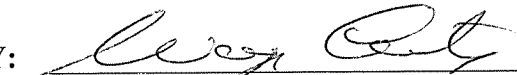


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Halifax Regional Council  
September 14, 2004

TO: Mayor Kelly and Members of Regional Council

SUBMITTED BY:   
Wayne Anstey, Q.C., Director of Legal Services

DATE: September 09, 2004

SUBJECT: **Proposed By-Law Re: Outdoor Solid Fuel Appliances  
Question Respecting Dartmouth Nuisance By-Law**

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INFORMATION REPORT

**Origin**

At the meeting of Regional Council held on August 3, 2004, the Municipal Solicitor was requested to provide a report on former City of Dartmouth By-Law N-300 and how citizens can address nuisance situations.

**Background**

The former City of Dartmouth Nuisance By-Law N-300 still appears to be in effect.

Section 2 of that By-Law defined a "nuisance", for the purposes of that By-law, as "any odour or substance which unreasonably interferes with the enjoyment of life by a person or persons in the City of Dartmouth".

The By-Law then went on to provide for the filing of a complaint with the City Clerk, a notice being given to the person creating the nuisance and a hearing of the complaint by City Council, who could then order the remedying of the situation giving rise to the nuisance.

Failure of the person creating to nuisance to remedy it is an offense against the by-law.

**Discussion**

City of Dartmouth Nuisance By-Law N-300 was supported by Section 152 of the Dartmouth City Charter. That section was a combination of nuisance regulation and dangerous and unsightly premises regulations and was similar to the present day Part XV of the *Municipal Government Act* which now only deals with dangerous and unsightly premises.

Under normal legislative circumstances, in the absence of special provisions to the contrary (such as in Dartmouth Charter, Section 152 or Part XV of the MGA), when a municipality is given the power to make by-laws in respect of a particular matter, it must do so by defining in the by-law the standards which it prescribes in an objective manner which are then capable of being administered by municipal staff. Council, except where those special powers exist, does not have the authority to establish a system where it determines the law in particular cases. Accordingly, although By-Law N-300 is technically still on the books, because the MGA does not current contain an enabling provision like Section 152 with respect to nuisances, in our opinion, the By-law is ineffectual.

The absence of municipal by-laws defining a particular condition as a legislative nuisance and as a result a municipal offense does not necessarily leave a resident without a remedy, if the condition also constitutes a nuisance at common law. The remedy, of course, would be by way of civil action.

**Budget Implications**

There are no budgetary implications to this report.

**Financial Management Policies/Business Plan**

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

**Alternatives**

N/A

**Attachments**

None

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by:   
Wayne Anstey, Director, Legal Services