

Item No. 5
Halifax Regional Council
17 September 2013

TO: Mayor Savage and Members of Halifax Regional Council

Original Signed by Director

SUBMITTED BY: _____
Catherine Mullally, Director, Human Resources

DATE: 17 July 2013

SUBJECT: Comeau versus HRM – Nova Scotia Human Rights Complaint

INFORMATION REPORT

ORIGIN

The Nova Scotia Human Rights Commission has referred the Complaint of Lucien Comeau against HRM and the Province of Nova Scotia to a Board of Inquiry for hearing.

LEGISLATIVE AUTHORITY

Section 35(2)(e) of the Halifax Municipal Charter.

BACKGROUND

The complainant Lucien Comeau has filed separate but similar complaints against HRM and the Province of Nova Scotia in respect of the period of time during which the Municipality provided supplementary funding for the Halifax Regional School Board but not for the Conseil Scolaire Acadien Provincial (“CSAP”), the province wide school board providing French first language schools with HRM.

HRM was formed in 1996 by the amalgamation of the four separate municipalities operating in Halifax County. Prior to the amalgamation, the two former cities of Halifax and Dartmouth had historically provided supplementary funding to their local school boards. The former Town of Bedford and the Municipality of Halifax County did not provide such funding. The *Halifax Regional Municipality Act* amalgamating the four municipalities required HRM to continue providing the supplementary funding for the Halifax Regional School Board (“HRSB”), and that obligation was also carried forward by section 530 of the *Municipal Government Act* (“MGA”).

The legislation recognizes the schools' reliance on this source of funding as it limits reductions by permitting HRM to only gradually phase out. The supplementary funding is raised by separate area rates in Halifax and Dartmouth, which are based on the assessed value of taxable property and business occupancy assessments.

In 2003-2004, the children of Mr. Comeau attended school in the former city of Dartmouth administered by the Conseil Scolaire Acadien Provincial ("CSAP"). The Complainant filed complaints against HRM dated June 26, 2003 and the Province dated July 30, 2004 objecting to the fact that CSAP did not participate in the MGA mandated supplementary funding and wished to have the funding extended to CSAP schools. In November, 2006 the MGA was amended to extend participation in the supplemental funding to the CSAP schools on an equal basis to the HRSB schools retroactive to April 1, 2006. Likewise, the Halifax Regional Municipal Charter continues supplementing funding for both the HRSB and the CSAP. By continuing this complaint, Mr. Comeau seeks to use the provisions of the Nova Scotia Human Rights Act to further extend the retroactive application of the statutory supplementary funding of CSAP schools to the date of his 2003 complaint.

The Nova Scotia Human Rights Commission investigated the complaint and found that CSAP schools received more per capita funding per student than the HRSB schools, however, the report recommended the appointment of a Board of Inquiry based on the conclusion that a "prima facie case of discrimination" existed because if given access to this additional source of money the CSAP schools would be able to offer more services.

HRM sought a judicial review to set aside the Commission's decision to refer the Complaint to a Board of Inquiry. HRM was successful in the Nova Scotia Supreme Court but not on appeal to the Court of Appeal or Supreme Court of Canada. As such, the matter was returned to the Board of Inquiry to continue proceedings.

DISCUSSION

The Nova Scotia Human Rights Commission (NSHRC) has recently begun to advance a restorative approach for handling Human Rights disputes. As of January 2012 parties involved in the Human Rights investigation process have been invited to participate in a new process that seeks to repair relationships and find solutions to complaints in a more collaborative and expeditious way. HRM and Mr. Comeau and other stakeholders have agreed to take the restorative approach as an alternative to the Board of Inquiry as a way of resolving this complaint.

In March 2013, HRM staff met with Mr. Comeau and representatives from the Acadian Community and the NSHRC to better understand the underlying harms caused as a result of HRM's decision to not extend supplementary education funding to French public schools in 2003. One of the fundamental issues raised by Mr. Comeau et al was HRM's relationship with the Acadian community and how their interests are represented within the municipal government

framework and in, particular, the decision making process and outcome regarding supplementary education funding.

As a result of this meeting and in keeping with the restorative process change by the NSHRC, Legal Services has invited a number of French speaking staff to actively participate in developing a restorative plan with Mr. Comeau et al to resolve the outstanding Human Rights Complaint. The HRM team is being lead by Jean Michel Blais, Chief of Police with support from Human Resources and Legal Services. All discussions between the two parties are now conducted in French. This change has been welcomed by Mr. Comeau and other representatives of the Acadian community. The parties will be continuing to meet over the next few months to build the resolution plan.

FINANCIAL IMPLICATIONS

To be determined.

COMMUNITY ENGAGEMENT

ATTACHMENTS

N/A

If the report is released to the public, a copy can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Catherine Mullally, Director, Human Resources (902) 490-7239

Original Signed by Director

Report Approved by: _____
Martin Ward, Q.C. Acting Director, Legal, Insurance & Risk Mgt Services (902) 490-6532
