

Newsletter

Winter 1996-97

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UPDATE

Our tax team lead by Tom Mills, the Million Dollar Man had a spectacular year in 1996. We expect to repeat the process this year. Read our article on Property Tax to learn how you or your company can benefit. Lasercad™ our new service which marries lasers with computers can add 8% to your rentable area, imagine what that will do for your bottom line. We continue our article on hazardous materials: our series on Contamination - Pity the Poor Property Owner helps take the hysteria out of the hype. Expropriation is a costly nerve racking business for the property owner affected. They the innocent victims are often treated with contemptuous disregard by the acquiring authority. Our litigation team has extensive experience of expropriation and expropriating authorities. The Feds are O.K. but the other levels of government leave a lot to be desired. Our series on Expropriation looks at two such cases. Forget mutual funds, real men (and women) get the same return with less risk by buying property: Brokerage - Real Opportunities for Investors tells you why. The past six years have been bargain basement time for Halifax C.B.D. tenants. They should enjoy it while they can, the party is almost over.



We are eager to extend our activity beyond Atlantic Canada. Two decades of dealing with properties as diverse as pulp mills and heavy water plants, with assessment departments that initially laboured under the impression that they should not, would not, could not, be challenged (an obdurate and arrogant attitude mired in an earlier age and now thankfully largely abandoned) has honed our skills to the point where we feel

confident of tackling any assignment, anywhere. So, if you have a tax problem with a pulp mill in British Columbia, a car plant in Ontario or a fish plant in Newfoundland, call Mike Turner at 1-800-567-3033.

Nova Scotia

PROPERTY TAX DIVISION

Tom Mills: Tax Terminator

In November Tom Mills, our V.P. Property Tax and his team successfully litigated and negotiated record tax savings of \$900,000 per annum ... well over \$1.00 million when occupancy taxes are taken into account ... capital liberated for more productive use in the Region's economy. December, usually a slow period for recovering taxes was also a record month and we can now claim with considerable satisfaction that we add millions of dollars each year to our clients' bottom line.



Amherst, Cumberland County, N.S.
(\$266,000 - 28% in tax savings)

Although he has not expressed a desire that his participation be mentioned, we feel it only fair to acknowledge the sterling efforts of John McFarlane QC with the Halifax office of Stewart McKelvey Stirling Scales in achieving the above pre-court settlement.

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The 1997 assessment notices were mailed to property owners and occupiers on the 14th January 1997. You only have until the 4th February in which to appeal: if you miss the appeal date you cannot appeal your assessment again this year. The Province deliberately employs this truncated 21 day appeal period in the hope that you will not bother. (During a meeting in 1995 with the then Minister of Municipal Affairs, Ms. Sandy Jolly and her senior officials we suggested that aggrieved taxpayers be extended the same courtesy afforded the Assessment Department: they should be allowed to appeal anytime. After all if an assessment is wrong, it's wrong .. no matter when the error is discovered. Our suggestion was received with smiling disbelief ... democracy it appears is too fragile an instrument to be entrusted holus bolus to the proletariat, far better it remain the husbandry of the bureaucrat ...).

The basis for your assessment is the market value of your property as at the 1st January 1995 (the base date) but in its physical condition as of the 1st December 1996. We have published a set of decision rules to determine whether your property is overassessed. If you have not received your copy please call Tom Mills or Jon Robbins (1-800-567-3033); they will be glad to assist you.

If you own, or occupy a commercial, industrial or investment type property, eg. office, industrial, shopping centre hotel, apartment building ... virtually anything in fact other than a dwelling, **your 1997 assessment should be substantially lower than your 1996 assessment.** The reason is simple: your 1996 assessment was based on its market value as at 1st January 1991. The correction (downwards) in market values concomitant with the onset of the recession in 1990 was **not** reflected in your 1996 assessment ... however it should be reflected in the 1997 assessment since a later (1st January 1995) base date is utilized.

How much should your new, 1997 assessment have dropped? Probably by 50%; provided that your 1996 assessment was accurate. If it hasn't dropped by at

least 30% you are probably overassessed. If it has dropped by more than 50% you are probably safe. If it has dropped by more than 30% but less than 50%, you may be overassessed. If in doubt file a protective appeal. You can always withdraw it if we subsequently find that you are not overassessed. In order that you do not limit yourself, we recommend that you utilize the following wording as your grounds for appeal:

"The assessment is excessive, unfair, not uniform with other assessments and any other grounds that may appear".

If you own a dwelling the increase (or decrease) in the 1997 assessment over 1996 should be a function of location and price class. Prices of most homes worth less than \$125,000 should have increased if they are located in the Halifax Regional Municipality. In areas uniquely impacted by micro-economic conditions, eg. the collapse of the fishing industry in Digby, prices have fallen, so too should assessments.

If your dwelling is located in the Halifax Regional Municipality we can usually utilize our computerized database to determine whether you are overassessed. We fax you our Residential Assessment Audit input form, you enter details of your dwelling and drop it back to us with a cheque for \$75 (plus G.S.T.). We run the information through our computer and advise you whether you are overassessed. We also provide you with comparable sales data: if you are overassessed you then have ammunition to use in your negotiations with the Assessor. If we are unable to generate a reliable result (because of lack of data) we will so advise you and return your uncashed cheque. Requests for a faxed copy of our Residential Assessment Audit input form can be placed with our switchboard (429-1811).

New Brunswick - Stretching Your Retail Dollar

Mr. Lawrence Garvie QC, the Chairman of the NB. Assessment Review Boards has frequently expressed the opinion that it behoves all parties to reduce the cost of the appeal process in these times of fiscal



Moncton, N.B.
(\$31,000/annum - 8% in tax savings)

restraint. We have therefore written to him and David Jennings, the Provincial Director of Assessment indicating our willingness to deal with all preliminary hearings before the Board by tele-conferencing. This will eliminate travel and reduce the cost of each appeal by several thousand dollars. We have also offered to bear the (modest) cost of the tele-conference call if it is not an expenditure the Board is authorized to make. We have suggested that suitable items to be dealt with through tele-conferencing should include preliminary hearings to agree on the dates for the exchange of appraisal reports and the formal hearing, and assessments which have already been agreed with the assessor but which require formal ratification by the Board. We will keep you posted as to the response of Mr. Garvie and Mr. Jennings.

Your assessment notices should be mailed on the 1st March 1997. There is a 60 day appeal period. The basis for your assessment is the market value of your property as at the 1st January 1997. We will be publishing a set of decision rules which you will be able to use to determine whether your property is overassessed. If you haven't received them by 8th March please call Mike (1-800-567-3033).

Prince Edward Island

Your 1997 assessment notices will be mailed at the end of April. You have 45 days in which to appeal. The basis for your assessment is the market value of your property as at the 1st January 1997. We will be mailing a set of decision rules to help clients determine whether they should appeal. If you do not receive them

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West Royalty, P.E.I.
\$12,000/annum - 18% in tax savings)

within 7 days of your assessment notice, please call Tom Mills or Jon Robbins (1-800-567-3033).

Newfoundland - Flying High



St. John's, Newfoundland
(\$12,000/annum - 22% in tax savings)

Newfoundland has a mixture of reassessment years and base dates which appear to be as confusing to the Provincial Assessment Department as they are to the rest of us. Reassessment is undertaken quinquennially in St. John's ... and every five years elsewhere in the province. Actually the quinquennial reassessments often take place at irregular intervals so there is currently no consistency ... other than the uniform 21 day appeal period ... which is occasionally extended to allow the turkey and pudding to settle if it spans the Christmas period ... The table in the next column should help clear up the confusion.

In 1998 all municipalities in the province will be reassessed using a single 1st January 1996 base date for residential and commercial properties. Thereafter reassessments will occur tri-annually.

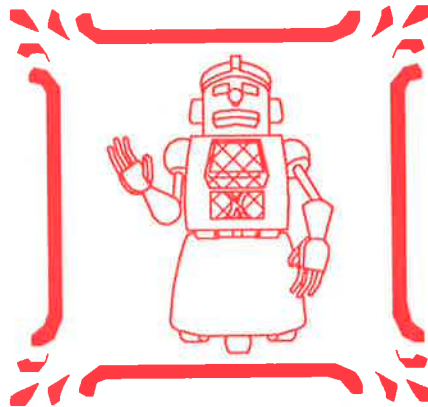
We were asleep at the switch and missed our annual mailout last fall. If you have appealed your assessment and need our

Municipality	Reassessment Year	Base Year	Date 1997 Assessment Notice Mailed	Date 1997 Appeal Period Expires	Comments
St. John's	1996 1991	1st Jan. '95 1st Jan. '90	18th Oct. '96 18th Oct. '96	8th Nov. '96 8th Nov. '96	Commercial Residential (incl. apartment buildings).
Mount Pearl	1994	1st Jan. '93	6th Sept. '96	27th Sept. '96	
Gander	1994	1st Jan. '94	20th Sept. '96	11th Oct. '96	
Grand Falls	1992	1st Jan. '91	6th Sept. '96	27th Sept. '96	
Corner Brook	1996	1st Jan. '94	1st Oct. '96	21st Oct. '96	

Source: Directors of Assessment St. John's & Province of Newfoundland, Jan. 1997.

help (or just want to bounce it off us) please call Tom Mills or Jon Robbins (1-800-567-3033). We'll smarten up this year however if you want to take a pro-active stance for next year's reassessment give us a call now.

LASERCAD™
Measure up, Atlantic Canada!



This handsome devil is a member of our Lasercad™ team. Note his (her, or it?) dental work, you don't see that sort of crown work everyday. Nice suit too ... love that tie. If you would like to meet this paragon of sartorial elegance, or our economy humanoid model, the time is now. In November 1996 we launched Lasercad™, the leasing and asset management tool for the twenty-first century. It combines the efficiency of computer aided design with the excitement of laser technology. Yes sirree, we slow down for nobody, if they don't move we drill a hole right through 'em: the perfect tool for measuring

buildings occupied by government tenants.

Over the past twenty years we have measured over 10,000 buildings and tenant suites and like to think we are trusted by tenants and landlords alike to provide unbiased, accurate measurement using the standard method of measurement appropriate for the type of space.

A Square Foot is Not a Square Foot

In our experience it is not unusual to find that the rentable areas are incorrect for 50% of the leases in any office building that is ten or more years old. It matters not that they are "certified" by an architect, a surveyor, the Pope ... or us. So if you are a tenant, insist on a Space Certificate which includes an "as built" scale plan, references the appropriate Standard Method of Measurement (SMM) employed and warrants that the calculations of usable and rentable area are correct in accordance with the version of the SMM current at the date shown. We'll explain! The plan ensures that the space measured is the space occupied. There is a regrettable tendency to move demising walls and omit to re-measure the space, to the detriment of one party, landlord or tenant. Space is measured differently depending on its use: office space is measured to the inside face of the outside wall (or the glass line in certain instances), retail space is calculated on exterior measurements. This can make a difference of 5% to the rentable area. We suggest the following Standard Methods

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of Measurement:

Type of Space	Standard Method of Measurement
Office	B.O.M.A.
Industrial	C.R.E.A.
Retail (Shopping Centre)	U.L.I.
Retail (Office Building)	B.O.M.A.

The date is important because standards change. The B.O.M.A. SMM was last changed on the 7th June 1996 and now includes a pro-rated share of common areas that serve the entire building, eg. furnace rooms, in the "rentable area" of each tenant suite. This increases the rentable area by 3% to 8% (depending on the configuration of the building) over the former B.O.M.A. SMM.

Buried in Bumpff?

He (or she) who coined the phrase "the paperless revolution" an Asset Manager was not. The unholy marriage of the legal profession and word processors has begat voluminous offers, counter offers and leases. Relax ... help is at hand; Lasercad™ can assist you cut through the clutter ...

Lasercad™ plans are provided in computer readable format. We supply and install the software and files, and also provide training. Details of each tenant space are now just a mouse click away. Flick through the floor plates, then zoom in on each individual tenant space. We (or you) can record a précis of each lease on the relevant tenant layout. Imagine how much easier life will be now you don't have to wrestle with large plans, tenant rolls and grumpy bosses. And how do you reach this state of Nirvana? Just give us a call at 1-800-567-3033 (429-1811 in Greater Halifax). If you are a property manager, there is no less expensive (legal) way of reaching this state of bliss.

CONTAMINATION - PITY THE POOR PROPERTY OWNER (CONTINUED)

A word of praise to alert reader Peter Thoem, Chambers & Company Limited, Hamilton, Ontario for rising to our challenge and spotting the deliberate errors in our previous article on contamination (Newsletter Vol.2 No.55). He correctly identified that "mesotheliomo" should have been "mesothelioma", and our "chrysolite" was meant to be "chrysotile". Sorry Peter your identification of "then" instead of "than" in the last line was incorrect; that was not a deliberate error.

Having established that only one person read the entire

article, we'll wait while the rest of you fish it out of your round filing cabinets. OK? Now, there may be some deliberate errors in this article too, so pay attention!

Hazardous Building Materials (Continued)

Asbestos was widely used as a construction material, and any building erected before 1976 almost certainly contains it. Floor coverings, especially vinyl asbestos tiles and thermal insulation around hot water pipes, are common locations. However, it was also used in ceiling tiles and plaster finishes. As a consequence many municipal land fills refuse to accept this type of refuse even when it is asbestos free. It was frequently sprayed on the underside of floor slabs and will be revealed in all its glory if you lift aside a ceiling tile. However asbestos cannot be positively identified by the naked eye, you'll need laboratory analysis. Since asbestos is only hazardous when inhaled it is not a health hazard unless disturbed. However, an in-place asbestos management program is required to protect you from liability if you own the building. It has been our experience that private sector tenants are usually reassured with a program of air-testing: however, government tenants often insist on asbestos removal. Asbestos, especially the sprayed on form adversely impacts the market value of the property by an amount in excess of the remediation cost.

(Contamination - Pity the Poor Property Owner will be continued in the next issue of Newsletter ...).

EXPROPRIATION - A HITCH HIKER'S GUIDE Power to the People!

In a democracy the checks and balances that ensure an overbearing bureaucracy resist the temptation to misuse and abuse the power delegated it by the people are often cumbersome and ineffective, witness the sad litany of recent months ... Somalia, the abuse of female members of the Armed Forces, the misuse of young offenders in New Brunswick and Nova Scotia, the destruction by Health Canada officials of records pertinent to the tainted blood affair ...

Our elected representatives lack the ability and resources, and often it seems the internal fortitude to tackle the entrenched power of a bureaucracy they in theory control. The Fifth Estate, especially the Press, battle geography and a low population density; cost considerations that result in a single newspaper nationally and in most local markets. Presumably this lack of competitive pressure and the sheer cost of digging information out of a civil service quick to close ranks, explains their former docility. Fortunately over the past two or three years they have increasingly risen to the challenge: more power to them. Perhaps the

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various Freedom of Information Acts now make it economically feasible to prise up the portcullis. However, in our experience the burden of torch bearer has usually fallen to our excellent judicial system. It is the slender thread that saves us from totalitarianism ... the abrogation of private rights by a civil service that, in the words of the *Globe and Mail* "has a comfortable contempt for the general public". And a civil service which often, in our experience, pursues courses of action which, because they entail no cost or retribution to the individual concerned, are driven by pique rather than reason ... an attitude grounded in the comfortable assumption by those that inhabit it, that "nobody can fight City Hall" ... and that if they do so and win, theirs will be a pyrrhic victory. Since in the past, our judicial system has been the only avenue open to obtain fair compensation, some bureaucrats have attempted to snap that slender thread and thus deny property owners its protection.

(1) Spryfield, Nova Scotia

In the late 1980s and early 1990s the former City of Halifax decided to widen the Herring Cove Road, in Spryfield. The neighbourhood is a blue collar area and most of the people effected were of modest means; many were at the stage of their life cycle when saving rather than spending was a preoccupation. At that time Section 35(1) of the Nova Scotia Expropriation Act provided that the expropriated party should have the benefit of legal and appraisal/valuation advice to be paid by the City of Halifax. It was, in the words of the Nova Scotia Court of Appeal (Attorney General of Nova Scotia and L.E. Powell Properties Ltd. C.A. No. 128593) a provision which "enables an owner to operate on a level playing field with the expropriating party in order to ensure the owner has access to appropriate legal and appraisal advice in considering any offer made by the expropriating party". Of course the Act did not apply if a settlement was negotiated without the necessity of expropriation. The City of Halifax therefore declined to inform the affected property owners of their rights to paid professional advice: most settled without the benefit of such advice, many were inadequately compensated for the loss they suffered. Some, such as businessman Joe Arab incensed at the absurdly low offer made to him by City negotiators (\$6,000) dug in his heels and fought back. The City of Halifax expropriated his property but refused to pay the legal and appraisal/valuation costs to which he was entitled on the spurious grounds that the Expropriation Act omitted to specify when they were to be paid. The Utility and Review Board heard Mr. Arab's case, awarded him compensation of \$136,050 and ordered that the City of Halifax pay his costs. In January 1995, almost 3 years after he had incurred them, the City eventually paid Mr. Arab's legal and appraisal/valuation costs ... this despite the fact that Mr. Justice Gruchy of the N.S. Supreme Court (Gary

Stevenson and The Village Commissioners of the Village of Lawrencetown S.A.R. 00803) had ruled six months earlier that Section 35 costs were to be paid when they were incurred. Mr. Justice Gruchy also ordered that the expropriating authority pay interest on their overdue accounts. The City of Halifax bureaucrats refused to follow the Supreme Court decision; apparently they disagreed with it! Although they eventually agreed to pay Mr. Arab his costs (after delaying for six months), their Senior Solicitor wrote

"we will decide in due course whether we concur with the decision of Justice Gruchy in the matter of entitlement to interest"!!

To date Mr. Arab still has not received his interest and is again back in court to force the City to comply.

(2) East Chezzetcook, Nova Scotia

During the 1980s the Province of Nova Scotia expropriated lands for Highway #107 in East Chezzetcook, a small community in Halifax County. They made a mess of the expropriation and had to abandon it. They then expropriated the lands required for Highway #107 all over again on 26th July 1986. Amongst them were lands owned by Mr. L.E. Powell; his case proceeded to the N.S. Utility and Review Board on 3rd May 1994. Larry Powell, a civil engineer with 44 years experience was at the age when most people were taking it easy. He was however a man of considerable courage and fortitude and was fortunate in his choice of Brian Hebert, a young, tenacious and bright lawyer who threw himself into the case with enthusiasm. He would need it. The hearing lasted 13 days and the Department of Justice, cost as usual being of no consideration, had two senior lawyers conduct their case. Lee Weatherby, our V.P. Consulting acted as Mr. Powell's expert valuation witness (Lee had also acted for Joe Arab). The Board awarded Mr. Powell \$123,532 ... the Province promptly appealed and the award was reduced to \$77,391. (The Province's original offer to Mr. Powell had been \$56,973). During the course of the proceedings the Department of Justice refused to pay Mr. Powell's proper legal and appraisal/valuation fees as required by Section 35(1) of the Act alleging that they were "unreasonable". The Board concluded that this was simply a ruse to place financial pressure on Mr. Powell to force him to settle the matter. They roundly criticized the Province's lawyers for taking "unfair advantage of Powell's known financial weakness". Unabashed, the bureaucrats who had appealed the Board's award of costs to the N.S. Court of Appeal and been reprimanded for attempting to "waitout' the Claimants in hopes of forcing the Claimants to settle at an unreasonable figure" again refused to pay Mr. Powell his costs. The redoubtable gentleman was again forced to resort to a hearing

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before the Utility and Review Board. The Board adjudicated the costs reducing them slightly but allowed interest at 2% per month. Their patience exhausted they expressed "the Board's pious hope that this matter may finally conclude". The provincial bureaucrats immediately appealed the Board's decision to the Nova Scotia Court of Appeal; the latter just as promptly dismissed their appeal.

In our view, the conduct of these cases raises serious questions about the accountability of public employees. The cost to the Nova Scotia taxpayer of the hearings, appeals and appeals of appeals must have run into several hundred thousand dollars. The cost to the property owners concerned in terms of stress can barely be imagined: the more so because they were thrust into a situation not of their own making, land was forcibly taken from them. It would be comforting to believe that the lesson has been learned and that history will not repeat itself. Unfortunately until government departments enter the twentieth century by implementing management systems that properly assign costs and accountability there is absolutely no reason to hope that this will be the case ...

BROKERAGE DIVISION
Real Opportunities For Investors



19 Alma Crescent, Halifax
(29% Cash on Cash Return)

RRSP season is in full cry; once again we are bombarded with boasts of spectacular returns, 24%, 27%, 43%! Of course these are single year results, the five year history is a little less spectacular, 18%, 20%, 24%. Nevertheless ... Wow! The economy has certainly come back with a bang; the equity market with it. Mind you most of the growth has come from

capital appreciation ... all those baby boomers socking savings away for retirement. Is there a hidden risk here, what if they were to take their money out ...? Well, they probably won't: so long as the Feds keep inflation under control and resist the temptation to spend their way into the next election, interest rates will remain down and bonds will not be an attractive alternate investment. On the other hand maybe those low interest rates represent an opportunity, one that is being overlooked by investors dazzled by the glitz and glitter of the stock market. Let's take a look ...

Mortgage money is available once again for commercial real estate. The banks re-entered the fray in mid'1996. It is also available at attractive rates, five year money now costs about 7.5%. The effect of leveraging a purchase with a 65% to 75% loan to value mortgage at that rate results in equity returns of 22% to 28%. Not bad! That's comparable to the stock market. True it is not RRSP eligible as a direct investment but then again you can only invest 18% of your income up to a maximum of \$13,500 for 1997 in your RRSP. Some of it is tax sheltered too, courtesy of the capital cost allowance on the depreciable portion of the real estate. Best of all most real estate still sells at prices well below replacement cost so has plenty of opportunity for capital growth. So if you have maximised your RRSP contribution and still have surplus funds, look beyond the stock market, this has to be the best time in twenty years to invest in real estate.

Leasing. The Party is Almost Over

Office rents in the Halifax Central Business District (C.B.D.) collapsed in 1990 in a truly spectacular manner. Tenants have never had it so good. They should enjoy their good fortune while they can, the party is almost over.

In a sense the rental bonanza enjoyed by office tenants in Halifax's C.B.D. owes more to a failure of nerve by landlords than economics. Faced with an average vacancy rate of 15%, a recession which reversed the growth in G.D.P., a Bank of Canada policy which reduced inflation to 2% per annum and a technological

revolution which ensured that growth in office demand would occur at one third of its past rate, much of that in the suburbs, they panicked. Tut, tut, timid fellows. Other centres in Atlantic Canada just beavered on regardless. Indeed Halifax C.B.D. had already experienced similar vacancy rates in 1978 and 1986. Their only impact then was to halt for twelve months the rise in rental rates, though of course the combination of circumstances was different, inflation rates in particular were much higher and government was not downsizing so there was a positive absorption rate. However, we believe that rental rates are now about to climb back to economically justifiable levels. Why? Consider the following:

- (1) Canada's G.D.P. is expected to grow by 4% this year. Prior to the recession each 1% growth in G.D.P. resulted in a 1.8% growth in office demand; during the recession the ratio fell to a 0.6% increase in office demand for each 1% growth in G.D.P.
- (2) Purdy's Wharf is the benchmark building in the C.B.D.; other space prices itself off their rents. Purdy's have reduced their vacancy rate from about 30% to 15% over the past two years. As they increase their rents so too will the other buildings.
- (3) Office space is still being retired. The Hollis Building (93,790 ft.²) was converted to the Radisson Hotel in 1995; the former Canada Permanent Building (48,170 ft.²) was taken out of service in 1996.
- (4) Current rents would have to triple before it is economic to build new office space.
- (5) Built-out space, i.e. tenant suites ready for occupation, are now in short supply. Until recently they rented for \$4.00 to \$7.00/ft.² net absolute. Whilst there is plenty of raw space still available the cost of fitting it out necessitates rental rates of \$8.00 to \$10.00/ft.² net absolute. This presages a doubling of net rental rates over the next twelve months.