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MEMORANDUM

TO: Natalie Borden
Chair of the Board of Police Commissioners

FROM: Katherine E. Salsman, Solicitor
Legal Services

DATE: May 7, 2020

SUBJECT: Department of Justice Memorandum of Understanding

Madam Chair,

This memo is in response to your request that I provide clarification around the enforceability of the Memorandum of Understanding signed by HRM, RCMP, and the Board in 2001. I understand your questions arise from conversations with Ms. Wanda Fletcher of the Department of Justice where she raised as two concerns: first, that she was not previously aware of the MOU as she would have expected to be in her role, and second that the DOJ is not signatory to this MOU, which she would have considered essential. Specifically, you asked me to clarify:

1. What impact does the DOJ not being signatory to this MOU have on its enforceability? Has Legal's opinion as to its enforceability changed?
2. What process would we follow to update this MOU in the future?

Enforceability of MOU

As the Department of Justice is not a party to this MOU, nothing in it would be binding on them. The MOU serves an agreement between HRM, the Board, and RCMP that was intended to provide some clarity for the parties on each of their roles when it comes to providing policing services in HRM. As the Department of Justice doesn't have a direct role in the day to day policing of HRM, it would not necessarily need to be a party to an MOU on that topic. The exception is on issues of budgeting such as we are currently considering. Ideally in the future the DOJ would be a party to an MOU on that subject.

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With respect to its enforceability in general, the MOU specifies at paragraph 23 that it is not entered into as a formal or legally binding agreement, but rather as a “definite expression and record of purpose and intention of the participants”. As a result of this clause, the MOU is not binding in the sense of legal action being able to be taken to enforce it. However, as a statement of the intentions of the parties we have always felt that it was HRM’s obligation to stick to the terms to the best of our ability, and if it is disregarded we may have a void when it comes to a framework for some of these issues.

Updating of MOU

In order to update the MOU in the future, the mutual agreement of the parties would need to be obtained. This would require consent of the Chief Administrative Officer of HRM, the Board, and the RCMP, and the Department of Justice if the choice was to have them as signatories to a new agreement. The MOU would eventually require Council approval. The first step to a renegotiation would be approaching those parties to see if there is any interest in reopening the agreement. I agree there are certainly parts of the agreement that could benefit from updating, but a comprehensive review of the parties’ responsibilities would likely be a fairly lengthy process.

I hope this answers your questions. I am happy to answer any follow up questions.

Yours truly,

Katherine E. Salsman
Solicitor