Court File No. C68946

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF HEALTH AND LONG-TERM CARE

Appellant

and

ASSOCIATION OF ONTARIO MIDWIVES and HUMAN RIGHTS TRIBUNAL OF ONTARIO

Respondents

FACTUM OF THE RESPONDENT, ASSOCIATION OF ONTARIO MIDWIVES

April 5, 2021

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PART I OVERVIEW – NATURE OF CASE AND ISSUES

1. This case is about whether the Court should interfere with the factual findings of the expert Human Rights Tribunal of Ontario (Tribunal) which found that the Appellant, the Ministry of Health (MOH), engaged in systemic sex discrimination in setting the compensation of midwives, the most highly sex-segregated profession in Ontario. It is well-established that jobs performed almost exclusively by women, and therefore closely associated with "women's work", are acutely susceptible to being undervalued and underpaid as a result of the persistent forces of systemic gender discrimination in compensation (SGDC). In the early 1990s, after decades of suppression by the male-dominated medical profession and a Task Force Report documenting their history of prejudicial treatment, midwives prepared to join physicians as regulated, publicly funded regulated maternity and newborn care providers in Ontario's health system. When setting midwives' compensation, the MOH and the Respondent, the Association of Ontario Midwives (AOM), recognized the systemic risks of undervaluing and undercompensating midwives' labour. The parties proactively developed equitable and gender-sensitive compensation principles and methodology (collectively, "the benchmarks") to objectively make visible and value midwifery work and relatively position midwives between a group of male predominant family physicians and female predominant senior nurses. In 1993, the parties applied the benchmarks, an equity tool, as part of a pay equity exercise to ensure the MOH discharged its proactive duties under the *Human Rights Code* (*Code*) to set midwives' compensation free of sex discrimination at regulation.

2. However, by 2010 the MOH had fully abandoned the parties' benchmarks, including the physician comparator, without adopting any *Code* compliant compensation setting process in their place, or taking any proactive steps to monitor and ensure midwifery pay was free of sex discrimination. The MOH instead closely aligned midwives' pay with nursing work, obscuring the

ways in which midwives, as autonomous primary care providers, are more like physicians. When the AOM raised concerns about an increasingly large pay gap between midwives and CHC physicians, the MOH refused to take their equity concerns seriously. When the parties conducted their first joint compensation study since 1993, the independent compensation expert applied the parties' benchmarks and recommended a 20% equitable adjustment to midwives' pay. The MOH rejected the expert findings, abandoned the joint process, and declined to conduct its own separate study, fearing it would confirm the joint study's results. The MOH instead froze midwives' pay at inequitable levels, leading to the AOM filing a human rights complaint on behalf of (now) over 1000 midwives in 2013. The MOH kept midwives' pay frozen until 2017.

3. In 2018, after a lengthy hearing involving 45 expert and lay witnesses and nearly 70,000 pages of evidence, the Tribunal found that the MOH had systemically discriminated against midwives on the basis of sex contrary to ss. 3, 5, 9, 11 and 12 of the *Code*. The Tribunal found that since 2005 the systemic and cumulative effects of the MOH's policies and actions on midwives had resulted in adverse treatment and that sex was more likely than not a factor in that treatment and the compensation gap that developed between midwives and CHC physicians. The Tribunal rejected the MOH's claim that gender was irrelevant to its compensation setting, underscoring that it is settled law that under the *Code* the MOH has a proactive duty to prevent discrimination and ensure that pay is set free of systemic sex bias. The Tribunal found that midwives continue to be acutely susceptible to SGDC and that the MOH had denied them the very mechanism the parties previously agreed was necessary to protect them from SGDC – an objective, gender-sensitive analysis of the value and pay of their work in comparison with a male-identified physician comparator. In a separate decision on remedy, the Tribunal ordered the MOH to reinstate the benchmarks and implement the recommended 20% equitable pay adjustment back to 2011.

AOM v Ontario, 2018 HRTO 1335 [Liability Decision, "**LD**"]; *AOM v Ontario*, 2020 HRTO 165 [Remedy Decision, "**RD**"]

4. On judicial review, the Divisional Court unanimously dismissed the MOH's application, finding both Tribunal decisions reasonable. The Court extensively reviewed the factual and legal context in which the Tribunal made its decisions and found that the Tribunal reasonably concluded that sex was a factor in the cumulative adverse treatment experienced by midwives, which resulted from the MOH's policies and conduct over time, and that there was ample evidence to support the Tribunal's findings. The Court called the MOH's gender-avoidant arguments "disingenuous" and further found they "miss the point", "ignore the overwhelming evidence", "mischaracterize the history of compensation negotiations with the AOM, fail to engage with the allegations of adverse gender impacts on midwives and ignore the systemic dimensions of the claim".

Ontario v AOM, 2020 ONSC 2839, [11, 113, 169, 196] ["**Div Ct**"]

5. On appeal, the MOH asks this Court to engage in a wholesale reassessment of the extensive evidence and overturn the Tribunal's factual findings, notwithstanding clear direction from the Supreme Court of Canada (SCC) that it is the Tribunal's role to evaluate the evidence, make factual findings, draw inferences from those findings, and "absent exceptional circumstances" the reviewing court should not intervene. The MOH's continued adoption of a "gender-avoidant" rather than "gender-sensitive" lens, contrary to established human rights jurisprudence, skews its analysis of the evidence. Despite warnings by the Tribunal and court below, the MOH continues to "mischaracterize" evidence, "ignore" the systemic dimensions of the midwives' claim, and attempt to "de-gender" or "delink" its midwifery compensation setting process from its gendered connections, despite the overwhelming evidence to the contrary. The AOM submits that the Tribunal's decisions are carefully reasoned and ought to be upheld.

PART II SUMMARY OF FACTS

A. Midwives, SGDC And Development Of 1993 Equitable Compensation Benchmarks

6. It is well-established that systemic gender discrimination in compensation is an ongoing, pervasive factor affecting the compensation of women, by rendering *invisible* and *undercompensating* women's work. Systemic factors have led to labour market occupational sex segregation, with women concentrated into jobs that are less valued and lower paid than male-dominated jobs. The more female-dominated the job, the more closely associated it is with "women's work" and the deeper the ongoing effects of SGDC, the lower the pay and the greater undermining of women's dignity and self-respect. Midwifery is the most extreme example of occupational sex segregation. Subject to a "gender trifecta", midwives are not only 99% women, but they also provide "reproductive care to [predominantly] women and their newborns, in an area of health care that was once dominated by male physicians".

> Div Ct [4, 19]; LD [2, 232, 247] (noting: midwives and their clients "may self-identify as transgender or gender non-conforming"); *Haldimand-Norfolk* (1991) 2 PER 105 [18-19]; *Centrale des Syndicats de Quebec*, 2018 SCC 18 [2-3, 34] [*CSQ*]; MOL, "Closing the Gender Wage Gap: A Background Paper" **Respondent's Compendium** [**RC**] V4 T46, R1577 p 30291-6; Gender Wage Gap Report, RC V5 T47, R1580 p 30662-66 [GWG Report]; Kervin & Reid, "Job Gender & Job Devaluation in 15 Organizations", RC V5 T57, R2093 p 42926-8; Kervin Transcript [**Trans**], RC V4 T43, R2216 p 67868-9, 67874; ECHO Report, RC V6, T63, R1580 p 30411-544

7. SGDC has been studied extensively by governments and academics for over 5 decades. Starting in the late 80's Ontario sought to address SGDC by legislating proactive duties on employers, including the MOH, to ensure their compensation practices were free of sex-bias. As set out in the *Pay Equity Act (PEA)* and related government studies, to identify and remedy SGDC, female and male dominated jobs are compared using an objective, gender-sensitive mechanism to assess the value and pay of the work based on the skill, effort, responsibility and working conditions (SERW) of the job. In 1993, Ontario extended the *PEA* to give women in workplaces

that are so female predominant that they have *no* male comparators, the right to compare to similar female pay equity adjusted jobs in larger proxy employers (that have sufficient male comparators), which act as "proxies" for male work and pay.

> *PEA*, RSO 1990 c P 7; *ONA v PNH*, 2021 ONCA 148 [12-20] [*ONA*]; Armstrong Trans, RC V4 T44, R2211 p 67032-36; Armstrong Expert Reports, RC V2 T12, R2054 40266-82, 40305-11; Pay Equity in Predominantly Female Establishments, RC V5 T50, R2058 p 40437-589; GWG Report, RC V5 T45, R1580 p 30665-66; Green Paper, RC V5 T49 R1534 p 25571-632; AOM Appx 7 [31, 38, 107-09], RC V4 T18, R3010 p 743, 745, 760-61; Van Wagner Aff [95-99], RC V1 T5, R191 p 4373-74; Van Wagner Trans, RC V4 T26, R2177 p 60507-09 40491

8. During this same period, midwives prepared to join predominantly male physicians as regulated primary healthcare providers. In the lead up to regulation, the AOM and MOH recognized the historic sex-based disadvantage and unequal treatment of midwives in the health sector, their acute vulnerability to SGDC, and their historical suppression by the male-dominated medical profession. A 1987 Task Force Report on Midwifery described how midwives, as sex segregated professionals, had long experienced systemic gender disadvantages, including the denigration and devaluation of their work and its contributions to women, families and the health system, in contrast to the many systemic advantages afforded to the male predominant medical profession. In 1992, the MOH developed an Options Paper and established an advisory council to inform equitable compensation setting. Approved by the Assistant Deputy Minister, the Options Paper emphasized the "necessity" of establishing "a fair and equitable pay level [for midwives] *based on pay equity*, reflecting responsibilities, working conditions and level of education".

> Div Ct [15, 19, 25]; LD, [25, 61, 64, 67, 78-79, 91-2]; Options Paper, RC V6 T67, R1260 p 22730 [Emph]; 1987 Task Force Report, RC V4 T45, R76 esp. 22279-83; Bourgeault Expert Reports, RC V2 T13, R2065 p 40845,65, 40858, 40884; Vicky Van Wagner Aff [82-9, 215-8], RC V1 T5, R191 p 4352, 4404-5; Council Report, RC V5 T52 R112 p 3548, 3555, 3561-64; McHugh Trans, RC V4 T39 R2207 p 66469; AOM, Issue of Equity, RC V5 T48 R120 p 3629; Appx 7 [13-24], RC V4 T18, R3010 p 739-41; Porter Trans, RC V4 T40, R2207 p 66605

9. In 1993, the parties jointly developed equitable compensation principles and methodology

(the benchmarks), which were "imbued with gender" and sensitive to the need for a proactive tool to prevent SGDC. Working with a compensation specialist, Robert Morton, the parties conducted a joint study which included "systematic and careful research" into how the SERW of midwifery compared to related health professions in order to inform the relative positioning of midwifery job requirements and compensation (Morton Report). The parties agreed family physicians employed at Community Health Centres (CHC) (then male predominant) and CHC senior nurses (now Nurse Practitioners or NPs) were appropriate comparators. The role of a comparator associated with male work was to ensure "their compensation corresponded with the work itself and not the gender of the person doing the work." The same MOH department was responsible for setting compensation for all three professionals. The benchmarks permitted some positional bargaining on the final compensation rate and fiscal restraints were imposed only after pay equity was achieved.

> Div Ct [5, 28-33, 36]; LD [26, 89, 103, 282, 301]; Morton Report, **Appellant's Compendium** [**AC**] V4 T108, R1277 p 22852-54, 22876-7; Morton Trans, RC V4 T36 R2199 p 64610; Primary Position Comparisons, RC V6 T66 R129 p 3667-74; Kilthei Aff, RC V1 T1, R68 p 2170-71, 2173, 2182; Principles of Funding, AC V5 T107, R2032 p 38824-6; Forestell Trans, RC V4 T42, R2215 p 67773, 67776, 67792; McHugh Trans, RC V4 T39, R2207 p 66463-65; AOM Submission, RC V3 T16, R3001 p 135, 218-26, 233; AOM Reply Submission, RC V4 T23, R3024 p 1595-98

10. Midwives and CHC physicians are both autonomous primary healthcare providers. They have a similar scope of practice providing care for low-risk pregnancies, referring high-risk clients to obstetricians. While 70-80% of Ontario births are low-risk, they nevertheless require midwives and physicians to have the expertise and skill in identifying and managing complications and emergencies, including most postpartum hemorrhages, miscarriages, stillbirths, or babies who survive birth and then die. Generalist family physicians and specialist obstetricians provide such care through a physician/nurse model. Midwives have a different specialist model of care comprising continuity of care, informed choice, and choice of birthplace, having assumed the work for low-risk pregnancies which was once the exclusive domain of physicians and obstetricians.

Midwives provide care for all 3 phases of reproductive care: pregnancy, intrapartum (labour and delivery) and postpartum (including newborn) care up to 6 weeks after delivery. Midwives are the only care providers who attend births at home or out-of-hospital birthing centres. CHC physicians rarely provide intrapartum care, which poses the most risk and requires midwives to have significantly higher professional liability insurance. Midwives are also responsible for the management of their clinics, unlike CHC physicians.

> Div Ct [21]; LD [47-51]; Model of Care, RC V5 T55, R2039 p 39463-4; Van Wagner Aff RC V1 T5, R191 p 4364-7; Kilthei Aff RC V1 T1 R68 p 2121, 2129, 2171; Price Report, AC V4 T45 R2170 p 49964; AOM Submission, RC V3 T16 R3001 p 95, 106-7, 121-2; Appx 8, RC V4 T19 R3011 p 764-79; Agnew Aff, RC V1 T4 R1211 p 20535; Kilroy Aff, RC V1 T2 R867 p 16050, 60-61, 16102-3, 16116; Appx 17, RC V4 T22 R3019 p 878-82; Price Trans, RC V4 T41 R2220 p 68678-79, 68685-98

11. The parties' benchmarks used an evidence-based methodology with a gender-sensitive SERW comparison to relatively position midwives between senior nurses and CHC physicians. The benchmarks "worked against the prevailing stereotypes about midwifery work and its association with women" and ensured that midwives' compensation appropriately reflected their overlapping scope of practice with CHC physicians (male comparator), as opposed to aligning midwives too closely with female-predominant nursing work. In 1993 the parties agreed to a salary range of **$55K** to **77K** as the equitable positioning of midwives, with an experienced midwife making **$3K** *less* than the lowest paid CHC physician and **$21K** *more* than an experienced senior nurse. The Tribunal noted the benchmarks' power, which led to *Code* compliant compensation for midwives at **$57K** *more* than what an experienced midwife earned pre-regulation. The Tribunal found that this compensation process was accurately described as a "pay equity exercise".

> Div Ct [31-32, 37]; LD, [28-29, 103-4, 107-8, 110-11, 117, 119, 278]; RD [4-5, 17]; Morton Report, AC V4 T108, R1277 p 22852-54, p 22876-77; Kilthei Aff, RC V1 T1, R68 p 2170-73, 2176, 2181-86, 2202; Kilthei Trans, RC V4 T25 R2175 p 60087-90; Davey Trans, RC V4 T33, R2191 p 63087-88, 63132-33; Principles of Funding, AC V5 T107, R2032 p 38825-26; AOM Committee re Midwives' Compensation, RC V5 T56, R134 p 3715; OMP Framework, AC V4 T110, R1280 p 22912-22; OMP

Framework Cabinet Doc., AC V4 T109, R1284 p 22936, 22942, 22947-48, 22953

B. Loss Of Benchmarks And Increasing Compensation Gap With CHC Physicians

12. The MOH gradually and by 2010 fully abandoned the equitable benchmarks, "leaving the compensation of midwives exposed to the well-known effects of gender discrimination". During the same period, the MOH awarded significant pay increases to CHC physicians leading to a substantial pay gap between midwives and their male comparators. In the late 90's, the MOH began increasing the compensation paid to non-CHC family physicians. At the same time, CHC physician pay remained frozen, leading to recruitment and retention issues. Reports documented a shortage of primary care providers and how midwives could improve access to reproductive primary care. In 2003, the MOH increased CHC physician pay by approximately 43% leading to a **$33.5K** pay gap with the top-level midwife – ten times the **$3K** pay gap at regulation. Moreover, top-level NPs now made **$3K** *more* than top-level midwives.

> Div Ct [56, 58, 71, 114, 120, 188]; LD [132-42, 274, 294, 297, 323-324]; McKendry Report, RC V6 T71 R1571 p 29806-7, 29814, 29836; Scarth Aff, AC V1 T35 R1948 p 36748; Davey Aff, RC V2 T10, R1254 p 22238-43; Davey Trans, RC V4 T32 R2190 p 62874-5; Davey Trans, RC V4 T34 R2192 p 63321-24; Appendix 1 to this factum

13. With midwives' pay frozen since 1994 and growing pay inequities with their comparators, the AOM retained the Hay Group in 2004 to conduct a compensation review. The 2004 Hay report recommended a **$31.8K** increase to the top-level midwife pay to bring it to **$108.8K**. It also confirmed the appropriateness of the benchmarks, including the CHC physician comparator, and highlighted the midwives' more onerous 24/7 schedule required by their model of care, which led midwives to work substantially more hours per week than CHC physicians. In 2005, after reviewing both the Morton and Hay reports, the MOH adjusted midwifery compensation, bringing the top-level midwife to **$92.6K.** The MOH informed the AOM it would have to wait for further pay adjustments to fully address the midwives' compensation freezes of the past 11 years.

Div Ct [34, 51-2]; LD [287,]; RD [287, 291-2]; Hay Report, RC V2 T14 R621 p 11862-8, 11871, 11878; Ejiwunmi Aff, RC V1 T6 R55 p 11320-24; Ejiwunmi Trans, RC V4 T27 R2181 p 61272-73; Greengarten Trans, p 14, 168, RC V4 T30, R2187.1

14. The AOM continued to raise gender equity concerns that midwives were falling too far behind CHC physicians and being positioned too closely to NPs. By 2004, CHC physicians – now a small majority female – were the lowest paid Ontario physicians. It was only after obtaining representation from the male-led Ontario Medical Association (OMA) that CHC physicians were afforded an alignment process with Ontario's male-predominant family physicians, resulting in their salary increasing an additional **$63.5K** between 2005 and 2010. (In 2005, overall Ontario physicians were 68.4% male and family physicians were 64% male.) During the same period, the top-level midwife's compensation rose by merely **$11K**. As of 2010, the compensation gap between midwives and CHC physicians had increased to over **$76K**. The highest paid midwives were now making only **$15.6K** more than the highest paid NPs. The MOH conducted no study or alignment process to ensure midwives, also primary care providers, had compensation free of systemic sex bias and were properly aligned with other primary care providers.

LD [131, 139-142, 157, 175, 294]; RD [27]; Appendix 1; Courtyard Report, AC V4 T93, R1073 p 19038-40; Johnson Aff, RC V1 T8, R716 p 13707, 13730-31; 2004 OMA Agreement, RC V6 T61, R1039 p 18576; AOM Submission [866, 1005], RC V3 T16, R3001p 248, 279; AOM Appx 5, RC V3 T17, R3008 p 599-620; Davey Trans, RC V4 T33, R2191 p 63128-32; Davey Trans, RC V4 T34 R2192 p 63338-41; MOH Letter, RC V6 T65, p R1516 25431-2; Pinkney Trans, RC V4 T37, R2200 p 64836-9

15. In 2006, the Ontario Maternity Care Expert Panel (OMCEP) documented a growing demand for maternity care and the "dramatic withdrawal of family physicians from birth care in recent years." Since regulation, 108 midwives had left the profession which was significant given their relatively few numbers and the shortage of midwives compared to demand. A separate paper on midwifery attrition detailed the reasons, including the onerous nature of the profession. The OMCEP report called for the need to recruit and retain maternity care providers and to ensure all

provider groups were valued and respected. Despite their importance to MOH maternity care strategies, "paying midwives higher was never deemed necessary [by the MOH] for improving recruitment and retention" of midwives.

> Appx 15 [15], RC V4 T20, R3017 p 856; "Becoming and Being a Midwife", RC V6 T62, R348 p 9501; OMCEP Report, RC V6 T70, R270 p 15626; Davey Trans, RC V4 T33, R2191 p 63209-11; OMP Evaluation Summary, RC V6 T69 R1408 p 23925

16. In 2008, the AOM finally persuaded the MOH to retain an independent expert to conduct a joint compensation review of midwifery services to inform the 2011 negotiations and address the growing inequities. The parties reaffirmed the OMP goal of providing "equitable funding mechanisms" for midwives. The MOH retained Courtyard to conduct the study, given its expertise in healthcare compensation. The parties agreed Courtyard would consider the Morton and Hay reports and comparators, including the physician comparators.

> Div Ct [51, 130, 234]; LD [38, 39]; 2009 MOU, RC V5 T53, R904 p 16454-5; RFP, RC V5 T54, R1170 p 20186; Courtyard Proposal, RC V6 T68, R1069 p 18954-64

17. In fall 2010, after a joint process, Courtyard issued a 53-page report that recommended a 20% "equity adjustment" to midwives' compensation in order to restore them to their "historic positioning" between NPs "and family physicians". This would bring a top-level midwife to **$124K**, with the lowest paid CHC physician at **$181K**. Courtyard found that the benchmarks in the Morton and Hay reports, including the CHC physician comparator, remained appropriate to establish fair and equitable compensation. After analysing the scope of practices, work and educational differences between midwives and their comparators, Courtyard concluded there was an inequitable pay gap between midwives and CHC physicians, as well as an inappropriate closeness with NPs. The report highlighted the continuing and increasing unmet demand for midwifery services with over 7500 women requesting but being denied midwifery services in the last year due to insufficient midwives and recommended more regular compensation negotiations.

Div Ct [52, 56-8, 188-94]; LD [157, RD [124-8, 141]; Courtyard Report, AC V4 T93, R1073 p 19032-82; Ronson Aff, RC, V1 T7, R1166 p 20092-111; Ronson Trans, RC V4 T31, R2188 p 62702-3, 62713-9, 62722-3, 62734-6

C. MOH Refusal To Implement Courtyard And Investigate AOM Equity Complaints

18. The MOH refused to implement the Courtyard report "despite having been a full and active participant" in the joint study including providing input on its draft recommendations. Despite the AOM's gender equity complaints, the MOH unilaterally abandoned the benchmarks, repudiating the principle of comparison with physicians altogether. Before the Tribunal, the MOH criticized Courtyard for issues it had not raised during the joint process – issues the Tribunal found were "minor" and easily addressed had the MOH followed the joint process through. Notably, the MOH could have easily conducted its own study to validate its compensation practices. However, internal MOH documents revealed it did not do so for fear such a study would result in the same or similar pay increase as Courtyard recommended, as there was "merit to the claim that midwives deserve a significant increase after several years of either no or minimal compensation increases".

Div Ct [60-1, 114]; LD [284, 297, 304-6]; RD [6-7, 20, 34, 116]; Pinkney Trans, RC V4 T37, R2200 p 64927-8; Kilroy Aff, RC V1 T2, R867 p 16088-96; Stadelbauer Aff, RC V1 T3, R1030 p 18145-50; Brandeis Trans, RC V4 T29, R2185 p 62201-2

19. The Tribunal found that the Courtyard report was "sufficiently compelling for the MOH to realize that the AOM's claim of gender discrimination had some validity" and that contrary to Ontario Human Rights Commission's (OHRC's) policies (which the MOH had cited in its HRTO pleadings) the MOH "took [no] reasonable steps to understand and evaluate the allegations of discrimination". The MOH instead froze midwives' compensation at inequitable levels under wage restraint legislation and policies, "without examining the gender implications" of doing so. Despite the AOM's requests, the MOH refused to apply the wage restraint law's exemption for human rights entitlements. The MOH manager leading the compensation setting testified she was neither familiar with nor trained in identifying SGDC. Nor did she consider in her decision-making that

midwives were predominantly women or apply any process to assess whether midwifery compensation was *Code* compliant. By 2012, the pay gap between the top-level midwife and lowest paid CHC physician was now over **$80K**. The MOH froze midwives' pay from 2011-2017.

> Div Ct [60-63, 161, 216]; LD [45, 199-203, 206-8, 306-08]; RD [131, 136, 144]; *Public Sector Compensation Restraint Act,* 2010 SO 2010, c 1, s 12(3); Response to Request for Particulars, RC V6 T72, R12, p 878; Kilroy Aff [248-49], RC V1 T2, R867 p 16092; Pinkney Aff, RC V1 T9, R1588 p 30965-68; Pinkney Trans, RC V4 T35, R2195 p 63804, 63809, 63815-18; AOM Submission [114], RC V3 T16 R3001 p 43-4, 109; Farrell Trans, AC V4 T56, R2200 p 65004-05; Brandeis Aff, RC V2 T11, R979 p 17715-6; OMP Slide Deck, RC V5 T58 R1706 p 32211; Appendix 1

D. Midwives' HRTO Complaint, Tribunal And Divisional Court Decisions

20. In late 2013, faced with the MOH's continued refusal to address the AOM's gender equity concerns, the AOM filed a human rights complaint on behalf of midwives. In 2014, the Tribunal dismissed a series of preliminary objections made by the MOH, finding that "the MOH had taken a compartmentalized approach to the history of compensation negotiations with the AOM, mischaracterizing the allegations and ignoring the systemic dimensions of the Application". The Tribunal warned the MOH that the midwives' discrimination claim must be "understood, considered, analyzed and decided in a complete, sophisticated and comprehensive way".

> *AOM v Ontario*, 2014 HRTO 1370 [**2014 HRTO**] [24, 27, 28, 33, 46]; LD [8]; AOM Application RC V2 T15 R2 p 162, 176-9; Premier Letter, RC V5 T59 R1019 p 17991

21. In 2018, following an extensive hearing with testimony from 45 witnesses, including10 experts, the Tribunal issued its decision on liability. The Tribunal found "on the balance of probabilities and on the totality of the evidence", that midwives "experienced adverse treatment and that sex is more likely than not a factor in the treatment they experienced and the compensation gap that has developed between midwives and CHC physicians since 2005". The Tribunal stated:

> After 2005, and particularly the period following the release of the Courtyard report, **the MOH unilaterally withdr[ew] from the principles established at regulation which protected the compensation of midwives from the effects of gender discrimination. In 1993, the parties were aware of the pervasive nature of**

> **discrimination in compensation, the stereotypes associated with women's work and the necessity to ensure that women are paid by reference to objective factors like SERW. The MOH's failure to maintain a perspective consistent with the principles set out in the *Code*** in negotiations with the AOM and the Courtyard report **created a series of consequences**, when considered together, **constitute discrimination under the *Code***.
> … **Midwives have, since 2010, attempted to negotiate in a context where the MOH no longer abides by the foundational principles established in 1993 or recognizes the effects of gender on compensation. This perpetuates the historic disadvantage midwives have experienced as sex-segregated workers. It also undermines the dignity of midwives who now find themselves having to explain why they should be compared to physicians for compensation purposes more than 20 years after this principle was established. It is a denial of substantive equality that midwives must negotiate in a context where there is no recognition of the potential negative impact of gender on their compensation.**
>
> Div Ct [75]; LD [7-17, 85, 234, 236, 242, 274, 322-28] [Emph.]

22. In finding the MOH liable, the Tribunal focussed on the systemic and cumulative nature of the various adverse gender impacts experienced by midwives as primary care providers. In addition to abandoning the benchmarks that were designed to proactively prevent the well-known effects of SGDC on midwifery compensation without adopting any *Code* compliant tool in their place, the MOH: unfairly positioned midwives' pay too closely to other predominantly female professions (nurses and midwives from other provinces) at the same time as affording CHC physicians a process to ensure equitable relative alignment with other male predominant primary care providers; denied midwives an equitable bargaining process and compensation studies (in contrast to the robust bargaining process afforded to the male-dominated OMA); failed to take proactive steps to monitor and ensure midwifery pay was free of SGDC; permitted a substantial pay equity gap to emerge between midwives and CHC physicians; failed to take reasonable steps to investigate the midwives' allegations of discrimination; and instead withdrew its support for the Courtyard process (in reaction to the recommended 20% equity adjustment) and froze midwifery pay until 2017 (despite exemptions under the wage restraint policy for *Code* required adjustments).

> Div Ct [57, 71, 117]; LD [37, 42-3, 141, 182, 191, 300-2, 314]; RD [7, 30, 36, 118]

23. The Tribunal found that the MOH's explanations for the discriminatory treatment and pay gap – including its criticism of Courtyard and its assertion that the pay gap was due to occupational differences and market forces – were inadequate and did not fully rebut the fact that midwives' gender was *also* a factor in their adverse treatment. The Tribunal ultimately found the MOH "failed to adequately explain its methodology for setting compensation for midwives", had no *Code* compliant mechanism in place to assess for SGDC or recognize the gendered circumstances of midwives and physicians, and tendered no expert evidence or compensation study to establish that its compensation practices were free of SGDC. By way of remedy, the Tribunal ordered the MOH to implement Courtyard's 20% equity adjustment back to April 2011, as it was the best evidence of what midwifery compensation would have been but for the discrimination. Future compliance remedies were also ordered to ensure midwifery compensation was free of SGDC going forward.

LD [15, 267, 303, 318]; RD [36, 58-59, 102, 118-120, 122, 187-192]

24. On judicial review, the Divisional Court unanimously rejected the MOH's arguments as "disingenuous". Applying *Vavilov*, the Court ruled that the Tribunal's findings of SGDC against midwives and remedies for such discrimination were reasonable. Citing the key evidentiary findings, the Court rejected the MOH's assertions that the Tribunal engaged in circular reasoning and "made no finding that there was any direct or circumstantial evidence that sex was a factor" in the MOH's adverse treatment of midwives. The Court also found that the Tribunal's conclusion that the MOH's rebuttal evidence was not a full answer to the discriminatory pay gap was "amply supported by the evidentiary record". The Court noted that the MOH's failure to provide a job evaluation establishing that midwifery pay was free of sex bias was simply one reason the Tribunal did not accept the MOH's rebuttal evidence and did not constitute a reversal of the onus of proof. The Court emphasized that the MOH argued the "application on the basis that gender and the systemic nature of the claim are nonexistent" and rejected the MOH's "overarching position…

that gender has never been a factor in determining compensation for midwives and that midwives' compensation was never set in relation to a male comparator".

Div Ct [102, 113-117, 119-120, 149, 157, 163-166, 170-173, 249]

PART III POSITION ON ISSUES

25. The appeal raises three issues: (1) Post-*Vavilov,* what is the correct interpretation of the "patent unreasonableness" standard under the *Code*? (2) Did the Tribunal err in finding that sex was more likely than not a factor in the midwives' adverse treatment? (3) Were the Tribunal's remedies "patently unreasonable"? Issue (2) raises two sub-issues: did the Tribunal err by (a) reversing the onus of proof; or (b) finding the MOH had a positive duty to prevent discrimination?

A. Standard Of Review: Patent Unreasonableness Or Reasonableness

26. As the subject-matter expert in human rights and systemic sex discrimination, the Tribunal's decisions are entitled to substantial deference. This is expressly prescribed by the legislature: section 45.8 of the *Code* states that the Tribunal's decision is "final" and "shall not be altered or set aside…unless [it] is *patently unreasonable*". After *Dunsmuir*, this Court interpreted this legislated standard as an *especially deferential* form of "reasonableness". The AOM adopts the Tribunal's submissions with respect to the appropriate interpretation of "patent unreasonableness" post-*Vavilov*. This Court "should accord the utmost deference" to the Tribunal's decisions, given its considerable specialized expertise and the legislated standard.

Div Ct [90]; *Code*, s 45.8 [Emph.]; *Shaw v Phipps*, 2012 ONCA 155 [10] [*Shaw*]; *Canada v Vavilov*, 2019 SCC 65 [34-35, 143] [*Vavilov*]; *West Fraser Mills v BC (Workers' Compensation Tribunal),* 2018 SCC 22 [28, 32]

27. Alternatively, should reasonableness review apply, *Vavilov* makes clear that it is anchored "in judicial restraint and respect [for] the distinct role of administrative decision makers". The Tribunal's reasons are "not to be assessed against a standard of perfection". They need not "respond to every argument or line of possible analysis" or include all "jurisprudence or other

details the reviewing judge would have preferred". Nor must they make "an explicit finding on each constituent element, however subordinate, leading to [the Tribunal's] conclusion." A decision is reasonable where the reasoning process is "transparent, intelligible and justified" and the outcome is one that "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law". The SCC also cautions courts to "tread lightly" in areas within the Tribunal's purview: "It is the Tribunal's task to evaluate the evidence, find the facts and draw reasonable inferences from the facts", and to interpret the *Code* "in ways that make practical and legal sense in the case before it, guided by the applicable jurisprudence". Such findings should not be interfered with "absent exceptional circumstances".

> *Vavilov* [15, 18, 75, 86, 91-4, 100, 125, 128]; *Dunsmuir v New Brunswick*, 2008 SCC 9 [47]; *Stewart v Elk Valley Coal*, 2017 SCC 30 [20-22, 27] [*Elk Valley*]

B. Tribunal Applied Correct Test For Discrimination

28. The parties agree the Tribunal correctly stated the three-part test for discrimination and burden of proof. Midwives must demonstrate on a balance of probabilities that: (1) they have a characteristic protected from discrimination under the *Code*; (2) they experienced an adverse impact with respect to a protected social area (here, employment and contract); and (3) the protected characteristic was *a* factor in the adverse impact. There is no dispute that the first two elements of the test are met in this case. At issue is whether the Tribunal erred in applying the third element of the test to the evidence before it. The AOM submits that the Tribunal's findings that sex was more likely than not a factor in the midwives' adverse treatment and resulting pay gap, and that the MOH had failed to rebut the *prima facie* case of discrimination, are factual findings amply supported by the evidentiary record. There is no basis to set aside the Tribunal's findings.

> LD [61, 249]; *Moore v BC*, 2012 SCC 61 [33] [*Moore*]; *Elk Valley* [5, 20-22, 24]

C. Tribunal's Finding That Sex Was A Factor In Adverse Treatment Was Reasonable

29. ***Third element of test.*** The SCC makes clear that the third step of the *prima facie* test – whether sex was *a* factor in the adverse treatment – merely requires proof of a *simple* (as opposed to *causal*) connection, or tangible relation, between the midwives' gender and their adverse treatment. Sex need not be the sole or even predominant factor in the adverse treatment. Moreover, discriminatory *intent* on the part of the MOH is not required "since human rights jurisprudence focuses on the discriminatory *effects* of conduct rather than on the existence of an intention to discriminate or of direct causes". As stated by the SCC in *Simpson-Sears*:

> **To… hold that intent is a required element of discrimination** under the *Code* **would… place a virtually insuperable barrier in the way of a complainant** seeking a remedy. **It would be extremely difficult in most circumstances to prove motive, and motive would be easy to cloak in the formation of rules which, though imposing equal standards, could create… injustice and discrimination by the equal treatment of those who are unequal.** [Emph.]

> Div Ct [157]; LD [254-55]; *Elk Valley* [24, 42, 45] *Fraser v Canada*, 2020 SCC 28 [69-71] [*Fraser*]; *Quebec v Bombardier Inc.* [40-41, 49, 51, 56] [*Bombardier*]; *Ont. Human Rights Commission v Simpsons-Sears*, [1985] 2 SCR 536 p 549 [*O'Malley*]

30. Similarly, proof of arbitrary or stereotypical decision-making is not required:

> The existence of **arbitrariness or stereotyping is not a stand-alone requirement** for proving *prima facie* discrimination. **Requiring otherwise would improperly focus on "whether a discriminatory *attitude* exists, not a discriminatory impact", the focus of the discrimination inquiry**. [Emph.]

> Div Ct [147]; *Elk Valley* [45]; *Fraser* [78-80]; *Quebec v A*, [2013] 1 SCR 61 [327]

31. Systemic discrimination and SGDC in particular are often subtle and hidden and require a comprehensive, sophisticated analysis of its effects on complainants. The SCC describes systemic discrimination as resulting "from the simple operation of established procedures… none of which is necessarily designed to promote discrimination", and the hallmark of which is its "structural and largely invisible nature". It follows that, contrary to the MOH's submission, the fact a particular MOH decision-maker or document did not expressly refer to "gender", "sex", "pay equity" or "male comparator" does not end the inquiry into whether gender was nevertheless a factor in the

adverse treatment. Systemic discrimination "is not usually practiced overtly or even intentionally", but rather, results from the operation of "business as usual" policies and practices which must continually be examined using a *Code* compliance lens for unintended discriminatory effects.

> Div Ct [105, 159]; LD [246, 253, 273, 311-12]; RD [53], 2014 HRTO [30-33, 37]; MOH Factum [22, 53]; *Fraser*, [29-49]; *ONA*, [71-4]; *CN v. Canada (Cdn Human Rights Comm.)*, [1987] 1 SCR 1114 [*Action de Travail]* p 1138-39; *BC v BCGSEU*, [1999] 3 SCR 3 [39, 41] [*Meiorin*], quoting Day & Brodsky, "The Duty to Accommodate: Who Will Benefit?" (1996) 75 Can Bar Rev 433; *First Nations Child & Family Caring Society v Canada*, 2016 CHRT 2 [26] [*Caring Society*]; *Bombardier* [1]; *PSAC v Canada (DND),* [1996] 3 FC 789 [16]; *CSQ* [25-29]; Eberts & Stanton "The Disappearance of the Four Equality Rights" (2018) 38:1 NJCL 89 p94-95; *Report of the Commission on Equality in Employment* (Ottawa: Abella, 1984) p2, 9-10 [Abella Report]; M Minow, *Making All the Difference* (Cornell University Press, 1990) p 110-12; Watson Hamilton & Koshan, "Adverse Impact" (2015) 19:2 Rev Const'l Stud 191

32. The Tribunal describes SGDC as arising from "deeply held attitudes…about women's work" which lead employers and compensation-setters "to give less value to the work" often "without conscious decision-making". These unconscious attitudes are often hidden and embedded in seemingly neutral compensation policies and practices. For example, "traditional job evaluation", without a gender-sensitive analysis, can reinforce and perpetuate these biases, "rewarding the skills and job content characteristics of male work and ignoring or giving less value to the skills and job content requirements of women's work". Given its systemic nature, such discrimination persists even after pay equity is first achieved, thus requiring ongoing vigilance and efforts to identify, prevent and remedy it.

> Div Ct [106]; LD [247]; *Haldimand Norfolk* [18-19]; *Canada v Public Service Alliance of Canada,* [2000] 1 FC 146 [117-18]; *CSQ* [2-3, 34]; *Fraser* [34, 53]

33. Ultimately, the question of whether sex was a factor in the adverse treatment of midwives "is essentially a question of fact for the Tribunal to determine". As noted by this Court in *Pieters*: "[r]elatively "little affirmative evidence" is required before the inference of discrimination is permitted"; "the standard of proof requires only that the inference be more probable than not."

Elk Valley, [9, 20, 39, 46]; *Peel Law Assn v Pieters*, 2013 ONCA 396 [73] [*Pieters*]

34. ***Tribunal's findings.*** The Tribunal concluded that sex was more likely than not a factor in the MOH's adverse treatment of midwives based on a detailed analysis of the extensive evidence:

(a) "Midwifery is a profession imbued with gender", "strongly identified with women's work", and acutely susceptible to SGDC. Midwives work in an environment in which medical dominance is structurally embedded and the historically male dominated medical profession continues to be advantaged by its association with "male work". In 1993, "the parties were aware of the pervasive nature of [SGDC], the stereotypes associated with women's work and the necessity to ensure that women are paid by reference to objective factors like SERW". They expressly recognized that "midwives are sex-segregated workers" and "vulnerable to the forces of gender discrimination on their compensation".

Div Ct [126]; LD [61-62, 267, 274-276]; RD [8]

(b) Gender was a *significant* factor in the parties' development of the 1993 benchmarks, which were rooted in promoting substantive gender equality. The benchmarks recognized the level of skill, education, training, autonomy and responsibility inherent in the work of midwives, to ensure that midwives were paid "equitably" using "an evidence-based methodology" that "worked against the prevailing stereotypes about midwifery work and its association with women". The benchmarks positioned midwives between CHC nurses (predominantly female) and physicians (predominantly male and associated with historically male work) and embodied what "fair and appropriate" compensation is "in relation to the gendered nature of midwifery work".

Div Ct [33-39], LD [275, 280-281, 300]; RD [8]

(c) The benchmarks adopted "[t]he principle that compensation for midwives should reflect the overlapping scope of practice of the family physician" – a principle that "is based on a male comparator". As noted by the Tribunal, "[f]amily physicians were male-dominated at the time" of regulation and in 2013 "they were more than 50% male". Comparing midwives' work to "work historically done by men" ensured "that their compensation corresponded with the work itself and not the gender of the person doing the work" and made "visible the overlapping scope of practice that midwives share with a historically male profession". It also ensured midwives were not too closely aligned with exclusively female-dominated health care professions, who were themselves vulnerable to SGDC.

Div Ct [28, 31, 35, 46]; LD [29, 51, 61, 71, 247, 252, 277, 281-282]; RD [8]

(d) By 2010, the MOH had unilaterally abandoned the gender-sensitive benchmarks, including physician comparator, and the "proactive prevention" approach to ensuring its compensation setting was free from the well-known effects of SGDC. The MOH replaced the benchmarks with nothing "other than "looking" at other health care professions" (mostly female predominant) "and conducting a jurisdictional scan of other midwifery programs across the country" (also female predominant). The MOH positioned midwives

too closely to nursing work notwithstanding the parties' recognition this would unfairly obscure the value of midwifery work. During the same period, the MOH afforded CHC physicians an alignment process with other predominantly male primary care providers and the medical profession more generally, which generated substantial pay increases.

Div Ct, [49, 114, 120, 149]; LD [62, 139-142, 274, 300-02, 315-22]; RD [187-88]

(e) The MOH's response to the 2010 Courtyard report marked "a significant departure" from the benchmarks that the parties had "agreed upon for establishing appropriate and fair compensation levels". The MOH unilaterally asserted that: (1) the benchmarks "no longer informed the compensation practices of the MOH"; and (2) CHC physicians were no longer appropriate comparators, despite not conducting "a study to validate that assumption" which flew in the face of the 1993 Morton, 2004 Hay and 2010 Courtyard reports "which confirmed the ongoing relevance of that comparator". The MOH did not raise this issue during the Courtyard process, including when providing feedback on drafts of the report, and only arrived at this conclusion *after* the Courtyard report was released.

Div Ct [59-61, 114, 162]; LD [287, 293, 295-97, 299]; RD [188]

(f) By 2010, midwives "no longer [had] a methodology to rely on in their negotiations with the MOH which ensures that their compensation is aligned with their SERW". The close alignment they now shared with nurses was easily construed as natural and appropriate, obscuring the ways in which they were like physicians. Midwives found "themselves having to explain why they should be compared to physicians for compensation purposes more than 20 years after this principle was established" and negotiating "in a context where there is no recognition of the potential negative impact of gender on their compensation". Midwives were "disadvantaged by the failure of the MOH to recognize the role of gender in their compensation, the overlapping scope of practice they share with physicians and the reasons for maintaining a physician comparator".

Div Ct [49, 114, 179]; LD [302, 322]; RD [188]

(g) Disadvantageous and stereotypical attitudes toward midwives and the value of their work continued to persist post-regulation. This was evident in the Minister of Health's response to the Courtyard report's recommended equity adjustment that the current compensation for midwives "was pretty good for a four-year degree". It is also evident in the MOH continuing to: (1) assert that midwives are paid the same or more than physicians to deliver babies based merely on fee codes, rendering invisible aspects of midwifery work not done by physicians; and (2) minimizing midwifery education which the Tribunal found was a specialist baccalaureate degree with one year post graduate mentoring and practice.

Div Ct [16, 114]; LD [48, 68-69, 76, 210, 302]; MOH Factum [12]; AOM Reply Submission, RC V4 T23 R3024 p 1625-30; Kilroy Trans, RC V4 T28 R2184 p 61864-5

35. The connection with gender was also evident in an independent compensation expert finding an *inequitable* pay gap between midwives and CHC physicians. Courtyard was an

evidence-based study undertaken by the parties "in good faith" to "develop the *objective criteria* necessary to evaluate the *fairness* of compensation paid to midwives". It was "an iterative process" in which the MOH fully participated and contributed to the final product. The Courtyard report is "the best evidence of both the consequences of losing the benchmarks, and what compensation losses flow from reinstating them". It revealed the gender penalty that arose from the MOH closely aligning midwives with female nursing work and abandoning the male-identified comparators.

Div Ct [51-9; 114]; LD [182-98]; RD [29, 121-28, 141, 156]; record cites [17] above

36. As is evident from the foregoing, the Tribunal did *not* presume sex was a factor based "*solely*" on "a social context of discrimination" against women in general. The Tribunal based its findings on the extensive evidence before it, including but not limited to, the fact that midwives, a sex-segregated profession, were "vulnerable to the forces of gender discrimination on their compensation", and were denied the very evidence-based mechanism the parties had deemed necessary to set compensation free of SGDC – an objective gender-based SERW analysis of the value of midwives' work in comparison to their male-identified physician comparator – and were instead compared to predominantly female nursing work, as a substantial pay gap with CHC physicians increased. The pervasive motif in the midwives' adverse treatment is gender. Ultimately, the Tribunal's inference that sex, whether intentional or not, was more likely than not a factor in the MOH's adverse treatment and compensation of midwives was firmly grounded in the evidence, consistent with the jurisprudence and legislative policy of Ontario, and reasonable.

Div Ct [119-20]; LD [81, 252]; RD [8, 34, 101]; *Bombardier* [88]; *ONA* [69-74]; *CSQ* [2-10, 29, 34]; *Québec v Alliance* [6-9, 38] [*Alliance*]; record cites [6-7] above

D. MOH's Explanations Do Not Rebut *Prima Facie* Case Of Discrimination

37. Having established a *prima* facie case of discrimination, the evidential burden shifted to the MOH "to prove a credible, non-discriminatory explanation which rebuts the *prima facie* case".

If successful, the evidential burden would have shifted to the AOM to prove that the MOH's "explanation is pre-textual". As noted by the Tribunal, "The evidence of the MOH is not presumed to be credible". The MOH cannot merely rebut the AOM's evidence and arguments "by suggesting that possible alternative explanations *might* exist for the AOM's allegations, which the AOM must then prove to be pre-textual." Rather, "[t]he Tribunal must have some basis for finding that the explanations offered by the MOH are reliable enough to rebut the evidence of the AOM", particularly in the face of the Tribunal findings that the MOH mischaracterized evidence and ignored the systemic dimension of the claim.

Div Ct [11, 117, 146]; LD [8, 246-7, 258, 260, 310] [Emph.]

38. Before this Court the MOH advances the same disingenuous arguments in defence of its discriminatory treatment of midwives that were rejected by the Tribunal and court below. The MOH relies on *Pieters* to argue the AOM failed to prove the MOH's rebuttal evidence was "false or a pretext". As detailed below, the Tribunal found the MOH's explanations "inadequate" and failed to "rebut the *prima facie* case". The AOM also notes the "false or a pretext" dicta from *Pieters* should not be rigidly applied in systemic discrimination cases, as it was articulated in the context of a *direct* discrimination case. In *Pieters* two Black lawyers filed a human rights complaint against a law librarian for racially profiling and carding them. As noted by this Court, "the outcome depend[ed] on the [librarian's] *state of mind*".[1] In contrast, systemic discrimination cases focus on "the operation and impact of policies, practices and systems over time", not on the respondent's "state of mind" and whether the respondent's explanations for their conduct were false or a pretext.

Div Ct [99-100]; 2014 HRTO [33, 45-47]; *Pieters* [72, 74, 92] [Emph.]

39. Moreover, even if a complainant must demonstrate that a respondent's explanations in a

[1] All cases cited by the MOH (FN 67) apply *Pieters* to direct, not systemic, discrimination claims.

systemic discrimination claim are "false or a pretext", the Court in *Pieters* expressly found that a complainant need not "eliminat[e] every conceivable possibility before an inference of discrimination may be made". As noted by the Tribunal, there is no strict requirement that the AOM prove each of the MOH's explanations are "false or a pretext" in order to succeed with the claim: "there may be many reasons" for the MOH's acts and omissions; "[i]t is not essential that the connection between [gender] and the impugned [treatment] be an exclusive one." Indeed, the SCC found in *Moore* that "the *sole* reason" for the discriminatory treatment of special needs students was "financial". Yet, disability was still found to be *a* factor in their adverse treatment.

Div Ct [100, 142-3]; LD [254]; *Bombardier* [41-52]; *Pieters* [73, 92]; *Moore* [45-6]

40. As detailed below, the Tribunal reasonably found that the MOH's explanations for the adverse treatment of midwives – alleged deficiencies in the Courtyard report, as well as the CHC physician's "occupational differences", female predominance, bargaining power, and recruitment and retention issues – were "inadequate", "gendered", and ultimately did not rebut the substantial evidence that established that sex *was also a factor* in the adverse treatment of midwives.

Div Ct [144, 151]; RD [58]; LD [256, 290, 299]

41. ***Courtyard best evidence of discriminatory pay gap.*** The Tribunal gave thorough reasons for rejecting the MOH's criticisms of the Courtyard report. The evidence demonstrated that any alleged deficiencies were "minor" and easily addressed by the MOH providing "further guidance to the consultants" instead of abandoning the joint process. Notably, the MOH did not undertake a different study to validate its concerns, because it feared such a study would confirm Courtyard's recommendations. Nor did it take any "reasonable steps to understand and evaluate the [AOM's] allegations of discrimination". Moreover, the MOH's abandonment of the benchmarks "prevented [it] from fully appreciating the significance" of Courtyard's findings and recommendations: "an independent consultant, working in collaboration with both parties, using the parties' original

funding principles as a guide," concluded that this "group of sex-segregated workers required an increase of 20% to bring their compensation up to a fair and appropriate level."

> Div Ct [58, 114, 229]; RD [37, 117, 132-37, 155]; LD [301, 304-08]; Pinkney Trans, RC V4 T37, R2200 p 64927-28; Scarth Trans, RC V4 T38 R2203 p 65643-47

42. ***Occupational differences must be equitably valued.*** The MOH's assertion that occupational differences, not gender, explain the compensation gap between midwives and CHC physicians is contrary to the evidence. First, the Tribunal found that there was "no evidence that compensation for physicians is tied to their SERW". Second, the fact that physicians and midwives "are different" is not disputed. In 1993, those differences were acknowledged and *equitably valued* by the parties when setting compensation. Third, any perceived occupational differences must be accurately – and equitably – assessed by applying an objective, gender-sensitive evaluation mechanism to compare the SERW of predominantly female workers with comparable male-identified work. Such an analysis protects against the systemic undervaluing of women's work on account of sex. This is precisely the mechanism the MOH refused to apply, despite the legislature expressly acknowledging "the existence of [SGDC] of employees in female job classes and the necessity for affirmative action to redress that discrimination". The MOH left midwives without an evidence-based methodology to ensure their pay is objectively aligned with their SERW – a benefit "routinely enjoyed by men – namely, compensation tied to the value of their work".

> Div Ct [114, 145-6, 160-1]; LD [141, 232, 274, 277, 302, 312, 314]; MOH [8]; *Alliance* [6-9, 29, 38]; *ONA* [35, 58-77, 84]; *CSQ* [2- 10, 24, 29, 34]; *PEA*, Preamble

43. Instead of applying a gender-sensitive evaluation mechanism, the MOH merely asserted that CHC physicians were no longer appropriate comparators because of alleged occupational differences that had arisen since 1993. Yet, as found by the Tribunal, the MOH led no expert evidence to rebut "the ongoing relevance of the comparison" which was validated in the 1993 Morton, 2004 Hay, and 2010 Courtyard reports. Aside from obstetricians, midwives and family

physicians are the *only* professions that provide comparable, "equally competent" obstetrical care to pregnant people with normal pregnancies. Moreover, the evidence established that the MOH comparing midwives to nurse practitioners or midwives from other provinces perpetuated SGDC by comparing highly sex-segregated professions with each other. In the face of this evidence, the Tribunal's factual finding that CHC physicians are appropriate comparators is reasonable.

> Div Ct [53, 60, 64, 114, 131, 171]; LD [299, 301-2]; RD [6, 20, 34]; *Moore* [31]

44. ***CHC physician proxy for male work.*** The MOH further argued that denying midwives a physician comparator is not connected to sex because CHC physicians were more than 50% female since at least 2001. It is well-established that substantive equality requires a contextual inquiry that goes "beyond the façade of similarities and differences" and takes "full account of social, political, economic and historical factors" concerning groups. Medicine has historically been practiced by men and remains "strongly identified with men's work". CHC physicians were predominantly male in 1993. In 2005, women represented merely "31.6% of the medical profession and 36% of family practitioners generally". Ontario physicians as of 2010 were still 64.1% male. Female physicians work within and benefit from the established attitudes and place of privilege in the health care hierarchy that was "developed and controlled by men for men for over a hundred years". Indeed, the alignment of CHC physician pay with other primary care physicians who were predominantly male reinforced the use of the CHC physician as a proxy for male work. As the Tribunal found, the fact that CHC family physicians are now predominantly female does not affect the underlying premise of the need for a comparison to work and pay associated with men.

> Div Ct [174-8]; LD [62, 65, 123, 142, 277, 283-85]; RD [101-02]; *Withler v Canada*, 2011 SCC 12 [39]; *Fraser* [40, 93-95];*Caring Society*, 2013 FCA 75 [16-19]; *CSQ* [2-10, 24, 29, 34]; *ONA* [35, 53-54, 58-59, 76-77]; Appx 7, RC V4 T18 R3010 p 741

45. ***Market factors connected to gender.*** The Tribunal found that compensation increases were paid to CHC physicians not because of occupational differences but because of two primary

reasons, both of which were connected to gender: (1) recruitment and retention issues for CHC physicians who "were the most female dominated and most undercompensated group of physicians in Ontario" (and indeed whose "inequitable" compensation gap with their physician peers had increased throughout the 1990's and early 2000's as they became more female predominant); and (2) the harmonization of CHC physician compensation with other primary care physicians after they obtained representation from the OMA. Notably, the OMA, the bargaining agent for a medical profession "still strongly identified with men's work", was able to secure for predominantly female CHC physicians an alignment process that paid them "similar compensation" as other predominantly male non-CHC family physicians on the basis that they were doing "similar jobs". In contrast, as noted by the Tribunal, "[t]he bargaining strength of midwives depends in large part on the MOH recognizing the connection between midwifery and gender and being informed about the effects of gender on the compensation of sex-segregated workers". The evidence established that the MOH's so-called "non-discriminatory" explanations of recruitment, retention and bargaining strength were not neutral but in fact connected to gender and failed to reflect the unequal and gendered compensation systems afforded to midwives and physicians.

> Div Ct [65, 114, 160, 167-9]; LD [62, 134, 137, 139-142, 303, 314, 321]; *CSQ* [2-3]; Appx 16 [4-12], RC V4 T21, R3018 p 859-61; record cites [14-15] above

46. ***MOH's explanations gendered & inadequate.*** Ultimately, the MOH led evidence on the reasons it paid increases to physicians and NPs, while ignoring the AOM's systemic equity claims, without (1) scrutinizing how those increases "resulted in a shifting alignment between midwives and their comparators"; (2) explaining "how it maintained the benchmarks with midwives"; and (3) attempting "to validate whether midwives remained fairly compensated despite changes in the compensation of their comparators". Indeed, the MOH did not retain a single expert "to conduct a study of midwives' work and pay" or "to validate how its seemingly reasonable explanations

would be weighted in a compensation study" despite having ample opportunity to conduct such a study and despite the MOH's own experts agreeing that such a study "would be useful". The Tribunal found "on the totality of the evidence, that while the MOH gave reasons for increasing physician compensation, it *failed to adequately explain* its methodology for setting compensation for midwives", including how it was set free of sex discrimination. As stated by the Tribunal:

> … it is the obligation of the MOH to ensure that its practices do not contravene the *Code*. **If the MOH takes no steps to monitor the compensation it pays to sex-segregated workers, it has no basis for explaining how it determined that gender was not a relevant factor in what those workers were paid.** … In a context **where midwives have had their compensation set by comparison to CHC physicians, especially where that comparator is linked to the sex-segregated nature of their work**, **the MOH can only partly defend what it pays to midwives by explaining why it gave increases to CHC physicians. An expert would weigh those explanations and the impact of those decisions on the alignment between midwives and CHC physicians and validate**, one way or the other, **whether midwives remained appropriately paid despite increases paid to CHC physicians**.

Div Ct [49, 114, 130, 136-7]; RD [36, 58-59, 118-120] [Emph.]

47. ***Onus of proof not reversed.*** Contrary to the MOH's assertions, the Tribunal did *not* reverse the onus of proof. Midwives successfully established a *prima facie* case of discrimination and the evidential burden shifted to the MOH to provide a credible, reliable explanation for why sex was *not* a factor in the adverse treatment of midwives. The MOH did not meet this burden. It could have easily tendered a gender-based study of its compensation practices. This would have been "an explanation that could have been very easily given". The MOH's failure to provide such a study (indeed because it feared the results) led to an adverse inference drawn by the Tribunal. The MOH chose to deny "the relevance of gender to setting compensation for midwives as an almost exclusively female profession", despite the parties' own recognition of its relevance in 1993 and the substantial evidence of its continuing relevance and the importance of taking a "gender sensitive" approach to setting compensation for a highly sex segregated profession like midwifery.

Div Ct [121, 163, 170-71]; RD [58, 120, 186]; MOH Factum [5, 50, 57]; see [22]

above; *Pieters* [97]; *PEA*, Pre.; *Alliance* [6-9, 29]; *CSQ* [2-4, 24, 29, 34]

48. The Tribunal's findings that the MOH's explanations were inadequate and themselves connected to gender were transparent, intelligible and justified and should be upheld. Contrary to SCC case law, the MOH asks this Court to engage in a wholesale reassessment of the evidentiary record before the Tribunal to draw different factual inferences. This request is ought to be denied.

E. Duty To Proactively Prevent Discrimination Well-Established

49. The MOH argues, contrary to the jurisprudence, that its failure to take proactive steps to monitor and *prevent* discrimination in midwives' compensation cannot constitute adverse gender treatment. It is well-established that the *Code* does not merely require that discrimination, once identified, be remedied. Rather, the *Code* places a proactive duty on respondents "to *prevent* all "discriminatory practices" based on sex. This principle is consistent with the SCC's direction that *Code* rights be interpreted liberally and purposively. As stated by the Tribunal:

> Like all human rights legislation, **the *Code* is directed at achieving substantive equality and enshrines positive rights, not just access to a remedy** where a breach can be found.…[**T**]**he *Code* is not solely reactive and complaint-based but "intended to transform social relations and institutions to secure substantive equality in practice." The requirement to act proactively, monitor workplace culture and systems, take preventative measures to ensure equality, identify and remove barriers, take positive steps to identify and remedy the adverse effects of practices and policies that appear neutral on their face, is well-documented** in the cases and [OHRC] policies.… **it would diminish the fundamental nature of the rights and protections enshrined in the *Code* to have the right to have discrimination remedied but not prevented**. [Emph.]
>
> Div Ct [95-96, 183-84]; LD [229-230]; MOH Factum [67-72]; *Meiorin* [39-42, 68]; *Fraser* [1, 132-136]; *BC (Supt. of Motor Vehicles) v BC*, [1999] 3 SCR 868 [19]; *Eldridge v BC*, [1997] 3 SCR 624 [73, 78-79]; *Lane v ADGA Group*, 2007 HRTO 34 [164]; Cornish, Faraday & Borowy, *Enforcing Human Rights in Ontario,* p 38

50. The MOH has a legal duty under the *Code* to *proactively* secure conditions of substantive equality even in the absence of a human rights complaint. As found by the SCC in *Moore* and the Canadian Human Rights Tribunal in *Caring Society*, this duty extends to the actual *design* and

implementation of government funding policies to ensure they *promote* substantive equality and *prevent* discriminatory effects *from the outset*. As stated by the SCC in *Meiorin*, the "heart of the equality question" under human rights codes is "the goal of transformation" which, among other things, requires employers to proactively "build conceptions of equality into workplace standards". SGDC has been analyzed in government reports and case law for decades. The problem and solution (proactive monitoring of compensation practices for the effects of SGDC using a gender-sensitive SERW analysis with male comparators) have been well-known for over 35 years.

> LD [81-82, 232-33, 265]; *Meiorin* [41, 68]; *Action de Travail*, p 1134, 1139, 1143-45; *Caring Society* [384-88, 403-04]; *Moore* [4, 43, 46-48, 52]; *Alliance*, [6-9]; *CSQ* [2-4, 6, 24]; *ONA* [15-20]; *PEA*, Pream, s 4, 7; Abella Report, p 2-10, 24-32, 232-54

51. Contrary to the MOH's position, the OHRC's policies make clear that it "takes vigilance and a willingness to monitor and review numerical data, policies, practices and decision-making processes and organizational culture" to ensure that an organization such as the MOH is "not unconsciously engaging in systemic discrimination". The OHRC policies further provide that "[i]t is not acceptable from a human rights perspective for an organization to choose to remain unaware of systemic discrimination or to fail to act when a problem comes to its attention." As noted by the Tribunal, "the reason the [OHRC] publishes policies to guide employers in their obligations under the *Code* is that the probability of compliance is reduced without proactive action."

> Div Ct [186-87]; LD [317-318]; OHRC, "Guide to Developing Human Rights Policies & Procedures" p 2-4, 6-8; OHRC, "Policy & Guidelines on Racism & Racial Discrimination", p 33; AOM Submission, RC V4, T24 R3025 p 1754-56

52. Central to the Tribunal's liability finding was the MOH's admission that it had taken "no proactive steps" to monitor the compensation of midwives for the impact of SGDC. Consistent with the established case law, OHRC policies, and evidence before it, the Tribunal found that the MOH "must take steps which are effective and proportional to its obligations under the *Code* to both prevent and remedy discrimination." The MOH's failure to monitor midwives' pay was in

stark contrast to evidence that the MOH had proactively "continued to monitor compensation for CHC physicians for evidence of recruitment and retention issues and to ensure that their compensation is fair and aligned with other physicians." The Tribunal's findings are reasonable.

Div Ct [71-75]; LD [315, 317-18]

F. Tribunal's Remedial Decision Reasonable

53. The *Code* "provides the Tribunal with broad remedial discretion to order remedies that are fair, effective and responsive to the circumstances of this case". The Tribunal gave a reasoned analysis of why a purely prospective remedy was not appropriate: (1) there was "no substantial change" in or "good faith" "reasonable reliance" by the MOH on human rights law, including the well-established principle that "compensation-setters are ultimately responsible for ensuring that their practices comply with the *Code*"; (2) a "retroactive remedy for lost income would not encroach on the legislative role of the government"; and (3) a "purely prospective remedy would constitute a "hollow victory" and "leave midwives without a remedy with respect to their compensation losses". With respect to implementing the 20% adjustment, the Tribunal noted that "any assessment of lost income, even based on the best available evidence, will nevertheless be an estimate" and that the "*Code* does not prescribe a process for establishing a specific level of compensation in a case such as this". The Tribunal concluded that implementing Courtyard – the joint study in which the MOH participated – would "bring the parties as close as possible" to "the place they would have been but for the discrimination". The Tribunal's remedies are reasonable.

Div Ct [212; 216, 222]; RD [41, 50-68, 95, 104, 112, 184-192, 205]; *Code*, s. 45.2; *Alliance* [8, 36-37]; *Walden v. Canada*, 2010 FC 1135 [67]

PART IV ORDERS & RELIEF REQUESTED

54. For the foregoing reasons, the appeal ought to be dismissed with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 5th DAY OF APRIL, 2021

per M. Cornish / A. Telford / L. Koerner-Yeo, Counsel for the AOM

APPENDIX 1

Male Predominance of Ontario Physicians (1978-2013)[2]			
Year	**All Physicians** (Male %)	**Family Physicians** (Male %)	**CHC Physicians** (Male %)
1978	88.1	85.7	Majority Male
1988	79.6	75.6	Majority Male
1993	75.3	71.0	Majority Male
2005	68.4	64.0	Majority Female
2010	65.1	60.0	Majority Female
2013	63.2	58.4	Majority Female

Compensation Gaps Between Midwives & Comparators, 1992 to 2015[3]					
Year	**Midwife (Top Level)**	**CHC Senior Nurse/Nurse Practitioner (Top Level)**	**CHC Physician (Lowest Level)**	**Compensation Gap (Midwife & Physician)**	**Compensation Gap (Midwife & Senior Nurse/NP)**
1992	$20,000	$56,000	$80,000	$60,000	$36,000 more
1993	$77,000	$56,000	$80,000	$3,000	$21,000 less
2003	$77,000	$80,000	$110,599	$33,599	$1000 less
2005	$93,600	$80,000	(Apr 1) - $113,259 (Oct 1) - $117,669	(Apr 1) $25,068 (Oct 1)- $24,069	$12,600 more
2009	$100,440	$89,203	(Apr 1) - $124,460 plus incentives valued $38,421=$162,881 (Oct 1) - $130,435 plus $38,421 incentives-$168,856	(Apr 1) $62,441 (Oct 1) $68,406	$11,237 more
2010	$104,847	$89,203	$181,233	$76,386	$15,644 more
2011	$104,847		$185,426	$81,127	
2012	$104,847		$185,426	$81,127	
2013	$104,847		(Jan 1) 183,426 (Apr 1) $182,509	(Jan 1) $78,569 (Apr 1) $77,662	
2015	$104,847		$177,673	$72,826	

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[2] Canadian Institute For Health Information (CIHI) Physician Counts, RC V6 T64, R208 p 5821

[3] RD [27]; LD [28-30, 36-37, 121-22, 149, 163-64, 178-80]; Courtyard Report, AC V3 T69, R1686; Spreadsheet of CHC Salary Scales, RC V5 T51, R1540 p 27511-12; Update on CHC Compensation for CHC Executive, RC V5 T60, R1803 p 32783-85

Court File No. C68946

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF HEALTH AND LONG-TERM CARE

Appellant
(Moving Party)

and

ASSOCIATION OF ONTARIO MIDWIVES and HUMAN RIGHTS TRIBUNAL OF ONTARIO

Respondents
(Responding Parties)

CERTIFICATE

We estimate that 7 hours will be needed for the Respondent AOM’s oral argument of the appeal, not including reply. An order under subrule 61.09(2) (original record and exhibits) is not required.

DATED AT Toronto, Ontario this 5th. day of April, 2021.

Per Mary Cornish / Adrienne Telford / Lara Koerner Yeo

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SCHEDULE "A"

LIST OF AUTHORITIES

Tab	Authority
1.	*Association of Ontario Midwives v. Ontario (Health and Long-Term Care)*, 2014 HRTO 1370
2.	*Association of Ontario Midwives v. Ontario (Health and Long-Term Care)*, 2018 HRTO 1335
3.	*Association of Ontario Midwives v. Ontario (Health and Long-Term Care)*, 2020 HRTO 165
4.	*British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 SCR 3
5.	*British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 SCR 868
6.	*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65
7.	*Canada v. Public Service Alliance of Canada*, [2000] 1 FC 146
8.	*Canadian National Railway Co. v. Canada (Canadian Human Rights Commission)*, [1987] 1 SCR 1114
9.	*Centrale des Syndicats du Québec v. Quebec (Attorney General)*, 2018 SCC 18
10.	*Dunsmuir v. New Brunswick*, 2008 SCC 9
11.	*Eldridge v. British Columbia (Attorney General)*, [1997] 3 SCR 624
12.	*First Nations Child and Family Caring Society of Canada v. Canada (Attorney General)*, 2016 CHRT 2
	A. *Canada (Attorney General) v. Canada (Human Rights Commission)*, 2013 FCA 75
13.	*Fraser v Canada*, 2020 SCC 28
14.	*Lane v. ADGA Group Consultants Inc*., 2007 HRTO 34
15.	*Moore v. British Columbia (Education)*, 2012 SCC 61
16.	*Ontario (Human Rights Commission), v. Simpsons Spears Ltd.*, [1985] 2 SCR 536
17.	*Ontario Nurses' Assoc. (ONA) v. Haldimand-Norfolk (Regional Municipality)*, 2 P.E.R. 105

Tab	Authority
18.	*Ontario Nurses Association v. Participating*, 2021 ONCA 148
19.	*Ontario v. Association of Ontario Midwives*, 2020 ONSC 2839
20.	*Participating Nursing Homes v. Ontario*, 2021 ONCA 149
21.	*Peel Law Association v. Pieters*, 2013 ONCA 396
22.	*Public Service Alliance of Canada v. Canada (Department of National Defence)* (C.A.), [1996] 3 FC 789
23.	*Québec (Attorney General) v. Alliance du Personnel Professionnel et Technique de la Santé et des Services Sociaux*, 2018 SCC 17
24.	*Québec (Attorney General) v. A*, 2013 SCC 5
25.	*Québec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39
26.	*Shaw v. Phipps*, 2012 ONCA 155
27.	*Stewart v. Elk Valley Coal Corp.*, 2017 SCC 30
28.	*Walden v. Canada (Social Development)*, 2010 FC 1135
29.	*West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22
30.	*Withler v. Canada (AG)*, 2011 SCC 12

Secondary Sources

31. Canada, Human Resources and Skills Development Canada, Report of the Commission on Equality in Employment (Ottawa: Justice Abella, Commissioner, 1984)

32. J. Watson Hamilton & J. Koshan "Adverse Impact: The Supreme Court's Approach to Adverse Effects Discrimination under Section 15 of the Charter" (2015) 19:2 Rev Const'l Stud 191

33. M. Cornish, F. Faraday and J. Borowy, Enforcing Human Rights in Ontario (Aurora: Canada Law Book, 2009)

34. M Eberts & K Stanton "The Disappearance of the Four Equality Rights and Systemic Discrimination from Canadian Equality Jurisprudence" (2018) 38:1 NJCL 89

35. M Minow "Making All the Difference: Inclusion, Exclusion and American Law" (Ithaca: Cornell University Press, 1990)

Tab	Authority
36.	Ontario Human Rights Commission (2013), "A policy primer: Guide to Developing Human Rights Policies and Procedures"
37.	Ontario Human Rights Commission (2005), "Policy and Guidelines on Racism and Racial Discrimination"

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

1. **Pay Equity Act, R.S.O. 1990, c. P.7**

Preamble

Whereas it is desirable that affirmative action be taken to redress gender discrimination in the compensation of employees employed in female job classes in Ontario;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I
GENERAL

Interpretation, posting and miscellaneous

Definitions

1 (1) In this Act,

“bargaining agent” means a trade union as defined in the Labour Relations Act that has the status of exclusive bargaining agent under that Act in respect of any bargaining unit or units in an establishment and includes an organization representing employees to whom this Act applies where such organization has exclusive bargaining rights under any other Act in respect of such employees; (“agent négociateur”)

“collective agreement” means an agreement in writing between an employer and a bargaining agent covering terms and conditions of employment; (“convention collective”)

“Commission” means the Pay Equity Commission of Ontario established by this Act; (“Commission”)

“compensation” means all payments and benefits paid or provided to or for the benefit of a person who performs functions that entitle the person to be paid a fixed or ascertainable amount; (“rétribution”)

“effective date” means the 1st day of January, 1988; (“date d’entrée en vigueur”)

“employee” does not include a student employed for his or her vacation period; (“employé”)

“establishment” means all of the employees of an employer employed in a geographic division or in such geographic divisions as are agreed upon under section 14 or decided upon under section 15; (“établissement”)

“female job class” means, except where there has been a decision that a job class is a male job class as described in clause (b) of the definition of “male job class”,

(a) a job class in which 60 per cent or more of the members are female,

(b) a job class that a review officer or the Hearings Tribunal decides is a female job class or a job class that the employer, with the agreement of the bargaining agent, if any, for the employees of the employer, decides is a female job class; ("catégorie d'emplois à prédominance féminine")

"geographic division" means a geographic area prescribed under the Territorial Division Act, 2002; ("zone géographique")

"Hearings Tribunal" means the Pay Equity Hearings Tribunal established by this Act; ("Tribunal")

"job class" means those positions in an establishment that have similar duties and responsibilities and require similar qualifications, are filled by similar recruiting procedures and have the same compensation schedule, salary grade or range of salary rates; ("catégorie d'emplois")

"job rate" means the highest rate of compensation for a job class; ("taux de catégorie")

"job-to-job method of comparison" means the method of determining whether pay equity exists that is set out in section 6; ("méthode de comparaison d'un emploi à l'autre")

"male job class" means, except where there has been a decision that a job class is a female job class as described in clause (b) of the definition of "female job class",

(a) a job class in which 70 per cent or more of the members are male, or

(b) a job class that a review officer or the Hearings Tribunal decides is a male job class or a job class that the employer, with the agreement of the bargaining agent, if any, for the employees of the employer, decides is a male job class; ("catégorie d'emplois à prédominance masculine")

"Minister" means the Minister of Labour; ("ministre")

"pay equity plan" means,

(a) a document as described in section 13, for a plan being prepared under Part II, or

(b) a document as described in section 21.6, for a plan being prepared or revised under Part III.1; ("programme d'équité salariale")

"private sector" means all of the employers who are not in the public sector; ("secteur privé")

"proportional value method of comparison" means the method of determining whether pay equity exists that is described in Part III.1; ("méthode de comparaison de la valeur proportionnelle")

"public sector" means all of the employers who are referred to in the Schedule; ("secteur public")

"regulations" means the regulations made under this Act; ("règlements")

"review officer" means a person designated as a review officer under subsection 34 (1). ("agent de révision") R.S.O. 1990, c. P.7, s. 1 (1); 1993, c. 4, s. 1; 1996, c. 1, Sched. J, s. 1; 1997, c. 26, Sched.; 2000, c. 5, s. 19; 2002, c. 17, Sched. C, s. 20 (1).

Posting

(2) Where this Act requires that a document be posted in the workplace, the employer shall post a copy of the document in prominent places in each workplace for the establishment to which the document relates in such a manner that it may be read by all of the employees in the workplace. R.S.O. 1990, c. P.7, s. 1 (2).

Idem

(3) The employer shall provide a copy of every document posted in the workplace under this Act,

(a) to the bargaining agent, if any, that represents the employees who are affected by the document;

(b) to any employee who requests a copy of the document, if the employee is not represented by a bargaining agent and the employee is affected by the document. R.S.O. 1990, c. P.7, s. 1 (3).

Calculation of number of employees

(4) If Part II or III applies to an employer, a reference in this Act to the number of employees of the employer shall be deemed to be a reference to the average number of employees employed in Ontario by the employer during the twelve-month period preceding the effective date or during the period from the day the first employee commenced employment in Ontario with the employer until the effective date, whichever period is shorter. R.S.O. 1990, c. P.7, s. 1 (4).

Decisions re job classes

(5) In deciding or agreeing whether a job class is a female job class or a male job class, regard shall be had to the historical incumbency of the job class, gender stereotypes of fields of work and such other criteria as may be prescribed by the regulations. R.S.O. 1990, c. P.7, s. 1 (5).

One-member job classes

(6) A job class may consist of only one position if it is unique in the establishment because its duties, responsibilities, qualifications, recruiting procedures or compensation schedule, salary grade or range of salary rates are not similar to those of any other position in the establishment. R.S.O. 1990, c. P.7, s. 1 (6).

Disabled, etc., not to be classed separately

(7) A position shall not be assigned to a job class different than that of other positions in the same establishment that have similar duties and responsibilities, require similar qualifications, are filled by similar recruiting procedures and have the same compensation schedule, salary grade or range of salary rates only because the needs of the occupant of the position have been

accommodated for the purpose of complying with the Human Rights Code. R.S.O. 1990, c. P.7, s. 1 (7).

Crown as employer

1.1 (1) For the purposes of this Act, the Crown is not the employer of a person unless the person,

(a) is a public servant employed under Part III of the Public Service of Ontario Act, 2006; or

(b) is employed by a body prescribed in the regulations. 2006, c. 35, Sched. C, s. 107 (1).

Plans posted before Dec. 18, 1991

(2) If the Crown and a bargaining agent have agreed that the Crown is the employer of the employees represented by the bargaining agent and a pay equity plan in accordance with that agreement was posted before the 18th day of December, 1991, the Crown shall be deemed to be the employer of those employees. 1993, c. 4, s. 2.

Same

(3) If the Crown posted a pay equity plan before the 18th day of December, 1991 for employees who are not represented by a bargaining agent, the Crown shall be deemed to be the employer of those employees. 1993, c. 4, s. 2.

Application

(4) This section does not apply,

(a) if a determination that the Crown is the employer was made by the Hearings Tribunal before the 18th day of December, 1991; or

(b) if an application respecting a proceeding in which the Crown's status as an employer is an issue was filed with the Hearings Tribunal before the 18th day of December, 1991. 1993, c. 4, s. 2.

Same

(5) This section, except for subsections (2) and (3), does not apply to determine the identity of the employer of an individual if a pay equity plan applicable to that individual prepared in accordance with a review officer's order was posted before the 18th day of December, 1991. 1993, c. 4, s. 2.

Combined establishments

2 (1) Two or more employers and the bargaining agent or agents for their employees, who come together to negotiate a central agreement, may agree that, for the purposes of a pay equity plan, all the employees constitute a single establishment and the employers shall be considered to be a single employer.

Idem

(2) Two or more employers who are municipalities in the same geographic division and the bargaining agent or agents for their employees or, if there is no bargaining agent, the employees, may agree that, for the purposes of a pay equity plan, all the employees constitute a single establishment and the employers shall be considered to be a single employer.

Employers to implement plans

(3) Despite the fact that the employees of two or more employers are considered to be one establishment under subsection (1) or (2), each employer is responsible for implementing and maintaining the pay equity plan with respect to the employer's employees. R.S.O. 1990, c. P.7, s. 2.

Application

3 (1) This Act applies to all employers in the private sector in Ontario who employ ten or more employees, all employers in the public sector, the employees of employers to whom this Act applies and to their bargaining agents, if any.

Idem

(2) If at any time after the coming into force of this Act an employer employs ten or more employees in Ontario, this Act applies with respect to the employer although the number of employees is subsequently reduced to fewer than ten. R.S.O. 1990, c. P.7, s. 3.

Purpose

4 (1) The purpose of this Act is to redress systemic gender discrimination in compensation for work performed by employees in female job classes.

Identification of systemic gender discrimination

(2) Systemic gender discrimination in compensation shall be identified by undertaking comparisons between each female job class in an establishment and the male job classes in the establishment in terms of compensation and in terms of the value of the work performed. R.S.O. 1990, c. P.7, s. 4.

Value determination

5 (1) For the purposes of this Act, the criterion to be applied in determining value of work shall be a composite of the skill, effort and responsibility normally required in the performance of the work and the conditions under which it is normally performed.

Idem, disabled employees, etc.

(2) The fact that an employee's needs have been accommodated for the purpose of complying with the Human Rights Code shall not be considered in determining the value of work performed. R.S.O. 1990, c. P.7, s. 5.

Achievement of pay equity

5.1 (1) For the purposes of this Act, pay equity is achieved in an establishment when every female job class in the establishment has been compared to a job class or job classes under the job-to-job method of comparison or the proportional value method of comparison and any adjustment to the job rate of each female job class that is indicated by the comparison has been made. 1996, c. 1, Sched. J, s. 2.

Deemed compliance

(2) A pay equity plan that used the proportional value method of comparison shall be deemed to have complied with section 6, as it reads immediately before this section comes into force,

(a) from the date on which the plan is posted if it is posted before Part III.1 comes into force by an employer to whom Part II applies; or

(b) from the date on which the plan is prepared if it is prepared before Part III.1 comes into force by an employer to whom Part III applies. 1993, c. 4, s. 3.

Achievement of pay equity

6 (1) For the purposes of this Act, pay equity is achieved under the job-to-job method of comparison when the job rate for the female job class that is the subject of the comparison is at least equal to the job rate for a male job class in the same establishment where the work performed in the two job classes is of equal or comparable value. R.S.O. 1990, c. P.7, s. 6 (1); 1993, c. 4, s. 4 (1).

Idem

(2) Where there is no male job class with which to make a comparison for the purposes of subsection (1), pay equity is achieved when the job rate for the female job class that is the subject of the comparison is at least equal to the job rate of a male job class in the same establishment that at the time of comparison had a higher job rate but performs work of lower value than the female job class.

Basis of comparison

(3) If more than one comparison is possible between a female job class in an establishment and male job classes in the same establishment, pay equity is achieved when the job rate for the female job class is at least as great as the job rate for the male job class,

(a) with the lowest job rate, if the work performed in both job classes is of equal or comparable value; or

(b) with the highest job rate, if the work performed in the male job class is of less value. R.S.O. 1990, c. P.7, s. 6 (2, 3).

Idem

(4) Comparisons under the job-to-job method of comparison,

(a) for job classes inside a bargaining unit, shall be made between job classes in the bargaining unit; and

(b) for job classes outside any bargaining unit, shall be made between job classes that are outside any bargaining unit. R.S.O. 1990, c. P.7, s. 6 (4); 1993, c. 4, s. 4 (2).

Idem

(5) If, after applying subsection (4), no male job class is found in which the work performed is of equal or comparable value to that of the female job class that is the subject of the comparison, the female job class shall be compared to male job classes throughout the establishment.

Groups of jobs

(6) An employer may treat job classes that are arranged in a group of jobs as one female job class if 60 per cent or more of the employees in the group are female.

Idem

(7) An employer shall treat job classes that are arranged in a group of jobs as one female job class if a review officer or the Hearings Tribunal decides that the group should be treated as one female job class.

Idem

(8) An employer may, with the agreement of the bargaining agent, if any, for the employees of the employer, decide to treat job classes that are arranged in a group of jobs as one female job class.

Job rate, value of work

(9) Where a group of jobs is being treated as a female job class, the job rate of the individual job class within the group that has the greatest number of employees is the job rate for the group and the value of the work performed by that individual job class is the value of the work performed by the group.

Definition

(10) In this section,

"group of jobs" means a series of job classes that bear a relationship to each other because of the nature of the work required to perform the work of each job class in the series and that are organized in successive levels. R.S.O. 1990, c. P.7, s. 6 (5-10).

Pay equity required

7 (1) Every employer shall establish and maintain compensation practices that provide for pay equity in every establishment of the employer.

Idem

(2) No employer or bargaining agent shall bargain for or agree to compensation practices that, if adopted, would cause a contravention of subsection (1). R.S.O. 1990, c. P.7, s. 7.

Posting of notice

7.1 (1) Every employer to whom Part III applies and any other employer who is directed to do so by the Pay Equity Office shall post in the employer's workplace a notice setting out,

(a) the employer's obligation to establish and maintain compensation practices that provide for pay equity; and

(b) the manner in which an employee may file a complaint or objection under this Act.

Language

(2) The notice shall be in English and the language other than English that is understood by the greatest number of employees in the workplace.

Form of notice

(3) The notice shall be in a form made available to employers by the Pay Equity Office. 1993, c. 4, s. 5.

Exceptions

8 (1) This Act does not apply so as to prevent differences in compensation between a female job class and a male job class if the employer is able to show that the difference is the result of,

(a) a formal seniority system that does not discriminate on the basis of gender;

(b) a temporary employee training or development assignment that is equally available to male and female employees and that leads to career advancement for those involved in the program;

(c) a merit compensation plan that is based on formal performance ratings and that has been brought to the attention of the employees and that does not discriminate on the basis of gender;

(d) the personnel practice known as red-circling, where, based on a gender-neutral re-evaluation process, the value of a position has been down-graded and the compensation of the incumbent employee has been frozen or his or her increases in compensation have been curtailed until the compensation for the down-graded position is equivalent to or greater than the compensation payable to the incumbent; or

(e) a skills shortage that is causing a temporary inflation in compensation because the employer is encountering difficulties in recruiting employees with the requisite skills for positions in the job class.

Idem

(2) After pay equity has been achieved in an establishment, this Act does not apply so as to prevent differences in compensation between a female job class and a male job class if the employer is able to show that the difference is the result of differences in bargaining strength.

Idem

(3) A position that an employer designates as a position that provides employment on a casual basis may be excluded in determining whether a job class is a female job class or a male job class and need not be included in compensation adjustments under a pay equity plan.

Idem

(4) A position shall not be designated under subsection (3) if,

(a) the work is performed for at least one-third of the normal work period that applies to similar full-time work;

(b) the work is performed on a seasonal basis in the same position for the same employer; or

(c) the work is performed on a regular and continuing basis, although for less than one-third of the normal work period that applies to similar full-time work. R.S.O. 1990, c. P.7, s. 8.

Limitation re maintaining pay equity

(5) The requirement that an employer maintain pay equity for a female job class is subject to such limitations as may be prescribed in the regulations. 1993, c. 4, s. 6.

Reduction, intimidation, adjustments
Reduction of compensation prohibited

9 (1) An employer shall not reduce the compensation payable to any employee or reduce the rate of compensation for any position in order to achieve pay equity.

Intimidation prohibited

(2) No employer, employee or bargaining agent and no one acting on behalf of an employer, employee or bargaining agent shall intimidate, coerce or penalize, or discriminate against, a person,

(a) because the person may participate, or is participating, in a proceeding under this Act;

(b) because the person has made, or may make, a disclosure required in a proceeding under this Act;

(c) because the person is exercising, or may exercise, any right under this Act; or

(d) because the person has acted or may act in compliance with this Act, the regulations or an order made under this Act or has sought or may seek the enforcement of this Act, the regulations or an order made under this Act.

Compensation adjustments

(3) Where, to achieve pay equity, it is necessary to increase the rate of compensation for a job class, all positions in the job class shall receive the same adjustment in dollar terms. R.S.O. 1990, c. P.7, s. 9.

PART II
IMPLEMENTATION: PUBLIC SECTOR AND LARGE PRIVATE SECTOR EMPLOYERS

Definition

10 In this Part,

“mandatory posting date” means,

(a) the second anniversary of the effective date, in respect of employers in the public sector and in respect of employers in the private sector who have at least 500 employees on the effective date,

(b) the third anniversary of the effective date, in respect of employers in the private sector who have at least 100 but fewer than 500 employees on the effective date,

(c) the fourth anniversary of the effective date, in respect of employers in the private sector who have at least fifty but fewer than 100 employees on the effective date and who have posted a notice under section 20, and

(d) the fifth anniversary of the effective date, in respect of employers in the private sector who have at least ten but fewer than fifty employees on the effective date and who have posted a notice under section 20. R.S.O. 1990, c. P.7, s. 10.

Application

11 (1) This Part applies to all employers in the public sector, all employers in the private sector who, on the effective date, employ 100 or more employees and those employers in the private sector who post a notice under section 20.

Idem

(2) This Part does not apply to an employer who does not have employees on the effective date. R.S.O. 1990, c. P.7, s. 11.

Same

(3) Despite subsection (2), sections 13.1, 14.1 and 14.2 apply to public sector employers that did not have employees on the effective date but that had employees on July 1, 1993. 1994, c. 27, s. 121 (1).

Comparison of job classes

12 Before the mandatory posting date, every employer to whom this Part applies shall, using a gender-neutral comparison system, compare the female job classes in each establishment of the employer with the male job classes in the same establishment to determine whether pay equity exists for each female job class. R.S.O. 1990, c. P.7, s. 12.

Pay equity plans required

13 (1) Documents, to be known as pay equity plans, shall be prepared in accordance with this Part to provide for pay equity for the female job classes in each establishment of every employer to whom this Part applies and, without restricting the generality of the foregoing,

(a) shall identify the establishment to which the plan applies; and

(b) shall identify all job classes which formed the basis of the comparisons under section 12.

Idem

(2) If both female job classes and male job classes exist in an establishment, every pay equity plan for the establishment,

(a) shall describe the gender-neutral comparison system used for the purposes of section 12;

(b) shall set out the results of the comparisons carried out under section 12;

(c) shall identify all positions and job classes in which differences in compensation are permitted by subsection 8 (1) or (3) and give the reasons for relying on such subsection;

(d) shall, with respect to all female job classes for which pay equity does not exist according to the comparisons under section 12, describe how the compensation in those job classes will be adjusted to achieve pay equity; and

(e) shall set out the date on which the first adjustments in compensation will be made under the plan, which date shall not be later than,

(i) the second anniversary of the effective date, in respect of employers in the public sector,

(ii) the third anniversary of the effective date, in respect of employers in the private sector who have at least 500 employees on the effective date,

(iii) the fourth anniversary of the effective date, in respect of employers in the private sector who have at least 100 but fewer than 500 employees on the effective date,

(iv) the fifth anniversary of the effective date, in respect of employers in the private sector who have at least fifty but fewer than 100 employees on the effective date and who have posted a notice under section 20, and

(v) the sixth anniversary of the effective date, in respect of employers in the private sector who have at least ten but fewer than fifty employees on the effective date and who have posted a notice under section 20.

Idem

(3) A pay equity plan shall provide that the female job class or classes that have, at any time during the implementation of the plan, the lowest job rate shall receive increases in rates of compensation under the plan that are greater than the increases under the plan for other female job classes until such time as the job rate for the female job class or classes receiving the greater increases is equal to the lesser of,

(a) the job rate required to achieve pay equity; and

(b) the job rate of the female job class or classes entitled to receive an adjustment under the plan with the next lowest job rate.

Minimum adjustments

(4) The first adjustments in compensation under a pay equity plan are payable as of the date provided for in clause (2) (e) and shall be such that the combined compensation payable under all pay equity plans of the employer during the twelve-month period following the first adjustments shall be increased by an amount that is not less than the lesser of,

(a) 1 per cent of the employer's payroll during the twelve-month period preceding the first adjustments; and

(b) the amount required to achieve pay equity.

Idem

(5) Adjustments shall be made in compensation under a pay equity plan on each anniversary of the first adjustments in compensation under the plan and shall be such that during the twelve-month period following each anniversary the combined compensation payable under all pay equity plans of the employer shall be increased by an amount that is not less than the lesser of,

(a) 1 per cent of the employer's payroll during the twelve-month period preceding the anniversary; and

(b) the amount required to achieve pay equity.

Maximum adjustments

(6) Except for the purpose of making retroactive adjustments in compensation under a pay equity plan or unless required to do so by an order described in clause 36 (g), nothing in this Act requires an employer to increase compensation payable under the pay equity plans of the employer during a twelve-month period in an amount greater than 1 per cent of the employer's payroll during the preceding twelve-month period. R.S.O. 1990, c. P.7, s. 13 (1-6).

Exception

(7) Despite subsection (6), pay equity plans in the public sector shall provide for adjustments in compensation such that the plan will be fully implemented not later than the 1st day of January, 1998.

Transition, application

(7.1) Subsections (7.2) and (7.3) apply with respect to an employer in the public sector who has set out in a pay equity plan that was posted or in another agreement that was made before this subsection comes into force a schedule of compensation adjustments for achieving pay equity.

Same, bargaining agent

(7.2) If the employees to whom the plan or agreement applies are represented by a bargaining agent, the employer is not bound by the schedule set out in it if the employer gives written notice to the bargaining agent that the employer wishes to enter into negotiations concerning a replacement schedule.

Same, no bargaining agent

(7.3) The employer is not bound by the schedule set out in the plan or agreement if the employees to whom it applies are not represented by a bargaining agent. 1993, c. 4, s. 7 (1).

Definition

(8) In this section,

“payroll” means the total of all wages and salaries payable to the employees in Ontario of the employer.

Pay equity plan binding

(9) A pay equity plan that is approved under this Part binds the employer and the employees to whom the plan applies and their bargaining agent, if any.

Plan to prevail

(10) A pay equity plan that is approved under this Part prevails over all relevant collective agreements and the adjustments to rates of compensation required by the plan shall be deemed to be incorporated into and form part of the relevant collective agreements.

Deemed compliance

(11) Every employer who prepares and implements a pay equity plan under this Part shall be deemed not to be in contravention of subsection 7 (1) with respect to those employees covered by the plan or plans that apply to the employees but only with respect to those compensation practices that existed immediately before the effective date. R.S.O. 1990, c. P.7, s. 13 (8-11).

Application

(12) If a pay equity plan is amended under section 14.1 or 14.2, subsections (9), (10) and (11) apply, with necessary modifications, to the amended plan. 1993, c. 4, s. 7 (2).

Sale of a business

13.1 (1) If an employer who is bound by a pay equity plan sells a business, the purchaser shall make any compensation adjustments that were to be made under the plan in respect of those positions in the business that are maintained by the purchaser and shall do so on the date on which the adjustments were to be made under the plan.

Plan no longer appropriate

(2) If, because of the sale, the seller’s plan or the purchaser’s plan is no longer appropriate, the seller or the purchaser, as the case may be, shall,

(a) in the case of employees represented by a bargaining agent, enter into negotiations with a view to agreeing on a new plan; and

(b) in the case of employees not represented by a bargaining agent, prepare a new plan. 1993, c. 4, s. 8.

Same

(3) Clause 14 (2) (a), subsections 14.1 (1) to (6) and 14.2 (1) and (2) apply, with necessary modifications, to the negotiation or preparation of a new plan. 1997, c. 21, s. 4 (1).

(4) Repealed: 1997, c. 21, s. 4 (1).

Application to certain events

(4.1) This section applies with respect to an occurrence described in sections 3 to 10 of the Public Sector Labour Relations Transition Act, 1997. For the purposes of this section, the occurrence shall be deemed to be the sale of a business, each of the predecessor employers shall be deemed to be a seller and the successor employer shall be deemed to be the purchaser. 1997, c. 21, s. 4 (2).

Definitions

(5) In this section,

"business" includes a part or parts thereof; ("entreprise")

"sells" includes leases, transfers and any other manner of disposition. ("vend") 1993, c. 4, s. 8.

Application of s. 13.1 in other circumstances

13.2 Section 13.1 applies with respect to an event to which the Public Sector Labour Relations Transition Act, 1997 applies in accordance with the Local Health System Integration Act, 2006. 2006, c. 4, s. 50 (1).

Establishments with bargaining units

14 (1) In an establishment in which any of the employees are represented by a bargaining agent, there shall be a pay equity plan for each bargaining unit and a pay equity plan for that part of the establishment that is not in any bargaining unit.

Bargaining unit plans

(2) The employer and the bargaining agent for a bargaining unit shall negotiate in good faith and endeavour to agree, before the mandatory posting date, on,

(a) the gender-neutral comparison system used for the purposes of section 12; and

(b) a pay equity plan for the bargaining unit.

Idem

(3) As part of the negotiations required by subsection (2), the employer and the bargaining agent may agree, for the purposes of the pay equity plan,

(a) that the establishment of the employer includes two or more geographic divisions; and

(b) that a job class is a female job class or a male job class.

Posting of plan

(4) When an employer and a bargaining agent agree on a pay equity plan, they shall execute the agreement and, on or before the mandatory posting date, the employer shall post a copy of the plan in the workplace.

Deemed approval and first adjustments

(5) When a pay equity plan has been executed by an employer and a bargaining agent, the plan shall be deemed to have been approved by the Commission and, on the day provided for in the plan, the employer shall make the first adjustments in compensation required to achieve pay equity.

Failure to agree

(6) Where an employer and a bargaining agent fail to agree on a pay equity plan by the mandatory posting date, the employer, forthwith after that date, shall give notice of the failure to the Commission.

Idem

(7) Subsection (6) does not prevent the bargaining agent from notifying the Commission of a failure to agree on a pay equity plan by the mandatory posting date.

Non-bargaining unit plan

(8) An employer shall prepare a pay equity plan for that part of the employer's establishment that is outside any bargaining unit in the establishment and, on or before the mandatory posting date, shall post a copy of the plan in the workplace.

Idem

(9) Subsections 15 (2) to (8) apply to a pay equity plan described in subsection (8). R.S.O. 1990, c. P.7, s. 14.

Changed circumstances

14.1 (1) If, in an establishment in which any of the employees are represented by a bargaining agent, the employer or the bargaining agent is of the view that because of changed circumstances in the establishment the pay equity plan for the bargaining unit is no longer appropriate, the employer or the bargaining agent, as the case may be, may by giving written notice require the other to enter into negotiations concerning the amendment of the plan.

Application of s. 14

(2) Clause 14 (2) (b) and subsections 14 (3), (4) and (5) apply, with necessary modifications, to the negotiations and to any amendment of the plan that is agreed upon.

Failure to agree

(3) If the employer and the bargaining agent do not agree on an amendment before the expiry of 120 days from the date on which notice to enter into negotiations is given, the employer shall give notice of the failure to the Commission.

Same

(4) Subsection (3) does not prevent the bargaining agent from notifying the Commission of a failure to agree on an amendment by the date referred to in that subsection.

Non-bargaining unit plan

(5) If the employer is of the view that, because of changed circumstances in the establishment, the pay equity plan for that part of the establishment that is outside any bargaining unit is no longer appropriate, the employer may amend the plan and post in the workplace a copy of the amended plan with the amendments clearly indicated.

Same

(6) Subsection 15 (2) and subsections 15 (4) to (8) apply, with necessary modifications, in respect of an amended plan described in subsection (5).

Adjustments

(7) If a plan is amended under this section, the compensation adjustment for each position to which the amended plan applies shall not be less than the adjustment that would have been made under the plan before it was amended. 1993, c. 4, s. 9.

Changed circumstances, no bargaining units

14.2 (1) In an establishment where no employee is represented by a bargaining agent, if the employer is of the view that because of changed circumstances in the establishment the pay equity plan for the establishment is no longer appropriate, the employer may amend the plan and post in the workplace a copy of the amended plan with the amendments clearly indicated.

Application of s. 15

(2) Subsections 15 (2) to (8) apply, with necessary modifications, in respect of the amended plan.

Adjustments

(3) If a plan is amended under this section, the compensation adjustment for each position to which the amended plan applies shall not be less than the adjustment that would have been made under the plan before it was amended. 1993, c. 4, s. 9.

Establishments without bargaining units

15 (1) In an establishment where no employee is represented by a bargaining agent, the employer shall prepare a pay equity plan for the employer's establishment and the employer, on or before the mandatory posting date, shall post a copy of the plan in the workplace.

Idem

(2) For the purposes of a pay equity plan required by this section or subsection 14 (8), the employer may decide,

(a) that the establishment of the employer includes two or more geographic divisions; and

(b) that a job class is a female job class or a male job class.

Idem

(3) An agreement under section 14 between an employer and a bargaining agent shall not affect any pay equity plan required by this section or subsection 14 (8). R.S.O. 1990, c. P.7, s. 15 (1-3).

Employee review

(4) The employees to whom a pay equity plan required by this section or subsection 14 (8) applies shall have until the ninetieth day after the date on which the copy of the plan is posted to review and submit comments to the employer on the plan. R.S.O. 1990, c. P.7, s. 15 (4); 1993, c. 4, s. 10.

Changes

(5) If as a result of comments received during the review period referred to in subsection (4), the employer is of the opinion that a pay equity plan should be changed, the employer may change the plan.

Posting of notice

(6) Not later than seven days after the end of the review period referred to in subsection (4), the employer shall post in the workplace a notice stating whether the pay equity plan has been amended under this section and, if the plan has been amended, the employer shall also post a copy of the amended plan with the amendments clearly indicated.

Objections

(7) Any employee or group of employees to whom a pay equity plan applies, within thirty days following a posting in respect of the plan under subsection (6), may file a notice of objection with the Commission whether or not the employee or group of employees has submitted comments to the employer under subsection (4).

Deemed approval and first adjustments

(8) If no objection in respect of a pay equity plan is filed with the Commission under subsection (7), the plan shall be deemed to have been approved by the Commission and, on the day

provided for in the plan, the employer shall make the first adjustments in compensation required to achieve pay equity. R.S.O. 1990, c. P.7, s. 15 (5-8).

Investigation by review officer

16 (1) If the Commission,

(a) is advised by an employer or a bargaining agent that no agreement has been reached on a pay equity plan or an amendment to a pay equity plan; or

(b) receives a notice of objection to a pay equity plan for employees who are not represented by a bargaining agent or a notice of objection to an amendment of such a plan,

a review officer shall investigate the matter and endeavour to effect a settlement. R.S.O. 1990, c. P.7, s. 16 (1); 1993, c. 4, s. 11.

Orders by review officer

(2) If the review officer is unable to effect a settlement as provided for in subsection (1), he or she shall by order decide all outstanding matters.

Posting of plan

(3) Where a review officer effects a settlement under subsection (1) or makes an order under subsection (2), the employer shall forthwith post in the workplace a copy of the pay equity plan that reflects the settlement or order.

Objections

(4) Where a pay equity plan has been posted under subsection (3), objections with respect to the plan may be filed with the Commission within thirty days of the posting as follows:

1. If the plan relates to a bargaining unit, objections may be filed only if the review officer has made an order under subsection (2) and only the employer or the bargaining agent for the bargaining unit may file objections.

2. If the plan does not relate to a bargaining unit and a review officer effected a settlement under subsection (1) with the agreement of the objector who filed the objection under subsection 15 (7), only an employee or group of employees to whom the plan applies, other than the objector, may file an objection.

3. If the plan does not relate to a bargaining unit and a review officer has made an order under subsection (2), the employer or any employee or group of employees to whom the plan applies may file an objection.

Deemed approval and first adjustments

(5) If a review officer effects a settlement of a pay equity plan for a bargaining unit under subsection (1) or, if in any other case, no objection in respect of a pay equity plan is filed with the Commission in accordance with subsection (4), the plan shall be deemed to have been

approved by the Commission and, on the day provided for in the plan, the employer shall make the first adjustments in compensation required to achieve pay equity.

Idem

(6) Where adjustments in compensation are made after the day provided for in the pay equity plan, the employer shall make the adjustments retroactive to that date. R.S.O. 1990, c. P.7, s. 16 (2-6).

Settling of plan

17 (1) If the Commission receives a notice of objection under subsection 16 (4), the Hearings Tribunal shall hold a hearing and, in its decision, shall settle the pay equity plan to which the objection relates.

Posting of plan

(2) Forthwith after receiving the decision of the Hearings Tribunal, the employer shall post a copy of the decision in the workplace and, on the day provided for in the plan, shall make the first adjustments in compensation required to achieve pay equity.

Idem

(3) Where adjustments in compensation are made after the day provided for in a pay equity plan, the employer shall make the adjustments retroactive to that date. R.S.O. 1990, c. P.7, s. 17.

Part III (ss. 18-21) Repealed: R.S.O. 1990, c. P.7, s. 21 (2).

18.-21 Repealed: R.S.O. 1990, c. P.7, s. 21 (2).

PART III.1
PROPORTIONAL VALUE METHOD OF COMPARISON

Application

21.1 (1) This Part applies to employers to whom Part II applies and to public sector employers that did not have employees on the effective date but that had employees on July 1, 1993.

Transition, deemed plan

(2) A plan for the achievement of pay equity shall be deemed to be a pay equity plan if it was prepared by a public sector employer described in subsection (1) before the coming into force of this subsection as if this Part applied to the employer. 1994, c. 27, s. 121 (2).

Proportional method required

21.2 (1) If a female job class within an employer’s establishment cannot be compared to a male job class in the establishment using the job-to-job method of comparison, the employer shall use the proportional value method of comparison to make a comparison for that female job class.

Adjustments

(2) If an employer uses the proportional value method of comparison to make a comparison for a female job class that can be compared to a male job class using the job-to-job method of comparison, the compensation adjustment made for members of that female job class shall not be less than the adjustment that is indicated under the job-to-job method.

Exception, Part II

(3) Subsection (2) does not apply to an employer to whom Part II applies if the employer prepared a pay equity plan using the proportional value method of comparison and posted it before the coming into force of this Part. However, subsection (2) does apply if the employer has also posted a pay equity plan using the job-to-job method of comparison.

Exception, Part III

(4) Subsection (2) does not apply to an employer to whom Part III applies if the employer prepared a pay equity plan using the proportional value method of comparison before the coming into force of this Part. However, subsection (2) does apply if the employer has also prepared a pay equity plan using the job-to-job method of comparison.

Notice

(5) If a female job class within an employer's establishment cannot be compared to a male job class within the establishment under either the job-to-job method of comparison or the proportional value method of comparison, the employer shall notify the Pay Equity Office.

Investigation and complaints

(6) If notice is given under subsection (5),

(a) section 16 applies, with necessary modifications, as if the review officer had received advice under clause 16 (1) (a) or a notice under clause 16 (1) (b);

(b) section 22 applies, with necessary modifications, as if a person had filed a complaint with the Commission concerning whether the job-to-job method or the proportional value method of comparison can be used in the circumstances;

(c) section 23 applies, with necessary modifications, as if the Commission had received a complaint concerning whether the job-to-job method or the proportional value method can be used in the circumstances;

(d) subsection 24 (1) applies. 1993, c. 4, s. 12.

Proportional value comparison method

21.3 (1) Pay equity is achieved for a female job class under the proportional value method of comparison,

(a) when the class is compared with a representative male job class or representative group of male job classes in accordance with this section; and

(b) when the job rate for the class bears the same relationship to the value of the work performed in the class as the job rate for the male job class bears to the value of the work performed in that class or as the job rates for the male job classes bear to the value of the work performed in those classes, as the case may be.

Comparisons required

(2) Comparisons required by this section,

(a) for job classes inside a bargaining unit shall be made between job classes in the unit; and

(b) for job classes outside any bargaining unit shall be made between job classes that are outside any bargaining unit.

Same

(3) If, after applying subsection (2), no representative male job class or classes is found to compare to the female job class, the female job class shall be compared to a representative male job class elsewhere in the establishment or to a representative group of male job classes throughout the establishment.

Comparison system

(4) The comparisons shall be carried out using a gender-neutral comparison system.

Group of jobs

(5) Subsections 6 (6) to (10) apply, with necessary modifications, to the proportional value method of comparison. 1993, c. 4, s. 12.

Amended pay equity plans

21.4 (1) If a pay equity plan prepared under Part II for an establishment does not achieve pay equity for all the female job classes at the establishment, the employer shall amend the plan to the extent necessary to achieve pay equity in accordance with this Part.

Same

(2) Subject to subsection 21.2 (2), an employer may, with the agreement of the bargaining agent, if any, replace a pay equity plan prepared under Part II with another plan prepared under this Part using the proportional value method of comparison. 1993, c. 4, s. 12.

Plan binding

21.5 (1) A pay equity plan prepared or amended under this Part binds the employer and the employees to whom the plan applies and their bargaining agent, if any.

Plan to prevail

(2) A pay equity plan prepared or amended under this Part prevails over all relevant collective agreements and the adjustments to rates of compensation required by the plan shall be deemed to be incorporated into and form part of the relevant collective agreements. 1993, c. 4, s. 12.

Contents of plans

21.6 (1) A pay equity plan prepared or amended under this Part must contain the information required by this section.

Same

(2) Subsections 13 (1) and (2) apply, with necessary modifications, with respect to a pay equity plan prepared or amended under this Part.

Method of comparison

(3) The plan must,

(a) state, for each female job class, what method of comparison has been used to determine whether pay equity exists;

(b) describe the methodology used for the calculations required by the proportional value method of comparison; and

(c) describe any amendments to be made to the pay equity plan prepared under Part II. 1993, c. 4, s. 12.

Requirement to post plans

21.7 The employer shall post a copy of each pay equity plan prepared or amended under this Part in the workplace not later than six months after this section comes into force. 1993, c. 4, s. 12.

Bargaining unit employees

21.8 Sections 14, 16 and 17 apply, with necessary modifications, with respect to a pay equity plan that is prepared or amended under this Part for employees in a bargaining unit. 1993, c. 4, s. 12.

Non-bargaining unit employees

21.9 (1) This section applies with respect to pay equity plans prepared or amended under this Part for employees who are not in a bargaining unit.

Review period

(2) Employees shall have until the ninetieth day after the plan is posted to review it and submit comments to the employer on the plan or, if the plan is an amended plan, the amendments to the plan. 1993, c. 4, s. 12.

Same

(2.1) For a plan described in subsection 21.1 (2) that is posted before this subsection comes into force, employees shall have until the ninetieth day after this subsection comes into force to review the plan and submit comments on it. 1994, c. 27, s. 121 (3).

Application of certain provisions

(3) Subsections 15 (2), (3) and (5) to (8) and sections 16 and 17 apply, with necessary modifications, with respect to the plan. 1993, c. 4, s. 12.

Date of first compensation adjustments

21.10 (1) If a pay equity plan is prepared or amended under this Part, the employer shall make the first adjustments in compensation in respect of the new or amended portions of the plan,

(a) in the case of employers in the private sector with 100 or more employees, effective as of the 1st day of January, 1993;

(b) in the case of employers in the public sector, effective as of the 1st day of January, 1993;

(c) in the case of employers in the private sector with at least fifty but fewer than 100 employees, effective as of the 1st day of January, 1993;

(d) in the case of employers in the private sector with at least ten but fewer than fifty employees, on or before the 1st day of January, 1994.

Same

(2) An employer described in clause (1) (a), (b) or (c) shall make the first payment in respect of the first adjustment within six months after the coming into force of this Part. 1993, c. 4, s. 12.

Same

(2.1) A public sector employer that did not have employees on the effective date but that had employees on July 1, 1993 shall make the first payment in respect of the first adjustment within six months after the coming into force of this subsection. 1994, c. 27, s. 121 (4).

Application of certain provisions

(3) Subsections 13 (3) to (8) apply, with necessary modifications, to compensation payable under a pay equity plan prepared or amended under this Part.

Deemed compliance

(4) Every employer who prepares or amends a pay equity plan under this Part and implements it shall be deemed not to be in contravention of subsection 7 (1) with respect to those employees covered by the plan or plans that apply to the employees but only with respect to those compensation practices that existed immediately before the 1st day of January, 1993. 1993, c. 4, s. 12.

Credit for payments

(5) A payment made under a plan described in subsection 21.1 (2) before this subsection comes into force shall be taken into account in determining whether the employer has complied with this Act. 1994, c. 27, s. 121 (4).

Part III.2 (ss. 21.11-21.23) Repealed: 1996, c. 1, Sched. J, s. 4.

21.11-21.23 Repealed: 1996, c. 1, Sched. J, s. 4.

APPENDIX

Ministry of the Attorney General

1 Community legal clinics that receive funding from the legal aid plan established under the Legal Aid Act.

2 Supervised access centres that receive funding from the Ministry of the Attorney General.

Ministry of Citizenship, Culture and Recreation

1 Organizations providing services for immigrants and refugees that receive funding through the Newcomer Settlement Program of the Ministry of Citizenship, Culture and Recreation.

2 A native friendship centre, being an employer that is a not-for-profit corporation established to assist in improving the quality of life of urban and migrating native people.

3 The Art Gallery of Ontario.

4 CJRT-FM Inc.

5 Royal Botanical Gardens.

6 Community information centres.

7 The Northern Ontario Library Service Board.

8 The Southern Ontario Library Service Board.

Ministry of Community and Social Services

Ministry of Children and Youth Services

1 Any corporation or organization of persons, other than one that has no employees other than employees who directly or indirectly control it, that,

(a) operates a children’s residence under the authority of a licence issued under subsection 254 (3) of the Child, Youth and Family Services Act, 2017;

(b) provides residential care under the authority of a licence issued under subsection 254 (3) of the Child, Youth and Family Services Act, 2017 unless the provider is a foster parent;

(c) Repealed: 2007, c. 8, s. 223 (1).

(d) provides counselling services if the provision of those services is funded under the General Welfare Assistance Act (R.S.O. 1990, c. G.6);

(e) provides counselling services if the provision of those services is funded under the Ministry of Community and Social Services Act (R.S.O. 1990, c. M.20);

(f) operates a hostel providing services if the provision of those services is funded under the General Welfare Assistance Act (R.S.O. 1990, c. G.6);

(g) provides community services for adults if the provision of those services is funded by the Ministry of Community and Social Services under the Ministry of Community and Social Services Act (R.S.O. 1990, c. M.20);

(h) provides vocational rehabilitation services if the provision of those services is funded under the Vocational Rehabilitation Services Act (R.S.O. 1990, c. V.5);

(i) operates a workshop under the Vocational Rehabilitation Services Act (R.S.O. 1990, c. V.5);

(j) operates a supported employment program, being a program established under subclause 5 (i) (ii) of the Vocational Rehabilitation Services Act (R.S.O. 1990, c. V.5) that provides individualized training and support for a disabled person to enable him or her to obtain and retain employment;

(k) provides services funded under the Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008 (S.O. 2008, c. 14);

(l) provides the services of homemakers or nurses if the provision of those services is funded under the Homemakers and Nurses Services Act (R.S.O. 1990, c. H.10);

(m) Repealed: 2001, c. 13, s. 23 (2).

(n) operates a child care centre or is a home child care agency within the meaning of the Child Care and Early Years Act, 2014;

(o) operates programs providing services to child care centres funded under the Child Care and Early Years Act, 2014;

(p) operates a program that receives a payment under the Seniors Active Living Centres Act, 2017;

(q) provides services for young persons under Part VI of the Child, Youth and Family Services Act, 2017 or under an agreement with the Ministry of Children and Youth Services;

(r) provides children's services funded or purchased by the Ministry of Children and Youth Services or the Ministry of Community and Social Services under the Child, Youth and Family Services Act, 2017;

(s) operates a childcare resource centre, being an employer providing services to persons providing care to young children and receiving funding under the Ministry of Community and Social Services Act (R.S.O. 1990, c. M.20);

(t) provides a service funded under or provided under the authority of a licence issued under the Child, Youth and Family Services Act, 2017.

2 Societies, as defined in the Child, Youth and Family Services Act, 2017.

3, 4 Repealed: 2007, c. 8, s. 223 (1).

5 District Welfare Administration Boards operating under the District Welfare Administration Boards Act (R.S.O. 1990, c. D.15).

Ministry of Economic Development, Trade and Tourism

1 Metropolitan Toronto Convention Centre.

2 The St. Clair Parkway Commission.

Ministry of Education and Training

1 Algoma College.

2 Assumption University.

3 Brescia College.

4 Canterbury College.

4.1 Centre franco-ontarien de ressources pédagogiques.

5 Collège dominicain de philosophie et de théologie.

6 Concordia Lutheran Seminary.

7 Conrad Grebel College.

8 Hearst College.

9 Holy Redeemer College.

10 Huntington University.

11 Huron College.

12 Iona College.

13 King’s College.

14 Knox College.

15 L’Université de Sudbury.

16 McMaster Divinity College.

17 Nipissing College.

18 Queen’s Theological College.

19 Regis College.

20 Renison College.

21 St. Augustine’s Seminary.

22 St. Paul’s United College.

23 St. Paul University.

24 St. Peter’s Seminary.

25 The University of St. Jerome’s College.

26 The University of St. Michael’s College.

27 Thorneloe University.

28 Trinity College.

29 Victoria University.

30 Waterloo Lutheran Seminary.

31 Wycliffe College.

32 Youth employment centres providing community-based vocational planning and counselling that receive funding from the Ministry of Education and Training.

Ministry of Health and Long-Term Care

1 Any corporation or organization of persons, other than one that has no employees other than employees who directly or indirectly control it, that operates or provides,

(a) an ambulance service, under the authority of a licence issued under the Ambulance Act (R.S.O. 1990, c. A.19);

(b) a long-term care home under the authority of a licence issued, or an approval granted, under the Long-Term Care Homes Act, 2007 but, for greater certainty, only in respect of its long-term care home beds with respect to which funding is received from the Province of Ontario or a local health integration network as defined in section 2 of the Local Health System Integration Act, 2006;

(c) a laboratory or a specimen collection centre, under the authority of a licence issued under the Laboratory and Specimen Collection Centre Licensing Act (R.S.O. 1990, c. L.1);

(d) a psychiatric facility within the meaning of the Mental Health Act (R.S.O. 1990, c. M.7), the operation of which is funded in whole or in part by the Ministry of Health and Long-Term Care or a local health integration network as defined in section 2 of the Local Health System Integration Act, 2006;

(e) a home for special care established, approved or licensed under the Homes for Special Care Act (R.S.O. 1990, c. H.2);

(f) a home care facility within the meaning of the General Regulation made under the Health Insurance Act (R.S.O. 1990, c. H.6) or a facility which, by arrangement with any such home care facility,

(i) provides nursing, physiotherapy, occupational therapy, speech therapy, nutritional counselling, social work, homemaking or other services to persons in their homes that are insured home care services under the General Regulation made under the Health Insurance Act (R.S.O. 1990, c. H.6), and

(ii) is entitled to payment from the home care facility for or in respect of supplying such services;

(g) a rehabilitation centre or a crippled children's centre listed in the relevant Schedule to the General Regulation made under the Health Insurance Act (R.S.O. 1990, c. H.6);

(h) a detoxification centre that receives funding from the Ministry of Health and Long-Term Care or a local health integration network as defined in section 2 of the Local Health System Integration Act, 2006;

(h.1) services relating to addiction if the provider of the services receives funding from the Ministry of Health and Long-Term Care or a local health integration network as defined in section 2 of the Local Health System Integration Act, 2006;

(i) an adult community mental health service the operation of which is, pursuant to an agreement in writing, funded in whole or in part by the Ministry of Health and Long-Term Care or a local health integration network as defined in section 2 of the Local Health System Integration Act, 2006;

(j) a placement service the operation of which is, pursuant to a "Placement Co-ordination Service Agreement" or other agreement in writing, funded in whole or in part by the Ministry of Health and Long-Term Care or a local health integration network as defined in section 2 of the Local Health System Integration Act, 2006.

2 Repealed: 2006, c. 4, s. 50 (3).

3 A laundry that is operated exclusively for one or more than one hospital.

4 Hospital Food Services-Ontario Inc.

5 Repealed: O. Reg. 395/93, s. 8 (4).

6 Alcoholism and Drug Addiction Research Foundation.

7 The Canadian Red Cross Society in respect of its operations in Ontario.

8 The Hospital Council of Metropolitan Toronto.

9 The Hospital Medical Records Institute.

10 The Ontario Cancer Institute.

11 The Ontario Cancer Treatment and Research Foundation.

12 Repealed: 2017, c. 25, Sched. 8, s. 2.

13 Michener Institute for Applied Health Sciences.

14 A community health centre, being an employer,

(a) who provides primary health services primarily to,

(i) a group or groups of individuals who, because of culture, sex, language, socio-economic factors or geographic isolation, would be unlikely to receive some or all of those services from other sources, or

(ii) a group or groups of individuals who, because of age, sex, socio-economic factors or environmental factors, are more likely to be in need of some or all of those services than other individuals; and

(b) who receives funding from the Ministry of Health and Long-Term Care or a local health integration network as defined in section 2 of the Local Health System Integration Act, 2006 in accordance with the number or type of services provided.

15 A comprehensive health organization, being a not-for-profit corporation that,

(a) provides or arranges for the provision of comprehensive health care services for individuals who are enrolled as members of the patient roster of the corporation; and

(b) receives funding from the Ministry of Health and Long-Term Care or a local health integration network as defined in section 2 of the Local Health System Integration Act, 2006 in accordance with the number of individuals on the roster.

Ministry of Labour

1 Pay Equity Advocacy and Legal Services.

2 A help centre, being an employer providing employment and vocational counselling services to adults that receives funding from the Ontario Help Centre Program of the Ministry of Labour.

Ministry of Municipal Affairs and Housing

1 Any authority, board, commission, corporation, office, person or organization of persons which operates or provides,

(a) the collection, removal and disposal of garbage and other refuse for a municipality;

(b) the operation and maintenance of buses for the conveyance of passengers under an agreement with a municipality.

2 Ontario Municipal Employees Retirement Board.

3 Toronto District Heating Corporation.

Ministry of Natural Resources

1 Conservation Authorities established under the Conservation Authorities Act (R.S.O. 1990, c. C.27).

Ministry of the Solicitor General and Correctional Services

1 Any agency, corporation or organization of persons, other than one that has no employees other than employees who directly or indirectly control it, that, under funding from the Ministry of the Solicitor General and Correctional Services,

(a) provides community residential or non-residential services; or

(b) supervises persons who have been convicted of or been found guilty of a criminal provincial offence or who have been accused of a criminal or provincial offence.

2 Sexual assault centres.

Office Responsible for Women's Issues

1 Any corporation or organization of persons, other than one that has no employees other than employees who directly or indirectly control it, that receives funding from the program administered by the Office Responsible for Women's Issues and known as Women's Centres Program: Investing in Women's Futures and that provides counselling, referral or information services for women.

PROXY PROVISIONS

1(1) Definitions - In this Act,

"pay equity plan" means

(...)

(c) a document as described in section 21.18, for a plan being prepared under Part III.2. ("programme d'équité salariale")

"proxy method of comparison" means

the method of determining whether pay equity exists that is described in Part III.2. ("méthode de comparaison avec des organisations de l'extérieur")

Achievement of pay equity

5.1 (1) For the purposes of this Act, pay equity is achieved in an establishment when every female job class in the establishment has been compared to a job class or job classes under the job-to-job method of comparison, the proportional value method of comparison or, in the case of an employer to whom Part III.2 applies, the proxy method of comparison, and any adjustment to the job rate of each female class that is indicated by the comparison has been made.

PART III.2

PROXY METHOD OF COMPARISON

Definitions

21.11 (1) In this Part,

"key female job class" means,

(a) the female job class in a seeking employer's establishment having the greatest number of employees in that establishment, or

(b) any other female job class in the establishment whose duties are essential to the delivery of the service provided by the employer; ("catégorie clé d'emplois à prédominance féminine")

"pay equity job rate" means,

(a) in relation to a female job class in a proxy establishment, the job rate that would be required for that class if pay equity were to be achieved for the class as of the 1st day of January, 1994, and

(b) in relation to a key female job class of the seeking employer, the job rate that would be required for that class if the job rate were to bear the same relationship to the value of the work performed in that class as the pay equity job rates for the female job classes in the proxy establishment with which the key female job class is compared bear to the value of the work performed in those female job classes in the proxy establishment; ("taux de catégorie relatif à l'équité salariale")

"potential proxy employer" means,

in relation to a seeking employer, an employer of a potential proxy establishment for that seeking employer; ("employeur éventuel de l'extérieur")

"potential proxy establishment" means,

in relation to a seeking employer, an establishment that is eligible to be selected as the proxy establishment for that seeking employer; ("établissement éventuel de l'extérieur")

"proxy employer" means,

an employer of a proxy establishment; ("employeur de l'extérieur")

"proxy establishment" means,

an establishment whose female job classes are compared with female job classes of a seeking employer using the proxy method of comparison; ("établissement de l'extérieur")

"seeking employer" means,

an employer in respect of whom a review officer has issued an order under subsection 21.12 (2). ("employeur intéressé)

Proxy's information to be used

(2) For the purposes of the definition of "pay equity job rate", the pay equity job rate for a female job class of the proxy establishment is the rate indicated by the proxy employer for that class under paragraph 2 of subsection 21.17(1).

Deemed increase in pay equity job rate

(3) If the job rate for a female job class of the seeking employer is increased by a percentage or dollar amount, and the increase is not made for the purpose of achieving pay equity, the pay equity job rate for any job class with which that female job class was compared shall be deemed to have been increased by the same percentage or dollar amount, as the case may be.

Application

21.22 (1) This Part applies to those employers who are declared, by order of a review officer, to be seeking employers for the purposes of this Part.

Order re seeking employer

(2) A review officer may make an order declaring an employer to be a seeking employer if the employer has given notice to the Pay Equity Office under subsection 21.2 (5) and if the review officer finds,

(a) that the employer is a public sector employer; and

(b) that there is any female job class within the employer's establishment that cannot be compared to a male job class within the establishment under either the job-to-job method of comparison or the proportional value method of comparison.

Reference to Hearings Tribunal

(3) Subsections 24 (5) and (6) apply, with necessary modifications, to an order made under subsection (2).

Systemic gender discrimination

21.13 For the purposes of this Part and despite subsection 4(2), systemic gender discrimination in compensation shall be identified by undertaking comparisons, in terms of compensation and in terms of the value of the work performed, using the proxy method of comparison,

(a) between each key female job class in the seeking employer's establishment and female job classes in a proxy establishment; and

(b) between the female job classes in the seeking employer's establishment that are not key female job classes and the key female job classes in that establishment.

Proxy method required

21.14(1) A seeking employer shall use the proxy method of comparison for all female job classes in an establishment.

Proxy establishment

(2) The seeking employer shall select the proxy establishment to be used for the purposes of the proxy method of comparison in accordance with the regulations.

Proxy method described

21.15(1) Pay equity is achieved for a female job class in an establishment of a seeking employer under the proxy method of comparison,

(a) in the case of a key female job class,

(i) when the class is compared with those female job classes in a proxy establishment whose duties and responsibilities are similar to those of the key female job class, and

(ii) when the job rate for the class bears the same relationship to the value of the work performed in the class as the pay equity job rates for the female job classes in the proxy establishment bear to the value of the work performed in those classes; and

(b) in the case of any other female job class,

(i) when the class has been compared with the key female job classes in the establishment of the seeking employer, and

(ii) when the job rate for the class bears the same relationship to the value of the work performed in the class as the pay equity job rates for the key female job classes bear to the value of the work performed in those classes.

Comparison methods

(2) The comparisons referred to in subsection (1) shall be carried out using the proportional value method of comparison,

(a) in the case of a comparison under clause (1)(a), as if the female job classes in the proxy establishment were male job classes of the seeking employer; and

(b) in the case of a comparison under clause (1)(b), as if the key female job classes of the seeking employer were male job classes of the seeking employer.

Comparison system

(3) The comparisons shall be carried out using a gender-neutral comparison system.

Bargaining unit

(4) Comparisons under this section for a key female job class in a bargaining unit of the seeking employer shall be made with job classes in a bargaining unit of the proxy establishment unless the seeking employer and the bargaining agent for the employees in the key female job class agree otherwise.

If no classes similar

(5) For the purpose of making comparisons under clause (1)(a), if there is no female job class in the proxy establishment whose duties and responsibilities are similar to those of the key female job class of the seeking employer, the comparison shall be made with a group of female job classes in the proxy establishment selected by the proxy employer in accordance with subsections 21.17 (4) to (6).

Group of jobs

(6) Subsections 6 (6) to (10) apply, with necessary modifications, to the proxy method of comparison.

Combined establishments

21.16(1) Two or more seeking employers agree that, for the purposes of a pay equity plan under this Part, all their employees constitute a single establishment,

(a) if the seeking employers are in the same geographic division; or

(b) if the seeking employers are otherwise entitled to agree under section 2,and the employers shall be considered to be a single employer.

Limitations

(2) The circumstances in which seeking employers may enter into an agreement under clause (1)(a) may be limited by regulation.

Exception

(3) If any of the employees to be covered by a plan referred to in subsection (1) have a bargaining agent, an agreement made under that subsection is not effective unless the bargaining agent joins the agreement.

Employers to implement plans

(4) Even though the employees of two or more seeking employers are considered to be one establishment under subsection (1), each employer is responsible for implementing and maintaining the pay equity plan with respect to that employer's employees.

Obtaining information from potential proxy employers

21.17(1) For the purpose of making a comparison for a key female job class using the proxy method, a seeking employer may request any potential proxy employer to provide it with the following information relating to a potential proxy establishment of the potential proxy employer:

1. Information about the duties and responsibilities of each female job class in the potential proxy establishment whose duties and responsibilities are similar to those of the key female job class of the seeking employer.

2. The pay equity job rate for each female job class in the potential proxy establishment referred to in paragraph 1.

3. The total cost of benefits provided to or for the benefit of the employees of the potential proxy establishment, expressed as a percentage of the total amount of all wages and salaries paid to those employees.

4. Such other information as may be prescribed in the regulations.

Request

(2) The potential proxy employer shall provide the requested information if,

(a) the request is made in writing;

(b) the request is accompanied by a copy of the order issued under subsection 21.12 (2);

(c) the request is accompanied by an organization chart showing the reporting relationships for all job classes of the seeking employer;

(d) the request contains a detailed description, in a form approved by the Commission, of the duties and responsibilities of the key female job class of the seeking employer that is to be compared using the proxy method;

(e) the request contains such additional information as may be prescribed in the regulations;

(f) the request is signed by the employer or a partner of the employer, or, if the employer is a corporation, if the request is accompanied by a copy of a resolution of the corporation's board of directors resolving that the corporation make the request and by a certificate of an officer of the corporation certifying that the copy is a true copy; and

(g) if the members of the key female job class of the seeking employer have a bargaining agent,

(i) the request is signed by the bargaining agent, and

(ii) it indicates whether the seeking employer and the bargaining agent have agreed that the class may be compared to job classes that are not in a bargaining unit of the establishment that is selected as the proxy establishment.

Response time

(3) An employer who is required to provide information under subsection (2) shall do so within sixty days after receiving the request.

If no classes similar

(4) If there is no female job class in the potential proxy establishment whose duties and responsibilities are similar to those of the key female job class of the seeking employer, the potential proxy employer shall provide the information for a group of female job classes in the potential proxy establishment selected by the potential proxy employer inaccordance with subsections (5) and (6).

Representative range

(5) Subject to subsection (6), the group of female job classes selected under subsection (4) shall consist of classes whose pay equity job rates are representative of the range of pay equity job rates in the potential proxy establishment.

Bargaining unit

(6) If the key female job class referred to in subsection (4) is in a bargaining unit, the group of classes selected by the potential proxy employer must be in a bargaining unit of that employer unless the seeking employer and the bargaining agent for the employees in the key female job class have agreed that the class may be compared to job classes that are not in a bargaining unit of the establishment that is selected as the proxy establishment.

Confidentiality

(7) The seeking employer, an employee of the seeking employer or a bargaining agent for such an employee shall use the information provided by a potential proxy employer only for the purposes of this Act.

Offence

(8) Every person who contravenes subsection (7) is guilty of an offence and on conviction is liable to a fine of not more than $5,000 in the case of an individual, and not more that $50,000 in any other case.

Parties to an offence

(9) If a corporation or bargaining agent contravenes subsection (7), every officer, official or agent of the corporation or bargaining agent who authorizes, permits or acquiesces in the contravention is party to and guilty of the offence and, on conviction, is liable to the penalty provided for the offence whether or not the corporation or bargaining agent has been prosecuted or convicted.

Bargaining agent

(10) A prosecution for an offence created by subsection (8) may be instituted against a bargaining agent in its own name.

Consent

(11) No prosecution for an offence created by subsection (8) shall be instituted except with the consent in writing of the Hearings Tribunal.

Pay equity plan

21.18(1) Every seeking employer shall prepare a pay equity plan to provide for pay equity using the proxy method of comparison.

Contents

(2) The plan must do the following:

1. Identify the establishment to which the plan applies.

2. Identify the key female job classes of the seeking employer.

3. Identify the proxy employer and the proxy establishment.

4. Identify the female job classes in the proxy establishment with which the key female job classes of the seeking employer were compared and set out their pay equity job rates.

5. Identify the female job classes in the seeking employer that are not key female job classes and that were compared with the key female job classes.

6. Describe the gender-neutral comparison system used for the purpose of making the comparisons.

7. Describe the methodology used for the calculations required by the comparisons.

8. Set out the value of the work performed in each job class that was compared with another job class.

9. Set out the results of the comparisons.

10. Identify all positions that are excluded in determining whether a job class is a female job class or a male job class and that are not to be included in any compensation adjustments under the plan by virtue of subsection 8(3), and set out the reasons for relying on that subsection.

11. With respect to all female job classes for which pay equity does not exist according to the comparisons, indicate how the compensation in those job classes will be adjusted to achieve pay equity.

12. Set out the date on which the first adjustments in compensation will be made under the plan, which date shall be not later than one year after this section comes into force.

Plan binding

(3) A pay equity plan prepared under this Part binds the employer and the employees to whom the plan applies and their bargaining agent, if any.

Plan to prevail

(4) A pay equity plan prepared under this Part prevails over all relevant collective agreements and the adjustments to rates of compensation required by the plan shall be deemed to be incorporated into and form part of the relevant collective agreements.

Requirement to post plan

21.19 An employer required to prepare a pay equity plan under this Part shall post a copy of it in the workplace within six months after this section comes into force.

Bargaining unit employees

21.20 Sections 14, 16 and 17 apply, with necessary modifications, with respect to a pay equity plan that is prepared under this Part for employees in a bargaining unit.

Non-bargaining unit employees

21.21(1) This section applies with respect to pay equity plans prepared under this Part for employees who are not in a bargaining unit.

Review period

(2) The employees shall have until the ninetieth day after the plan is posted to review it and submit comments to the employer on the plan.

Application of certain provisions

(3) Subsections 14(1) and 15(2), (3) and (5) to (8) and sections 16 and 17 apply, with necessary modifications, with respect to the plan.

Compensation adjustments

21.22(1) A seeking employer shall make the first adjustments in compensation in respect of a pay equity plan prepared under this Part effective as of the 1st day of January, 1994.

Application of certain provisions

(2) Subsections 13(3) to (6) and (8) apply, with necessary modifications, with respect to the plan.

Deemed increase in pay equity job rate

(3) Despite subsections 13(3) to (6), a seeking employer shall increase the job rate for a female job class for which pay equity has not been achieved by the dollar amount of any deemed increase in the pay equity job rate for the job class with which the female job class of the seeking employer was compared that is required by subsection 21.11(3). This increase shall be made before any adjustments required by subsection 13(3), (4) or (5) are made.

Deemed compliance

(4) Every employer who prepares and implements a pay equity plan under this Part shall be deemed not to be in contravention of subsection 7(1) with respect to those employees covered by the plan or plans that apply to the employees but only with respect to those compensation practices that existed immediately before the 1st day of January, 1994.

Orders for information

21.23(1) A review officer or the Hearings Tribunal may order,

(a) a proxy employer or a potential proxy employer to provide to a seeking employer any information that the proxy employer or potential proxy employer is required to provide by this Act or the regulations;

(b) a seeking employer to provide to a proxy employer or a potential proxy employer any information that the seeking employer is required to provide by this Act or the regulations.

Compliance

(2) An employer or a bargaining agent shall comply with an order issued under subsection (1) within the time indicated in the order.

Reference to Hearings Tribunal

(3) Subsections 24(5) and (6) apply, with necessary modifications, to an order issued by a review officer under subsection (1).

Orders by Review Officers

24(1) Where a review officer is of the opinion that a pay equity plan is not being prepared as required by Part II, III.1 or Part III.2, the review officer may order the employer and the bargaining agent, if any, to take such steps as are set out in the order to prepare the plan.

Idem

(4) An order under subsection (1) may provide for a mandatory posting date that is later than the one provided in section 10 or a posting date that is later than the one provided under section 21.7 or 21.19.

Orders

25(2)

(a) where it finds that an employer or a bargaining agent has failed to comply with Part II, III.1 or III.2, may order that a review officer prepare a pay equity plan for the employer's establishment and that the employer and the bargaining agent, if any, or either of them, pay all of the costs of preparing the plan;

Application of Parts II, III.1 and III.2

25(4) Parts II, III.1 and III.2 apply with necessary modifications to a pay equity plan prepared under clause (2)

(a) but,

(a) the order of the Hearings Tribunal may provide for a mandatory posting date that is later than the one provided in section 10 or a posting date that is later than the one provided under section 21.7 or 21.19;

(b) the order of the Hearings Tribunal shall not provide for a compensation adjustment date that is different than the relevant date set out in clause 13(2)(e) or a date that is later than the one provided under section 21.10 or 21.22;

Regulations

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(...)

(g.2) governing the selection of an establishment as the proxy establishment for a seeking employer under Part III.2;

(g.3) limiting the circumstances in which seeking employers may make agreements under clause 21.16(1)(a);

(g.4) prescribing information for the purpose of paragraph 4 of subsection 21.17(1);

(g.5) prescribing information for the purpose of clause 21.17(2)(e);

2. **<u>Human Rights Code, RSO 1990, c H.19</u>**

PART I - FREEDOM FROM DISCRIMINATION

Services

1 Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability. R.S.O. 1990, c. H.19, s. 1; 1999, c. 6, s. 28 (1); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (1); 2012, c. 7, s. 1.

Accommodation

2 (1) Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or the receipt of public assistance. R.S.O. 1990, c. H.19, s. 2 (1); 1999, c. 6, s. 28 (2); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (2); 2012, c. 7, s. 2 (1).

Harassment in accommodation

(2) Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or the receipt of public assistance. R.S.O. 1990, c. H.19, s. 2 (2); 1999, c. 6, s. 28 (3); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (3); 2012, c. 7, s. 2 (2).

Contracts

3 Every person having legal capacity has a right to contract on equal terms without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability. R.S.O. 1990, c. H.19, s. 3; 1999, c. 6, s. 28 (4); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (4); 2012, c. 7, s. 3.

Accommodation of person under eighteen

4 (1) Every sixteen or seventeen year old person who has withdrawn from parental control has a right to equal treatment with respect to occupancy of and contracting for accommodation without discrimination because the person is less than eighteen years old. R.S.O. 1990, c. H.19, s. 4 (1).

Idem

(2) A contract for accommodation entered into by a sixteen or seventeen year old person who has withdrawn from parental control is enforceable against that person as if the person were eighteen years old. R.S.O. 1990, c. H.19, s. 4 (2).

Employment

5 (1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability. R.S.O. 1990, c. H.19, s. 5 (1); 1999, c. 6, s. 28 (5); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (5); 2012, c. 7, s. 4 (1).

Harassment in employment

(2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability. R.S.O. 1990, c. H.19, s. 5 (2); 1999, c. 6, s. 28 (6); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (6); 2012, c. 7, s. 4 (2).

Vocational associations

6 Every person has a right to equal treatment with respect to membership in any trade union, trade or occupational association or self-governing profession without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability. R.S.O. 1990, c. H.19, s. 6; 1999, c. 6, s. 28 (7); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (7); 2012, c. 7, s. 5.

Sexual harassment
Harassment because of sex in accommodation

7 (1) Every person who occupies accommodation has a right to freedom from harassment because of sex, sexual orientation, gender identity or gender expression by the landlord or agent of the landlord or by an occupant of the same building. R.S.O. 1990, c. H.19, s. 7 (1); 2012, c. 7, s. 6 (1).

Harassment because of sex in workplaces

(2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex, sexual orientation, gender identity or gender expression by his or her employer or agent of the employer or by another employee. R.S.O. 1990, c. H.19, s. 7 (2); 2012, c. 7, s. 6 (2).

Sexual solicitation by a person in position to confer benefit, etc.

(3) Every person has a right to be free from,

(a) a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or

(b) a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person. R.S.O. 1990, c. H.19, s. 7 (3).

Reprisals

8 Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing. R.S.O. 1990, c. H.19, s. 8.

Infringement prohibited

9 No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part. R.S.O. 1990, c. H.19, s. 9.

PART II - INTERPRETATION AND APPLICATION

Definitions re: Parts I and II

10 (1) In Part I and in this Part,

"age" means an age that is 18 years or more; ("âge")

"disability" means,

(a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,

(b) a condition of mental impairment or a developmental disability,

(c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,

(d) a mental disorder, or

(e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*; ("handicap")

"equal" means subject to all requirements, qualifications and considerations that are not a prohibited ground of discrimination; ("égal")

“family status” means the status of being in a parent and child relationship; (“état familial”)

“group insurance” means insurance whereby the lives or well-being or the lives and well-being of a number of persons are insured severally under a single contract between an insurer and an association or an employer or other person; (“assurance-groupe”)

“harassment” means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome; (“harcèlement”)

“marital status” means the status of being married, single, widowed, divorced or separated and includes the status of living with a person in a conjugal relationship outside marriage; (“état matrimonial”)

“record of offences” means a conviction for,

(a) an offence in respect of which a pardon has been granted under the *Criminal Records Act* (Canada) and has not been revoked, or

(b) an offence in respect of any provincial enactment; (“casier judiciaire”)

“services” does not include a levy, fee, tax or periodic payment imposed by law; (“services”)

“spouse” means the person to whom a person is married or with whom the person is living in a conjugal relationship outside marriage. (“conjoint”) R.S.O. 1990, c. H.19, s. 10 (1); 1993, c. 27, Sched.; 1997, c. 16, s. 8; 1999, c. 6, s. 28 (8); 2001, c. 13, s. 19; 2001, c. 32, s. 27 (2, 3); 2005, c. 5, s. 32 (8-10); 2005, c. 29, s. 1 (1).

Pregnancy

(2) The right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant. R.S.O. 1990, c. H.19, s. 10 (2).

Past and presumed disabilities

(3) The right to equal treatment without discrimination because of disability includes the right to equal treatment without discrimination because a person has or has had a disability or is believed to have or to have had a disability. 2001, c. 32, s. 27 (4).

Constructive discrimination

11 (1) A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,

(a) the requirement, qualification or factor is reasonable and *bona fide* in the circumstances; or

(b) it is declared in this Act, other than in section 17, that to discriminate because of such ground is not an infringement of a right. R.S.O. 1990, c. H.19, s. 11 (1).

Idem

(2) The Tribunal or a court shall not find that a requirement, qualification or factor is reasonable and *bona fide* in the circumstances unless it is satisfied that the needs of the group of which the person is a member cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any. R.S.O. 1990, c. H.19, s. 11 (2); 1994, c. 27, s. 65 (1); 2002, c. 18, Sched. C, s. 2 (1); 2009, c. 33, Sched. 2, s. 35 (1).

Idem

(3) The Tribunal or a court shall consider any standards prescribed by the regulations for assessing what is undue hardship. R.S.O. 1990, c. H.19, s. 11 (3); 1994, c. 27, s. 65 (2); 2002, c. 18, Sched. C, s. 2 (2); 2009, c. 33, Sched. 2, s. 35 (2).

Discrimination because of association

12 A right under Part I is infringed where the discrimination is because of relationship, association or dealings with a person or persons identified by a prohibited ground of discrimination. R.S.O. 1990, c. H.19, s. 12.

Announced intention to discriminate

13 (1) A right under Part I is infringed by a person who publishes or displays before the public or causes the publication or display before the public of any notice, sign, symbol, emblem, or other similar representation that indicates the intention of the person to infringe a right under Part I or that is intended by the person to incite the infringement of a right under Part I. R.S.O. 1990, c. H.19, s. 13 (1).

Opinion

(2) Subsection (1) shall not interfere with freedom of expression of opinion. R.S.O. 1990, c. H.19, s. 13 (2).

Employment

23 (1) The right under section 5 to equal treatment with respect to employment is infringed where an invitation to apply for employment or an advertisement in connection with employment is published or displayed that directly or indirectly classifies or indicates qualifications by a prohibited ground of discrimination. R.S.O. 1990, c. H.19, s. 23 (1).

Application for employment

(2) The right under section 5 to equal treatment with respect to employment is infringed where a form of application for employment is used or a written or oral inquiry is made of an applicant that directly or indirectly classifies or indicates qualifications by a prohibited ground of discrimination. R.S.O. 1990, c. H.19, s. 23 (2).

Questions at interview

(3) Nothing in subsection (2) precludes the asking of questions at a personal employment interview concerning a prohibited ground of discrimination where discrimination on such ground is permitted under this Act. R.S.O. 1990, c. H.19, s. 23 (3).

Employment agencies

(4) The right under section 5 to equal treatment with respect to employment is infringed where an employment agency discriminates against a person because of a prohibited ground of discrimination in receiving, classifying, disposing of or otherwise acting upon applications for its services or in referring an applicant or applicants to an employer or agent of an employer. R.S.O. 1990, c. H.19, s. 23 (4).

Special employment

24 (1) The right under section 5 to equal treatment with respect to employment is not infringed where,

(a) a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by their race, ancestry, place of origin, colour, ethnic origin, creed, sex, age, marital status or disability employs only, or gives preference in employment to, persons similarly identified if the qualification is a reasonable and *bona fide* qualification because of the nature of the employment;

(b) the discrimination in employment is for reasons of age, sex, record of offences or marital status if the age, sex, record of offences or marital status of the applicant is a reasonable and *bona fide* qualification because of the nature of the employment;

(c) an individual person refuses to employ another for reasons of any prohibited ground of discrimination in section 5, where the primary duty of the employment is attending to the medical or personal needs of the person or of an ill child or an aged, infirm or ill spouse or other relative of the person;

(d) an employer grants or withholds employment or advancement in employment to a person who is the spouse, child or parent of the employer or an employee;

(e) a judge or master is required to retire or cease to continue in office on reaching a specified age under the *Courts of Justice Act*;

(f) a case management master is required to retire on reaching a specified age under the *Courts of Justice Act*;

(g) the term of reappointment of a case management master expires on the case management master reaching a specified age under the *Courts of Justice Act*; or

(h) a justice of the peace is required to retire on reaching a specified age under the *Justices of the Peace Act*. R.S.O. 1990, c. H.19, s. 24 (1); 1999, c. 6, s. 28 (11); 2001, c. 32, s. 27 (5); 2005, c. 5, s. 32 (14); 2005, c. 29, s. 1 (2); 2016, c. 23, s. 54.

Reasonable accommodation

(2) No tribunal or court shall find that a qualification under clause (1) (b) is reasonable and *bona fide* unless it is satisfied that the circumstances of the person cannot be accommodated without undue hardship on the person responsible for accommodating those circumstances considering the cost, outside sources of funding, if any, and health and safety requirements, if any. R.S.O. 1990, c. H.19, s. 24 (2); 1994, c. 27, s. 65 (4); 2002, c. 18, Sched. C, s. 4 (1); 2006, c. 30, s. 3 (1).

Determining if undue hardship

(3) In determining for the purposes of subsection (2) whether there would be undue hardship, a tribunal or court shall consider any standards prescribed by the regulations. 2006, c. 30, s. 3 (2).

Same

(4) Clauses 24 (1) (e), (f), (g) and (h) shall not be interpreted to suggest that a judge, master, case management master or justice of the peace is an employee for the purposes of this Act or any other Act or law. 2005, c. 29, s. 1 (3).

24.1 Repealed: 1995, c. 4, s. 3 (2).

Employee benefit and pension plans

25 (1) The right under section 5 to equal treatment with respect to employment is infringed where employment is denied or made conditional because a term or condition of employment requires enrolment in an employee benefit, pension or superannuation plan or fund or a contract of group insurance between an insurer and an employer, that makes a distinction, preference or exclusion on a prohibited ground of discrimination. R.S.O. 1990, c. H.19, s. 25 (1).

Same

(2) The right under section 5 to equal treatment with respect to employment without discrimination because of sex, marital status or family status is not infringed by an employee superannuation or pension plan or fund or a contract of group insurance between an insurer and an employer that complies with the *Employment Standards Act, 2000* and the regulations thereunder. R.S.O. 1990, c. H.19, s. 25 (2); 1999, c. 6, s. 28 (12); 2005, c. 5, s. 32 (15); 2005, c. 29, s. 1 (4).

Same

(2.1) The right under section 5 to equal treatment with respect to employment without discrimination because of age is not infringed by an employee benefit, pension, superannuation or group insurance plan or fund that complies with the *Employment Standards Act, 2000* and the regulations thereunder. 2005, c. 29, s. 1 (5).

Same

(2.2) Subsection (2.1) applies whether or not a plan or fund is the subject of a contract of insurance between an insurer and an employer. 2005, c. 29, s. 1 (5).

Same

(2.3) For greater certainty, subsections (2) and (2.1) apply whether or not "age", "sex" or "marital status" in the *Employment Standards Act, 2000* or the regulations under it have the same meaning as those terms have in this Act. 2005, c. 29, s. 1 (5).

Same

(3) The right under section 5 to equal treatment with respect to employment without discrimination because of disability is not infringed,

(a) where a reasonable and *bona fide* distinction, exclusion or preference is made in an employee disability or life insurance plan or benefit because of a pre-existing disability that substantially increases the risk;

(b) where a reasonable and *bona fide* distinction, exclusion or preference is made on the ground of a pre-existing disability in respect of an employee-pay-all or participant-pay-all benefit in an employee benefit, pension or superannuation plan or fund or a contract of group insurance between an insurer and an employer or in respect of a plan, fund or policy that is offered by an employer to employees if they are fewer than twenty-five in number. R.S.O. 1990, c. H.19, s. 25 (3); 2001, c. 32, s. 27 (5).

Compensation

(4) An employer shall pay to an employee who is excluded because of a disability from an employee benefit, pension or superannuation plan or fund or a contract of group insurance between an insurer and the employer compensation equivalent to the contribution that the employer would make thereto on behalf of an employee who does not have a disability. R.S.O. 1990, c. H.19, s. 25 (4); 2001, c. 32, s. 27 (5).

Discrimination in employment under government contracts

26 (1) It shall be deemed to be a condition of every contract entered into by or on behalf of the Crown or any agency thereof and of every subcontract entered into in the performance thereof

that no right under section 5 will be infringed in the course of performing the contract. R.S.O. 1990, c. H.19, s. 26 (1).

Idem: government grants and loans

(2) It shall be deemed to be a condition of every grant, contribution, loan or guarantee made by or on behalf of the Crown or any agency thereof that no right under section 5 will be infringed in the course of carrying out the purposes for which the grant, contribution, loan or guarantee was made. R.S.O. 1990, c. H.19, s. 26 (2).

Sanction

(3) Where an infringement of a right under section 5 is found by the Tribunal upon a complaint and constitutes a breach of a condition under this section, the breach of condition is sufficient grounds for cancellation of the contract, grant, contribution, loan or guarantee and refusal to enter into any further contract with or make any further grant, contribution, loan or guarantee to the same person. R.S.O. 1990, c. H.19, s. 26 (3); 2002, c. 18, Sched. C, s. 5.

The Commission

27 (1) The Ontario Human Rights Commission is continued under the name Ontario Human Rights Commission in English and Commission ontarienne des droits de la personne in French. 2006, c. 30, s. 4.

Composition

(2) The Commission shall be composed of such persons as are appointed by the Lieutenant Governor in Council. 2006, c. 30, s. 4.

Appointment

(3) Every person appointed to the Commission shall have knowledge, experience or training with respect to human rights law and issues. 2006, c. 30, s. 4.

Criteria

(4) In the appointment of persons to the Commission under subsection (2), the importance of reflecting, in the composition of the Commission as a whole, the diversity of Ontario's population shall be recognized. 2006, c. 30, s. 4.

Functions of Commission

29 The functions of the Commission are to promote and advance respect for human rights in Ontario, to protect human rights in Ontario and, recognizing that it is in the public interest to do so and that it is the Commission's duty to protect the public interest, to identify and promote the elimination of discriminatory practices and, more specifically,

(a) to forward the policy that the dignity and worth of every person be recognized and that equal rights and opportunities be provided without discrimination that is contrary to law;

(b) to develop and conduct programs of public information and education to,

(i) promote awareness and understanding of, respect for and compliance with this Act, and

(ii) prevent and eliminate discriminatory practices that infringe rights under Part I;

(c) to undertake, direct and encourage research into discriminatory practices and to make recommendations designed to prevent and eliminate such discriminatory practices;

(d) to examine and review any statute or regulation, and any program or policy made by or under a statute, and make recommendations on any provision, program or policy that in its opinion is inconsistent with the intent of this Act;

(e) to initiate reviews and inquiries into incidents of tension or conflict, or conditions that lead or may lead to incidents of tension or conflict, in a community, institution, industry or sector of the economy, and to make recommendations, and encourage and co-ordinate plans, programs and activities, to reduce or prevent such incidents or sources of tension or conflict;

(f) to promote, assist and encourage public, municipal or private agencies, organizations, groups or persons to engage in programs to alleviate tensions and conflicts based upon identification by a prohibited ground of discrimination;

(g) to designate programs as special programs in accordance with section 14;

(h) to approve policies under section 30;

(i) to make applications to the Tribunal under section 35;

(j) to report to the people of Ontario on the state of human rights in Ontario and on its affairs;

(k) to perform the functions assigned to the Commission under this or any other Act. 2006, c. 30, s. 4.

Commission policies

30 The Commission may approve policies prepared and published by the Commission to provide guidance in the application of Parts I and II. 2006, c. 30, s. 4.

Inquiries

31 (1) The Commission may conduct an inquiry under this section for the purpose of carrying out its functions under this Act if the Commission believes it is in the public interest to do so. 2006, c. 30, s. 4.

Conduct of inquiry

(2) An inquiry may be conducted under this section by any person who is appointed by the Commission to carry out inquiries under this section. 2006, c. 30, s. 4.

Production of certificate

(3) A person conducting an inquiry under this section shall produce proof of their appointment upon request. 2006, c. 30, s. 4.

Entry

(4) A person conducting an inquiry under this section may, without warrant, enter any lands or any building, structure or premises where the person has reason to believe there may be documents, things or information relevant to the inquiry. 2006, c. 30, s. 4.

Time of entry

(5) The power to enter a place under subsection (4) may be exercised only during the place's regular business hours or, if it does not have regular business hours, during daylight hours. 2006, c. 30, s. 4.

Dwellings

(6) A person conducting an inquiry under this section shall not enter into a place or part of a place that is a dwelling without the consent of the occupant. 2006, c. 30, s. 4.

Powers on inquiry

(7) A person conducting an inquiry may,

(a) request the production for inspection and examination of documents or things that are or may be relevant to the inquiry;

(b) upon giving a receipt for it, remove from a place documents produced in response to a request under clause (a) for the purpose of making copies or extracts;

(c) question a person on matters that are or may be relevant to the inquiry, subject to the person's right to have counsel or a personal representative present during such questioning and exclude from the questioning any person who may be adverse in interest to the inquiry;

(d) use any data storage, processing or retrieval device or system used in carrying on business in the place in order to produce a document in readable form;

(e) take measurements or record by any means the physical dimensions of a place;

(f) take photographs, video recordings or other visual or audio recordings of the interior or exterior of a place; and

(g) require that a place or part thereof not be disturbed for a reasonable period of time for the purposes of carrying out an examination, inquiry or test. 2006, c. 30, s. 4.

Written demand

(8) A demand that a document or thing be produced must be in writing and must include a statement of the nature of the document or thing required. 2006, c. 30, s. 4.

Assistance

(9) A person conducting an inquiry may be accompanied by any person who has special, expert or professional knowledge and who may be of assistance in carrying out the inquiry. 2006, c. 30, s. 4.

Use of force prohibited

(10) A person conducting an inquiry shall not use force to enter and search premises under this section. 2006, c. 30, s. 4.

Obligation to produce and assist

(11) A person who is requested to produce a document or thing under clause (7) (a) shall produce it and shall, on request by the person conducting the inquiry, provide any assistance that is reasonably necessary, including assistance in using any data storage, processing or retrieval device or system, to produce a document in readable form. 2006, c. 30, s. 4.

Return of removed things

(12) A person conducting an inquiry who removes any document or thing from a place under clause (7) (b) shall,

(a) make it available to the person from whom it was removed, on request, at a time and place convenient for both that person and the person conducting the inquiry; and

(b) return it to the person from whom it was removed within a reasonable time. 2006, c. 30, s. 4.

Admissibility of copies

(13) A copy of a document certified by a person conducting an inquiry to be a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value. 2006, c. 30, s. 4.

Obstruction

(14) No person shall obstruct or interfere with a person conducting an inquiry under this section. 2006, c. 30, s. 4.

PART IV - HUMAN RIGHTS TRIBUNAL OF ONTARIO

Tribunal

32 (1) The Tribunal known as the Human Rights Tribunal of Ontario in English and Tribunal des droits de la personne de l'Ontario in French is continued. 2006, c. 30, s. 5.

Composition

(2) The Tribunal shall be composed of such members as are appointed by the Lieutenant Governor in Council in accordance with the selection process described in subsection (3). 2006, c. 30, s. 5.

Selection process

(3) The selection process for the appointment of members of the Tribunal shall be a competitive process and the criteria to be applied in assessing candidates shall include the following:

1. Experience, knowledge or training with respect to human rights law and issues.
2. Aptitude for impartial adjudication.
3. Aptitude for applying the alternative adjudicative practices and procedures that may be set out in the Tribunal rules. 2006, c. 30, s. 5.

Remuneration

(4) The members of the Tribunal shall be paid such remuneration and allowance for expenses as are fixed by the Lieutenant Governor in Council. 2006, c. 30, s. 5.

Term of office

(5) A member of the Tribunal shall be appointed for such term as may be specified by the Lieutenant Governor in Council. 2006, c. 30, s. 5.

Chair, vice-chair

(6) The Lieutenant Governor in Council shall appoint a chair and may appoint one or more vice-chairs of the Tribunal from among the members of the Tribunal. 2006, c. 30, s. 5.

Alternate chair

(7) The Lieutenant Governor in Council shall designate one of the vice-chairs to be the alternate chair. 2006, c. 30, s. 5.

Same

(8) If the chair is unable to act, the alternate chair shall perform the duties of the chair and, for this purpose, has all the powers of the chair. 2006, c. 30, s. 5.

Employees

(9) The Tribunal may appoint such employees as it considers necessary for the proper conduct of its affairs and the employees shall be appointed under Part III of the *Public Service of Ontario Act, 2006*. 2006, c. 30, s. 5; 2006, c. 35, Sched. C, s. 132 (6).

Evidence obtained in course of proceeding

(10) A member or employee of the Tribunal shall not be required to give testimony in a civil suit or any proceeding as to information obtained in the course of a proceeding before the Tribunal. 2006, c. 30, s. 5.

Same

(11) Despite subsection (10), an employee of the Tribunal may be required to give testimony in a proceeding before the Tribunal in the circumstances prescribed by the Tribunal rules. 2006, c. 30, s. 5.

Panels

33 (1) The chair of the Tribunal may appoint panels composed of one or more members of the Tribunal to exercise and perform the powers and duties of the Tribunal. 2006, c. 30, s. 5.

Person designated to preside over panel

(2) If a panel of the Tribunal holds a hearing, the chair of the Tribunal shall designate one member of the panel to preside over the hearing. 2006, c. 30, s. 5.

Reassignment of panel

(3) If a panel of the Tribunal is unable for any reason to exercise or perform the powers or duties of the Tribunal, the chair of the Tribunal may assign another panel in its place. 2006, c. 30, s. 5.

Application by person

34 (1) If a person believes that any of his or her rights under Part I have been infringed, the person may apply to the Tribunal for an order under section 45.2,

(a) within one year after the incident to which the application relates; or

(b) if there was a series of incidents, within one year after the last incident in the series. 2006, c. 30, s. 5.

Late applications

(2) A person may apply under subsection (1) after the expiry of the time limit under that subsection if the Tribunal is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay. 2006, c. 30, s. 5.

Form

(3) An application under subsection (1) shall be in a form approved by the Tribunal. 2006, c. 30, s. 5.

Two or more persons

(4) Two or more persons who are each entitled to make an application under subsection (1) may file the applications jointly, subject to any provision in the Tribunal rules that authorizes the Tribunal to direct that one or more of the applications be considered in a separate proceeding. 2006, c. 30, s. 5.

Application on behalf of another

(5) A person or organization, other than the Commission, may apply on behalf of another person to the Tribunal for an order under section 45.2 if the other person,

(a) would have been entitled to bring an application under subsection (1); and

(b) consents to the application. 2006, c. 30, s. 5.

Participation in proceedings

(6) If a person or organization makes an application on behalf of another person, the person or organization may participate in the proceeding in accordance with the Tribunal rules. 2006, c. 30, s. 5.

Consent form

(7) A consent under clause (5) (b) shall be in a form specified in the Tribunal rules. 2006, c. 30, s. 5.

Time of application

(8) An application under subsection (5) shall be made within the time period required for making an application under subsection (1). 2006, c. 30, s. 5.

Application

(9) Subsections (2) and (3) apply to an application made under subsection (5). 2006, c. 30, s. 5.

Withdrawal of application

(10) An application under subsection (5) may be withdrawn by the person on behalf of whom the application is made in accordance with the Tribunal rules. 2006, c. 30, s. 5.

Where application barred

(11) A person who believes that one of his or her rights under Part I has been infringed may not make an application under subsection (1) with respect to that right if,

(a) a civil proceeding has been commenced in a court in which the person is seeking an order under section 46.1 with respect to the alleged infringement and the proceeding has not been finally determined or withdrawn; or

(b) a court has finally determined the issue of whether the right has been infringed or the matter has been settled. 2006, c. 30, s. 5.

Final determination

(12) For the purpose of subsection (11), a proceeding or issue has not been finally determined if a right of appeal exists and the time for appealing has not expired. 2006, c. 30, s. 5.

Application by Commission

35 (1) The Commission may apply to the Tribunal for an order under section 45.3 if the Commission is of the opinion that,

(a) it is in the public interest to make an application; and

(b) an order under section 45.3 could provide an appropriate remedy. 2006, c. 30, s. 5.

Form

(2) An application under subsection (1) shall be in a form approved by the Tribunal. 2006, c. 30, s. 5.

Effect of application

(3) An application made by the Commission does not affect the right of a person to make an application under section 34 in respect of the same matter. 2006, c. 30, s. 5.

Applications dealt with together

(4) If a person or organization makes an application under section 34 and the Commission makes an application under this section in respect of the same matter, the two applications shall be dealt with together in the same proceeding unless the Tribunal determines otherwise. 2006, c. 30, s. 5.

Parties
36 The parties to an application under section 34 or 35 are the following:

1. In the case of an application under subsection 34 (1), the person who made the application.
2. In the case of an application under subsection 34 (5), the person on behalf of whom the application is made.
3. In the case of an application under section 35, the Commission.
4. Any person against whom an order is sought in the application.
5. Any other person or the Commission, if they are added as a party by the Tribunal. 2006, c. 30, s. 5.

Intervention by Commission

37 (1) The Commission may intervene in an application under section 34 on such terms as the Tribunal may determine having regard to the role and mandate of the Commission under this Act. 2006, c. 30, s. 5.

Intervention as a party

(2) The Commission may intervene as a party to an application under section 34 if the person or organization who made the application consents to the intervention as a party. 2006, c. 30, s. 5.

Disclosure of information to Commission

38 Despite anything in the *Freedom of Information and Protection of Privacy Act*, at the request of the Commission, the Tribunal shall disclose to the Commission copies of applications and responses filed with the Tribunal and may disclose to the Commission other documents in its custody or in its control. 2006, c. 30, s. 5.

Powers of Tribunal

39 The Tribunal has the jurisdiction to exercise the powers conferred on it by or under this Act and to determine all questions of fact or law that arise in any application before it. 2006, c. 30, s. 5.

Disposition of applications

40 The Tribunal shall dispose of applications made under this Part by adopting the procedures and practices provided for in its rules or otherwise available to the Tribunal which, in its opinion, offer the best opportunity for a fair, just and expeditious resolution of the merits of the applications. 2006, c. 30, s. 5.

Interpretation of Part and rules
41 This Part and the Tribunal rules shall be liberally construed to permit the Tribunal to adopt practices and procedures, including alternatives to traditional adjudicative or adversarial procedures that, in the opinion of the Tribunal, will facilitate fair, just and expeditious resolutions of the merits of the matters before it. 2006, c. 30, s. 5.

41.1 Repealed: 1995, c. 4, s. 3 (3).

Statutory Powers Procedure Act

42 (1) The provisions of the *Statutory Powers Procedure Act* apply to a proceeding before the Tribunal unless they conflict with a provision of this Act, the regulations or the Tribunal rules. 2006, c. 30, s. 5.

Conflict

(2) Despite section 32 of the *Statutory Powers Procedure Act*, this Act, the regulations and the Tribunal rules prevail over the provisions of that Act with which they conflict. 2006, c. 30, s. 5.

Tribunal rules

43 (1) The Tribunal may make rules governing the practice and procedure before it. 2006, c. 30, s. 5.

Required practices and procedures

(2) The rules shall ensure that the following requirements are met with respect to any proceeding before the Tribunal:

1. An application that is within the jurisdiction of the Tribunal shall not be finally disposed of without affording the parties an opportunity to make oral submissions in accordance with the rules.

2. An application may not be finally disposed of without written reasons. 2006, c. 30, s. 5.

Same

(3) Without limiting the generality of subsection (1), the Tribunal rules may,

(a) provide for and require the use of hearings or of practices and procedures that are provided for under the *Statutory Powers Procedure Act* or that are alternatives to traditional adjudicative or adversarial procedures;

(b) authorize the Tribunal to,

(i) define or narrow the issues required to dispose of an application and limit the evidence and submissions of the parties on such issues, and

(ii) determine the order in which the issues and evidence in a proceeding will be presented;

(c) authorize the Tribunal to conduct examinations in chief or cross-examinations of a witness;

(d) prescribe the stages of its processes at which preliminary, procedural or interlocutory matters will be determined;

(e) authorize the Tribunal to make or cause to be made such examinations of records and such other inquiries as it considers necessary in the circumstances;

(f) authorize the Tribunal to require a party to a proceeding or another person to,

(i) produce any document, information or thing and provide such assistance as is reasonably necessary, including using any data storage, processing or retrieval device or system, to produce the information in any form,

(ii) provide a statement or oral or affidavit evidence, or

(iii) in the case of a party to the proceeding, adduce evidence or produce witnesses who are reasonably within the party's control; and

(g) govern any matter prescribed by the regulations. 2006, c. 30, s. 5.

General or particular

(4) The rules may be of general or particular application. 2006, c. 30, s. 5.

Consistency

(5) The rules shall be consistent with this Part. 2006, c. 30, s. 5.

Not a regulation

(6) The rules made under this section are not regulations for the purposes of Part III of the *Legislation Act, 2006*. 2006, c. 30, ss. 5, 11.

Public consultations

(7) The Tribunal shall hold public consultations before making a rule under this section. 2006, c. 30, s. 5.

Failure to comply with rules

(8) Failure on the part of the Tribunal to comply with the practices and procedures required by the rules or the exercise of a discretion under the rules by the Tribunal in a particular manner is not a ground for setting aside a decision of the Tribunal on an application for judicial review or any other form of relief, unless the failure or the exercise of a discretion caused a substantial wrong which affected the final disposition of the matter. 2006, c. 30, s. 5.

Adverse inference

(9) The Tribunal may draw an adverse inference from the failure of a party to comply, in whole or in part, with an order of the Tribunal for the party to do anything under a rule made under clause (3) (f). 2006, c. 30, s. 5.

Tribunal inquiry

44 (1) At the request of a party to an application under this Part, the Tribunal may appoint a person to conduct an inquiry under this section if the Tribunal is satisfied that,

(a) an inquiry is required in order to obtain evidence;

(b) the evidence obtained may assist in achieving a fair, just and expeditious resolution of the merits of the application; and

(c) it is appropriate to do so in the circumstances. 2006, c. 30, s. 5.

Production of certificate

(2) A person conducting an inquiry under this section shall produce proof of their appointment upon request. 2006, c. 30, s. 5.

Entry

(3) A person conducting an inquiry under this section may, without warrant, enter any lands or any building, structure or premises where the person has reason to believe there may be evidence relevant to the application. 2006, c. 30, s. 5.

Time of entry

(4) The power to enter a place under subsection (3) may be exercised only during the place's regular business hours or, if it does not have regular business hours, during daylight hours. 2006, c. 30, s. 5.

Dwellings

(5) A person conducting an inquiry shall not enter into a place or part of a place that is a dwelling without the consent of the occupant. 2006, c. 30, s. 5.

Powers on inquiry

(6) A person conducting an inquiry may,

(a) request the production for inspection and examination of documents or things that are or may be relevant to the inquiry;

(b) upon giving a receipt for it, remove from a place documents produced in response to a request under clause (a) for the purpose of making copies or extracts;

(c) question a person on matters that are or may be relevant to the inquiry, subject to the person's right to have counsel or a personal representative present during such questioning and exclude from the questioning any person who may be adverse in interest to the inquiry;

(d) use any data storage, processing or retrieval device or system used in carrying on business in the place in order to produce a document in readable form;

(e) take measurements or record by any means the physical dimensions of a place;

(f) take photographs, video recordings or other visual or audio recordings of the interior or exterior of a place; and

(g) require that a place or part thereof not be disturbed for a reasonable period of time for the purposes of carrying out an examination, inquiry or test. 2006, c. 30, s. 5.

Written demand

(7) A demand that a document or thing be produced must be in writing and must include a statement of the nature of the document or thing required. 2006, c. 30, s. 5.

Assistance

(8) A person conducting an inquiry may be accompanied by any person who has special, expert or professional knowledge and who may be of assistance in carrying out the inquiry. 2006, c. 30, s. 5.

Use of force prohibited

(9) A person conducting an inquiry shall not use force to enter and search premises under this section. 2006, c. 30, s. 5.

Obligation to produce and assist

(10) A person who is requested to produce a document or thing under clause (6) (a) shall produce it and shall, on request by the person conducting the inquiry, provide any assistance that is reasonably necessary, including assistance in using any data storage, processing or retrieval device or system, to produce a document in readable form. 2006, c. 30, s. 5.

Return of removed things

(11) A person conducting an inquiry who removes any document or thing from a place under clause (6) (b) shall,

(a) make it available to the person from whom it was removed, on request, at a time and place convenient for both that person and the person conducting the inquiry; and

(b) return it to the person from whom it was removed within a reasonable time. 2006, c. 30, s. 5.

Admissibility of copies

(12) A copy of a document certified by a person conducting an inquiry to be a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value. 2006, c. 30, s. 5.

Obstruction

(13) No person shall obstruct or interfere with a person conducting an inquiry under this section. 2006, c. 30, s. 5.

Inquiry report

(14) A person conducting an inquiry shall prepare a report and submit it to the Tribunal and the parties to the application that gave rise to the inquiry in accordance with the Tribunal rules. 2006, c. 30, s. 5.

Transfer of inquiry to Commission

(15) The Commission may, at the request of the Tribunal, appoint a person to conduct an inquiry under this section and the person so appointed has all of the powers of a person appointed by the Tribunal under this section and shall report to the Tribunal in accordance with subsection (14). 2006, c. 30, s. 5.

Deferral of application

45 The Tribunal may defer an application in accordance with the Tribunal rules. 2006, c. 30, s. 5.

Dismissal in accordance with rules

45.1 The Tribunal may dismiss an application, in whole or in part, in accordance with its rules if the Tribunal is of the opinion that another proceeding has appropriately dealt with the substance of the application. 2006, c. 30, s. 5.

Orders of Tribunal: applications under s. 34

45.2 (1) On an application under section 34, the Tribunal may make one or more of the following orders if the Tribunal determines that a party to the application has infringed a right under Part I of another party to the application:

1. An order directing the party who infringed the right to pay monetary compensation to the party whose right was infringed for loss arising out of the infringement, including compensation for injury to dignity, feelings and self-respect.

2. An order directing the party who infringed the right to make restitution to the party whose right was infringed, other than through monetary compensation, for loss arising out of the infringement, including restitution for injury to dignity, feelings and self-respect.

3. An order directing any party to the application to do anything that, in the opinion of the Tribunal, the party ought to do to promote compliance with this Act. 2006, c. 30, s. 5.

Orders under par. 3 of subs. (1)

(2) For greater certainty, an order under paragraph 3 of subsection (1),

(a) may direct a person to do anything with respect to future practices; and

(b) may be made even if no order under that paragraph was requested. 2006, c. 30, s. 5.

Orders of Tribunal: applications under s. 35

45.3 (1) If, on an application under section 35, the Tribunal determines that any one or more of the parties to the application have infringed a right under Part I, the Tribunal may make an order directing any party to the application to do anything that, in the opinion of the Tribunal, the party ought to do to promote compliance with this Act. 2006, c. 30, s. 5.

Same

(2) For greater certainty, an order under subsection (1) may direct a person to do anything with respect to future practices. 2006, c. 30, s. 5.

Matters referred to Commission

45.4 (1) The Tribunal may refer any matters arising out of a proceeding before it to the Commission if, in the Tribunal's opinion, they are matters of public interest or are otherwise of interest to the Commission. 2006, c. 30, s. 5.

Same

(2) The Commission may, in its discretion, decide whether to deal with a matter referred to it by the Tribunal. 2006, c. 30, s. 5.

Documents published by Commission

45.5 (1) In a proceeding under this Part, the Tribunal may consider policies approved by the Commission under section 30. 2006, c. 30, s. 5.

Same

(2) Despite subsection (1), the Tribunal shall consider a policy approved by the Commission under section 30 in a proceeding under this Part if a party to the proceeding or an intervenor requests that it do so. 2006, c. 30, s. 5.

Stated case to Divisional court

45.6 (1) If the Tribunal makes a final decision or order in a proceeding in which the Commission was a party or an intervenor, and the Commission believes that the decision or order is not consistent with a policy that has been approved by the Commission under section 30, the Commission may apply to the Tribunal to have the Tribunal state a case to the Divisional Court. 2006, c. 30, s. 5.

Same

(2) If the Tribunal determines that the application of the Commission relates to a question of law and that it is appropriate to do so, it may state the case in writing for the opinion of the Divisional Court upon the question of law. 2006, c. 30, s. 5.

Parties

(3) The parties to a stated case under this section are the parties to the proceeding referred to in subsection (1) and, if the Commission was an intervenor in that proceeding, the Commission. 2006, c. 30, s. 5.

Submissions by Tribunal

(4) The Divisional Court may hear submissions from the Tribunal. 2006, c. 30, s. 5.

Powers of Divisional Court

(5) The Divisional Court shall hear and determine the stated case. 2006, c. 30, s. 5.

No stay

(6) Unless otherwise ordered by the Tribunal or the Divisional Court, an application by the Commission under subsection (1) or the stating of a case to the Divisional Court under subsection (2) does not operate as a stay of the final decision or order of the Tribunal. 2006, c. 30, s. 5.

Reconsideration of Tribunal decision

(7) Within 30 days of receipt of the decision of the Divisional Court, any party to the stated case proceeding may apply to the Tribunal for a reconsideration of its original decision or order in accordance with section 45.7. 2006, c. 30, s. 5.

Reconsideration of Tribunal decision

45.7 (1) Any party to a proceeding before the Tribunal may request that the Tribunal reconsider its decision in accordance with the Tribunal rules. 2006, c. 30, s. 5.

Same

(2) Upon request under subsection (1) or on its own motion, the Tribunal may reconsider its decision in accordance with its rules. 2006, c. 30, s. 5.

Decisions final

45.8 Subject to section 45.7 of this Act, section 21.1 of the *Statutory Powers Procedure Act* and the Tribunal rules, a decision of the Tribunal is final and not subject to appeal and shall not be altered or set aside in an application for judicial review or in any other proceeding unless the decision is patently unreasonable. 2006, c. 30, s. 5; 2009, c. 33, Sched. 2, s. 35 (3).

Settlements

45.9 (1) If a settlement of an application made under section 34 or 35 is agreed to in writing and signed by the parties, the settlement is binding on the parties. 2006, c. 30, s. 5.

Consent order

(2) If a settlement of an application made under section 34 or 35 is agreed to in writing and signed by the parties, the Tribunal may, on the joint motion of the parties, make an order requiring compliance with the settlement or any part of the settlement. 2006, c. 30, s. 5.

Application where contravention

(3) If a settlement of an application made under section 34 or 35 is agreed to in writing and signed by the parties, a party who believes that another party has contravened the settlement may make an application to the Tribunal for an order under subsection (8),

(a) within six months after the contravention to which the application relates; or

(b) if there was a series of contraventions, within six months after the last contravention in the series. 2006, c. 30, s. 5.

Late applications

(4) A person may apply under subsection (3) after the expiry of the time limit under that subsection if the Tribunal is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay. 2006, c. 30, s. 5.

Form of application

(5) An application under subsection (3) shall be in a form approved by the Tribunal. 2006, c. 30, s. 5.

Parties

(6) Subject to the Tribunal rules, the parties to an application under subsection (3) are the following:

1. The parties to the settlement.

2. Any other person or the Commission, if they are added as a party by the Tribunal. 2006, c. 30, s. 5.

Intervention by Commission

(7) Section 37 applies with necessary modifications to an application under subsection (3). 2006, c. 30, s. 5.

Order

(8) If, on an application under subsection (3), the Tribunal determines that a party has contravened the settlement, the Tribunal may make any order that it considers appropriate to remedy the contravention. 2006, c. 30, s. 5.

45.10 Repealed: 2017, c. 34, Sched. 46, s. 20 (1).**Definitions, general**

46 In this Act,

"Commission" means the Ontario Human Rights Commission; ("Commission")

"Minister" means the member of the Executive Council to whom the powers and duties of the Minister under this Act are assigned by the Lieutenant Governor in Council; ("ministre")

"person" in addition to the extended meaning given it by Part VI (Interpretation) of the *Legislation Act, 2006*, includes an employment agency, an employers' organization, an unincorporated association, a trade or occupational association, a trade union, a partnership, a municipality, a board of police commissioners established under the *Police Act*, being chapter 381 of the Revised Statutes of Ontario, 1980, and a police services board established under the *Police Services Act*; ("personne")

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of "person" in section 46 of the Act is amended by striking out "police services board established under the *Police Services Act*" and substituting "police service board established under the *Community Safety and Policing Act, 2019*". (See: 2019, c. 1, Sched. 4, s. 25)

"regulations" means the regulations made under this Act; ("règlements")

"Tribunal" means the Human Rights Tribunal of Ontario continued under section 32; ("Tribunal")

"Tribunal rules" means the rules governing practice and procedure that are made by the Tribunal under section 43. ("règles du Tribunal") R.S.O. 1990, c. H.19, s. 46; 1994, c. 27, s. 65 (24); 2002, c. 18, Sched. C, s. 7; 2006, c. 21, Sched. F, s. 136 (2); 2006, c. 30, s. 7.

Civil remedy

46.1 (1) If, in a civil proceeding in a court, the court finds that a party to the proceeding has infringed a right under Part I of another party to the proceeding, the court may make either of the following orders, or both:

1. An order directing the party who infringed the right to pay monetary compensation to the party whose right was infringed for loss arising out of the infringement, including compensation for injury to dignity, feelings and self-respect.

2. An order directing the party who infringed the right to make restitution to the party whose right was infringed, other than through monetary compensation, for loss arising out of the infringement, including restitution for injury to dignity, feelings and self-respect. 2006, c. 30, s. 8.

Same

(2) Subsection (1) does not permit a person to commence an action based solely on an infringement of a right under Part I. 2006, c. 30, s. 8.

Penalty

46.2 (1) Every person who contravenes section 9 or subsection 31 (14), 31.1 (8) or 44 (13) or an order of the Tribunal is guilty of an offence and on conviction is liable to a fine of not more than $25,000. 2006, c. 30, s. 8.

Consent to prosecution

(2) No prosecution for an offence under this Act shall be instituted except with the consent in writing of the Attorney General. 2006, c. 30, s. 8.

Acts of officers, etc.

46.3 (1) For the purposes of this Act, except subsection 2 (2), subsection 5 (2), section 7 and subsection 46.2 (1), any act or thing done or omitted to be done in the course of his or her employment by an officer, official, employee or agent of a corporation, trade union, trade or occupational association, unincorporated association or employers' organization shall be deemed to be an act or thing done or omitted to be done by the corporation, trade union, trade or occupational association, unincorporated association or employers' organization. 2006, c. 30, s. 8.

Opinion re authority or acquiescence

(2) At the request of a corporation, trade union, trade or occupational association, unincorporated association or employers' organization, the Tribunal in its decision shall make known whether or not, in its opinion, an act or thing done or omitted to be done by an officer, official, employee or agent was done or omitted to be done with or without the authority or acquiescence of the

corporation, trade union, trade or occupational association, unincorporated association or employers' organization, and the opinion does not affect the application of subsection (1). 2006, c. 30, s. 8.

Act binds Crown

47 (1) This Act binds the Crown and every agency of the Crown. R.S.O. 1990, c. H.19, s. 47 (1).

Act has primacy over other Acts

(2) Where a provision in an Act or regulation purports to require or authorize conduct that is a contravention of Part I, this Act applies and prevails unless the Act or regulation specifically provides that it is to apply despite this Act. R.S.O. 1990, c. H.19, s. 47 (2).

3. ***Public* Sector *Compensation Restraint to Protect Public Services Act, 2010***

INTERPRETATION

Interpretation

1 (1) In this Act,

"Board" means the Public Sector Compensation Restraint Board established by subsection 18 (1); ("Commission")

"compensation" means all forms of payment, benefits and perquisites paid or provided, directly or indirectly, to or for the benefit of a person who performs duties and functions that entitle him or her to be paid, and includes discretionary payments; ("rémunération")

"compensation plan" means the provisions, however established, for the determination and administration of a person's compensation; ("régime de rémunération")

"effective date" means, in relation to an employer, employee or office holder, the date described in section 6; ("date d'effet")

"Minister" means the minister to whom the administration of this Act is assigned under the *Executive Council Act*; ("ministre")

"office holder" means a holder of office who is elected or appointed under the authority of an Act of Ontario; ("titulaire de charge")

"pay range" means a range of rates of pay; ("échelle salariale")

"prescribed" means prescribed by a regulation made under this Act; ("prescrit")

"rate of pay" means the rate of remuneration or, where no such rate exists, any fixed or ascertainable amount of remuneration; ("taux de salaire")

"restraint measure" means a requirement set out in section 7, 8, 9, 10 or 11. ("mesure de restriction") 2010, c. 1, Sched. 24, s. 1 (1).

Deemed employees

(2) For the purposes of this Act, the directors, members and officers of an employer are deemed to be employees of the employer. 2010, c. 1, Sched. 24, s. 1 (2).

Employer of office holders

(3) A reference in this Act to the employer of an office holder is a reference to the employer to which the office holder is elected or appointed, and the use of this terminology is not intended to create a deemed employment relationship between them for the purposes of this or any other Act or any law. 2010, c. 1, Sched. 24, s. 1 (3).

APPLICATION

Members of the Assembly

2 This Act applies to every member of the Assembly. 2010, c. 1, Sched. 24, s. 2.

Public sector employers

3 (1) This Act applies to the following employers:

1. The Crown in right of Ontario, every agency thereof and every authority, board, commission, corporation, office or organization of persons a majority of whose directors, members or officers are appointed or chosen by or under the authority of the Lieutenant Governor in Council or a member of the Executive Council.
2. The Office of the Lieutenant Governor of Ontario, the Office of the Assembly, members of the Assembly, and the offices of persons appointed by order of the Assembly.
3. Every board as defined in the *Education Act*.
4. Every university in Ontario and every college of applied arts and technology and post-secondary institution in Ontario whether or not affiliated with a university, the enrolments of which are counted for purposes of calculating annual operating grants and entitlements.
5. Every hospital referred to in the list of hospitals and their grades and classifications maintained by the Minister of Health and Long-Term Care under the *Public Hospitals Act*.
6. Every board of health under the *Health Protection and Promotion Act*.
7. Hydro One Inc., each of its subsidiaries, Ontario Power Generation Inc. and each of its subsidiaries.

8. Every other authority, board, commission, corporation, office or organization of persons that is prescribed for the purposes of this subsection. 2010, c. 1, Sched. 24, s. 3 (1); 2018, c. 17, Sched. 15, s. 12.

Employers subject to thresholds

(2) This Act applies to every employer that is an authority, board, commission, corporation, office or organization of persons, other than one described in subsection (1) or (3), that meets the following conditions:

1. It received at least $1,000,000 in funding from the Government of Ontario in 2009, as determined for the purposes of the *Public Sector Salary Disclosure Act, 1996*.
2. It does not carry on its activities for the purpose of gain or profit to its members or shareholders. 2010, c. 1, Sched. 24, s. 3 (2).

Exceptions

(3) This Act does not apply to the following employers:

1. Municipalities.
2. Local boards as defined in subsection 1 (1) of the *Municipal Act, 2001*. However, this exclusion does not apply with respect to boards of health.
3. Every authority, board, commission, corporation, office or organization of persons some or all of whose members, directors or officers are appointed or chosen by or under the authority of the council of a municipality, other than one described in subsection (1).
4. Every other authority, board, commission, corporation, office or organization of persons that is prescribed for the purposes of this subsection. 2010, c. 1, Sched. 24, s. 3 (3).

Section Amendments with date in force (d/m/y)

Employees

4 (1) This Act applies to every employee of an employer to whom this Act applies, other than the employees described in subsections (2) and (3). 2010, c. 1, Sched. 24, s. 4 (1).

Exception re collective bargaining

(2) This Act does not apply to an employee who is represented by any of the following organizations which represent two or more employees for the purpose of collectively bargaining, with their employer, terms and conditions of employment relating to compensation:

1. A trade union certified or voluntarily recognized under the *Labour Relations Act, 1995*.

2. An organization that represents employees under the *Crown Employees Collective Bargaining Act, 1993*.

3. An organization designated under the *School Boards Collective Bargaining Act, 2014* as the bargaining agent for a teachers' bargaining unit.

4. Repealed: 2014, c. 5, s. 52 (2).

5. An organization that represents employees under the *Colleges Collective Bargaining Act, 2008.*

6. An association recognized under the *Police Services Act.*

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 6 of subsection 4 (2) of the Act is repealed and the following substituted: (See: 2019, c. 1, Sched. 4, s. 49)

6. A police association recognized under the *Community Safety and Policing Act, 2019*.

7. The Association as defined in section 1 of the *Ontario Provincial Police Collective Bargaining Act, 2006*.

8. An association recognized under Part IX of the *Fire Protection and Prevention Act, 1997*.

9. An organization that, before the effective date applicable to the employer, has collectively bargained, with the employer, terms and conditions of employment relating to compensation that were implemented by the employer.

10. An organization that, before the effective date applicable to the employer, has an established framework for collectively bargaining, with the employer, terms and conditions of employment relating to compensation.

11. Another prescribed organization. 2010, c. 1, Sched. 24, s. 4 (2); 2014, c. 5, s. 52.

Other exceptions

(3) This Act does not apply to such other classes of employees as may be prescribed. 2010, c. 1, Sched. 24, s. 4 (3).

Section Amendments with date in force (d/m/y)

Other elected or appointed office holders

5 (1) This Act applies to every person who is elected or appointed under the authority of an Act of Ontario to a position with an employer to whom this Act applies. 2010, c. 1, Sched. 24, s. 5 (1).

Exceptions

(2) This Act does not apply to judges, deputy judges, justices of the peace, masters or case management masters. 2010, c. 1, Sched. 24, s. 5 (2).

RESTRAINT MEASURES

Duration of restraint measures

Effective date

6 (1) The effective date of the restraint measures for employers, office holders and employees is March 24, 2010, except as otherwise provided in this section. 2010, c. 1, Sched. 24, s. 6 (1).

Expiry of certain restraint measures

(2) The restraint measures in sections 7 to 10 expire on March 31, 2012. 2010, c. 1, Sched. 24, s. 6 (2).

Effective date for certain employers, etc.

(3) If this Act applies to an employer by virtue of a regulation, the effective date of the restraint measures for the employer and its office holders and employees is the date specified by regulation. 2010, c. 1, Sched. 24, s. 6 (3).

Same

(4) If, after March 25, 2010, this Act becomes applicable to an employer by virtue of any of paragraphs 1 to 7 of subsection 3 (1), the effective date of the restraint measures for the employer and its office holders and employees is the date on which this Act becomes applicable to the employer. 2010, c. 1, Sched. 24, s. 6 (4).

No increase in rate of pay, pay range

Rate of pay

7 (1) The rate of pay for an employee or office holder that is in effect on the applicable effective date cannot be increased before the beginning of April 2012, except as permitted by subsection (3) or (4). 2010, c. 1, Sched. 24, s. 7 (1).

Pay range

(2) The maximum amount within a pay range, if any, for an employee or office holder that is in effect on the applicable effective date, and any steps within the pay range, cannot be increased before the beginning of April 2012. 2010, c. 1, Sched. 24, s. 7 (2).

Exceptions

(3) If the rate of pay falls within a pay range that is in effect for a particular position or office on the applicable effective date, the employee or office holder's rate of pay may be increased — within that pay range — in recognition of any of the following matters only and only if the increase is authorized under the compensation plan as it existed on the applicable effective date:

1. His or her length of time in employment or in office.
2. An assessment of performance.
3. His or her successful completion of a program or course of professional or technical education. 2010, c. 1, Sched. 24, s. 7 (3).

Same, increase in minimum wage

(4) If, after the applicable effective date, an employee's or office holder's rate of pay falls below the minimum wage established under Part IX of the *Employment Standards Act, 2000*, the rate of pay may be increased to match the minimum wage. 2010, c. 1, Sched. 24, s. 7 (4).

No increase in benefits, perquisites and payments

8 (1) A benefit, perquisite or payment provided to an employee or office holder under the compensation plan as it existed on the applicable effective date cannot be increased before the beginning of April 2012, except as permitted by subsection (3). 2010, c. 1, Sched. 24, s. 8 (1).

No new or additional benefits, etc.

(2) No new or additional benefits, perquisites or payments may be provided to an employee or office holder before the beginning of April 2012, except as permitted by subsection (3). 2010, c. 1, Sched. 24, s. 8 (2).

Exceptions

(3) A benefit, perquisite or payment may be increased, or an additional benefit, perquisite or payment provided, to an employee or office holder in recognition of any of the following matters only and only if it is authorized under the compensation plan as it existed on the applicable effective date:

1. His or her length of time in employment or in office.
2. An assessment of performance.
3. His or her successful completion of a program or course of professional or technical education. 2010, c. 1, Sched. 24, s. 8 (3).

Time off

(4) For greater certainty, time off is a benefit for the purposes of this section. 2010, c. 1, Sched. 24, s. 8 (4).

Effect of cost increases

(5) If the employer's cost of providing a benefit, perquisite or payment under the compensation plan as it existed on the applicable effective date increases after that effective date, the increase in the employer's cost does not constitute an increase in the benefit, perquisite or payment itself. 2010, c. 1, Sched. 24, s. 8 (5).

No change upon renewal, etc.

Employees

9 (1) The renewal of an employee's contract cannot, before the beginning of April 2012, change the compensation plan as it existed on the applicable effective date for that position. 2010, c. 1, Sched. 24, s. 9 (1).

Office holders

(2) The re-election of an office holder or the renewal of an office holder's appointment cannot, before the beginning of April 2012, change the compensation plan as it existed on the applicable effective date for that office. 2010, c. 1, Sched. 24, s. 9 (2).

Interpretation

(3) If the employee remains employed in the same position but has a new employment contract, or if the office holder remains in the same office but has a new appointment, the new contract or appointment is deemed to be a renewal for the purposes of this section. 2010, c. 1, Sched. 24, s. 9 (3).

New employees, job changes, etc.

Employees

10 (1) The compensation plan for a person who becomes an employee, or accepts a new position, on or after the applicable effective date and before the beginning of April 2012 must be no greater than the compensation plan as it existed on that effective date for other employees in a similar position with the same employer. 2010, c. 1, Sched. 24, s. 10 (1).

Office holders

(2) The compensation plan for a person who becomes an office holder, or is elected or appointed to a different office, on or after the applicable effective date and before the beginning of April

2012 must be no greater than the compensation plan as it existed on that effective date for other holders of the same or a similar office. 2010, c. 1, Sched. 24, s. 10 (2).

No future compensation re restraint measures

11 A compensation plan cannot provide compensation after March 31, 2012 to an employee or office holder for compensation that he or she did not receive as a result of the restraint measures in this Act. 2010, c. 1, Sched. 24, s. 11.

Conflict with this Act

12 (1) This Act prevails over any provision of a compensation plan and, if there is a conflict between this Act and a compensation plan, the compensation plan is inoperative to the extent of the conflict. 2010, c. 1, Sched. 24, s. 12 (1).

Same

(2) This Act prevails over any other Act and over any regulation, by-law or other statutory instrument. 2010, c. 1, Sched. 24, s. 12 (2).

Exception

(3) Nothing in this Act shall be interpreted or applied so as to reduce any right or entitlement under the *Human Rights Code* or the *Pay Equity Act*. 2010, c. 1, Sched. 24, s. 12 (3).

Same

(4) Nothing in this Act shall be interpreted or applied so as to reduce any right or entitlement provided under section 42 or 44 of the *Employment Standards Act, 2000*. 2010, c. 1, Sched. 24, s. 12 (4).

Same

(5) Nothing in this Act shall be interpreted or applied so as to prevent the application of the insurance plan under the *Workplace Safety and Insurance Act, 1997* after the effective date to an individual to whom the insurance plan did not apply on the effective date. 2010, c. 26, Sched. 16, s. 1.

Section Amendments with date in force (d/m/y)

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF HEALTH AND LONG-TERM CARE
Appellant (Moving Party)

-and-

ASSOCIATION OF ONTARIO MIDWIVES et al.
Respondents, (Responding Parties)

Court File No. C68946

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT
TORONTO

FACTUM OF THE RESPONDENT, ASSOCIATION OF ONTARIO MIDWIVES

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