

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Annapolis (County) v. E.A. Farren, Limited*, 2021 NSSC 304

**Date:** 20211027

**Docket:** Hfx. No. 503924

**Registry:** Halifax

**Between:**

Municipality of the County of Annapolis

*Applicant*

v.

E. A. Farren, Limited

*Respondent*

<p><b>DECISION ON ADMISSIBLE AFFIDAVIT EVIDENCE</b></p>
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**Judge:** The Honourable Justice Scott C. Norton

**Heard:** By Correspondence

**Decision:** October 27, 2021

**Counsel:** Kevin Latimer, Q.C. and Kelcie White, for the Applicant  
Barry Mason, Q.C., for the Respondent

**By the Court:**

**Background**

[1] This is a motion by correspondence brought by the Applicant for an order striking certain phrases, sentences and paragraphs of the Affidavits of Timothy Habinski, John Ferguson and Edward Farren filed by the Respondent in the underlying Application in Court, scheduled to be heard by me on November 15 and 16, 2021.

[2] That Application relates to the acquisition by the Respondent E. A. Farren, Limited (“EAF”) of certain lands located in the Municipality of the County of Annapolis (“Annapolis”) on which EAF intended to build and operate a private school. Following a municipal election on October 17, 2020, the outgoing Annapolis municipal council approved the conveyance and lease of real property to EAF. Annapolis seeks a declaration that the warranty deed and lease are void *ab initio*. The Respondent asks that the Application in Court be dismissed on the basis that the transactions were valid.

[3] The basis for the objections to the admissibility of the affidavit evidence include relevance; improper opinion or belief; speculation; hearsay; legal argument; and, that some passages are scandalous and/or vexatious.

[4] Following a telephone conference during which counsel for both parties agreed to proceed by way of Motion by Correspondence, the Applicant filed the Motion and supporting affidavit and both parties submitted sequential written briefs of argument with the final reply brief from the Applicant being filed on October 6, 2021.

**Issue**

[5] The issue before me is whether to strike the imputed passages from the affidavits based on the law of evidence.

[6] Schedule “A” to this decision incorporates the Applicant’s objection, the Respondent’s reply, and my ruling on each impugned passage. The reasons for my rulings are contained in the body of this decision.

**Law**

[7] I previously had occasion to canvas the law relating to this type of motion in *King v. Gary Shaw Alter Ego Trust*, 2020 NSSC 288 and *Superport Marine Services*

*Limited v. Balodis Incorporated*, 2021 NSSC 237. I summarized the relevant *Nova Scotia Civil Procedure Rules* and jurisprudence in *Superport* beginning at para 5:

[5] *Civil Procedure Rule* 39.02 addresses the contents of affidavits:

### **5.17 Rules of evidence on an application**

The rules of evidence, including the rules about hearsay, apply on the hearing of an application and to affidavits filed for the hearing except a judge may, in an *ex parte* application, accept hearsay presented by affidavit prepared in accordance with Rule 39 - Affidavit.

### **39.02 Affidavit is to provide evidence**

(1) A party may only file an affidavit that contains evidence admissible under the rules of evidence, these Rules, or legislation.

(2) An affidavit that includes hearsay permitted under these Rules, a rule of evidence, or legislation must identify the source of the information and swear to, or affirm, the witness' belief in the truth of the information.

...

### **39.04 Striking part or all of affidavit**

(1) A judge may strike an affidavit containing information that is not admissible evidence, or evidence that is not appropriate to the affidavit.

(2) A judge must strike a part of an affidavit containing either of the following:

(a) information that is not admissible, such as an irrelevant statement or a submission or plea;

(b) information that may be admissible but for which the grounds of admission have not been provided in the affidavit, such as hearsay admissible on a motion but not supported by evidence of the source and belief in the truth of the information.

(3) If the parts of the affidavit to be struck cannot readily be separated from the rest, or if striking the parts leaves the rest difficult to understand, the judge may strike the whole affidavit.

(4) A judge who orders that the whole of an affidavit be struck may direct the prothonotary to remove the affidavit from the court file and maintain it, for the record, in a sealed envelope kept separate from the file.

(5) A judge who strikes parts, or the whole, of an affidavit must consider ordering the party who filed the affidavit to indemnify another party for the expense of the motion to strike and any adjournment caused by it.

[6] In *King v. Gary Shaw Alter Ego Trust*, 2020 NSSC 288, I reviewed the applicable law in a similar motion to strike, at paras 9 to 14:

[9] The leading decision in this province on the appropriate contents of affidavits is *Waverly (Village) v. Nova Scotia (Municipal Affairs)*, 1993

NSSC 71. Therein, Justice Davison made the following observation and set out in summary form the guidelines for admissible affidavit evidence (I note here that his reference to “application” was to a Chambers Application in the former Rules, now a Motion in Chambers in our present Rules):

14 Too often affidavits are submitted before the court which consist of rambling narratives. Some are opinions and inadmissible as evidence to determine the issues before the court. In my respectful view the type of affidavits which are being attacked in this proceeding are all too common in proceedings before our court and it would appear the concerns I express are shared by judges in other provinces...

20 It would [be] helpful to segregate principles which are apparent from consideration of the foregoing authorities and I would enumerate these principles as follows:

1. Affidavits should be confined to facts. There is no place in affidavits for speculation or inadmissible material. An affidavit should not take on the flavour of a plea or a summation.
2. The facts should be, for the most part, based on the personal knowledge of the affiant with the exception being an affidavit used in an application [a motion under the present Rules]. Affidavits should stipulate at the outset that the affiant has personal knowledge of the matters deposed to except where stated to be based on information and belief.
3. Affidavits used in applications [motions] may refer to facts based on information and belief but the source of the information should be referred to in the affidavit. It is insufficient to say simply that "I am advised".
4. The information as to the source must be sufficient to permit the court to conclude that the information comes from a sound source and preferably the original source.
5. The affidavit must state that the affiant believes the information received from the source.

[10] In *Sopinka, The Law of Evidence in Canada*, 5th ed. (Toronto: Lexis Nexis, 2018), the authors introduce the law of evidence as follows (p. 12):

The law of evidence controls the presentation of facts before the court and is made up of common law principles, statutory provisions and constitutional principles. Its purpose is to facilitate the introduction of all logically relevant facts without sacrificing any

fundamental policy of the law which may be of more importance than the ascertainment of the truth.

[11] There is a discretion for a judge to exclude evidence that meets the test of relevancy if the judge considers that the probative value is outweighed by its prejudicial effect. This discretion is most often considered in the context of criminal trials before juries. It has also been used to limit certain evidence in civil cases, again primarily before juries. The discretion has been recognized as broad: *R v. B. (C.R.)*, [1990] 1 S.C.R. 717.

### **Hearsay**

[12] Hearsay is one of the most common objections made to the introduction of evidence. It has been defined by the Supreme Court of Canada as follows:

Written or oral statements, or communicative conduct made by persons otherwise than in testimony at the proceeding in which it is offered, are inadmissible, if such statements or conduct are tendered as proof of their truth or as proof of assertions implicit therein. [*R. v. Bradshaw* 2017 SCC 35, at para. 1 and 20]

[13] *Sopinka* says:

The usual hearsay circumstance covered by the rule is where the witness testifies as to what someone else, who is not before the court, said. However, the modern interpretation of hearsay also encompasses prior out-of-court statements made by the very witness who is testifying in court when such earlier statements of the witness are tendered to prove the truth of their contents. [Supra, at p. 249]

[14] The defining features of the rule are that the purpose of adducing the evidence is to prove the truth of its contents and the absence of the contemporaneous opportunity to cross-examine the declarant. It is the inability to test the reliability of the evidence by cross-examination of the declarant that makes the admission of such evidence unfair and inadmissible. The rule recognizes the difficulty of the trier of fact assessing the probative value, if any, to be given to a statement made by a person who has not been seen or heard and who has not been subject to cross-examination. [*R. v. Khelawon* [2006] 2 S.C.R. 787]

[7] These same evidentiary issues were considered in *Canadian National Railway Company v. Halifax (Regional Municipality)*, 2012 NSSC 300 (“CNR”). With regard to the hearsay objection, Leblanc J. stated, at paras 5-8:

### **Hearsay**

[5] Rule 5.13 governs the use of hearsay evidence on applications. Rule 5.13 provides that the "rules of evidence, including the rules about hearsay, apply on the hearing of an application and to affidavits filed for the hearing except a judge may, in an ex parte application, accept hearsay presented by affidavit prepared in accordance with Rule 39 - Affidavit." This rule, says HRM, indicates that hearsay is not permitted on an

application unless a common law hearsay exception applies. I am satisfied that this would include the principled approach to admitting hearsay on the basis of necessity and reliability, as described in *R. v. Khelawon*, 2006 SCC 57, and decisions preceding it.

[6] The "essential defining features" of hearsay are . . . "(1) the fact that the statement is adduced to prove the truth of its contents and (2) the absence of a contemporaneous opportunity to cross-examine the declarant." (*Khelawon* at para. 35) It must be emphasized that it is "only when the evidence is tendered to prove the truth of its contents that the need to test its reliability arises." (*Khelawon* at para. 36) Further, Charron J. said for the court in *Khelawon*, (paras. 37-38) that while an out-of-court statement by a witness who testifies will be hearsay if adduced for the truth of its contents:

When the witness repeats or adopts an earlier out-of-court statement, in court, under oath or solemn affirmation, of course no hearsay issue arises. The statement itself is not evidence, the testimony is the evidence and it can be tested in the usual way by observing the witness and subjecting him or her to cross-examination. The hearsay issue does arise, however, when the witness does not repeat or adopt the information contained in the out-of-court statement and the statement itself is tendered for the truth of its contents. . . .

[7] Charron, J. went on to discuss the challenges of recognizing hearsay, at paras. 56-58:

The first matter to determine before embarking on a hearsay admissibility inquiry, of course, is whether the proposed evidence is hearsay. This may seem to be a rather obvious matter, but it is an important first step. Misguided objections to the admissibility of an out-of-court statement based on a misunderstanding of what constitutes hearsay are not uncommon. As discussed earlier, not all out-of-court statements will constitute hearsay. Recall the defining features of hearsay. An out-of-court statement will be hearsay when: (1) it is adduced to prove the truth of its contents and (2) there is no opportunity for a contemporaneous cross-examination of the declarant.

Putting one's mind to the defining features of hearsay at the outset serves to better focus the admissibility inquiry. As we have seen, the first identifying feature of hearsay calls for an inquiry into the purpose for which it is adduced. Only when the evidence is being tendered for its truth will it constitute hearsay. The fact that the out-of-court statement is adduced for its truth should be considered in the context of the issues in the case so that the court may better assess the potential impact of introducing the evidence in its hearsay form.

[8] Second, by putting one's mind, at the outset, to the second defining feature of hearsay – the absence of an opportunity for contemporaneous cross-examination of the declarant, the admissibility

inquiry is immediately focussed on the dangers of admitting hearsay evidence. Iacobucci, J. in *R. v. Starr*, [2000] 2 S.C.R. 144 identified the inability to test the evidence as the "central concern" underlying the hearsay rule. Lamer, C.J. in *U. (F.J.)* expressed the same view but put it more directly by stating: "Hearsay is inadmissible as evidence because its reliability cannot be tested" (para. 22).

[8] With respect to the opinion objections, Leblanc J. commented as follows:

### **Opinion Evidence**

[11] In addition to extrinsic evidence concerns, this case raises issues of opinion evidence. Charron, J. (as she then was) summarized the law on opinion evidence in *R. v. Collins* (2001), 160 C.C.C. (3d) 85, at para. 17:

In the law of evidence, an opinion means an "inference from observed fact": see *R. v. Abbey* (1982), 68 C.C.C. (2d) 394 at 409. As stated in *Abbey*, as a general rule, witnesses testify only as to observed facts and it is then up to the trier of fact to draw inferences from those facts. A lay witness will be permitted to give an opinion only with respect to matters that do not require special knowledge and in circumstances where it is virtually impossible to separate the facts from the inferences based on those facts. A witness testifying that "a person was drunk" is a common example of an opinion that can be provided by a lay witness. See *R. v. Graat* (1982), 2 C.C.C. (3d) 365 (S.C.C.) for a review of the law on non-expert opinion. Otherwise, opinion evidence will only be received with respect to matters calling for special knowledge beyond that of the trier of fact. In those cases, an expert in the field may be permitted to provide the judge and jury with an opinion, that is "a ready-made inference which the judge and jury, due to the technical nature of the facts, are unable to formulate" (*Abbey* at 409). The law as to expert opinion evidence was authoritatively restated in *Mohan*, supra. Before expert opinion evidence can be admitted, the evidence: (a) must be relevant to an issue in the case; (b) it must be necessary to assist the trier of fact; (c) it must not be subject to any other exclusionary rule; and (d) it must be given by a properly qualified expert.

[12] Paciocco and Stuesser, in *The Law of Evidence in Canada*, 6th ed. (Irwin Law, 2011) the authors summarize the law governing lay opinion evidence at 183:

Lay witnesses may present their relevant observations in the form of opinions where

- they are in a better position than the trier of fact to form the conclusion;
- the conclusion is one that persons of ordinary experience are able to make;
- the witness, although not expert, has the experiential capacity to make the conclusion; and

the opinions being expressed are merely a compendious mode of stating facts that are too subtle or complicated to be narrated as effectively without resort to conclusions.

### Materiality and Relevance

[8] The Municipality also referred me to the comments of Justice Wright in *Islam v. Maritime Muslim Academy*, 2019 NSSC 53, at para 33:

...inadmissible hearsay, argumentative, speculative, containing unsupported conclusions and opinions, impermissible comment on... credibility and in some respects, irrelevancies. These are all legitimate criticisms of the affidavit, contravening as it does the principles governing the form and content of affidavits as set out in *Waverley*...

[9] As to what is relevant, in *R. v. White*, 2011 SCC 13, the Supreme Court of Canada described the concept of relevance in the following terms:

[36] ...In order for evidence to satisfy the standard of relevance, it must have “some tendency as a matter of logic and human experience to make the proposition for which it is advanced more likely than the proposition would be in the absence of that evidence”.

[10] The Court had previously commented on this principle in *R. v. Arp* [1998], 3 S.C.R. 339:

[38] ... To be logically relevant, an item of evidence does not have to firmly establish, on any standard, the truth or falsity of a fact in issue. The evidence must simply tend to "increase or diminish the probability of the existence of a fact in issue". ...

[11] The parties agree that it is the substantive law governing the cause of action or offence set out in the pleadings that determines relevance. There is an apparent disagreement regarding the scope of what is relevant and how the evidentiary concepts of relevance and materiality differ.

[12] In their text, *The Law of Evidence*, (Toronto: Irwin Law Inc., 2015), authors David Paccioco and Lee Stuesser offer helpful explanations. As to what is “material”, the authors say at p. 28:

Regardless of the kind of proceeding, courts or tribunals resolving issues of fact are being asked to settle particular controversies. They are not interested in information about matters other than those that are that need to be settled. Evidence that is not directed at a matter in issue is inadmissible because it is “immaterial”. By contrast, “evidence is material if it is directed at a matter in issue in the case” “what is in issue is determined by and a function of the allegation contained in the pleadings and the governing procedural and substantive law”.



As to the meaning of “relevance”, the authors explain at p. 30:

While the concept of materiality describes the relationship between evidence and the matters in issue, logical “relevance” is about the relationship between evidence and the fact it is offered to prove. There is no legal test for identifying relevant evidence. Relevance is a matter of logic. To identify logically irrelevant evidence, ask, “does the evidence assist in proving the fact that my opponent is trying to prove?” for example, evidence that the alleged robber had downloaded a map of the area where the bank that was robbed was located would be relevant in linking the accused to the robbery. Evidence that he had downloaded movies about bank robbers would not.

### Scandalous and Vexatious

[13] The last category of objection is that certain content is scandalous or vexatious. Rule 39.05 restricts the filing of scandalous affidavits as follows:

A party who files a scandalous, irrelevant, or otherwise oppressive affidavit is subject to the provisions of Rule 88 – Abuse of Process.

[14] As to what defines scandalous content, courts have described scandalous content as “[o]ffensive allegations made for the purpose of prejudicing another party and inflammatory rhetoric directed at a party”. (*Stevens v. Associated Lodges of the Village of Douglaston Trust*, 2018 NBQB 82 at para. 12, citing *Chopik v. Mitsubishi Paper Mills Ltd.* (2002), 2002 CarswellOnt 2336 at para. 26 (Ont. S.C.J.)).

[15] The Nova Scotia Court of Appeal’s decision in *Wall v. Horn Abbot Ltd.*, 1999 NSCA 67, provides a further example. Justice Cromwell, writing for the Court, at para. 35, held that the “vivid picture [the affiant] paints of strippers, drugs, and motorcycle gangs had no place in this affidavit. This material was not only irrelevant, but scandalous.”

[16] It is noteworthy that the Court has authority to strike a scandalous statement from an affidavit notwithstanding that it might otherwise be relevant: *Elwin v. Nova Scotia Home for Coloured Children*, 2013 NSSC 196, at para 40.

[17] As it turns out, each passage that was objected to on this basis was previously determined by me to be irrelevant and struck on that basis.

### **Application of Law to Affidavits**

#### Materiality and Relevance

[18] What is in issue in this case, and therefore relevant, is framed by the pleadings. The cause of action in the Notice of Application alleges that:

- (a) The former Council failed to adhere to the statutory requirements governing the transition of power following a municipal election (as prescribed by the *Municipal Elections Act*, R.S.N.S. 1989 (the “MEA”), c. 300 and *Municipal Government Act*, S.N.S. 1998, c. 18 (the “MGA”); and
- (b) The former Council violated sections 50 and 51 of the MGA (namely, by selling and leasing municipal land to E.A. Farren for less than market value).

[19] I agree with the submission of the Applicant that these allegations and the provisions of the MEA and MGA make the following facts “material”:

- The date of the municipal election
- The outcome of that election (i.e., whether new Councillors were elected who would then have to be sworn in)
- The date the recount period expired
- The date of the new Councillors’ swearing-in
- The date the new Councillors were declared elected
- The dates of the various Council meetings between the election and the new Councillors’ swearing-in
- The date on which the newly elected Councillors were given an opportunity to select a Warden and Deputy Warden
- E.A. Farren’s status as a for-profit corporation
- The market value of the lands leased and conveyed to E.A. Farren
- Whether Council ascertained the market value of those lands
- Whether those lands were required for municipal purposes
- The date of the deed and lease to E.A. Farren, and the date on which the authorizing resolutions were passed
- The outcome of Council’s vote on the resolutions authorizing the transactions (specifically, whether the resolutions achieved a two-thirds majority vote)
- Whether Council advertised or held a public hearing with respect to the proposed conveyance to E.A. Farren

[20] As the authorities make clear, an item of evidence is only legally relevant if it helps establish (or disprove) one of these material facts.

[21] The Respondent asserts that because the cause of action refers to the election, any information that can be tied to the election is legally relevant (specifically, information about the Warden's electoral campaign, residents' social media activity, the supposedly hostile climate, and Mr. Habinski's perceived victimization by constituents). With respect, none of this evidence is relevant in that it does not tend to prove or disprove a fact that is material.

[22] Further, and contrary to the Respondent's assertions throughout its brief, the fact that this application indirectly concerns the proposed Gordonstoun school does not mean that any information pertaining to the proposed school (such as its internet infrastructure) becomes legally relevant unless it tends to prove or disprove a material fact.

[23] In summary, the Application is not about the value or viability of the proposed school. It is not concerned with whether it was supported by the Provincial government; how the Premier thought about it; or what trips were made by councillors and others to visit the parent school in Scotland or the High Commission in London. It is about whether the Municipal Council had the legal authority to transact the land transfer and lease to the Respondent. Stated another way, whatever use of the land was intended by the Respondent after the transfer and lease of the land is irrelevant to the present Application.

[24] I have allowed some affidavit evidence as narrative. *Paccioco, supra*, explains narrative evidence as follows, at p. 46:

It is inevitable that in narrating a story, even in response to questions, witnesses will include minutiae that do not meet the tests of relevance and materiality. For example, the trier of fact is likely to learn what a police officer was doing when a call was received, or whether the police officer was in a marked or unmarked police vehicle. This is harmless background material, and reference to it is generally tolerated because it improves comprehension by presenting a total picture and makes it easier for the witness to recount the evidence.

Care must be taken with the narrative doctrine; prejudicial information should gain this kind of "back door" entry only where significant testimony cannot be recounted meaningfully and fairly without its disclosure. Even then, the testimony should be edited pursuant to the judge's exclusionary discretion to the extent that it can be, to minimize any damage that may be done. When prejudicial or otherwise immaterial information does piggyback its way into the record as part of the narrative, judges must avoid relying on it for improper purposes and in jury trials, if there is any risk that jurors could misuse the evidence, judges must give limiting instructions directing those jurors as to the limitations on the use that the evidence can be put to.

I am satisfied that I can instruct myself on the proper and improper use of the narrative evidence that I have admitted.

### Opinion

[25] In response to the Applicant's objections to inadmissible hearsay, the Respondent asserts that these attestations are admissible as lay opinion as they constitute "compendious statements of fact".

[26] *Paccioco, supra*, provides the following assistive commentary, at p. 198:

To understand this distinction, attempt to describe the difference between a vehicle traveling at 40 kilometres an hour and one traveling at 70 kilometres an hour without expressing what will clearly be conclusions that capture the series of indescribable and internalised observations that enable most people to provide fair estimates of speed. Or, consider the recognition of faces. The compendious statement of fact, "That is Aunt Sally", subsumes myriad subtle characteristics observed and digested by the witness, attributes that could not be communicated effectively without resort to conclusions.

Except in those common areas where this kind of opinion evidence is routinely admitted, the admissibility of lay opinion evidence is a matter of judicial discretion. Based on the reasoning in *Graat*, an important consideration is whether it is necessary to have the lay witness express an opinion. In exercising that discretion, the trial judge should therefore assess whether the trier of fact is in as good a position as the witness to form the relevant conclusion. If so, the lay opinion should not be admitted unless the lay opinion evidence can, without prejudicing the case, assist in the orderly presentation of information. In *R. v. Walizadah*, for example, it was useful to permit a police officer to give jurors a fair and balanced guided tour through a video re-enactment even though they were capable of seeing what was there to be seen.

It is clear from *Graat* that in determining whether lay opinion evidence is needed, the trial judge should consider whether, given the nature of the observation or the deficiencies of language, it is necessary for the witness to resort to "compendious" statements in order to communicate effectively what has been observed. Where the witness can communicate the information adequately by describing with particularity what has been observed, the witness should generally not be permitted to express an opinion.

[27] I have admitted some passages of lay opinion based on the concept of compendious statements of fact. In all other cases, the passage objected to on the basis of lay opinion had been previously struck by me on the basis of relevance. I am satisfied that I can properly instruct myself on the use of the admitted lay opinion evidence.

### Legal Submission

[28] Submissions do not constitute evidence: *Canadian National Railway v. Teamsters Canada Rail Conference*, 2017 NSSC 10, at para 49. In *Canadian*

*Imperial Bank of Commerce v. CNH Capital Ltd.*, 2013 NSCA 35, the Court of Appeal commented on the meaning of the prohibition against statements in the nature of a plea or submission, as expressed in *Waverley* and the language of Rule 39.04(2)(a). In particular, at para. 82, the Court noted that the prohibition generally refers to a “conclusory statement that embodies or assumes a point of law.”

[29] I struck one passage of affidavit evidence on this basis as it was obviously a conclusory statement that embodied or assumed a point of law.

### **Summary**

[30] As stated, Schedule “A” to this decision incorporates the Applicant’s objections, the Respondent’s submissions and my ruling on each.

[31] I direct that counsel for the Respondent prepare copies of the affidavits with the passages I have ordered struck either removed or struck-through. These copies will be entered as the exhibited affidavits at the hearing of the Application.

[32] The Applicant is entitled to costs on this motion by correspondence in the amount of \$750 inclusive of disbursements and payable at the conclusion of the Application.

[33] Order accordingly.

Norton, J.

## SCHEDULE "A"

Affiant: Timothy Habinski				
Paragraph / sentence	Statement	Basis for objection	Response	Ruling
Paragraph 5 / 1 <sup>st</sup> sentence	"I was very intrigued by the idea of having the school in the Municipality as it would mean the creation of hundreds of jobs (directly or indirectly), millions of dollars in development of a school campus, millions more in housing development, and a significant increase in tourism"	Speculation, statement of opinion / belief, irrelevant	<ul style="list-style-type: none"> <li>The Municipality's interest in the Gordonstoun school project is relevant.</li> <li>The evidence is a compendious statement of fact based on Mr. Habinski's perceptions and experiences as a member of Council and Warden, who participated in the in camera discussions on the Gordonstoun school project</li> </ul>	Struck - irrelevant
Paragraph 5 / final sentence	"...and Council was very supportive."	Statement of opinion / belief	<ul style="list-style-type: none"> <li>The Municipality's interest in the Gordonstoun school project is relevant.</li> <li>The evidence is a compendious statement of fact based on Mr. Habinski's perceptions and experiences as a member of Council and Warden, who participated in the in camera discussions on the Gordonstoun school project</li> </ul>	Admissible opinion
Paragraph 6	Entire paragraph	Irrelevant	<ul style="list-style-type: none"> <li>The Notice of Application includes that the Gordonstoun school project is modeled after the original Gordonstoun school in Scotland. Evidence on Mr. Habinski's trip to visit the original school is relevant</li> </ul>	Struck - irrelevant

			<p>on the face of the pleadings.</p> <ul style="list-style-type: none"> <li>Evidence on the Municipality's interest in the development of the Gordonstoun school is relevant.</li> <li>Alternatively, the evidence forms part of the narrative.</li> </ul>	
Paragraph 7 and Exhibit A	Entire paragraph and exhibit	Irrelevant	<ul style="list-style-type: none"> <li>The Notice of Application includes that the Gordonstoun school project is modeled after the original Gordonstoun school in Scotland. Evidence on Mr. Habinski's trip to visit the original school is relevant.</li> <li>Such evidence is also relevant to the Municipality's interest in the Gordonstoun school project.</li> </ul>	Struck - irrelevant
Paragraph 8	Entire paragraph	Irrelevant	<ul style="list-style-type: none"> <li>Evidence on Mr. Habinski's trip to Scotland to visit the original Gordonstoun school is relevant on the face of the pleadings.</li> <li>Evidence on the discussion between Mr. Habinski, Ms. Kerr, and Mr. Farren, including that the Annapolis Valley would be a suitable location for the Gordonstoun school, is not opinion evidence but evidence that a discussion took place.</li> </ul>	Struck - irrelevant
Paragraph 8 / 2 <sup>nd</sup> sentence	"and why it would be an excellent location for a school similar to Gordonstoun."	Statement of opinion / belief	<ul style="list-style-type: none"> <li>Evidence on Mr. Habinski's trip to Scotland to visit the original Gordonstoun school is relevant on the face of the pleadings.</li> <li>Evidence on the discussion between Mr. Habinski, Ms. Kerr, and</li> </ul>	n/a as previously struck

			Mr. Farren, including that the Annapolis Valley would be a suitable location for the Gordonstoun school, is not opinion evidence but evidence that a discussion took place.	
Paragraph 12 and Exhibit B	Entire paragraph and exhibit	Irrelevant	<ul style="list-style-type: none"> <li>The Notice of Application includes that the Gordonstoun school project is modeled after the original Gordonstoun school in Scotland. Evidence on the second trip to visit the original school is relevant.</li> <li>Council's unanimous approval of the second trip to the original school is relevant and goes to the Municipality's interest in the Gordonstoun school project.</li> </ul>	Struck-irrelevant
Paragraph 13	Entire paragraph	Irrelevant. The statement that Mr. Habinski "felt convinced that this was an excellent opportunity for the Municipality" is also a statement of opinion / belief.	<ul style="list-style-type: none"> <li>The Notice of Application includes that the Gordonstoun school project is modeled after the original Gordonstoun school in Scotland. Evidence on the development of the Gordonstoun school, including its modeling after the original school, is relevant.</li> <li>The Municipality's interest in and involvement in the formation of the Gordonstoun school is relevant.</li> <li>Mr. Habinski's evidence that the Gordonstoun school project is an excellent opportunity for the Municipality is a compendious statement</li> </ul>	Struck - irrelevant



			of fact. Alternatively, it goes to narrative.	
Paragraph 14	Entire paragraph	Irrelevant	<ul style="list-style-type: none"> <li>Evidence on the development of the Gordonstoun school project, including the financial plans and Municipality's involvement, is relevant on the face of the pleadings. It is also relevant to the Municipality's interest in the project.</li> <li>Mr. Habinski's evidence on the financial benefit to the community is a compendious statement of fact. Alternatively, it goes to narrative.</li> </ul>	Struck - irrelevant
Paragraph 14 / final sentence	"...that would be extremely beneficial to the community"	Statement of opinion / belief	<ul style="list-style-type: none"> <li>Evidence on the development of the Gordonstoun school project, including the financial plans and Municipality's involvement, is relevant on the face of the pleadings. It is also relevant to the Municipality's interest in the project.</li> <li>Mr. Habinski's evidence on the financial benefit to the community is a compendious statement of fact. Alternatively, it goes to narrative.</li> </ul>	n/a
Paragraph 15 / 2 <sup>nd</sup> and 3 <sup>rd</sup> sentences	"The Premier indicated that he liked that idea. I recall that his exact words were, 'You're getting warmer'"	Hearsay, Irrelevant	<ul style="list-style-type: none"> <li>Evidence on the development of the Gordonstoun school project and the Municipality's involvement in same is relevant.</li> <li>Evidence on the discussion between Mr. Habinski, Mr. Farren, and</li> </ul>	Struck - hearsay

			Mr. McNeil is admissible to establish that a discussion took place. Alternatively, the evidence forms part of the narrative.	
Paragraph 21 / 1 <sup>st</sup> sentence	"I am advised by Mr. Farren, and I verily believe, that Richard Devey, the Head Teacher at Gordonstoun, was impressed with the Upper Clements Lands"	Hearsay. Attributed hearsay is only permissible on motions	<ul style="list-style-type: none"> <li>Mr. Habinski's evidence that he was advised by Mr. Farren that the Head Teacher at the original Gordonstoun School was impressed with the Upper Clements Park lands is admissible for the purpose of narrative.</li> </ul>	Struck - hearsay
Paragraph 22 / 3 <sup>rd</sup> sentence	"I understood from speaking to the principals of the Upper Clements Park society that they owed approximately \$600,000 to private creditors, approximately \$600,000 to the Federal and Provincial governments, and \$300,000 to the Municipality"	Hearsay	<ul style="list-style-type: none"> <li>Mr. Habinski's evidence on the extent of the Upper Clements Park Society's debt is based on his personal knowledge and is admissible for the truth of its contents.</li> </ul>	Admissible – speaks to his understanding not what he was told
Paragraph 28 / final sentence	"Had the subdivision been completed prior, Council would have been in a position to convey the Upper Clements Lands much sooner than it did"	Speculation	<ul style="list-style-type: none"> <li>The Notice of Application specifically references issues surrounding the timing of the conveyance.</li> <li>Mr. Habinski's evidence that the conveyance would have been completed before November, 2020 if the subdivision had been completed earlier is admissible as a compendious statement of fact.</li> </ul>	Admissible lay opinion
Paragraph 29	Entire paragraph	Irrelevant	<ul style="list-style-type: none"> <li>Evidence on the installation of reliable</li> </ul>	Struck - irrelevant

			<p>internet in the Municipality is relevant to the development of the plans affecting the Gordonstoun school project.</p> <ul style="list-style-type: none"> <li>• Alternatively, the evidence goes to narrative.</li> <li>• Mr. Habinski's evidence that the less expensive internet contract was a positive outcome for the Municipality is a compendious statement of fact.</li> <li>• Mr. Habinski's evidence that Mainland Telecom Inc. commenced an action against the Municipality goes to narrative.</li> </ul>	
Paragraph 30	Entire paragraph	Irrelevant	<ul style="list-style-type: none"> <li>• Evidence on the installation of reliable internet in the Municipality is relevant to the development of the plans affecting the Gordonstoun school project.</li> <li>• Alternatively, the evidence goes to narrative.</li> <li>• Mr. Habinski's evidence that the less expensive internet contract was a positive outcome for the Municipality is a compendious statement of fact.</li> <li>• Mr. Habinski's evidence that Mainland Telecom Inc. commenced an action against the Municipality goes to narrative.</li> </ul>	Struck - irrelevant

Paragraph 30 / final sentence	“In my view, this was a positive outcome for constituents of the Municipality.”	Statement of opinion / belief	<ul style="list-style-type: none"> <li>• Evidence on the installation of reliable internet in the Municipality is relevant to the development of the plans affecting the Gordonstoun school project.</li> <li>• Alternatively, the evidence goes to narrative.</li> <li>• Mr. Habinski’s evidence that the less expensive internet contract was a positive outcome for the Municipality is a compendious statement of fact.</li> <li>• Mr. Habinski’s evidence that Mainland Telecom Inc. commenced an action against the Municipality goes to narrative.</li> </ul>	n/a
Paragraph 31	Entire paragraph	Irrelevant	<ul style="list-style-type: none"> <li>• Evidence on the installation of reliable internet in the Municipality is relevant to the development of the plans affecting the Gordonstoun school project.</li> <li>• Alternatively, the evidence goes to narrative.</li> <li>• Mr. Habinski’s evidence that the less expensive internet contract was a positive outcome for the Municipality is a compendious statement of fact.</li> <li>• Mr. Habinski’s evidence that Mainland Telecom Inc. commenced an action against the</li> </ul>	Struck - irrelevant

			Municipality goes to narrative.	
Paragraph 32 / 1 <sup>st</sup> sentence	“Thereafter, significant efforts were made in the community to out-vote the existing Council.”	Irrelevant, statement of opinion / belief	<ul style="list-style-type: none"> <li>The Notice of Application references the 2020 Municipal election, including that 6/11 Councillors did not return to office. The Notice of Application states that the Gordonstoun school project was controversial and a subject of discussion in the election. Mr. Habinski’s evidence on the election and campaign is therefore relevant on the face of the pleadings.</li> <li>Mr. Habinski’s evidence on the hostility of the campaign is a compendious statement of fact.</li> <li>Mr. Habinski’s evidence on the Annapolis County Concerned Citizens Facebook group is relevant to the election and the campaign. It is important to the Respondent’s ability to respond to this application. Alternatively, the evidence goes to narrative.</li> </ul>	Struck - irrelevant
Paragraph 32 / 2 <sup>nd</sup> sentence	“I can only speculate as to what motivated this campaign, but having been through two (2) previous municipal elections, this campaign was particularly hostile.”	Irrelevant, statement of opinion / belief	<ul style="list-style-type: none"> <li>The Notice of Application references the 2020 Municipal election, including that 6/11 Councillors did not return to office. The Notice of Application states that the Gordonstoun school project was controversial and a subject of discussion in the election. Mr. Habinski’s evidence on the election and campaign is therefore</li> </ul>	Struck - irrelevant

			<p>relevant on the face of the pleadings.</p> <ul style="list-style-type: none"> <li>• Mr. Habinski's evidence on the hostility of the campaign is a compendious statement of fact.</li> <li>• Mr. Habinski's evidence on the Annapolis County Concerned Citizens Facebook group is relevant to the election and the campaign. It is important to the Respondent's ability to respond to this application. Alternatively, the evidence goes to narrative.</li> </ul>	
Paragraph 32 / 3 <sup>rd</sup> to 8 <sup>th</sup> sentences	<p>"A closed Facebook group entitled 'The Annapolis County Concerned Citizens' (or 'ACCC') was created where I and several other Councillors were falsely accused of sinister and unethical conduct. For example, I was accused of increasing my own salary to \$130,000. My salary at the time, was \$64,652.089, which was publicly available and published on the Municipal website. Similarly, the ACCC accused Councillors of increasing their salaries to \$48,000 (they were actually paid</p>	Irrelevant, scandalous and vexatious	<ul style="list-style-type: none"> <li>• The Notice of Application references the 2020 Municipal election, including that 6/11 Councillors did not return to office. The Notice of Application states that the Gordonstoun school project was controversial and a subject of discussion in the election. Mr. Habinski's evidence on the election and campaign is therefore relevant on the face of the pleadings.</li> <li>• Mr. Habinski's evidence on the hostility of the campaign is a compendious statement of fact.</li> <li>• Mr. Habinski's evidence on the Annapolis County Concerned Citizens Facebook group is relevant to the election and the campaign. It is important to the Respondent's ability to respond to this application. Alternatively,</li> </ul>	Struck - irrelevant

	approximately \$35,000). The Municipality was further accused of issuing tenders with a twenty-four (24) hour time limit to ensure the selection of a preferred respondent. These are only a few of several similar examples of the rumours that were circulated.”		the evidence goes to narrative.	
Paragraph 33	Entire paragraph	Irrelevant. The references to assault and tire slashing are also scandalous and vexatious	<ul style="list-style-type: none"> <li>• Mr. Habinski’s evidence on the Annapolis County Concerned Citizens Facebook group and his slashed front tire concerns the Municipal election, which is relevant on the face of the pleadings.</li> <li>• The evidence is important to the Respondent’s ability to respond to the application, including the suggestion in the pleadings that the Gordonstoun school project was controversial and connected to the out-voting of six Councillors.</li> <li>• In the alternative, the evidence goes to narrative.</li> </ul>	Struck - irrelevant
Paragraph 34 / 2 <sup>nd</sup> sentence	“Alan V. Parish Q.C., who is now the Warden of the Municipality, campaigned partly on criticizing the Municipality for its legal dispute with Mainland Telecom Inc. (as outlined in his campaign	Irrelevant	<ul style="list-style-type: none"> <li>• The election was specifically mentioned in the pleadings. Evidence on the hostility of the campaign and the election issues is relevant.</li> <li>• Reference to false accusations by Mr. Parish are important to the Respondent’s ability to respond to the suggestion</li> </ul>	Struck - irrelevant

	brochure, attached hereto as Exhibit "G", where he says "Because of its ill-considered actions, and the various lawsuits brought against it, the County has had to pay huge legal fees)."		in the Notice of Application that the Gordonstoun school project was controversial and connected to the out-voting of six Councillors. <ul style="list-style-type: none"> <li>Alternatively, the evidence goes to narrative.</li> </ul>	
Exhibit G	Campaign Brochure of Alan V. Parish, Q.C.	Irrelevant	<ul style="list-style-type: none"> <li>The election was specifically mentioned in the pleadings. Evidence on the hostility of the campaign and the election issues is relevant.</li> <li>Reference to false accusations by Mr. Parish are important to the Respondent's ability to respond to the suggestion in the Notice of Application that the Gordonstoun school project was controversial and connected to the out-voting of six Councillors.</li> <li>Alternatively, the evidence goes to narrative.</li> </ul>	Struck - irrelevant
Paragraph 35	Entire paragraph	Irrelevant. References to false accusations by Warden Parish are also scandalous	<ul style="list-style-type: none"> <li>The election was specifically mentioned in the pleadings. Evidence on the hostility of the campaign and the election issues is relevant.</li> <li>Reference to false accusations by Mr. Parish are important to the Respondent's ability to respond to the suggestion in the Notice of Application that the Gordonstoun school project was controversial and connected to the out-voting of six Councillors.</li> </ul>	Struck - irrelevant



			<ul style="list-style-type: none"> <li>Alternatively, the evidence goes to narrative.</li> </ul>	
Paragraph 45 / 2 <sup>nd</sup> sentence	“I believe these parcels were not conveyed to EA Farren due to inadvertence on the part of the person who drafted the deed and lease.”	Speculation, statement of opinion / belief	<ul style="list-style-type: none"> <li>Mr. Habinski’s evidence that he believes the subject parcels were not conveyed due to inadvertence is a compendious statement of fact.</li> <li>Alternatively, the evidence goes to narrative.</li> </ul>	Admissible lay opinion
<b>Affiant: John Ferguson</b>				
Paragraph 7 / 2 <sup>nd</sup> sentence	“We both felt that such a school could be a very positive opportunity for the community.”	Statement of opinion / belief, irrelevant	<ul style="list-style-type: none"> <li>Mr. Ferguson’s evidence on his discussion with Mr. Farren about the Annapolis Royal Regional Academy and Mr. Farren’s plan to develop a private school in Atlantic Canada is relevant to the Municipality’s interest in the Gordonstoun school project.</li> <li>Mr. Ferguson’s statement that the school could be a positive opportunity for the community is a compendious statement of fact. Alternatively, it goes to narrative.</li> </ul>	Struck - irrelevant
Paragraph 8	Entire paragraph	Irrelevant	<ul style="list-style-type: none"> <li>The Notice of Application includes that the parties entered into discussions surrounding the plan to establish a school in Annapolis County modeled after the original Gordonstoun school in Scotland. Information concerning the original Gordonstoun school is therefore relevant.</li> <li>Mr. Ferguson’s evidence on the trip he</li> </ul>	Struck - irrelevant

			and Mr. Habinski made to Scotland, as well as Council approving the travel request, is relevant to the development of the Gordonstoun school project and to the Municipality's interest in the project.	
Paragraph 10	Entire paragraph	Irrelevant	<ul style="list-style-type: none"> <li>The Notice of Application includes that the parties entered into discussions surrounding the plan to establish a school in Annapolis County modeled after the original Gordonstoun school in Scotland. Information concerning the original Gordonstoun school is therefore relevant.</li> <li>Mr. Ferguson's evidence on the trip he and Mr. Habinski made to Scotland, as well as Council approving the travel request, is relevant to the development of the Gordonstoun school project and to the Municipality's interest in the project.</li> </ul>	Struck - irrelevant
Paragraph 11	Entire paragraph	Irrelevant	<ul style="list-style-type: none"> <li>The modeling of the Gordonstoun school project after the original Gordonstoun school in Scotland is included in the pleadings. Information on Mr. Ferguson's trip to the original school is relevant.</li> <li>Information on Mr. Ferguson's discussion with Ms. Kerr and Mr. Farren on the Annapolis Valley and why it would be a suitable location for the Gordonstoun school project is not opinion evidence, but admitted to</li> </ul>	Struck - irrelevant

			establish that the discussion took place.	
Paragraph 11 / 2 <sup>nd</sup> sentence	“...and why it would be an excellent location for a school similar to Gordonstoun.”	Statement of opinion / belief, irrelevant	<ul style="list-style-type: none"> <li>The modeling of the Gordonstoun school project after the original Gordonstoun school in Scotland is included in the pleadings. Information on Mr. Ferguson’s trip to the original school is relevant.</li> <li>Information on Mr. Ferguson’s discussion with Ms. Kerr and Mr. Farren on the Annapolis Valley and why it would be a suitable location for the Gordonstoun school project is not opinion evidence, but admitted to establish that the discussion took place.</li> </ul>	Struck - irrelevant
Paragraph 13 / 2 <sup>nd</sup> sentence	“Thereafter, we met with members of the High Commission in London to advise of the proposed project in order to gather information on recruitment of international students and discuss other relevant topics.”	Irrelevant	<ul style="list-style-type: none"> <li>Mr. Ferguson’s evidence that he, Mr. Farren, and Mr. Habinski met with members of the High Commission to discuss the Gordonstoun school project in London is relevant to the Municipality’s interest in and involvement in the project.</li> <li>Alternatively, the evidence goes to narrative.</li> </ul>	Struck - irrelevant
Paragraph 14 / 2 <sup>nd</sup> sentence	“Mr. Farren invited Premier Stephen McNeil to tour Gordonstoun, which the Premier agreed to do in August of 2017.”	Irrelevant	<ul style="list-style-type: none"> <li>Mr. Ferguson’s evidence that Mr. Farren invited Mr. McNeil to tour the original Gordonstoun school is relevant to the development of the Gordonstoun school project, including its financial backing.</li> <li>Alternatively, the evidence goes to narrative.</li> </ul>	Struck - irrelevant

Paragraph 16 / 2 <sup>nd</sup> sentence	“My understanding is that Warden Habinski thought the 1.2% economic return in perpetuity would be very beneficial to the community.”	Statement of opinion / belief, hearsay	<ul style="list-style-type: none"> <li>• Mr. Ferguson’s evidence on the discussion between himself, Mr. Farren, Mr. Habinski, and Mr. McNeil on the financial arrangements for the Gordonstoun school project is relevant to the development of the project and the Municipality’s interest in the project.</li> <li>• The evidence is not opinion evidence. It is admissible to demonstrate that a discussion concerning the Gordonstoun school project and its financing took place between Mr. Farren, Municipal representatives, and a Provincial representative.</li> </ul>	Struck - irrelevant
Paragraph 16 / 3 <sup>rd</sup> sentence	“When it was suggested to the Premier that the Municipality become the guarantor rather than the Province, the Premier stated “You’re getting warmer”.	Irrelevant	<ul style="list-style-type: none"> <li>• Mr. Ferguson’s evidence on the discussion between himself, Mr. Farren, Mr. Habinski, and Mr. McNeil on the financial arrangements for the Gordonstoun school project is relevant to the development of the project and the Municipality’s interest in the project.</li> <li>• The evidence is not opinion evidence. It is admissible to demonstrate that a discussion concerning the Gordonstoun school project and its financing took place between Mr. Farren, Municipal representatives, and a Provincial representative.</li> </ul>	Struck - irrelevant

Paragraph 16 / 4 <sup>th</sup> sentence	“I understood this to mean the Premier supported the idea.”	Irrelevant, statement of opinion / belief	<ul style="list-style-type: none"> <li>• Mr. Ferguson’s evidence on the discussion between himself, Mr. Farren, Mr. Habinski, and Mr. McNeil on the financial arrangements for the Gordonstoun school project is relevant to the development of the project and the Municipality’s interest in the project.</li> <li>• The evidence is not opinion evidence. It is admissible to demonstrate that a discussion concerning the Gordonstoun school project and its financing took place between Mr. Farren, Municipal representatives, and a Provincial representative.</li> </ul>	Struck - irrelevant
Paragraph 24 / 2 <sup>nd</sup> sentence	“I understood from speaking to the principals of the Upper Clements Park society that they owed approximately \$600,000 to private creditors, approximately \$600,000 to the Federal and Provincial governments, and \$300,000 to the Municipality.”	Hearsay	<ul style="list-style-type: none"> <li>• Mr. Ferguson’s evidence on the extent of the Upper Clements Park Society’s debt was confirmed by documents once in his possession and is based on personal knowledge. It is not hearsay.</li> <li>• Mr. Ferguson’s evidence that the Society’s debt would be waived on the basis that the Upper Clements Park lands would be used for the Gordonstoun school project is based on personal knowledge he gained in connection with his role as CAO of the Municipality. His evidence is not opinion or speculation.</li> </ul>	Admissible – speaks to his understanding not what he was told

Paragraph 25 / 2 <sup>nd</sup> sentence	“I understood that the Federal and Provincial governments agreed to do this on the understanding that the Upper Clements Lands would be used for the Gordonstoun project.”	Statement of opinion / belief, speculation	<ul style="list-style-type: none"> <li>• Mr. Ferguson’s evidence on the extent of the Upper Clements Park Society’s debt was confirmed by documents once in his possession and is based on personal knowledge. It is not hearsay.</li> <li>• Mr. Ferguson’s evidence that the Society’s debt would be waived on the basis that the Upper Clements Park lands would be used for the Gordonstoun school project is based on personal knowledge he gained in connection with his role as CAO of the Municipality. His evidence is not opinion or speculation.</li> </ul>	Admissible – speaks to his understanding not what he was told
Paragraph 43 and Exhibit I	Entire paragraph and exhibit	Irrelevant	<ul style="list-style-type: none"> <li>• The November 4, 2020 meeting of which Mr. Ferguson gives evidence is referenced in the Notice of Application. His evidence is therefore relevant.</li> <li>• Mr. Ferguson’s evidence that he gave a presentation on November 4, 2020 for the benefit of the public on the Gordonstoun school project is relevant on the face of the Notice of Application, which asserts that the topic was controversial and a subject of the Municipal election.</li> </ul>	Struck - irrelevant
Paragraph 44	Entire paragraph	Irrelevant	<ul style="list-style-type: none"> <li>• Mr. Ferguson’s evidence that Council voted on November 4, 2020 in favour of a motion respecting a letter of intent, which the Council did not</li> </ul>	Admissible

			subsequently overturn, is relevant to the Applicant's contention that the subject conveyances were ultra vires.	
Paragraph 45	Entire paragraph	Irrelevant	<ul style="list-style-type: none"> <li>Mr. Ferguson was referenced in the Notice of Application in his capacity as CAO. The Notice of Application includes that the outgoing members of Council acted without authority and violated the governing legislation and policies. Evidence that his employment was wrongfully terminated on December 15, 2020 is relevant and important to the Respondent's ability to respond to the Applicant's contention that Council acted ultra vires.</li> </ul>	Admissible
<b>Affiant: Edward Farren</b>				
Paragraph 7 / 3 <sup>rd</sup> and 4 <sup>th</sup> sentences	"They both appeared to be intrigued by the idea of having the school developed in the Municipality. I thought the Municipality would be a great location for the school and that such arrangement could be mutually beneficial."	Statement of opinion / belief, irrelevant	<ul style="list-style-type: none"> <li>Mr. Farren's evidence that he discussed a private school in Atlantic Canada with Mr. Habinski and Mr. Ferguson, and that they appeared interested in such a project, is relevant to the development of the Gordonstoun school project and the Municipality's interest in same.</li> <li>Mr. Farren's evidence that Mr. Habinski and Mr. Ferguson were interested in the project is a compendious statement of fact.</li> <li>Mr. Farren's own interest in the Municipality as the location for the</li> </ul>	Admissible lay opinion

			Gordonstoun school project, and his impression that this would be mutually beneficial, is relevant. Alternatively, it goes to narrative.	
Paragraph 8	Entire paragraph	Irrelevant	<ul style="list-style-type: none"> <li>• Mr. Farren's evidence that he met with Municipal and provincial representatives to discuss the concept of an international school and the associated socio-economic benefits is relevant to the Municipality's interest in the Gordonstoun school project.</li> <li>• Mr. Farren's evidence that the provincial representative, Mr. Walzak, responded favourably to the concept, and that Mr. Farren then requested a loan for the Gordonstoun school project from Mr. Walzak, is relevant to the development of the Gordonstoun school project. Alternatively, the evidence goes to narrative.</li> </ul>	Struck - irrelevant
Paragraph 9 and Exhibit A	Entire paragraph and exhibit	Irrelevant	<ul style="list-style-type: none"> <li>• Mr. Farren's evidence that he met with Municipal and provincial representatives to discuss the concept of an international school and the associated socio-economic benefits is relevant to the Municipality's interest in the Gordonstoun school project.</li> <li>• Mr. Farren's evidence that the provincial representative, Mr. Walzak, responded favourably to the concept,</li> </ul>	Struck - irrelevant



			and that Mr. Farren then requested a loan for the Gordonstoun school project from Mr. Walzak, is relevant to the development of the Gordonstoun school project. Alternatively, the evidence goes to narrative.	
Paragraph 10 and Exhibit B	Entire paragraph and exhibit	Irrelevant	<ul style="list-style-type: none"> <li>• Mr. Farren's evidence that he met with Municipal and provincial representatives to discuss the concept of an international school and the associated socio-economic benefits is relevant to the Municipality's interest in the Gordonstoun school project.</li> <li>• Mr. Farren's evidence that the provincial representative, Mr. Walzak, responded favourably to the concept, and that Mr. Farren then requested a loan for the Gordonstoun school project from Mr. Walzak, is relevant to the development of the Gordonstoun school project. Alternatively, the evidence goes to narrative.</li> </ul>	Struck - irrelevant
Paragraph 11	Entire paragraph	Irrelevant	<ul style="list-style-type: none"> <li>• Mr. Farren's evidence on the fact that the Gordonstoun school project would be modeled after the original school in Scotland is relevant to the development of the project.</li> <li>• Mr. Farren's evidence on why he invited Mr. Habinski and Mr. Ferguson to visit the original school is relevant</li> </ul>	Admissible as narrative only

			<p>to the development of the Gordonstoun school project.</p> <ul style="list-style-type: none"> <li>• Mr. Farren's evidence that Mr. Habinski and Mr. Ferguson applied successfully to Council to travel to the original Gordonstoun school is relevant to the Municipality's interest in the school.</li> <li>• Mr. Farren's evidence that Ms. Kerr advised on the impact the original Gordonstoun school had on the local economy is relevant to the development of the Gordonstoun school project. This evidence is admissible for the purpose of narrative.</li> </ul>	
Paragraph 12	Entire paragraph	Irrelevant	<ul style="list-style-type: none"> <li>• Mr. Farren's evidence on the fact that the Gordonstoun school project would be modeled after the original school in Scotland is relevant to the development of the project.</li> <li>• Mr. Farren's evidence on why he invited Mr. Habinski and Mr. Ferguson to visit the original school is relevant to the development of the Gordonstoun school project.</li> <li>• Mr. Farren's evidence that Mr. Habinski and Mr. Ferguson applied successfully to Council to travel to the original Gordonstoun school is relevant to the Municipality's interest in the school.</li> </ul>	Struck - irrelevant

			<ul style="list-style-type: none"> <li>• Mr. Farren's evidence that Ms. Kerr advised on the impact the original Gordonstoun school had on the local economy is relevant to the development of the Gordonstoun school project. This evidence is admissible for the purpose of narrative.</li> </ul>	
Paragraph 13	Entire paragraph	Irrelevant	<ul style="list-style-type: none"> <li>• Mr. Farren's evidence on the fact that the Gordonstoun school project would be modeled after the original school in Scotland is relevant to the development of the project.</li> <li>• Mr. Farren's evidence on why he invited Mr. Habinski and Mr. Ferguson to visit the original school is relevant to the development of the Gordonstoun school project.</li> <li>• Mr. Farren's evidence that Mr. Habinski and Mr. Ferguson applied successfully to Council to travel to the original Gordonstoun school is relevant to the Municipality's interest in the school.</li> <li>• Mr. Farren's evidence that Ms. Kerr advised on the impact the original Gordonstoun school had on the local economy is relevant to the development of the Gordonstoun school project. This evidence is admissible for the purpose of narrative.</li> </ul>	Struck - irrelevant

Paragraph 14	Entire paragraph	Irrelevant	<ul style="list-style-type: none"> <li>• Mr. Farren's evidence on the fact that the Gordonstoun school project would be modeled after the original school in Scotland is relevant to the development of the project.</li> <li>• Mr. Farren's evidence on why he invited Mr. Habinski and Mr. Ferguson to visit the original school is relevant to the development of the Gordonstoun school project.</li> <li>• Mr. Farren's evidence that Mr. Habinski and Mr. Ferguson applied successfully to Council to travel to the original Gordonstoun school is relevant to the Municipality's interest in the school.</li> <li>• Mr. Farren's evidence that Ms. Kerr advised on the impact the original Gordonstoun school had on the local economy is relevant to the development of the Gordonstoun school project. This evidence is admissible for the purpose of narrative.</li> </ul>	Struck - irrelevant
Paragraph 14 / 4 <sup>th</sup> sentence	"In response, Ms. Kerr noted that the existence of Gordonstoun had a significant economic impact on the nearby communities and noted examples of various business [sic] in the area that would not	Irrelevant, hearsay	<ul style="list-style-type: none"> <li>• Mr. Farren's evidence on the fact that the Gordonstoun school project would be modeled after the original school in Scotland is relevant to the development of the project.</li> <li>• Mr. Farren's evidence on why he invited Mr. Habinski and Mr. Ferguson to visit the original school is relevant</li> </ul>	n/a

	exist were it not for Gordonstoun.”		<p>to the development of the Gordonstoun school project.</p> <ul style="list-style-type: none"> <li>• Mr. Farren’s evidence that Mr. Habinski and Mr. Ferguson applied successfully to Council to travel to the original Gordonstoun school is relevant to the Municipality’s interest in the school.</li> <li>• Mr. Farren’s evidence that Ms. Kerr advised on the impact the original Gordonstoun school had on the local economy is relevant to the development of the Gordonstoun school project. This evidence is admissible for the purpose of narrative.</li> </ul>	
Paragraph 15 / 2 <sup>nd</sup> sentence	“The Gordonstoun brand is world class.”	Statement of opinion / belief, irrelevant	<ul style="list-style-type: none"> <li>• Mr. Farren’s evidence that he was happy for EA Farren to become a franchisee of the original Gordonstoun school because the “Gordonstoun brand is world class” is a compendious statement of fact.</li> <li>• Alternatively, it goes to narrative.</li> </ul>	Admissible lay opinion
Paragraph 16	Entire paragraph	Irrelevant	<ul style="list-style-type: none"> <li>• Mr. Farren’s evidence that he, Mr. Habinski, and Mr. Ferguson met with members of the Canadian High Commission in London to advise of the Gordonstoun school project, which would be closely connected to the Royal Family, is relevant to the plans surrounding the development of the project, as well as the</li> </ul>	Struck - irrelevant

			<p>Municipality's interest in same.</p> <ul style="list-style-type: none"> <li>• Mr. Farren's evidence that the High Commission staff advised that a formal announcement would be made is relevant to the plans surrounding and development of the Gordonstoun school project.</li> <li>• Alternatively, the evidence goes to narrative.</li> </ul>	
Paragraph 17	Entire paragraph	Irrelevant	<ul style="list-style-type: none"> <li>• Mr. Farren's evidence that he, Mr. Habinski, and Mr. Ferguson met with members of the Canadian High Commission in London to advise of the Gordonstoun school project, which would be closely connected to the Royal Family, is relevant to the plans surrounding the development of the project, as well as the Municipality's interest in same.</li> <li>• Mr. Farren's evidence that the High Commission staff advised that a formal announcement would be made is relevant to the plans surrounding and development of the Gordonstoun school project.</li> <li>• Alternatively, the evidence goes to narrative.</li> </ul>	Struck - irrelevant
Paragraph 18	Entire paragraph	Irrelevant	<ul style="list-style-type: none"> <li>• Mr. Farren's evidence on the tour of the original Gordonstoun school with Mr. McNeil, Mr. Habinski, Mr.</li> </ul>	Struck - irrelevant

			<p>Ferguson, and Mr. Morrison is relevant to the development of the Gordonstoun school project, as well as its modeling after the original school and the Municipality's interest in the project.</p> <ul style="list-style-type: none"> <li>• Mr. Farren's evidence that discussions continued following their return to Nova Scotia is relevant to the development of the Gordonstoun school project and the Municipality's interest in same.</li> <li>• Mr. Farren's evidence at para 20 concerning Mr. McNeil's interest in the project is a compendious statement of fact. Alternatively, this evidence goes to narrative.</li> </ul>	
Paragraph 19	Entire paragraph	Irrelevant	<ul style="list-style-type: none"> <li>• Mr. Farren's evidence on the tour of the original Gordonstoun school with Mr. McNeil, Mr. Habinski, Mr. Ferguson, and Mr. Morrison is relevant to the development of the Gordonstoun school project, as well as its modeling after the original school and the Municipality's interest in the project.</li> <li>• Mr. Farren's evidence that discussions continued following their return to Nova Scotia is relevant to the development of the Gordonstoun school project and the</li> </ul>	Struck - irrelevant

			<p>Municipality's interest in same.</p> <ul style="list-style-type: none"> <li>Mr. Farren's evidence at para 20 concerning Mr. McNeil's interest in the project is a compendious statement of fact. Alternatively, this evidence goes to narrative.</li> </ul>	
Paragraph 20	<p>"The Premier appeared receptive to the concept of the school as a branch of Gordonstoun in the Municipality."</p>	<p>Statement of opinion / belief, irrelevant</p>	<ul style="list-style-type: none"> <li>Mr. Farren's evidence on the tour of the original Gordonstoun school with Mr. McNeil, Mr. Habinski, Mr. Ferguson, and Mr. Morrison is relevant to the development of the Gordonstoun school project, as well as its modeling after the original school and the Municipality's interest in the project.</li> <li>Mr. Farren's evidence that discussions continued following their return to Nova Scotia is relevant to the development of the Gordonstoun school project and the Municipality's interest in same.</li> <li>Mr. Farren's evidence at para 20 concerning Mr. McNeil's interest in the project is a compendious statement of fact. Alternatively, this evidence goes to narrative.</li> </ul>	<p>Struck - irrelevant</p>
Paragraph 21	<p>"Discussions continued with the Premier on several occasions thereafter when we had returned to Nova Scotia and included at</p>	<p>Irrelevant</p>	<ul style="list-style-type: none"> <li>Mr. Farren's evidence on the tour of the original Gordonstoun school with Mr. McNeil, Mr. Habinski, Mr. Ferguson, and Mr. Morrison is relevant to the development of the</li> </ul>	<p>Admissible as narrative only</p>



	different times Warden Habinski, Councillor Morrison, and Mr. Ferguson.”		<p>Gordonstoun school project, as well as its modeling after the original school and the Municipality’s interest in the project.</p> <ul style="list-style-type: none"> <li>• Mr. Farren’s evidence that discussions continued following their return to Nova Scotia is relevant to the development of the Gordonstoun school project and the Municipality’s interest in same.</li> <li>• Mr. Farren’s evidence at para 20 concerning Mr. McNeil’s interest in the project is a compendious statement of fact. Alternatively, this evidence goes to narrative.</li> </ul>	
Paragraph 38 / final sentence	“My understanding is that this was the Federal and Provincial governments’ way of investing in the Gordonstoun project.”	Statement of opinion / belief, irrelevant	<ul style="list-style-type: none"> <li>• Mr. Farren’s evidence that the provincial and federal government invested in the Gordonstoun school project by waiving the Upper Clements Park Society debt on the basis that its lands would be used for the Gordonstoun school is relevant to the development of the financial plans surrounding the project.</li> <li>• This evidence is not opinion evidence, but is based upon Mr. Farren’s personal knowledge and experience in developing the Gordonstoun school project.</li> <li>• Information concerning the subject lands, their acquisition,</li> </ul>	Struck - irrelevant

			and any encumbrances are relevant.	
Paragraph 44	Entire paragraph	Irrelevant	<ul style="list-style-type: none"> <li>Mr. Farren's evidence on the request that he assume responsibility for the security is relevant to the financial plans for the development of the Gordonstoun school project, as well as the Respondent's acquisition of the lands on which the school would be situate in Nova Scotia.</li> <li>Mr. Farren's evidence that the Municipality had neither the personnel nor the funds to shoulder the security is admissible for the truth of its contents. The evidence is necessary to the Respondent's ability to respond to the Notice of Application and contention that the subject transactions were ultra vires. Mr. Farren is available for cross-examination, as well as Mr. Ferguson. Alternatively, the evidence goes to narrative.</li> </ul>	Relevant to municipal purposes
Paragraph 45	"Mr. Ferguson, when asking EA Farren to pay for the site security expense from the \$7.2 million, stated it had neither the personnel nor the money to shoulder this security responsibility themselves."	Irrelevant, hearsay	<ul style="list-style-type: none"> <li>Mr. Farren's evidence on the request that he assume responsibility for the security is relevant to the financial plans for the development of the Gordonstoun school project, as well as the Respondent's acquisition of the lands on which the school would be situate in Nova Scotia.</li> <li>Mr. Farren's evidence that the Municipality had neither</li> </ul>	Relevant to municipal purposes Not hearsay as Ferguson available for cross examination

			<p>the personnel nor the funds to shoulder the security is admissible for the truth of its contents. The evidence is necessary to the Respondent's ability to respond to the Notice of Application and contention that the subject transactions were ultra vires. Mr. Farren is available for cross-examination, as well as Mr. Ferguson. Alternatively, the evidence goes to narrative.</p>	
Paragraph 47	Entire paragraph	Irrelevant	<ul style="list-style-type: none"> <li>Mr. Farren's evidence on the cost of the security, as well as that payment had been sought directly from the Municipality since March, 2021, is relevant as it concerns information surrounding the financial agreement between the Respondent and the Applicant respecting the subject land transactions.</li> </ul>	Relevant to municipal purposes
Paragraph 48	Entire paragraph	Irrelevant	<ul style="list-style-type: none"> <li>Mr. Farren's evidence on the cost of the security, as well as that payment had been sought directly from the Municipality since March, 2021, is relevant as it concerns information surrounding the financial agreement between the Respondent and the Applicant respecting the subject land transactions.</li> </ul>	Relevant to municipal purposes
Paragraph 54 / 1 <sup>st</sup> sentence	"For reasons about which EA Farren can only speculate, certain members of the community began criticizing the Gordonstoun	Irrelevant	<ul style="list-style-type: none"> <li>The Notice of Application provides that the Gordonstoun school project was controversial and a subject of the election. Mr. Farren's evidence that community</li> </ul>	Struck - irrelevant

	project around this time.”		<p>members criticized the project is relevant.</p> <ul style="list-style-type: none"> <li>• Similarly, Mr. Farren’s evidence that Mr. Parish used the project to promote his campaign and made false claims about the project is relevant on the face of the pleadings.</li> <li>• Mr. Farren’s evidence that he brought an action against Mr. Parish goes to narrative.</li> </ul>	
Paragraph 55 and exhibit K	Entire paragraph and exhibit	Irrelevant. The reference to false statements by Warden Parish is also scandalous and vexatious.	<ul style="list-style-type: none"> <li>• The Notice of Application provides that the Gordonstoun school project was controversial and a subject of the election. Mr. Farren’s evidence that community members criticized the project is relevant.</li> <li>• Similarly, Mr. Farren’s evidence that Mr. Parish used the project to promote his campaign and made false claims about the project is relevant on the face of the pleadings.</li> <li>• Mr. Farren’s evidence that he brought an action against Mr. Parish goes to narrative.</li> </ul>	Struck - irrelevant
Paragraph 57 and exhibit L	Entire paragraph	Irrelevant	<ul style="list-style-type: none"> <li>• The Notice of Application provides that the Gordonstoun school project was controversial and a subject of the election. Mr. Farren’s evidence that community members criticized the project is relevant.</li> <li>• Similarly, Mr. Farren’s evidence that Mr. Parish used the project to promote his campaign and made false claims</li> </ul>	Struck - irrelevant

			<p>about the project is relevant on the face of the pleadings.</p> <ul style="list-style-type: none"> <li>• Mr. Farren's evidence that he brought an action against Mr. Parish goes to narrative.</li> </ul>	
Paragraph 57 / 2 <sup>nd</sup> sentence	"The lawsuit alleges that Mr. Parish sought to advance his own political objective at the expense of EA Farren."	Scandalous / vexatious, irrelevant	<ul style="list-style-type: none"> <li>• The Notice of Application provides that the Gordonstoun school project was controversial and a subject of the election. Mr. Farren's evidence that community members criticized the project is relevant.</li> <li>• Similarly, Mr. Farren's evidence that Mr. Parish used the project to promote his campaign and made false claims about the project is relevant on the face of the pleadings.</li> <li>• Mr. Farren's evidence that he brought an action against Mr. Parish goes to narrative.</li> </ul>	n/a
Paragraph 61	Entire paragraph	Statement of opinion / belief, legal submission / plea	<ul style="list-style-type: none"> <li>• Mr. Farren's evidence that the November 4, 2020 transactions were simply the finalization of agreements between the parties already in place is a statement of fact. Mr. Farren's affidavit outlines the lengthy process by which EA Farren acquired the subject lands, which included numerous discussions and negotiations over the span of multiple years. The agreement between the parties in fact culminated on November 4, 2020 when the transactions were completed.</li> </ul>	Struck - legal submission

