



## REPORT FOR ACTION

### Leave to Intervene in Supreme Court of Canada City of Nelson Case

**Date:** December 9, 2020

**To:** City Council

**From:** City Solicitor

**Wards:** All

#### SUMMARY

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The City Solicitor is seeking authority to approve a motion for leave to intervene in a Supreme Court of Canada case where the court will consider important legal principles relevant to municipal liability involving the application of immunity for government policy decisions.

#### RECOMMENDATIONS

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City Council authorize the City Solicitor, with retroactive authority, to bring a motion seeking leave to intervene in the City of Nelson v. Marchi appeal at the Supreme Court of Canada, and to intervene in the appeal if granted leave by the Court.

#### FINANCIAL IMPACT

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The City will incur some minor expenses for retaining an Ottawa legal agent for filing materials at the Supreme Court of Canada. These will be paid for out of the Insurance Reserve fund.

#### DECISION HISTORY

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None

## **COMMENTS**

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The Supreme Court of Canada granted leave to appeal to the City of Nelson from a B.C. Court of Appeal decision that raises important legal principles about municipal liability. The City of Nelson case concerned the municipality's policy of snow removal in the winter and whether compliance with its policy provided a defence on the basis that policy decisions are immune from tort liability. This case provides the Supreme Court with an opportunity for providing guidance on the scope and application of policy defences for municipalities that will have an impact beyond the particulars of the Nelson case.

The City Solicitor has consulted with the Insurance & Risk Management Group in Finance who supports the City's participation in this case. The City of Toronto is the largest municipality in Canada and frequently makes policy decisions about service levels based on balancing many factors including budgetary restrictions. The City also responds to a significant number of claims each year. The City has a genuine interest in this case and the guidance the SCC will provide in this area. We think it important for the City to seek leave to intervene to actively participate.

In order to meet the deadlines the leave materials will be filed with the SCC by no later than December 15, 2020. As a result the City Solicitor is seeking retroactive authority.

## **CONTACT**

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## **SIGNATURE**

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