SUPREME COURT OF NOVA SCOTIA

Citation: *Annapolis Group Inc. v. Halifax Regional Municipality,* 2025 NSSC 262

Date: 20250805
Docket: Hfx No. 460474
Registry: Halifax

Between:

Annapolis Group Inc.

Plaintiff

v.

Halifax Regional Municipality

Defendant

Adjournment Motion Decision

Judge:	The Honourable Justice John Bodurtha
Heard:	June 10, 2025, in Halifax, Nova Scotia
Counsel:	Peter Griffin, Rebecca Jones, Jonathan McDaniel, Bhreagh Ross, and Herschel Chaiet, for the Plaintiff Michelle Awad, Ian Dunbar, Michael Richards, and Natasha Puka, for the Defendant

By the Court:

Introduction

[1] This is an adjournment motion brought by Annapolis Group Inc. ("Annapolis") because of the province designating the Annapolis Urban Settlement lands a special planning area based on a recommendation from Halifax Regional Municipality ("HRM").

Background

[2] On April 16, 2025, an *in camera* HRM staff report recommended designation of Annapolis' Urban Settlement ("US")-designated Highway 102 lands as a Special Planning Area ("SPA"). On April 29, HRM Council passed an *in camera* motion to recommend that the province's Executive Council on Housing designate the Annapolis US lands. On May 1, HRM notified Annapolis of the April 29 Council motion and disclosed the April 16 staff report and some related materials. On May 16, the province designated the Annapolis US lands as a SPA. HRM proposes to lead evidence of these events.

[3] In response to these developments, Annapolis has brought a motion for an adjournment and rescheduling of the remaining trial dates pursuant to Civil Procedure Rules 4.20 and 2.03, and sections 31 and 41 of the *Judicature Act*, RSNS 1989, c. 240. The relevant evidence on the motion was introduced for Annapolis by way of the affidavit and supplementary affidavit of Herschel W. Chaiet, filed June 3 and June 9, 2025, respectively, and for HRM by way of the affidavit of Michael Richards, filed June 6, 2025. There was no cross-examination on the affidavits.

[4] In this motion, the central issue of the three considerations under Rule 4.20(3) is the potential prejudice to Annapolis arising from continuing the trial in the face of the recent developments. The Annapolis adjournment request is completely open-ended, as they want no restrictions placed on them regarding any future motions they may bring because of the new designation. Annapolis notes, that the ultimate action by the province was triggered by HRM's actions. HRM argues that the current developments were not completely unforeseeable, given that HRM's pleaded position is that there was never a decision that the lands would never be approved for secondary planning.

Analysis

[5] Prejudice is presumed under Civil Procedure Rule 4.20(4). A judge hearing a motion for an adjournment pursuant to Rule 4.20 is required to consider the factors identified at Rule 4.20(3):

> 4.20 ...
>
> (3) A judge hearing a motion for an adjournment after the finish date must consider each of the following:
>
> (a) the prejudice to the party seeking the adjournment, if the party is required to proceed to trial;
>
> (b) the prejudice to other parties, if they lose the trial dates;
>
> (c) the public interest in making the best use of court facilities, judges' time, and the time of court staff.

[6] Pursuant to Rule 4.20(4)(a) and (b), respectively, a judge is required to presume, unless the contrary is established that "losing trial dates adversely affects a party's tangible and intangible interests" and "a late adjournment adversely affects the efficient scheduling of facilities and time."

Prejudice to Annapolis

[7] Annapolis argues HRM's decision to recommend that the Annapolis Highway 102 US lands be designated a SPA was a drastic change of position triggered by the province's decision to develop the nearby Sandy Lake lands, which would have left the Annapolis Highway 102 lands as the only Future Serviced Communities (FSC) study area not designated as an SPA.

[8] Annapolis alleges that HRM's disclosure respecting the April recommendation, and the May designation have been "late and drawn out", noting that, as the landowner, Annapolis had no notice of what was happening despite the existence of relevant documents dated back at least to January 2025. Annapolis further alleges that HRM's disclosure has been selective, forcing Annapolis to make requests without knowing what documents exist. According to Annapolis, the recent disclosure should have been provided within the scope of this Court's February ruling, without the need for Annapolis to request these documents.

[9] Annapolis agrees that the proposed evidence is relevant but takes the position that it should not be admitted without "full and complete disclosure and a

fair opportunity to respond." Annapolis insists that this was not a "business as usual decision by HRM, but that it "arose and was approved very quickly, near the scheduled end of this trial, and surrounded by a halo of claimed solicitor-client privilege." Annapolis says it will be "significantly prejudiced without an adjournment to address HRM's unannounced and fundamental shift in position." Annapolis says it must be able to "[f]ully consider the impact of HRM's decision" and potentially to further amend its statement of claim, deliver new experts' reports on damages, and potentially re-open its case.

[10] HRM denies that there has been any sudden shift of its position. The Annapolis Highway 102 lands have been "consistently designated and zoned for future serviced development since before 2006." This remained the case under several municipal planning strategies prior to 2016. At the time of the 2016 refusal of the Annapolis request for secondary planning, HRM's view was that the lands were not needed for development at that time, but not that they would never be developed. Thereafter the lands remained designated for future development. This was still the case when the Sandy Lake Future Serviced Communities Studies were completed in January 2025, and the Highway 102 study on April 4, culminating in the April 16 staff report and the April 29 HRM decision. Accordingly, HRM submits, there:

> …has been no change in HRM's position. Annapolis cannot have been surprised that the completion of the FSC study resulted in secondary planning for the Highway 102 lands... All that has unfolded is that the outcome does not support the theory that Annapolis has advanced in this litigation, specifically its claim that its lands were designated for serviced development but secondary planning would never be initiated...
>
> (HRM brief, June 6, 2025, at para. 37)

[11] HRM says the Annapolis theory that it changed position upon discovering its legal risk arising from secondary planning going ahead for Sandy Lake, but not for the Annapolis Highway 102 lands, is baseless. They say the evidence for Annapolis' theory is a reference to "legal risks" by Ben Sivak on a draft of the staff report. HRM says Annapolis' claims on this point are no more than baseless speculation, and that any "rush" relating to preparation of the staff report was driven by the time requirements of the April 29 Council meeting. Counsel concludes that Annapolis':

> …invented theory appears to also be that HRM Regional Council collectively felt that a "gotcha" trial tactic was a sufficient basis to unanimously vote to advance

> the Highway 102 Lands toward secondary planning, despite the millions of dollars in associated cost in infrastructure (capital cost and maintenance), staff time and resources that would come with that decision. There is no support for Annapolis' proposition in evidence.
>
> (HRM brief, June 6, 2025, at para. 44)

[12] Annapolis responds that HRM's "vehement denial" of their reading of the documents "is itself sufficient to demonstrate that more evidence will be needed to address HRM's recent actions... [W]hether HRM's SPA recommendation is reflective of an ongoing intention for the Annapolis lands going back to September 2016, or instead (as Annapolis will seek to demonstrate) a marked tactical break from that intention (which also goes to Annapolis' claim for misfeasance in public office), is a relevant issue before the Court."

Privilege

[13] Annapolis says the documents produced by HRM are heavily redacted based on claims of privilege. HRM denies any inordinate claims of solicitor-client privilege, and submits that "the repeated suggestion that Annapolis' purported narrative should be accepted because of a claim of solicitor-client privilege encourages the Court to improperly draw a negative inference from a privilege claim..." HRM cites *R. v Alcantara*, 2013 ABCA 163, for the principle that "[i]t is clearly inappropriate to draw any adverse inference from the inferred nature of the advice against a person asserting privilege, as that turns the privilege from a shield into a trap... It is equally inappropriate to draw an inference about the content of that advice, and then use that inference to the detriment of the person asserting the privilege...". HRM responds that it is not seeking to have the privilege claims disposed of on this motion and says the privilege issue is only raised "to show that there is more that must be fairly assessed." I agree with HRM's position that privilege claims should not be disposed of on this motion.

Document production

[14] HRM denies that it has been "selective" in document production. Counsel says HRM has complied with the court's February 27, 2025, directions on obligatory disclosure, and has made ten separate productions of documents since early February. At no point in that time did Annapolis call for an adjournment for disclosure reasons, until the filing of this motion on June 3.

[15] HRM counsel notes that despite indicating on May 28, 2025, that it was only seeking "a few additional documents", Annapolis delivered a four-page request for further disclosure on June 4. This included requests for documents of the provincial panel in HRM's possession. I note, Justice Chipman's December 2023 decision held that documents relating to the panel should be requested from the panel, not from HRM (2023 NSSC 389, at para. 37). HRM says it has produced staff documents prepared for Regional Council, as distinct from documents prepared for the panel, which remain covered by the exclusion in Justice Chipman's decision and must be requested from the panel, not from HRM. This does not consider the oral decision provided on December 16, 2024, regarding HRM's request to exclude passages of Ms. Denty's 2023 discovery relating to the provincial Executive Panel on Housing. That ruling was "…evidence about HRM's staff work and their recommendations to the panel is relevant to the issue of whether HRM is unlikely to ever grant secondary planning approval, which is relevant to a claim of constructive taking as long as that evidence relates to other greenfield sites or other lands where a sufficient factual nexus can be established to Annapolis' lands." In my view, anything up to and including HRM's recommendation to the panel is relevant. The recommendation is HRM's, the ultimate decision regarding the recommendation belongs to the panel. That is the distinction I am making regarding HRM's disclosure obligations regarding the recommendation to the panel.

[16] Annapolis also requested that HRM Teams chats be preserved. HRM says it is "not proportionate" to require the city to preserve chats for all its "thousands of employees ... on the off chance they may refer to the Annapolis lands", particularly given the lack of any prior suggestion from Annapolis that they were relevant. HRM says, "the electronic messages preservation request is not practical or proportionate given the limited relevance such documents could have to the issues at hand."

[17] In the June 4 request, Annapolis also sought production of a privilege log identifying possible solicitor-client privilege claims, including legal memoranda, legal presentations, and legal advice provided to Regional Council with respect to the SPA designation of the Annapolis Highway 102 lands. HRM maintains that there is no possible relevance to such a document, other than to allow Annapolis to speculate about legal advice provided, with HRM being unable to respond without waiving privilege.

[18] In its reply, Annapolis lists categories of documents that HRM has allegedly refused to produce:

> (1) documents about HRM's "decision to recommend that the Province make Annapolis' US lands an SPA", as opposed to documents respecting the April 16 staff report;
>
> (2) communications with the provincial panel and HRM staff members' notes of meetings where panel members were present, including those prior to the April 29 recommendation to the panel, contrary to the December ruling that "HRM's own work underlying its recommendations to the Panel is relevant";
>
> (3) communications with non-panel provincial personnel about HRM's April 29 recommendation and the SPA designation. (HRM says it will "further review" the Annapolis request for production of communications between HRM and "anyone else at the Province" regarding the SPA designation.)
>
> (4) A log of documents HRM has withheld on the basis of privilege since May 1, 2025, which Annapolis says it needs to assess HRM's claims of privilege.

[19] HRM attributes some delays in production to time lags between searches and disclosure, and in the case of certain documents respecting the Sandy Lake lands, says they did not reference the Annapolis Highway 102 lands and were not clearly within the scope of the February directions. Annapolis insists that these are inadequate explanations.

Effect of the provincial designation of the Annapolis Highway 102 lands

[20] HRM says it is unclear how Annapolis could be prejudiced by the designation, given that its entire claim rests on the allegation that secondary planning was never going to be permitted. Further, HRM emphasizes, the panel is a provincial entity, not under HRM's control. Finally, Annapolis' position is that the claim crystallized with the September 6, 2016, decision by which HRM allegedly constructively took its lands. HRM say the effect of the designation is to render moot any argument based on para. 72 of the Supreme Court of Canada decision (2022 SCC 36), as HRM cannot now approve or refuse to approve the relevant lands for development. That is now in the hands of the province, beyond HRM's control. This does not prevent Annapolis from advancing the claim that the lands were constructively taken in 2016. However, HRM says, "Annapolis cannot reformulate its case simply because ongoing events have not supported its litigation theory." Noting that the new regional plan came before Council on June 3, 2025, HRM counsel says, "[t]he new Regional Plan sets out how planning will

proceed for the Urban Reserve Lands... Will Annapolis demand another adjournment and a further amendment of pleadings when that is passed?"

[21] Annapolis, in reply, says it "has no knowledge" of the Province granting secondary planning approval for the US lands, citing correspondence from the Chair of the panel to HRM suggesting that secondary planning would be initiated by HRM. Counsel says nothing disclosed to this point substantiates HRM's claim that the US lands are now entirely under provincial planning authority. While the SPA designation is "technically" a provincial decision, Annapolis says it remains the case that HRM was deeply involved.

[22] There was some discussion in oral argument respecting the distinction between the US and Urban Reserve ("UR") lands. HRM counsel simply says Annapolis knew the regional plan treated these areas separately but chose to treat the entire Annapolis Highway 102 lands as a single unit. HRM insists that nothing has occurred that was not foreseeable when Annapolis framed its claims. Counsel for Annapolis objects that HRM led no evidence suggesting that the US and UR lands might be treated differently. HRM says this was a known possibility all along, and that Annapolis should not now be permitted to introduce an alternative pleading to that effect.

[23] HRM's position is that, rather than the open-ended adjournment Annapolis appears to be seeking, the plaintiff should have time to consider what claims they are dropping and what claims they are pursuing, in short, what remains of the litigation. It should not be a "recasting" or "recalibrating" of the entire proceeding. HRM also says the only claim that the minister's decision is relevant to is constructive taking, and that any misfeasance claim crystallized in 2016. Therefore, HRM's purpose in introducing the evidence is in support of their "when, not if" theory of the case, i.e. to show that there was not a refusal to allow secondary planning in 2016, but only a delay because the land was not needed for development at that time.

[24] It is this court's position that if HRM is to lead evidence regarding the recent decision of the provincial panel then Annapolis should be able to lead evidence to rebut it. The question is the scope of the evidence that Annapolis should be able to proffer.

Prejudice to HRM

[25] Annapolis submits that HRM will not be prejudiced by the adjournment, which would be "the direct result of its recent actions and disclosure choices" and only one HRM witness remains to testify in any event. Annapolis says the interests of justice and efficiency demand that the action be completed "on a proper record, proper pleadings, and in a way that fairly addresses the impact of HRM's recent actions" and that it "does not lie in HRM's mouth to say now that it will be prejudiced by affording Annapolis the opportunity to consider the impacts of its decision..."

[26] Given the scope of the adjournment requested by Annapolis – "first in relation to disclosure, followed by awaiting a prospective pleadings amendment, a likely contested Motion for leave to amend, followed by prospective new expert(s), rebuttal reports, likely another contested Motion on those, followed by a prospective attempt to re-open its case, which is also likely to involve a contested Motion" – HRM says the potential trial delay could be another year.

[27] HRM goes on to argue that the court should consider whether any of the steps Annapolis may potentially pursue have a realistic chance of success. Counsel cites *Ford v. Kennie*, 2002 NSCA 140, where the trial judge had allowed an amendment to the pleadings introducing a new cause of action after the close of evidence. The Court of Appeal held that the amendment made "following the completion of the trial was far too late, and was prejudicial to the appellant" (para 54). HRM says Annapolis cannot now "amend its pleadings with 76 days of trial behind us, without grossly prejudicing the fairness of the overall process." Annapolis says *Ford* is confined to its facts, and notes that the law, starting with Rule 83, is generally generous in allowing amendments.

[28] I find that it is premature to apply this reasoning to the present situation, where there is no specific amendment proposal, beyond accepting that, as a general rule, a late amendment is likely to cause prejudice to the other party.

[29] HRM also says Annapolis "has no realistic chance of success of bolstering its damages evidence at the close of trial." Both parties have introduced expert reports addressing the value of the lands as of September 6, 2016, and cross-examination of experts has taken place. According to HRM, allowing new experts' reports to be filed at this point would irreparably compromise trial fairness. Further, HRM says the developments of April and May 2025 do not justify a new valuation report. HRM says recent events provide no basis for Annapolis to "seek to re-open its case to lead unspecified additional evidence."

[30] Annapolis says HRM's reference to "realistic chance of success" amounts to asking the court to "pre-emptively adjudicate" the merits of future motions for pleading amendments and new experts' reports.

Prejudice to the public interest

[31] Annapolis says the presumed prejudice to the public interest resulting from the loss of trial dates under Rule 4.20(3)(c) and (4) is rebutted, given that there was only a single HRM witness remaining. Annapolis also says the administration of justice, the truth-seeking function of the court, and efficient use of court resources will be served by having fuller evidence before the court.

[32] HRM notes that in submissions relating to the February 2025 adjournment motion Annapolis argued strongly that mid-trial adjournments are "particularly prejudicial to the public interest", and that such prejudice is more pronounced when there have been prior adjournments. Further, this adjournment is requested near the end of the trial and involves a greater loss of trial time than the February adjournment entailed.

[33] Annapolis notes in reply that part of the recent loss of trial time is attributable not to the adjournment request, but to HRM's decision not to call Lieutenant-Governor Savage as a witness.

Conclusion

[34] Much of Annapolis' argument rests on broad and vague claims of sinister actions on the part of HRM in recommending the Annapolis Highway 102 lands for a SPA designation. However, if HRM is going to lead evidence with respect to the decision of the Provincial Panel, trial fairness mandates that Annapolis should be able to rebut that evidence. Therefore, I order HRM to produce to Annapolis:

> (1) all documents about HRM's "decision to recommend that the Province make Annapolis' US lands an SPA";
>
> (2) all communications prior to the April 29 recommendation to the panel involving the provincial panel and HRM staff members', including notes of meetings where panel members were present; and
>
> (3) all communications with non-panel provincial personnel about HRM's April 29 recommendation and the SPA designation.

[35] As I have indicated in my prior ruling, HRM's work which formed the basis for its recommendation to the provincial panel is relevant. The work of the panel is not part of this litigation as the province is not a party to these proceedings, but HRM's work up to that point is relevant and the documents relating to HRM's involvement in the decision-making process up to their recommendation to the panel must be disclosed.

[36] After considering Rule 4.20 and the respective prejudices I grant Annapolis' adjournment request. Trial fairness is behind my reason in granting this adjournment. Annapolis should be entitled to consider the effect of the provincial panel decision on its litigation against HRM and for it to review the production I have ordered. I will not prejudice any further motions that may come forward by commenting on them in this decision. The parties are directed to contact the court with available times next week to schedule a trial management conference to discuss the timeframe for production of the documents, the resumption of the trial, Annapolis' rebuttal evidence, the timing of any future motions, and any other issues counsel wish to address.

[37] This is a situation where each party should bear their own costs, but should the parties disagree, I am open to receiving submissions as there may be matters in the background regarding this motion of which I am not aware. Should that be the case, costs can be added to the trial management call.

Bodurtha, J.