

# Newsletter

(Late) Summer 1995

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**UPDATE**

**Times: They are a Changing**

New Year's resolutions are meant to be broken. Well, that's our excuse anyway. This year we were determined to produce Newsletter on time, each quarter. Somehow the summer has flown by and there is an autumnal nip in the morning air. Once again we have had a terrific summer in Atlantic Canada even though government appears to be taxing us more and more, whilst providing less and less. There are some welcome signs though, straws in the wind that times are a changing. Public Private Partnering, the involvement of the private sector in areas that were previously an exclusive public domain, is gaining ground. The private sector is now building public schools in Nova Scotia and a prison in New Brunswick. Our own Brokerage Division has just been awarded the mandate to lease Halifax Port Corporation's property. We believe that the region will blossom economically as this trend gains ground. Most of our work over the last nineteen years has been for the private sector. It has always been our belief that the only thing holding back this region from bursting with prosperity is the fact that it is buried by bureaucracy. We have never bought the argument that the private sector here is weak and needs nurturing by government. On the contrary, Atlantic Canadian business people are smarter than the average . . . they have to be to survive. Government and their agencies such as ACOA distort the economy, frustrate and truncate the efforts of entrepreneurial enterprise, stifle initiative and burden us all with misallocated resources and taxation. That is now changing and we will be the better for it.

In this issue we explain what we are not . . . and recycle property cycles. We provide our legal beagle readers with a hitch hiker's guide to expropriation and give some tips on evaluating appraisals. The Province of Nova Scotia has now cancelled the property re-assessment scheduled for next year: a stunning reversal of its previous commitment. We have some advice on how you can mitigate your losses. We also review the assessment scene in the other Atlantic Provinces.

Finally, we look at the commercial rental and sales scene in

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Nova Scotia.

**GO BACK TO GO**

We spend a good deal of our time explaining what we are not. We appraise, but we are not "appraisers". We have a very active Property Tax Division; so to clients who meet us in this capacity we must be "tax consultants". Our Brokerage Division sells, purchases, leases and rents, so we have to be "brokers". We offer counselling advice, so are "consultants". In fact we are all of these things . . . and none of them. In our view real estate advice, like real estate, should be seamless. To focus on one part of the real estate spectrum to the exclusion of the remainder simply misses the broader context against which each real estate problem must be assessed. The solution to the problem usually falls through the cracks. This is particularly true in today's rapidly changing global economy. For example: assessing market value using the traditional appraisal approach, involves a comparison of the property with other sales. Yet market value is more often a function of leasing, financing and management, than of the sale prices of other properties in the locality. Not surprisingly, appraisal, particularly in the 90's, is usually an oxymoron. We therefore approach each assignment as an opportunity to assist you better manage your real estate assets. Simply put, we provide solutions to your real estate problems. Oh, you just wanted an appraisal? Go back to the beginning of this article . . .

**REAL ESTATE CYCLES (Continued . . .)**

Our article on real estate cycles (Newsletter Vol. 2 No. 51) struck an echoing chord with a couple of readers. Ken Giffin C.A., of Dartmouth disagreed with our thesis that the residential market was on the upswing. Ken concurs that human behavior does follow a more or less predictable pattern and that history therefore does repeat itself. He agrees that real estate values may cycle through valleys and peaks but argues that there is an underlying cycle as well, the "long wave" first discovered by Russian economist Nikolai Kondratieff in the 1920s. In fact there are a number of waves, of varying lengths, each superimposed on one another. They have been charted using stock prices. There is the normal business cycle with a duration of four to five years.

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Underlying that is a medium length cycle averaging 17 years. Below that is Kondratieff's long wave usually cited as 50 to 60 years and averaging 54 years. The troughs grow progressively deeper as each coincides. The big bang is due at the end of this decade when all three cycles hit bottom together. Possibly, this is not what you wished to hear. However, before you skip to the next item we would caution you that Ken did warn us in 1989 about the impending property market meltdown, a full year before it happened . . . so you might just want to force yourself to read on. The Royal Institution of Chartered Surveyors' study (Newsletter Vol. 2, No. 51) discovered that the property market is not exactly in phase with the stock market, due to the lead/lag factor. Conceivably therefore the commercial property markets may have already absorbed their loss in value and the subsequent fall in the stock markets will result in increasing property values as investment funds are reallocated to real estate. However, we can look forward to slow and declining growth through the remainder of this decade with a severe recession at the turn of the century. The home owner market did not experience a major loss in value in 1990-1991. Its turn may well come, especially with the high end homes, as the 21st millennium looms.

research real estate. They reviewed the Russell Canadian Property Index (RCPI) to determine whether the investment real estate market had bottomed out. The RCPI tracks real estate values using appraisals as surrogates for sale prices. This gives rise to a "lag" problem. When prices are rising, appraisers underestimate the increase since they utilize historical data to compute their appraised values. The same problem arises in reverse when prices are falling. Drs. Clayton and Hamilton adjusted the RCPI (using United States data on appraised values versus sale prices) for this lag problem and discovered that the Canadian property market bottomed in late 1993, turning upwards again in the first quarter of 1994 (see "Simulated Unsmoothed Index" in graph).

Jim Clayton is currently undertaking a research project for the Institute of Canadian Real Estate Investment Managers (ICREIM) that looks at the relationship between real estate and financial assets over the business cycle, and the implications for property valuation and market timing. He has promised us a peek when it is completed later this year.

### PROPERTY TAX DIVISION

#### Nova Scotia



Atlantic Living Centre, Dartmouth, N.S.  
(\$41,000/annum in tax savings)

**Jolly Times Ahead** - In a stunning about face, the Department of Municipal Affairs has cancelled the re-assessment scheduled for 1996, thereby saddling Nova Scotia businesses with double taxation for yet another year. Perhaps you missed the announcement? Concerned no doubt with the delicate sensibilities of the people who pay its salary (we and you), the Department

cautiously couched the news thus:

THE DAILY NEWS,  
WEDNESDAY, JULY 12, 1995

#### Expect assessors

Dust off the welcome mat, the assessors are coming for a visit. (Hurrah! Hurrah!).

Municipal Affairs will begin reassessing property values, Minister Sandy Jolly said last night.

"That reassessment will be based on the 1995 year and will be the base date," Jolly said. "Any changes in a person's assessment will be mailed out in January 1997."

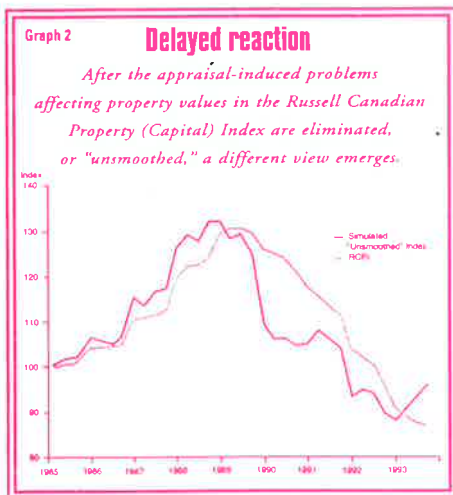
It's the final stage in an overhaul of property assessment, Jolly said. In the past, records were kept manually; since 1988, staff have been typing the information into a computer.

The computerized system will allow for assessments based on market evaluation. "Whenever a house is sold in a neighbourhood, the rest of the neighborhood assessment will have to conform to that market value," she said.

Properties are reassessed every three years but that causes instability in tax rates, Jolly said. The change will be province-wide and reassessments will begin immediately on commercial properties.

The truth of the matter is that the Province believes it is between a rock and a hard place. It is aware that the value of commercial property has fallen by half since the last re-assessment. It realizes that the combined commercial realty and business occupancy mill rate is already comparable to that of the neighbouring provinces, New Brunswick and Prince Edward Island. (Since these two provinces re-assess annually the drop in property values is already largely reflected in their property assessments). There is little opportunity for municipalities in Nova Scotia therefore to raise their mill rates (the rate applied to the assessed value to compute the actual taxes), since the overtaxation of

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Source: Canadian Investment Review, Summer 1995, Page 36

Dr. Jim Clayton, Saint Mary's University, Halifax sent us the article he co-authored with Dr. Stan Hamilton, University of British Columbia for the Canadian Investment Review (Summer 1995 issue). Jim and Stan teach and

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business will become starkly apparent and some firms will migrate to lower tax regimes, or decline to locate in the province. True, municipalities could (and should) reduce their spending but to date they have been reluctant to do so. The alternative is to raise the residential mill rate and alienate voters . . . or to defer the re-assessment, so . . .

Where does that leave you as the owner and/or occupier of commercial property? If the Province does not change its mind again, you can expect tax relief in 1997. We believe however, that there is strong anecdotal evidence that the present assessments are too high since the market correction occurred with the onset of the recession in 1990. The fall in property values should therefore be reflected in the current assessments. (The base date for the current assessment roll is the 1st January 1991). If we have not already appealed your current assessment, it should be reviewed. In effect we can kill two birds with one stone because we can also prepare a position on your proposed 1997 assessment too. (The base date for the 1997 assessment is the 1st January 1995). The Minister tells us that the 1997 re-assessment figures will be available in 1996; so it should be possible to negotiate reductions prior to the actual publication of the assessment roll in 1997.

**Request for Information Forms** - the Department of Municipal Affairs is gaily couriering these forms to all commercial and apartment property owners. You will probably forfeit your right of appeal unless you return the completed form. Be careful: like a camel (a horse designed by a committee) the forms are a product of the bureaucratic mind and are open to misinterpretation. In our experience the Department readily accepts information favourable to its cause, but disregards the remainder. For example: an apartment building located in Halifax Peninsula South will attract high rents but, because of the transient nature of its tenants, require high maintenance. The Department will happily accept the rental income . . . and sternly reject the expenses as being abnormally high. If you require assistance with completion of the forms, please call Tom Mills or Jon Robbins.

### New Brunswick



Gateway Mall, Sussex, N.B.  
(\$22,600 in tax savings)

We are currently working on a number of assessment appeals in New Brunswick. Assessment impacts on the pocket book: in small communities where the property owner and assessor know each other, it can assume personal dimensions. Logic can be sacrificed to personal animosity and appeals may be launched, or defended, for this reason alone. Often the merits of the appeals are lost because both parties take entrenched positions both of which are illogical, based on the personalities involved and the fact that "we have been through all this before". Some property owners automatically appeal their assessments because they feel that justice was not done in the past and they dislike the assessor. Some assessors automatically reject appeals because they harbour the same feelings about the owner. Our Property Tax Division are a happy group of souls, they like everybody. They have no personal attachment to the property and are unencumbered by past animosities. (If they lose a case . . . well they don't lose many cases, so we needn't dwell on that). As a consequence the decision whether to proceed with the appeal is based strictly on an assessment of its merits, and the negotiations with the assessor are conducted using the same criteria, rather than being clouded by the personalities involved.

### Prince Edward Island

We are now wrapping up our program for this year. However, our personnel are on the Island every week so if you have an outstanding 1995 appeal, or wish to prepare for 1996, please give Tom Mills a call (1-800-567-3033).

### Newfoundland

Now that the threat of the outside workers strike is over, the St. John's Assessment Department is turning its attention back from the prospect of manning the garbage trucks, to the 1996 quinquennial re-assessment. The base date is the 1st January 1995 and whilst you have the right to appeal during each of the five years, it obviously makes financial sense to do so in Year One since the tax savings will flow through to the year 2000. The present assessments are based on the market value pertaining as at the 1st January 1990. Since property values in many market sectors have fallen since then, your 1996 assessment should be lower than the current assessment. Prepare now! If history repeats itself, your assessment notice will be mailed just before Christmas so that much of your 21 day appeal period is swallowed up by the Christmas - New Year vacation season. **You should therefore get us to review your assessment this Fall before the assessment is published.** We have a number of appeals in Newfoundland and will be returning next month. Please call Tom Mills (1-800-567-3033) if you wish to discuss your assessment.

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### EXPROPRIATION - A HITCH HIKER'S GUIDE

#### Mainly For Lawyers

Our brochure "Beware of Strangers Bearing Gifts" (free for the asking) covers the Federal and Nova Scotia Expropriation Acts in some detail. This article extends that review to all four Atlantic Provincial Acts. It also puts some flesh on the bones, illustrating the application of the Acts with case law. Our Valuation Division has been heavily involved in expropriation work since 1976.

#### The A Team

Mike cut his teeth (and broke some of them) thirty-three years ago on slum clearance, road widening and other acquisition schemes in south-east England in the area between London's

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M.S. Turner, M.Sc., M.B.A.,  
FRICS, MAI, CRE

Gatwick and Heathrow airports. He worked at various times for the British government, Surrey County Council and a private firm of Chartered Surveyors. The residents of Surrey and Sussex were a colourful bunch with a well developed disdain for officialdom. It was not unusual to be welcomed with a flag draped coffin or a sign warning that all

trespassers and government officials would be shot on sight: salutary evidence that depriving individuals of their property rights in a democracy is a procedure that should be exercised with caution. Something perhaps which acquiring authorities in Atlantic Canada would be well advised to heed.



L. Weatherby  
FRICS, AACI

Lee's early experience with expropriation started nineteen years ago in England's industrial north-east. Working for a firm of Surveyors and then the British Government he too experienced first hand the rigours of property acquisition in an island that cares little for the exercise of police power by the state.

His valuation experience included a working brothel complete with whips and other tools of trade (no point in flogging this business loss claim) and slum clearance inspections followed by flea baths. Life today is less colourful . . . but cleaner. Lee's particular field of expertise is urban acquisition and expropriation.



R.J. Escott, B.E.S., AACI

Rick has been involved with rural expropriation since joining us fifteen years ago. He is not quite sure how he ended up as our expert in all things odorous but the rest of us know that he volunteered. Rick has slithered his way through slaughter houses, floundered through fish plants, plodded through poultry operations, slogged

through hogs and fielded farms. He is currently grubbing in a gravel pit in Paradise (Newfoundland not Tahiti). He must have volunteered. Rick's particular field of expertise is non-urban acquisition and expropriation (if in doubt we put it to the "smell test" - if we can, it's Rick's responsibility).

#### Fee Facts

Important things first: how do you and we, get paid? The Nova Scotia Act (Section 35) and the Federal Act (Section 29) require that the expropriating authority pay the cost of one appraisal, legal and other costs reasonably incurred prior to the institution of proceedings to determine compensation. It was the practice in Nova Scotia to delay payment of these fees as a way of placing pressure on the expropriated party to come to heel and agree to a settlement of his/her claim. The Nova Scotia Court of Appeal (Attorney General of Nova Scotia v. Richard & Alice Williams, C.A. No. 114628) has ruled that this practice must end and the fees must be paid "without undue delay". Expropriation is the threshold event which triggers the obligation to pay appraisal and legal costs. It follows therefore that you should not agree to enter into any negotiations prior to expropriation unless the acquiring authority agrees to be bound by the Act. The New Brunswick, Prince Edward Island and Newfoundland Acts do not provide for fees prior to the institution of proceedings to determine compensation. It follows therefore that you should not agree to enter into any negotiations at all unless the acquiring authority agrees to pay the claimant's costs.

After the institution of proceedings to assess compensation, the water on the beans changes somewhat. Under the Nova Scotia Act (Section 52) the acquiring authority is obliged to pay the appraisal, legal and other costs provided that the amount awarded by the Appeal Board is  $\geq 85\%$  of the amount offered by the acquiring authority. Under the Federal Act (Section 39) the acquiring authority is obliged to pay the costs if the amount awarded by the Court is  $> 100\%$  of the offer made by the acquiring authority, and in any event, unless in the Court's opinion the amount claimed was unreasonable. The New Brunswick (Section 52) and Newfoundland (Section 34) Acts provide that the acquiring authority must pay the costs if the amount awarded was  $> 100\%$  of the acquiring authority's offer. The Prince Edward Island Act (Section 27) delegates the decision to the Court. The optimum course of action therefore, is to first obtain the official offer of compensation and to then review it to see if it is reasonable (of which more later). Under the New Brunswick, Prince Edward Island and Newfoundland Acts this review is at the claimant's cost unless you

proceed to Court and win.

**Offer by Statutory Authority**

The contents of the offer by the acquiring authority to the property owner is shown in the table at the bottom of this page.

**Appraisal Report**

The Federal, Nova Scotia and New Brunswick Acts all require that the offer be accompanied by the appraisal report on which the offer is based. The expropriation is invalid if an appraisal report is not tendered. *Bambrough v. Ministry of Housing for Ontario (1974) 7 L.C.R. 103* dealt with this question. The court concluded that a two page appraisal report without adequate supporting data did not constitute an "appraisal". The court used the Appraisal Institute of Canada definition. ( The definition of an adequate appraisal has been further clarified since then because the entire North American appraisal industry has now

adopted the Uniform Standards of Professional Appraisal Practice [USPAP]. These standards were adopted in Canada on the 1st January 1994). This is particularly relevant if values have risen since the expropriation date or if the claimant was lured into settling at too low a figure by a document which does not meet the criteria for an appraisal. We are aware of numerous cases where sub-standard offers have been made and accepted based on "appraisal reports" that do not qualify as such. Indeed it is common practice by acquiring authorities in Nova Scotia, and we have recently reviewed an "appraisal report" from Newfoundland that wasn't. These property owners have the opportunity to re-open their claims and obtain "just compensation".

We have a thorough knowledge of USPAP and can review any reports whose status is at issue. However, many appraisers quite candidly admit in their report that it does not qualify for use for expropriation purposes. Their disclaimer is usually contained on a page entitled "Assumptions and Limiting Conditions"

Act	Date Must Be Served	Contents of Offer
Federal (Section 16)	≤ 90 days after registration of notice of confirmation of expropriation.	(1) Offer of compensation. (2) Copy of appraisal report upon which the offer is based.
Nova Scotia (Section 13)	≤ 90 days after deposit of expropriation documents under Section 11 and before taking possession.	(1) Offer of compensation. (2) Copy of appraisal report upon which the offer is based. (3) Copy of expropriation documents. (4) Where the registered owner is not a tenant, a statement of the total compensation being offered for all interests in the land.
New Brunswick (Section 37)	≤ 90 days after the registration of the notice of expropriation under Section 19.	(1) Offer of compensation (excludes business loss for which determination is postponed under Section 45). (2) Copy of appraisal report upon which the offer is based. (3) Tender to each known owner of 100% of the market value of his interest.
Prince Edward Iland (Section 12)	≤ 60 days after registration of the plan.	Nothing - the onus is on the expropriated party to file a claim for compensation (strict time limits apply).
Newfoundland (Section 8)	Not stated.	Nothing - the onus is on the expropriated party to file a claim for compensation within the time limits specified in the expropriation notice.

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and contains warnings that the report is "not to be relied upon by anyone other than the client" (the expropriating authority) since "there may be qualifications, assumptions or limiting conditions in addition to those disclosed" . . . or that the report may have been prepared at the request of the acquiring authority solely "to assist in negotiation purposes". Rather more tricky to interpret are those appraisal reports which include the foregoing but still purport to ascertain compensation under the Expropriation Act. We have seen some which claim to do all of the above and "meet the minimum requirements of USPAP" . . . a contradiction in terms which possibly arises through unfamiliarity with the Uniform Standards than by intent.

(To be continued in next issue of Newsletter . . .)

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## **BROKERAGE DIVISION**



### **Leasing**

There is an increasing focus on public/private partnership in Atlantic Canada. We welcome it and are very pleased therefore that Halifax Port Corporation has appointed our Brokerage Division as its exclusive leasing agent.

Halifax has been in the vanguard of the trend to containerization and boasts two modern container ports. This process has rendered some of the older sheds surplus to cargo handling requirements. They represent a unique opportunity for

tenants wishing to take advantage of the access, or the superb views, afforded by the waterfront location, or who would like to be situated adjacent to the Central Business District in an industrial setting.

The space available to lease runs the full gamut, from Victorian Gothic haunted by the ghost of Halifax past, to modern(ish) industrial with wharfside access. Adjacent space has already found alternate uses ranging across the spectrum: a lobster restaurant with a breathtaking view across the harbour to George's Island; an artists' colony; modern offices with contiguous workshop facilities; and warehousing, home to industry servicing the offshore. All of it within five minutes of the City's financial district.

The rental modules range between 1,000 ft.<sup>2</sup> and 65,000 ft.<sup>2</sup>. Heated and unheated space, some with dock height floors, and most with water access are available for rent on terms ranging from monthly to

five years. Canopy and outside storage is also available. Area 9D, the largest parcel of outside storage comprises 7.12 acres.

Our Leasing Prospectus is now available: call our rental guru Russ Allen (1-902-429-1811).

### **Sales - Buying Opportunities Abound**

We will know by October 30th whether Quebec votes in favour of separation. Provided the answer is "non", a unique opportunity exists for contrarians that

will probably not repeat itself again during their lifetime. Returns normally reflect risk: the higher the risk, the greater the return required to persuade investors to buy. Not so at present! The market meltdown which occurred in 1990 and 1991 frightened away purchasers: prices fell and returns rose. Once the market correction had taken place however most of the risk was eliminated. Markets have now bottomed and will move up: some eg. motels/hotels, are already doing so, yet the returns currently offered are 1% to 2% higher than before the market meltdown! Investment properties are not only far less risky than in the 1980s, they offer higher returns . . . and inflation is 5% per annum lower! Purchasers are returning to the marketplace. In Halifax, two office buildings with a total GFA of 720,000 ft.<sup>2</sup> owned by Trizec, were sold to Fortis Corporation of St. John's, Newfoundland. 1,060 apartment units, formerly the entire residential portfolios of Manufacturers Life and Halifax Developments Ltd. also found a market, 1,005 units to the same British Columbia purchaser.

We currently have an inventory of investment properties ranging in value from \$0.5 million to \$6.6 million which offer "going in" cash on cash yields of 11%, and a Year 1 return on investment (ROI) of 11% to 12%. Two are "blue chip" investments, yet show a projected leveraged internal rate of return of 23% to 25%! We are familiar with both properties and undertook the due diligence review of the operating income and expenses. In our view these are exceptional investment opportunities. In the past they would have been snapped up by institutional investors from Upper Canada at substantially higher prices. At present however those investors are focusing their attention closer to home, hence these buying opportunities are available. If you are a contrarian and would like further information, call Verna Turner (1-902-429-1811).

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## **CULLING THE HERD**

Our mailing list has now reached 10,000 and economics dictates that we prune it. If you want to continue to receive our Newsletter please call Patti (1-902-429-1811) and say so.

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