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Item No. 2

Halifax Regional Council
February 17, 2009

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY: 

Mary Ellen Donovan, Director of Legal Services

DATE: February 9, 2009

SUBJECT: CSAP Funding Human Rights Compliant

INFORMATION REPORT

ORIGIN

Decision of the Supreme Court of Nova Scotia released January 14, 2009.

BACKGROUND

Lucien Comeau, a francophone Acadian parent with children enrolled in schools of the Conseil Scolaire Acadien Provincial (“CSAP”) within HRM, filed a complaint against HRM with the Nova Scotia Human Rights Commission (the “Commission”) in June of 2003. Mr. Comeau alleged that the supplementary school funding taxation scheme, which was in place in 2003, resulted in HRM discriminating against residents on account of their Acadian origin because CSAP schools within HRM were not included in the statutorily mandated funding program. Parents with children in CSAP schools paid an area tax rate to raise this supplementary funding, but the CSAP schools within HRM did not receive any allocation of funds raised by this tax. It was alleged that this was discrimination on the basis of ethnic status against French Acadian parents with children enrolled in the CSAP schools within HRM. A similar complaint was filed against the Province of Nova Scotia.

DISCUSSION

HRM made an application to the Court to quash the decision of the Commission appointing a Board of Inquiry to investigate the complaint, and to prohibit the Board of Inquiry from conducting hearings in the matter. HRM contended that the Commission had no jurisdiction because the facts alleged could not constitute discrimination under the Nova Scotia *Human Rights Act* since the funding scheme was mandated by Provincial Legislation. HRM also contended that the matter would be appropriately the subject of a challenge under the Canadian Charter of Rights and Freedoms - such a proceeding having already been settled by the Province by amendments to the MGA.

Mr. Justice Boudreau found that the Commission did not have statutory jurisdiction to proceed with the complaint and further that the decision to proceed was not reasonable given the circumstances of the MGA amendments providing for funding to CSAP effective April, 2006. In the result, the decision of the Commission to appoint a Board of Inquiry was quashed and the Board was prohibited from inquiring into the matter.

This decision spares HRM from a two week long hearing into the complaint and from the potential liability to provide CSAP retroactive funding for the period from June 2003 to April, 2006. Legal counsel for the Commission advises that the Commission has not decided whether it intends to file an appeal of the decision.

BUDGET IMPLICATIONS

There are no budget implications associated with 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.

ATTACHMENTS

n/a

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.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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