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## **SECURING HUMAN RIGHTS JUSTICE FOR WOMEN'S WORK: THE PATH TO A 0% GENDER PAY GAP BY 2025**



### **PRELIMINARY SUBMISSIONS TO THE ONTARIO GENDER WAGE GAP REVIEW**

**JANUARY 18, 2016 (UPDATED)**

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Decent Jobs from the Ground Up Excerpted from "Still Working on the Edge", Workers Action Centre, March, 2015, Submission to the Changing Workplace Review"

**\*Note:** The research assistance of Caitlin Miller is gratefully acknowledged. Thanks also go Jennifer Quito, Danielle Bisnar, Dan Wilband and Wendy Balaban for their assistance in preparing this Submission as well as to Coalition members who also contributed their experience and knowledge. The Coalition also acknowledges the expert work of statistician Richard Shillington, Tristat Resources, principal, [shillington.ca](http://shillington.ca).

**Update:** This version has been updated to include the more recent Statistics Canada pay gap data from the Canadian Income Survey (CIS). The CIS replaced the now defunct Survey on Labour Income Dynamics (SLID) whose last year of data was 2011 and was the basis for the 31.5% gender pay gap in the Coalition's original version of this preliminary submission. The CIS Survey with data starting in 2012 uses a different methodology from the SLID survey and also uses a smaller data pool. Accordingly, it is difficult to make comparisons between the two data sources. The CIS data now in this report is for 2013 which is the most recent year for average annual earnings and full time full years calculations and is based on calculations by statistician Richard Shillington, Tristat Resources. The CIS hourly wage calculations in the report are for 2015.

## INTRODUCTION

1. This preliminary submission responds to the request by the Ontario government's Gender Wage Gap Review Steering Committee for feedback with respect to the government's development of a Gender Wage Gap Strategy.<sup>1</sup>

### I. OVERVIEW OF THE COALITION'S SUBMISSIONS

#### a. The Equal Pay Coalition

2. The Equal Pay Coalition is an organization of over 30 women's groups, trade unions, community groups and business organizations that was formed in 1976 to secure action through laws, collective bargaining and other policies and practices to eradicate Ontario's gender pay gap.
3. Forty years later the Coalition continues to pursue its vision that Ontario will have a labour market with a 0% gender pay gap and is calling for planning and action on many levels to accomplish that goal within 10 years by 2025. A background history of the Coalition's campaigning and a list of its member organizations is found at **Appendix A** to this submission and further information is available at [www.equalpaycoalition.org](http://www.equalpaycoalition.org).
4. Some progress has been made in narrowing the gender pay gap since the 1970's as shown in the chart below.<sup>2</sup> Yet a substantial gender pay gap of close to 30% persists which shows no signs of closing without active intervention to transform existing practices. this gender pay gap exists regardless of whether the gap is measured by average annual earnings (29.4%) (2013); full time full year earnings,(24%) (2013); or hourly wages (14%)(2015). The gap means that women earn on average \$36,000 annually while men earn on average \$51,000 – a gender penalty of \$15,000.<sup>3</sup> This data is based on the Statistics Canada

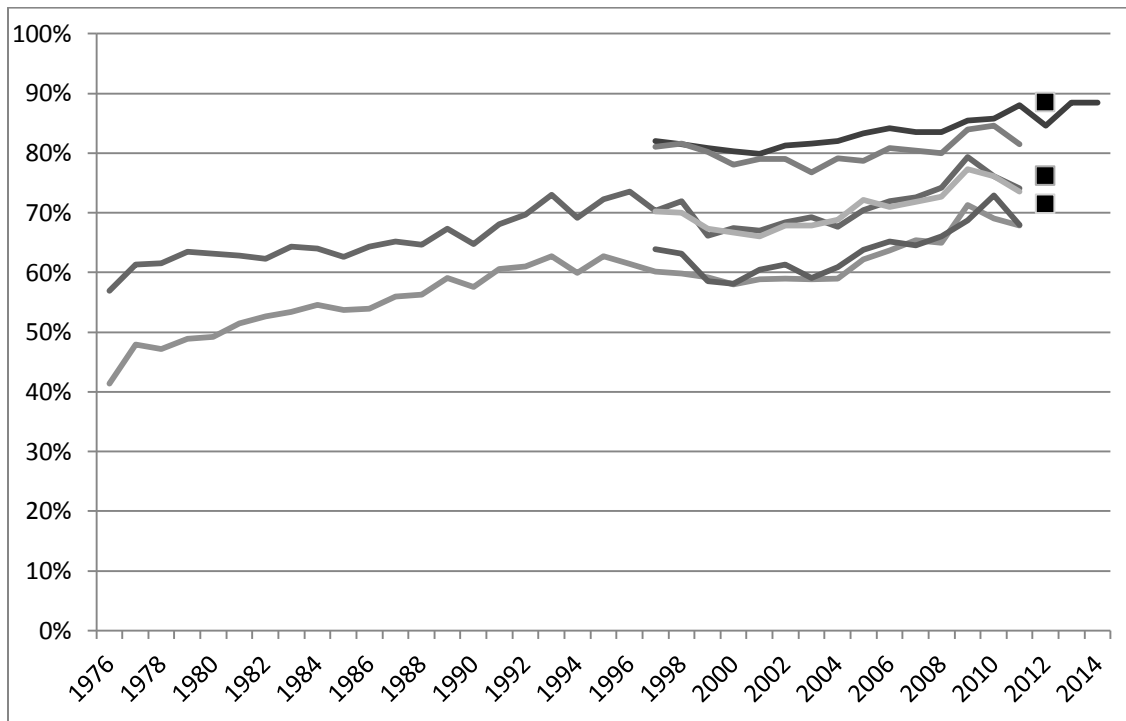
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1 See "Closing the Gender Wage Gap: A Consultation Paper for Businesses and Organizations", Ministry of Labour, October, 2015 and "Closing the Gender Wage Gap: A Background Paper", Ministry of Labour, October 2015. See also Appendix G: Ontario Government Commitments to Close the Gender Pay Gap.

2 Chart prepared by expert statistician Richard Shillington based on Statistics Canada Survey on Labour Income Dynamics data using the three measures for the gender pay gap, average annual earnings, full time full year earnings and hourly wages. It does not include the Canadian Income Survey data referred to in this paragraph. The data does not include the value of the differences in benefit entitlements between men and women which would increase the pay gap. See discussion of this data and sources in Mary Cornish, *A Growing Concern: Ontario's Gender Pay Gap* (Toronto: Canadian Centre for Policy Alternatives, 2014) at pp.8-11. See CANSIM Table 202-0102 Statistics Canada, Average Male and Female Earnings and female to male earnings ratio by work activity, 2011, Ontario, all earners and full time full year. See Table 282-0072 Labour Force Survey Estimates wages of employees, NAICS Ontario, hourly wage rate.

3 Based on calculations by statistician Richard Shillington using Statistics Canada Canadian Income Survey which replaced the now defunct Survey of Labour Income Dynamics (SLID). The CIS uses a different methodology and smaller data pool so it is difficult to assess whether decrease in gender pay gap from 31.5% based on 2011 SLID average annual earnings to 29.4%

Canadian Income Survey which replaced the Survey on Labour Income Dynamics which had been the source of the previous 31.5% gender pay gap.



Top Line: Hourly Wage 1984 - 2014

Centre Line: Full Time/Full Year

Bottom Line: All Earnings

5. While all three statistical measures contribute in different ways to understanding the gender pay gap, the Coalition relies primarily on the "average annual earnings" gap as it is the best measure of how the pay gap translates at the end of the day into the unequal earnings women have to support their families.
6. By appointing this Review process, the government recognizes that current actions have not worked to make the necessary progress to close the gap. A new Strategy is needed.
7. Ontario's roughly 30% gender gap in annual earnings relative to men covers women across the range of work arrangements from employees, to those who are dependent contractors, and to those who are truly self-employed.<sup>4</sup> As noted by the Review's consultation documents, while there are variations in the size of

based on CIS 2013 data is a significant decrease in the gap or reflects different methodology. The hourly pay gap increased by 2% from 2013 to 2015.

<sup>4</sup>

Statistics Canada, Table 202-0102 – Average Female and Male Earnings. Ontario, 2013.



the gap, women across this entire spectrum suffer a real and enduring gender pay penalty and do so throughout the entirety of their working lives.

8. Ontario women who are further disadvantaged by systemic discrimination because they are Indigenous, racialized, have disabilities, are immigrants, have precarious temporary migration status, are LGBT or elderly or face other systemic barriers, labour under the burden of even larger pay gaps.<sup>5</sup> The gender pay gap is further intensified by the fact that women make up the majority of workers in precarious employment relationships and predominate in lower paying occupations and industries.
9. This gender pay gap harms women, their families and communities across Ontario. The gender pay gap drives social harms of poverty, economic insecurity, and ill health.<sup>6</sup> It sustains and feeds a vicious cycle of gender discrimination that resonates through many spheres of social interaction. It erodes social cohesion at both an interpersonal and a community level. While we know that equitable economies generate sustainable and inclusive prosperity and growth, the persistence of the gender pay gap undermines those very goals.

#### **b. Principles and Values to Guide Dialogue and Action**

10. This Submission seeks to bring the dialogue and the action planning back to first principles:
  - (a) Women in Ontario have the fundamental human right to be free from systemic sex discrimination in pay. A "right" is just that – it is a legal entitlement that must be enforced. It is not a privilege. It is not an option. It must be secured. The current gender pay gap is a human rights crisis which must be addressed as such.
  - (b) International, national and Ontario provincial human rights standards, as discussed below and detailed in **Appendix B require** that Ontario women in all their diversity be afforded economic equality in Ontario's labour market.
  - (c) The gender pay gap is a key measure for identifying whether, overall, Ontario women have achieved their fundamental human right to economic equality. When Ontario women earn on average the same as Ontario

<sup>5</sup> In 2006, immigrant women earned on average \$6.60/hour less than non-immigrant men. Immigrant men earned more than non-immigrant women by \$3.16 per hour. (Pay Equity Commission, *Gender Wage Gaps and Earnings Ratios in Ontario*, March 2014, p. 27 (available at: [http://www.payequity.gov.on.ca/en/about/pdf/gender\\_gaps.pdf](http://www.payequity.gov.on.ca/en/about/pdf/gender_gaps.pdf))).

<sup>6</sup> World Health Organization, *Poverty, Social Exclusion and Health Systems in the WHO European Region* (Copenhagen: WHO Regional Office for Europe, 2010), p. 8 (available at: [http://www.euro.who.int/\\_data/assets/pdf\\_file/0004/127525/e94499.pdf](http://www.euro.who.int/_data/assets/pdf_file/0004/127525/e94499.pdf)); N. Sarma, "Why and How the Gender Pay Gap Affects Health," EuroHealthNet, September 29, 2015 (available at: <http://eurohealthnet.eu/media/why-and-how-gender-pay-gap-affects-health-nitya-sarma>).

men each year – in other words, when there is a 0% gender pay gap – a key dimension of gender equality in employment will be achieved.

- (d) Recommendations to close the gender pay gap as proposed in this submission are the human rights *enforcement mechanisms* for eradicating women's labour market discrimination and ensuring equality outcomes.
  - (e) Preventing and remedying pay discrimination is a matter of values. Ensuring that hard work is honoured and rewarded in Ontario regardless of the sex of the person who performs it.
  - (f) The Equal Pay Coalition has called on Premier Wynne and the business community to set 2025 as the deadline to end gender pay inequality in this province. This is the target date by which Ontario's gender pay gap should be reduced to 0%. This is also the year set by law when Ontario is to be free of barriers for persons with disabilities.
  - (g) Ensuring that this human rights goal is met requires mandatory gender-based analysis and planning at all levels of government and in workplaces and communities across the province. This includes short- and long-term plans, goals, targets and monitoring of results.
11. Reorienting the dialogue to focus on the priority human rights mandate, with a set compliance date and a gender-based planning/action/monitoring lens is essential if there is serious commitment to closing Ontario's gender pay gap.

**c. Vision for Ontario With a 0% Gender Pay Gap**

12. What will an Ontario with a 0% gender pay gap look like? Substantive equality should ensure that a woman's employment prospects and outcomes are not determined by discrimination due to her gender or other discriminatory dynamics. An Ontario that has eliminated the gender pay gap will have the following characteristics:
- (a) Ontario women and men will both have the economic and social opportunities to share equally in Ontario's labour market;
  - (b) Ontario women and men will both be treated with equal dignity and respect;
  - (c) Ontario women and men will both have their work valued and recognized appropriately;
  - (d) The barriers women face in gaining access to better paying and secure or "decent" work will have been removed;
  - (e) Women will not experience a penalty for their reproductive roles;

- (f) Care responsibilities will be shared equally by women and men and will be supported through social and economic policies that do not impose a gender penalty;
  - (g) Women will no longer face sexual violence and harassment in their workplaces and communities;
  - (h) Discrimination on grounds other than gender will also be eliminated so that women will not face greater economic penalties because they experience multiple forms of prohibited discrimination; and
  - (i) Women will be freed from all the discriminatory dynamics operating together to trap them in an unequal labour market which produces unequal outcomes for them.
13. In other words, closing the gender pay gap requires that all the diversity of Ontario's women can access the resources and opportunities they need to fully participate in and contribute to the economic, political, and cultural life of their community and province. It requires Ontario to foster inclusive growth: implementing win-win policies and strategies that grow decent work and women's businesses critical to a thriving economy while ensuring that workers and entrepreneurs play a role in generating that growth and share equitably in its benefits.

**d. Methodology, the 12 Steps and Submission Structure**

14. This preliminary submission articulates a framework for understanding the roots of the gender pay gap and for guiding action to dismantle those discriminatory practices in order to build an inclusive, fair and prosperous Ontario for both men and women. It also outlines the type of recommended actions that the Coalition believes will work to achieve our vision of an Ontario without a gender pay gap.
15. The Coalition reserves the right to make further submissions as the Committee's consultation process continues. As well, the Coalition in a separate letter dated January 18, 2016 has requested that the Committee make its research and consultation briefs received available to allow full transparency and an effective consultation process.
16. The Coalition is also requesting that the Committee make available online its consultation summary referred to in its Term of Reference by mid-March 2016 and thereafter schedule a public forum leading up to Equal Pay Day on April 19, 2016 to elicit a more focussed public dialogue amongst stakeholders and the Committee on potential strategies to close the gender pay gap.
17. Instead of "wage gap" used in the government's Review, this submission, generally uses the term "gender pay gap" so as to be inclusive of all types of women's employment earnings including salaried, contract, and self-employment and also to include benefits.

18. The Coalition in its campaign has called for action on twelve steps to get to a 0% gender pay gap. These steps - outlined in **Appendix C** –are: (1) Treat as Human Rights Priority; (2) Equal Pay Days and Education/Awareness; (3) Develop Closing the Gender Pay Gap Plans; (4) Expand and Enforce Pay Equity Promoting Laws; (5) Implement Employment Equity Laws and Policies; (6) Promote Access to Collective Bargaining Protection; (7) Increase the Minimum Wage; (8) Provide Affordable and Accessible Child Care; (9) Mainstream Equity Compliance into Government Laws and Policies; (10 )Mainstream Equity Compliance into Business Practices; (11) End Violence Against Women: and (12) Secure Decent Work for Women.<sup>7</sup>
19. With the work now to design a specific and comprehensive strategy to close the gender pay gap, the Coalition through this submission has deepened its analysis to develop a comprehensive strategy focussed on the specific dynamics that drive and sustain the pay gap. To take effective action, each dimension of discrimination needs to be addressed through consciously targeted reforms that understand how and why they connect to eradicating the gender pay gap. These submissions set out a conceptual framework for the Gender Pay Gap Strategy that addresses the following themes:
  - (a) Part II examines the critical importance of anchoring the gender pay gap strategy in a human rights frame. As such, any Strategy must directly confront the reality that closing the gap is a mandatory legal obligation, not merely a question of optional best practices or a good business case.
  - (b) Part III introduces the systemic discrimination analysis that must inform the identification of root causes of and remedies for the gender pay gap.
  - (c) Part IV identifies the gender based analysis and equity lens that is the human rights tool needed to map the discriminatory dynamics which create and sustain the gender pay gap and to develop and monitor the targeted actions needed to close the gap.
  - (d) Part V addresses the issue of political economy, mapping the systemically discriminatory dynamics of Ontario's gendered and globalizing labour market, and outlining seven political economy trends that support the persistence of the gender pay gap and that constrain action to eradicate the pay gap. These include growing and gendered income inequality; persistence of the gender pay gap; flexibility and fragmentation of the workplace; the austerity agenda and declining equality role of governments; the decline of unionization; and the impact of unequal

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<sup>7</sup> For a discussion of these steps, see Mary Cornish, *10 Ways to Close the Gender Pay Gap*, (Toronto: Canadian Centre for Policy Alternatives, 2013); and Mary Cornish, *A Growing Concern: Ontario's Gender Pay Gap* (Toronto: Canadian Centre for Policy Alternatives, 2014). 2 additional steps were added to the original 10 steps, namely ending violence and harassment and securing decent work.

households and unpaid care obligations.

- (e) Part VI maps specific workplace and social dynamics which constrain and forge Ontario women's unequal earnings ranging from discrimination in pay setting through the many barriers women face in accessing decent work with secure hours and pay and equitable employment status and conditions. This section provides the necessary analysis that grounds the above-noted 12 steps.
- (f) Part VII highlights the need for a systemic legal and policy response to systemic labour market discrimination.
- (g) Part VIII reviews Ontario's current inadequate and disconnected legal and policy response to the gender pay gap and recommends the reworking, enforcing and expanding of Ontario's gender pay gap laws and policies to provide for mandatory obligations to address the discrimination dynamics noted above. This includes considering the three key current laws, the *Employment Standards Act, 2000*, the *Pay Equity Act*, and the *Human Rights Code* and calling for the reinstatement of a strengthened *Employment Equity Act, 1993* and a new *Closing the Gender Pay Gap Act*.
- (h) Part IX outlines system-wide recommendations to address closing the gender pay gap, including mandatory multi-level action plans and processes at the provincial, ministry, municipal and business levels; the use of annual Equal Pay Days as a tool to educate, monitor and revise the above noted planning to ensure progress is sufficient to meet the 2025 0% gender pay gap goal; and the appointment of a Provincial Labour Market Equality Commissioner and provincial and local Closing the Gender Pay Gap Roundtables of stakeholders including women's representatives to coordinate and lead this large scale transformation process.
- (i) Part X, using an gender and equity lens and tracking the discriminatory practices mapped in Part VI, outlines some specific recommendations for legal and policy interventions. These interventions are necessary elements of a gender pay gap strategy that can effectively target and transform practices so as to secure equitable pay for women.
- (j) Part XI outlines the next steps forward to respond to and end this human rights crisis. It calls for Ontario governments and businesses, working with women and their representatives and other equality seeking groups to give the issue a high priority and to plan and track progress over the years towards the goal of fully closing the gender pay gap - hitting the target of a 0% gap – by the year 2025 as well as immediate steps which need to be taken in 2016 to get the gap closed by 3% to 28.5%.
- (k) Part X sets out some concluding comments.
- (l) Appendix E sets out a List of the Coalition's Preliminary

Recommendations outlined in this submission. Appendix F lists key reference documents supporting this submission which will be posted on the Coalition website for ease of reference.

20. In preparation for this submission, the Equal Pay Coalition commissioned an updated statistical profile of the earnings of Ontario women and men by statistician Richard Shillington, Principal Tristat Resources.<sup>8</sup> This data is posted on the Equal Pay Coalition's website. It also provides intersectional and other data: Aboriginal, Non Aboriginal; 6 Age Groups - 15- to 65+; With Disability, Without Disability; Different Education Levels; Private and Public Sector; Unionized, Non Unionized; Marital Status; Immigrant, Non Immigrant; Recent Immigrant, Non Recent Immigrant; Visible Minority, Non Visible Minority; Different Industry Sectors; Different Occupations.<sup>9</sup> These charts reveal the widespread gender pay gaps which persist across occupations, industries, public and private sector and other areas.<sup>10</sup>
21. Ultimately, the gender pay gap is a human rights crisis. As is warranted by any initiative that responds to a crisis (eg. climate change), the gender pay gap strategy must bring the resources, energy, sense of urgency and determination that prioritizes action to ensure that the gender pay gap is closed quickly and deliberately. Bold, courageous, innovative approaches that challenge, confront and transform systemic practices of discrimination are needed to ensure that women and girls finally share fully and equally in the economic and social wealth of our communities.

## **II. FRAMING THE PROBLEM: THE GENDER PAY GAP IS A HUMAN RIGHTS CRISIS**

### **a. Women's Equality in the Labour Market is a Human Right**

22. For generations, governments and employers in Ontario – and throughout Canada – have been bound by mandatory legal obligations to deliver equality in employment without discrimination based on sex. Governments (in their various roles as legislators, employers and service providers), public sector employers,

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8 See Tristat Resources, [shillington.ca](http://shillington.ca) and [equalpaycoalition.org](http://equalpaycoalition.org),

9 This data includes the following charts prepared by Richard Shillington: Long Term Trends - All Earnings, FT/FY, Hourly, 1976 - 2014, Statistics Canada; All Earnings, Male and Female, Ontario, Statistics Canada - Survey Labour Income Dynamics (SLID) 2011; Full Time/Full Year Earnings, Male and Female, Ontario, Statistics Canada - Survey Labour Income Dynamics (SLID) 2011; Hourly Wages, Male and Female, Ontario, Statistics Canada - Survey Labour Income Dynamics (SLID) 2011. In addition there is a Chart, Summary of Selected Equal Pay Coalition Data on Effects of Intersectional Factors and Marital Status based on Shillington data which was prepared by Danielle Bisnar.

10 See also the expert report of Richard Shillington dated April 13, 2013 filed in the SEIU and ONA v. Participating Nurses Homes Pay Equity Hearings Tribunal proceeding.

broader public sector employers, and private sector employers have for generations all been bound by fundamental legal obligations to ensure that women are able to participate in the labour market on terms of equality, free from sex discrimination.

23. Women's **legal entitlement** to be treated without discrimination on the basis of sex – and governments' and employers' corresponding **proactive legal obligations** to develop policies and practices that support and deliver those rights in reality – have long been enshrined in human rights laws such as Ontario's *Human Rights Code*.<sup>11</sup> These legal entitlements guarantee protection for equality in all dimensions of the employment relationship that together contribute to delivering compensation that provides an equal, non-discriminatory return on women's labour.
24. Supreme Court of Canada jurisprudence has long mandated that employers must meet their legal obligations to establish discrimination-free workplaces by proactively "building conceptions of equality into workplace standards"; by examining existing policies and practices; and by transforming them to eliminate practices that would otherwise sustain a cycle of systemic discrimination.<sup>12</sup> These pro-active obligations also apply to other entities with *Code* obligations including governments as policy makers, funders and service providers.<sup>13</sup>
25. Beyond the *Human Rights Code*, these legal entitlements and obligations have for generations been supported by additional laws that target specific notorious practices of sex-based pay discrimination such as the *Pay Equity Act* and the *Employment Standards Act, 2000*.<sup>14</sup>
26. At the same time, under s. 15 of the *Canadian Charter of Rights and Freedoms*, governments have a further proactive legal obligation to ensure that the laws they enact and the policies they develop and implement do not discriminate on the basis of sex or other prohibited grounds. In enacting laws and adopting and implementing policies, governments have a proactive obligation to conduct an equality rights or gender-based analysis to ensure that these initiatives neither sustain practices of systemic discrimination, nor exacerbate existing experiences of systemic disadvantage, and that they in fact contribute to closing any existing

<sup>11</sup> *Human Rights Code*, R.S.O. 1990, c. H-19.

<sup>12</sup> See, for example, *BCGSEU v. BC (Public Service Employee Relations Commission)*, (1999) 3 S.C.R. 3 at pp. 25 ff. and *Action Travail des Femmes v. Canadian National Railway Co.* (1987), 40 D.L.R. (4th) 193 (S.C.C.).

<sup>13</sup> See the Application of the Association of Ontario Midwives v. Ministry of Health and Long Term Care, filed with the HRTO on November 27, 2013, - for a summary see <http://www.ontariomidwives.ca/support/equity/resources> and the first interim decision in that proceeding, *Association of Ontario Midwives v. Ontario (Health and Long-Term Care)*, 2014 HRTO 1370.

<sup>14</sup> See, for example, *Pay Equity Act*, R.S.O. 1990, c. P-7; *Employment Standards Act 2000*, S.O. 2000, c. 41, s. 42

discriminatory gaps.<sup>15</sup> This analysis must also include an intersectional analysis to consider whether there are discriminatory factors contributing to the pay gap which must be addressed, such as race or disability.

27. As a participant in the international community through the United Nations and the International Labour Organization, Canada – and Ontario – have further legal obligations under numerous international human rights instruments that Canada has ratified to take active steps to eliminate sex-based discrimination in employment and, in particular, to eliminate sex-based pay discrimination.<sup>16</sup> These obligations are set out in the Coalition's document *Pay and Employment Equity for Women: International Human Rights Obligations* which is attached as **Appendix B**. This document details the basic principles and obligations from the many applicable international human rights instruments, including but not limited to International Labour Organization ("ILO") instruments such as Convention 100 – Equal Remuneration for Work of Equal Value and Convention 111 – Discrimination in Employment and Occupation, the UN *Convention on the Elimination of All Forms of Discrimination Against Women*, the *Durban Programme of Action on Racism, Racial Discrimination, Xenophobia and Related Intolerance*, the *Convention on the Rights of Persons with Disabilities*, and the *International Covenant on Economic Social and Cultural Rights*.
28. As the ILO sets out in its overview of the Conventions and Recommendations governing Gender Equality and the Decent Work Principles, women's entitlement to equality in employment, and states'/employers' corresponding obligations to deliver equality in employment, apply to all the different spheres in which women labour:

*Non-discrimination and promoting equality have been fundamental principles underpinning the work of the International Labour Organisation (ILO) since its creation in 1919.*

*These principles are also an integral component of the ILO Decent Work Agenda: to promote decent and productive work for women and men in conditions of freedom, equity, security and human dignity.*

*All workers have the right to decent work, not only those working in the formal economy, but also the self-employed, casual and informal economy workers, as well as those, predominantly women, working in the*

<sup>15</sup> *Canadian Charter of Rights and Freedoms*, s. 15; see, for example, *Eldridge v British Columbia (Attorney General)*, [1997] 3 S.C.R. 624 at para. 64.

<sup>16</sup> For a detailed analysis of these obligations see the commissioned research report of Mary Cornish, Elizabeth Shilton and Fay Faraday, *Canada's International and Domestic Human Rights Obligations to Ensure Pay Equity* (Ottawa: Federal Pay Equity Task Force, October 2002). Extracts of the specific legal obligations to protect and ensure the realization of women's entitlement to equality in compensation are set out in **Appendix B**.



*care economy and private households.*<sup>17</sup>

29. In July, 2015, the UN Human Rights Committee issued a report card on Canada which noted the "persisting inequalities between women and men" and the need for better laws to address the gender pay gap, particularly for minority and Indigenous women.<sup>18</sup>

**b. Ontario's Stated Commitment to Labour Market Equality**

30. In 1985, after lobbying by the Equal Pay Coalition, the Ontario government released its *Green Paper on Pay Equity* to initiate a discussion and elicit views on the methods and timing of a new pay equity law to help close the gender pay gap. The need to implement pay equity was not in dispute, only the method and technical application were left to be decided.
31. The government's starting point was that the route to equal opportunity and social justice includes economic equality. In turn, the road to economic equality requires true equal opportunity in all aspects of employment: among them, education and training, recruitment, promotion and compensation.
32. The policy development on pay equity took place within the context of a broader policy discussion in which the government readily acknowledged it needed to activate a wide range of policy tools and that these tools needed to operate *together* in order to end systemic gender discrimination in compensation.
33. The government relied on the 1984 report of Justice Rosalie Abella, *Inequality in Employment: a Royal Commission Report* which detailed "the breadth of social and employment policies and practices designed to eliminate discriminatory barriers and to provide, in a meaningful way, equitable opportunities in employment."<sup>19</sup>
34. The government clearly stated in the *Green Paper*:

*The achievement of equal opportunity and social justice for all Ontarians is a fundamental and unalterable commitment of the Ontario government. For women, this must include employment equity in all its aspects.*<sup>20</sup>

35. The *Green Paper* also acknowledged that in addition to proactive pay equity

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17 International Labour Organization, *Gender Equality and Decent Work: ILO Conventions on Equality* (Geneva: ILO, 2012), Preface at p. v.

18 See <http://www.cbc.ca/news/canada/un-human-rights-committee-slams-canada-s-record-on-women-1.3164650>.

19 Justice Rosalie Abella, *Report of the Commission on Equality in Employment* (Ottawa, 1984) at p. 7.

<sup>20</sup> Government of Ontario, *Green Paper on Pay Equity* (Toronto: 1985) at p. i.

legislation, the government needed to undertake a number of other key initiatives to end the unequal economic status of women, including but not limited to: affirmative action, child care and training. Each of these fell under the umbrella of employment equity as broadly defined by Abella.

36. Thus, three decades ago, the government fully recognized that a multi-dimensional approach was needed to close the gender pay gap. In launching this Gender Wage Gap Review, the government is recognizing that government action must be more comprehensive and extend even further beyond the basic initiatives identified in 1985. The Government's recent commitments to plan to close the gender pay gap are set out in Appendix G. The Coalition's outline of its recommendations for these broader systemic and targeted actions to close the persistent gender pay gap is set out in Parts IX and X of this submission.

**c. Eradicating the Pay Gap is a Mandatory Human Rights Obligation - Not a Voluntary "Best Practice" or "Business Case"**

37. In summary, the right to not earn less income because you are a woman is a fundamental human rights entitlement. It encapsulates both a substantive human rights *entitlement* to sex equality in the workplace and a systemic human rights *remedy* for discrimination.
38. Mechanisms to close the gender pay gap as proposed in this submission, which include but extend beyond the minimum identified in 1985, are the human rights *enforcement mechanisms* for eradicating women's labour market discrimination and ensuring equality outcomes.
39. Yet, despite the extensive web of mandatory legal obligations to deliver equality outlined above, government task forces, royal commissions and other studies – now *bridging three centuries* – have documented and decried the persistent gender pay gap.<sup>21</sup> The gap between the binding obligations of the law and the reality of non-compliance yawns wide.<sup>22</sup>
40. In her 1984 *Report of the Royal Commission on Equality in Employment*, Justice

<sup>21</sup> As early as 1884 Canada's federal *Royal Commission on the Relations Between Capital and Labour* identified significant pay gaps between women and men. See also *Report of the Royal Commission on the Status of Women in Canada* (Ottawa: 1970); Justice Rosalie Abella, *Report of the Commission on Equality in Employment*, *supra*.

<sup>22</sup> As the Steering Committee documented in its paper *Closing the Gender Wage Gap : A Consultation Paper for Businesses and Organizations* (Ontario: Ministry of Labour, 2015) at p. 5:

*Nearly half of Ontario's workforce is female, yet women earn less than men throughout their working lives. Despite increased participation in the workforce and higher levels of education and increased skills, women still face significant barriers and disadvantages in employment compared to men. More women than men are in lower-paying jobs, are disproportionately in minimum wage and part-time work and are under-represented in occupations that have higher-paying wages. This negatively affects women, their families and Ontario's economy.*

Rosalie Abella squarely condemned the discriminatory gender pay gap as a profound social harm that serves no justifiable social goal:

*The cost of the wage gap to women is staggering. And the sacrifice is not in aid of any demonstrably justifiable social goal. To argue, as some have, that we cannot afford the cost of equal pay to women is to imply that women somehow have a duty to be paid less until other financial priorities are accommodated. This reasoning is specious and it is based on an unacceptable premise that the acceptance of arbitrary distinctions based on gender is a legitimate basis for imposing negative consequences, particularly when the economy is faltering.<sup>23</sup>*

41. With this backdrop, Ontario's strategy to close the gender pay gap must be built upon and anchored in a human rights legal framework. The right to gender equality in employment – and the right to pay that is free of systemic gender discrimination – is a fundamental legal right of all women in Ontario.
42. The persistence of the gender pay gap is therefore not simply bad business practice – it is a breach of fundamental law. The obligation to pursue discrimination-free social and economic policies and support a discrimination-free labour market is a fundamental obligation of government. The obligation to deliver discrimination-free workplaces and discrimination-free pay is a fundamental legal obligation of all governments and employers in Ontario. Closing the gender pay gap is not optional. It is mandated by law.
43. Given this human rights framework, the Coalition strongly opposes any strategy which centres its analysis primarily around the need to make “the business case” for closing the pay gap.<sup>24</sup> Such a central focus profoundly mischaracterizes the legal obligations at issue, the nature of the social harms, and the inequitable structures of our labour market system highlighted in Part V below which create and sustain the gap.
44. It is in fact the operation of “business as usual” that significantly contributes to and drives the persistence of the gender pay gap. The dominant “business case” model in Ontario – maximizing short-term profit and short-term returns to shareholders; delivering public services with less – lies at the root of many practices that produce and sustain the gender pay gap; that leverage long-standing practices and norms that devalue women's labour and institutionalize their second-class status in the workplace; and that denigrate the use of public funds to institute social policies that promote equality.
45. In this reality, it is not enough to “make a business case” for closing the gender

<sup>23</sup> Abella, *Report of the Commission on Equality in Employment*, *supra*, at pp. 233-239

<sup>24</sup> See discussion in Consultation documents at footnote 1 and questions in the public consultations and stakeholder meetings, centred on the need to make “the business case” for closing the gender pay gap.

pay gap. Rather, there needs to be a frank discussion about the ways in which governments and businesses rely upon and leverage the gender pay gap in order to meet their other priorities and objectives. Businesses and governments both rely upon women to continue performing underpaid but valuable work so that businesses can profit and government can deliver public services without increasing public budgets.

46. Valuing women's work, engaging in non-discriminatory labour market, workplace and pay practices, and adopting, supporting and funding social policies that enable and facilitate equal access to work, all build a stronger more equitable economy.
47. The frame for evaluation needs to shift from the individual/private to the collective/public. Assessing the positive economic benefit of equitable employment practices is not a question of measuring individual employers' capacity to maximize profit. It is, rather, about examining how compliance with the law – through adopting and following non-discriminatory practices – enhances the collective economic strength and security of women and of the community at large.
48. There is no doubt that adopting non-discriminatory workplace practices builds more equitable sustainable economies, inclusive prosperity and growth. But this point is critical: the relevant economic frame is not one that is narrowly focused on illustrating that individual employers' compliance with the law is in their private economic interest.<sup>25</sup> Rather, the frame should be one that examines the public, collective and long-term benefits of equitable employment and pay practices.
49. It has long been recognized that putting money in the pockets of women has a strong multiplier effect with women more likely to spend money in their communities. As well, it is recognized that investment in equality supporting social and economic policies produces multiple advantages on many levels.
50. For example, a major new study by Robert Fairholm funded by the Child Care Human Resources Sector Council found that investing in child care provides the greatest economic benefit of all sectors of the Canadian economy as it is the biggest job creator: investing \$1 million in childcare would create 40 jobs: at least 43% more jobs than the next highest industry and four times the number of jobs generated by \$1 million in construction spending. Furthermore, such investment in social infrastructure provides strong economic stimulus: every dollar invested in childcare increases the economy's output (GDP) by \$2.30. This is one of the highest GDP impacts of all major sectors.<sup>26</sup> The Steering Committee's

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<sup>25</sup> While non-discriminatory employment practices have numerous positive impacts, the economic benefits are diffuse and accumulate over time (i.e. reduced employee turn over, enhanced employee productivity, reduced absenteeism, etc) and as such have difficulty displacing a short-termism that focuses on how a present outlay on wages affects immediate profit margins.

<sup>26</sup> See "Three new studies find child care is good for kids and the economy," Toronto Star Editorial,

Background Document's discussion of the Nordic model also shows the societal economic benefits of equity measures.<sup>27</sup>

51. Ultimately, however, while compliance with human rights law does support economic prosperity, anchoring the analysis and justification for action to close the gender pay gap in a question of the “business case” presents a problematic frame because (a) it suggests that closing the gender pay gap is optional and a matter of “best practices”; (b) it prioritizes business interests over human interests and business aspirations over fundamental human rights; and (c) it permits governments and businesses to frame the discussion about the gender pay gap within constraints that are inconsistent with and even inimical to women’s right to be free from sex discrimination.
52. How we talk about the significance of the gender pay gap and the imperative to address it matters deeply. How we frame the problem and the imperative for a solution communicates the values, priorities and obligations of our society. It also fundamentally affects how we diagnose the nature and extent of the social problem and the obligation to rectify it.
53. In all of this, Ontario has already democratically decided – and maintained for generations – that the right to equality is the fundamental law that defines the bedrock entitlements and obligations in our society.<sup>28</sup> The failure to make these rights a reality by allowing the gender pay gap to fester with impunity is a profound abdication of the rule of law. It is a human rights crisis that demands immediate and urgent action.

### **III. SYSTEMIC DISCRIMINATION: GETTING TO THE ROOT OF THE GENDER PAY GAP**

54. Any discussion of the design of Ontario’s Closing the Gender Pay Gap Strategy must begin by directly acknowledging and confronting the fact that the pay gap

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November 17, 2014 (available at:

[http://www.thestar.com/opinion/editorials/2014/11/17/three\\_new\\_studies\\_find\\_child\\_care\\_is\\_good\\_for\\_kids\\_and\\_the\\_economy\\_editorial.html](http://www.thestar.com/opinion/editorials/2014/11/17/three_new_studies_find_child_care_is_good_for_kids_and_the_economy_editorial.html); CUPE, The Facts, “Major New Study Shows Benefits from Investing in Child Care, September, 2009 and Canada Still Needs Child Care, “A Strong Economy Needs Good Child Care – Canada Can’t Work Without It,” 2008.

- 27 “Closing the Gender Wage Gap: A Background Paper, Ministry of Labour, October, 2015 at p.28ff.

<sup>28</sup> The Supreme Court of Canada has long ruled that human rights laws have a special nature” as “public and fundamental law”. The Court has reiterated that when a provincial or federal statute addresses human rights, “the people of that jurisdiction have through their legislature clearly indicated that they consider that law, and the values it endeavours to buttress and protect, are, save their constitutional laws, more important than all others”: *Insurance Corporation of British Columbia v. Heerspink* (1982), 137 D.L.R. (3d) 219 (S.C.C.) at 229. See also, *Winnipeg School Division No. 1 and Craton* (1985), 21 D.L.R. (4th) 1 (S.C.C.) at 6; *Ontario Human Rights Commission and O’Malley v. Simpsons Sears Ltd.*, [1985] 2 S.C.R. 536 at 546-547; *Action Travail des Femmes v. C.N.R.*, *supra*,k at 207-208.

arises from systemic discrimination against women. The reality is that Ontario men's and women's lives are profoundly different and unequal. Those women who are further disadvantaged by other discrimination experience a life of much greater inequality. This lived discrimination continues to distort women's access to and experience in the labour market and throughout all aspects of their employment.

55. While women have secured a measure of formal equality in many social spheres (i.e. the formal right to equal access to education, the formal right to apply for work), the reality of persistent discriminatory attitudes, values and practices pervades virtually all spheres of women's social engagement and throughout women's working lives or the Worklife Cycle referred to in the Committee's consultation documents.<sup>29</sup>
56. Critically, the gender pay gap cannot be understood and analyzed as a merely a product of individual "choices" made by individual women over that Worklife Cycle that can be rectified by individualized responses (e.g. training to negotiate better salaries). A reductive "individual choice" frame often used by those who dispute the gender pay gap, fails to acknowledge the ways in which systemic discrimination restricts women's options and fails to acknowledge that selecting from among a series of suboptimal options is a survival strategy rather than a reflection of genuine choice.
57. As Faraday, Heffernan and Rosenthal explain, our equality rights jurisprudence has recognized for three decades that

*discrimination arises not as a result of isolated acts motivated by discriminatory intent but through the operation and persistence of systems and established practices that disproportionately favour dominant groups while disproportionately marginalizing, disempowering and disadvantaging many groups throughout our communities. In her landmark 1984 Royal Commission Report on Equality in Employment, Justice Rosalie Abella called this systemic discrimination. Examining the policies, procedures and institutions that shape our daily interactions, she stressed that in identifying discrimination, "it is important to look at the results of a system." Rather than "stamping out brush fires" on a case-by-case basis, it is necessary to see "the incendiary potential of the whole forest" and to devise remedies that respond to discrimination's systemic roots.*<sup>30</sup>

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29 See "Closing the Gender Wage Gap: A Consultation Paper for Businesses and Organizations", supra; and "Closing the Gender Wage Gap: A Background Paper", supra.

30 Fay Faraday, Tracy Heffernan and Peter Rosenthal, "Fighting for the Right to Housing in Canada" (2015), 24 *Journal of Law and Social Policy* 10 at 36-37. References to Abella, *Royal Commission Report on Equality in Employment*, supra, are found at p. 8 of that Report.

58. The gender pay gap is the product of just such a system of interconnected and mutually supporting practices and procedures that disproportionately marginalize, disempower and disadvantage women in the labour market.<sup>31</sup> As a result, the gender pay gap does not have a single root cause. It cannot be remedied by a single-focus strategy or by a few changes. What is required is a multi-dimensional strategy that directly and deliberately disrupts and dismantles the systemic practices that in an interactive and cumulative way produce and sustain the gender pay gap.
59. To understand the breadth and depth of the action that is required to eradicate the gender pay gap, it is necessary to map some of the key dynamics that produce and sustain it. This is done by using an equity lens as described in the next Part.

#### **IV. USING AN EQUITY LENS TO MAP AND RECTIFY SYSTEMIC DISCRIMINATION**

##### **a. Introduction – What is an Equity Lens?**

60. A key tool in the development of a plan to close the gender pay gap is the use of a gender equity lens to review all policy and legislative action by asking how women and men are affected by laws and policies and whether proposed actions will help to close the gender pay gap and by also including in that lens an integrated analysis based on other intersectional factors, such as race, religion, disability, Indigenous status, LGBT and immigrant status.
61. Such a lens must also be used by this Steering Committee in its research and deliberations and by the Ontario government in its response to the Committee's report.

##### **b. Equity Lens is Legal Requirement and Human Rights Tool**

62. The United Nations *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) and the 1995 *Beijing Declaration and Platform for Action* and Beijing +10 Outcome documents require governments working with the business community and women's representatives to implement a gender mainstreaming or human rights based approach and lens for public policy

<sup>31</sup> In the landmark case of *Action Travail*, *supra*, the Supreme Court of Canada described systemic discrimination in an employment context as “discrimination that results from the simple operation of established procedures ... none of which is necessarily designed to promote discrimination” (at p. 210). The Court further explained that “... systemic discrimination is often unintentional. It results from the application of established practices and policies that, in effect, have a negative impact upon the ... prospects of a particular group” (at p. 213). The Court found at pp. 210 and 213 that in order to “break a continuing cycle” of systemic discrimination, “it is essential to create a climate in which both negative practices and negative attitudes can be challenged and discouraged.”

development.<sup>32</sup> The Federal Government has adopted a "Gender Based Analysis Plus" (GBA+) as an analytical tool to assess the potential impacts of all its laws, policies, programs, services, and other initiatives on diverse groups of women and men, taking into account gender and other identity factors. The "plus" in the name highlights that GBA goes beyond gender, and includes the examination of a range of other intersecting identity factors (including language, culture and income).<sup>33</sup>

63. A gender-based analysis, also known as a gender and equity lens, recognizes that securing gender equality requires a multi-faceted, systemic approach as women face systemic discrimination in all areas of their lives. By using a "gender-sensitive analysis" in all governance areas, it focuses on identifying the gender implications of policy proposals, including identifying gender differences and constraints, as well as equality promoting measures. It also includes an intersectional lens which looks at whether women are experiencing discrimination differently and more acutely as result of other discriminatory dynamics and in what ways so that measures can be targeted at those dynamics as well.
64. In general, a gender lens examines existing differences between women's and men's socio-economic realities as well as the differential impacts on women and men of proposed and existing policies, programs, budgets, legislative options, and agreements. This helps to identify the assumptions, which are sometimes incorrect, on which policies, programs and services are based.
65. The International Labour Organization calls for a gender-based analysis in the review and application of ILO international labour standards as it:
  - (a) helps to ensure that women and men have equal access to benefits derived from these standards;
  - (b) recognizes the needs, experiences and interests of both women and men;
  - (c) enables stakeholders to manage change;
  - (d) demonstrates a willingness to undertake differential measures to respond to the needs and interests of men and women; and
  - (e) promotes equality brought about by the implementation in practice of ILO

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32 See *Applying a Gender Lens to Close Ontario's Gender Pay Gap*, Equal Pay Coalition document dated March 27, 2015, *supra*..

33 "Gender Based Analysis Plus" <http://www.swc-cfc.gc.ca/gba-acis/index-en.html>; Implementing Gender Based Analysis – Fall 2015 Report of the Auditor General of Canada: [http://www.oag-bvg.gc.ca/internet/docs/parl\\_oag\\_201511\\_01\\_e.pdf](http://www.oag-bvg.gc.ca/internet/docs/parl_oag_201511_01_e.pdf)



Conventions.<sup>34</sup>

66. Failure to bring a gender and equity lens and analysis will mean that the deeply structural discriminatory impacts in Ontario's labour market will be left unexamined and without redress.
67. The Coalition's 2008 Framework for Action called for the use of a gender and intersectional lens and the need to ensure that appropriate data disaggregated by sex and other grounds is collected to support such analysis. No action was taken on that until September 2015, when Premier Wynne mandated her Minister Responsible for Women's Issues to work with other Ministers to implement a gender lens in government decision-making, policies and practices. See Appendix G.
68. The Coalition in March 2015 conducted a training session for Ontario government staff on how to implement a gender lens and the importance of collecting and analyzing disaggregated data.<sup>35</sup> Its training document, *Applying a Gender Lens to Close Ontario's Gender Pay Gap*, sets out the history of Canada's development of the gender lens tool, its incorporation in international human rights standards, and its use by the federal jurisdiction in Canada. Ontario used to have a gender lens process to review cabinet submissions back in the late 1980's and early 1990's but this was eliminated when the Conservative government came to power in 1995.
69. The Coalition also prepared another document to assist in applying an appropriate gender and equity lens to the development of the Gender Wage Gap Strategy. This document, *Closing Ontario's Gender Pay Gap: Questions/Issues to Consider in Government and Business Decision-Making*, is attached at **Appendix D**. Overall, these questions are aimed at examining both existing and new strategies, laws, policies and practices to ensure that they are serving to close and not widen the gender pay gap and that they also address the multiple forms of discrimination Ontario women face.
70. Although the use of a gender lens is used federally and internationally with many helpful guides for implementation, no action has yet been taken by the Minister Responsible for Women's Issues to implement processes and requirements for a gender lens throughout government decision-making despite repeated requests by the Coalition for immediate action on this mandate. The current Ontario budget consultations and decision-making are taking place without any gender lens in place.

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34 International Labour Organization, *Gender Equality and Decent Work: ILO Conventions on Equality*, 2012.

35 *Applying a Gender Lens to Close Ontario's Gender Pay Gap*, Equal Pay Coalition document dated March 27, 2015 prepared by Mary Cornish and Jennifer Quito reviewing the principles of gender mainstreaming and detailing the use of and tools developed to apply a gender and intersectional equity lens, [www.equalpaycoalition.org](http://www.equalpaycoalition.org).

71. Given the embedded nature of Ontario's persistent gender pay gap in labour market institutions, structures and practices as detailed in Parts V and VI, government and business actors need to use a gender lens in all decision-making so that they can undertake the necessary targeting measures to transform Ontario's economy so that it will deliver fair pay to all women and their families.

## **V. THE DISCRIMINATORY ROLE OF THE 21ST CENTURY ONTARIO LABOUR MARKET**

### **a. The Political Economy of Ontario's Gendered and Globalizing Labour Market**

72. While there are numerous workplace-based techniques and practices that produce the gender pay gap, those practices are situated within a broader labour market that is itself created on gendered norms that drive and sustain the gender pay gap at a macro level.
73. Ontario's gendered labour market history and functioning has been documented in detail by a wide range of feminist scholars, including Pat Armstrong, Judy Fudge, Leah Vosko and others.<sup>36</sup> Recognition of this gendered labour market reality also formed the basis for Abella's 1984 Royal Commission Report, Ontario's 1985 *Green Paper* and the introduction of *Pay Equity Act* itself.
74. In addition, Ontario's labour market is composed of a number of different and interconnected institutions which are impacted by the forces of a globalizing economy. These institutions include businesses, governments, unions, civil society and also the household. Gendered assumptions and systems are built into all these institutions which have resulted in a sex-segregated and unequal division of work and earnings in Ontario. The specific gendered dynamics by which these institutions are shaped, and which they in turn generate, are outlined more specifically in Part VI below.
75. The assumptions and functioning of all these institutions must be unpacked and

<sup>36</sup> Pat Armstrong and Hugh Armstrong, *The Double Ghetto: Canadian Women and Their Segregated Work*, 3rd ed. (Toronto: OUP Canada, 2010); Pat Armstrong and Hugh Armstrong, *Theorizing Women's Work* (Toronto: Garamond Press, 1990); Judy Fudge and Rosemary Owens, eds., *Precarious Work, Women and the New Economy*, (Oxford: Hart Publishing, 2006); Carol Agócs, ed., *Employment Equity in Canada* (Toronto: University of Toronto Press, 2014); Leah F. Vosko, *Managing the Margins: Gender Citizenship and the International Regulation of Precarious Employment* (New York: Oxford University Press, 2010).; and Leah F. Vosko, ed., *Precarious Employment: Understanding Labour Market Insecurity in Canada* (Montreal & Kingston: Queen's University Press, 2006). See also Heidi Gottfried, *Gender, Work, and Economy* (Cambridge, MA: Polity Press, 2013), Joan Acker, *Inequality Regimes: Gender, Class and Race in Organizations*. (2006) and Leah Vosko and Lisa Clark, *Canada: Gendered Precariousness and Social Reproduction: Gender and Contours of Precarious Employment*, Routledge, 2009, p.26-42.

analyzed to close the gender pay gap.<sup>37</sup>

**b. Seven Political Economy Trends That Perpetuate the Gender Pay Gap**

76. A political economy analysis is important because it highlights the active policy choices and ideologies that are operating to institutionalize and normalize behaviours that create and sustain the gender pay gap. Six such trends are reviewed briefly here.

**i. Growing income inequality**

77. Extensive research over the past decade has meticulously documented the growing income gap across many economies around the world. Canada has by no means been immune to this. Data from the Organization for Economic Cooperation and Development indicates that since the mid-1990s, 15 of 34 OECD nations narrowed the income inequality gap within their economies. By contrast, over that same period, the income gap in Canada has widened at an accelerating pace, so much so that Canada is the OECD country that has “slipped most rapidly down the international rankings, from 14th most equal to 22nd, from above-average to below average equality.”<sup>38</sup>
78. Income inequality in Canada and Ontario is higher now than it was a generation ago. This growing disparity is the product of social and economic policy choices (i.e. tax cuts; cuts to programs that support the social wage; cuts to public services many of which shift the burden to women’s private unpaid labour; deregulation; laws that impede unionization and interfere with collective bargaining) that have resulted in the poorest among us getting poorer, the middle hollowing out, and the richest among us getting richer. Between 1981 and 2010, the economy more than doubled in inflation-adjusted terms, but poverty has grown for working age adults and seniors. More of the gains from growth are ending up in the pockets of higher-income individuals and households than in the past.<sup>39</sup>
79. The labour market inequality picture is intensified when one examines the gender pay gap. Because women significantly predominate in the lower paid quintiles of the population – and are correspondingly disproportionately absent from the higher earning quintiles – the widening of the income gap generally reinforces

<sup>37</sup> See discussion in: Armstrong and Armstrong, *The Double Ghetto*, *supra*; H. Gottfried, *Gender Work and Economy*, *supra*, p. 31. See also the work of Joan Acker and Heidi Hartmann cited in Gottfried’s *Gender Work and Economy*, *supra*.

<sup>38</sup> Armine Yalnizian, *Study of Income Inequality in Canada — What Can Be Done?* (Ottawa: Canadian Centre for Policy Alternatives, 2013) at p.2 . See also, *Building More Resilient and Inclusive Labour Markets – How Does Your Country Compare?*, OECD presentation, OECD Labour and Employment Minister’s Meeting, January 15, 2016.

<sup>39</sup> A. Yalnizyan, *Study of Income Inequality in Canada*, *supra*.

and intensifies the existing gender pay gap.

80. The majority of working women in Ontario are clustered within the bottom 60% of the income spectrum, with only one-third (33%) of women climbing their way into the top 40% of the income ladder. Looking at women earners in the bottom 60% over a longer time period, a troubling pattern emerges: *women's average earnings appear to be stagnating and their income mobility appears to be limited*. Over the 14-year period from 1997-2011 only 3% of women managed to move out of the bottom 60%: 72% of working women were in the bottom 60% in 1997-1999; by 2009-2011, 69% of working women were still there.<sup>40</sup>
81. Because women are disproportionately found in the bottom three quintiles of earners where wages are either stagnating or dropping, the macro-level social and economic policy choices that drive the accelerating income gap also drive the gender pay gap.
82. As is widely documented, this growing income gap has widespread social harms that affect everyone, producing greater levels of social dysfunction and eroding social cohesion across a multitude of measures.<sup>41</sup> As Sran, Clancy, Fudge and Lynk write, "while economic inequality has traditionally been viewed as a social justice question, growing evidence suggests the rich-poor gap also hurts economic growth."<sup>42</sup> Increasingly many significant economic actors, including the World Bank, the International Monetary Fund, and the Conference Board of Canada, are raising the alarm that this growing income inequality hurts economic growth, undermines democratic capitalism, increases costs and creates social unrest.<sup>43</sup>
83. But again, what must be remembered is that this growing income inequality both reflects and intensifies a deeply gendered income inequality.

## ii. Persistence of the Gender Pay Gap

84. The structures and conditions of women's and men's work have changed significantly since the 1985 Green Paper on Pay Equity but women continue to face a substantial pay gap and gender discrimination remains a constant.<sup>44</sup>

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<sup>40</sup> Mary Cornish, *A Growing Concern: Ontario's Gender Pay Gap* (Toronto: Canadian Centre for Policy Alternatives, 2014)

<sup>41</sup> See, for example, Richard Wilkinson and Kate Pickett, *The Spirit Level: Why Equality is Better for Everyone* (London: Penguin, 2010).

<sup>42</sup> Garry Sran, James Clancy, Derek Fudge and Michael Lynk, "Why Unions Matter: Unions, Income Inequality and Regressive Labour Laws", in Matthew Behrens, ed., *Unions Matter: Advancing Democracy, Economic Equality and Social Justice* (Toronto: Between the Lines, 2014) at p. 13

<sup>43</sup> Yalnizian, *A Study of Income Inequality in Canada*, *supra*.

<sup>44</sup> For a discussion of Ontario's growing gender pay gap, see M. Cornish, *A Growing Concern*, *supra* and M. Cornish, *10 Ways to Close the Gender Pay Gap*, *supra* and The Equal Pay

85. Women's labour force participation has increased significantly over the past fifty years. As of 2014, 82% of women age 22-44 were in the paid work force compared to 57% in 1984, and only 32% in 1961. In 2009, women comprised nearly 48% of the labour force compared to 44% in 1989, 39% in 1979 and 33% in 1969.<sup>45</sup>
86. In 2004, 73% of all women with children under age 16 living at home were part of the employed workforce, up from 39% in 1976.<sup>15</sup> In 2004, 79% of women under age 55 without children living at home had jobs. In 2006, the labour force participation rate of women ages 15 to 64 was at an all-time high of 73.5%.
87. More older women are working as well. The participation of women aged 55 to 59 has seen a marked increase from just below 50% in the mid-1990's to 62.3% in 2006. In 2006, almost half of the women aged 60 to 65 were still in the paid workforce.<sup>16</sup>
88. But while more women are working for pay, they continue to face enduring patterns of systemic occupational segregation, low pay, and precarious employment that generate and sustain the gender pay gap.
89. There are numerous Ontario occupations with high earnings, but they are all occupations that are mostly male. As the proportion female in an occupation increases there are fewer and fewer higher paid occupations. Clearly, occupations that have more females have a lower earnings distribution as compared to occupations which are male dominated. There are no female dominated occupations which are in the higher earnings range.<sup>46</sup>
90. Not only does the labour market feature occupational segregation by sex, but within all occupations and industries, women are overwhelmingly segregated into the lowest paid forms of work and these patterns are persisting with little change.<sup>47</sup> Women predominate in health occupations but the average male salary was \$112,531 while the average female salary was less than half that - \$54,430.<sup>48</sup>

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Coalition Framework for Action, 2008.

- 45 See M. Cornish, *A Growing Concern*, *supra*. Also see Statistics Canada. "Table 282-0014 - Labour force survey estimates (LFS), part-time employment by reason for part-time work, sex and age group, annual (persons)", CANSIM (database).(accessed: 2014-03-26). Sorted by Ontario (or Canada), and sex.
- 46 See expert report of Richard Shillington in the *ONA and SEIU v. Participating Nursing Homes* proceeding, *supra*.
- 47 See statistical profile of Ontario women's and men's earnings, prepared by Richard Shillington, described in Part II above and posted at [www.equalpaycoalition.org](http://www.equalpaycoalition.org) and Shillington's expert report, *supra*.
- 48 See expert report of Richard Shillington in the *ONA and SEIU v. Participating Nursing Homes* proceeding, *supra*.

91. Women are segregated often into the lowest paid work. As the Canadian Centre for Policy Alternatives reported in 2015, between 1997 and 2014 the gendered profile of the lowest earners has intensified:

*The share of women who are low-wage workers has consistently been higher than the share of men. In 2014, 14.9 per cent of women employees were working for minimum wage, compared to 8.8 per cent of men. The share of women making within \$4 of the minimum wage increased from 24 to 34.3 per cent over the same period. This compares to a rise from 16.1 to 24.5 per cent for men.<sup>49</sup>*

92. Over this period, women in the bottom 60% of earners have also been increasing their labour market human capital with greater education and work experience yet they are not reaping the rewards of those investments. While women still face barriers accessing greater and more diverse educational opportunities, it appears that their stagnating position in the labour market also stems from a persistent systemic pattern of undervaluing the workplace skills and responsibilities that women in fact acquire and from a failure to reward their effort and working conditions at an equal rate to men's.
93. As well, women who experience other grounds of discrimination continue to experience substantially greater pay gaps. Women generally earn 68% of men in average annual earnings (\$34,000 vs \$50,000). The gap widens considerably when women who also identify as aboriginal, disabled or recent immigrants ("factor female") are compared to men who do not possess those characteristics ("non-factor male"). For example, aboriginal women earn only 57% of non-aboriginal men (\$29,000 vs \$51,000). This represents a 9% drop when compared to the general gender wage gap. Similarly, disabled women earn only 54% of the average annual earnings of non-disabled men (\$28,000 vs \$52,000), a 14% decrease compared to the general gender wage gap. Women who are recent immigrants earn only 47% of the average annual earnings of men who are not recent immigrants (\$24,000 vs \$51,000), a shocking 21% drop compared to the general gender wage gap.<sup>50</sup>
94. Moreover, throughout Ontario's regions and municipal areas, the globalizing economy has produced different local gender pay gaps depending on the structure and conditions of men's and women's employment in a particular municipal area. Mary Cornish in her Canadian Centre for Policy Alternatives Blogpost on April 20, 2015 detailed the different gender pay gaps ranging from the lowest at 25 per cent in Oshawa to the highest at 40 per cent in Windsor.<sup>51</sup>

<sup>49</sup> S. Block, *A Higher Standard: The Case for Holding Low-Wage Employers in Ontario to a Higher Standard*, Canadian Centre for Policy Alternatives, June 2015.

<sup>50</sup> Chart, Summary of Selected Equal Pay Coalition Data on Effects of Intersectional Factors and Marital Status based on Shillington data which was prepared by Danielle Bisnar.

<sup>51</sup> M. Cornish, "Ontario Equal Pay Day: Best Place For Women?" in *Behind the Numbers*: Canadian

95. These gendered dynamics of occupational segregation, suppressed pay and precarious employment are elaborated upon in Part VI of these submissions. The important observation at this point, however, is that these are critical features of the Canadian, Ontario and local labour markets at a macro level and are not confined to isolated experiences in individual workplaces. Moreover, these gendered disparities map onto the overall growing income gap in Canada and Ontario.

### **iii. Globalization and the Drive to the Lowest Common Denominator**

96. Globalization as an economic and social phenomenon is not new yet the terms on which economic activity within a globalized economy is being conducted in the 21<sup>st</sup> century facilitate and encourage practices which increase gendered precarity in the labour market and undermine social institutions that could otherwise counteract that precarity.
97. The global migration of capital – and the importation of transnational migrant labour on terms of profound precarity – create a dynamic which (a) prioritizes short-term profit maximization by corporations; (b) privatizes profit while socializing risk; (c) grants corporations undue leverage to demand reductions in regulation and oversight (euphemistically labelled “cutting red tape”) under threat of corporate relocation; and (d) contributes to an ideology that denigrates the value and funding of elements of a social wage that would otherwise provide security for workers and communities.<sup>52</sup>
98. As set out in more detail in Part VI, the networked and decentralized production structures that are created in this global system, and the transnational supply chains that are engaged, draw upon and leverage the occupational segregation and underpaid labour of Canadian women. Women who are transnational migrants working in Canada are used to provide a competitive advantage in a global economy.
99. These conditions affect the nature and degree of rights violations which arise and affect women’s work in its diverse worksites. Awareness of these dynamics must inform the design of mechanisms that aim to successfully tackle those violations.

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Centre for Policy Alternatives Blog, April 20, 2015 (available at: <http://behindthenumbers.ca/2015/04/19/ontario-equal-pay-day-best-place-for-women/>).

- 52 See a detailed discussion of this phenomenon in Heidi Gottfried, Gender, Work and the Economy, *supra*. Judy Fudge and Rosemary Owens, eds., *Precarious Work, Women and the New Economy*, *supra*; Leah F. Vosko, *Managing the Margins: Gender Citizenship and the International Regulation of Precarious Employment*, *supra*, and Leah Vosko and Lisa Clark, Canada: Gendered Precariousness and Social Reproduction: Gender and Contours of Precarious Employment; and Pat Armstrong and Mary Cornish, *Restructuring Pay Equity for a Restructured Work Force: Canadian Perspectives*, Gender Work & Organization, Vol. 4, Issue 2, 67-86, April, 1997.

**iv. “Flexibility” and the Fragmentation of the “Workplace”**

100. In conjunction with the trends identified above, the pursuit of a competitive advantage in a global economy has also resulted in; (a) a demand for ever more “flexibility” from workers without any corresponding loyalty or commitment on the part of employers; (b) a fragmentation of the workplace into networked and subcontracted relationships between smaller entities; (c) the invocation of separate corporate identity to evade responsibility for rights violations within the subcontracting chain; and (d) often even the disappearance of a collective workplace with home-based work.<sup>53</sup>
101. For almost four decades, the notion of labour market “flexibility” has been particularly one-sided. Employers’ main emphasis has been, and still is, to cut costs and find ways to reduce the unit cost of labour. In the 1970’s and 1980’s, the employment relationships most strongly associated with women, the precarious forms of part-time, contract, and temporary work, began to take hold as the new model. Labour costs were no longer fixed, but variable. Labour was purchased only as and when needed. The emergent casualized labour market meant predominantly lower wages, less access to benefits, holiday pay, overtime pay, CPP, severance pay, employment insurance. The normalization of this precarity traps women in jobs that are structured around and compensated on discriminatory norms that devalue women’s skills, time, labour force attachment and efforts.
102. These trends again intensify the precarity of women workers; present hurdles to closing the gender pay gap; and present barriers to overcoming occupational segregation and precarious employment relationships – all of which suppress wages and impede effective labour and human rights enforcement.
103. Employers’ demand for worker “flexibility” is in fact a demand that workers privately (and social programs, publicly) bear the risk of business decisions. It leads to a proliferation of precarious forms of employment, greater “individualization” of working conditions and generates more often false forms of self-employment.
104. In Canada, “non-standard” employment relationships have grown from 33% in 1989 to 37% in 2001. Between 1989 and 2002 part-time employment rose from 16.8% to 18.7%. Other forms of precarious work have grown. In general, own-account self-employment rose from 7.2% to 9.8% between 1989 and 2002. Over one in 10 employed women in Canada are self-employed. In 2004, 11% of all employed women, were self-employed, up from 9% in 1976. Overall, women accounted for 34% of all self-employed workers in 2004, up from 31% in 1990

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53 Ibid and M. Cornish, “Closing the Global Gender Pay Gap: Securing Justice for Women’s Work,” *Comparative Labor Law & Policy Journal* 28:2 (Winter 2007): 219.



and 26% in 1976.<sup>54</sup> As detailed in Part VI, men dominate higher-paying often full-time standard work, while women are more frequently employed in insecure, often part-time, lower paid non-standard employment, including disguised self-employment, casual and temporary employment and home-based low income work.

105. At the same time, businesses have been fragmenting their operations, contracting out different elements of the operations with the express goal of reducing the costs of each of those separate operations. This facilitates continuing competitive bidding to suppress the costs of contracted out operations, encouraging practices such as contract flipping that deepen workers' precarity and lower wages and working conditions. It also erodes opportunities for career progressions as transitions from contracted services into the core operation is more difficult and lateral moves across what had previously been elements of an integrated firm are no longer possible.
106. Similarly, such fragmentation shifts the costs of training and skill development onto the individual employee as the core entity retreats from its earlier training and mentoring functions in favour of demanding workers who are job-ready.<sup>55</sup> What must be emphasized is that (mostly white) male-dominated secure standard jobs tend to be found in the core workforce while predominantly female and racialized workforces tend to be concentrated in the lower paid peripheries.
107. Along with – and as part of – this fragmentation of the workplace, the size of workplaces has shrunk. Between 1978 and 1986 the proportion of small workplaces with less than 20 workers increased from 16.28% to 24%. The Toronto Region Research Alliance, *Workplace Establishments Report* outlines that in 2007, 74% of Ontario's 544,885 workplaces have less than 10 employees.<sup>56</sup> All of these employees are excluded from the coverage of the *Pay Equity Act*.
108. By 2007, the trend towards smaller workplaces was very apparent. The above-noted report states that the Retail and Wholesale sector, for example, has an estimated 149,596 establishments in Ontario with less than 50 employees. Accommodation, Food, Beverage and Recreation have 45,817 establishments with less than 50 employees.

<sup>54</sup> Statistics Canada, *Women in Canada: A Gender-based Statistical Report*, 5th edition, Ottawa, March 2006, p. 110 (<http://dsp-psd.tpsgc.gc.ca/Collection-R/Statcan/89-503-X/89-503-XIE.html>)

<sup>55</sup> See, for example, Tom Zyzis, *Working Better: Creating a High-Performing Labour Market in Ontario* (Toronto: Metcalf Foundation, 2011)

<sup>56</sup> Toronto Region Research Alliance, *Workplace Establishment Report for Ontario, Canada*. Relies upon Environics Analytics, *Business Profiles*, 2007. Daytime population is provided by Environics Analytics and is an estimate of total population for each Census geographic level during daytime hours. Data sources used are the 2006 Census, Environics Analytics' 2008 population estimates along with business locations and sizes from Info Canada (available at <http://www.trudeaufoundation.ca/community>).

109. The majority of firms in the private sector have less than 20 full-time employees whereas for the public sector the majority of organisations have more than 300 full-time employees.
110. Small workplaces should not be confused with “small” employers. In the networked relationships outlined above, many large and highly profitable employers oversee a large number of smaller workplaces because work that might have been performed ‘in-house’ in the 1980s is now contracted out to smaller private firms. It is the instrumental use of these forms of business organization that freeze women into forms of employment that devalue their economic contributions and suppress their pay.

**v. Shrinking Governments: The Austerity Agenda and Government’s Declining Role as an Equality Defender**

111. Since the Abella Report and the 1988 *Pay Equity Act*, Ontario governments and public sector organizations have been under siege and have repeatedly been targeted for cuts. The public sector was Ontario women’s best chance for equitable pay but privatization and fiscal restraints have eroded the role of the Ontario government as a human rights defender. In the face of a policy choice to refuse to increase revenues to provide for necessary health and social services and equitable pay for the delivery of public services, the Ontario government instead has repeatedly imposed program cuts, compensation restraints, privatization and deregulation. All these actions have directly impacted and sustained Ontario’s gender pay gap.
112. With the impact of globalization and the move to deregulate and eliminate “red tape”, labour market protections are eliminated or unresponsive to actual rights violations and government resources and services are often being reduced at a time when women workers require greater protections and services.<sup>57</sup>
113. Governments at both the provincial and municipal levels have resisted paying and funding women's work at what it is worth and have used the uncertain economic times to either freeze women's pay at discriminatory levels or to make matters worse for women by creating more precarious and low paid work. These are the dynamics we need to name and reject.
114. Particularly since the 1990s, the Ontario Government has pursued an austerity agenda which has substantially contributed to creating, sustaining and often widening the gender pay gap for women workers. This is done in multiple ways including (a) pursuing zero growth policies that preclude rectifying existing pay gaps and privatizing public sector jobs which did deliver more secure and

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57 M. Cornish, "Closing the Global Gender Pay Gap: Securing Justice for Women's Work," *Comparative Labor Law & Policy Journal* 28:2 (Winter 2007): 219.

equitable jobs; (b) by privatizing critical elements of public healthcare and social services in a way that depends upon women to bridge the care gap through their unpaid or low paid precarious labour; (c) by eliminating social programs that support the training and education of women, such as TARP; (d) by refusing to adopt and fund affordable, accessible childcare, elder care and care for persons with disabilities that would enable women to engage in the labour market and that would provide the women doing that care labour with decent jobs under decent working conditions; and (e) by eliminating provincial pay equity funding for pay equity adjustments identified to close the gender gap which were owed to women providing public services in public sector agencies.

115. Ontario announced on April 20, 2015 that "Closing the Wage Gap between men and women in part of the government's economic plan for Ontario" – That was a great statement by the Minister of Labour – but it is meaningless if nothing is done to embed that goal actually in the Government's economic plan. "Building Ontario Up – Ontario's 2015 Budget" - which is about 426 pages makes only two references to the term "women" – none to "gender" "sex" or "female" or "male". With the exception of references to eliminating sexual violence and harassment which is one of the steps to pay equality, for all intents and purposes, women and their unequal pay compared to men is invisible in this economic plan.
116. Why is this? Because the Ontario government relies on women's unequal pay and circumstances to build its economic plan and make cost savings. As this Review is being conducted, the Premier has mandated Ontario's Treasury Board Minister to constrain public sector pay, to implement program review savings targets and otherwise find savings by transforming public services, reducing costs and acting on the 2012 *Report of the Commission on the Reform of Ontario's Public Services* ("the Drummond Report"). This Report prescribed austerity measures that identified no less than 362 places to cut spending. The 2015 Ontario budget claims the province is "moving forward with about half of the 362 recommendations" and promises to implement a total of 60% of the recommendations.
117. The Drummond report calls on the government to consider putting out to tender more public services to save costs. Tendering to the lowest bidder who meets the requirements will widen the pay gap. Ontario's initial tendering process in the home care sector made it almost impossible for service providers who had adjusted pay to reflect equity requirements to win a competitive bid and keep their contract.
118. These austerity measures are being taken without any gender lens or concern for the impact which this will have on women, their earnings and livelihoods and the closing of the gender pay gap. Despite the Premier's mandate to close the gender pay gap, the same process is being used right now to prepare the 2016 Budget.
119. Austerity is premised on the unfounded notion that cutting government spending,

cutting public services, reducing benefits and cutting tax revenues will benefit the economy. The market, it is argued, will fix the gender wage gap. This approach clearly has not worked as evidenced by the persistent gender pay gap. And this ideology has been rejected by many. The new federal government argues for pursuing an agenda of infrastructure spending—not restraint—to stimulate the economy.

120. The Panel's own statistics and the chart at the beginning of this submission demonstrate that the decline in the gender pay gap was largely halted in and around 1996. This is the same year that the intense austerity measures of the Harris government years were introduced. Government spending in social programs was cut, welfare rates were cut by 21%, the size of the provincial public service was drastically reduced, changes to labour market regulations made it harder for women to join unions and pay equity funding and entitlements were drastically cut.
121. Cuts were also made to institutions with responsibility for oversight of women's pay. For example, the number of investigative officers at that Pay Equity Commission was cut by more than half by 1998 despite the fact that there is widespread non-compliance with the legislation; and these investigative officers have not been replaced in the intervening years.
122. As the Canadian Centre for Policy Alternatives' analysis of Ontario's recent provincial budgets demonstrates, Ontario remains in austerity mode, despite the mounting evidence and warnings by economists that austerity is doing more harm than good.<sup>58</sup> In the April 2015 edition of the World Economic Outlook (WEO) report, which featured data from 16 G20 countries, the International Monetary Fund found no evidence that neo-liberal deregulatory labour market reforms have had any positive impact on economic growth.<sup>59</sup>
123. In 2015, the provincial government promised to continue the annual one per cent increases in ODSP and OW rates and provided another top-up to single people without children who are receiving OW. However, these rates remain woefully inadequate. The real value of basic ODSP and OW benefits since 1993 continues to decline and any increases have not caught up to the real value of

<sup>58</sup> Trish Hennessy and Jim Stanford, *More Harm Than Good: Austerity's Impact in Ontario*, Report for the Canadian Centre for Policy Alternatives, March 19, 2013 (available at: <https://www.policyalternatives.ca/more-harm-good>).

<sup>59</sup> International Monetary Fund, *World Economic Outlook: Uneven Growth: Short- and Long-Term Factors*, April 2015, pp. 104-105 (available at: <http://www.imf.org/external/pubs/ft/weo/2015/01/>), (Box 3.5: "The Effects of Structural Reforms on Total Factor Productivity"):

*"[...] lower product market regulation and more intense use of high-skilled labor and ICT capital inputs, as well as higher spending on R&D activities, contribute positively and with statistical significance to total factor productivity. [...] In contrast, labor market regulation is not found to have statistically significant effects on total factor productivity [...]."*

these benefits prior to the 21% cuts by the Harris government in 1996.

124. In 2015, Ontario government program expenditures were increasing by only 1.4%. This is below what is required to keep up with inflation and population growth. Over the last 5 years, it works out to a decrease in real, per-capita expenditures of 6 per cent, or more than \$7 billion in total.
125. While the provincial government has stated that it's not interested in more austerity, public sector workers and public services are still being squeezed: 400,000 people have been subject to a wage freeze of one to four years since 2012. This year's budget promises more wage freezes or cuts to those who work directly for the government or in publicly funded agencies; once again reducing the deficit on the backs of those who are predominantly women workers.
126. Nine governments in an era of neo-liberalism been in retreat yet international and domestic human rights obligations as highlighted in Part III above, require them to play a vital role in establishing the legal frameworks, policies, social programs, regulation of business conduct, and enforcement of rights that fundamentally create the possibility for gender equality in the labour market. See **Appendix B**.
127. It must be emphasized that an austerity agenda is a deliberate, conscious, policy choice and that it affects women differently than men. Austerity's mantra of deregulation and cuts makes any expenditure on social good and social programs suspect and provides ideological reinforcement to the objective of private sector profit maximization and denigration of social programs. An austerity agenda stands firmly in the way of securing equality because it closes off options for reform from the outset by defining them as fundamentally incompatible with the primary agenda of restraint and deregulation.

#### **vi. Decline of Unionization and Importance of Collective Representation**

128. The Supreme Court of Canada has recognized that the right to unionize, the right to pursue meaningful collective bargaining and the right to strike are all critical exercises of the fundamental freedom of association and that the exercise of these collective actions is guaranteed under the *Charter*.<sup>60</sup> The Court has further ruled that in light of the power imbalance between employers and workers, the state has an obligation to ensure that vulnerable workers have access to legislation that ensures that they can in reality exercise these fundamental rights.<sup>61</sup>
129. Yet, the era of neo-liberalism in Canada has been marked by repeated incursions

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60 *Health Services and Support - Facilities Subsector Bargaining Assn. v. British Columbia*, [2007] 2 SCR 391; *Mounted Police Association of Ontario v. Canada (Attorney General)*, [2015] 1 SCR 3; *Saskatchewan Federation of Labour v. Saskatchewan*, [2015] 1 SCR 245.

61 *Dunmore v. Ontario (Attorney General)*, [2001] 3 SCR 1016.

on the right to unionize, the right to bargain collectively and the right to strike. Moreover, labour legislation has been reformed in ways which makes it more difficult to unionize and easier to decertify unions. As well, the restructuring of work has left many employees in contracting relationships without a direct employer to unionize.

130. The decline of unionization is addressed in more detail in Part VI. What is important to stress at this point is that unions have been the most significant countervailing force to the austerity agenda. Union organizations in the Equal Pay Coalition have been at the forefront of campaigning to close the gender pay gap and working to enforce the existing laws. This role was reinforced by their statutory role under the *Pay Equity Act*. So the policy choice to destabilize unions has contributed to the growing income and persistent gender gap and the entrenchment of the gendered precarity outlined above.<sup>62</sup>

### **vii. Unequal Households, Unpaid Care Obligations and the Care Economy**

131. Finally, the political economy of the Ontario labour market continues to ignore the role of the household as a key part of the labour market and this remains a bedrock element of the systemic discrimination women experience in earnings. Businesses, government and the labour market depend upon the invisibility of women's unpaid care work to sustain the economic functioning of the province. But this determination to render this economic contribution invisible and private (and undervalued and underpaid when performed publicly) traps women in a vicious cycle of underemployment, precarious employment, undervalued labour, economic poverty and time poverty.<sup>63</sup>
132. Ontario's labour market system continues to be designed for persons without care expectations – in other words – for men. As detailed in Pat and Hugh Armstrong's landmark book, *The Double Ghetto: Canadian Women and Their Segregated Work*,<sup>64</sup> Ontario women's unpaid reproductive and care work is not even considered part of the labour market even though it is absolutely essential to its sustainability.<sup>65</sup>
133. Women remain primarily responsible for unpaid housework and caring for children, the elderly, persons with disabilities, and family members who are ill. This creates significant stress in reconciling their unpaid and paid work responsibilities. As is addressed further in Part VI, the lack of affordable care services restricts women's ability to access paid labour, to access full employment, and to retain the employment they do have. It traps women in

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62 See M. Behrens, ed., *Unions Matter*, supra.

63 See discussion in Gottfried, *Gender Work and Economy*, supra, pp. 100 ff.

64 Oxford University Press, Third Edition, originally published in 1978.

65 See discussion in Gottfried, *Gender Work and Economy*, supra, pp. 100 ff.

precarious contingent work. Given the unequal relations of social reproduction, and the constraints women face as a result of their domestic and child care responsibilities, precarious employment with unequal pay is not a free choice but yet another manifestation of the systemically discriminatory gender penalty.

134. Furthermore, as is addressed further in Part VI, some more affluent women seek to address the lack of public care services through contracting for household and care services in their private homes or elsewhere. Increasing numbers of racialized women with precarious temporary migration status are being recruited to Ontario to perform that care work or in private businesses, often in extremely precarious conditions.<sup>66</sup>
135. Ultimately, all of these broad patterns within the Ontario labour market which are hallmarks of the 21<sup>st</sup> century economy are consciously chosen policy directions that fundamentally impede progress towards closing the gender pay gap. Without acknowledging and addressing these trends, it will not be possible to effectively advance towards compliance with the legal obligations to secure gender equity in the labour market.

## **VI. MAPPING SYSTEMIC DISCRIMINATION DYNAMICS THAT SUSTAIN THE GENDER PAY GAP**

### **Introduction**

136. As the Steering Committee's Background Paper illustrates, regardless of how women's and men's earnings are calculated (full time, part time, annual, hourly, median, average, before tax, after tax, public sector, private sector, industry-or occupation specific), women consistently earn less than men across all measures.<sup>67</sup> As well, those calculations overlook the unequal benefit entitlements women also experience; if that economic disparity were included, the gender pay gap would be even larger. These pay gaps persist throughout women's working lives and persist despite women having similar and sometimes greater educational and training qualifications as men.<sup>68</sup>
137. These pay gaps are intensified by intersectional discrimination that also disproportionately disadvantages women who are Indigenous, racialized, have disabilities, are immigrants, have temporary migration status, and who face other forms of systemic oppression.<sup>69</sup>
138. Racialized women earn 19% less than non-visible minority women and 24% less

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66 *Ibid.*, pp. 113 ff.

67 Ontario Ministry of Labour, *Closing the Gender Wage Gap: A Background Paper*, October 2015, pp. 9 ff ([http://www.labour.gov.on.ca/english/about/pdf/gwg\\_background.pdf](http://www.labour.gov.on.ca/english/about/pdf/gwg_background.pdf))

68 *Ibid.*, p. 46.

69 *Ibid.*, pp. 12, 33, 47.

than racialized men. First-generation immigrant women earn 18% less than non-immigrant women and 27% less than immigrant men. Aboriginal women's median income is 17% less than those of non-Aboriginal women, and lags 25% behind the earnings of Aboriginal men and 40% behind the earnings of non-Aboriginal men. Women with disabilities earn 75% of women without disabilities.<sup>70</sup> See as well, section c. below.

139. Footnote: Statistics prepared by Richard Shillington from data collected by Statistics Canada, Survey of Labour Income Dynamics (SLID) 2011
140. While some dynamics of systemic sex discrimination directly depress the precise pay that women receive in exchange for their labour, the gender pay gap is not isolated to discriminatory pay setting. Rather, the gender pay gap is the product of a wide range of factors including institutional practices, policies and laws that depress women's overall earning capacity relative to men.
141. While it is beyond the scope of these submissions to comprehensively map all these elements of systemic discrimination, this section maps some key dynamics that depress women's overall earning capacity and contribute to the gender pay gap including:
  - a. Discriminatory Pay Setting
  - b. Access to Employment - Segregated Jobs and Industries/Sectors
  - c. Access to Employment- Barriers faced by Further Disadvantaged Workers
  - d. Access to Employment - Child and other Care Responsibilities
  - e. Access to Pay - Predictability and Security of Pay/Hours of Work
  - f. Employment Status – Precarious Work and Workplaces
  - g. Empowerment of Women's Voice – Barriers to Collective Representation
  - h. Gendered Dynamics that Undermine Continued Employment and Pay
    - i. Harassment and Violence
    - ii. Pregnancy and Motherhood Discrimination
    - iii. Care Obligations
142. Ontario's gender pay gap is a function of the systemic labour market discrimination which women experience at all points of the work continuum. This discrimination arises from multiple, separate but interconnected and cumulatively intensifying discriminatory dynamics. Some of these systemic dynamics specifically target pay and are immediately recognizable as gender discrimination. Other dynamics do not on their face target pay rates, and on their face do not appear to target gender or other grounds. Yet, their impacts are ultimately experienced differently by women in the form of depressed pay and often experienced differently again by those disadvantaged by other grounds. Both kinds of discriminatory dynamics must be rectified to close the gender pay

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70 M. Cornish, *A Growing Concern*, *supra* and see statistics prepared by Richard Shillington from data collected by Statistics Canada, Survey of Labour Income Dynamics (SLID) 2011



gap.

143. Women experience discrimination in their segregated job ghettos where the different work women do is systemically undervalued both because it is not counted and because what is counted is not valued properly. They also experience many barriers to gaining access to secure and predictable decent work and pay. This includes the discrimination women experience because of the barriers – the “glass ceiling”, “glass walls” and “sticky floor” – that women face in gaining access to higher paying “men’s” work across the work spectrum. They also experience discrimination doing substantially the same jobs as men and yet getting paid less.

**a. Discriminatory Pay Setting**

144. The discrepancy between the actual pay that women and men earn is the most obvious location of the gender pay gap. It is well established that women across all sectors of the economy at all levels of employment face discriminatory pay rates. The reality is that women continue to be paid less for doing substantially similar work as men, and women in their segregated job ghettos also continue to be paid less when doing work of similar value to work done by men. As Pat Armstrong, a recognized expert on pay discrimination and women’s work, has written, there are three fundamental features of the sex discrimination that results in women receiving lower pay rates:

*1. Women are segregated from men into different work and different workplaces. The labour force in Canada and Ontario is divided along gender lines across occupations and industries. To a large extent, women and men do different work in different workplaces. There are still “men’s jobs” and “women’s jobs”.*

*2. The gender segregation of the labour force is accompanied by wage inequality. Female-domination of a job and low pay are linked. In general, women’s segregated work is paid less than men’s work and the more women [are] concentrated in a job, the less it pays. The data on the labour force as a whole indicates that work mainly done by women is consistently paid less than the work mainly done by men, with little regard to the value of the work to the employer or the consumer.*

*3. Lower pay reflects the systemic undervaluation of women’s work relative to that of men’s work. Many of the demands, conditions and contributions of women’s work are invisible and undervalued both because so many women do these jobs and because female-dominated skills, effort, responsibilities and working conditions are associated with unpaid domestic or volunteer work. Yet such skills are essential to the employer and are acquired over time, through training, even though they are often undervalued relative to those of men. Moreover, many of these women’s jobs are highly demanding, but in ways so long associated with women that they are thought to be part*

*of being a woman.*<sup>71</sup>

145. The "care economy" is an important example of this discriminatory pay setting. Economists have coined the term the "care penalty". This refers to both the low pay and strenuous workload for those in the "care economy" who care for the young, the elderly, those with disabilities, and those who are otherwise vulnerable within our society. The workforce in the social service, health care and child care sectors—all of which play a 'caring' role in our society—is predominately female.<sup>72</sup> Historically these types of paid care jobs have been viewed as 'women's work'. They are seen as an extension of the kind of unpaid work that women have traditionally performed in the home. There are a wide range of other jobs that similarly demand women's unrecognized and uncompensated emotional labour in facilitating the delivery of services (i.e. retail, hospitality, administrative support) and for which women are considered particularly well suited.
146. The systemic discrimination which women face in pay setting as set out by Pat Armstrong is the focus of the *Pay Equity Act* and has been documented by the Pay Equity Hearings Tribunal in its jurisprudence where Armstrong was relied on as an expert.<sup>73</sup> The Tribunal in its *ONA v. Women's College Hospital* decision made these findings:

*The sociological evidence we heard disclosed that gender is a factor in the value placed on activities and work performed by women and men, and therefore in the setting of wages. Wage discrimination in the setting of women's wages is pervasive.*<sup>74</sup>

147. Discriminatory pay equity setting is also addressed under the *Employment Standards Act* and *Human Rights Code* as set out in Part VIII below.
148. For example, even when women and men have the same qualifications and are doing the same jobs, systemic sex discrimination results in women often receiving lower pay. This is the discrimination addressed by section 42 of the *Employment Standards Act*. And this discrimination does not dissipate as women's educational attainment increases. As recent studies have indicated, university educated women receive lower starting salaries than males of their

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71 Pat Armstrong, Expert Witness, Opinion adopted in *Service Employees International Union, Local 204 v. Ontario (Attorney General)*, 1997 CanLII 12286 (ON SC).

72 See Pat Armstrong et al, *Critical to Care: The Invisible Women in Health Services* (Toronto: University of Toronto Press, 2008); M.J. Budig, and J. Misra, "How care-work employment shapes earnings in cross-national perspective," *International Labour Review*, 149 (2010): 441–460; P. England, M.J. Budig, N. Folbre, "Wages of Virtue: The Relative Pay of Care Work," *Social Problems*, 49:4 (November 2002): 455-473.

73 *O.N.A. v. Haldimand-Norfolk (No. 6)* (1991), 2 P.E.R. 105 and *Women's College Hospital (No. 4)* (1992), 3 P.E.R. 61. See also the decision in *SEIU Local 204 v. A.G. (Ont)*, *supra*.

74 *Women's College Hospital*, *supra*, at paras 16-21.

graduating cohort in the same field and that initial pay gap grows over their careers.<sup>75</sup>

149. The pay setting inequalities women and other disadvantaged groups face in workplaces is perpetuated and sustained by the secrecy which pervades employer's pay setting practices. Employees are generally, (except in unionized workplaces) forbidden or discouraged from talking about their pay and the pay structures and wage grids are not available to employees. This results in disadvantaged groups not even being able to see the discrimination which is being practised. Making visible and transparent those practices is an essential human rights tool.
150. As well, discriminatory pay setting also occurs when women who are dependent or independent contractors contract with businesses and governments for their services and receive less money than the value of their services. Many women in Ontario's care sector contract to provide important public services but at pay which is undervalued relative to male work because they are women doing "women's work". This is the basic argument in the Association of Ontario Midwives human rights application against the MOHLTC under the *Human Rights Code*.<sup>76</sup> The MOHLTC sets the compensation of midwives through a contract between a transfer payment agency and the midwifery practice group but refuses to rectify the pay discrimination faced by midwives as it states they are not covered by *Pay Equity Act* as independent contractors and there is no obligation to carry out any equity analysis.
151. The dynamics above combine to create pervasive discrimination in pay setting which is generally present regardless of the particular nature of women's work, her work industry or sector, her own capacities and her particular employer.
152. Other discrete pay practices also systemically disadvantage women. For example, the ILO has found that differentiated pay grids for male and female jobs are common elements of gender-based work organization that discriminate against women.<sup>77</sup> This means that where men and women are doing jobs of similar value, the female dominated jobs are often paid on grids that have more but smaller grid steps and it takes a much longer period of time to move from step to step than on the male wage grids.<sup>78</sup>

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<sup>75</sup> M. Drolet, *The Persistent Gap: New Evidence on the Canadian Gender Wage Gap*, Report prepared for Statistics Canada, Income Statistics Division, December, 1999, pp. 21 ff; also see Ontario Ministry of Labour, *Closing the Gender Wage Gap: A Background Paper*, *supra*, p.16.

<sup>76</sup> See the HRTO's interim decision, *Association of Ontario Midwives v. Ontario (Health and Long-Term Care)*, *supra*. For more information see: <http://www.ontariomidwives.ca>.

<sup>77</sup> International Labour Office, *Promoting Gender Neutral Job Evaluation for Pay Equity* (Geneva: ILO, 2008) at p. 263

<sup>78</sup> See *Lakeridge Health Corporation et. al*, 2012 ONSC 2051.

153. This discriminatory pay setting also has even greater effects for women who experience discrimination on other grounds as highlighted below in section c. below.
154. But before women even receive pay, there are multiple dynamics of systemic sex discrimination that restrict their access to employment in the first place.

**b. Access to Employment – Segregated Jobs and Industries/Sectors**

155. Our labour markets are still deeply gender segregated. Women still encounter widespread systemic discrimination in trying to access the labour market. As set out below, women are disproportionately segregated into the lowest paid sectors and the lowest paid jobs in those sectors. Even when they manage to get into higher paying male dominated occupations, (eg. managers, physicians, lawyers) they are often re-segregated into the lower rungs of those occupations.<sup>79</sup> They are also segregated into a narrower range of jobs than men. They face barriers being hired into traditionally male-dominated sectors of work and into emerging sectors of work that are male dominated. And they continue to face discrimination in accessing training and education and being considered for promotions and work opportunities.<sup>80</sup>
156. In 1985 Ontario's *Green Paper on Pay Equity* reported that "Ontario has a segregated labour force, with approximately 60% of female workers clustered in 20 out of 500 occupations".<sup>81</sup> As noted above, there has been not been substantial change in this segregation.<sup>82</sup> And this gender-based occupational segregation of the labour force is accompanied by wage inequality. Female-domination of a job and low pay are linked. The more female-dominated the industry or the occupation, the more women's wage rates are depressed. In 1995 women accounted for less than 20% of workers in the ten top paying jobs and more than 78% of those in the ten lowest paying jobs. This pattern is ongoing. Shillington's research shows that there are a majority of female

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79 For a discussion of this "re-segregation" process see H. Gottfried, *Gender Work and Economy*, *supra*, pp. 2, 60-62. Also see: R. Jagsi et al., "Gender Differences in the Salaries of Physician Researchers," *Journal of the American Medical Association* 307:22 (2012): 2410-2417; R. Dinovitzer, *Law and Beyond: A National Study of Canadian Law Graduates*, University of Toronto (2015), at p. 48 (available at: <http://individual.utoronto.ca/dinovitzer/images/LABReport.pdf>); F.M. Kay and E. Gorman, "Women in the Legal Profession," *Annual Review of Law and Social Science* 4 (2008): 299-332; P. D. Larson and M. Morris, "Sex and salary: Does size matter? (A survey of supply chain managers)". *Supply Chain Management: An International Journal* 19:4 (2014): 385–394.

80 See research of Richard Shillington referred to in Part 1 and expert report of Richard Shillington in the *ONA and SEIU v. Participating Nursing Homes* proceeding, *supra*..

81 Government of Ontario, *Green Paper on Pay Equity*, *supra*, at p. i

82 See research of Richard Shillington referred to in Part 1 and expert report of Richard Shillington in the *ONA and SEIU v. Participating Nursing Homes* proceeding, *supra*..

employees in 8 of the 10 lowest earning occupations and there is only majority female occupation in the 10 highest paying occupations.<sup>83</sup>

157. Furthermore, women continue to make less on average than men in almost every industry and occupation regardless of whether the occupation or industry is female dominated. The research conducted for this submission by statistician Richard Shillington using Statistics Canada Ontario data shows this in great detail.<sup>84</sup>
158. Men and women continue to do different work often in different workplaces with men dominating higher-paying “production”, supervisory and management positions and women dominating lower-paying care giving, home-based or informal jobs.
159. For example, women made up 21% of managerial positions in 1987 and this has gone virtually unchanged with women now making up 22% of the total employed in managerial positions. In 1987, 5.2% of women worked in trades, transport and construction and this has remained virtually the same with women making up only 7% of this occupational category. The business and finance sectors have seen some improvements. Women now make up 51.3% of the total employed in the sector compared to 38% in 1987.
160. Traditionally female-dominated occupations have not seen a change. Nurses are 87% women and this has not changed since 1987. In clerical and administrative positions women remain at 75% to the total employed. Very few professional occupations have seen modest changes.<sup>85</sup> But even here while greater numbers of women are entering some professional fields, women exit the field earlier and in larger numbers than men due to persistent systemic discrimination in the work structures.
161. According to Statistics Canada, Women in Canada 2006 report, there has been virtually no change in the proportion of women employed in these traditionally female-dominated occupations over the past decade.
162. In fact, the share of female workers employed in these areas in 2004 was almost exactly the same as that in 1996. In 2004, 67% of all employed women were working in teaching, nursing and related health occupations, clerical or other administrative positions, and sales and service occupations. This compared with just 30% of employed men.

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<sup>83</sup> See expert report of Richard Shillington in the *ONA and SEIU v. Participating Nursing Homes* proceeding, supra..

<sup>84</sup> This research is posted at [www.equalpaycoalition.org](http://www.equalpaycoalition.org).

<sup>85</sup> See, for example, F.M. Kay, S. Alarie and J. Adjei, *Leaving Law and Barriers to Re-Entry: A Study of Departures from and Re-entries to Private Practice: A Report to the LSUC*, April 2013 (available at: <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147494539>).

163. The pervasive occupational segregation of Ontario's workforce by sex corresponds with a value system in which men's work is considered superior economically, socially and legally. Women's full integration into the labour market continues to be resisted and surrounded by patriarchal stereotypes, prejudices, misconceptions and culturally-based expectations about gender roles and what constitutes "valuable work worthy of protection".
164. As the Ontario Government's "It's Never Okay – An Action Plan to Stop Violence and Harassment" notes, misogyny or hatred or dislike of women continues to operate in Ontario and supports a culture of rape and violence and harassment against women. As the Plan notes, such violence is part of the same systemic network which also produces inequalities for women in the labour market.<sup>86</sup>

**c. Access to Employment - Barriers Faced By Further Disadvantaged Workers**

165. Women who are further disadvantaged experience even more acute discrimination and this is reflected in their greater earnings gaps detailed above.
166. As highlighted in Part V above and below, the globalized Ontario labour market is also marked by other discriminatory dynamics as those who are disadvantaged by other factors such as race, ethnicity, Indigenous status, immigrant status, disability, or LGBT status are also often found clustered in low paying and precarious work.
167. Racialized, immigrant and migrant women predominate in the most precarious work—low paying care jobs both in the home and in the market.<sup>87</sup> A recent Alberta report found that highly educated second generation visible ethnic minorities earn less than the general population. This "ethnic penalty" is even greater for women.<sup>88</sup>
168. Other more privileged, often non racialized women win a degree of labour market freedom by paying such women to care for their children but resulting in very precarious work circumstances for the caregiver and exacerbating the inequalities among women. Many disabled and Indigenous women have difficulty accessing the market at all.<sup>89</sup>

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86 Government of Ontario, *It's Never Okay – An Action Plan to Stop Violence and Harassment*, Queen's Printer, March 2015, p.34-35 and Marie Deschamps, CC. Ad.E, External Review Authority, "External Review into Sexual Misconduct and Harassment in the Canadian Armed Forces", March 27, 2015.

87 See Pat Armstrong, *Critical to Care*, *supra*, and Gottfried, *Gender Work and Economy*, *supra*.

88 <http://www.cbc.ca/news/canada/edmonton/migrant-workers-face-ethnic-penalty-in-job-market-u-of-a-researcher-1.3402753>

89 D. Wilson and D. MacDonald, *The Income Gap Between Aboriginal Peoples and the Rest of Canada* (Canadian Centre for Policy Alternatives, April 2010); Native Women's Association of

169. Ontario's Colour of Poverty group and other groups such as DAWN – the DisAbleD Women's Network Canada<sup>90</sup> and the Native Women's Association of Canada have all detailed the many ways in which factors such as Indigenous status, race and disability affect women.<sup>91</sup>
170. With respect to race, the CCPA study *The Colour Coded Labour Market: The Gap for Racialized Workers*, detailed the segregated jobs and unequal conditions of work for those who are racialized. Shillington's research showed that racialized women earn less than racialized men who earn less than non-racialized men.<sup>92</sup> Such discrimination was also highlighted in the 2004 Federal Pay Equity Task Force Report which recommended that race should also be considered as a factor in pay equity processes.<sup>93</sup>
171. As well, there is evidence that the work which racialized, immigrant or temporary migrant women do is depressed in pay.<sup>94</sup> See the discussion in section d. below about the precarious work and pay circumstances of racialized women caregivers.
172. A recent Ontario legislature all-party Committee found that Ontario is also a “major hub” for human trafficking where women, often racialized, experience sexual exploitation, violence and severe pay theft and precarity.<sup>95</sup>
173. Woman with disabilities also must face the discrimination that has paid people with disabilities less money as well as another layer of prejudices about their abilities and skills.<sup>96</sup> They also face high rates of violence and abuse as well as lack of accommodation of their disabilities by businesses, governments and service and accommodation providers.<sup>97</sup>

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Canada, *GBA: A Culturally Relevant Gender Application Protocol* (Ottawa, ON, 2010).

90 DisAbleD Women's Network Canada, <http://www.dawncanada.net/en/?language=en>. See <http://www.dawncanada.net/main/wp-content/uploads/2014/03/English-Poverty-January-2014.pdf>

91 See <http://www.ohcc-ccso.ca/en/the-colour-of-poverty> and <http://www.dawncanada.net>.

92 Also see: S. Block and G. E. Galabuzi, *Colour Coded Labour Market: The Gap for Racialized Workers*, (Canadian Centre for Policy Alternatives, March 2011), p. 11;

93 2004 Federal Pay Equity Review Task Force, “Pay Equity: A New Approach to a Fundamental HumanRight”, file:///C:/Users/Mary%20Cornish/AppData/Local/Microsoft/Windows/INetCache/IE/C IKPYTVI/00000052.pdf

94 See discussion in Block and Galabuzzi, *The Colour Coded Labour Market*, supra, Armstrong et.al., *Critical to Care*, supra, and Gottfried, *Gender Work and Economy*. See also the resources at <http://www.colourofpoverty.ca>.

95 See discussion in <http://www.thestar.com/news/queenspark/2015/12/10/human-trafficking-of-young-girls-in-ontario-must-be-tackled-by-police-crime-force-say-mpps.html>.

96 See DisAbleD Women's Network Canada, <http://www.dawncanada.net/main/wp-content/uploads/2014/03/English-Poverty-January-2014.pdf>.

97 See DisAbleD Women's Network Canada, <http://www.dawncanada.net/issues/issues/fact-sheets->

174. Greater gender pay gaps have also been identified for LGBT women. One example is that two females in a household means living with a double gender pay gap.<sup>98</sup>
175. While the Review's consultation documents acknowledge these greater gaps, it is necessary now to move beyond acknowledgement and target the specific dynamics which fuel these intersectional pay gaps. This requires using a gender and equity lens which specifically identifies the lived reality of each of the protected groups which are at issue.
176. In order to directly address the further specialized dynamics which operate for these groups who are the most vulnerable and in need of protection, a priority focus must be given to remedying their circumstances.

**d. Access to Employment – Child and Other Care Responsibilities**

177. Apart from the systemic discrimination that results in occupational and industry segregation in the labour market, women face a profound systemic barrier in accessing employment because social policies have not prioritized making affordable childcare, elder care, and care for persons with disabilities available. As a result, women continue to bear disproportionate responsibility for care obligations within immediate and extended families and continue to bear the disproportionate economic cost of doing so.
178. Evidence suggests that giving birth to a child lowers the future earnings of a Canadian mother compared to a comparable woman without children by between 5% and 13%. As a Canadian Labour Congress Report outlines:

*In all countries, participation rates and employment in full-time jobs tend to be lower for women because women still bear the primary responsibility for child care as well as elder care and work in the home generally. Almost everywhere, the gap between the employment rates of women and men increases with the presence and number of children in a family.*<sup>99</sup>

179. Balancing the demands of paid work and unpaid care work, women often have to take low or non-paying "flexible" jobs with unsafe conditions. Women's double

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2/violence/.

98 See, for example: S. White and N. Denier, "Gay Pay for Straight Work: Mechanisms Generating Disadvantage," *Gender & Society* 29 (August 2015): 561-588; John M. Blandford, "The Nexus of Sexual Orientation and Gender in the Determination of Earnings," *Industrial & Labor Relations Review* 56 (July 2003): 622-642; D. Black et al., "The Earnings Effects of Sexual Orientation," *Industrial & Labor Relations Review* 56 (April 2003): 449-469.

99 Canadian Labour Congress, *Women in the Workforce: Still a Long Way from Equality*, March, 2008, p. 4



burden and time poverty are further exacerbated where they take on added care obligations as the Ontario government has rolled back, privatized and eliminated public services.

180. These ongoing impacts of the lack of a public "care" strategy continue despite the proven social and economic benefits of such a strategy as detailed in the report of Robert Fairholm described in Part II c. above.<sup>100</sup>
181. In the absence of a public "care" strategy – in particular one anchored in principles of gender equality and decent work – child care, elder care and care for persons with disabilities remains privatized in individual homes with the primary responsibility falling on women's unpaid labour.
182. Private families who can afford to have increasingly relied on transnational migrant caregivers with temporary immigration status to provide this care under extremely precarious circumstances which are rife with practices of wage theft and other exploitation.<sup>101</sup> Ontario receives more than half of all migrant caregivers who work in Canada.<sup>102</sup> These caregivers are racialized women from the global South, over 90% of whom are originally from the Philippines. Their employment in the most precarious and most undervalued parts of the care sector normalizes a racialized and gendered occupational segregation that creates barriers to these women leaving care work even after securing permanent resident status.
183. Significantly, racialized and gendered political discourses perpetuating the myth that "Canadians won't do this work" are relied upon to create zones of exceptionality where this work is exempted from core employment protections, thereby further suppressing women's wages and heightening their labour market isolation and exploitation.
184. Even where such care is provided in the community rather than the home, women providing that paid care are also often racialized and immigrant workers who do so again for low pay and in precarious circumstances.
185. Through these mechanisms of systemic racial and gender discrimination, one

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100 See CUPE, The Facts, "Major New Study Shows Benefits from Investing in Child Care, September, 2009 and Canada Still Needs Child Care, "A Strong Economy Needs Good Child Care – Canada Can't Work Without It," 2008.

101 See, for example: Workers' Action Centre, *Unpaid Wages, Unprotected Workers: A Survey of Employment Standards Violations* (2011) (available at: [http://www.workersactioncentre.org/wp-content/uploads/2011/12/pb\\_unpaidwagesunprotectedworkers\\_eng.pdf](http://www.workersactioncentre.org/wp-content/uploads/2011/12/pb_unpaidwagesunprotectedworkers_eng.pdf)); J. Gillmore, *The 2008 Canadian Immigrant Labour Market: Analysis of Quality of Employment*, Statistics Canada Report, November 2009 (available at: <http://www.statcan.gc.ca/pub/71-606-x/71-606-x2009001-eng.pdf>).

102 Submission by the Caregivers' Action Centre to Ontario's Changing Workplaces Review Consultations Process, September 18, 2015, p. 2 (available at: <http://www.migrantworkersalliance.org/wp-content/uploads/2015/11/CAC-CRW-submissions.pdf>).

group of women win a degree of labour market freedom by obtaining care at the direct cost of leveraging their privilege relative to women facing deeper forms of marginalization.<sup>103</sup>

186. To close Ontario's gender pay gap will require: (a) development of a meaningful public care strategy; (b) a sufficient supply of high quality child care, elder care and care for persons with disabilities at affordable fees so women can fully participate in the workforce; and (c) decent wages and decent secure working conditions for the mostly female workforce that provides care services for children, the elderly and persons with disabilities.
187. Ontario cannot close the gender pay gap without moving from the current market that relies on private initiatives to develop, maintain and pay for care to a publicly funded, more publicly managed accessible system.
188. The following passages look specifically at the issue of child care but similar concerns and consequences arise for women in respect of elder care and care for persons with disabilities.
189. The Ontario Coalition for Better Child Care (OCBCC) is a member of the Equal Pay Coalition. The OCBCC's submission, on which the EPC relies, outlines how two realities make child care a key element in any strategy for closing the gender pay gap:
  - (a) The lack of affordable, high quality child care continues to limit many women's opportunities to participate in full-time work, training, education;
  - (b) Child care work is still a firmly entrenched 'female job ghetto' in which the almost entirely female workforce continues to be underpaid and undervalued as determined by Ontario's pay equity process.
190. Child care—especially for infants, toddlers and children with special needs—is a labour intensive service and staff wages are directly tied to parent fees, as these are the primary funding source for services; staff costs normally make up 80%-85% of a centre's budget. As parent fees are already out of many families' reach, fees cannot rise to cover the higher wages needed to close the child care workforce's pay gap. Thus, the child care workforce continues to bear the brunt of the absence of public funding and provision of public child care services.
191. As well, limited public funding and weak public policy on child care results in an inadequate supply of quality services, uneven provision of child care services, reliance on unregulated arrangements, unaffordable parent fees, limited integration with the education system and ongoing quality issues.
192. Since the 1980s, there have been piecemeal attempts to address the child care

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103 See also H. Gottfried, *Gender Work and Economy*, *supra*, p. 148.

workforce's low wages and the lack of affordable services. But the absence of a coherent, publicly funded system continues to make these efforts ineffectual and ultimately unsuccessful.

193. What is required is sustained public funding to operate and develop services and the development of a comprehensive system.
194. In 1997, the provincial government of Quebec instituted just such a subsidized universal child care program for children of four years of age. The age minimum was decreased every year until all pre-kindergarten children were covered by the year 2000. By 2004, the price of child care for parents was seven dollars a day per child with the provincial government paying the balance to either private non-profit or for-profit child care firms. As a result of this program, the usage of formal child care has increased dramatically since 1997 and there is now an estimated 200,000 licensed spaces by 2008.
195. One of the main benefits of the Quebec child care program is to enable women to participate in the labour market throughout the entire year as well as in full-time rather than part-time work. This significantly reduces the component of the gender wage gap attributable to women's lack of participation or interrupted participation in the labour market. The child care program also enabled women to attend training and further education programs which further assisted in lowering the gender pay gap.
196. There has never been a better opportunity to move forward on developing an early childhood education and care system. The recently elected federal government has committed to working together with provinces, territories and Indigenous governments to build a National Early Learning and Child Care Framework.<sup>104</sup> This commitment was confirmed in the Ministerial mandate letters of the federal Minister of Children, Families and Social Development and the Minister of Indigenous and Northern Affairs. This is the willing federal partner that Ontario has been waiting for. Ontario has an opportunity to be a leader on this framework and it is an opportunity Ontario must seize.
197. In response to this federal commitment, the Child Care Advocacy Association of Canada, Childcare Resource and Research Unit, Canadian Child Care Federation and Campaign 2000 developed a Shared Framework on Building an Early Childhood Education and Care System. This Shared Framework is designed to facilitate a collaborative intergovernmental and community process and serve as a foundation for a program that will grow, over time, to meet the needs of families and children in all regions.

**e. Access to Pay - Predictability and Security of Pay/Hours of Work**

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<sup>104</sup> See <https://www.liberal.ca/realchange/child-care/>.

198. Another factor that contributes to the gender pay gap is the differential experience that men and women have in securing work that provides steady, predictable hours and predictable pay. The pay gap is a product not just of the quantum of pay, but of how many hours of work employees can access, when they can access them and how consistently paid hours are available.
199. Men dominate higher-paying often full-time standard work while women and particularly further disadvantaged women dominate insecure, often part-time, lower paid standard and non-standard employment.
200. Women are much more likely than their male counterparts to work part-time in the care sector or in retail services.
201. 72% of permanent, part-time workers are women. In 2004, 27% of all women workers were part-time employees, compared with just 11% of employed men.
202. Indeed, women account for about seven in 10 of all part-time employees, a figure which has not changed appreciably since the mid-1970s.
203. But what is important to underscore is that while women predominate in part-time work, women are also much more likely than men to be engaged in involuntary part-time work (i.e. they are working part-time even though they want to work full-time) and are much more likely to attribute their involuntary part-time status to a lack of affordable childcare.<sup>105</sup>

**f. Employment Status: Precarious Work and Workplaces**

204. A further factor that influences the gender pay gap is the degree to which women disproportionately work in precarious, non-standard forms of employment. Beyond part-time work, these precarious forms of employment encompass work that is classified as temporary, casual, independent contracting, self-employment or that is work provided through intermediaries such as agencies.
205. The vulnerability of women in these precarious employment relationships is intensified by employers' deliberate misclassification of workers as own-account independent contractors and through practices by which employers keep

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<sup>105</sup> See, for example: P. Albanese and A. Rauhala, "A Decade of Disconnection: Child Care Policies in Changing Economic Times in the Canadian Context," *International Journal of Child, Youth and Family Studies* 6:2 (2015): 252–274; C. Fagan et al., *In Search of Good Quality Part-Time Employment*, Conditions of Work and Employment Series No. 43 (Geneva: International Labour Office, 2014), pp. 3, 9 ff; R. Chaykowski, *Non-Standard Work and Economic Vulnerability*, Canadian Policy Research Networks – Vulnerable Workers' Series No. 3, March 2005, fn 36:

*The involuntary unemployment rate may be under-estimated, especially for women with children, because those working part-time because of a lack of affordable childcare may actually prefer full-time employment – yet report themselves as voluntarily employed part-time precisely because they lack child care.*

employees on casual, temporary or agency status for years, even decades, thereby suppressing their pay. While these deliberately constructed forms of workplace precarity are growing for all workers, women are more likely than men to be found in precarious employment.

206. These precarious forms of work contribute to the gender pay gap not merely because they are lower paid even relative to full time or permanent workers *doing the identical jobs in the same workplaces*, but because the precarity of the job prevents effective enforcement of employment standards and contractual obligations. Because our enforcement models are complaint-based, and rely upon vulnerable workers to confront non-compliant employers, rights that exist on paper are breached with impunity because workers cannot assert their rights without risking termination or a reduction in hours. As a result, workers employed in these precarious relationships are subject to widespread wage theft and other rights violations that depress their earnings.
207. In Ontario's 21<sup>st</sup> century economy of deliberately constructed employment precarity, women are clustered in the lowest paid, most precarious jobs in the informal and formal sector. Such work a) is highly vulnerable and often unsafe; b) has very low pay and irregular income; c) often excludes, effectively or directly legal and regulatory frameworks; and d) lacks access to employee and social security benefits.<sup>106</sup>
208. Many globalized enterprises and supply chains have a male-dominated core labour force and a periphery of networked enterprises where workers disadvantaged by factors such as gender, race or immigrant status increasingly have only a temporary, contract or home-based status. Many women workers have no “employer” at all as disguised employment or self-employment increases significantly and flexibilization leads to greater “individualization” of working conditions.
209. The duty to deliver non-discriminatory pay is not even considered as global supply chains focus on cost-cutting and production time constraints and use women's low pay as their competitive advantage.
210. Even in a strictly domestic labour supply chain, contracting out and contract flipping are similarly used to suppress wages and many of the cleaning, food service, care and services jobs that are subject to these practices are highly female-dominated. These practices have been documented by the Ontario's Workers Action Centre and form the basis for many of their recommendations in their brief, *Still Working on the Edge* on which the Coalition relies.<sup>107</sup>
211. Downsizing, work restructuring, reduced staffing levels and more ‘hard-nosed’

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106 Workers' Action Centre, *Still Working on the Edge*, Brief to the Changing Workplace Review, March 2015; S. Block, *A Higher Standard*, *supra*, p. 6.

107 Ibid. Workers' Action Centre, *Still Working on the Edge*, Brief to the Changing Workplace Review,

human resource management have gendered effects. Such changes more often lead to greater control for men and less control for women and expose women to workplace bullying/mobbing, abuse and other forms of occupational violence and harassment.

**g. Empowerment of Women's Voice- Barriers to Collective Representation**

212. It is well established that joining a union is one of the single most effective ways for women workers to narrow the gender pay gap. Unionization helps women raise their wages overall and also specifically helps narrow the gendered pay gap.
213. The pay gap between union men and women is estimated at just over \$2 per hour compared to a gap of more than \$4 per hour between non-union men and women. Unionized women have been the workers best able to access and enforce rights to discrimination-free wages under the *Pay Equity Act* and *Employment Standards Act*. And unions provide ongoing monitoring of employment practices to ensure that bargained rights are enforced and that rights to equality in training and promotions are respected.
214. However, unionization rates, particularly in the private sector, have decreased in the face of legislative changes and employer practices in the past decades. In Ontario, the unionization rate has declined from 33.7% in 1981 to 27% in 2004. Unionization in the private sector declined sharply between 1988 and 2008 and remains around 27% in 2014.<sup>108</sup>
215. Union density for men dropped from 32 per cent to 26 per cent over this period. Union density for women rose slightly and then stabilized at around 28 per cent between 1997 and 2014.
216. The larger decline in union density happened in the private sector – it fell from about 19 per cent in 1997 to about 14 per cent in 2014.
217. Public sector union density stayed relatively stable, rising from about 70 to 71 per cent. While union density is much higher in the public sector than it is in the private sector, most of the jobs in Ontario – about 78 per cent – are in the private sector, so a drop in unionization in that sector has a major impact on the labour market landscape.
218. Women's unionization has remained relatively constant in this period at approximately 30% primarily because of the higher unionization rate in the public sector. However, with the reduced union density across the entire labour market, women suffer.

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108 See S. Block, *A Higher Standard*, *supra*.

219. Moreover, significant areas of female dominated and often precarious work remain difficult to organize under existing labour legislation. And domestic workers remain excluded from the right to unionize at all under the *Labour Relations Act*.
220. As well, women working in reality for employment purposes as dependent contractors, whose pay and conditions of work are set by others, also face barriers in accessing *Labour Relations Act* protections. For example, the Ontario government sets the compensation of Ontario's midwives who provide midwifery services to the MOHLTC Ontario Midwifery Program. Yet the MOHLTC denies that it has any obligation to bargain with their collective representative, the Association of Ontario Midwives because midwives are "independent" contractors and not covered by the *Labour Relations Act*.
221. This decline in union density and the barriers to collective representation for all the diverse forms of women's work has weakened women's ability to assert their rights in the workplace. In particular, it has weakened women's ability to secure their right to be free from pay discrimination.

**h. Gendered Dynamics that Disrupt Women's Employment and Pay:**

222. There are a wide range of specifically gendered dynamics that continue to disrupt women's employment, that lead women to miss work and to lose their jobs, and that contribute to the gender pay gap that women experience. Some key examples of these disruptive dynamics are set out below:

**i. Harassment and Violence**

223. Women continue to face widespread harassment and violence both in their households and in employment as detailed in the Ontario government's document: "It's Never Okay – An Action Plan to Stop Violence and Harassment Action Plan."<sup>109</sup> This violence and harassment contributes substantially to their ongoing substantial unequal conditions in the labour market.
224. Women face persistent sexual harassment on the job. This has real effects on women's earning as women experience increased stress and sick leave, are subject to workplace reprisals, have their work performance and credibility undermined, and are driven from their jobs to escape the abuse.<sup>110</sup>
225. Women face particularly widespread and unique forms of gendered violence. Violence against women – including domestic violence -- also contributes to the gender pay gap as women miss work due to physical, mental and emotional

<sup>109</sup> Government of Ontario, *supra*.

<sup>110</sup> See, e.g.: Government of Ontario, *It's Never Okay*, *supra*; M. Deschamps, "External Review into Sexual Misconduct and Harassment in the Canadian Armed Forces", *supra*.

injuries from violence, as women miss work or leave jobs in order to avoid being traced by violent abusers and as women's housing and care arrangements are disrupted due to violence

226. As highlighted above, these patterns of violence are even greater for those who are further disadvantaged. The massive violence experienced by Indigenous women in Ontario and across the country has been detailed but not acted on for years. A National Inquiry into Missing and Murdered Indigenous Women and Girls is finally starting and has long been sought by the Native Women's Association of Canada and others.<sup>111</sup> The violence experienced by women with disabilities is also severe and widespread as detailed by the Disabled Women's Network of Canada in its document, "Women with Disabilities and Violence".<sup>112</sup> Racialized and immigrant and temporary migrant women also experience serious violence and harassment as highlighted above. Patterns of greater violence are also seen in the LGBT community and for older women.

## **ii. Pregnancy Discrimination**

227. As highlighted earlier in this submission, women who are pregnant or mothers experience widespread discrimination. A 2012 study "Pregnancy in the Workplace" summarized their findings as follows on page 89: "Despite laws in the USA, Canada, UK and EU to prohibit pregnancy discrimination, studies suggest that women experience a large amount of discrimination, both formally and informally, due to their pregnant state."<sup>113</sup>
228. This includes the fact that, despite laws providing otherwise, women continue to be terminated merely because they are pregnant or they are mothers with care responsibilities. Although it is patently illegal, this archaic, discriminatory practice continues. Women find their employment in jeopardy because of their pregnancy and/or need to take maternity leave or their future job prospects restricted or denied because of their "mother" status – the "motherhood" penalty.

## **iii. Care Obligations**

229. As highlighted earlier in this submission as well, women's care obligations also result in other gendered effects that disrupt their continuity in employment. Women lose hours of work and even lose their jobs due to their familial care obligations. Many workers in Ontario have no access to paid sick days (beyond emergency leave). But because it is women who bear the primary responsibility

<sup>111</sup> See National Inquiry into Missing and Murdered Indigenous Women, <http://www.aadnc-aandc.gc.ca/eng/1448633299414/1448633350146> and see resources on Native Women's Association of Canada, [www.nwac.ca](http://www.nwac.ca).

<sup>112</sup> "Women with Disabilities and Violence, DisAbled Women's Network of Canada, <http://www.dawncanada.net/issues/issues/fact-sheets-2/violence/>.

<sup>113</sup> H.M. Salihu, J. Myers and E.M. August, "Pregnancy in the workplace," *Occupational Medicine*, 62 (2012): 89, 88-97.



for child care, elder care and care for persons with disabilities, it is women who bear the disproportionate burden of losing their jobs and or much needed pay. If they have to miss or leave work in order to care for sick children or provide care to other family members. Care obligations may also prevent women from getting access to paid work at all or may require them to accept more precarious and lower paid work than their qualifications warrant.

## VII. SYSTEMIC DISCRIMINATION REQUIRES SYSTEMIC RESPONSE AND COMPREHENSIVE LEGAL AND POLICY FRAMEWORK

230. The critical point that emerges from mapping the multiple, interlocking systemic dynamics that create and sustain the gender pay gap, is that **systemic discrimination requires a systemic response**. Uprooting systemic discrimination requires a fully committed, multi-dimensional action plan. It also requires a much more nuanced and complicated understanding of how law and policy operate to either facilitate or eradicate the dynamics of the gender pay gap as described in the next Part and throughout this submission.
231. Closing the gender pay gap is not just a matter for Ontario's *Pay Equity Act*. That *Act*, a specialized statute with the aim to redress systemic gender discrimination in compensation, has been in effect for over twenty five years. The *Act* provides for equal pay for work of equal value and the comparison between women's jobs and male jobs of comparable and similar equal value. While the *Act* is an important tool which must be enhanced and enforced, it is not broad enough in scope to redress the multi-faceted forms of systemic gender discrimination outlined above.
232. The Equal Pay Coalition's 2008 Framework for Action called upon the Ontario government, working with employers and trade unions, to develop such a systemic plan which included targets for closing the pay gap over a realistic time frame and strategies for meeting those targets.<sup>114</sup> The Coalition called upon the government then and still does to close the gender pay gap no later than 2025. It was not until April, 2015 that the government committed to develop an overall strategy to close the gender pay gap.
233. Solving a persistent problem requires leadership and planning and a gender and equity lens - analyzing what works, what doesn't and what further steps or revisions to a plan are necessary. Governments enshrine planning mechanisms into their governance mechanisms to "mainstream" or drive key public policy issues such as health care and they economy - they have not done so for providing labour market equality to women. The same must be done for closing the gender pay gap.

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114 see [www.equalpaycoalition.org](http://www.equalpaycoalition.org).

## **VIII. CREATING A COMPREHENSIVE LEGAL AND POLICY RESPONSE TO THE GENDER PAY GAP**

### **a. Current Inadequate and Disconnected Legal and Policy Response**

234. There is no comprehensive legal and policy framework with a gender mainstreaming framework in place to close Ontario's gender pay gap. While there are several human rights and employment laws discussed below, the government has relied on the *Pay Equity Act* which is ineffectively enforced as its primary and limited response. The government has not acknowledged that remedying Ontario's gender pay gap is a human rights obligation it and businesses owe to Ontario's women.
235. Until this Review was appointed and despite repeated requests by the Coalition, the government had not systemically looked at the wider gender discrimination discriminatory dynamics which fuel the overall earnings gap between men and women across the economy. As well, the government does not have any entity in charge of systematically planning and co-ordinating efforts to close the gap. As a result its actions are failing to stem the growth of the gender pay gap and instead are contributing to it.
236. Further, the provincial government still does not have any process to apply a gender lens in its cabinet and ministry decision-making and preparation of budgets and funding. The April, 2015 Ontario budget made very few references to "women". The Ministry of Labour's website has no reference to "women" workers other than the reference to this Review. It is mostly the same story with the Ministry's Employment Standards Branch. The right of women to equal pay for substantially the same work is not even listed as one of the core *Employment Standards Act, 2000* protections on its workplace poster and its provisions are not found in the *ESA Workbook* on implementing those core protections. Women and their need for protection are for the most part invisible when it comes to the Ministry of Labour. Even the Women's Directorate charged with the protecting the interests of women and promoting gender equality does not have any substantial focus on women's workplace protections and the pay gap with the main exception of the Action Plan on violence.
237. Public policies often use an approach which assumes all employees face "similar" or "neutral" circumstances to predominantly able-bodied, white, male workers. There is a systemic failure to account for the different and unequal circumstances facing women and particularly those who racialized, Indigenous, Aboriginal, have disabilities or other disadvantages.
238. As highlighted in Part IV, there is a systemic failure to apply a gender and equity lens to government decision-making.
239. All social and economic policies need to be vetted by provincial cabinet, ministries, public agencies, and by local governments for their impact, answering

this question: *do they help close or widen gender pay gaps?*

- 240. 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 effectively ending the gender wage gap.
- 241. It is clear on both the legal and policy side, that there is much to do to get the ball rolling on developing the necessary comprehensive and mandatory legal and policy framework required.

**b. Reworking, Enforcing and Expanding Ontario's Current Pay Gap Laws**

- 242. While there are many causes of the gender pay gap, it is clear that Ontario's labour and employment laws are an important part of the problem and need to be strengthened and expanded – not weakened or reduced. The gender pay gap continues to reflect a deep systemic discriminatory failure in the province's current legislative framework to protect women workers from discrimination while ensuring that they have a true voice in the conditions of their work.
- 243. This failure arises both from the lack of sufficient legal protections from discrimination but also because existing enforcement models are underfunded; are primarily complaint-based or if pro-active, not effectively enforced. There is also no overarching law requiring action on many levels to close the 30% gender pay gap.
- 244. As a result, they rely upon vulnerable women to confront non-compliant employers and governments. As noted in Part VI above, rights that exist on paper are often breached with impunity because women are unaware of them or cannot assert their rights without risking termination or reprisals. Closing the gender pay gap requires both expanded laws but also an aggressive government approach to enforcement of women's legal rights.
- 245. There are currently three main pieces of legislation that are usually thought of when considering how to close the gender pay gap: the *Employment Standards Act*, the *Pay Equity Act* and the *Human Rights Code*. Each of these three pieces of legislation have a separate history and important role in Ontario's current pay gap human rights legal system which needs to be reworked, expanded and enforced.
- 246. The *Pay Equity Act* is directed at ensuring that men and women are paid equally where they do work of equal value. The *Human Rights Code* covers all types of unequal treatment in all forms of employment as well as services and accommodation. It also covers not only sex discrimination but many other of grounds of discrimination which women experience as highlighted in Part VI above. The *Employment Standards Act, 2000* set the minimum floor of rights and access for employees to a voice in the workplace. All of these laws and their

implementing policies address both different and overlapping manifestations of discriminatory practices that contribute to the gender pay gap, and they differ in the scope of employment and businesses covered and include different remedies.

247. To close the gender pay gap, it is necessary at a minimum that these laws and policies are sufficiently funded, enforced and work together close the gender pay gap. All employers must comply with the existing *Pay Equity Act*, *Employment Standards Act* and *Human Rights Code* obligations. This review should not be an opportunity for employers to try to rid themselves of existing obligations to close the gender pay gap.
248. Yet it is important to look beyond just these three laws which are considered in more detail below as many other laws can impact the gender pay gap and there is also need for overarching law discussed below.
249. Given the range of dynamics identified in Parts V and VI that produce the gender pay gap reach beyond individual workplaces, laws are engaged that on their face may appear to have nothing to do with gender or the pay gap. For example, Ontario's *Labour Relations Act* as noted above fundamentally affects the rights of women to gain access to higher and securer pay through collective bargaining. As well, employment equity laws, which are a specialized human rights law (which exist federally but which were repealed in Ontario in 1995), are directed at ensuring that steps are taken to remove barriers and take positive measures to give women and other disadvantaged groups equal access to higher paying work. As well, equality promoting or inequality promoting measures can also be found in other laws such as tax laws, compensation or other fiscal restraint laws.
250. As the right to labour market equality for women must be legally enforced and is mandatory, the required legal framework for achieving that protection must be much broader than the three key laws noted above.
251. Through the Committee's stakeholder meetings, questions were raised about whether Ontario's above-noted legislative framework was working and whether it can or should be changed or "streamlined".
252. The Equal Pay Coalition strongly argues that "streamlining" is ill advised. Rather than streamlining, what is required is a proliferation of sites at which and the tools by which the gender pay gap is confronted. The main problem is not that there are too many pieces of existing legislation. Rather the problem is that to date government has not recognized the breadth of laws that are in fact implicated in creating and sustaining the gender pay gap and the breadth of laws that need to be activated in order to eradicate it. Rather than streamlining, what is required is a broader based attack on discrimination. An effective and meaningful response to the gender pay gap implicates a wide range of laws and policy measures that on their face may appear unconnected with gender or the pay gap.

**c. Expanding and Enforcing The *Employment Standards Act, 2000***

253. The *Employment Standards Act, 2000* and its predecessors was the first law to address the gender pay gap directly by including a right of women doing the same job as men to equal pay. This was expanded in the early 1970's to include work which was not identical but substantially similar. This right is part of the generalized set of minimum standards employers must abide by and those other general standards provide important although insufficient protections for women's work. The *ESA, 2000*, for example contains the minimum wage law, provisions relating to pregnancy leaves and emergency leaves and other provisions controlling employer pay and work practices which can secure or undermine women's pay entitlements.<sup>115</sup>
254. The *ESA* has been reviewed, tinkered and modified in an *ad hoc* manner over the past fifty years. For many of the reasons identified in Part V above, over the years, its protections have been eroded through special rules and exemptions to appease employers of women - so much so it is commonly referred to as resembling a piece of Swiss cheese.<sup>116</sup> The Workers Action Centre brief, *Still Working on the Edge* details the many ways in which the *Act* undermines the ability of women and other disadvantaged workers to secure fair pay and working conditions.<sup>117</sup> The Coalition's brief to the Changing Workplace Review which was provided to this Committee also identifies how employment standards protections and enforcement affect the gender pay gap and must be changed to help close it.<sup>118</sup>
255. The *Employment Standards Act* provides a remedy for the discrete discriminatory practice by which employers pay women less than men doing substantially similar work. However, it has been given very little priority by the Employment Standards Branch. Yet the Steering Committee frequently heard in Town Halls across the province that this form of workplace discrimination remains a very large problem with women working side by side and even training men performing the same job and being paid substantially less.
256. In this submission in Part X below, the Coalition outlines some key *ESA* changes needed to address the gender pay gap mapped to the discriminatory dynamics identified in Part VI above. The Coalition also relies the recommendations of the Workers Action Centre from its brief, *Still Working on the Edge - Building Decent Jobs from the Ground Up*.

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115 See Workers' Action Centre, *Still Working on the Edge*, *supra*.

116 Workers' Action Centre, *Still Working on the Edge*, *supra*; Judy Fudge, "Flexibility and Feminization: The New Ontario *Employment Standards Act*," *Journal of Law and Social Policy* 16 (2001): 1-22.

117 Ibid.

118 Posted at [www.equalpaycoalition.org](http://www.equalpaycoalition.org).

**d. Expanding and Enforcing the *Pay Equity Act***

257. The *Pay Equity Act* imposes proactive legal obligations on employers to examine their pay setting practices for "employees" (and to engage in negotiations with trade unions) to ensure that female dominated jobs are paid the same as male dominated jobs of similar value. Even when the legislation was introduced, however, the government recognized that while this was a vital remedy, it was only one piece of the puzzle. As the government wrote in the *Green Paper*,

*As a single measure, pay equity legislation will not completely eliminate the wage gap or totally integrate the labour force. ...*

*Pay equity will not address issues such as access to non-traditional jobs, the need for increased education, training and retraining programs, the promotion of women into senior ranks, and adequate and affordable child care. The Government will, therefore, continue to be sensitive to other initiatives and will address these issues through other strategies. These other strategies are necessary because it is unrealistic to expect the wage gap to diminish "from natural causes" or be entirely addressed by affirmative action, either voluntary or mandatory.*<sup>119</sup>

258. The *Pay Equity Act* has been a critically important tool in helping to close the gender pay gap in Ontario. Its proactive nature, with mandatory goals and time lines along with incorporating the voice of unions representing women has been essential to getting the very significant changes in women's pay that have resulted from its operation. Consistent with its importance and its requirements for businesses and government to pay women's work equitably, the *Act* has been the subject of attack by the business community and by the Ontario government over the years since its enactment. This has included calls by the business community for it to be repealed as well as the Ontario government actually repealing in 1995 the pay equity rights of over 100,000 women in predominantly female public sector workplaces who used the "proxy comparison method".<sup>120</sup>
259. Many women still have not been able to obtain the rights which were promised to them and are provided for in the *Act*. The history of this enforcement problem is found in the Equal Pay Coalition's *Framework for Action*. It is also highlighted in the briefs of the Coalition's member unions who valiantly struggled to enforce the *Act* in the face of employer opposition and government obstruction.
260. The Pay Equity Commission recognizes that "wage gaps consistently persist in the province". Despite the widespread inequalities detailed in this submission, the Commission reports on the Commission's effectiveness in actually closing the pay gap are minimal: "in terms of program effectiveness, 1780 Ontario workers

<sup>119</sup> Government of Ontario, *Green Paper on Pay Equity*, *supra* at p. 14-15, also at p. 7. See also *Lakeridge Health Corporation et. al*, *supra*.

<sup>120</sup> For a detailed discussion of this, see the Equal Pay Coalition, *Framework for Action* and Mary Cornish, *Growing Concern*, *supra*.

received adjustments from their employers, totaling nearly \$3.6 million in 2013-14 compared with \$3.3 million in adjustments in 2012-13." <sup>121</sup>

261. In its report "Assessing Proxy Use and Outcomes in the Broader Public Sector 2009/2010", the Pay Equity Commission notes that for some women, it may "take up to twenty years to reach pay equity target job rates set in 1994." <sup>122</sup> As well, this survey did nothing to address the issue of such workers maintaining pay equity after the achievement targets were set as of 1994.
262. The Coalition recognizes that there are many issues to be addressed to ensure the *Pay Equity Act* is effective and strengthened and these matters need to be the subject of further discussion. At the same time, the Coalition cautions the Committee to be very careful in its approach to analyzing the effectiveness of the *Act* and sceptical of proposed changes by the business community or by the government itself who have found that the *Act* if enforced effectively would substantially interfere with their austerity and deregulation agenda along with the pursuit of profits. The *Act* must be strengthened and enforced not weakened and women's rights eliminated.
263. While there is currently widespread non-compliance with the *Act* which has been acknowledged by the Pay Equity Commission, employers would have done nothing without it. <sup>123</sup> This was clear from the example of the repeal of the *Employment Equity Act* in 1995. When there were no legal obligations, employers stopped moving to implement employment equity. There can be no relying on "voluntary" actions of employers or governments when it comes to securing equity rights.
264. Many, mostly unionized and public sector women were able to take advantage of the *Pay Equity Act*. The extension of the *Act* in 1993 to predominantly female workplaces with the use of the proportional value method and the proxy comparison method (for the public sector only) was critical to progressing towards pay equity initially for predominantly female public sector workplaces – mostly in the "care economy" and many of whom included racialized and immigrant workers. eg. nursing homes, community service sectors. Women received many hundreds of millions of dollars in adjustments towards pay equity.
265. However, the promise of the *Pay Equity Act* was eroded as the provincial government refused and still refuses to pay the cost of the necessary pay equity adjustments required to fully achieve and maintain pay equity for those providing the government's public services. Broader public sector agencies charged with delivering public services are deliberately given funding which is known to be

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121 See 2013-2014 Ontario Pay Equity Commission Annual Report.

122 Ontario Pay Equity Commission, "Assessing Proxy Use and Outcomes in the Broader Public Sector 2009/2010"p. 18

123 See

insufficient to make their pay equity adjustments. Everyone knows this and yet the system continues along in direct violation of the *Pay Equity Act*.

266. Here again we see employers and governments acting with “impunity” - as pay equity laws are openly violated with no consequences. Businesses continue with these practices because they know that the Pay Equity Commission is unlikely to catch them. Governments fail to fund the pay equity adjustments found to be owing for the delivery of their public services even though they know the contractors they are funding are violating the *Pay Equity Act* by not paying. The Pay Equity Commission itself has done little to call public attention to this “impunity” and to act aggressively to enforce the *Act*.
267. Such impunity is wrong for many reasons. When the *Act* is not enforced but there is no public denunciation of those who are non-compliant then the message is clear – women's human rights are not worth protecting. Moreover, this enforcement gap promotes the very misleading view that the pay equity problem is already solved – which sustains the business argument that the *Act* is no longer needed.
268. In addition to this “impunity” problem, the *Act* currently excludes many Ontario women with the exemption of all private sector workplaces with less than 10 employees. As well, it only covers “employees” and not independent contractors. Further, when the Ontario Government was funding the pay equity adjustments paid by public sector employers, it arranged for the *Pay Equity Act* to be amended to exclude it from being found to be the “employer” of those employees and therefore liable directly for any pay equity adjustments. However, such pay equity funding has long ago been eliminated. Yet that provision has been used by the Government to justify why it is not responsible to apply the *Pay Equity Act* and its principles to the pay for women whose compensation it sets effectively through its funding practices, but whom it does not “employ”.
269. Further, the Ontario Government repealed in 1995 the right of those in predominantly female workplaces to use the proxy comparison method so that they could obtain pay equity – and it took a *Charter* challenge to get that right reinstated. When the main nursing home group of employers in Ontario failed to maintain pay equity for those same workers, the unions representing those workers, SEIU and ONA had to take those employers to the Pay Equity Hearings Tribunal to argue that the workers' pay equity rights were being violated. At that point the Government then intervened to support the position of the employers and the Pay Equity Commission that there was no obligation to maintain pay equity by using the external comparison method which allowed for a comparison which was a proxy for male work. The Government did not want to have to fund any maintenance adjustments owing to these care workers. The Government also argued that Ontario's gender pay gap was closing on its own and so the innovative proxy method was not needed any longer. An initial ruling is expected in this case in January, 2016.



270. An additional factor which has slowed progress on enforcing the *Act* was the decision by the Pay Equity Commission to take the position that employers were not obliged to bargain with unions to ensure pay equity was maintained in workplaces. This decision only furthered the freedom that employers were experiencing to continue to pay inequitable wages without any effective oversight.
271. As well, other factors such as the closure of the Pay Equity Legal Clinic through lack of government funding back in 1996 and the lack of aggressive enforcement by the Pay Equity Commission contributes to the problem. While some Pay Equity Commission audits have been carried out, they are limited in scope and not effectively monitored. The Pay Equity Commission's low public profile and unwillingness to publicly call out governments and businesses for their failure to address the pay equity human rights crisis can be contrasted sharply with other jurisdictions. The European Union and Australia both have equality agencies which conduct major campaigns to close the gender pay gap.<sup>124</sup> Even the US appears to have more of a public profile for equal pay than Ontario now with President Obama and other celebrities highlighting it.
272. While even unionized women have difficulty getting the Pay Equity Commission to enforce the law with respect to unionized workplaces, non-unionized employees face innumerable barriers with a lengthy and complicated complaint process where they lack legal assistance and face highly resourced management lawyers to argue against them.
273. Efforts by the Coalition to seek more aggressive enforcement have generally been stonewalled by the Government and resisted by the inadequately resourced Commission.
274. Accordingly, the Coalition requests that the Committee identify the need for a strengthened, effective and enforceable *Pay Equity Act* while continuing to include the current proxy comparison method. This includes calling for the Pay Equity Commission to aggressively enforce the *Act* to require compliance.
275. The Coalition also calls for a further dialogue amongst governments, the business community, the Coalition, unions and other equality seeking groups to seek ways to achieve this objective.

**e. The *Human Rights Code***

276. The *Human Rights Code* provides for a broadly worded guarantee of the right to employment without discrimination based on sex and other grounds including race and disability. It is an important tool for addressing both gender and also for intersectional discrimination which is not addressed under the *PEA* or the *ESA*.

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124 See the website of the European Institute for Gender Equality at <http://eige.europa.eu>, and that of Australia's Workplace Gender Equality Agency at <https://www.wgea.gov.au>.

277. While *Code* enforcement has primarily focused on employment discrimination by employers, the *Code* can also redress human rights violations relating to the gender pay gap more broadly such as actions against governments for funding discrimination and can also address discrimination relating to self-employed women who experience gender related barriers in their business and earning opportunities and contracts. Unions have also started to use the *Code* to seek the elimination of workplace systems such as gendered and unequal part time wage grids.
278. After years of campaigning by equality seeking groups, the *Code* was reformed nearly 10 years ago to provide amongst other matters direct access of claimants to the Human Rights Tribunal of Ontario and the establishment of the Human Rights Legal Support Centre providing free legal services for claimants. The Ontario Human Rights Commission was also freed of its obligations to carry forward individual complaints so that it could focus on systemic discrimination.
279. As a result of the development of the human rights jurisprudence cited earlier in this Submission in Part II above, the *Code* has been interpreted to require those with equity obligations (eg. employers, contractors and service providers) to take pro-active steps to ensure that the *Code*'s rights are being realized. Mary Cornish, Fay Faraday and Jan Borowy in their chapter, "Securing Employment Equity by Enforcing Human Rights Laws,"<sup>125</sup> while still arguing for the reinstatement of the specialized *Employment Equity Act, 1993*, also set out the powerful employment equity obligations employers and service providers and others have under the *Code* and other Ontario equity laws to provide employment and service equity.<sup>126</sup>
280. Despite the substantial rights provided for in the *Human Rights Code*, there remain barriers to women using the *Code* to close the gender pay gap. The HRLSC is not sufficiently funded to permit the Centre to take on many large systemic cases. The Human Rights Tribunal of Ontario and Ontario Human Rights Commission are also not sufficiently funded to carry out their important tasks. As well, there is a need for the Human Rights Commission to start using its extensive research, investigative, public inquiry and guideline powers to address the many different discriminatory factors which create the discrimination women face in gaining access to labour market work. Last year, the Human Rights Commission and the Pay Equity Commission jointly sponsored a dialogue on the use of an intersectional lens to address pay discrimination issues which was an important first start and which recognized the importance of gathering disaggregated data to support pay equality measures.
281. The Ontario Government never established the Race Relations Directorate

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<sup>125</sup> in C. Agócs, *Employment Equity in Canada*, *supra*.

<sup>126</sup> Mary Cornish, Fay Faraday and Janet Borowy, "Securing Employment Equity by Enforcing Human Rights Laws," in Carol Agócs, ed., *Employment Equity in Canada*, *supra*.

provided for under the reformed *Code* and this Directorate, once established could play a strong role in the working of closing gender pay gaps of racialized women.

282. The *Code* is not, in itself sufficient to eradicate the gender pay gap. The broad range of interventions that are necessary to unseat the gender pay gap cannot be addressed fully and effectively through piece meal litigation, often on a workplace by workplace basis.

**f. *Accessibility for Ontarians with Disabilities Act.***

283. The disability community recognized the need to have a more proactive approach when it lobbied for and obtained the *Accessibility for Ontarians with Disabilities Act*.<sup>127</sup> This *Act* provided for system-wide specific regulations addressing matters such as employment, transportation and services which bind employers, service and accommodation providers including governments to implement the measures necessary to get Ontario to be barrier-free by 2025. While there are criticisms as to whether this law is also being effectively enforced, its specific directives and proactive approach have resulted in much greater human rights compliance than complaint-based approaches.<sup>128</sup>
284. There is a need to ensure effective enforcement of this *Act* to help close the gender pay gap for women in Ontario with disabilities. See the recommendations of the AODA Alliance with respect to these necessary enforcement measures. As well, there is a need to consider and adapt the measures from this *Act* in the process of developing Ontario's plans to close the gender pay gap.

**g. *Reinstating a Strengthened and Updated Employment Equity Act, 1993***

285. Ontario no longer has its *Employment Equity Act, 1993* which was repealed in 1995 by the Conservative Government. That repeal stopped the progress starting to be made by requiring employers, working with unions if any, to desegregate workplaces and ensure equality of employment outcomes.
286. It's time to reintroduce the *Employment Equity Act, 1993* and consider how it can be strengthened and updated. This proactive legislation will help to redress workplace discrimination in recruitment, employment conditions and retention against not only women but also racialized workers, aboriginal peoples and persons with disabilities – all major factors contributing to the gender pay gap. Employment equity laws and policies require employers to plan to end discriminatory practices facing these disadvantaged groups.
287. In addition to the above laws, there is also a need for a provincial Closing the

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127 2005, S.O. 2005, c. 11.

128 See AODA Alliance at <http://www.aodaalliance.org/strong-effective-aoda/default.asp>

Gender Pay Act as set out next in Part IX.

## **IX. OUTLINE OF SYSTEM-WIDE RECOMMENDATIONS TO ADDRESS SYSTEMIC DISCRIMINATION**

### **Introduction**

288. As set out above, there are many interconnected strands of discriminatory factors that create and sustain the gender pay gap both at the institutional system level and at the locus of work. Each dimension of discrimination needs to be addressed through consciously targeted reforms that understand how and why they connect to eradicating the gender pay gap. The Coalition's outline for specific recommendations follows in the next Part.
289. This Part concerns the need for system-wide accountability and planning within governments and in workplaces and businesses.

#### **a. Need for *Closing the Gender Pay Gap Act* and Multi-Level Action Plans and Processes at Provincial, Sectoral, Municipal and Business Levels**

290. Provincial legislation – A Closing the Gender Pay Gap Act is needed to set out the mandatory obligation that provincial and local governments and businesses must enshrine planning, action and consultation mechanisms into their governance structures to ensure the gender pay gap is closed.
291. This law should provide that gender and equity sensitive labour market knowledge, research and monitoring using appropriate disaggregated data must be included in closing the gender pay gap planning.
292. Creating the necessary transformative change required to close the provincial gender pay gap by 2025 requires clear action plans at all levels with realistic and timely goals, targets, and resources. All such plans must be developed with women and their representatives as the priority stakeholders to be consulted and empowered.
293. The Coalition is calling for multi-party co-operation to work with the EPC, employers, and other equality-seeking stakeholders to develop, implement, and resource a province-wide plan to close Ontario's gender pay gap by 2025. This plan would provide for the province to work with and coordinate the efforts of municipalities and businesses providing them with assistance as needed.
294. There are many examples to follow internationally of jurisdiction wide plans to address the gender pay gap and secure and promote women's equality. The EU has embedded closing the gender pay gap as one its five core policy areas for its *Strategy for equality between women and men (2010-2015)*.<sup>129</sup> It is also

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129 [http://ec.europa.eu/justice/gender-quality/files/gender\\_pay\\_gap/gpg\\_brochure\\_2013\\_final\\_en.pdf](http://ec.europa.eu/justice/gender-quality/files/gender_pay_gap/gpg_brochure_2013_final_en.pdf),

embedded in *the Europe 2020 Strategy*, the EU's economic growth strategy and in the *European Pact for Gender Equality* adopted by EU leaders.<sup>130</sup> There are numerous examples of EU country action plans to close the pay gap, which include actions covered by the 10 key steps, such as working with employers to improve family, work and private life reconciliation, promoting gender mainstreaming, analyzing public sector pay practices, and measures to increase salaries in female-dominated sectors.<sup>131</sup>

295. As well, there are also examples of jurisdictions which have recognized the need to have municipal closing the gender pay gap plans. The City of Boston is an excellent example of local government planning to close the gender pay gap. It has a plan to use 100% of its talent. That includes asking Boston employers to sign the Women's Compact and pledge to pay women equal wages. Its report, *Boston – Closing the Wage Gap, Becoming the Best City In America for Working Women* profiles Boston's gender pay gap and provides detailed advice on measures to close it.<sup>132</sup>
296. As well, one Ontario municipality has already started to tackle the issue of embedding equity in their municipal planning. The City for All Women Initiative (CAWI) working with the City of Ottawa developed the document: "Advancing Equity and Inclusion: A Guide For Municipalities". This guide using a gender and intersectional analysis notes that "systemic and persistent forms of discrimination have created cities and towns that don't work for everyone".<sup>133</sup>

#### **b. Coordination with other System-Wide and Ministry Planning and Actions including Poverty Reduction Strategy and Economic Planning**

297. To be effective and not marginalized, there is need to ensure provincial and local closing the gender pay gap planning is co-ordinated with other government

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accessed March 9, 2014

- 130 See The European Pact for Gender Equality adopted by EU leaders in 2011; Council of the European Union, Council conclusions on the European Pact for gender equality for the period 2011 – 2020, (2013), 2: The EU 2020 Strategy aims to create more and better jobs, to achieve a higher employment rate for women as part of the overall employment target of 75 % for all 20-64 year-olds, and to ensure that there are 20 million fewer people in or at risk of poverty and social exclusion by 2020. the framework of actions on gender equality agreed between the European social partners in 2005
- 131 Estonia 2012 Action Plan to reduce the gender pay gap, <http://www.sm.ee/tegevus/sooline-vordoiguslikkus/tooelu/palgalohe-tegevuskava.html>; and "Lithuania National Programme on Equal Opportunities for Men and Women," [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=372298&p\\_query=&p\\_tr2=](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=372298&p_query=&p_tr2=)
- 132 Boston: Closing the Wage Gap: Becoming the Best City in America for Working Women, October, 2013 [www.cityofboston.gov/images\\_documents/Boston\\_Closing%20the%20Wage%20Gap\\_Interventions%20Report\\_tcm3-41353.pdf](http://www.cityofboston.gov/images_documents/Boston_Closing%20the%20Wage%20Gap_Interventions%20Report_tcm3-41353.pdf). and 100% Talent, Boston Women's Compact, <http://www.cityofboston.gov/women/talent/>
- 133 "Advancing Equity and Inclusion: A Guide For Municipalities", City for All Women Initiative, June, 2015 and see [equityandinclusion.ca](http://equityandinclusion.ca) for Guide text and resources.

planning. For example, despite the clear connection between being a woman and poverty, Ontario's current Poverty Reduction Strategy makes no reference to women's labour market inequality and the need to close the gender pay gap. As noted above, the provincial budget and economic planning also do not include tackling the pay gap. As well, ministry planning does not include a closing the gender pay gap focus. In fact, there is no reference to women in the Premier's Ministerial Mandates except for the Women's Issues Minister and the Minister of Labour's Mandate. As a result, many government and ministry strategies and policies (such as compensation restraints) actually conflict with closing the gender pay gap rather than working to close it.

298. There is a need for the Premier's Ministry mandates to all include closing the gender gap as a priority mandate for each Ministry. The inclusion of this will mean that Ministry staff from the Deputy Minister staff will be held accountable for achieving this objective and will analyze Ministry planning and actions accordingly. Ministers should also hold public agencies who report to them accountable as well for ensuring the agencies' mandate is carried out consistent with a closing the gender pay gap focus.

**c. Need for Labour Market Equality Commissioner to Oversee Closing the Gender Pay Gap**

299. With such a large and complex project as closing the gender pay gap over 10 years, it is necessary to have some independent oversight and planning. This occurs with the environmental sector, where the province appoints an independent Environmental Commissioner under the *Environmental Bill of Rights* who has various investigative and reporting powers. The province also appoints an independent Information and Privacy Commissioner under the *Freedom of Information and Protection of Privacy Act*.<sup>134</sup>
300. Accordingly, the Coalition is recommending that a statutory Labour Market Equality Commissioner be appointed under the Closing the Gender Pay Gap Act proposed. Given that it will take some time for this person to be named with the need to enact the law, the Coalition is recommending the immediate appointment of an interim Commissioner to help develop and coordinate getting the action plans started so they are in operation for 2016 and can contribute to closing the gender pay gap by 3% as targeted.
301. With a broad mandate of labour market equality, this Commissioner's mandate could also include the eradication of all forms of labour market equality and not just those affecting Ontario's women.

**d. Provincial and Local Closing the Gender Pay Gap Roundtables**

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134 *Environmental Bill of Rights*, 1993, SO 1993, c 28, ss. 49-60; *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31, ss. 4-9.

302. To ensure an effective planning and action process, the Closing the Gender Pay Gap law should also provide for the establishment of provincial and local Closing the Gender Pay Gap Roundtables of stakeholders with women, their representatives and other equality seeking groups in a leading role. These roundtables must meet at least 4 times per year including around the annual Equal Pay Day. This will help to manage and monitor this large scale transformation process and embed the empowerment of women and their representatives as part of the change and transformation process.

**e. Equal Pay Day's Role in Monitoring and Revising Plans As Needed**

303. The Equal Pay Coalition was successful in getting the Ontario government to declare an annual Equal Pay Day since 2014. This year's Equal Pay Day is on April 19, 2016. This represents the fact that women currently must work more than 15 months in order to earn what a man earns in 12 months.
304. In the context of developing planning to close the gender pay gap by 2015, these annual Equal Pay Days represent an important way to raise awareness about the gender pay gap and to ignite action to close it.
305. The new Closing the Gender Pay Gap Act should declare an annual Equal Pay Day which can then be used to review progress with the action plans and make any necessary changes to ensure that sufficient progress is being to close the gender pay gap by 2025.

**f. Embedding Closing the Gender Pay Gap Awareness in Education Systems in Schools, Businesses, Government and the Legislators**

306. Education laws should be amended to make the teaching of systemic discrimination in the labour market and the human right to labour market equality and measures to close the gender pay gap part of provincial educational curriculum in high schools.
307. Similar to regulations under the *Accessibility for Ontarians with Disabilities* law and under the *Occupational Health and Safety Act*, businesses should be required to embed education and awareness of the human rights and responsibilities for closing gender pay gap in business planning and practices as well as in education for management, employees and contractors.<sup>135</sup>
308. As well, such education and awareness of the human rights and responsibilities for closing gender pay gap should be embedded in the training and education of government staff at all levels from the Premier, Ministers and mayor down, as well as for Ontario party leaders, MPPs and municipal councillors.

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135 Section 26(1) of the *Occupational Health and Safety Act* and O.Reg. 297/13 provide that employers have an obligation to carry out training programs for workers, supervisors and committee members. as may be prescribed."

## **X. OUTLINE OF SPECIFIC RECOMMENDATIONS TO ADDRESS SYSTEMIC DISCRIMINATION DYNAMICS**

### **a. Introduction**

309. This section outlines some specific recommendations which address the systemic discrimination dynamics outlined in Part V which are repeated here for ease of reference:

- a. Discriminatory Pay Setting
- b. Access to Employment - Segregated Jobs and Industries/Sectors
- c. Access to Employment- Barriers faced by Further Disadvantaged Workers
- d. Access to Employment - Child and other Care Responsibilities
- e. Access to Pay - Predictability and Security of Pay/Hours of Work
- f. Employment Status – Precarious Work and Workplaces
- g. Empowerment of Women's Voice – Barriers to Collective Representation
- h. Gendered Dynamics that Undermine Continued Employment and Pay
  - i. Harassment and Violence
  - ii. Pregnancy Discrimination
  - iii. Care Obligations

310. The sections below address the various dynamics above. As many of these dynamics are inter-related, recommendations which are found under one dynamic area will also make contributions to the ending the discrimination dynamics in other areas as well.

### **b. Ensuring Equitable Pay Setting**

311. As highlighted earlier in this submission, there are many different laws and policies which affect equitable pay setting. The approaches and recommendations highlighted in Parts VIII and IX with respect to the system-wide changes and issues relating to the *Employment Standards Act, 2000*, the *Pay Equity Act*, the *Human Rights Code*, and the *Labour Relations Act* will also address this issue. As well reinstating the *Employment Equity Act, 1993* will contribute to equitable pay setting by employers. This section addresses some other specific recommendations to get to the goal of equitable pay setting for women.

#### **i. Minimum Wage increase to \$15 per hour**

312. Minimum wage laws are a key pay equity measure. Women account for two-thirds of the minimum wage earners.<sup>51</sup> Aboriginal women, immigrant and refugee women, women with disabilities and racialized women are even more likely to be working at the minimum wage typically found in non-unionized settings. Without the benefit of a union, their employers have ignored their obligations to make



sure the women's work is paid equal to men's work of comparable value. Low minimum wage policies ensure that women and their children remain poor.

- 313. Increasing the minimum wage will have a significant impact on closing the gender pay and reducing women's poverty. There is significant research showing the benefits of a higher minimum, including one that becomes a "living wage".<sup>136</sup>
- 314. While \$15 per hour is still not a "living wage", it is an important pay equity down-payment and human rights tool.
- 315. The Coalition has requested for years that the Ontario government bring in emergency legislation to increase the minimum wage to \$15 per hour effective immediately. The minimum wage must keep up with inflation and keep on increasing until it is at the level of a living wage.<sup>137</sup> The Government has wrongly exempted from this Review process a consideration of the minimum wage. The Coalition objects to this exclusion. There is little doubt that an increased minimum wage is a major pay equity tool which needs to be implemented. The political will must be summoned to act immediately,

## **ii. Living Wage and Guaranteed Annual Income**

- 316. There is increasing public interest in making sure poor Ontarians are able to access sufficient pay and income to provide for themselves and their families. Consideration should be given to incorporating policies to ensure a living wage and guaranteed annual income.
- 317. Mary Cornish, in her CCPA report, "The Living Wage as a Human Right", outlines how living wage policies can help to serve as well as a pay equity downpayment for women and other disadvantaged groups.<sup>138</sup>
- 318. Another measure to address the income inequality faced by women is the Guaranteed Annual Income.(GAI) This concept, which is long known, has re-entered the public debate as Ontario and other jurisdictions worldwide grapple with the systemic impacts and costs of poverty and inequality.<sup>139</sup>

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136 Mary Cornish, "A Living Wage As a Human Right", Canadian Centre for Policy Alternatives , October 2012 (available at: <https://www.policyalternatives.ca/publications/reports/living-wage-human-right>)

137 See M. Cornish, "A Living Wage As a Human Right", *supra*.

138 Ibid, and see M. Young and J. Mulvale, *Possibilities and Prospects: The Debate Over a Guaranteed Income*, Canadian Center for Policy Alternatives, November 2009, p. 10 (available at: <https://www.policyalternatives.ca/publications/reports/possibilities-and-prospects>)

For a discussion of this, see <http://www.theglobeandmail.com/report-on-business/rob-commentary/the-time-for-a-guaranteed-annual-income-might-finally-have-come/article25819266/>.

**iii. Aggressively Enforce ESA Protection for Equal Pay for Substantially the Same Work**

- 319. As noted above, many women continue to be paid differently even though they do substantially the same work as men and despite the existence of a provision in the *ESA* which has existed for over 60 years.
- 320. Section 42 - the equal pay provision in the *ESA* was one of the first key statutory protections for women and introduced in 1951 and later expanded from equal pay for the same work in the early 70's to cover "substantially similar" work.
- 321. This provision was clearly designed to prevent an employer from paying employees differently just because of the sexes of the worker. Section 42 prohibits employers from paying employees who perform substantially the same work under the same working conditions where the performance of the work requires substantially similar skill, effort and responsibility differently solely because of the gender of the individuals. There are exemptions to the principle: e.g. a seniority system, a merit system, and piece rate systems.
- 322. There needs to be aggressive and pro-active enforcement of this provision. Just as the Labour Ministry has at times "cracked down" on occupational health and safety violations" or "wage" violations to ensure rules are being followed, it is high time the equal pay provisions got high priority enforcement treatment. As speaker after speaker at the Town Halls spoke of their experience of such blatant discrimination, there appears to be a culture of impunity with respect to this pay equity right as well. Employers are carrying on violating the *ESA* without worrying about being caught. That needs to stop.
- 323. As well, this equal pay provision should be included in the Employment Standards Branch Guide to rights and enforcement as well as being highlighted in its workplace rights poster and on its website.

**iv. Expand Equal Pay Section to Include Pay Equity for Full Time and Part Time Work**

- 324. As well, section 42 needs to be updated to include the obligation to pay women working part time in a job the same pay as the full time incumbent. As highlighted in Parts V and VII above, many women work part time in jobs where full time workers doing the same work are paid substantially more. A 2008 Vector Poll found that 72% of those polled say that the law should require that part-time and full-time workers should be paid the same hourly rate when they do the same job.
- 325. The current section. 42 2(d) exempts pay differences "based on any other factor than sex." Employers have used this exemption to argue that their payment of women doing part time work less is not sex discrimination. Some adjudicators under this section have concluded that an employer's wage policy may be relied

upon to exclude, for example, casual workers from the same wage rate.<sup>140</sup>

326. Adjudicators should be considering whether casual or part time "term of employment" (i.e. casual, part-time) is a device to mask a discriminatory impact. In other words, by an employer's mere stroke of the pen, a new category or employment status of worker is exempted from a law that women must not be paid less than men when doing similar work. The employer should have a *bona fide* non-discriminatory employment or wage policy for the existence of the separate employment status.
327. Employers have been provided too wide latitude to create distinct wage rates based solely on occupation status and "term of employment".
328. In today's labour market, with the extensive reliance on precarious employment relationships, not only is s. 42 2(d) an exemption that should be removed, but Section 42 as a whole requires modernization.
329. Similarly, a seniority system and merit system may also mask certain discriminatory features. This is particularly so where a male-dominated position is evaluated to be substantially the same as a female-dominated position. This hidden form of discrimination should be eliminated. Women should not be discriminated against where a male-dominated occupation is placed on a shorter, compact wage grid resulting in thousands of dollars less pay. The *ESA* exemptions should be fine-tuned to ensure that equal pay for equal work is a reality.<sup>141</sup>
330. The Coalition recommends that, as the majority of women work in a non-standard employment relationship, the *ESA* should be amended to ensure part-time, part-year, contract, temporary agency workers are paid the same rate as full-time workers when doing similar work.
331. The Coalition recommends that the exemptions regarding seniority and merit systems in section 42(2) should be amended to include the principle that where the jobs are of equal value, the wage grids and wage structures should be of equal length and equal steps on the wage grid.
332. To ensure that the *ESA* equal pay for equal work provides for substantive equality, it is time to amend s. 42 in a manner that effectively protects women from the discrimination in the labour market. The modernization of s. 42 will assist in reducing the gender wage gap.
333. The Coalition recommends that the Committee look to the EU as a roadmap for modernizing the *ESA* to ensure that equal pay for substantially similar work is a

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140 *Temiskaming Hospitals*, ESC 475, January 30, 1978 (Haladner)

141 See *Lakeridge Health Corporation et. al.*, *supra*. for a discussion the unequal wage structures issues.

fully realized substantive right. This includes the EU Directives on atypical work: the Part-Time work directive, the fixed-term work directive and the Agency Work Directive.

334. The EU Directives aim to ensure that employees who are not employed in permanent jobs are guaranteed a minimum level of equal treatment compared to full-time permanent staff. The explicit purpose of the Directives is (i) remove discrimination in pay and conditions; (ii) improve the quality of part-time, fixed term and agency work so that it is equal to full-time employees; and (iii) to prevent abuses of these forms of employment relationship, such as multiple successive fixed-term contracts.

**v. New Employment Standard: Pay Transparency provision – Mandatory Pay and Pay Gap Reporting.**

335. As highlighted in Part V above, the pay setting inequalities women and other disadvantaged groups face in workplaces is perpetuated and sustained by the secrecy which pervades employer's pay setting practices. Making visible and transparent those practices is an essential human rights tool.
336. In a bid to combat the gender pay gap, several jurisdictions in both the United Kingdom, EU and the United States have introduced new statutory measures which require companies to publicly disclose information on the average pay of their male and female employees.<sup>142</sup> These measures require employers to publish information relating to the pay of employees for the purpose of showing whether there are differences in the pay of male and female employees.
337. By shining a light on pay practices in the private and voluntary sectors, the impact of workplace pay policies and practices can be monitored and discussed. By identifying those employers that are consistently and successfully ensuring that their women employees are achieving their full potential, governments can also publicly recognize and disseminate good practices.
338. Transparency in pay structures has long existed in collective bargaining regimes. Employees receive copies of the bargained wage structure and conditions of work as outlined in their collective agreements. Such agreements are publicly available through the Ministry of Labour.
339. In order to ensure the widest coverage of this new tool, the Coalition recommends that the obligation be set out in the *Employment Standards Act, 2000* as a new core entitlement of all employees and obligation of all businesses and employers regardless of size. Such standard should be widely publicized and included in the Employment Standards Branch Guide and in the workplace poster.

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<sup>142</sup> See [www.equalpaycoalition.org](http://www.equalpaycoalition.org) for review of pay transparency practices.

340. The new pay transparency standard should report the wage and pay structures, any merit pay systems, the job and its description as well as the nature of the employment relationship (whether it be direct or contract, temporary agency, etc.) and the conditions under which it is paid (e.g. full time, part time, on call etc.). Employers should also have an obligation to be transparent about the pay practices of those contractors which they engage.
341. As well, employers should be required to report what their overall gender pay gap is – that is what is the average annual earnings of women and men for whom they directly or indirectly employ through contracts and temporary agencies. This should not be only at overall business pay gap but also for each job.
342. For domestic workers and home-based workers, the transparency provisions would require employers and workers to submit names to a central registry. Such a registry would provide the Ministry of Labour with an enforcement mechanism to ensure minimum standards are adhered to.
343. As well, this new core employment standard should also provide that governments (provincial and local) must make transparent any pay provisions it is setting when it contracts for the provision of public services. This will help to reveal the role and practices of government when they fund public services. It can serve to reveal good pay setting practices which help to close the gender pay gap and bad practices which serve to widen it.
344. The lack of a pay transparency provision in the *ESA* only serves to perpetuate the secrecy of employer's pay policies and potential wage disparities. Such a new obligation would create little cost to an employer. Employers who currently ensure that no wage disparities exist would likely support such an amendment for the public recognition of their good employment practices.

**vi. Expanding, Strengthening and Enforcing  
the *Pay Equity Act***

345. As outlined in Part VII above, the primary specialized tool for remedying discriminatory pay setting in Ontario is currently the *Pay Equity Act*.
346. The Coalition recognizes that there are many issues to be addressed to ensure the *Pay Equity Act* is effective and strengthened and these matters need to be the subject of further discussion. At the same time, the Coalition cautions the Committee to be very careful in its approach to analyzing the effectiveness of the *Act* and sceptical of proposed changes by the business community or by the government itself who have found that the *Act* substantially interfered with their austerity and deregulation agenda along with the pursuit of profits. The *Act* must be strengthened and enforced not weakened and women's rights eliminated.
347. Accordingly, the Coalition requests that the Committee identify the need for a strengthened, effective and enforceable *Pay Equity Act* while continuing to include the current proxy comparison method. This includes calling for the Pay

Equity Commission to aggressively enforce the *Act* to require compliance.

- 348. Unions must be given an strong role in enforcing all pay practices required by the *Act* including maintenance.
- 349. Employees in workplaces with less than 10 employees must be provided with protection under the *Act*.
- 350. Sufficient funding should be provided to the Pay Equity Commission to carry out its important tasks
- 351. The Pay Equity Legal Clinic should be re-instated and funded to provide critical legal assistance to those seeking enforcement of the *Act*.
- 352. The Coalition also calls for a further dialogue amongst governments, the business community, the Coalition, unions and other equality seeking groups to seek ways to achieve this objective.

**vii. Obligation to Close the Gender Pay Gap in Government and Business Procurement Policies**

- 353. Procurement and contracting policies by governments and business should include a requirement to ensure that the pay of those providing the service or creating the product contracted for should be free of gender and other discrimination. Such a requirement would be embedded in the provincial *Closing the Gender Pay Gap Act*. This requirement would put significant pressure on governments and business to exercise greater oversight over their contracting policies and contracts which now often rely on underpaid women's labour to reduce costs.

**c. Access to Employment - Desegregating Ontario's Occupations and Industries, Removing Barriers and Taking Positive Measures**

- 354. This section highlights recommendations which address the next two systemic dynamics areas: Ontario's segregated occupations and industries/sectors and the barriers faced by women in gaining access to

**i. Reinstate a Strengthened and Updated *Employment Equity Act*, 1993.**

- 355. As highlighted in Part VIII above, it is time to reintroduce the *Employment Equity Act*, 1993 and consider how it can be strengthened and updated. This proactive legislation will help to address the highly stratified occupations and industries which are profiled in Part V above. This is done by requiring employers, working with union representatives, to analyze the recruitment, employment conditions and retention of workers who are women, Indigenous, racialized or with disabilities requiring them to plan and take action (by both removing barriers and

taking positive measures) to reach the goal of an equitable workplace which better reflects the workers in the community. Consideration should also be given as to whether other disadvantaged groups should be included in an updated *Employment Equity Act*.

**ii. Human Rights Code**

356. The *Human Rights Code* mechanism should be strengthened so that it leverages its considerable powers to address the labour market inequalities which face women and other disadvantaged groups. With their jurisdiction to address many grounds of discrimination, as well as employment, accommodation, and services the Ontario Human Rights Commission is positioned to play a leadership role in developing the strategies and plans to close the gender pay gap. This includes using its power to hold public inquiries and to carry out research, particularly on the ways in which the intersectional factors are affecting women and the gender pay gap.
357. The Coalition calls for the Commission to consult and issue a specific guideline for those with equality obligations under the *Code* as to what necessary steps need to be taken to close the gender pay gap and end systemic discrimination and also to end the greater pay gaps experienced by further disadvantaged groups. .
358. The Coalition also calls for the Government to ensure the Commission, the Human Rights Legal Support Centre and the Human Rights Tribunal of Ontario are adequately funded to carry out their important role in closing Ontario's gender pay gap.
359. The Government should also establish the Commission's Race Relations Directorate provided for under the reformed *Code* which could play a strong role in the working of closing gender pay gaps of racialized women.

**d. Redressing Discriminatory Pay Setting for Further Disadvantaged Groups**

360. In order to redress the specific and greater pay discrimination outlined by further disadvantaged groups as highlighted in Part VI above, the Coalition recommends that a specialized mechanism be developed which mandates employers and governments to investigate and consider the ways in which the other grounds of discrimination which women experience (including race, ethnicity, Indigenous status, and disability) also serve to depress their pay and weaken their access to secure, decent work.
361. See also the recommendations above regarding the *Human Rights Code*, *Employment Standards Act* and reinstatement of the *Employment Equity Act*, 1993 which will also serve to close these gaps as well.

**e. Access to Employment - Providing Appropriate, Affordable and**

### **Accessible Child and other Care Services**

362. Ontario needs to develop and implement a public care strategy to address the unequal household and care responsibilities which women bear and to facilitate the equal sharing of those responsibilities by men and women
363. This requires that the Ontario government builds an early childhood education and care system based on the principles of universality, high quality and comprehensiveness that:
- (a) Recognizes that access requires both a supply of high quality services and fees that all families can afford (or no fee);
  - (b) Employs a well-compensated, well-supported, well-educated early childhood workforce, which is recognized and appreciated for the importance of their work;
364. To do this Ontario must develop:
- (a) a coherent policy framework with targets and timelines for expansion of early childhood education and care services;
  - (b) a long-term plan for sustained public funding to operate and develop services; and
  - (c) an early childhood education and care workforce strategy.
365. The Coalition also relies on the submission and recommendations to the Review Committee of the Ontario Coalition for Better Child Care and Association of Early Childhood Educators.
366. Such a public care strategy would provide a sufficient supply of high quality child care, elder care and care for persons with disabilities at affordable fees so women can fully participate in the workforce and ensure sufficient public funding so that care workers are provided with equitable pay and decent secure working conditions for the mostly female workforce that provides care services for children, the elderly and persons with disabilities.

### **f. Access to Employment - Requiring Predictable and Secure Pay/Hours of Work**

367. Directly related to the Coalition's recommendations concerning a public care strategy and services for women, the Coalition also recommends other measures to provide predictability and security for women's diverse work and pay circumstances.



### **i. Requiring Predictable Hours**

368. The Coalition adopts the recommendations of the Workers' Action Centre in respect of the *Employment Standards Act, 2000* amendments set out in Appendix H to this submission.<sup>143</sup> These recommendations address the need for Decent Hours for a Decent Income. There needs to be commitments to minimum hours of work and extended notice of scheduling so that women can plan for their care and other responsibilities and can also schedule other work as many have several part time jobs.' The further recommendations in this regard are set out in Appendix H in th

### **i. Flexible Scheduling and Job Sharing**

369. Access to flexible scheduling and job sharing regimes reduces the gender pay gap. See also the recommendations of the Workers Action Centre set out in Appendix H.
370. The Coalition recommends that flexible scheduling provisions, as a basic minimum standard, should be introduced into the *ESA*. Such scheduling provisions would include job sharing arrangements where two employees could voluntarily enter into an agreement to share one full-time position. It allows women, who remain the predominant caregivers and men to attend to family responsibilities.
371. See further discussion below under accommodating care obligations.

## **g. Securing Decent and Non Precarious Work and Workplaces**

### **i. Addressing Precarity in Work and Workplace**

372. The Coalition again adopts the recommendations of the Workers' Action Centre in respect of the *Employment Standards Act, 2000* amendments necessary to reduce the precarity and lack of employment protections for vulnerable workers, many of whom are women.<sup>144</sup>
373. In particular, the Coalition adopts the recommendations to end the many exemptions to the *ESA* and the urgent need for a more rigorous enforcement mechanism with heavy fines for violations of the *Act*.

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<sup>143</sup> Those recommendations are contained in the Workers Action Centre Document - *Still Working on the Edge*, *supra*.

<sup>144</sup> Those recommendations are contained in the Workers Action Centre Document - *Still Working on the Edge*, *supra*.

374. As well, protections are required to end the contract flipping and egregious employment practices of agencies which exploit vulnerable women.

**ii. Self-Employed Women and Their Businesses**

375. Closing the gender pay gap for women who are truly own-account self-employed entrepreneurs (not disguised employees), requires further distinct measures to ensure women's businesses and services do not face discrimination and unequal support from government.
376. The government needs to ensure that measures are in place to assist such women in gaining access to grants and business development assistance so that they are not disadvantaged in relation to male dominated entrepreneurs and businesses.

**h. Empower Women's Voice Through Ensuring Access to Collective Representation**

377. Unionization is a not only a gender pay gap remedy; The right to bargain collectively and right to strike are also constitutional rights. This means that there is positive obligation of government to enact legislation to ensure that the constitutional right can be exercised in practice in the face of a reality of power imbalance and employment precarity.<sup>145</sup>

**i. The *Labour Relations Act*: access to union representation and collective bargaining**

378. The right to union representation and collective bargaining is a critical statutory right for women. Unionization is an equality promoting tool for closing the gender pay gap. Through union representation women have access to just cause protection and mechanisms to enforce their statutory rights in the *Pay Equity Act* and the *Human Rights Code*. The unionized wage premium in Ontario is 28.2%, or \$6.43 per hour.<sup>146</sup>
379. Apart from increasing women's wages, union protection often leads to greater access to full time positions and/or more secure and greater part-time hours. As well, it means women have someone to negotiate with their employer to secure their pay equity rights.
380. The very foundation of Ontario's labour law recognizes that there is a profound inequality in bargaining power between individual employees and employers. The Ontario system privileges mechanisms whereby employees can join together to form a trade union to bargain collectively with their employer. The rationale in

<sup>145</sup> *Mounted Police Association of Ontario v. Canada (Attorney General)*, [2015] 1 SCR 3.

<sup>146</sup> M. Cornish, *A Growing Concern*, *supra*, at p. 10 and footnote 74.

this industrial pluralistic model is that the parties are best left to set the terms and conditions of employment themselves.

- 381. Union certification and bargaining with the exception of the construction industry happen on a workplace by workplace model. The unionization and collective bargaining model is predicated on a particular norm—that of a non-fragmented, male-dominated labour force, working in regular and secure employment, working for a family wage.<sup>147</sup>
- 382. The challenge is that the current labour relations norm upon which the *LRA* is based is significantly eroding the in Ontario labour market. Smaller workplaces and precarious employment relationships combine to defeat the modest *LRA* rights that currently exist.
- 383. The Coalition focuses its submissions on the following amendments to the *Labour Relations Act* as immediate steps to close the gender wage gap.

#### **ii. Card-based certification Needed for all Work**

- 384. When the *LRA* was amended to re-introduce card-based certification, it applied solely to the male-dominated construction sectors.
- 385. The exclusion of the non-construction sectors is a blatant differential treatment which has an extremely negative impact on women in female-dominated sectors such as employment agencies which provide home-care services.
- 386. In the construction sector, a union may elect either a card-base application or a vote-based application. Similar provisions should apply to the non-construction sector.
- 387. As part of the provisions to support card-based certification, the Coalition supports expanded access to remedial certification without a vote.

#### **iii. Greater Access to Employee Information to Facilitate Organizing**

- 388. The Coalition further supports measures to improve union access to employee information to facilitate organizing. As well, the *Public Sector Labour Relations Transition Act ("PSLRTA")*, the Board will order access to employee lists for a time-limited period. The employee lists include both currently unionized and non-union employees. Such provisions should be expanded where a union is able to demonstrate a near threshold support in a workplace.

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147 J. Fudge, *Labour Law's Little Sister: The Employment Standards Act and the Feminization of Labour*, Canadian Centre for Policy Alternatives (1991).

**iv. Bargaining Unit Structure: Consolidation of Bargaining Units**

389. The Coalition recommends the revision of the *LRA* to enable a union or employer to apply to the Ontario Labour Relations Board combine bargaining units represented by the same union. As the Labour Board has held, such a provision provides the means of enhancing administrative efficiency and convenience, lateral mobility, a common framework of employment conditions and the promotion of industrial stability".<sup>148</sup> Given that women are often in smaller workplaces, such a provision will enhance their ability to unionize and have an effective collective bargaining structure.
390. This recommendation is consistent with the OLRB's current approach to designate larger bargaining units pursuant to *Public Service Labour Relations Transition Act, 1997*.

**v. Coverage of Non Traditional Workers**

391. The *LRA* should expand the type of workers covered by the law so that it can provide a right to collective representation for professionals and others like Ontario midwives who are considered independent contractors as result of the nature of their work but otherwise have their pay set by a government funding body.

**vi. Sectoral Bargaining and Strategies**

392. Historically, there are different models of sectoral bargaining: the construction industry in Ontario and the Decrees system in Quebec, to name two. These models were considered in detail in the 1993 Study by the Ontario District Council of International Ladies' Garment Workers' Union and Intercede, *Meeting the Needs of Vulnerable Workers: Proposals for Improved Employment Legislation and Access to Collective Bargaining for Domestic Workers and Industrial Homeworkers* ("Intercede Report").
393. In order to redress the gender pay gap and the state of work organization in the Ontario labour market, the Coalition recommends that existing models of sectoral and broader based industry or provincial bargaining should be examined to determine effective and appropriate options. As part of this examination, unions, representatives of the unorganized and employers would provide further submissions on this issue.
394. Such models would not be limited to establishing sectoral wage setting mechanisms, but would ensure that the full benefits of collective bargaining would become available.

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148 *Marriott Corp.*, 1994 CanLII 9820 (ON LRB) para 2; *Mississauga Hydro-Electric Commission*, 1993 CanLII 7839 (ON LRB).

395. In the Coalition's submission there are three main components to sectoral bargaining: (i) that the "true employer" is identified, either through joint and several liability provisions required to pierce through existing chains and networks of subcontractors or multi-employer structures; (ii) that each sector may require specific modification to adopt to the precarity of the worker's employment relationship, and (iii) regional certification processes be developed.
396. The Coalition's recommendations in respect of sectoral bargaining are at the early stages and require full consultation and analysis of the options. The Coalition requests the opportunity and reserves the right to provide the Review with more fulsome submissions on this proposal as the Committee's process continues.

**g. Address Gendered Dynamics that Disrupt Women's Employment and Pay**

397. As highlighted in Parts V and VI above, there are many different ways that women's employment and pay are impaired.

**i. End Gender Harassment and Violence**

398. Ontario with its 2015 Action Plan to Stop Violence and Harassment has started to take a comprehensive approach to addressing the widespread violence and harassment women experience.<sup>149</sup> The Government established a provincial Roundtable to address and lead action on the Plan and monitor its progress. This Plan is an important step by the Government and also provides an important example to be looked at for planning for closing the gender pay gap.
399. In addition to the barrier for victims of unaffordable and inaccessible child care, is the additional barrier forcing women victims of violence to remain in abusive relationships because of the lack of affordable housing and sufficient shelter services.
400. The Coalition recommends that Ontario also follow the lead of two other province's initiatives in this area:
- (a) Following an Alberta private members Bill 204, amend Ontario's *Residential Tenancies Act, 2006* to provide increased flexibility in access to medical and care leaves for single days, rather than a full week, if so required and the removal of exemptions in respect of the size of the workplace and time in the workplace.<sup>150</sup>

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149 Government of Ontario, *It's Never Okay – An Action Plan to Stop Violence and Harassment*, Queen's Printer, March 2015, p.34-35 and Marie Deschamps, CC. Ad.E, External Review Authority, "External Review into Sexual Misconduct and Harassment in the Canadian Armed Forces", March 27, 2015.

150 *Residential Tenancies Act, 2006*, 2006 S.O. c.17.

- (b) The *ESA* provide for a separate and distinct statutory minimum for sick leave of not less than seven days per year to be taken on an as needed basis to allow domestic violence victims to break a lease early and without penalty or to effectively remove an abuser's name from the lease.<sup>151</sup>
  - (c) Following a Manitoba government bill, amend the *ESA* to ensure that victims of domestic violence have financial security, job protection and flexibility to take time away from work to recover from violence." This includes up to 10 days of leave per year without penalty, including five days of paid leave and a period of leave of up to 17 weeks so they can, for example, move into a new home or take time to recover from a violent relationship.<sup>152</sup>
401. As well, the Ontario government's Action Plan on violence should be co-ordinated with the closing the gender pay gap strategy so that they are mutually reinforcing.
402. As well, the Government should also ensure it takes all necessary steps based working nation to nation with Indigenous peoples to ensure that the disproportionate rates of missing and murdered Aboriginal women and girls in the province are addressed.

## **ii. End Pregnancy and Motherhood Discrimination**

403. Currently this problem is addressed both by leave provisions under the *ESA*, 2000 as well as by the provisions in the *Human Rights Code* prohibiting sex discrimination in employment.<sup>153</sup>
404. The Coalition recommends that the *ESA* provide for immediate reinstatement of a terminated employee on pregnancy or parental leave as well as an immediate fine of \$10,000 for terminating an employee on pregnancy and parental leave. The Coalition also recommends that the exemptions in the *ESA* which permit employers to fail to reinstate a pregnant employee should be eliminated as they have been used by employers to terminate employees unjustifiably.
405. As well, the Employment Standards Branch should conduct a province wide

<sup>151</sup> M. Ibrahim, "Proposed Alberta bill would remove barriers for those fleeing domestic violence", *Edmonton Journal*, November 15, 2015 (available at: <http://edmontonjournal.com/news/politics/proposed-alberta-bill-would-remove-barriers-for-those-fleeing-domestic-violence>).

<sup>152</sup> See "Domestic violence victims in Manitoba to get time off work with pay", *CBC News*, November 25, 2015 (available at: <http://www.cbc.ca/news/canada/manitoba/domestic-violence-victim-benefit-manitoba-1.3336751>).

For discussion of the *ESA* pregnancy leave provisions, see <http://www.labour.gov.on.ca/english/es/pubs/guide/pregnancy.php>.

campaign to educate employers about the entitlement of women and parents to leaves and should aggressively and pro-actively enforce these entitlements.

### **iii. Address Care Obligations**

- 406. As highlighted above, women have unequal care obligations which often result in their having to leave their jobs or earn less pay. These obligations include not only for children, but also for elder care and care of family with disabilities.
- 407. The government's expansion of the leave provisions of the *ESA 2000* to include Pregnancy, Personal Emergency, Family Medical Leaves, Critical Ill Child Care, Organ Donation, Crime-related Death or Disappearance of a Child all will work to protect women's job security and earnings.
- 408. However, as currently set out there are three significant issues for women which add to the gender pay gap: (i) the exemptions regarding size of workplace and length of time in workplace to qualify; (ii) the limitation that leaves are to be taken as the equivalent of "full week" (e.g. s. 49.3(1)) and some leaves are required to be taken as "full weeks" (49.1 (7) and (iii) lack of protection to employee is medical note is not immediately provided to an employer.
- 409. As well, there needs to be greater entitlements for male parents as well to carry out such responsibilities and to ensure equal sharing of those responsibilities by parents.
- 410. There should be a basic minimum of statutory defined, job-protected sick days and emergency days for every employee but not at the expense of reducing other critical leaves for medical and critical care needs.
- 411. The Coalition recommends increased flexibility in access medical and care leaves for single days, rather than a full week if so required. The Coalition recommends removing any exemptions in respect of the size of the workplace and time in workplace.
- 412. The Coalition explicitly supports the Workers Action Centre recommendation of a separate and distinct statutory minimum for sick leave of not less than seven days per year to be taken on an add needed basis.

## **XI. RESPONDING TO THE HUMAN RIGHTS CRISIS: IMMEDIATE NEXT STEPS AND 10 YEAR PLAN FOR TARGETING A ZERO GAP BY 2025**

### **a. Developing Mandatory Action Plans, Goals and Targets**

- 413. We need to challenge the failure of Ontario governments and businesses to carry out their role of securing the human rights of Ontario women to economic equality. This includes identifying and understanding the different dynamics

which produce the gender pay gap and the larger gender pay gaps for multiply disadvantaged women.

414. Closing those gaps requires transforming the way governments and businesses operate – nothing less than a transformation will work. There needs to be an interconnected and comprehensive framework of systems, structures and planning to get to the gender equality finish line. There must be a mandatory legal framework which drives those systemic actions.
415. Given the embedded ways in the current economy and government systems work to sustain the gender pay gap, changing those "ways" require mandatory legal obligations embedded in provincial laws for planning, actions and monitoring - not just good intentions.
416. With such a large task, there needs to be a goal – a target -- so everyone understands the urgency of the problem - we say the goal is 0% by 2025 – Will that be hard to do – yes – is it impossible - no.
417. It is useful to remember what Ontario and Canada did during the 2<sup>nd</sup> world war – remember “Rosie the Riveter”? With men away at war, women stepped in to perform complex work in factories and elsewhere – child care was provided - the economy was transformed to a war economy. Winning the war required a transformation of Ontario's labour market and production economy. When everyone was united in that objective –previous objections to women working were set aside – at least until the men came home and the campaign started to get women back to their homes or low paid work.
418. We also see Ontario, Canada and the world start to gear into action to address climate change – it took a long time for that to happen – we need to see the same commitment and priority given by Ontario's governments and businesses to securing women's economic equality.
419. We need to put the gender pay gap behind us - to make it history once and for all - we need to stop thinking that the "market" will fix the problem - it clearly hasn't and in fact continues to contribute to the problem.
420. The Coalition is calling on Ontario governments and businesses to work together to get the pay gap to 0% by 2025. To do that, we need to treat the gender pay gap and women's labour market inequality as a human rights and economic crisis like climate change or other similar system wide problems. Reorienting the dialogue to focus on the human right of women to equitable outcomes with men in the labour market and the need to build a new equitable economy is essential for there to be a serious commitment to closing Ontario's gender pay gap.

**b. How does Ontario get to 0% Gender Pay Gap by 2025?**

421. At its very basic, it requires taking steps to increase the average annual earnings of all women in Ontario so that they are on average equal to men's annual



average earnings.

422. The Coalition proposes that Ontario's Strategy therefore must include a plan which works to achieve that goal through planning, collaboration, setting of goals, monitoring and then revising plans to ensure the goal is reached. This requires collecting the necessary statistical data to monitor gender impacts as well as impacts based on the intersectional grounds, including race and disability.
423. We need to be specific. With current gap of close to 30% and 10 years between now and 2025, there needs to be a reduction of approximately 3% a year starting in 2017 with 4.5% in last year.

| Year | Gender Pay Gap* |
|------|-----------------|
| 2015 | 29.4%           |
| 2016 | 28.5%           |
| 2017 | 25.5%           |
| 2018 | 22.5%           |
| 2019 | 19.5%           |
| 2020 | 16.5%           |
| 2021 | 13.5%           |
| 2022 | 10.5%           |
| 2023 | 7.5%            |
| 2024 | 4.5%            |
| 2025 | 0%              |

\*based on Ontario average annual earnings of men and women according to Statistics Canada

### **c. Immediate Recommendations for Achieving Gap Reduction in 2016**

424. In terms of immediate action, we need to get the gender pay gap down by 1% in 2016. The year has already started. Much needs to be done immediately to achieve that 2016 goal.
425. The Coalition therefore requests the Committee to issue now an interim report identifying the following immediate actions which can be taken without the need for further consultation.
  - (a) Request the Government working with the Pay Equity Commission, Ontario Human Rights Commission and Employment Standards Branch to mount a substantial and resourced public campaign between now and including and after Equal Pay Day on April 19, 2016 which identifies:
    - (i) The extent of the gender pay gap, its harmful impacts and the need to close it to generate a fair and inclusive economy;
    - (ii) The Gender Pay Gap as a human rights crisis which must be acted upon immediately and thereafter till closed;. and

- (iii) The current human rights mechanisms which are available to address the problem.
- (b) Request the Pay Equity Commission to mount an immediate public campaign to advertise the rights and obligations under the *Pay Equity Act* and the intention of the Commission to vigorously enforce the *Act*, including through widespread audits across the province.
- (c) Request the Ontario Government working with the agencies which it publicly funds to make the necessary funds available so that public sector agencies can pay identified pay equity adjustments owing under the *Pay Equity Act*.
- (d) Appoint by Equal Pay Day in April, 2016, an interim Labour Market Equality Commissioner, reporting directly to the Legislature and the Premier, who can be in place to start coordinating the development and implementation of Ontario's plans to close the gender pay gap.
- (e) Effective April 1, 2016, increase the minimum wage to \$15 per hour, and
- (f) Implement a gender and equity lens in the current provincial budget process and in cabinet and ministry decision-making.
- (g) The Ontario Government abandons its objections to the Pay Equity Hearings Tribunal application to ensure women in predominantly female workplaces using the proxy comparison method can continue to maintain pay equity using their external proxy comparator and works to arrive at an appropriate resolution of the issues.
- (h) The Ontario Government abandons its defense of the Association of Ontario Midwives application to the Hearings Tribunal and works to resolve the pay equity maintenance issues for midwives and other government funded professionals who are not covered by the *Pay Equity Act*.

## **XII. CONCLUDING COMMENTS**

- 426. This submission has detailed the systemic discrimination Ontario women experience throughout their lives which creates and sustains the economic inequalities they face in Ontario's labour market. Getting from a nearly 30% gender pay gap to 0% will take a tremendous effort. But it is time to put women in all their diversity at the head of line in terms of economic and social priorities. Ontario needs to stop leaving women languishing in lower paid inferior jobs or without jobs at all because of their care responsibilities or the barriers they face in gaining decent work.
- 427. It is also time to make sure there are concrete plans to ensure those women who are most disadvantaged and suffer greater economic inequalities are given

priority attention.

428. Time is ticking away until the target date of 2025. Urgent action is needed starting immediately and continuing over the 10 year period. We need to unlock the promise of Ontario by unlocking the promise in all of Ontario's women.



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## **APPENDIX A**

### **BACKGROUND ON THE EQUAL PAY COALITION AND LIST OF ITS MEMBER ORGANIZATIONS**

With the founding of the Ontario Equal Pay Coalition in 1974, the Coalition brought together trade unions, women's and business women's organizations and community organizations to lobby for the implementation of ILO Convention 100 Equal Pay For Work of Equal Value.

The Equal Pay Coalition is a coalition of organizations to seek the implementation of equal pay for work of equal value both through legislation and collective bargaining. The Coalition has over 39 constituent and partner groups which represent Ontario women and men who support equal pay for work of equal value. Some of our member groups include:

The Coalition met with a succession of Ontario Ministers of Labour pushing for a strong equal pay for work value law; increases to the minimum wage as a pay equity down payment for the most vulnerable women workers; strong collective bargaining laws to help women bargain pay equity; and implementation of sectoral wages in female-dominated sectors.

With a strategy of working with all political parties who supported equal pay for work of equal value, the Coalition gained the support of both the New Democratic Party and the Liberal Party which resulted in pay equity being part of the Liberal/NDP Accord when the Liberals came to power in 1985.

As such, the Liberal Government issued a Green Paper on Pay Equity in 1985 which called for input on the design of the law. After two years of consultations, the Legislature passed the 1987 Pay Equity Act, effective January 1, 1988.

As this law was based on the job-to-job method and did not cover women who had no direct comparator in a workplace, the Predominantly Female Workplace study was made part of the Act. This Study reported to the Minister of Labour and resulted in the amendments to the Act in 1992 which provided for the proportional and proxy comparison method. This provides women in predominantly female workplace with a mechanism to identify their discriminatory pay gap. At the same time, as a result of

cases which were finding that the Ontario Government and larger public sector employers were being found to be “employers” under the Act and responsible for pay equity, the Ontario Government in the early 1990's agreed to fund all public sector pay equity adjustments. In exchange, the Government included an amendment which prevented the Ontario Government from being found as an employer of another entity in the public sector. As well, after lobbying efforts by many groups, Ontario passed the Employment Equity Act.

When the Progressive Conservative government came to power in 1995, Ontario 's leadership in the pay equity field ended. The Government quickly moved to repeal the proxy comparison sections of the Act which covered approximately 100,000 public sector women; ended the funding of such adjustments; eliminated funding for Pay Equity Legal Clinic; repealed the Employment Equity Act; and repealed Labour Relations Act provisions which had assisted and facilitated the union organizing of women workers.

As a result of the SEIU et al. v. Attorney General (Ont) legal challenge, Mr. Justice O'Leary struck down provisions of the Savings and Restructuring Act, 1996 as a violation of section 15 of the Charter of Rights and Freedoms. With the proxy provisions reinstated, the Coalition lobbied again for the funding of the proxy adjustments. After paying out more than \$200 million in funding adjustments after years of delay, the government then stated that pay equity was the cost of doing business and it was not prepared to fund public sector agencies to pay these adjustments. A further Charter challenge, CUPE et. Al v. Attorney General(Ont) was brought in 2001 which resulted in the Government reaching a settlement two years later in 2003. This led to the requirement for the Government to pay out up to \$414 million in pay equity adjustments for the over 100,000 women in predominantly female workplaces. This settlement lasted for a period of three years and the Ontario Government has again reverted to refusing to pay the necessary pay equity adjustments. Based on the government's own figures, \$78.1 million is owing for 2006 and 2007, a further \$77.6 million is owed in 2008 and about \$467.9 million will be owed from 2008-2011.

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From 2006- 2008, the Coalition lobbied all political parties to take immediate steps to improve the enforcement of the Pay Equity Act and continues to do so today.

In 2008, the twentieth anniversary of the Pay Equity Act, the Coalition released the Framework for Action on Pay Equity in Ontario which called upon the Provincial government to take action to end the gender pay gap crisis in the Ontario.

The Coalition lobbied for the creation of Equal Pay Day marking the pay gap and the additional days that women must work in order make the same pay men make in twelve months.

In April 2014, the provincial government agreed that Equal Pay Day would be held on an annual basis.

In June, 2014, Premier Kathleen Wynne responding to the Equal Pay Coalition's election letter by making a campaign promise on election to plan to close Ontario's gender pay gap.

In September, 2015, Premier Wynne followed up on that promise to the Coalition by mandating the Minister of Labour working with the Minister Responsible for Women's Issues to develop a strategy to close the gender pay gap in Ontario. This resulted in the appointment of the Gender Wage Gap Steering Committee at the time of the April, 2015 Equal Pay Day.

### **MEMBER ORGANIZATIONS:**

ACORN Canada, [www.acorncanada.org](http://www.acorncanada.org)

Association of Ontario Midwives, [www.aom.on.ca](http://www.aom.on.ca)

Business & Professional Women's Clubs of Ontario, [www.bpwontario.org](http://www.bpwontario.org)

Business And Professional Women of Ontario (Sudbury), [www.bpwsudbury.com](http://www.bpwsudbury.com)

Canadian Union of Public Employees, [www.cupe.ca](http://www.cupe.ca)

Chinese Canadian National Council (Toronto chapter), [www.ccnctoronto.ca](http://www.ccnctoronto.ca)

Community Social Planning Council of Toronto, [www.socialplanningtoronto.org/Index3.htm](http://www.socialplanningtoronto.org/Index3.htm)

Confederation of Ontario University Staff Associations & Unions, [www.cousa.on.ca](http://www.cousa.on.ca)

Elementary Teachers Federation of Ontario, [www.etfo.ca](http://www.etfo.ca)

Income Security Advocacy Centre, [www.incomesecurity.org](http://www.incomesecurity.org)

International Alliance Theatrical Stage Employees (IATSE), [www.iatse-intl.org/home.html](http://www.iatse-intl.org/home.html)

International Association Of Machinists And Aerospace Workers, [www.iamaw.ca](http://www.iamaw.ca)

Office & Professional Employees International Union, [www.copesepb.ca](http://www.copesepb.ca)

Ontario Association of Interval and Transition Houses (OAITH), [www.oaith.ca](http://www.oaith.ca)  
Ontario Coalition For Better Child Care, [www.childcareontario.org](http://www.childcareontario.org)  
Ontario Coalition for Social Justice, [www.ocsj.ca](http://www.ocsj.ca)  
Ontario Council of Canadian Federation of University Women, [www.cfuwontcouncil.ca](http://www.cfuwontcouncil.ca)  
Ontario Council of Hospital Unions, [www.ochu.on.ca](http://www.ochu.on.ca)  
Ontario English Catholic Teachers Association, [www.oecta.on.ca](http://www.oecta.on.ca)  
Ontario Federation of Labour, [www.ofl.ca](http://www.ofl.ca)  
Ontario Municipal Employees' Committee, Library Workers' Committee  
Ontario Nurses' Association, [www.ona.ca](http://www.ona.ca)  
Ontario Public Service Employees Union, [www.opseu.org](http://www.opseu.org)  
Ontario Secondary School Teachers' Federation, [www.osstf.on.ca](http://www.osstf.on.ca)  
Parkdale Community Legal Services, [www.parkdalelegal.org](http://www.parkdalelegal.org)  
Power Workers' Union, [www.pwu.ca](http://www.pwu.ca)  
Provincial Council of Women of Ontario  
Public Service Alliance Of Canada, [www.psac.com/home-e.shtml](http://www.psac.com/home-e.shtml)  
Service Employees International Union, [www.seiu.ca](http://www.seiu.ca)  
Times Change, [www.timeschange.org](http://www.timeschange.org)  
Unifor, [www.unifor.org](http://www.unifor.org)  
Union of Needletrades Industrial & Textile Employees, [www.unitehere.ca](http://www.unitehere.ca)  
United Food And Commercial Workers International Union, [www.ufcw.ca](http://www.ufcw.ca)  
United Steelworkers, Local 1998, [www.uswa1998.ca](http://www.uswa1998.ca)  
United Steelworkers, Local 2010, <http://usw2010.ca>  
United Steelworkers, District 6, <http://www.usw.ca/districts/6>  
United Food and Commercial Workers, Local 1000A, [www.ufcw1000a.org](http://www.ufcw1000a.org)  
York University Staff Association, [www.yusapuy.org](http://www.yusapuy.org)  
YWCA of Metropolitan Toronto, [www.ywcatoronto.org](http://www.ywcatoronto.org)



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## APPENDIX B

### PAY AND EMPLOYMENT EQUITY FOR WOMEN: INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

The following pay and employment equity obligations flow from international human rights instruments.<sup>154</sup>

#### A. PAY EQUITY

##### Basic Principles and Obligations

**The principle of equal pay for work of equal value or pay equity must be guaranteed, requiring that women's jobs where comparable to men's jobs must have equal compensation.** ILO Equal Remuneration Convention (No. 100) (ILO Convention No. 100), Article 1; International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 7; Convention on the Elimination of Discrimination Against Women (CEDAW), Article 11; Beijing Platform for Action (Beijing Platform), Paras. 165, 166, 175, 178; Committee on Economic, Social and Cultural Rights, General Comment No. 18, The Right to Work (General Comment No. 18), Para. 13; Committee on Economic, Social and Cultural Rights, General Comment No. 16, The Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights (General Comment No. 16), Para. 24.

**Equal pay for work of equal value is a fundamental labour standard of the highest priority, necessary for building a sustainable, just and developed society.** ILO Declaration on Fundamental Principles and Rights at Work (ILO Declaration); CEDAW, Preamble; Beijing Platform, Para. 41; General Comment No. 18, Para. 13; General Comment No. 16, Para. 24.

**Governments must enact pay equity legislation to ensure that the right is guaranteed.** ILO Convention No. 100, Article 2(2); CEDAW, Articles 2(b), 2(f); Beijing Platform, Paras. 165(a), 178(a); General Comment No. 16, Para. 24.

**Pay equity or the elimination of the “compensation gap” between men's and**

<sup>154</sup> See Annex A and - Achieving Pay and Employment Equity for Women - Human Rights and Business/Development Imperatives, *supra*.



**women's jobs must be achieved "without delay". CEDAW, Article 2**

**Pay equity must break the cycle of systemic discrimination by providing a framework to challenge systemic assumptions and practices that lead to the undervaluing and under-compensating of women's work. CEDAW, Preamble**

**Governments must ensure the full and practical realization of the right to equal pay for work of equal value. CEDAW, Articles 2, 24; Beijing Platform, Para. 175(k); ICESCR, Articles 3, 7**

**Governments must signal that they have made a strong commitment to achieving pay equity, that they have dedicated themselves unreservedly to achieving pay equity, and that they have mobilized adequate resources to achieving pay equity. CEDAW, Articles 2, 24; ICESCR, Article 2; Beijing Declaration, Para. 7; Beijing Platform, Paras. 4, 5**

**Employers have a proactive obligation to achieve pay equity in their workplaces. Beijing Platform, Para. 178(a), (h), (l), (o); Beijing +5 Resolution, Para. 82(h)**

### **Scope of Pay Equity Obligations**

Pay equity must be achieved in both the public sector and the private sector. CEDAW, Articles 2(d), (e); Beijing Platform, Para. 178(a), (h), (l), (o)

**Special measures are required to ensure that public authorities and public institutions act in compliance with pay equity obligations. CEDAW, Article 2(d)**

**A comprehensive system of protection is needed to combat gender discrimination and to ensure equal opportunities and treatment between men and women in relation to their right to work by ensuring equal pay for work of equal value. General Comment No. 18, Para. 13**

### **Methodologies for Achieving Pay Equity**

**Pay equity laws should require specific gender inclusive or gender neutral methodologies for evaluating and comparing the different jobs that men and women do and for reformulating wage structures of female-dominated jobs. ILO Convention No. 100, Article 3; Beijing Platform, Para. 178(k), (o)**

**Unions must be afforded an active role in developing and enforcing pay equity. ILO Convention No. 100, Article 4; Beijing Declaration, Para. 20; Beijing Platform, Paras. 166(l), 178(h)**

**Protection for the most vulnerable workers must be ensured by providing reasonable opportunity for representatives/agents of non-unionized employees to participate in developing and enforcing pay equity. Beijing Platform, Para. 45**

## **Enforcement of Pay Equity Rights**

**Complaints regarding lack of pay equity must be enforceable before a competent and expert tribunal.** International Covenant on Civil and Political Rights (ICCPR), Article 3; CEDAW, Article 2(c)

**Mechanisms to adjudicate systemic wage discrimination must be strengthened.** Beijing Platform, Para. 178(l)

**An effective remedy for systemic wage discrimination must be provided, and competent authorities must enforce pay equity remedies where granted.** ICCPR, Article 3

**Meaningful sanctions must be imposed for the failure to comply with pay equity obligations.** CEDAW, Article 2(b)

**A mechanism for external oversight and auditing of employers' compliance with pay equity should be provided.** ICESCR, Articles 16, 17; CEDAW, Part V; Beijing Platform for Action, Para. 178(c)

## **B. EMPLOYMENT EQUITY**

### **Basic Principles and Obligations**

**The principle of employment equity must be guaranteed, requiring equality of opportunity and treatment in employment and occupation for all women, including those who are disadvantaged on the basis of race, colour, indigenous states, religion, disability, political opinion, national extraction or social origin.** ICESCR, Articles 2, 7; ICCPR, Article 26; CEDAW, Article 11(1)(b); International Convention on the Elimination of all Forms of Racial Discrimination (CERD), Articles 4, 5(e)(i); Universal Declaration of Human Rights, Articles 2, 7, 23; ILO Discrimination (Employment and Occupation) Convention (No. 111) (ILO Convention No.111), Articles 1, 2, 3(b); ILO Employment Policy Convention (No. 122) (ILO Convention No. 122), Article 2(c); Durban Programme of Action on Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban Programme), Articles 48, 66; Beijing +5 Resolution, Paras. 74(b), 82(a), (e); Declaration on the Rights of Disabled Persons, Articles 6, 7; Declaration on the Rights of Mentally Retarded Persons, Articles 2,3; Declaration on Race and Racial Prejudice, Article 9; Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rule 8; World Programme of Action Concerning Disabled Persons, Paras. 116-118; General Comment No. 18, Paras. 13-19; Convention on the Rights of Persons with Disabilities (CRPD), Arts. 5, 6, 27; General Comment No. 16, Para. 24.

**The right to work must be guaranteed and protected from discrimination.** ICESCR, Article 6; CERD, Article 5(e)(i); CEDAW, Article 11(1)(a); General Comment No. 18, Paras. 13-19; CRPD, Art. 27; General Comment No. 16, Para. 24.

**Governments must enact employment equity legislation to ensure the right is**

**guaranteed.** CEDAW, Articles 2(b), 2(f); ILO Convention No. 111, Article 3(b); ILO Maternity Protection Convention (Revised) (No. 183) (ILO Convention No. 183), Article 12

**Employment equity is a fundamental labour standard.** ILO Declaration on Fundamental Principles and Rights at Work, Preamble, Article 1(b); Beijing Platform, Para. 41

**Achieving employment equity is a required action for achieving the full implementation of human rights.** Beijing Declaration, Paras. 9, 21; CERD, Article 2; ILO Convention No. 111, Preamble; Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Preamble, Rules 7(1), 15(2)

**In preventing employment discrimination, the multiple and intersecting forms of discrimination experienced by individuals must be taken into account.** Beijing Platform, Para. 178(f), (j), (p); Beijing +5 Resolution, Para. 83(d); Durban Programme, Articles 49, 51, 104(c); Draft Declaration on the Rights of Indigenous Peoples, Article 18

**Governments must signal that they have made a strong commitment to achieving employment equity, particularly through legislation, that they have dedicated themselves unreservedly to achieving employment equity, and that they have mobilized adequate resources.** ICESCR, Article 2(1); Beijing Platform, Para. 5

### **Scope of Employment Equity Obligation**

**Employment equity must be proactively achieved in both the public sector and the private sector.** CEDAW, Article 2(d), (e); Beijing Platform, Paras. 165(b), (o), 178(b), (h); Beijing +5 Resolution, Para. 82(m); Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rules 5, 8; Durban Programme, Article 215

**Employment equity must be achieved for part-time as well as full-time workers.** ILO Part-Time Work Convention (No. 175) (ILO Convention No. 175), Article 4(c)

### **Methodologies for Achieving Employment Equity**

The principle of gender equality must be constitutionalized. CEDAW, Article 2

#### **i. General**

**Women's right to free choice of employment, the right to promotion, job security, equal benefits and conditions of service, and the right to receive vocational training and retaining must be ensured.** CEDAW, Art. 11(1)(c)

**Women's right to social security and the right to paid leave in cases of retirement, unemployment, sickness, invalidity, old age, and other incapacity to work must be ensured.** UDHR, Art. 22; CEDAW, Art. 11(1)(e); ICESCR, Art. 9; Committee on Economic, Social and Cultural Rights, General Comment No. 19, The Right to Social Security, Paras. 1-84

**Governments must coordinate with regional and international institutions and actors to ensure employment equity for women living in poverty.** Beijing +5 Resolution, Para.101(d)

**Government policies must include gender equality training and gender-awareness campaigns.** Beijing +5 Resolution, Paras. 82(j), (k)

**Homeworkers' protection against discrimination in employment and occupation must be ensured.** ILO Home Work Convention (No. 177) (ILO Convention No. 177), Article 4(2)(b)

**Unions must be afforded an active role in promoting employment equity.** ILO Convention No. 111, Articles 1(b), 3(a); Beijing Platform, Paras. 178(d), 180(a); Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rules 6, 9; World Programme of Action Concerning Disabled Persons, Para. 131; Durban Programme, Article 215; ILO Workers with Family Responsibilities Convention (No. 156) (ILO Convention No. 156), Article 11; ILO Convention No. 183, Articles 4(4), 11; ILO Convention No. 122, Article 3.

**Occupational segregation should be eliminated through measures such as counselling, placement, and the diversification of occupational choices. Equal participation in highly-skilled jobs and senior management positions should be promoted.** Beijing Platform, Para. 178(g)

**Employment equity must be facilitated by increasing access to risk capital, credit schemes, microcredit, and facilitating microenterprises and small and medium-sized enterprises.** Beijing +5 Resolution, Paras. 74(b), 82(g)

ii. Women and Families

**Working mothers must be free from discrimination.** ILO Convention No. 183, Articles 6, 8, 9, 10; ICESCR, Article 10; CEDAW, Article 11(2)

**Governments must promote programmes and policies that enable women and men to reconcile their work and family responsibilities.** Beijing +5 Resolution, Paras. 82(b), (c), (d); CEDAW, Article 10; ILO Convention No. 156, Article 3(1)

**Workers with family responsibilities must be able to integrate into the labour force, as well as re-enter it after absences due to family responsibilities.** ILO Convention No. 156, Article 7 Family support services and flexible working arrangements should be provided by the employer. Beijing Platform, Para. 180(b)

iii. Women with Disabilities

**Governments must support personal assistance programmes and interpretation services to increase the level of participation of persons with disabilities in everyday life at work.** Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rule 4

**Negative attitudes and prejudices concerning disabled workers must be overcome, by means of state-initiated campaigns.** Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rule 7(4)

**Employment equity for disabled persons must be achieved in both rural and urban areas.** World Programme of Action Concerning Disabled Persons, Para. 128

**Employment equity for disabled persons should be achieved through various measures, including incentive-oriented quota schemes, designated employment, loans or grants for small businesses, contract compliance, and tax concessions.** Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rule 7(2); World Programme of Action Concerning Disabled Persons, Para. 129

**Technical aids for persons with disabilities and access to them must be supported by governments to achieve employment equity.** World Programme of Action Concerning Disabled Persons, Para. 129

iv. Indigenous Women

**Governments must ensure employment equity for indigenous peoples.** Durban Programme, Article 16; ILO Indigenous and Tribal Peoples in Independent Countries Convention (No. 169) (ILO Convention No. 169), Article 20; Draft Declaration on the Rights of Indigenous Peoples, Articles 18, 22

**Governments must enact and supervise legislation and other measures for employment equity for indigenous and tribal peoples.** ILO Convention No. 169, Article 33; Draft Declaration on the Rights of Indigenous Peoples, Article 37

**Social security and other occupational benefits must be ensured without discrimination for indigenous and tribal peoples.** ILO Convention No. 169, Articles 20(1)(c), 24 Vocational training must be tailored to suit the special needs of indigenous and tribal peoples. ILO Convention No. 169, Article 21

**Handicrafts, rural and community-based industries, and a subsistence economy and traditional activities shall be recognized as important factors in the maintenance of cultures and in economic self-reliance and development of indigenous and tribal peoples.** ILO Convention No. 169, Article 23

v. Women Disadvantaged by Racism, Racial Discrimination, Xenophobia and Related Intolerance

**Methods for achieving employment equity for victims of racism, racial discrimination, xenophobia and related intolerance include civil rights enforcement and public education and communication within the workplace.** Durban Programme, Article 104(a)

**Enterprises organized and operated by women who are victims of racism, racial discrimination, xenophobia and related intolerance should be supported by**

**promoting equal access to credit and training programmes.** Durban Programme, Article 103

**The public and the private sectors should improve the prospects of targeted groups, particularly those subject to multiple discrimination, facing the greatest obstacles in finding, keeping or regaining work.** Durban Programme, Article 104(c)

**Governments should promote and observe international instruments and norms on workers' rights to avoid the negative effects of discriminatory practices, racism and xenophobia in employment and occupation.** Durban Programme, Article 106

**Both the private and the public sector should foster the growth of businesses dedicated to improving economic and educational conditions in underserved and disadvantaged areas.** Durban Programme, Article 104(b)

### **Enforcement of Employment Equity Rights**

**A national coordinating committee for employment equity should be permanent and based on legal and administrative regulation, composed of pluralistic forces, and guaranteed autonomy and resources.** Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rule 17; Durban Programme, Articles 90, 91; National Institutions for the Promotion and Protection of Human Rights (Paris Principles)

**Employment equity must be enforceable before a competent and expert tribunal, and the remedies must be effective and enforced when granted.** ICCPR, Article 3; CERD, Article 6; Durban Programme, Articles 108, 165; Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rule 15(4); CEDAW, Article 2

**Meaningful sanctions must be imposed for the failure to comply with employment equity obligations.** CEDAW, Article 2(b); Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rule 15(2)

**Progress in employment equity must be reported annually.** ILO Convention No. 111 Article 3(f) Legislation implementing employment equity must be reviewed and monitored. Beijing Platform, Para. 178(c); Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Preamble, Part IV.



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## APPENDIX C

# MAKE YOUR STORY HEARD.....

## 12 steps to close the gender pay gap by 2025.

The Coalition is calling for the following 12 action steps to close the gender gap by 2025. These 12 steps (not ranked in order) are a mere starting point in the consultation process. Much more work needs to be done. Under each step below are some suggestions about actions which can be taken by governments, businesses and unions to close the gender pay gap. *Let the Gender Wage Gap Steering Committee know how you think such suggestions and actions might help your situation and consider if you have any other ideas for action steps.*

## How do we get to 0% Gender Pay Gap by 2025?

### STEP 1 Treat closing the gap as a human rights priority

Discriminatory pay gaps are a violation of human rights. The right of women to equal pay for work of equal value and equal treatment in pay and employment opportunities are internationally recognized human rights and labour standards.

Closing the gender pay gap has not been a priority in public policy and employer practices. That has to change. Women's right to equal pay and employment opportunities is not a "frill" or a "perk" to be ignored when inconvenient or costly.

Human rights enforcement is not a partisan issue. It is a legal fundamental obligation of all those who govern, regardless of their party, to co-operate to take the necessary human rights measures to close the pay gap.

### STEP 2 Raise awareness through annual Equal Pay Days and education

Unfortunately, the gender pay gap is not a matter for the history books. There is a need to raise awareness about the gender pay gap in order to ignite action to close it. Equal Pay Day represents the fact that women in Ontario on average must work more than 15 months into the new year in order to earn what men earn on average by the end of the previous year. The Ontario Government and all municipal councils should enshrine an annual Equal Pay Day in April each year. Businesses should embed awareness of the closing gender

pay gap in business vision, values and goals. Ontario would merely follow the Annual Pay Days in the US, EU, and Australia. Awareness of pay and employment equity issues and compliance should also be embedded in educational curriculum for students.

### **STEP 3      Develop the "Close the gender pay gap by 2025 Plan"**

The Coalition calls on Ontario Premier Kathleen Wynne, NDP Official Opposition leader Andrew Horwath and Progressive Conservative Leader Patrick Brown to work with the Coalition, employers, trade unions and other equality seeking stakeholders to develop, implement and resource a province-wide plan to close Ontario's gender pay gap by 2025. Ending the gender pay gap by 2025 requires a clear action plan with realistic and timely goals, targets and resources.

Solving a persistent problem requires leadership and planning - analyzing what works, what doesn't and what further steps or revisions to a plan are necessary. Governments enshrine planning mechanisms into their governance mechanisms for key public policy issues such as as health care and they economy, they have not done so for pay equality. Legislators and policy makers need to incorporate a pay equity impact analysis into their decision-making.

### **STEP 4      Enforce and expand pay equity laws**

Pay equity laws and policies are directed at ensuring that men and women are paid equally where they do work of equal value. Employment equity laws and policies are directed at ensuring that steps are taken to remove barriers and take positive measures to give women equal access to higher paying, often male-dominated work. Employment standards and labour laws set the minimum floor of rights and access for employees to a voice in the workplace. These three sets of laws and policies are necessary to work together close the gender pay gap. All employers must comply with the existing *Pay Equity Act*, *Employment Standards Act*, *the Labour Relations Act* and *Human Rights Code* obligations.

A new pay transparency standard would require employers to report and post the hourly wage and pay structures, any merit pay systems, the occupation and the nature of the employment relationship (such as part-time, contract, temporary agency).

Modernize the *Employment Standards Act* Equal Pay for Equal Work sections. The Coalition recommends that, given that women are the majority of workers in a non-standard employment relationship, the ESA should be amended to ensure part-time, part-year, contract, temporary agency workers are paid the same rate as full-time workers.

Ontario delivers public services through its own employees or through transfer payment agencies without providing proper funding to ensure pay equity is both achieved and maintained for those doing women's work. The pay equity adjustments that are owed to women working to provide public services to Ontarians require full funding.

There is a need to restore sufficient funding to the Pay Equity Commission to carry out its important tasks. The Government must introduce effective and fully-staffed enforcement mechanisms to ensure compliance with the *Act*.



## **STEP 5      Implement employment equity law and policies**

Pay disparities faced by racialized women, aboriginal women and women with disabilities are greater. Access to better paying jobs is a critical step in closing the gender pay gap.

Employment equity laws and policies should be implemented requiring employers to plan to end discriminatory practices facing women, racialized and aboriginal peoples, people living with disabilities and others who are similarly disadvantaged.

It's time to reintroduce Ontario's repealed *Employment Equity Act*. This proactive legislation helped to redress workplace discrimination in recruitment, employment conditions and retention against women, racialized workers, aboriginal peoples and persons with disabilities – all major factors contributing to the gender pay gap.

## **STEP 6      Promote access to collective bargaining**

Unionization is one of the most effective tools to close the gender pay gap. One reason that the pay gap has decreased over the years is the increasing unionization of women, particularly in the public sector. The “union advantage” in pay is on average \$5.11 per hour compared to non-unionized workers. Unions have a joint role with employers to create pay equity plans and unionized women were much more likely to receive pay equity adjustments which helped to close the gap with their male co-workers performing work of comparable value. However, unionization rates are declining, particularly in the private sector. The rise of precarious employment relationships, such as short-term contract, temporary agency and other forms has weakened the trade union representation of women .

The *Labour Relations Act* must be amended to include card-based certification and expanded access to remedial certification without a vote. We question why does the construction sector, a male-dominated sector, have access to card-based certification and female-dominated sectors do not? The Coalition further supports measures to improve union access to employee information to facilitate organizing.

In order to redress the gendered wage gap and the increase in precarious work in the Ontario labour market, sectoral and broader based bargaining approaches should be implemented. For example, Australia has a system of wage awards for sectors.

## **STEP 7      Increase the minimum wage**

Women are the majority of Ontario's 534,000 minimum wage workers. Aboriginal women, immigrant and refugee women, women with disabilities and racialized women are even more likely to be working at the minimum wage.

Any increase to statutory minimum wage laws serves as a down payment on closing the gender pay gap for vulnerable workers. The Coalition calls for the Ontario government to bring in emergency legislation to increase the minimum wage to \$15 per hour effective immediately. The minimum wage must keep up with inflation and keep on increasing until it is at the level of a living wage.

## **STEP 8 Provide affordable and accessible child care**

Women with children earn much less money. Many women work part-time because of lack of affordable child care. In 1988, the Government fully recognized that access to an affordable child care program was a cornerstone to ensure women's equality.

Despite many other reports calling for affordable, high quality child care, we have made little progress in access to a child care program. In Ontario, there are licensed spaces for just 1 in 5 children and fees are upwards of \$40 to \$60 per day, per child. The time for a program is now.

## **STEP 9 Mainstream equity compliance into government laws and policies**

Public policies often use an approach which assumes all employees face "similar" or "neutral" circumstances to predominantly able-bodied, white, male workers. There is a systemic failure to account for the different and unequal circumstances facing women and particularly those who racialized, Aboriginal, have disabilities or 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 gender 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 effectively ending the gender wage gap.

## **STEP 10 Mainstream equity 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. The pay transparency law above is a starting point to make this happen.

## **STEP 11 End Violence and Harassment of Women**

Sexual violence and harassment is connected to gender inequality and contributes to the gender wage gap. A woman who is the victim of assault or harassed out of a job is left with few economic resources. The closing the gender wage gap strategy needs to respond to the root causes of violence, including education, employment, and poverty. The Ontario government designed a targeted strategy to end Gender-based violence. This strategy needs to be continued. There is no reason why Ontario doesn't create its own task force examining the disproportionate rates of missing and murdered Aboriginal women and girls in the province as part of the strategy to end gender inequality.

## **STEP 12 Secure Decent Work for Women Across the Economic Spectrum**

It is time for the Ontario government to commit to the Decent work agenda. For almost four decades, the notion of labour market "flexibility" has been one-sided. The employer's main emphasis is to cut costs and find ways to reduce the unit cost of labour. The employment

relationships most strongly associated with women and dominated by women, the precarious forms of part-time, contract, and temporary, have taken hold as the new model. The precarious labour market means predominantly lower wages, less access to benefits, holiday pay, overtime pay, pensions, severance pay and employment insurance. In today's labour market, there is little balance between the power of employers and the many precariously employed women.

For women who are truly own-account self-employed entrepreneurs, not disguised employees, the government needs to ensure that measures are in place to assist such women in gaining access to grants and business development assistance, in a similar way to male dominated entrepreneurs have access to economic development grants.



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## **APPENDIX D**

### **Closing Ontario's Gender Pay Gap**

#### **Questions/Issues to Consider in Government and Business Decision-Making**

**prepared by Mary Cornish and Jennifer Quito**

**January 18, 2016**

**[www.equalpaycoalition.org](http://www.equalpaycoalition.org)**

As the Ontario Government moves to implement the Premier's Gender Pay Gap and Gender Lens mandates, it is important to embed a gender-based closing the gender pay gap analysis into government and business decision-making on strategies, policies, practices and laws. Given the embedded nature of Ontario's persistent gender pay gap, government and business actors need to transform Ontario's economy and workplaces so that they can begin to deliver fair pay to all women and their families. And the goal is to do this by bringing the pay gap from roughly 30% now to 0% by 2025. Here are some preliminary questions/issues to consider:

1. How can new strategies, policies, programs and laws be developed or existing ones modified so that government and business actions serve to close and not widen Ontario's gender pay gap?
2. Assess whether current government and business strategies, policies, programs or laws:
  - (a) have a differential impact on the earnings or ability to earn of Ontario men and women and the future earnings of girls and boys;
  - (b) help to close, widen or have no impact on the gender pay gap;
  - (c) whether women facing discrimination on multiple or intersecting grounds experience a greater impact on their earnings or ability to earn;

- (d) reflect and address the lived unequal compensation experiences of men and women in Ontario;
- 3. Have assumptions been challenged on which current policies, strategies, programs or laws are based?
- 4. Have government and business actors taken a pro-active approach to including mechanisms in strategies, policies, programs and laws to ensure that women's work is not undervalued and is compensated properly and free of discrimination?
- 5. Are there sufficient resources being made available to support the closing the gender pay gap strategy, policy, program or law?
- 6. Is there adequate representation and empowerment of women and their diverse circumstances among those consulted?
- 7. Are both women's and men's compensation realities reflected in the way research is conducted and issues are identified?
- 8. What types of gender-specific and intersectional data on pay and work and employment impacts are available and needed to consider how options will have a different impact on men and women and their diverse circumstances and disadvantages?
- 9. How can government and business actions to close the gender pay gap be linked with and further Ontario's Poverty Reduction Strategy?
- 10. How will the communications strategy of governments and business ensure that information about the strategy, policy, program or law is communicated to the diversity of women?
- 11. How will closing the gender pay gap concerns be incorporated into the evaluation criteria for strategies, policies and programs? What indicators will be used to measure the effects on closing the gender pay gap including any effects on specific subsets of women (e.g. races, disabilities, Aboriginal status)?
- 12. How will strategies to close the gender pay gap be promoted and incorporated:
  - (a) into the budgetary and funding decisions and planning of Government Ministries including Treasury Board and Cabinet and in relation to the Broader Public Sector and Contractors and funding of public services?
  - (b) into the budgetary and planning decisions of businesses.

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## APPENDIX E

### SUMMARY OF EQUAL PAY COALITION CLOSING THE GENDER PAY GAP INITIAL RECOMMENDATIONS

January 18, 2016

#### **Principles and Values to Guide Dialogue and Action Planning**

13. Women in Ontario have the fundamental human right to be free from systemic sex discrimination in pay. A "right" is just that – it is a legal entitlement that must be enforced. It is not a privilege. It is not an option. It must be secured. The current roughly 30% gender pay gap is a human rights crisis which must be addressed as such.
14. International, national and Ontario provincial human rights standards require that Ontario women in all their diversity be afforded economic equality in Ontario's labour market.
15. The gender pay gap is a key measure for identifying whether, overall, Ontario women have achieved their fundamental human right to economic equality. When Ontario women earn on average the same as Ontario men each year – in other words, when there is a 0% gender pay gap – a key dimension of gender equality in employment will be achieved.
16. Recommendations to close the gender pay gap as proposed in this submission are the human rights *enforcement mechanisms* for eradicating women's labour market discrimination and ensuring equality outcomes.
17. Preventing and remedying pay discrimination is a matter of values. Ensuring that hard work is honoured and rewarded in Ontario regardless of the sex of the person who performs it.
18. The Equal Pay Coalition has called on Premier Wynne and the business community to set 2025 as the deadline to end gender pay inequality in this province. This is the target date by which Ontario's gender pay gap should be reduced to 0%. This is also the year set by law when Ontario is to be free of barriers for persons with disabilities.

19. The design of closing the Gender Pay Gap strategies must begin by directly acknowledging and confronting the fact that the pay gap arises from systemic discrimination against women. The reality is that Ontario men's and women's lives are profoundly different and unequal and those who suffer from additional discrimination face much higher gaps which need to be addressed specifically.
20. Ensuring that this human rights goal is met requires mandatory human rights analysis and planning using a gender and equity lens at all levels of government and in workplaces and communities across the province. This includes short- and long-term plans, goals, targets and monitoring of results.
21. Reorienting the dialogue to focus on the priority human rights mandate, with a set compliance date and a gender based planning/action/monitoring focus is essential if there is serious commitment to closing Ontario's gender pay gap.

### **Twelve Steps to Closing the Gender Pay Gap**

22. The Equal Pay Coalition's 12 steps to closing the gender pay gap are:
  - (1) Treat as Human Rights Priority;
  - (2) Equal Pay Days and Education/Awareness;
  - (3) Develop Closing the Gender Pay Gap Plans;
  - (4) Expand and Enforce Pay Equity Promoting Laws;
  - (5) Implement Employment Equity Laws and Policies;
  - (6) Promote Access to Collective Bargaining Protection;
  - (7) Increase the Minimum Wage;
  - (8) Provide Affordable and Accessible Child Care;
  - (9) Mainstream Equity Compliance into Government Laws and Policies;
  - (10 )Mainstream Equity Compliance into Business Practices;
  - (11) End Violence Against Women: and
  - (12) Secure Decent Work for Women.

### **Immediate Recommendations for Achieving 1% Reduction in 2016**

23. In terms of immediate action, we need to get the gender pay gap down by 1% in 2016. We are already in January. Much needs to be done immediately to achieve that 2016 goal.
24. The Committee issue now an interim report identifying the following immediate actions which can be taken without the need for further consultation.
  - (a) Request the Government working with the Pay Equity Commission, Ontario Human Rights Commission and Employment Standards Branch to mount a substantial and resourced public campaign between now and including and after Equal Pay Day on April 19, 2016 which identifies:
    - (i) **The extent of the gender pay gap, its harmful impacts and the need to close it to generate a fair and inclusive economy;**
    - (ii) **The Gender Pay Gap as a human rights crisis which must be acted upon immediately and thereafter till closed; and**
    - (iii) **The current human rights mechanisms which are available to address the problem.**
  - (b) Request the Pay Equity Commission to mount an immediate public campaign to advertise the rights and obligations under the *Pay Equity Act* and the intention of the Commission to vigorously enforce the *Act*, including through widespread audits across the province.
  - (c) Request the Ontario Government working with the agencies which it publicly funds to make the necessary funds available so that public sector agencies can pay identified pay equity adjustments owing under the *Pay Equity Act*.
  - (d) Appoint by Equal Pay Day in April, 2016, an interim Labour Market Equality Commissioner, reporting directly to the Legislature and the Premier, who can be in place to start coordinating the development and implementation of Ontario's plans to close the gender pay gap.
  - (e) Effective April 1, 2016, increase the minimum wage to \$15 per hour.
  - (f) Implement a gender and equity lens in the current provincial budget process, cabinet decision and ministry decision-making.
  - (g) The Ontario Government abandons its objections to the Pay Equity Hearings Tribunal application to ensure women in predominantly female workplaces using the proxy comparison method can continue to maintain pay equity using their external proxy comparator and works to arrive at an appropriate resolution of the issues.



- (h) The Ontario Government abandons its defense of the Association of Ontario Midwives application to the Hearings Tribunal and works to resolve the pay equity issues for midwives and other government funded professionals who are not covered by the *Pay Equity Act*.

### **Using a Human Rights Framework**

- 25. A human rights framework and systemic discrimination analysis must be employed by all involved in closing the gender pay gap as the basis for reviewing and analyze all required legislative, policy and business actions and practices. This framework should include a consideration and application of Ontario's domestic and international human rights obligations to close the gender pay gap for the diversity of Ontario's women.

### **Using A Gender and Intersectional Equity Lens**

- 26. A gender and equity intersectional lens must be employed by all involved in closing the gender pay gap to review and analyze all legislative, policy and business actions and practices by asking how women and men are affected by laws and policies and whether proposed actions will help to close the gender pay gap - including a lens to address the impacts for women of other discriminatory factors, such as race, ethnicity, religion, disability, Indigenous status, migrant and LGBT status.
- 27. Governments need to resource and ensure that there is appropriate collections of data and information disaggregated by sex and other intersectional factors.

### **Using a Political Economy Analysis**

- 28. An understanding of the political economy dynamics of Ontario's gendered and globalizing labour market which perpetuates the gender pay gap must be employed by all involved in closing the gender pay gap to consider their particular relevance to the issues to be considered. These seven trends are: growing and gendered income inequality, persistence of the gender pay gap, flexibility and fragmentation of the workplace, the austerity agenda and the declining equality role of governments, the decline of unionization and the impact of unequal households, unpaid care obligations and the care economy.

### **Mapping Systemic Discrimination Dynamics That Perpetuate the Gender Pay Gap**

- 29. A mapping analysis of systemic discrimination dynamics must be employed by all involved in closing the gender pay gap to consider their particular relevance to the issues to be considered. This analysis includes: (a) discriminatory pay setting; (b) Access to Employment - Segregated and Unequal jobs (c) Access to Employment – Barriers Faced by Further Disadvantaged Workers; (d) Access to Employment – Child and other Care Responsibilities; (e) Predictability and Security of Pay/Hours of Work; (f) Employment Status – Precarious Work and Workplaces; (g) Barriers to Unionization and Empowerment of Women's Voice;

(h) Dynamics that Disrupt Women's Employment and Pay: (i) Harassment and Violence; (ii) Pregnancy and Motherhood Discrimination; and (iii) Care Obligations.

### **Systemic Discrimination Requires Systemic Response**

30. Given the multiple, interlocking dynamics which create and sustain the gender pay gap, responses at the provincial, local and business levels must be systemic and comprehensive. Uprooting and eliminating systemic discrimination requires a systemic response which means a fully committed and resourced multi-dimensional action plan which includes annual targets, goals and monitoring so that "closing the gender pay gap" is embedded or "mainstreamed" into government and business planning and actions.
31. Solving a persistent problem requires leadership and planning and a gender and equity lens - analyzing what works, what doesn't and what further steps or revisions to a plan are necessary.

### **Creating a Comprehensive and Mandatory Legal and Policy Framework to Close the Gender Pay Gap**

32. The current disconnected and inadequate legal and policy approach to closing the gender pay gap must be replaced with a comprehensive, expanded and coordinated mandatory legal and policy framework.
33. This requires reworking, enforcing and expanding Ontario's gender pay gap laws including the current three key laws, the *Employment Standards Act, 2000*, the *Pay Equity Act* and the *Human Rights Code*. All of these laws must be aggressively enforced so that women's existing and new protections actually result in increased earnings and secure and decent work for women. As well it is necessary to expand the perspective as to what is a "closing the gender pay gap law" to include laws like the *Labour Relations Act* and others which impact on the ability of women to secure decent work. As well it is necessary to bring back the repealed *Employment Equity Act, 1993* in a strengthened and updated form to further secure equality in employment for women.

### **System-Wide Recommendations to Address Systemic Discrimination**

34. In order to tackle this large scale human rights crisis, system-wide measures must be taken to get to the goal of 0% gender pay gap by 2025. The Coalition is calling for multi-party co-operation to work with the EPC, employers, and other equality-seeking stakeholders to develop, implement, and resource a province-wide plan to close Ontario's gender pay gap by 2025. This plan would provide for the province to work with and coordinate the efforts of municipalities and businesses providing them with assistance as needed.

### **New Closing the Gender Pay Gap Act**

35. A provincial Closing the Gender Pay Gap law should be enacted to provide for:

**Provincial and Local Mandatory Closing the Gender Pay Gap Plans**

- (a) the mandatory obligation that provincial and local governments and businesses must enshrine planning, action and consultation mechanisms into their governance structures to ensure the gender pay gap is closed.
- (b) Gender and equity sensitive labour market knowledge, research and monitoring using appropriate disaggregated data must be included in closing the gender pay gap planning.
- (c) The Premier's Ministry mandates to all Ministries must include closing the gender gap as a priority mandate for each Ministry. The inclusion of this will mean that Ministry staff from the Deputy Minister staff will be held accountable for achieving this objective and will analyze Ministry planning and actions accordingly. Ministers should also hold public agencies who report to them accountable as well for ensuring the agencies' mandate is carried out consistent with a closing the gender pay gap focus.
- (d) All social and economic policies should be vetted by provincial cabinet, ministries, public agencies, and by local governments for their impact, answering this question: *do they help close or widen gender pay gaps?* Do they account for the different and unequal circumstances facing women and particularly those who racialized, Indigenous, have disabilities or other disadvantages.
- (e) Cabinet and local government policy submissions should include a sign off to ensure proposed laws and policies have been reviewed for their contribution to closing gender pay gaps.
- (f) To be effective and not marginalized, there is need to ensure provincial and local closing the gender pay gap planning is co-ordinated with other government planning such as the Poverty Reduction Strategy, budgets, economic planning, and other actions to address women's inequality such as "It's Never Okay: Action Plan to Stop Violence and Harassment"

**Appointment of Labour Market Equality Commissioner**

- (g) the appointment of a Provincial Labour Market Equality Commissioner reporting to the Legislature and the Premier with the mandate to coordinate and implement the plans to close Ontario's gender pay gap by 2025. With a broad mandate of labour market equality, this Commissioner's mandate could also include the eradication of all forms of labour market equality and not just those affecting Ontario's women.
- (h) Given that it will take some time for this person to be named with the need to enact the law, the Coalition is recommending the immediate

appointment of an interim Commissioner to help develop and coordinate getting the action plans started so they are in operation for 2016 and can contribute to closing the gender pay gap as targeted.

### **Annual Equal Pay Day**

- (i) the enactment of an annual Equal Pay Day as a tool to educate, monitor and revise the above noted planning to ensure progress is sufficient to meet the 2025 0% gender pay gap goal;

### **Provincial and Local Closing the Gender Pay Gap Roundtables**

- (j) the establishment of provincial and local Closing the Gender Pay Gap Roundtable of stakeholders with women and their representatives in a leading role. These roundtables must meet at least 4 times per year including around the annual Equal Pay Day. This will help to manage and monitor this large scale transformation process and embed the empowerment of women and their representatives as part of the change and transformation process.

### **Embedding Closing the Gender Pay Gap Awareness in Education Systems in Schools, Businesses, Government and the Legislators**

- (k) amending education laws to make the teaching of systemic discrimination in the labour market, the human right to labour market equality and the measures to close the gender pay gap part of provincial educational curriculum in high schools.
- (l) Just as required by regulations under the *Accessibility for Ontarians with Disabilities* law and under the *Occupational Health and Safety Act* for their legal requirements, businesses should be required to embed education and awareness of the human rights and responsibilities for closing gender pay gap in business planning and practices as well as in education for management and employees.
- (m) As well, such education and awareness of the human rights and responsibilities for closing gender pay gap should be also embedded in the training and education of government staff at all levels from the Premier, Ministers and mayors down, as well as for Ontario party leaders, MPPs and municipal councillors.

### **Ensuring Equitable Pay Setting**

- 36. Ontario delivers public services through its own employees or through transfer payment agencies without providing proper funding to ensure pay equity is both achieved and maintained for those doing women's work. The pay equity adjustments that are owed to women working to provide public services to Ontarians require full funding.

### **Employment Standards Act - \$15 per hour indexed Minimum Wage**

37. The Ontario government bring in emergency legislation to increase the minimum wage to \$15 per hour effective April 1, 2016. The minimum wage must keep up with inflation and keep on increasing until it is at the level of a living wage.

### **Living Wage and Guaranteed Annual Income**

38. Poor Ontarians who are predominantly women and other disadvantaged group must be able to access sufficient pay and income to provide for themselves and their families. Consideration should be given to incorporating policies to ensure a living wage and guaranteed annual income. Living wage policies and a guaranteed annual income (GAI) can help to serve as well as a pay equity downpayment for women and other disadvantaged groups.

### **Employment Standards Act - Aggressively Enforce Section 42 - Equal Pay For Substantially Similar Work**

39. Section 42 as a whole requires modernization to reflect the realities of women's work. This section which currently provides women with the right to equal pay for substantially similar work performed by men needs to be aggressively enforced with major enforcement campaigns to cut down on the widespread and persistent violations of its provisions highlighted by the Committee's Town Hall presentations.
40. The Coalition recommends that the exemptions regarding seniority and merit systems should be amended to include the principle that where the jobs are of equal value, the wage grids and wage structures should be of equal length and equal steps on the wage grid.
41. This equal pay provision should be included in the Employment Standards Branch guide to rights and enforcement as well as being highlighted in its workplace rights poster and on its website.

### **Employment Standards Act – Update Section 42(2) to Provide Equal Pay For Full Time and Part Time Work Which is Substantially the Same Work**

42. Consideration should be given to the EU as a roadmap for modernizing the ESA to ensure that equal pay for substantially similar work is a fully realized substantive right. This includes the EU Directives on atypical work: the Part-Time work directive, the fixed-term work directive and the Agency Work Directive.
43. Directives aim to ensure that employees who are not employed in permanent jobs are guaranteed a minimum level of equal treatment compared to full-time permanent staff. The explicit purpose of the Directives is (i) remove discrimination in pay and conditions; (ii) improve the quality of part-time, fixed term and agency work so that it is equal to full-time employees; and (iii) to

prevent abuses of these forms of employment relationship, such as multiple successive fixed-term contracts

44. As the majority of women work in a non-standard employment relationship, the *ESA* should be amended to ensure part-time, part-year, contract, temporary agency workers are paid the same rate as full-time workers. Employers must be clearly directed to stop the practice of paying part time workers less when it is substantially the same job.
45. As well, the exemptions regarding seniority and merit systems in section 42 (2) should be amended to include the principle that where the jobs are of equal value, the wage grids and wage structures should be of equal length and equal steps on the wage grid.

**New Employment Standard: Pay Transparency provision – Mandatory Pay and Pay Gap Reporting.**

46. As highlighted in Part V above, the pay setting inequalities women and other disadvantaged groups face in workplaces is perpetuated and sustained by the secrecy which pervades employer's pay setting practices. Making visible and transparent those practices is an essential human rights tool
47. In order to ensure the widest coverage of this new tool, the Coalition recommends that the obligation be set out in the *Employment Standards Act, 2000* as a new core entitlement of all employees and obligation of all businesses and employers regardless of size. Such standard should be widely publicized and included in the Employment Standards Branch Guide and in the workplace poster.
48. The new pay transparency standard should report the wage and pay structures, any merit pay systems, the job and its description as well as the nature of the employment relationship (whether it be direct or contract, temporary agency, etc.) and the conditions under which it is paid (eg. full time, part time, on call etc. Employers should also have an obligation to be transparent about the pay practices of those contractors which they engage.
49. As well, employers should be required to report what their overall gender pay gap is – that is what is the average annual earnings of women and men for whom they directly or indirectly employ through contracts and temporary agencies.
50. For domestic workers and home-based workers, the transparency provisions would require employers and workers to submit names to a central registry. Such a registry would provide the Ministry of Labour with an enforcement mechanism to ensure minimum standards are adhered to.
51. As well, this new core employment standard should also provide that governments (provincial and local) must make transparent any pay provisions it is setting when it contracts for the provision of public services. This will help to

reveal the role and practices of government when they fund public services. It can serve to reveal good pay setting practices which help to close the gender pay gap and bad practices which serve to widen it.

### ***Pay Equity Act***

52. The Coalition recognizes that there are many issues to be addressed to ensure the *Pay Equity Act* is effective and strengthened and these matters need to be the subject of further discussion. At the same time, the Coalition cautions the Committee to be very careful in its approach to analyzing the effectiveness of the *Act* and sceptical of proposed changes by the business community or by the government itself who have found that the *Act* substantially interfered with their austerity and deregulation agenda along with the pursuit of profits. The *Act* must be strengthened and enforced not weakened and women's rights eliminated.
53. Accordingly, the Coalition requests that the Committee identify the need for a strengthened, effective and enforceable *Pay Equity Act* while continuing to include the current proxy comparison method. This includes calling for the Pay Equity Commission to aggressively enforce the *Act* to require compliance.
54. Unions must be given an strong role in enforcing all pay practices required by the *Act* including maintenance.
55. Employees in workplaces with less than 10 employees must be provided with protection under the *Act*.
56. Sufficient funding should be provided to the Pay Equity Commission to carry out its important tasks
57. The Pay Equity Legal Clinic should be re-instated and funded to provide critical legal assistance to those seeking enforcement of the *Act*.
58. The Coalition also calls for a further dialogue amongst governments, the business community, the Coalition, unions and other equality seeking groups to seek ways to achieve this objective.

### **Redressing Discriminatory Pay Setting for Further Disadvantaged Groups**

59. In order to redress the specific and greater pay discrimination outlined by further disadvantaged groups as highlighted in Part VI above, the Coalition recommends that a specialized mechanism be developed which mandates employers and governments to investigate and consider the ways in which the other grounds of discrimination which women experience (including race, ethnicity, Indigenous status, and disability) also serve to depress their pay and weaken their access to secure, decent work.

### **Obligation to Close the Gender Pay Gap in Government and Business Procurement Policies**

60. Procurement and contracting policies by governments and business should include a requirement to ensure that the pay of those providing the service or creating the product contracted for should be free of gender and other discrimination. Such a requirement would be embedded in the provincial *Closing the Gender Pay Gap Act*. This requirement would put significant pressure on governments and business to exercise greater oversight over their contracting policies and contracts which now often rely on underpaid women's labour to reduce costs.

**Access to Employment-Desegregating Ontario's Occupations and Industries/Sectors**

***Employment Equity Act***

61. Reinstate a strengthened and updated *Employment Equity Act, 1993* to ensure that women and other disadvantaged groups are provided employment equity in their work and are freed of barriers to their gaining access to and career progression in their work lives. Such a law will require employers, working with a union, if any, to analyze the recruitment, employment conditions and retention of workers who are women, Indigenous, racialized or with disabilities requiring them to plan and take action (by both removing barriers and taking positive measures to reach the goal of an equitable workplace which better reflects the workers in the community. Consideration should also be given as to whether other disadvantaged groups should be included in an updated *Employment Equity Act*.

***Human Rights Code***

62. The *Human Rights Code* mechanism should be strengthened so that it leverages its considerable powers to address the labour market inequalities which face women and other disadvantaged groups. With their jurisdiction to address many grounds of discrimination, as well as employment, accommodation, and services the Ontario Human Rights Commission is well positioned to play a leadership role in developing the strategies and plans to close the gender pay gap. This includes using its power to hold public inquiries and to carry out research, particularly on the ways in which the intersectional factors are affecting women and the gender pay gap.
63. The Coalition calls for the Commission to consult and issue a guideline for those with equality obligations under the *Code* as to what necessary steps need to be taken to close the gender pay gap and end systemic discrimination and also to end the greater pay gaps experienced by further disadvantaged groups. .
64. The Coalition also calls for the Government to ensure the Commission, the Human Rights Legal Support Centre and the Human Rights Tribunal of Ontario are adequately funded to carry out their important role in closing Ontario's gender pay gap.



65. The Government should also establish the Commission's Race Relations Directorate provided for under the reformed *Code* which could play a strong role in the working of closing gender pay gaps of racialized women.

***Accessibility for Ontarians with Disabilities Act***

66. There is a need to ensure effective enforcement of this Act to help close the gender pay gap for women in Ontario with disabilities. See the recommendations of the AODA Alliance with respect to these necessary enforcement measures. As well, there is a need to consider and adapt the measures from this *Act* in the process of developing Ontario's plans to close the gender pay gap.

**Addressing Child and other Care Responsibilities**

67. Ontario needs to develop and implement a public care strategy to address the unequal household and care responsibilities which women bear and to facilitate the equal sharing of those responsibilities by men and women
68. This requires that the Ontario government builds an early childhood education and care system based on the principles of universality, high quality and comprehensiveness that:
- (a) Recognizes that access requires both a supply of high quality services and fees that all families can afford (or no fee);
  - (b) Employs a well-compensated, well-supported, well-educated early childhood workforce, which is recognized and appreciated for the importance of their work;
69. To do this Ontario must develop:
- (a) a coherent policy framework with targets and timelines for expansion of early childhood education and care services;
  - (b) a long-term plan for sustained public funding to operate and develop services, and
  - (c) an early childhood education and care workforce strategy.
70. The Coalition also relies on the recommendations to the Review Committee of the Ontario Coalition for Better Child Care and Association of Early Childhood Educators.

**Access to Predictability and Security of Pay/Hours of Work**

71. The ESA requires employers to commit to minimum hours of work and extended notice of scheduling so that women can plan for their care and other

responsibilities and can also schedule other work as many have several part time jobs.

72. The *ESA* provide for flexible scheduling provisions as a basic minimum standard. Such scheduling provisions to include job sharing arrangements where two employees could voluntarily enter into an agreement to share one full-time position.
73. The Coalition has reviewed and adopts the recommendations of the Workers' Action Centre in respect of its proposed Employment Standards Act amendments set out in its Changing Workplace Review brief, *Still Working on the Edge*.<sup>155</sup>

### **Access to Secure Decent Work and Workplaces**

#### **Address Precarity in Work**

74. The Coalition again adopts the recommendations of the Workers' Action Centre in respect of the *Employment Standards Act, 2000* amendments necessary to reduce the precarity and lack of employment protections for vulnerable workers, many of whom are women.<sup>156</sup>
75. In particular, the Coalition adopts the recommendations to end the many exemptions to the *ESA* and the urgent need for a more rigorous enforcement mechanism with heavy fines for violations of the *Act*.
76. As well, protections are required to end the contract flipping and egregious employment practices of agencies which exploit vulnerable women.

#### **Self-Employed Women and Their Businesses**

77. Closing the gender pay gap for women who are truly own-account self-employed entrepreneurs, not disguised employees requires further distinct measures to ensure women's businesses and services do not face discrimination and unequal support from government.
78. The government needs to ensure that measures are in place to assist such women in gaining access to grants and business development assistance so that they are not disadvantaged in relation to male dominated entrepreneurs.

### **Empowering Women's Voice – Facilitating Collective Representation**

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<sup>155</sup> Those recommendations are contained in the Workers Action Centre Document - *Still Working on the Edge*, supra.

<sup>156</sup> Those recommendations are contained in the Workers Action Centre Document - *Still Working on the Edge*, supra.

79. The *Labour Relations Act* should extend card-based certification now provided to the male dominated construction sector to all other employees and particularly those who also work in the same shifting workplaces and jobs but in work predominated by women.
80. The *LRA* should expand access to remedial certification without a vote as part of the provisions to support card-based certification,
81. The *LRA* should extend union access to employee information to facilitate organizing.
82. The *LRA* should provide that a union or employer can apply to the OLRB to combine bargaining units represented by the same union.
83. The *LRA* should expand the type of workers covered by the law so that it can provide a right to collective representation for professionals and others like Ontario midwives who are considered independent contractors as result of the nature of their work but otherwise have their pay set by a government funding body.

### **Sectoral and Broader Based Bargaining**

84. In order to redress the gendered wage gap and the state of work organization in the Ontario labour market, the Coalition recommends that the Review examine and propose specific models of sectoral and broader based bargaining and consider the expansion of an adapted male dominated construction industry model to the precarious female dominated sectors such as those in the care economy. As part of this examination, unions, representatives of the unorganized and employers would provide further submissions on this issue.
85. Sectoral bargaining models should not be limited to establishing wage setting mechanisms, but should ensure that the full benefits of collective bargaining become available particularly to those who work circumstances are precarious and different from traditional employer-employee models of employment.
86. The Coalition recommends that any sectoral bargaining model ensure:
  - (a) that the "true employer" is identified; either through joint and several liability provisions required to pierce through existing chains and networks of subcontractors or multi-employer structures;
  - (b) that each sector may require specific modification to adopt to the precarity of the worker's employment relationship; and
  - (c) regional certification processes be developed.
87. The Coalition's recommendations in respect of sectoral bargaining are at the early stages and require full consultation and analysis of the options. The

Coalition requests the opportunity and reserves the right to provide the Review with more fulsome submissions on this proposal as the Committee's process continues

## **Eliminating Barriers which Disrupt Women's Employment and Pay**

### **Violence and Harassment**

88. Following an Alberta private members Bill 204, amend Ontario's *Residential Tenancies Act, 2006* to provide increased flexibility in access to medical and care leaves for single days, rather than a full week, if so required and the removal of exemptions in respect of the size of the workplace and time in the workplace.<sup>157</sup>
89. The *ESA* provide for a separate and distinct statutory minimum for sick leave of not less than seven days per year to be taken on an as needed basis to allow domestic violence victims to break a lease early and without penalty or to effectively remove an abuser's name from the lease.<sup>158</sup>
90. Following a Manitoba government bill, amend the *ESA* to ensure that victims of domestic violence have financial security, job protection and flexibility to take time away from work to recover from violence." This includes up to 10 days of leave per year without penalty, including five days of paid leave and a period of leave of up to 17 weeks so they can, for example, move into a new home or take time to recover from a violent relationship.<sup>159</sup>
91. The Ontario government's Action Plan on violence should be co-ordinated with the closing the gender pay gap strategy so that they are mutually reinforcing.
92. The Ontario government should also ensure it takes all necessary steps based working nation to nation with Indigenous peoples to ensure that the disproportionate rates of missing and murdered Aboriginal women and girls in the province are addressed.

### **Pregnancy and Motherhood Discrimination**

93. The *ESA* provide for immediate reinstatement of a terminated employee on pregnancy or parental leave as well as an immediate fine of \$10,000 for terminating an employee on pregnancy and parental leave. The Coalition also

<sup>157</sup> *Residential Tenancies Act, 2006*, 2006 S.O. c.17.

<sup>158</sup> M. Ibrahim, "Proposed Alberta bill would remove barriers for those fleeing domestic violence", *Edmonton Journal*, November 15, 2015 (available at: <http://edmontonjournal.com/news/politics/proposed-alberta-bill-would-remove-barriers-for-those-fleeing-domestic-violence>).

<sup>159</sup> See "Domestic violence victims in Manitoba to get time off work with pay", *CBC News*, November 25, 2015 (available at: <http://www.cbc.ca/news/canada/manitoba/domestic-violence-victim-benefit-manitoba-1.3336751>).

recommends that the exemptions in the ESA which permit employers to fail to reinstate a pregnant employee should be eliminated as they have been used by employers to terminate employees unjustifiably.

94. As well, the Employment Standards Branch should conduct a province wide campaign to educate employers about the entitlement of women and parents to leaves and should aggressively and pro-actively enforce these entitlements.

### **Facilitating Care Obligations and Sharing of Them**

95. The *ESA* must provide increased entitlements for fathers as well to carry out such responsibilities and to ensure equal sharing of those responsibilities by parents.
96. There should be a basic minimum of statutory defined, job-protected sick days and emergency days for every employee but not at the expense of reducing other critical leaves for medical and critical care needs.
97. The Coalition recommends increased flexibility in access medical and care leaves for single days, rather than a full week if so required. The Coalition recommends removing any exemptions in respect of the size of the workplace and time in workplace.
98. The Coalition explicitly supports the Workers Action Centre recommendation of a separate and distinct statutory minimum for sick leave of not less than seven days per year to be taken on an add needed basis.

### **Responding to the human rights crisis: immediate next steps and 10 year plan for targeting a zero gap by 2025**

#### **Developing Mandatory Action Plans, Goals and Targets**

99. The Coalition is calling on Ontario governments and businesses to work together to get the pay gap to 0% by 2025. To do that, we need to treat the gender pay gap and women's labour market inequality as a human rights and economic crisis like climate change or other similar system wide problems. Reorienting the dialogue to focus on the human right of women to equitable outcomes with men in the labour market and the need to build a new equitable economy is essential for there to be a serious commitment to closing Ontario's gender pay gap.

#### **How does Ontario get to 0% Gender Pay Gap by 2025?**

100. The Coalition proposes that Ontario's Strategy therefore must include a plan which works to achieve that goal through planning, collaboration, setting of goals, monitoring and then revising plans to ensure the goal is reached. This requires collecting the necessary statistical data to monitor gender impacts as well as impacts based on the intersectional grounds, including race and disability.

101. We need to be specific. With current gap of close to 30% and 10 years between now and 2025, there needs to be a reduction of approximately 3% a year with 4.5% in last year.

| Year | Gender Pay Gap* |
|------|-----------------|
| 2015 | 29.4%           |
| 2016 | 28.5%           |
| 2017 | 25.5%           |
| 2018 | 22.5%           |
| 2019 | 19.5%           |
| 2020 | 16.5%           |
| 2021 | 13.5%           |
| 2022 | 10.5%           |
| 2023 | 7.5%            |
| 2024 | 4.5%            |
| 2025 | 0%              |

\*based on Ontario average annual earnings of men and women according to Statistics Canada

### **Immediate Recommendations for Achieving 3% Reduction in 2016**

**See above**



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## APPENDIX F

### LIST OF KEY REFERENCE DOCUMENTS

Posted at [www.equalpaycoalition.org](http://www.equalpaycoalition.org)

1. Statistical Profile of Ontario Women and their Earnings - prepared by statistician, Richard Shillington, Tristat Resources, [shillington.ca](http://shillington.ca) for the Equal Pay Coalition - showing breakdown by the following areas:
  - Aboriginal, Non Aboriginal; 6 Age Groups - 15- to 65+; With Disability, Without Disability; Different Education Levels; Private and Public Sector; Unionized, Non-Unionized; Marital Status; Immigrant, Non Immigrant; Recent Immigrant, Non Recent Immigrant; Visible Minority, Non Visible Minority; Different Industry Sectors; Different Occupations
  - (a) Long Term Trends - All Earnings, FT/FY, Hourly, 1976 - 2014, Statistics Canada
  - (b) All Earnings, Male and Female, Ontario, Statistics Canada data - Survey Labour Income Dynamics (SLID) 2011 -
  - (c) Full Time/Full Year Earnings, Male and Female, Ontario, Statistics Canada data - Survey Labour Income Dynamics (SLID) 2011 - prepared by Statistician, Richard Shillington, [shillington.ca](http://shillington.ca)
  - (d) Hourly Wages, Male and Female, Ontario, Statistics Canada data - Survey Labour Income Dynamics (SLID) 2011 - prepared by Statistician, Richard Shillington, [shillington.ca](http://shillington.ca)
  - (e) Expert Report of Dr. Richard Shillington prepared for Proceedings before the Pay Equity Hearings Tribunal re: Services Employees International Union, Local 1 and Ontario Nurses' Association v. Participating Nursing Homes; PEHT Files 1507-11-PE and 3696-10-PE
2. Equal Pay Coalition (2008) *A Framework for Action on Pay Equity in Ontario – A Special 20<sup>th</sup> Anniversary report contributing to Ontario's future*

3. Canadian Centre for Policy Alternatives Ontario (2013) *10 Ways To Close Ontario's Gender Pay Gap*
4. Canadian Centre for Policy Alternatives Ontario (2014) *A Growing Concern: Ontario's Gender Pay Gap*
5. Canadian Centre for Policy Alternatives Ontario (April 2015 Blogpost) *The Best and Worst Places to Live For Women Seeking Pay Equality in Ontario* by Mary Cornish
6. Equal Pay Coalition presentation to \*\*\* (March, 2015) *Applying a Gender Lens to Close Ontario's Gender Pay Gap*
7. Taking Action To Close Ontario's Gender Pay Gap – Planning For Gender Equality by 2025. Presentation by Mary Cornish, Chair, Equal Pay Coalition, at the Ryerson Centre for Labour Management Relations Conference on "The Case for Pay Equity: Exploring the Benefits and Models That Work", September 28, 2015, Toronto
8. Submission of the Equal Pay Coalition to the Minister of Labour Changing Workplaces Review Consultation
9. Workers Action Centre (2015) *Still Working on the Edge*
10. Canadian Centre for Policy Alternatives Ontario (October 2015 Blogpost) *Ontario gender pay gap consultations: a welcome development* by Mary Cornish
11. Ontario District Council of International Ladies' Garment Workers' Union and Intercede (1993) *Meeting the Needs of Vulnerable Workers: Proposals for Improved Employment Legislation and Access to Collective Bargaining for Domestic Workers and Industrial Homeworkers* ("Intercede Report")





# **CLOSE ONTARIO'S 30% GENDER PAY GAP<sup>160</sup>**



## **APPENDIX G**

### **Ontario Government Commitments to Close the Gender Pay Gap**

**The Premier has mandated the Minister of Labour to:**

#### **Develop a Wage Gap Strategy**

**“Women make up an integral part of our economy and society, but on average still do not earn as much as men. You will work with the Minister Responsible for Women’s Issues and other ministers to develop a wage gap strategy that will close the gap between men and women in the context of the 21st century economy.”<sup>161</sup>**

**The Premier has mandated the Minister Responsible for Women’s Issues to:**

#### **Promote Gender Equality in Ontario**

**“play a key role in ensuring that every person who identifies as a woman or a girl is able to participate as a full member of our society, exercise their rights – and enjoy their fundamental freedoms in the social, economic and civil life of our province. Your priority will be to promote gender equality in Ontario, reflecting the diversity of our communities by taking a comprehensive approach to addressing the social and economic conditions that create inequalities.”**

**“support the Minister of Labour in the development of a wage gap strategy... and collaborat(e) with colleagues across government to ensure that a gender lens is brought to government strategies, policies and programs.”<sup>162</sup> See [equalpaycoalition.org](http://equalpaycoalition.org) F- /EqualPayON T. @EqualPayON**

<sup>160</sup> Statistics Canada. Table 202-0102 — Average female and male earnings, and female-to-male earnings ratio, by work activity, 2011 constant dollars, annual, CANSIM (database). Sorted by Ontario, all earners, average earnings, sex, female-to-male average earnings ratio. While men’s average annual earnings increased by \$200 from 2010 to 2011 to \$49,000, women’s decreased by \$1400 to \$33,600 in 2011.

<sup>161</sup> Letter from Premier Kathleen Wynne to Minister of Labour Kevin Flynn dated September 25, 2014, <http://www.ontario.ca/government/2014-mandate-letter-labour>.

<sup>162</sup> Letter from Premier Kathleen Wynne to Minister Responsible for Women’s Issues, Tracy MacCharles dated September 25, 2014, <http://www.ontario.ca/government/2014-mandate-letter-womens-directorate>.





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## APPENDIX H

### LIST OF WORKERS ACTION CENTRE RECOMMENDATIONS FOR BUILDING DECENT JOBS FROM THE GROUND UP<sup>163</sup>

#### Introduction

#### RECOMMENDATION 1.1

The Changing Workplace Review should be guided by the principle of decency as was the case in Harry Arthurs' review of the Federal Labour Code:

Labour standards should ensure that no matter how limited his or her bargaining power, no worker in the federal jurisdiction is offered, accepts or works under conditions that Canadians would not regard as "decent." No worker should therefore receive a wage that is insufficient to live on; be deprived of the payment of wages or benefits to which they are entitled; be subject to coercion, discrimination, indignity or unwarranted danger in the workplace; or be required to work so many hours that he or she is effectively denied a personal or civic life.

#### Inclusive Employment Standards Protection

#### RECOMMENDATION 2.1

Broaden the definition of employee along the lines of Ontario's *Health and Safety Act*, which defines a worker as "a person who is paid to perform work or supply services for monetary compensation."

#### RECOMMENDATION 2.2

Make employers who enter into contracts with subcontractors and other intermediaries, either directly or indirectly, liable both separately and together for wages owed and for statutory entitlements under the *ESA* and its regulations.

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163 Excerpted from "Still Working on the Edge", Workers Action Centre, March 2015, Brief to the Changing Workplace Review

### **RECOMMENDATION 2.3**

No exemptions to the *ESA* and no special rules.

### **RECOMMENDATION 2.4**

There should be no differential treatment in pay and working conditions for workers who are doing the same work but are classified differently, such as part-time, contract, temporary, or casual.

### **RECOMMENDATION 2.5**

»» Where an employer provides benefits, these must be provided to all workers regardless of employee status (e.g. part-time, contract). Full and equal benefits are the priority, as prorated benefits do not amount to equivalent conditions.

»» Where an employer provides benefits, they cannot discriminate due to the age, sex, or marital status of the employees. Amend the *ESA* to prohibit discrimination on the basis of form of the employment relationship (e.g., hours usually worked each week).

### **RECOMMENDATION 2.6**

»» Ensure that temp agency workers receive the same wages, benefits and working conditions as workers hired directly by the company.

»» Require temporary help agencies to provide employees with the hourly mark-up fees for each assignment (i.e., the difference between what the client company pays for the assignment worker and the wage the agency pays the assignment worker).

»» Make client companies jointly responsible with temp agencies for all rights under the *ESA*, not just wages, overtime and public holiday pay.

»» Eliminate barriers to client companies hiring temp agency workers directly during the first six months (repeal Section 74.8(1)8 of the *ESA* which allows agencies to charge fees during the first six months).

»» Make the client companies and agency liable for termination notice or pay in lieu of notice when the assignment is without a term or when a worker is terminated before the assignment is completed.

»» Prohibit long-term temporary assignments. Require that agency workers become directly hired employees after a working a cumulative total of six months for the client company.

»» No more than 20 percent of staff can be assignment employees. Every employer shall ensure that the total number of hours worked by assignment employees in a work week does not exceed 20 percent of the total number of hours worked by all employees, including assignment employees, in that work week.

## **RECOMMENDATION 2.7**

»» Establish a reverse onus regarding employee status, under which a worker is presumed to be an employee unless the employer demonstrates otherwise.

»» Work with federal agencies such as the Canadian Revenue Agency and Employment Insurance to map sectors where misclassification is growing or is already widespread. Undertake proactive sectoral inspections with stiff penalties for those in violation. Publicize names of companies in violation to deter misclassification.

## **Decent Hours for a Decent Income**

### **RECOMMENDATION 3.1**

The *ESA* should provide for an eight-hour day and a 40-hour work week. Employees should have the right to refuse work beyond 40 hours. Overtime at time and a half should be paid (or taken as paid time off in lieu) after 40 hours.

### **RECOMMENDATION 3.2**

Repeal overtime exemptions and special rules.

### **RECOMMENDATION 3.3**

Repeal overtime averaging provisions in the *ESA*.

### **RECOMMENDATION 3.4**

Permits for overtime in excess of 48 hours per week must be reviewed. Permits should only be given in exceptional circumstances and be conditional on demonstrated efforts to recall employees on layoff, offer hours to temporary, part-time and contract employees, and/or hire new employees. Annual caps of no greater than 100 hours per employee must be set on overtime hours allowed by permits. Annual permits must set a weekly or quarterly cap to avoid unhealthy overtime in busy periods. Workers should retain the right to refuse overtime when their employer has been granted an overtime permit. Names of companies with overtime permits should be publicized.

### **RECOMMENDATION 3.5**

In addition to an unpaid, half-hour lunch break, two paid breaks, such as a coffee break, should be provided by the employer.

### **RECOMMENDATION 3.6**

Increase paid vacation entitlement to three weeks per year. After five years of service, increase vacation to four weeks of paid vacation per year.

### **RECOMMENDATION 3.7**

Repeal exemptions from public holidays and public holiday pay.

### **RECOMMENDATION 3.8**

»» All workers should receive a written contract on the first day of employment setting out terms and conditions, including expected hours of work.

»» Require employers to offer available hours of work to those working less than fulltime before new workers performing similar work are hired.

»» Require employers to preferentially consider current part-time or casual employees before hiring additional part-time or full-time workers.

»» Provide just-cause protection to contract workers if, at the end of a contract, another worker is hired to do the work previously done by the contract worker.

»» Regulate renewal of contracts so that seniority translates into permanent job status.

### **RECOMMENDATION 3.9**

Amend the *ESA* to require that the minimum shift per day be three hours, scheduled or casual.

### **RECOMMENDATION 3.10**

»» Require two weeks' advance posting of work schedules (including when work begins, ends, shifts, meal breaks).

»» Require that employees receive the equivalent of one hour's pay if the schedule is changed with less than a week's notice, and four hours' pay for schedule changes made with less than 24 hours' notice.

»» Workers must be able to ask employers to change schedules without penalty (i.e., protection from reprisals).

### **RECOMMENDATION 3.11**

Repeal the exemption for employers of 49 or less workers from providing personal emergency leave.

### **RECOMMENDATION 3.12**

All employees shall accrue a minimum of one hour of paid sick time for every 35 hours worked. Employees will not accrue more than 52 hours of paid sick time in a calendar year, unless the employer selects a higher limit. For a full-time 35-hour per week employee, this works out to approximately seven paid sick days per year.

### **RECOMMENDATION 3.13**

Repeal Section 50(7) and amend the *ESA* to prohibit employers from requiring evidence to entitle workers to personal emergency leave or paid sick days.

### **Rights without Remedies: Improving Enforcement**

#### **RECOMMENDATION 4.1**

»» Implement a deterrence model of enforcement that compels employers to comply with the *ESA*.

»» Develop an expanded proactive system of enforcement to increase compliance.

#### **RECOMMENDATION 4.2**

Where individual claims confirm employer violations, then an inspection shall be expanded to determine if the employer has violated the rights of current employees and remedies all monetary (e.g., unpaid wages, overtime pay, public holiday pay, vacation pay, etc.) and non-monetary violations (e.g., hours of work, breaks, agreements etc.) detected.

#### **RECOMMENDATION 4.3**

Change the proactive inspection model to enforce rights for current employees. The goal of proactive inspections should be to ensure current workers get unpaid wages and core standards are adhered to, in addition to educating employers to guarantee future compliance.

#### **RECOMMENDATION 4.4**

»» Increase staffing to the dedicated enforcement team in order to increase proactive inspections.

»» Partner with organizations working directly with precarious workers (e.g., workers centres, community legal clinics, unions, immigrant serving agencies) to identify where violations are occurring and identify which investigative strategies will best uncover employer tactics to evade or disguise violations.

»» Strategically target emerging employer practices, such as misclassification of employees as independent contractors or failure to pay overtime, for proactive sectoral inspection blitzes.

»» Establish a provincial fair wage policy for government procurement of goods and contracts for work or service that would require adherence to minimum employment standards and industry norms.

#### **RECOMMENDATION 4.5**

»» a “hot cargo” provision in the *ESA* that would enable inspectors to impose an embargo on goods manufactured in violation of the Act to ensure that, in fairness, penalties are felt by all parties along the chain of production.

»» Hold companies in low-wage sectors responsible under a duty based regime for subcontractors’ violations of *ESA* wages and working conditions. Companies would have the duty to know that sufficient funds exist in the contract with subcontractors to comply with the *ESA*. This would follow the State of California’s Labour Code section known as the “brother’s keeper” law.

#### **RECOMMENDATION 4.6**

»» Create a reverse onus so that employers have to disprove a complaint against them, rather than workers having to prove that the violation occurred.

»» Direct one-on-one legal assistance to workers to make employment standards claims.

»» Revoke the requirement that workers first attempt to enforce their *ESA* rights with the employer before they are allowed to file a claim.

»» Fund interpreters for the claims process to ensure access for employers and employees who do not speak English.

#### **RECOMMENDATION 4.7**

When employers do not comply with orders to pay unpaid wages, the Ministry of Labour may take any appropriate enforcement action to secure compliance, including requesting that provincial or municipal agencies or departments revoke or suspend any registration certificates, permits, or licenses held or requested by the employer or until such time as the violation is remedied.

#### **RECOMMENDATION 4.8**

»» Establish set fines (rather than Employment Standards Officer discretion) for confirmed violations, including settlements and voluntary compliance.

»» Increase fines to double or triple the amount of wages owed to provide adequate deterrence for violations.

»» Use monies collected as fines to expand proactive inspections, extended investigations and collection activities.

»» Make prosecution policy simple and transparent. Each repeat violation or non-payment of orders must be prosecuted under Part III provincial offences.



»» Provide anti-reprisals protection to those workers whose workplace is subject to proactive inspection.

»» The names of all employers found in violation of Employment Standards should be publicized on the Ministry of Labour website.

#### **RECOMMENDATION 4.9**

»» Order employers to pay interest on all unpaid wages in all cases confirmed by the claims investigation (regardless of whether claims are settled, voluntarily complied with or result in order to pay).

»» Require any employer who fails to pay the wages required under the *ESA* to pay the employee the balance of the wages owed and an additional amount equal to twice the unpaid wages. The Ministry of Labour shall have the authority to order payment of such unpaid wages and other amounts.

#### **RECOMMENDATION 4.10**

»» Authorize the Ministry of Labour to impose a “wage lien” on an employer’s property when an employment standards complaint is filed for unpaid wages (i.e., prejudgment).

»» Authorize the Ministry of Labour to request bonds in cases where wages may go unpaid due to an employer’s history of previous wage claim violations or sectors at high risk of violations (e.g, recruitment).

»» The Ministry of Labour should establish a wage protection plan paid for by employers, similar to the Workplace Safety and Insurance system, not through general revenues. Employers, not taxpayers, should share the costs of restructuring and of employer practices that result in violations.

»» Make Part III prosecution mandatory in all cases where wages go unpaid to deter the practice of noncompliance with Ministry of Labour orders to pay.

### **Workers’ Voice**

#### **RECOMMENDATION 5.1**

»» Establish a formal anonymous and third party complaint system. To make employment standards enforcement and legal remedy accessible to current employees, inspection initiated after a formal anonymous or third party complaint is filed should aim to detect and assess monetary (e.g., unpaid wages, overtime pay, public holiday pay, vacation pay, etc.,) and non-monetary violations (e.g., hours of work, breaks, agreements etc.,), remedy violations with orders to pay for all current employees, and to bring the employer into compliance for the future. Institute an appeal process if a proactive inspection is not conducted. Make the report of the proactive inspection available to all employees. The officer’s decisions could be appealed either by employees or the employer.

## **RECOMMENDATION 5.2**

»» Protect workers who come forward to assert their rights by establishing substantial fines for employers who retaliate against them.

»» Conduct education and outreach to inform employers and employees about anti-reprisals protections.

»» Publicize confirmed anti-reprisal cases (protecting employee confidentiality) in the media, on government websites, and in educational materials.

»» To enable some workers to file individual claims while still on the job, develop an expedited investigation process for reprisals so that reprisal complaints will be heard immediately. Provide interim reinstatement, if requested by the worker, pending a ruling on cases of dismissal due to reprisals. This would reduce the penalizing impact of reprisals on workers.

»» In the case of migrant workers, prohibit employers from forcing “repatriation” of an employee who has filed an *ESA* complaint.

»» The Ministry of Labour should work with the federal government to ensure that migrant workers who have filed complaints are granted open permits. See additional information on this recommendation in the Migrant Workers section of the report.

## **RECOMMENDATION 5.3**

»» Amend the *ESA* to include protection from wrongful dismissal. Authorize a procedure for making complaints against a dismissal considered unjust by an employee.

»» Claims of unjust dismissal should be prioritized and investigated quickly, with interim reinstatement pending ruling, if requested by the worker.

## **RECOMMENDATION 5.4**

Ontario should adopt Quebec’s legislative approach to anti-psychological harassment under its labour standards. Like Quebec, Ontario should ensure that employees have a right to a workplace free from psychological harassment. Employers must take reasonable action to prevent harassment and, whenever they become aware of such behaviour, put a stop to it. Workers should have recourse against psychological harassment including reinstatement, punitive and moral damages, indemnity for loss of employment, compensation for psychological support if needed, and the ability to order the employer to take reasonable action to put a stop to harassment.

## **RECOMMENDATION 5.5**

»» Establish the legislative framework to enable sectoral bargaining in Ontario.

»» Allow caregivers under the Temporary Foreign Worker Program (TFWP) to unionize and bargain sectorally with employer representatives.

»» The Agricultural Employees Protection Act established in 2002 is so ineffective that no collective bargaining relationship has ever been established. This Act should be repealed and farm workers should have the same right to general collective bargaining under the Ontario Labour Relations Act (OLRA) that other workers have.

#### **RECOMMENDATION 5.6**

Enable unions to negotiate the terms and conditions of outsourced workers.

#### **RECOMMENDATION 5.7**

Repeal the bar on unionized workers from making claims through the *ESA* and enable unions to make third party complaints on behalf of non-unionized workers.

### **Migrant Workers**

#### **RECOMMENDATION 6.1 (METCALF FOUNDATION)**

Legislation to protect migrant workers from exploitation by recruiters and employers must be designed on a proactive platform that meets international best practices and domestic best practices represented by the Manitoba's Worker Recruitment and Protection Act and the enhancements developed in Saskatchewan and Nova Scotia.

Ontario should adopt a proactive system of employer registration, recruiter licensing (including the mandatory provision of an irrevocable letter of credit or deposit), mandatory filing of information about recruitment and employment contracts, and proactive government inspection and investigation in line with the best practices model adopted in Manitoba's Worker Recruitment and Protection Act and the enhancements developed in Saskatchewan and Nova Scotia.

Specific enhancements to the Manitoba model that should be adopted in Ontario include:

»» Mandatory reporting of all individuals and entities that participate in the recruiter's supply chain in Canada and abroad;

»» Mandatory reporting of detailed information regarding a recruiter's business and financial information in Canada and abroad as developed in Nova Scotia's legislation;

»» Explicit provisions that make a licensed recruiter liable for any actions by any individual or entity in the recruiter's supply chain that are inconsistent with the Ontario law prohibiting exploitative recruitment practices;

»» Public registries of both licensed recruiters and registered employers;

»» Explicit provision that makes it an independent offence for an employer to engage the services of a recruiter who is not licensed under the legislation;

»» Explicit provisions that make an employer and recruiter jointly and severally liable for violations of the law and employment contract;

»» Protections against the broader range of exploitative conduct that is prohibited under s. 22 of FWRISA in Saskatchewan (i.e., distributing false or misleading information, misrepresenting employment opportunities, threatening deportation, contacting a migrant worker's family without consent, threatening a migrant worker's family, etc.); and

»» Provisions allowing for information sharing that enhance cross jurisdictional enforcement of protections against exploitative recruitment practices, including information sharing with other ministries or agencies of the provincial government, department or agencies of the federal government, departments or agencies of another province or territory or another country or state within the country as developed in Saskatchewan's legislation.<sup>110</sup>

## **RECOMMENDATION 6.2**

»» Amend the *ESA* to include a process for expediting complaints of reprisals and, in the case of migrant workers, ensure that such complaints are heard before repatriation. Where there is a finding of reprisal, provision would be made for transfer to another employer or, where appropriate, reinstatement.

»» The *ESA* should explicitly prohibit an employer from forcing "repatriation" on an employee who has filed an *ESA* complaint.

»» Change the Canada-Ontario Immigration Agreement (COIA) to create an open work permit program for migrant workers who have filed complaints against recruiters, under the Employment Protection for Foreign National Act, and *ESA*.

## **RECOMMENDATION 6.3**

Migrant workers should be able to make claims under the *ESA* when conditions of the employment contract have been reduced or not complied with.

## **RECOMMENDATION 6.4**

The *ESA* should be amended to allow seasonal migrant workers access to termination and severance pay recognizing their years of service and the continuity of an employment relationship with the same employer.

Migrant workers should be considered to be on a temporary lay-off between their yearly contracts with the same employer.

**RECOMMENDATION 6.5**

Extend time limits on *ESA* claims filed by migrant workers to five years.

**Fair Wages**

**RECOMMENDATION 7.1**

Raise the minimum wage to \$15 per hour in 2015.

**RECOMMENDATION 7.2**

Repeal occupational exemptions to minimum wage.

**RECOMMENDATION 7.3**

Repeal liquor servers minimum wage.

**RECOMMENDATION 7.4**

Repeal student minimum wage.