



**Report to the Legislative  
Assembly of the Northwest  
Territories on Termination  
Compensation to Two  
Senior Officials**



**Office of the Auditor General of Canada  
Bureau du vérificateur général du Canada**

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Auditor General of Canada  
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To the Honourable Speaker of the Legislative Assembly of the Northwest Territories:

On March 12, 2002, Motion 7-14(5) was adopted by the Legislative Assembly of the Northwest Territories requesting that the Auditor General of Canada conduct a special audit. On March 28, 2002 I wrote to you to accept this request and agreed to undertake this audit. I have the honour to transmit herewith my Report on Termination Compensation to Two Senior Officials.

*Sheila Fraser*

Sheila Fraser, FCA  
Auditor General of Canada

Yellowknife, 23 October 2002



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# Report to the Legislative Assembly of the Northwest Territories on Termination Compensation to Two Senior Officials

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## Executive Summary

At the request of the Legislative Assembly of the Northwest Territories, we audited the termination compensation of two senior officials of the Government of the Northwest Territories (GNWT).

Our audit found that the termination compensation to the two officials exceeded what had been set out in their employment agreements and was not compliant with the government's policies. Further, we found no justification for paying the significantly higher termination payments and benefits. Therefore, we conclude that the GNWT did not handle the matter reasonably and with prudence.

The employees were John Bayly, Principal Secretary, and Lynda Sorensen, Chief of Staff, of the Premier's Office in the Department of the Executive. Both employees had "at pleasure" appointments with the GNWT. At pleasure appointments are positions that may be terminated by the employer at any time, with or without cause. Each employee had an employment agreement with the GNWT dated in 2000. The employment agreements had termination clauses that set out the manner of termination and the calculation of severance amounts payable should employment be terminated.

Bayly and Sorensen were terminated by the GNWT; subsequently, in November 2001, each entered into a termination agreement that effectively has continued their status as employees of the GNWT. Bayly's termination agreement states that he tenders his resignation effective 28 October 2002; Sorensen's termination agreement states that she tenders her resignation effective 4 January 2004.

The termination agreements set out the compensation that will be provided to Bayly and Sorensen. Bayly's termination agreement says that he will receive 12 months' salary and one year's full employee benefits, including pensionable time. He will also receive a payment for removal assistance and performance pay. Sorensen's termination agreement says that she will receive 24 months' salary plus two years' full employee benefits with pensionable time. She will also receive a payment for removal assistance and performance pay.

The termination agreements of both employees provided termination compensation over and above what was set out in their employment agreements and what is consistent with government policies. Bayly will receive a removal assistance payment without meeting the requirements. Sorensen will receive an additional 12 months' termination pay; 24 months'

full employee benefits, including pensionable time; and a removal assistance payment.

The cost to the GNWT to terminate the two employees will amount to about \$280,000 in Bayly's case and around \$400,000 in Sorensen's. The termination compensation amounts that exceed the terms of their employment agreements and government policies are \$6,000 for Bayly and about \$250,000 for Sorensen (Appendix A).

While the two terminated employees had legal counsel to advise them and protect their interests, the officials of the GNWT entered into the two termination agreements without seeking legal advice to protect the government's interests.



## Introduction

1. On 12 March 2002, the Legislative Assembly of the Northwest Territories adopted a motion requesting the Auditor General of Canada to undertake a special audit into all aspects and approvals of the process that led to the payments for termination, compensation, and benefits to former employees, as provided for in the Special Warrant approved by the Financial Management Board on 21 January 2002. The Auditor General of Canada agreed to undertake this audit.
2. Our audit objectives were to examine the process by which the termination payments and benefits were determined and approved. In addition, we sought to determine whether the process and the termination compensation were consistent with the policies and practices of the Government of the Northwest Territories (GNWT) and in accordance with the employment agreements between the government and the two individuals.
3. Our audit included examining documents and files provided by the government and interviewing government officials and senior employees involved in discussing and negotiating the terminations. We compared these two cases with those of other senior officials whose employment with the government had been terminated.
4. The special warrant approved on 21 January 2002 included an amount of \$696,000 identified as costs associated with the Special Committee on Conflict Process. Of that amount, \$162,000 was for legal bills of witnesses called during the public hearing of the Special Committee, \$19,000 was for other costs related to former Minister Groenewegen, and \$11,000 was additional costs for salaries of two administrative staff for one month. The remaining \$504,000 was for costs related to the termination of two senior employees in the Premier's Office in the Department of the Executive. These termination costs, the subject of our audit, include termination payments, benefits, and pension costs.
5. In addition to the \$504,000 in termination costs, the special warrant also indicated that additional termination costs of \$131,000 had already been accrued by the government for potential severance to one of the individuals. Therefore, the total costs identified in the special warrant for the termination of both senior officials are \$635,000.
6. The two senior employees terminated were John Bayly, Principal Secretary, and Lynda Sorensen, Chief of Staff. Bayly had an "at pleasure" appointment as the Principal Secretary effective 6 March 2000 and had signed an employment agreement with the GNWT. Bayly was considered equivalent to a deputy minister. Sorensen had an "at pleasure" appointment as the Chief of Staff, effective 30 January 2000, and she had also signed an employment agreement with the GNWT. Sorensen was considered a management employee. At pleasure appointments may be terminated by the employer at any time, with or without cause.

7. On 23 October 2001, the Special Committee on Conflict Process tabled its report, “Confidence in the Integrity and Standard of Government.” In this report the Special Committee stated that the Premier should require the resignations of Bayly and Sorensen to regain public confidence in the integrity of the Office of the Premier.

## Observations

8. The GNWT entered into separate employment agreements with Bayly and Sorensen, which set out the terms and conditions of their appointments. Included in the employment agreements were termination clauses describing how the “at pleasure” appointments and the agreements could be terminated. The termination clauses set out different methods of calculating severance amounts, depending on whether the government terminated the appointment or the employee resigned.

9. The GNWT terminated Bayly’s appointment, and termination clause 4.1(b) in his employment agreement therefore applied. Under clause 4.1(b), Bayly held office only at the pleasure of the government and his employment agreement could be terminated by the government for any reason and without showing cause. The GNWT would be required to make a payment to Bayly equal to his monthly salary multiplied by the number of years of service, but not less than 12 months’ salary and not more than 24 months’ salary. We interpret this to mean that based on Bayly’s 20 months of service as Principal Secretary, he would be entitled to a termination payment equivalent to 12 months’ salary (Appendix B).

10. The GNWT terminated Sorensen from her position, and termination clause 4.1(b) in her employment agreement therefore applied. Under clause 4.1(b), Sorensen held office only at the government’s pleasure, and the government could terminate her employment agreement for any reason and without showing cause. The government would be required to pay Sorensen an amount equal to her monthly salary multiplied by the number of years of service, but not less than 12 months’ salary and not more than 24 months’ salary. We interpret this to mean that based on Sorensen’s two years of service as Chief of Staff, she would be entitled to a termination payment equivalent to 12 months’ salary (Appendix C).

11. During the last week of October and the first week of November 2001, the GNWT held discussions and negotiations with Sorensen and Bayly to arrange the termination of their employment. On 1 November 2001, Sorensen signed a termination agreement with the GNWT, which Premier Stephen Kakfwi signed on the government’s behalf. On 2 November 2001, Bayly signed a termination agreement with the GNWT, which Elizabeth Snider, Secretary to Cabinet, signed on the government’s behalf. We were informed that the terms of the termination agreements with Sorensen and Bayly were negotiated by Elizabeth Snider and approved by Stephen Kakfwi.

12. These termination agreements set out new terms for the termination of both employees, providing them with higher compensation and extended benefits to which they had not been entitled under the terms of their employment agreements. Each termination agreement set a date in the future on which termination of employment with the GNWT would take effect. These termination agreements are final and binding agreements on the government and the two employees.

13. Bayly's termination agreement states that he tenders his resignation effective 28 October 2002. The termination agreement effectively continues his status as an employee of the GNWT until that date. He will continue to receive his current salary and full employee benefits: health and dental coverage, disability insurance, life insurance, pension and pensionable time for the additional 12 months. Under the termination agreement, Bayly is not required to report to work and is not to represent himself as an employee of the GNWT during this period. The government continues to make all statutory deductions for Bayly as an employee, such as Canada Pension Plan contributions and Employment Insurance premiums to which it pays the employer's share as well as benefit costs. Bayly stopped working in his position as Principal Secretary on 25 October 2001 and we were advised that he has not provided any services to the GNWT since then.

14. In June 1999, the GNWT Financial Management Board issued a decision that management and excluded employees laid off or terminated for health reasons could spread out their severance payments to extend their period of service. The decision also provided that deputy ministers could apply their severance pay to extend their employment when they were no longer serving at the government's pleasure, when their employment was terminated for health reasons, or when they retired and were entitled to an immediate annuity with superannuation. The Financial Management Board directed in its decision that the changes be incorporated in the relevant handbooks and contracts.

15. This decision entitles Bayly, as a deputy minister, to use his termination pay to extend his employment and receive benefits over 12 months, to October 2002. As a result of having his employment extended by one year, Bayly now qualifies for a pension with the GNWT. The minimum length of employment with the government needed to qualify for a pension is two years. In October 2001, at the time of his termination, Bayly had been an employee for only 20 months. We were advised that Bayly may begin in November 2002 to receive an annual pension of about \$8,000. This additional indexed pension amount of about \$8,000 annually over 25 years has a present value benefit to Bayly of about \$130,000.

16. Sorensen's termination agreement states that she tenders her resignation effective 4 January 2004. This termination agreement effectively continues her status as an employee of the GNWT until that date. She will continue to receive her current salary and full employee benefits: health and dental coverage, disability insurance, life insurance, pension and pensionable time. During this period, she is not to represent herself as an employee of the

GNWT. The government continues to make all statutory deductions for Sorensen as an employee, such as Canada Pension Plan contributions and Employment Insurance premiums to which it pays the employer's share and benefit costs. We were advised that Sorensen stopped working in her position as Chief of Staff on 18 January 2002, due to a two-week extension of her position to assist with the transition of the new Principal Secretary. Sorensen has provided no services to the government since then.

17. As a result of her termination agreement of November 2001, Sorensen will continue to receive her salary for 24 months, plus extended benefits, rather than the termination payment equivalent to 12 months' salary and no benefits under the terms of her employment agreement. GNWT officials have advised us that their intent, and their interpretation of Sorensen's employment agreement, is that the termination pay to which she was entitled took into account the 15 years she had worked for the GNWT before her appointment to Chief of Staff. We disagree with this interpretation, and further, we found that in each of the other employment agreements we examined, the wording was very clear on the years of service that would count. Even if we agreed with the government's interpretation, however, it would allow Sorensen only 17 months' termination pay, without benefits. Sorensen has obtained additional compensation of termination pay for 7 to 12 months more than she was entitled to receive under the terms of her employment agreement. This 12 months' additional termination pay amounts to about \$133,000.

18. Officials of the GNWT advised us that they paid Sorensen more than was set out in her employment agreement because they were concerned about the government's liability and potential litigation by Sorensen. Officials were unable to provide any documentation or legal opinions that supported the concern about liability or any documentation or memoranda on discussions about potential litigation. We were advised that the GNWT did not consult with or seek any legal advice on this issue.

19. Sorensen is not entitled to spread out her termination pay to extend her employment, nor is she entitled to any benefits, because she did not qualify for inclusion in the Financial Management Board decision of June 1999: she was not laid off or terminated for health reasons, nor is she considered a deputy minister. We found no GNWT policy under which she would qualify to spread out her termination pay to extend her employment or to qualify for benefits.

20. As a result of having her employment with the GNWT extended to January 2004, Sorensen will receive benefits, including additional pensionable service, for this entire period. These employee benefits, including the pensionable service, will cost the GNWT about \$112,000. Further, she now qualifies for a much larger pension. The additional two years of pensionable service at a larger salary as Chief of Staff increased her best-five-years-average salary substantially. This larger average salary will increase Sorensen's pension entitlements. We were advised that Sorensen will be entitled in February 2004 to begin receiving pension payments of about

\$14,000 a year more than she would have collected otherwise. This additional indexed pension amount of about \$14,000 annually over 25 years has a present value benefit to Sorensen of about \$230,000.

21. Bayly's and Sorensen's termination agreements specified the amounts they would receive as performance pay, which were at the highest level payable, 15 percent of their current salaries. Performance pay is additional compensation based on merit. It also increases pension entitlements, as it increases the best-five-years-average salary. Under their 2000 employment agreements, Bayly and Sorensen could earn from zero to 15 percent of their salaries each year as performance pay. The employment agreements set out the criteria and basis for determining whether performance pay was merited. Both Bayly's and Sorensen's personnel files contain a letter of reprimand related to the period when their performance raised the issue of questionable conduct that was referred to in the October 2001 report of the Special Committee on Conflict Process. Documentation is required under the employment agreements to justify the awarding of performance pay to Bayly and Sorensen. We found no documentation with respect to Sorensen and inadequate documentation with respect to Bayly. No formal process was undertaken to arrive at the amounts awarded as performance pay. Without sufficient documentation in the files, we could not determine the basis for either disregarding or considering the letters of reprimand and determining the performance pay amounts. Performance pay of \$25,000 was paid to Bayly and \$20,000 to Sorensen.

22. The termination agreements of Bayly and Sorensen also stipulated that each would be provided with removal assistance of \$6,000, and the GNWT paid each that amount. However, to qualify for removal assistance under the terms of the GNWT Managers' Handbook (which formed part of their employment agreements), employees must move from their community of residence within 30 days and must submit receipts for their removal costs. Employees must also have three years of service with the GNWT. We were informed that neither Bayly nor Sorensen moved from Yellowknife and neither provided any receipts for removal costs. We have determined that Sorensen recently moved from Yellowknife. However, neither was entitled to removal assistance payments, as all the requirements of the Manager's Handbook were not met.

23. The government's files contained very little documentation of the discussion that took place in various negotiation meetings, in internal GNWT meetings, or in the drafting of the termination agreements. Government officials said that Sorensen had been awarded the increased termination pay and benefits because of concerns about potential litigation and government liability. Unique to all the termination agreements that we examined was a clause in Sorensen's termination agreement stating that if the GNWT failed to perform all of its obligations under the agreement, it would be required to pay all of Sorensen's legal costs associated with enforcement of the agreement. There is no evidence that the GNWT sought legal advice on these issues during the discussion, negotiation, and drafting of the termination agreements; in fact, we were told it had not. Given that both

Bayly and Sorensen had legal counsel in this matter, it would have been prudent for the GNWT to have obtained legal advice as well.

24. By our calculation, the government's costs to terminate Bayly will amount to about \$280,000, and for Sorensen the cost will amount to about \$400,000. In addition, Bayly will have an entitlement of around \$8,000 as an annual pension, and Sorensen will receive an annual pension around \$14,000 higher than the pension she would have collected otherwise. The termination compensation to both individuals is over and above what had been set out in their employment agreements. This additional compensation amounts to \$6,000 for Bayly and about \$250,000 for Sorensen (Appendix A).

25. We noted that certain matters we raise in this report are common practices in the termination of other senior officials at the deputy minister level of the GNWT—namely, the practice of entering into a termination agreement, the spreading out of termination pay to extend the period of service, and the awarding of removal assistance to individuals who do not meet the criteria for entitlement.

## Conclusion

26. The Government of the Northwest Territories did not adhere to the termination clauses in the employment agreements and did not comply with government policies. The termination agreements enhanced the compensation and benefits of both individuals, especially Sorensen. In future, the GNWT should ensure that it adheres to the termination clauses set out in employment agreements and complies with government policies or substantiates the reasons for deviating from them.

27. We have concerns about the additional compensation of \$6,000 to Bayly for removal assistance. However, our greater concern is what the government provided to Sorensen for termination compensation. The GNWT provided Sorensen with higher termination compensation than was required, in the form of higher termination pay, benefits, removal assistance, and increased GNWT pension contributions due to the extension of her employment. We determined that the additional termination compensation over and above what was stated in Sorensen's employment agreement amounts to about \$250,000. She also will receive around \$14,000 in additional pension benefits every year as a result of having her employment extended by 24 months.

28. Along with these identified costs, the GNWT assumes an added financial risk in extending the employment status of these employees. If, for example, during their extended employment these individuals become ill and qualify for long-term disability, the GNWT will be liable for the long-term disability benefits until their eligibility for these benefits ceases, which could take many years.

29. Employment agreements are intended to ensure that all parties understand their rights and obligations. They are used to ensure that rights and obligations are interpreted clearly and that ambiguity or dispute about

their implementation is minimal. Adhering to the terms of employment agreements ensures that all parties, and in particular all employees, are dealt with fairly and equitably. The introduction of new or improved terms in negotiating termination agreements creates an undesirable precedent for the employer in dealing with employees it is terminating.

**30.** Our audit findings and the fact that we found no justification for the significantly higher termination compensation lead us to conclude that the government did not handle the matter reasonably and with prudence.

## Appendix A Additional Compensation and Termination Costs

<b>John Bayly</b>					
	<b>Employment Agreement Entitlements</b>	<b>Paid / Payable</b>	<b>Pension Increase</b>	<b>Additional Compensation</b>	<b>Termination Costs</b>
Termination Payments	\$164,000	\$164,000		0	\$164,000
Employee Benefits	85,000	85,000		0	85,000
Removal Assistance	0	6,000		\$6,000	6,000
Pension Increase	8,000		\$8,000	0	
Performance Pay	?	25,000		0	25,000
<b>TOTAL</b>				<b>\$6,000</b>	<b>\$280,000</b>

<b>Lynda Sorensen</b>					
	<b>Employment Agreement Entitlements</b>	<b>Paid / Payable</b>	<b>Pension Increase</b>	<b>Additional Compensation</b>	<b>Termination Costs</b>
Termination Payments	\$133,000	\$266,000		\$133,000	\$266,000
Employee Benefits	0	112,000		112,000	112,000
Removal Assistance	0	6,000		\$6,000	6,000
Pension Increase	0		\$14,000	Yes	
Performance Pay	?	20,000			20,000
<b>TOTAL</b>				<b>\$251,000</b>	<b>\$404,000</b>



## Appendix B Termination Clauses in Bayly's Employment Agreement Dated 19 March 2000

### Section 4: Termination

- 4.1 Recognizing that Mr. Bayly holds office during pleasure only, the parties understand and agree that this Agreement may be terminated in the following manner in the specified circumstances:
- (a) By Mr. Bayly, for any reason, by providing ninety days written notice to the GNWT. The GNWT may waive notice in whole or in part, at its absolute discretion. Upon termination of employment under this clause, the GNWT agrees to pay Mr. Bayly an amount equal to Mr. Bayly's monthly salary, multiplied by a factor representing the number of completed years of service, but in any case that factor shall not be more than twelve.
  - (b) By the GNWT, in its absolute discretion, for any reason and without cause, by written notice to Mr. Bayly and by providing payment in lieu of notice of an amount equal to Mr. Bayly's monthly salary multiplied by a factor representing the number of years of service, but in any case that factor shall be not less than 12 or more than 24.
  - (c) By the GNWT, without notice, for cause.
  - (d) By the GNWT, for any mental or physical disability or illness which results in Mr. Bayly being unable to perform the essential duties and responsibilities under this agreement, in which case the provisions of Section 5 shall govern.
- 4.2 In the event of the death of Mr. Bayly, this Agreement shall terminate immediately and Clause 4.1(b) shall not apply.
- 4.3 Following termination of this Agreement for any of the foregoing reasons, neither party has any further rights or obligations hereunder subject always to the confidentiality and conflict of interest provisions contained in this Agreement and its appendices which shall survive the termination of this Agreement.
- 4.4 Mr. Bayly shall, upon termination of employment, immediately deliver up to the GNWT all correspondence, documents, specifications, papers, computers, computer disks and property belonging to the GNWT which have come into the possession or under the control of Mr. Bayly during the term of this or any subsequent Agreement.

## Appendix C Termination Clauses in Sorensen's Employment Agreement Dated 21 June 2000

### Section 4: Termination

- 4.1 Recognizing that Ms. Sorensen holds office during pleasure only, the parties understand and agree that this Agreement may be terminated in the following manner in the specified circumstances:
- (a) By Ms. Sorensen, for any reason, by providing ninety days written notice to the GNWT. The GNWT may waive notice in whole or in part, at its absolute discretion. Upon termination of employment under this clause, the GNWT agrees to pay Ms. Sorensen an amount equal to Ms. Sorensen's monthly salary, multiplied by a factor representing the number of completed years of service, but in any case that factor shall not be more than twelve.
  - (b) By the GNWT, in its absolute discretion, for any reason and without cause, by written notice to Ms. Sorensen and by providing payment in lieu of notice of an amount equal to Ms. Sorensen's monthly salary multiplied by a factor representing the number of years of service, but in any case that factor shall be not less than 12 or more than 24.
  - (c) By the GNWT, without notice, for cause.
  - (d) By the GNWT, for any mental or physical disability or illness which results in Ms. Sorensen being unable to perform the essential duties and responsibilities under this agreement, in which case the provisions of Section 5 shall govern.
- 4.2 In the event of the death of Ms. Sorensen, this Agreement shall terminate immediately and Clause 4.1(b) shall not apply.
- 4.3 Following termination of this Agreement for any of the foregoing reasons, neither party has any further rights or obligations hereunder subject always to the confidentiality and conflict of interest provisions contained in this Agreement and its appendices which shall survive the termination of this Agreement.
- 4.4 Ms. Sorensen shall, upon termination of employment, immediately deliver up to the GNWT all correspondence, documents, specifications, papers, computers, computer disks and property belonging to the GNWT which have come into the possession or under the control of Ms. Sorensen during the term of this or any subsequent Agreement.