

0508-94 Salvation Army on behalf of Group of Employers, **Applicants** and Group of Employees (Anonymous), **Respondents**

Appearances: Mary Beth Currie and Monique M. Smith for the Salvation Army and the Group of Employers; Sharon Ffolkes-Abrahams and Michelle Sherwood for the Group of Employees

Before: Katherine Laird, **Vice-Chair** and **Members** Geri Sheedy and Charles Taccone

Cite As: **Salvation Army (Group of Employers) (No.3)**, (1997) 8 P.E.R.

DECISION OF THE TRIBUNAL, DECEMBER 1, 1997

INTRODUCTION

1. The application before the Tribunal was brought in the name of the “Salvation Army on behalf of Applicant Employers”. The one hundred and fifty-five listed applicants are described in Schedule B to the application as separate entities each of which “operates a facility, corps or centre bearing the name, The Salvation Army”. The application seeks revocation of a Review Officer Order dated October 6, 1993. The Order provided that, “for the purposes of pay equity, the Salvation Army be recognized as the employer for all facilities, corps and centres of the Salvation Army”.

2. The respondents to the application are an anonymous group of employees who are employed, or were employed during the relevant period, at one or more of the centres named as an applicant (the “applicant centres”). The respondent employees seek confirmation of the Review Officer Order.

3. The Tribunal has issued four interim decisions with respect to preliminary, procedural and evidentiary issues arising in this application. We determined, among other things, that the relevant evidentiary time period was from January 1, 1989 to December 31, 1993. In addition, an oral ruling delivered November 30, 1995, held that the four Salvation Army hospitals in Ontario were not parties to the proceeding. This is the final decision.

THE ISSUE TO BE DETERMINED

4. The task before the Tribunal in this proceeding is to determine the identity of the employer for each of the one hundred and fifty-five centres named in the application as a Salvation Army facility. The applicants seek a finding that each centre is a separate employer within the meaning of the *Pay Equity Act*, R.S.O. 1990, c. P. 7, as amended (the “*Act*”). The respondents, on the other hand, seek a finding that the Governing Council of the Salvation Army in Canada is the employer for all of the applicant centres.

THE DECISION

5. We find that, for the purposes of the *Act*, the employer at each of the applicant centres is The Salvation Army Canada and Bermuda, an unincorporated, voluntary association which acts through its corporate entity, The Governing Council of The Salvation Army in Canada, and through officers appointed to senior positions in both the unincorporated association and the incorporated body. The

Order of the Review Officer is hereby confirmed. The Salvation Army Canada and Bermuda and The Governing Council of The Salvation Army in Canada are responsible for compliance with this Order.

THE LEGAL TEST

6. The Tribunal has considerable jurisprudence on the issue of who is the employer, involving a wide variety of factual circumstances. A number of factors have been identified as relevant to a determination of who the employer is for the purposes of the legislation. Although the case law is not consistent with respect to the weight to be given to various components of the test, the Tribunal has considered a combination of the following factors in each of its decisions on this issue: overall financial responsibility and control; responsibility for remuneration and compensation practices; direction and control over employees, including the assignment of work responsibilities and the setting of terms and conditions of employment; reasonable employee perceptions; the labour relations reality; the nature of the service, business or enterprise; control over determinations as to the nature or scope of the service, business or enterprise; consistency with the overall legislative purpose. The panel adopted these criteria as appropriate factors to be considered in determining the identity of the employer for the purposes of the *Act*.

7. Having considered the analysis in previous decisions, and the particular evidence in the present case, we developed the following questions as useful to our determination:

What is the nature of the Salvation Army as an organization and how did the applicant centres relate to that organization during the relevant period?

What was the nature of the services and programs delivered by the centres?

Who was responsible for establishing the budget for each centre?

Who was responsible for financial administration of the budget?

Who set workplace policies and managed the employment relationship?

Who decided what labour was to be undertaken and attached responsibilities to particular jobs?

Who was responsible for dealing with grievances and for terminating employees?

Who made hiring decisions and set initial salaries?

Who determined salary increases?

Who bore the financial burden of compensation practices?

Who determined what services and programs were offered by the centres?

Was the work of the centres integral to the Salvation Army as a whole or was it severable and dispensable?

Who did the employees perceive to be the employer?

THE EVIDENCE

8. Early in the proceedings, the panel asked counsel to consider how the tribunal could efficiently receive evidence in respect of the one hundred and fifty-five applicant centres. We were advised that the centres, other than the churches or “corps”, were each associated with one of four program divisions within the Salvation Army, known as the “Social Services Departments”. The applicants proposed that evidence be introduced in respect of one representative facility in each of the Social Services Departments (Women’s Social Services; Health Services; Addictions and

Rehabilitation; Correctional and Justice Services) and that the findings on that evidence be binding on all centres in the department. Similarly, it was proposed that evidence be introduced in respect of one corps as representative of all the churches across the province. There being no objection, the panel agreed to accept evidence in this manner, subject to any difficulties that might arise.

9. Evidence was introduced with respect to the following applicant centres: Broadview Village (Women’s Social Services); Sunset Lodge (Health Services); Ottawa Booth Centre (Addictions and Rehabilitation); Metro Toronto Correctional and Justice Services (Correctional and Justice Services); Agincourt Temple and Agincourt Temple Daycare Centre (Corps). The senior officer at each centre gave evidence as to the nature of the services and programs offered and concerning the structure and functioning of each centre as a workplace. As well, they testified about the relationship between the centre and the larger Salvation Army organization.

10. The applicants also called as witnesses two employees of the national office of the Salvation Army, serving Canada and Bermuda, which is referred to as “Territorial Headquarters”. The testimony of Don Hutchinson, Salvation Army in-house counsel and Paul Goodyear, Assistant Financial Secretary, provided the panel with an overview of the legal structure and hierarchy of the Salvation Army as a national body, and dealt in particular with the relationship between the applicant centres and the central organization.

11. The respondents called three witnesses: Reverend Leonard Goddard, a former Salvation Army officer, and former Executive Director of the Ottawa Booth Centre; Jim Church and Heather Grabb, both former staff at the Salvation Army Family and Housing Services, Chatham.

12. Our findings of fact on the evidence are set out below in relation to each of the questions which we have identified as useful to our analysis. The questions are not arranged in order of importance; rather we have tried to answer the questions in an order which will, we believe, make the complex factual context of this dispute understandable, while avoiding undue repetition.

FINDINGS OF FACT

What is the nature of the Salvation Army as an organization and how did the applicant centres relate to that organization during the relevant period?

13. The Salvation Army was identified as an evangelical branch of the Christian church which practices traditional worship and has a practical outreach ministry. The presence of the church in Canada dates from the 1880s, when several Salvation Army congregations were established and became associated with each other and the international organization founded in England.

14. In 1909, the Salvation Army successfully petitioned the Federal Government for private legislation establishing the “Governing Council of the Salvation Army in Canada” as a corporation “for the purpose of administering in Canada the property, business and other temporal affairs of the Salvation Army”: *An Act to incorporate the Governing Council of the Salvation Army in Canada*, S.C. 1909, c.132, s. 1. The preamble to the legislation described the Salvation Army as a “voluntary community or society of Christian persons”, and gave explicit recognition to its founding “deed-

polls” or constitution. Section 5 of the legislation gave authority to the corporation to, among other things, manage and operate “lodging houses, shelters, homes and workshops for the poor”, “hospitals and places of rest and recuperation for the sick”, “homes for the rescue of fallen women” and homes for children. At the same time as the federal statute was passed, Ontario enacted provincial legislation which allowed the legal title for all property held by Salvation Army congregations in trust to be transferred to the name of the Governing Council for the Salvation Army in Canada (“Governing Council”).

15. There continue to be two central bodies comprising the Salvation Army in Canada: an unincorporated organization with a presence across the country and a corporation with a head office in Toronto. The panel heard considerable evidence concerning the roles of each and the relationship between both and the applicant centres. In-house counsel described the unincorporated body as a voluntary association of voluntary unincorporated associations (including the applicant centres), responsible for the “ministry” of the church within the community. Without endorsing the characterization of the individual centres as “voluntary associations”, we accept that, in accordance with the statutory description, the Salvation Army itself is an unincorporated voluntary association of Christians with a community ministry. Governing Council, on the other hand, is a corporation that acts for, and at the initiative of, the unincorporated association, and which manages its legal, financial, property and business affairs.

16. Under the legislation, membership in the corporate body is tied to particular offices or positions within the hierarchy of the unincorporated body. The senior Salvation Army officer in Canada, known as the Territorial Commander, is supported by an advisory council of senior officers, known as the Cabinet. Cabinet advises the Territorial Commander on matters of policy and procedure arising out of the ministry of the Salvation Army. Most members of Cabinet, but not all, are also automatically members of Governing Council. The Territorial Commander makes recommendations to International Headquarters in England on the appointment of officers to senior positions in the voluntary association, including those positions on Cabinet which are tied to membership on Governing Council. The officers appointed as Chief Secretary, Secretary of Business Administration, Financial Secretary and Secretary for Personnel hold offices on Governing Council as, respectively, Vice Chair, Treasurer, Secretary and Member, in addition to the Territorial Commander who is the Chair of Governing Council. Appointments to Governing Council are made by International Headquarters. These five officers are the only members of Governing Council.

17. Governing Council acts primarily on the advice of two committees made up of senior Salvation Army Officers: the Territorial Finance Council and the Territorial Property Board. In fact, the majority of the members of the Territorial Finance Council are also members of Governing Council, and members of Cabinet, as are many members of the Territorial Property Board. Governing Council manages a significant investment portfolio on the advice of the Territorial Finance Council and through senior Salvation Army finance staff at Territorial Headquarters. Within the unincorporated body, there are two levels of organizational headquarters under Cabinet: Territorial Headquarters, referred to above, and District Headquarters.

18. Together, these two levels of headquarters oversee and support the work of the Salvation Army in Canada. The country is divided into geographic districts, each of which is served by a District Headquarters (“DHQ”) under the leadership of a District Commander. The District

Commanders are accountable to the Territorial Commander at Territorial Headquarters (“THQ”). The Territorial Commander is the senior Salvation Army officer for Canada and Bermuda and reports to the International Commander at International Headquarters.

19. With this background on the central organization, the panel heard considerable evidence on the placement of the applicant centres in the overall Salvation Army hierarchy. Considering first the Social Services centres, the evidence established that there was an Executive Director at each centre who reported to and consulted with a Department Head at THQ, also referred to as a Secretary. In all but fifteen of the applicant centres, the Executive Director was a Salvation Army officer appointed to the position for an unspecified term by the Territorial Commander. Each Executive Director had a reporting/consulting relationship with one of four Social Services Secretaries: the Women’s Social Services Secretary; the Health Services Secretary; the Correctional and Justice Services Secretary; or the Rehabilitation and Addictions Secretary. Each Secretary had, in turn, a reporting relationship with the Chief Secretary at THQ. The Secretaries headed a departmental staff located at THQ which, among other things, advised more senior levels of the central organization and provided support or direction to the centres in many areas of administration.

20. The nature of the relationships between the Departments and the centres, and between the Secretaries and the Executive Directors was the subject of much evidence and argument. Mr. Hutchinson, in-house counsel at THQ, testified that the role of the Social Service Secretaries was to ensure that program delivery was handled by the centres in a manner consistent with Salvation Army policy. Several of the Executive Directors testified that they “reported to” their Department Head. At least one Executive Director referred to his Department Head, or Secretary, as his “boss” while maintaining that it was primarily a consulting relationship, not a rigidly hierarchial reporting relationship.

21. In the case of the churches or corps, accountability was, and is, to the Divisional Commander at DHQ. The senior officer at the Temple (called the “Corps Officer”) testified that he reported to the Divisional Commander, who also happened to be a member of his congregation. All communications between individual churches and more senior levels of the Salvation Army would be through DHQ. Policies developed at THQ would be disseminated to the corps through DHQ. During the relevant period, DHQ also housed the office of the Regional Co-ordinator for the Correctional and Justice Services Department, with whom Correctional and Justice Services centres had an intermediate reporting relationship.

22. The role and function of THQ and DHQ were also the subject of considerable evidence and argument at the hearing. Mr. Hutchinson testified that THQ and DHQ together “had oversight of” all the work of the Salvation Army in Canada. The centres each paid a compulsory fee, called a “supervision levy” or “tithes”, for a range of services provided through THQ (including the Social Services Departments) and through DHQ. The Chief Secretary at THQ issued a volume of comprehensive policy guidelines to assist or direct the centres in many areas, including financial and employee management. The policy guidelines, referred to as the “Minutes”, were regularly updated and were distributed to the centres through the Social Services Departments, and through DHQ. The centres communicated with several internal departments at THQ or DHQ, including a finance department, a property department, and a public relations department. Centres could choose to participate in an employee benefits plan and pension plan offered through THQ, and most centres

did. In addition, centres could obtain legal advice on employment and other matters through in-house counsel at THQ. Although none of the applicant centres were unionized, the evidence established that THQ had assisted other centres in collective bargaining and had a practice of reviewing the agreements negotiated at unionized centres to ensure consistency with Salvation Army policies.

23. The dispute between the parties was as to whether this THQ/DHQ involvement in the operation of the centres was properly characterized as support and consultation, or should rather be considered supervision and direction. Key to this question is a consideration of what interests were served by the THQ/DHQ involvement: the interests of the centres or the interests of the central organization. In our view, the evidence as a whole, as summarized in our findings below, established that the services provided by THQ/DHQ were for the primary purpose of protecting the Salvation Army name and the reputation of the whole organization as an effective and efficient manager of human and financial resources. This is not surprising, and perhaps only appropriate, for an organization like the Salvation Army which relies on government funding and public donations to deliver a wide range of services to disadvantaged members of society.

24. Mr. Hutchinson addressed this question directly in testifying about the role of his office at THQ, referred to as the “Office of the Legal Advisor”. In cross-examination, Mr. Hutchinson stated that, in giving advice to the centres, he represented the interests of the Salvation Army generally, “as a concept”. He took the position that all the centres were his clients, but acknowledged that he would refer to the Salvation Army Minutes in giving advice. Mr. Hutchinson gave two examples of instances which he believed demonstrated that his advice was sometimes contrary to the interests of the central organization. One example was a situation in which he advised an Executive Director that the conduct of a particular employee was such that termination was appropriate despite a direction in the Salvation Army Minutes that three prior warnings must be given. The other example was an instance in which he advised an Executive Director to go directly to the Program Secretary at THQ to obtain approval for a new program; adherence to the Minutes would have required that the proposal be taken first to the Department Head at THQ.

25. In our view, neither example demonstrated that paramountcy was given to the interests of the centres as separate clients. In neither of these examples is there any indication of a true conflict between the interests of the centre and the best interests of the Salvation Army. What the examples demonstrate is that central headquarters would sometimes show flexibility in the application of its guidelines. In fact, the examples illustrate the extent to which Salvation Army headquarters exercised hands-on control over employee management and over decisions regarding the scope of the work done at the centres.

What was the nature of the services and programs delivered by the centres?

26. Each of the representative centres operated a number of programs and/or facilities serving the needs of disadvantaged members of the community. Almost all of the services offered by the Social Services centres received their primary funding from various government sources at the federal, provincial and municipal levels. The principal services offered by the representative centres

during the relevant period are described below. For ease of reference, the name of the senior officer testifying for each of the centres is noted above the program descriptions.

Broadview Village

Major Richardson

<i>Program</i>	<i>DESCRIPTION</i>
Oriole Parkway	home for 10 developmentally-delayed adults
Ridley	home for 10 developmentally-delayed adults
Spruce Hill	home for 8 developmentally-delayed adults
Broadview Avenue	four houses accommodating 29 developmentally-delayed adults

Sunset Lodge

Major Herber

<i>Program</i>	<i>DESCRIPTION</i>
Lodge	housing for about 60 seniors with limited nursing care provided
Wheels to Meals	program to bring seniors into centre for a meal and social activity
Foot care	program to provide health services through specially trained nursing staff

Metro Toronto

Correctional and Justice Services

Major Lawlor

<i>Program</i>	<i>DESCRIPTION</i>
Community Service Orders	supervision of persons fulfilling provincial community service orders
Positive Lifestyles	teaching of life skills to women offenders
Literacy Training	teaching literacy and job entry skills to inmates and parolees

Brampton Intake	intake of persons on probation orders at Provincial Court
Federal Parole	assessment, supervision and support services for 120-135 federal offenders
Chaplaincy	to provide chaplaincy services to offenders in courts and in institutions

Ottawa Booth Centre

Captain Braddock

<i>Program</i>	<i>DESCRIPTION</i>
Anchorage	30 bed residential addiction and rehabilitation treatment program
Men's Hostel	105-110 bed men's hostel
Youth Hostel	22 bed hostel for youths aged 16-21
Salem	life skills and employment mobilization program for recovering addicts
Literacy Training	computer-assisted literacy training
LET	life skills and employment training
Recycling	thrift stores

Agincourt Temple

Captain Millar

<i>Program</i>	<i>DESCRIPTION</i>
Church Services	religious services
Chinese Ministry	outreach program to local Chinese community
Daycare	child care program for about 63 children

Who was responsible for establishing the budget for each centre?

27. Each Social Services centre would prepare a separate annual budget for each program funded by government, in addition to a Salvation Army budget for administrative costs and any services or programs not covered by government funding. Salvation Army funding came out of the annual Red Shield fund-raising campaign.

28. For example, the Executive Director of Metro Toronto Correctional and Justices Services would prepare five annual budgets for the various programs funded by the provincial Ministry of Correctional Services and by Correctional Services Canada, and a sixth Salvation Army budget for administrative costs, lay chaplains and non-funded officer positions. Similarly, the Executive Director at the Ottawa Booth Centre testified that he prepared six or seven budgets each year: for government-funded programs, for the Thrift Stores and for Red Shield funding. Broadview Village prepared ten separate budgets; Sunset Lodge prepared two.

29. The budgets prepared for government would generally be developed on the basis of the announced increase in funding for the coming year. Information on government funding increases would often come to the centres through relevant Social Services Department at THQ, which would receive the information from government in advance of the annual budget submission. Similarly, the Salvation Army budgets would be prepared on the basis of the annual percentage increase in Red Shield funding announced by THQ, although centres would sometimes seek a larger Salvation Army grant. A consolidated budget for each centre, incorporating all the separate budgets, would be sent to the appropriate Social Services Secretary at THQ, or in the case of the churches, to DHQ. The Executive Directors testified that their budgets were generally not revised at the Social Services Department, except that the amount of Red Shield funding was sometimes reduced. The Corps Officer at Agincourt Temple testified that sometimes suggestions or adjustments were made at DHQ before the budget was stamped “approved”.

30. Once the individual budgets for each centre were reviewed by the appropriate Secretary or the Divisional Commander, a consolidated budget for each Social Services Department and for each District would be forwarded to the finance department at THQ. According to the testimony of the Assistant Financial Secretary, the finance department at THQ did not review the budgets of individual centres as part of the annual budget process. Mr. Goodyear confirmed that the consolidated annual budget for the entire Department or Division was reviewed by the finance staff at THQ, and by the Territorial Finance Council. He testified that the primary reason for the annual budget submission by the centres was to apply for Red Shield funding, not to obtain THQ approval of the budget. Nonetheless, the budget submission process allowed the Social Service Departments and DHQ to review the proposed spending of each centre for the coming year.

Who was responsible for financial administration of the budget?

31. Although the senior officer at each centre was responsible on a day-to-day basis for administration of the budget, there was considerable supervision of the on-site financial management. Significantly, Salvation Army policy required each centre to send a monthly financial report to the finance staff at THQ, in the form of an income and expense statement with ‘budget to actual’ comparisons. The Assistant Financial Secretary at THQ testified that the purpose of the

monthly statements was to give THQ an early indication of any financial problems so that the finance department could offer assistance and direction. If statements were not filed, finance staff would follow up with the Executive Director or Corps Officer to determine if the centre was having difficulty preparing the reports. Mr. Goodyear testified that there were no negative consequences which flowed simply from a failure to file. He acknowledged that the primary purpose of the monthly statements was to safeguard the Salvation Army name.

32. As well, there were restrictions and procedural controls which affected spending even within budgetary allocations. Pursuant to Salvation Army Minutes, each centre was required to operate within set spending limits for particular types of expenditures. For example, expenditures on furnishing and equipment could not exceed a maximum of \$3000, even if funds were available, without obtaining approval from the Department Secretary at THQ. Moreover, because of a “central cash control” system negotiated between Governing Council and the Canadian Imperial Bank of Commerce (“CIBC”), each centre was required to access its funds in the system through its Department at THQ or, in the case of the corps, through DHQ. Centres were required to hold all significant cash reserves, such as funding dollars received in advance, in the central cash control system established at the CIBC. The various Executive Directors testified that permission to release funds was routinely granted as long as the money was in the account, and the expenditure was within spending limits. However, there were further restrictions applied to monies designated by THQ as reserved for capital purposes, principally legacies donated to a specific centre. A centre could only access these funds after the request had been reviewed by the Territorial Finance Secretary and approved by the Territorial Finance Council. The authority of an Executive Director or Corps Officer to deal with the bank was granted by power of attorney from Governing Council, revokable on the recommendation of the Territorial Finance Council.

33. The Assistant Financial Secretary suggested that this evidence merely established that the centres had a banking relationship with THQ. THQ acted as the “banker” for the centres in order to negotiate reduced charges and improved interest rates. He acknowledged that THQ could remove funds from a centre’s capital accounts, but cited a “gentlemen’s agreement” not to do so. That feature of the system, the ability of THQ to transfer funds between accounts, from centre to centre, indicated to the panel that THQ was reserving for itself a significant degree of financial control through this unusual banking arrangement.

34. This view of the evidence was reinforced by testimony establishing that an investment officer at THQ reviewed all bank balances for all centres on daily basis to catch any overdrafts which would affect the net investment income flowing to Governing Council. Mr. Goodyear stated that, if a centre was found to be running an overdraft, a fax would be sent to the centre immediately, and the Department Secretary or Divisional Commander would be informed. If the investment officer was not satisfied that steps were being taken to eliminate the overdraft, the investment officer reported it directly to the Financial Secretary at THQ. Corrective action would be taken at the direction of the Territorial Finance Council, a body composed of the senior members of Cabinet and Governing Council.

Who set workplace policies and managed the employment relationship?

35. The number of employees at the representative centres ranged from two or three staff in the case of Agincourt Temple, to approximately one hundred and fifty staff at Metro Toronto Correctional and Justice Services. At each of the centres, front-line responsibility for employee management rested with the senior officer or administrator on-site. At the Social Services centres, day-to-day management decisions were made by the Executive Directors and their senior staff. At Agincourt Temple, it was the Corps Officer who was responsible for day-to-day employee management. In the case of the Temple daycare, the part-time administrator and the staff supervisor managed the child care workers in consultation with a board of directors headed by the Corps Officer and his wife.

36. In the case of all centres except the churches, management decisions in some areas were circumscribed by the terms of funding agreements or by government guidelines or regulations on matters such as programming, staff/client ratios, client admissions, record-keeping procedures, intake requirements, and so on. For example, at Broadview Village, the programs funded by the Ministry of Community and Social Services were subject to detailed protocols on many aspects of service delivery.

37. Three of the four Social Services centres had internal employee handbooks establishing workplace policies on hours of work, overtime, grievances, maternity and health leaves, vacation, payroll, pension and benefits plans, and so on. In the case of the Ottawa Booth Centre, there were two employee manuals in evidence: one, in use to at least 1990/91, had been modified from the January 1979 THQ "Employees Handbook" issued by the Territorial Commander, and a second undated handbook introduced by the Executive Director at the Centre from 1990 to 1994. The employee handbooks for all three centres included a brief history of the Salvation Army and a description of its work and mission in Canada. An organization description or chart illustrating the relationship between the centre and the department at THQ was included. In each case, the handbooks were developed by the Executive Director of the centre, together with his/her senior staff.

38. The Executive Directors testifying on behalf of the representative centres were asked to compare their internal policies with those established by THQ in the Minutes. The contents of the internal manuals sometimes reflected the Salvation Army policies set out in the Minutes, but often had variations designed to deal with the particular circumstances of the individual facility. For example, at Sunset Lodge, the vacation and sick leave policies were the same as set out in the Minutes, but at Broadview Village, both internal policies were different from the Minutes. All centres gave employees the option of participating in the Salvation Army pension plan offered through THQ, and all but one offered employees the benefit plan negotiated through THQ. Both plans, which were offered to employees at centres across the country, had terms that were considered to be more favourable than individual centres could have offered on their own.

39. At Agincourt Temple, there was no internal employee manual. The Corps Officer testified that personnel matters were handled in accordance with the Salvation Army Minutes, although he seldom needed to have actual reference to the Minutes. Employees could opt into the benefit and pension plans offered through THQ.

40. At the Temple daycare, an internal employee handbook had been developed by the administrator in consultation with the board of directors. Some of the policies reflected the Minutes,

but others were developed to meet the particular needs of the workplace. For example, the vacation policy varied from THQ policy in allowing new staff to take vacation days prior to the completion of the first year of employment. On the other hand, the sick leave policy was the same as in the Minutes and staff were given the option of participating in the THQ benefits and pension plan. The handbook included a brief description of the Salvation Army as a national organization and was developed with reference to a national daycare manual issued by THQ more than 15 years earlier. The administrator testified that he rarely consulted the national manual, which he described as out-of-date.

41. In addition to the use of the THQ manual at the Ottawa Booth Centre prior to 1991, and the apparent influence of the Minutes, there were other indications of THQ input into the personnel policies of the individual centres. Excerpts from the Minutes were included in the Sunset Lodge employee handbook, as well as an “Official Bulletin” from the Health Services Department at THQ. Although the Executive Director testified that the bulletin was not in the version she used during the relevant period, it was dated November 1991. The document was entitled “Employee Vacation Policy”, and outlined a detailed vacation policy under an introduction which stated: “The guidelines for the items covered in this minute are the requirements for The Salvation Army in Canada and Bermuda Territory unless the Provincial Employment Standards Act dictates otherwise.”

42. More significantly, one of the centres, Metro Toronto Correctional and Justice Services, did not have an internal employee handbook and relied instead on the *Human Resource Policy and Procedure Manual*, issued by the Correctional and Justice Services Department at THQ. The manual applied to centres across Canada, and its stated purpose was to “set forth the rights and benefits that have been established and approved for employees of The Salvation Army Correctional and Justice Services Department” (section 1.2). The manual included policies on employee recruitment, orientation, compensation, benefits, health and safety, terminations and unions. In some areas, it incorporated or referred to relevant employment legislation.

43. Major Lawlor, testifying on behalf of the Metro Toronto Correctional and Justice Services, stated the manual was developed to guide inexperienced Executive Directors. She testified that she herself rarely needed to consult the manual as she had previously been a Regional Co-ordinator for the Department. Nonetheless, there was no question that the comprehensive personnel and workplace policies in the departmental manual applied to the applicant centres in the Correctional and Justice Services Department during the relevant period for the purposes of this application.

44. Further, the panel heard evidence that a national manual on employment issues was under development in the Women’s Social Services Department in the period from 1991-1993. The Executive Director of Broadview Village was one of several senior officers at Health Services centres who participated in a committee chaired by the Women’s Social Services Secretary which had the task of developing a national employment manual. The manual was designed to assist inexperienced Executive Directors at Women’s Social Services centres across the country. We did not receive in evidence a copy of the manual and it was unclear if it was ever issued by the Department. Major Richardson testified that the Secretary for Health Services retired just after completion of the final draft, and that she herself would not necessarily have received a copy if the manual was released because she was not in the group for whom the manual was developed. The

manual was completed in May 1993, and even if not released, represented an attempt to develop model employment policies for Women's Social Services Centres across the country.

45. Finally, the influence of THQ on workplace policies is demonstrated by the issuance of a centrally-developed "Personnel Policy on Employment-Related Sexual Harassment" in April 1993. The policy, which established a comprehensive process for dealing with complaints of sexual harassment, was released by the personnel department at THQ to centres across Canada. The policy stated on its face that it applied to "all Officers, employees, and volunteers of "The Salvation Army Canada and Bermuda Territory". It provided that the "The Salvation Army Canada and Bermuda Territory" would "formally appoint" harassment advisors in each centre, and that the Social Services Department Secretary or Divisional Commander would serve as the harassment advisor for smaller centres.

46. In our view, this piece of evidence confirmed the significance of all other indications of central supervision of employee management at the individual centres. We viewed it as particularly significant that the central organization intervened directly to develop and implement a new human resource policy on an issue of emerging importance. This matches the way in which pay equity requirements were initially handled at THQ. The evidence established that Executive Directors were advised by THQ in May 1989 that a pay equity plan would be developed at THQ for "all Salvation Army facilities throughout Ontario". Work on a central plan proceeded, managed by a committee at THQ under the Assistant to the Financial Secretary. However, in April 1990, the Secretary for Personnel, at THQ, advised Executive Directors that an internal task force and legal counsel had "determined The Salvation Army "employer" to be the individual centre, rather than Territorial Headquarters." This was followed by a letter in May 1990 advising Executive Directors of their responsibilities with respect to pay equity following what is described as "the recent decision by the administration that each institution/location will be considered the "employer" for purposes of Pay Equity".

47. Even after this change in approach, a central committee at THQ continued to take the lead on pay equity by developing and distributing employee questionnaires, collecting and evaluating data, reviewing and comparing job descriptions to facilitate wage comparisons. We did not hear evidence as to the results of this process, but the applicants took the position that the centres had complied with the legislation, and that THQ was simply providing consultation services to the centres. However, in the view of the panel, the central role played by THQ in the development and implementation of a pay equity policy for all of the applicant centres was another indication of central supervision and control over human resource management.

Who decided what labour was to be undertaken and attached responsibilities to particular jobs?

48. The evidence clearly established that Salvation Army headquarters, THQ and DHQ, were not involved in the assignment of work responsibilities or in the distribution of work at any of the applicant centres. At the Social Services centres, job descriptions were developed by the Executive Directors, together with their senior staff. At Agincourt Temple, job descriptions were developed by the Corps Officer, together with a personnel committee of corps members. At the Temple daycare centre, the job descriptions were developed by the board of directors on the advice of the administrator and supervisor.

49. However, the centres did not operate in a vacuum in developing position descriptions. For example, the duties and qualifications of the daycare staff were matters subject to regulation by the Ministry of Community and Social Services. In the case of the Social Services centres, the core job responsibilities were dictated by the functions the centre was contracted to perform under the terms of funding agreements with government. For example, schedules to the funding agreement between Governing Council and the Ministry of Community and Social Services for the delivery of services at Broadview Village detailed a daily/weekly activity schedule for residents and specified a range of staff positions to be maintained at the facility, the staffing levels for each position and the minimum staff qualifications. The job descriptions established by the Executive Director at Broadview Village were developed in the context of these requirements. The respective roles of the Executive Directors and of THQ and Governing Council in negotiating and entering into funding agreements are discussed in paragraphs 80 to 85 below.

50. In addition to the influence of government funders, there was evidence that the Social Services Departments at THQ gave a varying degree of assistance or direction to centres in the development of job descriptions. For example, basic position descriptions for Correctional and Justice Services centres were outlined in the Department's *Human Resources Policy and Procedure Manual*, discussed above. In the case of Women's Social Services centres, the evidence indicated that the national employment manual under development during the relevant period dealt with job descriptions, but as discussed above, there was no evidence that the manual was in actual use. In the case of Addictions and Rehabilitation centres, an annual program audit by the Department included a review of every centre's job descriptions. The Department's audit guidelines, called *Standards and Review Procedures*, outlined the key elements of a good job description but did not make suggestions on actual job content.

51. However, according to the testimony of Captain Braddock at Ottawa Booth, new Addictions and Rehabilitation programs were subject to tighter scrutiny pursuant to section 9.2.7 of the audit guidelines. Under this provision, centres were required to obtain THQ approval of internal policies establishing which staff "may assume specific functions and under what supervision". This requirement indicated a significant degree of THQ control over task assignment and supervision in the case of new programs in the Addictions and Rehabilitation centres.

Who was responsible for dealing with grievances and for terminating employees?

52. In three of the four representative Social Services centres, employees had notice of a policy allowing them to take grievances above the level of the Executive Director to departmental headquarters at THQ. In the case of Metro Toronto Correctional and Justice Services, the right to take grievances to the Secretary for Correctional and Justice Services was set out in the departmental manual. At the Ottawa Booth Centre, the internal employee handbook specified that staff had the right to grieve to the Addictions and Rehabilitation Secretary at THQ. The panel heard evidence about a particular instance in which an Ottawa Booth employee, who had been terminated by the Executive Director, took his case to the Addictions and Rehabilitation Secretary seeking reinstatement. The Secretary intervened on behalf of the employee, instructing the Executive Director to re-hire the employee. The Executive Director, Reverend Goddard, refused to do so, and shortly thereafter resigned as an officer of the Salvation Army.

53. Turning to Broadview Village, the panel considered two versions of the internal employee manual which differed in their descriptions of the grievance process. Although the two versions appeared identical, and were both dated April 1989, the manual produced in chief provided that the Executive Director was the final level for grievances, while the document produced in cross-examination had an additional paragraph which provided that a dissatisfied employee could forward a concern in writing to the Social Services Secretary. The Executive Director testified, and we accept, that the second version was released in January 1994, just outside the relevant time period, and was the result of a review of the manual over the preceding year or so. Major Richardson testified that the new provision reflected what had always been the policy, namely that a dissatisfied employee could appeal above the executive director level to the Secretary at THQ. She testified that she could not recall an instance where this right had been exercised.

54. Although three of the representative Social Services centres had policies allowing grievances to go to THQ, Sunset Village appeared to be an exception. There was no grievance process set out in the employee handbook. It only provided that, “In the event of any misunderstanding or complaint, the employee should feel free to discuss the matter fully with the supervisor or Administrator.” Similarly, at the Agincourt Temple, it appeared that an employee grievance could go to a church committee, but there was no evidence as to whether it could go beyond that to DHQ. At the Agincourt Temple daycare centre, the Ministry of Community and Social Services was the final level of appeal according to the testimony of the administrator.

55. With respect to termination of employment, the evidence indicated that Executive Directors had fired employees without consulting DHQ/THQ despite a Salvation Army policy requiring such prior consultation. Minute 31.16 stated, in bold, enlarged print, that an employee could only be terminated “with the permission of the appropriate supervising headquarters” and after verification that “the proper procedure of warnings has been followed”.

56. In practice, Minute 31.16 was not consistently followed. For example, the Executive Director at Broadview Village testified that she had terminated an employee for breach of trust after informing the Ministry of Community and Social Services and the police, and without informing THQ. The Executive Director at Sunset Village had never terminated an employee but testified that she was not aware of any central policy which would have required her to consult with Health Services at THQ before terminating staff. On the other hand, the Corps Officer at Agincourt Temple had also never terminated an employee, but testified that he was aware of Minute 31.16 and would have consulted with DHQ before acting. The supervisor of the Temple daycare centre had in fact disciplined and terminated employees without consulting DHQ.

57. Although the practice at the centres appears to have been mixed on the question of whether or not THQ/DHQ approval was sought for terminations, the written policy set out in the Minutes was corroborated by other evidence. For example, the Correctional and Justice Services Department’s *Human Resource Policy and Procedure Manual* provided that a centre could not discharge an employee without the written endorsement of the Regional Co-ordinator at DHQ (sections 4.5.1 and 9.2.3). This policy would have governed employee terminations at the Metro Toronto Correctional and Justice Services centre during the relevant period.

58. As well, although the Executive Director testifying for the Ottawa Booth Centre stated that he did not consult with THQ when he terminated two employees, his predecessor was criticized by his superiors at THQ for terminating a senior employee without consulting with the Addictions and Rehabilitation Secretary. Reverend Goddard received a letter from the Chief Secretary instructing him to rehire and saying: "... there is a perception by us that you go beyond the perimeters [sic] which are yours in relationship to direction which you receive from your department head and operate at times without fully clearing such matters with him." We also note that the Department's *Standards and Review Procedures* (section 2.4.7) required that the files of terminated employees be examined as part of the annual audit to determine if the centres had complied with THQ requirements in terminating employees.

59. In our view, the evidence indicated a significant degree of control by THQ/DHQ over both grievances and terminations. Even where a centre's employee manual did not specify the right to take grievances to headquarters, the evidence with respect to Broadview Village suggests that there may have been an informal policy allowing such appeals. With respect to terminations, although it was clear that some Executive Directors ignored the THQ requirement of prior approval, it appeared from the evidence of Reverend Goddard that this would only be tolerated if the termination was not challenged.

Who made hiring decisions and set initial salaries?

60. At each of the representative Social Services centres, primary responsibility for hiring employees rested with the Executive Director of the centre. Directors and program managers working under the Executive Director usually interviewed applicants and recommended candidates to the Executive Director. It was generally the responsibility of the Executive Director to review the recommendation and make the offer of employment.

61. The evidence was less clear on the question of who determined salary levels and had authority to enter into employment agreements. The Salvation Army Minutes indicated that the formal policy of the central organization was to require central pre-approval of all employment contracts entered into by the centres. The Minutes specified that the execution of employment contracts required the advance approval of senior authorities at THQ or DHQ. Employment contracts up to a level of \$30,000 annually required pre-approval by the Department Head at THQ, or by the Divisional Commander at DHQ. Employment contracts for remuneration in the \$30,000 to \$40,000 range required advance approval by the Secretary for Personnel and the Financial Secretary, while contracts for remuneration above \$40,000 required approval by the Territorial Finance Council. The Minutes specifically required salary commitments to have this level of approval even where "approved budgetary provision has been authorized". The requirements were articulated in the section of the Minutes dealing generally with expenditure approvals.

62. There was other evidence indicating that the centres required higher level pre-approval of salary offers. For example, section 2.10 of the *Human Resource Policy and Procedure Manual* for the Correctional and Justice Services Department provided:

Budget approval and prior approval of the C&JS Secretary must be in place for:

- a) a new position

- b) a significant change in job description
- c) a replacement at a higher salary
- d) replacement of an Executive Director/Director, Assistant, Manager or Bookkeeper

Requests relating to these are to be submitted through the Regional Co-ordinator to the C&JS Secretary.

The manual went on to specify the forms to be used in making the requests and the colour of paper to be used for each type of request.

63. The need for higher level approval was also corroborated by the evidence of Jim Church, a former employee of the Salvation Army Family and Housing Services in Chatham, called as a witness by the respondents. Mr. Church testified that, upon being told that he was the successful candidate for a position as an outreach worker, he was informed that pre-hiring approval had to be obtained from a higher level of the organization which he understood to be DHQ. His personnel file was received in evidence and included a form taken from the Minutes which named him as a “proposed employee” and was stamped and signed as approved by DHQ.

64. Despite the policy requiring pre-hiring approval, the panel heard considerable testimony indicating that the centres did make employment offers with salary commitments without obtaining pre-approval. For example, Mr. Hutchinson testified that Executive Directors could fill positions under a specified salary level (\$30,000) without higher approval. All four of the Executive Directors of the Social Services centres testified that they had hired staff, even at the higher salary levels, without prior THQ approval, in circumstances where the salary was fully funded under an agreement with government.

65. The Corps Officer at the Agincourt Temple had more limited experience than the others: he had never hired an employee, but was familiar with the process followed when the corps established a new outreach project to serve the local Chinese-Canadian community. The Temple obtained program approval and Salvation Army funding from THQ; the salary level for the staff position had been specified as part of that process. Captain Millar testified that he believed the Temple had some flexibility in setting the actual salary after program approval had been obtained, within the parameters of the grant provided. He also testified that, had a vacancy occurred, hiring would have been handled by himself in consultation with a committee of corps members. He stated that the Temple’s finance committee had control over expenditures but that employment contracts for more than \$30,000 would, in the normal course, be approved by DHQ.

66. The Agincourt Daycare administrator testified that the centre had hired a staff person at a salary of over \$30,00 without obtaining DHQ pre-approval, but that he had telephoned DHQ to advise that he was making the salary offer without pre-approval because otherwise he would lose the best candidate.

67. The panel accepts that, contrary to Minute 31.05, the actual practice at most centres was to not seek THQ/DHQ pre-approval of employment offers in circumstances where the salary had already been THQ-approved as part of a program approval, or where a position with a previously approved salary was being re-filled, or in circumstances where the salary for a position had been set

under the terms of a funding agreement with government and/or was fully funded. However, we did not hear evidence of a situation in which an Executive Director had, without pre-approval, hired into a new position not already approved by THQ/DHQ or not fully funded by non-Salvation Army monies.

68. The question for the panel was whether the practice of hiring without specific salary pre-approval indicated that Executive Directors were in fact in control of hiring and employee remuneration, or rather that an Executive Director could safely ignore protocol if confident that salary funds were available and that the program had the approval of headquarters. We find the latter to be the case. This is consistent with the evidence with respect to salary increases.

69. The panel also heard considerable evidence with respect to the process for hiring or placement of Executive Directors in the individual centres. As we have seen, in all but fifteen of the centres, the Executive Director at the time of the application was a Salvation Army officer appointed to the position for an unspecified term through the office of the Secretary for Personnel at THQ. Non-officer Executive Directors were only hired if this was a requirement of the funder or if the position required particular skills or training not available in an officer appointment.

70. In-house counsel testified that, during the relevant period, there were some instances, primarily in the Addictions and Rehabilitation Department and in the Correctional and Justice Services Department, where centres were required by the terms of their funding to hire a non-officer Executive Director. Mr. Hutchinson testified that recruitment would have been handled by a hiring committee set up by for that purpose by the Department Secretary at THQ, or by the Divisional Commander at DHQ. He testified that the hiring committee would typically include an officer from the Salvation Army Regional Office, who would represent the Secretary at THQ.

71. This evidence was corroborated by section 2.7 of the *Human Resource Policy and Procedure Manual* for the Correctional and Justice Services Department, referred to above. The manual recommends that a hiring committee be struck for Executive Director recruitments and provides that the composition “shall include” the Regional Co-ordinator, another person designated by the Regional Co-ordinator, as well as another Salvation Army Executive Director from the area and a member of the centre’s advisory committee, if any. The manual went on to stipulate in bold that the successful candidate must be informed that employment depends on ratification by the Correctional and Justice Services Secretary at THQ.

72. The evidence therefore establishes that, not only were officer placements at the executive director level handled by senior Salvation Army officials at THQ, but the hiring of non-officers to manage individual centres was delegated to a hiring committee established by, and accountable to, the central organization.

Who determined salary increases?

73. At the Social Services centres, the range for salary increases was dictated by the percentage increase in salary dollars received pursuant to the funding agreement(s). In setting salaries, the Executive Directors would consider the expected percentage increase (or decrease) in government funding, as well as an annual salary guideline issued by THQ. Similarly, at Agincourt Temple, the

Corps Officer set salary increases with reference to the annual guideline from THQ, while at the daycare centre, the increases set by the board would also take into account the expected increase in parent fees and in the wage supplement from the provincial government. A centre could vary the distribution of a funding increase among employees and some Executive Directors did so in order to allow for merit increases. In other programs, staff salaries were increased in accordance with a standard salary grid established by the Ministry providing the funding. This was the situation at Sunset Lodge and for some programs at Metro Toronto Correctional and Justice Services.

74. Executive Directors and Corps Officers did not need specific THQ/DHQ approval for salary increases within funding limits, but would in any event advise the appropriate Social Services Department or Divisional Headquarters of proposed increases as part of the annual budget submission required from each centre as a matter of Salvation Army policy. The budget submission of each centre was reviewed by the relevant Department or Division, but there was little evidence as to the level of scrutiny involved in this yearly review. The evidence of Major Richardson and Captain Millar indicated that changes to the budget were occasionally suggested by finance staff in the Department or by the Divisional Commander.

75. More significantly, the panel noted that the Correctional and Justice Services manual, in the “Salary approval/Salary increase” section, stated that approval of the annual budget by the Department Secretary “gives authorization for the positions and salaries/wages”. In our view, this confirms that salary increases were reviewed and approved by the Department or Division as part of the annual budget submission process. This finding is consistent with the “Compensation Policies and Practices” section of the Addictions and Rehabilitation *Standards and Review Procedures* manual which provides that: “Revisions to pay scales (outside of the annual budget increases) shall be reviewed and approved by DHQ and THQ.” The manual also specifies that annual pay increases must be tied to merit, and are to be reviewed annually by the Department as part of the program audit.

Who bore the financial burden of compensation practices?

76. In considering the representative centres, this question was simplest to answer for Agincourt Temple. The Temple received no funding from any government source and no funding through the Salvation Army campaign. Other than a special grant from THQ for its Chinese Ministry outreach program, the Temple’s programs were entirely funded through donations raised within and by the congregation. The members of the corps themselves bore the primary burden of compensation practices. However, the evidence established that not all Salvation Army churches were self-sufficient. It appeared from the financial reports in evidence that Agincourt Temple was not representative in that most churches received some funding from the Salvation Army Red Shield campaign.

77. The situation was different at the Temple’s daycare centre: staff salaries were paid out of parent fees and were subsidized by the provincial Ministry of Community and Social Services. The financial information reviewed by the panel indicated that most daycare programs offered by churches did not receive Red Shield funding. On the contrary, the daycare program offered in many churches would have increased the revenues of the host congregation through the payment of rent. The daycare centre at Agincourt Temple paid rent in the amount of almost \$35,000 annually.

78. In the case of the Social Services centres, government grants, sometimes combined with user fees and donations, accounted for over 90% of revenues. Several individual programs offered by the centres were funded by government for 100% of budget. The portion of revenues received from the Salvation Army seldom exceeded 5%.

79. Does this mean that the Salvation Army and Governing Council did not bear the burden of compensation practices in the Social Services centres? The question cannot be answered without considering the funding arrangements.

80. The panel received in evidence numerous funding agreements for various programs offered by the Social Services centres throughout the relevant period. Most of the agreements named the Governing Council of the Salvation Army as the party receiving government funding, but some agreements simply named “The Salvation Army” over the address of the individual agency. Although we heard testimony suggesting that Executive Directors could sign renewal agreements for on-going programs, we did not receive in evidence any agreements that were simply in the name of an individual centre. There were agreements in the name of “The Governing Council of the Salvation Army for the Booth Centre, Ottawa”, but those agreements were signed by members of Governing Council over the corporate stamp. There was one application for federal funding that was simply in the name of “The Salvation Army Booth Centre”, but even in that case, there was an implied sponsorship by Governing Council in that the document stated on its face that the applicant was incorporated. None of the applicant centres were incorporated. Similarly, in applications from Sunset Lodge for provincial subsidies under the *Homes for the Aged and Rest Homes Act*, R.S.O. 1990, c.H.13, the Lodge was named as the “Charitable Institution” but Governing Council was named as the “Corporation operating Charitable Institution”. To the extent that signatures could be identified, the Secretary and Treasurer usually signed for Governing Council, but there were also agreements which appeared to be signed by Regional Co-ordinators and local Executive Directors. Many agreements were signed over the Governing Council stamp, but some were not.

81. It was difficult to make findings of fact based on the agreements alone. However, the undisputed evidence of several witnesses established that Salvation Army policy required that all original agreements with government be signed by Governing Council. Minute 34.05a of the Salvation Army’s policy guidelines established the basic rule:

All contracts and/or agreements in connection with grants will be signed by the Treasurer and the Secretary as general procedure, otherwise by any two members of The Governing Council.

Apparently in the late 1980's, the Correctional and Justice Services Department lobbied successfully for modification of the policy to allow renewal agreements to be signed locally. A September 30, 1987 memorandum from Governing Council to the Correctional and Justice Services required new agreements to be reviewed by the Department and forwarded to Governing Council for signature, but provided that renewals could be signed by the “regional offices” after verification and review by the “National Office”. This modification in the policy was apparently in effect until the end of March 1993, and was interpreted to allow renewals to be signed by Regional Co-ordinators and by Executive Directors in some cases. The applicants relied on this evidence as establishing that centres had fundamental control over their funding arrangements.

82. It was not clear if this policy change was applied to centres in all of the Social Services Departments. For example, section 3.16 of the Addictions and Rehabilitation *Standards and Review Procedures* provided that all contracts had to be signed by Governing Council and that renewals had to be approved by DHQ before being forwarded to THQ, presumably for signing by Governing Council. Certainly if all centres had the option of signing renewal agreements, this was not reflected in practice. For example, the agreements with the Ministry of Community and Social Services for Broadview Village programs were consistently signed by and in the name of Governing Council.

83. In our view, this evidence establishes that the individual centres were never parties to the funding agreements with the government. Given that all original agreements were with the Governing Council, the fact that renewals were negotiated and sometimes signed at the local level, has little significance. To the extent that Executive Directors and/or Regional Co-ordinators negotiated and signed funding applications and agreements, we conclude that they did so on behalf of the named party to the agreement, which in every case was either “The Governing Council” or “The Salvation Army”.

84. The fact that Governing Council was the contracting party in the original agreements also explains why all external audit reports required by government funders were addressed to Governing Council. The Assistant Financial Secretary acknowledged that THQ would ask for a copy of the external audit reports, but testified that he could not explain why the reports were addressed to Governing Council and not to the centre being audited. In fact, a THQ-prepared specification for tenders for external audits of Salvation Army centres was received in evidence, indicating that the process was at least in some cases managed centrally. Moreover, Governing Council would have been seen as the appropriate party to receive the audit reports required by the government because it entered into the funding agreements and was responsible for the funds received.

85. The evidence of Major Lawlor, Executive Director of Metro Toronto Correctional and Justice Services, confirms this interpretation. In cross-examination, Lawlor stated that it was her mandate to represent the Salvation Army in negotiations related to government contracts. Using the example of the federal parole program, she testified in chief that her job was to negotiate the scope of the Metro Toronto program, specifically the number of clients to be served, with the Area Manager for Correctional Services Canada. Before going into negotiations, she would be informed of the federal governments funding “ceilings” for the coming year by her Department’s Regional Co-ordinator who would receive notice from the government through THQ. After negotiations, she would inform the Regional Co-ordinator of the results, and then, in her words, “the numbers would be put together nationally” at THQ into a national agreement. She testified that the terms of the national agreement were “negotiated through the national Salvation Army liaison in Ottawa”, and that the national agreement was signed by Major Boulton, as the national Correctional and Justice Services Secretary for the Salvation Army. A review of the national agreement entered into evidence indicated that the agreement was signed by Boulton over the name of the Governing Council, although in fact Boulton was not a member of Governing Council.

86. Based on this evidence, we find that the burden of compensation practices at the individual Social Services centres fell on Governing Council as the entity which entered into the funding agreements on behalf of the Salvation Army and was legally accountable for the funding supporting the programs offered at the centres.

Who determined what services and programs were offered by the applicant centres?

87. The evidence which we have reviewed in respect of the funding process indicates that the Salvation Army, through THQ and Governing Council, determined the services and programs to be offered by the centres by deciding what funding agreements would be entered into for the delivery of what programs. However, funding is only part of the picture, and is relevant principally for the Social Services centres. To answer this question, the panel considered the evidence on how new programs were started.

88. In-house counsel testified that new programs would often evolve out of existing programs or be developed to address unmet needs in the community, sometimes on the initiative of a single officer or at the urging of a government funder. All of the representative centres initiated new programs during the relevant period. The Executive Director would identify and negotiate a funding source for the program, and then prepare a detailed proposal for approval by THQ. Reverend Goddard indicated that he could be fairly confident of approval, but only if the program was within the mandate of the Department, compatible with the mission of the centre, and if funding was secured. Staff positions and salaries would be included in the proposed budget and might be amended or adopted as part of the approval process. The proposals were submitted to the Secretary for Program who would present them to the Territorial Program Planning Council at THQ for review. In some cases, depending on the resources required by the program, the proposal might also need approval from the Territorial Property Board and the Territorial Finance Council. Mr. Hutchinson testified that in some cases proposals would be taken to Cabinet as the senior policy-making body for the Salvation Army.

89. There was also some evidence as to how programs were terminated. Both Major Lawlor and Captain Braddock testified that they terminated programs when they could not secure full government funding, after advising their Department Secretary but without being required to obtain advance approval by THQ. The programs could only have been kept operational if Salvation Army funding was provided.

90. In our view, the evidence establishes that the Salvation Army, and not the individual centres, had the authority to decide what programs and services would be offered at the centres. Although the idea for a new program would often come from an Executive Director, and he or she would usually do all the work developing the proposal, no new programs could become operational without the advance approval of senior officers of the Salvation Army at THQ. The approval process certainly could not be considered a mere formality. Moreover, the funding agreements supporting the programs were required to be signed by and in the name of the Governing Council. The fact that some programs were terminated without specific approval is of little significance given that in each case the Department at THQ knew of the shortfall in funding and was informed of the intention of the Executive Director to discontinue the program.

Was the work of the centres integral to the Salvation Army as a whole or was it severable and dispensable?

91. The answer to this question must begin with a reconsideration of the answer to our second question about the services and programs offered by the centres. In that section, we listed the main

services and programs offered by the four representative Social Service centres, and by Agincourt Temple. An overview of that evidence reveals that the Social Services centres offered programs which addressed social needs in the community and were funded largely through government grants, while the corps offered church services and outreach services without any assistance from government. The daycare centres at some of the churches might be considered a hybrid program: most of the revenue came from parent fees, but wages were supplemented by the Ministry of Community and Social Services. There were no subsidized spaces for low-income families at the Agincourt daycare.

92. Although none of the parties gave the panel a breakdown of the applicants as between churches and Social Services centres, we thought it would be useful to have this perspective on the evidence as a whole. We reviewed the list of 155 applicants in schedule A of the application and found that it broke down as follows:

Salvation Army Headquarters including THQ, DHQs, training centres, and public relations offices	12
Churches including centres identified as Citadels, Temples and Corps	82
Social Services Centres Health Services, Women's Social Services, Addictions and Rehabilitation, Correctional and Justice Services	57
Family Services Centre	1
Unclear	3

93. We note that this breakdown is based on the names given in the application, and may not be entirely accurate. We listed the Family Services centre separately although the evidence indicates that it may be an outreach program of a church or of DHQ. We had 3 applicants that could not be categorized. Of the remaining 151 centres, churches made up almost 54% and central organizations an additional 8%. The Social Services centres appeared to make up only approximately 38% of the applicant centres, despite the fact that so much of the evidence concerned the Social Services centres.

94. Considering first the work of the churches, it was not argued that the religious services offered by the churches were dispensable or severable from the work of the Salvation Army as a whole. We find the delivery of religious services to be the primary work of the churches and that this work was integral to the mission of the Salvation Army. This was also true of the outreach ministry, which, in the case of Agincourt Temple's Chinese Ministry, was described by the Corps Officer as an attempt to diversify the congregation in recognition of the Temple's ethnic neighbourhood. We

heard little evidence about the other kinds of outreach programs offered by Salvation Army churches, such as emergency food and clothing assistance, but it was not argued that these programs were in any way severable from the work of the Salvation Army as a whole.

95. In our view, the daycare at Agincourt Temple should also be considered an outreach program of the church. The board of directors of the daycare was headed by the Corps Officer and his wife and appeared to be composed entirely of members of the congregation. Moreover, the Temple benefited from the daycare, through the payment of rent and through capital grants from the Ministry of Community and Social Services to improve the facilities which are shared by the Sunday children's program. The Temple paid a tithe of 10% to DHQ on the income it earned through the daycare centre.

96. Turning to the Social Services centres, we note that, although the applicants argued that each centre was a separate employer, it was not argued that the work of the centres was anything less than integral to the mission of the Salvation Army as a national and international organization. The evidence of the applicants was that the Salvation Army is a church identified by its outreach ministry. The work of the various centres was presented as part of this outreach ministry in their internal manuals and program descriptions. As we have seen, all of the employee manuals at the individual centres provided a history and overview of the Salvation Army. For example, Sunset Lodge's *Guidelines for Employees* stated in its introductory paragraph:

The Salvation Army is an international Christian organization with the dual function of Evangelism in the Christian faith and meeting the social needs of society. It is motivated by the principle of love for God and this is manifested in service to mankind.

97. In the following section, the manual stated that the property for Sunset Lodge was purchased by the Salvation Army and renovated for the "Senior Citizens Lodge". In other words, Sunset Lodge was presented to the employees reading the manual as a program of the Salvation Army, not as a separate entity. This was also true of the *Policies, Procedures and Personnel Manual* prepared for the employees at Broadview Village. The forward stated:

The Village is a community living program for developmentally handicapped adolescents and adults. It is owned and operated by The Salvation Army, a Christian church engaged in a wide variety of evangelistic and social service endeavours.

98. It was not argued that the work of the Social Services centres was in any way dispensable or severable from the work of the Salvation Army as a whole. The centres were not established in a manner that would have facilitated devolution. The fact that they were not separately incorporated would have affected their eligibility to operate at least some of the programs funded by government. The fact that the centres had federal charity registration only in association with Governing Council would have undermined efforts at independent fundraising. In fact, a former employee, Jim Church, testified that he had held discussions with other community organizations about devolving the Family and Housing Services in Chatham out of the Salvation Army, and was reprimanded by his supervisor for those discussions.

Who did employees perceive to be the employer?

99. In all, five employees, or former employees, at the applicant centres testified, excluding the officers who testified on behalf of the representative centres. For the applicants, the Assistant Financial Secretary and Salvation Army in-house counsel both testified that they perceived themselves to be employees of THQ but not of Governing Council. The daycare administrator testified that he believed that he was an employee of the Agincourt Temple Daycare.

100. The two former employees who testified for the respondents strongly believed that they were employees of the Salvation Army, not of the Family and Housing Services program of the Chatham Citadel. The personnel files of both indicated a basis for their perception. The employment application forms, job descriptions, employment contracts and a job description questionnaire were all under the heading “The Salvation Army”, with the words “Family and Housing Services” and “Chatham” sometimes written underneath. The name of the Chatham Citadel did not appear. Mr. Church’s application for employment was stamped as authorized by DHQ. When he was promoted to the position of Housing Co-ordinator, the promotion was documented in his file by a Salvation Army “Replacement of Employee” form signed at DHQ.

101. Eventually, both employees received notices called “Employee Warning Records” which included a distribution list indicating that the Divisional Commander had received a copy. Ms Grabb testified that she dealt with DHQ in communicating her unwillingness to participate in the benefits plan offered through THQ; presumably she and Mr. Church both received copies of the official benefits plan booklet which states on its face that the plan is for employees of the Governing Council of the Salvation Army. As well, Mr. Church produced in evidence an agency profile prepared for the United Way which describes the program as a “facet of the Salvation Army work”. Clearly, all these documents would have contributed to a reasonable perception that their employer was the Salvation Army, not the Chatham Citadel or the Family and Housing Services as a separate agency.

CONCLUSIONS

102. Relying on the findings of fact made in answering each of our questions, we draw the following conclusions.

- * The Salvation Army, through its staff at THQ and DHQ, and through Governing Council, had overall financial responsibility and control in respect of each of the representative centres. We rely principally on the evidence with respect to the centrally-established spending limits, the financial reporting requirements, the central banking system, the handling of external audits, the budget submission process and the funding process. Although each of these taken separately might not establish central financial control, taken together it is apparent that the individual centres were under a system of comprehensive financial controls managed by senior Salvation Army officers at THQ and DHQ.
- * The Salvation Army, through its staff at THQ and DHQ, and through Governing Council, exercised substantial control over compensation practices and bore ultimate responsibility for employee remuneration. The Executive Directors of individual

centres did have some flexibility in determining annual increases within funding limits, but salaries for all new positions and new programs required THQ approval, and subsequent yearly increases were subject to scrutiny as part of the budget submission process. The evidence established that the salaries for all employees, other than Agincourt Temple staff, were supported by government funds which Governing Council contracted for, or by Red Shield funds, allocated by THQ. In the case of the two staff people at Agincourt Temple, the salaries were supported internally, but compensation levels were nevertheless subject to scrutiny by DHQ.

- * The Salvation Army, through its staff at THQ and DHQ, exercised a supervisory role over management of employee relations at the individual centres. As a matter of Salvation Army policy, the approval of THQ or DHQ was required, but not always obtained, for initial employment agreements and for staff terminations. Although the Executive Directors of individual centres did have discretion to develop in-house employment policies, they did so within the context of a myriad of centrally-endorsed policies. The central policy guidelines, called Minutes, were developed and up-dated at THQ, and were distributed to all centres on a regular basis. The Social Services Departments played an active role in developing model human resource policies, and in two of the four departments, manuals prepared at THQ appeared to require mandatory compliance. The limited discretion that did rest with the Executive Directors was further eroded by government-imposed requirements, sometimes included in funding agreements entered into by Governing Council.
- * The Salvation Army, through its staff at THQ and DHQ, exercised direct and substantial control over the nature and scope of services offered by the applicant centres. The authority to approve new programs rested at the highest levels of the unincorporated association. Proposals originating in a centre would be taken first to the appropriate Social Services Secretary or to the Divisional Commander and then to the Secretary for Program at THQ. No new programs could operate without having obtained an approval in detail from the Territorial Program Planning Council. Proposals for new programs were often also reviewed by the Territorial Finance Council and/or the Territorial Property Board and/or Salvation Army Cabinet.

103. On the basis of these conclusions, supported by our factual findings, and on the basis of previous tribunal jurisprudence, we find that the employer of the employees at the applicant centres is The Salvation Army Canada and Bermuda, acting through its senior officers and its corporate body, Governing Council for The Salvation Army in Canada. We rely particularly on the decisions of the Tribunal in *Haldimand-Norfolk (No. 3)*(1989), 1 P.E.R. 17; *County of Middlesex and City of London* (1989), 1 P.E.R.89; *Metropolitan Toronto Library Board* (1989), 1 P.E.R. 112; *Kingston-Frontenac Children's Aid Society (No. 2)*(1992) 3 P.E.R. 117; *Thomson Newspapers* (1993), 4 P.E.R. 21; *Hilton Works (No. 3)*(1994), 5 P.E.R. 34. We also note that our determination is consistent with the *obiter* comments of the Ontario Court General Division in *Re Governing Council of the Salvation Army et al. and A.G. of Ontario*, (1992) 88 D.L.R 238 at 248, where the Court notes that: "The Army also has employees who are not soldiers or officers. They work for the Council or Army in various capacities".

104. In fact, there was no evidence before this panel of any other body capable of being identified as the employer in respect of the applicant centres. The applicants submitted that the centres should be considered voluntary unincorporated associations, and relied on a definition of an unincorporated association as two or more people joined together for a common purpose and with a constitution. This was not helpful as there was simply no evidence of such an association of people at the level of the individual centres, and certainly no evidence that any of the centres had a constitution. In this respect, the applicant centres stood in sharp contrast to the Salvation Army as a central organization: the Salvation Army was and is a highly structured association of officers with a detailed constitution recognized in the federal statute establishing its corporate body, the Governing Council.

105. Counsel for the applicants made no attempt, in evidence or argument, to identify a specific association of people acting as the employer at any of the representative centres. Although the testimony of several witnesses referred to the fact that some centres had advisory boards made up of members of the community, this evidence was not relied upon by the applicants, and the boards appeared to have little or no decision-making authority. The testimony of in-house counsel indicated that some Salvation Army long-term care facilities had management boards, if such boards were required by legislation or under funding arrangements, but despite the panel having expressed interest in this area, there was no evidence indicating that any of the applicant centres had management boards. The evidence disclosed that the decision-making power which existed at the local level was entirely in the hands of the Executive Director. None of the parties suggested that the Executive Directors should be identified as the employers at the centres.

106. In accordance with our determination that the employer at each of the applicant centres is The Salvation Army Canada and Bermuda, the Order of the Review Officer is hereby confirmed. The Salvation Army Canada and Bermuda and The Governing Council of The Salvation Army in Canada are responsible for compliance with this Order.