

**LINKING INTERNATIONAL AND DOMESTIC EQUALITY RIGHTS:
USING GLOBAL GENDER STANDARDS TO FURTHER CANADIAN
WOMEN'S ECONOMIC EQUALITY**

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Introduction

Gender equality seekers in Canada have used numerous tools in their efforts to ensure Canadian women are free from gender-based discrimination in employment. These tools have ranged from grassroots lobbying campaigns for legislative and policy reforms to multi-plaintiff lawsuits. This paper will focus on how Canada's international gender equality obligations have become an increasingly important element of these economic equality legal strategies. As a member of the international community through the United Nations and the International Labour Organization, Canada is party to many international human rights instruments which expressly commit Canada to eliminating gender-based and other discrimination in employment.

This paper proceeds in three parts. Part I of this paper will provide an overview of the international gender equality legal system and review the international principles, norms, and standards which are critical to the realization of women's labour market equality. It also sets out the key instruments which Canada has ratified. Part II and Part III uses the Canadian pay equity experience as an example of efforts by equality seekers to make the link between international and domestic equality rights. Section A reviews the international pay equity standards and Section B reviews the role and impact of those standards in the legal struggle for pay equity in Canada in terms of lobbying for pay equity laws at the federal and provincial level and the litigation surrounding those laws. Annex A sets out specific principles and obligations which emerge from these international law gender equality instruments in the area of women's labour market discrimination with references to the particular instruments from which they are drawn. Annex B sets out internet reference sources for key international human rights instruments and policy documents. Annex C contains a Bibliography.

Part I The International Gender Equality Legal System

Introduction

Since the adoption of the founding principles of the International Labour Organization in 1919 and continuing to the present with the Beijing +10 UN Declaration in March, 2005, world governments have worked to develop global rules to recognize women's rights as human rights and to develop mechanisms to redress the widespread systemic gender discrimination which permeates labour markets worldwide.

On a daily basis, the world's women, regardless of the country they live in, are denied one of their most basic human rights –the right to non-discriminatory work and income. If women obtain paid work, they are often segregated in job ghettos with inferior conditions, denied access to higher paying male work and paid much less than men for their work.¹ The global labour market for women has been marked by five significant trends that, while displaying some progress in women's share of both jobs and wages, demonstrate the persistent systemic gaps that exist between men and women across the spectrum of employment rights and benefits.² These five trends are (a) women's increased participation in the labour force; (b) women's modest gains in remuneration; (c) the continuing occupational segregation and income gaps between male and female workers; (d) women's continuing struggle to reconcile employment and family responsibilities; and (e) women's concentration in the informal economy.

Industrialized and developing countries alike share these trends, although the burden of inequality falls greatest on women workers where poverty, the informal economy, weak employment regulation, racial and ethnic discrimination and violence are most pronounced.³ So, while there has been improved equality, quantitatively, in women's global labour market participation, this has yet to yield true socio-economic equality and empowerment for women.⁴ Of a total 550 million working poor in the world, 330 million (60%) are women. In Canada, women and their children predominate amongst those in poverty. A substantial earnings gap between the men and women persists and has even widened slightly since the 1996 Census.⁵ In 2000, the average employment income for full-time, full-year female workers was equal to 70.8 percent of average employment income for men versus 70.9 percent in 1995. The wage gap found, at all levels of education, has widened for most educated women workers. In 2001, women accounted for 76.5 percent of the share of the lowest-paying occupations and earned less on average than men in every single low-paying occupational group with the exception of babysitters, nannies and parents' helpers.⁶

For women, their labour is their greatest asset and therefore global gender rules are necessary to provide them with access to a discrimination-free labour market. These rules are contained in an international gender equality legal system which is made up of many intersecting and overlapping instruments including treaties, conventions, declarations, resolutions, decisions and recommendations. Treaties and conventions are the most important mechanisms within this system because once they are negotiated, signed and ratified, they become legally binding and enforceable against the laws and actions of each signatory state. Together these instruments form the world's legal framework within which women's specific rights can be strengthened, states' positive obligations can be clarified, and effective mechanisms can be established and improved to monitor compliance with international obligations.⁷

Instruments/Documents Ratified by Canada

A sign of a government's commitment to gender equality at work is the ratification of ILO and United Nations Conventions to protect women worker's rights and promote gender equality. There are four major conventions specific to women's rights in the workplace: ILO Convention 100 on equal pay, ILO Convention 111 on ending discrimination in the workplace, ILO Convention 156 on accommodations for workers with familial responsibilities, and most recently ILO Convention 183 on maternity protection.⁸ Conventions 100 and 111 have met with widespread ratifications, signalling the commitment of governments to promote and uphold gender equality at work. However ratification is only one step, and governments must be committed to effective implementation, such as the adoption of national legislation, and the setting-up of enforcement and monitoring mechanisms.

In addition to ILO Conventions, many of the UN Conventions and agreements address the necessary steps to redress women's economic inequalities. This includes the 1979 Convention on the Elimination of All Forms of Discrimination against Women and the United Nations Fourth World Women's Conference Report, the 1995 Beijing Declaration and Platform for Action. Annex A refers to all these ILO and UN economic gender equality instruments/documents.

Canada has ratified or agreed to many of these instruments/documents affecting women's employment, including the following:

- Universal Declaration of Human Rights, 1948
- ILO Freedom of Association and Protection of the Right to Organise Convention, 1948
- ILO Equal Remuneration Convention, 1951 (No. 100)
- ILO Recommendation concerning Equal Remunerations for Men and Women Workers for Work of Equal Value (Recommendation No. 90) (1951)
- ILO Discrimination and Occupation Convention, 1958 (No. 111)
- ILO Employment Policy Convention, 1964 (No. 122)
- ILO Convention Freedom of Association and Protection of the Right to Organise, 1948 (No. 87)
- ILO Convention Abolition of Forced Labour, 1957 (No.105)
- ILO Convention Discrimination (Employment and Occupation), 1958 (No. 111)
- ILO Convention Worst Forms of Child Labour, 1999 (No. 182)
- ILO Convention Hours of Work (Industry), 1919 (No. 1)
- UN Convention on the Elimination of All Forms of Discrimination against Women, 1979
- UN Beijing Declaration and Platform for Action, 1995
- UN International Covenant on Civil and Political Rights, 1966
- UN International Covenant on Economic, Social and Cultural Rights, 1966
- UN Convention on the Political Rights of Women, 1953
- UN Convention for the Elimination of Racial Discrimination, 1969
- UN Convention on the Rights of the Child, 1990
- UN Convention relating to the Status of Refugees, 1954
- Durban Declaration and Action Programme on Racism, Racial Discrimination, Xenophobia and Related Intolerance, 2003
- UN Beijing Declaration and Platform for Action, Report of the Fourth World Conference on Women, 1995.

These conventions represent some but not all of the international gender standards referred to in Annex A. While Canada has ratified the equal pay conventions, it has failed to ratify those that deal with some other forms of sex-based discriminations, such as acknowledging women's overwhelming responsibility for the family. Many of these conventions are not meant to stand alone, and explicitly point out that discrimination is based on many layers of oppression, and cannot be solved without full commitment to overcoming *all* oppressive barriers in the workplace.

Recognition of Systemic Problems and Pro-Active Obligations

The above-mentioned gender equality standards reflect a emerging consensus on the nature of labour market inequalities facing women and the steps which need to be implemented to redress those inequalities.

Two main features of discrimination against women are job segregation and 'female occupations', which are less well-paid with lesser opportunities than male dominated occupations. One reason cited by employers for refusing to employ women is that they incur higher labour costs than men because of higher absenteeism rates, maternity protection, and less job flexibility.⁹ In reality, ILO research has found that it only costs employers 1% more to employ a woman than a man for the same job.¹⁰ Through tools such as the over 160 ratifications of ILO Convention 100, the world's global gender equality rules have increasingly

recognized the systemic and multi-layered nature of women's labour market discrimination. International labour and human rights law has moved from a traditional focus on the regulation of male-dominated "standard" workplaces, to taking a more systemic, inter-disciplinary and inter-institutional approach. This approach recognizes that securing gender justice for women in labour markets requires much more than enacting new labour laws. Equality measures must be taken to address the social, political and economic factors at the root of women's labour market discrimination, ie. women's lower labour force participation; persistent income discrimination; the continuing ghettoization of women's work particularly in the increasing informal economy and the many burdens of reconciling of work and family life.¹¹

International gender equality standards have imposed over the years increasingly specific directives for action to be taken by signatory states in order to achieve full equality in employment. In particular, the instruments use strong language requiring government and employers to ensure equality outcomes for women in practice and mandating regular reporting to monitor compliance. While the international gender equality mechanisms which Canada has ratified are far from being fully implemented, they do represent the new global standards which are to govern the actions of signatory state actors and where appropriate other social partners, such as trade unions and employers. These standards should inform the design of gender equality promoting laws and policies by ratifying states such as Canada.

International Labour Market Gender Equality Standards

In area of labour market equality, the following is a distillation of the gender standards taken from the mechanisms which Canada has ratified. This list was prepared by the co-authors as part of the research for the Federal Government's Pay Equity Review Task Force¹²:

1. Labour market equality for women and securing economic rights are priorities which warrant immediate attention and demand concerted action from all governments. Every available measure must be explored and the maximum available resources must be allocated towards securing these objectives. The achievement of equality for women in all aspects of life is a fundamental precondition for achieving a sustainable, just and developed society.¹³
2. Gender-based employment discrimination is systemic in nature. Traditional patterns of conduct and conceptions of what constitutes "valuable work" must be transformed in order to achieve greater workplace equality, including equal access to all benefits enjoyed by workers in the formal sector, and recognizing that women's full participation in all aspects of the labour market is imperative.¹⁴
3. Securing gender justice requires a multi-faceted approach with measures requiring governments and civil society members including employers and trade unions to take proactive steps coordinated through national action plans to address gender equality on a systematic basis.¹⁵ A comprehensive national strategy must be developed which recognizes and addresses the specific features of inequality which are facing women in the many different communities within a country.
4. Women's right to equal pay for work of equal value is a fundamental labour standard and human right of the highest priority.¹⁶ Government has a pressing legal obligation to take

positive steps to eradicate gender-based wage discrimination and to enact, modify and strengthen legislation in order to prevent all discrimination in employment practices including discrimination based on family status, non-standard work, and during periods of pregnancy or parental leave.¹⁷

5. Governments have an obligation to recognize the precarious position of female migrant workers and must implement measures to protect this group against involuntary confinement, forced labour, trafficking, and all other forms of labour and human rights abuses.¹⁸

6. Governments have a legal obligation to apply a gender perspective in the creation and implementation of the labour laws ensuring that women play an active role in this process, recognizing that the right to work and to define work conditions is fundamental to the right to development; recognizing that women experience work differently than men and their rights to development may be obstructed by unequal access to education, time poverty, and violence; and recognizing that the empowerment of women and full participation on the basis of equality are pressing international objectives.¹⁹

7. Governments have a legal obligation to ensure and guarantee equality outcomes.²⁰ Government must enforce adherence to workplace equality laws by public authorities and institutions.²¹ It has an added obligation to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise and must ensure that labour equality standards are achieved in both the public and private sector.²²

8. As a follow up to the Beijing Platform for Action and Beijing+5 and +10 commitments, employers (including private sector employers) have an obligation to take proactive steps to implement equal pay for work of equal value, to eliminate gender segregation in the labour force, and to review, analyse and reformulate wage structures for female-dominated jobs with a view to raising their status and earnings.²³

9. The achievement of equality is interconnected with the achievement and operation of other fundamental labour rights, including freedom of association and the right to collective bargaining. The methods devised to achieve labour market gender equality must recognize that collective bargaining is an important mechanism for eliminating wage discrimination and for securing adequate work conditions.²⁴ In the process of formulating legislation and taking steps to eradicate discrimination, and protect fundamental human rights, governments have a legal obligation to consult employers, trade unions, and civil society.²⁵

10. Government have a legal obligation to create effective enforcement mechanisms for ensuring compliance with international and national labour law standards. All labour complainants must have direct access to a competent tribunal that can: adjudicate their rights; issue and enforce an effective remedy; and impose sanctions for non-compliance. Effective enforcement also requires access to legal aid for vulnerable persons seeking to enforce their rights.²⁶

11. On-going monitoring, reporting and follow up within a defined time frame are necessary in order to ensure the practical implementation and realization of gender equality and full labour participation.²⁷

Annex “A” to this paper sets out more specific principles and obligations which emerge from these international law gender equality instruments in the area of women’s labour market discrimination with references to the particular instruments from which they are drawn.

Part II The Canadian Pay Equity Experience - Making the International and Domestic Link

Introduction

International pay equity standards have played a important role in women’s struggle for pay equity in Canada both in terms of the lobbying for and development of pay equity laws and policies and in the litigation surrounding those laws. This section of the paper uses this pay equity experience as an example to review how legal links have been made between international and domestic equality rights.

A. Pay Equity: An International Gender Equality Standard

Canadian equality principles and Canadian obligations under international human rights instruments can operate in concert to achieve the same objective. Canada’s obligations under domestic equality jurisprudence and under international human rights instruments are mutually reinforcing and complementary. Both domestic equality jurisprudence and international human rights instruments adopt a results-based, outcome-directed approach to equality. Both are concerned with achieving substantive equality in practice.²⁸

The international human rights instruments to which Canada is a signatory similarly require governments to begin from the acceptance that systemic discrimination against women and other marginalized groups is a reality which impoverishes women and society as a whole. From this starting point, the international instruments commit governments, employers and civil society to the goal of transformation in order to achieve the full realization of substantive equality. These international instruments similarly recognize that the objective of equality is to transform the way in which work is valued and compensated in order to ensure that women in practice receive equal pay for work of equal value. The international human rights instruments impose proactive obligations on government to “adopt all necessary measures”²⁹ to eliminate discrimination by any person, organization or enterprise.

The right to pay equity, ie. to compensation free of gender discrimination is an international gender equality standard and fundamental human right. Over the past century, the right to pay equity or equal pay for work of equal value has been enshrined in a wide range of binding international instruments.³⁰

Pay equity was one of the earliest rights to be recognized and formally codified as an international human right and labour standard. It was counted among the nine founding principles of the International Labour Organization in 1919.³¹ Thirty years later, in 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights. Article 23 of Declaration established that “[e]veryone, without discrimination, has the right to equal pay

for equal work.”³²

In 1951 this principle was expanded by ILO Convention No. 100 Concerning Equal Remuneration for Men and Women Workers of Equal Value which contained explicit directives for achieving pay equity using equal value principles which allowed the comparison of male and female work, which although dissimilar was comparable based on skill, effort, responsibility and working conditions.³³ This Convention has been explicitly ratified by many countries worldwide including Canada.³⁴ Soon after came ILO Convention No.111 Concerning Discrimination in Respect of Employment and Occupation, ratified by Canada, and requiring ratifying nations to create a national policy requiring equal treatment in employment.³⁵

In its 1998 Declaration of the Fundamental Principles and Rights at Work, the ILO confirmed pay equity as one of eight "Fundamental Conventions". All member states are under a particular duty to observe these Conventions as a result of their ILO membership, regardless of whether the individual Conventions have been ratified (ILO Constitution, Preamble and ILO Declaration). This Declaration has its roots in the 1995 World Summit for Social Development in Copenhagen, where the world's Heads of State affirmed for the first time that there were certain basic workers' rights. After 2 years of negotiations, the ILO Declaration was adopted by the International Labour Conference in June 1998. The adoption of the Declaration represented a commitment by all ILO member States, regardless of their level of economic development, cultural values, history, or number of ILO Conventions ratified, to respect, promote, and realize The predominance of these principles on the international stage is due to the realization that employment equality is interconnected with and necessary to sustain all other economic, social, civil and political rights. In particular, the achievement of pay equity is linked to the achievement of other fundamental labour rights, including freedom of association and the right to collective bargaining.³⁶

The most widespread promotion of pay equity came with the adoption of the International Covenant on Economic, Social and Cultural Rights (CESCR).³⁷ Article 7 of the CESCR obligates state parties to take active steps to realize the right to “equal remuneration for work of equal value without distinction of any kind, in particular [to ensure that] women ...[are] guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work...”³⁸ Ratification of the United Nations Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), which Canada and Quebec did in 1981, provides a number of additional international obligations relevant to pay equity. Article 7 of the Convention states a commitment to eliminate all forms of discrimination against women. Even more specific is Article 11.1, which provides an obligation to eliminate discrimination against women in the field of employment, stipulating the right to equal remuneration and to equal treatment in respect of work of equal value.³⁹

The most significant single UN gathering for women generally, and also significant in the struggle for pay equity was the Beijing Declaration and Platform For Action, a product of the Fourth World Conference on Women in Beijing.⁴⁰ Built on the gains achieved by CEDAW, the Beijing Declaration and Platform For Action provided more detailed contemporary interpretation of what CEDAW required by way of strategies for gender equality. One of the twelve critical areas of concern as identified by the Platform for Action, was “Women and the Economy,” an area that asked for the elimination of “all forms of employment discrimination.”⁴¹

The elimination of employment discrimination is to go hand in hand with the implementation of laws that ensure international labour standards such as ILO Convention No. 100 on equal pay and workers' rights, are effectively implemented in ratifying countries. This includes taking the necessary steps to establish and strengthen mechanisms to adjudicate matters relating to wage discrimination and to review and when necessary reformulate the wage structures in female-dominated professions to raise their low earnings.⁴²

International Pay Equity Requirements

The following key pay equity principles and obligations have been distilled from the above-noted obligations.

- The principle of *equal pay for work of equal value* or pay equity must be guaranteed, requiring that women's jobs where comparable to men's jobs must have equal compensation.
- Equal pay for work of equal value is a fundamental labour standard of the highest priority, necessary for building a sustainable, just and developed society.
- Governments must enact pay equity legislation covering both the public and private sector to ensure that the full and practical realization of the right is guaranteed and achieved "without delay" with the necessary mobilization of adequate resources to achieve that goal.
- Pay equity 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.
- Employers have a proactive obligation to achieve pay equity in their workplaces.
- Pay equity laws should require 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.
- Unions and representatives of non-unionized employees must be afforded an active role in developing and enforcing pay equity.
- Complaints regarding lack of pay equity must be enforceable before a competent and expert tribunal with meaningful sanctions for non-compliance.⁴³

B. Using International Pay Equity Standards in Canada

Introduction

The above-noted international pay equity related conventions and agreements place strong obligations on the Canadian and provincial governments to implement legislative measures advancing pay equity. It also provides the Canadian judiciary with compelling interpretive guides to ensure strong and effective interpretation of such legislative measures. This section of the paper provides an overview of how international pay equity standards were in fact used in the legal struggle for pay equity.

Lobbying and Legislative Reform

Equality seeking groups in Canada placed great reliance on the fact that the women's right to equitable wages has been a long standing principle of international labour and human rights

law.

....Ontario.....

Ontario's Equal Pay Coalition which lobbied for Ontario's *Pay Equity Act* referred continuously to Canada's 1972 ratification of ILO Convention 100 as a central reason why Ontario was required to enact a pay equity law. While the opposition argued that equal pay for work of equal value was a wild concept invented by radical feminists, the Equal Pay Coalition was able to argue that the concept had a long and distinguished pedigree and was based on a world consensus reached in 1919 and strengthened in 1951 and thereafter. Accordingly, provincial governments needed to enact domestic equal pay for work of equal value legislation in order to meet those binding obligations under international law.⁴⁴

After many years of lobbying, the Ontario Government in 1985 issued its *Green Paper on Pay Equity* which was the focus of the consultation process established prior to the enactment of a promised equal pay for work of equal value law. The link with international pay equity standards is evident from the covering letter from the then Attorney General of Ontario Ian Scott which notes that pay equity is not a new concept referring to Canada's ratification of ILO Convention 100 in 1972 and the implementation of pay equity in other international jurisdictions, such as Europe, Australia and elsewhere. As ILO Convention 100 required the implementation of equal pay for work of equal value and not just equal pay for equal work. This obligation was used by the Ontario Government to buttress support for its decision to expand Ontario's existing equal pay for equal work law to include an equal value requirement. As well, Ontario's *Pay Equity Act*, effective January 1, 1988 required employers to take pro-active steps to identify and eliminate gender-based compensation discrimination instead of waiting for complaints.

....Federal Jurisdiction...

The equal pay for work of equal value provisions of section 11 of the *Canadian Human Rights Act* were passed in 1978 by the Federal Government specifically as a measure to comply with its ratification of ILO Convention 100 in 1972. Unlike Ontario's 1988 Pay Equity Act, section 11 part of a complaint-based mechanism. Canadian women in the federal sector who tried to achieve pay equity using such a complaint-based mechanism experienced many delays and frustrations. After mounting criticism both domestically and at the international level, a federal Pay Equity Review Task Force was appointed by the Federal Government to investigate the matter and recommend the necessary legislative and policy reforms.

As part of the research work for this Task Force, the co-authors were commissioned to write a paper which reviewed Canada's international and domestic obligations in the area of pay equity and the impact of those obligations on the design and implementation of a new federal pay equity law.⁴⁵ The paper, "Canada's International and Domestic Human Rights Obligations to Ensure Pay Equity - Obligations to Design an Effective, Enforceable and Proactive Federal Pay Equity Law"⁴⁶ was relied upon in the final Task Force Report, *Pay Equity: A New Approach to a Fundamental Right*. The research paper concluded that the combination of Canada's international and domestic human rights obligations resulted in the following design requirements for a new federal pay equity law:

- * Canada has an obligation to enact strengthened pay equity legislation and to treat pay equity as a fundamental human right that has primacy over all other non-constitutional rights.
- * Employers have a proactive obligation to identify and rectify discriminatory workplace practices. Accordingly, pay equity legislation must be proactive and must address the systemic nature of the pay equity problem.
- * Pay equity legislation must apply to both the public and private sector.
- * Pay equity legislation must be designed in a manner that recognizes the interconnection between the right to organize, collective bargaining and the achievement of equality. Accordingly, it must enable unions and employee representatives/agents (in the case of non-unionized workers) to participate at all stages of developing and enforcing pay equity entitlements.
- * Pay equity legislation must ensure and guarantee that women can achieve non-discriminatory wages. Accordingly, it must allow for strong enforcement of pay equity obligations. Strong enforcement requires four different elements:
 - The legislation must detail pay equity obligations in such a way as to provide clear guidance that enables the workplaces parties to act upon their obligations. These measures, aimed at pre-empting litigation on procedural matters and allowing parties to focus on the substantive equality objectives of the legislation, would include setting out in detail the successive steps that workplace parties must pursue in order to meet their pay equity obligations. It would include clear definitions of key terms, would include clear guidance on the technical methodologies which are appropriate for developing gender inclusive pay patterns, and would include clear guidance on what specific factors must be included in a negotiated pay equity plan.
 - The legislation must set out clear time frames within which steps must be taken and within which substantive equality must be achieved. There must be clear and meaningful sanctions for failure to comply with the Act.
 - The legislation must provide for strong enforcement of rights through an expert tribunal with broad remedial powers. Complainants seeking to enforce rights under the Act must have direct access to the tribunal and legal aid must be provided where necessary to support such enforcement.
 - The legislation must provide for strong reporting, external monitoring and follow up on compliance with the Act. Methodologies must be included to measure the extent to which the wage gap is being closed.⁴⁷

The Task Force Report referred extensively to Canada's international pay equity obligations drawing upon the work from the above-noted paper including the following statement from the paper which was highlighted in the Report:

“As new international instruments have developed and ratified over the past century, they have continued to provide further guidance with respect to both the substantive meaning of non-discriminatory wages and the concrete steps that must be taken to achieve that objective.”⁴⁸

The Task Force Report also drew from the Federal Plan for Gender Equality which had been prepared by the Federal Government in the 1995 Beijing process as its plan for action to implement international gender commitments at the domestic level.⁴⁹ The Task Force stated as follows:

“In a variety of international settings, Canada has undertaken commitments to advance the goal of equal status for women and in particular to work towards the elimination of wage discrimination based on sex. Though these covenants do not manifest themselves directly as legal obligations within Canada, they represent an important body of principles which Canada has accepted as standards which this country is obliged to meet. Violations of these standards expose Canada to the sanctions available to the bodies, such as the United Nations, which represent the international community.”⁵⁰

The Task Force Report called for the passage of a new pro-active pay equity law separate from the *Canadian Human Rights Act* which could ensure that pay equity as a fundamental human right could be implemented effectively. Many of the specific Task Force recommendations followed the guidance of the international pay equity standards referred to in this paper and the above-noted Task Force research paper.

Since the release of the Pay Equity Task Force Report, equality seeking groups in Canada have formed together in the Pay Equity Network to lobby the Federal Government for the implementation of the Task Force Report. Like Ontario's Equal Pay Coalition, they are highlighting the fact that pay equity is an international gender equality standard which must be implemented through effective domestic law.

Litigation

...Ontario...

Once the *Pay Equity Act* was passed in Ontario, unions used litigation at the Pay Equity Hearings Tribunal to establish important precedents and decisions in order to implement pay equity in Ontario's unionized workplaces. This litigation particularly in the case of *ONA v. Haldimand-Norfolk* and *ONA v. Women's College Hospital*⁵¹ referred to the importance of pay equity as an international gender equality standard. While the decisions in these two cases set important pay equity precedents for the implementation of a gender neutral comparison system for male and female work, they did not explicitly refer to international standards.

When a new Progressive Conservative Government came to power in June, 1995, it moved to repeal the proxy provisions of the *Pay Equity Act* which had been passed effective January, 1993 to provide a mechanism for identifying gender-based wage discrimination in female-

dominated workplaces which lacked a female comparator, eg. child care centres, nursing homes, community agencies. The Service Employees International Union, Local 204 ("SEIU") which represented many of such employees, along with a number of individual women applicants, brought a challenge under section 15 of the *Charter* to the repeal of these provisions which had been effected through Schedule J of the *Savings and Restructuring Act*, 1996.

The applicants argued before Mr. Justice O'Leary that in interpreting the section 15 *Charter* obligations of the Ontario Government, it must consider the guarantees of equal pay for work of equal value enshrined in international human rights documents to which Canada was fully committed as a signatory. In particular, the applicants referred to the following international instruments: *The Universal Declaration of Human Rights*, Article 23(2); *ILO Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (Convention 100)*, ILO, *Recommendation concerning Equal Remunerations for Men and Women Workers for Work of Equal Value (Recommendation No. 90)* (1951); *International Covenant on Economic, Social and Cultural Rights*, Article 7; *Convention on the Elimination of All Forms of Discrimination Against Women*, Article 11(1)(d); and UN Beijing Declaration, Article 178(1)(k) and (l).

To meet the Ontario Government's argument that the repeal of the proxy provisions were necessary to save money given the Government's alleged fiscal crisis, the applicants pointed to the *Beijing Declaration's* requirement at Article 58(b) for Governments to commit to strengthening equal pay mechanisms as well as the obligation to study the gender impact of restructuring and other economic initiatives before taking steps which may have a negative impact on women's equality. The applicants also relied on the *Beijing Declaration* statement that governments have a positive obligation to assess the impact of legislative measures cutting back on equality protections for disadvantaged groups before enacting them. The applicants drew to the Court's attention, that in contrast to the increasing requirements of the pay equity standards internationally which supported the broadening and strengthening of pay equity laws, the Ontario Government was weakening its pay equity law and reducing its scope.

In the 1997 *SEIU v. Attorney-General(Ont)* decision, Mr. Justice O'Leary struck down Schedule J of the *Savings and Restructuring Act*, 1996 finding that the repeal of the proxy pay equity provisions violated the equality rights of the affected women under section 15 of the *Charter*.⁵² While Mr. Justice O'Leary did not specifically refer in his decision, to the international requirements which were cited to him, the reasoning in the case highlights the importance of pay equity as a fundamental right of women. As well, this decision is one of the very few decisions where women have successfully used the *Charter* to strike down discriminatory laws.

...Federal Jurisdiction...

Under the existing complaint-based pay equity law in the *Canadian Human Rights Act*, there has been substantial litigation as federal employers contested the complaints filed by unions on behalf of their members performing women's work in the federal sector.

Bell Canada v. Canadian Telephone Employees Association

In the *Bell Canada v. Canadian Telephone Employees Association* decision of the Supreme Court of Canada, the Court considered whether the power of the Canadian Human Rights Tribunal hearing the section 11 pay equity complaints of female employees under the *Canadian Human Rights Act* was compromised by the following: The Commission's power to issue binding guidelines and the power of the Tribunal Chairperson to extend Tribunal members' terms in ongoing inquiries.⁵³

The Canadian Labour Congress ("CLC") intervened in the case and relied on the international gender equality standards to set the context in which these administrative law questions should be answered. The CLC argued that the Canadian Human Rights Commission's various proactive remedial tools, including public education, institutional policy making and legislative action were all consistent with the multiple remedial approach which was contained in international gender equality instruments such as ILO Convention 100, CEDAW and the Beijing Declaration and Platform for Action.

The Court dismissed Bell Canada's appeal and held that the above-noted Commission powers did not compromise the Tribunal's ability to fairly judge the section 11 pay equity complaints. While the Court did not refer to the international standards, the Court did accept the appropriateness of the Commission having a variety of functions in order to properly address the systemic gender discrimination which exists in workplaces.

Newfoundland (Treasury Board) v. N.A.P.E.....

The Supreme Court of Canada in the *Newfoundland (Treasury Board) v. N.A.P.E.*⁵⁴ decision addressed whether the 1991 Newfoundland *Public Sector Restraint Act* violated section 15 of the *Charter* and whether such violation, if any, was saved under section 1. This *Act* had deferred from 1988 to 1991 the commencement of agreed upon pay equity adjustments and extinguished the 1988-1991 arrears which were owing to female employees in the health sector.

In addressing the importance of the right which had been unilaterally removed by the Newfoundland Government, the intervener CLC again relied on the status of pay equity as a fundamental human rights entitlement with "quasi-constitutional" status citing the *ONA v. Haldimand-Norfolk* decision and the *Syndicat de la fonction publique c. Procureur general de Quebec*.⁵⁵ Pay equity was not just a wage increase which could be removed but rather a human rights remedy to redress historical gender-based discrimination. The CLC further argued that achieving pay equity is interconnected with and necessary to support and sustain other social, civil and political rights, particularly in Canadian society where income earning power is so closely related to status. In making this argument, the CLC referred to international gender equality standards in the Beijing Declaration and Platform for Action and Canada's Fifth Periodic Report to the United Nations Committee on the Elimination of Discrimination Against Women.⁵⁶ The CLC further relied on the ILO Conventions and the 1998 ILO Declaration of Fundamental Principles and Rights at Work which all established pay equity as a core labour standard and human right. The CLC argued that the increasingly strong directives from the international community which are contained in international gender equality standards to which

Canada is a party compel the Newfoundland government to enhance and protect rather than erode the pay equity rights of public sector Newfoundland workers doing women's work.

Despite the reliance of the appellant union, NUPGE, and the intervener, the CLC on international pay equity standards, the Supreme Court of Canada's sole reference in the decision to matters "international" was to the Newfoundland Government's position that the "provincial credit rating on international money markets was at risk." While the Court recognized the importance of the pay equity right and obligations in its findings that there was a section 15 violation, the Court then went on to find that the Newfoundland Government was justified under section 1 in eliminating the pay equity adjustments owing to those public sector employees doing women's work in light of its finding that the fiscal crisis affecting Newfoundland in 1991 trumped the economic inequalities and discriminatory wages facing these Newfoundland health sector workers.

Use of International Gender Equality Enforcement Mechanisms

Canadian women's groups have also used the reporting mechanisms under the *Convention on the Elimination of Discrimination Against Women* as a way to highlight the gender inequalities women face in Canada and the failures of the Federal and Provincial Governments to meet their *CEDAW* obligations. *CEDAW* requires that signatory countries make a report periodically on their efforts to implement the Convention and these reports are monitored by the UN Committee on the Elimination of Discrimination against Women which issues its own assessment report on a country's performance.

Article 11 of *CEDAW* refers to the requirement to effectively enforce the international pay equity standards. Like many women's groups throughout the world, the Canadian Feminist Alliance for International Action ("FAFIA") a coalition of 40 Canadian women's organizations has prepared a "shadow report" to Canada's national official 5th periodic *CEDAW* report. FAFIA's January, 2003 Report, *Canada's Failure to Act: Women's Inequality Deepens* includes a section noting the failure of many provincial governments to enact effective pay equity laws and the ineffectiveness of the Federal Government's complaint-based section 11. In its 2003 monitoring report on Canada, the above-noted UN Committee expressed concern at the ongoing pay gap between men and women and the need to develop "effective enforcement mechanisms" including gender sensitive job evaluation systems with the aim of closing the pay gap.⁵⁷

Conclusion

As this paper indicates, international gender equality standards impose systemic and wide-ranging obligations on ratifying world governments, including Canada. These standards outline a multi-track process for working towards women's economic equality. Canadian equality seeking groups have relied on these standards in their lobbying, law reform and litigation in the pay equity area. While the standards have played an important role the results have been mixed.

Ontario's *Pay Equity Act* and the current section 11 of the *Canadian Human Rights Act* were influenced directly by the need to have a law the Government could argue complied with

Convention 100. While arguments based on international pay equity standards have been made to the Courts, the Courts have not relied specifically on the standards although in some cases, the reasoning and results of the case suggest that have had some impact. As, given that the *Bell Canada* case and the Ontario *Haldimand-Norfolk* and *Women's College Hospital* cases were already dealing with an existing pay equity law, the court and tribunal may not have seen the need to directly refer to the international standards. On the other hand, the Supreme Court of Canada in the *NAPE* decision appears to have ignored the standards in its final results.

There still remains a large disconnect between the obligations which Canada has undertaken in the international arena, and the economic discrimination facing women in Canada. The global gender standards are high. This is because lower standards are not effective in achieving gender equity for women. There is still much work to be done in continuing to bring to the attention of law makers, courts and adjudicators the many gender equality standards which Canada has ratified. Governments, in reviewing policy and legislative options must measure each policy and legislative choice that is made against what is needed to ensure equality. Courts and tribunals exercise their adjudicative obligations in the same way. Where a choice must be made, they must choose the option that will promote women's economic equality. Any choice which impedes women's economic equality is unacceptable. This is the challenge which both the international and Canadian legal system faces. In this way, the link between international and domestic equality rights will be strengthened.

ANNEX A

PAY AND EMPLOYMENT EQUITY FOR WOMEN: INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

The following pay and employment equity obligations flow from international human rights instruments.⁵⁸

A. PAY EQUITY

Basic Principles and Obligations

The principle of equal pay for work of equal value or pay equity must be guaranteed, requiring that women's jobs where comparable to men's jobs must have equal compensation. ILO *Equal Remuneration Convention (No. 100)* (ILO Convention No. 100), Article 1; *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, Article 7; *Convention on the Elimination of Discrimination Against Women (CEDAW)*, Article 11; *Beijing Platform for Action (Beijing Platform)*, Paras. 165, 166, 175, 178

Equal pay for work of equal value is a fundamental labour standard of the highest priority, necessary for building a sustainable, just and developed society. ILO *Declaration on Fundamental Principles and Rights at Work* (ILO Declaration); CEDAW, Preamble; *Beijing Platform*, Para. 41

Governments must enact pay equity legislation to ensure that the right is guaranteed. ILO *Convention No. 100*, Article 2(2); CEDAW, Articles 2(b), 2(f); *Beijing Platform*, Paras. 165(a), 178(a)

Pay equity or the elimination of the “compensation gap” between men's and women's jobs must be achieved “without delay”. CEDAW, Article 2

Pay equity 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. CEDAW, Preamble

Governments must ensure the full and practical realization of the right to equal pay for work of equal value. CEDAW, Articles 2, 24; *Beijing Platform*, Para. 175(k); ICESCR, Articles 3, 7

Governments must signal that they have made a strong commitment to achieving pay equity, that they have dedicated themselves unreservedly to achieving pay equity, and that they have mobilized adequate resources to achieving pay equity. CEDAW, Articles 2, 24; ICESCR, Article 2; *Beijing Declaration*, Para. 7; *Beijing Platform*, Paras. 4, 5

Employers have a proactive obligation to achieve pay equity in their workplaces. *Beijing Platform*, Para. 178(a), (h), (l), (o); *Beijing +5 Resolution*, Para. 82(h)

Scope of Pay Equity Obligations

Pay equity must be achieved in both the public sector and the private sector. CEDAW, Articles 2(d), (e); *Beijing Platform*, Para. 178(a), (h), (l), (o)

Special measures are required to ensure that public authorities and public institutions act in compliance with pay equity obligations. CEDAW, Article 2(d)

Methodologies for Achieving Pay Equity

Pay equity laws should require 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. ILO Convention No. 100, Article 3; *Beijing Platform*, Para. 178(k), (o)

Unions must be afforded an active role in developing and enforcing pay equity. ILO Convention No. 100, Article 4; *Beijing Declaration*, Para. 20; *Beijing Platform*, Paras. 166(l), 178(h)

Protection for the most vulnerable workers must be ensured by providing reasonable opportunity for representatives/agents of non-unionized employees to participate in developing and enforcing pay equity. *Beijing Platform*, Para. 45

Enforcement of Pay Equity Rights

Complaints regarding lack of pay equity must be enforceable before a competent and expert tribunal. *International Covenant on Civil and Political Rights (ICCPR)*, Article 3; *CEDAW*, Article 2(c)

Mechanisms to adjudicate systemic wage discrimination must be strengthened. *Beijing Platform*, Para. 178(l)

An effective remedy for systemic wage discrimination must be provided, and competent authorities must enforce pay equity remedies where granted. *ICCPR*, Article 3

Meaningful sanctions must be imposed for the failure to comply with pay equity obligations. *CEDAW*, Article 2(b)

A mechanism for external oversight and auditing of employers' compliance with pay equity should be provided. *ICESCR*, Articles 16, 17; *CEDAW*, Part V; *Beijing Platform for Action*, Para. 178©)

B. EMPLOYMENT EQUITY

Basic Principles and Obligations

The principle of employment equity must be guaranteed, requiring equality of opportunity and treatment in employment and occupation for all women, including those who are disadvantaged on the basis of race, colour, indigenous states, religion, disability, political opinion, national extraction or social origin. *ICESCR*, Articles 2, 7; *ICCPR*, Article 26; *CEDAW*, Article 11(1)(b); *International Convention on the Elimination of all Forms of Racial Discrimination (CERD)*, Articles 4, 5(e)(i); *Universal Declaration of Human Rights*, Articles 2, 7, 23; *ILO Discrimination (Employment and Occupation) Convention (No. 111)* (*ILO Convention No. 111*), Articles 1, 2, 3(b); *ILO Employment Policy Convention (No. 122)* (*ILO Convention No. 122*), Article 2(c); *Durban Programme of Action on Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban Programme)*, Articles 48, 66; *Beijing +5 Resolution*, Paras. 74(b), 82(a), (e); *Declaration on the Rights of Disabled Persons*, Articles 6, 7; *Declaration on the Rights of Mentally Retarded Persons*, Articles 2,3; *Declaration on Race and Racial Prejudice*, Article 9; *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, Rule 8; *World Programme of Action Concerning Disabled Persons*, Paras. 116-118

The right to work must be guaranteed and protected from discrimination. *ICESCR*, Article 6; *CERD*, Article 5(e)(i); *CEDAW*, Article 11(1)(a)

Governments must enact employment equity legislation to ensure the right is guaranteed.

CEDAW, Articles 2(b), 2(f); *ILO Convention No. 111*, Article 3(b); *ILO Maternity Protection Convention (Revised) (No. 183)* (*ILO Convention No. 183*), Article 12

Employment equity is a fundamental labour standard. *ILO Declaration on Fundamental Principles and Rights at Work*, Preamble, Article 1(b); *Beijing Platform*, Para. 41

Achieving employment equity is a required action for achieving the full implementation of human rights. *Beijing Declaration*, Paras. 9, 21; *CERD*, Article 2; *ILO Convention No. 111*, Preamble; *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, Preamble, Rules 7(1), 15(2)

In preventing employment discrimination, the multiple and intersecting forms of discrimination experienced by individuals must be taken into account. *Beijing Platform*, Para. 178(f), (j), (p); *Beijing +5 Resolution*, Para. 83(d); *Durban Programme*, Articles 49, 51, 104(c); *Draft Declaration on the Rights of Indigenous Peoples*, Article 18

Governments must signal that they have made a strong commitment to achieving employment equity, particularly through legislation, that they have dedicated themselves unreservedly to achieving employment equity, and that they have mobilized adequate resources. *ICESCR*, Article 2(1); *Beijing Platform*, Para. 5

Scope of Employment Equity Obligation

Employment equity must be proactively achieved in both the public sector and the private sector. *CEDAW*, Article 2(d), (e); *Beijing Platform*, Paras. 165(b), (o), 178(b), (h); *Beijing +5 Resolution*, Para. 82(m); *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, Rules 5, 8; *Durban Programme*, Article 215

Employment equity must be achieved for part-time as well as full-time workers. *ILO Part-Time Work Convention (No. 175)* (*ILO Convention No. 175*), Article 4(c)

Methodologies for Achieving Employment Equity

The principle of gender equality must be constitutionalized. *CEDAW*, Article 2

i. General

Women's right to free choice of employment, the right to promotion, job security, equal benefits and conditions of service, and the right to receive vocational training and retaining must be ensured. *CEDAW*, Article 11(1)(c)

Women's right to social security and the right to paid leave in cases of retirement, unemployment, sickness, invalidity, old age, and other incapacity to work must be ensured. *CEDAW*, Article 11(1)(e)
Governments must coordinate with regional and international institutions and actors to ensure employment equity for women living in poverty. *Beijing +5 Resolution*, Para.101(d)

Government policies must include gender equality training and gender-awareness campaigns. *Beijing +5 Resolution*, Paras. 82(j), (k)

Homeworkers' protection against discrimination in employment and occupation must be ensured. *ILO Home Work Convention (No. 177)* (*ILO Convention No. 177*), Article 4(2)(b)

Unions must be afforded an active role in promoting employment equity. *ILO Convention No. 111*,

Articles 1(b), 3(a); *Beijing Platform*, Paras. 178(d), 180(a); *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, Rules 6, 9; *World Programme of Action Concerning Disabled Persons*, Para. 131; *Durban Programme*, Article 215; *ILO Workers with Family Responsibilities Convention (No. 156)* (ILO Convention No. 156), Article 11; *ILO Convention No. 183*, Articles 4(4), 11; *ILO Convention No. 122*, Article 3.

Occupational segregation should be eliminated through measures such as counselling, placement, and the diversification of occupational choices. Equal participation in highly-skilled jobs and senior management positions should be promoted. *Beijing Platform*, Para. 178(g)

Employment equity must be facilitated by increasing access to risk capital, credit schemes, microcredit, and facilitating microenterprises and small and medium-sized enterprises. *Beijing +5 Resolution*, Paras. 74(b), 82(g)

ii. Women and Families

Working mothers must be free from discrimination. *ILO Convention No. 183*, Articles 6, 8, 9, 10; *ICESCR*, Article 10; *CEDAW*, Article 11(2)

Governments must promote programmes and policies that enable women and men to reconcile their work and family responsibilities. *Beijing +5 Resolution*, Paras. 82(b), (c), (d); *CEDAW*, Article 10; *ILO Convention No. 156*, Article 3(1)

Workers with family responsibilities must be able to integrate into the labour force, as well as re-enter it after absences due to family responsibilities. *ILO Convention No. 156*, Article 7

Family support services and flexible working arrangements should be provided by the employer. *Beijing Platform*, Para. 180(b)

iii. Women with Disabilities

Governments must support personal assistance programmes and interpretation services to increase the level of participation of persons with disabilities in everyday life at work. *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, Rule 4

Negative attitudes and prejudices concerning disabled workers must be overcome, by means of state-initiated campaigns. *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, Rule 7(4)

Employment equity for disabled persons must be achieved in both rural and urban areas. *World Programme of Action Concerning Disabled Persons*, Para. 128

Employment equity for disabled persons should be achieved through various measures, including incentive-oriented quota schemes, designated employment, loans or grants for small businesses, contract compliance, and tax concessions. *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, Rule 7(2); *World Programme of Action Concerning Disabled Persons*, Para. 129

Technical aids for persons with disabilities and access to them must be supported by governments to achieve employment equity. *World Programme of Action Concerning Disabled Persons*, Para. 129

iv. Indigenous Women

Governments must ensure employment equity for indigenous peoples. *Durban Programme*, Article 16;

ILO Indigenous and Tribal Peoples in Independent Countries Convention (No. 169) (ILO Convention No. 169), Article 20; Draft Declaration on the Rights of Indigenous Peoples, Articles 18, 22

Governments must enact and supervise legislation and other measures for employment equity for indigenous and tribal peoples. *ILO Convention No. 169, Article 33; Draft Declaration on the Rights of Indigenous Peoples, Article 37*

Social security and other occupational benefits must be ensured without discrimination for indigenous and tribal peoples. *ILO Convention No. 169, Articles 20(1)(c), 24*

Vocational training must be tailored to suit the special needs of indigenous and tribal peoples. *ILO Convention No. 169, Article 21*

Handicrafts, rural and community-based industries, and a subsistence economy and traditional activities shall be recognized as important factors in the maintenance of cultures and in economic self-reliance and development of indigenous and tribal peoples. *ILO Convention No. 169, Article 23*

v. *Women Disadvantaged by Racism, Racial Discrimination, Xenophobia and Related Intolerance*

Methods for achieving employment equity for victims of racism, racial discrimination, xenophobia and related intolerance include civil rights enforcement and public education and communication within the workplace. *Durban Programme, Article 104(a)*

Enterprises organized and operated by women who are victims of racism, racial discrimination, xenophobia and related intolerance should be supported by promoting equal access to credit and training programmes. *Durban Programme, Article 103*

The public and the private sectors should improve the prospects of targeted groups, particularly those subject to multiple discrimination, facing the greatest obstacles in finding, keeping or regaining work. *Durban Programme, Article 104(c)*

Governments should promote and observe international instruments and norms on workers' rights to avoid the negative effects of discriminatory practices, racism and xenophobia in employment and occupation. *Durban Programme, Article 106*

Both the private and the public sector should foster the growth of businesses dedicated to improving economic and educational conditions in underserved and disadvantaged areas. *Durban Programme, Article 104(b)*

Enforcement of Employment Equity Rights

A national coordinating committee for employment equity should be permanent and based on legal and administrative regulation, composed of pluralistic forces, and guaranteed autonomy and resources. *Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rule 17; Durban Programme, Articles 90, 91; National Institutions for the Promotion and Protection of Human Rights (Paris Principles)*

Employment equity must be enforceable before a competent and expert tribunal, and the remedies must be effective and enforced when granted. *ICCPR, Article 3; CERD, Article 6; Durban Programme, Articles 108, 165; Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rule 15(4); CEDAW, Article 2*

Meaningful sanctions must be imposed for the failure to comply with employment equity obligations. *CEDAW*, Article 2(b); *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, Rule 15(2)

Progress in employment equity must be reported annually. *ILO Convention No. 111* Article 3(f)

Legislation implementing employment equity must be reviewed and monitored. *Beijing Platform*, Para. 178(c); *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, Preamble, Part IV

ANNEX B

INTERNET REFERENCES FOR INTERNATIONAL HUMAN RIGHTS INSTRUMENTS AND DOCUMENTS

International Human Rights Instruments

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW):

<http://www.unhchr.ch/html/menu3/b/e1cedaw.htm>

ILO Declaration on Fundamental Principles and Rights at Work:

<http://www.ilo.org/public/english/standards/relm/ilc/ilc86/com-dtxt.htm>

ILO Discrimination (Employment and Occupation) Convention (No. 111):

http://www.unhchr.ch/html/menu3/b/d_ilo111.htm

ILO Equal Remuneration Convention (No. 100): http://www.unhchr.ch/html/menu3/b/d_ilo100.htm

International Covenant on Economic, Social and Cultural Rights (ICESCR):

http://www.unhchr.ch/html/menu3/b/a_ceschr.htm

International Covenant on Civil and Political Rights (ICCPR):

http://www.unhchr.ch/html/menu3/b/a_ccpr.htm

International Convention on the Elimination of all Forms of Racial Discrimination (CERD):

http://www.unhchr.ch/html/menu3/b/d_icerd.htm

Universal Declaration of Human Rights: <http://www.unhchr.ch/udhr/lang/eng.htm>

International Policy Documents

Beijing Declaration and Platform for Action:

<http://www.un.org/womenwatch/daw/beijing/platform/declar.htm>

Further Actions and Initiatives to Implement the Beijing Declaration and Platform for Action ("Beijing +5 Resolution"): <http://www.un.org/womenwatch/daw/followup/ress233e.pdf>

Declaration on Race and Racial Prejudice: http://www.unhchr.ch/html/menu3/b/d_prejud.htm

Declaration on the Rights of Disabled Persons: <http://www.unhchr.ch/html/menu3/b/72.htm>

Declaration on the Rights of Mentally Retarded Persons:

http://www.unhchr.ch/html/menu3/b/m_mental.htm

Draft Declaration on the Rights of Indigenous Peoples:

[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.SUB.2.RES.1994.45.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.SUB.2.RES.1994.45.En?OpenDocument)

Durban Declaration and Action Programme on Racism, Racial Discrimination, Xenophobia and Related Intolerance: <http://www.un.org/WCAR/durban.pdf>

ILO Employment Policy Convention (No. 122): http://www.unhchr.ch/html/menu3/b/k_ilo122.htm

ILO Home Work Convention (No. 177):

http://www.ilo.org/public/english/employment/skills/recomm/instr/c_177.htm

ILO Indigenous and Tribal Peoples in Independent Countries Convention (No. 169):

<http://www.unhchr.ch/html/menu3/b/62.htm>

ILO Maternity Protection Convention, (Revised) (No. 183): <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C183>

ILO Part-time Work Convention (No. 175): <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C175>

ILO Workers with Family Responsibilities Convention (No. 156):

<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C156>

National Institutions for the Promotion and Protection of Human Rights ("Paris Principles"):

<http://www1.umn.edu/humanrts/resolutions/48/134GA1993.html>

Standard Rules on the Equalization of Opportunities for Persons with Disabilities:

<http://www.un.org/documents/ga/res/48/a48r096.htm>

World Programme of Action Concerning Disabled Persons:

<http://www.un.org/esa/socdev/enable/diswpa00.htm>

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2. Cornish, Mary and Fay Faraday. "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 in Cambridge University Press, Spring, 2005.
3. Cornish, *supra* note 1 at 3-5.
4. ILO, *Global Employment Trends for Women 2004* (Geneva, ILO, 2004) at 1 [hereinafter, "Global Employment Trends for Women"]. See also UNIFEM, *Progress of the World's Women: UNIFEM Biennial Report*, UN IFEMOR, 2002, 0-91291770-9 [hereinafter, "Progress of Women 2002"], and *Time for Equality at Work: Report of the ILO Director General*, UN ILOOR, 2003, Report 1B, 92-2-112871-7 [hereinafter "Time for Equality"] and Fair Globalization, *supra*, note 3 at 48.
5. Statistics Canada (2001), *2001 Census of Population*; Pay Equity Task Force (2004), *Pay Equity: A New Approach to Fundamental Rights*, "Minister of Labour, Minister of Justice, Government of Canada at 9-12
6. *Pay Equity: A New Approach to a Fundamental Right*, *ibid* at 14.
7. *Securing Gender Justice*, *supra* note 2.
8. Two other conventions, Convention 175 (1994) on part-time work and Convention 177 (1996) on home work are of great importance to women, as they make up the majority of these workers. Only 10 countries have ratified Convention 175 and only four countries have ratified Convention 177. International Confederation of Free Trade Unions (February 2005) *Great Expectations...Mixed Results*, Report prepared for the Beijing Platform, at 7.
9. Cornish, *supra* note 1 at 9.
10. "Time for Equality" *supra* note 4 at 50.
11. Cornish, Mary and Fay Faraday, *Achieving Pay and Employment Equity for Women: Human Rights and Business/Development Imperatives* 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.
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13. *Beijing Declaration*, *supra* at para. 7; *Beijing Platform for Action*, *supra* at para. 4-5; *CEDAW*, *supra* at art. 2, art. 24; *ICESCR*, *supra* at art. 2, art.]; *Right to Development*, *supra* at art.6; *ILO 1998 Declaration*, *supra* at Preamble, art.2(d).
14. *CEDAW*, *supra* at Preamble, art.11(1); *ICESCR*, *supra* at art 7(a), 11.1; *Convention 111*, *supra* at art.2(b)(vi).

15. CEDAW, *ibid.*; the *Beijing Declaration and Platform for Action*, *supra*; and the *Resolution Integrating the Human Rights of Women throughout the United Nations System*.
16. *Convention 100*, *supra* at art. 2.1, art. 3.3; *ILO Constitution*, at preamble; *ILO 1988 Declaration* *supra*; *Convention 111*, *supra* at art.2(b)(v); *UNDHR*, *supra* at art 23.2; *ICESCR*, *supra* at art. 7(a)(i); *CEDAW*, *supra* at art 11.1, art.12;
17. *Convention 100*, *supra* at art. 2; *ILO Part-time Work Convention*, *supra* at art.4-7; *ILO Maternity Protection Convention 183*, *supra* at art.8, art.9; *Convention 111*, *supra* at art. 1(1); art. 2(a)(b); art. 6; *ILO Termination of Employment Convention*, *supra* at art. 5(d); *CEDAW*, *supra* at art. 2(f), art.4, art.11.2, art.12.2; *Beijing Platform for Action*, *supra* at para. 165 and 178(a)(f)(d), 179(c); *ICCPR*, *supra* at art 10(2).
18. See *UN International Convention on the Protection of the Rights of Migrant Workers and Their Families*, G.A. res. 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990), (entered into force 1 July 2003); *UN Convention on the Suppression of Traffic in Persons and of the Exploitation and Prostitution of Others*, 96 U.N.T.S. 271, entered into force July 25, 1951; *UN Declaration of Elimination of Violence Against Women*, G.A. res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, U.N. Doc. A/48/49 (1993) [hereinafter “DEVAW”].
19. *ILO Workers With Family Responsibilities Convention*, *supra* at art. 7; *Convention 111*, *supra* at art. 2(b)(iii); *Right to Development*, *supra* at art.8; *ICESCR*, *supra* at art. 6(10), art. 10.1; *CEDAW*, *supra* at art. 10(h), art. 11.2(c); *DEVAW*, *ibid* at art.2, art.4; *Beijing Declaration*, *supra* at para. 82, para. 179(c), para. 180 (a), para. 190.
20. *Convention 100*, *supra* at art. 2; *ICESCR*, *supra* at art. 3, art.; *CEDAW*, *supra* at art.2, art.11, art. 24; *UNDHR*, *supra*; *Platform for Action*, *supra* at para.165(a).
21. *CEDAW*, *supra* at art. 2(d)
22. *CEDAW*, *supra* at art. 2(e); *Convention 111*, *supra* at art.2, art.3;
23. *Beijing Platform for Action*, *supra* at para. 178(a), (h), (l) and (o).
24. *ILO 1998 Declaration*; *Beijing Platform for Action*, *supra* at para. 178(h); *UNDHR*, *supra* at art. 20.1, art. 23.4; *ICESCR*, *supra* at art. 8.1(a); *ICCPR*, *supra* at art.22.1.
25. *Beijing Declaration*, *supra* at para. 20.
26. *ICCPR*, *supra* at art. 3; *CEDAW*, *supra* at art. 2(b)(d); *Platform for Action*, *supra* at 178(l).
27. See regarding reporting, monitoring and follow up *Convention 100* *supra*; *ICESCR* *supra*; *ICCPR* *supra*; *CEDAW* *supra*; *Beijing Declaration* *supra*; *Beijing Platform for Action* *supra*; and *Beijing+5 Resolution*, *supra*.
28. 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” - Research Paper prepared for the Federal Pay Equity Review Task Force, Ottawa, Ontario.
29. *CEDAW*, Articles 2 and 24.

30. See Margot E. Young "Pay Equity: A Fundamental Human Right" Status of Women Canada, September 2002. Available at: http://www.swc-cfc.gc.ca/pubs/0662327535/200209_0662327535_e.pdf
31. Constitution of the International Labour Organization (1948) 15 U.N.T.S. 194. T
32. Article 23 (2.), Universal Declaration of Human Rights, GA Res. 217 (III), UN Doc. A/810 (1948).
33. (1953) 165 U.N.T.S. 303 [hereinafter Convention No. 100]. This Convention entered into force on May 23, 1953.
34. This Convention was ratified by Canada in 1972.
35. (1964) 521 U.N.T.S. 427 [hereinafter Convention No. 111].
36. Cornish, Shilton, Faraday, 2003 *supra*.
37. GA. Res. 2200A (XXI), 21 UN GAOR, (Supp. No. 16) 52, UN Doc A/6316 (1966), 993 U.N.T.S. 3, Can. T.S. 1976 No. 46.
38. In full, Article 7 states: The State parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular:
Remuneration which provides all workers, as a minimum, with:
Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
A decent living for themselves and their families in accordance with the provisions of the present Covenant;
Safe and healthy working conditions;
Equal opportunity for everyone to be promoted in his employment to an appropriate higher level. Subject to no considerations other than those of seniority and competence;
Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.
39. GA Res. 34/189, UN GAOR, 34th Sess., (Supp. No. 46), U.N. Doc. A/34/46, (1982) Can. T.S. 1982 No. 31.
40. United Nations, Report of the Fourth World Conference on Women, Beijing, China, September 4-15, 1995, A/CONF. 177/20, 17 October (1995).
41. *Ibid.*, Strategic Objective F-5.
42. *Ibid* at 26.
43. *Achieving Pay and Employment Equity*, *supra*.
44. Armstrong, Pat and Mary Cornish, "Restructuring Pay Equity for a Restructured Work Force: Canadian Perspectives" (1997), 4:2 *Gender Work and Organization* 67 at 68-69
45. Pay Equity Task Force Final Report, *Pay Equity: A New Approach to a Fundamental Right*, Minister of Justice, Ottawa, Canada, 2004.

46. Cornish, Shilton and Faraday, 2003, *supra* note 12.
47. *Ibid.*
48. Pay Equity Task Force Final Report, *supra* note 45 at 59, citing Cornish, Shilton and Faraday, 2003, *supra* note 12 at 6.
49. Status of Women Canada, (1995) *Setting the Stage for the Next Century: the Federal Plan for Gender Equality*, Ottawa.
50. Pay Equity Task Force Report, *supra* note 45, p. 63
51. *ONA v. Haldimand-Norfolk* (No. 6) (1991) 2 P.E.R. 105 and *ONA v. Women's College Hospital* (No. 4) (1992) 3 P.E.R. 61
52. *Service Employees International Union Local 204 et al. v. Attorney-General (Ont)*, (1997), 35 O.R. (3d) 508 (Gen. Div.)
53. 2003 SCC 36.
54. 2004 SCC 66.
55. January 9, 2004, unreported, Que.C. S at Annexe 11.
56. April 9, 2002, UN Doc. No. CEDAW/C/Can/5 at para. 9.
57. United Nations, Report of the Committee on the Elimination of Discrimination Against Women, 28th Session, 2003, General Assembly.
58. See Annex A and - Achieving Pay and Employment Equity for Women - Human Rights and Business/Development Imperatives, *supra*.