[Chairman: Mr. Musgrove] [10 a.m.]

MR. CHAIRMAN: Seeing as it's 10 o'clock and we have a quorum, we'll call the meeting to order. First on the agenda is approving the minutes of the February 26, 1985, meeting.

MR. R. MOORE: So moved.

MR. CHAIRMAN: All in favour? Carried.

Second on the agenda is approving the minutes of the February 27 meeting. Moved by John Batiuk. All in favour?

HON. MEMBERS: Agreed.

MR. CHAIRMAN: Discussion of Application for Judicial Review: on page 66 in your green book there's a brief summary; we also have a handout on it by Mr. Hurlburt. At this time I'll ask Mr. Hurlburt to review the recommendations.

MR. HURLBURT: Mr. Chairman, we're in an area called judicial review of administrative actions. That means the ways in which a court can look at something that's been done by an administrator, a board, or even the Provincial Court.

Mr. Chairman, I should have said first that Mrs. Shone, who is counsel to the institute, is here. She is the one who actually prepared the report we're dealing with. We sort of divide the labour, so she knows about it and I talk about it. She may step in to pick up any loose ends.

A court, under certain circumstances, can do various things with regard to administrative action. It can sometimes set it aside; sometimes direct the administrator to do his duty, if he's refusing to; stop somebody from holding a hearing or carrying on a procedure; or simply declare that the whole thing is bad. There are a number of things that could be done. We aren't talking about the power of the court to do those things or the right of the individual to come to court. We're talking about a very simple, down-to-earth question; namely, how he does it, how the individual comes to the court. We're not proposing to add to or subtract from the court's power to deal with administrative actions. All we're trying to do is to get a more efficient means of doing it. When I tell you what the state of things is now, I think you'll wonder why we weren't here doing this 100 years ago, because it's a jungle. It's a mess.

By the way, by "administrative action or decision" we're talking about a great range of things, as is mentioned on the first page. The examples I've chosen are the clerk in the motor vehicles branch who won't issue your driver's licence when you think he should or, at the other extreme, a decision made by the Public Utilities Board that's going to set the gas rates for the northern half of the province.

All page 2 of the handout says is what the court can do, and we aren't really changing that. But on page 3 the chart starts to talk about how you go about doing things. On pages 3 and 4 it talks about two categories, one called "prerogative remedies". That's simply historical, because over the centuries the Crown in England was the fountain of justice. From the royal prerogative you could get various ways of getting at things that went wrong. These are the ways that emerged over the centuries — things with strange names that aren't even Latin. "Certiorari" is a process by which a court calls up the record from some other -- well, it used to have to be — judicial type of tribunal in order to see whether it should set it aside or quash it. "Mandamus" is another tag that means an order that somebody do something. If you persuade the court that the clerk should have given you your driver's licence, the court can order the clerk to go ahead and do it. "Prohibition" means stopping somebody from doing something — not drinking in this case but stopping an inferior tribunal from holding a hearing or what have you. We don't even really need to talk about "quo warranto". That's challenging how somebody holds an office, and it isn't of very much importance nowadays. Those are all things that emerged over the centuries from the royal prerogative.

On the other hand, under the heading of "non-prerogative remedies" people have found ways to bring what looks like a private lawsuit against an administrator and get remedies that are of the kind you get in private lawsuits. The two things are a declaration -- the court says, "This is illegal"; it doesn't necessarily go on to say what's going to happen because it's illegal, but it says it's illegal or legal, and that's very often all anybody wants — and secondly, an injunction, which means that if something

illegal is going on, the court can say, "Don't do it." It's another form of remedy.

The problem with all that is that you have different grounds for some of these things and different ways of doing it. If you want a prerogative remedy, you give the clerk of the court one piece of paper. If you want a declaration or an injunction, you give him a different piece of paper. If you guess wrong, you're likely to be out of court because you've gone the wrong way and given him the wrong piece of paper. That sets off the wrong series of judicial events, so you're out. We think this is fundamentally what's wrong with it. People can lose their rights, particularly if a time limit has intervened, because they went down this channel instead of down that one. They're put to cost, it's inefficient, and it's generally a mess.

The only thing we're really doing in this report is to suggest working out one piece of paper that you can use for any or all of these purposes, so you can claim anything or all in this area by your one piece of paper, one procedure, and that's it. This report is really as simple as that. You can still make a mistake thinking that you're sort of in between the public law area and the private law area, but we've said that if you come in the wrong way, the judge can just reroute you onto the right track and send you off to get your remedy.

Basically, all we're suggesting is that this legal jungle be hacked away and cleared out and that --just to keep my metaphors moving -- you have only the one track to get out of it, so you should be able to follow it and not get lost simply because you don't quite understand the legal situation, which is very complex. That's really the basic point.

MR. CHAIRMAN: Do you have any comments to make, Mrs. Shone?

MRS. SHONE: No, but if there are discussion and questions afterward, I'd happily participate then.

MR. CHAIRMAN: Okay. Jack Campbell, you had a question.

MR. CAMPBELL: Yes, I'd go back to the green book, probably the last paragraph, where the institute thinks that the

> subject is one of technical procedure and that the Standing Committee is likely to think that its time would be better spent elsewhere.

I agree, and I recommend that we accept the report.

MR. CHAIRMAN: Discussion? All in favour? It's carried.

MR. HURLBURT: Mr. Chairman, there's one thing I should point out; that is, we may have a bit of an argument with some of the lawyers in the Attorney General's department, who may think we have brought in rather more remedies against the Crown than there were before. But we will talk to them and settle that point. I just mention it so as to more or less preserve their position.

AN HON. MEMBER: Can you settle it out of court?

MR. HURLBURT: It is my hope, Mr. Chairman.

MR. CHAIRMAN: In the last of the summary of recommendations it says:

> since amendments will make some changes in the laws as set forth below, amend the Judicature Act to confirm the amendments.

Is that a big amendment?

MR. HURLBURT: No. The legal situation is that the Lieutenant Governor in Council can make rules of practice and procedure for the court. That doesn't need legislation, but we have made two or three suggestions that would amount to changes in the court's power. For example, they'd be able to send something back to the tribunal and say, "Here is the law that you're supposed to be acting under; now go ahead and act." It usually can't do that now. That's a change which is a little more than a change of practice and procedure, so we think there should be a section in the Judicature Act approving it.

Actually, a number of years ago the Judicature Act was amended on the basis of one of our reports to say that the rules of court as they then existed were valid even though they affected more than practice and procedure. This would really just be repeating the same thing with respect to these changes.

MR. CHAIRMAN: This change of Act would come up, and we may have to speak to it at caucus.

MR. HURLBURT: It would require a Bill at some point, Mr. Chairman.

MR. CHAIRMAN: Yes. We now go to discussion of Compensation for Security Interests in Expropriated Land. On page 65 of the green book there's a summary of the view of that, and we also have a handout on it. Mr. Hurlburt.

MR. HURLBURT: Mr. Chairman, I'm afraid this one is a little bit blinding to grasp just what we're talking about. I'm also sorry to say that this is really a suggestion. One of our own bright ideas didn't work out quite as well as we'd hoped, so we should be changing back.

This deals with the Expropriation Act, which was based on one of our reports. It came in in 1973 or '74; I've forgotten the date. It has to do with how you compensate -- we might as well say a mortgagee -- the holder of a mortgage, though it's any kind of security, on land which is expropriated. That is, you've got a farm or a piece of property that's expropriated, and it's subject to a mortgage. What do you do about paying both the mortgagee and the landowner?

At the time we made our report, we thought that the fairest way — and we still think that theoretically it is the fairest way — to compensate people is simply to value what they have on a market value basis. To compensate people is simply to value what they have on a market value basis, and what the mortgagee has is a mortgage. We suggested that that mortgage be valued as a mortgage; that is, what could that mortgagee get for that mortgage if he sold it? That would lead to a result different from saying, "Pay him what's owing on the mortgage." For example, if his mortgage provided for a very high rate of interest, he'd be able to sell it for more than the face value. If it provided for a very low rate of interest, he would have to sell it for less than its face value. It seemed to us that the expropriator should pay for what the mortgagee actually had and should pay the landowner what the landowner actually had, which is a piece of land subject to an encumbrance or a mortgage which he could sell. We recommended accordingly, and that was built into the Expropriation Act.

Unfortunately, while this is theoretically the best — and I think it is — practically we've concluded that it won't work and that we should go back to the old law where you value the parcel of land as if clear title, then pay the mortgagee his face value — what's secured by the mortgage — and pay the landowner the rest. This is fairly simple and certain. You can usually find out how much is owing; it saves valuation costs and so on.

More than that, we perceive some problems arising, and this is the third page of the handout. I'm afraid it's rather longer than usual. If you have a simple mortgage of one piece of property and no enforceable covenant, the market value scheme will work. But once you get to the point where you have an enforceable covenant and collateral security, it's too simplistic, simply because the mortgage is then part of a much broader thing. A mortgage plus covenant plus collaterals is a lot more than just a mortgage of this one little piece of property.

Item 3 on page 3 looks at the market value theory, which is the present law, the one we now think is not workable. If you have an enforceable covenant and other collateral, then we can see that you have about three choices. One is to include those in the value of the mortgage when you're valuing it for market value purposes and require the expropriator to pay for it. That is, you don't value just the mortgage security on this piece of land; you value the whole account with whatever other security is there. The problem with that approach is that the expropriator would have to pay for those things, even though he doesn't want them and doesn't get them. The expropriator would be paying more for the land and all the interests in the land than he should be.

Secondly, you could say to value the mortgage without the value of the covenant and the collateral but discharge the covenant and the collateral and treat the whole debt as paid off. That's unfair to the mortgagee, because he isn't getting paid for something he had and has had to give up. That's what the existing Act really does with the covenant but not with the collateral.

Finally, the only other course of action is to exclude the covenant and the collateral and leave them in force. The problem there is that you don't know what they're in force for,

because the mortgage lender, the mortgagee, has been paid the market value of the mortgage, which really has a connection with the mortgage account but isn't the same thing. Again, he may have got more for the mortgage because it was a good mortgage, or he may have got less because it was a bad mortgage. But there's no real, rational way you can then take that money and put it onto the mortgage account. Or at least if you do, you might as well do it directly and not through all this market value bit. What the present Act says is that the Land Compensation Board or the court, if it goes to court instead, would decide what the balance is, but it doesn't say how -- and I can't really think of a rational way — to decide what the balance is.

I think the fundamental problem with the present market value theory, which we didn't really perceive in 1972 or 1973, was that it's all very well to value the interest in land separately and decide what its market value is — theoretically that's a splendid idea and perfectly fair, just, reasonable, and rational — but it overlooked the fact that this interest in land which is being taken is very often only part of a larger bundle, which is the mortgage account: this mortgage, the collaterals, the covenants, and everything else. You can't sever them. They are necessarily all one — it isn't really a bundle; it's one unit. You can't chop it up. If you try to think about the mortgage security without thinking about the mortgage account, you'll find you're in grave difficulties, because the two are simply part of the same thing.

I should say, though, that the chairman of the Land Compensation Board really would prefer to leave the present law and try to work it out. He's one of the most decent and competent public servants you're going to run into in a long time. He doesn't really agree with this, and it might be that you would want to hear from him before proceeding. Mind you, his position is that he's only the administrator of the law. He's not about to tell the Legislature what the law should be. He will administer whatever law they send him; he's not lobbying or pushing or anything else. But we did have discussions with him, and we ended up with some divergence of opinion.

I think that's my pitch, Mr. Chairman.

MR. CHAIRMAN: Is this problem with the present law because land prices have now dropped and some mortgages are actually higher than the present value of the land?

MR. HURLBURT: Changing land values certainly affect things. Actually, one of the reasons we launched on this was a case before the Land Compensation Board. I might just take a minute to describe it, since I have described it here.

Some land had been changing hands in a rising market. The last sale was for $120,000: $10,000 down, secured by a mortgage for $110,000. While the mortgage was still pretty well at that level — there had been a few payments, but not many — the land was expropriated. The Land Compensation Board held that the $110,000 mortgage, considered as a mortgage, had a value of only $100,000, because its interest rate wasn't good; the prevailing interest rates were higher. The stream of money that would come in from the mortgage would be worth only $100,000. Then the board looked at the fact that the land itself was worth only $100,000. That was just coincidence; the numbers were actually a little different. They said, "No prudent mortgage lender would advance more than 75 percent of the land; therefore, the mortgage of a face value of $110,000, which has an income stream value of $100,000, is worth only $75,000." That's what the board awarded the mortgagee.

Then the board went on and took another step and said, "The remaining $25,000 goes to the landowner." That is, the land is worth $100,000; the mortgage is worth $75,000; the landowner will get the $25,000. That's a splendid result from the landowner's point of view, because he had a $100,000 piece of land with $110,000 worth of mortgage against it, or $100,000 worth of mortgage against it, whichever way you look at it, and he's still got $25,000. But the result is a little strange, and that suggested to us that this market value theory, again, is splendid in theory, absolutely fair as far as we can see, but it doesn't seem to work. So we think we'd better go back to the old law.

MR. LYSONS: Mr. Chairman, there are all sorts of problems with expropriation. I'm not so sure that we're the body to try to effect a major revision of it, because a lot of it is so deep. The book says it's "blindingly technical,"

and it certainly is. If you take a large mortgage, spread over a large tract of land or several parcels of land, it can all look like the same mortgage on the same piece of land. I guess the biggest one I ever saw was a quarter section of sand where there was an actual mortgage of $18 million. It was a very complicated transaction. I wish I could remember all the details of it, but it was one that had absolutely caved us in. It was really hard. If we hold to the market value, as you're arguing . . .

MR. HURLBURT: No, I'm arguing the other way.

MR. LYSONS: You're arguing the mortgage value.

MR. HURLBURT: The mortgage amount, yes.

MR. LYSONS: If you hold to the mortgage value, you could easily visualize a situation where technically someone could have a rather large mortgage put on land that was going to be expropriated. You could visualize an expanding drainage system, for instance, or a highway overpass we know is eventually going to be built. It wouldn't be hard to get a lender to cook up a mortgage.

MR. HURLBURT: I don't think we would have that problem. I don't think I said this, but the top limit for the compensation would be the market value of the land, valued as of clear title. So putting a large mortgage on it, under what I am now proposing, wouldn't cause a problem, because the expropriator would simply pay the same amount of money. He'd just pay the land value, and it would all go to the mortgagee. If the landowner had mortgaged it up to its full value and beyond, the money would simply go to the mortgagee, the holder of the mortgage.

MR. LYSONS: Then we couldn't have a simple little provision saying either/or or and/or?

MR. HURLBURT: Either which or what, Mr. Chairman?

MR. LYSONS: Market value or mortgage value, whichever is the lesser, or something like that.

MR. HURLBURT: Our proposal would say that you would obtain the market value of the land by valuing it as if title were clear, and that's the amount of the compensation that would be paid, either to landowner or mortgagee or both. That's the total, and then you divide it up. If the amount secured by the mortgage was less than the land compensation, you'd pay out the mortgage; the landowner would get the rest. If the mortgage amount was greater than the land value, which is the compensation, it would all be paid into the mortgage account. It would reduce it accordingly, but there would still be a balance owing. Have I cleared your point? I don't know.

MR. LYSONS: I think so. You're saying that your change is that you wouldn't look at assessing the value of the mortgage relative to the piece of land.

MR. HURLBURT: That is correct. You'd just look at the mortgage account and how much is secured by it.

MR. CHAIRMAN: Mr. Clegg, do you want to comment on this?

MR. CLEGG: Mr. Chairman, I'd like to make a couple of comments, if I may, rather than ask Mr. Hurlburt questions, because I think this is an extremely technical question. I'm not certain how well the committee can function in making a decision between two arguable alternates. The process of expropriation is a legislative intervention in the free market to say, "We will force a sale." It's very difficult to put all parties into a fair situation, and obviously anything which is decided will be a compromise. It can't possibly be totally fair in the free-market sense, because it isn't a free-market situation. It is obviously attractive to say that the expropriation should be based on a value which looks at the value of the land unencumbered and not at the mortgagee's situation at all, merely at the value of his security on a market basis, because you can say that he wasn't really an investor in the land. He was a person who financed the individual who purchased it, and his concern was merely a financing arrangement. The person who was a speculator, or the investor in the land, was the person who is the landowner, and if there is to be a gain or a loss, it should go into his pocket

as a result of the forced sale.

The other way of looking at it is that the land is not unencumbered. It is in some ways unrealistic to look at it and value it as an unencumbered piece of property. For example, if the security is transferable, the land may be more or less valuable because of the mortgage that's on it. A good mortgage on a piece of land will increase the value of the land quite considerably. An expensive mortgage which can't be paid out can make the land less valuable.

I make these points not to argue one way or the other but to stress the fact that it is, as Mr. Hurlburt has admitted, a controversial and very difficult question. I feel that the committee should consider either listening to argument from the other side, which might possibly include the chairman of the Land Compensation Board, who feels that he would prefer to operate under the existing law, or deferring a decision on this, pending the outcome of the present consideration of the Attorney General's department. You will note on page 66 of the green book that the matter "is under active consideration by the Attorney General's Department." In view of that particular fact and the fact that the committee has not heard an argument, as it were, from the other side as to leaving the law as it stands — and we all understand that there are arguments to be made in both directions — it might be something which this committee might defer consideration of and look at at some future time if it's referred back to the committee, if the Attorney General's department does not make a determination as to what should be done.

MR. ALGER: Mr. Chairman, I'm having difficulty in my mind with expropriation for smaller things than we've talked about thus far. Mr. Hurlburt, consider that the province wants to build a road and it goes through farm country as well as acreage country. Let's say the actual value of the land is pretty much the same everywhere through that area. But the actual value to the acreage owner is far higher than to the farmer, because he paid an awful lot more for it. He may have agreed to pay whomever subdivided his piece, say, $4,000 an acre, and the government needs an acre or an acre and a half going right by his place. However, the valuation people tell the government that the land is worth $1,200 an acre in that particular instance. So they go to the man and say: "Gosh, this is as high as we can go. Sorry about that, but we've got to have that land and this is the law. We'll give you $1,200, and you're out whatever the difference is — $2,800 to the $4,000 mark."

What am I saying here? I'm asking: is there any place in the law that protects the acreage owner to the extent that he should at least — I'm not referring to the mortgagor per se but the actual involvement of dollars. Is there any way to protect a person of that nature? This can happen for mile after mile, you understand, and it gets pretty ridiculous.

MR. HURLBURT: I don't know if you have specific cases. I would have thought the law would be adequate. The fact that the general average of land in a given area is X doesn't prove that the specific parcel is also worth X. If he'd paid a great deal more for it, at least you have one man's opinion, backed up by cash, as to what the land is worth. That in itself would be a significant factor in the valuation.

Also, if he has a small acreage and taking the one acre is going to affect the rest, he can recover for that detriment. He can get disturbance damages, the cost he's put to by being ejected, and so on. Again, I'm not sure how it's working. I would have thought that situation would be covered reasonably well by the present law, but you may well have a case that didn't work out that way.

I should say that what the government valuator tells the farmer ain't the law; that is, the farmer can still object. The new Act made various provisions to put the landowner in a better position vis-a-vis the government than he would have been in before, whether you count that good or bad. He will get costs. He can have a valuator hired. If that's reasonable, he will get the cost in addition to the expropriation award. If they want the land, they should make him a tender and support it by valuations and that sort of thing. It's not as barbarous as it was. I'm not for a moment saying that all is for the best in this best of all possible expropriation worlds, but at least it's better than it was.

MR. CHAIRMAN: Isn't there also a part of the expropriation that calls for adverse affection? It deals with the problems to the landowner resulting from the expropriation.

MR. HURLBURT: Yes. If the remaining land is worth much less because of what you've lost, you can get some money for that.

MR. CHAIRMAN: John Batiuk.

MR. BATIUK: Mr. Chairman, it's been partially answered. According to Mr. Alger's remarks, there is provision for that. I went through something like that with our water line from Edmonton to Vegreville. It had to go through some of these areas where there were small lots, and the market value of those was considerably higher than for neighbouring farmland.

However, I can well agree that a different look has to be taken when you expropriate a portion or all of a big parcel of land. I think that once you sever a portion of land, the remaining land loses a lot of market value. I think there should always be a provision for that. If a person wanted to settle on the market value, he wouldn't go through expropriation. He would be willing to sell it. Any time there is an expropriation of land or land has to be broken up, I think there is a certain detriment to the owner and there should be provision for extra compensation for that purpose.

MR. HURLBURT: There is provision in the Act; that much I can say. You are entitled to damages for, as you say, the . . .

MR. BATIUK: Adverse effects.

MR. HURLBURT: "Injurious affection" is the term used, which is another of these barbarous phrases. By the way, just to complete the information, I should have mentioned that our proposal is that if you take a strip through a parcel -- that is, I've been talking about taking the whole parcel, even if it isn't the whole of the security -- divide the compensation between the mortgagee and the landowner so that the ratio of amount owing to the value of the security stays the same. So there's some provision for dividing the money between the landowner and the mortgagee. What goes to the mortgagee would be applied to the mortgage account, so ultimately the landowner should get the benefit of it anyway. That's just an extra detail.

MR. CHAIRMAN: Mr. Clegg, you have a comment.

MR. CLEGG: Mr. Chairman, just on the point that Mr. Batiuk raised. I know of one particular case where a strip was expropriated across a piece of farmland and the order of expropriation for the land that was taken was $9,000. The injurious affection on the remaining land was $90,000. So sometimes that can be a much bigger factor than the actual amount of the land taken.

MR. R. MOORE: Mr. Chairman, getting back to the area, I'd just like some clarification. Take the market value of the land as $100,000, Mr. Hurlburt, and the mortgage on it as $150,000. Say we expropriate on the market value of $100,000. You pay that to the mortgagee. There's $50,000 left hanging out there. Who's responsible for that? Is the Crown or the landowner responsible for that, or is the mortgagee just out?

MR. HURLBURT: Clearly, the Crown is not responsible. It has taken $100,000 worth of land, and it has paid $100,000. Whether it falls on the landowner or the mortgagee would depend on whether the mortgagee has something else; that is, if there is a personal covenant. The landowner may be a corporation and there may be a valid personal covenant in the mortgage. If so, the landowner still owes the mortgagee the $50,000.

Alternatively, if the mortgage covers another parcel of land as well or if there's other collateral security, then that security will remain for the $50,000. The $50,000 is still in the mortgage account, and it's a question of whether or not the mortgagee has anybody to go against, and that depends on covenants and other security. Generally speaking, he has been fairly treated, because if he foreclosed, all he would get is the value of that land anyway; that is, if he didn't get paid.

MR. R. MOORE: Mr. Chairman, I still say he has no legal recourse, because you've taken away the collateral he had at a lesser value than the increased value which he held it in. He has nothing to claim on it. Suppose the landowner has no other properties he can go after. The landowner didn't get a dollar out of the transaction. The mortgagee is then

automatically left to civil action of some sort.

MR. HURLBURT: If a mortgagee lends $150,000 on $100,000 worth of land, I'm afraid he has a problem.

MR. CLARK: I guess what bothers me in this area of compensation is the fact that you may have a mortgage on your land and may sometimes wonder whether you can ever pay it off or whether you've done the right thing. But as the years go by and you make your payments, you finally pay it off. Then, as the owner, you can decide to sell it at any time you wish, at an appropriate time. But when you have a forced sale and you come in and value the land at the price it is then — just because it's down today, that leaves you in a very poor situation, in my estimation. You've taken away the right of the landowners, especially in a large sale where, for instance, they're buying surface rights for a mine, which they do at times. You're leaving the landowner in a position where the people who are doing the expropriating can come in and say, "We'll take it this year because the land prices are cheaper and we can get it cheaper." It takes away all right of the landowner to try to make his mortgage payments, whether they're high or low or over a 20-year period, and take the good years with the bad.

I'd hate to see us go back to what the Expropriation Act was before. It was really tough; it's tough enough now. I think there should be some consideration in this area for the fact that you are taking the land at the time the taker wants to take it, not the time the seller wants to sell it. I think that has to be taken into consideration when you're making out your compensation.

MR. HURLBURT: Let's see now. Number one, what we're talking about won't make any difference in that area; that is, it won't make it any worse on the point you're talking about. Under the Expropriation Act as it stands, the landowner will be treated as being compelled to sell now. Whether you value it subject to the mortgage in the first instance doesn't make any difference to that.

As to the main point, which is the depressed market — the expropriation at a time of a depressed market and the ability of the expropriator to expropriate when he chooses — we're moving a little outside of things I've thought about in the last few years, so I may not be able to give a complete answer. I think the tribunal, the board or the court, has a certain reasonable amount of leeway to deal with that. As I remember, the basic definition of "market value" is what a willing buyer and a willing seller would arrive at given a reasonable length of time; that is, no time pressure. I think there must be a fair amount of room in that area for the tribunal to say, "Yes, if you exposed it for sale today, you'd get $50,000, but if you had exposed it for sale a year ago, it would have been $100,000, and it may be that again." I'm not really able to answer you on that. We haven't gone back and looked at the effect of the last three years on expropriation compensation. Certainly, if you're forced to accept a depressed market value, you will lose; there's no doubt about that.

MR. CLARK: Mr. Chairman, I would certainly like to see the committee hear from the land compensation people before we make a decision on this. I move that we defer it at least until such time as we've heard from the land compensation people and maybe until after the Attorney General's office has had that review.

MR. HURLBURT: Let's see now. I may be a little embarrassed here. I mentioned Mr. Boyd because it seemed to me only fair to tell the committee that there's more than one opinion about this. On the other hand, I don't want to embarrass him. He is not a lobbyist; he's just a public servant trying to do what he can. I asked him for his views and I got them. I hope he might be approached in such a way that he won't feel I have sort of put him in the public spotlight as saying what the law should be, when his function is to deal with the law as it is. He is not in any way agitating or anything else. If he can be approached on a fairly quiet basis and can give his views in a way that he would like to give them, that would be splendid.

MR. CLARK: I was just going to suggest that we could approach him to explain the present situation as it is under the Act. That's all we would want him for, not to try to get him to lobby for changes.

MR. CLEGG: Mr. Chairman, another approach would be to find some solicitor in private

practice who is of the opinion contrary to Mr. Hurlburt and who would be prepared to come here as an expert witness and argue the contrary case.

MR. HURLBURT: I'm inclined to doubt that you'll find very many. I don't think the market value approach — well, I shouldn't say that; it may be that it's very popular out there.

MR. CLEGG: Mr. Chairman, it might be possible to find somebody who is quite willing to present the contrary case, whether or not he adhered to it. He could analyze the arguments, of course, as Mr. Hurlburt has also done for us.

MR. HURLBURT: I'm certainly very happy to have the committee get any views that are available. I certainly don't want to appear to be obstructing. Indeed, I raised the question of the chairman because I knew he had his views. Again, I don't want to get him into a position in which he might feel he shouldn't be put, being a judicial officer.

MR. CLEGG: Mr. Chairman, when Mr. Clark was forming his motion, he mentioned that perhaps the committee should even wait until after the Attorney General's department has considered this. Those two solutions would not be compatible. I think the committee has to decide either to proceed with its consideration, perhaps hearing from Mr. Boyd of the Land Compensation Board, or to defer the matter until the Attorney General's department has considered it. If the committee wants to deal with those two things as alternates, I think we should deal with a motion on one of the two. Then if that motion doesn't pass, we can deal with the other possibility.

MR. CHAIRMAN: Okay.

MR. CLARK: Is there any way we could find out whether the Attorney General's department is in the process of reconsidering it and how long it will be?

MR. DALTON: I can speak to that matter. I think it's fair to say that this particular item is not a high priority. One might take the position that it may be some time before we're in a position to make a report on this matter.

MR. CLARK: Mr. Chairman, I suggest that we listen to the land compensation people for what the present situation is and act accordingly from then on.

MR. HURLBURT: I should mention — I haven't said this before — that the mortgage loans association, which is the major mortgage lenders, is very much against the present law. Since it came in as a Bill, they haven't liked it. It bothers their balance sheets and things. They like to think they have a stated amount and that that's what's going to come in. It isn't a case of getting more one way than the other. I have no idea whether the market value principle in the present Act would, on the whole, give mortgage lenders more or less. It depends which way interest rates have gone, basically. But they have always said: "We want certainty. We want our 100 cents on the dollar. If you tell us that we could get 150 cents in a given case, we're not interested. We would like to get the amount of our mortgage account." If you're going to hear anybody, I wouldn't be surprised if it would be a good idea to have them present too.

MR. CHAIRMAN: Do you want to include that in your motion?

MR. CLARK: Yes, I'll include that.

MR. CHAIRMAN: I was just going to make the statement that this is probably the last meeting of this committee before we report to the Legislative Assembly this spring, so this would probably be held over until after that time, unless we can work in a meeting sometime between now and when we make our final report.

MR. R. MOORE: Mr. Chairman, because of the busy time during the session, I suggest that this be the last meeting before we report to the Legislature and that any other business be set over until September. We're meeting in the first part of September.

MR. CHAIRMAN: We can handle that as a motion later. In regard to Mickey's motion, which is that we defer a decision on this until we hear from the chairman of the Land Compensation Board and also the financers . . .

MR. HURLBURT: The mortgage loans association.

MR. CHAIRMAN: Yes. All in favour? Opposed? It's carried. Now Ron has a motion.

MR. HURLBURT: Mr. Chairman, I would say one thing. I've always thought it was bad form in a lawyer to thank the tribunal, because it seemed to imply either that it was rather extraordinary that the tribunal had done its job or that somehow or other the tribunal had been more favourable to the person speaking than they ought to have been, something like that. But I really don't think I could let this go without saying that I have appreciated very much the willingness of the committee to sit and look at a whole great bunch of things that are quite different from your normal fare. I have certainly appreciated the courtesy that you, Mr. Chairman, and the committee have treated me with.

MR. CHAIRMAN: We certainly have appreciated the way you've explained these things in a language that's understandable to laypeople, and I think some of the topics we've discussed have been very enlightening to the committee.

MR. HURLBURT: Thank you, Mr. Chairman.

MR. CHAIRMAN: Ron, you had a motion?

MR. R. MOORE: No, I just had a motion of adjournment. The motion to wait until September 10? Mr. Chairman, I would withdraw that motion and replace it with another, if I could. The motion would be that we not hold another meeting until after the spring session and that it be at the call of the Chair.

MR. CHAIRMAN: Actually, we need a motion that we now dispense with the committee and report, with a copy to each member and to the Legislative Assembly.

MR. FISCHER: I so move.

MR. ALGER: You can't dispense with the committee if you're going to have a meeting in the fall, can you?

MR. CLEGG: Mr. Chairman, if I can explain the procedural situation to members, this committee, as it stands now, will cease to exist on Wednesday, when the existing Legislature is prorogued. The committee will be re-formed by appointment, probably two weeks into the sitting, when the striking committee makes its report and that report is accepted. The committee, re-formed with its new membership -- which will probably be very similar to its present membership -- will still have the instruction and the motion binding on it. That motion required the committee to report no later than May 15 on what it had discovered. When the committee reports on May 15 on what it has done so far, it will have fulfilled the task assigned to it by the Assembly. It can then ask the Assembly to refer more work back to it for the fall, and obviously the committee's intention is that that should happen. So I suggest that when the committee is reappointed, whoever the chairman may be -- it may well be Mr. Musgrove, of course, and we certainly hope it is -- the committee make its report for the work that's been done so far and suggest what might be referred back to it by the Assembly.

MR. CHAIRMAN: You are making that motion, are you, Butch?

MR. FISCHER: Yes, I am.

MR. CHAIRMAN: Thank you. All in favour?

HON. MEMBERS: Agreed.

MR. ALGER: I move that the meeting adjourn.

[The committee adjourned at 11:06 a.m.]