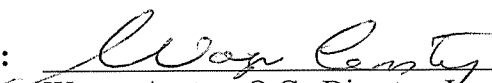


Halifax Regional Council
October 26, 2004

TO: Mayor Kelly and Members of Halifax Regional Council

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

DATE: October 19, 2004

SUBJECT: Councillor Smith - Outdoor Solid Fuel Appliances

INFORMATION REPORT

ORIGIN

At the meeting of Halifax Regional Council held on August 31, 2004 Council requested that the Municipal Solicitor report as to what recourse residents might have on the basis of a nuisance situation regarding the operation of Outdoor Solid Fuel Appliances.

BACKGROUND/DISCUSSION

An actionable tort of nuisance arises at common law when there is an unreasonable interference with someone's use and enjoyment of his or her own land. The nuisance must originate outside the complainant's property, but need not be constituted by an actual physical invasion of the land. The most familiar types of private nuisance include noise, vibrations, noxious odors, air or water pollution and roots of trees encroaching on the complainant's property.

As in many other areas of law, the law of nuisance involves the reconciliation of conflicting rights — the right to undisturbed use and enjoyment of one's land on the one hand, measured against the

right to freedom of action on the other to use his or her property. The courts have reconciled this conflict by allowing claims only where the offending party's actions cause inconvenience to the complainant beyond that which other occupiers in the area can be expected to bear, having regard to the prevailing standard and the character of the neighbourhood.

Individuals living in a particular area must be prepared to accept a certain amount of discomfort or inconvenience unless it exceeds that to be expected given the nature of the locality. For instance, someone operating a business in a commercial locality will normally be required to put up with a greater intrusion on his or her sensibilities than someone living in a residential area.

In determining whether an interference is unreasonable, the courts will not, by and large, take into consideration the particular sensitivity of the complainant. Rather, the courts will consider the effect the offending party's activity would have on normal persons of ordinary habits and sensibilities in the particular area.

Another factor to consider when determining the reasonableness of the interference is whether or not the offending party's conduct has social utility. Where the complainant has suffered only minor inconvenience, the offending party's conduct may be tolerated for its beneficial value to the community.

To determine whether an actionable nuisance exists in any particular circumstances, the party complaining of the nuisance should seek their own private legal advice. If an actionable nuisance exists, a remedy for damages or in some cases an injunction could be pursued through civil action in the courts.

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 (490-4229)

Report Approved by: _____
Wayne Anstey, Director, Legal Services (490-4229)