

Chapter 5

City of Saint John Funding Agreement – Special Review - Executive Council Office

Contents

Chapter Summary.....	113
Key Findings and Observations Table.....	114
Recommendations and Responses.....	116
Introduction.....	120
Conclusions.....	120
Inadequate Decision Records and Documentation.....	125
Rushed Agreement Increased Taxpayer Risk.....	127
AG Concerns with Legislative Compliance.....	137
Appendix I – Excerpts from Former Premier’s Letter (December 2017).....	140



City of Saint John Funding Agreement – Special Review - Executive Council Office

Report of the Auditor General - Volume I, Chapter 5 – June 2019
One-Page Chapter Summary

Why Is This Important?

- The Province of New Brunswick entered into a funding agreement with the City of Saint John to provide up to \$22.8 million to address the city's anticipated budget deficit.
- It is abnormal for the Province to provide financial assistance to address a municipal deficit, especially since municipalities are discouraged from operating with ongoing deficits.
- Provincial agreements must comply with legislation and include safeguards to minimize risk to taxpayers.

Overall Conclusions

- The City of Saint John Funding Agreement constitutes excessive risk to New Brunswick taxpayers.
- Agreement terms created inappropriate incentive for city to report deficits to maximize funding.
- Other municipalities may be enticed to report deficits and seek financial relief from the Province.
- In our view, Agreement terms effectively circumvented the *Local Governance Act* meant to discourage ongoing municipal deficits.
- Legislative authority was not obtained before funding was provided.

What We Found

Excessive Risk to New Brunswick Taxpayers

- Province's financial assistance inappropriately dependent on City reporting a deficit
- Funding agreement did not include specific outcomes and set risky precedent for Province
- Government negotiators allowed removal of key agreement clauses protecting the Province
- No provincial analysis to confirm the City's 3-year anticipated budget deficit
- Report intended to solve long-term problems months overdue

Agreement Rushed

- Premier appeared to guarantee assistance to Saint John before obtaining Cabinet approval
- Property Tax compensation paid before Agreement signed by Premier
- Rushed decisions resulted in several development and implementation issues
- Key Department (Environment and Local Government) not involved in decision making process or development of the Agreement
- Supporting documentation for decision inadequate and lacking in clarity
- News release containing agreement details made public before agreement finalized

AG Concerns with Legislative Compliance

- In our view, Agreement circumvented *Local Governance Act* which discourages ongoing deficits
- No budget appropriation for Funding Agreement violates intent of *Financial Administration Act*

Key Findings and Observations Table

City of Saint John Funding Agreement – Special Review - Executive Council Office

Paragraph	Key Findings and Observations
	Inadequate Decision Records and Documentation
5.17	<i>Former Premier appeared to guarantee assistance to Saint John before obtaining Cabinet approval</i>
5.20	<i>Supporting documentation for decision inadequate and lacking in clarity</i>
5.26	<i>AGNB denied access to information</i>
5.28	<i>Potential Auditor General Act obstruction – evidence not provided</i>
5.30	<i>Poor record retention in Premier’s Office during government transition</i>
	Rushed Agreement Increased Taxpayer Risk
5.34	<i>City leveraged election timing to gain provincial support</i>
5.36	<i>Premier’s Office intricately involved in agreement negotiation and development</i>
5.37	<i>Agreement negotiated and developed over a two-month timeline</i>
5.42	<i>Financial assistance dependent on City reporting a deficit</i>
5.43	<i>Precedent setting funding agreement created risk for the Province</i>
5.46	<i>In our view, agreement effectively circumvented Local Governance Act</i>
5.47	<i>Rushed decisions resulted in several development and implementation issues</i>
5.48	<i>Government negotiators allowed removal of key agreement clauses protecting the Province’s interests</i>
5.55	<i>Key Department not involved in decision making process or development of the Agreement</i>
5.58	<i>Department of Environment and Local Government struggled to implement Agreement in 2018</i>
5.59	<i>Public communications in advance of agreement ratification</i>
5.61	<i>Errors in news release flagged by Department of Post-Secondary Education, Training and Labour</i>
5.65	<i>Regional Development Corporation made payments before agreement ratified</i>
5.68	<i>Key committee report not delivered as required</i>

Key Findings and Observations Table (Continued)

Paragraph	Key Findings and Observations
	AG Concerns with Legislative Compliance
5.72	<i>No supplementary estimates or budget appropriation to fund Agreement payment despite Cabinet direction to do so</i>
5.74	<i>No budget transfer prior to first payment</i>
5.83	<i>Treasury Board not compliant with the Financial Administration Act</i>
5.84	<i>Financial Administration Act requires modernization</i>

Recommendations and Responses

Recommendation	Department's response	Target date for implementation
City of Saint John Funding Agreement		
<p>5.29 We recommend the Executive Council Office ensure funding decisions by Cabinet:</p> <ul style="list-style-type: none"> • follow due process with proper approval by all relevant parties; • are justified by a documented business case, detailed financial analysis and clear rationale for critical decisions; and • are supported by a documented legal review prior to decisions being made. 	<p><i>The Executive Council Office will follow all due processes associated with the submission to Cabinet of requests for funding approval.</i></p>	<p><i>Immediate and ongoing</i></p>
<p>5.33 We recommend the Executive Council Office develop a records retention policy to ensure key records are maintained in the Premier's Office throughout government transitions.</p>	<p><i>The Department of Finance and Treasury Board, responsible for records management under the Archives Act, will ensure policies/protocols are in place to manage records during Government transitions</i></p>	<p><i>2019</i></p>

Recommendations and Responses (continued)

Recommendation	Department’s response	Target date for implementation
<p>5.54 We recommend the Executive Council Office/Treasury Board Secretariat ensures:</p> <ul style="list-style-type: none"> • funding agreements do not effectively override the spirit and intent of legislation, such as: <ul style="list-style-type: none"> ○ subsection 100(8) of the <i>Local Governance Act</i> discouraging ongoing deficits; and ○ the need for an appropriation in advance of expending provincial funds as per the <i>Financial Administration Act</i>; • a detailed risk analysis is completed when developing funding agreements and necessary clauses are included to address identified risks to the Province; including: <ul style="list-style-type: none"> ○ an appropriations clause based on legal advice to ensure proper budget authority is obtained; and ○ a clause requiring financial reports follow Public Sector Accounting Standards; • a sufficient multi-year appropriation is obtained to cover all legally committed funding over the life of the agreement. 	<p><i>The Executive Council Office and Department of Finance and Treasury Board will ensure that funding agreements are aligned with applicable legislative provisions; that best practice is employed with respect to analysis including due diligence and legal review; and that multi-year appropriations are considered where appropriate, recognizing that clauses in most agreements enable alterations to those agreements, including cancellation.</i></p>	<p><i>Immediate and ongoing.</i></p>

Recommendations and Responses (continued)

Recommendation	Department's response	Target date for implementation
<p>5.64 We recommend the Executive Council Office involve all relevant provincial entities when planning, developing and reviewing future contracts and agreements for Cabinet approval.</p>	<p><i>The Executive Council Office will ensure involvement by all relevant provincial entities for any contract or agreement which constitutes a formal submission to Cabinet.</i></p>	<p><i>Immediate and ongoing.</i></p>
<p>5.71 We recommend the Executive Council Office ensure agreements approved by Cabinet:</p> <ul style="list-style-type: none"> • are complete and authorized prior to making payments under the agreement; • contain clauses to mitigate risk and protect the taxpayer; • include clear, measurable deliverables; • include monitoring mechanisms; and • are monitored to ensure key deliverables, such as committee reports, are completed as required. 	<p><i>The Executive Council Office will ensure that contracts and agreements which take the form of submissions to Cabinet, are complete, authorized, identify clear measurable deliverables, and include monitoring mechanisms.</i></p> <p><i>NOTE: With respect to the reference to payments having been made prior to the Agreement being ratified (page 135 of the Auditor's Report and elsewhere), the current description is not reflective of actual process. A separate, and previous appropriation was made for all municipalities receiving funds related to the 2018 tax freeze. These funds were all issued simultaneously. The reference to these funds in the SJ funding Agreement is one of the various examples provided in relation to the former Government's support for the City, and does not constitute part of any financial commitment under the Agreement.</i></p>	<p><i>2019-2020</i></p>

Recommendations and Responses (continued)

Recommendation	Department’s response	Target date for implementation
<p>5.85 We recommend Treasury Board Secretariat/ provincial Comptroller review and update the <i>Financial Administration Act</i> to:</p> <ul style="list-style-type: none"> • modernize the Act with respect to payments, accruals and conformance with Public Sector Accounting Standards; • increase clarity for key financial officers processing payments throughout government to know if proper budget authority exists; and • provide for budget appropriations for multi-year agreements at the time in which funds are legally committed. 	<p><i>The Department of Finance and Treasury Board, Office of the Comptroller will undertake a review of the Financial Administration Act and make appropriate recommendations based on our findings.</i></p>	<p>2019-2020</p>

Introduction

5.1 The former Premier and the City of Saint John mayor signed a March 15, 2018 funding agreement providing up to \$22.8 million to the City of Saint John over a 3-year period to address the city’s anticipated budget deficit. The Province would also provide Saint John over \$1.2 million in compensation for the 2018 property assessment freeze while at the same time reducing the City of Saint John unconditional grant by \$3.6 million (17.91%).

Why we reviewed the City of Saint John Funding Agreement

5.2 The Auditor General chose to review this funding agreement due to potential:

- inherent risk to provincial taxpayers; and
- non-compliance with provincial Acts and regulations.

Conclusions

5.3 We have concluded the City of Saint John Funding Agreement constitutes excessive risk for taxpayers. The Agreement did not include specific outcomes to be achieved and as at the date of writing this report (April 2019), has failed to effectively address the City’s challenges or mitigate inherent risk to the Province. Should the City and the Province fail to address the current deficit situation within the Agreement’s three-year timeframe, the Province will again be faced with a serious financial problem in its second largest city.

5.4 The Agreement provided funding based on the City’s anticipated deficit level, creating an inappropriate incentive for the City to incur deficits in order to maximize funding up to \$22.8 million. Further, this could set a precedent and provide an incentive to other municipalities in financial difficulty to report deficits and seek relief from the Province instead of addressing underlying challenges.

5.5 Finally, we believe the Agreement circumvented requirements under the *Local Governance Act* discouraging municipalities from having ongoing operating deficits. Further, Treasury Board did not comply with the *Financial Administration Act* to ensure proper legislative authority through an Environment and Local Government budgetary appropriation before providing funding under the Agreement.

Scope of Work

- 5.6** Our work included:
- review of the City of Saint John Funding Agreement, City budget and planning documents, other supporting documentation; and
 - interviews with staff from various government departments and entities.
- 5.7** We requested all communications and documentation related to the Agreement from six government entities:
- Office of the Premier
 - Executive Council Office (ECO)
 - Office of the Attorney General (OAG)
 - Regional Development Corporation (RDC)
 - Department of Environment and Local Government (ELG)
 - Treasury Board (TB)
- 5.8** Our review led to findings categorized in three main topic areas:
- Inadequate Decision Records and Documentation;
 - Rushed Agreement Increased Taxpayer Risk; and
 - AG Concerns with Legislative Compliance.

Background Information

- 5.9** According to July 2017 media reports, the mayor of Saint John stated the City was in “*crisis*” and asked for a “*new deal*” with the Province to address the city’s challenging financial situation.¹ The City of Saint John was facing an anticipated budget deficit of approximately \$6 million in 2018 due to, among other things, population decline, a property tax assessment freeze and reductions in the Province’s unconditional grant to municipalities.

¹ Cromwell, Andrew. *Saint John Mayor says city is in ‘crisis’, demands new deal with province*. Global News. July 2017. <https://globalnews.ca/news/>

5.10 According to a City of Saint John (City) document entitled *“Building a Sustainable Future for Saint John - 2018 Provincial Election White Paper”*, Saint John has the second largest municipal population in the Province at just over 67,500 in 2016. However, the *“population has declined by approximately 3% since 2011, and a staggering 24% since 1971”*,² one of several factors threatening the city’s economic and financial sustainability.

5.11 In a July 2017 news article, the Saint John mayor stated a new deal was needed with the Province to address financial pressures faced by the City. He indicated the City was in *“crisis”* and *“the time to address our challenges is right now.”*³

5.12 In September 2017 the former Premier pledged the Province would work with the City on a *“new deal.”*⁴ The former Premier further committed to working with the City to address the city’s challenges in a December 8, 2017 letter to the Saint John mayor, stating:

“We can begin by making investments today that will alleviate short-term budget pressures in the upcoming 2018 fiscal year.”

*“We want to work with you so you can avoid cuts to front-line services and you have my guarantee that the Province will work with you towards short-term assistance for investments in a growth agenda while we continue to work shoulder to shoulder on a new deal for Saint John.”*⁵

Additional excerpts from this document are provided in Appendix I.

5.13 A December 2017 City of Saint John news release stated *“...an estimated structural deficit of \$6-million in 2018, the situation is projected to escalate to \$14.4-million by 2022 if*

² *Building a Sustainable Future for Saint John - 2018 Provincial Election White Paper*. Saint John. Page 2. July 2018.

³ Cromwell, Andrew. *Saint John Mayor says city is in ‘crisis’, demands new deal with province*. Global News. July 2017. <https://globalnews.ca/news/>

⁴ *City of Saint John Funding Agreement*. Page 1. March 2018.

⁵ *Province of NB.pdf*. Common Council Meeting Agenda Item 17.6 from Office of the Premier. City of Saint John website. <http://documents.saintjohn.ca/>

immediate action is not taken".⁶ The 2018 City budget documents highlighted factors influencing the City's estimated \$6 million deficit in 2018, including:

- significant reduction in the unconditional grant provided by the Province (decreased by 17.91% or \$3.6 million in 2018);
- low tax base growth of 0.52% from 2013 to 2018 and a declining population;
- sustained decline in revenue growth (0.16% from 2013 to 2019);
- an infrastructure deficit estimated at \$433 million at the end of 2016; and
- highest municipal debt in the Province at \$206 million at the end of 2016 and expected to rise to \$235 million by the end of 2018.

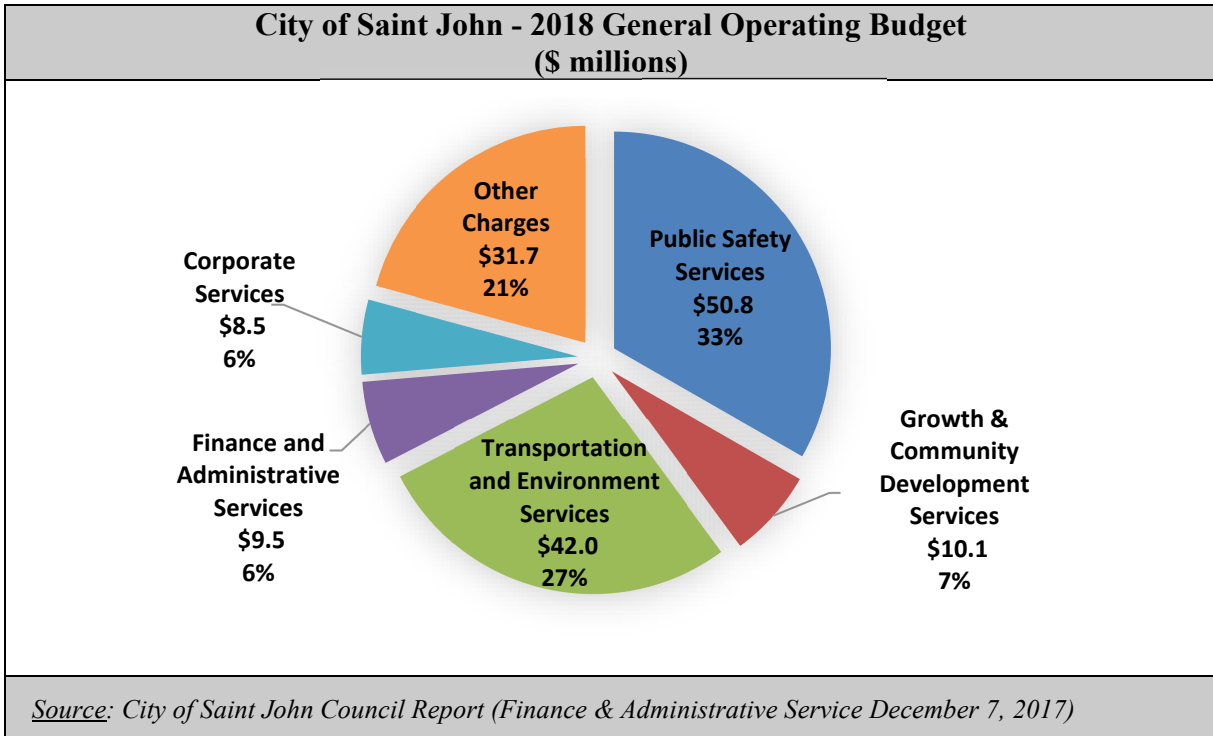
5.14 However, city council did pass a balanced 2018 operating budget on December 11, 2017. The deficit was reduced by including:

- \$3.5 million in adjustments to expected revenues and expenditures, part of which represented a reduction of \$2.5 million to front-line fire and police public safety services;
- \$1.2 million from the Province intended to counteract the provincially implemented 2018 property tax assessment freeze; and
- a carry-forward of the \$1.3 million 2016 surplus to the 2018 budget, as required under provincial legislation.

5.15 Exhibit 5.1 presents the summarized 2018 City of Saint John budget. The Province was concerned with the social impact of the City's plan to reduce front-line services as part of the effort to reach the balanced budget shown below.

⁶ Common Council. City of Saint John website.
<http://www.saintjohn.ca/en/home/news/newsreleases/common-council-passes-2018-budget-and-sets-sights-.aspx>

Exhibit 5.1 - City of Saint John - 2018 General Operating Budget (\$ millions)



5.16 As highlighted in Exhibit 5.1, Public Safety Services accounted for 33% of the budget total followed by Transportation and Environment Services at 27%. Among other planned adjustments to achieve a balanced budget, the City intended to reduce the Public Safety Services budget by \$2.5 million.

Inadequate Decision Records and Documentation

Former Premier appeared to guarantee assistance to Saint John before obtaining Cabinet approval

5.17 After pledging the Province would work with the City of Saint John (City) on a “*new deal*” in September 2017, the former Premier stated in his December 2017 letter to the City mayor “*you have my guarantee that the Province will work with you towards short-term assistance for investments in a growth agenda while we continue to work shoulder to shoulder on a new deal for Saint John*”.

In addition, the 2017 letter stated “*We can begin by making investments today that will alleviate short-term budget pressures in the upcoming 2018 fiscal year.*”

5.18 We reviewed information from various sources but received no evidence of documented approval by Cabinet supporting the former Premier’s 2017 apparent guarantee until February 8, 2018 (two months later). Nor was there any provision or qualifier in the former Premier’s letter indicating his apparent guarantee was subject to Cabinet approval, departmental consultation, confirmation of legal, appropriation and budget authority.

5.19 Although the agreement had significant implications on one of the province’s largest local governments, we found no evidence of consultation with the Department of Environment and Local Government in advance of Cabinet approval.

Supporting documentation for decision inadequate and lacking in clarity

5.20 We expected the Province to have adequate decision support documentation, such as a business case with a detailed financial analysis, to substantiate Cabinet approval of an agreement providing up to \$22.8 million in funding.

5.21 Instead, the only decision-support documents we were provided were dated February 7, 2018 and February 8, 2018. We found these were difficult to follow, lacked clarity and in our opinion did not include adequate analysis to support the final decision made by Cabinet.

5.22 A key February 8, 2018 document recommended the Lieutenant-Governor in Council:

“provide conditional repayable contributions up to \$22,800,000 to the City of Saint John, subject to the necessary supplemental estimate and appropriation being

made to the Department of Environment and Local Government budget;”

5.23 This was followed by a February 8, 2018 Order in Council approving funding to the City under the City of Saint John Funding Agreement (Agreement), only two months after the former Premier’s December 2017 letter.

5.24 It appeared the development of the agreement and the approval process was rushed to alleviate the need for the City to avoid cuts to front-line services.

5.25 We believe it is critical to take the time needed to ensure important decisions of this nature are considered in a well supported, rational manner. We further believe supporting documents should be clear, include adequate rationale, as well as financial analysis to support the dollars involved and provide decision-makers with assurance that recommended actions are well understood and supported by the responsible government officials.

AGNB denied access to information

5.26 Documentation provided and interviews with various government officials suggested that legal advice was provided by the Office of the Attorney General (OAG) during development of the Agreement. However, we found no specific OAG documentation supporting this advice included in the information we were provided. For this reason, we requested all documentation and communications regarding the Agreement from OAG and were denied access.

5.27 OAG responded to our request, stating “*all material in the files of the OAG related to this matter is subject to solicitor-client privilege.*” Because OAG would not provide any of the requested information, we were unable to verify the level of legal support the Province received to mitigate risk.

Potential Auditor General Act obstruction – evidence not provided

5.28 During our work, we found evidence departments involved did not provide all documentation and communications requested. Although this may constitute an obstruction under the *Auditor General Act*, as at the time of this report, we have not addressed the potential obstruction but may do so at a later date. It is uncertain whether our findings and conclusions would be altered had we received this information.

- Recommendation**
- 5.29 We recommend the Executive Council Office ensure funding decisions by Cabinet:**
- follow due process with proper approval by all relevant parties;
 - are justified by a documented business case, detailed financial analysis and clear rationale for critical decisions; and
 - are supported by a documented legal review prior to decisions being made.
- Poor record retention in Premier’s Office during government transition**
- 5.30** We found the Office of the Premier did not maintain adequate records for review during a period of government change.
- 5.31** We requested all communications and documentation related to the Agreement from the Office of the Premier on October 30, 2018 and again on March 8, 2019. We followed up on our request directly with officials at ECO and the Office of the Premier but failed to obtain any relevant information.
- 5.32** We realize this was during a period of government transition but our expectation was that records would be retained to facilitate transparency, knowledge transfer and effective review of significant, ongoing files. We believe this is fundamental to effective governance.
- Recommendation**
- 5.33 We recommend the Executive Council Office develop a records retention policy to ensure key records are maintained in the Premier’s Office throughout government transitions.**

Rushed Agreement Increased Taxpayer Risk

- City leveraged election timing to gain provincial support**
- 5.34** Our interviews with officials and review of documentation highlighted that the timing of the City’s efforts to gain provincial support to address their budget deficit was related to the upcoming provincial election.
- 5.35** While the former Premier had committed the Province’s support to the City in December 2017, the Agreement was not ratified until March 2018. The short period between these two events was devoted to negotiation and development of the official agreement.

Premier’s Office intricately involved in agreement negotiation and development

5.36 RDC was given responsibility for negotiating and developing the terms and conditions for the Agreement. However, from our review of documentation and communications between RDC and the City, we found key staff in the Office of the Premier were intricately involved throughout negotiation and development of the Agreement.

Agreement negotiated and developed over a two-month timeline

5.37 We could not identify the exact timeline for each stage of the Agreement development. However, our interviews and review of records suggest the process started in December of 2017. This meant the entire Agreement was negotiated, developed and approved over two months.

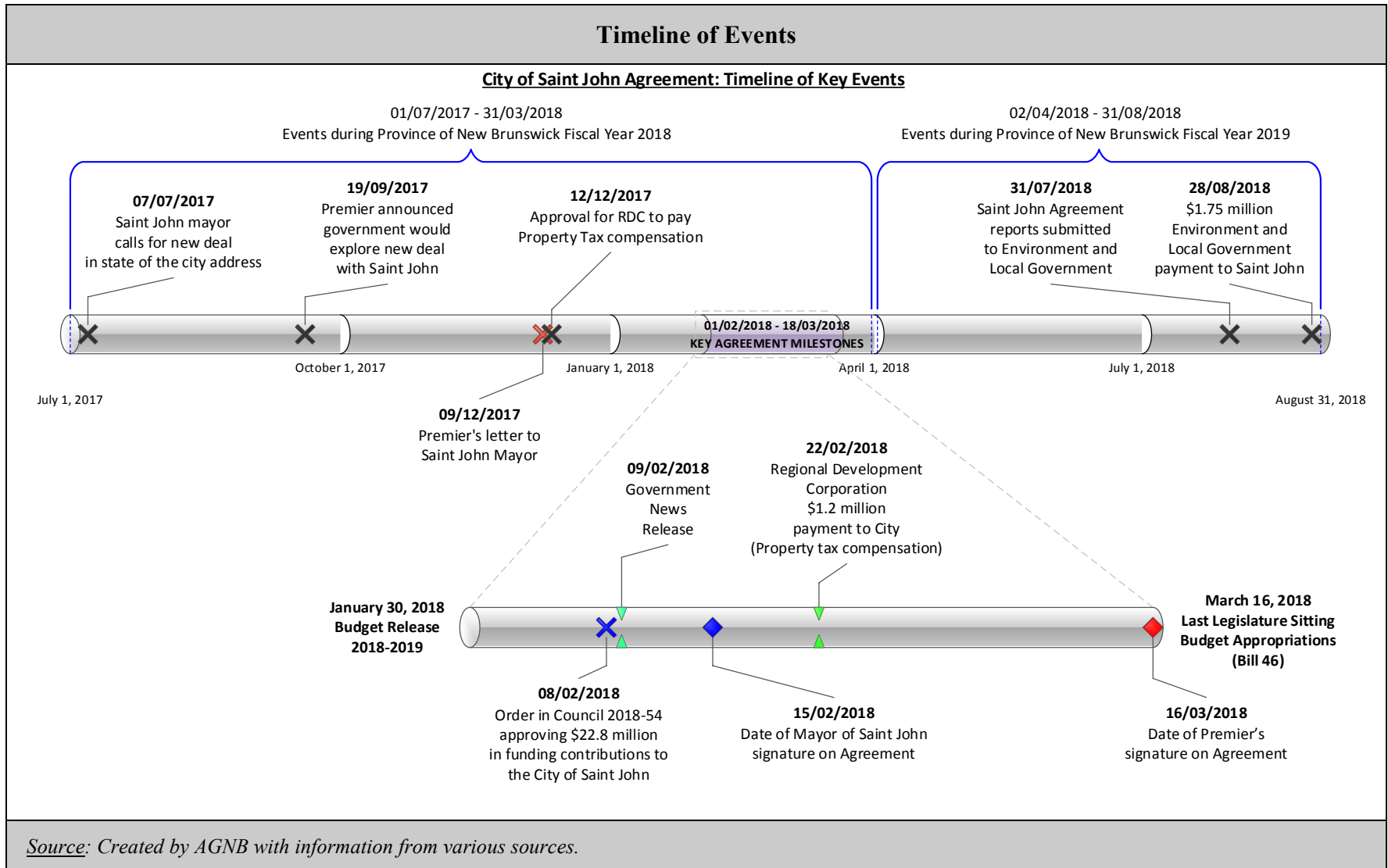
5.38 A government news release on February 9, 2018 suggested the agreement was complete but we found the former Premier’s signature on the Agreement was dated March 15, 2018.

5.39 Key terms and conditions of the final, signed Agreement included:

- City to limit impact on frontline services;
- City meets semi-annual and annual reporting requirements;
- operating surpluses, if any, to be repaid to the Province based on an agreed formula;
- semi-annual disbursement of funding; and
- establishment of a joint working committee to evaluate the success of the Agreement and “*review long term solutions deemed necessary to improve the fiscal conditions of the City.*” The committee would submit a report on or before January 1, 2019.

5.40 Exhibit 5.2 provides a timeline of events related to the City of Saint John Funding Agreement.

Exhibit 5.2 - Timeline of Events



5.41 Exhibit 5.2 highlights important dates and milestones related to development and design of the Agreement. Key events included:

- December 8, 2017 – Former Premier’s letter to City of Saint John mayor pledging government support.
- February 8, 2018 – Government decision documents approving a funding agreement with the City of Saint John.
- February 9, 2018 – Government news release and other news media announcing the Province and the City had reached an agreement.
- February 12, 2018 – City of Saint John council approves the Agreement.
- February 15, 2018 – City of Saint John Mayor signs the Agreement.
- February 22, 2018 – Regional Development Corporation completes property tax compensation payment to the City of Saint John and other local governments;
- March 15, 2018 – Date of former Premier’s signature on the Agreement.

Financial assistance dependent on City reporting a deficit

5.42 Provincial funding provided to the City under the Agreement is based on the City’s annual anticipated operating deficit. When the Agreement was signed in 2018, anticipated deficits included in the Agreement were:

Year	Anticipated Budget Deficit	Agreement funding
2018	\$3,477,659	\$3,500,000
2019	8,912,315	8,900,000
2020	10,423,699	10,400,000
Maximum	\$22,813,673	\$22,800,000

According to the Agreement, annual funding is capped at the funding levels presented above. No funding would be disbursed in 2019 and 2020 if the deficit was eliminated.

We were surprised to learn there was no provincial analysis to confirm the City’s 3-year anticipated budget deficit.

Precedent Setting funding agreement created risk for the Province

5.43 We believe financial assistance based on the City reporting a deficit creates inherent risk to the Province by:

- encouraging the City to report deficit numbers; and
- setting a precedent for other communities facing similar challenges in the future.

5.44 Saint John considers their situation to be unique for the reasons identified in their 2018 budget documents and presented in the background section above. According to government representatives we interviewed, the Agreement is meant to respond to these unique circumstances.

5.45 Providing funding to a municipality to address a projected, ongoing deficit could incite other communities to seek the same solution to financial issues. This precedent would represent additional increased risk for the Province as it faces pressure to address municipal deficits with similar actions.

In our view, agreement effectively circumvented *Local Governance Act*

5.46 Section 100(8) of the *Local Governance Act* (LGA) requires:

“A local government having an audited general operating fund deficit at the end of a fiscal year shall debit the deficit against the fund for the second year following that fiscal year.”

This section discourages New Brunswick municipalities from operating with ongoing deficits. In our view, the Agreement effectively circumvented the *Local Governance Act* as the Province agreed to fund the city’s deficit for three years. We believe agreements of this nature should respect the spirit and intent of provincial legislation.

Rushed decisions resulting in several development and implementation issues

5.47 As noted above, timing of the City’s efforts to gain provincial support in addressing their budget deficit was related to the upcoming provincial election. We believe this contributed to rushed decisions resulting in development and implementation issues.

Government negotiators allowed removal of key agreement clauses protecting the Province’s interests

5.48 Communications between the various parties revealed disagreement between the City and the Province on some key clauses within the agreement. City representatives appeared especially concerned with:

- terminology regarding accounting principles; and
- the Province’s inclusion of a clause requiring annual appropriations from the Legislative Assembly for funding approval.

Clause requiring conformance to accounting standards changed

5.49 The City disagreed with a clause requiring the City to prepare all calculations and financial data to be submitted in accordance with Public Sector Accounting Standards. It was eventually changed to allow the City to prepare this information to *“conform with the budgeting principles established for New Brunswick Municipalities by the Department of Environment and Local Government.”*

5.50 Neither ELG nor RDC could clearly explain why the City wanted this change. We did note an RDC communication identified concerns related to changing the clause. The RDC official wanted to ensure the City could not manipulate financial results impacting the size of the reported deficit and thereby affect the funding provided by the Province under the Agreement.

Appropriations clause removed from Agreement

5.51 The City also disagreed with a clause added to the Agreement. The clause was based on legal advice provided to the Province. The clause stated the following:

“Notwithstanding the Province’s obligation to make any payment under this Agreement, this obligation does not arise if, at the time when a payment under this Agreement becomes due the New Brunswick legislature has not passed an appropriation that is sufficient and constitutes legal authority for making the payment. The Province may reduce or terminate any payment under this Agreement in response to the reduction of Appropriations or departmental funding levels under which this Agreement was made.”

5.52 This clause meant the Province, regardless of the Agreement terms, would not be obligated to make a payment before obtaining legal legislative authority through a sufficient budget appropriation. Any reduction in the appropriation or departmental funding could also impact funding distributions under the Agreement.

5.53 Section 24 of the *Financial Administration Act* (Act) states “...no payment is to be made out of the Consolidated Fund without the authority of the Legislature”. We believe the original clause supported this section of the Act and removing it represented increased risk to the Province.

Recommendation

5.54 We recommend the Executive Council Office/Treasury Board Secretariat ensures:

- **funding agreements do not effectively override the spirit and intent of legislation, such as:**
 - **subsection 100(8) of the *Local Governance Act* discouraging ongoing deficits; and**
 - **the need for an appropriation in advance of expending provincial funds as per the *Financial Administration Act*;**
- **a detailed risk analysis is completed when developing funding agreements and necessary clauses are included to address identified risks to the Province; including:**
 - **an appropriations clause based on legal advice to ensure proper budget authority is obtained; and**
 - **a clause requiring financial reports follow Public Sector Accounting Standards;**
- **a sufficient multi-year appropriation is obtained to cover all legally committed funding over the life of the agreement.**

Key Department not involved in decision making process or development of the Agreement

5.55 Senior ELG officials indicated the Department was not involved in the decision-making process approving the Agreement or in the development of the Agreement. Senior officials stated they were not aware the Department would be responsible for funding provisions under the final agreement before being copied on the February 8, 2018 final Cabinet decision.

5.56 On February 9, 2018 the Executive Council Office provided senior Department personnel with an unsigned, incomplete version of the contract they would be required to implement and manage.

5.57 Various staff communications we reviewed in late April 2018 between staff at TB and ELG highlight confusion regarding responsibility for the contract and how aspects of

the Agreement would be administered. Since the Agreement was signed by the former Premier in March 2018, by April 2018 we would have expected all required parties to have a sound understanding of the Agreement terms and conditions and their roles in administering the Agreement. This clearly was not the case.

Department of Environment and Local Government struggled to implement Agreement in 2018

5.58 This lack of information and direction made it difficult for ELG to begin effectively managing the Agreement. The first \$1.75 million in funding was to be provided at the end of August 2018. In late July 2018 it was still verifying terms and conditions with the City and confirming the City’s June reporting requirements which were due July 31, 2018. In mid-August it was trying to determine how they would obtain the necessary budget authority to make the initial disbursement of funds at the end of the month.

Public communications in advance of Agreement ratification

5.59 We also noted both parties to the Agreement publicly released information on the Agreement over a month in advance of it being finalized. The Province issued a February 9, 2018 news release before the City formally approved the Agreement in Council on February 12, 2018. The former Premier signed the Agreement on March 15, 2018.

5.60 We believe it is important to ensure an agreement is legally ratified before publicly releasing contract details or undertaking funding disbursements. It is clear in this case both the Province and the City were motivated to publicly disclose the Agreement as soon as possible.

Errors in News Release flagged by Department of Post-Secondary Education, Training and Labour

5.61 On February 11, 2018 a senior official from the Department of Post-Secondary Education, Training and Labour was concerned with the accuracy of information in the news release. The official contacted ECO, suggesting departments should have an opportunity to provide input on public communications before release.

5.62 The official was concerned with two statements in the announcement:

- the first of which stated a “*guarantee that at least 25% of immigrants under the Atlantic Immigration Pilot Project*” would be “*attributed to employers in Saint John*”; and
- the other regarding the use of the Youth Employment Fund to aid Saint John, noting there were “*serious issues*”

with the Youth Employment Fund numbers in the release”.

The number referred to in the second bullet was a measure to “*Support private sector development opportunities and subsidize job placements in Saint John with an estimated \$273 million through the enhanced Youth Employment Fund...*”

5.63 PETL was concerned with the details in the original February 9, 2018 news release by Corporate Communications in ECO. Information we reviewed showed PETL officials had no knowledge of how the estimated funding number was calculated and were questioning where the funding was coming from. The Province issued a revised release to address these issues on February 13, 2018

Recommendation

5.64 We recommend the Executive Council Office involve all relevant provincial entities when planning, developing and reviewing future contracts and agreements for Cabinet approval.

**Regional
Development
Corporation made
payments before
Agreement ratified**

5.65 On February 22, 2018, RDC paid over \$1.2 million to the City of Saint John under the Agreement almost a month before the former Premier signed and the Agreement became effective. This was due to a December 2017 government decision to freeze property tax assessments for 2018.

5.66 A total of \$2.4 million was paid to 42 municipalities in the Province as compensation for the 2018 property tax assessment freeze. The City of Saint John received approximately 51% of this amount.

5.67 We believe it is important to ratify agreements before undertaking deliverables and actions required in the contracted terms and conditions. We believe draft agreements are working documents until fully ratified.

**Key committee report
not delivered as
required**

5.68 Prior to completing our work on this report, we verified with ELG that a key working committee report due January 1, 2019 under the Agreement had not been completed.

5.69 The joint working committee was established to evaluate the success of the Agreement and “*review long term solutions deemed necessary to improve the fiscal condition*”

of the City.”⁷ The committee work is critical in developing and recommending actions the City could take to address their unique situation and avoid deficits past 2020, when the Province’s financial assistance would end.

5.70 While we recognize the change in government that occurred in late 2018 could have affected the Agreement, we believe deliverables under a contract with the Province should be honored by both parties. Considering the significant challenges facing the City, delaying this report could impact the City’s ability to address future financial challenges.

Recommendation

5.71 We recommend the Executive Council Office ensure agreements approved by Cabinet:

- **are complete and authorized prior to making payments under the agreement;**
- **contain clauses to mitigate risk and protect the taxpayer;**
- **include clear, measurable deliverables;**
- **include monitoring mechanisms; and**
- **are monitored to ensure key deliverables, such as committee reports, are completed as required.**

⁷ City of Saint John Funding Agreement. Page 3 March 2018.

AG Concerns with Legislative Compliance

No supplementary estimate or budget appropriation to fund Agreement payment despite Cabinet direction to do so

5.72 ELG made the first \$1.75 million payment to address the forecasted 2018 deficit before any budget appropriation for the Department was approved by the Legislative Assembly. This payment was completed on August 28, 2018 despite Cabinet direction to secure the necessary legislative authority (even though the legislature was in session until March 16, 2018.)

5.73 The February 8, 2018 TB documentation we reviewed included a recommendation to Cabinet that the Lieutenant – Governor in Council provide funding to the City “*subject to the necessary supplemental estimate and appropriation being made to the Department of Environment and Local Government budget*”. Despite this direction there was no supplementary estimate or appropriation granted.

No budget transfer prior to first payment

5.74 We further verified that no budget transfers were made to ELG related to the funding agreement prior to the first distribution of funding by ELG on August 28, 2018.

5.75 On August 9, 2018 ELG requested direction from TB personnel in “*regard to the mechanism to provide ELG with the funds (\$1.75M) so that we can then disburse the funds to Saint John*”.

5.76 On August 15, 2018 ELG communications indicated the Department would “*proceed with a permitted over expenditure.*” We were told by TB officials that approval for this expenditure was provided by Treasury Board as part of a \$62.3 million supplementary funding provision under general government.

5.77 While this appropriation was not specifically related to the Agreement or ELG’s responsibility to provide funding under the Agreement, Treasury Board believes it is government-wide and meant to address this type of situation (unforeseen expenditures).

5.78 TB further confirmed no supplementary estimates had been undertaken for ELG to appropriate the additional funds and no transfer of funding had been completed prior to the August distribution of funding to Saint John. It stated it would be completed near the end of the year, as is its standard practice.

5.79 While Treasury Board believed this to be fully compliant with the *Financial Administration Act*, it noted the Act was outdated and as such, open to interpretation. It also indicated the meaning of terms such as “*payment*” might not apply as it does not represent current accounting principles. It could not tell us if the Act would be modernized at some point in the future.

5.80 In addition to section 24 of the Act noted above, section 30(3) states “*No expenditure is to be made unless provided for in an appropriation.*”

5.81 The Act defines appropriation as “*any authority of the Legislature to pay money out of the Consolidated Fund.*” The Legislative Assembly votes on a department’s budget as part of the main estimates process. If passed, the department is approved to spend up to the appropriated budget.

5.82 If required, government can seek approval for unforeseen expenditures by voting on a supplementary estimate during the fiscal year.

Treasury Board not compliant with the *Financial Administration Act*

5.83 We do not believe the process undertaken in this instance complies with the *Financial Administration Act* or follows the recommendation to Cabinet noted above. We believe the Act requires modernization to ensure proper terminology is included and current financial management and accounting principles are followed by government.

***Financial Administration Act* requires modernization**

5.84 In Chapter 4 of our June 2018 report, we raised concerns over government spending before obtaining approval from the Legislative Assembly. We believe this to be another example where the spirit of the Act was ignored and appropriate approval was not obtained.

Recommendation

5.85 We recommend Treasury Board Secretariat/provincial Comptroller review and update the *Financial Administration Act* to:

- **modernize the Act with respect to payments, accruals and conformance with Public Sector Accounting Standards;**
- **increase clarity for key financial officers processing payments throughout government to know if proper budget authority exists; and**
- **provide for budget appropriations for multi-year agreements at the time in which funds are legally committed.**

Appendix I - Excerpts from Former Premier’s Letter (December 2017)

The information included below is an excerpt from a December 8, 2017 letter from the former Premier to the Mayor of Saint John.

“I recognize that Saint John is at a crossroads and I applaud you for your leadership in facing your challenges head on. Saint John faces a perfect storm created in part by factors forced upon the city in years past.

You have done an excellent job laying out the fiscal challenges faced by the city.”

“Saint John needs to grow. New Brunswick needs a stronger Saint John.

We want to help. You asked for a new deal and we are prepared to give it....”

“...We have already begun with investments in projects such as Safe Clean Drinking Water, the Port of Saint John modernization, the field house, the new Museum, the Dalhousie Medical Program, the fund to end generational poverty in Saint John, the Saint John City Market, the Seaside Elementary School, the NBCC trade facility, and the Saint John Regional Hospital renovations. We are prepared to continue down that road by Investing even more in the Infrastructure Saint John needs to succeed.

So I urge you to continue to pursue a growth agenda and to enhance it. And I promise as your Premier and your Regional Minister that if you do, the Province will stand right there with you.

We can begin by making Investments today that will alleviate short-term budget pressures in the upcoming 2018 fiscal year. We can then immediately roll up our sleeves to look at medium and long term solutions that address Saint John's unique challenges and opportunities, all the while ensuring that the environment for growth is maintained and enhanced to drive up revenues and achieve economies of scale.

I know that you and your Council will consider a difficult budget on Monday. I know that you feel you have no option but to do so. We want to work with you so you can avoid cuts to front-line services and you have my guarantee that the Province will work with you towards short-term assistance for investments in a growth agenda while we continue to work shoulder to shoulder on a new deal for Saint John.

Respectfully,

Brian Gallant”