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WOODEN MONKEY'S NOVA CENTRE LEGAL ACTION

Wooden Monkey co-owners Lil MacPherson and Christine Bower have made the decision to end their legal action against HRM, the Province of Nova Scotia and the Halifax Convention Centre Corporation over the harm caused to their business during the five-year construction of the Nova Centre.

The Wooden Monkey is one of several downtown Halifax businesses impacted by the delayed construction project, which began in January of 2013 and was originally to be completed in January of 2016. Over two years behind schedule, the last estimation of the opening date was said to be December 2017.

For nearly five years impacted businesses have endured disruptive closures of streets and sidewalks, significant reductions in street parking and pedestrian traffic, dirt, noise and dust from drilling and blasting, traffic congestion, and even utilities being cut off with little notice. As a result, paying customers and patrons have gone elsewhere to avoid the inhospitable downtown core, resulting in lost sales.

Over the summer of 2016 seven businesses retained the law firm of Wagners to assist them in recovering losses suffered during the prolonged construction. These included Biscuit General

Store, Attica, The Carleton, The Economy Shoe Shop, Indochine, Drala Books & Gifts, and the Wooden Monkey.

The municipal, provincial and federal governments, as well as Argyle Developments Inc., its parent company Rank Incorporated, and the Halifax Convention Centre Corporation, were advised over the summer of 2016 of the businesses' claims for injurious affection – personal and business damages resulting from the construction project. Notices of negotiation were served on the parties in September of 2016.

On February 27, 2017 the Wooden Monkey filed a claim with the Nova Scotia Utility and Review Board against HRM, the Province and the Halifax Convention Centre Corporation claiming a loss of \$508,107 attributable to the construction of the Nova Centre, as set out in a forensic accounting report filed with the claim. This came after the businesses received no responses to their notices of negotiation.

The Respondents – HRM, the Province of Nova Scotia and the Halifax Convention Centre Corporation – challenged the Board's jurisdiction to hear the claim for what is called “injurious affection” damages. They said they were not “statutory authorities” responsible for the construction of the project and were therefore not responsible to pay damages.

The Board held the hearing on June 29, 2017. In a decision dated September 27, 2017, the Board ultimately concluded that the developer was responsible for the construction – notwithstanding the approximately \$113 million being paid by HRM and the Province for capital construction costs of the Convention Centre - and that the Board did not have jurisdiction to hear the claim against HRM, the Province and the Halifax Convention Centre Corporation.

The Wooden Monkey owners are disappointed that the Board declined to hear their claim, and continue to have questions about why fees collected by HRM from the developer in connection with the construction disruption weren't shared with the affected businesses. “I would still love

to put to the city this question - what exactly is the disruption money used for? There are large funds growing in this account. For what use?" comments Ms. MacPherson.

Lawyer Ray Wagner believes the legal action has exposed a significant gap in the legal system when it comes to public-private partnerships and their accountability for business losses caused by construction. "This was an important issue to be brought forward, both for our clients and for the sake of businesses impacted by future construction projects down the line. Growth and development are wonderful things, but the financial impacts they have on existing business must be mitigated. According to the Utility and Review Board, a project with this magnitude of financial support and engagement of government is not considered to be the responsibility of government. That's a big statement, given the increasing popularity of this model for public infrastructure. If it's not going to be addressed in legislation, there needs to be an effective construction mitigation policy with a compensation aspect. Compensation for business loss is a staple in infrastructure projects all over the world, including in lower income nations, like Bangladesh. It's archaic to have this huge gap in our municipality. We need to fill this gap, either with new legislation at the provincial level, or with a comprehensive mitigation policy."

Mr. Wagner is available for interviews with the press. Please contact him at 902-425-7330 or toll-free at 1-800-465-8794 to make arrangements for an interview with Mr. Wagner.

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