



56 Queen Street
Port Hope, ON L1A 3Z9
t: 905.885.4544
f: 905.885.7698
admin@porthope.ca
www.porthope.ca

July 20, 2016

IMPORTANT INFORMATION ENCLOSED

Dear Resident,

Re: **Ontario Superior Court of Justice decision on the Rural Low Level Radioactive Waste (LLRW) Fund**

On June 30, 2016, the Ontario Superior Court of Justice provided a decision in the case of Angus & Ross v The Municipality of Port Hope regarding the \$10 million rural Low Level Radioactive Waste (LLRW) Fund.

At almost 30 pages, the length of the judgment is indeed a reflection of the complexity of this case, and it has taken some time to fully assess the impacts to the Municipality and our residents. In the interim, individual Council members have received a number of inquiries and requests for clarification on various points, many of which are addressed below.

We've been asked how we feel about "losing" the court case. Of course Council is disappointed that the Municipality's argument was not upheld by Justice McCarthy, but winning or losing was never the point. Our primary objective in defending this case was to ensure the best interests of our citizens were being served. We have, however, heard many comments about the great "victory" that has been won over the Municipality, a position that has, in our view, been touted with disregard to the true ramifications of the court's decision.

To be clear; other than having the fund declared an invalid Trust and losing the fund immediately, Council believes this judgment provides the worst possible outcome for rural residents.

The court has established that the fund is a valid non-charitable purpose trust, for which the Municipality is trustee, and the Trust will collapse in just under six years on April 12, 2022.

Council has heard all manner of speculation in the community about what will happen to the remaining funds in 2022, including the potential for funds to be distributed amongst rural ratepayers. On this point, Justice McCarthy is clear in his decision that no individual property owner has any personal legal claim to the fund, or to benefit directly from its use, therefore, we understand this particular outcome to be one of the least likely.

We have also heard from various community members that they understand the Trust will be extended, or a new Trust established in 2022. In reality, under the current decision, the future of the fund is uncertain and will need to be determined by the court.

We are gravely concerned by the abundance of misinformation circulating in the community, and the lack of discussion and/or consideration of any other potential outcomes during a recent press conference held by the applicant to discuss the decision of the court.

In declaring the fund a non-charitable purpose trust, and as a consequence of s.16 of the *Perpetuities Act* and the law of trusts, one such potential outcome is that the fund will revert to the original "settlor" of the trust, which as identified by Justice McCarthy, is the Government of Canada.

Under the current decision, rural taxpayers will receive more municipal tax relief in the short term (i.e. the next 5 years), but they will likely receive much less over the long term. In less than six years the rural LLRW fund may be totally lost to the Municipality and rural ratepayers, returning instead to the “settlor”, the Government of Canada.

We were also greatly dismayed to learn that members of the community were advised that the Trust would not be subject to taxation. Unlike municipalities, non-charitable purpose trusts are typically taxable entities, and therefore the decision may raise serious tax implications. The Municipality will need to retain the services of a tax lawyer, however at this point, it is our understanding that as trustee, we are required to work with the Canada Revenue Agency with respect to unfiled returns, and potential liability for unpaid taxes on income earned since 2001 (that was not distributed in the year earned), interest on unpaid taxes and penalties.

There are a number of reasons why this Council, and the Councils before, under the guidance of an investment company, third party Financial Advisor and the Ward 2 Host Community Fee Committee (By-law 22/2002) chaired by Ian Angus, chose to manage the fund using an investment advisor rather than a trustee, including costs, complexity and the finite nature of a trust.

Beginning with our first budget in 2015, Council used the earnings from both the rural and urban LLRW funds to directly reduce Municipal property taxes for rural and urban ratepayers respectively. We have used 80% of the earnings from the prior year to reduce taxes and left the remaining 20% of earnings in the fund to generate additional earnings and offset the increasing cost of living.

In Council’s view, any decision that places the rural LLRW Fund at risk of not continuing indefinitely for the benefit of rural residents defies the entire original intention of Hope Township Council, and is certainly not in the best interests of rural residents going forward. We are astounded as to how the court’s decision could be described as a “victory” for rural residents, or how anyone could be “delighted” with this outcome.

As an unintended consequence of this legal challenge, in attempting to recover \$3 million, the rural community is now at risk of losing the entire LLRW fund in 2022, which is estimated to be at least \$6 million at that time.

Council has a responsibility to take all steps within our power to prevent this unfortunate outcome from occurring. While we were hoping to have an end to this matter that would enable the community to move forward, we are instead faced with the difficult decision of whether to appeal the decision in court.

Given that the adverse consequences of not appealing far outweigh the impact of doing so, Council has decided to appeal the decision to the Court of Appeal.

An appeal must be lodged within 30 days of the date of the judgment. Council does not take this decision lightly, and there are of course risks associated with an appeal, including additional costs and the possibility of the court returning a less favourable decision. However, we have concluded these risks are worth bearing when compared to the alternative of losing the fund altogether.

Please find enclosed additional information in relation to the court decision on the rural LLRW Fund. The full court decision, along with previous media releases and other pertinent information is available online at www.porthope.ca/llrw-fund-rural-court-case.

Council will continue to perform our duty to act in the best interests of those we represent, and we thank you for your patience in this matter. Please be assured, Council and staff are committed to communication and transparency, and we will continue in our efforts to keep the community informed, as far as the legal process permits.

Respectfully,



Mayor Bob Sanderson
On behalf of Council for the Municipality of Port Hope

Encs.