

DeMont Law

Barristers & Solicitors

File No. 15044

February 2, 2016

Via Email

To: scott.conrod@townofpictou.ca

MOU STEERING COMMITTEE
c/o Scott Conrod,
Project Manager MOU
P.O. Box 640
Pictou, Nova Scotia
B0K 1H0

RE: Municipal Co-Operation MOU-Human Resources - HR REPORT

Dear Mr. Conrod:

Further to your instructions, we provide the following report in relation to the Human Resources issues.

Part 1: Background

➤ **Purpose of Report**

This firm has been engaged by the MOU Steering Committee to provide an analysis of, and comments and recommendations in Human Resource related issues arising from the proposed amalgamation of the four participating municipalities (hereinafter PMUs), namely the towns of New Glasgow, Pictou, and Stellarton, and the Municipality of the County of Pictou.

Raymond Chabot Grant Thornton (hereinafter "RCGT") have reported on the proposed employee structure of the proposed new municipality (hereinafter

“NM”) should an amalgamation of the PMUs be approved. The RCGT Report on Human Resource Analysis dated November 18, 2015 can be found on the Utility and Review Board (UARB) website as Exhibit P-20 (filed 2015 11 27).

The RCGT Report contains the consultant’s findings on the existing human resource conditions, the consultant’s recommendations, and suggestions in relation to the organizational structure of the NM.

In light of the RCGT Report, this report attempts to place those Human Resource recommendations within the legal context and legislative framework existing within the Province of Nova Scotia.

➤ **Confidentiality**

Certain aspects of this report contain information that is confidential, private or otherwise subject to protections not waived by third parties. Protections for those third parties, principally the employees of the PMUs and in some circumstances their representative unions, dictate that this report be treated as confidential. For this reason, disclosure of this report in hard copy and on the UARB Public Document Database should be limited. Consideration of third party rights to privacy should be considered by the users of this report prior to dissemination. This report is prepared for the benefit of the Steering Committee in its deliberations relating to evaluation of the proposed NM and should be received *in camera* and treated as such pursuant to s. 22(2)(c), (d), (e) and (g) of the Municipal Government Act, S.N.S 1998, c. 18 (hereinafter the “MGA”).

➤ **Governing Legislation**

The Human Resource issues arising under the proposed voluntary amalgamation are principally but not exclusively related to matters of a) Severance of the departing workforces; b) Pension Plan reform and

continuation; c) Hiring decisions; and d) Terms of Employment for both unionized and non-unionized employees. These matters are addressed under the following legislation:

- Municipal Government Act (“MGA”)
- Trade Union Act (“TUA”)
- Labour Standards Code (“LSC”)
- Pension Benefits Act (“PBA”)
- Police Act (“PA”)
- Regulations promulgated under the above noted legislation.

Employment and labour laws also recognize common law principles. All analysis herein attempts to take into consideration those common law principles and legislative standards applicable within Nova Scotia.

➤ **Parties/Participants and Overview of current day organization**

As noted above, the parties to the voluntary amalgamation are the towns of New Glasgow, Pictou and Stellarton along with the Municipality of the County of Pictou. Within each of the party municipalities there are managers, non-unionized employees and unionized employees.

Within the Town of New Glasgow unionized employees are represented by the Canadian Union of Public Employees, or CUPE, Local 281. The certification order includes the classifications relating to the Public Works Department (Environmental Services, Transportation Services, Mechanical Services, and Water Treatment), Fire Department and Recreation Department. The Town of New Glasgow and CUPE have entered into a Collective Agreement dated November 13th, 2013 with an expiry date of February 28th, 2017.

The Town of Pictou unionized employees are likewise represented by CUPE Local 281 and have entered into a Collective Agreement dated June 29th, 2012

which expires on March 31, 2016. The Bargaining Unit is comprised of employees within the Public Works Department and would be described as 'outside' workers.

The Town of Stellarton and CUPE Local 281 have entered into a Collective Agreement dated February 9th, 2015 but effective from April 1, 2014 and set to expire on March 31st, 2017. The included employees are 'outside' workers, principally engaged in public works, but as of February 2015 the Custodian is also included

Finally, the Municipality of the County of Pictou unionized employees are represented by the Nova Scotia Government and General Employees Union (NSGEU) Local 60. The Collective Agreement is scheduled to expire on March 31st, 2017. The Certification Order provides for the bargaining unit to consist of "all full-time and regular part-time administrative, office and clerical employees of the Municipality of County of Pictou, Pictou, Nova Scotia, but excluding the Chief Administrative Officer, Deputy Municipal Clerk, Deputy Municipal Treasurer, Director of Public Works, Director of Municipal Social Services." This bargaining unit also includes the category described as "Public Works Labourer", "Recreation Coordinator" and "By-law/Dog Control". The municipality Collective Agreement covers both inside and outside workers.

➤ **RCGT Report on Best practices**

RCGT's analysis looked at best practices for sizing municipal workforces. The analysis and recommended size of the NM workforce is based on the comparisons against certain developed metrics which metrics have been benchmarked against other municipalities.

The resulting analysis, when applied to the metrics of the NM, would call for a reduction of the existing workforce by 16 employees, 8 unionized and 8 non-unionized. This workforce complement is the basis for the analysis that follows.

The recommended reductions come from a decrease in management staff of eight employees, from 32 to 24. Reductions of similar magnitude are proposed for unionized staff. The proposed reduction is to bring the number of Public Works employees from 90 to 85 and Community Development staff from 15 to 13 full time equivalents (“FTEs”).

Comments below reflect the necessity for two discrete frameworks with which to deal with the proposed reductions – one for unionized staff pursuant to the *Trade Union Act* and the collective agreements and the other for (non-unionized) managers pursuant to the *Labour Standards Code*.

➤ **Principles relating to Responsibility for Implementation and Execution of Human Resource Plans**

The *Municipal Government Act* provides the general legislative framework for the amalgamation process. As noted within the Application for Amalgamation, this application is made under s. 358 of “Part XVI – Boundaries” of the MGA. Unlike Part XVII – “Municipal Incorporation”; Part XVI is silent as to treatment of employees. The Municipal Incorporation Part addresses transitional measures for the establishment of a Regional Municipality

Regardless of the section under which the PMUs apply, the provisions of the TUA and the LSC apply except to the extent they have been specifically exempted. Were the MGA transitional provisions to apply, the requirements are essentially those of the TUA and LSC. Alternatively, should the MGA Part XVII provisions not apply, the TUA and LSC apply nevertheless. There is little or no

doubt that the employees will expect to benefit from the common law and statutory protections, the only doubt surrounds which mechanism affords the protection. This is an academic question only, and the uncertainty arises in that the approach of the PMUs – for a voluntary amalgamation of equal partners – is a new or novel approach to municipalities interested in reform.

Past experience of municipal amalgamation, in the form of the establishment of the HRM and the CBRM, provide little guidance to the PMUs. Accounting for the voluntary nature of the application, the parties have respectfully suggested that this amalgamation is unlike recent experience in other parts of Nova Scotia such as Springhill and Bridgetown. Nor is it a Regional Municipality as the PMUs do not comprise the entirety of the municipalities within the county.

Had the application for amalgamation been made pursuant to Part XVII – Municipal Incorporation, the former municipalities would have been forbidden to change terms of employment. That duty would have fallen to the Coordinator appointed by the Governor in Council with the costs of such changes to be borne by the NM.

Without helpful precedent, it is opined and suggested that the principles and rationale of Part XVII be applied to these circumstances.

The principles appear that the **old municipalities ought not to burden the new municipality with costs that have not been accepted by the NM** (as embodied by the new council or during the transition, by the Coordinator).

Furthermore, absent the consent of the coordinator or the new council, **the old municipalities should be forbidden to replace retiring, resigning, laid-off or dismissed employees [of the old municipality] nor shall they promote, or hire employees except as term employees whose terms expire before the**

establishment of the new municipality. The new municipality may take such steps but only for the new municipality's account.

These two principles are aimed at protection of the NM from abuses by the amalgamating municipalities seeking to advantage their employees over those of the other participating municipalities.

A third principle is that the **Labour Relations Board (now the Labour Board) has authority over matters relating to the application of Collective Agreements, Certification Orders** and the like.

Finally, for the purposes of the UARB, the MGA would suppose that the decisions in relation to how many employees are dismissed, laid-off or otherwise severed from their employment, who those employees are and on what terms the severance should take place, would be decided by the Chief Administrative Officer on the advice of the Department heads. The rationale for this principle is that it respects the Chief Administrative Officer model of governance.

Part 2: Pension and Employee Benefits

➤ Pension Promises made by existing Employers

The PMUs each have made a 'pension promise' to their respective employees. The Town of New Glasgow has entered into a Defined Benefit plan, while the other three PMUs have Defined Contribution plans.

➤ Defined Benefit ("DB") vs. Defined Contribution ("DC")

The promise made in the New Glasgow DB plan is set out in s. 8 of that Pension Plan text. For ease of reference the New Glasgow plan ("NG Plan") text

is attached to this report as an Exhibit. The NG Plan incorporates a “Rule of 85” whereby a member of the plan may retire without reduction in the accrued pension provided the member satisfies the two conditions of the rule, namely being at least 55 years of age and also having a combined age and years of continuous service to the employer that add up to at least 85.

The three PMUs with DC plans have the following contributions:

Employer	Employee Group	Employer Contribution	Employee Contribution
Mun. of County of Pictou	Union	Employee amount +1%	5% or 6% -- Discretion
Mun. of County of Pictou	Non-union	7% of Earnings	7% of Earnings
Town of Pictou	Union	Matched	Up to 7% -- Discretion
Town of Pictou	Non-Union	Matched	Up to 7% - Discretion
Town of Stellarton	Union	7%	7%
Town of Stellarton	Non-Union	7%	7%

The Town of New Glasgow’s DB plan requires the following Employee Contributions:

Employer	Employee Group	Employee Contribution
Town of New Glasgow	Union and Non-Union	6.1% of Earnings up to YMPE plus 7.6% of Earning above YMPE

“YMPE” is Year’s Maximum Pensionable Earnings as set by the Canada Pension Plan

Each of the DC plans are, as would be expected, money purchase plans. In each of these plans the plan text calls for purchase of an annuity, or pension plan which is made on behalf of the Employee from the contributions made by the Employee and the Employer for the benefit of the Employee. In each case, the annuity will be required to make periodic payments for a minimum of ten years. Each provides for typical survivor spousal benefits.

Each of the DC plans have a 'portability' provision allowing the member to transfer the funds held to the credit of the Employee in the plan to another registered pension plan (so long as the receiving plan so allows) or to other permitted registered plans (typically RRSP, RRIF etc as permitted by the applicable legislation).

All of the plans permit the termination of the plan at the discretion of the Employer (subject to legislation, and agreements outside of the Plan texts such as collective agreements and employment contracts).

➤ **Funding Deficiencies**

By their design, DC plans do not have a deficiency – they buy what benefit the accumulated contributions and the earnings made on the contributions (less authorized expenses) will buy.

DB plans may have deficiencies – where the promises made cannot be fully paid for by the plan funds. These deficiencies are regularly estimated by actuarial evaluations. There are two types of deficiencies -- Going Concern and Solvency Deficiencies.

Going Concern deficiencies are calculated in accordance with a “going concern valuation” which is defined in the regulations made pursuant to the Pension Benefits Act, as

“... a valuation of the assets and liabilities of a pension plan using actuarial methods and assumptions that are consistent with accepted actuarial practice for the valuation of a continuing pension plan” (emphasis added)

A Solvency Deficiency is one that is determined by a solvency valuation, which is defined as:

“a valuation of the solvency assets and solvency liabilities of a pension plan ... using actuarial methods and assumptions that are consistent with accepted actuarial practice for the valuation of a pension plan, determined on the basis that the plan is being wound up and otherwise meeting the requirements of these regulations” (emphasis added)

Through regulatory amendment, the Province has previously provided for certain exemptions for Solvency Valuations for specified plans. Municipal plans such as the NG Plan qualify for this exemption. The exemptions do not avoid the solvency valuation requirements, but do allow for the exemption from special payments to address solvency valuation shortfalls.

The most recent valuations in respect to the NG Plan are provided for in the Morneau Shepell Actuarial Valuation as at July 31, 2015. Their opinion is summarized as follows: As at July 31, 2015 the plan is fully funded on the going-concern basis; the plan is funded at approximately 82.7% on a solvency basis and therefore will need to complete annual valuations until the plan solvency ratio is up to 85% or above.

➤ **Pension Plan Options for NM**

With the assumption that all NM employees should be treated equitably, in accordance with their respective stations, the options for consideration by the NM would include (but not be limited to) the following:

- a) Wind up of all existing Plans, and create a NM Plan;
- b) Wind up all existing Plans and join existing Public Service Superannuation Plan (PSSP) or other 'target benefit' Plan;
- c) Convert DB Plan members to a combined DC Plan;
- d) Convert DC Plan members to the existing DB Plan;
- e) Continue a pension promise to the existing employees and create a different promise for new employees.

It would be prudent for the NM to do a cost benefit analysis of a variety of options going forward. We are advised that the Steering committee has outlined the need for such a study in their Letter of Intent request. The actuarial and conversion costs would inform any decision by the NM. Implementation of any such analysis is will require engagement with the employees or their bargaining agent.

The DC plans of the other three PMUs would permit the transfer of credits to the NG Plan, based on the purchase of 'years of service', such that all existing employees would fall under the continued NG Plan and be covered by a DB plan. DC plan Employees might be given the option to choose to buy service in the DB plan or to 'lock in' the winding up DC plans credits in other individually controlled vehicles as authorized by the legislation and begin another plan with the NM.

We have been advised that throughout the Halifax Regional Municipality amalgamation in the 1990s one of the most difficult elements of the amalgamation centred on the pension issues. One purpose of this analysis is to make clear that the NM will have difficult choices to make to address the

pension issues. Those choices will centre around the wind-up costs in New Glasgow, and the benefits going forward for existing employees in DC Plans.

At the risk of repetition, the NM council would be wise to consider all options based on actuarial, legal and policy advice. As noted above, an alternative may be to work with existing plans, such as the Public Service Superannuation Plan. Resulting from the size of the PSSP, certain economies of scale can be realized and the risks spread more broadly and the nature of the 'target benefit' plan has considerable appeal.

➤ **Policing Pension Plan Issues**

Due to the decision to exclude policing in the current amalgamation planning, as supported by the Minister of Justice and Attorney General's letter (UARB Exhibit P-9) consideration of pension plan issues relating to the Atlantic Police Association have not been taken into consideration and are not part of the analysis herein.

➤ **Pension Promises in Collective Agreements and Collective Bargaining**

Because pensions are a part of compensation, any discussions relating to pension plan reform, wind-up, reestablishment will require discussions with the unionized employee's representatives.

➤ **Other benefits**

Pensions are but one part of overall employee compensation. Such additional benefits, for example health and dental benefits, will have to be addressed upon amalgamation to allow for consistency among the workforce.

Part 3: Collective Bargaining – New Union, New Classifications

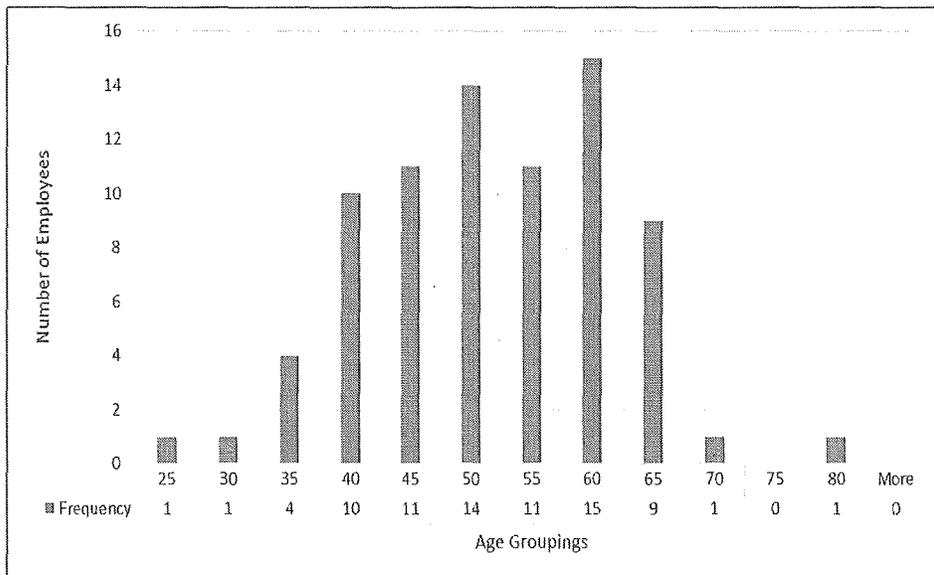
➤ Existing Unionized Employee Landscape

The RCGT Human Resources report provides an overall background to the existing workforce complement. The confidential employee database provides the raw data to develop a general picture of the workforce. The age and years of service data allow for an analysis of the overall unionized workforce makeup.

As noted above, four collective agreements are in effect.

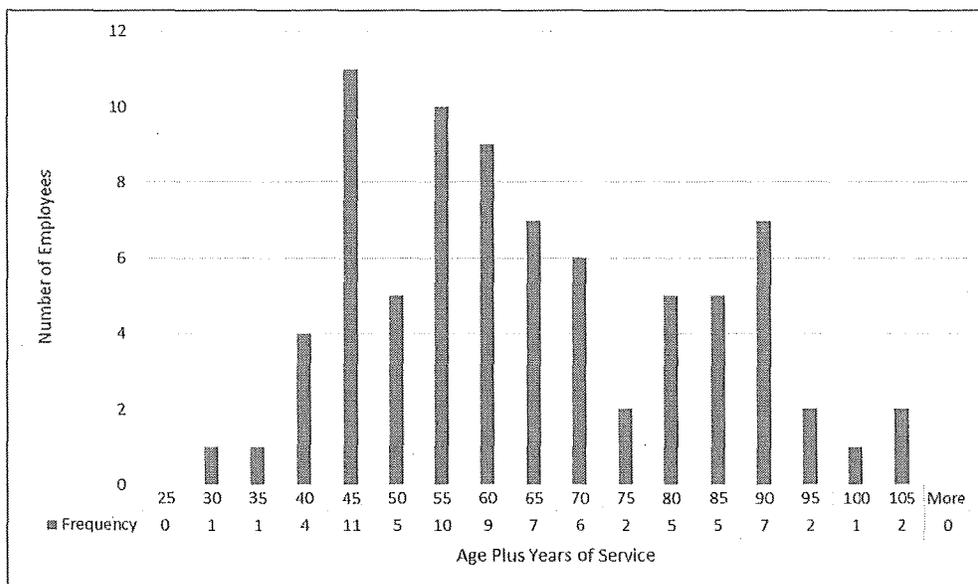
The following table provides a snap-shot of age data for the unionized cohort:

Chart 1. Age of Unionized Workforce



The following table provides as snap-shot of the age plus years of service data for the unionized workforce:

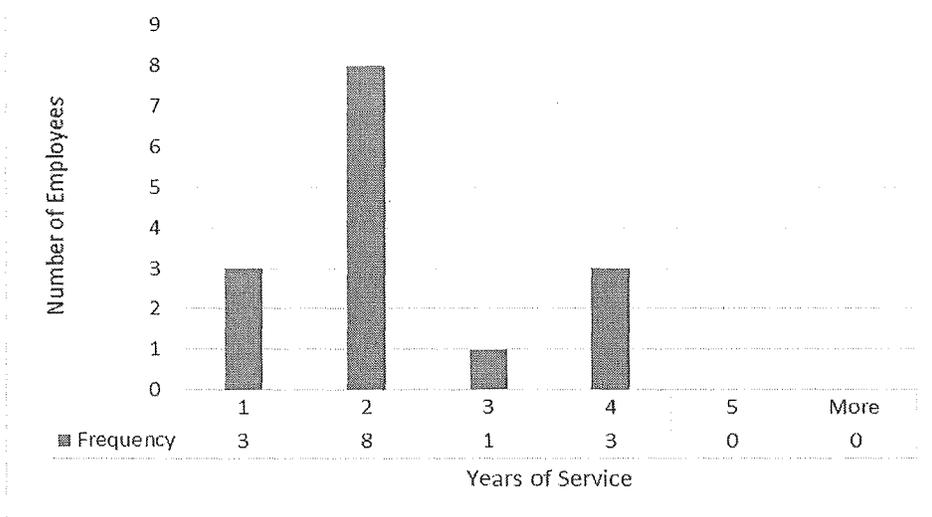
Chart 2. Age Plus Years of Unionized Workforce



The two Charts above draw attention to the relative aging of the workforce. There are 78 members of the unionized workforce in the four PMUs. Of the 78 unionized employees only two are under the age of 30. Forty members of the unionized workforce (slightly more than 51%) are more than 45 but less than 60 years of age. There are a total of 12 employees with more than 85 years of combined age and service.

The following table provides a snap-shot of the 15 newest hires within the unionized workforce:

Chart 3. Years of Service – Most Recently Hired



The average number of years of service for the lowest eight in seniority is 1.53, with an average annualized total cost (salary and benefits - rounded) of \$46,500.00.

The benchmarked employee complement provided for by the RCGT report suggested the reduction of the unionized workforce by eight employees. These reductions can be achieved through one or more approaches. The employer could seek to reduce the number of employees by attrition (not replacing those workers that leave their employment for whatever reason), with a call to the senior members to surrender their employment (perhaps with reliance on Employment Insurance programs established to make way for younger employees). Another option is through lay-offs of the least senior employees as according to the provisions of the collective agreements. Any such course of action should involve discussions with the unionized employee's representatives.

Any such approach or a combination of approaches to reducing the workforce would, due to the numbers involved and the severance provisions in the collective agreements or where silent under the TUA, be immaterial to the overall cost of labour which has an approximate annual cost of \$3.75 million dollars.

➤ **Successor Employer**

The Trade Union Act, s. 31, provides the continuation of Collective Agreement obligations, in the circumstance of a transfer of a business or operations where the employer is bound by or party to a collective agreement. "*Unless the [Labour] Board otherwise directs*" the successor employer continues to be bound by predecessor employer's collective agreement obligations.

There can be no doubt that the NM will be a successor employer in relation to the unionized employees.

➤ **Classifications and "pooled" employees**

It is possible that some non-unionized employees would be classified similarly to those within the current unions. The NM for an efficient and effective workforce, will require harmonization of classifications within the four collective agreements. The objective of such a classification review and harmonization will be to encourage workforce efficiencies through streamlining the duties, allowing for a broad scope of work for many employees. Full-time pools of divisional employees would be supplemented with other full-time pools of employees who transition between divisions to fulfill the highest need and seasonally demanded labour requirements.

Such a flexible pooling of workers will allow for younger employees to have a taste of the variety of duties municipal employees may engage in, allowing for the matching of skills with interests.

➤ **Seniority Issues**

Determination of which employees are assigned to particular classifications will be an exercise in credentialing, harmonizing and efficiently staffing the various departments. This process will be based in part on seniority. 'Bumping' may be a factor that will have to be considered.

As noted above, the lay-off of unionized staff will take place through any employee self-nomination for retirement, early retirement or attrition. In the event insufficient number of employees fail to self-nominate, the employer will, using the provisions in the collective agreements, lay-off based on seniority.

It is estimated the level of lay-offs will be immaterial on the financial statements of the NM and we have therefore recommended that at most, a modest provision be made for costs of transition of the organized workforce.

Part 4: Severance, Layoff, Retirement & Attrition for Non-unionized Employees

➤ Non-unionized Employees -- Contracts of Employment

Terms of employment are characterized as contractual. We speak of 'employment contracts', although generally and largely in the present situation, the contract is not a written contract, or is only partly committed to writing in an employment letter or non-union worker employment policies.

As generally found, the present employers do not have a comprehensive employment contract database nor are there specific written employment contracts for each employee. Very few of the existing non-union employees have a complete written employment contract. Each employee's rights are specific to the terms under which they were hired. In one instance there is a contract with specific severance terms. Otherwise, it would appear that the severance provisions are largely unwritten.

The total payroll for the four PMUs is about \$6.8 million. The 18 senior leaders have an annualized payroll cost of slightly more than \$1.8 million. We have analyzed the terms of employment for these 18 employees and calculated a global severance cost, were all members of the senior management teams to be severed. That global severance cost is estimated at \$1.6 million.

The methodology to arrive at the severance costs of each employee was to examine the nature of the employment, together with the employee's age, years of service, salary, managerial responsibilities, the so-called *Bardal* considerations. We looked to see if there were any 'special circumstances' giving rise to greater or lesser notice requirements.

Mr. Justice McRurer, in *Bardal v. Globe & Mail Ltd.* [1960] O.W.N. 253, (1960), 24 D.L.R. (2d) 140 (Ont. H.C.), wrote as follows in relation to non-unionized employees at paragraph 21:

There can be no catalogue laid down as to what is reasonable notice in particular classes of cases. The reasonableness of the notice must be decided with reference to each particular case, having regard to the character of the employment, the length of service of the servant, the age of the servant and the availability of similar employment, having regard to the experience, training and qualifications of the servant.

The sensitivity of the information used to come to the severance estimates dictates that the detailed analysis not be provided coincidental with this report.

The RCGT report recommends that elimination of eight of these managers is the appropriate, benchmarked, required reduction in the senior management complement.

It is not within the purview of this report nor the responsibility of the author (or for that matter the Steering Committee, the UARB or the existing councils) to select the employees of the NM. Without knowing which of the 18 employees will remain with the NM, the ability to provide a specific severance cost is impossible.

Different methods can be applied to approximate the magnitude of the actual severance costs, as it is unlikely that all senior managers would be severed and a new group hired to go forward. In all foreseeable circumstances, some of the existing employees will be working for the NM after a voluntary amalgamation.

One method, for example, would be to simply divide the global severance cost above in half. Another approach is to calculate the average severance cost of the 18 employees and multiply that average by eight, the likely number of

eliminated employees. Alternatively, one could attempt to guess who will stay and who will leave their employment. Many other alternatives are available. For the purposes of this exercise, we have taken both a high and low estimate informed by the need to ensure all the required employment functions are filled.

Each method has flaws, and the end result is an 'order of magnitude' estimate.

Applying each of the methods noted above, the severance cost would be as follows:

Method	Cost
½ the severance cost	\$800,000
Average severance x 8	\$715,000
Best guess (high)	\$879,000
Best guess (low)	\$637,000
Average of above	\$757,750

To err on the side of conservative estimates, the Steering Committee should consider and will likely want to use the average rounded up to \$800,000.00.

Part 5: Conclusions

The existing municipalities should each undertake to behave in a manner that respects the workforce, is fair to the other PMUs and is cautious with the public treasury. Several recommendations have been made which, in substance, follow the principles established in the transition sections of Part XVII of the Municipal Government Act.

The existing municipalities have made certain pension and benefit promises to their respective employees. The NM must be prepared to commit financial and human resources to the harmonization of those pension and other benefits. This will be challenging. The existing Defined Benefits (DB) plan in the Town of New Glasgow has a significant wind-up / solvency deficiency. The NM will have to determine if it is willing to carry forward a DB plan for new employees, and if it is willing and able to transfer existing Defined Contribution plan employees into the DB Plan. Furthermore, the NM will have to consider if the Town of New Glasgow DB plan is the appropriate plan going forward or if existing alternatives might be more suitable, for example the Public Service Superannuation Plan (PSSP).

Considerable work will be required by the NM (or by the transition team leading up to the empowerment of the NM) to settle several issues with the organized labour force. For example, will the NM have one union for all organized labour (and will there be a run-off between the existing Bargaining Agents) or two unions, representing inside and outside workers respectively?

The NM will need to negotiate new collective bargaining agreements with organized labour. Furthermore, the NM will need to set terms of employment with the senior employees.

The manner and timing of selection of NM staff will call for considerable sensitivity to the needs of the NM and the quantity and quality of work to be done by the NM, all with an appropriate human resource strategy in place.

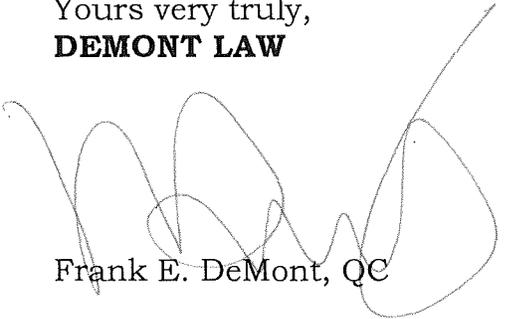
Severance, attrition, lay-offs and voluntary surrender of employment all have to be considered in aligning resources for an efficient and effective workforce. With some 'order of magnitude' allocation of financial resources, the NM

workforce can be appropriately sized and successfully implemented to provide for minimal job losses, and greater efficacy in the workplace.

We trust this report is of assistance to the Steering Committee in consideration of the human resource challenges ahead. If we can provide further particulars or offer any further assistance, we would be pleased to do so. Should the Steering Committee have any questions, please contact the undersigned.

We remain,

Yours very truly,
DEMONT LAW

A handwritten signature in black ink, appearing to read 'Frank E. DeMont', is written over the typed name. The signature is fluid and cursive, with a long, sweeping tail that extends upwards and to the right.

Frank E. DeMont, QC

FED:pb