

NOVA SCOTIA HUMAN RIGHTS COMMISSION  
BOARD OF INQUIRY

**IN THE MATTER OF:**  
**Board File No. H08-0983**  
**And**  
**Board File No. H09-1227**

BETWEEN:

Michael Craig, Complainant

-and-

Tammy Robertson, Complainant

-and-

Halifax Regional Municipality and Metro Transit

-and-

THE NOVA SCOTIA HUMAN RIGHTS COMMISSION

***Decision of the Board of Inquiry***

1. By appointment dated November 18, 2010, I was mandated to enquire into allegations of discrimination made on March 16, 2009 by Michael Craig, and on April 12, 2010 by Tammy Robertson, under s.5(1)(a)(o) of the *Human Rights Act*, R.S.N.S.1989, c.214, as amended. Both complaints alleged discrimination on the grounds of physical disability in relation to access to municipal transportation services in Halifax, Nova Scotia. Dates for hearing were scheduled for July 2011.

2. During the course of several pre-hearing conferences, by telephone and in person, I was made aware that there were active discussions underway in relation to resolving both complaints. I was advised on June 17, 2011, that the parties believed that they had settled the complaints. On June 29, 2011, I was presented with a document titled "Consent Order", signed by all of the involved parties that morning, as well as a Memorandum of Understanding, dated June 23, 2011. On the morning of June 29, 2011, I also heard the parties on the issues of the nature of the resolution, and their request for me to retain jurisdiction.

3. I have reviewed the "Consent Order" presented by the parties, and which is attached in unsigned form as an Appendix to this decision. After considering the terms of that document, and appreciating the submissions made to me, I am prepared to adopt the "Consent Order" as the core of an interim order, with some adjustments and some

comments. I will retain jurisdiction to hear the parties further on the issues of both the nature and extent of any contravention of the *Human Rights Act* by Metro Transit, as well as with respect to Metro Transit's compliance with the negotiated remedies which appear in the "Consent Order".

4. Although the complaints are made against Halifax Regional Municipality and Halifax Regional Municipality/Metro Transit, it was acknowledged by counsel appearing on behalf of both (Mr Randy Kinghorne) that both entities were properly before this Inquiry on both complaints. Any finding or order will therefore bind both legal entities. That acknowledgment by Mr Kinghorne was made at the pre-hearing conference held on March 18, 2011.

5. As a result of submissions heard on June 29, 2011, it is understood that the genesis of the complaints by both Mr Craig, and by Ms Robertson, arose from an historic approach by Metro Transit to accessibility issues for physically disabled persons. The historic policy or policies seemed to be to the effect that "one size fits all". That was Mr Kinghorne's succinct summary of the effect of the historic accessibility policy. The complainants both asserted in their complaints that respect for their personal physical disability issues, and reasonable accommodation of their particular accessibility issues, required a more sensitive, individualized approach.

6. There is no admission or acknowledgement in the "Consent Order" itself that Metro Transit has contravened the *Human Rights Act* in relation to these complainants. I understand from submissions made to the Board of Inquiry both by counsel for Metro Transit, and by the Complainants personally, that through the process of resolution discussions, there has been an acknowledgement by Metro Transit of the legitimacy of the complainants' position with regard to the impact of historic Metro Transit policies upon them. I am prepared on the basis of:

- a) the submissions made by all parties on June 29, 2011 particularly; and,
- b) appreciating the context provided by the June 23, 2011 Memorandum of Understanding; and,
- c) the specific remedial measures proposed in the "Consent Order" as they respond to the actual complaints of March 16, 2009, and April 12, 2010;

to find that there has been a discriminatory effect upon the two complainants. The application of historic Metro Transit policies in relation to access to transportation services towards these two complainants discriminated against them based on physical disability within the terms of s.5(1)(a)(o) of the *Human Rights Act*. I make that finding pursuant to s.34(7) of the *Act*.

7. Having made that s.34(7) finding, I must add that in the absence of hearing and evaluating *viva voce* or documentary evidence, or having further submissions from the parties, I will not make any further finding at this time in terms of the extent or content of

the discriminatory effect on access to transportation services. I am also not expressing an opinion now as to the extent of any co-relative obligations on the part of Metro Transit towards those with physical disabilities. I am only saying that I am prepared to find an acknowledgment of a discriminatory contravention by Metro Transit of the rights of access of Mr Craig and Ms Robertson to transportation services. If it is necessary in the view of any of the parties to address the dimensions of the contravention question further for purposes of any remedial issue, I retain jurisdiction to do so.

8. The parties have, by proposing their “Consent Order”, asked me to exercise my authority pursuant to s.34(8) of the *Act* to endorse a variety of remedies. These include:

a) some specific policy changes by Metro Transit in relation to access by those with physical disability to transportation services, particularly with regard to embarking and disembarking from accessible low floor buses;

b) some specific communications policy changes;

c) some inventory work with respect to stops that may be designated as accessible;

d) some changes with respect to access to the “Request a Stop” program; and,

e) some undertakings with respect to snowclearing at the Dartmouth Sportsplex’s wheelchair accessible stop.

The parties have also agreed that I should “remain seized of this matter until December 15, 2011, to address any issues related to the implementation of this Order.”

9. It appears to this Board of Inquiry that the “Consent Order” reflects certain principal objectives of the *Human Rights Act*, which include the education of persons about the fundamental importance of human rights, and about the values and purposes of recognizing human rights. I particularly recognize the value of settling complaints as the preferred means of resolving human rights disputes that occur from time to time. Settlement advances one of the purposes of the *Act*, as set out in s.2(d), which is to allow all participants in our society to exercise self-control of their lives. I commend the parties for their extended discussions of settlement, and their success in reaching the agreement presented. I also understand that further discussions among the parties are planned, beyond the settlement of these particular complaints.

10. Upon discussion with the parties on June 29, 2011, it became apparent that there was a diversion of views as to why I should or would remain seized of this matter. Some expected that this Board’s supervision of the implementation of remedies could extend beyond December 15, 2011. Some thought that December 15 was really only to be a tentative check-up date. Others expected finality of this Board’s role as of that date, with any compliance issues to pass to the Supreme Court. The general good will of the parties believed that absent unforeseen circumstances, all of the undertakings made in the “Consent Order” would be in place and operational by the end of November 2011, and

there would be no need for this Board of Inquiry to address any implementation issues. I am not persuaded that there is a true agreement among the parties in relation to the purpose of this Board remaining seized with this proceeding.

11. I do report the specific undertakings made by Metro Transit in the "Consent Order" and which form the "settlement agreement" of the parties in terms of remedy within the meaning of s.34(5) of the *Act*. I articulate those now as my order to remedy the contravention of the *Act* that I have already expressed at paragraph 6:

(1) Passengers, who because of personal mobility disabilities are using wheelchairs or scooters, shall have the right to embark (according to the established Metro Transit policies for the size of these devices and other space or passenger number restrictions) or disembark a functioning ALF bus at any existing Metro Transit bus stop which has not been converted into a designated accessible stop, provided that the accessible ramp can be deployed without risk of damage. A designated accessible stop is a stop with an accessible designation sign as noted in paragraph #4 of this order. Bus operators driving functioning ALF buses shall make all reasonable efforts to facilitate these passengers in their use of non designated accessible stops. Metro Transit does not warrant the safety of passengers using wheelchairs or scooters at stops not designated as accessible stops, and accepts no responsibility for risks to the passenger associated with using these stops. It is incumbent upon passengers to evaluate, in light of their own individual circumstances, the suitability of using a stop not designated as an accessible stop. In the absence of delays beyond the control of Metro Transit, these policy changes shall be implemented in November 2011.

(2) The Metro Transit time schedule booklet will be modified to provide a full listing of either the accessible or non-accessible stops. These stops will be noted on Metro Transit's website and on a stand-alone paper document (map or schedule) if they cannot be conveniently incorporated into the schedule's design. In the absence of delays beyond the control of Metro Transit these schedule booklet modifications shall begin in November 2011 and shall subsequently incorporate any recommendations from the accessibility consultant that are approved by HRM Council.

(3) Passengers with disabilities on functional ALF buses shall have the right to use the Request a Stop program (disembarking between stops at nighttime), and additional application of the Request a Stop program shall be extended for these passengers during daylight hours when it is reasonably necessary to accommodate them, including situations such as adverse weather conditions and personal security concerns, provided, where applicable, that the accessible ramp can be deployed without risk of damage. Operators of functioning ALF buses shall make all reasonable efforts to facilitate these passengers using the extended Request a Stop program at the location selected by the passenger. Metro Transit does not warrant the safety of passengers with disabilities disembarking at locations not designated as accessible stops, and accepts no responsibility for risks to the passenger associated with disembarking at these locations. It is incumbent on passengers to evaluate, in light of

their own individual circumstances, the suitability of disembarking at the selected location. In the absence of delays beyond the control of Metro Transit these policy changes shall be implemented in November 2011.

(4) In the absence of delays beyond the control of Metro Transit, all Metro Transit bus stops will be inventoried for accessibility and accessible designation signs placed on each stop that is designated accessible in or before November 2011. Metro Transit strategies for the upgrading of the remaining bus stops to designated accessible stops shall take into consideration the priorities noted by the Universal Accessibility Study.

(5) The wheelchair accessible stop in front of the Sportsplex bus terminal at Dartmouth shall be designated as 24 hour priority for snow clearing subject to reasonable operational and costs demands.

(6) The provision of this order in respect of snow removal designation at the bus stop in front of the Sportsplex shall continue in effect until completion of the construction of the new terminal to replace the Sportsplex terminal.

I will not make any supplementary comment about these six orders in light of my comments in paragraph 7 above, reserving jurisdiction to hear evidence and submissions from the parties in relation to the dimensions of Metro Transit's contravention of the *Act*, which could have an impact on the nature and extent of Metro Transit's appropriate remedial obligations.

12. I will retain jurisdiction to address any issues related to the implementation of the six specific orders which I made as my own orders in paragraph 11 (1) – (6).

13. The "Consent Order" document is attached to this decision. As the June 23, 2011, Memorandum of Agreement is understood to be an iterative document that forms the basis for continuing discussions among the parties, it will not be attached to nor be interpreted as forming part of the decision of this Board of Inquiry.

14. A signed copy of this decision will be delivered to the Commission. An unsigned copy has been distributed to the parties in pdf format.

DATED at Halifax, Nova Scotia, this 30<sup>th</sup> day of June, 2011.

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Donald C. Murray, Q.C.  
Board of Inquiry

**Appendix**  
**June 29, 2011 “Consent Order” of the Parties**

In the matter of the Nova Scotia *Human Rights Act*, R.S., c. 214, s. 1

**Tammy Robertson & Michael Craig**

Complainants

and

**Halifax Regional Municipality (“Metro Transit”)**

Respondent

and

**The Nova Scotia Human Rights Commission (the “Commission”)**

**Consent Order**

WHEREAS Article 9 of the *United Nations Convention on the Rights of Persons with Disabilities* binds Canada and its governments to “enable persons with disabilities to live independently and participate fully in all aspects of life... [and to] take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation...”.

AND WHEREAS Article 20 of the *United Nations Convention on the Rights of Persons with Disabilities* binds Canada and its governments to “...take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by...[f]acilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost”;

AND WHEREAS Metro Transit endorses the objectives of the said UN Convention, and as such all new urban area bus routes within Metro Transit’s service mandate are being implemented as designated accessible routes with designated accessible stops serviced by accessible low floor (“ALF”) buses, and further Metro Transit is presently engaged in the conversion of all urban area bus routes within its service mandate to designated accessible routes;

AND WHEREAS in furtherance of same Metro Transit is, in a fiscally responsible manner, presently in the process of replacing its conventional bus fleet with ALF buses and converting its bus stops into designated accessible stops by physically upgrading same to ensure that those stops are safe for use by persons using wheelchairs or scooters;

AND WHEREAS the complainants have filed complaints with the Commission to access transportation on any ALF bus which is serving a route that has not yet been converted to a designated accessible route, which complaints have resulted in the appointment of this Board of Inquiry;

AND WHEREAS Metro Transit has significant safety concerns in respect of the transport of wheelchair and scooter using passengers by ALF buses on non designated accessible routes;

AND WHEREAS Metro Transit makes no guarantee of ALF buses being available for return transportation on non designated accessible routes;

AND WHEREAS Metro Transit and the Commission have been working collaboratively to resolve the present complaints, and additionally matters beyond the scope of the those complaints to improve transit services for all passengers with disabilities;

AND WHEREAS Metro Transit has also independently instituted many improvements including the implementation of the recommendations from the Access-a-Bus Strategic Plan and engaged a consultant to provide a report on universal accessibility which report should be available by the fall of 2011;

AND WHEREAS on the consent of the Commission and the parties, the complaints before this Board of Inquiry are resolved on the basis of this Order;

IT IS HEREBY ORDERED THAT:

1. Passengers, who because of personal mobility disabilities are using wheelchairs or scooters, shall have the right to embark (according to the established Metro Transit policies for the size of these devices and other space or passenger number restrictions) or disembark a functioning ALF bus at any existing Metro Transit bus stop which has not been converted into a designated accessible stop, provided that the accessible ramp can be deployed without risk of damage. A designated accessible stop is a stop with an accessible designation sign as noted in paragraph #4 of this order. Bus operators driving functioning ALF buses shall make all reasonable efforts to facilitate these passengers in their use of non designated accessible stops. Metro Transit does not warrant the safety of passengers using wheelchairs or scooters at stops not designated as accessible stops, and accepts no responsibility for risks to the passenger associated with using these stops. It is incumbent upon passengers to evaluate, in light of their own individual circumstances, the suitability of using a stop not designated as an accessible stop. In the absence of delays beyond the control of Metro Transit, these policy changes shall be implemented in November 2011.
2. The Metro Transit time schedule booklet will be modified to provide a full listing of either the accessible or non-accessible stops. These stops will be noted on Metro Transit's website and on a stand-alone paper document (map or schedule) if they cannot be conveniently incorporated into the schedule's design. In the absence of delays beyond the control of Metro Transit these schedule booklet modifications shall begin in November 2011 and shall subsequently incorporate any recommendations from the accessibility consultant that are approved by HRM Council.
3. Passengers with disabilities on functional ALF buses shall have the right to use the Request a Stop program (disembarking between stops at nighttime), and additional application of the Request a Stop program shall be extended for these passengers during daylight hours when it is reasonably necessary to accommodate them, including situations such as adverse weather conditions and personal security concerns, provided, where applicable, that the accessible ramp can be deployed without risk of damage. Operators of functioning ALF buses shall make all reasonable efforts to facilitate these passengers using the extended Request a Stop program at the location selected by the passenger. Metro Transit does not warrant the safety of passengers with disabilities disembarking at locations not designated as accessible stops, and accepts no responsibility for risks to the passenger associated with disembarking at these locations. It is incumbent on passengers to evaluate, in light of their own individual circumstances, the suitability of disembarking at the selected location. In the absence of delays beyond the control of Metro Transit these policy changes shall be implemented in November 2011.



4. In the absence of delays beyond the control of Metro Transit, all Metro Transit bus stops will be inventoried for accessibility and accessible designation signs placed on each stop that is designated accessible in or before November 2011. Metro Transit strategies for the upgrading of the remaining bus stops to designated accessible stops shall take into consideration the priorities noted by the Universal Accessibility Study.
5. The wheelchair accessible stop in front of the Sportsplex bus terminal at Dartmouth shall be designated as 24 hour priority for snow clearing subject to reasonable operational and costs demands.
6. The provision of this order in respect of snow removal designation at the bus stop in front of the Sportsplex shall continue in effect until completion of the construction of the new terminal to replace the Sportsplex terminal.

7. The Board of Inquiry will remain seized of this matter until December 15th, 2011, to address any issues related to the implementation of this Order.

Issued this \_\_\_\_ day of July 2011.

\_\_\_\_\_  
Donald Murray, Q.C.  
Board Chair

Consented to by:

\_\_\_\_\_  
Human Rights Commission

\_\_\_\_\_  
Tammy Robertson

\_\_\_\_\_  
Michael Craig

\_\_\_\_\_  
Metro Transit