



BRIEFING NOTE

CREATING PAY EQUITY IN BC

August 2018

Prepared by Kathleen Renaud for Zahra Jimale, Director of Law Reform
West Coast Legal Education and Action Fund
555 – 409 Granville Street, Vancouver, BC V6C 1T2
604.684.8772 | lawreform@westcoastleaf.org

BRIEFING NOTE: Creating Pay Equity in BC

ISSUE

British Columbia is the **third worst** province in Canada when it comes to the gendered earnings gap. Of the provinces, only women in Alberta and Newfoundland fare worse than women in BC. BC women earn **22.6% less** than BC men.¹ This is a significant barrier to economic security for women of all ages across the province, with both short-term and long-term negative consequences.

OBJECTIVE

Our goal is to eliminate the gendered earnings gap in BC that has women earning significantly less than men. In order to address economic security in a meaningful way, there must be proactive pay equity legislation to **enforce transparency, raise public awareness about the issues, and make employers responsible and accountable** for the composition of their pay structures.

BACKGROUND & CURRENT SITUATION

Direct gender-based discrimination in pay has been **illegal for decades**.² The problem is that it has never been effectively monitored or enforced.³ Pay discrimination is prohibited across Canada whether by human rights legislation, employment standards legislation, or both.⁴ However the current system, which is not proactive, but rather a complaint-based model, is not working.⁵

The current complaint-based system places the onus of ensuring equal pay for work of equal value on individuals and unions, rather than employers, to bring forward a complaint

¹ Calculated using median weekly earnings; women earn **17.2%** less than men when using median hourly earnings, but hourly figures obscure the precarity of so-called women's work which is disproportionately part-time, casual, or temporary (Statistics Canada; The Conference Board of Canada: <goo.gl/Hb7cii>).

² BC's first pay *equality* legislation was *An Act to ensure Fair Remuneration to Female Employees*, which came into force in 1953. Section 3(1) read: "No employer and no person acting on his behalf shall discriminate between his male and female employees by paying a female employee at a rate of pay less than the rate of pay paid to a male employee employed by him for the same work done in the same establishment." Over time this provision was absorbed by human rights legislation, specifically section 12(1) of the *Human Rights Code, RSBC 1996, c 210*: "An employer must not discriminate between employees by employing an employee of one sex for work at a rate of pay that is less than the rate of pay at which an employee of the other sex is employed by that employer for similar or substantially similar work."

³ For a brief history of anti-pay discrimination laws and government recommendations, see Government of Canada, "Fact Sheet: Evolution of pay equity": <www.canada.ca/en/treasury-board-secretariat/services/innovation/equitable-compensation/fact-sheet-evolution-pay-equity.html>.

⁴ *Human Rights Code, RSBC 1996, c 210, s 12 (BC)*; *Alberta Human Rights Act, RSA 2000, c A-25.5, s 6 (AB)*; *Labour Standards Act, RSS 1978, c L-1, s 17 (SK)*; *Employment Standards Code, CCSM c E110, s 82 (MN)*; *Employment Standards Act, SO 2000, c 41, s 42 (ON)*; *Charter of human rights and freedoms, RSQ, c C-12, s 19 (QC)*; *Employment Standards Act, SNB 1982, c E-7.2, s 37.1 (NB)*; *Labour Standards Code, RSNS 1989, c 246, s 57 (NS)*; *Human Rights Act, RSPEI 1988, c H-12, s 7 (PE)*; *Human Rights Code, RSNL 1990, c H-14, s 16 (NL)*; *Canadian Human Rights Act, RSC 1985, c H-6, s 11 (federal)*.

⁵ Ontario Equal Pay Coalition <http://equalpaycoalition.org/the-gender-pay-gap-across-canada/> not effective plagued by protracted litigation

and spend their limited resources to pursue lengthy litigation.⁶ Under the *Human Rights Code*, BC uses an **ineffectual complaint-based model** that only handles reported incidents of unequal pay for equal work—the *minimum* standard. The burden is on employees to:

- a) **Know** that they are victims of direct, gender-based pay discrimination, and
- b) **Pursue** a remedy through the Human Rights Tribunal.

Most victims of pay discrimination reasonably fear retaliation for making a complaint, or for even raising the issue with a superior. They cannot risk a disruption in earnings, and instead must prioritize day-to-day concerns.

While women in BC overall earn **22.6%** less than men,⁷ Indigenous and racialized women experience even more profound gendered pay discrepancies on average. Indigenous women overall earn **23% less** per year than non-Indigenous women.⁸ University-educated, Canadian-born racialized women earn on average **12% less** per year than similarly educated white women.⁹ Women are more likely than men to work in low waged, part-time, and precarious jobs.¹⁰ In addition, unpaid caregiving responsibilities, such as child care, disproportionately fall on women, which has significant impact on their short term and long term economic security. As a result, the **likeliest victims** of pay discrimination face the **greatest barriers** to enforcing their rights, including women who are low-income, Indigenous women, women with disabilities, and immigrant and refugee women.¹¹

Women earn **at least 10% less** overall than men in every province, but **over 20% less** overall in BC.¹² BC, Alberta, Saskatchewan, and Newfoundland are the only provinces without pay equity legislation and they have the largest discrepancies in earnings

⁶ Ontario Equal Pay Coalition <http://equalpaycoalition.org/the-gender-pay-gap-across-canada/>

⁷ Calculated using median weekly earnings; women earn **17.2%** less than men when using median hourly earnings, but hourly figures obscure the precarity of so-called women’s work which is disproportionately part-time, casual, or temporary (Statistics Canada; The Conference Board of Canada: <goo.gl/Hb7cii>).

⁸ Aboriginal Affairs and Northern Development Canada, “Aboriginal Women in Canada,” <www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/ai_rs_pubs_ex_abwch_pdf_1333374752380_eng.pdf> at iii (2006 national figures; provincial figures not available).

⁹ Statistics Canada; The Conference Board of Canada, “Racial Pay Gap”: <www.conferenceboard.ca/hcp/provincial/society/racial-gap.aspx> (2010 national figures; racialized women in BC earn **14.2%** less).

¹⁰ Seth Klein, Iglia Ivanova and Andrew Leyland. *Long Overdue: Why BC Needs a Poverty Reduction Plan* (Canadian Centre for Policy Alternatives, Vancouver: 2017) at 32

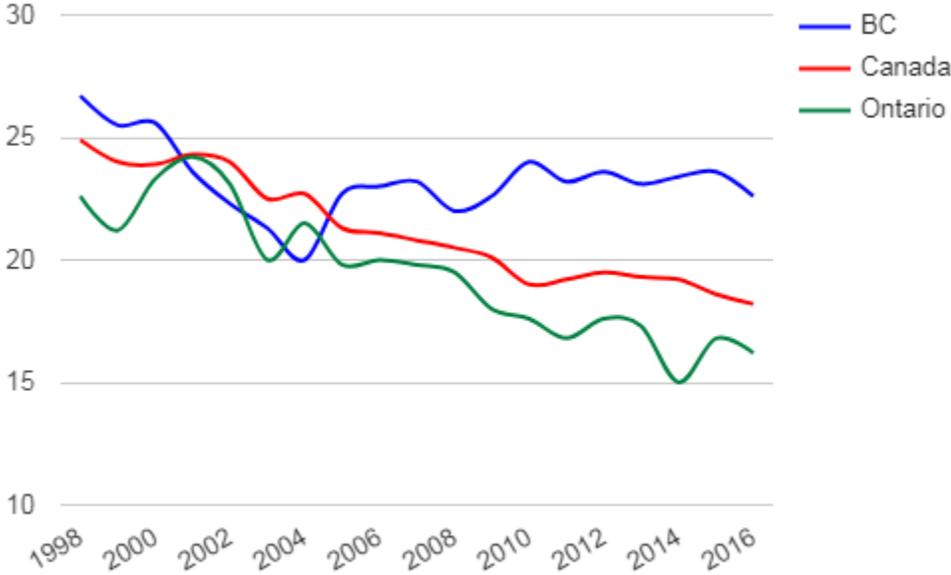
¹¹ United Nations, International Covenant on Civil and Political Rights, Concluding Observations on the Sixth Periodic Report of Canada (August 2015): <www.refworld.org/docid/5645a16f4.html> at 2; Government of Canada, “Towards a Poverty Reduction Strategy: A Backgrounder on Poverty in Canada” (October 2016): <www.canada.ca/en/employment-social-development/programs/poverty-reduction/backgrounder.html?wbdisable=true#h2.4> at 9; Statistics Canada, *Women in Canada: A Gender-based Statistical Report*, “Visible Minority Women” (March 2017), <www150.statcan.gc.ca/n1/en/pub/89-503-x/2015001/article/14315-eng.pdf?st=NZ2dLRCc> at 30-31.

¹² Statistics Canada; The Conference Board of Canada: <www.conferenceboard.ca/hcp/provincial/society/gender-gap.aspx> (calculated using median weekly earnings in 2016).

between men and women.¹³ The public sectors of 6 provinces (Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, and PEI) are governed by pay equity legislation, in addition to human rights and employee standards legislation that prohibits gender-based pay discrimination. The legislation in Ontario and Quebec also applies to private sector enterprises with over 10 employees.¹⁴ The following chart indicates the gendered earnings gap in each province and whether provincial legislation or a framework exists.

Province	Earnings Gap (%)	Pay Equity Legislation	...for Public Sector	... for Private Sector	Policy for Public Sector
PEI	10.7	Yes	Yes	No	Yes
MN	13.2	Yes	Yes	No	Yes
NB	14.4	Yes	Yes	No	Yes
ON	16.2	Yes	Yes	Yes	Yes
QC	16.4	Yes	Yes	Yes	Yes
NS	16.4	Yes	Yes	No	Yes
SK	21.6	No	No	No	Yes
BC	22.6	No	No	No	Yes
AB	24.6	No	No	No	No
NL	28.5	No	No	No	Yes

The following graph illustrates how much less (%) BC women earn than BC men, with Ontario and national figures for comparison.¹⁵



¹³ They are the four worst provinces regardless of whether median weekly or median hourly earnings are used.
¹⁴ *Pay Equity Act*, CCSM c P13 (MN); *Pay Equity Act*, RSO 1990, c P.7 (ON); *Pay Equity Act*, RSQ c E12.001 (QC); *Pay Equity Act*, SNB 2009, c P-5.05 (NB); *Pay Equity Act*, RSNS 1989, c 337 (NS); *Pay Equity Act*, RSPEI 1988 (PE).
¹⁵ *Ibid.*

Although there was some improvements between 1998 and 2004,¹⁶ there are no signs that the gendered earnings gap in BC will improve significantly in the near or distant future. Women still earn 20% less than men.

Pay equity – **equal pay for work of equal value** – addresses the systemic, both direct and indirect, discrimination in earnings based on gender. The basic principle is that the compensation package offered for a job performed predominantly by female employees must be equal to that for a job performed predominantly by male employees when the work is of equal or comparable value.

Pay equity schemes are most successful when they take into account and effectively address three main issues:

- Men are disproportionately making higher incomes **for doing the same or substantial similar work**;
- **Men are clustered at the top** of pay structures and women are clustered at the bottom; and
- **Men dominate higher-paid professions** and women dominate lower-paid professions.

RECOMMENDATIONS

West Coast LEAF recommends stand-alone proactive pay equity legislation for BC. Legislation in other provinces and abroad has achieved the greatest results when pay equity schemes are **mandatory across all sectors and industries**, are subject to strong **enforcement** mechanisms, and are responsive to **independent oversight**.¹⁷

We support the recommendations of the Federal Pay Equity Task Force in their 2004 report and urge that they be applied to BC.¹⁸ These recommendations were echoed again in 2016 by the Special Committee on Pay Equity – in June 2016 the committee tabled its report titled *It's Time to Act*. In addition to creating stand-alone proactive pay equity legislation, the task force also recommended:¹⁹

¹⁶Statistics Canada; The Conference Board of Canada, "Gender Wage Gap": <www.conferenceboard.ca/hcp/provincial/society/gender-gap.aspx> (calculated using median weekly earnings in 2016).

¹⁷ For example, Ontario's new pay transparency legislation was drafted with the failures of Ontario's *Pay Equity Act* (1990) in mind; a lack of enforcement mechanisms in the *Pay Equity Act* has produced very low compliance in what is ultimately a complaint-based system that kept the onus on employees. Also see Citation Information Faraday, Fay. "Dealing with Sexual Harrassment in the Workplace: The Promise and Limitations of Human Rights Discourse." *Osgoode Hall Law Journal* 32.1 (1994) : 33-63. <http://digitalcommons.osgoode.yorku.ca/ohlj/vol32/iss1/>

¹⁸ "Pay Equity: A New Approach to a Fundamental Right," Pay Equity Task Force Final Report (2004): <goo.gl/qB11kq>; "It's Time To Act," Report of the Special committee on Pay Equity (2016): <goo.gl/obsT2q>.

¹⁹ Pay Equity: A New Approach to a Fundamental Right, at 503 to 520.

- **To Require** employers, unions and workers' representatives to examine pay systems to make sure they are based on the principle of equal pay for work of equal value.
- **To Provide** adequate financial and human resources to oversight agencies to support the achievement of pay equity within a reasonable period of time, and that the government continue to allocate sufficient resources for the administration of pay equity legislation.

In order to create the most successful outcomes, we recommend that the pay equity legislation include provisions for both transparency and enforcement, with the enforcement mechanisms to come into effect a year after the transparency provisions come into effect. This would allow employers time to be transparent about their compensation structures and address discriminatory pay discrepancies. While we want to ensure there are mechanisms in place to enforce pay equity standards, we also know that the most effective system-wide shift will come if the public awareness is raised and employers buy in. Allowing the transparency provisions to come into force before the enforcement provisions are intended to have this impact.

Phase One: Transparency

Transparency in pay structures is a prerequisite to pay equity. Improvements cannot be made without first knowing if, and to what degree, men are clustered at the top of a company's pay structure and whether women's contributions are being seriously undervalued. The current secrecy surrounding pay structures perpetuates inequitable compensation by keeping employees in the dark.²⁰

- The BC legislation needs to include provisions similar to those of Ontario's *Pay Transparency Act* that also applies to the private *and* public sectors (including the broader public sector).²¹
- Pay transparency provisions must accomplish four main goals:
 - i. **Reporting:** Every employer with enough employees to gather meaningful statistics must report anonymous data about the composition of their workforce to the government through a standard form by a set annual deadline.²²

²⁰ Employees of the Royal Bank of Canada working in the United Kingdom now have a better sense of their employer's pay structure than RBC employees working in Canada. New mandatory gender pay gap reporting in the UK revealed that the average hourly rate of women working for RBC in London (UK) is **35% lower than men's**, women occupy **only 14%** percent of salaries in the top quartile, and the bonus pay of women is **64% lower than men's**: <gender-pay-gap.service.gov.uk/viewing/employer-%2cDGiU-jnP5sWVcNo3DhveLg!!/report-2017>. This is not unique to so-called 'male sectors' like finances. For example, Benefit Cosmetics Limited reported that despite having a disproportionately female workforce, women's earnings were on average **20.4% less** than their male colleagues and their bonus pay was **26.7% less** than the men's: <gender-pay-gap.service.gov.uk/viewing/employer-%2c_mUxFAQ4vvhM3ZX-HONdniA!!/report-2017>.

²¹ *Pay Transparency Act*, 2018 SO 2018, c 5 [Ontario *PTA*]; the change in government halted the drafting of regulations, which was to include its enforcement mechanisms.

²² Ontario *PTA*, s 7(1)-(3); the first pay transparency reports will be required of employers with **250** or more employees, then reports will be required of all employers with **100** or more employees the following

- Only basic bookkeeper data is needed: gender, age, ethnicity, employee status (full-time/part-time, permanent/temporary), immigration status, and total annual compensation.
 - Total annual compensation must factor in the entirety of an employee's benefits, including bonuses, gifts, allowances, and paid leave.²³
- ii. **Publication:** Government must be empowered to publish the results of the data online, organized by employer, while maintaining employee anonymity.
- Data must be presented in way as to reveal the pay structure of a company according to employee demographics.
 - The ability to sort data by all reported employee demographics allows for an intersectional analysis of a company's pay structure, such as whether women of colour are paid less by their employer than other women within the same age bracket.
- iii. **Enforcement:** Regulations must set out penalties for failing to report or reporting falsely.
- Penalties against an employer should be proportionate to the size of the enterprise.
- iv. **Protection:** Employers must be prohibited from seeking information about an applicant's compensation history.
- Soliciting information about a prospective employee's past earnings has been used to gauge how large of a compensation to offer in relation to the applicant's earnings history.
 - This practice reinforces the status quo of a gendered earnings gap, for example, when the future earnings of a female employee are based on her history of under-compensation.

year; the UK's 2017 regulations requires annual reporting of employers with **250+** workers, all 10,000 of which published their data by August 2018 (deadline was April 2018; 1,500 were late): www.gov.uk/government/news/100-of-uk-employers-publish-gender-pay-gap-data.

²³ See the United Kingdom's formula: *The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017*, United Kingdom: www.legislation.gov.uk/ukxi/2017/172/contents/made.

Phase Two: Equity

Equal pay for work of equal value.

A 'comparable worth' model takes measures to prevent occupational wage rates from being influenced by grounds of discrimination, such as gender.

- BC needs to apply a 'comparable worth' model to the province's workforce. This involves:
 - i. **Grouping** jobs into job classes.
 - Job classes consist of jobs that have similar duties and responsibilities and have the same compensation schedule. Depending on the current gender composition of the job classes, they are identified as female, male or gender neutral.
 - ii. **Collecting** job information about female and male job classes.
 - Each job class is valued using four factors required by law – skill, effort, responsibility, and working conditions.²⁴
 - iii. **Comparing** female job classes to male job classes.
 - Where the values are comparable, the compensation of the female job class must be of equal value to the compensation of the comparable male job class.
 - E.g. Administrative Assistants at Company-X were earning less than Shipper/Receivers despite being in a higher job class.
 - iv. **Equalizing** pay for work of equal value.
 - If a female job class is compensated lower than an equally-valued male job class, the employer is required to match the compensation of female job class to the male job class.
 - E.g. the compensation of Administrative Assistants at Company-X must be adjusted upward to reflect the higher job class.²⁵

²⁴ Ontario Equal Pay Commission, "Example of a Pay Equity Plan Job-To-Job Comparison Method" (with subfactors such as problem-solving/judgment, mental effort, and human resources):
<www.payequity.gov.on.ca/en/tools/Pages/jj_plan.aspx>

²⁵ Ontario Equal Pay Commission, "The List of Female and Male Job Classes" (with examples of pay bands):
<www.payequity.gov.on.ca/en/tools/Pages/regression_classes.aspx>.

In addition to the foregoing, we propose that there be meaningful and comprehensive consultation, including:

- Determining whether oversight and enforcement mechanisms should fall on the Human Rights Commission and Tribunal, or a standalone new body;
- Compare and consult with existing pay equity schemes across the country, to determine best practices; and
- Determine the size of company required to fall within the reporting guidelines, outlined above.