

ONTARIO NURSES' ASSOCIATION

Submissions on Bill 3 – *Pay Transparency Act*

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INTRODUCTION

The Ontario Nurses' Association (ONA) is the union representing approximately 65,000 Registered Nurses (RNs), Nurse Practitioners (NPs), Registered Practical Nurses (RPNs) and Health Care Professionals, as well as approximately 16,000 nursing student affiliates throughout the province who provide front-line health care in hospitals, long-term care facilities, public health, homes, the community, clinics, and private industrial establishments.

ONA welcomes the introduction of pay transparency legislation in Ontario and values the opportunity to provide recommendations on its development. Pay transparency measures are important tools that can assist in addressing the gender wage gap. Such legislation can help to expose when and to what extent men and women are being paid differently for similar work. Pay transparency laws also promote greater accountability and enforceability of other legislative measures in place to address unequal pay, such as the *Pay Equity Act*, the *Human Rights Code*, and the *Employment Standards Act*.

The gender wage gap continues to pose a barrier to women's equality in Ontario. Working women currently earn approximately 74 cents for every dollar earned by working men. The gap substantially increases when gender-based discrimination intersects with other forms of discrimination, including those forms often experienced by racialized women, Indigenous women, immigrant and migrant women, women with disabilities, elderly women, and LGBTQ2+ women. In Ontario, the pay gap is approximately 30% on average for all women; however, it increases to approximately 57% for Indigenous women, 46% for women with disabilities, and 32% for racialized women.¹ In its 6 March 2018 announcement regarding the *Women's Economic Empowerment Strategy*, the government of Ontario acknowledged that "The gender wage in Ontario has remained stagnant for the last decade, with women earning around 30 per cent less than men."² On a global scale, data from the Organisation for Economic Co-operation and Development (OECD) on the gender wage gap reveals that Canada's wage gap is the 7th largest of the 34 countries in the OECD.³ This is unacceptable and action must be taken immediately to close the gap once and for all.

While Premier Wynne has now committed to closing the wage gap between men and women, ONA has been on the forefront of this battle for more than 30 years. Since the inception of Ontario's *Pay Equity Act* in 1987, ONA has fought to achieve pay equity for its membership. ONA spearheaded precedent-setting litigation in the area of pay equity and contributed to the development of legal precedents, which go towards ensuring that women in Ontario have equal access to pay equity. In the early 1990s, ONA successfully fought against hospitals seeking to evaluate the work of nurses represented by ONA using biased evaluation tools that undervalued women's work. In the mid-1990s, ONA and other unions challenged attacks by the government of the day to eliminate the proxy method of comparison – a method of evaluation under the *Pay Equity Act* that protected the most vulnerable working women in predominantly female workplaces who were often the lowest paid women in the workforce.

¹ "8 Amendments to Bill 3 *Pay Transparency Act* to close the gender pay gap", Equal Pay Coalition, April 10, 2018, available online at: <http://equalpaycoalition.org/wp-content/uploads/2018/03/EPD-2018-Pay-Transparency-1-PAGER.pdf>

² Women's Economic Empowerment Strategy a Canadian First: Ontario First Province in Canada to Introduce Pay Transparency Legislation", News Release, Office of the Premier, March 6, 2018, available online at: <https://news.ontario.ca/opo/en/2018/03/womens-economic-empowerment-strategy-a-canadian-first.html>

³ "Earnings and wages – Gender wage gap – OECD Data, available online at: <https://data.oecd.org/earnwage/gender-wage-gap.htm>

Over 25 years later, ONA continues to fight for the most vulnerable women by seeking to ensure that pay equity is maintained for women in the proxy sector. ONA, along with the Service Employees' International Union (SEIU), spent two years litigating at the Pay Equity Hearings Tribunal (PEHT) against nursing homes and the government seeking pay equity compliance in the nursing home sector. Since 2005, the wages of nurses in the nursing home sector have not been pay equity compliant. In the Hospital sector, ONA has commenced negotiations with hospitals to evaluate jobs in the ONA bargaining unit. In all areas of healthcare, ONA has been fighting against wage discrimination by challenging employers to maintain pay equity compliance and taking the necessary steps when they do not.

While ONA commends the government on its efforts to advance women's economic empowerment and build fairer workplaces, significant action is still needed to ensure that women no longer face a gender wage gap in Ontario's labour market. ONA advocates for amendments to the *Pay Transparency Act* that will address the shortcomings in the proposed legislation as currently drafted.

ONA has reviewed the report and recommendations made by the Ontario Equal Pay Coalition, and adopts and supports those recommendations. To highlight the issues of significant concern to ONA and its members, we offer the following observations and recommendations.

RECOMMENDATIONS

1. Recognition in the Act that economic equality is a human right and that women continue to experience systemic wage discrimination

Acknowledging that economic equality is a human right needs to form the basis for any genuine dialogue about the steps that must be taken to eliminate the gender wage gap. Basing action on such a principle acknowledges that the issue of the gap must start first with recognizing that there continues to be systemic gender discrimination in pay, which is evidenced with highly skilled, female-dominated professions like nursing.

Nursing has traditionally been viewed as "women's work." While more men are entering nursing, it continues to be a highly female-dominated profession. Overall, women make up 82.6% of the healthcare and social assistance sectors.

Nurses are highly skilled workers that exercise significant judgment and problem solving in their day-to-day work in delivering patient, client, and/or resident care. The vast majority of ONA members have post-secondary education. Since 2005, the entry to practice requirements for an RN in Ontario is a baccalaureate degree in nursing, or an equivalent program. Nurse Practitioners require additional education beyond a university degree. Nurses in Ontario are governed by the College of Nurses of Ontario, a self-regulating body, which sets the standards for entry to practice and practice standards for members. However, in spite of nurses being highly educated, performing technical work, and working in a regulated health profession, ONA still observes many sectors where a wage gap continues to exist.

Recognizing that the wage gap exists due to economic inequality, and that it disproportionately affects women, is critical to identifying the steps needed to eliminate the gap. ONA submits that this context must be present in the legislation itself, particularly through the addition of a Preamble and a Purpose provision, which state that women's right to economic equality is enshrined in human rights law; that women continue to experience a discriminatory gender pay gap; and that

this legislation is being introduced in order to protect and promote women’s human rights as well as to address non-compliance with existing equal pay laws, namely the *Pay Equity Act*, the *Human Rights Code*, and the *Employment Standards Act*.

Accordingly, ONA agrees with the recommendations of the Equal Pay Coalition that:

- The *Act* include a Preamble which:
 - Introduces the context of women’s right to economic equality as enshrined in human rights legislation such as the International Covenant of Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention on the Rights of Persons with Disabilities as proclaimed by the United Nations; and Convention 100 – Equal Remuneration for Work of Equal Value and Convention 111 – Discrimination in Employment and Occupation as proclaimed by the International Labour Organization; and
 - Identifies that pay transparency legislation is proactive measure which increases compliance with existing laws related to addressing the gender wage gap.
- The *Act* include a Purpose clause which:
 - Identifies that the purpose of the *Act* is to protect and promote women’s fundamental right to receive pay free of sex discrimination by requiring employers to disclose information about the pay structure and wage grids in each establishment; and
 - Identifies that the *Act* does not abrogate from the obligations under the *Pay Equity Act*, the *Human Rights Code*, and the *Employment Standards Act*.
- Section 4(4) be removed or amended so that an employer cannot consider or rely on compensation history when such compensation may have been affected by systemic wage discrimination in the labour market.

2. Extend the *Act*’s Application to all Public and Private Sector Employers with more than 10 Employees

The *Act* in its current form states that the Regulations will define what a “prescribed employer” is. There is no Application provision in the *Act* that outlines which employers the *Act* applies to. The Premier’s *Women’s Economic Empowerment Strategy* indicates that the disclosure measures will begin with the Ontario Public Service and then, following consultation, will apply to employers with more than 500 employees, and later will extend to those with more than 250 employees.⁴ If Ontario is serious about its promise to close the gender wage gap, it can go much further by mandating the application of the *Act* to all employers with more than ten employees.

The government claims that its pay transparency legislation was informed by other jurisdictions with similar laws in place; however, many other jurisdictions have a significantly expanded scope compared to Ontario when it comes to the number of employers that the legislation applies to. For instance, Iceland’s *Act on Equal Status and Equal Rights of Women and Men No. 10/2008* applies to businesses with an average of 25 employees or more, with employers being required to obtain an equal pay certification to prove that they offer equal pay for work of equal value⁵;

⁴ “Women’s Economic Empowerment Strategy a Canadian First: Ontario First Province in Canada to Introduce Pay Transparency Legislation”, News Release, Office of the Premier, March 6, 2018, available online at: <https://news.ontario.ca/opo/en/2018/03/womens-economic-empowerment-strategy-a-canadian-first.html>

⁵ Act on Equal Status and Equal Rights of Women and Men No. 10/2008, as amended by Act No. 162/2010, No. 126/2011, No. 62/2014, No. 79/2015, No. 117/2016 and No. 56/2017, available online at: <https://www.government.is/library/04->

Denmark's *Equal Pay Act No. 899 of 2008* applies to companies with 35 employees or more and requires employers to provide gender wage statistics for men and women of similar job classification⁶; Belgian employers with more than 50 employees must draft a comparative analysis report of male and female salaries every two years⁷; in Australia, under the *Workplace Gender Equality Act, 2012*, all private sector employers with 100 or more employees are required to report to the Workplace Gender Equality Agency annually regarding pay structures⁸; and the United Kingdom's *Equality Act 2010* requires employers with more than 250 employees to publish information relating to the pay of employees for the purpose of showing whether there are differences in the pay of male and female employees.⁹ Ontario can, and should, follow the lead of these countries by expanding the application of the legislation to cover more employers in the Ontario labour market. The Ontario Ministry of Labour reports that small businesses represent 95% of all employers in Ontario, and they employ 28% of Ontario's workers.¹⁰ This means that the overwhelming majority of employers are being left out of the legislation's application, as its currently drafted.

ONA supports the Equal Pay Coalition recommendation that the scope of the application of the legislation should be expanded to include all private and public sector employers with more than ten employees. In addition to putting the *Act* in line with global leaders on pay transparency, this would put it in line with existing obligations under the *Pay Equity Act* as well as new federal pay equity legislation, which is to apply to all public and private sector employers in federal jurisdiction with ten or more employees.

3. Enhance the Reporting Obligations Outlined in the Act

Bill 3 in its current form contains no specific information on the requirements of the pay transparency reports. ONA supports the Equal Pay Coalition's position that the scope and specificities of the reporting requirements should be set out in the *Act*. These should not be left to the Regulations as these details are core to the *Act*. ONA recommends that the reports should include, at a minimum, information regarding the compensation structure and wage grids in workplaces, broken down by gender, job classification, and job status. Time frames for reporting should be included in the *Act* as well as details regarding sanctions for non-compliance with the requirement to compile pay transparency reports.

Greater legislative clarity on reporting requirements has been shown to render more meaningful results and are helpful to employers in terms of compliance. A 2018 report entitled *Pay transparency in Europe: First experiences with gender pay reports and audits in four Member States* assessed first mover countries – Austria, Denmark, Finland, and Sweden – which had

[Legislation/Act%20on%20equal%20status%20and%20equal%20rights%20of%20women%20and%20men%20no%2010%202008%20as%20amended%20101%202018%20final.pdf](#)

⁶ See http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=84692 and <https://www.retsinformation.dk/Forms/R0710.aspx?id=121176> (full text in Danish)

⁷ See Gender Pay Reporting: An International Survey at p. 9, available online at: [file:///Users/Andrea/Downloads/Annual%20Employment%20CLE%20Briefing_Gender%20pay%20survey%20\(1\).pdf](file:///Users/Andrea/Downloads/Annual%20Employment%20CLE%20Briefing_Gender%20pay%20survey%20(1).pdf)

⁸ See "Relevant Employers", Workplace Gender Equality Agency, available online: <https://www.wgea.gov.au/who-needs-report/relevant-employers>

⁹ *Equality Act 2010* at s. 78, available online at: https://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf

¹⁰ See "Small Business", Ontario Ministry of Labour, available online at: <https://www.labour.gov.on.ca/english/atwork/smallbusiness.php>

evaluated the use of gender pay reports and audits using evidence-based research.¹¹ The researchers concluded that:

Compliance in qualitative terms, concerning the contents of the reports, was generally higher in countries with ‘simpler’ reporting requirements. However, evidence from the evaluation studies stress that the reports or audits become more meaningful and effective when they are compiled with a certain degree of detail, both in terms of what parts of the pay are reported on separately, and what kinds of breakdown are provided. Only in those cases where sufficiently detailed information is available, and where they are further discussed and scrutinised, do the reports and audits move from being a mere formality towards becoming an effective and powerful instrument.¹²

The research confirmed that in general, clarity from the legislator as to who is required to compile reports, what they should contain, who would be involved at a company/organizational level, what template could be used, what should be done with reports, and what the consequences are if they are not compiled is helpful to all parties involved in the process. ONA submits that these details are critical and core to the *Act* and should therefore be included in the *Act* itself rather than the Regulations.

4. Enforce Pay Transparency through the Pay Equity Office

ONA is in agreement with the recommendation of the Equal Pay Coalition that pay transparency should be enforced through the Pay Equity Office Review Officers and the Pay Equity Hearings Tribunal (PEHT) rather than the Ontario Labour Relations Board (OLRB). The former have extensive expertise in the area of systemic wage discrimination and have developed jurisprudence dealing with the obligation to disclose wage information. Accordingly, the Review Officers and adjudicators at the PEHT are best-positioned to enforce pay transparency obligations outlined in the *Act*.

5. Outline Penalties for Failure to Comply in the *Act*

The *Act* in its current form contains no provisions setting out penalties for failure to comply with the pay transparency obligations. ONA submits that sanctions for non-compliance with the requirement to compile pay transparency reports should be outlined in the *Act*. This will create additional needed clarity in the *Act* and also signify that non-discriminatory pay is a fundamental human right and that the failure to comply with the legislative regime in place to uphold that is a violation of the law, and requires accountability by employers.

CONCLUSION

In ONA’s submission, eliminating the gender pay gap is an achievable and necessary goal for the province of Ontario. ONA supports the recommendations made by the Equal Pay Coalition. ONA strongly supports recognizing equal pay as a human right as a starting point to any action taken by the government. Approaching the gender wage gap from a human rights lens is critical to adopting actions that will not merely do lip service to this problem, but will engage meaningful

¹¹ “Pay transparency in Europe: First experiences with gender pay reports and audits in four Member”, Eurofound (2018), Publications Office of the European Union, Luxembourg, available online at: <https://www.eurofound.europa.eu/publications/report/2018/pay-transparency-in-europe-first-experiences-with-gender-pay-reports-and-audits-in-four-member>

¹² *Ibid* at p. 12.

steps to eliminate the gap. As the *Act* will be one of the primary legislative tools for enforcing and achieving pay equity, ONA supports revisions to the *Act* that expand its application and improve the reporting requirements and enforcement, permitting equal access and benefit to legislation in place to address equal pay issues.

Ensuring women's work is properly valued and paid the same as their male counterparts is not just a women's issue; it's an issue that affects all of society. We are optimistic that this new initiative by the government will result in meaningful action to eliminate the wage gap. Until then, ONA will continue the fight on behalf of its members and all women in this province.

ONA thanks the Standing Committee for the opportunity to bring our concerns to your attention.