T.D. 13/94
Decision rendered on August 30, 1994

THE CANADIAN HUMAN RIGHTS ACT
R.S.C., 1985, c. H-6 (as amended)

HUMAN RIGHTS TRIBUNAL

BETWEEN:

PUBLIC SERVICE ALLIANCE OF CANADA

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

DEPARTMENT OF NATIONAL DEFENCE -
THE STAFF OF THE NON-PUBLIC FUNDS,
CANADIAN FORCES -
NATIONAL DEFENCE HEADQUARTERS AND COMMODORE H.A. COOPER,
DIRECTOR GENERAL PERSONNEL SERVICES, D.N.D. AND
LIEUTENANT-COLONEL P.M. JOHNSTON
DIRECTOR NON-PUBLIC FUNDS PERSONNEL AND
MAJOR T.K. MOLONEY, NEGOTIATOR OF COLLECTIVE AGREEMENT

Respondent

DECISION OF TRIBUNAL

TRIBUNAL: Brenda M. Gash, Chairperson
Fred A. Wilkes, Member

APPEARANCES: Duff Friesen, Q.C., Lubomyr Chabursky - Counsel for the Respondent
Judith Allen - Counsel for the Complainant
Fiona Keith - Counsel for the Canadian Human Rights Commission

DATES AND
LOCATION OF HEARING: November 19, 1992

December 22, 1992
April 26, 1993
May 31 to June 4, 1993
August 19, 1993
Ottawa, Ontario

The Public Service Alliance of Canada (PSAC), on February 12, 1987, filed with the Canadian Human Rights Commission (CHRC), a complaint on behalf of the predominantly female Administrative Support Category of the staff of the Non-Public Funds, Canadian Forces at National Defence Headquarters (the "Employer Group"). It was alleged in the complaint that the Complainant Group was discriminated against in wages in that its members were paid less than the members of the predominately male Operational and Technical categories (the "Comparator Group"), even though the employees of both groups performed work of equal value. In the complaint, PSAC alleged that this discrimination was on the ground of sex, in contravention of Section 11 of the Canadian Human Rights Act. Additionally, it was alleged that the job evaluation plan in place at the time of the complaint discriminated on the ground of sex in contravention of Sections 7 and 10 of the Act.

In response to the complaint filed, the CHRC appointed an investigator to gather job information and evaluate the jobs in the comparative groups. As a consequence of the investigation, the complaint was referred to this Human Rights Tribunal for hearing. The Tribunal wishes to commend the parties and counsel for their efforts directed towards settlement of the complaints filed, which efforts led to the signing of a Consent Order by this Tribunal on June 2, 1993, in which the Section 11 complaint was resolved by the adjustment of pay rates in the Complainant Group in accordance with the Respondent's proposal of January 18, 1993, particularized in Bulletin C1/93 attached to and forming part of the said Order.

A further Consent Order was signed by the members of this Tribunal on January 18, 1994, dealing with the parts of the complaint made under Sections 7 and 10 of the legislation. By that Order, the Hearing was adjourned to afford the Respondent the opportunity to continue to develop, disclose and implement a job evaluation system, in consultation with the Canadian Human Rights Commission and the Public Service Alliance, in accordance with a schedule developed by the parties designed to reach that goal within a reasonable time frame.

The only issue before the Tribunal, therefore, is whether or not the remedy agreed to by the parties, as set forth in the June 2, 1993, Consent Order, should be applied retroactively to cover the period from February 12, 1986, to May 31, 1987. The position of both the Complainant and the Canadian Human Rights Commission is that this Tribunal should grant an Order compensating the Complainant Group for a period extending back one year from the date of the February 12, 1987, complaint. The Respondent's position is that the retroactivity of the adjustments agreed to in the June 2, 1993, Consent Order should not go back beyond June 1, 1987.

The effect of the Consent Order entered into by the parties hereto on June 2, 1993 was to equalize the wages of the Administrative Support Category and the Operational and Technical Categories (the Complainant group and the Comparator group), which equalization was calculated on the

basis of job scores determined by the Commission in May of 1988; the wage rates as set forth in the appropriate collective agreements; and the wage gap methodology of Dr. Nan Weiner, considered to be an expert on pay equity.

The Complainant and the CHRC have argued that the Respondent's job evaluation system systemically discriminated against members of the Complainant Group from February 12, 1986, to May 31, 1987, and that the job scores arrived at by the Commission during its investigation are a reliable basis upon which to award a remedy retroactive to February of 1986. The positions of the Complainant and the CHRC coincide in full and both argue that, in order to make the Complainant whole, a retroactive Order is necessary and is appropriate upon the basis of the following arguments:

1. That the policy and practice of PSAC, the Federal Government and the CHRC has been to go back one year prior to a complaint in voluntary settlements;

2. This Tribunal is bound to follow the only existing retroactivity case on point, namely PSAC and CHRC v. Treasury Board (April 29, 1991, hereinafter referred to as the "Hospital Services" case);

3. Retroactivity to one year prior to the filing of a complaint balances the interests of all parties and is logical and appropriate in systemic discrimination cases;

4. The Human Rights Act not only permits but dictates retroactive Orders.

In response to the above positions held by the Complainant and the CHRC, the Respondent's position is not only that this Tribunal does not have the authority, pursuant to the Human Rights Act to grant retroactive relief, but there is no evidentiary basis upon which to grant such a remedy in this case.

Dealing first with the issue of whether this Tribunal has the authority to grant retroactive relief, a review of the Canadian Human Rights Act and the existing case law offers little direction. There is no language in the legislation by which the Tribunal is specifically empowered to grant retroactive relief. Section 2 of the legislation sets forth the purpose of the Canadian Human Rights Act by which we are to be guided by as follows:

"the purpose of this Act is to extend the laws of Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that every individual should have an equal opportunity with other individuals to make for himself or herself the life that he or she is able and wishes to have, consistent with his or her duties and

obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, marital status, family status, disability or conviction for an offence for which a pardon has been granted".

The only Section of the Canadian Human Rights Act which specifically sets forth a limitation period is Section 41(e) which grants to the Human Rights Commission the discretion to decline to deal with a complaint if:

"the complaint is based on acts or omissions the last of which occurred more than one year, or such longer period of time as the Commission considers appropriate in the circumstances, before receipt of a complaint."

This section is not helpful to the Tribunal as regards the issue at hand as it deals with the authority of the Commission, not the Tribunal, and simply requires that a Complainant file its complaint within one year of the discriminatory practice, unless extenuating circumstances preclude this.

Section 11(1) of the Canadian Human Rights Act states:

"It is a discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value."

Section 53 of the legislation empowers the Tribunal to grant a variety of remedies, which remedies include the right to order the Respondent to:

"compensate the victim, as the Tribunal may consider proper, for any or all of the wages that the victim was deprived of and for any expenses incurred by the victim as a result of the discriminatory practice."

The Tribunal must be cognizant of certain presumptions which apply to the case at hand, namely, the presumption against the retrospective operation of statutes and the presumption against interference with vested rights. We have been asked to consider the wording and philosophy of the Canadian Human Rights Act in determining whether the legislators intended, in the absence of specific wording, to impliedly afford retroactivity. This issue has been dealt with in numerous articles and cases, albeit with little clarity.

In the case of Acme Village School District v. Steele - Smith, (1933) S.C.R. 47, recognition was given to the two conflicting presumptions, "that statutes are not to be construed as having retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary or distinct implication", and "should not be given a

construction that would impair existing rights, unless that effect cannot be avoided without doing violence to the language of the enactment."

These two presumptions were not argued at any length by the parties hereto but clearly they are presumptions which are of considerable import to this case. The Supreme Court of Canada has dealt with the issue of retroactivity in the case of Gustavson Drilling (1964) Ltd. v. M. N. R., (1977) 1 S.C.R. 271. The general rule which comes from the Gustavson case is, at page 279, "statutes are not to be construed as having (retroactive) operation unless such a construction is expressly or by necessary implication required by the language of the Act". The logic behind such a general rule appears, quite properly, to be inspired by a need for

limitations and predictability in the remedies available through our legal system. However, the presumption against retroactivity is not a rule of law but, rather, a rule of construction and must be viewed in conjunction with the principle of "non-interference with vested rights".

The origins of the principle of non-interference with vested rights are unknown to this Tribunal, however, they are reflected in the federal Interpretations Act, at Section 42 (1) and 43 (c) which provide:

> 42(1). Every Act shall be so construed as to reserve to Parliament the power of repealing or amending it, and of revoking, restricting or modifying any power, privilege or advantage thereby vested in or granted to any person.

> 43(c). Where an enactment is repealed in whole or in part, the repeal does not affect right, privilege, obligation or liability acquired, accrued, accruing or incurred under the enactment so repealed.

In the case of Latif v. Canadian Human Rights Commission, (1980) 1 F.C. 687 (C.A.) the matter of retroactive application of the Human Rights Act was considered. The court noted that there are no provisions within the legislation for the retroactive application of its remedies. At page 621 of the decision, the issue is raised as to whether the Canadian Human Rights Act applied to discriminatory practices which were engaged in and completed before the Act came into force.

> "It would be an application not to a characteristic or status acquired partly or wholly before the Act came into force but to an event - having engaged in proscribed conduct defined by the Act as discriminatory practice. ... Moreover, it would be an application with prejudicial effects, resulting in interference with contractual rights and relationships, obligations to do and not to do, and liability, as appears from the kind of order that a Human Rights Tribunal is empowered to make. It thus gives rise to the application of the rule of construction against retrospective operation."

The Court in the Latif case was not persuaded by the submissions of the Applicant that the general nature of the legislation, as well as specific provisions of the Act, indicated a clear intention that the Act should

apply retrospectively to discriminatory practices completed prior to the legislation coming into force.

"Counsel did not elaborate on his submission based on the general nature and importance of the legislation. He seemed to treat it as self-evident. The fact that legislation serves a generally laudable or desirable purpose is not by itself sufficient to displace the rule against retrospective operation."

Although the Court in the Latif decision held that the "Human Rights Act" does not disclose a clear intention that it should apply to a discriminatory practice that occurred and was completed before it came into force, the decision does leave open a limited retrospective application in circumstances in which the discriminatory practice began prior to the Act coming into force but continued on or after that date.

It is clear that this Tribunal has only those powers which have been given to it by the governing legislation. Section 53(2) of the Human Rights Act contains no wording of a retrospective nature and clearly seems only to contemplate prospective Orders. However, within the philosophy of an act designed to afford Tribunals the authority to make whole a Complainant who has suffered discrimination, hardship clearly would result to Complainants who are not, at least minimally, afforded a remedy which can be backdated to the moment the complaint was filed with the Human Rights Commission. Too much would be left to the vagaries of the investigative/legal system which could, for any number of reasons, fail a complainant by creating delays one can easily contemplate by the existence of an uncooperative employer or an overburdened or underfunded investigative process. This could unduly frustrate or impact upon the timely resolution of a complaint under this legislation. So, to the extent that a Tribunal is presented with sufficient evidence to make a finding of discrimination in wages at the appropriate point in time, this Tribunal would not preclude the application of a retroactive remedy for the period of time from the filing of a complaint to the date upon which the investigation reveals the existence of a wage gap. We do, however, question whether retroactivity should predate the filing of the complaint as argued on behalf of the Complainant. The policy of the PSAC, the Federal Government and the CHRC to backdate relief in voluntary settlements to one year preceding a complaint cannot reasonably be seen as authority for this Tribunal to do the same thing. Additionally, to argue that this one year rule balances the interests of all parties and is logical in systemic discrimination cases is simply not substantiated.

As for the Hospital Services case (PSAC and CHRC v. Treasury Board (April 29, 1991), presented by the Complainant as a binding precedent for

retroactivity, it was argued by Counsel for both the Complainant and for the CHRC that the wording of the Tribunal's decision in that case indicates that it weighed the long period of time from the date of the filing of the complaint to the date upon which compensation was to be awarded, expressing concerns about the nature of the job information provided, against the importance of, in the words of Counsel, "formulating a complete remedy for the past effects of discrimination on employees" in the granting of its retroactive compensation order.

Although our Tribunal is not satisfied that the decision in the Hospital Services case, as a Consent Order, is binding upon the Tribunal herein, it is swayed by the obiter in that decision which

reads:

"Since the only remedial power of the Tribunal which clearly extends to cover the past effects of a contravention of the Canadian Human Rights Act is the awarding of compensation, we conclude that the balance falls in favour of awarding full compensation to the community health representatives ... Our findings indicate that these employees have long been the victims of significant gender discrimination resulting from the under-evaluation of their position by the Respondent..."

Counsel for the Respondent cross-examined James Sadler, a pay equity expert called as a witness for the CHRC, at considerable length with respect to the Hospital Services case, as well as a line of cases presented by the Complainant in which there had been voluntary settlements involving retroactivity extending to a period one year prior to the date of the filing of a complaint. The Hospital Services decision, according to the evidence of Mr. Sadler, involved the granting of a remedy relative to the realigning of the classification structure within a Hospital Services Group, which structure had been in place for approximately twenty years.

The Complainant, in that case, argued that the employees had been wrongly classified under a particular paragraph of the Consent Order and had the Respondent's initial evaluation of the employees been in accordance with the findings of the Tribunal, the compensation covering the lengthy period

in question would have, in fact, resulted from the Consent Order. Mr. Sadler clearly admitted that, when reviewing the matter in 1991, the Tribunal chose to retroactively extend the Order back to the same date as the retroactive date in the Consent Order and under such circumstances, this Tribunal does not consider the Hospital Services case as authority for what is now being proposed by the Complainant and the CHRC in this case.

What is compelling to the Tribunal herein is that in order to make a Complainant whole under the Canadian Human Rights Act; in order to recognize the vested right to be protected from discriminatory practices, particularly those of a systemic nature, which arise prior to the date of a complaint and continue thereafter; and to properly give effect to the nature and philosophy of the legislation, it may well be appropriate to consider retroactivity in the awarding of compensation although this Tribunal has reservations about any retroactivity which would go back beyond the date of the filing of a complaint.

Separate from the issue of this Tribunal's jurisdiction to grant retroactive relief is the issue of whether there has been satisfactory evidence presented to this Tribunal upon which to base an award of a retroactive nature.

The members of the Tribunal were, throughout the course of the Hearing, impacted by the subjectivity of the study of pay equity. Although

experts in pay equity have developed plans and procedures for conducting studies to assess the relative value of jobs and methodologies designed to make comparisons between jobs, this clearly appears to be an area which is in its infancy and which continues to go through change. Not only is the challenge of job evaluation and comparison one involving considerable subjectivity and complexity, it is an area which is still in much flux.

Certainly this area of study has come about out of much necessity in the face of systemic discrimination against women in the work place but caution must be exercised in the manner in which judicial or quasi-judicial bodies respond to this relatively new area. Precisely because of the subjective nature of studies conducted to determine the existence and extent of wage differences ("wage gaps"), this is an area ill-suited to litigation.

As argued by the CHRC, there has been judicial recognition of the concept of systemic discrimination, described by Dickson C.J. in the

Supreme Court of Canada decision Action Travail des Femmes v. CNR at page 1139 as follows:

"In other words, systemic discrimination in an employment context is discrimination that results from the simple operation of established procedures of recruitment, hiring and promotion, none of which is necessarily designed to promote discrimination."

We would agree with the Tribunal in PSAC and the CHRC v. Treasury Board (the "Hospital Services" case) that the patterns of discrimination against women in the work place have been "perpetuated through assumptions that certain types of work historically performed by women are inherently less valuable than certain types of work historically performed by men".

However, it is impractical and inappropriate to expect remedies to redress systemic discrimination in such a way as to reach back in time in an effort to change history. While systemic discrimination in the work force is clearly wrong, certainty in the judicial system is essential to ascertaining and securing remedial relief. If there is indeed an evidentiary basis upon which the Tribunal can grant a remedy, we do not consider ourselves bound, either by legislation or case law, to extend the remedy retroactively to any point prior to the filing of the complaint. Additionally, in order to take the remedy back to the date of the complaint, this Tribunal must be satisfied that the Complainant has established an evidentiary basis for the remedy sought. We are not so satisfied.

It is certainly not the subjectivity of pay equity determinations in this case which causes the Tribunal concern. We have been informed by Counsel for the Respondent that a pay equity study is based upon three principal elements:

1. Correct and complete information about job duties;

2. Use of a gender neutral evaluation plan in the evaluation of job duties, to assess relative values;

3. Use of an appropriate method of comparison of the value of work and the wages of employees in the jobs in questions.

So qualitive are job valuations and so dependent are they upon the perceptions and biases of those conducting the examination that, according to the evidence of James Sadler, job evaluations should be conducted by committees of persons who represent both genders as well as labour and management so the evaluators can take advantage of the sometimes disparate perceptions and experiences of those involved in the work place in evaluating the work.

In its response to the position of the Complainant and the CHRC that this Tribunal should be guided by the policy of the CHRC in seeking pay equity adjustments retroactive to one year prior to the date of the complaint, the Respondent argues that, to do so, there must indeed still be a sound factual basis for assessing the wage gap in order to determine the appropriate retroactive pay adjustments.

Much evidence came before the Tribunal of the investigations conducted by Pierre Marleau and James Sadler, both of whom prepared assessments in which there was a determination that there was indeed a wage gap between the Complainant Group and the Comparator Group. The parties have attempted to educate the Tribunal as to pay equity methodology and we have been taken through the point system utilized by Mr. Marleau, Mr. Sadler and Nan Weiner in the Complainant's efforts to show us how a wage gap is determined.

The complaint filed on behalf of the Complainant was based upon the opinion of Mr. Marleau who conducted an investigation on behalf of the PSAC in which the information available to him included only the job descriptions supplied by the Respondent. His evaluation of the work contained in the job descriptions was based upon the Aiken Job Evaluation Plan applying a methodology of comparison which used wage lines for male and female employees. It is of note that the job descriptions evaluated by Mr. Marleau were all drafted on or prior to 1986.

Mr. Sadler, a senior consultant in the Pay Equity Directorate of the CHRC and an expert in pay equity investigation and job evaluation, testified that job descriptions alone do not afford adequate information upon which to base job evaluations and comparisons and it became apparent to the members of the Tribunal that much more information is necessary in order to do justice to the evaluation. Job descriptions may not be updated to reflect changes in duties which may occur and they may change with the simple passage of time due to progress in areas of technology, structural organizational changes, or changes in the policies or objectives of the employer. Additionally, Mr. Sadler's evidence, as referred to earlier, was that it is preferable to have information secured and analyzed by a committee, rather than one individual, to avoid the prospect of personal

bias. Mr. Sadler also testified that, because of the many changes within a work place, it is essential to do periodic pay equity reviews and he suggests that such reviews be conducted every three to five years.

Despite the evidence of Mr. Sadler that there may be gender neutrality problems with the Aiken Job Evaluation Plan and despite the evidence of Mr. Sadler that the investigation techniques utilized by Mr. Marleau were inadequate to meet the proper standards of pay equity evaluation, we have been asked by the Complainant and the Commission to compare the point scores of Mr. Marleau's study with the point scores produced by Mr. Sadler and Ms. Weiner. The information relied upon by Mr. Sadler and Ms. Weiner was gathered between January and May of 1988. Clearly, the Consent Order entered into between the parties confirms that the Respondent was satisfied with the methodology used and the investigation done by Mr. Sadler in his attempt to determine whether there was a wage gap at the time of the investigation. The wages of the employees in the Complainant and the Comparator Groups in the period from January to May of 1988 were paid in accordance with wage rates established in the June 1, 1987 Collective Agreement.

The examination conducted by Mr. Sadler was clearly far more in depth than that done by Mr. Marleau and involved his securing job descriptions, having employees complete questionnaires regarding their job duties, and interviewing the employees and their supervisors to secure additional information of a more complete nature. Although the job descriptions used by Mr. Sadler were the same as those secured by Mr. Marleau, there is nonetheless little comparison between the quality of the investigations done by the two gentlemen. After securing higher quality information, Mr. Sadler arranged for the job information to be evaluated by a committee of officers of the CHRC using the Aiken Job Evaluation Plan. A wage gap analysis was prepared by the Commission for the periods from February 12, 1986 to August 31, 1986 and from September 1, 1986 to May 31, 1987, designed to coincide with the dates of the Collective Agreements for the two periods.

The evidence of Mr. Sadler was that no information was secured from the employees as to their job duties prior to 1988 and certainly none of the witnesses who gave evidence before the Tribunal had any personal knowledge of the duties of the relevant jobs prior to 1988.

The CHRC engaged Dr. Nan Weiner, a person described to the Tribunal as an internationally recognized pay equity expert, to prepare a wage gap analysis using the evaluations prepared by Mr. Sadler and the CHRC. A report was prepared by Dr. Weiner dated September 30, 1993, in which she suggested the use of a different methodology other than the wage line methodology utilized by the Commission to do the job analysis and all of the parties have agreed that the methodology proposed by Dr. Weiner to assess the wage gap is appropriate, used in conjunction with the evaluations prepared by Mr. Sadler and the CHRC.

As the investigation and analysis performed by Mr. Marleau, based upon the evidence of Mr. Sadler, must be seen as inadequate, not only as to the information secured but also as to the lack of a gender-neutral plan for evaluation and classification, it is of little assistance to the Tribunal to describe the differences between the scores assigned by Mr. Marleau and those assigned by Mr. Sadler or Dr. Weiner.

The Complainant argues that Mr. Sadler, in conducting his own assessment, requested and secured the same documentation from the Respondent which was provided to Mr. Marleau, regarding job descriptions. Mr. Sadler made additional inquiries of the employer to determine whether there had been changes in the job duties performed by those employees within the Complainant and Comparator Groups and he received from the Respondent information that the only male position which had seen a change in job duties was that of the Distribution/Shipping Operator Helper-Printer Shop Assistant position. There were three female job positions which had gone through changes in job duties, namely, the Management Information Systems Clerk position, the Assistant Administrative Clerk D-Canex II position and the Administrative Assistant D-Canex IV position. If job duties and job descriptions were the only criteria upon which a wage gap

analysis was based, this information would have more relevance. Essentially, however, this Tribunal is being asked by the Complainant and the CHRC to compare apples to oranges. In its analysis of the four jobs which went through changes in job duties, the Complainant asks the Tribunal to accept as the "best evidence", the evidence of Mr. Marleau as to the ratings given to those particular jobs and, where those ratings do not conform with those of Mr. Sadler, it is suggested that the "benefit of the doubt" should be given to the Respondent. Certainly no benefit is given to the Respondent when it is suggested that this Tribunal use as the best evidence of a wage gap, an analysis which is based upon completely inadequate information, as testified to by Mr. Sadler, the senior consultant for the CHRC.

The Complainant and CHRC seem to suggest that there is a changing burden of proof in these proceedings. It is suggested that we accept the evidence of Mr. Marleau simply because the Respondent has not adduced any evidence to suggest that there were changes in the remaining job positions or any factors which would have impacted upon the analysis done by Mr. Marleau. The Tribunal does not accept this argument and the burden of establishing a sound evidentiary basis for the remedies sought clearly remains with the Complainant.

In response to the argument of Counsel for the CHRC that we should accept Mr. Sadler's testimony that job evaluation and review is not required unless there are substantial changes in jobs and that three to five years is an appropriate review range, the Tribunal would again suggest that this may well be an appropriate position to take, provided that there is a solid evidentiary basis for doing so. There may well be changes within a six month period of the date of analysis but we cannot know whether there were such changes in the retroactivity period sought because the evidence upon which we are to rely is the evidence of Mr. Marleau which is based solely upon job descriptions and nothing more than that. Mr. Sadler's evidence was that he sought from the employer information regarding any substantial changes in jobs and job levels but it is also Mr. Sadler who made it clear to the Tribunal that a much closer analysis of a job site is required in order to properly assess jobs to determine whether pay equity exists. Had Mr. Marleau been possessed of the expertise and knowledge at the time he did his investigation sufficient to secure the proper information needed to do a wage gap analysis, we would not now be facing the problem of being asked to compare apples to oranges. This is not a criticism of the work performed by Mr. Marleau. It is simply an acknowledgement that the level of sophistication of pay equity analysis, still in its relative infancy, may not have been developed enough to have established proper investigative techniques.

In pay equity cases which come before a Human Rights Tribunal, the granting of a remedy should be subject to satisfactory proof of the existence and extent of a wage gap between female and male employees performing work of equal value during a specific period of time. The analysis done upon the information secured by Mr. Sadler between January

and May of 1988 is a snapshot which cannot now be superimposed over a period commencing in February of 1986. We accept the submission of the Respondent that proof of the existence and extent of a wage gap during one period of time is not proof of the existence and extent of the wage gap

during different periods of time, without a satisfactory evidentiary basis upon which to make such a transposition.

Since there was no information presented to this Tribunal about all relevant factors impacting on a wage analysis, prior to 1988, this Tribunal is not prepared to extend the wage adjustment back further than what has already been agreed to between the parties. It is of note that the employer has voluntarily made an adjustment of wages paid to the employees in the Complainant Group pursuant to the Consent Order retroactive to June 1, 1987, the commencement date of the applicable Collective Agreement, and a date which precedes the conclusion of Mr. Sadler's investigation by approximately one year. For the reasons set forth herein, this Tribunal finds that there is no factual basis upon which to award the remedy sought. The Complainant's claim is therefore dismissed.

DATED ON THIS DAY OF AUGUST, 1994.

Brenda M. Gash,
Chairperson

Fred A. Wilkes
Member