

Law Amendments Committee – List of Documents

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A

Law Amendments Committee Presentation: 4 March 2024 Anne-Marie Long

Good afternoon and thank you for allowing me to present my issues with Bill 407.

I live in rural Antigonish County. I'm a retired CPA, since April 2009, after 36 years with the Canada Revenue Agency. I returned to Nova Scotia after managing the International Tax Transfer Pricing Division in Toronto, and during the last 14 years of my career in Halifax, I managed the Litigation unit for Atlantic Canada and then was Chief of Appeals for Atlantic Canada. In both of these roles I worked closely with the federal DOJ. While in Toronto, I taught first year and advanced tax law at Ryerson University for the Accounting Association for 10 years. I am one of the 3 litigants on this issue.

- A. My first request from this Law Amendments Committee is that the proposed legislation in Bill 407 be amended to require an independent study overseen by the UARB, before any Act to consolidate Antigonish town and county takes effect.**

My rationale for asking for a study is because there has been no work done by either of the two Antigonish Municipal units, or Municipal Affairs (DMAH) to determine whether a merger of the two is in the best interests of the affected population. I've given some details herein as to my attempts to acquire relevant information and the failure of the Engagement sessions to do so. These sessions were conducted by the municipal units and facilitated by the consultants engaged to do so and report back. I've included information obtained via FOIPOP that demonstrates that Municipal Affairs, was the author of the process recommended to accomplish a merger by effectively circumventing the legislative authority of the Municipal Government Act (MGA). Mark Peck, no longer with Municipal Affairs, was the initial person to promote this merger without a study or a plebiscite when creating a regional municipality.

- 1. I've included herein a copy of my presentation made to Antigonish County Council on 10 May 2022 looking for information and stating facts:**
- i) the process being imposed as compared to ones given as examples;
 - ii) requesting information identifying the strengths, opportunities, weaknesses, opportunities, and threats/risks of a merger with the town;
 - iii) Windsor-West Hants amalgamation request was from the citizens; and
 - iv) whether the Province would help with costs given the financial strengths of the county and town.

After that meeting, I was quite taken aback to learn of the deficiency in knowledge of the relevant parts of the MGA, demonstrated by the Mayor, the Warden and most of the councillors, regarding mergers of municipalities. I have a definite competency concern regarding elected

officials who do not know the legislation they administer and upon which they vote.

2. I've included a copy of my formal request, on 24 April 2022, to the town and county councillors, to reconsider the process taking place for the consolidation of the two municipalities. I was clear that I was not against consolidation of the town & county at that time, and I'm still not because there has not been factual information provided by Municipal Affairs, or the municipal units, that would allow a reasonable evaluation to be made. Like the majority of other affected citizens, I want facts and a vote. The affected people have been and are still feeling robbed of facts and a vote to decide whether there should be a merger creating a significant change in how we are governed. I expressed concern that taxpayer frustration with some of the current councillors, based on the process underway at the time, could leave us after the next election with unskilled, yet "untainted" elected councillors to carry on the merged entity. I also commented as to my respect and contentment, at that time, with the current Warden & Mayor and my pleasure with the degree of cooperation between the town & county councils.
3. I've made comments on the "What We Heard Report", prepared by consultants hired by the town and county councils, and used to report on the engagement session results. It was published literally a few hours before the councils voted on a resolution to ask the province for special legislation to consolidate the two units. The report did not and was not intended to provide substantive information upon which a merger could be evaluated. The councillors had no time to absorb this 44 page report, from *Brighter Community Planning and Consulting*, before voting. The report said that 840 people attended the mostly "kiosk" style "Engagement Sessions" that were held during the thick of COVID. On page 12 of that report, the consultants said that "many of the comments received were strongly in favour of a plebiscite". When reporting on "public confidence" the consultants said, on page 35, that "... many of the comments received showed a lack of confidence in the process, the municipal leaders and the relationship between the Town and County." The Mayor & Warden pushed for a vote asking the province for legislation before the final report was available for reading by the councillors.
Summary containing feedback on the report
4. FOIPOP Information and Issues: In pursuit of understanding what happened, I applied to (FOIPOP), the Freedom of Information and Protection of Privacy Act for information regarding meetings among Municipal Affairs, the Mayor, Warden, their deputies, and their CAOs. It was not forthcoming and I resorted to the Office of the Information and Privacy Commissioner (OIPC) on 26 August 2023 for assistance. Those communications are included herein, being her 31 August 2023 "Notice of Review" and her "Review Report" of 22 September 2023 on the deemed refusal by DMAH. She gave DMAH until 15 September 2023 to provide

the required materials. Although there were significant redactions to the documents, I am including a few pages of that information that were sent to me on 15 September 2023.

I have attached to this submission a thread of emails that starts on page 29 (see the # on the top right corner of the page) and concludes on page 27 because the latest email is on the first page. These emails are **between Glenn Horne, County CAO, and Nick Barr**, DMAH Director of Governance & Advisory Services and **copied in the emails were Town CAO, Jeff Lawrence, and DMAH Ross MacDonald**. **Glenn Horne was asking for a draft "inforgraph"** to be used to differentiate processes for a legislated amalgamation from a consolidation process. (See 12 September 2021). **Nick Barr speaks to using the word consolidation v. amalgamation** opined to have "a very negative connotation to many residents." While speaking to this voluntary process, he states clearly that **"... the fact that this process will not require any applications to the UARB to determine whether consolidation is in the best interests of the two communities..."**. He presumes that the respective councils would have already made that determination. If anyone did so for Antigonish, it was not shared with our elected councillors. **Nick Barr continued, "If you really need a way to distinguish between consolidation and amalgamation for the purposes of explaining things to Council, I'd be inclined to talk about the mandatory vs voluntary aspect noted above, the fact that the UARB will not be involved (other than for electoral boundary purposes), and the two communities will make their own decisions about what the new combined municipality will look like rather than having a third party make those decisions."**

Glenn Horne, as part of his 13 September 2021 response said, "We can draft something ourselves if necessary based on our understanding of the processes. However, I thought it would have greater standing and avoid some criticism from opponents if it came from DMAH, as the authority on municipal reform and a neutral party in our ongoing discussions." And on that same evening they issued a press release about voting to explore consolidation. During a subsequent Joint Council Meeting, between the 2 municipal units the following week in September 2021, Mark Peck was clear in advising the councillors that the public did not need to vote on a merger and he discouraged allowing a vote to the people.

I've included the document called "Structural Change in Nova Scotia Municipalities", drafted by DMAH to accommodate this "back door" approach to municipal mergers. At that time of this document, in September 2021, and until the fall of 2022, the plan was to consolidate to form a regional municipality that would be governed under Part 17 of the Municipal Government Act (MGA) after a consolidation. Without a discussion with elected councillors, the Municipality

Warden and their CAOs issued a press release in September 2022, that the town would be dissolved and acquired by the county. This same document was submitted by Glenn Horne as part of his affidavit in the legal challenge heard by Justice Timothy Gabriel on 7 July 2023.

This document explains *The Special Legislation Approach in the right sided column*. It says step 1 is for municipalities to approach the province to request special legislation to consolidate into a single regional government by passing a resolution. And this leads us to where we are today, with the municipal units indeed asking the provincial government to create legislation to effect a merger, a major change in governance, with no study and no voice from the people. Step 2 says the government will consider the request and, if appropriate, pass the special legislation. Given that Part XVII of the MGA is highly political, in terms of process, once a study is done to determine what's in the best interests of the affected population, and a positive plebiscite result is achieved, the rest of the process is simple, in that the DMAH Minister can then ask the Governor-in-Council to ask the government to create the regional municipality. The simplicity of Part XVII is not explained on the document prepared by DMAH; however, the cumbersome rules of Part XVI are emphasized, keeping in mind that it was a regional municipality under consideration at that time for the merged units. With solid reasons, I question the neutrality of Municipal Affairs in this whole process.

Windsor-West Hants has been consistently used as the model for a modern, consolidation approach instead of using the MGA to amalgamate. Deliberately omitted from every discussion was the fact that these two municipal units did not fit within the requirements of Part XVII to form a regional municipality, as confirmed in Hansard 27 September 2018, where at page 947 it states "The situation is unique because the regional government will consist of only Windsor and West Hants. Typically, under the Municipal Government Act, the regional government would be formed from all the municipalities in a particular county. In this case, only Windsor and West Hants wish to consolidate, which requires a separate piece of legislation to allow this process to proceed. This legislation will address transitional matters and will offer the voluntary consolidation of these two municipalities."

All of this is to make my point that DMAH in their rush to accomplish municipal reform have created a new process, outside of the legislated provisions of the MGA, that effectively circumvents the legislated requirements of the MGA under Parts XVI & XVII. When looking at the history of Part XVII it is noteworthy that when Municipal Affairs requested amendments to the MGA to create Part XVII, enacted in 1998, they did not have either a study or a plebiscite in their draft legislation. It was the sober, second look by the Law Amendments Committee who added both of those provisions in this highly political process.

To allow municipal units to consolidate and change the form of governance without an independently ordered study to determine what's in the best interests of the affected population, and without a vote from the people is, in my humble opinion, an abuse of process.

- B. My second request from this Law Amendments Committee is that the proposed legislation in Bill 407 be amended to include a plebiscite after an independent study is performed to determine what is in the best interests of the affected population.
- C. My third request is that no legislation to accomplish a merger of the 2 units in Antigonish be considered until our appeal of Justice Timothy Gabriel's 5 December 2023 decision has been heard by the Court of Appeal.

I could find no evidence that DMAH have attempted, in recent years and prior to this consolidation plan, to submit draft legislation, applicable to all municipalities, to the Law Amendments Committee to create structural change in Nova Scotia. I believe, especially in majority governments, that there needs to be legislated safeguards to protect the people being governed to ensure that a select few are not permitted to change our governance without those safeguards.

- 5. Bill 407. I am recommending amendments to Bill 407 as articulated below. I suggest Clause 3 of this bill be deleted and replaced with the following:

3(1) This act shall take effect only if, in plebiscites held in the Town of Antigonish and in the Municipality of the County of Antigonish, a majority of those who vote in both municipalities vote "yes" to the following question:

Do you agree that the Town of Antigonish be dissolved, and that its inhabitants become residents of the Municipality of the County of Antigonish?

(2) The plebiscites shall be held on the same day, shall be carried out as closely as possible to the manner provided for the conduct of a special election pursuant to the *Municipal Elections Act*, and the returning officer appointed pursuant to that Act shall conduct the plebiscites. The cost of the plebiscites shall be borne by the respective municipalities.

(3) If the question is approved by the votes of both municipalities, on the Dissolution Date, the Town is dissolved and the inhabitants of the Town become residents of the Consolidated Municipality.

There would need to be another amendment to put the Dissolution Date, say 8 months from the plebiscite date.

Role of the Coordinator: If this government insists on implementing Bill 407, I want to see it amended to have a member of the UARB as Coordinator. There has been a significant erosion in public trust in our Antigonish municipal leaders, and, increasingly, discontent has reached the provincial level. A coordinator from the UARB would help ensure that matters on which there is no agreement, as between the participants from each municipal unit, are dealt with by someone with municipal experience, expertise and impartiality. If the MGA process as currently instituted was to be observed, it would be the UARB, a body independent of government, making those decisions. While I'm concerned with a judgement that I am somehow impugning the fairness and impartiality of whomever the selected coordinator may be, it stands to reason that he or she may tend to be influenced by the priorities of this majority government, particularly where that person may want to secure such work in the future. We already see other jurisdictions waiting to see what happens in Antigonish to follow suite. Shelbourne comes to mind immediately.

Another concern is that the draft Bill 407 provides for the current Mayor, Warden and their Deputies to form part of the Transition Committee. Further, the draft legislation in ss 12(3) says that they will determine whether a mayor led municipality will be chosen. This should be decided by the UARB or the government before the Transition Committee is formed. **Additionally, none of the municipal members of the committee should be eligible for election in the first term after formation of the consolidated unit unless they have been first elected in the October 2024 municipal election or an earlier specific election for Antigonish.** We have already had our Warden Owen McCaron stating on XFM98.9 radio on Wednesday, 28 March 2024 that he intends to run for Mayor of the consolidated unit. The current state of public confidence and trust in our current Antigonish leaders is very low. We need to rebuild public trust in our specific municipal governments and everyone should be concerned about the democratic decline in our institutions that result from treating the public as being incapable of understanding issues.

"Without fact there is no truth. Without truth, there is no trust." Maria Reesa
(2021 Nobel Peace Prize)

Submitted by :

Anne-Marie Long, CPA (Retired)



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Town & County Consolidation: Presentation to County Council 10 May 2022

Anne-Marie Long

To try and give some context to my concerns about the process being used, my interpretation about how the Warden defines due diligence, and the timeline to date, on the consolidation discussions, I am presenting my findings in a chronological fashion.

The Sept 13/21, Committee of the Whole Meeting Minutes of The County of Antigonish (County Minutes) reflected the Warden's introduction to the Councillors, "to the discussion regarding consideration of consolidating the County & Town of Antigonish". Each of the Councillors are recorded as asking questions and one specifically referred to whether the taxpayers would have a final say; another stressed the possibility of a plebiscite; and my Councillor "clarified the ability of the Municipality to back out of the process if it chose to". The Minutes also reflect that the Councillors were told during this meeting that discussions had already taken place with the Dept of Municipal Affairs. The Minutes also reflect the carried resolution: "The Committee recommends that the Town of Antigonish and the Municipality of the County of Antigonish work with the Department of Municipal Affairs to explore consolidation of the two municipal units."

The Town & County joint press release on September 13, 2021, stated that they had voted to gather the information needed to consider consolidating the two municipal units into one regional government. It spoke to the "exploration phase" involving *"assessing if residents, businesses, and communities would be better served by combining efforts on all municipal services ..."*. It also said that there was still a lot that they needed to determine and investigate further. Our Warden said that *"We are committed to doing our due diligence by engaging the community and keeping them informed on the process as we assess this opportunity further."*

The Sept 28/21 County Minutes reflect that Council had met with Municipal Affairs and a steering committee was formed and terms of reference presented for it.

The Oct 26/21 Minutes referred to a debrief process on the Queens Consolidation, cost savings identified (savings were not identified in the Minutes), and the amount of work done by their Public Works Dept, as opposed to using external contractors. It is important to note that the Queens merger was a 1996 amalgamation under the Municipal Government Act and it was not a modern-day consolidation as being considered currently for the town and county. For later reference I want to emphasize that Queens became more profitable after the merger. They have said that having their own in-house heavy equipment and trades people in Public Works, contributed significantly to their success over the 26 years since their merger.

At the Nov 9/21 Council Meeting, the CAO presented council with one recommendation, from the RFP group of bids, that he and presumably the office staff reviewed. A resolution was carried to engage *Brighter Community Planning Consulting* for the bid price of \$142,628.75 (incl HST).

At the Nov 30/21 meeting, the CAO announced that the provincial gov't was providing \$150K in funding, and that kickoff meetings were to start later in the week with the consultants.

Minutes of the joint council meeting on January 20/22, are not available on the county website or at *antigonish.ca*, nor are the Jan 25th or any other Minutes of the Steering Committee. The February 8th Minutes have no definite information on the merger progress. A draft of the "updated Guiding Principles" was provided for review at the March 8/22 meeting.

What has happened since?

Shortly after mid-March 2022, we had delivered to our homes, a glossy two-sided page: "Invitation to join the Consolidation Discussion". It had a community engagement schedule for "drop in" styled meetings and a letter on the reverse side basically telling us that the councils would make a consolidation decision on our behalf, after those of us with an interest in our future took part in the process, by the on-line website, in person, by phone or email. We were told that: "Consolidation may be a more efficient use of existing resources to provide a high level of service to residents living in our communities. Many of the issues facing our communities, such as climate change, economic development, infrastructure planning, accessibility and housing, require or would benefit significantly from a regional approach."

So, I went on-line on March 25/22, and visited *antigonish.ca* and printed out the FAQs and other material to read. I found nothing informative as to any identified benefits for the county to join the town. I continued to monitor the site for updates and there were none forthcoming for quite a while. The information, and lack thereof, made me more curious because it said that the Council reps would gather and assess information on the Windsor-West Hants (2020 Consolidation) and the Liverpool-Queens (1996 Amalgamation) mergers. I think that a reasonable person could presume that the facts of the pros and cons of these mergers, and the relative financial costs/benefits, would have been available and presented on the website and in the planned kiosk-style sessions. A reasonable person would also expect that the strengths, weaknesses, opportunities and threats/risks would have been identified.

You said that you wanted public input that would be used to help the Councils understand the values and issues that are important to residents. You have been told loudly and clearly at information sessions, to date, that the people want:

1. To know the identified pros and cons, benefits/risks and related costs of the previous mergers and how we would mitigate the cons and risks;
2. And that we, the taxpayers/constituents want to vote on this issue of consolidation.

I have to wonder about the "Guiding Principles for Consolidating Antigonish Town & County". For example, what do you mean with respect to # 3 that says: "Communicate regularly about progress and decisions"; and that the communication will be frequent, transparent, and inclusive? Until many complaints about the inability of the Warden, Mayor and councillors to answer questions on the facts identified in the mergers reviewed, and the form and substance of the new regional municipality, there was nothing in print. To date, there is still nothing on the benefits and/or risks with their respective financial implications.

Then, in May 2022, the website contained a document, prepared by the hired consultants, called: "Community Engagement Liaison Project Exploring Consolidation with the Town & County of Antigonish". It contains a January 2022 date on the front page, and it should have been put on the website and distributed much earlier than in May. So, in reading that document I made some interesting observations about their analysis. There is an absolute lie on page 2 with respect to the 2001-2006 Antigonish Annexation request. There was not "limited support" from the county residents. The County voted 84% to amalgamate with the town in an act of retaliation for the town wanting to annex far more land than they may have wanted for their specific objectives. And an important part that is missing from the piece, is that after the UARB recommended an amalgamation, the town took the issue to court. They were not successful; however, the UARB backed off on the merger.

To combine all the 1990's amalgamations on page 3 and not speak to the costly items in the HRM merger, for example, is an absolute disservice to the reader who wants to understand the pros and cons. It speaks of the success of the 1996 Liverpool/Queens amalgamation, guided jointly by the town and county, as opposed to the "appointed coordinators" for HRM and CBRM. Where is the consultants', or the Council's Steering Committee, analysis that explains to us why a "friendly" amalgamation, with town & county direct participation, under the UARB rules, (*where the rules are more clearly defined*), is considered inferior to a Consolidation? In a consolidation procedure, you don't get to create the substance of the regional municipality until a Transition Committee is trusted to accomplish the merger, after a favourable consolidation vote is held. If Queens didn't need a UARB "appointed coordinator", why would we? Why was there a failure to draw on your available expertise to tell us how you differentiate between the two models of a "friendly" amalgamation and a consolidation?

It seems from the information on the Windsor/Hants consolidation, that the citizens were quite engaged at the early stages of the process. It seems that another flame was ignited between the town & county, in 2015, with a decision by West Hants to drop the Windsor Fire service and create their own fire dept. The town & county tensions rose and in 2016 a citizens' group applied to the UARB for an amalgamation of the two municipalities, citing a "dysfunctional" relationship between the two local governments. The town supported it and West Hants did not. Abraham Zebian was a West Hants councillor and may have also been the Warden. The citizens were able to elect their representatives in the 2016 municipal election. Then, In 2017, the application for amalgamation was adjourned and an MOU was created to reflect the desire of the two municipalities to work together collaboratively, to strengthen their communities. It took another year for the two municipalities to agree on a process for merging, based on their collaborative efforts for the good of all their residents. In October 2018, the Province passed Bill 55 creating the Windsor-West Hants Regional Municipality effective April 1, 2020. On April 1/21, per CBC News report, the first Mayor of the regional municipality, Abraham Zebian, said that the consolidation had been a success, although he admitted that it would be years before the benefits can be properly measured. He admitted that it will take at least a few years to formally assess the merger. Then Municipal Affairs Minister, Brendan Maguire, agreed with Zebian in its success, and said, "Really, it's about financial stability and just having a path forward."

The information provided (see also the "*Latimer Report*") states that the elected officials in Windsor/Hants canvassed their communities prior to the 2016 municipal elections, and there was lots of interest in the structure of local government in the area. They took their time and were able to get the public and businesses to buy into the merger and to do it under a consolidation approach after they had identified all the issues and costs and that they could work together harmoniously.

What is the rush for us to do this now? There is no established level of trust or confidence that this process is good for the county at this time. We have been pushed into a process being driven by the Mayor, the Warden, their deputies and the CAOs.

The county taxpayers want to know whether a consolidation would be beneficial to us. We want due diligence applied to identifying our strengths, weaknesses, opportunities and threats or risks, and their financial effects, in each of our municipalities.

Within our strengths, we want you to identify what are we doing well and do we have a competitive advantage in one or more areas? What makes us stronger than the town and how will they also benefit? What do we have that is valuable? What draws people and business to

come to or stay in the county? For example, the types of questions to which I'd like answers for the county (and the town):

. In the county we have lots of space for residential and business expansion, at a significantly lower commercial assessment rate than the town. Have we costed/projected our ability to increase developmental plans and our projected incremental tax base over the next X years, based on the data of the past X years.

. In the county we have our own garbage & recycling pickups and it's far less costly than having a contracted service. Given that we keep the profits, what is our financial advantage to this practice?

. The current age of our infrastructure, overall, should be in good shape. Is it? Part of a transition to a merger should be a review of all physical inventory and the state of all linear infrastructure including all water & sewer lines, roads and sidewalks, etc. What are the projected costs to maintain, upgrade over the next few years?

. Capped assessments, that are a way of retaining people where they are. What is the forecast on this issue with respect to the provincial government?

What are our weaknesses in the county? What could we be doing better and to save dollars? Do we struggle with obtaining timely resources of any type? Are we lacking assets of any type? Are we lacking funding to cover needed projects? Etc. For example:

. By contracting out to third party businesses for sewer and water, what are we losing in speed of response time for service, profits that could be ours, etc, by acquiring heavy equipment, employing our own trades people, mechanics, and a project manager? Queens saw their reliance on their own Public Works staff as a distinct advantage for timeliness and retained profits. Hants also saw having a robust Public Works Department as a distinct advantage. What will it cost to have unionized wage parity with the town?

What unique opportunities do we have in the county that we could use to benefit the county, and perhaps the town and region, that we are not developing? Do we have access to materials, land, etc that could be employed to our advantage, for example, for additional sewage treatment?

. We have a well field in Lower South River that has significant excess capacity according to our Warden (April 18/22 Chronicle Herald). He says that it could end the issue of summer water shortage in the town, if it were piped into the town system to complement the existing source at James River. Why not develop/expand the water piping to serve the county residents in the fringe areas of the town? Putting our fringe residents on county water should free up capacity in the town to address their summer shortages. What would this cost?

What are our exposable risks/threats? Can any identified risks be controlled?

For example, are there any government regulations that prevent us from utilizing any of our land? Are our water sources at risk for any reason, eg contaminants?

. The Warden is quoted as "suggesting that the county needs access to the town's water and sewer facilities, as their biggest growth is in the fringe area." (May 4/22 Reporter). What is stopping the county from being self-reliant given our resources and space?

. In the new glossy FAQs on the website and distributed at the municipally scheduled "meet & greets", the page on *Water, Electricity and Energy Leadership* says: "The Town has a water supply that draws its supply from the James River watershed and is distributed to Town

Residents and some County users. There are approximately 1,600 connections to the Town's water utility. The County water utility provides water in the fringe area surrounding the Town and to Lower South River, St Andrews and St Josephs. In 2020 the County amalgamated all of its water systems into one utility and harmonized rates for all 1,640 water utility customers."

. Jeff Lawrence, CAO for the town, said that the existing sewer treatment plant, is owned by the town but also used by many county residents on the fringe of Antigonish. He said that it was only pushed to its capacity during heavy rain. That problem, he said, could be handled by a stormwater diversion project. (April 18/22 Chronicle Herald).

. Is there a good reason why the county has to use the town water and deplete its resources? Does the town own the property at the James River watershed? Is there any reason why the county can't be self sufficient for water and what would be the cost?

. What are our financial risks with respect to fire service with our current assessments/levies, and to the county's coverage in protective services in a merged organization?

. After a taxpayer raised the issue of change to Hants Region in policing costs, from a 70/30 split with the feds, to a 90/10 split, there was concern expressed about this quite significant additional cost. Can we afford to absorb that cost? Have we costed having our own police force as we used to have? What other additional costs or savings did Hants Region experience.

. Given our financial strength, is the province agreeable to funding a merger? What would be our expected contribution to the costs?

The items stated above are not, by any stretch of the imagination, a full list of the issues to be considered in a S.W.O.T. assessment. It's a very short example to demonstrate what we and you need to know, from both municipalities, before deciding on a merger.

in the May 4/22 *Guysborough Journal*, the Mayor said that "We are going to continue down this road" (on consolidation) and she added that "the "Guiding Principles" established by both Councils when they agreed to explore a possible consolidation, did not include having residents vote on whether to become one municipality". The article also said that "When it comes to the councils' decision not to opt for a plebiscite, officials have pointed to the potential divisiveness created, along with the history of such votes garnering low voter turnout." Well, the town & county residents are absolutely united on wanting a vote, and I want to note that 45% of the eligible voters voted in the 2006 plebiscite. Have you given any thought to the turnout for the election of municipal councillors and for the Mayor, in her initial election? Near the end of the article in the paper, it said, "Getting back to the plebiscite debate, Boucher noted that both councils-by consensus- agreed not to conduct one." With respect to these statements that the councillors were complicit in not allowing a vote to the taxpayers, where is this agreement in any of the recorded Minutes? I suggest that there has been a huge gap in the message that was heard and understood by the Councillors, and what was intended by the people delivering the message. Even reading "between the lines" in all the printed promotional material, other than the Mayor's statements to the press, at the outset in the Sept 14/21 release, "Boucher downplayed the likelihood of holding a plebiscite on the matter, ..." does not indicate that there was never an intention of permitting a plebiscite. Additionally, the County's Sept 13, 2021 Minutes do not reflect that when Councillor Brophy

stressed "the importance of consultation, including the possibility of a plebiscite, ..." , anyone said that there could be no plebiscite.

Finally, the May 4/22 issue of The Reporter speaks to the Mayor and the Warden feeling that the process is being undermined by 2 councillors not supporting a consolidation. Is this viewed as a greater abuse to the process than the 2 councillors who have said that they are voting for consolidation regardless of what their constituents want? I expect that it may be difficult for some people to deal with the conflict and controversy surrounding this priority to accomplish a consolidation. At the same time, it is unprofessional and beneath the dignity of the Office of both the Warden and the Mayor to publicly accuse councillors of undermining the process in what many of us consider to much of a rush to consolidation. These councillors have been elected by their constituents and we expect them to tell us the truth in their discussions with us. No decision to consolidate has been made by the council, yet, and until then, I want to remind you that the councillors voted to approve a resolution to explore consolidation, and many of them are doing so by going through that process with their constituents. I do believe that when councillors are given the information they should have before they vote on a finite issue, that, once the resolution is carried, they are expected to uphold the decision of the whole council with dignity, despite their personal opinions. So, please, do not rush to put this issue to a vote because you simply have not yet done the work that needs to happen before anyone should be making a decision.

The bottom line is that the majority of taxpayers from the town and county, who have participated in the process to date, have been unified in overwhelmingly stating that they want to vote on this issue. It has been expressed by some elected officials that the constituents are not well-enough informed to make this decision. Given that the elected officials have not produced any factual information to show that the county will be better served and in a better financial position from consolidation, or alternatively, refute that we won't be in a worse financial position, I respectfully state, that the elected officials have not earned the moral right to make this consolidation decision. They must provide us with the facts and figures to support the reasons for a merger. If we are to use Windsor/Hants as a model, the people started the process and were informed about the issues before they elected their council to deal with the issues. It took them 2 years to explore the issues and get answers to their questions, including financial impacts, and to test their ability to compromise in finding solutions, before agreeing to trust their elected officials without holding a plebiscite. I suggest that you show some good faith, slam the brakes on this process and start feeding us the relevant information. We deserve fairness and full transparency.

To quote from an October 9, 2019 document about the Windsor/West Hants Consolidation Restructuring Model:

"The process needed to have the community's understanding and trust. ...the community would need to believe that the key merger issues had been addressed thoughtfully and transparently and that, where necessary, reasonable compromises had been achieved.

We recognize more residents of these municipalities will be drawn into the discussions. They will have their own learning curves as they increasingly become engaged; they will want information and they will want reassurance. And we need to listen. That's the way it should be when you're breaking new ground, following a new path. We will not have

done a good job unless those who live in what will be the new regional municipality recognize that we have acted in their best interests."

Proposed Consolidation of Antigonish Town & County Consolidation

Anne-Marie Long

Sun, 24 Apr 2022,
22:39

to omccarron, mmacllan, dfmacdonald, hdstewart, sbrophy, rdeveau, jdunbar, gmattie, h
mcnamara, bmacfarlane, mayor, wcornier, dmacinnis, scameron, amurray, mfarrell, dro
berts

Dear Warden, Mayor and Councillors:

This is my formal request that both town and county Councils reconsider the process taking place for the proposed consolidation of both municipalities; and after providing timely and relevant information to all the taxpayers, that you hold a plebiscite vote under S.53 of the Municipal Government Act of NS on this issue.

I must convey my absolute disappointment in the process chosen to date. I have had the utmost respect for both our current Warden and Mayor and most of the councillors who have served over the past years. I've been truly content and pleased with the degree of cooperation between the town and county Councils under Owen and Laurie. Actually, I believe that during my time since I returned to NS in 1994, Owen, you have been the best Warden the county has had. I also dare to say that until these past few weeks, both our Warden and the Mayor enjoyed good public reputations that were respectively well earned.

I've been retired since early 2009 and prior to that I was an executive manager and a professional accountant for many years. And before that, I was president of a union with 4000 members. I have a good understanding of people and behaviours. I also understand government operations and the desire and need for change. I have worked with consultants who gave advice; however, they did not drive the change and we, the executives, made the decisions.

By now you must know that the dissatisfaction and disappointment in the process towards consolidation, being expressed by many, is due to the methodology being used and failure to propose a plebiscite. Since yesterday, after information was distributed at the Farmer's Market, over 400 people have joined a Facebook page looking for a plebiscite.

It seems that the consultants, with the support of Municipal Affairs and their financial contribution, have given one way to get this done and you've totally accepted that advice. The website and open forum meetings should have been used to provide information on the determined advantages and disadvantages of a merger. That should have happened prior to a plebiscite vote to enable people to become informed and to observe what is in it for them. Yes, you've scheduled meetings across both municipalities; however, they are totally controlled in this kiosk style manner. Anyone in

a leadership role should know that many people will not go to a microphone and ask questions; yet, by attending an open forum meeting where there is perhaps an informed speaker and a Q&A session, people can hear the questions and answers that provide much information to the uninformed.

Make no mistake in presuming I was against a merger. I fully supported the exploration of a merger of the town and county. What has me hitting the Internet , websites and writing letters and posts is the apparent sudden rush to have this decided before, or early in, the summer; also, because I consider this process to be an abuse of power and an absolute failure to trust, that if you have given out sufficient information to enable people to make the decision, the ones who do vote will know that they have your respect.

While I believe that there has been a major error in judgement in the way this process has been handled, I believe that there is time for "redemption". With the delay in sessions due to unfortunate illnesses, it is possible to restructure the remaining meetings to be "open forum" style, with yourselves and the consultants answering questions. And you should offer a plebiscite. Quite frankly an apology for the process to date would also go a long way to getting people onside to listen.

My biggest concern is actually what happens if you continue with this process and get only a council approved vote to continue with the consolidation. The fact is that, after a consolidation decision, we will need a strong, experienced person as mayor and we will need some solid, experienced councillors to help the mayor. If you continue destroying the trust, that you've earned by your past work, we may end up with someone as mayor who is unskilled yet untainted, simply due to taxpayer frustration with the council members who voted for consolidation. (*Dare I say, remember how Donald Trump got elected.*) Solid leaders should also know that many people react emotionally and when faced with a stumbling block, such as feeling robbed of a vote in this decision, they are unable to separate the past good from the one current issue. That's reality and when it happens we all lose.

Respectfully,
Anne Marie Long
Tracadie



Office of the Information
& Privacy Commissioner
Nova Scotia

D

Tricia Ralph
Information & Privacy Commissioner for Nova Scotia
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Email: oipecns@novascotia.ca
Tel: (902) 424-4684
Fax: (902) 424-8303
Website: <https://oipec.novascotia.ca>

September 22, 2023

Anne-Marie Long

[REDACTED]
Monastery NS B01E 1W0

Email: [REDACTED]

//via email//

Dear Anne-Marie Long:

**RE: Review Report 23-09 / OIPC File 23-00433 / Municipal Affairs and Housing
File 2023-00315-MAH**

Enclosed please find a copy of my review report issued on September 22, 2023, concerning the above-noted request for review.

Two copies of this letter and a hard copy of the review report will follow by mail. Please acknowledge receipt by signing one of the letters and returning it to my office at your earliest convenience.

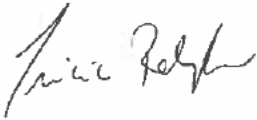
Pursuant to section 40 of the *Freedom of Information and Protection of Privacy Act (FOIPOP)*, the Department of Municipal Affairs and Housing (public body) must make a decision with regard to the recommendation contained in this report and give written notice of that decision to the Information and Privacy Commissioner and to you, as the applicant, within 30 days of receiving this report. In accordance with section 41 of *FOIPOP*, you can appeal the public body's decision to the Nova Scotia Supreme Court. An appeal must be made within 30 days after receiving the public body's response to the recommendation contained in the report.

Alternatively, if the public body does not give a written decision within 30 days of receiving this report, it is deemed to have refused to follow my recommendation. In this case, your appeal to the Nova Scotia Supreme Court must be made within 30 days of when the decision was due, i.e., the deemed refusal date.

A copy of the review report will be posted on the OIPC NS website, <https://oipc.novascotia.ca>, the week of September 25, 2023. This is to ensure that all parties and the public understand what the Information and Privacy Commissioner decided in the review.

Should you decide to appeal the public body's decision to the Supreme Court of Nova Scotia, please notify our office as required by section 7.20(4) of the *Nova Scotia Civil Procedure Rules*. We would appreciate being notified of the appeal as soon as possible.

Yours truly,




Tricia Ralph
Information and Privacy Commissioner for Nova Scotia

Enclosure

I acknowledge receipt of Review Report 23-09.

Signature: _____

Date: _____



Office of the Information and Privacy Commissioner for Nova Scotia
Report of the Commissioner (Review Officer)
Tricia Ralph

REVIEW REPORT 23-09

September 22, 2023

Department of Municipal Affairs and Housing

Summary: The Department of Municipal Affairs and Housing (public body) did not issue a decision to the applicant in response to an access to information request within the legislated time period required by the *Freedom of Information and Protection of Privacy Act (FOIPOP)*. The delay was caused by the public body failing to meet its legislated duty to assist the applicant without an authorized or legitimate or reason to do so. The applicant appealed to the Office of the Information and Privacy Commissioner. The Commissioner finds that because the public body did not respond to the applicant within its legislated deadlines, it is in contravention of s. 7 of *FOIPOP*. She recommends that the public body issue a decision to the applicant by October 13, 2023.

INTRODUCTION:

[1] On February 17, 2023, the applicant submitted an application for access to records (access request) held by the Department of Municipal Affairs and Housing (public body) under the *Freedom of Information and Protection of Privacy Act (FOIPOP)* for records related to a proposed consolidation of Antigonish Town and County. Section 7(2) of *FOIPOP* required the public body to issue a decision in response to the request within 30 days after the application was received unless an authorized time extension was taken.

[2] The public body did not and still has not issued a decision to the applicant within the deadlines set out in *FOIPOP*. The applicant has been waiting approximately seven months for a decision to be made by the public body, well outside the statutory deadline for response. The applicant has not received any records in response to her access request.

[3] The applicant filed a review request with the Office of the Information and Privacy Commissioner (OIPC) about the public body's failure to respond to her access to information request.

ISSUE:

[4] Did the public body meet its duty to assist the applicant by responding without delay as required by s. 7 of the *Freedom of Information and Protection of Privacy Act*?

DISCUSSION:
Burden of Proof

[5] With respect to the duty to assist set out in s. 7, *FOIPOP* is silent as to who bears the burden of proof. Therefore, the parties must each submit arguments and evidence in support of their positions. However, it is the public body who failed to make a decision in this case and who is in the best position to discharge the burden of proof.

Did the public body meet its duty to assist the applicant by responding without delay as required by s. 7 of the *Freedom of Information and Protection of Privacy Act*?

[6] For the reasons set out below, I find that the public body is in contravention of s. 7 of *FOIPOP* in that it has failed to respond to the applicant's access request within the deadlines set out therein.

[7] Section 7(1) requires public bodies to respond to access requests openly, accurately, completely and without delay. Section 7(2) requires public bodies to respond to access requests within 30 days unless an authorized time extension has been taken by the public body or granted by the OIPC under s. 9 of *FOIPOP*. Section 7(3) states that when a public body fails to respond to an applicant within the statutory time period, it is deemed to have refused access to the requested records. A failure by a public body to give an applicant a written decision within the statutory deadline is, under s. 7(3) of *FOIPOP*, deemed to be a refusal to give access to the records. This circumstance is regularly referred to as "deemed refusal".

[8] On February 17, 2023, the applicant made an access request to the public body. She included a request for a fee waiver with it. The public body corresponded with the applicant to clarify her request. An updated scope was agreed upon on February 21, 2023. The public body told the applicant that its due date for response became March 24, 2023, unless an authorized time extension was taken.

[9] The public body collected approximately 800 pages of records in response to the applicant's access request. It provided them to Information Access and Privacy Services (IAP Services)¹ on March 2 and 7, 2023. Under s. 44 of *FOIPOP*, a public body can delegate its duties under *FOIPOP* to an officer of the public body. While it is not clear to me if IAP Services was formally delegated the duties of the public body under *FOIPOP*, it acted in that capacity. IAP Services was the only contact the applicant had for her *FOIPOP* request.

[10] On March 16, 2023, IAP Services notified the applicant that it was extending the time to respond for an additional 30 days under s. 9(1)(b) of *FOIPOP*. This section allows public bodies to take a 30-day time extension when an applicant requests a large volume of records and

¹ Information Access and Privacy (IAP) Services was formed April 1, 2015 by centralizing information access and privacy staff from across several government departments into one centralized service at the Department of Service Nova Scotia and Internal Services (now called the Department of Service Nova Scotia). The mandate for this group is to provide information access and privacy policies, practices, services and resources for government. This information was obtained from an Information Access and Privacy Services pamphlet prepared for the 2018 Reverse Trade Show.

meeting the time limit would unreasonably interfere with the operations of the public body. IAP Services issued a new deadline for response of April 24, 2023.

[11] The supporting documentation provided to this office indicates that on April 18, 2023, IAP Services recommended to the public body that it charge the applicant fees for processing her access request.

[12] On April 20, 2023, IAP Services sent the applicant a fee estimate. When a public body issues a fee estimate, the public body is allowed to "stop the clock" or pause its deadline for response until the applicant either (1) pays a fee deposit or (2) the public body grants a fee waiver. Thus, the clock was stopped on April 20, 2023, four days before the public body's April 24, 2023, response deadline.

[13] On April 26, 2023, the applicant provided IAP Services with written rationale for why she believed she met the criteria set out in s. 11(7) of *FOIPOP* to warrant the public body granting a fee waiver. From the supporting documentation provided to this office, IAP Services appears to have waited almost two months before notifying the public body that the applicant had requested a fee waiver and supplied an argument for why she should be granted one. The public body's representations to me state that it was "notified of the fee waiver request on June 21, 2023." The supporting documentation supplied by the public body also supports that IAP Services waited two months to tell the public body. Once it was told, the public body made a decision to grant the fee waiver within 9 days, on June 30, 2023. During this two-month gap, the applicant followed up several times with IAP Services asking what the status of her request was. She repeatedly reminded IAP Services that she needed the responsive records for a July 7, 2023, court date. Ultimately, more than two months passed before the public body issued a decision to granting a fee waiver. The public body decided to grant the applicant's request for a fee waiver and told IAP Services this on June 30, 2023. On July 5, 2023, IAP Services informed the applicant that the public body granted a fee waiver.

[14] *FOIPOP* is silent on the amount of time a public body is allowed to take when considering whether to waive fees. The OIPC is of the view that this lack of response time deadlines is problematic and has recommended that *FOIPOP* be amended to impose such deadlines, but no amendments have been made.² This review demonstrates why the lack of time deadlines with respect to fee waiver requests is problematic. In this case, more than two months were taken for this step. In my view, this is too long. It is inconsistent with the purpose of *FOIPOP* to allow public bodies to hold up access to information for unspecified periods of time while considering whether to waive fees.

[15] In any event, the clock resumed in early July. The deadline for response came and passed, but the public body did not issue a decision to the applicant, nor did it request an additional time extension from the OIPC. In terms of why it did not request an additional time extension from the OIPC in an effort to avoid a deemed refusal, the public body explained that once the clock

² Office of the Information and Privacy Commissioner for Nova Scotia, *Accountability for the Digital Age, Modernizing Nova Scotia's Access and Privacy Laws* (June 2017), online: <https://oipc.novascotia.ca/sites/default/files/publications/annual-reports/Accountability%20for%20the%20Digital%20Age%20%28June%202017%29%20.pdf>, recommendation 5.

resumed by the granting of the fee waiver in early July, it only had four days left to respond by its response deadline. The public body said this did not leave it enough time to make a time extension request to the OIPC on the basis that it needed an extension to conduct consultations or because the volume was high and would unreasonably interfere with the operations of the public body. I cannot accept this argument. Firstly, the applicant's access request identified that she was seeking third party information so it should have been clear that consultations might be needed in this case when she filed her access request on February 17, 2023.³ Secondly, in its representations, the public body noted that it had collected the approximately 800 pages of responsive records and provided them to IAP Services on March 2 and 7, 2023. The public body should have realized shortly thereafter that consultations were required. The public body had more than enough time to request a time extension from the OIPC before getting itself into a deemed refusal situation.

[16] When IAP Services told the applicant on July 5, 2023 that the fee waiver had been granted, it did not tell the applicant when the records would be issued, stating only that the records would be processed and provided to the applicant "as soon as possible". On July 18, 2023, the applicant followed up by email asking for a more specific date and was told by IAP Services that a rough estimate for the applicant getting her records would be about three weeks. Those three weeks came and went. The applicant asked IAP Services multiple times what the status was. She was repeatedly told that it would take longer for various reasons (none of which would have authorized it to not meet its response deadline). By August 26, 2023, the applicant had still not been given a concrete date by which the public body would respond to her access request, and so she filed a request for review of the public body's actions.

[17] In addition to the above, despite being aware that consultations were needed at least by June 30, 2023, IAP Services did not send out its consultation letters to third parties until September 2023, more than two months later. Some consultation notices were sent on September 7, 2023. The public body said in its representations that it expected that all consultation notices would be sent by September 12, 2023. I do not know for certain if that was done. Regardless, this is way too long to take to send out consultation notification letters. As set out above, the public body should have been aware that the records might require consult at the time she made her access request given the nature of her request. It had a second opportunity to catch this once it had collected the records in early March. Furthermore, the public body's representations to me stated that by June 30, 2023, it thought it did not have enough time to request a time extension for consultations from the OIPC. This implies that certainly by June 30, 2023, it was fully aware that it thought consultations would be needed. Despite this, the public body still waited more than two months before it even sent out the consultation letters. I have not been given any legitimate explanation that would rationalize this unacceptable delay. Finally, as an aside, I will also note that it is not clear why consultations were required in this case and whether any would qualify as mandatory consultations within the meaning of s. 22 of *FOIPOP*. With deemed refusals, I do not have the benefit of reviewing the responsive records. It is not apparent from the consultation notices that the public body supplied to this office why the consultations were needed. Finally, the public body's representations do not rationalize why consultations were required. Since the issue in this review is deemed refusal, I will not get into it except to remind

³ Not all third party information will trigger a third party consult requirement.

IAP Services and the public body that they should be following the *OIPC's Guidelines*⁴ on third party notice when conducting consultations with third parties.

[18] Overall, the public body's representations and its supporting documentation lead me to believe that the primary reason for the delay in this case was a lack of communication between the public body and IAP Services. An example of this is the two months IAP Services appears to have waited to inform the public body of the applicant's fee waiver request from April 26, 2023 to June 21, 2023. Thus, two months of delay likely would have been prevented if IAP Services had informed the public body in a timely manner.

[19] *FOIPOP* requires that the *head* of a public body comply with the duties set out in the legislation. In this case, that is the Minister of Municipal Affairs and Housing. The Minister is authorized to delegate his powers and duties. However, as an OIPC adjudicator in Alberta has stated, "...if the head delegates her duty and authority to employees who lack sufficient authority, time, and experience to fulfil those duties, the result may be a failure to comply with mandatory duties under the FOIP Act."⁵ In my view, that is what happened in this case. No matter how you slice it, the public body has not complied with its mandatory duty to make every reasonable effort to respond to the applicant openly, accurately, completely, and without delay as required by s. 7 of *FOIPOP*. The delays were preventable, inexcusable, and unreasonable.

[20] I find that the public body has failed in its s. 7 duty to assist obligations. In reviews where deemed refusal is at issue, the only remedy is for the public body to issue a decision to the applicant. I have made that recommendation below.

FINDING & RECOMMENDATION:

[21] I find that the public body is in contravention of s. 7 of *FOIPOP* in that it has failed to respond to the applicant openly, accurately, completely, and without delay.

[22] I recommend that:

1. The public body issue a decision in response to the applicant's access request, along with a copy of the records,⁶ by October 13, 2023, and provide the OIPC with a copy of the decision letter sent to the applicant.

September 22, 2023


Tricia Ralph

Information and Privacy Commissioner for Nova Scotia

OIPC File: 23-00433

⁴ Office of the Information and Privacy Commissioner for Nova Scotia (March 2019), online: <https://oipc.novascotia.ca/sites/default/files/publications/18-00192%20Duty%20to%20Assist%20-%20Third%20Party%20Notice%20Guide%20%282019%20March%29.pdf>.

⁵ *AB Order F2018-10, Alberta Health (Re)*, 2018 CanLII 7385 (AB OIPC), at para. 22.

⁶ Per s. 8(1)(a)(i) of *FOIPOP*.



Office of the Information
& Privacy Commissioner
Nova Scotia

Mary Kennedy
Intake Manager/Investigator
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PO Box 181 Halifax, NS B3J 2M4

Email: Mary.Kennedy@novascotia.ca
Tel: (902) 424-1532
Fax: (902) 424-8303
<https://oipc.novascotia.ca>

August 31, 2023

Applicant:
Anne-Marie Long
Sent via email

///and///

Public Body:
Crystal McGraw
Manager, Access Program
Information Access and Privacy Services
Sent via email

Dear Ann-Marie Long and Crystal McGraw:

NOTICE OF REVIEW

Public Body: Department of Municipal Affairs and Housing (public body)
OIPC File: 23-00433
Public Body File: 2023-00315-MAH

The Office of the Information and Privacy Commissioner (OIPC) received the attached Request for Review under the *Freedom of Information and Protection of Privacy Act (FOIPOP)*.

Background

Based on the information we have before us at this point:

- On February 17, 2023, the applicant submitted an access to information request ["access request"] to the public body under s. 6 of *FOIPOP*.
- Section 7 of *FOIPOP* imposes a duty on public bodies to make every reasonable effort to assist the applicant and to respond without delay to the applicant openly, accurately and completely.
- Section 7(2) of *FOIPOP* requires that a public body respond to an access request within 30 days after receiving the access request when the applicant has met the requirements of s. 6(1)(b) and

(c) to specify the subject-matter of the record requested with sufficient particulars to enable an individual familiar with the subject-matter to identify the record and to pay any required fee.

- The public body issued a fee estimate on April 20, 2023.
- On April 26, 2023, the applicant requested a fee waiver from the public body.
- After multiple follow-ups by the applicant, on July 5, 2023, the public body notified the applicant that the fees were waived.
- After multiple follow-ups by the applicant, the public body advised the applicant that the file was still being reviewed for severing and to confirm what parts of the records will need to be sent for consultation.
- On August 28, 2023, the applicant asked the Information and Privacy Commissioner to conduct a review under s. 32 of *FOIPOP* of the public body's failure to issue a decision.
- The applicant informed the OIPC that they have not received a decision in response to this access request.
- The public body confirmed no decision was issued.
- Section 7(3) of *FOIPOP* provides that when a public body fails to respond to an access request within the statutory timelines, it is deemed to have refused access to the requested records.

There are two possible outcomes to this review, each is discussed below in detail:

- A. **Informal Resolution** – If the public body has failed to respond to this access request within the statutory timelines, the public body issues a decision to the applicant within 15 days and the file will be closed; or
- B. **Public Review Report** – If the public body has failed to respond to this access request within the statutory timelines and a decision is not issued in 15 days, this file moves to review with the Information and Privacy Commissioner and a public review report will be issued.

Outcome A – Informal Resolution – Decision issued within 15 days

If the public body has failed to respond to this access request within the statutory timelines and the public body issues a decision to the applicant within 15 days of receipt of this letter, we will consider the matter resolved and this file will be closed. If the file is closed informally, we do not require anything from either party.

Please ensure that I am copied on the decision letter to the applicant.

If the applicant takes issue with the decision that is issued, they will need to file a new appeal.

Outcome B – Public Review Report issued after 15 days

If the public body has failed to respond to this access request within the statutory timelines, this letter serves as the Notice of Public Review Report. Should the public body fail to issue a decision within 15 days of receipt of this Notice, under section 39 of *FOIPOP* the Information and Privacy Commissioner will complete the review of this matter and issue a public written report.

In addition to any representations it wishes to submit (see below for more details on providing representations), the public body is required by s. 22 of the Regulations to provide the OIPC with the following documents within 15 days of receipt of this letter.

1. The applicant's access request to the public body.
2. The applicant's access request to the public body.

3. Documentation of the processing timeline for processing this access request, including the date(s) and reason(s) for any on hold time(s) and time extension(s).
4. All communications to/from the applicant and the public body; all communications to/from any affected third parties and the public body; and all communications regarding the processing of this access request.

This is your only opportunity to submit information (in addition to what the public body is required to provide, listed above), make statements, and provide relevant evidence regarding the delay on this access request. Any submissions you make are considered representations and they will be before the Commissioner at the review stage.

The procedures for submitting representations are set out below.

1. Deadline to Respond

The deadline to provide the required materials and representations on this matter is **September 15, 2023**.

2. The Relevant Provisions

The following provisions of the *Freedom of Information and Protection of Privacy Act* are under consideration in this review: s. 7 (duty to assist).

A complete copy of the statutory provisions can be found at:

<https://nslegislature.ca/sites/default/files/legc/statutes/freedom%20of%20information%20and%20protection%20of%20privacy.pdf>

3. Issue

will be forwarding the following issue to the Information and Privacy Commissioner for consideration:

Did the public body meet its duty to assist the applicant by responding without delay as required by s. 7 of the *Freedom of Information and Protection of Privacy Act*?

While completing the review, the Information and Privacy Commissioner may amend, add or remove issues under review. If this happens, you will be notified.

4. Burden of Proof

With respect to the duty to assist set out in s. 7, *FOIPOP* is silent as to who bears the burden of proof. Therefore, the parties must each submit arguments and evidence in support of their positions. However, it is the public body who failed to make a decision in this case and who is in the best position to discharge the burden of proof.

5. Parties to the Review

All persons receiving this Notice of Public Review Report are parties to the review with the following procedural rights:

- the right to make written representations;

- the right to receive a copy of the review report;
- the right to receive a copy of the public body's decision in response to the Information and Privacy Commissioner's review report recommendations; and
- may have standing to appeal the public body's decision to the Nova Scotia Supreme Court.

6. Representations and Your Right to Make Them

Representations are your opportunity to provide your evidence, written thoughts and legal arguments that explain why the Commissioner should decide in your favour.

The following persons are entitled by s. 37(2) of *FOIPOP* to make representations to the Information and Privacy Commissioner in a review:

- a) the person who applied for the review;
- b) a third party or applicant who was entitled to notice pursuant to *FOIPOP*;
- c) the head of the public body whose decision is the subject of the review; and
- d) any other person the Information and Privacy Commissioner considers appropriate.

At this time, the following individuals are entitled to be parties to the review process:

- a) the applicant, and
- b) the public body.

While completing the review, the Information and Privacy Commissioner may determine that others should be entitled to standing (see s. 37(2)(d)). Should this be the case, they will be provided with a Notice of Public Review Report, and you will be informed of the decision.

7. Review Report to be Publicly Issued

The Information and Privacy Commissioner's review reports are publicly issued. She may quote from your representations. If you intend to include information in your representations that cannot be shared with other review parties and the public, you will need to contact me prior to submitting your representations and make a request outlining the rationale for requesting an *in-camera* submission. If, following your request, you are granted permission by the Commissioner to submit all or part of your representations in private, you will receive additional guidance on how best to organize and submit them. Please keep the timelines in mind, additional time will not be granted for requesting and submitting *in-camera* submissions.

8. Procedures for Submitting Representations

In accordance with s. 37 of *FOIPOP*, the Commissioner has determined that all representations are to be made in writing.

All information already provided by the parties will be considered by the Information and Privacy Commissioner as she completes the review and may be addressed in her report.

If you wish to make written representations, you must deliver them by the due date found in item 1 above. Representations can be mailed, faxed or emailed to my attention; my contact information is below. If you are sending representations by mail, you must consider the deadline and leave enough time for it to be received by the deadline.

Mary Kennedy
Intake Manager/Investigator
Email: Mary.Kennedy@novascotia.ca
Fax: 902-424-8303
Mail: PO Box 181 Halifax, NS B3J 2M4

Please note that if required materials and representations are not provided by the due date found in item 1 above the file will move forward, and a review report will be issued without them.

Please contact me directly with any questions about this review or to request to provide in-camera (private) representations.

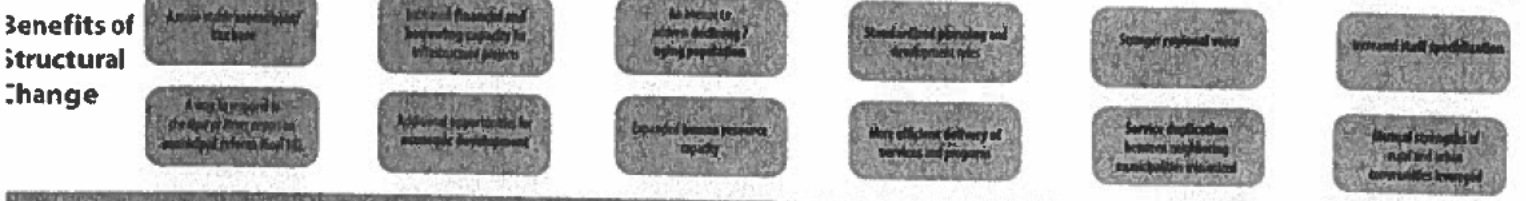
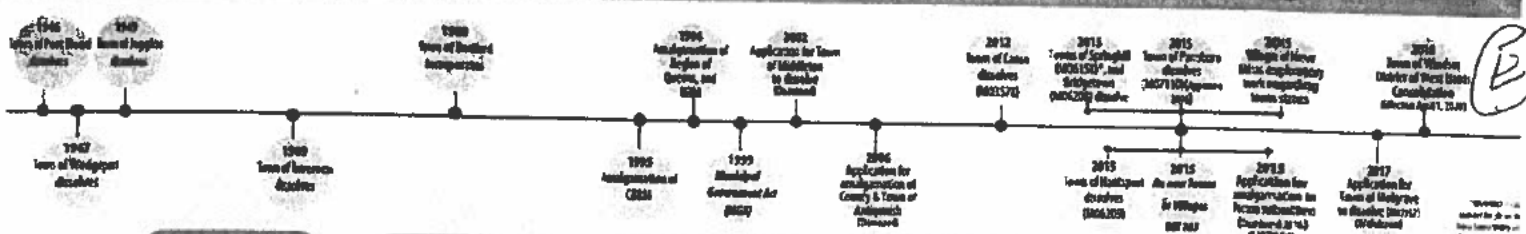
Sincerely,

A handwritten signature in black ink, appearing to read 'Mary Kennedy', written in a cursive style.

Mary Kennedy
Intake Manager/Investigator

Attachment

Structural Change in Nova Scotia Municipalities



Communication Strategy

Press Releases, Newsletters, Information Sharing, Open Houses

Critical Success Factor: PUBLIC ENGAGEMENT

The UARB Process

The process is evidence based with an overarching goal of an uncontested hearing. Generally, an applicant municipality and one or more receiving municipalities work together to restructure. All municipalities in Nova Scotia can apply to the Nova Scotia Utility and Review Board (UARB) to undergo structural change as outlined in Sections 358 to 402 of the Municipal Government Act (MGA). Prior to 1999, structural change was established by individual legislation.

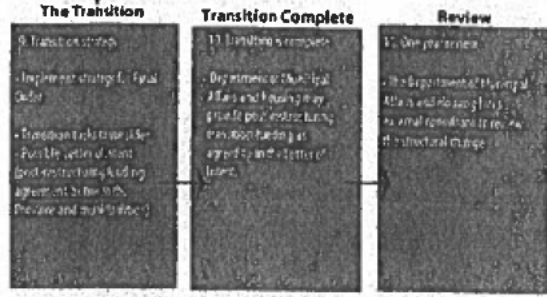
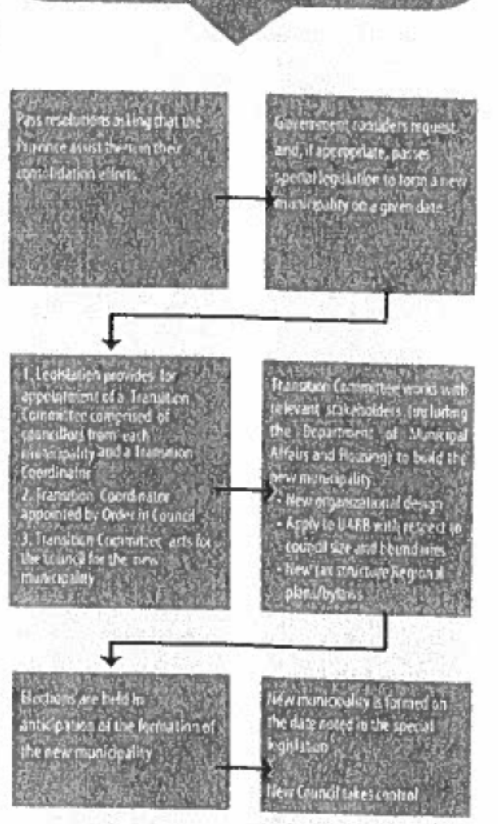
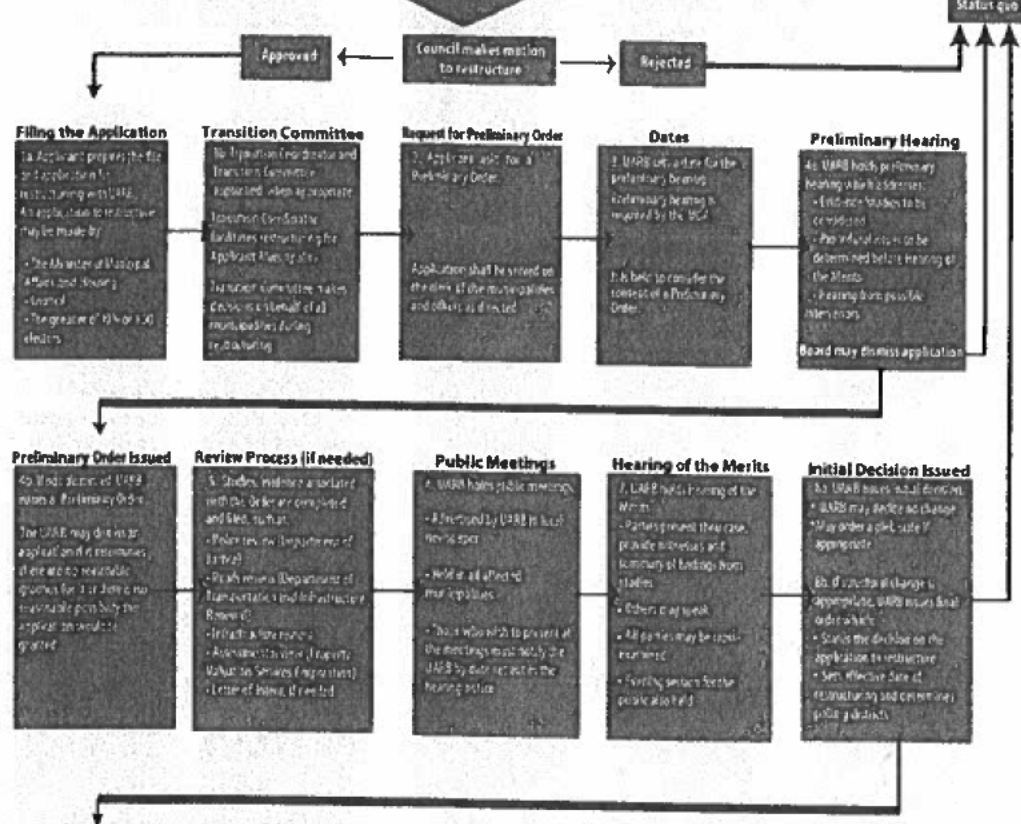
The applicant municipality may conduct local governance studies, hold a council meeting, and engage with the public. It recognizes that possible drivers may influence its well being, therefore, the municipality may decide to explore the process of municipal restructuring.

The Special Legislation Approach

Municipalities that agree that structural change is right for their region may approach the Province to request special legislation to consolidate into a single regional government. Once a decision is made, municipalities design and build a new municipality.

Queens Act HRM Act BRSS

The municipalities then work together to build their future, designing a new municipal unit to meet the needs of the combined region.



Success Stories

Town of Canso Dissolution
Residents of Canso experienced an increase in services and a decrease in taxes after dissolution. It was a success story.

Town of Bridgetown, Springhill, Hantsport & Parrsboro Dissolution
Water service after dissolution. Improved public services.

Success Stories

Queens - Liverpool Amalgamation
Municipalities experienced an increase in services and a decrease in taxes after amalgamation. First year budget savings of \$1.5 million. Standardized practices, policies, bylaws. KMP able to optimize resources. Everyone working towards the same goals. Lower tax in areas of Liverpool dissolved.

Windsor - West Hants Amalgamation
First intention. Regional focus on goals and strategy. Positive relationship between the two municipalities. Opportunities for staff development.

From: Glenn Horne
To: Barr, Nick; MacDonald, Ross
Cc: Jeff Lawrence; Peck, Mark A
Subject: RE: Information Poster
Date: September 13, 2021 8:43:36 AM
Attachments: [image002.jpg](#)
[image001.jpg](#)
[image004.jpg](#)

Good morning, Nick –

Thanks for your email. I understand the differences and origin – our Council will understand it as well through our conversations. However, the lived experience of our residents and local media is a relatively hostile and combative amalgamation process in 2006. To the point that even though we are consistently using the word consolidation, we are seeing to work amalgamation pop up organically because it is what they know. And with that comes all the perspectives and feelings of 2006 – all things we want to avoid this time.

That's why we feel it is important to provide a simple, clear graphic or one-page explanation of the differences between the two (ie: amalgamation is a specific process with the NSUARB that has been found to be ineffective in similar circumstances vs consolidation which is a process based on partnership and respect between two municipalities and deals directly with the province). Otherwise, we will have the negative experiences of 2006 colour the work we are trying to do today. We can draft something ourselves if necessary based on our understanding of the processes. However, I thought it would have greater standing and avoid some criticism from opponents if it came from DMAH, as the authority on municipal reform and a neutral party in our ongoing discussions.

We will know tonight, one way or another, if we are moving forward with discussions of consolidation. We will also be issuing a public statement tonight based on the outcome of the meeting. That means we will need to "clear the air" on amalgamation vs consolidation quickly in the next few days if we hope to avoid comparisons to 2006.

I hope this has made my request more clear. Please feel free to give me a call if you'd like to discuss further (902.870.9315).

Cheers,
Glenn

Glenn Horne | Chief Administrative Officer
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Honour Yesterday, Act Today, Inspire Tomorrow

From: Barr, Nick <Nick.Barr@novascotia.ca>
Sent: September 12, 2021 4:13 PM
To: Glenn Horne <glenn.horne@antigonishcounty.ns.ca>; MacDonald, Ross <Ross.MacDonald@novascotia.ca>
Cc: Jeff Lawrence <jlawrence@townofantigonish.ca>; Barr, Nick <Nick.Barr@novascotia.ca>; Peck, Mark A <Mark.Peck@novascotia.ca>
Subject: RE: Information Poster
 Glenn,

The truth is that we started to use the word "consolidation" because, to your point, the word

"amalgamation" has a very negative connotation for many residents.

That said, my advice is not to get too caught up in a debate over terminology, but focus on process. The fact that this will be a voluntary process where you folks determine what the new municipality will look like is the key difference between today and what you folks went through in 2005/06.

Part and parcel with the above is the fact that this process will not require any applications to the UARB to determine whether consolidation is in the best interests of the two communities; assuming you go forward, your respective councils will have already made that determination.

If you really need a way to distinguish between consolidation and amalgamation for the purposes of explaining things to Council, I'd be inclined to talk about the mandatory vs voluntary aspect noted above, the fact that the UARB will not be involved (other than for electoral boundary purposes), and the two communities will make their own decisions about what the new combined municipality will look like rather than having a third party make those decisions.

Does this make sense? Does it work for your purposes?

Thanks,

Nick



Nicolas A. Barr, B.Sc., J.D.
Director, Governance & Advisory Services

Maritime Centre, Floor 8 North, 1505 Barrington Street
PO Box 216, Halifax, NS B3J 2M4
☎ (902) 424-4656
✉ Nick.Barr@novascotia.ca

From: Glenn Horne <glenn.horne@antigonishcounty.ns.ca>

Sent: September 12, 2021 11:57 AM

To: Barr, Nick <Nick.Barr@novascotia.ca>; MacDonald, Ross <Ross.MacDonald@novascotia.ca>

Cc: Jeff Lawrence <jlawrence@townofantigonish.ca>; Barr, Nick <Nick.Barr@novascotia.ca>

Subject: Re: Information Poster

Good morning, Ross & Nick -

We have identified the need to clearly distinguish between amalgamation and consolidation as we prepare our early communications. This will be important for Council, media and the community, particularly because our previous experience with this was through amalgamation and this process is intended to be very different.

Whether it's the draft infographic you've shared or something else, it would be helpful if you could provide us with a simple resource that can be publicly shared to clearly explain the difference.

Thanks!

Glenn

Glenn Horne

CAO

Municipality of the County of Antigonish

From: Barr, Nick <Nick.Barr@novascotia.ca>

Sent: Wednesday, September 8, 2021, 4:57 p.m.

To: Glenn Horne; MacDonald, Ross


Cc: Jeff Lawrence; Barr, Nick

Subject: RE: Information Poster

Hey Folks!

I just wanted to send a quick message to confirm that we're fine with the information poster being made public as part of the agenda package so long as it's made clear that the document is a work in progress/draft. We certainly don't want anyone to be left with the impression that we're hiding anything from the public.

Thanks,
Nick



**Department of Municipal
Affairs and Housing**


Nicolas A. Barr, B.Sc., J.D.
Director, Governance & Advisory Services

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PO Box 216, Halifax, NS B3J 2M4
☎ (902) 424-4656
✉ Nick.Barr@novascotia.ca

From: Glenn Horne <glenn.horne@antigonishcounty.ns.ca>
Sent: September 8, 2021 1:58 PM
To: MacDonald, Ross <Ross.MacDonald@novascotia.ca>
Cc: Barr, Nick <Nick.Barr@novascotia.ca>; Jeff Lawrence <jlawrence@townofantigonish.ca>
Subject: RE: Information Poster

Thanks, Ross. Antigonish had a plebiscite too in 2006. That is the origin of the question – we expect some will feel it is a normal part of the process and expect it be done again.

Cheers,
Glenn



Glenn Horne | Chief Administrative Officer
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Honour Yesterday, Act Today, Inspire Tomorrow

From: MacDonald, Ross <Ross.MacDonald@novascotia.ca>
Sent: September 8, 2021 1:22 PM
To: Glenn Horne <glenn.horne@antigonishcounty.ns.ca>
Cc: Barr, Nick <Nick.Barr@novascotia.ca>; Jeff Lawrence <jlawrence@townofantigonish.ca>
Subject: RE: Information Poster

Hi Glenn – I am going to double check on this but I believe the only plebiscite was in Pictou County in 2015. I will confirm.

Meanwhile – given that you will be providing a package to council for the 13th – I have added a draft note on the attached information poster. Can we ask that you use this version?

Much appreciated,
Ross

From: Glenn Horne <glenn.horne@antigonishcounty.ns.ca>
Sent: September 8, 2021 12:58 PM
To: MacDonald, Ross <Ross.MacDonald@novascotia.ca>
Cc: Barr, Nick <Nick.Barr@novascotia.ca>; Jeff Lawrence <jlawrence@townofantigonish.ca>