

A Living Wage As a Human Right

Mary Cornish





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A Living Wage As a Human Right

Introduction

In Canada, many workers do not earn a living wage — that is, sufficient income to afford the basics of life — because of discrimination. Women workers and those who are racialized, immigrant, Aboriginal, living with disabilities or similarly disadvantaged are all segregated into low wage job ghettos. Many experience discrimination on a number of grounds. While pay equity is often only considered in relation to women's work, workers from each of these backgrounds take home less pay than other workers in Canada. Their work is devalued and the problem is systemic. In 2008, the living wage in Toronto was calculated to be \$16.60 — the amount needed to allow a family to experience a decent standard of living. Yet many workers who are stereotyped in the labour market will have no hope of reaching such a wage level unless measures are taken to address their pay discrimination.¹

The 2004 Federal Pay Equity Task Force Final Report concluded that, in addition to women, members of visible minorities, Aboriginal peoples and persons living with disabilities have all suffered historical economic disadvantage and discrimination in terms of access to jobs and lower earnings compared to other workers in Canada.² Despite some progress over the years, pay discrimination is embedded within the organization of Canada's labour market and its systems of hiring, promotion, conditions of work and

pay.³ The labour market operates to keep these vulnerable groups struggling at the bottom of the Occupy Movement’s “99%”.⁴ They are the face of poverty and joblessness and those most impacted by the intensification of work across Canada.⁵ This persistent state of inequality continues while the income of the average CEO has grown to 189 times the income of the average Canadian.⁶

Enforcing the human rights of all workers to be free of pay discrimination is a key step to lifting workers up to a living wage.⁷ The 2004 Task Force Report called for effective enforcement of the human right to pay equity for women’s jobs, but also for other workers discriminated against in the workplace.⁸ International and Canadian human rights standards already mandate that discrimination in work and pay that is based on prohibited grounds such as sex, race, disability and Aboriginal status must be eradicated.

This paper highlights the use of human rights-based strategies as one means to help bring a living wage to low-paid disadvantaged workers. It focuses on those referred to in the Task Force Report, although other groups suffer pay discrimination on other prohibited grounds, such as age, social status and sexual orientation.⁹ The paper outlines the human rights obligations of governments and employers, including the mainstreaming of measures to close such pay gaps into their internal policies and practices. This includes the need to map and identify such pay gaps for each group and the systemic dynamics that sustain low pay practices. It also reviews the need to develop plans to close the gaps by setting out targeted and multi-faceted measures that promote the reduction of pay inequities and the creation of decent work. With the collaboration of legislators, public policy makers, employers, trade unions and civil society, these plans need to be developed not only at the governmental level, but also at the community and workplace level. Protecting workers from human rights violations is a bedrock requirement for a society and economy to function fairly.

Profile of Disadvantaged Low Wage Workers

Substantial discriminatory pay gaps permeate the entire labour market spectrum, from less precarious to highly precarious work. At a national level, Canadian women earn, on average for full-time work, 71 cents for every dollar earned by men — amongst the highest gaps in the world.¹⁰ In Canada, racialized workers are paid 77.5 cents for every dollar that non-racialized workers are paid. Racialized men in Ontario earn 73.6 cents for every

dollar earned by non-racialized men. In Toronto, 59% of poor families are from racialized groups. Racialized families are 2 to 4 times more likely than non-racialized families to fall below the low-income cut-off.¹¹ Persons living with disabilities earn vastly less. The median income for Aboriginal peoples is \$18,962 — 30% lower than the \$27,097 median income for the rest of Canadians.¹² Both persons with disabilities and Aboriginal peoples also suffer the most severe discrimination because they face so many barriers gaining equal access to a job. Poverty among immigrants to Canada is increasing, even though their education levels are higher than ever.¹³ Migrant workers are increasingly used in Canada in many sectors, but their wages remain very low and their working conditions extremely precarious.¹⁴

Most of these pay gaps are caused by prejudice and discrimination. The consequences of these pay inequities follow workers throughout their lives, reducing their lifetime earnings and retirement income. In Canada, 42% of elderly women are poor and the median income of retired women is almost half that of older men.¹⁵

The degree of disadvantage workers endure also shapes the form of unequal pay and conditions of work they experience. For example, women suffer from multiple forms of discrimination. Women earn less than men in each of these categories as well. Racialized women earn 53.4 cents for every dollar earned by non-racialized men in 2005.¹⁶ Aboriginal women, immigrant and refugee women, women with disabilities and racialized women are even more likely to be working at the minimum wage. In fact, women account for two-thirds of Canada's minimum wage earners.¹⁷ Racialized or Aboriginal peoples often suffer from disabilities as a result of their life experiences of discrimination.¹⁸ The precarious structures and conditions facing vulnerable workers also increase the likelihood that they will not have union representation or effective access to enforcement of their rights.

Why Close Discriminatory Pay Gaps?

First of all, it is against the law to permit systemic discriminatory pay gaps. Enforcing human rights is a basic principle of Canada's democratic society. Yet there are also other important reasons. Allowing such gaps is bad public policy. For many vulnerable workers, their pay is not enough to lift them or their families out of poverty, with all its devastating health and social consequences. Children are suffering because their parents' work is undervalued. Communities also rely on the pay of all workers. And when work-

ers are forced to scramble every month to make ends meet, losing pay because of discrimination is devastating to a family budget. For women, this pay gap adds up to astonishing financial losses — ranging from a lifetime total loss of \$700,000 to \$2 million in earnings, depending on the level of education the woman has completed.¹⁹

The current volatile economy and government cutbacks add more reasons to make committing to a living wage a priority. A country or employer that allows vulnerable workers to be channeled into low-paid, undervalued work when the economy needs their skills will not be able to compete successfully in the global economy. Making child and family poverty history, while promoting a strong economy, requires strong human rights enforcement.

Ending Discriminatory Pay Gaps: A Human Right

Taking steps to secure the rights of all workers is mandatory, not optional. Canadian and international human rights laws, which Canada has ratified, make it unlawful to discriminate against workers when it comes to their work or pay if they are in protected groups.²⁰ Discriminatory pay gaps violate ILO Conventions 100 and 111, which mandate equal pay for work of equal value for women and the right to non-discrimination in employment and occupations for other protected groups.²¹ They also violate the *Universal Declaration of Human Rights* and related UN Conventions, such as the *Convention on the Elimination of Discrimination against Women*, the *Convention on the Elimination of all forms of Racial Discrimination*, and the *Convention on the Rights of Persons with Disabilities*.²²

Governments around the world, including Canada, have committed themselves to providing the international labour standard of “decent work”, which includes a fair income as well as work and pay free of discrimination.²³ The *Canadian Charter of Rights and Freedoms* and Canadian human rights and pay equity laws also provide the national and provincial human rights frameworks that require the elimination of systemic labour market pay discrimination on prohibited grounds.²⁴ Laws such as the federal *Employment Equity Act* also require specialized, pro-active measures to be taken to address the discrimination facing women, persons living with disabilities, members of “visible minorities” and Aboriginal peoples.²⁵

Even in the absence of such laws, general human rights laws have been interpreted to require employers to take pro-active employment equity measures to redress systemic inequalities.²⁶ Canadian courts and adjudi-

cators have identified wide-ranging employment equity obligations which bind employers and trade unions, whether or not they are covered by the federal *Employment Equity Act*. These employment equity obligations flow from the inter-connecting and wide-ranging matrix of pro-active equity obligations that arise from federal and provincial human rights laws and policies, the *Charter*, labour relations and pay equity laws, and collective agreements. These obligations extend beyond the grounds covered by employment equity laws to grounds such as sexual orientation, religion, age and ethnicity. Powerful jurisprudence, mostly from the Supreme Court of Canada, requires employers — working with trade unions — to build a culture and reality of workplace equality by pro-actively designing workplace rules and practices to eliminate discrimination and promote the equality of disadvantaged groups.²⁷

As the Ontario government learned when its 1995 repeal of certain pay equity entitlement was declared unconstitutional, the pay equity rights of disadvantaged workers are not discretionary. They cannot be tossed overboard at the first sign of economic difficulties.²⁸ Yet it is a constant struggle to protect hard won equity rights. In 1995, Ontario repealed its *Employment Equity Act*. While the federal government still has its *Employment Equity Act*, the spring 2012 federal omnibus budget removed the explicit legislative obligation of federal contractors to comply with this law and left it to the discretion of the Minister in charge. While the 2004 *Federal Pay Equity Task Force Report* called for the creation of new federal pro-active law and an extension of the Act to cover more grounds, the federal government instead legislated the *Public Sector Equitable Compensation Act*, which denies federal workers the right to use the *Canadian Human Rights Act* to seek pay equity. The *PSECA* is subject to a *Charter* challenge brought by the Professional Institute of the Public Service and the Public Service Alliance of Canada.

A Human Rights-Based Mainstreaming Approach

Closing the gap on socioeconomic and political inequalities workers face requires a combination of transformative and integrated interventions. That is why the world has adopted the concept of “mainstreaming” human rights into a country’s social and economic fabric as the best method of enforcement.

A rights-based approach to pay equity is a vital mechanism to practically realize workers’ right to work and pay free of discrimination. With the many different causes and roots of discrimination comes the understand-

ing that there is no single path to closing pay gaps. What is required is “human rights-sensitive”, systemic, pro-active planning and remedies by those with human rights responsibilities. This puts the onus on policy makers, legislators, public and private sector employers and trade unions to incorporate pay equity promoting measures into all their actions and avoid measures that widen the gaps. This approach ensures steps to protect workers’ rights are taken without waiting for complaints from vulnerable workers already suffering from the intensity of work obligations.

Mapping Vulnerable Workers’ Constraints

The first step, working with the empowered voices of low-paid vulnerable workers, is to map the diverse pay circumstances and the mechanisms and structures that reinforce each group’s low and unequal pay.²⁹

For example, the pay gap experienced by women will not be fully addressed without addressing women’s unequal care responsibilities. Women remain primarily responsible for unpaid housework and caring for children, the sick and elderly. Balancing the demands of paid work and unpaid care work often requires women to take low or non-paying jobs with discriminatory pay and poor working conditions. Women’s double burden and time poverty are further exacerbated when they take on added care obligations, especially as states privatize, eliminate or reduce public services. Lack of affordable, reliable child care limits women’s income earning ability.³⁰ Thirty-eight per cent of Canadian women age 25–44 said they worked part-time because of family care responsibilities, with many women single parents.³¹

Given the occupational segregation of the economy, it is necessary to look at the specific jobs, occupations and sectors that are dominated by vulnerable groups and identify what may often be intersecting equality barriers. This requires access to data disaggregated by sex, race, disability, Aboriginal status or other area of disadvantage. Labour market pay inequality is manifested in both unequal opportunities workers face in gaining higher paying jobs and the unequal conditions of work and pay they face in their jobs. Based on this information, plans for closing the pay gaps can be developed which will include both pay and employment equity measures to address both of these problems.

Mainstreaming Compliance Into Government Laws and Policies

Under international standards, governments are responsible for creating and sustaining the legal, policy and economic framework to end unlawful systemic pay discrimination. Governments are the guardian of human rights and responsible for (1) enacting equality-promoting mechanisms and (2) re-sourcing those mechanisms to a practical degree. While Canada has ratified all these conventions, the above pay gaps show it is failing to take all required measures — using maximum available resources — to ensure equality seeking groups can earn pay without discrimination.³²

Public policies often use an approach which assumes all workers face circumstances similar to predominant able-bodied, white, male workers. They fail to account for the different and unequal circumstances facing women, racialized or Aboriginal workers, those with disabilities and those who are poor. All social and economic policies should be vetted by government departments for their impact, answering this question: do they help close or widen these pay gaps? Cabinet policy submissions should include a sign off to ensure proposed laws and policies have been reviewed for their contribution to closing these pay gaps. Labour market knowledge, research and monitoring that is sensitive to human rights is key to an effective pay equity compliance system.

Mainstreaming Compliance Into Workplaces and Businesses

Employers also need to mainstream equity compliances into their workplace practices, including analyzing the impact recruitment and retention practices as well as pay and promotion structures and conditions of work have on vulnerable groups. These are employment equity obligations which, as noted above, are either required as a result of general human rights laws or through specialized employment equity laws.³³

Recognizing that those who are vulnerable work for businesses in a number of different relationships, there is a need for such businesses to pro-actively remove systemic gender discrimination from all the pay systems which drive the undervaluation of that work, including the terms with their employee contractors or subcontracted firms.

Developing Plans to Close Pay Gaps

Generally, social change of this kind does not occur without plans being developed and resourced to meet specific targets and goals in realistic time frames. Specialized employment equity laws contain those specific planning obligations but they are also implied from general human rights law. Businesses can also take the lead in building a culture of pay equity compliance into their business and contractor practices through including pay equity compliance in their corporate social responsibility plans.

International standards also call for such planning by governments in order to fulfill their human rights obligations. Even with a plan, action will be difficult. Without it, usually not a lot happens. Creating a federal and provincial plans to close these pay gaps over time should be a governmental priority. These plans should be integrated with poverty reduction plans.

Increasing the Minimum Wage

Minimum wage laws are an important pay equity mechanism for vulnerable workers as well as a means to reach a living wage. Any setting of the minimum wage should incorporate a human rights-based analysis of the positive impact a minimum wage increase will have towards closing the discriminatory pay gaps.³⁴ Indexing the minimum wage automatically to reflect the rising cost of living will also have a significant impact on closing such gaps and reducing the poverty of vulnerable groups without requiring such workers to take action on their own.

Procurement Policies

Another example of a public policy that contributes to closing these pay gaps are government procurement policies. Governments across Canada at every level enter into hundreds of thousands of contracts a year to obtain services and products. Yet, usually, they do not ensure services and products are provided by companies that have non-discriminatory and living wage pay policies. This should be a minimum requirement in any public procurement policy, with government-wide measures to ensure such policies are monitored, audited and enforced. Companies that fail to comply should be excluded from access to public contracts.

Promoting Access to Collective Bargaining

A recent study by the Canadian Labour Congress shows that Canadian unionized workers, on average, earn \$5.11 per hour more than non-unionized workers. This “union advantage” could bring many vulnerable workers up to a living wage.³⁵ Studies of pay equity implementation in Ontario show that workers with the benefit of union representation are most likely to receive pay equity adjustments, closing their pay gap with comparable male work.³⁶ Unionization is a clear pathway out of poverty for vulnerable workers. Yet collective bargaining laws have been weakened over the years, making it even more difficult for vulnerable workers to organize. Legislating amendments to increase access to collective bargaining should be one of the actions taken by governments to close the pay gaps.

The Role of Civil Society

The experience in Ontario with enforcing its 1988 *Pay Equity Act* addressing pay equity for women’s work shows the importance of having broad-based advocacy organizations to advocate for the vulnerable. The Equal Pay Coalition, founded in 1974, is still campaigning to enforce pay equity through both pay and employment equity measures. In 2011, the coalition conducted a campaign with national advocacy group Leadnow.ca. The coalition called on party leaders and candidates to commit to the coalition’s plan for a fair Ontario.³⁷ In its online social media campaign with commissioned videos, the coalition asked Ontarians to vote for the party that has the best plan to close the gender pay gap. The coalition has been successful in getting the Ontario government to exempt pay equity and human rights pay adjustments from its law freezing unionized workers compensation in the education sector.³⁸ Other advocacy organizations, such as the Colour of Poverty and the Accessibility for Ontarians with Disabilities Act Alliance, also promote closing discriminatory pay gaps.³⁹

Towards a Living Wage Through Pay Equity

Planning and implementing a road map to closing Canada’s discriminatory pay gaps is part of a broader dialogue for creating decent work for all. It involves changing the way the business of government and work is carried out. Governments and employers need to deliver more equitable com-

pensation incomes for vulnerable workers. Canadians want to live in a society that creates good jobs with “living wages” for the majority; a society that stimulates the economy, increases productivity and competitiveness, and attracts the most talented workers. Closing discriminatory pay gaps does just that. It is time to take action, so that this basic human right — the right to work and to earn pay free of discrimination — is realized for Canada’s low-paid workers.

Notes

- 1** \$16.60 has been determined to be the amount needed to support a “living wage” in Toronto. See “Living Wage for Toronto” by Hugh Mackenzie and Jim Stanford, Canadian Centre for Policy Alternatives, www.policyalternatives.ca.
- 2** Federal Pay Equity Task Force Final Report, 2004, ‘Pay Equity: A New Approach to a Fundamental Right’, Department of Justice, Canada. p. 12–47.
- 3** Jill Rubery, “Pay Equity, Minimum Wage and Equality at Work, Working Paper 2003, International Labour Office, Geneva, p. 1, 59.
- 4** Falling Behind: Ontario’s Backslide into Widening Inequality, Growing Poverty and Cuts to Social Programs: A Report of the Ontario Common Front and Fact Sheets, August 29, 2012 by Natalie Mehra – See We Are Ontario website www.weareontario.ca.
- 5** Lars Osberg and Andrew Sharpe, Centre for Study of Living Standards, Beyond GDP: Measuring Economic Well Being In Canada and the Provinces: 1981–2010 (September 201) 40.
- 6** <http://www.policyalternatives.ca/newsroom/news-releases/ceos-vs-99-no-contest-when-it-comes-pay>. See also Linda McQuaig and Neil Brooks, *The Trouble with Billionnaires*, Viking Canada, 2010.
- 7** Armine Yalnizyan, Canadian Centre for Policy Alternatives, Ontario’s Growing Gap: Time for Leadership (2007). 5.
- 8** Federal Pay Equity Task Force Final Report, 2004, *supra*, p. 196–199.
- 9** For example of prohibited grounds, see *Canadian Human Rights Act*, R.S.C.1985, c. H-6, amended, s.3.
- 10** The Framework for Action, The Equal Pay Coalition of Ontario, 2008, www.equalpaycoalition.org; Mary Cornish, “Putting Fairness Back into Women’s Pay: The Case for Pay Equity in Ontario, Canadian Centre for Policy Alternatives, March, 2008, www.policyalternatives.ca.
- 11** Sheila Block, Canadian Centre for Policy Alternatives, Ontario’s Growing Gap: The Role of Race and Gender, (June, 2010) p. 7.

- 12 David Wilson and David MacDonald, The Income Gap Between Aboriginal Peoples and the Rest of Canada, April, 2010, Canadian Centre for Policy Alternatives, www.policyalternatives.ca.
- 13 Colour of Poverty Campaign, Fact Sheet #6, Understanding the Racialization of Poverty, www.colourofpoverty.ca, Sheila Block and Grace-Edward Galabuzzi, “Canada’s Colour Coded Labour Market: the Gap for Racialized Workers”, (Wellesley Institute and Canadian Centre for Policy Alternatives, 2011).
- 14 Fay Faraday, Metcalf Foundation, “Made in Canada: How the Law Constructs Migrant Workers’ Insecurity, September, 2012 p.1.
- 15 The Framework for Action, The Equal Pay Coalition of Ontario, *supra*.
- 16 Sheila Block, Ontario’s Growing Gap, The Role of Race and Gender, *supra*, p. 3.
- 17 The Framework for Action, The Equal Pay Coalition of Ontario, 2008, *supra*. and “Canada’s Colour Coded Labour Market: the Gap for Racialized Workers”, (Wellesley Institute and Canadian Centre for Policy Alternatives, 2011).
- 18 Deborah Stienstra, The Intersection of Disability and Race/Ethnicity/Official Language/Religion, Canadian Centre On Disability Studies, University of Winnipeg, March, 2002.
- 19 Fact Sheet on Minimum Wage, September, 2005, Perspectives on Labour and Income, Statistics Canada, p. 20.
- 20 Mary Cornish, Fay Faraday, Elizabeth Shilton, “Canada’s International and Domestic Human Rights Obligations to Ensure Pay Equity: Obligations to Design an Effective, Enforceable and Pro-active Federal Pay Equity Law”, 2002, unpublished research paper commissioned by the Federal Pay Equity Task Force.
- 21 Equality at Work: The Continuing Challenge, Global Report, 2011 International Labour Conference, Geneva.
- 22 For a discussion of international and domestic pay equity obligations see Chapter 2, Federal Pay Equity Task Force Final Report, 2004, *supra*.
- 23 Ibid.
- 24 See http://www.chrc-ccdp.ca/legislation_policies/legislation-eng.aspx for description of federal human rights laws and the protected grounds. See <http://www.ohrc.on.ca/en/ontario-human-rights-code> for description on Ontario laws. See <http://laws-lois.justice.gc.ca/eng/Const/page-15.html> for the text of the *Canadian Charter of Rights and Freedoms*.
- 25 “Visible minorities are defined in Employment Equity Act “persons, other than aboriginal peoples, who are non-Caucasian in race or non-white in colour”
- 26 For a discussion of the enforcement of employment through human rights see Mary Cornish, Fay Faraday and Jan Borowy, Securing Employment Equity By Enforcing Human Rights Laws, Chapter in forthcoming book, Employment Equity in Canada: 25 Years After the Abella Report, Agocs, C, Lynk, M and Craig, J (eds) Toronto: University of Toronto Press.
- 27 Securing Employment Equity By Enforcing Human Rights Laws, *supra*, p. 1.
- 28 SEIU Local 204 v. Attorney General of Ontario, (1997) O.R.(3d) 508.
- 29 Cynthia J Crawford. and Leah F. Vosko (2006) “Conceptualizing Precarious Employment: Mapping Wage Work Across Social Location and Occupational Context” in *Precarious Employment: Understanding Labour Market Insecurity in Canada*. McGill –Queen’s University Press: Montreal & Kingston and Mary Cornish, Closing the Global Gender Pay Gap, Securing Justice for Women’s Work, Vol.29, Comp.Lab.Law Journal, 2007.

- 30** Equality at Work: The Continuing Challenge, *supra*.
- 31** 2007 Toronto Dominion Bank Special Report, p. 8–9.
- 32** Federal Pay Equity Task Force Final Report, 2004, *supra*, p. 52–59. See also Mary Cornish, Fay Faraday, Elizabeth Shilton, “Canada’s International and Domestic Human Rights Obligations to Ensure Pay Equity: Obligations to Design an Effective, Enforceable and Proactive Federal Pay Equity Law”, *supra*.
- 33** Mary Cornish, Fay Faraday and Jan Borowy, Securing Employment Equity By Enforcing Human Rights Laws, *supra*.
- 34** See discussion of this in context of gender equality in Jill Rubery “Pay Equity, Minimum Wage and Equality at Work, *supra*, p. 60–61.
- 35** Canadian Labour Congress, “The Union Advantage in Canadian Communities”, August, 2012, <http://www.canadianlabour.ca/national/news/clc-releases-study-union-advantage-unionized-workers-earn-511-more-hour-non-union>.
- 36** The Framework for Action, The Equal Pay Coalition of Ontario, 2008, *supra*.
- 37** The Ontario Equal Pay Coalition’s FAIR plan is: **F — Funded** — meets the Government’s obligation to use maximum available resources to enforce women’s human right to pay equity. This includes 1) providing the necessary enforcement funding for the Pay Equity Commission and Tribunal and restoring the Pay Equity Legal Clinic to ensure all Ontario women are protected from pay discrimination; and 2) providing the funding to ensure employers of women providing Ontario’s public services close the pay equity gaps in their workplaces; **A — Accountable** — sets out the steps in a comprehensive province-wide plan detailing implementation and monitoring responsibilities. This includes leveling the playing field for private sector employers by ensuring employers in all areas of the economy from retail to financial are required to play by the rules and pay fair; **I — Integrated** — addresses the need for complementary strategies which both raise women’s pay that has been unfairly valued and also provide women with access to higher paying jobs. This means: 1) restoring Ontario’s employment equity laws which require employers to provide equal opportunities to women and disadvantaged groups; 2) screening public policies and laws to make sure they are closing not widening the pay gap; 3) increase the minimum wage to a living wage as a pay equity down payment for women workers; **R — Real** — to set clear timeframes for closing the 29% pay gap, starting with a commitment to close the gap by 5 percentage points to 24% by 2015—the end of the upcoming legislative term.
- 38** *Putting Students First Act*. Bill 115, 2012.
- 39** See the Equal Pay Coalition, www.Equalpaycoalition.org. See also Colour of Poverty, colourofpoverty.ca and Accessibility for Ontarians with Disabilities Act Alliance, www.aodaalliance.org.



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