

B E T W E E N:  
PUBLIC SERVICE ALLIANCE OF CANADA  
Complainant  
-and-  
CANADIAN HUMAN RIGHTS COMMISSION  
Commission  
-and-  
GOVERNMENT OF THE NORTHWEST TERRITORIES  
Respondent

MEMORANDUM OF AGREEMENT  
June 25, 2002

WHEREAS the Public Service Alliance of Canada (the "PSAC") filed a complaint against the Government of the Northwest Territories (the "Government") with the Canadian Human Rights Commission (the "Commission") on March 28, 1989 (the "Complaint"); and

WHEREAS in the Complaint, the PSAC alleges that the Minister of Personnel for the Government has violated sections 7, 10 and 11 of the Canadian Human Rights Act (the "Act"); and

WHEREAS the Commission investigated the Complaint and requested the assignment of a Human Rights Tribunal (the "Tribunal") to inquire into the part of the Complaint arising under sections 7 and 11 of the Act; and

WHEREAS the Tribunal was assigned on February 20, 1998 to hear that part of the Complaint that was referred to it by the Commission (the "Proceeding"); and

WHEREAS the PSAC later withdrew the section 7 portion of the Complaint; and  
WHEREAS the Government, the PSAC and the Commission (collectively the "Parties", individually the "Party") are agreed that under the collective agreements and arbitral award in force between the Government and the Union of Northern Workers ("UNW") during the period March 28, 1989 to March 31, 1998, Government employees in female dominated occupational groups received less wages than employees in male dominated occupational groups performing work of equal value; and

WHEREAS the PSAC and the Commission have taken issue with the validity and/or enforceability of Settlement Agreements, as defined in Appendix "B"; and

WHEREAS the Parties have agreed upon a wage and payment calculation methodology to provide a remedy and redress to the employees affected by the Complaint and wish to finally settle and resolve the Complaint and any and all matters, claims, or things, whatsoever covered by and/or arising out of, and/or relating to the Complaint, including without limitation, all issues relating to remedy and redress.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

I. Remedy and Redress

1. The Parties are agreed that the basis for the calculation of wage adjustments, exclusive of interest, payable to Eligible Employees, as defined in Appendix "B", shall be as set forth in Appendix "A".

2. The manner in which the final wage adjustments are calculated shall be as described in Appendix "B". The Government shall under no circumstances be obliged to pay any monetary compensation exceeding the sum set out in Appendices "A" and "B" respecting any and all matters, claims or things whatsoever covered by, and/or arising out of, and/or relating to the Complaint.

#### II. Settlement Agreements

3. The Parties agree that this Agreement in no way supersedes, rescinds or vitiates the Settlement Agreements, but may supplement the Settlement Agreements of Eligible Employees.

4. The PSAC and the Commission agree that they shall not, directly or indirectly, challenge and/or directly or indirectly support any challenge to the validity and enforceability of the Settlement Agreements.

#### III. Integration of Appendices

5. Appendices "A" and "B" hereto form an integral part of this Agreement and have the same force and effect as the main body of this Agreement. The Parties confirm that they have read and reviewed Appendices "A" and "B" and understand the contents of such appendices and agree that the information contained in such appendices is complete and accurate.

#### IV. Acknowledgment of the PSAC

6. The PSAC acknowledges that it is executing this Agreement on its own behalf and on behalf of its current and former members who are or were represented by its component the UNW over the Retroactive Period, as defined in Appendix "B".

#### V. Amendments

7. This Agreement shall not be amended, modified, superseded and/or cancelled except by a document or other instrument in writing signed by all the Parties and any document or other instrument which purports to amend, modify, supersede and/or cancel this Agreement or any part hereof shall not be binding and shall be of no effect unless and until it has been executed and delivered by all of the Parties.

#### VI. Execution

8. This Agreement may be executed in several counterparts by original signature or by facsimile, each of which so executed will be deemed to be an original and such counterparts together shall be deemed to be one and the same instrument, which shall be deemed to be executed as of the date first above written.

#### VII. Miscellaneous

9. The division of this Agreement into sections, subsections and the insertion of headings are for convenience and reference only and shall not affect the interpretation or construction of this Agreement.

10. Any provision of this Agreement which is invalid, prohibited or unenforceable in any jurisdiction for any reason whatsoever shall, as to such jurisdiction only, be ineffective and severable from this Agreement but such invalidity, prohibition or unenforceability shall not invalidate or otherwise affect the remaining portions of this Agreement nor shall it affect the validity or enforceability of such provision in any other jurisdiction.

#### VIII. Costs

11. The Government agrees to pay the PSAC \$700,000.00, payable to Raven, Allen, Cameron and Ballantyne, in trust, to compensate the PSAC for a portion of the legal costs the PSAC has incurred related to this matter, such payment to be made thirty (30) days after the Order as defined in Appendix "B".

IX. Interpretation

12. As this Agreement was concluded between the Parties in English, in the event of any dispute between the English and any translated version of this Agreement, the English version shall govern.

DATED as of June 25, 2002 )

)

WITNESS: )

)

) Per:

) Government of the Northwest Territories

)

)

)

) Per:

) Public Service Alliance of Canada

)

)

)

) Per:

) Canadian Human Rights Commission

)

Appendix "A"

Prorated Hourly Adjustments, by Class Code and Fiscal Year

	1989/90	1990/91	1991/92	1992/93	1993/94	1994/95	1995/96	1996/97	1997/98
1032	1.48	1.34	1.20	1.07	1.04	0.97	1.00	0.48	0.54

1033	1.64	1.49	1.33	1.19	1.16	1.08	1.11	0.52	0.59
1201	0.94	0.85	0.76	0.68	0.66	0.62	0.63	0.32	0.36
1202	0.99	0.90	0.80	0.71	0.70	0.65	0.67	0.33	0.38
1203	1.08	0.98	0.87	0.78	0.76	0.71	0.73	0.36	0.41
1204	1.26	1.15	1.02	0.91	0.89	0.83	0.85	0.41	0.47
1205	1.35	1.22	1.09	0.97	0.95	0.88	0.91	0.44	0.50
1222	0.00	0.00	0.00	0.00	0.00	0.65	0.67	0.33	0.38
1223	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.36	0.41
1224	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.41	0.47
1301	1.44	1.31	1.17	1.04	1.02	0.94	0.97	0.46	0.53
1302	1.53	1.39	1.24	1.11	1.08	1.00	1.03	0.49	0.56
1303	1.64	1.49	1.33	1.19	1.16	1.08	1.11	0.52	0.59
1304	1.83	1.66	1.48	1.32	1.30	1.20	1.24	0.58	0.65
1305	2.04	1.85	1.65	1.47	1.44	1.33	1.38	0.64	0.72
1701	0.97	0.88	0.78	0.70	0.68	0.63	0.65	0.33	0.37
1702	1.02	0.92	0.82	0.73	0.72	0.67	0.69	0.34	0.39
1703	1.08	0.98	0.87	0.78	0.76	0.71	0.73	0.36	0.41
3031	1.35	1.22	1.09	0.97	0.95	0.88	0.91	0.44	0.50
3032	1.44	1.31	0.00	0.00	0.00	0.00	0.00	0.46	0.53
3034	1.64	1.49	1.33	1.19	1.16	1.08	1.11	0.52	0.59
3201	1.02	0.93	0.83	0.74	0.72	0.67	0.69	0.34	0.39
3202	1.12	1.02	0.91	0.81	0.79	0.74	0.76	0.37	0.42
3203	1.23	1.12	1.00	0.89	0.87	0.81	0.83	0.40	0.46
3204	1.40	1.27	1.13	1.01	0.99	0.92	0.95	0.45	0.51
3205	1.54	1.40	1.25	1.11	1.09	1.01	1.04	0.49	0.56
3206	1.72	1.56	1.39	1.24	1.21	1.13	1.16	0.54	0.62
3207	1.85	1.68	1.49	1.33	1.31	1.21	1.25	0.58	0.66
3211	0.96	0.87	0.78	0.69	0.68	0.63	0.65	0.32	0.36
3212	1.05	0.95	0.85	0.76	0.74	0.69	0.71	0.35	0.39
3213	1.16	1.05	0.93	0.83	0.82	0.00	0.00	0.00	0.00
3214	1.32	1.19	1.06	0.95	0.93	0.86	0.89	0.42	0.48
3215	1.45	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
3301	0.99	0.90	0.80	0.72	0.70	0.65	0.67	0.33	0.38
3401	1.11	1.01	0.90	0.80	0.79	0.73	0.75	0.37	0.42
3402	1.30	1.18	1.05	0.94	0.92	0.85	0.88	0.42	0.48

Prorated Hourly Adjustments, by Class Code and Fiscal Year

	1989/90	1990/91	1991/92	1992/93	1993/94	1994/95	1995/96	1996/97	1997/98
3403	1.48	1.34	1.20	1.07	1.04	0.97	1.00	0.48	0.54
3404	1.64	1.49	1.33	1.19	1.16	1.08	1.11	0.52	0.59
4511	1.02	0.92	0.82	0.73	0.72	0.67	0.69	0.34	0.39
4512	1.11	1.01	0.90	0.80	0.79	0.73	0.75	0.37	0.42
4513	1.26	1.15	1.02	0.91	0.89	0.83	0.85	0.41	0.47
6101	1.33	1.24	1.14	1.02	0.99	0.92	0.95	0.48	0.54
6102	1.38	1.28	1.18	1.05	1.03	0.95	0.98	0.50	0.56
6103	1.41	1.31	1.21	1.08	1.06	0.98	1.01	0.51	0.58
6104	1.46	1.36	1.25	1.12	1.09	1.01	1.05	0.53	0.60
6105	1.51	1.41	1.30	1.16	1.13	1.05	1.08	0.55	0.62
6107	1.75	1.63	1.50	1.34	1.31	1.22	1.25	0.62	0.71
6201	1.38	1.28	1.18	1.05	1.03	0.95	0.98	0.48	0.54
6202	1.46	1.36	1.25	1.12	1.09	1.01	1.05	0.51	0.58
6203	1.51	1.41	1.30	1.16	1.13	1.05	1.08	0.53	0.60
6204	1.63	1.51	1.39	1.24	1.22	1.13	1.16	0.56	0.64
6301	0.92	0.86	0.79	0.70	0.69	0.64	0.66	0.33	0.37
6302	0.97	0.90	0.83	0.74	0.73	0.67	0.69	0.34	0.39
6303	1.03	0.96	0.88	0.79	0.77	0.71	0.74	0.36	0.41
6304	1.10	1.02	0.94	0.84	0.82	0.76	0.78	0.38	0.43
6305	1.21	1.12	1.03	0.92	0.90	0.84	0.86	0.42	0.47
6401	1.10	1.02	0.94	0.84	0.82	0.76	0.78	0.38	0.43
6501	1.38	1.28	1.18	1.05	1.03	0.95	0.98	0.47	0.53
6502	1.46	1.36	1.25	1.12	1.09	1.01	1.05	0.50	0.56
6503	0.00	1.46	1.34	1.20	1.17	1.09	1.12	0.00	0.00
6511	1.46	1.36	1.25	1.12	1.09	1.01	1.05	0.50	0.56
6512	0.00	0.00	0.00	0.00	0.00	1.05	1.08	0.51	0.58
6513	1.63	1.51	1.39	0.00	0.00	1.13	1.16	0.55	0.62
6521	0.00	0.00	0.00	0.00	0.00	0.00	0.98	0.47	0.53
6522	1.46	1.36	1.25	1.12	1.09	1.01	1.05	0.50	0.56
6523	1.51	1.41	1.30	1.16	1.13	1.05	1.08	0.51	0.58
6531	1.63	1.51	1.39	1.24	1.22	1.13	1.16	0.55	0.62
6532	0.00	0.00	0.00	0.00	0.00	1.17	1.21	0.56	0.64
6601	1.33	1.24	1.14	1.02	0.99	0.92	0.95	0.45	0.52
6602	1.41	1.31	1.21	1.08	1.06	0.98	1.01	0.48	0.54
6603	0.00	1.41	1.30	1.16	1.13	1.05	1.08	0.51	0.58

## Appendix "B"

### Further Definitions and Limitations:

1. "Bargaining Unit" for purposes of this Agreement comprises current and former unionized employees of the Government represented by the UNW other than Northwest Territories Power Corporation employees.
2. "Casual Eligible Employees" are Eligible Employees, as defined below, who are hired to perform work of a temporary or casual nature, except that casual employees who are hired for a single job for a period of more than one year shall be deemed to be term employees for purposes of this Agreement. Casual Eligible Employees will be compensated using 80% of the adjustment amount calculated for indeterminate, term and seasonal employees in the same class code.
3. "Eligible Class Codes" are the class codes listed in Appendix "A".
4. "Eligible Employees" are Bargaining Unit indeterminate, term, seasonal and casual employees (including both full-time and part-time employees) with service in one or more Eligible Class Codes who meet the following criteria:
  - (a) The employee had service between March 28, 1989, and March 31, 1998;
  - (b) The class code of their substantive position was entitled to an adjustment and/or supplement in accordance with the wage adjustment methodology set out herein. For greater clarity, a substantive position is the one to which an employee is appointed as opposed to an acting assignment; and
  - (c) The employee has submitted a claim to the Government on or before December 31, 2004.

For the purpose of clarity, no employee with service in an excluded class code is eligible for a Payment(s) in respect of that service under this Agreement.

### 5. "The Fund"

- (a) The Parties agree that pursuant to this Agreement and the Settlement Agreements, the amount that the Government is liable to pay to, or on behalf of Eligible Employees, is in total \$50,000,000 (the "Fund" or the "Funds");
- (b) \$46,500,000 from the Fund is dedicated for the settlement of claims by Eligible Employees excluding Casual Eligible Employees;
- (c) \$3,500,000 from the Fund is dedicated for the settlement of claims by Casual Eligible Employees. Casual Eligible Employees will receive Payments based on 80% of the hourly term/indeterminate rate;
- (d) In the event that there is a surplus in the dedicated funds referenced in sub-paragraph (b), they shall be used to supplement the dedicated funds referenced in sub-paragraph (c), or vice versa. No such supplement will occur until the expiry of thirty (30) months from the date of the Order.
- (e) For greater clarity:

- (i) Principal and interest for all payments made by the Government pursuant to the Settlement Agreements to Bargaining Unit employees will be charged to the Fund;
  - (ii) Principal, interest, and any required employer statutory deductions and Superannuation contributions, for any future Payments, as defined below, will be charged to the Fund. Superannuation will be deducted only in cases where the employee was a contributor to the Superannuation plan during the period being compensated and only in respect of the part of the payment to that employee which is considered principal.
  - (iii) No interest will accrue and be payable for the period after October 1, 2002; and
  - (iv) There is to be no charge made to the Fund for payments made by the Government:
    - (1) to employees not included in the Bargaining Unit;
    - (2) on account of benefits pursuant to the Settlement Agreements;
    - (3) after October 1, 2001, to Bargaining Unit employees for service in Out of Scope Class Codes; and
    - (4) legal costs.
6. "Order" is the final order under Section 53(2) of the Act by the Tribunal incorporating this Agreement and disposing of the Complaint.
7. "Out of Scope Class Code(s)" are those class codes that were included in the Settlement Agreements but are not set out in Appendix "A". Current and former Bargaining Unit employees with service in Out of Scope Class Codes have no entitlement to any Payments, as defined below, for that service.
8. "Payment(s)" is compensation provided to Eligible Employees in the Eligible Class Codes. Payment for each individual will be based on actual tenure in Eligible Class Codes. Payments, exclusive of the interest portion, are subject to withholdings for statutory deductions, Superannuation deductions and union dues.
9. "Retroactive Period" is the period between March 28, 1989 to March 31, 1998. Eligible Employees employed on April 1, 1989 will have four days added to their 1989-1990 tenure to compensate for four days in 1988 - 1989 (March 28, 29, 30 and 31). Eligible Employees not employed on April 1, 1989 but employed any of the four days from March 28 to March 31, 1989 must identify themselves to the Government.
10. "Settlement Agreement(s)" are the individual settlement offers sent to individual employees by the Government starting in 1999, whether accepted or not, purporting to resolve their interest in the Complaint and any and all matters, claims or things whatsoever covered by and/or arising out of and/or relating to the Complaint.
11. "Settlement Protection" means each employee in an Eligible Class Code shall be entitled to receive a principal payment from the Fund based on the more favourable of offers (if any) made for that Eligible Class Code and the adjustments now calculated for that Eligible Class Code. Employees who executed a Settlement Agreement in respect of one or more periods of tenure in an Eligible Class Code shall be entitled to receive payment of interest only, from the Fund, on the incremental principal in respect of those Eligible Class Code(s). Employees who were offered a Settlement Agreement but who have service in Out of Scope Class Code(s) will not be entitled to receive Settlement Protection in respect of that service.
12. "Tenure" is all paid work periods. Periods of maternity leave, adoption leave and disability leave that fall within an Eligible Employee's service record will be considered eligible service for the purpose of Payments. Other non-paid periods of leave and periods

of education leave shall not be considered eligible service for the purpose of this Agreement.

#### Methodology and Foundation

13. For the purpose of calculating the Payments the following data will be used:

- (a) Step 6 salary rates from the relevant collective agreements and arbitral award;
- (b) April 1999 Hay Job Evaluation points;
- (c) Population information by class code by year;
- (d) Gender dominance by Group from JEPS;
- (e) Job tenure by incumbent and class code;
- (f) Settlement Agreement adjustments;
- (g) Acceptance/Non acceptance of Settlement Agreements and year; and
- (h) Weekly hours worked for 1988/89 by class code.

14. The following steps are involved to calculate individual adjustment:

(a) Population-weighted linear regressions equations are calculated for male dominated comparator positions for each Eligible Class Code in each year. For each Eligible Class Code the range for male comparators is defined by +/- 7.5% of the average Hay points for the Eligible Class Codes. The initial estimate of the wage gap is the difference in salary for the Eligible Class Code and the point on the male comparator regression that corresponds with the average points for the Eligible Class Code calculated for that class code in each year.

(b) An estimate of the overall average wage gap for each year is then calculated as a weighted average of the initial estimate as described in paragraph 14(a) above using total hours worked for weighting.

(c) An adjustment factor calculated as the ratio of overall estimated average gap to average wage for Eligible Class Code(s) for each year is then applied to the wage of each Eligible Class Code for each year to determine the hourly adjustment for that Class Code for that year

(d) The prorated hourly adjustment, as set out in Appendix "A", are the adjustments set out in sub-paragraphs 14(e) and (f) below necessary to ensure the Payments are equal to the dedicated portion of the Fund described at sub-paragraphs 5(b) and (e) of Appendix "B". These prorated adjustments can be arrived at through an iterative modification of the hourly adjustments in 14(c) above.

(e) For each employee with tenure in one or more Eligible Class Code(s), the total of the principal and interest to October 1, 2002 is calculated over all such tenures for that individual, using Settlement Agreement(s) adjustments as the basis of the calculation, and compared with the results of a similar calculation, using the prorated hourly adjustments as the basis of the calculation.

(f) The Payment due to an Eligible Employee who has executed a Settlement Agreement, for whom the result of the calculation based on (1) adjustment amounts, (i.e., principal plus interest) is more than that based on (2) the Settlement Agreement, is the first of these results less the second. No Payment is due if the first result is less than the second;

(g) The Payment due to an Eligible Employee who has not executed a Settlement Agreement, is the greater of the result of the calculation based on adjustment amounts and that based on settlement offers.

15. The interest that is applied to principal Payments due to Eligible Employees is simple interest using the rates described below:



## Interest Rate

Apr-919.396  
Apr-926.875  
Apr-935.633  
Apr-945.641  
Apr-956.528  
Apr-967.063  
Apr-975.858  
Apr-983.848  
Apr-994.667  
Apr-005.354  
Apr-013.958  
Apr-026.604  
Oct-025.000

16. The process to determine final payments for Eligible Employees is as follows:

- (a) Obtain confirmed tenure information for each job by fiscal year;
- (b) Calculate principal and interest based on the table of prorated hourly adjustments;
- (c) Calculate principal and interest based on the table of settlement agreement hourly amounts;
- (d) Apply settlement protection as follows:
  - (i) For a non-signer pay the greater amount of the adjustments or the settlement offers.
  - (ii) For a signer, determine whether an increment is due based on comparing the total payout (principal and interest) for the adjustments with the total payout from the settlement offers including interest calculated to 2002.
  - (iii) If an increment is due, the incremental principal is determined as the difference between the adjustment principal and the settlement offer principal. The incremental interest is the difference between total incremental amount (principal and interest) and the calculated incremental principal. If either the incremental principal or interest is less than zero, the negative value is added to the other component and then set to zero.
- (e) Benefits are calculated on the principal for non-signers and incremental principal for signers.