

# A Framework for Action on Pay Equity in Ontario



A special 20<sup>th</sup>  
Anniversary report  
contributing to  
Ontario's Future

by the Equal Pay Coalition  
November, 2008

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

 **EQUAL PAY COALITION** 



**A FRAMEWORK FOR ACTION  
ON PAY EQUITY IN ONTARIO**  
*Contributing to Ontario's Future*

**PREPARED BY**

**MARY CORNISH AND FAY FARADAY**

**with the assistance of Michelle Dagnino, Janet Borowy and Janina Fogels**

**Cavalluzzo Hayes Shilton McIntyre & Cornish LLP**  
**Barristers and Solicitors**  
**474 Bathurst Street, Ste. 300**  
**Toronto, ON M5T 2S6**  
[www.cavalluzzo.com](http://www.cavalluzzo.com)  
[mcornish@cavalluzzo.com](mailto:mcornish@cavalluzzo.com)  
[ffaraday@cavalluzzo.com](mailto:ffaraday@cavalluzzo.com)



## INDEX

EXECUTIVE SUMMARY .....	i	
<b>PART I</b>	<b>GENDER-BASED PAY DISCRIMINATION .....</b>	<b>1</b>
a.	What is it? – Comparing Now and 20 years Ago. ....	1
b.	The Impact of Ontario’s Gendered and Globalizing Economy. ....	1
c.	Seven Key Labour Market Trends since 1988. ....	2
d.	What are the Causes of the Gender Pay Gap?.....	7
e.	Three Key Dynamics of Pay Discrimination .....	8
<b>PART II</b>	<b>THE RIGHT TO BE FREE FROM PAY DISCRIMINATION .....</b>	<b>10</b>
a.	Fundamental Human Right . ....	10
b.	Equal Pay For Work of Equal Value – Remedy for Dynamic #1.....	11
c.	The Right to Employment Equity or Equal Treatment – Remedy for Dynamic #2 .....	11
d.	Equal Pay for Equal Work – Remedy for Dynamic #3 .....	12
e.	International Labour and Human Rights Standards .....	12
f.	Government <i>Charter</i> and Human Rights Obligations Re: Pay Discrimination .	14
<b>PART III</b>	<b>LESSONS LEARNED AFTER 20 YEARS OF THE <i>PAY EQUITY ACT</i>.....</b>	<b>16</b>
a.	More than 35 Years of Action and Inaction . ....	16
b.	Why is there so much Non-Compliance? .....	18
c.	What do those with Responsibility for Ending Pay Discrimination Have to Say? .....	19
<b>PART IV</b>	<b>FRAMEWORK FOR ACTION – THE WAY FORWARD . ....</b>	<b>23</b>
a.	Rethinking Compliance Frameworks – Immediate and Ongoing Measures . .	23
b.	Need for a Human Rights- Based Gender Mainstreaming Approach . ....	23
c.	The Fiscal Crisis is not an excuse to ignore the human rights crisis.....	24
<b>Step 1</b>	<b>FRAMEWORK FOR ACTION: Immediate Policy Shifts . ....</b>	<b>26</b>
a.	Public Sector Funding .....	26
b.	Increasing the Minimum Wage.....	27
c.	Restoration of Commission and Tribunal Funding and Pay Equity Legal Clinic .	27
<b>Step 2</b>	<b>FRAMEWORK FOR ACTION: Closing the Gender Pay Gap Plan . ....</b>	<b>28</b>
a.	Central focus – Enable Women to Realize their Human Rights. ....	28
b.	Recognize the Equality Role of the Government.....	29
c.	Need for Planned, Integrated and Multi-Faceted Approach .....	29
d.	Ensure Pro-Active, Preventative and and Results-Based approach . ....	29
e.	Build Equality into Government Public Policies .....	29
f.	Map Women’s Work and its Pay Constraints .....	30
g.	Address the Diversity of Women and their Disadvantages. ....	31
h.	Ensure women’s empowerment as both a strategy and goal.....	31

l.	Promotion of Capacity Building and Training . . . . .	31
j.	Reconciling Work and Women’s Unequal Family/Home Life . . . . .	31
k.	Develop Mechanisms for Precarious Work. . . . .	32
l.	Enhance Complementary Role of other Rights. . . . .	32
m.	Focus also on Employment Equity Measures . . . . .	32
n.	Ensure Effective Complaint Mechanisms to Enforce the Right . . . . .	33
o.	Role of Employers and Business . . . . .	33
p.	Role of Trade Unions and other Women’s Voice Organizations . . . . .	33
<b>CONCLUSION – TOWARDS SUSTAINABLE AND EQUITABLE PAY PRACTICES. . . . .</b>		<b>34</b>
<b>LIST OF MEMBER ORGANIZATIONS. . . . .</b>		<b>36</b>
<b>KEY REFERENCES. . . . .</b>		<b>38</b>
<b>ENDNOTES. . . . .</b>		<b>41</b>

## EXECUTIVE SUMMARY

Twenty years after Ontario's *Pay Equity Act* was passed, Ontario women, working in segregated job ghettos, continue to suffer systemic gender-based discrimination in pay. In Ontario, where a person's pay is critical to family, community and provincial prosperity, the gender pay gap at 29% is a human rights crisis which must be solved.

Like the current financial crisis, the pay gap crisis will continue to erode Ontario's economy and impair its future prosperity unless pro-active interventionist measures are taken to bring gender equality to the pay systems of Ontario's labour market. The International Labour Organization, World Bank and World Economic Forum all recognize that closing the gap is a key component of sustainable global productivity and equitable and secure development and governance. It is well-recognized internationally that poverty reduction goals will not be met without addressing women's pay inequalities in all poverty reduction planning.

The current financial crisis provides even stronger reasons for making the issue a priority given that Ontario's women workers, many of whom are low-paid and poor - are struggling to cope in this volatile economy. Scrambling every month to make ends meet, losing almost a quarter for every dollar a man is paid is devastating to a family budget. Over a lifetime, this pay gap adds up to astonishing financial losses for women—ranging between \$700,000 and \$2 million depending on the level of education the woman has completed.<sup>1</sup>

In 1984, the Royal Commission on Equality in Employment warned of the hugely negative impact on women of perpetuating discriminatory low wages:

*The cost of the wage gap to women is staggering. And the sacrifice is not in aid of any demonstrably justifiable social goal. To argue, as some have, that we cannot afford the cost of equal pay to women is to imply that women somehow have a duty to be paid less until other financial priorities are accommodated. This reasoning is specious and it is based on an unacceptable premise that the acceptance of arbitrary distinctions based on gender is a legitimate basis for imposing negative consequences, particularly when the economy is faltering.<sup>2</sup>*

When the Ontario Government introduced the *Act* in 1988, it committed to "the achievement of equal opportunity and social justice for all Ontarians" as "a fundamental and unalterable commitment of the Ontario government". While there is cause to be proud on one level of Ontario's leadership in passing one of the most progressive pay equity laws in the world, that leadership ended in the 1990's. As a result of a sustained 10 year lobbying campaign by the Equal Pay Coalition, the *Act* was passed in 1987. In 2008, the Coalition, representing over 1 million workers in organizations ranging from trade unions to business women and community groups – is continuing this struggle to end pay discrimination. The release of this Framework for Action - The Way Forward Report is part of the Coalition's 20<sup>th</sup> Anniversary campaign.

Inaction on the issue even in the good fiscal times sends the message that women are not equal to men, that gender equality is not affordable. It reinforces the prejudices which undervalue women's work and undermines the struggle of women for equality in all areas of their lives. Status in contemporary society is so often and so closely related to income-earning power. As a result, the failure to fairly value female-dominated work and to place barriers to women gaining access to men's work undermines women's social value and their capacity to participate in decision-making within households, within their local communities and at the national level. By contrast, ending pay discrimination secures a foundation for this broader equality.<sup>3</sup>

Equality is not a luxury for times of prosperity. It is a fundamental human right and women's equality is a cornerstone of our democratic society. During his campaign, United States President Barack Obama, recognizing its fundamental importance, made equal pay an important plank in his election campaign. He called for it as a democratic right which can help women steer themselves and their families through the current financial uncertainty. Securing the human rights of those who live within a country or province is an essential feature of democratic governance. But in the end, preventing and remedying pay discrimination is a matter of values - ensuring that hard work is honoured and rewarded in Ontario regardless of the sex of person who performs it.

Disadvantaged groups are repeatedly faced with the argument that redressing equality is too expensive.

This economic argument fails to acknowledge that the cost of achieving equality – the cost of redress – is proportional to and reflective of the extent of the discrimination experienced.

When governments use the cost of redress this effectively penalizes the most vulnerable of them doubly. They have already suffered long-term discrimination which has resulted in the quantified pay discrimination gap.

The magnitude of the government's delinquency – the size of this equality debt – is then relied upon as a reason not to pay redress.<sup>4</sup>

The existence of a gap between the earnings of men and women is one of the few facts not in dispute in the 'equality' debate. According to Statistics Canada, in 2001, women employed full-year, full-time in Canada averaged just 71.6% of male full-time earnings. Studies show that a differential of 5-15% of the pay gap is considered attributable to the stereotypes and prejudice about the value of women's work and gender-biased pay systems.<sup>5</sup> This part of the gap is addressed by equal pay for work of equal value laws like Ontario's *Pay Equity Act*. Part of the gap is also caused by the discrimination women face in gaining access to higher paying work where men predominate. This part of the gap is addressed by employment equity laws and human rights laws, like Ontario's *Human Rights Code*. A small part of the gap relates to unequal pay for women doing the same work as men which is prohibited by the *Employment Standards Act*.

Ontario's gender pay gap affects women of all ages, regions and education and income levels. It applies regardless of where women work in the economy, following women from their first job to retirement. The gap is greatest and work conditions are poorer where women are also disadvantaged by poverty, age, race, disability or aboriginal and immigrant status. Despite the rising education of women, the pay gap - at 38% in 1985 at the time of the Ontario Government's Green Paper on Pay Equity, has narrowed since that date but still remains unacceptably wide.

While the *Act* was key to delivering more equitable pay for some, mostly unionized women in the 1990's, the Coalition shares the Pay Equity Commission's view that there is widespread non-compliance with the *Act*. Women's and men's work has changed dramatically since 1988 with the globalization of Ontario's economy. Women continue to predominate in the lowest paying, "precarious", often part-time, temporary or contract jobs in the labour market continuum. While Ontario passed one of the world's leading pay equity laws, many pay equity gains have been lost due to restructuring and privatization and many women never received the benefit of the *Act* at all.<sup>6</sup> Ontario should not feel smug about its pre-eminence in the pay equity field with when its pay gap of 29% is higher than that of Europe (15%) and of the Nordic countries (10%).

Despite the human rights obligations of the Ontario government and those who use women's work to mainstream discrimination-free pay into Ontario's economic life, women's pay discrimination is often invisible or under-estimated. Ending the systemic discrimination women experience starts with ending the issue's marginalization and requiring public and private policy and business planning to incorporate measures which will identify the gap and then work to close it as a priority and human rights obligation.

Given the diversity of Ontario women's often precarious work circumstances, closing the gender pay gap means moving labour market policy beyond the traditional focus on the regulation of larger, male-dominated workplaces with "standard" work. It requires taking more systemic, inter-disciplinary and inter-institutional approach to address the social, political and economic roots of women's economic equality.

This 20<sup>th</sup> anniversary year provides a unique opportunity to revitalize the province's energies and commitments towards achieving this goal for all Ontario women. Ending gender-based pay discrimination is strongly supported by Ontarians.<sup>7</sup> In January, 2008, many thousands of women called on the Ontario government to take effective action to close the pay gap by signing the Equal Pay Coalition's postcards and petition.

Everyone benefits from ending pay discrimination in Ontario. As noted by the September, 2007 TD Economics Special Report, women workers and the areas of their work - especially the services sector - are the key to Ontario's future prosperity.



## Framework For Action – The Way Forward

The Framework For Action will review, among other things, the actions or inactions of the Government which have contributed to the pay gap.

The Equal Pay Coalition is calling upon the Ontario government working with employers and trade unions to take both immediate policy shifts and to institute ongoing gender mainstreaming measures to close the gender pay gap. All these measures should be included in a province-wide Ontario Closing the Gender Pay Gap Plan. This Plan should include targets for closing the pay gap over a realistic time frame and strategies for meeting those targets. The Plan should be coordinated with the Province's Poverty Reduction Plan.

The immediate policy shifts outlined below will be the first steps of that Plan. They will signal to the people of Ontario that the government is shifting the direction of the past decade and will concretely support an end to pay discrimination. Mainstreaming non-discriminatory pay into Ontario's economic life will be the second step: a shift so that closing the gender pay gap becomes enshrined in all public laws, policies and practices and workplace practices. It will also ensure that women's pay equity rights are not a victim of the fiscal crisis but rather a measure to protect Ontario's disadvantaged and to leverage the value of the contribution of women's work as Ontario rebuilds its economy.

Step 2 of the Plan highlights the many different considerations which should be taken into account in building a culture of non-discriminatory pay including: recognizing the equality role of the government; need for planned, integrated and multi-faceted approach; ensuring a pro-active, preventative and results-based approach; taking measures to build into public policy measures to close the pay gap; instituting the mapping and making visible the diversity of women, their diverse work and its pay inequalities; developing pay equality mechanisms for precarious work; and ensuring effective enforcement mechanisms - working with employers and trade unions.

These immediate steps include the following:

- a. Bringing in emergency legislation to increase the minimum wage to \$10 per hour effective immediately as a pay equity down payment for women workers.
- b. Fully funding the pay equity adjustments owing to women providing important public services to Ontarians;
- c. Fully funding the Pay Equity Commission and Pay Equity Hearings Tribunal so that the *Pay Equity Act* can be vigilantly enforced; and
- d. Restoring funding to the Pay Equity Legal Clinic to provide support for women filing pay discrimination complaints.

This report provides important information to assist in bringing together governments, employers, trade unions and civil society to engage in creative discussions and strategies about closing

Ontario's gender pay gap and promoting women's economic equality. This includes taking the necessary steps to ensure effective *Pay Equity Act* compliance and new measures to make the enforcement system securing non-discriminatory pay effective and accessible.

The Equal Pay Coalition's call for action on this issue is backed by its broad-based membership of trade unions, community and social justice organizations, and business and professional women's organizations who represent over one million Ontarians. (See list of members appended to Report).

## **PART I            GENDER-BASED PAY DISCRIMINATION**

### ***a.        What is it? – Comparing Now and 20 years Ago***

Women earned just 70.5% as much as men in 2005 or \$39,200 annually compared to \$55,700 for men. This puts the gender pay gap at 29%. Comparing the annual earnings of full-time, full year workers is the most commonly cited gap indicator. If all workers – including part-time and part-year workers - are considered, the gap is even greater – with women earning just 64.0% as much as men.<sup>8</sup>

The 1985 Ontario Government Green Paper on Pay Equity stated that the pay gap based on full time full year earnings was 38%. In the twenty years since the introduction of the 1988 *Pay Equity Act* (“the *Act*”), the gender pay gap has been reduced by roughly 9%.

A look at the hourly wage gap shows the pure gender gap per hour worked, as opposed to larger pay gaps for the week and for the year (which reflect not just lower pay rates for women, but also fewer hours worked.) Women earned an average of \$17.96 per hour compared to \$21.43 for men in 2006, meaning that women earned, on average, 83.8% of the male hourly wage. The pay gap based upon hourly earnings is 16%. The 1985 Ontario Government Green Paper on Pay Equity stated that when adjusted to examine hourly earnings the gender pay gap was 22%.

A 2007 Toronto Dominion Bank Special Report citing the importance of making labour markets work for women made the following findings:

- i        Pay gaps exist in every sector.
- ii       The gap widens with age, as earnings reflect the cumulative impact of career interruptions, limitations on job advancement, and differentiated household responsibilities.
- iii      Children generate career interruptions at a stage of the life cycle when substantial investment in human capital occurs, such as training and promotions.
- iv      More than twice as many women are in part-time employment than men, with the incidence particularly high among married women with children. More than one third of women between 25-44 cite child care responsibilities as a reason for part-time employment.
- v       80% of single parent families are headed by women.<sup>9</sup>

### ***b.        The Impact of Ontario’s Gendered and Globalizing Economy***

While the pay gap and gender discrimination remain, the structures and conditions of women’s and men’s work have changed significantly since 1988 when the *Act* was passed. There is

widespread low pay for women's work despite its importance to the success of Ontario's economy. The global migration of capital, work and labour is having positive and negative impacts for Ontario women. While some women have more paid work with better conditions, the interconnected globalizing economy is producing increasingly precarious work for women. Networked and decentralized production structures are leading to increasingly precarious conditions of employment. These conditions affect the nature and the degree of rights violations and the design of mechanisms to successfully tackle those violations. With globalization, labour markets are being deregulated and state resources and services are often being reduced at a time when women workers require greater protections and services.<sup>10</sup>

***Everyone benefits from ending pay discrimination***

***Pay Equity Contributes to Ontario's Economic Prosperity***

*As noted by the Toronto Dominion Bank, women hold the key to Ontario's economic growth. With a shrinking pool of labour, increasing service-oriented economy which is female dominated and women exceeding men in university enrollment, the economy and businesses need skilled women workers.<sup>11</sup> (In 2004, 62% of university B.A. degrees went to women.)*

**c. Seven Key Labour Market Trends since 1988**

Ontario, like other labour markets worldwide, is marked by seven key trends which are driving the systemic gender equality gaps between men and women workers. Industrialized and developing countries alike share these trends, although in different degrees. The burden of inequality falls greatest on women workers where poverty, weak employment regulation, racial, ethnic, aboriginal and disability discrimination and violence are most pronounced. These trends sustain a gendered labour market where women experience a high degree of unlawful discrimination both in gaining access to paid work as well as in the conditions and pay of that work and their ability to keep it.

**1) More women are working for pay.**

While women's work opportunities in Ontario have expanded more than men's with a growing female-dominated services sector and a declining male-dominated manufacturing sector, their conditions of work have not commensurately improved with the level of their economic contributions.

82% of women age 22-44 are working compared to about 57% of women participating in 1984 according to the Green Paper on Pay Equity.<sup>12</sup> In 1961 only 32 per cent of women were employed.<sup>13</sup> In 1989, women comprised 44% of the labour force, up from 39% in 1979 and 33% in 1969.<sup>14</sup>

In 2004, 73% of all women with children under age 16 living at home were part of the employed workforce, up from 39% in 1976.<sup>15</sup> In 2004, 79% of women under age 55 without children living at home had jobs. In 2006, the labour force participation rate of women ages 15 to 64 is at an all-time high of 73.5%.

More older women are working as well. The participation of women aged 55 to 59 has seen a marked increase from just under 50% in the mid-1990's to 62.3%. In 2006. Almost half of the women aged 60 to 65 are still in the paid workforce<sup>16</sup>

## **2) Better but still markedly unequal pay and conditions**

As highlighted above, women's wages have improved gradually, yet Ontario's 29% pay gap is still significant. Ontario's pay gap is much larger than Europe which has an average pay gap of 15%. In the Nordic countries with many progressive equality policies the pay gap is just 10%.<sup>17</sup>

## **3) Persistent Occupational Segregation**

Men and women continue to do different work often in different workplaces with men dominating higher-paying "production", supervisory and management positions and women dominating lower-paying care giving, home-based or informal jobs. For example, women made up 21% of managerial positions in 1987 and this has gone virtually unchanged with women now making up 22% of the total employed in managerial positions.

In 1987, 5.2 per cent of women worked in trades, transport and construction and this has remained virtually the same with women making up only 7% of this occupational category. Traditionally-female dominated occupations have not seen a change. Nurses are 87% women and this had not changed since 1987.

In clerical and administrative positions women remain at 75% to the total employed. Very few professional occupations have seen modest changes. The business and finance sectors have seen some improvements. Women now make up 51.3% of the total employed in the sector compared to 38% in 1987.<sup>18</sup>

The 1985 Green Paper on Pay Equity justified the need for the new pay equity legislation on the grounds that that occupational segregation pervaded the Ontario labour force with approximately 60% of female workers clustered in 20 out of 500 occupations. For example, in 1982 98% of women were in stenographic and typing occupations; 69% in food services; 92% in nursing occupations. Women dominate lower paying positions in personal, commercial and social services.

According to Statistic Canada, *Women in Canada 2006* report, there has been virtually no change in the proportion of women employed in these traditionally female-dominated occupations over the past decade. In fact, the share of female workers employed in these areas in 2004 was almost

exactly the same as that in 1996. In 2004, 67% of all employed women were working in teaching, nursing and related health occupations, clerical or other administrative positions, and sales and service occupations. This compared with just 30% of employed men.

The pervasive occupational segregation of Ontario's workforce by sex corresponds with a value system in which men's work is considered superior economically, socially and legally. Women's full integration into the labour market continues to be resisted and surrounded by patriarchal stereotypes, prejudices, misconceptions and culturally-based expectations about gender roles and what constitutes "valuable work worthy of protection".

Men dominate higher-paying often full-time standard work with many women found mostly in insecure, often part-time lower paid standard and non-standard employment.

***Everyone benefits from ending pay discrimination***

***Good for Families***

*Pay equity is a financial and social necessity issue for families, with 63% of Canadian households having dual incomes and 1.3 million women being the primary breadwinner among 4.6 million couples in 2005 in Canada.<sup>19</sup> The vast majority of temporary or contract workers, part-timers or self-employed are women and many can't earn enough to support their families.*

*Many women do not meet qualifying requirements for Employment Insurance maternity and parental benefits due to insufficient hours worked or the fact they are self-employed.*

*Income supports to mothers stopped growing in the 1990's as EI implemented restrictive access terms.<sup>20</sup> Paying women fairly is needed for families to have the resources they need to prosper and avoid poverty.*

**4) Unequal Home and Life Circumstances**

Women remain primarily responsible for unpaid housework and caring for children, the sick and elderly. This creates significant stress in reconciling their unpaid and paid work responsibilities and increasing their work hours and therefore paid income beyond that of men. Regardless of the reasons, the evidence suggests that giving birth to a child lowers the future earnings of a Canadian mother compared to a comparable woman without children by between 5% and 13%.<sup>21</sup> As a Canadian Labour Congress Report outlines:

*In all countries, participation rates and employment in full-time jobs tend to be lower for women because women still bear the primary responsibility for child care as well as elder care and work in the home generally. Almost everywhere, the gap between the employment rates of women and men increases with the presence and number of children in a family.<sup>22</sup>*

Balancing the demands of paid work and unpaid care work, women often have to take low or

non-paying “flexible” jobs with unsafe conditions. Women’s double burden and time poverty are further exacerbated where they take on added care obligations as the Ontario government has rolled back, privatized and eliminate public services. Given the unequal relations of social reproduction, and the constraints women face as a result of their domestic and child care responsibilities, precarious employment with unequal pay is not a free choice.

## 5) Predominance in Precarious Work

The growth of women’s work is largely in the precarious sectors of the economy since global networks are structured to depend on “insecure” and individualized forms of employment, including disguised employment self-employment, part-time employment, casual and temporary employment and home-based low income work.

In Canada, "non-standard" employment relationships have grown from 33% in 1989 to 37% in 2001. Between 1989 and 2002 part-time employment rose from 16.8% to 18.7%. Women are also much more likely than their male counterparts to work part-time. In 2004, 27% of the total female workforce were part-time employees, compared with just 11% of employed men. Indeed, women currently account for about seven in 10 of all part-time employees, a figure which has not changed appreciably since the mid-1970s.<sup>23</sup>

In general, own-account self-employment rose from 7.2% to 9.8% between 1989 and 2002. Over one in 10 employed women in Canada is self-employed. In 2004, 11% of all employed women, were self-employed, up from 9% in 1976. Overall, women accounted for 34% of all self-employed workers in 2004, up from 31% in 1990 and 26% in 1976.<sup>24</sup>

Women are clustered in the lowest paid, lowest skilled jobs in the informal and formal sector. Such work is a) highly vulnerable and often unsafe; b) has very low pay and irregular income; c) often excluded, effectively or directly legal and regulatory frameworks; and d) lacks access to employee and social security benefits.

Many globalized enterprises and supply chains have a male-dominated core labour force and a periphery of networked enterprises where workers disadvantaged by factors such as gender, race or immigrant status increasingly have only a temporary, contract or home-based status. Increasing sectors of the economy are not subject to effective labour enforcement. Many women workers have no “employer” at all as disguised employment or self-employment increases significantly and flexibilization leads to greater “individualization” of working conditions.<sup>25</sup> Ensuring non-discrimination in pay is not even considered as global supply chains focus on cost-cutting and production time constraints and using women's low pay as their competitive advantage.

There is likely not a workplace in Ontario which looks the same as it did in the late 1980's when the *Pay Equity Act* was designed.<sup>26</sup>

Downsizing, work restructuring, reduced staffing levels and more 'hard-nosed' human resource management have gendered effects. Such changes more often lead to greater control for men and less control for women and exposing women to workplace bullying/mobbing, abuse and other forms of occupational violence and harassment.

## **6) Workplace Size**

The size of the workplace or establishment has a direct impact on women and labour standards enforcement and contributes to the persistent pay discrimination gap. The *Pay Equity Act* excludes workplaces with less than 10 employees. Based upon the limits of the *Act* and its interpretation, the vast majority of Ontario's workplaces are not covered by the *Act*.

One of the significant trends since the *Act* was introduced is the emergence of smaller and smaller workplaces. The Toronto Region Research Alliance, Workplace Establishments Report outlines that in 2007, 74% of Ontario's 544,885 workplaces have less than 10 employees.

The majority of firms in the private sector have less than 20 full-time employees whereas for the public sector the majority of organisations have more than 300 full-time employees.

It is a trend that began to emerge during the recession of the 1980's. Between 1978 and 1986 the proportion of small workplaces with less than 20 workers increased from 16.28 per cent to 24 per cent.<sup>27</sup>

By 2007, the trend towards smaller workplaces was very apparent. The above-noted report states that the Retail and Wholesale sector, for example, has an estimated 149,596 establishments in Ontario with less than 50 employees. Accommodation, Food, Beverage and Recreation have 45,817 establishments with less than 50 employees. These are two sectors targeted by the Pay Equity Commission for pro-active compliance monitoring.<sup>28</sup> The data suggests that many women won't see the benefits of the current *Pay Equity Act*.

Small workplaces should not be confused with necessarily small employers. Many large employers oversee a large number of smaller workplaces. Over the past twenty years, employers have relied upon contracting out a strategy to reduce costs and avoid responsibility for labour standards and equity entitlements. Work that might have been performed 'in-house' in 1988 is now contracted out to a smaller private firm.

## **7) Weakening of Union Representation and Women's Voice**

With unionization rates declining, and the structures of workplaces increasingly favouring individualized working conditions, trade union representation of women has been weakened. With unionized women being the group which was best able to use the *Act*, this weakening adversely impacts the ability of women to secure their right to be free from pay discrimination. In Ontario,



the unionization rate has declined from 33.7% in 1981 to 27% in 2004. Unionization in the private sector declined sharply between 1988 and 2008. Union density overall in the private sector has slipped to under 20%.

Women's unionization has remained relatively constant in this period at approximately 30%. However, with the reduced union density across the entire labour market, women suffer.

Unionization play a major role in closing the pay discrimination gap between women and men and in countering the low pay among working women. The pay gap between union men and women is just over \$2 per hour compared to a gap of more than \$4 per hour between non-union men and women.<sup>29</sup>

**d. What are the causes of the Gender Pay Gap?**

*Many of the demands, conditions and contributions of women's work are invisible and undervalued both because so many women do these jobs and because female-dominated skills, effort, responsibilities and working conditions are associated with unpaid domestic or volunteer work.*

*Yet such skills are essential to carrying out the work and are acquired over time, through training, even though they are often undervalued relative to those of men. Moreover, many of these women's jobs are highly demanding, but in ways so long associated with women that they are thought to be part of being a women. Dr. Pat Armstrong, Expert Witness, CUPE et al v. Attorney-General (Ont.), 2001*

Ontario's gender pay gap has many causes – some legitimate but most tainted by Ontario's gender labour market systems. Different human capital factors such as education or experience, full or part time employment, work sector affect the gap. Studies show that at least 5-15% of the gap is attributable to the undervaluation of women's work due to stereotypes and prejudice and gender-biased evaluation and pay systems.<sup>30</sup>

Systemic gender-based pay discrimination persists in Ontario arising out of three fundamental features associated with women's work:

- (a) First, to a very large extent, women and men continue to be segregated in different jobs in the workplace. There are still "women's jobs" and "men's jobs" with women limited to a narrow range of sales, service and clerical occupations and facing barriers to obtaining higher paying male dominated work.
- (b) Second, the gender segregation of the labour force is accompanied by wage inequality.

Female-domination of a job and low pay are linked. The more female-dominated the industry or the occupation, the more women's wage rates are depressed. In 1995 women accounted for less than 20% of workers in the ten top paying jobs and more than 78% of those in the ten lowest paying jobs.

- (c) Third, this lower pay reflects the systemic undervaluation of women's work relative to that of men's work. It reflects the failure to recognize and value the skills, effort, responsibility and working conditions associated with female-dominated jobs. It is a product of a devaluation of women's skills (i.e. pervasive stereotypes that women's skills are not real skills but are qualities "intrinsic to being a woman" and so not deserving of compensation); a devaluation of the kind of work women do as not being "real work" (particularly in relation to the kind of care-giving work which is heavily female-dominated); and a reliance on historical stereotypes about women as secondary wage earners rather than true "breadwinners". The factors above combine to create pervasive discrimination which is generally present regardless of the particular nature of women's work, her industrial sector, her own capacities and her particular employer.<sup>31</sup>

***Everyone benefits from ending pay discrimination***

***Reduces Poverty***

*Women are the face of Ontario's working poor. Many intersecting reasons account for women's poverty, including systemic gender discrimination which undervalues, underpays or doesn't pay at all for their work. women are often trapped in low paid, insecure work.*

*Two thirds of adults who remain poor for long periods of time are women. 31% of all Ontario women earn "poverty wages", i.e. less than \$10 per hour.<sup>32</sup> To get a poverty-line income, someone must work full-time, full-year at about \$10 per hour. 61% of minimum wage workers are women. With women the sole support for many families, pay inequities contribute to situation where 500,000 Ontario children live in poverty. 90% of single parents on social assistance are women and 23.8% of female single parents are low paid.<sup>33</sup>*

***e. Three Key Dynamics of Pay Discrimination***

Since its founding in 1974, the Coalition has recognized that Ontario's gender pay gap is a function of the systemic labour market discrimination which women experience at all points of the work continuum. This discrimination arises from three separate but interconnected discriminatory dynamics.

**Discrimination Dynamic #1**

The discrimination women experience in their segregated job ghettos where the different work

women do is systemically undervalued both because it is not counted and what is counted is not valued properly.

**Discrimination Dynamic #2:**

The discrimination women experience because of the barriers or “glass ceiling” women face in gaining access to higher paying “men’s” work - the male job ghettos.

**Discrimination Dynamic #3:**

The discrimination women experience where they do the same job as men and get paid differently. A small part of the gap relates to this aspect.

## PART II THE RIGHT TO BE FREE FROM PAY DISCRIMINATION

### a. Fundamental Human Right

The right to not earn less income because you are a woman is a fundamental human rights entitlement.

It encapsulates:

(i) a substantive human rights *entitlement* to sex equality in the workplace;

(ii) a systemic human rights *remedy* for discrimination; and

(iii) as implemented through collective bargaining and collective agreement enforcement, a human rights *enforcement mechanism* for eradicating discrimination and ensuring equality outcomes.

The right applies to all three discrimination dynamics discussed above, but the remedial mechanisms are both different and inter-related.

#### ***Everyone benefits from ending pay discrimination***

#### ***Good for Women and Society***

*Apart from increasing women's pay, ending pay discrimination also has a broader remedial impact because it requires society and workplace parties to actively re-examine how they value work and the workers who do it and what barriers are in place to women gaining access to men's work.*

*The process of securing equal pay conditions requires society and workplace parties to actively build equality promoting measures into their practices. This transforms the status of women workers, enhancing their capacity to be full participants in their workplace and society and workplace. It also recognizes them as having the capacity to contribute to and advance within the workplace, and to resist abuse and harassment. It supports and sustains broader economic and social equality as well.*

*As recognized repeatedly by the Supreme Court of Canada, work and how an individual is treated in her employment, is central to her identity, dignity and capacity to engage in society:*

*Work is one of the most fundamental aspects in a person's life, providing the individual with a means of financial support and, as importantly, a contributory role in society. A person's employment is an essential component of his or her sense of identity, self-worth and emotional well-being. Accordingly, the conditions in which a person works are highly significant in shaping the whole compendium of psychological, emotional and physical elements of a person's dignity and self-respect.<sup>34</sup>*

### b. Equal Pay For Work of Equal Value – Remedy for Dynamic #1

The first dynamic - undervaluation of women's work is addressed by equal remuneration for work

of equal value (ERWEV) or “pay equity’ mechanisms which are aimed at removing the systemic discriminatory undervaluation of women’s work and re-valuing it so that it is equal in compensation to comparable men’s work.

This entitlement to pay equity is enshrined for workplaces with 10 or more employees in the *Pay Equity Act*; for all workers in the provisions of Ontario’s *Human Rights Code* which prevent discrimination in the conditions of employment based on sex;<sup>35</sup> and for unionized workers in the non-discrimination provisions of their collective agreement and the *Labour Relations Act*.

The *Pay Equity Act* recognizes pay discrimination is systemic and exists throughout Ontario’s workplaces. The *Act* is a legal remedy for ending such discrimination which requires that men’s and women’s jobs are evaluated in a non-discriminatory way by accurately identifying and valuing the skill, effort, responsibility and working conditions of those jobs and raising women’s pay to that of comparably valued men’s jobs.

Under human rights statutes, employers have a pro-active obligation to identify and rectify discriminatory workplace practices and this includes the duty to eliminate discriminatory pay structures and systems. This prohibition against sex discrimination encompasses the right to discrimination-free wages.<sup>36</sup>

Many collective agreements also include pay equity and anti-discrimination provisions which expressly prohibit discrimination in employment based on sex and other prohibited grounds. Under these agreements, employers, working with the trade union are under a pro-active obligation to eliminate sex discrimination in pay conditions.

### **c. The Right to Employment Equity or Equal Treatment – Remedy for Dynamic #2**

The second discrimination dynamic--eradicating the barriers to accessing higher paid male work is addressed by employment equity mechanisms, such as the Federal *Employment Equity Act*, Ontario’s now repealed 1995 *Employment Equity Act* and the right to equal treatment in employment guaranteed by the *Human Rights Code*. Under the *Code*, like the *Pay Equity Act*, employers must take positive steps to identify and redress discrimination on an ongoing basis, not only when a complaint comes forward: “Employers designing workplace standards *owe an obligation* to be aware of both the differences between individuals, and differences that characterize groups of individuals. *They must build conceptions of equality into workplace standards.*”<sup>37</sup>

This duty to eliminate discrimination according to the Supreme Court of Canada must subject existing practices to critical scrutiny because at “the heart of the equality question” is “the *goal of transformation*” which requires “an examination of the way institutions and relations must be changed in order to make them available, accessible, meaningful and rewarding for the many diverse groups of which our society is composed.”<sup>38</sup>

This means addressing the systemic inequalities women face as a result of their unequal reproductive and care burdens, sexual harassment, and the glass ceiling of prejudice which excludes them from higher paying male dominated work.

**d. Equal Pay for Equal Work – Remedy for Dynamic #3**

The third discrimination dynamic equal pay for equal work is prohibited by Ontario's *Employment Standards Act*. Some women continue to be paid differently even though they do the same work as men.

This is also a factor in the different pay for female-dominated part-time work from full time work. For example, in a new Vector Poll released in September 2008, 72% of those polled say that the law should require that part-time and full-time workers should be paid the same hourly rate when they do the same job. The majority of part-time workers are women. The lower pay rate paid to the mostly women part-time employees is one of the factors leading to the 71 per cent pay equity gap.

**e. International Labour and Human Rights Standards**

All of the domestic rights reviewed above which was considered “quasi-constitutional” rights draw their basis from the international labour and human rights standards which world governments including Canada and Ontario have agreed must be guaranteed and implemented.

Over the past century, the right to be free from pay discrimination has been enshrined in a wide range of binding international instruments. In 1972, ILO Convention 100 Re: Equal Remuneration for Work of Equal Value was ratified by Canada. This Convention is one of the oldest international labour standards with its 1919 inclusion in the founding principles of the International Labour Organization.<sup>39</sup> The 1958 ILO Convention 111 Re: Discrimination in Employment and Occupation, also ratified by Canada. The UN Convention on the Elimination of Discrimination against Women and the Beijing Declaration and Platform for Action also call for gender mainstreaming and proactive measures to end gender-based pay discrimination. More recently, In its 1998 *Declaration of the Fundamental Principles and Rights at Work*, the ILO confirmed pay equity as one of the eight “Fundamental Conventions” which all member states are under a particular duty to achieve.

These instruments have imposed increasingly specific directives for action to be taken by signatory states – including Canada – in order to end this discrimination. In particular the instruments use strong language requiring government and employers to ensure pay equality outcomes in practice and mandating regular reporting to monitor compliance. The principles and obligations that emerge from these international law instruments include the following:

- (a) Achieving equality for women is a matter of urgency and priority to which governments must dedicate themselves “unreservedly”. All necessary measures to

achieve equality must be pursued and the maximum available resources must be devoted towards securing this objective.

- (b) Equal pay for work of equal value and the right to free from employment and occupation discrimination is not a luxury. It is a fundamental labour standard and human right of the highest priority.
- (c) Government has a legal obligation to take “*action*” – it must pro-actively “*take steps*” – to eradicate sex-based pay discrimination. Government must “*initiate positive steps* to close the gender pay gap and diminish differentials in incomes between women and men”. [emphasis added]
- (d) Government has a legal obligation to “*ensure*” equitable equity outcomes. It must “*ensure* the application to all workers of the principle of equal remuneration for men and women workers for work of equal value” and must ensure that women are “*guaranteed* conditions of work not inferior to men”. [emphasis added]
- (e) Government – in both its role as legislator and employer – has a particular obligation to ensure that public authorities and institutions comply with these obligations and to ensure contracts for public services are providing using equitable pay and employment practices. In this respect, government has a particular duty to act as a leader in ending pay discrimination.
- (f) Employers – including the government – have an obligation to take pro-active steps to implement equal pay for work of equal value and to “review, analyse and, where appropriate, reformulate wage structures for female-dominated professions ... with a view to raising their low status and earnings”.
- (g) Government has a legal obligation to ensure that there are effective mechanisms for achieving and enforcing the right to be free from pay discrimination.<sup>40</sup>
- (h) Achieving the right of women to non-discriminatory incomes is interconnected with and necessary to support and sustain all other social, civil and political rights. In particular, this includes securing women’s right to collective bargaining as an important mechanism for eliminating pay discrimination.<sup>41</sup>

**f. Government *Charter* and Human Rights Obligations Re: Pay Discrimination**

Achieving government policy objectives *by means of discriminatory pay practices* is fundamentally inconsistent with the *Charter*.<sup>42</sup> The *Charter*, is intended to actively change how government makes its policy choices and enacts legislation:

*Democratic values and principles under the Charter demand that legislators and the executive*

*take these into account; and if they fail to do so, courts should stand ready to intervene to protect these democratic values as appropriate.*<sup>43</sup>

In areas which do not implicate *Charter* rights, the government is free to make choices based solely on its political priorities. Where policy choices, such as funding of public services, have implications for *Charter* rights, government's range of choices is circumscribed by the *Charter* and its exercise of choice must conform with the *Charter*. When the government enacts economic and fiscal policy, the *Charter* mandates that government recognize the law's implications for equality rights and undertake all necessary measures to safeguard equality.

This analysis is consistent with Canada's international law obligations which require that it commit itself "unreservedly" to achieve equality for women as a matter of "urgent action" and which mandate that government "take steps ... to the maximum of its available resources, with a view to progressively achieving the *full realization*" of equality rights. The "maximum of its available resources" does not mean what is left over after other policies are satisfied. Rather, it requires that in allocating resources a priority be placed on equality rights at the front end.<sup>44</sup>

This approach is also consistent with Canada's domestic human rights law and with Canada's international human rights commitments which mandate it to actively "use gender-impact analyses in the development of macro- and micro-economic and social policies in order to monitor such impacts and restructure policies in cases where harmful impact occurs". The Federal Government, in accordance with its *Beijing* commitments has long accepted that such "gender-based analysis" or "gender mainstreaming" is necessary to fulfil Canada's international law commitments.<sup>45</sup>

When such gender analysis is not used, legislatures often wrongly identify pay equity adjustments as a target for retrenchment because they have failed to recognize and treat these adjustments as the fundamental human rights remedies that they are for present and historical discrimination. Instead, these human rights remedies have been characterized as simple "wage increases". This results in a false comparison in which workers in female-dominated job classes are characterized as getting "wage increases" that others are not. Failure to acknowledge the implications of retrenching on this *Charter* right and human rights remedy contributes to a backlash against workers in female-dominated jobs, thereby compounding their discrimination.

Where a government, acting in its role as employer, fails to provide terms and conditions of work that comply with the *Charter*, employees may sue directly under the *Charter* to protect their *Charter* rights.<sup>46</sup> Similarly where a government as a law maker or in public services and funding agreements perpetuates and sanctions conditions of work that deny equality, this is also a *Charter* violation.<sup>47</sup> This includes providing funding to transfer payment agencies which results in such agencies relying on discriminatory wages to provide the public service.<sup>48</sup>



### **PART III LESSONS LEARNED AFTER 20 YEARS OF THE PAY EQUITY ACT**

#### **a. More than 35 Years of Action and Inaction**

##### **1970's -1987**

Starting early in the 1970's worked started on lobbying the Ontario government to amend Ontario's *Employment Standards Act* provision on equal pay for equal work which resulted in the addition to the law of the phrase "for substantially similar work" which was the first step in making more flexible the similar work law. With the founding of the Ontario Equal Pay Coalition in 1974, the Coalition brought together trade unions, women's and business women's organizations and community organizations to lobby for the implementation of ILO Convention 100 Equal Pay For Work of Equal Value. The Coalition met with a succession of Ontario Ministers of Labour pushing for a strong equal pay for work value law; increases to the minimum wage as a pay equity down payment for the most vulnerable women workers; strong collective bargaining laws to help women bargain pay equity; and implementation of sectoral wages in female-dominated sectors.

#### ***Everyone benefits from ending pay discrimination***

#### ***Women Should not be Expected to carry the fiscal crisis***

*The 1984 Royal Commission on Equality in Employment warned of the hugely negative impact on women of perpetuating discriminatory low wages:*

*The cost of the wage gap to women is staggering. And the sacrifice is not in aid of any demonstrably justifiable social goal. To argue, as some have, that we cannot afford the cost of equal pay to women is to imply that women somehow have a duty to be paid less until other financial priorities are accommodated. This reasoning is specious and it is based on an unacceptable premise that the acceptance of arbitrary distinctions based on gender is a legitimate basis for imposing negative consequences, particularly when the economy is faltering.<sup>49</sup>*

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

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

##### **1988-1995**

As this law was based on the job-to-job method and did not cover women who had no direct comparator in a workplace, the Predominantly Female Workplace study was made part of the *Act*. This Study reported to the Minister of Labour and resulted in the amendments to the *Act* in 1992 which provided for the proportional and proxy comparison method. This provides women in predominantly female workplace with a mechanism to identify their discriminatory pay gap. At the same time, as a result of cases which were finding that the Ontario Government and larger public sector employers were being found to be “employers” under the *Act* and responsible for pay equity, the Ontario Government in the early 1990's agreed to fund all public sector pay equity adjustments. In exchange, the Government included an amendment which prevented the Ontario Government from being found as an employer of another entity in the public sector. As well, after lobbying efforts by many groups, Ontario passed the *Employment Equity Act*.

### **1995 - onwards**

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

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

### **2008 - Widespread Non-Compliance**

The 29% gender pay discrimination gap continues to be a human rights crisis but little action is being taken to solve it. In November, 2006, the Pay Equity Commissioner acknowledged at a Pay Equity Seminar at the Ontario Federation of Labour that there was widespread non-compliance with the

*Pay Equity Act* particularly in the private sector. This had been apparent for many years.

**b. Why is there so much Non-Compliance?**

There are many reasons: These include:

- a. Most of Ontario's workplaces are not covered by the *Act* as they employ 10 employees or less and the downsizing of workplaces is increasing. Both public and private sector employers now employ increasingly fewer "employees" as they seek to transform their employees into independent contractors to avoid legislative employee entitlements, such as pay equity.
- b. Many non-unionized women never received *Pay Equity Act* adjustments in the 1990's when they are required to because their employers ignored their obligations and these women did not have a union to fight for them.
- c. Many new employers since 1988 opened their doors but did not do so with equitable wages as required under the *Act*.
- d. Women's jobs have changed dramatically since 1988 but pay equity plans and employers' compensation practices have not been changed to reflect this and to ensure that pay equity is maintained. Despite the efforts of unions, employers have systematically ignored the duty to maintain pay equity set out in section 7 of the *Act*.
- e. Pay equity adjustments remain owing to hundreds of thousands of women doing publicly funded public service jobs who have either not yet achieved pay equity in the first place or, having initially achieved pay equity, have since seen the pay gap wide again between them and comparable men's work.
- f. The Government sent a signal in 1995 that pay equity entitlements are not important by repealing the proxy provisions of the *Act*. This signal was reinforced by cutting pay equity funding, slashing the budget of the Pay Equity Commission and Hearings Tribunal and closing the Pay Equity Legal Clinic. Many people thought the whole pay equity law was no longer in force.
- g. The Government in power from 1995 on failed to increase the minimum wage for many years. Currently, in Ontario onward, there is a Human Rights Legal Support Centre, but no pay equity clinic. Understandably, complaints at the Pay Equity Commission decreased. The current Ontario government failed to reverse these trends since it came to power. Women must rely upon a union to be the primary enforcement mechanism for any real hope of achieving an end to pay

discrimination.

- h. Monitoring by the Pay Equity Commission, although one of its key powers, didn't start until a number of years ago and current monitoring is woefully inadequate, targeted only to one small geographic area and one sector, with little budget to resource it.
- i. Finally, while unions continued to work on addressing the pay gap from a number of perspectives, governments and employers failed not only to implement the *Pay Equity Act* provisions but also failed to address create new solutions to address the many areas of women's work which fall outside the effective scope of the *Act*.

**c. What do those with Responsibility for Ending Pay Discrimination Have to Say?**

In October 2008, the Equal Pay Coalition wrote to the major bodies responsible for pay equity compliance in Ontario – the Premier, all of Ontario's Ministers, the Pay Equity Commission, key employer organizations, including the Ontario Chamber of Commerce and the Ontario Federation of Labour. The Coalition expressed its concern about the large gender pay gap and asked for an overview of what each body had done to close the gender pay gap and what their future plans are. In other words, what steps were going to be taken to build a culture of pay equity compliance? The Coalition received only three responses: from the Pay Equity Commission, the Minister of Labour and the Ontario Federation of Labour.

**1) The Minister of Labour**

Minister of Labour Peter Fonseca's letter focussed on Ontario's *Pay Equity Act* being one of the most progressive statutes in the world. Minister Fonseca stated that the Ontario government will:

- work with business and labour in any discussions on pay equity;
- rely on the Pay Equity Office (PEO) to continue to provide services to help employers understand and comply with the *Pay Equity Act*;
- rely on the Pay Equity Office to continue to investigate complaints from employees and unions about possible contraventions of the *Act*.
- proactively monitor workplaces. In 2007-2008, the PEO monitored approximately 600 workplaces in retail, hotel and motel sectors in Hamilton. In 2008-2009, the PEO is monitoring 1,000 workplaces in the same sector in Peel and Durham regions;
- as an employer, the Government human resource plan ensures that hiring, promotional processes and access to training and development activities are free of systemic barriers;
- as an employer, it continues to work with its bargaining agents on pay equity maintenance to revise job descriptions and pay adjustments by way of collective bargaining.

## Comments on Response:

The Ontario government's response to the pay equity human rights crisis reflects its lack of understanding of the nature of the human rights crisis and the need for systemic, economy-wide solutions. Minister Peter Fonseca failed to answer the following specific questions asked by the Coalition letter:

- how the government transfer payment funding policies would change to provide sufficient monies to ensure pay equity compliance?
- how the Ministry would improve the pay equity enforcement machinery?
- how Government procurement policies are monitored, audited and enforced to ensure pay equity compliance by the receiving company? If not, compliant, are the companies then excluded from access to public contracts?
- how the Ministry policy development incorporates a pay equity analysis which ensures that such policies contribute to closing the gap and or do nothing to widen the gap?

The Minister did not provide any information on how a culture of pay equity compliance was built into the Ontario government. To this day, the Coalition does not know how pay equity compliance is monitored and evaluated by the individual Ministries within the government of Ontario. The Minister relied on the work of the Commission.

## 2) The Pay Equity Commission

The Pay Equity Commission responded to the Coalition letter by first focussing on its limited budget to achieve its mandate. It noted the Commission operates with 32 full-time employees in three units: Education, Review Services and Administration and policy. 90% of its budget is dedicated to salary and benefits. The remaining 10% represents all other operational expenses. The Education Unit offers seminars including "customized" training for daycares, libraries and CCACs as well as for some unions. It has developed a wide array of education materials and has been piloting a Small Business Tool Kit to assist employers in meeting their obligations under the *Act*. It states that the Review Services Unit now proactively monitors workplaces and has made a commitment to increase the number of workplaces monitored in 2008-2009. Review services is collecting data from the monitoring campaign to assess levels of compliance and what role pay equity can play to assist women in these sectors.

The Commission states that the *Act* is premised on the process of pay equity being self-managed and sets out a framework for compensation practices to ensure that job classes are valued in a gender-neutral way. The Commission states it is looking to the November, 2008 Pay Equity Conference to address solutions.

### **Comments on Response:**

The Pay Equity Commission's response wrongly interprets the *Pay Equity Act* as emphasizing a self-monitoring process. (See section above on Pay Equity as Fundamental Human Right) The Act provides the Pay Equity Office with strong enforcement and monitoring powers precisely because self-management does not work. It is a quasi-constitutional law. For many years, the Commission did not act on its powers to monitor and took no leadership to do research and study on new ways to end pay discrimination in the changing circumstances of Ontario's globalizing economy.

There are approximately 545,000 workplaces in Ontario. With combined effect of widespread non-compliance by employers and inadequate funding by the Ontario government means that the Commission is limited in its enforcement and monitoring mandate. Self-monitoring, in effect, means that employer's are left to create pay systems without any check that they are compliant with pay equity principles.

The Ontario Pay Equity Commission - Pay Equity Office and the Pay Equity Tribunal have had their funding and staff substantially stripped and have been unable to effectively carry out their difficult and extensive enforcement mandate. The only entity to point out this defunding has been the Equal Pay Coalition.

In 1992-3, under the New Democratic Party Government, the Pay Equity Commission and Tribunal employed and appointed 86 people and relied upon 28 review officers for enforcement, with a budget of only \$6.8 million dollars. However, even this limited budget was cut by over 46 per cent by the Progressive Conservative Government when it came to power in 1995. These cutbacks also eliminated funding for the Pay Equity Legal Clinic which assisted non-unionized women to enforce their pay equity rights.

The cutbacks continued when the Liberal Government came to power in 2003, with the Commission and Tribunal budgets being reduced a further 20 per cent since that time. By 2006, their combined budgets had fallen to just \$3.4 million – one half of the 1992-93 budget. Now, there are only 32 employees, 16 Review officers to cover the entire province, no regional offices, no research officer, and no library.

### **3) The Ontario Federation of Labour**

The Ontario Federation of Labour ("OFL") responded to the Equal Pay Coalition by reaffirming its support for the work of the Coalition (the OFL is a member and financial supporter of the Coalition), and its support of other community partners working on pay equity advocacy, including the Ontario Coalition for Better Child Care, the Ontario Association of Interval and Transitional Houses, the Ontario Coalition for Social Justice, and the 24 in 5 Anti-Poverty Coalition. Wayne Samuelson, President of the Ontario Federation of Labour reported the following Federation actions on pay equity :

- The OFL's 2008 convention highlighted pay equity through convention resolutions and policy papers.
- Provided educational materials to affiliated unions on pay equity maintenance.
- Co-launched a campaign on "It's Time for Public Child Care" with a focus on closing the gender gap. Other campaigns on raising the minimum wage, ending violence against women and ending poverty have a similar focus,
- Ongoing briefings throughout the year to heads of unions on pay equity issues.

**Comments on response:**

Unions have faced a number of challenges in supporting pay equity in the workplace. Some unionized workforces are not pay equity compliant, and many more have failed to maintain their pay equity obligations. Unions have a joint obligation with employers to maintain pay equity by taking the necessary steps to ensure that any identified gap in compensation between job classes is not allowed to widen. Unions, along with employers, must monitor the workplace for any changes which would affect the validity of the pay equity plan in place.

## **PART IV      FRAMEWORK FOR ACTION – THE WAY FORWARD**

### **a.      Rethinking Compliance Frameworks – Immediate and Ongoing Measures**

Many women work in areas which require systemic pay equality solutions. The *Pay Equity Act* – while a critical first step – will not alone end the pay discrimination gap. However, without effective enforcement of the *Act*, the gap is sure to grow and Ontario’s economy is bound to weaken rather than strengthen.

Moving forward to close the pay gap requires all those with human rights responsibilities to use a systemic human rights-based approach. Ontario has lost its focus on the human rights nature of pay equity. This needs to be restored. A human rights-based approach requires all those with responsibilities to end pay discrimination to mainstream pay equality promoting measures into all their actions. This puts the onus on public and private sector employers, including the Government, to show what steps they have taken and will take to ensure that women’s pay is cleansed of discrimination and remains discrimination-free. This is a significant policy shift in Ontario but the process needs to commence now.

The Equal Pay Coalition calls upon the Ontario government working with employers and trade unions to take both immediate policy shifts and to institute ongoing gender mainstreaming measures to close the gender pay gap.

All these measures should be included in a province-wide Ontario Closing the Gender Pay Gap Plan. This Plan should include targets for closing the pay gap over a realistic time frame and strategies for meeting those targets. The Plan should be coordinated with the Province’s Poverty Reduction Plan.

The Equal Pay Coalition’s Plan involves two steps. The immediate policy shifts outlined below will be the first steps of that Plan. They will signal to the people of Ontario that the government is shifting the direction of the past decade and will concretely support an end to pay discrimination. Mainstreaming non-discriminatory pay into Ontario’s economic life will be the second step: a shift all future Ontario’s laws, policies and practices so that closing the gender pay gap becomes enshrined in public and workplace policies and practices. It will also ensure that women’s pay equity rights are not a victim of the fiscal crisis but rather a measure to protect Ontario’s disadvantaged and to leverage the value of the contribution of women’s work as Ontario rebuilds its economy.

### **b.      Need for a Human Rights- Based Gender Mainstreaming Approach**

There is a world wide problem that women are unable to realize the human rights which the world agrees are essential. Ontario is part of this problem. This is because either there is no law in place to implement women’s rights; a law exists but they are not covered or the law and its enforcement



are not adequate to realize the right; or finally the right can't be realized without simultaneous work on securing other interconnecting rights, eg. enhancing collective bargaining access for women workers.

As noted above, United Nations and ILO Conventions ratified by Canada and agreed to by Ontario require equal pay for work of equal value and the right to non-discrimination in access to work income. The Convention on the Elimination of Discrimination Against Women (CEDAW) and the 1995 Beijing Declaration and Platform for Action and Beijing +10 Outcome documents require government to implement a gender mainstreaming or human rights based approach to public policy. This requires a public policy process which recognizes that securing gender equality requires a multi-faceted, systemic approach. This must address the systemic discrimination women face in all areas of their lives. By using a "gender-sensitive analysis" in all governance areas, it focuses on identifying gender differences, constraints and equality promoting measures.

Employers, through their workplace human rights duties have similar obligations.

Worldwide, it is recognized that such a human rights based approach is critical to social change and sustainable economic development.

This means that the *Pay Equity Act* is only the starting point. While steps must be taken to enforce it, all the actors need to collaborate to identify more precisely the diverse pay circumstances of Ontario women across the labour market continuum. Once identified, working with the empowered voice of women and their representatives, they need to design pay equality promoting strategies which will deliver equitable pay to women in all the diverse circumstances in which they work along that continuum. Only when this is done, will significant progress be made in closing the gender pay gap in Ontario.

An example of such a strategy is the ILO project in Portugal where the ILO worked with restaurant and beverage sector industry employer organizations and unions to develop a sector-wide pay equity job evaluation process.

### **c. The Fiscal Crisis is not an excuse to ignore the human rights crisis**

As the Ontario Government learned when its 1995 repeal of the proxy pay equity provisions was declared unconstitutional, women's pay equity rights are not "discretionary" and to be tossed overboard at the first sign of economic difficulties.

The pay gap crisis will continue to erode Ontario's economy and impair its future prosperity unless pro-active interventionist measures are taken to bring gender equality to the pay systems of Ontario's labour market.

The current financial crisis provides even stronger reasons for making the issue a priority given that

Ontario's women workers, many of whom are low-paid and poor - are struggling to cope in this volatile economy. Scrambling every month to make ends meet, losing almost a quarter for every dollar a man is paid is devastating to a family budget.

As noted above, over a lifetime, this pay gap adds up to astonishing financial losses for women—ranging between \$700,000 and \$2 million depending on the level of education the woman has completed.

Disadvantaged groups are repeatedly faced with the argument that redressing equality is too expensive.

This economic argument fails to acknowledge that the cost of achieving equality – the cost of redress – is proportional to and reflective of the extent of the discrimination experienced.

When governments use the cost of redress this effectively penalizes the most vulnerable of them doubly. They have already suffered long-term discrimination which has resulted in the quantified pay discrimination gap.

The magnitude of the government's delinquency – the size of this equality debt – is then relied upon as a reason not to pay redress.

***Everyone benefits from ending pay discrimination.***

Women can't carry the fiscal crisis

The 1984 Royal Commission on Equality in Employment warned of the hugely negative impact on women of perpetuating discriminatory low wages:

*The cost of the wage gap to women is staggering. And the sacrifice is not in aid of any demonstrably justifiable social goal. To argue, as some have, that we cannot afford the cost of equal pay to women is to imply that women somehow have a duty to be paid less until other financial priorities are accommodated. This reasoning is specious and it is based on an unacceptable premise that the acceptance of arbitrary distinctions based on gender is a legitimate basis for imposing negative consequences, particularly when the economy is faltering.<sup>50</sup>*

## Step 1

## FRAMEWORK FOR ACTION: IMMEDIATE POLICY SHIFTS

The Equal Pay Coalition with its over one million members and over 8000 Ontario women who signed postcards, have called on the Ontario Government to take the following immediate steps during the 20<sup>th</sup> Anniversary to start to redress the widespread pay equity non-compliance in Ontario.

### a. Public Sector Funding

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

Government and Ministry policies do not provide sufficient monies to ensure that the transfer payment agencies who carry out vital Government services are able to pay the workers who provide such services pay equity compliant pay. This is a problem not only for those predominantly female agencies which used the proxy comparison method (and were the subject of the *SEIU et. al* and *CUPE et.al*. Charter challenges) but also other larger broader public sector bodies such as municipalities, hospitals and universities. These policies must ensure that funding is provided which allows such transfer payment agencies to make the necessary pay equity adjustments required under the *Pay Equity Act* and this includes not only achieving pay equity but also maintaining it. Currently there is widespread non-compliance in transfer payment agencies as Ministries have failed to provide the necessary designated pay equity funding.

More than 100,000 women work in broader public sector jobs like child care, battered women's shelters and other key community service agencies, which because they are traditionally female jobs have some of the largest pay gaps in Ontario and had to use the proxy comparison method to identify their pay gaps. The Government has already identified the discriminatory pay gaps in these publicly funded jobs and in the settlement of the above-noted 2003 *Charter* challenge provided funding from 2003-2006 to close those gaps. But with the end of the Charter settlement payments in 2006, the Liberal Government has failed to continue dedicated funding for pay equity adjustments that remain owing to close the identified gaps which on average will need to be paid up to 2011, based on annual payments of 1% of payroll. These women are far from "achieving" pay equity, and at the same time are seeing themselves fall far behind their comparators in the public sector.

Based on a Government chart, produced in *Charter* litigation, as of this year, the Ontario government has failed to deliver \$78.1 million owing to these hard working women for delivering public services in 2006 and 2007. A further \$467.9 million dollars is owed from 2008-2011. The Government is now open to a further Charter challenge as result of this failure to fund.

With a \$2.3 billion Government surplus in 2007, there were substantial monies available to pursue important public policy objectives and yet this money was not used to close the public sector pay gap. That surplus had been created in part by not paying women delivering public services the money they were owed to close discriminatory pay gaps. Even with the current fiscal difficulties, this money must be must now be factored into government budgets, understood as “human rights remedies” and not normal pay increases - and then paid out.

The Government needs to set aside a specialized fund to be used to flow the necessary monies to pay for the pay equity adjustments owing to public sector workers carrying out important public services. Without special funding and separate payments, the right of workers to other collective bargaining increases will be compromised.

As noted above, as a result of the arguments put forward in the *CUPE et al v. Attorney-General(Ont)*, the failure of the Government to fund such adjustments is a violation of section 15 of the *Charter*.

#### **b. Increasing the Minimum Wage**

Minimum wage laws are a key pay equity measure. Women account for two-thirds of the minimum wage earners.<sup>51</sup> Aboriginal women, immigrant and refugee women, women with disabilities and racialized women are even more likely to be working at the minimum wage. Without the benefit of a union and lacking a properly funded *Pay Equity Act* enforcement machinery to help them, their employers have ignored their obligations to make sure their women’s work is paid equal to men’s work of comparable value. Low minimum wage policies ensure that women and their children remain poor. It is estimated that a single person working full-time needs an hourly wage of \$10.00 per hour just in order to reach the poverty line.

Increasing the minimum wage will have a significant impact on closing the gender pay and reducing women’s poverty. The Coalition asks that the Ontario government bring in emergency legislation to increase the minimum wage to \$10 per hour effective immediately, not in 2010 as promised, as a pay equity down payment. With the current fiscal crisis, women need this money now. The minimum wage must keep up with inflation and keep on increasing until it is at the level of a living wage.

#### **c. Restoration of Commission and Tribunal Funding and Pay Equity Legal Clinic**

There is a need to restore the Commission and Tribunal funding so its is sufficient to carry out their important tasks. In 1992-3, under the New Democratic Party Government, the Pay Equity Commission and Tribunal employed and appointed 86 people and relied upon 28 review officers for enforcement, with a budget of only \$6.8 million dollars. As just a small example, the Pay Equity Commission has recently stated that budgetary reasons restricted it from having a large public conference. As a starting point, the Coalition is calling for the Commission and the Tribunal to be

restored to at least the 1992-93 funding level of \$6.8 million.

Separate funding is required so that the Pay Equity Legal Clinic can be reopened again and start to assist vulnerable women workers to make pay equity complaints under the *Act*.

This funding ended in 1995. Now claimants under the *Human Rights Code* have access to the Human Rights Legal Support Centre but those claiming their rights under the *Pay Equity Act* are denied support. As well, while additional money was provided to the Human Rights Code enforcement machinery recently, it is widely acknowledged this money is quite inadequate to meet the demands of the new Bill 107 system. The human rights system is also a part of the machinery to enforce non-discrimination in pay.

As pay equity compliance planning progresses, there will be a need for further funding to ensure vigorous *Act* enforcement and the closing of Ontario's gender pay gap. Substantial province-wide monitoring in the many diverse sectors of women's work is required. Substantial research must be funded to identify and develop strategies to close the gap. Without constant proactive vigilance and enforcement of Ontario's *Pay Equity Act* and the development of new measures which recognize and adapt to changing patterns of underpayment, any work to keep the pay equity gains that were made in the early 1990's are maintained.

## **Step 2      FRAMEWORK FOR ACTION: CLOSING THE GENDER PAY GAP PLAN**

With an understanding of the systemic nature of pay discrimination, comes the understanding that there is no single path to closing Ontario's gender pay gap. This leads to step 2 of Ontario's Closing the Gender Pay Gap Plan. The development of integrated, multi-level, multi-faceted and multi-tracked strategies to ensure non-discriminatory pay becomes a central feature of not only overall labour market governance but also of actual workplace practices. This plan needs to be developed with the collaboration of legislators, public policy makers, employers and trade unions and civil society, such as the Coalition.

The plan includes the specific steps which governments, employers, trade unions, working together with other civil society actors and gender equality experts must take to carry out their different but intersecting equality roles.

Developing this plan should take into account the following considerations using the human -rights based approach and steps:

### **a.      Central focus – Enable Women to Realize their Human Rights**

This focus ensures the required priority is given to the actions necessary to carry out these legal obligations. Ensuring equitable pay outcomes must be a priority in research, law reform, public education and prevention activities and in workplace changes. Use can be made of current

resources, knowledge and experience to make a difference now while working on transforming research and labour market and workplace governance mechanisms.

**b. Recognize the Equality Role of the Government**

Securing Ontario women’s right to pay equity is not an option but a legal obligation. International standards supported by relevant national and local laws require it. The state, is the guardian of human rights and responsible for (1) enacting pay equality promoting mechanisms; and (2) resourcing those mechanisms to the degree practical. The above-noted TD Report noted that “legislation and landmark legal decisions are necessary to promote gender wage equality.”

Governments have a mandatory equality role to ensure the rights of Ontario women to non-discriminatory pay. This must be carried out by directions from the Premier and Ministers to ensure that all social and economic policies in Ontario are vetted for their impact - negative or positive - on the gender pay gap.

**c. Need for Planned, Integrated and Multi-Faceted Approach**

Systemic discrimination against women calls for systemic and pro-active planning and remedies. There is a need to break women free from the web of socio-economic and political inequalities women face in their home, community and other workplaces, all of which contribute to and sustain the gender pay gap. This requires a combination of transformative and integrated interventions. Depending on the particular work and enterprise, local or provincial context, there is need to address specific constraints and prejudices that interact in complex and specific ways. This includes taking into account impacts arising from women’s work environment, work-family balance; and the structural conditions impacting on women’s work.

As many different mechanisms are necessary, the *Pay Equity Act* itself cannot be the only measure. There are many other measures such as the *Human Rights Code*, collective agreement protections, procurement, minimum wage or sectoral pay policies.

**d. Ensure pro-active, preventative and and results-based approach**

Finding and implementing solutions for women’s pay gap barriers should emphasize prevention and combatting barriers before they are put in place. Employers and Government should take pro-active measures without waiting for complaints to carry out their human rights obligations. A pay equity compliant culture should be promoted as a key economic and business development measure.

**e. Building Equality into Government Public Policies**

Public policies often use a gender blind approach which assumes men and women workers are the

same and fails to consider women's often different and unequal circumstances. This leaves women to work in conditions where their pay is less because they are women. It also violates the gender aware or sensitive approach mandated by international standards.

Government-wide and Ministry policy development should have their own planning for closing Ontario's gender pay gap which would then be included in the Province's Closing the Gender Pay Gap Plan. This planning must start from an understanding of the nature of the human rights crisis women face and the need for both systemic, economy-wide and local workplace solutions. To this day, the Coalition does not know how pay equity compliance is monitored and evaluated by the individual Ministries within the government of Ontario. Cabinet policy submissions should include a sign off to ensure that proposed laws and policies have been reviewed for their contribution to closing the gender pay gap and to ensure that they do nothing to widen it.

In public policy areas where women are predominately affected, an analysis of the new policy requires an assessment of how the new policy will remedy women's pay discrimination. For example, women are the main recipients of minimum wage in Ontario's labour market. Any setting of the minimum wage should incorporate an analysis of the positive impact a minimum wage increase will have towards ending pay discrimination. Another example of a public policy which contributes to closing the gender pay gap are government procurement policies where suppliers provide proof that they have non-discriminatory pay policies. Suppliers who cannot provide such proof should be excluded from government contracts.

#### **f. Mapping Women's Work and its Pay Constraints**

A gender mainstreaming approach requires mapping the structures, conditions and socio-economic influences on women's diverse paid and unpaid work. This helps to shine a gender-sensitive light on the information needed to properly analyze the conditions which contribute to Ontario's gender pay gap.

There is need for sex-disaggregated data about the conditions of women's work. With the discriminatory conditions which fuel women's unequal pay and income co-existing and sustaining each other, it is essential to identify and untangle these interacting barriers and plan and implement strategies to free women's work from such conditions and realize substantive progress.

Women's work is often invisible. Labour market research and data collection often ignores gender differences with research and data collection focussing too often on men's work.

There is a need to engage in a systematic identification of the diverse forms of women's work and its pay and conditions in order to identify the immediate, underlying and structural causes of the non-realization of women's rights in this area. This includes assessing the capacity of women, their representatives, if any, employers and other institutions to realize those rights. Given the sex segregation of the economy, gender mainstreaming requires occupation and sector specific

analysis of the pay gaps as they will vary by occupation and sector, by differences, by factors such as race and disability with differences from the public to the private sector, from precarious to non-precarious employment. Data disaggregated by sex, race and other equality seeking groups and human rights sensitive knowledge, research, monitoring and reporting capacity are key parts of a pay equality system.<sup>52</sup>

**g. Addressing the Diversity of Women and their Disadvantages**

The degree of disadvantage women suffer from also shapes the forms of unequal pay and conditions of work they experience. As noted in this Report, women suffering from multiple forms of discrimination, - for example, immigrants, Indigenous women, persons with disabilities, lesbians, ethnic minorities or poor women - have greater pay gaps and more inferior working conditions and predominate in the lowest paid jobs in the labour market continuum. For women with low social status, and fewer or no options for assistance, a broader context of disadvantage underlies each of their often different experiences. Bringing non-discriminatory pay to these women often requires additional and different strategies which recognize that part of their pay gap can be attributed to factors such as racism and ableism. For example, the Federal Task Force Report on Pay Equity called for measures to address race-based pay discrimination.

***Everyone benefits from ending pay discrimination***

***Good for Workers of Colour and Aboriginal Women***

*In 1999, workers of colour earned 16.3% less than all other workers: for working women of colour this gap was almost 12%. Women of colour are in very precarious jobs with average earnings of less than \$15,000. One in three people of colour live in poverty compared to the overall poverty rate of one in five. 38% of women of colour are among the working poor.<sup>53</sup> The proportion of women of colour who earn more than \$80,000 is too statistically insignificant to report.*

**h. Ensure women’s empowerment as both a strategy and goal**

Women must be enabled to fully participate in shaping and building an Ontario culture where non-discriminatory pay becomes the norm.

**I. Promotion of Capacity Building and Training**

All those involved in this area, including women, legislators, public policy makers, employers and trade unions need information and assistance to build their capacity to participate and implement solutions. This information needs to be informed by gender sensitive research and communications



**j. Reconciling Work and Women’s Unequal Family/Home Life**

The pay gap will not be fully addressed without addressing women’s unequal care responsibilities. Women remain primarily responsible for unpaid housework and caring for children, the sick and elderly. This creates significant stress in reconciling their unpaid and paid work responsibilities and increasing their work hours beyond that of men. Balancing the demands of paid work and unpaid care work often requires women to take low or non-paying “flexible” jobs with discriminatory pay and poor working conditions.

Women’s double burden and time poverty are further exacerbated where they take on added care obligations as states roll back, privatize and eliminate public services, as the population ages, as poverty increases is poverty increasing.

***Everyone benefits from ending pay discrimination***

***Good for Children***

*Lack of affordable, reliable child care limits women’s income earning ability. Thirty-eight per cent of women age 25-44 said they worked part-time because of family care responsibilities, with many women single parents.*

**k. Developing Mechanisms for Precarious Work**

The precarious structures and conditions of women’s work increase the likelihood women will be paid unequally and that they will not have effective access to enforcement of their pay equity rights. Women are concentrated in sectors with the most unfavourable working conditions, including high rates of violence in health, social services and domestic work. These factors are undermining the ability of state actors and social partners to deliver on the promises in international labour and human rights standards. The reality is that many aspects of precarious work are "invisible to those that plan".

**l. Enhancing complementary role of other rights**

Women’s rights in other areas as well as the *Pay Equity Act* play a complementary role in assisting with ending pay discrimination. As the Coalition noted above, an immediate increase in the minimum wage to a living wage is one example of a basic and fundamental right. Equally important are Ontario’s collective bargaining laws. These need to be amended to facilitate the organizing of women workers into unions. The fewer women in unions and pay discrimination will continue.

**m. Focus also on Employment Equity Measures**

As the federal pro-active *Employment Equity Act* applies only to the federal sector and to those

provincially-regulated employers who are part of the Federal Contractors Program, the majority of Canadian employees are not covered by pro-active employment equity laws. Yet, the equality litigation pursued under general human rights laws does create requirements and guidelines for employers to follow in establishing employment equity in their workplaces. Many of the systemic remedies ordered by Human Rights Tribunals create this obligation as well. Direct measures by the government of Ontario are required to ensure employers are living up to these human rights obligations.

**n. Ensure Effective Complaint Mechanisms to enforce the Right**

Enforcement mechanisms must be effective, accessible and gender sensitive. They need to be tailored to address women's justice needs along the continuum of labour market work from less precarious to more precarious work. This promotes accountability and make clear that the Government takes seriously its obligations to assist women to realize their rights where employers have not carried out their obligations to cleanse pay of discrimination. With women's work conditions/ structures constantly changing, there is need for ongoing review to evaluate and adapt equality mechanisms.

There is also a need to be more creative about enforcement and focus on measures which don't place burdens on vulnerable workers.

For example, Ministries enter into thousands of contracts a year to obtain services and products and yet they do not ensure that such services and products are provided to the Government by companies which have pay equity compliant policies. This should be a minimum requirement in any public procurement policy with Government-wide measures to ensure that such policies are monitored, audited and enforced. Companies who fail to comply should be excluded from access to public contracts.

**o. Role of Employers and Business**

Recognizing that women work for businesses in a number of different relationships, there is a need for employers to pro-actively remove systemic gender discrimination from all the pay systems which drive the undervaluation of that work, including the terms with subcontracted firms. Within a framework of mandatory pay equity laws and policies, and working with women's representatives, business and enterprises can also take the lead in building a culture of pay equity compliance through establishing pay equity compliance business practices. This includes incorporating pay equity compliance in corporate social responsibility (CSR) mechanisms.

**p. Role of Trade Unions and other Women's Voice Organizations**

Women's voice through trade union unions or women's organizations must be at the centre of

identifying and implementing appropriate pay equity mechanisms. Given women's current income and power deficits, they often do not have the time, resources or information to assert their rights. Measures are necessary to enable women to exercise their collective bargaining and other labour rights and the right for their entrepreneurial voices to be heard and acted upon in economic-decision making. The World Bank has recently underlined this role stating that "the collective organization of workers is one of the main channels for securing better and more equitable working conditions".

As recognized repeatedly by the Supreme Court of Canada, work and how an individual is treated in her employment, is central to her identity, dignity and capacity to engage in society:

*Work is one of the most fundamental aspects in a person's life, providing the individual with a means of financial support and, as importantly, a contributory role in society. A person's employment is an essential component of his or her sense of identity, self-worth and emotional well-being. Accordingly, the conditions in which a person works are highly significant in shaping the whole compendium of psychological, emotional and physical elements of a person's dignity and self-respect.*<sup>54</sup>

## **CONCLUSION – TOWARDS SUSTAINABLE AND EQUITABLE PAY PRACTICES**

Systemic pay discrimination requires systemic solutions. The Framework for Action is a systemic solution.

Securing equitable pay practices for women involves changing the way the business of government and work is carried out.

Employers and government need to deliver more equitable, safe and healthy incomes for women at all points of the labour market continuum.

Bringing an end to systemic pay discrimination requires research, collaboration, action and coordination between decision makers, policy makers, community organizations, businesses, trade unions and women's organizations.

While some progress has been made since 1988, there remains an unacceptable pay gap with insufficient resources and a lack of political focus.

The Coalition recognizes that there will be enormous challenges. The Framework for Action will create substantial development and economic opportunities. The Framework for Action will shape the broader dialogue in creating decent work for all.



## THE EQUAL PAY COALITION LIST OF MEMBER ORGANIZATIONS

The Equal Pay Coalition was formed in 1976 as a coalition of organizations to seek the implementation of equal pay for work of equal value both through legislation and collective bargaining. The Coalition has over 39 constituent and partner groups which represent Ontario women and men who support equal pay for work of equal value. Some of our member groups include:

The Ontario Federation of Labour, <http://www.ofl.ca/>  
The YWCA of Metropolitan Toronto, <https://www.ywcatoronto.org/>  
The Ontario Public Service Employees Union, <http://www.opseu.org/>  
The Canadian Union of Public Employees, <http://cupe.ca/>  
The Business & Professional Women's Clubs of Ontario, <http://www.bpwontario.org/>  
The Business And Professional Women of Ontario (Sudbury), <http://www.bpwsudbury.com/>  
Service Employees International Union, <http://www.seiu.ca/>  
Service Employees International Union, Local 1, [www.seiulocal1.org](http://www.seiulocal1.org)  
Ontario Coalition For Better Child Care, <http://www.childcareontario.org/>  
Times Change, <http://www.timeschange.org/>  
Ontario Coalition for Social Justice, <http://www.ocsj.ca>  
International Association Of Machinists And Aerospace Workers, <http://www.iamaw.ca/>  
Public Service Alliance Of Canada, <http://www.pvac.com/home-e.shtml>  
United Food And Commercial Workers International Union, <http://www.ufcw.ca/>  
United Steelworkers of America, District 6,  
[http://steelworkers-metallco.ca/program/content/overview\\_sub.php?modules\\_ID=386&modules2\\_ID=384](http://steelworkers-metallco.ca/program/content/overview_sub.php?modules_ID=386&modules2_ID=384)  
United Steelworkers of America, Local 1998, <http://www.uswa1998.ca/>  
National Automobile, Aerospace, Transportation and General Workers of Canada (CAW-Canada) <http://www.caw.ca/>  
Ontario English Catholic Teachers Association, <http://www.oecta.on.ca/>  
York University Staff Association, <http://www.yusapuy.org/>  
Elementary Teachers Federation of Ontario, <http://www.etfo.ca/Pages/default.aspx>  
Ontario Secondary School Teachers' Federation, <http://www.osstf.on.ca/>  
Communications, Energy & Paperworkers of Canada (CEP), [http://www.cep.ca/index\\_e.html](http://www.cep.ca/index_e.html)  
CEP Local 87-M, Southern Ontario Newspaper Guild, <http://www.song.on.ca/>  
Ontario Council of the Canadian Federation of University Women, <http://www.cfuwontcouncil.ca/>  
Community Social Planning Council of Toronto, <http://www.socialplanningtoronto.org/Index3.htm>  
Chinese Canadian National Council (Toronto chapter), <http://www.ccncutoronto.ca/>  
Union of Needletrades Industrial & Textile Employees, <http://www.unitehere.ca/>

Office & Professional Employees International Union, <http://copesepb.ca/e/>  
United Food and Commercial Workers, Local 1000A, <http://www.ufcw1000a.org/index.asp?pid=38>  
International Alliance Theatrical Stage Employees (IATSE), <http://www.iatse-intl.org/home.html>  
Income Security Advocacy Centre, [www.incomesecurity.org](http://www.incomesecurity.org)  
Ontario Association of Interval and Transition Houses (OAITH), <http://www.oaith.ca>  
Ontario Municipal Employees' Committee, Library Workers' Committee  
[http://cupe.on.ca/doc.php?subject\\_id=23](http://cupe.on.ca/doc.php?subject_id=23) =en  
Confederation of Ontario University Staff Associations & Unions, <http://www.cousa.on.ca/>

## KEY REFERENCES

Cornish, Mary, "Much Work to be Done on Pay Equity, Canadian Human Resources Reporter, February 25, 2008

Cornish, Mary and Fay Faraday, "Ontario's Gender Gap Cheats Women Workers", Toronto Star, September 17, 2008

Cornish, Mary, "Securing Pay Equity for Women's Work - Everyone Benefits - The International Experience", paper prepared for the ILO for the ILO International Seminar on Equal Pay For Work of Equal Value, Santiago, Chile, August 25, 2008.

Cornish, Mary, "Putting Fairness Back on Women's Pay, The Case for Pay Equity in Ontario, Canadian Centre for Policy Alternatives, March, 2008.

Canadian Labour Congress, Report on Women in the Workforce, 2008.

Cornish, Mary, "Securing Pay Equity for Women's Work - Everyone Benefits - The International Experience", paper prepared for the ILO for the ILO International Seminar on Equal Pay For Work of Equal Value, Santiago, Chile, August 25, 2008.

Cornish, Mary, "Closing the Global Gender Pay Gap: Securing Justice for Women's Work", Comparative Labor Law & Policy Journal, Vol.28, No. 2, Winter, 2007, 219-249,

Cornish, Mary, Elizabeth Shilton and Fay Faraday, "Canada's International and Domestic Human Rights Obligations to Ensure Pay Equity - Obligations to Design an Effective, Enforceable and Proactive Federal Pay Equity Law" - co-authored with Fay Faraday and Elizabeth Shilton. Research Paper prepared for the Federal Pay Equity Review Task Force, Ottawa, Ontario.

Cornish, Mary and Fay Faraday, "Linking International and Domestic Equality Rights: Using Global Gender Standards to Further Canadian Women's Economic Equality". presented to the Canadian Bar Association Annual Legal Conference, Vancouver, British Columbia, August, 2005.

Cornish, Mary and Fay Faraday, "Litigating Pay and Employment Equity: Strategic Uses and Limits", presented to the Pay and Employment Equity for Women International Conference convened by the New Zealand National Advisory Council on the Employment of Women, Wellington, New Zealand, June 28-30, 2004.

Cornish, Mary and Fay Faraday, "Achieving Pay and Employment Equity: for Women: Human Rights and Business/Development Imperatives" - co-authored with Fay Faraday and presented to the Pay and Employment Equity for Women International Conference convened by the New Zealand National Advisory Council on the Employment of Women, Wellington, New Zealand, June 28-

30,2004.

Armstrong, Pat, Mary Cornish and Elizabeth Millar, "Pay Equity: Complexity and Contradiction in Legal Rights and Social Processes", Chapter 7, Changing Canada: Political Economy As Transformation. Health in the Workplace". Montreal, McGill-Queen's University Press, 2003. Edited by Wallace Clement and Leah F. Vosko.

Cornish, Mary, Fay Faraday and Veena Verma, "Securing Gender Justice: Challenges Facing International Labour Law", prepared in March, 2004 for the Compendium of Papers arising from the Meeting the Challenges of Globalization Conference at University of Western Ontario, London, October, 2003. Publication forthcoming by Cambridge University Press.

Cornish, Mary and Karen Schucher, Guide to Bargaining for Equity, co-authored with Karen Schucher, prepared for the Elementary Teachers Federation on Ontario Women's Collective Bargaining Conference, February 25-26, 2000.

Cornish, Mary, Equality Rights versus Deficit Reduction - *SEIU Local 204 v. Attorney General (Ont)*", presentation to the Law Society of Upper Canada "Women and Law in the New Millennium speaker series, March 13, 2000.

Cornish, Mary and Fay Faraday, "Where Do We Go for Equity? Strategies for Achieving Pay Equity and Employment Equity". Prepared for the Canadian Association of Labour Lawyers 8th Annual Conference, 29 Apr.-May 2, 1999 in Toronto. Co-authored by Mary Cornish and Fay Faraday

Armstrong, Pat and Mary Cornish, "Restructuring Pay Equity for A Restructured Work Force: Canadian Perspectives" Presentation to the Conference "Equal Pay in a Deregulated Labour Market" sponsored by the Gender Research Centre, Middlesex University and the Pay Equity Project, June 7-8, 1996. Published in the April, 1997 issue of *Gender, Work & Organization*, published by Blackwells, Oxford, U.K.

Cornish, Mary Employment and Pay Equity in Canada - Success Brings Both Attacks and New Initiatives" prepared for Conference on Human Resources in the Canada/US Context and in a Changing World: The Impact of NAFTA on Human Resources Canada/United States Law Institute Case Western Reserve University School of Law, April 19-21, 1996. Published in *Canada-United States Law Journal*, v. 22, 1996.

Cornish, Mary and Pat Armstrong, "Equal Pay and Job Evaluation: The Ontario Experience" prepared, for the ETUC/TUC Seminar on Equal Pay, Job Evaluation and Job Classification, Oxford, July, 1992.

Armstrong, Pat and Mary Cornish, "Equal Pay and Job Evaluation: The Ontario Experience". Invited paper (with Dr. Pat Armstrong) distributed to the European Economic Community Seminar, Equal

Pay 36 Years Later: In Search of Excellence, Brussels, October 1993.

Cornish, Mary and Amanda Pask, "The *Employment Equity Act, 1992* and Union's Responsibilities" prepared for the Ontario Federation of Labour, November 20, 1992.



## ENDNOTES

1. US Working Women Report.
2. Justice Rosalie Abella, *Report of the Commission on Equality in Employment* (Ottawa, 1984) at 233-239 at 234.
3. United Nations, *Report of the Fourth World Conference on Women, Beijing, China, 4-15 September 1995, A/CONF/177/20, 17 October 1995 Beijing, Chap I., resolution 1, annex I ["Beijing Declaration"]; annex II ["Beijing Platform for Action"]* at para. 41; Canada, *Fifth Periodic Report to the United Nations Committee on the Elimination of Discrimination Against Women* (9 April 2002), UN Doc. No. CEDAW/C/CAN/5 at para. 9
4. *Vriend v. Alberta, supra* at para. 122; *Canada v. PSAC, supra* at para. 8-10
5. Justice Rosalie Abella, *Report of the Commission on Equality in Employment* (Ottawa, 1984) at 233-239. Canadian Human Rights Commission, *Time for Action: Special Report to Parliament on Pay Equity* (Ottawa: Minister of Public Works and Govt. Services, 2001) at 3. Statistics Canada, *Average Earnings by sex and work pattern* (22 Dec. 2003), available online at <http://www.statcan.ca/english/Pgdb/labor01a.htm>.
6. Pat Armstrong and Mary Cornish, *Restructuring Pay Equity for a Restructured Work Force: Canadian Perspectives* GENDER, WORK & ORGANIZATION, Blackwells, Oxford, U.K. Vol.4 No.2, April, 1997.
7. In a new Vector Poll released in September 2008, 72% of those polled say that the law should require that part-time and full-time workers should be paid the same hourly rate when they do the same job. The majority of part-time workers are women. The lower pay rate paid to the mostly women part-time employees is one of the significant factors leading to the 71 per cent pay equity gap.
8. Vosko, Leah (ed.) *Precarious Employment*. Kingston: McGill-Queens' University Press, 2006; Canadian Labour Congress (CLC) 2008, "Women in the Workforce: Still a Long Way from Equality. March, 2008. Available at <http://canadianlabour.ca/sites/clc/files/womensequalityreportEn.pdf>.
9. Toronto Dominion Bank Special Report (2007), p. 8-9.
10. Cornish, Mary. *Closing the Global Gender Pay Gap: Securing Justice for Women's Work*. Comparative Labor Law & Policy Journal, Vol. 28, No. 2, Winter, 2007, 219.
11. TD Economics Report, *supra*, p. 12
12. TD Economics Report, *supra*, p. 1

13. Statistics Canada 2006a. Cat. 89-503XIE. Women in Canada: Fifth Edition.
14. Statistics Canada 1990. Perspectives: Spring 1990.
15. CLC, Women in the Workforce, *supra*.
16. Statistics Canada, Women in Canada, 2005.
17. EU project on Equal Pay, <http://www.equalpay.nu/en>; and the European Road Map to Equality at [http://ec.europa.eu/employment\\_social/news/2006/mar/com06092\\_roadmap\\_en.pdf](http://ec.europa.eu/employment_social/news/2006/mar/com06092_roadmap_en.pdf)
18. See Statistics Canada Women, *supra*, Table 5.13.
19. TD Economics Report, *supra*.
20. Townson, Monica and Hayes, Kevin Women Women and the Employment Insurance Program Ottawa: Canadian Centre for Policy Alternatives, 2007
21. Drolet, Marie. 2002. "The Male-Female Wage Gap." Perspectives on Labour and Income (Spring): 29–37; Zhang, Xuelin. 2007. Returning to Work after Childbirth. Statistics Canada Cat. 75-011XIE Perspectives on Labour and Income. December.
22. CLC Report, *supra*, at p.4.
23. CLC Report, *supra*, at p.
24. TD Economics Report, *supra* p. 7
25. Cornish, Mary. *Closing the Global Gender Pay Gap. supra*
26. Armstrong, P., & Cornish, M., 1997, 'Restructuring Pay Equity for a Restructured Work Force: Canadian Perspectives', Gender, Work and Organisation, vol. 4, no. 2, pp. 67-86.
27. See O'Grady, John "Beyond the Wagner Act, What then?" in Getting on Track Drache D. (ed.) McGill-Queen's Press, 1992
28. Toronto Region Research Alliance, Workplace Establishment Report for Ontario, Canada. Relies upon Environics Analytics, Business Profiles, 2007. Daytime population is provided by Environics Analytics and is an estimate of total population for each Census geographic level during daytime hours. Data sources used are the 2006 Census, Environics Analytics' 2008 population estimates along with business locations and sizes from Info Canada. Available at <http://www.trudeaufoundation.ca/community>
29. Andrew Jackson, *Work and Labour in Canada*, Toronto: Canadian Scholars' Press, 2005,

30. Toronto Dominion Report, *supra*; Chicha, Marie-Therese, *A comparative analysis of promoting pay equity: models and impacts*. Geneva, International Labour Office (2006)
31. *Abella Report, supra* at 232, 245-249; CHRC, *Time for Action, supra* at 2-4; *Haldimand-Norfolk (No. 6)* (1991), 2 P.E.R. 105 (Ontario Pay Equity Hearings Tribunal) at para. 9-10, 12, 16-20, 28-31; *Canada v. Public Service Alliance of Canada* [2000] 1 F.C. 146 (T.D.) at para.53, 100, 151-152, 240, 244; Statistics Canada, *Number of Earners Who Worked Full Year, Full Time in 1995 in the 25 Highest Paying and 25 Lowest Paying Occupations and Their Average Earnings By Sex for Canada 1995*, [www.statcan.ca/english/census96/may12/t2.htm](http://www.statcan.ca/english/census96/may12/t2.htm)
32. Statistics Canada (2005).
33. Vosko, L. *supra*. Saunders, Ron, *Low Wage: Issues and Policy Options Canadian*: Ottawa Canadian Policy Research Network, 2004 Katherine Scott, *Women and the CHST: A Profile of Women Receiving Social Assistance in 1994*, (Ottawa: Status of Women Canada. 1998)
34. Ref. re Public Service Employee Relations Act (Alberta) [1987] 1 S.C.R. 313 at 368; *McKinley v. B.C. Tel*, [2001] 2 S.C.R. 161 at para. 53
35. *Human Rights Code*, R.S.O. 1990, Ch. H.19, CHRC, *Time for Action, supra* at 1-2; *Canada v. PSAC, supra* at para. 53, 98; *Ontario Nurses' Association v. Haldimand Norfolk (Regional Municipality)*, [1989] O.P.E.D. No. 3 (P.E.H.T.) at para. 29, 43; affirmed [1989] O.J. No. 1995 (Div. Ct.); affirmed [1990] O.J. No. 1745 (C.A.); *Syndicat de la fonction publique c. Procureur général du Québec* (9 January 2004), unreported (Qué. C.S.) at Annexe 11.
36. *Human Rights Code, supra*; *Nishimura v. Ontario Human Rights Commission* (1989), 70 O.R. (2d) 347 (Div. Ct.) at 354-355
37. *British Columbia (Public Service Employee Relations Commission) v. B.C.G.S.E.U.*, [1999] 3 S.C.R. 3 at para. 39-42
38. *British Columbia (Public Service Employee Relations Commission) v. B.C.G.S.E.U.*, *ibid.* at para. 68.
39. *ILO Constitution*, Preamble, on-line at [www.ilo.org/public/english/about/iloconst.htm](http://www.ilo.org/public/english/about/iloconst.htm); *ILO Convention No. 100 (Convention on Equal Remuneration for Work of Equal Value)*, 29 June 1951, 165 U.N.T.S. 303; *ILO Convention 111, (Convention re: Discrimination in Employment and Occupation)* 1958; *ILO Declaration of the Fundamental Principles and Rights at Work* on-line at [www.ilo.org](http://www.ilo.org)
40. *ILO, Convention No. 100, supra* at Articles 2, 3; *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 U.N.T.S. 3 at Articles 2, 3, 7; *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, G.A. Res. 34/180,

GAOR, 34<sup>th</sup> Sess., Supp. No. 46 at 193 (1979) at Preamble, Articles 2, 11; Beijing Declaration, *supra* at para. 7; Beijing Platform for Action, *supra* at para. 4-5, para. 165(a), 166(l), 175(b), 178(a), 178(h), 178(k), 178(l), 178(o); United Nations, *Follow-Up to the Fourth World Conference on Women and full implementation of the Beijing Declaration and the Platform for Action*, GA Res. 50/203, UN GAOR, 50<sup>th</sup> Sess., UN Doc. A/RES/30/205 (1995) at para. 21, 73, 82(h); ILO, *Declaration of the Fundamental Principles and Rights at Work*

41. *ILO Convention No. 100*, Article 2; *Beijing Platform for Action*, para. 178(h)
42. *R. v. Oakes*, *supra* at 136; Reference re Secession of Québec, [1998] 2 S.C.R. 217 at para. 64.
43. *Vriend v. Alberta*, *supra* at para. 131-142.
44. *Beijing Declaration*, *supra* at para. 7; *International Covenant on Economic, Social and Cultural Rights*, *supra* at Art. 2.
45. *Beijing Platform for Action*, at para. 165(p) ; *Beijing Follow-Up*, at para. 73(a)(b); Canada, *Gender-Based Analysis: A Guide for Policy-Making* (Ottawa: Status of Women Canada, 1995) at 1, 4-5; Canada, *Diversity and Justice: Gender Perspectives - A Guide to Gender Equality Analysis 1998* (Ottawa: Department of Justice, 1998) at Part One and Part Two; and *Meiorin*, *supra* at para. 68.
46. *Delisle v. Canada (Attorney General)*, [1999] 2 S.C.R. 989 at para. 32; *Perera v. Canada* (1998), 154 D.L.R. (4<sup>th</sup>) 341 (F.C.A.) at 351, para. 30.
47. *Service Employees International Union Local 204 v. Ontario (Attorney General)* (1997), 35 O.R. (3d) 508 (Gen. Div.) at 522, 525; *Manitoba Council of Health Care Unions v. Bethesda Hospital* (1992), 88 D.L.R. (4<sup>th</sup>) 60 (Man. Q.B.) at 67-68; and *Syndicat de la fonction publique c. Procureur général du Québec*, *supra* at pp. 12-14, 323-336.
48. See *CUPE et al v. Attorney General of Ontario et al* (June 19, 2003) Unreported. (Ont. S.C.J.)
49. Justice Rosalie Abella, *Report of the Commission on Equality in Employment* (Ottawa, 1984) at 233-239 at 234.
50. Justice Rosalie Abella, *Report of the Commission on Equality in Employment* (Ottawa, 1984) at 233-239 at 234.
51. Statscan, 2000.
52. Cornish, Mary, *Securing Pay Equity for Women Workers, Everyone Benefits - The International Experience* - see Key References section.
53. See Fact Sheet, Canadian Centre for Policy Alternatives, Vo.8 No.1, Feb. 2007.

54. Ref. re Public Service Employee Relations Act (Alberta) [1987] 1 S.C.R. 313 at 368; *McKinley v. B.C. Tel*, [2001] 2 S.C.R. 161 at para. 53