



Summary of NAWL Recommendations to the Pay Equity Task Force

In NAWL's submission to the Pay Equity Task Force in December 2002, we argue that the federal government must replace the existing federal pay equity scheme with comprehensive and proactive pay equity legislation.

The current complaint-based model is ineffective and inaccessible for the majority of women in Canada. Its ambiguous terminology, unspecified methodology and lack of enforcement mechanisms have resulted in extensive delays, unacceptably long waits for wage adjustments and, in many cases, a complete lack of alternatives for women with pay equity complaints.

Accordingly, NAWL advocates that the federal government take steps toward remedying the situation by drafting clear and unambiguous proactive pay equity legislation.

To this end, NAWL urges that the new federal pay equity legislation incorporate several main points:

- 1. Recognition that despite anti-discrimination legislation, women still face inequality in the labour market, occupational segregation and the systematic devaluation of their work.**

Unfortunately, pay equity has not yet been achieved in Canada. Currently, women earn approximately 72 percent of what men earn, and the majority of low-income households are headed by women. The current pay equity provisions in the *Canadian Human Rights Act* have not succeeded in closing the gap.

The new federal pay equity legislation must include a preamble to set the tone for interpretation and analysis of the legislation. The preamble should acknowledge that, despite existing anti-discrimination legislation, women continue to face inequality. In addition, the preamble must state a clear commitment to end wage discrimination on the basis of gender.

- 2. Recognition that racialized women and women with disabilities contend with specific patterns of wage discrimination, that need to be specifically addressed in pay equity legislation.**

Racialized women and women with disabilities face grave forms of marginalization and discrimination that result in specific patterns of wage discrimination and pay inequity. Women of colour earn – as a group- significantly less than white women, Aboriginal women face stark income realities and most women with disabilities have drastically low income levels. Future pay equity legislation must address the specific pay equity needs of women from

historically disadvantaged groups, and must provide for mechanisms to prevent and remedy this discrimination and disadvantage.

3. Recognition that pay equity violations are due to systemic discrimination and, as such, systemic remedies are necessary. Pay equity legislation must utilize proactive regulatory mechanisms, not only complaint-based mechanisms.

Although pay equity is a human right, it is not an individual problem. Rather, it is a systemic problem that requires systemic remedies. The current legislation is complaint based, focusing on the individual. Although, on the face of it, this seems workable, it is not. The complaint process is encumbered by numerous obstacles and immense delays that render the process inaccessible to the majority of women. In particular, women who are not represented by a union do not have adequate information or resources to succeed with a complaint, especially in the face of employers with seemingly limitless resources. That all current cases before the Tribunal are more than a decade old is a telling fact; the vast majority of individuals do not have the resources to engage in such an extended ordeal.

Furthermore, under the current pay equity regime, the onus is on the least powerful party: the women, who are already marginalized. The onus must be on the employers; employers must have a positive duty to implement pay equity. Accordingly, NAWL recommends a systemic approach to pay equity in the form of comprehensive and proactive legislation. In particular, the new pay equity legislation must provide for clear timelines, rules, expectations and enforcement processes in the implementation of pay equity.

4. An affirmation of the fact that pay equity is a fundamental human right, protected under the *Canadian Charter of Rights and Freedoms* and international human rights law. Recognition that pay equity is an essential mechanism for ensuring constitutional equality rights for women and other disadvantaged groups

The federal government is obligated to uphold the right to pay equity in accordance with the equality rights provisions in the *Canadian Charter of Rights and Freedoms*, the *Federal Plan for Gender Equality*, as well as Supreme Court of Canada jurisprudence ruling that employers must “build conceptions of equality into workplace standards”. The federal government is also bound by international instruments, including the International Covenant on Social, Economic and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Equal Remuneration Convention. Because of these international and domestic obligations, pay equity must be a priority for the Canadian government.

The preamble to the new federal pay equity legislation should recognize not only that pay equity itself is a human right, but also that pay equity is situated within the broader obligation to promote equality on the basis of gender.

5. Comprehensive and proactive pay equity provisions that require that all federally-regulated employers develop and implement a pay equity plan.

The new legislation must expressly require that employers take the initiative in assessing pay equity issues and develop a detailed pay equity plan in order to make appropriate wage adjustments, in collaboration with unions when applicable.

The pay equity plan must identify the establishment to which the plan applies, the male and female job classes, the gender neutral comparison system that will be used, the results of

the job comparison, identify the job classes entitled to pay equity adjustments and set out a payment schedule.

The plan must also put forth the necessary provisions for the ongoing maintenance of pay equity, and employers must be subject to an ongoing obligation to report to employees and bargaining agents on the maintenance of pay equity.

6. Comprehensive coverage that protects all workers and guarantees enforcement despite contracting out or a subsequent change in ownership, and that applies to the Federal Contractor's Program.

The legislation must cover all federally regulated workers – whether part-time, casual, seasonal or contracted – and the term “employee” must be clearly defined to reflect this. Pay equity must also apply to the entire workforce of an employer. Currently the term “establishment” is often divided on gendered lines, thereby undermining the realization of pay equity.

In addition, the legislation must not allow employers to contract out work (such as, for example, cleaning jobs) on a contract basis and pay a wage that would be unacceptable under the legislation. Further, pay equity must be upheld within the Federal Contractors Program; the federal government should not contract with employers who use discriminatory pay practices.

7. Effective methodology for job evaluations, job comparisons, wage adjustments and the timing of corrective payments.

Pro-active pay equity legislation must lay the groundwork for effective methodology for job evaluations, job comparisons, wage adjustments and the timing of corrective payments. Historically, there has been extensive debate and litigation over appropriate methodologies. To avoid further lengthy litigation, the legislation needs to provide clear guidelines. Guidelines will also help ensure consistency across different workplaces.

8. Strong monitoring and enforcement mechanisms, including proactive deadlines, random inspections and the authority to award interest.

The legislation must clearly enumerate the mechanisms by which pay equity will be achieved and maintained and complaints addressed. For example, the legislation must set proactive deadlines and provide for random inspections to ensure that employers have plans in place based on the appropriate methodology. In addition, the legislation should provide for an enforcement body that has the authority to award interest. Under the current pay equity regime, there is no authority to award interest and thus there is no incentive for employers to make payments; employers are economically rewarded for delay.

9. The participation of unions throughout the pay equity process and, in particular, the involvement of unions in negotiating and enforcing pay equity plans.

The legislation must acknowledge the right of unions to be involved at all stages of the process. However, the legislation must be clear that pay equity should not be a component of collective bargaining. Pay equity is a human right. Like other human rights, it is not open to negotiation, and it must be upheld at all costs. Just as child labour is not up for bargain in Canada, so too must pay equity be sacrosanct. Accordingly, it is imperative that pay equity plans and processes are developed separately from collective bargaining.

10. The creation of a separate pay equity commission and a specialized tribunal that has institutional independence and impartiality.

Pay equity and the mechanisms by which it is enforced are complex. As such, the legislation must create a pay equity commission that will provide education and research, as well as monitoring and audits of pay equity plans. The Commission must also have the authority to initiate complaints.

In addition, parties must have a right to make applications directly to a pay equity tribunal whose members have specialized expertise as well as institutional independence.

11. The development of an information and advocacy body that will help non-unionized women know and defend their rights.

The new legislation needs to have a clear commitment to achieving pay equity for women who are not represented by unions. To do this, the legislation should provide for the establishment of an information and advocacy body to can act on behalf of women. The body could also offer education on what pay equity is, what rights exist under pay equity and how to exercise those rights. Pay equity will only work for non-unionized women if this body exists.

12. An allocation of funding to finance pay equity wage adjustments in the federal public sector.

The maintenance and enforcement of pay equity, and specifically a pay equity tribunal and advocacy body, require funding. The legislation must establish an obligation for adequate funding. The Supreme Court of Canada has been clear that economic concerns are not a defense to human rights violations. Pay equity is no exception.

It is NAWL's hope that pro-active federal pay equity legislation that includes the above provisions will allow the pay equity process to become an effective means of enforcing an established human right and promoting women's equality rights.

For more information, please consult the document entitled *Brief by the National Association of Women and the Law to the Pay Equity Task Force*, December 2002, available on our website at: www.nawl.ca

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