The Pay Equity Office

Brief to the Special Committee on Pay Equity

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Introduction

Gender stereotypes and social norms create circumstances that affect the way in which women’s work is considered and valued. To address the undervaluation of work historically performed by women, the Province of Ontario, in 1987, enacted the Pay Equity Act, R.S.O. 1990, c. P7, as amended (the Act).

The Ontario Pay Equity Commission was created in January 1988 to monitor and enforce the Act. Ontario is one of only two jurisdictions in Canada that have a well-defined, stand-alone pay equity law with an independent enforcement agency that applies to public and private employers. The Pay Equity Commission is accountable to the Ontario Legislature through the Ministry of Labour. Annual reports are filed each year and are publicly available.

The Pay Equity Commission is comprised of two separate, independent parts: the Pay Equity Office and the Pay Equity Hearings Tribunal.

- The **Pay Equity Office** (the Office) is responsible for enforcing the Pay Equity Act. The Review Officer Unit is required to investigate, attempt to settle, and resolve pay equity complaints and objections to pay equity plans, to monitor the implementation and maintenance of pay equity in workplaces and to resolve all pay equity related issues by Order or Notice of Decision. The Office also provides programs and services to help people understand and comply with the Act. Finally, the Office has legislative authority to conduct research and disseminate information about any aspect of pay equity and related subjects.

- The **Pay Equity Hearings Tribunal** (the Tribunal) is responsible for adjudicating disputes that arise under the Pay Equity Act on a de novo basis. Parties must bring their disputes first to the Office before accessing the tribunal process. The Tribunal has exclusive jurisdiction to determine all questions of fact or law that arise in any matter before it. The decisions of the Tribunal are final and conclusive for all purposes and it is this body of law as well as any jurisprudence from the courts that dictate the interpretation of the Act.

This brief will focus on the experience of the Pay Equity Office in order to convey lessons learned throughout the process of implementing and enforcing the Pay Equity Act.

Proactive Legislation

The Act’s purpose is to redress gender discrimination in the compensation of employees employed in female job classes in Ontario. The Act requires all Ontario private sector employers with 10 or more employees and all public sector employers to ensure that their
compensation practices provide for pay equity. The Act specifies the steps to achieve pay equity by:

- Undertaking comparisons between female and male job classes in terms of compensation and value
- Determining value of work using a composite of skill, effort, responsibility and working conditions
- Setting out methods of comparison
- Achieving pay equity by adjusting the job rates of female job classes so that they are at least equal to the job rates of comparably valued male job classes.

There is a process to trigger investigations of non-compliance, but the requirement for employers to achieve and maintain pay equity arises as soon as an employer comes under the purview of the legislation and is not complaint based.

**Monitoring Activities**

Given the age of the Act, the majority of the Office’s work is based on monitoring activities. In the last 10 years, the Office has conducted several types of monitoring programs, each with a specific focus, goal, and way to engage employers:

- The Service Industry Monitoring Program covered hotel/motel and retail/food and beverage sector that assisted over 1,000 employers to bring their compensation practices into compliance.
- The Wage Gap Pilot Program was an exercise in outreach, awareness, interest and an opportunity to pilot broader gender wage gap criteria. 81% of employers responded to the pilot on a voluntary basis with their compensation data. From our analysis we found that 54% of responders appeared to have a gender wage gap in their organizations.
- From this pilot we initiated monitoring of those employers who either didn’t respond or whose data revealed “apparent wage gap” to assist them in becoming pay equity compliant.
- In 2014, we monitored all classified government agencies for compliance.
- In 2015 we sent outreach and pay equity awareness letters to 14,000 new businesses, to make them aware of their obligations and the various tools available through the Office to assist them and to alert them to the possibility of being monitored. Monitoring of these businesses has now begun.
Outcomes

As a result of the direct involvement of the Office, adjustments continue to be made for employees in female job classes. Our data shows:

- Adjustments of $3.6M in 2013/2014
- Adjustments of $5.0M in 2014/2015
- Adjustments of $6.1M in 2015/2016

In addition to these outcomes, we regularly see announcements of pay equity achievement and adjustments to wages of employees in female job classes in unionized settings. In these cases parties themselves have negotiated pay equity through their agreed upon processes and Office involvement is not triggered. Anecdotally we also understand that pay equity activity has greatly increased over the last few years and is tied to our direct contact with employers about their obligations.

Education and Outreach

Engaging employers and organizations is an important part of the work of the Office. Building on our past work, the Office has recently:

- Consolidated and widely circulated our Guide to Interpreting the Act and provided simple, web-based interactive tools that allow organizations to educate themselves about the process and analyse their compensation practices using their own data.
- Partnered with other organizations to provide training materials and disseminate pay equity compliance information. We recently engaged with the Human Resource Professional Association (HRPA) and York University to provide input into the development of a certificate program specifically for pay equity. This course is now offered regularly through HRPA and is one of their most popular offerings.
- Established the Gender Wage Gap Grant Program that has supported original research and targeted outreach campaigns. The Grant Program has allowed for a wider dialogue amongst academics and others to examine aspects of pay equity and the broader issue of the gender wage gap.

Considerations when Enacting Proactive Legislation

Ontario's Pay Equity Act was the first of its kind in the world. The initial legislation recognized that more study would be required on comparison methods and on how to address implementation issues in female-dominated sectors with no male comparators. The Act underwent significant amendments once these studies were concluded.
During the implementation period, an extensive public awareness and outreach campaign was crucial to inform employers of their new obligations. It was also important to develop consistent policies around implementation issues. The Office provided technical advice and significant mediation services to deal with interpretation and implementation issues between workplace parties.

The Office has extensive materials covering all aspects of implementation. Over time, there has been considerable jurisprudence from the Tribunal and from the courts that have been incorporated into our materials. Many jurisdictions regularly use the materials that have been developed and rely on the jurisprudence.

Our field experiences show that when employers are aware of their obligations and are given the means to comply, they will do so because they understand that gender biased compensation is not acceptable. Many employers simply do not do the necessary analysis to know whether they have gender biased practices. Laws such as pay equity address this in ways that help employers.

Building on Ontario’s experience, the following considerations are useful when designing proactive legislation:

- Define the concept of pay equity, how to apply it, and to whom.
- Structure the necessary steps to achieve pay equity, including the comparison methods.
- Determine the appropriate method to achieve pay equity in female dominated sectors.
- Consider the impact of pay equity results on collective bargaining.
- Provide for a staged implementation process based on size of the organization to take into account that the legislation would impact existing compensation structures, some of which would have been bargained collectively with bargaining agents.
- Provide for a process for bringing forward complaints of non-compliance and the means to resolve them.
- Empower the enforcement agency to make rules and regulations regarding process and interpretation.
- Empower the enforcement agency to monitor/audit employers for compliance, including having power to require production of documents, to inspect premises and to contact employees.

**Challenges with Proactive Legislation**

The Office supports the findings of the 2004 Task Force on Pay Equity that recommends proactive legislation. Consideration should be given to ensure that businesses both implement
and then maintain pay equity; otherwise the benefits of the legislation in addressing the undervaluation of women's work will be undermined.

Once an implementation period concludes there is less focus by parties on compliance. It is difficult to sustain a public awareness campaign so there is risk that new employers will not be aware of their obligations in ensuring that their compensation systems provide for pay equity. This may result in significant liability that then becomes a barrier to compliance.

To support long-term compliance it would be beneficial to consider the following:

- Ensuring maintenance – businesses often undergo significant changes to their staff and compensation structures that may impact on pay equity; parameters around maintenance would be useful.
- Filing and reporting – some form of regular reporting process to employees and to the enforcement agency would act as a reminder for businesses to ensure maintenance, would alert employees and their bargaining agents to potential pay equity issues, could define the period within which retroactivity would apply, and would enable better statistics to be generated to measure the legislation's impact.

The enforcement agency requires the capacity to:

- handle complaints of non-compliance, monitor/audit employers in a timely fashion;
- administer any compliance reporting structure;
- provide the necessary tools to enable employers to implement and maintain pay equity; and,
- generate the necessary statistics to show the impact of pay equity in workplaces and on the economy.

**Conclusion**

The Pay Equity Office welcomes the opportunity to share its experiences. We commend the Special Committee on Pay Equity for undertaking a study of the merits of proactive legislation and look forward to receiving its report.