

HIGHLIGHTS OF CUPE ET AL V. ATTORNEY-GENERAL(ONT) ET AL SETTLEMENT

Mediated Settlement Reached for Pay Equity Payments of up to \$414 million

Five Unions and 4 women who brought a pay equity funding *Charter* challenge, *CUPE et al v. Attorney-General (Ont.) et al* reached a settlement with the Government of Ontario on May 23, 2003. The Applicant 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. The individual applicants are a child care worker, registered nurse, health care aide and developmental services worker.

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.

Background to *CUPE et al v. Attorney-General (Ont) Action*

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 Their right to pay equity had been taken away by the Ontario Government in 1996 when it repealed the proxy provisions of the *Pay Equity Act* as part of its budget cutting process.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. After two years of litigation, the Government, after producing documentation requested by the Unions, agreed in December, 2002 to enter into a mediation process to try to reach a settlement of the case.

Settlement terms include:

- Government acknowledgement as funder that proxy employers are legally obliged to provide employees with their proxy pay equity adjustments on an annual basis;
- 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)

**PAY EQUITY CHARTER CHALLENGE
GOVERNMENT SETTLEMENT FUNDING**

	2003-04	2004-05	2005-06	
9(a)Additional 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)	
Total 9(a) funding 2003-2006				\$174 million
9(b)Additional Base Funding – Proxy TPOs who have outstanding current pay equity liabilities	\$40 million	\$40 million \$10 million	\$40 million \$10 million	
Total 9(b) funding 2003-2006				\$140 million
9(c) One-time Funding – outstanding pay equity liabilities	\$30 million	\$50 million	\$20 million	
Total 9(c) funding – 2000-2006				\$100 million
Yearly Total of 9(a), (b) and (c) funding	\$100 million	\$160 million	\$154 million	
Overall Total 2003-2006 of 9(a), (b) and (c) funding				\$414 million

Timing of Distribution of the Funds

- The Government has agreed to make its best efforts to distribute the funding to employers “as quickly as possible” and no later than the following dates: 1)The 2003-04 additional base funding (s.9(a) funding) will be provided to employers no later than December 31, 2003; 2) 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; 3) In the

2004-05 and 2005-06 fiscal years, the funding will be provided to employers as part of the customary budgeting process and in any event before the end of the fiscal year. Employers are required to distribute funding received under this Agreement to employees no later than 60 days after they receive it from Government.

Enhanced Accountability

- To strengthen accountability and enhance compliance with the *Pay Equity Act*, MOHLTC and MCFCS have agreed to do the following:
 - a. Provide information and education to proxy Boards of Directors/Owners on their legal and financial responsibilities regarding their contracts with Government.
 - b. Require that all proxy transfer payment agencies (TPOs') 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*.
 - c. Require that all TPOs, on receipt of funding for proxy pay equity under 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
- 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 to Union employees.

Legal Proceedings

- 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. The Government agreed to pay the Applicants' reasonable legal costs of their Charter Challenge proceeding in the Ontario Superior Court of Justice. 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 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*. The Applicants agreed to release the Government from any claims arising under the *Charter* with respect to circumstances supporting the *CUPE et al* action and government funding of proxy agencies up to March 31, 2006, the end of funding under the agreement.