

REALITIES BEHIND THE ROMANCE OF HISTORIC BUILDINGS  
PRESERVATION:  
IN SEARCH OF A FINANCIAL INCENTIVE SYSTEM

by

Philip Chang

A thesis  
presented to the University of Manitoba  
in partial fulfillment of the  
requirements for the degree of  
Master of City Planning  
in  
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Winnipeg, Manitoba

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To my parents with love

## ABSTRACT

Both legal control and financial incentives are important mechanisms to achieve preservation goals. It is the latter mechanism that is not well in place in Canada. Historic buildings are part of a nation's heritage. The obligation to preserve these important cultural resources should not be imposed primarily on a few private owners; "preservation" is a social objective that should be achieved through collective efforts. A restrictive heritage legislation without appropriate financial aids to owners will simply discourage preservation or rehabilitation investments, and might even "throw the baby away with the bath water". This thesis examines the relation between the private and the public sectors in the present context of preservation, and recommends a federal tax incentive scheme, as well as a local tax incentive system for the City of Winnipeg, for the rehabilitation of designated historic buildings. Preceding the first chapter is an e. e. cummings poem:

christ but they're few

all (beyond win  
or lose) good true  
beautiful things

god how he sings

the robin (who  
'll be silent in  
a moon or two)

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## Chapter I

### INTRODUCTION

The considerable growth in preservation concern over the last decade or so in Canada has led to laws protecting the nation's historic assets of a more-than-usual restrictive nature. To owners of the designated architectural landmarks, however, these assets might become liabilities. Often, a privately-owned historic structure is already in a state of functional obsolescence, and unless it is adapted to an economically viable use, it will cease to have a meaningful survival. Architectural conservation or preservation is a concept of breathing vitality into old buildings, giving them new functions, or simply maintaining them in use. However preservation might be a practice totally against the economic logic of an owner. Since the previous option of demolishing the building has been taken away by legislation, the owner is left with a property that might be highly unsaleable; and if he feels that it is "financial suicide" to invest in renovating his building, he would very likely choose not to do anything to his regulated property. Thus a control mechanism that governs the development of the planned environment will eventually add to a further degree of obsolescence. Financial aid for designated buildings owners is required for a successful preservation system.



Most people, including historic buildings owners, would not disagree with Oscar Wilde's romantic phrase that "one charm of the past is that it is the past." John S. Pyke argued that as "an abstract concept, the preservation of landmarks is a desideration with which no one would quarrel" (21, 6); however in reality, preservation ideas will not materialize unless they make economic sense. Regulatory mechanism, namely legal control, could ensure a degree of certainty that some old buildings would not easily disappear, but it would not directly prolong the life of a building in an economically viable way. Another important, if not more important, mechanism is one of financial incentives to the private sector in order to foster conservation activities. The regulatory and the financial mechanisms should have a symbiotic relation in conducting to the preservation of the structural past. Unfortunately, in Canada it is the latter mechanism that is not yet in place. Although there are fundings for preservation from the three levels of government, it has mostly been allotted to projects on publically-owned buildings rather than on subsidizing the private sector. Marc Denhez, a Canadian lawyer, was absolutely right when he argued that "the subject of financial assistance to renovation is not a romantic one." (9, 156) The whole issue of limiting or interfering with property rights upon designation arises when those who have property rights in question feel that they are being expropriated without compensation. Many private owners feel that it is

morally wrong or unjust to have them pay for the cost of achieving what is meant to be a social objective. The intent of this thesis is to examine the present cost-sharing arrangement for historic buildings conservation with a view to recommending a monetary incentive system which will create a more favourable financial climate for preservation projects. The focus is on Winnipeg.

It has been argued that federal income tax policy has a significant impact upon the investment behaviour of the private sector. The United States experience in utilizing its income tax system has encouraged preservationists in Canada to suggest a similar approach. An article titled "Restoration of Things Past", appearing in the March 23, 1981 issue of Newsweek magazine, spelled out:

In testimony before Congress, an AIA spokesman predicted that 77 percent of all construction activity this year is likely to involve 'preservation, adaptive use and renovation.' Last year recycling buildings of all kinds accounted for more architectural income than any other source - more than \$40 billion for the entire profession. Most architects predict that their work in the 80s will be involved as much with re-creation as creation itself. (41, 84)

The subject of income tax as a preservation means has become a "hot topic" in the Canadian conservation scene. Is an income tax incentive system the ultimate answer to stimulate private investment on heritage conservation in Canada? Are there any type of government actions that can stimulate preservation activities such as a property tax relief program? The core of this thesis attempts to provide the

answer. For the purposes of this thesis the terms "preservation", "conservation", "rehabilitation" and "renovation" mean the same thing - recycling of a building in a manner that is consistent with its historic character, for existing use, or for new functions - thus they are used interchangeably.

Chapter 2 provides the historical and philosophical bases of historic buildings preservation; it examines the genesis of architectural preservation as a systematic approach in Europe, the development of a preservation movement in Canada, and the values of preservation. Chapter 3 briefly reviews the legal mechanisms in Canada presently at work in preservation. Chapter 4 is divided into two parts; the first deals with the issue of compensation, and the second examines some alternative measures to compensation and the governmental financial programs for preservation. Chapter 5 evaluates the effectiveness of income tax incentives for preservation by examining the United States experience in these types of tax incentives; this chapter also discusses the various Canadian proposals on similar tax incentives. Chapter 6 provides a historic examination of the development of the Historic Winnipeg Warehouse District; it examines the mechanics of a property tax incentive system for preservation. Chapter 7 concludes the thesis with a few recommendations.

## Chapter II

### THE ORIGINS AND VALUES OF HISTORIC BUILDINGS PRESERVATION

The first part of this chapter briefly traces the history of the preservation movement in Europe from its origin in Renaissance and eighteenth century historicist philosophies through the growth of systematic or legalized protection in the nineteenth to the recent decades when preservation is definitely a popular movement. The second part of the chapter examines the development of this movement in Canada beginning in the mid-sixties. It ends by suggesting some answers to the question: why preserve?

#### THE EUROPEAN EXPERIENCES:

The origins of historic buildings preservation lie in a reaction to destruction. In France, it was the French Revolution in the late eighteenth century - the destruction of the achievement of artists and architects - that first led to an attempt to organize the preservation of historic monuments. Lakanal in a speech (6 June 1793) "decreed a sentence of two years in iron for anyone found guilty of causing damage." (3, 26) Europe seems to have a very long history in preservation; the Colosseum in Rome was the first building to be protected by law, in 457 A.D. However, a

systematic approach to preservation (which ensures activities such as the recording of old buildings and the passing of protective legislation) was not firmly established in Europe till the beginning of the nineteenth century.

What underlies the onset of architectural preservation is the particular sense or interest of the past brought about by the Italian Renaissance. Although preservation did not become an immediate reality, the Renaissance did "establish a cultural tradition in Europe which respected the past."

(5, 1) Michael Hunter wrote:

Not until the Renaissance did a sense of the historical past as a set of separate realms become habitual, even among the educated. A crucial element in Renaissance esteem of classical antiquity - and of determination to revive its virtues - was the belief that antiquity was set off from the present by a more inferior past. The Renaissance legacy over the next four centuries spread to encompass most aspects of European culture, infusing education, forms of government, art, literature, and material structures with classical features, themes, and precepts. (7, 17)

Starting from the Renaissance, one can trace "a rise of tourism, of a more or less well-informed curiosity about sites and buildings." (7, 25) In post-Renaissance Europe, the emergence of historicist philosophies also had a strong influence on man's appreciation of historic remnants. Historicists stressed the uniqueness of historical change and the importance of the historical value of all types of man-made artifact. In the field of architecture, Roger Kain argued, "this encouraged scholars to study, measure and even

replicate the relics of past periods." (16, 5) The historian's inspiration in preservation was quite apparent in the nineteenth century. The opening statement of pioneering measure of Ludwig I of Hesse, in 1818, read as follows:

Whereas the surviving monuments of architecture are among the most important and interesting evidence of history, culture, and civil condition of the nation, and therefore their preservation is greatly to be wished, we decree as follows...(7, 28)

Interest in the material past, probably considered avant-garde in the seventeenth and eighteenth centuries, became genuinely popular in the nineteenth; and it was precisely in the nineteenth century that preservation as a systematic approach arose. In most European countries, it was the formation of a preservation interest group or organization that marked the beginning of the movement towards the legalized protection of historic buildings. In France, the year 1837 saw the creation of the Commission des Monuments Historiques by King Louis Phillippe. Legislation became an essential mechanism for preservation when the Commission found that many proprietors of historic monuments were not interested in preservation. Writer Victor Hugo demanded "a law for monuments, a law for art, a law for the French nationality." (50, 198) Artists, like Delacroix, argued that "monuments are not just sources of interest and pleasure, they are a public necessity because they represent the honor of the nation." (50, 198) The Historical Monuments Act is the first law to give the state the power to prohibit

the alteration or destruction of a historic structure of national interest. However, it was not until 1913 that a comprehensive piece of legislation dealing with historic buildings of general public interest was enacted in France. The law of 1913 gave the state the power to delay the granting of permission to an owner to modify his structure if it was under consideration for listing (for permanent protection). In England, the founding of the Society for the Protection of Ancient Buildings in 1877 by William Morris subsequently led to the protection legislation of 1913. Morris wrote in his manifesto:

We protect our ancient buildings and hand them down instructive, and venerable to those that come after us. (16, 5)

Denmark began her architectural preservation in 1907 with the formation of the Society for the Preservation of Ancient Buildings. This gave rise to the 1918 Danish heritage legislation.

The concern of preservationists before the twentieth century was primarily for those great monuments associated with important historic figures. The concept of creating a "museum piece" was almost an obsession to preservationists. A building would be carefully restored, and any surrounding insignificant structures were torn down, setting the monuments in "glorious isolation." This resulted in huge open spaces in front of monuments; the contrasting images which once gave the building proportion and character were

gone. The surrounding site of the monument had not received any attention till 1925 when the idea of the "beauty spot" (or historic site) emerged. However, it was only after the Second World War that the orientation switched from the museum piece to the living whole.

Much destruction from the two World Wars led to the awareness of the social significance of an old centre in the life of an urban community. Warsaw, Pozan, Gdansk in Poland, the Grand Place d'Arcs in France were not rebuilt from scratch, but restored to their previous images. By the early fifties, the preservation movement had spread throughout Europe. A positive attitude toward such policies together with a strong sense of pride towards the architectural achievement of one's nation have been developed. Sir John Pope-Hennessy wrote:

We all recognize instinctively that the historic character of cities is bound up with physical appearance, and the reason why so many areas in so many towns in Europe have, up to quite recently, been so well preserved, is that the sense of local identity has been so strong. (18, 10)

This period also saw the acceleration of urban growth and the destruction of nature and the countryside which called for a need to establish control over the natural and built environment. This is how the notion of regional and urban planning came into existence in Europe, which must take into consideration the protection of historic buildings and sites. So evolved the general history of preservation in Europe.



THE GENESIS OF THE PRESERVATION MOVEMENT IN CANADA:

It might appear that the architectural legacy in Canada is hardly historic, when the country has only four centuries of documented history. In fact there is no Canadian structural heritage which dates back to more than three hundred years. However, what constitutes a historic building has to do more with the cultural context of a building, and the notion of irreplaceability, rather than its age. For example, a small wooden domestic structure in Australia dated from the late nineteenth century might be considered a heritage and worth preserving, because it dates from the founding of the nation. Whereas in Italy, a comparable structure would simply be ignored among its thousands of ancient monuments. Although for decades Canadians seem to have "lived in a manner generally oblivious to the historical aspects of their surroundings" (9, 17), they have long developed a cultural and historic consciousness. Northrop Frye argued that art (paintings, writings and films) in Canada has implication of this notion beginning in the mid-nineteenth century:

Canadian painting began with documentary painters like Krieghoff and Paul Kane, who may have kept an eye on the European market but were nevertheless keen observers of what was around them. Group of Seven painting, along with that of Thomson and Emily Carr, was documentary painting to an unusual degree, almost an imaginative mapping and survey of the remoter parts of the country; and we have also extensive "war records" of painting from both wars. What Jackson and Thomson did for landscape, Riopelle and Pellon and their contemporaries are doing for the Cartesian culture that we live in now. Canadian film has always been remarkable for

its sensitive documentary feeling, applied to everything from Eskimo and Indian life to the urban cultures of Toronto and Montreal. Canadian literature, in the nineteenth century as well as this one, and in both poetry and fiction, has had a distinctive attachment to a sober narrative technique, a clear sense of fact, and a curious tendency to itemize, to make a functional use of lists and catalogues and inventories. The implication is perhaps that the Canadian consciousness is one peculiarly adapted to preserving its own heritage...(18, 27)

It is the Canadian Centennial in 1967 that acted as a catalyst for expression of national pride and identity. This national birthday led to the appreciation of the achievements of the country's forefathers. The emergence of the preservation movement in Canada, however, is more likely to be the result of events in the United States in the mid-sixties.

During the mid-sixties, environmentalists in the United States were very much concerned about what industrial progress had done to the natural environment; they tried hard and succeeded in convincing the U.S. Congress to pass the Wilderness Act (1964) protecting the natural environment. The success of these nature conservationists triggered the architectural preservation movement both in the United States and Canada. After all, environment is where one lives, as Denhez said: "If bears, moose and beavers have a right to have their environment respected, why don't people?" (9, 18) Those who are dedicated to architectural preservation thus joined with the environmentalists

in the "holy war against sinister forces of 'progress'" (40, 13) so prominent in twentieth century North America.

Canadian cities in the twentieth century have undergone tremendous changes similar to those experienced by their neighbouring American cities. The impact of phenomena such as the aging of older buildings, the frantic increasing use of the automobile, the suburban expansion, and the development of computer and other electronic media "subversively" led to the erosion of the once relatively compact traditional city. The result is the emergence of a new urban form which contains too many Bahaus-boxes. Pierre Berton, chairman of Heritage Canada wrote: "Faceless highrises and ugly parking lots pockmarked our cities." (37) Winnipeg, for instance, "has been turned into one of North America's largest day-care centres for automobiles; it has been estimated that about 60% of private land in its central core area is covered by parking lots." (9, 148) In the name of progress, old buildings or entire quarters were razed and rebuilt, especially during the post-war period of America, which led to the decline of the traditional city's standard. Jonathan Barnett wrote:

Structures of great artistic merit, designed and built with care and devotion, no longer have an economic use, and are casually knocked down and replaced. Buildings of less merit, which were nevertheless the very fabric of the city vanish, with their accumulated memories and associations leaving a depressing emptiness. (4,70)

The razing of older buildings until recently was seen as a practical necessity of change, whereas retaining these buildings was merely regarded as a reflection of nostalgia, or was equated with impracticality. However, preservation-minded people started to realize that true progress "builds on what went before rather than repeatedly starting over again." (53) John J. Costonis, in discussing the preservation movement in the United States stated:

Until recently at least, the nation has viewed change fetishistically, identifying it with progress even at the cost of cutting itself off from its past. (8, 4)

A growing concern of the structural heritage in Canada in the past fifteen years or so has led to a re-definition of urban progress:

Changes of times and progress cannot and does not mean that everything of the past must be obliterated in its path. The bringing in of new ones does not mean that all of the old, regardless of merit must be destroyed. For all change is based on history in part, and history has always served as a guide by which we judge the value of the present and determine the future. (53)

The idea of preservationists is to "regulate the rate and direction of environmental change," thus "conservationists far from being 'conservative' should perhaps be regarded as 'radicals'." (16, 2)

Preservation interest groups in Canada began to grow in the mid-sixties. Until twenty years ago, there were no more than half a dozen voluntary groups actively involved in promoting preservation. Their energies were channeled to

"immediate issues, the rallying of public opinion to save a given building, pressures to divert a certain planned expressway, or..." (18, 45) Local preservation groups reached 100 by the early seventies. Nevertheless, it was not until 1973 that Heritage Canada, the first national non-profit organization to promote the conservation of historic buildings and natural landscape at high profile was established. This organization is incorporated under part II of the Canada Corporations Act, and is not affiliated with the federal government. At the time of its formation, Heritage Canada received an endowment grant of \$12 million from the federal government. In the last decade or so, the growing concern for preservation has led to the enactment of heritage law (at the provincial and local level) everywhere in Canada, protecting the once forgotten heritage.

### WHY PRESERVE?

The values inherent in historic buildings conservation - cultural, aesthetic, or economic - are the ultimate reasons why a nation or a city embarks on some course of action. They are the entire raison d'etre of preservation.

Culture: In Canada, one important justification for preserving historic buildings is that they represent the largest and most visible form of cultural heritage. The story of a city can be told through the voices of its old buildings:

these buildings are symbols of the roots, identity, stability and the collective legacy to the future generations of this nation. It is the cultural capital on which a civilization grows.  
(54)

Aesthetics: Another main justification for preservation is related to the environmental issue; heritage buildings or sites need to be preserved because they possess an aesthetic or a visual quality which is often lacking in our built-environment. A historic building with fine design details of a particular architectural style, be it the Queen Anne style or the Richardsonian Romanesque can never be replicated by our contemporary builders. Most of these heritage structures add much charm to our cities of today; it would be a pity to see them destroyed through demolition or neglect. Thomas D. Bever wrote:

Modern houses oftentimes lack character and detail in their architecture, are located in neighbourhoods without any sense of neighbourhood, and are void of simple amenities such as trees, sidewalks and porches. Modern Commercial buildings are built larger than human scale; their architectural style is intimidating, repetitive, and boring. (69)

However aesthetics values are an imprecise matter; a study conducted in England by Colin Morris illustrates this point. Morris assessed the significance of the image of historic architecture to people. The results of his analysis suggested that man's perception of the urban environment "may be coloured by an imbalance between a sophisticated sense of orientation to old buildings, and a less developed ability to come to terms with modern townscape." (16, 259)

Economist John Kenneth Galbraith was probably right when he argued that "nothing so attracts in our times as the architectural wonder of the past." (20, 51) Using the cultural or the aesthetic arguments for preservation might appear to be an exercise of romance. For example, Robert Bruegmann commented that architectural preservations "are based on nothing more solid than the current aesthetic preferences of the middle class." (40, 15) What most people tend to overlook is the potential of the cultural and the aesthetic elements to be capitalized, for instance to enhance the tourist industry. From a macro-economic point of view, heritage buildings are an important capital resource. There are many economic reasons not to destroy these buildings or to let them echo empty without adapting to contemporary use; they are related to resource efficiency, employment, tourism, and so on and so forth. And from a micro-economics point of view, the costs of historic building preservation could in some cases be relatively less expensive than new construction. However, it must be noted that there are biases in regard to the arguments for preservation; literature and research pertaining to this subject are mostly written or done by preservationists. The economic arguments for preservation examined in the following sections are by no means universal; they reflect only a limited individual point of view.

Resource Efficiency: According to studies done in the United States, the consumption of energy in rehabilitation is less than that of new construction. In 1967, it took 49,000 BTUs (British Thermal Unit) per square foot to renovate a building while it took 65,200 BTUs per square foot for a new one. (69) The Government's Advisory Council on Historic Preservation published a major study in 1979 entitled "Assessing the Energy Conservation Benefits of Historic Preservation: Methods and Examples" showing that preserving old buildings is an investment in energy, and that demolition and new construction will often result in a net energy loss over the expected life span of the building. This study shows that new buildings require up to five times more energy for construction and operation for the projected life of the structure than do renovated buildings. (48, 28) William Whiddon et al measured the embodied energy (the energy required to manufacture, haul and erect building materials) required for renovating an existing structure, and the embodied energy for building a comparable new structure which includes the energy for demolition and preparation for a new site. The methodology employed is based on the work developed by Richard Stein, a New York architect. Stein has calculated the embodied energies of different materials; therefore to calculate the total required energies for any construction or rehabilitation project, what is needed is to compile a list of the construction materials needed for a specific project. The result of the



study by Whiddon et al shows that renovation often uses less energy. The savings are then plotted against any increase of fuel-efficiency over the operating life of the hypothetical new building. The study team concluded that:

because fuel-efficiency is only marginally higher in most new structures, vintage architecture, with its enormous inventory of embodied energy, will usually be the net conserver. (48, 28)

Employment: Recent researches from the United States have shown that rehabilitation projects have a higher employment potential than new construction projects. According to the Office of Archeology and Historic Preservation, rehabilitation projects are 75% labour intensive, whereas new construction projects are only 50%. Also, a study by the Advisory Council on Historic Preservation found that for every one million dollars expenditure, demolition and new construction yielded an average of 70 jobs, while rehabilitation created 109. In most Canadian cities, the construction industry has been suffering from the slowdown in the economy; thus through encouraging historic buildings preservation employment could be stimulated in this sector. Thomas D. Bever, an economist, argued that preservation projects have an important multiplier effect on a local economy:

Dependent on the size and sophistication of a locality, a higher proportion of construction materials will come from outside the area than will construction labor. For funds that are spent in a local economy, a higher percentage of funds remain as a stimulant in that locality from projects that are labor intense. Thus, funds utilized in historic preservation projects have

greater impact on employment than funds used in construction of new buildings...through this labor intensity, the higher multiplier. (69)

Tourism: Historic buildings and sites have a potential to stimulate the tourism industry of a local economy. In his article, "The Economic and Social Returns of Preservation", Galbraith argued that tourists "seek things that have been conserved deliberately in continuity with the past. And they look also, at the monuments of past depotism." (20, 57-58) Most North American surveys pointed out that historic buildings and sites are prime attractions to tourists. In 1971, the Canadian Travel Survey indicated that 29% of Canadian tourist spending "is attributable to tourist whose main activity is visiting historical and cultural sites." (46, 4) Tourist spending has a multiplier of 1.5 to 2.5 according to a study by Heritage Canada. For example, an injection of \$100,000 directly into the tourist industry will generate a total inflow between \$150,000 and \$250,000 to the whole economy. (46, 4) In the United States, New Orleans was one of the first North American cities to utilize its historic resource; their tourism industry has been growing steadily. The same could be said about Montreal and Quebec City in Canada.

Cost Advantages of Preservation: There are arguments that show that in certain cases the cost of preservation or renovation is lower than the cost of constructing a building of similar size. One historic project developer in the

United States argued that the cost of rehabilitation is usually  $1/3$  to  $1/4$  cheaper than the cost of new construction. (36, 5) However, generalization on the economics of conservation should be avoided. The simple truth is that no renovation project is the same. In the United States, the Advisory Council on Historic Preservation did a survey in 1976 comparing the cost of recycling with the cost of new construction. Thirty-one conservation projects were studied; they are of five different building types: museum, office, retail, apartment and theatre. The study focused on the "hard cost" of four basic types of construction works (which include demolition, architectural, structural and mechanical):

1. Demolition includes structural demolition, removal of unwanted partitions, mechanical equipment of electrical service.
2. Architectural includes construction of all new partitions, walls and floor finishes, installation of elevators, exterior wall treatment and roofing (movable furniture excluded).
3. Structural includes reinforcement of foundations, floors, walls, and roof supports.
4. Mechanical includes installation of all electrical equipment, lighting, heating, air conditioning, plumbing, kitchen equipment, or fire protection equipment as applicable. (36,7)

The result of the survey shows that demolition and structural costs are low, normally about 1 to 4 percent of the total project cost; "it appears that the real deter-

mining factors of the overall cost of adaptive use construction will be in the architectural and mechanical work." (36, 21) The survey did not show a general cost advantage for conservation projects over new construction. However, conservation does "reflect the ability to provide varied and interesting space for reasonably comparable cost...Appreciation of the quality of the finished product is essential to place the comparative cost figures in perspective." (36, 22)

#### SUMMARY:

In Europe, the origin of the preservation movement was rooted in the Italian Renaissance and the eighteenth century historicist ideas, which contributed to the establishment of a tradition which respected the relics of the past. However, a systematic legalized approach to architectural preservation did not emerge till the beginning of the nineteenth century, first in France, then England and Denmark. From then on, the preservation movement has become widespread in Europe. Preservationists of the nineteenth century were primarily interested in preserving great monuments or cathedrals. It was only after World War II that the concern of historic buildings and sites of general public interest grew. Since the emergence of urban planning in post-war Europe, preservation has had an important place in the context of urban planning.

In Canada, the preservation movement was triggered by events happening in the United States in the mid-sixties. As a response to urban expansion so obvious in that era, the environmentalists in the United States succeeded in demanding that the U.S. Congress pass statutes protecting the natural environment. The success of these nature conservationists underlies the beginning of architectural preservation movement both in the United States and in Canada. The ideas of nature conservation and architectural preservation are not different: to control the rate and direction of environmental change. The growth in preservation concern in Canada in the last decade or so has led to the passage of heritage legislation everywhere in this country. Values of preservation are not hard to identify; they are related not only to culture and aesthetics, but economics as well. There are arguments that suggest that preservation is more labour intensive, uses less energy, and in some cases is cheaper than new construction. Historic buildings are also shown to be a prime tourist attraction. However, these arguments are not true as an absolute; they are often the preservationists' point of view.

### Chapter III

#### LEGAL MECHANISMS FOR HERITAGE PROTECTION

It is not unlikely that the significance of heritage buildings as a capital or cultural resource, or the global issue of energy conservation, or the economic significance of tourism and employment creation, will be important concerns to the historic building owner in regard to his rehabilitation decision. The main criterion of any investment decision is "profitability". Unfortunately, preservation often implies forgoing economic profit, as Wayland Kennet argued that to say "'preserve' is to say 'spend', or 'exert' or 'forgo profit'." (17, 14) This is not to say that there can be no profit derived from rehabilitation of a historic structure; however, financial success in preservation is not a norm. Therefore, heritage legislation is required. Based on international consensus, heritage legislation is defined as a set of rules which governs the "identification and protection of sites and areas of historic and/or architectural interest." (43, 453) Financial incentive to owners of historic properties is often a consideration in most countries, but not a statutory obligation. The intention of the international treaties such as The Hague Convention in 1954 and the UNESCO World Heritage Convention in 1972 was to promote the protection of

architectural or historic buildings and sites at high profile. Canada adhered to the later treaty, and is formally committed to a number of preservation objectives of which the integration of heritage preservation principles into its national policy is a primary one. This chapter examines the legal mechanisms for protecting the structural legacy of Canada.

#### FEDERAL LEVEL:

At the federal level, the power to protect historic buildings against demolition is limited by constitutional factors. Matters pertaining to property control are under provincial jurisdiction. The legal basis for federal involvement is the Historic Sites and Monuments Act of 1952. However, this Act provides a very limited role for the government. Under this Act, the Minister of the Department of Indian and Northern Affairs is authorized (with the approval of the Treasury Board) to acquire any historically significant structures or sites through purchase or lease, and to take on the responsibilities of preservation and maintenance of the property so acquired pursuant to the Act. The federal government has so far acquired approximately one hundred properties and most of them are being used as museums. The Minister is also empowered to name any structures or sites which are considered to be of "national historical significance." Unlike most European governments,

the Canadian federal government has no important obligation for preservation.

PROVINCIAL LEVEL:

Under Section 92 of the Constitution Act (1867), the power to regulate property falls under provincial jurisdiction. The history of provincial legislation in regard to preservation is very short - about 10 years or so - except in Quebec which has protective statutory measures dated back to 1922. All but two provincial governments have heritage protection statutes. The exceptions are Ontario and Nova Scotia; historic buildings can only be protected by local or municipal governments in these two provinces. The common and the primary feature of these statutes is that they grant power to officials to list heritage sites or structures; and to protect them from alteration or demolition. However, there are differences among the provinces in their protective approach. Generally, three different approaches can be cited. Quebec and Ontario highlight two extreme contrasts, whereas other provinces generally follow a middle course. The Cultural Property Act of Quebec treats the protection of historic property as merely a state responsibility, local and private interventions are just supportive. This approach derives from the French experience. In contrast, the 1975 Heritage Act of Ontario has assigned the municipalities the responsibilities for heritage protection.



In other words, the province has no role in preservation. In terms of protection of the surroundings of designated sites, Quebec is the only province that has statutory obligation. The affected area is within a radius of 500 ft (150 m). Similar practice appears in Alberta, though not in legislation. Under the Alberta Planning Act, any projects within 1/2 mile (0.8 km) of a designated site must be approved by the cultural officials.

The procedure for designation does not necessarily appear in legislation. Most provinces have a historical board which plays an advisory role for the government in regard to buildings worth preserving. Only in Quebec and in Alberta is the government obliged to its advisory bodies. Also in these two provinces it is essential to notify owners of proposed designated structures 60 days before designation. Alterations or demolitions on provincially designated sites or structures are possible; however, no province has any statute which outlines a comprehensive procedure to deal with these applications. Thus they are treated primarily on an ad hoc basis. Only two provinces have environmental assessment statutes. The Ontario Environmental Assessment Act (1975) and the Alberta Land Surface Conservation and Reclamation Act are derived from the Environmental Impact Assessment procedure developed in United States and Australia. This procedure calls for a careful assessment preceding a major project which might have an effect on

either the natural or the man-made environment; and is financed partly by the government. According to Section 1(c)(iii) of the Environment Assessment Act of Ontario, the definition of environment (which includes the built-environment) is "the social, economic and cultural conditions that influence the life of man or a community", and also includes "any building, structure, machine or other device or thing made by man." (31) The Environment Assessment report must be made public, and can be challenged by citizens if it is not completed. The system of environmental assessment does not exist in Manitoba. But it is noteworthy to mention that the provision of an environmental assessment report has existed in Winnipeg under Section 653 of the City of Winnipeg Act; however, a 1977 amendment repealed the section and changed it to a non-obligatory provision.

#### MANITOBA:

In Manitoba, there are two different statutory mechanisms administered by two separate ministries which can be used for protecting heritage structures and sites. They are the Historic Sites and Objects Act and the Planning Act.

The Historic Sites and Objects Act: Under the Historic Sites and Objects Act, the Minister of Cultural Affairs and Historical Resource is empowered to recommend property for protection. He acts on the advice of the Historic Sites

Advisory Board of Manitoba. Upon the Minister's recommendation, the Cabinet may designate any area or structure to be a historic site. The legal consequences of such designation are found in Section 3 of the Act:

No person shall damage, destroy, remove, improve, or alter an historic site without a valid subsisting permit to do so under the regulation and except to the extent authorized by such a permit. (28)

The approval or rejection of the proposed demolition, alteration, or construction is subjected to the discretion of the Minister. Unlike the statutes of some other provinces (Alberta, British Columbia, Quebec, Saskatchewan), the Historic Sites and Objects Act does not grant the responsible Minister the right to halt work pending investigation of a potential site for designation. Consequently, immediate designation is the only way to save an endangered structure. Also, the Minister is not empowered to suspend any permit given for construction or demolition issued by a municipality. (Note that at present this Act is under review.)

The Planning Act: The Cabinet is empowered by the Planning Act to establish "special planning areas" within Manitoba except Winnipeg and area designated as "provincial parklands" under the Provincial Park Lands Act. A "special planning area" is subjected to a regulatory system commonly known as "development control". "Development", according to Section 1(k) of the Act, means any "operations on, over or

under land, or the making of any change in the use or intensity of use of any land or building or premises." (29) However, the Planning Act "could not be used to control demolition unless the Act referred specifically to demolition control." (43, 457) Under this Act, control could only apply to infill construction. The size of a "special planning area" could be as small as an individual lot, or as big as the size desired by the Minister. The reason for the designation must be related to that of the Historic Sites and Objects Act; any reason other than to protect heritage value would be open to challenge in the courts. The importance of the areas adjacent to historic sites is recognized in the Planning Act, and thus the Act provides for their inclusion in the "special planning area".

Penalties: Violation of the two statutes could result in any of these three penalties:

1. Restore any alteration to its original situation.
2. A fine of up to \$100 under the Historic Sites and Objects Act. (Note that in Alberta, it is \$50,000.)
3. A fine of up to \$1,000 for individuals and \$5,000 for corporations under the Planning Act.

Unlike the heritage statutes of some other provinces (Quebec, Alberta and Saskatchewan), the Manitoba statutes do not apply to the Crown.

LOCAL AUTHORITIES:

There are three legislative approaches which empower Canadian municipalities to protect historic sites and structures. The first of these is the "enabling legislation" which delegates function to all municipalities in a given province. Such is the case in British Columbia, New Brunswick, Alberta, Ontario and Quebec. The second approach is that the power to protect heritage buildings and sites is conferred only to specified municipalities. Provinces which use this approach are Nova Scotia, Newfoundland, Prince Edward Island, and Manitoba. The third system is the adaptation of planning legislation to achieve heritage preservation goals. For example, municipalities in Manitoba wishing to act on their concerns of historic properties will be governed by the provisions of the Planning Act. Some cities are specifically empowered to protect historic districts; an example is Saint John, New Brunswick. Local land use legislation could be effectively used to enhance preservation. Most municipalities are empowered to control the bulk and height of buildings. The rationale behind this is obvious - a bulk and height regulation on infill construction on a heritage site would prevent unsympathetic physical development that might destroy the character of the area. Generally, most provinces delegate to their municipalities the power to regulate location of a building, design control, signage, destruction of trees and shrubbery.

Sanctions against property owners who violate municipal by-laws are very minimal. No province has authorized its municipalities to plan for heritage conservation as is the case in Britain under the British Civic Amenities Act. However, some jurisdictions, such as Manitoba and New Brunswick, have spelled out that a plan must take conservation into account. In almost all Canadian cities, the municipal planning department is responsible for the administration of the historic district.

#### WINNIPEG:

The City of Winnipeg has its own enabling legislation entitled the City of Winnipeg Act. The municipal power to control designated historic property is clearly enunciated in the Act. Other municipalities in Manitoba do not share the same power that Winnipeg has to control demolition and alteration of historic buildings. There are two by-laws in Winnipeg in regard to historic buildings preservation: the Historic Building By-law and "The Historic Winnipeg Restoration Area District" By-law.

The first heritage by-law, enacted in 1978, titled the Historic Building By-law is:

A By-law of The City of Winnipeg to provide for a Buildings Conservation List and the listing thereon of buildings, erections or structures deemed to be of special architectural or historical interest, to prohibit or regulate their alteration, prohibit the issuance of demolition permits. (34)

This by-law provides that the city council, the Commissioner of Environment and the Designated Committee may designate any structures in a Buildings Conservation List under three categories, depending on their historic and architectural quality as determined by an advisory board, the Historic Buildings Committee. (See Appendix A) For buildings listed under Grade I, the entire exterior and interior are to be preserved; and all repairs or alterations must respect the architectural and historical character of the subject buildings. For buildings listed under Grade II, the entire exterior and part of the interior elements or features specified in the conservation list are to be preserved. As for buildings listed under Grade III, demolition or alteration is prohibited unless it is shown to be necessary to the Designated Committee. If demolition is granted, certain features which have special architectural or historic quality are to be recorded or preserved where possible. The Act also provides that the "economic viability" of a building should be taken into account in considering a listing, de-listing or change of grade; however in practice, this is hardly the case. For instance when the Imperial Bank of Commerce and the Bank of Hamilton were designated as historic buildings for protection in 1978, the economic function of the two buildings were obsolete. The by-law however does make provision of a grant to be issued by City Council for conservation of designated buildings on a discretionary basis.

Applications for de-listing or change of grade are submitted to the City Clerk. A hearing is then held by the Designated Committee with the presence of the Historic Building Committee and the Commissioner of Environment. Generally speaking, it is quite difficult for an owner of a Grade I or II building to have his property de-listed or categorized into another grade. Alterations or rehabilitation of any designated historic buildings are possible if the projects will respect the historic character of the building; this will be determined by the Historic Buildings Committee. The Designated Committee will then act on the recommendation by the Historic Buildings Committee, and decide whether or not it should direct the Commissioner to issue a Certificate of Suitability.

The second preservation by-law, enacted in 1979, established "The Historic Winnipeg Restoration Area District". (This by-law was amended in 1984 to expand the boundary to include the area east of Main Street. See Appendix B.) The Winnipeg General Zoning By-law was amended to allow architectural control and regulation of uses within the historic area. Existing buildings (designated or non-designated) within the area are subjected to demolition and alteration controls. The by-law also regulates the height, signage, facade colour and materials, and uses of the structures (for instance, no escort and body-rub establishments) within the area. This legislation applies to new construction as well.



Maximum height of a building is eight stories and minimum height 2. In regard to any alterations of existing buildings, the Historic Winnipeg Design Board, created under the 1978 preservation by-law, will consider applications for certificates of suitability on recommendations of the Historic Winnipeg Advisory Committee. Any application that is not related to the exterior of a designated historic building within the Restoration Area shall require the recommendations from the Historic Buildings Committee instead of the Historic Winnipeg Advisory Board.

SUMMARY:

Under the Constitution Act of 1867, the power to regulate property is assigned to the provincial jurisdiction. Thus the Canadian federal government has virtually no power to protect heritage buildings. However, through the provision of the Historic Sites and Monument Act, the federal government can purchase or lease important historic buildings or sites for preservation or upgrading purposes. The federal government can also list any structures or sites which are considered of "national historical significance." However, these listed structures are not subject to any federal regulation. At the provincial level, there are basically three approaches in heritage protection. Quebec modelled its approach on the French experience, treating preservation as primarily a state responsibility. Ontario is

at the other extreme, virtually denying any responsibility; the power to protect historical buildings is given to the municipalities. Other provinces follow a middle course. Most provinces have an advisory board dealing with the recommendation of buildings worth listing. In Manitoba, there are two pieces of so-called preservation legislation. The Historic Sites and Objects Act restricts the demolition and alteration of a building or a site which is designated by the province. The Planning Act regulates infill development within a designated planning area; this Act applies to all municipalities of Manitoba except Winnipeg. These two statutes have minimal effect on owners' decisions in regard to demolitions because of the low financial penalties.

There are three legislative approaches which grant power to Canadian municipalities to protect heritage buildings. First is the enabling legislation that gives this power to all municipalities in a given province. Second is that this power is only conferred to specific municipalities. Third, a municipality can utilize the provincial planning legislation to achieve preservation goals. In Winnipeg, the protection of historic buildings is the city's responsibility; the power to protect historic buildings is conferred on the city. There are two preservation by-laws in Winnipeg; the Historic Buildings By-law, basically an anti-demolition by-law, and "The Historic Winnipeg Restoration Area District" by-law regulating the uses and design of existing buildings and new construction within the area.

## Chapter IV

### THE FINANCIAL REALITIES OF PRESERVATION

The whole essence of the problem of preserving historic buildings is "economics." It must be realized that those who recommend the listing of buildings do not have any financial responsibility for preservation, and they "generally do so on the ground of a general broad impression of its appearance, external and/or internal, with practically no reference to its state of repair or to its suitability for a modern use." (53, 80) Often in the eyes of a private investor, preservation is not an attractive investment; a historic building often falls short of modern statutory requirements and the cost of upgrading might be prohibitively expensive. The obligation to preserve the building is then imposed on an owner who might not be able to fulfill it. This chapter briefly examines first the cost implications of preservation to private owners; second, the issues of compensation which include the arguments for and against compensation, and the alternative measures to compensation. A review of the governmental mechanisms for preservation will be found at the end of the chapter.

THE COST IMPLICATION OF PRESERVATION:

In 1977, Winnipeg's first preservation by-law was drafted to ensure the perpetuity of designated historic landmarks. The financial implications of this anti-demolition by-law have however irritated some property owners. Jack Perrin, owner of the designated Hotel Fort Garry remarked to the author that there are many older buildings in Winnipeg that deserve to be preserved, but unfortunately the city officials here "have in a way put the cart before the horse, named all those buildings which are primarily privately owned, and put limitations without giving any previous consideration to their relation with the owners." According to a study done by the Winnipeg Environmental Planning Department, many of the listed buildings in this city "unquestionably face profound hardship from obsolescent mechanical and electrical systems, inefficient floor plans, increasing maintenance cost, building code problems and the redevelopment potential of the sites on which they are located." (84, 3) From the property owners' point of view, the designation process is a negative one, "the result being a procedure marked by confrontation and misunderstanding rather than a cooperative search for solution." (84, 3) Instead of giving the designated buildings' owners something, the city has taken something away from them, namely their property rights.

Although recent studies have indicated that in some cases the cost of preservation and reuse of an old building may be lower than constructing a new structure of a similar size, the obverse can also happen. Rehabilitation is considered a relatively speculative investment, especially when it is done in an area which has not seen much preservation activity. For example, the conversion of the Travellers Building, a deserted early twentieth century structure, into Townsite, a modern retail complex in 1976, one of the very first preservation projects undertaken in the Winnipeg Historic Warehouse District, did not lead to its owners financial success but to bankruptcy. The failure of "Townsite" has given "preservation" a poor image to private investors in Winnipeg; rehabilitating a historic building is simply viewed as risky business. The designation of a building that has no economic use could create economic hardship for an owner. Since the owner is deprived of the opportunity for redevelopment of the property, he might be left with an unsaleable property. There are a few examples in Winnipeg to illustrate these hardships.

The Bank of Commerce (1919) at 389 Main Street, a magnificent neoclassical structure, has been vacant since 1967 when the bank moved its main branch into the newly constructed Richardson Building at Portage and Main. The adjacent Bank of Hamilton (1916), of neo-Renaissance style architecture, was amalgamated with the Bank of Commerce in

1923. This structure functioned as a branch of the Bank of Commerce, and later as a savings bank. The building was then leased to United Grain Growers until 1978 when the wheat marketing company relocated in a new office building. The Bank of Hamilton remained vacant until 1982. On July 20, 1978, the owner of these two buildings, the Canadian Imperial Bank of Commerce, applied to the city of Winnipeg for demolition permits for these two banking structures. The owner claimed that they were economically obsolete. The annual expenses incurred by these two vacant buildings were calculated to be \$138,411. The City Council, however, delayed the consideration of the permits pending the adoption of the Historic Building By-law. The law firm, Pitblado and Hoskins, acting on behalf of the owner, warned the City that the case would be settled in court unless demolition permits were issued before October 5, 1978. On October 5, 1978, the two structures were designated as Grade I building, for permanent protection of the interior and exterior features. This action thus prevented the City from being drawn into court. In order to demonstrate its commitment to preservation, the City of Winnipeg took a ten year lease on these two structures, and has spent over \$600,000 on the renovation of the Hamilton Building in 1982. This building now houses the City of Winnipeg's Environmental Planning Department. However, the Bank of Commerce building, now leased at \$1 per year to the City, is still unoccupied; the City is still seeking new uses for this grandiose banking hall.

The most recent example of an owner complaining about economic hardship as a result of designation is the Hotel Fort Garry case. This case is of a very complex nature because of the double bind of designation and high property taxes. The present owner, Jack Perrin, bought the Hotel from the Canadian National Railway in 1979 for \$2.4 million. Perrin said that all but \$200,000 of the acquisition cost was for the land. (64) The listing of this "Chateau" architectural style hotel, built in 1911, at 222 Broadway on the Buildings Conservation List was approved by Winnipeg City Council on February 20, 1980. On August 22, 1983, Mr. Perrin applied for a demolition permit for the reason that his hotel is not a viable operation. The owner argued that the building has lost \$3.3 million over the last ten years, and since the structure is largely functionally obsolete, an amount of \$4.5 to 5 million must be spent to upgrade it. However, Perrin is not going to spend this money unless the city arrives at some formula for tax relief; the Tax Revision Board is presently looking at this matter. The case of the Hotel Fort Garry appears to be a property tax problem. The owner complained that the City's tax assessment rate on his hotel makes no consideration for the fact that the hotel is economically obsolete due to its location and physical deterioration. Although at one time the Hotel enjoyed being in an advantageous location close to the C.N. Railway Station, the market demand has now greatly diminished. Taxes for the Hotel in 1981 were \$245,000. (63)

Unpaid taxes total about \$1.2 million, and the City will be entitled to claim title soon. The \$1 million mortgage obtained from the Great West Life Assurance Company for the purchase of the Hotel was recently in foreclosure. The insurance company has now taken over the nearby land which is used for hotel parking, but has waived the right to take over the hotel building. Allan Poapst, a Winnipeg real estate appraiser, said "the Fort Garry can't be sold in the marketplace because of its history of losing money." (63) Prior to the purchase of the Hotel Fort Garry, Perrin was aware that the Hotel lost \$1.3 million in the five-year period before his purchase (64), but he believed that it could be made more economically viable; at any rate, his investment was protected by the value of the land. However, designation of this building has eliminated this protection; the development option was taken away. Had the designation not taken place, the owner would be able to demolish the building and redevelop the land. Perrin claimed that designation of his hotel for protection is in effect "expropriation without compensation." In an interview with the writer, he argued that if the City wanted to preserve the Hotel, it should be prepared to expropriate the property or to provide some kind of property tax relief.

There are now roughly over fifty buildings designated for protection in Winnipeg. If an owner feels that his building is functionally obsolete and no longer has an economic life,



he is very likely to choose not to renovate his building; he will either leave it the way it is, leading to further physical deterioration, or abandon it completely until the City takes over the building and the attached responsibility of preserving it. There are many historic buildings in Winnipeg that have lost their economic life, such as the Union Tower Building at 191 Lombard Avenue or the Bank of Nova Scotia at the corner of Portage and Garry Street. These two buildings presently stand completely vacant. In the case of the Hamilton Building, the City bears the burden of the cost of preservation; however, it is unrealistic to expect the City to carry the financial responsibility to preserve every historic building. The issue of compensation or financial aid for preservation must be dealt with.

#### THE ISSUE OF COMPENSATION:

The issue of compensation is a very important element in a comprehensive study of the economic aspects of preservation. This issue arises when an owner of a building perceives an economic loss of the values or the market potential of his properties as a result of designation. Since the nature of heritage law is anti-demolition, the owners are automatically deprived of the option of tearing their buildings down in order to redevelop the site. Land beneath a historic building might be a great asset, but with the building on top of it, it might become a liability.

Should government then be obliged to provide compensation? The key question to address when dealing with the issue of compensation is, according to William J. Huot, "whether designation is a form of expropriation or a form of land use control." (78, 2) Expropriation is usually defined as "the acquisition, pursuant to statutory powers, of property rights without the consent of the owner of those rights." And land use controls are "restrictions which arise from planning, zoning or other programs limiting property development or use, which are instituted to promote the common good." (78, 2) Historic buildings designation seems to fit into both definitions.

#### RIGHTS OF PROPERTY OWNERS:

In Canada, rights of property owners have always been limited, since all land ultimately belongs to the Crown. The rights of land owners are defined as "a bundle of rights," having to do with possession, use, income and disposition of the land owned. This "bundle of rights" can be altered or rescinded by the Crown. Under the Common Law System, and a number of Parliamentary Acts, the principle has been established that when title or an interest in land is expropriated from an owner, the owner is entitled to the compensation of the full value of the rights being deprived. However, if rights are only being affected for the benefit of the general public and "the owners share in the benefits

because of comparable restriction placed on others, then compensation need not be paid." (78, 2) Take the case of zoning, a form of land use control imposing certain restrictions on the owners. Downzoning is an action taken by the land-use authority to adjust zoning regulations which results in a reduction of the possible uses of a piece of land, and often lowers the value of some land while increasing the property value of others. Since zoning is designed to guide the development of a community for the benefit of its residents, and all property is subjected to the regulations, therefore when a piece of property is downzoned it is "deemed not to be taken or injuriously affected." (78, 3) Zoning and expropriation might appear to be essentially the same thing, but they are not. Zoning does not take away all rights from a property owner, while expropriation does.

Although heritage preservation seems to come in as the same category as zoning - regulation of development for the benefit of the public, compensation should be considered for owners whose property is affected by heritage legislation. Zoning by-laws and historic building by-laws are not co-equal. Zoning is generally a kind of control to prevent development not compatible with the established structure of a community; it does not prohibit demolition or redevelopment. Historic buildings preservation implies some actions to save something for the present and the future gener-

ations; this action necessarily includes the taking of some established rights from the owners. So is heritage designation a kind of expropriation? The Supreme Court of the United States has recently spelled out that heritage designation does not constitute expropriation if it is done "in the public interest and in a manner which does not violate due process." (78, 3) The classic example is the case of the City of New York vs. Penn. Central Co., the owners of Grand Central Station in New York; the Supreme Court ruled that the listing of the Station in New York was done in public interest, and thus it did not constitute a "taking" or expropriation. Although heritage designation, unlike expropriation, does not terminate the owner's relation with the building, it definitely involves the "taking" of a certain right formerly enjoyed by the owner. William Hout wrote:

whether or not an owner is entitled to compensation does not appear to be a matter of well-established legal rights of ownership, but of what the designating authority choose its policy to be.  
(78, 3)

#### ARGUMENTS FAVOURING OBLIGATORY COMPENSATION:

The arguments for compensation to owners whose properties are regulated by preservation law are based on equity.

1. Discriminatory Loss: The most frequent argument for obligatory compensation is "discriminatory loss." This argument is based on two assumptions - the imposition of a loss, and that this imposition is discriminatory. Historic

building designation singles out certain properties and lays additional constraints upon the owners in the use of the properties; it is discriminatory because these constraints are not shared by other property owners. For example, in an area where development pressure is high as it is in an area of high-density zoning, a designated historic structure of two-storeys would be below the highest and best use level allowed in that area. Property value of the historic building would decrease. Marc Denhez argued that "because the property's market value, based on expectations of development (or redevelopment), is often higher than its use value, any such decline in market value will be viewed by the proprietor, as injurious to his interest." (73, 4) An even more unfair situation arises when the owners have to pay for the property taxes based upon the highest and best use. Donald Hagman wrote:

When those expectations are taken away by harsh controls on real estate, the property owner can fairly inquire as to whether some compensation should not be paid because property taxes were paid over the years on the basis of those expectations. (15, 292)

2. Public Benefit: Since historic building preservation confers benefits to the community as a whole, then those who enjoy these benefits should then bear the cost as well, rather than have some private owners pay for what is presumably a social objective that creates benefits for the general population. Micky Fingold, a Winnipeg investor, made the following comment:

What business man...is interested in preserving historic Winnipeg liability? You can't ask a landowner to coddle an unproductive building that's costing him \$150,000 a year just to stand there. If he can't make it economically viable, must he pay for perpetuity? If the city wants to retain an edifice for everyone in the province, surely it should buy the building. The financial responsibility must fall to whom the benefit accrues. (59, 17)

3. The Check and Balance Theory: When there is no cost implication in designation of buildings for protection, overzealous regulation might be a result. Siegans argued that:

the power to prevent development that will benefit many individuals is an awesome one, fraught with the perils of intellectual, moral.... Requiring public expenditure would limit preservation to the most deserving properties. (58, 9)

A compensation requirement would result in designation of worthy buildings, and would avoid the listing of unmeritorious ones. When public funds are involved, regulatory authority has to exercise the designation process with greater scrutiny.

4. Priorizing of Cost: Heritage regulation has hidden costs which are hard to measure, as long as they remain hidden. Compensation increases the visibility of the cost, and would help place heritage preservation objectives in a rank among other social goals. This argument "underlies the inevitable tradeoffs that are made when a building or district is preserved, and that governmental authorities must be careful of the true costs of heritage conservation." (74, 7-8)

5. Compensation and Pre-emptive Demolition: Another argument for compensation is that as long as there is a threat of designation on unregulated older buildings, there is a potential for these buildings to be demolished. In order to avoid any possible decline of economic value, the owner might choose to destroy all or part of a still-viable structure. A mandatory compensation would ensure owners that they would be paid for any loss of economic value, and there would then be no advantage in demolition.

ARGUMENTS AGAINST OBLIGATORY COMPENSATION:

1. Administrative Uncertainty: The difficulty in implementing compensation stems from the fact that it is very difficult to measure the exact loss of value caused by designation. Not every designated building suffers from the decrease of market value. In Vancouver, the designation of Gastown and the private interest in that area increased property values of the buildings within the area by 81% in six years. (74, 8) Therefore, a government which obliges itself to 'compensate' the owner of a designated property might succeed only in tying itself to endless and insoluble debates over the quantum of compensation (if any) to which the owner is entitled.

2. Challenging the Right to Develop: Heritage preservation is often viewed as tantamount to zoning, and there has never been any legal obligation to compensate owners

whose properties are affected by zoning, so compensation should not be provided to owners who are affected by heritage designation. A decrease in market value of a property is derived from the notion that designation leads to a loss of speculative potential. All properties are subjected to a certain degree of control and are susceptible to changes in potential uses and development through rezoning and other land-use and building regulations for which no compensation is given. The possibility of the loss of speculative potential for a piece of property is simply a normal business risk. Municipal or other levels of government bear no obligation to guarantee a speculative profit. John Swaigen, former Counsel of the Canadian Environmental Law Research Foundation, challenged the right to development on a legal ground by describing the Ontario situation:

development rights are not legally recognized rights, but rather privileges, and therefore no rights are denied when land is downzoned. Downzoning is not a matter of deciding what use of the land is in the public interest and represents good planning. (81, 23)

In the United States, the court decision (in regard to the owner's appeal of the designation of Penn Central Station) written by the former Chief Justice of the New York Court of Appeal reads as follows:

Our whole concept about property rights and the valuation of property has been, of course, in very continuous progress and change since the very earliest days. For example, when the court legitimized zoning in the wake of *Euclid v. Ambler*, it gave us the idea, which was very radical for its time, that you could restrict an owner's right to



his property, even though, without compensation, you depreciated the economic value of that property. We have gone a much greater step forward in the Grand Central Terminal case by saying there is no inalienable right to the full economic value of your property... (38, 5)

3. The Foreseeability Argument: There is always a foreseeable risk of an old building being designated in purchasing the property. The measurement of this risk could be calculated by assessing the historic and architectural characteristics of the building prior to acquisition. If a potential buyer decides to purchase it, he is undertaking a risk. Government is under no obligation to compensate for foreseeable risks upon designation. The William Cornelius van Horne case in Montreal serves as a good illustration. Those who favour heritage preservation argued that no developer in his right mind should expect he could treat this property as any other disposable commodity. The same argument could be made in regard to the Hotel Fort Garry in Winnipeg. However, it must be noted that this argument does not take the incumbent owner into consideration.

4. Alternatives to Compensation: Those who favour other financial incentive programs argue that if "owners of designated properties are experiencing real hardships, subsidies may be provided (but not as a matter of right)." However, "other heritage conservation programs may promise greater benefits to the community (including the owners of designated buildings)." (78, 5) Compensation is associated

with the notion of economic loss; a cash payment to the owner of a designated property for the purpose of compensation is not likely to promote preservation or rehabilitation activities as a conditional financial incentive program (which requires owners to upgrade their buildings). Discretionary financial grants do not discourage designation, as obligatory compensation perhaps does. Also, unlike compensation which is basically a "one-shot deal", other financial measures such as property tax relief or income tax incentives can last for several years, thus reflecting an on-going public commitment to preservation. Denhez explained why incentive measures are much more desirable than compensation:

It is preferable from society's standpoint because the owner is being encouraged to upgrade his property, rather than simply to sit on it and collect compensation for a loss which was, in the final analysis, allegedly conjectural. (74, 13)

#### A COMMENTARY:

In order to translate a given policy into an administrative action, according to Denhez, the policy does not necessarily have to be theoretically sound:

the theoretical correctness of a given policy is probably not among the highest priorities of most decision makers. What is more important, from a purely pragmatic standpoint, is that the policy is acceptable to the social consensus. (74, 14)

No one would likely argue that some sort of compensation or financial aid should be made available to owners who suffer

from economic hardship as a result of their property being designated as historic. Whenever a building is listed as a historic property, then by definition the owner is precluded from demolishing it or from redeveloping it. These types of restrictions might affect "the potential use of the property; limiting the intensity of land use that might otherwise be achieved, causing higher cost renovations and/or possibly higher continuing operating costs." (79, 5) These factors will lead to decline in the actual or potential value of the property. In an overall preservation scheme, financial aid must be considered. If not, the owner could at worst abandon his building and not pay property taxes; the city would then have the responsibility of preserving the building.

The issue of compensation deserves some concern; however, the arguments for obligatory compensation should not be given too much weight. Firstly, it is very difficult to arrive at an actual amount of loss in value due to designation. Two figures are involved in such an estimation: the fair market value of the property before designation on the basis of its highest and best use, and the fair market value of the property after designation. The drop in value would be reflected by the difference between the two estimates. The I.B.I. group, a Toronto consultant firm, argued the following:

Since each of these figures is likely to be subjected to considerable controversy even among informed independent appraisers, the difference

between the two figures as evaluated by different appraisers is likely to be subjected to extreme variation. This variation could of course result in long and complicated litigation procedures.  
(79, 7)

Another reason that compensation should not be made as a legislated requirement whenever a building is designated for heritage protection is simply because designation does not in all cases lead to economic hardship. It is also important to note that obligatory compensation is not generally favoured by most jurisdictions in Canada and the United States. In Canada, compensation as a statutory requirement is found only in two provinces: British Columbia and Alberta.

The whole idea of architectural preservation is to prolong the life of buildings by recycling them into new uses, or maintaining them in existing use; therefore financial incentives to encourage the investment on preservation or rehabilitation projects seem to be more desirable than obligatory compensation. Nonetheless, there are still buildings that could not be economically recycled; some provisions concerning the financial hardship must be dealt with. In New York, the City Landmarks Law has a provision concerning economic hardship. If the owner of a designated landmark can prove that his building cannot earn a reasonable return unless the demolition or alteration is approved, the responsibility of preserving the building will then shift to the New York City Landmarks Commission. (56,

25-26) "Reasonable return" is defined as a "net annual return of six percentum of the valuation." (56, 25)

GOVERNMENTAL FINANCIAL MECHANISMS FOR PRESERVATION

AT THE FEDERAL AND PROVINCIAL LEVELS:

At the federal level, the only direct subsidy program for historic properties are limited to those sites or buildings designated as being of national significance under the federal Historic Sites and Monuments Act; Treasury Board Minute 623840 states:

(1) where title to the historic property is vested in Her Majesty in right of Canada

(2) where title to the historic property is vested in the name of the other party to the agreement

(3) where title to the historic property is to become vested in the other party to the agreement

a. when condition (1) prevails, the federal government share should be not in excess of 75% of the cost of restoration;

b. when condition (2) prevails, the federal government share should be not in excess of 50% of the cost of restoration;

c. when condition (3) prevails, the federal government share should be not in excess of 50% of the cost of acquisition and 50% of the cost of restoration. (14, 79)

Although there are subsidy programs directed towards structural renovations administered by other levels of government while the federal government provides the funds, they are primarily programs to encourage rehabilitation of older housing stock in Canada, but not programs designed for

designated historic buildings. For the purpose of this thesis, this type of program will not be discussed.

On February 23, 1976, the Minister of Indian and Northern Affairs officially announced federal approval of a new "Program for Heritage Conservation." This program would include the establishment of a "Canadian Register of Heritage Properties" (originally proposed by Heritage Canada in 1974); this register would comprise a list of buildings designated jointly by the federal and provincial governments. Those buildings so designated would be eligible for financial aid through matching grants with the province. However, this system has never been implemented.

At the provincial level, financial programs for preservation are characterized by their constant changes of detail; therefore only a general outline of these programs is possible. Most provinces have some sort of monetary aid either as a means of compensation or to encourage renovations of designated historic buildings. Quebec has a very elaborate set of rules to provide financial aid. Section 33 of the Quebec Cultural Property Act declares:

Any classified cultural inmoveable property not used for commercial purposes may be exempted from real estate tax to the extent and under the conditions provided by regulation of the Lieutenant Governor in Council up to one-half of the value entered on the valuation roll of the municipality where it is situated. (32)

The systems in Alberta and Saskatchewan are also well defined. The Alberta Historic Resources Act makes compen-

sation to owners a statutory obligation. Section 19.5 of the Act states:

If a by-law under Section 19.3 or 19.4 (allowing for designations) decreases the economic value of a building, structure or land that is within the area designated by the by-law, the council shall by by-law provide the owner of that building, structure or land with compensation for the decrease in economic value. (25)

In Saskatchewan, if a building is designated by the Minister of Cultural Affairs and Historical Resources as Provincial Heritage Property, the owner is eligible to apply for the Provincial Heritage Property Grant (a maximum of \$100,000 in matching funds over a five-year period for a renovation project), and the Provincial Heritage Property Tax Rebate Grant, an amount up to 50% of the total assessed property tax of the building to an upper limit of \$1 million annually. In most other provinces, except British Columbia and Alberta, financial subsidy is also contingent on renovation being conducted. Note that in Manitoba incentives to preserve are provided on a very discretionary basis. Under the British Columbia Heritage Conservation Act, both provincial and municipal authorities are empowered to designate historic structures and sites for permanent protection. Section 11(4) of the Act compels the province to compensate the owner whenever its designation "decreases the economic value of the building, structure or land." (26) This obligation is legally binding whether the owner undertakes any renovation or not. When a municipality designates a building for protection, there is reference to compensation, however oblique it is. The Act states:

Where designation...decreases the economic value of the building, structure, or land, the council may, by by-law, provide a grant, loan, tax relief, or other compensation to the owner. (26)

MUNICIPAL PROGRAMS TO PROMOTE HERITAGE PRESERVATION:

1. Direct Financial Grant: To assist a historic building owner in the costs of rehabilitation, the most obvious form of assistance is a direct cash subsidy. One major advantage of this program is that funding criteria could be used to influence how the buildings are upgraded. Direct financial grants "can produce immediate and visible benefits for the community." (72, 7) The disadvantage of this type of program is that it involves a direct cash outlay.

2. Property Tax Relief: Generally, tax relief could be operated in two possible forms:

- a) complete or partial exemption from property tax for an owner who enters an agreement with the city to have his building renovated.
- b) tax moratorium, ie. freezing the tax at the present level so that renovation will not lead to a higher assessment value for a structure.

The exemption or freeze can be granted for a fixed period of time - five, ten, or fifteen years. The main advantage of a tax relief program is that it can improve the owner's cash



flow in the initial, critical years following a major capital outlay for rehabilitation. A program which freezes the property tax payment of designated buildings for a fixed period of time will encourage owners to renovate the buildings if they are to enjoy this special exemption for several years. Although there is no direct cash outlay involved in a tax relief program, this type of program involves a hidden cost "in the form of foregone revenue, but the full costs are generally not reviewed under normal budgetary procedures." (72, 10) However, the future increased assessment value after the fixed-period exemption, would lead to an increase in municipal revenue.

3. Transfer of Development Potential: T.D.P. is a recently developed concept originating in the United States which purports not to affect municipal finance. This system allows the owner of a historic building, with a floor space ratio below the maximum permitted zoning density, to transfer any untapped development potential to a different parcel of land (under the same ownership as the historic building). Alternatively, the owner could sell this development potential to another developer. T.D.P. concept does not work everywhere, but only in larger cities with substantial development pressure for high-density development.

4. Mortgage Guarantees: The city could assist an individual wanting to invest in preservation of a historic

building, but having difficulties in securing financing at an acceptable interest rate by mortgage guarantees to the lender. Since the interest rate on such a secured mortgage should be low, a fee should be charged by the city "to reflect a realistic appraisal of risk involved, with the proceeds used to develop a fund to provide for defaults." (72, 15) This type of program would stimulate preservation investment; however the disadvantage is that the default rate might be high.

5. Zoning and Building By-law Concessions: The economic viability of a historic building is sometimes dependent on whether a new use is allowed under existing zoning, and on the cost of meeting building code requirements. The zoning and building by-law concessions aim is to provide flexibility in applying municipal land-use and building control.

In regard to zoning relaxation, a designated property could be allowed to adopt a new use which might not otherwise be permitted under existing zoning. The city or municipality could re-zone the properties in question to a category permitting a wider range of uses. Another means to enhance preservation is the relaxation of certain regulations such as the parking requirement. The advantage of these types of programs is that they involve virtually no cash cost to the city.

The National Building Code requirements can be a frustrating issue to be dealt with by the private owners, simply because the code is designed to apply to new construction. Although the National Building Code suggests that local officials vary the standard by considering alternative measures or "equivalents" which will meet the same intent of the regulations, there is a general reluctance of the regulatory authorities to deal with equivalent measures. The concern for legal liability of equivalents which has been approved, leading to the loss of life or property, is one of the main reasons for this reluctance. Some action which would enable the regulatory authorities to exercise more flexibility in the permission of equivalent measures must be taken. Rolf Jensen and Association, Ltd. suggested the removal of any legal liability from the regulatory authorities who have accepted equivalencies. This would probably have a greater impact on historic buildings conservation.

A SUMMARY OF FINANCIAL PROGRAMS FOR PRESERVATION  
FROM MAJOR CANADIAN CITIES:

The following summary is not intended to be comprehensive but does serve as a general illustration of municipal incentives currently used in Canada.

1. Victoria, British Columbia: Victoria has had incentive programs for designated historic buildings for

several years. A plaque program has been in operation since 1977. Events such as "Heritage Day" and "Heritage Clinic" have enhanced preservation awareness. The "Chinatown Paint-up Program" brought the private and public sectors together, sharing the cost of revitalizing twenty-five sites. The Heritage House Grant Program has accumulated funding of \$306,800 since its inception in 1977, and has helped maintain and renovate about sixty-five houses. Municipal by-law 82-185 (adopted in 1983) makes provision of compensation for economic loss. The amount of compensation will not exceed \$10,000 and is limited to residential premises.

2. Vancouver, British Columbia: Vancouver has made limited use of transfer development potential as a means of compensating owners whose properties have been designated.

3. Edmonton, Alberta: Edmonton has virtually no monetary incentives, except a small tax relief program in Old Strathcona which is not within the downtown boundaries. Transfer of density potential is possible and has been used in two instances outside of the downtown area. The city offers non-monetary density related incentives such as floor area density bonuses and parking requirement reductions.

4. Calgary, Alberta: In Calgary, Transfer of Development Potential has been intensively used as an incentive for preservation because of the high development

pressure in the downtown area prior to 1982. After 1982, development slowed down, and thus T.D.P. and other land-use adjustments such as parking relaxation are dealt with on an individual basis.

5. Regina, Saskatchewan: The major incentive program is the "Municipal Heritage Property Grant" funded by the Saskatchewan Department of Culture and Youth to designated properties owners. The program is operated on a cost-sharing basis over a two-year period to an upper limit of \$20,000 for rehabilitation.

6. Toronto, Ontario: In 1980, a revolving fund of approximately \$500,000 was created by City Council, serving as grants and low-interest loans to owners for conservation works, contingent upon Council approval and signing a Heritage Easement Agreement. Other incentives are Transfer of Development Potential and density bonus, parking and zoning relaxations.

7. Ottawa, Ontario: The major financial program is the Heritage Grant Program which funds a maximum of 50% of the costs of restoration work with an upper limit of \$10,000 for designated buildings and a maximum of \$6,000 for those structures designated within the heritage district. In 1982, this program had a funding of \$60,000 from special projects in addition to the funds that were allotted from previous years. An extensive plaque program with a funding of \$25,000

is also ongoing. The remaining \$90,000 of the special projects budget has been allotted to governmental project - streetscaping.

8. Montreal, Quebec: A sum of \$800,000 was available for 1980 and 1981 for subsidizing preservation works.

9. Quebec City, Quebec: The Department of Cultural Affairs provides subsidies for renovation of historic buildings. Approximately \$250,000 a year is spent in Old Quebec. The city supports historic building owners by upgrading street and park design. Incentive programs are being considered to encourage upgrading of buildings to meet building code standards.

10. Saint John, New Brunswick: A proposal to recycle and sell ten city-owned heritage properties was initiated in August 1980. By June 1982, two buildings had been sold. This government initiative has encouraged private sector owners to participate in saving the historic buildings. However, there is no direct financial program for designated historic buildings owners.

11. Halifax, Nova Scotia: A revolving fund of about \$200,000 has not been used to purchase and resell historic buildings as intended. The money serves as grants for renovation and hiring consultants for owners.

12. Winnipeg, Manitoba: In early 1982, the federal government, the Province of Manitoba and the City of Winnipeg entered into the "Winnipeg Core Area Tripartite Agreement" to spend \$96 million on revitalizing the core area of the city. Of this amount, \$5.1 million was allocated in September 1983 to the "Historic Winnipeg Area Development Project." This project basically includes a feasibility study of arts accomodation, streetscaping, and financial grants to owners and/or leasers of designated historic buildings within the Historic Area. There are four types of financial grant programs available. "Building Rehabilitation" provides owners with financial incentives up to 50% of the rehabilitation cost to a maximum of \$50,000. "Residential Conversion" provides 50% of the cost of creating residential units, with an upper limit of \$10,000 per unit. "Business Accomodation" provides assistance to businesses expanding or relocating to designated buildings that will carry out permanent tenant improvements. Up to 50% of the cost of tenant improvement to a maximum claim of \$15,000 per business is possible. "Signage" provides up to 50% of the design and production costs of business signage to a maximum of \$2,000 per business. It also provides up to 50% of the design and production costs of decorative and commercial building murals to an upper limit of \$3,000.

SUMMARY:

Preservation legislation limits the "right" or "privilege" of an owner to demolish his building for redevelopment. In Winnipeg, the economic implications of preservation have angered some designated buildings' owners. One such owner claimed that designation equates to "expropriation without compensation." However, one of the most popular arguments against compensation is that historic buildings designation is actually a kind of zoning control which is for the benefit of the whole community, and since there is no provision for compensating an owner whose property is under a specific zoning control, no special treatment should be given to owners whose property is affected by designation. Although designation might appear to be very similar to zoning, they are not co-equal. Zoning does not take away the right of redevelopment from an owner, and is generally a classification of the existing functional pattern of a community, which aims to maintain this status quo and to govern infill development. Historic designation imposes restrictions on existing buildings' owners without consideration for their economic relation to the buildings. However, obligatory compensation should not be recommended, since not every building being designated will suffer from economic hardship. Financial or non-financial incentives such as grants, property tax relief, transfer development potential, and relaxations of zoning and building code requirements should be considered instead.



At the federal level, financial subsidies are available only to buildings or sites listed by the federal government as of national significance. At the provincial level, there are some financial incentives and compensation programs. Quebec has a tax relief program for designated building owners of residential properties. British Columbia and Alberta have a system of compensation. Other provinces have financial incentives for rehabilitation of heritage buildings. As for the local level, most cities have a direct grant system for historic building renovation; the amount varies from city to city, but generally does not exceed \$20,000 for an owner. In Winnipeg, an owner of a designated historic building within the Historic Area could receive a maximum grant of \$50,000 for building rehabilitation.

## Chapter V

### TAX INCENTIVES FOR HISTORIC BUILDINGS PRESERVATION

The Canadian Income Tax Act has a significant effect on real estate investments, including renovations of historic buildings. The economic rules for preservation are no different from the rules for new construction; investors generally look at two things: tax shelter and cash flow. The income tax system could be manipulated to alter the economic scenario of these factors. For preservation to become an attractive investment, it must compete with the prospect of new construction. Unfortunately, there is hardly any provision of tax incentives for preserving heritage structures, whereas new constructions are given a comparatively better term under the income tax system. It has been argued many times that income tax incentives would be the "ultimate" answer to preservation in Canada. In a letter to the Minister of the Environment in Canada, P. Buxton, executive director of the Annapolis Royal Development Commission wrote the following:

Certainly much of Canada's heritage cannot be preserved without some assistance and the most appropriate incentive lies in amendments to the Income Tax Act. (70, 2)

The experiences of tax incentives for heritage preservation in the United States represent a triumph. Tax credits for

rehabilitation were first made available by the American Congress in the 1976 Tax Reform Act. The 1981 Economic Recovery Tax Act further stimulates rehabilitation investment by increasing the credit. In Canada, various proposals to amend the Income Tax Act have followed the American examples. This chapter will examine the American experiences in tax incentives for preservation, and the Canadian proposals in order to make some recommendations in the final chapter. Before doing that, it is necessary to look at how the Canadian Income Tax system works, and the present tax treatment for historic buildings.

#### A LOOK AT THE CANADIAN INCOME TAX SYSTEM:

Both the federal and the provincial governments have a responsibility under the Income Tax Act. The provincial tax is a direct function of the federal government tax and is collected through the federal tax payment. Thus any amendments of the Federal Income Tax Act "will automatically be picked up at the Provincial level," (82, 1) so there is no need to seek amendments to the provincial Acts.

Section 9 of the Canadian Income Tax Act states simply that "a taxpayer's income for a taxation year from a business or property is his profit therefrom for the year." (22, 23) In other words, taxable income is the amount remaining after subtracting expenses from gross revenue. These expenses include operating cost, and depreciation (or

capital cost allowance). Two types of expenses are incurred in the computation of the profit; they are current expenses and capital expenses. Current expenses are expenses that relate to the repairing and maintenance of an income-producing property. They are not added to the capital cost of the building, and are fully deductible from gross revenue in the taxation year. Expenses that are not in the current expenses category are capital expenses. These are expenses used in acquiring or making major improvements to a building, and are considered as capital costs. Capital expenses are not deductible from gross income in calculating the profit for which they are incurred. However, there is a special provision under the Income Tax Act allowing deduction of these types of expenses through a period of time; this deduction is known as "capital cost allowance" or "depreciation".

It is assumed that the value of a building will be "consumed" or depreciate materially through use and time; therefore depreciation allowance is provided. The allowable rate for deduction under the capital cost allowance system depends on what class the building or renovation falls into. Capital assets are categorized into over thirty classes by the Income Tax Regulations. (See Appendix C.) Assets in a particular class are assumed to have the same length of economic life. In computation for the value which could be deducted, it is the total value of assets belonging to a

particular class that is taken into account, not the value of each individual asset. In other words, the assets of a particular class are treated as the same. The allowances are measured on a diminishing balance basis. The amount of capital cost for which no depreciation has been taken is called undepreciated capital cost (U.C.C.). Figure 1 serves as an illustrative example. The annual actual income or net

Year	Undepreciated Capital Cost of Building	Capital Cost Allowance	Taxable Income	Actual Income
1	\$100,000	\$10,000	\$0	\$10,000
2	\$90,000	\$9,000	\$1,000	"
3	\$81,000	\$8,100	\$1,900	"
4	\$72,900	\$7,290	\$2,710	"
5	\$65,610	\$6,561	\$3,484	"

Figure 1: Depreciation Over a Five-Year Period

before tax income of the taxpayer after loan amortization is \$100,000; Capital Cost Allowance rate is 10%. Taxable income is equal to actual income minus capital cost allowance. Figure 1 would be the result for the first five years. The expense on an asset of a particular class will be added to the balance of undepreciated capital cost in that class of assets.

Depreciation allowance is a device that affects owners' financial position; depreciation is accounted for through allowing the private owner to write off the asset through capital cost allowance over a predetermined life cycle. The asset might in actuality lose its value either at a faster or slower rate than was anticipated. When the entire assets of a particular class are disposed of, or sold, the full proceeds are subtracted from the balance of undepreciated capital cost in the class of assets. Upon disposition of the entire assets of a particular class, if there is a negative balance in the undepreciated capital cost (ie. when the assets have been losing value at a slower rate than permitted by the depreciation allowance), the amount of negative balance must be brought back as taxable income. This amount is known as "recapture income". In terms of assets losing value at a faster rate than the depreciation allowance system permits them to be expensed, ie. when the entire assets in a particular class has been disposed of, and there is a positive balance in the undepreciated capital cost, this amount is deductible from taxable income, and such deduction is known as "terminal loss".

THE TAX TREATMENT OF HISTORIC BUILDINGS:

There is no specific provision in the Income Tax Act that deals with investment in designated historic buildings. However, some provisions might have an effect on preservation. For example, the Department of National Revenue considers rehabilitation as a form of capital improvement rather than a form of general maintenance; thus expenditure on preservation projects is not tax-deductible. The Canadian tax law had also in the past provided incentives for demolition. Until very recently, if an owner demolished his building, the property was considered a "lost building", and any positive balance of undepreciated cost was entirely deductible from his income. This "terminal" deduction would be very encouraging especially when an owner was thinking of demolishing his building, or when there was a substantial amount of tax saving from demolition. The first media attack on this demolition incentive appeared in the July 13, 1973 Globe and Mail:

The federal tax regulation which abets the destruction of useful old buildings is contained in depreciation provision...If a building is torn down before being fully depreciated, then all the depreciation remaining on the structure can be charged against income in one year... Depreciation provision and other federal income tax regulations may have become as important in the reshaping of urban centres as any of the facets of the planning process. (66)

Fortunately, the November 12, 1981 Budget Proposal in regard to the removal of this incentive has become law. Demolition is now treated as a "deemed disposition" of property;

terminal loss deduction is denied on the disposal of a building. The effect of this change makes terminal loss less attractive. If an owner disposes of his buildings and there is still a positive balance of U.C.C., this amount of what was once termed as "terminal loss" must be added to the undepreciated cost of another building of the owner rather than used as full deduction. If the owner has no other buildings, he would be able to utilize only one-half of the terminal loss as a deduction in the year. This income tax amendment is a result of the pressing demand by groups like Heritage Canada and Heritage Winnipeg. However, the removal of this tax-saving provision for demolition was not complemented by the provision of a tax break for preservation.

If depreciation for rehabilitation investment could even create a loss on rental income to be applied against other sources of income, preservation activities would be very likely to increase. The recently expired MURB (Multiple Units Residential Buildings) program allows the developers to claim depreciation in excess of the revenue obtained from the project, thereby artificially creating a loss. And this loss could be claimed against other income, creating a "sheltering effect". The rationale of this provision is to stimulate development of rental housing. However, this provision applied only to new construction of rental housing. In order to promote preservation, the government could have used the MURB provision to stimulate the recycling of historic buildings to residential uses.



THE AMERICAN EXPERIENCE:

The first attempt to use the income tax system as a preservation tool in the United States was through the Tax Reform Act of 1976. However, the real triumph of preservation was the enactment of the Economic Recovery Act of 1981; this new legislation provides far better investment opportunities for preservation projects than the 1976 Act and the subsequent amendments of that Act in 1978 and 1980. In the United States, the Internal Revenue Code has in the past done little to enhance heritage preservation in the private sector, but its provision, similar to those of Canada, has been detrimental to preservation, though perhaps unintentionally. The Tax Reform Act of 1976 and the Revenue Act of 1978 changed this scene:

Section 2124 of the Tax Reform Act, as amended by the Revenue Act of 1978, added new provisions to the Internal Revenue Code that provide major tax incentives for rehabilitation by owners or lessees of commercial or other income producing historic structures and tax penalties for those who demolish such structures and replace them with new buildings, or substantially alter them. (1, 17)

The law applied only to "certified historic structures", ie. ones listed in the National Register or located in a historic district designated by the National Register, or a state or local statute, and must be approved by the Secretary of the Interior. Two important changes brought about by these Acts are worth mentioning here.

First of all, before the tax amendments of 1976 and 1978, the code allowed a property owner to depreciate the cost of an old commercial structure only on a straight line basis, ie. the value of a building is depreciated at a fixed rate throughout the "guesstimated" economic life. However, for a new building, the declining balance depreciation method was applied; the taxpayer was able to deduct the cost at "a rate equal to 150 percent of the straight line rate." The results have been changed by the Tax Reform Act of 1976 and the Revenue Act of 1978. Accelerated depreciation is made available for rehabilitating historic buildings. In order to discourage demolition, now for new construction on a site of a demolished historic structure, depreciation will be measured on a straight line basis. Incentives have also been created for the renovation of a certified historic structure. When an owner of a historic building undertakes a renovation project consistent with the building's historic character, "he or she may either deduct the cost of rehabilitation through amortization over five years or, if the rehabilitation is substantial, depreciate the cost of the building and the rehabilitation at the same accelerated rate as if the building were new." (1, 9) The depreciation allowance is liable to recapture when the building is eventually disposed of. This tax deferment or "accelerated depreciation" provision, however, represents a great benefit to the owners. William S. McKee wrote:

The first thing one must understand is the time value of money. If I am able to take depreciation

this year and, thus, save taxes this year, the fact that at some point in the future I will not have any more depreciation is not very important to me. Saving dollars today is much more important than saving dollars in the future....This is what is known, in the jargon of the trade, as the deferral value of the real estate tax shelter."  
(1, 15)

In his paper titled "A Reformed Tax Treatment of Existing Buildings?", Denhez presented the same kind of argument:

The benefit to the owner is particularly significant because of its timing. It permits the owner to defer taxes at the very moment that he is conducting a renovation project, ie. at the very moment when he is probably having the most problems with cash flow. This deferment can therefore be vital to the successful completion of the project. The recapture becomes taxable at the time of disposition, ie. when the taxpayer usually has proceeds of disposition and thus is in the best position to pay the taxes required. (73, 44)

The second major change is that the demolition of a commercial structure is no longer regarded as a loss; the positive balance of U.C.C resulting from demolition that was otherwise deductible must be added to the capital cost of the land of the demolished building.

The Revenue Act of 1978 also made available a 10 percent investment tax credit for rehabilitation of a designated historic structure already in use at least for 20 years as a commercial or revenue-producing property other than a residential one. To qualify for this incentive, the renovation work must be carried out in a way that is sympathetic with its historic character and must be approved by the Secretary of the Interior. Note that an owner cannot qualify for the five-year amortization option and the investment tax credit

at the same time under the Tax Reform Act. However, the credit can be made available in addition to the accelerated depreciation provision. The Revenue Act of 1978 has even made preservation investment more attractive by mitigating the effect of recapture. Recapture treatment for the amortization provision is changed from full recapture at ordinary income rates to partial recapture at capital gains rates.

A study evaluating the economic impact which resulted from the Tax Reform Act of 1976, prepared by the National Bureau of Standards of the U.S. Department of Commerce in 1979, revealed the usefulness of tax incentives for preservation:

The results indicate that the Tax Reform Act (TRA) has significantly affected the economic trade-off between rehabilitation and redevelopment of historic properties. Before the TRA, rehabilitation used to be between 4 percent and 9 percent more costly whereas after the TRA, the rapid amortization provision causes rehabilitation to be between 13 percent and 28 percent less costly than redevelopment. The accelerated depreciation provision for substantially rehabilitated structures is also seen to make rehabilitation less costly than redevelopment.

In conclusion this study suggests that the TRA has tipped the tax scale in favor of historic preservation. Current and prospective owners of historic structures now have a strong incentive to consider rehabilitation as a serious alternative to demolition. Whereas formerly there was a distinct tax bias in favour of demolition and redevelopment, now the bias has been reversed, from the point of view of after-tax life-cycle costs. (60, 1)

An article titled "Heritage buildings need tax break" featured in the Winnipeg Real Estate News in the November 18, 1983 issue, praised the U.S. tax incentive:

In the United States, a lucrative tax incentive package for developers to rehabilitate heritage and older buildings has been offered since 1976. The policy effects on industry are astounding and if similar initiatives were adopted in Canada, legal experts say these could provide the impetus for a 10 per cent increase in national activity.  
(45, 1)

The amendments of the Internal Revenue Code enacted as part of the Tax Reform Act of 1976 and the Revenue Act of 1978 aimed to create a more favourable climate for preservation. Although the new provisions when enacted were assigned a limited life, their success in encouraging historic building preservation led to their continuing existence in the United States income tax system in modified form: the Tax Treatment Extension Act of 1980 and, more important, the Economic Recovery Tax Act of 1981.

The Tax Treatment Extension Act of 1980 allowed owners of certified historic buildings substantial income and real estate tax deductions if the owners donated conservation easement on their buildings. This law applied to buildings that are used as private residences as well as income-producing structures. A conservation easement is a legal document regulating the uses and alterations to a historic structure. The 1981 Economic Recovery Tax Act provides an even more favourable term for rehabilitation projects. It contains significant financial incentives for "substantial" rehabilitation, that is "the rehabilitation expenditure must exceed the taxable basis of the property." (55, 67) This act provides a 25% investment tax credit for rehabilitation of

certified income-producing structures - commercial, industrial and residential. If a building is not a certified structure, this law still provides a tax credit, though a smaller one: a 15% tax credit for renovation of a thirty-year old structure, and 20% for a forty-year old structure. These credits are limited to only non-residential use income-producing structures. The credit is deducted directly from the tax bill, and is not just a deduction merely reducing the taxable income level. The increase of tax credit brought about by the act of 1981 also led to an increase in preservation activities. A survey by the NPS revealed that 64% of owners would not have done certified preservation projects if the tax incentive of the 25% tax credit was not made available. In 1983, \$2.2 billion worth of certified rehabilitation was generated by 2,600 projects. Jerry L. Rogers, head of NPS's preservation division, said:

We wanted to draw people into preservation and we've succeeded. We've expanded away from people who love buildings to those who want to make money.(62)

As a whole, the American tax incentives legislations have been utilized in 7,500 projects amounting to approximately \$4.82 billion of private investment. A drastic increase in preservation investment since the 25% tax credit was made available in 1981 was recorded; the 1983 figures show a 43% increase in investment over 1982. The 7,500 preservation projects include the renovation of 38,000 housing units, which accounts for 48% of all projects. Other projects

include mixes of commercial and residential uses (22%), offices (16%), commercial (8%) and hotels (3%). (62) Before examining the Canadian tax incentives proposals, it is noteworthy to mention something about the cost implications for the American tax incentives. In fiscal year 1983, the amount of taxes lost roughly totalled \$200 million. (62) In Canada, if a similar incentive system were available, the cost for the federal treasury would be much less because there are fewer designated historic buildings in this country. In any event, there is a price to pay to live in a civilized society; if preservation is considered as an important social objective in the Canadian society, the public sector must be prepared to pay for its cost. However, preservation projects often lead to increase of other tax revenues including property tax by local government.

Traditionally, income tax is meant to be a revenue raiser, but recently, it has been also used to achieve other non-revenue objectives or socio-economic policy. However, according to Mortimer Caplin, two pre-conditions must exist in justifying the use of the tax system to attain non-revenue goals; these two pre-conditions are: "(1) the objective should be of overriding importance to the society and (2) the objective should be one that can be achieved most effectively through the tax system." (1, 10) Obviously, heritage preservation fits into the first requirement; Ann Falkner argued that if "we wait for the opportune moment to

take bold step towards good preservation, all that comprises our past will have been used up or demolished. We cannot wait..." (12, 7) However, in regard to the second pre-condition, there is no certainty in determining whether historic buildings preservation is best achieved through the tax system. The United States experience seems to suggest the positive. Michael L. Ainslie wrote:

the National Trust asked its non-profit member organizations nation-wide, municipal preservation commission and state attorneys general for their views on the value of the preservation provisions. They were almost unanimous in concluding that the Tax Reform Act of 1976 has been the single most effective recent piece of legislation affecting historic preservation and building re-use. I was able to testify, based on experience to date, that these tax incentives have the ability to reach far more buildings worthy of preservation, and to do so more efficiently and effectively, than grants and other forms of direct government assistance. (1, vii)

The income tax system has been proven successful for preservation, but it cannot be the only answer to preservation, primarily because it offers "only partial solutions to the basic economic problems of preservation and cannot be considered in isolation from non-tax approaches. For example, some of the changes may encourage an owner to retain an old building, rather than tear it down and construct a new building. But federal tax incentives will not by themselves persuade most owners to forgo large buildings in favour of small, old ones. The profits foregone by not constructing a new building may be too great. More direct control through zoning and preservation requirement would appear to overcome this." (1, 12)



THE CANADIAN INCOME TAX INCENTIVES PROPOSALS:

In 1978, the Canadian federal government appointed one of its agencies, Parks Canada (part of the Department of Indian and Northern Affairs), to deal with the heritage issue. This action was primarily a response to the then popular criticism by the press and Heritage Canada that the Federal Income Tax Act encourages demolition. The Minister responsible for Parks Canada commissioned the I.B.I. Group, a Toronto consulting firm, to study the tax implications of the preservation of historic buildings. On February 9, 1979, the study results were presented by Wolfe Goodman during a Heritage Building Conservation Conference in Ottawa. The I.B.I. Group agreed with the previous arguments that income tax provisions favoured demolition and provided no incentives for rehabilitation; and the Group made some recommendations. The I.B.I. proposal and later proposals by other organizations were heavily influenced by the United States experiences in tax incentives, which centre on the question of tax deductible depreciation, especially the timing of useability of this deduction. Although these proposals have not yet led to the provision of tax incentives by the federal government, the efforts of such groups as I.B.I., Heritage Canada and Heritage Winnipeg have led to the removal of tax breaks for demolition. In the following sections, the I.B.I., Heritage Canada and Heritage Winnipeg proposals will be examined. Since the November 12,

1981 budget has already eliminated incentives for demolition, the discussion of the Canadian proposals will omit those recommendations related to this particular aspect.

The I.B.I. Proposal: The I.B.I. Group argued that the majority of buildings which constitute the heritage stock of Canada are held by "individual owners or companies of relatively modest means." (79, 2) Since historic buildings designation necessarily limits the redevelopment potential of a building, and somehow reduces its market value, the I.B.I. Group suggested a tax deduction for owners of buildings whose market values have declined as a result of designation. The Group felt however that it was difficult to measure the resulting reduction in market value. As Goodman put it:

This requires determination of the market value immediately before the agreement is signed and immediately after, with the difference being allowed as a deduction for tax purposes. Unfortunately, since two appraisals are required, for property which is, by definition, unique and difficult to value, the amount which is to be allowed as a tax deduction may be subject of serious dispute. (75, 2)

The I.B.I. Group then suggested a uniform provision of accelerated depreciation for capital outflow incurred in rehabilitation of a designated historic building. Unlike the Tax Reform Act of the United States, which provided a 20% depreciation rate annually for five years, the I.B.I. Group suggested a maximum of 100% of the total renovation expense to be written off as depreciation in the very first year.

The 100% write-off obviously would create a temporary tax shelter exceeding the renovation expense. This fast write-off within one year is not anything unusual in Canada. For the reason of "national interest", there are many types of expenditure which are given this favourable treatment - for example, expenses on resource exploration and Canadian film production. The following is cited from the I.B.I. report:

The modifications of current tax provisions suggested in this paper are in line with tax policy in other matters such as encouragement of investment in Canadian corporations, in Canadian resource development, in Canadian film industry and for the increase in the stock of rental housing. (79, 4)

The fast write-off for rehabilitation expense could be done by creating a special class of assets under Schedule B of the Income Tax Regulations, which allows an owner to amortize the rehabilitation expenses at his own desired rate. The depreciation amount could be claimed in excess of the income from the building in the year; therefore the amount exceeded could be used to claim against other sources of income. Since a building in the middle of renovation does not earn an income, it is useless to provide such a fast rate of depreciation allowance unless the allowance could be claimed in excess of the revenue generated from the property. Unlike the U.S. tax incentive system, the I.B.I. proposal made no provision to alter the rate of tax payment upon "recapture" of depreciation. In short, "I.B.I.'s proposal was a tax deferment, ie. the equivalent to an

interest free loan, but none of that loan was forgivable."  
(19, 146)

Heritage Canada Proposals: On February 23rd, Pierre Berton presented the Heritage Canada proposal to the Federal Cabinet. Heritage Canada recommended the adoption of the I.B.I. suggestion of a 100% write-off for renovation expenses; however, not only designated historic buildings, but all existing properties would be included. Heritage Canada also suggested the adoption of the U.S. system in regard to recapture of depreciation at low capital gains rates for designated properties. In other words, the Heritage Canada proposal suggested accelerated depreciation, and a tax deferment equivalent to an interest free loan for all investment properties, but part of the loan would be forgivable for designated properties.

In December, 1981, another proposal by Heritage Canada was forwarded to the Department of Finance. Again, this proposal is universal, ie. it is not restricted to designated historic buildings. Heritage Canada suggested the creation of a separate class of depreciable property for capital cost allowance purposes in respect of rehabilitation of buildings more than fifty years old; such expenditures could be deducted over a three-year period on a straight-line method. In addition, Heritage Canada suggested that a separate class should be created for capital cost allowance purposes in regard to the "purchase"

or "acquisition" of a building over fifty years old prior to the date of acquisition. Such expenditures should be allowed to depreciate at a maximum rate of twice the normal amount (applicable to buildings in class three or class six). This time, Heritage Canada did not suggest changes to the system or the rate of recapture, as it reasoned that "the incentives should relate to the acquisitions and renovations of heritage buildings rather than to relieve any tax consequences upon this disposition." (77, 6)

Heritage Winnipeg Proposal: In 1981, Heritage Winnipeg, a non-profit corporation created by the Province of Manitoba, submitted its proposal for Income Tax Act amendments in respect to preservation. This proposal, which applies only to designated historic buildings, was prepared by lawyer Cy Fien. Fien suggested that rehabilitation costs be continued to be treated as capital expenses, but should be placed into a separate class for the capital allowance purpose as opposed to the same class that the original capital cost of the building is put into. Like other proposals discussed earlier, the Heritage Winnipeg proposal recommended the provision of accelerated depreciation for rehabilitation expenses under a separate class which allows a 33-1/3% deduction of such expenses each year for three years. This treatment would be made available not only to renovation by the owner, but also to "leasehold improvements", ie. renovation done by a lessee of a

designated building. A purchaser of a designated building would not only be entitled to the fast write-off if he renovates the structure, but also would be entitled to deduct the original acquisition cost of the building at a rate of 20% each year for a five-year period provided that the building is substantially rehabilitated. Fien explained what he meant by a "substantially rehabilitated" building:

that rehabilitation cost must be greater than some absolute amount (say \$15,000.00) and also greater than some particular percentage (say, 75%) of the undepreciated capital cost to the owner. (49)

SUMMARY:

The success in stimulating preservation investment through income tax incentives in the United States has tempted preservationists in Canada to suggest similar approaches. Various proposals to amend the Canadian Income Tax Act had followed closely the American examples, which centred on the question of tax-deductibility, especially "timing of useability" of this deduction. The I.B.I. Group, Heritage Canada and Heritage Winnipeg share the view that the answer to preservation lies in the amendment of Federal Income Tax Act to provide incentives for preservation. Tax amendment could provide a greater degree of tax neutrality between heritage conservation and new construction. The present income tax system does not encourage preservation, and until recently if an owner demolished his building, he was entitled to claim lost deduction. If the Canadian

federal government were to adopt similar provision of tax incentives to those of the United States, ie. provision of a faster write-off of capital expense from depreciation allowance, preservation activities would very likely increase. The benefit of a faster write-off to an owner is significant, since he would be able to lower the amount of his payable tax immediately after a major capital expense.

## Chapter VI

### PRESERVING WINNIPEG HISTORY

Winnipeg today is not only blessed with the "largest collection of terra cotta and cut stone buildings in the world" built prior to the First World War; its warehouse district has been praised as "architecturally the finest on the North American continent." (52,42) This concentration of historic buildings in the warehouse district is the "single remaining cluster of the turn of the century buildings in Western Canada." (57, 27) Terra cotta detailing, Richardsonian arches and spandrel design, elaborate Renaissance treatment of cornice detail were but a few features of the architectural repertoire of the bygone era. This chapter is divided into two parts. The first provides a historical overview of the Winnipeg Warehouse District, whereas the second suggests the need for a property tax incentive system for building rehabilitation.

#### WINNIPEG WAREHOUSE DISTRICT - A HISTORIC OVERVIEW:

As early as 1812, Manitoba was a common meeting place for the fur traders of the North West Company and Hudson's Bay Company. It was the fur trade that gave birth to the City of Winnipeg. The traditional trade centre was at Upper Fort



Garry near the confluence of the Red and Assiniboine Rivers, where the Hudson's Bay Company's first store in Winnipeg was located. The breaking of the trading monopoly of the Hudson's Bay Company marked the beginning of Manitoba as a free-trading region. This region gradually became the home of traders and newcomers, mostly British and Ontarian in origin. By 1859, Upper Fort Garry was recognized as a desirable location for general trade, and subsequently became the main distributing point for the whole Canadian west.

In 1871, the year after the entry of Manitoba into Confederation, Manitoba had a total population of 11,963. At this time Winnipeg's population was only about 215. The city was incorporated in 1873, and by 1874 the population reached 3,700. There were then more than 20 wholesalers or traders with premises on Main Street. By 1878, a proper commercial district was developed just west of Main Street, in what is known today as the Historic Warehouse District. Due to the incredibly cold winter in Winnipeg, the rivers were frozen for almost half of the year; therefore large quantities of supplies and goods had to be brought to Winnipeg during the navigable season. This condition of transportation thus led to the development of large jobbing warehouses in Winnipeg.

It was the construction of the Canadian Pacific Railway, begun in 1880, that led to the development of Western Canada and particularly to the growth of the City of Winnipeg.

Being on the main line of this transcontinental railway, Winnipeg gradually became the agricultural and commercial centre of Western Canada. By the late 1880s, Winnipeg became a very important grain exchange market. By 1903, Winnipeg was the centre of the three great railroad system: the Canadian Pacific Railway, the Canadian Northern and the Grand Trunk Pacific. The early twentieth century saw the construction of a great number of prestigious banks, offices and hotels in this city: Winnipeg Grain Exchange (1906), Chamber of Commerce Building (1909), Canadian Imperial Bank of Commerce (1910), Bank of Montreal (1913), Royal Albert Arms Hotel (1913), and Hotel Fort Garry (1913), just to name a few. In the beginning of this century, Winnipeg was often proclaimed as "the key to the whole west and that all business east and west must pass through the Gateway City." (44, 19) The population reached 160,000 in 1912 and Winnipeg was often named by the press as the "Canadian Chicago".

Since the jobbing trade was concentrated in the warehouse district, intense competition was a result; it was essential for a building to show signs of prosperity. The owners were described by Leonard Eaton as probably "conservative in their tastes in music and art, but then architectural programmes were well defined and they built some magnificent structures." (44, 20) Well-known landmarks constructed in the Winnipeg Warehouse District include the Gault Block (1900, addition 1903), Whitla Building (1896, additions 1906

and 1911) and Lake of the Woods Building (1901, addition 1911). When Timothy Eaton opened his store at Portage and Donald in 1905, the development of the warehouse district was moving at a moderate pace, and finally became stagnant by 1918. The commercial activity had shifted its focus to Portage Avenue and parallel streets to the south. From then on the Winnipeg warehouse area has almost been forgotten.

By 1955, "it was obvious that something had to be done to rescue the warehouse area from becoming a blight on the city." (39, 14) An urban renewal scheme was then underway which resulted in the demolition of the old City Hall, market building and Central Fire Hall, and the construction of the present City Hall and the Public Safety Building on the market's site. Cultural amenities were created to complement the new civic centre; the Centennial Hall and the Museum of Man and Nature were erected across Main Street. However, these public projects did not stimulate any private interest in the area. Winnipeg in the early 1970s "was faced with the spectre of a civic centre/cultural complex awash in a sea of deteriorating buildings." (39, 14)

In 1973, the City of Winnipeg initiated a study on the historic warehouse area. The study, entitled The Historic Winnipeg Restoration Study, completed in 1974, recognized the uniqueness of this historic environment and "examined possibilities for recycling the unusual urban spaces found in the nooks and crannies around the old buildings on Albert

Street." (61, 8) The concept of a heritage conservation area was introduced in this report; unfortunately this report received minimal attention from the general public and private investors. In 1975, Heritage Canada, a national non-profit foundation, commissioned the Manitoba Historical Society to do a study of the warehouse area. The report concluded that the creation of an area conservation program and heritage legislation was necessary. In 1976, a number of "creative" entrepreneurs moved into the warehouse district, and began to unlock the potential of some of the buildings. For example, the six-storey Traveller's Block, built in 1907 as headquarters for the North West Traveller's Association, vacant for almost ten years, was renovated into Townsite, a vertical shopping centre right next to the Old Spaghetti Factory. The Imperial Drygoods Block (1899), a three-storey structure, was recycled into the "Trend Interiors", an interior design firm. The four-storey Telegram Building (1880) was converted to house the Modernage Furniture Ltd. These new property owners interested in preserving the living history of Winnipeg formed the "Old Market Square Association" in 1976 and developed the idea of a summer outdoor farmers' market. The City's "Old Market Square Streetscaping Project" which "beautified" the once deserted triangular site of the former Central Fire Hall was a response to the Association's initiative. Unfortunately, neither the recycling of a few historic buildings nor the weekend operation of the farmers' market led to a viable business community in the Historic Warehouse District.

In 1977, Heritage Canada committed a grant of \$500,000 to the Historic Winnipeg Restoration Area contingent upon matching funds from the Province of Manitoba and the City of Winnipeg, and the passing of heritage protection legislation by the City. The Winnipeg Historic Building By-law was enacted in 1978 allowing city council to designate important historic buildings and to protect them from demolition. In the same year, the Province of Manitoba committed \$500,000 and created "Heritage Winnipeg", a non-profit trust involved in funding research, and promotional activities in regard to the historic resources of the city, especially those in the warehouse area. In 1979, the City's financial contribution to the district reached \$1 million. This fund was primarily allocated for streetscaping, widening sidewalks and historic street ornamentation. The city also passed in this year, the "HW" (Historic Winnipeg) Zoning By-law to enhance and protect the historic ambience of the warehouse area. In July, 1983, the Winnipeg Core Area Initiative, a federal, provincial and city program, allocated \$5.1 million to revitalize the Historic Winnipeg Area. The project includes more streetscaping, a feasibility study of accomodation of arts community in warehouse buildings, and a financial grant up to \$50,000 for building rehabilitation. (Note that financial grants for rehabilitation applies only to owners or lessees of designated historic buildings within the warehouse district.) There are at present 500,000 square feet of empty space in the Historic Winnipeg Area. The Core Area

Initiative Program will expire in 1986. To expect the short-term rehabilitation program to accomplish the renovation and the filling up of this space is probably a fantasy.

CREATING PROPERTY TAX RELIEF FOR PRESERVATION:

Although Winnipeg has contributed to preservation of historic buildings through the passage and administration of protective by-laws, it has not seriously pondered providing local tax relief as an incentive for the owners of designated buildings to rehabilitate and maintain their properties. Such is the case common to most other Canadian cities. The City of Winnipeg is empowered by the Manitoba Legislature to deal with the assessment of property value and to levy taxes to finance local services. It might appear hard to justify using local tax revenue, derived primarily from one single source, property tax, for preserving old buildings, when this revenue is required to provide local services which have much higher priorities. However, the issue of special tax treatment to historic buildings should be considered, especially in the absence of Federal Income Tax incentives for preservation.

Another reason for the consideration of providing property tax relief is that the assessment of the values of older buildings for tax purposes has created an unfair situation, putting older buildings in a relatively disad-

vantaged position in comparison with new buildings. Contrary to popular belief, tax assessment in Manitoba is neither based on the market value of the property, nor does it bear any "real" relation to the owners' abilities to pay. Property tax liability is computed by multiplying the legislated mill rate by the total assessed value of the property. The assessed land value reflects the market value of that particular piece of land in 1950; and the assessed building value reflects  $2/3$  of the market value of the building in 1950. The intention of the assessment system is to distribute the tax burden among taxpayers in a fair and just manner through the application of a uniform assessment procedures. The valuation of all properties must bear a fair and equitable relationship to all owners. However, in practice, this principle has not been followed, probably because there is no consensus on what constitutes an equitable relationship. In Manitoba, like many other provinces except New Brunswick, property assessment is not based on true market value. Deans argued that the reason "might simply be that the effort required to maintain market value assessment has not been made." (42, 602) According to Denis Dyck, an assessment officer with the City of Winnipeg, the approach to property assessment in Winnipeg is based fundamentally on the cost approach. Such an approach, in which land and building are assessed separately, is commonly used in other Canadian and American cities. In regard to building assessment, this approach derives its name from the

fact that an estimate of the current cost of reproducing or replacing a building is made, from which an accumulated depreciation is deducted, and to which an estimated value of land is added. The land value estimate is based on the estimated market value of the site as if it were available to be used in the most profitable way (the so-called "highest and best use"). In this approach older buildings are generally over-assessed relative to new buildings. William Bennett argued that in Ontario one of the causes for unfair assessment of old buildings is assigning a value to a property based on its "potential for development." Bennett argued that this approach to assessment is detrimental to preservation because "it forces demolition of the old and building of new structures in order to have economic viability." (68, 4) This technique of assessment assumes a more lucrative redevelopment option is readily possible, whereas such a change could be achieved only by alteration or demolition of the building. What makes the matter worse in Winnipeg is the low frequency of re-assessment. The last full assessment of properties in Winnipeg was commenced in 1958; and each year these "latest" assessment values are multiplied by an index to bring them to the current level. However, depreciation of a building was only taken into account in the last full assessment. Thus owners of older buildings are being placed in a disadvantageous situation. No wonder property tax on the Hotel Fort Garry "are from 4.2 to 13.6 times higher than those charged other Winnipeg



hotels which changed hand between 1979 and 1981 for similar price." (65)

A building, regardless of its age, is considered obsolete and has no market value if it has no economic life. A designated historic building is placed in a relatively disadvantaged position not only to new buildings, but to other non-designated older structures. An owner of a designated building that is not economically viable generally has a heavy tax burden due to the inequity of the tax system; in addition, the fact that his building is designated means that he is deprived of his right to demolish his building or to redevelop his land. Thus special tax treatment should be given to an owner either as a kind of compensation or as an incentive for preservation.

There are at least three ways to reduce property tax burdens on historic buildings in Winnipeg. The first is through legislative provision of a property tax incentive for designated historic buildings owners under an agreement to rehabilitate the subject buildings. The second is through legislative provision of a property tax relief, requiring no condition other than a building being listed for protection. The third is through special consideration in the assessment process being given to designated buildings in order to reduce their property taxes; this would require the re-assessment of the buildings in question. It is noteworthy to mention here that in 1980, the Provincial government of

Manitoba passed Bill 100, freezing property assessment until December 31, 1982. The reason for this tax freeze was to allow time for the Manitoba Assessment Review Committee to come up with a more effective property assessment system. In March 1982, this Assessment Review Committee submitted its report; one of the recommendations in regard to the valuation of real property reads as follows:

III-A-1 All valuations should be at the assessors' opinion of the fair value of the property. That is to say, the price at which the assessors believe the property would most likely have sold in an open market transaction involving a buyer and seller both of whom desired to come to terms but were under no undue constraints to do so...(51, 28)

However, the Province has taken no action; but instead passed Bill 33 in June 1982 to extend this assessment freeze for an indefinite period of time. Thus re-assessment of historic buildings will not be possible unless amendment of Bill 33 is made to exclude designated historic buildings in Winnipeg. Regardless of whether the province is going to adapt a new assessment approach, property tax incentives or tax relief for preservation should be seriously considered by the City of Winnipeg, unless the City wants to be in a perpetual state of "Waiting for Godot". For the purpose of this thesis, tax incentives for rehabilitation of designated historic buildings are suggested. A tax incentive program does not only reduce the tax burden of the owner, but it could ensure that the forgone money would be channelled into renovation projects.

PROPERTY TAX INCENTIVES FOR PRESERVATION:

Generally speaking, a property tax incentive scheme could be operated in two possible forms:

- a) complete or partial exemption from property taxes
- b) maintaining tax assessment at present levels so that the rehabilitation of a building will not lead to increased property tax assessment.

The exemption and tax freeze could either be granted for a fixed time limit or permanently.

In Canada, statutory provision of property tax incentives are rare. The first Canadian jurisdiction to operate a tax relief scheme is Quebec. Under its Cultural Property Act (1972), historic buildings owners could have a maximum of 50% municipal property tax abated, provided that it is not commercial use. Not long afterwards, the City of Victoria initiated a similar tax scheme, and the City of Edmonton developed a small tax abatement in Old Strathcona district. In the United States, a number of states and local governments have legislated to provide tax incentives to owners of historic properties. The following are a few examples of property tax relief or incentive legislation in the United States. They serve merely as superficial illustrations, rather than being comprehensive.

One approach used in Maryland is to allow a credit against local property tax up to 10% of the rehabilitation cost of a building within a historic district or up to 5% of the construction cost of a new building in a historic district which is compatible with the ambience of the district. If the credit could not be used up in one year, it could be carried over to a maximum of five or more years. However, this statute has not been used by any county. Lonnie Powers argued that the reason is "probably for fear of reducing their local tax base." (1, 111)

The assessment freeze approach is used in Oregon; a statute passed in 1975 provides for frozen property tax assessment for a period of fifteen years. This program is limited to owners of buildings listed in the National Register of Historic Places. Also, in order to qualify for this relief, the owners must enter an agreement with the state to open their buildings to the public at least once a year, and the rehabilitation works must meet the requirements set up by the State Historic Preservation Officer. Because of the high property tax nature of Oregon, this law has been proved to be very attractive to historic buildings owners:

The law has been in effect only a little less than four years and 192 of an estimated 500 eligible properties have been certified under it. (1, 108)

In California, a 1977 statute authorized that the assessment of historic properties be appraised according to

their actual use rather than potential use. In return for this special assessment treatment, owners have to enter a twenty-year renewable contract with a city or county to maintain the buildings in very good condition, and make them publically accesible; in some instances uses are restricted. A similar tax measure is found in the District of Columbia.

One of the advantages of tax incentives is that they do not lead to an immediate decrease of revenue. There might appear to be a disadvantage in using tax schemes to promote preservation: the forgone revenue becomes a hidden subsidy. Since this type of program usually involves long-term commitments, the costs and benefits of tax relief should be considered. Nevertheless, the increased assessment in the future as a result of renovation would lead to a rise in tax revenue. Tax incentives, either in the form of tax freeze or exemption of renovation expense from payable tax, increase an owner's profitability and cash flow in the period during renovation and immediately afterwards, a very critical period for the owner.

#### SUMMARY:

When the Canadian Pacific Railway chose Winnipeg as its western headquarters in 1880, the city's economic prosperity was assured. By 1912, population of Winnipeg was 160,000, and the city was often referred to as the "Canadian Chicago". Businessmen who found their way to Winnipeg had

built some magnificent turn-of-the-century structures in the early commercial district of the city, which is today the Winnipeg Warehouse District. Some of this architecture is the finest on the North American Continent. In 1905, the erection of the Eaton's store at the corner of Portage Avenue and Donald Street began to shift the commercial activities to Portage Avenue and the parallel streets to the south. From 1918 on, Winnipeg's early commercial district was gradually forgotten. In the mid-fifties, the city thought that the construction of a new civic centre on Main Street would stimulate private investment in and around the warehouse area, however, this did not materialize, and only found the architecturally unique Winnipeg's City Hall had become a victim of the bulldozer approach. In 1973, the City of Winnipeg initiated a study examining the uniqueness of the warehouse district; the City's very first attempt to promote preservation. In 1977, Heritage Canada committed a sum of \$500,000 to the warehouse area. This was followed by a contribution of \$500,000 each from the Province of Manitoba and the City of Winnipeg. In addition, the City's preservation by-law was passed. In 1978, the Warehouse District was designated by the City as a historic site for protection. The mid-seventies saw a change in property ownership in the warehouse area; these new entrepreneurs began to renovate a number of buildings in this area, and formed the Old Market Square Association organizing activities such as a farmer's market. In 1983, a financial

grant of up to \$500,000 for building rehabilitation was made available through the Core Area Initiative's fund. At present, there are about 500,000 sq. feet of vacant space; more financial incentives are required.

Property tax incentives are worth considering especially in the absence of federal tax incentives. They could encourage the preservation of historic buildings by deduction of a percentage of rehabilitation expenses from the property tax.

## Chapter VII

### CONCLUSION AND RECOMMENDATIONS

Historic buildings preservation necessarily implies governmental intervention. It is essential to have a regulatory mechanism to limit what an owner can do to his building which is considered historically significant, and a financial mechanism to aid or to encourage preservation or rehabilitation activities. It is the latter mechanism that is not well in place in Canada. This thesis examines the relationship between the private and public sectors in the present context of preservation; and recommends a federal financial incentive system for rehabilitation of designated historic buildings in Canada, and a local financial incentive system for Winnipeg.

It is a particular sense of the past brought about by the Renaissance and the historicist philosophies that underlie the onset of preservation in Europe. The idea that historic buildings preservation must be ensured by legislation rather than left to chance was well articulated in the writing of Victor Hugo and a number of intelligensia of early nineteenth century Europe. It was the popularization or the acceptance of this idea that led to the translation of preservation interest into law. France was the first European



country to embark in systematic preservation, followed by England (1913) and Denmark (1918). Preservation law was first a means to prevent destruction of great meritorious monuments; the concern for the surrounding site of a monument or a historic structure of general public interest did not emerge till after World War II. The "invasion" of nature was a result of urban expansion in post-war Europe; the notion of regional and urban planning thus arose, and "preservation" and "conservation" must be included in a planner's vocabulary.

In Canada, the razing of old buildings and erecting of new ones was seen as an inescapable necessity of progress in and around the mid-twentieth century. In the mid-sixties, the activities of the nature conservationists in the United States heightened the awareness of Americans and Canadians of the importance of the built-environment. The undoubted growth in preservation concern in Canada over the last decade or so has led to a more-than-restrictive nature of laws protecting the nation's historic assets. It is important to protect buildings of architectural or historic significance, because the values they represent are cultural, aesthetic and sometimes economic. However, from the private sector point of view, a historic building might be a liability simply because preservation might be financially prohibitive for an owner to carry out.

Effective legislation to protect historic buildings exists primarily at the provincial and the municipal levels. Limited by the Constitution Act of 1867, the federal government has virtually no role to play in the protection of historic buildings or sites. Most provinces, except Quebec, assign the power of heritage protection either to all or specific municipalities. The provincial heritage legislation of Manitoba has virtually no protective effect on heritage buildings across the province. Any violation of this anti-demolition law would result only in a fine of no more than \$100. The City of Winnipeg has its own comprehensive enabling legislation entitled The City of Winnipeg Act; the protection of historic buildings from demolition or alteration is primarily governed by the City's Historic Buildings By-law. There is another by-law, "The Historic Winnipeg Restoration Area District" By-law, regulating the uses and design of existing buildings and infill development within the designated boundaries. There are 61 designated buildings in the city, primarily privately-owned.

The cost implications of preservation has enraged some listed buildings owners in Winnipeg. Heritage laws have taken away their "rights" to demolish and redevelop their properties. Much controversy has surrounded this imposition of preservation responsibility to the private sector. On one hand, heritage designation is viewed as "expropriation without compensation"; on the other hand it is argued that

designation is merely a kind of zoning control, and since there is no compensation provision to an owner whose property is affected by downzoning, therefore no special treatment should be given to an owner whose building is affected by heritage designation. The other side of the argument is that a heritage designation necessarily limits the rights previously given to the owner, thus it is a form of expropriation and therefore compensation should be provided. Regardless of the merits of these contradictory arguments, the issue of compensation or financial aid must be addressed by the city; at worst, the owner could simply abandon the building and not pay the property tax. The implication of this is that the city would have to take over the responsibility of preserving the building. However, the idea of mandatory compensation for owners of designated properties must be dropped, simply because designation does not always lead to economic hardship. Since the concept of preservation is to make effective use of heritage structures through recycling them to meet new functions, or simply to upgrade them for present use, in order to prolong their life, financial incentives to rehabilitation projects seem to be more appropriate than compensation. Programs such as direct financial grant, Transfer of Development Potential, property tax relief, mortgage guarantee, and zoning and building code relaxations are worth considering by individual municipalities who want to achieve preservation goals. It is, however, the view of the author of this thesis

that a successful preservation scheme lies in the adoption of income tax incentives.

The United States experience in tax incentives has demonstrated that the tax system can be successfully manipulated to encourage preservation activities. Canadian proposals on income tax incentives have generally followed the American examples, suggesting a faster write-off of capital expense from depreciation allowance. Owners of designated historic buildings could enjoy significant benefit from a fast write-off of rehabilitation expense or an accelerated depreciation because of its timing. It allows the owner to deduct a substantially greater amount of capital cost allowance from his taxable income than he normally could at the initial and very critical moment after a major capital investment. However, this system is not a tax evasion, but simply tax deferral. The depreciation allowance is only liable to recapture upon disposal of the building. There is, however, a hidden cost in the amount of forgone revenue, but preservation projects often lead to a rise in other revenue such as local property tax.

While waiting for the federal provision of tax incentives for preservation (which might never happen at all), the City of Winnipeg should provide its own financial incentive program to encourage the renovation of its many turn-of-the-century buildings, primarily concentrated in the early commercial district of the city, known today as the Historic

Winnipeg Warehouse District. Although through the Core Area Initiative's Heritage program, a possible maximum of \$50,000 might be available for an owner who wants to rehabilitate his building, it is limited to owners of designated buildings within the warehouse district. Another thirty buildings which spread around the city are not taken care of. It is reasonable to assume that a more attractive financial package, with less bureaucratic control, for all designated buildings in Winnipeg will stimulate more preservation activities in the city. This would probably be a property tax incentive system which allows the deduction of a percentage of renovation expense from the payable property tax. Since there is an argument that tax incentives program, be it income tax or property tax, "as opposed to direct government expenditures, is that they are cheaper and more efficient than bureaucratically administered programs" (1, 12), local tax incentives system for preservation is worth a thought. One designated building owner in Winnipeg argued that there is simply more red tape involved in a direct grant program. It is noteworthy to mention here that since the availability of the Building Rehabilitation grant of up to \$50,000 in September, 1983 till this day, no maximum grant has been given out yet.

To preserve the structural legacy of Canada is a national goal, preservation should be achieved through joint efforts of the private and the public sector. For preservation to

work, legal control to restrict the property rights of a historic building owner is essential; but preservation law alone cannot make an "unwanted" building "wanted"; financial incentives must be seriously considered. There is no doubt that the federal income tax system could be utilized for preservation purposes, but it should be noted that tax incentive is not everything. Most Canadian cities have their own law protecting heritage buildings; but preservation will not go too far (even if income tax incentives are available) if there is no local preservation plan. This type of plan is especially important for cities where heritage buildings are concentrated in one particular area; the Historic Warehouse District in Winnipeg is a good example. One historic building owner commented that the city might from time to time steetscape here and there, or do a study like Historic Winnipeg Restoration Study, or Arts Accomodation; but businessmen will not have the confidence to invest in this area unless they are assured of what the city is really going to do with the area. It must also be noted that financing might be very difficult to obtain. This stems from the lending institutions having concerns with the rehabilitation cost and the potential revenue. Federal tax incentive is just one of the many financial mechanisms that should be used to achieve preservation; other policies such as mortgage guarantees, discretionary compensation treatment, grants or property tax relief should be parts of a comprehensive preservation system. Nevertheless, if

similar tax incentives to those of the United States become a reality in Canada, this country's architectural legacy will as a whole benefit from them. The Canadian income tax incentive proposals suggest a system of rapid amortization. This system provides tax incentives over the life of an investment. The 100% immediate deduction of rehabilitation expenses for income tax purposes as suggested by the I.B.I Group would, however, very likely maximize the public cost of federal tax loss. The 33-1/3% deduction over a period of three years on a straight line basis, proposed by both Heritage Canada and Heritage Winnipeg, seems reasonable; but once depreciation is exhausted in three years, a large portion of income from the rehabilitated property, and other previously tax-sheltered income become fully taxable. Thus, it might be more ideal to allow an investor to depreciate his rehabilitation or acquisition expenses at a prescribed maximum rate on a straight line basis, and allow him to choose a lower rate of deduction if he so desires. This way the investor could write off his capital expenses in a period of three, four, five, or more years. As for a property tax incentive system, it is thought that a 50% cost-sharing for the expenses of rehabilitation between the private and the public sectors will be fair; however, in order to avoid unexpected or huge tax loss, the city should put an upper limit on property tax incentives.

RECOMMENDATIONS TO THE FEDERAL GOVERNMENT:

It is recommended that the federal government:

- a) Allow the deduction of rehabilitation expense of a designated historic building at a maximum rate of 33-1/3%, or a lower rate as preferred by the investor, annually on a straight line basis.
- b) Provide an accelerated depreciation allowance at a rate of 33-1/3% of capital expense, or a lower rate as preferred by the purchaser, on the acquisition of a designated historic building on a straight line basis.
- c) Allow the amount of capital cost allowance mentioned in the above two points to exceed the net income of the owner of the designated building, thus creating a sheltering effect on other source of income of the owner or investor.
- d) Compile a list of historic buildings designated jointly by the federal and the provincial governments; buildings so designated and which are income-producing structures would be qualified for the above recommended provisions.



EXAMPLES:

Townsite Building at 283 Bannatyne Avenue, Winnipeg, is presently being renovated. The property is managed by Kona Properties Ltd. for its present owner. According to Ken Epp, vice-president of Kona, the renovation cost would amount to \$400,000; the property was purchased for \$400,000. Assume that the above recommendations were available, and assume that the Townsite Building would be qualified for the provisions. Assume the owner chose to deduct the rehabilitation expenses at a rate of 33-1/3% over a period of three years. Figure 2 will show the substantial amount of tax

Year	Without Recommendation (1)		With Recommendation (1)	
	U.C.C.	Capital Cost Allowance	U.C.C.	Capital Cost Allowance
1	\$400,000	\$20,000	\$400,000	\$133,333
2	\$380,000	\$19,000	\$266,667	"
3	\$361,000	\$18,050	\$133,333	"
4	\$342,950	\$17,148	\$0	\$0

Figure 2: Recommendation (1)

reduction from recommendation (1) for the first few years. Note that the normal corporation tax rate is 46%, and thus a substantial amount of tax-saving in the initial years after

a major capital investment is obvious. Assume the owner of the Townsite Building has an income of \$100,000 obtained from the renovated building for the first three years. Taxable income is equal to \$100,000 minus Capital Cost Allowance; and payable tax is equal to taxable income times 0.46. Without the provision of recommendation (1), the owner's taxable income for the first three years are \$80,000, \$81,000 and \$81,950 respectively; and the payable tax would be \$36,800, \$37,260 and \$37,697. With recommendation (1) available, the owner could claim a loss of \$33,333 each year for the three years, and use the amount to shelter other sources of his income. The owner could at least defer  $$(36,800+37,260+37,697)$  or \$111,757 in income tax for the first three years immediately after a rehabilitation investment.

RECOMMENDATIONS TO THE CITY OF WINNIPEG:

It is recommended that the City of Winnipeg Act be amended:

- a) To enable the City to provide a tax incentive scheme for preservation of buildings listed in the Historic Buildings Conservation List.
- b) To provide an exemption of 50% of the renovation expenses of a designated historic building under By-law 1474/77, with an upper limit of \$100,000, from payable property tax on a five-year carry-over basis.

EXAMPLES:

The present assessment value of the Townsite Building is \$113,890. Assume the renovation would lead to an increase in the property's assessment value to \$170,000; the payable property tax would then be  $(170,000 \times 0.236283)$  or \$40,168 per year. If the 50% tax exemption was made available, it would take three years for the owner to write-off \$100,000 renovation expenses. The owner would not have to pay any property tax in the first two years, and pay the amount which exceeds \$100,000 in the third year. After that, the owner would begin to pay tax on the building according to its new assessment value.

Appendix A

BUILDING CONSERVATION LIST

Note: The following buildings have been placed on the Buildings Conservation List to date.

Quarter ending September 30, 1983

Re: City of Winnipeg, By-law No. 1474/77 as amended

Source: City of Winnipeg Environmental Planning Department

ADDRESS	NAME	GRADE	DATE LISTED
88 Adelaide St.	Kelly Residence	III	8 June 1982
48 Albert St.	Royal Albert Arms Hotel	III	19 May 1981
63 Albert St.	Hammond Building	III	14 July 1980
70 Albert St.	Telegram Building	II	14 July 1980
91 Albert St.	Trend Interiors	III	16 June 1980
184 Alexander Ave.	Ukranian Cultural Centre	III	21 April 1980
104 Arthur St.	Gault Building	II	6 Dec. 1982

Assiniboine Park	Park Pavilion	II	5 April 1982
115 Bannatyne Ave.	Donald H. Bain Building	II	16 June 1980
283 Bannatyne Ave.	Traveller's Building	II	19 Nov. 1979
291 Bannatyne Ave.	Sanford Building (Spaghetti Factory)	II	19 Nov. 1979
291 Bannatyne Ave.	Maw's Garage (Brandy's)	III	19 Nov. 1979
222 Broadway	Fort Garry Hotel	II	20 Feb. 1980
61 Carlton St.	MacDonald House	II	11 Aug. 1980
270 Cockburn St.	Earl Grey School	III	21 April 1981
375 Rue Deschambault	Maison Roy	III	8 June 1982
1055 Dorchester Ave.	No. 12 Firehall	III	11 April 1983
Joe Zuken Heritage Park	Ross House Museum	I	11 Aug. 1980
109 James St.	James Street Pumping Station	II	15 Nov. 1982
87 King St.	Anne Building	III	12 Sept. 1983
120 King St.	Sparling Sales Ltd.	II	8 March 1983

165 Rue LaVerendrye	Maison Kittson	III	12 Sept. 1983
177 Lombard Ave.	Chamber of Commerce	II	12 Sept. 1983
171 Main St.	Empire Hotel	III	
335 Main St.	Bank of Montreal	II	7 May 1980
389 Main St.	Bank of Commerce	I	7 Nov. 1979
395 Main St.	Bank of Hamilton	I	7 Nov. 1979
457 Main St.	Confederation Life Building	II	16 June 1980
1637 Main St.	Inkster House (Bleak House)	II	22 Sept. 1980
180 Market Ave.	Playhouse Theatre	II	5 Jan. 1981
60 Maryland St.	Woodsworth House	III	2 Nov. 1981
214 McDermot Ave.	Criterion Hotel	II	21 April 1981
217-223 McDermot Ave.	Bate Building	II	19 May 1981
1 Morley Ave.	Nurses' Residence	III	4 May 1981
160 Newton Ave.	Fraser House	II	6 April 1982
169 Pioneer Ave.	Commercial Building	III	11 Aug. 1980
259 Portage Ave.	Paris Building	II	5 Jan. 1981

388 Portage Ave.	Boyd Building	III	4 Nov. 1981
92-100 Princess St.	Adelman Building	II	12 Sept. 1983
146 Princess St.	Drake Hotel	III	18 June 1979
148 Princess St.	House of Comoy	III	18 June 1979
154 Princess St.	Hochman Building	III	18 June 1979
160 Princess St.	Exchange Building	II	18 June 1979
164-166 Princess St.	Utility Building	II	18 June 1979
219 Provencher Boulevard	Warwick Apartments	II	22 Aug. 1983
141 Regent Ave.	former Municipal Offices	III	14 July 1980
171 River Ave.	residence	III	18 Aug. 1981
229 Roslyn Rd.	Nanton Estates gates	II	14 Sept. 1981
310 St. Charles St.	St. Charles Novitiate*	III	31 March 1980
729 St. Joseph Ave.	Leveque House	II	
596 St. Mary's Rd.	Firehall	III	8 June 1982
Saint Norbert	Trappist Monastery**	II	7 May 1980
310 Vaughan St.	Isbister School	II	6 Oct. 1982

54 Westgate	Ralph Connor House	II	21 June 1983
294-296 William Ave.	Massey Building		12 Sept. 1983
71 Xavier Dr.	Caron House	III	2 Feb. 1981

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\* De-listed 6 April 1982

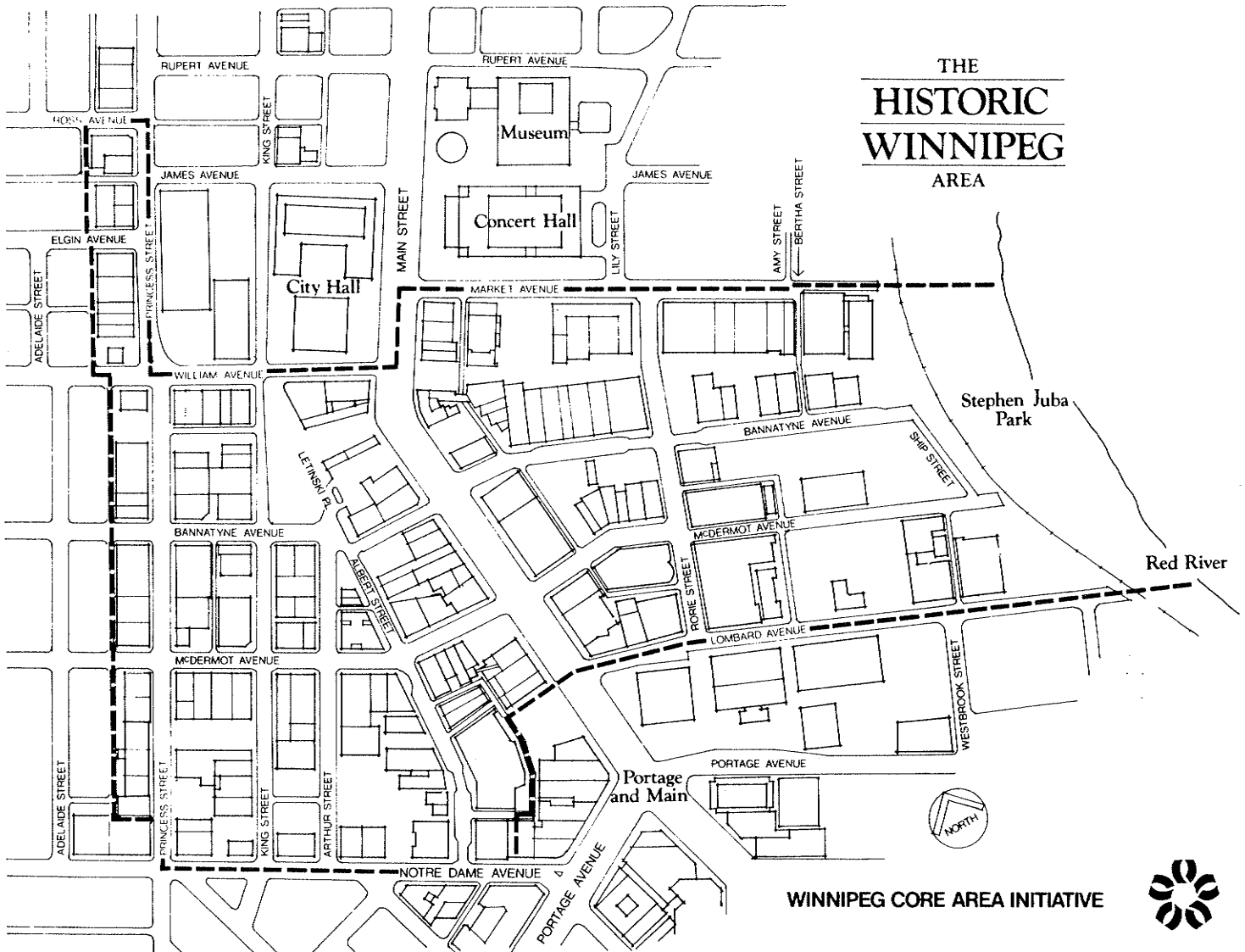
\*\* Damaged by fire 7 November 1983



Appendix B

THE HISTORIC WINNIPEG AREA

Source: Winnipeg Core Area Initiative



## Appendix C

### PRESCRIBED CLASSES AND RATES OF INCOME TAX REGULATIONS

Source: See Bibliography, (11)

- |   |   |
|---|---|
| <p><b>Class 1 - 4%</b> - roads, sidewalks, parking or storage areas and similar surface construction acquired before May 26, 1976.<br/>- railway track and grading acquired after May 25, 1976,<br/>- bridges, canals, dams.</p> <p><b>Class 2 - 6%</b> - electrical generating equipment (unless specified elsewhere), pipelines and electrical, gas, water and heat distribution equipment.<br/>- Interpretation Bulletin, IT-482, November 30, 1981 discusses the classification of pipelines among Classes 2, 8 and 10.</p> <p><b>Class 3 - 5%</b> - buildings, including component parts such as electrical wiring, plumbing, air conditioning, heat equipment, lighting fixtures and elevators. Class 3 includes all buildings not otherwise prescribed in Class 6 (frame, galvanized iron, etc.) and generally represents buildings of concrete or structural steel (except that frame buildings are generally included in Class 3, for construction starts after December 31, 1978).<br/>- also includes buildings erected by the taxpayer on leased land (section 1102(5)).<br/>- Interpretation Bulletin, IT-79R2, June 10, 1980 discusses the classification of such assets among Classes 3, 6 and 8,<br/>- also includes telephone and telegraph systems acquired after May 25, 1976.</p> <p><b>Class 4 - 6%</b> - a railway system, acquired before May 26, 1976.</p> <p><b>Class 5 - 10%</b> - pulp and paper mills, acquired before the end of the taxpayer's 1962 taxation year.</p> <p><b>Class 6 - 10%</b> - buildings of frame, log, stucco, galvanized iron or corrugated iron construction acquired before 1979 (see comment under Class 3 above), fences, oil and water storage tanks,<br/>- railway tankcars acquired before May 26, 1976,<br/>- railway locomotives after May 25, 1976.</p> <p><b>Class 7 - 15%</b> - boats and ships (30% for offshore drilling vessels).</p> <p><b>Class 8 - 20%</b> - tangible assets not specifically included in another class and also excepting certain specific items. This class is a catch-all, the most common assets are machinery and equipment and office furniture.<br/>- electric generating equipment acquired after May 25, 1976 as auxiliary equipment.<br/>- Interpretation Bulletin, IT-472, February 16, 1981 discusses the types of depreciable property included in this class.</p> <p><b>Class 9 - 25%</b> - radar and radio equipment and certain electrical generating equipment acquired before May 26, 1976.<br/>- aircraft, including furnishings and parts, acquired after May 25, 1976.</p> | <p><b>Class 10 - 30%</b> - automotive equipment, trailers, wagons, contractor's moveable equipment, assets used in mining and logging operations.<br/>- Interpretation Bulletin, IT-306R, June 25, 1982 describes contractor's moveable equipment included in this class,<br/>- general purpose electronic data processing equipment and systems software acquired after May 25, 1976, if not included in Class 29.<br/>- motion picture films or videotapes acquired after May 25, 1976 (other than a property included in Class 12).<br/>- gas or oil well equipment.<br/>- Interpretation Bulletin, IT-476, April 30, 1981, pertains to the classification for capital cost allowance purposes of depreciable equipment acquired for exploring for and producing gas and oil.</p> <p><b>Class 11 - 35%</b> - rental signs and billboards used in advertising.</p> <p><b>Class 12 - 100%</b> - jigs, dies, moulds, patterns, uniforms, dishes, cutlery, etc.; mine shafts, haulage ways.<br/>- certified feature films, certified feature productions or certified short productions,<br/>- Interpretation Bulletin, IT-441, November 19, 1979 discusses the requirements necessary for motion picture films to be included in this class,<br/>- videotapes acquired before May 26, 1976,<br/>- tools costing less than \$100 if acquired before May 26, 1976 and less than \$200 if acquired after May 25, 1976.<br/>- computer software acquired after May 25, 1976, but not including systems software,<br/>- metric scales or conversion scales acquired after March 31, 1977 and before July 1, 1984 for use in a retail business with a maximum capacity of 100 kilograms.</p> <p><b>Class 13</b> - leasehold improvements - amortized over the life of the lease plus first renewal period (minimum five years, maximum 40 years).<br/>- Schedule III of the Regulations,<br/>- Interpretation Bulletin, IT-464, December 8, 1980, discusses various matters relating to this class.</p> <p><b>Class 14</b> - patent, franchise, concession or licence for a limited period - amortized over the life of the asset.<br/>- Interpretation Bulletin, IT-477, April 30, 1981 discusses items to be included in this class and the rules regarding calculation of CCA for assets included in this class.</p> <p><b>Class 15</b> - wood assets other than a timber resource property - depreciated under Schedule IV on the basis of timber cut during the year.</p> <p><b>Class 16 - 40%</b> - aircraft, including furnishings and parts, acquired before May 26, 1976,<br/>- taxicabs acquired after May 25, 1976 (previously Class 10).<br/>- passenger automobiles acquired after November 12, 1981 for the purpose of leasing on a short-term basis (no more than 30 days in a 12-month period to any one person).</p> |
|---|---|

- Class 17 - 8%** - telephone and telegraph systems, acquired before May 26, 1976.  
- roads, sidewalks, parking or storage areas and similar surface construction acquired after May 25, 1976.
- Class 18 - 60%** - motion picture films, acquired before May 26, 1976.
- Class 19** - new machinery and equipment acquired between June 13, 1963 and January 1, 1967 by a manufacturing or processing business having a prescribed degree of Canadian ownership - a maximum claim of 50% of cost.
- Class 20** - new building or addition located in designated areas of slow growth acquired between December 5, 1963 and April 1, 1967 or subject to an Area Development grant.  
- straight line 20% of cost per year.
- Class 21** - new equipment for use in manufacturing in designated areas.  
- similar qualifications as Class 20 - 50% of cost.
- Class 22 - 50%** - power-operated movable equipment designed for excavating, moving, placing or compacting earth, rock, concrete or asphalt, acquired before March 16, 1964.  
- Interpretation Bulletin, IT-469, February 16, 1981 outlines the criteria in determining which equipment may be included in this class.
- Class 23** - assets for use at 1967 World Exhibition in Montreal.
- Class 24** - water pollution control equipment - 50% of cost.
- Class 25 - 100%** - certain property acquired before 1974 by a municipal or provincial corporation where income not exempt from tax because of subparagraph 149(1)(d)(i) or (ii) of the Act.
- Class 26 - 5%** - a catalyst, or "heavy water" acquired after May 22, 1979.
- Class 27** - air pollution control equipment - 50% of cost.
- Class 28 - 30%** - assets of a new mine or major expansion of an existing mine,  
- after November 7, 1969; normal allowance 30% but taxpayer may claim 100% from income of the new mine.
- Class 29** - two-year write-off available for machinery and equipment manufactured or purchased after May 8, 1972 and prior to November 12, 1981 for use in a manufacturing or processing operation in Canada or for lease in the ordinary course of business in Canada, to a lessee who can reasonably be expected to use the property in a manufacturing or processing operation in Canada. For additions subsequent to that date the write-off period is three years with a maximum of 25% in Year 1 and 50% in Year 2.
- Class 30 - 40%** - property that is an unmanned telecommunications spacecraft designed to orbit above the earth.
- Class 31 - 5%** - multiple-unit residential building that would otherwise be included in Class 3 or Class 6 where CMHC certifies that construction commenced after November 18, 1974 and before 1980 or after October 26, 1980 and before 1982 in respect of a building that would otherwise be included in Class 3, and after December 31, 1977 and before 1979 in respect of a building that would otherwise be included in Class 6.  
- Interpretation Bulletin, IT-367R2, September 7, 1981 and Special Release, February 4, 1983 discuss multiple-unit residential buildings (MURBs).
- Class 32 - 10%** - MURB that would otherwise be included in Class 6 where CMHC certifies that construction commenced after November 18, 1974 and before 1976.
- Class 33 - 15%** - timber resource property.  
- Interpretation Bulletin, IT-481, November 27, 1981 discusses timber resource property and timber limits.
- Class 34** - electrical or steam generating equipment and production equipment and pipelines for the distribution of heat, if acquired after May 25, 1976 and before 1985 and certified by the Minister of Industry, Trade and Commerce before December 11, 1979 or the Minister of Energy, Mines and Resources after December 10, 1979, as meeting criteria relating to more efficient use of fuels of the utilization of wood wastes or municipal wastes.  
- active solar heating equipment, heat recovery equipment, hydro electric equipment acquired after December 10, 1979 and before 1985, that is to be used in Canada or leased to a lessee for his use in Canada and certified by the Minister of Energy, Mines and Resources,  
- for such assets acquired prior to November 12, 1981 the taxpayer could write them off with a maximum claim of 50% in the year of acquisition.
- Class 35 - 7%** - railway cars acquired after May 25, 1976.
- Class 36** - property acquired after December 11, 1979 that is deemed to be depreciable property. Since this class relates to land deemed acquired under lease option no capital cost allowance is permitted.
- Class 37 - 15%** - property used in connection with an amusement park such as rides, attractions, ticket booths, facades, bridges, fences, equipment and furniture and fixtures in or attached to buildings in this class, roads, sidewalks, canals, and automotive equipment (other than that designed for use on highways or streets).

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