

CHRT Files No. : T1111/9205, T1112/9305, T1113/9405

**CANADIAN HUMAN RIGHTS TRIBUNAL**

CANADIAN HUMAN RIGHTS ACT  
R.S.C. 1985, c. H-6  
(AS AMENDED)

Ottawa, Ontario, July 31, 2012

BEFORE: Matthew D. Garfield, Member

**B E T W E E N:**

**RUTH WALDEN ET AL.**

**Complainants**

**- and -**

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

**- and -**

**ATTORNEY GENERAL OF CANADA  
(representing the Treasury Board of Canada and  
Human Resources and Skills Development Canada)**

**Respondent**

**- and -**

**PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA**

**Interested Party**

**CONSENT ORDER**

**WHEREAS** the Complainants filed the following complaints with the Canadian Human Rights Commission (“Commission” or “CHRC”): CHRC Complaints No. 20041658, 20050041, 20050042;

**AND WHEREAS** the Commission referred CHRC complaints No. 20041658, 20050041, 20050042 (“Complaints”) to the Canadian Human Rights Tribunal (“Tribunal” or “CHRT”) and these Complaints became CHRT files T1111/9205, T1112/9305, T1113/9405;

**AND WHEREAS** the Complaints were substantiated after a hearing before the Tribunal;

**AND WHEREAS** by letter dated May 31, 2012, the Attorney General of Canada offered to settle all outstanding issues arising out of the Complaints;

**AND WHEREAS** all 417 Complainants have accepted the offer to settle;

**AND WHEREAS** the Complainants and the Attorney General of Canada have resolved the outstanding portion of the Complaints as set out in the Memorandum of Agreement (“Agreement”) concluded on July 3, 2012, a copy of which is attached;

**AND WHEREAS** the Complainants and the Attorney General of Canada recognize that this settlement constitutes a full and final settlement of all issues arising out of the Complaints;

**AND WHEREAS** the Commission and the Professional Institute of the Public Service of Canada (“Institute”) support the Agreement;

**AND WHEREAS** the Complainants, the Commission and the Institute have agreed to forthwith provide the names and any contact information available for all current and former employees of which they are aware and who may have performed Eligible Work as it is defined in the Agreement;

**AND WHEREAS** the Complainants and the Attorney General of Canada have requested that the Tribunal issue a Consent Order implementing the terms of the Agreement;

**THE TRIBUNAL HEREBY ORDERS** as follows:

1. The Agreement attached hereto is hereby accepted by the Tribunal as full and final resolution of all remaining issues in the Complaints;
2. The terms of the Agreement form part of this Order and shall be fully enforceable as such;
3. The Respondent will use best efforts to consolidate its own records with the contact information provided by the Commission and the Institute regarding non-Complainants who may have performed Eligible Work and to notify current and former non-Complainants of their potential entitlement to an award in this matter, in accordance with the Agreement;
4. In the event of a dispute or controversy surrounding the meaning or interpretation of the Agreement, or of its implementation or fulfillment, the Tribunal shall retain full jurisdiction until June 30, 2014 to deal with any such issues on the application of any party, or Individual who may have performed Eligible Work as defined in the Agreement.

DATED at Ottawa, this 31<sup>st</sup> day of July, 2012.



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Matthew D. Garfield, Member

CHRT File Nos.: T1111/9205, T1112/9305, T1113/9405

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

B E T W E E N:

RUTH WALDEN ET AL.

Complainants

- and -

ATTORNEY GENERAL OF CANADA  
(representing the Treasury Board of Canada and Human Resources and Skills Development  
Canada)

Respondent

<p><b>MEMORANDUM OF AGREEMENT</b></p>
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**WHEREAS** the Complainants and the Respondent have agreed to resolve all the remaining issues in Canadian Human Rights Commission (“CHRC”) Complaints 20041658, 20050041, 20050042, now Canadian Human Rights Tribunal (“CHRT”) files T1111/9205, T1112/9305, T1113/9405 (the “Complaints”).

**AND WHEREAS** by letter dated May 31, 2012, a copy of which is attached, the Respondent offered to settle all outstanding issues arising out of the Complaints.

**AND WHEREAS** the Complainants accepted the offer to settle.

**NOW THEREFORE** the Complainants and the Respondent agree as follows:

## 1. Definition of Terms

For the purposes of this Memorandum of Agreement:

“**Eligible Work**” is defined as described in paragraph 4 of the Tribunal’s order dated October 26, 2011, that is, the individual was primarily employed in the CPP Disability Program in Human Resources and Skills Development Canada (HRSDC) either conducting adjudications (i.e. assessing medical information for the purposes of determining eligibility for CPP disability benefits and, in doing so, was required to use knowledge associated with being a registered nurse) or providing expert advice to or directly supervising those who did conduct adjudications.

For greater certainty, periods of leave without pay (except where the Individual was receiving maternity, parental, sick or disability benefits) taken while the Individual was in an Eligible Work position fall outside of the definition of “Eligible Work”.

“**Eligibility Period**” is defined as the period between December 1, 1999 to September 30, 2011 inclusive.

“**Employer**” is defined as Treasury Board Secretariat.

“**Individual**” is defined as any person who performed Eligible Work.

“**Individuals**” is defined as persons who performed Eligible Work.

“**Period 1**” is defined as the period between March 1, 1978 and May 31, 1989.

“**Period 2**” is defined as the period between June 1, 1989 to November 30, 1999.

“**Supplementary Amount**” is defined as the difference between the amount the Individual is entitled to pursuant to article 2.1 and \$40,000.

“**Pain and Suffering Order**” means the Order made by the Tribunal on October 26, 2011.

## 2. Payment Calculation

2.1. Individuals will be paid **\$16,500** per year (pro-rated amount for a partial year) of Eligible Work during the Eligibility Period.

2.2. An Individual who commenced Eligible Work within the Eligibility Period and who continuously performed the equivalent of at least six (6) months of full-time Eligible Work will, if entitled to be paid less than \$40,000 pursuant to article 2.1, be paid a Supplementary Amount.

- 2.3. Any Supplementary Amount will not be pensionable and will not bear interest.
- 2.4. For any Individual performing Eligible Work within the Eligibility Period who received maternity, parental, sick or disability benefits, the calculation will also be \$16,500 per year (or a pro-rated amount for the period in which the benefits were in relation to Eligible Work). Other periods of leave without pay will not be used in the payout calculation under articles 2.1 and 2.2.

### **3. Superannuate Pension Entitlement**

- 3.1 For periods when individuals were contributors pursuant to the *Public Service Superannuation Act*, R.S.C., c. P-36 ("PSSA") during the Eligibility Period, any payment made pursuant to article 2.1 of this Memorandum of Agreement for the periods when they were contributors is deemed to constitute "salary" within the meaning of the PSSA.

### **4. Interest Calculation**

- 4.1. Any payment made in accordance with article 2.1 of this Memorandum of Agreement will include simple interest calculated on an annual basis at the Bank Rate (monthly series established by the Bank of Canada).
- 4.2. Interest will be paid on the per year amounts payable pursuant to article 2.1 commencing April 1 of the year to which the payments pertain until the last day of the month preceding payment.

### **5. Other Compensation**

- 5.1. Individuals who continuously performed six (6) months of full-time Eligible Work or the continuous part-time equivalent of six (6) months of full-time Eligible Work in Period 1 (i.e. between March 1, 1978 and May 31, 1989) will be paid a fixed amount of **\$20,000**.
- 5.2. Individuals who continuously performed six (6) months of full-time Eligible Work or the continuous part-time equivalent of six (6) months of full-time Eligible Work in Period 2 (i.e. between June 1, 1989 and November 30, 1999) will be paid a fixed amount of **\$40,000**.
- 5.3. The fixed amounts, outlined in articles 5.1 and 5.2 of this Memorandum of Agreement, will not be pensionable and will not bear interest

**6. Additional Pain and Suffering Compensation**

- 6.1. Individuals who performed the equivalent of six (6) months of full-time Eligible Work between March 1, 1978 and September 30, 2011 will be paid a fixed amount of **\$2,000** as additional pain and suffering compensation pursuant to s. 53(2)(e) of the *Canadian Human Rights Act*, above and beyond any sums outlined above and the Pain and Suffering Order.
- 6.2. The amount outlined in article 6.1 of this Memorandum of Agreement will not be pensionable and will not bear interest.

**7. Confirming Amounts Payable to Complainants**

- 7.1. Human Resources and Skills Development Canada (“HRSDC”) will make its best efforts to provide each Complainant with its record of start and end dates of Eligible Work within the Eligibility Period, Period 1 and Period 2 (the “employment record”) within 90 days of the Tribunal issuing its Order relating to this Memorandum of Agreement.
- 7.2. Upon notification from a Complainant that he or she agrees with HRSDC’s records regarding Eligible Work (“Notification”), the Respondent will make its best efforts to do the following:
- 7.2.1 Issue payment for any entitlement pursuant to article 5 and article 6 within 45 days of receipt of the Notification.
- 7.2.2 For Complainants who work for HRSDC or who resigned or retired from the federal public service immediately after working for HRSDC, issue a settlement cheque for (or, at the discretion of HRSDC, directly deposit into the Individual’s bank account) an amount payable pursuant to article 2.1 as soon as practical and in any event no later than 270 days of receipt of the Notification. For all other Complainants, payments pursuant to article 2.1 will be issued as soon as is reasonably possible.
- 7.2.3 Issue payment for any entitlement pursuant to article 2.2, plus interest pursuant to article 4, within 45 days of the payment pursuant to article 2.1 being made.

- 7.3 Where, in complying with article 7.1 of this Memorandum of Agreement, HRSDC advises a Complainant that his or her start or end dates of Eligible Work as set out in one of Appendix A, B, or C to the Pain and Suffering Order were in error, HRSDC will correct the error so that any payment in accordance with this Memorandum of Agreement reflects the corrected period of Eligible Work. HRSDC will not change any payment made pursuant to the Pain and Suffering Order.
- 7.4 If a Complainant disagrees with HRSDC's information regarding his or her start and end dates of Eligible Work, the onus will be on the Complainant to provide HRSDC with evidence supporting the Complainant's proposed corrections to HRSDC's information. The Complainant must make best efforts to submit his or her evidence to HRSDC within 60 days of the receipt of the HRSDC employment record.

**8. Retention of Accountant to Advise on Gross-Up**

- 8.1. An additional amount ("Gross-up") will be provided to Individuals to achieve tax neutrality in relation to an Individual's entitlement to the payments made in accordance with article 2.1 of this Memorandum of Agreement. Specifically, the Gross-up amount will be sufficient to compensate for any additional tax liability to Individuals that might arise from the payments made in accordance with article 2.1 of this Memorandum of Agreement, relative to the tax payable if the payments in accordance with article 2.1 had been received in the years to which they pertain.
- 8.2. The Gross-up will only be provided in respect of the payments to be made in accordance with article 2.1 of this Memorandum of Agreement. For clarity, there will be no additional amounts to achieve tax neutrality in respect of lump sum amounts paid pursuant to articles 5.1, 5.2, 6.1 and the Supplementary Amounts paid pursuant to article 2.2.
- 8.3. The Gross-up will be determined based on the advice of an accountant appointed at the joint consent of counsel for the Respondent and Laurence Armstrong or Heather Wellman, counsel for the majority of the named Complainants. Counsel for the Respondent will nominate potential accountants and Mr. Armstrong or Ms. Wellman will choose one of the Respondent's proposed candidates. The accountant will be jointly instructed by counsel for the Respondent and either Mr. Armstrong or Ms. Wellman. The Parties will be bound by the accountant's advice regarding the Gross-up.
- 8.4. The Respondent agrees to pay the full cost of retaining an accountant.



**9. Tax Treatment**

- 9.1 The Respondent makes no representation as to the income tax treatment of any payments made pursuant to this Memorandum of Agreement.

**10. Process for Contacting Non-Complainant Individuals**

- 10.1. Any non-complainant Individual seeking to obtain the benefit of this settlement has until December 31, 2013 to notify the Respondent in writing of his or her potential entitlement pursuant to the Settlement Order.
- 10.2 The Respondent shall attempt to locate and pay to non-complainant Individuals who have performed Eligible Work during the March 1, 1978 to September 30, 2011 period by writing within 180 days of the issuance of the Settlement Order to each non-complainant Individual at the last known address for that Individual. The last known address will be determined from a review of HRSDC's records and a consideration of any information supplied by CHRC or the Professional Institute of the Public Service of Canada (PIPSC). The letter sent by HRSDC shall enclose a copy of the Tribunal Order.
- 10.3 The Respondent will follow a similar process to that in article 7, except for compliance with the timelines set out therein, for paying compensation to non-complainant Individuals. Payments will be made as soon as reasonably possible.
- 10.4 HRSDC will make the following efforts to contact non-complainant Individuals:
- Searching its own databases for non-complainants who performed Eligible Work during Period 1, Period 2 and the Eligibility Period;
  - Asking the Complainants' current and former bargaining agents, PIPSC and Public Service Alliance of Canada (PSAC), to share their records of names and addresses of non-complainant Individuals with HRSDC;
  - Asking the Complainants' current and former bargaining agents, PIPSC and PSAC, to post notices on their websites;
  - Asking the Canadian Nurses Association to post a notice on their website;
  - Encouraging Complainants and identified non-complainant Individuals to advise other potential non-complainant Individuals;
  - Make best efforts to post a notice on the HRSDC web-site.

**11. Settlement and Releases**

- 11.1 The Complainants and the Respondent agree that the terms of this agreement constitute full and final settlement of all issues in CHRC Complaints 20041658, 20050041, 20050042, now CHRT files T1111/9205, T1112/9305, T1113/9405.
- 11.2 The Respondent reserves the right, before any settlement moneys are paid to Individuals not represented by legal counsel, to require a release whereby the Individual agrees to abandon all rights to pursue further compensation or any other relief in relation to the Complaints.

**12. Submission to the Tribunal**

- 12.1 The Complainants and the Respondent agree to jointly submit the terms of this Agreement to the CHRT to form the basis of its final order disposing fully and finally of CHRC complaints 20041658, 20050041, 20050042, now CHRT files T1111/9205, T1112/9305, T1113/9405.

**13. Effective Date**

- 13.1 The Complainants and the Respondent agree that this Memorandum of Agreement and the rights and obligations specified in it shall be effective on the date it is signed by Laurence Armstrong or Heather Wellman, counsel for the majority of the named Complainants, and Lynn Marchildon or Talitha Nabbali, counsel for the Respondent.

**14. Order of the Federal Court**

14.1 The Complainants and the Respondent consent to this Memorandum of Agreement being made an order of the Federal Court of Canada for all purposes pursuant to subsection 48(3) of the *Canadian Human Rights Act*.

Signed in five (5) originals at Ottawa on this 3<sup>rd</sup> day of July, 2012



\_\_\_\_\_  
Laurence Armstrong or Heather Wellman  
Counsel for the Majority of the named Complainants

Signed in five (5) originals at Ottawa on this 3<sup>rd</sup> day of July, 2012



\_\_\_\_\_  
Lynn Marchildon or Talitha Nabbali  
Counsel for the Respondent