

ONTARIO SUPERIOR COURT OF JUSTICE

B E T W E E N:

**CANADIAN UNION OF PUBLIC EMPLOYEES,
ONTARIO NURSES ASSOCIATION,
ONTARIO PUBLIC SERVICES EMPLOYEES UNION,
SERVICE EMPLOYEES INTERNATIONAL UNION,
UNITED STEELWORKERS OF AMERICA,
ELIZABETH CHONTOS,
ANGELA DIPIETRO
MARY KELLY
and PATRICIA WILLIAMS**

Applicants

- and -

**THE ATTORNEY GENERAL OF ONTARIO
THE MINISTER OF FINANCE and
THE LIEUTENANT GOVERNOR IN COUNCIL**

Respondents

APPLICATION under Rule 14.05(3)(g.1) of the *Rules of Civil Procedure* and the *Canadian Charter of Rights and Freedoms*, including ss.15, 24(1) and 28

MEMORANDUM OF SETTLEMENT

1. In consideration of the terms set out in this Memorandum, the Applicants and the Respondents agree to the following terms of settlement to resolve the issues in the above-noted proceeding.
2. For the purposes of this Agreement, the term Government refers to the Ontario Government and the term TPOs refers to Transfer Payment Organizations which are funded by the Ontario Government or employers who are themselves funded by proxy TPOs, e.g. In-Home Providers.
3. Proxy employers in the broader public sector are legally obliged to provide employees with their proxy pay equity adjustments on an annual basis. These payments are not discretionary. Some TPOs have not paid the proxy pay equity adjustments owing

to their staff. The parties have identified issues of non-compliance in some proxy TPOs. The funding in this Agreement addresses the following sectors:

- Long Term Care Facilities
 - Long Term Care Community Services
 - Community Care Access Centres
 - Community Support Services
 - Community Mental Health
 - Substance Abuse
 - Community Health Centres
 - District Health Councils
 - Private Hospitals
 - Child Care
 - Developmental Services
 - Children's Mental Health
 - Young Offenders
 - Violence Against Women
 - Community Support Services (Adult's and Children's)
4. Public Health Special Programs, AIDS Programs, new Long-Term Care and interim Long-Term Care beds, Homes for Special Care, Domicillary Hostels, and Children's Aid Societies will not receive funding pursuant to this Agreement.
5. TPOs funded by ministries other than the Ministry of Health and Long-Term Care (MOHLTC) and the Ministry of Community, Family and Children's Services (MCFCS) will not receive funding pursuant to this Agreement. TPOs funded by MOHLTC and/or MCFCS and another ministry will receive funding pursuant to this Agreement for programs/services funded by MOHLTC and/or MCFCS only.
6. Rest and Retirement Homes, including those attached or adjacent to Long-Term Care facilities, will not receive funding pursuant to this Agreement.

The Government agrees to take the following steps:

7. With respect to funding under this Agreement, In-Home Providers will receive the funding outlined in Section 9 (a) of this Agreement only. Funding will be allocated to In-Home Providers through Community Care Access Centres.
8. After consultations with the Association of Municipalities of Ontario, as required by its Memorandum of Understanding with the province, the Government will, through the process outlined in paragraphs 8(a) and (b) below, assist not-for-profit proxy Child Care Operators (CCOs) in meeting their pay equity obligations. The Government will provide in 2003/04 a base increase equivalent to 1% of the CCOs' previous year's payroll, in 2004/05 a base increase equivalent to 0.8% of the CCOs' previous year's payroll and in 2005/06, a base increase equivalent to 75% of 0.8% of the CCOs' previous year's payroll.

- a. Base funding will be allocated to CCOs through municipal delivery agents (Consolidated Municipal Service Managers/District Social Service Administration Boards).
- b. CCOs, through municipal delivery agents, will also be eligible for the additional base and one-time funding outlined in Sections 9 (b) and 9 (c) of this Agreement. These funds will be provided to municipalities as described in Section 13 of this Agreement to assist CCOs that have current base and outstanding proxy pay equity liabilities.

9. The Government will provide the following funding:

- a. A base increase of one percent (1%) of the previous year's payroll in each of 2003-04 and 2004-05 to proxy TPOs with employees who have not achieved the pay equity job rate. A base increase of 0.75% of the previous year's payroll in 2005-06 to cover the period April 1, 2005 to December 31, 2005 to proxy TPOs with employees who have not achieved the pay equity job rate.
- b. A fund of \$50 million base dollars with \$40 million paid in 2003-04 and \$10 million in 2004-05 to proxy TPOs with current base pay equity liabilities.
- c. A fund of \$100 million one-time dollars to proxy TPOs with outstanding pay equity liabilities. \$30 million will be paid in 2003-04. \$50 million will be paid in 2004-05 and \$20 million in 2005-06.

10. The Government agrees to make best efforts to distribute the funding in this agreement to TPOs as quickly as possible. The 2003-04 funding in Section 9(a) will be provided to TPOs no later than December 31, 2003. The remaining 2003-04 funds in Sections 9(b) and 9(c) will be provided to TPOs no later than March 31, 2004. In subsequent years the funding in Sections 9 (a), 9(b) and 9(c) will be provided to proxy TPOs as part of the customary budgeting process and in any event before the end of the relevant fiscal year. TPOs will be directed to distribute any funding received under this Agreement to employees no later than 60 days from receipt of such funding.

11. In Section 9, "payroll" refers to a TPO's total salary and wages for services funded by MOHLTC or MCFCS. The funding in Sections 9(b) and 9(c) will be provided for liabilities incurred from January 1, 1999 onwards. Funding is contingent on demonstration of the remaining actual liabilities of the Proxy TPO in each of the fiscal years in which the funding will be disbursed.

12. Government will provide the funding in Sections 9 (b) and 9 (c) of this Agreement to proxy TPOs for all or part of their pay equity liabilities. These liabilities will be identified as part of the budget and financial reporting process, except for Long-Term Care Facilities, which will use a separate pay equity questionnaire due to the funding formula in that sector.

13. Government will allocate the funding in Sections 9(b) and 9(c) of this Agreement according to the following formula:

At least 85% of funds in 9(b) X Proxy pay equity base liability of each proxy TPO
Total pay equity base liability of proxy TPOs

At least 85% of funds in 9(c) X Proxy pay equity one-time liability of each proxy TPO
Total pay equity one-time liability of proxy TPOs

The numerators and denominator are net of the Child Care Operators and Per Diem Operators. This formula will not be applied to Child Care Operators or Per Diem Operators, which will be funded through alternate strategies. These strategies will be developed based on information on liabilities collected from TPOs and discussions with Municipalities and Per Diem Operators.

Government will ensure that the Child Care sector will receive funding for liabilities described in sections 9(b) and 9(c) comparable to the other TPOs described in this Agreement (taking into account the total amount of the CCO liability in comparison to the total liability of all proxy TPOs). For clarity purposes, it is agreed and understood that overall liability funding to the Child Care sector will be a combination of both provincial and municipal funding.

Government agrees to set aside a minimum of \$5 million of the funds in section 9(c) to deal with proxy pay equity liabilities of Per Diem Operators.

Government will allocate up to 15% of the remaining funds in 9(b) and 9(c) based on the following criteria:

- (a) the proxy adjustments owing from 1999 to 2003;
- (b) the use of government funding provided since 1999 for the purpose intended;
- (c) the ability of TPOs to provide required services and meet proxy obligations; and
- (d) the actions taken by TPOs to meet their proxy obligations.

14. To strengthen the accountability relationship between TPOs and Government and to enhance compliance with the *Pay Equity Act*, the Ministry of Health and Long-Term Care and the Ministry of Community, Family and Children's Services will:

- a. Provide information and education to Boards of Directors/Owners on their legal and financial responsibilities regarding their contracts with Government.
- b. Require that all proxy TPO budgets/service plans include any current and outstanding pay equity liabilities under the *Pay Equity Act* or, if no such liabilities exist, confirmation that the TPO is in compliance with the *Pay Equity Act*. Proxy adjustments will be included in the salary and wages portion of the TPO's fiscal/operating plan, where applicable.
- c. Require that all TPOs, on receipt of funding for proxy pay equity under Section 9 of this Agreement, provide written confirmation by the Board/Owner that the required pay equity payments will be paid.

- d. Require that all proxy TPO year-end reconciliations show actual pay equity expenditures, be consistent with accrual accounting and where applicable show current outstanding proxy pay equity liabilities.
 - e. Train ministry staff on the requirements of this Agreement, analysis of financial and service reports submitted by TPOs, year-end reconciliations and the *Pay Equity Act*.
15. As a condition of funding for In-Home Providers, the Government will oblige Community Care Access Centres to agree to appropriate mechanisms and accountability requirements similar to those outlined for other TPOs in Section 14 of this Agreement.
16. As a condition of funding for Child Care Operators, the Government will oblige municipal delivery agents to agree to appropriate mechanisms and accountability requirements similar to those outlined for other TPOs in Sections 12 and 14 of this Agreement.
17. Government agrees to discuss with Residences Treating Youth mechanisms to ensure accountability for funds distributed under this Agreement.
18. The Applicant unions will provide Government with a list of TPOs where they represent proxy employees by June 30, 2003 and this list will be updated by the Unions in the subsequent years covered by this agreement.
19. On May 31, 2004, May 31, 2005 and May 31, 2006, the Government will provide to the Applicant Unions a report on the funding disbursed under this Agreement. The report will include the following information:
- a. the total base funding and total one-time funding provided by each ministry;
 - b. the total base funding and total one-time funding provided to each proxy TPO in the list provided under Section 18 of this Agreement, except for child-care, in-home providers and per diems;
 - c. for child-care, the total base and total one-time funding provided to municipalities pursuant to Section 8 of this Agreement;
 - d. for in-home providers, the total base funding provided to CCACs pursuant to Section 7 of this Agreement; and
 - e. e .for per diem agencies, the total one-time funding and rate increases provided to per diems in the list provided under Section 18 of this Agreement.

The Government agrees to provide a contact person in MOHLTC and MCFCS who can provide any necessary clarifying information requested by the Applicant Unions about the above-noted reports.

20. The Government and the Applicant Unions agree to meet with the Ontario Long Term Care Association within 30 days of ratification of this Agreement. At this meeting, the Government will provide information regarding the RFP process for the new and interim Long-Term Care beds. It is understood that the Union issue of ongoing compliance with the Pay Equity Act will be an agenda topic at this meeting.
21. The parties agree to consent to an order discontinuing\withdrawing the above-noted Ontario Superior Court of Justice proceeding within 7 days of the Government's payment to the Applicant Unions of their reasonable legal costs.
22. The parties agree to sign a release the precise wording to be agreed upon by the parties whereby the Applicants agree to release the Respondents from any claims arising under the *Charter of Rights and Freedoms* with respect to the circumstances supporting the above-noted Ontario Superior Court of Justice action and government funding of proxy agencies up to March 31, 2006.
23. The parties agree that this Memorandum of Settlement is enforceable as a contract between the parties in the Ontario Superior Court of Justice and there is good and sufficient consideration for the contract in light of the mutual obligations herein.
24. The parties agree that this settlement is not an admission of liability by the Government. The discontinuance\withdrawal of the Ontario Superior Court of Justice proceeding is not an admission by either party as to the merits of that proceeding.
25. The Applicants agree that they will withdraw the complaints filed under the *Pay Equity Act* referred to in paragraph 213 of the affidavit of Lawrence Walter, sworn April 14, 2001 and filed in these proceedings and the complaints filed by SEIU as referred to in paragraph 213. This withdrawal will be without prejudice to the right of the Applicant Unions to bring other complaints to the Pay Equity Commission with respect to any compliance issue under the *Pay Equity Act*.
26. The Government agrees to pay to the Applicant Unions their reasonable legal costs of the above-noted Ontario Superior Court of Justice proceeding within 30 days from ratification. This amount shall be paid to Cavalluzzo Hayes Shilton McIntyre and Cornish in Trust.