Newsletter



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UPDATE

Tax Terror Takes Hold

There is an undercurrent of desperation throughout Atlantic Canada and whilst it is less pronounced in New Brunswick, it exists there too. Many businesses are hanging on by their fingertips and there is an all pervading fear that the three levels of government are intent on offloading their debt problem onto private industry. Time after time we hear the same story: there is much government talk about the necessity for reducing debt, but their actions mock the message. Government waste is stupefying in its quantity, breathtaking in its frequency, heart stopping in its stupidity. Examples abound, many within a stone's throw of our own office. The Federal Government builds a new office building at Shearwater Air Base in Dartmouth . . . despite the fact that it is redundant before completion since the Base is to be closed. The City of Halifax embarks on two land assemblies at inflated acquisition prices . . . and promptly places part of the land back on the market as soon as the purchase is complete. The Provincial government launches a rationalization program and calls for proposals for new office premises with a 40 ft. boardroom, in an area richly endowed with surplus office space. In Truro, Nova Scotia, the Federal Government condemns its Post Office building and decides to build a new one because the space is not good enough for the public servants . . . despite the fact that it is of equal or higher quality than 80% of office space in the town. When the local Member of Parliament, a plucky little lady objects, the civil service pouts that it will invest its(!) money in Red Deer, Alberta instead. It then produces a report proving that the drinking water contains lead from soldered pipe joints . . . based on a sample from a virtually unused "invalid" drinking fountain on the second floor! Governments start levying charges for everything from occupancy permit information to details of government land purchases . . . and give the same lousy service as before, despite the fact that the taxpayer is now paying for them twice. ACOA continues to dish out grants and loans to business despite protests from the private sector that they are a waste and distort the economy. Meanwhile the

IN THIS	ISSUE	
	Tax Terror Takes Hold1	6
	Taxes: Faint Heart N'er Won1	
	Sehaviour4	
	or Lawyers; Beware of Strangers4	
	e: In Tennessee Too5	
	Cycles: What Goes Up6	

orchestrators are rewarded with wage freezes, or minor salary cutbacks that are the envy of most of us in the private sector; or are lavishly endowed with early retirement packages. And all the while, deficits everywhere grow . . . and taxes increase. They just don't get it . . . for goodness sake stop the stupidity. Freeze all capital projects, fire the idiots who waste our money, and reduce costs by privatizing the civil service . . . before it's too late . . . whilst there are still taxpayers left.

And, since it is unlikely that governments anywhere will take our advice, you should take evasive action. We are in the business of saving our clients money. Our Property Tax Division has successfully contested thousands of assessments: talk to us about your realty or business occupancy taxes. Our Consulting and Valuation Divisions are constantly searching for "value adding" opportunities, no matter the objective of the assignment. We focus on ways to reduce your property's operating costs, or on opportunities for increasing revenues. This is your last opportunity to tax shelter \$100,000 of capital gains: we can assist you. If the government wants to acquire part of your property for road widening or some other purpose, we can protect you there too. If you are interested in leasing or selling your property our Brokerage Division will work with you to develop an exit strategy. If you are a tenant and want to reduce your rental burden, we offer a Tenant Representation service. If you think you may be paying more than your fair share of the operating costs of the property, we can provide a lease audit . . . and we won't charge you a thing unless we save you money.

PROPERTY TAXES

Faint Heart N'er Won Fair Maiden

Recovering income lost to taxes, starts with one simple step; making the decision to do something about it. We have helped Atlantic Canadians recover income for almost 19 years and are astonished that so few avail themselves of the opportunity. There is little virtue in timidity: most provincial assessors are professionals, open to reasoned negotiation. Even when negotiations fail, and the matter ends up in court, they rarely take umbrage at a successful appeal . . . so if you are paying too much real estate tax give us a call, our free telephone

(Continued on page 2)

Year	Hotel	City	Province	Annual Tax Saving	% Reduction in Assessment
1991 1992 1992 1993 1993 1993 1994 1994 1994	Courtney Bay Inn Colonial Inn Howard Johnson White Point Beach Inn on the Lake Best Western Journey's End Howard Johnson Colonial Inn Best Western Inn on the Hill	Saint John Moncton Fredericton White Point Waverley Antigonish St. John's Saint John Saint John Charlottetown Charlottetown	N.B. N.B. N.S. N.S. N.S. NFLD N.B. N.B. P.E.I.	\$ 31,923 \$ 32,241 \$ 22,651 \$ 22,585 \$ 11,700 \$ 25,497 \$ 49,483 \$ 51,657 \$ 26,652 \$ 12,120 \$ 24,925	30% 49% 14% 49% 19% 11% 20% 41% 54% 15% 59%
Total				\$311,434	₹33%

consultation can often identify if you have valid grounds for appeal. We have mounted thousands of appeals; on all types of property. Take a look at the table above; it details just some of the hotel appeals we have dealt with in recent years.



Lounsbury Co. Ltd., Bathurst, N.B. (\$45,000/annum - 30% in tax savings)

New Brunswick - is much in the news these days as telecom centres migrate there from all parts of the continent. There is a darker side to this apparently idyllic picture however: the province's major taxpayers are in revolt. The object of their angst is the Geographic Information Corporation (G.I.C.), the Orwellian named government body charged with property tax assessments. Repap Enterprises is currently at war with G.I.C. over the assessment (\$125 million) of its five pulp and paper mill complex at Newcastle. Irving, a name synonymous with industrial development in the province, has appealed the assessment of its largest properties, an oil refinery and pulp mill. At issue is the electrical power assessability of distribution within the property. However, this is but the tip of the iceberg. Real estate and not process plant and machinery is assessable in New Brunswick. But the gospel according to

rather liberal G.I.C. affords a interpretation of "real estate". Thus structural components necessary to support the machinery are deemed to be part of the real estate, and hence taxable. Nor is G.I.C.'s corporate culture. "Auntie knows consumer conscious: best" is the touchstone. Auntie G.I.C. is a trifle touchy about giving nosey taxpayers a copy of their assessment calculations. Tut tut Auntie, they pay your salary. To be fair, this policy emanates from on high, and the assessors toiling in the trenches take a rather more sensible view of their role. Most permit a peek, some even a look. No doubt this policy discourages appeals, but in this day and age? . . . come on G.I.C. don't be a geek, democracy's not so bad, they're even trying it in the Soviet Union now . .

Fortunately New Brunswick is blessed with an excellent appeal court, the Assessment Review Board which, whilst a trifle tardy, definitely knows its onions; real estate too. So don't be shy. If you're overassessed; appeal . . .

March 1st is decision time: the date your 1995 assessment notice will be committed to the tender mercy of Canada Post. The appeal period lasts 60 days: do not appeal until the end. Your assessment is based on the market value as at the 1st January 1995. We have prepared a set of decision rules to help you decide whether to appeal. They will wend their way to you shortly, directed with deadly accuracy by our infallible computer. If you don't receive them don't just curse Canada Post, pick up the phone and call Tom Mill\$, our million dollar man. We'll pay for the call (1800-567-3033). (If you own an income property, eg. office building, shopping centre, etc., you are probably overassessed...unless we've appealed it within the last five years. Auntie is a little overwrought about investment properties).



Kensington Road, Charlottetown, P.E.I. (\$9,000/annum - 24% in tax savings)

Prince Edward Island - your assessment notices will wing their way to you at the end of April 1995. You have 45 days in which to file an appeal. Do not appeal until the end of the appeal period . . . it's bad form. The basis for your assessment is the market value of your property as at the 1st January 1995. We will contact you, computer permitting, with a set of decision rules to aid in your deliberations. Take particular notice if you own an income producing property (eg. shopping centre, office building, apartment); real estate is no longer the vehicle of choice for investors and rents have taken a beating over recent years. Vacancy has increased too. Vacant space in commercial properties is taxed at the (lower) residential rate, but the onus is on you to alert the assessor that the space is not occupied. The P.E.I. Assessment Department is refreshingly open and professional.

Newfoundland - the appeal periods have now expired in St. John's and Mount Pearl. Although the assessment notices were ready for mailing at the beginning of December in St. John's, they were not given to Canada Post until the 22nd. Much of the 21 day appeal period was therefore taken up by the Christmas - New Year vacation season. Now that is an interesting way to discourage appeals ... way to go St. John's! If you appealed your assessment in St. John's or Mount Pearl, please call Rick (1-800-567-3033); we are undertaking appeals in these

municipalities. This is the last year of the quinquennial cycle in St. John's. The base date for assessment purposes is the 1st January 1990. (1996 will be a reassessment year. Prepare now, it affords you the opportunity of reducing your tax load). The base date in Mount Pearl is the 1st January 1993 so it is possible to substantially reduce your tax burden since your assessment should reflect the recessionary fall in property values.

The assessment notices for Corner Brook were mailed on the 23rd December 1995, at one minute to midnight no doubt. There was a 21 day appeal period.



Strescon, Bedford, N.S. (\$30,000/annum - 36% in tax savings)

Nova Scotia - it's enough to make a body turn in its grave: the City of Halifax taxing cemeteries. Fortunately the occupants are not taking this lying down: they're digging in for a fight. (Sorry: joke in bad taste . . . it gets worse, if you are dying for more read on . . .).

The appeal period has now expired in Nova Scotia: if you did not bother to appeal, your taxes may bury you. If you did appeal and haven't retained us yet, we're gravely concerned.

In 1994, the provincial Assessment Department gave itself a 365 day appeal period by getting the Regional Assessment Appeal Court to increase assessments, even though the official 21 day appeal period had expired. The Court has the power to increase assessments "of its own motion" at anytime, under Section 76 of the the Assessment Assessment Act: Department does not. Naturally this action invoked the fury of the affected taxpayers since they had a mere 21 days in which to appeal and, once the appeal period had expired, struck their 1994

budgets on the basis of the unappealed assessments.

(The matter could be easily resolved by giving both the taxpayer and the taxspender the right to appeal anytime. Needless to say, the Assessment Department finds that prospect . . . unappealing). The taxpayers took their case to the Supreme Court of Nova Scotia on the grounds that the Regional Assessment Appeal Court was abusing its Unfortunately the first, and presumably deciding case, to be heard on January 16th has been deferred to March 7th because the Assessment Department lawyer was ill. During the interim, municipalities such as the City of Halifax are levying 15% annual interest on the unpaid tax bills even though they are under appeal!

In our last Newsletter (Vol. 2 No. 49) we mentioned that many Assessment Appeal Court chairpeople were inexperienced and some were reluctant to "upset" the assessment (and the assessor). The result has been a torrent of appeals to the next court level: the Nova Scotia Utility and Review Board. An unprecedented 120 appeals are now outstanding: all of which have to be dealt with at considerable cost. This is a "lose lose" situation for all Nova Scotian taxpayers. (Incidentally the Board has proven itself to be very competent in dealing with expropriation cases and we are very confident that they will display similar acumen with assessment appeals).

The Assessment Department sneaked in a change to the Assessment Act during 1994. The "state of the property" provision was amended to restrict its use to "physical state". Prior to this amendment, and to the chagrin of the Assessment Department, we successfully challenged the assessment of many investment properties on the grounds that vacant space should be recognized as part of the state of the property. So they changed the rules! Twas ever thus. We understand that the change was effected by Order, rather than by debate in the Legislature.

Next year may be the saviour of many businesses in the province. They will be able to reduce their property tax burden if the 1996 re-assessment proceeds as currently legislated. At present, businesses in Nova Scotia are at a competitive disadvantage with enterprises located in the remainder of the Maritime Provinces. Both New Brunswick and Prince Edward Island reassess annually so the recent fall in property values has (or should be) reflected in their assessments. Nova Scotia still staggers along with a trire-assessment cycle assessments currently reflect values pertaining at the 1st January 1991 base date, before the dramatic fall in property values was evident. The assessment of virtually all non-residential properties should fall in 1996, shifting the tax burden to residential property owners. . . and therein lies the problem.

Will the re-assessment actually go ahead? We believe that it will not. Although the Assessment Department insists that no decision has been made to cancel the re-assessment, all evidence is to the contrary. The Department has to complete its work by 1st December, yet they have still to mail their "request for information" forms to property owners. These forms have to be returned to the Department, and then processed, prior to the re-assessment of each property. We suspect that the decision to "defer" the assessment was made last year, tacitly if not explicitly. Deferment of the reassessment will sound the death knell for many businesses in the province, many of whom are grimly hanging on in anticipation of tax relief in 1996. However, presumably it will be popular with politicians and public servants concerned about the loss of tax revenue, or of shifting the tax burden to residential property owners.

If we are wrong and you do receive a nosey "request for information" form resist the temptation to file it in the appropriate container: complete and return the form . . . or ask us to do it. You lose your right of appeal if the form is not returned.

COURTLY BEHAVIOUR

Our valuation staff are engaged for much of their time with "court work", assessing compensation for expropriation or acting as property tax consultants. It can be quite rewarding, fighting government bureaucracy, often on behalf of the "little guy". It is also a trifle stressful and frustrating too, so it's always nice when the Court chairman or judge tosses the occasional bouquet our way. Our Rick Escott (blush, blush) was a recent recipient. The New Brunswick Assessment Review Board observed that "The Board in the determination of the weight to be allocated to the evidence of the witnesses has found the explanations of the expert witness Escott to be well founded, credible and accepted" (The Lounsbury Company Ltd. v. Director of Assessment). High praise indeed! Congratulations to our Tom Mills too, he conducted the Our clients were happy: their property assessment was reduced from its original \$1,695,300 to \$1,190,035, a tax saving of \$45,442 per year. The Nova Scotia Utility and Review Board was no less complimentary about our Lee Weatherby (L.E. Powell Properties Limited v. Province of Nova Scotia Department of Transportation). "Mr. Weatherby by his demeanor on the stand, his presentation contained in his report, impressed the Board as having the degree of independence and knowledge to be able to assist the Board in arriving at an accurate value for the superior lands." The Department of Transportation had offered \$56,000 in compensation, the Board awarded \$123,532 plus interest and costs. It was a double triumph for Lee, a month later in December the same Board assessed the compensation for a road widening case in which he provided expert testimony, at \$136,050 plus interest and costs (Joseph Arab v. City of Halifax). The City of Halifax had originally offered Mr. Arab \$6,000, based on their appraisal!

MAINLY FOR LAWYERS

Beware of Strangers Bearing Gifts

Do you have a client who is losing all or part of his/her property to a road widening or similar scheme? No? Well find one! What's the point of writing articles like this if you don't do your share?!

In our view, the actions of many municipal bodies charged with the acquisition of property range between the mildly distasteful to the extremely obnoxious. Their modus operandi follows a depressingly similar pattern. First they commission an "appraisal". For some curious reason this appraisal often ignores the substantive portion of the loss and focuses only on the land value. Injurious affection (the loss in value to the property as a result of the road scheme) is ignored or is

dismissed as being inconsequential. The acquiring authority then approaches the property owner with an offer based on the "appraisal". Since no expropriation has occurred the property owner is not protected by the Expropriation Act. Many property owners cannot afford professional advice (and are not alerted to the fact that it is available if they are expropriated); many are scared and fear retaliation if they "fight city hall"; often they are old or not well educated. Most meekly accept the compensation offered. Some, we are glad to recount, do not. The following examples are fairly typical of the cases in which we are involved.

A Pretty Kettle of Fish

The owner of a waterfront restaurant is to lose part of his property for a road widening scheme. acquiring authority, the City of Halifax, commissioned an appraisal which valued the land to be acquired at \$2,900. The appraisal report did not explore the changes that would occur as a result of the road construction and simply dismissed them with the comment that "given the current size of the original parcel, location, etc., and given the location of the subject property, no injurious affection is anticipated". Quite co-incidentally we happened to be valuing the property for a different purpose and the owner casually asked if the compensation was adequate. We advised him that the land value was adequate, but on checking the construction drawings found that, (a) the curb grade was to be altered thus increasing the slope of the access driveway to 20%, (b) the acquiring authority intended to levy a betterment charge of about \$6,000 on the property owner to pay for the road improvements, (c) a new bus bay was to be located across half of the road frontage thus impeding access, (d) one access driveway was being closed and the other changed, necessitating relocation of ornamental driveway lighting at the owner's expense, (e) the restaurant was to be responsible for the cost of clearing snow from the new sidewalk, (f) other businesses had suffered considerable loss because of the road construction and the acquiring authority had refused to compensate them.

Something Smells . . .

An elderly couple were offered \$67,500 for their family home: one of three properties required for a sewage pumping station. The City of Halifax's offer was based on an appraisal which omitted to mention that, were the matter to proceed to expropriation, the couple would be entitled to a "home for a home". Under this section of the Expropriation Act, the aged pair would receive sufficient compensation to allow them to relocate within the same neighborhood. Fortunately they consulted a lawyer who naturally pointed out this curious oversight. The City of Halifax readily agreed

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and, upon being notified of our involvement, immediately increased their offer to \$100,000.

Professional Fees

The Federal and Nova Scotia Expropriation Acts both provide that the acquiring authority pays for the appraisal and legal costs incurred in acting for the property owner; but this only applies after The other three Atlantic Canada expropriation. Expropriation Acts are silent on the matter. In order to discourage property owners from seeking professional advice in Nova Scotia, the acquiring authorities refuse to pay the professional fees until the claim is settled, on the somewhat dubious grounds that the Act does not specify when the fees have to be paid. It has been our experience that acquiring authorities (with the possible exception of the Federal Government) exhibit a comfortable contempt for the general public, none more so than in Nova Scotia. (The latter are now attempting to limit payment of fees under the Expropriation Act). Apparently the Nova Scotia Supreme Court shares our opinion. On July 15th, 1994 the Honorable Justice David W. Gruchy ruled that professional fees have to be paid promptly, rather than being utilized as a negotiating lever by the acquiring authority (S.A.R. 00803. Gary Stevenson and The Village Commissioners of the Village of Lawrencetown). The Nova Scotia Utility and Review Board concurs (NSUARB - EX - 94 - 01, October 21st 1994, H.M.Q. Province of Nova Scotia and L.E. Powell Properties Limited). To date, public servants employed by the City of Halifax and the Provincial Department of Transportation have ignored the Supreme Court ruling, presumably because they disagree with it. Democracy, Nova Scotian style! The (relatively) new Minister of Transportation, a Mr. Richie Mann, is aware of the situation but so far has not taken any action.

Just Compensation . . . or just compensation

Most acquiring authorities base their offer on an appraisal. Is their offer likely to be Just Compensation, or is it just compensation, an arbitrary figure designed to get a settlement which bears no relationship to the actual loss suffered by the property owner? To answer that question we investigated every case in which we had been involved and for which reliable data was available. We compared the original offer with the final settlement. The latter is assumed to represent Just Compensation since it was negotiated by a knowledgeable professional acting for the property owner, or was determined by an expropriation compensation board or similar judicial body. The data is shown in the table. We then subjected it to vigorous statistical testing. This is serious stuff, so pay attention . . . and we found that whilst on average the original offer was about one third (32%) of the actual loss suffered, it actually varied between 4% and 104%. In other words the original offer from the acquiring authority is an arbitrary figure that bears no relationship to the actual loss suffered! (The result was no surprise to us. In December 1993 we carried out other statistical testing using sub-sets of this data and found that even an offer supported by an appraisal was no more accurate than an offer where no appraisal had been prepared at all! All of the appraisals had been prepared by "accredited appraisers", individuals holding the AACI designation from their trade association, the Appraisal Institute of Canada).

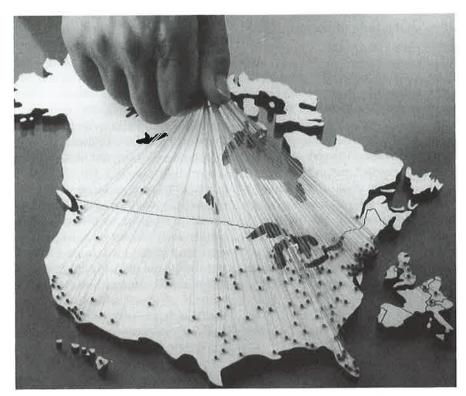
Original	Final	Difference		
Offer	Settlement	%	S	
250,000	\$ 980,000	292	\$ 730,000	
53,600	\$ 194,600	263	\$ 141,000	
6,000	\$ 136,050	2,168	\$ 130,050	
6,350	\$ 90,000	1,317	\$ 83,650	
56,000	\$ 123,532	121	\$ 67,532	
27,098	\$ 95,000	251	\$ 67,902	
21,000	\$ 73,971	252	\$ 52,971	
2,348	\$ 54,166	2,207	\$ 51,818	
25,000	\$ 75,000	200	\$ 50,000	
12,200	\$ 58,800	382	\$ 46,600	
67,500	\$ 100,000	48	\$ 32,500	
21,345	\$ 47,000	120	\$ 25,655	
25,000	\$ 47,000	88	\$ 22,000	
5,760	\$ 22,000	282	\$ 16,240	
39,000	\$ 55,000+	41+	\$ 16,000-	
11,633	\$ 25,000	115	\$ 13,367	
2,080	\$ 13,103	530	\$ 11,023	
2,165	\$ 11,060	411	\$ 8,895	
7.500	\$ 15,000	100	\$ 7.500	
3,000	\$ 10,000	233	\$ 7,000	
1,230	\$ 7,500	510	\$ 6,270	
1,305	\$ 7,500	475	\$ 6,195	
1,440	\$ 7,500	421	\$ 6,060	
90,000	\$ 95,300	6	\$ 5,500	
52,500	\$ 58,000+	10+	\$ 5,500-	
85,000	\$ 90,000	6	\$ 5,000	
2,400	\$ 6,100	154	\$ 3,700	
2,895	\$ 6,500	125	\$ 3,605	
795	\$ 4,300	441	\$ 3,505	
1,969	\$ 4,787	143	\$ 2,818	
2,344	\$ 4,530	93	\$ 2,186	
4,600	\$ 6,186	34	\$ 1,586	
180	\$ 1,600	789	\$ 1,420	
248	\$ 1,572	534	\$ 1,324	
1,995	\$ 3,245	63	\$ 1,250	
22,000	\$ 22,900	4	\$ 900	
1,500	\$ 1,631	9	\$ 131	
10,000	\$ 10,000	o o	\$ 0	
4,800	\$ 4,800	ő	\$ 0	
5,500	\$ 5,280	4	<\$ 280°	

Get expert valuation advice for your clients: our free expropriation brochure "Beware of Strangers Bearing Gifts" is yours for the asking.

BROKERAGE DIVISION

In Tennessee Too

The world is shrinking daily. Over recent months we have been involved with property owners from Vietnam, Korea, Hong Kong, Germany, the Middle



East, U.S.A. and our own country. It is evident that we are dealing with a continental, if not a global market. NAFTA is dissolving the Canada/United States border and the pace of enquiries from south of Forty-Nine reflects this changing world. North America is increasingly viewed as a single market, so to extend our continental reach we have joined the New America Network (NAN).

Our NAN membership affords clients access to 151 commercial real estate brokers, located in 210 primary and secondary markets mainly in the United States and Canada, but also in Mexico, South America, Europe and the United Kingdom. Our fellow Canadian brokers are located in Vancouver, Edmonton, Calgary, Winnipeg, Kitchener, Waterloo, Toronto and Montreal.

The restructuring of the Canadian economy since 1989 has been breathtaking in scope and mindboggling in depth.

The increased sophistication and falling cost of telecommunications has enabled companies to centralize their administrative functions on a continent wide and often global basis. Increased competition worldwide is propelling

them to do so. NAFTA and the recession have been seminal events, changing real estate markets in North America forever. There has been a marked migration of American firms into Atlantic Canada: not just retailers such as Wal-Mart or The Gap, but individual investors too. For example, we are currently seeking premises for a New York publisher of literature directed at the black community. Halifax is a springboard to enter Canada because we were the northern terminus of the "underground railroad". And we expect that the favourable exchange rate will encourage this influx of U.S. investors. Maritimes has strong historic links to Halifax, because of New England. faculty employment at its universities, and the fact that it embraces the North American headquarters of the Buddhist church, hosts a significant community of U.S. citizens. We anticipate growing links along this northsouth axis.

NAN also acts as a single source contact, co-ordinating acquisition and disposition for firms such as Pepsi Cola, Hertz, Sears, et al. It also enables us to provide our clients with specialist services such as time sensitive disposition (auctions, sealed bids) . . . and it give us access to emerging trends in real estate software

and marketing . . . as well as the opportunity to pinch ideas from our fellow network members at the various conferences during the year (it's called research for goodness sake!).

PROPERTY CYCLES

What Goes Up, Must Come Down

Echoes of the property crash continue to reverberate around the country: North American Trust, created out of the ashes of failed First City Trust, is now being offered for sale by its owners North American Life. And it looks as though Canadian Deposit Insurance Corporation (CDIC) losses on the First City and Standard Trust failures will be much greater than originally anticipated. CDIC has now borrowed a staggering \$3 billion from the public purse to finance the cost of bailing out depositors of failed bank and trust companies. The string of failures was lent impetus by the 1989 real estate market meltdown, the worst since the Great Depression. Little published research is available on property cycles, their cause, timing, magnitude and even whether there is such a defined phenomenon. Since the most recent market meltdown occurred in many countries including the U.S.A., Canada, United Kingdom and Japan, within a three year period, it is timely that the Royal Institution of Chartered Surveyors (RICS), the international body of the property profession, has completed a study of property cycles. Undertaken on behalf of the RICS by the Investment Property Databank and the University of Aberdeen, the research project tests whether property cycles exist (they do), and analyses their timing and correlation with economic indicators. The results are impressive and whilst the study utilizes United Kingdom data, it has applicability here too. We'll take a look at the lessons to be learnt from it in future issues of Newsletter. (Copies of the study are available from the RICS at a cost of £50. Tel: London 071-222-7000).