



TOWN OF OXFORD

Committee of the Whole Meeting

Conducted through Zoom and Streamed Live to Facebook

Monday, 7 December 2020

AGENDA

1. Call to Order
2. Approval of Agenda
3. Approval of Previous Minutes
 - 3.1 Regular Committee of the Whole Minutes – 2 November 2020
4. New Business
 - 4.1 RFD #015-2020 Safe Restart Funding Request
 - 4.2 Legal & Insurance Risks: Oxford Arena
5. Correspondence
 - 5.1. Habitat for Humanity Update
6. Adjournment



Minutes of the Committee of the Whole Meeting

Place: Conducted through Zoom, streamed live to Town of Oxford FaceBook Group.

Date: Monday, November 2, 2020

Presiding Officer: Mayor Gregory Henley

Councillors Present: Councillors Wade Adshade, Carla Black, Brenton Colborne, and Paul Jones

Regrets: Nil

A quorum was present throughout the meeting.

Staff in attendance: CAO - Rachel Jones and Deputy Clerk - Linda Cloney (recording secretary)

1. Call to Order

Mayor Gregory Henley called the meeting to order at 6:15 pm.

2. Approval of Agenda

Addition to Agenda
4.4 Arena – Councillor Colborne

It was moved and seconded that the agenda of the Committee of the Whole Meeting for November 2, 2020 be approved, as amended.

Motion Carried

3. Approval of Previous Minutes

It was moved and seconded that the minutes of the Regular Committee of the Whole Meeting for October 5, 2020 be approved.

Motion Carried

4. New Business

4.1 Orientation Presentation: CAO Jones

CAO Jones presented to the Mayor and Council a presentation on A Day in the Life of a Municipal Government.

A copy of this has been filed.

4.2 RFD #013-2020 Special Election

Council had a general discussion regarding the process required to reduce the number of Council Members for the Town of Oxford.

It was moved and seconded that the Committee of the Whole recommend to Town Council to approve to hold the Town of Oxford Special Election on January 16, 2021 and further, to approve the Schedule of Election Fees and Expenses for election staff as presented.

Motion Carried

4.3 2020 Committee Appointments

CAO Jones presented to Council the Committees and Boards that need representation from Council Members. Mayor Henley will follow up with individual members regarding possible appointments, with the final appointments to be made at the November 16 Regular Council Meeting.

4.3 Arena – Councillor Colborne

Councillor Colborne informed the Mayor and Council that he has been approached anonymously regarding a financial contribution of \$40,000 to cover the operating costs, along with the intent that a volunteer committee would manage the operations of the arena for the 2020-2021 season.

Council directed staff to follow up on this information and provide a report to Council at the November 16 Regular Council Meeting.

5. Correspondence

5.1. Cumberland Public Libraries

Cumberland Public Libraries submitted a Year in Review report to Council for information purposes.

Council had a general discussion regarding the Royal Canadian Legion Branch #36 and the Church Mouse Players organizing a Letters to Santa Event. More information regarding this and how the Town will be collaborating with the Legion and others on holiday events will be released soon.

6. Adjournment

At 6:50 pm, it was moved and seconded that the meeting be adjourned.

Motion Carried

Gregory Henley, Mayor

Linda Cloney, Recording Secretary



REQUEST FOR DECISION
Safe Restart Agreement Fund Request
#015-2020

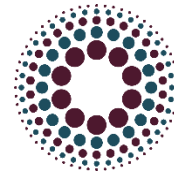
Date: 5 November 2020	Subject: Safe Restart Agreement (SRA) Fund Request
Proposal Attached: Yes	Submitted by: Rachel Jones, Chief Administrative Officer

Proposal:	That Town Council approve the payment of the Association of Municipal Administrators Nova Scotia invoice in the amount of \$917.01, to be taken from the Federal Government Safe Restart Agreement funding amount allocated to the Town of Oxford, in support of the efforts of both AMANS and NSFM spent collecting information and lobbying other levels of governments to support municipalities in addressing their financial impacts from COVID-19.
Background:	<p>Further to the public health orders regarding gathering restrictions and other impacts from the COVID-19 pandemic that began in earnest in Nova Scotia in March 2020, there was significant work done within municipalities, the Nova Scotia Federation of Municipalities (NSFM) and Association of Municipal Administrators (AMANS) to gather and compile information around expected financial impacts on municipal units. It included lost revenues from facilities, transit, programming, and the increased costs of operations regarding personal protective equipment, cleaning, and technology solutions for working and meeting remotely to name a few.</p> <p>This work culminated in lobbying the Provincial and Federal Governments for financial assistance for municipalities in Nova Scotia. The result is the Federal announcement of the Safe Restart Agreement Fund and the release of these funds to municipalities. The request through NSFM was for \$66 Million, and the amount awarded was just over \$67 Million. The Town of Oxford has received \$253,985 as its allocation. Further information will be provided that pertains to specific criteria that the funds can be used for, the timeframe in which they can be spent, and the accountability framework for reporting these expenses back to the Province of Nova Scotia.</p>

	Both of our professional organizations have incurred substantial revenue losses due to having to cancel both the spring and fall conferences for 2020, as well as in person training opportunities, that generally provide significant revenues that offset operating expenses. These organizations, funded by municipalities, did not receive financial support through the SRA Fund. As additional funds were received over and above the request, these organizations are requesting 15% of the <u>additional</u> funds received only, not from the total amount, to be provided to them to assist their operations.
Benefits:	<ol style="list-style-type: none"> 1. We can support our professional organizations which have provided continuous and extra support during the pandemic, allowing them business continuity to continue their mandate of assisting municipalities. 2. This does not affect any cashflow or ability to meet unexpected expenses/losses for the Town of Oxford.
Disadvantages:	<ol style="list-style-type: none"> 1. Not all municipalities may agree to the funding request, making the allocation unbalanced across the province.
Options:	
Required Resources:	
Source of Funding:	Safe Restart Agreement Fund allocation.
Sustainability Implications: (Environmental, Social, Economic and Cultural)	Provides business continuity and financial stability for our professional organizations that contribute to broader municipal priorities.
Workplan Implications (now/future):	
Communication Plan:	
Staff Comments/ Recommendations:	
CAO's Review/ Comments:	I support the request from AMANS and recommend payment of the invoice.

CAO Initials: RLJ

Target Decision Date: 21 December 2020



NOVA SCOTIA
FEDERATION OF
MUNICIPALITIES

November 4, 2020

Ms. Rachel Jones
Chief Administrative Officer
Town of Oxford
P. O. Box 338
Oxford, NS
B0M 1P0

Dear Rachel,

The last eight months have been difficult times for everyone, and we recognize the challenges municipalities have had and are still facing. Throughout the pandemic, NSFAM and AMANS have been all hands-on deck working on behalf of municipalities. Many staff and volunteer hours have been spent to help provide resources and information to municipalities during the pandemic. Included in these efforts was the data collected for the NSFAM Report which identified the need for assistance and formed the basis for the \$67M in restart funding for municipalities. In fact, municipalities will be receiving \$1,067,000 more than what was identified. This is a good news story!

NSFAM and AMA, like municipalities, are feeling the impacts of COVID-19 with significant losses in revenue from cancelled events. While municipalities are receiving the much-needed help that they deserve from the restart funding, NSFAM and AMA are still struggling. It is uncertain when the two organizations will be able to resume holding conferences at full capacity again. These events are critical funding mechanisms for both organizations. Therefore, it is proposed that municipalities be billed a one-time restart fee to help the AMA and NSFAM at a time when municipalities need the two organizations most. This would equate to 15 percent of the extra \$1,067,000 going to municipalities and would be split between the two organizations to help offset lost revenue and operating expenses due to COVID-19. Each municipal unit will be billed based on their allocation of the additional \$1,067,000 to ensure an equitable sharing of the redistribution.

We do not believe this is a big ask as it will leave 85 percent of the extra money that municipalities did not initially ask for and equates to less than one quarter of a percent of the total restart funding allocation to municipalities.

Attached to this letter is a one-time invoice for your municipality's allocation. We hope you will support your municipal organizations. If you have any questions, please do not hesitate to contact us.

Yours truly,



Pam Mood,
President, NSFM



Mike Dolter, CD, MBA, CPA, CMA
President, AMANS

cc: Director of Finance

Safe Restart Funds

Municipality	Total Safe Restart Funding (\$)
Cape Breton Regional Municipality	3,929,632
Halifax Regional Municipality	46,091,927
Region of Queens	590,735
West Hants Regional Municipality	634,521
Town of Amherst	205,840
Town of Annapolis Royal	28,306
Town of Antigonish	313,547
Town of Berwick	486,202
Town of Bridgewater	639,553
Town of Clark's Harbour	35,150
Town of Digby	164,561
Town of Kentville	273,173
Town of Lockeport	14,195
Town of Lunenburg	287,930
Town of Mahone Bay	43,651
Town of Middleton	71,317
Town of Mulgrave	68,925
Town of New Glasgow	504,134
Town of Oxford	253,985
Town of Pictou	120,296
Town of Port Hawkesbury	647,656
Town of Shelburne	83,100
Town of Stellarton	69,165
Town of Stewiacke	74,800
Town of Trenton	87,896
Town of Truro	752,103
Town of Westville	56,244
Town of Wolfville	384,657

Safe Restart Funds

Municipality	Total Safe Restart Funding (\$)
Town of Yarmouth	400,803
County of Annapolis	713,798
County of Antigonish	614,798
District of Argyle	240,796
District of Barrington	131,420
District of Chester	272,561
District of Clare	228,500
County of Colchester	1,024,664
County of Cumberland	239,771
District of Digby	427,230
District of Guysborough	248,276
District of East Hants	1,496,669
County of Inverness	805,580
County of Kings	792,211
District of Lunenburg	1,414,036
County of Pictou	259,240
County of Richmond	261,109
District of Shelburne	144,734
District of St. Mary's	67,115
County of Victoria	237,722
District of Yarmouth	592,768
Total	\$67,527,000



NOVA SCOTIA FEDERATION
OF MUNICIPALITIES

COVID-19: LOST REVENUE REPORT

June 18th, 2020

About Us

The Nova Scotia Federation of Municipalities (NSFM) has been the collective voice for municipal governments across the province since 1906. With 376 members comprising Mayors, Wardens, and councillors, NSFM represents the interests of municipalities on policy and program matters that fall within provincial jurisdiction. Members include all 49 of Nova Scotia's municipalities.

NSFM Board of Directors, 2019-2020

Mayor Pam Mood, Town of Yarmouth – President

Deputy Mayor Emily Lutz, County of Kings – Vice-President

Councillor Wayne Mason, Halifax Regional Municipality – Past President

Mayor Brenda Chisholm-Beaton, Town of Port Hawkesbury – Towns Caucus Chair

Deputy Mayor Geoff Stewart, County of Colchester – Rural Caucus Chair

Councillor Clarence Prince, Cape Breton Regional Municipality – Regional Caucus Chair

Councillor Russell Walker, Halifax Regional Municipality, Regional Caucus Representative

Councillor George MacDonald, Cape Breton Regional Municipality, Regional Caucus Representative

Warden Jim Smith, District of East Hants, Rural Caucus Representative

Councillor Patti Durkee, Municipality of the District of Yarmouth, Rural Caucus Representative

Mayor Jeff Cantwell, Town of Wolfville, Towns Caucus Representative

Mayor Lennie White, Town of Westville, Towns Caucus Representative

Alain Muise, CAO, District of Argyle, AMANS Representative

NSFM Staff

Juanita Spencer – Chief Executive Officer

Will Brooke – Policy Advisor

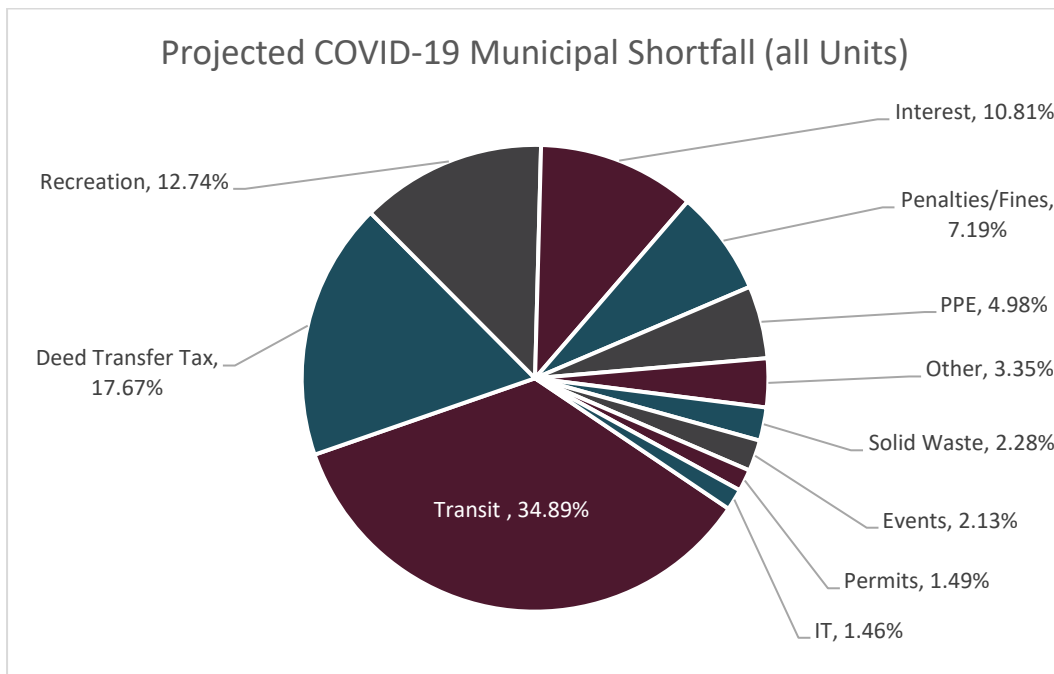
Amy Pugsley Fraser – Communications Advisor

Judy Webber – Event Planner / Financial Officer

Debbie Nielsen – Infrastructure and Sustainability Officer

Executive Summary

- Municipal shortfalls could total nearly \$67 million this year across Nova Scotia
- Transit is the biggest shortfall area, followed by deed transfer and recreation
- 76% of losses are in regional municipalities, 15% in rural, and 9% in towns
- The property tax financing loan must be repaid, and is not for shortfalls
- Without alternate funding, shortfalls will impact next year’s property tax rates
- On average, covering shortfalls would require a 7.1% residential tax rate hike
- Municipalities have cut 143 FTEs, and have put off hiring another 116 FTEs, not including Halifax Regional Municipality (1 FTE = 1,820 hours per year)
- The Province of Nova Scotia and Government of Canada can help prevent tax hikes and further cuts by transferring funds to municipalities



Transit	\$23,184,740	Other	\$2,223,806
Deed Transfer Tax	\$11,743,732	Solid Waste	\$1,516,200
Recreation	\$8,464,679	Events	\$1,416,567
Interest	\$7,183,438	Permits	\$990,622
Penalties/Fines	\$4,775,640	IT/Comms	\$968,786
PPE	\$3,311,403	Total	\$66,459,684

Overview

Over the past months Canadians and Nova Scotians have achieved admirable results in combatting COVID-19. Throughout these difficult times, most of us have seemed willing to accept that a good public health payoff has been worth the economic and social difficulties implicit in widespread shutdowns. Nova Scotia's municipalities have been supportive of the policy decisions made at every step on this journey at both the provincial and federal levels. But we also know that these shutdowns have compromised the financial well-being of Nova Scotia's municipalities.

This year, the Nova Scotia Federation of Municipalities (NSFM) has worked in partnership with the Association of Municipal Administrators, Nova Scotia (AMANS)¹ to make it easier for struggling businesses and households to dutifully observe public health orders and enroll in a property tax financing program. This program enables them to pay little in the way of property taxes for six months, until the worst of COVID-19 is over. After it is safer to resume normal economic activities, they can pay their property taxes from the months of COVID-19 shutdown over a multi-year installment period. NSFM and AMANS are proud that we have been able to arrange for the delayed payment of property taxes. Yet property taxes only make up a part of municipal budgets.

Each year, municipalities create their budgets based, at least in part, on data from past years. This year, municipalities operating transit systems assumed bus ridership would be predictable. Municipalities assumed that a typical number of homes would be bought and sold, and that the number of building and development permits that would be issued would be somewhere around the yearly average. We planned for a certain number of events to be held in municipal spaces, and we expected that people would get a normal number of parking tickets.

Even though these revenue streams fluctuate to some degree from year to year, nothing could have prepared municipalities for the shortfalls being experienced because of COVID-19. With so many Nova Scotians staying at home, municipalities' normal non-tax revenue streams have almost entirely dried up. In assessing these shortfalls across our province, NSFM and municipal finance staff estimate that municipal losses in these categories could total nearly \$67 million this year.

Nova Scotian municipalities have scrambled to make cuts over these past months, axing programs and laying off hundreds of staff. But without additional funding to cover the shortfalls identified in this report, the lost revenues that municipalities budgeted to receive will be carried forward into next year's budgeting process, causing next year's tax rates to increase. On average, covering the shortfalls reported in this survey would require a 7.1% residential tax rate hike next year.

¹ AMANS is a professional non-profit organization with over 250 members from Nova Scotia Municipalities, the Province of Nova Scotia, and other professionals in the field of local government. AMANS members include CAOs, Clerks, Deputies, Directors, Administrative Assistants, and other administrators from within local government.

Method

Chief Administrative Officers, Clerk-Treasurers, and/or their designates in every Nova Scotian municipality were invited to participate in the NSFM/AMANS Lost Revenue survey on May 15th, 2020. The survey was crafted in cooperation with the Federation of Canadian Municipalities (FCM) and AMANS. A copy of the distributed survey questions is attached as *Appendix A*.

Municipal respondents were invited to report on a variety of topics. They were asked to estimate the total net shortfall that they expected considering the COVID-19 pandemic. We also asked that they break this total net shortfall number down into itemized areas to facilitate more detailed analysis. In asking these questions, we requested that respondents assumed a scenario in which the current distancing measures were in place for a total of six months (i.e., from March 15th, 2020 to September 15th, 2020.)

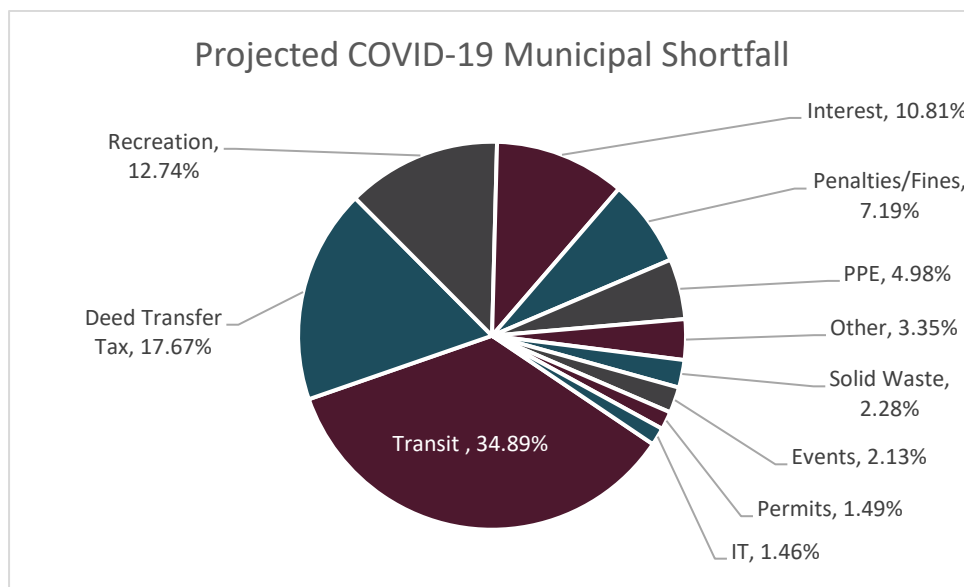
The survey officially closed on June 1st, 2020. Data quality checks began immediately, with queries being made to seek clarification on outliers in the responses. At the time of writing this report, 47 of 49 municipalities had submitted responses, with these 47 municipalities representing some 99.84 per cent of the population of Nova Scotia.

Overall Results

Nova Scotia’s municipalities are in dire financial straits. Without some form of relief, an estimated \$66.5 million dollars of shortfall will need to be brought forward into next year’s budgeting process. The unique fiscal structure of municipalities only permits this loss to be carried forward into next year, not any future year beyond that. Any lingering shortfall from this year will require next year’s tax rates to be raised by a similar and corresponding amount.

The average shortfall estimated by municipalities in this survey is equivalent to 2.94 per cent of their total operating budgets. Based on submitted numbers, covering this year’s shortfalls would require the equivalent of a 7.1% residential tax rate hike next year.

Given that municipalities will continue to face inflationary cost pressures, we should expect next year’s operating budgets to be larger, even before we bring this year’s shortfall forward. These larger budgets must be considered in concert with diminished ability to pay, given expected decreases in GDP, as well as a likely decrease in assessment values.



Transit	\$23,184,740	Solid Waste	\$1,516,200
Deed Transfer Tax	\$11,743,732	Events	\$1,416,567
Recreation	\$8,464,679	Permits	\$990,622
Interest	\$7,183,438	IT/Comms	\$968,786
Penalties/Fines	\$4,775,640	Did not categorize	\$578,500
PPE	\$3,311,403	Did not report (est.)	\$101,570
Other	\$2,223,806	Total	\$66,459,684

Transit losses constitute the largest component—some 35 per cent—of the \$66.45 million shortfall. Collectively, municipalities across Nova Scotia are reporting an expected loss of transit revenue amounting to \$23,184,740. Expected losses from deed transfer taxes are next, with reduced activity in the housing market, amounting to \$11.74 million. Recreation revenues are also down significantly, though cuts to staffing, maintenance, and other expenditures brings this loss total to a more manageable \$8.46 million (net).

Along with providing a property tax installment payment program, many municipalities across Nova Scotia have delayed property tax due dates to help homeowners and businessowners cope with the difficulties of COVID-19. Delays in these collections leave municipalities coming up short on paying the bills for essential services like fire, police, water, and sewer, and accordingly, many are pulling investments to help with cash flow, or running overdrafts in their operating accounts.

Most municipalities budget for a small amount of interest each year on their cash deposits, on their short- and medium-term investments, as well as some amount of interest on outstanding taxes. Municipalities told us that they were expecting to take at least \$10.8 million out of reserves to address operating shortfalls, and many others told us that discussions about drawing on reserves were underway. Collectively, along with decreased interest rates, expected losses in these areas are anticipated to amount to some 10.81 per cent of the overall \$66.45 million total, or \$7,183,438.

With more Nova Scotians staying home, municipalities are expecting fewer by-law infractions, parking tickets, and other penalties, fines, and fees than they had previously budgeted to receive. The expected provincial total for this is \$4.77 million. Unexpected additional expenses for personal protective equipment (PPE), the addition of Plexiglas service kiosks, and other health and safety measures, are expected to total another \$3.31 million.

Although municipalities have done their best to provide detailed shortfall projections, many have indicated that the uncertainty of COVID-19, and they have included a buffer of as-yet uncategorized expected losses. To capture these uncategorized expectations, we have included an ‘other’ column. Across the 49 municipalities, reports allocate a total of \$2.22 million to this ‘other’ category. This equates to 3.3 per cent of the \$66.45 million total, or approximately \$45,383 per municipality.

There is an expected loss of \$1.51 million in solid waste management, although because this service is often coordinated through intermunicipal service agreements, this number could be significantly larger after actual losses are determined by regional authorities. There are projected losses of \$1.41 million for events no longer being held, and because housing starts are expected to be down, losses of \$990,622 are expected due to unbudgeted decreases in the issuance of building and development permits. Additional expenses in investments in IT technology to support remote work and communications to advertise public hearings are also expected, with an anticipated total of \$968,786 across the province.

Non-responsive municipalities were not excluded from the survey results. We approximated total shortfalls in these municipalities, together accounting for less than 0.16 per cent of Nova Scotia's population, by examining the reports provided by similar municipal units. After expressing reported shortfalls in these similar cases as percentages of reported operating budgets, we then determined the average of those ratios and applied the resulting average ratio to the most recently available operating budgets for each non-responsive municipality. The total estimated shortfall for these cases is \$101,570. One further municipality was able to provide an overall loss number without further categorization.

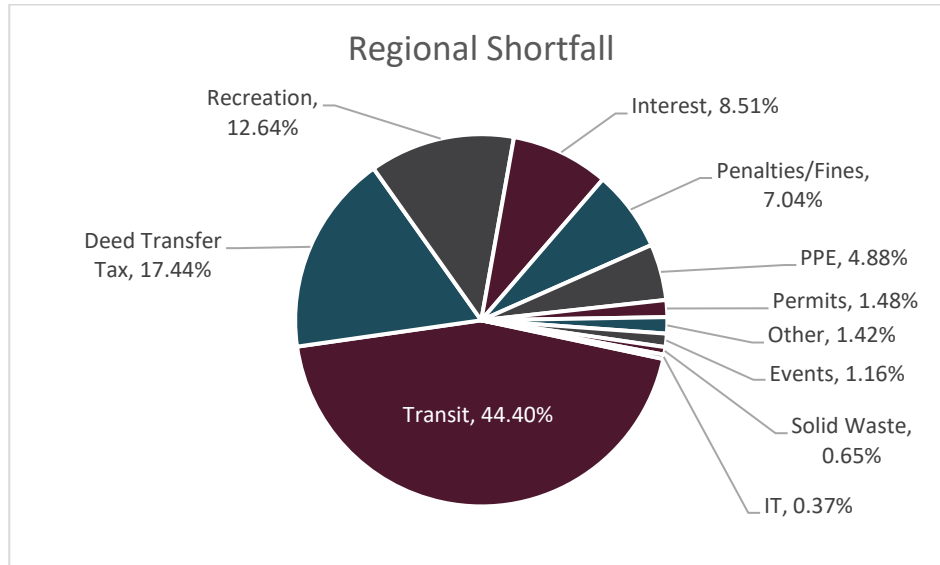
Municipalities were also asked to report on expected staffing impacts. Thus far, municipalities have reported that 142.91 FTEs have been cut, and that another 116.41 FTEs that had previously been planned to be hired will no longer be hired because of COVID-19. For the purposes of the survey, we asked respondents to assume that one FTE was equivalent to 1,820 hours. It should also be noted that these numbers do not include cuts at Halifax Regional Municipality (HRM), where staffing impacts were still being determined at the time of writing this report.

Above and beyond all of this, municipalities reported on additional expected discretionary expenses of \$16,714,367 due to COVID-19. Municipalities said that, because of COVID-19, they expected to make decisions about offering tax forgiveness, including offering tax write-downs and tax write-offs, that would sum to approximately \$13.5 million.

Within this \$16.7 million, several municipalities reported that they expected that they would be increasing their contributions in pre-existing programs designed to support vulnerable populations due to COVID-19. Many indicated that they were deliberating how much to add, but those who had already made these determinations said that the difference due to COVID-19 amounted to \$1.14 million.

Although not included in the total \$66.45 expected shortfall, another component of this \$16.7 million are those expected costs resulting from rent forgiveness for the spaces that many municipalities lease to variety of voluntary sector organizations. In many cases, these organizations are no longer generating any kind of income due to COVID-19, and the expected need for relief in this area is expected to be \$1.38 million. Municipalities that provide funds for local public health measures are expecting to contribute an additional \$658,000 because of COVID-19.

Regional Results



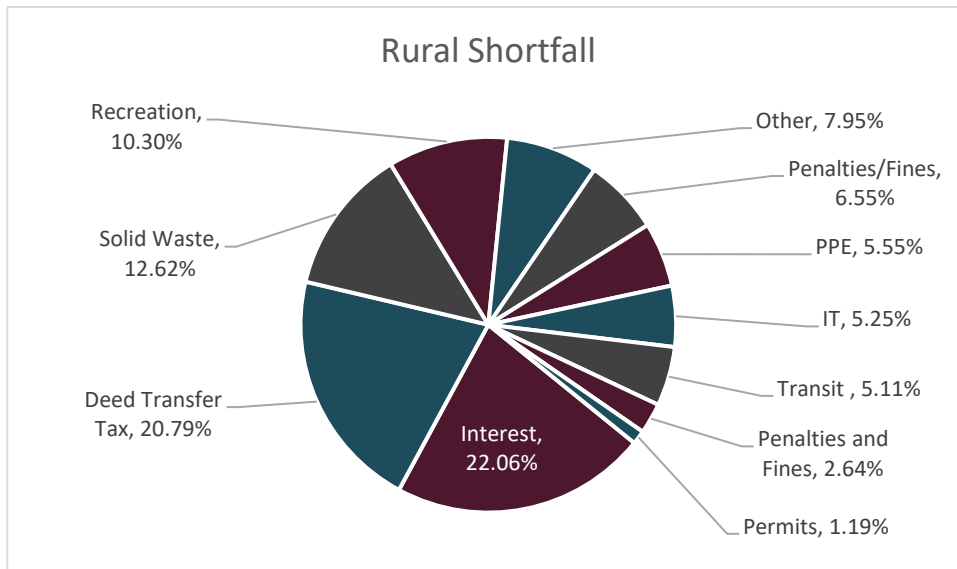
Transit	\$22,448,174	Permits	\$746,124
Deed Transfer Tax	\$8,817,694	Other	\$716,915
Recreation	\$6,389,579	Events	\$587,105
Interest	\$4,302,000	Solid Waste	\$330,000
Penalties/Fines	\$3,559,450	IT	\$188,928
PPE	\$2,467,663	Total	\$50,553,632

Survey results clearly indicate that Nova Scotia’s regional municipalities are bearing the brunt of shortfalls related to COVID-19. Regional municipalities account for approximately 76 per cent of the total estimated shortfall, or \$50.5 million of a province-wide municipal shortfall of \$66.45 million. The average regional shortfall is equivalent to 3.29 per cent of their operating budgets, which is a little higher than the total municipal average (2.94 per cent). Covering these shortfalls would require regional municipalities to raise their residential tax rates by an average of 6.97 per cent next year.

Across Nova Scotia, regional municipalities have the largest transit ridership numbers. Within the \$50.5 million shortfall posted by regional municipalities, transit losses make up some 44.4 per cent, or \$22.4 million, of that shortfall. Regional municipalities are estimating that deed transfer taxes will be their next largest loss, followed by recreation, interest, penalties and fines, and PPE.

Regional municipalities noted that they expect to see further difficulties emerging related to COVID-19 along several fronts. They expect a decreased demand for class A and B office space as firms become increasingly lean post-crisis, resulting in lower than normal commercial assessment growth over time. They also expect asset value declines in hotels and retail, as well as any other businesses directly affected by decreased consumption and tourism, likely resulting in an increased property tax burden.

Rural Results

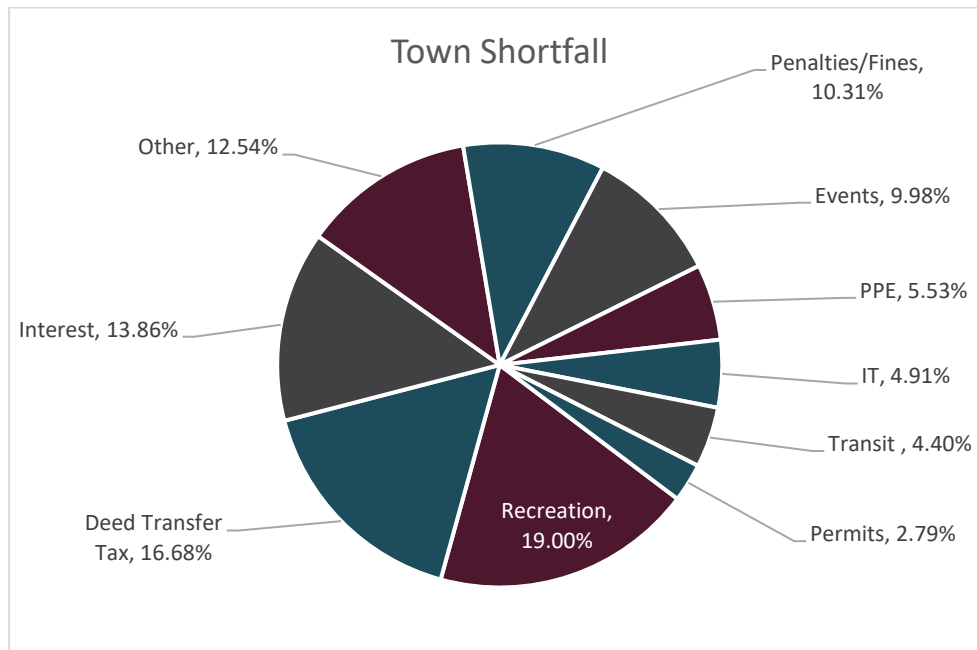


Interest	\$2,074,093	PPE	\$521,550
Deed Transfer Tax	\$1,954,038	IT/Comms	\$493,750
Solid Waste	\$1,186,200	Transit	\$480,199
Recreation	\$968,234	Events	\$248,007
Other	\$746,982	Permits	\$111,432
Penalties/Fines	\$615,744	Total	\$9,978,729
Did not categorize	\$578,500		

Rural municipalities reported a total of \$9.97 million in shortfalls due to COVID-19, equivalent to about 15.01 per cent of the \$66.45 million total for all municipalities. The average rural shortfall was equivalent to 2.66 per cent of their operating budgets, slightly below the total municipal average. Covering these shortfalls would require rural municipalities to raise their average residential tax rates by 5.53 per cent next year. The largest loss category for rural municipalities was interest, at a total of \$2.2 million, followed by deed transfer taxes at \$1.95 million, and solid waste at \$1.18 million.

Several rural municipalities noted that their cash accounts and reserves were in good enough shape to see them through the early weeks and months of the state of emergency. They also noted that they felt confident that their own resources should be sufficient to sustain them in the mid-term, pending no extreme developments. However, several expressed concern about the potential for assessment declines in both residential and commercial property, and the impact that these changes may have on taxation revenue going into the next fiscal period and beyond.

Town Results



Recreation	\$1,106,866	PPE	\$322,186
Deed Transfer Tax	\$972,000	IT	\$286,108
Interest	\$807,345	Transit	\$256,368
Other	\$730,700	Permits	\$162,275
Penalties/Fines	\$600,446	Did not report (est.)	\$101,570
Events	\$581,455	Total	\$5,825,752

Towns reported \$5.82 million in expected shortfalls resulting from COVID-19. This accounts for approximately 8.9 per cent of the \$66.45 million total shortfall being estimated across Nova Scotian municipalities. Although this \$5.82 million total reported shortfall in towns may seem small, the residential tax rate changes that would be required to cover this shortfall in next year's budgeting process is, on average, equivalent to an 8.5 per cent hike.

Many respondents from towns indicated serious concern about the impacts of COVID-19 on tourism, hospitality businesses, and the retail sector, as well as their fisheries. Some municipal responses also included concerns about the cancellation of events and festivals. Although most indicated that the total impact of COVID-19 could not be quantified with certainty at this time, several expressed concern about the long-term sustainability of their commercial tax bases, especially depending on how hard subsequent waves of COVID-19 hit.

Conclusions

COVID-19 is taking a toll on municipal finances across Nova Scotia. At first, the brunt of the total \$66.45 million burden may appear to be centralized in the regional municipalities, and particularly on those with large transit expenses. But the shortfalls being reported by municipalities of all sizes translate into significant tax burdens when carried forward to next year.

As we saw, if carried forward to next year, the \$66.45 million expected shortfall reported by our members would translate into an average residential tax rate hike of 7.1 per cent. This number is higher in our towns, where that average is 8.5 per cent, and although it is a little lower in rural municipalities, the expected impact would still be 5.53 per cent.

In addition to these pressures, it is almost certain that municipal operating budgets will need to be higher next year, even after making significant program and staff cuts this year. This is because the cost of providing fire, police, solid waste management, road maintenance and other services continues to escalate each year. Over the past decade, the costs of these services have steadily increased, often at two to three times the rate of inflation, as measured by the consumer price index. Many of these cost increases are driven by wage arbitration and rapidly increasing prices for raw materials.

The Canadian Mortgage and Housing Corporation (CMHC) has also projected decreases in home sale prices for the next two years. For Nova Scotia, CMHC expects the pre-COVID-19 average home sale price of approximately \$270,000 to drop to an average of between \$245,000 (in a good scenario) to \$230,000 (in a bad scenario) over the next year. These numbers translate into a projected 9.2 per cent to 14.8 per cent drop. Because assessment values being based on market prices, if CMHC's projections are correct, municipalities need to prepare for decreased assessment roll values for 2021, which will again require increases in tax rates.

In conclusion, if municipalities carry this year's shortfall into next year, it will have to be added to a mix that will already include steadily increasing cost pressures, as well as what will likely be an assessment base that is decreasing in value. With these three pressures threatening to drive tax rates up, municipalities need help from the Province of Nova Scotia and the Government of Canada.

Though most municipal expenses go towards providing services that are essential, many of our municipalities are working hard to make reductions to programs and staff. Work to find efficiencies will continue, but to prevent significant tax increases, non-repayable transfers are needed from other levels of government. This support can cover the lost revenues that municipalities had previously budgeted to receive, as well as the added expenses being incurred because of COVID-19.

Appendix A

NSFM/AMANS Lost Revenue Survey – COVID-19

The \$380 million that NSFM and AMANS have secured will help us all remain more stable in the months to come. But \$380 million is just a good start. The reality is that property taxes are only part of the picture. Beyond property taxes, municipalities across all of Nova Scotia continue to lose revenues because of COVID-19.

NSFM, together with AMANS, is now working on a second phase of relief efforts. Our plan is to advocate at the provincial level here in Nova Scotia, and at the federal level by working with FCM, to secure grant money to address revenue losses for municipalities.

In active consultations with members over the past two months NSFM and AMA have identified the following cost drivers related to COVID-19. We know that municipalities are experiencing dramatic revenue losses across all municipal services. The most prominent examples include transit and recreation.

But the effects of COVID-19 are far-reaching, and many of our revenue streams are changed, especially user-fee based streams. We hope that you will estimate the financial cost of the pandemic in terms of direct costs and lost revenues using the following criteria, and to forward the results to NSFM for our continued advocacy efforts.

In calculating answers for each of the questions in this survey, please assume a scenario in which the current distancing measures are in place for a total of six months (i.e., from March 15th, 2020 to September 15th, 2020.)

Please note that the questions in sections 2-5 may require research. Please consider whether you might wish to delegate this work or save and print this form to work offline before filling in the actual survey.

We would like to have responses from all 49 municipalities by Monday, June 1st, 2020.

If you have any questions or feedback about the survey, please email Will Brooke at wbrooke@nsfm.ca.

Section 1: General Questions

- 1.) What is the name of your municipal unit?
- 2.) What is the current estimated population of your municipality?
- 3.) Do you consent to detailed aspects of the data collected being shared with the Government of Nova Scotia for provincial advocacy purposes?

- 4.) Do you consent to detailed aspects of the data collected being shared with the Federation of Canadian Municipalities for federal advocacy purposes?
- 5.) Do you consent to the data collected being shared with the general public, in aggregate form, for general advocacy purposes?
- 6.) Please indicate your operating budget for the 2020 year.
- 7.) How much revenue would you raise through a one-time 1% residential property tax levy?
- 8.) What is your total monthly operating expenditure, excluding contributions to reserves?

The following questions may involve research. Please save your work and assign this work accordingly.

Section 2: General Finance Questions

- 1.) For the past 12 months, please insert your total collections of all revenues:

Month	Collections
April 2019	
May 2019	
June 2019	
July 2019	
August 2019	
September 2019	
October 2019	
November 2019	
December 2019	
January 2020	
February 2020	
March 2020	

- 2.) What is the total amount of revenue that you expect to lose in 2020, assuming six months of physical distancing?

Section 3: Revenue Losses in Fees and Service Areas

- 1.) What are your expected revenue losses from transit, recreation, parking, enforcement of provincial offences, and other municipal services reliant on user fees, and/or collection of penalties? If possible, please itemize your list for each service area instead of providing a total.
- 2.) What are your expected staffing impacts from transit, recreation, parking, and other municipal services reliant on user fees? If possible, please itemize your list for each service area instead of providing a total.
- 3.) What are your expected additional expenditures for personal protective equipment, enhanced cleaning, or other increased measures required as a result of COVID-19?
- 4.) What are your expected additional expenditures to implement service cuts?
- 5.) How many positions have you cut, or are planning not to hire? For these questions, assume that one FTE is equivalent to 1,820 hours per year.
 - a. Number of cuts of existing staff, in FTEs
 - b. Staff that you planned to hire but are no longer hiring, due to COVID-19, in FTEs
- 6.) What, if any, are your expected additional overtime costs?
- 7.) What, if any, are your expected additional 911/call centre costs?

Section 4: Expected Short-Term Cash Flow Impacts

- 1.) How much of your tax collection do you expect will be delayed this year? Please express as a percent and as a numerical value. (This information was already requested in a previous NSF/M/AMA information request to inform our request for a \$380M loan. Please update your estimate at this time if a change is required, or simply share the same information here.)
- 2.) What is the expected cost of any tax payment deadline extensions or financing plans that you are offering?
 - a. What loss of penalties on taxes are you expecting, compared to what you would typically expect to recover in normal times?
 - b. What loss in fees are you expecting (e.g. building and other permits) compared to what you would typically expect to earn?
 - c. What is the expected value of the potential need for forgiveness, rather than deadline extensions or financing/installments, for some property taxpayers? (This includes tax write-downs/write-offs, and uncollected taxes.)

- d. What is your expected loss of interest income on short/medium-term investments (under normal revenue assumptions)?
 - e. Other
- 3.) What are your staff/technology costs related to implementing/expanding deadline extension or tax financing/installment programs? (For example: one municipality might have 3,500 residents to apply to participate in a tax installment program, choose to use a centralized application website shared with other municipalities, and then plan for municipal staff to spend 10 minutes on each application.)

Section 5: Other

- 1.) What are your expected additional costs to support vulnerable persons, in excess of emergency funding being provided by federal and provincial governments?
- 2.) Regarding emergency operations, what are your expected additional costs for:
 - a. local public health measures
 - b. enforcement costs, such as non-compliance with quarantine orders
 - c. public communications
- 3.) What are your expected additional costs related to the information services and information technology investments required to support remote work?
- 4.) What are your expected additional costs regarding utility dividends and other revenues from municipal corporations?
- 5.) If your municipality serves as a landlord, what is the sum total of rent relief that you expect you will need to provide to not-for-profit and other tenants (or the closure of municipal facilities where space is rented)?
- 6.) How much money, if any, are you removing from your reserves this year in order to address operating cost shortfalls?
- 7.) How much money, if any, are you diverting from capital projects in order to address operating cost shortfalls?

Section 6: Submitted by User

- 1.) Each region, town, and rural municipality may have specific economic sector impacts falling outside of the above questions that will affect municipal revenues in different ways. Please itemize and indicate these here. (As an example, some municipalities may be facing additional costs resulting from construction projects that have been delayed due to COVID-19.)

Association of Municipal Administrators, Nova Scotia

1809 Barrington Street
 Suite 1304
 Halifax, Nova Scotia B3J 3K8

INVOICE

Invoice No.: 7447
 Date: 02/11/2020
 Page: 1
 Re: Order No.

Sold to:

Town of Oxford
 P.O. Box 338
 Oxford, NS B0M 1P0

Business No.: 12473 1324 RT0001

Quantity	Description	Tax	Unit Price	Amount
1	One-time Restart Funding Fee		917.01	917.01

Shipped By:	Tracking Number:	Total Amount	917.01
Comment:		Amount Paid	0.00
Sold By:		Amount Owning	917.01



CHIEF ADMINISTRATIVE OFFICER REPORT

TO: COMMITTEE OF THE WHOLE

FROM: Rachel Jones, Chief Administrative Officer

SUBJECT: LEGAL & INSURANCE RISKS: OXFORD ARENA

DATE: 3 DECEMBER 2020

Subsequent to the discussion at the November Council meeting on the potential operation of the Oxford Arena through a third party, further information around the legal and insurance risks surrounding this initiative have to come forward through discussions with the Town's solicitor and insurers.

Attached to this report is a written opinion from the Town's solicitor as to the legal risks that the Town should consider with respect to having an external group operate the arena for the 2020/21 ice season.

The Town's insurers are through Gallagher Insurance and Frank Cowan Company, and they have provided the following comments and attached articles around Joint and Several Liability, Aggregate Limits, and Litigating Cases Involving Injuries to Minors.

In their opinion, a \$2M limit is not enough in way of general liability limit. They recall a claim several years ago where there was damage to ice making equipment and a leak of ammonia which, caused several people to become very ill, along with a business interruption claim.

Applying this example to the Town there are three claims:

- Third Party Bodily Injury (\$2M Liability)
- Property - Business Interruption
- Equipment Breakdown
 - Now depending on a few factors including the agreement between the Town and the Operating Company, who is responsible?

- Could it be the staff of operating company the caused the damage, if so, we would be subrogating which would come under the \$2M General Liability.

Most General Liability policies have an annual aggregate which is also a concern, not to mention exclusions that could be in the Operators policy.

There is a strong probability that in the event of a large claim the Town is going to be named no matter. If the Operating Company does not have enough in way of Liability Limits and the Town does not have a strong agreement in place the principal of Joint Several would come into play.

The insurers wholeheartedly disagree that an injury on the ice or in the stands could not exceed a claim of \$2,000,000. Particularly, one arena claim stands out. Stein v. Sandwich West. It is commonly referred to as the Lasalle case (see the link below). It says ... "In Stein v. Sandwich West. (1995), 77 O.A.C. 40 (C.A.); A young man with a very promising future was rendered quadriplegic during a hockey game when his skate struck a hole in the ice. Negligence was established against the municipality because its ice maintenance practices fell below standard. When decided, this case was the largest award for damages for personal injury in Canadian legal history." That case was in 1995. Obviously, the amounts would be higher today.

<https://www.lerners.ca/cases/stein-v-sandwich-west/>

For the purposes of insurance claims, catastrophic loss refers to significant and severe injury or loss. Catastrophic injuries can carry with them very high damages, well over \$2 M. In fact, a dentist from Antigonish was awarded something in the range of \$4.2 M for a severely injured ankle suffered in a motor vehicle accident. What if that injury happened in the Oxford arena due to negligence of the third-party operator and they only carried \$2 M coverage? Damages due to catastrophic injuries to one plaintiff have approached \$20 M in Canada – one had to do with a young girl ejected from a leased vehicle. It doesn't matter so much that recent large losses haven't specifically been arena claims. Rather, the potential definitely exists for serious injuries to happen in an arena, like Lasalle, and more importantly, damages connected with those catastrophic losses are increasing exponentially.

As insurers, we are not in the business of reassuring people in the event that they will probably never be sued for a certain amount. That would require a crystal ball. Rather, **our role is to point out that we are seeing huge losses from a variety of sources that although not an everyday occurrence, they do happen, and to advise you that having those kinds of injuries occur in the arena could impact the Town.** I believe both Gallagher and Cowan have done that, and it is emphasized that **neither of our organizations feel that \$2 M is adequate protection for the operator of an arena.**

If a third party operator does take over, the Town's exposure would be on a joint and several basis, meaning if a \$2 M limit is required, the Town and its insurer could be held to account for damages in excess of \$2 mil.

If Town Council decides to move forward with such an initiative, we ask to be provided with the draft agreement prior to signing to assess it from our perspective. This is a high-risk exposure we would want to further review as there quite possibly will be additional premium associated with it.

Conclusion

Through a recent press conference on the transmission and spread of COVID-19, Chief Medical Officer for Nova Scotia Dr. Strang noted an important fact. The first wave spread was primarily related to individuals who had travelled outside of Nova Scotia and close contacts of those who had travelled. The current second wave is clearly identified as spreading through social contacts. Dr. Strang, as recently as December 1, 2020, is urging everyone to reduce and limit their social contacts outside of their immediate family.

The offer to operate the Oxford Arena through a separate group, at no cost to the Town of Oxford, is extremely generous. Of course, it is for the benefit of our community to provide services and activities that residents in Oxford and surrounding areas are used to having access and it is an important part of our community in the past. With that said, based on all of the information gathered through the solicitor and insurers, and upon listening to the advice and recommendations of Dr. Strang and Premier MacNeil regarding COVID-19 and public health, it is my recommendation that Town Council respectfully decline entering into an agreement with an external party to operate the arena for this winter season.

The potential to more fully engage the group and individuals who are interested in this initiative to assist with decreasing these costs of the Town and maintain services through the Arena in future years would be an important process to focus on through the rest of this winter through to the fall of 2021. This would allow sufficient time for the options of a separate organization or society to form for this purpose, and to develop clear legal agreements to appropriately move forward, both with the Town and as it relates to the lease agreement between the Town and the Agricultural Society. Not only appropriate legal agreements, but also sufficient insurance, essential training around refrigeration and dangerous materials, vulnerable sector background checks for those who would be working or engaged around minors in the facility, or other requirements that have not yet been identified would all be important factors to focus on before engaging in any form of agreement at this time.

BEATON BLAIKIE

Barristers & Solicitors

D. ALDEN BLAIKIE, B.A., M.Div., LL.B.

File No. 202124

December 4, 2020

VIA EMAIL [cao@town.oxford.ns.ca] and REGULAR MAIL

Town of Oxford
5201 Main Street
PO Box 338
Oxford, NS B0M 1P9

Attention: Rachel L. Jones, CAO

Dear Rachel:

Re: Use of Arena – Potential Lease to Third Party Operator

You have asked me to prepare an opinion letter setting out my thoughts on the Town opening the Oxford Arena for hockey, skating and related activities via a third party organization which would lease the Arena and operate the facility at no cost to the Town.

This is a very generous offer, of course, and one which, all other things being equal, could greatly benefit the Town, especially the minor hockey associations and sports communities. Unfortunately, all other things are not equal in this situation and, as much as I would like to offer an unconditional endorsement of this idea, it is incumbent upon me to assess potential pitfalls. I note my concerns as follows:

Potential Union Grievance

In the recall provisions of the Town's Collective Agreement, there is express permission for Public Works to prepare things at the Arena for the Exhibition. Public Works can even start to get things ready for the winter season, but only up to the point of making ice. At that point, the Arena employees have to be recalled. If you open the Arena without recalling the Arena employees, whether by Public Works personnel or via a new lease arrangement with a volunteer organization, you may face a grievance.

In the negotiation of the Collective Agreement, the Town specifically carved out these exceptions from Union (arena employee) work, but it did not carve out any exception for the actual operation of the rink as an ice (skating / hockey / broomball, etc.) facility. My concern, in this respect, is that the Town would run afoul of the legal principle *expressio unius est exclusio alterius*.

44 East Victoria Street
P.O. Box 295
Amherst, NS B4H 3Z2

Phone: (902) 667-0515

Fax: (902) 667-6161

Email: ablaikie@amherstlawyer.ca

unius est exclusio alterius, meaning “the expression of one thing is the exclusion of the other”. In other words, since there is specific reference in the Collective Agreement to what the Town *can* do without recalling the Arena employees, and “making ice” is not one of those exceptions, you can’t tack it on now.

I will say that the proposal to lease the Arena to a third party (as opposed to the first idea of just having free labour donated) makes it somewhat more likely that the Town would win a grievance because the Town would then have the argument that it no longer operated the Arena at all. However, I am still of the view that the Union would likely grieve this, alleging that the lease arrangement is just an end run around the Collective Agreement. The Town, of course, would argue that it simply cannot afford to bring the Arena employees back, lease or no lease, so the Union loses nothing by virtue of the new lease arrangement.

Even if the Town were to win a grievance, you still have the time, expense and headache of the process. The bottom line in my mind, with respect to this particular issue at least, is whether the Town thinks that the risk of a dealing with a Union grievance is worth the benefit of opening the facility through a third party.

Insurance Issues

If the Town does proceed with a lease arrangement, I would strongly encourage the Town to require the lessee to have at least \$2,000,000 of general liability insurance which also names the Town as an insured.

You advised me that a representative of your own insurer felt that a policy limit of \$2,000,000 was not sufficient. I hesitate to disagree with someone who actually works in the insurance industry, but I find it difficult to imagine a likely scenario of a liability incident at the rink which would result in an award of damages exceeding two million dollars. The United States – yes; Canada – not too likely. You would pretty much have to run over a neuro-surgeon with the Zamboni to reach damages in that range.

The Town, of course, would still need to maintain its own insurance for a catastrophic event such as a devastating fire or the complete collapse of the structure as happened in Springhill. That incident fortunately did not result in loss of life, or even injury as I recall, but it certainly could have. Any event like that could, of course, result in damages exceeding \$2,000,000. The Town would still need to maintain its own insurance for such events, however unlikely they might be.

Making sure that the appropriate insurance is in place is critically important, but very doable in usual times. My next concern, however, is all about the unusual times in which we find ourselves.

COVID-19

In my view, the current pandemic should be a factor which is considered for this hockey season, at least. Operating a public facility where COVID could be spread seems fraught with liability to me. The second wave is already here. I realize, of course, that so far, we are in really good shape in Cumberland County and in northern Nova Scotia as a whole. The problem with COVID is that this all could change virtually overnight simply by one person doing one careless thing. I think that the Town should consider whether the winter of 2021 is really the time to take a new arena arrangement out for a test drive.

There is no question that COVID transmission is going to result in lawsuits. It will be a circus in the United States; much less so in Canada; and the circus may never come to town here in Nova Scotia. But here's the thing: no one really knows how liability issues are going to play out in terms of COVID transmission. This is a brand new situation. I have significant concerns for any business or organization if any type of outbreak is traced back to that business or organization. A lawsuit might arise and it might be devastating. We just don't know yet. We are in uncharted waters. Is opening the Arena for the next three or four months worth the risk? Whatever your ultimate decision, the question is entirely relevant. Come the fall and winter of 2021 / 2022, we may be back to normal or near normal given that vaccines are starting to roll out now. Most of the current uncertainty and unpredictability is likely to dissipate by next summer. A 2021 fall opening of the Arena is worth the wait, in my view.

I trust that the above is of some assistance to you in your deliberations. Should you require anything further, please contact me at any time.

Yours truly,

BEATON BLAIKIE

Per:

For 

D. ALDEN BLAIKIE

DAB / lo

Encl.

Claim Case Studies & Legislation

Joint and Several Liability (the 1% Rule) Analysis

Joint and several liability is a common law principle that can be modified by statute. It directs that a person injured by two or more wrongdoers may collect their full damages from one of the wrongdoers.

Each province has its own governing statutes. In Ontario, the principle can be found in the *Negligence Act*, RSO 1990, CHAPTER N.1. Section 1 states:

“Where damages have been caused or contributed to by the fault or neglect of two or more persons, the court shall determine the degree in which each of such persons is at fault or negligent, and, where two or more persons are found at fault or negligent, they are jointly and severally liable to the person suffering loss or damage for such fault or negligence, but as between themselves, in the absence of any contract express or implied, each is liable to make contribution and indemnify each other in the degree in which they are respectively found to be at fault or negligent.”

The central argument in favour of joint and several liability is fairness to the plaintiff who has suffered the loss and damages. It would be unfair to a plaintiff to shift to the plaintiff the risk of a defendant's inability to pay damages. The risk ought to be borne by the defendants because they have caused the loss.

The central argument against joint and several liability is also fairness, but fairness to the defendants. It is argued that it is unfair for a defendant whose degree of fault is minor when compared to that of other defendants to have to fully compensate a plaintiff should the others be insolvent. The less blameworthy defendants can recover contribution from the more blameworthy. However, in practice, this doesn't always happen as the former are often insured professionals or large corporate or government entities.

Examples

A driver lost control of a vehicle on a gravel road. A passenger sustained a severe brain injury. The liability limits on the vehicle were \$1,000,000. The allegation against the municipality was a failure to grade the road. The damages claimed for the passenger were \$15,000,000. If liability is found on the part of the municipality, any damages awarded in excess of \$1,000,000 will be payable by the municipality.

In another example, the plaintiff and two minor grandchildren were passengers in a vehicle. The driver came to a stop at a stop sign. He proceeded to make

a left hand turn into the path of an oncoming vehicle. The sightlines and signage at the stop sign were within standards. The plaintiff placed the municipality on notice because they claimed that snow piles at the edge of the road were too high and therefore obstructed visibility. The claim for the plaintiff greatly exceeds the limits of \$1,000,000 on the automobile. The claim has a total value of approximately \$6,000,000. The exposure to the municipality based on a court finding 25% liability would be \$1,500,000. Because of the 1% rule, the exposure to the municipality will increase to \$5,000,000 if the plaintiff is successful.

Joint and several liability produces unfairness when one or more defendants in a legal action is insolvent or unavailable to pay their share of the plaintiff's claim, because each defendant is 100% liable for the plaintiff's losses, in such cases a single, peripheral defendant can be responsible for paying the entire loss. The Canadian Bar Association agrees that joint and several liability encourages plaintiffs to target defendants who are known or perceived to be insured or solvent (the 'deep pocket' defendant).

Joint and several liability is a principle used across the Country. Courts will continue to follow the principle in the absence of any legislative changes. It has become engrained as a common law principle and has experienced little change. However, it is not a popular principle and there are various groups interested in seeing more changes in the application of the doctrine.

The Association of Municipalities of Ontario (AMO) has also expressed concerns regarding joint and several liability. They claim that municipalities have had to scale back on the provisions of public services in order to limit liability exposure. The Alberta Association of Municipal Districts and Counties (AAMDC), is pushing for reform. They claim that joint and several liability reform in Canada is lagging behind reforms seen in the United States and Australia. They fear that the success of joint and several liability claims are leading to significant financial penalties for municipalities.

A fundamental principle of tort law is to compensate the plaintiff fully for their loss. Joint and several liability is one way of achieving this goal. To help protect your organization, always follow diligent risk management practices to minimize your exposure to costly claims.

Frank Cowan Company Limited regularly researches and writes about issues that could affect our clients. These documents provide an opinion on key risk management issues but are not meant to provide any form of legal opinion or official interpretation. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation. All rights reserved. ©2012 Frank Cowan Company Limited.

Frequently Asked Questions

What is the Cost of Aggregate Limits?

When purchasing an insurance policy, municipalities are diligent in examining product and price to find the best solution for their needs. However, there is one area where decision makers may believe their municipality is fully covered when in fact they could end up funding claims.

The key issue here is a special limit of liability known as the "Aggregate Limit". The aggregate limit is separate and distinct from the "per occurrence/claim limit", which is the maximum amount an insurer will pay per claim. In contrast, the aggregate limit is the maximum amount a policy will pay out as a result of claims during the policy year. It is an "annual cap" on policy payments.

Aggregate limits may be found in Municipal Liability Policies, Commercial General Liability Policies and Errors & Omissions Policies.

Examples of Aggregate Limits

Fact: You purchase a Public Officials Errors & Omissions Policy with a \$5 million per claim limit. The policy also has a \$5 million aggregate limit.

Claim #1: In 2005, a developer acquired land and began construction on condominiums before obtaining title and building permits. You, as the municipality, allow the construction to continue before reviewing the architectural and engineering drawings. Problems with the roof trusses and fire separation walls are discovered and the units are ordered evacuated. In February 2006, the developer claims against your municipality for \$2.65 million.

Claim #2: In May, of the same year, a second building inspection claim is presented. A townhouse development that was built in 2003 is found to never have had an inspection by a building inspector. Several code infractions are discovered and all unit holders are evacuated from their units. A claim is presented against the municipality for \$3 million.

How will the policy respond?

Claim #1: Since the \$2.65 million is within the limit per claim of the policy and it is also within the aggregate limit, it would be paid fully by the insurer.

Claim #2: The policy will not be able to pay the full claim of \$3 million. It will only be able to pay \$2.35 million because that is all that is left after paying claim #1. That means the municipality will have to find the funds to pay the remaining \$650,000.

How will you finance the remaining amount?

One solution is to look to an Excess Policy. It will be necessary to examine the Excess Policy's terms and conditions. Does the policy have a "drop down feature" or does it require an underlying limit of \$5 million? If there is no "drop down feature", then the Excess Policy will not respond because the underlying limit has been exhausted.

Therefore, the municipality will have to fund the remaining \$650,000.

Of significance in the above examples is the fact that these claims have occurred within the first five months of the policy term. That means there is no further protection afforded by this policy for the remaining seven months and leaves the municipality on the hook to pay for this shortfall in coverage. Are aggregate limits really right for your policy?

While policies with an aggregate limit can seem like a good deal because they tend to be less expensive, it may mean paying more in the end.

Frank Cowan Company Limited regularly researches and writes about issues that could affect our clients. These documents provide an opinion on key risk management issues but are not meant to provide any form of legal opinion or official interpretation. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation. All rights reserved. ©2012 Frank Cowan Company Limited.

SPORTS RECREATION & SPORTS LIABILITY: LITIGATING CASES INVOLVING INJURIES TO MINORS

By: Jim Tomlinson & Jesse Bellam*

I. Introduction

Unintentional injuries are the leading cause of death among Canadian minors.¹ Between 1990 and 2007, over 1.6 million children and youth received emergency room treatment for unintentional injuries at hospitals across Canada.² Sports and other recreational activities are common precipitating events of serious injury among minors.³ The ramifications of these injuries to a child can be profound, particularly in cases involving even “mild” trauma to the brain. In the context of litigation, the costs associated with the loss of future earnings and future care can be significant, with damages in some cases being assessed in the millions.

While the spectre of eight figure exposure may seem daunting enough, several factors conspire to make cases involving injuries to minors particularly difficult to navigate from the defence perspective. With this in mind, the following paper will address common legal and strategic elements to be considered when attempting to settle cases involving injuries to minors.

II. The Advantages of Settlement in Child Injury Cases

When faced with legitimate exposure, a myriad of factors tend to militate in favour of settlement. In the context of an injury to a minor, predictability takes on a heightened importance for several reasons. First, injuries involving children invariably make for emotionally charged cases. Should a matter proceed to trial, an injured child and the consequent devastation wrought on the family can evoke considerable sympathy from a trier of fact.⁴ Accordingly, from the defence perspective, one should be aware of the added risk associated with trying a child injury case, irrespective of the relative merits of the case. This point is exacerbated when presenting before a jury. Despite these sensitivities, a number of child injury cases do proceed to trial, in which case the use of experienced counsel becomes all the more imperative.

A second factor favouring settlement in child injury cases is the inherently challenging nature of predicting an infant plaintiff’s realistic range of damages and preparing an appropriate reserve accordingly. This issue arises because a disproportionate amount of damages in child injury cases typically stem from pecuniary losses derived from the loss or diminishment of the minor plaintiff’s future earning capacity. As will be delineated in greater detail later in this paper, there exists considerable disagreement among legal, medical, and scholarly communities with

* With contributing assistance from Ben Carino.

¹ Public Health Agency of Canada, *Child and Youth Injury in Review*, online: <<http://www.phac-aspc.gc.ca/publicat/cyi-bej/2009/>>; A minor is a person who has not yet reached the age of 18, *See Age of Majority and Accountability Act*, R.S.O. 1990, C.A A.7 at s.1.

² *Ibid.*

³ For instance, in 2010 half of all hockey injuries and nearly one-third of skiing and snowboarding injuries were sustained by individuals between the ages of 10 to 19. *See Winter Injuries, More than 5,600 Canadians seriously injured every year from winter activities*, online: Canadian Institute of Health Information <http://www.cihi.ca/CIHI-ext-portal/internet/en/document/types+of+care/specialized+services/trauma+and+injuries/release_17jan12>.

⁴ Particularly given the injuries typical of major infant cases, including scarring, brain injury, and injury to the eyes and appendages.

respect to the quantification of a minor's future earnings. Consequently, when provided with an opportunity, settling at an earlier juncture may result in lower compensation for future loss of earning capacity, as projections in this regard tend to rise exponentially as a gamut of experts become involved as the case moves closer to trial.

Cases involving child injuries can remain in limbo for protracted periods as the plaintiff argues that additional information is required to glean the extent of the injury to the child. This can create a situation wherein the case remains active, without being set down for trial, for extended periods as the plaintiff awaits the pendulum shifting in their favour (i.e. a bad report card demonstrating the alleged deleterious effects of the subject injury).

*Wood v. Hospital for Sick Children*⁵ is demonstrative of this strategy and sets out the test the plaintiff must meet in order to substantiate a motion to stay an action. In *Wood*, the infant plaintiff, who was 5 months old at the time, was given an overdose of morphine. In September 2000, an action was commenced against the hospital and staff arising from damages sustained by the minor as a result of respiratory arrest and brain anoxia. The plaintiffs brought a motion to stay the action pursuant to s. 106 of the *Courts of Justice Act* to allow for further time to evaluate future damages.⁶ The plaintiffs took the position that the full effect of the infant plaintiff's brain injury was not ascertainable until much later in the injured minor's development. The plaintiffs' position was that it would not be known until the injured minor had at least two years of primary education. The court determined that in order to substantiate a stay of proceedings pursuant to s. 106, the plaintiff bears the burden of demonstrating that the continuance of the action would work an injustice to the plaintiff because it would be oppressive, vexatious or an abuse of process. Then the court had to examine whether a stay would cause an injustice to the defendants.⁷ In the end, the court sided with the defence, holding that protracted periods of litigation are inherently burdensome to defendants and that no evidence had been proffered to rebut the defence expert's assertion that diagnostic tools existed to provide an immediate assessment of the infant plaintiff.

Having discussed some of the primary considerations mitigating in favour of settling a child injury case, we proceed to review two areas particularly salient to litigation involving infant plaintiffs.

III. Calculating Loss of Earnings

In cases where a loss of earning capacity is alleged, a trier of fact is faced with the ominous task of choosing between competing expert evidence approximating the sum an individual would have earned but for the injury that forms the basis of litigation. While the difficulty of coming to an accurate assessment in such instances is appreciable, historical information with respect to the claimant's education, employment, personality, and physical health can assist in building a reasoned, if imperfect, opinion. Conversely, estimating future earnings in child injury cases requires the same act of divination but without, or with significantly

⁵[2002] 62 OR (3d) 336 (S.C.J.).

⁶ Section 106 states: "A court, on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered just." R.S.O. 1990, c. C.43, s. 106.

⁷*Supra* at 16.

less, assistance from the records noted above, which in many cases have yet to be established. However, as the Court of Appeal established in *Schrump v. Koot*, the burden of proof placed on the plaintiff is only to demonstrate that there is a “substantial possibility” of a loss of future income.⁸

Despite the difficulty inherent in coming to such a formulation, there is an expanding body of case law in which the courts comment on how various socio-economic factors should be considered when predicting the level of education a child plaintiff would have achieved and, consequently what his or her potential earnings would have been in the absence of the injury at issue.

Given the absence of a long history of earnings, professional and personal information, courts will favour a holistic approach to determining a child’s future earnings. Specifically, courts will look at the plaintiff’s: (1) academic achievements, where available; (2) evidence of general intelligence and personal life; (3) the academic and professional achievement of the claimant’s parents and siblings.

*Carere v. Cressman*⁹ is a clear example of how courts assess future earnings claims involving minors. In *Carere*, an action was brought before the Ontario Superior Court seeking, *inter alia*, pecuniary damages stemming from lost future earnings by a child born with cerebral palsy resulting from the negligence of a mid-wife. The plaintiff’s family was employed as flooring contractors and lived as members of a Mennonite community whose beliefs prohibited the pursuit of higher education.¹⁰ As a result, the court was able to embark on a relatively straightforward analysis and find that the plaintiff would have earned in his lifetime the average of a Canadian male high school graduate, assessed at \$1,094,718.00.¹¹ The manner in which the court will consider familial history is set out by Henderson J. as follows:

Four of Paul’s six elder siblings graduated from high school. Of these siblings, two of them achieved some post high school education, but none achieved any university education. I note the education of the two oldest siblings was suppressed because of the family’s devout adherence to the belief of their Mennonite community that higher education should be pursued. Both of Paul’s older brothers went into business as flooring contractors but neither obtained any trade certificate. In addition, I note that Paul’s father, Fred, has been engaged as a flooring contractor for most of his working life.

Given the family History, I find that if Paul had not suffered from cerebral palsy he would have graduated from high school and

⁸ *Schrump v. Koot* [1977], 18 O.R. (2d) 337 (C.A.).

⁹ [2002] O.J. 1496 (Ont. S.C.J.).

¹⁰ *Ibid* at 152.

¹¹ *Ibid* at 151.

without further education become an independent flooring contractor, or worked in a similar business.¹²

Although the court in *Carere* showed little hesitation in concluding that the minor plaintiff would have met the relatively low bar of education previously attained by his family, courts have been far more reticent to impute exceptional academic and/or professional achievements by parents onto a minor. In *Chow (Litigation Guardian of) v. Wellesley Hospital*,¹³ the plaintiff argued that the loss of future earnings of a child born with severe mental and physical handicaps, stemming from the alleged negligence of the attending doctors, should be assessed based on the presumption that he would have become a dentist like both of his parents. Rejecting this argument, Lissaman J. states as follows:

The defendants argue that there is no economic or other basis to support the contention that a child will assume the career of his or her parent. The strongest socio-economic link between parents and children, as mentioned above, is educational achievement. The only reliable exercise in prediction, submits the defence, stems from the fact that Michael's parents are both university-educated. The only thing that can be said with any certainty is that Michael would have completed university. We will never know what Michael would have done with that university degree.¹⁴

In the sports and recreation context, the court came to a similar conclusion in *Stein v. Sandwich West (Township)*.¹⁵ In *Stein*, the plaintiff, a minor age 17, came into forceful contact with the boards while playing hockey after his skates struck a hole in the arena's ice surface. The minor plaintiff suffered a severe injury to his vertebrae and spinal cord resulting in quadriplegia. It was alleged that the municipality and its employees were negligent in failing to maintain an ice surface of a sufficient strength and quality fit for playing hockey. Both the plaintiff and defence called numerous expert witnesses, including four-time Stanley Cup champion and Hockey Hall of Fame member Gordie Howe, who spoke to the appropriateness of the plaintiff's skate sharpening.¹⁶ With respect to future earnings capacity, the plaintiff's experts presented an income loss projection of \$2,792,987.00 based on the presumption that the injured minor would have graduated from Windsor University, gained admission to law school, and proceeded forthwith to a partnership position within a law firm.¹⁷ The court rejected this approach, finding it to contain too many "serious contingent factors."¹⁸ Instead, the court focused on the average industrial wage in the region and added a premium to account for the minor plaintiff's academic achievements, resulting in an estimated loss of future earnings in the sum of \$1,200,000.00.¹⁹

¹² [1999] O.J. No. 279 at 152-153.

¹³ *Ibid* at 287.

¹⁴ *Ibid* at 298-299.

¹⁵ *Stein v. Sandwich West (Township)*, 1993 CarswellOnt 1866.

¹⁶ *Ibid* at 42-45.

¹⁷ *Ibid* at 103.

¹⁸ *Ibid* at 104.

¹⁹ *Ibid*.

Chow and Stein, therefore, stands for the proposition that courts will generally limit the extent to which they are willing to opine on the future earnings only to whether or not a university degree will be obtained. Courts will not impute graduate, doctoral, or professional level educational achievement on a minor plaintiff.

While exceptional familial performance by the plaintiff's parents may give rise to a presumption that he or she would have received a university education, the reverse is not always the case. That is to say, where the parents have not received post-secondary education and no intervening factors exist, such as the Mennonite belief system referenced in *Carere*, some courts have been unwilling to assume the injured child would have ended their studies similarly.

In *Dryden (Litigation Guardian of) v. Campbell Estate*,²⁰ the Ontario Superior Court considered an income loss claim by a 13 year old who sustained severe brain trauma after the vehicle in which he was travelling was struck by a drunk driver. The defence presented evidence that neither of the minor's parents had completed their high school education, with both having dropped out by Grade 10.²¹ However, Cavarzan, J. was not prepared to follow this argument, pointing out the arbitrary nature of such a finding, and emphasizing the academic successes, though somewhat limited, of the plaintiff's sister. To this end, he states:

I find it difficult to credit the suggestion in this case that Scott Dryden would not have proceeded beyond high school. Using the educational level achieved by the parents as the yardstick for predicating the education level to be achieved by their children, seems to me to be an unduly crude and arbitrary indicator. This is especially so where we have no evidence concerning neither the parents' I.Q. scores, nor the life circumstances which may have limited their opportunities to pursue higher education. An additional consideration in this case is that Scott's older sister Leigh-Anne attended Wilfred Laurier University for two years. She abandoned her studies for financial and personal reasons unrelated to academic performance. It would have been wrong, therefore, to predict her level of academic achievement based upon the record of her parents.²²

The court also seemed compelled by the plaintiff's comportment as a witness, noting that despite his substantial mental impairment, he possessed a "wit and insight which bespoke an intellectual potential which might well have taken him beyond the high school level in his formal education".²³

In sum, the educational level of a minor plaintiff's family members is the most common metric used to predict future level of education. It seems clear from *Chow*, however, that the

²⁰ [2001] O.J. No. 829.

²¹ *Ibid* at 138.

²² *Ibid* at 139.

²³ *Ibid* at 140.

courts will not necessarily take the next step and rely on an infant plaintiff's parental income or specific profession as a predictor of the infant's future earnings. Despite the case law, assessing future earnings remains nonetheless "a somewhat speculative exercise"²⁴ with courts such as that in *Dryden* willing to take a broader approach to their analysis.

IV. Obtaining Approval of Settlement

Minors benefit from special procedural protections under the *Rules of Civil Procedure* (the "*Rules*")²⁵ some of which can introduce a set of unique challenges to the defence.

The *Rules* set out the parameters for when, and by whom, a child must be represented. Under the *Rules*, a party under disability is a general term that includes minors, mental incompetents and absentees under Rule 1.02.²⁶ A proceeding must be commenced or defended on behalf of a party under disability by a litigation guardian.²⁷ In Ontario, the limitation period is delayed for a minor plaintiff during the time in which he or she is not represented by a litigation guardian.²⁸ Unless there is some other person willing, able and qualified to act as litigation guardian for a minor party, the court will request the appointment of counsel from the Office of the Children's Lawyer ("OCL").²⁹ A parent may act as litigation guardian for a child, but should not do so where a child has a separate cause of action for contributory negligence.³⁰ The role of a litigation guardian is to provide a child with independent legal representation "in a manner consistent with the children's best interests."³¹

The *Rules* impose a heightened level of judicial scrutiny on settlements involving a minor plaintiff. Section 7.07(1) of the *Rules* requires a judge's approval to note a child in default or to discontinue an action by or against a child. The court must also approve any settlement of a claim by or against a child who is a party to a proceeding.³² Any party seeking settlement under Rule 7.08(4) must serve and file a notice of motion or application with: (a) an affidavit of the litigation guardian setting out the material facts and the reasons supporting the proposed settlement and the position of the litigation guardian in respect of the settlement; (b) an affidavit of the lawyer acting for the litigation guardian setting out the lawyer's position in respect of the proposed settlement; (c) where the person under disability is a minor who is over the age of sixteen years, the minor's consent in writing, unless the judge orders otherwise; and, (d) a copy of the proposed minutes of settlement.³³

²⁴ *Graham v. Rourke* (1990), 75 O.R. (2d) 622 (Ont. C.A.).

²⁵ R.R.O. 1990, Reg. 194.

²⁶ *Ibid* at r. 1.03(1).

²⁷ *Ibid* at r. 7.01(1).

²⁸ Limitations Act, 2002, S.O. 2002, c. 24, Sched. B, s. 6.

²⁹ Rule 7.04 (1) of the *Rules of Civil Procedure*.

³⁰ *O. (B.A.) (Guardian ad litem of) v. G. (J.M.)* (1994), 99 B.C.L.R. (2d) 305.

³¹ *Grande (Litigation Guardian of) v. Grande* (1997), 34 O.R. (3d) 645 (Div. Ct.).

³² Rule 7.08 (1) of the *Rules of Civil Procedure*.

³³ *Ibid*.

The consequences of failing to adhere to any of the aforementioned requirements can be severe. Namely, the settlement will not bind the minor. The minor will then be able to recover damages regardless of the prior settlement.³⁴

In *Otto Rivera et al v. Sayaka LeBlond et al*,³⁵ the court reviewed the application of Rule 7.08:

Rule 7.08(4) and the obligation of the court pursuant to its *parens patriae* jurisdiction require a party seeking approval to submit sufficient evidence to make a meaningful assessment of the reasonability of the proposed settlement of the claims of a person under a disability...This is a serious and substantial requirement...It requires full disclosure of evidence regarding the material issues... Rule 7.08(4) does not, however, require a full trial of the material issues... it is necessary to provide sufficient evidence to demonstrate that the proposal is secure, provides a real benefit to the disabled person and adequately addresses the long-term needs and interests of the disabled person.³⁶

In other words, a motion seeking settlement approval under Rule 7.08 requires full and complete assessment of the material issues under a process as rigorous as trial.³⁷ The court will not approve settlement unless it is beneficial to do so for the child. When considering a potential settlement, a judge may refer the material to the OCL and can ask for any objections it may have to the proposed settlement and for recommendations for revision. In *Tsaoussis (Litigation Guardian of) v. Baetz*,³⁸ the Court of Appeal emphasized that the court's discretion to intervene in proposed settlements involving minors should be unfettered by the desire of the non-infant parties. Accordingly, the court states that a court must "abandon its normal umpire-like role and assume a more interventionists mode" in protecting the "best interests of minors who are parties to legal proceedings."³⁹

V. Conclusion

Child injury cases introduce a litany of unique challenges. However, given the prevalence, and importance, of minors in sport, recreational, and resort focused enterprises, encountering such cases is inevitable. Being aware from the outset of the substantive and procedural hurdles discussed in this paper can assist defence litigants in minimizing exposure and achieving an efficient resolution of claims involving minor plaintiffs.

³⁴ Justice Festeryga "Obtaining Approval for Judgments for Minors" H.L.A. program, Thursday, February 17th 2005, *Closing Tough Cases : The Personal Injury Lawyer's Challenge*.

³⁵ *Otto Rivera et al v. Sayaka LeBlond et al*, 2007 CanLII 7396 (ON SC).

³⁶ *Ibid* at 25-26.

³⁷ *See McRitchie et al v. Dr. Natale et al.*, 2011 ONSC 3400.

³⁸ 41 O.R. (3d) 257.

³⁹ *Ibid* at 24.



We build strength, stability and self-reliance.

Rachel Jones

Chief Administrative Officer
Town of Oxford

Re: Habitat for Humanity Nova Scotia Unfinished Building Lot with Foundation.

Good Morning Rachel;

Firstly, hope all is well with you and your family in these 'new normal' COVID 19 times.

NEVER, an ideal way to begin correspondence but as Chair of **Habitat for Humanity Nova Scotia (HFHNS)** want to apologize for not reaching out to you sooner. No excuses but you certainly deserve to hear some reasons. In 2019 HFHNS undertook a major Board led 14-month (January 25, 2019 – February 28th, 2021) restructuring of the entire Organization. The purpose was to transform the HFHNS into a more efficient, productive and financially sustainable Organization that could ultimately deliver more decent, safe and affordable housing to Nova Scotia families. Since 1992 when we were founded, we have provided 72+ Habitat Homes and affordable mortgages to Nova Scotia families and our goal with our pending 2021-2025 Strategic Plan is to have a much stronger presence in Nova Scotia Affordable Housing.

Since March 2020, HFHNS introduced a COVID 19 Action Plan to weather this storm per say. Our Restores and most of our operation (except Family Services) was closed during the Provincial COVID 19 lockdown. Specifically, our Restores were closed from March 13 – July 5th, 2020. During this four month as well as this year **Habitat for Humanity Nova Scotia** during the closing of our Restores and cancellation of four events lost \$400,000+ in gross revenue. A significant 'hit' for a not for profit. This being said, our hard work during the Major Restructuring and COVID 19 Action Plan has placed us in a stronger more sustainable place, which is an incredible indication of the dedication, commitment and passion of our Staff, Volunteers and Directors.

Upcoming at our Board meeting this Thursday, December 3rd, 2020 is a final draft of our 2021 Annual Budget. In this budget our Finance Committee is recommending which I fully support that top priority be given to finishing the last phase (4 of 4) of our Duplex Build at 19 McIntosh Street in Spryfield, HALIFAX and moving forward with completing the Oxford Build in 2021.

Our Building Manager and HFHNS Build & Development Committee is currently reviewing final Class C (within 10%) construction estimates for the Oxford Build. Last week Melanie Matheson, Director of Philanthropy & Partnerships and I had a very productive ZOOM meeting with the Oxford Chapter leadership.

Melanie and I would enjoy the opportunity to chat with you over ZOOM when you have some availability. This will allow us the chance to meet virtually and answer any of your questions. Please let us know and thank you.

Stay Safe, Stay Well and Stay Healthy!

Thank You & Warmest Regards,
Kevin

Kevin W. Riles

Board Chair

Habitat For Humanity Nova Scotia (HFHNS)

We build **strength, stability, self-reliance** and **shelter**.

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STRATEGIC PRIORITIES CHART

September 2020

COUNCIL PRIORITIES

NOW

1. **POLICE SERVICES REVIEW: Waiting for Public Safety Canada to respond**
2. **ASSET MANAGEMENT STRATEGY (Council resolution 19 May 2020)**
3. **MASS ALERT SYSTEM: Options**
4. **3-YEAR CAPITAL PLAN**
5. **SOURCE WATER PROTECTION/WATER MANAGEMENT STRATEGY: Review**

TIMELINE

October
January 2021
April 2021
February 2021
June 2021

NEXT

- COMMUNITY CENTRE: Feasibility
- BRANDING STRATEGY: Terms of Reference
- WATER PIPE REPLACEMENT: 3-Year Program
- PUBLIC COMMUNICATION STRATEGY
- SERVICE CAPACITY REVIEW

ADVOCACY / PARTNERSHIPS

- *Park Proposal (Lions)*
- *Water System Funding*
- *Oxford Frozen Foods Limited: Communication & Relationship*

OPERATIONAL STRATEGIES

CHIEF ADMINISTRATION OFFICER

- **POLICE SERVICES REVIEW: follow up**
- **ASSET MANAGEMENT STRATEGY:** this will also address –
 - **3-YEAR CAPITAL PLAN** - February
 - SERVICE CAPACITY REVIEW
 - WATER PIPE REPLACEMENT: 3-Year Program
 - COMMUNITY CENTRE: Feasibility
- Unsightly Premises Campaign
- Website: Refresh
- New Council Orientation Program

FINANCE

1. TownSuite Software Implementation – December (1st phase)
2. Collection Process - Nov.
3. Tax Sales - January

ADMINISTRATION

4. Records Management
5. **MASS ALERT SYSTEM: Options** - April

PUBLIC WORKS

1. Water Utility/DOE Compliance Plan
 2. Development of shovel-ready priorities
 - 3.
- WATER PIPE REPLACEMENT: 3-Year program
 -

RECREATION SERVICES

- 1.
 - 2.
-

PROTECTIVE SERVICES

1. Regular Liaison Schedule: Mayor & CAO
 2. Apparatus Inventory Assessment - April
 - 3.
- -

COMMUNITY ECONOMIC DEVELOPMENT

1. Downtown Beautification - December
 - 2.
 - 3.
- -

BOLD CAPITALS = Council NOW Priorities; **CAPITALS** = Council NEXT Items; *Italics* = Advocacy;

Title Case = Departmental Strategic Initiatives