

Enclosure 1 – Summary of FCM Legal Defense Fund Case Studies

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).

Federal Payments in Lieu of Taxes

Across Canada, PILT payments account for hundreds of millions of dollars in revenues for a several municipalities. For decades, FCM has negotiated with the federal government on behalf of the municipal sector. In the early 1990s, these efforts led to amendments to the PILT Act and an accompanying Memorandum of Understanding. As a result, federal (tax-exempt) properties were to pay an amount as close as possible to what would be charged if these properties were subject to local taxation.

Two municipalities — Montreal, Quebec and Halifax, Nova Scotia — in separate appeals to the Supreme Court, sought clarification of the PILT Act in order to bring greater predictability and stability to PILT calculations. FCM intervened in both cases and both resulted in clear victories for the municipal sector, with the Supreme Court unequivocally endorsing FCM's interpretation of the PILT Act.

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).

Jurisdiction of the Federal Court

In 2016, FCM intervened at the Supreme Court of Canada in a dispute between Windsor, Ontario and the Canadian Transit Company, the federally regulated corporation that operates the international bridge between Windsor and Detroit. The dispute centered on whether the Federal Court has jurisdiction to determine the applicability of a local property standards bylaw to a federal undertaking.

FCM intervened to support local access to justice in such cases, arguing that questions of federal-municipal jurisdiction must be decided in the local courthouse by a Superior Court Justice, not by the Federal Court. The Supreme Court of Canada ruled (in a 5 to 4 split) in favour of the City of Windsor, narrowly agreeing with the city and FCM's position. Although others asked to participate in the proceedings, FCM was the only municipal representative granted intervener status by the Supreme Court.