

Item No. 6
Halifax Regional Council
November 30, 2010

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY: Original Signed by Director

M.E. Donovan, Q.C., Director, Legal Services and Risk Management

DATE: November 15, 2010

SUBJECT: 2003 Supplementary School Funding Challenge

INFORMATION REPORT

ORIGIN

Decision of Supreme Court of Canada on October 28, 2010, granting HRM leave to appeal the decision of the N.S. Court of Appeal allowing the continuation of the Board of Inquiry into the human rights complaint of Lucien Comeau.

BACKGROUND

In 2003, Lucien Comeau filed a human rights complaint against HRM (and against the Province in 2004) alleging discrimination on the basis of ethnic origin in respect of the then absence of supplemental funding for the Conseil Scolaire Acadien Provincial. (CSAP) supplementary education payments were at that time remitted to the Halifax Regional School Board pursuant to the terms of the MGA. A comparative supplementary education provision mandating payments to the CSAP did not then exist. This was addressed when the Province of Nova Scotia amended the MGA to extend such funding to the CSAP effective April 1, 2006. Effective April 1, 2006, HRM divided its supplementary education funding proportionately between HRSB and CSAP in accordance with the legislation. Notwithstanding the amendment, the Human Rights Commission, in November 2006, referred the Comeau complaint to a Board of Inquiry and a ten-day hearing was scheduled.

Prior to the commencement of the Board of Inquiry, HRM brought an application before the Supreme Court of Nova Scotia to quash the referral and stay the Board of Inquiry proceeding. The Supreme Court did so finding that the 2006 legislative amendments rendered the matter moot, and that, in any event, the Board of Inquiry did not have jurisdiction to make a declaration on the validity of provincial legislation.

The Human Rights Commission appealed that decision to the N.S. Court of Appeal which ruled on February 11, 2010 that the jurisdictional issues raised by HRM can and should be decided by the Board of Inquiry. HRM then sought leave from the Supreme Court of Canada to challenge the Court of Appeal decision. On October 28, 2010, the Supreme Court of Canada granted leave to appeal. The hearing of the appeal has been scheduled for October 19, 2011.

DISCUSSION

The question before the Supreme Court of Canada is whether the decision of the Human Rights Commission to refer the complaint to a Board of Inquiry was based on a correct interpretation of the law and was otherwise reasonable based on the factual findings of the investigating officer. In particular, the primary legal issue is whether the *Human Rights Act* has precedence over general legislation such as the funding direction previously contained in *Municipal Government Act*.

Pursuant to the *Supreme Court of Canada Act*, a prerequisite to the Court granting leave to appeal is that the matter raises issues of national importance. In granting leave, the SCC has effectively confirmed that this issue is one of national importance. The issue is of particular concern to HRM because of the budgetary concerns associated with the risk that a Board of Inquiry might make an order for additional payments to CSAP.

BUDGET IMPLICATIONS

Failure to overturn the Court of Appeal decision will result in staff costs to HRM to defend the human rights complaint. If that defence is unsuccessful, there is the possibility of HRM being ordered to make a restitution payment to the CSAP for the years 2003-2006. Under the provisions of the Human Rights Act, a Board of Inquiry has the authority to order any party determined to be in breach of the Act to do anything the Board decides is necessary to remedy the breach.

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

COMMUNITY ENGAGEMENT

None

ATTACHMENTS

None

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/agenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208

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