FTR Now

Termination of Municipal Officers: The New Rules

Date: April 16, 2008

This Client Update follows up on our March 2008 Update regarding the Supreme Court of Canada's landmark decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9 (CanLII). As discussed in the previous Update, the Supreme Court significantly reformed the law relating to the termination of public office holders. The Court clearly signalled that where office holders are subject to an employment contract (which will almost always be the case), the termination of their employment is subject to ordinary contract law, and not the rules of administrative law.

In the municipal sector this means that the obligation to provide procedural fairness to municipal officers before they are terminated has been eliminated. It is within that context that this Client Update aims to provide some practical direction to municipalities in light of this fundamental change.

The elimination of a procedural fairness requirement in almost all cases prior to terminating a municipal officer is likely to be a change in the law that is welcomed by most municipal councils and officials as providing certainty in an area of the law that was far from certain. Previously, the issue of who was a municipal officer, and hence who was entitled to procedural fairness bedevilled most municipalities, as did the cost and delay of providing procedural fairness.

In moving forward with future terminations of municipal officers, municipalities will want to be mindful of a number of issues:

- First, normal employment contractual provisions will now govern the situation. However, it is important to remember that some municipal officers may contractually be still entitled to procedural fairness. As such, a review of contractual entitlements will be necessary before any termination can be affected.
- Second, many municipalities have appointed employees by by-law. Those by-laws should be repealed and replaced with a by-law allowing the Chief Administrative Officers to have the authority to determine who can hire and fire on behalf of the Municipality. Reasonable notice of this change may be required.
- Lastly, municipalities will want to remember that the elimination of procedural fairness does not eliminate the obligation of good faith in terminations as mandated by the Supreme Court in *Wallace v. United Grain Growers Ltd.*, 1997 SCC 332 (CanLII).

If you have any questions arising from this Client Update, please do not hesitate to contact one of the members of our municipal practice group.

The articles in this *Client Update* provide general information and should not be relied on as legal advice or opinion. This publication is copyrighted by Hicks Morley Hamilton Stewart Storie LLP and may not be photocopied or reproduced in any form, in whole or in part, without the express permission of Hicks Morley Hamilton Stewart Storie LLP. ©