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Putting fairness back into women's pay

THE CASE FOR PAY EQUITY IN ONTARIO

Mary Cornish *Equal Pay Coalition*

Introduction

Ontario's *Pay Equity Act* celebrates its 20th anniversary this year, but the party will be bittersweet.

The province's 1988 *Pay Equity Act* promised to bring fairness to working women's paycheques. It was supposed to end the systemic pay discrimination that undervalued and underpaid women's work in the public and private sectors. The *Act* required and still requires employers and trade unions take proactive steps, with the backing of a specialized commission and tribunal enforcement regime. In 1992, the government promised to fund the pay equity adjustments required to end gender pay discrimination for workers delivering public services. Twenty years later, these promises have not been kept.

While the *Act* helped reduce the gender pay gap from 38% in 1985, women, on average, still earn 29% less than men. The law is regularly violated. Despite this, government funding for enforcement of the law has been cut in half since the early 1990s. Millions of dollars are owed in public sector pay equity

adjustments. As a result, employers and governments continue to rely on discriminatory wages to cut costs.

Ontario's 2008 budget can play an important role in ending this pattern of discriminatory pay and setting Ontario on a new economic course — one that fairly values women's work.

A Fundamental Human Right, But It's Not Free

Pay equity is a fundamental human right guaranteed by International Labour Organization Convention 100 (ratified by Canada in 1972). It means that women workers must be paid free of the gender-based pay discrimination which values and pays **women's work less than men's work of comparable value**. The *Act* was passed to make this human right a reality for Ontario women. It recognizes such discrimination is systemic and exists throughout Ontario's workplaces.

Widespread Non-Compliance

Despite the law, most Ontario women — regardless of their occupation, age or education — continue to be paid less than men because they do women’s work. Women on average still earn only 71% of what men earn. This is the best evidence that pay equity in Ontario is far from being achieved nor has it been maintained as the *Act* requires. Most Ontario employers are ignoring their obligation to pay women fairly, and the government is failing to fully fund the pay equity adjustments owing to women in the public and broader public sector. In addition, the Pay Equity Commission and Pay Equity Hearings Tribunal, which enforce the *Act*, are seriously underfunded. The Ontario government needs to step up with this year’s budget.

Gender-Based Pay Discrimination — The Gender Pay Gap

Pay discrimination affects Ontario women of all ages, races and education levels, regardless of family decisions. The most vulnerable women — Aboriginal woman, women of colour, racialized or immigrant women, and non-unionized women workers — face an even greater wage gap.

While the overall pay gap in 2006 is 29%, racial minority women earn 36% less than men and Aboriginal women earn 54% less. Women with disabilities earn significantly less than women and men without disabilities. Women outnumber men in nine of the 10 lowest-paying occupations in Canada.

Women’s discriminatory pay affects them throughout their lives, from their first jobs continuing into retirement. Young women graduating from high school earn 27% less than male high school graduates. Young women graduating from university earn 16% less than male graduates, but this pay gap widens as their careers progress. The median income of retired women is almost half that of older men and 42% of elderly women are poor. Gender-based pay inequities also contribute to higher poverty levels with women and their children much more likely to be living in poverty than men.

Why is Pay Equity Important to the Economy

The World Economic Forum’s 2007 Global Gender Gap Report recognizes the key role pay gaps play in impairing economies from realizing their full potential. The costs of inaction in On-

tario are high. A province that allows women 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. Women and their families are suffering, and businesses and communities are missing out on the positive economic and social impacts — such as increased productivity, reduced turnover and less poverty — which come when workers are paid equitably. Pay equity is good for business and society. Pay inequity is not.

Fulfilling Promises

While there remains much to do, it is important to recognize and build on the achievements to date. Ontario’s proactive pay equity law with specialized enforcement machinery through the Commission and Tribunal, along with proactive responsibilities for employers and trade unions, serves as an international model for the enforcement of ILO Convention 100. Pay equity plans implemented in the early- to mid-1990s did address much of the pay gap which existed in 1988 for mostly unionized workers. But the task of bringing pay equity to Ontario’s women is far from finished. This is why:

- Many non-unionized women never received *Pay Equity Act* adjustments because their employers ignored their obligations and they did not have a union to fight for them.
- Many new employers have opened their doors since 1988, but did not do so with equitable wages, as required under the *Act*.
- Women’s jobs have changed dramatically since 1988, but pay equity plans and employers’ compensation practices have not been changed to reflect this and to ensure that pay equity is maintained.
- Pay equity adjustments are still owed to hundreds of thousands of women doing public service jobs. They have either not achieved pay equity in the first place, or they have since seen the pay gap wide again between them and comparable men’s work.
- Many public sector women’s jobs have been privatized, with women having to leave behind their pay equity adjusted wages. With downsizing, those public sector women’s jobs that remained were given increasing responsibilities, but

without the appropriate pay equity adjustment required by the original plan.

- Private sector employers seek to transform their employees into independent contractors to avoid legislative employee entitlements, such as pay equity.

Strengthening and revitalizing pay equity enforcement requires the Ontario 2008 budget to address the following three issues:

1. Public Sector Funding

The Ontario government must commit to fully funding the pay equity adjustments owed to women providing the “women’s work” that is essential to delivering public services to Ontarians. This includes both those working in large public sector workplaces and also the more than 100,000 women working in smaller public sector workplaces like child care, battered women’s shelters and other key community service agencies.

As as a result of a 2003 *CUPE et al.* Charter challenge, the Ontario government provided funding covering much of the monies owing from 1999–2005 to close the gaps in these smaller workplaces. But with the end of the Charter settlement payments in 2005, the Liberal government failed to continue dedicated funding for the pay equity adjustments that remained owing to close the identified gaps. On average, these will need to be paid up to 2011, based on annual payments of 1% of payroll. These women are far from achieving pay equity, and at the same time are seeing themselves fall far behind their comparators in the public sector.

Based on the chart produced in the 1996 Charter litigation (see Figure 1), as of 2007 the Ontario government has failed to deliver approximately \$78.1 million owing to women for their 2006–07 adjustments. A further \$467.9 million is owed from 2008–11. The Ontario government is now open to a further Charter challenge as result of these failures.

As well, many other women working in larger public sector workplaces, such as hospitals, school boards and universities have seen their pay gaps widen as a result of pay equity not being maintained. Government funding is necessary for these maintenance pay equity adjustments.

With a \$2.3 billion provincial surplus this year, it is clear that there are substantial monies available to pursue important public policy objectives. As well, the current surplus was created in part by not paying women delivering public services the money they were owed to close discriminatory pay gaps.

2. Increasing the Minimum Wage

Minimum wage laws are a key pay equity measure. Women account for two-thirds of Ontario’s minimum wage earners. Aboriginal women, immigrant and refugee women, women with disabilities and racialized women are even more likely to be working at the minimum wage. These workers have not had the benefit of a union and have lacked a properly funded *Pay Equity Act* enforcement regime to help them. Their employers have ignored their obligations to make sure women’s work is paid equal to men’s work of comparable value. Many workers do not know their rights and are afraid to complain. Low-wage policies ensure that women and their children remain poor. It is estimated that a single person working full-time needs an hourly wage of \$10 per hour just in order to reach the poverty line.

Ontario’s 2008 budget must take into account the need to legislate an immediate increase to the minimum wage to \$10 per hour. The minimum wage should also be automatically increased every year to reflect Ontario’s rising cost of living. This will have a significant impact on closing the gender pay gap and reducing women’s poverty.

3. Restoration of Commission and Tribunal Funding

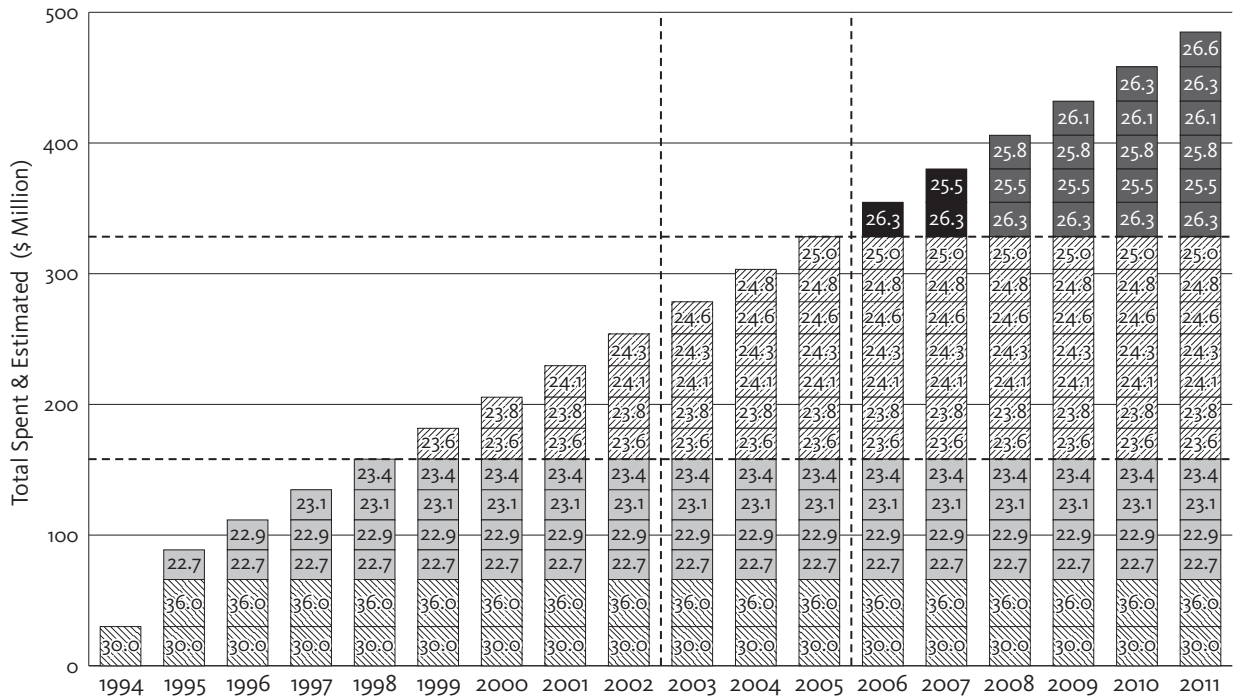
The Commission and the Tribunal have had their funding and staff substantially stripped and have been unable to effectively carry out their difficult and extensive enforcement mandate. In 1992–03, the Pay Equity Commission and Tribunal employed and appointed 86 people and relied upon 28 review officers for enforcement, with a budget of only \$6.8 million dollars.

However, even this limited budget was cut by over 46% by the Progressive Conservative government when it came to power in 1995. These cutbacks also eliminated funding for the Pay Equity Legal Clinic, which assisted non-unionized women to enforce their pay equity rights. The cutbacks continued when the Liberal government came to power in 2003, with the Commission and Tribunal budgets reduced a further 20% since that time.

By 2006, their combined budgets had fallen to just \$3.4 million — one half of the 1992–93 budget.

Today, there are only 32 employees and 16 review officers to cover the entire province. There are no regional offices. There is no legal clinic, no research officer, and no library. It is necessary to restore the Commission and the Tribunal funding to at least the 1992–93 funding level of \$6.8 million and also provide whatever further funding is necessary to ensure vigorous *Act* enforcement and the closing of Ontario’s gender pay gap.

FIGURE 1 Pay Equity Denied by Ontario Government September 2007*



- Monies owing for 2006–2007 pay equity adjustments which Government is not funding—approx. \$78.1 million.
- Future pay equity monies owing to women—approx. \$467.9 million
- ▨ Pay equity monies owing for the period 1999–2005 at time of 2003 Charter settlement—up to \$414 million and ongoing base funding of this funded by settlement.
- Pay equity monies funded as a result of the 1997 Charter challenge—\$505 million covering 1995–2001 and ongoing base funding
- ▨ Initial pay equity level provided to women prior to 1995 Schedule J: Tory cap on funding and elimination of pay equity for women in predominantly female workplaces

- 1994** Start date for pay equity in predominantly female workplaces.
- 1995** Tories pass Schedule J capping pay equity funding and eliminating further pay equity for women in predominantly female workplaces.
- 1997** SEIU Local 204 v. AG (ONT) Decision (O’Leary J.) Court rules Schedule J unconstitutional.
- 1998** Following Charter Challenge, Government again capped funding and refuses to fund ongoing pay equity wages.
- 2001** CUPE, ONA, OPSEU, SEIU, USWA launch second Charter Challenge requesting court order to Government to fully fund pay equity.
- 2003** Government agrees to settlement with public sector unions which will pay out up to \$414 million and ongoing base funding covering
- 2006–7** Settlement ends and approx. \$78.1 million of pay equity monies owing to women for 2006–2007 adjustments not funded by Government.
- 2008–11** A further \$467.9 million of pay equity monies for these years remains to be funded by Government.
- 2011** Pay equity monies owing on average to this sector to achieve pay equity must be fully paid.

NOTE Figures are based on Chart produced by Government in 1997 SEIU litigation and are approximations.

* Predominantly female workplaces in the broader public sector provide important services eg. nursing homes, child care centres and community service agencies. The 100,000 women who work in this sector receive discriminatory wages because they do “women’s work.” They have neither achieved nor maintained pay equity. Women in the rest of the public sector mostly achieved pay equity in 1998 but have not been able to maintain it.

Conclusion

For women to genuinely celebrate the 20th anniversary of Ontario's pay equity law, this next budget must become pay equity friendly.

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