



# Closing the Gender Wage Gap Consultation

**Submitted to:** Gender Wage Gap Steering Committee

**Submitted by:** Ontario Bar Association



ONTARIO  
BAR ASSOCIATION  
A Branch of the  
Canadian Bar Association

L'ASSOCIATION DU  
BARREAU DE L'ONTARIO  
Une division de l'Association  
du Barreau canadien



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## Introduction

The Ontario Bar Association (the “OBA”) appreciates the opportunity to provide a submission to the Gender Wage Gap Steering Committee (the “Steering Committee”), appointed in April 2015 by the Minister of Labour to lead a public consultation on “Closing the Gender Wage Gap” (the “Consultation”), after which the Steering Committee will make recommendations that inform a strategy to close the wage gap between men and women.

## The OBA

Established in 1907, the OBA is the largest legal advocacy organization in the province, representing more than 16,500 lawyers, judges, law professors and students. OBA members are on the frontlines of our justice system in no fewer than 39 different sectors and in every region of the province. In addition to providing legal education for its members, the OBA assists government with dozens of legislative and policy initiatives each year - in the interest of the public, the profession and the administration of justice.

This submission was prepared by a working group of representatives from the OBA’s Labour and Employment Section, Public Sector Lawyers Section, Women Lawyers Forum and Canadian Corporate Counsel Association – Ontario Chapter (the “Working Group”). Collectively, these sections have over 3,000 members, who would count as clients, employers and employees in unionized and non-unionized environments, and who have experience providing legal counsel on the implementation and application of pay equity legislation.

## Background

The OBA applauds Premier Wynne, the Minister of Labour and the Minister Responsible for Women’s Issues, for recognizing that the gender wage gap continues to be an issue and for making a priority of closing the wage gap. Core to our mission is promoting fair justice systems, facilitating effective law reform, upholding equality in the legal profession, and devotion to eliminating discrimination. OBA members have assisted legislative efforts in Ontario and across the country to eliminate gender wage discrimination and redress discriminatory undervaluation of jobs typically performed by women. We support the development of the strategy and are pleased to contribute to the shared goals of achieving greater wage equality and increased opportunities for women workers.

Equal pay for work of equal value, or pay equity, is a fundamental human right enshrined in the International Labour Organization’s Equal Remuneration Convention,<sup>1</sup> which was ratified by

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<sup>1</sup> C100, Equal Remuneration Convention, 1951 (No.100).



Canada in 1972. Pay equity is about redressing the undervaluation of jobs typically performed by women and rewarding them according to their value. While there is a cost associated with achieving pay equity, the benefit of human rights, non-discrimination and equality is non-negotiable, and will improve the economy as well.

Ontario has taken steps toward the goal of pay equity, including enacting a number of legislative measures. The *Pay Equity Act*<sup>2</sup> and *Human Rights Code*<sup>3</sup> represent Ontario's guarantee to its women workers that they will not be denied equal treatment in compensation because of their gender. The *Pay Equity Act* is intended to address discrimination where roles typically performed by women are paid less than male-dominated roles, even though they have comparable skill, effort, responsibility and working conditions. The *Human Rights Code* is intended to address situations where women in female-dominated roles cannot effectively access higher valued and better paid male-dominated roles because of workplace or other barriers. The *Employment Standards Act*<sup>4</sup> sets out minimum rights and responsibilities for workers and employers, and requires that men and women receive equal pay when they do the same or substantially the same job in the same establishment.

## Comments

### The Current Legislative Framework

The *Pay Equity Act* was adopted into law in 1987 to address systemic gender discrimination in compensation for work performed by employees in roles typically filled by women. The *Pay Equity Act* sets out minimum requirements for ensuring that employers' compensation practices provide equal pay for work for equal value for all employees in female job classes. The approach it adopted encouraged employers to be proactive and create their own plan for pay equity, as opposed to the complaints-based approach of the *Human Rights Code*. This new approach to pay equity was good in its time, and the government of the day deserves praise for its effort. At the time, the *Pay Equity Act* was drafted to apply broadly to all public service employees as well as private companies with over 10 employees.

Under the *Human Rights Code*, employers have broad obligations to ensure equality. Section 5 (1) establishes the basic right of all employees to equal treatment in pay and employment. Section 14 (1) protects "special programs" that are aimed at relieving hardship or economic disadvantage, such as pay equity plans.

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<sup>2</sup> R.S.O. 1990, c. P.7.

<sup>3</sup> R.S.O. 1990, c. H.19.

<sup>4</sup> S.O. 2000, c. 41.



The *Pay Equity Act* builds on the *Human Rights Code* and is a human rights remedy. It sets a standard for gender wage equality and a process for achieving it. As such, it aims to prevent and redress systemic wage discrimination based on occupational segregation, prejudices and stereotypes about women and the roles that they typically occupy, as well as labour market practices.

Under the *Pay Equity Act*, employers are required to develop plans that compare skill, effort, responsibility and working conditions of female- and male-dominated work. It also requires that if work is of comparable value, but the male-dominated jobs are paid more, the wages for female-dominated work must be increased.

### **Impact to Date**

Although legislation has been in place for decades in Ontario as one way to reduce discrimination in compensation practices, the gender wage gap remains unacceptable and there is clearly further work to be done. The gender wage gap, based on average annual earnings, was 44.4% in 1986 when the *Pay Equity Act* was passed and decreased only to 31.5% by 2011 according to the most recent *Statistics Canada*.<sup>5</sup> Of some concern, if the Canadian Centre for Policy Alternatives is correct, the narrowing of the wage gap in Ontario may have less to do with legal compliance with the *Pay Equity Act* and a growing culture of wage equality than it has to do with decreases in male earnings, due to the loss of higher-paid jobs in male-dominated sectors, such as manufacturing.<sup>6</sup>

In looking at other jurisdictions contending with solving the same problem, it is clear that closing the gender wage gap will require more than just renewed focus on pay equity legislation. Research conducted by the International Labour Office into why the wage gap persists points to a number of factors: differences in the productivity of men and women, the jobs they do, flexibility and child care responsibilities and the number of hours they devote to paid and unpaid work, in addition to gender-biased job classification or wage-fixing systems that legislation is intended to affect.<sup>7</sup>

Research conducted for and in the years since the Royal Commission on the Status of Women issued its Report in 1970 have affirmed that discriminatory attitudes remain an important factor in the continuing wage gap.<sup>8</sup> As the Consultation background paper acknowledges, no single policy measure can address all these factors, and a set of interventions are needed.

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<sup>5</sup> Ministry of Labour (2015). Closing the Gender Wage Gap: A Background Paper, pp. 23.

<sup>6</sup> McInturff, Kate E., *Ontario's Gender Gap: Women and Jobs Post-Recession*. (Ottawa: Canadian Centre for Policy Alternatives, 2014).

<sup>7</sup> Chicha, Marie-Therese, *A Comparative Analysis of Promoting Pay Equity: Models and Impacts*. (Geneva: International Labour Office, 2006).

<sup>8</sup> Report of the Royal Commission on the Status of Women in Canada, Information Canada: Ottawa, 1970.



## What Can Be Done? Systemic Solutions to a Systemic Problem

### A. More Effective Enforcement Mechanisms for Non-Compliance

The Working Group recommends that the *Pay Equity Act* be amended to strengthen and promote compliance so that the policy goals underpinning the legislation are actually implemented. Currently, the requirement for employers to create pay equity plans may not be adequately enforced, which may partly be the result of inadequate funding for the enforcement agency—the Pay Equity Commission—and inadequate penalties and interest on non-payment.

Jurisdictions which have more stringent penalties in place have a better track record of compliance, reducing wage discrimination, and narrowing the gender wage gap. For example, Quebec's pay equity legislation establishes a timeframe for a plan to which employers must adhere, fixes a deadline for compliance, and imposes sanctions of \$1,000 to \$45,000 that are doubled in the case of repeat offences. Data from Statistics Canada on gender and pay for each province revealed that wages for Quebec women are significantly closer to the wages of Quebec men than those for women in Ontario (72% and 65%, respectively).<sup>9</sup>

The *Pay Equity Act* should specify timelines for actions of all sorts, including correcting inadequate payments. At the time the *Pay Equity Act* was adopted, there was optimism that at the very least business organizations understood that non-discrimination is a human right and non-negotiable, if not recognized the benefits of a diversified workplace. Re-classifying jobs and wage systems is complex and a challenge for even well-meaning and supportive employers to achieve.

The OBA's members represent both employers and employees in unionized and non-unionized workplaces. In the OBA's experience, the work of comparing job classes, developing policies, and securing buy-in takes time. While the Working Group is recommending that the strategy for closing the gender wage gap include the creation of new enforcement mechanisms for non-compliance with the *Pay Equity Act*, it is also our view that the Pay Equity Commission should continue to exercise its discretion to assist compliance by businesses acting in good faith.

The Working Group believes that if penalties under the *Pay Equity Act* are to be increased, it is essential that the necessary supports are also put in place to assist businesses who are acting in good faith to redress wage discrimination and implement and maintain pay equity.

In our experience, the Pay Equity Commission website is an excellent resource that can assist businesses to learn about their obligations, adopt best practices and comply with obligations under the *Pay Equity Act*. The Working Group recommends that the Commission have the resources to

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<sup>9</sup> Statistics Canada. (2008). Average total income of women and men, by province. Table 202-0407. CANSIM. Ottawa, Ontario.



explore additional user-friendly web applications designed to expeditiously implement and maintain pay equity. These would be specifically advantageous to small businesses who may struggle with the process and who cannot afford to retain a pay equity consultant. In our experience, businesses also benefit greatly from the involvement and assistance of Pay Equity Officers. The Working Group believes that compliance can be greatly enhanced if the Commission has the resources to increase its outreach in this area.

## **B. Public Reporting**

The experience in Quebec suggests that requiring companies to publicly report on gender wage gaps encourages compliance. Other jurisdictions are beginning to follow suit. Section 78 of the United Kingdom's *Equality Act*<sup>10</sup> contains a power to make regulations requiring employers with at least 250 employees to publish gender pay gap information. The aim of public reporting is to use transparency in hourly wage and pay structures, merit pay systems, occupations, and the nature of the employment relationship to foster accountability.

In Ontario, the Ontario Securities Commission recently adopted new amendments that promote a proactive approach through a “comply or explain” model.<sup>11</sup> They have expressed a commitment to review the data on an annual basis. A recent study found that the new approach is showing early success in encouraging businesses to change behaviour and forcing companies to make positive changes in board composition, diversity and equality.<sup>12</sup>

The Working Group suggests that public reporting be explored more thoroughly.

## **C. Contract Compliance**

One step the Ontario government can take is to consider adopting a policy of only procuring goods and services from business organizations that have implemented (or begun) pay equity plans. The Government of Canada's “Federal Contractors’ Program”, for example, requires provincially regulated employers with 100 or more employees bidding on federal contracts of \$1 million or more to certify that they will implement employment equity measures. While short of imposing legal compliance through legislation, contract compliance enables the provincial government to influence the private sector by leveraging commercial interests to achieve greater gender wage equality. Contract compliance creates an incentive for private sector businesses to view gender

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<sup>10</sup> 2010, c. 15, s. 78.

<sup>11</sup> This model doesn't set quotas, but requires certain issuers to annually disclose either information about specific mechanisms, policies or targets it has adopted relating to the representation of women on boards and executive officer positions, or to explain its reasons for not adopting these.

<sup>12</sup> “Women in the C-Suite: Can Securities Law Advance Gender Equality?” (2015, June 16). Retrieved from <<http://www.torys.com/insights/publications/2015/06/women-in-the-c-suite-can-securities-law-advance-gender-equality>>



wage equality as connected to their commercial interests and take steps to meet their obligations under the *Pay Equity Act*.

#### **D. Employment Equity Legislation**

Ontario passed employment equity legislation in 1993 to rectify discrimination in hiring, working conditions and promotions for women and other diverse groups. It required the preparation of employment equity plans to eliminate barriers, implement positive measures and create specific goals and timetables. This law was repealed in 1995. Employment equity efforts, to improve job prospects for working women in non-traditional careers and to better their prospects, are worthy of being reviewed and considered for reinstatement. This is further supported by the International Labour Office's review of the legislative regimes in Quebec and Sweden, which have had some success in addressing discriminatory pay practices.<sup>13</sup>

#### **E. Child Care supports are essential to an equitable work place**

Women will have the best chance of competing with men for better-paying jobs if our society provides help in the form of child care places to enable women to work outside the home. It is not cash that is required but secure, accessible and affordable child care places that will enable parents to make their best contribution to the work of our society. When organizations also foster work environments where both men and woman are encouraged to take parental leaves of equal duration and remove the stigma for a man who takes an extended parental leave or otherwise embraces childcare activities, we will move closer to gender equality and pay equity. Iceland, Finland, Denmark and Sweden are world leaders in gender equality and the Ontario government should be encouraged to look to those countries for examples of successful initiatives.<sup>14</sup>

#### **F. Precarious and contract employment is a factor in the 21<sup>st</sup> century wage gap**

These vulnerable employment classes should be protected by pay equity legislation and we invite the Working Group to consider how this may be achieved.

## **Conclusion**

The OBA appreciates the opportunity to provide a submission to the Steering Committee as it develops recommendations for the government's strategy for closing the gender wage gap. Achieving greater pay equity between men and women will be a positive step for equality and

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<sup>13</sup> Chicha, *supra* note 7 at 10-15.

<sup>14</sup> <http://reports.weforum.org/global-gender-gap-report-2014/>



human rights. We look forward to the Steering Committee's report and recommendations, and to working with the Ministers to develop and implement needed change.