. Bell-Irving in arriving at their value based on such method, the following may be said:

First of all, in relation to the matter of the highest and best use of the property at page 2 of his report, Exhibit S-93, Mr. Young said (in reference to the main parcel formerly owned by the Lake Louise Ski Lodge Limited) "in the opinion of the appraiser the highest and best use of the subject property will be in accordance with the opinions expressed by Messrs. Underwood and McLellan in a suggested scheme of development".

As to parcels B and C shown on Exhibit S-8 and on the plan attached to Exhibit R-5, Mr. Young does not state any highest or best use, but from the evidence, I assume that he holds the same view as Mr. Bell-Irving, namely, that these parcels might have been purchased at the material time by some buyer to hold for speculation for some future development as yet undetermined.

Mr. Bell-Irving on the other hand in respect of Lake Louise Ski Lodge Limited main parcel (marked A on Exhibit S-8 and on the plan attached to Exhibit R-5) notwithstanding that he was not able to get any help from any person in the area, envisaged a development on it of a 20-unit motel in 1956 and similar developments of a 20-unit motel, in each of the years 1962, 1964 and 1966, as the highest and best use of this property. He did so on the basis that the Banff National Park authorities, in respect of their regulations, and the C.P.R., in respect to its restrictions in the said Caveat, would be reasonable and cooperate with a potential purchaser.

As to the small parcel formerly owned by Lake Louise Ski Lodge Limited (shown as AA on said Exhibit S-8 and on the plan attached to Exhibit R-5), Mr. Young gave no

1967
 LAKE LOUISE
 SKI LODGE
 LTD. *et al.*
 v.
 THE QUEEN
 Gibson J.

opinion as to its highest and best use in his report, but in his evidence said that it might have some commercial use.

Mr. Bell-Irving on the other hand was of the opinion that as of 1956 this parcel's highest and best use might be a development with an owner's house, public dining-room and eight motel units, which would be possible on the basis that there was available for building purposes part of the property held under licence of occupation, such part being between the two other parcels and which not having been acquired from the C.P.R., would escape the C.P.R. covenant referred to in the said Caveat 6160 FE restricting the numbers of units that could be built on it.

As stated, Mr. Young in making his estimate of value based on alleged comparable transactions of raw land just considered three such transactions. Two were just outside the Town of Banff, 36 miles away from the subject property. One was in Lower Lake Louise. The two parcels outside the Town of Banff are shown as Items I and II in Appendix "B" to his report, Exhibit S-93, (on which, as mentioned, respectively are now built the Archway Motel and the Bel-Plaza Motel) from which he purported to find the 1957 and 1954 cost respectively to the transferees of \$3,896 per acre and \$2,856 per acre.

The parcel in Lower Lake Louise is the one 1.62 acres of land located on the east side of the Banff Jasper Highway opposite what is referred to in the evidence as the Brisco land (the subject property in action B-314) north of the Post Hotel also referred to in the evidence. It sold in October 1952 for \$3,500 or \$2,160 per acre. This is listed as Item III in his report.

Originally this property had been sold in 1941 by the C.P.R. to James Boyce for \$154 per acre. James Boyce sold this to one Lewis Sydney Crosby *et al* in 1952 for \$2,160 per acre. The evidence is that Mr. Crosby sought to use this for a service station at the time of purchase.

This property of Crosby's was expropriated in 1956 and the title indicates that there was a settlement made by the Crown. The conveyance to the Crown recites the considerations as \$5,000 but there were two transactions in connection with leases also entered into with the Crown about the same time regarding other property.

In my view, because this is a settlement of expropriation compensation and the details of it are not known, no

weight can be given to this subsequent transaction in 1956 between the Crown and Crosby to assist the Court in finding the market values of the subject properties at the material times.

Not in his report, but in his evidence to support his opinion based on market comparison, Mr. Young did purport to use the transactions involving the Post Hotel commencing with the purchase from the C.P.R. of the whole of the land of which the land used for the hotel formed part, in 1941, and the sale of it in 1946, to assist him in arriving at the values he found employing his first method.

I am unable to draw any inferences from the Post Hotel transactions, however, because, among other things, the figures of allocation of costs of construction and acquisition of the various assets shown on the financial statement filed may or may not be valid as representing precisely the costs of the various items, and because I am unable to measure without evidence what sum should be allocated to goodwill. Therefore, for these two reasons, and for others it is not necessary to mention, it is impossible to make any finding of what the probable value of the Post Hotel land was, not only in 1946, but in reference to 1956 values.

Mr. Bell-Irving, in his market comparison approach, used one transaction only, namely, the said transaction concerning parcel D, plan 8189 FE being the sale of 1.62 acres from Boyce to Crosby in 1949 for \$3,500 or \$2,160 per acre. He makes the assumption that this sale was at arm's length and indicative of the market value per acre at that time. He admits that between the date of sale 1949 and 1956, there is no local evidence of any change in market value of raw land in the area. He points out that the total park east gate passenger entries increased between those dates by about eight per cent and notes that there is some percentage relation which may be coincidental with the increase in Town of Banff values based on the amounts paid by successful tenderers for leasehold lands in that area. He says that these figures do suggest that properties in Banff town site may have increased in value between 1952 and 1956 but queries whether Lower Lake Louise have increased to the same extent. He says he was unable to find evidence of a comparable demand in the Lower Lake Louise area. He, however, concludes as a rough crite-

1967

LAKE LOUISE
SKI LODGE
LTD. *et al.*v.
THE QUEEN

Gibson J.

1967
 LAKE LOUISE
 SKI LODGE
 LTD. *et al.*
 v.
 THE QUEEN
 Gibson J.

tion that the increase in Lower Lake Louise land values might be better than indicated by overall tourist intake figures. And, he concluded that he should make a round figure date adjustment of 25 per cent, which in his opinion is reasonable and might have been accepted by a buyer in 1956 in the absence of any evidence to the contrary.

From this he concludes that the 1956 price per acre of usable property in the large parcel formerly owned by Lake Louise Ski Lodge Limited, (parcel A, on Exhibit S-8 and on a plan to Exhibit R-5) should be \$2,700 per acre.

Relating the usable property of this said parcel to the highest and best use, namely, for the development of four sites to establish on each 20-unit motels in each of the years 1956, 1962, 1964 and 1966, he takes four areas of seven acres each; and from this arrives at a price of a seven acre area of said parcel A in 1956 of \$18,900.

In addition, however, to this raw land alleged comparative sale, Mr. Bell-Irving uses the sale nearby in the Lower Lake Louise area of a 7.64 acre property improved with a 22 unit motel on it, known as the Motel Lake Louise. It is located on the south-west side of Banff Jasper Highway and is close to the subject large parcel of Lake Louise Ski Lodge Limited. It sold in 1954 to one Gourlay for \$75,000 for which sum he acquired the land, buildings and chattels. It was built on leasehold property. From this data (see page 33 of Exhibit R-5), he purports to find a 1954 indicated leasehold land value of \$7,000. He then converts this \$7,000 figure to a comparable figure for the freehold land of a seven acre parcel in the subject lands of Lake Louise Ski Lodge Limited in 1956 and purports to find an indicated 1956 freehold value of Motel Lake Louise land of \$18,322 by making an economic analysis using projected earnings and, *inter alia*, making a 12½ per cent addition to the figure found of freehold value as a possible adjustment for the change from 1954 to 1956.

Having thus come to the conclusion, using a market data approach that a seven acre freehold price in parcel A of the subject property of Lake Louise Ski Lodge Limited had an indicated value in 1956 of \$18,900, and using an economic approach employing the Motel Lake Louise sale that this 7.64 acres of freehold land had an indicated 1956 value of \$18,322, Mr. Bell-Irving then used his concept of the high-

est and best use of the main parcel of Lake Louise Ski Lodge Limited, (parcel A on Exhibit S-8 and on plan attached to Exhibit R-5) to find his 1956 market value of the whole parcel. (See page 36 of his report, Exhibit R-5.)

1967
LAKE LOUISE
SKI LODGE
LTD. et al.
v.
THE QUEEN
Gibson J.

In so finding, he assumes that a person in 1956 would consider that each of the three other seven acre parcels of Lake Louise Ski Lodge Limited (envisaged in his concept of the highest and best use of the property) would sell for \$18,900 in the years respectively 1962, 1964 and 1966. He then finds the present worth of all these sales, including the first sale, at \$52,100. From this he deducts the estimated cost of bridging the Pipestone River to reach said parcel A, in the sum of \$24,000 and of building a roadway, in the sum of \$6,840. From this he gets an indicated value of \$21,260 or in round figures \$20,000 for this parcel.

Mr. Bell-Irving admits the economic approach is not usually the best one for evaluating any resort property, for many reasons. He also indicates and admits that there are many variables, such as projected rates of rental, occupancy rates, expenses, the capitalization rate, etc., and that changes in any of these will result in finding a different land value.

In considering his whole approach though, two matters are significant. Firstly, as mentioned, in considering his market data approach (see page 32 of Exhibit R-5), he estimated a 25 per cent increase in land values between 1949 and 1956 in arriving at a figure of \$2,700 per acre, which he used for the purpose of developing his concept of the highest and best use of said parcel A (Exhibit S-8, and on the plan attached to Exhibit R-5), and to make his ultimate finding of 1956 market value.

Secondly, in using his economic approach, as also mentioned, he added 12½ per cent as the indicated adjustment between 1954 and 1956 to obtain his indicated 1956 freehold value of the Motel Lake Louise land of \$18,322.

So much for a discussion of the evidence.

Speaking generally in coming to a conclusion, I consider that only transactions in the Lower Lake Louise area should be considered as comparable in any material and substantial way so as to reach a correct finding of market value in this case, (as I have indicated earlier in these Reasons).

1967
 LAKE LOUISE
 SKI LODGE
 LTD. *et al.*
 v.
 THE QUEEN
 Gibson J.

Of substantial importance also in this case, because, *inter alia*, of the lack of any number of comparable market sales, is the history of the subject properties in this particular case.

The history of the sales and development of the subject properties in brief is as follows:

The whole of the subject property, namely, parcel A and parcel AA of the Lake Louise Ski Lodge Limited and parcels B and C owned by Boyle and Cooper respectively, plus the property that constitutes the Post Hotel which was subsequently sold to a third party, plus another strip opposite the Post Hotel sold to one Brisco, (which is the subject of another action numbered B-314) (all of which parcels are so shown and referred to on Exhibit S-8 and on the plan attached to Exhibit R-5) were all purchased from the C.P.R. in 1941 for \$6,000, and were subject to the Caveats contained in said instrument numbered 6160 FE and 2446 FJ.

The first transaction after the CPR purchase that took place was in respect to a small parcel of it which was transferred to James Boyle, on which subsequently in 1949 was built a service station and a store, both of which are still owned by the Boyle estate.

Then parcel B was given to James Boyle without any consideration.

Then parcel C is deeded to Mr. Cooper without any consideration.

Then in late 1941 or in 1942 the Post Hotel was built on a two acre parcel. This hotel remained vacant during the war years and was sold in 1946 by the Lake Louise Ski Lodge Limited.

Then in 1947 Lake Louise Ski Lodge Limited authorized Mr. Cooper, who at the time was making frequent trips to Calgary, to sell the better lots (on a rough plan of parcel A) for \$300 each, but nothing came of this because there was no market for the sale of any of these proposed lots.

Then in 1953, the shareholders of Lake Louise Ski Lodge Limited made a draft division among themselves of said parcel A (see Exhibit R-3). This proposed division would have given Boyle, Cooper and Boyce, each a ten acre parcel and also a smaller 2.75 acre parcel. This draft plan for division was submitted to the Banff National Park authorities, but they refused permission to divide this land, and so nothing came of it.

In short, Lake Louise Ski Lodge Limited built the Post Hotel, which was subsequently sold, on a two acre parcel of the total they had received from the C.P.R., and gave away all the rest of this land which fronted on a highway. What remained at the date of expropriation in 1956, was the poorest part of this land. It did not front on any highway. To reach it, a bridge would have to be constructed over the Pipestone River which in 1956 would have cost at least \$24,000 (for a wooden bridge), and a road would have to be constructed which would have cost at least \$6,000. And as late as 1953, the shareholders of the Lake Louise Ski Lodge Limited apparently thought there was no immediate market for parcel A, and attempted to divide it into three titles, each to take part of it, obviously to hold same for some indefinite purpose some time in the future, but permission to so divide was refused. In addition, no survey was made of the subject property, no engineering study and no economic feasibility investigation was made by the suppliants at any time.

1967
 LAKE LOUISE
 SKI LODGE
 LTD. *et al.*
 v.
 THE QUEEN
 Gibson J.

This was the situation that existed in 1956. The only hope giving some new potential to the property was the building of the Trans-Canada Highway, (then expected in 1960) in consequence of which then was an expected substantial increase in the number of people who by motor car would visit the Banff National Park area and therefore Lower Lake Louise area would receive some share of this traffic and whatever economic benefit that would accrue attributable to it.

In addition, the owners of the subject properties, at all material times, all knew that they had to comply with the Banff National Park regulations. They knew that their properties were subject to such limitations. They also knew, as it was admitted in evidence by Mr. Boyce and Mrs. Boyle, that they had to comply with C.P.R. covenants. That was their belief. The situation was also, and still is, that Lower Lake Louise area is not a year-round resort area. Tourists come in the summer months, skiers come in the winter, but of the skiers, a large majority are day skiers from Calgary.

Undoubtedly also, in 1956 a potential buyer of the subject lands would know that there was little freehold in the whole Banff National Park. He would know of the limitations as to the use that could be made of the properties

1967
 LAKE LOUISE
 SKI LODGE
 LTD. *et al.*
 v.
 THE QUEEN
 Gibson J.

imposed by the National Park regulations and policies and by the C.P.R. covenants. He might consider that the freehold had certain monopolistic value because there was so little of it, but he would realize also that it would be subject to the devaluing influence caused by the situation that most of the existing private enterprises are on leaseholds with good tenure at very low ground rentals and that as demand for facilities increased, the National Park authorities would probably make available on leases, other areas of low-lying land, especially between the Banff town site and Lower Lake Louise, for purposes which would be compatible with providing the amenities for tourists as citizens of Canada and in competition with anything that could be provided in the Lower Lake Louise area. This latter is a proper inference from part of the evidence of the discovery of Mr. J. R. B. Coleman, Director of Banff National Park of the Department of Northern Affairs and National Resources of Canada, read in and made part of the suppliants' case, *viz*:

- 404 Q. Let us put it this way: When was the department aware of the firm survey that a highway would be built through the Lake Louise area, what year?
- A. I would have to inform myself on that.
- 405 Q. Was it before 1956?
- A. Yes.
- 406 Q. That is all you know. And highways, that knowledge coming into the department and to men of your calibre and experience, it would leave you with the opinion, I am certain—and I ask you if that is correct—that there would be more people coming into that area?
- A. Yes, it could be correct that there would be more people coming once the Trans-Canada Highway had been completed.
- 407 Q. Because the majority of people that do come to Banff—and I read out the number from 1955 to 1965, and whether they are exact or not doesn't matter, but they are there—come by automobile rather than any other source?
- A. Yes.
- 408 Q. Right. And if they are going to come there, services must be given to those people; that has been the policy of the parks for a number of years?
- A. As demand increased we would endeavour to increase our facilities.
- 409 Q. And the demand has increased since 1945 steadily, there has been steady growth?
- A. Not noticeably immediately after 1945.
- 410 Q. All right. Would you say from 1950?
- A. I would say rather from the mid-50's.
- 411 Q. The mid-50's, and then the demand became fairly great?
- A. Yes.

In relation to the opinion evidence adduced, I am of the view that the opinion of Mr. Bell-Irving should be preferred to that of Mr. Young; and that the opinion of Mr. Bell-Irving in the main, represents the correct approach to market value in this case. Among the reasons why I come to this conclusion is, that Mr. Bell-Irving gave a realistic opinion as to the highest and best use of each of the respective subject properties, whereas Mr. Young did not; Mr. Bell-Irving used as comparables in his market data approach land in Lower Lake Louise area only, whereas Mr. Young based a substantial part of his evidence in relation to parcel A on the grandiose schemes of development of Messrs. Gordon and Bothwell which I do not think are of any help and sales in the Town of Banff and just outside; that in relation to parcel A, Mr. Bell-Irving highlights as the main debility of the property, the necessity of building a bridge and roadway, and in relation to parcels B and C, the question of whether or not access from the Trans-Canada Highway could be obtained by a purchaser of these parcels.

1967
 LAKE LOUISE
 SKI LODGE
 LTD. *et al.*
 v.
 THE QUEEN
 Gibson J.

One other reason that Mr. Young's evidence is not to be preferred, is because I do not think Mr. Young, in preparing his report, (which was filed as Exhibit S-93) has done anything more than counsel could have done themselves.

In summary, therefore, the views of the owners of the subject properties at the material times and the whole history of the property of which the subject properties are parts, are most vital. The views also of all persons in the area at the material time of the expropriation are also most relevant. These views and history, considered in relation to and in conjunction with the only sale of raw land, the Crosby sale, and the only transaction from which an economic approach can be employed as a check against the market data approach, namely, the Motel Lake Louise transaction, and the hope for financial return arising from the substantial increase in traffic to the area expected as a consequence of the completion of the Trans-Canada Highway, the problem of access to parcel A (by bridge and road only) and the problem of access to parcels B and C to Trans-Canada Highway are the main evidentiary basis for the determination of market value of the subject properties as of the date of expropriation made in this case.

1967

The said market values of the subject properties, I find as follows:

LAKE LOUISE
SKI LODGE
LTD. et al.
v.
THE QUEEN
Gibson J.

(a) Lake Louise Ski Lodge Limited

(i) main parcel (parcel A on Exhibit S-8 and on plan attached to Exhibit R-5).

I accept the 1956 market value of seven acres found by Mr. Bell-Irving by employing his two methods, that is \$18,900 or \$18,322 and am of the view that a potential buyer would in his mind round such figures to \$20,000. I also accept his concept of the highest and best use of this parcel, namely, four seven acre successive developments of 20-unit motels in a time schedule of approximately 1956 to 1966; and that the balance of the property would have little monetary value to the owner and therefore should not be considered in determining the market price of the whole parcel. I also accept the figure of bridging and road costs of \$24,000 and \$6,840 respectively.

A buyer therefore, would probably use the figure of \$1,000 per motel site to make his judgment as to what he would pay for parcel A.

But I do not think a buyer in 1956 would discount the future site costs (see sites B, C and D, page 43, Exhibit R-5) in the way suggested by Mr. Bell-Irving. I am of the opinion that a buyer in 1956, if he would be prepared to buy at all, would be of opinion that values would go up in the years after 1956 and this would take care of all the unknown costs, including interest on his investment, while waiting for demand to arise so that he could economically complete this scheme of development. In other words, he would think of \$1,000 per motel site as the cost to him in 1956.

This leads to the conclusion, therefore, in my view, on the evidence, that the market price in 1956 of this parcel was \$50,000 (rounding the figure of \$49,160), computed as follows:

Four sites at \$20,000 each	\$80,000
Less cost of Bridging the Pipe- stone River	\$ 24,000
Less cost of 1,200 feet of road at \$5.70	\$ 6,840
	30,840
	\$49,160

(ii) smaller parcel (parcel AA on Exhibit S-8 and on plan attached to Exhibit R-5).

1967
LAKE LOUISE
SKI LODGE
LTD. *et al.*
v.
THE QUEEN
Gibson J.

I adopt the opinion of Mr. Bell-Irving as to the highest and best use of this property and his value of this land per acre and conclude that its market value as of the date of the 1956 expropriation was \$5,300.

(b) J. Stanley Boyle and Alfred Cooper properties (that is parcels B and C—Exhibit S-8 and on plan attached to Exhibit R-5).

These properties have highway frontage of 600 and 650 feet respectively and consist of 2 acres and 4.40 acres respectively. The problem of access to the Trans-Canada Highway would be paramount in the mind of a speculator buyer, in my view in 1956, and he would not buy at all unless he did think he had some hope of getting some type of access. I think such a buyer would only buy if he could acquire both of these properties and in view of the evidence of the history of the association of Boyle and Cooper, this would seem to be a probability. I think such a buyer in 1965 would discount any indicated market value of property very heavily and I am of the opinion that such discount would be 50 per cent.

I accept the indicated 1956 market value of raw land in the area given by Mr. Bell-Irving of \$2,400 per acre and find therefore, the 1956 market value at the date of expropriation of parcel B was \$2,400 and parcel C was \$5,280.

I also allow simple interest on the said sums at 5 per cent from the 29th day of August 1956, notwithstanding the unconscionable delay in bringing these claims for compensation to trial. I am, however, unable to assess which of the parties was to blame, or more to blame, for this delay and so, I am giving the benefit of this doubt to the suppliants.

As to costs, I think the suppliants are entitled to them with some abatement. There were two elaborate models prepared of the subject properties which were filed as Exhibits S-58 and S-59. The construction cost of them obviously was substantial. But they were of no use whatsoever

1967
LAKE LOUISE
SKI LODGE
LTD. *et al.*
models.

v.
THE QUEEN

Gibson J.

in this adjudication. Accordingly, I do not allow any item of costs for the construction and preparation of these models.

In addition, Messrs. Gordon and Bothwell, who prepared these grandiose possible schemes of development of the main parcel of the subject property of Lake Louise Ski Lodge Limited, did not assist the Court in any way except to confirm that such schemes are of no assistance in adjudicating the compensation payable for raw land when such schemes of development were not factors in the market at the date of expropriation. In my opinion, I see no reason why they were required to go to all this trouble or were called as witnesses because the jurisprudence in respect to such evidence in relation to the problem of the said properties is quite clear. I therefore do not allow any costs for these witnesses or the cost of producing any of these plans.