BETWEEN:

NATIONAL CAPITAL COMMISSION .....PLAINTIFF;

1965
Mar. 8-11
April 28

AND

HAROLD MUNRO .....DEFENDANT.

Expropriation—National Capital Commission—Constitutionality of expropriating powers of National Capital Commission—Meaning of "planning" and "Green Belt"—Master (Greber) Plan for the National Capital Region—Double aspect principle as test of validity of federal legislation—Subject matter under review beyond local or provincial concern—Validity of federal legislation affecting property and civil rights and matters of a local or private nature within a province—Existence of emergency as condition of federal legislative authority under peace, order and good government clause of s. 91 of B. N. A. Act—Expropriation powers of National Capital Commission—Powers of National Capital Commission—National Capital Act, S. of C. 1958, c. 37, ss. 10 and 13—British North America Act, 1867-1960, ss. 91 and 92—Aeronautics Act, R.S.C. 1952, c. 2—The Planning Act, R.S.O. 1960, c. 296.

This is an adjunction on a special case stated concerning the expropriation by the plaintiff of certain lands of the defendant in the Township of Gloucester, in the County of Carleton, under the *National Capital Act*. The expropriated lands are wholly within the National Capital Region as defined by s. 2(*j*) of the *National Capital Act* and are within the Green Belt Area on the Master (Greber) Plan of the National Capital Region adopted by the National Capital Commission.

On the application for the special case it was ordered that

"the following question arising in this action:

'Whether, on the special case stated by the parties, the expropriation of the lands of the defendant by the National Capital Commission therein referred to is a nullity because the legislative authority of the Parliament of Canada under the British North

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

America Act, 1867 to 1960, does not extend to authorizing the expropriation.'

be set down and tried by the Court before the trial of the other questions raised in this action."

In its reasons for judgment the Court considered and reviewed in detail the general approach to, objectives of, and methods of implementing planning by governmental authority with particular reference to the *National Capital Act* and preceding legislation of the Parliament of Canada on the one hand and *The Planning Act*, and earlier legislation of the Province of Ontario on the other.

Held: That the objectives and purposes of any master plan of the National Capital Commission under the *National Capital Act* must be in conformity with s. 10(1) of the *National Capital Act*, and the objects and purposes of any general plan under the *Ontario Planning Act* must be in accordance with s. 1(*h*) of *The Planning Act*.

2. That the establishment of a Green Belt in the National Capital Region is the implementation of part of a general plan for the Region, namely, the Master (Greber) Plan, and that such part of the general plan is indivisible from the whole in that it is of the essence of the planning problem of the National Capital of Canada.

3. That the matter in respect to which the *National Capital Act* was passed by Parliament is one of planning in its two-fold aspect, namely, the preparation of plans and the implementation of such plans, and that the language employed by Parliament in s. 10 of the *National Capital Act* aptly describes this matter in its two-fold aspect.

4. That in considering whether the matter of the *National Capital Act* falls within s. 91 or s. 92 of the *British North America Act*, the most important principle to be applied is the double aspect principle, i.e. some matters which in one aspect and for one purpose fall within s. 92, may, in another aspect and for another purpose, fall within s. 91 of the *British North America Act*.

5. That the objects and purposes of implementing a plan for the development, conservation and improvement of the National Capital Region "in order that the nature and character of the seat of the Government of Canada may be in accordance with its national significance" is "such that it goes beyond local or provincial concern or interests and must in its inherent nature be the concern of . . . (Canada) . . . as a whole". It is a class of subject which has the dimensions to affect the body politic of Canada as a nation.

6. That the words "national significance" as used in s. 10(1) of the *National Capital Act* are meaningful and are apt in describing the goal sought to be attained for the nature and character of the seat of the Government of Canada.

7. That it is possible that the implementing of any plan by the National Capital Commission under s. 10(2) of the *National Capital Act* may affect property and civil rights and also matters of a local or private nature within the Provinces of Ontario and Quebec; and it may also affect zoning and land use regulations passed by the various municipal corporations therein pursuant to valid provincial authority delegated to them, in the National Capital Region, but the true character of the *National Capital Act* is not legislation "in relation to" such classes of subjects.

8. That the legislation under review was not the occasion of and needs no justification of emergency, inasmuch as it is well established that the legislative power of the Parliament of Canada as conferred by the peace, order and good government clause of s. 91 of the *British North America Act* is not restricted to occasions when there exist unusual conditions constituting an emergency.

9. That the double aspect principle applies to the facts of this case and that the matter should be classified as coming within the classes of subject assigned to the Parliament of Canada under s. 91 of the *British North America Act,* that is, under the power contained in the words constituting Parliament's sole grant of legislative power, viz.,

> to make laws for the peace, order and good government of Canada in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces.

10. That the National Capital Commission has power to implement its general plans, provided always that such plans are for "the development, conservation and improvement of the National Capital Region in order that the nature and character of the seat of the Government of Canada may be in accordance with its national significance".

11. That the National Capital Commission has power under s. 13 of the *National Capital Act* to expropriate land for the purpose of removal and replotting of odd-shaped remnants of land; for the purpose of taking abutting land so that planning restrictions may be imposed to protect a public improvement from inharmonious environment; and for the purpose of taking surplus lands so that a profit may be obtained upon re-sale at the values enhanced by the completion of the project, provided that any such acquisition of land is made in good faith for the purposes set out in s. 10(1) of the *National Capital Act.*

12. That on the abandonment of the purposes for which the land was acquired, if such abandonment is not part of a colourable scheme, the National Capital Commission may, subject to the provisions of s. 14 of the *National Capital Act,* sell such lands for private use and no right or interest remains in the original owners.

13. That there is no obligation on the part of the National Capital Commission to continue any particular use of lands after the acquisition thereof by it pursuant to s. 13 of the *National Capital Act,* and therefore no cause of action against the National Capital Commission can arise at any time in favour of the original owners of any lands by reason of the abandonment by the Commission in good faith, of any use which constituted the original purpose for the acquisition of such lands.

14. That the question in the special case stated is answered in the negative.

ACTION to have the Court determine whether the expropriation of land by the National Capital Commission is a nullity.

The action was tried by the Honourable Mr. Justice Gibson at Ottawa.

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

D. S. Maxwell, Q.C., G. W. Ainslie and *D. G. H. Bowman* for plaintiff.

B. J. MacKinnon, Q.C. and *Roydon A. Hughes, Q.C.* for defendant.

The facts and questions of law raised are stated in the reasons for judgment.

GIBSON J. now (April 28, 1965) delivered the following judgment:

This is an adjudication on a special case stated concerning the expropriation of certain lands of the defendant in the Township of Gloucester, in the County of Carleton, which were taken by the plaintiff on the 29th day of July, A.D. 1959, with the approval of the Governor in Council under section 13 of the *National Capital Act,* S. of C. 1958, c. 37, for the purposes of the said Act.

On the 21st of February, A.D., 1965, on the application for the special case, it was ordered by this Court that:

the following questions arising in this action:

> "Whether, on the special case stated by the parties, the expropriation of the lands of the defendant by the National Capital Commission therein referred to is a nullity because the legislative authority of the Parliament of Canada under the British North America Act, 1867 to 1960, does not extend to authorizing the expropriation."

be set down and tried by the Court before the trial of the other questions raised in this action,

A plan and a description of the lands of the defendant which were expropriated was deposited in the Registry Office for the County of Carleton on July 29, A.D. 1959.

The plaintiff in this action, the National Capital Commission, prior to the deposit of the said plan and description, obtained the approval of the Governor in Council for its action, as is evidenced by Order in Council P.C. 1959-815, dated June 25, A.D. 1959.

The parcel of land (hereinafter referred to as the "subject property") which was expropriated from the defendant is situated wholly within the National Capital Region as defined in section 2(*j*) of the *National Capital Act* (and more particularly described by metes and bounds in the schedule to the said Act.)

The National Capital Region as described in the *National Capital Act* consists of 1,800 square miles comprising lands

in both the Province of Ontario and the Province of Quebec, and it includes the whole of the City of Ottawa, the Townships of Gloucester, Nepean, Goulbourn, Huntley, March, and Thorbolton, parts of the Townships of Fitzroy, North Gower, and Osgoode, in the County of Carleton; parts of the Townships of Pakenham, Ramsay and Beckwith, in the County of Lanark; parts of the Townships of Russell and Cumberland in the County of Russell, in the Province of Ontario; the whole of the City of Hull, in the County of Gatineau, the whole of the Township of Templeton and parts of the Townships of Buckingham and Portland in the County of Papineau; the whole of the Townships of Hull and Eardley and parts of the Townships of Wakefield and Masham in the County of Gatineau (formerly the County of Hull), the whole of the Township of Onslow and part of the Township of Oldfield in the County of Pontiac, in the Province of Quebec.

The subject property is in the area designated as a Green Belt area on the so-called Master (Greber) Plan of the National Capital Region. The said Master (Greber) Plan (a copy of which was filed as an exhibit at this hearing) is a general plan of the National Capital Region adopted by the National Capital Commission.

The plaintiff, the National Capital Commission, is a corporation duly constituted by section 3 of the *National Capital Act* which reads as follows:

3. (1) There shall be a corporation, to be called the National Capital Commission, consisting of twenty members, each of whom shall be appointed by the Governor in Council to hold office during pleasure for a term not exceeding four years.

(2) The Governor in Council shall designate one of the members to be Chairman and one of the members to be Vice-Chairman.

(3) The members, other than the Chairman and Vice-Chairman, shall be appointed as follows:

(*a*) at least one member from each of the ten provinces;

(*b*) at least two members from the city of Ottawa;

(*c*) at least one member from the city of Hull;

(*d*) at least one member from a local municipality in Ontario other than the city of Ottawa; and

(*e*) at least one member from a local municipality in Quebec other than the city of Hull.

(4) A member is eligible to be appointed from a province or municipality if, at the time of his appointment, he normally resides therein.

(5) A person who has served two consecutive terms as a member, other than Chairman, is not, during the twelve months following the com-

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

Gibson J.

pletion of his second term, eligible to be reappointed to the Commission in the capacity in which he so served.

(6) A vacancy in the membership of the Commission does not impair the right of the remainder to act.

(7) The *Public Service Superannuation Act* does not apply to a member unless the Governor in Council otherwise directs.

(8) A member who is present at a meeting at which is discussed any matter in which he has, directly or indirectly, a pecuniary interest, shall declare his interest and shall refrain from casting a vote in respect of such matter.

The defendant is a farmer residing in the Township of Gloucester in the County of Carleton and Province of Ontario, and he alleges that before the expropriation by the plaintiff he was the owner in fee simple of Lot 20 in the 3rd Concession, Ontario Front, in the Township of Gloucester, in the County of Carleton and Province of Ontario.

The plaintiff, the National Capital Commission, claims that $200,000 is sufficient and just compensation for the lands taken, and the defendant claims $450,000.

The wording of the expropriating power contained in section 13 of the *National Capital Act*, which the National Capital Commission purported to exercise in taking the subject property, reads as follows:

13 (1) The Commission may, with the approval of the Governor in Council, take or acquire lands for the purpose of this Act without the consent of the owner, and, except as otherwise provided in this section, all the provisions of the *Expropriation Act*, with such modifications as circumstances require, are applicable to and in respect of the exercise of the powers conferred by this section and the lands so taken or acquired.

The declared purpose of this Act for which the National Capital Commission may take and acquire lands, under section 13(1) of the Act, is set out in section 10(1), which reads as follows:

10. (1) The objects and purposes of the Commission are to prepare plans for and assist in the development, conservation and improvement of the National Capital Region in order that the nature and character of the seat of the Government of Canada may be in accordance with its national significance.

The defendant does not attack the validity of the *National Capital Act* in its entirety. Instead, the defendant submits that the expropriation of his lands by the National Capital Commission is a nullity because the legislative authority of the Parliament of Canada under the *British North America Act*, 1867 to 1960, does not extend to authorizing this expropriation. The submission is that the object

and purpose of this expropriation is to establish part of a so-called Green Belt; that the establishment of a Green Belt is a matter of zoning or land use control; that zoning or land use control is a matter falling within either head 13 or head 16 of section 92 of the *British North America Act*, namely, "property and civil rights in the province" or "generally all matters of a local or private nature in the province"; that legislation in relation to zoning or land use control is within the exclusive legislative jurisdiction of the Provincial Legislature; and in reference to the subject property, that the Province of Ontario, by its planning legislation, has delegated the exclusive power to legislate in respect thereto, to one of its municipal institutions, namely, the Township of Gloucester, which is a municipal institution within the meaning of head 8 of section 92 of the *British North America Act*.

The defendant, also, does not question the legislative authority of the Parliament of Canada to permit the National Capital Commission to establish a Green Belt or to otherwise zone for land use any land which the National Capital Commission (or indeed any other agent or legal body duly constituted by the Parliament of Canada) has acquired (a) by voluntary purchase, or (b) by expropriation in connection with any matter falling within any of the classes of subjects enumerated in section 91 of the *British North America Act*.

The issue for decision on this special case, with respect to the subject property, therefore, resolves itself into a specific enquiry. It may be put this way. If the National Capital Commission had power to expropriate the subject property for the purpose of establishing part of a Green Belt in its National Capital Region, such power must be established by finding as follows: (1) that the establishment of a Green Belt in the National Capital Region is within the legislative jurisdiction of the Parliament of Canada under the opening words of section 91 of the *British North America Act* (namely, the power "to make laws for the peace, order and good government of Canada in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces"—which words constitute Parliament's sole grant of legislative

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

Gibson J.

power); (2) that the enactment of section 10 of the *National Capital Act* is a valid exercise of such legislative power; and (3) that the establishment of such Green Belt is within the objects and purposes set out in section 10 of the *National Capital Act*.

The relevant portions of the *British North America Act*, 1867, read as follows:

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next herein-after enumerated; that is to say,—

1. The amendment from time to time of the Constitution of Canada, except as regards matters coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces, or as regards rights or privileges by this or any other Constitutional Act granted or secured to the Legislature or the Government of a province, or to any class of persons with respect to schools or as regards the use of the English or the French language or as regards the requirements that there shall be a session of the Parliament of Canada at least once each year, and that no House of Commons shall continue for more than five years from the day of the return of the Writs for choosing the House: provided, however, that a House of Commons may in time of real or apprehended war, invasion or insurrection be continued by the Parliament of Canada if such continuation is not opposed by the votes of more than one-third of the members of such House.

1A. The Public Debt and Property.

2. The Regulation of Trade and Commerce.

2A. Unemployment insurance.

3. The raising of Money by any Mode or System of Taxation.

4. The borrowing of Money on the Public Credit.

5. Postal Service.

6. The Census and Statistics.

7. Militia, Military and Naval Service, and Defence.

8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.

9. Beacons, Buoys, Lighthouses, and Sable Island.

10. Navigation and Shipping.

11. Quarantine and the Establishment and Maintenance of Marine Hospitals.

12. Sea Coast and Inland Fisheries.

13. Ferries between a Province and any British or Foreign Country or between Two Provinces.

14. Currency and Coinage.
15. Banking, Incorporation of Banks, and the Issue of Paper Money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal Tender.
21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.
23. Copyrights.
24. Indians, and Lands reserved for the Indians.
25. Naturalization and Aliens.
26. Marriage and Divorce.
27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.
28. The Establishment, Maintenance, and Management of Penitentiaries.
29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subject next hereinafter enumerated; that is to say,—

1. The Amendment from time to time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant Governor.
2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.
3. The borrowing of Money on the sole Credit of the Province.
4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.
5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.
6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
8. Municipal Institutions in the Province.
9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.
10. Local Works and Undertakings other than such as are of the following Classes:—

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

Gibson J.

(a) Lines and Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province;

(b) Lines of Steam Ships between the Province and any British or Foreign Country;

(c) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.

11. The Incorporation of Companies with Provincial Objects.

12. The Solemnization of Marriage in the Province.

13. Property and Civil Rights in the Province.

14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.

15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.

16. Generally all Matters of a merely local or private Nature in the Province.

Section 10(2) of the *National Capital Act* contains the powers conferred on the National Capital Commission for carrying out or implementing the declared objects and purposes of that Act as defined by section 10(1) of the Act. Section 10(2) reads as follows:

(2) The Commission may for the purposes of this Act,

(a) acquire, hold, administer or develop property;

(b) sell, grant, convey, lease or otherwise dispose of or make available to any person any property, subject to such conditions and limitations as it considers necessary or desirable;

(c) construct, maintain and operate parks, squares, highways, parkways, bridges, buildings and any other works;

(d) maintain and improve any property of the Commission, or any other property under the control and management of a department at the request of the authority or Minister in charge thereof;

(e) co-operate or engage in joint projects with, or make grants, to, local municipalities or other authorities for the improvement, development or maintenance of property;

(f) construct, maintain and operate, or grant concessions for the operation of, places of entertainment, amusement, recreation, refreshment, or other places of public interest or accommodation upon any property of the Commission;

(g) administer, preserve and maintain any historic place or historic museum;

(h) conduct investigations and researches in connection with the planning of the National Capital Region; and

(*i*) generally, do and authorize such things as are incidental or conducive to the attainment of the objects and purposes of the Commission and the exercise of its powers.

The enquiry may be divided into two parts. Firstly, what is the "matter" in relation to which the *National Capital Act* was passed by the Parliament of Canada? Secondly, is the "matter" in the federal or the provincial field?

In other words, it is necessary to ascertain the matter in relation to which this Act was passed by the Parliament of Canada before the matter can be classified as "coming within" or "not coming within" the classes of subjects assigned to the Parliament of Canada.

To ascertain the matter of the *National Capital Act,* it is helpful firstly to consider the evidence for the purpose of defining certain concepts and terms. What we are concerned with here is a matter that is generally referred to as a "Green Belt". It is, therefore, essential to ascertain what is meant by this expression.

In regard to this it is correct to say that there is no accepted definition of "Green Belt" because there is no complete agreement of concept among planners on the aims and purposes of a Green Belt.

Nevertheless, although the Green Belt concept cannot be precisely described, as I understand it, the expression "Green Belt" is employed in relation to three types of situations. They are as follows:

1. A buffer type of green belt, which may consist, for example, of a screen established between areas of land dedicated to incompatible uses. This might be created by the planting of trees, the building of an opaque wall, and so forth.
2. A device to avoid unbroken urban development. This may consist of roads, golf clubs, cemeteries and farms in an area surrounding a central urban core. (The Driveway in the Ottawa area is such a device on a small scale.) This type of Green Belt prevents large and continuous, and usually monotonous, building. Such a Green Belt is essentially a low density use of the land. It is an area of land that forms a break between the central core and the area beyond it.
3. The so-called "urban fence" idea. This is an attempt to limit the size of a city or town.

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

Gibson J.

(The Green Belt proposed by the Master (Greber) Plan of the National Capital Commission under the *National Capital Act* for the National Capital Region is an example of this third type of Green Belt. Under it the proposal is to contain the center urban core inside the so-called Green Belt area, which area it is estimated will eventually contain a population of approximately 500,000 people. The increase in population to attain this figure, it is envisaged, will be, in the main, in the countryside lying between the inner boundary of the Green Belt and the built up areas of the City of Ottawa, and other existing municipalities. Beyond the Green Belt area it is envisaged there will be built-up satellite towns like Smiths Falls and so forth.

The Master (Greber) Plan says that this Green Belt area should be subjected "to control to the end that the periphery of the urban area be protected against all undesirable or linear subdivisions or developments" (Greber Report, p. 191).

The Master (Greber) Plan further envisages that within this Green Belt there may be sites which in the future may be used as sites for new federal buildings or institutions, which by their nature require large acreages, or by private persons who also require large acreages; and there would also be provided park areas to serve the future metropolitan population which will live inside the Green Belt and in the satellite communities beyond the Green Belt.)

The object and purpose of this type of Green Belt is to prevent rural slums, which occur when housing is permitted to grow sporadically without proper servicing.

This concept of what such a Green Belt should contain is a flexible and growing one. Its main purpose as indicated is to cause an urban fence to be established around the central urban core and to prevent haphazard growth in the suburbs.

The physical design concept of this proposal is one that has been adopted by practically every large European city and by many, and in increasing numbers, United States major cities. In brief, it is the concept of a main centre as the dominant point, surrounded by satellites of lesser centres, with residential communities throughout the entire area accessible to the centres and to governmental and industrial concentrations at daily peak hours mainly by

means of regional streets and highways and a regional transportation system.

So much for the discussion as to the three types of situation in relation to which the term "Green Belt" is employed.

The actual physical boundaries of the Green Belt planned in the Master (Greber) Plan of the National Capital Commission encompass 37,388 acres. Almost half of this acreage consists of highway and railway rights-of-way, and large areas of land having mostly shallow soil over rock shelves which would present problems of both finding water and disposing of wastes. This leaves only approximately 20,000 acres of usable land affected by the proposed Green Belt. Of this latter amount of acreage, already 6,170 acres of Federally owned land are devoted to a variety of uses, and it appears from the evidence that it is proposed to use a further 4,000 acres for the Experimental Farm and another 2,000 acres for the Department of National Defence.

In further analyzing the term "Green Belt" and the concepts which are involved in establishing such an area in relation the the constitutional question raised in this action, it is helpful to consider a number of matters, such as some details of the so-called Master (Greber) Plan adopted by the National Capital Commission, *The Planning Act,* R.S.O. 1960, c. 296, as amended, the *National Capital Act,* and the evidence as set out in the Agreed Statement of Facts. This involves a discussion of planning and of zoning or land use principles and concepts.

At this juncture it should be mentioned that the Agreed Statement of Facts, filed (which constitutes the evidence on the issue raised herein), contains at page 1 the following limitation as to the use that may be made of what material is contained therein. It reads:

> . . . provided further that the parties hereto reserve the right to object to the admissibility of all or any of the said facts or documents on the grounds that they are not relevant or material to any of the issues to be determined in answering the question stated in the said Order.

Counsel for the plaintiff submitted that the paragraphs numbered as follows and the material to which such paragraphs refer were inadmissible on the above grounds, that is to say, paragraphs 6, 7-19, 26 and 27, 37-41, 42 and 43, 45-51, 52, 53 and 54, and 56-60. These paragraphs are, in the

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

Gibson J.

main, various parts of minutes of the Ottawa Area Planning Board, documents relating to the National Planning Committee of the Federal District Commission Minutes, parts of meetings of zoning and Green Belt sub-committees, and documents relating to the proposed Green Belt.

I am of opinion that all of these documents are admissible and that in relation to any of them it is a matter only of what weight should be given to any of them in the determination of the issue herein.

These documents in some places refer to planning concepts and what was done or not done by the various representatives mentioned. And, while they are not necessarily probative of any of the statements or propositions of law therein set out, they assist in the determination of the issue raised by the question in this stated case, because the answer to it concerns planning, and the effects of planning decisions, and necessitates the categorization of the legislative jurisdiction in respect to such classes of subjects.

It is helpful in reaching a decision in this matter on the evidence to mention at this stage some general planning ideas and the planning policies adopted by certain governmental authorities.

It should first be mentioned that planning, in the sense of a general plan for the physical development of a community, may conceivably be undertaken by any governmental authority, either federal, provincial or municipal, in either the Province of Ontario or the Province of Quebec.

The first thing that it is necessary to do in undertaking planning in order to make a general plan is to do a survey. Such survey must be directed to the objects or goals of such plan.

The next thing to consider in making a plan is the form and content of it.

Again, the objects or goals of such plan govern its form and content.

Because the results of planning involve a choice which will have an impact not only in space but in time, it is necessary to decide what type of plan it is sought to make, that is, whether the objects and purposes of the plan will result in what is sometimes referred to as "positive planning" or whether it will result in what is sometimes referred to as "negative planning".

The distinction between positive and negative planning lies in the method of implementing a plan.

Negative planning consists of settling the positive proposals and then waiting until the proposals are carried out by private enterprise or by public authorities. In this type of planning, therefore, the person who carries out the plan is different from the planning agency.

Positive planning is a program which is undertaken and carried out by the planning agency.

This distinction is of significance, as will appear later, when the objects and purposes of planning under the *National Capital Act* are compared with the objects and purposes under *The Planning Act*.

It is essential to note also that planning itself is to be distinguished from the implementation of a plan. They are quite separate and distinct matters.

Provincially, for example, the usual way a general plan is implemented is to confer on the municipality the power to control land use by enabling it to enact what are sometimes referred to as zoning or land use by-laws. This is not the only way but it is the predominant way in which general plans are implemented by such legislative bodies.

Zoning or land use by-laws curtail and abridge the rights of affected owners in relation to the uses of their lands.

In the Province of Ontario, no right to compensation has ever been conferred upon owners of property by provincial or municipal legislative bodies for the property rights which are taken away from such owners by reason of the enactment of land use or zoning by-laws. The idea that compensation should be paid to such owners appears to be abhorrent to provincial or municipal planners in Ontario according to the evidence of the views expressed at the meetings attended at various times over the last few years by various representatives of the Government of the Province of Ontario, of the municipalities of Ottawa, Township of Nepean and Township of Gloucester, and of the National Capital Commission, in connection with the problem of overall planning for the National Capital Region.

Another important feature about zoning or land use by-laws or controls in the Province of Ontario is that after

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

Gibson J.

the same are enacted the title to the affected land is left in the same private ownership.

An alternative to the above method of implementing a general plan (and this is germane to the issue raised in this case) is acquisition of the affected land by the governmental body which implements its plan. Acquisition may be accomplished by purchase, expropriation or by gift.

(This latter method of implementing a general plan is the way the Government of Canada through the plaintiff, the National Capital Commission, in the instant case is implementing part of its general plan. In the case of the subject property acquisition is being accomplished by expropriation.)

A necessary incident of implementing a plan by expropriation (or purchase or gift) is that the title then vests in the authority implementing the plan. In such cases, practically universally, the substantive law requires that compensation be paid to the owners from whom property is expropriated. (For example, and it is relevant to this case, when the Government of Canada expropriates property for any of its purposes, the substantive law enacted by Parliament requires that compensation be paid.)

In connection with compensation, it is also relevant to note, as will be detailed at greater length later in these reasons, that in certain particular instances the Government of Canada has the power to, and does, enact the equivalent of zoning or land use by-laws which otherwise leave the titles to the properties affected in the particular private ownerships, but in such particular cases the laws concerning such matters enacted by the Parliament of Canada require that compensation be paid to owners of land whose rights are diminished by such enactments.

This is a clear departure from the concept held by provincial and municipal legislative bodies and planners in the Province of Ontario concerning the matter of compensation in such cases.

This is of vital concern in this particular case, as will also be noted later in these reasons, because failure of the representatives of the Townships of Gloucester and Nepean in particular to persuade the persons representing the Government of Ontario and the City of Ottawa (when they met

at various times to consider the request of the National Capital Commission that they adopt the latter's Master or General (Greber) Plan as their respective official plans under the Ontario *Planning Act*, and to pass zoning or land use by-laws only in accordance with the same) that compensation should be paid to the owners of land whose rights were liable to be diminished by the passing of zoning or land use by-laws, was one of the main reasons that the National Capital Commission General (Greber) Plan was not so adopted and implemented in the area where the subject property is.

This matter of whether or not compensation should be paid to owners of property affected by the enactment of zoning or land use controls or by-laws is important when particularly onerous land use or control by-laws are considered, and it beclouds the solution to the problem of determining the matter of the legislation under review in every case.

This is so because when the resulting diminution of private property rights is excessive, it is always difficult to argue that the goal in the field of such land use controls or zoning by-laws enacted under provincial or municipal legislation and the goal of expropriation for land use control by another legislative body such as the Parliament of Canada through the National Capital Commission, are distinguishable. In other words, the distinction between the goals attained by the exercise of these two different powers on the basis of any difference in motive becomes difficult to determine.

In connection with this matter of compensation, also, it is of some help in understanding the problem in this case to mention that there is a crucial difference between the land use controls systems of the Province of Ontario and the United States on the one hand, and the British system of land use controls on the other hand.

The British system provides for compensation in cases where properties, affected by implementation of a general plan or any part of it or by a planning decision, had development value before their present system of control was introduced in 1947. If any such properties have acquired development value since 1947, no compensation is payable except where the decision cancels "existing use"

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

Gibson J.

rights. If, however, the property has become "incapable of reasonably beneficial use" as a result of implementation of a general plan or part thereof (which is done under the present British planning law by making a planning decision), then the owner can require the planning authority to purchase the property.

The result is that now the compensation position in the Province of Ontario, in Britain and in the United States, except in the circumstances set out above, are somewhat similar, that is, no compensation for implementing a general plan or part of it or for planning decisions.

But it is important to note that, whereas in Britain the introduction of the control system was accompanied by making provision for the payment of compensation by the establishment of a fund of £300,000,000 for such purpose, in the United States and in the Province of Ontario their systems have never been accompanied by any provision for compensation.

In the United States, the reason for this was and is as follows: The originators of the zoning system in the United States had to decide upon which of two quite distinct governmental powers these new controls should be based, that is, on eminent domain (compulsory acquisition or expropriation) or on the police power. (Police power in the United States includes the right to enact land use or zoning controls or by-laws such as are enacted by municipalities in the Province of Ontario. In other words, zoning or land use controls are an exercise of the police power. But police power authority is much wider. It is the general residual power of government to pass laws in the interests of the general public health, safety and welfare.) If property rights were condemned under the power of eminent domain (compulsory acquisition or expropriation) then compensation would have to be paid. If on the other hand these controls could be brought under the police power, then no compensation would be payable and the controls would be analogous to fire or structure regulations. The real problem arises when the enactment of controls under each of these powers is for essentially the same goal. Then the enactment of such controls based on the police power may become unconstitutional because of the Fifth Amendment, *viz.*: "No person . . shall be deprived of life, liberty or property, without due

process of law; nor shall private property be taken for the public use without just compensation." Under this guarantee of due process of law, a United States Court must decide whether a particular zoning ordinance is a "Reasonable" exercise of that power.

It is the degree of intensity of such controls in the United States which becomes important in determining the line between regulation and eminent domain (expropriation or compulsory acquisition). Mr. Justice Holmes stated this in the United States Supreme Court in *Pennsylvania Coal Company v. Mahon*[1].

> Government hardly could go on if, to some extent, values incident to property could not be diminished without paying for every such change in the general law. As long recognized, some values are enjoyed under an implied limitation and must yield to the police power. But obviously the implied limitation must have its limits, or the contract and due process clauses are gone. One fact for consideration in determining such limits is the extent of the diminution. When it reaches a certain magnitude, in most if not in all cases, there must be an exercise of eminent domain and compensation to sustain the act.

The absence of any "once and for all" settlement on the lines of the British system, obviously curtails the scope of land use controls in the Province of Ontario as well as in the United States; and as stated this was one of the main reasons why the Townships of Gloucester and Nepean did not accept the Master (Greber) Plan of the National Capital Commission or any other official plan and declined otherwise to enact any planning controls, except, in the case of the Township of Gloucester the enactment of Building By-law No. 34 of 1946, as amended by By-lay No. 18 of 1947 (being a combined building and zoning by-law). As a result, as stated, the problem of determining the respective matters in relation to which the *National Capital Act* and *The Planning Act* (and Province of Ontario Municipal land use or zoning by-laws) were enacted is beclouded.

Another thing that should be mentioned is that in planning for a large area, reference is sometimes made to a master plan. (This is what the plan of the National Capital Commission is called.) (Under the Ontario *Planning Act*, a general plan for a community is called an "official plan".) The term "master plan" can be misleading because such plans are elastic and flexible projects. They are projects of

[1] 260 U.S. 393, 413 (1922).

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

Gibson J.

community planning subject to change in accordance with changing circumstances and are in effect merely blue prints. They are not static museum-like directives.

Finally, in connection with the specific general plans that must be considered in these proceedings, it is important to note that the objects and purposes of any master plan of the National Capital Commission under the *National Capital Act* must be in conformity with section 10(1) of the *National Capital Act,* and that the objects and purposes of any general plan under the Ontario *Planning Act* must be in accordance with section 1(*h*) of *The Planning Act.*

So much for a general discussion of general planning ideas and planning policies adopted by certain governmental authorities (including the authorities interested in these proceedings, namely, the Government of Canada, the Government of Ontario, and the municipalities (in the National Capital Region) established by the Legislature of the Province of Ontario).

With this background, the answer to the first part of this enquiry can now be sought.

The answer to the first part of this enquiry, namely, what is the matter in respect to which the *National Capital Act* was passed by the Parliament of Canada, may be obtained by considering and deciding whether the objectives of the community physical design proposals of the general plans under *The Planning Act* of the Province of Ontario ("Official Plan") and those of the National Capital Commission (e.g., the Master (Greber) Plan) are distinct and different.

For this purpose nine (9) subjects will now be considered, namely: (1) the physical design proposals of every "official plan" under *The Planning Act* (Ontario) and those under the *National Capital Act*; (2) the fact that no municipality in the National Capital Region adopted the Master (Greber) Plan as its "official plan" under *The Planning Act* (Ontario); (3) the form and content of the Master (Greber) Plan of the National Capital Commission; (4) a comparison of the objects and purposes of the physical design proposals of the National Capital Commission in reference to the seat of the Government of Canada with those of the Federal Government of the United States in reference to its seat of Government, *viz.,* Washington, D.C.; (5) a

comparison of the legal effects resulting from the adoption of the Master (Greber) Plan with those resulting from the adoption of an "official plan" under *The Planning Act* (Ontario); (6) the legislative history of the *National Capital Act*; (7) the legislative history of *The Planning Act* (Ontario); (8) a consideration of the problems of the suburbs (the approaches to an urban centre); and (9) the parts of the Master (Greber) Plan of the National Capital Commission that have been implemented.

1. The physical design proposals.

The physical design proposals of every "Official Plan" enacted by any municipal corporation pursuant to *The Planning Act* of the Province of Ontario by reason of section 1(*h*) of the said Act must consist of a "programme or policy...designed to secure the health, safety, convenience or welfare of the inhabitants of the area . . ." These criteria were chosen by the Legislature of the Province of Ontario as the declared objectives of every such "Official Plan".

(It should be mentioned, as an aside, that the objectives of the community physical design proposals of the relevant legislation in the Province of Quebec are in essence of a similar character to those in *The Planning Act* of the Province of Ontario, and although the National Capital Region is partly in the Province of Quebec, since the subject property is entirely in the Province of Ontario, it is not necessary to discuss the Province of Quebec legislation in this case. The relevant Province of Quebec legislation is contained in section 426 of the *Cities and Towns Act*, R.S.Q. 1962, c. 49, and Art. 392a of the *Municipal Code*. Also within the Province of Quebec Department of Municipal Affairs there is a Provincial Town Branch which is charged with duties of a local nature and its duty is to assist municipalities in an advisory capacity to carry out municipal planning.)

The physical design proposals of any general plan such as the Master (Greber) Plan adopted by the National Capital Commission, by virtue of section 19(1) of the *National Capital Act*, must be for "the development, conservation and improvement of the National Capital Region in order that the nature and character of the seat of the Government

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

Gibson J.

of Canada may be in accordance with its national significance." These criteria were chosen by the Parliament of Canada through the medium of the *National Capital Act* as the declared objectives of any general plan under that Act.

2. The fact that no municipality in the National Capital Region adopted the Master (Greber) Plan as its "official plan" under *The Planning Act* (Ontario).

The evidence discloses a reluctance on the part of the relevant (in this case) Ontario municipalities in the National Capital Region to adopt as their respective "Official Plan" under *The Planning Act* (Ontario) any part of the National Capital Commission's Master (Greber) Plan despite years of negotiations by the National Capital Commission (and its predecessor corporation the Federal District Commission) with the Townships of Gloucester and Nepean and the City of Ottawa, and the Ottawa Area Planning Board; and the evidence establishes that none of these municipalities did so adopt any part of such general plan.

It may be that the objectives and purposes of the National Capital Commission in this matter, as exemplified in the Master (Greber) Plan were not directed to the programme and policy envisaged by these local municipalities as satisfying their respective needs.

In this connection it is interesting to consider whether the objectives of the Government of Canada in this latter regard were similar to those that must have motivated the respective authorities who caused Athens, Rome and Paris, for example, to become cities of national significance. Lord Latham spoke of similar objectives when he spoke on the introduction into the British Parliament of the general plan for the Metropolitan County of London, as follows:

> This is a plan for London. A plan for one of the greatest cities the world has ever known; for the capital of an Empire; for the meeting place of a commonwealth of Nations. Those who study the Plan may be critical, they cannot be indifferent.
>
> Our London has much that is lovely and gracious. I do not know that any city can rival its parks and gardens, its squares and terraces. But year by year as the nineteenth and twentieth centuries grew more and more absorbed in first gaining and then holding material prosperity, these graces were over-laid, and a tide of mean, ugly, unplanned building rose in every London borough and flooded outward over the fields of Middlesex, Surrey, Essex, Kent.

Athens was the glory of Greece, Rome the great capital of a great Empire, a magnet to all travellers. Paris holds the hearts of civilised people all over the world. Russia is passionately proud of Moscow and Leningrad; but the name we have for London is the Great Wen.

It need not have been so. Had our seventeenth century forefathers had the faith to follow Wren not just the history of London, but perhaps the history of the world might have been different. For the effect of their surroundings on a people is incalculable. It is a part of their education.

Faith, however, was wanting It must not be wanting again no more in our civic, than in our national life. We can have the London we want; the London that people will come from the four corners of the world to see; if only we determine that we will have it; and that no weakness or indifference shall prevent it.

3. The form and content of the Master (Greber) Plan of the National Capital Commission.

A general perusal of the plan indicates that it contains the ideas and information needed so the scheme can be seen in its proper context, that is to say, it includes (*a*) a history: the various stages of the development of the National Capital Region since 1899; (b) geography: a description of the geographic setting of the National Capital Region and a discussion of the geographic factors that are of significance to it; (*c*) population and economic base: a statement of the facts and conditions from 1899 up to the present time, and of future trends, forecasts and assumptions concerning the population and economy of the National Capital Region; and (*d*) major physical development issues: a summary statement of immediate and ultimate problems and proposals for the development and preservation of the National Capital Region.

This is emphatically demonstrated by referring to the following excerpts from this Master (Greber) Plan and by making the following comments.

To begin, to find the real origin of this Master (Greber) Plan it is necessary to go back in time much beyond the year 1937 when Mr. Greber's services were first employed by the Government of Canada.

Since 1903 the development of the National Capital Region as the seat of Government worthy of the nation has been the program and policy of successive governments, commencing with the government led by Sir Wilfrid Laurier.

In turn, Sir Wilfrid Laurier, Sir Robert Borden and the Right Honourable W. L. Mackenzie King each expressed

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

Gibson J.

the determination to provide Canada with a seat of Government worthy of the growth and status of this nation and as an interpretation and exemplification of the national pride and aspirations of all the people of Canada.

When the Government commissioned and authorized the preparation of this Master (Greber) Plan, the Right Honourable Mackenzie King expressed such motives of the people of Canada in this way:

> Canada's Capital has grown up in a magnificent setting of intimate, imposing and enchanting scenery. Ottawa's growth, however, has reached a point of urban development which is rapidly depleting and endangering its natural assets To be worthy of Canada's future greatness, its Capital must be planned with far-reaching foresight.
>
> * * *
>
> The vast amount of research, technical knowledge and imagination, of which this work by Mr. Greber and his assistants is so eloquent an expression, cannot fail, if given due appreciation and support, to result in the attainment of a Capital City of which Canadians of our own and future generations will be increasingly proud.

The history of the previous planning studies of the National Capital of Canada (which is the real origin of the present Master (Greber) Plan) begins with the study made in 1903 by the late Frederick G. Todd of Montreal.

At p. 129 of Greber it is stated:

> In the year 1903, the late Frederick G. Todd of Montreal, a noted Canadian landscape architect, was engaged by the Ottawa Improvement Commission to outline a comprehensive scheme of park and parkway development for the City of Ottawa and its environs. Though the scope of his report did not go beyond beautification, Mr. Todd expressed strongly for the first time the necessity of collecting all data necessary to make a comprehensive plan. His outlook on the subject was broad and tended to evolve a general scheme rather than attempt to go into details.
>
> Remembering that the Report was written in 1903, the following quotation is indicative of this attitude:
>
> > Ottawa is at present a manufacturing city of considerable importance, and is destined to become great in this respect, owing to its immense water power. The industries, however, should be so regulated that they will interfere as little as possible with the beauty of the city, for a Capital City belongs to a certain extent to the whole country, and should not be placed in such a position that any one man, or company of men, can have it in their power to seriously mar its beauty, and thus throw discredit on the nation. As a Capital City, the park and open spaces should be numerous, and ample boulevards and parkways should skirt the different waterways as well as connect the principal parks and the different public buildlings . . . .
> >
> > To preserve the great natural beauty of the city as a heritage for the Dominion of the future, and at the same time to allow of the development to the greatest possible extent of the magnificent

industrial opportunities of Ottawa, presents a problem of such magnitude that to attempt to discuss it in this respect would be practically impossible. It seems to me, however, that this question must be faced sooner or later, and these two important considerations which often conflict so seriously, made to work together for the future beauty and prosperity of the city, otherwise the industrial development of the city will be sacrificed to its aesthetic development, or what is probably of greater present danger, that much of the natural beauty of the city will be sacrificed to its industrial growth.

The Todd recommendations which have been adopted or as the Greber Report points out can still be made the subjects for consideration may be listed under the following headings:

Large natural parks or reserves.

Suburban parks.

Boulevards and parkways.

City parks.

As to large natural parks or reserves, "two forest reserves were recommended by the author; one of the two thousand acres along the Gatineau River between Ironside and Old Chelsea; the other on both sides of Meach Lake.

The first proposal is no longer feasible due to extensive cottage and agricultural developments. However, it is recommended that this area be included in the controlled rural belts and be subject to special regulations, thus preserving the remnants of the forests to which Mr. Todd refers."

The next report of the Federal Planning Commission, in time, was that of the Holt Commission in 1915.

At page 133 of the Master (Greber) Report is this reference to it:

This Commission, under the Chairmanship of Sir Herbert S. Holt, and generally referred to as the "Holt Commission", was appointed under Order in Council dated September 8, 1913, and was a joint undertaking on the part of the Federal Government and the Cities of Ottawa and Hull.

The comprehensive recommendations contained within the report are dealt with in detail but special attention is drawn to the following features, i.e.:

1. That improvements in the area of the Capital at Ottawa and Hull should not be attempted without first establishing a Federal District and securing for the Federal authority some control of local government.

2. That the pivot, on which hinged the success or failure in carrying out any comprehensive plan, lay in the proper solution of steam railway transportation.

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

Gibson J.

3. That the extension and development of Government Buildings should be carried out on a comprehensive plan.

4. That there should be proper control of residential and manufacturing districts by enforcing building restrictions.

5. That there be developed a broad and forceful policy of park lands.

The next report in time that was made was the Cauchon Report in 1922.

This Report was unofficial in the sense that Mr. Noulan Cauchon, Planning Consultant of the City of Ottawa, was not retained by the Government of Canada to execute it, but it does comprise the co-ordination of extensive studies of the Capital area pursued by this author over a period of some fifteen years.

The Master (Greber) Report makes this reference to it, at page 139:

> The Cauchon Report was formulated and released in April, 1922. It suggested the creation of a Federal District on a basis which would overcome previous objections to such a project, by providing for the control of physical features and public utilities within Ottawa, Hull and their environs, and leaving all other provincial and municipal prerogatives undisturbed.

The first studies made by Mr. Jacques Greber were done in the period 1937 to 1939.

Reference is made to them on page 142 of the Master (Greber) Plan:

> The Federal Government retained my services in 1937, 1938 and 1939 as consultant in relation to the development of Government-owned lands in the centre of the City.
>
> The plans, which primarily embraced the whole of Parliament Hill and Nepean Point, dealt with the landscape design of the grounds and approaches to the Government Buildings, as well as the architectural treatment of such buildings. They also comprised suggestions or recommendations covering the utilization of certain sites.
>
> As it was important to examine the relationships of such undertakings to adjoining areas, a preliminary plan of Ottawa was submitted, accompanied by a report setting forth the advantages of a master plan from the point of view of the co-ordination of proposals as well as of economics, in order to orient the execution of future developments.
>
> Lacking a complete analysis of existing conditions and future requirements, this preliminary plan was merely a superficial outline. Nevertheless, it comprised many new suggestions and co-ordinated or endorsed, according to cases, certain proposals envisaged and in some cases studied in previous plans. Thus the development of a main transurban artery was recommended on the Canadian National right-of-way traversing the City from east to west. The plan likewise envisaged the linking up of Scott Street and Wellington Street providing a new westerly outlet toward Westboro and Britannia. The partial or total use of other rights-of-way

as arteries of penetration was also recommended, among which were the Canadian Pacific rights-of-way linking Billing's Bridge and the Prince of Wales Bridge, and those of the present belt line from Hurdman Bridge to Sussex Street. These highway proposals, as also other operations of lesser importance, have been retained within the present report.

The studies then made of landscaping and architectural treatment of the central area are also basic to the detailed plans now submitted. (See photographs of the model prepared in 1938—Illustrations 117 and 118)

Certain detail operations were partially executed. These were, principally, the development of the site on which the Government had previously decided to locate the National War Memorial, 1914-1918, known as Confederation Place, and the widening of Elgin Street. The Confederation Place project was executed only to the extent which concerned the War Memorial Terrace and its planted surroundings. The erection of the memorial and the development of its immediate site, having to be completed for the Royal Visit in May 1939, were undertaken only in so far as the westerly extremity of Confederation Place was concerned. Work on the approach from the east, essential to improve traffic conditions at that congested point, was postponed and its resumption was offset by the outbreak of the war of 1939-45.

For similar reasons proposals then envisaged for the improvement of Elgin Street were likewise postponed, its widening being limited to that part situated between Laurier Avenue and the Memorial, while its regrading to improve its profile was temporarily omitted to ensure the termination of the work then undertaken prior to the Royal Visit.

The authority to undertake what is now the present Master (Greber) Plan, Exhibit 1, was given by the Committee of the Privy Council approved by His Excellency the Administrator on the 31st of October, 1945, and the terms of reference are prescribed in it. The reference to this in the Master (Greber) Report is at page 5:

That under the authority of Order in Council P.C. 5635 of August 16, 1945, an area comprising some 900 square miles, more or less, adjoining the City has been defined as the National Capital district and it has been decided to re-engage Mr. Greber to make a study of that area with a view of preparing plans for a suitable long-term development of such area as a National War Memorial;

That Mr. Greber will be required to:

(List of Services)

1. Direct the preparations of graphic survey, basic plan and various cartograms, diagrams, photographic illustrations, etc., including guidance for research and graphic representation of all elements of the survey, by advice and documentary examples, bibliography, etc.

2. Direct the preparation of the proposed master plan, by advice and furnishing personal preliminary drawings and sketches, in Ottawa or from Paris, as previously done.

3. Direct the preparation of proposed by-laws, zoning ordinances and planning programmes.

4. Direct the preparation of eventual scale model.

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

Gibson J.

5. Study and advise on the eventual local operations while final report is being prepared.

6. Direct the preparation of the final report and basic plans.

(The references to the preliminary report of the National Capital are not included in the Master (Greber) Plan, but they are contained in the Statement of Facts agreed to by the parties and the relevant pages are 63, 64, 66, 68, 72, 73 and 76.

In it there is reference to the green belt which is the concept we are considering in this particular case in reference to the subject property. The point to note is that in this preliminary report and also in the final report, Exhibit 1, the concept of the green belt is given in its correct meaning. It explains (as was pointed out earlier in these reasons) that a green belt is not a fixed and immutable concept. So it is not surprising to find reference to different things that may be contained in any particular type of green belt. This is the accepted view when one is referring to green belt concepts.)

At page 2 of the Master (Greber) Report there is a reference to the fact that the Master Plan of the seat of the Government of Canada and the implementation of any work in it was to be a national scheme, and such national scheme was to be accomplished (with the co-operation of Canadian architects, engineers and technicians) under the guidance of a National Capital Committee.

The scope of the project is set out at page 14 of the Master (Greber) Report:

> In establishing a National Capital Region in accordance with the recommendations of the Joint Committee of the Senate and of the House of Commons, and pursuant to the provisions of the Order in Council of August 16, 1945, the Federal Government defined an area comprising some 900 square miles surrounding the City of Ottawa, as the National Capital Region, with a view to the preparation of plans for the long-range development of this territory.
>
> Consequently, the first concern of the National Capital Planning Service was to initiate studies to determine the present and future needs of this large region, and to secure the basic information upon which to chart its planning. This analytical study forms the first part of this Report under the heading of "General Survey".
>
> It would have been comparatively easy, following a superficial survey of present conditions and trends, to have drafted a theoretical plan which from the natural and magnificent setting of the region, could have been quite attractive, but such a procedure would have lacked practical value, and the expenditure involved would have been unwarranted.

The National Capital plan has a dual purpose: it aims primarily at the planning and mapping of the development of the group of municipalities which form the Capital Region, with a view to ensuring the comfort and well-being of their inhabitants and facilitating all their activities; but also, it must aim at the planning of a capital, an undertaking which involves manifold problems relative to its life and special functions: Parliament, Government, diplomatic life, and national and international conventions, in an atmosphere of dignity, orderliness and welcome.

The duty rests on the Capital to set the example for other Canadian cities, in their adoption of planning procedures suited to the needs of modern living.

In this connection the scope of the general survey, (which as stated earlier in these reasons is the first step in the preparation of any plan) is set out demonstratively by the index. At page 303 of the Master (Greber) Report appears such index, as follows:

GENERAL SURVEY

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

Gibson J.

The next matter which it is relevant to consider in this Master Plan is the part entitled "Justification of Proposals." This is set out at page 155 of the Master Report, as follows:

The plan and its accompanying report are but directing documents. They form the general skeleton of development for the region and do not treat any operations in detail. The ultimate formulation and execution of each project will be the subjects of further local studies. However, in exceptional and urgent cases, we have been called upon to provide immediate solutions, the detail plans of which were either incorporated in the Master Plan or elaborated in keeping therewith in co-operation with the authorities responsible for their realization.

This part of the Master Plan is broken down into several sub-headings.

The first is entitled General Commentary on the Project, which appears at pages 157 to 160:

GENERAL COMMENTARY ON THE PROJECT

In compliance with the scope of the task entrusted to us, and in light of basic data derived from investigations and surveys made, we have conducted our studies with the sole object of reaching conclusions in keeping with present and estimated requirements based on existing tendencies.

Our task consisted of two inseparable but differing programmes, comprised of complementary elements.

(*a*) In the first instance, it was required to develop the physical framework of expansion for the National Capital, organizing its life for a period of at least two generations, without comprising the more remote future.

A Capital is the reflection, the symbol, of the whole nation. The Capital of Canada, as in all federated states, such as in the case of Washington, or Berne, has special importance; it is the city which, to every Canadian and to all foreigners, must be representative of all of the ten confederated provinces, without, however, prejudicing the attributes and prerogatives of their respective capitals.

Chosen for this noble role by a far-seeing and wisely inspired Queen, the little Ontario town of Ottawa, the outgrowth of the pioneer village of Bytown, rapidly became a large city, and, with distances gradually losing their significance, blended itself with the neighbouring villages and localities around the beautiful Ottawa River, formerly a frontier but now a link between the two provinces of Ontario and Quebec, which are symbolic of Canadian greatness.

Extending beyond this initial symbolic development, Ottawa has since become truly representative of the whole of Canada.

The large neighbouring metropolitan cities of Montreal and Toronto, those of the prairies and of the oceanic shores, retain their prestige, and leave to the Capital its constitutional, national and international mission. There is neither competition nor rivalry, because their respective functions are clearly defined.

The planning of the Capital is therefore a national undertaking, of which each Canadian can be proud and through which national desires and aspirations can be expressed through material accomplishments. The first accomplishment, initiated by the Federal Government, will go down in history: it is the decision that the planning of the National Capital be dedicated to the memory of Canadians who gave their lives to the nation in the second world war.

This heroic symbol will be materialized in the heart of the territory of the Capital, not by an allegoric sculptural composition, sometimes subject to controversies, but by an objective reality: the living panorama of the Capital. Other tangible tokens of national unanimity and of effective participation of the Federal Capital in the greatness and progress of each of the ten provinces will be similarly integrated in the material expression of its plan.

* * *

(*b*) The second imperative demand, lay in the recognition of the territory of the Capital area as an already urbanized region, the place of living and of work of its citizens. We have reviewed the extraordinary growth of its demographic occupations, involving a present population of more than a quarter of a million inhabitants.

Two principal cities, Ottawa in Ontario and Hull in Quebec—mixed population, differing legislative and educational systems,—two provincial entities within which we must recognize their respective administrations, customs, language and aspirations; far from being a difficulty in our work, these conditions merely intensified our interest.

* * *

What then, briefly expressed, are the characteristics of our plan?

The planning of the region of 900 square miles, which is the area of attraction incident to the Capital, involves, primarily, the establishment of a highway system through the improvement of existing roads and the creation of additional roads, to facilitate traffic movements throughout the region. Specific classification of roads is predicated upon their particular functions, and the nature and speed of the vehicular traffic to which they are or will be subjected: utilitarian transportation, interurban communications or pleasure driving.

In the centre, the urban region is delimited by a perimeter, intended to prohibit tentacular and linear extensions of construction abutting upon highways. To that effect an area, zoned as a *greenbelt,* frames this perimeter and is subjected to regulations to protect the area comprised within the greenbelt against undesirable development. Outside of the extreme limit of this greenbelt, the territory will retain its rural character, with the exception of limited and controlled minor and appropriate developments.

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

Gibson J.

(At pages 84 and 85 of the Agreed Statement of Facts is a reproduction of a plan of the open spaces in the Green Belt area.

The importance of this is that the subject property, of course, is in the proposed green belt area, but as has been heretofore mentioned in these reasons it is clear that the green belt is an integral part of the whole Master Plan and it is tied in intimately with the railway and railway facilities relocation. But there is this difference in these two matters. The green belt proposal in this plan deliberately seeks to cause a particular type of development. The establishment of railway and railway facilities without reference to any intent have caused a control of the form of development of the area because such establishment happened to coincide with the railway economic reasons for placing their installations in the location in which they were put.)

At page 191 of the Master (Greber) Plan, there is set out the specific type of green belt envisaged. It is the third type referred to in these reasons and its objects and purposes are described in these words:

DELIMITATION OF FUTURE URBAN GROWTH — NUCLEAR DISTRIBUTION OF COMMUNITIES AND NEIGHBOURHOODS — ZONING REGULATIONS

The Master Plan shows the maximum delimitation of the future urban extension within an area amply sufficient for a total population of 500,000 inhabitants, a figure which is merely indicative, the anticipated densities being based on data covering existing conditions, but eventually subject to modification in relation to the likely increase of multiple dwellings and apartments replacing single family dwellings.

It is thus possible, to envisage the eventual population reaching without inconvenience, 600,000 within the limits of the agglomeration as defined in the plan.

What is important is that, outside the limits so defined, there be maintained a rural belt, subjected to control to the end that the periphery of the urban area be protected against all undesirable or linear subdivisions or developments.

This rural belt, the outer limits of which are also indicated, should be solely dedicated to agriculture, or to the establishment of large properties. Public urban services cannot be assured within this rural belt and if residential groups must be constructed they should be reserved solely for agricultural workers.

If, in the future, the needs of the urban extension became such that the provisions now adopted from studies made of the urban evolution have to be exceeded, tentacular extensions, similar to those which have formerly developed around the initial urban core and which with adjustments

we have had to incorporate within the general layout of the ultimate urban zone, would be thus made impossible through the controls referred to.

Exterior to the rural greenbelt and at a sufficient distance therefrom to ensure the permanency of a rural frame to the future Capital, other nuclei of populations could be established in the rural zone in the form of complete self-contained communities comprising from 20,000 to 25,000 inhabitants, similar to the towns of Buckingham, P.Q., or Smiths Falls in Ontario. The rural regions surrounding the Capital on both sides of the Ottawa River offer excellent road and railway facilities for exploitation and favourable development of this type of "new cities" as satellites to the Capital.

A further reference in this Report to the open spaces is made at page 227, as follows:

OPEN SPACES

The survey of built-up areas and of existing open spaces, warrants the envisagement of the creation at little cost of an organic system of parks and an uninterrupted network of verdure within the entire region.

Such a project, while ambitious in appearance, nevertheless does not necessitate costly expropriations, grading or planting on a large scale, but rather a simple reservation of appropriate lands chosen from spaces, which from their natures, do not lend themselves to economic housing development and servicing.

The lands thus retained should be sufficient to fulfil a twofold objective, (1) establish a system of greenbelts framing dwelling areas and directly linked to the main rural belt surrounding the urban zone, and (2) ensuring a sufficient reserve for the eventual establishment of public services necessitating environments of verdure and quietness: such as hospitals, houses of refuge, schools, churches, colleges, recreational, sports or cultural centres, cemeteries, etc.

The suggested schedule of execution for this Master (Greber) Plan is set out on page 265 and following, after these preliminary words of explanation are given:

The Master Plan and justificative programme herewith submitted are not final and rigid blue-prints of immediate operations, but a comprehensive and flexible chart of co-ordinated development, subject to amendments and adaptations resulting from detail studies and from unforeseen circumstances as they may evolve.

* * *

IMMEDIATE AND SHORT RANGE OPERATIONS

1. Construction of new bridge and approaches from Elgin to Waller Streets, between Confederation Place and Laurier Avenue.

2. Acquisition and zoning of land incidental to the adequate relocation of railway facilities; the equipment of new railway belt line, from its intersection with the C.P.R. Montreal south shore line, southerly to Chaudiere junction, with the C.P.R. Prescott line; development and equipment of new industrial zones on appropriate grounds, contiguous to railway facilities.

3. Reservation of lands for Governmental buildings and public services.

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

Gibson J.

4. Elimination of the Daly Building and of the buildings on the south side of Rideau Street east of and adjacent to the Union Station, as part of the completion of the approaches to Confederation Place; construction of a parking terrace on the site of the Daly Building, and of an additional covered parking area, directly connected with the Chateau Laurier.

5. Extension of Scott Street westerly to Highway No. 15.

6. Construction of parkway from Bayview Road to Island Park Drive.

7. Gradual elimination of the C.N.R. cross-town tracks and construction of the cross-town parkway on the vacated right-of-way.

8. Elimination of the Sussex Street C.P.R. line from Sussex Street to Hurdman's Bridge and construction of circular boulevard on the vacated right-of-way.

9. Gradual elimination of the freight yards at Union Station and their relocation on new freight terminal grounds east of Hurdman's Bridge.

10. Construction of new eastern approach from Montreal Road at a point west of Green Creek and linked with the MacArthur Road to Cummings Bridge, Eastview.

11. Development and extension of industrial zones in Hull and Hull South.

12. Construction in Hull of new boulevard from Reboul Street to Montclair Boulevard, and connection to Mountain Road and Saint-Joseph Boulevard.

13. Partial improvement of Aylmer Road between Hull and the Ottawa Country Club (double drive and central boulevard). Diversion from Aylmer Road, west of the Country Club, by construction of a new driveway on rights-of-way of Hull Electric Railway, and of a direct by-pass highway north of the Aylmer Road and the Town of Aylmer, to relieve Aylmer Road approaching and within the Town of Aylmer.

14. Construction of public buildings:—Printing Bureau; Department of Veterans Affairs Building; Headquarters for the Department of National Defence; Bureau of Statistics; National Film Board Buildings; Ottawa City Hall; Institute of Fine Arts; National Theatre; National Art Gallery; National Library; Public Works laboratories and workshops; Laboratories for Department of National Health and Welfare; National Stadium and Sports Centre.

15. Construction, in its first stage, of National Memorial Terrace on Gatineau Hills, dedicated to the Canadians fallen in the Second World War.

16. Construction of the Mountain parkway from the intersection of Brickyard Road and Mountain Road to Kingsmere.

17. In Hull, direct connections from Aylmer Road to (1) the Mountain Road, and (2) to the Mine Road, by the construction of two new boulevards on each side of Fairy Lake Park.

18. Widening of Laurier Avenue in Hull, north of Interprovincial Bridge to Jacques-Cartier Park.

LONG RANGE OPERATIONS

19. Construction of a new by-pass highway to Hull, from north-shore Highway No. 8 from Montreal, through Templeton, Gatineau and Pointe-Gatineau, north of C.P.R. Railway.

20. Construction of public buildings:—Civic Auditorium and Convention Hall centered on Lyon Street, and annexes on surrounding grounds—Additions to National Archives—Laboratories for Bureau of National Research and Department of Mines and Resources—Office buildings for decentralized Government Departments—Botanical Garden—Museum of Natural History—Zoological Garden.

21. Construction of esplanade on the western end of Parliament Hill, and of a large underground garage.

22. Reconstruction, in two stages, of the Chaudiere Bridges from Wellington Street at the westerly end of Parliament Hill, to Eddy Park in Hull. Gradual park treatment of the Chaudiere islands, peninsula and Ottawa River banks.

23. Completion of the Railroad Belt line, north of the C.P.R. Montreal line, northerly across Ottawa River, including a new Railroad and Highway Bridge, west of Green Creek, over Duck Island, to the C.P.R. North Shore Line and Highway No. 8.

24. Construction of the new Union Station on the belt line; elimination of present Union Station and of railroad tracks from site of present Union Station to Hurdman's Bridge and from Hurdman's Bridge to Chaudiere Junction.

25. Extension of riverside parkway (operation 6) from Island Park Drive to Britannia.

26. Construction of the new bridge over the Ottawa River to replace the present Interprovincial Bridge; and replanning of the central part of Hull—widening of St-Laurent Boulevard and construction of the new Hull Station; and development of access in Ottawa to the new bridge by Sussex and Mackenzie Avenue.

27. Final completion of the eastern end of Confederation Place by building a right turn loop and underpass to connect Sussex Street with the new lower entrance to the Chateau Laurier and underground garage accommodations.

28. Gradual realization of Confederation Park, from Elgin to Nicholas, such work being co-ordinated with the elimination of railway facilities, first freight, and ultimately passenger.

29. Construction of new rapid transit highways leading from various parts of the city to the new Station and to the industrial areas. Simultaneously, construction of new residential units in the neighbourhood of the working areas.

30. After elimination of the railway tracks leading to the present Union Station, construction, on vacated right-of-way, of the driveway from Hurdman's Bridge to Confederation Place.

31. Elimination of the C.P.R. Carleton Place line between Nepean Bay and its intersection with the C.N.R. North Bay line. Construction of two lane artery, in conjunction with Scott Street, on the vacated right-of-way, and its extension easterly across present railway yards to Wellington Street.

32. Elimination of the Prescott C.P.R. line between Prince of Wales Bridge and the new belt line south of Rideau River.

EVENTUAL OPERATIONS

Other operations shown on the plan or described in the present report, but not mentioned in the above list, concern a number of street, driveway or road widenings and openings, green belt reservations, gradual

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

Gibson J.

completion of the park and playground system, planning of new residential units and corresponding civic centres for communities or neighbourhoods, development of roads, trails and pedestrian walks within suburban natural parks.

Such operations form the balance of the proposals shown on the Master Plan. They are indicative and will be subject to flexible adaptations when they reach the stage of execution. They may be reduced, amplified or, if need arises, completely omitted, in the light of unforeseeable circumstances or new requirements, and to the measure of financial possibilities.

These operations still remain co-ordinated to those of the first two categories, and amendments, to which they may be subjected, will require to be conceived in harmony with the parts of the Master Plan previously executed.

A town planning work is a continuous creation, comprised of progressively slow and flexible adaptations, as are all evolutions of nature, from which we should seek inspiration.

4. A comparison of the objects and purposes of the physical design proposals of the National Capital Commission in reference to the seat of the Government of Canada with those of the Federal Government of United States in reference to its seat of government, *viz.*, Washington, D.C.

The objects and purposes of the policies and physical design proposals (of which the expropriation of the subject property for part of the Green Belt area is the implementation of a very small part) in the National Capital Commission's Master (Greber) Plan can be compared with the objects and purposes of the policies and physical design proposals for the seat of Government of the United States, *viz.*, Washington, D.C. While this is not part of the evidence it is of interest to note that this comparison is apposite, and it may be made by considering in this context the memorandum made by the late President John F. Kennedy in 1962, which appeared in the Washington Post, November 28, 1962:

Because of the importance of the Federal interest in the National Capital Region, I want the greatest possible coordination of planning and action among the Federal agencies in developing plans or making decisions which affect the Region.

Decisions of the Federal Government affect directly and indirectly the location of employment centers, highways, parks, airports, dams, rapid transit, utilities, and public and private housing. These decisions all have a crucial bearing on the future development of the metropolitan area outside as well as within the District of Columbia.

In order that the effect of the Federal Government's activities on the Region will be consistent and directed in a manner which will foster the implementation of modern planning concepts, the following development

policies are established as guidelines for the agencies of the executive branch, subject to periodic review.

1. Planning for the Region shall be based on the prospect that regional population will approximate 5 million by the year 2000.

2. The corridor cities concept recommended by the Year 2000 Plan, prepared by the National Capital Planning Commission and the National Capital Regional Planning Council in 1961, shall be supported by agencies of the executive branch as the basic development scheme for the National Capital Region.

3. The success of the corridor cities concept depends on the reservation of substantial areas of open countryside from urban development. It shall be the policy of the executive branch to seek to preserve for the benefit of the National Capital Region strategic open spaces, including existing park, woodland, and scenic resources.

4. It shall be the policy of the executive branch to limit the concentration of Federal employees within Metro-Center, as defined in the Year 2000 Plan, over the next four decades to an increase of approximately 75,000.

5. It shall be the policy of the executive branch that new facilities housing Federal agencies outside Metro-Center shall, to the maximum extent possible, be planned, located, and designed to promote the development of the suburban business districts which will be required to serve the new corridor cities.

6. Planning to meet future transportation requirements for the Region shall assume the need for a coordinated system including both efficient highways and mass transit facilities, and making full use of the advantages of each mode of transportation.

7. It shall be the policy of the executive branch to complete and enhance the Mall complex as a unique monumental setting.

8. It shall be the policy of the executive branch to house new public offices of an operational nature in non-monumental buildings which, through the use of the highest quality of design and strategic siting, will have a dignity and strength to establish their public identity. Within Metro-Center, this policy shall be carried out by locating new nonmonumental Federal buildings in relatively small but strategically situated groups in and adjacent to the Central Business District.

9. It shall be the policy of the executive branch to encourage the development of a system of small urban open spaces throughout the District of Columbia as adjuncts to the development of new Government, institutional, commercial and high-density residential facilities. In addition, a system of important streets and avenues shall be designated for special design coordination and treatment.

10. The executive branch will participate with local governments in the formulation of complementary policies essential to the coordinated development of the Region.

I am requesting each department and agency head concerned to give full consideration to these policies in all activities relating to the planning and development of the National Capital Region, and to work closely with the planning bodies which have responsibilities for the sound and orderly development of the entire area.

(Schematic drawings omitted).

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

Gibson J.

From such a comparison, it may be inferred that the objects and purposes are quite similar in both cases. This summary, it should be observed, like the Master (Greber) Plan, is composed of three closely related parts: policies, physical-design proposals, and simple schematic drawings; and it may demonstrate that the objects and purposes for the National Capital Region of Washington are the very antithesis of any enactment that is directed to parochial or private objects and purposes; and from this it may be reasonable to infer, because essentially it has some objects and purposes, that the same comments may be applied to the General (Greber) Plan for the National Capital Region of Canada.

5. A comparison of the legal effects resulting from the adoption of the Master (Greber) Plan with those resulting from the adoption of an "Official Plan" under *The Planning Act* (Ontario) by a municipality in the Province of Ontario.

The adoption of the Master (Greber) Plan by the National Capital Commission has no legal effect on lands in the National Capital Region. (It is only by the implementation of it, or part of it, as for example in this case by expropriation of the subject property, or as another example, by purchase of property, in the exercise of powers conferred by section 10 or section 13 of the *National Capital Act,* that some legal consequences flow.)

But, in contrast to this, such is not the case when a municipality enacts an "official plan" under *The Planning Act.* For example, section 20 of that Act provides that no redevelopment (which means the planning or replanning, designing, re-designing of a subdivision, clearance, development, construction, rehabilitation, etc.) shall be approved by the Municipal Board unless it conforms with the Official Plan. It is also provided in section 15(1) that where an official plan is in effect in a municipality no public work shall be undertaken that does not conform therewith.

There are other examples, and these are merely illustrative of the legal consequences that flow when such an Official Plan has been adopted by an Ontario municipality.

(In this connection, it should be recalled that, as mentioned above, that except for streets and certain parks,

neither the Townships of Gloucester and Nepean nor the City of Ottawa has adopted an official plan under *The Planning Act*, although each of these municipalities was invited to adopt the Master (Greber) Plan of the National Capital Commission as their respective official plan under *The Planning Act*.

In the Province of Quebec, also, there has been no adoption of the equivalent of any so-called "official plan" or the Master (Greber) Plan of the National Capital Commission in so far as the lands in the Province of Quebec within the National Capital Region under the *National Capital Act* are concerned.)

6. The legislative history of the *National Capital Act*.

The legislative history of the *National Capital Act* (under which was established the National Capital Commission, which adopted this so-called Master (Greber) Plan for the National Capital Region) commences with the year 1899.

In 1899, by 62-63, Victoria, c. 10, there was created a corporation under the name "The Ottawa Improvement Commission".

It was provided by that Act at section 4 as follows:

> 4. The Commission shall be a body corporate under the name of "The Ottawa Improvement Commission" and it shall have power to make such by-laws, employ such persons, and pay and defray such expenses as are necessary to enable them to carry into effect the purposes for which they are constituted, or any of the powers conferred on them by this Act; but no by-laws so made shall come into force or effect until approved by the Governor in Council, nor shall any alteration, modification or repeal of any such by-law have any force or effect until approved by the Governor in Council.

The number of Commissioners and their tenure of office was prescribed by section 3 of the Act.

The powers of the Commission were set out in section 7 of the Act, as follows:

> 7. The Commission may—
>
> (*a*) purchase, acquire and hold real property in the city of Ottawa, or in the vicinity thereof, for the purpose of public parks or squares, streets, avenues, drives or thoroughfares;
>
> (*b*) do, perform and execute all necessary or proper acts or things for the purpose of preparing, building, improving, repairing and maintaining all or any of such works for public use;
>
> (*c*) co-operate with the Corporation, or with the Board of Park Management of the City of Ottawa, in the improvement and beautifying of the said city, or the vicinity thereof, by the

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

Gibson J.

acquisition, maintenance and improvement of public parks, squares, streets, avenues, drives or thoroughfares, and the erection of public buildings in the said city or in the vicinity thereof;

And for all or any of the aforesaid purposes the Commission may expend the whole or any portion of the sums that are placed at their credit under this Act: provided that in case of local improvements being made by the Corporation in front of or along the line of property owned by the Dominion Government, the Commission may out of such moneys contribute thereto such share of the cost, or may perform such portion of such local improvements, as is agreed upon between the Commission and the Corporation.

In section 8 of the Act it was declared that "all works and undertakings of the Commission under clauses (*a*) and (*b*) of section 7 are to be for the general advantage of Canada".

Section 9 prescribed the power to acquire property as follows:

9. No real property shall be purchased or acquired by the Commission, except with the previous consent of the Governor in Council; and should the Commission be unable to agree with the owner of the property, which they are so authorized to purchase, as to the price to be paid therefor, then the Commission shall have the right to acquire the same without the consent of the owner, and the provisions of *The Railway Act* relative to the taking of lands by railway companies shall, mutatis mutandis, be applicable to the acquisition of such real property by the Commission.

The first amendment to this Act of 1899 was made in 1902 by 2 Edward VII, c. 25, That amendment merely increased the number of Commissioners to eight from four, which four new commissioners it was provided were to be appointed by the Governor in Council and would hold office during pleasure.

The second amendment to this 1899 Act was made in 1903 by 3 Edward VII, c. 45.

For the first time, it was provided that the Commission had power to borrow money from time to time on debentures of the Commission to enable the Commission "to purchase land or to carry into effect any scheme of improvement and undertakings requiring a larger outlay than is available out of the annual income of the Commission or for both purposes."

The third amendment to the 1899 Act was made in 1905 by 4-5 Edward VII.

By section 2 of this 1905 Act the powers of the Commission as prescribed in section 7 of the 1899 Act were enlarged

by deleting paragraph (*b*) of section 7 and inserting a new paragraph (*b*) which reads as follows:

(*b*) do, perform and execute all necessary or proper acts or things for the purposes of preparing, building, improving, repairing, maintaining and protecting all or any of the works of or under the control of the Commission and for preserving order thereon.

Section 11 of the 1899 Act was also amended by adding a subsection (2) to it, that is, as follows:

2. The Commissioners shall on or before the first day of December in each year make to the Governor in Council through the Minister of Finance and the Receiver General an annual report for the information of Parliament, setting forth a description of the nature and extent of the works and undertakings of the Commission for the year ended on the thirtieth day of June in that year, and such other matters as appear to them to be of public interest in relation to the said Commission. The report for the year ended on the thirtieth day of June, 1905, shall cover also the period from the date of the appointment of the Commissioners under the said Act to the thirtieth day of June, 1905. Copies of such annual reports shall be laid before Parliament by the Minister of Finance and Receiver General within the first fourteen days of the next following session thereof.

The fourth amendment to the 1899 Act was made in 1910 by 9-10 Edward VII, c. 45.

By this Act the money authorized to be paid to the Commission for the purpose of the Act was increased to $100,000 and by section 3 thereof the Commission was authorized, subject to the provisions of sections 9 to 14 of the 1899 Act to "expend the sums placed to its credit under the provisions of this Act for all or any of the purposes for which the said Commission is authorized by section 7 of the said...(1899 Act) to expend sums placed at its credit."

By section 4 of this Act the Minister of Finance and the Receiver General were authorized to pay out of the Consolidated Revenue Fund to the corporation of the City of Ottawa, as a contribution to the maintenance of the fire protection service given by the City of Ottawa, the sum of $15,000 annually for a period of ten years from the first day of July 1909.

The fifth amendment to the 1899 Act was made in 1919 by 9-10 George V, c. 62. This Act provided for substantial amendments in certain areas.

For example, the powers were increased. This was provided in section 8 which read as follows:

8. The Commission may,—

(*a*) purchase, acquire and hold real property in the city of Ottawa, or in the vicinity thereof, for the purpose of public parks or

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

Gibson J.

squares, streets, avenues, drives or thoroughfares;

(*b*) do, perform and execute all necessary or proper acts or things for the purpose of preparing, building, improving, repairing, maintaining and protecting all or any of the works of or under the control of the Commission and for preserving order thereon;

(*c*) co-operate with the City in the improvement and beautifying of the said city, or the vicinity thereof, by the acquisition, maintenance and improvement of public parks, squares, streets, avenues, drives or thoroughfares in the said city or in the vicinity thereof;

And for all or any of the aforesaid purposes the Commission may expend the whole or any portion of the sums that are placed at its credit under this Act.

Section 9 of this 1919 Act also provided that

9. All works or undertakings of the Commission, under section eight of this Act, are hereby declared to be for the general advantage of Canada.

Section 10 provided for the method by which the Commission might acquire real property. It read as follows:

10. No real property shall be purchased or acquired by the Commission, except with the previous consent of the Governor in Council; and if the Commission is unable to agree with the owner of the property, which it is so authorized to purchase, as to the price to be paid therefor, the Commission shall have the right to acquire the same without the consent of the owner, and the provisions of the *Railway Act* relating to the taking of lands by railway companies shall, *mutatis mutandis*, be applicable to the acquisition of such real property by the Commission.

The sixth amendment to the 1899 Act was made in 1921 by 11-12 George V, c. 43. This Act amended the powers of the Commission prescribed in section 8 of the 1919 Act by adding at the end of paragraph (*a*) thereof, the following:

and, subject to the approval of the Governor in Council, sell or lease any real property of the Commission, not being a portion of any public park or square, street, avenue, drive or thoroughfare, which is not required for purposes of the Commission.

This is the first time that the Commission was given power to sell to a third party any property that the Commission did not require, that is, excess property that had become surplus for any reason.

Then in 1927 there was a substantial change in this legislation. The 1899 Act and all the amendments above referred to were repealed, and the provisions of the 1927 Act were substituted for the provisions of the 1899 Act and all the Acts amending the 1899 Act.

The 1927 Act was referred to as *"The Federal District Commission Act, 1927"*. It was enacted in 17 George V, c. 55.

The new Commission, by statute, was given a new name and was called "The Federal District Commission"; and it consisted of ten members and section 3 prescribed who these Commissioners were to be:

3. There shall be a Commission, to be called "the Federal District Commission", consisting of ten members, of whom nine shall be appointed by the Governor in Council and shall hold office during pleasure and at least one of whom shall be a resident of the City of Hull. One shall be appointed by the Corporation of the City of Ottawa, hereinafter referred to as "the City" and shall hold office for a period of one year from the date of his appointment, or for such period not exceeding three years as shall be determined by by-law duly passed by the City: Provided, however, that if the mayor or an alderman of the City is appointed by the City to be a commissioner he shall cease to hold office as commissioner when he ceased to hold office as mayor or alderman, and the City shall thereupon appoint a commissioner for the unexpired term.

By section 4 of that Act, the Commission was made a body corporate and its powers were prescribed:

4. (1) The Commission shall be a body corporate, and shall have power to make such by-laws, employ such persons, and pay and defray such expenses as are necessary to enable it to carry into effect the purposes for which it is constituted or any of the powers conferred on it by this Act; but no by-laws so made shall come into force or effect until approved by the Governor in Council, and no alteration, modification or repeal of any such by-law shall have any force or effect until approved by the Governor in Council.

(2) Any by-law of the Commission may impose penalties not exceeding fifty dollars, recoverable upon summary conviction, for the infraction of its provisions, and may provide for the imprisonment of offenders in default of payment of such penalties for any term not exceeding two months.

This new body corporate, The Federal District Commission, assumed the rights and liabilities of the previous Commission by virtue of section 20 which read as follows:

20. Subject to the provisions of this Act the Commission shall possess and be vested with all the assets, rights, credits, effects and property, real, personal and mixed, of whatsoever kind and wheresoever situated, belonging to the Ottawa Improvement Commission, and shall pay, discharge, carry out and perform all the debts, liabilities, obligations and duties thereof.

By section 7 of this 1927 Act the powers of the Commission were considerably enlarged and they were not limited to activities concerning the city of Ottawa but the powers included the right to deal with other municipalities. There was, however, no power given to sell or lease any property once acquired by the Commission.

Section 7 of the Act read as follows:

7. The Commission may,—

(*a*) purchase, acquire and hold real property within such area or

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

Gibson J.

district as may from time to time be designated by the Governor in Council for the purpose of public parks or squares, streets, avenues, drives, thoroughfares or bridges;

(b) do, perform and execute all necessary or proper acts or things for the purposes of preparing, building, improving, repairing, maintaining and protecting all or any of the works of or under the control of the Commission, and for preserving order thereon;

(c) co-operate with any local municipality in the improvement and beautifying of the same or the vicinity thereof by the acquisition, maintenance and improvement of public parks, squares, streets, avenues, drives, thoroughfares or bridges in such municipality or in the vicinity thereof;

(d) grant concessions for the maintenance of places of refreshment, amusement or shelter, or for the encouragement of sports and games, upon any property under its administration or control, where in the judgment of the Commission it is advisable in the public interest to do so;

and for all or any of the aforesaid purposes, the Commission may expend the whole or any portion of the sums that are placed at its credit under this Act; Provided that any moneys which may be received by the Commission by way of special grant for the carrying out of any particular work or undertaking shall be expended solely upon such work or undertaking.

By section 8, the Minister of National Revenue was authorized to pay out of the Consolidated Revenue Fund of Canada to the Commission the sum of $250,000 a year and the Commission by section 9 was given certain borrowing powers.

By section 12, all the works or undertakings of the Commission were declared to be works for the general advantage of Canada.

By section 13, no real property was to be purchased or acquired by the Commission, except with the previous consent of the Governor in Council. Power was given also by this section to expropriate property from third parties.

The 1927 Act was amended in 1928 by 18-19 George V, c. 26.

By section 1 of the 1928 Act the power to sell or lease was again given. This was done by adding a new section 7(e) to the 1927 statute which read as follows:

(e) subject to the approval of the Governor in Council, sell or lease any real property of the Commission not being a portion of any public park or square, street, avenue, drive or thoroughfare, which is not required for the purposes of the Commission.

By section 2 of the 1928 Act, the annual grant was reduced to $200,000 per year.

By section 9 of this Act, the National Capital Fund of $3,000,000 was made available for the purposes of the Commission in so far as they related to the purchase of land or the carrying into effect of any scheme of improvements and undertakings requiring a larger outlay than was available under the actual annual income of the Commission.

By section 3 of that Act, section 13 of the 1927 Act was amended and expropriation proceedings were now to be taken under the *Expropriation Act* and not under the provisions of the *Railway Act*. The Commission was empowered to take land for a limited time only or to take a limited estate or interest in any real estate.

The new subsections 13(1) and (2) as amended by this Act read as follows:

13. (1) No real property shall be purchased or acquired by the Commission, except with the previous consent of the Governor in Council; and if the Commission is unable to agree with the owner of the property which it is so authorized to purchase, as to the price to be paid therefor, the Commission shall have the right to acquire the same without the consent of the owner, and the provisions of the *Expropriation Act* shall, *mutatis mutandis,* be applicable to the acquisition of such real property by the Commission.

(2) Any plan and description deposited under the provisions of the *Expropriation Act* may be signed by the Chairman of the Commission or by one of the Commissioners thereof, on behalf of the Commission, and the land shown upon and described in such plan and description so deposited shall thereupon be and become vested in the Commission, unless the plan and description indicates that the land taken is required for a limited time only, or that a limited estate or interest therein is taken; and by the deposit in such latter case the right of possession for such limited time or such limited estate or interest shall be and become vested in the Commission.

This 1927 Act was next amended in 1943 by 7 George VI, c. 27. The only amendment made by this Act was to extend the period of the payment of the annual grants.

The 1927 Act was next amended in 1946 by 10 George VI, c. 51.

By section 3 of this Act the number of Commissioners was increased to nineteen and the method of appointment and who they were to be was changed. This new amendment read as follows:

3. (1) There shall be a Commission to be called the Federal District Commission, consisting of nineteen members.

(2) Seventeen members shall be appointed by the Governor in Council to hold office during pleasure for a period not exceeding five years.

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

Gibson J.

(3) One member shall be appointed by the Corporation of the City of Ottawa, to hold office during pleasure for such period not exceeding five years as the Corporation may by by-law determine.

(4) One member shall be appointed by the Corporation of the City of Hull to hold office during pleasure for such period not exceeding five years as the Corporation may by by-law determine.

(5) Of the members appointed by the Governor in Council one shall be ordinarily resident in each of the nine provinces of Canada.

(6) A retiring member is eligible for reappointment.

(It should be noted that all the provinces of Canada for the first time were given representation on this Commission.)

A new section 3A was also added which prescribed that "The Governor in Council may from time to time designate an area within and in the district surrounding the City of Ottawa to be known as the National Capital District."

By section 4 of this Act, the powers of the Commission were considerably enlarged. Section 4 read as follows:

4. The said Act is further amended by inserting immediately after section six thereof the following section:—

"6A. (1) The Commission shall co-ordinate construction and development work in the National Capital District in accordance with general plans approved from time to time under this Act.

(2) Proposals for the location, erection, alteration or extension of a building or other work by or on behalf of the Government of Canada or by any person on lands owned, leased or otherwise controlled by the Government of Canada in the National Capital District shall be referred to the Commission prior to the commencement of the work.

(3) No building or other works shall be erected, altered or extended by or on behalf of the Government of Canada in the National Capital District unless the site, location and plans thereof have first been approved by the Commission.

(4) No person shall erect, alter or extend a building or other work on land in the National Capital District owned, leased or otherwise controlled by the Government of Canada unless the site, location, and plans thereof have first been approved by the Commission.

* * *

(7) This section does not apply to interior alterations in a work or building."

The right to acquire property for various purposes by section 5 of this Act was also very considerably enlarged. Section 5 read as follows, in part:

(*a*) purchase, acquire and hold real property within the National Capital District for the purpose of public parks or squares, streets, avenues, drives, thoroughfares, bridges or other structures;

* * *

(*c*) co-operate with any local municipality in the improvement and beautifying of the same or the vicinity thereof by the develop-

ment, maintenance or improvement of public parks, squares, streets, avenues, drives, thoroughfares, bridges or other structures in such municipality or in the vicinity thereof;

It should be noted from the above that by this Act it was not necessary to co-operate with any other municipality in the acquisition of any real property for the purposes of the Commission.

Then finally this brings us to the *National Capital Act* which was passed in 1958 by 7 Elizabeth II, c. 37.

This Act was an entirely new Act and it repealed the *Federal District Commission Act* of 1927 and all amendments thereto.

The main provisions of the *National Capital Act* are as follows:

It is provided in section 1 that the Act may be cited as the "National Capital Act".

In section 2(*j*), the National Capital Region is prescribed and defined and it was provided that the powers of the Commission can now only be exercised within the area of the National Capital Region. This is, therefore, a limitation on its powers which heretofore did not exist.

Section 2(*j*) of the Act reads as follows:

(*j*) "National Capital Region" means the seat of the Government of Canada and its surrounding area, more particularly described in the Schedule;

The constitution of the Commission is set out in section 3. By it, the number of Commissioners was increased to twenty, all of whom were to be appointed by the Governor General in Council. The City of Ottawa and the City of Hull no longer had the right to appoint a member.

Section 3 reads as follows, in part:

3. (1) There shall be a corporation, to be called the National Capital Commission, consisting of twenty members, each of whom shall be appointed by the Governor in Council to hold office during pleasure for a term not exceeding four years.

* * *

(3) The members, other than the Chairman and Vice-Chairman, shall be appointed as follows:

(*a*) at least one member from each of the ten provinces;

(*b*) at least two members from the city of Ottawa;

(*c*) at least one member from the city of Hull;

(*d*) at least one member from a local municipality in Ontario other than the city of Ottawa; and

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

Gibson J.

(e) at least one member from a local municipality in Quebec other than the city of Hull.

There is a statutory definition of "local municipality" referred to in section 3(3)(e) above quoted. It is contained in section 2(g) of the Act and it reads as follows:

(g) "local municipality" means a municipality wholly or partly within the National Capital Region;

It is provided in section 4 that the Commission shall be the agent of Her Majesty, thereby removing any suggestion of ambiguity in its status. Section 4 reads as follows:

4. (1) The Commission is, for all purposes of this Act, an agent of Her Majesty, and its powers under this Act may be exercised only as an agent of Her Majesty.

(2) The Commission may, on behalf of Her Majesty, enter into contracts in the name of Her Majesty or in the name of the Commission.

(3) Property acquired by the Commission is the property of Her Majesty and title thereto may be vested in the name of Her Majesty or in the name of the Commission.

(4) Actions, suits or other legal proceedings in respect of any right or obligation acquired or incurred by the Commission on behalf of Her Majesty whether in its name or in the name of Her Majesty, may be brought or taken by or against the Commission in the name of the Commission in any court that would have jurisdiction if the Commission were not an agent of Her Majesty.

In section 5, it is prescribed that the head office of the Commission shall be at the city of Ottawa; and that the Commission shall meet at least three times a year in the city of Ottawa; and that it may meet at such other times in the National Capital Region as the Commission deems necessary.

In section 8, the method of appointing officers and employees of the Commission and consultants and advisers is provided for, and all appointments are subject to the approval of the Governor in Council in the manner therein provided.

Under section 9(3), it is provided that the Commission may appoint a National Capital Planning Committee and such other committees as it considers necessary or desirable for the administration of the Act.

(This is the first time there was a statutory recognition of a National Planning Committee. Heretofore the appointment of such a committee was done by by-law. (See p. 28 of the Statement of Facts)).

Section 10 of the Act, as indicated earlier in these reasons, sets out the objects, purposes and powers of the Commission.

In section 10(*c*) the words "other works" is a new phrase and gives additional rights.

In section 10(*e*), the Commission is authorized to "co-operate or engage in joint projects with, or make grants to, local municipalities or other authorities for the improvement, development or maintenance of property". (In 1927, in section 7, the power given was to co-operate in the acquisition.)

Section 11 charges the Commission with the co-ordination of the development of the public lands in the National Capital Region and prescribes the method by which they may accomplish this. Section 11 reads as follows:

11. (1) The Commission shall, in accordance with general plans prepared under this Act, co-ordinate the development of public lands in the National Capital Region.

(2) Proposals for the location, erection, alteration or extension of a building or other work by any person on public lands, or by or on behalf of a department, in the National Capital Region shall be referred to the Commission prior to the commencement of the work.

(3) No building or other work shall be erected, altered or extended by or on behalf of a department in the National Capital Region unless the site, location and plans thereof have first been approved by the Commission.

(4) No person shall erect, alter or extend a building or other work on public lands in the National Capital Region unless the site, location and plans thereof have first been approved by the Commission.

(5) In any case where the Commission does not give its approval under this section the Governor in Council may give such approval.

(6) Any approval given under this section may be subject to such terms and conditions as are considered desirable by the Commission or the Governor in Council, as the case may be, respecting the erection, alteration, extension or maintenance of the building or other work in relation to which the approval was given.

(7) This section does not apply to interior alterations in a work or building.

By section 12, the Commission is given power to relocate railways and related facilities. Section 12 reads as follows:

12. (1) The Commission may construct in the National Capital Region, in accordance with plans prepared under this Act, a railway and related facilities.

(2) The Commission may sell, convey or lease the railway and related facilities, or any portion thereof, to any railway company or enter into agreements with any railway company for the sole, joint or several use of such railway or facilities or portion thereof and for the maintenance by

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

Gibson J.

such company of such railway or facilities or portion thereof and the operation thereof.

(3) The provisions of the *Railway Act*, with such modifications as circumstances require, are applicable to and in respect of the exercise of the powers conferred by this section, but nothing in this section shall be deemed to constitute the Commission a railway company except for the purpose of carrying out the provisions of subsection (2).

The expropriating power of the Commission, as above set out in part in these reasons, is contained in section 13. It is to be noted that there is no power to take property for a limited time or to take a limited right or estate in any property as there was in the 1928 statute.

Section 13 reads in full as follows:

13. (1) The Commission may, with the approval of the Governor in Council, take or acquire lands for the purpose of this Act without the consent of the owner, and, except as otherwise provided in this section, all the provisions of the *Expropriation Act*, with such modification as circumstances require, are applicable to and in respect of the exercise of the powers conferred by this section and the lands so taken or acquired.

(2) For the purposes of section 9 of the *Expropriation Act* the plan and description may be signed by the Chairman or General Manager of the Commission.

(3) The compensation for lands taken or acquired under this section, or for damage to lands injuriously affected by the construction of any work by the Commission, shall be paid by the Commission as though the lands were acquired under the other provisions of this Act, and all claims against the Commission for such compensation or damage may be heard and determined in the Exchequer Court of Canada in accordance with sections 46 to 49 of the *Exchequer Court Act*; but nothing in this subsection shall be construed to affect the operation of section 34 of the *Expropriation Act*.

By section 14, a limitation was imposed on the disposal of any property acquired by the Commission. Section 14 reads as follows:

14. Except with the approval of the Governor in Council, the Commission shall not

(*a*) dispose of any real property for a consideration in excess of a value of ten thousand dollars;

(*b*) acquire any real property for a consideration in excess of a value of twenty-five thousand dollars; or

(*c*) enter into an agreement or lease enduring for a period in excess of five years.

Section 15(1) of the Act empowers the Commission to make payments of taxes to municipalities. Section 15 reads as follows:

15. (1) The Commission may pay grants to a local municipality not exceeding the taxes that might be levied by the municipality in respect of

any real property of the Commission if the Commission were not an agent of Her Majesty.

(2) Subsection (1) does not apply to parks or to squares, highways or parkways or to bridges or similar structures.

(3) The Commission may pay grants to the appropriate authorities in respect of real property of the Commission situated in Gatineau Park not exceeding in any tax year the amounts estimated by the Commission to be sufficient to compensate such authorities for the loss of tax revenue during that tax year in respect of municipal and school taxes by reason of the acquisition of the property by the Commission.

Section 16 sets up a separate National Capital Fund and this is the first time this was done by statute for the Commission.

By section 23, all works of the Commission, were declared to be for the general advantage of Canada. Section 23 reads as follows:

23. All works of the Commission, whether constructed or executed before or after the coming into force of this Act, are hereby declared to be for the general advantage of Canada.

The word "work" referred in the said section 23 is defined in section 2(*o*) of the Act. It reads as follows:

(*o*) "work" means any work, structure or undertaking.

Section 26 provides for the substituting of the Commission under this Act for the Federal District Commission in any heretofore existing acts, orders, regulations, contracts, etc. Section 26 of the Act reads as follows:

26. Whenever in any Act, order, regulation, deed, contract, lease or other document, the Federal District Commission is mentioned or referred to, there shall, in each and every case, be substituted the National Capital Commission.

Section 27 also provides for certain transmittal powers to the Commission. Section 27 reads as follows:

27. The corporation referred to in section 3, and the corporation established by the *Federal District Commission Act* are hereby declared for all purposes to be one and the same corporation.

All powers, rights, liabilities, therefore, of the Federal District Commission under the 1927 Act and all amendments thereto are now transferred to the National Capital Commission under the *National Capital Act*.

From this history of legislation culminating in the *National Capital Act*, it may be observed that since 1899 it has always been the object and purpose of the Parliament of Canada to plan and implement plans from time to time to make the seat of the Government of Canada some place different and distinct from all other areas in the nation.

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

Gibson J.

7. The legislative history of *The Planning Act* (Ontario).

The present planning Act of the Province of Ontario is *The Planning Act,* R.S.O. 1960, c. 296, as amended by 1960-1, c. 76; 1961-62, c. 104; 1962-63, c. 105, and 1964, c. 90 (in force in part).

The first planning Act in the Province of Ontario was enacted in 1946, R.S.O. 1946, c. 41. This 1946 Act was subsequently amended by 1947, c. 75; by 1949, c. 71 (consolidated in R.S.O. 1950, c. 53); by 1952, c. 775; by 1953, c. 80; by 1954, c. 71; by 1955, c. 279, and by 1959, c. 71. Then there was enacted the present Act in 1960; and the amending Acts, as set out in the previous paragraph, were enacted.

In reviewing the provisions of these planning Acts, it may reasonably be inferred that in pith and substance the object of this provincial legislation from 1946 to date has been planning and regulating the use of land in a manner designed to secure the health, safety, convenience and welfare of the inhabitants of the particular planning area.

For example, the functions of local planning boards are directed solely to planning of a purely local or private nature; "official plans", as another example, must be designed solely with the above purpose as their goal.

In the 1959 *Planning Act,* S. of O. 1959, c. 71, there was transferred to *The Planning Act* from *The Municipal Act* the provisions giving municipalities the power to pass zoning or land use by-laws. (In the 1960 *Planning Act* this power is set out in section 30.)

The power to enact zoning of land use by-laws had been in *The Municipal Act* for as long a time as there existed a predecessor Act to the *National Capital Act,* which latter date is 1899. This power in fact predates 1899.

In *The Municipal Act,* R.S.O. 1897, c. 223, s. 631, for example, it was provided that any city having a population of 50,000 or more could pass a general by-law prescribing the minimum width of streets, lanes, alleys or any public places within the municipality wherein dwelling houses could be erected or occupied and the minimum area of vacant land to be attached and used with any dwelling house thereafter to be erected as the court yard or curtilage and the mode of erection of buildings occupied or intended

to be occupied as dwelling houses within the municipality or within any area or areas thereof to be defined by the said by-law or by any other by-law which may from time to time alter, amend or repeal such by-law.

But a municipality in the Province of Ontario was not given the right to adopt an official plan for its municipality or a joint official plan with one or more other municipalities of their joint area until the enactment of the 1946 *Planning Act*.

Therefore, until 1946, it was not the practice for a municipality to draw up and adopt a general plan and then to implement such plan by way of passing a zoning or land use or building by-law, except in so far as it was necessary to have in mind some general plan in order to draft any such zoning or land use or building by-law.

Since the passing of the first *Planning Act* in 1946, however, although it is not imperative for any municipality to adopt an official plan within the meaning of that Act, nevertheless, the whole scheme of this original *Planning Act*, and its successor Act today, and the goal of any official plan adopted pursuant to such legislation and the implementation of any plan is "to secure the health, safety, convenience or welfare of the inhabitants of the area".

Not only, therefore, must any zoning or land use or building by-law or any other planning decision now made by any Province of Ontario municipality or by one such municipality jointly with any other municipality or municipalities have such as its sole goal, but in fact, if any such by-law is passed which purports to have any different goal it is illegal because it is beyond the powers of any such municipality to enact under the delegated authority given to it by section 30 of the present *Planning Act*.

It may therefore be inferred from the history of the planning and land use legislation in the Province of Ontario that its objects and purposes have been solely directed to assisting municipalities to carry out in the best way possible their traditional roles, namely, for example, the provision of fire and police protection, water and sewer services, street cleaning and repairs, garbage collection, establishment of parks and recreation areas, the provision of local health and welfare services, schools, standards of construction of buildings, etc.

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

Gibson J.

8. A consideration of the problems of the suburbs (the approaches to an urban center).

There is a great and particular emphasis in the Master (Greber) Plan adopted under *The National Capital Act*, on the suburbs, but none in particular is called for under *The Planning Act* (Ontario) or any legislation enacted pursuant to any enabling power granted by it.

As disclosed fully in the evidence, the problem of suburbs is a general problem of planning in any large city. The problem is how to cope with suburbs.

One of the main objects and purposes of establishing a green belt in the National Capital Region (and establishing part of this green belt involved the acquisition of the defendant's property) is directed to solving the problem of the suburbs in the National Capital Region.

It is abundantly clear from the evidence that one of the most difficult problems in devising a satisfactory economic and social layout of the National Capital Region concerns the suburbs.

The approach to any great city is a most vital matter, Without proper approaches no city can become a truly great city.

If the National Capital of Canada is to be developed in accordance with the national significance of Canada, it therefore may be reasonably inferred that it is imperative that the problem of the approaches to it must be solved in a satisfactory way.

(In this connection it should be observed that the problem of the approaches to cities is a world-wide problem as is indicated in the evidence and it has not been solved in cities like Montreal and Detroit, but it has been solved, for example, in the western approach to Philadelphia, in the approach to Berlin and in the northern development of New York City, and in many parts of Greater London.)

The evidence discloses that, in the main, speculation and neglect are responsible for the decay that does occur in the approaches to many cities.

It may, therefore, be reasonably inferred that it is of the utmost importance that a situation that permits irrational and disgraceful treatment of congested suburban approaches be eliminated so that uneconomical and social disorder

will not encircle and dishonour the National Capital of Canada. And it may be reasonable to assume that this must be done if this national purpose is to be attained.

Solving the problem of the suburban approaches is one of the main purposes in establishing a green belt area.

Associated with and as part and parcel of solving this problem of the suburbs and the approaches to the central urban core of the National Capital Region of Canada by the establishing of a green belt area, the National Capital Commission has taken other steps which are complementary thereto, namely, steps to reestablish rail freight facilities, railway tracks, branch lines of the railways, and Union Station, so that this urban central core of Ottawa will be free of these facilities and the difficulties they create. This serves to point up the objects and purposes of implementing this part of the Master (Greber) Plan.

(The railway relocation program as the evidence indicates is the key of the plan of the National Capital. Originally the railway facilities were organized strictly in keeping with the demands of the railroad operations and their immediate economy to the detriment of the normal growth and life of the Ottawa and area community.)

9. The parts of the Master (Greber) Plan of the National Capital Commission that have been implemented.

Parts of the whole Master (Greber) Plan have already been implemented. For example, between 1945 and 1955, the following joint projects have been carried out or initiated under the Master Plan:

(a) Federal District Commission Joint Projects with Ottawa and Hull
  (i) The Mackenzie King Bridge,
  (ii) Fairy Lake Parkway.
(b) City of Ottawa—Federal District Commission Joint Projects
  (i) Sussex Drive and Bytown Bridges,
  (ii) The Dunbar Bridge,
  (iii) The Queensway limited access roadway,
  (iv) Carling Avenue widening,
  (v) "Advance of Need" municipal sewer and waterworks projects.

As to this also, the joint committee of the Senate and the House of Commons appointed to review and report upon the progress and programme of the Federal District Commission (predecessor to the National Capital Commission) in developing and implementing the plan of the National

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

Gibson J.

Capital, reported in 1956, and selected six works in the whole general plan for special consideration, *viz.*:

(1) the elimination of the causes of pollution in the Ottawa River,

(2) the completion of the ten-mile section of the essential elements of the Queensway within the City of Ottawa,

(3) the completion of the removal of the railroad tracks from the Interprovincial Bridge, the abandonment of the C.P.R. main line along the Ottawa River west of the Ottawa West Station, the elimination of many dangerous level crossings in the west end of the Capital, the renovation of the Union Station and the removal of the local freight sheds and yards to a site immediately east of Hurdman's Bridge,

(4) a new bridge across the Ottawa River servicing the downtown sections of Ottawa and Hull,

(5) the establishment of the Green Belt, and

(6) the Gatineau Park.

It may be reasonable to infer further that not only does the Master (Greber) Plan refer to matters which are calculated to make the seat of the Government of Canada a great area, but also that they are not directly, except incidentally, related to the health, safety and welfare of the inhabitants resident in the National Capital Region.

So much for the consideration of the federal and provincial objectives of the community physical design proposals of their respective general plans.

From a consideration of the foregoing, I am of the opinion that the establishment of a Green Belt in the National Capital Region is the implementation of part of a general plan for the Region, namely, the Master (Greber) Plan, and that such part of the general plan is indivisible from the whole in that it is of the essence of the planning problem of the National Capital of Canada. Such planning problem consists of many indivisible parts, such as the decentralization of population, the controlling of the suburbs or the approaches, providing for or causing the establishment of satellite towns, placing of public buildings, providing for parkway development, the Gatineau Park, the main arterial road system, and as stated, the relocation of the railway and railway facilities and many other matters.

The answer to the first part of this enquiry, I am of opinion, is, therefore, that the matter in respect to which the *National Capital Act* was passed by Parliament is one of planning in its two-fold aspects, namely, the preparation of plans, and the implementation of such plans; and that the language employed by Parliament in section 10 of the *National Capital Act* aptly describes this matter in its two fold aspect. It does so in this way:

(a) *by authorizing the preparation of general plans in*

10. (1) The objects and purposes of the Commission are to prepare plans for and assist in the development, conservation and improvement of the National Capital Region in order that the nature and character of the seat of the Government of Canada may be in accordance with its national significance.

(b) *by authorizing the implementation of general plans in*

10. (2) The Commission may for the purposes of this Act,

(*a*) acquire, hold, administer or develop property; . . .

The second part of this enquiry is concerned with ascertaining whether this matter is in the federal or provincial field, that is with deciding whether the matter should be classified as "coming within" or as "not coming within" the classes of subjects assigned to the Parliament of Canada under section 91 of the *B.N.A. Act.*

In reaching a decision on this point, it is not necessary to consider the matter of planning in relation to its first aspect, namely the preparing of general plans (section 10(1) of the Act) because as was mentioned above, no legal results flow from the preparation of such plans by the National Capital Commission and therefore no constitutional question for decision has arisen with regard thereto.

The question for decision therefore is concerned solely with the constitutional right of the Parliament of Canada to confer on the Federal Goverment the powers contained in section 10(2) of the Act to implement such plans.

I therefore come now to discuss and decide whether the matter of the *National Capital Act* falls within section 91 or 92 of the *B.N.A. Act.*

Probably the most important principle to be applied in reaching such a decision is the double aspect principle.

Briefly stated, this principle may be put this way:

Some matters which in one aspect and for one purpose fall within section 92, may in another aspect and for another purpose fall within section 91 of the *B.N.A. Act.*

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

Gibson J.

Viscount Haldane in the case of *John Deere Plow v. Wharton*[1] stated it in these words:

> It must be borne in mind in construing the two sections that matters which in a special aspect and for a particular purpose may fall within one of them may in a different aspect and for a different purpose fall within the other. In such cases the nature and scope of the legislative attempt of the Dominion or the Province, as the case may be, have to be examined with reference to the actual facts if it is to be possible to determine under which set of powers it falls in substance and reality.

In the cases of *Russell v. The Queen*[2] and *Hodge v. The Queen*[3] the character of this doctrine was first defined. In *A.G. Ontario v. Canada Temperance Federation*[4] Viscount Simon stated the test to be employed in solving the problem of whether the matter falls within section 91 or 92 in this language:

> In their Lordships' opinion the true test must be found in the real subject matter of the legislation: if it is such that it goes beyond local or provincial concern or interests and must in its inherent nature be the concern of the Dominion as a whole (as, for example, in the *Aeronautics* case . . . and the *Radio* case . . .) then it will fall within the competence of the Dominion Parliament as a matter affecting the peace, order and good government of Canada, though it may in another aspect touch on matters specially reserved to the provincial legislatures.

In *Johannesson v. West St. Paul*[5], the Supreme Court of Canada applied Lord Simon's test and held that a zoning by-law which purported to prevent the erection of an airport, which was passed pursuant to the purported enabling powers contained in section 921 of the *Municipal Act*, R.S.M. 1940, c. 141, was of no legal effect because the said enabling legislation was in relation to aeronautics and, therefore, beyond the competency of the Legislature of Manitoba to enact.

This was planning legislation, and planning legislation speaking generally, in one aspect with within the competency of the Legislature of Manitoba to enact, but this particular planning legislation in this particular aspect was not.

And the enactment of this zoning by-law by the Municipality of West St. Paul was a purported implementation of planning in what, again speaking generally, in one aspect was a subject in relation to which competent municipal legislation can be passed, but not in the aspect appearing on the facts of the *Johannesson* case.

Following this case, section 4 of the *Aeronautics Act*, R.S.C. 1952, c. 2, was amended in 1952 (by R.S.C. 1952, c.

[1] [1915] A.C. 330 at 339. [2] (1882) 7 A.C. 829. [3] (1883) 9 A.C. 117.
[4] [1946] A.C. 193. [5] [1952] 1 S.C.R. 292.

302,) to authorize the Minister to "make regulations with respect to

(*j*) the height, use and location of buildings, structures and objects, including objects of natural growth, situated on lands adjacent to or in the vicinity of airports, for purposes relating to navigation or aircraft and use and operation of airport, and including for such purposes, regulations restricting, regulating or prohibiting the doing of anything or the suffering of anything to be done on any such lands, or the construction or use of any such building, structure or object."

Section 4 was also amended in other respects, providing for so-called "zoning regulations" under paragraph (*j*) set out above. Subsections (8) and (9) provided.

(8) Every person whose property is injuriously affected by the operation of a zoning regulation is entitled to recover from Her Majesty as compensation, the amount, if any, by which the property was decreased in value by the enactment of the regulation, minus an amount equal to any increase in the value of the property that occurred after the claimant became the owner thereof and is attributable to the airport.

(9) No proceedings to recover any compensation to which a person may be entitled under section (8) by reason of the operation of a zoning regulation shall be brought except within two years after a copy of the regulation was deposited pursuant to subsection (6) or (7).

Under this authority the Governor General in Council on the recommendation of the Minister of Transport approved *The Toronto Malton Airport Zoning Regulations* (1 S.O.R. Consolidation 1955, 37).

The Regulations provide in part:

3. These regulations apply to all lands adjacent to or in the vicinity of Toronto Airport, Malton, Ontario, including public road allowance, as more particularly described in the Schedule hereto.

4. (1) No person shall erect or construct, on any land to which these regulations apply, any building, structure or object or any addition to any existing building, structure or object, the highest point of which exceeds in elevation the elevation at that point of such of the surfaces hereinafter described as project: immediately over and above the surface of the land upon which such building, structure or object is located, namely,

(*a*) a horizontal surface, the outer limits of which are at a horizontal radius of 13,000 feet more or less;

(*b*) the approach surfaces abutting each end of the strip designated as 10-28, the strip designated as 14-32 and the strip designated as 05-23, and extending outward therefrom, the dimensions of which approach surfaces are 600 feet on each side of the centre line of the strip at the strip ends and 2,000 feet on each side of the projected centre line of the strip at the outer ends, the said outer ends being 200 feet above the elevations at the strip ends, and measured horizontally, 10,000 feet from the strip ends; and

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

Gibson J.

(c) the several transitional surfaces, each rising at an angle determined on the basis of a ratio of one foot vertically for every seven feet measured horizontally from the outer lateral limits of the strips and their abutting surfaces, as shown on a Plan No. T724 dated December 17, 1952, and revised February 20, 1953, of record in the Department of Transport.

(2) Where any building, structure or object on land to which these regulations apply exceeds the limits in elevation specified in subsection (1), the Minister may order the owner or occupier of the land to remove, demolish or modify such buildings, structure or object or do any act or thing necessary to ensure that such building, structure or object complies with the limits in elevation so specified and may, in any such order, specify the time within such removal, demolition, modification, act or thing shall be done.

5. No person shall operate or cause to be operated on any lands to which these regulations apply any machine, device, contrivance or thing after being notified by the Minister that, in the opinion of the Minister, the machine, device, contrivance or thing causes or is likely to cause, by the emission of light, smoke, noise or fumes, a hazard or obstruction to aircraft using the airport.

[The short title and interpretation sections and the schedule describing the lands have been omitted. Section 4(2) and section 5 were revoked by S.O.R./55-331 and S.O.R./55-402].

Under this authority also the Governor General in Council on the recommendation of the Minister of Transport approved the Ottawa Airport Zoning Regulations (Uplands Airport) on the 23rd January, 1964 (S.O.R. 64-41).

These Regulations apply to certain lands in the Township of Gloucester and the Township of Nepean and provide in part:

1. These Regulations may be cited as the *Ottawa Airport Zoning Regulations*.

2. In these Regulations,

(a) "airport" means Ottawa Airport, Ottawa, in the Province of Ontario;

(b) "airport reference point" means the point determined in the manner set out in Part I of the Schedule;

(c) "approach surface" means an imaginary inclined plane the lower end of which is a horizontal line at right angles to the centre line of the strip and passing through a point at the strip end on the centre line of the strip;

(d) "horizontal surface" means an imaginary horizontal plane located 150 feet above the assigned elevation of the airport reference point;

(e) "Minister" means the Minister of Transport;

(f) "strip" means a rectangular portion of the land area of the airport, being 2000 feet in width including the runway, especially prepared for the take-off and landing of aircraft in a particular direction; and

(g) "transitional surface" means an imaginary inclined plane extending upward and outward from the outer lateral limits of the strip and its approach surface to an intersection with the horizontal surface or other transitional surfaces.

3. For the purpose of these Regulations the airport reference point is deemed to be 348 feet above sea level.

4. These Regulations apply to all the lands adjacent to or in the vicinity of Ottawa Airport, Ottawa, Ontario, including public road allowances, as more particularly described in Part II of the Schedule.

5. No person shall erect or construct, on any land to which these Regulations apply, any building, structure or object or any addition to any existing building, structure or object, the highest point of which exceeds in elevation the elevation at that point of such of the surfaces hereinafter described as projects immediately over and above the surface of the land upon which such building, structure or object is located, namely: (Description)

(In both these cases it should be observed, and as alluded to earlier in these reasons the Federal Government pays compensation pursuant to the provisions of the *Aeronautics Act* to any owner of property whose title is diminished within the meaning of this Act, by such zoning regulations. This, as mentioned earlier also, is something that is never done under any Ontario provincial or municipal planning regulation or zoning.)

From this it is clear that part of the matter in respect to which the *Aeronautics Act* was passed by the Parliament of Canada concerns planning, and approvals of these zoning regulations in the cases of these two airports are examples of implementation of such planning.

This clearly exemplifies the proposition that planning and the implementation of planning are subjects in respect to which the double aspect doctrine can apply.

In the instant case the implementation of planning by the plaintiff, the National Capital Commission, by expropriating the defendant's property for part of a green belt purports to have been done pursuant to a plan whose objects and purposes are for the "development, conservation and improvement of the National Capital Region in order that the nature and character of the seat of the Government of Canada may be in accordance with its national significance."

This is positive planning as defined earlier in these reasons.

Whether or not an "official plan" within the meaning of section 1(*h*) of *The Planning Act* has been adopted by a municipality in the Province of Ontario (and the Township of Gloucester has not adopted an "official plan" except for certain streets and parks) any zoning or land use by-law passed by such municipality must have as its objects and

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

Gibson J.

purposes the securing of "the health, safety, convenience or welfare of the inhabitants of the area", and if any such by-law does not, it is not valid because it is beyond the intent and scope of the enabling legislation delegating power to such municipalities to pass such by-laws.

This is negative planning as defined earlier in these reasons.

The conclusion, therefore, is irresistible that the two above-mentioned aspects of the matter in relation to the implementation of planning or the making of a planning decision are quite distinct and different. The objects and purposes of implementing a plan for the development, conservation and improvement of the National Capital Region "in order that the nature and character of the seat of the Government of Canada may be in accordance with its national significance" is "such that it goes beyond local or provincial concern or interests and must in its inherent nature be the concern of . . . (Canada) . . . as a whole." (Compare the language of Viscount Simon at p. 206 in *A.G. Ontario v. Canada Temperance Federation*[1]. It is a class of subject which has the dimensions to affect the body politic of Canada as a nation.

The words "national significance" in s. 10(1) of *The National Capital Act* are employed in describing the goal sought to be obtained for the "nature and character of the seat of the Government of Canada".

These words were understood by three of Canada's great Prime Ministers, Sir Wilfrid Laurier, Sir Robert Borden and Mackenzie King from 1899, and by the persons who were employed by the Government of Canada to investigate, to report and to act. And it has been understood by every succeeding Prime Minister down to the present time.

Canada is a nation as was exemplified this year when the Parliament of Canada adopted a national flag for the first time.

The Royal Proclamation of this flag reads in part:

> We do by this Our Royal Proclamation appoint and declare as the National Flag of Canada, from and after the fifteenth day of February, in the Year of Our Lord, one thousand nine hundred and sixty-five . . .
>
> * * *
>
> All of which Our Loving Subjects and all others whom these Presents may concern are hereby required to take notice and to govern themselves accordingly. * * *

[1] [1946] A.C. 193.

This national flag symbolizes the national significance of Canada.

The National Capital Region belongs to the nation in the sense that it can be said that the aspirations, hopes, attainments and way of life of the citizens of Canada are exemplified to themselves and to all the visitors to Canada in the nature and character of the seat of the Government of Canada. Concern for and interest in the seat of the Government of Canada are the affair of all the citizens of Canada and of all ten provinces. A worthy seat of Government can be achieved by the adoption and implementation of a general plan under the provisions of section 10 of the *National Capital Act*.

Every country must have a capital worthy of it, and the evidence indicates that throughout history this has always been recognized. As indicated earlier, the national significance of ancient Greece was exemplified in its capital Athens, of Italy, in its capital Rome, of France, in its capital Paris, of Great Britain, in its capital London, and of the United States, in its capital Washington.

In the result, therefore, I am of opinion that the words "national significance" are meaningful and are apt in describing the goal sought to be attained for the nature and character of the seat of the Government of Canada.

Counsel for the defendant submitted that this was a matter of "Property and Civil Rights in the Province" of Ontario. The question raised by this submission is whether the disputed Act deals with a single matter of national concern or several identical matters each of local or provincial concern in one of the provinces.

In *Gold Seal Limited v. Dominion Express Company and A.G. Alberta*[1] Duff, J., as he then was, used these words at p. 460 in dealing with a similar argument:

> The fallacy lies in failing to distinguish between legislation affecting civil rights and legislation "in relation to" civil rights. Most legislaton of a representative character does incidentally or consequently affect civil rights. But if it is not legislation "in relation to" the subject matter of "property and civil rights" within the provinces, within the meaning of section 92 of the British North America Act, then that is no objection although it be passed in exercise of the residuary authority conferred by the introductory clause.

Viscount Simon in *A.G. Saskatchewan v. A.G. Canada*[2]

[1] [1921] S C.R. 424.

[2] [1949] A.C. 110 at 123.

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

Gibson J.

quoted with approval the language of Rand, J., enunciating the same principle:

> But, as Rand, J. points out, there is a distinction between legislation "in relation to" agriculture and legislation which may produce a favourable effect on the strength of stability of that industry. Consequential effects are not the same thing as legislative subject matter. It is "the true nature and character of the legislation"—not its ultimate economic results—that matters . . .

In 1956, *Pinto Uranium Mines Limited v. Ontario Labour Relations Board*[1] McLennan, J., quoted these words of Lord Simon and applied this principle.

In 1964, in this Court, in *Porter v. The Queen*[2] Jackett, P., held, in relation to the object of the legislation in that case, namely, *The Government Annuities Act*, that although it may be legislation affecting the classes of subjects enumerated in s. 92, it was not legislation in relation to any of such classes of subjects; and stated:

> Here Parliament expressly declared that the scheme was "in the public interest" and there are no circumstances that would constrain the Courts to hold that that declaration is colourable.

In this case it is possible that the implementing of any plan by the National Capital Commission under s. 10(2) of the *National Capital Act* may affect property and civil rights, and also matters of a local or private nature within the provinces of Ontario and Quebec; and it may also affect zoning and land use regulations passed by the various municipal corporations therein pursuant to valid provincial authority delegated to them, in the National Capital Region, but the true character of the *National Capital Act* is not legislation "in relation to" such classes of subjects.

The language of Jackett, P., quoted from the above case, relating to the declared objects of the subject legislation in that case, applies with equal force to the title words and to the words of s. 10(1) of the *National Capital Act*.

Counsel for the defendant also submitted that there must be a national emergency before the Parliament of Canada can enact a law in relation to a matter that does not fall within one of the enumerated heads of s. 91.

In *A. G. Ontario v. Canada Temperance Federation*[3] it was held that it was not necessary that there be unusual conditions constituting an emergency before the Parliament

[1] [1956] O.R. 862. [2] [1965] 1 Ex. C.R. 200.
[3] [1946] A.C. 193.

of Canada can exercise its legislative jurisdiction under the legislative power conferred on it by the peace, order and good government clause by s. 91; and Viscount Simon at p. 206 expressly negatives any suggestion that the contrary was the decision in *Toronto Electric Commissioners v. Snider*[1] when he used these words:

> It is to be noticed that the Board in Snider's case nowhere said that *Russell v. The Queen* (7 App. Cas. 829) was wrongly decided. What it did was to put forward an explanation of what it considered was the ground of the decision, but in their Lordships' opinion the explanation is too narrowly expressed. True it is that an emergency may be the occasion which calls for the legislation itself, but it is the nature of the legislation itself, and not the existence of emergency, that must determine whether it is valid or not.

There is nothing in *Natural Products Market Act et al*[2], especially the words of Duff, C. J. at 419, in the *Labour Convention Case*[3] which the Privy Council stated it hoped would form the *locus classicus* of the law on this point, *Margarine Reference, Canadian Federation of Agriculture v. Attorney General of Quebec et al.*[4], *or Reference Concerning Japanese Canadians*[5] which changed the jurisprudence in respect to this emergency theory enunciated by Viscount Simon and quoted above. There may be cases in which an emergency may be both the occasion and the justification for legislation by the Parliament of Canada. But this proposition is something entirely different from the submission that the opening words of s. 91 confer only an emergency power.

The legislation, in the subject case, was not the occasion of and needs no justification of emergency.

In the result, therefore, I am of opinion that the double aspect principle applies to the facts of this case and that the matter should be classified as coming within the classes of subjects assigned to the Parliament of Canada under s. 91 of the *B.N.A. Act,* that is under the power contained in the words constituting Parliament's sole grant of legislative power, viz., "to make laws for the peace, order and good government of Canada in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces".

The National Capital Commission, therefore, has power to implement its general plans provided always, of course,

[1] [1925] A.C. 396. [2] [1936] S.C.R. 398. [3] [1937] A.C. 326 at 353.
[4] [1951] A.C. 179. [5] [1947] A.C. 88.

1965

NATIONAL CAPITAL COMMISSION v. MUNRO

Gibson J.

such plans are for "the development, conservation and improvement of the National Capital Region in order that the nature and character of the seat of the Government of Canada may be in accordance with its national significance."

It also follows that such implementation may be done by purchase, by expropriation, or by gift to it. The right to expropriate is not the issue before the Court. The role of the Court is to determine the right of the Parliament of Canada in this matter to implement its general plan for the National Capital Region. But the Parliament of Canada is the sole authority to determine the needs to be served by s. 10(2) of the *National Capital Act*. This principle admits of no exception merely because the power of expropriation is involved. The power of expropriation in s. 13 is merely one means to accomplish such needs; the power to accept gifts in s. 20 is another means.

It is also not the role of the Court to say whether or not the *National Capital Act* could have been drafted better to achieve its national objectives. The Court in this case is concerned only with the validity of the power under which the National Capital Commission purported to expropriate the subject property of the defendant.

The Court would have a role to play, however, if the exercise of this power of expropriation was colourable.

It was suggested by counsel for the defendant that the power in s. 10(2)(*b*) of the *National Capital Act* may be a colourable attempt to authorize expropriation for purposes of re-sale under the guise of planning legislation.

In essence it is a submission that the National Capital Commission in respect to the green belt area proposes and is empowered to embark on a program which in some jurisdictions is referred to as excess condemnation (expropriation).

Such use of expropriation proceedings may take one of the following forms:

(1) expropriation for the purpose of removal and replotting of odd-shaped remnants of land;

(2) the taking of abutting land so that planning restrictions may be imposed to protect a public improvement from inharmonious environment;

(3) the taking of surplus lands so that a profit may be

obtained upon re-sale at the values enhanced by the completion of the project.

In my opinion, all of these uses are within the legal competence of the National Capital Commission under its power contained in s. 13 of the *National Capital Act* provided any acquisition of lands is made in good faith for the purposes set out in s. 10(1). On the abandonment of such purposes, if such abandonment is not part of a colourable scheme, the National Capital Commission, subject to the provisions of s. 14, may sell such lands for private use and no right or interest remains in the original owners. There is also no obligation on the part of the National Capital Commission to continue any particular use of lands after the acquisition of the same by it pursuant to s. 13 of the Act, and therefore no cause of action against the National Capital Commission can arise at any time in favour of the original owners of any lands by reason of the abandonment by the latter, in good faith, of any use which constituted the original purpose for the acquisition of such lands.

The conclusion that I reach is, therefore, that the legislative authority of the Parliament of Canada, under the *British North America Act,* 1867 to 1960, does extend to authorizing the expropriation of the lands of the defendant referred to in the proceedings in this action.

The question in the special case stated is, therefore, answered in the negative.

The plaintiff is entitled to its costs from the defendant.