HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

IT'S TIME TO ACT

Report of the Special Committee on Pay Equity

Anita Vandenbeld
Chair

JUNE 2016

42nd PARLIAMENT, 1st SESSION

IT'S TIME TO ACT

Report of the Special Committee on Pay Equity

Anita Vandenbeld
Chair

JUNE 2016

42nd PARLIAMENT, 1st SESSION

SPECIAL COMMITTEE ON PAY EQUITY

CHAIR

Anita Vandenbeld

VICE-CHAIRS

Shannon Stubbs
Sheri Benson

MEMBERS

Dan Albas
Matt DeCourcey
Julie Dzerowicz
Marilyn Gladu
Eva Nassif
Terry Sheehan
Sonia Sidhu

OTHER MEMBERS OF PARLIAMENT WHO PARTICIPATED

Julie Dabrusin
Gérard Deltell
Anju Dhillon
Fayçal El-Khoury
Doug Eyolfson
Tom Kmiec
Linda Lapointe
Lloyd Longfield
Joyce Murray
Yves Robillard
Sherry Romanado
Kim Rudd
Karen Vecchio

CLERK OF THE COMMITTEE

Julie Lalande Prud'homme

LIBRARY OF PARLIAMENT

Parliamentary Information and Research Service

Julie Mackenzie, Analyst
Julian Walker, Analyst

THE SPECIAL COMMITTEE ON PAY EQUITY

has the honour to present its

FIRST REPORT

Pursuant to the Order of Reference of Wednesday, February 3, 2016, the Committee has studied Pay Equity and has agreed to report the following:

TABLE OF CONTENTS

IT'S TIME TO ACT

A. INTRODUCTION

On 3 February 2016, the House of Commons adopted the following motion with respect to pay equity:

> That the House
>
> (a) recognize that the government must take action to close the unacceptable gap in pay between men and women which contributes to income inequality and discriminates against women;
>
> (b) recognize pay equity as a right;
>
> (c) call on the government to implement the recommendations of the 2004 Pay Equity Task Force Report and restore the right to pay equity in the public service which was eliminated by the previous Conservative government in 2009;
>
> (d) appoint a special committee with the mandate to conduct hearings on the matter of pay equity and to propose a plan to adopt a proactive federal pay equity regime, both legislative and otherwise; and
>
> (e) table a final report to Parliament by June 10, 2016.[1]

The Special Committee on Pay Equity (Committee) held a total of 11 meetings on the topic of pay equity between 7 March and 1 June 2016, heard from 50 witnesses (listed in Appendix A), including three federal government departments and agencies, and received 11 written submissions (listed in Appendix B).

The Committee was mindful as it began its study that 12 years have passed since the 2004 Pay Equity Task report was released. Since that time, more women have entered the Canadian workforce, women's educational levels have risen, more women are pursuing academic studies in mathematics, engineering and computer science, and a higher proportion of senior managers in government and industry are now women. Yet, there remains persistent gender wage inequity, as described in the World Economic Forum's 2015 gender gap report that placed Canada 80th in the world in terms of gender wage equality.[2]

The Committee is aware that there are trends emerging in other countries and within the private sector surrounding the issues of pay equity and the gender wage gap, and that there is a renewed commitment to address issues related to gender diversity in the workplace. A number of countries have established proactive pay equity regimes and are pressing their corporate citizens to take more aggressive measures on these issues. During testimony, the Committee heard of companies and institutions that have taken

1 House of Commons, *Journals*, 3 February 2016.

2 World Economic Forum, *The Global Gender Gap Report 2015*, Geneva, p. 53.

unilateral direct action to address wage disparities. One witness described how her university had conducted a pay equity evaluation, determined that a wage gap existed and simply issued payments to those affected, without dispute.[3] The Committee heard how Gap Inc. was the first Fortune 500 company in the United States to publicly disclose and validate that it pays men and women equally, following a pay equity study.[4] Salary transparency measures for companies have recently been announced in Australia, the United Kingdom and the United States. Other witnesses pointed to examples of proactive pay equity systems in Sweden, Norway, Switzerland and Spain. Many Canadian provinces have proactive pay equity legislation for their public sectors and for several decades, Ontario and Quebec have had proactive regimes that also include the private sector. Several experts cited Quebec's pay equity system as a best practice.[5]

The Committee reviewed Canada's existing federal pay equity system and quickly realized it is not working for employers or employees. The Committee is concerned about the structure of the pay equity framework and shares the sense of frustration expressed by several witnesses. The Committee heard that the 2004 Federal Pay Equity Task Force report was the most comprehensive study of its kind and is recognized internationally.[6] With both the 2004 Task Force report and the examples of other jurisdictions that have successfully implemented pay equity, some witnesses pressed the Committee to advise the government that the issue has been studied extensively, established in other countries and in provinces, and that there is no need for further reports and studies of the issue.[7]

The Committee heard a clear desire for action, such as the following:

> [I] want to offer a brief reflection on the impact of action and the lack of action. When I speak about pay equity, I often use the phrase "justice delayed is justice denied", so I want to remember the groups of workers who had to wait decades for complaints to work their way through the courts, such as the Bell Canada workers whose case took 15 years, and by the time the settlement was reached, almost 16% of those workers had died and many more were frail and nearing end of life. Imagine for a moment their quality of life if they hadn't had to wait. Imagine the boost to the economy if that money had been in their bank accounts the whole time.[8]

---

3 Special Committee on Pay Equity [ESPE], *Evidence*, 20 April 2016, 1940 (Prof. Daphne Taras, University of Saskatchewan, as an individual).

4 ESPE, *Evidence*, 2 May 2016, 1940 and 2005 (Ms. Serena Fong, Vice-President, Government Affairs, Catalyst).

5 ESPE, *Evidence*, 18 April 2016, 2010 (Ms. Debora De Angelis, National Coordinator for Strategic Campaigns, United Food and Commercial Workers Union Canada); 18 April 2016, 1835 (Ms. Barbara Byers, Secretary-Treasurer, Canadian Labour Congress); 18 April 2016, 1845 (Mr. Dany Richard, Executive Vice-President, Association of Canadian Financial Officers); 18 April 2016, 1910 (Ms. Vicky Smallman, National Director, Women's and Human Rights, Canadian Labour Congress); *Evidence*, 20 April, 2016, 2000 (Prof. Kathleen Lahey, Professor, Faculty of Law, Queen's University, as an individual).

6 ESPE, *Evidence*, 2 May 2016, 1945 (Ms. Janet Borowy, Member and Lawyer, Cavalluzzo Shilton McIntyre Cornish LLP, Equal Pay Coalition).

7 ESPE, *Evidence*, 18 April 2016, 1945 (Byers); 18 April 2016, 2005 (Ms. Robyn Benson, National President, Public Service Alliance of Canada); *Evidence*, 2 May 2016, 1945 (Borowy); *Evidence*, 4 May 2016, 1735 (Ms. Johanne Perron, Executive Director, New Brunswick Coalition for Pay Equity); 4 May 2016, 1730 (Ms. Julie Shugarman, Consulting Director, National Association of Women and the Law).

8 ESPE, *Evidence*, 18 April 2016, 1845 (Byers).

The Committee echoes this frustration. The Committee recognizes that pay equity is a legislated human right and the Committee believes that the Government of Canada has the obligation to ensure that within its jurisdiction, pay equity is a human right that is promoted, implemented and enforced. The Committee believes it is time for the federal government to act.

B. BACKGROUND

a. Pay equity is a human right entrenched in federal law

Pay equity is an established human right enshrined under the 1977 *Canadian Human Rights Act*.[9] The legal obligation for employers to ensure that their employees receive equal pay for work of equal value is specified in section 11 (1) of the Act which states that:

> It is a discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value.[10]

In 2004, the Supreme Court of Canada recognized pay equity as being constitutionally protected under section 15 of the *Canadian Charter of Rights and Freedoms*.[11] Moreover, Canada has international human rights' obligations, having ratified a number of International conventions that commit Canada to pay equity.[12] The core international obligation is reflected in Canada's 1972 ratification of the International Labour Organization's *Convention No.100*, although there are numerous others.[13]

b. Federal Task Force on Pay Equity and Response of the Government of Canada

On 28 October 1999, the Government of Canada announced that it would conduct a review of section 11 of the *Canadian Human Rights Act* (CHRA) to clarify the way pay equity is implemented in the workplace. To conduct this review, the Pay Equity Task Force was established in June 2001 and following extensive research, consultations and roundtables, issued its final report, *Pay Equity: A New Approach to A Fundamental Right*, in May 2004.[14] The recommendations in the Task Force's final report were a focus of this

---

9 *Canadian Human Rights Act*, R.S.C., 1985, c. H-6.

10 Ibid., c. H-6. S. 11 (1).

11 *Newfoundland (Treasury Board) v. N.A.P.E.*, [2004] 3 S.C.R. 381, 2004 SCC 66.

12 Canada's other international obligations include: *the Convention Concerning Equal Remuneration for Men and Women for Work of Equal Value;* the *United Nations International Covenant on Economic, Social and Cultural Rights*, ratified by Canada in 1976; the 1976 ratification of the United Nation's *International Covenant on Civil and Political Rights;* the 1981 ratification of the United Nation's *Convention on the Elimination of all Forms of Discrimination Against Women* (CEDAW); and Canada's signing of the *Beijing Declaration and the Platform for Action* in 1995.

13 ESPE, *Evidence*, 20 April 2016, 1945 and 1950 (Prof. Margot Young, Professor, Allard School of Law, University of British Columbia).

14 Pay Equity Task Force, *Pay Equity: A New Approach to a Fundamental Right*, 2004, Government of Canada Webarchive.

Committee's study. The Task Force was chaired by Prof. Beth Bilson and most pay equity experts and witnesses who appeared before the Committee referred to the report as "the Bilson report."

The 2004 Bilson report contained 596 pages and 113 recommendations and was a comprehensive three-year study of a proactive pay equity regime. It provided extensive details on the composition of proposed pay equity committees to be established by employers, the structure of pay equity plans that would need to be prepared, and the suggested methodologies to be used. It also outlined recommendations on reporting on, monitoring and maintaining pay equity systems.

It is not the intent of the Committee to repeat what most experts consider to be the most complete pay equity study ever undertaken.[15] Rather, the Committee was more interested in learning from experts what elements of the 2004 Bilson report remain relevant and what elements should be modified, based on experiences in other jurisdictions in Canada and abroad.

The Bilson report included the foundational recommendation that the federal government should establish a proactive federal pay equity system, under which it would be the responsibility of employers to examine their own pay practices, identify possible gender wage discrimination, adjust wages accordingly, and maintain the plan over time so that inequities would not reoccur.[16]

In June 2005, the Standing Committee on the Status of Women released a report recommending that the federal government implement all recommendations of the Task Force's report. The Government Response, tabled in the House of Commons on 7 October 2005, stated that while the government was in agreement with the overall objectives of the Task Force report, it intended to conduct consultations with stakeholders before preparing legislation to enact a proactive federal pay equity regime. In 2009, the government passed the *Public Sector Equitable Compensation Act* (PSECA),[17] pay equity legislation which would affect only the core federal public service. PSECA has not yet been enacted and would not affect Crown corporations or the federally regulated private sector which remain under the jurisdiction of the CHRA.

15 ESPE, *Evidence*, 18 April 2016, 1835 (Byers); *Evidence*, 2 May 2016, 1945 (Borowy); *Evidence*, 4 May 2016, 1935 (Ms. Emanuela Heyninck, Commissioner, Ontario Pay Equity Commission).

16 ESPE, *Evidence*, 21 March 2016, 1750 (Prof. Beth Bilson, Former Chair, Pay Equity Task Force and Interim Dean and Professor of Law, University of Saskatchewan, as an individual).

17 *Public Sector Equitable Compensation Act*, S.C. 2009, c. 2, s. 394 [not in force].

C. FOCUS OF THE STUDY

The Committee began its study aware that it did not need to focus its attention on creating a legal obligation to pay equity, as that is well established under Canadian law and international human rights conventions ratified by Canada. The Committee focused on how this existing human rights obligation is currently being implemented within the federal jurisdiction, how the current system can be improved, and how to learn from other Canadian jurisdictions in order to recommend a fairer and more efficient pay equity regime.

The Motion outlining the mandate of the Committee specifies that the Committee examine gender pay equity, not pay equity related to the other employment equity groups (visible minorities, Indigenous peoples and persons with disabilities). While the Committee did seek the views of witnesses on pay equity related to these groups, none identified examples of jurisdictions where pay equity regimes, other than those related to gender pay equity, were in place, nor did they provide concrete guidance as to how discriminatory human rights issues related to the other employment equity groups could be included within a pay equity framework based on job classifications.[18] As a result, the Committee focused on a gender lens for its study of pay equity and did not address recommendation 6.9[19] in the Bilson report.

The Committee would like to acknowledge the excellence of the Bilson report and its comprehensive analysis. The report provided an ideal foundation for the Committee's study and assisted in focussing discussions on a path forward. To aid the Committee in its work, it began by grouping and paraphrasing the key recommendations of the Bilson report. It is these core recommendations that are reflected elsewhere in the report:

1. The federal government should develop a new proactive pay equity law. The legislation should include an employer's obligation to review its organizational wage structure, identify gender-based wage gaps and develop a pay equity plan to eliminate wage inequities within a specific time frame.

2. All employees within federal jurisdiction should be covered by federal pay equity legislation, including non-unionized employees and temporary workers, employees of Parliament and employees of federal contractors covered by the Federal Contractors Program.

3. Employers should establish pay equity committees, responsible for developing a pay equity plan and monitoring the elimination of wage gaps.

4. Pay equity should not be included in the collective bargaining process.

---

18 ESPE, *Evidence*, 18 April 2016, 2100 (Ms. Annick Desjardins, Executive Assistant, National President's Office, Canadian Union of Public Employees).

19 The Bilson report's recommendation 6.9 states: "The Task Force recommends that the provisions of the new federal pay equity legislation which recognize that employees are entitled to equal pay for equal work, and which establish a process for eliminating this form of wage discrimination, should apply to members of visible minorities, Aboriginal people and persons with disabilities as well as women."

5. Employers should have an obligation to maintain pay equity once a pay equity plan has been implemented. In unionized workplaces, unions should share this monitoring responsibility.

6. A Canadian Pay Equity Commission, with sufficient resources, should be created to administer the new legislation.

7. A Canadian Pay Equity Tribunal, with sufficient resources, should be created to adjudicate disputes related to pay equity.[20]

a. Pay equity vs gender wage gap

The Committee heard a wide range of testimony regarding both pay equity and the gender wage gap. The definitions of each term and the differences between them are important. As the Hon. Patty Hajdu, Minister of Status Women, explained:

> While definitions may vary, the gender wage gap is generally recognized as the difference between the total of what women earn in our country compared with what men earn. [P]ay equity is defined as equal pay for work of equal value, where jobs are evaluated on their skill, their effort, their responsibility, and working conditions, and can be compared for their value in the workplace.[21]

The Committee was mindful of its responsibilities to focus on a proactive pay equity regime, as distinct from addressing the broader factors that contribute to the issue of the gender wage gap. The Committee heard that the gender wage gap is a result of broader factors, such as, among other things, the high percentage of women in part-time work, the burden of providing care for children or aging family members, which falls disproportionally on women, the lack of affordable child care, and the lack of women in science, technology, engineering and mathematics (STEM) academic programs and jobs. Pay inequity in the workplace is a key element of the gender wage gap, but it is only one factor contributing to this wage gap. While pay equity and the gender wage gap are related, the Committee was advised by several witnesses that reducing pay inequity would not in itself eliminate the gender wage gap.

Nonetheless, the Committee was concerned by the broader context in which pay equity is situated. The Committee heard that Statistics Canada's 2015 Labour Force Survey indicates that women in Canada earned 82 cents for every dollar earned by men. Women in the federally regulated sector earned 87 cents for every dollar earned by men.[22] The Committee also heard that Canada is currently placed 80th out of 145 countries in gender income equality according to the World Economic Forum's 2015 report.[23]

---

20 National Association of Women and the Law Final Report of the Workshop on Pay Equity, May 2-3, 2007 (Ottawa), pp 13-14; www.nawl.ca.

21 ESPE, *Evidence*, 3 May 2016, 1740 (The Hon. Patty Hajdu, Minister of Status of Women).

22 Ibid., 1745 (The Hon. MaryAnn Mihychuk, Minister of Employment, Workforce Development and Labour, Employment and Social Development Canada).

23 ESPE, *Evidence*, 11 April 2016, 1745 (Ms. Justine Akman, Director General, Policy and External Relations, Policy and External Relations Directorate, Status of Women Canada).

D. THE CURRENT FEDERAL PAY EQUITY SYSTEM

The Canadian Human Rights Commission and Canadian Human Rights Tribunal were established with the 1977 enactment of the *Canadian Human Rights Act* (CHRA). The Commission oversees discrimination complaints based on 11 grounds of discrimination including disability, age, gender and race.[24] The system is referred to as a "complaints-based system," meaning that an employee, group of employees or their bargaining agent may file a complaint with the Commission, which then investigates the complaint. The Commission does not proactively initiate investigations to determine if cases of pay equity exist.

In addition to the CHRA, there are other legal components to the federal pay equity system. The *Equal Wage Guidelines, 1986*[25] provide guidance on the application of the pay equity provisions of the CHRA. The Guidelines elaborate on the four factors used to assess the value of work: skill, effort, responsibility and working conditions. They also provide criteria for examining whether different jobs are part of the same establishment, outline reasonable factors that may justify wage differences, and set out a scale to determine if jobs are male or female-dominant (female-dominant if women comprise 70% of a job classification where the organization has fewer than 100 employees, 60% where the job classification has 100–500 employees; and 55% if the job classification has more than 500 employees).

Section 249 of the *Canada Labour Code,* Part III gives Employment and Social Development Canada's Labour Program inspectors the authority to examine wage records and gather information related to pay equity. If an inspector has reasonable grounds to believe that there is gender-based wage discrimination in an establishment, he or she may notify the Commission, which can then initiate an investigation.[26]

In 2009, the government tabled a new pay equity law solely for the federal public service, the *Public Sector Equitable Compensation Act* (PSECA), as part of the *Budget Implementation Act, 2009*. Although PSECA has never been enacted, the government did include transitional provisions that resulted in federal public service pay equity complaints being transferred from the purview of the Canadian Human Rights Tribunal to the Public Sector Labour Relations and Employment Board. While PSECA is not in force, it contains certain measures that differ significantly from those under the CHRA including:

- raising the threshold for determining female-dominated job classifications to 70%;

- directing adjudicators to consider "market forces" in determining wage adjustment awards;

---

24 ESPE, *Evidence*, 18 April 2016, 1730 (Mr. Ian Fine, Executive Director, Canadian Human Rights Commission).

25 *Equal Wages Guidelines, 1986*, SOR/86-1082.

26 *Canada Labour Code*, R.S.C. 1985, c. L-2.

- prohibiting collective bargaining agents from supporting pay equity complainants; and

- preventing the public service from having access to the Canadian Human Rights Commission for pay equity complaints.

The federally regulated sector remains under the jurisdiction of the Canadian Human Rights Commission and the Canadian Human Rights Tribunal.

a. Views of the Public Sector Equitable Compensation Act

The Committee heard many criticisms of PSECA, referring to it as "regressive" and "fundamentally flawed."[27] The Committee did not hear from any witnesses who supported bringing PSECA into force or who suggested modifications that could, in the witnesses' opinion, remediate the legislation. Indeed, most witnesses advocated repealing PSECA and identified several key flaws in the legislation.[28] The Committee notes that two of the bargaining agents that appeared as witnesses have indicated they would launch court challenges should the legislation come into force. The majority of the objections heard about PSECA are summarized by one witness:

> Although the previous government labelled PSECA as "proactive", we're not convinced of that. PSECA does not place the responsibility for eliminating discriminatory wages on employers alone. It introduces market forces as a factor for consideration when valuing women's work in the public sector. It only targets certain employers, redefines a female-predominant group, and restricts the comparator groups, thus making it more difficult to establish where wage discrimination exists. This is not proactive pay equity legislation.[29]

The Committee agrees that PSECA would establish a two-tier pay equity system for the federal jurisdiction and cannot be amended to create a sound base for a proactive pay equity regime.

Recommendation 1

The Committee recommends that the Government of Canada repeal the *Public Sector Equitable Compensation Act.*

b. Views of the Current Complaints-based System of Pay Equity

For the federally regulated sector, the current federal pay equity system is a complaints-based model administered by the Canadian Human Rights Commission. The Committee heard from many witnesses that this model has resulted in lengthy, costly and contentious disputes between employers and bargaining agents. The Committee was reminded of well-known pay equity disputes involving the federal government, Canada

---

27 ESPE, *Evidence*, 20 April 2016, 1920 (Ms. Colleen Bauman, Partner, Goldblatt Partners LLP, Canadian Association of Labour Lawyers).

28 Ibid.

29 ESPE, *Evidence*, 18 April 2016, 1840 (Byers).

Post, Air Canada, and Bell Canada, several of which ultimately went to the Supreme Court of Canada for resolution.

The Committee heard that the complaints-based system is unfair for employers. As one witness pointed out:

> [Y]ou can have one employer in one industry facing a complaint and then having to remedy that particular complaint, whereas other organizations in the same industry are not facing the complaint and not having to go through the same process.[30]

The Committee also learned that the lengthy and costly complaints-based system was a source of frustration for employees:

> If you think of the millions of dollars—and I mean millions of dollars—spent by Bell Canada and by the federal government when it was fighting its own employees on pay equity, that money could have been better used to do the work that needed to be done in proactive pay equity legislation and in the education that's needed in removing the biases from workplace evaluations of positions and getting the money into people's hands who deserved it because that's the reality.[31]

> This is not what pay equity was intended to do. The federal complaint base model has been in place now for almost 40 years. That has given us more than enough time to assess its effectiveness. What we've found is that this model is highly adversarial. It requires legal expertise. It takes an excessive amount of time and resources to resolve the complaints. [U]nder this system it is virtually impossible for anyone to pursue a complaint who doesn't have the support of a large union or unlimited funds.[32]

The Committee heard similar concerns expressed by the government. As The Hon. MaryAnn Mihychuk, Minister of Employment, Workforce Development and Labour stated:

> When we look at any system that takes 30 years to get a resolution, like Canada Post, it obviously did not work. Payments have been made to the estates of employees. They waited so long—30 years—for a resolution. Clearly, the process we have now has failed workers, and in particular women.[33]

The Committee was concerned to learn that under the current system, non-unionized workers do not have the same ability to file a pay equity complaint as unionized workers. A complaint can take years, or in some cases decades, to resolve, requiring large amounts of resources; such resources are not available to non-unionized workers.[34] The Committee was also reminded that unlike other human rights complaints, pay equity is a human right that is not based on individuals who experience human rights violations but is based on job classifications in which collections of people work.[35] Individuals or

---

30 Ibid., 1750 (Fine).

31 Ibid., 1925 (Byers).

32 Ibid., 2005 (Benson).

33 ESPE, *Evidence*, 3 May 2016, 1820 (The Hon. MaryAnn Mihychuk).

34 ESPE, *Evidence*, 21 March 2016, 1735 (Prof. Marie- Thérèse Chicha, Former Member, Pay Equity Task Force and, Professor, School of Industrial Relations, University of Montreal, as an Individual).

35 ESPE, *Evidence*, 18 April 2016, 1930 (Smallman).

unrepresented groups of workers are at a disadvantage. As the Committee heard, legislative change is needed "to ensure that pay equity is applied systematically and not on a case-by-case basis."[36]

The Committee listened as one witness quoted Justice Evans of the Federal Court of Canada in his Canada Post decision: "with the benefit of hindsight, it now seems to have been a mistake for Parliament to have entrusted pay equity to the complaint-driven, adversarial, human rights process of the *Canadian Human Rights Act*."[37]

c. The Need for Change

The Committee did not hear from any witnesses who advocated that the existing system under the jurisdiction of the Canadian Human Rights Commission be retained without changes. The federally regulated employers' associations told the Committee that the Canadian Human Rights Commission is the appropriate forum to address pay equity and that it should be given enhanced resources to continue its role in administering pay equity complaints.[38] These witnesses also reminded the Committee that Employment and Social Development Canada's (ESDC) Labour Program inspectors have the authority under the *Canada Labour Code* to conduct workplace inspections, including for pay equity purposes.[39]

However, the Committee was surprised to learn that ESDC's Labour Program had done no inspections for the past five years. The Hon. MaryAnn Mihychuk provided an explanation for this situation:

> Yes, that's true. No cases have been referred over the last five years…. The department is small. It's overtaxed. They've seen a reduction of support for staffing, and they've been focusing on workplace health and safety.[40]

The Committee heard from many witnesses who called clearly for a new proactive federal pay equity regime that is based in legislation and aligned with the recommendations of the 2004 Federal Pay Equity Task Force report.[41] The Committee

---

36 Ibid., 1730 (Fine).

37 ESPE, *Evidence*, 4 May 2016, 1730 (Shugarman).

38 ESPE, *Evidence*, 2 May 2016, 1845 (Mr. Derrick Hynes, Executive Director, FETCO); 2 May 2016, 1835 (Ms. Marina Mandal, Assistant General Counsel, Legal Branch, Canadian Bankers Association).

39 Ibid., 1900 (Mandal).

40 ESPE, *Evidence*, 3 May 2016, 1825 (The Hon. MaryAnn Mihychuk).

41 ESPE, *Evidence*, 18 April 2016, 2000 (Ms. Debi Daviau, President, Professional Institute of the Public Service of Canada); 18 April 2016, 2005 (Benson); *Evidence*, 20 April 2016, 1930 (Dr. Kate McInturff, Senior Researcher, National Office, Canadian Centre for Policy Alternatives); 20 April 2016, 1915 (Mr. Peter Engelmann, Partner, Goldblatt Partners LLP, Canadian Association of Labour Lawyers); *Evidence*, 2 May 2016, 1945 (Borowy); *Evidence*, 4 May 2016, 1730 (Shugarman); *Evidence*, 4 May 2016, 1735 (Perron).

heard an equally forceful message that thorough and extensive consultations with stakeholders to discuss the drafting of a new pay equity law must be undertaken.[42]

The Committee heard compelling reasons to support a proactive pay equity model. Provincial proactive pay equity models, such as those in Quebec, Ontario and Manitoba, and the models of several OECD countries were cited by several witnesses.[43] The Committee heard that these and other proactive models had several advantages over complaints-based models:

> Quebec, Ontario, and Manitoba all have proactive models that outline steps and timetables for the achievement and maintenance of pay equity in the public and private sectors. The proactive model has the advantage of ensuring broad implementation, reducing the need for complaints, fostering management-union co-operation, reducing ambiguity, making non-discriminatory wages a priority, and achieving pay equity at a clear point in time without the need for large retroactive pay awards.[44]

> It's a much shorter process. It doesn't involve the same costs to any of the parties. Also, it typically doesn't involve major retroactive payouts. [I]t's a process that's much more palatable for everyone concerned.[45]

The Committee heard that with clear criteria and timelines and flexible, scalable measures to ease the burden for smaller organizations, a proactive model would have many benefits. Such a model would ensure broad implementation, reduce the need for complaints, foster management-union cooperation, reduce ambiguity, and would help achieve pay equity in a timely manner which would avoid the need for large retroactive pay awards.[46] The Committee was interested that the Canadian Human Rights Commission applauded the proactive model, based on its experiences administering the proactive *Employment Equity Act*:

> The process around employment equity is [using the] proactive model, so we've had the benefit of a number of years now of experience in auditing employers for compliance with the provisions of the *Employment Equity Act*, and we can tell you that it's a much less painful process. It's a much shorter process. It's a much less costly process financially. We believe it accomplishes the desired outcomes for all of the parties, most importantly, employment opportunities for persons in the four designated groups under the *Employment Equity Act*.[47]

---

42 ESPE, *Evidence*, 11 April 2016, 1825 (Mr. Anthony Giles, Assistant Deputy Minister, Policy, Dispute Resolution and International Affairs, Labour Program, Employment and Social Development Canada); *Evidence*, 4 May 2016,1915 (Shugarman).

43 ESPE, *Evidence*, 18 April 2016, 1735 (Fine); *Evidence*, 11 April 2016, 1925 (Giles); *Evidence*, 18 April 2016, 1845 (Richard).

44 ESPE, *Evidence*, 18 April 2016, 1735 (Fine).

45 Ibid., 1825.

46 Ibid., 1735.

47 Ibid., 1815.

Recommendation 2

The Committee recommends that the Government of Canada draft proactive pay equity legislation within 18 months of the tabling of this report.

Recommendation 3

The Committee recommends that the Government of Canada accept the overall direction of the 2004 Federal Pay Equity Task Force report and that the majority of the recommendations be adopted.

Recommendation 4

The Committee recommends that the Government of Canada include provisions in the proposed proactive pay equity legislation requiring that it be reviewed by Parliament every five years following a three-year implementation period.

E. JURISDICTION OF NEW PROACTIVE PAY EQUITY LEGISLATION

In addition to its oversight of pay equity for much of the federal jurisdiction, the Canadian Human Rights Commission also administers the *Employment Equity Act*, which applies to the federal public service, Crown corporations and agencies and the federally regulated private sector. Compliance with the Act is a condition for contractors that are part of the federal government's Federal Contractors Program, a program that includes companies with federal contracts, where the companies have 100 or more employees and contracts or standing arrangements valued at $1 million or more.

The Committee was interested to learn that of the 217 companies currently[48] under the Federal Contractors Program, 77% have their headquarters in either Ontario or Quebec and are therefore obliged to implement and report on the pay equity legislation of their respective provincial governments.[49] The Committee was informed that other countries, including Switzerland and Sweden, require that companies must practice pay equity in order to receive federal contracts.[50]

The Committee was reminded that the federally regulated sector includes some of Canada's largest companies and includes firms in the sectors of banking, air and rail transportation, telecommunications, banks and most federal Crown corporations. The Committee was informed that large federally regulated companies would have sufficient resources to implement proactive pay equity obligations:

48 Companies under the Federal Contractors Program as of April 26, 2016. Follow-up information provided to the Committee by Employment and Social Development Canada.

49 ESPE, *Evidence*, 3 May 2016, 1840 (The Hon. Scott Brison, President of the Treasury Board).

50 ESPE, *Evidence*, 21 March 2016, 1800 (Chicha).

> At FETCO [Federally Regulated Employers – Transportation and Communications], the companies we represent are very large and certainly have the models, the tools, and the resourcing in place to do whatever is required in the event that the system changes. We're not going to cry poor and say that we can't accommodate, because clearly we can.[51]

However, the Committee was also told that the federally regulated sector includes numerous smaller companies, from trucking firms to smaller banks and municipal bus services that cross provincial boundaries.[52] The Committee was particularly interested in witnesses' views on how proactive pay equity legislation could affect smaller companies and organizations and what measures provinces with pay equity legislation have taken to address their needs.

The Committee was interested to learn of the financial impact on companies in Ontario and Quebec that operate under provincial pay equity legislation. The Committee learned that employers in Ontario and Quebec have found that the cost of those provincial proactive pay equity laws was not significant and not as costly as employers had initially feared when the regimes were introduced;[53] the average cost to private sector companies has been approximately 1.5% of payroll.[54] The Committee heard witnesses express concern about the administrative burden that could be placed on smaller federally regulated companies if there were no flexible measures established to accommodate them. Nevertheless, several witnesses pointed to the existing pay equity systems in place in Ontario and Quebec where small companies with 10 or more employees were able to comply successfully with provincial pay equity legislation.

The Committee recalled that the 2004 Federal Pay Equity Task Force report included a recommendation (6.2), that federal proactive pay equity legislation include federally regulated companies with 15 or more employees, a slightly higher threshold than that of Canada's two provinces with similar legislation.

Recommendation 5

The Committee recommends that the Government of Canada draft the proposed proactive gender pay equity legislation such that it applies to the federal public service, Crown corporations, all federally regulated companies with 15 employees or more and companies participating in the Federal Contractors Program. Companies within the Federal Contractors Program that already report to provincial jurisdictions with pay equity legislation, and that can provide evidence of compliance with the provincial legislation, should be exempted from federal pay equity plan, monitoring and reporting obligations.

---

51 ESPE, *Evidence*, 2 May 2016, 1920 (Hynes).

52 ESPE, *Evidence*, 11 April 2016, 1800 (Giles); *Evidence*, 2 May 2016, 1855 (Mandal).

53 ESPE, *Evidence*, 21 March 2016, 1800 (Bilson).

54 Ibid., (Chicha).

The Committee heard that a proactive pay equity system must be applicable to all employees in the federal workplace, including unionized, non-unionized, full-time, part-time, casual, seasonal and temporary workers.[55] The Committee believes that including a wide range of employees in the regime is an issue of fairness and ensuring equal access to justice. The Committee also notes that wage inequities tend to be greater in non-unionized workplaces and greater for part-time employees.[56] Including part-time workers is particularly important as women comprise approximately 70% of part-time workers in Canada.[57] Such workers tend to have less stable employment and have lower pension benefits which are based on lower wage levels.

Recommendation 6

The Committee recommends that the Government of Canada include provisions in the proposed proactive pay equity legislation making it applicable to all unionized, non-unionized, full-time, part-time, casual, seasonal and temporary employees.

F. ADMINISTRATION OF NEW FEDERAL PROACTIVE PAY EQUITY LEGISLATION

The Committee heard from many witnesses that the body responsible for the administration and oversight of any new pay equity legislation should be robust and well-resourced. Representatives from the Canadian Human Rights Commission explained to the Committee that its administration of other areas of discrimination is relatively straightforward but the issue of pay equity does not function well under this model. The Committee was informed that pay equity was distinct and complex and required a separate commission and tribunal structure to support new proactive legislation.[58] The Committee also learned that the complex issues involved in the administration and adjudication of pay equity issues require specific technical expertise unique among professionals that work in the area of human rights.[59]

The Committee was reminded that in the past, the Canadian Human Rights Commission had a branch responsible for pay equity. However, other witnesses noted that when one organization is part of another, their resources become blended, they lose mission focus and the ability to retain their experts needed to do the monitoring work.[60] In its exploration of pay equity regimes in other jurisdictions, the Committee noted that most have distinct commissions and tribunals to manage pay equity issues.

55 ESPE, *Evidence*, 20 April 2016, 1915 (Engelmann).

56 ESPE, *Evidence*, 21 March 2016, 1805 (Bilson).

57 ESPE, *Evidence*, 11 April 2016, 1745 (Akman).

58 ESPE, *Evidence*, 18 April 2016, 1810 (Fine).

59 Ibid., 2050 (Desjardins).

60 ESPE, *Evidence*, 20 April 2016, 2020 (Engelmann).

Recommendation 7

The Committee recommends that the Government of Canada's proposed proactive pay equity legislation include provisions to create a distinct Pay Equity Commission and a distinct Pay Equity Tribunal and that both bodies be given the jurisdiction, authorities, expertise and resources to fully execute their responsibilities.

a. Roles and Responsibilities of a New Pay Equity Commission

The Committee learned that the Ontario and Quebec pay equity commissions and tribunals were designed to support both employers and employees. Both share similar roles and responsibilities, centred on providing education, training, counselling and advice; providing information and tools; and monitoring, enforcing and maintaining pay equity plans and wage adjustments. They also offer mediation and dispute resolution services. The Committee was reminded that the 2004 Bilson report contained a comprehensive description of the roles of a pay equity commission, which was aligned with these existing provincial models.

Several witnesses told the Committee that lessons from the experience of the Ontario and Quebec models indicate that certain features of the regimes could either be enhanced or prescribed with more clarity. The Committee was particularly interested in the concept of incorporating alternative dispute resolution services into the functions of a pay equity commission, which would be beneficial, both for reducing conflicts and for reducing the time needed to resolve pay equity disputes.[61] The Committee was also intrigued by the suggestion that a new pay equity commission should have the ability to establish a "fast track" form of resolution for more straightforward pay equity complaints, which would both increase the efficiency of resolving disputes and also conserve resources for more complex cases.[62] This fast track could include expedited dispute resolution processes or arbitration.[63] Many witnesses reminded the Committee that the new pay equity commission would need to focus its attention on a strong system of supports and services for smaller employers[64]. One witness also suggested that an awards or recognition program for employers could be considered[65].

---

61 ESPE, *Evidence*, 18 April 2016, 1850 (Ms. Stephanie Rochon-Perras, Labour Relations Advisor, Association of Canadian Financial Officers).

62 Ibid.

63 Submission from the Association of Canadian Financial Officers, *A collaborative path to pay equity*, April 2016.

64 ESPE, *Evidence*, 2 May 2016, 1955 (Bilson); 2 May 2016, 1905 (Mandal); *Evidence*, 4 May 2016, 2000 and 2005 (Chicha).

65 ESPE, *Evidence*, 2 May 2016, 1920 (Hynes).

Recommendation 8

The Committee recommends that the Government of Canada provide, in legislation, the proposed Pay Equity Commission with the following roles and responsibilities:

1. **The authority to:**
    a. **receive complaints**
    b. **initiate proactive investigations**
    c. **issue compliance orders**
    d. **investigate complaints (including authority to enter premises, and summon documents and interview personnel)**
    e. **conduct audits of compliance.**
2. **Provide monitoring, verifying compliance with, enforcing, and following up on pay equity plans.**
3. **Provide mediation and alternative dispute resolution services.**
4. **Provide education and training programs.**
5. **Provide tools, information and advice for establishing committees, reporting, and monitoring measures.**
6. **Provide specialized supports for small and medium-sized enterprises.**
7. **Provide supports for unrepresented complainants who are referred to the Pay Equity Tribunal by the Commission.**
8. **Provide research functions including identification of benefits to companies that comply with the legislation, best practices, simplified tools and reporting mechanisms.**

The Committee also reflected on the need for the Pay Equity Commission to report to Canadians to keep them informed of the overall implementation of the pay equity system and to provide a transparent measurement tool for results. The Committee noted that the Canadian Human Rights Commission reports annually to Parliament regarding its oversight of the *Employment Equity Act*.

Recommendation 9

The Committee recommends that the Government of Canada establish in legislation the requirement that the proposed federal Pay Equity Commission report annually to Parliament.

b. Roles and Responsibilities of a New Pay Equity Tribunal: Enforcement and Compliance

The Committee was interested to hear the views of pay equity experts who have worked in or with the provincial pay equity regimes to determine if there are best practices that should be considered in establishing a federal pay equity tribunal. The Committee heard that compliance among some Quebec employers had been uneven in past years, but was improved through amendments to the Quebec *Pay Equity Act*.[66] The Committee was impressed to learn that following the legislative changes, 94% of Quebec companies with 100 or more employees and 84% of Quebec employers with 10 or more employees have implemented the requirements of the *Pay Equity Act.*[67] Many witnesses stressed the need for sufficiently robust enforcement authorities.[68] The following roles and responsibilities are drawn from recommendations 14.2, 14.3, 14.4, 14.6 and 14.7 of the 2004 Bilson report and are generally in line with provincial pay equity legislation.

Recommendation 10

The Committee recommends that the Government of Canada provide the proposed Pay Equity Tribunal with the following roles and responsibilities, defined in legislation:

1. **Clear enforcement authorities established in legislation, including clearly defined timelines by which pay equity plans and payment of wage adjustments will be completed.**

2. **The authority:**

    a. **to formulate a broad range of remedial measures aimed at assisting and directing employers and employee representatives to achieve compliance with the statute**

    b. **to award compensation for acts of intimidation or reprisal by employers, employees, employer organizations or employee organizations against employees or others who are exercising their rights or carrying out responsibilities under the legislation**

    c. **to order that a violation of the statue be discontinued and not repeated**

    d. **to order compensation where harm to individuals can be established**

---

66 ESPE, *Evidence*, 4 May 2016, 2000 (Chicha), *Evidence* 18 April 2016, 1800 (Ms. Fiona Keith, Counsel, Human Rights Protection Branch, Canadian Human Rights Commission); 18 April 2016, 1940 (Smallman).

67 ESPE, *Evidence*, 4 May 2016, 2000 (Chicha).

68 ESPE, *Evidence*, 20 April 2016, 2005 (Young); *Evidence*, 4 May 2016 2055 (Mr. Paul Durber, Consultant, Opus Mundi Canada, as an Individual); 4 May 2016, 2055 (Chicha).

e. to order the disclosure and publication of information

f. to devise flexible and innovative remedies in the interpretation and application of pay equity plans

g. to prosecute and impose fines and sanctions

h. to file and enforce orders through the Federal Court.

The Committee was surprised to learn that the Supreme Court ruled in 2011 that the Canadian Human Rights Tribunal did not have the legislated authority to award costs, the effect of which was punitive for individuals and small groups involved in lengthy and litigious pay equity complaints.[69]

Recommendation 11

The Committee recommends that the Government of Canada provide, in legislation, the proposed Pay Equity Tribunal with explicit authority to award costs.

G. TRANSITION TO A NEW PAY EQUITY REGIME

The Committee is aware that consultations with stakeholders to discuss new legislative, regulatory and policy requirements are essential to ensure that a proactive pay equity system is efficient, workable and fair for both employers and employees. Having a new pay equity law in place would need to be followed by a period of up to a year to have a fully functioning pay equity commission and tribunal in fully functional, based on the experiences of Ontario and Quebec.[70]

The Committee has recommended that PSECA be repealed. Should that occur before passage of new pay equity legislation, responsibility for federal public sector pay equity complaints will revert to the Canadian Human Rights Commission. The Committee is concerned that based on the testimony it heard, the Commission may not have sufficient resources to assume this interim responsibility.

Recommendation 12

The Committee recommends that the Government of Canada provide short-term bridge funding, if required, to the Canadian Human Rights Commission to enable the Commission to assume responsibility for federal public service pay equity complaints until a new pay equity commission and tribunal are established.

69 ESPE, *Evidence*, 18 April 2016, 1800 (Fine).

70 ESPE, *Evidence*, 4 May 2016, 2100 (Chicha); 4 May 2016, 2100 (Durber).

H. KEY ELEMENTS OF A PROACTIVE FEDERAL PAY EQUITY REGIME

The 2004 Bilson report provided extensive details on the proposed composition of pay equity committees to be established by employers, the structure of pay equity plans that need to be prepared, and the suggested methodologies to be used.[71] Other key areas that many witnesses referred to as being fundamental to any proactive pay equity system centred on the roles and responsibilities of employers, employees and bargaining agents, and criteria for reporting, monitoring and maintenance. The Committee is in agreement with the majority of the details outlined in the Bilson report. However, the Committee was interested in learning about the experiences in provincial jurisdictions, particularly in provinces with legislation that includes the private sector, and what has been done in other countries. The Committee was particularly interested to learn how best to minimize the administrative burden on employers, with a focus on smaller companies.

a. Roles and Rights of Employers

The Committee heard that the roles of employers across provincial pay equity regimes are consistent. They include the key functions of establishing equity committees, working with employees and employee representatives to create pay equity analyses of job classifications, developing pay equity plans, issuing wage adjustments, as required, and reporting in a timely manner to oversight bodies. In discussion of the components of these functions, the Committee learned of slight variations among jurisdictions' pay equity regimes and how these systems could be improved.

Pay Equity Committees

The size and composition of pay equity committees in workplaces was of interest to the Committee. The Committee learned that in Ontario and Quebec, organizations with 100 or more employees must establish a pay equity committee, which must include bargaining agents and employees who are not represented by bargaining agents. The Committee understands that it is important that employers ensure that participating employees receive training in pay equity, that they receive their regular pay while participating in the committee, and that they are protected from retaliation because of their participation in the committee.

Communication and Transparency

The Committee also learned that the issues of clear communication and transparency were fundamental to the effective functioning of workplace pay equity committees and the monitoring and maintenance of pay equity plans.[72] Within an organization, the work of the pay equity committee and the results of the pay equity plan and any resulting wage adjustments must be clearly communicated to all employees. Moreover, the Committee heard that it is important for all members of the pay equity

71 2004 Bilson Report, Recommendations 14.2 – 14.4, 14.6, 14.7.

72 ESPE, *Evidence*, 18 April 2016, 2030 (Desjardins); *Evidence*, 2 May 2016, 1935 (Fong).

committee to have access to all relevant wage data.[73] The foundation of transparency is to have sufficient sharing of data and other information, and to ensure good employee representation and shared responsibilities at all stages of planning, evaluating, monitoring and maintenance of a pay equity plan. The availability of information for all employees on plans, wage adjustments, monitoring and maintenance is fundamental for functional and transparent pay equity.

The Committee heard that general wage transparency has been an interest in other countries, where several governments have required companies to publicly disclose salaries or gender wage gaps, as is the case in the UK. The Committee heard that Australia has passed a law requiring companies to report on their employees' remuneration.[74] It was suggested that such reporting using averages and salary bands could be useful in a federal proactive pay equity regime, and would assist companies in benchmarking themselves against other averages, while protecting specific private salary information.[75]

Smaller Employers

The Committee was particularly interested in seeking the views of witnesses on how best to ease the administrative burden of a mandatory pay equity regime for small companies. Witnesses informed the Committee that the Quebec pay equity legislation includes a sliding scale related to the size of companies. Under this model, companies are divided according to their size, with the requirements for small companies with 10 to 49 employees being minimal. Companies with 50 to 99 employees are required to have a pay equity plan but are not required to create pay equity committees. Companies with 100 or more employees have more structured obligations and must establish pay equity committees, with 50% representation of women, in addition to developing pay equity plans.[76]

The Committee also learned that Quebec has facilitated the needs of small companies in certain sectors by encouraging them to create sectoral committees, enabling them to prepare generic job evaluations specific to their sectors and to share training resources to minimize the administrative burden. The Committee heard that this system also has the advantage of reducing anomalies within sectors.[77]

73 ESPE, *Evidence*, 4 May 2016, 2050 (Chicha).

74 ESPE, *Evidence*, 2 May 2016, 1935 (Fong).

75 Ibid., 2005.

76 ESPE, *Evidence*, 4 May 2016, 2000 and 2005 (Chicha).

77 ESPE, *Evidence*, 2 May 2016, 1955 (Bilson).

Recommendation 13

The Committee recommends that the Government of Canada ensure that flexible options for small companies are reflected in the proposed proactive pay equity legislation, including the requirement that only organizations with 100 or more full-time equivalent employees establish pay equity committees. Such committees must include bargaining agents and employees not represented by bargaining agents, and at least 50% of the members should be women.

Recommendation 14

The Committee recommends that the Government of Canada permit, encourage and provide support to small employers with fewer than 100 employees to create sectoral committees in order to: minimize administrative burden; share resources; and, collaborate in preparing job evaluations used for pay equity plans.

b. Roles and Rights of Employees and Bargaining Agents

The Committee heard that employees must be represented in establishing a pay equity plan as well as in maintaining the plan. This representation is a more straightforward matter in unionized workplaces where bargaining agents are responsible for representing unionized employees. Ontario, Quebec and Manitoba each include a provision in legislation requiring both management and bargaining agents to share responsibility for pay equity plans.[78] However, sharing this responsibility is more challenging in non-unionized workplaces and in workplaces where not all employees are unionized.

The Committee also heard that pay equity models are most effective when both employers and bargaining agents are responsible for establishing and participating in pay equity committees; developing pay equity plans; ensuring wage adjustments are made in a timely manner; and, monitoring and maintaining the pay equity plans. The Committee was reminded that this sharing of responsibilities was also a recommendation of the Bilson report and it has proven to be an effective measure in Ontario and Quebec for ensuring that pay equity compliance is achieved and maintained in a transparent manner.

Recommendation 15

The Committee recommends that the Government of Canada include provisions in the proposed proactive pay equity legislation requiring that both bargaining agents and employers be responsible for the modelling, implementation, execution, monitoring and maintenance of pay equity plans.

The Committee heard from both employers and bargaining agents of the alarming duration of several noteworthy pay equity disputes, consuming time and resources on a

78 ESPE, *Evidence*, 18 April 2016, 1740 (Fine).

scale that only larger employers and employees with bargaining agents would be able to withstand. The Committee was reminded that in the complaints-based system currently in place, employees without the representation of a bargaining agent are unable to pursue their pay equity rights unless these individuals had access to "unlimited funds"[79]. Given the Committee's commitment to including both unionized and non-unionized employees in a proactive pay equity regime, the Committee listened carefully to advice that suggested that funding be established to enable non-unionized employees equitable access to the complaint and dispute resolution functions of such a regime.[80] However, to ensure this funding is not used for cases without merit, it should be granted only in exceptional circumstances and under the approval of the pay equity commission.

Recommendation 16

The Committee recommends that the Government of Canada establish a legal fund that can be accessed by unrepresented complainants in pay equity disputes in exceptional circumstances, on the recommendation of the proposed Pay Equity Commission.

Pay Equity and Collective Bargaining

The Committee heard from witnesses that pay equity must be separated from the collective bargaining process.[81] The Committee was swayed by the argument that because pay equity is a recognized human right, it should not be subject to the dynamics and trade-offs of the bargaining table. Several witnesses observed that such a situation is similar to the treatment of health and safety issues in the workplace, where there is collaboration between employers and bargaining agents, but these issues are not discussed at the bargaining table.[82] Moreover, linking pay equity with collective bargaining could contribute to both delays in the collective bargaining process and to inadequate attention paid to the pay equity process. Separating pay equity from collective bargaining allows both processes to move forward on their own timelines and not compromise each other.[83]

However, the Committee believes that collective bargaining and pay equity will intersect on some level. In Ontario, challenges have occurred when pay equity complaints are brought forward after a series of collective agreements have been negotiated.[84] The Committee heard the Hon. Scott Brison refer to a "tension" between pay equity and collective bargaining, although he believed the separation of the collective bargaining process from pay equity issues ought to be respected.[85] The Ontario Commissioner for

79 Ibid., 2005 (Benson).

80 ESPE, *Evidence*, 20 April 2016, 2005 (Young).

81 ESPE, *Evidence*, 18 April 2016, 1740 (Fine); 18 April 2016, 1940 (Byers).

82 ESPE, *Evidence*, 21 March 2016, 1815 (Bilson).

83 ESPE, *Evidence*, 18 April 2016, 2000 (Daviau).

84 ESPE, *Evidence*, 4 May 2016, 2020 (Heyninck).

85 ESPE, *Evidence*, 3 May 2016, 1820 and 1850 (The Hon. Scott Brison).

Pay Equity, Emanuela Heyninck, explained that the Ontario *Pay Equity Act* has a measure to address this potential conflict.

> I would say most unions are averse to mixing collective bargaining with pay equity, because one is a human right and the other one is the normal give and flow of collective bargaining. Our act integrates those two concepts from the perspective that unions and employers are prohibited from bargaining anything that, if implemented, would bring about a contravention of the Act. That's the prohibition, and then any pay equity agreement that results supersedes a collective bargaining agreement. That's how the two Acts interact in Ontario.[86]

Recommendation 17

The Committee recommends that the Government of Canada include provisions in the proposed proactive pay equity legislation that would prohibit unions and employers from negotiating collective agreements that would contravene the new pay equity legislation, and that any pay equity agreement under the new legislation would supersede any collective bargaining agreement.

c. Methodologies

The Committee was advised by a range of witnesses that a new pay equity regime must have elements of flexibility, to address the needs of smaller employers, the variety of business structures and the different sectors within which each business operates. As one witness observed, "a one-size-fits-all approach is not appropriate for pay equity."[87]

Proposed measures that the federal government could consider to make the pay equity system flexible, scalable and of minimal administrative burden have been outlined earlier in this report. The Committee heard that the experiences of provincial jurisdictions have provided a number of practices that could be used in the crafting of a federal pay equity regime. In particular, the Committee was advised that the legislation needed to include clear terminology and clear processes, in order to avoid the lengthy litigation on which many of the complaints-based disputes were founded.[88] In particular, the government must ensure that definitions such as "establishment" are clearly defined and understood to avoid confusion and disputes.

86 ESPE, *Evidence*, 4 May 2016, 2015 (Heyninck).

87 ESPE, *Evidence*, 2 May 2016, 1835 (Mandal).

88 ESPE, *Evidence*, 20 April 2016, 1915 and 2005 (Engelmann); 20 April 2016, 2005 (Young); *Evidence*, 4 May 2016, 1900 (Perron).

Recommendation 18

The Committee recommends that, following consultations with stakeholders, pay equity methodologies should be introduced through regulations and that they be clear and prescriptive, but with sufficient flexibility to accommodate smaller organizations. In the development of methodologies, those used by other jurisdictions should be considered, specifically those with features designed to minimize the administrative burden on smaller employers.

Recommendation 19

The Committee recommends that the Government of Canada include clear definitions of key terminology in the proposed proactive pay equity legislation and regulations.

Defining Compensation

The Committee learned that the federal government must consider what terms of compensation are to be considered for use in pay equity plans. Companies may provide employees with non-salary benefits, such as bonuses, that are not reflected in traditional salary calculations. As the Committee was informed, the bonus system is common in the private sector and women are often not as confident as men in seeking bonuses.[89]

Recommendation 20

The Committee recommends that methodologies and pay equity plans include non-salary compensation, such as bonuses and other benefits, in the calculation of wages.

Job Classifications

The Committee heard of the need for clear guidelines for employers in determining job classification methodology, the base exercise for pay equity analysis and for determining if pay inequities exist in the workplace. The Committee understands that this area is one of the more complex aspects of pay equity, and can be the subject of pay equity disputes when such methodologies are not agreed upon by employers and employees.

Again, the Committee was concerned about the potential challenges for smaller companies. The Committee heard about Quebec's use of sectoral job classifications, where small employers in the same sector jointly develop and use generic job classifications that can be shared. The Committee learned that this approach has been used successfully in the tourism and hospitality industries in Quebec, where small business employers have a single pay equity job classification structure to cover a number of employers so that they can smooth out anomalies and make accurate comparisons among job classifications.[90]

89 ESPE, *Evidence*, 3 May 2016, 1900 (The Hon. MaryAnn Mihychuk).

90 ESPE, *Evidence*, 2 May 2016, 1955 (Bilson).

Thresholds for Job Classifications

The Committee was also reminded of the need for proactive pay equity legislation to include an explicit threshold for what would be considered a female-dominated job classification, which would then be assessed under a pay equity plan. Here again, the Committee was interested in comparing how provinces have established this threshold in comparison with the Bilson report's recommended threshold of 60% (percentage of women in a job classification) for all organizations.[91] The detailed analysis by the Bilson report concluded that such a threshold would prevent ambiguity and prevent small variations in smaller workplaces from having a disproportionate impact on calculating what would be considered a female-dominated job classification.[92] However, the Committee was aware that the thresholds under the *Equal Wage Guidelines, 1986* are a sliding scale, with a threshold of 70% for job classifications with fewer than 100 employees.

Recommendation 21

The Committee recommends that the Government of Canada include provisions in the proposed proactive pay equity legislation that would define a female-dominated job classification as a one that includes at least 60% of women for job classifications of 100 or more employees and one that includes at least 70% of women for job classifications with fewer than 100 employees.

Pay Equity Plans

The Committee learned that the core steps for establishing pay equity plans for workplaces were outlined succinctly in the Bilson report and are reflected in the Quebec *Pay Equity Act*, namely:

a. identification of the job classifications to be compared and their gender predominance;
b. development of the evaluation method, tools and process;
c. evaluation of gender predominant jobs using the selected method, tools and process;
d. determination of total remuneration for those jobs, the wage gaps and any necessary salary adjustments;
e. determination of the terms of payment for salary adjustments.[93]

As stated earlier in the report, witnesses told the Committee that it is critical that employers and employees and/or bargaining agents collaborate on the development of plans, in addition to the responsibility of employers and bargaining agents to monitor and maintain these plans. While the Committee was concerned that establishing and

91 Bilson report, p. 263, recommendation 9.2.

92 Ibid., p. 263.

93 Ibid., p. 219, See also Quebec *Pay Equity Act*, s. 50.

maintaining a pay equity plan may be an administratively cumbersome task for employers, one witness demystified the task somewhat by describing the process in Quebec. Employers in Quebec have four years to prepare pay equity plans. For a small company, it often takes one to two weeks to complete a plan. The time requirements to complete the pay equity plan are longer for larger organizations.[94]

Wage Comparisons

The Committee also heard that comparisons of salaries should be clear and fair. Recommendation 11.2 in the Bilson report stated that the maximum salaries within salary ranges should be used for wage comparisons. However, the Committee heard that average salaries were more reasonable and that they are used in wage comparisons in provincial pay equity regimes.[95]

Recommendation 22

The Committee recommends that the Government of Canada include provisions in the proposed proactive pay equity legislation stipulating that the average salaries and bonuses, if applicable, within salary ranges be used in wage comparisons.

Methodology applied to the Federal Public Service

The Committee was mindful that the Bilson report included two possible methodologies for determining job classifications and allowed scope for others.[96] No witness recommended one methodology as a sole model for the federal jurisdiction. Indeed, the Committee was reminded that the federal jurisdiction includes a broad range of sizes and types of employers, in the public and private sectors, and with vastly different corporate human resources structures.

The Committee was surprised to learn that the federal public service alone has 72 job classifications that have not effectively been modernized since their creation over 40 years ago.[97] This situation is further complicated by the fact that the job classifications are not based on the usual pay equity benchmarks of skill, effort, responsibility and workplace conditions.

However, the Committee was hopeful that this situation will not be an impediment to ensuring that the federal public service will be a full participant in a new pay equity regime. To date, public sector bargaining agents have collaborated with off-the-shelf job evaluation plans and pay equity plans have been successfully introduced in certain workplaces under

94 ESPE, *Evidence*, 4 May 2016, 2045 (Chicha).

95 Ibid., 1940 (Durber).

96 ESPE, *Evidence*, 21 March 2016, 1810 (Bilson). For a full description of methodologies, see Bilson report, Chapter 10, pp. 273–304.

97 ESPE, *Evidence*, 18 April 2016, 2025 (Helen Berry, Classification and Equal Pay Specialist, Public Service Alliance of Canada).

federal jurisdiction such as NAV Canada and the Canada Revenue Agency.[98] Indeed, the Committee recalled that several pay equity complaints from the public service have been successfully resolved, albeit after lengthy disputes in some cases. Ms. Heyninck, Ontario's Commissioner of Pay Equity, reminded the Committee that the Ontario civil service has similar job classification challenges and that many provinces in Canada have proactive pay equity legislation that include their public sector employees.[99]

Methodology applied to the Private Sector

The Committee became aware that a single methodology would also not serve the private sector, particularly small companies and organizations with non-unionized employees. As the Committee was reminded, the pay equity laws of Ontario and Quebec include employers with as few as 10 employees. The Committee was eager to learn how small employers, often with limited resources, were supported in meeting their pay equity commitments, particularly in cases where small workplaces could make the assessment of job classifications challenging.

The Committee's attention again returned to the Quebec model which includes a range of educational material, advisory supports, advice and counselling and tools, such as in the area of job classifications, designed for and offered to small employers. Its reporting and monitoring system for small and medium-sized enterprises is also minimized, as described below. The Committee concluded that the federal government would have to consider more than one methodology and that it should ensure that the methodologies have sufficiently flexible features in order to address the broad range of public and private sector organizations.

Recommendation 23

The Committee recommends that the Government of Canada consider including more than one job classification methodology in the regulations of the proposed proactive pay equity legislation, to take into account: sectoral job classifications; the structures and resource limitations of small organizations; companies with non-unionized employees; and, the complex structure of the federal public service job classification system.

Recommendation 24

The Committee recommends that the Government of Canada consider the methods used to address civil service job classifications in provinces that have enacted proactive pay equity legislation. The Government of Canada should also consider the successful methodologies used for smaller employers in the province of Quebec.

98 Ibid., 2030.

99 ESPE, *Evidence*, 4 May 2016, 2025 (Heyninck).

Allowable Exemptions

The Committee heard that the "allowable exemptions" from the calculation of wages in preparing a pay equity analysis as outlined in the Bilson report are valid and fair. The Committee learned that such exemptions are included in the Quebec *Pay Equity Act* and believes that they should be included in a federal pay equity statute. These exemptions are outlined fully in Recommendation 12.3 of the Bilson report and can be summarized as:

- payments based on seniority where the seniority system is not inherently discriminatory and not applied in a discriminatory way;
- the portion of a wage rate which is "red-circled" due to:
  - re-evaluation and downgrading of the position of an employee as a result of the pay equity process
  - a rehabilitation assignment, where an employer pays an employee higher wages during recuperation from injury or illness
  - a demotion procedure or gradual reduction of wages, where the employer reassigns an employee to a position at a lower level for reasons such as the increasing complexity of the job, the impaired health or partial disability of the employee, or as the result of an internal labour force surplus;
- a shortage of skilled labour, linked to specific problems of recruitment and retention;
- payments to employees which are specifically attributable to geographic factors.[100]

Recommendation 25

The Committee recommends that the Government of Canada incorporate recommendation 12.3 from the report (*Pay Equity: A New Approach to A Fundamental Right*) of the 2004 Task Force on Pay Equity, which outlines the exemptions from the calculation of wages, in the proposed proactive pay equity legislation.

The Committee agreed that one fundamental area of flexibility, outlined in the 2004 Bilson Report, is to recognize that some exceptions are important to maintain. Employers must be able to pay a premium wage for employees with skills that are scarce and in high demand.[101] The Committee also listened to the specific measures to ensure flexibility that fall within the Quebec model. In cases where companies are in financial

100 Bilson report, Recommendation 12.3: See pp. 513–514 for complete wording of recommendation.

101 ESPE, *Evidence*, 21 March 2016, 1745 (Chicha).

difficulty, the pay equity commission has the authority to extend the deadline by which any wage adjustments must be issued. As well, Quebec allows employers to consider market forces in the event of a shortage of qualified individuals for a male-dominated job classification, where the employer is required to pay a premium salary to attract and retain employees. The Committee was reminded that this flexibility is not possible in a complaint-based pay equity model.[102]

Recommendation 26

The Committee recommends that the Government of Canada include provisions in the proposed proactive pay equity legislation that allow the proposed pay equity commission to implement time-limited flexible measures to meet the needs of employers in financial hardship and employers requiring workers with specific skills that are in short supply and for which the employers can demonstrate higher salaries are required.

d. Reporting Requirements, Monitoring and Maintenance

Reporting, Monitoring and Maintenance

The Committee heard clear and consistent advice that the key to the successful implementation of a pay equity regime is that there be the ability to monitor compliance (also referred to by some witnesses as auditing) and that, once achieved, workplace pay equity is maintained to ensure that new inequities do not emerge over time. The Committee learned that the requirement for monitoring is included in Ontario's pay equity legislation and is a function undertaken by Ontario employers every two years.[103]

The Committee learned that a key feature of successful pay equity regimes is the need for reporting by employers to the oversight body, verifying that their obligations have been met within the timeframe required. The Committee heard from several witnesses that a noticeable weakness of the Ontario *Pay Equity Act* is its omission of a reporting structure for employers.[104] While Quebec had experienced a similar problem, the provincial government changed its legislation in 2009 with a new requirement that Quebec employers submit reports annually. This legislative measure has increased the rate of compliance among all employers to 84%,[105] and it helps ensure that employers revisit pay equity regularly and not let their obligations slide.[106]

The Committee was mindful, however, of the need to minimize the administrative burden on smaller employers. Officials from ESDC drew the Committee's attention to the fact that all federally regulated employers are required to respect the fundamental

102 ESPE, *Evidence*, 4 May 2016, 2000 and 2005 (Chicha).

103 ESPE, *Evidence*, 2 May 2016, 2020 (Borowy).

104 ESPE, *Evidence*, 4 May 2016, 1935 (Heyninck); 4 May 2016, 1945 (Durber).

105 Ibid., 2000 (Chicha).

106 Ibid., 2055.

principles of the *Employment Equity Act*, but that the reporting requirements are structured to take into account the capacity of smaller firms.[107]

The Committee was interested to learn that Quebec has developed a system requiring employers to conduct self-audits every five years,[108] thus minimizing the administrative costs for both the provincial government and employers. The Committee was also very interested to hear that the Quebec government has developed a streamlined annual reporting system for employers, a simple one-page form with up to four questions, some of which require only yes/no responses.[109] The Committee heard that in Sweden, while employers are required to report only every three years, their reporting requirements are considerably more detailed and likely more administratively cumbersome over time.[110]

Recommendation 27

The Committee recommends that the Government of Canada consider streamlined reporting and monitoring obligations with respect to pay equity plans for employers, based on systems employed by provincial governments, in order to minimize the administrative burden for employers, particularly smaller employers, and that these obligations be a key subject for consultations with employers.

The Committee recalled that the issue of maintenance of pay equity plans was well researched and analyzed by the Task Force on Pay Equity. The Committee was interested to hear from several witnesses that maintenance of pay equity plans is an area that needs to be strengthened in the provincial models[111]. In seeking information on how this issue has been approached by several provinces, the Committee learned that the Quebec government found their legislative maintenance provisions to be insufficient and amended the *Pay Equity Act* in 2009 to address the issue. Although maintenance is generally viewed to have improved in Quebec, the Committee heard dissatisfaction with the new approach, which provides only for prospective maintenance, thereby creating immunity for some employers' prior lack of compliance. The Committee learned that another perceived weakness is that although pay equity committees are mandatory for larger employers to establish pay equity plans, the 2009 amendment removed the requirement for employers to establish a mandatory pay equity committee to oversee maintenance, which enabled employers to change wages.[112]

---

107 ESPE, *Evidence*, 11 April 2016, 1830 (Giles).

108 ESPE, *Evidence*, 18 April 2016, 1800 (Keith).

109 ESPE, *Evidence*, 4 May 2016, 2055 (Chicha).

110 Ibid.

111 ESPE, *Evidence*, 18 April 2016, 1800, (Fine); *Evidence*, 4 May 2016, 1935 and 2025 (Heyninck); 4 May 2016, 1915 (Perron); 4 May 2016, 1945 (Durber).

112 ESPE, *Evidence*, 18 April 2016, 2020 (Desjardins). Note: Both of the issues related to the 2009 amendment of the *Quebec Pay Equity Act* are currently before the courts.

Witnesses informed the Committee that Quebec has a very high compliance rate for pay equity as a result of these changes. The Committee was also interested to hear that this high rate of compliance was achieved with little administrative burden for employers, which are required to conduct a self-audit every five years to ensure that they are maintaining pay equity within their organizations.[113]

Another key feature that drew the interest of the Committee was the recommendation from witnesses that maintenance reviews should be transparent in that employees must be able to review the maintenance reviews and that the government oversight body receive them to ensure ongoing compliance.[114] Recommendation 13.5 of the Bilson report asked that these maintenance reviews occur every three years[115].

Recommendation 28

The Committee recommends that the Government of Canada include provisions in the proposed proactive pay equity legislation or regulations that employers must make maintenance reviews accessible to employees and provide a copy to the proposed Pay Equity Commission every three years.

I. TIMING OF PROPOSED LEGISLATION'S OBLIGATIONS

a. Option of Phasing in Legislation

The Committee was interested in the witnesses' experiences with the timeline obligations for employers to establish pay equity committees, to prepare pay equity plans and to issue payments for any necessary wage adjustments. The Committee learned that Ontario phased in its pay equity coverage, with large employers having to meet requirements before smaller employers.[116]

The experience of New Brunswick with respect to the introduction of its pay equity legislation was an interesting example that caught the Committee's attention. One witness cautioned the Committee about using a phased-in approach for different categories of employers. She noted that when New Brunswick passed its pay equity legislation in 1989, it was for only one part of the civil service, with the government's commitment to phase in the inclusion of Crown corporations, and health and education sector organizations at a later time. The legislation remained unchanged for 20 years.[117] Other witnesses referred to the phased-in approach as "incremental equality," under which the first phase normally includes the public sector, leaving more vulnerable workers to wait.[118]

---

113 ESPE, *Evidence*, 18 April 2016, 1800 (Keith).

114 ESPE, *Evidence*, 4 May 2016, 1915 (Shugarman); 4 May 2016, 1945 (Durber).

115 Bilson report, recommendation 13.5. See p. 384 for complete wording of the recommendation.

116 ESPE, *Evidence*, 20 April 2016, 1955 (Engelmann).

117 ESPE, *Evidence*, 4 May 2016, 1920 (Perron).

118 Ibid., (Ms. Anne Levesque, Co-chair, National Steering Committee, National Association of Women and the Law).

b. Timeframes for the establishment of pay equity committees, pay equity plans and wage adjustments

The Committee was interested in options to consider regarding the amount of time given to employers to establish pay equity committees, develop pay equity plans and to issue wage adjustments. One approach used by Ontario was to phase in the requirements, so that large companies had to meet their obligations within two years of the legislation's enactment, , whereas smaller companies had an additional two years to meet their obligations under the Act.

The Committee heard that the current model in Quebec allows for four years, from the *Pay Equity Act* coming into force, for all employers to establish a committee and a plan and a further four years to complete any wage adjustment payments. (It should be remembered that only companies of 100 or more employees are required to establish pay equity committees in Quebec). However, the Committee learned that Quebec is considering shortening this requirement to three years and three years, following the practice in Sweden. This amount of time would standardize the implementation on a schedule that would be more administratively simple to oversee and yet would provide both large and smaller companies sufficient time to implement plans and any wage adjustments.[119] The need for established timeframes to meet pay equity obligations was also supported by other witnesses[120].

Recommendation 29

The Committee recommends that, recognizing the need for consultation with stakeholders, the Government of Canada should include provisions in the proposed proactive pay equity legislation requiring all employers (public service, federally regulated employers and firms under the Federal Contractors Program) to have pay equity plans, and for employers with 100 or more employees committees in place, within three years of the legislation coming into force. The Government of Canada should also require employers to issue any wage adjustments within three years after completion of their pay equity plans.

119 Ibid., 2005 (Chicha).

120 Submission Association of Canadian Financial Officers, *A collaborative path to pay equity*, April 2016.

J. OTHER MEASURES

The Committee heard suggestions from witnesses concerning other pay equity and general gender wage gap issues that could be considered by the federal government. Several witnesses proposed identifying a specific day to identify the number of additional days that women must work to earn the same as men who work in the same job. Such a day would create dialogue among Canadians and provide an opportunity to raise awareness of, and clarify the issues related to, the gender wage gap and pay equity in Canada.[121]

Recommendation 30

The Committee recommends that the Government of Canada introduce a Motion in Parliament to establish March 18 of each year as Equal Pay Day, the day that is calculated to mark the additional number of working days that women must work in comparison to the 365 days in a given year that men work performing the same job to earn the same wage. The day could be used to raise awareness and broader understanding of pay equity issues.

The Committee felt that certain recommendations of the Bilson report were problematic for implementation and recommends that the federal government not include them in any proactive pay equity legislation. Most of the recommendations included in the report address these issues and reflect the will of the Committee. However, for clarity, the Committee would like the government to exclude the following recommendations of the Bilson report in its pay equity legislation as the Committee believes they are too prescriptive, too onerous for small organizations, do not provide sufficient flexibility for smaller organizations, or are contrary to the Committee's recommendations:

> 8.3 The Task Force recommends that the new federal pay equity legislation provide that every employer is obligated to create a pay equity committee on which all employees are represented.
>
> 8.5 The Task Force recommends that the new federal pay equity legislation provide that at least half the employee representatives on the pay equity committee should be female workers from predominantly female job classes.
>
> 8.12 The Task Force recommends that the new federal pay equity legislation provide that:
>
> - after the second, third and fifth steps, the employer must post the results of the deliberations of the pay equity committee in a format consistent with guidelines issued by the proposed Canadian Pay Equity Commission, described in Chapter 17;

121 ESPE, *Evidence*, 4 May 2016, 1950 (Linda Davis, Past-President, Business and Professional Women's Clubs of Ontario); 4 May 2016, 1950 (Durber); Submission from the Canadian Federation of Business and Professional Women, letter to the Clerk, 2 May 2016.

- employees affected by the plan be allowed eight weeks after each posting to make comments and request modifications. The pay equity committee will have four weeks to respond with a new posting including, where applicable, the modified plan; and

- employees may appeal decisions made by the committee by filing a complaint with the proposed Canadian Pay Equity Commission at any stage of the process, based on the grounds set out in Chapter 17, or on retaliatory action taken against them.

9.2 The Task Force recommends that the new federal pay equity legislation include a provision which defines a female-dominated job class as a job class where at least 60 percent of the employees are women and a male-dominated job class as a job class where at least 60 percent of the employees in that job class are men.

9.6 The Task Force recommends that the new federal pay equity legislation indicate that a job class will be treated as a female-dominated job class when the combined representation of employees of a designated group—visible minorities, Aboriginal people, or persons with disabilities—and women is 60 percent or more of the employees in that job class.

11.2 The Task Force recommends that the new federal pay equity legislation define pay for a job class as the maximum flat rate or the maximum pay level in a salary range for the jobs in that class.

11.9 The Task Force recommends that the new federal pay equity legislation provide that where the pay structures of predominantly female job classes differ from those of equivalent predominantly male job classes, those structures must be harmonized in order to implement pay equity.

12.2 The Task Force recommends that the new federal pay equity legislation contain a provision making it clear that resort to any of the permitted exemptions must be justified in precise terms by an employer.

13.5 The Task Force recommends that the new federal pay equity legislation provide that the employer must post the results of pay equity maintenance reviews and send a copy of the posting to the proposed Canadian Pay Equity Commission, described in Chapter 17, at least every three years.

K. BROADER CONTEXTUAL ISSUES

The Committee heard several insightful suggestions and learned of gaps in data and analysis that were related to the broader concept of the gender wage gap in Canada. Statistics Canada provided the Committee with an overview of the gender wage gap in Canada, including how the gap has narrowed somewhat over time. The Committee learned that the gender wage gap in Canada went from 81% in 1997 to 85% in 2015,[122] but that this gap narrowed to approximately 90% when other variables such as differences in education, job tenure and other factors are considered. With respect to the "unexplained component" of the wage gap, an official from Statistics Canada noted:

> The questions related to the gender pay gap are often framed in such a way that it's what the hypothetical woman would earn if she were paid according to the male pay structure. We can use different comparative pay structures and that will give us a different estimate of this unexplained component. Depending on the variables used in the study, depending on the methodology used, you could have different estimates in unexplained components. A lot of the studies do suggest that the unexplained component can run between 50% to 75% of the actual gender wage gap, so a lot of our models, if we had better data that we're missing on what determines wages, we could do a better job in explaining the gender pay gap.[123]

In response to questions from the Committee, the official from Statistics Canada indicated that there are other data that could better explain wage gaps, specifically information related to work experience. The Agency lacks "information on the continuity of work experience, the frequency of labour force withdrawals, the timing of those withdrawals, and the duration of those withdrawals."[124] The Committee understands that more precise data would be of benefit to parliamentarians and governmental policy makers.

Recommendation 31

The Committee recommends that Statistics Canada allocate additional resources to collecting better data and conducting analysis in order to determine the casual factors of the unexplained portion of the gender wage gap in Canada.

122 ESPE, *Evidence*, 2 May 2016, 1800 (Ms. Alison Hale, Director, Labour Statistics Division, Statistics Canada).

123 Ibid., 1755 (Ms. Marie Drolet, Research Economist, Labour Statistics Division, Statistics Canada).

124 Ibid., 1820.

LIST OF RECOMMENDATIONS

APPENDIX A
LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
As an individual	2016/03/21	2
Beth Bilson, Former Chair, Pay Equity Task Force and, Interim Dean and Professor of Law, University of Saskatchewan		
Marie-Thérèse Chicha, Former Member, Pay Equity Task Force and, Professor, School of Industrial Relations, University of Montreal		
Department of Employment and Social Development	2016/04/11	3
Anthony Giles, Assistant Deputy Minister, Policy, Dispute Resolution and International Affairs, Labour Program		
Margaret Hill, Acting Director General, Strategic Policy, Analysis and Workplace Information		
Status of Women Canada		
Justine Akman, Director General, Policy and External Relations, Policy and External Relations Directorate		
Treasury Board Secretariat		
Manon Brassard, Assistant Deputy Minister, Compensation and Labour Relations, Office of the Chief Human Resources Officer		
Renée Caron, Senior Director, Equitable Compensation, Compensation and Labour Relations Sector		
Library of Parliament	2016/04/13	4
Julie Mackenzie, Analyst		
Julian Walker, Analyst		
Association of Canadian Financial Officers	2016/04/18	5
Dany Richard, Executive Vice-President		
Stéphanie Rochon-Perras, Labour Relations Advisor		
Canadian Human Rights Commission		
Ian Fine, Executive Director		
Fiona Keith, Counsel, Human Rights Protection Branch		
Piero Narducci, Acting Director General, Human Rights Promotion Branch		
Canadian Labour Congress		
Barbara Byers, Secretary-Treasurer		
Vicky Smallman, National Director, Women's and Human Rights		

Organizations and Individuals	Date	Meeting
Canadian Union of Public Employees	2016/04/18	5
Annick Desjardins, Executive Assistant, National President's Office		
Professional Institute of the Public Service of Canada		
Debi Daviau, President		
Public Service Alliance of Canada		
Robyn Benson, National President		
Helen Berry, Classification and Equal Pay Specialist		
United Food and Commercial Workers Union Canada		
Debora De Angelis, National Coordinator for Strategic Campaigns		
As an individual	2016/04/20	6
Kathleen Lahey, Professor, Faculty of Law, Queen's University		
Daphne Taras, Dean, Edwards School of Business, University of Saskatchewan		
Margot Young, Professor, Allard School of Law, University of British Columbia		
Canadian Association of Labour Lawyers		
Colleen Bauman, Partner, Goldblatt Partners LLP		
Peter Engelmann, Partner, Goldblatt Partners LLP		
Canadian Centre for Policy Alternatives		
Kate McInturff, Senior Researcher, National Office		
As an individual	2016/05/02	7
Beth Bilson, Former Chair, Pay Equity Task Force and, Interim Dean and Professor of Law, University of Saskatchewan		
Canadian Bankers Association		
Marina Mandal, Assistant General Counsel, Legal Branch		
Catalyst		
Serena Fong, Vice-President, Government Affairs		
Equal Pay Coalition		
Janet Borowy, Member and Lawyer, Cavalluzzo Shilton McIntyre Cornish LLP		
FETCO Inc.		
Elizabeth Cameron, Vice-Chair		
Derrick Hynes, Executive Director		

Organizations and Individuals	Date	Meeting
Statistics Canada	2016/05/02	7
Marie Drolet, Research Economist, Labour Statistics Division		
Alison Hale, Director, Labour Statistics Division		
Vancity Credit Union		
Catherine Ludgate, Manager, Community Investment		
Department of Employment and Social Development	2016/05/03	8
Lori Sterling, Deputy Minister of Labour		
House of Commons		
Hon. Scott Brison, President of the Treasury Board		
Hon. Patty Hajdu, Minister of Status of Women		
Hon. MaryAnn Mihychuk, Minister of Employment, Workforce Development and Labour		
Status of Women Canada		
Meena Ballantyne, Head of Agency		
Treasury Board Secretariat		
Manon Brassard, Assistant Deputy Minister, Compensation and Labour Relations, Office of the Chief Human Resources Officer		
Renée Caron, Senior Director, Equitable Compensation, Compensation and Labour Relations Sector		
As an individual	2016/05/04	9
Marie-Thérèse Chicha, Former Member, Pay Equity Task Force and, Professor, School of Industrial Relations, University of Montreal		
Paul Durber, Consultant, Opus Mundi Canada		
Business and Professional Women's Clubs of Ontario		
Linda Davis, Past President		
National Association of Women and the Law		
Anne Levesque, Co-chair, National Steering Committee		
Julie Shugarman, Consulting Director		
New Brunswick Coalition for Pay Equity		
Johanne Perron, Executive Director		
Ontario Pay Equity Commission		
Emanuela Heyninck, Commissioner		

APPENDIX B
LIST OF BRIEFS

Organizations and Individuals

Association of Canadian Financial Officers

Canadian Association of Counsel to Employers (CACE)

Canadian Federation of Business and Professional Women

Canadian Union of Public Employees

Equal Pay Coalition

Lahey, Kathleen

National Association of Women and the Law

Ontario Pay Equity Commission

Professional Institute of the Public Service of Canada

Public Service Alliance of Canada

Vancity Credit Union

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant Minutes of Proceedings (Meetings Nos 1 to 12) is tabled.

Respectfully submitted,

Anita Vandenbeld
Chair

Pay Equity: An Issue of Fairness

A Supplementary Report submitted by the
New Democratic Party of Canada

After a successful Motion from the New Democratic Party of Canada, the Special Committee on Pay Equity was created to 'conduct hearings on the matter of pay equity and to propose a plan to adopt a proactive federal pay equity regime, both legislative and otherwise.'

Since March 2016, the Committee has had a gruelling schedule, hearing from an exhaustive list of witnesses that included the Ministers responsible for Labour, Status of Women and Treasury Board, the co-chairs of the 2004 Pay Equity Task Force, expert witnesses, employers, unions, and individuals with experience in the administration and implementation of pay equity.

There was broad consensus among the witnesses that:

- **Pay equity is a human right, and should not be subject to collective bargaining.**
- **The current complaint-based system is not accessible to everyone and is costly and time-consuming for those who do have access – effectively denying fairness and justice through delays that can stretch for decades.**
- **Canadian women have been waiting too long for the right to pay equity to be realized and there shouldn't be any further delays.**
- **We need proactive legislation to achieve pay equity, and the 2004 Task Force Report provides an excellent template for that legislation.**

While the committee report recommends that the government proceed with proactive pay equity legislation, we believe that the report does not accurately reflect the urgency expressed by many of the witnesses. It has now been 12 years since the Pay Equity Task Force submitted its report to the government and 11 years since the House of Commons Standing Committee on the Status of Women recommended that the government implement the report in its entirety, calling for proactive pay equity legislation by October 31, 2005. As Barbara Byers, Secretary-Treasurer of the Canadian Labour Congress, testified:

After 12 years, working women deserve nothing less than proactive pay equity legislation. This committee's work must result in the tabling of a bill in short order. So much time, effort, and resources went into the task force consultation and report. We can't let it languish in the archives any longer.

Let us also be mindful that women have been waiting for longer than 12 years. We've been waiting for decades and decades, and while we wait, the debt owed to those who are caught in the wage gap continues to mount. These are women with children to raise, women who deserve a dignified retirement, and many are women who face multiple and intersecting forms of discrimination both in the workplace and in the community.[1]

Instead of moving quickly to realize the right to pay equity, the committee report recommends that the government introduce legislation ***eighteen months*** after the tabling of the report. But as Robyn Benson, President of the Public Service Association of Canada testified, there is no excuse for delaying action: "There has been much discussion over the years. Now is the time for action. Now is the time for this committee to recommend – to urge – that the government act without delay and make proactive pay equity legislation a reality."[2]

The Committee's report is entitled 'It's Time to Act,' but instead of urging action, the report urges delays. Most of the witnesses, however, recommended that the government act swiftly to introduce draft legislation, with many citing six months as a reasonable timeline.

Many of the witnesses spoke of the excellent work done by the Pay Equity Task Force and argued that the Task Force's report, known as the Bilson report, presented an excellent model for the government to follow. Peter Engelmann of the Canadian Association of Labour Lawyers told the committee "There is no need to reinvent the wheel."[3] Kate McInturff of the Canadian Centre for Policy Alternatives suggested that the Task Force "provided a comprehensive foundation for moving forward."[4] Similarly, Byers called the report "the most extensive pay equity review that's been done" and recommended "Let's get on with the work that's there."[5]

In this context, further consultations and an extended deadline to introduce legislation only serve as a tool to delay justice for Canadian women once again. As Professor Margot Young of the University of British Columbia pointed out, "[T]alk about gender equity, slogans like "it's 2015", are purely empty rhetoric without such things in place as proper and full pay equity law. For a government that is committed to, that indeed has promised to, prioritize gender equality, pay equity reforms are essential." [6]

But, to borrow an old expression, that's not to suggest that talk is cheap. Indeed, talk is very expensive for the women who continue to be denied a fundamental human right. As Byers reminded the committee:

[1] ESPE, Evidence, April 18, 2016
[2] ESPE, Evidence, April 18, 2016
[3] ESPE, Evidence, April 20, 2016
[4] ESPE, Evidence, April 20, 2016
[5] ESPE, Evidence, April 18, 2016
[6] ESPE, Evidence, April 20, 2016

"Remember that every day you delay is justice denied, economically, for a lot of people out there. It makes a difference from the day they enter the workplace, and the things they try to accomplish for themselves and their families, and the day they retire. If you could talk to some of the women who've been affected when there has been a pay equity increase, then you would see it even more. Don't delay, because if you remember the Bell Canada case, almost 16% of the women had died." [7]

Benson also reminded the committee of the human costs of our current, broken pay equity system. "It took 15 years to resolve our 1984 complaint against the Treasury Board. Our 1983 complaint against Canada Post wasn't settled until 2013, literally 30 years later, and only after the Supreme Court was involved. We had former members in their eighties calling our offices, desperate to receive the money they were owed before it was too late. Sadly, I have to say that it was too late for some." [8]

According to McInturff, there is also an economic cost for the country if Canada doesn't move swiftly to implement pay equity:

The cost of continuing to under-employ and underpay women in our workforce is high at a time when we can little afford it. Closing the gender gap is a key part of the return to strong growth in Canada's economy and security for Canadians. The OECD projects that narrowing the gap between men's and women's employment in Canada by 50% could contribute an additional $160 billion to our economy by 2030. Research published by the World Bank suggests that closing the gender wage gap could be worth the equivalent of 10% of Canada's GDP. That's not nothing—not to our economy, not to women.[9]

On the other hand, Professor Kathleen Lahey of Queen's University told the committee there would be significant economic benefit to implementing pay equity immediately:

…even if just one province, the province of Alberta, were to engage in partial and beginning pay equity adjustments, that would produce between a half a billion dollars and $4 billion in federal revenues more each year, beginning in 2016. If you were to multiply that impact across the country, and then take the provincial tax and revenue effect into consideration, you would be seeing even larger amounts being generated, and over time this would accumulate.[10]

Allowing the status quo to continue unnecessarily for another year and a half is to actively deny justice to women who have already been waiting for far too long.

Pay equity is a human right and Canadian women should not be made to wait any longer to see their human rights realized.

Therefore, ***the New Democratic Party recommends that the federal government introduce proactive legislation on pay equity before the end of 2016.***

---

[7] ESPE, Evidence, April 18, 2016
[8] ESPE, Evidence, April 18, 2016
[9] ESPE, Evidence, April 20, 2016
[10] ESPE, Evidence, April 20, 2016

Pay Equity Task Force Report

The New Democratic Party is also concerned about the way in which the committee report dismisses a number of important recommendations from the Pay Equity Task Force. As witnesses noted, the Task Force's Report was the result of extensive study and received strong support. Barb Byers told the committee, "The recommendations of the task force on pay equity were the result of years of careful and comprehensive study and consultation, and were widely supported by labour and women's organizations. The work of the task force is the most significant and in-depth study on pay equity anywhere, and is recognized as such by the ILO."[11]

Similarly, Fiona Keith of the Canadian Human Rights Commission argued that from the perspective of the Commission, compared to alternative options "the task force's recommendations will likely lead to the most robust and most effective right to pay equity, both in terms of implementation and cost."[12]

It is therefore surprising and disappointing to see the committee report dismiss a number of the Task Force's recommendations, particularly when witness testimony before the committee provides no evidence of the need to disregard these recommendations. We are particularly concerned that some of the recommendations that the report argues should be ignored would have the effect of closing loopholes through which employers might be able to avoid actually implementing pay equity. The committee report also dismisses a number of recommendations that would require transparency from the employer throughout the process. And we find it totally unacceptable that the committee report should argue that a recommendation requiring that pay equity committees must be composed of at least 50% women is "too prescriptive" or "too onerous." After all, it is 2016.

Therefore, ***the New Democratic Party recommends that the federal government adopt the recommendations of the 2004 Pay Equity Task Force in their entirety.***

Public Sector Equitable Compensation Act

Although the former Conservative government's regressive legislation on pay equity, the Public Sector Equitable Compensation Act (PSECA), has never been implemented, a number of witnesses testified that the existence of the Act was nonetheless having a harmful effect on the pay equity rights of public servants in Canada. Because of the Act, complaints about pay equity from the Public Service have been directed to the Public Service Labour Relations and Employment Board instead of to the Canadian Human Rights Commission.[13]

[11] ESPE, Evidence, April 18, 2016
[12] ESPE, Evidence, April 18, 2016
[13] ESPE, Evidence, April 18, 2016

It is very disappointing, then, that the Liberal government did not take the opportunity to repeal PSECA when it introduced Bill C-4, which does repeal other pieces of damaging Conservative labour legislation.

The New Democratic Party recommends that PSECA be repealed immediately.

This will restore the right of women and their unions in the federal public sector to file pay equity complaints during the transition to a new, proactive federal pay equity regime. This should be done as soon as the government returns in September.

The New Democratic Party Caucus looks forward to reviewing the government's legislation for a proactive pay equity regime, and to working with Members of Parliament from all parties to eliminate wage discrimination for all Canadians.

Respectfully submitted on behalf of the New Democratic Party
June 9, 2016