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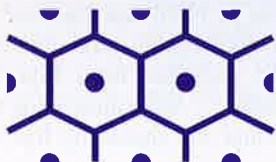
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**“PIPE DOWN AND PAY UP”**



Corbis

... that essentially, was the message conveyed by the Nova Scotia Utility and Review Board in its April 19th 2002 decision in the case of Allan Myers and Darlene Myers v. Sable Offshore Energy Inc.

It had been a long time coming; but for courageous couple Allan and Darlene Myers, the Nova Scotia Utility and Review Board decision was well worth the wait. This was a David and Goliath contest: in one corner the Myers from Guysborough County facing off against Sable Offshore Energy Inc., a subsidiary of multi-billion dollar giant Exxon Mobil. Six years ago this would not have been such an unequal battle. Property owners, Mr. and Mrs. Myers wouldn't have had to dip into their savings to fund the court costs. However in 1996 the law was changed in Nova Scotia: petty minded civil servants employed by the Province and the City

of Halifax were repeatedly criticized by the courts for their failure to follow Expropriation Act provisions which attempted to level the playing field by affording property owners, professional representation. City of Halifax lawyers attempted to bring property owners to their knees by refusing to abide by the Act while they dragged two virtually identical cases each through three levels of appeals at enormous cost, before being rapped on the knuckles for wasting the Courts' time ... and taxpayers' money. Stung by the court decisions, Provincial civil servants amended the Expropriation Act to ensure that any property owner would have to fight unaided until the court proceedings were complete and they had won their case. Our gutless politicians rubber stamped the amendment. Today it requires considerable courage, fortitude and money to face City Hall, the Province or large corporations such as Sable Offshore Energy Inc. It is a tribute to the Myers, and individuals like them that there are those still willing to stand up and fight.

**Synopsis**

Mr. and Mrs. Myers owned land in North Riverside, Guysborough County, Nova Scotia. Their property lay across the path of two pipelines, both subsequently to be laid in the same easement through their land. Sable Offshore Energy's natural gas liquids line was laid in the same trench as Maritimes and Northeast Pipeline's natural gas line. The former however, fell under Provincial jurisdiction and became the subject of this Nova Scotia Utility and Review Board hearing under the Expropriation Act. In addition to their pipeline easement, Sable Offshore Energy Inc. required an above ground valve installation site. During the summer of 1997 the Myers were approached by Mr. Kevin MacDonald, a former forestry technician hired by Sable Offshore to negotiate pipeline easements for them. According to the Myers, Mr. MacDonald assured them that the fenced valve site would only be 8 ft. square and was going to be located close to the river. In reality the site proved to be 60 ft. x 100 ft. and was located instead at the entrance to their property. In order to compute compensation for their pipeline easement Sable Offshore commissioned a "baseline appraisal" from Mr. Vernon Murray a former Provincial employee, now a self employed appraiser in Antigonish. The purpose of a baseline appraisal is to establish the "average" land value along the

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pipeline route: it ignores "injurious affection", usually the most substantive part of any claim. Property owners who objected to the baseline figure received individual attention, Sable Offshore would then commission Mr. Murray to undertake a site specific appraisal which considered all heads of claim including injurious affection. This was done for the Myer's property and Mr. MacDonald based Sable Offshore's offer on it. Mr. Murray's appraisal was not tendered as evidence by Sable Offshore at the subsequent Utility Board hearing and Mr. Murray was not called by them to give evidence. Instead, Sable Offshore commissioned another appraisal report, this one authored by Mr. Peter Constable, the owner of MacKay Appraisals in New Glasgow. Mr. Constable was uncertain whether he had the necessary qualifications to undertake and sign the appraisal himself so he enlisted the assistance of Mr. Ralph Taylor to supervise the assignment. Mr. Taylor, a former Provincial employee, now a self employed appraiser, signed the appraisal report as the Supervisory Appraiser for the assignment. He too was not called by Sable Offshore to give expert testimony in support of the appraisal at the Utility Board hearing.

The Utility Board awards costs, including professional fees for legal and appraisal advice, to the expropriated party as of right provided that their award is equal to or greater than 85% of the offer tendered by Sable Offshore. This is an attempt, albeit after the fact, to level the playing field: it is recognition in law that the poor property owner usually faces a financially superior opponent. *Sable Offshore's negotiator Kevin MacDonald admitted during testimony that he "probably did not suggest" to the Myers that they seek independent professional advice and did not recall advising any of the property owners that the Expropriation Act entitled them to requisition an independent appraisal from an appraiser of their choice.* In any event, the Myers rejected Sable's offer and dipped into their savings to retain Mr. Alan Hayman, Q.C. of Burchell Hayman Parish as their legal counsel, and Mr. Lee Weatherby of our firm to prepare an appraisal and provide expert testimony.

At the commencement of the Utility

Board hearing, Sable Offshore's case suffered something of a setback when Peter Constable, their only appraiser to give evidence, discovered that he had confused metric measurements with imperial: one metre as one foot, etc. ... an error which had escaped Mr. Taylor, his Supervisory Appraiser's attention too. Mr. Constable's appraisal and his evidence in support thereof discounted the presence of any injurious affection or other heads of claim and identified the land alone as the only compensable loss .. and this at the princely sum of \$1,100 (Imperial dollars) ... corrected at the commencement of the Hearing to \$3,620 (Metric money) ... an opinion with which the Board declined to concur: adopting instead the opinion advanced by the Myer's expert, our Lee Weatherby ... and awarding the Myers their appraisal and legal costs.

### Background

Allan and Darlene Myers owned 40 acres of land with 3,937 ft. of water frontage at Bowles Point on the Milton Haven River in Guysborough County; a beautiful property, possessing wildlife and a fish habitat. The property was improved with a cottage, the building of which had commenced in 1997, and which was about 75% complete. The cottage was insulated and used regularly. In the summer of 1997, Sable Offshore Energy Inc. began negotiating with property owners in the area to acquire easement rights for the construction of one or more pipelines between Goldboro and Point Tupper. Sable successfully negotiated the acquisition of easements from most private landowners with the exception of five properties, including that of the Myers. On January 8<sup>th</sup>, 1999 the Minister responsible for the Provincial Pipeline Act issued a vesting order, effectively expropriating an easement across the Myer's property. On February 8<sup>th</sup>, 1999, Maritimes and Northeast Pipeline Limited Partnership (M & NP) issued a notice to Myers under the National Energy Board Act that they too would be constructing a pipeline, to be located within the same easement as the Sable Offshore pipeline. Sable Offshore subsequently paid the Myers \$42,650 in compensation for their pipeline easement and agreed to pay additional

compensation for the above ground shut off valve and related apparatus. On the same day M & NP paid the Myers \$25,866 in compensation for their easement.

### Heads of Claim

The various heads of claim and the Board's decision thereon were as follows:

**(1) Post hearing evidence on a gas leak was not admissible**, even though the leak occurred after the hearing but before the decision was issued, primarily because the Board felt that the possibility of such a leak had been considered when the Myer's expert prepared his report.

**(2) No evidentiary weight was placed on the monetary settlements agreed by Sable with the other property owners** primarily because, (1) there was no evidence of similarity between the properties and the "pattern of dealing approach" was therefore not applicable, (2) there were not a great number of settlements, (3) there was no previous local experience of expropriation for gas pipelines, (4) the owners may not have acted knowledgeably because Sable Offshore did not advise them of their rights under the Expropriation Act.

**(3) This was a partial taking and the "Before and After" test was the most appropriate way to determine the market value of the interest taken and the injurious affection to the remaining land.**

**(4) The economic value of the waterfront had to be considered in assessing compensation.** The Myers' appraiser, Lee Weatherby of Turner Drake had assigned a "basic" land value and "waterfront benefit" in order to compute the market value. The Board concurred with his approach.

**(5) Sable was not entitled to deduct the payment for the M & NP easement from their compensation to the Myers.** Sable had advanced the argument that since their line was in the same easement as the Maritimes & Northeast Pipeline's gas line, the compensation paid by the latter should be deducted from Myer's claim against Sable ... something akin to the proposition that you should fly free if



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there are other passengers on the plane. The sheer logic of this argument was not readily apparent to the Board (nor was I suspect to anybody other than Sable) and they declined to adopt it. The Board did point out that the M & NP line fell under Federal jurisdiction, related to a different activity, and had a different ultimate purpose (it carried natural gas, while the Sable Offshore line carried gas liquids). However the Board went further and determined that even if such had not been the case, it would not have been appropriate to treat them as if they were a single easement ... because they were not! The M & NP easement permitted the company to install one further pipeline; the Sable easement more than one pipeline.

**(6) Appraisal costs incurred before the hearing could not be paid in advance of the hearing,** notwithstanding the financial grief it caused the expropriated party, because the Province had foreclosed such an opportunity when it repealed Section 35 of the Expropriation Act.

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### JURASSIC JIG AWARD



Corel

Payment of taxes is voluntary. Well not quite voluntary perhaps, but unless citizens are confident their tax load is fairly distributed they exercise their voting power to reduce them, move elsewhere, engage in tax evasion, or seek more violent solutions. The appeal process is a critical part of this architecture; a necessary safety valve which offers taxpayers redress for unfair treatment. It is *not* a privilege exercisable at the whim of those we pay to serve. Heretical though it appears to many in the civil service, the appeal process is the foundation on which any taxation system rests, and stratagems designed to foreclose taxpayers' right to appeal are ultimately self defeating. Which brings us once again (sigh!) to Service Nova

Scotia, a.k.a. the Provincial Assessment Department and the case of *Fitz's Realty Limited v. Director of Assessment*, heard recently by the N.S. Utility Review Board (NSUARB - AS-01-35 2003 NSUARB 106).

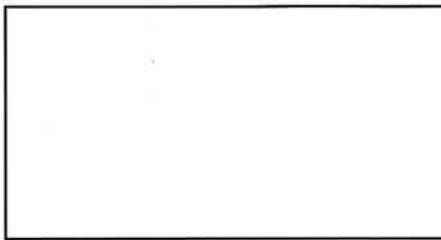
Fitz's Realty Limited appealed the assessment of 25 Neptune Crescent, Dartmouth, a property they had acquired in 1998 at a price below its 2001 assessed value. The basis on which SNB were required to calculate that assessed value was the market value of the property, as at January 1st 1999 (the base date) so the taxpayer naturally considered that a purchase price so close to the base date was very relevant. So did we, and an appeal was filed citing the following grounds: *"The assessment is excessive, unfair, not consistent with the 1998 sale price, not uniform with other assessments and any other grounds that may appear"*. The appeal was heard, and rejected by the Regional Assessment Appeal Court, so the taxpayer appealed to the Nova Scotia Utility and Review Board. The Director of Assessment, represented by Mr. Randall R. Duplak, QC, a government lawyer, objected to the appeal and asked the Board to dismiss it without a hearing on the grounds that the notice of appeal was not sufficiently specific to meet the requirements of Section 86(2) of the Assessment Act. A Preliminary Hearing was arranged ... and Mr. Duplak promptly objected to the taxpayer being represented by Ms. Giselle Kakamousias, a rather bright young lady who also happens to be the Manager of our Property Tax Division, on the grounds that she ... well, we'll tell you in the next issue of Newsletter.

*"Jurassic Jig Award" will be concluded in the next issue of Newsletter.*

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### PROPERTY TAX DIVISION

#### Newfoundland



Bruce Street, Mount Pearl  
(\$9,783/annum—15% in Tax Savings)

OK, so it was foggy, this is Newfoundland!

Every three years the City of St. John's and the remainder of Newfoundland and Labrador are re-assessed for property tax purposes. Although the prospect may not fill you with unalloyed glee, **this** is the year for the tri-annual re-assessment. The City of St. John's mailed out its proposed 2004 assessments during the last week of August. There was a 21 day appeal period; we contacted many property owners directly and advised clients through our web based Action Alert! program. (If your property is enrolled in our PAMST<sup>TM</sup> Property Tax Manager program no action was required, we already had matters in hand). If you did not appeal; possess your soul in patience until 2005, you are beyond redemption until then. If you did appeal, or own/occupy property elsewhere in the Province, read on ...

The Provincial Assessment Department, a.k.a. the Municipal Assessment Agency have tentatively scheduled their mail-out for October 10th for the proposed 2004 assessments for the entire province, excluding St. John's. There is a 21 day period from the date of mailing in which to appeal your property assessment. (If your property is enrolled in our PAMST<sup>TM</sup> Property Tax Manager program we will take care of your appeal).

The basis for your 2004 property assessment is the market value of your property as at January 1st 2002. However the provincial Assessment Act does contain a "uniformity" provision so your assessment is required to be similar to that of comparable properties, subject only to the "market value" ceiling. If your assessment is greater than its January 1st 2002 market value **or** if it is higher than the assessments of similar properties, you are over-assessed and should appeal.

We have built an assessment database segregated by asset class for the entire Province which contains past and proposed assessment data. It is integrated with our Transactional, Photographic and Mapping databases and provides factual and visual information on each property, to put the information needed at our fingertips. The analysis Toolkit incorporated into the assessment database

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will undertake cross sectional and longitudinal comparisons so we can evaluate how your property assessment compares with similar properties .. and with past assessments.

Contact our Newfoundland Tax Team, Rick Escott or André Pouliot toll free at 1-800-567-3033 (email [rescott@turnerdrake.com](mailto:rescott@turnerdrake.com) or [apouliot@turnerdrake.com](mailto:apouliot@turnerdrake.com)) if you would like to discuss your assessment ... or visit our web site [www.turnerdrake.com](http://www.turnerdrake.com) and follow the links (products → property tax → appeals).

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## URBAN DECAY - THE WRITING'S ON THE WALL (Concluded)

### Property Values

Graffiti initially hits the owners of residences and small commercial buildings the hardest because their properties are the most accessible and hence very vulnerable. Ultimately however we all suffer. Graffiti destroys property values in three overlapping and escalating waves.

The first wave, the cost of graffiti removal, is easy to quantify: commercial properties fall in value by about \$10,000 for every \$1,000 spent annually in graffiti remediation. A similar ratio probably holds true too for residential property. However since the entire neighbourhood will be blighted by graffiti there is also a systemic loss in value to all properties regardless of each individual property's graffiti status.

This second wave, the lowering of property values throughout the graffiti infected area, was the focus of attention by a 2003 study undertaken by Steve Gibbons, Lecturer at the London School of Economics. The study found that residential property values in London, England declined by 1.6% for every 10% increase in property damage reported to the police. The actual density of reported property damage was 101 incidents per square kilometre ... so every 10 additional incidences of (reported) graffiti, or other property damage, drove down prices by 1.6%, i.e. \$3,061 for an average dwelling in Halifax Regional Municipality (H.R.M.) if the same ratio holds true here.

The third wave of value declines is also systemic, but appears to be discrete rather than continuous. As indicated earlier, society relinquishes control of graffiti bombed neighbourhoods; property misdemeanours spawn major crime. The perceived lack of societal control encourages the infiltration of prostitution and drug peddling ... and the violent crimes associated therewith. In addition to the empirical results of the "broken windows" policing in New York alluded to earlier, various studies in the United States have established high collinearity between property crime and violent crime, e.g. Hellmann and Naroff (1979),

Lynch and Rasmussen (2001). Indeed in the latter study, the two crimes enjoyed a correlation coefficient of 0.75 ( $\pm 1.0$  = perfect correlation). The collapse in property values resulting from the incidence of violent crime in the neighbourhood is sudden and dramatic: it occurs when the area reaches its "violent crime" threshold, i.e. becomes entrenched in the public mind as an unsafe place to live. It is dangerous to generalise the results of United States' studies to Canada because there is less tolerance of homicides and other violent crime here. However a study of 2,880 residential property sales which occurred between 1st July 1994 and 30th June 1995 in Jacksonville, Florida, conducted by Professors Allen Lynch (Mercer University) and David Rasmussen (Florida State University), revealed a 39% drop in value when the neighbourhood reached its "violent crime" threshold. There are at least two neighbourhoods in H.R.M. where property values register similar discounts because they are regarded as unsafe ... even though they would not qualify as such, south of the border. Canadian cities therefore are much more at risk from graffiti than their American counterparts.

### Wall Piece



Turner Drake

Municipalities derive the majority of their revenue from property taxes, which in turn are based on the current market value of properties in their jurisdiction. Graffiti and the chain of crime it sets in motion has a devastating effect on property values. It is surprising therefore that municipal government, the chief stakeholder, is usually slow to take effective action. Unfortunately graffiti first takes root on public property and typically comprises between 60% and 70% of all graffiti incidents in any neighbourhood. Often too the municipality will encourage graffiti by providing "walls", apparently under the assumption that this provides an outlet to graffiti writers, and thus discourages them from exercising their paint cans elsewhere. This has proven to have the reverse effect: walls such as that shown in the photograph typically result in increased graffiti activity within a ten block radius. Municipalities often take a similar complacent attitude to "wild" or "fly" posturing as well; though cities such as Victoria recognise that whilst it emanates from a different source, its impact is the same, and

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include it under their definition of "graffiti".

### Stemming The Tide

Private property owners cannot combat graffiti alone: nor can public authorities. Graffiti eradication requires a concerted community effort. However owners can take action individually to reduce their property's graffiti profile by taking the following action:

(1) *Establish a clear boundary*, with a durable fence, especially between your property and public property.

(2) *Display a sense of ownership* by maintaining the property well: eliminate peeling paint, keep the exterior clean, litter and garbage free.

(3) *Eliminate "ambiguous" spaces* such as alleyways, by giving them a purpose, e.g. planters and other types of landscaping.

(4) *Graffiti writers require high exposure locations* with alleys or doorways to provide cover. Bank machines, pay phones, mail boxes, benches, etc. all attract pedestrian traffic ... and hence graffiti. Ask that they be moved or that video surveillance be provided.

(5) *Flank walls protruding into a busy street, with a side alley for "cover", are prime targets for graffiti.* Provide video camera surveillance, motion sensor activated floodlights, or install a graffiti resistant coated surface on the wall.

(6) *Avoid large unbroken areas of wall.* It provides a "canvas" especially if painted white, or in very dark colours. Paint the wall with a mural: taggers usually respect another "artist's" work. Alternatively reduce the paintable surface by installing creeper such as ivy, or install video surveillance and motion sensor activated floodlights. Consider a sacrificial coating that can be removed with a high pressure hose, or install graffiti resistant panels, to the most accessible parts of the wall .. or paint the wall in "modular panels" that will enable you to cover the graffiti without repainting the entire wall or leaving a "ghost" image.

(7) *Reduce the accessibility of walls* and free standing signs by protecting their base with spiky plants, thick or thorny bushes.

(8) *When you are "bombed", report the vandalism to the police immediately, record the graffiti with photographs, and remove it within 24 hours.* These actions may identify the graffiti writer, may get you restitution when they are caught, and will reduce your chances of being tagged again. If you remove all visual clues to the former presence of graffiti, you reduce the chance of being tagged again by 90%. If you leave the graffiti, there is virtually a 100% probability of your

property being tagged again ... and again ... and again ... as the graffiti writers 'talk' to each other with additional tags.

(9) *Municipalities such as Halifax have adopted Toronto's "5E Program" of empowerment* (getting neighbourhoods involved), *environmental* (designing new buildings with reduced graffiti opportunities), *eradication* (graffiti and litter removal), *education* and *enforcement* (prosecution for vandalism).

### Epitaph

Atlantic Canada stands to lose more from graffiti than the rest of the country because we are the custodians of its oldest buildings. It is often impossible to eradicate graffiti without destroying the original stonework. Add to that, the fact that resources are scarce and must be diverted from more useful ends such as health care and education to remedy vandalism, and we face a no win situation.

For more information on graffiti visit [www.nograffiti.com](http://www.nograffiti.com) or the more than 1.6 million web sites devoted to graffiti.

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### TRYING HARDER!

On January 4th 2000, we became the first real estate company in the Atlantic region with a quality system registered to the ISO 9001:1994 standard. The International Organisation for Standardisation (ISO), headquartered in Geneva, Switzerland is a worldwide federation of national standards bodies for some 130 countries, one from each country. The Standards Council of Canada (SCC) represents them here. Time flies: this year the Quality Management Institute (QMI) a subsidiary of the Canadian Standards Association (CSA) carried out their recertification audit and determined that our quality management system met the ISO 9001:2000 standard. All of which is a long way of saying, with a lot of confusing initials, that we are still trying harder. So do you agree? Well, it is a requirement of ISO 9001:2000 that we find out, so we surveyed all clients for whom we conducted assignments during the six month period ending September 30th 2002. The results are in (39% responded), we are prepared to bare all, so here is the Full Monty ...

Many thanks to all of you who responded to the survey. We are currently reevaluating the results of our March 2003 survey to see if you think the changes we implemented to our Web Site Client Area and Property Investors Club are beneficial and are feeding your suggestions into a further upgrade of the Site.

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Question	Excellent/ Good	Average	Fair/ Poor	Comments
<b>Consulting Staff:</b>				
Did we explain the scope of the job?	95%	5%	0%	😊
How well did we fulfil our mandate?	98%	0%	2%	😊
How well did we keep you in the loop?	88%	10%	2%	😊
Courteous, helpful, professional?	94%	6%	0%	😊
How was our response time?	90%	10%	0%	😊
Did you get value for money?	94%	3%	3%	😊
Our performance compared to previous assignments?	94%	6%	0%	😊
<b>Support Staff:</b>				
Office staff—Courteous, helpful, knowledgeable?	98%	2%	0%	😊
Accounting Staff—Courteous, helpful, knowledgeable?	67%	25%	8%	😊
<b>Web Site:</b>				
How useful is our Client Area?	66%	22%	12%	😊
How useful is our Web Site generally?	66%	25%	9%	😊
How easy is it to navigate?	62%	29%	9%	😊
How useful are the Action Alerts?	66%	26%	8%	😊
How useful is the Property Investors Club?	33%	47%	20%	😞
How useful is our Mainly for Tenants program?	45%	33%	22%	😞

**BROKERAGE DIVISION**

**We Act For Tenants Too!**



Typically a tenant will approach a commercial real estate broker, or often several brokers, and advise them of their space requirements. The broker, or brokers will then review the inventory of space available for lease, identify locations that appear to meet the tenant's specifications, and submit them to the tenant. The real estate broker is acting as an *agent of the landlord(s)* and the broker will be compensated by the landlord for leasing their space. If the broker is unsuccessful, a likely event in many cases because the tenant often opts to stay in their existing space, changes their mind, or leases space through another broker, the unfortunate broker collects no fee. This is why it is counterproductive

to approach several brokers. Once it becomes apparent that such is the case, all of the brokers involved rapidly lose interest because the chances of their being remunerated for their individual effort, are substantially diminished. The landlords go to great lengths to ensure that the commercial brokers in their community are aware of space availability; a process that has been much facilitated by email and the Internet. They also cultivate this awareness through receptions and other events with their brokers. The process ensures that the market works efficiently, landlords can expose their space to a wide audience of potential tenants relatively inexpensively, and tenants are afforded a broad number of leasing packages. The market inefficiencies that do occur, arise because tenants often approach several brokers in the mistaken assumption that this broadens the opportunities; or make a sub-optimal choice because they lack an understanding of the leasing process. Often they will make their decision based on rent/ft.<sup>2</sup> and have an incomplete understanding of the different rental terms used, the nature of rentable area ... a ft.<sup>2</sup> is not necessarily a ft.<sup>2</sup> ... or fail to appreciate that the timing of the rental payments, leasehold and relocation packages are more important than their narrowly focussed decision criteria of rent/ft.<sup>2</sup>.

**Tenant Representation** is designed to

address this problem and occurs when the tenant retains the broker to act on their behalf. It has been common in the United Kingdom since God created real estate, and first took root on the North American continent in California (where else), moved up the western seaboard to Canada and then spread eastwards. We first investigated it in 1988 and have worked hard since then to fine-tune it to fit within our own corporate culture. *Our Tenant Representation program, aligns our interests with those of the tenant, provides that the latter benefits financially from the leasing commission ... and ensures that the landlord incurs no additional costs that they would have to recover in the rent.*

Our Tenant Representation program is straight forward. It starts with a clear, written contract which sets out our responsibilities and legally obligates us to act in the tenant's best interests. The contract defines what we do to locate the "best deal" for the tenant. It provides that the leasing commission that would normally be paid to the broker (us), is instead paid to the tenant. We believe that this is important psychologically because we are paid by the tenant, not the landlord, albeit out of the landlord's commission. The tenant pays us a small up front fee to cover our out of pocket expenses plus 75% of the commission they recover from the landlord. The cost of the transaction is not increased to the landlord so there is no temptation to increase the asking rent. The tenant effectively participates in the brokerage commission and employs a broker obligated, and motivated, to act in their best interest. Our leasing personnel are salaried professionals, (unusual in North America; most brokerage personnel are remunerated out of the broker's commission) and they have access to details on virtually all of the space available for lease in the Halifax Regional Municipality. There may be another Tenant Representation program which offers as much to the tenant: we have yet to find it.

*For more information on our Tenant Representation program call Russ Allen toll free 1-800-567-3033 (429-1811 in HRM) or visit our web site at [www.turnerdrake.com](http://www.turnerdrake.com) and follow the links (products → brokerage → leasing).*