

27.9.16

In the Privy Council 28, 1951 No. 31 of 1950.

**ON APPEAL**  
FROM THE SUPREME COURT OF CANADA.

BETWEEN

THE CITY OF MONTREAL - - - - - *Appellant*

AND

SUN LIFE ASSURANCE CO. OF CANADA - - - - - *Respondent.*

RECORD OF PROCEEDINGS—Vol. 5

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W.C.1.

12 NOV 1958

INSTITUTE OF ADVANCED  
LEGAL STUDIES

45154

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**DOMINION OF CANADA**

**In the Supreme Court of Canada**

**(OTTAWA)**

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On Appeal from a judgment of the Court of King's Bench.

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10 BETWEEN:—

**SUN LIFE ASSURANCE CO. OF CANADA,**

Petitioner before the Board of Revision;  
Plaintiff-Appellant in the Superior  
Court;  
Appellant-Respondent in the Court of  
King's Bench, Appeal Side,

20

**APPELLANT,**

— and —

30

**THE CITY OF MONTREAL,**

Respondent before the Board of  
Revision;  
Respondent in the Superior Court;  
Appellant-Respondent in the Court of  
King's Bench, Appeal Side,

40

**RESPONDENT.**

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**JOINT CASE**

**VOL. V — PLAINTIFF'S & DEFENDANT'S EXHIBITS (Continued).  
JUDGMENTS, NOTES AND APPENDIX, &c. (Page 846 to 1154).**

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PLAINTIFF'S EXHIBIT P-12 AT ENQUETE

*Report of Mr. Gaspard Archambault.*

VALUATION  
OF  
SUN LIFE BUILDING  
Montreal

10 as at December 1st, 1941.

*Replacement Cost of Building*

22,000,000 cu. ft. @ \$0.80 .....		\$17,600,000.	
Less cost to complete unfinished Stories and spaces —			
2,323,000 cu. ft. @ \$0.20 .....		464,600.	17,135,400.

*Depreciation*

20 Physical depreciation (about 1.4 per annum) \$233,664.	15 %	2,570,310.	
Obsolescence	5 %	728,255.	
Functional depreciation			
a) Low ratio of rentable area	18 %	2,490,630.	
b) Value of renting space below normal.	19 %	2,155,779.	7,944,974.
			\$ 9,190,426.

30 *Total depreciation is equivalent  
to 46.37%*

Special deduction, to readjust abnormal 1941 wartime prices to 1939 level.	10 %		919,043.
--	------	--	----------

*Replacement Cost of  
Power House*

Building & Equipment — 552,000 cu. ft. @ \$1.00 .....		552,000.	
40 Depreciation	46.37%	265,962.	
		286,038.	
Special Wartime Deduction	10 %	28,604.	257,434.
			\$ 8,528,817.

Real Value — BUILDING	\$8,271,383.
POWER HOUSE	257,434.

\$8,528,817.

Gaspard Archambault, C.E.  
March 20/43.

PREAMBLE

Montreal, March 16th, 1943.

Mr. D. L. Macaulay,  
Sun Life Assurance Company of Canada,  
Montreal.

Re: *Valuation of Sun Life Building — Montreal.*

10

Dear Sir:

I have made, at your request, a valuation (exclusive of land) of the Sun Life Building in Montreal as at December 1st, 1941

Building	\$ 8,271,383.	
Power House	257,434.	<u>\$ 8,528,817.</u>

20

I surveyed the premises completely and thoroughly, examining carefully every floor including the basements, the roof and the exterior of the building. I was accompanied by Mr. A. C. Paine, your Architect, who placed himself at my disposal and supplied me with plans of the building, and any other additional and necessary information required.

30

You have given me some data, figures, concerning the cubic contents, gross and rentable floor areas, floor heights, and other figures which I have accepted as being accurate and on which I have based my valuation.

This valuation has been made according to the method known as "Replacement Cost less Depreciation" and, in my opinion, would represent the *MAXIMUM VALUE* of the Building, because when it refers to buildings, Cost does not necessarily represent *Value*; Cost being generally *Higher* than *Value*.

40 This applies especially to buildings adorned with elaborate embellishments, the cost of which is out of proportion with their practical, commercial or real value; and again to the use of very expensive, high class materials, which will show a very light physical depreciation only, long after the building in which they are incorporated has lost its *COMMERCIAL VALUE* through obsolescence.

This is why another factor of outstanding and primary importance, the *COMMERCIAL VALUE* of a building, must also be taken into consideration in order to determine its *REAL VALUE*.

Mr. Honoré Parent, K.C., Director of Municipal Services of the City of Montreal, Representative of the Quebec Municipal Commission, in his "Manuel d'Estimation des Biens-Fonds", published in 1936, explains the Law, Fundamental Principles, and Methods employed in Estimating Property (Real Estate).

10 In the first 57 pages of his treatise, Mr. Parent discusses at length the Value of Property, how this Value is measured and explains (Page 27) the Law governing Municipal Valuation in the City of Montreal.

He states that in preparing a "Valuation Roll", property should be assessed or estimated at its *REAL* or *ACTUAL VALUE*, declaring that the terms *REAL VALUE* and *ACTUAL VALUE* are equivalent.

20 After a lengthy and elaborate analysis, Mr. Parent in the last paragraph of page 57, comes to the following conclusion:

That no matter how you consider this problem, there is only *one solution*, namely, that Valuation Rolls, must be based on *CURRENT VALUE*, only, that is

"The price which a willing seller would obtain from a buyer, who is not obliged to buy."

30 I respectfully suggest that the following is a more complete and appropriate definition of the *VALUE* described above:

"The highest price in terms of money which a property will bring when exposed for sale in the open market with a reasonable time allowed to find a purchaser, with a full knowledge of all the uses to which it is adapted and for which it is capable of being used."

40 In this definition the free and competitive market feature is present, but in addition it is contemplated that the purchaser must have a true appreciation of the potential utility of the property.

Following out Mr. Parent's theory of the "*WILLING BUYER*", which is in agreement with other authorities on Valuation of Real Estate, let us analyse what consideration would influence the price which said "buyer" would feel justified in paying for the Sun Life Building, which is essentially an *INVESTMENT PROPERTY*.

*INVESTMENT PROPERTIES* are valued on their capacity to produce income and are purchased by one who seeks a definite and adequate return on the capital invested, and such a property should show a return which, capitalized, indicates its value.

10 Income becomes a primary factor in valuation, and the occurrence of the income is subsequent to the valuation and is therefore anticipated rather than actual.

The purchaser has not nejoyed the property before the date on which he buys it, therefore the productivity which gives the property value to him must lie in the future, as it is not the actual income productivity which produces its value, but rather its anticipated or expected income productivity.

20 Therefore, the present worth of the property depends upon its *ANTICIPATED EARNINGS*, and these should be established as precisely as possible, over a period of time which is proportionate to the importance and character of the property under consideration.

30 Too great importance cannot be attached to the fact that "Real Value is established on a basic consideration of the *PRESENT WORTH* of the *FUTURE BENEFITS* of the property and not on rent for the past years."  
(Page 332 — McMichael's Appraising Manual 1938).

In view of the above a Prospective Buyer would estimate not only the *DEPRECIATED REPLACEMENT COST VALUE* of the Building, but he would also ascertain as accurately as possible the average *ASSUMED NET FUTURE REVENUE* of the property during its remaining economic life, and capitalizing this net income (before depreciation) at a fair rate, obtain the *COMMERCIAL VALUE* of the property, including the land and building.

40 In estimating the Commercial Value of the Sun Life Building, the following points which will affect this value should be taken into consideration:

#### 1.—OCCUPANCY.

It is interesting to note that the percentage of Occupancy of the Sun Life Building averaged 60.8% for the years 1937, 1938 and 1939, increasing to 73.2% for years 1940 and 1941, and practically 86.5% which is considered as normal occupancy for 1942.

The future net income should evidently not be based on the high rate of occupancy brought about by abnormal war conditions.

## 2.—MARKETABILITY.

10 A buyer will have to face the fact that he is investing his money in holdings that will be very difficult to liquidate, owing to the large amount involved, and also because the Commercial Value of the Property will be decreasing in proportion to its revenue, which will diminish as the Building is gradually affected by old age.

The greater the difficulty in marketing an investment, the higher the rate of interest the prospective purchaser will expect.

## 20 3.—CHANGE IN UTILITY DEMAND.

This Building was originally intended to be occupied exclusively by the Sun Life Assurance Company of Canada and was designed accordingly, with long and deep rooms to accommodate large clerical staffs that could be easily supervised by a department head.

30 Although this building has been completed only thirteen (13) years ago, great changes have already taken place in this short period inasmuch as its utility is concerned.

We find with present occupancy of 86.5%, which is practically normal occupancy, that 48.7% only of the occupied space is used by the Sun Life Assurance Company of Canada: the purpose for which the building had been originally planned.

Of the occupied space, 39.9% has been rented to the public, private companies: a utility purpose different from the concept which the owners had in mind when the building was designed.

40 The unoccupied vacant space, 11.4%, of which 9.3% is unfinished, is intended for tenant occupancy.

Extensive and costly alterations on different floors have failed to provide modern offices.

The 17th and 18th floors, taken as an example, show clearly that the Building cannot adapt itself satisfactorily to changes in utility demand.

The Aluminum Company of Canada Ltd. rented these two unfinished floors a couple of years ago; the floors were just a vast open space with no partitions, no plaster, no finished flooring, etc.

10 The Aluminum Company of Canada Ltd. with the aid of capable designers laid out these two floors and had them finished to obtain the best possible modern office accommodation from the available space.

The result was as follows, over a gross area of 34,500 sq. ft. for each floor:

20	<i>17th Percentage of Gross Floor Area</i>	<i>18th Percentage of Gross Floor Area</i>
Outside offices with daylight	41%	44%
Inside offices — dark	17%	14%
Halls, service areas & storage	42%	42%
	<u>100%</u>	<u>100%</u>

30

These percentages of 41% and 44% for outside offices with daylight compare very poorly with other local buildings. The Dominion Square Building has practically 80% (a normal percentage) of the gross area of its floors made up of outside offices with daylight (see plans).

40 In other words, the Building, after 13 years of existence only, already feels the necessity of *REMODELLING*; a positive factor of creeping *OBSOLESCENCE*.

#### 4.—RATIO OF VOLUME TO ONE SQUARE FOOT OF RENTABLE FLOOR.

“A gauge of planning skill is the general rule that *every twenty to twenty two* cubic feet of construction should produce one square foot of rentable area”.

(Page 170 — Architectural Record — (building Types) (December 1938).



10 “The given figures for depreciation assume an economic life of 50 years for office buildings, or an annual depreciation of 2 per cent. On the basis of an original investment of \$12. per square foot of rentable area (20 cu. ft. for each square foot of rentable area at 60¢ per cu. ft.) and 2 per cent for depreciation, the amount that must be set aside every year for each square foot of rentable area is 24¢.”

(Page 56 — Prouty, Collins & Prouty.)

The Sun Life Building with a total cube of 22,000,000 cubic feet and a total rentable area of 780,680 sq. ft. (some of which is dark and storage space) requires 28 cu. ft. for one square foot of rentable space or 1/3 more volume than in the average office building.

\* \* \* \* \*

20

The buyer should add to the sum of \$8,528,817. a fair price for the land and the total obtained will represent the *REPLACEMENT COST* less *DEPRECIATION VALUE* of the *PROPERTY* (Land & Building).

He should also establish the *COMMERCIAL VALUE* of the *PROPERTY*.

30

With these two values at hand, a comparison should be made, and should the *REPLACEMENT COST* less *DEPRECIATION VALUE* of the *PROPERTY* prove to be higher than its *COMMERCIAL VALUE*, then a downward revision should be made in order to find its *REAL VALUE* and what price should be paid for it; as the *COMMERCIAL VALUE* is the one to which the willing buyer will attach the most importance, when he contemplates, investing his money in this property.

Yours truly,

40

Gaspard Archambault.

\* \* \* \* \*

REPLACEMENT COST

BUILDING—

Materials and workmanship of the very best quality were used throughout in the construction of this building.

This building was erected in three stages: the first unit, from 1914 to 1918; the second unit, from 1923 to 1925; and the third unit, from 1927 to 1930.

As this last unit comprises about 85% of the whole Building, I have, in estimating its replacement cost, considered the *TOTAL* structure as having been built in one complete continuous operation, instead of at three different stages, and have accepted its cubic contents as being \$22,000,000 cubic feet, the replacement cost of which I value at \$0.80 per cubic foot.

22,000,000 cubic feet @ \$0.80 ..... \$17,600,000.

The 11th, 20th, 22nd, 23rd, 24th, 25th, 26th floors, and portions of the ground, 10th and 19th floors are unfinished.

20 These unfinished parts represent 2,323,000 cubic feet, and I allow \$0.20 per cubic foot to complete these parts, which amount I must deduct from the \$17,600,000.

2,323,000 cubic feet @ \$0.20 ..... 464,600.

\$17,135,400.

30 The following factors which tend to lower the cost per cubic foot, must be taken into consideration:

10.—LARGE VOLUME OF UNDIVIDED SPACE.

a) "The effective gross story height is assumed as averaging 12'-0"  
(Reference page 170 — Pencil Points for March 1932).

40 Excessive gross story height of 14'-6" on the 23 rentable floors above ground as against a normal height of 12'-0", gives an excess volume of 20% of undivided and unfinished space per floor.

This accounts for large volumes of empty space, which are estimated at the high price of \$0.80 per cubic foot.

Notice should be taken of the fact that if the story height in the Sun Life Building was the usual average height of 12'-0", instead of 14'-6", 27 stories could have been built in the height actually taken up for the 23 rentable floors above ground, an addition of 4 floors with no additional height in the outside walls.

*Gross Story Height  
Typical Floors*

Dominion Square	—	Montreal	11'-0"
Insurance Exchange	—	"	10'-3"
Aldred	—	"	12'-0"
Transportation	—	"	11'-3"

10

Gross story heights of office buildings in New York City are usually between 11'-3" and 12'-0".

- b) *Blind Floors.*—7A and 16A duct floors which correspond to an attic over a house, with a volume of approximately 917,000 cubic feet or over 4% of the total cubic of the building, this undivided and unfinished space is also included at \$0.80 per cubic foot in the total cost.
- c) *Large Undivided Spaces.*—Some of general floors below 8th floor contain large "office" or other undivided space of which the following are good examples:

20

*Approximate  
Cube*

	<i>Ground floor—East side accountant space in original Building on ground and 1st floors, adjoining main office and Banking Room on west side....</i>	472,000	
30	<i>2nd floor—Undivided accounting of office spaces, east, west and north....</i>	495,000	
	<i>3rd floor—North and east sides 25,000 sq. ft. or more, representing....</i>	340,000	
	<i>4th floor—East and west sides — 28,000 sq. ft. or more, representing....</i>	380,000	
	<i>5th floor—East and west sides — 20,800 sq. ft. or more, representing....</i>	270,000	
40	<i>6th floor—Dining room — 12,600 sq. ft. or more, representing....</i>	176,000	
	<i>7th floor—Lounge rooms — 8,000 sq. ft. or more, representing....</i>	116,000	<u>2,249,000</u>

These unusually large volumes (over 10% of the total cube of the building), which are undivided and represent an abnormal cube of empty space, tend to reduce the total cost per cubic foot.

20.—EXCESSIVE BASEMENT SPACE.

Three (3) floors with an approximate volume of 3,105,000 cubic feet, or about 14% of the total cube of the building.

The finish in these basements, although much cheaper than that of the rest of the building, is also included @ \$0.80 per cubic foot in the total cost.

30.—The SHAPE of the building, a rectangle twice as long as it is wide, with only one break for a small light well, is an economical one for building operations.

40.—HEATING EQUIPMENT.

The cost of this Equipment which is located in the Power House, outside of the Building is not included in the \$0.80 per cubic foot replacement cost of the Building.

PHYSICAL DEPRECIATION

This building generally speaking is in excellent physical condition due to the extraordinary care that has been given to its maintenance.

This is why the percentage of Physical Depreciation which has been estimated by personal survey, is in some cases extremely low.

I have classified the component parts which make up the total cost of the BUILDING into four (4) groups; each group being made up of items which in my opinion, have been affected to the same extent by Physical Depreciation.

GROUPS	A Percentage of Total Cost	B Percentage of Depreciation	C Percentage of Depreciation to Total Cost
1. — Foundations & Waterproofing, Concrete Structure, Brick, Terracota, Granite, Exterior Terracota, Syenite cols, Structural Steel, Marble, Tile, Terrazo, Metal Windows & Glazing, Bronze, & Iron Works, Hardware .....	60%	10%	6.00
2. — General conditions, Temporary Constructions & Sundries, Architects Fees, Interest, Taxes, Insurance, Doors, Trim & Woodwork, Plastering, Painting .....	19%	15%	2.85
3. — Electric Wiring, Elevators, Plumbing, heating (no boilers included) Ventilation and Compressed Air .....	20%	30%	6.00
4. — Roofing, Linoleum and Floor Covering .....	1%	35%	0.35
	100%		15.20%

Column "A"—% of cost of each group compared to the total cost.

“ “B”—% of Depreciation by which each group is affected.

“ “C”—% of Depreciation of each group in relation to the total cost.

The total of Column "C" 15.20% represents the total Depreciation.

I therefore feel justified in stating that the PHYSICAL DEPRECIATION is equal to 15% of the Total Cost of the Building.

## DEPRECIATION BY OBSOLESCENCE.

### *Obsolescence:*

10 “That change in building value due to normal progress in the arts, changes in styles, inadequacy to present or growing needs, or the necessity for replacement due to new inventions.”

(Pag 402 — Valuation of Real Estate — Babcock.)

20 I refer to this particular loss in value, which is attributable to the fact that certain items incorporated in the building, although they are of the best quality, in good physical condition, and in many instances, still capable of giving good service, have gone out of style, are no longer in demand, become a constant reminder of the age of the building and are prejudicial to good rentals.

This also applies to architectural features which although looked upon with favour in the past, would not be tolerated in new structures.

This condition which depreciates a building commands, where possible a correction, which is seldom very successful.

30 This obsolescence will be found in the following amongst other items:

Electrical fixtures,  
Heavy unconcealed cast iron radiators,  
Hand operated control elevators,  
White ceramic tile in kitchen floors,  
Ventilation outlets,  
Etc.

40 A very low depreciation of 5% has been placed on the Sun Life Building as a result of this obsolescence.

### FUNCTIONAL DEPRECIATION DUE TO LOW RATIO OF RENTABLE TO GROSS AREA

“It is commonly thought that net rentable area should represent 70 to 85 of the gross area, depending upon the height of the structure”.

Page 100 — Architectural Record — Building Types — 1938).

“The net area is assumed as a certain percentage of the gross, roughly from 75 to 80 per cent, depending upon the extent to which the plan is broken up.”

(Pages 881-883 — Factors in Office Building Planning, by James B. Newman — Architectural Forum — Part II — June 1930).

10 I have adopted the ratio of 78% as being a fair average of what should be the proportion of rentable to gross floor area (inside measurements) in office buildings.

In calculating the ratio of gross area inside walls on rentable floors only, to the net rentable area, in order to ascertain how this ratio compares with the normal one of 78% in the well planned office building, I have considered in the Sun Life Building the 23 *rentable* floors above ground *only*, leaving out the basement floors which have a gross area of 216,500 sq. ft. and a rentable area of only 72,106 sq. ft. a low ratio of 33%.

20 I have not included either the 7A floor which has a gross area of 61,169 and a rentable area of 2,566 sq. ft., a ratio of 4.2%.

*Rentable Area—*

23 rentable floors above ground only 706,008 s. ft.

*Gross Area—*

23 “ “ “ “ “ “ 1,100,578 s. ft.

Ratio of rentable to gross is: 64%

30 This low rate of 64% is 82% of the normal ratio and justifies a depreciation of 18% on the building.

If we include the basements and floor 7A, we have:

*Rentable Area—*

All floors, except 16A-24th-25th-26th 780,680 s. ft.

*Gross Area—*

“ “ “ “ “ “ “ 1,378,247 s. ft.

Ratio of rentable to gross is: 56.6%

40 Comparing total gross area of *all floors* in the building to rentable area:

*Rentable Area—*

All floors in the building 780,680 s. ft.

*Gross Area—*

“ “ “ “ “ “ 1,144,137 s. ft.

Ratio of rentable to gross is: 54.1%

This leaves 45.9%, a very high percentage of unrentable floor space which is used for services only.

FUNCTIONAL DEPRECIATION due to LOW ratio of  
RENTABLE to GROSS area

*Total Gross Area on Rentable Floors.*

(inside measurements)	Basements	( 3) floors	216,500 s. ft.
(inside measurements)	Above Ground	(23) floors	1,100,578 s. ft.
			1,317,078 s. ft.

<i>Rentable Areas</i>		(Basements) (3 floors)	(Above) (Ground) (23 floors)
1-2	(b) Office space outside —light—		560,328 s. ft.
3	(c) Office space inside —dark—		88,131 s. ft.
4	(f) Potential corridors —dark— 17,768		
	(g) Locker rooms —dark— 16,466		34,324 s. ft.
5	(d) Locker rooms (used otherwise) —dark— 2,525		
	(e) Service areas (used otherwise) —dark— 16,221		
	(h) Elevators, Bank areas b & c —dark— 3,941		
	(j) —dark— 628		23,315 s. ft.
6	(c) Rentable space —dark—	67,843 s. ft.	
7	(g) Locker rooms —dark—	2,062 s. ft.	
8	(d) Locker rooms (used otherwise) —dark— 1,796		
	(e) Service areas —dark— 403	2,201 s. ft.	
		72,106 s. ft.	706,008 s. ft.

		Rentable Area	Gross Area	Percentage of rentable to Gross Area
Basement	( 3) floors	72,106 s. ft.	216,500 s. ft.	33%
Above Ground	(23) floors	706,008 s. ft.	1,100,578 s. ft.	64%
Total Areas	.....	778,114 s. ft.	1,317,078 s. ft.	59%

Ratio of total gross floor area on rentable floors to total rentable area equals 59%.

*Depreciation*

Taking into consideration areas above ground floor only, percentage of rentable to gross area is 64%, as against the normal ratio of 78% in the average well planned office building.

This low percentage of rentable area depreciates the building by 18%.

N.B.—7A Floor with only 2,566 sq. ft. rentable not included in above.

GROSS FLOOR AREAS (inside measurements)

*Unrentable Floors* (5 floors used for services)

7a	56,059 square feet	
16a	37,000	"
24th	19,000	"
25th	7,500	"
26th	7,500	"
		127,059 s. f.

*Rentable Floors* (Basement) (3 floors below Ground)

3rd	54,000 square feet	
2nd	79,000	"
1st	83,500	"
		216,500 s. f.

(above ground) (23 floors)

Ground	78,027 square feet	
1st	78,720	"
2nd	72,915	"
3rd	74,388	"
4th	78,771	"
5th	71,716	"
6th	71,384	"
7th	56,059	"
8th	51,511	"
9th	43,721	"
10th	52,202	"
11th	36,490	"
12th	36,490	"
14th	36,490	"
15th	36,490	"
16th	36,490	"
17th	34,500	"
18th	34,500	"
19th	34,500	"
20th	25,107	"
21st	25,107	"
22nd	24,000	"
23rd	19,000	"
		1,100,578 s. f.
		<u>1,444,137 s. f.</u>

SUMMARY

Total gross area of unrentable (5) floors (service)		127,059 s. f.
Total gross area of rentable (3) floors (basements)	216,500	
Total gross area of rentable (23) floors		
	(above ground 1,100,578	
		<u>1,317,078 s. f.</u>
Total gross area .....		<u>1,444,137 s. f.</u>

Ratio of total gross floor area to rentable floor area = 54.1%.



## FUNCTIONAL DEPRECIATION

### DUE TO

#### RELATIVE VALUES OF RENTABLE AREAS

10

It is an accepted fact that daylight is a very important factor in the value of office space, and that this value is affected to a great extent in proportion to the amount of daylight which it receives.

In order to classify the value of the different rentable spaces in the Sun Life Building, I have made use of coefficients, adapting the figure 1 for space having normal rental value.

20

10.—This coefficient of one (1) is applied to space within 30'-0" from windows and receiving daylight through same.

20.—A coefficient of one half ( $1/2$ ) is used for that space receiving daylight from windows which are further than 30'-0" away, which means that in an office say 50'-0" deep and lighted by windows, the space beyond 30'-0" from the windows has only half normal value, or is worth half in comparison with the space within 30'-0" from the windows which has a normal value of one (1).

30

30.—There are in the building many inside rooms which, having no windows and receiving no daylight, are dark.

On account of the ventilation provided in these rooms, some of them are used as offices. I used the coefficient of one third ( $1/3$ ) in estimating their value, as, in my opinion, this space has only one third normal value.

40

40.—50.—Corridors; lockers and storage space with no daylight I estimate to be worth one quarter ( $1/4$ ) of the normal value.

The table on the following page made on the above basis gives a resultant value of 80.66% of normal value, and a depreciation of 19.34% to the rentable area exclusive of basement.

I therefore, on this account, depreciate the Replacement Cost of the Building by 19%.

A further depreciation of rentable areas which would be justified, but has not been taken into consideration, is the one due to the fact that parapet walls or balustrades obstruct, and diminish considerably the amount of daylight coming into the building through the windows. This occurs at different floors, notably at the 20th and 23rd floors.

- 10 The unsightly bulkheads, which break up the level of the ceilings in many rooms, are also a depreciation factor.

FUNCTIONAL DEPRECIATION due to RELATIVE  
VALUES of RENTABLE AREAS  
(Exclusive of Basements)

20 A coefficient of 1 is used to determine the value of normal rentable areas.

	Rentable Space Sq. ft.	Percen- tage	Value Coeffi- cient	Normal Value
1.—Office space outside light within 30'0" from windows	490,406	= 69.5	X 1	= 69.50%
2.—Office space outside light further than 30'0" from windows	69,922	= 9.9	X 1/2	= 4.95%
3.—Office space inside —dark—	88,131	= 12.5	X 1/3	= 4.18%
4.—5.—(within Service area) Storage Space inside —dark—	23,315			
Lockers & Corridors inside —dark—	34,234	= 8.1	1/4	= 2.03%
	706,078 sq. ft.			
		100.00%		80.66%

Due to the dark and inconvenient location of some of the rentable spaces, the average value of the rentable areas is only 80.66% of normal, a depreciation of 19.34%

This diminution in value depreciates the building 19%.

COMPARISON OF 17th & 18th FLOORS OF SUN LIFE BUILDING  
WITH  
TYPICAL FLOORS OF OTHER OFFICE BUILDINGS  
IN MONTREAL

			Floor to Floor Height	Gross Area Inside Walls	Rentable Area	% Rentable Gross	% Outside Offices Gross Area	Cubic Feet For One sq. ft. Rentable Floor		
Transportation	Building	—	Typical Floor	—	11'-3"	13,100	11,346	86%	86%	13.
Insurance Exchange	"	—	"	—	10'-3"	20,000	17,300	86%	86%	11.85
Dominion Square	"	—	"	—	11'-3"	33,700	26,300	78%	78%	14.1
Sun Life	"	—	17th	—	14'-0"	34,500	22,781	66%	41%	21.2
" "	"	—	18th	—	14'-0"	34,500	22,831	66%	44%	21.2

- It is to be noted that
- 1o.—The Ratio of net to gross is much lower on the Sun Life Building Floors.
  - 2o.—The Ratio of outside offices to gross area is much lower on Sun Life Floors.
  - 3o.—The number of cubic feet required for one sq. ft. of rentable floor is much higher on the Sun Life Floors.
  - 4o.—The Floor to Floor height is much higher on the Sun Life Floors.

### SPECIAL WARTIME DEDUCTION

The Replacement Cost used in this valuation was based on labor and material prices prevailing at December 1st 1941, and therefore reflects the abnormal rise in costs due to war conditions which had already taken place at the above date.

10

I am of the opinion that a deduction of 10% should be made from the 1941 costs to readjust them to the 1939 level, that of the year previous to the war, in order to obtain a FAIR and TRUE VALUATION under normal conditions.

### POWER HOUSE

#### *Replacement Cost*

20	Building 552,000 cu. ft.	@	\$0.45	=	\$ 248,400
	Equipment			=	303,600
					<hr/>
					\$ 552,000.

This is equivalent to \$1.00 per cu. ft. of Building.  
Applying the same depreciation as on the main

Building — or	46.37%	265,962.
---------------	--------	----------

30			\$ 286,038.
	Special Wartime Deduction 10%		28,604.
			<hr/>
			\$ 257,434.
	Replacement Cost =	\$257,434.	

### DEPRECIATION OF BUILDINGS

(Pages 52 & 56 — Appraising Manual (1938) — McMichael.)

40 “*Functional obsolescence* attaches almost entirely to the building on the property. It has to do with architectural design: layout of rooms, the presence of construction style providing unnecessarily thick walls, large rooms, high ceilings, gaudy decorations, etc.

“*Physical deterioration* is perhaps the most manifest evidence of depreciation offering itself to the eye of the appraiser. Even the novice can detect it with little effort if he investigates. Like functional obsolescence, it is inherent in the property itself.

If a neighborhood has been built up rather uniformly at one time, it will be manifested in similar conditions in adjoining buildings unless they have been completely remodeled and rehabilitated.

10 “Studies of recent years indicate that depreciation accelerates at a much faster rate than is commonly supposed, owing largely to elements of obsolescence. Physically, structures will stand up perhaps a hundred years if given reasonable attention. They become old-fashioned, out of date and obsolete in 20 or 25 years, however.

20 “Some buildings are obsolete from the very day they are conceived and erected and, consequently, are worth less the amount of money it took to produce them. Poorly designed structures and misplaced improvements, which will not earn a return on the land they occupy, and residences so planned as to reflect individual tastes that might not appeal to buyers are in many instances worth less than their cost of reproduction upon the day they are first occupied.

“Many existing buildings are not worth today their cost of reproduction owing to the fact that they were not planned in the light of the latest accepted methods. Even when considerable money is spent in remodeling them they cannot compare with new and up to date structures.”

30 (Pages 109 - 110 - 111 - 112 - *The Valuation of Real Estate* (1932) — Babcock).

“*Economic Mortality in Buildings.*”

40 “In American cities, economic factors have been responsible for a high rate of building mortality. Few buildings have been demolished because they were no longer structurally sound. Most buildings come to the end of their useful lives as a result of obsolescence. Furthermore the factors which result in obsolescence have operated rapidly in most cases.

“*Causes of Mortality in Buildings.* The physical decay of buildings is one of the minor factors in bringing the useful lives of buildings to an end. Many very large and substantial buildings have been destroyed to make room for more adequate improvements long before physical depreciation was a factor of any observable importance.

“Nevertheless disintegration and natural decay will always determine the ultimate possible life. The maximum physical

life of a building is thus limited by the craftsmanship and structural design used in its original construction. It is limited by the quality and kinds of materials of which it was built. It is modified by the wear and tear incident to its use and by the maintenance and repair to which it has been subjected. Climate is one determinant of the maximum physical life.

- 10       “Still, physical depreciation determines the maximum life of the building, while the valuator is concerned with the life of the value of the building. Houses frequently have exceedingly long physical lives in spite of relatively cheap construction. But with shifts in neighborhoods and styles, houses lose value with considerable rapidity.

20       “The use of prepared tables giving so-called normal useful lives of improvements of various kinds may be declared poor practice on the part of valuers. The tables to which reference is made have been prepared by builders who have approached the task from the depreciation rather than the obsolescence point of view. Manifestly the results are not in accord with actual life expectancies because they ignore the paramount importance of the surrounding economic and environmental conditions.”

(Pages 81 & 82 — Appraisers and Assessors Manual (1930) — Prouty, Collins and Prouty.)

- 30       “*Effect of Obsolescence on Life of Office Buildings.*

In a very interesting study of the effect of obsolescence on the useful and probable life of office buildings, Earle Shultz, vice president, National Association Building Owners and Managers, secured information on 55 office buildings in 45 different cities in the United States.

- 40       “Figure 12 shows that for a period of about 28 years, after the erection of a building, the gross income is nearly constant, with a gradual increase in expenses and a consequent decrease in net income. This period represents the useful and profitable life of an office building where it can house the best class of tenants and produce an adequate financial return on the investment. After a period of 28 years, obsolescence sets in to such an extent that the highest class tenants move to more modern quarters. Subsequently, rents are reduced, maintenance expenses are increased and there is a continual reduction in the net income.

“Lawson Purdy, former president of the New York City Tax Department, has stated that changes have been so rapid that

frequently a building ceased to have any value before it had suffered any depreciation from age which was visible or ascertainable. Some buildings in Manhattan have become obsolete in five years and encumber the ground.”

### QUALIFICATIONS

- 10           GASPARD ARCHAMBAULT, I.C., B.A. Sc.
- Civil Engineer, graduate “Ecole Polytechnique de Montréal”—  
year 1910.
- President — G. Archambault Ltée — Engineers & Contractors.
- Secretary Treasurer of Subsidiary Companies — Duroc Ltd,  
Roofers Incorporated.
- 
- 20
- 1910-1913—With Moyer Engineering Co., City of Montreal —  
Dominion Bridge Co.
- 1913-1918—President—Archambault & Conway — Engineers &  
Contractors.
- 1918-1926—President—Archambault & Leclair Ltée — Engineers  
& Contractors.
- 1926-1943—President—G. Archambault Ltée — Engineers &  
Contractors.

30

### CONSTRUCTION

General contracts executed for over ..... 6,000,000.

Industrial Plants, Stores, Banks, Theatre,  
Garages, Public Buildings, Schools, Residences, Fil-  
tration Plants, Hydro Electric Development, Bridge,  
Roads, Sewers, and Water Works.

40

Knights of Columbus, Casgrain & Charbon-  
neau Buildings, Dupuis Frères, Edmond Archam-  
bault Stores, Granada Treatre, Fort Garage, Seven  
Schools, Twelve Municipal Filtration Plants, Three  
Rivers, Sorel, St. Lambert, etc. etc. . . .

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*Work in Process:*

500 Houses for WARTIME HOUSING Co. Ltd.

### VALUATION OF BUILDINGS

	Re: <i>Expropriation</i> — Total Value of .....	\$ 5,439,000.
10	For City of Montreal — 105 buildings	
	“ Canadian, National Rail’s — 153 “	
	Etc. . . .	
	Re: <i>Municipal Valuation</i> — Total Value of .....	\$10,063,000.
	For City of Montreal—Transportation, Alliance Nationale Buildings.	
	Montreal Cotton — Wabasso Cotton.	
	Wayagamack, Belgo Canadian, St. Maurice, Paper Plants.	
20	Domaine d’Esterel. Etc. . . .	
<hr/>		
	<i>Other Valuations</i> — Value of .....	\$ 6,119,000.
	For Dominion Government, Dominion Textile — Verdun, Dominion Engineering Works—Lon- gueuil, Dominion Arsenal — St. Malo, Arena Garage — Montreal.	
30	National Bridge Co. — Montreal.	
	Dominion Square Building — Montreal.	
	Etc. . . .	
	<i>Total Valuations of Buildings</i> .....	<u>\$21,611,000.</u>

### 40 *Arbitrations, Settlement of Claims, Reports, Etc.*

Services retained in over 200 cases, most of which included court evidence.

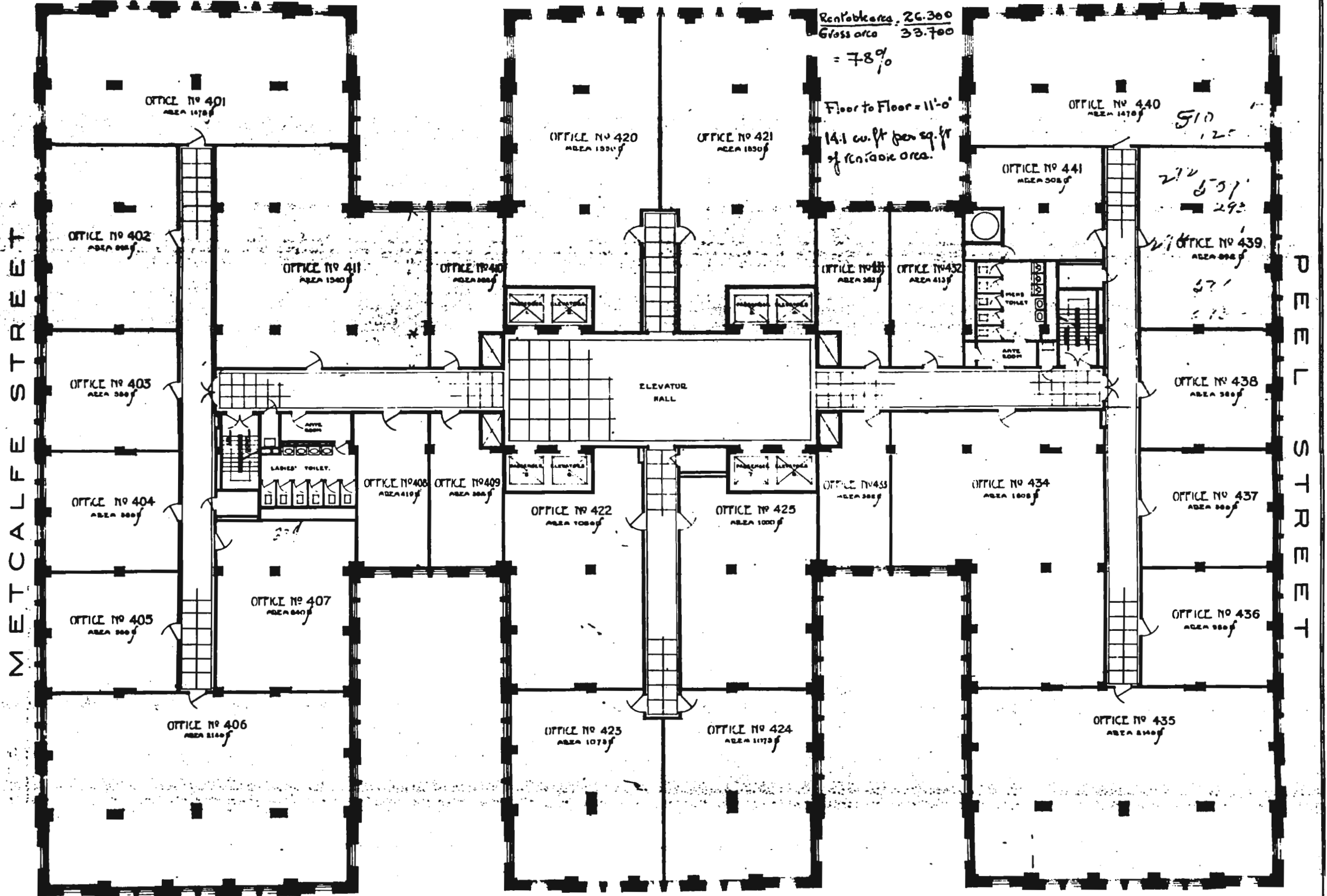
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PLAINTIFF'S EXHIBIT P-16 AT ENQUETE

*Dominion Square Building. Plan showing typical floor 4 to 8.*

# DOMINION SQUARE



METCALFE STREET

PEEL STREET

ST CATHERINE STREET

SCALE 16 0 16 32 48 FEET

TYPICAL FLOORS 4 to 8

PLAINTIFF'S EXHIBIT P-10 AT ENQUETE

*Report of Mr. Allan Simpson.*

10 Alan Craddock Simpson  
President and Managing Director

Col. A. Roy, M.V.O.  
Vice-President

THE CRADDOCK SIMPSON COMPANY  
(Business Established 1879)  
Real Estate — Insurance — Mortgage Loans  
Room 1103, Dominion Square Building  
1010 St. Catherine Street West

Montreal, March 19th, 1943

20 D. L. Macaulay, Esq.,  
Sun Life Assurance Company of Canada,  
Dominion Square,  
Montreal.

Dear Mr. Macaulay:—

30 I have studied the information you have given me regarding the Sun Life Building in Montreal and I have considered the protest that your Company has made as to the present assessed value. In my opinion the only proper way to determine the "real" or "actual" value of your property, as called for in taxation matters by the City of Montreal Charter, is to determine the price it would bring in the free and open market. This "market value" might be easily determined by having reference to actual current sales of comparable properties if there were such sales. Where, however, we are called upon to deal with a large and unusual commercial structure such as the Sun Life Building and the simple method of fixing the "market value" by direct comparison with market sales is, in the nature of things, not available, we must determine the price that the property would command by reference to its revenue-producing ability.

40 (a) *Cost and replacement value:*

Before proceeding to deal with my valuation of the property on the basis mentioned above, I would point out that the valuation of a commercial building or, in fact, of any other immoveable property by reference to its original cost, or to its current replacement cost, cannot be relied on to determine the present market value of the property in question, that is its

“real” or “actual” value. The original cost obviously has no bearing on the value of an old property and the depreciated replacement cost is only pertinent to the extent that it tends to set an upper limit of market value in the sense that, assuming the revenue-producing possibilities were sufficient to warrant it, a prospective purchaser, rather than exceed this upper limit, would buy another site and reproduce a similar building as a source of revenue. The case of the Sun Life Building is a striking illustration of this. It is a large office building of the monumental type, originally built for exclusive use as the head office of a large Company and, as such, with many refinements and embellishments which, while reflected in the rentals obtainable for space in the building to the extent that they add to the value of the “address” do not add to these rentals an amount commensurate with the cost of producing or replacing them. On the other hand too, and for the same reason, the monumental and ornamental design of the Sun Life Building produces and has produced from the outset a serious sacrifice of desirable net rentable floor area in comparison with the total cube of the buildings. This sacrifice reflects directly on the net revenue which the building is capable of producing and naturally tends to increase the disparity between cost or replacement cost and the price which the building would command in the current or any other market. The fact is that there is much waste space on each floor as well as space that is too dark to bring a maximum rental and it is difficult to subdivide the space into offices satisfactorily. The building has the advantages of its extra fine construction and appearance, its convenient location, its good address and the first-class service afforded to tenants, all of which are reflected in the rentals it commands, but on the other hand many of the offices are too deep, ranging from about 33 feet in depth on the upper floors to about 60 feet in depth on the lower floors and some of the floors have balustrades screening the windows. In addition, the lighting of many of the offices is expensive because of their depth; the width of the bays (about 16 feet 3 inches) and the spacing of the windows make it difficult to lay out offices of the smaller size needed for many types of business; and the older parts of the building are somewhat badly cut up and there are no garage facilities for tenants.

(b) *Market Value:*

Since it is not possible in dealing with a large property of this kind to find current sales of comparable properties with which comparisons can be made in order to determine the market value, it is necessary, as above indicated, to determine the price

which a "willing buyer" would offer by reference to the factor which that buyer would take into account in determining the price he is willing to pay, namely, the revenue-producing capability of the building in the current market. This is determined by establishing the gross potential rental value of the building and by deducting therefrom an amount to cover the normal percentage of vacancy, the expenses of operating and maintaining  
10 the building including taxes and an amount to cover depreciation, obsolescence and major repairs and replacements, thus arriving, at a net annual revenue which, when capitalized, at the current rate for real estate money, will give the price which the "willing buyer" would be prepared to pay.

In valuing this building I propose to include the boiler plant, since it is an essential part of the main building even although it is located on the opposite side of Mansfield Street and is only connected with it by a tunnel.  
20

In December 1941, about 50.4% of the rentable space in the Sun Life Building was occupied by your Company and about 35.7% by different tenants; the balance, mostly unfinished, being vacant. I might mention here, 66,544 square feet of the vacant space, out of the total of 108,447, are on four floors of the Building that are entirely unfinished — the 11th, 20th, 22nd and 23rd floors — and that in the case of two of these floors, namely the 20th and 23rd, the windows are so obstructed by ornamental  
30 balustrades that it is questionable if the rental obtainable for the poorly lighted offices would justify the cost of finishing the floors in the manner of the other floors in the building. I consider that the rentals paid by your tenants are an accurate guide as to the rental value of your office space since the leases were negotiated in the open market in competition with other buildings. If your rates were too low the building would probably be fully rented, which it is not, and there is no indication that undue influence was used to persuade companies to move into your Building quite irrespective of the rentals charged. In some cases  
40 concessions may have been made to tenants in order to get them established in the Building and in trying to arrive at a fair potential gross revenue I have made allowance in certain instances for a rental higher than that actually paid. I have based the rentals for the space occupied by your Company on the rentals paid by tenants, but the average rental of the Company-occupied space is lower because much basement storage is included and because the lower floors of the Building, which are those used by the Sun Life, are less well lighted and consequently less valu-

able than the upper floors. In the attached tabulation, marked Schedule A, I have given what I consider a fair rental to the space on the different floors and, after making some adjustments, you will notice that I arrive at a potential gross revenue with 100% occupancy of \$1,260,545. As regards the operating expenses I have used the actual cost for the year 1941 although with the higher percentage of occupancy that I have adopted in arriving at the potential revenue the expenses would of necessity be higher. These expenses compare favourably with those of other large office buildings, both in Montreal and elsewhere, except in the matter of taxes, especially with the new increased assessment. In attempting to arrive at a fair net revenue for the Sun Life property including the Boiler Plant, I have used a depreciation of 1½% per annum on the building and I consider this very conservative considering that it must cover amortisation on a 50 year basis as well as an allowance for major repairs and alterations.

If we were to assume that the entire property, including the very essential Boiler Plant, had the actual value of \$14,276,000.00 placed on it by the City of Montreal in the assessment that is being protested, the net revenue, worked out on the above basis, would be as follows:

	Potential Gross Revenue —	\$1,260,545.00
	10% deduction for vacancies, etc. —	126,055.00
30		<hr/> 1,134,490.00
	Expenses (1941) without allowance for depreciation and major repairs but including taxes on present assessed value, amounting to \$426,567.00	863,560.00
		<hr/> 270,930.00
40	Depreciation of 1½% on assessed building value of \$13,471,300.	202,070.00
		<hr/> 68,860.00
	Potential net annual revenue	

This amount of \$68,860.00 would represent a return of only approximately 0.48% on the City's valuation and this is obviously absurd as a return on an investment.

As an alternative, let us assume that the "real", as well as the assessed value, of the whole property is \$7,500,000.00 and work out the net revenue on the same basis.

	Potential Gross Revenue —	\$1,260,545.00
	10% deduction for vacancies, etc. —	126,055.00
		<hr/>
		1,134,490.00
10	Expenses (1941) without allowance for depreciation and major repairs but including taxes, on an assessed value of \$7,500,000.00, amounting to \$223,100.00	660,093.00
		<hr/>
		474,397.00
	Depreciation of 1½% on assumed building value of \$6,695,300.00	100,430.00
		<hr/>
	Potential Net Annual Revenue	373,967.00

20 This amount of \$373,967.00 represents a return of nearly 5% on an investment of \$7,500,000.00.

Since the Sun Life property has little or no speculative value a purchaser would, in my opinion, under existing conditions insist on a return of at least 5% on the money invested, and in order to have any hope of obtaining this return he could not afford to pay more than \$7,500,000.00.

30 It may be suggested that the opening of the new C.N.R. station will have a physical effect upon this district which would tend to increase office rentals. On the other hand, in my opinion, office rentals in Montreal generally will have a tendency to drop when the numerous present abnormal war tenancies disappear, and such drop would more than offset any influence which the C.N.R. station might have. At all events, we are concerned here with the valuation of a property as in December 1941 and, in my opinion, the market value of that property at that time was not more than \$7,500,000.00.

40 It seems to me that one of the fundamental principles of assessment for taxation purposes should be that all similar properties should be treated on the same basis and I find a number of discrepancies between the Sun Life Building and other large buildings in the City of Montreal as regards assessments.

- (1) A comparison of the assessed values for the years 1932-33 and 1942-43 of forty-one of the large office buildings and commercial buildings in Montreal, as given in attached Schedule B, shows that the assessed values of thirty-five of the buildings have decreased by nearly 16% during the period, three have remained the same and three have increased. One of these is the Sun Life Building, which suf-

ferred a sudden increase during the last year or so from \$9,986,200.00 to \$13,755,500.00 — that is nearly 38% — for the main building and its site without the power plant. The total increase in the assessed value of this property since 1932-33 has been \$5,255,500.00 while the capital expenditure made by the Sun Life Company during that period have been \$1,636,695.00 — leaving an increase of \$3,618,805.00 for which there appears to be no justification, especially if depreciation is considered.

(2) If we compare the Municipal Taxes with the gross revenue, as shown by their financial statements, of the four large uptown office buildings, the University Tower Building, the Dominion Square Building, the Castle Building and the Keefer Building, and the Insurance Exchange Building in the downtown area, as shown in attached Schedule C, we find that the taxes average 22.9% of the total gross revenues for these buildings. In the case of the Sun Life Building, including the power plant, we find that the taxes for 1942-43 amount to 38.5% of the potential gross revenue or 14.6% more than the average for the other five buildings. If a commercial office building is to be successful and so have some real value, the operating costs, including the Municipal Taxes, must be kept down to a reasonable proportion of the revenue and even with lower taxes of the five buildings mentioned above their financial success may be judged by the fact that a re-organization has had to be arranged in each case during the last five years.

We also see from Schedule C that the operating expenses, not including taxes, of the five Montreal buildings mentioned above average about 39% of the gross revenue, while the expenses in the case of the Sun Life Building are lower than the average for the five large buildings mentioned as long as taxes are not included. It will also be noted that the percentage of the Sun Life Building operating expenses is lower than the average for a group of American office buildings which is 43.4% of the average revenue.

To summarize my opinion, therefore, I am of the view that the cost of replacement value has no relation to the actual value of the Sun Life property and that the only proper basis on which to assess this property is by determining the market value through the revenue process above outlined, or, in other words, by determining the price which the property would command in the current market, given a reasonable time in which



to make the sale. Considering the potential revenue value of the building and the expenses, I do not think that anyone would be likely to pay more than \$7,500,000.00 for it.

Yours truly,

Alan C. Simpson.

10

**SCHEDULE "A"**  
**SUN LIFE BUILDING**  
**POTENTIAL REVENUE WITH LEASES AS**  
**AT DECEMBER 1st, 1941**

	Floor	Occupancy	Area	Rate	Rental
	th. th. th.				
	26, 25, 24	Service only.			
	23rd.	Poor Office space, unfinished	11,099	1.50	\$ 16,648.00
20	22nd.	Good Office space, unfinished.	16,292	2.05	33,399.00
	21st.	Aluminium Limited	13,927	2.05	28,500.00
	20th.	Poor Office space, unfinished	16,046	1.35	21,662.00
	19th.	3 Tenants	20,982	1.60	33,590.00
	"	Vacant	870	1.50	1,305.00
	18th & 17th.	Aluminum Company	42,599	1.71	73,000.00
	16th.	5 Tenants	23,511	1.70	40,165.00
	"	Vacant	1,426	1.50	2,139.00
	15th.	7 Tenants	23,133	1.43	33,294.00
	"	Vacant	1,586	1.00	1,586.00
30	14th.	Candn. International Paper Co.	26,172	1.45	38,000.00
	12th.	M. D. 4	24,191	1.41	34,000.00
	11th.	Good Office space, unfinished	23,107	1.75	40,437.00
	10th.	10 Tenants	11,281	1.39	15,680.00
	"	Sun Life (Bowling)	8,972	0.60	5,383.00
	"	Vacant	6,035	1.70	10,260.00
	9th.	14 Tenants	21,717	1.67	36,190.00
	"	1 Tenant, storage	416	0.14	60.00
	"	Free Tenancy, storage	308	0.60	185.00
40	"	Sun Life	584	1.00	584.00
	"	Vacant space, unfinished	1,280	1.70	2,176.00
	8th.	5 Tenants	9,057	1.63	14,710.00
	"	Sun Life (Gym. & Hospital)	14,978	2.50	37,445.00
	"	Sun Life	1,766	1.70	3,002.00
	"	Vacant space, finished	5,754	1.60	9,208.00
	7th. A.	1 Tenant	664	1.63	1,080.00
	"	Sun Life	990	1.60	1,584.00
	"	Vacant	912	1.60	1,459.00
	7th.	7 Tenants	15,666	1.37	20,320.00
	"	Sun Life, Hall	9,900	2.50	24,750.00
		Forward.....	355,221		\$581,801.00

### SUN LIFE BUILDING

Floor	Occupancy	Area	Rate	Rental
	Forward.....	355,221		\$581,801.00
10	7th. Sun Life. Club, etc.	9,215	1.60	14,744.00
	“ Vacant space, finished	650	1.60	1,040.00
	6th. 12 Tenants	20,341	1.47	29,929.33
	“ Sun Life	28,544	1.60	45,670.00
	“ Vacant	2,654	1.50	3,981.00
	5th. Present free tenancy	285	2.00	570.00
	“ Sun Life	47,643	1.50	71,465.00
	4th. Sun Life	45,764	1.50	68,646.00
	“ Vacant	8,705	1.50	13,058.00
20	3rd Present free tenancy	1,197	1.50	1,795.00
	“ Sun Life	43,089	1.50	64,970.00
	“ Vacant	5,140	1.50	7,710.00
	2nd. Sun Life	49,985	1.50	74,977.00
	1st. Sun Life	43,980	1.50	64,970.00
	“ Vacant	2,946	1.00	2,946.00
	Ground 10 Tenants	15,561	2.04	31,641.81
	“ Present free tenancy	748	2.25	1,683.00
	“ Sun Life, Main Office	12,320	6.00	73,920.00
	“ Sun Life	10,551	2.25	23,740.00
30	“ Vacant space	3,945	2.25	8,876.00
	Concessions			559.56
	Basement 4 Tenants	7,154	0.62	4,420.00
	“ Sun Life	64,952	0.50	32,476.00
		<u>780,590</u>		<u>\$1,225,251.70</u>

40 Adjustment of rentals of tenant-occupied space on various floors to bring rates per square foot from \$1.50 on lower floors to \$1.75 on upper floors and \$2.25 on ground floor ..... 35,293.00

\$1,260,544.70

				Per Sq. Ft.
Total for Tenants	278,910	35.7%	\$439,372.70	\$1.58
Total Sun Life Space	393,232	50.4%	607,989.00	1.55
Total Unoccupied space	108,447	13.9%	177,890.00	1.64
	<u>780,590</u>	100%	<u>\$1,225,251.70</u>	

SCHEDULE "B"  
 ASSESSED VALUES OF MONTREAL OFFICE  
 BUILDINGS — 1932-33 & 1942-43

10

	Building	Assessed Value		Increase	Decrease
		1932-33	1942-43		
	Aldred Building	\$1,800,000.00	\$1,800,000.00		
	Jacobs Building	1,750,000.00	1,400,000.00		\$350,000.00
	C. I. L. Building	709,000.00	650,000.00		59,000.00
20	Balfour Building	600,700.00	517,000.00		83,700.00
	Bank of Nova Scotia	792,000.00	670,000.00		122,000.00
	Bank of Toronto	593,000.00	550,000.00		43,000.00
	Banque Canadienne Nationale Building	677,300.00	600,000.00		77,300.00
	Belgo Building	1,920,000.00	1,500,000.00		420,000.00
	Bell Telephone Bldg.	3,000,000.00	3,000,000.00		
	Canada Cement Bldg	1,600,000.00	1,339,000.00		261,000.00
	Canadian Pacific Express Building	1,060,000.00	1,100,000.00	\$ 40,000.00	
30	Caron (Bank) Bldg.	725,000.00	700,000.00		25,000.00
	Castle Building	825,000.00	690,000.00		135,000.00
	Confederation Bldg.	1,270,000.00	1,200,000.00		70,000.00
	Dominion Square Bldg.	5,000,000.00	4,275,000.00		725,000.00
	Drummond Building	1,318,000.00	1,160,000.00		158,000.00
	Guarantee Co. of North America	468,900.00	350,000.00		118,900.00
	Drummond Medical Bldg.	800,000.00	600,000.00		200,000.00
	Hermes Building Annex	489,000.00	404,100.00		84,900.00
40	Hermes Building	600,000.00	547,000.00		53,000.00
	Insurance Exchange Bldg.	1,800,000.00	1,443,000.00		357,000.00
	Forward.....	\$27,797,900.00	\$24,495,100.00	\$ 40,000.00	\$3,342,800.00

	Building	Assessed Value		Increase	Decrease
		1932-33	1942-43		
10	Forward.....	\$27,797,900.00	\$24,495,100.00	\$ 40,000.00	\$3,342,800.00
	Keefer Building	650,000.00	498,000.00		152,000.00
	Lewis Building	600,000.00	525,000.00		75,000.00
	Mayor Building	550,000.00	460,000.00		90,000.00
	Medical Arts Bldg.	590,000.00	500,000.00		90,000.00
	McGill Building	565,000.00	350,000.00		215,000.00
	Montreal Light, Heat & Power Building	567,000.00	640,000.00	73,000.00	
20	Montreal Tramways Bldg.	900,000.00	750,000.00		150,000.00
	Ontario Building	500,000.00	440,000.00		60,000.00
	Phillips Place Bldg.	822,400.00	762,400.00		60,000.00
	Railway Exchange Bldg.	400,000.00	320,000.00		80,000.00
	Read Building	599,700.00	580,000.00		19,700.00
	Royal Bank of Canada	5,444,000.00	4,550,000.00		894,000.00
	Royal Bank (St. Denis Building)	435,000.00	300,000.00		135,000.00
	Royal Trust Co.	981,500.00	980,000.00		1,500.00
30	Shaughnessy Building	578,600.00	360,000.00		218,600.00
	Sommer Building	648,600.00	548,000.00		100,600.00
	Star Building	765,500.00	671,500.00		94,000.00
	Transportation Bldg.	1,455,000.00	1,150,000.00		305,000.00
	University Tower Bldg.	1,500,000.00	1,500,000.00		
		\$46,350,200.00	\$40,380,000.00	\$113,000.00	\$6,083,200.00
	Sun Life Building With Boiler Plant	8,725,000.00	14,276,000.00	5,551,000.00	
	Capital Expenditure by Sun Life Co. 1-1-32—1-11-41			1,636,695.00	
40				\$3,914,305.00	

SCHEDULE "C"  
COMPARISON OF OFFICE BUILDINGS IN MONTREAL, ETC.

	Assessed Value 1942-1943	1942-43 Gross Revenue	1941-42		Taxes Amount	1942-1943 % of Revenue
			Operating Expenses not including taxes Amount	% of Revenue		
University Tower Building	\$ 1,500,000.00	\$ 262,147.23	\$ 96,520.00	36.8%	\$ 44,820.00	17.1%
Keefer Building	498,000.00	79,892.00	38,253.00	48.0%	14,870.00	18.7%
Insurance Exchange Building	1,443,400.00	211,336.67	95,898.00	45.4%	43,129.00	20.4%
Castle Building	690,000.00	91,898.00	33,173.00	36.2%	20,617.00	22.4%
Dominion Square Building	4,275,000.00	451,954.10	164,296.00	36.4%	127,737.99	28.2%
		\$ 1,097,228.00	428,140.00	39.0%	\$251,173.00	22.9%
Sun Life Building Including Power Plant 1942-43 Taxes	14,276,000.00	1,134,490.00 (Estimated potential Revenue 90% occupancy)	436,993.00	38.5%	426,567.00	37.5%
Average American Buildings - 1939	See Buildings & Building Management February, 1941	206,780.00	89,880.00	43.4%	34,720.00	16.8%

ALAN CRADOCK SIMPSON  
Qualifications.

President of The Cradock Simpson Company, real estate firm established in 1879.

Has been connected with this Company since 1911, a period of over thirty years.

Graduate in Engineering of McGill University.

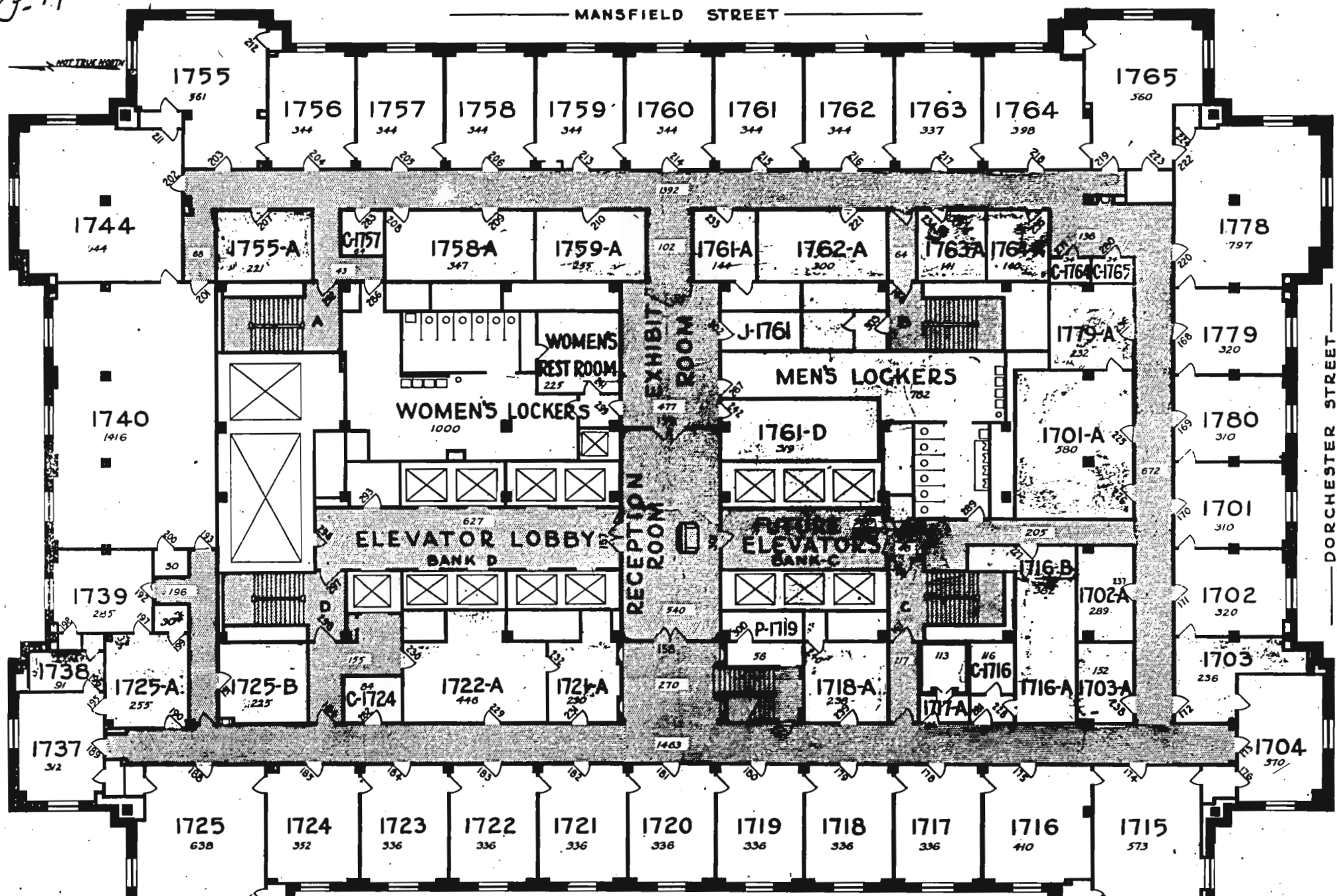
Has appraised real estate of all descriptions during the last 25 years for many different Companies, including some of the large Lending Companies, and for individuals.

Has acted as expert witness for Canadian National Railways, The Dominion Government, etc., before the Exchequer Court and other courts in connection with Expropriation cases.

PLAINTIFF'S EXHIBIT P-19 AT ENQUETE

*Sun Life Building, 17th floor:*

P-19



**ALUMINUM COMPANY OF CANADA, LIMITED.**  
**17TH. FLOOR SUN LIFE BUILDING**

DRAWN BY C.N. KING JULY 1940



NOTE: THE NUMBERS IN ITALICS SHOW AREAS IN SQUARE FEET.

PLAINTIFF'S EXHIBIT P-21 AT ENQUETE

*Report of Mr. Arthur Surveyer.*

10 ARTHUR SURVEYER & CO.  
Consulting Engineers  
Dominion Square Building  
Montreal

March 20, 1943

Mr. D. L. Macaulay  
Assistant-Secretary  
Sun Life Assurance Co. of Canada  
Sun Life Building  
20 Montreal.

Dear Mr. Macaulay:

Pursuant to your instructions I have made a valuation for taxation purposes, of the immovable properties owned by the Sun Life Assurance Co. of Canada. I understand that the value to be determined is the "real value" which our Courts have defined as: "the price that a seller, who is not obliged to sell and who is not being dispossessed against his will, would succeed in  
30 obtaining from a buyer, who is not obliged to purchase but who wishes to purchase."

The main factors to be examined when considering an investment are the following: the safety of the principal, the marketability, and the certainty and rate of the return on the money invested. If the safety and the marketability of the investment are in doubt then the investor will seek a higher return on his money in order to compensate for these uncertainties. There is no doubt that an investment in an office building such as that  
40 now being operated by the Sun Life Assurance Co. offers certain risks and lacks marketability. The would be buyer, is, therefore, justified in expecting to get a decidedly higher return that he would on bonds as safe and marketable as those of the Dominion of Canada or of the Province of Ontario or Quebec. Let us, therefore, examine what return a willing purchaser would get if he were to purchase the Sun Life's office building, together with its heating plant, at the real value of \$14,276,000 set upon it by the City's assessors.



Estimate of the probable return from the operation  
of the Sun Life's office building on an  
investment of \$14,276,000.

Operating income		\$700,000
Taxes at 3% on \$14,276,000	\$428,000	
Depreciation	175,000	603,000
10 Available for return on investment		\$ 97,000
Percentage return on investment		0.68%

Obviously no investor would think for a moment of purchasing this office building for the sake of obtaining a yearly return of less than one percent, which might be completely wiped out, by a decrease of about 15% in the gross income from the building.

20 This is particularly true when this investor could obtain safety of principal, marketability and higher and surer return by buying the long term issues of the Dominion of Canada, or of the Province of Quebec. The following table indicates the yields obtainable now on these securities:

<i>Securities</i>		<i>Yield</i>
Dominion of Canada	3 $\frac{1}{4}$ June 1966	3.01
Province of Quebec	4 $\frac{1}{2}$ Jan. 1963	3.65

30 It will be seen that the minimum yield on these securities is 3% for the Dominion of Canada bonds and 3.65% for the Province of Quebec bonds.

40 Since it is evident from the above that the City's valuation of the Sun Life's building is too high, let us try to determine what would be a fair price to pay for the purchase of this office building and what would be a fair return on such an investment. The purchaser could either supply the whole of the money himself, or supply only a part of the capital, securing the difference by mortgaging the property. One method of financing would be to place a first mortgage at 4 $\frac{1}{2}$ % on, say 60% of the property and a second mortgage at 6% on 20% of the property, the purchaser supplying the difference, or 20% of the purchase price of the property. The purchaser would expect, in a good year, to get a higher return on his money than the second mortgage, so as to compensate him for the possibility of having to forego all return during a poor year. The prospective buyer, whether supplying a part of the whole capital, would not be attracted unless he could count on a return of from 5 $\frac{1}{2}$ % to 6% on the total purchase price.

In order to calculate the probable return on the money invested in this property and also in order to indicate the effect on this return of a slight variation in the operating income, I have assumed operating income varying from \$600,000 per year, for about 77% occupancy, to \$700,000 for a year of high occupancy. This last figure is somewhat higher than the estimate given by Mr. Owen Lobley and practically equal to the amount  
 10 adopted by Mr. Alan Simpson. I have also assumed tentative valuations of \$8,000,000 and \$7,000,000 for the purpose of determining if the probable return, from the operation of this office building would justify the willing purchaser to pay either of these amounts for the properties in question. According to the previous assumptions the purchase money would be subdivided as follows:

Estimate of the probable return from the operation  
 of the Sun Life's office building on an  
 investment of \$8,000,000

	<i>Purchase money</i>		<i>Interest charges</i>
1st Mortgage	\$4,800,000	4½%	\$216,000
2nd Mortgage	1,600,000	6%	96,000
			<hr/>
30 Mortgage interests			\$312,000
Purchaser's capital	\$1,600,000		
			<hr/>
Purchase price	\$8,000,000		
Operating income	\$600,000	\$650,000	\$700,000
Taxes at 3%	240,000	240,000	240,000
			<hr/>
Net after taxes	\$360,000	\$410,000	\$450,000
Depreciation	94,000	94,000	94,000
			<hr/>
40 Available for interest	\$266,000	\$316,000	\$366,000
Mortgage interest	312,000	312,000	312,000
			<hr/>
Available for owner	\$ 46,000	\$ 4,000	\$ 54,000
Return on owner's capital	nil	0.25%	3.4%
Return on total capital	3.3%	3.9 %	4.6%

It is apparent from the calculations above that the purchaser should not pay \$8,000,000 for these properties because the return on his capital would not be high enough to compensate for the lack of marketability and for the risks. The bonds of the City of Montreal now sell, to yield about 4¼%, under the pro-

posed refinancing plan, which calls for a reduction of the coupon rate to 4% and the extension of maturity to 1976. The City now pays the actual coupon rate so that the present yield is a good deal higher. It would not seem logical for an investor to buy a property in Montreal to yield a smaller return than the ordinary bonds of the City itself. Let us, therefore, make the same calculations for a purchase price of \$7,000,000. We would  
10 have the following distribution of the purchase money:

Estimate of the probable return from the operation  
of the Sun Life's office building on an  
investment of \$7,000,000

	<i>Purchase money</i>		<i>Interest charges</i>
1st Mortgage	\$4,200,000	4½%	\$189,000
20 2nd Mortgage	1,400,000	6%	84,000
			<hr/> \$273,000
Mortgage Interest			\$273,000
Purchaser's capital	\$1,400,000		
	<hr/>		
Purchase price	\$7,000,000		
Operating income	\$600,000	\$650,000	\$700,000
Taxes at 3%	210,000	210,000	210,000
	<hr/>	<hr/>	<hr/>
30 Net after taxes	\$390,000	\$440,000	\$490,000
Depreciation	80,000	80,000	80,000
	<hr/>	<hr/>	<hr/>
Available for interest	\$310,000	\$360,000	\$410,000
Mortgage interest	273,000	273,000	273,000
	<hr/>	<hr/>	<hr/>
Available for owner	\$ 37,000	\$ 87,000	\$137,000
Return on owner's capital	2.6%	6.2%	9.8%
Return on total money	4.4%	5.1%	5.9%

40 On a purchase price of \$7,000,000 the return on the total money invested would vary between 4.4% in the case of a 78% occupancy, to 5.9%, in a year of high occupancy. These are low yields compared with the yields which could be obtained by purchasing on the market the bonds of some of the other Montreal office buildings. In view of the above I consider that the \$7,000,000 would be a fair purchase price for the office building of the Sun Life Assurance Co. of Canada, together with the heating plant on Cathcart street.

Yours very truly,

AS:GB

Arthur Surveyer.

Biographical Notes Concerning

ARTHUR SURVEYER

Consulting Engineer, Montreal, P.Q.

Bachelor of Arts, Université Laval, Montréal, 1898.

10 Civil Engineer, and Bachelor of Applied Sciences, Ecole Polytechnique de Montréal, in 1902.

Post Graduate Course at Ecole Spéciale d'Industrie et des Mines du Hainaut, Mons, Belgium, 1903-1904.

Doctor of Engineering, Rensselaer Polytechnic Institute, Troy, N.Y., 1924.

Doctor of Applied Sciences, University of Montreal, 1942.  
In private practice as Arthur Surveyer & Co., Consulting Engineers, since 1911.

20 President of Engineering Institute of Canada, 1924 and 1925.

Member of the Canadian Council for Industrial and Scientific Research 1917-1924.

Member of the Corporation of the Ecole Polytechnique de Montréal.

Member of the National Research Council, 1942.

Member, Engineering Institute of Canada.

30 Member, Corporation of Professional Engineers of Quebec.

Member, American Society of Civil Engineers.

Member, American Economic Association

Member, American Management Association.

Director, The Shawinigan Water & Power Company.

Director, Chronium Mining & Smelting Corporation, Ltd.

40 Director, Holland-Canada Mortgage Company, Ltd.

Commissioner-Censor, Crédit Franco-Canadien.

General Manager, for 13 years, of a large investment trust, International Bond & Share Corporation.

Engineering career began with the Department of Public Works of Canada, in 1904. Left the Department in 1911 to go in private practice under the name of Arthur Surveyer & Co. Mr. Arthur Surveyer has specialized in semi-technical and semi-financial investigations for cities, investment banking firms, public utilities, commercial banks, and industrial corporations.

University Tower Building  
CITE DE MONTREAL  
CITY OF

University Tower Corp.  
640-664 St. Catherine, W.  
1241-57 University

FEUILLE DES ESTIMATIONS  
VALUATION SHEET

NO DE COMPTE.....141693...  
NO. OF ACCOUNT

1.- PRIX UNITAIRES  
UNIT PRICES

Terrain 93  
Land 94 x 195 Superficie 18349  
Area

Taux unitaires de valeur au pied carré, tel que déterminé par le Comité d'estimateurs \$42.00 & 12.00  
Unit rate of value per square foot, as determined by the Committee of Assessors

Prix déterminé par le Service Technique suivant le taux unitaire établi par le Comité d'estimateurs:—  
Price determined by the Technical Service according to the unit rate established by the Committee of Assessors

Corner Inf. & Merger Inc. au pied carré \$ 31.03 Total \$ 569350  
per square foot

Bâtiment: Groupe No 3  
Building: Group No  
Catégorie Comm. Classe 1 Type 4  
Category Class

Coût de reconstruction, moins la dépréciation, mais y compris les dépendances, jusqu'en 1941 \$85,623 Total \$ 1,354,973  
Cost of reconstruction, less depreciation, but including outbuildings, up to

Net 2,899,459  
Cubage { Conventionnel Prix au pied cube 319 & Total \$ 927,535  
Conventional Price per cubic foot

2.- ESTIMATION SELON LA VALEUR LOCATIVE ANNUELLE  
VALUATION ACCORDING TO ANNUAL RENTAL VALUE

Office Building Revenu réel 1941 Inc. Services & Vacants \$260,000  
Real revenue  
Valeur locative \$180,750  
Rental value  
" " capitalisée à raison de % See Remarks  
" " capitalized at the rate of %  
Estimation selon la valeur locative: \$  
Valuation according to rental value:

3.- PRIX DE VENTE DE CETTE PROPRIÉTÉ  
SALE PRICE OF THIS PROPERTY

Date \$

4.- MONTANT DE L'HYPOTHÈQUE  
AMOUNT OF MORTGAGE

Première \$  
First  
Deuxième \$ Total \$  
Second

5.- AUTRES RENSEIGNEMENTS  
OTHER INFORMATION

Tous autres renseignements tels que offres de vente ou d'achat, expropriations, règlements de succession, vente par voie de  
Any other data such as offers of sale or purchase, expropriations, settlement of estates, sales by  
licitation, décisions des tribunaux ou du bureau de révision des estimations, etc., de nature à indiquer la valeur de la propriété  
licitation, decisions of the courts or of the Board of Revision of Valuations, etc., of a nature to show the value of the property

Date

6.- VALEUR DE CETTE PROPRIÉTÉ PORTÉE DANS UN PROSPECTUS OU INSCRITE DANS LES LIVRES DU PROPRIÉTAIRE  
VALUE OF THIS PROPERTY ENTERED IN A PROSPECTUS OR IN THE OWNER'S BOOKS

Date \$

7.-

**PRIX DE VENTE DE PROPRIÉTÉS SEMBLABLES  
SALE PRICE OF SIMILAR PROPERTIES**

Nos de cadastre.....original.....subd.  
Cadastral Nos.:  
No de maison:.....rue.....street  
House No.:  
Date.....

8.-

**COÛT INITIAL DE CONSTRUCTION DU BÂTIMENT  
ORIGINAL COST OF CONSTRUCTION OF BUILDING**

Date..... \$.....  
Renseignements donnés par:.....  
Information given by:

9.-

**ASSURANCES  
INSURANCE**

Date..... \$.....

10.-

**ÉVALUATION DES ESTIMATEURS  
ASSESSORS' VALUATION**

Terrain: 18349	au pied carré \$ 31.03	Total \$ 569,350	
Land:	per square foot	930,650	
Bâtiment:		\$.....	1,500,000
Building:			Total \$.....

	REMARQUES REMARKS	Book Value
100% Tenant Occupied Commercial Value	Net Replacement	
Gross Poss. Rev.	260,000	\$1,354,973
Less Services	90,000	\$2,924,269
Net. Rev.	170,000	
Capt. a 11%	\$1,550,000	
	As it is all tenant occupied allowing 50% Comm. & 50% Repl. =	\$1,550,000
		1,354,973
		2).....
		2,904,973
Date: March 25th 1943		1,455,000

G. E. Vernot.....

Estimateurs — Assessors

**DÉCISION DU BUREAU DE RÉVISION DES ESTIMATIONS  
DECISION OF BOARD OF REVISION OF VALUATIONS**

Date de l'audition: .....  
Date heard:

Date de la décision: .....  
Date decision rendered:

Président — President

## PROCEDURE

Le Bureau de Revision des Estimations, en vertu des pouvoirs qui lui sont conférés par la Charte de la Cité de Montréal, a donné au Chef Estimateur les instructions suivantes sur la façon selon laquelle les estimateurs doivent procéder à leur travail:—

**1. TERRAINS:**—En ce qui concerne les prix unitaires des terrains, le Chef Estimateur nommera cinq comités d'estimateurs formés à même le personnel des estimateurs. Chaque comité se réunira sous la présidence d'un de ses membres désigné par le Chef Estimateur et déterminera les taux unitaires de la valeur des terrains de sept quartiers lesquels formeront un arrondissement qui sera du ressort de chacun. Ces taux unitaires de la valeur seront indiqués sur le plan spécial de quartier tel qu'il existe déjà, et cette carte portera un numéro auquel référeront les fiches entre les mains des estimateurs. En cas de divergence de vues au sein d'un comité, l'avis de la majorité l'emportera. Le Chef Estimateur pourra assister aux séances des différents comités et donner son avis. Le Chef Estimateur verra à coordonner le travail des cinq comités et à ce que ceux-ci se consultent les uns les autres lorsqu'il y aura lieu de le faire en vue d'assurer l'uniformité dans la détermination des prix unitaires.

Un comité de coordination du travail en cours, composé des présidents des cinq comités mentionnés plus haut, et présidé par le Chef Estimateur, sera formé d'ailleurs en vue d'assurer cette coordination.

Le prix au pied carré sera calculé pour chaque terrain par le Service Technique, suivant les taux unitaires de valeur établis par les comités d'estimateurs, en tenant compte, même pour les propriétés résidentielles, des tables de profondeur et d'influence d'encoignure ainsi que des autres facteurs mentionnés dans le "Manuel d'Estimation des Biens-Fonds".

Cependant, dans certains cas exceptionnels, tels que groupements, irrégularités, diminution d'utilité due à la configuration ou au caractère du terrain, où l'application stricte des règles de profondeur et d'influence d'encoignure donnerait lieu à une évaluation injuste en plus ou en moins, il appartiendra à l'estimateur d'user de son jugement pour ramener le chiffre final à une évaluation adéquate.

**2. BÂTIMENTS:**—Les prix unitaires, le coût de reconstruction et le pourcentage de dépréciation annuelle des bâtiments sont établis par le Service Technique, de la façon suivante:—

a) La classification des bâtiments déjà en vigueur continue de s'appliquer à tous les bâtiments, quelle que soit leur date de construction; b) Les bâtiments seront divisés en trois nouveaux groupes:—

1. Les habitations domiciliaires ou semi commerciales qui sont imposables et qui ont été construites avant l'année 1915; 2. Tous les bâtiments non assujettis à l'impôt foncier ordinaire; 3. Tous les autres bâtiments.

Les habitations des premier et deuxième groupes seront classifiées par catégories, classes et types, selon le système déjà en vigueur, avec subdivisions que l'on jugera à propos d'y ajouter, et un prix, au pied cube seulement, de chaque type de bâtiment, sera déterminé.

Le coût de reconstruction d'un bâtiment en particulier sera fixé à raison de son cubage et du prix au pied cube déjà déterminé pour le type de construction qui lui est propre.

Le cubage des bâtiments et la détermination de la catégorie et du type dans lesquels ils doivent être classés, l'entrée des chiffres de cubage sur la fiche permanente, seront faits par le Service Technique et les estimateurs quand ces derniers seront disponibles. Pour que le travail puisse être accompli dans un délai raisonnable, nous recommandons l'engagement immédiat d'employés surnuméraires dont le nombre et les fonctions seront déterminés par le Chef Estimateur.

L'estimation du coût net de remplacement des bâtiments de troisième groupe se continuera comme elle se poursuit présentement.

**3. FICHES PERMANENTES:**—Elles seront de deux sortes: les cartes jaunes actuellement en usage serviront aux propriétés du troisième groupe; les cartes de couleur azur serviront aux propriétés des premier et deuxième groupes. Ces cartes sont permanentes et doivent être remplies pour toutes les propriétés de façon que chaque immeuble ait la sienne.

Les fiches de même que les feuilles des estimateurs, seront remplies par les commis attachés à chaque groupe de deux estimateurs ou, si le Chef Estimateur le juge à propos, par d'autres commis à être nommés.

Les estimateurs reçoivent leurs fiches et, le cas échéant, les feuilles d'estimation dûment remplies, sauf relativement aux espaces réservés à l'estimation selon la valeur locative annuelle, à l'évaluation des estimateurs, et aux remarques, lesquels sont remplis par les estimateurs eux-mêmes.

## PROCEDURE

The following instructions on the manner in which the Assessors shall proceed with their work, have been given to the Chief Assessor, by the Board of Revision of Valuations, in virtue of the powers conferred on it by the Charter of the City of Montreal:—

**1. LAND:**—Regarding the land unit prices, the Chief Assessor will name five committees of valuers formed amongst the Assessors; each committee will meet under the presidency of one of its members designated by the Chief Assessor and will determine the unit prices of the value of lands in seven wards which will form a district and which will be the responsibility of each. These unit prices will be indicated on special ward plans, already existing, and these plans will bear a number which will refer to cards in the hands of the Assessors. In case of any difference of opinion amongst the members of any committee, the opinion of the majority shall prevail. The Chief Assessor may attend the meetings of the different committees and give his opinion. He will also see that the work of the five committees is coordinated and that they consult each other when necessary in order to ensure uniformity in the unit prices determined.

A committee of coordination of the work in hand, composed of the presidents of the five committees above-mentioned and presided over by the Chief Assessor, will be formed with a view to securing this coordination.

The price per square foot will be calculated for each lot by the Technical Service, according to the unit prices established by the Committees mentioned and taking into account, even for residential properties, the depth and corner influence tables, as well as other rules mentioned in the Real Estate Valuation Manual.

However, in certain exceptional cases, such as plottage, irregular lots, loss of utility due to the shape or the character of the land, where the strict application of the depth and corner rules mentioned would occasion an unjust valuation either more or less, it will belong to the assessor to use his judgment to bring the final figure to a correct valuation.

**2. BUILDINGS:**—The unit prices, the cost of reconstruction and the percentage of annual depreciation of buildings are established by the Technical Service in the following manner:—

a) The classification already in force for buildings will continue to apply to all buildings, no matter what their date of construction; b) The buildings will be divided in three new groups:—

1. Residential properties or semi-commercial properties (stores and dwellings) which are taxable and which were constructed before the year 1915; 2. All buildings exempt from the ordinary municipal tax; 3. All other buildings.

The buildings of the first and second groups will be classified by categories, classes and types, according to the system already in force, with such subdivisions as is deemed proper to add, and a price, per cubic foot only, will be determined for each type of building.

The reconstruction cost of any particular building will be fixed following its cubic content and the price per cubic foot already determined for the type of construction to which it belongs.

The cubing of buildings, the determination of the category and type in which they should be classified, and the entry of the cubage figures on the permanent cards will be made by the Technical Service and the Assessors when the latter are available. In order that the work may be accomplished within a reasonable delay, we recommend the immediate engagement of additional temporary employees of which the number and the duties will be determined by the Chief Assessor.

The estimation of the net replacement cost of buildings in the third group will continue as at present.

**3. PERMANENT CARDS:**—These will be of two kinds. The yellow cards actually in use will serve for the properties of the third group. The azure cards will serve for the properties of the first and second groups. These cards are permanent and should be filled for all the properties so that each immovable has its own.

The cards as well as the valuation sheets will be filled in by the clerks attached to each group of two assessors or if the Chief Assessor finds it necessary, by other clerks to be named.

The assessors receive their cards and, as the case may be, the valuation sheets duly filled in, except for the spaces reserved for the valuation according to the annual rental value, for the valuation of the assessors and for the remarks. These three spaces are filled in by the assessors themselves.

**4. ÉVALUATION:**—Les estimateurs complètent la fiche permanente en y inscrivant le chiffre de l'évaluation. Il leur appartient de décider si ce chiffre doit être modifié à cause de la dépréciation et de tenir compte des autres facteurs affectant la valeur de la propriété tel que prévu par la Charte. S'ils arrivent ainsi à un chiffre d'évaluation différent de celui représentant la valeur intrinsèque ou de remplacement après déduction de la dépréciation normale, ils devront indiquer sommairement la raison de leur évaluation et initialement leur entrée sur la fiche permanente.

Tout le travail d'évaluation se divise donc en deux opérations bien définies: — a) L'obtention et la réunion des renseignements de faits par les estimateurs et le Service Technique; b) L'évaluation définitive, par les estimateurs, en possession de ces renseignements et données que contiendra chacune des fiches permanentes.

L'organisation nécessaire à la préparation des fiches, à leur distribution au Service Technique puis aux estimateurs et à leur classement une fois complétées, est confiée à l'initiative du Chef Estimateur.

**5. FEUILLES D'ESTIMATION:**—Les feuilles d'estimation sont remplies, selon la formule indiquée plus bas, dans tous les cas de contestation d'une évaluation, pour l'usage du Bureau de Révision et des tribunaux supérieurs, ou chaque fois que ce Bureau en fait la demande. Elles peuvent l'être en outre au gré du Chef Estimateur ou des estimateurs.

Relativement aux inscriptions à être faites sur les feuilles des estimateurs, dans l'espace numéro 1 réservé aux prix unitaires, il convient de préciser que dans le cas des propriétés incluses plus haut dans le groupe numéro 3, le coût de reconstruction du bâtiment doit être inscrit tel que spécifié, ainsi que le prix au pied cube d'après le prix total en premier lieu déterminé.

Dans le cas des bâtiments des groupes numéros 1 et 2, le prix au pied cube seulement sera inscrit, avec le groupement, la catégorie, la classe, le type et le cubage du bâtiment concerné. Le prix global au pied cube devra être reporté ensuite à l'espace réservé pour l'inscription du coût total du bâtiment.

**6. UTILITÉS PUBLIQUES:**—Le Service Technique préparera des formules d'estimation relatives aux entreprises d'utilité publique, comme les chemins de fer, les tramways, les entreprises de gaz, d'électricité et de téléphone ou de télégraphe, et autres. Dès que ces formules auront été soumises au Bureau de Révision des Estimations et que ce dernier les aura approuvées, le Chef Estimateur pourra procéder ou recommander qu'il soit procédé aux estimations de ces propriétés.

**4. VALUATION:**—The assessors complete the permanent card by inscribing thereon the valuation figures. It belongs to them to decide if the figure should be modified by reason of depreciation and by taking into account other factors affecting the valuation of the property, as provided by the Charter. If they thus arrive at a valuation figure different from that representing the intrinsic value or the replacement cost after deduction of the normal depreciation, they should indicate briefly the reason of their valuation and initial the entry on the permanent card.

The work of valuation divides itself in two definite operations: — a) Securing and uniting all information and data obtained by the assessors and the Technical Service; b) The definitive valuation by the assessors who are in possession of the information and data shown on each permanent card.

The necessary organization in the preparation of the cards, in their distribution to the Technical Service and then to the assessors and in their filing once completed, is entrusted to the initiative of the Chief Assessor.

**5. VALUATION SHEETS:**—The valuation sheets are filled in according to the formula indicated below, in every case of contestation of a valuation, for the use of the Board of Revision and of the Superior Court or for each case for which a request is made by the Board of Revision. They may also be made, at the wish of the Chief Assessor or of the assessors.

Relating to the inscriptions to be made on the valuation sheets in space No. 1 reserved for unit prices, it is understood that in all cases of properties included in group No. 3, the cost of reconstruction of the building should be inscribed as specified, also the price per cubic foot according to the total price determined in the first place.

In the case of buildings belonging to groups 1 and 2, the cubic price only will be inscribed showing the group, the category, the class, the type and the cubic content of the building concerned. The total price on the cubic foot basis should be shown afterwards in the space reserved for the inscription of the total cost of the building.

**6. PUBLIC UTILITIES:**—The Technical Service will prepare valuation forms relative to the enterprises of public utility, such as railroads, tramways, gas, electricity and telephone or telegraph enterprises, and others. As soon as these forms have been submitted to the Board of Revision of Valuations and approved by them, the Chief Assessor may proceed in making the valuation of these properties or recommend that this be done.



DEFENDANT'S EXHIBIT D-13 AT ENQUETE

*Report of Mr. B. R. Perry.*

BRIAN R. PERRY, M.E.I.C.  
Consulting Engineer  
New Birks Building  
Montreal

10

Valuation of Properties  
SUN LIFE ASSURANCE COMPANY  
OF CANADA

To,  
R. M. Seguin, Esq.,  
Ass't. City Attorney,  
City Hall,  
20 Montreal.

At your request the Sun Life Building was carefully inspected with a view to the subsequent preparation of an estimate of replacement cost of the buildings. Consideration has also been given to information made available, including a series of joint admissions made by the Sun Life Company and the City. The Sun Life Company has co-operated most freely and generously. In company with your other appointed representatives and alone  
30 on two or three occasions, we were conducted through practically every room in the building where notes were made on any features that might affect our estimates. The owners also supplied without restrictions, building drawings from which we had photostats made for our personal convenience and use, and loaned to me personally many special drawings which were returned after they had served my purpose.

As intimated above, the inspection was made generally in company with three other appointed representatives of the  
40 City. Many meetings were held with them over a period of weeks to discuss various aspects of the appraisal.

The building is unique in size and many other ways, and problems that frequently arose required collaboration to consider the effect upon the building as a whole. In particular, your real estate experts called upon me for considerable data on the cost or value of various parts of the building. My estimate of replacement cost was, however, made without reference to any of the other three experts, and in fact, was prepared by a method completely different from that used by them.

This report is intended primarily to present my estimate of replacement cost of the main office building of the Sun Life Assurance Company and of the Power Plant located opposite, on Mansfield Street; with the connecting tunnel. There is also attached confirming data that is required to support my conclusions. I have shown also the detailed costs requested by the Real Estate appraisers. I have also checked carefully for any evidence  
10 of deterioration and have given some consideration to the effectiveness of the building plan to suit the purposes for which it was obviously built.

At the request of the City I have based my analysis of cost on units applicable in 1939-1940, in order to eliminate any unfair influence due to war conditions. In this connection it must be noted that the cost trend was rising prior to the war. This is shown clearly on the curve and tabulated statement of construction cost index from the records of the Dominion Bureau of  
20 Statistics (see Table III). This index is not presented as a rigid or precise figure but it is by far the most complete and reasonable figure available and it is generally accepted as being authoritative.

It should be made very clear that all unit costs used are not claimed as being precise costs applicable in 1939-1940. In many instances, such as items subject to special manufacture for the Sun Life Building, it is obviously impossible to get any price at all; especially ten years after the event. There are  
30 other items that were not specially made and yet are used in comparatively few buildings; it is unfair to say that one could always expect from the trade a price applicable in 1939-1940 when the price was asked in 1942 or 1943. But the larger items are for materials on which the price could be, and was, fairly established. These major items (a-f in Table I) total about 60%. For all other items I have checked those which were substantiated in whole or in part; this proportion is 33%, giving a total of 93%. The balance of about 7% of the gross cost shows items or parts  
40 on which I had to rely on my own judgment to arrive at a fair reasonable figure; my judgment being tempered by twenty-five years varied experience in the construction industry.

It is my considered opinion, subject to the foregoing restrictions, and based upon a detailed process of estimating, adequately described below, that the net replacement cost of the Sun Life Buildings, as at December 1, 1941, is as follows:

Main Building	\$18,060,070.
Power Plant & Tunnell	501,220.
Total	<u>\$18,561,290.</u>

After examining the building, careful consideration was given to the possible ways of arriving at replacement cost without unreasonable detail. Unit costs per cubic foot of building volume are frequently used for a rough, quick estimate when other and better means are not possible. But this building is quite unique, and as the cubic foot estimate is at best a guess, it was discarded as being inadequate and inapplicable. I prepared  
10 a skeleton quantity survey and priced it in the same way that I would price a detailed estimate. All items were not taken off to precise detail. But the larger the item the greater attention was paid to the estimate. Many items were grouped where applicable. Steel columns were taken in careful detail; three or four typical floors of steel were taken off and averaged. Exterior walls were taken off at a net area and priced as a unit including stone, brick, plaster, etc. Ornamental granite was taken separately and in considerable separate detail, both as to quantity and price. Floor  
20 materials such as plaster, concrete, fill and finish were taken as a unit. Marble was taken at a square foot estimate and priced at an average unit per square foot, but in different groups such as floors, walls, etc. Where there was a duplication in this method an appropriate reduction was made in the unit cost of the secondary item of cost. In short, the estimate was made in sufficient detail to justify clearly the schedule in Table I and to allow the extraction of information about special features as covered later in this report.

30 Many small items were omitted. Their omission will not seriously affect my total because the major fundamental items bulk to a much larger percentage than usual. An average amount of 15% has been included covering architects and engineers fees, contractors profit, what are known as "general conditions", i.e., supervision, permits, temporary light and heat, job operating, overhead, taxes and compensations, etc; also such items as plant, machinery, scaffolds, applicable to construction but not part of the building. This percentage was added to each item in varying amounts dictated by my experience. In all, I believe that my  
40 estimate errs on the low side rather than on the high.

In every possible instance I have checked my quantities and costs against any available information or costs which might be comparable. My gross floor areas check within less than 1% compared to the figures of the City and Mr. Fournier. My cubic content of the building is less than 1% above the City estimate. Differences greater than this can be attributed merely to interpretation of certain physical features, Structural steel was carefully estimated in detail from the drawings; my total was 17,900

tons which compares with 18,550 tons as published. Granite was taken off quite carefully; my tonnage was 32,000 tons, compared to a published weight of 35,000. Mr. McAuslane intimated that the cost of finishing a complete tower floor was about \$80,000. to \$90,000. Using the same prices as used in my estimates, my figure would be \$92,000.

10 Table V shows the actual cost of the building as declared by the owners. Reduced to 1939/40 index and treated exactly as my own estimate the 1941 values are as follows:

	<i>Main Building</i>	<i>Both Buildings</i>
Present Estimate, see Table I	18,060,070.	18,561,290.
20 Sun Life declared costs, see Table V	18,859,750.	19,375,840.
Sun Life declared costs reduced by claimed remodelling cost	17,537,750.	18,053,840.
(\$1,520,000. depreciated to \$1,322,000.)		

These figures check within about 3% which I consider close for this type of building.

30 The building has been constructed using the finest obtainable materials, equipment and workmanship. No other building of any magnitude has been erected in this district using similar proportions of comparable materials. There has been no recognizable deterioration to date with the exception of five minor items which I have noticed.

40 a. Granite column bases, etc., have corner cracks in a few instances due to improper jointing with mortar. No repair is possible and replacement would be impractical and ridiculously costly. These cracks do not entail any continuing or or cumulative deterioration.

b. There are three or four plaster cracks, especially where the new building was joined to the old. These could be repaired at a cost of a few hundred dollars, but might open up again. It is possible that replacement of partitions might prevent further evident cracks at a cost which I would guess at about \$5,000.

- c. Marble in the floor has worn away in a very few places due to soft veins. Those pieces I have seen could be replaced for \$200.
- d. The basement wall leaks slightly at the north west corner and this has caused a little damage: It is not serious and the company has not made repairs as they are not using the space for the purpose originally intended. The repaired value (including waterproofing of the concrete wall) might be \$3,000. This is not deterioration or depreciation as much as damage due to defective work.
- e. A very few marble stair treads show slight wear.

The profitable life of the building is as near permanent as it possible in this country. I believe that an average allowance for depreciation of 1% per annum, taken over the whole establishment, is reasonable and justifiable. The mechanical parts of the building total 23½% of my estimated gross cost. This includes complete plumbing, piping, wiring, elevators and machinery; ordinary maintenance and current repair will assure a life similar to that of the building shell for the greater part of these trades.

The boiler plant has been treated separately at your request, because it is carried on the City rolls as an independent unit. It is, in fact, a part of the whole project and in most cases would be incorporated as a physical part of the building which it serves. As such, I believe that 1% depreciation would apply over the whole project. But as a separate unit, containing an abnormal percentage of mechanical equipment, it has been treated differently. The building is no less permanent than the main building, though the materials are not as expensive and do not show. Much of the mechanical installation is practically permanent. Practically none of it has a life expectancy less than 30 to 40 years, subject, of course, to reasonable maintenance.

To illustrate, the small boiler in this building was installed originally in the first unit of the main building in about 1917 and is 26 years old and still in service even after being moved.

The schedule of declared costs shown in Table V was adjusted to 1939/40 costs and each annual expenditure was depreciated from the date of first occupancy of the part of the building in question. The resulting cost have been mentioned previously in comparing my estimate. My primary purpose in preparing the table was to arrive at a reasonable hypothetical

or average period for depreciation, to be used to establish the comparable age of a building erected at one time. In this connection it should be mentioned that it has been established, solely as a matter of opinion that such a building would require three years to build. This does not affect depreciation allowance but this figure is used elsewhere in this report.

10           There was some discussion among your representatives as to the cost index to assume to that there would be no unfair prejudice to the Sun Life Company on account of war conditions and costs. It should be noted that the index curve was rising steadily. On this basis an index of 97.5 could be justified. I adopted 94.58 as the average of 1939/40 in accordance with the generality of your suggestion. Messrs. Desaulniers and Mills used the 1939 figure of 92.08. If the low index is used, the depreciated cost of the building would drop by about \$500,000. If the high figure is used it would increase by about the same amount. The figure is  
20 not precise because the "fair date and conditions" is entirely a matter of opinion. These details are added only for your guidance.

          There is no recognizable element of obsolescence in the building that can be considered important. The building was built by the owners for their specific requirements and they incorporated all available features, materials and services that would establish their property as the public embodiment of the Sun Life Company and that would add to the convenience, comfort and  
30 health of their employees. The design and construction is not surpassed in Canada; it was intended to continue permanently as a suitable head-office for the Company, affected as little as possible by any changes, style or current popular fashion. Considering the amount of the investment and the anticipated growth of the Company business, this requirement was legitimate. In several of the papers published in the Engineering Journal, the architects and engineers re-iterated that the owner occupied space was laid out in large areas to suit their specific requirements. This fact and the parallel requirements of certain large  
40 units, gymnasium, auditorium and banking hall, etc., determined the fundamental arrangement of the lower floors and the consequent size and shape of the building. It is obviously impossible to place upon this property a building to provide the gross floor area required without creating large and therefore deep spaces. However, reasonable consideration of the building and of the published requirements of the owner company indicate clearly that the requirements for size and arrangements of space blended completely into the plan for a monumental building. The space arrangements diverge somewhat from the customary layout for

commercial office buildings arranged to provide any size of space to all comers within the scope of the building. The depth to windows is greater than typical in such buildings, but this is balanced in part (deliberately) by extra ceiling height to throw light back farther and by Mechanical Ventilation: this mechanical ventilation was not installed primarily for this purpose but for the benefit of the employees. It is significant that the Sun Life Company staff occupy the lower floors where the areas are largest and depths of working space are greatest.

It must also be noted that the building site is unique in that it is clear on two sides and can never be obstructed. On Mansfield Street the roadway is ample in width. On the north side lanes divide the property into such small parcels of land that no building over ten storeys can sensibly be thought of. This open site assists greatly in counteracting conditions that might otherwise be considered a minor restriction.

Service areas throughout the building are definitely generous in proportion, in keeping with the obvious planning of the building and its type. A great deal of this apparent excess service space is necessitated by the air conditioning system.

Considerable weight was placed on the undesirability of two floors of unfinished space which are partly shielded by balustrades at "set back" levels. They are not as desirable as other floors because they lose the outlook which might have been a bonus value. They lose some light, although the unobstructed site and high ceilings compensate considerably for this loss. These areas are in the tower where the depth of space is not as great as below. When the time comes for the Sun Life to occupy the whole building (or these two floors) it will obviously be quite possible and practical to use this area for purposes suited to the space, exactly as they do now in the areas occupied.

It is true that for the time being some areas of floor space cannot be subdivided efficiently into small exterior offices for rental to all classes of tenants, comparable to a much smaller building designed exclusively for commercial purposes.

It is also true that the owners now rent space or have vacant space available for rental to the extent of about 40 or 45% of the floor area suitable for office or similar use. This is not a new condition for the Company. The first unit of the building which was six or seven storeys high, accommodated many tenants immediately after the Great War. They were displaced as the

owners required the space. The first extension was inadequate almost as soon as completed. The main building was occupied in part as soon as it could be made habitable. The technical papers published, indicate that the owners were definitely planning for all the growth they could possibly foresee, because the site was being developed to the limit.

10 The rentable space in general however, lends itself very satisfactorily to tenants requiring larger areas, which are much less available in more commercial buildings. But to the extent that rented space to tenants does not utilize it as efficiently as planned for the specific requirements of the owners, they may be entitled to a diminution of appraisal as long as the condition lasts. All of these rental "disabilities" have been investigated by Messrs. Desaulniers and Mills and due allowance made in their findings. But the use in part by tenants has no effect whatever on the use by the owners of that part occupied by their staff. In fact, they  
20 enjoy current value from a considerable part of the worth of the portions occupied by tenants. This feature is covered later in this report.

Messrs. Desaulniers and Mills have asked for details about the building which are of use only to the Sun Life Company. Also for the cost of features not usually found in competitive commercial buildings. The costs which follow have all been taken from my estimate and are on the same basis. In some cases it is not possible to segregate a cost, and in two or three instances an  
30 approximate figure has been used. In all comparisons I have considered a high class office building such as the Dominion Square Building.

Cost estimate items 'a', 'b', 'c', etc., refer to Table I.

1. *Limestone could have been used instead of granite*

	Item 'e':		
	Plain walls in granite		\$2,100,000.
	Limestone would cost 50%.		
40	Brickwork and setting of stone remain same.		1,260,000.
			\$ 840,000.
	Item 'f':		
	Ornamental features in granite.		1,757,000.
	Limestone would cost about 40% for material, no change for setting cost.		805,000.
			952,000.
	Excess cost of granite		952,000.



2. *Reduction in Ornamental Stonework:*

10	Ornament in modern revenue producing buildings is largely eliminated to save cost, e.g., News Building, New York City. Some cost is justifiable — purely a personal guess — say 25% of the item above		
	Excess cost of limestone ornamentation		600,000.
	3. <i>Steel Sash could have been used instead of bronze and good ordinary glass instead of Vita Plate</i>		
	Item 'e':		
20	Bronze sash — glazed	785,000.	
	Good steel sash at \$2.00 plus \$0.50 erection, plus \$1.00 for glass in place, per sq. ft.	255,000.	
		<hr/>	
	Excess cost of bronze sash		530,000.
	4. <i>Less expensive doors could have been used for entrances and at elevators</i>		
30	Item 'm':		
	Bronze doors, etc.	225,000.	
	Good steel doors — purely a guess	81,000.	
		<hr/>	
	Excess cost of bronze		144,000.
	5. <i>Terrazzo floors could have been used instead of marble</i>		
40	Items 'i', 'j', 'k':		
	Marble floors	229,000.	
	Terrazzo would cost	56,000.	
		<hr/>	
	Excess cost of marble		173,000.
	6. <i>Marble walls could have been omitted</i>		
	Items 'i', 'j', 'k':		
	Marble walls and base	350,000.	
	Plaster and plain base	40,000.	
		<hr/>	
	Excess cost of marble		310,000.

	7.	<i>Decorative cost in banking hall</i>		
		Item '1':		
		Complete ornamentation	469,500.	
		Ordinary construction	70,000.	
			<hr/>	
		Excess cost of ornamentation		399,500.
10	8.	<i>Equipment &amp; Finish in Hospital</i>		
		Tile and fittings entirely excess.	57,100.	57,100.
		(Note: excessive amount of parti- tions and plumbing would more than balance removal of floor finish, not otherwise compensated in this comparison)		
20	9.	<i>Auditorium and Gymnasium</i>		
		Structural steel for these areas is excessive due to long span. If in- termediate floors were completed the structural cost would be as low or lower than for the present con- dition. Partitions, lighting, heating and decoration are the same for the full volume as for the subdivided volume, or almost so. The excessive decoration, tile and equipment, plumbing, etc., probably create a net "plus" cost in this area over the above suggestion. These costs can- not be fairly segregated.		
30				
	10.	<i>Securities Vault in Basement</i>		
40		Item '0':		
		Entirely excess cost		225,000.
	11.	<i>Kitchen &amp; Cafeteria Services</i>		
		Item 'p':		
		Kitchen equipment in upper floor, almost entirely excess cost		233,000.
		Item 'q':		
		Kitchen equipment in basement, almost entirely excess cost		35,900.

12. *Private Elevators to Kitchen & Vault*

Item 's':

Two elevators only 22,000.

13. *Main Elevators*

10 These elevators are quite costly. Their cost could be reduced very considerably. Possibly as much as 500,000.

14. *Cost for Twenty-six Storey Building*

20 This height is directly a high cost item. The excess cost above a twelve storey building of full area has been carefully calculated and is 670,000.  
If a twelve storey building had been used concrete could have been used at a further considerable saving.

15. *Cost of Mechanical Ventilation*

This cost cannot be properly segregated. An idea only is given by the following —

30 Item 'v':  
Ventilating apparatus 780,000.  
Electrical — about 200,000.  
Power house — about 50% of cost 300,000.  
Two complete equipment floors taken at about 50% of the average building cost — 1,000,000 cu. ft. 500,000.

Total excess cost at least \$1,780,000.

40

Note: The full mechanical ventilation of this building was installed directly for the benefit of the Sun Life Company and its staff. As an added attraction to a revenue producing building it should be an excellent feature in that it maintains the building in an exclusive category where it can select its tenants, presumably at enhanced rentals or with longer leases. This extra value should be reflected in the rental charge against either tenants or for owner occupied space. This provision of air conditioning is about as desirable a feature as could be established by the owners to ensure the attraction of tenants for a long time to come — or

in other words to prolong the commercial life of the building in the high category in which it stood when first completed, and in which it stands today. It should be noted that the fuel cost chargeable to air conditioning and other services would be at least 25% of the total expense; probably more.

10 There are other costs such as the extra height on all floors; additional cost for plumbing and services due exclusively to the high building feature; extra cost of plumbing due to brass and copper pipe throughout; expensive and elaborate electrical and mechanical equipment, refrigeration, etc. It is impossible to segregate these items and they have not been valued; but must be taken as a definite "plus value" when any commercial consideration is given to the building.

20 If the above items are totalled they come to \$7,471,500. plus certain considerable values not definitely established. The following point is significant. My estimate cost of \$20,008,600. shows a cube foot cost of 91¢. If financing cost is added the unit becomes 94½¢. If the above total of so called "Excess costs" is deducted, the unit becomes 60¢, which is readily comparable to the building cost of any high class office building. This is not suggested as an appraisal approach but is presented as further confirmation of the original estimate.

30 The above discussion of items more costly than usual for commercial or revenue producing buildings were all added by the owner for the benefit use and prestige of the Sun Life Company. Items 6 to 12 and 15 are solely for the use of the Company and its staff. (Item 15 may be of some value to tenants also) Items 1 to 5 and 13,14 are integral parts of the building as a whole. They were added to create in the building a distinction that would be associated with and restricted to it. They or their value cannot be subtracted from the whole nor subdivided among temporary tenants. Any added prestige or satisfaction or value to these tenants is purely incidental and exist because it is an exclusive  
40 building, The Sun Life Building. They were designed and built to create that condition. They exist and are being used for the purpose intended and have real value as such, which value, in my opinion, accrues to the owner company.

Due to erection of the building in three parts there was some demolition required and the Sun Life Company claim lost value of expenditures. Such deductions are quite legitimate. In this connection it should be pointed out that the labor element of the work in this building is unusually low, due to the high qual-

ity and consequent cost of the materials. In my opinion the ratio is about 20% labor. To illustrate; items a-f in the estimate, Table I, total \$11,470,000. and include labor of \$2,341,000. or 21½%; (both figures subjected to the same percentage for overhead, etc.). In establishing the construction cost index we used 25% - 75%. A lower percentage of labor would have been in favor of a higher estimate.

10

The deductible costs declared total as follows:

Granite sidewalks	70,335.
Temporary partitions	233,713.
Walls & floors, demolished	1,215,450.
	<hr/>
Total	\$1,519,498.
	<hr/>

20 I do not know what amount of such work was involved. I do know of certain items that were charged. The north wall of the original section was in granite, of typical design. A great deal of it should have been re-usable and the drawings call for some re-use. The east end temporary wall of the first section was of brick. The north wall of the first extension was enclosed but I do not know whether in brick or granite. There was a temporary terra cotta or brick wall parallel to Mansfield street reaching to about the 9th floor and closing off the Mansfield Street part of the building. There was also considerable expense involved in altering the  
 30 columns in the banking hall and for temporary partitions.

Estimated costs for the alterations about which I know are given below

*North Wall of Original Section*

	Concrete wall	4,000.
	Demolition	1,000.
40	Granite wall	151,000.
	Demolition	8,000.
	<i>East End Wall</i>	18,000.
	Demolition	1,000.
	<i>Temporary wall to 7th floor</i>	53,000.
	Demolition	5,000.
	Old Roof Construction:	
	Original Building	35,000.
	Demolition	3,000.
		<hr/>
		\$ 279,000.
		<hr/>

Of this amount about \$110,000. (gross) is value of granite which should have been salvaged to a large extent. Strengthening steel columns and changes to black synite columns in the banking hall are all considerable items, but it must be kept in mind that the ratio of labor to materials is about 20% - 80%. A very little permanent material is involved, and a great deal of labor can be carried out for a cost that does not influence the total cost greatly.

10 Against the claim for \$233,713. for temporary partitions, my estimate includes \$1,191,000. for all permanent partitions including those of steel and wood. These details are not presented as criticism of the declared amount but to indicate that any estimate figures are low.

In conclusion, it is my opinion that my figures of \$18,060,-070. for cost of the main building and \$501,220. for the cost of the power house show a minimum appraisal of the replacement value, with adequate allowance for physical depreciation, as at

20 Dec. 1, 1941. It is also my opinion that the building was designated and constructed as a monumental building for the special purposes and requirements of the owner; and that it is being used and occupied as such, and that over 60% of the building volume (up to the 10th floor and in proportion to owner occupancy) is being used directly in the manner which was intended when the building was planned and designed. This space is providing the efficiency of use planned for it, and is probably as efficient as similar space in any building of comparable size, and similar use.

30 Also, it is my opinion that the owners retain for themselves considerable current value in the portion of the building occupied by tenants; probably to the extent of at least 40%.

Brian R. Perry.

Montreal, February 24th, 1943.

40

SUN LIFE ASSURANCE COMPANY

MAIN BUILDING

ESTIMATE OF REPLACEMENT COST

Table No. 1.

a. Excavation .....	\$ 267,000.
b. Basement Concrete .....	184,200.
c. Structural Steel .....	3,500,000.

	d.	Typical Floor Construction, complete including finish .....	3,520,000.
	e.	Exterior Typical Walls, complete .....	2,795,000.
	f.	Ornamental Features of Masonry Walls .....	1,755,000.
	g.	Miscellaneous non-typical items such as — Roofs, Panelling and expensive details of minor offices .....	280,000.
10	h.	Partitions; including doors .....	1,191,000.
	i.	Typical Marble and Tile .....	539,000.
	j.	Marble in Ground Floor .....	177,500.
	k.	Marble in Entrance of Original Building .....	90,000.
	l.	Banking Hall, ornamentation .....	469,500.
	m.	Bronze Doors .....	225,000.
	n.	Stairs; complete .....	171,000.
	o.	Main Vault .....	225,000.
	p.	Kitchens and Cafeteria, including Marble Tile & Equipment .....	233,000.
20	q.	Basement Kitchen Services .....	35,900.
	r.	Hospital Section; Tile & Equipment .....	57,100.
	s.	Elevators .....	1,588,000.
	t.	Electrical Work .....	1,086,000.
	u.	Heating .....	615,000.
	v.	Ventilation .....	780,000.
	w.	Mechanical Equipment .....	137,500.
	x.	Plumbing .....	437,000.
			<hr/>
			\$20,248,700.
30		Deduct for typical floors not completd, partially include above .....	240,000.
			<hr/>
			\$20,008,700.

Add financing cost for estimated three years  
construction time, in equal amounts, each 6  
months at 3%.

40	\$3,333,000. at 3% for 2½ years	\$250,000.	
	“ “ “ “ 2 “	200,000.	
	“ “ “ “ 1½ “	150,000.	
	“ “ “ “ 1 “	100,000.	
	“ “ “ “ ½ “	50,000.	750,000.
			<hr/>

Gross Replacement cost of Main Building  
as at December 1, 1941 ..... \$20,758,700.

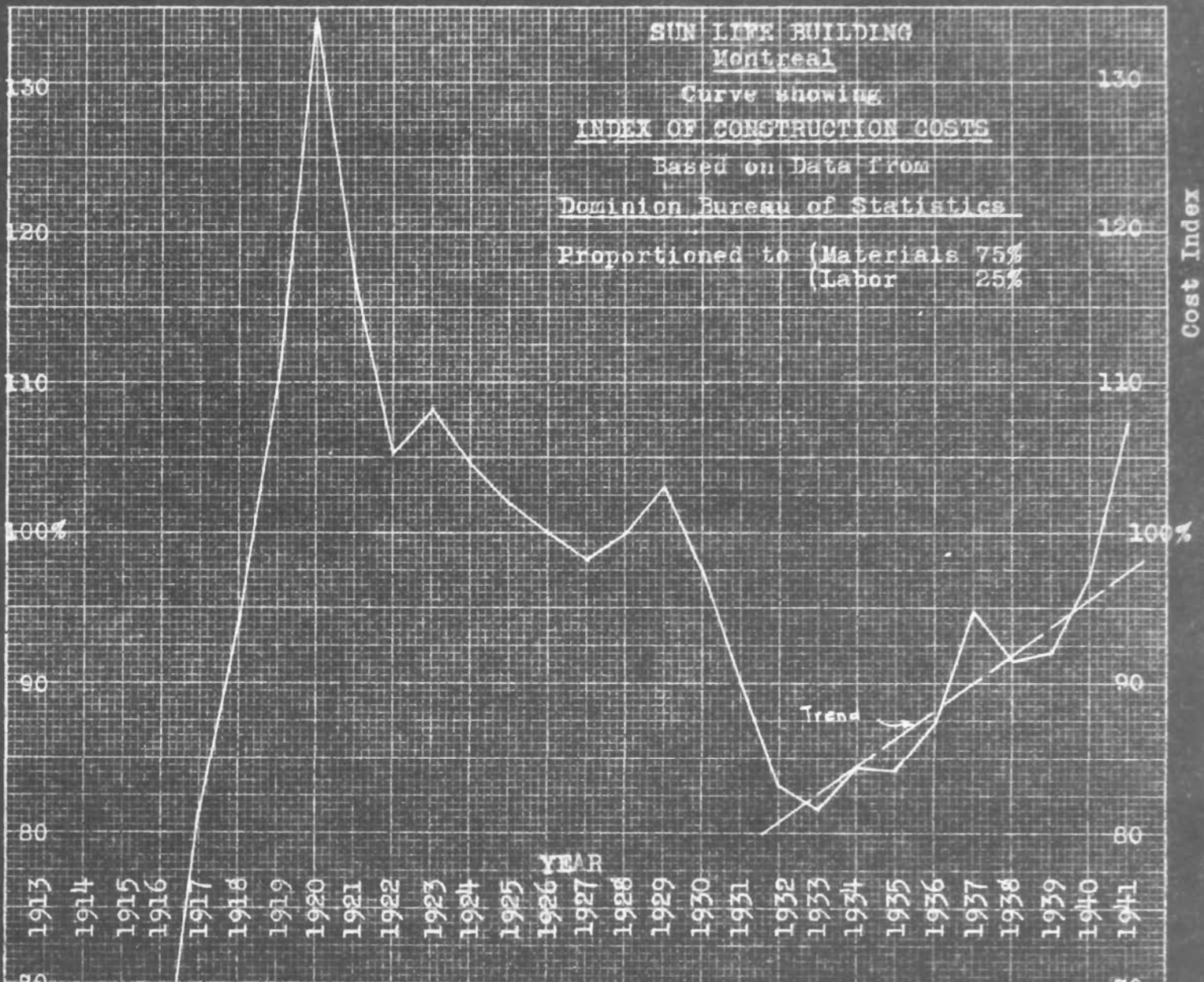
SUN LIFE BUILDINGS  
SUMMARY OF REPLACEMENT COST  
ESTIMATES

10		Table No. II.
	<i>Main Building</i>	
	Replacement Cost	\$20,008,700.
	Financing	750,000.
		\$20,758,700.
	Depreciation at 1% for thirteen years	2,698,630.
20	Net Replacement Value as at Dec. 1, 1941	18,060,070.
	<i>Boiler Plant &amp; Tunnel</i>	
	Replacement cost, Buildings & all usual sub-trades	311,000.
30	Mechanical trades	325,000.
		636,000.
	Depreciation :	
	Building 12 yrs. at 1%	37,280.
	Mechanical 12 yrs at 2½%	97,500.
		134,780.
40	Net replacement value December 1, 1941	501,220.
	All Buildings, net replacement value, December 1, 1941	\$18,561,290.



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SUN LIFE BUILDING  
 Montreal  
 Curve showing  
INDEX OF CONSTRUCTION COSTS  
 Based on Data from  
Dominion Bureau of Statistics  
 Proportioned to (Materials 75%  
 (Labor 25%)



1913	64.78	1922	105.30	1931	89.95
1914	61.73	1923	108.10	1932	83.18
1915	60.13	1924	104.60	1933	81.68
1916	61.00	1925	101.93	1934	84.35
1917	81.53	1926	100.00	1935	84.13
1918	93.83	1927	98.13	1936	87.33
1919	109.88	1928	100.00	1937	94.80
1920	134.28	1929	102.95	1938	91.43
1921	116.80	1930	97.63	1939	92.08
		1940	97.08	1940	97.08
		1941	107.30	1941	107.30

TABLE No. 111.

TABULATION OF DECLARED EXPENDITURES  
MADE BY THE SUN LIFE COMPANY

Table No. IV.

MAIN BUILDING

Declared expenditures, year by year, have been related to the average 1939/40 cost index. From these costs, depreciation has been applied at 1% per annum from the date of occupancy of each section. Where minor parts have been completed each year, immediate occupation was assumed.

Year	Expenditure Assumed at 1st. July, Each Year	Cost Index	Cost Referred to Index 94.58 Average of 1939-40	Sub-Total	Depreciation Period in Years	Depreciation at 1% per Annum to Dec. 1st. 1941
1913	126,794.	64.78	185,000.			
1914	524,183.	61.73	803,000.			
1915	200,465.	60.13	315,300.			
1916	350,417.	61.00	495,000.			
1917	596,634.	81.53	692,200.			
1918	444,584.	93.83	447,800.	2,938,300.	23½	690,500.
1919	64,279.	109.88	55,300.		22½	12,450.
1920	24,643.	134.28	17,400.		21½	3,740.
1921	49,452.	116.80	40,100.	32,950.	20½	6,750.
1922	cr. 7,963.	105.30	cr. 7,150.			
1923	280,934.	108.10	245,600.			
1924	603,928.	104.60	546,500.			
1925	764,022.	101.93	710,000.	1,502,100.	16½	248,000.
1926	253,775.	100.00	240,000.			
1927	219,701.	98.13	211,800.			
1928	1,775,711.	100.00	1,680,000.			
1929	3,063,803.	102.95	2,814,700.			
1930	6,510,750.	97.63	6,307,600.	11,254,100.	11½	1,294,200.
1931	3,207,453.	89.95	3,380,000.		10½	354,900.
1932	589,610.	83.18	665,000.		9½	63,200.
1933	194,610	81.68	225,300.		8½	19,150.
1934	45,046.	84.35	50,650.		7½	3,800.
1935	43,693.	84.13	49,180.		6½	3,200.
1936	62,707.	87.33	68,000.		5½	3,740.
1937	22,635.	94.80	22,600.		4½	1,020.
1938	89,066.	91.43	92,200.		3½	3,230.
1939	101,331.	92.08	104,100.		2½	2,610.
1940	421,719.	97.08	411,700.		1½	6,160.
1941	62,673.	107.30	55,300.		0½	280.
	<u>20,686,655.</u>		<u>20,924,180.</u>			<u>2,716,930.</u>
			<u>2,716,930.</u>			

Net depreciated cost \$18,207,250.

From the above tabulation the average depreciation period would be 13.0 years, assuming construction of the whole building as a unit.

SUMMARY OF DECLARED EXPENDITURES

Table No. V.

<i>Main Building</i>			
10	Declared Expenditures	<u>\$20,686,655.</u>	
	Expenditures related to 1939/40 cost index (See Table V)	20,924,180.	
	Depreciation:	<u>2,716,930.</u>	
	Net Depreciated Value		\$18,207,250.
	Financing costs (approximate)	750,000.	
	Depreciation costs “	<u>97,500.</u>	
20	Net Depreciated Value		652,500.
<i>Power House &amp; Tunnel</i>			
	Declared Expenditures	<u>709,257.</u>	
	Expenditures related to 1939/40 cost index, compounded to 1929	651,590.	
30	Depreciation:		
	Building 12 yrs. at 1%	40,000.	
	Equipment 12 yrs at 2½%	95,500.	135,500.
	Net Depreciated Value		<u>516,090.</u>
<i>Both Buildings</i>			
	Net Value as at December 1, 1941		<u>\$19,375,840.</u>

40 From this should be deducted the depreciated value of certain excessive costs claimed by the Sun Life Company, due to the fact that the building was erected in three parts.

The item for financing costs has been added for comparative purposes only and is based on a three year period for the construction of the project as a unit.

TABULATION  
OF  
FLOOR AREAS AND BUILDING VOLUMES

Table No. VI.

Floor	Gross Area (Projected)	Area of Floor Structure (Gross)	Area for Building Volume	Floor Height	Cubic Content
27	8,430				
26	8,430	6,430	8,430	11'5"	96,230
25	21,380		8,430	16'1"	135,580
24	21,380		21,380	11'	235,180
23	26,300		21,380	14'	299,320
22	26,300		26,300	17'	447,100
21	26,300		26,300	14'	368,200
20	38,747		26,300	14'	368,200
19	36,712		36,712	14'6"	532,324
18	36,712		36,712	14'	513,968
17	38,747		36,712	14'	513,968
16a	38,747		38,747	10'	387,470
16	38,747		38,747	14'6"	561,831
15	38,747		38,747	14'	542,458
14	38,747		38,747	14'	542,458
12	38,747		38,747	14'	542,458
11	56,685		38,747	14'	542,458
10	56,685		56,685	14'	793,590
9	54,955	47,121	54,955	14'	659,370
8	60,433		54,955	15'	824,325
7a	74,643	55,433	60,433	10'	604,330
7	74,643		60,433	14'6"	876,279
6	74,643		74,643	14'	1,045,002
5	82,793		74,643	13'	970,359
4	82,793		82,793	13'6"	1,117,705
3	83,056		82,793	13'6"	1,117,705
2	83,056	78,076	83,056	13'	1,079,728
1	83,056	76,076	83,056	15'	1,245,840
G	87,603		83,056	25'	1,661,120
B1	87,603		87,603	14'	1,226,442
B2	87,203		87,203	14'	1,220,842
B3	59,248		59,248	16'	947,968
	<u>1,662,671</u>	<u>1,623,627</u>	<u>1,596,893</u>		<u>22,129,808</u>

The above table is included to make the building quantities available for comparative purposes.

**DEFENDANT'S EXHIBIT D-18 AT ENQUETE**

*Statement of Areas in Sun Life Building considered rentable by  
C. Desaulniers and H. Mills but not admitted by  
The Sun Life Company in Schedule 'B'*

Floor	Washroom	Corridors	Electric and Janitor's Closets Pipe and Duct Shafts	UPPER PARTS OF			Building Services	Elevator Shafts
				Banking Hall	Assembly Hall	Gym- nasium		
Bas'mt								
1	1,588							
Ground			217					
1st				5,668				
3rd	225		107					
4th			117					
5th			225					
7th					1,138			
7a					5,130			
8th	1,378	1,113						
9th			301			8,437		
11th	134							464
12th	322							210
14th	173							
17th	282							
18th	144							
19th		788						
22nd	112							
23rd	112		492					
24th							9,328	
	<u>4,470</u>	<u>1,901</u>	<u>1,459</u>	<u>5,668</u>	<u>6,268</u>	<u>8,437</u>	<u>9,328</u>	<u>674</u>

**% OF AREAS NOT ADMITTED**

**TO TOTAL RENTABLE AREA OF BUILDING  
823,351 SQUARE FEET**

	<i>Not Admitted</i>		
	<i>Used as</i>	<i>Area</i>	
		<i>sq. ft.</i>	
		<i>% of Total</i>	
Washrooms		4,470	.543%
Corridors		1,901	.231%
Electrical and janitor's closets, pipe and duct shafts		1,459	.177%
Banking Hall		5,668	.688%
Assembly Hall		6,268	.761%
Gymnasium		8,437	1.025%
Building services		9,328	1.133%
Elevator shafts		674	.082%
		<u>38,205</u>	<u>4.640%</u>

Prepared by Desaulniers and H. Mills.

**DEFENDANT'S EXHIBIT D-19 AT ENQUETE**

*Statement on Cost of Standard Finishing of 17th and 18th floors etc., signed by Mr. McAuslane.*

1. Cost of constructing security vault including fees to vault engineers, is approximately \$97,000.00. The work was not done as additional to construction of ordinary space — therefore, I cannot find any record of the exact amount by which vault cost exceeds ordinary space.

Structural work and permanent vault equipment cannot be separated since work was given to one contractor and his costs are not broken down sufficiently to determine the two items.

The answer to the second query is Yes.

2. The cost to us of standard finishing of 17th, 18th, 19th and 21st floors was \$377,474. representing a gross floor area of 123,622 sq. ft., which amounts to \$3,053 per sq. ft. of finishing.

On this basis the following may be taken as the expected cost of finishing the floors referred to:

x24th floor	3,384 net sq. ft.	\$10,000.
23rd "	24,892 gross sq. ft.	75,995.
†22nd "	24,892 " " "	83,995.
20th "	24,892 " " "	75,995.
v11th "	35,500 " " "	80,000.
10th "	612 net sq. ft.	1,000.
Ground "	2,400 " " "	10,800.
	<hr/>	
	116,572	\$337,785.

x re 24th floor. The only elevator service to the 24th floor is freight, and only a small portion of this floor is not occupied by equipment. The space left could only be rented for storage and the finishing would probably cost as stated above.

† re 22nd floor. \$8,000. has been added to the expected cost of this floor to take care of the excess of ceiling height over the others.

v re 11th floor. The reason why this floor does not work out at \$3.053 per gross sq. ft. is that certain essential services are already in and would not require to be duplicated.

The following space, unfinished in 1941, has since been finished at the cost indicated:

19th floor	571 net sq. ft.	\$ 814.90
10th "	4 048 " " "	7,875.23
9th "	1,296 " " "	2,247.61
	<hr/>	
	5,915	\$10,937.74

3. Questions covered under this heading are answered by means of separate lists which have been compiled.

H. McAuslane.

Godfrey Realty Corp.  
738-28 St. Catherine, W.  
1255-53 McGill  
Confederation Building

FEUILLE DES ESTIMATIONS  
VALUATION SHEET

141708

NO DE COMPTE.....  
NO. OF ACCOUNT

1.- **PRIX UNITAIRES**  
**UNIT PRICES**

Irr.  
Terrain 106<sup>s</sup> x 106<sup>s</sup> Superficie 19045  
Land Area

Taux unitaires de valeur au pied carré, tel que déterminé par le Comité d'estimateurs \$2.00 & 8.00  
Unit rate of value per square foot, as determined by the Committee of Assessors

Prix déterminé par le Service Technique suivant le taux unitaire établi par le Comité d'estimateurs:—  
Price determined by the Technical Service according to the unit rate established by the Committee of Assessors

Corner Inf. Inc., au pied carré \$29.62 Total \$564,050  
per square foot

Bâtiment:.....Groupe No 3  
Building:.....Group No.  
Catégorie Comm. Classe 1 Type 3  
Category Class

Coût de reconstruction, moins la dépréciation, mais y compris les dépendances, jusqu'à 1941 \$654,106 Total \$1,218,156  
Cost of reconstruction, less depreciation, but including outbuildings, up to

Net 2,612,751  
Cubage { Conventionnel ..... Prix au pied cube \$.30 Total \$783,825  
Conventional Price per cubic foot

2.- **ESTIMATION SELON LA VALEUR LOCATIVE ANNUELLE**  
**VALUATION ACCORDING TO ANNUAL RENTAL VALUE**

Office & Loft Building 1946 Inc. Service & Vacant \$189,270 Gross Poss.  
Built 1928 Real revenue

Valeur locative \$137,780  
Rental value See Remarks

“ “ capitalisée à raison de % ..... \$1,226,500  
capitalized at the rate of

Estimation selon la valeur locative: \$ .....  
Valuation according to rental value:

3.- **PRIX DE VENTE DE CETTE PROPRIÉTÉ**  
**SALE PRICE OF THIS PROPERTY**

Date..... \$.....

4.- **MONTANT DE L'HYPOTHÈQUE**  
**AMOUNT OF MORTGAGE**

Première \$ .....  
First  
Deuxième \$ ..... Total \$ .....  
Second

5.- **AUTRES RENSEIGNEMENTS**  
**OTHER INFORMATION**

Tous autres renseignements tels que offres de vente ou d'achat, expropriations, règlements de succession, vente par voie de  
Any other data such as offers of sale or purchase, expropriations, settlement of estates, sales by

licitation, décisions des tribunaux ou du bureau de révision des estimations, etc., de nature à indiquer la valeur de la propriété  
licitation, decisions of the courts or of the Board of Revision of Valuations, etc., of a nature to show the value of the property

Date.....

6.- **VALEUR DE CETTE PROPRIÉTÉ PORTÉE DANS UN PROSPECTUS OU INSCRITE DANS LES LIVRES DU PROPRIÉTAIRE**  
**VALUE OF THIS PROPERTY ENTERED IN A PROSPECTUS OR IN THE OWNER'S BOOKS**

Date..... \$.....

7.-

**PRIX DE VENTE DE PROPRIÉTÉS SEMBLABLES  
SALE PRICE OF SIMILAR PROPERTIES**

Nos de cadastre.....original.....subd.

Cadastral Nos.:

No de maison :.....rue.....street

House No.:

Date.....

8.-

**COÛT INITIAL DE CONSTRUCTION DU BÂTIMENT  
ORIGINAL COST OF CONSTRUCTION OF BUILDING**

Date..... \$.....

Renseignements donnés par :.....  
Information given by:

9.-

**ASSURANCES  
INSURANCE**

Date..... \$.....

10.-

**ÉVALUATION DES ESTIMATEURS  
ASSESSORS' VALUATION**

Terrain : 19045 au pied carré \$ 29.62 Total \$ 564,050  
Land: per square foot  
Bâtiment: \$ 635,950  
Building:

Total \$ 1,200,000

This building is about 50% Office & 50% Loft Building

**REMARQUES  
REMARKS**

Gross Poss. Rev.	189,270.		Our replacement (Net)	1,175,550.
Less operating Exp.	54,360.		Commercial Value	1,226,500.
				2)
	134,910.			2,402,050.
Capt at 11%	1,226,500.		50% Comm. & Repl.	1,201,025.
100% occupied by tenants				

Date..... March 25th 1943

G. E. Vernot

Estimateurs — Assessors

**DÉCISION DU BUREAU DE RÉVISION DES ESTIMATIONS  
DECISION OF BOARD OF REVISION OF VALUATIONS**

Date de l'audition: .....  
Date heard:

Date de la décision: .....  
Date decision rendered:

Président — President



## PROCEDURE

Le Bureau de Revision des Estimations, en vertu des pouvoirs qui lui sont conférés par la Charte de la Cité de Montréal, a donné au Chef Estimateur les instructions suivantes sur la façon selon laquelle les estimateurs doivent procéder à leur travail:—

**1. TERRAINS:—**En ce qui concerne les prix unitaires des terrains, le Chef Estimateur nommera cinq comités d'estimateurs formés à même le personnel des estimateurs. Chaque comité se réunira sous la présidence d'un de ses membres désigné par le Chef Estimateur et déterminera les taux unitaires de la valeur des terrains de sept quartiers lesquels formeront un arrondissement qui sera du ressort de chacun. Ces taux unitaires de la valeur seront indiqués sur le plan spécial de quartier tel qu'il existe déjà, et cette carte portera un numéro auquel référeront les fiches entre les mains des estimateurs. En cas de divergence de vues au sein d'un comité, l'avis de la majorité l'emportera. Le Chef Estimateur pourra assister aux séances des différents comités et donner son avis. Le Chef Estimateur verra à coordonner le travail des cinq comités et à ce que ceux-ci se consultent les uns les autres lorsqu'il y aura lieu de le faire en vue d'assurer l'uniformité dans la détermination des prix unitaires.

Un comité de coordination du travail en cours, composé des présidents des cinq comités mentionnés plus haut, et présidé par le Chef Estimateur, sera formé d'ailleurs en vue d'assurer cette coordination.

Le prix au pied carré sera calculé pour chaque terrain par le Service Technique, suivant les taux unitaires de valeur établis par les comités d'estimateurs, en tenant compte, même pour les propriétés résidentielles, des tables de profondeur et d'influence d'encoignure ainsi que des autres facteurs mentionnés dans le "Manuel d'Estimation des Biens-Fonds".

Cependant, dans certains cas exceptionnels, tels que groupements, irrégularités, diminution d'utilité due à la configuration ou au caractère du terrain, où l'application stricte des règles de profondeur et d'influence d'encoignure donnerait lieu à une évaluation injuste en plus ou en moins, il appartiendra à l'estimateur d'user de son jugement pour ramener le chiffre final à une évaluation adéquate.

**2. BÂTIMENTS:—**Les prix unitaires, le coût de reconstruction et le pourcentage de dépréciation annuelle des bâtiments sont établis par le Service Technique, de la façon suivante:—

a) La classification des bâtiments déjà en vigueur continue de s'appliquer à tous les bâtiments, quelle que soit leur date de construction; b) Les bâtiments seront divisés en trois nouveaux groupes:—

1. Les habitations domiciliaires ou semi-commerciales qui sont impossibles et qui ont été construites avant l'année 1915; 2. Tous les bâtiments non assujettis à l'impôt foncier ordinaire; 3. Tous les autres bâtiments.

Les habitations des premier et deuxième groupes seront classifiées par catégories, classes et types, selon le système déjà en vigueur, avec subdivisions que l'on jugera à propos d'y ajouter, et un prix, au pied cube seulement, de chaque type de bâtiment, sera déterminé.

Le coût de reconstruction d'un bâtiment en particulier sera fixé à raison de son cubage et du prix au pied cube déjà déterminé pour le type de construction qui lui est propre.

Le cubage des bâtiments et la détermination de la catégorie et du type dans lesquels ils doivent être classés, l'entrée des chiffres de cubage sur la fiche permanente, seront faits par le Service Technique et les estimateurs quand ces derniers seront disponibles. Pour que le travail puisse être accompli dans un délai raisonnable, nous recommandons l'engagement immédiat d'employés surnuméraires dont le nombre et les fonctions seront déterminés par le Chef Estimateur.

L'estimation du coût net de remplacement des bâtiments de troisième groupe se continuera comme elle se poursuit présentement.

**3. FICHES PERMANENTES:—**Elles seront de deux sortes: les cartes jaunes actuellement en usage serviront aux propriétés du troisième groupe; les cartes de couleur azur serviront aux propriétés des premier et deuxième groupes. Ces cartes sont permanentes et doivent être remplies pour toutes les propriétés de façon que chaque immeuble ait la sienne.

Les fiches de même que les feuilles des estimateurs, seront remplies par les commis attachés à chaque groupe de deux estimateurs ou, si le Chef Estimateur le juge à propos, par d'autres commis à être nommés.

Les estimateurs reçoivent leurs fiches et, le cas échéant, les feuilles d'estimation dûment remplies, sauf relativement aux espaces réservés à l'estimation selon la valeur locative annuelle, à l'évaluation des estimateurs, et aux remarques, lesquels sont remplis par les estimateurs eux-mêmes.

## PROCEDURE

The following instructions on the manner in which the Assessors shall proceed with their work, have been given to the Chief Assessor, by the Board of Revision of Valuations, in virtue of the powers conferred on it by the Charter of the City of Montreal:—

**1. LAND:—**Regarding the land unit prices, the Chief Assessor will name five committees of valuers formed amongst the Assessors; each committee will meet under the presidency of one of its members designated by the Chief Assessor and will determine the unit prices of the value of lands in seven wards which will form a district and which will be the responsibility of each. These unit prices will be indicated on special ward plans, already existing, and these plans will bear a number which will refer to cards in the hands of the Assessors. In case of any difference of opinion amongst the members of any committee, the opinion of the majority shall prevail. The Chief Assessor may attend the meetings of the different committees and give his opinion. He will also see that the work of the five committees is coordinated and that they consult each other when necessary in order to ensure uniformity in the unit prices determined.

A committee of coordination of the work in hand, composed of the presidents of the five committees above-mentioned and presided over by the Chief Assessor, will be formed with a view to securing this coordination.

The price per square foot will be calculated for each lot by the Technical Service, according to the unit prices established by the Committees mentioned and taking into account, even for residential properties, the depth and corner influence tables, as well as other rules mentioned in the Real Estate Valuation Manual.

However, in certain exceptional cases, such as plottage, irregular lots, loss of utility due to the shape or the character of the land, where the strict application of the depth and corner rules mentioned would occasion an unjust valuation either more or less, it will belong to the assessor to use his judgment to bring the final figure to a correct valuation.

**2. BUILDINGS:—**The unit prices, the cost of reconstruction and the percentage of annual depreciation of buildings are established by the Technical Service in the following manner:—

a) The classification already in force for buildings will continue to apply to all buildings, no matter what their date of construction; b) The buildings will be divided in three new groups:—

1. Residential properties or semi-commercial properties (stores and dwellings) which are taxable and which were constructed before the year 1915; 2. All buildings exempt from the ordinary municipal tax; 3. All other buildings.

The buildings of the first and second groups will be classified by categories, classes and types, according to the system already in force, with such subdivisions as is deemed proper to add, and a price, per cubic foot only, will be determined for each type of building.

The reconstruction cost of any particular building will be fixed following its cubic content and the price per cubic foot already determined for the type of construction to which it belongs.

The cubing of buildings, the determination of the category and type in which they should be classified, and the entry of the cubage figures on the permanent cards will be made by the Technical Service and the Assessors when the latter are available. In order that the work may be accomplished within a reasonable delay, we recommend the immediate engagement of additional temporary employees of which the number and the duties will be determined by the Chief Assessor.

The estimation of the net replacement cost of buildings in the third group will continue as at present.

**3. PERMANENT CARDS:—**These will be of two kinds. The yellow cards actually in use will serve for the properties of the third group. The azure cards will serve for the properties of the first and second groups. These cards are permanent and should be filled for all the properties so that each immovable has its own.

The cards as well as the valuation sheets will be filled in by the clerks attached to each group of two assessors or if the Chief Assessor finds it necessary, by other clerks to be named.

The assessors receive their cards and, as the case may be, the valuation sheets duly filled in, except for the spaces reserved for the valuation according to the annual rental value, for the valuation of the assessors and for the remarks. These three spaces are filled in by the assessors themselves.

**4. ÉVALUATION:**—Les estimateurs complètent la fiche permanente en y inscrivant le chiffre de l'évaluation. Il leur appartient de décider si ce chiffre doit être modifié à cause de la dépréciation et de tenir compte des autres facteurs affectant la valeur de la propriété tel que prévu par la Charte. S'ils arrivent ainsi à un chiffre d'évaluation différent de celui représentant la valeur intrinsèque ou de remplacement après déduction de la dépréciation normale, ils devront indiquer sommairement la raison de leur évaluation et initier leur entrée sur la fiche permanente.

Tout le travail d'évaluation se divise donc en deux opérations bien définies: — a) L'obtention et la réunion des renseignements de faits par les estimateurs et le Service Technique; b) L'évaluation définitive, par les estimateurs, en possession de ces renseignements et données que contiendra chacune des fiches permanentes.

L'organisation nécessaire à la préparation des fiches, à leur distribution au Service Technique puis aux estimateurs et à leur classement une fois complétées, est confiée à l'initiative du Chef Estimateur.

**5. FEUILLES D'ESTIMATION:**—Les feuilles d'estimation sont remplies, selon la formule indiquée plus bas, dans tous les cas de contestation d'une évaluation, pour l'usage du Bureau de Révision et des tribunaux supérieurs, ou chaque fois que ce Bureau en fait la demande. Elles peuvent l'être en outre au gré du Chef Estimateur ou des estimateurs.

Relativement aux inscriptions à être faites sur les feuilles des estimateurs, dans l'espace numéro 1 réservé aux prix unitaires, il convient de préciser que dans le cas des propriétés incluses plus haut dans le groupe numéro 3, le coût de reconstruction du bâtiment doit être inscrit tel que spécifié, ainsi que le prix au pied cube d'après le prix total en premier lieu déterminé.

Dans le cas des bâtiments des groupes numéros 1 et 2, le prix au pied cube seulement sera inscrit, avec le groupement, la catégorie, la classe, le type et le cubage du bâtiment concerné. Le prix global au pied cube devra être reporté ensuite à l'espace réservé pour l'inscription du coût total du bâtiment.

**6. UTILITÉS PUBLIQUES:**—Le Service Technique préparera des formules d'estimation relatives aux entreprises d'utilité publique, comme les chemins de fer, les tramways, les entreprises de gaz, d'électricité et de téléphone ou de télégraphe, et autres. Dès que ces formules auront été soumises au Bureau de Révision des Estimations et que ce dernier les aura approuvées, le Chef Estimateur pourra procéder ou recommander qu'il soit procédé aux estimations de ces propriétés.

**4. VALUATION:**—The assessors complete the permanent card by inscribing thereon the valuation figures. It belongs to them to decide if the figure should be modified by reason of depreciation and by taking into account other factors affecting the valuation of the property, as provided by the Charter. If they thus arrive at a valuation figure different from that representing the intrinsic value or the replacement cost after deduction of the normal depreciation, they should indicate briefly the reason of their valuation and initial the entry on the permanent card.

The work of valuation divides itself in two definite operations: — a) Securing and uniting all information and data obtained by the assessors and the Technical Service; b) The definitive valuation by the assessors who are in possession of the information and data shown on each permanent card.

The necessary organization in the preparation of the cards, in their distribution to the Technical Service and then to the assessors and in their filing once completed, is entrusted to the initiative of the Chief Assessor.

**5. VALUATION SHEETS:**—The valuation sheets are filled in according to the formula indicated below, in every case of contestation of a valuation, for the use of the Board of Revision and of the Superior Court or for each case for which a request is made by the Board of Revision. They may also be made, at the wish of the Chief Assessor or of the assessors.

Relating to the inscriptions to be made on the valuation sheet in space No. 1 reserved for unit prices, it is understood that in all cases of properties included in group No. 3, the cost of reconstruction of the building should be inscribed as specified, also the price per cubic foot according to the total price determined in the first place.

In the case of buildings belonging to groups 1 and 2, the cubic price only will be inscribed showing the group, the category, the class, the type and the cubic content of the building concerned. The total price on the cubic foot basis should be shown afterward in the space reserved for the inscription of the total cost of the building.

**6. PUBLIC UTILITIES:**—The Technical Service will prepare valuation forms relative to the enterprises of public utility, such as railroads, tramways, gas, electricity and telephone or telegraph enterprises, and others. As soon as these forms have been submitted to the Board of Revision of Valuations and approved by them, the Chief Assessor may proceed in making the valuation of these properties or recommend that this be done.

Canada Cement Company  
600 Cathcart

FEUILLE DES ESTIMATIONS  
VALUATION SHEET

NO DE COMPTE.....141784...  
NO. OF ACCOUNT

1.- PRIX UNITAIRES  
UNIT PRICES

Terrain Various Superficie 20,139  
Land Area

Taux unitaires de valeur au pied carré, tel que déterminé par le Comité d'estimateurs \$20.00.....12.00 & 5.00  
Unit rate of value per square foot, as determined by the Committee of Assessors

Prix déterminé par le Service Technique suivant le taux unitaire établi par le Comité d'estimateurs:—  
Price determined by the Technical Service according to the unit rate established by the Committee of Assessors

Merger & Corner Inf. Inc. au pied carré 18.70 Total \$ 376,700.....  
per square foot

Bâtiment:.....Groupe No. 3.....  
Building: Group No.

Catégorie Comm. Classe 1 Type 2.....  
Category Class

Coût de reconstruction, moins la dépréciation, mais y compris les dépendances, jusqu'en 1941 \$886,796. Total \$ 1,263,496.....  
Cost of reconstruction, less depreciation, but including outbuildings, up to

Cubage { Net 2,676,290.....  
Conventional ..... Prix au pied cube \$..... Total \$ 1,166,862.....  
Conventional Price per cubic foot

2.- ESTIMATION SELON LA VALEUR LOCATIVE ANNUELLE  
VALUATION ACCORDING TO ANNUAL RENTAL VALUE

Office Building  
Built 1921

Revenu réel 1941 Inc. Services & Vacants \$ 212,607.....  
Real revenue

Valeur locative \$ 148,730.....  
Rental value

“ “ capitalisée à raison de %..... \$ See Remarks  
capitalized at the rate of

Estimation selon la valeur locative: \$.....  
Valuation according to rental value:

3.- PRIX DE VENTE DE CETTE PROPRIÉTÉ  
SALE PRICE OF THIS PROPERTY

Date..... \$.....

4.- MONTANT DE L'HYPOTHÈQUE  
AMOUNT OF MORTGAGE

Première \$.....  
First

Deuxième \$..... Total \$.....  
Second

5.- AUTRES RENSEIGNEMENTS  
OTHER INFORMATION

Tous autres renseignements tels que offres de vente ou d'achat, expropriations, règlements de succession, vente par voie de  
Any other data such as offers of sale or purchase, expropriations, settlement of estates, sales by

licitation, décisions des tribunaux ou du bureau de révision des estimations, etc., de nature à indiquer la valeur de la propriété  
licitation, decisions of the courts or of the Board of Revision of Valuations, etc., of a nature to show the value of the property

Date.....

6.- VALEUR DE CETTE PROPRIÉTÉ PORTÉE DANS UN PROSPECTUS OU INSCRITE DANS LES LIVRES DU PROPRIÉTAIRE  
VALUE OF THIS PROPERTY ENTERED IN A PROSPECTUS OR IN THE OWNER'S BOOKS

Date..... \$.....

7.-

**PRIX DE VENTE DE PROPRIÉTÉS SEMBLABLES  
SALE PRICE OF SIMILAR PROPERTIES**

Nos de cadastre.....original.....subd.  
Cadastral Nos.:

No de maison:.....rue.....street  
House No.:

Date.....

8.-

**COÛT INITIAL DE CONSTRUCTION DU BÂTIMENT  
ORIGINAL COST OF CONSTRUCTION OF BUILDING**

Date..... \$.....

Renseignements donnés par:.....  
Information given by:

9.-

**ASSURANCES  
INSURANCE**

Date..... \$.....

10.-

**ÉVALUATION DES ESTIMATEURS  
ASSESSORS' VALUATION**

Terrain:.....	20,139	au pied carré	\$.....	1870	Total \$.....	376,700.
Land:		per square foot				
Bâtiment:					\$.....	962,300.
Building:						
					Total \$.....	1,339,000.

10% Owner Occupied  
Commercial Value

**REMARQUES  
REMARKS**

Net Replacement Value

Gross Poss. Rev.	\$212,607.	Net Replacement Value	\$1,263,496.	Repl.	\$1,263,496.
Expenses	57,228.			Comm.	1,412,500.
				2)	
Capt at 11%	155,379.				2,675,996.
	\$1,412,500.				1,338,000.

Date..... March 25th, 1943

G. E. Vernot

Estimateurs — Assessors

**DÉCISION DU BUREAU DE RÉVISION DES ESTIMATIONS  
DECISION OF BOARD OF REVISION OF VALUATIONS**

Date de l'audition: .....  
Date heard:

Date de la décision: .....  
Date decision rendered:

Président — President

## PROCEDURE

Le Bureau de Revision des Estimations, en vertu des pouvoirs qui lui sont conférés par la Charte de la Cité de Montréal, a donné au Chef Estimateur les instructions suivantes sur la façon selon laquelle les estimateurs doivent procéder à leur travail:—

**1. TERRAINS:**—En ce qui concerne les prix unitaires des terrains, le Chef Estimateur nommera cinq comités d'estimateurs formés à même le personnel des estimateurs. Chaque comité se réunira sous la présidence d'un de ses membres désigné par le Chef Estimateur et déterminera les taux unitaires de la valeur des terrains de sept quartiers lesquels formeront un arrondissement qui sera du ressort de chacun. Ces taux unitaires de la valeur seront indiqués sur le plan spécial de quartier tel qu'il existe déjà, et cette carte portera un numéro auquel référeront les fiches entre les mains des estimateurs. En cas de divergence de vues au sein d'un comité, l'avis de la majorité l'emportera. Le Chef Estimateur pourra assister aux séances des différents comités et donner son avis. Le Chef Estimateur verra à coordonner le travail des cinq comités et à ce que ceux-ci se consultant les uns les autres lorsqu'il y aura lieu de le faire en vue d'assurer l'uniformité dans la détermination des prix unitaires.

Un comité de coordination du travail en cours, composé des présidents des cinq comités mentionnés plus haut, et présidé par le Chef Estimateur, sera formé d'ailleurs en vue d'assurer cette coordination.

Le prix au pied carré sera calculé pour chaque terrain par le Service Technique, suivant les taux unitaires de valeur établis par les comités d'estimateurs, en tenant compte, même pour les propriétés résidentielles, des tables de profondeur et d'influence d'encoignure ainsi que des autres facteurs mentionnés dans le "Manuel d'Estimation des Biens-Fonds".

Cependant, dans certains cas exceptionnels, tels que groupements, irrégularités, diminution d'utilité due à la configuration ou au caractère du terrain, où l'application stricte des règles de profondeur et d'influence d'encoignure donnerait lieu à une évaluation injuste en plus ou en moins, il appartiendra à l'estimateur d'user de son jugement pour ramener le chiffre final à une évaluation adéquate.

**2. BÂTIMENTS:**—Les prix unitaires, le coût de reconstruction et le pourcentage de dépréciation annuelle des bâtiments sont établis par le Service Technique, de la façon suivante:—

a) La classification des bâtiments déjà en vigueur continue de s'appliquer à tous les bâtiments, quelle que soit leur date de construction; b) Les bâtiments seront divisés en trois nouveaux groupes:—

1. Les habitations domiciliaires ou semi commerciales qui sont imposables et qui ont été construites avant l'année 1915; 2. Tous les bâtiments non assujettis à l'impôt foncier ordinaire; 3. Tous les autres bâtiments.

Les habitations des premier et deuxième groupes seront classifiées par catégories, classes et types, selon le système déjà en vigueur, avec subdivisions que l'on jugera à propos d'y ajouter, et un prix, au pied cube seulement, de chaque type de bâtiment, sera déterminé.

Le coût de reconstruction d'un bâtiment en particulier sera fixé à raison de son cubage et du prix au pied cube déjà déterminé pour le type de construction qui lui est propre.

Le cubage des bâtiments et la détermination de la catégorie et du type dans lesquels ils doivent être classés, l'entrée des chiffres de cubage sur la fiche permanente, seront faits par le Service Technique et les estimateurs quand ces derniers seront disponibles. Pour que le travail puisse être accompli dans un délai raisonnable, nous recommandons l'engagement immédiat d'employés surnuméraires dont le nombre et les fonctions seront déterminés par le Chef Estimateur.

L'estimation du coût net de remplacement des bâtiments de troisième groupe se continuera comme elle se poursuit présentement.

**3. FICHES PERMANENTES:**—Elles seront de deux sortes: les cartes jaunes actuellement en usage serviront aux propriétés du troisième groupe; les cartes de couleur azur serviront aux propriétés des premier et deuxième groupes. Ces cartes sont permanentes et doivent être remplies pour toutes les propriétés de façon que chaque immeuble ait la sienne.

Les fiches de même que les feuilles des estimateurs, seront remplies par les commis attachés à chaque groupe de deux estimateurs ou, si le Chef Estimateur le juge à propos, par d'autres commis à être nommés.

Les estimateurs reçoivent leurs fiches et, le cas échéant, les feuilles d'estimation dûment remplies, sauf relativement aux espaces réservés à l'estimation selon la valeur locative annuelle, à l'évaluation des estimateurs, et aux remarques, lesquels sont remplis par les estimateurs eux-mêmes.

## PROCEDURE

The following instructions on the manner in which the Assessors shall proceed with their work, have been given to the Chief Assessor, by the Board of Revision of Valuations, in virtue of the powers conferred on it by the Charter of the City of Montreal:—

**1. LAND:**—Regarding the land unit prices, the Chief Assessor will name five committees of valuers formed amongst the Assessors; each committee will meet under the presidency of one of its members designated by the Chief Assessor and will determine the unit prices of the value of lands in seven wards which will form a district and which will be the responsibility of each. These unit prices will be indicated on special ward plans, already existing, and these plans will bear a number which will refer to cards in the hands of the Assessors. In case of any difference of opinion amongst the members of any committee, the opinion of the majority shall prevail. The Chief Assessor may attend the meetings of the different committees and give his opinion. He will also see that the work of the five committees is coordinated and that they consult each other when necessary in order to ensure uniformity in the unit prices determined.

A committee of coordination of the work in hand, composed of the presidents of the five committees above-mentioned and presided over by the Chief Assessor, will be formed with a view to securing this coordination.

The price per square foot will be calculated for each lot by the Technical Service, according to the unit prices established by the Committees mentioned and taking into account, even for residential properties, the depth and corner influence tables, as well as other rules mentioned in the Real Estate Valuation Manual.

However, in certain exceptional cases, such as plottage, irregular lots, loss of utility due to the shape or the character of the land, where the strict application of the depth and corner rules mentioned would occasion an unjust valuation either more or less, it will belong to the assessor to use his judgment to bring the final figure to a correct valuation.

**2. BUILDINGS:**—The unit prices, the cost of reconstruction and the percentage of annual depreciation of buildings are established by the Technical Service in the following manner:—

a) The classification already in force for buildings will continue to apply to all buildings, no matter what their date of construction; b) The buildings will be divided in three new groups:—

1. Residential properties or semi-commercial properties (stores and dwellings) which are taxable and which were constructed before the year 1915; 2. All buildings exempt from the ordinary municipal tax; 3. All other buildings.

The buildings of the first and second groups will be classified by categories, classes and types, according to the system already in force, with such subdivisions as is deemed proper to add, and a price, per cubic foot only, will be determined for each type of building.

The reconstruction cost of any particular building will be fixed following its cubic content and the price per cubic foot already determined for the type of construction to which it belongs.

The cubing of buildings, the determination of the category and type in which they should be classified, and the entry of the cubage figures on the permanent cards will be made by the Technical Service and the Assessors when the latter are available. In order that the work may be accomplished within a reasonable delay, we recommend the immediate engagement of additional temporary employees of which the number and the duties will be determined by the Chief Assessor.

The estimation of the net replacement cost of buildings in the third group will continue as at present.

**3. PERMANENT CARDS:**—These will be of two kinds. The yellow cards actually in use will serve for the properties of the third group. The azure cards will serve for the properties of the first and second groups. These cards are permanent and should be filled for all the properties so that each immovable has its own.

The cards as well as the valuation sheets will be filled in by the clerks attached to each group of two assessors or if the Chief Assessor finds it necessary, by other clerks to be named.

The assessors receive their cards and, as the case may be, the valuation sheets duly filled in, except for the spaces reserved for the valuation according to the annual rental value, for the valuation of the assessors and for the remarks. These three spaces are filled in by the assessors themselves.

**4. ÉVALUATION:**—Les estimateurs complètent la fiche permanente en y inscrivant le chiffre de l'évaluation. Il leur appartient de décider si ce chiffre doit être modifié à cause de la dépréciation et de tenir compte des autres facteurs affectant la valeur de la propriété tel que prévu par la Charte. S'ils arrivent ainsi à un chiffre d'évaluation différent de celui représentant la valeur intrinsèque ou de remplacement après déduction de la dépréciation normale, ils devront indiquer sommairement la raison de leur évaluation et initialement leur entrée sur la fiche permanente.

Tout le travail d'évaluation se divise donc en deux opérations bien définies: — a) L'obtention et la réunion des renseignements de faits par les estimateurs et le Service Technique; b) L'évaluation définitive, par les estimateurs, en possession de ces renseignements et données que contiendra chacune des fiches permanentes.

L'organisation nécessaire à la préparation des fiches, à leur distribution au Service Technique puis aux estimateurs et à leur classement une fois complétées, est confiée à l'initiative du Chef Estimateur.

**5. FEUILLES D'ESTIMATION:**—Les feuilles d'estimation sont remplies, selon la formule indiquée plus bas, dans tous les cas de contestation d'une évaluation, pour l'usage du Bureau de Révision et des tribunaux supérieurs, ou chaque fois que ce Bureau en fait la demande. Elles peuvent l'être en outre au gré du Chef Estimateur ou des estimateurs.

Relativement aux inscriptions à être faites sur les feuilles des estimateurs, dans l'espace numéro 1 réservé aux prix unitaires, il convient de préciser que dans le cas des propriétés incluses plus haut dans le groupe numéro 3, le coût de reconstruction du bâtiment doit être inscrit tel que spécifié, ainsi que le prix au pied cube d'après le prix total en premier lieu déterminé.

Dans le cas des bâtiments des groupes numéros 1 et 2, le prix au pied cube seulement sera inscrit, avec le groupement, la catégorie, la classe, le type et le cubage du bâtiment concerné. Le prix global au pied cube devra être reporté ensuite à l'espace réservé pour l'inscription du coût total du bâtiment.

**6. UTILITÉS PUBLIQUES:**—Le Service Technique préparera des formules d'estimation relatives aux entreprises d'utilité publique, comme les chemins de fer, les tramways, les entreprises de gaz, d'électricité et de téléphone ou de télégraphe, et autres. Dès que ces formules auront été soumises au Bureau de Révision des Estimations et que ce dernier les aura approuvées, le Chef Estimateur pourra procéder ou recommander qu'il soit procédé aux estimations de ces propriétés.

**4. VALUATION:**—The assessors complete the permanent card by inscribing thereon the valuation figures. It belongs to them to decide if the figure should be modified by reason of depreciation and by taking into account other factors affecting the valuation of the property, as provided by the Charter. If they thus arrive at a valuation figure different from that representing the intrinsic value or the replacement cost after deduction of the normal depreciation, they should indicate briefly the reason of their valuation and initial the entry on the permanent card.

The work of valuation divides itself in two definite operations: — a) Securing and uniting all information and data obtained by the assessors and the Technical Service; b) The definitive valuation by the assessors who are in possession of the information and data shown on each permanent card.

The necessary organization in the preparation of the cards, in their distribution to the Technical Service and then to the assessors and in their filing once completed, is entrusted to the initiative of the Chief Assessor.

**5. VALUATION SHEETS:**—The valuation sheets are filled in according to the formula indicated below, in every case of contestation of a valuation, for the use of the Board of Revision and of the Superior Court or for each case for which a request is made by the Board of Revision. They may also be made, at the wish of the Chief Assessor or of the assessors.

Relating to the inscriptions to be made on the valuation sheets in space No. 1 reserved for unit prices, it is understood that in all cases of properties included in group No. 3, the cost of reconstruction of the building should be inscribed as specified, also the price per cubic foot according to the total price determined in the first place.

In the case of buildings belonging to groups 1 and 2, the cubic price only will be inscribed showing the group, the category, the class, the type and the cubic content of the building concerned. The total price on the cubic foot basis should be shown afterwards in the space reserved for the inscription of the total cost of the building.

**6. PUBLIC UTILITIES:**—The Technical Service will prepare valuation forms relative to the enterprises of public utility, such as railroads, tramways, gas, electricity and telephone or telegraph enterprises, and others. As soon as these forms have been submitted to the Board of Revision of Valuations and approved by them, the Chief Assessor may proceed in making the valuation of these properties or recommend that this be done.

PLAINTIFF'S EXHIBIT P-29 AT ENQUETE  
Globe Realty or Royal Bank Building. Valuation.  
CITE DE MONTREAL  
CITY OF MONTREAL

Globe Realty Corp. Ltd.  
360 St. James, West

FEUILLE DES ESTIMATIONS  
VALUATION SHEET

NO DE COMPTE.....140297  
NO. OF ACCOUNT

1.-

PRIX UNITAIRES  
UNIT PRICES

Terrain 180<sup>s</sup> x 170<sup>s</sup> 1/2 Superficie.....  
Land 157' 172' Area 28892

Taux unitaires de valeur au pied carré, tel que déterminé par le Comité d'estimateurs \$.....  
Unit rate of value per square foot, as determined by the Committee of Assessors 32.00 16.00 12.00 & 8.00

Prix déterminé par le Service Technique suivant le taux unitaire établi par le Comité d'estimateurs:—  
Price determined by the Technical Service according to the unit rate established by the Committee of Assessors

Corner Inf. Frontage. Plottage & Merger au pied carré 32,334 Total \$ 934,200.  
per square foot

Bâtiment:.....Groupe No 3.....  
Building:.....Group No.

Catégorie Comm.....Classe 1.....Type 2.....  
Category Class

3,120,196

Coût de reconstruction, moins la dépréciation, mais y compris les dépendances, jusqu'à 1941..... \$..... Total \$ 4,054,396  
Cost of reconstruction, less depreciation, but including outbuildings, up to

Cubage { Ne 6,925,618.....  
Conventionnel ..... Prix au pied cube \$ 5384 Total \$ 3,732,291.  
Conventional Price per cubic foot

2.-

ESTIMATION SELON LA VALEUR LOCATIVE ANNUELLE  
VALUATION ACCORDING TO ANNUAL RENTAL VALUE

Built 1928  
Bank & Office Bldg.  
Head Office

Revenu réel 1941..... \$ 585,160  
Real revenue

Valeur locative \$ 357,540  
Rental value

“ “ capitalisée à raison de %..... \$  
“ “ capitalized at the rate of

Estimation selon la valeur locative: \$.....  
Valuation according to rental value:

3.-

PRIX DE VENTE DE CETTE PROPRIÉTÉ  
SALE PRICE OF THIS PROPERTY

Date..... \$.....

4.-

MONTANT DE L'HYPOTHÈQUE  
AMOUNT OF MORTGAGE

Première \$.....  
First

Deuxième \$..... Total \$.....  
Second

5.-

AUTRES RENSEIGNEMENTS  
OTHER INFORMATION

Tous autres renseignements tels que offres de vente ou d'achat, expropriations, règlements de succession, vente par voie de  
Any other data such as offers of sale or purchase, expropriations, settlement of estates, sales by

licitation, décisions des tribunaux ou du bureau de révision des estimations, etc., de nature à indiquer la valeur de la propriété  
licitation, decisions of the courts or of the Board of Revision of Valuations, etc., of a nature to show the value of the property

Date.....

6.- VALEUR DE CETTE PROPRIÉTÉ PORTÉE DANS UN PROSPECTUS OU INSCRITE DANS LES LIVRES DU PROPRIÉTAIRE  
VALUE OF THIS PROPERTY ENTERED IN A PROSPECTUS OR IN THE OWNER'S BOOKS

Date..... \$.....

7.-

**PRIX DE VENTE DE PROPRIÉTÉS SEMBLABLES  
SALE PRICE OF SIMILAR PROPERTIES**

Nos de cadastre.....original.....subd.  
Cadastral Nos.:

No de maison:.....rue.....street  
House No.:

Date.....

8.-

**COÛT INITIAL DE CONSTRUCTION DU BÂTIMENT  
ORIGINAL COST OF CONSTRUCTION OF BUILDING**

Date..... \$.....

Renseignements donnés par:.....  
Information given by:

9.-

**ASSURANCES  
INSURANCE**

Date..... \$.....

10.-

**ÉVALUATION DES ESTIMATEURS  
ASSESSORS' VALUATION**

Terrain:.....28892...au pied carré \$.....32,334 Total \$.....934,200  
Land: per square foot

Bâtiment: \$.....3,615,800  
Building:

Total \$.....4,550,000

40% Owner Occupied  
Commercial Value

**REMARQUES  
REMARKS**

Our Replacement (Net) \$4,696,200  
80% Replacement \$3,756,960  
20% Commercial 780,200

Gross Poss. Rev. \$ 585,160  
Capt at 15% 3,901,000

\$4,537,160

Date.....  
March 26th, 1943

G. E. Vernot

Estimateurs — Assessors

**DÉCISION DU BUREAU DE RÉVISION DES ESTIMATIONS  
DECISION OF BOARD OF REVISION OF VALUATIONS**

Date de l'audition: .....  
Date heard:

Date de la décision: .....  
Date decision rendered:

Président — President



## PROCEDURE

Le Bureau de Revision des Estimations, en vertu des pouvoirs qui lui sont conférés par la Charte de la Cité de Montréal, a donné au Chef Estimateur les instructions suivantes sur la façon selon laquelle les estimateurs doivent procéder à leur travail:—

**1. TERRAINS:**—En ce qui concerne les prix unitaires des terrains, le Chef Estimateur nommera cinq comités d'estimateurs formés à même le personnel des estimateurs. Chaque comité se réunira sous la présidence d'un de ses membres désigné par le Chef Estimateur et déterminera les taux unitaires de la valeur des terrains de sept quartiers lesquels formeront un arrondissement qui sera du ressort de chacun. Ces taux unitaires de la valeur seront indiqués sur le plan spécial de quartier tel qu'il existe déjà, et cette carte portera un numéro auquel référeront les fiches entre les mains des estimateurs. En cas de divergence de vues au sein d'un comité, l'avis de la majorité l'emportera. Le Chef Estimateur pourra assister aux séances des différents comités et donner son avis. Le Chef Estimateur verra à coordonner le travail des cinq comités et à ce que ceux-ci se consultent les uns les autres lorsqu'il y aura lieu de le faire en vue d'assurer l'uniformité dans la détermination des prix unitaires.

Un comité de coordination du travail en cours, composé des présidents des cinq comités mentionnés plus haut, et présidé par le Chef Estimateur, sera formé d'ailleurs en vue d'assurer cette coordination.

Le prix au pied carré sera calculé pour chaque terrain par le Service Technique, suivant les taux unitaires de valeur établis par les comités d'estimateurs, en tenant compte, même pour les propriétés résidentielles, des tables de profondeur et d'influence d'encoignure ainsi que des autres facteurs mentionnés dans le "Manuel d'Estimation des Biens-Fonds".

Cependant, dans certains cas exceptionnels, tels que groupements, irrégularités, diminution d'utilité due à la configuration ou au caractère du terrain, où l'application stricte des règles de profondeur et d'influence d'encoignure donnerait lieu à une évaluation injuste en plus ou en moins, il appartiendra à l'estimateur d'user de son jugement pour ramener le chiffre final à une évaluation adéquate.

**2. BÂTIMENTS:**—Les prix unitaires, le coût de reconstruction et le pourcentage de dépréciation annuelle des bâtiments sont établis par le Service Technique, de la façon suivante:—

a) La classification des bâtiments déjà en vigueur continue de s'appliquer à tous les bâtiments, quelle que soit leur date de construction; b) Les bâtiments seront divisés en trois nouveaux groupes:—

1. Les habitations domiciliaires ou semi-commerciales qui sont imposables et qui ont été construites avant l'année 1915; 2. Tous les bâtiments non assujettis à l'impôt foncier ordinaire; 3. Tous les autres bâtiments.

Les habitations des premier et deuxième groupes seront classifiées par catégories, classes et types, selon le système déjà en vigueur, avec subdivisions que l'on jugera à propos d'y ajouter, et un prix, au pied cube seulement, de chaque type de bâtiment, sera déterminé.

Le coût de reconstruction d'un bâtiment en particulier sera fixé à raison de son cubage et du prix au pied cube déjà déterminé pour le type de construction qui lui est propre.

Le cubage des bâtiments et la détermination de la catégorie et du type dans lesquels ils doivent être classés, l'entrée des chiffres de cubage sur la fiche permanente, seront faits par le Service Technique et les estimateurs quand ces derniers seront disponibles. Pour que le travail puisse être accompli dans un délai raisonnable, nous recommandons l'engagement immédiat d'employés surnuméraires dont le nombre et les fonctions seront déterminés par le Chef Estimateur.

L'estimation du coût net de remplacement des bâtiments de troisième groupe se continuera comme elle se poursuit présentement.

**3. FICHES PERMANENTES:**—Elles seront de deux sortes: les cartes jaunes actuellement en usage serviront aux propriétés du troisième groupe; les cartes de couleur azur serviront aux propriétés des premier et deuxième groupes. Ces cartes sont permanentes et doivent être remplies pour toutes les propriétés de façon que chaque immeuble ait la sienne.

Les fiches de même que les feuilles des estimateurs, seront remplies par les commis attachés à chaque groupe de deux estimateurs ou, si le Chef Estimateur le juge à propos, par d'autres commis à être nommés.

Les estimateurs reçoivent leurs fiches et, le cas échéant, les feuilles d'estimation dûment remplies, sauf relativement aux espaces réservés à l'estimation selon la valeur locative annuelle, à l'évaluation des estimateurs, et aux remarques, lesquels sont remplis par les estimateurs eux-mêmes.

## PROCEDURE

The following instructions on the manner in which the Assessors shall proceed with their work, have been given to the Chief Assessor, by the Board of Revision of Valuations, in virtue of the powers conferred on it by the Charter of the City of Montreal:—

**1. LAND:**—Regarding the land unit prices, the Chief Assessor will name five committees of valuers formed amongst the Assessors; each committee will meet under the presidency of one of its members designated by the Chief Assessor and will determine the unit prices of the value of lands in seven wards which will form a district and which will be the responsibility of each. These unit prices will be indicated on special ward plans, already existing, and these plans will bear a number which will refer to cards in the hands of the Assessors. In case of any difference of opinion amongst the members of any committee, the opinion of the majority shall prevail. The Chief Assessor may attend the meetings of the different committees and give his opinion. He will also see that the work of the five committees is coordinated and that they consult each other when necessary in order to ensure uniformity in the unit prices determined.

A committee of coordination of the work in hand, composed of the presidents of the five committees above-mentioned and presided over by the Chief Assessor, will be formed with a view to securing this coordination.

The price per square foot will be calculated for each lot by the Technical Service, according to the unit prices established by the Committees mentioned and taking into account, even for residential properties, the depth and corner influence tables, as well as other rules mentioned in the Real Estate Valuation Manual.

However, in certain exceptional cases, such as plottage, irregular lots, loss of utility due to the shape or the character of the land, where the strict application of the depth and corner rules mentioned would occasion an unjust valuation either more or less, it will belong to the assessor to use his judgment to bring the final figure to a correct valuation.

**2. BUILDINGS:**—The unit prices, the cost of reconstruction and the percentage of annual depreciation of buildings are established by the Technical Service in the following manner:—

a) The classification already in force for buildings will continue to apply to all buildings, no matter what their date of construction; b) The buildings will be divided in three new groups:—

1. Residential properties or semi-commercial properties (stores and dwellings) which are taxable and which were constructed before the year 1915; 2. All buildings exempt from the ordinary municipal tax; 3. All other buildings.

The buildings of the first and second groups will be classified by categories, classes and types, according to the system already in force, with such subdivisions as is deemed proper to add, and a price, per cubic foot only, will be determined for each type of building.

The reconstruction cost of any particular building will be fixed following its cubic content and the price per cubic foot already determined for the type of construction to which it belongs.

The cubing of buildings, the determination of the category and type in which they should be classified, and the entry of the cubage figures on the permanent cards will be made by the Technical Service and the Assessors when the latter are available. In order that the work may be accomplished within a reasonable delay, we recommend the immediate engagement of additional temporary employees of which the number and the duties will be determined by the Chief Assessor.

The estimation of the net replacement cost of buildings in the third group will continue as at present.

**3. PERMANENT CARDS:**—These will be of two kinds. The yellow cards actually in use will serve for the properties of the third group. The azure cards will serve for the properties of the first and second groups. These cards are permanent and should be filled for all the properties so that each immovable has its own.

The cards as well as the valuation sheets will be filled in by the clerks attached to each group of two assessors or if the Chief Assessor finds it necessary, by other clerks to be named.

The assessors receive their cards and, as the case may be, the valuation sheets duly filled in, except for the spaces reserved for the valuation according to the annual rental value, for the valuation of the assessors and for the remarks. These three spaces are filled in by the assessors themselves.

**4. ÉVALUATION:**—Les estimateurs complètent la fiche permanente en y inscrivant le chiffre de l'évaluation. Il leur appartient de décider si ce chiffre doit être modifié à cause de la dépréciation et de tenir compte des autres facteurs affectant la valeur de la propriété tel que prévu par la Charte. S'ils arrivent ainsi à un chiffre d'évaluation différant de celui représentant la valeur intrinsèque ou de remplacement après déduction de la dépréciation normale, ils devront indiquer sommairement la raison de leur évaluation et initialement leur entrée sur la fiche permanente.

Tout le travail d'évaluation se divise donc en deux opérations bien définies: — a) L'obtention et la réunion des renseignements de faits par les estimateurs et le Service Technique; b) L'évaluation définitive, par les estimateurs, en possession de ces renseignements et données que contiendra chacune des fiches permanentes.

L'organisation nécessaire à la préparation des fiches, à leur distribution au Service Technique puis aux estimateurs et à leur classement une fois complétées, est confiée à l'initiative du Chef Estimateur.

**5. FEUILLES D'ESTIMATION:**—Les feuilles d'estimation sont remplies, selon la formule indiquée plus bas, dans tous les cas de contestation d'une évaluation, pour l'usage du Bureau de Révision et des tribunaux supérieurs, ou chaque fois que ce Bureau en fait la demande. Elles peuvent l'être en outre au gré du Chef Estimateur ou des estimateurs.

Relativement aux inscriptions à être faites sur les feuilles des estimateurs, dans l'espace numéro 1 réservé aux prix unitaires, il convient de préciser que dans le cas des propriétés incluses plus haut dans le groupe numéro 3, le coût de reconstruction du bâtiment doit être inscrit tel que spécifié, ainsi que le prix au pied cube d'après le prix total en premier lieu déterminé.

Dans le cas des bâtiments des groupes numéros 1 et 2, le prix au pied cube seulement sera inscrit, avec le groupement, la catégorie, la classe, le type et le cubage du bâtiment concerné. Le prix global au pied cube devra être reporté ensuite à l'espace réservé pour l'inscription du coût total du bâtiment.

**6. UTILITÉS PUBLIQUES:**—Le Service Technique préparera des formules d'estimation relatives aux entreprises d'utilité publique, comme les chemins de fer, les tramways, les entreprises de gaz, d'électricité et de téléphone ou de télégraphe, et autres. Dès que ces formules auront été soumises au Bureau de Révision des Estimations et que ce dernier les aura approuvées, le Chef Estimateur pourra procéder ou recommander qu'il soit procédé aux estimations de ces propriétés.

**4. VALUATION:**—The assessors complete the permanent card by inscribing thereon the valuation figures. It belongs to them to decide if the figure should be modified by reason of depreciation and by taking into account other factors affecting the valuation of the property, as provided by the Charter. If they thus arrive at a valuation figure different from that representing the intrinsic value or the replacement cost after deduction of the normal depreciation, they should indicate briefly the reason of their valuation and initial the entry on the permanent card.

The work of valuation divides itself in two definite operations: — a) Securing and uniting all information and data obtained by the assessors and the Technical Service; b) The definitive valuation by the assessors who are in possession of the information and data shown on each permanent card.

The necessary organization in the preparation of the cards, in their distribution to the Technical Service and then to the assessors and in their filing once completed, is entrusted to the initiative of the Chief Assessor.

**5. VALUATION SHEETS:**—The valuation sheets are filled in according to the formula indicated below, in every case of contestation of a valuation, for the use of the Board of Revision and of the Superior Court or for each case for which a request is made by the Board of Revision. They may also be made, at the wish of the Chief Assessor or of the assessors.

Relating to the inscriptions to be made on the valuation sheets in space No. 1 reserved for unit prices, it is understood that in all cases of properties included in group No. 3, the cost of reconstruction of the building should be inscribed as specified, also the price per cubic foot according to the total price determined in the first place.

In the case of buildings belonging to groups 1 and 2, the cubic price only will be inscribed showing the group, the category, the class, the type and the cubic content of the building concerned. The total price on the cubic foot basis should be shown afterwards in the space reserved for the inscription of the total cost of the building.

**6. PUBLIC UTILITIES:**—The Technical Service will prepare valuation forms relative to the enterprises of public utility, such as railroads, tramways, gas, electricity and telephone or telegraph enterprises, and others. As soon as these forms have been submitted to the Board of Revision of Valuations and approved by them, the Chief Assessor may proceed in making the valuation of these properties or recommend that this be done.

CITE DE MONTREAL  
CITY OF MONTREAL

Dominion Square Corp.  
1000-22 St. Catherine, W.

FEUILLE DES ESTIMATIONS  
VALUATION SHEET

NO DE COMPTE.....141723...  
NO. OF ACCOUNT

1.- PRIX UNITAIRES  
UNIT PRICES

Terrain 238<sup>6</sup> x 170 Superficie 40545  
Land Area

Taux unitaires de valeur au pied carré, tel que déterminé par le Comité d'estimateurs \$45.00.....20.00 15.00 & 8.00  
Unit rate of value per square foot, as determined by the Committee of Assessors

Prix déterminé par le Service Technique suivant le taux unitaire établi par le Comité d'estimateurs:—  
Price determined by the Technical Service according to the unit rate established by the Committee of Assessors

Corner Inf., merger & plottage incl. au pied carré \$ 41.19 Total \$ 1,670,250.....  
per square foot

Bâtiment: Groupe No 3  
Building: Group No.

Catégorie Comm. Classe 1 Type 3  
Category Class

Coût de reconstruction, moins la dépréciation, mais y compris les dépendances, jusqu'en 1911 2,400,398.  
Cost of reconstruction, less depreciation, but including outbuildings, up to \$..... Total \$ 4,070,649.....

Cubage { Net 7,035,270.....  
Conventionnel ..... Prix au pied cube \$40.44 Total \$ 2,845,063.  
Conventional Price per cubic foot

2.- ESTIMATION SELON LA VALEUR LOCATIVE ANNUELLE  
VALUATION ACCORDING TO ANNUAL RENTAL VALUE

Office Bldg. Revenu réel 1941 Inc. Services & Vacants \$ 500,674. Gross Poss.  
Built 1929 Real revenue

Valeur locative \$ 296,120.  
Rental value

“ “ capitalisée à raison de % ..... \$ .....  
capitalized at the rate of

Valuation \$4,275,000 Complaint withdrawn  
1939. Board of Revision. Estimation selon la valeur locative: \$ .....  
Complaint Dec. 1st 1941. Valuation according to rental value:

3.- PRIX DE VENTE DE CETTE PROPRIÉTÉ  
SALE PRICE OF THIS PROPERTY

Date..... \$.....

4.- MONTANT DE L'HYPOTHÈQUE  
AMOUNT OF MORTGAGE

Première \$ .....  
First

Deuxième \$ ..... Total \$ .....  
Second

5.- AUTRES RENSEIGNEMENTS  
OTHER INFORMATION

Tous autres renseignements tels que offres de vente ou d'achat, expropriations, règlements de succession, vente par voie de  
Any other data such as offers of sale or purchase, expropriations, settlement of estates, sales by

licitation, décisions des tribunaux ou du bureau de révision des estimations, etc., de nature à indiquer la valeur de la propriété  
licitation, decisions of the courts or of the Board of Revision of Valuations, etc., of a nature to show the value of the property

Date.....

6.- VALEUR DE CETTE PROPRIÉTÉ PORTÉE DANS UN PROSPECTUS OU INSCRITE DANS LES LIVRES DU PROPRIÉTAIRE  
VALUE OF THIS PROPERTY ENTERED IN A PROSPECTUS OR IN THE OWNER'S BOOKS

Date..... \$.....

7.-

**PRIX DE VENTE DE PROPRIÉTÉS SEMBLABLES  
SALE PRICE OF SIMILAR PROPERTIES**

Nos de cadastre.....original.....subd.

Cadastral Nos.:

No de maison:.....rue.....street

House No.:

Date.....

8.-

**COÛT INITIAL DE CONSTRUCTION DU BÂTIMENT  
ORIGINAL COST OF CONSTRUCTION OF BUILDING**

Date..... \$.....

Renseignements donnés par:.....  
Information given by:

9.-

**ASSURANCES  
INSURANCE**

Date..... \$.....

10.-

**ÉVALUATION DES ESTIMATEURS  
ASSESSORS' VALUATION**

Terrain: 40545	au pied carré	\$ 41.19	Total \$	1,670,250.	
Land:	per square foot			2,604,750.	
Bâtiment:					4,275,000.
Building:			Total \$		

**REMARQUES  
REMARKS**

100% Tenant Occupied Commercial Value		Our Replacement (Net) Commercial Value	\$4,540,550. 3,440,000.
			2)-----
Gross Poss. Rev.	\$500,674.		7,980,550.
Less Oper. Exp.	122,250.		
	-----	Allowing 50% & 50%	3,990,275.
	378,424.		
Capt at 11%	\$3,440,000.	"See note below"	

March 26th, 1943.

Date.....

G. E. Vernot

Estimateurs — Assessors

**DÉCISION DU BUREAU DE RÉVISION DES ESTIMATIONS  
DECISION OF BOARD OF REVISION OF VALUATIONS**

Somehow the Valuation on the roll is the same as the previous year but our calculation now make it about \$4,000,000.

G. E. V.

Note:—This building cost \$3,682,031 exc. of Architect's Fees & Interest during construction according to the evidence of Mr. George A. Ross, given before the Board of Assessors Nov., 14, 1933.

Date de l'audition: .....

Date heard:

Date de la décision: .....

Date decision rendered:

Président — President

## PROCEDURE

Le Bureau de Revision des Estimations, en vertu des pouvoirs qui lui sont conférés par la Charte de la Cité de Montréal, a donné au Chef Estimateur les instructions suivantes sur la façon selon laquelle les estimateurs doivent procéder à leur travail:—

**1. TERRAINS:**—En ce qui concerne les prix unitaires des terrains, le Chef Estimateur nommera cinq comités d'estimateurs formés à même le personnel des estimateurs. Chaque comité se réunira sous la présidence d'un de ses membres désigné par le Chef Estimateur et déterminera les taux unitaires de la valeur des terrains de sept quartiers lesquels formeront un arrondissement qui sera du ressort de chacun. Ces taux unitaires de la valeur seront indiqués sur le plan spécial de quartier tel qu'il existe déjà, et cette carte portera un numéro auquel référeront les fiches entre les mains des estimateurs. En cas de divergence de vues au sein d'un comité, l'avis de la majorité l'emportera. Le Chef Estimateur pourra assister aux séances des différents comités et donner son avis. Le Chef Estimateur verra à coordonner le travail des cinq comités et à ce que ceux-ci se consultent les uns les autres lorsqu'il y aura lieu de le faire en vue d'assurer l'uniformité dans la détermination des prix unitaires.

Un comité de coordination du travail en cours, composé des présidents des cinq comités mentionnés plus haut, et présidé par le Chef Estimateur, sera formé d'ailleurs en vue d'assurer cette coordination.

Le prix au pied carré sera calculé pour chaque terrain par le Service Technique, suivant les taux unitaires de valeur établis par les comités d'estimateurs, en tenant compte, même pour les propriétés résidentielles, des tables de profondeur et d'influence d'encoignure ainsi que des autres facteurs mentionnés dans le "Manuel d'Estimation des Biens-Fonds".

Cependant, dans certains cas exceptionnels, tels que groupements, irrégularités, diminution d'utilité due à la configuration ou au caractère du terrain, où l'application stricte des règles de profondeur et d'influence d'encoignure donnerait lieu à une évaluation injuste en plus ou en moins, il appartiendra à l'estimateur d'user de son jugement pour ramener le chiffre final à une évaluation adéquate.

**2. BÂTIMENTS:**—Les prix unitaires, le coût de reconstruction et le pourcentage de dépréciation annuelle des bâtiments sont établis par le Service Technique, de la façon suivante:—

a) La classification des bâtiments déjà en vigueur continue de s'appliquer à tous les bâtiments, quelle que soit leur date de construction; b) Les bâtiments seront divisés en trois nouveaux groupes:—

1. Les habitations domiciliaires ou semi commerciales qui sont imposables et qui ont été construites avant l'année 1915; 2. Tous les bâtiments non assujettis à l'impôt foncier ordinaire; 3. Tous les autres bâtiments.

Les habitations des premier et deuxième groupes seront classifiées par catégories, classes et types, selon le système déjà en vigueur, avec subdivisions que l'on jugera à propos d'y ajouter, et un prix, au pied cube seulement, de chaque type de bâtiment, sera déterminé.

Le coût de reconstruction d'un bâtiment en particulier sera fixé à raison de son cubage et du prix au pied cube déjà déterminé pour le type de construction qui lui est propre.

Le cubage des bâtiments et la détermination de la catégorie et du type dans lesquels ils doivent être classés, l'entrée des chiffres de cubage sur la fiche permanente, seront faits par le Service Technique et les estimateurs quand ces derniers seront disponibles. Pour que le travail puisse être accompli dans un délai raisonnable, nous recommandons l'engagement immédiat d'employés surnuméraires dont le nombre et les fonctions seront déterminés par le Chef Estimateur.

L'estimation du coût net de remplacement des bâtiments de troisième groupe se continuera comme elle se poursuit présentement.

**3. FICHES PERMANENTES:**—Elles seront de deux sortes: les cartes jaunes actuellement en usage serviront aux propriétés du troisième groupe; les cartes de couleur azur serviront aux propriétés des premier et deuxième groupes. Ces cartes sont permanentes et doivent être remplies pour toutes les propriétés de façon que chaque immeuble ait la sienne.

Les fiches de même que les feuilles des estimateurs, seront remplies par les commis attachés à chaque groupe de deux estimateurs ou, si le Chef Estimateur le juge à propos, par d'autres commis à être nommés.

Les estimateurs reçoivent leurs fiches et, le cas échéant, les feuilles d'estimation dûment remplies, sauf relativement aux espaces réservés à l'estimation selon la valeur locative annuelle, à l'évaluation des estimateurs, et aux remarques, lesquels sont remplis par les estimateurs eux-mêmes.

## PROCEDURE

The following instructions on the manner in which the Assessors shall proceed with their work, have been given to the Chief Assessor, by the Board of Revision of Valuations, in virtue of the powers conferred on it by the Charter of the City of Montreal:—

**1. LAND:**—Regarding the land unit prices, the Chief Assessor will name five committees of valuers formed amongst the Assessors; each committee will meet under the presidency of one of its members designated by the Chief Assessor and will determine the unit prices of the value of lands in seven wards which will form a district and which will be the responsibility of each. These unit prices will be indicated on special ward plans, already existing, and these plans will bear a number which will refer to cards in the hands of the Assessors. In case of any difference of opinion amongst the members of any committee, the opinion of the majority shall prevail. The Chief Assessor may attend the meetings of the different committees and give his opinion. He will also see that the work of the five committees is coordinated and that they consult each other when necessary in order to ensure uniformity in the unit prices determined.

A committee of coordination of the work in hand, composed of the presidents of the five committees above-mentioned and presided over by the Chief Assessor, will be formed with a view to securing this coordination.

The price per square foot will be calculated for each lot by the Technical Service, according to the unit prices established by the Committees mentioned and taking into account, even for residential properties, the depth and corner influence tables, as well as other rules mentioned in the Real Estate Valuation Manual.

However, in certain exceptional cases, such as plottage, irregular lots, loss of utility due to the shape or the character of the land, where the strict application of the depth and corner rules mentioned would occasion an unjust valuation either more or less, it will belong to the assessor to use his judgment to bring the final figure to a correct valuation.

**2. BUILDINGS:**—The unit prices, the cost of reconstruction and the percentage of annual depreciation of buildings are established by the Technical Service in the following manner:—

a) The classification already in force for buildings will continue to apply to all buildings, no matter what their date of construction; b) The buildings will be divided in three new groups:—

1. Residential properties or semi-commercial properties (stores and dwellings) which are taxable and which were constructed before the year 1915; 2. All buildings exempt from the ordinary municipal tax; 3. All other buildings.

The buildings of the first and second groups will be classified by categories, classes and types, according to the system already in force, with such subdivisions as is deemed proper to add, and a price, per cubic foot only, will be determined for each type of building.

The reconstruction cost of any particular building will be fixed following its cubic content and the price per cubic foot already determined for the type of construction to which it belongs.

The cubing of buildings, the determination of the category and type in which they should be classified, and the entry of the cubage figures on the permanent cards will be made by the Technical Service and the Assessors when the latter are available. In order that the work may be accomplished within a reasonable delay, we recommend the immediate engagement of additional temporary employees of which the number and the duties will be determined by the Chief Assessor.

The estimation of the net replacement cost of buildings in the third group will continue as at present.

**3. PERMANENT CARDS:**—These will be of two kinds. The yellow cards actually in use will serve for the properties of the third group. The azure cards will serve for the properties of the first and second groups. These cards are permanent and should be filled for all the properties so that each immovable has its own.

The cards as well as the valuation sheets will be filled in by the clerks attached to each group of two assessors or if the Chief Assessor finds it necessary, by other clerks to be named.

The assessors receive their cards and, as the case may be, the valuation sheets duly filled in, except for the spaces reserved for the valuation according to the annual rental value, for the valuation of the assessors and for the remarks. These three spaces are filled in by the assessors themselves.

**4. ÉVALUATION:**—Les estimateurs complètent la fiche permanente en y inscrivant le chiffre de l'évaluation. Il leur appartient de décider si ce chiffre doit être modifié à cause de la dépréciation et de tenir compte des autres facteurs affectant la valeur de la propriété tel que prévu par la Charte. S'ils arrivent ainsi à un chiffre d'évaluation différent de celui représentant la valeur intrinsèque ou de remplacement après déduction de la dépréciation normale, ils devront indiquer sommairement la raison de leur évaluation et initialement leur entrée sur la fiche permanente.

Tout le travail d'évaluation se divise donc en deux opérations bien définies: — a) L'obtention et la réunion des renseignements de faits par les estimateurs et le Service Technique; b) L'évaluation définitive, par les estimateurs, en possession de ces renseignements et données que contiendra chacune des fiches permanentes.

L'organisation nécessaire à la préparation des fiches, à leur distribution au Service Technique puis aux estimateurs et à leur classement une fois complétées, est confiée à l'initiative du Chef Estimateur.

**5. FEUILLES D'ESTIMATION:**—Les feuilles d'estimation sont remplies, selon la formule indiquée plus bas, dans tous les cas de contestation d'une évaluation, pour l'usage du Bureau de Révision et des tribunaux supérieurs, ou chaque fois que ce Bureau en fait la demande. Elles peuvent l'être en outre au gré du Chef Estimateur ou des estimateurs.

Relativement aux inscriptions à être faites sur les feuilles des estimateurs, dans l'espace numéro 1 réservé aux prix unitaires, il convient de préciser que dans le cas des propriétés incluses plus haut dans le groupe numéro 3, le coût de reconstruction du bâtiment doit être inscrit tel que spécifié, ainsi que le prix au pied cube d'après le prix total en premier lieu déterminé.

Dans le cas des bâtiments des groupes numéros 1 et 2, le prix au pied cube seulement sera inscrit, avec le groupement, la catégorie, la classe, le type et le cubage du bâtiment concerné. Le prix global au pied cube devra être reporté ensuite à l'espace réservé pour l'inscription du coût total du bâtiment.

**6. UTILITÉS PUBLIQUES:**—Le Service Technique préparera des formules d'estimation relatives aux entreprises d'utilité publique, comme les chemins de fer, les tramways, les entreprises de gaz, d'électricité et de téléphone ou de télégraphe, et autres. Dès que ces formules auront été soumises au Bureau de Révision des Estimations et que ce dernier les aura approuvées, le Chef Estimateur pourra procéder ou recommander qu'il soit procédé aux estimations de ces propriétés.

**4. VALUATION:**—The assessors complete the permanent card by inscribing thereon the valuation figures. It belongs to them to decide if the figure should be modified by reason of depreciation and by taking into account other factors affecting the valuation of the property, as provided by the Charter. If they thus arrive at a valuation figure different from that representing the intrinsic value or the replacement cost after deduction of the normal depreciation, they should indicate briefly the reason of their valuation and initial the entry on the permanent card.

The work of valuation divides itself in two definite operations: — a) Securing and uniting all information and data obtained by the assessors and the Technical Service; b) The definitive valuation by the assessors who are in possession of the information and data shown on each permanent card.

The necessary organization in the preparation of the cards, in their distribution to the Technical Service and then to the assessors and in their filing once completed, is entrusted to the initiative of the Chief Assessor.

**5. VALUATION SHEETS:**—The valuation sheets are filled in according to the formula indicated below, in every case of contestation of a valuation, for the use of the Board of Revision and of the Superior Court or for each case for which a request is made by the Board of Revision. They may also be made, at the wish of the Chief Assessor or of the assessors.

Relating to the inscriptions to be made on the valuation sheets in space No. 1 reserved for unit prices, it is understood that in all cases of properties included in group No. 3, the cost of reconstruction of the building should be inscribed as specified, also the price per cubic foot according to the total price determined in the first place.

In the case of buildings belonging to groups 1 and 2, the cubic price only will be inscribed showing the group, the category, the class, the type and the cubic content of the building concerned. The total price on the cubic foot basis should be shown afterwards in the space reserved for the inscription of the total cost of the building.

**6. PUBLIC UTILITIES:**—The Technical Service will prepare valuation forms relative to the enterprises of public utility, such as railroads, tramways, gas, electricity and telephone or telegraph enterprises, and others. As soon as these forms have been submitted to the Board of Revision of Valuations and approved by them, the Chief Assessor may proceed in making the valuation of these properties or recommend that this be done.

C.I.L. Building Valuation.  
CITÉ DE MONTREAL  
CITY OF MONTREAL

C.I.L. House  
Canadian Industries Ltd.  
1137-35 Beaver Hall Hill  
(Architect's Building)

FEUILLE DES ESTIMATIONS  
VALUATION SHEET

NO DE COMPTE..... 140345  
NO. OF ACCOUNT.....

1.- 44<sup>s</sup> x 100 4471 PRIX UNITAIRES  
25<sup>s</sup> x 100 2525 UNIT PRICES

Terrain..... Superficie..... 6996  
Land..... Area

Taux unitaires de valeur au pied carré, tel que déterminé par le Comité d'estimateurs \$ 9.00 & 5.00  
Unit rate of value per square foot, as determined by the Committee of Assessors

Prix déterminé par le Service Technique suivant le taux unitaire établi par le Comité d'estimateurs:—  
Price determined by the Technical Service according to the unit rate established by the Committee of Assessors

Corner & Square Inf. included au pied carré \$ 12.57 Total \$ 87,950.  
per square foot

Bâtiment:..... Groupe No. 3  
Building:..... Group No.

Catégorie Comm. Classe 1 Type 3 528,300  
Category Class

Coût de reconstruction, moins la dépréciation, mais y compris les dépendances, jusqu'en 1941 \$..... Total \$ 616,250.  
Cost of reconstruction, less depreciation, but including outbuildings, up to

Cubage { Net.....  
Conventionnel..... Prix au pied cube \$ 505 Total \$ 603,035  
Conventional..... Price per cubic foot

2.- ESTIMATION SELON LA VALEUR LOCATIVE ANNUELLE  
Office Building VALUATION ACCORDING TO ANNUAL RENTAL VALUE  
Built 1931

Revenu réel 1941 \$.....  
Real revenue

Valeur locative \$ 50,700. Inc. acct. 140346  
Rental value

“ “ capitalisée à raison de %..... \$.....  
“ “ capitalized at the rate of

Estimation selon la valeur locative: \$.....  
Valuation according to rental value:

3.- PRIX DE VENTE DE CETTE PROPRIÉTÉ  
SALE PRICE OF THIS PROPERTY

Date..... \$.....

4.- MONTANT DE L'HYPOTHÈQUE  
AMOUNT OF MORTGAGE

Première \$.....  
First

Deuxième \$..... Total \$.....  
Second

5.- AUTRES RENSEIGNEMENTS  
OTHER INFORMATION

Tous autres renseignements tels que offres de vente ou d'achat, expropriations, règlements de succession, vente par voie de  
Any other data such as offers of sale or purchase, expropriations, settlement of estates, sales by  
licitation, décisions des tribunaux ou du bureau de révision des estimations, etc., de nature à indiquer la valeur de la propriété  
licitation, decisions of the courts or of the Board of Revision of Valuations, etc., of a nature to show the value of the property

6.- VALEUR DE CETTE PROPRIÉTÉ PORTÉE DANS UN PROSPECTUS OU INSCRITE DANS LES LIVRES DU PROPRIÉTAIRE  
VALUE OF THIS PROPERTY ENTERED IN A PROSPECTUS OR IN THE OWNER'S BOOKS

Date..... \$.....

7.-

**PRIX DE VENTE DE PROPRIÉTÉS SEMBLABLES  
SALE PRICE OF SIMILAR PROPERTIES**

Nos de cadastre.....original.....subd.  
Cadastral Nos.:

No de maison:.....rue.....street  
House No.:

Date.....

8.-

**COÛT INITIAL DE CONSTRUCTION DU BÂTIMENT  
ORIGINAL COST OF CONSTRUCTION OF BUILDING**

Date..... \$.....

Renseignements donnés par:.....  
Information given by:

9.-

**ASSURANCES  
INSURANCE**

Date..... \$.....

10.-

**ÉVALUATION DES ESTIMATEURS  
ASSESSORS' VALUATION**

Terrain: 6996.....au pied carré \$.....12.57..... Total \$.....87,950.....  
Land: .....per square foot

Bâtiment: \$.....562,050.....  
Building:

Total \$.....650,000

**REMARQUES  
REMARKS**

Owner Occupied 100% Replacement  
Our replacement Value Net

\$571,390.  
87,950.

Only 2 tenants (Bank & Restaurant)  
Building  
Land

Building alone cost

\$659,340.  
\$711,138.

in 1930-31

Date..... March 27th, 1943.....

..... G. E. Vernot.....

..... Estimateurs — Assessors

**DÉCISION DU BUREAU DE RÉVISION DES ESTIMATIONS  
DECISION OF BOARD OF REVISION OF VALUATIONS**

Date de l'audition: .....  
Date heard:

Date de la décision: .....  
Date decision rendered:

..... Président — President



## PROCEDURE

Le Bureau de Revision des Estimations, en vertu des pouvoirs qui lui sont conférés par la Charte de la Cité de Montréal, a donné au Chef Estimateur les instructions suivantes sur la façon selon laquelle les estimateurs doivent procéder à leur travail:—

**1. TERRAINS:**—En ce qui concerne les prix unitaires des terrains, le Chef Estimateur nommera cinq comités d'estimateurs formés à même le personnel des estimateurs. Chaque comité se réunira sous la présidence d'un de ses membres désigné par le Chef Estimateur et déterminera les taux unitaires de la valeur des terrains de sept quartiers lesquels formeront un arrondissement qui sera du ressort de chacun. Ces taux unitaires de la valeur seront indiqués sur le plan spécial de quartier tel qu'il existe déjà, et cette carte portera un numéro auquel référeront les fiches entre les mains des estimateurs. En cas de divergence de vues au sein d'un comité, l'avis de la majorité l'emportera. Le Chef Estimateur pourra assister aux séances des différents comités et donner son avis. Le Chef Estimateur verra à coordonner le travail des cinq comités et à ce que ceux-ci se consultent les uns les autres lorsqu'il y aura lieu de le faire en vue d'assurer l'uniformité dans la détermination des prix unitaires.

Un comité de coordination du travail en cours, composé des présidents des cinq comités mentionnés plus haut, et présidé par le Chef Estimateur, sera formé d'ailleurs en vue d'assurer cette coordination.

Le prix au pied carré sera calculé pour chaque terrain par le Service Technique, suivant les taux unitaires de valeur établis par les comités d'estimateurs, en tenant compte, même pour les propriétés résidentielles, des tables de profondeur et d'influence d'encoignure ainsi que des autres facteurs mentionnés dans le "Manuel d'Estimation des Biens-Fonds".

Cependant, dans certains cas exceptionnels, tels que groupements, irrégularités, diminution d'utilité due à la configuration ou au caractère du terrain, où l'application stricte des règles de profondeur et d'influence d'encoignure donnerait lieu à une évaluation injuste en plus ou en moins, il appartiendra à l'estimateur d'user de son jugement pour ramener le chiffre final à une évaluation adéquate.

**2. BÂTIMENTS:**—Les prix unitaires, le coût de reconstruction et le pourcentage de dépréciation annuelle des bâtiments sont établis par le Service Technique, de la façon suivante:—

a) La classification des bâtiments déjà en vigueur continue de s'appliquer à tous les bâtiments, quelle que soit leur date de construction; b) Les bâtiments seront divisés en trois nouveaux groupes:—

1. Les habitations domiciliaires ou semi commerciales qui sont impossibles et qui ont été construites avant l'année 1915; 2. Tous les bâtiments non assujettis à l'impôt foncier ordinaire; 3. Tous les autres bâtiments.

Les habitations des premier et deuxième groupes seront classifiées par catégories, classes et types, selon le système déjà en vigueur, avec subdivisions que l'on jugera à propos d'y ajouter, et un prix, au pied cube seulement, de chaque type de bâtiment, sera déterminé.

Le coût de reconstruction d'un bâtiment en particulier sera fixé à raison de son cubage et du prix au pied cube déjà déterminé pour le type de construction qui lui est propre.

Le cubage des bâtiments et la détermination de la catégorie et du type dans lesquels ils doivent être classés, l'entrée des chiffres de cubage sur la fiche permanente, seront faits par le Service Technique et les estimateurs quand ces derniers seront disponibles. Pour que le travail puisse être accompli dans un délai raisonnable, nous recommandons l'engagement immédiat d'employés surnuméraires dont le nombre et les fonctions seront déterminés par le Chef Estimateur.

L'estimation du coût net de remplacement des bâtiments de troisième groupe se continuera comme elle se poursuit présentement.

**3. FICHES PERMANENTES:**—Elles seront de deux sortes: les cartes jaunes actuellement en usage serviront aux propriétés du troisième groupe; les cartes de couleur azur serviront aux propriétés des premier et deuxième groupes. Ces cartes sont permanentes et doivent être remplies pour toutes les propriétés de façon que chaque immeuble ait la sienne.

Les fiches de même que les feuilles des estimateurs, seront remplies par les commis attachés à chaque groupe de deux estimateurs ou, si le Chef Estimateur le juge à propos, par d'autres commis à être nommés.

Les estimateurs reçoivent leurs fiches et, le cas échéant, les feuilles d'estimation dûment remplies, sauf relativement aux espaces réservés à l'estimation selon la valeur locative annuelle, à l'évaluation des estimateurs, et aux remarques, lesquels sont remplis par les estimateurs eux-mêmes.

## PROCEDURE

The following instructions on the manner in which the Assessors shall proceed with their work, have been given to the Chief Assessor, by the Board of Revision of Valuations, in virtue of the powers conferred on it by the Charter of the City of Montreal:—

**1. LAND:**—Regarding the land unit prices, the Chief Assessor will name five committees of valuers formed amongst the Assessors; each committee will meet under the presidency of one of its members designated by the Chief Assessor and will determine the unit prices of the value of lands in seven wards which will form a district and which will be the responsibility of each. These unit prices will be indicated on special ward plans, already existing, and these plans will bear a number which will refer to cards in the hands of the Assessors. In case of any difference of opinion amongst the members of any committee, the opinion of the majority shall prevail. The Chief Assessor may attend the meetings of the different committees and give his opinion. He will also see that the work of the five committees is coordinated and that they consult each other when necessary in order to ensure uniformity in the unit prices determined.

A committee of coordination of the work in hand, composed of the presidents of the five committees above-mentioned and presided over by the Chief Assessor, will be formed with a view to securing this coordination.

The price per square foot will be calculated for each lot by the Technical Service, according to the unit prices established by the Committees mentioned and taking into account, even for residential properties, the depth and corner influence tables, as well as other rules mentioned in the Real Estate Valuation Manual.

However, in certain exceptional cases, such as plottage, irregular lots, loss of utility due to the shape or the character of the land, where the strict application of the depth and corner rules mentioned would occasion an unjust valuation either more or less, it will belong to the assessor to use his judgment to bring the final figure to a correct valuation.

**2. BUILDINGS:**—The unit prices, the cost of reconstruction and the percentage of annual depreciation of buildings are established by the Technical Service in the following manner:—

a) The classification already in force for buildings will continue to apply to all buildings, no matter what their date of construction; b) The buildings will be divided in three new groups:—

1. Residential properties or semi-commercial properties (stores and dwellings) which are taxable and which were constructed before the year 1915; 2. All buildings exempt from the ordinary municipal tax; 3. All other buildings.

The buildings of the first and second groups will be classified by categories, classes and types, according to the system already in force, with such subdivisions as is deemed proper to add, and a price, per cubic foot only, will be determined for each type of building.

The reconstruction cost of any particular building will be fixed following its cubic content and the price per cubic foot already determined for the type of construction to which it belongs.

The cubing of buildings, the determination of the category and type in which they should be classified, and the entry of the cubage figures on the permanent cards will be made by the Technical Service and the Assessors when the latter are available. In order that the work may be accomplished within a reasonable delay, we recommend the immediate engagement of additional temporary employees of which the number and the duties will be determined by the Chief Assessor.

The estimation of the net replacement cost of buildings in the third group will continue as at present.

**3. PERMANENT CARDS:**—These will be of two kinds. The yellow cards actually in use will serve for the properties of the third group. The azure cards will serve for the properties of the first and second groups. These cards are permanent and should be filled for all the properties so that each immovable has its own.

The cards as well as the valuation sheets will be filled in by the clerks attached to each group of two assessors or if the Chief Assessor finds it necessary, by other clerks to be named.

The assessors receive their cards and, as the case may be, the valuation sheets duly filled in, except for the spaces reserved for the valuation according to the annual rental value, for the valuation of the assessors and for the remarks. These three spaces are filled in by the assessors themselves.

**4. ÉVALUATION:**—Les estimateurs complètent la fiche permanente en y inscrivant le chiffre de l'évaluation. Il leur appartient de décider si ce chiffre doit être modifié à cause de la dépréciation et de tenir compte des autres facteurs affectant la valeur de la propriété tel que prévu par la Charte. S'ils arrivent ainsi à un chiffre d'évaluation différent de celui représentant la valeur intrinsèque ou de remplacement après déduction de la dépréciation normale, ils devront indiquer sommairement la raison de leur évaluation et initialiser leur entrée sur la fiche permanente.

Tout le travail d'évaluation se divise donc en deux opérations bien définies:—a) L'obtention et la réunion des renseignements de faits par les estimateurs et le Service Technique; b) L'évaluation définitive, par les estimateurs, en possession de ces renseignements et données que contiendra chacune des fiches permanentes.

L'organisation nécessaire à la préparation des fiches, à leur distribution au Service Technique puis aux estimateurs et à leur classement une fois complétées, est confiée à l'initiative du Chef Estimateur.

**5. FEUILLES D'ESTIMATION:**—Les feuilles d'estimation sont remplies, selon la formule indiquée plus bas, dans tous les cas de contestation d'une évaluation, pour l'usage du Bureau de Révision et des tribunaux supérieurs, ou chaque fois que ce Bureau en fait la demande. Elles peuvent l'être en outre au gré du Chef Estimateur ou des estimateurs.

Relativement aux inscriptions à être faites sur les feuilles des estimateurs, dans l'espace numéro 1 réservé aux prix unitaires, il convient de préciser que dans le cas des propriétés incluses plus haut dans le groupe numéro 3, le coût de reconstruction du bâtiment doit être inscrit tel que spécifié, ainsi que le prix au pied cube d'après le prix total en premier lieu déterminé.

Dans le cas des bâtiments des groupes numéros 1 et 2, le prix au pied cube seulement sera inscrit, avec le groupement, la catégorie, la classe, le type et le cubage du bâtiment concerné. Le prix global au pied cube devra être reporté ensuite à l'espace réservé pour l'inscription du coût total du bâtiment.

**6. UTILITÉS PUBLIQUES:**—Le Service Technique préparera des formules d'estimation relatives aux entreprises d'utilité publique, comme les chemins de fer, les tramways, les entreprises de gaz, d'électricité et de téléphone ou de télégraphe, et autres. Dès que ces formules auront été soumises au Bureau de Révision des Estimations et que ce dernier les aura approuvées, le Chef Estimateur pourra procéder ou recommander qu'il soit procédé aux estimations de ces propriétés.

**4. VALUATION:**—The assessors complete the permanent card by inscribing thereon the valuation figures. It belongs to them to decide if the figure should be modified by reason of depreciation and by taking into account other factors affecting the valuation of the property, as provided by the Charter. If they thus arrive at a valuation figure different from that representing the intrinsic value or the replacement cost after deduction of the normal depreciation, they should indicate briefly the reason of their valuation and initial the entry on the permanent card.

The work of valuation divides itself in two definite operations:—a) Securing and uniting all information and data obtained by the assessors and the Technical Service; b) The definitive valuation by the assessors who are in possession of the information and data shown on each permanent card.

The necessary organization in the preparation of the cards, in their distribution to the Technical Service and then to the assessors and in their filing once completed, is entrusted to the initiative of the Chief Assessor.

**5. VALUATION SHEETS:**—The valuation sheets are filled in according to the formula indicated below, in every case of contestation of a valuation, for the use of the Board of Revision and of the Superior Court or for each case for which a request is made by the Board of Revision. They may also be made, at the wish of the Chief Assessor or of the assessors.

Relating to the inscriptions to be made on the valuation sheets in space No. 1 reserved for unit prices, it is understood that in all cases of properties included in group No. 3, the cost of reconstruction of the building should be inscribed as specified, also the price per cubic foot according to the total price determined in the first place.

In the case of buildings belonging to groups 1 and 2, the cubic price only will be inscribed showing the group, the category, the class, the type and the cubic content of the building concerned. The total price on the cubic foot basis should be shown afterwards in the space reserved for the inscription of the total cost of the building.

**6. PUBLIC UTILITIES:**—The Technical Service will prepare valuation forms relative to the enterprises of public utility, such as railroads, tramways, gas, electricity and telephone or telegraph enterprises, and others. As soon as these forms have been submitted to the Board of Revision of Valuations and approved by them, the Chief Assessor may proceed in making the valuation of these properties or recommend that this be done.

PLAINTIFF'S EXHIBIT P-35 AT ENQUETE

*Statement of Buildings referred in Schedule I  
of Joint Admission.*

Name of Building	Net replacement value	Percentage of replacement value used in valuation	Commercial value	Percentage of commercial value used in valuation	Valuation on Roll
Royal Trust	\$ 974,431.	100%	—	—	\$ 980,000.
C.P.R. Express	1,125,760.	50%	\$1,092,000.	50%	1,100,000.
Bank of Nova-Scotia	697,095.	75%	590,600.	25%	670,400.
Guarantee Co. of N. America	338,330.	75%	373,300.	25%	350,000.
Banque Can. Nationale	594,307.	85%	638,000.	15%	600,000.
Bank of Toronto	611,600.	75%	444,000.	25%	550,000.
Architects' (C.I.L. House)	— Valuation Sheet furnished				
Tramways	746,595.	50%	754,478.	50%	750,000.
M.L.H. & P. Consolidated	( 340,000.	100%	—	—	340,000.
	( 300,000.	50%	295,000.	50%	300,000.
Canada Cement	— Valuation Sheet furnished				
Bell Telephone	3,057,000.	100%	—	—	3,000,000.
Royal Bank	— Valuation Sheet furnished				
Royal Bank (St. Denis & St. Catherine)	282,362.	50%	292,930.	50%	300,000.
Star Building	724,483.	50%	618,600.	50%	671,500.
Sun Life	— Valuation Sheet furnished				A. E. Hulse.

PLAINTIFF'S EXHIBIT P-51 AT ENQUETE

*Tenancies of a Temporary Wartime Nature—as at April 1st 1943.*

SUN LIFE BUILDING, Montreal.

Location	Tenant	Area sq. ft.	Annual Rental	Present From	Lease To	Cancellation and Renewal privileges
1655	M.D. No. 4 (Chaplains)	760	\$ 720.00	1-12-42	30-7-43	—
1639	Can. Pulp & Paper Association (Wartime Service Dept.)	1,442	\$ 1,600.00	21-10-41	monthly	May be cancelled by either party on one month's notice.
1564	M.D. No. 4	364	\$ 540.00	11-9-42	10-9-43	—
1559	Electrical Trading Co. Ltd.	825	\$ 840.00	1-5-42 1-5-43	30-4-43 30-4-44	— (renewal)
whole 12th fl.	M.D. No. 4	x 24,191	\$34,000.00	23-10-39	22-10-44	One-third of space may be cancelled after Oct. 1940 on 6 mos. notice to Lessor, in which event Lessee to pay \$2400. p.a. to Lessor as indemnity for rest of lease-term in addition to reduced rental.
		x May be reduced by say 8000 sq. ft. at corresponding reduction in rent of \$9000. p.a.				
1057	M.D. No. 4	640	\$ 900.00	6-1-42	6-7-42	and monthly thereafter.
1056	M.D. No. 4	608	\$ 900.00	1-9-42	31-8-43	—
10th fl. storage in locker rm. space	International Red Cross	783	\$ 360.00	1-3-42 1-5-43	30-4-43 30-4-44	— (renewal)
1022	Aluminum Co. of Can. Ltd.	3,547	\$ 6,300.00	22-4-42	21-4-44	May be renewed by Lessee at same rental for each of 2 yrs. on 1 month's notice. Either renewal may be cancelled at end of any mo. on 3 mos. notice to Lessor.
1015	Aluminum Co. of Can. Ltd.	3,339	\$ 5,700.00	1-10-42	30-9-43	Same cancellation & renewal clauses as above.
959.	Aluminum Co. of Can. Ltd.	624	\$ 1,140.00 (renewal):	1-3-42 1-3-43	28-2-43 28-2-44	Same renewal & cancellation as above, except cancellation on 1 month's notice only to Lessor.
915	Wartime Prices & Trade Board	1,792	\$ 3,520.00	1-12-42	30-11-43	—

Location	Tenant	Area sq. ft.	Annual Rental	Present Lease From	Lease To	Cancellation and Renewal privileges
825	M.D. No. 4	1,665	\$ 2,250.00	10-4-42 10-4-43	9-4-43 9-4-44	— (renewal)
812	M.D. No. 4	1,773	\$ 2,400.00	28-4-42 28-4-43	27-4-43 27-4-44	—
860	Aluminum Co. of Can. Ltd.	3,280	\$ 4,250.00	1-1-41	31-12-43	After Dec. 31/41, Lessee may cancel at end of any month on 3 mos. notice to Lessor.
809	Grand Duchy of Luxembourg	652	\$ 1,260.00	1-1-43	30-6-43	—
753	M.D. No. 4 (old Men's Lounge)	3,565	\$ 6,100.00	15-2-43	14-8-43	Lessee may renewed for further 6 mos. May be cancelled by Lessee on 2 mos. notice. May be cancelled by either party after cessation of hostilities on 1 month's notice.
759	M.D. No. 4 (old Billiard Room)	4,310	\$ 5,820.00	18-7-42	17-7-43	—
7th fl. north of well,	M.D. No. 4	5,010	\$ 6,067.44	22-10-42	21-10-43	—
7th fl. south of well,	M.D. No. 4	1,460	\$ 1,500.00	17-2-41	monthly	—
718	Can. Pris. of War Rel. Assn.	650	Free	14-4-42	—	To give up possession at any time on Lessor's demand.
705	Central Agency Ltd.	1,100	\$ 2,280.00	18-11-40	monthly	—
628 (northwest corner)	Aluminum Co.	4,533	\$ 7,733.33	21-7-41	20-7-44	After lease in force 1 yr., may be cancelled by Lessee on 1 month's notice to Lessor.
622 (west side new bldg.)	Aluminum Co.	5,449	\$ 8,076.00	1-10-41	monthly	—
608 (west side old bldg.)	Aluminum Co.	5,752	\$ 7,000.00	1-1-41	31-12-43	After Dec. 31/41, may be cancelled at end of any month on 1 month's notice to Lessor.
rear 616-619	Aluminum Co.	1,512	\$ 1,500.00	18-1-43	17-7-43	and monthly thereafter.
679a	M.D. No. 4	256	\$ 312.00	19-1-42	monthly	May be cancelled by either party on 1 month's notice.
674	M.D. No. 4	754	\$ 1,020.00	1-6-43	31-5-44	—
603	Can. Pulp & Paper Assn. (Wartime Machine Shop Board)	1,142	\$ 2,100.00	18-3-43	17-3-44	—

Location	Tenant	Area sq. ft.	Annual Rental	Present From	Lease To	Cancellation and Renewal privileges
678	The Loewy Engineer. Co. Ltd.	480	\$ 960.00	1-5-42 1-5-43	30-4-43 30-4-44	— (renewal)
678a	Woodland Lumber Ltd.	136	\$ 180.00	1-5-42 1-5-43	30-4-43 30-4-44	— (renewal)
679	Woodland Lumber Ltd.	304	\$ 540.00	1-3-43	28-2-44	—
510	Canadian Aid to Russia	200	\$ 240.00	1-3-43	monthly	May be cancelled by either party on 1 month's notice.
455	Aluminum Co. of Can. Ltd.	15,880	\$26,200.00 (renewal):	9-2-42 9-2-43	8-2-43 8-2-44	May be renewed for each of 2 yrs on 1 month's notice. Either renewal may be cancelled by Lessee at end of any month on 1 month's notice.
152	Can. Pulp & Paper Assn. (Pulpwood Committee of) (Pulp & Paper Industry.)	960	\$ 1,440.00	1-3-43	28-2-44	After lease in force 6 mos., may be cancelled by Lessee on 3 months' notice.
128	Women's Voluntary Services	1,750	\$ 1,350.00	1-4-43	30-4-44	—
130a	Can. Pris. of War Rel. Assn.	383	Free	5-4-43	—	To vacate on Lessor's demand.
70	Central Bk. & Mag Depot (MD4)	748	Free	1-11-39	—	May be cancelled by Lessor on 24 hrs. notice.
62	United Kingdom Sec. Deposit	2,535	\$ 4,800.00	4-10-42	3-10-43	May be cancelled by Lessee on 6 mos. notice to Lessor.
Space east side 3rd basement	" " " "	6,612	\$ 4,000.00	15-7-41	14-7-45	May be cancelled by Lessee on 6 mos. notice to Lessor.

mg.  
real estate/sun life.  
13-4-43.

PLAINTIFF'S EXHIBIT P-52 AT ENQUETE

*Summary of Wartime Tenancies.*

SUN LIFE BUILDING, Montreal. — as at April 1st 1943.

10	Free Space, may vacate on demand	1,781
	Monthly cancellation privilege	36,492
	Three months " " "	11,126
	Six " " "	9,799
	M.D. No. 4 — sundry spaces	21,165
	12th floor—one-third of floor (6 mos. notice)	8,000
	Yearly leases	5,467
	" " — may be post-war tenancies	1,745
		<hr/>
		95,575
20		Hinch.
	Real Estate/Sun Life.	
	14-4-43.	

PLAINTIFF'S EXHIBIT P-39 AT ENQUETE

*Analysis of V. Fournier Report by Mr. J. J. Perrault.*

30 PERRAULT & GADBOIS  
Architectes  
3795 Avenue Van Horne, Montréal

April the 7th, 1943.

D. L. Macaulay, Esq.,  
Assistant-Secretary,  
Sun Life Assurance Company of Canada,  
Sun Life Building,  
Montreal, P.Q.

40 Dear Sir:

*Analysis of V. Fournier Report.*

I have analysed Mr. Fournier's estimate of \$18,747,947.53 covering the replacement value of the main building only, as of 1939. This estimate is arrived at in a peculiar manner: a basic office building rating 40¢ per cu. ft., is used as a base; then surplusses are added for various trades insofar as the cost of said trades exceed the amount pro rata of a 40¢ building.

In the following table you will find:—

- 1st column—Mr. Fournier's estimate  
 2nd " —Total cost to Sun Life of the trades mentioned, as existing in 1941, and adjusted to 1939.  
 3rd " —Amount of trades included in basic 40¢ building.  
 4th " —Amount by which cost of trades exceed amount of trade in basic building.

The amount of \$8,800,099.60, adopted for 40¢ basic building, has been reduced to \$8,000,000.00 on account of difference in height of typical floors;

Basic Building — 10'6" to 11'0" floor to floor.  
 Sun Life Bldg. — 14'0" floor to floor.

	Estimate V. Fournier	Cost to Sun Life Adjusted 1939.	Amount Included Basic 40¢ Bldg.	Surplus Etc.
22,000,249 c.f. @ 40¢	8,800,099.60			8,000,000.00
<b>SURPLUS.</b>				
Foundations	57,209.00	—	—	57,200.00
Concrete	196,913.00	—	—	95,000.00
Steel	750,600.00			750,600.00
Masonry	2,421,634.00	3,500,000.	1,500,000.	2,000,000.00
Roofing	75,177.00	75,600.	25,000.	50,000.00
Windows	458,892.00	333,000.	33,000.	300,000.00
Stair rails, etc.	34,900.00	—	—	34,900.00
Doors	132,000.00	80,000.	3,000.	77,000.00
Special finishes	95,000.00	—	—	95,000.00
Acoustic	66,000.00	—	—	66,000.00
Plastering	202,500.00	745,000.	550,000.	195,000.00
Electricity	550,000.00	754,000.	330,000.	424,000.00
Marble, etc.	768,000.00	935,000.	550,000.	385,000.00
Floors	176,618.00	—	—	175,000.00
Plumbing	370,000.00	584,000.	330,000.	254,000.00
Heating & Ventilation	820,000.00	1,160,000.	484,000.	676,000.00
Painting & Glazing	70,000.00	—	—	70,000.00
General Exp Proof.	660,000.00			600,000.00
Vaults	175,000.00	90,000.	27,000.	63,000.00
Elevators	1,239,000.00	800,000.	440,000.	360,000.00
Hardware	50,000.00	54,000.	54,000.	—
	\$18,169,542.60	Arch. fees 4%		\$589,200.00
Arch. fees 4%	726,781.70			
Tot. bldg. inc. heat.	\$18,896,324.30			\$15,316,000.00
Unfinished =				
\$335,775.68				355,000.00
Heat. Equipment =				
273,974.40	629,750.08			
	\$18,266,574.22			\$14,961,000.00
Finance	481,400.30			409,000.00
Repl cost 1939	\$18,747,974.53			\$15,370,000.00

Mr. Fournier's replacement value of the main building, exclusive of financing costs, based on the 1939 index, and as corrected above, amounts to \$14,961,000.00 and compares with \$15,566,000.00 in my report.

Yours very truly,

Jean Julien Perrault.



PLAINTIFF'S EXHIBIT P-40 AT ENQUETE

*Analysis of B. Perry Report by A. J. C. Paine.*

PERRAULT & GADBOIS

Architectes

3795 Avenue Van Horne, Montréal

10

Ce 8 avril, 1943.

D. L. Macaulay, Esq.,  
Assistant Secretary,  
Sun Life Assurance Company of Canada,  
Sun Life Building,  
Montreal, P.Q.

20

Dear Sir:

*Re: Analysis of B. Perry Report.*

I have analysed Mr. Brian Perry's estimate of \$20,758,-  
700.00 covering the replacement value of the main building only  
as of 1939.

30 It is rather interesting to work back from this figure,  
namely:

Replacement value 1939-40 (B. Perry)	\$20,758,700.00
Increased to construction date, 10%	2,075,870.00

---

\$22,834,570.00

Plus items deducted.

Cost of sidewalks	70,335.00
-------------------	-----------

Temporary partitions	233,713.38
----------------------	------------

40

Parts demolished	1,215,450.00
------------------	--------------

---

1,519,498.38

---

\$24,354,068.38

Plus allowance for having presumed  
construction as one building (See D2)

881,851.00

---

To be forwarded \$25,235,919.38

For'd \$25,235,919.38

Actual cost to Sun Life		\$22,377,769.26	
Less Power	\$ 709,257.14		
Bldg.			
Land	1,040,638.20	1,749,895.34	<u>\$20,627,873.92</u>

10

Perry valuation exceeds cost by 22.3% on a corrected basis of 22.3%, the estimated replacement value of the main building, exclusive of finance charges, set by Mr. Perry at \$20,008,700.00, would become \$16,360,000.

This figure compares with \$15,566,000.00 in my report.

It might be interesting to compare a few items of Mr. Perry's valuation with actual cost, adjusted to 1939.

20

	<i>Perry</i>	<i>Sun Life</i>	<i>Excess</i>
(e) Ext. typical walls complete	2,795,000.		
(f) Ornamental features, etc.	1,755,000.		
	<u>\$4,550,000.</u>	3,889,000.	17%
(o) Main vault	225,000.	100,000.	125%
(s) Elevators	1,588,000.	889,000.	80%
(t) Electrical work	1,086,000.	837,000.	29%
(u) Heating	615,000.	372,000.	65%
(v) Ventilation	<u>780,000.</u>	638,000.	22%

30

Yours very truly,

Jean Julien Perrault.

40

DEFENDANT'S EXHIBIT D-22 AT ENQUETE

*List of Rentals for the 8th Floor as at December 1, 1941.*

April 8, 1943

10

THE ROYAL BANK BUILDING — MONTREAL

<i>Rooms</i>	<i>Tenant</i>	<i>Rental Per Annum</i>
801-4; 827-8	Mutual Life Insurance Co. of New York	\$3,900.00
20 805-8	Chubb & Son	3,120.00
809-10	Building Management Office	1,800.00
811	Securities & Money Transport Inc.	480.00
812	Barnes, K. S.	600.00
813-15	Dominick Corporation of Canada	1,800.00
30 816-17	Timmings, J. R.	1,620.00
818-19	Sterling Properties, Ltd.	1,740.00
820-3	<i>Vacant</i>	3,200.00
824-26	Moorgate Agency Ltd.	1,800.00
		<u>\$20,060.00</u>

40

DEFENDANT'S EXHIBIT D-23 AT ENQUETE

*Rentable Area on each floor above and including ground floor.*

April 8, 1943

10 THE ROYAL BANK BUILDING — MONTREAL

	<i>Floor</i>	<i>Sq. Ft.</i>
	Ground Floor	19,038
	Mezzanine Floors:	
	Notre Dame St. side	2,940
	St. James St. side	9,164
20	1st Floor	19,500
	2nd Floor	18,800
	3rd Floor	9,465
	4th “	10,104
	5th “	10,177
	6th “	10,040
30	7th “	10,166
	8th “	10,011
	9th “	10,088
	10th “	9,921
	11th “	8,367
	12th “	10,225
	14th “	10,131
40	15th “	10,110
	16th “	10,344
	17th “	11,178
	18th “	9,954
	19th “	4,959
	20th “	5,132

229,814 Square Feet

EXHIBIT D-24 DE LA DEFENDERESSE A L'ENQUETE

*Comparaison entre les cubages de 9 bâtisses.*

	<i>Buildings</i>	<i>No. de Comptes</i>	<i>Inspection de</i>	<i>Cubage:</i>
10	Themis	110281	J. A. S. Houle	864,940 pds. cu.
	Crescent	260593	E. Tassé	509,958 " "
	University Tower	141693	G. de Varennes	2,899,459 " "
	Drummond	141757	E. Bouchard	2,229,436 " "
	Insurance Exchange	140299	E. Tassé	2,978,101 " "
	Dominion Square	141723	E. Tassé	7,035,270 " "
	Canada Cement	141784	J. A. S. Houle	2,676,290 " "
	Transportation	110268	J. H. Lascelles	2,318,855 " "
	Medico Dental	260464	J. A. S. Houle	614,064 " "
20				22,126,373 pds. cu.

EXHIBIT D-26 DE LA DEFENDERESSE A L'ENQUETE

*Détail des superficies de planchers Royal Bank.*

(Inspection Jos. A. S. Houle)

	Rez-de-chaussée	29000	pds. car.
30	Mezzanine	12636	" "
	do	3168	" "
	1er étage	29000	" "
	2e étage	29000	" "
	3e " "	14441	" "
	4e " "	14441	" "
	5e " "	14441	" "
	6e " "	14441	" "
	7e " "	14441	" "
	8e " "	14441	" "
40	9e " "	14441	" "
	10e " "	14441	" "
	11e " "	14441	" "
	12e " "	14441	" "
	13e " "	14441	" "
	14e " "	14441	" "
	15e " "	14441	" "
	16e " "	14441	" "
	17e " "	14441	" "
	18e " "	8022	" "
	19e " "	8022	" "
	Total	335463	pds. car.

PLAINTIFF'S EXHIBIT P-38 AT ENQUETE

*Analysis of Cartier Report by Mr. J. J. Perrault.*

PERRAULT & GADBOIS

Architectes

3795 Avenue Van Horne, Montréal

10 D. L. Macaulay, Esq., April, the 10th, 1943.  
 Assistant-Secretary,  
 Sun Life Assurance Company of Canada,  
 Sun Life Building,  
 Montreal, P.Q.

Dear Sir:

Re: *Analysis of Cartier Report*

20 I have examined the report submitted by Mr. Cartier showing a replacement value in the main building estimated at \$18,706,115.53.

Although I do not agree with many of the unit prices contained therein, I shall limit my observations to the amount charged for "Construction en Hauteur" at the rate of 19%.

I consider this surcharge exceedingly high. I am of the opinion that at the very most an amount of 3% could be allowed, and even then only on trades above the ground floor.

30 Following find figures corrected on this basis:—

	<i>Cartier Estimate</i>	<i>Cartier estimate Corrected by Perrault</i>
Amount in report dated 2/11/42	\$13,110,446.05	\$13,110,446.05
Construction en hauteur 19%	2,490,984.75	
To be forwarded	\$15,601,430.80	
For'd.	\$15,601,430.80	\$13,110,446.05
40 Plus 3% on \$12,000,000.00		359,553.95
		\$13,470,000.00
Plus 10% "sous-contrat"	1,560,143.08	1,347,000.00
	\$17,161,573.88	\$14,817,000.00
Increased to 1941-1939	\$18,706,115.53	\$16,150,000.00

This figure of \$16,150,000.00 represents the replacement value of the main building, based on 1939 index and compares with \$15,566,000.00 mentioned in my report.

Yours very truly,

Jean Julien Perrault.

PLAINTIFF'S EXHIBIT P-41 AT ENQUETE

*Analysis of Desaulniers-Mills' Report by Mr. J. J. Perrault.*

PERRAULT & GADBOIS

Architectes

10 3795 Avenue Van Horne, Montréal

April, the 10th, 1943.

D. L. Macaulay, Esq.,  
Assistant-Secretary,  
Sun Life Assurance Company of Canada,  
Sun Life Building,  
Montreal, P.Q.

20 Dear Sir:  
Re: *Analysis of Desaulniers-Mills' Report.*

Mr. Mills on pages 22 and 23 establishes the total of amount spent on main building, adjusted to 1939 index, at \$20,364,633.28 which less deductions of \$1,519,498.38 leaves an amount of \$18,845,134.90 which he determines as being the cost of replacement in 1939, exclusive of cost of financing and taxes during construction.

30 This is based purely on amount spent by the Sun Life. In my opinion the deductions are inadequate.

Following find table showing the amounts per trade that should have been deducted:—

— SUMMARY —

Total amount spent, Mills, page 23,		\$20,686,587.62
Deductions, due to materials removed, cost of changes, etc., etc.		
40 Contractors general conditions,	\$	115,400.00
Foundations & Waterproofing,		43,465.00
Concrete & Brickwork		40,700.00
Carting, Hoisting & Setting granite,		10,600.00
Granite facings,		128,750.00
Terra Cotta facings on court,		9,530.00
Syenite columns, etc., including re-cutting,		22,050.00
Granite sidewalks, material,		56,400.00
Rough Carpentry & protection,		48,000.00
		<hr/>
To be forwarded	\$	474,895.00

	Forw'd.	\$ 474,895.00	\$20,686,587.62
	Demolition,	151,800.00	
	Temporary construction,	163,200.00	
	Sundries not classified, small trades, etc.,		
	Hoardings, sheds, tools, materials, etc.	80,000.00	
	Pneumatic tubes,	58,950.00	
	Clocks & Signals,	14,960.00	
10	Filters,	4,000.00	
	Electric fixtures & reflectors,	20,000.00	
	Decorating,	13,000.00	
	Structural Steel,	247,970.00	
	Roofing,	59,300.00	
	Plastering,	12,600.00	
	Doors & Trim (steel & wood)	12,520.00	
	Painting,	13,500.00	
	Inside glazing,	5,040.00	
	Marble & Tile,	156,800.00	
20	Bronze & Iron work—stairs, Doors, railings, etc.	78,260.00	
	Bronze windows & glazing,	22,300.00	
	Hardware,	5,500.00	
	Special Woodwork,	49,050.00	
	Compressed air Equipment,	750.00	
	Elevators,	72,960.00	
	Plumbing,	96,340.00	
	Electric conduit & Wiring, etc.	167,200.00	
	Heating & Ventilating,	291,600.00	
	Linoleum, etc.	12,000.00	
30	Value of general construction work demolished on upper floors, etc.	301,221.00	
	Adjustment for proportionate loss on architect's and engineers' fees	150,000.00	2,735,716.00
			<hr/>
			\$17,950,871.62
	Less 10% reduction, adjusting to 1939 index,		1,795,071.62
			<hr/>
			<u>\$16,155,800.00</u>

40

This figure of \$16,155,800.00 represents the replacement value of the main building based on 1939 index and compares with \$15,566,000.00 mentioned in my report.

Yours very truly,

Jean Julien Perrault.



PLAINTIFF'S EXHIBIT P-43 AT ENQUETE

*Memorandum on Mr. Cartier's Report by Mr. A. J. C. Paine.*

April 14, 1943.

10

SUN LIFE BUILDING, MONTREAL. ASSESSMENT  
BY CITY

*Notes made during a study of the appraisal sheets produced by J. A. E. Cartier, Chief Architect, Inspection Division, of the Assessors' Department, before the Board of Revision, March 25, 1943.*

20 DOCUMENTS PRODUCED

1. Inspectors field report, on printed sheets numbered in pencil 91, 92, 93, 95, signed by J. A. S. Houle, Architect, 17th of June 1938.

2. Block plan of typical floors with pencilled details of construction, quantities of various finishes, cubic feet, etc. numbered I, II, III to IX. All signed by J. A. S. Houle and dated 17/6/38.

30

3. Details of the quantities involved in the assessment on sheets numbered in pencil 29, 30, 31, 32, 33, 34, 35, 36, which give the 'quantities' of walls, floors, finishes, etc. etc., all as described in the foregoing plans (mentioned in item 2). The correctness of these lists when compared with the plans has not been checked in detail, some items examined are in complete agreement in the two different sheets (plans and figures).

40 4. Details of the application of values of replacement to the quantity sheets mentioned in '3' above appear in sheets numbered in pencil: 22, 23, 24, 25, 26, 27, 28 - 7, 8 - 5, 6 - 2, 2a.

The sheets have been arranged as given above, which is their chronological order.

5. Boiler House details. Inspectors field report on printed forms and squared paper, including plans and sections, 8 sheets in all, plus one typewritten description, all signed by J. A. S. Houle, dated June 30, 1938.

6. Boiler House assessment details giving quantities and prices, six sheets in all, signed by Geo. Paquette 6/7/38.

### COMMENTS

Re: #1 and 2 Inspectors Field Reports — sheets 91 to 95 inclusive; Plans I to X inclusive.

10

These have been examined in detail, both in respect to the descriptive information given thereon and to the quantities of walls, floors, ceilings, etc. It has been impossible to find time to check the latter. This would take two months.

In regard to the descriptive information given, the following are noted as discrepancies. There may be others. Naturally these discrepancies have been reflected in the quantitative estimate made in the valuation sheets and are referred to in further notes below:

20

a. Elevators, Plan 1, 1st Basement: Passenger 20, Freight 4; should be Pass. 20; Freight 3; 2nd Basement: Passenger 6, Freight 4; should be Pass. 6; Freight 3. This is exclusive of Push Button passenger car.

b. Electrical Service entry is given as being in 2nd Basement rather than 3rd Basement.

30

c. Plan II. Elevators in Ground, 1st, 2nd, 3rd, 4th floors are given as Passenger 20, freight 5.

should be “ 20, “ 3. exclusive of Push Button car.

40

d. Doors to Elevators are given as ‘Bronze de Luxe’ on all of these floors for all cars, whereas they are *bronze on Ground Floor only* for 22 cars. Hence out of 110 doors taken as *bronze de luxe*, 88 are steel and the remainder bronze. This is of course reflected in the valuation of Elevators.

e. Plans III and IV. Floors 5th, 6th, 7th and Duct Floor.

Same note applies in regard to elevator hatchway doors. Out of 69 doors classed as *bronze de luxe* on the three floors (no openings on duct floor) *none* is bronze, all are steel.

f. On same floors elevators passing through are given as 20 passengers and 5 freight, whereas there are 20 passenger cars to 7th and 3 freight, again exclusive of Push Button car.

g. 8th floor, Plan V, 16 passenger, 2 freight elevators are given with *bronze de luxe doors*. There are only 10 passenger cars and 2 freight serving the 18th floor, and all doors are steel above the Ground Floor.

10 h. On Plan VI. 11th floor and on Plan V, 8th floor, there is a skylight shown over the north end of the building 40' x 92' with a note on the 8th floor plan that there exists "Au plafond du neuvième lanterneau 40' x 92' acier cuivre; verre broché; châssis plafond 35' x 87' verre dans le plomb spécial."

No skylight and ceiling light of this magnitude and description exists. There is a small skylight on the 10th-11th floors into the paint shop, about 40' x 4' instead of 40' x 92'. (The latter is as big as a tennis court).

20 j. On Plan VI, 11th floor south end, is a note on the roof of the south wing "*Toit Tuiles Rouge 6" x 6"*. There is not a tile on this section of the roof. The area of this roof which is described with a more expensive finish than exists is 168 x 64 = 10,750 sq. ft. less court 80 x 46 = 3680, or net 7070 sq. ft., a considerable area.

30 k. On plans V and VI of the 8th, 9th, 10th, 11th, 12th, 13th, 14th and 15th floors a grave error has been made in the number of elevators serving the floors, which is reflected in the valuation of the elevators in the estimate sheets.

The plans and notes show these eight floors to be served by 16 passenger elevators and 2 freights whereas the 8th, 9th floors are served by 10 passenger cars and one freight and the 10th, 11th, 12th, 13th, 14th and 15th floors (old numbering) have but eight passenger cars and one freight.

40 1. Again on Plans VII and VIII the information given is 8 passenger, 1 freight elevator up to the 23rd floor (old numbering) whereas 8 passenger elevators stop at the 22nd floor and one freight rises to 23rd floor.

Re: #3. *Details of Quantities involved in the Assessment.* These quantity sheets 29 to 36 inclusive have been made up from the field inspector's reports and naturally the mistakes made in the field reports — some of which (those noted in checking) have been described in detail above (Items 'a' to 'l') are all copied into the quantities, which are *wrong* in these particular items.

a. In addition to these items the excavation given on sheet 35 is not correct.

	$140' \times 215' \times 24 = 722,400$	cubic feet
should be	$140' \times 40' \times 10' = 56,000$	
	$140' \times 175' \times 24 = 585,000$	
	641,000 cubic feet	

10

Re: #4. *Estimate Sheets with Quantities and Prices.*

The quantities are taken from *Document '3'*, sheets 29-36, which contain errors as already pointed out.

20 A, The prices are taken in most instances from the Real Estate Valuation Manual, i.e. wherever applicable, and where they are not applicable they seem to have been "filled in" by the estimator as he saw fit. The prices, mostly on the unit system, but frequently on a 'lump sum' basis, can in many instances be questioned. The questions will fall under three categories — I. As to prices being applied correctly from the Manual. In several instances which are pointed out later there seems to be discrimination against the Sun Life Building. II. As to the estimator's prices, which are *not* to be found in the Manual, being equitable. These are illustrated also. In some instances the whole item is questioned. III. As to the basis of costing in the Manual  
30 being equitable — and justifiable — Examples are given of items, the costs of which are entirely different from the 'values' given in the Manual.

B. A careful and complete checking of the methods employed in the reach of replacement value of \$18,706,115.53 for the building on a 1941 price basis should be made.

(See Mr. Archambault's Resumée of these Valuations.)

40 The following is a summary of the different steps in the valuation:

I. In sheets 22 to 26 inclusive the original valuation upon the field inspection sheets, plans and the quantity sheets, 'Documents' 1-2 and 3 respectively, is made. This is signed by *Georges Paquette*, 4/7/38, and appears therefore to have been made shortly after the submission of the Inspection sheets and plans by J. A. S. Houle which are dated 17/5/38. The quantities are the same as on Houle's sheets and on Paquette's summary, and generally, but not always, the 'manual' is the source of unit prices.

In this first valuation the replacement cost (see Manual opposite page 322) is given at ..... \$ 9,273,401.49

Plus an extra of 13½% to compensate for extra height over 5 storeys (see manual, page 323) 1,251,909.20

10 Plus 10% extra for sub-contracts ..... \$10,525,310.69  
1,052,531.07

Total..... \$11,577,841.76

Total of *first estimate* of Replacement cost ..... \$11,577,841.76  
..... (17/6/38 and 4/7/38).

(1) This is given as being \$0.528 per cubic foot.  
c. ft. 21,931,761.

20 II. There follows here on sheets 26, 27, 28 summaries which were made apparently in 1941.

The part of the building completely finished at June 17, 1938 is given at 16,567,664 c.ft. or 75.5% of the whole, of which the exterior walls, framework and roofs are said to be valued at \$5,708,221.15 and the interior finish at \$3,565,180.34 or 75.5% completed rate.

30 This would give at a 1936 rate of building costs a value for 100% interior finish of ..... \$ 4,722,093.10

to which add the walls, floors and roof and framework ..... 5,708,221.51

making a total 'completed' cost of ..... \$10,430,314.25  
plus 13½% for extra height ..... 1,408,092.42

40 plus 10% for sub-contracts ..... \$11,838,406.67  
1,183,840.67

\$13,022,247.34

(2) This is \$0.594 per cubic foot.

This paragraph and others not copied seem to have been given chiefly to obtain the 'completed' value per cubic foot for purposes of depreciation. The replacement cost of \$11,577,841.76 as at 17/6/38 is then depreciated in accordance with the length of time each part of the building had been erected up to 1941

(which indicates that this summary was made in 1941 and not in 1938). The net valuation after depreciation is given as in 1941 as ..... \$ 9,315,759.30

A note appears on sheet 28: “voir ci-après pour les calculs des travaux fait depuis 1938 et suivi de la dépréciation”.

10

III. On sheets 7 and 8, is a calculation dated 19/12/41 and signed by Geo. Paquette headed “Calcul du coût de l’édifice après transformations”.

This apparently is the calculation made for purposes of assessment at that time by adding to the valuation of 17/6/38 the value of the floors completed since that time up to the end of December 1941. It commences:

20 Cost of building — in the report of 4/7/38 ..... \$9,273,401.49

Note that this is *net replacement value* on sheet 25 before adding the extras for height and for sub-contractors.

30 There are added the values of extra plumbing fixtures, lavatory, marble and tile including marble w.c. stalls omitted from the 1938 valuation, extra heating on the newly finished floors, plus extra charges (or corrections) for automatic feeders, whatever that is — and a ‘jacket heater’ which is apparently the domestic hot water system, the costs of which have apparently been reckoned incorrectly from Manual constants or factors, (this is mentioned farther on), extra elevator doors, electrical work additional, extra floors and doors and base, extra plaster, terra cotta partitions, ceilings, ‘air conditioning’ and letter chute, all for new work apparently, and all at quantity and unit price basis, the latter coming from the Manual.

40 One item to be mentioned is the jacking up of the electrical unit costs from .09 cts, per sq. ft. in 1938 to .26 cts. per sq. ft. in 1941 on *the entire building* including old and new work. This will be discussed later, but the basis for the increase is *not* seen at present. The 0.26 rate is Departmental Store rate, the 0.09 rate is ‘public building’ and ‘commercial building’ rate *plus* a little.

The net total of the new work plus these ‘jacking up’

items is given at ..... \$ 1,143,040.92  
Add amount shown above ..... 9,273,401.49

.....  
Making a new total of ..... \$10,416,442.32

	Brought forward	\$10,416,442.32
	There is added, this time in a reverse manner from the June 1938 replacement valuation, but in accordance with the manual	
	10% for sub-contracts .....	1,041,644.23
		<hr/>
		\$11,458,076.55
10	and 13½% for extra height .....	1,546,841.68
		<hr/>
(3)	This is given as \$0.593 per cubic foot. signed 'Georges Paquette 19/12/41'.	\$13,004,928.23

IV. There comes next on sheets 5 and 6 entitled "Feuille de Correction 1942" a list of items with a new valuation signed by Georges Paquette 12/1/42 which was apparently made to boost up the replacement level to a value well beyond that made by the same assessor three weeks previously, this time *without* the aid of the Manual so far as some of the items are concerned.

The sheet commences:

	Value of the building—report of December 19, 1941	\$10,416,442.32
	(This is the same as the <i>net</i> total given in 'c' above)	
30	(a) <i>Exterior walls</i> —a change from the 5.25 unit (per sq. ft.) in the previous valuation June 1938 to \$6.30 per sq. ft.—an extra of \$1.05 per sq. ft. for 380,300 sq. ft. of outside walls, or .....	399,315.00
	The new unit is given as granite face	\$4.20
	Brick backing 8" .....	.38
	Terra Cotta 4" .....	.22
	Ornamentation surplus .....	1.50
		<hr/>
40		\$6.30
		<hr/>

The granite value will be discussed later but it should be noted that a large part of the terra cotta furring is also estimated in the total value in the June valuation as follows:

Sheet 24 — 'Fini intérieur'  
Murs ext. T.C. 4" enduit simple  
217,480 sq. ft. at 0.291 = \$63,286.68

A duplication in value to this extent therefore exists in the terra cotta item above. The Ornamentation surplus is dealt with in the report on granite.

(b) *Elevators*

10	A new price schedule for elevators <i>which is not at all in accordance with the Manual method of figuring</i> is introduced in detail (on the 1938 quantities which, as pointed out above, are not correct and are too high, which boost the elevator valuation (including hatchway doors and cabs) from \$337,795. to \$632,375.00, an extra of 87% or .....	294,580.00
20	A 'work out' of the valuation on the manual basis of two typical elevators in comparison with these new figures is being made further on. The new net total is now .....	\$11,110,337.32
	to which is added (in the wrong order according to the manual) 19% extra height for 390 feet .....	2,110,964.09
		\$13,221,301.41
	Plus 10% for sub-contracts .....	1,322,130.14
30		\$14,543,431.55

This is stated as being \$0.663 per cubic foot.

The step-up from 13½% to 19% for extra height is apparently reconciled by the manual formula "add for extra height above 5 storeys 5% of the total height — 10 ft."

The total height is 390 feet.  
5% of 380 is 19, which is the percentage used.

Why 13.5 was used in earlier valuations is inexplicable. It would represent a total height of 280 feet.

Both the extra percentage of height and the 10% extra for sub-contracts bear no relation to *actual* costs. This can be shown and proved.



This is discussed later.

There follows on sheet 6 a depreciation account which first raises the 1936 basis of the 1941 basis. On the 1936 basis the sum of ..... \$14,543,431.55

10 (3) becomes on the 1941 basis a new total of..... \$15,852,340.39

which, when depreciated in the various steps is dropped to ..... \$14,205,577.27

V. Following the adjustments made in sheets 5 and 6 (d) above, there appear two additional sheets 2 and 2-a which are headed:—

20 “*Correction Finale Après Inspection de vérification avec J. A. S. Houle le 2 novembre 1942.*”

Signed J. A. E. Cartier”

Note: Was this correction *before or after the valuation roll was made public?*

Note: Roll was completed in December 1941.

30 This final correction is as follows:

Amount shown in the last estimate of Geo. Paquette 12/1/42 ..... \$11,110,337.32  
(which is the net amount in (d) above)

Additional for the following

1. Excavation in rock — 25% of the excavation, or 29,700 cubic yards at \$4.50 extra ..... 133,650.00

40 (This item is wrong in quantity, the rock was not over 13,750 c. yds.) and wrong in cost or value. \$2.50 has already been charged for earth which is near to double the actual costs). Before the addition of the 19% and 10% — and 10% surplus, actual cost with all overhead profit and fees was \$2.80 per yd. over earth excavation — the latter was \$1.60.

	2. Underpinning Loew's Theatre, 9 piers (This is on the next property but may be applied to S. I. Building, it is doubtful) .....	2,750.00
	3. Surplus of electricity for Auditorium and Gymnasium based on calculations of the Ca- pitol Theatre .....	1,850.00
10	This is not important but the Gymnasium lighting outlets are farther apart than in any other location in the occupied floors of the build- ing. It ought to be <i>less</i> , not more.	
	For centralization of electric control .....	15,000.00
	“ transformer of current .....	5,000.00
	“ emergency lighting .....	25,000.00
20	“ exterior lighting .....	12,000.00
	(These are the 'valuations of the architect'—what they refer to in particular is difficult to state except possibly the flood lighting is the <i>outside</i> lighting. All of the others are part of the distri- bution system which the Manual covers).	
	4. Extra for heating system—	
30	For centralization of controls .....	15,000.00
	“ connecting apparatus .....	12,000.00
	(These items are inexplicable and are certainly not required by the Manual to be extras to the rates in the manual).	
	5. Extras for ventilation and fire protec- tion—For centralization of control.....	15,000.00
40	(Not understood)	
	For protection above Loew's Theatre (Water curtain) .....	3,000.00
	“ ventilation of kitchen .....	15,000.00
	(Note that Air Conditioned heating at double the unit of ordinary steam or water heating is valued at the beginning for ventilation at a unit not sub- stantiated by the manual so far as we can see. All	

at a unit rate per sq. ft. of floor which includes the kitchen and *now* they add a little \$15,000.00 item for *kitchen ventilation extra*, as if it were different from toilet ventilation, which it isn't).

	6, Extra on Elevators	
	"Supp de forces Motrices"	
10	('Supplementary or extra horse-power')	35,000.00

20 The valuation has been made up using rates beyond the manual values for "de luxe" 'elevators' automatic control passenger cars, including a 33% extra because the lifting capacity is over 1 ton and under 2 tons. The additional value for extra horse-power is not understood. It is not on the manual basis at all. The manual basis of elevator calculation could be questioned, particularly the addition of 10% (given in the manual) to the basic figure for each extra floor over two. This is exclusive of hatchway doors. Two identical elevators in two buildings, one travelling 2 floors, the other 12 floors; one costing for machine and cables and rails alone, twice the other is not a fair cost.

	7. For 26 stations Pneumatic Tubes	10,000.00
30	If this addition was made between Jan. 12/42 and November 2/42 after 'verification' it should be verified again. The pneumatic tube system is reported as dismantled. This can be checked however. On checking I find that the system is still there but is not in use.	

	8. Ejectors, plumbing system	8,000.00
	No comment.	
40	9. For an extra to the steel framing for tower and concentrated loads	500,000.00

The tables in the Manual provide for framing costs to *increase* as the building goes higher. There is no justification for this addition at this time and it is not upheld by the Manual. If this were done a sliding scale for each building would have to be established and all loads figured.

As for concentrated loads, there *are* instances in this building of concentrated loads — can anyone show *any* building where there are none? Each time a spandrel beam carries an outside wall you get a concentrated load. Every shop window needs a heavy member over it to carry the concentrated load. Each truss in a factory,  
10 even of the lightest structure, carries a concentrated load to the wall or column supporting it.

This item needs much detailed explanation of acceptable nature to establish it.

Net Total ..... \$11,918,587.32

(AND FINALLY)

20 10% for “omission et supplément” ..... 1,191,858.73  
\$13,110,446.05

In item of this importance surely needs to be explained in detail. Surely a proprietor of \$1,191,858.73 worth of real estate has a right to demand details of the *assessment* by the city of this amount of property. The Manual says so at any rate. How was it made 10% and not 8% or  
30 12% or 15%.

Extra for height 19% ..... 2,490,984.75  
\$15,601,430.80  
10% sub-contracts ..... 1,560,143.08  
\$17,161,573.88

40 This is given as being \$0.782 per cubic foot, 1936 prices. Bring it to 1941 prices by adding 10%..... \$18,706,115.53  
Makes a unit price of \$0.853 per cubic foot.

The ‘Statement’ is signed by J. E. Cartier  
2/11/42.

Depreciated in steps as before this becomes ..... \$16,064,960.74  
which is the figure appearing on the valuation sheet.

An analysis of *prices* in Documents mentioned on page 1, item 4 of these comments will be found on the sheets attached numbered 7 to 14.

Re #4-a. *Analysis of some of the cost items in the City Assessor's estimate sheets, referred to on page 1, paragraph numbered 4, of these comments as follows.*

10

*Details of the application of values of replacements to the 'Quantity' sheets, as found in the sheets numbered in pencil 22 to 28 inclusive, 7-8, 5-6, 2-2a.*

---

The questions raised in connection with the items analyzed below fall generally into three categories as previously pointed out.

20

- I. As to the Manual prices being correctly applied.
- II. As to the equity or fairness or correctness of the estimator's valuations where the item of 'cost' does not appear in the manual.
- III. As to the basis of costs set up in the manual being fair and reasonable, or met with in building practice.
- 30 IV. Items which are over-measured or non-existent. The category symbol is placed before each item.

---

Sheet 22 of City Estimator's Valuation. All on 1936 prices.  
*Category*

1. '*Charpente*'

40

1,596,100 sq. ft. at \$1.65 ..... \$2,633,565.00

It is difficult to determine how the unit was established. The manual has an item for structural steel of \$0.065 per lb. and one for concrete reinforced of 0.73 per sq. ft. Neither of these apply. Also on page 344 replacement costs of reinforced concrete construction is given for loading of 100 lbs. for various height buildings up to 8 storeys but these do not apply either. This may not be

very important in the whole valuation but it is apparent that the manual has *not* been used. It also appears that in sheets 5 and 6 entitled "Feuille de Correction 1942" the valuator made up their minds that this was a place where former units could be boosted, for they added \$500,000. as a lump sum without explanation, to cover  
10 "steel covering for tower and concentrated loads." This addition would change the overall unit from \$1.65 to \$1.96 per sq. ft.

*Murs Extérieurs*

- including (a) stone (granite) brick backing plus \$1.00 for decoration.  
20 (b) Columns (presumably free standing) as a separate item.

III. also 1 to a certain degree.

- (a) The unit given for granite walls and backing is 5.25 per sq. ft. plus \$1.00 for decoration.  
(380,300 sq. ft. x 5.25 = \$1,996,575.00)

30 The Manual, page 350, Table 102, gives a unit of \$5.13 for granite walls per sq. ft. The change to \$5.25 is not clearly defined but if we examine the re-valuation on the 'Feuille de Correction 1942' (sheet 5) we find

40	Granit Enduit	\$4.20	
	Brick 8" backing	.38	
	T. C. 4"	.22	(also charged in with
	Ornamentation	1.50	T. C. partitions)

Total \$6.30

Apply these prices to the first estimate given above and we could get

Granit enduit	\$3.87	
Brick 8" backing	.38	
Terra Cotta	—	
Ornamentation	1.00	as stated

Total \$5.25

10 Here the cost of granite face alone of \$3.87 per sq. ft. approximates the 'veneer' price of granite in the manual of \$3.85. With the figure thus established of granite facing *only* at \$3.85 (or \$3.87) per sq. ft. let us see in the Manual what Limestone facing is worth. In the same table (102) cut stone or Limestone facing is given at \$1.03 per sq. ft. Deduct from each say 30¢ for cartage and setting costs leaving Granite facing costs \$3.55 sq. ft.

Cut stone or Limestone .73 sq. ft.  
a ratio of 4.86 : 1

20 Let us examine actual tenders taken in May 1929 for the stonework F.O.B. Montreal for the upper part of the Sun Life Building from 8th floor to top.

	Ritchie Cut Stone Co. Queenston (Ont.)	
	Limestone all on	
	the bed .....	\$1,601,000.00
	“ “ “ “ Queenston Lime-	
	stone on bed and	
	on edge as decided	
30	at mills .....	1,429,000.00
	“ “ “ “ Grey Indiana	
	Limestone .....	1,099,000.00
	Quinlan Cut Stone Ltd. Queenston Lime-	
	stone .....	1,125,100.00
	T. A. Morrison & Co. Deschambault	
	Limestone .....	1,160,000.00
	Anglin-Norcross Ltd. — Stanstead	
	Granite .....	1,839,000.00
40	Stanstead Granite	
	Quarries Co. .... Granite .....	1,849,000.00

The ratio between the granite prices and highest Limestone price is 1.15 : 1

The ratio between the granite prices and the lowest Limestone price is 1.67 : 1

Compare either of these with the 'Manual standard' ratio of 4.86 : 1

Prices of the five largest producers of stone in Eastern Canada are hardly likely to be out to this extent.

II. (b) Columns (granite) 63,020 c. ft. at \$15. \$945,300.00

10 There is no figure in the Manual for estimating the cost of granite columns hence it is assumed that the price was set by the city estimator at \$15.00 per c. ft. set. Take off a high figure .50 cents per ft. cube for cartage and setting, leaving \$14.50 per ft. cube for the material F.O.B. Montreal.

20 Stanstead Granite Quarries Co's bill of quantities dated July 16/27 for the work done by them on the lower section of the building, where the bulk of the columns and the *more* expensive columns with flutes occur, gives a unit price for 38,600 c. ft. columns, *base and cap included*, of \$8.00 per cub. ft. F.O.B. Montreal.

III. *Plomberie*

or Abreuvoir 118 at \$110.50 \$13,039.00

I.

30 The price given is that in the Manual for 'semi luxe' fountains installed, but not including plumbing pipes, drains, which are figured separately on the overall sq. ft. basis for plumbing.

40 The drinking fountains used in the main building, Sun Life, cost \$36.00 each complete with fittings, delivered at the building. Adding \$6.00 each to connect them the installed cost of this fixture will be \$42.00. The drinking fountains are 'ordinary' and not 'old style' except for a few in the original building, and the installed price slightly over one-third of the price applied. It would appear that these fountains have got into the wrong classification in the valuation estimate and that they are not covered by the manual.



IV. *Ascenseurs*

The quantities are incorrect as pointed out in the Comments on Inspector's field reports, Items (a), (c), (f), (g).

- 10 a) The elevator estimate includes as pointed out above, 9 non-existent elevators between 7-a floor and 15th floors inclusive — 9 floors — when there is a 10% increase in cost placed on each additional floor served, In this case the estimate includes 90% *increase in the basic cost of 9 elevators* plus the cost of 81 non-existent steel doors at \$150.00 per door.
- 20 b) 8 passenger cars and one freight are included as serving the 23rd floor (old number) when *no passenger cars* go to that floor. \$4,000.00 on basic costs and \$1,200.00 for non-existent doors have been added by this mistake.
- c) All elevator doors on passenger cars on the 1st to 8th floors are included as being 'bronze de luxe' when they are without exception *steel, enamelled very dark green*. Bronze doors are in a higher cost category than steel in the Manual (Table III).

- 30 I. The Manual prices in estimating elevator costs do not seem to have been applied correctly at this point but the error is *against* the city in the instance examined. Since in the 'Feuille de Correction 1942' an entirely new estimate of elevators is introduced the matter will be discussed there.

*Page 24*

I *Plancher.*

- 40 Some of the units have not been applied according to the Manual. These are corrected later in the "Feuille de Correction 1942". Objection will be raised to the Terrazzo price in the Manual.

*Murs & Divisions*

Exception is taken to the Terra Cotta quantities.

IV There are no 8" terra cotta walls in the building either *plastered*, of which 233,420 sq. ft. are reported, or *bare*, of which 39,000 sq. ft. are reported, a total of 272,420 sq. ft. or 6.3 acres. The 8" partitions reported are probably 6" and the 6" are 4", and a lot of the 4", particularly outside walls (217,480 sq. ft.) are 3".

10 Higher prices apply to the heavier partitions thus making the estimate incorrect.

III Exception is taken to the manual prices on terra cotta partitions.

20 Take for example 4" T.C. at 0.215 per sq. ft. in the manual. Adding the 19% extra height surplus and the 10% sub contract surplus, the gross value would be a little over 28¢ per sq. ft. 1936 price. This is compared with 16¢ per sq. ft. *in place* on the 14th floor in 1938 and 16½¢ *in place* on the 17 18, 19, 21st floors in 1940. *Total costs.*

*Fire Hose protection*

II 30 stations at \$800.00 — \$24,000.00. This is a price set by the estimator. It has no bearing upon actual costs. (Actual costs of stations and piping would be of the order of \$170.00 each).

30 *Page 25*

IV Lanterneaux. 7,480 sq. ft. at \$2.00. The quantity is too great by 3,680 sq. ft. which was reported on the 10th & 11th floors in field report. See note "h" in comments re Documents 1 & 2.

I *Ventilation (and Heating)*

40 18,442,185 cu. ft. x 40% ventilated (June 1938) x 0.025.

Coupled with this item should be "chauffage" on page 23 which is reported as follows:—

Rough—18,442,185 cu. ft. x 60% at 0.030.  
Fini —15,287,585 cu. ft. x 40% at 0.030.

From these two items it is obvious that the estimator has charged *both* for ventilation and for *heating*, and that

the unit charged per sq. ft. for ventilation is 0.025 and for *finished* heating 0.06, whereas the part roughed in, but without radiation is counted as being worth half of the finished heating.

10 The total unit for the heating and ventilation is therefore 0.085 per sq. ft.

Now, look at Table 109 in the Manual. The rates given are as follows:—

For a totally detached building (the Sun Life is almost totally detached).

*Public Building* steam or hot water—

	Ordinary	.03	per sq. ft.
20	Air Conditioning	.06	“ “
	“Walls Ventilation”	.012	“ “

*Industrial or Commercial Building* 50%  
of the above prices.

What is the Sun Life Building category — a public building in which 0.06 per sq. ft. should be charged for “air conditioning”, steam or hot water heating, or a Commercial Building at 50% of this amount?

30 See page 201 of the Manual for a full page picture of Sun Life Building headed “Commercial Building”, and below —“Office Building Class Type 1”.

40 Why then has a 0.06 rate per sq. ft. been applied for Heating presumably on an “*air conditioning*” basis if the manual says to use *half* that rate for a commercial building? Again, why are *both* an air conditioning heating unit and a ventilating unit used to make up the value of the heating system? The manual differentiates between ordinary steam, hot water and air conditioning heating by making the latter unit *double* the former. Why? Is it not to cover the ventilating feature, i.e. the air filters, humidifiers, fans, air heaters and duct system used in the air condition system?

The Sun Life is heated to 70°F normal the same as any other building. It is done by having radiators look after

heat losses through walls and windows and by having air heaters, fans and ducts to look after ventilation heat losses. It does not seem correct to use both the "air conditioning" heating unit *and* the ventilator unit in conjunction, even if these units were used separately and correctly out of the manual.

- 10 II Finally — the ventilation unit of 0.025 used by the estimator is not to be found in the manual. Where does he get it or how does he make it up?

*Refrigeration Eau*

20 18,442,185 cu. ft. at 0.002 per cu. ft. This is the same cubic footage used for the heating costs, i.e., the whole of the usable section above the ground level plus *half* of the basement. The unit of 0.002 is found in Table 114 of the manual, page 370.

- IV Cooled drinking water is supplied to drinking fountains up to the 7th floor *only* and in the "new building" 2nd and 3rd Extensions only. The volume of the section thus supplied is approximately 6,500,000 cu. ft. and certainly not over 7,000,000. Hence, this item for cooled water is put in at  $2\frac{1}{2}$  times the amount it would have been if the information by the Inspector had been correct.

30

*Nettoyeur par le Vide*

1,120,260 sq. ft. x 0.0475. The area taken is about 200,000 sq. ft. more than the *finished* floors as at June 1938 reported on sheet 32 of the quantities — (up to the 15th floor) including the basements. The unit is not quite in accordance with the price list in the manual, page 289 where for apartments it is given at 0.05 per sq. ft. of floor. However, the total value is given at \$35,212.35.

40

The following are the facts:—

A vacuum cleaning system was installed in the original building in 1916 to serve a floor area of approximately 115,000 sq. ft. — its cost was approximately \$6,000.00. It has not been used for many years and the machine has been dismantled and removed from the building. Thus, \$53,212.35 too much appears in the valuation at this point — when the 19% height extra and the 10% for sub-contracts

and the 10% for increased costs up to 1941 are added — this error becomes \$76,000.00.

*Voutes*

- 10 II 4 “vaults” of 20’ x 10’ are valued by the city assessors architect at \$18,000 each — (this appears on his plan #1) — and 3 vaults 20’ x 10’ at 9,000.00 each (appearing on plan # III).  
&

These vaults which have not been listed correctly are not of special construction.

- 20 III They are plain fireproof rooms set in a stack reaching from the basement to the 5th floor in the original building and not attached to the steel framing.

By the manual — price list 389 — they should have been classed as commercial (with doors) at from 5.00 to 15.00 per sq. ft.

Take one of them:

Area of slab forming floor 10 x 20 —	200 sq. ft.
“ “ walls through one storey of 14’0” x (20 + 20 + 8 + 8) =	744 “ “

- 30 Value of slab 10’0” span x 20’ width  
(by table on pages 344 or 346) at .044 = \$88.00 approx.  
Value of walls—774 sq. ft. at 16” thick  
concrete by price list on table 118A  
at .60 = 465.00  
Add for temperature steel in wall 2 lbs.  
per sq. ft. of surface — 1,550 lbs.  
x 0.024 per lb. = 37.20

- 40 Price list page 387  
Add for finish of ceiling 200 sq. ft.  
cement plaster = 19.20  
Add for finish of floor 200 sq. ft.  
cement & lime = 56.00  
Add for finish of walls 675 sq. ft.  
cement plaster = 65.00  
1 fireproof vault door with vestibule at  
normal cost plus setting = 235.00  
Nothing for electricity & heating since  
the given floor area or volume of vault  
is already included in these items
- 
- \$965.40

The shelving in the vaults is loose and stands on the floor not *attached*. It is therefore not assessable. The \$965.40 then is applicable to each of the vaults except the top vault which would have one ceiling slab extra or about \$108.00 including the plaster.

10 at \$5.00 per sq. ft. in the manual for ordinary commercial vaults the cost would be \$1,000.00. Obviously the valuation in this case is wrong.

### General

#### II *Electricity*

20 The electrical cost is figured here in accordance with manual requirements for "loft buildings and ordinary stores" at \$18.00 per outlet. (1 outlet per 200 sq. ft.). There is no complaint with this method but in the 'Feuille de Correction 1942' the basis is changed to \$36.00 per outlet and all the work refigured. This is not in accordance with the manual and the change cannot be justified by it. In other words, the assessors used their own yardstick and *not* that in the manual.

#### II "13½% en hauteur"

30 This is covered on page 323 of the manual by a rule, the equity of which will be questioned later, which requires an addition to the estimates made by manual costs of 5% of the total height of the building — 10' for construction in height in buildings of 5 storeys and over. The estimator evidently took the total height at 280 ft. (which is incorrect) to arrive at a 13½% surplus, unless he took the height *above the 4th floor* which is roughly 235 ft.

40 III It is noted that 10% is to be added and has been added for sub-contracts to *all* replacement costs. See page 323 of manual. This is not justifiable particularly since it applies to the work done by the general contractor as well as by sub contractors. A rough split would be 50% by each, hence by the manual the surcharge for sub-contract is 20% on the work done by them. Any general contractor on a large undertaking will be very well satisfied with from 2% to 5% on sub-contracts. That in the 2nd and 3rd Extensions of the S. L. Building — which amounted in cost to 70% or more of the whole was less than 2%.

Sheet 7.

*Calcul du Coût de l'Edifice après Transformation*

This is a supplementary estimate covering principally work done between June 1938 and December 1941 in finishing upper floors in the building.

10

The following comments and objections are made:—

a) *Plumbing*:—

Drinking fountains costing \$42.00 are charged in at \$110.50 — (see notes on plumbing sheet 23).

b) *Heating*:—

20

The former cost of \$513,960.00 for heating—(see sheet 23 where it is given at \$515,410.35) — is now raised 5% or \$25,698.00 for “automatic feeder”, whatever that means, unless it is the stockers in the boiler — which is covered in the manual at 5% of the cost, Table 109. If this is so it is about twice their actual installed cost.

c) *Escaliers*:—

30

Exception is taken to 8" T.C. enclosures around stairs.

They are 6".

I *Electricity*

40

A correction is made in the former valuation of the unit used for calculating electrical cost. The former unit was \$18.00 per outlet, one outlet per 200 sq. ft. or \$0.09 per sq. ft. The whole trade is now changed to \$0.26 per sq. ft. which is the Departmental Store rate and in apartment houses and hotels. The new rate is almost 200% increase from the rate in the manual. Evidently the manual has been ignored by the assessors. (Increase about \$265,000.00)

Sheet 8

IV *Terra Cotta* — 6" should be 4" and the rate changed accordingly. No 6" T.C. was used in the new partitions in the floors finished between 1938 and 1941.

*Ceilings*

The rate has been changed from 0.07 in 1938 to 0.19 per sq. ft. estimate. This is in accordance with a footnote on page 360, table 107. It is not questioned further.

*Air Conditioning*

10

A new unit has been taken of 0.03 instead of 0.025 in the 1938 valuation. The notes on Air Conditioning in the 1938 valuation cover this point. There is no further comment.

Sheet 5 & 6

*Feuilles de Correction 1942*

20 I *Murs Extérieurs*

III Here the granite walls have been raised from \$5.25 per sq. ft. to \$6.30 by the addition of 50¢ per sq. ft. for ornamentation (\$1.00 in 1938 to \$1.50 in 1942) and the granite facing has been raised to \$4.20 from \$3.87. These new figures are by the assessors. They are not according to manual. Mr. Cartier explained the latter as being to cover *extra thickness* of granite. The manual doesn't stipulate a thickness of the granite veneer — the rate allowed for it would allow for very great thickness. The ornamentation item can be disproved. This will be done in a separate statement. It should be noted that the replacement value of granite walls and columns, etc., is now — \$3,500.00 approximately.  $6.30 + 19\% + 10\%$  sub-contract  $+ 10\%$  from 1938-1941 = 9.10 per sq. ft. for 380,300 sq. ft. before the 10% 'omissions and supplement' of "final corrections" are added.

30

40 I *Ascenseurs*

A completely new assessment of elevators has been made in this correction sheet which cannot be verified by the manual. As before there are errors in quantities. (See notes on "Ascenseurs", sheet 23).

One 'long run' elevator is worked out for an example as follows, using the manual, table III:—

Passenger car, automatic electric de luxe, 3,500 lbs. capacity, travelling between 3rd basement and 22nd floor (old numbering), 28 storeys with 27 floor openings — (Duct floors are blind.



<i>Manual Basis</i>		<i>New Basis in the 'Feuille de Correction'</i>	
Basic cost as per manual	\$ 5,000.00		
Add for 26 storeys over 2 allowed 10% pers torey—260%	13,000.00	(No details)	
	<hr/>		
	\$18,000.00		
Add 33½% for capacity over 1 ton & under 2 tons	6,000.00		
	<hr/>		
	\$24,000.00		\$32,000.00
Doors — 1 bronze door	175.00	These should be the same if	
26 steel doors at \$150.00	3,900.00	the quantities were corrected	4,075.00
1 wood passenger cab	400.00	Bronze cab taken	350.00
	<hr/>		<hr/>
	<u>\$28,475.00</u>		<u>\$36,425.00</u>

The entire estimate is wrongly made and the quantities used are incorrect.

Sheets 2 & 3

*Correction Finale après Inspection de Vérification avec J. S. Houle le 2 novembre 1942.*

These sheets are fully analyzed in the "Comments".

In the light of the foregoing additions of 1941 to the former valuation June — July 1938, the supplementary items or "Surpluses" now appearing on these "Final Correction Sheets" cannot be justified by the manual, neither can the raise in value of outside walls, heating, electrical, ventilation, elevators as well as including items in large quantities which do not exist in the building.

As mentioned before the items of "surplus steel framing"	\$ 500.00
and "10% omissions and supplement"	1,191,858.72
	<hr/>
to a total of	<u>\$1,691,858.72</u>

which appear on these final correction sheets are signed by Mr. Cartier, chief architect of the Assessment Department. They apparently do not represent true and proper valuation made on the basis set forth in the Manual for Commercial Buildings.

Note also one clear and strong point —

10

Despite evidence to the contrary, and the statement of the chairman of the Board of Revision, which is recorded in the proceedings, the author of the Real Estate Valuation Manual and his collaborators considered the Sun Life Building to be a *commercial building* and not a *monument*. See their first illustration of Montreal Buildings, page 201 in the Manual.

*Re Boiler House Assessment Sheets*

20

Category

IV The exterior walls reported in #1 Milton pressed brick and assessed accordingly are St. Lawrence Brick Company's Plastic Bricks selected for face work — costing about \$19.00 per M. delivered.

30

PLAINTIFF'S EXHIBIT P-42 AT ENQUETE

*Analysis of Mr. Perry's Report by Mr. A. J. C. Paine.*

April 15, 1943.

SUN LIFE BUILDING, MONTREAL

40

Re: *Valuation of Properties Sun Life Assurance Company of Canada by Brian R. Perry, M.E.I.C.,*  
*Dated February 24th, 1943.*

On page 15 of Mr. Perry's report there is an estimate of Replacement Costs, Table No. I, which gives in detail under twenty-four classifications an estimate of the replacement costs of the Sun Life Building.

Because of Mr. Perry's rather involved and unusual method of grouping the various trades which go into a building it

has been impossible to make a comparison between the estimates of many of the items and their actual cost. For example, Item 'g' classifies under one heading such trades as "Roofs, Panelling and Expensive Details of Minor Offices."

Again, Item 'd' covers Typical Floor Construction including 'Finish'. With the short time at my disposal a detailed statement of the costs of the many types of floor finishes used, and of the ceilings below them which Mr. Perry may have included in his classification of 'Finish', would have been impossible.

I have, however, made a partial list of the items given in Mr. Perry's 'estimate' and have compared them with actual costs.

Since the cost index summary on page 17 of Mr. Perry's Table III, based on his own assumption of 25% labour costs and valuation, Table III, based on his own assumption of 25% labour costs and 75% materials costs, shows higher costs in 1922 when the First Extension was built and in 1927-28-29 when the bulk of the work was contracted for in the 'Main Building' (2nd & 3rd Extensions) than those prevailing in 1939-40, no attempt was made to bring the actual costs to the 1939-40 period. Had this been done, the cost figures given would have been reduced.

<i>Item in Mr. Perry's list.</i>	<i>Mr. Perry's Estimate</i>	<i>Actual Costs in round figures, including the Contractor's Overhead and Profit and Architect's Fees.</i>
(a) Excavation .....	\$ 267,000.	Actual costs of Excavation \$ 224,000.
(c) Structural Steel .....	\$3,400,000.	Exclusive of steel work demolished \$2,462,000. in the Original Building and in Extension #1 and exclusive of the <i>field work</i> in reinforcing the columns in these two parts to carry Extensions 2 & 3, the cost of the steel work throughout was \$2,462,000. The labour costs of reinforcing the columns was \$57,000. but the material <i>used</i> is included in the \$2,462,000 at the price per lb. which it would have <i>cost</i> if the work had been done in the shop and not in the field.
(m) Bronze Doors .....	\$ 225,000.	Actual cost of all bronze doors in the building including bronze elevator doors, was \$ 168,500.

<i>Item in Mr. Perry's list.</i>	<i>Mr. Perry's Estimate</i>	<i>Actual Costs in round figures, including the Contractor's Overhead and Profit and Architect's Fees.</i>
(o) Main Vault .....	\$ 225,000.	The actual cost of the man Vault ... \$ 84,300. complete with grilles, etc. was \$84,-260, but this does not include the safe filing cabinets in the vault, resting on the floors and not attached to the vault. These cost \$9000. additional.
(s) Elevators .....	\$1,588,000.	The actual cost of existing elevator \$ 989,000. equipment complete with steel hatchway doors but not including the bronze hatchway doors, which are in item 'm' above, was \$989,000.
(t) Electrical Work .....	\$1,086,000.	The actual cost of Electrical work \$ 988,400. including the entrance of the Primary Service, was \$950,000.
(u) Heating Work .....	\$ 615,000.	Actual cost of existing equipment \$ 403,000. exclusive of the equipment in the Boiler House, since Mr. Perry in the Boiler House valuation covers this equipment in an item for 'Mechanical Trades' — \$325,000.
(v) Ventilation .....	\$ 780,000.	Actual cost of existing equipment \$ 690,000.

A. J. C. Paine.

PLAINTIFF'S EXHIBIT P-45 AT ENQUETE

*Notes on steel columns and beams and concrete slab construction as found in the manual.*

SUN LIFE BUILDING APPRAISAL

10

April 19, 1943.

This is in explanation of the paragraph on page 7 of my comments upon the Appraisal Sheet.

A further study of the Manual in regard to costs of construction of floors shows the following:

20 Table 117—'Frame' steel recovered by concrete, terra cotta, etc. equivalent to 2½ times reinforced concrete.

Page 345 of Manual.

Framework of reinforced concrete for 10 storeys in 20 ft. long spans.

The rate is 0.557 per sq. ft.

30 This would be increased for floor height above 9 ft. by about  $5 \times 0.0097 = 0.0485$  in Sun Life Building, making a total of \$0.6055 per sq. ft.  $2\frac{1}{2}$  times  $0.6055 = \$1.51$  per sq. ft.

This is for 10 storeys only.

Assume the Sun Life to be 14 to 15 storeys average, the basic unit would become about .....	0.61
Assume the surplus for higher storey heights $5 \times 0.015$ .....	0.075

	New unit .....	0.685
40	$2\frac{1}{2} \times 0.685 =$	\$1.71

The unit used by Technical Dept. is \$1.65 which is somewhat lower. This may be an explanation of the method used in amount at \$1.65.

The increase of \$500,000. in the value of the framework which is classified as "surplus for steel framing for tower and concentrated loads" is still unexplained.

Note that with this extra added the unit value per sq. ft. becomes \$1.96 instead of \$1.65.

AJCP:W

PLAINTIFF'S EXHIBIT P-47 AT ENQUETE

*Memorandum filed by Mr. McCauley on Sheridan  
Karkow Formula.*

10 The Sheridan-Karkow Formula has been produced in the  
evidence of Messrs. Mills and Desaulniers to support their val-  
uation of the Sun Life Building and to compare it with other  
buildings in Montreal.

20 The Formula in my opinion is of academic value in rating  
one portion of a building as against another. Unfortunately,  
however, it fails to take into proper account two of the most im-  
portant factors in our building, viz., the existence of space with-  
out any natural light, and the fact that the typical bay has a width  
of 16'3" with but one window. Consequently our use of the for-  
mula over the last seven years has been very limited.

30 I have listened in the testimony to the statement that this  
Formula is a very valuable aid in the hands of an expert, but  
that it is very dangerous in the hands of an inexperienced per-  
son. I agree with this statement. The results obtained from Mr.  
Mills' survey would demonstrate how dangerous the application  
of such an empirical table can be when it is not used as origin-  
ally intended but subjected to partial amendments without com-  
plete revision.

The difficulties that we have experienced in applying this  
Formula to our Building were evidently, at least in part, en-  
countered by Mr. Mills, since he states that he took a special trip  
to Chicago on that account. Needless to say, the alterations to  
the Formula that he has made are of such a drastic nature that  
in my opinion it becomes a different formula which I, for the  
sake of brevity, will refer to as the "Mills formula".

40 The changes effected to produce the Mills formula in the  
main serve to increase or inflate the "equivalent area" of the Sun  
Life Building beyond the figure which the Sheridan-Karkow For-  
mula itself would bring out.

The Sheridan-Karkow Formula indicated by their typical  
example No. 1 North LaSalle Street, Chicago, is based upon an  
18' standard bay which in that building has either two or three  
windows per bay, whereas in our Building at no point above the  
6th floor have we more than one window per bay of 16'3", and in

some cases even less. Consequently the subdividing into small offices is extremely difficult. The Sheridan-Karkow covers bay width very thoroughly but the makers apparently never thought of the possibility of there being less than two windows per bay.

In creating the Mills formula, no account is taken of this small number of windows. The net effect upon our Building of 10 changes to create the Mills formula is as follows:—

- A. A reduction in the rating factor for shallow space serves to slightly decrease the equivalent area of the small amount of shallow space located in the originally designed portion of our Building, which we refer to as “Old Building”, though the decrease in the total equivalent area of the Building would be insignificant.
- 20 B. The cutting in half of the depth factor for space 25' to 35' deep serves to increase by 10 points in the percentage the equivalent area of all spaces in the Building that are between 35' and 50' deep and about 7% on the whole Building.

Mr. Mills explained that this was due to the large windows in this Building but did not take into account the quantum of windows referred to previously.

- 30 C. The similar halving of the depth factor in the case of light-well space produces the same result in respect of space which is already difficult to deal with.

D. The change in height factor serves to produce a lower total equivalent area.

Mr. Mills offered a reasonable explanation for this change.

- 40 E. The effect of the modification of the “corner influence factor” is to increase the equivalent area of corners in our Building by 5%, whereas the Sheridan-Karkow formula only permits of an increase when the space of 450' of corner contains at least three windows and is capable of being sub-divided into three offices.

Our typical corners are approximately 800 sq. ft. and only have two windows per corner, the bay width on the south-east corner being 29' with only one window in that length and 23' with one window on the adjoining well. The plan does not war-

rant any rating up on the corners at all, as is shewn by the attached plan of a typical corner. Our experience over many years of renting has shewn that the frontal widths of the corner is too great for effective sub-division and that the back area behind the pair of corner windows is extremely difficult to advantageously sub-divide, with the result that the total corners do not produce any increase in rental value.

10

Mr. Mills' only reason for providing a "corner influence factor" seems to be that the Sheridan-Karkow formula would not permit of any increase at this point.

F. The Sheridan-Karkow formula makes no provision for space completely devoid of natural light, though it does indicate that "dead areas on inside corners not in line with windows to be valued at 50% of adjoining space". Similarly, it provides that space in line with a window, but distant more than 50' therefrom would be rated at 33-1/3%.

20

Mr. Mills elects to rate such completely unlighted spaces at 50% of the base rate. In other words, space distant more than 50' from a window would, by his reasoning, increase in value from .33 to .5 if an obstructing partition was installed to completely eliminate daylight, which is, of course, absurd.

In my opinion, there is no justification for rating such dark space at a higher value than the lowest depth value provided by the formula, viz., 33-1/3%.

30

The total effect of Mr. Mills' changes is to *rate up* the equivalent area of the rented portion of building by about 7% or 8%.

When he applies the formula to the Dominion Square Building, to obtain a comparison between the buildings, he again does not correctly adhere to the formula. For instance, he rates the 'exterior front courts' of the Dominion Square Building at from 75% to 85% though they were "interior light-well" closed on four sides. He should have only devalued the portion more than 25' from the front walls and that portion by 90% only.

40

He does not apply the "corner influence factor", that the formula provides for such a building, of 15% or 10%, but uses the 5% factor that he created for the Sun Life Building which justified no factor under the formula.



He shows the 7th Floor of the Dominion Square Building as having an overall factor of 83%, whereas on the application of the Sheridan-Karkow formula, it would be in excess of 87% as the Dominion Square Building has practically no deep space.

He calculates the factor for the 14th floor of the Sun Life Building as 85%, to obtain which he includes completely dark space at a higher value than space having partial daylight.

I cannot see that the Mills formula can be considered as a measuring stick at all, it is completely untried, has been adopted by nobody else and is incomplete.

If the Sheridan-Karkow formula in its entirety were to be applied to both buildings, even without attempting to correct it for window spacing, but using a reasonable dark space factor, the difference in percentage of equivalent area between the two buildings on a typical floor would be tremendous. Were it applied to our entire building, which of course is the only logical way of using it, it would indicate that his \$2.00 per sq. ft. over the Company-occupied space, which it is not, it produces on a typical floor like the fourth a base rate or equivalent rental for the first 25' of depth in accordance with the formula, of \$2.90 per sq. ft. which is, of course, absurd in the Montreal rental market. The rental of such a floor on the Mills formula at the \$1.95 base rate would be about \$73,000 instead of \$108,785 — which latter amount is an increase of about \$35,000 or nearly 50%.

Similarly a deep space on the 3rd floor to produce a rental of \$2.00 per rentable foot would require to produce \$3.45 per foot of "equivalent area" instead of the \$1.95 he figures for tenants space.

PLAINTIFF'S EXHIBIT P-56 AT ENQUETE

*Mr. G. Archambault's Memorandum on Mr. Cartier's evidence.*

GASPARD ARCHAMBAULT, I.C., B.Sc.A.  
Ingénieur Conseil

Montreal, April 19, 1943.

Mr. D. L. Macaulay,  
Assistant Secretary,  
Sun Life Assurance Company of Canada,  
Montreal.

Dear Sir,

Re: *City of Montreal Valuation on Sun Life Building.*

Mr. J. A. C. Cartier has submitted the following valuations on behalf of the City of Montreal:—

1941—Dec. 19.	Valuation signed by Georges Paquette. (page 28)		
	Replacement cost of building totally completed.	\$13,004,928.23	\$0.593 cu. ft.
	This is arrived at from report of July 4, 1938, using as a base the figure of \$9,273,401.49 which represents the replacement cost at 1936 before adding surcharge of 13½% for height and 10% for subcontracts. To the above figure has been added the cost of work done between 1936 and 1941 to complete the building.		
	In this Valuation some of the unit prices which had been used in July 4, 1938 Valuation have been raised.		
1942—Jan. 12.	Valuation signed by Georges Paquette. (page 5)		
	<i>Correction sheet as at 1942.</i>		
	Replacement cost of building completed	\$14,543,431.55	\$0.663 cu. ft.
	This is Valuation of December 19, 1941, which has been increased by raising unit prices again. Replacement cost as at December 19, 1941. (page 6).		
	Building completed and depreciated.	\$14,205,577.27	

1942—Nov. 2. Valuation signed by J. A. C. Cartier. (page 2).

*Final Correction after checking inspection*  
with Jos. A. S. Houle, Nov. 2, 1942.

An amount of \$11,110,337.32 given in report by Paquette Jan. 12, 1942 — is taken as a base. This amount is replacement cost before adding a surcharge of 19% for height plus 10% for sub-contractors.

To the basic figure of \$11,110,337.32 Cartier as the result of his inspection of Nov. 2 1942 adds \$808,250.00, none of which can be justified and including an item of \$500,000.00 for additional structure re: tower & concentrated loads. This addition of \$808,250.00 raises the amount of \$11,110,337.32 to

\$11,918,587.32

Plus 10% for omission & supplement (unjustified) 1,191,858.73.

13,110,446.05

Plus 19% for height

2,490,984.75

Plus 10% sub contracts

15,601,430.80

1,560,143.08

17,161,573.88

\$0.782 cu. ft.

\$17,161,573.88 is replacement cost at 1941 but nevertheless Cartier adds 10% for adjustment to 1941 prices, making replacement cost at 1941

18,706,115.53

\$0.853 “ “

Final Depreciated Replacement cost as at 1941.

16,064,960.74

The result of these different Valuations made by the City of Montreal is as follows:—

Replacement cost of Building completed as at 1941 signed by Cartier, Nov. 2, 1942.

\$18,706,115.53

Replacement cost of Building completed as at 1941 signed by Paquette, Dec. 19, 1941.

\$13,004,928.23

\$ 5,701,187.30

A Valuation of the Same completed Building as at December 1941, signed by Georges Paquette, *has been increased by* \$5,701,187.30, by Cartier in a valuation made subsequently on Nov. 2, 1942. This increase is totally unjustified.

The City in making these different Valuations has followed a system, which can be shown to be erroneous, to say the last, in the following instances — viz:

- 1.—Using prices as indicated in “The Real Estate Valuation Manual” of the City of Montreal, which unit prices are incorrect in many instances.
- 10 2.—Applying unit prices from the “Manual”, which are not the proper ones.
- 3.—Disregarding unit prices as shown in the “Manual” and substituting to them unit prices which are out of bounds on the high side.
- 4.—Adding on Nov. 2 1942 \$808,250.00 without any justification.
- 20 5.—Adding 10% for omission and supplement.
- 6.—Adding 19% for height of construction.
- 7.—Adding 10% for sub contracts.
- 8.—Adding 10% to adjust to 1941 prices, on top of Valuation of Jan. 1st 1942 which was already made on the 1941 price basis.

30 The following example will show the effect of increases No. 5, 6, 7 and 8

	on —		\$1.00
		# 5 add 10%	.10
			1.10
		# 6 add 19%	.209
			1.309
40		# 7 add 10%	.1309
			1.4399
		# 8 add 10%	.14399
			\$1.58389

Addition of surcharges 5, 6, 7 and 8 raise without reason a cost of \$1.00 to \$1.58 — an increase of 58% on total Replacement Cost.

*Re: 19% Supercharge*, which is added for the construction in height, Mr. Cartier said that this was based on a formula in the City's Manual, page 323. This formula reads as follows—"Added for the construction in height, 5% (total height minus 10)".

I have never heard previously or read in any textbook of such a formula.

10

Mr. Cartier on April 5th testified that this formula was not a guess, but had been arrived at after careful consideration and gave us a breakdown of the 19% as follows:—

$\frac{1}{4}$  for hoisting materials,  
 $\frac{1}{4}$  for setting material,  
 $\frac{1}{4}$  for machinery and permits,  
 $\frac{1}{8}$  for insurance, and  
 $\frac{1}{8}$  for scaffolding and bridges.

20

Ten days later on April 15th, Mr. Cartier testified that this breakdown should be changed and he gave us a new distribution of the 19%. The charges in the breakdown of April 5th still remain but are all cut in half, and the 50% left over is now charged to the cost of finance.

It might be interesting to note that the breakdown of this 19% when applied to Mr. Cartier's estimate of replacement cost of \$18,706,115.53, is now approximately as follows:—

30

hoisting material	\$444,269.
setting material	444,269.
machinery & permits	444,269.
insurance	222,135.
scaffolding & bridges	222,135.
financing	1,777,076.

. \$3,554,153.

40

This 19% surcharge is approximately \$3,554,153; and one-half of this amount, or \$1,777,076 would be an additional charge in financing the building, due to the fact that it is a high building.

According to the Manual, this excessive amount would disappear if the building had the same cube or cost the same money, but was only one story high.

In my opinion, a 10 or 12 story building will cost less per cubic foot than a one or two story building built of the same quality. In the 10 or 12 story building the cost of roof and foundations — which is the same in the case of the roof, and slightly higher for the foundations, whether the building is 2 or 12 story, this cost of foundations and roof is distributed over approximately six times a larger volume of cubic feet in a 12 story building, than it would be in a 2 story building.

The form work can only be used once in a 2 story building, whereas the same forms would be used over six times in the 12 story building.

The same labour operations will be repeated much oftener and, therefore, at a lower cost per cubic foot, on a 12 story building than would be the case in a 2 story building.

2) The cost of installation and organization does not increase in proportion to the height of the building.

It would be interesting to compare Mr. Perry's figures relative to cost of height and financing with Mr. Cartier's figures given in the 19% surcharge.

Mr. Perry in his report gives as the total cost of financing the whole building as it exists, \$750,000, whereas Mr. Cartier says that it should cost for financing( \$1,777,076, due to the fact that the building is high, not including the ordinary amount allowed for financing by Mr. Perry.

Furthermore, Mr. Perry states on page 11, No. 14, Cost of 26-story building — The excess cost of a building above 12 story high as been carefully calculated and is \$670,000.

As in my opinion, there is no additional cost due to the height in a 12-story building, I must compare Mr. Perry's figure of \$670,000, with the 19% of Mr. Cartier amounting to \$3,554,153, as an additional charge for *financing only* brought about by the the height of the building.

*Re: 10% Surcharge for sub contracts.* Such a percentage is never added by a general contractor to the sub-contractor's bid; 2 and 3% is considered as a fair profit for the general contractor on the sub contractor's work.

Excess unit prices are used in the City Valuation; amongst which,

The earth excavation is worth \$1. per cubic yard, and is estimated by the City as \$2. per cubic yard — a 100% increase.

The rock excavation is worth \$2. per cubic yard, and is estimated by the City at \$6.50 per cubic yard — an increase of 250%. The quantity of rock shown in the City's estimate is 29,700 yards, whereas it should be 13,750 — a difference of 123%.

10 The contracts in the foundations is worth \$13. per cubic yard. and is estimated by the City at 0.733¢ per cubic foot or approximately \$19.70 per cubic yard, an increase of 48%.

The granite is estimated at \$6.30 a square foot on page 5 — which is not only too high a unit, but includes 4 inches of terra cotta furring, which is already taken care of as a separate item on page 24.

An amount of \$329,538.15 has been included. for air-conditioning, which does not exist in the building — this sum being over and above the \$184,421 already charged for ventilation.

20 It is to be remembered also that all the above amounts are increased by 58% by adding different surcharges for subcontractors, height of building, supplements and omissions.

The City adjusts by an index the original replacement cost to bring it to the actual replacement cost. This, in my opinion, does not give true results.

30 The labour costs are distributed as they would be in the proportion of different trades in a residence, which does not reflect the percentage of the different trades in a building like the Sun Life.

In the small residences, the carpentry labour is 30% of the total labour whereas in the Sun Life it is not 2%.

Furthermore, the actual cost of labour and material is about 50% of one and 50% of the other in an ordinary building.

40 Another important factor which is not taken into consideration, is the law of supply and demand which affects the efficiency and, therefore, the cost of your labour. By this I mean, that mechanics who might be paid the same wages in different years, will give you more production when construction work is depressed than when it is booming, and therefore, although you will pay the same rate, your cost of labour will be higher when construction is flourishing than when it is at a low level.

In other words, the wage index might indicate the fluctuation in rate of wages, but not necessarily the accurate effect of fluctuation of wages on *cost* of construction.

Yours truly,

Gaspard Archambault.

GA/MG

PLAINTIFF'S EXHIBIT P-56-A AT ENQUETE

*Two corrected sheets from Plaintiff's Exhibit P-56.*

- 4.—Adding on Nov. 2 1942 \$808,250.00 without any justification.  
10 5.—Adding 10% for omission and supplement.  
6.—Adding 19% for height of construction.  
7.—Adding 10% for sub contracts.  
8.—Adding 10% to adjust to 1941 prices, on top of Valuation of  
Jan. 1st 1942 which was already made on the 1941 price basis.  
20 The following example will show the effect of increases No. 5,  
6, 7 and 8

on —		\$1.00
	# 5 add 10%	.10
		<hr/>
		1.10
	# 6 add 19%	.209
		<hr/>
		1.309
30	# 7 add 10%	.1309
		<hr/>
		1.4399
	# 8 add 10%	.14399
		<hr/>
		\$1.58389

Addition of surcharges 5, 6, 7 and 8 raise without reason a cost of \$1.00 to \$1.58 — an increase of 58% on total Replacement Cost.

- 40 *Re: 19% Supercharge*, which is added for the construction in height, Mr. Cartier said that this was based on a formula in the City's Manual, page 323. This formula reads as follows—"Added for the construction in height, 5% (total height minus 10)".

I have never heard previously or read in any textbook of such a formula.



Mr. Cartier on April 5th testified that this formula was not a guess, but had been arrived at after careful consideration and gave us a breakdown of the 19% as follows:—

- 10                     $\frac{1}{4}$  for hoisting materials,  
                       $\frac{1}{4}$  for setting material,  
                       $\frac{1}{4}$  for machinery and permits,  
                       $\frac{1}{8}$  for insurance, and  
                       $\frac{1}{8}$  for scaffolding and bridges.

Ten days later on April 15th, Mr. Cartier testified that this breakdown should be changed and he gave us a new distribution of the 19%. The charges in the breakdown of April 5th still remain but are all cut in half, and the 50% left over is now charged to the cost of finance.

- 20                    It might be interesting to note that the breakdown of this 19% when applied to Mr. Cartier's estimate of replacement cost of \$18,706,115.53, is now approximately as follows:—

	hoisting material	\$373,336.
	setting material	373,336.
	machinery & permits	373,336.
	insurance	186,668.
	scaffolding & bridges	186,668.
	financing	1,493,345.
30		<hr/>
		\$2,986,690.

Gaspard Archambault.

This 19% surcharge is approximately \$2,986,690; and one-half of this amount, or \$1,493,345 would be an additional charge in financing the building, due to the fact it is a high building.

- 40                    According to the Manual, this excessive amount would disappear if the building had the same cube or cost the same money, but was only one story high.

In my opinion, a 10 or 12 story building will cost less per cubic foot than a one or two story building built of the same quality. In the 10 or 12 story building the cost of roof and foundations — which is the same in the case of the roof, and slightly higher for the foundations, whether the building is 2 or 12 story, this cost of foundations and roof is distributed over approximately six times a larger volume of cubic feet in a 12 story building, than it would be in a 2 story building.

The form work can only be used once in a 2 story building, whereas the same forms would be used over six times in the 12 story building.

The same labour operations will be repeated much oftener and, therefore, at a lower cost per cubic foot, on a 12 story building than would be the case in a 2 story building.

10

The cost of installation and organization does not increase in proportion to the height of the building.

It would be interesting to compare Mr. Perry's figures relative to cost of height and financing with Mr. Cartier's figures given in the 19% surcharge.

2)

Mr. Perry in his report gives as the total cost of financing the whole building as it exists, \$750,000, whereas Mr. Cartier says that it should cost for financing, \$1,493,345, due to the fact that the building is high, not including the ordinary amount allowed for financing by Mr. Perry.

Furthermore, Mr. Perry states on page 11, No. 14, Cost of 26-story building — The excess cost of a building above 12 story high as been carefully calculated and is \$670,000.

30 As in my opinion, there is no additional cost due to the height in a 12-story building, I must compare Mr. Perry's figure of \$670,000, with the 19% of Mr. Cartier amounting to \$2,986,690,, as an additional charge for *financing only* brought about by the the height of the building.

*Re: 10% Surcharge for sub contracts.* Such a percentage is never added by a general contractor to the sub-contractor's bid; 2 and 3% is considered as a fair profit for the general contractor on the sub contractor's work.

Excess unit prices are used in the City Valuation; amongst which,

40

The earth excavation is worth \$1. per cubic yard, and is estimated by the City as \$2. per cubic yard — a 100% increase.

The rock excavation is worth \$2. per cubic yard, and is estimated by the City at \$6.50 per cubic yard — an increase of 250%. The quantity of rock shown in the City's estimate is 29,700 yards, whereas it should be 13,750 — a difference of 123%.

The contracts in the foundations is worth \$13. per cubic yard, and is estimated by the City at 0.733¢ per cubic foot or approximately \$19.70 per cubic yard, an increase of 48%.

Gaspard Archambault.

PLAINTIFF'S EXHIBIT P-57 AT ENQUETE

*Memorandum on Mr. Fournier's Report.*

GASPARD ARCHAMBAULT, I.C., B.Sc.A.  
Ingénieur Conseil

10

Montreal, April 19, 1943.

Mr. D. L. Macaulay,  
Assistant Secretary,  
Sun Life Assurance Company of Canada,  
Montreal.

Dear Sir,

20 Re: *Mr. Victor A. Fournier's Report on Sun Life Building.*

Mr. Fournier in his evidence stated that the Sun Life Assurance Company never intended to consider their building as a revenue producing investment, because according to his calculations the original building built in 1914 on the northeast corner of Dorchester and Metcalfe Streets, cost \$1.06 per cubic foot, a prohibitive price from an investment point of view.

30 From this, Mr. Fournier argues that when the more extensive building programme was carried on, the Sun Life Assurance Company were aware from their costs on the original building that the additions could not produce a large revenue.

40 This is not sound, as the original building, which is only about one-tenth of the whole building in volume contains many costly features, which contribute to a great extent to raise the price per cubic foot, and that these special features being non-existent in the additions to the initial building, the cost per cubic foot of these additions must, therefore, be considerably lower in the additions than in the original building.

Among these expensive special features in the original building which do not exist in the additions, might be mentioned the vault, and the banking hall which is the most expensive part of the entire completed building.

This is corroborated by the high rental price per square foot at which the space in the banking room has been valued by the different real estate experts who have testified.

In order to make a valuation of the main building, Mr. Fournier has selected a rather unusual and difficult approach. Mr. Fournier has as a basis for his valuation that a plain ordinary 10-story building should cost 40¢ per cubic foot.

10 He finds the cost of such a hypothetical building having the same volume as the Sun Life Building, to have a replacement cost as at 1941 of \$8,800,099.60.

He then compares this 40¢ a cubic foot building with the present Sun Life Building, and adds various sums of money, representing the difference in quality of different parts of his hypothetical building, as compared to the corresponding parts in the Sun Life Building.

20 In order to be able to accept the basis of Mr. Fournier's procedure, he would have to show in a concrete form what he considers to be a 40¢ a cubic foot building, so that one could appreciate the extent of the additions and substitutions which he makes to bring it up to the standard of the Sun Life Building.

30 Even if this could be done, it is extremely doubtful if one can make a close estimate of the changes required and their cost, to transform what Mr. Fournier considers to be an ordinary 40¢ a cubic foot building into a building such as the Sun Life Building.

40 As a matter of fact, this process is much more complicated than attempting to make an estimate of the Sun Life Building proper, because it requires not only the ability to segregate the items which not being similar to those in the Sun Life Building, have to be replaced, but also to make two estimates, one for the deductions representing the value of the amounts which must be replaced, and another giving the costs of the replacement.

Although this way of proceeding might be justified in the case of estimating the value of a proposed building similar in shape and quality to one which has already been built at a known cost, by adding to this cost amounts to cover a few distinct additional features which do not exist in the first building, it is, in my opinion practically impossible to value the many changes which have to take place in the supposedly 40¢ building which does not exist, to make it a replica of the Sun Life Building.

Mr. Fournier has given a list with the required changes and their respective costs.

10 Amongst other items Mr. Fournier would add \$1,239,000 to the cost of the elevators of the 40¢ a cubic foot building to bring said elevators on a par with those of the Sun Life Building, which have cost \$889,090 to the owners.

20 It is interesting to note that the writer on March 11th 1938, appeared before this same Board of Revision, and acting on behalf of the City of Montreal in a case similar to the present one, valued exclusive of very special foundation work below basement level, the replacement cost of the Alliance Nationale Building with a cube of 1,176,400 cubic feet, at 40¢ per cubic foot, to which should be added 5% for architect's fees, giving 42¢ per cubic foot complete, as compared with Mr. Fournier's hypothetical building of 40¢.

30 It is my recollection that the contract figure produced in the Court at that time, verified my valuation of 42¢ per cubic foot, which was corroborated by Mr. Rosaire Gratton, an expert witness for the owners, and if I remember correctly the City assessment was finally based on approximately this 42¢ per cubic foot price.

Mr. Fournier after adding for different items to his imaginary building, arrived at a final replacement cost of \$18,747,974.53 as at 1941 but based on the 1939 prices. This works out at about 85.3% per cubic foot.

40 The Alliance Nationale is a first-class building, with granite walls, basement and sub-basement, and I feel sure that it would require much less than 100% of the original cost to bring it up to the same standard as that of the Sun Life Building.

I disagree with Mr. Fournier's figures when they show that an additional expenditure of 43.3¢ per cubic foot (more than double the original cost of the building), would have to be spent on a building of the type of the Alliance Nationale to bring it up to the quality and standard of that of the Sun Life Building, considered on 1939 prices.

The average height from floor to floor in the Sun Life Building is 14'6", whereas in buildings like the Transportation Building, the Dominion Square Building, the Insurance Exchange Building, would be about 11'6". Therefore, the hypothetical 10-story building that Mr. Fournier has estimated would be high enough to accommodate eight floors of the Sun Life Building.

10

If you have two buildings of the same height, one with ten floors and the other with eight, built in the same style, the cost per cubic foot of the eight-story building should be considerably less than that for the 10-story building, and therefore, the 40¢ per cubic foot in Mr. Fournier's 10-story building is too high when applied to a 10-story building with the abnormally high floor heights which you find in the Sun Life Building.

20

I, therefore, cannot agree with the excessive high figure of \$18,747,974.53 which Mr. Fournier claims to be the replacement cost of the Sun Life Building as at 1941 based on 1939 prices.

His total depreciation of 1% per annum is in my opinion much too low. It is to be noted that Mr. Fournier has completely ignored Obsolescence and Functional depreciation.

30

Yours truly,

Gaspard Archambault.

GA/MG

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PLAINTIFF'S EXHIBIT P-58 AT ENQUETE

*Memorandum on Mr. Perry's Report.*

GASPARD ARCHAMBAULT, I.C., B.Sc.A.  
Ingénieur Conseil

10

Montreal, April 19, 1943.

Mr. D. L. Macaulay,  
Assistant Secretary,  
Sun Life Assurance Company of Canada,  
Montreal.

Dear Sir,

20

Re: *Mr. B. R. Perry's Report on Sun Life Building.*

On page 5, Mr. Perry states that the mechanical parts which form  $23\frac{1}{2}\%$  of the total cost would with ordinary maintenance and current repair, have a life similar to that of the building shell.

30

This is wrong as no maintenance or repair will keep the mechanical parts in good condition for thirty years, and further all of this equipment would probably have been replaced on account of obsolescence long before that time.

On page 16, Mr. Perry allows  $2\frac{1}{2}\%$  depreciation per year on mechanical trades in the boiler plant, which in my opinion, is much too low and should be at least between 4 and 5% per annum.

40

The same rate of depreciation should apply to the mechanical trades in the main building, and using Mr. Perry's low rate of depreciation,  $2\frac{1}{2}\%$  on  $23\frac{1}{2}\%$  of total cost would give a depreciation of  $7.64\%$  of the total replacement cost of the building over a period of 13 years.

Mr. Perry allows 13% depreciation only for thirteen years on the whole building, which means that deducting from this 13% the  $7.64\%$  which should be allowed on mechanical equipment alone, it would leave only  $5.36\%$  depreciation on total cost for 13 years as applicable to the whole building, exclusive of the mechanical trades. This is obviously too low and, therefore, the total depreciation of 13% for 13 years is also too low.

On page 6, Mr. Perry states that “large units — gymnasium, auditorium, banking hall, etc. determine the fundamental arrangement of the lower floors and the consequent size and shape of the building”.

This has not — and in my opinion cannot be proved, as I do not think that it is the case.

10

On page 7, Mr. Perry admits that the depth to windows is greater than typical in such buildings, and said that it is balanced *in part* by extra ceiling height to throw light back further and by mechanical ventilation.

20

This extra ceiling height referred to, which was necessary to avoid in the deep rooms the impression of a very low ceiling, does not correct to any extent the lack of light due to depth; as according to Mr. Mills, the rays of light penetrate into the room obliquely and will not reach very far back inside the building, even if the top of the window is slightly higher than normal.

This is proved by the fact that on many occasions, on going through the building, with a bright sun shining outside, I noted on practically every floor that electric light was used, starting about fifteen feet back from the window.

30

The ventilation does not correct the functional depreciation due to depth, but simply permits people to breathe who could not have done so otherwise, if there had been no ventilation in space, which is nevertheless not desirable.

Mr. Perry incorrectly refers on page 12 to ventilation as air-conditioning, which is much costlier than ventilation.

40

On page 7, “A great deal of this apparent excess service space is necessitated by the air-conditioning system”, writes Mr. Perry.

On page 8, “All of these rental disabilities”, writes Mr. Perry.

On page 9, Mr. Perry makes a comparison with the News Building in New York City. The News Building is 36 stories high plus pent-house, the cubic contents are 9,839,000 cubic feet, and the rentable area 602,192 square feet, that is 16.3 cubic feet per square foot of rentable floor, as compared with 28 cubic feet for one square foot of rentable space in the Sun Life Building.



In other words, the Sun Life Building requires 75% more volume than the News Building to produce one square foot of rentable space.

The News Building was completed in May 1930, at a cost of 65¢ per cubic foot. The cost of building in New York City is much higher than it is in Montreal.

10

Mr. Perry has compiled a list showing the costs of features which he states exist in the Sun Life Building, are used only by the Sun Life Company, and are not usually found in competitive commercial buildings.

I will not comment these items, as I understand that this has been done by other witnesses. I must, however, draw attention to item 3 on page 9:—"Bronze sash glazed which Mr. Perry estimates at \$785,000, compared with the actual cost to the owners of \$394,650, a difference of about 100%".

20

Elevators which are shown to have cost the Sun Life \$889,090, are estimated on page 15 at \$1,588,000. by Mr. Perry — an increase of 78% over the cost.

On page 10, item 9, of the above-mentioned list — auditorium and Gymnasium, Mr. Perry states that if intermediate floors were completed the structural cost would be as low or lower than for the present condition, and that excessive decoration, tile, etc., would probably create a net plus cost in this area over the above suggestions.

30

This I do not agree with, as I have noted especially that both in the Auditorium and the Gymnasium, there is no excessive decoration, the interior finish of these rooms being simple and inexpensive.

On page 13, Mr. Perry gives an estimate of the cost for alterations due to the erection of the building in three parts, involving demolition.

40

In my opinion, it is practically impossible to estimate in 1943 the expenditure involved, without having been closely connected with this work when it was done, and knowing from the records its exact cost.

Mr. Perry uses the ratio of 25% for labour and 75% for material in establishing the construction cost index.

I disagree with Mr. Perry, and in my opinion, the ratio should be about 50% for labour and 50% for material.

Taking figures from the Dominion Bureau of Statistics, based at 100 on 1926, the index is as follows:—

	<i>Wages</i>	<i>Material</i>	<i>50%-50%</i>
10 1941	107.3	107.3	107.3
1929	114.8	99.—	106.9
			<hr/>
		difference:	0.4

Using a 50-50% basis, the composite average for 1929 is 106.9 and for 1941 107.3, a difference of 0.4 only. In other words, the composite index for wages and material as at 1941, is approximately the same as at 1929.

20 On page 4, Mr. Perry states that no other building of any magnitude, has been erected in this district using similar proportion of comparable material.

I would like to point out that in the Supreme Court Building in Ottawa, which has been built in 1941, more expensive materials have been used than in the Sun Life Building.

30 The walls are of Stanstead granite, the sloping roof is covered with copper. Most of the large rooms have walls panelled in walnut from floor to ceiling. Part of the building is air-conditioned, and nevertheless, the cost per cubic foot in 1941 was only 50¢, compared with Mr. Perry's estimate of 94½¢ per cubic foot as the replacement cost of the Sun Life Building as at 1941.

I wish to point out that bricklayers, masons, stone-cutters, were paid 92¢ per hour in 1941, as against \$1.20 in 1929 — an increase of over 30% in 1929 over 1941, or a decrease of 24½% in 1941 from 1929.

40 This would affect the cost of the outside walls which should be much lower in 1941 than it was in 1929, as the cost of the granite itself is a small proportion of the finished product compared to labour.

As a matter of fact, granite which was worth delivered on the site in 1929/30 \$4, a cubic foot, could have been bought in 1941 for \$2.75.

If Mr. Perry has adjusted 1929 costs at 1941 by the index of wages and material on a 25-75 basis, his price for granite in 1941 would be much too high.

Mr. Perry disregards completely depreciation through obsolescence and functional depreciations, both of which exist in the Sun Life Building to a considerable extent, and are bound to lower the value of a Building whether it be of a Commercial or Institutional character.

It is impossible to check on Mr. Perry's estimate of Replacement Cost on page 15, as he has combined under one heading, items which cannot be broken down to obtain their individual cost, as an example:—

20	Item "G"—Miscellaneous non-typical items such as, Roofs, Panelling and expensive details of minor offices,	\$280,000.
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I cannot agree with Mr. Perry's net replacement cost of \$18,060,070. for the main Building as at 1941, which in my opinion is excessive, and approximately \$9,000,000 too high.

Yours truly,

GA/MG

Gaspard Archambault.

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PLAINTIFF'S EXHIBIT P-59 AT ENQUETE

*Comparison of 17 and 18th floors of Sun Life Building, with typical floor of other office buildings.*

GASPARD ARCHAMBAULT, I.C., B.Sc.A.  
Ingénieur Conseil

10 Mr. D. L. Macaulay, Montreal, April 19, 1943.  
Assistant Secretary,  
Sun Life Assurance Company of Canada,  
Montreal.

Dear Sir,

Re: *Valuation of Sun Life Building.*

20 You will find below the ratios of rentable to gross areas as shown on pages 10 and 15 of my report, readjusted on the basis of a gross area obtained from outside, instead of inside, wall measurements. This readjustment is made to permit a fair comparison with similar ratios established on the same basis by City witnesses, who have determined the gross area from outside wall dimensions.

Rentable area—23 rentable floors above ground only	sq. ft.
Gross area —23 “ “ “ “ “	706,008
	1,192,624

Ratio of rentable to gross is: 59.2%

30 In my opinion, the ratio of rentable to gross area outside measurements, should be the normal ratio, 74%, in the average well-planned office building.

59.2% is 80% of the normal ratio and, therefore, justifies a depreciation of 20% on the building.

Rentable Area—All floors in the building	780,680 sq. ft.
Gross Area — “ “ “ “ “	1,563,239 sq. ft.

Ratio of rentable to gross is: 50%

40 This ratio of 50% means that one-half only of the total floor area throughout the building is rentable, the other half being required to give service to the rentable half. This is equivalent to having one total area of a floor rentable and using the total area of the floor above or below for services only, or again, having each floor divided into two equal areas, one of which would be rentable and the other one would be used for services only. It is evident that there is too large a proportion of the floor area which must be used for services, and that this is a deficiency or functional depreciation.

Yours truly,

Gaspard Archambault.

GA/MG  
Encl. 1.

P.S. See revised Page 15 attached.

COMPARISON OF 17th & 18th FLOORS OF SUN LIFE BUILDING  
WITH  
TYPICAL FLOORS OF OTHER OFFICE BUILDINGS  
IN MONTREAL.

			Floor to Floor Height	Gross Area Outside Walls	Rentable Area	% Rentable Gross	% Outside Offices Gross Area	Cubic Feet for One sq. ft. Rentable Floor
Transportation	Building — Typical Floor —		11'-3"	13,820	11,346	82.1%	82.1%	13.8
Insurance Exchange	" — " —		10'-3"	21,150	17,300	81.8%	81.8%	12.5
Dominion Square	" — " —		11'-3"	34,933	26,923	77%	77%	14.6
Sun Life	" — 17th	" —	14'-0"	38,002	21,025	55.3%	36.4%	25.3
" "	" — 18th	" —	14'-0"	38,002	22,000	57.8%	42.3%	24.2

It is to be noted that 1o.—The Ratio of net to gross is much lower on the Sun Life Building Floors

2o.—The Ratio of outside offices to gross area is much lower on Sun Life Floors

3o.—The number of cubic feet required for one sq. ft. of rentable floor is much higher on the Sun Life Floors

4o.—The Floor to Floor height is much higher on the Sun Life Floors.

Note:—Gross area measured outside of walls.

Gaspard Archambault.

PLAINTIFF'S EXHIBIT P-49 AT ENQUETE

*Comparison of Windows on Typical Floors — Sun Life and Dominion Square Buildings, Using Mr. Mills' Rentable Area Figures.*

Name of Bldg.	Inside Perimeter of Wall in feet.	Number of Windows per Floor.	Linear feet of Wall per Window.	Feet of Rentable Area per Window.	Feet of Rentable Area per inch of Window width.	Minimum Window Width.
Sun Life — 14th Fl. Mr Mills' Rentable area 26,172 sq. ft.	778	42	18.5	622	9.44	5'6"
Dominion Square — Mr Mills' Rentable area 26,900 sq. ft.	1176	168	6.92	160	4.2	3'2"

The above comparisons indicate the far greater possibilities of sub-division for tenants in the Dominion Square Building as against the Sun Life Building. At the vast majority of prospective tenants occupy comparatively small areas, the lack of ability to provide private offices in conjunction with small tenancies is very prejudicial.

DLM/W.B.  
April 20th, 1943.

PLAINTIFF'S EXHIBIT P-60 AT ENQUETE

*Comparison of Replacement Costs taken from Valuations made by Mr. B. R. Perry and by the City of Montreal.*

	<i>Mr. B.R. Perry</i>	<i>City of Montreal (by Mr. J.A.C. Cartier)</i>
Excavation	\$ 267,000.	\$ 582,695.
Stairs	171,000.	109,606.
Elevators	1,588,000.	1,056,856.
Electrical Work	1,086,000.	778,920.
Heating	615,000.	953,268.
Ventilation	780,000.	854,014.
Plumbing	437,000.	267,961.
Exterior Walls	4,550,000.	5,536,870.

N.B. To Mr. Perry's prices should be added about 3.75% to distribute over the different items their share of \$750,000. for financing charges during construction.

Gaspard Archambault.

GA/MG  
April 20, 1943.

## PART IV — JUDGMENTS

### Judgment of the Board of Revision.

10

#### CITE DE MONTREAL

#### BUREAU DE REVISION DES ESTIMATIONS

EXTRAIT du procès-verbal de la neuf cent quatre-vingt-dix-septième assemblée du Bureau de Révision, tenue à l'Hôtel de Ville, le 21 juin 1943.

20

PRESENTS:—MM. CAMILLE TESSIER  
J. G. CARON

Account No. 140896, SUN LIFE ASSURANCE CO. OF CANADA, 1153 Metcalfe, St. George Ward. Valuation: — \$13,755,500. — Land \$730,600., Building \$13,024,900.

Account No. 140942, SUN LIFE ASSURANCE CO. OF CANADA, 1207 Mansfield, St. George Ward. Valuation: — \$520,500. — Land \$74,100., Building \$446,400.

30

The subject of this contestation is the assessment of the head office building of the Sun Life Assurance Co. of Canada, in Montreal, located on Metcalfe Street at the corner of Dorchester. It is 27 stories high above ground, with three basements. To use the same expression as one of the expert witnesses for the complainant, it "is one of the largest office buildings in the world". (Mr. Loble's report, p. 21). The erection of the property was commenced in June 1913 and continued until December 1930. It was constructed in three units. An original building was first put up and occupied in March 1918; a first extension was commenced in 1922 and occupied in December 1925; a second extension was commenced in 1927 and partially occupied by December 1930.

40

The contestation also affects a secondary building called the power house or heating plant on Mansfield Street, which was

commenced in November 1928 and completed in March 1930. The cubic contents of the two buildings are 22, 481,157 cubic feet. In a foreword by the architects, Messrs. Darling and Pearsons of Toronto, to the description contained in the February 1931 number of the Engineering Journal, (Exh. D-1), we find that:—  
“The complete building, including the old, had to be designed to accommodate a population of approximately 10,000 persons”.

10

On the Valuation Roll deposited the 1st of December 1941 for the three following fiscal years, the main building is assessed with the land at \$13,755,500. namely: — Land \$730,600., Building \$13,024,900.; the heating plant is assessed at \$520,500. — Land \$74,100., Building \$446,400. Total assessment:—\$14,276,000.

The valuation placed on the land is not in dispute. The complainant contends for a valuation of the main building of \$8,330,600. and on the boiler house or heating plant of \$102,600. or a combined total of \$8,433,200. The City of Montreal, on the contrary, through its attorneys, is asking us to increase the assessment of the main property to \$15,130,600., and to maintain the assessment of the power house at \$520,500.

20

These cases are before this Board in virtue of Article 382 of the Charter of the City of Montreal, which Article, at paragraph 18, reads as follows:—

30

“18.—The Board of Revision shall also hear all complaints  
“produced legally, each year, within the required delays,  
“against the valuations entered on the valuation roll and  
“against any entry on the tax roll, the hearing whereof is  
“within its power in virtue of this act.

40

“The Board of Revision shall hear these complaints and  
“render its decisions within the shortest possible delay.  
“The Board of Revision, if it be of the opinion that the  
“estimate of the immoveable value or of the rental value  
“complained of should be increased rather than reduced  
“or maintained, may order such increase. In such case,  
“the provisions of paragraphs 15, 16 and 17 of this section  
“shall not apply.”

All immoveable property situate within the limits of the City are liable to taxation and assessment, except such as may be declared exempt therefrom. (Charter, Art. 361).

In order to give effect to the above enactment, the Charter, at Art. 375, stipulates that:—



“Every three years the assessors shall draw up in duplicate for each ward of the City a new valuation roll for all the immoveables in such ward. Such roll shall be completed and deposited on or before the 1st of December, after having been signed by the Chief Assessor. This roll and each of the supplementary rolls mentioned in paragraph b, shall contain:—

10

.....  
“3.—The actual value of the immoveables.”

The French version reads: “La valeur réelle” and it always use this same expression of “valeur réelle” in all the other articles referring either to valuations or to expropriations; the English text of the Charter uses indifferently the expressions “real value”. This difference is immaterial however, the parties having admitted that the words “valeur réelle” and “actual value” are synonymous.

20

In Montreal, the tremendous work of assessing all immoveables is accomplished by the official assessors who are appointed by the Executive Committee on the recommendation of the Chief Assessor and who constitute with him the Assessors Department. (Charter, Art. 373). This work is divided amongst the assessors by the Chief Assessor under whose exclusive jurisdiction they are as to the fulfilment of their duties, their working hours and other internal administration rules which the Chief Assessor shall deem fit to impose (Charter, Art. 373, 8 & 9).

30

According to their oath before taking office, the assessors bind themselves to “faithfully, impartially, honestly and diligently perform the duties of an assessor according to law”. (Art. 374).

In the accomplishment of their work of assessing these immoveables, the assessors have to be completely independent; they decide the amounts they put on the valuation roll and no one, not even the Chief Assessor, is empowered to dictate to them or even influence them in the full discretion they have of valuing the immoveables according to their personal judgment. They are fulfilling quasi-judicial duties and their decisions enjoy the benefit of a legal presumption. The law is clear and the jurisprudence is firmly established. We cannot make a better summary of the decisions on this point than by quoting the following passages of The Real Estate Valuation Manual (Montreal, 1941, pp. 32 & 33):—

40

10 “In brief, it is to be remembered that the municipal asses-  
sor, in the exercise of his duties, fulfils almost judicial  
“functions: he is not to be influenced by nor to receive  
“instructions from the municipal council, or from any  
“other person or body. He must personally execute his  
“duties with the fullest independence, to the best of his  
“judgment and according to his conscience. (Royal vs.  
“Corp. du Village de Coteau-Landing — 1929 — 36 L.R.  
“n.s., 265. Myerson vs Ville de St. Laurent, 34 L.R. n.s.,  
“263. Vancouver Incorp. Act vs C.P.R. — 1930 — 4 D.L.  
“R., 80. Improvement District Act, Alberta — App. Div.  
“1, D.L.R., 1009. — H. E. Manning, Assessment and  
“Rating, 1928, p. 148.)”

20 “The law further allows of appeal to certain courts  
“which it designates with fixed delays and in conformity  
“with a specified procedure in cases of illegality or error-  
“neous valuation. The courts should then intervene with  
“prudence: they have not “to judge the competency of  
“the Assessors”; they must not “substitute their personal  
“opinion to that of the assessors. . . , whose valuation is  
“presumed to be correct and reasonable, so long as the  
“parties concerned have not established “a real injustice  
“or an important deviation”, or that “it is so erroneous  
“that an honest and competent man could not have made  
“it” and that “a substantial injustice has been commit-  
30 “ted”.” (Shannon Realities vs Ville St. Michel — 1929 —  
“Privy Council, 47 K.B., 416 — Art. 50, c.p.c. Cf. also;  
“Corp. du Village de St. Ulric vs Matane — 1925 — 38  
“K.B., 247. Pelletier vs Cité de Rivière du Loup — 1921—  
“27 R. of J., 230. Cf. also: Improvement District Act Al-  
“berta, App. Div. — 1924 — 1 D.L.R., 1009. Gouin vs Cité  
“de St. Lambert, 1929, 67 S.C., 216. Vancouver Inc. Act vs  
“C.P.R., 1930, 4 D.L.R., 80. Fortin vs Paroisse de Contre-  
“coeur — —1918 — 24 R. of J., 537. Cf. also: Daigneault  
40 “et al vs Notre-Dame de St.-Hyacinthe — 1927 — 66 S.C.,  
“338. Canada Cement et al vs Ville de Montréal-Est —  
“1923 — 35 K.B., 410. Cf. also: Cooley on Taxation, Vol.  
“III, Art. 1199. St. Denis vs Cité de Montréal — 1915 —  
“49 S.C., 55. Lachine Boating and Canoeing Club vs Cité  
“de Lachine, 1929 — 68 S.C., 123. Cf. also: McEvoy vs City  
“of Montreal — 1920 — 59 S.C., 566.)”

Previous to the amendments of the 29th of April 1941  
(5 Geo. VI, chapter 73, section 33) the Valuation Roll had to be  
made every year. The roll deposited the 1st of December 1941

was the first one under the new law and it was also the first valuation roll which was made and deposited since the one of December 1937. The reason of such a solution of continuity is found in 2 Geo. VI, chapter 105, section 11, paragraph 7 and in 3 Geo. VI, chapter 104, section 11, paragraph 7 and in section 13, paragraph 31. In virtue of these statutes the valuation rolls were stabilized (pegged, firstly for the fiscal year 1939-40 and subsequently for the years 1940-41 and 1941-42. By the statute stipulating this last extension of the valuation roll of December 1937 it was also enacted (3 Geo. VI, Art. 13) that:—

20 “Notwithstanding any law to the contrary and in order to  
“permit to the Board of Revision to proceed with the gen-  
“eral and complete revaluation of the immoveable pro-  
“perty, no decision upon the complaints relative to the  
“real estate valuation made before this Board or on the  
“revaluation of the immoveables shall be rendered by this  
“Board before the 1st of May 1941.”

This was in April 1939. The valuation roll remained unchanged until December 1941; so that the figures appearing on this roll of December 1941 are new assessments resulting from the general and complete revaluation made by the assessors following the orders issued by the Board of Revision under the authority of the amendments above referred to.

30 Whatever may be the discrepancies between the assessments which appear on the roll of December 1941 and the assessments on the roll for the preceding years, it is not correct to contend that such discrepancies are increases or decreases in the assessments. They are simply new assessments. A valuation roll does not constitute a revision or revamping of the preceding one which is in force at that moment (the new roll being deposited for the incoming fiscal year) but it is a completely new roll. When it begins to be used as a basis for the taxation of the next fiscal period, the preceding roll will be no longer in existence.

40 Now the words “valeur réelle”, “actual value” of Art. 375, paragraph 3 of the Charter of the City of Montreal are not defined, their interpretation being left to the discretion of the assessors, in each particular case. Lawyers and experts in real estate have found here a field wide open to their explorations from both a theoretical and a practical standpoint. The coupling of the word “real” with the word “value” indicates that real value is a fact, not an hypothesis. Because this conception of real value is overlooked or ignored, the means, the elements to determine the said

real value are often taken for the value itself. Such elements are unlimited in number. They vary “ad infinitum” as the cases. There is no fixed rules to determine in what proportion every element must be taken into account and what importance should be given to any element in particular. The same element may have more importance in one case than in another. The law imposes on the assessor the duty of finding the real value of an  
10 immoveable and of inscribing it on the roll, but does not in any way put any limit to the assessor’s discretion in considering all the elements he thinks it advisable to consider in exercising his judgment and arriving at a decision.

The “enquête” was started with the filing in the record of a document called “joint admission of the parties” from which were transcribe the following paragraphs, seeing their capital importance in the present decision:—

20 “1.—The cost of the Complainant’s head office building “up to April 30th, 1941, including all capital expenditures “to that date, but excluding the cost of land, was \$20,627,- “873.92. The foregoing figure includes Architectural and “Engineering fees, but no taxes or interest during con- “struction.

30 “2.—(a) Excavation for the construction of the Com- “plainant’s original head office building, situated at the “corner of Metcalfe and Dorchester Streets was commen- “ced in the month of June 1913 and the said building was “completed and occupied in the months of January, Feb- “ruary and March 1918.

“ (b) Excavation for the construction of the first ex- “tension of the said head office building, carrying the same “to Mansfield Street was commenced in the summer of “1922 and the said first extension was completed and occu- “pied in December 1925.

40 “ (c) Excavation for the construction of the second “extension of the said head office building was commenced “in May 1927 and the structural portion thereof was com- “pleted by December 1930. Partial occupation commen- “ced in 1929 and certain of the upper floors have been “completed from time to time since.

“3.—The amounts spent per year on the construction of “the said head office building, making up the said total of

“\$20,627,873.92 (including costs of demolition, removal, reconstruction and making good occasioned by the aforesaid extensions) are as shown in the statement hereto annexed as Schedule “A” to form part hereof.

10 “4.—The amount spent on construction of the said head office building from April 30th to December 1st, 1941, was \$58,713.70.

“5.—The cost of completing the power house for the said head office building and of the equipment for the said power house exclusive of the cost of land was \$709,257.14. The foregoing figure includes Architectural and Engineering fees, but no taxes or interest during construction.

20 “6.—Excavation for the construction of the said power house was commenced in November 1928, boilers were first inspected and steam used in October 1929 and the structure was completed in March 1930.

“7.—The only addition or modification to the power house, plant and equipment since completion was a ladder added to the stack in the year 1938 at a cost of \$154.00.

30 “8.—The floor area exclusive of corridors for each floor of the said head office building including the basements is as shown in the statement annexed hereto as Schedule “B” to form part hereof.

“9.—The floor area on each floor occupied on December 1st, 1941, by the Complainant Company and by tenants was as shown in the said Schedule “B”.

40 “10.—The unoccupied floor area of finished rentable space and of unfinished space for each floor including basements as at December 1st, 1941, was as shown in the said statement Schedule “B”.

“11.—The Complainant Company’s tenants on December 1st, 1941, the floor area occupied by each tenant on each floor including the basements and the annual rental in respect thereof were as shown on the statement hereto annexed as Schedule “C” to form part hereof.

“12.—The gross rental receipts for each tenant and each floor including the basements for the year 1941, to wit: the Complainant Company’s last financial year, were as shown in the said Schedule “C”.

“13.—Concessions or free space in the said head office building together with the occupants concerned and the area occupied are shown in the statement annexed hereto as Schedule “D” to form part hereof.

10 “14.—The yearly rental actually charged to the Complainant Company for the years 1937 to 1941 inclusive, as appearing in the books of the Company, in the Company’s annual statements and in statements supplied to the Superintendent of Insurance for the Dominion of Canada, for the floor space occupied by it per floor, including the basements and the totals thereof were as shown in the statement annexed hereto as Schedule “E” to form part hereof.

20 “15.—The cubic content of the said head office building and of the said power house (exclusive of tunnel under Mansfield Street) is 21,931,761 cubic feet and 549,396 cubic feet respectively.

30 “16.—The amounts shown under the respective headings of Book Value and Market Value in the Company’s annual general statements and in the Company’s returns to the Superintendent of Insurance for the Dominion of Canada for the years 1914 to 1941 inclusive were as set forth in the statement hereto annexed as Schedule “F” to form part hereof.”

The first witness was Mr. Edward J. Lynch, City Assessor. Examined by Aimé Geoffrion, K.C., for the Complainant, Mr. Lynch declared that he is a partner of the assessor of St. George’s Ward, Mr. Vernot, and that he is not in a position to speak of the new assessment of the Sun Life property.

40 The second witness was the City Assessor who made these assessments, Mr. George E. Vernot. He became assessor for St. George’s Ward in September 1941. He was previously assessor for other wards and in September 1941 had to finish his own wards and continue on in St. George where his predecessor had left off.

Mr. Vernot admits that he did not visit the property in the capacity of assessor before making this assessment, but says that when he was with the Bell Telephone, he “was in between

jobs, and helped with Mr. Cameron who was superintendent of the construction” and that he spent two months on it. “It must have been the spring, February or March 1928”. — He also “visited it (the building) many times after to see Mr. Cameron and also with the Engineering Institute of Canada”. (Vernot’s deposition, p. 12 & 13). He made his valuation “not only from a knowledge of the building; from all available information we had in the office”. (Vernot’s deposition, p. 14).

A complete explanation of the method followed by Mr. Vernot in valuing the main property is contained in Exhibit D-2, which speaks for itself:—

SUN LIFE HEAD OFFICE BUILDING — Assessor’s Notes.

	“Total cost as reported by the Company as at April 30th 1941	\$22,377,769.26
	“LESS:—	
20	Power House Building & Equipment	709,257.14
	Land for Head Office & Power House	1,040,638.20
	Cost of Sidewalk	70,335.00
	Cost of temporary partitions during construction	233,713.38
	Cost of parts demolished to connect up to new building	1,215,450.00
		3,269,393.72
30	“Reported cost of Head Office Building, without land .....	\$19,108,375.54
	Cost .....	\$19,108,375.
	“To adjust cost to 1941 figure, 1927 to 1930 most money spent	
	1927	113.6 index figure
	1928	115.9
	1929	120.3
	1930	117.1
		466.9
40	“Divide by 4 —	116.7
	“1941 figure	109.0
		7.7 —
	“Difference	1,471,344.
		\$17,637,031.
	“Less 5% allowance for presumed extra cost as building “erected in 3 units	881,851.
		\$16,755,180.

“DEPRECIATION

	“Assessed value of 1st two	\$2,176,000.	
	“corner buildings—		
	“Less allowed for portions	1,215,000.	
	“demolished		
		<hr/>	
10		961,000.	
	“Say 25% depreciation	\$240,250.	16 years
	“Total as above	\$16,755,180.	
	“Less	961,000.	
		<hr/>	
		\$15,794,180.	
	“Less about 15 yrs. depn.		
	“say 18%	\$2,840,952.	\$3,081,202.
		<hr/>	<hr/>
20	“Net cost 1941 of building after depreciation .....		\$13,673,978.
	“Add value of land		730,600.
			<hr/>
			\$14,404,578.
			<hr/> <hr/>

“The total revenue of the property is \$1,187,225., which calculated on a 15% capitalization rate gives an economic value of \$7,915,000.

“VALUATION

30	REPLACEMENT		
	90% of \$14,404,578		\$12,964,120.
	REVENUE		
	10% of capitalized value of \$7,915,000.		791,500.
			<hr/>
			\$13,755,620.
			<hr/> <hr/>
		Say	\$13,755,500.
		Less land	730,600.
40			<hr/>
		Building	\$13,024,900.”

When being pressed by the Complainant’s attorneys on the combination of “replacement” at 90% and “revenue” at 10%, here is how Mr. Vernot explains his system. (Deposition of Mr. Vernot, pages 33 and 34).

“We decided that on the large buildings in our Wards that “were rented, totally rented, we took into consideration



10 “50% commercial value and 50% replacement value; that  
“is where the building was built solely for commercial  
“purposes and occupied solely for commercial purposes  
“by tenants. Those that were occupied by owners we would  
“take at 100% replacement cost and nothing for commer-  
“cial value. So the Sun Life happened to fall between these  
“two categories. The total floor space occupied by the Sun  
“Life and the tenants is given by their list and came out  
“to be 60% and 40%.

“Q.—You take that, anyway.

20 “A.—So, if it was in a commercial building wherè there  
“is no owner we allow 50% replacement and 50% commer-  
“cial. In a place where the owner is in the building that  
“would mean 20% commercial and 80% replacement. But  
“that would be if the owner was mixed up among the  
“tenants in the more or less poorer parts of the building  
“as well as the better parts of the building as if the build-  
“ing was completely divided down the middle. In this  
“particular case, the Sun Life occupied the best part of  
“the building and I thought 10% was fair.”

And on page 35 of his deposition, Mr. Vernot gives further explanations:—

30 “The assessors at a meeting, I think it was on the instruc-  
“tions of the Board of Revision, decided that commercial  
“values should be taken into consideration and at the end  
“of our meeting we decided that in the tenant occupied  
“building like flats and apartments, the commercial value  
“should be taken as 75% and the replacement value as  
“25% and it was the majority opinion that the capitaliza-  
“tion figure should not be used as one figure in estimating  
40 “valuation of a property unless the result of its use given  
“by itself is a fair indication of the real value of the pro-  
“perty; also it is evident that it cannot be used in pro-  
“prietor occupied properties or stores in high priced re-  
“tail districts.”

When examined later on by the Respondent's attorney, Mr. Vernot on page 5 of his deposition says:—

“I must say that in the mass of data received for the build-  
“ing, the man who handled it, he also made a preliminary

“assessment on it and he put the figure of 90 and 10. 90  
“for replacement and 10 for commercial. After studying  
“it, I thought it was a fair value.

“Q.—It is a question of opinion. That is your opinion?

“A.—It was his opinion and my own as assessor.

10 “Mr. Hansard:—

“Q.—You said “the man”, who is that man?

“A.—Mr. Munn.

“The President:—

20 :Q.—Can you give us some more particulars as to the pro-  
“portion between the 90 and 10? Do you conclude that 90%  
“must be given to replacement cost and 10% to the com-  
“mercial?

“A.—Yes.

“Q.—Why not 15 and 85, or 20 and 80? You could give me  
“some explanations?

30 “A.—I think I will have to corroborate what Mr. Hulse  
“said about the principles and methods agreed upon by the  
“assessors, and in commercial buildings, first, we agreed  
“on 50% replacement for strict commercial buildings, and  
“50% commercial value. When I say strictly commercial  
“I mean a building designed and built for revenue pur-  
“poses only.

40 “ When you come into the owner occupied building  
“and renting part of it, we would have to balance the part  
“of the building assessed for commercial purposes and the  
“part assessed as owner occupied. In the case of the Sun  
“Life it was 40% tenant occupied in 1941 and 60% owner  
“occupied. The occupied space. So that would mean that  
“the 50% for commercial would be divided into 20 and 60.  
“There would be another 30% replacement cost added on  
“to the 50, to make it 80 and 20.

“ But as the revenues in this building were based on  
“revenues of much cheaper buildings — the revenue of this  
“building received no competition — I consider that half  
“of the commercial value of 20%, making it 10%, would  
“pay for the amenities and benefits received by the owner  
“of the building.”

As to his assessment of the power house or heating plant, Mr. Vernot was not examined in the examination in chief. In his evidence as the City's witness, he filed a letter received from the Sun Life showing the various main disbursements amounting to \$709,257.14. The letter is filed as D-53.

10 The three next witnesses testified, on behalf of the Complainant, on the revenue approach.

Colonel Owen Lobley, says that in his opinion, the valuation of the land and the building and the heating plant is \$7,250,000. That is the actual value which he defines as follows, on page 2 of his report, filed as P-5: — "Value, for the purpose of this evidence, pertains to actual value, that is the price at which an owner is willing to sell, but does not have to sell, to a buyer who is willing to buy but does not have to buy". He then takes a gross rental income of \$1,109,000. and deducts \$430,000. for operating  
20 expenses, leaving a gross operating profit or net income of \$679,000. After that he proceeds to set aside two items of \$50,000. each, namely \$50,000. as reserve for major items of replacement and renewal and \$50,000. as reserve for obsolescence and for extraordinary tenants' alterations. The balance for net operating return before providing for municipal real estate taxes is \$579,000. Then he takes off the municipal taxes on a basis of a municipal valuation of \$7,250,000. that is \$217,000. obtaining a net operating return of \$362,000. which he capitalizes at 5% thus  
30 obtaining a commercial value of \$7,250,000. which in his opinion is the actual value of the whole property.

Being cross-examined by Counsel for the City, Mr. Lobley says that he did not take into account the replacement value of the building. "Not at all". He did not consider it. "The depreciated replacement cost merely constitutes the ceiling over which a value cannot normally go and because I know that ceiling is higher than the income value I did not bother with it." (Deposition Mr. Lobley, p. 95).

40 And finally to the following question put to him by the President:—"With your theory a valuation of such an immovable as the Sun Life cannot be arrived at without imagining a change of proprietor?" He answers:—"Definitely Sir. And I am capable of imagining it". (Deposition Mr. Lobley, p. 107).

✓ Mr. Alan C. Simpson, the next witness for the complainant, is also of opinion that the only proper way to determine the "real" or "actual" value of this property, "is to determine the

price that it would bring in the full and open market". He contends that "the original cost obviously has no bearing on the value of an old property and the depreciated replacement cost is only pertinent to the extent that it tends to set an upper limit of market value in the sense that, assuming the revenue producing possibilities were sufficient to warrant it, a prospective purchaser, rather than exceed this upper limit, would buy another site and reproduce a similar building as a source of revenue. The case of the Sun Life is a striking illustration of this. It is a large office building of the monumental type, originally built for exclusive use at the head office of a large Company, and as such, with many refinements and embellishments which, while reflected in the rentals obtainable for space in the building to the extent that they add to the value of the "address", do not add to these rentals an amount commensurate with the cost of producing or replacing them etc." (Exhibit P-10, p. 1 and 2).

20 He has based the rentals for the space occupied by the Company on the rentals paid by tenants and arrives to a potential gross revenue with 100% occupancy of \$1,260,545. He deducts 10% for vacancies, \$863,560. for operating expenses and municipal taxes, and a depreciation of 1½% on assessed building value, thus obtaining a net potential revenue of \$68,860. Such a return would be absurd, he says, on the City's valuation, because it would represent 0.48% net while it would represent a normal net income of 5% on an investment of \$7,500,000. He concludes that the market value of the property at the time of the assessment was not more than \$7,500,000.

Commenting on Mr. Vernot's, Mr. Simpson says: "I don't think I would have followed the same methods. I realize that Mr. Vernot, like the other assessors, is confronted with a great many valuations and he cannot go through every building and examine it as carefully as a man making an investigation". (Cf: Mr. Simpson's deposition, p. 130).

40 Mr. Arthur Survever, the next witness, considered only the investment standpoint. If a purchaser were to purchase the Sun Life property at the real value of \$14,276,000. set upon by the City's assessors, with an operating income of \$700,000. he would get a return of 0.68% on his investment. On a purchase price of \$7,000,000. the return of the total money invested would vary between 4.4% and 5.9% depending on the occupancy.

So much for the point of view of revenue exclusively.

Two important experts, Messrs. J. J. Perrault and G. Archambault, have filed reports and given lengthy evidence on the subject of the replacement cost approach.

Mr. Jean Julien Perrault has valued the Sun Life property by using the cube method. He obtained from representatives of the Company all the cube data and the percentage of rentable  
10 area in order to establish the real value of this property, but as a revenue producing building. Mr. Perrault subdivided the building in three units:—Unit "A" comprising that part situated at the corner of Metcalfe and Dorchester constructed from May 1914 to January 1918; Unit "B" comprising that part situated at the corner of Mansfield and Dorchester constructed from 1923 to December 1925; Unit "C" the balance of the structure constructed from 1927 to late 1930 and small sections terminated in August 1931. The heating plant is situated across Mansfield  
20 Street; the garage has not been included. Mr. Perrault is the only witness who referred to a garage on top of the heating plant, which is also mentioned in the Technical Service inspection card.

For the valuation of the Sun Life building, including the heating plant, Mr. Perrault has taken 22,484,061 cubic feet at \$0.81, \$18,212,000.; he deducted \$250,000. for unfinished floors; granted a reduction of 10% to reduce the valuation to the 1939  
30 basis; then deducted 23.3% for depreciation due to planning functional inadaptability and a further depreciation of 21.26% due to loss of rental, thus arriving at an amount of \$9,763,200. for the two buildings, which was brought down to \$8,202,600. in applying a physical depreciation of 28½% for "A", 21% for "B" and 14½% for "C".

For the main building, exclusive of heating plant, Mr. Perrault has taken 21,931,761 cubic feet at \$0.80, \$17,545,000.; deducted \$250,000. for unfinished floors; 10% to reduce the valuation to the 1939 basis; 23.3% depreciation due to planning functional inadaptability and 21.26% depreciation due to loss of rental, thus arriving at a final amount for the main building alone  
40 of \$9,401,000. Then Mr. Perrault proceeds to take off the physical depreciation of 28.5%, 21% and 14.5%, according to the units "A", "B" and "C" thus arriving at a total depreciated value for the main building alone of \$7,894,600. The heating plant, less a physical depreciation of 14.5% for 11 years, gives a net value of \$308,100. and the grand total for both buildings is \$8,202,700.

At the end of his report, Mr. Perrault says:—

10 “In order to arrive at the real value for taxation purposes,  
“that is to say, the value established in a transaction be-  
“tween a seller who wishes to sell but does not have to do  
“so, and a buyer who wishes to buy but is not obligated  
“to do so, the above valuation of \$8,202,600.00 may be sub-  
“ject to a fluctuation, depending on the net revenue of the  
“property. It is quite evident that this net revenue is a  
“very important factor in determining the true real value  
“of this property. The net revenue should be determined  
“after deducting from the gross revenue all operating  
“charges against the property and setting aside an amount  
“to amortize the capital invested in the building, so as to  
“compensate for the physical depreciation of the struc-  
“ture.” (Page 11).

20 Mr. Gaspard Archambault, Civil Engineer, has also used  
the cube method and also valued the property as a revenue pro-  
ducing enterprise. He has taken for the main building 22,000,000  
cubic feet at \$0.80, \$17,600,000.; has deducted \$464,600. for unfin-  
ished parts; has taken a physical depreciation of 15% \$2,570,310.;  
has also deducted 5% for obsolescence \$728,255.; has allowed 18%  
for functional depreciation due to low ratio of rentable area  
\$2,490,630. and 19% for functional depreciation due to value of  
renting space below normal \$2,155,779.; then he has on top of  
that put a special deduction to readjust abnormal 1941 wartime  
30 prices to 1939 level \$919,043., thus arriving at a final replace-  
ment cost of the main building of \$8,271,383. For the power  
house, he has taken 552,000 cubic feet at \$1.00, \$552,000.; has  
allowed a depreciation of 46.37% \$265,962., and has deducted  
10% for special wartime prices \$28,604., thus arriving at a net  
replacement cost for the building of \$257,434. which makes  
altogether with the replacement cost of the main building, a  
total of \$8,528,817.

40 Mr. Archambault also says in the conclusions of his re-  
port:—

“The buyer should add to the sum of \$8,528,817. a fair  
“price for the land and the total obtained will represent  
“the replacement cost less depreciation value of the pro-  
“perty..He should also establish the commercial value of  
“the property. With these two values at hand, a compar-  
“ison should be made and should the replacement cost  
“less depreciation value of the property prove to be higher  
“than its commercial value, then a downward revision

“should be made in order to find its real value and what price should be paid for it, as the commercial value is the one to which the willing buyer will attach the most importance, when he contemplates investing his money in this property.” (Report, p. 5).

Other witnesses for the complainant were Mr. William  
10 MacRossie, Mr. H. J. Nobley, Mr. D. L. McCaulay and Mr. McAuslane. They have given evidence on point of details on which we do not think it useful to make a review in our decision. We simply want to refer “en passant” to the deposition of Mr. MacRossie. He is real estate broker and appraiser in the United States, and President of the American Institute Real Estate Appraisers. In the course of his remarks, which are of rather general character, he said that he doubted whether the method  
20 followed by Mr. Vernot proved that the figure arrived at was the actual reproduction cost at the date the assessment was made. He also doubted if any one would give out a contract to build this building if it was not already built, at a figure thus arrived at. “Historical cost (says he) is knowledge and it undoubtedly is a guide but it is not usually accurate in reflecting current reproduction cost.”

Mr. MacRossie also mentioned that there are three important factors to arrive at the real values:—First, replacement cost; Second, market value; Third, income value. Furthermore  
30 he informed us that the rate of capitalization in New York varies from 7% to 7½%.

The City of Montreal, being in the roll of Defendant in this case, has offered the testimonies of the following witnesses:— Messrs. A. E. Hulse, Chief Assessor, Jos. Houle, architect, J. A. E. Cartier, architect, all three employees of the City, and also the testimonies of Messrs. Victor Fournier, civil engineer, Brian Perry, civil engineer, Harold Mills and G. Desaulniers, real estate experts, B. C. Empey, William Reed and Albert Grimstead.  
40 Mr. Geo. Vernot, the assessor who made this assessment was also heard on behalf of the City. We have already summed up his evidence. Messrs. Houle, Empey, Reed and Grimstead have given evidence which needs not to be summarized here.

Mr. A. E. Hulse, said that one of his chief duties is coordination, and explained the system and the principles followed in his department.

It was decided amongst the assessors, says Mr. Hulse, that in no case the weight to be given to the replacement cost should be less than 50%. Some consideration should also be given to the commercial value in cases in which the owner partly occupies himself and partly rents to others the building. Mr. Hulse has filed in the Memorandum on the assessment of large properties the Exhibit D-5, in which we find that the said properties fall into four categories which determine to a large extent the relative importance of the different factors to be used in arriving at their valuation.

The third category is the one which embraces the properties that are partly occupied by the owners and partly rented such as the Royal Bank, the Canada Life, the Bank of Toronto, the Sun Life etc.; we quote from this paragraph of the Memorandum:—

20 “It must be remembered that properties of this class have  
“been constructed or acquired as a permanent home for  
“the enterprise in question and that frequently the build-  
“ing is laid out for future development, the tenant situa-  
“tion being considered only temporary or incidental. In  
“other cases, the space rented is provided to help carry  
“the cost of the land, or to increase the size of the build-  
“ing, thereby adding to the prestige of the owner and giving  
“what might be called advertising value to the project.  
30 “In these cases the owner is enjoying the full utility only  
“of the space occupied by himself, and is dependent on  
“current rental conditions for the carrying charges on the  
“balance of the building. It would seem that some consid-  
“eration should be given to rental value in these cases, so  
“that the replacement factor should be weighted some-  
“where 50 and 100 per cent, and the commercial value  
“factor make up the difference between 50 per cent and  
“zero. No hard and fast rule can be given for the division  
40 “of weight in these factors, as it will depend on the pro-  
“portion owner-occupied, the extent to which the com-  
“mercial features of the building have been sacrificed to  
“the main design with a view to the future complete use  
“of the building by the owner, or the enhanced prestige  
“of an elaborate and expressive construction. Each proper-  
“ty will have to be considered on its merits within the  
“limits outlined above.”

Mr. Victor E. Fournier, civil engineer, has examined the Sun Life buildings and studied its plan in view of determining



✓  
10 their replacement cost. He has arrived at his prices in taking an ordinary building of \$0.40 per cubic foot, i.e. 22,000,249 at \$0.40 = \$8,800,099.60 adding for extra features \$9,369,443, plus architects fees \$726,781.70, which give a total of \$18,896,324.30; then he takes off for unfinished parts \$355,775.68 and for heating apparatus \$273,974.40, thus arriving at a sum of \$18,266,574.22. Then he adds financing expenses, 3% = \$481,400.30 and obtain, as replacement cost, \$18,747,974.53. Reducing this cost to the figure of 1939 and taking off a depreciation of 1% per annum, he arrives at a net replacement cost or replacement value in 1942 of \$16,387,966.88 for the main building. As to the tunnel and the replacement cost of the power station, he arrives at a net value in 1942 of \$424,144.46, making altogether with the main building a total of \$16,812,111.34.

20 Mr. Brian R. Perry, consulting engineer, has made his estimate from plans furnished by the Company, after having made a very careful personal inspection of the buildings. His estimate of replacement cost was made without reference to any of the other three experts and was prepared by a method completely different from that used by them. He has based his analysis of cost on units applicable in 1939-40 in order to eliminate any unfair influence due to war conditions. After having made a quantity survey he arrives for replacement cost of the main building at a sum of \$20,008,700. to which he adds \$750,000. for financing costs. Then he deducts 13% for 13 years depreciation, 30 thus arriving at a net sum of \$18,060,070. For the heating plant, he arrives by the same way at a net sum of \$501,220. making for both buildings a total of \$18,561,290.

40 Messrs. Desaulniers and Mills declare in their joint report that by reason of their investigation and correlation of the various estimates, they have formed the opinion that the real value of the subject property as of December 1st 1941 is \$15,800,000. But they take the land at another price than the assessed value, and in making the necessary correction, as the land value is not in dispute, they would arrive at \$15,674,700. They put the replacement cost of the main building at \$14,400,000. and of the heating plant at \$470,000.

There remains the evidence of Mr. Cartier, architect in charge of the Valuation Department of the Technical Service of the City of Montreal. He has filed and explained the report of inspection of the property by the staff of the Technical and the cards based on the said report.

There were three inspections made of the Sun Life building by the employees of the Technical Service Department, the first in June 1938, the second in December 1941 and the third in November 1942. Since the date of the first inspection, the Company admits having spent \$674,788.81.

10 The estimate amounting to \$18,706,115.53 was prepared at the end of 1942. The admissions of the Company, as filed in the record, were known in March 1943 and the Technical Service then compared its estimate with the sums spent by the Company brought to the index 109 for 1939 as used in 1941 with the following results:—From 1913 to 1941, the Company spent \$20,686,587.62, which amount reduced to the index 109 comes to \$18,985,585.92 which represents the cost of the construction of the main building. In taking off the depreciation and adding the power plant and the land for both buildings, the Technical Service  
20 figures come to \$17,301,320.

After this necessarily brief review of the evidence, there remains for us to decide if the Complainant has established that the real value of its immoveables, as at the 1st of December 1941, was not in excess of the sum of \$8,433,200. to which we are asked to reduce the assessments, and consequently if the assessors have grossly exaggerated the real value in assessing this property at \$14,276,000. There are three main questions:— 1.—The validity  
30 of the theory in virtue of which this property should be assessed on the revenue approach exclusively, using the said revenue to establish an “imaginary market”. 2.—Does the proof reveal that the assessors have erred, a) in figuring the replacement cost of the buildings; b) in giving an importance of 90% to the replacement cost and of 10% to the commercial value. 3.—Does the proof reveal that there has been discrimination?

1.— On the first question, we have no hesitation in declaring that we cannot find fault with the assessors for having not adopted such a method. For Messrs. Lobley and Simpson there is only  
40 one way to value the Sun Life property: it is to imagine a “willing seller and a willing buyer” and to figure what maximum price the buyer should pay, if he wants to make a reasonably safe investment.

There is no proof of the existence of such a willing buyer. As to the willing seller, he could not be any other than the Sun Life itself, and the only figure contained in the record as to the price at which this prospective seller puts its property is \$16-258,050.27. (Cf.: Admission, Schedule F).

This disconcerting argument has likely been suggested to its sponsors by the reading of the following extract of the decision of the Privy Council in the case of Cedars Rapids Manufacturing and Power Company vs Lacoste (16 D.L.R., p. 171) where Lord Dunedin says:—

10 “Where, therefore, the element of value over and above  
“the bare value of the ground itself (commonly spoken of  
“as the agricultural value) consists in adaptability for a  
“certain undertaking (though adaptability as pointed out  
“by Lord Justice Moulton in the case cited, is really rather  
“an unfortunate expression) the value is not a propor-  
“tional part of the assumed value of the whole under-  
“taking, but is merely the price, enhanced above the bare  
“value of the ground which possible intending undertakers  
“would give. That price must be tested by the *imaginary*  
20 “*market* which would have ruled had the land been ex-  
“posed for sale before any undertakers had secured the  
“powers, or acquired the other subjects which made the  
“undertaking as a whole a realized possibility.”

This was an expropriation case and the subject was an island situated to the north of the medium filum of the St. Lawrence River which at this place is in rapids. The project was to construct a dyke in the bed of the river and to provide for an uninterrupted flow towards the power house. The appellant had  
30 reserved for himself the exclusive right of exploiting a water power, and it has been decided that the extinction of such rights was worth the amount granted above the value of the bare land. It is a possibility which was expropriated, and the “imaginary market” was referred to, not to find the real value of the land but to value the rights and possibilities and the expropriation indemnity which the appellant was entitled to.

There is absolutely no parity nor analogy between this  
40 case and the Sun Life case. Here is a completely developed — and even over developed — property, which is actually and fully and tangibly in existence. Its real value is all there. Why imagine a different situation which may never present itself, a change of proprietor when it can be inferred from the evidence and circumstances than the present one does not contemplate selling?

Moreover, there is nothing either in this decision of the Privy Council or in any of the other decisions quoted which would justify the contention that the assessors should have made

the assessment on the revenue approach only. The stereotyped formula which is so frequently quoted: "la valeur réelle ..... est le prix qu'un vendeur qui n'est pas obligé de vendre et qui n'est pas dépossédé malgré lui, mais qui désire vendre, réussira à avoir d'un acheteur qui n'est pas obligé d'acheter, mais qui désire acheter" does not constitute a complete definition of the real value, but is merely a qualification of one of the numerous elements which may help in determining same. This sentence is not limitative. It does not mean that real value is only that. Furthermore, it has its application to ordinary and current cases of immoveables which can easily be put on the market, but cannot be applied rigourously to a property like the Sun Life which is definitely an unusual one.

To sustain the thesis developed by their experts, the learned Counsels for the Complainant have also had recourse to the authority of Honoré Parent, K.C., and invoked the following passage of the "Real Estate Valuation Manual" (English version, 2nd edition, 1941, p. 57):—

"Whatever be the angle from which this problem is considered, there is only one solution possible — that the property tax rolls should have current value for their sole basis; that is to say, the valuation should be based upon "the price which a person who is not obliged to sell could obtain from a buyer who is not obliged to buy"."

This general statement, made with reference to immoveables which do not fall out of the ordinary, must not be singularized and interpreted without reading the context. We could quote abundantly from the "Manual" to show that Mr. Parent, never thought of stressing the opinion that the assessors should pay attention merely to the "current values".

By instance, see page 17:—

"These three elements — purchase price, market price and revenue — as well as a fourth remaining to be defined, buttress and balance one another in such a manner as to insure a solid basis for tax rolls."

"To these factors there must still be added intrinsic value or cost of replacement."

Page 19:—

10 “I would carry the investigation farther. I would in the  
“final analysis check the figures so obtained by compar-  
“ing them with the amount of risk assumed by the insurers.  
“That is not always conclusive, but at times may be very  
“efficacious, if only to confound an owner who insists  
“that his building is overvalued, when his own valuation,  
“for purposes of insurance, shows the contrary. The same  
“applies to the sum at which the property is carried in  
“his books.”

Page 24:—

20 “Purchase price, market price, revenue and cost of con-  
“struction or of replacement are thus the principal fac-  
“tors which should receive the attention of the experienced  
“buyer. These are the four elements, the combination of  
“which will establish the value of property for purpose of  
“municipal valuation. Considered singly, none can give  
“the result required, any more than water can be secured  
“from one part of oxygen without the two parts of hydro-  
“gen. That is why, in the course of these notes, an effort  
“has been made to stress the close relation existing be-  
“tween these different factors, and to show that non may  
“exist except as it functions with the others. It will be  
“relatively easy for the buyer, the assessor, the expert or  
30 “the expropriation commissioner, after having listed all  
“these elements in proper order, to work out the problem  
“to a well directed conclusion corresponding to the true  
“value of the property under examination.”

Page 29:—

40 “The common method of assessing properties does not ap-  
“ply to immoveables difficult to sell in the usual course  
“of business, such as large buildings for factory purposes;  
“in such cases, other criteria should be applied, as the  
“estimate of cost of construction or of replacement. . . ”

Page 40:—

“For instance, how may the value of all buildings be  
“measured on the basis of yield when an important pro-  
“portion yields nothing: whether because it is impossible  
“to extract any profit from them, as in the case of vacant  
“lots; or because at the moment of valuation they are

10 “unproductive, as in the case of unoccupied houses; or  
“because the building is not on a rental basis, as in that of  
“certain industrial enterprises? Three different methods,  
“therefore, would be necessary to value the revenue, ac-  
“cording to the cases which appear for consideration, or  
“the value would have to be based on rental, where that  
“would be possible, and on another basis, where rental is  
“not available. Even in considering but one type of build-  
“ings — dwellings, — it would be necessary to calculate  
“revenue in different ways, depending on whether we are  
“dealing with apartment houses or individual dwellings,  
“such as cottages. It is easy to see upon what an uneven  
“basis such a taxation system might be laid.”

20 It is useful to consult, on this point, the following author-  
ities quoted by the attorneys for the Complainant and for the  
City:—

Lacroix vs City of Montreal, 54 S.C. 130; Cassills vs City  
of Montreal, 14 S.C. 269; Cie d'Approvisionnement d'Eau vs  
Ville de Montmagny, 24 K.B. 416; Gouin vs City of St. Lambert,  
67 S.C. 216; Gramplan Realities Ltd. vs Montreal East, 1 D.L.R.  
405; Canada Cement Co. vs Montreal East, 35 K.B., 411; Que-  
bec Apartments Ltd. vs Cité de Québec, 45 R.L. n.s., 283; Pelle-  
tier vs Cité de Rivière du Loup, 59 S.C. 489; Lespérance vs Cité  
de Valleyfield, 39 R. de J. 231.

30 Before leaving this question of “revenue approach”, it  
may be well to remark that, the assessor having taken as a basis  
an annual revenue of \$1,187,225., which is about \$2,000. less than  
the gross declared by the Company, there is not a substantial  
discrepancy between the figures arrived at for the commercial  
value, by the assessors and the witnesses for the Company:—  
Mr. Lobley: \$7,250,000.; Mr. Simpson: \$7,500,000.; Mr. Vernot:  
\$7,915,000.

40 2.— The assessor has figured the replacement cost of the build-  
ings in taking as a basic figure the cost price reported by the  
Company. Messrs. Perrault and Archambault have used the  
cube method, Mr. Perrault in taking 22,484,061 cubic feet at  
\$0.81 and Mr. Archambault, 22,552,000 cubic feet at \$0.80 with a  
net result of \$8,202,700. and \$8,528,817.

It is to be noted concerning the method of these two ex-  
perts: a) that they have taken as starting point a cubic figure

based solely on their experience. Although their cubic prices in this case, give gross figures which are not much at variance with the assessor's, we are of the opinion that, for a building of this importance, the cost price or the quantity survey methods are less arbitrary and more accurate; b) that in making allowances for "functional" depreciation and obsolescence, on top of the physical depreciation, they have overstepped the field of  
10 the replacement to encroach on the one of the economic value. The deficiencies, if they exist, are reflected in the rental value on which is based the commercial value; so that Messrs. Perrault and Archambault are making double use of the same allowances.

For the replacement as well as for the commercial value, there does not seem to be a great difference between the assessors and Messrs. Perrault and Archambault and these experts admitting that both factors should be used, the only question is  
20 in what proportion must each of the factors be taken into consideration. Mr. Vernot has explained why he gave an importance of 90% to replacement and 10% only to revenue. It may be, as we will explain later, that this proportion is not mathematically adequate, but there has been no proof made against it.

3.—This property, a "large and exceptional" one, as the learned Counsel for the Complainant puts it; cannot suffer any just comparison with other properties in the City. But it falls in one of the categories mentioned in the Memorandum filed as D-5 and  
30 has been accordingly assessed, as all the other large properties falling in the same category.

What would clearly constitute discrimination but in favor of the Complainant would be to assess this property on the revenue approach only and thus arrive to a cubic foot price of \$0.29 which would be ridiculous.

A former assessment does not constitute "res judicata"; neither can the increase from the previous roll be invoked as  
40 discrimination, nor the fact that other large buildings were not increased in proportion. If the present assessment is correct, the previous one was wrong, or the property was not in the same condition, which is the case of the Sun Life building which has been gradually completed and occupied at various periods. It is not proven that other large properties in a similar condition have not been increased.

The wide margin between the commercial value and the replacement cost is not a proof of discrimination. It is due to

the fact that the Sun Life property is a very exceptional one, not built to be rented to tenants but for the use of the Company itself with special amenities and facilities; it is also due to the fact that the commercial value has been arrived at in accepting the actual rentals as declared by the Company based on the tenants' rental, which are not a just yardstick to fix the value of the space occupied by the Sun Life itself; it is also to be noted  
10 that the service space, the vacant space are not accounted for in the revenue.

We are convinced that the Complainant does not suffer from any discrimination with the present assessment.

In reconstituting these assessments, along the same lines as the one followed by the assessors, whose method we find reasonable and just, and in taking the figures contained in the joint admission, we would proceed as follows:—  
20

The cost of the head office building up to April 30th 1941, was \$20,627,873.92. The amount spent on construction of the said head office building from April 30th to December 1st 1941, was \$58,713.70. (See joint admissions 1 & 4). The total cost of the head office building was \$20,686,587.62.

The said sum includes \$70,335. for the sidewalk, \$233,713.38 for temporary partitions during the construction, and \$1,215,450.  
30 for cost of parts demolished to connect up the new building, altogether a sum of \$1,519,498.38 which we deduct from the total, obtaining a residue of \$19,167,089.24.

The construction having been started in 1913, the cost index from 1913 to 1941 varies from 68 to 149.8 (68 in 1915 and 149.8 in 1920) the total expenditure for each year being reduced to 109 which represents the index cost of 1939-40, used for all the assessments on the valuation roll deposited the 1st of December 1941. The fluctuation of market prices and the variation in the  
40 purchasing power of the dollar require an adjustment of values as needed. The cost of material and labor for different trades is obtained monthly and a summation of these prices is made each year in order to adjust the replacement cost of 1936 to that of the required year. The index number for 1936 is represented by 100 an devery other year is adjusted to it.

For the year 1939-40 the index number is 109 and shows that the cost of construction is 9% higher than in 1936. Reducing



or increasing accordingly all expenditures to the year during which they were incurred, we find that the above amount of \$19,167,089.24 has to be reduced by \$181,503.32, or to \$18,985,585.92.

10 Mr. Vernot, the assessor, has made an allowance of 5% "for presumed extra cost as building erected in 3 units", but he said at the hearing that if he had to remake his assessment, he would not make such allowance. We think, on the contrary, that it is advisable to deduct from the original expenditure a certain percentage for loss of time, delays and other inevitable inconveniences in an enterprise of that size. We therefore take off 5% which we think is a reasonable allowance, i.e. \$949,279.30 leaving a cost, before depreciation of \$18,036,306.62.

20 The majority of the experts have allowed 14% for depreciation. We accept this rate of 14% and we deduct from the above amount \$2,525,082.93, thus arriving at a net cost of \$15,511,223.69 for the head office building, without the land. In adding the land, we have \$16,241,823.69.

30 Now as to the heating plant and equipment, its total declared cost is \$709,257.14 without land. Reducing this sum to index number 109 we obtain a gross replacement cost in 1939 of \$641,160. We allow a depreciation of 28% on account of equipment, the building being eleven years old only and we arrive at a net replacement cost of \$461,635. which added to the land \$74,100. makes a total value of \$535,735. The total replacement value for the two properties amounts to \$16,777,558.69.

40 Considering now the revenue approach, we take the given figures of \$768,265.56 as the rental of the part of the building occupied by the Sun Life itself (Schedule E of the joint admission) and \$420,789.74 as the gross rental receipts from the tenants. (Schedule C). These rentals are very low. For instance, on the ground floor 22,817 square feet are occupied by the Company and 1,064 square feet used in common. The charge in the books of the Company is \$48,095.94 a year which is equivalent to \$1.97 per square foot for the best part of the building. Mr. Lobley puts the rental value of the banking hall at \$7.50 and Mr. Simpson at \$6.00 a square foot.

Besides that, the Company charges itself \$768,265.56 in all (Schedule E) taking as a basis the gross rental receipts of \$420,789.74 from the tenants. And this sum of \$420,789.74 represents

the receipts only, not the rentals; some tenants also have the benefit of free occupation. This is not taken into account nor the fact that there is unoccupied space and unfinished space. All the rentable space has been very carefully estimated by Messrs. Desaulniers and Mills and it would be interesting to compare their figures with these. But, as we said at the beginning we are making our computation in accepting the figures of the joint admission,  
10 though we are not ready to approve them.

The total gross revenue as given, namely \$1,189,055.30, divided into \$768,265.56 for the Company and \$420,789.74 paid by tenants, gives a percentage of 64.61% and 35.39%. The building being partly occupied by the proprietor, the rule adopted and followed by the assessors for all the large properties of this category (See D-5) directs us to give a weight of between 50% and 100% to the replacement factor, proportionately to the proprietors declared occupied value. That is, each one per cent of the rental value charged to the proprietor should be multiplied by 0.5 plus 50 in order to obtain the rate of appreciation of this part in the net replacement cost. Thus, 64.61% above mentioned multiplied by 0.5 plus 50 will give 82.3% which is the ratio of importance to be given to the net replacement cost.  
20

On the other hand, the commercial value is appreciated by the complement between 100 and 82.3%, that is 17.7%. In other words, the commercial value factor should be weighed between 50 per cent and zero. The rentals paid by the tenants being equal to 35.39% should be multiplied by 0.5 which gives 17.695 or 17.7% as above.  
30

The next operation is to find the commercial value with the aid of the above figures. From the gross declared revenue we deduct the declared operating expenses of \$436,992.64, leaving a net revenue of \$752,062.66.

We take these operating expenses but we do not admit them as "service" expenses, which usually are what the tenants are paying for besides rental, for instance, heating, janitor service, elevator, frigidaire, gas stoves, cleaning lighting, etc.  
40

It is customary to capitalize the net revenue of properties of this category at 10% for the first year and increasing by 0.05% per year for each of the following years. The "effective" age of the property being 14 years, our capitalizing factor should be 10.7%. The net revenue of \$752,062.66 capitalized at 10.7% gives a capital sum of \$7,028,623.

To the net replacement of the two properties i.e. \$16,777,-558.69 we give a weight of 82.3% thus obtaining the sum of \$13,-807,930.80; to the commercial value of \$7,028,623. we give a weight of 17.7% arriving at \$1,244,066.27 and the total of these two sums represents the real value, that is to say \$15,051,997.07.

### RECAPITULATION

10	REPLACEMENT VALUE	
	Total cost of main building as declared December 1st 1941	\$20,686,587.62
	Less:	
	Cost of sidewalk	\$70,335.00
	Cost of temporary partitions	233,713.38
	Cost of demolishing ,etc.	1,215,450.00
		<u>1,519,498.38</u>
20	Construction cost of the building .....	\$19,167,089.24
	Adjuster cost to index number 1939-40	181,503.32
		<u>18,985,585.92</u>
	Cost of building in 1941 .....	\$18,985,585.92
	Less 5% allowance for extra cost	949,279.30
		<u>18,036,306.62</u>
	Net cost of building in 1941 .....	\$18,036,306.62
	Less 14% depreciation	2,525,082.93
		<u>15,511,223.69</u>
30	Replacement cost of building in 1941 .....	\$15,511,223.69
	Plus land value	730,600.00
		<u>\$16,241,823.69</u>

### HEATING PLANT

	Total cost as declared December 1st 1941	\$709,257.14
	Adjusted cost to index number 1939-40	68,097.14
		<u>\$641,160.00</u>
40	Gross cost of heating plant in 1941	\$641,160.00
	Less 28% depreciation for 11 years	179,525.00
		<u>\$461,635.00</u>
	Replacement cost of heating plant	\$461,635.00
	Plus value of land	74,100.00
		<u>\$535,735.00</u>
	Total value .....	\$535,735.00
	Total replacement value .....	<u>\$16,777,558.69</u>

COMMERCIAL VALUE

Revenue, given for Company occupation	\$768,265.56	=	64.61%
Revenue paid by tenants for occupation	420,789.74	=	35.39%
	<hr/>		
Total gross revenue	\$1,189,055.30	=	100.00%
Rate of appreciation for Replacement Value	= 64.61% x 0.5 plus 50	=	82.3%
10 Rate of appreciation for Commercial Value	= 35.39% x 0.5	=	17.7%
			<hr/>
			100.0%
	<hr/>		
Total gross revenue	=	\$1,189,055.30	
Less operating expenses	=	436,992.64	
		<hr/>	
Net revenue	=	\$752,062.66	

The effective age of the building being 14 years, we capitalize the net revenue of \$752,062.66 at 10.7% giving a commercial value of \$7,028,623.00

20 VALUATION

Replacement value	— 82.3% of \$16,777,558.69	=	\$13,807,930.80
Commercial value	— 17.7% of 7,028,623.00	=	1,244,066.27
			<hr/>
Real Value of both properties			\$15,051,997.07

30 The final figure of \$15,051,997.07, has been arrived at by making all possible concessions to the Complainant's statements. This sum is 5% over the contested assessment and 7.5% less than the book value and marked value in the Company's annual general statement for 1941 and in the Company's return to the Superintendent of Insurance for the Dominion of Canada. (See joint admission 16 and Schedule F). Substantial discrepancies between the opinions of men of experience is of common occurrence when appraising or estimating enterprises of huge dimensions.

40 The Complainant is right in its contention that the boiler house of heating plant must be considered as an integral part of the main property and should not be valued separately. When several lots owned by the same proprietor are used for one and the same purpose, the whole may be valued as as single lot. (Charter, Art. 375).

For these reasons, we come to the conclusion that these two immoveables should be grouped in one for the purpose of assessment and that the Complainant has failed to establish that their present assessments at a total sum of \$14,276,000. is excessive. Wherefore, the said assessments, being considered and grouped

✓  
as a single one, are hereby maintained, with costs of stenography and of transcription against the Complainant. The necessary changes on the roll are ordered and the required certificates are issued.

Account No. 151039-L, SUN LIFE ASSURANCE CO. OF CANADA, 1153 Metcalfe, St. George Ward. Valuation:— \$423,-  
10 280. (water) — \$421,580. (business).

This is a complaint against the assessment of the annual rental value on the roll of August 1942.

The yearly rental of \$768,265.56 which the Complainant has charged itself in its books for 1941, less its proportion of operating expenses, amply justifies the present assessment. (See our decision in the case of the complaint against the real value of  
20 this property).

Wherefore the said assessment is hereby maintained and the complaint is dismissed.

Account No. 151178-L, SUN LIFE ASSURANCE CO. OF CANADA, 1209 Mansfield, St. George Ward, Valuation:— \$26,000. (water and business).

30 Seeing that we have already grouped this immoveable with the main property belonging to the same owner and used with this one for the same purpose, and seeing that the main property is already assessed at its annual rental value under Account No. L-151039 and the various tenants' accounts.

The present annual rental value assessment is hereby reduced to "Nil" and annulled, the changes on the roll are ordered and the certificate is issued.

40 (Signé) CAMILLE TESSIER,  
Président

“ ALBERT PERUSSE,  
Secrétaire.

Vraie copie  
Albert Pérusse,  
Secrétaire.

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A 1

EVIDENCE ON RENTALS FOR VACANT AND FREE SPACE.

W. F. W. W. W.

Simpson Vol. 5 page 871 lines 4-8.

"In the attached tabulation marked Schedule A I have given what I consider a fair rental to the space on the different floors and, after making some adjustmentsm you will notice that I arrive at a potential gross revenue with 100% occupancy of \$1,260,545."

**SCHEDULE "A"**  
**SUN LIFE BUILDING**  
**POTENTIAL REVENUE WITH LEASES AS**  
**AT DECEMBER 1st, 1941**

*P. H. C.*  
*2874*  
*Vol V*

Floor	Occupancy	Area	Rate	Rental
th. th. th. 26, 25, 24	Service only			
23rd.	Poor Office space, unfinished	11,099	1.50	\$ 16,648.00
22nd.	Good Office space, unfinished	16,292	2.05	33,399.00
21st.	Aluminium Limited	13,927	2.05	28,500.00
20th.	Poor Office space, unfinished	16,046	1.35	21,662.00
19th.	3 Tenants	20,982	1.60	33,590.00
"	Vacant	870	1.50	1,305.00
18th & 17th	Aluminium Company	42,599	1.71	73,000.00
16th	5 Tenants	23,511	1.70	40,165.00
"	Vacant	1,426	1.50	2,139.00
15th.	7 Tenants	23,133	1.43	33,294.00
"	Vacant	1,586	1.00	1,586.00
14th.	Candn. International Paper Co.	26,172	1.45	38,000.00
12th	M.D.4	24,191	1.41	34,000.00
11th.	Good Office space, unfinished	23,107	1.75	40,437.00
10th.	10 Tenants	11,281	1.39	15,680.00
"	Sun Life /Bowling/	8,972	0.60	5,383.00
"	Vacant	6,035	1.70	10,260.00
9th.	14 Tenants	21,717	1.67	36,190.00
"	1 Tenant, storage	416	0.14	60.00
"	Free Tenancy, storage	308	0.60	185.00
"	Sun Life	584	1.00	584.00
"	Vacant space, unfinished	1,280	1.70	2,176.00
8th	5 Tenants	9,057	1.63	14,710.00
"	Sun Life /Gym. & Hospital/	14,978	2.50	37,445.00
"	Sun Life	1,766	1.70	3,002.00
"	Vacant space, finished	5,754	1.60	9,208.00
7th.A.	1 Tenant	664	1.63	1,080.00
"	Sun Life	990	1.60	1,584.00
"	Vacant	912	1.60	1,459.00
7th.	7 Tenants	15,666	1.37	20,320.00
"	Sun Life, Hall	9,900	2.50	24,750.00
Forward.....		355,221		\$581,801.00

SUN LIFE BUILDING

Floor	Occupancy	Area	Rate	Rental	
	Forward.....	355,221		\$581,801.00	
7th	Sun Life Club, etc.	9,215	1.60	14,744.00	
"	Vacant space, finished	650	1.60	1,040.00	
6th.	12 Tenants	20,341	1.47	29,929.33	
"	Sun Life	28,544	1.60	45,670.00	
"	Vacant	2,654	1.50	3,981.00	
5th.	Present free tenancy	285	2.00	570.00	
"	Sun Life	47,643	1.50	71,465.00	
4th	Sun Life	45,764	1.50	68,646.00	
"	Vacant	8,705	1.50	13,058.00	
3rd	Present free tenancy	1,197	1.50	1,795.00	
"	Sun Life	43,089	1.50	64,970.00	
"	Vacant	5,140	1.50	7,710.00	
2nd.	Sun Life	49,985	1.50	74,977.00	
1st.	Sun Life	43,980	1.50	64,970.00	
"	Vacant	2,946	1.00	2,946.00	
Ground	10 Tenants	15,561	2.04	31,641.81	
"	Present free tenancy	748	2.25	1,683.00	
"	Sun Life, Main Office	12,320	6.00	73,920.00	
"	Sun Life	10,551	2.25	23,740.00	
"	Vacant space	3,945	2.25	8,876.00	
	Concessions			559.56	
Basement	4 Tenants	7,154	0.62	4,420.00	
"	Sun Life	64,952	0.50	32,476.00	
		780,590		\$1,225,251.70	
	Adjustment of rentals of tenant-occupied space on various floors to bring rates per square foot from \$1.50 on lower floors to \$1.75 on upper floors and \$2.25 on ground floor.....			35,293.00	
				\$1,260,544.70	
			Per Sq. Ft.		
	Total for Tenants	278,910	35.7%	\$439,372.70	\$1.58
	Total Sun Life Space	393,232	50.4%	607,989.00	1.55
	Total Unoccupied Space	108,447	13.9%	177,890.00	1.64
		780,590	100%	\$1,225,251.70	

Note. Simpson makes a vacancy allowance of 10%.



## Judgment of the Superior Court

Province of Quebec  
District of Montreal  
No. 1080 Ex-parte.

10

### SUPERIOR COURT

On the 20th day of September, 1944.

Present: The Hon. Mr. Justice Mackinnon.

Judgment on an appeal from a decision of the Board of Revision  
of Valuation of the City of Montreal rendered •  
on the 21st of June, 1943.

20

This case comes before the court by way of an appeal by the Sun Life Assurance Company of Canada from a judgment of the Board of Revision of Valuations of the City of Montreal rendered the 21st of June, 1943, dealing with a complaint against the assessment of its properties as entered on the valuation roll deposited the 1st of December 1941, and another complaint against the assessment of its properties as entered on the valuation roll deposited the 1st of December, 1941, and another complaint against the rental value in respect of its own occupancy of the Head Office building or Heating Plant. For the sake of brevity the Sun Life Assurance Company of Canada, the complainant, will be referred to as "the Sun Life", the City of Montreal as "the City" and the Board of Revisions of Valuation as "the Board".

30

The company has appealed from the decision of the Board by virtue of 384 of the charter of the City as amended by 1 Geo. VI, ch. 103, sec. 59 which enacts:

40

"An appeal shall lie from any decision rendered by the board of revision in respect of any entry on the valuation roll or on the tax roll, and from the decision rendered by the assessor in respect of a complaint receive relative to an entry made on the tax roll, when the estimation of the rental value so entered does not exceed one thousand dollars, to any one of the Judges of the Superior Court by summary petition, either in term or vacation, within a delay of ten days from such decision. Such petition must be served upon the other party during the usual hours and according to the rules of the Code of Civil Procedure for writs of summons in ordinary matters".

At the hearing the following admission were made:

10 “It is agreed between the parties that the company (Sun Life Assurance Company of Canada) does not dispute the valuation of lands inserted on the rolls. It is agreed that it will not challenge the legality of or the procedure in making the roll, or the jurisdiction of this Board.

On the other hand, the City agrees that any evidence that may happen to enter this case on the value of the land shall not be used either to increase the assessment on the land or to offset a diminution, if any, on the value of the buildings.”

20 Prior to the hearing the following joint admission was made by the parties under express reserve of the right to object at the hearing to their relevancy:

“A.—*Question asked by the respondent:*

30 1. The cost of the complainant's head office building up to April 30th, 1941, including all capital expenditures to that date, but excluding the cost of land, was \$20,627,873.92. The foregoing figure includes Architectural and Engineering fees, but no taxes or interest during construction.

2. (a) Excavation for the construction of the complainant's original head office building, situated at the corner of Metcalfe and Dorchester Streets was commenced in the month of June, 1913, and the said building was completed and occupied in the months of January, February and March 1918.

40 (b) Excavation for the construction of the first extension of the said head office building, carrying the same to Mansfield Street was commenced in the summer of 1922 and the said first extension was completed and occupied in December, 1925.

(c) Excavation for the construction of the second extension of the said head office building was commenced in May 1927 and the structural portion thereof was completed by December, 1930. Partial occupation commenced in 1929 and certain of the upper floors have been completed from time to time since.

3. The amounts spent per year on the construction of the said head office building, making up the said total of \$20,627,873.92 (including costs of demolition, removal, reconstruction and making good occasioned by the aforesaid extensions) are as shown in the statement hereto annexed as Scheduled "A" to form part hereof.

10 4. The amount spent on construction of the said head office building from April 30th to December 1st, 1941, was \$58,713.70.

5. The cost of completing the power house for the said head office building and of the equipment for the said power house exclusive of the cost of land was \$709,257.14. The foregoing figure includes Architectural and Engineering fees, but no taxes or interest during construction.

20 6. Excavation for the construction of the said power house was commenced in November, 1928, boilers were first inspected and steam used in October 1929 and the structure was completed in March 1930.

7. The only addition or modification to the power house, plant and equipment since completion was a ladder added to the stack in the year 1938 at a cost of \$154.00.

30 8. The floor area exclusive of corridors for each floor of the said head office building including the basements is as shown in the statement annexed hereto to Schedule "B" to form part hereof.

9. The floor area on each floor occupied on December 1st, 1941, by the complainant company and by tenants was as shown in the said Schedule "B".

40 10. The unoccupied floor area of finished rentable space and of unfinished space for each floor including basements as at December 1st, 1941, was as shown in the said statement Schedule "B".

11. The complainant company's tenants on December 1st, 1941, the floor area occupied by each tenant on each floor including the basements and the annual rental in respect thereof were as shown on the statement hereto annexed as Schedule "C" to form part hereof.

12. The gross rental receipts for each tenant and each floor including the basements for the year 1941, to wit, the Complainant Company's last financial year, were as shown in the said Schedule "C".

10 13. Concessions or free space in the said head office building together with the occupants concerned and the area occupied are shown in the statement annexed hereto as Schedule "D" to form part hereof.

20 14. The yearly rental actually charged to the Complainant Company for the year 1937 to 1941 inclusive, as appearing in the books of the company, in the Company's annual statements and in statements supplied to the Superintendent of Insurance for the Dominion of Canada, for the floor space occupied by it per floor, including the basements and the totals thereof were as shown in the statement annexed hereto as Schedule "E" to form part hereof.

15. The cubic content of the said head office building and of the said power house (exclusive of tunnel under Mansfield Street) is 21,931,761 cubic feet and 549,396 cubic feet respectively.

30 16. The amounts shown under the respective headings of Book Value and Market Value in the company's annual general statements and in the company's returns to the Superintendent of Insurance for the Dominion of Canada for the years 1914 to 1941 inclusive were as set forth in the statement hereto annexed as Schedule "F" to form part hereof.

*B—Questions asked by the Complainant:*

40 17. The date of erection and cubic content of the buildings enumerated in the statement annexed hereto as Schedule "G" to form part hereof are as shown in the said statement.

18. The annual assessed values and assessed rental values, as shown in the records of the City of Montreal, of the buildings enumerated in the statement annexed hereto as Schedule "H" to form part hereof for the years therein set out are as shown in the said statement.

19. The percentage of owner occupancy to total rentable space as at the 1st December, 1941, for the buildings enumerated in the statement annexed hereto as Schedule "I" to form part hereof were as shown in the said statement."

The immoveables were assessed as follows:

10

"Account No. 140896, SUN LIFE ASSURANCE CO. OF CANADA, 1153 Metcalfe St. George Ward. Valuation:—\$13,755,500.—Land \$730,600., Building \$13,024,900.

Account No. 140942. SUN LIFE ASSURANCE CO. OF CANADA 1207 Mansfield, St. George Ward. Valuation:—\$520,500. — Land \$74,100., Building \$446,400."

20

The assessments of the annual rental value were:

"Account No. 151039-L. SUN LIFE ASSURANCE CO. OF CANADA, 1153 Metcalfe, St. George Ward. Valuation:—\$423,280. (water) — \$421,580. (business).

Account No. 151178-L. SUN LIFE ASSURANCE CO. OF CANADA, 1209 Mansfield, St. George Ward. Valuation:—\$26,000. (water and business)."

30

The Board of Revision upheld the appellant's contention that the boiler house or heating plant, used solely in connection with the heating and operation of the main building, should not be assessed separately and joined the two together as one assessment, but maintained the assessments at the total of the two valuations placed thereon by the City Assessors, to wit, \$14,276,000, and maintained the business and water tax assessment at \$423,280, as fixed by the assessors in respect of the main building but reduced the business and water tax assessment of \$26,000 on the boiler house to "nil".

40

The assessment of \$13,755,500 thus placed on the head office building and land occupied by it represents an increase of \$3,769,300 over the assessment for the previous year or in other words, an increase of approximately 40%. The valuation placed on the land was in fact reduced by \$3,200 so that the actual increase in the assessment of the building as distinguished from the land was \$3,772,500. The increase in the boiler house valuation over the preceding year amounts to \$295,500 or approximately 135%. The total increase for the combined properties is \$4,064,800.00.

At the hearing the City Attorneys asked the Board to increase the assessment on the main building still further to \$15,130,600 which would represent an increase of 51.51% over the previous assessment.

10 As appears from the Joint Admission, the valuation of the Sun Life building had remained constant since the assessment of 1931-32 being increased only by the amount spent on additional floors from time to time. In November, 1931, on an appeal by the Sun Life the assessment of the immoveables was reduced from \$12,400,000.00 to \$8,000,000.00. The valuation of the boiler house during the same period prior to the assessment now in dispute had remained constant at \$225,000.00 for land and buildings.

20 In its complaint the appellant company contends for a valuation on the main building of \$8,330,600.00 and on the boiler house of \$102,600.00 or a combined total of \$8,433,200.00. The appellant likewise contends that the rental value of the space occupied by it in the main building should not have been assessed more than \$352,034.50.

Art. 376 of the Charter of the City stipulates that:

30 “Every three years the assessors shall draw up in duplicate for each ward of the city a new valuation roll for all the immoveables in such ward. Such roll shall be completed and deposited on or before the 1st of December, after having been signed by the Chief Assessor.

This roll and each of the supplementary rolls mentioned in paragraph b shall contain:—

.....

40 3. The actual value of the immoveables”.

In Montreal the work of assessing all immoveables is performed by assessors appointed by the Executive Committee on the recommendation of the Chief Assessor who with him constitute the Assessors Department. (Art. 373 of the Charter).

Before taking office the assessors take an oath that they will “faithfully, impartially, honestly and diligently perform the duties of an assessor according to law”. (Art. 379) They are independent and are the ones who decide the amount they place

on the valuation roll and no one has any right to dictate to them or influence them in the discretion they have in arriving at their valuation.

Art. 375 (c) of the city charter provides that:

10           “The Chief Assessor shall divide the work in such a manner that at least two assessors shall act together in drawing up the valuation roll or the supplementary rolls”.

20           The two assessors who were supposed to act in drawing up the valuation roll affecting the Sun Life were Lynch and Vernot. Lynch says in effect that he had nothing to do with the assessment of this property. While this was an illegal method of valuation it has been agreed that the legality or the procedure in making the roll would not be challenged. The only argument that can be advanced against the preparation of the roll by Vernot alone is that his valuation has not the same weight as it would have had were it the product of the joint collaboration of two assessors. He had the plans of the building and all the information that he required was put at his disposal. He had previously in-formation that he required was put at his disposal. He had previously informally visited the building.

30           During the hearing and in the judgment reference was made from time to time to “The Real Estate Valuation Manual”. This was commonly referred to as “The Manual”. This is a work prepared by Mr. Honoré Parent K.C. as a guide to the assessors of the City for the purpose of bringing some uniformity into the assessments of all immoveables in the City which of necessity have to be made by wards and by different assessors.

          The first sentence of the preface explains the object of the manual:

40           “This manual has been prepared to explain the system and methods to be used in the municipal valuation of real estate in the City of Montreal and to demonstrate how the problems, so frequently met in the valuation of land and buildings, may be analyzed and solved by the adoption of certain recognized rules and standards.”

          It has been explained that the Manual has no legal character and that the assessors are bound only by the City Charter — that the depreciation table found in the Manual is not mandatory

on the assessors and that its application is left to their discretion. However the depreciation table has been followed quite consistently by the witnesses examined by the City. The Manual represents a great deal of honest and efficient effort on the part of its author to establish uniformity in the assessments.

The duties of the assessor are defined in the Manual as follows:

20 “In brief, it is to be remembered that the municipal assessor, in the exercise of his duties, fulfils almost judicial functions; he is not to be influenced by nor to receive instructions from the municipal council, or from any other person or body. He must personally execute his duties with the fullest independence, to the best of his judgment and according to his conscience. (*Royal vs Corp. du Village de Coteau-Landing* — 1929 — 36 L.R. n.s., 265, *Myerson vs Ville de St. Laurent*, 34 L.R. n.s. 263. *Vancouver Incorp. Act. vs C.P.R.* — 1930 — 4 D.L.R., 80. Improvement District Act, Alberta — App. Div. 1, D.L.R., 1009, — H. E. Manning, *Assessment and Rating*, 1928, p. 148).

30 The law further allows of appeal to certain courts which it designates with fixed delays and in conformity with a specified procedure in cases of illegality or erroneous valuation. The courts should then intervene with prudence; they have not “to judge the competency of the Assessors”; they must not substitute their personal opinion to that of the assessors. . . .”, whose valuation is presumed to be correct and reasonable, so long as the parties concerned have not established “a real injustice or an important deviation“, or that “it is so erroneous that an honest and competent man could not have made it” and that “a substantial injustice has been committed”. (*Shannon Realities vs Ville St. Michel* — 1929 — Privy Council, 47 K.B. 316 — Art. 50, C.P.C. Ch. also *Corp. du Village de St. Ulrice vs Matane* — 1925 — 38 K.B. 247. *Pelletier vs. Cité de Rivière du Loup* — 1921 — 27 R. of J. 230. Ch. also: *Improvement District Act Alberta*, App. Div. — 1924 — 1 D.R.L., 1009. *Gouin vs Cité de St. Lambert*, 1929, 67 S.C., 216. *Vancouver Inc. Act vs C.P.R.* 1930, 4 D.L.R. 80. *Fortin vs Paroisse de Contrecoeur* — 1918 — 24 R. of J. 537. Ch. also: *Daigneault et al vs Notre Dame de St. Hyacinthe* — 1927 — 66 S.C., 338. *Canada Cement et al vs*

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*Ville de Montréal-Est* — 1923 — 35 K.B. 410. Ch. also: *Cooley on Taxation*, Vol. III, Art. 1199. *St. Denis vs Cité de Montréal* — 1915 — 49 S.C., 55. *Lachine Boating and Canoeing Club vs Cité de Lachine*, 1929, — 68 S.C., 123. Ch. also: *McEvoy vs City of Montreal* — 1920 — 59 S.C. 566) ”.

10 The court does not fully agree with that part of the judgment of the Board which states that the assessors “are fulfilling quasi judicial duties and their decisions enjoy the benefit of a legal presumption. The law is clear and the jurisprudence is firmly established”. It goes far beyond the generally accepted rule laid down in *Canada Cement Co. and the St. Lawrence Land Co. vs Ville de Montréal-Est* (35 K.B. 410) that a municipal valuation made by municipal assessors must be presumed just and reasonable so long as no injustice or important variance has  
20 been shown. This rule has been disregarded by the Board in its refusal to accept the valuation of the assessor Vernot and his method of arriving at his assessment and in establishing another of its own compounding.

Art. 375 of the Charter stipulates that the assessors shall draw up a valuation roll which shall contain “the actual value of the immoveables”.

The Board rightly considers that the expressions “real  
30 value” and “actual value” are synonymous.

The French version reads: “La valeur réelle” and it always uses this same expression of “valeur réelle” in all the other articles referring either to valuations or to expropriations: the English text of the Charter uses indifferently the expressions “real value” or “actual value”. The parties agree that the words “valeur-réelle” and “actual value” are synonymous.

40 There is a wide divergence in the view of the parties as to what method or methods of approach should be adopted in order to arrive at the “actual value”. They are in agreement that the following methods or finding or of coming as close as possible to the real value are generally accepted:

- “(a) A recent free sale of the property itself where neither the condition of the property nor the market have since changed.
- (b) Recent free sales of identical properties in the same neighbourhood and market.

- (c) Recent free sales of comparable properties.
- (a) The price which the revenue producing possibilities of the property will command.
- (e) The depreciated replacement cost.”

10 Only two of these five approaches can be considered in arriving at a valuation which can be applied to the Sun Life property. The first three clearly cannot be used.

The submission of the Sun Life is almost entirely based on the fourth of these methods, namely that the value is the price which the revenue possibilities of the property will command. On the other hand the assessment of the city is based mainly on the depreciated cost approach.

20 The authorities cited by the Sun Life are all in support of their contention that the “actual” or “real value” can only be determined by arriving at a market value based on a hypothetical sale and have based their valuations principally on the fourth of these methods namely, that the value is the price the revenue possibilities of the property will command, but as stated by Mr. Justice Guerin in *Canada Cement Co. and Montreal East* there exists in fact no rigid rule for a valuation which is affected by a multitude of circumstances which no ruling can foresee or provide for.

30 It cannot be seriously contended that these five approaches are limitative and every angle tending to establish the worth of a property should be considered. The value at which the property is shown on the books of the Sun Life and as declared by it to the Superintendent of Insurance should be given consideration as having an indirect bearing on the value and previous assessments by the City should also be taken into account.

40 In the Supreme Court case of *King vs Halpin* (1944, 1 D.L.R. 625) Mr. Justice Taschereau said:

“In order to determine the indemnity to be granted in an expropriation matter, several elements may and must be taken into consideration. Thus, it is permissible for the Judge to whom the matter is submitted to examine the purchase price, the municipal valuation, the price paid in the district for similar land, the costs of improvements, the revenue which the property provides, the use which the

owner can make of it, the increase in value of neighboring lands, the opinions of experts, and other special circumstances which can help in finding a solution. And when after having examined these various elements, the Judge of first instance comes to a conclusion as to which there is no error in law, and the amount allowed is justified by the evidence, a Court of Appeal will not interfere. That is the jurisprudence that has been established in the case of *The King vs Elgine Realty Co.* (1943) 1 D.L.R. 497, S.C.R. 49, 55 C.R.T.C. 262.”

In *The King vs Spencer* (1940, 1 D.L.R. 575) Mr. Justice Angers said:

“I may note that the market price is not necessarily a conclusive test of the real value; *South Eastern R. v. London County Council* (1914) 2 Ch. 252 at p. 258; *Pastoral Finance Ass'n v. The Minister* (1914) A.C. 1083 at pp. 1087-8; Cripps on *Compensation*, 8th ed., p. 182.

In these circumstances it seems to me that the only manner in which a value may be set on the *Spencer* building is to figure out the replacement cost and deduct therefrom the depreciation which the buildings now standing have suffered since their erection.”

Schmutz in his book “*The Appraisal Process*” deal with the question of assessment as follows:

“The pertinent data, when assembled and verified, are then processed by one or more of the three basic appraisal techniques: (1) the market data approach, sometimes called the comparative approach; (2) the cost approach, sometimes called the summation and also the replacement cost approach; and (3) the income approach, also known as the income capitalization approach. There are cases, in which none of these three techniques, in simplest form is applicable and variations must be employed in the processing of the data.

The appraisal process contemplates the development of three estimates of value, if the data are available, which are based upon market data, cost, and income. Having developed three indicated values, which are usually dif-

ferent, the question arises as to which, if any, is the indicator of a reasonable value estimate. The analysis of the different value estimates is called correlation and from this analysis emerges the value conclusion.

10 Value cannot be determined. Of necessity it must remain a matter of opinion, and for this reason it should be viewed from as many angles as possible. Here we have mentioned three of the approaches and pointed out that, in most cases, no one can be used to the exclusion of the others.”

McRossie, an expert examined by the Sun Life, mentioned that there are three important factors to be considered in arriving at the real value, namely, replacement cost, market value and income value.

20 The Sun Life attaches considerable importance to the decision in the case of *Cedars Rapids Manufacturing and Power Co. vs. Lacasse*, (16 D.L.R. 168). This case is hardly in point as it dealt with the probable value of a property which has not been exploited whereas the present case deals with a building already erected of which the cost, age, use and the real and possible revenues are known.

30 In support of its contentions that our courts have repeatedly held that the words “actual value” and “real value” mean the current market value, the Sun Life has cited *Montreal Island Power Co. vs. The Town of Laval des Rapides* (1935 S.C.R. 304) *Lacroix vs City of Montreal* (54 S.C. 130) *Cassils vs. City of Montreal* (14 S.C. 269); *La Compagnie d'Approvisionnement D'eau vs Ville de Montmagny* (24 K.B. (1915) 416); *Gouin vs City of St. Lambert* (67 S.C. 216); *Crampean Realities Limited vs Montreal East* 1932 (1) D.L.R. 705) and *Canada Cement Co. vs. Montreal East* (35 K.B. 411). These cases all more or less follow the principle that the real value is the price which a seller  
40 who/is not obliged to sell and who wishes to sell could get from a purchaser who is not obliged to buy and who desires to purchase. This is known as the “willing buyer — willing seller” formula. The difficulty of applying this formula to a property of the nature and size of the Sun Life can well be understood.

The Sun Life Building has been described by the various witness as monumental, colossal and unique and different from an yother building in Montreal.

Lobley in his report gives the following description of the building:

10        “The building may be described as three blocks of diminishing size superimposed each upon the other, together with a heating plant which is below the grade, separate from the building and connected therewith by two underground tunnels for the accommodation of pipelines and traffic.

20        The first block of the building has a frontage on Metcalfe Street of approximately 418 feet by a depth of approximately 220 feet, occupying an area of approximately 87,132 square feet outside measurements. This block contains twelve storeys, one of which is entirely given up to the accommodation of mechanical equipment for the operation of the building.

      Proceeding upwards, the outside dimensions of the next block at its base are approximately 240 feet facing on Metcalfe Street by a depth of 168 feet, giving an approximate area of 38,400 square feet. This block contains nine storeys, one of which is entirely given up to the accommodation of machinery for the operation of the building.

30        The uppermost block has dimensions at its base of 200 feet facing on Metcalfe Street by a depth of approximately 134 feet, giving an area of approximately 26,800 square feet. This block contains seven storeys, three of which are entirely given up to the accommodation of machinery for the operation of the building.

40        The foundations of the building which extend deeply into the ground enclose a basement, sub-basement, and sub-sub-basement, which provide space for machinery necessary for the operation of the building (other than the heating plant and for storerooms both for the use of tenants and for materials necessary for the operation of the building.

      Throughout the building the quality of the materials and workmanship of construction is of the highest order.”

      Simpson, an expert examined by the city in referring to the main building, said:

“It is not a building which is designed purely as a commercial building. It was designed for the head office of the Sun Life, and it was designed a number of years ago. The building has many faults. It has many good points, but it has also a distinct number of faults in its planning.

10           There are various things there much in the manner of wastefulness of space, the amount of service space, the lighting of many of the offices, and the fact that some of the office windows are more or less obscured or partly hidden by balustrades.

The building was designed to have a massive or imposing appearance and in order to get it they sacrificed somehow the utility of the building.”

20           Cartier, one of the city experts, said:

“Ensuite, à l'intérieur regardez le grand hall. On voit là que c'est une bâtisse réellement faite pour servir de monument, pour servir d'édifice exceptionnel. Le fait est que je ne crois pas me tromper en disant qu'il est unique dans tout l'Empire.

30           Maintenant, sa forme. On aurait pu employer plusieurs sortes de formes mais l'on n'aurait jamais obtenu l'effet que l'on a obtenu avec la forme actuelle. Cette forme aurait pu peut-être être contestée pour l'effet d'éclairage, l'effet d'aération du centre de la bâtisse, parce que c'était éloignée des baies de lumière, mais tout cela a été prévu par des experts — et il est incontestable que ce sont des experts: le centre de la bâtisse est occupé par des services, par les ascenseurs, par les corridors, les escaliers d'honneur, les escaliers de service, les cafétérias, gymnases, auditoriums. Ce sont toutes des pièces qui nécessairement ne demandent pas la lumière du jour, la lumière extérieure, le soleil, mais qu'en plusieurs cas même  
40           il est préférable d'avoir un peu loin de la lumière. Les corridors sont spacieux. Il ne pourrait pas en être autrement à mon avis, puisque cette bâtisse-là est appelée à loger plusieurs milliers de personnes. On ne pouvait pas faire de petits corridors, il fallait nécessairement faire de beaux corridors. Et ils ont eu raison parce que c'est même très bien. Même dans les corridors du haut on sent encore la beauté du monument, elle se reflète jusque là.

En outre de cela, les matériaux employés là-dedans sont de toute beauté et je crois que je me résume bien en disant que partout dans cette bâtisse-là, à l'extérieur comme à l'intérieur, on ne peut que voir le monument."

Perry, another of the City experts, referred to the building as follows:

10

"The Sun Life building is unique. We all know that. It is three times as big as the next biggest building for anything like the same type of purpose in Montreal, which puts it in a class by itself.

The materials used are completely unique.

20

The planning of the building is not elaborate, but close to it. Some parts are distinctly elaborate.

The classifications and types of material are of high quality and finish, throughout and makes it impossible to get prices on a great number of things that were made specially for the Sun Life, especially ten years or more after the event.

30

The building has been constructed using the finest obtainable materials, equipment and workmanship. There has been no other building erected in this district with anything like the size or quantities of materials or the class used."

Desanliers also described the building as follows:

"Both the site and building are unique in size and location.

40

The quality of construction and luxury of appointments are of a higher standard than anything else in Montreal.

The building, by its majestic beauty, the perfect harmony of its classic design and general appearance of plain dignity creates undoubtedly an impression on the mind of the passerby."

In order to apply the willing buyer — willing seller formula in valuing the Sun Life building one would have to imagine

a hypothetical sale. This has been the main approach adopted by the Sun Life and its experts in making their valuations. They have based these on prices which would probably attract the prospective purchaser but have failed to consider the price which the Sun Life would have been willing to accept. The court cannot ignore the fact that the Sun Life carried this property at a price almost double the value given it by its own experts. 1. Not only did it carry it at a price exceeding the valuation now in dispute but in returns to the Superintendent of Insurance sworn to under the oath of its principal officers it gave the following valuation (including land):

	<i>Year</i>	<i>Book Value</i>	<i>Market Value</i>
	1930	17,524,459.30	14,727,078.50
20	1931	20,772,288.47	17,974,907.67
	1932	21,392,282.36	18,594,901.56
	1933	21,586,939.57	18,789,558.77
	% 1934	21,632,504.67	18,835,123.87
	1935	21,676,198.01	18,878,817.21
	1936	21,676,198.01	17,676,198.01
	1937	17,357,230.13	17,357,230.13
	1938	17,008,969.66	17,008,969.66
	1939	16,670,793.41	16,670,793.41
	1940	16,644,571.59	16,644,571.59
30	1941	16,258,050.27	16,258,050.27

% (All accounts including land and Power House consolidated in one account).

Surely it cannot be contended that the Sun Life would be a willing seller at the valuation placed on it by its experts in applying the "willing seller-willing buyer" formula. Lobley places it as \$7,250,000.00 Simpson as \$7,500,000.00.

40 On the other hand the Board of Assessors of the City of Montreal on the 18th of November, 1931, reduced the assessment of the property from \$12,400,000.00 to \$8,000,000.00 and the following appear as the annual assessments from them on:

<i>Year</i>	<i>Land</i>	<i>Building</i>	<i>Total</i>
1931-32	733,800.	7,266,200.	8,000,000.
1932-33	733,800.	7,766,200.	8,500,000.



<i>Year</i>	<i>Land</i>	<i>Building</i>	<i>Total</i>
1933-34	733,800.	7,841,200.	8,575,000.
1934-35	733,800.	7,991,200.	8,725,000.
1935-36	733,800.	7,991,200.	8,725,000.
1936-37	733,800.	7,991,200.	8,725,000.
10 1937-38	733,800.	8,016,200.	8,750,000.
1938-39	733,800.	8,046,200.	8,780,000.
1939-40	733,800.	8,302,400.	9,036,200.
1940-41	733,800.	8,343,500.	9,077,300.
1941-42	733,800.	9,252,400.	9,986,200.
1942-43	730,600.	13,024,900.	13,755,500.

20 The roll was frozen in 1937 by the Statute 3 Geo. VI., but this does not sufficiently explain why the assessments previous to 1937 varied so from the ones under consideration. Presumably they were prepared by assessors sworn to arrive impartially at the true and correct value after considering all the various elements entering into their estimate. While the Board has declared that the assessment of 1941 is not an increase in the previous assessments but is a new and independent one the bald fact remains that a tremendous increase was made.

30 The court considers that for a property such as that of the Sun Life both the depreciated replacement approach and the commercial approach should be considered even though the valuations arrived at show a considerable variance.

It is recognised that in dealing with buildings such as churches, theatres, railway stations etc. where there are no means of establishing a normal rental value or to get a true picture of net earnings that the replacement cost must have a considerable bearing on the valuation.

40 The City has attached considerable importance to a judgment of the United States District Court, District of Minnesota, Fourth Division in which the State of Minnesota was plaintiff and the Federal Reserve Bank of Minneapolis defendant where the assessment of a building constructed for the sole use of a bank and as a special purpose building was assessed on its depreciated replacement value. This court also attaches considerable importance to this judgment as many of the features discussed there have arisen in the present dispute.

The statutes of the State of Minnesota governing the method of assessment and defining what property is assessable are singularly similar to that governing the present case.

10 In that case the experts produced by the Bank assumed the building vacant and estimated the annual rental that might be obtained for some presumed use. They emphasized that the bank building was unsuitable for most business purposes and that there was considerable waste space even in its present use. The building was about 12 years old and was intended and designed to house a Federal Reserve Bank for many years to come. The primary object in designing and constructing the building was to erect a structure that would safely preserve the funds and securities of the bank.

20 The only factors given any real consideration by the Bank's experts were the uses to which the building could be put if the Bank moved out and the rental that could be obtained if the building were used for other purposes. (The same approach was made by the Sun Life experts Lobley and Simpson).

30 The State's experts limited themselves to a determination of the reproduction cost, less depreciation as determining the fair cash value. (The same approach was made by the experts examined by the City). They contended that the bank building could be properly designated as a service building and that this is the only feasible, suitable and practical method of determining the true value.

40 The assessor who assessed the building testified that he took, among other things, the following factors into consideration in determining the true value: location; size and shape of the lot; character of surroundings; cost of land; value of land; cost of building; reproduction cost of building; physical value of property; economic life of building; service character of building; previous assessments; previous agreements relative to assessments; character and permanency of occupancy; transportation; and sales and leases of property in the neighborhood. In substantiation of his estimate of the true market value, as contemplated by the statute, he figured the reproduction cost of the building as of May 1, 1936, to be \$2,600,000.00. *He allowed 25% depreciation, being approximately 2% per year for the life of the building, and by reason of the apparent difference of opinion as to the effect of the distinctive architecture on its market value, both artistically and as an utilitarian structure, he allowed an additional 25% for depreciation. Therefore, a total of 50% depreciation is to be found in the assessor's computation.*

The following extracts from the judgment are pertinent:

10           “Obviously, it is in the nature of a semi-public structure, erected for special use. It was not intended for general business purposes and when it was constructed it was assumed that its use would be limited to the needs of the Federal Reserve Bank in the Ninth District for many years in the future.”

20           .....

          “ In attempting to set aside the assessor’s valuation, defendant relies solely upon a valuation computed by the capitalization of estimated income. No consideration is given to the other factors which may bear upon the market value. The building when erected was not primarily constructed to return income as such. It is a single purpose building, and many of its features which may detract from its usefulness as an income producing building may materially enhance its value for the purpose for which it was built, and which purpose and use will probably continue for years to come. Demand for the use is only one factor. To rely entirely on the capitalization of income under these circumstances in determining the market value neglects considerations that are vital. If plaintiff’s figures were adopted, there would result a discrimination and a relative injustice in tax valuation that could not be supported and which would run counter to Chapter 237, Laws of 1935. Defendant cannot escape its just share of the tax burden by erecting a building which is fairly adequate for its needs and which is devoted and intended to be devoted for its particular purpose for many years in the future, and then contend that, because it is only adapted for its requirements as a semi-public institution, it has no market value except as reflected in the capitalization of income for a use which is non-existent and which was never intended.”

30

40

.....

          “ No one factor should be controlling. Many facts and circumstances have evidentiary value in arriving at the true value contemplated by the statute. A rigid standard will only add to the confusion that undoubtedly does exist under the present system of computing values for

real estate taxation. The assessor must be given a reasonable latitude in the exercise of his sound judgment in determining such values”.

10           “Furthermore, it appears that due consideration and allowance have been given by the assessor on account of the architectural and structural limitations that may exist in this building”.

20           The Sun Life Building is a massive monument and one which, by reason of its construction in three stages, was costly and extravagant materials and ornamentation were employed in its construction. The design called for exceptionally wide corridors throughout the building and special features for the use of the Sun Life were incorporated in the building.

30           When the building was originally planned and built the Sun Life contemplated the use of the entire building by its own employees. While it was erected for a special purpose it was built to house office personnel. It is essentially an office building. The Sun Life subsequently found that instead of its staff increasing as contemplated it now requires only about 50% of the building and has established that due to decentralisation of its business it will in the future require less space than it now occupies. The space not required by the Sun Life has been either rented or can be made available for tenants.

          The evidence of McCaulay, the assistant-secretary of the company, on this point is clear:

40           “Q.—Now, we have heard about the Sun Life Building being designed as an office building to house the head office staff of the company. Have you anything to say about that?

          A.—Well, at the time that the design of the building was being undertaken the company was growing at a very high rate. The staff was increasing very rapidly. The actual figures will be given by another witness, and consequently it was anticipated that eventually the company’s Head Office would require a building of the approximate proportions of the present building.

          Consequently the building was designed with the object in view of its being used for offices for the Head

Office Staff and rented to tenants, with the idea always in the back of the designer's mind that eventually it would probably become one hundred percent occupied by the Sun Life.

10 It is not necessary for me to tell you that that situation has not developed. The trend in the last eleven years has been continually downward in numbers of company staff; so that at the time the designs were made the population curve was of a very steep upward trend, and which was offset and the population curve is now going downward. The occupancy has more or less followed that curve."

20 The whole building can be made available for tenants as indicated by Messrs. Mills and Desaulniers in their evidence but the wide corridors and design of the building will not allow the same percentage of rental space as is found in the usual office building. Desaulniers one of the city experts says that the floors above the tenth are advantageously planned to accommodate large companies. The monumental character of the building calls for extraordinary deep office space on the lower floors and a great deal of controversy has developed over the rental value of these floors. In view of the very complete and modern ventilation system in the building and the perfection of inside lighting it would not appear that their rental value has been impaired to the same extent as that considered by the Sun Life experts.

30 It is considered that while the Sun Life building is essentially a commercial building it has certain special service features which would entitle the Sun Life to ask for a greater depreciation than allowed by the assessor Vernot and the Board.

40 In the erection of its building the Sun Life spent considerable sums on special features and ornamentation which do not add to its commercial value and which can never be reflected in a sale price. In arriving at a value by means of the cost approach these features should be considered in arriving at a depreciation allowance as was done in the Minnesota case.

Perry, an expert examined by the City, said:

"In bringing down these items I considered, and this is hypothetical but backed by twenty-five years of experience in building business — had they used limestone instead of granite — it would have cost about the same for setting up — but by using limestone the saving would be

about Eight hundred and forty thousand dollars (\$840,000). That is for the plain walls only.

10        If you take the ornamental features in granite, the columns and then the cornices, with granite it is a great deal more expensive. On the whole I would say with limestone the cost would be roughly forty percent (40%) of the cost of granite, and this would be a saving of Nine hundred and fifty-two thousand dollars (\$952,000),

20        How much of the ornamentation may be considered excessive, I don't know. That is a personal guess. I have left in an amount of limestone of Eight hundred and five thousand dollars (\$805,000) for ornamentation. You could take out any amount for that depending on the appearance of the building and how it is designed. I put three-quarters of that eliminated, leaving one-quarter. Whether that is enough or too much is a matter of opinion."

In his report Perry details these excessive costs as follows:

**“LIMESTONE COULD HAVE BEEN USED INSTEAD OF GRANITE**

Item 'e'

	Plain walls in granite	\$2,100,000.
30	Limestone would cost 50%	
	Brickwork and setting of stone	1,260,000.
	remain same	
	Excess cost of plain granite	\$ 840,000.

Item 'f'

	Ornamental features in granite	1,757,000.
	Limestone would cost about 40%	
	for material, no change for	805,000.
40	setting cost.	
	Excess cost of granite	\$ 952,000.

**2. REDUCTION IN ORNAMENTAL STONWORK:**

Ornament in modern revenue producing buildings is largely eliminated to save cost, e.g. News Building, New York City. Some cost is

justifiable — purely a personal guess  
 — say 25% of the item above

Excess cost of limestone ornamentation \$ 600,000.

10 3. STEEL SASH COULD HAVE BEEN USED INSTEAD OF BRONZE AND GOOD ORDINARY GLASS INSTEAD OF VITA PLATE

Item 'e':

Bronze doors, etc. 225,000.  
 Good steel doors — purely a guess 81,000.

20 Excess cost of bronze 144,000.

5. TERRAZZO FLOORS COULD HAVE BEEN USED INSTEAD OF MARBLE

Items 'i', 'j', 'k':

Marble floors 229,000.  
 Terrazzo would cost 56,000.

30 Excess cost of marble 173,000.

6. MARBLE WALLS COULD HAVE BEEN OMITTED

Items 'i', 'j', 'k':

Marble walls and base 350,000.  
 Plaster and plain base 40,000.

40 Excess cost of marble 310,000.

7. DECORATIVE COST IN BANKING HALL

Item 'l':

Complete ornamentation 469,500.  
 Ordinary construction 70,000.

Excess cost of ornamentation 399,500.

Mills and Desaubniers both accepted Perry's figures as to these increased costs.

It is considered that \$600,000.00 is too great an allowance for extra ornamentation as such a saving would have resulted in a bare unattractive looking building on a prominent site which would undoubtedly affect its attractiveness to tenants and would not be in keeping with the design and appearance of other high class buildings in the City. \$200,000.00 would be an ample deduction under this heading. These items total \$3,548,500.00 to which should be added the architect's fee of 5% (\$177,425.00) in all \$3,725,925.00. This amount of \$3,725,925.00 represents additional and extravagant cost incurred in constructing this monumental building instead of the usual type of fine quality 1st class building.

The Board arrived at a total replacement value of the two properties of \$16,777,558.69:

	"Total cost of main building as declared		
	December 1, 1941		\$20,686,587.62
	Less:		
	Cost of sidewalk	\$ 70,335.00	
	Cost of temporary partitions	233,713.38	
	Cost of demolishing etc.	1,215,450.00	1,519,498.38
			<hr/>
30	Construction cost of the building		19,167,089.24
	Adjusted cost to index number 1939-40		181,503.32
			<hr/>
	Cost of building in 1941		18,985,585.92
	Less 5% allowance for extra cost		949,279.30
			<hr/>
	Net cost of building in 1941		18,036,306.62
	Less 14% depreciation		2,525,082.93
			<hr/>
	Replacement cost of building in 1941		15,511,223.69
40	Plus land value		730,600.00
			<hr/>
	Replacement value of main building		16,241,823.69

#### HEATING PLANT

Total cost as declared De-		
cember 1st, 1941	709,257.14	
Adjusted cost to index number		
1939-40	68,097.14	
	<hr/>	



	Gross cost of heating plant in 1941	641,160.00	
	Less 28% depreciation for 11 years	179,525.00	
		<hr/>	
	Replacement cost of heating plant	461,635.00	
	Plus value of land	74,100.00	
		<hr/>	
	Total value		535,735.00
10			<hr/>
	Total replacement value		16,777,558.69''
	The recapitulation of Vernot's assessment of the main building was:		
	"Total cost as reported by the company as at April 30, 1941		
			\$22,377,769.26
	Less:		
	Power House Building & Equipment	709,257.14	
20	Land for Head Office & Power House	1,040,638.20	
	Cost of Sidewalk	70,335.00	
	Cost of temporary partitions during construction	233,713.38	
	Cost of parts demolished to connect up to new building	1,215,450.00	
		<hr/>	
			3,269,393.72
			<hr/>
30	Reported cost of Head Office Building, without land		\$19,108,375.54
		Cost	19,108,375.00
	To adjust cost to 1941 figure 1927 to 1930 most money spent.		
	1927	113.6 index figure	
	1928	115.9	
	1929	120.3	
	1930	117.1	
		<hr/>	
40		466.9	
	Divide by 4	116.7	
	1941 figure	109.0	
		<hr/>	
	Difference	7.7	
			1,471,344.00
			<hr/>
			\$17,637,031.00

	Less 5% allowance for presumed extra cost as building erected in 3 units	881,851.00
	Amount reported	<u>16,755,180.00</u>
<b>DEPRECIATION</b>		
	Assessed value of 1st two	
10	corner buildings \$2,176,000.00	
	Less allowed for por- tions demolished 1,215,000.00	
	<u>961,000.00</u>	
	Say 25% depreciation \$240,250. 16 years—	
	Total as above \$16,755,180.00	
	Less 961,000.00	
	<u>\$15,794,180.00</u>	
20	Less about 15 yrs. depn. say 18% = 4,840,952.	\$ 3,081,202.00
	Net cost 1941 of building after depreciation	13,673,978.00''

Vernot found the commercial value of the main building to be \$7,915,000.00 and arrived at his assessment of the main building by the following computation:

<b>“VALUATION</b>		
<b>REPLACEMENT</b>		
30	90% of \$14,404,578.00 =	\$12,964,120.00
<b>REVENUE</b>		
	10% of capitalized value of \$ 7,915,000.00 =	791,500.00
		<u>\$13,755,620.00</u>
	say	\$13,755,500.00
40	Less Land	730,600.00
		<u>\$13,024,900.00''</u>

The Board found a commercial value of \$7,028,623.00 and arrived at a real value of both properties of \$15,051,997.07 by the following computation:

“Replacement value — 82.3% of \$16,777,558.69	\$13,807,930.80
Commercial value — 17.7% of 7,028,623.00	1,244,066.27
	<u>\$15,051,997.07''</u>

The difference between the reported cost of the building as stated by the Board (\$19,167,089.24) and by Vernot (\$19,108,375.54) is accounted for by the addition by the Board of an amount of \$58,713.70 spent on the construction of the building from April 1st, 1930, to December 1st, 1941.

10 The Board has deducted an amount of \$181,503.32 as being the adjusted cost to index number 1939-40 (a deduction of less than 1%). Vernot had adjusted this cost on a basis of 7.7 percent and the court can see no reason for brushing aside this percentage as established by him and can find no logical explanation for the Board arriving at the negligible percentage adopted by it. The amount to be deducted on the basis of 7.7 to adjust the cost to 1941 figures is \$1,475,865.87 making the cost of the main building in 1941 of \$17,691,223.37.

20 An additional amount of 5% was deducted by the Board as allowance for extra cost being *for loss of time, delays and other inevitable inconveniences in an enterprise of that size*. Consequently a further deduction of \$884,561.17 brings the cost to \$16,806,662.20. A depreciation of 14% should also be deducted leaving a replacement cost of \$14,453,729.50. Vernot allowed a depreciation of 25% on the 1st two buildings and 18% on the main building which seems reasonable enough but of not sufficient importance to challenge the percentage of depreciation adopted by the Board.

30 However both Vernot and the Board have refused to allow any depreciation on account of the additional costs for granite, monumental work etc. as explained by Perry and adopted by Mills and Desautniers. In the Minnesota case above referred to and relied on by the City the replacement approach was based on a 2% a year allowance for general depreciation and a further 25% on account of its distinctive architecture. The court considers that in dealing with the replacement approach the extra cost of \$3,725,925.00 for the granite, ornamental stone work,  
40 bronze sash, bronze doors etc., should also be taken as an important fact. Consequently an additional depreciation of 14% should be allowed for this extra cost, i.e., \$2,352,932.70. This additional 14% allowed for depreciation takes into consideration the index figure and the 5% extra allowances which entered into the gross amount. This would bring the final replacement value of \$12,100,796.80. To this amount of \$12,100,796.62 must be added \$730,600.00 the value of the land giving a total for the main building and land of \$12,831,396.80.

In allowing this additional 14% for depreciation the court has not taken into consideration the excess cost of the hospital, auditorium, kitchen and cafeteria services and private elevators as they all form part of the special services enjoyed by the Sun Life. Although adding little to the actual value of the building, Vernot and the Board have not considered any allowance for cost of financing and if such allowance should be made it would  
10 be taken care of by the extra cost of these amenities.

In arriving at this amount of \$12,831,396.80 the court has followed the calculations and accepted the figures of the Board except that it has adopted the 7.7 percentage adopted by the assessor Vernot for adjusting the cost to the index number and has allowed an additional 14% for depreciation for extra costs as already explained. There appears no reason for otherwise disturbing the valuation arrived at by the Board. Vernot and the Board do not agree on the depreciated replacement values arrived at by them.  
20

The heating plant assessment will not be disturbed. The assessment as detailed in the judgment speaks for itself and the only criticism that could be offered would be as to the percentage allowed for depreciation. This percentage is not so much at variance with the evidence as to justify it being altered.

The court has carefully read the evidence and studied the record and can see no reason for adopting any one of the various methods adopted by the experts in arriving at their replacement valuations. None of them agree as to the approach or the method of making their calculations or as to the rate of depreciation to be allowed or as to what, if anything, should be allowed for obsolescence and functional disability. There does not appear to be any obsolescence which can be considered in dealing with the replacement value. The so-called functional disability has been taken into consideration in the commercial valuation.  
30

The Board has made a very comprehensive resumé of the evidence of the various experts examined by the parties and of the various factors considered by them in arriving at their various valuations and it is not necessary to again review the evidence.  
40

The commercial value of \$7,028,623.00 found by the Board must remain. It is less than the commercial value arrived at by the experts of the Sun Life and the City has not stressed any error in this valuation.

The Board in arriving at a commercial value based its decision on a total gross revenue of \$1,189,055.30. This is made up of \$768,255.56 charged by the company to itself for the space occupied by it and \$420,789.74 as being the gross rental receipts from the tenants as admitted by the parties. These figures do not take into account a certain amount of free occupation as well as the unoccupied and unfinished space. The rental charged  
10 by the company to itself is more or less a bookkeeping entry and does not necessarily reflect the actual commercial value of the space. The actual potential rental value of all the available rental space in the building as arrived at by Lobley and Simpson, which is approximately the same as the gross revenue on which the Board based the commercial value, justifies the commercial value established by the Board.

Lobley, Simpson, Mills and Desaulniers all have made their own calculations as to the rental possibilities of the build-  
20 ing as a whole, taking into consideration the occupied and unoccupied space, and making their own estimates as to the rental value of all the space in the building. The total potential gross revenue has been estimated by Lobley at \$1,108,000.00, by Simpson at \$1,134,490.00 and by Mills and Desaulniers at \$1,496,444.45. Both the rental valuations of Lobley and Simpson are below the total gross revenue on which the Board based the commercial valuation.

The court attaches particular importance to the valuation  
30 arrived at by Lobley who is the rentals administrator of Eastern Canada for the Wartime Prices and Trade Board and has had a most extensive experience in Real Estate matters. His method of arriving at his valuation is concise and clear. He stated that he assessed the Sun Life for the space it occupied in the building at rates which are in keeping with the rates that are paid for very substantial quantities of space in the same building by a similar character of tenants and at the highest rentals that could be secured at the present time by any first class tenants.

40 It can be assumed that the Board in basing its decision as to the commercial value on the total gross revenue of \$1,189,055.30 has followed the potential gross revenue as estimated by Lobley and Mills rather than what appears to the court to be the excessive potential gross revenue of \$1,496,444.45 estimated by Mills and Desaulniers.

While Mills undoubtedly has had considerable experience in the rental field in the City of Montreal his assessment of the

space in the Sun Life does not appear warranted. He has adopted a formula known as the Sherdon Karkow formula to his own uses. He allots a much higher rate to the Sun Life than for similar space occupied by other tenants. He values the basement at \$2.25 a square foot. He finds that \$2.10 a square foot paid in the Royal Bank Building, built in the centre of the city on land valued at over \$30.00 a square foot justifies the basic rate of  
10 \$1.95 applied to the equivalent area in the Sun Life Building. The whole tenor of his report would indicate that he has gone to the very extreme in all his valuations. He has assessed the land on which the building is erected at \$844,000.00 and that on which the power house is erected at \$86,000.00. The land has been assessed by the City assessors at \$730,000.00 for the main office building and \$74,100.00 for the other building, which valuations have been accepted as correct by the Sun Life and the City. He endeavoured to establish the replacement cost of a building without any qualifications as a builder or architect.

20

Desaulniers who collaborated with Mills has approved of the methods adopted by him in arriving at his estimates as well as the estimates themselves.

The Sun Life has strenuously argued that any property replacement value should be approximately the same as the cost value and that the two should be correlated. In dealing with a property such as the Sun Life the difference in the two values  
30 can be readily understood.

The replacement value of a church might be \$100,000.00 and the commercial value practically nil — in a building designed and economically built for an office building the two values might be the same. In using the two different approaches where the cost is high and the rental low a serious difference must ensue.

The Board has approved of the two approaches but has adopted a peculiar method in its endeavour to correlate the two.  
40 After finding the replacement value of the two plants to be \$16,777,557.69 and the commercial value \$7,028,623.00 it has taken 82.3 of the replacement value and 17.7 of the commercial value and totalling the two results has found the real value of the two main bulidings and the heating plant to be \$15,051,997.07 but has not disturbed the value arrived at by Vernot. Vernot reached his value by adding 90% of the replacement value to 10% of the commercial value.

In 1940 the assessors of the City adopted a memorandum establishing a system for the assessment of large properties such

as of office buildings, apartment houses, departmental stores, hotels, etc. Mr. Hulse, the chief assessor of the city, in his evidence refers to this memorandum:

10           “As regards the weight which should be given to different factors in the case of residential properties, very little difficulties are experienced in that class of property for the reason that they are easily comparable.

It was, however, necessary to make a more detailed study of the matter as regards large properties such as office buildings, apartment houses, departmental stores, and so forth, as the style and special design of the building seemed to differ in almost every case.

20           It was about the month of August, 1940, about fifteen months before we had to deposit the new Roll, that after having cited certain rules and tables for residential properties, the question of the weight to be given the different factors in the case of large buildings came under discussion, and eventually, the following decision was arrived at:

30           So that the quality and class of the building itself would find some reflection in the final valuation it was decided by the assessors that the minimum weight to be given the net replacement value would in no case be less than fifty percent (50%).”

In this memorandum it was set out:

“These properties seem to fall into four main categories, which determine to a large extent the relative importance of the different factors to be used in arriving at their valuation:

- 40           1. Properties that are developed and operated solely on a commercial basis as investment propositions, such as the Insurance Exchange Building, the University Tower Building, the Dominion Square Building, the Drummond & Drummond Court Apartments, etc. etc. The return on those investments varies from time to time according to the demand for and the supply of office and apartment space in the city and more particularly in the district in which they are situated. When the demand exceeds the supply, rents are pushed up and a high return is shown on the investment, en-

10

couraging new construction. When the demand is satisfied and there is an over-supply of space, rents fall and with them the return on the investment. In fact, the situation becomes extreme in a period of low rents, as the operating charges do not decrease proportionately. It would seem that the proper way to provide for this fluctuation in net revenue is to combine the factors of replacement cost and commercial value so as to allow for the more violent changes that occur in abnormal times, without departing too far from the normal values prevailing in a period of balanced supply and demand. It is recommended that these two factors, viz., replacement cost and commercial value, be given equal weight in valuing these properties for a three year period. A revaluation at the end of that time would, of course take into consideration the conditions then prevailing.

20

2. Properties that are completely occupied by their owners, whether constructed for that purpose or acquired with that object in view such as the Canadian Bank of Commerce, the C.I.L. Building, Eaton's, etc. etc. It would seem that properties in that category are always worth to their owners the current cost of replacement less depreciation, since, if the owner had not already acquired such a property, but wished to provide himself with suitable premises at the present time he would have to pay current prices to secure suitable accommodation. In this theory of value being based solely on current cost of replacement less depreciation, it is assumed that the building is of a type suitable to the location. Otherwise, consideration will have to be given to the factor of obsolescence.

30

3. Properties that are partly occupied by the owners and partly rented, such as the Royal Bank, the Canada Life, the Bank of Toronto, the Sun Life etc. etc.

40

It must be remembered that properties of this class have been constructed or acquired as a permanent home for the enterprise in question and that frequently the building is laid out for future development, the tenant situation being considered only temporary or incidental. In other cases, the space rented is provided to help carry the cost of the land, or to increase the size of the building, thereby adding to



10 the prestige of the owner and giving what might be called advertising value to the project. In these cases the owner is enjoying the full utility only of the space occupied by himself, and is dependent on current rental conditions for the carrying charges on the balance of the building. It would seem that some consideration should be given to rental value in these cases, so that the replacement factor should be weighed somewhere between 50 and 100 percent, and the commercial value factor make up the difference between 50 percent and zero. No hard and fast rule can be given for the division of weight in these factors, as it will depend on the proportion owner-occupied, the extent to which the commercial features of the building have been sacrificed to the main design with a view to the future complete use of the building by the owner, or the enhanced prestige of an elaborate and expensive construction. Each property will have to be considered on its merits within the limits outlined above.”

The fourth category dealt with buildings such as hotels and theatres etc. which in no way resemble the type of building under discussion.

30 Mr. Vernot decided that 90% of the replacement value and 10% of the commercial value should be added together to arrive at the actual or real value of the property for assessment purposes.

The following explanation of his procedure is found in the judgment of the Board:

40 “When being pressed by the complaint’s attorneys on his combination of “replacement” at 90% and “revenue” at 10% Vernot explained his system. (Deposition of Mr. Vernot, pages 33 and 34).

“We decided that on the large buildings in our Wards that were rented, totally rented, we took into consideration 50% commercial value and 50% replacement value; that is where the building was built solely for commercial purpose and occupied solely for commercial purposes by tenants. Those that were occupied by owners we would take at 100% replacement cost and nothing for commercial value. So the Sun Life happened to fall between these two categories. The total floor space occupied by the Sun Life and the tenants is given by their list and came out to be 60% and 40%.

Q.—You take that, anyway.

10 A.—So, if it was in a commercial building where there is no owner we allow 50% replacement and 50% commercial. In a place where the owner is in the building that would mean 20% commercial and 80% replacement. But that would be if the owner was mixed up among the tenants in the more or less poorer parts of the building as well as the better parts of the building as if the building was completely divided down the middle. In this particular case, the Sun Life occupied the best part of the building and I thought 10% was fair.'

Further on in his deposition Mr. Vernot said:

20 "The assessors at a meeting, I think it was on the instructions of the Board of Revision, decided that commercial values should be taken into consideration and at the end of our meeting we decided that in the tenant occupied building like flats and apartments, the commercial value should be taken as 75% and the replacement value as 25% and it was the majority opinion that the capitalization figure should not be used as one figure in estimating valuation of a property unless the result of its use given by itself is a fair indication of the real value of the property; also it is evident that it cannot be used in proprietor occupied properties or stores in high priced retail districts."

30

When examined later on by the respondent's attorney, Vernot in his deposition says:

40 "I must say that in the mass of data received for the building, the man who handled it, he also made a preliminary assessment on it and he put the figure of 90 and 10. 90 for replacement and 10 for commercial. After studying it, I thought it was a fair value.

40

Q.—It is a question of opinion. That is your opinion?

A.—It was his opinion and my own as assessor.

Mr. Hansard:—

Q.—You said "the man", who is that man?

A.—Mr. Munn.

The President:—

Q.—Can you give us some more particulars as to the proportion between the 90 and 10? Do you conclude that 90% must be given to replacement cost and 10% to the commercial?

A.—Yes.

Q.—Why not 15 and 85, or 20 and 80?  
You could give me some explanations?

10 A.—I think I will have to corroborate what Mr. Hulse, said about the principles and methods agreed upon by the assessors, and in commercial buildings, first, we agreed on 50% replacement for strictly commercial buildings and 50% commercial value. When I say strictly commercial I mean a building designed and built for revenue purposes only.

20 When you come into the owner occupied building and renting part of it, we would have to balance the part of the building assessed for commercial purposes and the part assessed as owner occupied. In the case of the Sun Life it was 40% tenant occupied in 1941 and 60% owner occupied. The occupied space. So that would mean that the 50% for commercial would be divided into 20 and 60. There would be another 30% replacement cost added on to the 50, to make it 80 and 20.

30 But as the revenues in this building were based on revenues of much cheaper buildings — the revenue of this building received no competition — I consider that half of the commercial value of 20%, making it 10%, would pay for the amenities and benefits received by the owner of the building”.

The Board in altering the percentage of replacement and commercial values as arrived at by the assessor gives the following reasons:

40 “The total gross revenue as given, namely \$1,189,055.30 divided into \$768,265.56 for the company and \$420,789.74 paid by tenants, gives a percentage of 64.61% and 35.39%. The building being partly occupied by the proprietor, the rule adopted and followed by the assessors for all the large properties of this category directs us to give a weight of between 50% and 100% to the replacement factor, proportionately to the proprietors declared occupied value. That is, each one percent of the rental value charged to the proprietor should be multiplied by 0.5 plus 50 in

order to obtain the rate of appreciation of this part in the net replacement cost. Thus 64.61% above mentioned multiplied by 0.5 plus 50 will give 82.3% which is the ratio of importance to be given to the net replacement costs.

10 On the other hand, the commercial value is appreciated by the complement between 100 and 82.3% that is 17.7%. In other words, the commercial value factor should be weighed between 50 per cent and zero. The rentals paid by the tenants being equal to 35.39% should be multiplied by 0.5 which gives 17.695 or 17.7% as above.

20 The court cannot follow the reasoning of either Vernot or the Board in arriving at their percentages. The Sun Life building was constructed for the housing of office workers and 50% of the building is occupied by the company and the rental value can be easily computed.

The criticisms of Lobley and Simpson as to Vernot's application of the 90%, 10% valuation would apply equally to the 82.3% and 17.7% valuation of the Board.

Lobley said:

30 "The capitalized amount of the dependable future income of an office building is regarded by all authorities as the chief instrument for the measurement of value. Mr. Vernot has related it to an insignificant place, viz 10%. He has attributed 90% of the value to his so-called cost of reconstruction less depreciation and 10% to the capitalized amount of the future income.

40 Although it is recognized that the experience and judgment of the valuer play an important part in the use and employment of figures and calculations developed in the process of valuing, there should and must be elementary principles as well as theories behind all formulae. I cannot imagine any principle or theory from which the 90:10 formula has been developed.

I listened most carefully to Mr. Vernot's evidence. He said that it was one of a series of formulae which had been agreed upon by a Committee of assessors, but he gave no information to enlighten us as to the theories, principles or notions that were behind it. Unless or until these theories or principles are disclosed and explained to me,

I find myself unable to comment on them, and to tell the truth, I cannot help feeling that there is nothing behind them.

What have you to say about a system of arriving at a valuation by two different methods and then weighing your final result 90% at one end and 10% at the other?

10

I can see no advantage in doing that. Buildings have one value, whether the year occupied by the owner or by tenants. This is a commercial building. There is no space there that cannot be rented. It is absolutely a commercial building. It is not a one-purpose building like a church. The space which is occupied by the Sun Life can be used by others as it is now, or it can be divided up and used for office space. The cafeteria, if they did not want to use it as a cafeteria, could be rented for office space. Nothing makes it necessary to use it as a cafeteria. The banking hall, it might be hard to find a tenant for that.

20

The building is a commercial building, and there is no reason why there should be a difference, in value whether occupied by tenants or the owner. It has a market value. And the system of dividing it up taking a certain percentage according to whether it is occupied by the owner does not seem to be logical. If you applied that to one kind of building you would apply it to another. If you had a couple of duplexes, one was rented and the other was occupied by the owner. How would it apply there?

30

One other point as regards Mr. Vernot's testimony. He said if he was doing it over again it would reduce his return from 6% to a lower figure. I can't see any person who is going to buy that building and receive only 3 or 3½% on his investment. I can't realize anyone taking this for less than 5%. They might want more. That would be the least return."

40

The court does not criticise the assessor for following the memorandum of 1940 concerning the assessment of certain large properties in order to arrive at a uniformity in the valuation of properties in the city which was intended as a guide. It does however question the percentages allotted by Vernot and the Board.

The court considers that both the replacement value and the commercial value should be considered and that each should

be given equal consideration, viz, the actual value should be 50% of the replacement value plus 50% of the commercial value. In the Sun Life Building the tenant situation cannot be "considered only temporary and incidental". While the Sun Life enjoys the full utility of the space occupied by it, it is not "dependent on current rental conditions for the carrying charges on the balance". The variance between the replacement value and the commercial value is such that the percentages adopted by Vernot and the Board appear to bring a distorted result.

The following is a recapitulation showing how the final valuation has been arrived at by the court:

	"The total cost of the main building as declared Dec. 1st 1941	20,686,587.62
	Less:	
20	Cost of sidewalk 70,335.00	
	Cost of temporary partitions 233,713.38	
	Cost of demolishing etc. 1,215,450.00	1,519,498.38
	Construction cost of the building	19,167,089.24
	To adjust cost to index No. 1939-40 7.7%	1,475,865.87
	Cost of building in 1941	17,691,223.37
	Less 5% allowance for extra costs	884,561.17
30	Net cost of building in 1941	16,806,662.20
	Less 14% depreciation	2,352,932.70
	Replacement cost of building in 1941	14,453,729.50
	Less 14% depreciation for extra unnecessary costs	2,352,932.70
	Replacement value	12,100,796.80
	Plus land value	730,600.00
40	Replacement value of main building & land	12,831,396.80
	Total value of heating plant and land	535,735.00
	Total replacement value	\$13,387,131.80

*Commercial value*

Total gross revenue	1,189,055.30
Less operating expenses	436,992.64
Net Revenue	752,062.66

Capitalization of net revenue 10.7% giving  
a commercial value of \$7,028,623.00

*Valuation*

	50% of replacement value of \$13,387,131.80 —	6,693,565.90
	50% of commercial value of 7,028,623.00 —	3,514,311.50
10	Real value of both properties	<hr/> \$10,207,877.40

As already stated the court agrees with the conclusions arrived at by the Board that these two immoveables should be grouped in one for the purpose of assessment but finds that the complainant has established that the present assessment of a total sum of \$14,276,000.00 is excessive and for the reasons given has come to the conclusion that the assessments, considered and grouped as a single one, should total \$10,207,877.40 with costs of stenography and of transcription against the City and the costs of the present proceedings also against the city.

In maintaining the appeal of the Sun Life as regards the valuation of its immoveable properties the court has not disregarded three cases cited by the city dismissing appeals from decisions of the Board. (*Finance Nationale vs City of Montreal*, 76 S.C. p. 281; *Lynch-Stanton et al vs City of Montreal*, 76 S.C. 286 and a judgment of this court of the 7th of October, 1942, in *Dominion Textile Co. Ltd., vs City of Montreal*). The court has not questioned the judgment of the Board except as regards the adjusted cost to the index number, the percentage allowed for depreciation and the percentage of replacement value and commercial value on which the final valuation was established. The Board has not accepted Vernot's figures on any of these items.

As regards account No. 151039-L being the assessment of the annual rental value on the roll August, 1942, the court considers that this has been amply justified by the evidence of the experts examined by the Sun Life.

As the present annual rental value assessment of the heating plant (account No. 151178-L) has been reduced to nil and annulled by the judgment of the Board and changes on the roll ordered no comment on this point is necessary.

CONSIDERING that for the reasons stated the Sun Life Assurance Company of Canada, appellant has justified its appeal as regards the total assessment of its immoveables and has failed to justify its appeal as regards the assessment of the rental value.

DOTH MAINTAIN in part the appeal of the Sun Life Assurance Company of Canada, appellant, from the judgment of the Board of Revision of Valuations of the City of Montreal rendered on the 21st of June, 1943, and DOTH ORDER that account No. 140896 Sun Life Assurance Company of Canada, 1153 Metcalfe St. St. George Ward and account No. 140942 Sun Life Assurance Company of Canada, 1207 Mansfield St., St. George Ward be grouped as a single one and that the valuation of the lands and buildings be reduced to \$10,207,877.40 (land \$804,700.00, buildings \$9,403,177.40) and DOTH DISMISS the appeal as regards the confirmation by the Board of Revision of the assessment of the annual rental value on the roll of August, 1942, (account No. 151039-L) the whole with costs against the respondent, the City of Montreal, including the costs of shorthand and transcription.

20 S. Martel,  
D.P.S.C.

(Signed) C. Gordon MacKinnon,  
J.S.C.

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#### INSCRIPTION EN APPEL DE LA CITE DE MONTREAL

30 L'intimée inscrit cette cause devant la Cour du Banc du Roi siégeant à Montréal, en appel du jugement prononcé par la Cour supérieure du district de Montréal, présidée par l'Honorable Juge G. MacKinnon, prononcé le 20 septembre 1944, maintenant partiellement l'appel de la requérante.

MM. Montgomery, McMichael, Common, Howard, Forsyth & Ker, avocats, et MM. Geoffrion & Prud'homme, procureurs de la requérante sont prévenus que le 30 septembre courant (1944) l'intimée a déposé cette inscription en appel au greffe du tribunal inférieur, savoir de la cour supérieure.

40 Conformément à l'article 552 de sa charte, la Cité de Montréal n'est pas tenue de fournir cautionnement ou de donner garantie quelconque.

Montréal, le 30 septembre 1944.

Saint-Pierre, Choquette, Berthiaume, Emard,  
Martineau, McDonald & Séguin,  
Procureurs de l'intimée.



INSCRIPTION IN APPEAL AND NOTICE FROM  
SUN LIFE ASS. CO. OF CANADA

The Appellant hereinabove described hereby inscribes this case in appeal before the Court of King's Bench sitting in appeal  
10 for the District of Montreal from the Judgment of the Honourable Mr. Justice C. Gordon Mackinnon of the Superior Court for the District of Montreal, sitting in appeal under provisions of the Charter of the City of Montreal, rendered on the 20th day of September, 1944 maintaining in part with costs the Appellant's appeal from a decision of the Board of Revision of the City of Montreal rendered on the 21st day of June, 1943, and gives notice to Messrs. Saint-Pierre, Choquette, Berthiaume, Emard, Martineau, McDonald & Séguin, Attorneys for Respondent, of its said appeal and of the present inscription and that  
20 the same has this day been filed in the office of said Superior Court for the District of Montreal and that on the 17th day of October, 1944 at eleven of the clock of the forenoon before the Prothonotary of the said Superior Court for the District of Montreal at his office in the Court House, Montreal, the Appellant will give good and sufficient security that it will effectually prosecute the said appeal, that it will satisfy the condemnation and pay all costs adjudged in case the Judgment appealed from is confirmed and that it will then and there offer as surety Montreal Trust Company, a body politic and corporate, duly incorporated according to law and having its head office and principal place of business in the City and District of Montreal and  
30 duly qualified to furnish surety bonds which will then and there justify unto its sufficiency if required.

Montreal, 12th October, 1944.

Montgomery, McMichael, Common, Howard,  
Forsyth & Ker,  
40 Attorneys for Appellant.

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CERTIFICAT DE LA COUR SUPERIEURE

Je, soussigné député-protonotaire de la Cour Supérieure  
de la Province de Québec, pour le district de Montréal, certifie  
10 par les présentes que le dossier en cette cause est déjà transmis à  
la Cour du Banc du Roi (En appel) sous le numéro 2787.

Montréal, 19 décembre 1944.

C. E. Sauvé,  
Député-protonotaire.

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JUGEMENT DE LA COUR DU BANC DU ROI  
(EN APPEL)

Montréal, le vingt-cinquième jour du mois de juin,  
mil neuf cent quarante-huit.

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Présents:—

L'HONORABLE JUGE GALIPEAULT	
..	“ ST-GERMAIN
..	“ ST-JACQUES
..	“ PRATTE
..	“ CASEY

20 LA COUR, parties ouïes par leurs procureurs sur le mé-  
rite des appels interjetés par la Cité de Montréal et la Sun Life  
Assurance Company of Canada (qui seront ultérieurement, par  
abréviation, appelées “la Cité” et “la Compagnie”) d’un juge-  
ment prononcé par un des juges de la Cour Supérieure le 20  
septembre 1944, lequel jugement disposait lui-même d’un appel  
formé par la Compagnie à l’encontre d’une décision rendue par  
le Bureau de revision des évaluations de la Cité sur les plaintes  
formulées par la Compagnie contre les évaluations que les esti-  
mateurs de la Cité avaient faites d’une propriété appartenant à  
30 la dite Compagnie; après avoir examiné les actes de la procé-  
dure, la preuve versée au dossier, et sur le tout délibéré;

ATTENDU que la Compagnie possède à Montréal une  
propriété située sur le côté nord de la rue Dorchester et formée  
de deux terrains séparés par la rue Mansfield; que sur l’un de  
ces terrains la Compagnie a fait ériger un édifice monumental  
dans lequel elle a établi son siège social et ses services adminis-  
tratifs, et dont une partie est donnée en location pour des bureaux  
d'affaires; que le chauffage de cet édifice est assuré par une cen-  
trale que la Compagnie a fait construire sur l’autre terrain; et  
40 que la construction de ces deux bâtiments a coûté à la Compagnie  
plus de \$20,000,000.

ATTENDU que sur le rôle d’évaluation préparé par les  
estimateurs de la Cité pour le 1er décembre 1941, rôle d’après  
lequel devait se faire la répartition de l’impôt foncier, la propriété  
de la Compagnie a été évaluée à \$14,726,000., dont \$13,755,500.  
pour l’édifice principal, et \$520,500 pour la centrale de  
chauffage; et que sur un autre rôle devant servir de base à la

perception des taxes d'affaires et de la taxe d'eau, la valeur locative de l'édifice principal a été établie à \$423,280. pour la fixation de la taxe d'eau, et à \$421,580. pour la taxe d'affaires, la valeur locative de la centrale de chauffage étant établie à \$26,000.;

10 ATTENDU que la Compagnie s'est plainte de ces évaluations au Bureau de revision des évaluations de la Cité conformément aux dispositions de la charte de la Cité, et que ce Bureau, après une longue et minutieuse enquête, a décidé: que les deux bâtiments devaient être évalués ensemble comme s'ils formaient un seul édifice; que l'inscription au rôle de la valeur locative de la centrale de chauffage devait disparaître; et que la Compagnie n'avait pas démontré que la valeur réelle de sa propriété était inférieure \$14,276,000.; et que dès lors, il n'y avait pas lieu de modifier l'évaluation faite par les estimateurs;

20 ATTENDU que la Compagnie a appelé de cette décision du Bureau à un juge de la Cour Supérieure suivant les dispositions de la Charte de la Cité, et que le juge saisi de ce pourvoi a fixé la valeur réelle de la propriété à \$10,207,877.40, au lieu de \$14,276,000.;

30 ATTENDU que la Cité et la Compagnie appellent l'une et l'autre de ce jugement, la Cité pour demander que la décision du Bureau de revision fixant la valeur réelle de l'immeuble à \$14,276,000. soit rétablie, et la Compagnie pour demander que la valeur réelle de son immeuble soit fixée à un montant n'excédant pas \$8,433,200, et sa valeur locative à \$352,045.;

ATTENDU que la valeur du terrain sur lequel les deux bâtiments sont érigés n'est pas mise en question; que les deux parties s'entendent pour reconnaître que les deux édifices doivent être évalués ensemble; et que le débat porte exclusivement sur la valeur réelle de la propriété, et notamment sur la manière de procéder pour établir cette valeur, la valeur locative étant un point secondaire du litige;

40 VU les dispositions de la charte de la Cité concernant l'évaluation des immeubles, et notamment celles concernant la formation du Bureau de revision des évaluations de la Cité et les pouvoirs accordés aux membres de ce Bureau;

CONSIDERANT que l'élévation des immeubles pour les fins municipales est une opération qui requiert de la part de ceux qui en sont chargés des connaissances techniques et une expérience qu'on ne saurait trouver que chez le spécialiste sou-

cieux de concilier l'intérêt particulier des contribuables et celui de la collectivité, de manière à assurer une répartition équitable de l'impôt foncier suivant la valeur des immeubles imposables;

10 CONSIDERANT que les dispositions de la charte de la Cité relatives à la formation du Bureau de revision font voir que le législateur a entendu pourvoir à la création d'un tribunal spécialisé dont les membres auraient le double caractère de juge et d'experts;

20 CONSIDERANT qu'il n'y a pas de règles de droit qui édictent la manière de procéder à l'évaluation des immeubles, à part celles reconnues par la jurisprudence et d'après lesquelles l'évaluation doit tendre à établir une valeur qui reflète autant que possible le prix qu'un acheteur paierait sur le marché libre, et être faite de manière à amener une juste répartition de l'impôt; et que dès lors, il convient de dire qu'en accordant le droit d'appeler de la décision du Bureau de revision, la législature n'a pas dû vouloir que le juge de la Cour Supérieure ou ceux de la Cour du Banc du Roi substituent leur opinion à celle des membres du Bureau sur les points dont la décision requiert une appréciation d'expert, mais qu'il a plutôt entendu accorder aux contribuables un moyen de se pourvoir contre les erreurs certaines, de principe ou de calcul, erreurs qui feraient manifestement échec au principe que les immeubles doivent être évalués de manière à répartir l'impôt équitablement suivant une norme commune à tous;

30

CONSIDERANT, par conséquent, que si la base d'une évaluation faite par le Bureau de revision n'est pas manifestement fautive; si le Bureau n'a pas commis d'erreur évidente dans ses calculs, et que la méthode suivie pour déterminer la valeur n'a pas eu pour effet de créer une injustice certaine, ni le juge de la Cour Supérieure ni la Cour du Banc du Roi ne devraient intervenir pour modifier la décision du Bureau;

40 CONSIDERANT qu'il est reconnu que pour déterminer la valeur réelle des immeubles, il y a lieu de tenir compte: 1, des indications du marché; 2, de la valeur de remplacement; et 3, de la valeur économique de l'immeuble, établie en capitalisant les revenus que cet immeuble est susceptible de produire;

CONSIDERANT que les estimateurs de la Cité, avant à évaluer des immeubles au sujet desquels le marché ne fournit aucun indice de valeur, ont cru devoir classer ces édifices en diverses catégories, suivant leur destination, et adopter une

méthode d'évaluation particulière pour chaque catégorie; que, notamment, les édifices construits en vue de servir de siège permanent aux institutions qui les possèdent, sont évalués suivant leur valeur de remplacement; que les immeubles érigés exclusivement en vue d'être loués sont évalués en tenant compte à la fois et à parts égales, de la valeur de remplacement et de la valeur économique (rendement capitalisé); et que les immeubles destinés premièrement à servir de siège permanent à l'institution qui les a fait construire, mais qui sont en partie occupés par des locataires, sont évalués en tenant compte de la valeur de remplacement et de la valeur économique, la proportion exacte de chacun de ces deux éléments devant être établie suivant les circonstances de chaque cas, pourvu, cependant, que la valeur de remplacement ne compte jamais pour moins de 50%;

20 CONSIDERANT que la propriété en litige a été et demeure destinée à abriter de façon permanente le siège social de la Compagnie; que ce n'est qu'accessoirement à cette fin première, et comme pour remplir une fin secondaire, qu'une partie de l'édifice est donnée en location; et que dès lors c'est à bon droit que cet édifice a été évalué suivant la méthode usitée pour les immeubles ayant un double caractère;

30 CONSIDERANT que tout le litige porte sur le point de savoir si l'édifice de la Compagnie devrait être évalué en tenant compte à la fois de la valeur de remplacement et de la valeur économique, ou seulement d'après sa valeur économique comme le prétend la Compagnie;

CONSIDERANT que ni le Bureau de revision ni le juge de la Cour Supérieure n'ont voulu accepter la prétention de la Compagnie que sa propriété devrait être évaluée en tenant compte seulement de sa valeur économique; que la justesse de cette méthode d'évaluation, qui ne tient pas compte de la valeur intrinsèque de l'immeuble, n'a pas été démontrée;

40 CONSIDERANT, d'autre part, que la méthode d'évaluation suivie par les estimateurs et par le Bureau de revision n'a rien fait qui ne soit juste et équitable; que cette méthode tient compte à la fois de la valeur intrinsèque des immeubles et des aléas du marché immobilier, suivant la destination de ces immeubles; et que par conséquent, le Bureau de revision n'a pas erré dans le choix des deux facteurs dont il a tenu compte pour déterminer la valeur réelle;

CONSIDERANT que le point de savoir exactement dans quelle mesure chacun de ces éléments de valeur doit être con-

sidéré est du domaine des experts parfaitement au courant de tout ce qui peut avoir quelque influence en la matière; et que les membres du Bureau de revision ont toutes les qualités et connaissances voulues pour décider cette question;

10 CONSIDERANT, dans l'espèce, que les membres du Bureau de revision ayant pesé tous les éléments du problème particulier qui leur était soumis, leur décision de faire entrer la valeur de remplacement pour 82.3% et la valeur économique pour 17.7% dans la composition de la valeur réelle n'eut pas dû être modifiée;

20 CONSIDERANT, d'autre part, qu'il appert au vu du jugement attaqué, que les seules divergences entre la décision du Bureau de revision et celle du premier juge portent sur les points suivants: 1o, la fixation de la valeur de remplacement; 2o, le pourcentage de cette valeur qu'il convient de défalquer pour dépréciation; et 3o, l'importance relative de la valeur de remplacement et de la valeur économique, le juge de la Cour Supérieure ayant décidé que ces deux facteurs devaient être pris à parts égales pour former la valeur réelle;

30 CONSIDERANT que le juge de la Cour Supérieure a erré lorsque, pour établir la valeur de remplacement, il a choisi les chiffres établis par l'estimateur Vernot de préférence à ceux du Bureau de revision, le dossier faisant voir que le calcul de l'estimateur était basé sur des données incomplètes, tandis que celui du Bureau a été fait d'après les chiffres exacts fournis par la Compagnie;

40 CONSIDERANT qu'après avoir établi le coût de remplacement comme susdit, le premier juge en a déduit 14% par le motif que l'emploi de certains matériaux ainsi que l'ornementation du bâtiment avaient augmenté le coût de celui-ci sans cependant ajouter à sa valeur au point de vue commercial; et que dès lors il apparaît que l'édifice dont la valeur de remplacement a été ainsi fixée par la Cour Supérieure n'est pas celui de la Compagnie mais un édifice imaginaire qui n'aurait ni le caractère ni la qualité du premier; et que par conséquent, et lors même que le premier juge aurait en raison d'évaluer la propriété en tenant compte dans une égale mesure de la valeur de remplacement et de la valeur commerciale, le jugement serait encore erroné en ce que la valeur de remplacement a été mal établie;

CONSIDERANT que le juge de la Cour Supérieure a de plus erré en classant l'édifice de la Compagnie dans la catégorie

des immeubles purement commerciaux, alors que ce bâtiment a une destination particulière qui n'est pas celle des immeubles construits uniquement en vue des revenus qu'ils peuvent produire;

10 CONSIDÉRANT que le Bureau de revision ne s'est pas trompé dans le choix des éléments dont il devait tenir compte pour établir la valeur réelle de la propriété de la Compagnie; qu'il n'est pas démontré que ce Bureau a erré dans la méthode qu'il a employée pour établir ces éléments, non plus que dans son appréciation de l'importance qu'il convenait d'accorder à chacun d'eux;

20 CONSIDÉRANT que la décision du Bureau a été adoptée après une mûre réflexion sur tous les éléments du problème; qu'elle résulte de l'application à la propriété de la Compagnie des mêmes normes que celles appliquées aux autres propriétés du même genre; que cette décision n'est entachée d'aucun vice justifiant l'intervention d'un tribunal d'appel; et que dès lors, elle n'eut pas dû être modifiée;

30 CONSIDÉRANT, de plus, que dans le rapport que la Compagnie a fourni au surintendant des assurances pour l'année 1941, suivant les dispositions de la Loi concernant les Compagnies d'assurance canadiennes et britanniques (22-23 Geo. V, ch. 46), il a été déclaré que la propriété de la Compagnie avait une valeur marchande de \$16,258,050.27; et que cette évaluation, attestée par le serment de deux administrateurs de la Compagnie, et destinée à renseigner l'autorité compétente, les actionnaires et les créanciers de la Compagnie sur la valeur des biens de cette dernière, est un indice sérieux que la valeur établie par le Bureau de revision est beaucoup plus juste que celle que la Compagnie voudrait maintenant faire fixer;

40 CONSIDÉRANT qu'il n'a pas été démontré qu'il y ait eu erreur dans la fixation de la valeur locative de l'immeuble de la Compagnie;

PAR CES MOTIFS, rejette avec dépens l'appel de la Sun Life Assurance Company of Canada; et statuant sur l'appel interjeté par la Cité de Montréal, y fait droit avec dépens, infirme le jugement attaqué, et jugeant à nouveau, rétablit la décision rendue par le Bureau de revision des évaluations de la Cité, St-Jacques et Casey, J.J. étant dissidents.

J.C.B.R.



## NOTES DE L'HON. JUGE GALIPEAULT

Jusqu'ici, les parties litigantes ont provoqué trois décisions, celles de l'évaluateur de la Cité, du Bureau de Revision et de la Cour Supérieure.

10

Tous ceux-là qui ont eu à se prononcer en ces arrêts sont d'accord sur une question de principe bien importante en la cause, à savoir que la valeur réelle de l'immeuble de la Compagnie Sun Life doit être recherchée en tenant compte tant de la valeur de remplacement que de la valeur économique ou locative, soit de la valeur commerciale.

Le mode d'évaluation qui fait la base du conflit a été reconnu comme celui qui devait être suivi en l'occurrence.

20

Unanimentement, le Bureau de Revision comme la Cour Supérieure elle-même ont donc mis de côté plus d'une théorie entendues au procès, bien que soutenues par des hommes éminents.

Des théories, il y en a pour tous les goûts. Certains témoins vous diront (MM. Lobley et A. Simpson) que pour parvenir à la valeur de l'immeuble en question, seule la valeur économique ou par le revenu capitalisé est l'unique facteur qui doit être considéré.

30

Selon MM. Gaspard Archambault et J. J. Perreault, l'évaluation doit se faire en fonction du revenu seulement, en partant de la valeur de remplacement.

D'après MM. V.-E. Fournier et Bryan A. Perry, telle évaluation doit être faite par la valeur de remplacement seulement, sans tenir compte du revenu.

40

Puis MM. Harold Mills et Guy Désaulniers soutiennent qu'à raison du spécial de cette bâtisse, il serait impossible de trouver la vraie valeur locative de l'immeuble, de sorte qu'il faudrait l'estimer en partant de la valeur de remplacement.

Puis comme dans toute estimation, il faut tenir compte de tous les facteurs possibles, ils déduisent un certain pourcentage arbitraire de leur valeur de remplacement, pour tenir compte des facteurs qu'ils considèrent influencer sur la valeur.

L'estimateur, le Bureau et la Cour Supérieure considèrent que la valeur de remplacement et la valeur par le revenu

doivent toutes deux être considérées. Tous trois sont d'accord sur le principe, mais non sur le pourcentage.

La Compagnie déclare avoir dépensé au 30 avril 1941 pour ses édifices principal et secondaire, la somme de \$22,377,769.26, inclus les terrains qui ont coûté \$1,040,638.20 et l'édifice secondaire \$709,257.14. Le trottoir a coûté \$70,335.00, les divisions  
10 temporaires \$223,713.38.

La valeur du terrain n'est pas mise en question; elle est admise par tous être, quant à l'immeuble principal, de \$730,600.00, et quant à l'immeuble secondaire de \$74,100.00.

On est venu finalement d'accord aussi je crois, quant à la valeur locative de la propriété pour fins de taxes d'eau et d'affaires. En tous cas, là n'est pas le litige.

20 L'estimateur de la Cité a porté au rôle d'évaluation déposé le 1er décembre 1941, la propriété Sun Life à une valeur réelle de \$14,276,000.00.

Le Bureau de Revision devant lequel la Compagnie a porté appel et qui a bénéficié d'admissions des parties et d'une foule de renseignements dont était privé l'évaluateur de la Cité, et devant lequel encore une preuve testimoniale et documentaire considérable a été apportée, en est venu à la conclusion après réductions nombreuses et de toutes espèces, que la valeur réelle  
30 de la propriété était de \$15,051,997.07, mais repoussant l'augmentation demandée par la Cité, a maintenu l'estimation à \$14,276,000.00, telle que fixée par l'estimateur.

Seule la Compagnie a appelé de ce jugement devant la Cour Supérieure qui, le 20 septembre 1944, infirmait la décision du Bureau, réduisant l'estimation de la propriété à \$10,207,877.40, maintenant le jugement quant aux valeurs locatives.

40 Il y aurait donc entre l'opinion du Bureau et celle de la Cour Supérieure une différence de \$4,844,199.67 et entre l'estimation au rôle maintenu par le bureau et le montant fixé par la Cour Supérieure un écart de \$4,068,122.60.

Et la Cité et la Compagnie ont appelé toutes deux du jugement de la Cour Supérieure.

La Cour Supérieure approuve en principe la méthode suivie et par l'estimateur et par le Bureau de Revision, sauf sur trois points (D.C. volume 5 p. 1022) nous dit la Cité:—

10. L'ajustement des montants dépensés par la compagnie pour sa construction au chiffre indice des prix prévalant en 1939-40; le juge prenant le pourcentage de l'estimateur Vernot au lieu de ceux du Bureau de Revision.
20. Le montant de dépréciation; le tribunal en fixant un qui n'est ni celui de l'estimateur, ni celui du Bureau, ni celui d'aucun des experts.
30. L'influence de la valeur de remplacement et de la valeur commerciale dans l'évaluation finale; la cour leur accordant respectivement des pourcentages qui ne sont ni ceux de l'estimateur, ni ceux du Bureau de Revision, ni ceux d'aucun des experts.

Ce sont ces trois points qui représentent une différence de \$4,844,119.60.

Le dossier fait voir que l'estimateur a considéré qu'il devait tenir compte de tous les facteurs possibles qui, de l'admission de toutes les parties, se groupent sous trois titres principaux. I. Les indications du marché ou les ventes de la propriété en question ou de propriétés identiques ou semblables; II. Les valeurs de remplacement, moins la dépréciation; III. La valeur économique ou commerciale par le revenu capitalisé.

Il est admis aussi généralement, je crois, et il y a tellement de logique dans cette admission, que si l'un des facteurs est inexistant, l'on doit avoir recours aux autres.

Il faut reconnaître qu'il n'y a pas de marché pour un immeuble comme celui du Sun Life, qu'il n'y en a pas eu dans le passé, que seule une institution identique à l'appelante, avec les mêmes ressources, les mêmes buts, les mêmes fins recherchées, pourrait être un acheteur possible, au prix qu'il lui conviendrait de proposer. Il ne paraît pas au dossier que l'on ait trouvé cet oiseau rare.

Ce premier facteur indiqué plus haut faisant défaut, l'estimateur a cru devoir recourir aux deux autres, l'un corrigeant l'autre. Le Bureau et la Cour ont approuvé ce principe et ce, à l'encontre des prétentions de la Compagnie qui veut que l'immeuble soit estimé par le revenu seulement.

L'estimateur se reposant sur les chiffres fournis par la Compagnie, a pris le montant total dépensé, a soustrait d'icelui

le coût de l'édifice secondaire, des terrains, des trottoirs, des divisions temporaires, des murs démolis et de la démolition, tel que rapporté, et ceci lui a laissé pour l'édifice principal, sans terrain, une valeur de \$19,108,375.54.

10 Comme les prix de construction étaient plus élevés à la date du 1er décembre 1941, date du dépôt du rôle, il a basé ce dernier sur les prix prévalant entre le 1er mai 1939 et le 30 avril 1940.

20 L'estimateur n'avait pas à sa disposition le détail des montants dépensés chaque année, depuis 1913, pour la construction, dont le gros s'était fait entre 1927 et 1930, alors que les prix étaient très élevés. Il a adopté la moyenne des chiffres indices pour ces années, soit 116.7, et la comparant avec celle de 1939-40, soit 109., il trouve une différence en moins de 7.7% du coût représentant \$1,471,344.00 qu'il déduit de \$19,108,375., laissant \$17,637,031.00.

30 Le Bureau de Revision ayant dans les admissions produites et écrites des parties les montants dépensés chaque année, était mieux renseigné que l'estimateur. Avec l'index des coûts de construction de chacune des années, il a fait le rajustement précis des montants dépensés annuellement à l'index 109 de 1939-40 et a trouvé que le montant de \$19,167,089.24 dépensé au 1er décembre 1941, devait être réduit de \$181,503.32 au lieu de \$1,471,344. adopté par l'estimateur. (Voir jugement du Bureau, Vol. 5, pages 983-a 26 et 27). A noter que le Bureau a ajouté dans son coût \$58,713.70 dépensés entre le 30 avril, date arrêtée dans la lettre de la compagnie, et le 1er décembre qui, lui, est la date du rôle. Entre \$1,471,344. et \$181,503.32, il y a une différence de \$1,289,840.68.

La Cour Supérieure dans son jugement, (vol. 5 p. 1010), dit qu'elle ne voit aucune raison et aucune explication logique dans le geste du Bureau et adopte le chiffre de Vernot.

40 L'estimateur fait sa dépréciation en deux parties, d'abord pour les deux premières bâtisses et ensuite pour la dernière extension, les trois formant aujourd'hui la bâtisse principale. Pour les deux premières bâtisses, il prend l'estimation qu'elles avaient au rôle de 1927, soustrait les parties démolies selon le chiffre indiqué par Sun Life et enlève 25% de ce résidu. Prenant ensuite son coût de tout l'édifice et enlevant la valeur des deux premières bâtisses, il reste avec la partie principale de \$15,794,180. qu'il déprécie de 18% pour quinze ans, trouvant ainsi une dé-

préciation totale de \$3,081,202. En enlevant cette somme de son \$16,755,180., il trouve comme valeur de remplacement dépréciée pour l'édifice principal \$13,673,978. à laquelle il ajoute la valeur admise du terrain soit \$730,600. pour obtenir un total de \$14,404,578. C'est le chiffre adopté par lui au point de vue facteur de valeur de remplacement dépréciée.

10 Le Bureau de Revision, lui, enlève 14% de dépréciation en disant que la majorité des experts ont alloué ce pourcentage. Jugement, Vol. 5, pages 983-a 27. C'est sensiblement moins que Vernot n'avait alloué. Le Juge de la Cour Supérieure signale cette différence, mais adopte le pourcentage du Bureau de Revision, Vol. 5, page 1010.

En somme, le Bureau change la dépréciation de Vernot en se basant sur la preuve et la Cour Supérieure l'approuve ou, du moins, ne change pas cette partie du jugement.

20

Tel que nous l'avons vu précédemment, la première construction avait été terminée en 1918, et la seconde en 1925. Ensuite, il y avait eu démolition de murs pour fondre cette partie avec la dernière construction représentant environ 85% du tout, terminée au point de vue structure en 1930. De 1930 à 1941, il n'y a que 11 ans. De plus, de 1930 à 1941, il y a encore eu au-delà de \$4,700,000. de dépenses à finir et terminer certaines parties de l'immeuble. L'estimateur Vernot avait été large en accordant ses dépréciations.

30

Les experts varient dans les montants de la dépréciation qu'il faut apporter pour atteindre la valeur réelle. Il convient de signaler qu'à ce stage de la cause, en tenant compte des divergences et concordances signalées, nous restons avec les chiffres suivants, sans terrain:—

	Estimateur .....	\$13,673,978.00
40	Bureau de Revision .....	\$15,511,223.69
	Cour Supérieure .....	\$14,453,729.50

Ici, la Cour Supérieure se sépare de l'estimateur, du Bureau de Revision et des experts, pour enlever d'un coup un autre 14% de dépréciation, soit \$2,352,932.70 "depreciation for extra unnecessary cost". Vol. 5, jugement 1007 et 1021.

A la page 1004, Vol. 5, le juge dit ceci:—

“It is considered that while the Sun Life Building *is essentially* a commercial building it has certain special service features which would entitle the Sun Life to ask for a greater depreciation than allowed by the assessor Vernot and the Board.

10 In the erection of the building the Sun Life spent considerable sums on special features and ornamentation which do not add to *its commercial value* and which can never be reflected in a sale price. In arriving at a value by means of the cost approach these features should be considered in arriving at a depreciation allowance as was done in the Minnesota case.”

Le Juge estime que sept item n'ajoutent aucune valeur à l'immeuble et il les déduit entièrement; et qu'un huitième n'ajoute qu'une valeur partielle de \$605,000. De ce chef, il enlève 20 \$3,418,500. Les item en question sont:—

	Surplus pour murs en granit au lieu de pierre pierre à chaux .....	\$840,000.
	Surplus pour ornamentation en granit au lieu de pierre à chaux .....	952,000.
	Surplus d'ornementation assumée en pierre à chaux .....	200,000
	Surplus pour châssis en bronze et vitres “Vi- tra” au lieu d'acier et vitres ordinaires.....	530,000.
30	Surplus pour portes en bronze au lieu d'acier	144,000.
	Surplus pour planchers de marbre au lieu de terrazo .....	173,000.
	Surplus pour murs de marbre au lieu d'enduit	310,000.
	Surplus pour décoration et ornamentation de la salle de banque (Banking Hall) .....	399,500.
	Total .....	3,548,500.

40 Le juge ajoute à ce montant 5% pour honoraires d'archi-  
tecte ce qui lui a donné \$3,725,925. “d'excessive cost”. Plus loin,  
page 1010, il dit ceci:—

“The Court considers that in dealing with the re-  
placement approach the extra cost of \$3,725,925. for the  
granite, ornamental stone work, bronze sash, bronze doors,  
etc., should also be taken as an important fact. Consequently  
an additional depreciation of 14% should be allowed for  
this entire cost, i.e. \$2,352,932.70. This additional 14% al-

lowed for depreciation, takes into consideration the index figure and the 5% extra allowances which entered into the gross amount.”

Dans la même page le juge dit aussi:—

10 “However both Vernot and the Board, have refused to allow any depreciation on account of the additional cost for granite, monumental work, etc., as explained by Perry and adopted by Mills and Desaulniers.”

A ce stage ici, si nous ajoutons la valeur admise du terrain, nous avons pour ce facteur valeur de remplacement les chiffres suivants:—

	L'estimateur Vernot .....	\$14,404,578.00
20	Bureau de Revision .....	16,241,823.69
	Cour Supérieure .....	12,831,396.80

Si nous revenons aux notes de l'estimateur, Vol. 4, page 715, nous voyons que ce dernier adoptant un revenu brut de \$1,187,225. qu'il capitalise à 15%, trouve une valeur économique pour l'édifice principal de \$7,915,000.

30 Le Bureau de Revision, procède autrement. Il se base sur les admissions conjointes pour établir sa valeur locative. Vide jugement du Bureau, Vol. 5, pages 983-A 27, 28 et 29. Pour l'espace occupé par Sun Life, cette dernière dit qu'elle se charge \$768,265.56. Le Bureau adopte ce chiffre. Pour l'espace occupé par les locataires, les encaissements pour l'année 1940 ont été de \$420,789.74. Admissions Vol. 1, page XVI. Ceci donne un total de \$1,189,055.30. Il déduit les dépenses d'opération de \$436,992.64 telles que données par la Compagnie Vol. 4, page 707, laissant un revenu net de \$752,062.66 qu'il capitalise à 10.7%, ce qui donne \$7,028,623.

40

Sur ce point, le juge de la Cour Supérieure dit: Vol. 5, pages 1011 et 1012, “The commercial value of \$7,028,623.00 found by the Board must remain. It is less than the commercial value arrived at by the experts of the Sun Life and the City has not stressed any error in this valuation”.

Sans discuter ce point maintenant, disons simplement que le bureau a trouvé une valeur commerciale ou économique de \$7,028,623. et que la Cour Supérieure l'admet.

M. Lobley avait trouvé, vol. 4, page 750, en se basant sur le revenu, une valeur de \$7,250,000. pour les deux bâtisses.

M. Simpson, lui, avait fixé pour les deux bâtisses, également en se basant sur le revenu, une valeur de \$7,500,000. Vol. 5 page 874.

10 A ce stage ici, nous avons les chiffres suivants pour l'édifice principal et son terrain:—

VERNOT:—

Facteur valeur de remplacement .....	\$14,404,578.00
Facteur valeur économique .....	7,915,000.00

BUREAU DE REVISION:—

20

Valeur de remplacement .....	\$16,241,823.69
Valeur économique .....	7,028,623.00

COUR SUPERIEURE:—

Valeur de remplacement .....	\$12,831,396.80
Valeur économique .....	7,028,623.00

30 Dans la corrélation de ces deux facteurs, ou l'importance respective à leur donner pour trouver la valeur réelle, l'estimateur, le Bureau et la Cour Supérieure ont chacun adopté un pourcentage différent.

L'estimateur Vernot estimant séparément l'édifice secondaire, a pris 90% de la valeur de remplacement et 10% de sa valeur économique pour trouver la valeur de la bâtisse principale.

40 L'édifice secondaire qui a coûté \$709,257.14, a été déprécié par Vernot de 38%, soit à \$446,400.00, ce qui avec le terrain a porté à \$520,500.00 la valeur réelle.

Le Bureau de Revision, par le jeu des indices des prix de construction, réduit le montant dépensé à \$641,160.00 et alloue 28% de dépréciation, portant la valeur totale de remplacement dépréciée à \$535,735.00.

Et la Cour Supérieure adopte le chiffre du Bureau de Revision.



Pour ce qui est des bâtisses principales et accessoire, le Bureau de Revision donne une valeur de remplacement dépréciée de \$16,777,558.69, et une valeur par le revenu de \$7,000,000.00.

Et pour les raisons qu'il donne au jugement, il prend 82.3% de la valeur de remplacement et 17.7% de la valeur économique, ce qui lui donne \$15,051,997.07 pour les deux propriétés, 10 terrains et bâtiments.

La Cour Supérieure, tout en adoptant le principe, diffère d'opinion avec l'estimateur et le Bureau, quant aux pourcentages, et adopte 50% de valeur de remplacement et 50% de valeur économique. Elle tint pour valeur de remplacement des deux propriétés la somme de \$13,387,131.80, et pour valeur économique \$7,028,683.00, donnant une importance égale aux deux facteurs, soit 50% de chacun, et elle arrive à une valeur réelle globale de \$10,207,877.40.

20

L'on sait déjà que le Bureau de Revision avait en mains des indications que ne possédait pas l'estimateur Vernot.

Il apparaît bien au dossier que les chiffres du Bureau sont plus exacts et plus justes, plus mathématiques que ceux de Vernot. Tout de même, la Cour Supérieure s'en rapporte au Calcul de Vernot, soutenant que le geste du Bureau n'a aucune explication logique.

30

Sans entrer dans les détails, encore une fois, l'estimation du Bureau offre plus de garantie que celle de l'estimateur.

Comme le fait remarquer la Cité dans son mémoire, la Cour Supérieure a accordé deux fois une dépréciation de 14%, la seconde pour "excessive cost".

40

Procédant du principe que l'édifice Sun Life est un édifice strictement commercial, mais avec des spécialités de service, qui donnent droit à la compagnie à une dépréciation élevée, elle dit que la Compagnie a dépensé des sommes considérables pour des "spécialités et des ornements qui n'ajoutent rien à la valeur commerciale ou au prix de vente". Le prix qu'ont coûté ces spécialités et ces ornements, devra donc être déduit de la valeur. De ce chef, il enlève complètement sept item et la majeure partie d'un huitième, soit \$3,725,925.00, comprenant les honoraires d'architecte.

Cette somme de \$3,725,925.00 réduite de 14% de dépréciation ordinaire, de 7% pour ajustement selon le chiffre indice,

et de 5% pour construction par étapes, donnait un chiffre résiduaire d'un peu plus de \$2,720,000.00.

Le Juge fixant un chiffre arbitraire de 14% déduit du montant de \$3,725,925.00 la somme de \$2,352,932.70, et ce, en plus du 14% qu'il avait déjà enlevé pour dépréciation ordinaire.

- 10        Bref, il enlève complètement la valeur dépréciée de ces item comme n'ajoutant pas un sou de valeur réelle.

Je regrette ne pouvoir suivre le Savant Juge dans les raisons qu'il donne pour cette déduction de \$3,725,925.00 avant dépréciation etc., et de \$2,352,932.70 après dépréciation. Il s'appuie sur le raisonnement que la Compagnie avait construit l'édifice pour l'occuper en entier, mais qu'elle n'en occupe que 50%, situation qui d'après lui devrait persister. Il réitère que l'édifice est essentiellement commercial, qu'il peut être loué, mais que  
20        les corridors larges et la disposition générale ne procureur pas le même pourcentage d'espace locatif que celui trouvé dans les bâtisses essentiellement à bureaux.

Revenant à son argument que l'édifice essentiellement commercial avec spécialité de services et aménagements spéciaux qui n'ajoutent pas à sa valeur commerciale, ne peuvent se refléter dans un prix de vente, déduction entière doit être faite du facteur de remplacement comme dépréciation additionnelle.

- 30        Le fait que le facteur prix de vente est inexistant n'autorise pas les tribunaux à ne pas considérer ou négliger l'autre facteur, la valeur de remplacement, non plus à déprécier complètement les item qui font d'une construction un bâtiment incomparable; ce serait le renversement des choses.

Lorsque le Savant Juge, après avoir accepté comme facteurs principaux de l'évaluation et la valeur par le revenu et la valeur de remplacement dépréciée, en vient à la conclusion qu'il y a là un total et pour les terrains et pour les deux bâtisses de  
40        \$15,720,064.54, il procède à prendre 50% de \$13,387,131.80 seulement qui serait la valeur dépréciée d'une bâtisse hypothétique qui n'est plus l'édifice du Sun Life du tout.

Comme on le soumet, cette bâtisse aurait des murs en pierre à chaux, très peu d'ornements, des châssis d'acier, des vitres ordinaires, des planchers de terrazo, des murs en enduits et pas de salle de banque.

Il semble que pour les fins de l'estimation de la valeur réelle, il faille, d'accord avec les experts estimateurs et les au-

teurs, rechercher la valeur de remplacement du bâtiment en jeu, et non pas d'une bâtisse imaginaire, complètement différente.

10 L'immeuble Sun Life tient tant de la nature commerciale que de la nature institutionnelle. Le juge est obligé lui-même d'admettre (p. 1021 D.C.) que la Compagnie jouit de l'entière utilité de l'espace occupé par elle, soit 58.5% utilisable dans la bâtisse. Et comme l'évaluation municipale de 1941 n'est pas fixée pour toujours, il sera temps pour le Sun Life de faire entendre ses protestations si les conditions viennent à changer plus tard.

D'après le Président de la Compagnie, il manquait 20% de son personnel.

20 L'estimation d'un immeuble pour fins de taxes municipales ne se compare pas généralement avec l'évaluation faite par des experts désireux de découvrir la valeur marchande du même immeuble. Ici, l'on sait déjà qu'il ne peut être question d'un acheteur désireux d'acheter et non forcé de le faire, d'un vendeur désireux de vendre, mais non obligé de vendre, non plus de comparer avec des immeubles semblables vendus ou même des immeubles identiques dans le voisinage, car ces éléments manquent ici complètement.

30 Les estimateurs qui n'ignoraient pas cette règle confirmée par la jurisprudence, du "Willing buyer" et du "Willing seller", auraient été bien heureux de s'en servir, si elle eût pu s'appliquer à l'édifice Sun Life.

Les estimateurs d'une cité ont pour mission entre'autres, d'être justes et équitables, d'évaluer les propriétés commises à leur soin d'après un critère susceptible de ne pas créer d'injustice, de ne pas discriminer, de ne pas imposer à quelques-uns une plus large part de l'impôt qu'aux autres.

40 Ils doivent avoir des principes connus et définis, afin d'atteindre l'uniformité et l'égalité d'évaluation entre les différentes classes de propriété et entre les propriétés elles-mêmes.

Il appert au dossier que le Juge de la Cour Supérieure a considéré le facteur valeur de remplacement et le facteur économique, tout comme l'estimateur Vernot et le Bureau de Revision. L'auteur Schmutz professe la même doctrine, tout autant que M. MacRossie, expert de la compagnie.

L'on sait que l'estimateur a pris 10% de la valeur économique et 90% de la valeur de remplacement, alors que le bureau

prenait 17.7% de la valeur économique et 82.3% de la valeur de remplacement, tandis que la Cour Supérieure prend 50% chacune.

Si le juge s'était arrêté aux chiffres ou à la proportion acceptée par le Bureau, il aurait trouvé comme valeur réelle \$12,261,575.74 au lieu de \$10,207,877.40, même avec sa valeur de  
10 remplacement beaucoup plus basse que celle du Bureau.

Il est à noter que la Cour Supérieure (volume 5, p. 1013 D.C.) a approuvé la méthode des deux facteurs employés par l'estimateur Vernot, mais elle ajoute:—

“He has adopted a peculiar method in its endeavour to correlate the two”.

Le juge en revient toujours à la même question, considé-  
20 rant l'immeuble Sun Life comme un immeuble commercial ordinaire.

Si la Cour Supérieure et le Bureau de Revision sont d'accord pour adopter le principe de la corrélation des valeurs, il importe d'étudier pourquoi les pourcentages varient, quelles en sont les raisons.

M. Hulse (volume 2, p. 242 etc.) nous dit que tous les éléments de valeur doivent être pris en considération, mais que  
30 ces éléments peuvent se résumer et se condenser à 4. Le prix d'achat, le prix du marché, le revenu, la valeur de remplacement. Il faut donner dans l'estimation

“fixing the weight to be given the different factors as regards large properties such as office buildings, large apartment houses, departmental stores and hotels and other properties.”

Il continue en disant que la propriété résidentielle présente peu  
40 de difficultés, mais qu'il n'en est pas ainsi de certaines classes de grosses propriétés plus ou moins spéciales.

Il est prouvé que vers 1940, 15 mois avant le dépôt du rôle, les estimateurs de la Cité se sont réunis, ont étudié toute la question, et ont rédigé leurs conclusions dans un document intitulé “Memorandum on the assessment of large properties “such as office buildings, apartment houses, departmental “stores, hotels, etc.”

Ce document est reproduit au dossier. C'est le guide des estimateurs de la Cité de Montréal dans les cas particuliers.

Comme on le soutient, mettre de côté ce manuel, le rejeter ou le renverser, c'est pratiquement annuler l'estimation de toute une catégorie d'immeubles à Montréal. Le Bureau a approuvé les principes du mémoire et a varié légèrement les pourcentages d'influence des facteurs dans la cause.

La Cour Supérieure (volume 5, p. 1020) dit:—

“The Court does not criticise the assessor for following the memorandum of 1940 concerning the assessment of certain large properties in order to arrive at a uniformity in the valuation of properties in the city which was intended as a guide. It does however question the percentages allotted by Vernot and the Board.”

20

La raison il la donne. Il dit d'une façon implicite que Vernot et le Bureau se sont trompés de catégorie en appliquant le memorandum. L'édifice Sun Life est un édifice commercial ordinaire et non un édifice en tout ou en partie spécial. Vide Vol. 5, pages 1020 et 1021.

“It is absolutely a commercial building. It is not a one purpose building like a church”.

30

L'estimateur et le Bureau avaient considéré cet immeuble comme commercial pour partie et institutionnel pour une autre partie, ce qui fait la différence dans l'application du “memorandum.” M. Hulse ajoute, page 250:—

“This basis or rule, or any other rule, is of course to be deviated from by the assessor if, in his judgment, it is necessary to do so to arrive at the real value of the property.”

40

Plus loin, il ajoute, page 254:—

“Yes certainly. We will consider the market value as an element of value.”

Il apparaît au mémoire que lorsqu'il s'agit

a) de propriétés bâties et exploitées uniquement sur une base commerciale, comme placement à revenus, on recommande 50-50 ou influence égale à la valeur de remplacement et à la valeur économique.

b) S'il s'agit de propriétés spéciales complètement occupées par leurs propriétaires, construites ou acquises pour leurs fins, on recommande d'estimer sur la valeur de remplacement seulement, moins la dépréciation, en tenant compte de l'obsolescence. Dans ce cas, ne considérant qu'un facteur, il faut tout déduire de ce facteur.

10 Comme troisième catégorie, il existe les immeubles partiellement occupés par les propriétaires et partiellement loués à des étrangers, soit le Sun Life Particulièrement.

On arrête que ces propriétés ont été construites ou acquises comme siège permanent pour l'entreprise et que souvent la forme et la disposition de l'immeuble sont en fonction des développements futurs de cette dernière, la question des locataires étant considérée comme temporaire et incidente. Dans d'autres cas on loue de l'espace pour aider à payer les dépenses d'exploitation et permettre d'augmenter les dimensions de la bâtisse afin d'ajouter du prestige au propriétaire et donner une valeur de réclame. "In this case the owner is enjoying the full utility "only of the space occupied by himself, and is dependent on current rental conditions for the carrying charges on the balance "of the building". Dans ces cas le mémoire dit qu'il faut tenir compte de la valeur locative. La valeur de remplacement se reflètera dans l'estimation dans une proportion d'entre 50% minimum et 100%; le facteur valeur économique entrant pour la différence de 50% à 0. Le mémoire ajoute que les directives ne peuvent aller plus loin dans la division des facteurs, car chaque cas est un cas particulier qui dépend de la proportion de l'immeuble occupée par le propriétaire etc.

40 "The extent to which the commercial features of the buildings have been sacrificed to the main design with a view to the future complete use of the building by the owner, or the enhanced prestige of an elaborate and expensive construction. Each property will have to be considered on its merits within the limits outlined above."

Bref, dans ces cas, l'estimation reflètera 50% de valeur de remplacement minimum et le jugement de l'estimateur pour le reste selon les circonstances de chaque cas.

40. Dans une quatrième catégorie, on range les théâtres et les hôtels.

Ce mémoire est le fruit d'années de consultations, d'expérience et d'étude de la jurisprudence, afin de parvenir à quelque

chose d'équitable et de pratique. Je dois dire que sur le point, je le préfère aux théories des experts produits par un côté ou par l'autre. Il est à la base de toute évaluation spéciale, à Montréal, tel qu'on le voit par une longue liste d'estimations apparaissant au dossier.

10 Quant aux directives du mémoire sur la première catégorie, soit les propriétés commerciales ordinaires bâties pour le revenu, comme placement, pour payer des dividendes, il y a peu à dire. Il semble évident qu'il ne peut être plus juste et plus logique que de prendre 50% de la valeur de remplacement dépréciée et 50% de la valeur par le revenu capitalisé. D'ailleurs, dans ces constructions, genre de nombreuses bâtisses énumérées au dossier, on construit généralement à un coût originaire bas pour rencontrer le marché de location et pouvoir faire des profits. On garde le plus d'espace locatif possible pour accroître les revenus. Tout naturellement, en période normale, la valeur par le revenu  
20 est à peu près égale ou diffère peu de la valeur de remplacement dépréciée.

Le Juge de la Cour Supérieure a décidé que l'immeuble Sun Life tombe dans cette catégorie; je crois qu'il a fait erreur.

Le mémoire préparé de concert par tous les cotiseurs ou évaluateurs de la Cité de Montréal, des experts ou cotiseurs et auquel ils se sont arrêtés pour se guider dans l'évaluation des différents immeubles pour assurer l'uniformité, l'équité de leur  
30 cotisation, respire la logique, fait voir une étude sérieuse et approfondie, et donne l'impression d'être pratique, de tenir compte de tous les facteurs qui doivent être considérés dans une évaluation municipale, et à mon sens, offre plus de garantie que le témoignage des experts, même triés sur le volet, mais appelés par une partie qui a la certitude qu'en matière générale, ils appuient une théorie qui favorisera ses prétentions.

Aucun des tribunaux auxquels a été soumise cette cause n'a véritablement critiqué à fond les directives ou les enseignements du mémoire en question. On l'a dit, renverser ces principes en matière d'évaluation, c'est pratiquement annuler l'esti-  
40 mation de toute la catégorie d'immeubles à Montréal.

Le cotiseur de même que le Bureau de Revision se sont inspirés du mémoire, en ce qui concerne la troisième catégorie de l'immeuble, à savoir, concernant les immeubles partiellement occupés par les propriétaires et partiellement loués à des étrangers, comme, ont-ils dit, les édifices Banque Royale, Canada Life, Banque de Toronto, Sun Life etc.

Il n'est pas contredit que la compagnie a construit son édifice comme le siège permanent pour son entreprise, en fonction des développements futurs de cette dernière, la question des locataires était considérée comme temporaire et incidente, La compagnie avait bien l'intention d'occuper un jour tout son immeuble pour ses fins à elle, elle le fera possiblement plus tard. Elle en occupait en 1941, au jour du dépôt du rôle, 58.1%. Elle 10 jouit de la pleine utilité avec toutes les améliorations "amenities" de l'espace occupé par elle.

Ici, on le sait, il n'est pas possible de tenir compte d'un facteur important généralement considéré, savoir la valeur du marché, puisqu'il n'y a pas tel marché. Il a fallu nécessairement se rabattre et sur la valeur de remplacement et sur la valeur économique.

Toujours dans un cas semblable, la valeur de remplace- 20 ment entrera dans l'évaluation pour au moins 50% comme minimum, pouvant s'élever jusqu'à 100%, et le facteur valeur économique entrera pour la valeur de 50% à 0. Il y a donc là matière à discrétion, à opinion, à jugement, à expérience chez le cotiseur, toutes aptitudes ou qualités qu'il possède, du moment que sa bonne foi n'est pas mise en jeu, à un degré certainement supérieur que le juge lui-même.

Dans ces circonstances, est-il possible de mettre de côté, de ne pas tenir compte, que le propriétaire a entendu faire de son 30 immeuble un monument devant attirer l'attention du public à Montréal, en dehors et à l'étranger, faire publicité qui, si elle s'opérait par d'autres moyens, coûterait chaque année des deniers considérables à la Compagnie, publicité faisant connaître la force, la grandeur et la richesse de cette même Compagnie d'assurance aux assurés, au public, à ceux qui veulent investir des deniers dans pareils corps, à la clientèle à venir. Comment ne pas tenir compte encore de ce qui a été dépensé pour faire beau, majestueux, avec tout le confort moderne, décider que l'estima- 40 tion devrait en être faite sur la base d'une construction modeste, privée de tous les avantages, de tout le confort comme même, jusqu'à un certain point, de la splendeur de celle du Sun Life.

Le Sun Life jouit maintenant de la construction qu'elle a voulu avoir, qu'elle a décidée et arrêtée, après y avoir songé en tout repos, construction qui s'est effectuée au cours de nombreuses années pendant lesquelles elle aurait pu modifier ses plans, ses visées. ce qu'elle n'a pas cru devoir faire, s'en tenant à sa première décision.



L'estimateur d'une cité ne saurait maintenant s'apitoyer sur le sort de l'appelante; s'arrêter dans le cours de son travail à l'idée que le coût des taxes sera élevé; que l'immeuble loué rapportera peu en rapport du coût de la construction; il n'a pas plus à y songer que ne l'a fait la Compagnie elle-même. Il ne saurait non plus, s'il veut accomplir son devoir, sortir l'immeuble de son usage logique et actuel pour en faire une propriété commerciale  
10 ordinaire, exploitée en vue du revenu seulement, afin de l'estimer comme tel. Parmi les nombreux précédents cités, il n'en manque pas pour appuyer ces dires. Les dirigeants de la Compagnie ont peut être péché par orgueil, mais le poids de cette faute ne doit pas être imposé, même en partie, aux autres contribuables payeurs de taxes.

Il y aurait donc de ce chef erreur du savant juge de la Cour Supérieure qui a enlevé de l'évaluation pour plusieurs millions de ces "amenities" dont jouit l'immeuble du Sun Life,  
20 parce qu'il considère que tout ce perfectionnement dans la construction n'apporte rien à la valeur vénale ou marchande de la bâtisse. Dans mon humble opinion, je trouve aussi erreur du savant juge dans la fixation du pourcentage 50-50 du point de vue corrélation des valeurs.

Encore une fois, pourquoi s'occuper des indications du marché, si tous se rendent compte qu'il n'y a pas de marché possible pour pareil immeuble.

Mis en présence de la discussion entre les parties n'y a-t-il pas beaucoup à conclure dans le fait qu'une compagnie avisée comme le Sun Life, obligée par la loi sous des sanctions importantes à faire des rapports sous serment à l'Etat, au public, sur le coût d'une construction comme celle de son bureau chef, sa valeur de marché ou commerciale, déclare non pas seulement une fois, mais au cours de plusieurs années dans ses rapports officiels, que sa valeur aux livres pour chacune des années de 1931 à 1941 est de \$16,259,050.27, et la valeur marchande de  
30 \$16,258,050.27.

Il y a là un aven qui ne peut être ignoré, et cet aven l'emporte de beaucoup sur le fait que l'évaluation au rôle avant celle du 1er décembre 1941, ne portait l'immeuble qu'à  
40 \$8,000,000.00.

Ce ne sont pas les tribunaux qui ont fixé cette évaluation. Il y eut entente entre les représentants de la Compagnie et ceux de la Cité.

L'on sait que depuis 1939, les rôles de la Cité de Montréal étaient gelés et l'ont été jusqu'à 1941, alors que l'on devait donner une nouvelle base à l'évaluation des immeubles.

Cette nouvelle base d'évaluation est survenue en 1941, et elle a eu pour résultat de surélever d'un montant considérable la valeur des immeubles à Montréal.

10

Pourquoi la Cité a-t-elle accepté l'évaluation de \$8,000,000. en 1939? Nous l'ignorons. Il peut y avoir de nombreuses raisons. Nous n'avons sur le point pratiquement que la déposition de M. D. L. McCaulay, Vol. 2, page 211 et suivantes D.C., et que les explications de M. McAuslane dans une lettre reproduite Vol. 5, page 907.

20

Il y a une chose certaine, le Bureau de Revision qui a rendu jugement ici n'était pas alors constitué. C'étaient trois des estimateurs de la Cité qui siégeaient en revision, lequel corps composé, comme je viens de le dire, n'offrait pas les garanties d'indépendance et de sûreté qu'un bureau formé comme celui que nous connaissons.

L'estimateur d'alors craignait-il d'affronter un procès considérable, nécessitant une aussi grande préparation que celle nécessitée par le litige d'aujourd'hui.

30

Je cite du mémoire de l'appelante :

Ce que l'on sait, c'est que depuis 1931, l'évaluation a augmenté proportionnellement au supplément d'espace fini sans dépréciation. Depuis la dite date en effet, la propriété n'a pas changé, sauf qu'un certain espace a été fini et l'évaluation, au lieu d'augmenter, aurait dû baisser à cause de la dépréciation.

McCaulay admet qu'en 1931, il y avait de nombreux étages non finis et non divisés. A la page 214 il admet :—

40

“A.—There were several floors completely unfinished naturally, otherwise the One million six hundred thousand dollars \$1,600,000.00 would not have been spent.”

Le témoin admet que ces étages non finis étaient évidemment non loués et que c'était un élément dont les estimateurs devaient tenir compte. Cette somme de \$1,600,000. est le montant dépensé depuis 1931 à diviser et finir les étages supérieurs. Ceci appert aux admissions cédule “A”, Vol. 1, page X. Monsieur

McCaulay n'a pas pu nous dire combien d'étages étaient non divisés en 1931, se contentant de remarquer qu'il y en avait plusieurs. En fait, il y avait alors à peu près quinze étages qui ne comprenaient que les quatre murs et les planchers.

10 M. McAuslane, surintendant de l'immeuble, nous dit dans une lettre reproduite Vol. 5, page 907, que le coût pour le "standard finishing" de quatre étages a été de \$337,785. A ce compte, il est bien évident que plus de la moitié de l'immeuble n'était ni divisé, ni fini, ni loué. Ce fait devait être considéré par les estimateurs en 1931. Si nous examinons de nouveau les admissions cédule "A" Vol. 1, page 10, nous voyons qu'en 1932 et 1933 la compagnie a fini plusieurs planchers et très peu les années suivantes. Enfin, arrivent les années 1938, 1939, 1940 et la compagnie dépense au-delà d'un demi million à finir des étages, ce qu'elle a continué à faire après l'estimation. Il est aussi intéressant de noter aux admissions Vol. 1, page XXV, qu'en 1931 il n'y avait 20 dans l'immeuble Sun Life que pour \$25,120. d'espace occupé par des locataires, tandis qu'on trouve une augmentation soudaine en 1939, 1940 et 1941 pour arriver au chiffre de \$273,640. en 1941. Evidemment, ces chiffres représentent la valeur nette après défalcation du chauffage, de l'éclairage et des services en général.

Les rôles étant gelés depuis 1937, ce n'est qu'en décembre 1941 que les estimateurs ont pu déposer un rôle et estimer l'immeuble Sun Life pour la première fois comme 90% fini et 30 occupé.

Pour les raisons de droit données par le Bureau et les raisons de faits apparaissant dans la preuve, nous soumettons que le juge "a quo" n'aurait pas dû prendre en considération les différentes estimations antérieures à 1941.

40 Ce qu'il faut retenir, c'est qu'en 1941, après que son rôle ait été gelé depuis plusieurs années, les estimateurs de la Cité qui avaient eu tout le temps nécessaire pour étudier et approfondir la question, ont fait tout un chambardement dans l'évaluation des immeubles de la Cité de façon à donner justice à tous et chacun.

En définitive, à mon sens, il n'y a rien dans la récrimination de l'appelante ci-dessus pour compromettre de la moindre façon la position de la Cité aujourd'hui. Tout ce dont nous devons nous occuper, c'est de savoir si l'évaluation portée au rôle en 1941 est juste et équitable.

Pour ce qui est de la proportion à tenir entre la valeur de remplacement et la valeur économique, le Bureau de Revision, mieux informé, s'est écarté quelque peu des chiffres du cotiseur; . . . je ne suis pas prêt à dire que le Bureau de Revision, avec l'expérience de ses membres, avec les directives qu'ils ont suivies, s'est trompé, mais je ne suis surtout pas prêt à substituer ma modeste opinion à celle de ces experts.

10

Dans de nombreux arrêts qui nous ont été cités, c'est bien la conclusion à laquelle en sont venus de savants juges, mais pas plus experts que nous-mêmes en la matière.

Il n'est pas possible, à mon avis, d'en venir à la conclusion, comme le savant juge, que l'édifice du Sun Life est essentiellement un édifice commercial, et que pour en fixer la valeur réelle, il faut imaginer un immeuble hypothétique, se tenir dans l'irréel.

20

Avec l'évaluation faite par la Cour Supérieure, nous avons, encore une fois, devant nous, non pas la bâtisse actuelle du Sun Life, mais une construction tout autre, toute différente, toute hypothétique. Ce n'est pas cette dernière qui est occupée aujourd'hui par la Compagnie; c'est la construction actuelle qui nous a été décrite.

30

Devrons-nous dans nos arrêts, décréter qu'un estimateur d'immeubles dans une cité doit les évaluer comme s'ils étaient tous construits de mêmes matériaux, comme s'ils apportaient à ceux qui les habitent, plus spécialement qui les occupent pour eux-mêmes, le même confort à tous? Devra-t-on arrêter que si un propriétaire, le Sun Life, se construit un immeuble sans tenir compte de la moindre façon du revenu qu'il pourra rapporter, pour les raisons qu'il juge dans son intérêt, aura droit d'exiger que cette même construction soit évaluée principalement ou dans une large mesure d'après les revenus qu'elle rapporte, d'après sa valeur économique? Ce serait, à mon sens, lui accorder une préférence injuste, et ce, au préjudice des autres propriétaires de la communauté.

40

A mon avis, il faut nécessairement, d'accord avec le dossier, pour en venir à une évaluation réelle, accorder une prépondérance considérable à la valeur de remplacement, suivant les directives du mémoire dont il est question ci-dessus, et le Bureau de Revision me paraît être resté dans la norme.

Je m'abstiens de référer en particulier à quelques-unes des nombreuses décisions qui nous ont été citées de part et d'au-

tre. Je crois que d'une façon générale, elles soutiennent les prétentions de la Cité de Montréal.

Sans aller plus loin, j'accueillerais avec dépens, suivant les conclusions du mémoire de la Cité, l'appel qu'elle a logé, et rétablirais le jugement de la Cour de Revision. Pour les mêmes raisons, je rejetterais et avec dépens, l'appel de la Compagnie  
10 Sun Life.

Québec, le 9 février 1948.

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NOTES DE L'HON. JUGE ST-GERMAIN

Cet appel et ce contre-appel sont d'un jugement de la Cour supérieure du district de Montréal, en date du 20 septembre 1944,  
20 — MacKinnon, j. — ce jugement portant sur un appel de la compagnie Sun Life Assurance à l'encontre d'une décision du Bureau de revision des évaluations de la cité de Montréal datée du 21 juin 1943, cette dernière décision disposant de plaintes ou d'appels formulés par la compagnie à l'encontre des évaluations faites par l'estimateur de la cité pour fins de taxation à une certaine propriété de la compagnie consistant en deux constructions, une bâtisse principale située rue Metcalfe et une bâtisse secondaire située rue Mansfield utilisée comme chaufferie, centrale électrique et garage; les deux reliées par un tunnel.  
30

Au rôle d'évaluation déposé le 1er décembre 1941, la propriété Sun Life fut estimée comme deux immeubles distincts avec deux numéros de compte différents, savoir:—

*L'immeuble principal:* Compte no 140896:

Terrain \$730,600. Bâtiment \$13,024,900. Total \$13,755,500.

40 *L'immeuble secondaire:* Compte no 140942:

Terrain \$ 74,100. Bâtiment \$ 446,400. Total \$ 520,500.

*Pour les deux:* \$14,276,000.

La compagnie a porté plainte à l'encontre de ces deux entrées au rôle concernant la valeur réelle.

Le Bureau de revision a maintenu l'estimation de la valeur réelle, soit \$14,276,000, et la Cour supérieure l'a réduite à \$10,207,877.40.

Aux termes de l'art. 375 "a" de la charte de la cité de Montréal, telle qu'amendée par la loi 5 Geo. VI, chap. 73:

10 "Tous les trois ans, les estimateurs dressent en double pour chaque quartier de la cité un nouveau rôle d'évaluation pour tous les immeubles de tel quartier. Ce rôle doit être complété et déposé le ou avant le 1er décembre après avoir été signé par le chef estimateur.

Ce rôle doit contenir:

- 20
1. ....
  2. ....
  3. La valeur réelle des dits immeubles;
  4. ....
  5. ....
  6. ....
  7. ....

30 Art. 375a:—

1. ....
  2. Les estimateurs fixent la valeur réelle de tout bâtiment dont la construction est terminée et qui est prêt à être occupé ou qui est occupé en entier ou en partie le ou après le 1er mai, et ils font rapport au chef estimateur de cette estimation, en y indiquant la date à laquelle la construction du bâtiment a été terminée ou à laquelle celui-ci a été prêt à être occupé ou a été occupé comme susdit.
- 40

Art. 382:—

1. Il est, par la présente loi, créé un bureau de revision des estimateurs qui se compose de trois membres que le conseil nomme sur rapport du comité exécutif, et qui ne peuvent être révoqués par le conseil, sur rapport du comité exécutif, que par le vote des deux tiers de tous les membres du dit conseil.

2. Le conseil désigne le président et le vice-président du bureau, selon la procédure établie au paragraphe précédent. Le président doit, depuis au moins dix ans, être membre du Barreau de la province de Québec ou de l'Ordre des notaires de la dite province.

10

12a. Le président décide les questions de droit relativement aux plaintes qui sont du ressort du bureau.

20

27. Le bureau de revision peut assigner tous témoins, procéder à l'interrogatoire des parties et de leurs témoins, peut procéder lui-même à faire ou à faire faire des expertises, de façon à se mettre en mesure de se prononcer sur la valeur des biens sous examen.

29. Les membres du bureau de revision ont droit de visiter, en tout temps, les immeubles inscrits au rôle.

30

Comme on le voit, les membres du bureau de revision ne peuvent être révoqués que par le vote des deux-tiers de tous les membres du conseil, ce qui donne à ce corps judiciaire un caractère de véritable indépendance. Notons, de plus, qu'en outre du pouvoir d'assigner et de procéder à l'interrogatoire des parties et de leurs témoins, les membres du bureau de revision ont le droit de visiter les immeubles inscrits au rôle, ce qui ajoute au poids qu'une cour d'appel doit accorder à leur décision.

40

Avant d'entrer dans l'examen du mérite des présents appel et contre-appel, je crois devoir citer immédiatement un extrait du témoignage de M. A. E. Hulse, estimateur en chef de la cité de Montréal, qui a été entendu comme témoin devant le bureau de revision.

"I am the Chief Assessor and Director of the Assessor's Department. I entered the services of the City in December 1913 and from that time to the month of June 1934 I was a member of the Board of Assessors of the City of Montreal. Before that, I was with the assessors department of the Canadian Pacific Railway valuing and contesting valuations of property between Saint John, N.B., and Winnipeg, Manitoba. Previous to that, I was in assess-

ment offices for a period of ten years. In a great measure I am responsible for the practical part of the Manual, prepared by Mr. Parent.

10 Q.—When you had something to do with this Manual, did you have occasion to travel in Canada and the United States to secure opinions and examine different systems to see what was done in other countries and other cities as to assessments?

A.—Yes. My experience in Canada took me to three or four Provinces and am well acquainted with the systems in force in those provinces.

20 When we commenced to install the system in Montreal the Executive Committee sent the Director of Departments, the Engineer of the Technical Services and myself to New York, Boston, Cleveland, Chicago and Detroit to compare the system we were installing with what they already had in force in those cities to see if our system could be improved upon.

When we came back we did not make any changes to our system.

30 Mr. President, in commencing I think I might be permitted to say that it is generally understood that every element which might influence the value of a property must be taken into consideration in arriving at the value of that property. However, in dealing with the question in the Manual we condensed those elements to arrive at four principal points. The first one Purchase Price; the second — Market Price; the third — The Revenue of the Property; and the fourth — the Replacement Value.

40 Also noted on page forty-seven (47) of the Manual is the following:—

If in a particular case certain of those elements are not utilizable, the others are used; if but one is available everything possible is drawn from it.

Now, before I proceed further I would like to de-



duce as to the value of our system by an independant outside service.

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10 In the Dow Service Real Estate Valuation Calculator for the period October to December 1940, we have the following:—

Mr. Parent, who, with his associates, has recently installed in the City of Montreal one of the most modern of municipal valuation systems following a study of how it is done in the United States in various cities such as New York, Chicago, Boston, etc. . . .

20 That goes all over the States, and is an outside appreciation of our Manual.

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30 Since the time I was placed in charge of the Department in 1934, I have carried out such reforms in the department as I found necessary, and as far as property valuations are concerned such reforms as would ensure that valuations were made according to well-defined principles as to ensure a uniform basis of valuation for all property in general, and thus achieve as a final result, as near as is humanly possible, uniformity of valuations.

40 It is true, and that is where our system differs from those in many other cities, that the assessor is free to make and is responsible for the valuation figures which are entered on the Roll. But the assessor himself realizes that he is better equipped and more qualified to do his work if he is in possession of the rules, principles and methods which apply to his type of work and which are the result of long use and experience and consideration and considered good assessment practice.

He has something behind him which would take him years of experience to find out and something on which to solve the problems he meets with and on which to arrive at decisions in his work without relying entirely on his own opinions and ideas.

Therefore, in view of the long experience which I have had in this class of work I shall endeavour to explain

the particular functions which attach to the position of an assessor in the exercise of his duties insofar as they differ from the work of an individual appraiser.

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10 First and foremost, he is not a real estate agent nor real estate appraiser as commonly implied by those designations. He does not work on a commission. He is a permanent municipal official on an annual salary and has no personal monetary interest resulting from reduced or increased valuations.

The real estate agent in fixing his price is not subject to any jurisprudence in that respect.

20 What then, are the functions of the municipal assessor and what does he do? He is determining the value of each and every immovable according to a well defined basis to ensure complete equality of valuation and thereby ensure complete equality for all before the impost. But always subject to the stipulation in the law that he must determine the real value for each and every immovable.

30 His work is subject to much jurisprudence, and some of which may reasonably be interpreted as protecting the assessor or in the uniform work he is endeavouring to accomplish.

Now in contrast, the work of an individual appraiser generally is limited to individual appraisals. He may adopt a line of appraisal which he decides, and another appraiser appraising the same property may adopt a different line as he chooses, as the work of the appraiser may be said to be done solely for a client and his responsibility rests as to the client only.

40 A valuation roll covering One hundred and seventy thousand (170,000) valuations, made by a number of persons each following his own ideas could not possibly lead to uniformity or equality in valuations, as to attain such an end it is necessary that certain recognized standards and methods be adopted and used.

It follows then that in Montreal, where a number of assessors must be employed, it is necessary that certain methods and systems be formulated which will aid the

assessors in establishing that valuations made in parts of the City by different assessors will illustrate the same standards of valuation and that valuations of similar properties in similar localities will give the same result.

10 Besides his duty as an arbitrator between the individual proprietor and the municipal corporation, he has a duty to perform to the community at large in that the result of each assessor's work forms part of a general plan to secure a basis which will ensure that the burden of taxation is imposed equitable and uniformly throughout the whole of the City.

20 Such then is the result, that the assessor must always be conscious that in performing his duty his work is always subject to comparison with any work done by another assessor in any other section of the City.

In addition to the rules and tables given in the Manual and to solve some of the problems in the application of the various principles involved, the Assessors work out and decide the details to put these principles in force, and have done so as regards:—

30 10. Fixing the rates of capitalization for the greatest bulk of the properties, which are of residential class;

20 20. The variance to be given to rates according to the age of the building;

30 30. Fixing the percentage of the revenue to be allowed in the case of service building such as for heating, janitor service, refrigerators, stoves, and where water tax is included in the rental paid by the tenant;

40 40. Fixing the weight to be given the different factors as regards residential properties;

50. Fixing the weight to be given the different factors as regards large properties such as office buildings, large apartment houses, departmental stores, and hotels and other properties.

Now, it is the last rule which I think now very opportune to explain.

As regards the weight which should be given to different factors in the case of residential properties, very little difficulties are experienced in that class of property for the reason that they are easily comparable.

10 It was, however, necessary to make a more detailed study of the matter as regards large properties such as office buildings, apartment houses, departmental stores, and so forth, as the style and special design of the building seemed to differ in almost every case.

20 It was about the month of August 1940, about fifteen months before we had to deposit the new Roll, that after having fixed certain rules and tables for residential properties, the question of the weight to be given the different factors in the case of large buildings came under discussion, and eventually the following decision was arrived at:

20 So that the quality and class of the building itself would find some reflection in the final valuation it was decided by the assessors that the minimum weight to be given the net replacement value factor would in no case be less than fifty per cent (50%).

30 Commencing with this, the principle adopted by the assessors is as follows, and covered by the memorandum which I now quote:—

“COPY OF MEMORANDUM ON ASSESSMENT  
OF LARGE PROPERTIES  
MEMORANDUM

40 These properties seem to fall into four main categories, which determine to a large extent the relative importance of the different factors to be used in arriving at their valuation:—

1.—Properties that are developed and operated solely on a commercial basis as investment propositions, such as the Insurance Exchange Building, the University Tower Building, the Dominion Square Building, the Drummond & Drummond Court Apartments, etc. etc. The return on those investments varies from time to time according to the demand for and the supply of office and apartment space in the city and more particularly in the district in which they are situated. When the demand exceeds the

10 supply, rents are pushed up and a high return is shown on the investment, encouraging new construction. When the demand is satisfied and there is an over-supply of space, rents fall and with them the return on the investment. In fact, the situation becomes extreme in a period of low rents, as the operating charges do not decrease proportionately. It would seem that the proper way to provide for this fluctuation in net revenue is to combine the factors of replacement cost and commercial value so as to allow for the more violent changes that occur in abnormal times, without departing too far from the normal values prevailing in a period of balanced supply and demand. It is recommended that these two factors, viz., replacement cost and commercial value, be given equal weight in valuing these properties for a three-year period. A revaluation at the end of that time would, of course, take into consideration the conditions then prevailing.

20 2.—Properties that are completely occupied by their owners, whether constructed for that purpose or acquired with that object in view, such as the Canadian Bank of Commerce, the C.I.L. Building, Eaton's etc. etc. It would seem that properties in that category are always worth to their owners the current cost of replacement less depreciation, since, if the owner had not already acquired such a property, but wished to provide himself with suitable premises at the present time he would have to pay current prices to secure suitable accommodation. In this theory of value being based solely on current cost of replacement less depreciation, it is assumed that the building is of a type suitable to the location. Otherwise, consideration will have to be given to the factor of obsolescence.

30 3.—Properties that are partly occupied by the owners and partly rented, such as the Royal Bank, the Canada Life, the Bank of Toronto, the Sun Life, etc. etc. It must be remembered that properties of this class have been  
40 constructed or acquired as a permanent home for the enterprise in question and that frequently the building is laid out for future development, the tenant situation being considered only temporary or incidental. In other cases, the space rented is provided to help carry the cost of the land, or to increase the size of the building, thereby adding to the prestige of the owner and giving what might be called advertising value to the project. In these cases the owner is enjoying the full utility only of the space occu-

10      pied by himself, and is dependent on current rental conditions for the carrying charges on the balance of the building. It would seem that some consideration should be given to rental value in these cases, so that the replacement factor should be weighted somewhere between 50 and 100 per cent, and the commercial value factor make up the difference between 50 per cent and zéro. No hard and fast rule can be given for the division of weight in these factors, as it will depend on the proportion owner-occupied, the extent to which the commercial features of the building have been sacrificed to the main design with a view to the future complete use of the building by the owner, or the enhanced prestige of an elaborate and expensive construction. Each property will have to be considered on its merits within the limits outlined above.

20      4.—In a separate category should be put buildings like theatres and hotels for two reasons. In the first place, buildings of this nature have not as long a useful life as the other classes of buildings, and should be allowed, in addition to structural depreciation, an allowance to cover obsolescence or periodic remodelling and renovation. Secondly, their operation is usually in the hands of the owner or an affiliated company, and there is no way to establish a normal rental value, or to get a true picture of net earnings, as these are so seriously affected by the cost of management, the allowance set up for depreciation and maintenance, etc. It would seem that to some extent these properties should be valued on their individual merits, bearing in mind the condition mentioned above of extra depreciation or obsolescence.”

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40      Il convenait, je crois, dès le début de ces notes, de démontrer, par ce clair exposé de l'estimateur en chef de la cité-appelante, toute l'importance que l'on doit attacher aux évaluations faites, dans ces conditions, par les estimateurs de la dite cité.

La propriété de la compagnie Sun Life, qui fait l'objet de cette cause, est placée dans la catégorie 3 du memorandum, intitulée “Part owner-occupied and part commercial”. Nous avons aussi dans cette catégorie, entre autres propriétés, les suivantes :

Bank of Toronto  
Globe Realty Corp. Ltd. (Royal Bank of Canada)  
Montreal City & District Savings Bank

The Guardian Fire & Life Assce Co. Ltd.  
Canadian Pacific Express Co.  
Canada Life Assce Co.  
Montreal Light Heat & Power Co.  
Banque Canadienne Nationale, etc. . . .

10 Dans le présent cas, l'estimateur, en faisant l'évaluation de la propriété Sun Life, tout en considérant qu'il devait tenir compte de tous les facteurs possibles, savoir: I. les indications du marché, c'est-à-dire les ventes de la propriété en question ou de propriétés semblables; II. La valeur de remplacement, moins la dépréciation; III. La valeur économique ou commerciale par le revenu capitalisé, n'a tenu compte que des deux derniers facteurs, le premier facteur, savoir: les indications du marché étant, en l'espèce, inexistantes, vu le caractère de la propriété.

20 Le bureau de revision ainsi que la Cour supérieure ont approuvé ce principe contrairement aux prétentions de la compagnie qui soutient que le dit immeuble doit être estimé par le revenu seulement.

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30 Avant d'examiner les motifs du jugement de la Cour supérieure qui a réduit le montant de l'évaluation fixée, et par l'estimateur et par le bureau de revision, il n'est pas hors de propos, je crois, de citer immédiatement la jurisprudence de nos cours, depuis la constitution du bureau de revision, quant à la valeur juridique des décisions rendues par ce tribunal.

Les principes applicables, en l'espèce, ont été énoncés par l'honorable juge Gibson, d'abord, et ensuite approuvés par plusieurs juges, tels qu'il appert des citations suivantes:—

*Alliance Nationale vs Cité de Montréal et Bureau de Revision*, 76 C.S., page 281.

40 *Lynch-Staunton et al vs City of Montreal & Board of Revision*, 76 C.S., page 286.

“Attendu que, d'après le dit article 384, sur tel appel, c'est le dossier qui a servi devant le bureau de revision, et sur lequel le dit bureau a formé son opinion et rendu sa décision, qui seul doit servir, sans enquête additionnelle, et c'est sur ce dossier que l'autorité judiciaire (un juge de cette cour en première instance et la cour du banc du roi en appel) est autorisée et chargée de rendre “tout jugement que de droit;”

10      Attendu que la juridiction ainsi conférée — de rendre “tout jugement que de droit” — est une juridiction la plus ample, et, suivant ses termes, permettrait au juge de cette cour de mettre de côté et réformer la décision du bureau de revision, non seulement pour cause de quelque irrégularité dirimante ou quelque erreur de droit, mais aussi si ce juge trouvait plus juste une méthode de calcul autre que celle que le bureau de revision avait adoptée, ou s’il appréciait les témoignages ou autres preuves d’une façon différente que ne l’avait fait le bureau;

    Attendu que la requérante a été entendue devant le bureau; elle a soumis toutes les preuves qu’elle a jugé à propos de soumettre, et c’est sur ces preuves et les preuves soumises par l’intimée que le dit bureau a rendu sa décision et a émis son certificat d’estimation;

20      Attendu que la requérante ne soulève aucune question nouvelle sur le présent appel, toutes ses prétentions actuelles, soit de droit ou de faits, sont les mêmes qu’elle a soumises au bureau de revision, et que le dit bureau a dû passer en revue et juger avant d’arriver à sa décision susdite;

30      Considérant que, de l’avis du soussigné, quoique la loi 1 Geo. VI, ch. 103 n’édicte pas de restrictions quant à la dite juridiction conférée à l’autorité judiciaire, néanmoins cette juridiction devra être exercée avec réserve en tenant bien compte des raisons suivantes:—

a) Très certainement le but de l’article 382 de la charte est d’assurer une étude sérieuse de toute contestation d’estimation, ce, après audition des parties, et par un bureau dont les membres sont choisis à cause de leur compétence spéciale pour cette tâche;

40      b) Très certainement le but de l’article 382 est de s’assurer, autant que faire se peut, uniformité dans les estimations, et uniformité relative entre les parties de la ville, savoir en les soumettant toutes à un seul bureau de compétence spéciale;

c) De leur nature les estimations sont des affaires d’opinion (ce n’est que très rarement qu’elles puissent être mises à une épreuve certaine), il est possible que ces opinions diffèrent entre elles dans des proportions perceptibles sans qu’il soit évident laquelle s’approche le plus de



la réalité; et même cette “réalité” n’est qu’un terme relatif;

10 d) S’il était admis que l’estimation personnelle du juge de la Cour supérieure chargé de l’appel, même son estimation fondée sur la preuve, pouvait prévaloir sur l’estimation déclarée par le bureau de revision, il s’en suivrait — du moins de l’avis du soussigné — que le but de l’article 382 serait frustré, car les appels seraient multipliés, l’uniformité et l’uniformité relative deviendraient impossibles — on en pourrait pas attendre uniformité entre les estimations des nombreux juges de cette cour, chacun d’eux exerçant ses fonctions indépendamment des autres, et l’existence même du bureau de revision serait de valeur assez discutable;

20 Considérant que, de l’avis du soussigné, la juridiction susdite devra être exercée *ex debito justiciæ* dans les cas tels que les suivants:—

30 a) Si les procédures devant le bureau de revision étaient entachées de quelque informalité ou irrégularité de nature à emporter nullité ou illégalité; ou si le bureau n’avait pas tenu compte de quelque disposition de loi; ou si la décision était basée sur quelque erreur de droit quant aux titres, quant à la responsabilité ou autre question de ce genre; ou si le plaignant a été refusé, ou n’a pas eu, audition de sa cause ou de ses preuves, etc.;

b) Si la décision était entachée de fraude ou de quelque mobile illégal;

c) Si l’estimation était si excessive ou si insuffisante qu’elle ne pourrait être raisonnablement basée sur les preuves, et que évidemment le bureau a été induit dans une erreur quelconque;

40 Mais en général, cette juridiction ne devrait être exercée si le seul but ou le seul effet de l’appel serait de remplacer l’estimation du bureau par l’estimation du juge chargé de l’appel;

En général, il doit être tenu pour acquis que l’estimation du bureau de revision est conforme avec la compétence et le discernement du bureau, après audition du plaignant et de ses preuves;

En général, la requête sous l'article 382 devrait faire voir une cause sérieuse pour justifier l'intervention et non pas le simple désir d'une nouvelle estimation — cette fois par le juge." (Hon. juge Gibson, 76 C.S., page 282).

10 Cette jurisprudence a été suivie dans *Dominion Textile Co. vs Cité de Montréal et Bureau de Revision*, juge MacKinnon. Jugement du 7 octobre 1942. Cause non rapportée. L'honorable juge dit ce qui suit:—

20 "The Court has carefully considered both these judgments and is of the opinion that the learned judge has correctly interpreted his position and the duties of a judge of the Superior Court in dealing with appeals from decisions of the Board. The judgment of the Board of the 2nd of July 1941 was an unanimous one. The four members who heard and dealt with the complaints of the company must be recognized as competent and experienced persons. They not only heard all the witnesses but in all cases visited and inspected the site, the machinery and the buildings.

30 That the members of the Board were in a far more advantageous position than the court to consider the complaints, is only to self evident. The rule laid down in *Canada Cement Company & St. Lawrence Land Company vs Ville de Montréal Est* (35 KB 410) that municipal valuation made by municipal assessors must be presumed just and reasonable as long as no injustice or important variance has been shown applies with even more force to a finding of the Board of Revision."

40 Dans une autre cause, *The Royal Trust Co. vs La Cité de Montréal et Le Bureau de Revision*, ex parte no 1194, jugement non rapporté, 11 janvier 1944, l'honorable juge Trahan a soutenu les mêmes principes.

Le 7 mars 1944, dans *Lacroix & Léger Limitée vs La Cité de Montréal et Bureau de Revision*, ex parte no 1164, jugement non rapporté, l'honorable juge Salvat dit ceci:—

"Considérant que le bureau de revision des estimations a été constitué pour s'occuper spécialement de l'évaluation des immeubles, pour fins municipales, dans la cité de Montréal. Ses pouvoirs sont très étendus et ses membres

doivent consacrer tout leur temps à leurs fonctions. Le bureau a, entre autres pouvoirs, celui d'entendre toute plainte dûment produite à l'encontre d'une estimation inscrite au rôle d'évaluation. Il peut assigner tous témoins, entendre les parties et leurs témoins, faire lui-même ou faire faire des expertises et ce, pour pouvoir se prononcer en connaissance de cause, sur les évaluations qui lui sont soumise. Enfin, les membres du bureau peuvent, en tout temps, visiter les immeubles inscrits au rôle;

Considérant que, dans l'espèce, le bureau a vu et entendu les témoins, dont des experts en matière de valeur immobilière, produits de part et d'autre, et ses membres ont même visité la bâtisse de l'appelante comme ils en avaient le pouvoir selon les termes du paragraphe 29 du dit article 382 de la charte;

Considérant que le bureau de revision se trouvait dans une position beaucoup plus avantageuse que le juge saisi du présent appel, pour se prononcer sur la valeur de la bâtisse de l'appelante. Le législateur l'a voulu ainsi en confiant à ce bureau les pouvoirs énumérés dans la loi qui le régit;

Considérant que, ce bureau jouissant de pouvoirs aussi étendus en vertu de la loi, il faut, à plus forte raison, attacher à ses décisions la présomption, existant en faveur de celles des estimateurs, qu'elles sont justes et raisonnables aussi longtemps qu'une preuve n'a pas été faite d'une injustice ou d'une différence importante entre l'évaluation établie et la valeur réelle du bien à estimer;

Considérant que le juge saisi de l'appel en vertu de l'article 384 de la charte de l'intimée, doit tenir compte des principes et des faits ci-dessus exposés, dans l'exercice des pouvoirs que lui confère le même article;

Considérant qu'il s'agit dans l'espèce, d'un entrepôt que l'appelante a construit pour son propre usage en l'année 1930, et depuis, elle s'en est toujours servie elle-même et pour les mêmes fins. Elle ne l'a jamais loué et ne l'a jamais offert en vente. Apparemment, aucune propriété du même genre, dans le même quartier, n'aurait été louée ni vendue dans la même période. Ce sont là des faits qui rendaient plus difficiles l'évaluation du bâtiment de l'appelante;

Considérant qu'après étude complète de tout le dossier et en particulier de la preuve faite devant le bureau de revision, le juge soussigné est d'avis que le dit bureau n'a pas mal jugé en droit et qu'il n'a pas erré dans ses conclusions sur les faits."

10 Le 19 juin 1944, dans *Dame Joséphine Brunet vs La Cité de Montréal et Bureau de Revision*, ex parte no 1237, jugement non rapporté, l'honorable juge Décary, à son tour, soutenait aussi la même doctrine.

Le 3 mai 1944, l'honorable juge Boyer, dans ex parte no 1206, *Ford Hotel Company of Montreal Limited vs La Cité de Montréal et Bureau de Revision*, jugement non rapporté, partage les mêmes idées.

20 Le 30 octobre 1945, dans ex parte no 509, *Victor E. Lambert vs Cité de Montréal et Bureau de Revision*, jugement non rapporté, l'honorable juge Boyer dit encore ceci:—

"La Cour n'a pas à se prononcer sur la valeur des différentes méthodes d'évaluation, et est moins qualifiée, d'ailleurs, que les membres du Bureau qui ont rendu la décision, dont appel, mais encore une fois, doit s'en tenir à la preuve, et d'après cette preuve, la décision attaquée doit être maintenue."

30 Enfin, le 22 septembre 1945, dans ex parte no 1074, *Stanislas Christin vs La Cité de Montréal et Bureau de Revision*, jugement non rapporté, l'honorable juge Dalma Landry s'exprimait dans les mêmes termes.

40 L'honorable juge Denis, dans une cause de *Eugène Simard vs La Cité de Montréal et Bureau de Revision*, C.S. ex parte no 1477, jugement non rapporté du 18 janvier 1946, cite tous les jugements ci-dessus pour conclure que les règles édictées dans ces arrêts doivent servir de guide à la Cour ou au juge dans l'appréciation des causes de cette espèce.

Dans une cause de *King vs Halpin* (1944, 1 D.L.R. 625), M. le juge Taschereau dit:—

"In order to determine the indemnity to be granted in an expropriation matter, several elements may and must be taken into consideration. Thus, it is permissible for the Judge to whom the matter is submitted to examine the

10 purchase price, the municipal valuation, the price paid in the district for similar land, the costs of improvements, the revenue which the property provides, the use which the owner can make of it, the increase in value of neighboring lands, the opinions of experts, and other special circumstances which can help in finding a solution. And when after having examined these various elements, the Judge of first instance comes to a conclusion as to which there is no error in law, and the amount allowed is justified by the evidence, a Court of Appeal will not interfere. That is the jurisprudence that has been established in the case of *The King vs Elgine Realty Co.* (1 D.L.R. (1943) 497, S.C.R. 49, 55 C.R.T.C. 262.”)

20 Notons que, dans la présente cause, si l'estimateur qui a fixé l'évaluation de la propriété Sun Life ne peut être considéré comme étant le juge de première instance, à tout événement, le bureau de revision qui a entendu tous les témoins et qui en vertu de la charte que nous avons ci-dessus citée a même le pouvoir d'examiner les lieux, doit, lui, être considéré comme le tribunal de première instance, et alors le juge de la Cour supérieure devant qui l'appel de la décision du bureau de revision est porté aussi bien que la Cour d'appel ne sauraient intervenir dans la décision rendue par le bureau de revision, à moins d'une erreur de droit bien manifeste.

30 Dans la présente cause, le bureau de revision et le juge de la Cour supérieure ont tous deux adopté la même méthode d'évaluation que l'estimateur.

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40 Après avoir lu et relu les témoignages des experts qui ont été entendus dans cette cause, conformément à la jurisprudence ci-dessus citée, je ne me croirais nullement justifié de substituer mon opinion personnelle à celle de l'estimateur de la cité, du bureau de revision et de la Cour supérieure, quant à la méthode qu'ils ont adoptée pour faire l'évaluation des bâtisses de la Sun Life, à savoir: *en tenant compte de la valeur de remplacement aussi bien que de la valeur économique*, pour adopter la méthode préconisée par les experts de la compagnie, à savoir: *que pour l'évaluation du dit immeuble de la compagnie, on ne devait tenir compte que de la valeur économique ou commerciale par le revenu capitalisé.*

Dans leur évaluation de la propriété de la compagnie, les experts de la dite compagnie déclarent expressément qu'ils n'ont nullement tenu compte de la valeur de remplacement.

Pour les raisons exposées dans les jugements très élaborés du bureau de revision et de la Cour supérieure qu'il serait trop long de reproduire ici et auxquels je réfère, j'en arrive donc à la conclusion que la méthode adoptée, et par l'estimateur et par le bureau de revision et par l'honorable juge de la Cour supérieure, suivant laquelle on a tenu compte à la fois, et de la valeur de remplacement et de la valeur locative, pour établir la valeur de  
10 l'immeuble de la Sun Life, doit être acceptée.

Nous lisons dans le jugement du bureau de revision:—

“What would clearly constitute discrimination but in favor of the Complainant would be to assess this property on the revenue approach only and thus arrive to a cubic foot price of \$0.29 which would be ridiculous.”

Dans son jugement, M. le juge MacKinnon s'exprime com-  
20 me suit:—

“The authorities cited by the Sun Life are all in support of their contention that the “actual” or “real value” can only be determined by arriving at a market value based on a hypothetical sale and have based their valuations principally on the fourth of these methods namely, that the value is the price the revenue possibilities of the property will command, but as stated by Mr. Justice Guerin in Canada Cement Co. and Montreal East  
30 there exists in fact no rigid rule for a valuation which is affected by a multitude of circumstances which no ruling can foresee or provide for.

It cannot be seriously contended that these five approaches are limitative and every angle tending to establish the worth of a property should be considered. The value at which the property is shown on the books of the Sun Life and as declared by it to the Superintendent of Insurance should be given consideration as having an indirect bearing on the value and previous assessments by  
40 the City should also be taken into account.”

Disons immédiatement que la valeur marchande (market value) portée dans ses livres par la compagnie, en 1941, est de \$16,258,050.27. Nous examinerons plus bas les évaluations faites par la cité de Montréal, pour la bâtisse Sun Life, antérieurement à 1941.

Le jugement “*State of Minnesota vs Federal Reserve Bank of Minneapolis*”, cité au long à la fin du factum de la cité-appelante, démontre bien, à mon humble avis, la fausseté de la méthode préconisée par les experts de la compagnie quand il s’agit d’évaluer une propriété comme celle de la Sun Life.

10 *James C. Bonbright*, professeur de finance à l’université Columbia, dans son traité, en deux volumes, intitulé “*The Valuation of Property*”, sous le chap. XVII “*Valuation for tax purposes*”, fait l’exposé suivant sur cette question:—

20 “A nicer question of choice concerns the alternatives of market value and value to the owner, where the property is demonstrably worth far more to its present owner than the price at which it could be sold to anyone else. Some writers in finance, while conceding that value to the owner may be the ideal basis of valuation under the laws of damages and of eminent domain, have insisted that, for tax purposes, market value in its literal sense of realization price should always be adopted. This position is plausible, though not conclusive, in inheritance taxation, where the tax is generally paid by the sale of a part of the very property in question. But it hardly applies to the general property tax, where the taxpayer’s usual procedure is to pay the tax from his current income rather than by liquidation.

30 The literal adoption of a market-value rule would seem to do gross injustice by hitting only those taxpayers whose property happens to take marketable form. Consider an extravagant mansion, unsalable because it is now owned by the one man in the community who is wealthy enough to indulge in such a luxury; or a factory whose very value to its owner consists in a special design which makes it unsalable. If the property were appraised at its market value, in the sense of the price for which the owner could actually sell it, it would be almost tax exempt. Of  
40 course, the appraiser may invoke some concept of a “fair market value”, defined as a price at which the property might be sold by a fictitious willing seller to a fictitious willing buyer. But such a concept, though traditional in the law, suggests either an utterly meaningless compromise between the owner’s withholding price and a buyer’s bidding price, or else a camouflaged standard of value to the owner.

We conclude that value to the owner has much the better claim to acceptance than market value, although

on grounds quite different from those which support the use of the same standard under the laws of indemnity.....

10 Several cases have raised the question whether value for tax purposes means market value in the literal sense of realization price with respect to property that is obviously worth much more than this price to its present owner. Sometimes this issue has arisen when the pertinent statute requires the use of “market value” or “fair market value” as the basis of appraisal; for even here it is open to argument either that “market value” means sale price in a *hypothetical market*, or else that the statutory standard is applicable only when the property “has a fair market value”. But when “true value” or some similar phrase is used in the law, there is room for the further contention that this value is not necessarily the same thing as market value.”

20 Signalons que dans la chartre de la cité de Montréal, ainsi qu’il est édicté sous l’art. 375a, c’est la “valeur réelle” des immeubles et non la “valeur marchande” (market value) que les estimateurs doivent considérer.

30 Ces citations, jointes à notre jurisprudence ainsi qu’aux motifs exposés dans le jugement du bureau de revision aussi bien que dans celui de la Cour supérieure, me convainquent, encore une fois, que la méthode adoptée par l’estimateur de la cité, et confirmée par le bureau de revision aussi bien que par la Cour supérieure, est entièrement justifiée.

L’un des principaux arguments invoqués par les savants procureurs de la compagnie Sun Life, et dont l’honorable juge de la Cour supérieure tient compte, est le suivant, tel que relaté dans le mémoire de la compagnie Sun Life:—

40 “The assessment history of the Sun Life Building appears from Schedule “H” of the Joint Admission at Case Vol. 1, page XXV. From this it will be seen that, starting with an initial total assessment for land and building for the year 1931-32 of \$8,000,000, the total assessment had increased down to and including the year immediately preceding the assessment under attack to a figure of \$9,986,200. This gradual increase corresponded roughly with the amounts expended each year as shown in Schedule “A” (Case Vol. 1, page X). As pointed out by the Witness Macaulay, the 1931-32 assessment of \$8,000,000, which was made at a time when the building had been



substantially completed, was fixed as the result of an appeal by the Company to the full Board of Assessors, the then equivalent of the present Board of Revision. By the decision of the Board of Assessors in that year the assessment of the City assessors was reduced from \$12,400,000 to the said figure of \$8,000,000. (v. Notice of Reduction, Exhibit P-22 — Case Vol. IV, page 693).

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It should be noted here that, during the period from 1937 to 1941, immediately prior to the assessment under attack, the Valuation Roll of the City of Montreal was “pegged” by statute (Case Vol. I, page 5, line 5), save as to new construction. The valuations for the years from 1931-32 down to the time of such “pegging”, however, were free valuations made by the City assessors without restrictions.

20

It was in these circumstances that the Company was confronted, on the filing of the Valuation Roll for the tax year 1942-43 in December 1941, with an increase in the total valuation of its main building and the land occupied by it alone of \$3,769,300 or approximately 40% over the preceding year.

30

Le juge de la Cour supérieure insiste, lui aussi, sur le fait que l'évaluation du premier décembre 1941 constitue une augmentation de quelque 40% sur les évaluations antérieures. Il ajoute que depuis 1931-32 l'évaluation de l'immeuble Sun Life est demeuré à peu près la même en y ajoutant seulement d'année en année les montants dépensés à finir des planchers ou étages additionnels. Il signale enfin qu'en 1931 les estimateurs ayant évalué l'immeuble à \$12,400,000, une plainte fut logée devant l'ancien bureau des estimateurs, qui réduisit l'estimation à \$8,000,000.

40

Ainsi que le font remarquer les savants procureurs de la cité de Montréal, dans leur mémoire, c'est la Législature qui a gelé le rôle de la cité pendant quatre ans, a imposé une ré-évaluation complète de tous les immeubles de Montréal et a créé un bureau de révision avec juridiction d'appel mais aussi de surveillance et de ré-évaluation. Les estimateurs ne siègent plus en révision de leurs propres estimations.

“Dans le présent cas”, disent les savants procureurs, le juge accorde beaucoup d'importance au fait qu'en 1931 les estimateurs ayant évalué l'immeuble à \$12,400,000, aient

jugé à propos de réduire leur estimation à \$8,000,000 et que cette estimation soit demeurée constante depuis jusqu'à 1941, en y ajoutant seulement certains montants annuels selon l'espace additionnel fini.

10 Sur ce point", ajoutent-ils, "nous n'avons pratiquement que la déposition de M. D. L. Macaulay, Vol. 2, page 211 et suivantes, se résumant ainsi. C'est lui qui s'est occupé de la plainte en 1931. Depuis, chaque année, l'évaluation a augmenté proportionnellement au supplément d'espace fini sans dépréciation. La propriété n'a pas changé depuis 1931, sauf l'espace qui a été fini, et l'évaluation au lieu d'augmenter aurait dû baisser à cause de la dépréciation. En transquestion, il admet qu'en 1931 il y avait de nombreux étages non finis et non divisés. A la page 214 il admet:—

20 "A.—There were several floors completely unfinished naturally, otherwise the One million six hundred thousand dollars \$1,600,000 would not have been spent."

30 Le témoin admet que ces étages non finis étaient évidemment non loués et que c'était un élément dont les estimateurs devaient tenir compte. Cette somme de \$1,600,000 est le montant dépensé depuis 1931 à diviser et finir les étages supérieurs. Ceci appert aux admissions cédule "A", Vol. 1, page X. Monsieur Macaulay n'a pas pu nous dire combien d'étages étaient non divisés en 1931, se contentant de remarquer qu'il y en avait plusieurs. En faits, il y avait alors à peu près quinze étages qui ne comprenaient que les quatre murs et les planchers.

40 Les rôles étant gelés depuis 1937, ce n'est qu'en décembre 1941 que les estimateurs ont pu déposer un rôle et estimer l'immeuble Sun Life pour la première fois comme 90% fini et occupé."

Et les savants procureurs de conclure:—

"Pour les raisons de droit donnés par le bureau et les raisons de faits apparaissant dans la preuve, nous soumettons que le juge "a quo" n'aurait pas dû prendre en considération les différentes estimations antérieures à 1941."

Si l'on examine les admissions reproduites aux pages VII et s., ainsi que les cédules auxquelles réfèrent ces admissions, il est facile, je crois, de se rendre compte de l'augmentation de l'évaluation de l'immeuble de la Sun Life, depuis l'évaluation qui avait été faite en 1931, pour l'année 1931-32, jusqu'à l'évaluation du premier décembre 1941, qui fait l'objet du présent litige.

10 M. Macaulay, le président de la compagnie, a été interrogé à ce sujet.

“Q.—In the same year of 1931 you spent Three million two hundred and seven thousand dollars (\$3,307,000)?  
A.—And the year before.

Q.—Not the year before. The year you made the complaint for the assessment. A.—Quite. You have the figures. Presumably that's correct.

20 Q.—And at that time, how many storeys? A.—The assessment of the year before, the assessment of the building the year before was Seven million five hundred thousand dollars (\$7,500,000), and Three million dollars (\$3,000,000), according to your assessment, was expended and the assessment was increased to Twelve million four hundred thousand dollars (\$12,400,000), which we protested successfully. And the Board heard us and that was the award of the Board. And the same situation has developed again.”

30 Nous avons là, d'abord, l'admission qu'en 1930 la bâtisse avait été évaluée, pour l'année 1930-31, à \$7,500,000. Or, il ne faut pas oublier qu'à cette époque, aux termes de l'art. 373 de la charte qui n'avait pas encore été amendée, le conseil devait nommer huit estimateurs, au mois de décembre de chaque année.

*Art. 375:—*

40 “Chaque année, entre le premier janvier et le premier septembre, les estimateurs devront dresser, pour chacun des quartiers de la cité, un rôle d'évaluation et de contribution foncière pour tous les immeubles situés dans tels quartiers.”

*Art. 379:—*

“La revision du rôle de perception doit être terminée le 20 août de chaque année et pas plus tard, et la revision du rôle d'évaluation et de contribution foncière doit être

complétée le 20 septembre de chaque année et pas plus tard.”

Or, comme nous avons vu d’après la charte telle qu’amendée:—

Art. 375a:—

10

“Le rôle doit être maintenant complété et déposé le ou avant le 1er décembre”.

*et non au mois d’août.*

20 Les estimateurs de la cité qui ont fait le rôle d’évaluation en 1931, pour l’année 1931-32, ont donc été nommés en décembre 1930, et il est certain que ces estimateurs ont dû se mettre à l’oeuvre dès le printemps de 1931, pour visiter les propriétés qu’ils avaient à évaluer, aux fins de compléter le rôle pour le 1er septembre.

Or, lorsqu’ils ont visité l’immeuble de la Sun Life, au printemps de 1931, ils se sont nécessairement rendus compte que l’année précédente, en 1930, la Sun Life avait fait des dépenses considérables sur sa bâtisse puisque, d’après les admissions, en 1930, la compagnie a dépensé \$6,510,749.83.

30 Il n’est donc pas étonnant qu’en faisant leur rôle, en 1931, les estimateurs se rendant compte du montant considérable des travaux qui avaient été faits en 1930, aient porté l’évaluation de \$7,500,000 à \$12,400,000.

40 Au moment où les estimateurs ont fait leur rôle, en 1931, ils n’étaient pas encore en mesure de se rendre compte des dépenses qui seraient faites en 1931 par la compagnie et, par conséquent, en faisant leur évaluation, ils ont bien tenu compte des dépenses faites par la compagnie en 1930, soit \$6,510,749.83, mais non des dépenses faites par la compagnie en 1931, soit \$3,207,452.79, tel que constaté aux admissions cédule “A”.

Que si, maintenant, le bureau des estimateurs a cru devoir réduire cette évaluation de \$12,400,000 à \$8,000,000, c’est qu’il appert à la cédule “H”, p. XXV, qu’en 1931, il n’y avait dans l’immeuble Sun Life que pour \$25,120 d’espace occupé par des

locataires, tandis qu'en 1941, indépendamment de la partie occupée par Sun Life, l'espace occupé par les locataires est évalué à \$273,640.

Tel qu'il appert des admissions, vol. 1, p. VII, la construction de l'édifice principal originaire a été commencée en juin 1913 et terminée en mars 1918. Une première extension à l'arrière, prolongeant la bâtisse jusqu'à la rue Mansfield, fut commencée durant l'été de 1922 et terminée en décembre 1925. Enfin, la dernière extension la plus considérable fut commencée en mai 1927 et complétée, quant à la structure, en décembre 1930. L'occupation partielle de cette dernière partie a commencé en 1929 et certains étages supérieurs ont été ensuite finis et aménagés en différents temps chaque année depuis.

D'après M. Perrault, expert de la compagnie, la première partie a 1,850,000 pieds cubes, la deuxième 1,150,000 et la troisième 18,931,761, ce qui veut dire que le coût principal de la construction a donc eu lieu entre 1927 et 1930.

Toujours d'après les admissions de la compagnie, cédule "A", il appert que les montants dépensés par la compagnie pour la construction de leur immeuble, à partir de 1913 à 1929 inclusivement, s'élèvent à \$9,351,288.60. C'est dire que lorsque les estimateurs ont fait l'évaluation de cet immeuble, au printemps de 1930, ils ont dû prendre en considération cette somme de \$9,351,288.60 et ont évalué le dit immeuble à \$7,500,000. Il n'appert pas que la compagnie Sun Life se soit objectée à cette évaluation.

Notons, ici, que l'expert Loble, produit par la compagnie pour évaluer leur immeuble en 1941, fixe comme valeur du dit immeuble la somme de \$7,250,000, soit \$250,000 de moins que l'évaluation municipale de 1931, alors que la compagnie avait déjà dépensé \$9,351,288.60. L'expert Simpson fixe cette valeur à \$7,500,000, exactement le montant de l'évaluation de la cité pour 1930-31. Les experts Perrault et Archambault qui sont aussi produits par la compagnie, fixent la valeur de ce même immeuble, — l'expert Perrault à \$8,202,600 et l'expert Archambault à \$8,528,817 — alors qu'à partir de 1930 jusqu'au mois de décembre 1941, la compagnie a dépensé sur ce même immeuble, pour le compléter, toujours suivant son admission, \$6,510,749.93, \$3,207,452.79 et \$1,633,023.32, soit un total de \$11,351,255.94 réparti comme suit:—

	1930	\$6,510,749.83	
	1931	3,207,452.79	
		<hr/>	\$ 9,718,202.62
	1932	589,543.95	
	1933	194,609.58	
	1934	45,045.50	
10	1935	43,693.34	
	1936	62,707.18	
	1937	22,634.96	
	1938	89,065.68	
	1939	101,330.51	
	1940	421,719.33	
	1941 (à avril)	3,959.59	
	1941 (avr. à déc.)	58,713.70	
		<hr/>	1,633,023.32
20			<hr/>
			<u>\$11,351,225.94</u>

Ces chiffres sont assez éloquents, il me semble, pour démontrer qu'il n'est nullement raisonnable d'adopter l'évaluation de ces experts de la compagnie.

La compagnie signale, de plus, que l'augmentation de l'évaluation de cet immeuble, depuis 1931 à 1941, est excessive, en 30 égard à l'évaluation de certaines autres propriétés dont l'évaluation n'a nullement été augmentée.

Or, ces autres immeubles tels que l'édifice Aldred, l'édifice Dominion Square, l'édifice de la Banque Royale et autres 40 immeubles mentionnés dans la cédule "H" étaient tous des immeubles qui étaient complètement terminés et occupés avant 1931, et il n'est pas étonnant, en égard surtout à la dépression qui existait durant les années 1930, 1931 et 1932 jusqu'en 1935, que la cité n'ait pas jugé à propos d'augmenter l'évaluation de ces immeubles. Cette dépression notoire qui existait durant ces années, nul doute, a aussi été considérée par le bureau des estimateurs, lorsqu'ils ont réduit de \$12,400,000 à \$8,000,000 l'immeuble de la Sun Life, en 1931, outre qu'ils ont alors aussi pris en considération le fait que cette bâtisse n'était pas complètement occupée.

Il n'est pas non plus sans intérêt de faire la comparaison entre l'évaluation foncière de certains immeubles auxquels il est référé dans la preuve avec l'évaluation faite par les estimateurs

de la cité pour l'édifice Sun Life, en tenant compte du nombre de pieds cubes pour chacun de ces immeubles.

Et, d'abord, prenons *l'édifice Aldred*. Cet édifice est évalué depuis 1931, à \$1,800,000. D'après la cédule "G", l'édifice Aldred, catégorie 1, érigé en 1929, contient 3,259,867 pieds cubes, tandis que la Sun Life, en chiffres ronds, en contient 22,000,000, soit sept fois plus. Que si l'on multiplie \$1,800,000 par 7, on obtient le chiffre de \$12,600,000.

*L'édifice de la Banque Royale*, érigé en 1928, est évalué à \$4,700,000. Suivant la cédule "G", elle contient 6,925,618 pieds cubes. Si l'on compare ce chiffre aux 22,000,000 pieds cubes de la Sun Life, la Sun Life contient trois fois plus de pieds cubes que la Banque Royale. Trois fois \$4,700,000 donne \$14,100,000.

Notons, en passant, que la Banque Royale est dans la même catégorie 3 que la Sun Life.

Quant à *l'édifice Bell Telephone*, érigé en 1928, catégorie 2, cette bâtisse est évaluée, depuis 1913, à \$3,000,000. Le nombre de pieds cubes qu'elle contient est de 4,820,690, tandis que la Sun Life en contient 4.5 fois plus. Or, si l'on multiplie \$3,000,000 par 4.5, on arrive au chiffre de \$13,500,000.

Voyons, maintenant, quant à *l'édifice Dominion Square*, érigé en 1929, évalué depuis 1934 à \$4,275,000. Cette bâtisse contient 6,741,985 pieds cubes. La Sun Life en contient donc trois fois plus, et en multipliant \$4,275,000 par 3, nous arrivons au chiffre de \$12,825,000.

On ne saurait contester que la valeur au pied cube de la bâtisse Sun Life est au moins égale à la valeur au pied cube des autres bâtisses.

Quant à l'espace locative, la Sun Life a une superficie brute de 1,207,351 pieds carrés, sur ce l'espace locative est de 732,633 pieds carrés, ce qui équivaut à 66% de la superficie totale; la Banque Royale a une superficie brute de 335,463 pieds carrés, l'espace locative est de 229,811 pieds carrés, soit 68% de la superficie brute. Comme on le voit, il n'y a pas une grande différence dans cette proportion de l'espace locative de ces deux immeubles.

Ces chiffres, suivant mon humble avis, font voir qu'il n'y a pas eu de discréditation dans l'évaluation de tous ces immeubles,

et que la seule raison pour laquelle l'évaluation de la Sun Life a été portée par les estimateurs de la cité et confirmée par le bureau de revision à \$14,276,000, c'est qu'à cette époque, l'édifice était complètement fini et que les estimateurs ont nécessairement dû tenir compte des \$11,351,225.94 dépensés par la compagnie depuis l'évaluation de 1930, qui n'avait été que de \$7,500,000.

10

Ainsi que nous l'avons déjà mentionné, la cité de Montréal en appelle du jugement de la Cour supérieure qui a réduit l'estimation de la Sun Life à \$10,207,877.40.

Le juge de la Cour supérieure a approuvé la méthode suivie par l'estimateur et le bureau de revision, sauf sur trois points; 1o. L'ajustment des montants dépensés par la compagnie pour sa construction au chiffre indice des prix prévalant en 20 1939-40; le juge prenant le pourcentage de l'estimateur Vernot au lieu de ceux du bureau de revision; 2o. Le montant de dépréciation; le tribunal en fixant un qui n'est ni celui de l'estimateur, ni celui du bureau, ni celui d'aucun des experts; 3o. L'influence de la valeur de remplacement et de la valeur commerciale dans l'évaluation finale; la cour leur accordant respectivement des pourcentages qui ne sont ni ceux de l'estimateur, ni ceux du bureau de revision, ni ceux d'aucun des experts. Ces trois points représentent une différence de \$4,844,119.60.

30 Nous lisons dans le jugement de la Cour supérieure, à ce sujet:—

“The court does not criticise the assessor for following the memorandum of 1940 concerning the assessment of certain large properties in order to arrive at a uniformity in the valuation of properties in the city which was intended as a guide. It does however question the percentages allotted by Vernot and the Board.

40

The court has not questioned the judgment of the Board except as regards the adjusted cost to the index number, the percentage allowed for depreciation and the percentage of replacement value and commercial value on which the final valuation was established.”

Voici les raisons exposées, dans leur mémoire, par les procureurs de la cité pour ne pas accepter le chiffre indice de l'estimateur Vernot, auquel a adhéré le juge de la Cour supérieure.



10 “Comme l’estimation était faite en date du 1er décembre 1941, l’estimateur devait voir si au moment où la compagnie a fait ses déboursés les prix étaient plus hauts ou plus bas que ceux prévalant au moment de l’estimation et, au cas de différence, les ajuster en plus ou en moins. Or, au 1er décembre 1941, les prix du matériel et de la main-d’oeuvre avaient commencé à monter. Pour ne pas refléter cette hausse, la cité a basé tout son rôle du 1er décembre 1941 sur les prix prévalant entre le 1er mai 1939 et le 30 avril 1940. (Vide tém. Vernot, Vol. 1, page 31, et Cartier, Vol. 2, pages 268 et 269). Tel qu’il appert des admissions, Vol. 1, page VII, la construction de l’édifice principal originaire a été commencée en juin 1913 et terminée en mars 1918. Une première extension à l’arrière, prolongeant la bâtisse jusqu’à la rue Mansfield, fut commencée durant l’été de 1922 et terminée en décembre 1925. Enfin, la dernière extension la plus considérable fut commencée en mai 1927 et complétée, quant à la structure, en décembre 1930.

20  
30 Le bureau de revision, ayant en admission les montants dépensés chaque année, était mieux renseigné que l’estimateur. Avec l’index des coûts de construction de chacune des années, il a fait le rajustement précis des montants dépensés annuellement à l’index 109 de 1939-40 et a trouvé que le montant de \$19,167,089.24 dépensé au 1er décembre 1941, devait être réduit de \$181,503.32 au lieu de \$1,471,344 adopté par l’estimateur.”

Les savants procureurs font remarquer que la Cour supérieure dit qu’elle ne voit aucune raison et aucune explication logique dans le geste du bureau, et adopte le chiffre de Vernot.

A cette observation, les savants procureurs répondent:—

40 “La bonne raison et l’explication logique sont bien faciles à donner. Vernot a assumé toute la construction érigée entre 1927 et 1930 dans une période de très hauts prix, alors qu’en réalité la construction a débuté en 1913 et se poursuivait encore en 1941. Vernot n’avait pas les détails précis des admissions et a dû procéder par à peu près. Le bureau se basant sur les dépenses annuelles indiquées aux admissions, avec l’index de construction de chaque année, arrive à un résultat précis. Il y a au dossier trois tables de chiffres indices de 1913 à 1941, toutes trois rédigées par les experts de la cité et basées sur les rensei-

gnements fournis par le gouvernement fédéral. Ces tables de chiffres indices ne sont pas contredites par la compagnie.

10 L'estimateur Vernot a agi au meilleur de sa connaissance avec les renseignements qu'il avait en mains, mais le bureau avait les détails précis des dépenses annuelles et les chiffres indices. Il ne pouvait faire autrement que d'adopter ce qui était admis et prouvé sans contradiction.

20 La Cour supérieure dès qu'elle adoptait le principe de prendre les montants dépensés annuellement par la compagnie donnés par les admissions, et cet autre principe de faire l'équivalence des dépenses selon le chiffre indice, ne pouvait logiquement mettre la preuve de côté et renverser le chiffre indiqué par le bureau. Nous soumettons humblement que ce point est clair et facile en regard de la preuve et de l'attitude prise par la Cour supérieure."

Avec toute déférence, je suis d'avis que sur ce point le bureau de revision a raison et que son chiffre indice de \$181,503.32 doit être accepté plutôt que celui de Vernot et de la Cour supérieure qui s'élève à \$1,471,344.

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30 Le second point sur lequel il y a divergence d'opinion entre le bureau et la Cour supérieure a trait à la dépréciation.

Ici, encore, je citerai le mémoire des savants procureurs de la cité, car je ne saurais exposer plus clairement les arguments qu'il apportent à l'encontre d'une dépréciation additionnelle de 14% pour "excessive cost", accordée par la Cour supérieure.

40 Ce second point est développé de la page 18 à la page 35 du mémoire. Je me contenterai simplement de citer les extraits suivants:—

"Dans la présente cause, l'estimateur, le bureau de revision et le juge de la Cour supérieure se sont tous basés sur deux facteurs, la valeur de remplacement et la valeur par le revenu, l'un corrigeant l'autre. Dans ce dernier cas, il faut prendre la valeur de remplacement telle qu'elle est, autrement il y aurait double emploi, double réduction et le facteur revenu viendrait corriger ce qui l'a déjà été.

10 Lorsque les experts estimateurs ou les auteurs parlent de combinaison de valeur de remplacement avec d'autres facteurs, ils entendent la valeur de remplacement de la bâtisse en question et non d'une bâtisse imaginaire, complètement différente, qu'ils n'ont jamais vue et ne verront jamais. Leur motif en ce faisant est de donner une certaine importance au caractère de la bâtisse, au plus ou moins de réparations qu'elle nécessitera, dépendant de la permanence et de la qualité de ses matériaux, etc. C'est une doctrine étrange et inconnue d'estimation que de prendre la valeur de remplacement dépréciée et d'enlever ensuite 14% pour "additional extravagant cost incurred in constructing this monumental building instead of the usual type fine quality first class building." En d'autres termes, meilleure sera la construction et plus le coût sera élevé, plus grand sera le pourcentage à enlever du coût réel avant d'arriver à un facteur de coût remplacement imaginaire, à être employé en combinaison avec les autres facteurs pour fins d'estimation. A ce compte, il y aura un plafond dans la valeur de remplacement des édifices à bureaux.

30 S'il est vrai, tel qu'indiqué dans le jugement, que "Sun Life spent considerable sums on special features and ornamentation which do not add to its commercial value" pourquoi déduire ces sommes de la valeur de remplacement avant de combiner cette valeur avec la valeur commerciale ou par le revenu? Si ces spécialités ne sont pas locatives et n'ajoutent aucune valeur locative, cela se reflètera dans la valeur économique ou le facteur commerciale. En réduisant leur coût de la valeur de remplacement on donne une double considération et une double déduction pour les mêmes item."

40 "Le juge lui-même dans son jugement, vol. 5, p. 1111, admet le principe que nous émettons. M. Gaspard Archambault et M. J. J. Perreault avaient enlevé respectivement 18% et 23.3% de dépréciation additionnelle à raison du fait que les corridors étaient larges, les espaces de service spacieux et que de ce fait il y avait moins d'espace "rentable" que dans les édifices à bureaux proprement dit. Le juge dit:—

"The so called functional disability has been taken into consideration in the commercial valuation."

Le même principe s'applique aux huit item énumérés dans le jugement *a quo*. Si cette dépense additionnelle n'apporte aucun revenu, la valeur commerciale s'en ressent et se reflète dans l'évaluation. Cependant le juge, vol. 5, p. 1004, dit en parlant de ces huit item:—

10 “In arriving at a value by means of the cost approach these features should be considered in arriving at a depreciation allowance as was done in the Minnesota Case.”

Ces item n'ajoutent peut-être pas 100% de valeur commerciale, mais ils ajoutent 100% au facteur valeur de remplacement comme facteur.”

20 Ici, je dois faire remarquer que le juge oublie que dans la cause *Minnesota*, la cour n'avait considéré qu'un facteur, tandis que dans la cause actuelle les deux facteurs ont été pris en considération, et les savants procureurs ont raison de dire:—

“Nous soumettons humblement que rien dans le témoignage de Perry, Désaulniers et Mills ne justifie le juge de la Cour supérieure d'enlever la valeur des huit item susdits de la valeur de remplacement, s'il se sert de la valeur par le revenu pour parvenir à la valeur réelle.”

30 Sur ce deuxième point, adoptant les motifs exposés par les savants procureurs de la cité, dans leur mémoire, je retrancherais les 14% de dépréciation additionnelle accordée par la Cour supérieure.

Le troisième point qu'il nous reste à examiner, c'est l'influence de la valeur de remplacement et de la valeur commerciale dans l'évaluation finale, la Cour supérieure leur accordant respectivement des pourcentages qui ne sont pas ceux de l'estimateur ni ceux du Bureau ni ceux d'aucun des experts.

40 Rappelons immédiatement que, dans le présent cas, le facteur découlant des indications du marché, c'est-à-dire les ventes de la propriété en question ou de propriétés semblables n'existant pas, l'estimateur ainsi que le Bureau et la Cour supérieure ont eu recours aux deux autres facteurs, savoir la valeur de remplacement et la valeur commerciale, l'estimateur comme le Bureau et la Cour devant tenir compte des observations du memorandum, dans la computation du pourcentage à accorder à l'un ou l'autre de ces deux facteurs.

Ici, encore, rappelons-nous que dans le cas de propriétés de la première catégorie, c'est-à-dire "Developed and operated solely on a commercial basis as investment propositions", pour les motifs énoncés dans cette catégorie et auxquels nous référons :

10 "It is recommended that these two factors, viz., replacement cost and commercial value, be given equal weight in valuing these properties for a three-year period."

C'est à cette première catégorie que s'est arrêté l'honorable juge de la Cour supérieure et qu'il a, en conséquence, attribué au facteur économique une importance égale à celle attribuée au facteur valeur de remplacement, soit 50% à chacun de ces deux facteurs.

20 La raison qu'il en donne c'est que l'édifice Sun Life est un édifice commercial ordinaire et non un édifice en tout ou en partie spécial: . . . "It is absolutely a commercial building. It is not a one purpose building like a church."

Avec toute déférence, la preuve au dossier fait voir très clairement qu'on ne saurait considérer cet immeuble comme un immeuble commercial ordinaire. Tous les experts ont admis qu'il s'agissait d'une bâtisse spéciale pour des fins et besoins de la compagnie Sun Life. Pour n'en mentionner qu'un, M. Simpson, — expert pour la compagnie — nous dit (vol. 1, pp. 81 et 88) :—

30 "They must have designed it for their own use. They must have designed it for the purpose they wanted, for their own use. If they wished to derive as much revenues as possible from it, they would not have designed it that way.

The building was designed to have a massive or imposing appearance, and in order to get it they sacrificed somehow the utility of the building."

40 La compagnie elle-même, dans sa plainte, vol. 4, p. 717, nous indique qu'il s'agit d'un immeuble sortant de l'ordinaire :—

"I wish to emphasize that the figures given above are gross figures before depreciation and that they also include architectural features and embellishments and other items for large amounts which, in our opinion, are not taxable."

Enfin, l'honorable juge de la Cour supérieure admet le fait lorsqu'il dit, vol. 5, p. 995:—

“The Sun Life Building has been described by the various witnesses as monumental, colossal and unique and different from any other building in Montreal.”

10 On ne saurait donc considérer l'édifice Sun Life comme un immeuble commercial ordinaire. Aussi bien, dans le memorandum, cet édifice est-il placé dans la troisième catégorie, et quant aux propriétés de cette troisième catégorie, c'est-à-dire “Properties partly occupied by the owners and partly rented, such as the Royal Bank, the Canada Life, the Bank of Toronto, the Sun Life, etc.”, le memorandum, tout en donnant comme directive que la valeur de remplacement ne doit pas être considérée pour moins de 50% de sa valeur, laisse une grande discrétion quant à la considération de la valeur commerciale pour  
20 l'autre 50%. Je cite de nouveau le passage suivant du memorandum pour cette troisième catégorie:—

30 “It would seem that some consideration should be given to rental value in these cases, so that the replacement factor should be weighted somewhere between 50 and 100 per cent, and the commercial value factor make up the difference between 50 per cent and zero. No hard and fast rule can be given for the division of weight in these factors, as it will depend on the proportion owner-occupied, the extent to which the commercial features of the building have been sacrificed to the main design with a view to the future complete use of the building by the owner, or the enhanced prestige of an elaborate and expensive construction. Each property will have to be considered on its merits within the limits outlined above.”

40 Ainsi, pour établir le pourcentage qu'il faut accorder à chacun de ces deux facteurs, valeur de remplacement et valeur locative, il faut tenir compte, nous dit le memorandum, non seulement “of the proportion owner-occupied”, mais aussi “the extent to which the commercial features of the building have been sacrificed to the main design with a view to the future complete use of the building by the owner, or the enhanced prestige of an elaborate and expensive construction.”

Dans le cas actuel, pour l'édifice Sun Life, l'estimateur a fixé à 10% la valeur économique, et à 90% la valeur de remplacement. Le bureau de revision, de son côté, a accordé 17.7% à la valeur économique, et 82.3% à la valeur de remplacement.

Or, comme le bureau de revision avait trouvé comme valeur de remplacement du dit édifice \$16,777,558.69, et comme valeur économique \$7,028,623, prenant 82.3% de la valeur de remplacement et 17.7% de la valeur économique, il est arrivé à une valeur de \$15,051,997.07.

Nous lisons dans le jugement du bureau de revision, vol. 10 5, p. 983-a-30:—

20 “The final figure of \$15,051,997.07 has been arrived at by making all possible concessions to the Complainant’s statements. This sum is 5% over the contested assessment and 7.5% less than the book value and marked value in the Company’s annual general statement for 1941 and in the Company’s return to the Superintendent of Insurance for the Dominion of Canada. (See joint admission 16 and Schedule F). Substantial discrepancies between the opinions of men of experience is of common occurrence when appraising or estimating enterprises of huge dimensions.”

Ici, encore, je ne me croirais nullement justifié de substituer mon opinion personnelle à celle du bureau de revision quant à la proportion qu’il a établie entre la valeur de remplacement et la valeur économique, d’autant plus qu’en arrivant ainsi à une valeur totale de \$15,051,997.07, le Bureau s’en est, cependant, tenu à l’évaluation de l’estimateur, telle que portée au rôle d’évaluation déposé le 1er décembre 1941, soit à la somme 30 de \$14,276,000, ce qui, ainsi que le font justement remarquer les savants procureurs de l’appelante, équivaut à ne prendre que 75% de valeur de remplacement et 25% de valeur économique.

Je dois avouer que tout en n’ayant pas cru devoir intervenir dans l’appréciation de la proportion accordée par le bureau de revision à ces deux facteurs, valeur de remplacement et valeur économique, j’inclinai, toutefois, à accorder une plus grande proportion que 17.7% à la valeur économique, et qu’en regard 40 de la preuve, une proportion de 25% accordée à la valeur économique eût été, suivant mon humble avis, plus conforme à l’opinion des experts touchant cette question de la valeur économique.

Rappelons-nous enfin, pour terminer, que le montant de \$14,276,000. porté au rôle d’évaluation de décembre 1941, n’est que de \$7,000,000. plus élevé que l’estimation de la cité, pour l’année 1930-31, alors qu’à partir de janvier 1930 à décembre 1941, la compagnie a dépensé sur cette bâtisse, d’après ses livres, \$11,351,225.94.

Rappelons-nous aussi que ce montant de \$14,276,000. est \$2,000,000. de moins que la valeur marchande (market value) portée dans ses livres par la compagnie en 1941, soit \$16,258,050.27.

Pour toutes ces raisons, je ferais droit à l'appel de la cité de Montréal, avec dépens, et statuant à nouveau, j'infirmemais le jugement de la Cour supérieure, confirmerais le jugement du  
10 Bureau de revision, et rejetterais l'appel de la compagnie Sun Life, aussi avec dépens.

J.C.B.R.

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#### NOTES DE L'HON. JUGE ST-JACQUES

Quelle était la valeur réelle des immeubles de la compagnie  
20 d'assurance Sun Life au moment où le rôle d'évaluation a été préparé en 1941? Tel est le problème que cette Cour doit résoudre. La loi qui régit la Cité exige que les immeubles soient portés au rôle à leur valeur réelle, pour les fins de l'imposition des taxes municipales et scolaires.

Pour arriver à déterminer cette valeur réelle, il faut, selon les cas, tenir compte de divers facteurs que Monsieur Parent indique dans son manuel: "Real Estate Valuation" (Montréal 2ème édition, 1941). Après avoir signalé les inconvénients qui  
30 résulteraient d'une évaluation arbitraire, M. Parent s'exprime comme suit (P. 57):—

"It is easy to imagine what would happen to such investments were the property value regulated by an arbitrary and artificial valuation, which would not correspond to a valuation as precise as can humanly be obtained."

et il ajoute, comme synthèse des différents éléments qui peuvent entrer dans la fixation du chiffre de l'évaluation:—  
40

"Whatever be the angle from which this problem is considered, there is only one solution possible — that the property tax rolls should have current value for their sole basis; that is to say, the valuation should be based upon the price which a person who is not obliged to sell could obtain from a buyer who is not obliged to buy".

Dans la présente cause, il n'est pas possible de considérer les ventes d'immeubles qui auraient pu être faites dans le voisinage, car aucune preuve n'a été rapportée à ce sujet.



Pour rechercher et fixer la valeur réelle, la Cité suggère deux éléments seulement:—

1. la valeur commerciale ou économique, et;
2. le coût de remplacement des édifices, tels que dépréciés; et la combinaison de ces deux éléments dans des proportions  
10 basées sur les règles arrêtées par le bureau des estimateurs dans le cours des dernières années.

Cette méthode a conduit, en 1941, les évaluateurs Vernot et Lynch, quant à l'estimation des immeubles de la compagnie, au résultat suivant:—

Pour l'édifice principal, valeur commerciale:	\$7,915,000.00
Coût de remplacement:	14,404,578.00
20 Combinaison de ces deux facteurs dans la proportion de 90% du coût de remplacement, et 10% de la valeur commerciale:	13,755,620.00
Pour l'édifice secondaire, incluant terrain, bâtisse et équipement:	\$ 520,474.00

30 Le bureau de revision, groupant ensemble l'édifice principal et la chambre de chauffage pour n'en faire qu'un seul immeuble porté au rôle, et tenant compte, à la fois, de la valeur commerciale et du coût de remplacement, mais dans des proportions différentes de celles des évaluateurs, en est arrivé au chiffre total de \$15,051,997.07. Cependant, le bureau de revision n'a pas modifié l'évaluation telle qu'elle avait été fixée par les estimateurs.

40 La Cour supérieure a suivi, d'assez près, la même voie que les estimateurs et le bureau de révision, en ce sens qu'elle a tenu compte de deux éléments seulement: valeur commerciale, d'une part, et coût de remplacement, de l'autre, mais en les combinant différemment, soit 50% pour chacun. Elle en est arrivée à la conclusion que l'évaluation devait être réduite, tant pour les bâtisses que pour les terrains, à \$10,207,877.40. Il n'y a vraiment pas de contestation quant à l'évaluation du terrain sur lequel sont érigées les deux édifices qui, en réalité, peuvent et doivent être considérés comme un seul.

Il y a peu de divergences d'opinion sur la valeur commerciale, ou économique, de cet édifice partiellement occupé par la

compagnie et loué pour une bonne partie. Cette valeur commerciale varie, suivant les témoignages, entre \$7,250,000.00 et à peu près \$8,000,000.00. Personne, pas même les évaluateurs et le bureau de revision, ne dépasse ce dernier chiffre de \$8,000,000.00.

10 C'est, surtout, en ce qui concerne le coût de remplacement des immeubles que se produit l'écart entre les experts, les évaluateurs, le bureau de revision et la Cour supérieure. Deux des experts de la compagnie, MM. Jean-Julien Perrault, architecte, et Gaspard Archambault, entrepreneur, ont établi, sur des données logiques et bien raisonnées, la valeur de remplacement; l'un, Perrault, (en chiffres ronds) \$8,200,000.00, et l'autre, Archambault (en chiffres ronds) \$8,500,000.00.

D'autre part, les experts de la Cité, et, en particulier, MM. Perry, Mills et Désaulniers établissent un chiffre beaucoup plus élevé:—  
20

Perry (en chiffres ronds): \$18,500,000.00

Mills et Désaulniers: 15,800,000.00

Les immeubles de la compagnie ont donc été portés au rôle d'évaluation, tant par les estimateurs que par le bureau de revision, à la somme globale de: \$14,276,000.00

30 Pour les fins des taxes d'affaires, le chiffre en est de \$421,580.00; la taxe d'eau: \$423,280.00 pour l'édifice principal, et quant à l'édifice secondaire: \$26,000.00. Cette partie de l'évaluation n'a pas été modifiée par la Cour supérieure. La modification n'a porté que sur l'évaluation des immeubles pour les fins de l'imposition des taxes municipales et scolaires et elle a été réduite à \$10,207,877.40.

La Cité demande à notre Cour de rétablir le chiffre fixé par ses estimateurs.

40 D'autre part, la compagnie forme un contre-appel et soumet que cette évaluation devrait être réduite à environ \$9,000,000.

Il y a donc entre l'évaluation faite par la Cour supérieure et celle des estimateurs un écart d'à peu près \$4,000,000. et il en résulte que, pour les fins de l'imposition des taxes municipales et scolaires qui étaient à cette époque, en 1942, d'environ \$3. pour chaque \$100 d'évaluation, la Cité percevrait, si l'évaluation de ses estimateurs est rétablie, au delà de \$120,000.00 de plus par année et, naturellement, le paiement de cette somme retomberait sur la compagnie.

Il est bien admis que l'imposition des taxes, dans une municipalité, doit être faite suivant la valeur réelle des immeubles imposables, d'une façon équitable et sans discrimination. Sans doute, comme le signale M. Parent, dans son Manuel, que l'on ne peut exiger, pour la détermination de ce chiffre de l'évaluation, la perfection absolue, mais l'on doit se contenter de ce qui est humainement possible.

10

De ces deux chiffres, dont l'un déterminé par les estimateurs, et accepté par le bureau de revision, et l'autre par la Cour supérieure, quel est celui qui paraît se rapprocher le plus de la valeur réelle imposable des immeubles de la compagnie? C'est ce à quoi je veux maintenant tâcher de m'arrêter. Pour le faire, je n'entends pas discuter, ni condamner, les méthodes suivies, tant par les évaluateurs que par le bureau de révision; mais je voudrais, autant que possible, me placer au point de vue de la valeur marchande des immeubles de la compagnie.

20

Les évaluateurs ont pris, comme base du rendement total de l'édifice principal au moment de la confection du rôle, le chiffre de \$1,187,225.00 de loyer brut par année. Si l'on considérait un rendement brut de 15% sur le capital auquel correspondrait le total du loyer (ce qu'a fait l'estimateur Vernot), la valeur commerciale de l'édifice ne serait que \$7,915,000.00.

30 Pour ne pas exagérer, prenons comme base un rendement brut de 12%; il en résulterait que le capital qui produirait ce rendement serait de \$9,893,500.00. Allons plus loin.

Ce rendement brut a servi de base à presque tous les calculs faits par les experts, sauf MM. Mills et Désaulniers qui donnent l'opinion que le rendement devrait être un peu plus élevé.

40 Quoiqu'il en soit, et pour les fins de la démonstration que j'entends faire, prenons comme base un rendement de \$1,200,000.00 par année. Il est admis que les dépenses de maintien et d'entretien des édifices, pour les années qui ont précédé 1941, étaient d'environ \$430,000.00, ce qui laisserait une marge, entre le rendement brut et le coût d'entretien, de \$770,000.00. A même ce surplus, la compagnie devrait payer les taxes qui seraient imposées par la cité de Montréal. Si ces taxes sont imposées sur \$14,200,000.00, suivant le rôle tel que préparé, à raison de trois dollars par cent dollars d'évaluation, le montant en serait d'environ \$425,000.00; il ne resterait donc qu'un revenu net de \$345,000.00 sur un capital que la Cité fixe à au-delà de \$14,000,000.00 c'est-à-dire un rendement de 2.5% par année.

Si, au contraire, l'imposition municipale se fait sur la base fixée par la Cour supérieure, soit (en chiffres ronds \$10,200,000.00, le montant des taxes municipales et scolaires sera d'environ \$306,000.00, ce qui laisserait une marge nette de \$464,000.00 sur un capital de \$10,200,000.00, soit un rendement de 4.5%. Peut-on concevoir qu'un acheteur qui n'est pas forcé d'acheter, mais qui veut faire un placement sûr et de tout repos, n'envisagerait pas au moins l'éventualité d'un rendement approchant 5%; et, dans ce cas, comment peut-on espérer qu'une vente, même imaginaire, puisse se faire sur une base excédant \$10,000,000.00? Je ne puis me résoudre à le croire. Le jeu des combinaisons que l'on fait entre la valeur strictement commerciale des immeubles de la compagnie et le coût aléatoire de remplacement conduit à des résultats que je ne puis accepter, dans le cas actuel, en face du chiffre brutal du rendement de ces édifices tel qu'établi par la preuve.

20 Je m'arrête à ce raisonnement avec d'autant plus de facilité, que je trouve dans le dossier une base suffisamment solide pour le faire.

C'est en 1931 que la compagnie a terminé la structure extérieure de son édifice principal, bien qu'alors les divisions intérieures ne fussent pas complétées. On savait ou, du moins, l'on pouvait savoir, à ce moment, ce qu'avait coûté la construction, commencée depuis au delà de dix-neuf ans, de cet édifice majestueux, imposant, mais extravagant dans son goût de construction si l'on se place, surtout, au point de vue commercial ordinaire. Les estimateurs de la cité de Montréal de 1931, assermentés pour faire leur devoir, tout comme ceux de 1941, et tenus, tant en vertu de la loi que des instructions reçues de leurs supérieurs, de rechercher et établir la valeur réelle des propriétés imposables, en avaient fixé le chiffre à \$12,400,000.00. Notons qu'à ce moment, ils n'avaient pas d'autre base pour faire l'évaluation que la valeur intrinsèque des édifices, et non pas le rendement, puisqu'alors ils n'en produisaient pas ou peu. La compagnie s'étant plainte de cette évaluation, le bureau des évaluateurs, réuni au complet, sans doute après avoir mûrement étudié le problème, et, en se plaçant au point de vue des intérêts de la Cité, réduisit à \$8,000,000.00 le chiffre de l'évaluation, pour l'édifice principal, et \$225,000.00 pour ce que l'on appelait "l'édifice du chauffage".

A partir de cette date jusqu'en 1941, c'est ce chiffre qui a été maintenu chaque fois que l'on a refait le rôle d'évaluation, en ajoutant, toutefois, les sommes dépensées par la compagnie

pour terminer l'intérieur de l'édifice, ses divisions pour les fins de location, etc. L'évaluation, telle qu'elle apparaissait au rôle de 1941, était donc de \$9,986,200.00 ( Voir P. 55, factum de la Cité).

On se demande, naturellement, pourquoi cette évaluation, que l'on avait cru raisonnable et équitable depuis dix ans, serait portée à au delà de \$14,000,000.00, pour les fins de l'imposition  
10 des taxes pour les années 1942-1943. Les édifices n'avaient pas rajeuni depuis 1931; sans doute qu'à raison de cette construction, si solide de l'édifice principal, il ne s'était pas sensiblement déprécié dans le cours de ces dix années. Mais ce que l'on appelle la chambre de chauffage et la machinerie qui y était installée n'avaient pas pu augmenter de valeur depuis 1931; elles s'étaient sensiblement dépréciées et, cependant, la somme de \$225,000.00 que l'on avait fixée en 1931, on la porte, en 1941, à au delà de \$500,000.00 ( Voir exhibit P-2, vol. 4, pp. 716 et 717).  
20 Je ne trouve absolument rien au dossier qui puisse justifier cette augmentation et elle me paraît même discriminatoire.

On suggère, de la part de la Cité, qu'en 1937, la Législature de Québec avait adopté une loi pour "geler" le rôle d'évaluation et qu'on ne pouvait pas jusqu'en 1941, y toucher; on l'a, cependant, modifié pour y ajouter les dépenses faites par la compagnie.

Il est dit au jugement du bureau de revision que le rôle fait en 1931 ne peut pas constituer "chose jugée" pour les années  
30 subséquentes. Je n'entends pas discuter cette proposition. Toutefois, il se dégage, pour moi, une conclusion à laquelle je ne puis me soustraire: c'est que les estimateurs de 1931 ont dû faire leur devoir, et la présomption qui s'attache à la confection de ce rôle, maintenu avec les modifications qui s'imposaient, pendant une période de dix ans, détruit fortement la présomption que l'on nous demande de faire prévaloir en faveur du rôle fait en 1941, et sanctionné par le bureau de revision.

Je suis d'autant plus à l'aise pour tenir compte de cette  
40 forte présomption que le chiffre maintenu au rôle d'évaluation jusqu'en 1941, savoir: \$9,986,200.00, me paraît correspondre bien plus à la valeur réelle des immeubles imposables de la compagnie que celui qui a été, en définitive, fixé par les estimateurs, en 1941. En d'autres mots, si les immeubles de la compagnie restaient imposables sur une base de \$14,200,000.00 (en chiffres ronds), cela voudrait dire qu'ils ne produiraient qu'un rendement de 2.5%; alors que si, au contraire, ils sont taxés sur une base d'environ \$10,000,000.00, leur rendement net serait d'à peu près 4.5%.

S'il me fallait tenir compte des deux éléments proposés par la Cité, à savoir : la valeur commerciale, ou économique, et la valeur intrinsèque des édifices, je n'en conclurais pas moins que le chiffre de l'évaluation, tel que fixé par le jugement frappé d'appel, est beaucoup plus rapproché de la valeur réelle imposable que ne l'est celui qui a été porté au rôle d'évaluation.

10 La "feuille des estimations" (exhibit P-I) fait voir que les estimateurs ont fixé la valeur commerciale de l'immeuble principal à \$7,915,000.00, et pour les fins de mes calculs, j'accepterai ce chiffre, bien qu'il soit supérieur à celui suggéré par les témoins Lobley et Simpson.

20 Quant à ce qui concerne la valeur intrinsèque de l'immeuble imposable, les estimateurs, qui ont préparé le rôle de 1931, s'étaient arrêtés à la somme de \$12,400,000.00. A ce moment, comme je l'ai dit plus haut, l'édifice était complété et partiellement occupé par la compagnie; il restait encore à subdiviser les étages supérieurs qu'on destinait à la location. Il est certain que les estimateurs n'avaient pas alors d'autre base que la valeur intrinsèque de l'édifice, c'est-à-dire son coût normal de construction. Il faut présumer qu'ils avaient pris tous les renseignements nécessaires pour leur permettre d'accomplir le devoir que leur imposaient les dispositions de la charte et ainsi déterminer la valeur réelle pour les fins de taxation; ils ont dû considérer, à ce moment, que le coût de construction de cet édifice devait s'élever normalement au chiffre qu'ils ont fixé, soit \$12,400,000.00.

30 Je suis satisfait, d'après l'ensemble de la preuve, qu'en envisageant uniquement la valeur intrinsèque de l'immeuble (terrain et édifice), il n'était pas déraisonnable de la déterminer, en 1931, à \$12,400,000.00. Dans le cours des dix années qui ont suivi, cet édifice, si parfaitement construit qu'il fût, a nécessairement subi, de l'aveu de tous les témoins entendus, une certaine dépréciation; les experts semblent d'accord pour admettre qu'une dépréciation de 1% par année est la moindre qui puisse être envisagée. Il faut donc en conclure qu'en 1941, lorsque l'on considérait le coût de remplacement de cet édifice, il fallait déduire de la somme de \$12,400,000.00 10%, soit \$1,240 000.00, ce qui laisserait une valeur intrinsèque de \$11,160,000.00. A cette somme, il faudrait ajouter ce que la compagnie a dépensé, de 1931 à 1941, pour compléter l'intérieur de l'édifice, soit celle que la Cité elle-même a ajouté à son rôle : \$1,986,200.00. La valeur intrinsèque de l'immeuble eut donc été, en 1941, en s'en rapportant aux bases mêmes adoptées par la Cité dès 1931, d'environ \$13,150,000.00.

L'édifice était alors occupé par la compagnie dans une proportion d'à peu près 50%, et la balance était destinée à des fins de location. Je serais absolument d'avis que s'il faut tenir compte de ces deux éléments, ce n'est pas dans la proportion admise par le bureau de revision, mais celle que la Cour supérieure a adoptée, soit 50% de la valeur commerciale, et 50% de la valeur intrinsèque, au coût de remplacement. Le jeu de cette combinaison produirait le résultat suivant:—

Valeur commerciale:	\$7,915,500.00	
Moitié:		\$ 3,907,500.00
Valeur intrinsèque:	13,150,000.00	
Moitié:		6,575,000.00
	Total:	<u>\$10,482,500.00</u>

Or la Cour supérieure s'est arrêtée au chiffre de \$10,207,817.00, en suivant une voie différente.

Si j'envisage l'évaluation au point de vue placement seulement, il m'est impossible de dépasser le chiffre de \$10,000,000.00; si j'entreprends de suivre la combinaison de la valeur commerciale avec la valeur intrinsèque, j'obtiendrais un chiffre de \$10,482,500.00. Il y a tellement peu de différence dans l'un et l'autre cas, avec l'évaluation telle que fixée par le jugement de la Cour supérieure, que je ne crois pas devoir intervenir pour le modifier, en l'augmentant, et je confirmerais donc le jugement, rejetant l'appel de la cité de Montréal avec dépens.

Quant à l'appel de la compagnie, il ne me paraît pas qu'il puisse être entretenu; ses immeubles étaient évalués avant la confection du rôle attaqué à \$9,986,200.00. Elle ne s'en plaignait pas et je crois que l'on peut dire, avec assez de certitude, que si le rôle n'eût pas été modifié, il n'y aurait pas eu d'appel de sa part, même devant le bureau de revision.

En ce qui concerne l'évaluation pour les fins des taxes d'affaires et la taxe de l'eau, le rôle n'a été touché ni par le bureau de revision, ni par la Cour supérieure, et la compagnie n'a pas démontré, à ma satisfaction, qu'il y aît lieu de modifier cette partie du rôle.

Je rejetterais donc l'appel de la compagnie avec dépens.

D E L I B E R E

NOTES DE L'HON. JUGE PRATTE

La Cité de Montréal et la Sun Life Assurance Company of Canada (qui seront appelées ultérieurement, par abbréviation, 10 “la Cité” et “la Compagnie”) se pourvoient l’une et l’autre contre un jugement de la Cour Supérieure (Montréal, le 20 septembre 1944, MacKinnon, J.) qui a fait droit à l’appel que la Compagnie avait interjeté contre une décision du Bureau de revision des évaluateurs de la Cité. Cette décision disposait des plaintes que la Compagnie avait formées contre les évaluations que les estimateurs de la Cité avaient faites d’une propriété appartenant à la Compagnie.

20 Avant que d’exposer les faits du litige, il me paraît opportun d’indiquer les dispositions de la charte de la Cité au sujet de l’évaluation des immeubles.

Suivant l’art. 375-a, les estimateurs doivent dresser tous les trois ans, et déposer avant le premier décembre, un rôle d’évaluation pour chaque quartier de la Cité, rôle sur lequel les immeubles sont portés à leur valeur réelle.

30 Mais comme il est toujours possible que les estimateurs commettent des erreurs et que, les évaluations étant faites par des estimateurs nommés pour chaque quartier, il est nécessaire d’appliquer les mêmes normes par toute la ville afin d’assurer une juste répartition de l’impôt foncier, le législateur a pourvu à la création d’un Bureau de revision pour entendre et décider les plaintes auxquelles les évaluations des estimateurs pourraient donner lieu.

40 Ce Bureau est composé de trois membres nommés par le conseil de la Cité, sur rapport du comité exécutif, et qui ne peuvent être révoqués que par le vote des deux tiers de tous les membres du conseil. Le président du Bureau, à qui il incombe de décider toutes les questions de droit ressortissant à cet organisme, doit être inscrit au tableau de l’ordre des avocats ou de celui des notaires depuis au moins dix ans.

Toujours d’après la charte, le Bureau de revision peut assigner des témoins, interroger les parties et leurs témoins, faire faire des expertises, ou les faire lui-même, et visiter les immeubles inscrits au rôle, de façon à se mettre en état de prononcer en



pleine connaissance de cause sur la valeur des immeubles sous examen.

De la décision rendue par le Bureau de revision, il y a appel à un juge de la Cour Supérieure, et le jugement de ce dernier est lui-même susceptible d'appel à la Cour du Banc du Roi lorsque l'évaluation de la propriété en cause excède \$5,000.

10

Comme bien l'on pense, l'évaluation d'un immeuble est presque toujours une opération difficile. Il n'existe pas de formule toute faite dont l'application permette de dire avec certitude, et de façon absolue dans tous les cas, qu'un immeuble vaut tant, ni plus, ni moins. A raison de la multiplicité des facteurs qui doivent entrer en compte, et à cause du caractère variable et incertain de plusieurs d'entre eux, le travail de l'estimateur requiert des connaissances particulières qu'on ne peut s'attendre de trouver que chez le spécialiste expérimenté qui oriente son travail vers le seul but de donner justice à la fois aux contribuables et à la collectivité.

20

Aussi, la Cité s'est-elle efforcée de mettre au point une méthode d'évaluation sûre qui, sans entraver indûment l'indépendance des estimateurs, laisse cependant peu de place aux hasards du caprice, et tend à assurer une juste répartition de l'impôt foncier. Pour s'en rendre compte, on n'a qu'à parcourir le manuel mis à la disposition des estimateurs, et à se rappeler que la Cité tient à la disposition de ces derniers tous les renseignements techniques dont ils peuvent avoir besoin. On aura aussi une juste idée du système établi par la Cité en lisant la déposition de M. Hulse, le directeur du service des évaluations.

30

Lorsqu'il s'agit de l'évaluation de petites propriétés pour lesquelles il existe un marché constant, les estimateurs peuvent contrôler l'exactitude de leurs procédés en se référant, lorsque cela est possible, aux prix payés pour des propriétés du même genre et situées dans les mêmes conditions: le prix payé sur un marché libre correspond assez exactement à la valeur.

40

Mais l'on s'est vite aperçu qu'il existe dans tous les quartiers des immeubles qui, soit à raison de leur destination particulière, soit à cause de leurs dimensions imposantes, ne changent à peu près jamais de propriétaires. Les estimateurs se sont rendu compte que dans le cas de ces immeubles, il n'y a pas de prix du marché auquel ils pourraient se reporter. Le problème de l'évaluation de ces immeubles a fait l'objet d'une étude spéciale de la part des estimateurs, et ces derniers se sont arrêtés à une méthode d'évaluation qui est exposée dans le mémoire ci-après réité:—

“COPY OF MEMORANDUM ON ASSESSMENT  
“OF LARGE PROPERTIES  
“M E M O R A N D U M

10 “These properties seem to fall into four main cate-  
“gories, which determine to a large extent the relative  
“importance of the different factors to be used in arriving  
“at their valuation:—

20 “1.—Properties that are developed and operated  
“solely on a commercial basis as investment propositions,  
“such as the Insurance Exchange Building, the University  
“Tower Building, the Dominion Square Building, the  
“Drummond & Drummond Court Apartments, etc., etc.  
“The return on those investments varies from time to time  
“according to the demand for and the supply of office  
“and apartment space in the City and more particularly  
“in the district in which they are situated. When the de-  
“mand exceeds the supply, rents are pushed up and a high  
“return is shown on the investment, encouraging new con-  
“structions. When the demand is satisfied and there is an  
“over-supply of space, rents fall and with them the return  
“on the investment. In fact, the situation becomes extreme  
“in a period of low rents, as the operating charges do not  
30 “decrease proportionately. It would seem that the proper  
“way to provide for this fluctuation in net revenue is to  
“combine the factors of replacement cost and commercial  
“value so as to allow for the more violent changes that  
“occur in abnormal times, without departing too far from  
“the normal value prevailing in a period of balanced sup-  
“ply and demand. It is recommended that these two factors,  
“viz., replacement cost and commercial value, be given  
“equal weight in valuing these properties for a three-year  
“period. A revaluation at the end of that time would, of  
40 “course, take into consideration the conditions then pre-  
“vailing.

“2.—Properties that are completely occupied by  
“their owners, whether constructed for that purpose or  
“acquired with that object in view, such as the Canadian  
“Bank of Commerce, the C.I.L. Buildings, Eaton’s, etc.,  
“etc. It would seem that properties in that category are  
“always worth to their owners the current cost of replace-  
“ment less depreciation, since, if the owner had not al-

10 “ready acquired such a property, but wished to provide  
“himself with suitable premises at the present time he  
“would have to pay current prices to secure suitable ac-  
“commodation. In this theory of value being based solely  
“on current cost of replacement less depreciation, it is  
“assumed that the building is of a type suitable to the  
“location. Otherwise, consideration will have to be given  
“to the factor of obsolescence.

“3.—Properties that are partly occupied by the  
“owners and partly rented, such as the Royal Bank, the  
“Canada Life, the Bank of Toronto, the Sun Life, etc.,  
“etc.

20 “It must be remembered that properties of this  
“class have been constructed or acquired as a permanent  
“home for the enterprise in question and that frequently  
“the building is laid out for future development, the  
“tenant situation being considered only temporary or in-  
“cidental. In other cases, the space rented is provided to  
“help carry the cost of the land, or to increase the size of  
“the building, thereby adding to the prestige of the owner  
“and giving what might be called advertising value to the  
“project. In these cases the owner is enjoying the full  
“utility only of the space occupied by himself, and is de-  
“pendent on current rental conditions for the carrying  
30 “charges on the balance of the building. It would seem  
“that some consideration should be given to rental value  
“in these cases, so that the replacement factor should be  
“weighted somewhere between 50 and 100 per cent, and  
“the commercial value factor make up the difference be-  
“tween 50 per cent and zero. No hard and fast rule can  
“be given for the division of weight in these factors, as it  
“will depend on the proportion owner-occupied, the extend  
“to which the commercial features of the building have  
“been sacrificed to the main design with a view to the  
40 “future complete use of the building by the owner, or the  
“enhanced prestige of an elaborate and expensive con-  
“struction. Each property will have to be considered on its  
“merits within the limits outlined above.

“4.—In a separate category should be put buildings  
“like theatres and hotels for two reasons. In the first  
“place, buildings of this nature have not as long a useful  
“life as the other classes of buildings, and should be al-  
“lowed, in addition to structural depreciation, an allow-

10 “ance to cover obsolescence or periodic remodelling and  
“renovation. Secondly, their operation is usually in the  
“hands of the owner or an affiliated company, and there  
“is no way to establish a normal rental value, or to get a  
“true picture of net earnings, as there are so seriously  
“affected by the cost of management, the allowance set up  
“for depreciation and maintenance, etc. It would seem  
“that to some extent these properties should be valued on  
“their individual merits, bearing in mind the condition  
“mentioned above of extra depreciation or obsolescence.”

Si j'ai cru devoir citer le texte du mémoire des estimateurs, c'est parce qu'il contient l'exposé de la méthode suivie, tant par les estimateurs que par le Bureau de revision, pour l'évaluation de la propriété de la Compagnie, et que celle-ci prétend que cette méthode est fautive et ne lui rend pas justice.

20 Cela étant dit, revenons au cas qui nous intéresse.

La Compagnie possède à Montréal une propriété formée de deux terrains situés sur le côté nord de la rue Dorchester, et séparés l'un de l'autre par la rue Mansfield.

30 Sur l'un de ces terrains — celui situé sur le côté ouest de la rue Mansfield — la Compagnie a fait ériger, il y a plusieurs années, un édifice monumental où elle a établi son siège social. Et comme les services administratifs de la Compagnie ne suffisent pas à occuper tout l'édifice, une partie de celui-ci est offerte en location pour des bureaux d'affaires.

Le chauffage de cet édifice est assuré par une centrale que la Compagnie a fait construire sur l'autre terrain, — à l'est de la rue Mansfield, — et qui est reliée au bâtiment principal par un tunnel sous cette rue.

40 Disons ici que l'édifice de la Compagnie a été érigé par étapes. En 1913, on a commencé la construction d'un premier bâtiment qui fut terminé en 1918. En 1922, on a entrepris d'agrandir ce bâtiment, et on y a travaillé jusqu'en 1925. Deux ans plus tard, on entreprenait un deuxième aggrandissement dont le gros oeuvre fut terminé en 1931. Quant aux travaux d'intérieur, on y a procédé graduellement, étage par étage, au fur et à mesure que le besoin s'en faisait sentir.

A la date du 1er décembre 1941, tous ces travaux de construction avaient coûté à la Compagnie la somme de \$20,686,587.62.

Ce montant comprend les frais d'architectes et d'ingénieurs, mais non pas l'intérêt sur l'argent dépensé.

Si le manque de continuité dans la construction a contribué à augmenter le coût de l'édifice, il ne faudrait pas croire, cependant, que l'apparence du bâtiment en a souffert. En effet, l'édifice est un monument de grand style, dont on a pu écrire, dans *The Engineering Journal*, qu'il pouvait être compté parmi les plus beaux du monde.

C'est au sujet de la valeur imposable de cet immeuble que le présent litige est né.

Le bâtiment en question peut loger environ dix mille personnes. La Compagnie n'a rien épargné pour que ses employés puissent travailler dans les meilleures conditions d'hygiène et de confort, et cela dans une ambiance aussi agréable que possible. Aussi trouve-t-on dans cet édifice, en outre de ce que la technique la plus perfectionnée pouvait offrir de mieux pour assurer l'efficacité du travail de ses employés et le bon fonctionnement des services de la Compagnie, tout ce qu'il est raisonnable d'attendre d'un patron à la fois riche et soucieux du bien être de ses employés. Et tout cela dans un bâtiment de style de très bon goût, et fait des meilleurs matériaux qu'il soit possible de trouver.

La Compagnie a voulu, en construisant cet immeuble, qu'il fut un symbole de sa puissance, un monument qui fut à la hauteur du prestige de l'institution qui allait s'y établir en permanence. Rien n'a été épargné qui fut de nature à réaliser cette ambition. Mais il est arrivé que les services de la Compagnie ne suffisant pas à occuper tout cet édifice, une partie a été donnée en location pour des bureaux d'affaires. Suivant ce qui est établi, la Compagnie occupe elle-même environ 60% de l'espace utilisable; le reste est occupé par des locataires. Or, comme bien l'on pense, l'espace loué ne rapporte pas autant que si l'immeuble avait été construit en vue de la location. Cela tient surtout à ce que sur chaque étage, il y a beaucoup d'espace de perdu, et que tout le bâtiment est construit de matériaux plus dispendieux que ceux employés dans la construction d'immeubles destinés à être loués.

En 1941, avant le 1er décembre, il a été déposé suivant la loi, un rôle d'évaluation au vu duquel il appert que les estimateurs de la Cité ont considéré les deux immeubles de la Compagnie comme deux propriétés distinctes qu'ils ont évalués comme suit :—



réelle à \$13,755,500. Ce dernier montant comprend la valeur du terrain qui est estimé à \$730,000.

10 Il faut noter ici qu'en établissant la valeur nette de remplacement, les estimateurs se sont montrés larges envers la Compagnie, en défalquant du coût réel tout ce qui pouvait en être déduit tant pour tenir compte de la dépréciation que pour couvrir ce que la construction par étapes avait ajouté au coût sans cependant augmenter la valeur du bâtiment.

Ainsi donc — et il est important de se le rappeler — la valeur réelle, telle qu'établie par les estimateurs, est la résultante de deux facteurs: le coût de remplacement (90%), et la valeur économique (10%).

20 Comme elle en avait le droit, la Compagnie s'est pourvue devant le Bureau de revision, et elle a soutenu notamment que la méthode employée par les estimateurs ne lui rendait pas justice. Suivant ce qu'elle a prétendu, les estimateurs auraient dû fixer la valeur de sa propriété en considérant seulement les revenus qu'elle est susceptible de produire, — et s'ils croyaient devoir baser leur évaluation sur la valeur de remplacement, ils auraient dû déduire une forte somme à titre de dépréciation, à raison des particularités de l'édifice.

30 Le Bureau a fait une longue enquête, au cours de laquelle il a obtenu de la Compagnie des renseignements que n'avaient pas eus les estimateurs. Sur le point soulevé par la Compagnie, le Bureau s'est prononcé contre les prétentions de cette dernière, et il décida que l'immeuble devait être évalué en tenant compte à la fois du coût de remplacement et de sa valeur économique. Parce qu'il était mieux renseigné, le Bureau a pu établir la valeur de remplacement à \$16,241,000. environ, et sa valeur économique à \$7,028,000. Il a combiné ces deux facteurs dans une proportion de 82.3% pour la valeur de remplacement, et de 17.7% pour la valeur économique, ce qui a donné comme valeur réelle \$15,051,997. Bien que ce montant soit plus élevé que celui que les  
40 estimateurs avaient trouvé, le Bureau n'a pas voulu modifier l'évaluation faite en premier lieu et s'est contenté de décider: 1, que la Compagnie n'avait pas établi que la valeur réelle de cette propriété était inférieure à \$14,276,000., le montant fixé par les estimateurs; 2, qu'il n'y avait pas lieu de modifier la décision des estimateurs quant à la valeur locative de l'édifice principal; et 3, que l'inscription au rôle de la valeur locative de la centrale de chauffage devait disparaître.

La Cité n'a pas appelé de cette décision du Bureau de revision, mais la compagnie, elle, s'est pourvu devant la Cour Supérieure, et ce tribunal a réduit de \$14,276,000. à \$10,207,877.40 la valeur réelle de l'immeuble en question.

10 Ici, il convient de dire que tout en faisant droit à l'appel de la Compagnie, la Cour Supérieure n'a pas adopté la méthode d'estimation suggérée par cette dernière. Tout comme les estimateurs et le Bureau de revision, la Cour Supérieure a décidé que la valeur réelle de l'immeuble devait être déterminée en tenant compte à la fois de la valeur de remplacement et de la valeur économique établie par la capitalisation des revenus.

L'extrait ci-après réité du jugement nous fait voir clairement les points sur lesquels il y a divergence entre la Cour Supérieure et le Bureau de revision:—

20 “The Court has not questioned the judgment of the  
“Board except as regards the adjusted cost to the index  
“number, the percentage allowed for depreciation and  
“the percentage of replacement value and commercial value  
“on which the final valuation was established.”

C'est ce jugement qui est frappé d'appel par la Cité et par la Compagnie.

30 La Cité demande que la décision du Bureau de revision qui a fixé la valeur de la propriété à \$14,276,000. soit rétablie. De son côté, la Compagnie voudrait que la valeur réelle de sa propriété soit fixée à un montant n'excédant pas \$8,433,200., et que sa valeur locative en soit établie à \$352,035.

40 Disons tout de suite qu'il n'y a pas de différend au sujet de la valeur du terrain, et que le débat porte exclusivement sur la valeur des deux bâtiments: l'édifice principal et la centrale de chauffage. Les deux parties sont également d'accord pour dire que ces deux bâtiments doivent être évalués comme s'ils ne formaient qu'un. Toute la discussion porte uniquement sur la méthode à suivre pour arriver à déterminer la valeur réelle de l'immeuble.

La Cité prétend que cette valeur doit être établie en tenant compte à la fois du coût de remplacement et de ce qu'elle appelle la valeur économique (le rendement capitalisé), ces deux éléments devant être combinés dans la proportion établie par le Bureau de revision. De son côté, la Compagnie soutient qu'on ne



doit tenir compte que de la valeur économique; et, subsidiairement, que si l'on doit avoir recours à la valeur de remplacement, celle-ci doit être fixée à un montant beaucoup moins élevé que celui établi en première instance.

10 Avant que d'examiner le mérite de ces prétentions, il me paraît nécessaire d'exposer ce que je crois être le rôle du juge de la Cour Supérieure et celui de la Cour du Banc du Roi lorsqu'ils sont saisis d'un appel formé contre une décision du Bureau de revision des évaluations de la Cité.

20 Comme il y a déjà été dit, l'évaluation des immeubles est surtout une question technique qui doit ressortir d'abord à des spécialistes. Le législateur semble l'avoir compris ainsi en décrétant la constitution du Bureau de revision. En effet, les règles édictées pour la composition de ce tribunal, et les pouvoirs qui sont accordés à ceux qui en font partie, font bien voir que le législateur a entendu créer une espèce de tribunal spécialisé composé d'experts en la matière.

30 De plus, la question de savoir quels sont les facteurs dont il doit être tenu compte pour déterminer la valeur imposable d'une propriété relève beaucoup plus du domaine économique que de la science juridique. Il n'y a aucune règle de droit qui dise comment procéder pour établir cette valeur. Tout ce qui est certain, c'est que l'évaluation doit tendre à établir autant que possible une valeur qui reflète ce que l'on entend généralement par valeur réelle, et que la méthode employée pour établir cette valeur doit amener une juste répartition de l'impôt. Il me paraît nécessaire de distinguer entre l'évaluation faite pour fins d'expropriation et celle qui est faite en vue de l'imposition de taxes foncières. La première ayant pour but d'indemniser le propriétaire qu'on va dépouiller, et il est de la plus grande importance qu'on tienne bien compte de tout ce qui peut contribuer à ajouter de la valeur à sa chose. La seconde n'ayant d'autre objectif que de répartir l'impôt équitablement entre les immeubles imposables, suivant leur valeur réelle, ce que l'on doit chercher avant tout, 40 c'est que la méthode employée soit ordonnée à cette fin.

Aussi bien, lorsque le législateur a accordé le droit d'appeler de la décision du Bureau de revision, il me paraît qu'il n'a pas dû vouloir que le juge de la Cour Supérieure ou ceux de la Cour du Banc du Roi se substituent au Bureau, soit pour adopter une méthode d'évaluation différente de celle appliquée généralement à tous les contribuables, soit pour décider autrement que le Bureau les points dont le règlement requiert l'exercice

d'une discrétion. Ce qui me paraît plus raisonnable, c'est que le législateur a seulement voulu accorder au contribuable un moyen de se pourvoir contre les erreurs certaines ou les décisions qui porteraient manifestement atteinte au principe que les évaluations doivent être faites de manière à ce que le fardeau de l'impôt soit réparti sur tous les immeubles imposables suivant leur valeur réelle. S'il en était autrement, il pourrait arriver que le tribunal  
10 d'appel, saisi d'un cas particulier, mette de côté la base d'évaluation de tous les immeubles de la Cité pour y substituer l'une ou l'autre des nombreuses théories qui ont cours en cette matière.

C'est pourquoi il me paraît que, si dans un cas particulier la base de l'évaluation faite par le Bureau de revision n'est pas manifestement fautive ou incomplète; si ce Bureau n'a commis aucune erreur flagrante dans ses calculs, et si la méthode qu'il a suivie n'a pas eu pour effet de créer une injustice certaine, ni  
20 le juge de la Cour Supérieure ni la Cour du Banc du Roi ne devraient intervenir pour modifier sa décision. En cette matière, je crois qu'il faut adopter à l'égard de la décision du Bureau de revision la règle suivie par les tribunaux d'appel à l'égard de la décision d'un juge qui a fixé des dommages-intérêts dans un cas où il n'existe pas de règle de droit pour leur détermination.

Revenons maintenant au jugement de la Cour Supérieure.

Nous avons vu que le premier juge a adopté la méthode d'évaluation qui avait été suivie par les estimateurs et par le  
30 Bureau de revision, mais qu'il a modifié le calcul du Bureau sur les trois points suivants:

1o—Le nombre indice utilisé pour établir le coût de remplacement;

2o—Le taux de dépréciation; et

3o—La proportion à accorder aux deux facteurs formant la valeur réelle: la valeur de remplacement et la valeur économique.  
40

Prenons d'abord le premier point.

Pour établir le coût de remplacement d'un édifice (sans tenir compte de la dépréciation que le bâtiment a pu subir depuis sa construction) on a recours à un nombre indice, scientifiquement établi, qui indique la différence dans le coût de la construction à deux époques déterminées.

Dans le cas qui nous occupe, l'estimateur Vernot avait utilisé, pour établir cette valeur de remplacement, le nombre indice 109, par rapport au nombre indice 116.7 correspondant au coût moyen de la construction entre 1927 et 1930. Il a donc déduit 7.7%, soit \$1,471,344., du montant dépensé par la Compagnie, après en avoir défalqué au delà de \$3,000,000. sous divers chefs.

10 Le Bureau de revision, lui, n'a déduit que \$181,503.32 au lieu de \$1,471,344. La Cour Supérieure a préféré adopter le montant établi par l'estimateur, ne voyant aucune raison qui eut pu justifier le Bureau de revision de le modifier. Or, si l'on examine le dossier, l'on ne peut manquer d'y trouver la raison pour laquelle le Bureau a modifié, sur ce point, le calcul de l'estimateur.

20 En effet, l'estimateur Vernot avait pris pour acquis que tout le montant dépensé par la Compagnie pour la construction de son immeuble l'avait été entre 1927 et 1930, alors que le prix de la construction était très élevé. Le Bureau de revision, lui, a pu s'assurer qu'en réalité la construction avait commencé en 1913, et que dès avant 1927 on avait déjà dépensé bien au delà de \$4,000,000. Muni de ces renseignements, le Bureau de revision ne pouvait faire autrement que de ramener au coût de 1940 tous les montants dépensés annuellement depuis le début de la construction. Cela explique la différence soulignée par le juge de première instance.

30 Il me paraît donc certain que c'est le montant auquel est arrivé le Bureau de revision qui eut dû être adopté par le premier juge, et non pas celui établi par l'estimateur Vernot.

Le deuxième point sur lequel il y a divergence entre la Cour Supérieure et le Bureau de revision se rapporte au pourcentage de dépréciation qui doit être défalqué du coût de l'immeuble.

40 L'estimateur, après avoir établi la valeur de remplacement à \$15,794,180. a déduit \$2,840,952. à titre de dépréciation, au taux de 18%. Le Bureau de revision (Vol. V, p. 983-A-27) a fixé le taux de dépréciation à 14%, et sur ce point la Cour Supérieure a accepté sa décision (Vol. V, p. 1010).

Mais cette dépréciation-là étant enlevée, le juge de la Cour Supérieure déduit un autre 14% parce que, suivant ce qui apparaît au jugement, on aurait dépensé pour la construction de cet immeuble des sommes considérables qui n'ajouteraient rien à sa valeur comme immeuble commercial. C'est ainsi, par exemple, que sui-

10 vant le premier juge, un immeuble construit en pierre à chaux aurait fait tout aussi bien qu'un immeuble en granit, tout en coûtant \$840,000. de moins; et que le marbre utilisé pour les murs intérieurs n'aurait rien ajouté à la valeur réelle du bâtiment, bien que le coût de celui-ci en ait été augmenté de \$310,000. Voici, d'ailleurs, la liste des montants qui, suivant le premier juge, auraient été dépensés dans la construction de l'édifice sans ce-  
pendant ajouter à sa valeur; et c'est pour couvrir ces dépenses inutiles que la Cour Supérieure a retranché 14% du coût réel de la construction:

	“Surplus pour murs en granit au lieu de “pierre à chaux .....	\$840,000.
	“Surplus pour ornementation en granit “au lieu de pierre à chaux .....	952,000.
	“Surplus d'ornementation assumée en “pierre à chaux .....	200,000.
20	“Surplus pour châssis en bronze et vitres “ ‘Vita’, au lieu d'acier et vitres ordinaires .....	530,000.
	“Surplus pour portes en bronze au lieu “d'acier .....	144,000.
	“Surplus pour planchers en marbre au “lieu de terrazo .....	173,000.
	“Surplus pour murs en marbre au lieu “d'enduit .....	310,000.
	“Surplus pour décorations et ornemen- “tation de la salle de banque (Banking Hall) .....	399,500.
30		Total: \$3,548.500.

L'on voit tout de suite que ce qui a été estimé par le premier juge ce n'est pas l'édifice de la Compagnie tel qu'il se trouvait en 1941, mais un autre édifice complètement différent, un édifice qui sans doute suffirait à abriter les employés, mais qui n'aurait pas du tout le caractère de celui possédé par la Compagnie.

40 Ce qui frappe dans ces défalcatons que le premier juge a cru devoir faire, c'est qu'au moins deux d'entre elles portent sur des item qui, loin d'enlever de la valeur à l'immeuble, contribuent plutôt à lui en donner, et cela même si l'édifice devait être considéré comme ayant été construit uniquement en vue d'en tirer des revenus.

Celui qui acquiert ou fait ériger un immeuble pour fin de placement n'est pas seulement intéressé au taux d'intérêt qu'il pourra retirer pendant les premières années qui suivront la cons-

truction ; il l'est également, sinon davantage, à ce que ces revenus se maintiennent aussi longtemps que possible. Plus la mise de fonds requise est importante, plus l'immeuble devra durer longtemps pour que le propriétaire puisse éventuellement y trouver son profit. A cause de cela, le propriétaire qui construit un édifice considérable a intérêt à ce qu'il soit fait de matériaux qui assure-  
10 d'utiliser du granit pour les gros murs, c'est précisément parce que ce matériau garantit une plus longue durée que la pierre à chaux, et qu'il requiert moins d'entretien. Et personne ne songera à prétendre que le revêtement de marbre qui couvre les murs intérieurs n'aura pas une plus longue durée qu'un enduit de plâtre.

Dans le cas d'un immeuble de l'importance de celui de la Compagnie, il fallait nécessairement que l'on employât des matériaux de toute première qualité ; cela était nécessaire pour assu-  
20 rer une longue vie au bâtiment, et pour tenir à un aussi bas niveau que possible les frais d'entretien et de réparation.

Il me paraît donc certain, au moins quant aux item ci-dessus mentionnés, que le premier juge a erré en décidant qu'ils n'ajoutaient rien à la valeur de l'édifice.

Mais ces erreurs ne suffisant pas à disposer complètement du litige. Il reste encore à décider si le Bureau de revision n'a pas lui aussi commis quelque erreur qui justifierait l'interven-  
30 tion d'un tribunal d'appel.

On se rappelle que le Bureau a considéré que la valeur réelle de l'édifice en question devait résulter de la combinaison de deux éléments : la valeur de remplacement (compte tenu de la dépréciation), et la valeur économique (établie en capitalisant les revenus) ; et que ces deux éléments devaient compter pour 82.3% et 17.7% respectivement dans la composition du total.

40 La Compagnie soutient que le Bureau a commis une erreur fondamentale en tenant compte de ces deux éléments. D'après elle, la valeur réelle de sa propriété ne pourrait s'établir autrement qu'en capitalisant les revenus de l'immeuble. Subsidiairement, la Compagnie prétend que s'il convenait de tenir compte des deux éléments précités, on aurait dû établir la valeur de remplacement à un montant de beaucoup inférieur à celui qui a été fixé, soit par le Bureau de revision, soit par la Cour Supérieure, et accorder à la valeur de remplacement moins d'importance qu'elle en a reçue. Et pour appuyer cette prétention, la Compa-

gnie soutient que son édifice ayant été mal conçu, il est impropre à une exploitation commerciale économique.

D'où l'on voit que le premier point à décider est de savoir si le Bureau de revision et la Cour Supérieure ont erré dans le choix des éléments constitutifs de la valeur réelle.

10 L'on reconnaît généralement que la valeur réelle d'un immeuble s'entend du prix qu'un acheteur qui ne serait pas tenu d'acheter paierait à un vendeur qui ne serait pas obligé de vendre. Cela revient à dire que la valeur réelle équivaut au prix payé sur un marché libre.

La détermination de la valeur réelle ne présente guère de difficulté lorsqu'il s'agit d'évaluer un édifice au moment de son acquisition ou de sa construction; c'est lorsqu'on veut fixer la valeur à une date ultérieure que les difficultés surgissent. On tombe alors dans le domaine de l'hypothèse. En supposant que 20 le propriétaire d'un immeuble voudrait le vendre sans cependant y être forcé, quel prix obtiendrait-il d'un acheteur qui consentirait librement à l'acquérir?

Pour résoudre le problème, l'on reconnaît qu'il faut recourir à trois éléments: 1, les indications du marché (vente récente de l'immeuble à évaluer ou d'immeubles qui lui sont comparables); 2, le coût de remplacement de l'immeuble dans son état actuel; et 3, la valeur économique (que l'on établit en capitalisant 30 les revenus de la propriété).

Le premier des éléments ci-dessus mentionnés peut quelquefois être un indice assez sûr de la valeur réelle; il est rarement un indice infaillible; et très souvent il fait complètement défaut.

Dans le cas qui nous occupe, l'immeuble à évaluer n'a jamais été vendu, et aucun autre immeuble ne lui est comparable. Il ne nous reste donc à considérer que les deux autres éléments: le coût de remplacement et la valeur économique. Là-dessus il ne saurait y avoir de discussion. 40

Nous avons vu dans le mémoire préparé par les estimateurs que, pour évaluer certains immeubles au sujet desquels le marché immobilier ne peut fournir aucun indice de valeur réelle, il y a lieu de procéder différemment suivant que ces immeubles sont occupés exclusivement par leurs propriétaires, ou qu'ils sont donnés en location, ou qu'ils sont occupés en partie par leurs propriétaires et en partie par des locataires.

Dans le cas d'édifices acquis par des institutions pour y établir leur siège permanent, et occupés exclusivement à cette fin, on a considéré qu'ils devaient être évalués suivant ce qu'il en coûterait pour les reproduire dans leur état actuel. Je ne crois pas qu'il y ait rien à redire à cette méthode. Tant qu'un édifice de ce genre est utilisé suivant sa destination et qu'il est situé dans un milieu propice à l'accomplissement de la fin à laquelle il a été ordonné, il me paraît éminemment juste de dire qu'il vaut ce que son propriétaire devrait déboursier pour s'en procurer un semblable. Il me paraîtrait déraisonnable de vouloir l'évaluer comme s'il devait être utilisé en vue d'en tirer des revenus. Les immeubles doivent être évalués tels qu'ils sont, et non pas tels qu'on voudrait qu'ils soient.

Lorsqu'il s'agit d'édifices acquis ou construits pour des fins purement commerciales, on a jugé qu'il convenait de les évaluer en tenant compte à la fois de la valeur de remplacement et de la valeur commerciale, ces deux éléments devant être pris dans une proportion égale. Le mémoire justifie cette manière de procéder. Tout en accordant, comme il convient, beaucoup d'importance à la valeur de remplacement, cette méthode tient compte également des aléas que le marché des loyers peut présenter pour le propriétaire. Il n'y a rien là qui ne soit raisonnable. En effet, les revenus qu'un édifice peut produire ne doivent pas être le seul élément de valeur. Il y a des édifices qui rapportent beaucoup plus, et d'autres beaucoup moins que ce que leurs propriétaires devraient normalement en retirer, et cela sous l'influence d'éléments absolument étrangers à la valeur intrinsèque du bâtiment, et par le seul jeu de l'offre et de la demande. La valeur réelle doit refléter, au moins dans une certaine mesure, un élément de stabilité que la seule valeur économique ne présente pas. Il me paraît en outre que l'intérêt de celui qui acquiert un immeuble destiné à être loué ne se limite pas à la quotité des revenus que l'édifice peut rapporter. Cet intérêt s'étend également au temps pendant lequel l'édifice pourra produire ses fruits. Cela me paraît bien indiquer la nécessité d'établir la valeur réelle de ces immeubles non pas uniquement en fonction de leur valeur économique, mais en ayant égard également à leur valeur intrinsèque.

Quant au point de savoir quelle importance il convient d'accorder à chacun de ces deux éléments, je crois qu'il appartient à des experts de le décider.

Mais à part les édifices occupés exclusivement par leurs propriétaires et ceux occupés exclusivement par des locataires, il y a des édifices qui ont une double fin. Destinés d'abord à ser-

vir de demeure permanente à l'institution qui les a acquis ou fait construire, ils sont occupés en partie par des locataires. Comme il est expliqué dans le mémoire des estimateurs, dans le cas de ces édifices l'élément commercial est secondaire.

10 Pour évaluer ces immeubles on doit tenir compte, d'après le mémoire des estimateurs, de la valeur de remplacement et de la valeur économique. Mais alors que dans le cas d'immeubles entièrement commerciaux, on accorde à ces deux facteurs une importance égale, lorsqu'il s'agit d'édifices comme celui de la Compagnie la valeur de remplacement ne doit jamais entrer pour moins de 50% dans la valeur réelle.

C'est à cette méthode d'évaluation que la Compagnie s'en prend.

20 S'il est juste d'évaluer suivant leur valeur de remplacement les immeubles occupés exclusivement par leurs propriétaires, — et je ne vois pas comment on pourrait évaluer ces immeubles autrement; — s'il est également juste d'évaluer de la manière que l'on sait les immeubles occupés exclusivement par des locataires, — et je ne vois rien là qui ne soit équitable; il est absolument logique que la valeur de remplacement compte pour au moins 50% dans la valeur réelle de ces immeubles dont la destination première est de servir de demeure permanente à l'institution qui les a fait construire, et dont l'utilisation commerciale est secondaire et accessoire.

30 Pour prétendre à l'injustice de cette méthode d'évaluation, la Compagnie est obligée d'attribuer à son édifice une destination autre que celle qui lui est propre, et de mettre en relief tous les défauts du bâtiment qui le rendraient impropre à la location de bureaux.

40 S'il est vrai que la partie de l'édifice de la Compagnie qui est occupée par les locataires rapporte peu en égard au coût de la construction, la raison en est assez simple. C'est que le bâtiment n'a pas été conçu pour cela. L'édifice n'a pas été ordonné d'abord à une exploitation commerciale. Il a été destiné à une fin bien particulière, et il atteint cette destination. On a voulu loger les services de la Compagnie dans un édifice incomparable, et on y a réussi. Tout ce qui excède le prix qu'aurait coûté un édifice destiné spécialement à être exploité commercialement, a contribué à faire ce que la Compagnie avait en vue: un monument qui symbolise sa puissance et son prestige. Il n'est que juste alors que ce qui a été dépensé à cette fin et qui a une valeur



incontestable pour la Compagnie, entre pour beaucoup plus dans la détermination de la valeur réelle que la valeur économique attribuable à la partie de l'immeuble occupée par les locataires.

Quant à la méthode à suivre pour établir ces deux facteurs, et à la proportion dans laquelle ils doivent être combinés pour arriver à la valeur réelle, je crois qu'il faut s'en rapporter aux  
10 experts à qui le législateur a confié le soin de décider ces questions. Comme je l'ai déjà dit, il ne me paraît pas qu'en cette matière, le législateur ait entendu que les tribunaux d'appel substituent leur opinion à celle des membres du Bureau de revision, excepté dans le cas d'erreur manifeste.

Dans le cas qui nous occupe, le Bureau de revision a appliqué à l'édifice de la Compagnie la même norme qu'aux autres  
édifices de la même catégorie. S'il fallait faire droit aux prétentions de la Compagnie, on se trouverait à attribuer à son édifice  
20 une valeur réelle inférieure, par pied cube, à celle qui a été établie pour les autres immeubles du même genre, mais d'une valeur intrinsèque incontestablement inférieure.

Les membres du Bureau de revision sont à la fois juges et experts. Ce double caractère, qui leur a sans doute permis d'apprécier comme il convenait les prétentions des témoins, donne à leur décision une autorité qui ne doit pas être mise de côté sans motif absolument certain. Ces experts ne se sont pas mépris sur  
ce qu'il faut entendre par valeur réelle, non plus que sur les  
30 éléments dont il convient de tenir compte pour l'établir; ils ont établi par des calculs auxquels je ne vois rien à reprendre, la valeur de remplacement et la valeur économique de l'édifice. Bien au courant de tous les éléments qu'ils devaient considérer, ils ont décidé qu'il convenait de combiner les deux valeurs dans la proportion que l'on sait. Leur décision a été murie par une sérieuse réflexion sur tous les points en litige, et je n'interviendrais pas pour la modifier, parce que l'on ne m'a pas démontré qu'elle soit erronée.

40 Si l'étude de ce dossier avait fait naître dans mon esprit quelque doute sur la justesse de la méthode suivie par le Bureau, ces doutes auraient été dissipés par un élément de preuve qui fait bien voir, à mon avis, que la décision du Bureau est plus près de la vérité que la prétention de la Compagnie. En effet, le dossier fait voir que dans le rapport que la Compagnie a fait au Surintendant des assurances pour l'année 1941, rapport qui est destiné à faire connaître à l'autorité compétente, aux actionnaires et aux créanciers de la Compagnie, la valeur de l'actif de celle-ci, il a été déclaré que l'édifice avait une valeur au marché (Market Value) de \$16,258,050.27.

Je ne puis me résoudre à croire que cette évaluation, attestée sous serment par deux administrateurs de la Compagnie, ne correspond pas à ce que ces administrateurs et le personnel compétent qui les entoure croyaient sincèrement être la valeur marchande de l'immeuble en question.

10 Pour ces raisons, je rejetterais avec dépens l'appel de la Compagnie; je ferais droit à l'appel de la Cité, avec dépens; j'infirmerais le jugement de la Cour Supérieure, et rétablirais la décision du Bureau de revision.

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#### NOTES OF THE HON. JUSTICE CASEY

20 This appeal and cross-appeal are from a judgment of the Superior Court, District of Montreal, rendered September 20th, 1944. For purposes of convenience, I shall refer to the appellant and cross-respondent, the City of Montreal as the "City", and to the respondent and cross-appellant, Sun Life Assurance Co. of Canada, as the "Company".

The facts are as follows:

30 Sometime prior to the month of June, 1913, the Company acquired two emplacements in the City of Montreal. The larger emplacement occupies the whole block along Dorchester St., between Metcalfe and Mansfield Streets, and extends some distance to the north towards St. Catherine St. On this emplacement the Company's Head Office was subsequently built.

The smaller emplacement is at the corner of Mansfield and Cathcart Streets, and on it the heating plant for the main building is erected. The two buildings are connected by a tunnel which runs under Mansfield St.

40 The main building was erected in three stages, the dates of completion being 1918, 1935, and 1940. In 1941 all work on the building was finished.

Pursuant to the provisions of the City's Charter, (sec. 375) its assessors deposited on December 1, 1941, a new valuation roll for the immovables of the ward in which the Company's Head Office is located. On this roll the main building and the heating plant were treated as separate accounts, the values shown being as follows:—

*Main Building* (Head Office) — a/c 140896

Land	\$ 730,600.00
Building	13,024,900.00
	<hr/>
	\$13,755,500.00

10      *Secondary Building* (Heating Plant) — a/c 140942

Land	74,100.00
Building	446,400.00
	<hr/>
	\$520,500.00

On August 1, 1942, a second roll, the basis of the business and water taxes due to the City (section 376) was deposited, the following valuations appearing:—

20

*Main Building*

Water	\$ 423,280.00
Business	421,580.00

*Secondary Building*

Water and business	\$ 26,000.00
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30      Concerning these rolls, the following points may be noted:

1. The figures contained in the roll deposited December 1, 1941, are meant to represent the actual value of the immoveables;

2. All parties have accepted the valuation of the land, restricting the dispute to that concerning the buildings;

40      3. The figures shown on the roll of August 1, 1942 are meant to represent the annual rental value of those parts of the buildings capable of being occupied by persons subject to the taxes mentioned in section 376 of the City's Charter; — and

4. The difference between the annual rental value as established for purposes of water taxes and as established for purposes of business taxes is explained by the fact that in the main building there was certain space which, though subject to the payment of water taxes, was not subject to the payment of business taxes.

In due course the Company appealed from these valuations to the Board of Revision provided for by section 382 of the City's Charter, the Company's main contentions being that the total valuation of both properties should be limited to \$8,433,200.00, and that the rental value of the properties should be reduced to \$352,034.50.

10        On June 21, 1943, the Board of Revision rendered its judgment, the dispositif of which reads as follows: (Joint case, volume 5, page 983 — A — 30)—

20        “For these reasons, we come to the conclusion that these two immoveables should be grouped in one for the purpose of assessment and that the Complainant has failed to establish that their present assessments at a total sum of \$14,276,000. is excessive. Wherefore, the said assessments, being considered and grouped as a single one, are hereby maintained, with costs of stenography and of transcription against the Complainant. The necessary changes of the roll are ordered and the required certificates are issued.

Account No. 151039-L *Sun Life Assurance Co. of Canada*, 1153 Metcalfe, St. George Ward, Valuation:— \$423,280. (water) — \$421,580. (business).

30        This is a complaint against the assessment of the annual rental value on the roll of August 1942.

The yearly rental of \$768,265.55 which the Complainant has charged itself in its books for 1941, less its proportion of operating expenses, amply justifies the present assessment. (See our decision in the case of the complaint against the real value of this property.)

40        Wherefore the said assessment is hereby maintained and the complaint is dismissed.

Account No. 151178-L *Sun Life Assurance Co. of Canada*, 1209 Mansfield, St. George Ward, Valuation:— \$26,000. (water and business).

Seeing that we have already grouped this immovable with the main property belonging to the same owner and used with this one for the same purpose, and seeing that the main property is already assessed at its annual

rental value under Account No. L-151039 and the various tenants' accounts.

The present annual rental value assessment is hereby reduced to "Nil" and annulled, the changes on the roll are ordered and the certificate is issued."

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From this judgment the City did not appeal with the result that this Court cannot do more than restore the valuations originally made by the assessors.

The Company however, appealed from the decision of the Board of Revision to the Superior Court, District of Montreal (Charter section 384). On December 20, 1944, the judgment of the Superior Court was rendered, the dispositif reading as follows: (Joint case, volume 5, page 1023)—

30

"DOTH MAINTAIN in part the appeal of the Sun Life Assurance Company of Canada, appellant, from the judgment of the Board of Revision of Valuations of the City of Montreal rendered on the 21st of June, 1943, and DOTH ORDER that account No. 140896 Sun Life Assurance Company of Canada, 1153 Metcalfe St., St. George Ward and account No. 140942 Sun Life Assurance Company of Canada, 1207 Mansfield St., St. George Ward be grouped as a single one and that the valuation of the lands and buildings be reduced to \$10,207,877.40 (land \$804,700.00, buildings \$9,403,177.40) and DOTH DISMISS the appeal as regards the confirmation by the Board of Revision of the Assessment of the annual rental value on the roll of August, 1942 (account No. 151039-L) the whole with costs against the respondent, the City of Montreal, including the costs of shorthand and transcription."

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It is from this judgment of the Superior Court that both appeals have been taken, the contentions of the parties being:—

1. On behalf of the City, that the valuation of \$14,276,000. (land \$804,700., buildings \$13,471,300.) appearing on the roll of December 1, 1941, and the annual rental valuation of \$423,280. and \$421,580. appearing on the roll of August 1, 1942, be restored; — and

2. On behalf of the Company, that valuation of the immoveable property be fixed at not greater than the sum of \$8,433,200, and that the annual rental value of the space occupied by it be reduced for purposes of water and business taxes to \$352,035.

10 In view of the agreement by the parties as to the valuation of the land, the legality of the roll and the jurisdiction of the Board of Revision (joint case, volume 2, page 376), and since the City did not appeal from the judgment of the Board of Revision, the issues before this Court are limited to; —

1. The valuation placed on the buildings; — and

2. The amount at which should be fixed the annual rental values.

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In section 375 of the City's Charter, it is provided that every three years the assessors shall draw up for each Ward a new valuation roll for all the immoveables in such Ward. Section 375 goes on to state what the roll shall contain and in sub-paragraph 3 of paragraph A we find that the rule was set forth, "the actual value of the immoveables."

30 There also appears in the said Charter the term "real value", but as pointed out by Mr. Parent (Municipal valuation of Real Estate — introductory remarks, page 27) — these terms "are equivalent and may be employed indifferently, the one for the other".

Both parties subscribe to this view and such was the opinion of the Board of Revision and of the Superior Court.

40 While no attempt is made in the Charter to define the term "actual value", the meaning of this term as it appears in similar legislation has been considered on numerous occasions by the Courts.

In the case of Montreal Island Power Co. — and — The Town of Laval des Rapides, (1935 - S.C.R. - 304,) the Supreme Court of Canada was concerned with the assessment under the Cities and Towns Act of flooded lands. After referring to the section of the Cities and Towns Act in which the terms "real value" and "actual value" appear, Duff, C.J., says at page 305:

10 “Obviously, “real value” and “actual value” are regarded by the legislature as convertible expressions. The construction of these phrases does not, I think, present any difficulty. The meaning of “actual value”, when used in a legal instrument, subject, of course, to any controlling context, is indicated by the following passage from the judgment of Lord MacLaren in *Lord Advocate v. Earl of Home* (1):

20 “Now, the word “value” may have different meanings, like many other words in common use, according as it is used in pure literature, or in a business communication or in conversation. But I think that “value” when it occurs in a contract has a perfectly definite and known meaning unless there be something in the contract itself to suggest a meaning different from the ordinary meaning. It means exchangeable value — the price which the subject will bring when exposed to the test of competition.”

When used for the purpose of defining the valuation of property for taxation purposes, the courts have, in this country, and, generally speaking, on this continent, accepted this view of the term “value.”

30 In the case of *The Bishop of Victoria v. The City of Victoria*, (1933, 4 D.L.R. - 524) the British Columbia Court of Appeal took a similar view of the meaning “actual value” as this term appeared in the British Columbia Municipal Act. At page 538 of the report, we find the following words of MacDonald J. A.:—

40 “There are two kinds of value known to economists, viz., value in use and value in exchange. An article may have great value in use because of special properties or characteristics not susceptible to measurement by commercial standards and have comparatively little value in exchange. It is the latter measure of valuation properly understood however, that should be applied.”

Since the value in exchange of an object is the power which it possesses to procure some other commodity or commodities in exchange for itself, it is obviously objective in nature and herein lies the basic difference between the meaning of the word “value” for purposes of expropriation and that of the same term for purposes of taxation.

As stated by Duff, C. J. in the case of Montreal Island Power Co. (supra) at page 307:—

10 “I think it important to say that, in my view, the standard of assessment laid down by the Legislature of the province of Quebec is not a standard which, for the purpose of assessing property for taxation purposes under these sections (485 and 488), admits of the application of the principle by which compensation to the owner of land is determined when it is compulsorily taken from him under the authority of an expropriation act. In the case of expropriation, the rule is undisputed. The person whose property is taken is entitled to be compensated for the loss he has suffered by being deprived of his land compulsorily; the value of the land, for the purpose of ascertaining such compensation, is the value of the land to him.”

20 In the case of *The King v Spencer*, (1940, 1, D.L.R. 575), Angers J. was dealing with the expropriation of a residence, the replacement value of which was established at around \$80,000. with its market value being placed at about \$40,000. After stating that one of the main factors to consider in arriving at a fair valuation of a property is its market value, Mr. Justice Angers went on to say that the market price is not a conclusive test of the property's real value. It is very clear, however, that Mr. Justice Angers was there using the word “value” for purposes of expropriation and not for purposes of taxation. Commencing at  
30 page 576 of the report we read:—

40 “In these circumstances it seems to me that the only manner in which a value may be set on the Spencer buildings is to figure out the replacement cost and deduct therefrom the depreciation which the buildings now standing have suffered since their erection. The figure thus obtained will, in my opinion, represent the value to the owner at the time of the expropriation, which is the basis of the compensation allowable in cases of compulsory taking.”

In re *Ontario and Minnesota Power Co. Limited*, (28, D.L. R - 30), the Ontario Supreme Court, Appellate Division, was concerned with the meaning of “actual value” as used in the Ontario Assessment Act, Hodgins, J. A. states at page 39:—

“I agree with the judgment of my Lord the Chief Justice of Ontario, except in the opinion therein expressed that the same principles should be applied in ascertaining assessment value as in fixing compensation value.



10 The point was not argued; but, when it is presented for decision, the fact that the municipality appraises the land each year as it then is, and in that way gets the benefit, from time to time, of each realised possibility as it occurs, must be considered. The reason for the rule in compensation cases that “all advantages which the land possesses, present or future,” must be paid for, is that the land is finally taken, and the owner loses both those present and future advantages, and the taker gets them.

In the case of assessment the situation is so different that I prefer to place my decision in refusing the application upon the ground that the actual value in this case may properly include the advantageous position of this lot in relation to the other works. Consequently, the propriety of the amount fixed is at best a question of fact.”

20 In the case of *Cedar Rapids Manufacturing and Power Co. v. Lacoste*, (16 D.L.R. 168), the meaning of value in expropriation matters is quite clearly defined by Lord Dumedin, who says at page 171:—

30 “The law of Canada as regards the principles upon which compensation for land taken is to be awarded is the same as the law of England, and it has been explained in numerous cases — nowhere with greater precision than in the case of *Lucas v. Chesterfield Gas and Water Board*, (1909) 1 K.B. 16, where Lord Justices Vaughan Williams and Moulton deal with the whole subject exhaustively and accurately.

40 For the present purpose it may be sufficient to state two brief propositions. 1. The value to be paid for is the value to the owner as it existed at the date of the taking, not the value to the taker. 2. The value to the owner consists in all advantages which the land possesses, present or future, but it is the present value alone of such advantages that falls to be determined.”

I take it to be well established that any proper definition of “actual value” must contain as an element the idea of objective exchange value. In addition, such a definition should indicate at what moment in its life the property must be regarded when the valuation is made.

As suggested by Mr. Justice Hodgins in the case of Ontario and Minnesota Power Co. (*supra*), one of the reasons why

municipalities appraise property at regular intervals (every three years in this case), instead of once and for all time, is that they thereby reap the benefit “of each realised possibility as it occurs.” By the same token regularly spaced valuations enable the taxpayer to obtain relief should his property have depreciated in value since the last appraisal.

10 This must, I believe have been in the mind of the Board of Revision when it stated (Joint case, volume 5, page 983-A, 5) :—

20 “Whatever may be the discrepancies between the assessments which appear on the roll of December 1941 and the assessments on the roll for the preceding years, it is not correct to contend that such discrepancies are increases or decreases in the assessments. They are simply new assessments. A valuation roll does not constitute a revision or revamping of the preceding one which is in force at that moment (the new roll being deposited for the incoming fiscal year) but it is a completely new roll. When it begins to be used as a basis for the taxation of the next fiscal period, the preceding roll will be no longer in existence.”

In the case of *Pigeon v. La Ville de Montréal-Nord*, (59 S.C. 143) the Court of Revision was concerned with the meaning of “real value” as it appeared in the City and Town Clauses Act. At page 145 of the report, Mr. Justice Hackett, speaking for the Court said:—

30

“What does this mean? Is it the value that may come in the future? Is it the value that may result from certain public works that are about to be done? Is it to result from certain steps that may be taken to annex it to larger Montreal? Cassils, of the Exchequer Court, in a case reported in the 1st Exchequer Court, says:—

40

“The real value is the price which a seller, who is not obliged to sell and who is not dispossessed against his will but who desires to sell can get from a buyer who is not forced to buy but wants to buy.”

In the case of *Lacroix v. The City of Montreal*, Mr. Justice Bruneau, gave the following definition of real value as:—

“It should be understood as its selling price, that is to say, the price that the proprietor could obtain for his property from a buyer who, without being obliged, desires to purchase his property.”

10 This decision is in conformity with the one cited above. And the further laid down the rule that the valuers should guide themselves entirely upon the value of the immovable at the time of making the roll, and that no prospect of public works, or opening of streets, construction of sewers, or other public works could not be taken into consideration to fix and determine the actual value as required by the law.”

In the case of the Bishop of Victoria above cited, the Court was dealing with the value to be placed on a school, and the opinion was expressed that in making a valuation, the building must be regarded as it was at that moment. At page 540 of the report, we read:—

20 “It is improper, for assessment purposes to mentally convert it, so to speak, into a revenue-producing commercial structure (e.g., an apartment house) and value it accordingly. That would be placing a value not on this special “improvement” but on something else not in existence. To follow this method one would be taking into account potential values whereas the meaning of “actual” is “as opposed to potential”. It must be valued qua school and although the task is difficult it cannot be shirked by adopting an easier or unsound method.”

30 It may also be noted that in expropriation matters, the value of the property, though it be a subjective value, as opposed to the objective value with which we are concerned, is taken as to the date of expropriation.

40 From the foregoing I draw the conclusion that “actual value” as used in the City’s Charter means the objective exchange value of the property; that this value must be determined as of the date of the making of the roll, (December 1, 1941); that the buildings must be taken in their then condition; and, that all the circumstances affecting the value of the property must be taken as they then were, and not as they were before, or as they may be later.

Attempts have been made to express all this in the form of a definition, and of these, the first is the “willing seller, willing buyer formula” to which reference is made in some of the judgments above cited.

It is well to note that this formula, poorly worded though it may be, has been generally accepted. In fact, Mr. Parent con-

cludes his introductory remarks (Real Estate Valuation Manual, page 57) with the following statement:—

10 “Whatever be the angle from which this problem is considered, there is only one solution possible — that the property tax rolls should have current value for their sole basis; that is to say, the valuation should be based upon “the price which a person who is not obliged to sell could obtain from a buyer who is not obliged to buy”.”

There have been many reported decisions in which this definition or formula has been approved, and of these it is sufficient to refer to that of *La Compagnie d'approvisionnement d'Eau v. La Ville de Montmagny*, (21 K.B. 416) At page 418, Mr. Justice Pelletier said:—

20 “Dans la cause du *Roi v. Meecherson*, je trouve une définition donnée par le juge Cassels de la Cour d'échiquier qui me paraît excellente. Voici cette définition: “C'est le prix qu'un vendeur qui n'est pas obligé de vendre et qui n'est pas dépossédé malgré lui, mais qui désire vendre réussira à avoir d'un acheteur qui n'est pas obligé d'acheter, mais qui désire acheter”.”

This formula however, is far from complete, and while it indicates that the hypothetical sale must be a free one,—i.e.—not one made in distress, it has lent itself to confusion with the 30 methods whereby the purchase price envisaged by it must be determined.

In the case of *Canada Cement Co. and St. Lawrence Land Co. v. The Town of Montreal East*, (35 K.B. 410) this Court was concerned with the valuation of vacant land conceded to be unsaleable. At page 416 of the report we read:—

40 “Il existait, nous disent les procureurs des appelantes, une méthode d'évaluation éprouvée et reconnue par les tribunaux; trouver la valeur réelle en recherchant “le prix qu'un vendeur, qui n'est pas obligé de vendre et qui n'est pas dépossédé malgré lui, mais qui désire vendre, réussira à avoir d'un acheteur qui n'est pas obligé d'acheter mais qui désire acheter”. Oui, c'est en effet là une base qui eût pu donner satisfaction, mais cette base ne peut valoir que dans un temps où la propriété dont il s'agit peut se vendre, et s'il s'agit d'une propriété susceptible d'être sur le marché, d'être vendue ou achetée. Or, et la chose est

admise par les appelantes, la propriété dont il s'agit est à nulle autre pareille et une propriété dont la vente ne pouvait en aucune façon être considérée; du moins à l'époque où l'on en devait faire l'évaluation qui nous occupe. Ainsi, il faut renoncer à cette méthode possible pour les propriétés ordinaires et qui jouissent d'un marché."

10 In the case of *Grampian Realities Co. v. The Town of Montreal East* (1932, 1, D.L.R. 705), the Supreme Court was dealing with the value to be given land which was, at the time of its assessment, restricted in its use. At page 708 of the report, we read:—

20 "For the appellant it was contended that the rule applicable to determine the "real value" of land was as follows:—"It is the price that a vendor who is not obliged to sell and who is not dispossessed against his will, but who wishes to sell succeeds in obtaining from a purchaser who is not obliged to buy, but who wishes to buy."

30 This rule, however useful it may be in cases where the property is suitable for general business purposes and there are buyers for such property, can have no application in a case like the present, where the property, owing to its location or surroundings, is restricted in the use which can be made of it, but which when required for a suitable purpose is salable at a high price."

40 It may be that in the two cases immediately above referred to the "willing seller — willing buyer" definition of "actual value" was confused with the method by which such value must be determined. If that be the meaning of the passages which I have quoted, I have nothing further to say. If however, the meaning be that one may use this yardstick only with respect to certain types of property, then I must disagree. For purposes of taxation "actual value" can only have one meaning, and the soundness of this principle is in no way affected by the fact that in certain cases it may be necessary to use a method of calculation different from that employed in others.

True, it may be more difficult to determine what the willing buyer will pay in a particular case than to justify the general rule that what he is prepared to offer for a property is that property's actual value. In attacking the problem however, we find assistance in the "Prudent Investor" theory which emerges from other decisions on this question.

In the case of *Pearse v The City of Calgary* (9-WWR, 669) the Supreme Court of Canada discusses the term “fair, actual value” of land for which there was no ready market. At page 672 of the report, Mr. Justice Iddington expresses himself in the following terms:—

10           “Confessedly there is no ready market in sight at the present moment. How can we then determine the fair actual value which has to be determined?”

          In the course of liquidation which always follows and has to be faced by those concerned in disposing of such properties under such circumstances, there are generally some prudent persons possessed of means or credit who will attempt to measure the forces at work making for a present shrinkage in values for a time and again likely to arise making for an increase of value.

20           Such men are few in number and of these only a very small percentage perhaps are able to make a rational estimate of these reversible currents, and a still smaller percentage willing to venture the chances of their investment on the strength of their best judgment. They know that the shrewdest and most far seeing may be mistaken.

30           I take it that the “fair actual value” meant by the statute quoted above is, when no present market is in sight and so such ordinary means available of determining thereby the value, what some such man would be likely to pay or agree to pay in way of investment for such lands.”

          At this point, I wish to draw attention to the following passages taken from the judgment of the Board of Revision and from the judgment *a quo*. At page 983-A 20 and 21 of the Joint Case we read the following:—

40           “On the first question, we have no hesitation in declaring that we cannot find fault with the assessors for having not adopted such a method. For Messrs. Lobley and Simpson there is only one way to value the Sun Life property; it is to imagine a “willing seller” and a “willing buyer” and to figure what maximum price the buyer should pay, if he wants to make a reasonably safe investment.

          There is no proof of the existence of such a willing buyer. As to the willing seller, he could not be any other

than the Sun Life itself, and the only figure contained in the record as to the price at which this prospective seller puts its property is \$16,258,050.27. (Cf.; Admission, Schedule F).”

— and —

10           “There is absolutely no parity nor analogy between this case and the Sun Life case. Here is a completely developed — and even over developed — property, which is actually and fully and tangibly in existence. Its real value is all there. Why imagine a different situation which may never present itself, a change of proprietor when it can be inferred from the evidence and circumstances that the present one does not contemplate selling?

20           Moreover, there is nothing either in this decision of the Privy Council or in any of the other decisions quoted which would justify the contention that the assessors should have made the assessment on the revenue approach only. The stereotyped formula which is so frequently quoted: “la valeur réelle. . . est le prix qu’un vendeur qui n’est pas obligé de vendre et qui n’est pas dépossédé malgré lui, mais qui désire vendre, réussira à avoir d’un acheteur qui n’est pas obligé d’acheter, mais qui désire acheter” does not constitute a complete definition of the real value, but is merely a qualification of one of the  
30           numerous elements which may help in determining same. This sentence is not limitative. It does not mean that the real value is only that. Furthermore, it has its application to ordinary and current cases of immoveables which can easily be put on the market, but cannot be applied rigorously to a property like the Sun Life which is definitely an unusual one.”

40           At page 998 of the same volume, the learned Justice of the Superior Court says:—

          “*In order to apply the willing buyer — willing seller formula in valuing the Sun Life building one would have to imagine a hypothetical sale. This has been the main approach adopted by the Sun Life and its experts in making their valuations. They have based these on prices which would probably attract the prospective purchaser but have failed to consider the price which the Sun Life would have been willing to accept. The court cannot ignore the fact that the Sun Life carried this property at a price almost double the value given it by its own experts.*”

I cannot agree that the willing seller formula is intended to cover merely one of the elements which must be considered in determining the property's value. This formula, as I understand it is designed to limit the discussion to a particular type of person who is willing to buy in a known market. It makes no attempt to specify or indicate what reasoning he will follow in arriving at the sum he is prepared to pay. It gives to us but two  
10 elements — the person and the market. For the balance we must look elsewhere. Nor do I find it repugnant that in seeking an answer we must, to some extent at least, deal with the hypothetical, and close one's eyes to the fact that the Company's buildings are not for sale, and perhaps could not be sold at any price.

Why should we, who daily project our "bon père de famille" into hypothetical situations for the purpose of testing and accepting his reactions, refuse to repeat the process when we come to the valuation of real estate? And since the determining  
20 factor in establishing the market price, real or imaginary is what the buyer will pay, why should we be concerned with what the Company would be willing to accept for its buildings? This puts us right back into the field of subjective value, with which for purposes of taxation, we are not concerned.

On the whole, I am of the opinion that in determining, for the purposes of taxation under the City's Charter, the actual value of the Company's buildings, we must look to the prudent investor operating in a free market, and we must ask how much  
30 he would, on December 1, 1941, have paid by way of purchase price. This figure will be the actual value of the property.

At this moment I refer to the judgment of the United States District Court, District of Minnesota, in the case of the *State of Minnesota v The Federal Reserve Bank of Minneapolis*. Here the Court was concerned with assessing "at its true and full value in money" a fortress-like building which had never  
40 been intended for general business purposes. Experts were heard on behalf of the Bank and in arriving at their valuations they, the experts, ignored the use to which the building was being put and assuming it to be vacant, they estimated the annual rental that might be obtained for some presumed use. These annual rentals were then capitalized to give what they represented as the building's market value.

The State's assessor calculated the reproduction cost of the building. He then allowed 25% depreciation (2% per year for the life of the building) and an additional 25% to compensate for the effect of its architecture on its market value, artistically and as a utilitarian structure.



From this judgment I quote the following excerpts:—

10 “In attempting to set aside the assessor’s valuation, defendant relies solely upon a valuation computed by the capitalization of estimated income. No consideration is given to the other factors which may bear upon the market value. The building when erected was not primarily constructed to return income as such. It is a single purpose building, and many of its features which may detract from its usefulness as an income producing building may materially enhance its value for the purpose for which it was built, and which purpose and use will probably continue for years to come. Demand for the use is only one factor. To rely entirely on the capitalization of income under these circumstances in determining the market value neglects considerations that are vital.”

20 —and:

30 “Defendant cannot escape its just share of the tax burden by erecting a building which is fairly adequate for its needs and which is devoted and intended to be devoted for its particular purpose for many years in the future, and then contend that, because it is only adapted for its requirements as a semi-public institution, it has no market value except as reflected in the capitalization of income for a use which is non-existent and which was never intended. There may be instances where capitalization of income will fairly reflect taxable values, but there is no intimation in the statute that this method is the exclusive standard to apply. Quite the contrary appears. The assessor is required to give due weight to “every element and factor affecting the market value thereof”

—and:

40 “The Supreme Court of the State has not ruled upon the construction and purpose of the amendment. However, it is evident that there is to be noted in the statute a direction to the assessor and the Board to consider other factors in determining the valuation for tax purposes that the traditional, hypothetical query, — what price could be obtained by an owner who was ready, willing and able, but not forced to sell, from a buyer who was ready, willing and able, but not forced to buy? It emphasized the necessity of achieving equality in the distribution of the tax

burden, and is support for the State's position that the value of property must not be viewed in the abstract. Furthermore, it tends to reiterate the principle which is steadily gaining recognition among courts and tax officials that the primary object of real estate taxation is to obtain a uniform tax base. All real property must bear taxation, not only commensurate with the burden which the property imposes upon the community, but equitably in comparison with other property assessed in the community."

On this judgment I make the following comments:—

1. There is no similarity between the single purpose fortress-like construction of the Bank and the Head Office of the Company;

2. There is some difference between the wording of the City's Charter and the Statute with which the District Court of Minnesota was concerned. If one however, can assume that under that Statute it was the duty of the assessor to find the actual value of the building as that term is used in the City's Charter, then the Bank's experts were in error in assuming the building to be vacant and in estimating the annual rental that might be obtained from some presumed use. As I understand the authorities the building must be taken as it is at the time of the valuation and the willing buyer or the prudent investor must so regard it in order to determine what the building should produce. For this reason, any special features incorporated into the building for the particular use of an occupant, whether such occupant be a tenant or the owner, must be taken into consideration, for such features will be reflected in the rental which such occupant should pay.

3. In substance, this judgment holds that the assessor had attempted to proceed scientifically and fairly and that his determination should not be disturbed in the absence of proof that his valuation was clearly too high.

Then there is the matter of in re *Phillipps Estate* 1934 — 1, W.W.R. 449. In that case the learned trial Judge held that "the amount which a prudent investor, taking into account all the factors creating value, might reasonably be expected to pay for the property is the value at which the property should be assessed." After stating that the prudent investor must reduce each element to its monetary value, he goes on to say that the following factors must be considered:—

1. That the property had been advertised at \$30,000.00;
2. Its net revenue;
3. Its cost of replacement;
4. Its condition;
5. Its location.

The trial Judge then concludes:—

10

“Finally it remains for me to weigh the evidence in relation to the statute and to decide whether the board performed its duty. To do this I must myself make a finding as to the value of the property. I must seat myself in the office chair of the “prudent investor” and determine the amount which in my opinion he would be likely to be willing to pay, in the way of investment, for the Empress Block. I must consider the property as a unit and disregard the assessments of other properties. I should not forget that the property has stood open to the world at \$30,000 for the past two years, but I must remember the present world-wide depression. By and large it is my duty to consider every present and potential factor bearing on the value of the property, “to measure the forces making for the present shrinkage and any again likely to arise making for an increase of value.”

20

There can be no doubt but that all factors above indicated must be considered, but it is equally clear that they cannot all be given the same weight and importance. What we are here seeking is the building’s objective exchange value and I cannot admit that to arrive at this result one may blend the elements that play a part in finding the object’s subjective value with those that go to make up its objective value.

30

We are dealing with a building made up of rentable space and it must be so considered. That it may be owner-occupied in part seems of importance only in that the rental charged the owner need not be calculated in the same way as that charged the other tenants. The amenities incorporated into the building by the owner for its own use and the other features, which so far as the owner is concerned, place the building in a class by itself will be reflected in the rental. This rental will not necessarily be that which the owner charges itself, but will be that which should be paid in the light of conditions existing on the relevant date by a person having the same need for the space. The fact of owner-occupancy however, can never justify a blending of two opposed values.

40

The condition and location of the building are not in question, nor need one discuss the liquidity of the investment. We may also disregard the possibility of an appreciation or a depreciation in the investment, since we are tied to conditions as they existed on December 1, 1941 and since there is nothing in the record to indicate the possibility of any change during the following three year term.

10

These factors having been eliminated, our willing buyer, who at the same time is a prudent investor, has but to consider the building's net revenue, its replacement cost as that term is used in this case, and finally, the cost to him of erecting a new building comparable with that which he proposes to buy. Since the last factor was not discussed, I limit myself to the building's net revenue and to its replacement cost and I again state that since we are dealing with the building's objective exchange value, these two factors cannot play the same role.

20

The prudent investor is interested in a reasonable return on his money and he will not pay more than the sum which the building's net revenue represents as a reasonable return. He will obviously be interested in the building's replacement cost as that term is here used, for this figure will serve to test the offer which he proposes to make. He would, I imagine be more interested in the cost of erecting a comparable building, for if he finds that it can be replaced for a sum less than the capitalized net revenue, he may not pay the greater figure. By the same token, if he  
30 finds that the cost of replacing the building exceeds the capitalized revenue, he will not make a gift of the excess.

With the exception of Messrs. Mills and Désaulniers the witnesses are in approximate agreement on the building's gross rental. The figures given by them are as follows:—

Mr. Vernot:	\$1,189,225.
Mr. Lobley:	1,108,000.
Mr. Simpson:	1,260,544.

40

On this aspect of the matter, the learned Justice of the Superior Court expresses the opinion that the estimate of Messrs. Mills and Désaulniers is extreme, and in commenting on the other witnesses he says at page 1012 of Volume 5:—

“The court attaches particular importance to the valuation arrived at by Lobley who is the rentals administrator of Eastern Canada for the Wartime Prices and

Trade Board and has had a most extensive experience in Real Estate matters. His method of arriving at this valuation is concise and clear. He stated that he assessed the Sun Life for the space it occupied in the building at rates which are in keeping with the rates that are paid for very substantial quantities of space in the same building by a similar character of tenants and at the highest rentals that could be accrued at the present time by any first class tenants.”

The Board of Revision accepts the figure of \$1,189,055 shown in the joint-admission of the parties.

I am prepared to accept the estimate of Mr. Lobley with respect to non-company space, that is \$493,022. So far as the Company's space is concerned however, I would accept the figure which appears in the joint-admission, namely \$768,265. On this basis therefore, I would accept as the gross rental value of the building, \$1,261,287 (\$768,265 plus \$493,022). It is of interest to note that this figure to all intents and purposes agrees with the estimate of Mr. Simpson.

With respect to deductions for vacancies, I would accept in principle that such a deduction should be made from the gross rental and that the amount thereof should be 10%. I feel however, that we must accept the Company's needs as fixed as of December 1, 1941, and that the possibility of vacancies can only arise with respect to the non-company space. In consequence I would deduct 10% of \$493,022, or \$49,302.

No difficulty is encountered in the matter of operating expenses. Mr. Lobley fixes these at \$430,000; Messrs. Mills and Désaulniers, \$432,030 and Mr. Simpson and the Board of Revision at \$436,993. For the purpose of my calculations I will fix this figure at \$433,000.

With respect to depreciation, Mr. Simpson allows 1½% on the assessed value, which estimate is approximately the same as that of Messrs. Mills and Désaulniers. Mr. Lobley allows for this and for maintenance and repairs a lump sum of \$50,000. In this connection he says at page 747 of Volume 4.—

“Because of the massive nature of the structure in all its parts, the excellence and durability of the materials of construction and the high quality of workmanship that have gone into it, and because of the margin that has been

10 provided to withstand the ravages of time, depreciation in the sense of physical and chemical change will occur at an unusually low rate. Furthermore, an orderly and prompt programme of doing repairs and maintenance, which must of necessity be consistently followed in a building of this kind, will maintain the structure and some of the equipment in as-good-as-new condition at all times and the cost thereof will continue to be reflected in the annual Operating Expense on the 1941 - 1942 basis. In providing a reserve for physical depreciation the "willing buyer" will therefore be particularly concerned in anticipating the cost of certain accumulating items of replacement which will occur at long intervals, e.g., boilers, elevators, wiring and the roof. From a study of the building and its equipment I have formed the opinion that the "willing buyer" would display sound and expectable judgment by providing an annual reserve of \$50,000.00 under this heading, on the assumption that it would be invested in a cumulative sinking-fund at 5% interest."

20

I accept Mr. Lobley's reasoning and would allow \$50,000. for this item.

Mr. Lobley allows a further item of \$50,000 to enable the willing buyer to make provision, in his own words — "for the cost of keeping abreast of the times and for the scrapping of old-fashioned equipment, even though its useful life may be little impaired." (Volume 4 page 748). For the reason that this building must be regarded as it was on December 1, 1941, and not as it may become through the course of years, I would disallow this item.

30

At this point then, the figures reached read as follows:—

	<i>Gross Rental</i>		
40	Company space	\$768,265	
	Non-company space	493,022	\$1,261,287
		<hr/>	
	<i>Deduct</i>		
	Vacancies	\$49,302	
	Operating	433,000	
	Depreciation etc.	50,000	532,302
		<hr/>	<hr/>
	<i>Net Rental Before Taxes</i>		\$728,985

There must now be deducted the item of taxes, and if they be calculated at 2.9% on the value of \$10,207,877.00 found by the Superior Court, they will amount to \$296,028.00. This will leave a net rental revenue of \$432,957.00.

On the question as to what the investment should yield there is some divergence of opinion.

10

Mr. Vernot states that the return should be 3% for an owner-occupied building and 4½% for one that is tenant occupied. Mr. Lobley and Mr. Simpson feel that a yield of 5% is indicated, and Mr. MacRosie seems to share their view.

I find of interest Mr. Lobley's reasons for suggesting a yield of 5%. At page 749 of Volume 4, he says:—

20

“The “willing buyer” would also recognized the well-established investment-principle that the rate of yield varies inversely with the liquidity of the security. Thus, if a Dominion of Canada bond which can be immediately liquidated yields 3%, an investment in real property which might take years to liquidate, would demand a rate of yield in excess of 3%, and the question which the “willing buyer” must decide is: what should the differential be? Being real-estate-minded, the “willing buyer” might invest his capital in a portfolio of mortgages at the going Canadian rates of 5%, but from this rate he should make some deduction for the cost of management of the mortgages and for casualties. This I estimate should be ½ of 1%, leaving a net yield of 4½%. The security afforded by this class of security would provide a margin of value of approximately 40%, and the risk would be spread over a number and variety of properties.”

30

In the light of the foregoing, it is interesting to note that a net rental of \$432,957.00 represents a yield of approximately 4.2% on the figure found by the Superior Court.

40

As was stated at the outset, the City's Charter requires that the property's actual value be shown on the roll. It also provides that the aggrieved taxpayer may complain to the Board of Revision which is given the power to determine itself the valuation in question. The taxpayer may then go before a judge of the Superior Court, who “must proceed with the revision of the valuation submitted to him and with the rendering of such judgment as to law and justice shall appertain”.

Finally there is the appeal to this Court.

I agree that on an appeal to the Superior Court the Judge should not intervene for the sole purpose of substituting his opinion for that of the Board of Revision or of the assessors. But, if the Judge of the Superior Court comes to the conclusion that for one reason or another the Board of Revision has arrived at a figure grossly out of line with the property's actual value as that term is used in the Charter, then he must intervene and make the necessary correction.

It may be possible to arrive at that value by employing any one of several methods. But since, in my opinion at least, the revenue approach as used in this case leads irresistibly to the correct answer, any other method must, if it is to be considered, produce approximately the same result.

20 The assessors have employed certain rules which they themselves have arbitrarily fixed. I do not deny their right to formulate their own rules of thumb, but in applying these rules they must, as stated by Mr. Hulse, always bear in mind that they are seeking the actual value of the immoveable.

If then in applying their own rules they arrive at the wrong answer it must be because their rules are improper, or because their application of them is faulty, or because they have erred in their calculation. It is no answer that all taxpayers have been submitted to the same treatment. It may be that the same rules have been employed in making all valuations, but from this one cannot conclude that the same errors were committed in all cases or, that if they were, that this imports ratification.

Applying the tests which I think should be applied to this case I find that the value found by the Superior Court, on the information available, represents the property's actual value as that term is used in the City's Charter. Since there is a substantial difference between that figure and the answer arrived at by the Board of Revision, the learned Justice of the Superior Court acted properly in intervening and in fixing the value of the Company's property, land and buildings at \$10,207,877.00.

40 For this reason I would confirm the judgment *a quo* and would hold that the figure found by the Superior Court is the one which should have appeared on the roll of December 1, 1941, in the following details:—



*Land*

Main Building	\$730,600	
Secondary Building	74,100	\$804,700
	<hr/>	

*Buildings*

10	Main and Secondary	9,403,177
		<hr/>
		\$10,207,877

In conclusion, what must be determined is the extent to which the learned Justice of the Court below succeeded in placing a true objective exchange value on the property. Whether in so doing he followed one method rather than another is of relative unimportance. This result is what counts, and this too is true of the assessors and the Board of Revision.

20

The Superior Court found \$10,207,877.00 and on this the net revenue, as I calculate it, represents a yield of slightly more than 4%, or as it is calculated by Mr. Lobley (\$362,000) and by Mr. Simpson (\$373,967.), a yield of about 3%. Anywhere in this field is approximately correct, since the elements which might, as the record discloses, indicate a higher yield on some investments, do not play too serious a role in this case.

30 Had the figure reached by the Board of Revision been within striking distance of that established by the judgment *a quo*, the Superior Court would have been justified in refusing to interfere. But it was not, and as the amount fixed by that Court more closely approaches the actual value of the property than does either the figure of the Board of Revision or that suggested by the Company, it must stand.

40 As to the item of the assessed rental value, I share the opinion of the Judge below that the valuations appearing on the roll of August 1, 1942 are amply justified.

In view of the foregoing, I am of the opinion that both the appeal of the City of Montreal and the cross-appeal of the Sun Life Assurance Company of Canada should be dismissed with costs in each case against the loser.

Montreal, June 25, 1948.

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APPENDIX

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10

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

Equity No. 2967.

In the Matter of the Assessment and Taxation of Lots Six (6)  
and Seven (7), and the Southeasterly twenty-three (23)  
feet of Lot Eight (8), Block Eighty-Seven (87),  
Town of Minneapolis, for the year 1936.

20

STATE OF MINNESOTA,

**PLAINTIFF,**

— VS —

FEDERAL RESERVE BANK OF MINNEAPOLIS,

**DEFENDANT.**

MEMORANDUM OPINION

30

This proceeding was instituted by the Federal Reserve Bank of Minneapolis pursuant to Chapter 300, Laws of Minnesota 1935, as amended by Chapter 483, Laws of Minnesota 1937, in order to prevent a tax judgment being assessed against the real estate of the said bank on account of the taxes assessed and levied for the year 1936. The state will be referred to herein as the plaintiff and the Bank as the Defendant.

40

Mr. Frank J. Williams, Assistant County Attorney of Hennepin County, appeared in behalf of the plaintiff,

and

Messrs. Usland and Usland appeared in behalf of the Defendant.

The Federal Reserve Bank of Minneapolis is the central bank of the Ninth Reserve District, which includes Minnesota, North and South Dakota, Montana, and a part of northern Wisconsin and northern Michigan. The bank building in Minnea-

polis was completed in 1924 at the following costs Building, \$2,940,711.39; land, \$600,520.66; total \$3,541,232.05. Since that time, and up to and including May 1, 1936, some \$5,517.60 has been expended for a protective system.

10 The real estate upon which is situated the banking house of the defendant was valued by the taxing authorities at \$470,250.00 and the building and improvements at \$1,300,000.00, or a total of \$1,770,250.00 as its full and true value. The defendant contends that the full and true value in money of the real estate, including land, building, and improvements thereon as of May 1, 1936, or any time during that year, did not exceed the sum of \$470,250.00, and that the building and improvements added nothing whatever to the market value of the real estate. It is contended that the city assessor and taxing authorities have not valued the real estate in accordance with its true and full value at the price which could have been obtained for the same private  
20 sale, but that some arbitrary rule has been followed in obtaining the assessed valuation contrary to the mandate of the statute. The pertinent statutes of the state are as follows:—

30 “Section 1977. Real property, for the purpose of taxation shall be construed to include the land itself, and all buildings, structures, and improvements or other fixtures of whatsoever kind thereon, and all rights and privileges thereto belonging or in any wise appertaining, and all mines, minerals, quarries, fossils, and trees on or under the same.”

“Section 1980. 5. ‘True and full value’ shall mean the usual selling price at the place where the property to which the term is applied shall be at the time of assessment; being the price which could be obtained therefor at private sale, and not at forced auction sale”.

40 “Section 1992. All property shall be assessed at its true and full value in money. In determining such value, the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor shall he adopt as a criterion of value the price for which the said property would sell at auction or at a forced sale, or in the aggregate with all the property in the town or district; but he shall value each article or description of property by itself, and at such sum or price as he believes the same to be fairly worth in money. In assessing any tract or lot or real property, the value of the land exclusive of structures and improvements shall

be determined, and also the value of all structures and improvements thereon, and the aggregate value of the property, including all structures and improvements, excluding the value of crops growing upon cultivated land.

10 “Section 1992-1. It shall be the duty of every assessor and board, in determining the value of lands for the purpose of taxation and in fixing the assessed value thereof, to consider and give due weight to every element and factor affecting the market value thereof, including its location with reference to roads and streets and the location of roads and streets thereon or over the same, and to take into consideration a reduction in the acreage of each tract or lot sufficient to cover the amount of land actually used for any improved public highway and the reduction in area of land caused thereby.”

20 Section 2120 gives the taxpayer a defense if his “parcel has been assessed and taxed at a valuation greater than its real and actual value.”

Chapter 237, Laws of 1935, provides:—

30 “It shall be the duty of every assessor and board in determining the value of lands for the purpose of taxation and in fixing the assessed value thereof, to consider and give due weight to lands which are comparable in character, quality and location, to the end that all lands similarly located and improved will be assessed upon a uniform basis and without discrimination.”

Since the completion of the building, the records of the assessments have been as follows (those agreed or stipulated to by the parties are indicated in the last column):—

40	<i>Year</i>	<i>Land</i>	<i>Building</i>	<i>Total</i>	<i>By Stipulation and Agreement</i>
	1926	\$627,900	\$2,217,500	\$2,845,400	
	1927				\$2,500,000
	1928	627,900	2,217,500	2,845,400	2,400,000
	1930	647,490	2,217,500	2,864,990	2,250,000
	1932	633,000	1,517,000	2,150,000	2,150,000
	1934	547,500	1,502,500	2,050,000	2,050,000
	1936	470,250	1,300,000	1,770,250	

It is not contended by the State that the Bank is estopped by the prior assessments or the acquiescence in or agreement as

to the value, but it is asserted that the past record of assessments, in view of all the circumstances, has some probative value in the determination of the question presented. The Bank's position is briefly this: The statute requires the assessor to determine the value of property for taxation purpose at its fair market value. It is contended that the test to be applied is the determination of the sum that the property could have been sold for at private  
10 sale. Defendant urges that the four principal elements to be considered in determining the fair sale value are (1) demand for this type of building; (2) earning capacity of the building in the hands of others than the present owners; (3) utility of this type of building to possible purchasers; (4) location. It is recognized by the Bank that other factors may be properly considered in determining market value, but it asserts that the above factors are the most important. The defendant also asserts that the property was unfairly, inequitable, and partially assessed.

20 The Bank produced four real estate experts who gave as their opinion of the value of the real estate and the building as of the time in question the following figures: \$575,000.00; \$675,000.00; \$700,000.00; and \$680,000.00 to \$750,000.00. There is no particular controversy over the assessed valuation of the land at \$470,250.00. In arriving at the values, these experts ignored the present use or occupancy, assumed the building vacant and estimated the annual rental that might be obtained for some presumed use. In carrying out this formula for determining market value, the annual rents were capitalized, and on this  
30 computation, the above market values were obtained. The experts emphasized that the bank building was unsuitable for most business purposes and that there was considerable waste space even in its present use. It was asserted that the cost of maintenance as a business property would be excessive, and the building was described as a fortress-like structure of doubtful architectural attractiveness and of questionable utilitarian value for business purposes. It was contended that it would have but few uses as a business property, and that, as constructed, a commercial bank would find it difficult to make adequate use of the space therein.  
40 One of the present officers of the Bank stated that, in his opinion, the building was not effectively or conveniently constructed for its present use and that the building was only of salvage value. It appears that the building was about twelve years old at the time the assessment was made. It may be gathered that it was intended and designed to house the Federal Reserve Bank for the Ninth District for many years to come. The primary object in designing and constructing the building was to erect a structure that would safely preserve the funds and securities in the

care of the Defendant in the event of fire, burglary, or mob attack. The architecture is unique and distinctive, if not pleasing. However, a comparison of the outside appearance of the other Federal Reserve Bank Buildings in the United States would indicate that the Minneapolis structure does not compare unfavorably with some of the other buildings. It is apparently recognized by both parties that the building is well-located in the heart of the financial district of this city.

10 The only factors that are given any real consideration by the Defendant's experts are the uses to which the building could be put if the Federal Reserve Bank moved out, and the rental that could probably be obtained if the building were utilized for other purposes. No consideration is given by the experts to the past or prospective earnings of the Bank in this structure. Assuming the land to be worth approximately \$470,250.00, it would appear that these experts have reduced the value of this building for taxation purpose to a sum ranging from \$105,000.00 to \$2,800.00. The state's experts limited themselves to a determination of the reproduction cost, less depreciation, as determining the fair cash value. They contend that the bank building may be properly designated as a service building and that this means of determining the true value is the only feasible, equitable and practical method. One estimated the market value of the bank building and ground to be \$1,794,974.00, and the other, \$1,958,264.00.

30 The assessor (*Edward S. Gould*) testified that he took, among other things, the following factors into consideration in determining the true value; location, size and shape of the lot; character of surroundings, cost of land, value of land; cost of building; reproduction cost of building; physical value of property; economic life of building, service character of building, previous assessments; previous agreements relative to assessments; character and permanency of occupancy; transportation; and sales and lease of property in the neighborhood. In substantiation of his estimate of the true market value, as contemplated by the statute, he figured the reproduction cost of the building 40 as of May 1, 1936, to be \$2,600,000.00. He allowed 25% depreciation, being approximately 2% per year for the life of the building, and by reason of the apparent difference of opinion as to the effect of the distinctive architecture on its market value, both artistically and as a utilitarian structure, he allowed an additional 25% for depreciation. Therefore, a total of 50% depreciation is to be found in the assessor's computation.

There has been no appreciable market for downtown real estate in Minneapolis for some years. The principle of supply and demand, which is generally conceded to be the most important criterion in determining market value, is undoubtedly difficult to apply in determining the true value for taxation purposes. Manifestly, a rigid standard which usually serves the purposes when property moves freely in commerce is of but doubtful value  
10 value in the present time as a guide for the assessor. The fact that there is no demand for downtown property, or that the supply far exceeds the demand, may, if a liberal application of the statute is applied, justify such fluctuations in assessment figures from year to year that will precipitate the fiscal affairs of the city into utter confusion. *The purpose of an assessment is to distribute the tax burden fairly and equitably. This burden is present in boom times as well as in depressions. As long as real estate bears the major part of that burden, a tax base that will prevent undue discrimination of inequities must be adhered to.*

20

Concededly, it may be difficult at this time, if not impossible, to obtain any buyer who would be willing to pay \$1,770,250.00 (the assessed valuation) for the Federal Reserve Bank Building. The number of buyers who would be interested in this type of building for any purpose would be exceedingly few. Obviously, it is in the nature of a semi-public structure, erected for special use. It was not intended for general business purposes, and when it was constructed it was assumed that its use would be limited to the needs of the Federal Reserve Bank in the Ninth  
30 District for many years in the future. If placed upon the market at this time and the United States, for instance, was interested in obtaining a building suitable for a sub-treasury or similar purpose, it may be that a sum approximating its value could be realized out of such a sale, but, because the building may have no market value by reason of no demand, it should not escape its just share of the tax burden. Probably no other downtown building in Minneapolis could be sold at this time for the valuation placed thereon for taxation purposes, but, notwithstanding, the assessor must determine to the best of his judgment from all  
40 the factors present the true value of such property.

In *State v. Penn Mutual Life Ins. Co.*, 198 Minn. 115, 117, 269 NW. 37, 38 (1936), the Supreme Court of this state indicated its attitude in the application of the statutes governing the valuation of real estate for tax purposes during depression periods, stating:—

10 “But where there has been a long continued financial depression which has so affected real estate that no sales or dealings in real estate have taken place in the vicinity of the lot or parcel of land to be valued for assessment purposes, it is almost impossible to ascertain the market or sales value thereof. When the property does not move, whether from want of willing sellers or willing buyers, its sales value in money must necessarily become such a matter of judgment based upon many factors, whose weight may not influence alike the minds of persons qualified to judge. The one upon whom the duty eventually falls to determine such value must fix it ‘at such sum or price as he believes ‘the same to be fairly worth in money.’ When the court finds the value of real estate in a delinquent tax proceeding such finding must be based upon the testimony adduced at the trial. It is not for this court to overthrow the finding of the trial court unless manifestly against the weight of the evidence.”

20

And on page 119:—

“Although there are no sales to establish market value of lands, they must be assessed. As said in *State v. Fritch*, 195 Minn. 478, 479, 221 N.W. 725, 726;

30 “Taxes have to be levied, and to that end assessors must make a valuation of real estate every two years regardless of whether any of the lands could or could not then be sold. Where there have been no actual sales for a long period of time, there is no way of determining values except by judgment and opinion of men acquainted with the lands, their adaptability for use, and the circumstances of the surrounding community. The trial court could also take into account the qualification of the witnesses and their attitude toward the litigants’.”

40

It may be noted that the reproduction cost of the building in the financial statement of the Federal Reserve Board and the defendant bank is indicated in petitioner’s Exhibit E. This exhibit may be summarized as follows:—



	Actual cost of land .....	\$ 600,520.66
	Building, average of 1915 to 1925 cost .....	2,416,745.84
	Fixed machinery and equipment .....	532,635.15
		<hr/>
	Total cost	3,549,901.65
	Deduction for equipment sold, not replaced	3,969.00
		<hr/>
10	Net cost	3,545,932.65
	Arbitrarily charged off from building value 1919 to 1927 .....	1,133,464.34
		<hr/>
	Leaving gross book value of .....	2,412,468.31
	This gross book value is made up as follows:—	
	Land .....	500,520.66
	Building .....	1,283,261.50
	Fixed machinery and equipment .....	628,656.15

20 It appears that the building was depreciated 2% annually on this gross book value in the total sum of \$307,987.56, which included \$25,665.63 for the year 1936, leaving a net building value of \$975,293.94. The machinery and equipment were depreciated 10% annually, or a total of \$61,967.03, leaving a net book value of \$6,699.12. The real estate is carried at \$500,520.66. After allowing depreciation, the aggregate net book value of these items as of January 1, 1936, is \$1,482,513.72. The contractor who built the building, a witness for the State, contradicts the figures

30 of depreciation with reference to machinery and equipment, and contends that 10% per year is entirely too high. He figures the reproduction cost and estimates such cost as of May 1, 1936, to be \$520,610.31, and after allowing what he considers a reasonable twelve year depreciation, he arrives at the figure of \$210,184.10 as the true and sound value of the machinery and equipment as of May 1, 1936. Assuming that the contractor's method of figuring depreciation is reasonable and sound, it will be observed that if one adds the difference between the Bank's value and the contractor's value of the machinery and equipment to the net

40 book value, the value of the land and the building would be \$1,685,998.79. This figure is fairly comparable to the taxable valuation at which the assessor placed the property.

In attempting to set aside the assessor's valuation, defendant relies solely upon a valuation computed by the capitalization of estimated income. No consideration is given to the other factors which may bear upon the market value. The building when erected was not primarily constructed to return income as such. It is a

single purpose building, and many of its features which may detract from its usefulness as an income producing building may materially enhance its value for the purpose for which it was built, and which purpose and use will probable continue for years to come. Demand for the use is only one factor. To rely entirely on the capitalization of income under these circumstances in determining the market value neglects considerations that are vital. If plaintiff's figures were adopted, there would result a discrimination and a relative injustice in tax valuation that could not be supported and which would run counter to Chapter 227, Laws of 1935. Defendant cannot escape its just share of the tax burden by erecting a building which is fairly adequate for its needs and which is devoted and intended to be devoted for its particular purpose for many years in the future, and then contend that, because it is only adapted for its requirements as a semi-public institution, it has no market value except as reflected in the capitalization of income for a use which is non-existent and which was never intended. *There may be instances where capitalization of income will fairly reflect taxable values, but there is no intimation in the statute that this method is the exclusive standard to apply. Quite the contrary appears. The assessor is required to give due weight to "every element and factory affecting the market value thereof."* Certainly, in a building of this type for taxation purposes, reproduction cost less depreciation is a factor that must be accorded due consideration. Prior assessments, book value as reflected in defendant's public statements, the particular use to which the building is being devoted by the defendant, original cost less depreciation, values of comparable buildings, are all factors which are entitled to due weight. None of these items have been given adequate consideration by defendant's experts.

The State urges that, not only do the assessor's figures fairly represent the true and full value of the property, but that the 1935 amendment (Chapter 237) intended to limit the defense in tax cases to a relative basis, rather than on the independent basis that a particular piece of property has been assessed at a valuation greater than its real and actual value. It is urged that, in view of this amendment, the rule of sale price and strict market value is merely intended as a guide in the determination of relative assessments. It is contended that the evidence herein is insufficient to establish any inequality or discrimination in the assessment of the Bank's property. However, it may be doubted that the prevailing rule since the adoption of the 1902 statute has been entirely abandoned by the adoption of the amendment. If the Legislature so intended, language more direct and explicit

would undoubtedly have been utilized. Furthermore, it will be observed that Section 2126-1, (also enacted 1935) gives the owner a defense where his property "has been assessed at a valuation greater than its real or actual value." It would seem that the statute merely emphasizes the necessity of uniformity and non-discrimination, which factors are not in any way inconsistent with the determination of value on a market-value basis. The  
10 most that can be read into the amendment is a mandate to the assessor and the Board to give due weight to the market value of the lands which are comparable in character, quality and location, so that there will be uniformity in the values.

The Supreme Court of the State has not ruled upon the construction and purpose of the amendment. However, it is evident that there is to be noted in the statute a direction to the assessor and the Board to consider other factors in determining the valuation for tax purposes than the traditional, hypothetical  
20 query, — what price could be obtained by an owner who was ready, willing and able, but not forced to sell, from a buyer who was ready, willing and able, but non forced to buy? It emphasized the necessity of achieving equality in the distribution of the tax burden, and is support for the State's position that the value of property must not be viewed in the abstract. Furthermore, it tends to reiterate the principle which is steadily gaining recognition among courts and tax officials that the primary object of real estate taxation is to obtain a uniform tax base. All real property must bear taxation, not only commensurate with the  
30 burden which the property imposes upon the community, but equitably in comparison with other property assessed in the community.

One must recognize that in these times an assessor is confronted with a most perplexing problem in determining real estate values for taxation purposes. The statutes make no distinction in determining taxable values between investment property and property which may be devoted to a special purpose. If, for instance, the State of Minnesota did not have the gross earnings tax, it would obviously be difficult to determine the price  
40 for which a railroad depot could be sold at private sale. A somewhat similar question is submitted in determining the value of the Federal Reserve Bank building for taxation purposes. One must adopt a realistic approach to such a problem. No one factor should be controlling. Many facts and circumstances have evidentiary value in arriving at the true value contemplated by the statute. A rigid standard will only add to the confusion that undoubtedly does exist under the present system of computing

values for real estate taxation. The assessor must be given a reasonable latitude in the exercise of his sound judgment in determining such values. The Court cannot say on this showing that the assessor had placed undue emphasis on any one factor, or that some elements of value have erroneously been given primary consideration, while other of equal importance have been relegated to secondary consideration. Throughout the years that  
10 this particular property has been on the tax rolls, it appears that, by conference and adjustment, the assessor and the taxpayer have been able to agree upon a fair valuation. The present valuation which is objected to herein is appreciably less than the sums heretofore agreed upon. Such circumstances would negative the charge that the assessor's present figures are arbitrary or discriminatory. Furthermore, it appears that due consideration and allowance have been given by the assessor on account of the architectural and structural limitations that may exist in  
20 this building, and the Court cannot overlook the fact that the assessor's value are approximately the same as those which the defendant itself carries on its books. It may be observed in passing that the Supreme Court of the United State has recently indicated that the full and true value of property for tax purposes bears a reasonable relation to the valuation that should be determined in condemnation proceedings. *Great Northern Railway Co. v. Weeks* 297 U.S. 135. If, perchance, the state or federal authorities were proceeding against this property in eminent domain, one can scarcely imagine that the officers of the Federal Reserve Bank would concede that the building which houses this  
30 Bank, and which was erected at a cost of nearly three million dollars some twelve years ago, has now only a salvage value.

The assessor is equipped with many years of experience and has access to technical knowledge and record which should make him peculiarly competent to arrive at a fair and equitable value of this property as contemplated by the statute. The depression has accentuated the difficulty in maintaining the degree of equality and the factor of non-discrimination which is required by our tax laws. The evidence indicates that the assessor has  
40 attempted to proceed scientifically and fairly, and his determination should not be disturbed in absence of a showing that his valuation is clearly too high. The taxpayer herein has failed to prove over-valuation by the character of evidence which would justify interference by this Court. If this Court on the evidence attempted to arrive at a lower valuation, such figure would not only fail to reflect the weight of the evidence, but it would be the mere selection of an arbitrary figure. The Court cannot find on the evidence submitted that the property was unlawfully or inequitably assessed.



Court of King's Bench that it will effectually prosecute its said appeal and pay such costs and damages as may be awarded against it by the Supreme Court of Canada, and further that if the Judgment appealed from or any part thereof is affirmed, it will pay the amount thereby directed to be paid, or the part thereof as to which the Judgment is affirmed, if it is affirmed only as to part, and all damages awarded against it on such appeal, the  
10 whole in accordance with the requirements of Sections 70 and 71 of the Supreme Court Act;

3. That the security which your Petitioner offers and for which approval is hereby sought is an unlimited Bond of the Montreal Trust Company, a body politic and corporate duly incorporated according to law and having its head office and principal place of business in the City and District of Montreal, the said Company being authorized to give judicial surety in the said Province and which said Company will justify as to its sol-  
20 vency if required, the whole as more fully appears by copy of the said unlimited Bond produced herewith.

WHEREFORE your Petitioner prays that your Lordship do receive and approve the said security offered and tendered by it upon its said appeal to the Supreme Court of Canada, and do allow such appeal and do stay execution of the said Judgment of this Honourable Court of the 25th day of June, 1948, the whole with costs reserved.

30 Montreal, 27th August, 1948.

Montgomery, McMichael, Common,  
Howard, Forsyth & Ker,  
Attorneys for Appellant-Petitioner.

BAIL BOND

BOND FOR SECURITY IN APPEAL

To the Supreme Court of Canada.

10

COURT OF KING'S BENCH (In Appeal)

WHEREAS, on the 25th day of June One thousand nine hundred and forty-eight, judgment was rendered by the Court of King's Bench (Appeal Side) for the Province of Quebec, sitting in the District of Montreal, in a certain cause bearing the No. 2787 and No. 2790 of the records of the said Court, between,

20

SUN LIFE ASSURANCE COMPANY OF CANADA,

*Appellant*

and

THE CITY OF MONTREAL,

*Respondent*

30

WHEREAS, the said judgment has been appealed from the said Court of King's Bench (Appeal Side) to the Supreme Court of Canada by the said Sun Life Assurance Company of Canada thus rendering necessary the giving of the security required by law upon such appeal to the Supreme Court of Canada.

40

THEREFORE THESE PRESENTS TESTIFY, that on the Third day of September One thousand nine hundred and Forty-eight came and appeared before me the Honourable Mr. Justice St-Germain one of the Justices of the Court of King's Bench, the MONTREAL TRUST COMPANY, of Montreal, a body politic and corporate, having its Head Office in the City of Montreal, and duly authorized to become surety before the Courts by Order in Council dated the 28th day of February, One thousand nine hundred and ten, under the provisions of the Act, 63 Victoria, Chapter 44, and herein represented and acting by Henry J. Knuble of the said Company, duly authorized by resolution of the Directors of the said the MONTREAL TRUST COMPANY duly certified copy of said resolution being hereunto annexed, and by which the said Company has acknowledged and

hereby acknowledges itself to be the legal surety of the said Appellant in regard to the said Appeal, that the Appellant will effectually prosecute his Appeal, will satisfy the said condemnation and pay such costs and damages as may be awarded against him by the Supreme Court, and the surety hereby promises and binds and obliges itself that in case the said Appellant does not effectually prosecute the said Appeal, and does not satisfy the  
10 condemnation and pay all the costs and damages awarded and all interest accrued and payable thereon, then the said surety will effectually prosecute the said Appeal, will satisfy the said condemnation and pay all costs and damages and interest which have been adjudged before the Superior Court and the Court of King's Bench (Appeal Side) and which may be hereafter awarded against him by the Supreme Court to the use and profit of the said Respondent his heirs, administrators, executors and assigns; provided, however that the total amount for which the said MONTREAL TRUST COMPANY will be liable as surety here-  
20 under shall be unlimited.

And the said the MONTREAL TRUST COMPANY has signed these presents acting and represented by its Manager duly authorized as aforesaid.

H. J. KNUBLEY.

Taken and acknowledged before me at  
Montreal, this Third day of  
30 September A.D. 1948.

G. St-Germain,  
J.K.B.



CONSENT AS TO CONTENTS OF CASE ON APPEAL  
TO THE SUPREME COURT OF CANADA

The parties hereto by the undersigned, their Attorneys of record, hereby consent and agree that the printed Case on the  
10 appeal herein to the Supreme Court of Canada, as stated by them in accordance with Section 68 of the Supreme Court Act, shall comprise the following:—

- I — All Pleadings, Exhibits, Evidence, Judgments, Reasons for Judgment and other documents as reproduced in the printed Joint Case in this matter before the Court of King's Bench (Appeal Side);
- 20 II — The Judgment of the said Court of King's Bench rendered on 25th June, 1948, and the Reasons for Judgment delivered by the Members of that Court;
- III — The usual Certificates required to be reproduced under the Supreme Court Rules; and
- IV — The present Consent.
- 30 V — Appendix setting forth Judgment of U.S. District Court in Minnesota vs. Fed. Reserve Bank.

Montreal, P.Q., 25th November, 1948.

Montgomery, McMichael, Common,  
Howard, Forsyth & Ker,  
Attorneys for Appellant.

40 Saint-Pierre, Choquette, Berthiaume, Emard,  
Martineau, McDonald & Séguin,  
Attorneys for Respondent.

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CERTIFICATE AS TO CASE

I, HAZEN HANSARD, hereby certify that I have personally compared the annexed print of the Case in Appeal to the Supreme Court with the originals and that the same is a true  
10 and correct reproduction of such originals.

Montreal,            March 1949.

HAZEN HANSARD,  
Solicitor for the Appellant.

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CERTIFICATE OF CLERK OF APPEALS AS TO SETTLE-  
MENT OF CASE AND AS TO SECURITY

We, the undersigned, Clerk of the Court of King's Bench,  
(Appeal Side), do hereby certify that the foregoing printed  
10 documents from page one to page 1154, is the Case stated by the  
parties, pursuant to Section 68, of the Supreme Court Act and  
the Rules of the Supreme Court of Canada, in a certain cause  
lately pending, in the said Court of King's Bench, Sun Life  
Assurance Co. of Canada, Appellant-Respondent, and The City  
of Montreal, Appellant-Respondent.

And we further certify that the said Appellant has given  
proper security as required by the 70th Section of the Supreme  
Court Act, being an Act of Deposit, a copy of which is to be found  
20 on page 1150, of the annexed Case.

In testimony whereof, we have hereunto subscribed our  
hand and affixed the seal of the said Court of King's Bench, at  
Montreal, this        of March 1949.

(L.S.)

LAPORTE & FALARDEAU,  
Clerks of Appeals.

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# In the Supreme Court of Canada.

Tuesday, the Twenty-First Day of February, A.D. 1950.

Present :

The Right Honourable the CHIEF JUSTICE OF CANADA.  
The Honourable Mr. Justice KERWIN.  
The Honourable Mr. Justice TASCHEREAU.  
The Honourable Mr. Justice RAND.  
The Honourable Mr. Justice ESTEY.

BETWEEN

SUN LIFE ASSURANCE CO. OF CANADA ... .. APPELLANT

AND

CITY OF MONTREAL ... .. RESPONDENT.

## Formal Judgment

The appeal of the above named Appellant from the judgment of the Court of King's Bench for the Province of Quebec (Appeal Side), pronounced in the above cause on the twenty-fifth day of June in the year of our Lord one thousand nine hundred and forty-eight, reversing the judgment of the Superior Court for the Province of Quebec, sitting in and for the District of Montreal rendered in the said cause on the twentieth day of September in the year of our Lord one thousand nine hundred and forty-four having come on to be heard before this Court on the fourth, fifth, sixth, seventh, eleventh and twelfth days of October in the year of our Lord one thousand  
10 nine hundred and forty-nine in the presence of Counsel as well for the Appellant as for the Respondent whereupon and upon hearing what was alleged by Counsel aforesaid, this Court was pleased to direct that the said Appeal should stand over for judgment, and the same coming on this day for judgment :

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THIS COURT DID ORDER AND ADJUDGE that the said appeal should be and the same was allowed, that the said judgment of the Court of King's Bench for the Province of Quebec (Appeal Side) should be and the same was reversed and set aside, and that the said judgment of the Superior Court for the Province of Quebec, sitting in and for the District of Montreal,  
20 should be and the same was restored.

AND THIS COURT DID FURTHER ORDER AND ADJUDGE that the said Respondent should and do pay to the said Appellant the costs incurred by the said Appellant as well in the said Court of King's Bench for the Province of Quebec (Appeal Side) as in this Court.

AND THIS COURT DID FURTHER ORDER AND ADJUDGE that the award of costs by the Court of King's Bench for the Province of Quebec (Appeal Side) on the appeal of the Sun Life Assurance Co. of Canada to that Court be not disturbed.

(Signed) PAUL LEDUC,  
Registrar.

RECORD

## Reasons for Judgment

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## THE CHIEF JUSTICE :

The subject matter of this appeal is the assessment for municipal purposes of the properties of the Sun Life Assurance Company of Canada in the City of Montreal. While there may be recognized general principles concerning municipal valuations, yet the main concern of the Courts in this case is evidently to apply the several provisions of the charter of the City of Montreal having reference to the subject.

Section 361 of the charter provides that all immovable property situate within the limits of the city shall be liable to taxation and assessment, with certain exceptions with which we are not concerned. It declares that immovable property shall comprise lands, buildings erected thereon, and everything so fixed or attached to any building or land as to form part thereof, but shall not include machinery, tools and shafting used for industrial purposes, except such as are employed for the purpose of producing or receiving motive power. 10

Under Section 375 (a) every three years the assessors shall draw up in duplicate for each ward of the city a new valuation roll for all the immovables in such ward, and this roll shall contain, amongst other things, the actual value of the immovables. However, whenever buildings or constructions erected upon an immovable entered in the previous roll have been changed or altered, or whenever a lot has been subdivided or divided, a new valuation of such property shall be made according to law and entered on the valuation roll by the assessors. The same section provides that at least two assessors shall act together in drawing up the valuation roll. The roll is deposited on the first of December. A public notice thereof is published and, during the delays fixed by the notice, the chief assessor is directed to receive complaints filed with him respecting any entries in the roll and to transmit them immediately to the Board of Revision. 20

By Section 382 a Board of Revision was created to be composed of three members appointed by Council on the report of the executive committee. The Board hears complaints at public meetings at which witnesses are called. The President decides questions of law. The Board may compel the appearance before it of one or several assessors in order to know in what manner and according to what principles they have proceeded to establish their valuations generally or in a particular case, or on what basis such valuations are founded, after which it may determine itself, or with the assistance of experts, the valuation in question ; and, in so doing, it may increase, or reduce, or maintain, the valuation. 30

By force of Section 384 of the charter an appeal lies from any decision rendered by the Board of Revision to any one of the judges of the Superior Court, by summary petition. The judge may order a copy of the record, including copies of the valuation certificate and of the documents annexed thereto, of the proceedings of the Board of Revision, as well as of the complaint itself ; and, after having heard the parties, but without inquiry, 40

he must proceed with the revision of the valuation submitted to him and with the rendering of such judgment as to law and justice shall appertain.

A further appeal lies from the decision of the judge of the Superior Court to the Court of King's Bench, when the amount of valuation contested for the property concerned exceeds five thousand dollars, or when the amount of the rental contested and under examination exceeds one thousand dollars.

I only want to emphasize that, in the case of an appeal, the judge of the Superior Court, under the charter (Section 384) shall render "such judgment as to law and justice shall appertain." Although this is not repeated with reference to the decision which the Court of King's Bench must render, it cannot be understood to mean that such Court is not to be governed by the same direction as the judge of the Superior Court. If we carefully examine the judgment rendered by the Court of King's Bench in the present instance, and the reasons given by the majority, I am of opinion, with respect, that, in the judgment appealed from, that direction of the charter of the City of Montreal has not been followed. That is apparent by the following considérant of the formal judgment:—

20 "CONSIDÉRANT, par conséquent, que si la base d'une évaluation faite par le Bureau de revision n'est pas manifestement fausse; si le Bureau n'a pas commis d'erreur évidente dans ses calculs, et que la méthode suivie pour déterminer la valeur n'a pas eu pour effet de créer une injustice certaine, ni le juge de la Cour Supérieure ni la Cour du Banc du Roi ne devraient intervenir pour modifier la décision du Bureau."

It is also apparent throughout the reasons given by the learned judges who formed the majority.

30 Now, of course, the principle embodied in the considérant, above reproduced, is the general principle followed in appeals from municipal assessments, but, as can be seen from the text of the charter, it is not the principle laid down by the latter. The Court of King's Bench professed to be governed by the general principle and applied it to the judgment it rendered and disregarded Section 384 of the charter which prescribes, as we have seen, not that they ought not to interfere in the assessment only if the Board of Revision was manifestly wrong and had committed an evident error, or created a clear injustice, but that both the judge of the Superior Court and the judges of the Court of King's Bench should render "such judgment as to law and justice shall appertain." It follows that the judgment now under appeal, in my humble opinion, was not rendered 40 according to the law which governs the City of Montreal, and that, for that reason alone, it ought to be set aside.

On the other hand, the learned judge of the Superior Court undoubtedly followed the principle laid down in the charter as to the powers which he was entitled to exercise, to such an extent, as a matter of fact, that the majority of the Court of King's Bench found that he had been wrong in doing so.

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I need not insist on the point that a municipal valuation for assessment purposes is not to be made in accordance with the rules laid down with regard to the valuation of a property for expropriation purposes. One main ground why such a course should not be followed is that the expropriation of a property means the permanent divesting of the owner and should legitimately, therefore, take into account the present value and all the prospective possibilities of the property, while the municipal valuation is, generally speaking, only made for one year, or, in the case of the City of Montreal, for three years, with certain provisions for modification if certain events happen, such as alteration, improvement, fire, etc. The rule was laid 10  
 down by Lord Parmoor in *Great Western and Metropolitan Railway Companies v. Kensington Assessment Committee* (1916) 1 A.C., p. 23 at p. 54, that in such a case "the hereditament should be valued as it stands and as used and occupied when the assessment is made." In the yearly valuation of a property for purposes of municipal assessment there is no room for hypothesis as regards the future of the property. The assessor should not look at past, or subsequent or potential values. His valuation must be based on conditions as he finds them at the date of the assessment. In particular, in the present case, there was no ground for considering any other condition, as no suggestion of any kind appears in the record that there was, throughout 20  
 the period of assessment, a prospect of any change.

The Sun Life property, as it stood at the time of the valuation now in question, was occupied about sixty per cent. by the company itself for its own purposes and about forty per cent. by tenants. That is how the assessors found the property at the time they made their valuation, and that is the only aspect of the property that they had to take into consideration. If some material change took place during the three year period following the valuation, the charter of the City of Montreal provided for a fresh valuation taking into account those changes. Again, at the end of the three years, if the situation had been modified, there was then the opportunity to modify 30  
 the valuation accordingly. But, for the valuation which had to be made and which is now the subject of the litigation, the property had to be taken as it stood then and as it was used and occupied.

The parties agreed on certain admissions showing the gross rental receipts for each tenant and each floor, including the basements, for the year 1941, being the material year. By these admissions the yearly rental actually charged to the company for the years 1937–1941 inclusive, as appears in the books of the Company, in the Company's annual statements and in statements supplied to the Superintendent of Insurance for the Dominion of Canada, for the floor space occupied by it per floor, was 40  
 established. The amount shown, therefore, establishes the rental value for the year 1941, with which alone the assessors were concerned in their valuation. In turn, such rental value enables one to find the commercial value of the building, or, to adopt another expression which was used throughout the case, to estimate the price which a prudent investor would have been willing to give for the purchase of the property. An increase in rents in the City of Montreal might mean a higher rental value, but that

would be the concern of the assessors who would have to render a decision at that time. For the moment, the assessors and the Court cannot be concerned with any other value than that of 1941. It is on such a basis that the judgment in this case must be arrived at.

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Now, it is evident from a reading of the record and the opinions expressed by the many experts who were heard, that there is far from being an agreement on the approach that should be made to reach a proper valuation in these matters. Some speak of market value, but there is a general consensus of opinion, in the circumstances, that this cannot form  
10 the basis of valuation here, as everybody, witnesses, experts, assessors, Board of Revision, judge of the Superior Court, and judges of the Court of King's Bench, state most positively that the Sun Life building now in question is unique and that there is no comparison between it and any other building in either the City of Montreal or the immediate vicinity. We were invited to apply certain *dicta* of a United States court in a judgment dealing with the Federal Reserve Bank of Minneapolis, in the State of Minnesota. I do not find it necessary to pause to consider such a judgment dealing with a property several thousand miles from the one which we are now considering. Counsel for the respondent in the case at bar stated  
20 several times in the course of his argument that one way to estimate the value of the Sun Life property would be to look at the valuation of comparable buildings. Of course, that should first mean comparable buildings in the City of Montreal, or the neighbouring country. But I have been so far unable to understand how a comparison of that kind could be helpful. It cannot assist the Court in reaching a conclusion because, of course, that would assume that the so-called comparable buildings have themselves been correctly valued by the assessors. And the Court really does not know anything about those buildings in that respect, more particularly because the owners of such buildings have not been heard in this case. At all events,  
30 the evidence is clearly to the effect that there is no building in Montreal comparable to that of the appellant. (*Grampian Realties Co. v. Montreal East*, (1931) 1 *D.L.R.*, 705).

Moreover, if there is one basis upon which we should be clear as to the method which should be followed for municipal valuation purposes, it is the one which is recognized by the assessors themselves in the memorandum prepared by them on the assessment of large properties. It states :—

“ Each property will have to be considered on its merits within the limits outlined above.”

The Board of Revision expresses the same view as follows :—

40 “ The coupling of the word ‘ real ’ with the word ‘ value ’ indicates that real value is a fact, not an hypothesis. Because this conception of real value is overlooked or ignored, the means, the elements to determine the said real value are often taken for the value itself. Such elements are unlimited in number. They vary ‘ ad infinitum ’ as the cases. There is no fixed rule to determine in what proportion every element must be taken into account and



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what importance should be given to any element in particular. The same element may have more importance in one case than in another. The law imposes on the assessor the duty of finding the real value of an immovable and of inscribing it on the roll, but does not in any way put any limit to the assessor's discretion in considering all the elements he thinks it advisable to consider in exercising his judgment and arriving at a decision."

The "limits outlined above," referred to in the memorandum of the assessors, (Ex. D-5) proceed to divide the properties such as office buildings, apartment houses, departmental stores, hotels, etc., into four main categories. They are as follows :— 10

- (1) Properties that are developed and operated solely on a commercial basis as investment propositions.
- (2) Properties that are completely occupied by their owners.
- (3) Properties that are partly occupied by the owners and partly rented, among which the Sun Life property is specifically mentioned.
- (4) In a separate category all buildings like theatres and hotels.

With respect to the properties in the third category, of which the Sun Life is said to be one, the memorandum proceeds to state that these 20 properties have been constructed or acquired as a permanent home for the enterprise of their owners, and that frequently the building is laid out for future development, the tenant situation being considered only temporary or incidental. In these cases, the memorandum continues, the owner is enjoying the full utility only of the space occupied by himself and is dependent on current rental conditions for the carrying charges on the balance of the building ; and it is mentioned that some consideration should be given to the rental value in these cases, so that the replacement factor should be weighted somewhere between 50 and 100 per cent., and the commercial value factor make up the difference between 50 per cent. and 30 zero. Then the memorandum goes on to say :—

" No hard and fast rule can be given for the division of weight in these factors, as it will depend on the proportion owner-occupied, the extent to which the commercial features of the building have been sacrificed to the main design with a view to the future complete use of the building by the owner, or the enhanced prestige of an elaborate and expensive construction."

Admittedly such were the rules and the guiding principles followed by the assessors in the present case, and it is to that memorandum that we owe the idea embodied in the assessment herein of a certain percentage 40 attributed to the replacement factor and another percentage attributed to the commercial value factor. In this instance, the Board of Revision came to the conclusion, after a very complicated calculation, that the ratio of importance to be given to the net replacement cost should be 82·3% and the ratio of the commercial value 17·7%. Counsel for the respondent, in the course of the argument, was asked if a calculation of that kind for

municipal valuation purposes was ever accepted in any Court of the province of Quebec and, of course, he could not point to any authority to that effect. Nevertheless, that was the yard-stick applied to the Sun Life property for its valuation by the Board of Revision.

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I do not think that it is the function of this Court, acting as third Appeal Court, to proceed to a detailed calculation of what the valuation should be. In that view I am fully in accord with the reasons for judgment of Casey J.A. in the Court of King's Bench (Appeal Side), and I adopt his reasons. Like him, I think that "the learned Justice of the Superior Court acted properly in intervening and in fixing the value of the Company's property, land and buildings at \$10,207,877.00." I think the learned judge of the Superior Court succeeded in placing a true objective exchange value on the property and that the result he arrived at should be affirmed. As was said by Casey J.A. the amount fixed by that Court more closely approaches the actual value of the property, as prescribed by the charter of the City of Montreal, and it should be allowed to stand.

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The appeal should, therefore, be allowed and the judgment of MacKinnon J. should be restored with costs both here and in the Court of King's Bench (Appeal Side) against the respondent. The award of costs by the Court of King's Bench (Appeal Side) on the appeal to that Court of the Sun Life Assurance Co. of Canada should not be disturbed.

The Chief  
 Justice—  
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KERWIN J. :

This appeal is concerned with (1) the assessment by the City of Montreal of the appellant's main office building and what is called a secondary building, containing the heating plant; (2) the annual rental value of the two buildings for the purposes of business and water taxes.

Kerwin, J.

The main question is the first and as to it there is no dispute as to the assessable value of the land itself. Article 375 of the charter of the City of Montreal provides for the preparation, every three years, by the assessors, of a valuation roll in each ward of all the "immovables," which expression includes lands and buildings. The roll is to contain "the actual value of the immovables" and the controversy turns upon the method of determining that value or, as it is put in the French version "la valeur réelle des dits immeubles." The rule applicable in determining compensation in expropriation cases is not that to be followed in municipal assessment cases where the land and buildings are to be assessed at their value, or real value, or actual value. The test is an objective one which in many cases may be applied by seeking the exchange value or the value in a competitive market. If there is no such market, then one may ask what would a prudent investor pay for the subject of taxation, bearing in mind the return that might be expected upon the money invested.

The differences between the assessors and the Board of Revision need not be set out since the latter confirmed the amount of the assessment set by the former. Both, however, proceeded in the following manner: Taking the actual rents received by the Company and estimating the rents from other parts of the building available for tenants, and adding to that an

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estimate of what the Company should pay for the space occupied by itself, and deducting therefrom the operating expenses, gives a net revenue which when capitalized resulted in a commercial value which may be taken as \$7,028,623.00. The assessors and the Board then proceeded to fix the replacement cost of the buildings, which may be put at \$13,387,131.80. Holding the view that there was no market and that both the replacement value and commercial value should be taken into consideration, it then became necessary, in their opinion, to take certain percentages of the above figures, which in the case of the assessors were put at 90% of the assessed value and 10% of the commercial value, and by the Board at 82.3% and 17.7%. The explanation of how the assessors arrived at their assessment appears in the evidence of one of them, Mr. Vernot, at page 556 of the Case, where he states :—

“ I think I will have to corroborate what Mr. Hulse said about the principles and methods agreed upon by the assessors, and in commercial buildings, first, we agreed on 50% replacement for strictly commercial buildings, and 50% commercial value. When I say strictly commercial I mean a building designed and built for revenue purposes only.

When you come into the owner occupied building and renting part of it, we would have to balance the part of the building assessed for commercial purposes and the part assessed as owner occupied. In the case of the Sun Life it was 40% tenant occupied in 1941 and 60% owner occupied. The occupied space. So that would mean that the 50% for commercial would be divided into 20 and 60. There would be another 30% replacement cost added on the 50, to make it 80 and 20.

But as the revenues in this building were based on revenues of much cheaper buildings—the revenue of this building received no competition—I consider that half of the commercial value of 20%, making it 10%, would pay for the amenities and benefits received by the owner of the building.”

On appeal to the Superior Court, Mr. Justice MacKinnon, while arriving at a different total for the replacement value, took 50% of that total and 50% of the commercial value in order to arrive at an amount of \$10,207,877.40 for land and buildings. The majority of the Court of King's Bench restored the order of the Board but Mr. Justice St. Jacques and Mr. Justice Casey dissented as they would have affirmed the judgment of the Superior Court. Casey J. decided that the commercial value was the proper method of approach and that the net rental revenue at which he arrived, \$432,957.00, would represent a yield of approximately 4.2% on the figure found by the Superior Court. He considered that in view of the evidence of Mr. Vernot that the rate should be 3% for an owner occupied building and 4½% for one that is tenant occupied, while Mr. Lobley and Mr. Simpson, for the Company, felt that a yield of 5% was indicated, the figure of 4.2% would not be far out of line. With those reasons and the

result, I agree. While the Company sought to obtain a lower valuation on the basis of the evidence of its experts as to a possible purchaser, that evidence is not of such a character as to warrant it prevailing against the almost unanimous evidence of the commercial value.

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I have not overlooked the fact that in the Company's annual general statements and in its returns to the Superintendent of Insurance for Canada for the years 1914 to 1941 inclusive, sums of a like amount appeared under the headings "book value" and "market value," which represented actual cost less depreciation. Much was made by the respondent of this fact. 10 Whatever bearing the figures might have when related either to the annual statements or the returns to the Superintendent of Insurance, they cannot, I think, affect the duty of the assessors and of the Board and of the Courts in fixing the value of the Company's immovables for the purposes of municipal taxation.

There remains the City's contention that the assessors and the Board of Revision proceeded in accordance with a memorandum adopted by the assessors at a meeting held at the suggestion of the Board, and that failure to adhere to that memorandum would result in discrimination. The assessors must, of course, proceed so as to cause no discrimination but it is also their 20 duty to see that every ratepayer is assessed for its immovables at their actual value. Where it is demonstrated, as is the case here, that by attempting to use the formula of the memorandum the result arrived at is not such value, then the formula must be disregarded.

As to the second point in the appeal—annual rental value—the appellant has not convinced me that all the judges were wrong and that item should therefore stand. The appeal should be allowed to the extent indicated, with costs, and the judgment of MacKinnon J. restored. The appellant is entitled to its costs in the Court of King's Bench in the appeal of the City of Montreal, but should pay the costs of its own appeal in that Court; the cost 30 of printing the case in the Court of King's Bench should be borne equally by both parties.

TASCHEREAU, J. :

The appellant is the owner of a large office building situated on Dominion Square, in the City of Montreal, and which occupies an entire city block from Metcalfe to Mansfield Streets on Dorchester Street. From Dorchester Street, it extends northward for approximately one half of a long city block. Part of this building is occupied by the Company itself as its head office, the remainder being rented on a commercial basis to a large 40 number of business tenants.

Taschereau,  
J.

The appellant is also the owner of a boiler house situated on Mansfield Street, where is located the heating apparatus. The office building and this boiler house, together with the emplacements whereon they are erected, were placed on the municipal valuation roll deposited by the assessors of the respondent on December 1st, 1941, at the respective valuation of \$13,755,500 and \$520,500. The appellant was also assessed in respect of its occupancy of the main building, at \$423,280 for water tax purposes, and

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at \$421,580 for business tax purposes. In the case of the boiler house, the assessment was placed at \$26,000.

The appellant feeling that it was aggrieved by these valuations, appealed to the Board of Revision of the City of Montreal, and contended that the true and proper valuations of the said buildings should be \$8,330,600 and \$102,600 respectively. The valuations placed on the land in both cases (viz. : \$520,500 and \$74,100) were not challenged, but the appellant also appealed regarding the assessed rental value for business tax, claiming that it should be reduced to \$352,035. It also asked that the assessment of the rental value of the boiler house, fixed at \$26,000, should disappear. During 10 the hearing before the Board, the respondent submitted by counter-appeal that the combined assessment of the main building and boiler house should be increased to \$15,651,100. The Board refused this increase, but maintained the assessment as made by the assessors, subject to consolidation of the boiler house assessment with that of the main building, with the result that the annual rental valuation of the boiler house disappeared. The Board also dismissed the complaint against the assessment of the annual rental value on the roll.

The appellant then appealed to the Superior Court, under the provisions of the City Charter. Mr. Justice MacKinnon sitting in that court, 20 reduced the assessment of both properties, including land, to \$10,207,877.40, but refused to disturb the Board's decision as to the annual rental value. He therefore allowed in part the appeal of the Company with costs against the City of Montreal.

Both parties then inscribed the case before the Court of King's Bench of the Province of Quebec, which, Messrs. Justices St. Jacques and Casey dissenting, allowed the appeal of the City of Montreal with costs, dismissed the appeal of the Company also with costs, and restored the decision given by the Board of Revision. The appellant now appeals to this Court.

A brief account of the erection of this massive cubical designed building, 30 which rises twenty-five storeys above the ground, is I think useful for a better understanding of this case. It was erected in three different stages. The first building, which now constitutes the southwest, or Dorchester and Metcalfe corner, was commenced in June, 1913, and completed in March, 1918. It was intended to be the head office of the Company. Although a comparatively small building of five or six storeys, occupying only one-sixth of the ground area of the present structure, it was made of very costly materials. The second stage of construction consisted in approximately doubling the size of the original building by extending it east, along Dorchester Street to Mansfield Street, and adding two storeys. This was com- 40 menced in the Summer of 1922 and finished in December, 1925. Finally the third stage, during which the great bulk of the existing structure was added, started in May, 1927, and it was only in December, 1930, that it was nearly all completed. Only a number of upper floors were not finished for occupancy by tenants at that time, nor completed until occupancy was from time to time, thereafter contracted for. At the time of the 1941 assess-

ment, which is now in issue, approximately 14% of the rentable space in the building was still unfinished and, therefore, unoccupied.

Its cost up to April 30th, 1941, was \$20,627,873.92, excluding the cost of the land and taxes and interest during construction, and the amount spent from April 30th, 1941, to December 1st of the same year, the date of the roll, was \$58,713.70. The cost of the boiler house which was commenced in November, 1928, and ready in March, 1930, exclusive of the land and of interest and taxes during construction, was \$709,257.14 plus \$154.00 spent in 1938. The cost of the land, as given by the Company to the assessors, was \$1,040,638.20. By adding together the above mentioned amounts, we come to a total of \$22,436,636.96.

In 1930, the respondent's assessors placed these properties on the valuation roll of the City of Montreal for the tax year 1931-1932, at \$12,400,000, but the present appellant appealed from such assessment to the full Board of Assessors under the provisions of the City Charter then in effect, and the appeal being allowed, the assessment was reduced to \$8,000,000. During the ten years which followed, up to 1941, this figure of \$8,000,000 was increased annually by amounts corresponding to the sums from time to time expended by the appellant on completion of interior floors as the same were occupied by tenants, and for the year immediately preceding the assessment now in issue, the property stood on the City valuation roll at \$9,986,200 and it is from the sudden increase to \$13,755,500 that the present appellant now complains. The assessment of the boiler house and land occupied by the appellant had likewise remained constant throughout the same period, at a total of \$225,000 and by the assessment now under attack, this sum was increased to \$520,500. These increases represent approximately 40% for the office building and approximately 135% for the boiler house. It must be noted that the land valuations were not increased, but on the contrary, slightly reduced, and it follows that the percentages of increase on the buildings as distinguished from the total included in the land, were even greater. The overall increase of the appellant's property affected by the assessment under attack was, therefore, of \$4,064,000, and the overall assessment was \$14,276,000.

At the same time, the annual rental value of the space occupied by the Company in its building, was increased from \$357,280 to \$423,280 for water tax purposes and \$421,580 for business tax purposes.

In 1940, before the valuation of the properties now in question was made, the assessors of the City of Montreal prepared a "Memorandum" laying down certain rules concerning the assessment of large properties in Montreal, as office buildings, apartment houses, departmental stores, hotels, etc. These properties were divided into four main categories in order to determine the relative importance of the various factors used in arriving at their valuation.

The category with which we are concerned, is the third, and it includes properties that are partly occupied by the owners and partly rented. The "Memorandum" indicates that in order to determine a proper valuation, the replacement and commercial values have to be taken into account, but

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*continued.*

the replacement factor should always be weighed somewhere between 50% and 100%, and the commercial factor between 50% and zero. This "Memorandum" was produced as exhibit and with it was also produced a list of properties, the valuations of which have been made in accordance with those directions. It appears that in assessing the Sun Life Building, the assessors have thought that the replacement factor should be 90%, and the commercial factor 10%.

Mr. George E. Vernot was the City assessor who made the assessments now challenged. The method followed by Mr. Vernot to value the main property was the following:—

He took the total cost of both properties as at the 30th of April, 1941, which as reported by the Company was \$22,377,769.26. From this figure, he deducted the amounts paid for the erection of the boiler house, the construction of the sidewalks, the price paid for the land of both properties, the costs of the temporary partitions during the construction and of the parts demolished to connect the new buildings. These various amounts totalling \$4,269,393.72 were then subtracted from the total costs, leaving a balance of \$19,108,375 for the main building alone, without the land. He then adjusted the cost of replacement to the 1941 figure, using the index of 1927-28-29-30, when most of the money was spent, and having found the difference to be \$1,471,344 which he subtracted, he reached a figure of \$17,637,031. He allowed 5% for presumed extra cost, as the building was erected in three units, viz. : \$881,851, giving a balance of \$16,755,180. He figured the depreciation at \$3,081,202, and came to a final figure of \$13,673,978 as being the cost of the main building in 1941, after depreciation and without the land.

His next operation was to add to this last figure \$730,600 value of the land, giving a total *replacement value* of \$14,404,578.

The commercial value of the property was also considered by Mr. Vernot. By capitalizing at a rate of 15%, the total revenue of the property which he figured at \$1,187,225, he thus gave to the property an economic value of \$7,915,000.

Then in order to apply the principles enunciated in the Memorandum, he reached the conclusion that the factor "replacement value" should be 90%, and the commercial factor 10%. By taking 90% of \$14,404,578, he obtained \$12,964,120, and 10% of \$7,915,000 gave the figure of \$791,500. His final operation was to add both these figures, subtract the value of the land, with the result that, in his opinion the "real value" of the main building alone, is \$13,024,900, or \$13,755,500 with the land. To this figure he added the amount of the valuation of the boiler house, including the land, \$520,500, making a grand total of \$14,276,000.

When the case was heard by the Board of Revision, Mr. Vernot explained as follows how he arrived at 90% "replacement" and 10% "commercial":—

"We decided that on the large buildings in our Wards that were rented, totally rented, we took into consideration 50% commercial value and 50% replacement value; that is where the

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building was built solely for commercial purposes and occupied solely for commercial purposes by tenants. Those that were occupied by owners we would take at 100% replacement cost and nothing for commercial value. So the Sun Life happened to fall between these two categories. The total floor space occupied by the Sun Life and the tenants is given by their list and came out to be 60% and 40%."

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Later in his evidence, he added :—

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"Q. Can you give us some more particulars as to the proportion between the 90 and 10? Do you conclude that 90% must be given to replacement cost and 10% to the commercial?"

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A. Yes.

Q. Why not 15 and 85, or 20 and 80? You could give me some explanations?"

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A. I think I will have to corroborate what Mr. Hulse said about the principles and methods agreed upon by the assessors, and in commercial buildings, first, we agreed on 50% replacement for strict commercial buildings, and 50% commercial value. When I say strictly commercial I mean a building designed and built for revenue purposes only."

"When you come into the owner occupied building and renting part of it, we would have to balance the part of the building assessed for commercial purposes and the part assessed as owner occupied. In the case of the Sun Life it was 40% tenant occupied in 1941 and 60% owner occupied. The occupied space. So that would mean that the 50% for commercial would be divided into 20 and 60. There would be another 30% replacement cost added on to the 50, to make it 80 and 20.

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But as the revenues in this building were based on revenues of much cheaper buildings—the revenue of this building received no competition—I consider that half of the commercial value of 20%, making it 10%, would pay for the amenities and benefits received by the owner of the building."

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The members of the Board of Revision accepted the method adopted by the assessors, but reached a higher figure because they reduced the adjustment cost to the index number 1939-40, and reduced also the amount of depreciation. They also applied the formula indicated in the "Memorandum" to the boiler house, which was dealt with separately by the assessors. They thought however that the "replacement" factor should be 82.3% and the "commercial" factor 17.7%. On account of these slight differences, they came to the final conclusion that the "real value" of both properties was \$15,051,977.07, and that therefore, the valuation made by the assessors, viz. : \$14,276,000, was not excessive.

In the Superior Court, Mr. Justice MacKinnon agreed with many of the figures arrived at by the assessors. He however slightly reduced the depreciation on the building, but thought that a further depreciation of



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14%, viz. : \$2,352,932.70, should also be subtracted from the 1941 net cost of the building, being for extra unnecessary costs for granite, monumental work, ornamental stones, bronze sash, bronze doors, etc., as explained by the witnesses Perry, Mills and Désaulniers. He therefore reached the conclusion that the replacement value of the main building was \$12,100,786.80 and after adding to this figure, the value of the land, viz. : \$730,600, plus the value of the boiler house and land, viz. : \$535,735, he arrived at a total replacement value of \$13,387,131.80.

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Mr. Justice MacKinnon expressed the view that both the replacement value and the commercial value should be considered, but that each should be given equal consideration, that the "actual value" should be 50% of the replacement value, plus 50% of the commercial value. He capitalized the net revenue of \$752,062.66 at 10.7% which equalled \$7,028,623. Adding this last figure to the replacement value, as found by him, and dividing by 50%, he concluded that the real value of both properties including the land, was \$10,207,877.40. 10

Then, the Court of King's Bench, to whom both parties appealed, considered the case. The majority found that the valuation of immovables is an operation which requires technical knowledge and an experience that can be found only with specialists in the matter, and that if a valuation made by a Board of Revision composed of experts, is not manifestly wrong, does not contain obvious errors in its figures, if the method followed to determine the value of the property did not cause a manifest injustice, neither a Judge of the Superior Court nor a Court of Appeal should intervene to modify the conclusion arrived at by the Board. 20

The Court held that, for the proper determination of the real value of immovables one must take into account 1° the indicia of the market, 2° the replacement value, 3° the economic value of the immovable, by capitalizing the revenues that it is susceptible of producing. The Court said that it was impossible to give to the Sun Life Building a market value, because such a building has no market, there being no seller and no purchaser, and that the safest way to come to a proper conclusion is to take into account the replacement value and the economic value. The Court thought that the Board had made no error in choosing these two factors to determine the real value, and it concluded by saying that, the Board having weighted all the elements of the problem that was submitted to it, the decision to apportion 82.3% to the replacement value and 17.7% to the economic value, should not have been disturbed. 30

The Court, therefore, dismissed the appeal of the Sun Life Assurance Company with costs, maintained with costs the appeal of the City of Montreal, and confirmed the judgment given by the Board, Mr. Justice St. Jacques and Casey dissenting. 40

This building has been rightly described as monumental and unique. Its external appearance, with its ornamental columns and balustrades, its granite walls, bronze doors, the lavishness of the interior decorations, the unsparing use of marble and other expensive materials, the vastness of its rooms, its cafeterias, gymnasiums, elevators, etc., all contribute to make of

this building one of the most sumptuous in the City of Montreal. For the same reasons, however, it is undoubtedly one of the least economical office buildings, and at the same time, one on which it is not easy to place a municipal valuation, and give to it a "real" or "actual" value.

The Charter of the City of Montreal, Art. 375, provides :—

"Every three years, the assessors shall draw up in duplicate for each Ward of the City a new valuation roll for all the immovables in such Ward. Such roll shall be completed and deposited on or before the 1st of December, after having been signed by the Chief Assessor.

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This roll and each of the supplementary rolls mentioned in paragraph b, shall contain :

3° The actual value of the immovables."

It is admitted that the words "real value" and "actual value" are interchangeable, and as Sir Lyman Duff, then C.J. said in *Montreal Island v. The Town of Laval des Rapides* (1935) S.C.R. at page 305 :—

"Obviously, 'real value' and 'actual value' are regarded by the Legislature as convertible expressions."

20 But for the purpose of municipal valuation, they do not have the same meaning as the one attributed to them in expropriation cases, and therefore the necessary distinction must be kept in mind. In expropriation matters, "real value" means "value to the owner," which is not the case in municipal valuation. In *Pastoral Finance Association, Ltd. v. The Minister* (1914, A.C.) at page 1088, Lord Moulton, who was there dealing with an expropriation case, enunciated the following formula :—

"The owner is entitled to that which a prudent man in his position would have been willing to give for the land sooner than fail to obtain it."

30 Discussing this formula in *Montreal Island Power Co. v. The Town of Laval des Rapides* (cited supra), at page 307 Sir Lyman Duff expressed the following views :—

"There is no room for the application of any such formula in the administration of an *assessment act*, because the amount ascertained under the formula depends upon the *special position of the owner with regard to the land*."

And on the same page he added :—

40 "In the case of expropriation, the rule is undisputed. The person whose property is taken is entitled to be compensated for the loss he has suffered by being deprived of his land compulsorily ; the value of the land, for ascertaining such compensation, *is the value of the land to him*."

See also (*Diggon-Hibben Ltd. v. His Majesty the King, Supreme Court* 1949, page 712.

In *Cedars Rapids v. Lacoste* (A.C. 1914), at page 576, Lord Dunsedin, speaking for the Judicial Committee, also in an expropriation case said :—

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“ For the present purpose it may be sufficient to state two brief propositions : (1) *the value* to be paid for is *the value to the owner* as it existed at the date of the taking, not the value to the taker. (2) the value to the owner consists in all advantages which the land possesses, present or future, but it is the present value alone of such advantages that falls to be determined.”

The reason for this rule is obvious, and I do not think I can put it more clearly than Mr. Justice Hodgins in *Ontario & Minnesota Power Co. v. The Town of Fort Francis* (28 D.L.R.) at page 30 :—

“ . . . the fact that the municipality appraises the land 10  
 each year as it then is, and in that way gets the benefit, from time to time, of each realized possibility as it occurs, must be considered. The reason for the rule in compensation cases that ‘ all advantages which the land possesses, present or future, ’ must be paid for, is that the land is finally taken, and the owner loses both those present and future advantages, and the taker gets them.”

It naturally follows that a building may for municipal purposes, be valued at a much lower amount than the amount of the compensation its owner would be entitled to if expropriated. In the latter case, the “ value to the owner ” would be considered, but ignored in the former. 20

In order to reach a proper conclusion in a case of municipal assessment, it is the “ real value ” that has therefore to be considered. As in many other statutes, these words are not defined in the Charter of the City of Montreal, but they have been the subject of many judicial pronouncements. It is settled law, I think, that they mean what the building will command in terms of money in the open market.

In *Lord Advocate v. Earl of Home* (1891) 28 Sc. L.R. 289, at 293, Lord MacLaren said :—

“ It means exchangeable value---the price the subject will bring when exposed to the test of competition.” 30

In *Grierson v. Edmonton* (1917) 58 S.C.R. 13, Sir Charles Fitzpatrick, C.J., with whom all the members of this Court concurred, said :—

“ Speaking generally, the intrinsic value of a piece of property must necessarily be the price which it will command in the open market.”

In *Gouin v. The City of St. Lambert*, 67 S.C. 216, it was held :—

“ La valeur réelle que vise la loi des cités et villes (art. 485) quant aux immeubles imposables d'une municipalité urbaine consiste dans leur valeur vénale à l'époque de la confection du rôle d'évaluation par les estimateurs.” 40

At page 219, Mr. Justice Archambault says :—

“ Le sens des mots ‘ valeur réelle ’ de l'article 485 de notre Loi des Cités et Villes est fixé par la doctrine et la jurisprudence. Les mots ‘ valeur réelle ’ signifient ‘ valeur actuelle, ’ ‘ valeur marchande. ’ ”

In *Bishop of Victoria v. City of Victoria* (1933, 4 D.L.R., 524), the British Columbia Court of Appeal decided :—

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“ Under section 212, para. 1, of the British Columbia Municipal Act, for assessment purposes, the term ‘ actual value ’ means ‘ *value in exchange*, ’ that is, what a prudent man of business, taking into consideration the reversible currents which affect the value of land would be likely to pay for a property of the character under assessment.”

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10 The respondent itself accepts these views, and in its factum also agrees with the “ willing buyer ” and “ willing seller ” formula, which has often been recognized by the courts, and cites the case of *La Compagnie d'Approvisionnement d'Eau v. La Ville de Montmagny* (24 K.B. 416) where Mr. Justice Pelletier said :—

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20 “ Dans la cause du *Roi v. MacPherson* (10 Exch. Ct. Rep. 208), je trouve une définition donnée par le juge Cassels de la Cour d'Échiquier qui me paraît excellente. Voici cette définition : ‘ C'est le prix qu'un vendeur qui n'est pas obligé de vendre et qui n'est pas dépossédé malgré lui, mais qui désire vendre réussira à avoir d'un acheteur qui n'est pas obligé d'acheter, mais qui désire acheter.’ ”

I may also add the following authority—In *Lacroix v. City of Montreal* (54 S.C.) Bruneau, J., said at page 130 :—

“ La valeur actuelle à laquelle les estimateurs de la Cité de Montréal sont tenus d'évaluer les immeubles doit s'entendre de la valeur vénale savoir, celle que le propriétaire pourrait obtenir pour sa propriété, d'un acheteur qui, sans y être obligé, désirerait en faire l'acquisition.”

30 In order to find this “ actual value ” it is of course, as Mr. Justice MacKinnon and the Court of Appeal have said, quite in order for the assessor to consider various elements as recent free sales of identical or comparable properties, the depreciated replacement cost, the economic value of the property itself. The first of these approaches cannot be considered in this case ; the Sun Life Building being in a class by itself, no sales of identical or comparable buildings have taken place, and I therefore agree with the courts below, that the two last approaches only can help to come to a proper conclusion.

40 Dealing first of all with the replacement value, I think there are considerations that have to be kept in mind, and which apply particularly in this present case. Although this method of valuation for municipal purposes is of frequent use, there are cases where it would be dangerous to attach to it too much importance, in view of the particular circumstances which may arise. I do not disagree with the method recommended in the “ Memorandum,” when of course no other indicia are available, but the rule must not be too rigid. It must have enough flexibility so that it may be applied to certain exceptional cases, as for instance the one with which we are now dealing. Otherwise, a manifest injustice would be the inevitable result.

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It is not always, although it might happen, that the “ market value ” or the “ exchangeable value ” of a building is represented by the amount of the investment made by the owner less depreciation. Some investments are good, some others are not, and certain features of an expensive building may contribute considerably to reduce its “ market value.”

What I have said previously of the Sun Life Building as to its most expensive construction, is sufficient, I believe, to show that its “ replacement value ” placed in the books of the Company at \$16,258,050 in 1941, is not the figure that a “ prudent investor ” would consider in trying to determine its “ real value.” He would obviously disregard many of its amenities and luxuries, thinking rightly that they are superfluous and not productive of a proportionate return. 10

This amount of \$16,258,050 which the Company showed in its books as being the value of the property, and which in the relevant year appeared in its annual statement furnished to the Superintendent of Insurance, does not represent the “ real value ” of the property for “ assessment purposes.” It merely shows the amount of money spent in the circumstances already mentioned, with the ordinary annual depreciation. It indicates to the shareholders and to the Superintendent of Insurance how the funds of the Company were invested, but it surely does not reveal all the elements of the “ replacement value,” which has to be considered with the “ economic value.” 20

The proper method to be followed in order to determine the replacement value of a building, is first of all to ascertain the cost of construction, to adjust that cost to the index figure of the year when the valuation is made, then to deduct a reasonable amount for depreciation, and in certain exceptional cases a further amount on account of the special features of the building, keeping always in mind that the “ replacement value ” is one of the important factors that must be considered in the determination of the “ real ” or “ market value.” Expressing in a different form what I have said previously, it would be quite impossible to determine what the building will command in terms of money, if too expensive materials, sumptuous decorations and luxuries are value at their cost price. There must necessarily be an allowance for those special items, the value of which is not commensurate with their cost. 30

The assessors, the Board of Revision and the Court of King’s Bench have refused to allow any reduction for such items as granite, ornamental work, marble floors and walls, etc., which Mr. Justice MacKinnon believes could have been replaced by less expensive materials, as explained by witnesses Perry, Mills and Désaulniers. He therefore, and with this view I fully concur, allowed a further depreciation of 14% for those extra unnecessary costs, which do not add to the “ real value ” of the property. This additional depreciation amounted to \$2,352,932.70. By doing so, he followed the judgment delivered by the U.S. District Court of Minnesota in *Federal Reserve Bank v. The State of Minnesota*. This case, of course, is not a binding authority, but an expression of opinion with which I entirely 40

agree. The judgment, after referring to the building of the Federal Reserve Bank, as a "fortress," said:—

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" . . . in substantiation of his estimate of the true market as contemplated by the Statute he figured the reproduction cost of the building as of May 1, 1936 to be \$2,600,000. He allowed 25% depreciation, being approximately 2% per year for the life of the building and by reason of the apparent difference of opinion as to the effect of the distinctive architecture on its market value both artistically and as a utilitarian structure, he allowed an additional 25% for depreciation. Therefore a total of 50% depreciation is to be found in the Assessor's computation."

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The judgment also reads:—

" Furthermore, it appears that due consideration and allowance have been given by the assessor on account of the architectural and structural limitations that may exist in this building."

I also agree with the other figures arrived at by Mr. Justice MacKinnon, which are not materially different from those of the assessors and of the Board of Revision. I therefore accept his finding that the " replacement value " of the building is \$12,100,796.80.

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Turning now to the commercial value of the property, it is necessary to consider its gross revenue and its operating expenses. The Board of Revision and Mr. Justice MacKinnon both accept the same figures, viz. : Total gross revenue \$1,189,055.30 and operating expenses \$436,992.64, leaving a net revenue of \$752,062.66. After having capitalized this net revenue, they all came to the conclusion that the commercial value of the building, at the relevant date, was \$7,028,623.00, and I find no satisfactory reason why this amount should be changed.

The " replacement value " and the " economic value " having been 30 ascertained, it now remains to determine what consideration should be given to each element. The assessors thought that 90% and 10% were the right figures, while the Board was of the opinion that 82.3% and 17.7% should be adopted. Mr. Justice MacKinnon gave to each factor an equal importance of 50%. It is not an easy task to reach mathematically the exact figure in such a matter, but I have no hesitation in reaching the conclusion that the assessors and the Board have given too much weight to the " replacement " factor. Having in mind that the test of " real or actual value " lies in the exchangeability of the property, I believe that the " prudent investor " would particularly be concerned with the " economic 40 value " of the building, in order to get a fair return on his money.

The " real value " is the " market value " or the " value in exchange," and in order to ascertain it, one must necessarily, even if there has been no sale of the building, try and find what would be the price of the building in the open market. The rule is not that because there is no buyer and no seller, as in the present case, the well known theory of " willing buyer and

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willing seller " does not apply. We must ask ourselves this question: What would occur if there was a buyer and a seller? In *Lacoste v. Cedar Rapids* (1929, K.B. Vol. 47), Lord Warrington speaking for the Judicial Committee said at page 285:—

“ But the proper amount to be awarded in such a case cannot be fixed with mathematical certainty but must be largely a matter of conjecture. It is the price likely to be obtained at an *imaginary* sale, the bidders at which are assumed to ignore the fact that a definite scheme of exploitation has been formed and compulsory powers obtained for carrying it into effect.”

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I do not agree with the Board of Revision when it says that this case does not apply. True, this was an expropriation case, but the principle of an imaginary sale may as well help to determine the real value of a building, as it does when the courts have to value the future advantages of a water power. Moreover, several witnesses heard before the Board are clearly of opinion that it is quite possible to imagine a market for the property, and that it is a commercial building (Simpson, MacRosie, Archambault, Lobley).

Under these circumstances, I am satisfied that the assessors and the Board have considerably undervalued the “ economic factor ” which, in a very large measure, would guide the “ prudent investor ” or “ the willing buyer,” always anxious to obtain “ value in exchange ” for his money. I believe that a proportion of at least 50% should be attributed to it, although the replacement value has already been reduced by 14%.

As I do not think that there has been any substantial error in the valuation of the boiler house, the figures should not be altered.

It follows that if we add to the replacement value of the building, viz: \$12,100,796.80, the value of the land which is not challenged \$730,600 and \$535,735, the value of the boiler house and land, we have a total replacement value of \$13,387,131.80. This figure added to the economic value, viz: \$7,028,623.00, will give \$20,415,754.80, which divided by 50%, will equal the “ market value ” of the property, viz: \$10,207,877.40. This amount is \$2,207,877.40 higher than the valuation given to the same premises in 1931–32, by the respondent’s Board of Assessors.

In coming to this conclusion, I have kept in mind that it is not the function of a Court of Appeal to disturb the valuations made by assessors. But in certain cases it is its duty to do so, particularly when the assessors have proceeded on a wrong principle, and when there is a manifest injustice. Here in refusing to allow an additional 14% for extra unnecessary costs, and in giving a disproportionate consideration to the replacement value, they justified this Court to interfere.

After having carefully read the evidence, I have come to the conclusion that there is no justification to modify the judgment of the court below as to the complaint that the annual rental value is too high.

I would allow the appeal with costs, and restore the judgment of Mr. Justice MacKinnon. The appellant should also be entitled to its costs

in the Court of King's Bench in the appeal of the City of Montreal, but should pay the costs of its own appeal in that Court; the cost of printing the case in the Court of King's Bench should be borne equally by both parties.

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Rand, J.

RAND J. :—

This appeal raises the question of the basis of valuation and its application for assessment purposes of the large building in Montreal owned by the Sun Life Assurance Company.

For property designed for business or ordinary private purposes, it is, I think, settled that, as stated by Duff C.J. in *Montreal Island Power v. Laval des Rapides* (1935) S.C.R. 304, "actual value" in article 375 of the charter of Montreal means exchange value, the value actually or theoretically ascertained by the test of competition between a free and willing purchaser and a like vendor. It seems quite evident that the draftsman of the article had not fully explored the conception of "actual value," and in spite of the controversy to which these words have given rise, they remain the legislative language of value for tax assessments. The legislature, in other words, has left it to the courts through experience with the many forms in which property value presents itself, to develop a formula which, adaptable to the generality of property, will produce a rough fairness and uniformity.

20 In the ordinary case, a commercial building constructed with due regard to the necessary relation between cost and utility presents little trouble whether the exchange value is arrived at by capitalizing revenue or by depreciated reproduction: there are no elements of cost not reflected in competitive value. There may be values imbedded in special features or conditions, but unless they are reflected in exchange value they must be eliminated in its ascertainment.

30 That value may thus become a highly theoretical conception; for assessment purposes it is, in any case, an approximation; but in the practical administration of local government, the impact on the individual owner is lessened by the uniformity of the mode and by the small fraction of challenged differences in assessments which reaches him in the tax levied. But notwithstanding that fact, a formula suitable even for substantially the whole body of property must possess a flexibility sufficient to adjust the measure to exceptional features.

40 Admittedly a great deal of money has been expended in exceptional form in the building in question. It is monumental in design and massive in dimensions, and is seemingly intended to symbolize a business position of commanding power; but it is essentially an office building. The floor space is used both by the company and by tenants, of which approximately 50% is occupied by the company, about 38% is under lease, and the remainder unoccupied. Its total cost, as built in three stages between 1914 and 1930, though still not fully completed, was somewhat over \$20,000,000.00. It is marketable only to a limited number of purchasers; the highest bidder would be one for whom the special features had the greatest attraction; the most likely buyers would be investors in office



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buildings, for whom the funded excess or uneconomic surplus would be written off. The potential market would thus present competition between investing groups and bids in the course of time of persons having purposes in mind more or less similar to those of the appellant.

In the theoretical market which, by the necessities of the case, must be constructed, competition in some form is essential. The case of *Vyricherla v. Revenue Officer* (1939) A.C. 302, although one of expropriation, illustrates one of its difficult aspects. The possibilities of buyers, sellers and properties is to be conceived in all manner and degrees. It is said by the respondent that, in an imagined sale, as the company would concede value to the total expenditure, it would, accordingly, be willing to pay the entire reproduction cost. But that ignores the test. The company, as bidder, would be influenced by the fact that there would likely be no other immediately available bidder with similar purposes in mind and it would drive the price down to the point at which the possibilities of owner bidders of diminishing interests or investment buyers would induce the seller to hold his property : both owners and investors could properly regard the value for the other secondary object as a reserved interest in their purchase. 10

The Assessment Department, in developing a working basis of valuation of general uniformity, in 1940 drew up a memorandum containing three directions to guide the assessors. Where the commercial building was occupied by the owner and no special characters present, the depreciated original or reproduction cost was to be taken as actual value ; where the building was occupied by tenants, one-half of reproduction was to be added to one-half of the capitalization of income ; and where occupied in part by owner and in part by tenants the former portion was to be treated as in the first case and the latter as in the second, with the percentage attributable to capitalization to range from 50% to zero. Allowance was to be made for unusual factors by means of the percentages applied. 20

As exemplified here, the building being in the third class and as to 60% of its available space, deemed occupied by the owner, the first figure would be the reproduction of that 60% ; the second would result from the division of the 40% into fractions representing reproduction and capitalization. The assessor attributed first one-half of the 40% to reproduction but by reason of the special enjoyment of the unique elements by the company, divided the remainder, 20%, into one-half to reproduction and one-half to capitalization. In the result, 90% of reproduction and 10% of capitalization produced the assessed valuation. Reproduction cost together with the land but exclusive of the power plant on a nearby site, was found to be \$14,404,578.00 90% of which is \$12,964,120.00 ; capitalization was \$7,915,000.00, which at 10% gave \$791,500.00 ; total actual value, \$13,755,500.00. 30 40

For the purchase of the building as an investment for business offices, the price would admittedly range between \$7,500,000.00 and \$8,000,000.00.

Although the latter would be the most likely object of purchase, the appellant does not ask us to take it alone as the determinant of exchange value. There are always the possible purchases for owner purposes, on the

chance of which, rather than a sale solely on an income basis, the company would no doubt put a not inconsiderable value. The gradation of increasing possibilities of purchasers with lessening degrees of interest would extend to the purely investment basis; and the crux of the problem would be in estimating the present value of those possibilities.

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10 The error of the assessment made lies in the fact that actual value has been virtually identified with value to the owner. That is clear from the influence on the percentage applied to construction cost of the special features as owner interests. Although the rule in expropriation would take their peculiar value to the owner into account as the assessor has done, that rule has no place in assessment: *Montreal Island v. Laval* (supra) at p. 307. For the purposes here, those values must be subjected to the competitive test.

20 On the foregoing basis and taking the reproduction cost accepted by the Superior Court at \$14,453,729.50, there would be deducted from it what is dead value for any purpose, such as differences in cost between marble and terrazzo flooring, between marble and plaster walls, and excessive decorative and ornamental work, which, as adjusted by MacKinnon J. is \$2,352,932.70. To the remainder there would be added \$730,000.00, the value of the land, and \$535,735.00, the value of the heating plant; a total of \$13,367,131.00. Placing the commercial value at the sum of \$7,750,000, there remain the percentages to be applied to these two amounts.

30 As already stated the assessor attributed 90% to reconstruction cost and 10% to capitalization. The modification in this made by the Board of Review was on the basis of estimated rentals, rather than space, 65% of which was imputed to the company and 35% to lessees. Adding to the 65% one-half of the 35% gave 82.5% to be attributed to reproduction value and 17.5% to capitalization. This on an increased reproduction cost produced a figure somewhat higher than that of the assessor, but the latter was allowed to stand.

Having regard to the whole group of possible purchasers, the weight to be attributed to the one or other primary basis of price must depend upon the likelihood of their appearance as bidders. A heavy demand from prospective owners and few commercial investors would call for a correspondingly small percentage to be referred to the latter basis; when these proportions are reversed, as here, a like reversal of percentages becomes necessary.

40 MacKinnon, J., was of the opinion that an equal percentage should be applied to each factor, but even with the deduction of surplus expenditure, that does not seem to me to reflect sufficiently the relative possibilities. Taking into consideration all special elements such as functional depreciation and obsolescence, and the comparative chances of sale, I should say that not less than 55% should be related to the commercial figure and 45% to that of reproduction cost. The former yields \$4,262,500.00 and the latter \$6,015,208.95, a total of \$10,277,708.95. As this is substantially the amount found by MacKinnon, J., I accept his figure as the proper valuation. In agreement with him I would allow the assessment of the power house

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and those in respect of both the business and school taxes to stand as confirmed by the Board of Review.

The appeal should therefore be allowed and the judgment of MacKinnon, J., restored; the appellant should have its costs here and in the Court of King's Bench.

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ESTEY, J. :

Estey, J.

The appellant's main contentions are that the assessment dated December 1, 1941, upon the Sun Life building in Montreal is erroneous: (1) That the plan or method adopted by the assessors did not determine the actual value as required by the Charter of the City of Montreal, and (2) Certain allowances or deductions were improperly disallowed.

The assessment made by the assessors of land and building at \$14,276,000 was affirmed by the Board of Revision, reduced by Mr. Justice MacKinnon in the Superior Court to \$10,207,877.40, and restored by a majority of the learned Judges in the Court of King's Bench (Appeal Side), Mr. Justice St. Jacques and Mr. Justice Casey dissenting.

The issues in this appeal are restricted to the assessment of the building, there being here no contest with respect to the assessment of the land.

The assessors determined what they called the commercial value by ascertaining the net rental revenue of the building and capitalizing that amount; and the replacement value by making certain deductions for depreciation and other items from the cost of construction and the adjustment of the cost to the index number 1939-40. Then by apportioning these two amounts on the basis of 90% replacement valuation and 10% commercial valuation they arrived at the actual value. The Board of Revision suggested slight changes might have been made in certain items as well as the percentages in the apportionment but in the end affirmed the decision of the assessors. Mr. Justice MacKinnon allowed a further deduction for extra unnecessary costs and considered that both of these valuations should be given equal consideration as follows:—

50% of replacement value of	\$13,387,131.80	—	\$6,693,565.90
50% of commercial value of	7,028,623.00	—	3,514,311.50

Real value of both properties	—	\$10,207,877.40
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The appellant submits that this plan or method is not justified within the meaning of the Charter of the City of Montreal.

The assessors under the Charter of the City of Montreal, 62 Vict., c. 58, as amended by S. of Q. 1941, c. 73, s. 33, are required to determine the actual value of the immovables.

“ 375-a. Every three years the assessors shall draw up in duplicate for each ward of the city a new valuation roll for all immovables in such ward . . . .”

This roll and each of the supplementary rolls mentioned in paragraph b shall contain:

3. The actual value of the immovables.”

The term "actual value" is not defined in the Charter. The legislature therefore in imposing upon the assessors the duty of determining actual value, without defining that term, intended that the assessors should accept the meaning of that phrase as it has been interpreted by the Courts in decisions respecting assessments. Chief Justice Duff in construing the phrase "actual value" in *The Cities and Towns Act, R.S.Q. 1925, c. 102*, stated in *Montreal Island Power Co. v. The Town of Laval des Rapides* (1935) S.C.R. 304, at p. 305:—

10 "Obviously, 'real value' and 'actual value' are regarded by the legislature as convertible expressions. The construction of these phrases does not, I think, present any difficulty. The meaning of 'actual value,' when used in a legal instrument, subject, of course, to any controlling context, is indicated by the following passage from the judgment of Lord MacLaren in *Lord Advocate v. Earl of Home* (1891) 28 Sc. L.R. 289, at p. 293:

20 "Now, the word "value" may have different meanings, like many other words in common use, according as it is used in pure literature, or in a business communication or in conversation. But I think that "value" when it occurs in a contract has a perfectly definite and known meaning unless there be something in the contract itself to suggest a meaning different from the ordinary meaning. It means exchangeable value--the price which the subject will bring when exposed to the test of competition."

"When used for the purpose of defining the valuation of property for taxation purposes, the courts have, in this country, and, generally speaking, on this continent, accepted this view of the term 'value'."

30 And at p. 307:

"These assessment provisions, like other assessment provisions, contemplate an objective standard which can be applied with fairly reasonable uniformity to all classes of owners alike."

Mr. Justice Pelletier in *Compagnie d'approvisionnement d'eau v. Ville de Montmagny* (1915) 24 Q.R. K.B. 416, stated at p. 418:

40 "Dans la cause du *Roi v. Macpherson*, 1 Exch. Ct. Rep. p. 53, je trouve une définition donnée par le juge Cassels de la Cour d'échiquier qui me paraît excellente. Voici cette définition: 'c'est le prix qu'un vendeur qui n'est pas obligé de vendre et qui n'est pas dépossédé malgré lui, mais qui désire vendre réussira à avoir d'un acheteur qui n'est pas obligé d'acheter, mais qui désire acheter.'"

Actual value must be, except where there is a market in which the exchange value may be ascertained, a matter of judgment exercised after determining every item that affects the value of the particular immovable under consideration. The *Bishop of Victoria v. City of Victoria* (1933)

RECORD 4 D.L.R. 524; *Massachusetts General Hospital v. Belmont* (1919) 233 Mass. 191.

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In the American and English Ency. of Law, Vol. 27, p. 690, it is stated :

“The advantages and disadvantages of location, earning capacity, cost of construction, market price, or other elements which enter into and constitute the value of property, should be considered by the assessing officers in arriving at their determination. The method to be followed and the elements of value to be taken into consideration in a particular case must generally be determined by the character and situation of the property involved. There exists in fact no rigid rule for the valuation, which is affected by the multitude of circumstances which no rule can foresee or provide for. The assessor must consider all these circumstances and elements of value, and must exercise a prudent discretion in reaching a conclusion.” 10

Actual value, as above defined, determined upon a consideration of so many factors is unavoidably a matter upon which, in respect to many properties, men of experience and capacity will entertain different opinions. The legislature in recognition of this fact provides that actual value as determined by the assessors in the exercise of their own judgment shall be accepted for assessment purposes. 20

The relevant provisions of the Charter of the City of Montreal may be summarized : Sec. 375 above quoted requires that every three years the assessors shall draw up a new valuation roll for all immovables ; Sec. 375-c. that “ the chief assessor shall divide the work in such a manner that at least two assessors shall act together in drawing up the valuation roll ; ” Sec. 373 (10) provides that “ the assessors shall be held to perform all the duties imposed upon them by the charter ; ” and sec. 374 requires that each assessor shall, before entering upon his duties, declare upon his oath that “ I will faithfully, impartially, honestly and diligently perform the duties of an assessor according to law.” The statute gives to them a wide latitude in determining their method of procedure and the source from which they may obtain their information, but requires that the amount when finally determined must be the result of their own independent judgment. 30

This requirement is in accord with that which exists in similar assessment legislation where it has been held that the assessors must act independently even of their own council. In *re Denne and The Corp. of the Town of Peterborough* (1886) 10 O.R. 767 ; *Lounsbury Co., Ltd. v. Batkurst* (1949) 1 D.L.R. 62.

In *Dreifus v. Royds* (1920) 61 S.C.R. 326, the statute provided in Section 40 (1) “ land shall be assessed at its actual value ” and then in Section 69 “ the court may, in determining the value at which any land shall be assessed, have reference to the value at which similar land in the vicinity is assessed.” The board largely determined the actual value of the land in question from that of neighbouring lands assumed to be of the same character. Duff J. (later Chief Justice) stated at p. 336 :

“ It is very clear to me that the board has proceeded upon the theory that the enactment of Section 40 s.s. 1 is modified by that of s.s. 16 of Section 69 and that the actual value for the purpose of assessment may be something other than the actual value in fact, the determination of which is governed by the practice of the assessor as applied to similar lands in the vicinity. This I think is an erroneous view. The governing enactment is that of Section 40, s.s. 1, and the rule laid down by s.s. 16 of Section 69 is a subsidiary rule which has been enunciated with the object of facilitating the application of the governing rule. The assessment of other lands may be referred to for the purpose of ascertaining the actual value, that is to say as affording some evidence of the actual value but only for that purpose.

The appeal should be allowed and the matter referred back to the board to enable them to determine the assessment in accordance with this principle.”

See also *Rogers Realty Co. v. City of Swift Current* (1918) 57 S.C.R. 534.

The fixing of a flat rate over a large acreage throughout which values vary has been held to be invalid : *In re Assessment Act in N. & F.S. Rly. Co.* (1904) 10 B.C.R. 519 ; *In re Wauchop School Dist.* (1909) 2 S.L.R. 327. These authorities illustrate the personal responsibility of assessors whose duty it is to determine actual value. It is in recognition of this responsibility so placed upon assessors by the legislators that Courts have refused to interfere with assessments unless they involve some error in principle or substantial injustice.

That the assessors in the City of Montreal should confer with respect to the factors that enter into the making of assessments is to be commended. They may adopt rules and standards which they believe to be of assistance in the more accurate determination of actual value and in the attainment of uniformity in the distribution of the tax burden. In so far, however, as such rules, formulae or plans interfere with, restrict or eliminate the discharge of the assessors' statutory duty, to that extent they cannot be upheld.

A Real Estate Valuation Manual prepared for and used by the assessors in the City of Montreal contains the following in its foreword :

“ The object of this manual is to explain the system and methods to be used in the municipal valuation of real estate and to demonstrate how the problems which originate with the latter may be analyzed and solved by the adoption of certain recognized rules and standards.”

In addition thereto, and about fifteen months before the roll containing the items here in question was completed, the assessors of that city at a conference adopted a memorandum entitled “ Memorandum on the assessment of large properties, such as office buildings, apartment houses, departmental stores, hotels, etc.” It states : “ These properties seem to fall into four main categories, which determine to a large extent the relative importance of the different factors to be used in arriving at their valuation.”

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This memorandum requires that the two assessors in the ward would first determine whether a building should be classified as one of the "large properties." If so classified, they shall then determine both its replacement and commercial valuations.

The assessors having arrived at what they deem replacement and commercial valuations, are then required by the memorandum to decide whether it is wholly or partially owner or tenant occupied. If tenant occupied these valuations shall be apportioned equally, or 50% of each. If wholly owner occupied 100% replacement cost shall be accepted as the assessment valuation. Then when the property is, as here, partially owner and tenant occupied, the assessors must give the replacement valuation at least 50% or such higher percentage as they may decide and the balance to make up the 100% is the percentage of the commercial valuation in the apportionment. The total of these two percentages constitutes the assessment. 10

The assessors arrived at the percentages in this case as follows :

"In the case of the Sun Life it was 40% tenant occupied in 1941 and 60% owner occupied. The occupied space. So that would mean that the 50% for commercial would be divided into 20 and 60. There would be another 30% replacement cost added on the 50, to make it 80 and 20. 20

But as the revenues of this building were based on revenues of much cheaper buildings—the revenue of this building received no competition—I consider that half of the commercial value of 20%, making it 10%, would pay for the amenities and benefits received by the owner of the building."

The actual computation was :

Replacement	90% of \$14,404,578	—	\$12,964,120
Revenue	10% of \$ 7,915,000	—	791,500
			<hr/>
	Say		\$13,755,500
	Less land		730,600
			<hr/>
	Building		\$13,024,900

The foregoing indicates that the assessors followed the provisions of the memorandum in determining the assessment of the Sun Life building, notwithstanding that the assessor who did the greater part, if not all, of the work in arriving at the amount of the assessment stated "There is no other building in the city to compare with the Sun Life." This statement, founded upon the size and particular architectural features of the building, emphasizes what the authorities insist upon and the Charter of the City of Montreal requires that every building should be assessed upon the judgment of the assessor after considering all the relevant factors. These same authorities indicate that there is an inherent danger in grouping buildings, variously used and located, according to their size. Such is no doubt the paramount 40

reason for the absence in the Charter of the City of Montreal of any rules or other aids or guides to assist in determining actual value.

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10 The Sun Life building is an office building and in following the provisions of the memorandum the assessors because its offices were in part occupied by the owner and in part by tenants were required to accept in the apportionment at least 50% of the replacement valuation and, indeed, it is largely this factor that eventually leads to the apportionment of 90% replacement and 10% commercial valuation. Counsel for the appellant stressed occupancy as between owner and tenant is not a determining factor in the determination of actual value of a building. He illustrated his contention by pointing out the mere fact that the tenants move out and owners move in and occupy the premises does not, without more, affect actual value and there is support for this contention in *Regina v. Wells* (1867) 36 L.J.M.C. 109, at p. 111. In any event, it appears that it has been given an importance in the determination of the actual value of this building that cannot, in the circumstances, be justified.

20 The assessors themselves computed the commercial value of the land and building at \$7,915,000 and the replacement value at \$14,404,578. Even if it be granted that these valuations include all relevant factors, the Charter of the City of Montreal contemplates that the assessors shall consider the difference between these valuations, give to the factors that make for that difference such importance as the circumstances warrant and in the exercise of their own judgment determine the actual value. This is far different from their proceeding as they have under the direction of the memorandum that fixes the apportionment largely upon the basis of occupancy. In fact as stated above, proceeding upon this basis they arrived at an apportionment of 80% and 20% and then as "the revenue of this building received no competition" it was decided that a 90% and a 10% apportionment "would pay for the amenities and benefits received by the owners of the building."

30 It is significant that while in their computation of the assessment only commercial and replacement valuations were considered, upon this appeal respondent submitted that the book and market values as computed by the company and reported to the Superintendent of Insurance should be taken into account. These values were computed and so reported each year. In the year 1941 they were the same and in the sum of \$16,258,050.27. On the other hand, the appellant contended that consideration should be given to the fact that after the building was constructed in 1931 it was assessed for the year 1931-32 at \$12,400,000, and upon appeal was reduced to \$8,000,000, which was increased from year  
40 to year as the interior of the building was completed and occupied by tenants until in 1940 the property was assessed at \$10,211,200. Both might well be considered but neither is conclusive. These requests of the respective parties but emphasize again the statement included in the quotation from the American and English Ency. of Law, Vol. 27, p. 690, where it is stated:—

"There exists in fact no rigid rule for the valuation, which



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is affected by the multitude of circumstances which no rule can foresee or provide for.”

Notwithstanding the desirability, if, indeed, not the necessity of the assessors conferring for the purpose, as already mentioned, in a city the size of Montreal, it does seem that having regard to the admittedly unique, distinct and different character of this building that, in the main, it has been assessed as any “large property” within the terms of the memorandum. In these circumstances, notwithstanding the judgment exercised by the assessors in fixing the percentages, there has not been that assessment of this building contemplated by the statute.

10

The second contention raises issues as to what ought to be made by way of allowances and deductions. The assessors allowed a deduction for the fact that the building was built in three completed buildings, the first in 1918, the second in 1925, and the third in 1930. A further deduction for structural depreciation and an allowance to adjust the cost figure to that of 1941. Mr. Justice MacKinnon allowed a further deduction of 14% for extra unnecessary costs of construction. The appellant, however, contends that there should be a further allowance for functional depreciation, that “the Sun Life Building suffers from a very serious functional disability resulting from the inherent design of the building.” This, it is pointed out, involves a large amount of waste space which cannot be utilized, as well as additional space which is undesirable because it is either inadequately lighted or altogether dark. The contention is “this waste space and this excessive undesirable space detract from the value of the building whether to a prospective purchaser or to the Sun Life Company itself.”

20

It is a very large building occupying an entire city block, rising 25 storeys above the ground and appropriately described as of a “massive cubical design . . . with walls unbroken by courts or light wells,” that the heavy columns as well as other architectural features and embellishments, together with the fact that throughout the finest materials and equipment were used made the construction cost excessive in relation to its exchange value.

30

Mr. Justice MacKinnon granted depreciation for extra unnecessary or excessive costs upon the evidence that the granite walls, bronze sashes, vitreous plate glass, marble floors and walls, ornamental structure and interior decorations, though adding much to the attractiveness of the building, did not increase its revenue or earning possibilities in a commensurate amount. Mr. Justice MacKinnon stated that:

“In allowing this additional 14% for depreciation the court has not taken into consideration the excess cost of the hospital, auditorium, kitchen and cafeteria services and private elevators as they all form part of the special services enjoyed by the Sun Life although adding little to the actual value of the building . . .”

40

The unreported case of *State of Minnesota v. Federal Reserve Bank of Minneapolis*, a copy of which was included in the record, was cited in support of a functional allowance. The State of Minnesota required the

assessor to determine the "true and full value." It was there contended that because the building was constructed for and solely occupied by the bank that it had "considerable waste space even in its present use," and as its maintenance was excessive, it was unsuitable as a business property. The assessor determined the cost of reproduction in the year in question and then allowed 25% for physical depreciation and a further 25% to cover "the effect of the distinctive architecture on its market value, both artistically and as a utilitarian structure." The Court affirmed the assessment at this valuation. The phrase "both artistically and as a utilitarian structure" would seem to include both that which Mr. Justice MacKinnon allowed "for extra unnecessary costs" as well as an allowance for what the appellant terms "functional depreciation."

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Messrs. Perreault and Archambault, whose valuations were respectively \$8,625,200 and \$9,001,983 (the lowest replacement valuations deposed to), included an allowance for "functional depreciation." The Board of Revision disallowed this item but stated "that in making allowances for 'functional' depreciation and obsolescence, on top of the physical depreciation, they (Perreault and Archambault) have overstepped the field of the replacement to encroach on the one of the economic value. The deficiencies, if they exist, are reflected in the rental value on which is based the commercial value; so that Messrs. Perreault and Archambault are making double use of the same allowances."

On principle, it would appear that such non-productive features of a building, in so far as they do not add to its actual value (as already defined) ought not to be included among items in the determination of that value. In so far as such items do not enter into or form a part of the actual value and yet are included in the computation thereof the taxpayer is called upon to pay an annual tax thereon which ought not, within the accepted definition of "actual value," to be included. When, therefore, these factors are established the assessors ought to make such fair and reasonable allowances as the particular circumstances may justify.

The business and water assessments have been affirmed in each of the lower Courts and while in many cases the contention of the appellant would be applicable, there is in the particular circumstances of this case justification for a difference such as has been here computed.

The errors in principle involved in the foregoing determination of actual value would, in the ordinary course, justify a reference back to the assessors. However, at the hearing the parties intimated that they would prefer, should we find such errors, a direction fixing actual value as determined by Mr. Justice MacKinnon. In compliance with that suggestion, the appeal will therefore be allowed and the judgment varied to fix the actual value of the Sun Life Building at \$10,207,877.40.

The appellant should have its costs throughout.

In the  
Privy  
Council

**Order of His Majesty in Council granting Special Leave to Appeal**

[L.S.]

Order of  
His  
Majesty in  
Council  
granting  
special  
leave to  
appeal

AT THE COURT AT BUCKINGHAM PALACE

The 26th day of June, 1950

Present

THE KING'S MOST EXCELLENT MAJESTY.

26th June  
1950

LORD PRESIDENT.

MR. GAITSKELL.

MR. SECRETARY GRIFFITHS.

SIR RONALD IAN CAMPBELL.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 19th day of June 1950 10  
in the words following, viz. :—

“ WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of the City of Montreal in the matter of an Appeal from the Supreme Court of Canada between the Petitioner Appellant and Sun Life Assurance Co. of Canada Respondent setting forth (amongst other matters) : that the Petitioner desires special leave to appeal from a Judgment of the Supreme Court dated the 21st February 1950 and recorded on the 4th April 1950 which allowed the Appeal of the present 20  
Respondent reversed and set aside a Judgment of the Court of King's Bench (Appeal Side) of the Province of Quebec dated the 25th June 1948 and restored a Judgment of the Superior Court of Montreal dated the 20th September 1944 : that the Judgment of the Superior Court had rescinded and reversed a Judgment of the Board of Revision of Valuations of the City of Montreal dated the 21st June 1943 which had confirmed the valuation put by the assessors on the valuation roll for the Head Office building of the Respondent and also the rental value put on the tax roll for that part of the Head Office building occupied by the Respondent except on a 30  
small item covering the rental value of a separate building containing the heating plant ; that by reason of the difference of judicial opinion and the varying reasons given by Judges who concurred in a particular result it has become impossible for assessors throughout Canada to know what principles to apply in assessing the ' actual value ' of buildings for which there is no market : And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal from the Judgment of the Supreme Court dated the 21st February 1950 and for such further or other Order 40  
as to Your Majesty in Council may appear proper :

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute its Appeal against the Judgment of the Supreme Court of Canada dated the 21st day of February 1950 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs :

In the  
Privy  
Council  
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Order of  
His  
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appeal

10 "AND THEIR LORDSHIPS do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondent) as the Record proper to be laid before Your Majesty on the hearing of the Appeal."

26th June,  
1950—  
*continued.*

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

20 Whereof the Governor-General or Officer administering the Government of the Dominion of Canada for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

E. C. E. LEADBITTER.