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**Environment & Sustainability Standing Committee**  
**April 16, 2012**

**TO:** Chair and Members of the Environment & Sustainability Standing Committee

**SUBMITTED BY:**

A handwritten signature in black ink, appearing to read "M. Tyson", written over a horizontal line.

Marion F.H. Tyson, Q.C., Acting Director, Legal Services & Risk Management

**DATE:** April 11, 2012

**SUBJECT:** Unwanted Distribution or Misplacement of Flyers

**INFORMATION REPORT**

**ORIGIN**

Gord Helm, Manager, Solid Waste Resources, requested a report examining the legal basis for a Bylaw designed to control unwanted flyers and/or junk mail.

**BACKGROUND**

There have been a number of complaints from HRM residents in regard to unwanted ad mail being delivered to their homes. There are also reports of unwanted material being placed at the entrance of driveways, at the side of the road or in ditches. Further, there are complaints of this material accumulating while residents are away.

## **DISCUSSION**

HRM can enact a Bylaw to control unwanted flyers but we cannot outlaw them.

Flyers, junk mail, ad mail, etc., serve a variety of purposes. Most of the material has a commercial purpose, such as promoting a product or service. Other items promote artistic productions, political causes, charity events or provide other types of information. All of this material would be considered forms of expression, regardless of the message. All forms of expression are protected by the *Canadian Charter of Rights and Freedoms*.

HRM cannot ban a form of expression. HRM can, however, place a reasonable limit on that expression.

The first question is whether the Bylaw complies with the enabling legislation. The HRM Charter provides the general power to “regulate or prohibit” as well as the more specific power to make bylaws in regard to nuisances.

The second question is if the power exercised under the Bylaw complies with the general principles governing municipal bylaws. The Supreme Court of Canada has often reiterated the social and political importance of local governments. It has stressed that their powers must be given a generous interpretation because their closeness to the members of the public who live or work on their territory make them more sensitive to the problems experienced by those individuals. Apart from the legislative framework and the general principles of administrative law that apply to them, municipal powers must be exercised in accordance with the principles of the *Charter of Rights and Freedoms*, as must all government powers.

The third question will be if, in fact, the Bylaw is a reasonable limit of the freedom of expression.

The Supreme Court of Canada has considered the question of what constitutes a “reasonable limit” on several occasions. A Court assessing the Bylaw will likely consider the following issues:

First of all, HRM must be able to demonstrate a “pressing and substantial objective.” The law must pursue an objective that is sufficiently important to justify limiting a *Charter* right.

Second, the law must be rationally connected to the objective. If the objective is to reduce litter, prevent the build-up of material that may indicate the resident is away, etc., then it is easier for a total ban to satisfy the rational connection step. The City of Saint-Hyacinthe restricted only commercial signs on the grounds of visual pollution and driver distraction. The Supreme Court of Canada found that the Bylaw was not rationally connected to the objectives because it was selective.

Third, the right must be impaired no more than reasonably necessary to achieve the objective. In contradiction to the above, a total ban is harder to justify under the minimal impairment step. A full prohibition will only be constitutionally acceptable under this stage where the government can show that only a full prohibition will enable it to achieve its objective. If a partial ban would also achieve the state's objective, a total ban will fail this step.

The concept that the law should impair "as little as possible" the right or freedom in question is the most common reason that laws "fail" court scrutiny. The courts have often held that other legislative options were available which would still accomplish the desired objective but would impair the right less than the law that was enacted.

Finally, the Court will consider if the deleterious effects of the impairment outweigh the benefits achieved in pursuit of a pressing and substantive objective. The practical effects of the law (in terms of the collective good it represents) are measured against the limitation to the right.

The City of Ottawa enacted an Admail Reduction Bylaw in 2003. A summary of the Bylaw is below:

1. A resident may place a "No Junk Mail" sign on their mailbox or mail slot.
2. No distributor or their agent may deliver any unaddressed material to a property where a "No Junk Mail" sign is visible.
3. On properties where junk mail is accepted, it must be placed:
  - a) in a mail box;
  - b) in a mail slot;
  - c) in a receptacle identified for this purpose;
  - d) on a newspaper rack or hooked to it;
  - e) in an apartment building lobby; or
  - f) on the door handle if the junk mail is delivered in a bag.
4. No delivery shall be made between 9pm and 8am.
5. The "No Junk Mail" sign does not apply to:
  - a) newspapers delivered to paid subscribers;
  - b) community newspapers;
  - c) material produced in the context of a campaign for elected office; or
  - d) information circulars produced by governments or their agencies.

**BUDGET IMPLICATIONS**

If HRM was to adopt a Bylaw, there would be a cost for:

1. Staff time to administer the program
2. Staff time to enforce the bylaw; and
3. Staff time to prosecute violations.

**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**

N/A

**ATTACHMENTS**

None

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

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