

A LEGISLATIVE CHECKLIST FOR SUBSTANTIVE PAY EQUALITY

PREPARED FOR PAY EQUITY TASK FORCE SYMPOSIUM

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The Checklist below identifies the obligations that flow from international human rights instruments to which Canada is a signatory and from Canada's domestic equality jurisprudence that must inform the design of new pay equity legislation in Canada.

OBLIGATION

NOTES

Enacting Legislation

1. The government must enact pay equity legislation.

Source of Obligation:

- *Convention No. 100*, Article 2(2)
- *Convention on the Elimination of Discrimination Against Women*, Articles 2(b), 2(f)
- *Beijing Platform for Action*, para. 165(a) and para. 178(a)

2. The new pay equity legislation must *increase efforts* to close the wage gap and must *strengthen* the ability to achieve pay equity in practice.

Source of Obligation:

- *Beijing Platform for Action*, para. 175(k)

Equal Pay For Work of Equal Value

3. The legislation must guarantee the principle of *equal pay for work of equal value*.

Source of Obligation:

- ILO *Convention No. 100*, Article 1
- *International Covenant on Economic, Social and Cultural Rights*, Article 7
- *Convention on the Elimination of Discrimination Against Women*,

Article 11 - *Beijing Platform for Action*, paras. 165, 166, 175, 178

4. The legislation must impose a *proactive obligation* upon employers to achieve pay equity in their workplaces.

Source of Obligation:

- *B.C. v. B.C.G.S.E.U. (Re Meiorin)* (1999), 176 D.L.R. (4th) 1 (S.C.C.)
- *Beijing Platform for Action*, para. 178(a), (h), (l) and (o)
- *Beijing +5 Resolution*, para. 82(h)

5. The legislation must achieve substantive equality.

Source of Obligation:

- *Andrews v. Law Society of British Columbia* (1989), 56 D.L.R. (4th) 1 (S.C.C.)

Recognizing the Importance of Pay Equity as a Fundamental Human Right

6. The legislation must expressly recognize equal pay for work of equal value as a fundamental labour standard of the highest priority which is necessary for building a sustainable, just and developed society.

Source of Obligation:

- *ILO Convention No. 100*
- *ILO Declaration on Fundamental Principles and Rights at Work*
- *Convention on the Elimination of Discrimination Against Women*, Preamble
- *Beijing Platform for Action*, para. 41

7. The legislation must expressly recognize that pay equity is a fundamental human right with quasi-constitutional status.

Source of Obligation:

- *Insurance Corporation of British Columbia v. Heerspink* (1982), 137 D.L.R. (3d) 219 (S.C.C.)

8. The legislation must expressly provide that like other human rights statutes, the pay equity statute takes primacy over all laws save the *Constitution*.

Source of Obligation:

- *Insurance Corporation of British Columbia v. Heerspink* (1982), 137 D.L.R. (3d) 219 (S.C.C.)

Scope of the Legislation's Application

9. The legislation must impose a proactive obligation to achieve pay equity upon employers in both the public sector and the private sector.

Source of Obligation:

- *Convention on the Elimination of Discrimination Against Women*, Articles 2(d) and 2(e)

- *Beijing Platform for Action*, para. 178(a), (h), (l) and (o)
- *B.C. v. B.C.G.S.E.U. (Re Meiorin)* (1999), 176 D.L.R. (4th) 1 (S.C.C.)

10. The legislation must contain special measures to ensure that public authorities and public institutions act in compliance with pay equity obligations.

Source of Obligation:

- *Convention on the Elimination of Discrimination Against Women*, Article 2(d)

Methodologies for Achieving Pay Equity

11. The legislation must provide a remedy for systemic discrimination.

Source of Obligation:

- *Action Travail des Femmes v. C.N.R. Ltd.* (1987), 40 D.L.R. (4th) 193 (S.C.C.)

12. The legislation must break the cycle of systemic discrimination by providing a framework to challenge systemic assumptions and practices that lead to the undervaluing and under-compensating of women's work.

Source of Obligation:

- *Action Travail des Femmes v. C.N.R. Ltd.* (1987), 40 D.L.R. (4th) 193 (S.C.C.)
- *Convention on the Elimination of Discrimination Against Women*, Preamble

13. The legislation must set out specific gender inclusive or gender neutral methodologies for evaluating and comparing the different jobs that men and women do and for reformulating wage structures of female-dominated jobs.

Source of Obligation:

- ILO, *Convention No. 100*, Article 3
- *Report of the Committee on the Elimination of Discrimination against Women*, para. 339
- *Beijing Platform for Action*, para. 178(k) and 178(o)
- *B.C. v. B.C.G.S.E.U. (Re Meiorin)* (1999), 176 D.L.R. (4th) 1 (S.C.C.)
- *Federal Plan for Gender Equality*, para. 91-92

14. The legislation must ensure that unions have an active role in developing and enforcing pay equity.

Source of Obligation:

- *Beijing Declaration*, para. 20
- *Beijing Platform for Action*, para. 166(l), para. 178(h)
- *ILO Declaration on Fundamental Principles and Rights at Work*

- *Federal Plan for Gender Equality*, para. 90

15. **The legislation must guarantee protection for the most vulnerable workers by ensuring that methodologies for achieving pay equity provide reasonable opportunity for representatives/agents of non-unionized employees to participate in the process of developing and enforcing pay equity.**

Source of Obligation:

- *Beijing Platform for Action*, para. 45

Enforcement of Pay Equity Rights

16. **The legislation must guarantee pay equity rights by ensuring that complaints regarding pay equity will be enforced before a competent and expert tribunal.**

Source of Obligation:

- *International Covenant on Civil and Political Rights*, Article 3
- *Convention on the Elimination of Discrimination Against Women*, Article 2(c)
- *Report of the Committee on Human Rights*, para. 9

17. **The legislation must provide an *effective remedy* for systemic wage discrimination.**

Source of Obligation:

- *International Covenant on Civil and Political Rights*, Article 3
- *Report of the Committee on Human Rights*, para. 9

18. **The legislation must impose meaningful sanctions for the failure to comply with pay equity obligations.**

Source of Obligation:

- *Convention on the Elimination of Discrimination Against Women*, Article 2(b)

19. **The legislation must ensure that competent authorities will enforce pay equity remedies when they are granted.**

Source of Obligation:

- *International Covenant on Civil and Political Rights*, Article 3

20. **The legislation must *strengthen* adjudicative mechanisms to adjudicate systemic wage discrimination.**

Source of Obligation:

- *Beijing Platform for Action*, para. 178(l)
- *Report of the Committee on Economic, Social and Cultural Rights*, para. 51

- 21. The legislation must guarantee that vulnerable workers will be provided with legal aid in order to enforce their pay equity claims.**

Source of Obligation:

- *Report of the Committee on Economic, Social and Cultural Rights*, para. 51
- *Promoting Equality: A New Vision 2000* (Ottawa: Canadian Human Rights Act Review Panel, 2000) [*LaForest Task Force Report*]
- *Achieving Equality: Report of the Ontario Human Rights Code Review Task Force* (Ontario: Ministry of Citizenship, 1992) [*Cornish Task Force Report*]

- 22. The legislation must include mechanism to ensure that pay equity will be achieved “without delay”.**

Source of Obligation:

- *Convention on the Elimination of Discrimination Against Women*, Article 2

- 23. The legislation must include methodologies to evaluate progress in closing the wage gap.**

Source of Obligation:

- *Report of the Committee on the Elimination of Discrimination Against Women*, para.339

- 24. The legislation must ensure that past discriminatory practices will not re-emerge.**

Source of Obligation:

- *Action Travail des Femmes v. C.N.R. Ltd.* (1987), 40 D.L.R. (4th) 193 (S.C.C.)

- 25. (a) The legislation must include a mechanism by which employers must report to an external oversight body regarding their compliance with pay equity obligations.**

- (b) The legislation must include a mechanism for external oversight and auditing of employers’ compliance with pay equity.**

Source of Obligation:

- *ILO Convention No. 100*
- *International Covenant on Economic, Social and Cultural Rights*, Articles 16 and 17
- *International Covenant on Civil and Political Rights*
- *Convention on the Elimination of Discrimination Against Women*, Part V
- Beijing Platform for Action

- 26. The legislation must signal that government has made a strong commitment to achieving pay equity, that government has dedicated itself unreservedly to achieving pay equity, and that government has mobilized adequate resources to achieving pay equity.**

Source of Obligation:

- *Dunmore v. Ontario (Attorney General)* 2001 SCC 94
- *Convention on the Elimination of Discrimination Against Women*, Articles 2 and 24
- *International Covenant on Economic, Social and Cultural Rights*, Article 2
- *Beijing Declaration*, para. 7
- *Beijing Platform for Action*, para. 4-5

- 27. The legislation must ensure the full and practical realization of the right to equal pay for work of equal value.**

Source of Obligation:

- *Convention on the Elimination of Discrimination Against Women*, Articles 2 and 24
- *International Covenant on Economic, Social and Cultural Rights*, Articles 3 and 7
- *Report of the Committee on Economic, Social and Cultural Rights*, para. 53

ENDNOTES