



ONTARIO
EQUAL PAY COALITION
CLOSE THE GENDER PAY GAP

**STRENGTHENING HUMAN RIGHTS ACCOUNTABILITY:
PAY TRANSPARENCY TO CLOSE THE GENDER PAY GAP**

**Equal Pay Coalition Submissions to the
Ministry of Labour Consultation on the proposed Employer's Reporting
Requirements under the *Pay Transparency Act, 2018***

Re: Regulation Registry Consultation #: 19-MOL005

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I. BACKGROUND

1. The Equal Pay Coalition is an organization that unites more than 41 women's groups, trade unions, community groups and business organizations. Since it was formed in 1974, the Coalition has been at the forefront of advocating for women's economic security. The Coalition advocates to close the gender pay gap through law reform, collective bargaining and other policies and practices to advance women's economic security.
2. The Coalition continues to pursue its vision that Ontario must eliminate systemic discrimination against women. The Coalition calls for planning and action on many levels so that Ontario achieves a 0% gender pay gap by 2025.
3. On Equal Pay Day, April 9, 2019, the Coalition calls upon the Ontario government to take **5 basic actions** immediately to make a significant start to closing the gender pay gap by 2025:
 - **Implement the *Pay Transparency Act, 2018* and the new supporting regulation no later than May 1, 2019.** This will provide employers with a year to organize reports – a reasonable length of time considering that employers already have this basic payroll information at their fingertips. In the United Kingdom, 82% of employers and business organizations agreed that the publication of gender pay information would encourage employers to close the gender pay gap.¹ They also reported that the cost of compliance with pay transparency was nominal.
 - **Keep the \$2 per hour Provincial Wage Enhancement Grant for Registered Early Childhood Educators** and child care workers working in licensed child care. Increase funding for investment in public and not-for profit licensed child care.
 - **Ensure that broader public sector employers are funded appropriately** to meet their pay equity obligations and demand accountability to demonstrate that pay equity payments are being made to workers.
 - **Increase funding to the Pay Equity Commission** to enable robust proactive enforcement of pay equity obligations. The Commission's own studies found that 54% of employers are not compliant with the *Pay Equity Act*. Pay equity is the law. Compliance is mandatory and must be rigorously enforced. As part of the

1 Government Equalities Office, Closing the Gender Pay Gap: government response to the consultation, February 2016 at page

new enforcement regime, the Pay Equity Commission must mount an immediate public campaign to advertise the rights and obligations under the *Pay Equity Act*.

- **Raise the minimum wage to \$15 per hour immediately** and increase funding for proactive employment standards enforcement to end employment standards violations that impoverish women.
4. As the Supreme Court of Canada stated in the important 2018 pay equity case, *Quebec (Attorney General) v. Alliance du personnel professionnel et technique de la santé et des services sociaux* 2018 SCC 17, that “leaving wage inequities in place makes women “the economy’s ordained shock absorbers”.
 5. The immediate implementation of the *Pay Transparency Act, 2018* and its new regulation will provide an important opportunity to close the gender pay gap and benefit Ontario’s economy. The Coalition underscores that transparency is the paramount value because the very purpose of a pay transparency law is to ensure employees have access to information they need to enforce their fundamental workplace rights. Without access to pay information, women cannot enforce their rights to equal pay.
 6. Below in Parts II and III the Coalition provides an analytic framework and context to guide development of the pay transparency regulation. Part IV responds directly to the Ministry’s questions. In that section the Coalition provides specific language to include in the regulation.
 7. The Coalition is deeply concerned that the Ministry’s proposed regulation and consultation background and questions significantly undermine the purpose of the *Pay Transparency Act*. The Ministry has added new principles or conditions to the development of the Act’s regulation which may weaken the regulation. It is the Coalition’s position that the regulation must be designed in a manner fully consistent with purpose of the Act.

II. PAY DISCRIMINATION BASED ON SEX IS ILLEGAL IN ONTARIO

8. For literally generations, it has been against the law in Ontario to discriminate against women in employment.
9. Women in Ontario have been entitled to equal pay for equal work since the 1951 *Female Employees’ Fair Remuneration Act*. They have been guaranteed equal rights in employment without discrimination based on sex under the *Human Rights Code* since 1962. They have been protected by equal pay provisions under the *Employment Standards Act* since 1968. And they have been entitled to equal pay for work of equal value under the *Pay Equity Act* since 1987.

10. Despite all of these laws, the gender pay gap persists because of systemic sex discrimination in employment. There is a significant enforcement gap when it comes to gender equality and its intersectional dimensions.
11. Women continue to be paid less when doing the same work as men. They continue to be paid less when doing work of equal value to men. They continue to face systemic sex discrimination in hiring, and in access to full time work, training, mentoring and promotions. Women continue to predominate in part-time, temporary, casual, seasonal and temporary agency work where they continue to face deep pay discrimination, often earning only 50% the hourly pay of full-time workers doing the same work.
12. Because of this systemic sex discrimination women continue to be paid average annual earnings that are significantly lower than men's. Statistics Canada has recorded that in 469 out of 500 occupations it tracks, men are paid more than women. The gender pay gap exists at all income levels, at all education levels, at all age levels.
13. As the Ministry's consultation paper acknowledges, despite a decline in the gender pay gap since the 1970s, the pay gap persists.
14. However, the central issue with the gender pay gap in Ontario is not that the gap persists, but that the gap has stagnated. The gender wage gap in Ontario has remained stagnant for the last decade. Women have indeed become the economy's ordained shock absorbers.
15. Further, by focusing upon the "average" gender pay gap, the Ministry' consultation document has not captured the depth of discrimination in the labour market. As a result, it significantly minimizes the human rights crisis in the province.
16. The latest 2016 Census data on Ontario women's annual earnings show they face these deficits:
 - Indigenous women: **43%** gender pay gap
 - Racialized women: **38%** gender pay gap
 - Immigrant women: **34%** gender pay gap
 - On average, Ontario women face a **29.3%** gender pay gap.
15. It is in this context that pay transparency is an important legal tool that has been designed specifically to buttress enforcement of the existing human rights laws that can help close the gender pay gap. Pay transparency promotes human rights compliance by creating accountability for non-discriminatory pay.
16. Women have the fundamental human right to be free from systemic sex discrimination in pay. A "right" is just that – it is a legal entitlement that must be

enforced. It is not a privilege. It is not an option. It is a baseline entitlement for every woman in the workplace. And it is a baseline obligation for every employer to ensure they in fact deliver non-discriminatory pay and working conditions.

17. Under existing law, individual women must come forward to file complaints if they are experiencing sex discrimination in pay. But we know that the gender pay gap is not an individual problem; it is a systemic problem. We know that systemic discrimination persists because of entrenched practices and attitudes. The problem is not isolated. It is able to persist because of pay secrecy.
18. Systemic discrimination requires a systemic response. Pay transparency is designed to break a continuing cycle of systemic discrimination.
19. Without clarity on the depths of discrimination in the province's labour market, the Minister will not have a complete picture of the urgent need for a strong pay transparency regulation and immediate implementation. The Minister must consider pay transparency as a remedy to redress the broad and systemic issue which has affected women for decades.
20. Employers have had literally generations to eliminate the gender pay gaps in their workplaces. Pay transparency laws effectively tell employers that "Time's Up". Employers must now positively demonstrate that they are complying with the multitude of laws that guarantee women discrimination-free pay.
21. A strong regulation is required to support the *Pay Transparency Act* to break the cycle of systemic discrimination. Pay transparency laws have been adopted because without a significant intervention to disrupt these patterns of systemic discrimination, the gap will not close.

III. PAY TRANSPARENCY IS A GLOBAL TOOL THAT BENEFITS THE ECONOMY

22. The Coalition first advocated for pay transparency over a decade ago. The Coalition remains a vocal proponent for strong pay transparency laws and regulations in the province.
23. In 2009, the International Labour Organization ("ILO") concluded that pay transparency was critical for the elimination of gender pay gaps². The ILO reported in an overview of pay transparency that

2 Observation (CEACR) – adopted 2009, published 99th ILC session (2010), Equal Remuneration Convention, 1951 (No. 100), Austria. See International Labour Organization [2016] Closing the gender pay gap: A review of the issues, policy mechanisms and international evidence, page 33.

According to the Workplace Gender Equality Agency (Australia), the pay gap is almost non-existent when pay is set transparently as compared to 20.6 per cent when pay information is withheld.

24. As set out by the ILO, pay transparency legislation has at least three key functions in closing the gender pay gap:
- it can promote enforcement of, and compliance with, legal mandates. Where transparency is the norm, empirical evidence suggests that there are significantly lower disparities linked to sex or race.
 - pay transparency may improve the efficiency of labour markets by informing employees' labour market decisions and redressing the imbalance in power between the employer and the employee, especially since women are significantly less likely to bargain over salaries.
 - pay transparency may generate public pressure on corporations to improve wages at the bottom and provide a basis for assessing employers' compliance with emerging norms of corporate social responsibility.³
25. Pay transparency has become the international gold standard to address the persistence of the gender pay gap.
26. In 2014, the European Union Commission passed a recommendation that its member states implement pay transparency. Australia implemented pay transparency measures. In 2016, the United Kingdom passed a Pay Transparency law after voluntary efforts did not work.
27. In 2018, the global Equal Pay International Coalition was launched by the ILO, UN Women and the OECD and identified pay transparency as a key tool for closing the gender pay gap. Canada is a member of the EPIC steering committee.
28. What is important to note is that Ontario's Pay Transparency Act includes a phased timetable whereby employers with 250 or more employees report by May 2020 and employers with 100 or more employees report by May 2021. This restricted reporting is one of the weakest pay transparency laws on the global stage. For example, pay transparency laws in Iceland, Denmark and Belgium apply to employers with 25, 35, and 50 employees respectively. Australia's law applies to employers with 100 employees. It is only the United Kingdom's law applies to employers with 250 employees.
29. What is common in all the international efforts is that pay transparency is good for the economy. In Ontario, the study by Deloitte, prepared for Ontario's Ministry of Labour in 2016 as part of the Gender Wage Gap Steering Committee review,

3 International Labour Organization, [2016] at page 32

calculated that the gender pay gap costs Ontario \$18 billion in lost wages every year – an amount that is the equivalent of losing the entire auto and auto parts industries. By closing the gender pay gap, Ontario could add an extra \$60 billion in GDP by 2026, or up to an additional 9 per cent in GDP.

30. The study continued that closing the gender wage gap would also have implications for Ontario's government revenue. Deloitte estimated that annual revenues from personal and sales tax could increase by \$2.6 billion. They also estimated that government spending on social assistance, tax credits, and child benefits could decrease by \$103 million annually, due to the projected increase in families' income.⁴

IV. ANSWERS TO THE MINISTRY'S CONSULTATION QUESTIONS

A. Consistency with the Pay Transparency Act's purpose

31. Before turning to the specific question's posed by the Ministry, it is important that the Ministry ensure that the regulation fulfill the Act's stated purpose. We were surprised to see that the consultation document did not clearly set out the Act's purposes. Instead, the consultation paper listed "guiding principles" that are not anchored in the Act and that conflict with the stated purpose of the Act.

32. Section 4 sets out the Act's purpose which are as follows:

The purposes of this Act are,

- (a) to promote gender equality and equal opportunity in employment and in the workplace, including equality of compensation between women and men, through increased transparency of pay and workforce composition;
- (b) to increase disclosure of inequities related to employment and compensation that women and other Ontarians may experience in the workplace to encourage the removal of such inequities to promote the full and equal participation of women and other groups in the workplace;
- (c) to promote, amongst employers, the elimination of gender and other biases in hiring, promotion, employment status and pay practices;
- (d) to support open dialogue and workplace consultation between employers and employees on issues concerning employment, compensation and equal opportunity; and

4 Gender Wage Gap Strategy Steering Committee Report, Ministry of Labour, [2016] p 16.

(e) to support economic growth through the advancement of equity in employment and in the workplace for women and other groups.

33. These are the criteria by which the regulation must be developed. These are not merely guiding principles but are the legislative requirement.
34. The new regulation must be measured against the extent to which it ensures that the Act's stated purpose is fully enabled and achieved.
35. We note that the "guiding principles" set out on page 5 of the Consultation document are not found in the Act or the Act's purpose clause.
36. Nowhere in the Act is there a requirement for the reporting obligations to be "streamlined". Moreover, the definition of "effective" as a guiding principle appears extremely narrow when it merely requires that "employers to provide enough information to demonstrate wage gaps." This standard is significantly downgraded from the expansive purposes set out in s. 4 of the Act.
37. The point of pay transparency is to ensure access to meaningful data to promote gender equality in the workplace. The guiding principles from the consultation paper are in conflict with the stated purpose of the Act.

B. The proposed reporting categories – too narrow to fulfil the purpose

38. It appears that the Ministry's proposal replicates the pay transparency reporting mechanism in the United Kingdom. The proposal requires median and average hourly wage reporting by gender and by quartile for a specified pay period.
39. Importantly, the Ontario proposal includes what appears to be an optional, not a mandatory, narrative report to provide additional context to the pay transparency report. As the legislative experience in the UK demonstrated, voluntary compliance means no compliance. The requirement for narrative reports must be mandatory.
40. After two years of pay transparency, the UK model has come under sharp criticism for not providing enough data to promote gender equality or disclose meaningful information related to inequities in compensation in the workplace for women and other groups facing systemic wage discrimination.
41. The Institute for Public Policy Research examined the UK pay transparency law. The Institute interviewed employers, surveyed employers and held focus groups with employers all affected by the UK pay transparency regulation. The Institute concluded that the UK pay transparency regulations could be improved to advance the goal of closing the gender pay gap. The Institute concluded that:
 - the regulation worked well, but could be improved;
 - employers should report on the gender balance in their workplace in total, not merely by quartile, to enable a picture of the occupational segregation in a firm;

- employers should *be required* to produce narrative reports every two years which set out their understanding of the causes of the gender pay gap;
- employers should produce an action plan to correct the gender pay gap inclusive of targets to do so;
- employers should be required to produce a fair pay report, covering not just the gender pay gap, but the racial/ethnicity pay gap and the disability pay gap;
- reports should include internal pay ratios, and the proportion of workers below the living wage;
- partners in firm with a partnership structure should be included in the pay transparency reports

42. We note that the Ontario *Pay Transparency Act* requires that the pay transparency reporting must increase disclosure of inequities related to employment and compensation that women and other Ontarians. The Ontario Act is not limited to reporting on gender inequalities.

**C. Consultation questions 1 and 2:
The Employer's reporting categories to calculate the gender pay gap**

43. The Ministry proposal suggests a very narrow reporting mechanism. The proposal is limited to two main categories: the hourly wage and gender. This again is inconsistent with the Act itself.

44. The Act's Section 1 provides a definition of compensation that extends beyond hourly wage to include

“all payments and benefits paid or provided to or for the benefit of a person who performs functions that entitle the person to be paid a fixed or ascertainable amount.”

This definition is consistent with the definition of compensation in the *Pay Equity Act*. Any new regulation must not undermine the *Pay Equity Act* definition or jurisprudence regarding a broad definition of compensation.

45. What is most concerning is that the Ministry's narrow tool does not adequately reveal the depths of inequality because it overlooks women's access to fewer hours of work, concentration in precarious work, and concentration in female-dominated work. In this regard, it replicates the acknowledged weaknesses of the UK's model.

46. The proposal also overlooks how race and other forms of discrimination intersect to deepen the gender pay gap. The current Ministry proposal does not fulfill the stated purpose of the Act which is to increase disclosure of inequities related to employment and compensation of women and other Ontarians.

47. For pay transparency to be a robust tool of enforcement, the publicly reported information must reveal the overall picture of the wage structure.

48. Further, Employers must be required to file a narrative report providing further details on the nature of the pay structure and occupational segregation in the workplace.

49. The Regulation must include the following key data:

- Report the overall wage structure by the average hourly wage, median hourly wage, as well as average annual earnings and median annual earnings at the workplace.
- Intersectional data based upon gender, race, disability and Indigeneity, which is information that must be reported in the federal sector.
- Report total compensation in addition to hourly wages. As defined in the Pay Transparency Act, compensation includes any form of remuneration payable for work: salaries, commissions, vacation pay, dismissal wages and bonuses; reasonable value for board, rent, housing and lodging; payments in kind; employer contributions to pension funds or plans, long-term disability plans and all forms of health insurance plans.
- Bonuses, commissions and tips (where tips are a fixed percentage of salary) are part of total compensation but should be reported separately from wages because there are gendered gaps in access to these forms of payment.
- Report by compensation structure: Are wage grids different for male jobs and female jobs? (i.e How many steps are on the grid? How long does it take to move up the grid, etc.)
- Report by job classifications (i.e. clerk, administrative assistant)
- Report job status to show whether employees are full-time, part-time, casual, seasonal or are hired through temporary help agencies.

D. The Coalition's Recommended Regulation language

1. Employers shall disclose the following information on a calendar year basis to the Minister in an annual Pay Transparency Report:

- (i) annual individual compensation of male employees, categorized by job classification and job status within the establishment,*
- (ii) annual individual compensation of female employees categorized by job classification and job status within the establishment,*
- (iii) if an employee's compensation is expressed as an hourly rate, the hourly wage rate and the annual compensation of male employees*

categorized by each classification and job status within the establishment,

- (iv) *if an employee's compensation is expressed as an hourly rate, the hourly wage rate and the annual compensation of female employees categorized by each classification and job status within the establishment,*
- (v) *the number of steps in a pay range by each classification and job status within the establishment,*
- (vi) *the rate of progression through a pay range by each classification and job status within the establishment.*
- (vii) *a narrative report which outlines an action plan inclusive of the pay adjustments required to close the gender pay gap.*

E. Consultation question 3: The Reporting Period

50. As noted above, the *Pay Transparency Act* requires that reports be filed by May 15, 2020 for employers with 250 or more employees and May 15, 2021 for employers with more than 100 employees. This is one of the weakest reporting timelines amongst the global pay transparency laws.
51. It is crucial that the same reporting period apply to all employers so that the information is consistent and can be compared over time. If the same reporting period is not used for all employers, the data will not be meaningful for employees, researchers and government's own assessment of the law's impact.
52. For this reason, the data that is collected in pay transparency reports should refer to data for a calendar year (1 January to 31 December). This is also consistent with the information that employers already prepare for annual income tax slips which facilitates reporting.

F. Consultation questions 4 to 6: What is the cost to employers to prepare the reports?

53. Employers already have the data they need to prepare pay transparency reports. The data at issue is basic payroll data. The necessary reports can easily and quickly be prepared using existing payroll systems. If an employer operates in the federal jurisdiction, they are already required to file annual employment equity reports.
54. Data on annual earnings is already prepared by employers for reporting to Canada Revenue Agency.

55. In response to Question 5, the Coalition is pleased to see the request for costs broken down into discrete categories. However, it is very concerning that the question seeks an estimated cost rather than a comparison to the actual costs of reporting pay roll data to the Canada Revenue Agency. It will be very important to examine actual costs based upon actual evidence and not estimates.
56. It is not costly to prepare pay transparency reports. In the UK, employers had to file annual pay transparency reports beginning April 1, 2018. During the consultation phase, the UK Government Equalities Office noted that there was a significant difference between organizations that provided actual costs and those that gave a general estimate of their expected costs. The actual costs were considerably less, on average than the estimated costs. Training costs were one-fifth of the estimated costs.
57. The UK Government Equalities Office reported that employers required 22 hours in total (i.e. less than 3 days of work), for those who reported the actual time, to complete the pay transparency reports.⁵
58. When the UK government consulted on their pay transparency reporting scheme, 82% of employers and business organisations agreed that the publication of gender pay information would encourage employers to take action to close the gender pay gap.
59. Less than 2% of organisations said they were unable to measure the difference in the pay of male and female employees from existing data and systems.
60. The Ministry's consultation document outlines that large employers will have most or all of the data available to calculate wage gaps and other reporting requirements, but smaller and medium-sized employers will not.
61. The Coalition notes that the Ministry appears to rely upon a definition of small and medium enterprises ("SME") that does not fit with the Statistics Canada definition of SMEs. Statistics Canada defines small enterprises as employers with less than 100 employees. Statistics Canada defines medium enterprises as employers with 100 to 499 employees.
62. At this time, the *Pay Transparency Act* does not apply to employers with less than 100 employees. The Coalition's clearly stated position is that the Act should mirror the *Pay Equity Act* and apply to all employers with 10 or more employees. The Act's application to employers with 100 or more employees as of 2021 should not be amended as it is a minimum threshold.

5 Government Equalities Office [2016] February consultation response p 24 and 25.

V. CONCLUDING COMMENTS

63. The Act's new regulation presents an opportunity to add an important tool to enhance enforcement to close the gender pay gap. But in order to have the desired impact, the regulation must be designed to provide meaningful data and a clear picture of a firm's compensation practices.

64. The amendments proposed by the Equal Pay Coalition will ensure that the *Pay Transparency Act* will be strong and align with the leading pay transparency legislation globally, particularly in the European Union.

65. We need bold action to close the gender pay gap. Women have waited generations to close the gender pay gap. They should not have to wait any longer. Women are done waiting. It is time to show us the money.