

Halifax Regional Council

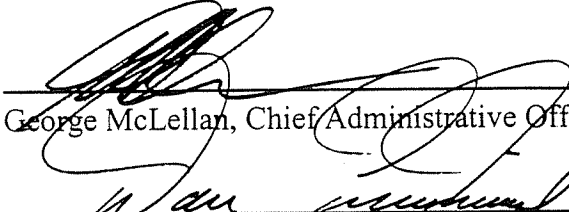
October 21, 2003

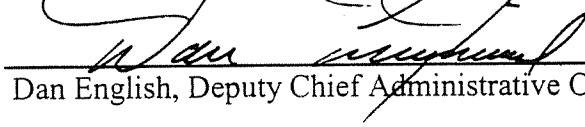
October 28, 2003

November 25, 2003

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:


George McLellan, Chief Administrative Officer


Dan English, Deputy Chief Administrative Officer

DATE: October 06, 2003

SUBJECT: **By-law Number P-501, An Amendment to By-law Number P-500,
Respecting Liability of Owner For Parking Tickets**

ORIGIN

Legal Services is recommending that the Halifax Regional Municipality By-law P-500, the Parking Meter By-law, be amended to incorporate s. 153(2)(ca) of the **Motor Vehicle Act** which provides authority (in addition to s. 259(1) of the **Motor Vehicle Act**) to prosecute the owner of the vehicle for a violation of By-law Number P-500.

RECOMMENDATION

It is recommended that Regional Council approve in principle and direct staff to arrange for formal adoption of the amendment to By-law P-500 outlined in Appendix A.

BACKGROUND

For most parking offences it is virtually impossible to prove who actually parked the vehicle. The parking enforcement officer obtains the license plate and the owner of the vehicle is charged. In order to charge the owner (who might not have driven the vehicle) it is necessary to create a statutory liability offence.

Most parking offences, such as parking in a no parking zone, are violations of the **Motor Vehicle Act**. Section 259(1) of the **Motor Vehicle Act** creates a statutory liability of owner offence so the owner of the vehicle can be prosecuted.

S. 259(1) of the **Motor Vehicle Act** implicitly creates a statutory liability of owner offence for violating By-law Number P-500, the Parking Meter By-law. S. 153(2)(ca) of the **Motor Vehicle Act** specifically authorizes a municipality to create a statutory liability offence in its Parking Meter By-law. The purpose of this amendment is to allow the HRM to utilize s. 153(2)(ca) of the **Motor Vehicle Act** in the event a Court might rule that s. 259(1) does not apply to a municipal by-law.

DISCUSSION

By-law P-501 would create a statutory liability offence under By-law P-500. This would ensure that the owner of the vehicle can be prosecuted for an offence under the Parking Meter By-law. This amendment would prevent parking tickets from being dismissed on the basis that s. 259(1) of the **Motor Vehicle Act** does not apply to a municipal by-law.

It is possible that this amendment is not necessary but it will remove any potential argument that the owner of the vehicle cannot to be prosecuted under the Parking Meter By-law.

Since the owner of the vehicle might not have actually violated the by-law, it is would be contrary to the **Canadian Charter of Rights and Freedoms** for the owner of the vehicle to be subject to imprisonment. Imprisonment is a theoretical possibility if fines are not paid. Therefore, s. 18A(2) is necessary to ensure that the owner of the vehicle is never imprisoned for unpaid fines under the Parking Meter By-law.

BUDGET IMPLICATIONS

There are no budget implications resulting at this time.

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

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

ALTERNATIVES

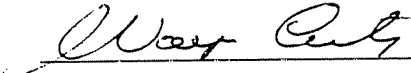
Council could choose not to amend the by-law. This is not the recommended option since this could leave a potential argument against the prosecution of owners. Amending the by-law would eliminate the potential argument.

ATTACHMENTS

Appendix A - Proposed amendment

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: Edward Sawa, Solicitor, Legal Services 490-4220

Report Approved by: 
Wayne Anstey, Q.C., Director, Legal Services 490-4229

APPENDIX A

**HALIFAX REGIONAL MUNICIPALITY
BY-LAW NUMBER P-501**

An Amendment to By-law Number P-500 Respecting Liability of Owner

BE IT ENACTED by the Council of the Halifax Regional Municipality as follows:

1. By-law P-500, the Parking Meter By-law, is amended by adding immediately following Section 18 the following Section:

18A Liability of owner and driver

- (1) The owner of a motor vehicle shall incur the fine provided for any violation of this by-law unless at the time of such violation the motor vehicle was in the possession of some person other than the owner without the owner's consent, either expressed or implied, and the driver of a motor vehicle not being the owner shall also incur the penalties or other consequences provided for any such violation.
- (2) The owner of a motor vehicle who incurs a fine under subsection (1) is not in any event liable to imprisonment.