

**THE NOVA SCOTIA HUMAN RIGHTS COMMISSION
BOARD OF INQUIRY**

BETWEEN:

ROBERT THERIAULT

Complainant

-and -

CONSEIL SCOLAIRE ACADIEN PROVINCIAL (CSAP)

Respondent

-and-

THE NOVA SCOTIA HUMAN RIGHTS COMMISSION

Commission

DECISION ON RECTIFICATION

Case Number 42000 H05-0039

History of the Proceedings

1. On April 30, 2005, Mr Robert Theriault was retired from his position as co-ordinateur des operations for the Conseil Scolaire Acadien Provincial (CSAP). On June 8, 2005, Mr Theriault complained about his forced retirement from the CSAP to the Nova Scotia Human Rights Commission, alleging discrimination on the basis of age.
2. On February 18, 2008, I was constituted as a Board of Inquiry to inquire into that complaint. After several days of hearing in June and August, 2008, I delivered a decision on September 2, 2008, finding that the CSAP had discriminated against Robert Theriault on the basis of age by compelling his retirement in a way that did not comply with the exemption available at the time under the Nova Scotia *Human Rights Act*, R.S.N.S.1989, c.214, s.5(1)(d), (h), and s.6(1)(g) and (h). At that time, I reserved jurisdiction to deal with the issue of remedy in the event that the parties were unable to come to some mutual agreement. That decision is reported at CHRR Doc.08-553 (N.S.Bd.Inq.).

3. That decision in relation to the allegation of discriminatory behaviour was considered by the Nova Scotia Court of Appeal as *Conseil Scolaire Acadien Provincial v. Nova Scotia (Human Rights Commission)*, 2009 NSCA 31, on March 25, 2009. No error was found in the reasons that had been provided for the conclusion that discrimination had in fact occurred, and it was noted that this Board had in fact retained jurisdiction to deal with evaluating the appropriate remedy for the discrimination.

4. Subsequent to a telephone conference involving the Board and all of the parties on July 21, 2009, written submissions were received from each of the parties. Evidence was received in documentary and *viva voce* form (from Robert Therault, Cetus David, and Ian Claveau), and final submissions made, on September 18 and October 2, 2009. At the conclusion of the hearing on October 2, I reserved the decision which I now deliver.

Authority in relation to Remedy

5. The *Human Rights Act* provides in s.34(8) that:

A board of inquiry may order any party who has contravened this Act to do any act or thing that constitutes full compliance with the Act and to rectify any injury caused to any person or class of persons or to make compensation therefor, and where authorized by and to the extent permitted by the regulations, may make any order against that party, unless that party is the complainant, as to costs as it considers appropriate in the circumstances.

The purpose of the remedial power under the *Act* is therefore two-fold: establishing “full compliance”, and “to rectify any injury”. Where the injury cannot be rectified, then a compensatory order may be made for the injury. Costs may also be awarded as appropriate, except against the complainant.

6. The Human Rights Commission indicated in its written and oral submissions that it did not seek any public interest remedy. The Commission took this position primarily because of legislative initiatives that have essentially ended the practise of mandatory

retirement since these proceedings commenced in 2005: see S.N.S. 2007, c.11 (proclaimed July 1, 2009). The changing legal landscape and treatment of mandatory retirement during the progress of this complaint has, however, also been argued by the CSAP as a contextual factor that the Board should consider to perhaps restrain the level of compensation or remedies to which Mr Theriault might be entitled – perhaps because there was some permissible age discrimination at that time. Mr Theriault confined the thrust of his submissions on remedy to the extent of the injury he has suffered. As a result the parties appear to agree, as I do, that there is no call for this Board of Inquiry, in relation to this complaint, to make any “public interest” order which would mandate some “full compliance” by the CSAP with a legislative scheme that is now moribund.

Quantifying the Injury/ Calculating the Compensatory Remedy

7. No one suggested or requested rectifying the forced retirement of Mr Theriault through reinstatement to his former position with the CSAP. The remedial issue left before me is therefore really a compensatory one, and the parties approached their submissions on this basis: what order of money will rectify the injury that Mr Theriault suffered as a result of his wrongful mandatory retirement at the end of April, 2005? Having considered the written and oral submissions of the parties, and the evidence presented in 2008 as well as this year, I have concluded that the “injury” flowing from Mr Theriault’s mandatory retirement includes a) lost income, b) lost pension entitlement, c) an RRSP loss, d) general personal harm, and e) some process/hearing costs.

Compensation for Lost Income

8. What income was lost to Mr Theriault as a result of his wrongful mandatory retirement? This was the primary concern of the parties. I accept the idea advanced at the remedy hearing by Mr Theriault that a sudden loss of employment through an unexpected and discriminatory retirement, such as he suffered, carried with it sudden and acute financial instability for him and his household. The sudden loss of full income can

destabilize a dependent household's financial security, and disrupt the former employee's financial planning options – even if other funds become available to soften the financial adjustment (such as pension income, and the “*indemnité de retraite*” [the earned retirement allowance]). That kind of disruption is part of the injury that flowed from the discriminatory act in this case, but it is a separate injury from the simple loss of income. I will deal with the financial disruption injury elsewhere. In this section of the decision I am concerned only with the loss of actual income.

9. The answer to this question as to what income was lost to Mr Theriault will be resolved by the formula of:

Time of employment after April 30, 2005 X Salary during that period.

The parties were in agreement as to the salary figures to be used in this formula. At the time of his forced retirement, Mr Theriault was earning approximately \$61,581 gross per annum. The pay rate for his level (niveau 5) was increased by 2.9% as of the first pay period in May, 2005, to \$63,367. Cetus David indicated that the 2.9% figure came from a 3 year scale for non-union staff at CSAP. The actual gross pay for Mr Theriault's position between May 1, 2005, and April 30, 2006, would have been \$61,684.03. I accept that calculation.

10. What term should be used for “Time of employment after April 30, 2005”? If Mr Theriault had not been mandatorily retired, how long would he have worked? Mr Theriault testified on September 18, 2009, that as of April 2005, he wanted or planned to work another one and a half, or two and a half, years. He testified that three and a half years would have been “a long way off”, and that the other figures provided “a happy medium”. Mr Theriault was also firm in his view that because of the inherent requirements of the CSAP's maintenance schedule, there was no sense to retiring from his position in the spring of a year. He said that it made more sense to retire from his

position in the fall after summer projects had been completed and school classes had resumed.

11. Mr Theriacult's evidence in September 2009 with respect to his choice of timing for retirement is at odds with what he expressed to the Board during the hearings in August, 2008. Mr Theriacult's evidence then was that he advised the CSAP that he planned to work past the age of 65, that he would give the CSAP six months notice of his intent to leave his employment, and that as of April 2005, he planned to work "an extra year". That is also the language that Mr Theriacult used in his original complaint to the Commission. I found as a fact in the decision on discrimination, at paragraph 9, that Mr Theriacult's actual intention as of April 2005 was to work "an extra year".

12. While I doubt that it would be fair to the parties to re-open the issue of what Mr Theriacult's intentions were as of April 2005 despite my previous finding, I would not change my finding on that issue based on the evidence provided on the remedy hearing anyway. To the contrary of Mr Theriacult's evidence, there was evidence from Mr David of the CSAP that Mr Theriacult's actual replacement was able to take over Mr Theriacult's duties without difficulties starting "close to the end of May", which would have been in 2005. Further, Mr David pointed out that the nature of the job for the co-ordinateur des operations meant that emergency work could and has challenged the concept of an orderly, predictable, annual sequence of work for any co-ordinateur des operations.

13. I find that the "loss of employment" injury caused by the mandatory retirement of Mr Theriacult was the loss of "an extra year" of employment. One year should be used as the "time of employment" in the formula for calculating this loss. Therefore, based on the evidence detailed in Exhibit I, Mr Theriacult's gross income loss is \$61,684.03. This is the amount that he should have received as gross employment salary between May 1, 2005 and April 30, 2006. That is 3.5 years ago now.

14. In order to arrive at an appropriate figure for Mr Theriault's true lost income, I have been asked to consider Mr Theriault's efforts, or not, to mitigate his loss, and income that he was able to earn during the remainder of 2005 and into 2006 from paid employment, as well as from the sale of logs he cut in his own woodlot. In addition, I have been asked to make certain deductions from what would be considered his employment income – which includes his pension income and employment insurance.

15. I accept that Mr Theriault had a duty to mitigate his loss. However, Mr Theriault did not have a duty at the age of 65 to search for employment beyond his chosen community. He also had no duty to seek and accept work in an occupation that would not employ his core professional talents and skills. The evidence is that Mr Theriault did find some limited employment that used some of his core capacities - when he assisted a business called Lewis Engineering to collect energy data during the summer of 2006 on a municipal contract in Clare. This occurred after the one year compensation period, and therefore does not represent an appropriate deduction from Mr Theriault's lost income. Prior to the Lewis Engineering work, around Easter 2006, Mr Theriault secured brief employment as a supervisor of enumerators for Stats Can census work. This was full-time work while it lasted, and grossed \$1800 (Exhibit D). That is not work that Mr Theriault could have undertaken had he been working for the CSAP.

16. During the year of concern to the Board of Inquiry, Mr Theriault did spend some time in his inherited woodlot, and produced more truckloads of cut wood for sale than he would have normally been able to do during the years that he was employed with the CSAP. Instead of logging his usual one and half truckloads, he logged five (both figures approximate). Mr Theriault calculated his "income" from "sale of logs" for income tax purposes as \$3270.66. There was no evidence as to whether this was a gross or net figure. I am going to infer that this was income earned prior to April 30, 2006, even though it is reported in the same tax return as the Lewis Engineering income from summer 2006. I will not however deduct this income from the lost income claim. The funds earned are, while perhaps taxable as income, more in the nature of an asset sale

than income. The fact that Mr Theriault had the good fortune to be able to increase logging activities on his woodlot, to turn assets into cash, to soften the financial impact of his forced retirement, should not be used to reduce his calculated financial loss. Had Mr Theriault been treated appropriately by the CSAP, he would not only have had a year's work, but also his full income to April 30, 2006, as well as the logs that he felt obligated to sell sooner than he would otherwise have done.

17. The \$1800 from Mr Theriault's Stats Can income will be deducted from the lost income figure on a gross basis. I would also deduct from the lost income figure the gross amount of the CSAP pension paid to him during the 12 months from May 1, 2005, to April 30, 2006, which I understand (from Exhibit K, paragraph 11) was \$7,761.41. In coming to this conclusion I accept and apply the reasoning expressed in *Canada (Canadian Human Rights Commission v. Canada(Attorney General)*, 2001 FCT 1399, at paras.60 – 61. Put simply, the purpose of a lost income award is for *lost* income. Here the discriminatory act had not only the effect of depriving Mr Theriault of his salary, but also of providing him with a new source of (pension) income. In order to make Mr Theriault whole, to compensate him for the actual injury suffered to his income, we must deduct the new income from the putative lost salary.

18. I would not propose to make any further deduction for an alleged failure to mitigate – to the extent that that concept applies: see *Chopra v. Canada(Attorney General)*, 2007 FCA 2698, at para.40. Mr Theriault's post-employment adjustment, on a financial and social and emotional basis, was made more difficult by the abruptness of his termination in the late spring of 2005. I find that it would not be reasonable to expect that Mr Theriault could have immediately re-oriented himself to the acquisition of new employment. Appreciating that Mr Theriault also lived in an area of the province with limited employment opportunities for his core skills, and that his marketability to potential employers could have been hampered by a quite limited future horizon on his likely employability, the fact that it took some 10 months for Mr Theriault to find some useful paid employment is not unreasonable. That amount of time to find useful work

might have been reduced if the retirement process at CSAP had included retirement preparation planning – including outplacement counseling and job placement assistance for Mr Theriault in the months leading to April 2005.

19. I will not deduct from the lost income figure the amounts received by Mr Theriault in the 12 months following April 30, 2005, on account of Employment Insurance (\$12,268: Exhibits F and G). This was income which Mr Theriault would have been entitled to receive commencing May 1, 2006, had the CSAP respected Mr Theriault’s right to continue working for the “extra year” between May 1, 2005 and April 30, 2006. It is money that he did get to collect sooner because of the CSAP termination of his employment, and those funds did cushion some of the financial blow of his sudden termination of work. Like the Retirement Allowance discussed later in these reasons, I view these benefits as funds which Mr Theriault earned and which he would have been entitled to receive regardless of when his work with the CSAP came to an end. His termination of employment in April 30, 2005, only determined the timing of when he became entitled to receive those earned benefits.

Compensation for Loss of Pension

20. I turn now to Mr Theriault’s pension. Because Mr Theriault’s pension through the Nova Scotia School Boards Association is a defined benefit pension (Exhibit J), the amount of pension which he is receiving now and which he will receive in the future has been based on the amount of his contributions through to April 30, 2005 only. In other words, his loss of employment for “an extra year” has permanently injured the level of the defined benefit provided by his pension.

21. Mr Ian Claveau was called by the CSAP to testify at the hearing on October 2, 2009. He was qualified as a pension actuary capable of giving opinion evidence in relation to the pension issues before the Board of Inquiry. Mr Claveau explained that had Mr Theriault’s pension benefit been defined as of April 30, 2006, with another year of

contributions to the plan on his behalf (by himself as well as by the CSAP), Mr Theriault's pension would have been \$8,905.87 annually rather than \$7,761.41, which it will now always be. Of course, Mr Theriault also collected pension benefits a year earlier than he would have done had he remained in his position with the CSAP. Mr Theriault also did not make pension contributions between May 1, 2005, and April 30, 2006.

22. Mr Claveau described in his evidence the effective loss to Mr Theriault, in dollars current as of May 1, 2006, of the retirement on May 1, 2005. The commuted value [the present value of his future pension benefit] of his pension as of May 1, 2006, would have been \$123,600, rather than the \$109,900 that it was on the same date in 2005. Mr Theriault's pension contributions between May 1, 2005, and April 30, 2006, had he remained employed, would have been \$4,073, or \$4,169 with interest. For all of his "projected" values, Mr Claveau used a simple rate of interest of 4.75%. The result of Mr Claveau's calculations is that as of May 1, 2006, the present value of the loss on Mr Theriault's pension benefit was calculated as follows:

Commutated value as of May 1, 2006	123, 600
<i>Minus</i>	
Commutated value as of May 1, 2005 (projected forward from the 109,900 figure)	115, 100
<i>Minus</i>	
Missed or Unmade contributions (projected forward from the \$4,073 figure)	4, 169
Present Value of Pension Loss (as of May 1, 2006)	4, 331

23. As counsel for the Commission pointed out through examination of Mr Claveau, there are other approaches that can be taken in calculating the value of the pension loss,

which produce similar but not identical numbers. I accept the calculation as done by Mr Claveau because he is familiar with the plan, and appreciates the sophistication of the assumptions and calculations involved in producing a legitimate present value for Mr Theriault's permanent loss. I also accept, because neither Mr Claveau nor counsel made the suggestion, that for purposes of this case it would not have been possible to rectify the injury to Mr Theriault's pension by funding a concurrent pension payout of \$1,144.46 per annum (the difference between the \$7,7614.41, which is the current defined benefit on an annual basis, and the \$8,905.87 that it should have been).

Consequential Losses

24. Mr Theriault led evidence that one of the consequences to him and his household of the discriminatory retirement action by the CSAP was that he had to re-arrange his financial affairs, and that this resulted in a specific financial loss to him. Mr Theriault had accumulated two small RRSPs (registered retirement savings plans) outside his pension. When he was retired at the end of April, 2005, he said that he had to transfer these into two income funds. The parties at the hearing agreed to value the "12 month" loss proposed for this at \$161.45. I will accept the agreement to that figure.

25. Earlier in these reasons I referred to one of the injuries arising from the discriminatory behaviour of the CSAP as the financial disruption caused to Mr Theriault and his dependent household: paragraph 8, *supra*. That is still a separate issue from this particular item of compensation. Compensation for the suffering of financial disruption is something in the nature of general damages, which I will deal with below.

Other Special Compensation

26. The hearing of this complaint occurred in two distinct phases. Liability issues were litigated in 2008, primarily at the Universite Ste Anne, close to Mr Theriault's usual residence. When the hearing resumed to deal with remedial issues, the evidence was taken and arguments made in Halifax. While each of the parties agreed to the location of the various hearings for the convenience of counsel and witnesses, the Board appreciates that Mr Theriault was involved in these hearings as an injured party. He has largely funded his own participation in this process, both in terms of time and the expenditure of travel/attendance expenses. In particular, the remedy portion of the hearing involved two trips to Halifax, including overnight accommodation. In recognition of this cost of participating, the Board will award Mr Theriault a global amount for travel, meals, and accommodations of \$400. As these expenses were incurred within the last couple of months, the \$400 will not be subject to any interest adjustment.

Retirement Allowance

27. Upon his retirement, Mr Theriault received what the CSAP described as a "generous" retirement allowance. This was a benefit effectively earned by Mr Theriault during his employment by maintaining good health and good work attendance. The amount of retirement allowance earned reflected the number of sick days not used by Mr Theriault. He was, as of April 30, 2005, entitled to the maximum benefit. Whether or not this was "generous", the only reasonable inference to draw from evidence about the retirement allowance is that if Mr Theriault had continued to work until April 30, 2006, he would have continued to qualify for the maximum benefit available. Counsel for the Commission indicated that there was no loss to be claimed in relation to the retirement allowance, and Mr Theriault did not disagree with that. Therefore, there will be no award or deduction by the Board in relation to the retirement allowance.

General Damages

28. The authority of a Board of Inquiry to award general damages has been discussed in a number of decisions, of which I need only refer to *Nova Scotia Construction Safety Assn. v. Nova Scotia (Human Rights Commission)*, 2006 NSCA 63, where the Court approved three distinct awards of general damages at paras.134 - 138, but set aside an award of exemplary damages, at paras.139 – 148, with the following trenchant observation, at para.147:

Had the Nova Scotia Legislature intended this *Act* to authorize boards of inquiry to award exemplary damages, it could have added an express *provisio* to that effect. In my view, the absence of such a provision underscores the well recognized objectives of the *Act*, and that its underlying purpose is remedial, so as to educate and inform rather than punish the wrongdoer.

General damages are appropriately within the jurisdiction of the Board to award, so long as their purpose is remedial and compensatory within the meaning of s.34(8) of the *Human Rights Act*.

29. Mr Theriault spoke movingly about his employment history, his home life, and the impact that mandatory retirement from the CSAP had upon him. Some of the social adjustment that he described as following from the termination of his employment would have been experienced whenever he had retired – though those adjustments might have been softer if the adjustment to retired status had been voluntary rather than forced, and had CSAP provided some form of retirement planning assistance. The point for this Board of Inquiry to note is that Mr Theriault’s sense of self was harmed by the failure of the CSAP to deal with his employment rights in a non-discriminatory way. He deserves recognition of that in compensation beyond the Board’s simple declaration.

30. Earlier in these reasons I expressed the conclusion that Mr Theriault had established to my satisfaction that a real component of the injury that he suffered as a

result of his mandatory retirement was the sudden disruption to his level of income – not just the loss of that income. This not only affected him, but also disrupted the household in which he lived that depended upon his income. Mr Therault’s freedom of action in relation to his financial affairs was disrupted by the CSAP’s discriminatory act. Mr Therault was influenced into making undesired and detrimental financial transactions because of the CSAP’s discriminatory act. Evidence of the extent of the financial disruption to Mr Therault’s life has already been discussed in relation to the conversion of RRSP funds into income funds as discussed above (the losses on which have been compensated for by a separate award in paragraph 23), and the conversion of logging assets into cash sooner than he might have chosen to do so (described in paragraph 16).

31. While the Board accepts that general damages should be awarded in part to reflect the fact that economic disruption was caused to Mr Therault and his dependent household, this Board of Inquiry will not calculate those damages on the basis of Mr Therault’s future financial *desires* as of April 2005. Mr Therault expressed thoughts during his evidence on the remedy phase of the hearing about the kind of financial security he would like to have achieved for his daughters, and which had motivated him to want to keep working. There is no evidentiary basis on which to know much about Mr Therault’s plans in that regard, nor whether they were realistically achievable. What was clear from his evidence was that Mr Therault’s financial *plans* in support of his daughters were choices about what he wanted or hoped to do with whatever available income he had. These choices may or may not have come to fruition for a variety of unknown contingencies even if he had remained employed with the CSAP. Interference with his sense of financial security is something different. Therefore, while I accept that the interference caused to Mr Therault’s sense of financial security by his mandatory retirement deserves some compensation within a general damage award, I take the view that fulfilling Mr Therault’s proposed future financial plans is not part of rectifying the injury created by his mandatory retirement. I will not use Mr Therault’s *plans* for the use of his income as a basis upon which to calculate general damages.

32. Counsel for the CSAP suggested, as noted earlier, that because the legal landscape in relation to mandatory retirement was changing at the time of Mr Theriault's retirement, that should inform our discussion of general damages. Counsel also suggested, though without perhaps using these particular words, that the CSAP *believed* that it was complying with the legislative regime in place at the time and therefore was not acting in an *intentionally* discriminatory way. Counsel for the CSAP also suggested that the nature of the discrimination involved here was not as insidious or as socially-loaded or as historically entrenched as gender and racial discrimination, and that therefore this would not be an appropriate case in which to award general damages – or at least not significant general damages. Finally, counsel for the CSAP asked the Board to consider that the CSAP was a public organization, responsible to exercise responsible stewardship of public funds.

33. Counsel for the Commission articulated for Mr Theriault a submission in relation to the appropriate considerations for a general damage award in this matter. Those submissions reflected the evidence of Mr Theriault as to how the unilateral termination of his employment through mandatory retirement was a significant blow to his sense of self. It had left him in a fog, feeling betrayed, bitter, disillusioned, upset, and frustrated.

34. These words, used in evidence by Mr Theriault, express the sum of feelings that too regularly accompany the experience of discrimination. The *Human Rights Act* prohibits the making of certain life-affecting decisions about individuals based on irrelevant personal characteristics over which the victims have no control. In Mr Theriault's case, this 'irrelevant personal characteristic' was his age. Mr Theriault's employment was, as I referred to in the decision on liability, much of what provided his sense of self-worth. His work and his work role also provided him with much of his social life as well. To lose those things by the discriminatory act of an employer created the same sense of powerlessness that all victims of discrimination feel. The *reason* for being a victim of discrimination scarcely matters to the victim. On this level, the personal experience of discrimination remains the same whether the *reason* ascribed is age, race,

or gender. The intent of the institution practicing the discriminatory behaviour is also irrelevant.

35. In my view, it is appropriate to consider general damages in terms of an amount of money that will compensate Mr Theriacult for the *effect* of discriminatory behaviour. Those effects for Mr Theriacult here include an accelerated loss of the emotional accoutrements of employment. The harm here did involve a permanent loss of employment, though Mr Theriacult would have had to face retirement at some date. His mandatory retirement by the CSAP deprived him of the dignity of being involved in the choosing of the time of his retirement. Mr Theriacult was deprived of the ability to participate in a decision about a significant and central part of his life. This was not a decision about whether Mr Theriacult could earn a few extra days work as a substitute teacher: *Cline v. Valley Regional School Board* (2007), 61 C.H.R.R. D/391 (N.S.Bd.Inq.), or whether he endured daily confrontation with persons who discriminated against him: *Gough v. C.R. Falkenham Backhoe Services Ltd.* (2007), 61 C.H.R.R. D/208 (N.S.Bd.Inq.), appeal dismissed *sub nom, C.R. Falkenham Backhoe Services Ltd. v. Nova Scotia (Board of Inquiry)*, 2008 NSCA 38. In my view, Mr Theriacult's predicament was more analogous to the kind of life-affecting decision that resulted in the loss of an employment position - as occurred in *Cottreau v. R. Ellis Chevrolet Oldsmobile Ltd.* (2007), 61 C.H.R.R. D/8 (N.S.Bd.Inq.). In *Cottreau*, a much younger, mid-career employee had been wrongfully terminated because of disability. General damages of \$10,000 were deemed appropriate in that case even though the victim of discrimination found new employment quite quickly.

36. Mr Theriacult is entitled to recognition of the harm done to him as an individual by forced, and wrongful, mandatory retirement through an award in the nature of general damages. For the reasons already expressed, I would fix the amount of general damages at \$7,500. This figure is necessarily an approximation in dollars of the value of the emotional harm, affront to personal dignity, and financial instability, that was caused to Mr Theriacult's life - and which must be compensated.

37. In selecting that general damages figure I do not express any blame of the CSAP for choosing to vigorously contest the issues raised by the complaint Mr Theriacult made back in June 2005. The CSAP doubtless had good reason to do so, including its public responsibility for the protection and responsible use of public funds. To his credit, Mr Theriacult also indicated in closing remarks that he did not regard the *litigation* decisions of the CSAP as personal. He was able to distinguish between the discriminatory retirement, and the organization's stance in the human rights process. In that same vein, this amount of general damages should not be seen as a reflection of the delay that has occurred in arriving at a conclusion. Interest exists to compensate for the financial cost of the delay that the inquiry and judicial process requires.

Summary of Compensation Amounts

38. I therefore have calculated the following compensation amounts:

Gross Income Loss	61,684.03	
Less census work	1,800.00	
Less pension received	7,761.41	
Total Gross Income Loss	52,122.62	52,122.62
Pension Loss as of May 1, 2006	4,331.00	4,331.00
RRSP Consequential Loss	161.45	161.45
General Damages	7,500.00	7,500.00
Total of Damages to which interest applies:		64,115.07
Hearing Participation	400.00	400.00
Total Award before Interest		64,515.07

39. All compensation funds, other than the funds to compensate Mr Theriacult for his hearing participation, will be subject to interest of 2.5% per annum, calculated from May

1, 2006, and compounded every 12 months, to the date of delivery of funds to Mr Theriault (a method described as “accumulating” in *Willow v. Halifax Regional School Board* (2006), 56 C.H.R.R. D/157 (N.S. Bd.Inq.), at para.127).

40. To the extent that CSAP may feel it necessary, it may deduct and remit all appropriate source deductions to the Canada Customs and Revenue Agency on the “income” portion of the award, but all interest calculations are to be made beginning with the gross amount of \$52,122.62.

41. No costs are awarded for or against any party to these proceedings except as detailed above.

Dated this 12 th day of November, 2009.

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