

Schulich School of Law

Land Property Tax Moratorium:
The Cessation of Property Loss to Tax Sales

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*Land is the basis of all independence.
Land is the basis of freedom, justice, and equality.*

- **Social Activist Icon, Malcolm X (Message to the Grassroots; 1963)**

*Telling me longevity is in the dirt
Should buy some property first
Should profit a better dollar with generational perks
Equity at his best, really, you should invest
These tangible things expire, don't you expect
Income with so much outcomes and yes
Look at my heritage, we now blessed*

- **Pulitzer Prized Author, Kendrick Lamar (untitled 03 05.28.2013; 2013)**

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Abstract

There has been a fracturing of African Nova Scotian (“ANS”) communities in this province’s history. Amongst the many structural inequities that create inequalities, the loss of land to property tax sales has been an alarming issue. The loss of property to tax sales is based in the lack of clear legal land title. It is a coercive experience that disenfranchises, devalues, and fractures the ANS community in Nova Scotia – only perpetuating their current standing in society. As such, it seems necessary in the democratic province of Nova Scotia to legislate a moratorium to alleviate this cycle and to begin to lay the grounds for a prosperous ANS community.

This legal memorandum seeks to establish that the benefits of a moratorium on these property tax sales in ANS communities would substantially outweigh the prejudicial effects of doing so. To satisfy the burden of this legal test, this memorandum establishes the social justice lens that is requisite for the ANS community and as such prioritizes the finding for beneficial effects for a systemically maligned community. From there, the memorandum then reviews the presence of moratoriums and tax exemptions in Nova Scotia as to attest to their commonality and frequency. In doing so, the memorandum establishes that it is a common avenue for Nova Scotia to exempt property taxes for desired social outcomes which should lend easily to the justification of this socially desirable moratorium. Then, the paper undergoes a literature review that qualifies Canada as a state with a progressive tax scheme but burdened with tax exemptions and benefits which inherently defeat the social contract benefits of taxation. As such, the memorandum concludes that to legislate for a moratorium would fall closely to the original purpose of our tax scheme and benefit a systemically maligned ANS community. In its final section, we lightly survey the different options for the practical creation of this moratorium may manifest. This memorandum is confident that beneficial effects of this property tax sale moratorium substantially outweighs the prejudicial effects of doing so.

Keywords: African Nova Scotians, Shared Truth, Democracy, Social Contract Theory, Race Literature, Systemic Inequities, Fractured Communities, Real Property, Social Justice Taxation, Taxation Exemptions, Land Title Issues, Moratorium

Section I: Introduction

Liberal democracies exist in the written words that form the foundations of their statehood and their social contracts. The Canadian constitution was first enacted in the 1867 installment at the creation of the state of Canada and later re-invigorated with the 1982 addition of the Charter of Human Rights. In each, the language written establishes the social contract that all peoples in Canada abide in pursuit of an inclusive, progressive society. However, amongst the plethora of democratic principles that live through the written word of the Canadian constitutions, there are unwritten principles that are as important to the sanctity of our Canadian democracy – and all democracies in the world¹. In Canada, there are four specific unwritten principles, but we shall highlight the “shared truths” as the fundamental democratic underpinning of the legal position held by this memorandum.

In Nova Scotia, Canada – the home of Canada’s original Africa-Canadian community – systemic inequities have plagued the self-actualization of African Nova Scotians (“ANS”). The shared truth of our Nova Scotian history often ignores the presence of the ANS and with it comes the denial of the inequitable standing they have today. Inequity manifests itself in various forms, one of which has been the loss of land to tax sales in ANS communities. This memorandum will present a thorough argument favoring for a moratorium on tax sales in ANS communities. Throughout, the legal question that the legal paper will seek to answer is whether the beneficial impacts of such a decision cessation will substantially outweigh the prejudicial impacts of a moratorium on property tax sales.

¹ See Steven Levitsky & Daniel Ziblatt, *How Democracies Die*, (USA: Crown, 2018) discussion on unwritten democratic principles and their vulnerability in decaying democracies.

Section II of this paper will establish the Social Justice lens. **Section III** will review current moratoriums and tax exemptions in the Nova Scotian society. **Section IV** will consider the policy and social contract theory aspects of taxations. **Section V** will summarize and conclude the position of the memorandum. **Section VI** will present a brief examination the prejudicial effects, and what the tax sale moratorium legislation may resemble if it were to be undertaken.

Section II: A Social Justice Lens

In Nova Scotia, the ANS community has suffered several traumatic events that has left the community with unrequited demands for justice. The unjustifiable and poorly planned decision to expel the ANS community from Africville, the environmental racism that pollutes several ANS communities², and the lack of legal title to land preventing ownership are but a few that decry the levels of salient systemic inequities³ in Nova Scotia.

Much of these issues were covered in Angela Simmonds *This Land is Our Land* (2014). In her publication, Simmonds reviews in depth traumatic moments of inequity like the 1983 economic development in the communities of Cherry Brook/Lake Loon, Lake Major, North Preston and East Preston communities⁴. This development process came in light of negligent polluting of their river streams with unregulated garbage dumping in nearby areas that made the land dangerous for use. As a result, the government sought to develop the area. In doing so, many of the ANS community members ended up selling their land to the government with an eye on a short-term gain⁵. Considering the asset value of land ownership is one of the fundamental

² See Ingrid RG Waldron, *There's Something in the Water, Environmental Racism in Indigenous & Black Communities* (Halifax: Fernwood Publishing, 2019) for an extensive look at environmental racism in Canada and specifically in Nova Scotia.

³ “Inequity” and “inequality” are often interchangeable terms that connote similar meanings in today’s climate and academic literature. This paper will employ the phrase “equity” and “inequity” as to emphasize the economic implications of the systemic inequalities that have pervaded ANS history. All accounts of their traumas have left lasting psychological impacts; but, very importantly greater Nova Scotia is worse off for having barred a fluid, cultural, historical, colorful working community from thriving and prospering. Their standing today in this province was caused by inequal treatments, but has also created deep rooted inequities.

⁴ Angela Simmonds, “This Land is Our Land: African Nova Scotian Voices from the Preston Area Speak Up” (19 August 2014), online: The Legacy of Land in North Preston <www.northprestonland.ca/archive.html> at 5 [“Simmonds”].

⁵ Simmonds, *supra* note 4, at 6.

concepts of Western society⁶, one must speculate whether the requisite duty of good faith between the purchaser of land (the government) and the sellers of the land (the uneducated, poverty-stricken class of ANS) was met. This lack of good faith from the body authorities is a reoccurring theme in the ANS history⁷. Despite the otherwise humanitarian driven society that Nova Scotia and Canada boasts to be, the loss of land to the deprivation of the community is the concurring theme underlying this memorandum.

The issue presented in this case is unclear land title. Clear land title is the explicit legal decree of a defined land parcel to a specific individual's name connoting ownership and corresponding usage rights. In having legal title to land, an individual is able to enjoy that land through a various form of uses. We create our relationship to the land; we orient our society around our land. Scholar Vine Deloria Jr (1969) wrote, "no movement can sustain itself, no people can continue, no government can function, and no religion can become a reality except to be bound to a land area of its own"⁸. Collective identities and their positive contributions to the growth of a society depend on the land.

The Cyclical Deprivation to *Enjoy Their Land*

One of the enjoyments would be to benefit from its financial implications. When a parcel of land is not clearly entitled to one individual, that individual is prohibited from the financial benefits of that real property – they are unable to build on the land, develop the land, sell the

⁶ In Thomas Malthus *The Works of Thomas Malthus*, 6:1820, (London: William Pickering, 1820), Malthus states that private property is "among the most important causes which influence the wealth of nations" and the more immediate cause of wealth "land".

⁷ Simmonds, *supra* note 4, at 4-5, 8.

⁸ Sara Safransky, "Land Justice as a Historical Diagnostic: Thinking with Detroit" (2018) 108:2 *Annals of the American Association of Geographers*, at 505 ["Safransky"].

land, or more importantly lease or mortgage the land. Therefore, when an individual resides on land that they do not have financial capacity to manipulate to their benefit in a society with most communities having clear title – the end result is that the ANS are financially disempowered from a privilege enjoyed by most others. A disempowered ANS community deprives the Nova Scotian workforce from attaining its optimized form and satisfactorily high rates of employment⁹.

In addition to this disempowerment, the ANS with unclear title of land face burdening issues pertaining to the land in form of tax sales.

When a parcel of land accrues unpaid property taxes past an unreasonable amount of time, the land will be exposed to an auction style tax sale¹⁰. In the tax sale, bidders will bid to pay for the property taxes that have fallen in arrears. The successful bidder will pay the property taxes to the government, satisfying the government, and take legal title to the land. It has been a common occurrence to have tax sales in the ANS communities. The reason is explained through a culturally sensitive perspective.

The ANS communities have been built on property “without proper subdivision approval and without having a land survey done”¹¹. In some cases, several houses are built on one single parcel making it difficult for the municipality to “properly assess the property for tax purposes

⁹ In financial and economic literature, *slack* is a term that implies the difference between a projected output versus a real output. The difference is the *slack* that a system demonstrates. In minimizing slack, a system increases efficiency and output. Specifically for social justice literature, slack is often tied to the notion of unemployment. The great a system is functioning; the more roles available and the more employment opportunities arise. ANS have been the recipient of systemic inequalities that have caused systemic inequities. They are not experiencing their maximized potential, and as such, Nova Scotia suffers from an unnecessary slack in its total population work force.

¹⁰ *Municipal Government Act*, SNS 1998, c 18, ss 134-160, for the legislated mandate surrounding Nova Scotian tax sales.

¹¹ Simmonds, *supra* note at 4, at 8.

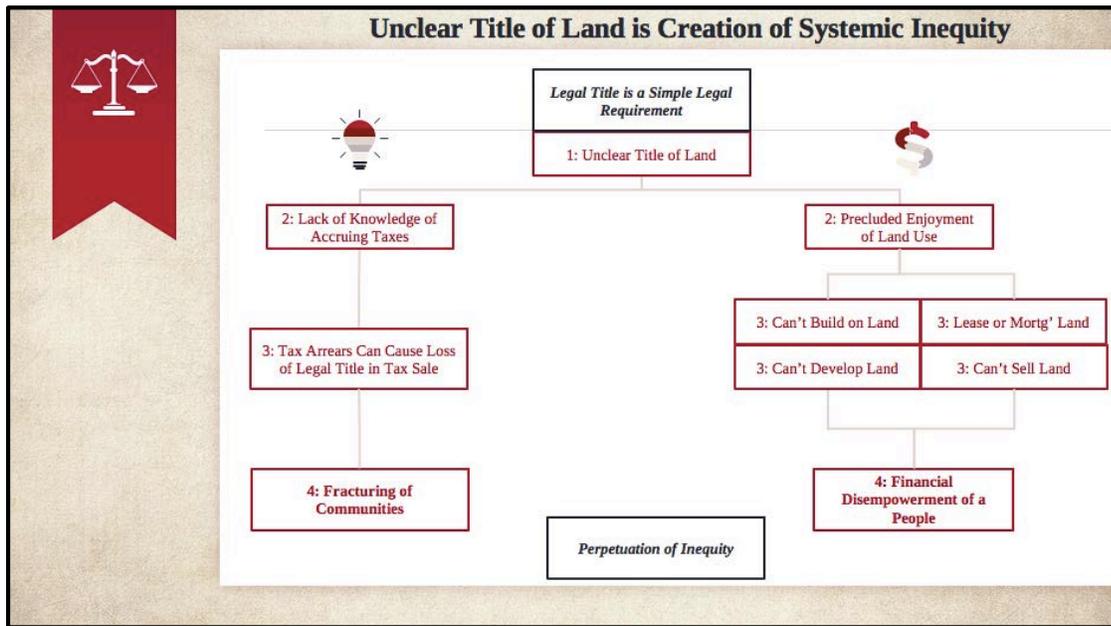
and to bill the appropriate person or family”¹². In doing research for this memorandum, it was made clear that a failure to notify families of their parcels falling into tax arrears was a common occurrence. Granted the residential lay out of the several houses on a parcel complicated matters, but often no notice was being delivered. Or there were reports that notice would be placed without satisfaction of bringing it to the attention of any parcel owner. From the perspective of the ANS community, this was their relationality to the land they have lived on for 200+ years, while from the perspective of the Nova Scotian government, there was a lacking clear title and a failure to pay property taxes. In *Downey v NS*, 2020 NSSC 201, Justice Campbell described the situation eloquently,

Residents in African Nova Scotian communities are more likely to have unclear title to land on which they may have lived for many generations. That is because in those communities, informal arrangements were more common. Financial and other obstacles made it less likely that people in those communities would retain lawyers and surveyors to research title, register deeds or wills, or to survey boundaries. People may have lived on land for generations without having title registered. No one else might claim it and it may be that no one in the community disputes their entitlement to it. But they still have no formal title (para 5).

¹² *Ibid.*

While the tax sale experience alone is an adversarial one to the interest of the ANS community members themselves, it also poses a threat to the general community at large. In preparation of this memorandum, sentiments seemed to echo what was also expressed in Simmonds' work¹³ – that the ANS communities were under an existential threat. Communities are fractured when the loss of land occurs. With each successful sale in a tax sale, the parcel that was once in the community's interests leaves to any successful bidder. This fracturing of land is also the fracturing of community identity. The perpetual fracturing of community only further reinforces the loss of solidarity in a community but also emphasizes the experience of inequality and creation of inequity. A fractured community is not one that will be readied to contribute effectively to a growing Nova Scotia.

Flowgraph 1: a summary of the impact of unclear title on ANS equity



The social justice perspective requires that the reader and the policy maker consider not the technical perspective of language, but rather the contextual matter of language. Property has

¹³ Simmonds, *supra* note 4, at 11-12.

typically been defined as something that is of material possessory rights, but “critical property theorists have shown, it is better understood as a bundle of negotiated social, political, legal, and economic relationships that confer value through exclusion”¹⁴. Exclusionary practices confer the value and orient the bundle of negotiated interests; as to say, the loss of a community’s lands to a wealthier, more sophisticated buyer confers value in the buyer at the tax sale at the devaluation of the less-prepared ANS community member. To turn a blind eye to how these lands are being lost to tax sales is to reinforce the fact that “property relations established under colonialism and slavery and perpetuated under legal and extralegal segregation practices...remain a huge obstacle to democratization”¹⁵. Simply, to allow these tax sales to go on further would only be turning a blind-eye to an affront on our Nova Scotian democracy.

An issue as simple as unclear land titles has shown to result in both financial disempowerment of the ANS communities and fractured ANS communities which only perpetuates the systemic inequities that pervasively exist today. The mainstream pairing of the terms *social* and *justice* has led to unintended cognitive associations that have bloated the phraseology to encompass an array of tangential ideas and approaches. However, at the core of the phrase – *social justice* – is the shared truth that *some* societal classes have suffered a disproportionate amount in comparison to others. The social justice perspective targets a remedial objective that empowers all under a true democracy to alleviate those unfairly burdened by the mishaps of our society. The shared truth that the ANS community members is not just a truth held by stakeholders alone, but one that has been shared by those that wield the sanctified truths at the highest levels of Canadian public rhetoric.

¹⁴ Safransky, *supra* note 8, at 503.

¹⁵ *Ibid*, at 502-3.

In *Downey v NS*, 2020 NSSC 201, Justice Campbell is on record stating that “African Nova Scotians have been subjected to racism for hundreds of years in this province. It is embedded within the systems that govern how our society operates. That is a fundamental historical fact and an observation of present reality”¹⁶. In *R v Anderson*, 2020 NSPC 10, Justice William stated that, “the socio-economic forces at play are so powerful and are firmly entrenched in systemic racism and marginalization”¹⁷ in reference to the ANS treatments in Nova Scotia. These two cases demonstrate Nova Scotian Justices acknowledging the presence of systemic racism in the ANS experience in Nova Scotia. In a March 2021 decision, the Provincial government of Nova Scotia allocated \$3,000,000 to go towards the land title initiative to fund the clarification of land titles¹⁸. A policy goal of that decision was to address a “legacy of systemic racism”¹⁹.

Section II aimed to establish the perspective required for this memorandum. In seeking to answer whether a tax moratorium’s benefits would outweigh the burdens of the act, it is necessary to be reminded that the ANS communities have been a disempowered, fractured group of our Nova Scotian democracy. This should affect the weight given in considering the benefits of a moratorium. In other words, the benefits of a moratorium are emphasized by presence of systemic inequities and unequal treatments to which are a collective, Nova Scotian shared truth.

The next two sections will seek to demonstrate the commonality of tax exemptions and other legislated forms of specialized treatments for the benefit of a democratic objectives. In doing so, this memorandum hopes to demonstrate how typical a decision like a moratorium may

¹⁶ *Downey v NS 2020 NSSC 201*, para. 4.

¹⁷ *R v Anderson*, 2020 NSPC 10, para. 94.

¹⁸ Danielle Edwards, “N.S. announces \$3M fund for land title claims in African Nova Scotian communities” (5 March 2020), online: *CTV News* <<https://atlantic.ctvnews.ca/n-s-announces-3m-fund-for-land-title-claims-in-african-nova-scotian-communities-1.5335074>>

¹⁹ *Ibid.*

be and hope to dismiss any notion that a tax sale moratorium holds sufficient levels of prejudicial effects.

Section III: Current Moratoriums and Tax Exemptions

In balancing the benefits versus the prejudicial effects of a tax sale moratorium, this memorandum will consider the commonality of moratoriums and tax exemptions in Nova Scotian governance. By presenting our province's affinity to amend and exempt certain practices and responsibilities, this memorandum intends to demonstrate that moratoriums are not uncommon practice in our province.

(A) Precedence of Moratoriums

A moratorium is a legally authorized period of delay in the performance of an obligation or in the payment of a debt²⁰. Moratoriums are a common feature of any democratic society as they essentially represent the notion that some activities are not inherently harmful, but there can be policy objectives that contextualize a demand for their delay. Moratoriums are present throughout Nova Scotian governance as they show to have great utility.

The *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act* is a moratorium on oil and gas exploration and drilling on Georges Bank off the coast of Nova Scotia²¹. This moratorium has been in place since 1988 and offers protections against exploration and drilling in the region²². BP and Chevron both have rights to drill in the area but are prohibited from acting on their leases to the land as result of the moratorium. This moratorium benefits the fisheries in the area at the detriment of the large potential financial gain

²⁰Merriam Webster Dictionary, "moratorium" (1 January 2021), online: *Merriam-Webster* <<https://www.merriam-webster.com/dictionary/moratorium>>

²¹ *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act*, SNS 1987, c 3 and current to 2022.

²² Jean LaRoche, "Georges Bank moratorium extended by Nova Scotia government" (26 November 2015), online: *CBC Nova Scotia* <<https://www.cbc.ca/news/canada/nova-scotia/georges-bank-moratorium-extended-1.3338283>>

from exploring the area. This moratorium reflects that Nova Scotian governance is willing to prioritize fishery standards over abundant financial gains anticipated from oil drilling.

During the early stages of the pandemic in 2020 there was a Nova Scotian “eviction moratorium”²³. Evictions alone are not a troubling procedure, but during a public health crisis like the Covid-19 pandemic, there was good reason to pause those evictions with the policy goal of minimizing tenant relocation and hence prioritize public health. The goal was satisfied: between April 2020 to June 2020 there were 28 eviction notices filed while merely six weeks after the moratorium was lifted there were 343 filed²⁴. This Nova Scotian moratorium reflects that moratoriums can be successful in attaining wider social benefits for society.

The final example is the 2019 “Moratorium Placed on Street Checks of Pedestrians, Vehicle Passengers”²⁵. Attorney General and Justice Minister Mark Furey issued the directive that suspended street checks of pedestrians and passengers in motor vehicles²⁶. Justice Furey was quoted stating that “We need to address the fear and mistrust that street checks have caused for many in the African Nova Scotian community”²⁷. At the time, ANS were six times more likely to get stopped than other Nova Scotians of the general population.

This section briefly covered three different moratoriums to demonstrate that their common use in Nova Scotian governance: a fishery benefit at financial loss, a tenant’s benefits at landlord’s loss, and a ANS’ benefit at a policing loss. With three moratoriums alone, Nova Scotians have seen its province step forward with affective action promoting an array of societal

²³ Alicia Draus, “Calls for Nova Scotia to reinstate eviction ban during public health emergency” (12 November 2020), online: *Global News Nova Scotia* <<https://globalnews.ca/news/7458737/nova-scotia-eviction-ban-coronavirus-public-health-emergency/>>

²⁴ *Ibid.*

²⁵ Nova Scotia, “Moratorium Placed on Street Checks of Pedestrians, Vehicle Passengers” (17 April 2019), online: *Government of Nova Scotia* <<https://novascotia.ca/news/release/?id=20190417001>>

²⁶ *Ibid.*

²⁷ *Ibid.*, para 4.

interest. As such, memorandum is not asking for a rarely relied upon legal tool to benefit to the ANS communities, but rather one that has been relied on significantly in recent Nova Scotian past.

(B) Legal Structures & Tax Exemptions

This section will consider examples of legal structures and tax exemptions that are seen in Nova Scotia that should further justify the implementation of the moratorium. In doing so, this section will show that to exempt the ANS community from the punishment of falling in tax arrears, but rather akin to the other examples of tax exemptions. This section will not delve into the policy discussion that underlies taxation – that is reserved for **Section III** of the legal memorandum.

(i) Heritage Property Act

The first legal structure to be reviewed is the *Heritage Property Act*²⁸. The *HPA* is a legislated protection for the cityscape and landscape of *old* Nova Scotia. Heritage Property aims to protect not just the façade of Nova Scotian houses but also, “farm buildings, public-building interiors, streetscapes, cemeteries, industrial structures, historic districts, archaeological and palaeontological sites and cultural landscapes” as these locations represent Nova Scotia’s “recent and distant past”²⁹. The program discusses the importance of old Nova Scotian heritage and the responsibility of our community to protect it from an overhaul, modernization of our cityscape³⁰. To do so, the *HPA* confers financial assistance to Nova Scotian residents that enlist their property under the heritage protection³¹. The financial assistance comes in ways of funding for the

²⁸ *Heritage Property Act*, RSNS 1989, c 199 [“*HPA*”].

²⁹ Nova Scotia Communities, Culture, & Heritage, “Heritage Places in Nova Scotia: what you need to know”, (1 January 2011), pdf, at 1.

³⁰ *Ibid.*

³¹ *HPA*, *supra* note 28, s 22.

restoration or renovations of the property³². The money collected to fund the restoration or renovations of the heritage properties may be “raised, levied, or collected as part of the general rates or taxes of the municipality”³³. It is the position of this memorandum to support the Heritage Property initiative – as the policy that underlies the *HPA* is a form of protectionism of original Nova Scotian culture and communities. In fact, that sentiment is echoed by this memorandum. If it is possible for financial assistance to support the *HPA* and the *HPA* to rely on the municipal tax scheme to provide that financial assistance, then it is possible to envision a tax moratorium that also relies on the municipal tax schemes but the benefit of the heritage, community, and identity of the ANS – a people that has been present here for more than 200 years.

(ii) Property Valuation Services Corporation

The next tax structure to be reviewed is the property assessment system in Nova Scotia. The Property Valuation Services Corporation (“PVSC”) is a municipally owned, non-for-profit corporation that determines the market value of properties in Nova Scotia in accordance with the *Assessment Act*³⁴. There are several types of properties that are exempt from property taxes, like all school lands³⁵, municipal properties³⁶, and others³⁷. The nature of these property tax exemptions is that the lands are used for public good. In addition, the PVSC governs the Capped Valuation Program. The Capped Valuation Program limits the amount that property taxes can rise on residential housing year over year as to limit a sudden and dramatic increases in market values which would cause a rise in property taxes. Commercial properties, non-Nova Scotians,

³² *Ibid.*

³³ *Ibid.*, s 22(4).

³⁴ *Assessment Act*, RSNS 1989, c 23 [“AA”].

³⁵ AA, *supra* note 34, s 5(f).

³⁶ *Ibid.*, s 5(h).

³⁷ *Ibid.*, s 5.

and residential real estate of more than 4-units are not eligible for this Capped Valuation Program. From the perspective of this memorandum, the presence of the capped valuation program reveals that property taxes are a form of debt that can foreseeably reach burdensome levels for residential landowners. To prevent that aversive situation, the Capped Valuation System protects Nova Scotians from rising market valuation. This alone is a form of moratorium on regular market valuations of eligible Nova Scotian residential properties. A tax sale moratorium is not unlike the Capped Valuation Program; but rather, is much akin to it and would confer a similar protection to ANS communities. The capped valuation system also demonstrates the willingness to deprive the province from the collection of taxes at the benefit of the local communities. This memorandum is calling for a similar privilege.

(iii) Discretion in the Tax Sale Legislation

The next structure to be reviewed is the tax sale legislation. Tax sales exist in the *Municipal Government Act*³⁸. Tax sales, akin to a foreclosure sale, occur when the registered owner of a parcel fails to pay their property taxes for the full preceding year³⁹. However, the *MGA* stipulates that a property “shall” go to tax sales after a failure to pay property taxes for three years⁴⁰. Upon discretion of the council, this tax sale may be deferred for a further two more years⁴¹. As such, the *MGA* provides that the longest a piece of land may fall in tax arrears is five years. However, it is the position of this memorandum that the mere nature of a tax sale carries with it legal discretion. It is clear by way of the language of “shall” rather than “must” or “will”, and the further two-year delay before listing for tax sales that the council is to utilize legal discretion as to attempt to guard against unnecessarily prejudicial sales of properties.

³⁸ *MGA*, *supra* note 10, ss 134-160.

³⁹ *MGA*, *supra* note 10, s 134(1).

⁴⁰ *Ibid*, s 134(2).

⁴¹ *Ibid*, s 134(3).

The financial implications of a parcel of land are numerous, and the successful bidder of a piece of land gains a disproportionate amount of value in light of the low bar of having to pay the cost of the tax arrears. Simply put, tax sales are the site of legal transfer of land at values far below fair market value. So much so, there is an entire redemption aspect to the tax sale where those who lost the land can pay a price to be placed back into legal title of land within a designated amount of time after the tax sale⁴². Or, in the alternative, there are payment arrangements between the taxpayers and the relevant municipality that can preclude a finding for tax sales⁴³. Tax sales clearly are already designed with a level of legal discretion as to prevent prejudicial losses of land for the sake of property taxes. As such, it is the position of this memorandum that if this legislation is structured with legal discretion, then the mere act of foreclosing on a parcel of land because of tax arrears is something that is already considerate of the policy issues that underly the real-world act. It is not a burdensome demand to place a tax sale moratorium on these vulnerable communities; rather, it is a demand that expands on the principle of legal discretion that the *Act* already considers.

(iv) Land Titles Clarification Act & Tax Forgiveness

The final consideration is the tax forgiveness clauses under the *Land Titles Clarification Act*⁴⁴. The *LTCA* is the legislation that seeks to clarify land title throughout the province with both ANS and general population communities included. Under the *LTCA*, there is an opportunity for tax forgiveness for successful *LTCA* claimants. The tax forgiveness parameters are found under Administrative Order 10, “Respecting Partial Tax Exemption for Residential

⁴² *MGA*, *supra* note 10, s 152.

⁴³ *Ibid*, ss 134(4)-(5).

⁴⁴ *Land Titles Clarification Act*, RSNS 1989, c 250, [“*LTCA*”].

Taxation”⁴⁵. The Administrative Order states that any claimant that is issued a Certificate of Claim and is registered in the Registry of Deeds is eligible for tax forgiveness⁴⁶. Then, depending on level of income and where the applicant lies on the income test, they can benefit from forgiveness of the tax arrears on the unclear land. While the formulation of this language does seem to present itself as a viable option for ANS community members, the practical reality of the nature of property ownership dictates another story.

Firstly, a majority of the property losses occur from tax arrears in both probate of the land and migration of land to the land registration act. The nature of the probate is immensely complicated and creates staggering expenses to effectively probate the estates because of a cultural bias against will creation in ANS communities. According to Simmonds’ research, “elders in the community affiliate death with wills”⁴⁷ which has resulted in a lack of will creation. Furthermore, there is a cultural notion that land will fall to the youngest of the children or the child or children residing with the parent at the time that the parent passes away⁴⁸. This cultural tendency often leads to conflict when the government then seeks clarification to migrate, to probate the estate, or any other related act to the clarity of the legal title.

The second issue with this administrative order and the tax forgiveness is that it only pertains communities registered under the *LTCA*. The *LTCA* is enacted to formally clarify land in 13 areas, the following 5 of which are ANS communities: Cherry Brook, East Preston, North Preston, Lincolnville, and Sunnyville. However, there are 53 ANS communities in the province and the 13 areas chosen for the *LTCA* is notoriously arbitrary. As such, communities like

⁴⁵Administrative Order, “Respecting Partial Tax Exemption For Residential Taxation” (27 April 2010), online: *Nova Scotia Government* <<https://www.halifax.ca/sites/default/files/documents/city-hall/legislation-by-laws/AO-10.pdf>> s 5a.

⁴⁶ *Ibid*, s 5a.2(2).

⁴⁷ Simmonds, *supra* note 4, at 8.

⁴⁸ *Ibid*, at 8.

Shelburne or Hammonds Plains cannot rely on the *LTCA* for this forgiveness, and rather must rely on other resources to attempt to resolve the matter. So, while the tax forgiveness scheme presents itself for 5 of the 53 ANS communities, it still relies on the successful application of land clarification – which alone presents itself as a hurdle considering the cultural nuances to land ownership in the areas.

This section sought to set out the manner of which Nova Scotian governance currently provides forms of exceptions to the collection of taxes. To satisfy the policy concerns of this memorandum, it is imperative to demonstrate that a tax sale moratorium's benefits outweighs the prejudicial effects. As such, this section sought to demonstrate that moratoriums and tax exemptions and their associated benefits have already been visited by the legislature in Nova Scotia. The familiarity of this legal resource furthers the case that the prejudicial effects of the decision would be more foreseeable, more anticipated, and hence more manageable and less negative. Furthermore, one may argue that the mere presence of tax exemptions, exceptions, and forgiveness demonstrates a legislated willingness to relieve Nova Scotians of due taxes. The ask of this memorandum is not shaping up to be something unfamiliar in Nova Scotia – and for that its predictability enhances the anticipated benefits of the moratorium.

Finally, this section was not a conclusive survey. Rather it was a brief review of relevant pieces of legislation. However, as a testament to the commonality of tax breaks, exemptions, and benefits that reinforce societal objectives, it would have been impossible to effectively review all the tax benefits in Nova Scotian governance. On this note, this memorandum turns to the next section.

Section IV: The Social Contract of Property Taxes

Taxes have long been understood as the underlying cost of membership to a social contract and its society. This section will aim to demonstrate that taxes are intended for the benefit of the overall good of Nova Scotia. In assessing the benefits and prejudicial effects of a tax sale moratorium, this section will aim to orient the moratorium with our progressive taxation system.

(A) Nova Scotia Property Taxes

Property taxes are a provincial and municipal mandated tax system. Property taxes are calculated by the combination of the municipal tax rates and the provincial tax rates. There are three municipal tax rates for Nova Scotia while there is one fixed provincial tax rate⁴⁹.

The three municipal tax designations are urban general rate, suburban general rate, and rural general rate⁵⁰. All tax rates are per \$100 of assessed value of the property – as assessed by PVSC. Urban General Rates are \$0.67 per \$100 of residential land value assessments, suburban general rates are \$0.637 per \$100 of residential land value assessments, and rural general rates are \$0.6370 per \$100 of residential land value assessments. The requisite services provided – or in other words the promised compensation for these taxes – are as follows:

policing, solid waste, recreation programs, planning, libraries,
sports fields, playgrounds, administration, fire suppression, street
lighting, recreational and community facilities (municipality's
share of capital and operating costs)⁵¹.

This will be touched on later in this section.

⁴⁹ Halifax Regional Municipality, "Property Taxes" (18 February 2021), online <<https://www.halifax.ca/home-property/property-taxes/tax-rates>>

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

The provincial rates are all fixed regardless of region. Each tax is collected to fund the corresponding public service given: \$0.016 for the property valuation assessment system, \$0.015 for correctional services, \$0.007 for non-profit housing for seniors and low-income families, \$0.306 for a mandatory provincial education tax contribution and all together amassed to a total of \$0.344 for residential property tax rates. The commercial property tax rates are almost 4 to 5 times larger than the residential property tax rates in the municipal tax: \$3.00 per \$100 urban and suburban assessments while \$2.66 per \$100 of rural assessments. In the provincial tax, it is slightly lower than the residential tax: \$0.334 per \$100 for commercial property in contrast to the \$0.344. It is clear that in the municipal tax collection, there is substantially more weight on commercial properties while in the provincial tax they are essentially similar.

In the ANS context, Hammonds Plains, a vocal historical ANS community, is designated a rural tax designation boundary⁵². North Preston and East Preston, historically ANS communities and registered under the *LTCA*, are both rural tax designation boundaries⁵³. A majority of the ANS communities find themselves in the rural tax designation boundaries which means that they already contribute the least of the three municipal designations. On the surface, this would be defined as a progressive tax scheme.

⁵² Halifax Regional Municipality, "Tax Area Map" (18 February 2021), online: <<https://www.halifax.ca/sites/default/files/documents/home-property/property-taxes/Tax%20Area%20Map%202017.pdf>>

⁵³ *Ibid.*

(B) Taxing Schemes: Progressive and Regressive

In the contemporary context, there are three taxing schemes: progressive, regressive, and proportional⁵⁴. A regressive taxing scheme arises when the higher income earner pays a lesser amount percentage of their overall income on a tax compared to a lower income earner⁵⁵. An excellent example of this taxing scheme is the HST paid at grocery stores. In Nova Scotia, the approximate 13-15% HST is fixed on each purchase; therefore, an individual making \$150,000 versus an individual making \$45,000 will each pay 15% additional for a \$100.00 grocery bill. 15% of \$100.00 is \$15.00. \$15.00 is 0.033% of the \$45,000 income earner and only 0.01% of the \$100,000 income earner. The higher income earner pays less relative to the amount they make. As such, HST is a regressive tax considering it burdens lower income individuals greater than it does higher income individuals.

Canadian income tax is a bracketed progressive tax scheme where the higher the income earner, the greater they pay taxes per every additional dollar in the bracket. Property taxes are indirectly a progressive tax scheme considering the taxation percentage decreases down the municipality boundary designation. Naturally, lower income individuals live in rural designated areas, and as such, the property tax will burden them at a lower percentage than would those living in greater designation areas. But, practically speaking, this would all depend on the amount of income per home and the comparisons between two parties. While assessing that burden is not the objective of this memorandum, the message to be brought forth here is that Nova Scotian property tax and income tax schemes have in it their policy objective to burden those with greater incomes with a greater taxation. While in theory this is satisfactory, the

⁵⁴ Proportional taxing schemes was not touched upon as it did not bring relevance to this discussion.

⁵⁵ Melissa Horton, "Regressive, Proportional, and Progressive Taxes: What's the Difference?" (1 January 2021), online: *Investopedia* <<https://www.investopedia.com/ask/answers/042415/what-are-differences-between-regressive-proportional-and-progressive-taxes.asp>>

practical reality of this changes when one considers the amendments and exemptions given in our taxing schemes.

(C) Effect of Tax Breaks on the Canadian Progressive Taxation Scheme

Our taxation scheme is illustriously designed to benefit the good of all Canadian classes. However, by riddling the taxation scheme with tax breaks and exemptions, the higher income earners are tooled with the necessary legal avenues to successfully partake in tax avoidance. According to Citizens for Public Justice, the federal government tax revenues have fallen by 11.6% which is the lowest rates in 70 years and provincial governments across Canada have followed a similar trend⁵⁶. Tax cuts have allowed higher income earners to avoid their necessary share of tax contribution – which only jeopardizes the entire structure.

For example, sources of income through stock options or capital gains are taxed “more lightly than income from wages and salaries undermining the progressivity of the system”⁵⁷. Other examples are the RRSP and TFSA contributions that both allow for generous tax avoidances⁵⁸. Canada ranks second lowest among G7 nations for corporate taxation and is “considerably lower than US rates”⁵⁹. Every year between 2006 and 2015, a range of tax cuts resulted in foregone tax revenue of approximately \$45 billion per year⁶⁰. The effect of tax cuts results in the depletion of tax revenues and a heightened need to fulfill tax targets – which is easily placed onto the lower income earners in Canada⁶¹. There is a loud body of literature that would decry that Canada having the highest marginal tax rate in North America disincentivizes

⁵⁶ Citizens for Public Justice, *Taxes for the Common Good A Public Justice Primer on Taxation*, (Canada: CPJ.ca, 2015), at 4 [“Citizens for Public Justice”].

⁵⁷ Citizens for Public Justice, *supra* note 56, at 8.

⁵⁸ *Ibid*, at 8.

⁵⁹ *Ibid*, at 11.

⁶⁰ *Ibid*, at 5.

⁶¹ *Ibid*, at 7.

an effective working culture and a reinforcement of mediocracy⁶². This memorandum is not interested in the position that Canada must increase tax on the higher income earners or continue to cut taxes for that same group. This memorandum seeks to demonstrate that tax exemptions are a common occurrence in the wider Canadian society. As such, it does not seem reasonable to conclude that the property taxes collected from the ANS community members will make or break the tax revenue for the province. If taxes are meant to further our social well-being, then it is the position of this memorandum that property taxes are currently over-burdening the ANS communities that are already under fire from riddling systemic inequities and risks to their existential identities. Simply put, a tax sale moratorium on the collection of property taxes from ANS communities would only seem fitting in a tax system that is intended to benefit the overall good of Canadian society.

Next, this memorandum will consider some of the philosophical points that underpin taxation schemes in general.

(D) Taxes & Social Justice

Social justice taxation requires that “those who are of greater means and receive greater benefits of tax policy should be responsible for a greater weight of the tax burdens”⁶³. However, justice – in the tax context – depends on which group or stakeholders is communicating their tax frustrations⁶⁴. Essentially, justice in the tax context is relative to the individual that communicates their definition of tax justice. Between the high-income earners complaining that they are overly burdened by taxes and the low-income earners complaining about a lack of

⁶² Tegan Hill, Nathaniel Li, & Milagros Palacios, “Canada’s Rising Personal Tax Rates and Falling Tax Competitiveness, 2020” (7 July 2020), online: *Fraser Institute*, <<https://www.fraserinstitute.org/studies/canadas-rising-personal-tax-rates-and-falling-tax-competitiveness-2020>>

⁶³ Phyllis C Taite, *Exploding Wealth Inequalities: Does Tax Policy Promote Social Justice Or Social Injustice?* (2014) 36 W New Eng L Rev 201, at 202.

⁶⁴ Taite, *supra* note 63, at 203.

public compensation and services for the taxes they pay, the commonality is “equity”⁶⁵. Equity is based on the “notion of ownership interest...in property rights”⁶⁶. Those with greater equity have the actual capacity to bear greater burden of taxation – hence the progressivity of Canadian tax. More specifically, there are vertical and horizontal equities. The objective has been to treat “equals equally” (horizontal equity) and “unequals unequally” (vertical equity)⁶⁷. As such, those with similar liabilities pay similar amounts, and those with dissimilar liabilities pay varying amounts. This is the essence of a progressive tax system; and more importantly, speaks to the essence that equity is at the heart of taxation policies. Our policies are already designed to alleviate and minimize the undue burden on individual taxpayers; therefore, in the face of land loss to tax sales, this memorandum would position that it is reasonable to place a moratorium on that demand for property tax until the underlying issues (clarification of land titles) is established. However, there has been an admissible “tax preference” formation of our tax system that has affected its accuracy as outlined above.

Tax preferences have “undermined the progressive nature of the taxing system...and changed the seemingly progressive taxing system into a regressive taxing system”⁶⁸. These taxing systems were designed to benefit the public good but with the manipulation of the scheme, the public have been burdened with sustaining the objective of fulfilling the public’s interests. This furthers the notion that taxes contribute to the “rich getting richer and the poor getting poorer”⁶⁹. In the short-term, the political benefit of providing these tax benefits is well-noted⁷⁰. While it may be politically tempting to do so, these tax breaks “leave local governments

⁶⁵ Taite, *supra* note 63, at 204.

⁶⁶ *Ibid.*, at 204.

⁶⁷ Jay K Rosengard, *The Tax Everyone Loves to Hate: Principles of Property Tax Reform*, (2012) Harvard Kennedy School, at 4.

⁶⁸ Taite, *supra* note 63, at 204.

⁶⁹ Rosengard, *supra* note 67, at 2.

⁷⁰ *Ibid.*

with two unattractive alternatives: either receive less property tax revenue and make corresponding budget cuts or increase tax rates on the remaining smaller tax base to generate an equivalent amount of money”⁷¹. The former is a long-term political disaster while the latter results in tax evading behavior⁷². Perhaps it is time to allow robust taxation relief for a targeted benefit for a marginalized community.

The final consideration for this section is the notion of literal or implicit compensation for the property taxes taken.

(E) The Compensation for the Property Taxes Isn’t Cutting It

In the philosophical discussion of taxes, there is an interesting dichotomy between taxation and expropriation⁷³. Taxes are levied against our personal and real property assets resulting in an amount owed to the taxing body to the benefit of public services. Expropriation is not dissimilar in that it is the government body calling upon an individual’s real property (parcel) for seizure at the compensation of fair market value assessment of the parcel. In fact, both are committed in compliance of the policy objective of “public benefit”⁷⁴. With expropriation, it might be in the creation of a public road or space for a utility; with taxation, it is for the benefit of public services that are used by the general population, but especially the “needy”⁷⁵.

The second stage of comparison is the compensation. Expropriation results with an individual given fair market value in literal pay-out form (cash); taxation results in the transfer of wealth to the body authority which is several degrees removed from the compensation of a bettered public arena⁷⁶. As such, in the case of expropriation the compensation is “obvious and

⁷¹ *Ibid*, at 7.

⁷² *Ibid*, at 7.

⁷³ Martin O’Neill & Shepley Orr, “Taxation: Philosophical Perspectives” (UK: Oxford University Press, 2018) at 83-6.

⁷⁴ *Ibid*, at 84.

⁷⁵ *Ibid*, at 84.

⁷⁶ O’Neill, *supra* note 73, at 85.

direct” whereas with taxes it is “implicit”⁷⁷. As such, with an implicit benefit from taxation, one must demand that the public benefit be foreseen otherwise there is a furthered frustration with the presence of taxation on the low-income communities.

Applied to the ANS context, the exact issue is that the public sphere has not been in favor of implicitly benefitting these communities. Not to repeat what was covered in **Section I-II**, the ANS community has been at the back hand of Nova Scotia’s public service. There is the intended public service funded by property taxes at page 17, but the reality is that there are reports of a lack of infrastructure and care taken for the ANS community areas. Furthermore, their lack of clear title is only an installation of how systemic inequities have manifested in Nova Scotia. While it is one thing to not have clear title, which leads to financial disempowerment, the cause of the unclear title (cultural practices) is also now prey of tax sales. The ANS community is currently bound to a social contract that has not satisfied nor justified the mere existence of a joint partnership between the ANS and Nova Scotian governance.

⁷⁷ *Ibid.*

Section V: A Finding for the Benefit of the Tax Sale Moratorium

This memorandum sought out to assess whether the beneficial effects of a tax sale moratorium would outweigh its prejudicial effects. It first established the social justice lens in consideration of the systemic inequities that pervade the ANS communities. It then outlined the issue of how land title clarity has led to not only financial disempowerment, but also fracturing of their communities by loss of land through tax sales. As so, the memorandum established that the issue of tax sales is a derivative of the otherwise systemic inequality that exists (the cultural property practices). Therefore, the alleviation of this issue would carry with it a policy objective for the greater good of Nova Scotian society and specifically to confer social justice for the ANS.

Next in **Section II**, the memorandum established that (1) moratoriums are a common occurrence in Nova Scotia and that (2) tax exemptions, forgiveness, property tax capping, and historical property legislation are present in Nova Scotian society. These two points establish that (1) moratoriums are a natural legal avenue and (2) taxes are not a sacred deer to never be touched, but rather are very abundantly manipulated and forgiven in Nova Scotia society. These two points minimize how prejudicial a tax sale moratorium would be by the mere presence other legal avenues and exceptions construed through legislation for public policy objectives. For if they were so prejudicial, it would not be so commonly done. And, if they remain prejudicial, the benefit to ANS' communities is a laudable objective that would demonstrate direct benefits for Nova Scotian democracy.

In **Section III**, the memorandum established that our tax system is intended to benefit the general population but has been bogged down by manipulative policies that have in fact curtailed the progressivity of the system. All this to demonstrate that to cease property tax sales in ANS communities does not seem to pose a prejudicial standing the way one might speculate. Rather,

considering the social justice lens for this memorandum that is also complementary of the ubiquitous change present in the social climate of 2021, the tax sale moratorium ought to be high on the public order of policy considerations. Many of the policies considered in this memorandum demonstrate where policy interests lie and considering the aversive effects of loss of land from these communities, this memorandum sees it reasonable that a tax sale moratorium be brought into effect immediately. In doing so, Nova Scotian governance would demonstrate a true commitment to ANS communities and aiding in alleviating what seems like irreparable damage to the community and their history. For the sake of every ANS individual, for the sake of each community, and for the sake of the betterment of Nova Scotia as a whole – the reader of this memorandum should approach this resolution with the eye that to improve the ANS community will in turn benefit all of Nova Scotia. With what has been presented, this memorandum is confident that a tax sale moratorium's benefits would more than likely outweigh the prejudicial effects. And it ought to be done as it is our shared truth that no minority rest in the margins of Nova Scotian prosperity.

Section VI: Avenues to Enact this Moratorium

This section will first briefly touch on the prejudicial effects and then as well skim the potential options that could empower this moratorium. The reason that prejudicial effects was left until after is because a majority of the concerns would be resolved by the potential legal avenues taken by province and community.

(A) Prejudicial Effects

This memorandum will consider four prejudicial effects related to a tax sale moratorium. There may be others, but these following three cohesively cover the anxiety of taking the social justice leap.

(1) Why Should the ANS Get This Benefit?

This question may arise to those who are either unaware of the ANS context, or do not prescribe to the belief that the province has a systemic inequality. **Section II** specifically resolves this question as does the rest of the memorandum in a more implicit fashion. In short, the ANS bear the burden of systemic inequalities and this step will allow for a substantial move towards the relief and reparation of those systemic inequalities.

(2) Do we not already provide this benefit for the Indigenous?

The indigenous situation in Canada is a complex matter filled with tragedy, divisiveness in politics, and inequality/inequity in experience. This memorandum will not compare nor contrast the two plights – as to do so would only benefit those seeking to minimize the inequities experienced by either community and in doing so diminish the reality of their struggle. However, Canada does provide the benefit of a property tax free reserve⁷⁸. This comes with much

⁷⁸ Canada Revenue Agency, “GST/HST and Indigenous peoples” (1 January 2021), online: *Government of Canada* <<https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/gst-hst-businesses/charge-collect-indigenous-peoples.html>>

discourse and thought. However, the ANS do not have reserves. They barely have communities free from outside development interest. This is a moratorium that will provide benefit over an agreed upon time-period. As was seen in **Section III**, it is a reminder that property tax alleviation is a common form of social agreements and benefits.

(3) What about those taxes? Do they go unrecovered?

(4) Where does it stop? Which properties will benefit from this moratorium?

These last two questions will be covered in section B: Avenues to Enact the Moratorium.

(B) Avenues to Enact the Moratorium

There is a spectrum of perspectives that can be undertaken in addressing what avenue to take. The two poles are (1) pro-taxation and (2) pro-ANS reparations. It is not the place of the memorandum to take a firm stance on either considering the many factors and realities that would need to be considered before making the decision. However, all avenues at their core will address prejudicial effects (3) and (4) outline above.

(3) What about those taxes? Do they go unrecovered?

Pro-Taxation

Avenues that will focus on protecting taxation over long term would require a short-term moratorium. In that, the moratorium would be in place only as long as necessary to prevent any unnecessary tax sales and allow community leaders to have best situated themselves for the future benefit of their communities. In this context, those unpaid property taxes would remain on-balance, and once the community had sorted themselves, they would begin a repayment of

property taxes as is necessary. There has been much discussion on community land trusts in certain parts of the province. A community land trust would be effective in overseeing the outstanding taxes and governing how those properties that were in arrears were to best adjust themselves for the future.

Pro-ANS Reparations

Avenues that will focus on ANS reparations would rather span a variety of options. Under this option, the moratorium would undergo a generous time period as to best allow the community to sort how they aim to resolve the situation. Furthermore, the collection of property taxes in the time being may be forgiven as a communication from the province to the ANS communities' benefits moving forward.

(4) Where does it stop? Which properties will benefit from this moratorium?

A narrow application of this moratorium would be to the listed communities in the LTCA. However, considering the LTCA's unclear inception, there is a concerning lack of documentation that speaks to the intent of the choices made for those communities. Therefore, to rely on the LTCA's five ANS communities would be to once again rely on a piece of legislation where it's intentions, objectives, and overall impact are not clear. As such, it would seem unreasonable to narrow the choice to these five communities alone and create an absurd result.

One could envision a system that grants the moratorium to properties through application. With the appointment of the Honourable Corrine Sparks and Honourable Valerie Miller as adjudicators disputes in addition to Angela Simmonds as the executive director of the

Accelerated Land Title's Initiative, it is safe to say these individuals can oversee disputes and furthermore aid in the application process⁷⁹.

Pro-Taxation

Under this perspective, it would be to include the five LTCA communities and the inclusion of other ANS landowners by way of application. But there seems to be issues because often community members only find out they are in arrears once it is too late. Furthermore, to take a restrictive approach to the moratorium definitely appeases the sanctity of our taxation; however, as this memorandum has set out – taxation is in fact an often-manipulated instrument in our society.

Pro-ANS Reparations

As such, this position of this memorandum would be that it be reasonable to open the moratorium to all ANS community members province wide. In doing so, the LTI team will have to vet the genuineness of all claims. For example, at page 21 of this memorandum, it was clear that the more sophisticated buyers were benefitting from tax sales in ANS communities. The LTI could vet the knowledge held by the ANS community member and assess whether they know they are falling in tax arrears. From there, there can be a system that aids in preventing the tax arrears or allowing a “right of first refusal⁸⁰” for the governing bodies overseeing these tax sales. This would prioritize the ANS interest.

⁷⁹African Nova Scotian Affairs, “Land Titles Initiative - Commissioners and Executive Director”, (1 April 2021), online: *Government of Nova Scotia*, <<https://ansa.novascotia.ca/land-titles-initiative-Commissioners-and-Executive-Director>>

⁸⁰ This would imply that the governing entity would be able to decide as a community whether to retain the parcel or not before allowing it to go to a general population tax sale or another form of sale.

While this a robust approach that would require great labor to successfully accomplish, it would also be the most effective way of satisfying the moratorium's objective.

There may be other forms and considerations not laid out in this brief outlook. In considering all options, this memorandum will again insist that it is now the time to reinforce the ANS reparations movement. As discussed throughout, the province has made significant steps to repairing the situation, and this can be one more coherent step towards that objective.

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I am because We are

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