



WeirFoulds 2021 Municipal Infrastructure Webinar: Municipal Infrastructure Projects In The 2020s

April 20, 2021

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Agenda

Energy from Waste and Anaerobic Digestion Organics Processing Projects

Jason Hunt, Director of Legal Services, The Regional Municipality of Durham

The ONE Prudent Investor Program

Bill Hughes, Chair, ONE Joint Investment Board

Senior Fellow, Institute on Municipal Finance and Governance

Munk School of Global Affairs and Public Policy, University of Toronto

A Primer on Alternative Dispute Resolution in Municipal Projects

Faren Bogach, Partner, WeirFoulds LLP

Jeff Scorgie, Associate, WeirFoulds LLP

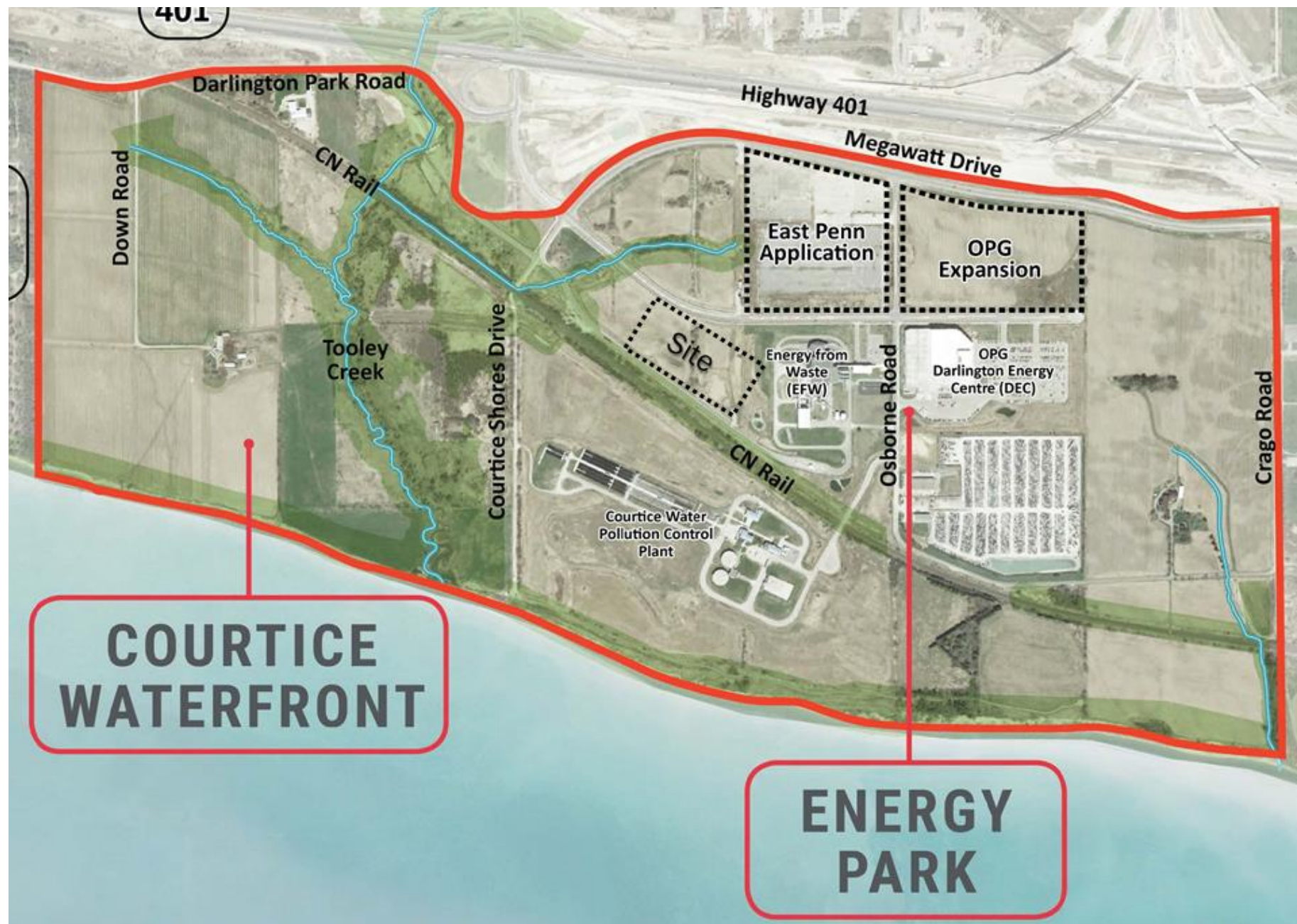


Energy from Waste and Anaerobic Digestion

Jason Hunt,
Regional Solicitor
Regional Municipality of
Durham

Overview

- Map
- DYEC vs AD Comparison
- Durham York Energy Centre Highlights
- DYEC Procurement, Construction & Operation
- DYEC Project Agreement
- Anaerobic Digester Highlights
- AD Drivers, Function, Financial, Co-Ownership, RNG
- AD Legal Issues
- Common Success Factors
- Questions & Discussion



DYEC vs Anaerobic Digester Comparison

DYEC

- \$235M
- Challenging Technology
- Environmental Assessment
- MECP Controlled Emissions
- Co-Owner with York
- Electricity Revenues

Anaerobic Digester

- \$190M
- Settled Technology
- No Environmental Assessment
- No Emissions
- No Co-Owner
- RNG/Biogas Revenues



DYEC Project Highlights

- Co-Ownership with York Region with joint Management Committee
- DBOM Contract
- Construction Price Fixed at RFP
- Monthly operating fee
- Electricity Revenues (Power Purchase Agreement)
- Annual Reconciliation

DYEC Procurement

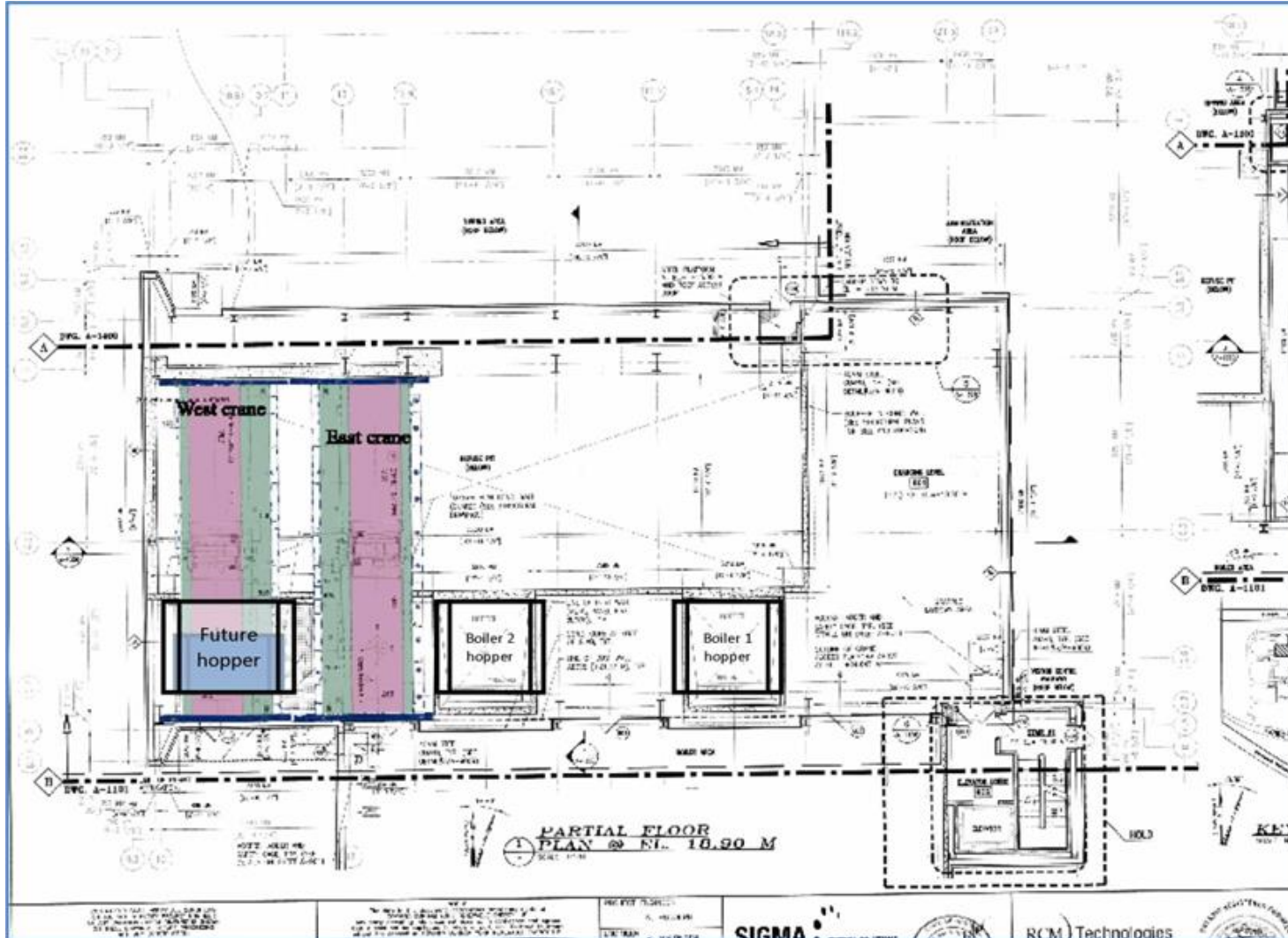
- Pre-Project Stage
 - Facility Tours
 - Waste Studies (HHV)
 - Consultant
 - Site Selection
- Environmental Assessment
- RFP Drafting
- Fairness Monitor
- Contract B Negotiations



DYEC Construction

- Design – Build Dilemma
- West Crane Laydown Area
- Tipping Floor
- Reverse Osmosis

West Crane Laydown Area



West Crane Laydown Area

“Each crane must be capable of continuous operation in the handling of solid waste . . .

The cranes must be used to feed refuse to each steam generator and for refuse management in storing and receiving refuse for the 761 tonne per day facility.”

Tipping Floor



Tipping Floor

The tipping floor and refuse storage pit will be large enough to accommodate four days of storage at the expanded Facility capacity of 250,000 tonnes per year (761 tpd) of MSW. The bottom ash storage area and fly ash storage system will be sized for a minimum of 4 days storage for the 761 tonne per day facility.

Four (4) tipping bays will be provided. The tipping floor will have a minimum open span distance of 30.5 meters from the front of the storage tip dumping bays to the exterior wall of the tipping floor, to accommodate turning requirements of transfer trailers and all other vehicles.

Reverse Osmosis – Water Polisher

The source of potable water for the Facility will be the Clarington Municipal Water Supply. In the case that the actual potable water quality is significantly different from the water quality identified in Ontario Drinking -Water Quality Standards, Ontario Regulation 169/03, made pursuant to the *Safe Drinking Water Act. 2002. as of April 2009* as attached as Exhibit B to these Technical Requirements (the "Water Standards"). If the quality of the potable water provided to the Facility differs from the Water Standards such that additional pre-treatment equipment, additives, treatments or other special handling is required, such matter shall be handled under the provisions of Article 15 of the Project Agreement.

DYEC Acceptance Testing & Operations

- Residual Ash Limits
- Annual Reconciliations
- Shut Down and Start up – Industry Standard
- Maintenance Periods
- Lifecycle Replacement Schedules



DYEC Project Agreement Clauses

- **Work To Continue**

No Dispute of any nature, including with respect to the amount of a progress payment Acceptance Certificate or in respect of any amount withheld by Owner pursuant to the provisions of this Agreement shall entitle the DBO Contractor to delay the **Design Build Work** and the DBO Contractor shall prosecute the **Design Build Work** as if there were no disagreement . . .

DYEC Project Agreement Clauses

- **Payment of Undisputed Amounts**
- **. . . where there is any Dispute as to the amount of monies owing by any Party to any other Party hereunder including Milestone Payments, the portion of the amount owing that is not in dispute or otherwise contested or challenged, if any, shall be paid**

DYEC Project Agreement Clauses

- **Dispute Resolution**

(a) Negotiation – The Parties shall first attempt in good faith to promptly resolve the Dispute by negotiation between the Owner Representative and the Project Manager. If, following good faith negotiation between them, resolution of the Dispute has not been reached, upon the request of either Party, executive officers of each Party shall attempt to resolve, in good faith, such Dispute. If the Dispute is resolved, such resolution will be evidenced by an instrument in writing.

DYEC Project Agreement Clauses

- **Dispute Resolution (continued . . .)**
 - (b) Mediation – If the Dispute has not been resolved within fifteen (15) days of a Party’s request for executive officer negotiation, the Parties may agree to submit the Dispute to mediation. If the matter is resolved through mediation, such resolution will be evidenced by an instrument in writing. Mediation shall be considered to have failed if a Party, at any time, gives written notice to such effect to the other Party.**

DYEC Project Agreement Clauses

- **Annual Reconciliation**

Within sixty (60) days of the end of each quarter during the term, DBO Contractor shall provide Owner with a reconciliation invoice setting forth (a) the amount owed by the Owner to DBO Contractor for By-pass Waste transportation and disposal attributable to Owner's account pursuant to **Appendix 34** and (b) reasonable documentation of the facts and circumstances by which the By-pass Waste was attributable to the Owner's account under the provisions of **Appendix 34**.

Anaerobic Digester Highlights

Zero odour emissions

- Fully enclosed facility
- Negative pressure and biofilters

Address Climate Change

RNG recovery / revenue

Be “District Energy Ready”

Minor Traffic increase \approx 2 trucks

Synergies: DYEC and WWTP



Anaerobic Digester Project Drivers

Region Drivers

Growth and Diversion

Durham-York Energy Centre capacity

Regulatory re: Compost

Address Climate Change/reduce GHG emissions

Market Drivers

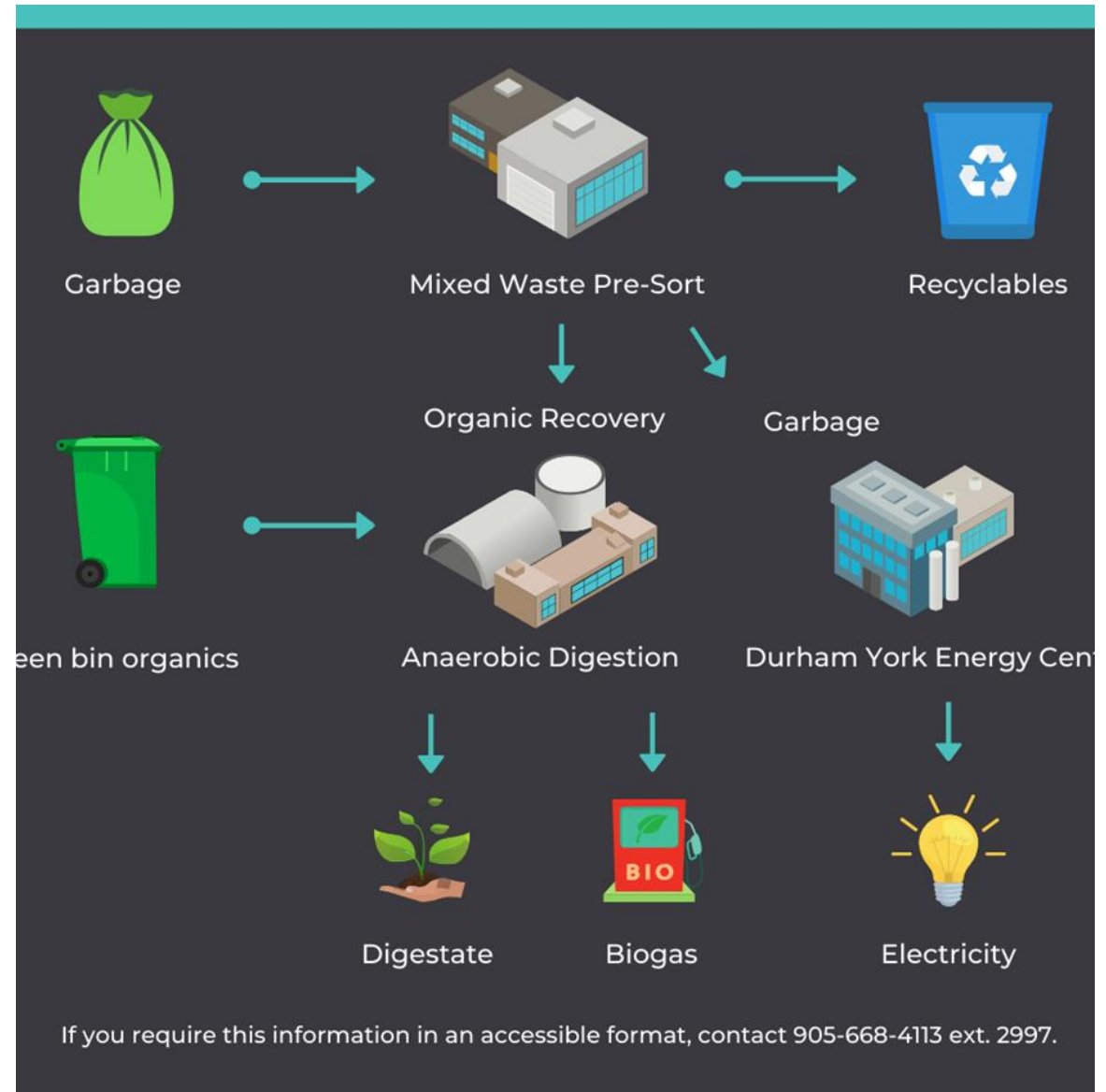
Landfill capacity

Green bin processing capacity

Renewable Natural Gas



Anaerobic Digester Function Overview



Anaerobic Digester – Financial Overview

Capital Project Costing Update	2022-2023 (\$ millions)
Pre-sort/Transfer Facility	\$ 46.5
Anaerobic Digestion Facility	\$ 128.1
Biogas Upgrading and Injection	\$ 12.2
Additional Construction Related Expenditures	\$ 5.8
Total Capital Costs	\$ 192.5

Note: For the sole purpose of the business case, \$10.4 million was used as land value estimate. The Region wholly owns the land on which the Project is proposed to be built

20-Year Operating Cost Estimates	2024 (\$ millions)	2025-43 (\$ millions)	Total (\$ millions)
Operating Costs			
Pre-Sort/Transfer Operations	\$ 10.5	\$ 313.5	\$ 324.0
Organics Processing through AD (SSO and FSO)	\$ 9.4	\$ 269.5	\$ 278.9
Status Quo SSO Compost Processing Savings	\$ (8.2)	\$ (254.7)	\$ (262.9)
Digestate Management	\$ 1.5	\$ 45.8	\$ 47.3
Transfer, Haulage, DYEC/Bypass Disposal Costs	\$ (1.2)	\$ (49.5)	\$ (50.7)
Other Site/Project Operating Costs	\$ 1.8	\$ 44.0	\$ 45.7
Biogas Upgrading and Injection Operating	\$ 0.7	\$ 21.8	\$ 22.5
Operating Costs Before Revenues Sub-Total	\$ 14.4	\$ 390.5	\$ 404.9
Revenues			
Enhanced Materials Recovery and RNG Revenues	\$ (3.4)	\$ (92.1)	\$ (95.5)
Revenues Sub-Total	\$ (3.4)	\$ (92.1)	\$ (95.5)
Total Nominal Net Operating Costs	\$ 11.1	\$ 298.3	\$ 309.4

Anaerobic Digester Co-Ownership Benefits

- Why Should the Region Pursue a Joint Venture Relationship with a Co-Owner?
 - Net Present Benefit of the Joint Venture to the Region
 - Risk Sharing
 - Project efficiencies and expertise/experience
 - Specific Industry position of proposed co-owner (Renewable Natural Gas Markets, Specific Infrastructure Projects)
 - Experience with large infrastructure projects
 - Understanding of Public Sector responsibilities

Anaerobic Digester Co-Ownership Evaluation

	Scenario 1 Joint Venture Tax Exempt	Scenario 3 Sole Ownership
DBOM and Site Project Costs less Revenues	\$352	\$352
Capital Financing	\$126	\$162
JV Specific Components	\$58	
Region Retained Risk	\$69	\$131
Total	\$605	\$645

Anaerobic Digester Co-Ownership Challenges

- Contracting complexity
 - End of useful life
 - Providing shared services
 - Addressing community concerns
 - Regulatory risk
- Competing interests
 - Region interests as a supplier of compost
 - Region interests as an owner
 - Region interests as a local government
- No financial imperative/driver
- Main benefit was risk sharing – is this real?

Anaerobic Digester RNG/BioGas

1. Use of renewable natural gas (RNG) for Regional facilities;
2. Direct sale of RNG within and/or outside the Enbridge franchise area;
3. Use of CNG/RNG for fueling of Regional fleet;
4. Combined heat-and-power (CHP) to generate both electricity and heat;
5. Direct sale of raw biogas; and
6. Other

Anaerobic Digester Legal Issues

Business Case

RFEI

Co-Ownership

Tax Implications

Fairness Monitor

RFPQ

RFP

Stay Tuned

- **RFP Award**
- **Contract B Negotiations**
- **Construction**

Common Issues

- Competing Priorities for Regional Funds
- Complexity
- Project Cost Escalation
- Correct Solution vs Inexpensive Solution
- Lumpiness of Workload for Project Team
- ProjectCo Relationship
- Co-owner Relationship
- GHG Acceleration
- Inability to Predict the Future!

Common Success Factors

- High Quality Consultants – Legal and Technical
- Cohesive Project Team
- Transparency
- Council Support / Ownership
- Incremental Project Development
- Scheduling of Project and Council Approvals
- Fairness Monitor & Procurement Process
- Project Champions

Project Champions – DYEC

Roger Anderson
Former Chair & CEO



Matt Gaskell
Former Regional Solicitor



Project Champions – Anaerobic Digester

Susan Siopis
Commissioner of Works



Gio Anello
Director of Waste Services





Questions



Thank You

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Investment: The Hidden Revenue Source

Bill Hughes

Chair, ONE Joint Investment Board

Senior Fellow, Institute on Municipal Finance and Governance

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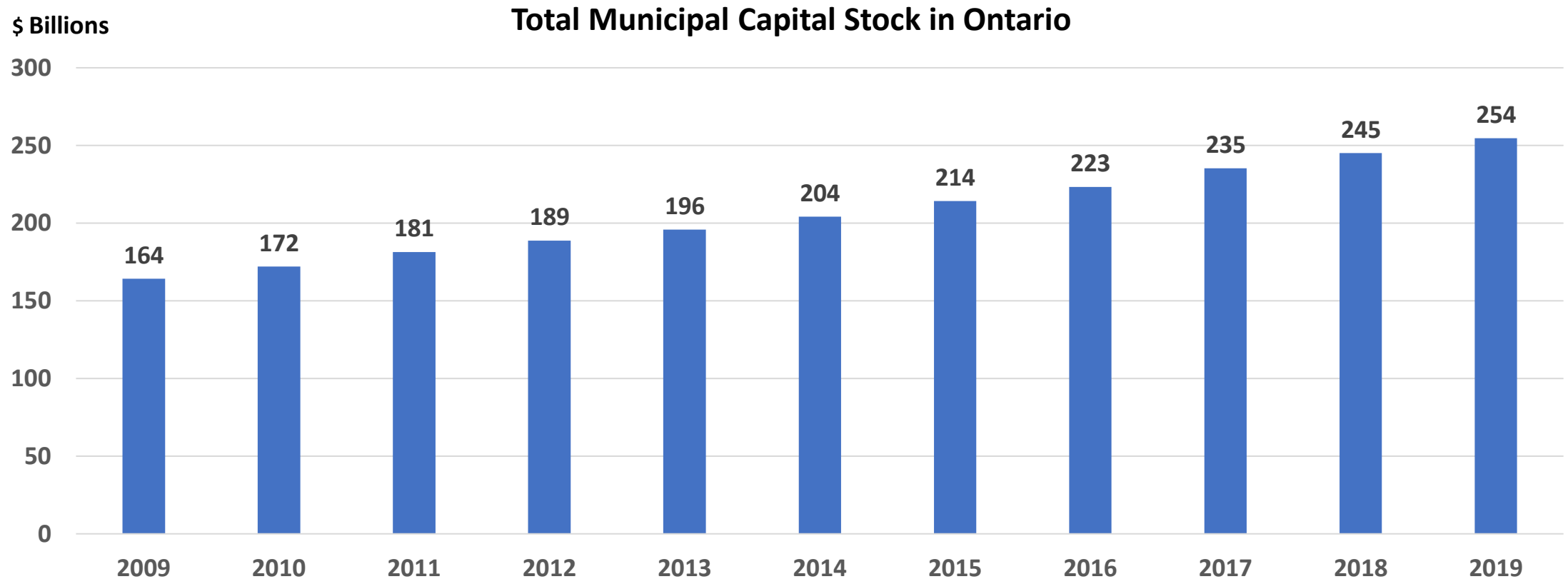
April 20, 2021



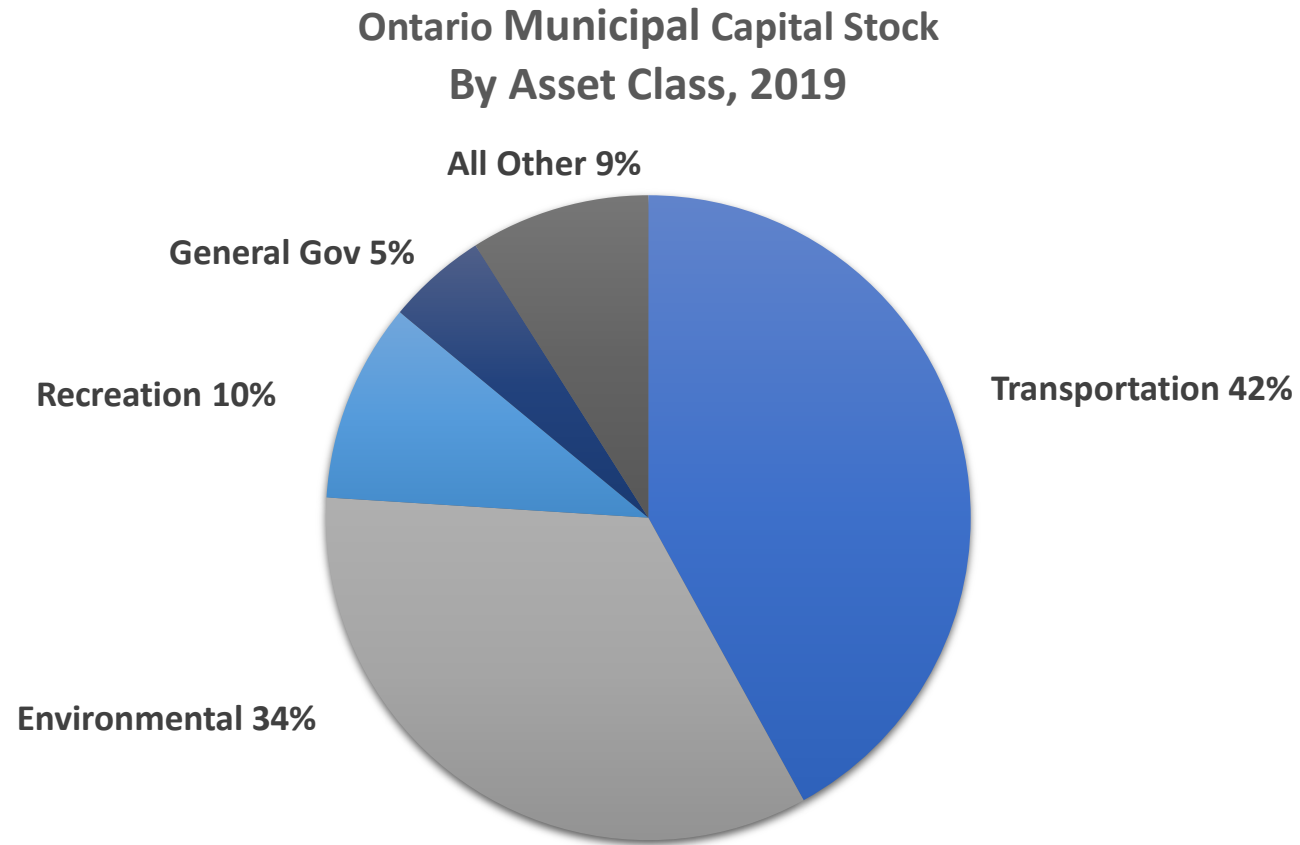
Part I

Infrastructure and Investment

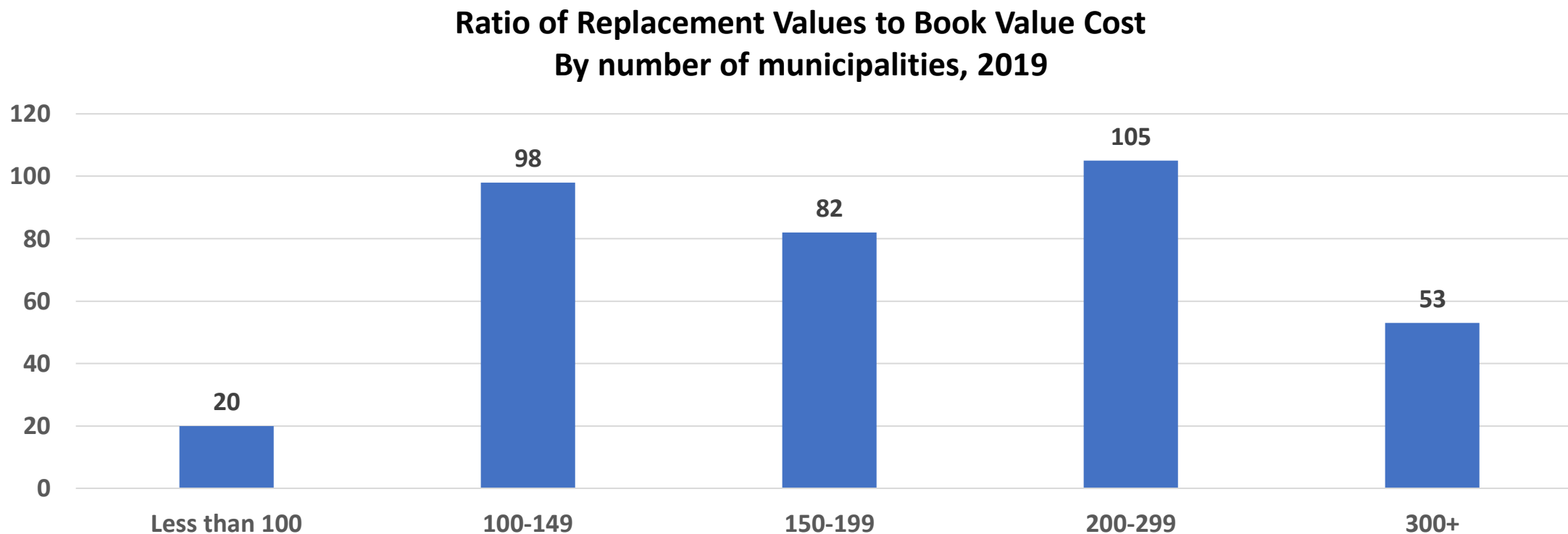
Municipalities have over \$250 billion worth of infrastructure



Over three quarters is for transportation and environmental services



Replacement values are at least 150% of book values in two thirds of municipalities



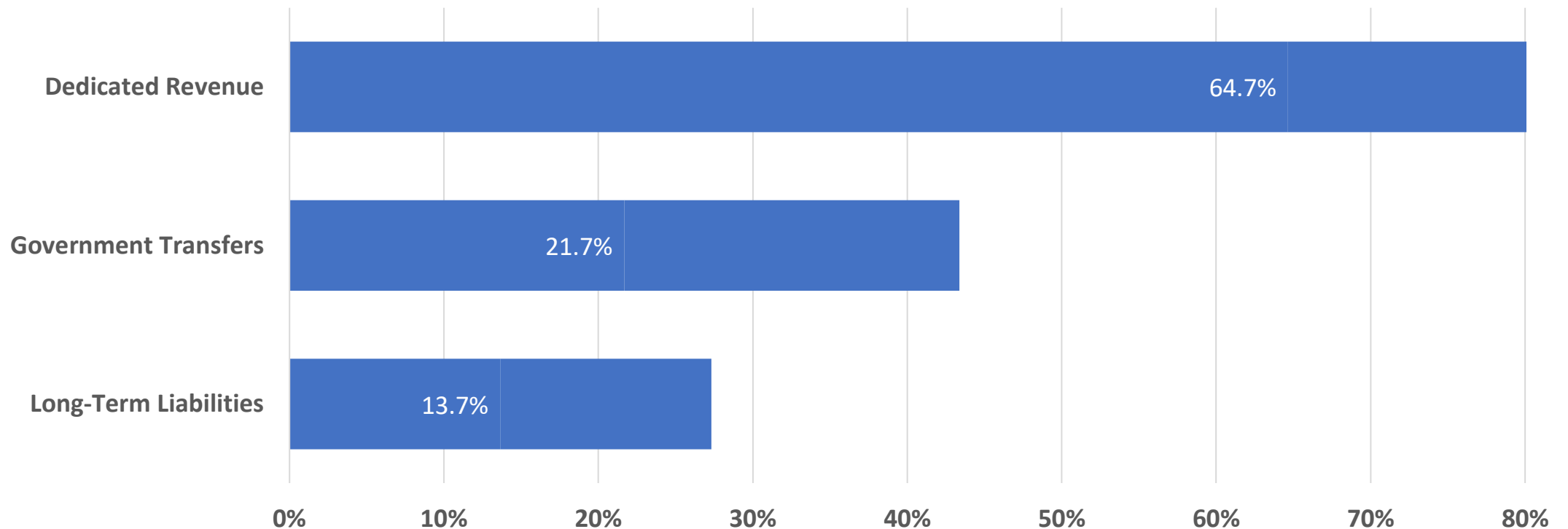
Note: 100 means replacement cost equals book value cost.
Data is for 358 municipalities (after outliers removed).

Asset management is a looming financial threat

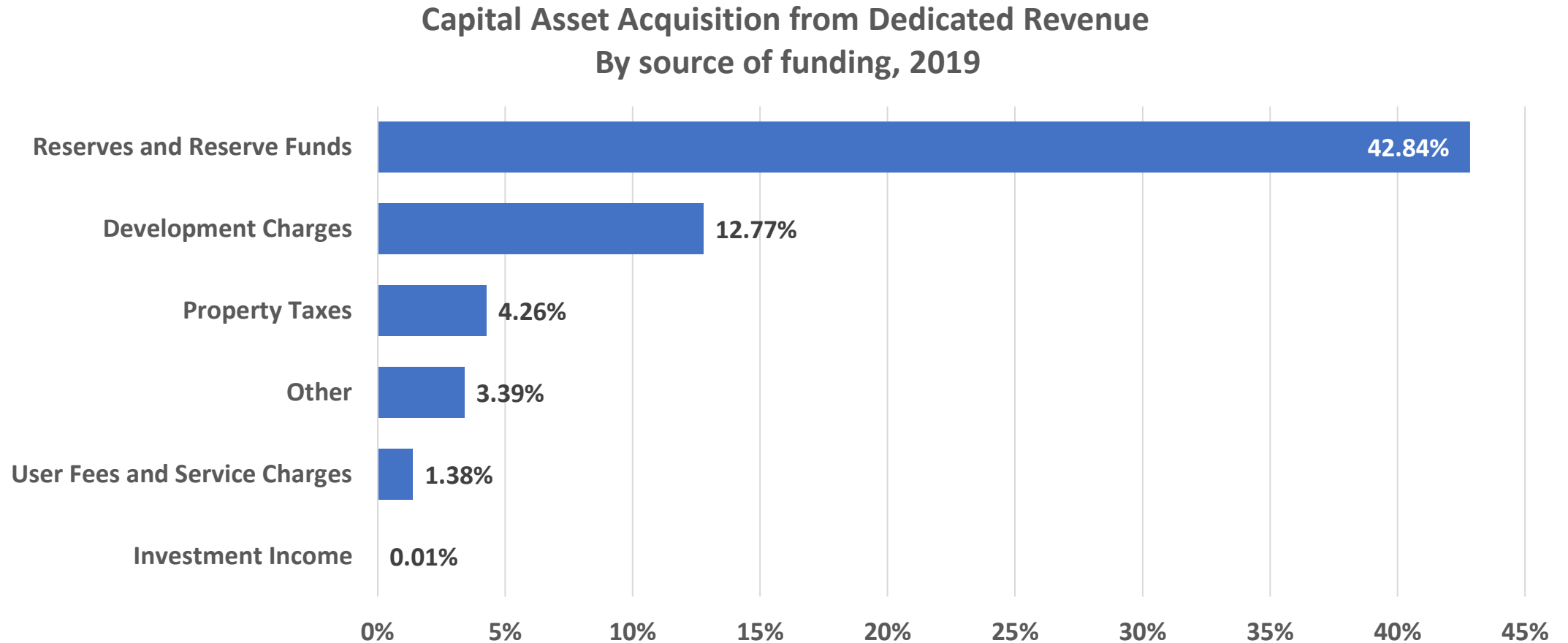
- The future cost of asset management is influenced by a variety of factors:
 - Replacement value of infrastructure
 - Life cycle events (timing and magnitude prior to replacement)
 - Remaining life span of infrastructure
 - Choices about service levels, including tolerance for an infrastructure deficit
 - Inter-generational equity considerations

Where does the money for infrastructure come from?

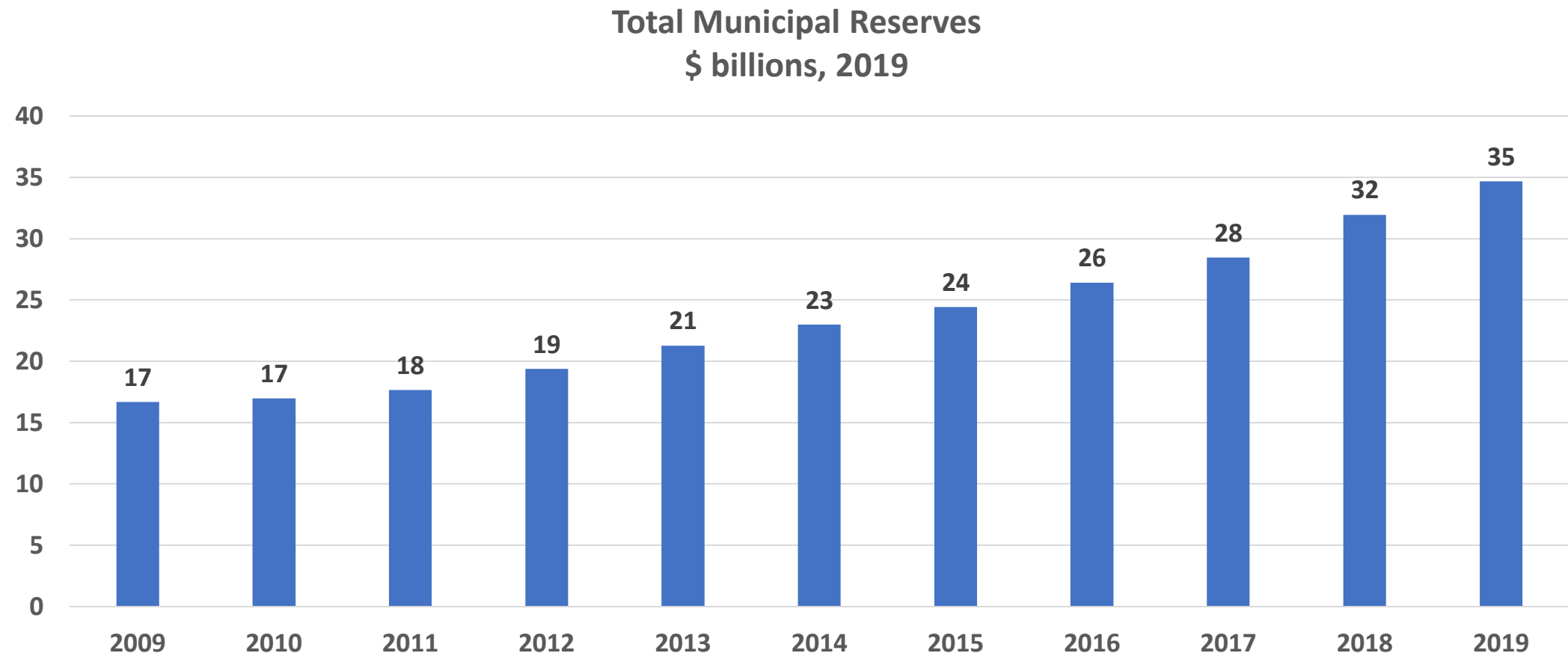
**Sources of Capital Asset Funding & Financing
2019**



Reserve draws dwarf other sources of funding

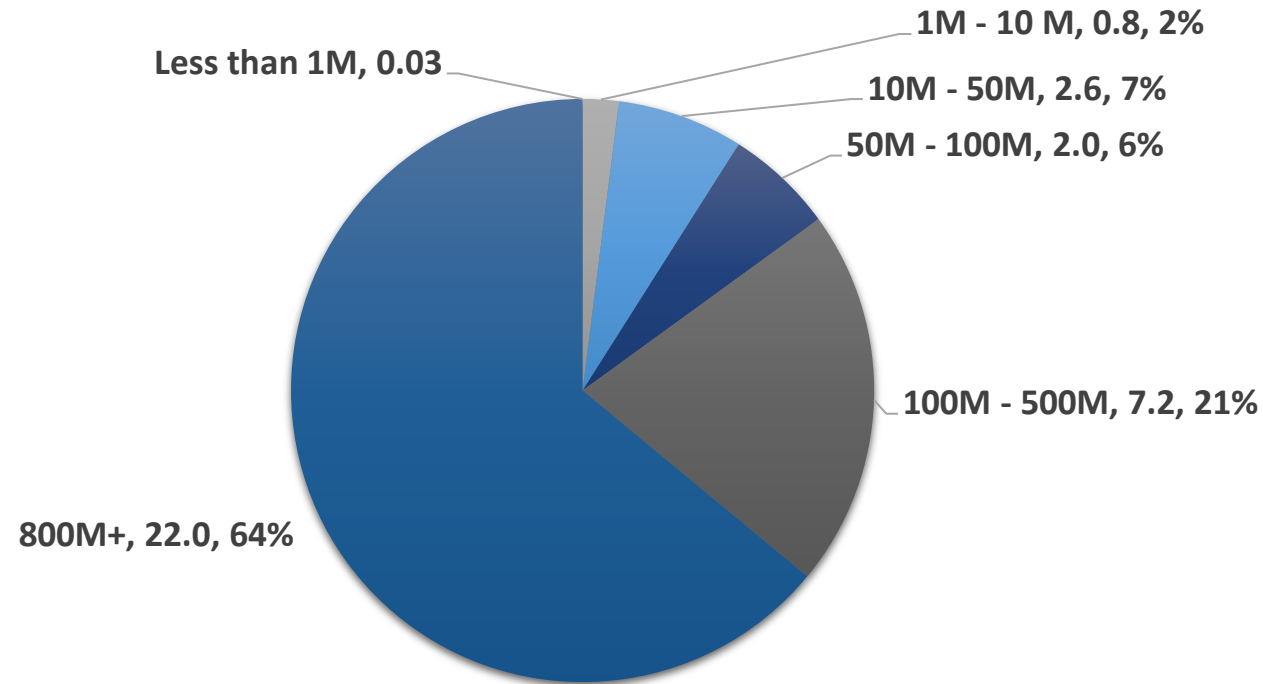


Municipal reserves have doubled in the last nine years



Municipalities with at least \$100 million hold almost 85% of reserves

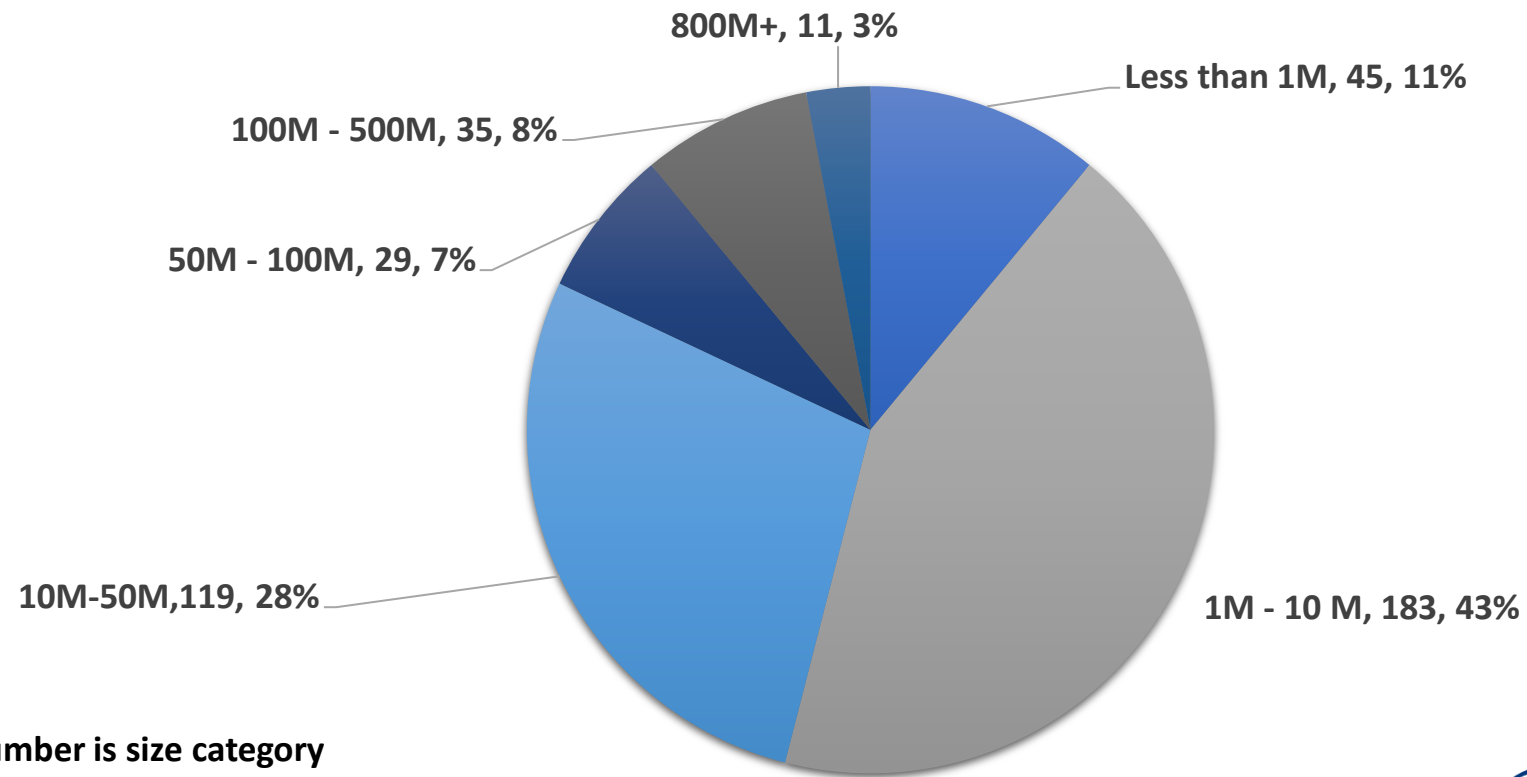
**Total Municipal Reserves Closing Balances
Amount (\$ billions) and % by size category**



**Key: First number is size category
Second number is \$ value of reserves in the size category
Third number is % of reserves in size category**

Over 70% of municipalities have reserves between \$1M and \$50M

Total Municipal Reserves, 2019 closing balances
Number of municipalities by size category & percentage



Key: First number is size category
Second number is number of munis in category
Third number is % of munis in category

Reserves are the vehicle for generating investment income.

Part II

Investment Choices for Municipalities

Investment income is a powerful potential revenue source

Uses of investment Income	Uses of investment Income
Build reserves	Pay for future asset management needs
Reduce debt	Hedge against construction cost inflation
Subsidize property tax/water rates	Hedge against process-related increases in capital costs
Reduce sinking fund contributions	Fill shortfalls in development charge revenue
Help meet revenue shortfalls or expenditure shocks (through contingency reserves)	Hedge against increases in debt servicing costs

Municipalities have two big investment choices

Legal List versus Prudent Investing

**Invest on their own or through ONE
Investment**

The Municipal Act authorizes municipalities to invest money that is not required immediately

- Section 418 allows investments in prescribed securities (the “**Legal List**”)
- Section 418.1 allows eligible municipalities to opt into **the prudent investor regime** and be authorized to invest in **any** security

The two options are quite different

Legal List	Prudent Investing
Regulation prescribes investments	Must exercise the care, skill, diligence and judgement that a prudent investor would exercise
Generally restricted to fixed income: government bonds, Schedule 1 bank bonds, etc.	Duty to obtain advice
Must meet credit quality standards	Must consider certain criteria (economic conditions, inflation, returns, investment needs)
Equity investment permitted only through ONE Investment.	Must diversify investments appropriately

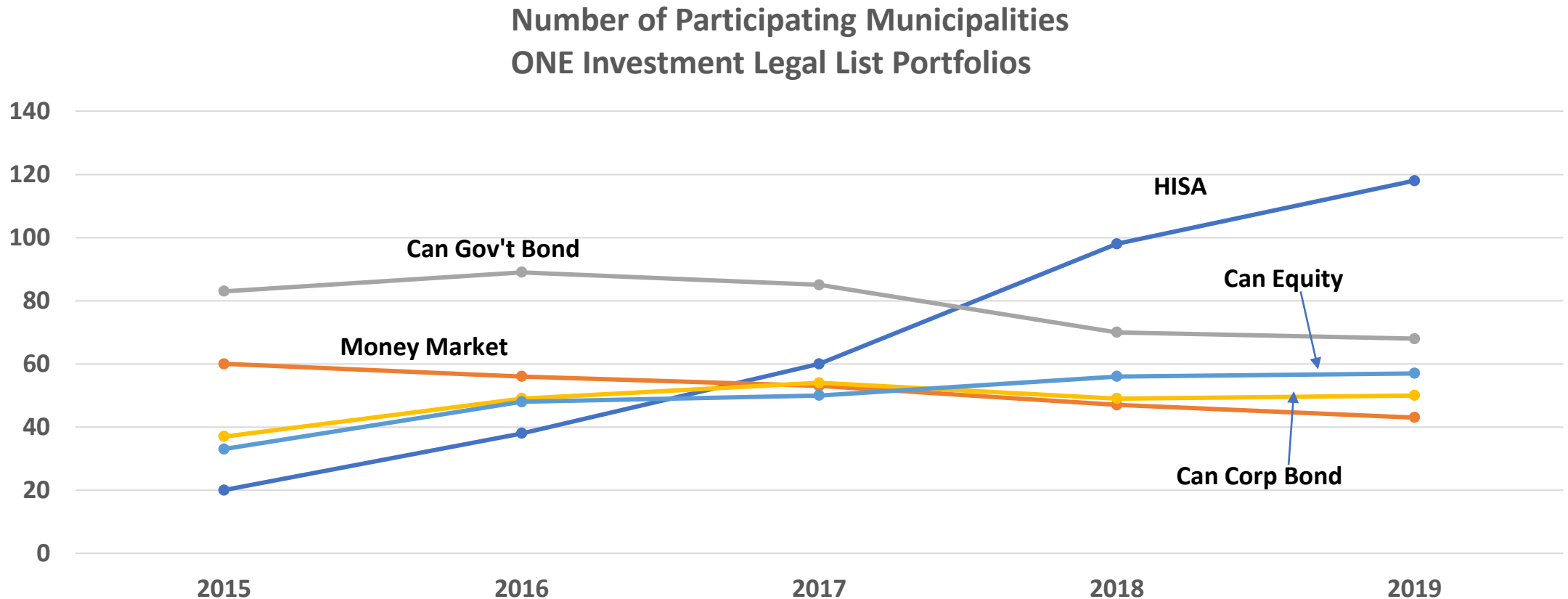
The choice depends on investment strategy

Legal List	Prudent Investing
Generally lower, more certain returns	Potential for significantly higher risk-adjusted returns
Restricted mainly to Canadian market	Global reach
Restricted mainly to fixed income	Broad scope---any prudent investment
Simple governance: direct municipal control	More complex governance, including outside expert board
Works with minimal Council involvement	More Council involvement needed

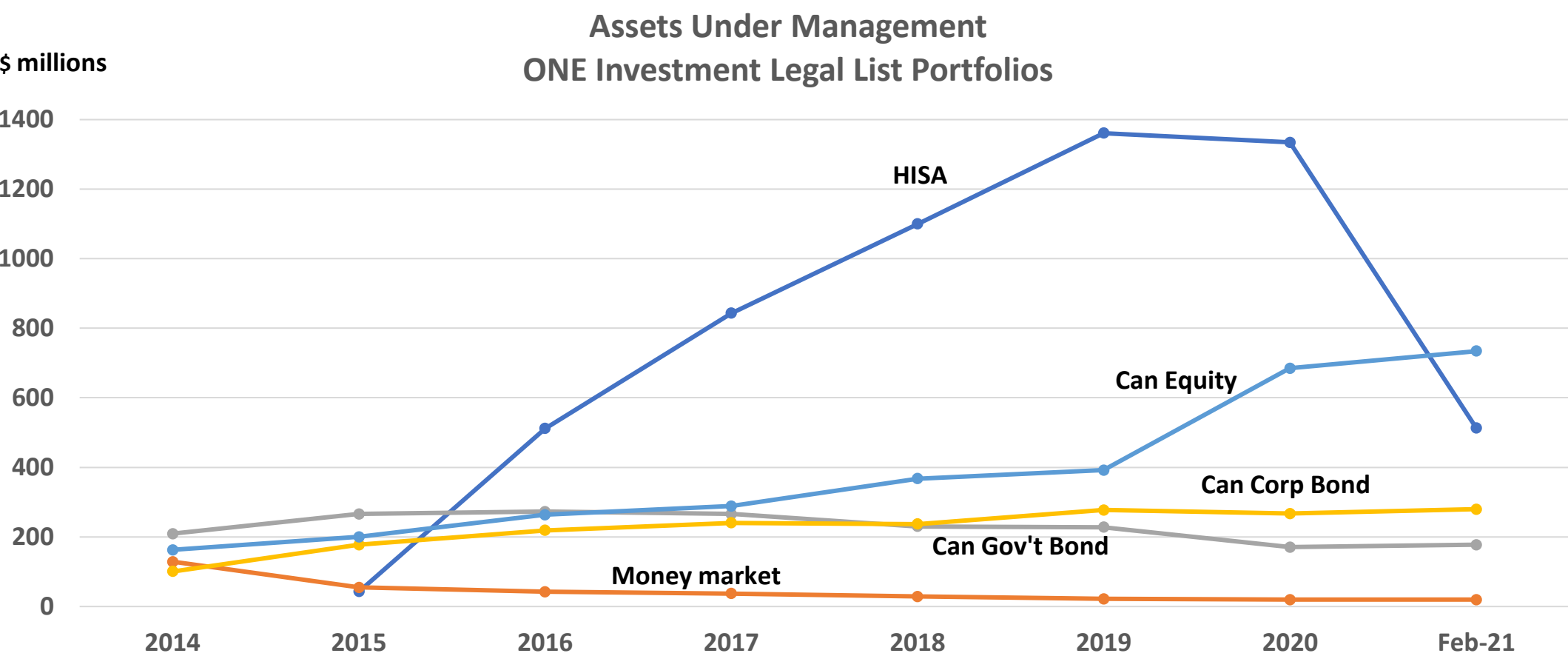
ONE Investment supports both Legal List and prudent investing

- ONE Investment is a not-for-profit organization jointly operated by the Association of Municipalities of Ontario and the Municipal Finance Officers' Association
- Any municipality can invest all or part of its money with ONE Investment (save the City of Toronto)

More than 150 municipalities invest through ONE Investment's Legal List offerings



Investment is starting to follow returns

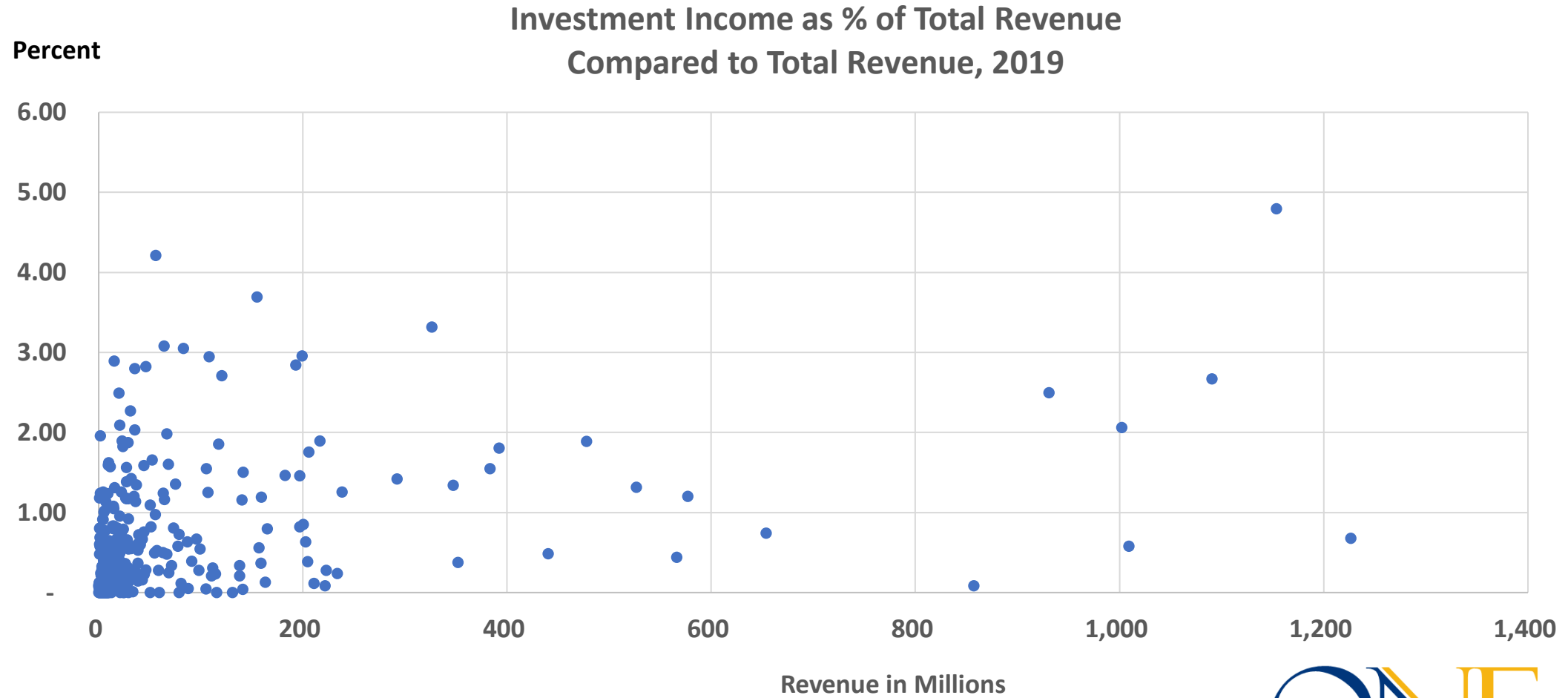


Most municipalities are conservative investors and generate paltry returns

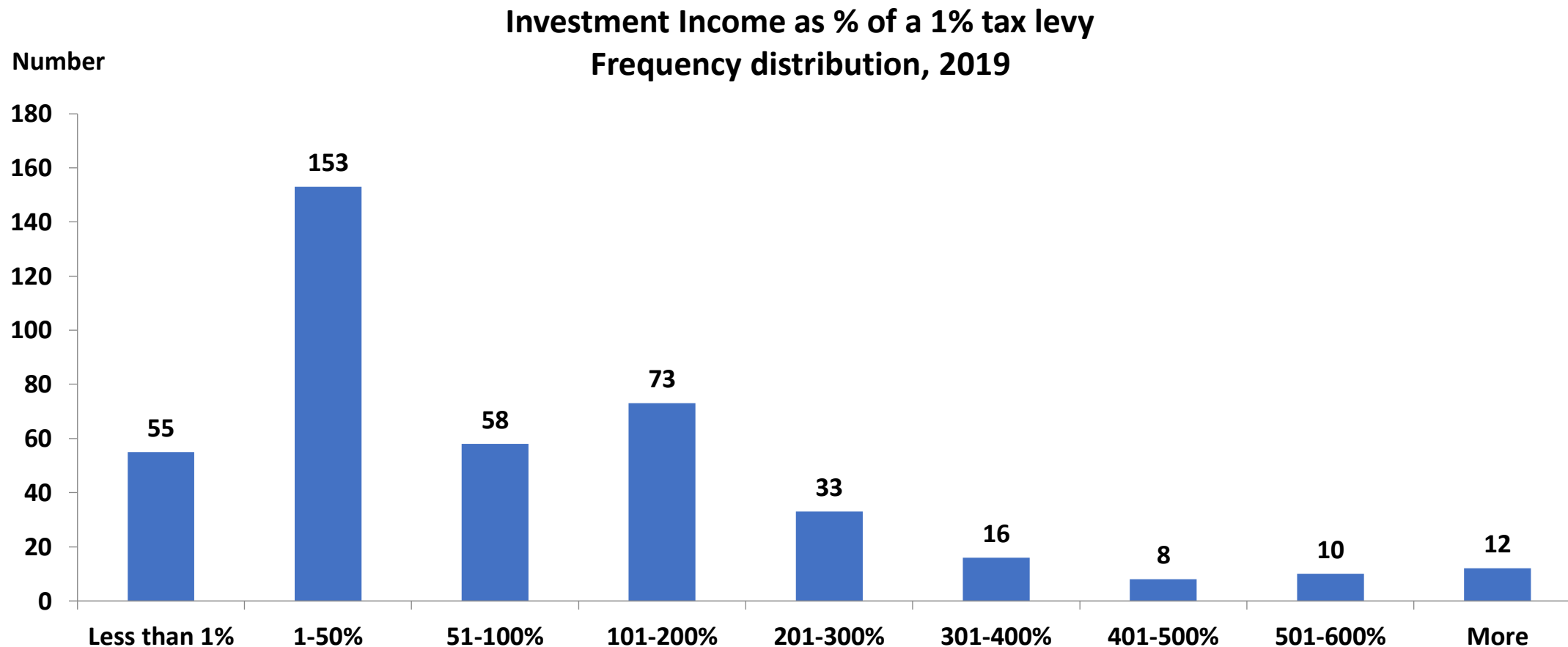
Investment return on reserves (%)	Number of municipalities, 2019
0 or less	58
.01 to .99	222
1.00 to 1.99	84
2.00 to 2.99	43
3.00 to 3.99	11
4.00+	4

Source: Total of 422 municipalities in 2019 FIR, Schedule 60 as of April 7, 2021.

Investment income is mostly a small share of revenue

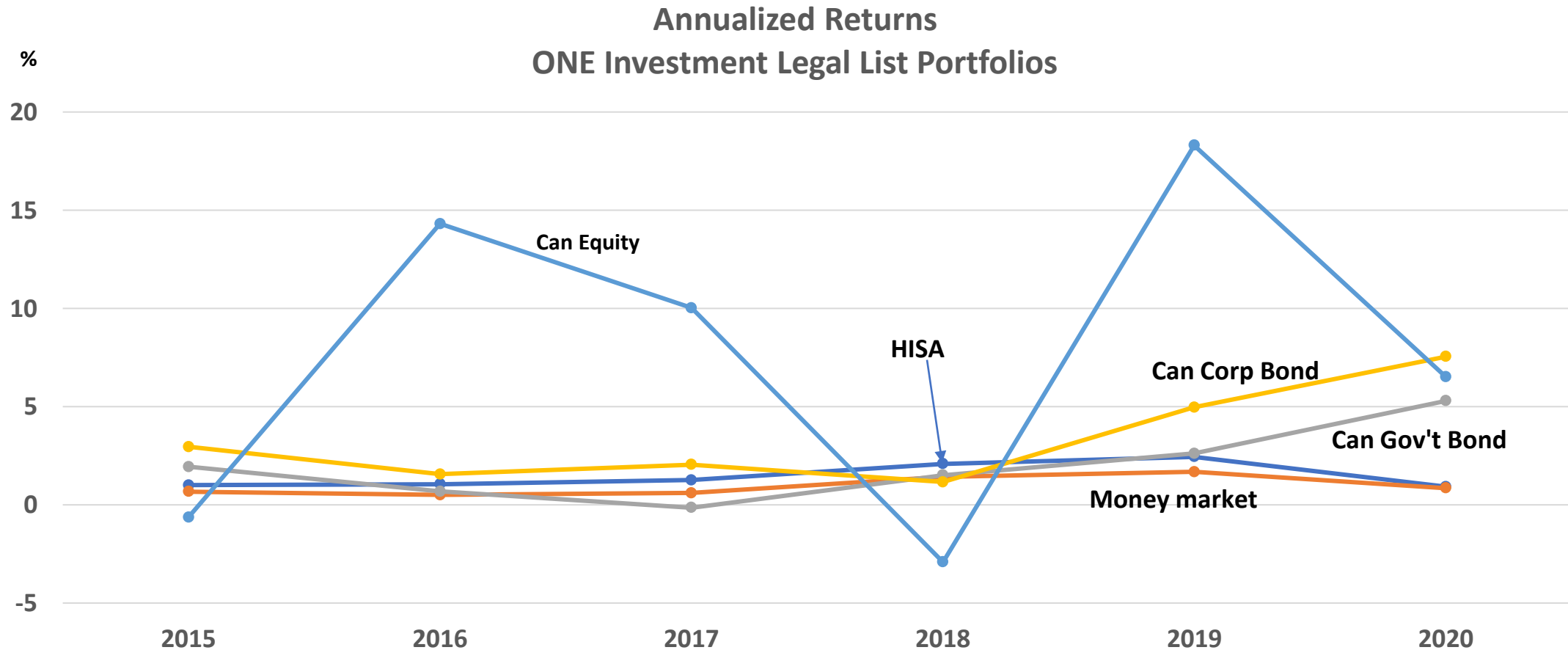


Investment income has the potential to mitigate property tax increases



Prudent investing gives municipalities a new path to higher risk-adjusted returns.

Higher returns usually involve higher volatility (risk)

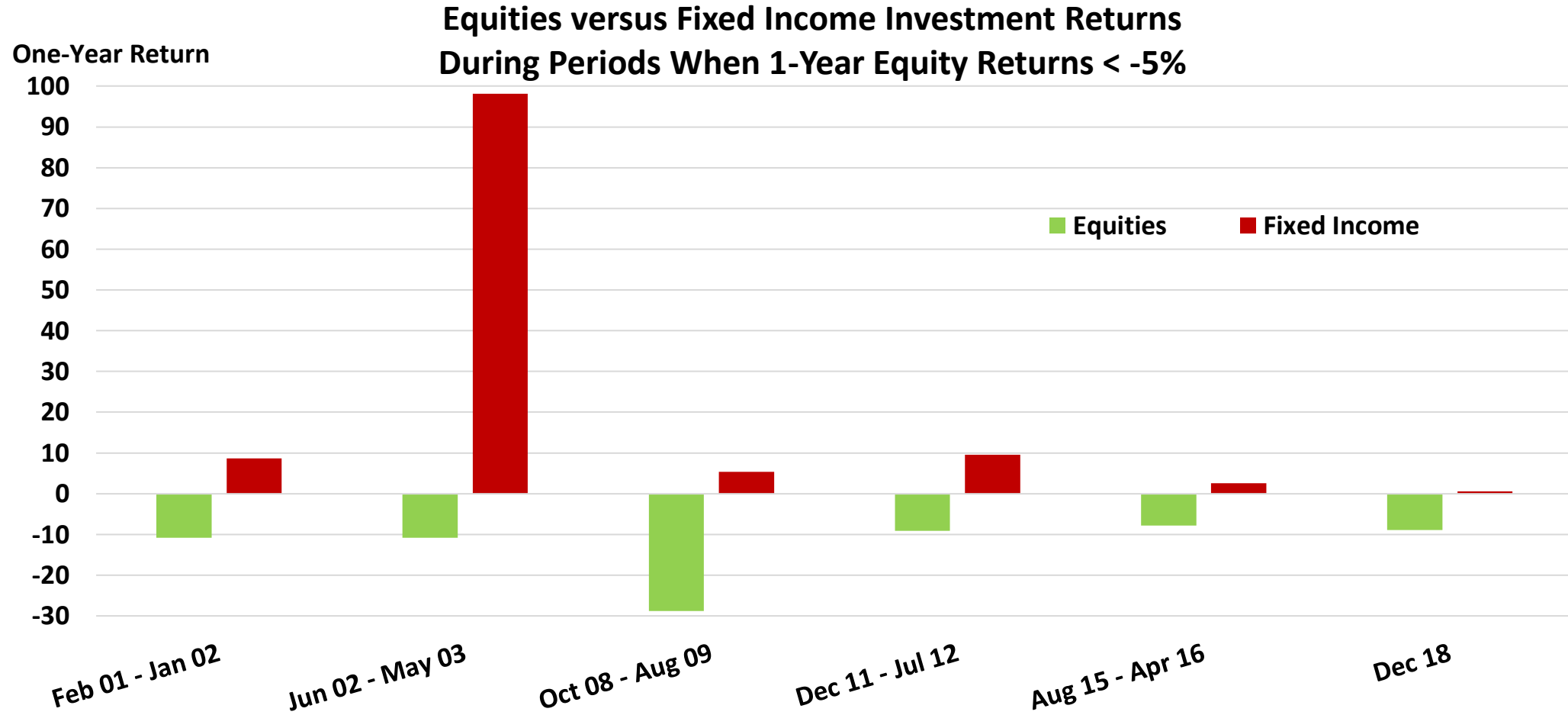


Diversification is the classic approach to risk management

Source of diversification	Description
Asset class	Fixed income, equity, alternatives
Geography	Beyond Canadian markets
Sector	Sector performance varies
Market capitalization	Large cap, mid-cap, small cap
Management approach	Growth, value, momentum, quality

Risk can also be managed by being patient (longer time horizons reduce risk)

The 60:40 stocks to bonds ratio has worked well in providing diversification in the past



Interest rates appear to be at the end of a long decline

Interest rates
Government of Canada 10 year bonds
Monthly, 1955-2019



“With a persistent low interest rate environment expected in the coming years, fixed income will be a less effective source of diversification and returns in the immediate future.”

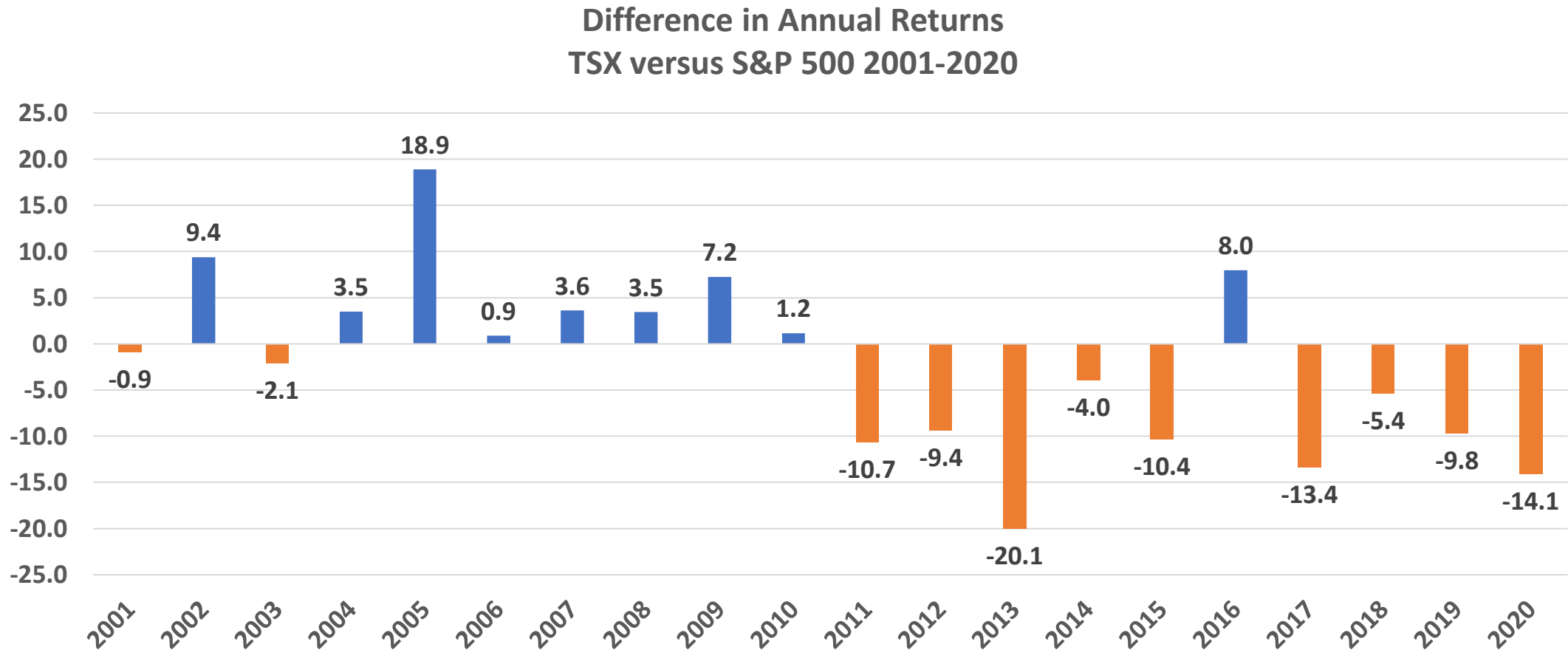
Ziad Hindo,

Chief Investment Officer

Ontario Teachers’ Pension Plan

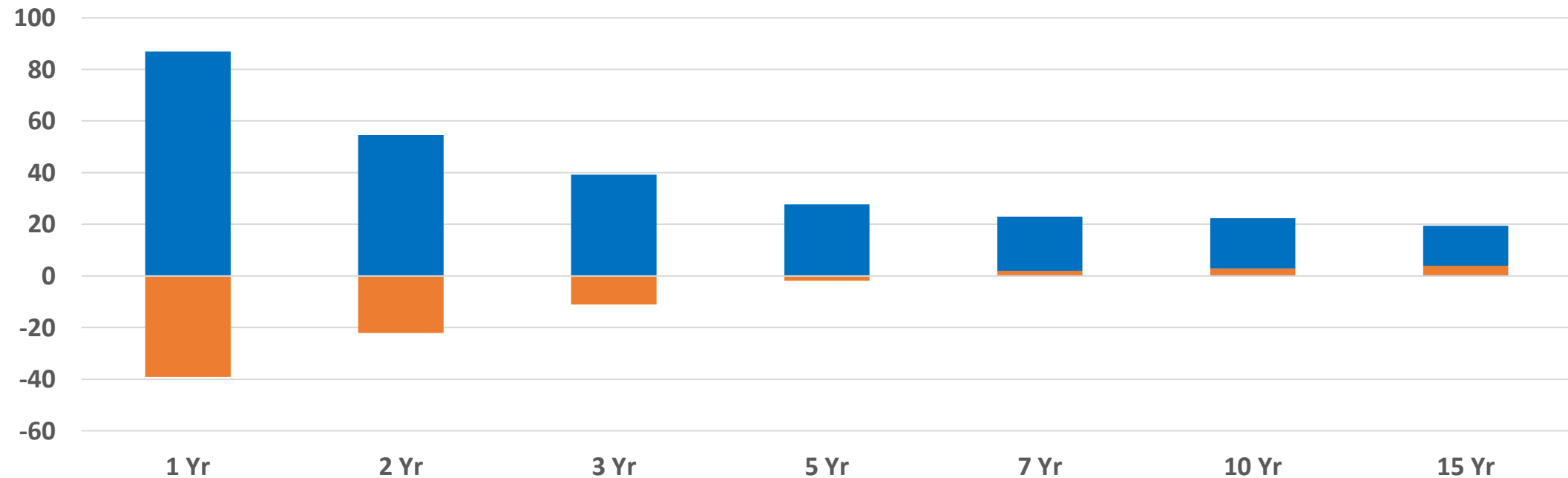
Toronto Star, March 31, 2021

Returns can be different in different regions



Time mitigates risk

TSX Composite Index Total Returns
Rolling Returns, Highest and Lowest
1956-2019



Prudent investing offers the promise of higher risk-adjusted returns, but the Province has made the requirements deliberately stringent.

Part III

The path to prudent investing

Prudent investing gives municipalities more freedom within a structured framework

Requirement	Description
Financial	\$100M in money not required immediately or \$50M in net financial assets
Governance	External Investment Board
Accountability	Control and management of money not required immediately delegated to Investment Board
Oversight	Council-approved Investment Policy Statement

The requirements are relaxed if municipalities work together

Requirements	Description
Financial	Combined \$100M in money not required immediately
Governance	Be part of a Joint Investment Board

Investment Boards follow legislative and regulatory rules

Provisions	Description
Authority	Municipal service board under the Municipal Act
Composition	External board. No councilors or municipal staff except for the Treasurer
Investment Plan	Must be approved by the board and comply with Council's Investment Policy Statement
Investment Report	Board must report performance at least annually to Council
Compliance	Treasurer certifies compliance with Investment Policy Statement and Investment Plan

The municipality still has responsibilities under the prudent investor regime

Money Not Required Immediately	Municipality has scope to define - it could be based on time, source of funds or use of funds
Investment Policy Statement	Approved by Council. Must include return objectives, risk tolerance, liquidity and other needs
Bylaws	Process involves Council reports and authorizing and enabling bylaws

Six municipalities founded the ONE Joint Investment Board in 2020

The Corporation of the
Town of Bracebridge

The Corporation of the
City of Kenora

The Corporation of the
Town of Huntsville

The District Municipality
of Muskoka

The Corporation of the
Town of Innisfil

The Corporation of the
Town of Whitby

ONE JIB Investment Offerings

Fund	Annualized Return July 2, 2020 to December 31, 2020
Canadian Equity	17.2
Global Equity	6.8
Canadian Government Bond	1.0
Canadian Corporate Bond	1.3
Global Bond	4.7

Translating municipal reserves into investment allocations



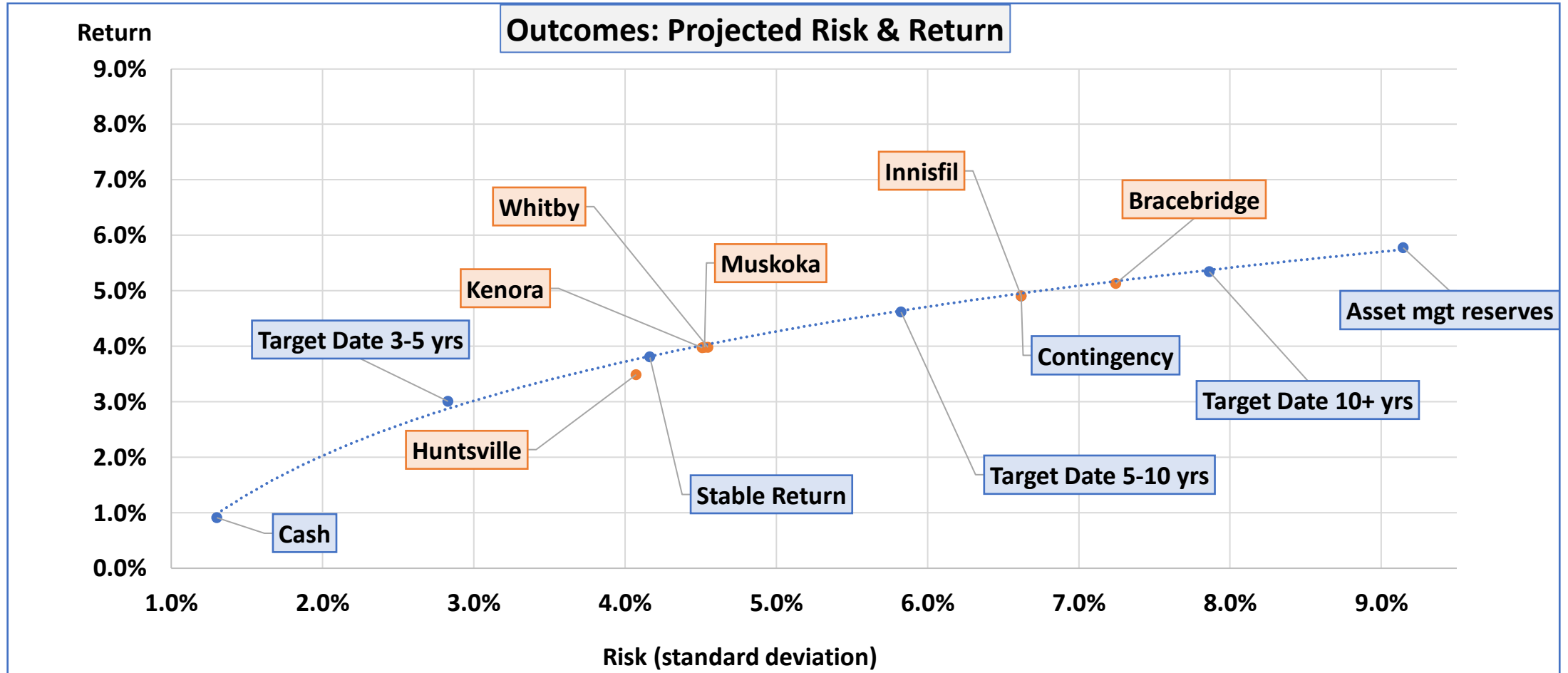
The Outcomes Framework

Outcome Category	Outcome Strategy	Objective	Investment Horizon
Cash	Cash	Preservation of capital	< 3 years
Stable Return	Stable Return	Income generation: To generate returns to fund recurring needs	> 5 years (Perpetual)
Contingency	Contingency	Contributions for unexpected and infrequent events	> 5 years (Perpetual)
	Asset mgt reserves	Contributions to generate returns to fund asset management reserves	> 10 years (Perpetual)
Target Date	Target Date 3-5 yrs	Preservation of capital	3 - 5 years
	Target Date 5-10 yrs	Contributions toward capital projects, mitigate inflation impacts and meet target funding requirements	5 - 10 years
	Target Date 10+ yrs	Contributions toward capital projects, mitigate inflation impacts and meet target funding requirements	> 10 years

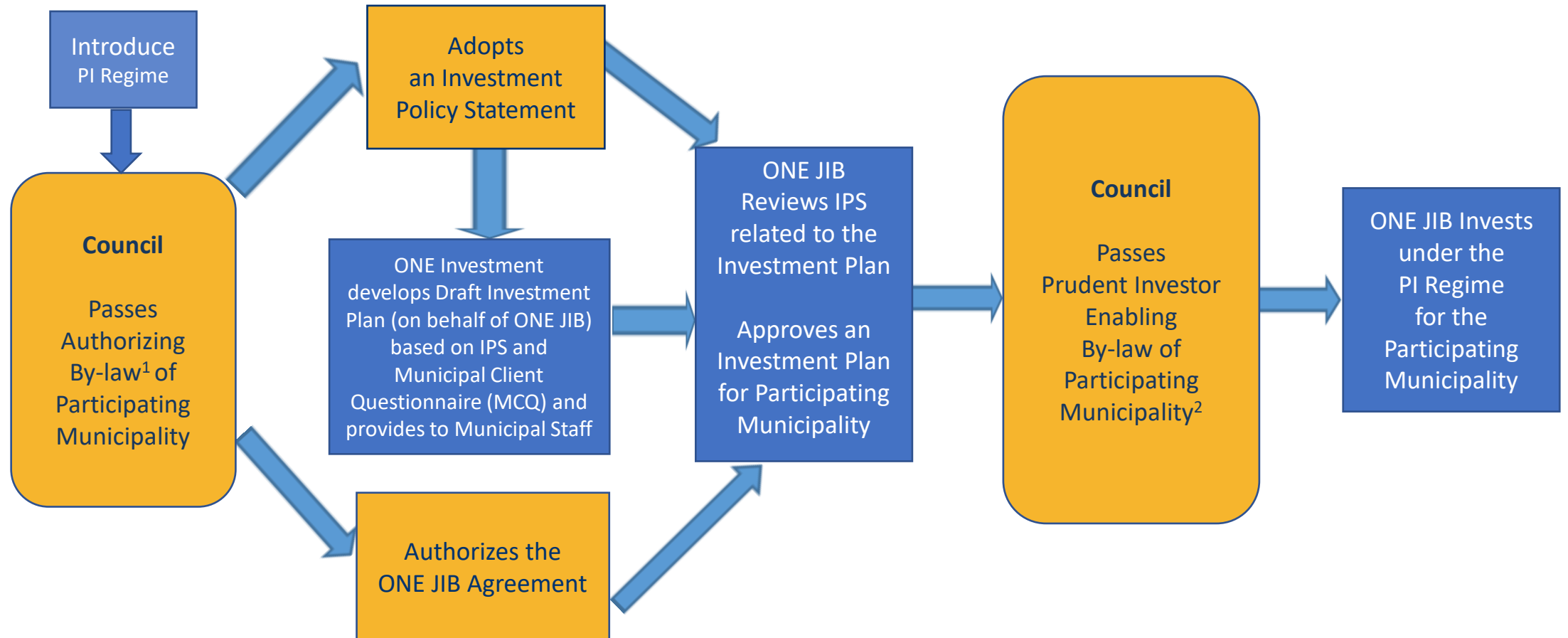
Translating outcomes to allocations

Outcome Category	Outcome Strategy	Equity	Fixed Income	Cash
Cash	Cash			100
Stable Return	Stable Return	30	60	10
Contingency	Contingency	60	40	
	Asset mgt reserves	90	10	
Target Date	Target Date 3-5 yrs	10	70	20
	Target Date 5-10 yrs	50	50	
	Target Date 10+ yrs	75	25	

The outcomes framework in practice



The process requires time and commitment



¹ Council may elect to pass one combined By-law (Authorizing and Enabling)

²The Prudent Effective Date is the future effective date set out in the Prudent Investor Enabling By-law as the date on which the PI Regime applies to the Participating Municipality

Key Take-Aways

1. Future asset management costs for infrastructure are a looming financial threat for municipalities
2. Municipalities will need to continue to build reserves, especially for capital projects and contingencies
3. Investment income can increase the value of reserves and mitigate the need for property tax increases
4. Traditional fixed income investments such as GICS and PPNs are less attractive in a low interest rate environment
5. Municipalities need to consider changing their investment strategies to achieve higher risk-adjusted returns

Key Take-Aways continued

6. The key choices for municipalities are: (1) between the Legal List and the prudent investor regime, and (2) between managing their investments on their own or working with ONE Investment
7. Diversification and time (patient investing) are the keys to managing risk
8. Prudent investing offers the potential for higher risk-adjusted returns for patient capital
9. Provincial legislation and regulation establish complex governance arrangements for prudent investing, including permission for municipalities to work together
10. Participating in the ONE Joint Investment Board is an option for municipalities interested in the prudent investor regime



Municipal Infrastructure Projects

A Primer on Alternative Dispute Resolution in Municipal Projects

Tuesday April 20, 2021

The information and comments herein are for general information and are not intended as advice or opinion to be relied upon in relation to any circumstances. For application of the law to specific situations, you are encouraged to seek legal advice. The information was updated on xx, xx, 2020.

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Agenda

1. Dispute Resolution Clauses in Contracts
2. Key Clauses for Managing Risk and Controlling Disputes and Claims
3. Navigating the Dispute Resolution Process
4. Adjudication 101
5. Liens and Adjudication and your Contract's Dispute Resolution Process

Dispute Resolution Clauses in Contracts

Most construction and infrastructure contracts contemplate a staged dispute resolution process, such as:

- 
1. Delivery of a claim notice
 2. Finding or interpretation by the Consultant
 3. Negotiation
 4. Mediation
 5. Arbitration or Litigation

*Check your
contract!*



Dispute Resolution Clauses in Contracts

CCDC 2 (2020) DRP:

1. Consulting “finding”
2. Claim is waived unless written dispute notice is sent to consultant and other party within 15 working days of consultant’s “finding”
3. Responding party sends written reply within 10 working days
4. Without prejudice negotiations (no timeline)
5. Mediation (under CCDC 40 mediation rules)
6. Arbitration (only if a party sends written notice within 10 working days of termination of mediation)

Dispute Resolution Clauses in Contracts

OPSS.MUNI 100 (Nov 2019):

1. Contractor provides verbal notice of situation that may lead to claim
2. Contractor provides written notice (within 7 days of starting work affected by the “situation”)
3. Contractor provides detailed claim (within 30 days after completion of affected work)
4. Contractor submits further particulars if requested by CA
5. CA provides opinion on claim (within 90 days of contractor’s detailed claim)
6. Negotiations (if contractor disagrees with CA’s opinion)
7. Optional mediation (within 30 days of CA’s opinion)
 1. Mediator completes “review” (within 90 days of CA’s opinion)
8. Arbitration (if party sends written notice within defined time period after CA’s opinion or mediation)



Dispute Resolution Clauses in Contracts

Key Considerations for Contractual DRPs:

1. Timelines
 1. Are the timelines feasible?
 2. Are the timelines too long?
2. Does the DRP address disputes that are *not* related to contractor claims?
 1. OPSS.MUNI process centered around claims by contractor
 2. Consider how to resolve other disputes (e.g. owner default, termination, breaches of obligations unrelated to additional work, extras or delays)
3. Role of the Consultant / Contract Administrator:
 1. Consultant/CA plays a major role in dispute resolution in most standard form contracts – may not be appropriate in all situations
 2. Consider disputes on issues over which the Consultant/CA has no authority



Dispute Resolution Clauses in Contracts

Key Considerations for Contractual DRPs:

4. Negotiation:
 1. Specify time limit?
 2. Staged negotiation (e.g. project representatives then senior management)?
 3. Disclosure of documents and information?

5. Mediation:
 1. Does your DRP require you to select a “Project Mediator” at project outset?
 2. Should mediation be a precondition to moving on?
 3. How does the mediator get selected?
 4. How are costs of the mediation handled?

Dispute Resolution Clauses in Contracts

Key Considerations for Contractual DRPs:

6. Arbitration versus Litigation:

1. Both have benefits and drawbacks on various issues:
 1. Cost
 2. Speed
 3. Confidentiality
 4. Ability to involve other parties in the dispute
 5. Subject matter expertise of judge/arbitrator
 6. Process flexibility
 7. Appeals
 8. Municipal procurement bylaws re: ongoing litigation



Dispute Resolution Clauses in Contracts

Key Considerations for Contractual DRPs:

7. Key considerations for arbitration clauses:
 1. How are costs handled? (e.g. shared or left to arbitrator's discretion)
 2. How is the arbitrator appointed?
 3. Where is the seat of the arbitration?
 4. How many arbitrators will there be?
 5. Will certain arbitration rules govern the arbitration? (e.g. CCDC 40, ADRIC)
 6. Is the arbitration award appealable?
 7. When will the arbitration be heard? (e.g. defer until end of project)
 8. Can third parties be joined into the arbitration?
 9. How will construction lien proceedings be dealt with pending an arbitration?
 10. Does the consultant have a right to opt-in and participate?

Key Clauses for Managing Risk and Controlling Disputes and Claims

Notice provisions:

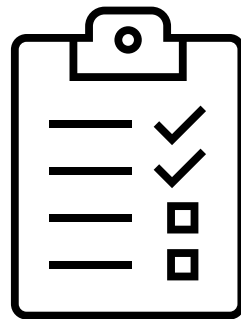
1. Notice of delays
2. Notice of encountering unforeseen or concealed physical conditions or the need to perform additional work
3. Waiver of claims if not compliant with requirements

Change Orders:

1. Clear language confirming all-inclusiveness of relief covered
2. Prohibition on performing extra work unless authorized *in writing*

Claim Submission Requirements:

1. Providing sufficient particulars (including contract section references)
2. Proof of evaluation of subcontractor-related claims
3. Provision of additional information if requested





Navigating the Dispute Resolution Process

Comply with Contract Requirements:

1. Review DRP and claim provisions early in the process
2. Engage consultant to ensure it is adhering to its responsibilities (e.g. issuing finding or interpretation on a claim)

Perform Early Risk Assessment:

1. Early assessment and thorough understanding of issues can avoid larger downstream consequences and lead to early resolution of dispute
2. Consider any implications for contract security (e.g. performance bonds)

Preparation and Staying Organized:

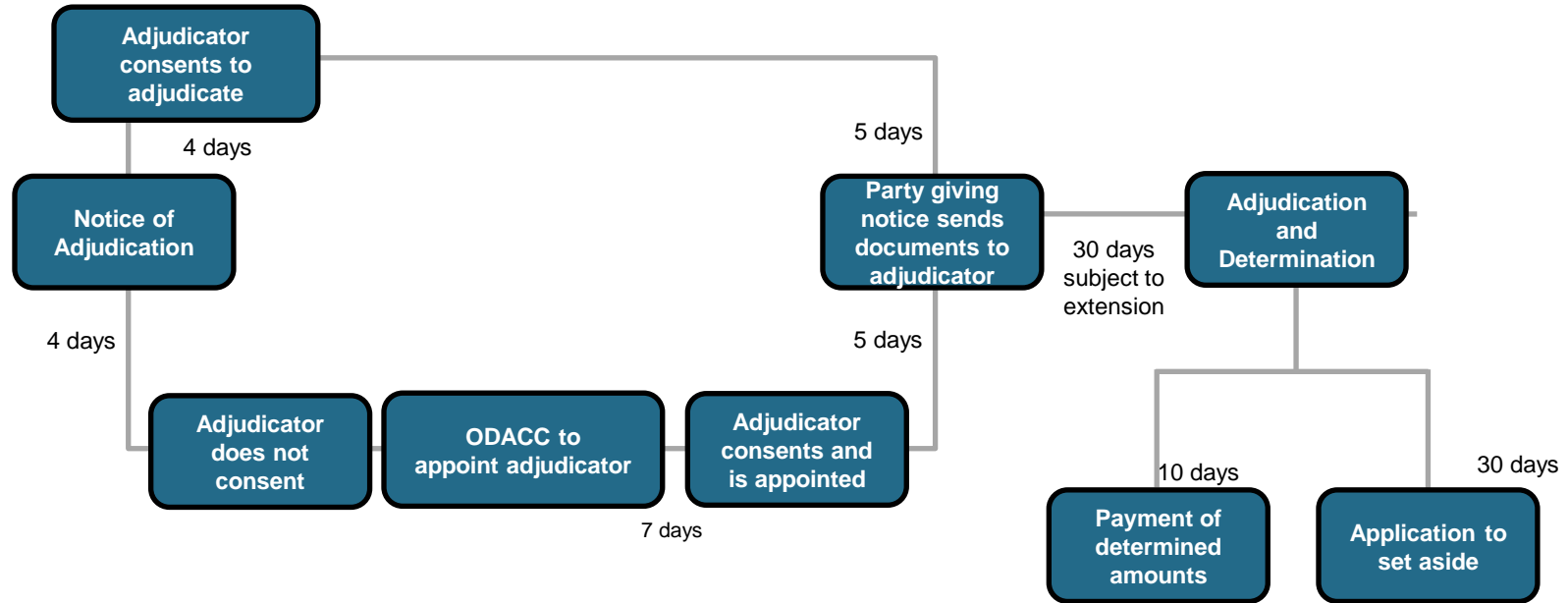
1. Manage and collect key documents and records
2. Diarize limitation periods and deadlines (both statutory and contractual)
3. Engage key staff members involved in the project

Adjudication 101

- ‘Rough justice’
- Binding until court decision
- Not mandatory but may be necessary



Adjudication 101



Liens and Adjudication under the Construction Act

Consider Interaction of Lien Rights and Adjudication with Contract DRPs:

1. Cannot 'contract-out' of statutory lien rights or adjudication rights
2. Most standard form contractual DRPs stay relatively silent on the issue

Clauses to consider in contract regarding liens:

1. General obligation to vacate subcontract construction liens
2. Staying of lien proceedings once arbitration is commenced (apart from steps required to preserve and maintain rights under the Construction Act)

Clauses to consider in contract regarding adjudication:

1. Expanded adjudication 'processes'
2. Distinguishing between "claims" and "disputes"
3. Can disputes after completion of contract be adjudicated?
4. Does commencing adjudication freeze or foreclose contract's DRP?



Thank you for joining us!

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