

MEMORANDUM OF SETTLEMENT

BETWEEN:

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

“UNION”

AND

THE CROWN IN RIGHT OF ONTARIO

“EMPLOYER”

WHEREAS Vice-Chair Abramsky of the Grievance Settlement Board [“GSB”] is currently seized of policy and group grievances collectively referred to as “Hunt et al.”, OPSEU #2001-0551-0001, 2003-0999-0023, 2008-0526-0018, GSB #2001-0534, 2003-2944, 2008-3397;

WHEREAS Vice-Chair Dissanayake of the GSB is currently seized of a number of policy, group, and individual grievances collectively referred to as “Hollingsworth et al.”, OPSEU #2011-0999-0033 et al., GSB #2011-1335 et al.;

WHEREAS Vice-Chair Briggs of the GSB is currently seized of a number of policy, group and individual grievances, OPSEU#2011-0999-0009 et al., GSB #2011-0088 et al.;

WHEREAS Vice-Chair Herlich of the GSB is currently seized of a number of policy grievances relating to the use of Agency or other non-Ministry employee reporters in court reporting including OPSEU # 2010-0999-0009, which are currently before the Grievance Settlement Board under the protocol relating to OPSEU Grievance #92U120, GSB #2441-02;

WHEREAS the litigation of the above noted matters continues on various dates set by the GSB;

WHEREAS Vice-Chair Abramsky issued a decision in the Hunt et al. matter dated July 27th 2006 which ordered that the preparation and certification of transcripts is bargaining unit work of the Court Reporters;

WHEREAS Vice-Chair Abramsky issued a decision in the Hunt et al. matter dated October 23rd 2013 which made a number of orders including an order that expenses incurred by a Court Reporter could be factored into the amount of money owed to them; an order that the Employer is required to pay Union dues to OPSEU for the bargaining unit work performed by Court Reporters in regard to transcript production, plus interest; an order that an individual Court Reporter is responsible for their portion of missed pension contributions in regards to the work of transcript production but the Employer is responsible for its pension contributions plus any interest penalty assessed by OPT on both the individual's share as well as the Employer's share;

WHEREAS Vice-Chair Dissanayake issued a decision dated March 1st 2013 in the Hollingsworth et al. matter which ordered the Employer to forthwith cease its violation of the collective agreement by failing to apply the collective agreement to Court Reporters and ordered the Employer to forthwith apply the collective agreement to Court Reporters performing bargaining unit work of production of transcripts, and not treat them as independent contractors;

WHEREAS the GSB has issued a number of other decisions as a result of the litigation of the above noted matters;

WHEREAS OPSEU initiated a court action (Court File No. 13-476243) seeking enforcement of the GSB Order dated March 1, 2013;

WHEREAS the Employer has advised the Union that it will be introducing a new model for the production of transcripts based upon the record taken in Court by bargaining unit members performing court reporting functions by June 9, 2014

WHEREAS the Parties wish to fully and finally resolve the above noted grievances as well as the grievances listed in Appendix A, as well as all other challenges, issues, causes of action, demands and claims relating to the current model for the production of transcripts and the subject matter of the above noted litigation without prejudice or precedent to any other matters between the parties;

NOW THEREFORE THE PARTIES AGREE:

APPLICATION

1. The Parties agree that this settlement applies to the following individuals:
 - (a) Court Reporter 1s, Court Reporter 2s and Court Services Specialists (CSS), who are employed with the Ministry of Attorney General as of the date of signing of this Agreement and who, as part of their work duties, perform court reporting duties and are authorized to produce transcripts.
 - (b) Court Reporter 1s, Court Reporter 2s and Court Services Specialists (CSS) who were
 - (i) employed with the Ministry of Attorney General between July 16, 2003 and the date of signing of this Agreement and;
 - (ii) who, as part of their work duties, performed court reporting duties and who were authorized by the Ministry to produce transcripts and;
 - (iii) the individual is retired and is in receipt of an Ontario Public Service Pension.

- (c) (i) employed with the Ministry of Attorney General between July 16, 2003 and the date of signing of this Agreement; and,
- (ii) who, as part of their work duties, performed court reporting duties and who were authorized by the Ministry to produce transcripts.

2. The Parties agree that the Employer will advise the Union with respect to which individuals are captured under paragraph 1 (a) and paragraph 1 (b). The Union can advise within 30 days of receipt of the Employer's lists in paragraphs 1(a) and 1(b) with an additional list of employees that in its view should be included. If the parties fail to agree with respect to who is eligible pursuant to paragraphs 1(a) and 1(b), then the matter shall be referred to Mediator/Arbitrator William Kaplan in accordance with paragraph 25. With respect to paragraph 1(c), the parties agree that the Union will have up to six months from the effective date of this agreement to provide the Employer with a list of employees that are captured by paragraph 1 (c). If the parties fail to agree with respect to who is eligible pursuant to paragraph 1 (c), then the matter shall be referred to Mediator/Arbitrator William Kaplan in accordance with paragraph ~~25~~ ~~17~~.

3. The Ministry will give each employee the foot pedal and the headset currently in their possession and those items will become the property of the employee. No other supplies or equipment will be provided by the Ministry and the maintenance and repairs of this equipment will be the employees' responsibility.

4. Pursuant to paragraphs 1 and 2, within ^{ninety days (90)} ~~forty five (45)~~ days of being notified by the Employer about an election pursuant to this paragraph, each individual shall select one of the following options:

- a) Lump Sum Payment Option
- b) Pension Contribution Option

Each employee shall only be entitled to one of the options in this paragraph.

Lump Sum Payment Option:

5. Employees who select Option (a) in paragraph ⁴ ~~5~~ – Lump Sum Payment Option, will be entitled to a one-time lump sum payment (reimbursement for out of pocket expenses relating to transcript

production) equivalent to \$500 without deduction (the parties agree that any employee exercising this option will need to execute an appropriate indemnity) for each full year of service between July 21, 2003 and June 9, 2014. Where less than a full year of service has been worked during that period, the payment will be prorated to the last full month worked.

Pension Contribution Option:

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6. Employees who select Option (b) in paragraph ~~4~~ – Pension Contribution Option, shall, pursuant to the terms of the OPSEU Pension Plan (Plan), make all required employee pension contributions for transcription earnings in respect of the period from July 21, 2003 to June 9, 2014 (the Period) where employees were performing transcription for the Ministry of the Attorney General (MAG) while they were also members of the Plan.

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7. Option (b) in paragraph ~~4~~ does not apply to transcription work earnings for any period during which the employee was not a member of the Plan. Furthermore, Option (b) in paragraph ~~4~~ is only available to those flexible part time employees and fixed-term employees who are current members of the Plan.
8. The Employer and OPSEU agree to consult with the OPTrust and abide by its direction about the process of determining the amounts of contributions and interest owing for valid claims, the process of making such payments and the administration of such payments. Any disputes regarding these matters will be settled by the OPTrust alone. For clarity, it is understood that no employer contributions or interest amounts are owing unless and until the employee makes his/her contributions to OPTrust, at which time the Employer will make its applicable pension contribution in accordance with Abramsky award.
9. The Parties agree that the employees alone are responsible for their individual tax circumstances that may or may not limit the amount of credit any one employee may establish in the OPSEU Pension Plan for the Period.
10. The Employer will pay \$500,000 to OPSEU in lieu of union dues for the period between July 21, 2003 and ~~September 1, 2014~~ June 9, 2014. The Employer agrees that it shall pay this amount within sixty (60) days of the date of this settlement.

June 9, 2014

11. Nothing in this settlement constitutes an admission or concession of liability or wrongdoing by any party and all liability is denied.
12. OPSEU agrees that upon execution of this settlement, the court action and associated contempt proceedings noted in the preamble to this Settlement is withdrawn and abandoned, without costs, and that OPSEU will notify the Superior Court of Justice immediately.
13. Subject to paragraph 18, ¹⁷¹ ~~the Parties~~ the Union hereby release and forever discharge the Crown in Right of Ontario and the Employer, its servants, agents and directors of and from all actions, causes of action, grievances, claims and demands of every nature and kind arising out of, as a result of the subject matter of the outstanding litigation listed in the preamble to this settlement, listed in Appendix A and the circumstances giving rise to the outstanding litigation listed in the preamble to this Settlement and Appendix A, including but not limited to all claims under the Employer's *Workplace Discrimination and Harassment Policy*, the *Ontario Human Rights Code*, the *Public Service of Ontario Act*, the *Crown Employees Collective Bargaining Act*, the *Occupational Health and Safety Act*, the *Labour Relations Act*, the *Employment Standards Act* and the common law.
14. With respect to the grievances regarding the use of Agency or non-Ministry reporters, the parties agree that those matters are not withdrawn but that the duties of transcript production as they exist at the signing of the Memorandum of Settlement shall not be relied on by the Union in those matters, and that the duties of transcript production will not be put forward as a foundation for a claim that additional bargaining unit court reporter positions should be established.
15. The Union agrees not to file any new or additional grievances with respect to subject matter of the litigation outlined in the preamble to this settlement and/or the subject matter of the litigation associated with Appendix A.
16. This settlement represents the complete agreement between the Parties in relation to the above noted litigation in the Preamble and the litigation noted in Appendix A. The Parties agree and acknowledge that they have not made any verbal or other agreements beyond what is contained in this written agreement.

17. The parties agree that as part of the settlement of these matters, including the grievances and the proceedings in Court File #CV-13-476423 Arbitrator/Mediator William Kaplan has full authority as though he were a Vice Chair of the Grievance Settlement Board. The parties agree that as part of that authority he has the jurisdiction to enforce the awards and any orders included therein and to enforce this settlement, and to make any order and provide any remedy necessary to ensure that the awards, orders or settlement are fully implemented and satisfied. The parties agree that this settlement may be raised as an absolute defence against any argument raised by the Crown in a proceeding before Arbitrator/Mediator Kaplan concerning the remedial authority of Arbitrator/Mediator Kaplan to make any order or grant any remedy he deems appropriate.
18. Notwithstanding any orders of the GSB which have been issued to date in the above noted matters, all grievances in these matters are fully and finally remediated in accordance with the terms set out in this settlement. The parties agree that any order issued by the GSB in regards to the above noted matters have, as a result of ~~this~~ settlement, been fully complied with and enforced. *the full implementation of this*
19. Nothing in this settlement interferes with the rights of the Union from filing grievances or pursuing any other legal actions on or after September 1, 2014, with respect to the new transcript production model including, but not limited to, any grievance relating to successor rights or the validity of the contracting out method employed in the new model. In the event the Union files any such grievances or pursues any other legal actions, the Employer agrees it waives any timeliness objections associated with the timeline between June 2014 and September 1, 2014.
20. The parties acknowledge that the Ministry will submit to the Lieutenant Governor in Council recommendations associated with changes the transcript fees.
21. ~~Mediator/Arbitrator William Kaplan shall remain seized with respect to the implementation, interpretation and enforcement of this settlement and shall have the equivalent powers of a vice chair of the Grievance Settlement Board.~~

DATED IN TORONTO this 3rd day of March 2014.

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Union

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Employer