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PART III
~~MEMORANDUM ON~~ VALUATION OF REAL AND PERSONAL PROPERTY FOR THE
ESTABLISHMENT OF JAPANESE CLAIMS UNDER ORDERS-IN-COUNCIL 1810
and 3737.

Capital
Evaluation of Property

no limit

Under Order-in-Council P.C. 3737, dated September 17, 1947, the amount of claim is stated to be the difference between the "fair market value" of the property at time of sale or disappearance and the amount received by the claimant. It is important to note that it is the amount received by the claimant, not by the Custodian, which is to be considered. This would appear to enable claimants to recover losses resulting from fees and charges deducted by the Custodian before remitting the proceeds of sales. The amount received by the claimant can no doubt be determined definitely in each case, so that the major problem in establishing claims involves the determination of "fair market value" at time of sale or disappearance.

The expression "fair market value" has a definite meaning in valuation cases which is generally taken as being "the amount in money which a willing buyer would pay to a willing seller, both having reasonable knowledge of the facts and neither being under any compulsion to trade". This definition clearly eliminates the proceeds of a forced sale as establishing fair market value, and indeed there are numerous court cases which have established this principle.

There are a number of different criteria of value, some

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applicable in some cases and not in others, which must be considered, and given their appropriate weight in arriving at a judgment of what is the fair market value in a particular case. These criteria include: original cost, reproduction cost, capitalization, potential or prospective earning capacity, with the numerous elements of value embraced in each of these broad concepts. Since the value is measured in dollars, the changes and trends in the general level of prices must also be considered.

The determination of value is an economic question wherein informed and competent judgment must be exercised. It is fundamental that all relevant factors must be considered and given due weight in arriving at the decision. In recent years, court decisions on valuation cases have tended to give increasing weight to prospective earning power. In this connection, the trend of earnings at the time of the valuation is obviously important. If the trend is downward, the effect of past earnings is weakened unless indications are present that the downward trend may be arrested or reversed; and on the other hand, when the trend is upward and there are indications that this trend will continue, future prospects justify a much higher valuation than that based on capitalized past earnings.

In estimating prospective earnings, consideration must be given to possibilities arising from alternative uses of the property under valuation. This was clearly stated in a celebrated case in the United States many years ago:

"...what is the property worth in the market, viewed not merely with reference to the uses to which it is at the time applied but with reference to the uses to which it is plainly adapted; that is to say, what it is worth from its availability for valuable uses..."
 (U. S. Supreme Court in *Boon Co. vs Patterson*,
 98 U.S. 403, 408; 25 L. Ed. 206)

Thus the presentation of evidence on "fair market value" is much more than a legal problem. It is much more than the result of a strict engineering or accounting compilation. It is an economic project of broad scope, which involves the marshalling of all relevant facts plus the expression of informed opinion thereon.

What this means for the present purpose may be summarized thus:

1. The Royal Commission should entertain as evidence of value a study of all the relevant facts and expert opinion thereon,
2. The presentation of the evidence on fair market value should include all possible approaches, including a study of prospective earnings from alternative uses of the property.

Capital
Valuation Methods

To this end, a number of different approaches and specific factors to be considered are outlined for different classes of property. The outline, of course, is not intended to be all-inclusive or definitive, but merely illustrative.

(a) Urban Real Estate - Land

1. sales realization from adjacent parcels sold freely around the same time
2. assessed value of specific parcel adjusted by average relation of assessed value to sale price for comparable parcels in same or comparable locality

3. earning value assuming parcel to be developed to highest usefulness possible in its location
4. If the land is occupied by old buildings then present earnings are not a good criterion of probable future earnings when the old buildings are replaced with modern structures, perhaps designed for more appropriate uses from the point of view of the land location.
5. trend of market value of adjacent land as a reflection of environmental factors on probable future earnings

(b) Urban Real Estate - Buildings

1. assessed value of buildings adjusted by average relation of assessed value to sale price of comparable buildings in same or comparable locality
2. original cost and reproduction cost of building including all overheads
3. earning value based on past experience and prospects
4. evaluation of other pertinent factors such as exceptionally favourable leases, working capital employed in administration of building, nearby developments which enhance the value, etc.

(c) Farms

1. general level of farm values from recent sales records of comparable farms in same locality
2. original cost and reproduction cost of buildings and other fixed improvements
3. Since a farm is both a productive unit and a home, a number of special factors must be given careful consideration in each individual case: e.g.,
 - a. kind of crops that can be grown on the soil advantageously
 - b. extent to which fertility of the soil has been depleted or built up
 - c. character of road system serving the farm
 - d. accessibility of markets for each possible crop

- e. annual rainfall or source and cost of irrigation water
- f. nature and abundance of water for stock and domestic use
- g. adequacy of natural and artificial drainage
- h. character and adequacy of fences
- i. accessibility or approach of rural electric lines
- j. aesthetic setting of the farm home
- k. annual tax rate
- l. social character of the neighbourhood
- m. educational facilities available
- n. alternative uses to which all or part of the farm could be put
- o. possibility of future revenue producing developments of importance, such as site of waterfront development, highway, powerline, tourist resort, etc.

(d) Business Enterprise

1. original cost and replacement cost of physical assets (buildings, machinery, equipment and land)
2. historical and reproduction preliminary-expense value: This includes the fair capital allowance for the necessary expenses incurred in the organization and promotion of the enterprise.
3. going-concern value: This is the element of value in an assembled and established plant doing business and earning money, over one not thus advanced. The value element is the present worth of the near-future earnings of the going plant during the period required to duplicate the enterprise and get it into operation.
(There are a number of U. S. Supreme Court decisions in favour of this theory, for example, Los Angeles Gas & Electric Corp. vs Railroad Commission of California et al., 53 U. S. Sup. Ct. Rep. 637)

4. goodwill value: This is something different from going-concern value. It was succinctly stated by Lord Eldon in 1810 as "the probability that the old customers will resort to the old place". The unit of measurement of goodwill value is one-year's purchase of the excess of the profits of the business over reasonable interest on the fair value of the property. The number of years by which the unit value is multiplied in individual cases depends on the kind of business involved.
5. other intangibles: These may include favourable leases, contracts, options, trade secrets, trade names, patent rights, copyrights, etc. where they are present. They should definitely be considered in arriving at the estimated fair market value.

(e) Fishing Vessels and Gear

About the same list of possible elements of value exist as noted above for other business enterprises. In addition, a factor of great importance in 1942-43 was the practical impossibility of replacing these physical assets under the existing conditions of very short supply.

(f) Automobiles, Radios, Cameras, Firearms

1. replacement cost
2. W.P.T.B. price ceilings

(g) Household Chattels and Other Personal Property

1. replacement cost
2. intrinsic and sentimental value not replaceable.

The elements to be given the most weight in particular circumstances, of course, cannot be set forth schematically. The above outline is intended simply to illustrate some of the valuation methods applicable in different classes of property.