

<b>DETAILED SUMMARY OF CUPE ET AL V. ATTORNEY-GENERAL-ONT ET AL SETTLEMENT</b>
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As a result of a mediation process, 5 Unions and 4 women who brought a pay equity funding *Charter* challenge, *CUPE et al v. Attorney-General (Ont.) et al* have now reached a settlement with the Government of Ontario. The Unions are the Canadian Union of Public Employees, the Ontario Nurses Association, the Ontario Public Service Employees Union, the Service Employees International Union, and the United Steelworkers of America.

This settlement, facilitated by Mediator Gerry Lee has resulted in the agreement of the Government to flow up to \$414 million in pay equity funding over the next three years to approximately 100,000 women. The 5 Unions represent women who work in “proxy” sector - i.e. predominantly female public sector agencies such as nursing homes, child care centres, developmental services and other community agencies. The *CUPE et al* legal action was brought in April, 2001 as a result of the Ontario Government’s decision to discontinue providing pay equity funding to the publicly funded employers who employ these women to provide essential public services. This sector used the proxy comparison method under the *Pay Equity Act*. Their right to pay equity had been taken away by the Ontario Government in 1996 when it repealed the proxy provisions of the *Pay Equity Act* as part of its budget cutting process. The Ontario Superior Court of Justice, acting on a previous *Charter* challenge brought by SEIU Local 204 restored the pay equity rights of these women in September, 1997 finding the Government’s actions to be discriminatory and unconstitutional.

The settlement provides as follows:

### **Pay Equity Liabilities of Proxy TPOs Must be Paid**

1. The Government acknowledges that:
  - a. there are pay equity compliance issues in the proxy sector and that some employers have not complied with their pay equity obligations.
  - b. proxy employers in the broader public sector are legally obliged to provide employees with their proxy pay equity adjustments on an annual basis;
  - c. Such adjustments are not discretionary and must be paid.

### **Agreement Funding**

2. The Government agrees to provide pay equity funding to address the following sectors funded by the Ministry of Health and Long Term Care (MOHLTC) and the Ministry of Community, Family and Child Services, (MCFCS): Long Term Care Facilities; Long Term Care Community Services (Community Care Access Centres and 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 and Children's)

3. The funding under this Agreement is limited to the above-noted MOHLTC and MCFCS sectors.
  - a. The following programs in these two Ministries will not receive funding under this Agreement: 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
  - b. Rest and Retirement Homes, including those attached or adjacent to Long-Term Care facilities, will not receive funding pursuant to this Agreement.
  - c. 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.
4. *Note: Proxy TPOs not receiving funding under this Agreement remain obligated to provide their employees with their pay equity adjustments on a timely basis and such TPOs should request funding for such adjustments in the Ministry budgeting process.*

#### **Breakdown of Agreement Funding**

5. The Government will provide the following funding to address the compliance issues in the proxy sector. This funding is divided into three categories or streams:

#### Additional Base Pay Equity Funding - Agreement - Para. 9(a)

- a. For those proxy TPO agencies in the above sectors "who have employees who have not yet achieved the pay equity job rate", the Government will flow the following base funding increases:
  - i. 2003-04 -increase of 1% of previous years' payroll (estimated to be about \$30 million)
  - ii. 2004 -05 -increase of 1% of previous year's payroll (estimated to be about \$30 million)
  - iii. 2005-06 - increase of 0.75% of the previous year's payroll to cover the period April 1, 2005 to December 31, 2005 (estimated to be about \$24 million)

#### Current Base Pay Equity Liabilities Funding - Agreement - Para. 9(b)

- b. For those proxy TPOs with current base pay equity liabilities, a fund of \$50 million base dollars paid as follows:
  - i. 2003-04 - \$40 million
  - ii. 2004-05 - \$10 million

#### Retroactive Pay Equity Liabilities Funding - Agreement - Para. 9(c)

- c. For those proxy TPOs with outstanding pay equity liabilities, a fund of \$100 million one time dollars paid as follows:
- i. 2003-04 - \$30 million
  - ii. 2004-05 - \$50 million
  - iii. 2005-06- \$20 million

**PAY EQUITY CHARTER CHALLENGE  
GOVERNMENT SETTLEMENT FUNDING**

	<b>2003-04</b>	<b>2004-05</b>	<b>2005-06</b>	
9(a) Base Funding – Proxy TPOs who have not achieved pay equity (Amt. Estimated)	\$30 million (1% of previous year's payroll)	\$30 million (Continuation of 2003-04 base funding) \$30 million	\$30 million  \$30 million  \$24 million (.75% of previous year's payroll)	
<b>Total 9(a) funding 2003-2006</b>				\$174 million
9(b) Base Funding – Proxy TPOs who have outstanding current pay equity liabilities	\$40 million	\$40 million  \$10 million	\$40 million  \$10 million	
<b>Total 9(b) funding 2003-2006</b>				\$140 million
9(c) One-time Funding – outstanding pay equity liabilities	\$30 million	\$50 million	\$20 million	
<b>Total 9(c) funding – 2000-2006</b>				\$100 million
<b>Yearly Total of 9(a), (b) and (c) funding</b>	<b>\$100 million</b>	<b>\$160 million</b>	<b>\$154 million</b>	
<b>Overall Total 2003-2006 of 9(a), (b) and (c) funding</b>				<b>\$414 million</b>

### Timing of Distribution of the Funds

6. The Government has agreed to make its best efforts to distribute the funding to TPOs “as quickly as possible” and no later than the following dates:
  - a. The 2003-04 additional base funding (s.9(a) funding) will be provided to TPOs no later than December 31, 2003
  - b. The remaining 2003-04 funding for current and retroactive pay equity liabilities (s. 9(b) and (c)) will be provided no later than March 31, 2004.
  - c. In the 2004-05 and 2005-06 fiscal years, the funding will be provided to TPOs as part of the customary TPO budgeting process and in any event before the end of the fiscal year.
5. TPOS will be directed by the Government to distribute any funding received under this Agreement to employees no later than 60 days after the receipt of the funding.

### Current and Outstanding Funding for Pay Equity Liabilities

6. The Government will provide the s. 9(b) and (c) funding for current and outstanding pay equity liabilities of the Proxy TPOs as set out below:
  - a) The payment in any year to a TPO may represent all or part of the pay equity liabilities of the TPO. The amount of funding distributed under this Agreement will be determined as set out below:
    - a) The pay equity liabilities will be identified as part of the Government’s 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 the sector.
    - b) The Government will allocate the funding in Sections 9(b) and 9(c) of this Agreement as follows:

<i>85% of funds in 9(b)</i>	<i>X</i>	<i>Proxy pay equity base liability of each proxy TPO</i>
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*Total pay equity base liability of proxy TPOs*

<i>At least 85% of funds in 9(c)</i>	<i>X</i>	<i>Proxy pay equity base liability of each proxy TPO</i>
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*Total pay equity base liability of proxy TPOs*

*Note: the purpose of this formula is to ensure that if there are insufficient funds in any year to meet the pay equity liabilities of a TPO, that the funds negotiated under this agreement are distributed on a proportionate basis according to the liabilities of the TPOs. The Government has retained the discretion to distribute up to 15% of*

*this pay equity funding according to the criteria set out below.*

This formula will not be applied to Child Care Operators or Per Diem Operators, who are being funded through alternate strategies as a result of the nature of their funding process. Accordingly, the above formula will be calculated net of the Child Care Operators and Per Diem Operators.

#### Remaining 15% of Funding

- c) Government will allocate up to 15% of the remaining funds in 9(b) and 9(c) based on the following criteria:
1. the proxy adjustments owing from 1999 to 2003;
  2. the use of government funding provided since 1999 for the purpose intended;
  3. the ability of TPOs to provide required services and meet proxy obligations; and
  4. the actions taken by TPOs to meet their proxy obligations.

### **Special Funding Provisions**

#### Child Care

7. In light of the involvement of municipalities in the funding of Child Care Operators, a separate funding process is necessary.
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 below, assist not-for-profit proxy Child Care Operators (CCOs) in meeting their pay equity obligations.
9. The Government will provide the following funding:
  1. 2003/04 - base increase equivalent to 1% of the CCOs' previous year's payroll;
  2. 2004/05 - base increase equivalent to 0.8% of the CCOs' previous year's payroll; and
  3. 2005/06 - base increase equivalent to 75% of 0.8% of the CCOs' previous year's payroll.
10. Base funding will be allocated to CCOs through municipal delivery agents (Consolidated Municipal Service Managers/District Social Service Administration Boards).
11. CCOs, through municipal delivery agents, will also be eligible for ss.9(b) and (c) additional base and one-time funding for current and retroactive pay equity liabilities.

These funds will be provided to municipalities to assist CCOs that have current base and outstanding proxy pay equity liabilities based on strategies that will be developed based on information on liabilities collected from TPOs and discussions with Municipalities and Per Diem Operators.

12. Government will ensure that the Child Care sector will receive ss.9(b) and (c) funding for current and retroactive liabilities comparable to the other TPOs funded under the Agreement. The overall liability funding to the Child Care sector will be a combination of both provincial and municipal funding.

#### In-Home Providers

13. In-Home Providers will receive s. 9(a) additional base funding only and this funding will be allocated through Community Care Access Centres.

#### Per Diem Operators

14. Government will set aside a minimum of \$5 million of the s.9(c) retroactive funds to address proxy pay equity liabilities of Per Diem Operators.

#### **Enhanced Accountability Mechanisms**

15. 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 the Settlement Agreement, analysis of financial and service reports submitted by TPOs, year-end reconciliations and

the Pay Equity Act.

12. 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 above for other TPOs.
13. 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 above for other TPOs.
14. Government agrees to discuss with Residences Treating Youth mechanisms to ensure accountability for funds distributed under the Settlement Agreement.

### **Government Reporting to Unions**

15. 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 the Settlement Agreement.
16. 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 the Settlement 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 above-noted list provided by the Unions, 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 s. 8 of the Settlement Agreement;
  - d) for in-home providers, the total base funding provided to CCACs for such providers pursuant to s. 7 of the Settlement Agreement; and
  - e) for per diem agencies, the total one-time funding and rate increases provided to per diems on the above-noted list provided by the Unions
17. 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.

### **Enforceability - Legal Issues**

18. The Memorandum of Settlement is enforceable in the Ontario Superior Court of

Justice. The *CUPE et al v. Attorney-General (Ont) et al* proceeding is to be discontinued and this is agreed not to be an admission as to the merits of that proceeding. The settlement is not an admission of liability of the Government.

### **Legal Costs**

19. The Government agreed to pay the Applicants reasonable legal costs of their Charter Challenge proceeding in the Ontario Superior Court of Justice.

### **Pay Equity Complaints**

20. The Applicants agreed to withdraw the complaints filed under the *Pay Equity Act* at the time the *CUPE et al* case was filed in April, 2001. (Set out in 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 that affidavit.) This withdrawal is 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*.

### **New and Interim Long Term Care Beds**

21. 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.

### **22. Notes**

- a) Payroll for purposes of section 9(a) funding payout refers to the TPOs "total salary and wages for services funded by MOHLTC and MCFC". If a particular service funded, for example, 85% by MOHLTC or MCFCS and 15% by fundraising revenues, then the calculation of the total salary will be based on 100% of the total salaries and wages for that service.
- b) The funding in section 9(b) and (c) only applies to TPO pay equity liabilities on or after January 1, 1999. The Government funding provided after the previous *SEIU Charter* challenge provided funding for adjustments up to December 31, 1998.
- c) TPOs must demonstrate remaining pay equity liabilities in order to receive funding in each of the three fiscal years.
- d) The term Government here refers to the Ontario Government and the term TPOs refers to Transfer Payment Organizations funded by the Government or employers who are funded by proxy TPOs, e.g. In-Home Providers.