

2012

Hfx No. 406970

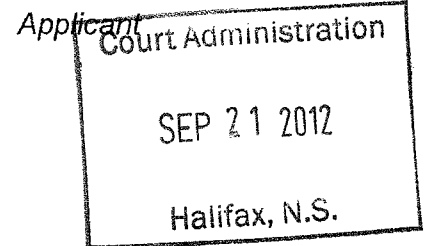
Supreme Court of Nova Scotia

Between:

Angela Jones

and

Returning Officer for the Halifax Regional
Municipality and the Chief Administrative
Officer for the Halifax Regional Municipality



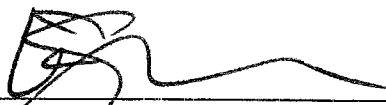
Respondents

Agreed Statement of Facts


1. Nominations for the office of councillor in the various districts of the Halifax Regional Municipality ("HRM") closed at 5:00 pm on September 11, 2012.
2. Angela Jones filed her nomination papers before the close of nominations on September 11, 2012. The nomination papers are attached as Tab 1 of the Returning Officer's Record. The Returning Officer signed the Receipt confirming that she had received the nomination papers and the required deposit from Ms. Jones, and added Ms. Jones to the list of candidates.
3. At the time of filing her nomination papers and at the time of closing of nominations, Ms. Jones was employed as a solicitor in the legal services department of Halifax Regional Municipality. She told the Returning Officer that she was on a leave of absence by virtue of her maternity/parental leave which was scheduled to end on November 16, 2012. The Returning Officer agreed that Ms. Jones was on a leave of absence.
4. Parental leave is governed by the HRM Pregnancy, Parental & Adoption Leave Policy, a copy of which is attached to this Agreed Statement of Facts.
5. Ms. Jones is not participating in any group plan for medical, life, or disability insurance through HRM.
6. The benefits received by an HRM employee who is granted a leave of absence pursuant to subsection 17C(2) of the *Municipal Elections Act* (the "Act") are governed by subsection 17C (9) of the *Act*.

7. On September 12, 2012, the Returning Officer became aware that Ms. Jones had not requested leave in accordance with subsection 17C(2) of the Act. The Returning Officer accordingly sought advice regarding the candidacy of Ms. Jones.
8. After clarifying with HRM Human Resources that Ms. Jones was on parental leave but had not requested a leave of absence pursuant to subsection 17C(2) of the Act, the Returning Officer communicated this information to Ms. Jones via telephone and e-mail. Ms. Jones was advised to make a request to HRM's Chief Administrative Officer ("CAO") pursuant to subsection 17C(2) of the Act. The Returning Officer's e-mail of September 12, 2012 at 4:22 pm is attached at Tab 9 of the Returning Officer's Record. The preceding telephone discussion primarily concerned the issue of benefits.
9. On September 12, 2012 at 4:49 pm, Ms. Jones wrote to the CAO requesting a leave of absence pursuant to section 17 of the Act. This e-mail is attached at Tab 10 of the Returning Officer's Record.
10. On September 13, 2012 at 2:25 pm, the CAO advised Ms. Jones via e-mail that, according to the provisions of the Act, an HRM employee must request a leave of absence prior to being nominated for election. The CAO said he could not find any authority in the Act which would allow him to grant a retroactive leave. The CAO's e-mail is attached at Tab 1 of the CAO's Record.
11. On September 13, 2012 at 3:03 pm, the Returning Officer advised Ms. Jones via telephone and e-mail that, because she had not applied to the CAO for a leave of absence pursuant to subsection 17C(2) of the Act prior to 5:00 pm on September 11, the conditions set out in the Act had not been complied with. As such, the Returning Officer indicated that she had no legislative authority to accept Ms. Jones' nomination. A copy of the Returning Officer's e-mail is attached at Tab 17 of the Returning Officer's Record.
12. Ordinary polling day in HRM is on Saturday, October 20, 2012. Advance voting via telephone and Internet commences on Saturday, October 6, 2012.

Agreed September 20, 2012.



Daniel M. Campbell, QC
Counsel for the Respondents



Matthew J.D. Moir
Counsel for the Applicant

Pregnancy, Parental, & Adoption Leave

Original Implementation Date:	
Date of Last Revision:	June 12, 2006
Effective Date of Last Revision:	June 12, 2006
Related Policies/Practices/Links:	<ul style="list-style-type: none"> • http://www.gov.ns.ca/enla/employmentrights/leaves.asp • http://www1.servicecanada.gc.ca/en/sc/ei/benefits/maternityparental.shtml • Application form for Supplementary Unemployment Benefit (Top Up)
Contact:	Senior HR Consultants, Human Resources

Halifax Regional Municipality will grant Pregnancy and Parental Leave in accordance with the Nova Scotia Labour Standards Code.

The provincial legislation sets out the eligibility and conditions for an entitlement to 17 weeks of pregnancy leave and 35 weeks of parental (including adoption) leave for a maximum of 52 weeks of unpaid leave. Pregnancy leave commences not more than 16 weeks in advance of the expected delivery date and the employer is entitled to four weeks advance notice.

The federal legislation sets out the eligibility and conditions for entitlement to federally funded pregnancy and parental (including adoption) benefits. Information concerning these federal government benefits is available from your local Human Resources Development Canada (HRDC) office; see the Blue Pages listing for your nearest office.

During any period of pregnancy or parental leave, sick leave and vacation credits continue to accrue as if you were actively at work.

HRM continues to cost-share group insurance premiums provided the employee on leave contributes the employee share of the required premiums. Such premiums may be deducted in advance of the leave, or paid during the leave by cheque and arrangements should be made in advance to ensure there is no interruption to your benefit coverage.

HRM will contribute both the employee and employer share of pension contributions during the leave and the employee is obligated to refund the amount of the employee share to HRM.

In addition to any applicable Parental Leave, the spouse of a person giving birth will be granted paid leave on the day of the birth of the child, if it falls on their scheduled work

day.

Additional information and a brochure on this topic are available from HR Services benefits consultants.

Employees entitled to pregnancy, parental and adoption leave under this business practice, and who provide the Employer with proof that they have applied for and are entitled to receive Employment Insurance benefits pursuant to the Employment Insurance Act, shall be paid an allowance in accordance with the Supplementary Unemployment Benefit (SUB) provisions of the Act and the following subsections:

Pregnancy Leave

The period of pregnancy leave payments made in accordance with SUB plan will consist of the following:

- (10) Where the employee is subject to a waiting period of two (2) weeks before receiving EI benefits, payments equivalent to seventy-five percent (75%) of their weekly rate of pay, less applicable deductions, for each week of the two (2) week waiting period, less any other earnings received by the employee during the benefit period.
- (11) Up to a maximum of (3) additional weeks, payments equivalent to the difference between the weekly EI benefit the employee is eligible to receive and ninety-three percent (93%) of their weekly rate of pay, less applicable deductions, less any other earnings received by the employee during the benefit period which may result in a decrease in the EI benefits to which an employee would have been eligible if no other earnings had been received during the period.

Parental & Adoption Leave

The period of parental and adoption leave payments made in accordance with the SUB plan will consist of the following:

- (1) Where the employee is subject to a waiting period of two (2) weeks before receiving EI benefits, payments equivalent to seventy-five percent (75%) of their weekly rate of pay, less applicable deductions, for each week of the two (2) week waiting period, less any other earnings received by the employee during the benefit period.
- (2) Up to a maximum of (10) additional weeks, payments equivalent to the difference between the weekly EI benefit the employee is eligible to receive and ninety-three percent (93%) of their weekly rate of pay, less applicable deductions, less any other earnings received by the employee during the benefit period which may result in a decrease in the EI benefits to which an employee would have been eligible if no other earnings had been received during the period. If a birth mother, who has been

- in receipt of pregnancy leave payments, does not have to undergo an additional waiting period with respect to her parental leave EI benefits, the birth mother is entitled to an additional 2 weeks of parental leave additional payments (in lieu of the 2 weeks waiting period payments) for a total of 12 weeks of parental leave additional payments
- (3) A birth mother may, at her discretion, apply her parental leave payments to weeks during which she is in receipt of EI benefits for pregnancy leave thus allowing her to receive a maximum of 17 consecutive weeks payments (2 weeks waiting period payments, 3 weeks pregnancy leave additional payments and 12 weeks additional parental leave payments) during her pregnancy leave.
 - (4) If both parents work for HRM the total number of weeks entitlement to payments for parental leave is 12 (2 weeks waiting period payments and 10 weeks additional payments). However the parents may, at their discretion, divide the 12 weeks between them in any manner they so choose.
 - (5) For the purpose of this allowance, an employee's weekly rate of pay will be one-half ($\frac{1}{2}$) of the bi-weekly rate of pay to which the employee is entitled for their classification on the date immediately preceding the commencement of their parental or adoption leave. In the case of a part time employee, such weekly rate of pay will be multiplied by the fraction obtained from dividing the employee's actual time worked (designated hours plus additional shifts but not including overtime) averaged over the preceding twenty-six (26) weeks, by the regular full time hours of work for the employee's classification.
 - (6) The Employer will not reimburse the employee for any amount employees are required to remit to Human Resources Development Canada or any other government agency, where such remittance is required under the provisions of the Employment Insurance Act due to the employee's annual income.

The revisions to this business practice are effective June 12, 2006.