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**Item No. 5**

**Halifax Regional Council  
August 4, 2009**

**TO:** Mayor Kelly and Members of Halifax Regional Council

**SUBMITTED BY:**   
M E Donovan, Director, Legal Services and Risk Management

**DATE:** July 13, 2009

**SUBJECT:** Land Use Bylaw Prosecution

## INFORMATION REPORT

### ORIGIN

Legal Services - Municipal Prosecutions

### BACKGROUND

On May 20, 2009, Landlord Maria Rockwell was convicted of a Land Use By-law offence and the Court determined that the minimum fine permitted by law was \$18,500.00.

## DISCUSSION

An important decision was rendered by the Halifax Provincial Court on May 20, 2009. The Court determined that in the case of certain land use by-law offences, each day an offence continues is a separate offence, even if the defendant is charged with a single violation over a range of days. Further, the Court determined that the penalty applies to each day that the offence continues.

Ms. Rockwell was using the building located at 1403 and 1407 Henry Street as a 17-unit apartment building when the legal use of the building was 2-units in an R-2 Zone. In Ms. Rockwell's case the offence continued for a period of 185 days. Even though the Court applied the minimum daily penalty of \$100, the resulting fine was \$18,500.00. The property has now been converted back to two-units.

Maria Rockwell was charged as follows:

**Between July 25, 2007 and January 25, 2008 at or near 1403 and 1407 Henry Street, Halifax, Nova Scotia (PID #00134478) did allow the land to be used in a way not permitted within an R-2 zone, to wit, a building containing more than four apartments, contrary to Section 35(3) of the Halifax Peninsula Land Use By-Law, pursuant to Section 505(1) of the Municipal Government Act, c. 18, S.N.S. 1998.**

Section 505 of the MGA [now section 369 HRM Charter] states:

**(1) A person who**

**(a) violates a provision of this Act or of an order, regulation or by-law in force in accordance with this Act;**

**(b) fails to do anything required by an order, regulation or by-law in force in accordance with this Act;**

**(c) permits anything to be done in violation of this Act or of an order, regulation or by-law in force in accordance with this Act; or**

**(d) obstructs or hinders any person in the performance of their duties under this Act or under any order, regulation or by-law in force in accordance with this Act,**

**is guilty of an offence.**

**(2) Unless otherwise provided in a by-law, a person who commits an offence is liable, upon summary conviction, to a penalty of not less than one hundred dollars and not more than ten thousand dollars and in default of payment, to imprisonment for a term of not more than two months.**

**(3) Every day during which an offence pursuant to subsection (1) continues is a separate offence.**

The penalty imposed in this instance is one of the larger penalties from the Provincial Court for this type of offence. Although strong objections were made to the imposition of a daily penalty for the period of violation, the Court found that this was clearly provided for in the MGA. Although this does not, in our opinion, represent new law, the imposition of continuing offence penalties are uncommon. This decision significantly strengthens HRM's hand in regard to this type of prosecution. Many individuals take the position that once they have violated the law, they might as well leave the violation in place for as long as possible. Others do not see the need to bring property back into compliance with the law. Now there is a clear consequence for allowing an offence to continue. The decision has gained recognition among municipal prosecutors across Canada and a copy is attached.

**BUDGET IMPLICATIONS**

None relating 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.

**ATTACHMENTS**

1. R. v. Maria Rockwell (2009) NSPC 23  
(The written decision of the Court)

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.

Report Prepared by : Josh Judah, Chief Prosecutor, 490-4124

IN THE PROVINCIAL COURT OF NOVA SCOTIA

**Citation:** Maria Rockwell 2009 NSPC 23

**Date:** May 20, 2009

**Docket:** 1867744

**Registry:** Halifax

**Between:**

Her Majesty the Queen

v.

Maria Rockwell

**Judge:** The Honourable Judge Michael B. Sherar

**Heard:** May 20, 2009, in Halifax, Nova Scotia

**Counsel:** Mr. Josh Judah, for the crown  
Mr. Ian Dunbar, for the defence

**Charge:** Between July 25, 2007 and January 25, 2008, at, or near 1403 and 1407 Henry Street, Halifax, Nova Scotia (PID #00134478), did allow the land to be used in a way not permitted within an R-2 zone, to wit, a building containing more than four apartments, contrary to section 35(3) of the Halifax Peninsula Land Use By Law, pursuant to section 505(1) of the Municipal Government Act, c.18, S.N.S., 1998.

**By the Court:**

[1] Marie Rockwell pled guilty before the **Provincial Court** on July 29, 2008 to the following charge:

Between July 25, 2007 and January 25, 2008 at or near 1403 and 1407 Henry Street, Halifax Nova Scotia (PID #00134478) did allow the land to be used in a way not permitted within an R-2 zone, to wit, a building containing more than four apartments, contrary to Section 35(3) of the Halifax Peninsula Land Use By Law, pursuant to Section 505(1) of the Municipal Government Act, c.18 S.N.S. 1998

[2] At the request of both parties, sentencing on that charge was adjourned on several occasions for the hearing of testimony and the receiving of oral and written submissions.

[3] As will become apparent, there is a substantial difference in the recommendations of the Crown and Defence counsel as to the appropriate penalty in this case.

[4] Mrs. Maria Rockwell was 68 years old at the time she testified; her husband, Wayne Rockwell, was 63 years old. They both testified that they had health issues and each purported to be caring for the other.

[5] The Rockwells purchased the property in her name in the early 1970s. When they acquired the property at 1403 and 1407 Henry Street, it was sold as two flats, though it was being used as student accommodations. They knew that the property was not in compliance with the stated R-2 zoning. Instead of being occupied as two units, the interior was divided into 17 very small apartments and rented to students. The property is located quite near to Dalhousie University and the area has a large number of student tenants. Mr. Rockwell stated that the property was usually 60-70% occupied, mostly from September to April. The rents, charged in later years, amounted to about \$350 per month per unit. Mrs. Rockwell stated that she was helping students by giving them a quiet place to live.

[6] The by-law enforcement officers related numerous attempts to contact the Rockwells and require them to bring the property in compliance. After one inspection, the Rockwells attempted to submit an application to license the property as a rooming house. No plans accompanied the application. In any case, a rooming house apparently could not be accommodated on that small property in that area.

[7] Mr. Rockwell stated that despite his infirmities, he has maintained the property. Ultimately, the Rockwells gave notice to their tenants to quit the premises, and by July 2008 the property was vacant.

[8] During the sentencing proceedings, the by-law enforcement personnel attended the subject property and took a view. The officer testified that as of January 12, 2009 the multiple mini apartments on the property had been torn apart and the numerous sinks and toilets had been removed. One basement unit appeared to be still occupied or able to be occupied.

[9] The bottom line is that during the period relating to the charge before the Court, the defendant knowingly created, and rented for profit, 17 apartments in a residential property zoned for no more than four apartments.

[10] What is the available and appropriate penalty? The Information was laid on January 25, 2008 and the relevant penalty provision was Section 505 of the *Municipal Government Act*, S.N.S. 1998 c.18, which states:

(1) a person who

(a) violates a provision of this Act or of an Order, regulations or by-law in force in accordance with this Act ....

is guilty of an offence

[11] And furthermore:

(2) Unless otherwise provided in a by-law, a person who commits an offence is liable, upon summary conviction, to a penalty of not less than one hundred dollars and not more than ten thousand dollars and in default of payment, to imprisonment for a term of not more than two months.

(3) Every day during which an offence pursuant to subsection (1) continues is a separate offence.

[12] On November 25, 2008, Royal Assent was given to the *Halifax Regional Municipality Charter* S.N.S. 2008 c.39. Section 369(1), of the *Halifax Charter*, is identical to s.505 of the *Municipal Government Act* supra.

[13] The Crown argues that since the offence is a continuing offence over a period of 185 days, the Court can impose a fine of at least \$100 - to a maximum of \$10,000 - for each separate day for a minimum total of \$18,500 to a maximum total of 1.85 million dollars.



[14] The defendant argues that even though the defendant has pled guilty to an offence occurring over 185 days, she was charged only with a single offence so the minimum fine the Court could impose would be \$100 to a maximum of \$10,000.

[15] Both the *Municipal Government Act* and the *Halifax Regional Municipality Charter* are subject to the *Summary Proceedings Act*, R.S.N.S. 1989 c. 450 as amended s.2(1).

### **Application of Act**

2 (1) Subject to any special provision otherwise enacted, this Act applies to

(a) every case in which a person commits or is suspected of having committed any offence or act over which the Legislature has legislative authority and for which such person is liable, on summary conviction, to imprisonment, fine, penalty or other punishment;

### **Summary conviction provisions of Criminal Code**

7 (1) Except where and to the extent that it is otherwise specially enacted, the provisions of the *Criminal Code* (Canada), as amended or re-enacted from time to time, applicable to offences punishable on summary conviction, whether those provisions are procedural or substantive and including provisions which impose additional penalties and liabilities, apply, *mutatis mutandis*, to every proceeding under this Act.

[16] One of the relevant provisions of the procedure found in the *Criminal Code* R.S.C. 1985 c. C-46 is s.789(1).

789(1) In proceedings to which this Part applies, an information

(a) shall be in writing and under oath; and

(b) may charge more than one offence or relate to more than one matter of complaint, but where more than one offence is charged or the information related to more than one matter of complaint, each offence or matter of complaint, as the case may be, shall be set out in a separate count.

previously enacted as R.S.C. 1970 c. C-34 s.724

[17] The **Nova Scotia Supreme Court [Appeal Division]**, as it then was, considered a similar situation in a prosecution under the provisions of the *The Dental Act*, R.S.N.S. 1967 C.75 s.25(1)(b) in the case of R. v. Mason 1972 Carswell NS 15, 20 C.R.N.S. 213, 4 N.S.R. (2d) 295, 8 C.C.C. (2d) 546.

[18] The relevant sections of *The Dental Act* supra were:

Sections 25(1)(b) and 44 of the Dental Act read:

25(1) Every person other than a registered medical practitioner, not registered and licensed under this Act, who ...

(b) holds himself out as qualified or entitled to practice dentistry or dental surgery or any branch thereof; or ... shall be guilty of an offence and for the first offence shall be liable to a penalty not exceeding one hundred dollars, for the second offence a penalty not exceeding two hundred dollars, and for every subsequent offence a penalty of five hundred dollars. Every day on which any such offence occurs shall be deemed a separate offence. Every person registered or licensed under this Act who employs an unregistered person in the practice of dentistry shall be liable to like penalties and every day on which such employment exists shall be deemed a separate offence. [emphasis added]

44. The Summary Convictions Act and amendments thereto shall apply to all offences under this Act.

[19] *The Summary Convictions Act* R.S.N.S. 1967 c.295 as amended by S.N.S. 1970 c.69 replicated the provisions of s.789(1)(b) of the current *Criminal Code* and s.724 of the 1970 version of the *Criminal Code*.

[20] Additionally, at the time of R. v. Mason, the *Summary Convictions Act*, s.21 provided a broad discretion to correct a defective information unlike the current legislative framework.

[21] In part, s.21 stated:

21(1) No objection shall be allowed to any information, complaint, summons or warrant for any alleged defect therein, in substance or in form ...

...

(5) Notwithstanding anything in this Act, the justice may at any time before judgment amend or alter any information or complaint to correct any alleged defect in substance or from therein

[22] The trial judge determined that the defendant had held himself out as qualified to practise a branch of dentistry between August 26, 1971 and October 15, 1971 when he was not registered under the *Dental Act* to do so.

[23] The trial judge in Mason stated several questions to the **Appeal Division** including:

Was I correct: (c) In holding that the provision in Section 25(1) of the Dental Act, namely, 'Every day on which any such offence occurs shall be deemed a separate offence,' voids the information in that the count contained therein charges more than one offence between the dates stated?

Was I correct: (d) In holding that the offences committed between the dates set forth in the information should be set out in separate counts in the same information or in separate informations for each offence?

[24] The trial judge had concluded that, under the *Dental Act* supra, if every day a breach of the Act occurred, then, an offence was committed, and if more than one offence was charged in a count, the provisions of the provisions of the *Criminal Code* s.724 [now 789 (1)(b)] were violated and the information was void.

[25] The Court answered both of the stated questions in the negative. Mr. Justice Cooper concluded at paragraph 18:

It seems to me that the offence here alleged is of a continuing character: see *Rex v. Armstrong* (1911), 18 C.C.C. 72 (Sask.) And *Regina v. Whelan* (1900, 4 C.C.C. 277 (Ont.). The effect of the words in question is that, although what is charged is one offence continuing within certain dates, penalties may be exacted with respect to each day within those dates on which there has been a holding out. In other words the one continuing offence is for the purpose of application of the penalty provision to be deemed, that is, treated as separate offences for every day on which the holding out occurs.

[26] A similar issue was before the **Manitoba Court of Appeal** in *Dressler v. Tolliver Gravel & Sand Supply Limited* (1963) 36 D.L.R. (2d) 398. In the decision the Court cited *R. v. Mason* supra with approval.

[27] In Dressler supra, an employer was charged with failing to pay overtime on various days between 9 February 1959 and 28 November 1959, as well as between 6 April 1960 and 18 May 1960, contrary to s.14(2) of the *Employment Standards Act*.

[28] *Employment Standards Act* s.14(2) states:

Where the contravention, neglect, omission or failure continues for more than one day, the person is guilty of a separate offence for each day that it continues.

[29] The trial Court dismissed the information on grounds that it was void for duplicity. The accused on appeal argued that there should be a separate information for each day.

[30] In the **Court of Appeal**, Justice Monnin concluded:

56 Sec. 14(2) of *The Employment Standards Act* establishes that where the contravention or failure to pay overtime wages continues for more than one day, the employer is guilty of a separate offence for each day that the contravention or failure continues. Thus, the employer is subject to a separate offence and a separate penalty for each day that the failure continues but this section does not prevent the offence from being continuous if the contravention, neglect, failure, or omission continues for a period of time as herein alleged.

- 57 It was submitted that sec. 696(1)(b) [now 789(11)] of the *Code* is fatal to the charge as laid, as the information was void for duplicity and was incapable of amendment. It cannot be successfully argued that a separate information should have been laid for each day that the employer failed to pay overtime wages. When the transaction is continuous from day to day or from week to week, such as in the case of daily or weekly employment over a period of time, and the information on behalf of the wage-earner alleges against one employer some contravention of the Act for a determinate period of time, it would be unreasonable, impractical and a waste of the court's time to expect the wage-earner to lay a large number of informations.
- 58 Basically, a charge must allege all the essential elements of the offence together with enough particulars to enable the party accused to identify the transaction and to prepare himself for the case which the complainant will attempt to make against him. That is the reason why the counts should not be mixed and more than one offence included in one count.
- 59 But where the nature of the employment continues and the subject-matter affects only one employee and one employer, I cannot accept that a multiplicity of charges must be laid. This would create a greater evil than what is challenged as defective due to duplicity.

[31] The Court concluded that while each day's contravention of the Act is a separate offence, it is a continuing offence, and s.14(2) of the Act did not require separate informations for each of a series of contraventions as long as the dates of the alleged contraventions were within the limitation period statutorily allowed for prosecution of the contravention.

[32] From the Dresser and Mason cases one may conclude that a continuing offence, over a series of dates, can be charged as a single offence and not be contrary to the provisions of s.789 (1)(b) of the *Criminal Code*. Moreover, in determining a penalty, the Court, where the legislation specifies, can consider that each day of the continuing offence can be treated as a separate offence.

[33] As an aside, how do the Courts treat a continuing offence when there is no daily or other intermittent penalty allowed?

[34] In a well reasoned decision, Justice Ehreke of the **British Columbia Supreme Court**, R. v. Valley Paper Cycle Limited BC 1422 refused to enter multiple convictions and cases pending penalties for the violation of regulations under the *Waste Management Act* S.B.C. 1982 c.41, occurring over multiple dates, because the particular regulation did not allow for separate penalties for each day.

[35] At trial, the appellant was convicted of storage of recyclable material containing gypsum at a place of storage in a facility that exceeded 1000 tonne contrary to s.4(25) of the *Regulations* under the *Waste Management Act*. Count



number one covered the period of March 16, 1999 to July 7, 1999, count two July 7, 1999 to March 29, 2000 and count three March 29, 2000 to September 9, 2000.

[36] The penalty under s.6 of the *Regulations* stated:

6. A person who contravenes section 4(1) and (2) or 5(1) commits an offence and is liable to a penalty not exceeding \$200,000.

[37] Justice Ehrcke agreed that the offence of illegal storage was a continuing offence and adopted the reasoning of McIntyre J of the **Supreme Court of Canada** in Bell v. R. [1983] 2 S.C.R. 471 @ p.488:

A continuing offence is not simply an offence which takes or may take a long time to commit. It may be described as an offence where the conjunction of the *actus reus* and the *mens rea*, which makes the offence complete, does not, as well, terminate the offence. The conjunction of the two essential elements for the commission of the offence continues and the accused remains in what might be described as a state of criminality while the offence continues. Murder is not a continuing offence. When the requisite intent to kill is present the crime is complete when the killing is effected. Conspiracy to commit murder could be a continuing offence. The *actus reus* and *mens rea* are present when the unlawful agreement is made and continue until the killing occurs or the conspiracy is abandoned. Whatever the length of time involved, the conspirators remain in the act of commission of a truly continuing offence. Theft is not a continuing offence. It is terminated when the wrongful taking has occurred with the requisite intention. On the other hand, possession of goods knowing them to have been obtained by the commission of theft is a continuing offence. The offence of kidnapping would not be a continuing offence, but that of wrongful detention of the victim following the kidnapping would be.

[38] He also applied the reasoning of MacKay J.A. in R. v. Siggins [1960] O.R. 284 (Ont. C.A.) @ p.287:

79 It would be clearly wrong to charge a man who had possession of stolen goods for a continuous period of one month with separate charges for each day of that period. It is only where the statute creating the offence provides that it shall be a separate offence or that separate penalties may be imposed for successive periods that a continuing offence can be treated as multiple offences.

[39] Justice Ehrcke concluded that the ongoing offence of illegal storage ought to have been charged as one continuing offence instead of three convictions for three separate periods. Since the penalty section, *Regulation 6* supra, did not provide for a daily sanction, then only one penalty ought to be applied. A conviction was upheld on one of the three charges and a conditional stay of proceedings entered on the remaining counts.

[40] Under the *Waste Management Act* s.54(17) the following provision also exists:

54(17) If an offence under this section continues for more than one day, separate fines, each not exceeding the maximum fine for that offence, may be imposed for each day the offence continues.

[41] However, that provision [54(17)] did not apply to the charges which the accused faced in Valley Paper supra. Presumably, a different result would have occurred.

[42] In 1979 the **Supreme Court of Canada** ruled on a charge arising out of the Quebec *Labour Code*. In Strasser v. Roberge [1979] 2 S.C.R. 953, 1979 Caswell Que 155, a Mr. Roberge was charged as follows:

Count Number 2

On July 3, 4, 5, 8, 9 and 10, 1974 Mr. Claude Roberge, being an officer of Local 5186 of the United Steelworkers of America, an organization of employees duly certified to represent the employees of Campbell Chibougamau Mines Ltd., the whole contrary to the provisions of the Labour Code, in particular ss. 124, 94 and 46 of the Code.

[43] The penalty under section 124 of the *Labour Code* states:

124 Any person declaring or instigating a strike or lock-out contrary to the provisions of this code, or participating therein, shall be liable, in the case of an employer, association or officer or representative of an association, to a fine of one hundred to one thousand dollars for each day or part of a day during which such a strike or lock-out exists and, in all other cases, to a fine of ten to fifty dollars for each such day or part of a day. [emphasis added]

[44] The requirements for laying a charge under the Quebec *Labour Code* included the provisions of the *Summary Convictions Act* of Quebec, including s.12, which states:

...

(2) A single complainant may charge several offences; each offence charged must be set out in a separate count ...

(4) When an offence is continuous, such continuation shall constitute a separate offence day by day.

[45] On appeal, it was argued that the information sworn against Mr. Roberge was not laid in accordance with subsections (2) and (4) of s.12 as stated above. It was argued that the information, as it read, included more than one offence in the single count

[46] The trial judge had held the charge was a continuing offence - that of having participated in a single unlawful strike lasting for several days. He applied the reasoning in Dressler and Mason and ruled that the continuing offence could be subsumed into the single count. He convicted Mr. Roberge and fined him \$100 per day for each of the seven days.

[47] Upon hearing the appeal in Strasser v Roberge, the majority of the **Supreme Court** (4-3) concurred with Mr. Justice Beetz and overturned the trial court finding. In his reasons, Mr. Justice Beetz applied the reasoning of the **Quebec Court of Appeal** in Office de la Construction du Quebec v. Amco Door Installation [1977] C.A. 135 and concluded that under the preemptive provisions of the Quebec *Summary Convictions Act*, s.12, each day that offence occurs must be alleged in a separate count whether the offence purportedly occurred on separate occasions, or occurred over several days as a continuous offence.

[48] In his decision, Mr. Justice Beetz at paragraph 29 specifically distinguishes the decision under the Quebec *Labour Code* from the holdings of Alberta and Nova Scotia appellate decisions in Dressler, supra and Mason supra respectively.

However, in these two decisions, the legislation to be interpreted was provincial Statutes referring to the Criminal Code and did not include any provision worded like the new section 12 of the Summary Convictions Act.

[49] In R. v. Trans Canada Pipeline Ltd (1994) 15 C.E.L.R. (NS) 62 Judge Lebel of the **Ontario Court of Justice** quashed an information under the *Fisheries Act* where

a continuing offence was contained in a single count. In his decision to quash the information, he did not set out the alleged dates of the offences under s.35(1), 36(3) and s.38(5) of the *Fisheries Act*.

[50] Though the *Fisheries Act* is federal legislation and was being presented in Ontario before the **Provincial Court**, the trial judge felt he ought to follow the **Supreme Court of Canada** decision in Strasser v. Roberge supra.

[51] At paragraph 21 of his decision, the Court states:

21 The relevant statutory provisions on this issue are s.789(1)(b) of the *Criminal Code* and s.78.1 of the *Fisheries Act*. The summary conviction procedures of the *Criminal Code* are clearly applicable in this instance given that the *Fisheries Act* is a Federal Statute.

22 The only relevant authority on a similar issue can be found in the Supreme Court of Canada decision of *Strasser v. Roberge* (1979), 50 C.C.C. (2d) 129. In that decision the court had to consider and interpret the provision of s.12 of the *Summary Convictions Act* as amended by S.Q. 1970 c. 11, s. 4 (a Quebec Statute) and in particular subss. (2) and (4) of s. 12.

12(2) A single complaint may charge several offences: each offence charged must be set out in a separate count.

.....

12(4) When an offence is continuous, such continuation shall constitute a separate offence day by day.

23 Section 12(2) of the *Summary Convictions Act* mirrors s.789(1)(b) of the *Criminal Code* of Canada.

... may charge more than one offence or relate to more than one matter of complaint, but where more than one offence is charged or the information relates to more than one matter of complaint each offence or matter of complaint, as the case may be, shall be set out in a separate count.

24 Section 12(4) of the Act mirrors s.78(1) of the *Fisheries Act*.

78.1 Where any contravention of this Act or the regulations is committed or continued on more than one day, it constitutes a separate offence for each day of which the contravention is committed or continued.

[52] He concluded s.78.1 of the *Fisheries Act* required that every day of an ongoing offence must be drafted as a separate count in order for the information to be valid

His Honour stated at paragraph 33:

The Crown vigorously argued that to have separate counts for each occurrence would be absurd and unnecessary. The court could possibly have to deal with a one thousand count information. He indicates that in this matter we are dealing with an “intermittent offence that is ongoing”. I am very sympathetic to this submission and agree that one thousand count informations would cause havoc to the administration of justice.

[53] In R. V. Gateway Industries Ltd. [1997] 7 W.W.R. 120, 23 C.E.L.R. (N.S.) 70, Judge Devine of the **Manitoba Provincial Court** considered the same s.78.1 of the *Fisheries Act*

[54] Gateway Ltd. Was charged between April 7, 1993 and November 26, 1993 with depositing a deleterious substance in water frequented by fish contrary to s.36(3) of the Fisheries Act and committing an offence under s.40(2) of the Act.

and the same offence between April 20, 1994 and June 24, 1994

[55] The procedural provisions of s.789(1) of the *Criminal Code* were applicable to the prosecution of the offence.

[56] Judge Devine was referred to the Strasser supra decision of the **Supreme Court of Canada** and the decision of Judge Label in R. v. Trans Canada Pipeline Ltd, supra.

[57] At paragraph 21, Judge Devine states:



- 21 In *Strasser*, the information alleged certain illegal behaviour on 6 individual non-consecutive days

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within the month of July. In contrast, the counts at issue before me allege that the applicants deposited a deleterious substance in waters frequented by fish over a span of time (for example, April 7, 1993 to November 26, 1993, both dates inclusive), and that they did thereby commit *an offence* under subsection 40(2) of the *Fisheries Act* (emphasis added).

- 22 The counts in the information before me do not offend the single transaction rule any more than does an information alleging an embezzlement of monies or a sexual assault which takes place between certain dates. (See for example, *R. v. Fischer* (Sask. C.A.); *R. v. Minchin* (S.C.C.); *R. v. Monk* (Ont. C.A.), re theft and *R. v. Burke* (P.E.I. C.A.) Re sexual assault).

[citations omitted]

[58] Judge Devine applied the reasoning in *R. v. Mason* supra and concluded that the charge under the *Fisheries Act* “was not a series of isolated acts but rather continuing behaviour over a course of time”.

[59] The Court concluded, after reviewing similar case law and legislation, that regulatory legislation required ongoing penalties provisions at paragraph 29 of the decision.

A number of these cases point out the public policy considerations for such a provision in regulatory legislation that provides for separate penalties to be imposed

for each date on which an offence occurs. If environmental legislation is to achieve its purpose, there must be meaningful penalties at stake for potential offenders to weigh into any cost-benefit analysis of continuing their offending behaviour. Such an interpretation of ss.78.1 of the *Fisheries Act* is supported both by the history of the enactment and the placing of the section in the “offence and punishment” section of the legislation.

[60] In essence, the Court concluded that the Crown could allege the commission of a continuing offence over a period of time within a single count and that the defendant would be subject to the legislated penalties on a daily basis upon conviction. In the case of the *Fisheries Act*, the potential penalties are formidable with fines in a first offence on summary conviction up to \$100,000 per day.

[61] In R. v. Gateway Industries, supra - the application before the Court was a motion to quash prior to plea. In its decision, the Court refused to quash the information, but did order the Crown to provide particulars to the accused to clarify the penalty that was being sought.

These particulars will state whether or not the offences are alleged to be continuing offences over each and every day of the time span alleged, or whether the offences are alleged to have occurred on one or more specified dates. In the absence of any such particulars, then the counts before the court will be treated by me as single counts attracting a single penalty, regardless of the number of days in respect of which an infraction may be proved.

[62] In Nova Scotia there is presently no requirement to set out a separate count for each day of a continuing offence as required in s.12(4) of the Quebec *Summary Convictions Act* S.R.Q. 1964 c.35 as amended.

[63] It is the conclusion of this Court that the charge contrary to s.505(1) of the *Municipal Government Act* before this Court alleging a breach of s.35(3) of the *Halifax Peninsula Land Use By-Law* by the defendant between July 25, 2007 and January 25, 2008 is a single continuing offence. As drafted, it meets the requirements of the *Summary Proceedings Act* of Nova Scotia and the *Criminal Code*, s.789. However, the penalty that is attached to commission of such an offence is outlined in subsections (2) and (3) of that section.

[64] Under subsection (2) the minimum penalty for the commission of such an offence is a fine not less than one hundred dollars and not more than 100,000 dollars. However, for the purposes of calculating that penalty under subsection (3), every day during which an offence occurs is a separate offence.

[65] In the present case, the defendant is not seeking to quash the information nor is the defendant seeking particulars. The defendant has entered a plea of guilty to the

charge before the Court. The defendant, by the plea, admits that she is guilty of a continuing offence between the dates of July 25, 2007 and January 25, 2008.

[66] It is argued that the charge against the defendant is ambiguous because she was charged with only violating one offence over a period of time, contrary to section 505(1), and no reference was made to s.505(3). With respect, it is quite clear that s.505(3) states:

Everyday during which an offence pursuant to subsection (1) continues is a separate offence.

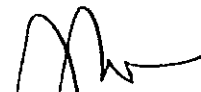
[67] By operation of law, the defendant is put on notice that upon tendering a plea of guilty to an offence alleged contrary to s.505(1), that they are liable for a financial penalty for each single day the offence continues to be committed as alleged in the charge.

[68] While this was an ongoing violation of the *Land Use By-Law*, knowingly committed for a financial profit, there is no evidence to suggest there has been any prior convictions entered against the defendant for a similar offence.

[69] Accordingly, the minimum penalty will be imposed at the rate of \$100 per day for 185 days for a total of \$18,500.00 - in default, two months incarceration.

[70] I will hear counsel with regards to the *Remission of Penalties Act* R.S.N.S. 1989 c.397, and time to pay.

Order accordingly,



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Michael B. Sherar  
Judge of the Provincial Court