

BACKGROUNDER

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No Lands or Property ... Shall Be Liable to Taxation

Payment in Lieu of Taxes (PILT)

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Introduction

This constitutional protection is at the center of many long standing arguments...

Section 125 of the *Constitution Act, 1867*, states: "*No Lands or Property belonging to Canada or any Province shall be liable to Taxation.*"¹ This constitutional protection is at the center of many long standing arguments between the federal government and municipalities. Recently, the issue of privatizing the Canadian Broadcasting Corporation (CBC), the increases in allocation to the Department of Canadian Heritage in Budget 2016, and evaluating Canada's national historical sites has seen this old argument reemerge.²

The CBC is a federal corporation with a government imposed mandate to provide Canadian entertainment content representing Canada's multiculturalism and bilingualism. As a crown corporation, it is apart of the *Payment in Lieu of Taxes Act, 2000* (PILT). Privatization of CBC would remove PILT and become subject to the same municipal tax liabilities as private sector corporations. Private corporations pay property taxes in the similar manner as any other residential property, and in some municipalities, are also subject to business occupancy taxes. Federal owned/leased land and crown corporations are exempt from paying taxation by the constitution, however, PILT payments are made to municipalities in exchange.

PILT is a federal legislation that governs the Payment in Lieu of Taxes program. The program is responsible for making payments/transfers to municipalities in exchange for municipal taxes on federal owned/leased land. In 2015 Alberta, Saskatchewan, and Manitoba received a total of \$61 million dollars from the program for payment in lieu of taxes. Alberta was the lead recipient with PILT payments of \$26,862,090, followed by Manitoba at \$22,501,417, and Saskatchewan at \$11,683,295.³

Historical Overview

In 1950, the federal government adopted a general policy on payments in lieu of property taxes to municipalities and formed the Payment in Lieu program.

Only a few crown corporations and government departments made payments to municipalities in lieu of local taxation prior to 1950. These corporations and departments included Central Mortgage & Housing Corporation (involved in residential housing), Wartime Housing Limited (in relation to war workers' houses), Canadian National Railway (government-owned railways), and the operation of federal penitentiaries.⁴

Starting in the 1930's, several published reports called upon the federal government to mandate that all crown corporations and government departments make payments in lieu of taxation to municipalities as part of their fair share. In 1950, the federal government adopted a general policy on payments in lieu of property taxes to municipalities and formed the Payment in Lieu program.⁵ This policy was based on three principles: "(1) ... the constitutional exemption of federal property from municipal taxation must be maintained, (2) ... the presence of federal property within a municipality normally brings certain definite benefits to the municipality. These benefits include not only the increase in local incomes and business activity resulting from the presence of federal employees who work and live within the municipality, but also the greater degree of stability given to municipal revenues by the fact that a good proportion of municipal taxpayers are in the employ of the federal government, and (3) ... the special cases where it clearly cannot be said that the benefits derived by a municipality from the presence of federal property within its limits are more than sufficient to compensate for the added costs resulting therefrom ... anything in excess of the national average of all federal property to total municipal assessments in all municipalities in Canada shall be considered abnormal concentration."⁶

The first formula used to determine the grant amount payable to a municipality was based on 75% of the general tax levy⁷ for municipal and school taxes, excluding business tax. The general tax levy was calculated as the total federal property assessment divided by the total municipal assessment less 4%.⁸

Commencing operations on January 1, 1950, the original PILT program was called the Municipal Grants program and was administered by the federal department of finance.⁹ The first year of the program there was approximately \$1.6 million disbursed to municipalities.¹⁰

Two major reviews of the program occurred, one in 1980 and another in 2000. The 1980 review instituted several changes: transferred the program from the department of finance to the public works department,¹¹ more properties were added to the program, the program administration was decentralized, and a dispute resolution process was established. The 2000 review: (1) created the municipal payments program advisory council — to give advice on administrative and policy issues relating to the management of the program; and (2) engage national professional appraisal associations — to draft best practices for unique types of properties. Most past problems under the program arose due to the disagreement between federal and municipal appraisers on certain types of federal properties, such as airports and penitentiaries, and (3) changed the

TABLE 1

Statement of Grants Made During Fiscal Year 1950-51

Ordinary Grants under the 4% formula					
Ottawa, ON	962,392	Halifax, NS	197,394	Calgary, AB	43,300
Saint John, NB	42,210	New Westminster BC	27,089	Moncton, NB	23,161
Esquimau, BC	19,175	Dartmouth, NS	18,104	Fredericton, BC	11,711
Richmond, BC	9,779	North Vancouver, BC	8,212	Prince Albert SK	7,707
Amherst, NS	6,646	Senneville, PQ	3,904	Pictou, NS	2,690
Lauzon, PQ	2,322	Little Current, ON	2,195	Gloucester, ON	1,936
Grants In Lieu of taxes on government grain elevators					
Edmonton, AB	18,074	Calgary, AB	12,931	Prince Rupert, BC	12,746
Lethbridge, AB	12,020	Moose Jaw, SK	11,612	Cory, SK	6,800
Transitional grants respecting newly acquired properties					
Regina, SK	658	Sidney, ON	571	Moncton, NB	266
Maple Ridge, BC	126	Ops, ON	40		
Grants in lieu of special assessments for local improvements					
Hull, PQ	46,939	Winnipeg, MB	21,207	Halifax, NS	11,095
Toronto, ON	8,874	Regina, SK	6,304	Edmonton AB	5,042
London, ON	4,164	Grantham, ON	2,038	Belleville, ON	1,716
Calgary, AB	1,352	Red Deer, AB	969	Kingston, ON	429
Saskatoon, SK	416	Kindersley, SK	403	Woodstock, ON	334
Prince George, BC	312	Nipawin, MB	300	Vancouver, BC	172
Neepawa, MB	134	Three Rivers, PQ	128	Maple Ridge, SK	53
Moose Jaw, SK	53	Dartmouth, NS	28		

Source: Canada. House of Commons Debates. 18 June 1951 (Hon. Douglas Abbott, Liberal). <http://www.lipad.ca/full/permalink/1650148/>.

objective of PILT from "*as a matter of grace*" by the federal government to making federal payments in lieu of taxes as similar as possible to taxes levied against private corporations while maintaining the government's exemption under the constitution.¹²

The *Payment in Lieu of Taxes Act* 2000 was the result of the 2000 review and establishes the PILT Dispute Advisory Panel,¹³ and introduces a new method of calculation.¹⁴ "Values and rates used in the calculation of payments are those which, in the opinion of the Minister, would apply to the property if it were taxable."¹⁵ Generally speaking, the Minister determines which asset class the federal property belongs, and determines federal assessment value in which municipal mill rate applies. The PILT guiding principles differ from the original principles: (1) fairness to taxing authorities and federal taxpayers, (2) equity with the taxable property owners, and (3) predictability to all stakeholders.

In fact the purpose of the program is explicitly defined in the *Payment in Lieu of Tax Act, 2000* as "... to provide for fair and equitable administration of payments in lieu of taxes", note the language is "fair and equitable administration", not necessarily "fair and equitable payment".¹⁶

The PILT program has grown in size and complexity and currently includes five different types of payments for different reasons and different calculation methods.¹⁷ The payment process used today begins with an application made by a municipality or taxing authority. After verification of the application and confirmation of the eligibility of the property is determined by the PWGS, a valuation audit and review is performed by the PILT Valuation Staff and confirmation of the tax class and applicable tax rates are determined, the payment then is made to the taxing authority by PWGS.¹⁸ The payment made by PWGS is recovered from the custodial department (the department who uses the federal property). Since 1997-98, each department has been financially responsible out of its budget for payments made on its property, and must reimburse PWGS according to the terms of the departments memorandum of understanding.¹⁹ While crown corporations are independent of the Minister of the PWGS, authority for each crown corporation is their own for its own PILT program. Heads of the crown corporation exercise similar discretion to the Minister of PWGS with respect to their payments.²⁰

Despite the head of the crown corporation having similar discretion over the PILT payment as the minister of PWGS payments are to be based on the principle of fairness, principle of equity, principle of predictability respecting both the taxing authorities and the federal government.²¹ The PILT Act states payments should be made in the following manner: (1) "A payment ... shall not exceed ...

“... the [Act’s] language is “fair and equitable administration”, not necessarily “fair and equitable payment”.

TABLE 2

Types of PILT Payments

Real Property Taxes	Federal property	(Federal property value x Effective tax rate) + Mitigating measures
Frontage or Area Charges	Installation or repair of sanitary/storm sewers; Street lighting	(Applicable rate x Dimension of the property)
Service Charges	Unmetered water; Garbage collection	Annual flat rate charge and not dependent on consumption
Late Payment Supplements	Late payment of Real Property taxes, frontage charges, service charges	Lesser of either the taxing authority’s late payment rate or the rate set by the <i>Financial Administration Act</i>
Business Occupancy Tax	Where applicable paid by crown corporations in Schedule IV	Percentage of real property tax, depending on the type of business

Source: Public Works and Government Services Canada. <https://www.tpsgc-pwgsc.gc.ca/biens-property/peri-pilt/questions-eng.html#no3>.

the product of the effective rate in the taxation year applicable to the federal property in respect of which the payment may be made and the property value in the taxation year of that federal property”²² (2) “for school purposes ... levied at different rates for taxpayers of different religious denominations and for different classes of taxable property there shall be substituted for the effective rate, a rate equal to the rate calculated”²³ (3) Convert the language into simple mathematical function.²⁴ (4) Deductions for special arrangements: for financing of an educational service by government of Canada, an alternative means of compensating a taxing authority, in the opinion of the Minister is unable or unwilling to provide federal property with service without a special arrangement amount in the opinion of the Minister, an amount that in the opinion of the minister is equal to any cancellation, reduction or refund in respect of a real property tax,²⁵ (5) Minister may make payment on federally owned property occupied by third party occupants that have defaulted on their property,²⁶ (6) Values are set at the discretion of the Minister of Public Works,²⁷ (7) No payments are made on Crown Corp properties,²⁸ and (8) Dispute Advisory Panel (2 members from each province, appointee by Governor in Council, Governor in Council names the chair).²⁹

The PILT Act has four schedules attached. Schedule I lists any corporation established by or under an act of parliament or a corporation performing a function on behalf of the government who may make payments in lieu of tax. Schedule II lists any structures, work, machinery or equipment that is excluded from federal property and is exempt from paying taxes. Schedule III lists all the corporations and departments that are included in the PILT program, Schedule IV lists all the corporations and departments that are subject to business occupancy tax (BOT).³⁰

“...payments are to be made based on the principle of fairness, the principle of predictability respecting both the taxing authorities and the federal government.”

Current Issues

Canadian Broadcasting Corporation (CBC)

On December 6, 2016 private member's Bill C-308 was placed onto the Order of Precedence³¹ in the House of Commons. Bill C-308 was first introduced and read on September 16, 2016 by Conservative MP, Bradley Trost, C-308 is an Act to privatize the Canadian Broadcasting Corporation (CBC) through a public offering.³² Passing of this bill would authorize the issuing of share capital to a member of the Queen's Privy Council for Canada, and move the CBC from a crown corporation to a private corporation operating under the *Canada Business Corporations Act*. In addition, the CBC would be struck from Schedule III of the *Payment in Lieu of Taxes Act*, and by subject to the same municipal taxes as other private sector corporations.³³ Under PILT, crown corporations pay municipal property taxes, but most are excluded from business occupancy tax. In the case where the CBC would have to pay business occupancy tax as other private corporation would see increase in revenues for the municipality while imposing greater costs on CBC operations.³⁴ This is an ongoing contentious issues between the City of Montreal and the CBC,³⁵ as well in other municipalities across the country.³⁶

Canadian Museum of History

The Canadian Museum of History (formerly known as the Canadian Museum of Civilization – CMCC) located in Gatineau, Quebec had the largest backlog in Payment in Lieu of taxes. However, some relief has been given under Budget 2016 as government allocation to museums has been increased. For the past several years, museums across Canada have seen their municipal tax bills increase without seeing their budgets increase resulting in budgetary decisions needing to be made in terms of staff layoffs and reduction in services.³⁷ The Corporation has also been seeking increased funding from the Treasury Board to enable the CMCC to reimburse PWGS for municipal taxes on the two museum properties. As PILT represents the single largest fixed expense for the Corporation, this appeal for increased funding for PILT is essential to the financial health of the Corporation and its ability to fulfill its mandate. PILT has risen dramatically over the past seven years, and the annual shortfall between the required PILT payments and approved funding is close to \$2 million. The accumulated shortfall as of March 31, 2008 is estimated at \$6.5 million.³⁸ The Museum's PILT expense has increased 69% since it was transferred to the Museum, without any corresponding increases in funding.³⁹ Canadian Museum of History is not the only museum who obtained relief, in August 2016 the City of Winnipeg's seven year dispute with the federal government over the assessed value of the Canadian Museum for Human Rights was resolved with the land and museum assessed at \$108 million rather than the assessed value by the federal government of \$30 million.⁴⁰

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Fort Chambly

Built in 1711 to defend the colony and located approximately 30 km southeast of Montreal in the municipality of La Vallée-du-Richelieu, Fort Chambly is designated as a National Historic Site of Canada.⁴¹ Every year, the City of Chambly has to absorb a \$500,000 shortfall because the Liberal government is not honouring its commitment to the municipality to pay its fair share of costs related to the Fort Chambly site.⁴² The City of Chambly received \$168,946.22 in PILT in 2015.⁴³ The City of Chambly is not the only city with a national historic site where there has been a dispute over assessed value. In January 2015 the City of Halifax resolved a twenty year long dispute with the federal government over the assessment value of Citadel Hill. Citadel Hill was valued at \$41.2 million rather than the assessed value by the federal government of \$3.6 million.⁴⁴

Quick Statistics/Data

- Approximately 22,500 federal properties located in 1,300 taxing authorities.⁴⁵
- In 2016, there was \$514.9 million paid to 1,250 taxing authorities.⁴⁶
- Types of property include: office buildings, harbours, prisons, national parks, RCMP detachment buildings, post offices, etc.⁴⁷
- Canada Post Corporation and the Canadian Broadcasting Corporation made payments in lieu of taxes approximately \$200 million per year.⁴⁸

TABLE 3 PILT Distribution 2012-2013 (\$Millions)			
PWGSC	169.1	DND	153.4
Aéroports de Montreal	39.2	Correctional Services	28.2
RCMP	16.3	Parks	13.5
Fisheries	10.2	Museum of History	9.3
NRC	8.1	Agriculture	8.1
Transport Canada	6.3	NRCan	6.9
CSIS	6.1	National Gallery	4.1

Source: Canada. Public Works and Government Services Canada. *Payments in Lieu of Taxes*. Presented to Real Property Institute of Canada, November 6, 2013.

TABLE 4 Geographical Distribution 2013 (\$Millions)			
National Capital	162.2	Quebec	115.5
Ontario	65.7	Atlantic	63.4
Western	57.6	Pacific	50.2

Source: Canada. Public Works and Government Services Canada. *Payments in Lieu of Taxes*. Presented to Real Property Institute of Canada, November 6, 2013.

TABLE 5

Schedule III & IV* Federal Corporations and Departments PILT Included

Canada Postal Service	Natural Sciences and Engineering Research Council	Canadian Dairy Commission	Canadian Museum of Nature
Canada Revenue Agency	North Fraser Port Authority	Canadian Institutes of Health Research	Canadian Nuclear Safety Commission
Canadian Broadcasting Corporation	Northwest Territories Housing Corporation	Canada Museums Construction Corporation Inc	Canadian Sport and Fitness Administration Centre
Canadian Centre for Occupational Health and Safety	Port Alberni Port Authority	Canadian Museum for Human Rights	Defence Construction (1951) Limited
Canadian Commercial Corp.	Prince Rupert Port Authority	Canadian Museum of History	Director of Soldier Settlement
The Director, The Veterans' Land Act	Queens Quay West Land Corp.	Farm Credit Canada	The Federal Bridge Corporation Limited
Fraser River Port Authority	Quebec Port Authority	Freshwater Fish Marketing Corporation	Halifax Port Authority
Hamilton Port Authority	Radio Engineering Products Limited	Hockey Canada Research Centre	International Development
The Jacques-Cartier and Champlain Bridges Inc.	Royal Canadian Mint	Katimavik-Opcan Corporation	Marine Atlantic Inc.
Montreal Port Authority	Saguenay Port Authority	Municipal Development and Loan Board	Nanaimo Port Authority
National Arts Centre Corp.	Saint John Port Authority	The National Battlefields Commission	National Capital Commission
National Gallery of Canada	Sept-Îles Port Authority	National Museum of Science and Technology	National Research Council of Canada
Social Sciences and Humanities Research Council	Sport Participation Canada	Standards Council of Canada	St. John's Port Authority
Telefilm Canada	Thunder Bay Port Authority	Toronto Port Authority	Trois-Rivières Port Authority
Vancouver Port Authority	VIA Rail Canada Inc.	Windsor Port Authority	Canada Development Investment Corporation
Bank of Canada*	Business Development Bank of Canada*	Canada Deposit Insurance Corporation*	Great Lakes Pilotage Authority*
Canada Lands Company* Limited	Eldorado Nuclear Limited*	Export Development Canada*	Laurentian Pilotage Authority*

Source: <http://laws-lois.justice.gc.ca/PDF/SOR-81-29.pdf>.

TABLE 6

Top Twenty-Five PILT Recipient Municipalities Prairie Provinces

Sturgeon, County	\$ 4,737,417.08	Winnipeg, City	\$ 13,612,128.73	Regina, City #159	\$ 4,298,042.53
Cold Lake, City	\$ 4,143,292.67	North Cypress–Langford, Municipality #155	\$ 2,778,611.03	Saskatoon, City #344	\$ 1,858,408.03
Edmonton, City #98	\$ 3,655,160.10	Glenboro–South Cypress, Municipality #187	\$ 865,331.68	Prine Albert, Rural Municipality #155	\$ 1,017,178.96
Cypress, County	\$ 2,496,254.88	Rockwood, Rural Municipality #168	\$ 858,755.59	Moose Jaw, Rural Municipality #161	\$ 670,988.14
Wainwright, Municipality #155	\$ 2,272,766.48	Cornwallis, Rural Municipality #116	\$ 595,724.44	Prince Albert, City #461	\$ 271,173.91
Calgary, City #46	\$ 1,837,022.44	Brandon, City #500	\$ 523,992.16	Dundurn, Rural Municipality #314	\$ 257,726.57
Grande Cache, Town #131	\$ 1,289,277.79	Emerson–Franklin, Municipality #127	\$ 344,524.61	Val Marie, Rural Municipality #17	\$ 207,724.23
Improvement District No. 9 (Banff)	\$ 874,522.24	Churchill, Town #603	\$ 332,796.17	Swift Current	\$ 127,878.75
Banff, Town	\$ 783,526.58	Morden, City #433	\$ 311,279.58	Reno, Rural Municipality #51	\$ 91,802.61
Lethbridge, County #26	\$ 709,788.60	Selkirk, City #447	\$ 134,849.58	Yorkton, City	\$ 84,035.62
Red Deer, County #23	\$ 853,983.43	The Pas, Town #457	\$ 131,212.39	Wreford, Rural Municipality #280	\$ 77,357.61
Jasper, Municipality #418	\$ 541,048.97	Dauphin, Rural Municipality #118	\$ 116,269.62	Meeting Lake, Rural Municipality #466	\$ 77,005.58
Drumheller, Town	\$ 513,941.03	Northern Manitoba Affairs	\$ 115,180.73	Wellington, Rural Municipality #97	\$ 68,458.02
Lethbridge, City #203	\$ 190,012.33	St. Andrews, Rural Municipality #174	\$ 108,627.72	Indian Head Rural Municipality #158	\$ 56,935.18
Improvement District No. 4 (Waterton)	\$ 165,767.12	Ellice–Archie, Rural Municipality #101	\$ 108,351.73	Moose Jaw, City #161	\$ 52,707.56
Red Deer, City #262	\$ 162,457.03	Dauphin, City #411	\$ 93,016.01	North Portal, Village	\$ 52,470.72
Coutts, Village	\$ 113,365.83	Grandview, Municipality #132	\$ 71,736.18	Hazel Dell, Rural Municipality #335	\$ 49,295.46
Lacombe, County #14	\$ 103,903.67	Boissevain–Morton Municipality #153	\$ 71,064.02	Waverley, Rural Municipality #44	\$ 47,688.94
Leduc, County #25	\$ 101,207.70	Two Borders Municipality #122	\$ 67,216.45	Carlyle, Town #63	\$ 47,517.69
Bighorn, Municipal District #8	\$ 79,368.28	Woodlands, Rural Municipality #206	\$ 65,474.43	Wise Creek Rural Municipality #77	\$ 46,305.89
Wood Buffalo, Municipality #508	\$ 75,150.84	Grahamdale, Rural Municipality #606	\$ 58,451.66	Frenchman Butte, Rural Municipality #501	\$ 45,634.32
Improvement District #349	\$ 61,152.10	Lynn Lake, Town #614	\$ 49,259.54	Monet, Rural Municipality #257	\$ 45,412.43
High Level, Town #146	\$ 59,284.57	Roblin, Municipality #182	\$ 48,908.13	Edenwold, Rural Municipality #158	\$ 40,981.60
Grande Prairie, County #1	\$ 52,380.74	Ethelbert, Municipality #126	\$ 44,282.18	Buckland, Rural Municipality #491	\$ 40,975.09
Manning, Town #2121	\$ 41,915.30	Alonsa, Rural Municipality #601	\$ 41,576.66	Mariposa, Rural Municipality #350	\$ 38,929.51

Source: Canada. Public Works and Government Services. Payments in lieu of taxes by taxing authority for taxation year 2015 (May 2016).

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ENDNOTES

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