

DEPARTMENT OF  
MUNICIPAL AND PROVINCIAL AFFAIRS

**AN INVESTIGATION  
INTO THE FINANCIAL AND OPERATIONAL ACTIVITY  
OF THE  
COUNCIL OF THE TOWN OF PORT AU CHOIX**

SUBMITTED TO

HONOURABLE MINISTER JACK BYRNE  
MINISTER OF MUNICIPAL AND PROVINCIAL AFFAIRS

SUBMITTED BY

DAN NOSEWORTHY  
MUNICIPAL AFFAIRS ANALYST

FEBRUARY 2, 2005

EXECUTIVE SUMMARY

In response to a written request by the Council of the Town of Port au Choix and a verbal request by the Concerned Citizens Committee in the town, Honourable Minister Jack Byrne, Minister of the Department of Municipal and Provincial Affairs announced that an investigation into the financial and operational activity of the current Council would be undertaken by officials of the Department.

Under the supervision of John Moore, the Director of Regional Operations, the investigation was to be performed by Municipal Analysts Dan Noseworthy and Rhonda McLean. The investigation was undertaken between November 30 and December 10, 2004. The investigation consisted of a review of Council records, attendance at public meeting, and interviews conducted with various interested individuals and groups in the municipality.

During meetings with the public, a number of concerns were raised pertaining to the activity of the current Council. However, a review of the records of Council did not support the allegations made by the residents. It appears the basis for the conflict in the municipality is attributed to the nature of the decisions being made by Council rather than the manner in which they were made. There was nothing identified which would support the removal of the current members of Council as requested by the Concerned Citizens Committee.

The investigation did confirm that the town is in a difficult financial position that requires immediate action by the Council. It was determined, however, that the financial position can be attributed to the actions of former councils and not the current.

## MANDATE

In response to a written request (Appendix 1) by the Council of the Town of Port au Choix (the Council), and a verbal request by the Port au Choix Concerned Citizens Committee (the Committee), the Honourable Jack Byrne, Minister of Municipal and Provincial Affairs announced on November 25, 2004 that an investigation into the operational and financial practices of the current Council of the Town of Port au Choix would be conducted by officials of the Department (Appendix 2).

This document is the report on the investigation undertaken by Dan Noseworthy, Municipal Analyst with the Eastern Regional Office who was assisted by Rhonda McLean, Municipal Analyst with the Western Regional Office. John Moore, Director of Regional Operations was assigned overall responsibility for the investigation.

The investigation became necessary due to the level of conflict and civic unrest existing between residents of the community and current Councillors resulting in, among other actions, members of the Committee occupying the town office on November 8, 2004 thereby preventing Council from holding a meeting. The occupancy of the office was associated with activity such as the unauthorized removal of Council's Pay Loader from its quarry site to the town hall. This particular action was deemed necessary by the Committee in response to what the Committee members believed was the inappropriate involvement of members of Council in the arrest of a Council employee. The employee was not working at the time of the arrest.

In addition to the perceived involvement of Council in the arrest, the Committee indicated the

action was being taken and the meeting disrupted because they believed the Councillors were not making decisions in the best interest of the community and requested that all Councillors resign. They also requested that a special election be conducted in which a complete complement of Council would be elected. On November 12, both Mayor Vachon Noel and Deputy Mayor Alice Bromley tendered their resignations. Remaining Councillors Stella Mailman, Jocelyn Kennedy, Kirby Spence, and Tony Spence refused to resign as requested.

While during the conduct of the investigation there were many issues raised by the current Council, the Committee representatives, and the general public, it must be clear that the mandate of this investigation was to review the practices of the current Council, and not those of previous administrations.

### APPROACH

The investigation into the financial and operational practices of the current Council was undertaken between November 30 and December 10, 2004. Specifically, the records of Council including the minutes of meetings, the cheque disbursements journal, and other Council documents were reviewed to determine whether the actions of the current Council were in compliance with the requirements of the Municipalities Act, the Public Tender Act, and the Urban and Rural Planning Act.

Between November 30 and December 3, the minutes of Council meetings held during the term of the current and prior Councils were reviewed by Dan Noseworthy and Rhonda McLean. The purpose of this exercise was to determine whether the business of Council was being properly recorded, and more importantly, that the decisions made by Council were in accordance with

statutory requirements. As many of the decisions made by the current Council were impacted by previous Council decisions, the minutes of all meetings held between January 2000 and November 2004 were reviewed.

Also during this week, the financial activity of the Council between January 2000 and November 2004 was reviewed. This involved a review of the expenditure records of Council, annual budgets, and audited financial statements. As with the minutes of Council meetings, this period was identified as being adequate to both ensure compliance with statutory requirements, and to gain an understanding of the financial practices and obligations of council.

While the purpose of the review of Council records provided an opportunity to ensure compliance and to gain an understanding of the financial position of the town, it also served to provide a knowledge-base required to adequately conduct informed discussions with individuals and groups in the community, and to be able to respond appropriately to issues raised during discussions with Committee members and the general public. These meetings were conducted during the week of December 6 - 10, 2004.

### MEETING SUMMARY

This section includes summaries of a public Council meeting, a public meeting with concerned citizens ( Question and Answer Session), and of meetings held with individuals and groups during the investigation. The meetings with individuals and groups were conducted both in person and by phone.

#### Public Council Meeting

A regularly scheduled meeting of Council was held at 7:00 p.m. on November 30, 2004. This was the first meeting held after the by-election in which Terry Aylward was elected to Council. It was also the first meeting that Stella Mailman presided over as Mayor, and Jocelyn Kennedy as Deputy Mayor. The meeting was attended by approximately 65 residents of the community. The meeting was opened as a public meeting and continued for approximately two hours. The remaining portion of the meeting was then declared to be privileged and this portion lasted for an additional four and a half hours.

The location of the meeting had to be changed due to the regular Council chambers not being large enough to accommodate the number of residents attending the meeting. Unlike previous meetings of Council held during the period of civic unrest, this meeting proceeded without significant altercation. It was quite obvious that the presence of a Department official at the meeting impacted the manner in which residents conducted themselves. At previous and subsequent meetings held without representation from the Department, there was considerable disruption from those in attendance to the point that Council business could not be adequately addressed.

It is my experience that, given the opportunity, disgruntled residents will impede the conduct of Council business. To avoid this situation, it is imperative that the chairperson conduct all meetings with authority. Such was not the case at the November 30 meeting. During the public portion of the meeting, Mayor Mailman did not appear confident in directing the business of Council, and on a number of occasions appeared unable to control heated debates between Councillors Terry Aylward and Kirby Spence. During much of the meeting, those in attendance could not hear the comments made by the Mayor, and it appeared from time to time she was uncertain as to what the issues were and how to address them.

I feel this can be attributed to the fact that the Mayor was presiding over her first public Council meeting and the intimidation factor associated with a potentially conflicting environment. This matter was discussed with Mayor Mailman during a private meeting with Council held on December 8. I impressed on her the importance of maintaining control of all Council meetings, especially those held under extremely volatile conditions.

In general, the public portion of the meeting was held without incident. Such was not the case with the privileged portion of the meeting. There were a number of highly controversial issues discussed which created much of the tension between the Council and the Committee.

Councillor Aylward represented the perspective of the Committee and Councillor Kirby Spence provided the perspective of Council. The debate was highly heated and often out of control. Without my intervention and that of the new Clerk, there would have been little civil discussion on many of the issues. This was the first opportunity for the concerns of the Committee to be presented directly to Council by a fellow Councillor, and it was obvious that all issues were tabled.

In retrospect, it was better that the intensity of the debate occur in the presence of an official of the Department who was able to provide an independent perspective, and insert a little civility into the discussion when required. I feel that both parties had some legitimate concerns. Other comments made by both parties were fundamentally incorrect or unjustified. During the discussion, support was provided when appropriate, and correction when required.

Overall, the meeting was relatively productive from the point of conducting the business of the town, and it provided an opportunity to debate issues creating the level of conflict existing between certain residents of the community and Council.

### Meeting with Concerned Citizens Committee

On the afternoon of December 6, 2004 I met with representatives of the Concerned Citizens Committee. The Committee executive in attendance at the meeting was Chairman John White, Vice Chairman Sten Einerson, and Secretary Alice Bromley. This was a very productive meeting during which the Committee members identified four specific issues, and one general issue which, if addressed by Council, they believed would relieve the current level of tension and provide an environment in which the Committee and Council could work within until the next general municipal election being held in September 2005.

The four specific issues were:

1. Security of Personal Records of Council Employees - There was concern expressed that the private files of Council employees were being provided to the RCMP. It was indicated that current Councillors agreed to provide the RCMP with copies of all documents on the personal files of council employees.

I advised the members that the private records of Council employees could not be provided to any outside body unless directed to do so by a court of law. This information was also communicated to Council in a subsequent meeting.

2. Storage of Council Equipment - This concern pertained to a number of sewing machines and other related equipment that was acquired by Council through

HRDC and used to produce costumes for the French Deserters Festival. Through the HRDC agreement, Council was required to secure the equipment. While no motion of Council directed the relocating of the equipment, it was discussed by Council and decided at a meeting held on June 8, 2004 that the equipment would be relocated to the Women's Institute Building. At this location the machines would be more accessible to the general public who have been permitted use of them.

It appears that while the machines may not be located in the town hall, I feel they are still under the control of Council thereby not violating the agreement with HRDC. In addition, as the equipment is more accessible to the public and they are appropriately secured, the current arrangement is acceptable.

3. Agenda for the November 17, 2004 Meeting - Through discussion with officials of the Department, it was agreed by the Committee that they would not obstruct the meeting of Council to be held on November 17, 2004. The Committee indicate that their agreement to allow the meeting to proceed was based on their understanding that the business of Council to be conducted at this meeting was to be limited to that which was included on the agenda for the November 9, 2004 (See Appendix 3) meeting which was disrupted by the Committee. While this may have been the understanding of Committee members, there was no record of any such agreement located. At the November 17 meeting an agenda was produced by Councillor Kirby Spence (See Appendix 4) which contained items not included on the November 9 agenda. Specifically, additional items included the hiring of a Town Clerk, and the selection of the Mayor and Deputy Mayor.

Prior to holding the November 17 meeting, the Councillors identified a number of actions required to be undertaken at that meeting in order for the structure of Council to satisfy the requirements of the Municipalities Act. The perception left by Councillor Spence in providing the agenda was that some underhanded act was being conducted by Council. However, Council was not party to any agreement limiting the items to be conducted and carried out the business it felt necessary to be conducted.

With respect to this issue, it is generally the clerk who provides the agenda of items to be discussed at a meeting of Council. In saying this, the Rules of Procedure adopted by Council provides the opportunity for individual Councillors to add items to a tabled agenda. Therefore, while it may appear that an inappropriate act may have occurred with the tabling of additional agenda items by Councillor Spence, the inclusion of additional items for discussion by Council is permitted. It was stated by the Committee that they would not have permitted the meeting to take place if they had been aware that the hiring of the Clerk and the selection of the Mayor and Deputy Mayor had been items on the agenda.

4. Reimbursement for Destroyed Equipment - One of the issues creating the conflict between the Committee and Council pertained to a claim by a local fisherman (See Appendix 5) that during the clean-up of a quarry area occupied by Council, a certain amount of his personal belongings were destroyed. The Committee indicated that the Council would have to pay restitution to the individual in order for the tension surrounding the issue to be alleviated.

While the circumstances of this action are unclear, Council did direct that the former town manager undertake the clean-up of the Council quarry site (See Appendix 6). In carrying out this direction, an area other than that identified in photographs in the possession of Council at the time the direction was given was also cleaned up. The items removed from this area of which did not appear in the photographs were owned by the brother of the town manager.

Council is adamant that its direction was quite clear and that only the refuse identified in the photographs was to be removed and therefore refuses to pay the claim.

The general concern expressed by the Committee pertained to the manner in which the current Councillors were focusing their attention on Council employees. It was alleged that employees were being identified by Council and harassed during the conduct of their duty. In my discussion with Council they agreed that there were issues with certain employees that required specific attention, but that it was Council's responsibility to ensure that employees were conducting themselves appropriately in the conduct of their duty.

A review of the minutes of Council revealed that there had been complaints received by Council pertaining to the conduct of employees as early as 2000. It became an issue to the point that on March 8, 2001 Council decided to adopt a policy governing the conduct of employees (See Appendix 7).

It appeared that there was validity to some of the four specific and the general concerns raised by the Committee, and where it was deemed appropriate, Council was advised accordingly.

However, it was felt that the issues raised could be addressed and that the level of conflict could be lowered to the point that would enable council to conduct the business of the town until the general election in September 2005, albeit under the watchful eye of the Committee. Such was not the message received during the next meeting held with the former town manager.

#### Meeting with Former Town Manager

On December 9, 2004 I met with the former town manager Maurice Kelly. He provided a detailed history of incidents that occurred during the time of his employment with the town. While concerns raised were similar to those expressed by members of the Committee, he did not support the opinion of the Committee that even if the issues identified during the meeting with them were addressed, residents of the community would be willing to have the current Council continue to conduct the business of the town until the next general election.

He indicated that nothing less than having all members of the current Council removed would be acceptable to the residents. I indicated that I would neither recommend nor support the removal of Councillors elected through a legitimate democratic process without clear evidence that the Council had repeatedly and knowingly violated their statutory responsibilities. He indicated that, in his opinion, the current Council had severely violated their legislated authority. However, a review of the Council records does not support this opinion. It appears that while there may be a difference of opinion as to how certain matters have been addressed, with the exception of the issuance of a quarry permit, decisions made by the Council did not constitute any significant violation of its legislated authority. This matter will be addressed later in the report.

I advised him that Council would be holding a public meeting with concerned residents the following evening which was intended to provide residents with the opportunity to question Council on the rationale of decisions made and encouraged him to attend. He indicated he would not be attending as he feared the meeting would be violent and individuals would be injured. He was assured the meeting would be conducted in a civil manner and that the RCMP were aware of the meeting and had agreed to be available if required.

During the evening of the day I met with Mr Kelly, he convened a meeting at the local arena at which time he again expressed his concerns over the welfare of those attending the December 8 public meeting and suggested that no one attend. In discussing the reception of the public meeting with Council after it concluded, it was indicated that of approximately 45 residents in attendance, only 2- 3 were public supporters of the Committee.

#### Meeting with Council Employees

On December 8, 2004 I met with the outside employees of the town. Mr's Tom Hamlyn , Clary Hinks, and Jim Tuff have been the focal point of much of the conflict between the Committee and Council. As with the meeting with Maurice Kelly, during this meeting the employees provided a historical recount of their relationship with Council. They expressed their displeasure at many of the actions by Councillors as individuals and collectively as Council. They expressed their belief that it was the intention of the current Council to end their employment with the town through either layoff, or creating an environment in which the employee would have no alternative but to resign.

During 2004, both Mr Hamlyn and Mr Hinks had been off work for extended periods of time

under medical care from what they attribute to stressful working conditions.

Public Meeting With Concerned Residents (Question and Answer Session)

During the November 30, 2004 meeting of Council it was suggested by Deputy Mayor Kennedy that the public be provided an opportunity to question Council on the manner in which it was making decisions for the town, and the actual subject matter of the decisions being made. While this type of meeting provides the public with the opportunity to directly question Council, it also potentially provides a forum for disgruntled residents to once again publicly express their displeasure at the manner in which Council is conducting the business of the town.

After some discussion with Council, the clerk, and the RCMP it was decided the meeting would be held on December 8, 2004 at the Women's Institute Building. This date was determined to be one in which all Councillors would be available, and the location was selected due to concerns that the Council office would not be large enough to accommodate the number of residents expected to attend.

During this meeting, a completely different message was received from the residents in attendance. While much had been heard through the media and during meetings held with representatives of the Committee and the former town manager that Council was making decisions which were not in the best interest of the community, it was clear that the majority of those who attended the December 8 meeting strongly supported the actions of the current Council.

There were a number of issues raised that had been circulated through the community which required clarification. Some of the issues raised were quite easy to address. Other issues required a more detailed explanation.

Overall, the level of support for the current Council was quite high at this meeting. Many individuals offered their support to the current Council in conducting the business of the town in the manner in which they were. There were matters of concern expressed by the public during the meeting, but most of the issues pertained to the conduct of Council business prior to the term of the current administration. While these matters may require further attention, they did not fall within the scope of this investigation.

#### Other Meetings

During the conduct of this investigation, I was contacted by two individuals who wished to discuss the situation existing within their community. The comments made by these individuals are recorded in this report. However, for reasons of confidentiality, the individuals will not be specifically identified.

The first individual who contacted me indicated that, for personal reasons, they had not taken a public position with respect to the current situation in the community. The individual operates a business in the town and was genuinely concerned for the long-term welfare of their community. There has been a considerable downturn in the local economy, and concern was expressed that the level of conflict currently existing would result in a further decline. The individual stated their appreciation for the financial crisis the town was experiencing, but also expressed concern that the town employees should not be used as a means to balance the budget. While the

individual did not want to see the level of service provided by Council decline, it was stated that the revenue required to maintain the services should not be collected through the increased taxation of local residents or businesses.

The second individual indicated they had taken a public position with respect to the political situation in the community and expressed their unconditional support for the current Council. They stated their belief that much of the conflict being experienced was directly related to the lack of clear and defined roles of former Councils and Council employees. They were able to support statements pertaining to the conduct of previous administrations and requested that either the scope of this investigation be broadened to include past business practices of the town, or that a second investigation be conducted on these past business practices. The individual also stated that at this point in time, many residents were reluctant to offer their support for the current Council out of fear for their personal welfare. However, it was this individual's opinion that many would be willing to discuss their experiences with former administrations under controlled circumstances.

#### LOCALLY EXPRESSED CONCERNS

There are a number of issues identified during this investigation that appear to have resulted in the degree of conflict between residents of the community and the Council. Some of the issues have been raised as concerns over the decisions made by the current Council, others in support of the same decisions.

Many of the issues raised in the media and during the conducting of this investigation opposing Council pertained partially to the actions of individual Councillors and Council, and partially to

formal decisions made by council as a body.

These issues are as follows:

1. Councillors Voting as a Block - There were allegations that four of the current Councillors were voting as a block thereby controlling all decisions of Council. A review of the minutes of council business does not support this claim. With the exception of a very few insignificant decisions, all decisions of Council, both before and after the resignation of Mayor Noel and Deputy Mayor Bromley, were unanimous. The democratic process permits individuals to vote on matters as they see fit, and it appears this allegation is more related to disagreeing with the decisions made, rather than the manner in which they were made. There was no indication that any decisions were being controlled by specific Councillors.
2. Conducting Private Meetings - There was an allegation that Councillors were conducting private meeting to discuss Council business. Once again our democratic society allows individuals to gather and discuss matters of interest. It must be realized that no matter what discussion takes place outside the Council chambers, the only official decisions of Council are those made by motion at a public meeting.
3. Illegal Issuance of Permits - There was an allegation that Council issued permits in violation of their Municipal Plan. This pertained to the issuance of a permit to a local contractor to excavate a parcel of land located within a Conservation Use Zone as defined by the town's Municipal Plan. While it is unclear as to what the specific area of excavation was intended to be, the contractor was permitted by Council to excavate in a restricted area. Council acknowledges its action and

indicated the approval was part of an agreement between Council and the Department of Transportation and Works to have the access to a provincial road relocated. Council is now aware of their error and the aggregate extraction has been discontinued.

There remains some confusion as to whether aggregate removed by the contractor which was intended to be used in the relocation of the road access should be reclaimed by Council. There are cost implications to having the aggregate reclaimed by Council that may not be within their ability given the financial position the town is currently in.

While Council clearly violated the provisions of its Municipal Plan in approving this quarry activity, violations of this nature are common in municipalities and does not warrant the removal of the current Councillors from office.

4. Financial Position - Concern has been expressed as to the financial position of the town and the manner in which the current Council is addressing the matter. There is certainly evidence to support the concern over the finances of the municipality, but a review of the financial activity of the town indicated the financial crisis is due to the business practices of former administrations, not the current. The current Council is in the position where difficult financial decisions have to be made immediately.

This matter will be addressed in detail in the next section of this report

5. Treatment /Conduct of Council Employees - It was alleged that Councillors were

focusing unnecessary amounts of attention on Council employees with respect to the manner in which they were conducting their duties. In the minutes there is a recorded history of concerns expressed by members of the public with the manner in which employees of Council conducted themselves while working for the town. As previously indicated, the volume of complaints prompted Council to adopt a policy in 2001 governing employee conduct during their period of work.

This concern was raised with Council and it was indicated that there was indeed a history of concerns with Council employees, but Council addressed the concerns in accordance with the financial and operational position of the town. Council indicated that the welfare of the community could not be jeopardized by the actions of town employees and intended to fulfil its responsibility and role as a Council to administer the affairs of the town in the most effective and efficient manner possible.

6. Other Issues - A review of correspondence and media articles show that there has been as many as 21 issues raised by the Committee in which they disagree with the actions of Council. While these issues have been raised in the media at various times during the recent period of conflict, they were not specifically raised during meetings with the individuals or groups. In assessing the issues, they generally pertain to differences of opinion on decisions made by Council and suggest that the current Council is changing long-standing practices of the town. It has been confirmed that the decisions have been made in accordance with the legislated requirements, and given the financial position of the municipality, it appears Council has no alternative but to review these practices.

OTHER ISSUES

While there were many issues raised by local individuals and groups that have been identified in the previous sections of this report, there were a number which require particular attention.

These issues are as follows:

1. Financial Position of the Town - The town is currently experiencing a financial crisis. Its ratio of local revenue to capital debt is approximately 60%. This results in limited funds being available to address the operational requirements of the town.

With respect to the capital requirements, the town refinanced its capital debt in 1997 thereby alleviating immediate financial pressures and providing additional cash flow. However, since that time, Council has approved and undertaken the development of a new water chlorination system the cost of which negated any relief realized through the 1997 refinancing. After a review of the financial position of the town, the Department provided a grant of \$240,000 to assist with the municipal obligation toward the system in 2004.

However, the financial crisis being faced by the town can only be partially attributed to the capital requirements of the municipality. The operating cost for Port au Choix greatly exceeds that of comparable municipalities in a number of areas. The basis for this situation has historical significance that predates the current Council and is therefore not part of this investigation.

Another area of significant operating cost to the town is with the maintenance of

its public works equipment. A review of the expenditure records of the municipality revealed that an astronomical amount of funds is being spent maintaining the outside equipment. Although the specific invoices were not reviewed to identify which vehicles were requiring the greatest maintenance, a visual inspection of the Pay Loader is adequate to confirm its state of disrepair. During the investigation, the engine developed problems that required major repairs costing approximately \$15,000. Fortunately, two local residents who placed great value on the equipment being in working order as it is used for snow clearing offered to pay the cost to repair the equipment.

With the expected economic downturn in the local economy and the associated erosion of the tax base in the municipality, Council has to assess its financial position immediately. The financial position of the town cannot support the level of expenditure it committed to during periods of prosperity. The Council of the day developed services and funded capital projects during a period when the local tax base was significantly greater than it currently is. Therefore, the town must determine the funds available to pay the operating costs of the municipality, and determine a means to deliver a reasonable level of service within these limits.

It was indicated that a complete review of the operational and financial practices of the municipality are required. It is expected that this review will take place over an extended period of time due to the magnitude of the task.

2. Providing Tax Account Balances - While working in the Council office it was noted that a member of Council appeared to have a copy of the tax roll on which identified the amounts of taxes outstanding for all taxpayers in the municipality. Upon being questioned, it was confirmed that copies of the tax roll were regularly made available to individuals who had all taxes paid. I advised of the inappropriateness of the practice and strongly suggested that it discontinue immediately.

### RECOMMENDATIONS/COMMENTS

As indicated in the opening section of this report, the mandate of this investigation was limited to the financial and operational practices of the current Council. While it is impossible to ignore all business of former administrations, the focus of the report is in accordance with this mandate.

It is obvious from reviewing the records of Council that difficult decisions have to be made in the near future. The financial position of the town does not allow for a period of grace in which many issues can be deferred. Certain aspects of the administration of Council, such as the methods of record keeping, do not require the urgent address that other aspects do. However, it appears Council recognizes the financial dilemma it is facing and is prepared to make the difficult decisions. It is imperative that Council analyze its operational and financial requirements, and devise a plan to meet these requirements.

It is expected that many of the future decisions made by Council, as with those in the past, will not be viewed by members of the Committee as being in the best interest of the community. However, the decisions made by the current Councillors since their election to office appear to be reasonable, and more importantly from the perspective this investigation, all but the issuance of the quarry permit are in compliance with the statutory requirements.

Council must be cognizant of its authority in all areas of local government administration. Councillors must have a clear understanding of their role, and the role of their employees. It is important that this division of duties be clearly communicated to the employees to avoid potential confusion and conflict associated with poorly defined roles and responsibilities. It is

recognized that elected councillors are volunteers who have limited time to dedicate to the administration of the town's business. However, if the business of the community is to be conducted efficiently and effectively, the required time must be allocated by the individual.

As previously indicated, it appears that the financial and operational dilemma Council is currently required to address resulted from the business activity of former administrations. There has been no long term commitments made by the current Council that attributed to the current financial situation.

However, information compiled during this investigation indicates that the difficulties being experienced by the current Council can be attributed to decisions made by former Councils and the manner in which the business of Council was administered in the past. It appears that the current financial dilemma Council is forced to address does not originate with the current Council, but results from the financial practices of former Councils.

APPENDIX 1

Dm



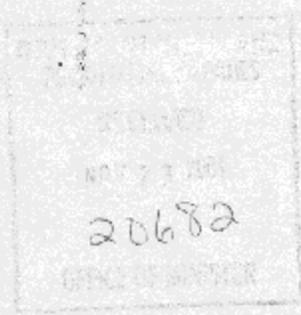
**The Town Council of Port au Choix**

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Tel: (709) 861-3409  
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November 23, 2004

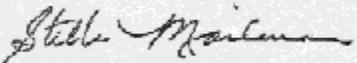
Honourable Jack Byrne  
Minister of Municipal and  
Provincial Affairs  
Confederation Building  
P.O. Box 8700  
St. John's, NL  
A1B 4J6



Dear Minister Byrne:

On behalf of Town Council for Port au Choix I am requesting that you launch an investigation into the Operational Practices and Financial Affairs of the Town of Port au Choix. An immediate response would be appreciated.

Sincerely,

  
Stella Mailman, Mayor  
Town of Port au Choix

Mgs



## APPENDIX 2

GOVERNMENT OF  
NEWFOUNDLAND AND LABRADOR

Department of  
Municipal and Provincial Affairs  
Office of the Minister

November 25, 2004

Mayor Stella Mailman  
Town of Port au Choix  
P. O. Box 89  
Port au Choix NL A0K 4C0

Dear Mayor Mailman:

As a follow-up to my letter of November 24, 2004 I can now advise that the investigation of the operational and financial practices of the Town of Port au Choix requested in your letter of November 23<sup>rd</sup> will commence on Tuesday November 30<sup>th</sup>.

This investigation will be led by Mr Dan Noseworthy a Municipal Analyst with the Eastern Regional Office of my department who will be assisted by Ms. Rhonda McLean a Municipal Analyst with our Western Regional Office. Mr. Noseworthy will be reporting to Mr. John Moore the Director of Regional Operations who has been assigned overall responsibility for the investigation.

I trust this will be satisfactory.

Yours truly,

A handwritten signature in black ink, appearing to read 'J. Byrne', written over the typed name 'JACK BYRNE'.

JACK BYRNE  
Minister

c.c. Western Regional Office

APPENDIX 3

AGENDA FOR REGULAR MEETING TUESDAY NOVEMBER 9<sup>TH</sup>, 2004

1. CALL TO ORDER
2. ADOPTION OF THE AGENDA
3. MINUTES OF THE PREVIOUS MEETINGS
4. BUSINESS ARISING FROM THE MINUTES
5. DEFERRED ITEMS FROM PREVIOUS MEETINGS
  - (a) Clarence Billard/Sewer Tax
  - (b) Pat Rumbolt/Land Dispute
  - © Mike Kelly/Court Case
  - (d) Eric Patcy/ Map
- ✓ 6. CITIZEN PRESENTATIONS: Arthur Skinner, Maurice Kelly
7. COMMITTEE'S REPORT AND MAYOR'S REPORT
8. LISTING OF ALL ACCOUNTS PAID AND BANK RECONCILIATION REPORT
9. CORRESPONDENCE:
  - (a) Northern Pen - Cost of ad in paper
  - (b) SPCA - request for donation
  - © Municipal Affairs - Town's Budget
  - (d) Dept. Of Trans & Works - ice control materials
  - (e) Dept. Of Tourism - meeting
  - (f) Bonnell Cole Janes - Nfld Bait Services
  - (g) Nordic Economic Development Corp. Conference
  - (h) Janes & Noseworthy - Lloyd Gaslard Bankruptcy
  - (I) Dept. Of Environment and Conservation - Drinking water report
  - (j) Dept. Of Tourism - \$2000.00 grant
  - (k) Dept. Of Municipal Affairs - guidelines for cost shared projects
  - (l) Memorial University
  - (m) Department of Natural Resources- Vincent Genneau
  - (n) Department of Municipal Affairs- Norpen Waste Management

9. NEW BUSINESS:

- ✓ (a) Rob Goodland - re road to house
- ✓ (b) Recreation Members (new)
- ✓ © Travel Claims
- ✓ (d) Ivy Kelly - Application for Business Tax Exemption
- ✓ (e) Jennifer Gaslard - Note re poll tax
- ✓ (f) Studio Gargamelle - Application for Business Tax Exemption
- ✓ (g) Water Analysis Report
- ✓ (h) Municipal Training - re workshop
- (i) Tom Hamlyn - sick leave
- ✓ (j) Recreation project workers - hours of work
- ✓ (k) Project supervisor
- ✓ (l) Janitorial Tenders
- (m) Building Permit For Lion's Club
- (n) Nape Grievances
- (o) Other Business
- (p) Adjournment & Time for Next Meeting

## APPENDIX 4

**AGENDA ITEMS DEALT WITH BY COUNCIL DURING THE EMERGENCY  
MEETING HELD ON WEDNESDAY, NOVEMBER 17, 2004 FROM 8:03 PM TO 8:25  
PM.**

1. Election of Mayor by secret ballot
2. Election of Deputy Mayor by secret ballot
3. Appointment of Town Clerk
4. Selection of signing officers
5. Letter of authority for Clerk to be liaison for council
6. Decision to change locks on municipal building
7. Decision to seek Ministers approval to defer preparation of 2005 annual budget for one month.
8. Decision to publish notice of council meeting on CBC & CFCB Community calendars
9. Appointment of Kirby Spence as councils new representative on Joint Council
10. Decision to hold next meeting on Tuesday, November 23, 2004 at 7:00 pm.
11. Adjournment at 8:25 PM.

FROM : T JAMES BENNETT BA LLB JD FAX NO. : 7095982847

APPENDIX 5

STATEMENT OF CLAIM

IN THE PROVINCIAL COURT OF NEWFOUNDLAND AND LABRADOR

CORPORATION

FROM: This person has made a claim against you in Small Claims Court.

NAME Michael Kelly

MALE  FEMALE PLAINTIFF(S)

CITY, TOWN, MUNICIPALITY Port au Choix

TEL 709-861-3616  INDIVIDUAL  CORPORATION

TO: NAME Town of Port au Choix

MALE  FEMALE 1<sup>st</sup> DEFENDANT

CITY, TOWN, MUNICIPALITY Port au Choix

TEL 709 861 3409  INDIVIDUAL  CORPORATION

NAME ADDRESS  MALE  FEMALE 2<sup>nd</sup> DEFENDANT

CITY, TOWN, MUNICIPALITY  INDIVIDUAL  CORPORATION

WHAT HAPPENED?

Refer to Attached Fact Summary and Relevant Documents

If you need more space to describe what happened, attach another page, mark it "Page 2 of the Statement of Claim", and check this box. A copy of the attached page must accompany each copy of the Statement of Claim.

WHERE?

Where did the claimant say it happened?

CITY, TOWN, MUNICIPALITY Port au Choix

PROV. NL

WHEN?

This is when the plaintiff says it happened.

July 2004

HOW MUCH?

How much are you claiming?

3240.27

Amount being abandoned None

\$ 3240.27

TOTAL

*J. Bennett*

SIGNATURE OF  PLAINTIFF  AGENT  SOLICITOR

+ FILING FEES 100.00

+ SERVICE FEES 20.00

= TOTAL CLAIMED \$ 3360.27

TIME LIMIT FOR A DEFENDANT(S): If you do not settle directly with the plaintiff or file a reply within 10 days from being served with this Statement of Claim, a judgment may be entered against you. Then you will have to pay the amount claimed plus interest and further expenses.

The Court Address for filing documents is:

Provincial Court  
PO Box 2006  
Corner Brook NL  
A1A 6T8

SERVED AT Corner Brook THIS 7 DAY OF Oct 2004

DEBT  OTHER THAN DEBT

1st defendant's copy

STATEMENT OF CLAIM

FROM : T. JAMES BENNETT BA LLB JD

FAX NO. : 7098622047

Oct. 18 2004 01:53PM P3

### Fact Summary

1. The Plaintiff, Michael Kelly, is a Commercial Fisherman who is resident in the Town of Port aux Choix.
2. The Defendant is a Municipality duly incorporated under the Municipalities Act.
3. For the past several years the Plaintiff has been accustomed to leaving certain of his fishing gear and equipment on Crown Land in a deserted part of the Town. No issue has ever been taken with his storage of this personal property at that location nor has he ever been issued a Clean-up Order.
4. Furthermore it is well known to members of the Town Council and Council Staff that this personal property belongs to him.
5. At some time during the month of July 2004 the Town Council passed a motion to have the Town issue a Work Order to have the entire area cleaned up. Based upon this Work Order Town workers attended at the site and removed all of the Plaintiff's property and disposed of it.
6. No notice was given. No opportunity was given to the Plaintiff to recover the property and the Plaintiff has suffered a loss in the amount of \$3240.27.
7. In spite of repeated representations to the Defendant the Defendant has failed to indemnify the Plaintiff for his loss. The Plaintiff pleads that the Defendant had no lawful basis to destroy his property without notice to him and is liable by its workers for a trespass to his chattels.
8. The Plaintiff wishes a Trial of this matter at the City of Corner Brook.

Cement Box . 365.00

5 Nets 9,50.00 = 190: each. 600.00 labour

fridge 600.00

Wheel Barrow \$139.95

Sticks for traps . \$ 116.00

Lumber \$249.32

Wire for traps 220.00

3240.27

Michael Kelly.

## APPENDIX 6

### Minutes of meeting Tues.

The Town Manager explained that Deputy Mayor Bromley is councils representative on the Recreation Committee and that she would be the best one to answer those questions. He stated that he was aware that the committee has been trying to use those funds to leverage additional funding through ACOA/HRDC in order to complete the works necessary to be done there. It was decided by consensus to approach Deputy Mayor Bromley with this issue and state councils position that the money has been raised and that it should be spent.

\* Councillor Mailman presented meeting chairman Kirby Spence with a number of photographs and indicated that the pit at the end of Rue Belanger is an active garbage dump site.

\* Motion # 04-185 - Mailman/A. Spence

Resolved to have council forces immediately clean up the mess in the pit at Eastern Point, to bar off access to the pit and to put up no dumping signs in order to prevent any future dumping there. In favour: S. Mailman, A. Spence, J. Kennedy, K. Spence. Against: 0. The motion carried unanimously.

Councillor Mailman stated that the council sponsored a project over the winter to create a number of eighteenth century french costumes. The project was developed by the Heritage Committee and sponsored by council because government funding regulations prevented the Heritage Committee from signing off as the project sponsor. The costumes are currently stored at the council building and this creates a problem with accessibility for any group wishing to use those. Councillor Mailman stated that she required a decision from council on who is in charge of those costumes and the equipment used in the completion of the project. She indicated that she feels that the items should be under the care and control of the Heritage Committee. It was agreed by consensus that the Heritage Committee will be the custodian of the costumes and equipment from the HRDC Project and that those will be turned over to the committee whenever the committee wants.

Motion # 04-186 - Mailman/A. Spence

Resolved that a letter be written to Irving Oil Limited to either remove or restore the bulk storage tanks and associated property prior to August 1, 2004. In favour: S. Mailman, A. Spence, J. Kennedy, K. Spence. Against: 0. The motion carried unanimously.

Motion # 04-187 - Mailman/Kennedy

Resolved to seek tenders for accountants to perform councils works for a period of three (3) years. In favour: S. Mailman, J. Kennedy, A. Spence, K. Spence. Against: 0. The motion carried unanimously.

Motion # 04-188 - Mailman/Kennedy

Resolved that council meetings will be recorded via audio tape. In favour: S. Mailman, J. Kennedy, A. Spence, K. Spence. Against: 0. The motion carried unanimously.

It was agreed by consensus to seek clarification from the Department of Environment on the area to be designated as part of the protected watershed for the artesian wells fresh water supply.

Motion # 04-189 - Mailman/Kennedy

Resolved to discontinue the use of municipal equipment for loading class "A" gravel from the municipal quarry and to make the processed material available to local contractors to be coordinated daily through the Town Manager/Clerk for loading and removal. In favour: S. Mailman, J. Kennedy, A. Spence, K. Spence. Against: 0. The motion carried unanimously.

## APPENDIX 7

## MINUTES OF MEETING MARCH 7, 2001

## ATTENDING WERE:

Pearl	Offrey	Mayor
Alice	Bromley	Deputy Mayor
Rose	Whiteway	Councillor
Mary	Rumbolt	Councillor
Frank	Gaslard	Councillor
Reginald	Rumbolt	Councillor
Stephen	Spence	Councillor
Maurice	Kelly	Town Manager/Clerk

The meeting was called to order at 7:00 pm by Mayor Offrey who explained that this will be a special meeting to discuss matters arising out of the regular meeting on March 5, 2001.

Whereas during the meeting on March 5, 2001 council had resolved to invite Kirby Spence to attend this meeting to present an explanation of his written complaint about the snow clearing problems he has been experiencing and to answer some questions which council had concerning allegations made in his letter and whereas Mr. Spence is out of town due to work commitments and was therefore unable to be present at this meeting, a discussion was held regarding policy in general. It was suggested that council needed a policy manual outlining all adopted policies with respect to its operations and this manual could then be distributed to employees which would enable the employees to have a better understanding of how they should be conducting themselves in the performance of their duties. It was decided that a review of the minutes from all of the council meetings would need to be done in order to identify which policies have been adopted for councils review and inclusion in the manual. Councillor Mary Rumbolt volunteered to assist with this procedure.

Mayor Offrey explained that she and the Town Manager had met with representatives of Parks Canada to discuss works which need to be done within the National Historic Site and areas where council may be able to assist in partnership to get this work done. Parks Canada will develop a proposal for submission to HRDC for funding for this summer to complete the trail and infrastructure items such as rest stops, etc along the trail. Once this has been completed, it will be submitted to council for review and submission to HRDC through council. Councils contribution will be the funding from HRDC, supply of equipment and crushed stone. The application to HRDC will require a letter of support for the project from council. The application will be made for insurable employment this year.

