

**1. REPORT ON THE JURY RECOMMENDATIONS ARISING OUT OF THE
CORONER'S INQUEST INTO THE DEATH OF JÉRÉMIE AUDETTE, JULY 28,
2010**

**RAPPORT SUR LES RECOMMANDATIONS DU JURY DÉCOULANT DU
RAPPORT D'ENQUÊTE DU CORONER SUR LE DÉCÈS DE JÉRÉMIE
AUDETTE, LE 28 JUILLET 2010**

COMMITTEE RECOMMENDATION

That Council receive this report for information.

RECOMMANDATION DU COMITÉ

Que le Conseil prenne connaissance du présent rapport.

DOCUMENTATION / DOCUMENTATION

1. Rick O'Connor, City Clerk and Solicitor report dated 7 January 2013
(ACS2012-CMR-LEG-0012)
Rapport du Greffier municipal et chef des contentieux daté du 7 janvier 2013
(ACS2012-CMR-LEG-0012).
2. Extract of Minutes, Planning Committee, 23 October 2012.
Extrait du procès-verbal du Comité de l'urbanisme, le 23 octobre 2012.
3. Extract of Draft Minutes, Agriculture and Rural Affairs Committee,
17 January 2013.
Extrait de l'ébauche du procès-verbal du Comité de l'agriculture et des affaires
rurales, le 17 janvier 2013.

Report to/Rapport au :

Planning Committee
Comité de l'urbanisme

and

Agriculture and Rural Affairs Committee
Comité de l'agriculture et des affaires rurales

and Council / et au Conseil

January 7, 2013
7 janvier 2013

Submitted by/Soumis par : M. Rick O'Connor, City Clerk and Solicitor/Greffier
municipal et chef des contentieux

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CITY WIDE / À L'ÉCHELLE DE LA VILLE

Ref N°: ACS2012-CMR-LEG-0012

SUBJECT: REPORT ON THE JURY RECOMMENDATIONS ARISING OUT OF
THE CORONER'S INQUEST INTO THE DEATH OF JÉRÉMIE
AUDETTE, JULY 28, 2010.

OBJET : RAPPORT SUR LES RECOMMANDATIONS DU JURY DÉCOULANT
DU RAPPORT D'ENQUÊTE DU CORONER SUR LE DÉCÈS DE
JÉRÉMIE AUDETTE, LE 28 JUILLET 2010.

REPORT RECOMMENDATION

That the Planning Committee, Agriculture and Rural Affairs Committee and Council receive this report for information.

RECOMMANDATION DU RAPPORT

Que le Comité de l'urbanisme, le Comité de l'agriculture et des affaires rurales et le Conseil prennent connaissance du présent rapport.

BACKGROUND

In later October 2012, the Office of the Chief Coroner called for an inquest under the authority of the *Coroner's Act* to investigate the circumstances surrounding Jérémie Audette's death and to explore whether any recommendations could be made aimed at preventing a similar incident from occurring. The Coroner's Inquest commenced on November 26th, 2012 and concluded on December 6th, 2012. Pursuant to Council's Resolution 44/9 made on November 14th, 2012, the City Clerk and Solicitor applied for and obtained standing from the Coroner to participate in the Inquest process. At that time, Council further directed that the City Clerk and Solicitor, in concert with the Planning and Growth Management Department, report back to the Planning Committee, Agriculture and Rural Affairs Committee and Council on the Inquest's recommendations.

On July 28, 2010, two-year old Jérémie Audette was at a private unlicensed day care home in Orléans where a number of care providers had convened for a playdate. Jérémie Audette's care provider had transported him and her other care children to the Orléans home. Approximately four to six adults were present and approximately 31 children were in the backyard. The backyard contained an above-ground swimming pool. This swimming pool was protected by a perimeter pool enclosure which was in compliance with the applicable municipal regulations. In addition, the above-ground pool was gated-off. However, this particular gate was not self-latching nor locked at the time as the pool was in use. Somehow, Jérémie, entered the swimming pool undetected where he drowned. An expert witness qualified to give opinion evidence at the Inquest opined that a lack of adult supervision was a key factor relating to the tragic events of July 28, 2010.

At the conclusion of the Inquest, the Jury made 16 recommendations directed toward various stakeholders relating to the provision of day care in Ontario and in relation to private backyard swimming pools. The Jury's recommendations are attached at Document 1. Various recommendations on matters relating to the provision of day care in Ontario are mainly directed towards the provincial Ministry of Education in relation to its administration of the *Day Nurseries Act*. The Jury also made a number of recommendations directed towards municipalities via the Association of Municipalities for Ontario (AMO), on the subject of municipal pool enclosure by-laws. As indicated, the Jury's recommendations are designed to prevent similar incidents and are generally considered as public safety measures.

DISCUSSION

Coincidental to the timing of the announcement of the Coroner's Inquest, staff had previously prepared a Report recommending a review of the Pool Enclosure By-law 2001-259, which was enacted following municipal amalgamation. In the Report dated October 4, 2012, staff further recommended that the Planning Committee and Agriculture and Rural Affairs Committee recommend that Council:

- 1. Repeal the By-law of the City of Ottawa Respecting the Enclosure for Privately Owned Outdoor Pools, By-law 2001-259; and replace it with a new By-law, substantially in the form [of a draft by-law]; and**
- 2. Direct staff to bring forward a report in January 2013, including timeframes and resource requirements, on a proposed public awareness and education campaign on pool safety and Pool Enclosure By-law requirements.**

On October 23, 2012, the Planning Committee carried the staff recommendations. Upon being advised of the timing of the Inquest into the death of Jérémie Audette, the Committee further recommended that the Recommendations be deferred pending the completion of the Inquest. On November 1st, 2012, the Agriculture and Rural Affairs Committee carried the staff recommendations and further deferred the matter pending the outcome of the Inquest.

The Jury has made sixteen (16) recommendations directed at various ministries, agencies, and associations on two main issues that were the focus of the multi-day Inquest. The first five recommendations were directed at various provincial ministries with respect to day cares and recommendation sixteen was directed at the insurance industry. As such, these recommendations are not dealt with in this report.

A careful review of the Jury's recommendations numbers six (6) to fifteen (15) relating to backyard pool safety and pool enclosure by-laws, public education and water safety, has been carried out by staff with comments as follows:

Recommendations directed to the Association of Municipalities of Ontario (AMO):

Jury Recommendation No. 6:

6. All Municipalities in Ontario enact pool enclosure by-laws to provide minimum regulations.

Department Comment:

The Planning and Growth Management Department supports this recommendation. The City of Ottawa currently has a pool enclosure by-law in place.

Jury Recommendation No. 7:

7. Municipalities consider enacting/amending pool enclosure by-laws that:
 - a. Require a permit and inspection for a pool enclosure;
 - b. Require any gates to the pool enclosure to be self-closing, self-latching and locked at all times when not under direct adult supervision;

- c. Require that the enclosure be maintained;
- d. Require all new pool construction to have an enclosure that completely encloses the area in which a swimming pool is located and that any part of the building that contains an entrance (windows/doors) not constitute part of the enclosure;
- e. Consider the feasibility of retroactive application of 7.d. to existing pool enclosures; and
- f. Require that the pool enclosure, including the gate, be constructed in such a manner that it shall not impede the ability to directly view the pool area from within the confines of the property.

Department Comment:

The Planning and Growth Management Department supports recommendations 7 a, b and c as follows:

7 a. The current and proposed pool enclosure by-laws already provide for a permit and inspection process. The report has recommended some improvements to the administration of the permits with respect to refunds, and to the extension of time period related to the expiration of the permit.

7 b. The current pool enclosure by-law, By-law Number 2001-259, requires any gate to be self-closing and self-latching, and to be lockable. The proposed by-law will also require that the gate be locked at all times except when the enclosed pool area is in use or when the gate is being used for access or egress. This provision will apply to every pool enclosure in the City regardless of when the enclosure was constructed. With respect to gates that adjoin a public space, an amendment in 2009 required that every gate that adjoined a public space be lockable and locked at all times, except when the gate is being used for access or egress. The proposed changes will require that this provision be retroactive as well.

7 c. The current by-law and proposed by-law both require maintenance of the pool enclosure.

The Planning and Growth Management Department does not recommend implementing the Jury's recommendations 7 d, e and f, as follows:

The Inquest revealed that a lack of adult supervision was a key factor relating to the tragic events of July 28, 2010 rather than the lack of a fourth sided enclosure (that is a fence between the dwelling and the pool area). Specifically, the pool enclosure was compliant, and in addition, a fourth side had been installed to restrict access to the stairs and deck serving the above ground pool. However, the gate to the stairs and deck of the above ground pool was not secured and maintained and consequently, J r mie Audette gained access unseen.

The Department's review of the Pool Enclosure By-law dealt with the issue of four sided enclosures, including consultation with the public, industry stakeholders and safety organizations. Although it is recognized that four sided pool enclosures are a best practice, the following concerns were identified:

- review of data of jurisdictions where fourth sided pool enclosures were introduced revealed that despite the introduction of such enclosures, drowning incidents continued to occur and that the key factor in these incidents was the failure of the gate. Gates were the Achilles heel of enclosures;
- rear or side yards of the new lots in subdivisions may be too small to accommodate a fourth sided fence;
- yards with already installed pools have been landscaped and designed and to alter the landscape would require owners to incur additional and unplanned costs;
- the cost of adding a fourth side;
- not all pool owners have young children;
- the concern with aesthetics, as fencing in front of a pool may not be visually appealing; and
- limited resources to implement and enforce.

The Report dated October 4, 2012, which was carried by both the Planning Committee and the Agriculture and Rural Affairs Committee on October 23 and November 1, 2012, respectively, sets out the reasons why four sided pool enclosures would not be introduced at this time and that other steps for improving safety of children be introduced instead, particularly increasing public awareness of the need for heightened vigilance and constant supervision of children.

Retroactively imposing such a requirement is also problematic as there have been over 5700 pool permits issued in the City since 2006. None of these pools and enclosures, in addition to all the enclosures installed prior to this time, were required to install a gated fence between their pool and the dwelling. Furthermore, the requirement to construct the fourth side so as not to impede the ability to directly view the pool from within the confines of the property, would require a very strict regulation on the materials that could be used for the enclosure and gate, such as only using chain link, wrought iron or plexiglass.

Pool owners can voluntarily install a fourth side, as was the case at the location where the accident occurred; or they can additionally install self-closing, self-latching doors that provide access from the residence, installing door and pool alarms, and pool covers; all of which provide additional layers of protection.

Jury Recommendation No. 8:

8. Municipalities require that backyard pools be directly supervised, to a standard of "within arm's reach", by a responsible person at all times when a child is in or near a pool.

Department Comment:

The Planning and Growth Management Department does not recommend implementing this recommendation, however, the Department does recommend the concerns underlying this direction be addressed through an annual public education and awareness campaign.

The *Municipal Act* does provide the authority to pass by-laws respecting the health, safety and well being of persons. While it is critically important that backyard pools be properly supervised, such a provision in a by-law would be very difficult to enforce as to be effective. For example, an officer would have to be present at the time of use and have unimpeded access to the yard at all times. It is felt that public education rather than regulation is the best method of promoting the “within arm’s reach” message to the public.

Jury Recommendation No. 9:

9. Municipalities, in partnership with pool safety stakeholders/resources, engage in annual public education/awareness campaigns on pool safety and pool enclosure requirements, including maintenance.

Department Comments:

The Planning and Growth Management Department agrees with this recommendation. Staff will be bringing forward a report to Committee and Council in February proposing an annual public education and awareness campaign on pool safety and pool enclosure requirements, including maintenance. This campaign will enhance the activities already undertaken by the Ottawa Drowning Prevention Coalition, and will be funded through an increase in pool enclosure permit fees. The Ottawa Drowning Prevention Coalition is comprised of the following departments and agencies: City of Ottawa (Ottawa Public Health, Parks, Recreation and Cultural Services Department, Ottawa Police Services, Ottawa Paramedic Services Branch and Ottawa Fire Services Branch); Dovercourt Recreational Centre, Boys and Girls Club, Ottawa Chapter of Canadian Red Cross, Lifesaving Society, and the Children’s Hospital of Eastern Ontario (CHEO).

Jury Recommendation No. 10:

10. Municipalities make available information and checklists on pool safety, maintenance and inspections to all applicants for pool installation/enclosure permits.

Department Comments:

The Planning and Growth Management Department agrees with this recommendation. The information on the City of Ottawa website will be enhanced to include links and messages on pool safety, pool enclosure requirements, including maintenance and inspections

Recommendations directed to the Ontario Ministry of Health and Long Term Care; Lifesaving Society Canada; Canadian Red Cross; Safe Communities Canada; Safe Kids Canada; SMARTRISK Canada; St. John Ambulance; and Thinkfirst Canada it is recommended that:

Jury Recommendation No. 11:

11. Organizations and agencies with expertise in water safety education and drowning prevention should meet, develop and launch a collaborative public education safety campaign with water safety messages detailing prevention strategies, particularly addressing issues related to backyard pools and child safety.

Department Comment:

The Planning and Growth Management Department agrees with this recommendation. The City of Ottawa is currently consulting with the Ottawa Drowning Prevention Coalition and the Pool and Hot Tub Council in preparing a public education campaign on pool safety and drowning prevention.

Jury Recommendation No. 12:

12. They inform municipalities of the availability of information and checklists on pool safety, maintenance and inspections.

Department Comment:

The Planning and Growth Management Department agrees with this recommendation.

Recommendations to the Pool and Hot Tub Council of Canada:

Jury Recommendation No. 13:

13. They provide residential pool purchasers with up-to-date safety and supervision information and recommendations as to best practices.

Department Comment:

The Planning and Growth Management Department agrees with this recommendation.

Recommendations to the Ontario Real Estate Association:

Jury Recommendation No. 14:

14. They encourage realtors to distribute information concerning pool safety to prospective purchasers of residential properties having swimming pools, particularly relating to issues of child safety.

Department Comment:

The Planning and Growth Management Department agrees with this recommendation.

**Recommendations to the Ontario Ministry of Municipal Affairs and Housing;
Association of Municipalities of Ontario; and Ontario Real Estate Association:**

Jury Recommendation No. 15:

15. They encourage new purchasers of homes that include pools to contact their municipality prior to pool use for information and checklists on pool safety, maintenance and inspections.

Department Recommendation:

The Planning and Growth Management Department agrees with this recommendation. Currently the City of Ottawa does not provide the service of confirming regulatory compliance of existing pool enclosures. However, with this recommendation, the Department will consider introducing a new service and associated fee to cost recover through a compliance report which will provide the following:

- Information from available records on the pool enclosure permit and inspection report;
- Outstanding Notice of Violation or Orders; and
- Provide for an inspection regarding compliance.

RURAL IMPLICATIONS

There are no special implications for the rural sector.

CONSULTATION

This report deals with the recommendations of a Coroner's jury and provides staff comment on the findings of an inquest. No public consultations were undertaken in order to develop this report.

However, the Chief Building Official, who testified at the Coroner's Inquest, has reviewed the contents of this report in detail and agrees with same. Furthermore, she advised that there will be no revision or amendments to her earlier report entitled, "Review of the Pool Enclosure By-Law, 2001-259" (ACS2012-PAI-PGM-0114) other than to amend the implementation dates in view of the deferral of the report.

COMMENTS BY THE WARD COUNCILLOR(S)

Not applicable as recommendations arising out of the inquest are City-wide.

LEGAL IMPLICATIONS

There are no legal implications associated with this report.

RISK MANAGEMENT IMPLICATIONS

The Coroner's Jury recommendations are intended to enhance public safety and reduce the risk of drowning at private backyard pools. The recommendations, along with the measures identified in the staff comments, are all intended to reduce the risk implications associated with backyard pools.

FINANCIAL IMPLICATIONS

There are no financial implications associated with this report.

ACCESSIBILITY IMPACTS

There are no accessibility implications.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications.

TECHNOLOGY IMPLICATIONS

There are no technology implications associated with this report.

TERM OF COUNCIL PRIORITIES

The changes to the Pool Enclosure By-law and the planned public education/awareness campaign that are noted in this report support Council's Strategic Priority – Healthy and Caring Communities: "Help all residents enjoy a high quality of life and contribute to community well-being through healthy, safe, secure, accessible and inclusive places". However, there are no specific Strategic Objectives for healthy and caring communities, that have been approved for this term of Council that directly relate to this report.

SUPPORTING DOCUMENTATION

Document 1 - Verdict of the Coroner's Jury; Jérémie Audette.

DISPOSITION

Planning and Growth Management to bring forward for Council's approval:

1. the report regarding the amendments to the Pool Enclosure By-law;
2. a report on the public education and awareness campaign regarding pool safety and pool enclosure requirements; and
3. a report amending the Compliance Reports By-law to provide for compliance reporting, and associated fees, for existing pool enclosures.