REVIEW OF VALUATION CASES

2004

Australian Property Institute
Seminar

July 2004
Brisbane

BR O'Connor,
Judicial Registrar
Land Court.

INTRODUCTION

The cases covered in this year's Review include:

1.	*Spender*	-	a consideration by the Land Appeal Court of the 2003 High Court decision in *Maurici*
2.	*Marshall*	-	the application of the *Marshall* principle (High Court 2001) to the facts on remittal to the Land Court
3.	*Camp*	-	a corridor resumption case involving issues of town planning, re-instatement of leases and valuation methodology
4.	*Nevis*	-	what was the purpose of the resumption where two road widening projects were in place
5.	*Haber*	-	can "solatium" be claimed as compensation in a resumption
6.	*Springfield*	-	consideration of the criteria for awarding costs against a resumee

---

1. SPENDER

The subject property situated at Hill End, Brisbane, and containing an historic residence had its valuation under the Valuation of Land Act (VLA) reduced by the Land Court from $460,000 to $350,000. Key reasons were:

- The valuation approach of the Chief Executive was flawed in not applying the principles in *Maurici v Chief Commissioner of State Revenue*. There was such a scarcity of available unimproved sales that a UCV could not be based on such without further supporting evidence; and the improved sales later introduced as support had not been adequately analysed.

- A 7.5% reduction in value was made due to the presence of the historic dwelling on the site. This was allowed despite the building not being listed on any Heritage Register or equivalent.

The Land Court determination was ultimately made on percentage increases based on wider market evidence in the area. The Chief Executive appealed to the Land Appeal Court. In allowing the appeal and restoring the original valuation, it held:

1. The facts, while largely similar, may be distinguished from *Maurici* on the evidence. First, Mr Van Hees (Departmental Valuer) did give consideration to the overall evidence, including sales of improved land. Second, in his professional opinion, there was no ***directly*** comparable sales evidence either of vacant or improved land. However, it was his evidence that in his professional opinion, analyses of the sales of improved land as well as the vacant land sales supported the applied level of unimproved value.

   The valuation made by the Chief Executive was not flawed on that basis.

2. Relevant aspects of *Maurici* warranted some explanation:

   (a) It is also a basic valuation principle that, for sales to be treated as comparable, they should not be unreasonably selective. There can be no hard and fast rules as to the extent of sales evidence which will be deemed to provide either a reasonably representative group of sales or to be overly selective. That is the question of fact based on the circumstances of a particular case and the relevant evidence.

   (b) The High Court reasoning was a recognition that the market for land in a predominantly built-up area was not exclusively of scarce vacant land but inclusive of land with improvements thereon.

   It was wrong to adopt a basis of valuation selected exclusively from one segment of the market which in itself was not proved to be representative of the overall market for land.

   A group of comparable sales cannot be representative if it does not go ***beyond*** sales of scarce vacant land. That is not to say that sales of comparable vacant land may not provide useful evidence of value.

   (c) Added Value. The methodology adopted in the assessment of the added value of improvements in the analysis of an improved residential sale will be a matter of professional judgment. Difficulties are likely to arise.

   It is reasonable to assume that in many instances, but certainly not all, added value may well be found to equal depreciated replacement cost. However in cases such as, for example, over or under capitalisation, lack of aesthetic appeal and the like, no precise assessment of the added value of improvements could reasonably be expected.

   (d) If there was a reasonably representative group of comparable sales going beyond sales of scarce vacant land, and Mr Van Hees had disregarded those comparable sales, then clearly his valuation would have been flawed.

3. Burden of Proof: Pursuant to s.45(4) of the *VLA (Qld)* "the burden of proving any and every such ground" of appeal "shall be upon the owner". If the

valuation was flawed because it had been made having regard exclusively or virtually exclusively to sales of scarce unimproved parcels, then the landowners should have adduced evidence to show:

- that a group of comparable sales existed;
- that group of sales went beyond sales of scarce vacant land;
- that on analysis the improved sales evidence proved that the level of unimproved value reflected by those sales did not support the level of unimproved value reflected by sales of the scarce vacant land.

4. The Learned Member erred in finding that the unimproved valuation of the land should be reduced because of the existence of the dwelling with historical significance.

Restrictive provisions apply to the building, not to the land. It is well settled from the authorities, that it is only when the restrictions or limitations affect the land as well as the improvements that they can be considered to adversely affect the unimproved value of the land.

In the present case, the provision of the *VLA (Qld)* require that the unimproved value be determined at the market value of the land, assuming that the improvements did not exist. If the dwelling house on the subject land is notionally removed, then there is no evidence that any "historical significance" would attach to that land or have any adverse impact on the unimproved value of the land.

5. Because of the sales evidence before him, it was unnecessary for the learned Member to resort to applying a percentage increase over the previous valuation.

6. The nature of a rehearing by the Land Appeal Court was also considered.

- The express requirement of s 56(1) of the Land Court Act, together with the restriction on the introduction of fresh evidence, clearly indicated that the rehearing by the Land Appeal Court is intended to be a rehearing on the evidence that was before the learned Member.

- The Land Appeal Court is required to reach its opinion as to the correctness of the valuation which is the subject of the appeal. In practical terms, however, the Land Appeal Court is not likely to reach an opinion that is different from the learned Member, unless the appellant establishes an error on the part of the learned Member of law or fact.

- As the Land Court and the Land Appeal Court are in the same hierarchy of courts, established by the same Act of Parliament and the majority of the membership of the Land Appeal Court is drawn from the members of the Land Court, it is not necessary for the Land Appeal Court to proceed on the basis that greater weight should be given to the opinion of the learned Member by virtue of the learned Member's

expertise for appointment as a member of the Land Court than the weight which would ordinarily attach to the opinion of the court at first instance.

2. MARSHALL

The 2002 Valuation Cases Review considered the High Court decision in *Marshall v Department of Transport* where the High Court overruled the longstanding *Edwards* principle as applying to the *Acquisition of Land Act 1967* (Queensland). The result was that injurious affection to balance land did not have to emanate from the scheme activity on the resumed land of the claimant; it was sufficient if damage was caused by the effect of the scheme of resumption irrespective of where the activity causing the damage came from.

Marshall was remitted by the High Court to the original Land Court Member (via the Land Appeal Court) to decide in accordance with the High Court interpretation. This note deals with that remitted decision.

The basic facts in *Marshall* were these:

- The appellant sought compensation under the *Acquisition of Land Act* because alterations to the highway drainage system rendered the appellant's residual land more susceptible to flooding.
- No part of the widened highway or altered drainage system was located on the resumed land.
- Nor was the resumed land used to carry out the work for the widening or drainage of the highway.

Very extensive technical evidence was tendered in the remitted Land Court case, particularly on the effect of flooding on the balance land; also on the appropriate method and costs of alleviating such. Rectification was to allow dual uses of extractive industry (continuing) and (tourism) proposed.

The Court identified three core questions or issues with which it was concerned:

(a) Whether the respondent's exercise of its statutory powers in relation to the construction of the new northbound carriageway, and associated works, caused by the claimant's balance land to be more susceptible to flooding than it would have been had the respondent not exercised its statutory powers;

(b) If so, whether the exercise of those statutory powers has caused the value of the claimant's balance land to be reduced; and

(c) If so, by what amount has the value of the claimant's balance land been so reduced?

The claimant's position was that the value of his land had been reduced by an amount equal to the cost of earth, road and bridge works required to maintain access for quarrying and tourist operations, that amount being $686,274.

The respondent's position was:

- The extent of the increase in peak flood levels on the claimant's balance land in consequence of the exercise of the respondent's statutory powers was such as to be of little practical consequence and, accordingly, has no material effect on the value of that land.

- Alternatively, if it was concluded that the value of the claimant's balance land had been diminished by an amount equal to the cost of works required to be undertaken on that land to achieve the same degree of flood immunity as it possessed as at the date of resumption, that amount was to be quantified in the sum of $59,829. However, the respondent asserted that there were cogent reasons for significantly reducing, if not eliminating entirely this assessment of compensation.

Principle of Equivalence

In considering injurious affection, the Court looked at the relevance of the principle of equivalence. Such term had been periodically mentioned in a range of major cases including *Horn v. Sunderland Corporation* (1941), *Nelungaloo* (1948) and Shun Fung (1995). Essentially the principle is that in compensation case an owner shall be paid neither less nor more than his loss.

The Court looked at two limitations in relation to injurious affection relevant to this principle. First, injurious affection is different from a wider damages award: it is not compensation for general or particular financial harm suffered by the claimant. Second, there is an assumption that the claimant will act reasonably; losses or expenditure unreasonably incurred is not a consequence of the resumption – injurious affection is not merely to remedy the disability complained of.

Factors in Injurious Affection

Permissible matters to consider in assessment of injurious affection include physical damage, increased cost of use, limitations on use, interference with amenity and reduced attraction to purchasers. All must affect value to be compensable.

Valuation Methodology

The summation or piecemeal method was employed by each valuer. They were required to consider the reduction in value on the balance land due to injurious affection using this approach.

Other Matters

A range of other matters was considered by the Court in determining its overall conclusion to injurious affection.

- Detailed expert evidence, where available to the Court at the date of hearing, should be used as against assumed market evidence. The Court should not speculate where it knows; this approach applies equally to enhancement and injurious affection.

- Doubts relating to determination of compensation should be resolved in the claimant's favour, however there are limits to such rule. The rule is not concerned with valuation methodology or principle – but merely with determination of compensation.

- Reinstatement – four categories of reinstatement have been traditionally allowed by the Courts. A claim for reinstatement here by the claimant was not within one of these categories and no argument was advanced for a variation or addition to those categories; consequently the claim was refused.

Conclusions – Assessment of Compensation

The respondent's exercise of statutory powers in relation to the purpose of the resumption caused the claimant's balance land to be more susceptible to flooding than it would otherwise have been.

The increased susceptibility to flooding reduced the value of the claimant's balance land from what it would have been had the respondent's works not been carried out.

The measure of that value loss is not based on the need to fill the balance land such that its before works flood immunity is restored overall.

Neither is it based on the assumption that, absent the resumption, a prudent owner of the balance land would have been expected to fill the land such that it would achieve a Q20 flood immunity or better.

The measure of loss is based on a prudent owner filling selected sites on the land, such sites being (1) in association with the existing extractive operation – machinery and plant storage and repair; sand stockpiling and (2) in association with such potential for tourism use – planned building sites.

In addition, there was loss (1) associated with the extractive operation – inconvenience and risk of specified loss and (2) associated with the potential for tourism use – inconvenience and the risk of the specified loss including the need to design, plan and construct any such tourist development to take into account the prospect of greater inundation.

A piecemeal or summation approach by the Court resulted in an award exclusive of any interest of $5,000 for the extractive industry use and $20,000 for the tourist potential use.

A greater inconvenience and risk allowance was made for the tourism use than the extractive industry one as the former would be ongoing, while the latter had a foreseeable finite life.

3. CAMP

A strip of land of about 2,500 metres was resumed from a parent parcel of about 25,000 m² by the Department of main Roads for widening the South East Freeway at Eight Mile Plains. Located on the subject land were two leases (one for nursery, the other for landscape supply purposes). Businesses operated on these leases at the time of resumption. Further commercial approvals were in place, but not yet developed, on the remainder of the land.

A substantial part of the resumed strip was essentially a buffer area required as a condition of approval of the existing development permit granted in 1996; however the two leases incorporated part of this buffer area and were consequently substantially reduced in area by the resumption. So as to retain the leases for future periods, the resumee proposed to grant reconfigured leases using unassigned balance land. The new area granted to one of the lessees was not only superior land but also some 1,400 m² larger than the previous lease.

The major issues between the parties were:

- Whether, given that the land subject to the buffer zone had been resumed, it was necessary to establish another buffer adjacent to the new boundary;

- Whether the claimant's proposal to reconfigure the lease areas by granting additional land to the lessees to "compensate" them for the land taken from each of the lease areas was a reasonable response to the resumption;

- Whether it would be necessary for the claimant to apply to the Brisbane City Council for development approval for the proposed changes of use to the balance site.

New Buffer Zone

After hearing competing views from opposing town planners and having the opinion of a local authority planning officer, the Court concluded that a prudent purchaser would decide that a new buffer area would be unlikely to be required. It was probable that the use of the resumed area (partial screening from freeway) would be considered and further landscape requirements would be added to development approvals for the balance land.

The claimant argued that conditions of a development approval (including buffer requirements) would run with the land even if partial resumption was effected. However, the Court concluded the notion of conditions running with the land was more related to the binding of successors in title than the resumption scenario here.

Reconfiguring of Leases – Reasonable Response

It was important to address the reconfiguration as, on one view, such would affect the value of the balance land and increase the loss suffered by the claimant.

The Court cited the landmark House of Lords decision of *Director of Buildings v Shun Fung Ironworks* (1995) which stated that for compensation be awarded:

- There must be a causal connection between the resumption and the loss in question; and

- The loss must not be too remote; and

- The claimant must have behaved reasonably to eliminate or reduce any losses

> "If a reasonable person in the position of the claimant would have taken steps to eliminate or reduce the loss, and the claimant failed to do so, he cannot fairly expect to be compensated for the loss or the unreasonable part of it. Likewise if a reasonable person in the position of the claimant would not have incurred, or would not incur, the expenditure being claimed, fairness does not require that the authority should be responsible for such expenditure. Expressed in other words, losses or expenditure incurred unreasonably cannot sensibly be said to be caused by, or be the consequence of, or be due to the resumption."

The Court observed that, while there is a limit to the demands to which a reasonable lessor might accede, in principle, a reallocation of land is not an unreasonable response to a resumption.

With the nursery reallocation, the lessor had little choice as to what land could be reassigned, even though the additional land was superior to that resumed. Such was held to be a reasonable reaction in all the circumstances and causally connected to the resumption.

With the landscape supply lease, the Court concluded that the allocation of an additional 1,400 m² was not a reasonable response to the resumption because the lessee was now in possession of an area much larger than was originally leased to it.

This was held so even though the lessees claimed they would have moved the business if they were not allocated additional land and the lessor needed to preserve the rental income from the property.

Need for a New Development approval on Balance Area

The claimant's town planner said that the effect of the resumption, including the reinstatement of the buffer zone and the claimant's proposed reconfiguration of the leases, was that the amount of land available for the approved uses was significantly reduced, and that any application for approval for the changes which sought to preserve all the uses approved in the 1996 permit would lead to a greater intensification of use on the site. The changes therefore constituted a "material" change of use". In his opinion, there was a serious risk that an application to the Council made immediately after the resumption date for approval for such a material change of use would be unlikely to succeed. The changes in the planning scheme due

to come into force in October 2000 indicated that there was to be little or no commercial activity on land such as the subject land and that any material change of use for such land was generally to be regarded as inappropriate.

Counsel for the respondent submitted that the proposed changes to the development constituted a minor change of use only. This as because the resumption resulted in the highway buffer being lost, the nursery and landscaping businesses being relocated and, to varying degrees intensified, the loss of one of the uses (probably Stage 5 the veterinary surgery) from the overall development, and the loss of two car parks from the nursery business.

The Court decided that a prudent purchaser would conclude that there is likely to be a material change in the intensity or scale of use of the premises and a consequent decrease in the undeveloped areas of the property. It would therefore be necessary to make a new application for a development approval.

It was likely that the existing businesses would retain their approval and proposed reallocation of leases would be approved. Given the new planning scheme, there was a serious risk that Council would not allow all of the remaining uses to be developed on the balance site. Some modification would be necessary.

Valuation Methodology

Both valuers adopted the same general approach to their valuations. The Court approved such methodology but made adjustments to certain components.

The leased areas of the property were valued on a before and after basis by capitalisation of rentals. The balance area was valued on a before and after basis by comparison with sales of similar properties. The claimant's valuer provided the only market evidence to support his capitalisation rate (being 1% lower than the respondent in the before situation). He relied on two sales to establish the net return expected by an investor for the type of development here in question. This rate was accepted by the Court.

The Court also considered it appropriate to increase the capitalisation rate in the after valuation by 1.5% to allow for uncertainties, including in the relationship between the parties to the nursery lease post resumption.

4. NEVIS

The claimant conducted a self-storage business adjacent to the Pacific Highway at Loganholme. In 1999, a strip of land some 20 metres wide was resumed from the parent parcel for "transport purposes and incidental purposes". Compensation was determined after a Land Court hearing at $854,719.00.

The Land Appeal Court remitted the matter to the Land Court for rehearing on one particular aspect – on the issue of further compensation based on the intervening High

Court decision *Marshall v Department of Transport* (2001) 75 ALJR 1218. The latter decided that compensation for injurious affection to the balance land is to encompass losses that can be foreseen due to the total scheme of works, not only works on the resumed land.

The claimants sought a rehearing on this issue on the basis that business loss was suffered as a result of a reduction in exposure to highway traffic and the adverse effects of past and future roadworks. This loss was claimed to relate to two events: the widening of the Pacific Highway to six lanes between 1995 to 1997, and likely future loss caused by subsequent plans to widen the highway to eight lanes. No land was resumed from the claimant for the first widening.

The respondent applied (under r.19(2) of the *Land Court Rules*) for a determination of a preliminary point as to what works constitute the scheme pursuant to which the claimants land was resumed. Leave to argue the preliminary point was granted on the basis of reducing the amount of evidence to be tendered, shortening the time for hearing and saving of costs at the proposed later rehearing.

The single issue before the court was whether the purpose of the resumption was for the widening of the Pacific Highway from four to six lanes as a first stage, and then to eight lanes as a second stage (claimants contention) or was it solely for the purpose of widening the Pacific Highway from 6 to 8 lanes (respondent's contention).

The claimants contended that from the 1980s there was a corporate knowledge within the Main Roads Department that six lanes would not be sufficient to cope with traffic in the longer term. The six lane project was simply a step in the process that would lead to an eight lane Pacific Highway.

The respondent argued that the purpose of the resumption was for the SET project, upgrading of the Pacific Highway from six to eight lanes. It relied on Cabinet decision of February 1992 to upgrade the highway to a maximum of six lanes in conjunction with a detailed investigation of an Eastern Corridor project. It was not until a change of Government in 1996 that a decision was made to upgrade the highway from six to eight lanes and abandon the Eastern Corridor project. The two decisions were unrelated made by different Governments four years apart. The second decision was not the second stage of some overarching scheme nor the first decision the first stage of such a scheme.

The Court held:

1. The preliminary point sought by the parties for determination was what works constitute the "scheme" pursuant to which the claimants' land was resumed.

2. With injurious affection claims, it is preferable not to consider the scheme but to focus on the purpose for which the land was taken. The "scheme" here is not the same as the "scheme" in the *Pointe Gourde* situation. The latter principle is concerned with value of the resumed land – any enhancement or depreciation in value as a result of the scheme must be ignored.

3. In the present case, in assessing injurious affection regard should be had to the damage caused by the exercise of statutory powers of the Government authority on other (balance) land of the claimants.

4. The principles determined by the Privy Council in *Shun Fung* (1995) are not applicable in the present case. The issue in *Shun Fung* was whether the claimant was entitled to business losses which occurred prior to the resumption. Such losses were allowed if incurred in anticipation of resumption and because of the threat which resumption presented.

   In the present case there was no suggestion of resumption of the subject land until it was decided to undertake the eight lane project.

5. It does not matter what individual departmental officers thought about the ultimate development of the highway. Such did not influence the Cabinet decision in early 1992 to upgrade to six lanes and continue with the planning for the Eastern Corridor.

6. The next critical decision was in early 1996 following a change of Government. In fulfilment of an election promise, the Government abandoned the Eastern Corridor project and directed the department to commence planning for upgrading of the eight lane highway. The first decision was not related to the second. The second decision caused the resumption of the claimant's land.

7. There are two separate projects – the six lane project and the eight lane project. They are not part of a wider project to upgrade the Pacific Highway. Decisions to proceed with each project were made by different Governments at different times.

8. This conclusion is reinforced by the fact that much of the infrastructure with interchanges and underpasses (constructed the six lane project) had to be demolished or substantially changed to accommodate the eight lane plans.

9. The project pursuant to which the claimants' land was resumed was the project to undergrade the highway from six to eight lanes; the project to upgrade from four to six lanes was a separate project and had no relevance to the resumption of the subject land.

5. HABER

This case is noted here on the *solatium* aspect only.

In *Land Acquisition* by Douglas Brown (4th edition 1996) dealing with the heading "Solatium", the author discusses whether, in addition to other heads of compensation, the dispossessed owner is entitled to an additional sum for hardship, inconvenience, trauma or unspecified loss caused by the resumption; in other words "a solatium".

Brown refers to the underlying scheme of compensation as seeking to ensure that the dispossessed owner is no worse off or better off as a result of the resumption and an award of solatium is a recognition that the amount of compensation may not have covered every foreseeable loss; solatium is a kind of sweetener reflecting some kind of apology. According to Brown, the courts used to apply a right for such payment in appropriate circumstances. However with the introduction of comprehensive and detailed provisions in respect of compensation, in the absence of express provision, the courts will be unlikely to apply such a provision.

Counsel for the claimant in Haber argued that the reference in s.20(1) of the *Acquisition of Land Act* to the "value of the land taken" is wide enough to include special value and disturbance and also the concept of solatium.

In the present case, the claimant linked a claim for solatium to a claim for special value totalling $195,000. The claim was grounded on the length of time the property had been owned by the claimant, the time and effort he had put into the park, the frustrations of his plans for the future and the stress and injury which the resumption has caused to the claimant.

The respondent submitted that the right to compensation is statutory and there is no right to solatium to be found in s.20 of the Queensland *Acquisition of Land Act*. Although compensation is often awarded for disturbance, it is not a separate subject of compensation but is bound up with value to the owner. The respondent further submitted that the matters upon which compensation was claimed will lie only if they can be categorised as falling under the heading of disturbance or special value. However, these matters listed come within neither category. Citing *Boland v Yates*, the respondent argued there would be very few cases where there was special value for a particular owner and that neither sentiment or long attachment to the land amounted to special value; there must be a quality that has economic significance to the owner.

The Court held that the Queensland *Acquisition of Land Act* made no provision for payment of solatium. The authorities made it clear that, in the absence of such a provision, no award was to be made. The attempt by the claimant to link solatium to special value and disturbance must fail. Special value and disturbance are simply aspects of the value of the resumed land to the owner. Solatium is money paid over and above compensation as solace for the fact that the claimant's land has been taken compulsorily and to cover inconvenience and distress and injured feelings because of the compulsory nature of the resumption.

Special value must relate to the quality that is not personal to the owner but a quality of the land itself in the hands of the owner. None of the elements of this claim were found to have fallen under the heading of disturbance or special value in the present case.

6. SPRINGFIELD

Compensation for the taking (by agreement) of the subject land by the State for school purposes from the Springfield Land Corporation (SLC) was determined at $2,050,000. The amount finally claimed by SLC was $4,865,000. The amount of the valuation finally put in evidence by the State was $1,100,000.

The State made application for its costs under s.27(2) of the *Acquisition of Land Act* and argued that three features of the case warranted a costs order in its favour:

(a) SLC was not an unwilling resumee with no interest in the resumption; that the acquisition of the land for school purposes had been promoted by SLC to serve the commercial interests as the developer of the Springfield Residential project; SLC could clearly be distinguished from the normal resumee who had unwillingly suffered an invasion of his property rights;

An element of enhancement (but not within s.20(3) of the *Acquisition of Land Act*) for the balance SLC land was also allegedly present.

(b) SLC claim was exorbitant; its claim was almost $3,000,000 over that ultimately awarded.

(c) Unsatisfactory aspects of promotion of SLC's claim; that it provided its valuer with "exaggerated information"; that it consulted an expert in commercial potential but chose not to call his evidence in Court; that it attempted to produce a contract in relation to the subject land during the period it was still attempting to have the State take the land.

The Court held:

1. The scope and exercise of the Court's discretionary power in costs issued summarised by the Land Appeal Court in the *Yalgan* decision were appropriate to govern the present case.

2. Section 27(2) halfway rule is intended to discourage exorbitant costs; but its consequence is that a resumee is disentitled to costs when the facts would suggest the claim has been successful, despite not reaching the halfway point. A strong argument could have been advanced to have costs against the State in this case but for s.27 to fetter.

3. The State did not acquire the land for the purpose of enriching SLC, but rather to provide a benefit to the Springfield and neighbouring community as a whole. The end result was that the question of compensation was able to be determined in accordance with the Act, just as is the question of costs.

4. There was no justification for an award of costs to the State under feature (a).

5. The State's submission on feature (c) amounted to a gratuitous and irrelevant criticism of the claimant or its advisors; there was no evidence to suggest the claimant presented its case to impose an unnecessary and unreasonable burden on the State or the Court.

6. There was nothing to suggest from SLC's perspective making a claim was exorbitant. The potential of land was found to be generally in keeping with the case of SLC, but futuristic not short-term.

7. The conduct of SLC was not such as to have forced the State unreasonably and unnecessarily into litigation; nor had SLC pursued a vexatious or dishonest claim.

8. It had been reasonably necessary for SLC to pursue its claim based on a potentiality rejected by the State and significantly in excess of the State's valuation.

9. One consequence of SLC having made an exorbitant or grossly exaggerated claim in the light of the determination is that it is disentitled to its costs and has permitted the State to avoid the possibility of an award against it.

10. The application for costs by the State was disallowed; the State was ordered to pay the respondent's costs of this application.

TABLE OF CASES

1. *Spender v Chief Executive, Department of Natural Resources and Mines,* Land Appeal Court, 19 December 2003, [2003] QLAC 0086.

2. *Marshall v Department of Transport*, Land Court, 27 February 2004 [2004] QLC 0009.

3. *Camp v Department of Main Roads*, Land Court, 7 April 2004 [2004] QLC 0031.

4. *Nevis v Department of main Roads*, Land Court, 29 July 2003 [2003] QLC 0052.

5. *Haber v Department of Main Roads*, Land Court, 28 November 2003 [2003] QLC 0083.

6. *Springfield land Corporation v The State*, Land Court, 25 July 2003 [2003] QLC 0051.