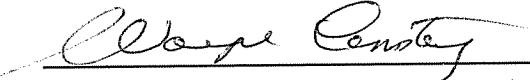


Halifax Regional Council
December 16, 2003

TO: Mayor Kelly and Members of Halifax Regional Council

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

DATE: December 12, 2003

SUBJECT: Mahaney v. Halifax Regional Water Commission

INFORMATION REPORT

ORIGIN

This Report originates as a result of decision of the Small Claims Court on November 5, 2003 dismissing a claim by Elizabeth Mahaney against the Halifax Regional Water Commission for damages to her motor vehicle and personal items resulting from a water main break on South Street on August 15, 2002.

BACKGROUND

An action was commenced in the Small Claims Court on October 2, 2002 by Elizabeth Mahaney against the Halifax Regional Water Commission for property damage to her uninsured motor vehicle, other personal property and for loss of income resulting from a water main break on South Street on August 15, 2002.

A defence was filed under HRM's insurance program on behalf of the Halifax Regional Water Commission denying liability and pleading section 26 of the Halifax Water Commission Act which provides that the Commission is not liable for damages "unless the damages are shown to be directly due to the negligence of the Commission or its employees."

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The matter was heard in Small Claims Court in Halifax on February 25, 2003, February 26, 2003 and on September 17, 2003. The Water Commission was represented by Karen Brown, Senior Solicitor with HRM Legal Services

DISCUSSION

The Small Claims Court dismissed the claim against the Halifax Regional Water Commission finding no liability on the part of the Commission. The Court stated that the Claimant had to show that there was negligence by the Defendant Water Commission or its employees for the Claimant to be successful. The Court accepted that Section 26 of the *Halifax Water Commission Act* provides statutory immunity to the Commission unless the Commission or its employees have been found to be negligent. The Court found that the standard of care required of the Defendant Water Commission was met and there was no breach of that standard.

Had the Halifax Regional Water Commission been found liable for the damages caused by the water main break of August 15, 2002, there would be implications on other possible claims arising out of water main breaks. A similar standard of care applies to HRM.

BUDGET IMPLICATIONS

N/A

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:

Karen L. Brown, Senior Solicitor

490-6477