PAYMENTS IN LIEU OF TAXES-A legal perspective

Introduction

Property tax remains the main source of operating revenue in most municipalities, towns and cities in both the United States and Canada. In Canada the levying of property tax has historically been a municipal function. Municipal legislation empowers local governments to set tax rates and collect property tax revenue. The determination of the assessment of property, which includes land and improvements, is either a provincial responsibility or the responsibility of management authorities or assessment corporations established by the provinces. Provincial assessment legislation determines what property is subject to taxation by defining "assessable property", and sets the legislative framework for the determination of assessed value for assessable properties. The level of property tax paid on any given property is the product of its assessed value and effective real property tax rate.[1]

The federal government is one of the largest property owners in Canada, with more than 26,500 federal lands and facilities located within municipal boundaries across the country.[2] Federal properties encompass a host of different types of lands, including airports, correctional institutions, harbours, military bases, and national historic sites, which receive a variety of municipal services from local governments. The local services provided to federal properties can, and do routinely include sewers, water, waste disposal, fire and police protection, and roads.

However, under Canadian law federal property is not subject to property tax. In recognition of the contribution made by municipalities to the servicing of federal properties located in municipal territory, and to alleviate the obvious cost inequity which would otherwise accrue to municipal units

[1]Local variations to these general comments can occur within provinces and municipalities. Reference should be made to the governing legislation in each province for details on local and jurisdictional variations.

[2]PWGSC website: www.pwgsc.gc.ca/pilt/text/index-e.html)

that provide such services, municipalities receive payments in lieu of taxes through the federal *Payments in Lieu of Taxes Act* ("PILT" Act).[3] The level of PILT payments received varies amongst municipalities, and in some cases forms a significant component of municipal property tax-related revenue[4].

Revenue from PILT payments for municipalities depend upon two main factors: (I) the number of federal properties on which payments are made, and (II) the extent to which payments reflect the amount of taxes which would have been paid if the properties had been subject to standard tax liability and property assessment.[5]

This paper offers a legal perspective on the the federal PILT program through a review of the PILT Act, specifically focusing on the application of the Act to the determination of eligible federal property and the level of payments in lieu of real property taxes for special-purpose federal properties, such as National Historic Sites. Although the PILT Act also allows for payments in lieu of frontage or area tax, these will not be addressed in this paper. The operation of provincial assessment legislation and assessment law principles in conjunction with the provisions of the PILT Act will also be discussed, as will the operation of the PILT Dispute Advisory Panel when disagreements arise with respect to the level of PILT payments received. The paper will conclude with a review of various PILT cases and a comment on the recent PILT hearing held with respect to the valuation of the Citadel Hill National Historic Site, located in Halifax, Nova Scotia, in which the author participated as co-counsel. The Citadel Hill hearing will be analyzed with a view to identifying general principles applicable to valuation hearings for federal properties before the PILT Advisory Panel.

PILT Program: A Brief History

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[3] R.S.C. 1985, c. M-13

[4] Harry M. Kitchen & Enid Slack, "Special Study: New Finance Options for Municipal Governments" (2003) 51 Can. Tax. J. @ p. 2254, Table 13, Part B

[5] Ibid; pp. 253-2254

Section 125 of the *Constitution Act*, 1867 states that "No Lands or Property Belonging to Canada or any Province shall be Liable to Taxation."[6] Pursuant to this section, lands owned by the Government of Canada are constitutionally protected from local property taxation. Provincial assessment legislation reaffirms this special status for federal lands by specifically exempting property owned by or vested in Her Majesty from property taxation.[7] In general, municipal enabling legislation in each province empowers municipal units to levy property taxes and collect tax revenue. Section 125 was enacted to ensure that taxation powers of one level of government did not interfere with the power of another level of government to control its own property.[8]

Although federal lands enjoyed what amounted to a constitutional exemption from property taxation, by the beginning of the post-World War II era it became evident that federal (and provincial) properties were benefitting from municipally-provided services (roads, sewers, fire protection) for which municipal governments could not collect any tax revenue from property taxation .[9] As a result, beginning in 1950 the federal government began making payments in lieu of property taxes to municipalities in order to share in the cost of local governments where the Crown owned property. Initially payments were made under the provisions of the *Municipal Grants Act* S.C. 1950-51, c.54, then under updated 1980 version of the *Municipal Grants Act*. What were once termed "municipal grants" are now called "payments in lieu of taxes", which are paid in accordance with the provisions of the *Payments in Lieu of Taxes Act*, supra.

The PILT program provides management, consulting and valuation services to federal departmental

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[6] Constitution Act, 1867 (U.K.), 30 & 31

[7] e.g., *Assessment Act*, R.S.N.S. 1989, c.23, s.5(1)

[8] Harry M. Kitchen & Francois Vaillancourt, "The Federal Grants-in-Lieu of Property Taxes Program: An Assessment" (1990), 39 Can. Tax. J. 928, at p.929, updated in Harry M. Kitchen & Enid Slack, "Special Study: New Finance Options for Municipal Governments" (2003) Can. Tax. J. 2215

[9] ibid, p.929

custodians of federal properties, including Transport Canada, Parks Canada, National Defence Canada, and Veterans Affairs. Public Works and Government Services Canada (PWGSC) administers the PILT program and in practice makes payments to the taxing authorities in each province, under the discretionary power of the Minister of PWGSC to make such payments. As will be discussed herein, certain Crown corporations are given authority under the PILT Act for making payments in lieu of taxes to taxing authorities and administer their own PILT programs.[10]

PILT: The Legislative Framework

Payments in lieu of taxes are the payment that the federal government makes to real property taxing authorities in which federal properties are located. The PILT Act sets out the legislative structure for the determination and payment of payments in lieu of taxes for federal properties. For ease of reference the PILT Act, Schedules, and Regulations are appended to this paper.

Considering its potential impact on municipal revenues the federal PILT Act is notable for its relative brevity. The statute's provisions are organized under several headings: "Interpretation", "Purpose of Act", "Authority to Make Payments", "Calculation of Payments", "Payments by Crown Corporations", "Advisory Panel" and "General". The stated purpose of the Act as set out at s.2.1 is "to provide for the fair and equitable administration of payments in lieu of taxes."

Martineau, J. writing for the Federal Court of Canada recently commented on the objects and purposes of the PILT Act in *City of Montreal v. Canadian Broadcasting Corporation and Attorney General of Canada* (2006), 28 M.P.L.R. (4th) 49:

> *" The PLTA (PILT Act) (enacted for the first time in 1950 as the Municipal Grants Act) provides for equitable payments for municipalities in lieu of taxes for federal property located on their territory. The purpose of the PILT Act is to provide a distinctive legislative scheme according to which the Crown agrees to pay the relevant taxing authorities,*

[10] PWGSC website, www. pwgsc.ca/pilt/text/clien-e.html

including municipalities, payments in lieu of taxes. "[11]

Paragraph 17 of the same decision the Federal Court emphasized the collaborative elements of the PILT Act in the context of federalism:

> "*The PLTA ("PILT" Act) is an example of cooperative federalism. Even if these immovables are exempted from real property tax, frontage or area tax, or even a business occupancy tax, the government of Canada, which is the country's most important real property owner, nevertheless assumes and pays its fair share of the costs of the local government in communities where it owns immovable property*."[12]

By way of overview of its operative provisions, the Act gives discretionary authority to the Minister of Public Works and Government Services to make payments in lieu of real property taxes to a taxing authority that applies for the payments, in respect of federal property situated in the area in which the taxing authority has power to levy and collect real property taxes (PILT Act, s.3(1)(a)). The PILT Act limits what the Minister can make for a payment in lieu of tax to an amount not greater than the product of the (a) the effective tax rate in the taxation year applicable to the federal property in respect of which payment may be made, and (b) the property value in the taxation year of that federal property.

The preceding overview contains a number of key definitions found in the PILT Act. The defined actors in the PILT Act are the "assessment authority", "taxing authority" and the "Minister".

The "Minister" means the Minister of Public Works and Government Services (PWGSC). The "taxing authority" includes any municipality, or other authority that "levies and collects a real property tax" (or a frontage tax or area tax), "pursuant to an Act of the legislature of a province." In

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[11] at para. 6-also stated in *City of Montreal v. Montreal Port Authority and Attorney General of Canada* (2006), 31 M.P.L.R. (4th) 117

[12] Ibid, at para. 17

most province the taxing authorities are municipal governments, as is the case in Nova Scotia. In Quebec and Ontario, in addition to municipal governments, taxing authorities are school boards. In Prince Edward Island the provincial government assumes the role; the New Brunswick version is the provincial Finance Department. In both the Yukon and Northwest Territories, the taxing authorities are the respective territorial governments and municipal governments.

"Assessment authority" is defined in the Act as the authority that has power under an Act of Parliament or "legislature of a province to establish the assessed value of real property or immovables." The definition of "property value", discussed later, includes reference in its wording to value that would be attributable by an assessment authority to federal property, thereby affirming the connection between the property value component of PILT payments and the assessment valuation of the federal property by a provincial assessment authority. As with taxing authorities, assessment authorities take a variety of forms in different provinces. In British Columbia, the assessment authority is BC Assessment, a publicly-funded provincial Crown corporation governed by a Board of Directors. The assessment authority for the Northwest Territories is the Government of the Northwest Territories, with the exception of the city of Yellowknife which provides its own valuations service; a similar situation exists in the Yukon. In Ontario, the assessment authority is the Municipal Property Taxation Corporation, while in Saskatchewan the assessment authority takes the form of the Saskatchewan Management Authority, as well as individual municipal assessors for certain cities. The assessment authority in Nova Scotia is the Assessment Services division of Service Nova Scotia and Municipal Relations, which will be changing to a property services valuation corporation in 2008. [13]

The Minister is given the authority under the PILT Act to make payments in lieu of taxes to an applicant taxing authority (PILT Act, s.3(1)(a)), a discretionary decision-making power, which also includes the discretion to award supplemental PILT payments if he is of the opinion that a payment in lieu of taxes has been unreasonably delayed in being received by a taxing authority. In lieu payments are not available to municipalities as of right. A municipal taxing authority must apply

[13]Valuation Advisor, Vol.5, No.1, January, 2007: www.pwgsc.gc.ca/pilt/text/va_jan2007

for payments in lieu of taxes in respect of eligible federal property in order to be considered for receipt of the payments in lieu. Applications for payments in lieu of taxes are made to the Payments in Lieu of Taxes Program of the PWGSC department.[14]

Once the Minister chooses to exercise his discretion to award payments in lieu of taxes he is effectively capped in the amount of the payment in lieu of real property taxes to the product of (i) the effective tax rate in the in the taxation year applicable to the federal property, and (ii) the property value in the taxation year of that federal property (PILT Act, s.4(1)). Some important points to note here are that these payments are in lieu of "real property taxes" and in respect of "federal property." The definition of "real property tax" emphasizes the interconnection between payments in lieu and the tax levied by municipal taxing authorities. "Real property tax" is defined as

> "*a tax of general application to real property and immovables or any class of them that is*
> *(a) levied by a taxing authority on owners of real property or immovables..and*
> *(b) computed by applying a rate to all or part of the assessed value of taxable property*" (emphasis added)

The discretion to make payments in lieu under the PILT Act must be exercised with a view to replacing the real property tax on a federal property as if it was "taxable property" or property on which a person would be required by a taxing authority to pay real property tax.

In addition to the definition of "property value", the definition of "federal property" is of central importance to applying the PILT Act in respect of payments in lieu of real property taxes. The majority of federal properties located within the territories of municipal taxing authorities fall under the first part of the definition:

> "*federal property" means, subject to subsection (3),*
> *(a) real property and immovables owned by Her Majesty in right of Canada*

[14] For information on the application process visit the PWGSC website at https://peri-pilt.gc.ca

> *that are under the administration of a minister of the Crown,*
>
> *(b) real property and immovables owned by Her Majesty in right of Canada that are, by virtue of a least to a corporation included in Schedule III or IV, under the management, charge and direction of that corporation.*."

Schedule III and IV contain lists of Crown corporations.

Section 2(3) of the PILT Act sets out a list of properties not included in the definition of "federal property". Two exceptions are highlighted here: any "structure or work", and any "structure, work, machinery or equipment that is included in Schedule II of the PILT Act." A "structure or work" is not federal property, but there are exceptions to the exception. Section 2(3)(a) counts among these exceptions, and therefore included as "federal property": (i) a building designed primarily for the shelter of people, living things, fixtures, personal property or movable property; (ii) an outdoor swimming pool; (iii) a golf course improvement, (iv) a driveway for a single-family dwelling, (v) paving associated with employee parking, or (vi) an outdoor theatre. In the Halifax Citadel National Historic Site PILT hearing referenced within, payments in lieu of real property taxes were sought for the casemate or vaulted chamber components of the fortifications as structures designed for shelter of property.

Schedule II sets out a number of structures, works, machinery and equipment specifically excluded from the definition of "federal property." Schedule II was introduced as part of amendments to the PILT Act in 2000, after which the following were excluded from eligible federal property: canal structures, conveyor belts, docks, wharves, piers, drydocks, fortifications and components, gasoline pumps, gun butts, monuments, penitentiary walls, pole lines, transmission lines, reservoirs, storage tanks, road, sidewalks, snow sheds, tunnels, bridges and dams. The exclusion of fortifications from the meaning of "federal property" impacted significantly on the Halifax Citadel valuation, as fortification components were excluded as "federal property" after 2000 and therefore not eligible for PILT payments after 2000. The costing of casemates were for use in the assessment years 1997 to 2000, when casemates were still included as "federal property" under the Act.

As will be commented upon herein, "property value" is the value of a federal property which the

Minister thinks an assessment authority would assign to the property, as the 'basis for computing any real property tax that would be applicable to that property if it were taxable property.' With this definition, an assessor's market value assessment is made to be the foundation of any decision on payments in lieu of taxes by the Minister. Payments under the PILT Act are a function of assessment law. By definition, the property value attributed to the federal property by an assessment authority must not take into account any "mineral rights or any ornamental, decorative or non-functional features" of the property. This can be an area for potential conflict in the valuation of unique properties, such as historic sites, where the original purpose of a structure or building may no longer serve its original purpose, but which may not be obsolete for other uses. What is considered "ornamental" or "decorative" elements of a property may also be a subject of disagreement depending on the nature of the property, and what the alleged "ornamental" or "decorative" elements are actually being used for.

The PILT Act does not have the effect of making the Federal Crown subject to provincial or municipal legislation involving taxation or real property, and it does not confer any right to payment, as indicated in the wording of s.2, 3, and 15 of the PILT Act.[15] Section 15 expressly provides that "no right to payment is conferred by the Act."

Crown Corporations

The PILT Act lists a number of Crown corporations at Schedules III and IV which include Canada Post, the CBC, and several port authorities such as the Montreal Port Authority. These Crown corporations are given authority under the PILT Act and *Crown Corporation Payments Regulations* (CCPR) to make payments in lieu of real property taxes in respect of corporate property."Corporate property" is defined under the CCPR as including "any real property or immovables owned by Her Majesty in right of Canada that is under the management, charge and direction of a corporation included in Schedule II or IV of the PILT Act, or that has been entrusted to such corporation", and any such property or immovables owned by Her Majesty and held by a port authority for conducting

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[15] *City of Montreal v. CBC***,** supra 11, at para. 7

the activities of a port authority (CCPR, reg. 2) As agents of the Crown, Crown corporations exercise jurisdiction over corporate property in making payments in lieu of taxes which would normally belong to the Minister of Public Works under section 3 of the PILT Act.[16]

In 1967, Cabinet instructed Crown corporations to make payments in lieu of taxes on a basis similar to that set out in the applicable legislation at the time for grants in lieu. More formally, section 9(1)(f) of the PILT Act permits the passage of regulations pertaining to payments in lieu of taxes by Crown corporations, with the payments so determined to be done so on a basis "at least equivalent to that provided in this (PILT) Act."[17]

Section 11 of the PILT Act deals with payments by Crown corporations and stipulates that every Crown corporation listed in Schedule III or IV shall, if it exempt from real property tax, comply with any regulations made under section 9(1)(f). The CCPR are regulations made under section 9(1)(f), with which Crown corporations must therefore comply. An important condition to compliance is that the Crown corporation must be "exempt from property tax." A Crown corporation can acquire property to carry out its own purposes, or to manage, which remains the Crown's property. In order for the corporation to be exempt from tax under s. 125 of the *Constitution Act*, 1867 (U.K.), and required to comply with the CCPR, the properties in question must also be occupied and operated by the respondent exclusively on behalf of Canada.[18]

The calculations of payments made by a corporation in lieu of real property tax under the CCPRs are significantly different than the mode of calculation under the PILT Act. Regulation 6 states that the

> *"payment made by a corporation in lieu of a real property tax..*
> *in respect of any corporation property that would be federal property*

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[16] Ibid, para. 8.

[17] City of Montreal, supra 11, at para. 8.

[18] *Halifax (City) v. Halifax Harbour Commissioners* ,[1935] S.C.R. 215 (SCC); Toronto (City) v. CBC, [1938] O.W.N. 507 (Ont. C.A.).

> *if it were under the management, charge and direction of a Minister of the Crown is made without any condition, in an amount not less than the amount referred to in sections 7 to 11."*

Section 7(1) of the CCPR says that a payment made by a corporation in lieu of property tax shall not be *less than the product of* (a) the corporation effective rate and (b) the corporation property value in the taxation year of that corporation property. This is contrasted with the wording in the PILT Act that a payment in lieu of taxes shall not *exceed* product of the effective rate and property value.

Under the CCPRs the Crown corporation maintains discretion as to what is the "corporation property value" and "corporation effective rate", as is the case in the PILT Act, but is still required to consider the value that an assessment authority would attribute to the corporate property. Section 2 of the CCPR provides a definition of "corporation property value" which is the same as that of "property value" in the PILT Act, with "corporation property" substituted for "federal property."

PILT Dispute Advisory Panel

A taxing authority may make a request for review to the PILT Dispute Advisory Panel (DAP) if it is in disagreement with the PILT payments received. The provisions dealing with the appointment of the advisory panel, removal of members, duty of chairperson, and mandate of the Advisory Panel are set out at section 11.1 of the PILT Act. The DAP's mandate is given at s.11.1(2) of the PILT Act:

> 11.1(2) *The advisory panel shall give advice to the Minister in the event that a taxing authority disagrees with the property value, property dimension or effective tax rate applicable to any federal property, or claims that a payment should be supplemented under subsection 3(1.1).*

In its functioning, the DAP is advisory in nature with respect to those areas of jurisdiction listed in s.11.1(2). DAP hearings are conducted in accordance with the Advisory Panel Rules of Practice, which in turn are interpreted and applied so as to ensure that the principles of natural justice and procedural fairness are followed. The letter of the Rules does not stand in the way of ensuring

fairness and justice are achieved in the context of a hearing. The wording of Rules 12.5, 12.6, and 12.7 confirm this approach to the interpretation of the Rules and their application to DAP hearings. Rule 12.5 provides:

> 'The rules of practice of the Advisory Panel shall be construed so as to ensure the *fair and simple operation of the review procedure and to eliminate unjustified expenses and delays.* Unless there is a declaration to the contrary, *the present rules of practice may be relaxed or set aside by the Chairperson or the Hearing Panel where compliance with them might create an injustice*.

Rule 12.6 expressly reads that the Hearing Panel shall "apply the principles of natural justice, providing the parties with a fair opportunity to be heard" and that each member of the Panel should "act in good faith and without bias." Rule 12.7 prioritizes the rules of procedural fairness applicable to the resolution of disputes before the DAP.

The Advisory Panel Rules also set rules for filing deadlines for review applications to the DAP (Rule 3.1), the mode of filing a review application (Rule 2.1), the contents of the application for review (Rule 2.2 and 2.3), the timing and location of the hearing (Rule 7.0 and 8.0, respectively), the filing of documents before the hearing (Rule 9.1), and the conduct of hearings before the DAP (Rule 12.0).

As referred to above, the DAP's jurisdiction to advise the Minister is limited under s.11.1(2) to situations where a taxing authority disagrees with "property value", "property dimension", "effective tax rate", and "claims that a payment should be supplemented". Rule 2.5 of the Rules of Practice elaborates on the DAP's jurisdiction:

> "*Only a disagreement by a Taxing Authority as to the property value, the property dimensions, the effective rate including the method of application of any tax mitigation measures such as capping and claw back provisions, rebates and discounts applicable to any federal or corporation property, or a claim that a payment should be supplemented under subsection 3 (1.1) of the Act is admissible as an application to the Advisory Panel. Issues dealing with the eligibility of a property, improvement or structure or decision*

arising from the interpretation of the Act and its Regulations are outside the mandate of the Advisory Panel and should be addressed directly to the Federal Organization."

Therefore, issues on eligibility of property, improvements, or structures, and matters involving the interpretation of the Act and Regulations are not matters which can properly be brought before the DAP. Such issues are referred to the relevant "Federal Organization" authorized to make PILT payments to the eligible taxing authority. The definition of "Federal Organization" in the Rules of Practice is broad enough to include the Department of Public Work and Government Services Canada and Crown corporations. A taxing authority who wishes to challenge PWGSC's decision in any of these areas can do so by application to the Federal Court.

The PILT Act and Assessment Legislation

The legal nexus, or legislative link between the federal PILT Act and provincial assessment legislation is found in the PILT Act's definition of "assessed value", "property value" , and "taxable property", and the provision for the calculation of payments in lieu of real property tax (section 4(1) of the PILT Act).

"Assessed value" is defined as "*the value established for any real property or immovable by an assessment authority for the purpose of computing a real property tax*."

The PILT Act defines "property value" in terms similar to that for "assessed value",by referring to "the value that, in the opinion of the Minister, would be attributable by an assessment authority to federal property.." Property value is the assessed value of a federal property, or the value established by an assessment authority for the purpose of computing a real property tax, "that would be applicable to that (federal) property if it were taxable property." "Taxable property" is defined as real property or immovables on which a taxing authority may require payment of a real property tax.

As noted above, the Minister has the discretion to make payments from the Consolidated Revenue

Fund upon receipt of an application for payments in lieu of property tax, with the payment not to exceed the product of the effective taxation rate and the property value of the federal property for a particular taxation year (s.4(1)(a)).

The Minister is guided in the exercise of his discretion to make PILT payments for federal property by considering the value which, in the Minister's opinion, an assessment authority would attribute to the federal property. The spirit of the PILT Act as evidenced through these provisions requires that the standards and methods of assessment applicable in the assessment authority's jurisdiction are to be followed in determining PILT payments, and that the valuation methods chosen are to be consistent with provincial assessment legislation. This leads directly to the operative valuation clauses in provincial assessment legislation for direction on the valuation of property by assessment authorities.

Assessment statutes in each province stipulate the basis upon which respective provincial assessment authorities are to determine the assessed value of property. In most provincial jurisdictions properties are to be assessed at "market value", or a percentage thereof. Although some provincial statutes refer to property as being valued at "value", "fair value", or "current value", the definitions for these terms reflect a market value assessment.[19]

Section 42(1) of the Nova Scotia *Assessment Act* R.S.N.S. 1989 c.23 provides typical wording as to the meaning of "market value":

> **Valuation**
>
> 42(1) *All property shall be assessed at its market value, such value being the amount which in the opinion of the assessor would be paid if it were sold on a date prescribed by the Director in the open market by a willing seller to a willing buyer, but in forming his opinion the assessor shall have regard to the assessment of other properties in the*

[19] *Urban Municipality Act* S.S. 1983-84, c.U-11, refers to "fair value" which Saskatchewan assessment manual equates to "market value"; In Ontario, the *Assessment Act* R.S.O. 1990, c.A.31 sets assessments at "current value" which is defined as the "amount of money the fee simple, if unencumbered would realize if sold at arm's length by a willing buyer to willing seller", a statement of market value.

> *municipality so as to ensure that,.. taxation falls in a uniform manner upon all residential and resource property, and in a uniform manner upon all commercial property in the municipality.*

"Market value" so defined has three elements. First, market value is the price that would be paid between to unrelated people, being the price paid by a 'willing buyer to a willing seller'. Second, market value is the price obtained in an open market. Third, the market value must be determined as if the property were sold on "the date prescribed by the Director (of Assessment)". The last requirement varies from jurisdiction to jurisdiction but most often takes the form of a "base date" of fixed duration prior to an assessment year as determined by the assessment authority. Market value so defined also includes a uniformity requirement- any opinion as to market value must ensure that taxation falls in a uniform manner on similar properties, by considering the assessment of like properties within a municipality.

These legislative requirements for determining "market value" correspond closely to the definition of market value endorsed by professional appraisal bodies. One of these organizations, The International Association of Assessing Officers (IAAO), in its text *Property Appraisal and Assessment Administration,* at p.651 defines "market value" as follows:

> "***Market value.*** *The most probable sale price of a property in terms of money in a competitive and open market, assuming that the buyer and seller are acting prudently and knowledgeably, allowing sufficient time for the sale, and assuming that the transaction is not affected by undue pressures.*[20]

The Canadian Uniform Standards of Professional Appraisal Practice (CUSPAP) define "market value" as:

> "*The most probable price which a property should bring in a competitive and open market as of the specified date under all conditions requisite to a fair sale, the buyers and seller each acting prudently and knowledgeably,*

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[20] Eckert, Joseph K. (Ph.D) 1990. *Property Appraisal and Assessment Administration* Chicago, IAAO.

and assuming the price is no affected by undue stimulus."[21]

As assessment authorities are to assess properties at market value pursuant to assessment legislation, "property value" as defined in the PILT Act must be taken to mean the *market value* attributed by an assessment authority to federal property.

Reference in the PILT Act to the value that a provincial assessment authority would ascribe to federal property does not mean that the Federal Crown is subject to provincial assessment legislation. Rather it is the Minister's exercise of discretion in awarding payment in lieu of taxes which is made subject to assessment legislation. Ultimately the Minister must decide the level of the payment in lieu of tax, but in doing so he must consider the value that an assessment authority would attribute to the federal property, which assessment legislation sets at market value.

In accordance with the provisions of the PILT Act already discussed, payments in lieu of taxes are predicated on the following principles: (i) property valuation must be determined using correct valuation principles, and (ii) the payment in lieu must be fair and equitable to both the municipality and the federal government.

Assessment Law Principles and Valuation Methodologies

The PILT Act supports adherence to the methods of assessment used by an assessment authority in determining market value, consistent with the particular legislative requirements for valuation. In doing so the PILT Act links payments in lieu of taxes for federal property to the assessed value of the property as determined by an assessment authority pursuant to appraisal principles and assessment legislation. The payments in lieu of taxes regime is thereby subject to the basic legal principles which apply to assessment valuations in general. In *3163083 Canada Ltd v. City of St. John's, et al.* 2005 NLTD 32, at para. 31 the Court provides a good summary of the legal principles applicable in assessment matters:

[21] Appraisal Institute of Canada, CUSPAP, effective 01/01/2005

(i) the objective of the assessment is to determine the fair market value of the property, that is, the amount the property would realize if sold on the open market by a willing seller to a willing buyer.

(ii) an opinion on fair market value may be informed by:

(a) a recent free sale of the property itself where neither the conditions of the property nor the market have since changed;

(b) recent free sales of identical properties in the same neighborhood and market;

(c) recent free sales of comparable properties (market data or direct comparison approach);

(d) the price which the revenue producing possibilities of the property will command; (income capitalization approach) and,

(e) the depreciated replacement cost (cost approach).

Professional appraisers customarily resort to one or more of the last three methods.

(iii) As a general proposition, all approaches to valuation may be resorted to, either to provide a fair market value, to provide a "reality check" of the results of one approach against the results of another, or to enable the formulation of a value using a composite of the results.

(iv) In assessing the fair market value of a property, the property is to be assessed in its current condition and as it is currently being used.

(v) The objective is not to determine the value to the owner as a going concern or otherwise; while the owner may indeed be considered as a possible purchaser in the notional and hypothetical market, that fact does not serve to inflate the value beyond what other potential purchasers would pay.

(vi) A legislative requirement for uniformity of taxation does not contemplate that assessments may exceed fair market value. Fair market value is the objective and represents the upper limit of assessed value, but that value may be reduced if assessments of like properties have been set at a lower amount.

Added to these principles, and related to the assessment objective of determining market value, is

the requirement that market value be derived from the highest and best use of the subject property. The purpose of an assessment is to find the market or exchange value of property, not to value the use of the property, a guiding consideration which makes a highest and best use analysis essential.

The function of assessment is the art and science of appraisal, and determining the market value of a property is the province of the assessor-appraiser.[22] In the process of determining property value, or "market value" as defined in assessment legislation, appraisers apply the various valuation methodologies and appraisal concepts referred to above.

Valuation Methodologies and Appraisal Concepts

One of the most important duties of an assessor in determining market value is the choice of the valuation methodology used in the appraisal of a property. The particular characteristics of a property and available market data are fundamental to the choice of the appraisal approach, as are the intended use and scope of the appraisal.[23] As noted in the *City of St. John's* case, supra, there are three generally recognized valuation methodologies which have historically been recognized in both appraisal theory and practice: the direct sales comparison approach, cost approach, and income approach.

Direct Sales Comparison Approach

The American Institute of Real Estate Appraisers has described the Direct Sales Comparison Approach as follows:

> "*The sales comparison approach is a method of estimating market value whereby a subject property is compared with comparable properties that have sold recently. Preferably, all properties are in the same area. One premise of the sales comparison approach is that the market will determine a price of comparable, competitive properties.*

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[22] "Assessor" and "appraiser" will be used interchangeably in this paper.

[23] Appraisal Institute of Canada & Appraisal Institute**,** *The Appraisal of Real Estate, 2nd ed. (Can), p .4.12.*

> *Essentially, the sales comparison approach is a systematic procedure for carrying out comparative shopping. In this approach, the comparison is applied to the unique characteristics of real estate that cause its prices to vary*."[24]

The direct sales or sales comparison approach to value uses sales prices of properties as evidence of the value of similar properties. [25] Systematic methods are used to adjust the prices of sold comparable properties to reflect the degree to which certain features of comparable properties add to or subtract from the sales price of the comparable property. Adjustments can be made for such characteristics of the property as size, age, and water frontage, or for the time and terms of sale.

This approach assumes that an informed purchaser will pay no more for a property than the costs of acquiring a comparable property. Using the direct sales comparison approach is generally most appropriate when the market is active and many properties with similar characteristics are selling.

Cost Approach

The cost approach is often called the 'summation approach.' The cost approach is based on the idea that the value of an existing property is the value of the land plus the replacement cost of the improvements less depreciation: Value of Land + Cost of Improvements (i.e., building) - Depreciation = Total Value of Property.[26]

The cost approach to value is based on the assumption that an informed purchaser would pay no more for a given property (land and building) than it would cost to buy a similar piece of land on which a building could be constructed with characteristics comparable to the property to be purchased. When applying this approach to value, cost must be adjusted to the valuation date,

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[24] American Institute of Real Estate Appraisers**,** *The Appraisal of Real Estate,* 8th ed. (Chicago: American Institute of Real Estate Appraisers, 1983), at 441-442.

[25] *Property Appraisement and Assessment Administration,* p. 82

[26] *Property Appraisement and Assessment Administration,* p.82-83

reflect market values in a property's geographic location, and include all indirect costs such as the developer's profits and the cost of financing during construction.

The cost approach is used most often when the property under review is new or nearly new, there are no comparable sales, or the improvements are relatively unique or specialized.

Income Approach

The income approach establishes an estimate of current property value though the capitalization of the income derived from a property. This approach is based on the conceptualization of value as the present worth of future income.

In applying the income approach an appraiser estimates the income that the property would produce under typical management, and establishes the value of the property by dividing the income by a capitalization rate. The capitalization rate is a measure of the rate of return on a particular investment which the appraiser obtains from market data on what investors are receiving on similar properties involving similar risks.[27] The income approach is applied to properties purchased for the purpose of producing income, such as office or apartment buildings.

An appraiser can use one or more of the three approaches to valuation to estimate the market value of a property. For each approach the appraiser must undertake detailed and thorough market analysis to acquire adequate market data.

Highest and Best Use

The *Canadian Uniform Standards of Professional Appraisal Practice* (CUSPAP) define "Highest and Best Use" as follows:

"*That reasonably probable and legal use of vacant land or an*

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[27] *Property Appraisal and Assessment Administration, p.83-84.*

> *improved property which is physically possible, appropriately supported, financially feasible, and that results in the highest value.*"

CUSPAP also recognizes highest and best use as an economic concept which measures the interaction of four criteria :(1) legal permissibility; (2) physical possibility, (3) financial feasibility, and (4) maximum profitability.

Highest and Best use is a market-driven concept which defines the market for the appraisal of a property. As explained in *Ford Motor Co. v. Township of Edison,* 127 N.J. 290 (U.S. N.J. Sup. Ct. 1992), 1992 N.J. LEXIS 32, quoting the Oregon Tax Court in *Fred Meyer Inc. v. Department of Revenue,* 12 Or. Tax 85 (U.S.T.C. 1991):

> "The Tax Court emphasized that the concept of highest and best use is based on market forces. 'When the purpose of an appraisal is to estimate market value, highest and best use is the use that produces the highest estimate of market value and cannot be determined without reference to a competitive market.'"

The concept of highest and best use determines the market for a property by defining the valuation context within which market participants engage in the purchase and sale of properties.

A highest and best use analysis entails both an analysis of the land as vacant and an analysis of the property as improved. The purpose of a highest and best use analysis for the property as improved is to determine what, if any, contribution there is to the value of the site from the improvements. This is an essential consideration in determining the overall highest and best use of a property as it examines the extent to which the current use of a property achieves its highest and best use.

Willing Seller to Willing Buyer

A key component in the concept of market value is that of what would be paid for a property sold by a "willing seller to a willing buyer." As noted in the wording of s.42 of the Nova Scotia *Assessment Act,* as in other definitions of market value, the intent of assessing a property at market

value is to find out what the price of exchange would be between a knowledgeable willing buyer and a knowledgeable willing seller. The willing seller is not defined in terms of the present owner, but in terms of a hypothetical seller of real property.[28] The market value is derived using a hypothetical construct; the hypothetical sale of real property by a hypothetical seller to a hypothetical buyer in a hypothetical market.[29]

The current owner of a property can be considered as a potential purchaser as a factor in determining what could be had for the property in a hypothetical market. However, the aim of an appraisal is to find the market or exchange value of a property, not the subjective value to the owner.[30]

Principle of Consistent Use

The principle of consistent use holds that land cannot be valued based on one use while improvements are valued for another use. According to this principle, an improvement must be valued on the basis of a use that is consistent with the property's highest and best use.[31] A simple example of a violation of the principle of consistent use is valuing a building for a residential use in an area where the highest and best use of the land is for commercial use based on commercial zoning.

Fairness and Equity

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[28] St. John's, supra, at para. 110.

[29] Ibid.

[30] *Sun Life Assurance Company v. Montreal***,** [1950] 2 D.L.R. 785 (SCC); affid. [1952) 2 D.L.R. 81 (P.C.), at pp, 90 and 102]

[31] Appraisal Institute of Canada & Appraisal Institute, *The Appraisal of Real Estate, 2nd ed. (Can), p.12.16-12.17.*

Although the Minister must consider the property value at which an assessment authority would assess a federal property, the PILT Act does not stipulate that he must fix the PILT payment at what would be paid in taxes for a federal property at that property value. Section 4(1) provides that the payment in lieu of taxes is not to exceed the product of the effective rate and the property value of the federal property. A ceiling is placed on the PILT payment, preserving a discretion for the Minister with respect to the amount of the payment.

The basic tenets of fairness and equity pertain to the payment calculated from the valuation of the property, as well as to the criteria applied in the determination of the payment.[32] This is consistent with the purpose of the PILT Act given at s.2.1 of the Act.

It can be argued that the consideration of what is fair and equitable is related to the concept of market value used in each assessment jurisdiction to value properties. A common legislative requirement in determining market value is for an assessor, in giving an opinion as to market value, to consider the assessment of other properties in a municipality to ensure that taxation falls in a uniform manner for similar properties in the municipality. The requirement for appraisal uniformity relates to the fair and equitable treatment of individual properties.[33] In fact, several cases have declared uniformity or equity to be paramount to market value in determining assessed value.[34]

The way in which uniformity is achieved in arriving at an opinion of assessed value is a matter of some debate. Some argue that the uniform use of "market value" as an assessment standard achieves tax equity through assessment fairness; others hold the view that uniformity is a separate concept from market value which requires a separate measure through assessment/market value ration studies. For the purposes of determining fair and equitable PILT payments, evidence can be adduced

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[32] *Improvement District No.9-Banff National Park v. Public Works & Government Services Canada,* Municipal Grants Review Committee, p.39

[33] *Property Appraisement and Assessment Administration,* p.516

[34] *Managerial Services Ltd. v. Regina (City)* (1980), 14 M.P.L.R 82 (Sask. C.A.); *Bramalea Ltd. v. British Columbia (Assessor of Area #09-Vancouver),* 76 D.L.R. (4th) 60; and *Doucette v. Halifax (City) Regional Assessment Appeal Court* (1992), 112 N.S.R. (2d) 3236 (N.S.C.A.)

that uniformity has been applied in arriving at market value in a manner similar to what is used by an assessment authority in a particular jurisdiction. The Minister can then refer to the methods used by an assessment authority in determining the assessed value, or market value of a property to address fairness and equity in the level of payments in lieu of taxes.

Another aspect of addressing the issue of fair and equitable PILT payments is to consider the overall PILT policy with respect to payments in lieu of taxes for a particular type of property-military bases, port authority lands, National Parks or Historic Sites-and the history of payments for a specific property. Upon review of such information, one would expect equitable payments to be shown in a reasonably consistent level of payments for particular properties.

At the time of writing this paper, the Federal Court seems to have brought the issue of fairness and equity for PILT payments full circle with a trilogy of cases involving the city of Montreal[35]. The decisions arose out of a dispute between Montreal and the federal government with respect to PILT payments on federal airport properties in Montreal, and a similar dispute between the city and two Crown corporations, CBC and the Montreal Port Authority, over the applicable tax rate and exclusion of certain properties as federal properties for the purposes of PILT payments. In decisions rendered on July 5, 2007, Martineau, J, writing for the Court determined that the federal government and Crown corporations have a duty to pay their fair share to municipalities for properties they own.[36] The Court ruled that federal officials cannot unilaterally decide the amount of PILT payments to the City and directed federal officials on how such payments should be calculated, by setting out the tax rate that should be used. These decisions could impact PILT payments in the future by equating fair and equitable payments in lieu of taxes with property value for federal properties as determined by assessment authorities.

Judicial Review of PILT decisions

[35] *Montreal (Ville) v. Canada (Procureur generale),* 2007 CF 702; *City of Montreal v. Montreal Port Authority* 2007 CF 701; *City of Montreal v. CBC* 2007 CF 700

[36] Elizabeth Thompson**,** *Ottawa Must Pay its Share,* The Gazette, August 31, 2007.

The Minister of PWGSC has statutory jurisdiction under s.3(1)(a) of the PILT Act to make a payment in lieu of taxes to a taxing authority that applies for the payment. More fundamentally the power to make payments in lieu of taxes arise from the prerogative of Crown immunity.[37]

Crown corporations make payment in lieu of taxes under authority of the *Crown Corporation Payments Regulations,* SOR/81-1030, pursuant to provisions which are amended to apply to Crown corporations as previously reviewed. In making PILT payments, Crown corporations exercise jurisdiction which would normally belong to the Minister under section 3 of the PILT Act.[38]

Decisions of the federal Minister of PWGSC and Crown corporations concerning PILT payments are administrative decisions made pursuant to federal legislation, and are subject to judicial review. In both instances the Federal Court of Canada has original jurisdiction to hear and decide any application for judicial review. Recent decisions of the Federal Court in *City of Montreal* v. *Montreal Port Authority,* supra, and *City of Montreal v. Canadian Broadcasting Corporation, supra* have confirmed the Federal Court's exclusive jurisdiction to undertake judicial reviews of the lawfulness of acts or decisions of Crown corporations made under the PILT Act and *Crown Corporation Payments Regulations* (CCPR). In both cases the Court held that the Crown corporations in question, the CBC and Montreal Port Authority, in deciding the effective base tax rate and value of property, were exercising jurisdiction under the PILT Act and CCPR. As the corporations purported to exercise jurisdiction or powers conferred by an Act of Parliament, the Crown corporations fell within the definition of "federal board, commission or tribunal" under the *Federal Court Act,* thereby giving the Federal Court exclusive original jurisdiction to hear and decide any application for judicial review.

Presumably the same test would apply to a decision made by the Minister with respect to a payment made by the Minister pursuant to the PILT Act. The Court held as much in both cases referred to

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[37] *"The Federal Grants-in-Lieu of Property taxes program: an Assessment, Harry M. Kitchen and Francois Vaillancourt* (1990) 38 Can Tax. J. 928, p.930.

[38] *City of Montreal v. Montreal Port Authority* (2006), 31 M.P.L.R. (4th) 117, at para 13.

above involving the city of Montreal by citing as determinative the decision in *Gestion Complexe Cousineau (1989) Inc. v. Canada (Minister of Public Works & Government Services),* [1995] 2 F.C. 694 (Fed. C.A) in which the Federal Court of Appeal held that a decision by the Minister was subject to judicial review by the Court if it was a decision based on a "power conferred by or under an Act of Parliament." The Minister's authority to make payments in lieu of taxes is found under the PILT Act, and therefore the Minister's decision made under this authority is subject to judicial review.

PILT Payments for Special Purpose Federal Properties

The application of standard valuation methodologies and appraisal principles to standard, conventionally used and occupied federal lands is relatively non-problematic insofar as standard appraisal methods and principles can be applied to conventional properties. A federal property used as office space may be valued based on the income it generates over its economic life using the income approach to valuation; federal housing units valued by comparing to sale prices of comparable properties which have recently sold in the market. Determining market value for a federal property with common features or uses will be driven by the valuation approaches adopted in each provincial assessment jurisdiction for the valuation of such non-unique properties. Any disputes which arise as to valuation will most likely be related to the interpretation of market data, costing figures, depreciation estimates, and other factors directly related to the opinion on market value. The issues which arise with respect to standard properties are largely issues of data interpretation and resulting market values. It is less likely for the valuation approach to be challenged for properties with common characteristics, or for which there is ample market evidence of value.

The same cannot be said for federal properties which are unique, or special purpose properties, such as National Historic Sites or National Parks. In addition to the valuation considerations noted in the previous paragraph, the valuation of unique federal properties often involves questions concerning the valuation approach to be adopted for assessing these properties, and how certain appraisal concepts are to be applied. The fundamental challenges faced in determining the market value of

such properties are twofold: (i) how to determine market value for properties with unique characteristics or restrictions which limit their marketability; and (ii) how to apply standard appraisal methods and practice to the valuation of unique properties.

The recommendation by the Municipal Grants Review Committee, forerunner to the PILT Dispute Advisory Panel, in *Improvement District No. 9 Banff National Park v. Public Works & Government Services Canada,* and submissions made in the recent hearing before the PILT Dispute Advisory Panel in *Halifax Regional Municipality v. Public Works & Government Services Canada Re: Halifax Citadel National Historic Site* highlight the competing arguments and principles applicable in such cases.

(i) *Banff National Park*

The matter of *Improvement District No.9 Banff National Park v. PWGSC* was heard before the Municipal Grants Committee in 1998. The Committee dealt with the issue of what value should be attributed to certain residual lands within Banff National Park for a grant in lieu of taxes to be paid on those lands in accordance with the granting legislation at that time, the *Municipal Grants Act*. The question for the Committee was the familiar one in all PILT matters, addressed most recently before the Dispute Advisory Panel in the *Halifax Citadel National Historic Site* hearing: "what value would an assessor attribute to these lands if they were taxable?" As noted by the Committee in its recommendation, the valuation question also raised issues as to what was a fair and equitable valuation for the parties with respect to the subject property. The Committee also considered the question of land value when the land is restricted to park use and cannot, therefore, be used for any alternative economic gain.

The Appellant District No. 9 disputed the value placed on the residual lands by PWGSC as not reflective of the standard of value required under the applicable legislation. It believed the correct approach was to estimate the market value of the land for use in the determination of the grant amount. PWGSC. argued that the appropriate method of valuation for assessment and grant purposes was in accordance with the provisions of the fair actual value regulations adopted under the

Municipal Government Act. The Department said the lands should be valued as conservation land, which has a nominal market value due to constraints thereby placed on the land use.

The Committee recommended the lands be valued at $57 million dollars, and set out the following principles upon which such valuation should be based:

1. The valuation of federal properties for the purpose of a municipal grant (or payment in lieu) is a question of determining what an assessment authority would assess the property for, if it was a taxable property.

2. The standard of value with respect to the assessment of a property, and therefore used in payment in lieu valuations, is market value. The real value of a property is its market value, or value in exchange, and in order to ascertain market value a hypothetical sale must be constructed between a willing seller and a willing buyer. Only then can the price be property in the open market, its market value, be ascertained.

3. In the case of "unique" properties with certain restrictions imposed upon their use or disposition, it is necessary to consider such restrictions in light of the highest and best use of the property. If a highest and best use analysis confirms its current, special use as its highest and best use, then the restrictions placed on the property should be considered as protecting and supporting the highest and best use, and a valuation be conducted accordingly.

4. A property valuation for the purposes of payments in lieu of taxes should be prepared using correct appraisal valuation principles, and consistent with legislative requirements for assessment valuation.

5. The basic tenet of fairness and equity pertains to both the grant calculated

from the grant, as well as to the criteria applied in the determination of the grant.

(ii) *Halifax Citadel National Historic Site*

The Halifax Citadel National Historic Site is a 48-acre parcel of land situated in the center of Halifax, Nova Scotia, upon which rests the Halifax Citadel, a former British military fortification. The Halifax Citadel fortifications, alternatively knows as Citadel Hill, are the fourth of a series of forts which were constructed following the founding of Halifax in 1749. The Citadel's national historic site designation derives from its importance in the history and development of the city of Halifax and Canada, primarily through the reality of an historical British presence due to the existence of the Citadel.

In June, 2007, the PILT Dispute Advisory Panel heard arguments from the PWGSC and Halifax Regional Municipality ("HRM") (the Federal Organization and taxing authority, respectively) on the property value of the land and certain fortification structures within the Citadel complex. Expert evidence given at the hearing on behalf of HRM by the assessment authority for Nova Scotia set the property value for the land component of Citadel Hill at $19 million dollars, and $7,315,900 dollars for the Citadel's casemates and demi-casemate fortification structures. A casemate is a vaulted chamber built into the walls of a fortress for its defence. The appraiser for the federal government presented evidence in support of a total land value of $286,010, and a casemate value of $1.1 million dollars.

The wide discrepancy between the respective opinions on value is attributable to the different valuation methodologies employed by each side, and the manner in which appraisal concepts and methods were applied to the valuation of the land and casemates.

The federal government employed the direct comparison approach with respect to the valuation of the land comprising the Halifax Citadel, in conjunction with the principles set forth in a draft document prepared by the government's expert entitled "Best Practices for the Valuation of Historic

Sites" (Best Practices). Best Practices has not been recognized by any professional appraisal bodies or organizations as the appropriate guideline for the valuation of historic sites. Interesting enough, evidence presented at the DAP hearing confirmed that a version of Best Practices has been used by the federal government to determine PILT payments for the past number of years, with a resulting decline in the amount of such payments.

At the PILT DAP hearing, the federal government based the property value of the Citadel lands on a concept of value which equates market value and value in exchange to economic value, or the ability to generate income or profit. The government contended that a property has no market value if income or profit cannot be generated through the use of the property. The government's appraiser reached the same conclusion as the taxing authority's appraise that Halifax Citadel's highest and best use was its current use as a National Historic Site. However, in keeping with the concept of value as linked solely to income-generating potential, the federal government's appraiser concluded that the lands of Halifax Citadel as a designated National Historic Site have no economic viability to generate revenue, no economic value to the owner, and therefore no market value. Instead, in keeping with what it saw as the requirements of the Best Practices and the PILT Act, the appraiser assigned a hypothetical or notional value to the land and casemates of the Halifax Citadel.

Although both agreed on the highest and best use of the property to be its current use as a national historic site, the federal government valued the vacant lands by valuing the lands associated with eligible improvements differently from the lands associated with non-eligible improvements. The land associated with eligible improvements was based on the modern usage of these improvements at the Citadel as office space, and the land associated with the non-eligible improvements was based on the development potential of the lands taking into consideration the zoning restrictions, PILT Act, and National Historic Site designation. In the latter case, the federal government contended that all economically beneficial uses of the land had been eliminated because of the aforementioned restrictions, and placed a nominal value of $10.00 on a substantial portion of lands surrounding the Citadel fortifications. The casemates were valued using all three approaches to value. In the cost approach valuation, the casemates were costed based on their dominant use for shelter, using the depreciated replacement cost of a steel frame warehouse to reflect the stated use.

On behalf of HRM, the assessment authority adopted the cost approach to value as the only accepted method of valuing a unique, special purpose property in the absence of market data to support either the income or direct comparison approach. In using this approach the assessment authority constructed a hypothetical market on the basis that a hypothetical buyer (most likely a government actor) who wanted to buy lands for public use would pay no more than what it would cost to purchase a substitute property. The assessor for the assessment authority equated the market value of vacant lands acquired for public use as that which is reflective of the market value of lands in the local real estate market surrounding the Citadel. The assessor's opinion on value of the vacant land was reached after applying the direct comparison approach to sales that had occurred in the local market, and adjusting for differences in the comparable vacant sales ns and the subject site. In keeping with the highest and best use of the property as a National Historic site acting as a living museum, the casemates were valued on a modified reproduction cost new less depreciation approach using Boeckh's costing services, Boeckh's armory model, and unit-in-place values. This approach was adopted to achieve as accurate a costing as possible of the actual casemate improvements. To this value, the assessment authority added the market value of the vacant land to arrive at a market value for the lands and casemates,

The findings of the PILT Dispute Advisory Panel and resulting decision of the Minister in the Halifax Citadel PILT matter will be of considerable importance in future PILT applications involving unique or special purpose properties. The DAP's comments and Minister's decision will also no doubt serve to clarify the application of appraisal principles and concepts generally to the determination of property value for federal properties. The following principles can be extracted from the Halifax Citadel DAP hearing and submissions for application to the issue of determining property value of federal properties, and specifically unique federal properties, for PILT purposes:

1. An appraiser should undertake a detailed market analysis in support of whatever valuation approach and methodology are chosen to value a property.

2. The valuation of improvements and land must observe the principle of consistent use in terms of the identified highest and best use.

3. A determination of property value must be conducted using standard appraisal principles and valuation concepts and methods.

4. An appraisal of property value must adhere to the principle that what is being valued is market or exchange value, not value to the owner.

5. In the valuation of special purpose federal properties, restrictions on use should be considered as defining the nature of the property to be valued, and therefore lend value to the property, rather than as factors diminishing its market value.

6. In any valuation of unique federal property an appraiser must undertake to value the property based on the characteristics of the unique property in question and the market for the property based on its highest and best use.

7. PILT valuations must be considered in terms of the statutory valuation regime, appraisal principles and practice which an assessment authority must follow in the determination of market value.

Conclusion

Cases involving disputes over payments in lieu of real property taxes for federal properties which

arise through the operation of the federal PILT Act, provide one of the few instances in which Canadian municipalities, as taxing authorities, can engage the Federal Government directly on the issue of Federal-Municipal payments. It is essential that municipalities with federal properties within their boundaries become familiar with the operation of the PILT Act, and the application of appraisal principles and assessment law in the determination of property value for the purposes of determining fair and equitable payments. In this regard, municipalities should pay special attention to the outcome of the Halifax Citadel National Historic Site case for guidance on the approach to be taken to valuation of federal property for PILT purposes.

LEGISLATION

1. *Payments in Lieu of Taxes Act and Regulations*
   Crown Corporation Payments Regulations
   http//laws.justice.gc.ca/en/showtdm/cs/M-13

2. *Dispute Advisory Panel Rules of Practice:*
   www.pwgsc.gc.ca/pilt/text/rls-e.html