



the NIRB demonstrated that it is able to accommodate the public health restrictions while providing a meaningful hearing, current commonwealth case law supports relying on creative solutions, like the NIRB has employed, rather than indefinitely postponing matters.<sup>1</sup> Importantly, the NIRB has a legislated obligation to discharge its duties; the pandemic does not remove those obligations; and the challenges posed by the public health orders are not new and have been known since the public health emergency began.

Accordingly, although we acknowledge that many Parties may not be comfortable with resuming the Public Hearing until such time when the COVID-19 pandemic is considered over and the NIRB can return fully to its pre-pandemic processes, as acknowledged in the NIRB's Pre-Hearing Conference Decision Report, we agree with the NIRB that this is not a reasonable approach. Particularly, in light of the considerable logistical effort and cost the NIRB has adapted to modify its in-person proceedings, the significant background planning currently being undertaken by the NIRB for these proceedings, and the NIRB's obligations to discharge its legislated duties, it is reasonable to us that the Public Hearing reconvene per the dates identified in the Pre-Hearing Conference Decision Report.

With respect to the MHTO Motion for an order by the Board to Amend the Final Public Hearing Agenda issued December 7, 2020 to include presentations by Intervenors to Community Roundtable participants during Community Roundtable proceedings, we anticipate presentations will be given by Intervenors during the technical portion of the Public Hearing to report on the extent of resolved and unresolved issues and the substance of their interventions. To ensure adequate time is allocated to community members to question the Proponent on their proposal and to question Intervenors on their presentations and interventions to which community members will observe, time allocated during the Community Roundtable for presentations from Intervenors given during the portion of proceedings is duplicative and takes valuable time away from community members' ability to question and comment on the Phase 2 proposal and interventions.

Ultimately, we defer to the authority of the NIRB to deliberate on these matters. We hope our comments are helpful to the Board in their deliberations and look forward to its further guidance.

Qujannamiik,

*[Original Signed By]*

Natalie O'Grady  
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<sup>1</sup> See namely: *R v Komoatok*, 2020 NUCJ 29; and *Capic v Ford Motor Company of Australia Limited* [2020] FCA 486.