

# **ONTARIO NURSES' ASSOCIATION**

## **Submission to Gender Wage Gap Strategy Steering Committee**

**January 22, 2016**



**ONTARIO NURSES' ASSOCIATION**

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## **EXECUTIVE SUMMARY**

The Ontario Nurses' Association (ONA) welcomes the opportunity to provide the Wage Gap Steering Committee with submissions concerning the elimination of the wage gap between men and women in the province of Ontario. ONA's recommendations are focused primarily on the *Pay Equity Act (Act)*. These recommendations are based on the following principles:

1. Acknowledgement that economic equality for women is a human right. Women in Ontario have the right to be free from systemic sex discrimination in pay.
2. Amend the *Pay Equity Act* to allow for better and equal access to pay equity for women.
  - a. Amend the proxy provisions of the *Pay Equity Act* to allow women in this sector equal access to pay equity as women covered by job to job and proportional value, in particular ongoing maintenance obligations.
  - b. Improve enforcement of the *Pay Equity Act*. Improve enforcement of the *Act* acknowledging the Union's role in maintaining pay equity.
3. Better access to unionization for women – reinstate the card check certification (women are able to achieve better wages through unionization and bargaining power).

## **ONA'S RECOMMENDATIONS**

- A. Acknowledgement by the Government of Ontario that economic equality is a human right.
  - a. Eliminating the gender wage gap is a human rights issue.
- B. Amend the *Pay Equity Act* to allow for better and equal access to pay equity for women in Ontario
  - a. Amend the proxy provisions of the *Pay Equity Act* to require seeking employers to maintain female job rates at the job rates of their proxy employer.
  - b. Improve enforcement of the *Pay Equity Act*.
  - c. Amend the *Pay Equity Act* to acknowledge Union's role in maintaining pay equity.
- C. Encourage Unionization
  - a. Reinstated card-based certification for all work.
  - b. Mandate full information sharing during an organizing campaign.

## INTRODUCTION

Since its inception in 1973, ONA has been the union in Ontario representing Registered Nurses as well as Allied Health Professionals in the health care sector.

ONA represents approximately 60,000 Registered Nurses, Nurse Practitioners, Registered Practical Nurses and Allied Health Professionals, as well as approximately 14,000 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.

Prior to the inception of Ontario's *Pay Equity Act* in 1987, ONA has been at the forefront of the battle of eliminating the gender wage gap. ONA has been involved with precedent-setting case law, the goal of which being to ensure that women in Ontario have equal access to pay equity. In spite of the gains made since the early 1990's, a wage gap between men and women in the province continues. Women make up 82.6% of the health care and social assistance industry and continue to experience the widest gender wage gap. The current wage gap is 31.5%. However, this gap is wider for women of colour, disabled women and immigrant women.

Given the nature of the work performed by its members, the majority of ONA's membership historically and continues to be predominantly female; currently 95%.

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

### **A. Acknowledgement by the Government of Ontario that economic equality is a human right.**

ONA has reviewed the submissions of the Equal Pay Coalition, "Securing Human Rights Justice for Women's Work." ONA fully supports the recommendations in their report. ONA would add the following comments. 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 professions like nursing.

### **Identify Responses to Systemic Discrimination**

Nurses are highly skilled workers that exercise significant judgment and problem solving in their day to day work in delivering patient/client/resident care. The vast majority of ONA members have post secondary education. Since 2005, the entry to practice requirements for a Registered Nurse 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 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, ONA still observes many sectors where a wage gap continues to exist.

Nursing has traditionally been viewed as “women’s work.” While more men are entering nursing, it continues to be a female-dominated profession. Overall, women make up 82.6% of the health care and social assistance industry and continue to experience the widest gender wage gap. Recognizing that the wage gap exists due to economic equality is critical to identifying any steps that are taken to eliminate the gap.

### **B. Amend the *Pay Equity Act* to allow for better and equal access to pay equity for women in Ontario**

ONA has reviewed the submissions of the Equal Pay Coalition and we agree with its submission that Ontario currently lacks a comprehensive legal and policy framework in place to close the gap. ONA agrees that the three current pieces of legislation generally considered to play a role in closing the gap are the *Employment Standards Act*, the *Pay Equity Act* and the *Human Rights Code*. ONA’s submissions will focus specifically on the *Pay Equity Act* and its role in eliminating the gender wage gap.

#### **1. Improve enforcement of the *Pay Equity Act***

The *Pay Equity Act* mandates that men and women must be paid equally for work of equal or comparable value. The legislation plays a critical role in eliminating the wage gap. While the Act imposes obligations on employers to ensure their pay practices provide for pay equity

between men and women, there continues to be widespread non-compliance. There are currently no reporting requirements for employers in Ontario to ensure that they are complying with the *Act*. ONA encourages increased and improved enforcement and supports a consideration of requiring employers to undergo mandatory reporting such as in Quebec where employers must conduct pay equity audits every five years and report the results.

## **2. Amend the proxy provisions of the *Pay Equity Act* to ensure equal access for women in female dominated establishments**

While the *Pay Equity Act* has been a tool used by ONA to enforce its members' rights to equal pay, the *Act* has its limitations. Most specifically, the proxy sections of the *Act* have been enforced in a manner which results in discrimination between women.

The proxy sections of the *Pay Equity Act* provide a means for women in female dominated public sector establishments to achieve pay equity where there are no male comparators. Under the proxy method, organizations ("Seeking Employers") were able to access the pay equity information from another public sector establishment, which had achieved pay equity ("Proxy Employer"). Women workers in these segregated workplaces (e.g., Nursing Homes, Community Care Access Centres and Home Care Providers) are often women of colour or immigrant women. The proxy method created a means for women in female dominated workplaces to achieve pay equity. However, women whose only means of achieving pay equity was through the proxy method have faced battles since its inception.

In 1997, the proxy provisions of the *Pay Equity Act* were repealed. The repeal was successfully challenged with the finding in court being that it was contrary to section 15 of the *Canadian Charter of Rights and Freedoms (Charter)*. A second challenge under the *Charter* was commenced when the government capped the funding for pay equity adjustments. This second challenge was resolved through a settlement. This history is important because it is demonstrative of a lack of recognition that pay equity is a human right. Furthermore, it demonstrates that the government while giving lip service to its commitment to pay equity has continued to treat one of the most vulnerable sectors of women unfairly.

Currently ONA's experience with the proxy section demonstrates that there continues to be discrimination against women which is not being remedied due to the operation of the *Pay Equity Act*. The proxy provisions of the *Act* only apply to public sector employers with

employees as of January 1, 1993. The pay equity job rate or target job rate is the rate that the proxy employer's job classes would have been paid had the job class achieved pay equity on January 1, 1994. The Pay Equity Commission has interpreted the *Act* to mean that once employers have achieved the target job rate, maintenance of pay equity is incorporated into the pay practices of the employer. In other words, women in proxy establishments do not have the benefit of maintaining the same job rate as their proxy comparator. The expectation is that unionized women would then maintain pay equity through negotiated wage settlements. This is not the case. The wage gap has reemerged as women in the proxy sector often have less bargaining power in these smaller employer's than women in other sectors. The wage gap is even larger for non-unionized women in these sectors.

This interpretation of the *Pay Equity Act* limits women's right to continue to follow the wages of their proxy comparators. In 2006, ONA set out to defend the rights of Registered Nurses (RNs) in female-dominated workplaces who are covered by a proxy comparison pay equity plan and in the Nursing Homes specifically. Currently and historically the nursing home sector is almost exclusively female-dominated with approximately 90% of workers being female.

In the case of Nursing Homes, the proxy comparator is the Municipal Homes for the Aged. Nursing Homes achieved pay equity in 2004. However, by 2005, the rates of pay for the nurses at the municipal homes for the aged had increased and a wage gap reappeared. The vast majority of municipal homes for the aged achieve pay equity using the job to job or proportional value method of comparison. The *Pay Equity Act's* requirement that Employers maintain pay equity has meant that women in establishments where the job-to-job method or proportional value method were used to achieve pay equity receive at least the same rate of pay as their male comparators. Where the male comparator receives an increase in compensation, the female wage rate must be adjusted accordingly. ONA took the position that in order to maintain pay equity, nurses in the Nursing Homes should be paid the same as their proxy comparators – nurses in the municipal homes for the aged. The Nursing Homes disputed ONA's position that the appropriate comparator is the "external" comparator for pay equity maintenance purposes. ONA also took the position that due to significant changes that have taken place in the sector; the work of RNs has changed such that the original proxy plans were no longer appropriate. The nursing homes disagreed with this position.

In 2012, ONA, as well as Service Employees International Union (SEIU), filed an application to the Pay Equity Hearing Tribunal. SIEU represents many health care workers in the nursing home sector, specifically Personal Support Workers and Registered Practical Nurses also covered by the same pay equity plan with the nursing homes. The province intervened in the matter as well, specifically to provide its position on the interpretation of the *Act*. After thirty days of hearing, the case was completed in June 2014. The province and the Nursing homes took the same position on the *Act*, namely that the proxy provisions contemplate only an internal maintenance obligation and not a requirement to return to the proxy comparator once pay equity is achieved. The Tribunal released its decision on January 21, 2016.

The Tribunal has acknowledged that pay equity must be maintained regardless of the method of comparison used. However, the Tribunal found that in the proxy sector, maintenance must be done internally and there is no requirement under the *Act* to return to the proxy employer. Further, the Tribunal found no violation of the *Charter*. The Tribunal's finding that maintenance is an internal exercise still does not address the practical implications of the *Act*. Namely, that there continues to be unequal access and benefit. The Tribunal has directed the parties to engage in discussions to amend the original proxy plan in line with its decision.

Plainly speaking, the Tribunal's decision highlights that while the *Pay Equity Act* is a key tool in eliminating the wage gap, its operation does not protect all women in Ontario nor does it provide equal access to those who benefit from it. The Act requires improvements in its enforcement mechanisms and protection for women in Ontario. ONA recommends that the government immediately commence a review of the *Pay Equity Act* with consultation from key stakeholders such as unions. ONA recommends this review as part of an overall strategy to eliminate the gender wage gap.

### **C. Encourage Unionization**

Unionization is an important tool in the elimination of the gender wage gap for two key reasons.

1. Women represented by unions have access to and support in enforcing their statutory rights.
2. Unionized workers earn more than non non-unionized workers – a premium of approximately 28%.

ONA has been at the forefront of significant achievements in pay equity jurisprudence in the province since the *Pay Equity Act's* inception. This has directly benefited our members. Furthermore, ONA provides resources and support to its members during negotiations of pay equity and in the complaint and litigation stages. Ontario does not have a support centre where women in non-unionized workplaces could receive assistance in filing complaints with the Pay Equity Commission or in hearings at the Pay Equity Hearings Tribunal.

It is a well recognized principle that bargaining power allows employees to achieve greater gains in their conditions of employment than individual employees negotiating with an employer on their own. ONA as well as many other unions achieve greater benefits for its members above the minimum statutory requirements. Women's wages and conditions of employment are improved when they are unionized.

ONA supports an expansion of the *Labour Relations Act* to improve women's access to unionization. Specifically, ONA supports reinstating card-based certification in all sectors. Card-based certification should not be limited to the construction industry – a predominantly male sector. Card check certification reduces opportunities for employer intimidation and coercion that continues to exist in the current secret ballot system. Women, particularly women of colour or immigrant women are particularly vulnerable during organizing campaigns.

Once a union has established minority support, they should have the opportunity to provide employees in the potential bargaining unit with information regarding the union. The open communication approach adopted by the Ontario Labour Relations Board in the *Public Sector Labour Relations Transition Act (PSLRTA)* cases should be applied to certification proceedings under the *Ontario Labour Relations Act*. Under the *PSLRTA*, unions are given access to bulletin boards in the employer's premises, contact information for employees on the potential voter list, the ability to conduct information meetings at the employer's sites as well as an information table.

Allowing unions the opportunity to fully communicate would provide more level playing fields, reduce anti-union activity by employers, and allow unions the opportunity to promote pay equity obligations of an employer and the role the union can play in assisting employees achieve or maintain pay equity; ultimately assisting to eliminate the wage gap.

In ONA's submission, eliminating the gap is an achievable and necessary goal for the province of Ontario. ONA supports all 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 steps to eliminate the gap. As the *Pay Equity Act* is the primary legislative tool for enforcing and achieving pay equity, ONA supports revisions to the *Act* that improve enforcement and permit equal access and benefit to the *Act*. Finally, improving the ability to unionize will not only improve the wages and conditions of employment for more women, it will also afford them a voice to advocate on their behalf for their right to pay equity.

ONA reserves the right to make further submissions. ONA requests a stakeholder consultation with the Steering Committee.

All of which is respectfully submitted by the Ontario Nurses' Association.