



FEDERATION
OF CANADIAN
MUNICIPALITIES

FÉDÉRATION
CANADIENNE DES
MUNICIPALITÉS

LH
COPORATION OF THE TOWNSHIP OF ESQUIMALT

For Information:

CAO

Mayor/Council

RECEIVED: MAR 27 2017

Referred:

For Action

For Response

COTW

For Report

Council Agenda

IC

04438

March 17, 2017

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Président
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Councillor
Regional Municipality of
Halton, ON

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www.fcm.ca

Dear Mayor and Members of Council,

For the past 20 years, FCM's Legal Defense Fund has been a critical tool in defending the national legal interests of Canada's municipalities. When a member calls on FCM to intervene in a court case of national importance, it's the Legal Defense Fund that makes this support possible. The Fund has been instrumental in setting important legal precedents on a number of issues that are of crucial importance to all municipalities. These include rights-of-way management, payments in lieu of taxes, environmental protection as well as the constitutional ability of municipalities to exercise their legislative powers.

After years of activity, FCM's Legal Defense Fund has been fully depleted. Now we need municipalities like the Township of Esquimalt to help restore the long-term health of the Fund.

A robust Legal Defense Fund is more important than ever. As courts — particularly the Supreme Court — become more strict with regard to the number of intervening parties they will allow in any given case, FCM is consistently recognized as the sole municipal intervenor in cases with national implications. That means the Fund is the most certain and cost-effective way of protecting municipal legal rights in bodies such as the Courts of Appeal (provincial and federal), the Supreme Court of Canada and administrative bodies like the CRTC. While the Fund is used specifically for costs incurred directly by FCM, its influence in setting national legal precedents benefits every municipality in Canada. A recapitalized Fund will enable FCM to continue its longstanding efforts to maintain adequate municipal control over local rights-of-way and to maximize cost-recovery — while also bringing the municipal voice to a broad range of legal issues. What's more, it will support a growing demand for FCM to seek out proactive legal opinions on emerging policy issues, such as marijuana legalization. This will help provide all municipalities with the best legal advice available at a fraction of the cost, while contributing to the development of a united municipal response on national issues.

FCM has established a long-term strategy to recapitalize the Legal Defense Fund annually — beginning with an immediate call for contributions to cover ongoing legal costs. While support is voluntary, we strongly encourage members to contribute. FCM's Board of Directors has established a set contribution formula of 2 cents per capita. Enclosed is a voluntary invoice that indicates the Township of Esquimalt's proposed contribution for this year. This amount can be changed based on your budgetary situation. Starting next fall, municipalities will be invited to make an annual voluntary contribution to the long-term viability of the Fund as part of FCM's yearly membership drive.

All of us have a role to play in advancing the legal interests of Canada's municipalities. Thank you in advance for your immediate and ongoing support of the Legal Defense Fund. For more information, visit the membership page at fcm.ca or email info@fcm.ca.

Sincerely,

Clark Somerville
FCM President





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FÉDÉRATION
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Invoice / Facture

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T. 613-241-5221 F. 613-241-7440

Hurst, Laurie

Township of Esquimalt

1229 Esquimalt Road

Esquimalt, British Columbia /
Colombie-Britannique V9A 3P1

Invoice / Facture: ORD-04438-D9J6P2

DATE: 03/01/2017

ACCOUNT/COMPTE: 130

DUE DATE/DATE 04/01/2017

LIMITE:

ITEM/DESCRIPTION	QTY/QTE	RATE/TAUX	TAX/TAXE	TOTAL
Legal Defense Fund/Fonds de défense juridique	16,209.00000	\$0.0230	\$18.64	\$391.45
GST/TPS (5%):				\$18.64
TOTAL:				\$391.45

PAYMENT/PAIEMENT

By cheque payable to:

Federation of Canadian Municipalities

Par chèque à l'ordre de:

By Electronic Funds Transfer/Par transfert électronique de fonds

Royal Bank of Canada (RBC)

90 Sparks St, Ottawa, ON K1P 5T7

Transit Number/Numéro de transit: 00006

Account Number/Numéro de compte: 1006603

Fédération canadienne des municipalités

24, rue Clarence Street

accountsreceivable@fcm.ca/comptesrecevables@fcm.ca

Ottawa, Ontario K1N 5P3

HST # / No. de TVH: 11891 3938 RT0001

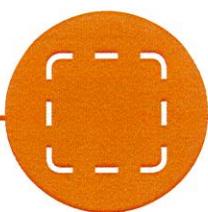
QST # / No. de TVQ: 1202728231DQ0001

Ref No. / No. de 130

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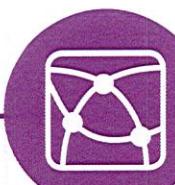
FCM's Legal Defense Fund

A TRACK RECORD OF SUCCESS



CONSTITUTIONAL JURISDICTION OF MUNICIPALITIES

The 2001 decision by the Supreme Court of Canada in the *Spraytech v. Hudson* case, in which FCM intervened on behalf of the municipal sector, ushered in a new approach to how courts should interpret the legislative authority of municipal councils. In that case, the Supreme Court indicated that courts should show deference to the choices made by local elected officials, in this case the Town of Hudson, Quebec. The Court also indicated that municipal legislative authority should be interpreted broadly and that local rules could coexist with federal regulations. Since then, FCM has continued to play an active role, as intervener, in a number of cases where the basic ability of municipalities to use their legislative powers has been at stake. Recent examples include *Rogers v. Châteauguay*, *Windsor v. Canadian Transit Company* (both heard by the Supreme Court in 2016) and *Hamilton v. Canada Post* (Court of Appeal for Ontario in 2016).



RIGHTS-OF-WAY MANAGEMENT

The deregulation of the telecommunications sector in 1993 completely changed the ROW environment overnight. A number of new, commercially aggressive providers sought quick access to municipal ROWs to deploy their networks. Through its Technical Committee on ROWs (some 40 legal and technical experts from across the country), FCM has coordinated the municipal sector's response for 25 years: development of best practices, information sharing and active participation in a number of legal cases. FCM was the Appellant to the Federal Court of Appeal in the landmark *Ledcor* case that established the principle that municipalities have the right to recover all incremental costs related to telecommunications activity on their land. FCM also intervened in early cases such as the Edmonton LRT tunnels as well as recent precedent-setting cases: next-generation access agreements (CRTC decision in *Hamilton v. Bell*), the applicability of general ROW bylaws to federal undertakings (Court of Appeal for Ontario in *Hamilton v. Canada Post*) and the use of bylaws to grant "consent" under the *Telecommunications Act* (brought by Calgary and currently before the CRTC).



WHAT MUNICIPAL LEADERS ARE SAYING ABOUT THE LEGAL DEFENSE FUND:

"The FCM Legal Defense Fund has played a critical role in advancing municipalities' constitutional and legal interests. In 2012, FCM defended the sector's interests in our city's payments in lieu dispute before the Supreme Court of Canada with the federal government regarding the valuation of Halifax's Citadel Hill. After a successful Supreme Court decision, this case was successfully resolved in 2016. The Fund remains a key tool for bringing the national voice to legal disputes and in defending the municipal sector's collective interests."

**Mayor Mike Savage,
City of Halifax, Nova Scotia**

"Defending municipal jurisdiction in court is a tall task for municipalities to bear on their own – especially for smaller municipalities. That's why FCM's Legal Defense Fund is such a critical tool. A well-supported Fund is key to defending the legal interests of municipalities of all sizes. FCM is consistently recognized by the courts as the sole national representative of our sector in cases of national importance. We need to continue to support the Fund to ensure that FCM is able to intervene in precedent-setting cases that impact each and every one of us."

**Councillor Lorne Olsvik,
Lac Ste. Anne County, Alberta**

To learn more, visit the membership page at fcm.ca.