PAY EQUITY OFFICE
BUREAU DE L'ÉQUITÉ SALARIALE

Pay Equity Office

Ontario's *Pay Equity Act* with selected case references

2022

Title: Ontario's *Pay Equity Act* With Selected Case References, 2022

Contents

INTRODUCTION

The Pay Equity Office has prepared this guide to assist compensation specialists, unions, legal professionals, and others who need to know more about pay equity law in Ontario.

This Selected Case Reference Guide is an annotated copy of the *Pay Equity Act* with a curated selection of relevant tribunal and court caselaw inserted next to the section of the act that it applies to. Each selection is presented as a short synopsis of the case's precedent and a link to the source decision on CanLii.org. You can look up key cases either by browsing to the section of the act you're interested in, or by using the Case Index at the end of the Guide.

We alert you to the reality that statutes and regulations can change at any time, so this guide will not necessarily reflect the most recent legislative changes. For the most recent version of the Pay Equity Act and its regulations, please go to https://www.ontario.ca/laws/statute/90p07.

NOTE TO READER

This publication is provided for educational and informational purposes only and does not amount to legal advice. It is not intended to be an exhaustive summary of all pay equity case law and does not restrict Review Officers or the Pay Equity Hearings Tribunal (PEHT) in their interpretation of the *Pay Equity Act*.

Complete PEHT cases can be accessed electronically on the Canadian Legal Institute's public website (https://www.canlii.org/en/) and are also available in the Ontario Workplace Tribunals Library (http://www.owtlibrary.on.ca/english/). The Workplace Tribunals Library is managed by the Ontario Labour Relations Board, the Pay Equity Hearings Tribunal, and the Workplace Safety and Insurance Appeals Tribunal.

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")

> **Wentworth County Board of Education v. Wentworth Women Teachers' Association, 1990 CanLII 3993** (ON PEHT) 1990-01-22 — Employees of a single employer with multiple branches attempted to negotiate for multiple bargaining units using one collective bargaining agent. The Tribunal allowed it and determined that there is nothing in the definition of "bargaining agent" in the Act that prevents organizations, acting jointly, from together being the bargaining agent for pay equity purposes.

"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")

> **Group of Employees v. Windsor Casino Limited, 2007 CanLII 62083** (ON PEHT) 2007-11-14 — The pay equity plan negotiated by an employer and the union included tips in the calculation of compensation for the purposes of

determining job rate. The Tribunal held that where tips are ascertainable and the inclusion of tip amounts do not artificially manipulate the compensation and job rate of a job class, tips are to be included in compensation.

Regional Municipality of Peel v. Canadian Union of Public Employees, Local 966, 1992 CanLII 4698 (ON PEHT) 1992-10-15 — Shift premiums were payable to different job classes of employees subject to differing preconditions. The tribunal held that the value shift premiums should be included in the calculation of compensation, so long as the availability of the shift premium is not largely illusory in that availability is dependent on pre-conditions that cannot be met by members of the job class.

Ontario Nurses' Association v. Lady Dunn General Hospital, 1991 CanLII 44518 (ON PEHT) 1991-06-28 — Female employees sought to equalize compensation between the male and female job classes by way of an increase in vacation benefit rather than cash value. The Tribunal held that to achieve pay equity, the sum of all salaries or wages, and benefits, if any, received by a female job class must be equal to the sum of all salaries or wages, and benefits, if any, provided to its male comparator job class. Where the compensation paid to a female job class must be adjusted to achieve pay equity, that adjustment may be made to wages or salaries, to benefits, or to a combination of the two.

"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")

Note: There is no definition of Employer nor Employee in the Act. The Tribunal developed the definitions and interpretation tests it thought appropriate.

Ontario Nurses Association v. Haldimand-Norfolk (Regional Municipality) (No.3), 1989 CanLII 1454 (ON PEHT) 1989-06-30 — The parties disputed the identity of the employer and so asked the Tribunal to make a determination. At para. 49, the Tribunal outlined the criteria to be used when considering who the employer is. The 4 factors discussed are the overall financial responsibility; responsibility for compensation; nature of business, service or enterprise; and what is most consistent with the purpose of the *Act*.

Thomson Newspapers Corporation v. Southern Ontario Newspaper Guild, 1993 CanLII 5427 (ON PEHT) 1993-07-28 — Thomson Newspapers objected to the finding that it was the employer for pay equity purposes. The Tribunal applied the control test and held that Thomson Newspapers was the employer because it had overriding financial control and ultimate authority regarding compensation.

Salvation Army on behalf of Group of Employers v. Group of Employees (Anonymous), 1997 CanLII 12216 (ON PEHT) 1997-12-01 — The Tribunal was asked to identify the employer for each of the 155 Salvation Army centres, where the applicants sought a finding that each centre was a separate employer. At para. 7, the Tribunal lists thirteen questions to consider under the legal relationship test in order to determine who the employer is.

Wellington (County) v. Butler, 1999 CanLII 14830 (ON PEHT) 1999-10-25 — The Tribunal looked at whether women who provided day care in their homes as part of a program operated by the Corporation of the County of Wellington were employees of Wellington for pay equity purposes. The Tribunal considered the different common law tests used to determine employment relationship and concluded that the appropriate approach was the total relationship test. Based on the totality of the relationship, the day care providers were deemed employees.

Wellington (County) v. Butler, 2001 CanLII 38739 (ON SC) 2001-10-31 — The court reviewed and quashed the Tribunal's decision. The court did not take issue with the total relationship test applied by the Tribunal; they agree that the Tribunal is given considerable latitude to define the employment relationship using a number of legal tests absent a definition. That said, the court found flaws in the Tribunal's analysis of the application under the test they chose to adopt.

Clow v. Peterborough (City), 1995 CanLII 7217 (ON PEHT) 1995-06-09 — A part-time employee was terminated for pay equity activity, and the Tribunal was asked to determine if she was an employee and thus under the jurisdiction of the Pay Equity Office. The Tribunal determined that part-time seasonal employees are employees for pay equity purposes. They also determined that due to the "residual employment relationship", the complaint was valid even though the employee had been terminated when it was made.

"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")

Ontario Nurses Association v. Haldimand-Norfolk (Regional Municipality) (No.3), 1989 CanLII 1454 (ON PEHT) 1989-06-30 — The question was whether the Municipality was the employer of the Regional Police Force such that the police are part of the Municipality's establishment and may be used as a comparative male job class for the nurses. The Tribunal held that the police were part of the establishment of the Municipality and based on the plain meaning interpretation of the definition of "establishment", the Municipality was the employer of the Regional Police Force for the purposes of the *Act*.

Helen Henderson Care Centre v. Service Employees' International Union, Local 183, 2001 CanLII 28094 (ON PEHT) 2001-12-17— The Tribunal was asked to determine the nature of an employment relationship. At para. 90, the Tribunal held that it is the characterization of the employer itself and not the nature of its activities that determine the extent of its obligations under the *Act*.

"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")

Gloucester (No. 2) (1991), 2 P.E.R. 208 — The Tribunal was asked to decide on a dispute in how to adjust the rates of compensation for incumbents in the female job classes. Given that "position" and "incumbent" are distinguished in several places in the Act, different meanings must be given to each term. The Tribunal established that the definition for "position" must be inferred from the definition of a job class. That is, a position is a subset of a job class and cannot straddle more than one class. "Position" is the work performed, not the person who performs the work; there may be more than one incumbent occupying one position.

Wentworth County Board of Education v. Wentworth Women Teachers' Association, 1990 CanLII 3993 (ON PEHT) 1990-01-22 — Two school boards argued that all elementary teachers constitute one job class on the basis that they all occupy one position. At para. 90, The tribunal discusses the grouping of positions into job classes in the context of meeting all four criteria under the definition of job class. The Tribunal found that compensation schedules for teachers were set based on different educational qualifications, despite the similarities evident in actual teaching duties. Therefore, it was determined that there were seven distinct job classes, not just one.

Peterborough (City) v. Professional Fire Fighters Association, Local 519, 1997 CanLII 12087 (ON PEHT) 1997-06-11 — One of the issues put to the Tribunal was to identify the appropriate job class for an order which required Peterborough and the Peterborough Professional Fire Fighters Association to implement a pay equity plan. At para. 21, The Tribunal states that the term "job class" is not an exact requirement and subject to what is reasonable, parties have a range in which to negotiate what will meet the requirements in the Act.

Windsor Star v. Communications, Energy and Paperworkers Union, Local 517-G, 2009 CanLII 56704 (ON PEHT) 2009-10-19 — The issue was whether certain positions constituted one or more "job classes", given that compensation for some individuals was pursuant to a collective agreement and other individuals were paid based on the terms of a Letter of Understanding based on a previous position. The Tribunal held that a single position cannot include positions which do not have the same compensation schedule, even if work is identical.

Hospital for Sick Children v. Ciordas, 1995 CanLII 7026 (ON PEHT) 1995-02-09 — The Hospital sought a finding that the Registered Nurses all formed one job class in spite of original evaluations of the positions which separated the positions into three grade levels. The Tribunal considered the duties and responsibilities different enough to separate Registered nurses into 33 different job classes.

Canadian Union of Public Employees, Local 87 v. Thunder Bay (City), 2004 CanLII 60158 (ON PEHT) 2004-07-30 — The dispute centred on whether the parties had, in good faith, considered part-time positions and decided on their job classes when they negotiated and agreed to a Pay Equity Plan. The Tribunal held that they did not. Subsection 1(1) exhaustively defines the term job class. There is no provision in the Act, expressed or implied, that allows the employer and the bargaining agent to modify the constituent parts of the definition of job class to classify positions. These standards must be applied correctly. To determine a job class, the employer and the bargaining agent actively must look at the positions in the establishment and determine whether all four elements are present. Determining a job class and deciding or agreeing whether a job class is male or female are two distinct processes.

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

Ontario Northland Transportation Commission v. Transportation Communications International Union, 1992 CanLII 4696 (ON PEHT) 1992-09-30 — The Tribunal was asked to identify the job rates for a job class of Clerks. They identified three principles to be used when determining job rate under the heading of 'Job Rate – Calculation'. The principles are (1) calculations are to be

as accurate as possible; (2) the job rate is to be calculated in a manner least disruptive to the collective agreement and compensation practices of the parties; and (3) the calculations must conform to the purpose and scheme of the *Act*.

Welland County General Hospital (1994) 5 P.E.R. 12 — A union sought and obtained a collective agreement through arbitration which had the effect of increasing the job rate of a male job class. The Tribunal deemed that pay equity negotiation and collective bargaining were separate and distinct processes. The also held that where an incumbent in a male job class receives a wage rate that is in excess of the rate set out in the collective agreement, this actual rate, and not the collective agreement rate, is the job rate.

York Region Board of Education v. York Region Women Teachers' Association, 1995 CanLII 7030 (ON PEHT) 1995-01-18 — Teachers were paid based on annual salary and not by an hourly wage. The question was whether the hours worked by incumbents were relevant to the determination of job rate. The Tribunal held that the hours actually worked as compared to potential male comparators were irrelevant to job rate because both were measured as annual salaries and not hourly wages. Job rates must be expressed in common terms for comparison purposes.

Group of Employees v. Windsor Casino Limited, 2007 CanLII 62083 (ON PEHT) 2007-11-14 — The pay equity plan negotiated by an employer and the union included tips in the calculation of compensation for the purposes of determining job rate. The Tribunal held that where tips are ascertainable and the inclusion of tip amounts do not artificially manipulate the compensation and job rate of a job class, tips are to be included in compensation. The determination of tips for calculating compensation must be as accurate as possible. Here, the Tribunal determined that the method used to ascertain tips was flawed.

Group of Employees v. Windsor Casino Limited, 2009 CanLII 56707 (ON PEHT) 2009-10-19 — This decision was in response to the Tribunal's direction that the Employer and Union track the tips of employees in order to ascertain the proper tip rate for the relevant job classes. The determination of tips as a component of the job rate can be based on the collection and evaluation of data.

Regional Municipality of Peel v. Canadian Union of Public Employees, Local 966, 1992 CanLII 4698 (ON PEHT) 1992-10-15 — Shift premiums were payable to different job classes of employees subject to differing preconditions The Tribunal found that both the monetary value of a benefit and the availability of a benefit to incumbents in a job class must be considered when determining the value of a benefit in the context of job rate calculations.

Canadian Union of Public Employees, Local 2974.1 v. Essex (County), 1996 CanLII 8065 (ON PEHT) 1996-11-15 — The Tribunal was asked to determine if there was a pay equity plan between the parties, whether it was an approved plan, and whether it was reviewable and under what circumstances. The Tribunal held that the pay equity plan was deficient as it did not include benefits in the calculation of the job rate. That is, a job rate must include a wage and benefits component.

Hamilton-Wentworth District School Board v. Ontario Secondary School Teachers' Federation, 2009 CanLII 60545 (ON PEHT) 2009-10-30 — The issue in dispute was how to calculate the job rate for the male comparator job class. At para. 8 and 9, the Tribunal confirmed that the achievement of pay equity does not involve compensating all positions in female job classes at the job rate of the male comparator without regard to compensation scales, ranges or schedules which may exist in the establishment. At para. 11, the Tribunal concluded that the value of vacation benefits must be included in calculation of job rate, taking into account the years of service.

Ontario Nurses' Association v. Lady Dunn General Hospital, 1991 CanLII 4451 (ON PEHT) 1991-06-28 — Female employees sought to equalize compensation between the male and female job classes by way of an increase in vacation rather than cash value. The Tribunal ruled that vacation entitlement had to be included in the calculation of job rate and adjustments, as required, can be made to wages/salaries, or benefits or to a combination of the two.

"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")

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

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

"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).

Oakwood Retirement Communities Inc. v. S.E.I.U. Local 1 Canada, 2010 CanLII 76245 (ON PEHT) 2010-12-15 — A union sought to challenge a pay equity process undertaken by the employer under an agreement with the predecessor union. At para. 69, The tribunal discusses the fact that the employers were subject to Part I of the *Act* and were not required to negotiate pay equity with a bargaining agent in the same manner that it would if it was governed by Part II. However, employers must seek agreement from the bargaining agent on decisions concerning gender predominance in the context of a consideration of historical incumbency and gender stereotypes.

Canadian Union of Public Employees, Local 2974.1 v. Essex (County), 1996 CanLII 8065 (ON PEHT) 1996-11-15 — The Tribunal was asked to determine if there was a pay equity plan between the parties, whether it was an approved plan, and whether it was reviewable and under what circumstances. The Tribunal held that the pay equity plan was deficient. At para. 36, the Tribunal found that the pay equity plan agreed to by parties contravened the *Act*, in part, because parties simply adopted job classes in the collective agreement without reference to the actual definition of job class in the *Act*.

Parry Sound District Hospital (No.2) (1995), 7 P.E.R. 72 — Housekeeping and dietary employees challenged a pay equity plan on the basis that the gender characterization of job classes was inappropriate. The Tribunal held that they had jurisdiction to hear the matter and the standard of review for gender predominance is reasonableness. At para. 70, the Tribunal noted that it may not contravene the *Act* for a job class to be identified as gender neutral following an examination of the current incumbency. The Tribunal stated that while the outcome might be different if historical incumbency and gender stereotyping are considered, an outcome based on a consideration of current incumbency is not unreasonable.

Pay Equity Office v. GL&V Process Equipment Group Inc., 1999 CanLII 14828 (ON PEHT) 1999-12-16 — Gender predominence of a “Buyer” job class was in dispute, where the pay equity plan identified it as female, but the employer characterized it as male. At para. 23, the Tribunal states that the *Act* dictates a two-step process with respect to determination of gender predominance – (1) examine current incumbency at the time the employer’s pay equity obligation began, and (2) consider historical gender incumbency and gender stereotyping.

At para. 27, the Tribunal discusses that the fairest way to determine historical incumbency in light of turnover is to compare the total incumbent years of each gender. Here, both current and historical incumbency indicated a male job class.

Hatts Off Specialized Services Inc. v. Employees of the Employer, 2005 CanLII 60098 (ON PEHT) 2005-03-23 — An Order declared that the job classes of Bookkeeper, Child and Youth Worker and Supervisor were female job classes. The Applicant disagreed and asserted that Bookkeeper was a male job class and that the Child and Youth Worker and Supervisor were gender neutral. At para. 22, the Tribunal said that "[w]hile it is important to consider gender stereotyping in fields of work, the *Act's* overall structure contemplates developing pay equity in each establishment of an employer, thus placing a particular focus on the reality of each workplace." The Applicant was correct about the neutral job classes, but gender stereotyping needed to be considered more for the Bookkeeper class.

Dufferin-Peel Roman Catholic Separate School Board v. Several Employees, 1997 CanLII 12227 (ON PEHT) 1997-11-12 — The employer challenged an Order deemed that the Planner 1 job class was gender neutral. The Tribunal decided not to look at the gender composition of the entire department when assessing gender predominance because although they were asked to, such was outside their jurisdiction as the only class appealed was Planner 1. Looking at gender incumbency and stereotypes, the Tribunal deemed the class gender neutral.

Association of Professional Student Services Personnel v. Toronto Catholic District School Board, 2006 CanLII 61262 (ON PEHT) 2006-03-23 — The Applicant sought a determination that the Community Relations Officer job class was a female job class within the meaning of the *Act.* At para. 8 & 9, the Tribunal upheld the two-step analysis for gender predominance in *Pay Equity Office v. GL&V Process Equipment Group Inc*., above. Although the current and historical incumbency indicated a gender-neutral job class, the Applicant argued that gender stereotypes were not considered. The Tribunal held that employers are not required to demonstrate they considered gender stereotype after the deemed approved plan is implemented and the is onus on the challenging to demonstrate that Part I was contravened. The Applicant did not meet this onus.

Flemingdon Neighbourhood Services v. Lemire, 2009 CanLII 59587 (ON PEHT) 2009-10-23 — The employers challenged an Order that the Executive Director job class was gender neutral, and argued it was female dominated. There was only one incumbent who was male. At para. 4 & 5, The Tribunal notes that where job class has a single incumbent, historical incumbency may not be as relevant a factor to consider. It may be more relevant to consider gender stereotypes in the entire sector itself when determining the gender predominance

of a single incumbent job class. The Tribunal held that the sector stereotypes indicated the class was female dominated.

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).

Wentworth County Board of Education v. Wentworth Women Teachers' Association, 1990 CanLII 3993 (ON PEHT) 1990-01-22 — Two schoolboards argued that all elementary classroom teachers constituted one job class on the basis that they all occupy one position. The Tribunal found that compensation schedules were set based on different qualifications, despite similarities in actual duties and thus there were seven distinct job classes, not just one. At para. 95, The Tribunal said that if positions were different with respect to any one of the four criteria listed under the definition of job class, then it may form a separate job class, even if the job class only consists of one position. All four criteria under the definition of job class must be considered.

Windsor Star v. Communications, Energy and Paperworkers Union, Local 517-G, 2009 CanLII 56704 (ON PEHT) 2009-10-19 — The issue was whether certain positions constituted one or more “job classes”, given that compensation for some individuals was pursuant to a collective agreement and other individuals were paid based on the terms of a Letter of Understanding. The Tribunal held that there were different job classes. Even if the work performed is identical, an incumbent is in a different job class if the compensation schedule is different.

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).

Ontario Teachers' Plan Board v. Ontario Public Service Employees' Union, Local 598, 1995 CanLII 7029 (ON PEHT) 1995-08-17 — The issue in this case is who is the employer of the employees at the Ontario Teachers' Pension Plan Board represented by the Ontario Public Service Employees Union. The Board was found not to be an agency of the crown based on the existing relationship and the control test. Specifically, although the board was a creature of statute, on the balance, the relationship was predicated on "administrative convenience" which allowed the Board to operate as a separate entity.

Michipicoten (Township) v. Ontario (Crown in Right), 1995 CanLII 7036 (ON PEHT) 1995-02-28 — There was a dispute whether the Crown or the Township was the employer for a Resource Centre providing services to women in Crisis. Both parties agreed that the Resource Centre as an entity was not capable of being an employer. At para. 2, the Tribunal explicitly notes that section 1.1(1) precludes them from issuing a remedy that named the Crown as the employer. The Township was ultimately deemed to be the employer because even though the Crown funded the project, the Township had significant control.

Community Living North Perth v. Ontario Public Service Employees Union, 2016 CanLII 11531 (ON PEHT) 2016-03-02 – Although there was agreement that the Crown was not the employer, the Applicant asked the Tribunal to hear the application and direct the Crown to provide the funding necessary to allow the employer to meet its obligations under the *Act.* The Tribunal refused at para. 19, where it held that a plain reading of this section precludes the Crown from being found as an Employer. Specifically, at para. 17, the Tribunal notes that there is no provision under the *Act* that grants the Tribunal authority to make an Order against the Crown save and except a finding that the Crown is the Employer.

Kingston-Frontenac Children's Aid Society (No. 2)(1992) 3 P.E.R. 117 — [HARD COPY] The Act was amended after this decision, which found that the Crown was the Employer based on the tests previously established at the Tribunal. There were other orders by Review Officers that deemed the Crown as the employer for pay equity purposes under Kingston-Frontenac, however, the amendment to add section 1.1 now precludes the Crown as being considered to be the employer under the Act.

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.

Ontario Nurses Association v. Haldimand-Norfolk (Regional Municipality) (No.3), 1989 CanLII 1454 (ON PEHT) 1989-06-30 — The parties disputed the identity of the employer and so asked the Tribunal to make a determination. In their interpretation, the Tribunal noted that the *Act* has elements of both human rights and labour relations law. Employment and labour relations case law may be helpful in interpreting the Act, such as in the case of interpreting "employer" in the absence of a definition, but only to the extent that such is in accordance with the purpose sand structure of the Act.

Canadian Union of Public Employees, Local 1999 v. Lakeridge Health Corporation, 2010 CanLII 46187 (ON PEHT) 2010-08-11 — The Tribunal refused an application asking them to adjust the wage grids of female job classes to mirror those of male classes. The Tribunal specified that the purpose of the *Act* is to redress, rather than "eliminate" gender discrimination in compensation in accordance with the detailed provisions of the legislative scheme. The legislature made a number of choices about how pay equity is to be achieved, with the consideration that that the *Act* does not contemplate the elimination of all discrepancies between comparably-valued male and female job classes. As such, the Tribunal has no authority to deal with complaints of sex discrimination under the *Human Rights Code* unrelated to the implementation of pay equity. The *Act* it is a highly specialized and integrative undertaking blending aspects of labour relations, compensation practices, employment law and human rights.

York Region District School Board v. Canadian Union of Public Employees [2011] O.P.E.D. No. 36 — The Tribunal refused an application asking them to adjust the wage grids of female job classes to mirror those of male classes. At para. 43, it is noted that this provision must be considered in the context of the statute as a whole. There are statutory provisions conferring on a tribunal the jurisdiction to determine if gender discrimination in pay exists and leaving completely to the tribunal's discretion the question of how that should be redressed. There are also many provisions in the Act that specifically address how discrimination is to be redressed. Where the Act is not silent, the Tribunal does not have freestanding jurisdiction as to how to redress gender discrimination.

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.

MacKay v Brant Community Healthcare System, 2017 CanLII 22872 (ON PEHT) 2017-04-03 and **MacKay et al v. Brant Community Healthcare System, 2017 CanLII 37589** (ON PEHT) 2017-06-12 — Employees alleged that the Union and Employer, when negotiating the pay equity plan, erroneously evaluated one of the job classes and thus violated the *Act*. The Tribunal disagreed. If the Union and Employer have made a reasonable effort to accurately capture job content then the Tribunal will not inquire further. Such reasonable efforts were made here. At para. 9 (and para. 13), the Tribunal notes that reasonable efforts to accurately capture job content include that important job information was not unreasonably excluded, the criteria were not ignored, and there was no failure to apply any of the criteria.

Bonnie E. MacLeod, Irene Hutton, and Linda Gemmell v Brockville General Hospital, 2019 CanLII 113536 (ON PEHT) 2019-11-20 — Applicant employees asserted the bargaining unit and the Employer did not act reasonably when evaluating their job classification during the pay equity maintenance process. The Tribunal notes that to establish a prima facie case of a violation of the Act, the applicants must set out facts that, if accepted as true, could lead the Tribunal to the conclusion that the job evaluation system either: ignored or failed to apply one of the statutory criteria or unreasonably excluded important information related to any of the statutory criteria. The Tribunal held they did not make out such a case and the fact that the applicants were not consulted during the maintenance review process is also not a prima facie violation of the Act.

Tina Lahtinen v Corporation of the City of Thunder Bay, 2020 CanLII 26465 (ON PEHT) 2020-04-09 — An employee alleged that her job was not evaluated properly, and that a different male comparator should have been chosen based on certain added job responsibilities. The employee argued she could not make a prima facie case without information regarding how the jobs were evaluated. The Tribunal directed this information be provided given the material was before Review Services and thus fell within the Tribunal's jurisdiction.

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 (s. 5.1(1))

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, 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 job class that is indicated by the comparison has been made.

Commport Communications International Inc. v. Pay Equity Commission, 2006 CanLII 61261 (ON PEHT) 2006-07-14 — The employer argued they did not need to take steps to establish pay equity because their corporate policy statement included a statement "adjusting to meet pay equity requirements." A Review Officer concluded that the employer had not taken appropriate steps, and directed it, in some detail, to collect job information, evaluate jobs, make comparisons, pay adjustments and to post the Order in the workplace. The Tribunal affirms the Officer's decision and confirms the proactive requirement for employers to take the specific steps under Part I in order to achieve pay equity.

Oakwood Retirement Communities Inc. v. S.E.I.U. Local 1 Canada, 2010 CanLII 76245 (ON PEHT) 2010-12-15 — A Review Officer determined that there had been a number of contraventions of the *Act* in the pay equity agreement between the Employer and predecessor Union. The Tribunal set out the specific steps that an employer covered by Part I of the *Act* must take to achieve pay equity from the outset of operations. This includes establishing job classes as defined by the *Act*; determining the gender dominance of the job classes; and making comparisons between male and female job classes in terms of compensation and value of work performed having regard to skill, effort, responsibility, and the conditions under which the work is performed. If the comparisons between male and female job classes reveal gender discrimination in compensation for work performed by employees in female job classes, the Part I employer must redress it by adjusting the job rates of the lower paid employees in the female job class. The Part I employer does not enjoy the benefit of a phase-in period to achieve pay equity. It must comply with the *Act* from the outset.

Ottawa Board of Education v. Ontario Secondary School Teachers' Federation, 1996 CanLII 7947 (ON PEHT) 1996-05-28 — The Employer had a deemed approved non-union pay equity plan. Upon the certification of a new bargaining agent for a group of non-union employees, the union sought to

negotiate a pay equity plan due to changed circumstances and alleged contravention of the *Act* The Employer argued they had no obligation to negotiate and that the deemed approved plan complied with the *Act* .The Tribunal was asked to determine if an employer, who had a deemed equity plan in place, was obliged to negotiate with a newly certified bargaining agent to maintain pay equity. They were also asked to determine what the appropriate standard of review was to determine if contravnetion. The Tribunal held that the standard of review regarding job evaluation, job data collection, comparisons, and comparison tool (GNCS) is reasonableness, not a standard of correctness. The *Act* allows for a range of outcomes, and choices are available to the negotiating parties. Specifically, the standard of review applicable to determining whether a contravention has been established is different, depending upon whether the provision relied on sets an exact minimum standard or implies a range.

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 (s. 6(1))

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).

Canadian Union of Public Employees, Local 1999 v. Lakeridge Health Corporation, 2010 CanLII 46187 (ON PEHT) 2010-08-11 — The Union sought to have the Tribunal order the Employer to adjust wage grids for female job classes in the bargaining unit to mirror that for male comparator job classes outside the bargaining unit. The Tribunal dismissed the application on the basis that the *Act* specifies that pay equity is achieved based on job rates, which are distinct from compensation schedules, salary grades, or ranges of salary rates. That is, the *Act* does not define “pay equity” but it does define when pay equity is “achieved” (*i.e.*, when the job rates for male and female job classes have been adjusted in accordance with the *Act*).

Ottawa Board of Education v. Ontario Secondary School Teachers' Federation, 1996 CanLII 7947 (ON PEHT) 1996-05-28 — The Tribunal held that the standard of review regarding job evaluation, job data collection, comparisons, and comparison tool (GNCS) is reasonableness, not a standard of correctness. The Act allows for a range of outcomes, and choices are available to the negotiating parties. Specifically, the standard of review applicable to determining whether a contravention has been established is different, depending upon whether the provision relied on sets an exact minimum standard or implies a range. For the facts of the case, see the case summary under s. 5.1(1).

AG Simpson Automotive Inc (Re), 2011 CanLII 36309 (ON PEHT) 2011-06-16 — A Review Officer ordered that the employer develop a non-union pay equity plan, then subsequently ordered that bargaining unit male comparators be identified for non-union female job classes. The employer sought that these orders be varied. The Tribunal agrees and says there are no fixed rules concerning methods of job class comparison, including banding methodology, in pay equity plans. In terms of how job classes of comparable value are to be identified, the *Act* itself is silent. Various banding methodologies may satisfy the requirements of the *Act* (*e.g.*, fixed point bands, variable point bands, floating bands based on percentages). The chosen methodology need not be one that ensures adjustments for the greatest number of female job classes. Employers are entitled to exercise their discretion in that regard, so long as they do so reasonably and consistently with the purposes and intent of the *Act*.

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).

Ontario Nurses' Association v. Women's Christian Association of London, Operator of Parkwood Hospital, 1995 CanLII 7032 (ON PEHT) 1995-07-21 — The Union challenged the constitutionality of s. 6(3) after a review officer determined that the Manager of Physical Operations job class was equal of comparable value to the female Registered nurse job class. At para. 19 and 20 of Appendix A, it is noted that s. 6(3) of the *Act* does not require that 6(3)(a) be exhausted sequentially before proceeding to 6(3)(b). The Tribunal found that either 6(3)(a) or 6(3)(b) should apply depending on whatever is most consistent with the purpose of the *Act*. As such, the Review Officer's decision was upheld.

Brampton (City) v. Brampton Professional Firefighters Association, 1995 CanLII 7207 (ON PEHT) 1995-01-27 — One of the issues that the Tribunal was asked to determine was the appropriateness of the job comparison process providing the foundation for the pay equity plan ordered by Review Officer, given that some of male comparators were not examined. The Tribunal held it was appropriate. All male job classes do not have to be evaluated and used as comparators for female job classes.

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.

Commport Communications International Inc. v. Pay Equity Commission, 2006 CanLII 61261 (ON PEHT) 2006-07-14 — The employer argued they did not need to take steps to establish pay equity because their corporate policy statement included a statement "adjusting to meet pay equity requirements." A Review Officer concluded that the employer had not taken appropriate steps, and directed it, in some detail, to collect job information, evaluate jobs, make comparisons, pay adjustments and to post the Order in the workplace. The Tribunal affirms the Officer's decision and confirms the proactive requirement for employers to take the specific steps under Part I in order to achieve pay equity.

Oakwood Retirement Communities Inc. v. S.E.I.U. Local 1 Canada, 2010 CanLII 76245 (ON PEHT) 2010-12-15 — A union sought to challenge a pay equity process undertaken by the employer under an agreement with the predecessor union. At para. 54 and 55, the Tribunal discusses the steps to follow to achieve compliance with the *Act* for Part I employers. They also state that Part I employers cannot benefit from 'deemed compliance' status as under Part II and must be incompliance with the *Act* from the outset.

Corporation of the City of Windsor v Shirley D. Moor, 2017 CanLII 22919 (ON PEHT) 2017-04-11 — The Applicant complained that the Employer and Union violated section 7 of the Act by reducing her wages for a two-year period below the pay equity job rate that she previously achieved. The Tribunal held that while

an employer is entitled to implement wage grids after pay equity is achieved, it must do so in a way consistent with the Act. Therefore, under the obligation to maintain pay equity, if the employer is implementing a wage grid, the actual wages that that employees in female job classes received must either remain constant or must increase. The employer cannot reduce the wages. The Tribunal found the reducing the wages re-emerges the wage gap, as this would make the goal of providing pay equity under the Act meaningless

York Region District School Board v. Canadian Union of Public Employees [2011] O.P.E.D. No. 36 — The Tribunal refused an application asking them to adjust the wage grids of female job classes to mirror those of male classes. The *Act* does not require that the wage grid for female job classes be compressed to mirror comparator male job classes. Section 7(1) does not stand alone but is part of a comprehensive statutory scheme. Section 7(1) does not override other specific language in the *Act* and the Tribunal must take account of the totality of the *Act's* provisions. Section 7(1) did not confer some kind of "plenary or over-arching jurisdiction on the Tribunal".

Call-A-Service Inc v An Anonymous Employee, 2008 CanLII 88827 (ON PEHT) 2008-04-28 — The Tribunal refused an employer application asking them to declare that pay equity had been achieved. They held that maintenance, the means by which an employer ensures that compensation practices are kept up-to-date and remain consistent with pay equity principles, is an ongoing responsibility. It includes reviewing job classes regularly to capture changes to job duties and responsibilities, which may require pay equity adjustments. Some examples of changes resulting from ongoing maintenance are changes to job titles; changes to the duties and responsibilities of a job that change its job class and salary scale; the creation or elimination of a job class; and changes in gender dominance. Where there is a deemed approved pay equity plan, maintenance does not open up a deemed approved pay equity plan to objections. See also Centennial College (2001–02), 12 P.E.R. 102, at para. 20.

Ottawa Board of Education v. Ontario Secondary School Teachers' Federation, 1996 CanLII 7947 (ON PEHT) 1996-05-28 — The Tribunal determined that "to maintain" is very general language, with several different meanings in the administration of compensation practices. On-going and regular maintenance of an employer's compensation practices may, or may not, affect the provision of pay equity. For the facts of the case, see the case summary under s. 5.1(1).

York Region Board of Education v. Canadian Union of Public Employees, Local 1734, 1995 CanLII 7202 (ON PEHT) 1995-01-18 — The Tribunal dismissed the employer's application to revoke an order that they failed to maintain pay equity

with respect to certain female job classes. Under s. 7(1) of the *Act*, employers bear primary responsibility for both the establishing and the maintaining of pay equity. The statutory presumption is that pay equity will be maintained automatically and an employee or bargaining agent should not need to complain or demand to negotiate to trigger the employer's obligation to maintain pay equity.

Canadian Union of Public Employees v. Corporation of the City of Peterborough, 2015 CanLII 55324 (ON PEHT) 2015-08-31 – The Tribunal held that the City was in breach of its duty to maintain pay equity. At para. 15, the Tribunal says that maintenance of pay equity is excused only in accordance with the exceptions in s. 8 of the *Act*. The Tribunal found that the City contravened this section by not maintaining pay equity in accordance with the pay equity plan negotiated by the parties. The Employer unilaterally excluded a male job class due to its special market adjusted wage rate, which had been agreed to by the parties' collective agreement.

University of Western Ontario Faculty Association - Librarians & Archivists v. University of Western Ontario, 2018 CanLII 116055 (ON PEHT) 2018-11-28 – A bargaining unit asserted that the Employer failed to comply with the Act when they did not follow steps in a Letter of Understanding. After a pay equity plan has been established, maintenance is required under the Act. An Employer and Union can negotiate a new (or amend an existing) pay equity plan if either party asserts that the original plan is 'no longer appropriate' in accordance with s.14.1 of the Act. But, as in this case, if no such assertion has been made, the Tribunal cannot enforce negotiation efforts operating outside the requirements of the Act. No evidence suggested that engaging in the process under the LOU was necessary for the Employer to meet its maintenance requirements under section 7 of the Act.

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.

Oakwood Retirement Communities Inc. v. S.E.I.U. Local 1 Canada, 2010 CanLII 76245 (ON PEHT) 2010-12-15 — A union sought to challenge a pay equity process undertaken by the employer under an agreement with the predecessor union. At para. 69, the Tribunal discusses the fact that employers subject to Part I of the *Act* are not required to negotiate pay equity with a bargaining agent, however, employers must seek agreement from the bargaining agent on gender predominance in the context of a consideration of historical incumbency and gender stereotypes.

Fedoruk v. Thunder Bay Police Service, 2006 CanLII 61258 (ON PEHT) 2006-11-01 — The Tribunal was asked about the relevance of a male comparator job class that had been eliminated. At para. 6, the Tribunal found that employers and bargaining agents are required to contemplate existing jobs in the workplace when achieving and maintaining pay equity. No requirement exists to reach back in time and consider jobs which are no longer part of the plan.

York Region Board of Education v. Canadian Union of Public Employees, Local 1734, 1995 CanLII 7202 (ON PEHT) 1995-01-18 — The Tribunal dismissed the employer's application to revoke an order that they failed to maintain pay equity with respect to certain female job classes. Section 7(2) operates to prohibit a bargaining agent from acting so as to condone an employer's failure to maintain pay equity. This could occur where the bargaining agent negotiated an agreement that clearly does not provide for maintenance and then failed to take other steps to redress that problem. Here, the Union did take other steps. See also: Well and County General Hospital (23 February 1994) 0340‑92 (P.E.H.T.).

Corporation of the City of Windsor v. Shirley D. Moor, 2017 CanLII 22919 (ON PEHT) 2017-04-11 — The Tribunal found that the Union and Employer violated the *Act* when the Union made an agreement that reduced an employee's wages below the pay equity job rate she had previously achieved. An Employer cannot introduce a wage grid after achieving pay equity that effectively reduces the wages for Employees in a female job class without an express exception under the *Act* as to do so would be inconsistent with the purpose and intent of the *Act*.

Ontario Nurses' Association v. Participating Nursing Homes, 2016 CanLII 2675 (ON PEHT) 2016-01-21 – The Tribunal considered a situation in which the employer had achieved pay equity using the proxy methodology of comparison. In considering "maintenance", the Tribunal said that the plain meaning of the word suggests an obligation to continue the compensation/value relationship that is established when a female job class rate becomes pay equity compliant. At para. 107, it is stated that a change in either the job class compensation or its value would affect that relationship. Any maintenance analysis cannot ignore the ongoing monitoring of changes in the value of jobs (at para. 114).

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,

Canadian Union of Public Employees v. Corporation of the City of Peterborough, 2015 CanLII 55324 (ON PEHT) 2015-08-31 — The Tribunal held that the City was in breach of its duty to maintain pay equity. At para. 15, the Tribunal says that maintenance of pay equity is excused only in accordance with the exceptions in s. 8 of the *Act*. The Tribunal found that the City contravened this section by not maintaining pay equity in accordance with the pay equity plan negotiated by the parties. The Tribunal has no power to unilaterally create exceptions under the *Act* (at para. 16).

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

Hamilton-Wentworth District School Board v. Ontario Secondary School Teachers' Federation, 2009 CanLII 60545 (ON PEHT) 2009-10-30 — The Tribunal addressed a dispute about how to calculate the job rate for the male comparator job class. As part of their analysis, at para. 12, the Tribunal found that in order to demonstrate the existence of a formal seniority system which does not discriminate on the grounds of gender, it is necessary to demonstrate that the job rate of the male comparator is equally available to incumbents in the female job class for which it serves as a comparator. Otherwise, discrimination on the basis of gender would exist.

(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;

Law Society of Upper Canada v. Unknown Respondents, 1999 CanLII 14823 (ON PEHT) 1999-02-18 — When considering a merit compensation plan, the Tribunal found that the highest job rate had a bonus merit component such that the exception applied. Thus, the female job class was not required to be compared with actual highest job rate. The Tribunal further directed that an amended plan be drafted where it was required to show that the Employer relied on the exception (at paras. 17-19).

(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

Canadian Union of Public Employees, Local 2974.1 v. Essex (County), 1996 CanLII 8065 (ON PEHT) 1996-11-15 — The Tribunal held that the pay equity plan in place was deficient as it did not include benefits in calculating job rate. At para. 50, the Tribunal outlined what the employer must do in order to establish red-circling as an allowable exclusion under the *Act*. That is, the employer must be able to show that a red-circling policy and practice was already in effect, that the red-circled positions have been down-graded, and the job rate for the incumbent has been either frozen or curtailed as a result.

CUPE, Local 1623 v. Greater Sudbury Regional Hospital, 2005 CanLII 60099 (ON PEHT) 2005-07-07 — When considering pay equity plans that provided for red-circling, the Tribunal found (at para. 60) that this exception contemplates red-circling of male job classes, not female job classes. Red-circling of female job classes who are paid above the pay equity job rate does not contravene the *Act*.

Southern Ontario Newspaper Guild v. Canadian Publishing Division of Maclean-Hunter Limited, 1993 CanLII 5414 (ON PEHT) 1993-05-05 — The Tribunal was asked by the employer to find that red-circling during the pay equity process is an acceptable method for determining appropriate job rates for both male and female job classes. At paras. 7 and 8, the Tribunal notes that in order for 8(1)(d) to apply, the Employer must show a difference in compensation between male and female job classes; that a gender neutral re-evaluation process

was used; that the value of a position has been down-graded; and that the compensation of an incumbent was frozen or curtailed.

(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.

Law Society(No.2)(1998-99), 9 P.E.R. 35 — This decision, although not addressing this specific exception, notes that exceptions to the statute are to be construed narrowly. The onus is on the party claiming the exception to show that they could rely on an exception.

Welland County General Hospital (1994), 5 P.E.R.12 — A union sought and obtained a collective agreement through arbitration which had the effect of increasing the job rate of a male job class. The Tribunal deemed that pay equity negotiation and collective bargaining were separate and distinct processes. They also ruled that in order for an employer to rely on a skills shortage exception, it would have to show that there was a skills shortage in effect at the time the parties entered into an agreement on this matter, and also at the time the pay equity plan was implemented.

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.

Stevenson Memorial Hospital v. Ontario Public Service Employees Union, Local 360, 2000 CanLII 22419 (ON PEHT) 2000-02-24 — The Tribunal refused an employer application asking them to revoke a Review Officer's order that the job rate of a female job class be adjusted to equal its male comparator in the same bargaining unit. The Tribunal found that differences in bargaining strength could only be applied when the male job class and the female job class are in different bargaining units, or when the male job class is in a bargaining unit and the female job class is not. See Regulation 491/93.

Corporation of the City of Windsor v Shirley D. Moor, 2017 CanLII 22919 (ON PEHT) 2017-04-11 — The Applicant complained that the Employer violated section 7 of the Act by reducing her wages for a two-year period below the pay equity job rate that she previously achieved. The Employer argued that the wage

reduction is justified pursuant to subsection 8(2) since the reduction occurred as a result of a difference in bargaining strength. The Tribunal held that subsection 8(2) is not concerned with the bargaining imbalance between an employer and the bargaining agent of the female job class in question. Instead, the Tribunal found that it is concerned with the difference in compensation between a female and male job class after pay equity has been achieved but there can be an exception whereby differences between the two job classes can occur as a result of differences in bargaining strength.

BICC Phillips Incorporated v. Group of Employees, 1997 CanLII 12223 (ON PEHT) 1997-10-07 — The Tribunal refused an employer application which asked them for an order that because there has been a change of circumstances in the establishment, the pay equity plan is to be revised. At para. 14, the Tribunal says the onus is on the employer to establish factual circumstances. The Tribunal found that the employer failed to establish it could rely on 8(2) as an exception, nor on changed circumstances to defend against a failure to maintain complaint.

York Region Board of Education v. Canadian Union of Public Employees, Local 1734, 1995 CanLII 7202 (ON PEHT) 1995-01-18 — The Tribunal dismissed the employer's application to revoke an order holding that the employer failed to maintain pay equity with respect to certain female job classes. The employer attempted to rely on section 8(2), but section 8(2) cannot be raised until the employer has achieved pay equity for all employees in its establishment.

Ongwanada v. Ontario Public Service Employees' Union, Local 433, 2001 CanLII 28100 (ON PEHT) 2001-10-26 — The employer successfully used the bargaining strength defence to object to an order that they had contravened the *Act.* At para. 21-23, the Tribunal states that there are limited circumstances under which bargaining strength exception may be relied upon and states that the exception is only applicable after pay equity has been achieved.

Corporation of the City of Windsor v. Shirley D. Moor, 2017 CanLII 22919 (ON PEHT) 2017-04-11 — The Tribunal found that the Union and Employer violated the Act when the Union made an agreement that reduced an employee's wages below the pay equity job rate she had previously achieved. A bargaining imbalance is permitted where the bargaining agent for a male job class is able to achieve gains over the bargaining agent for a female job class as a result of its superior bargaining strength. A bargaining imbalance is concerned with the compensation between a male and female job class, not with the disparity in bargaining strength between the Union and the Employer (at para. 57).

Ottawa Public Library Board v. Ottawa-Carleton Public Employees Union, 2015 CanLII 6950 (ON PEHT) 2015-02-03 — The Tribunal held that the Union

and Employer failed to achieve pay equity in the plan they agreed to. At para. 37, the Tribunal states that achieving pay equity is a precondition to satisfying that differences in compensation between female and male job classes is as a result of a difference in bargaining strength. The Tribunal outlines interpretive principles at para. 40 and notes that the party asserting the application of this section bears the burden of demonstrating superior bargaining strength (at para. 41).

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

Clow v. Peterborough (City), 1995 CanLII 7217 (ON PEHT) 1995-06-09 — A part-time employee was terminated for pay equity activity, and the Tribunal was asked to determine if she was an employee and thus under the jurisdiction of the Pay Equity Office. The Tribunal determined that part-time seasonal employees are employees for pay equity purposes.

(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.

General Health Services (Circle of Life Health Services) v. Toronto East General Hospital, 2003 CanLII 57507 (ON PEHT) 2003-02-13 — At para. 31, the Tribunal notes the necessity of focusing on the term “work” as opposed to the term “position” or the hours worked by any individual when interpreting section 8(4). Here, the work was performed on a “regular and continuing basis” and thus caught under the *Act*.

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.

Glengarry Memorial Hospital v. Ontario Nurses' Association, 1991 CanLII 4447 (ON PEHT) 1991-06-06 — The Tribunal refused a proposition by the employer, who argued that the health care aide positions comprising the job classes were causal because employees were dispatched inconsistently. At para. 12, the Tribunal considers the Hospital's conduct and finds that differential treatment wherein male comparator job classes did not receive salary increases with other non-union salaries had the effect of "artificially holding back" the nurses' job rate and thus violated s. 9(1).

CUPE, Local 1623 v. Greater Sudbury Regional Hospital, 2005 CanLII 60099 (ON PEHT) 2005-07-07 — The Tribunal refused an application from a Union that alleged the employer contravened section 9(1) of the *Act* through its use of red-circling. At para. 59, the Tribunal emphasized the language contained in 9(1), 'to achieve pay equity'. This section of the *Act* prohibits parties from reducing the compensation of a male job class, but not increasing the compensation of a similarly valued female job class in order to achieve pay equity.

Call-A-Service Inc v An Anonymous Employee, 2008 CanLII 88827 (ON PEHT) 2008-04-28 — The Tribunal held that that an employer contravened section 7(1) of the *Act* by introducing salary scales that were inconsistent with the *Act*, after the plan had been approved. Specifically, section 9(1) prohibits an employer from setting salary scales below the pay equity adjusted wage rate or the pay equity job rate. When an employer sets steps incorrectly, by setting steps below the pay equity job rate, a wage gap may be created.

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.

Alzheimer Society of Chatham-Kent v. Moon, 1997 CanLII 12220 (ON PEHT) 1997-12-16 — The Tribunal found that the employer contravened the *Act* by reducing an employee's hours to part-time and ultimately discharging them for pay equity-related activities. The Tribunal held at para. 40 that the employer had the onus of proving they did not contravene the *Act* and that there was "no taint of anti-pay equity animus" in its decision to reduce the employee's hours and ultimately discharge her.

Quach v. St. Christopher House, 2009 CanLII 51436 (ON PEHT) 2009-09 — The Tribunal refused to dismiss an employee's application that the *Act* was contravened because a pay equity plan was never posted, and was "lost". The employee also argued that she had been penalized for her pay equity complaints, but the Tribunal dismissed it as they found that she had entered into a binding settlement which precluded her right to bring this complaint.

Clow v. Peterborough (City), 1996 CanLII 8060 (ON PEHT) 1996-06-25 — The Tribunal held that an employer contravened the *Act* when a part-time employee was terminated for pay equity activity. The employee did not make a complaint, but section 9(2) protection is not limited to persons who file complaints. Where applicant engaged in pay equity activities and shortly thereafter terminated, onus is on the employer to demonstrate that termination was not motivated in whole or in part due to anti-pay equity animus.

Corporation du Village de Plantagenet v. Bastien, 1997 CanLII 12221 (ON PEHT) 1997-05-15 and **Corporation of the Village of Plantagenet v. Bastien, 1997 CanLII 12218** (ON PEHT) 1997-08-28 — The Tribunal found that an employer penalized an employee, by dismissing her for exercising her rights under the *Act.* The Tribunal examined *what information the employer had* when it made its decision and *how* the decision to dismiss the applicant was made. The Tribunal found that the dismissal was motivated in part by anti-pay equity animus. They held at para. 36 that reinstatement is the remedy of choice except where the employer convinces Tribunal that the workplace environment makes reinstatement not practicable.

Farr v. Great Lakes Brick and Stone Ltd. [1994] O.P.E.D. No. 2 — The Tribunal refused to dismiss an employee's allegations that she was terminated so that the employer could avoid making a pay equity adjustment. The Tribunal held it had jurisdiction to hear the matter and that a *prima facie* case for 9(2) is made out if an employee alleged that she was engaged in protected activity and also alleged that

she suffered a detriment. If *prima facie* case is made out, the evidentiary and legal burden shifts to the employer.

Townships of Belmont and Methuen (1994), 5 P.E.R. 5 — It was established that the Applicants were laid off by the employer and that they made a complaint (*i.e.*, the protected activity) in respect of the pay equity plan. The Tribunal found that the applicants successfully made out a prima facie case for their allegations that they were terminated for making complaints regarding the pay equity plan.

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.

EA/OCT/CYW Bargaining Unit v. Brant Haldimand-Norfolk Catholic District School Board, 2009 CanLII 41201 (ON PEHT) 2009-07-31 — The Tribunal found that it was impermissible for an employee to pro-rate the pay equity adjustment made at each step of a multi-step pay grid based on the relationship between the rate of compensation and the highest possible the job rate for their job class. At paras. 5, 26-31, Tribunal clarifies that each step of multi-step pay grid must be adjusted by an equal dollar amount. Section 9(3) of the *Act* exists to avoid the "achievement" of notional or partial pay.

Call-A-Service Inc v An Anonymous Employee, 2008 CanLII 88827 (ON PEHT) 2008-04-28 — The Tribunal refused an application from an employer asking them to declare that pay equity had been achieved. The tribunal held that the employer's distribution of 1% of the employer's payroll must be done correctly. Every job class that has not achieved pay equity must receive an adjustment. Every employee in the same job class must get the same dollar adjustment.

Canadian Union of Public Employees, Local 1999 v. Lakeridge Health Corporation, 2010 CanLII 46187 (ON PEHT) 2010-08-11 — The Tribunal refused an application asking them to adjust the wage grids of female job classes to mirror those of male classes. At paras. 27-30, the Tribunal found there was no requirement to equalize wage grids between male comparators and female job classes. Section 9(3) only makes sense in a scheme where its absence would mean the only statutorily-mandated pay equity adjustment would be to the "job rate", such that positions in the female job class that were paid below the job rate would not benefit from the "achievement" of pay equity.

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.

Haldimand-Norfolk (No. 6) (1992) 2 P.E.R. 105 — A union brought an application regarding the employer's failure to bargain in good faith, alleging that the employer violated their statutory obligation to endeavour to agree on a gender-neutral

comparison system and pay equity plan. The Tribunal found that one of the primary purposes of a gender-neutral comparison system is to make visible and value aspects of women's work which were previously invisible and therefore devalued. The Tribunal determined that the following considerations were helpful in assessing the mechanism or tool which determines work value:

(1) Can the tool determine the value of the work performed using the statutory criteria of skill, effort, responsibility and working conditions?

(2) Is the choice of sub-factors, if used, undertaken free of gender bias?

(3) Are levels or equivalencies, if used, free of gender bias?

(4) Is the composite required by subsection 5(1) decided in such a way that gives value to all the statutory criteria and is point weighting free of gender bias?

The Tribunal ruled that the standard to be applied to the collection of job content data is one of accuracy. Also, a gender-neutral comparison system may involve a formalized job evaluation system, but does not require it, as Act makes no specific references to job evaluation.

Tina Lahtinen v Corporation of the City of Thunder Bay, 2020 CanLII 86643 (ON PEHT) 2020-11-02 — The Applicant argued that her job was unreasonably valued, and it was compared to an inappropriate male comparator with lesser responsibility, resulting in a violation of the Act. The Respondent submitted that the Applicant failed to identify issues that violates the Act. Instead, the Respondent argued that the Applicant is challenging the evaluation of an individual job in a pay equity plan, which the Respondent submitted should not be subject to review in isolation. The Tribunal held that employees cannot be placed in a higher band on a plan simply because the employees' position received increased responsibilities. Changes in responsibilities invites an employer to review a job class's rating within a plan but does not open a review of the entire plan. Furthermore, the Tribunal found that two jobs can have relatively the same value using the GNCS despite their job descriptions appearing different on the surface. Therefore, the Tribunal will generally not analyze how any individual job class has been evaluated in isolation or against a small subset of other positions.

Brampton (City) v. Brampton Professional Firefighters Association, 1995 CanLII 7207 (ON PEHT) 1995-01-27 — One of the issues that the Tribunal was asked to determine was the appropriateness of the job comparison process providing the foundation for the pay equity plan ordered by Review Officer, given that some of male comparators were not examined. At para. 30 and 31, the Tribunal specified that once potential male comparators have been identified, it is unnecessary to collect further job content data on all other male job classes in the establishment. Section 12 requires that a comparison is made with male job

classes to determine if may equity exists, but there is no requirement in the Act to evaluate all male job classes in the establishment.

Dare Foods Limited v. Bakery, Confectionery & Tobacco Workers International Union, Local 264, 1992 CanLII 4695 (ON PEHT) 1992-09-28 — The parties agreed that there was no issue before the panel with respect to the gender neutrality of the evaluation manual comprising the comparison system. Rather, the parties could not agree whether how the system was applied to determine the value of the work was in a gender-neutral manner. The Tribunal concluded that the evaluations failed to reflect and positively value the full range of content in the female job classes. Moreover, values which were recognized were not equally or consistently applied. The parties were directed to amend the job fact sheets to record all job requirements of all the job classes.

Peterborough (City) v. Professional Fire Fighters Association, Local 519, 1997 CanLII 12087 (ON PEHT) 1997-06-11 — A Review Officer ordered that the parties implement a pay equity plan they prepared, but the Employer objected on the basis that the comparison system was gender biased. The Tribunal held that the comparison system was flawed. At para 28-34, the Tribunal discussed the adequacy of collection of job information in the specific context of the actions of the joint committee. The Joint Committee did not collect job information in advance of applying the system and the absence of a systematic collection of job content from the incumbents in the job classes was inadequate pursuant to the Act.

Canadian Union of Public Employees Local 1328 v. Toronto Catholic District School Board, 2009 CanLII 37952 (ON PEHT) 2009-04-29 — Employees challenged the quality of the position description questionnaires completed by incumbents in a job class and used by a joint committee to evaluate a job class. The Tribunal dismissed the application and stated that the entire pay equity exercise is about relativity and consistent application of the tool. Thus, as was the case here, where there is only evidence regarding the evaluation of one job in isolation, without explanation of how the job evaluation tool was applied to other jobs in that unit, there is insufficient basis to succeed in a complaint regarding a job evaluation result by a joint committee.

Ontario Nurses' Association v. Women's College Hospital, 1992 CanLII 4706 (ON PEHT) 1992-08-04 — The Tribunal addressed the adequacy of the parties' gender-neutral comparison system in light of the test used to assess gender neutrality as articulated in Haldimand-Norfolk (No.6). The Tribunal considered the sub factors that were used by the parties to determine skill, effort, responsibility and working conditions and concluded the tool did not properly value nursing work.

Cornwall General Hospital, (March 8, 1993, P.E.H.T., File No. 0341-92) — A non-union employee Applicant was found to have viewed her job class in isolation

and so her application regarding ender neutrality was dismissed. In making her arguments, she did not compare her work in relation to the male comparator job classes or in relation to the job evaluation tool used by the employer.

Ottawa Board of Education v. Ontario Secondary School Teachers' Federation, 1996 CanLII 7947 (ON PEHT) 1996-05-28 — At paras. 36 and 37, The Tribunal notes that complaints about the choice of a gender-neutral comparison system are properly the subject of objections or pre-deemed approval complaints. After a plan is deemed approved, an Applicant must make out a contravention of Part I of the Act. To demonstrate gender bias may require expert evidence to show how Part I contravened. For the facts, see the summary of this case in s. 5.1(1).

Mackay v. Brant Community Healthcare System, 2017 CanLII 22872 (ON PEHT) 2017-04-03 and **MacKay et al v. Brant Community Healthcare System, 2017 CanLII 37589** (ON PEHT) 2017-06-12 — On considering an application by a group of employees, the Tribunal states that when there is a Bargaining Agent in place, an employee has no rights with respect to the negotiation and implementation of pay equity plans as those rights are afforded to the Bargaining Agent to exercise on behalf of its Members. At para. 7, they clarify that only a Bargaining Agent can make a complaint under this section, and section 14.

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,

Whitby (Town) v. Whitby Professional Firefighters' Association, 2000 CanLII 22423 (ON PEHT) 2000-11-23 — An employer objected a Review Officer's Order to negotiate a pay equity plan on the basis that at the effective date of the Act, all of the job classes within the bargaining unit were male-dominated. At para. 50, 51, & 53, Tribunal clarified that Part II employers have an obligation to prepare and post a pay equity plan even where no comparisons are required because all of the job classes in a bargaining unit are male-dominated,

(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.

Renfrew County and District Health Unit v. Ontario Public Service Employees Union, 2002 CanLII 49456 (ON PEHT) 2002-03-27 — One issue between the parties was how to allocate, amongst members of the bargaining unit, pay equity adjustments if the amounts required to achieve pay equity exceed 1% of payroll in each year. At para. 4, the Tribunal held that an employer is required to consider all of its pay equity plans when calculating what adjustments are required in order to avoid unfairness in the application of adjustment payments under different plans.

Canadian Union of Public Employees, Local 2974.1 v. Essex (County), 1996 CanLII 8065 (ON PEHT) 1996-11-15 — The parties, in accordance with their intention to achieve internal equity along with pay equity, agreed that both male and female job classes would receive adjustments to their pay. At para. 47-54, the Tribunal stated that the application of 1% of previous years' payroll towards internal equity violates section 13 of the Act, which provides for pay equity to the female job classes, and has the effect of widening the wage gap.

Regional Municipality of Peel v. Canadian Union of Public Employees, Local 966, 1992 CanLII 4698 (ON PEHT) 1992-10-15 — The Tribunal considered the employer's argument that the cost of maintaining pay equity is to be included in the 1% of payroll available for pay equity adjustments. The 1% of payroll must be used to close the wage gap which existed as of the effective date and cannot be used toward the cost of maintaining pay equity and ensuring the wage gap doesn't widen. Section 13(4) cannot be taken to mean that adjustments paid out include payments for situations in which the wage gap is widened after the pay equity plan is established, since the objective of the pay equity plan is to identify the wage gap and to correct the wage discrimination or wage gap identified.

Oakwood Retirement Communities Inc. v. S.E.I.U. Local 1 Canada, 2010 CanLII 76245 (ON PEHT) 2010-12-15 — A union sought to challenge a pay equity process undertaken by the employer under an agreement with the predecessor union. The tribunal found that the pay equity agreement with the predecessor

union did not achieve pay equity for the employees in the bargaining unit and the new union was entitled to inquire about, and satisfy itself concerning the extent of pay equity compliance in the bargaining unit. The parties were free to enter into negotiations, and at para. 72, the Tribunal stated that the certification date of the union is the effective date for the purposes of wage adjustment retroactivity and the determination of job content of job classes.

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.

Kensington Village v. Service Employees International Union, Local 220, 2000 CanLII 22420 (ON PEHT) 2000-10-13 — The Tribunal refused an employer application asking them to revoke an order that the employer implement its pay equity plan by paying outstanding adjustments as required to maintain pay equity. The employer raised that it had not received funding from the Province of Ontario and thus should not have to pay the adjustments. At para. 21-24, the Tribunal held that the employer has an obligation to make adjustments even if funding is not received or even if an employer pleads financial hardship. An employer cannot contract out of their obligations under the *Act*.

Pay Equity Office v. Community Living Guelph Wellington, 2015 CanLII 16351 (ON PEHT) 2015-03-16 — This application concerned the issue of an employer that made the necessary pay equity adjustments in the beginning, then stopped due to lack of funding. The Tribunal refused to accept lack of funding as a defense to an employer's failure to comply with the *Act*. At paras. 30 and 33 The Tribunal clarified that this section does not grant authority for the Tribunal to sanction non-compliance with the *Act* and that the *Act* has no provision providing for an Employer to avoid or delay the liability to make pay equity adjustments.

Ontario Nurses' Association v. Brant County Health Unit, 1992 CanLII 4704 (ON PEHT) 1992-11-18 — The Tribunal was asked to consider whether it had the discretion to order more than 1% of annual payroll be directed toward pay equity adjustments. They held that they did not have that discretion and at paras. 13 & 14, they state that nothing in the *Act* compels an employer to pay more than 1%

of the previous years' payroll towards pay equity adjustments. An employer can agree to pay more than 1% but cannot be ordered to do so. The *Act* specifies when and in what circumstances an employer can be required to spend more than 1% of payroll per year on pay equity.

Corporation of the City of Windsor v. Shirley D. Moor, 2017 CanLII 22919 (ON PEHT) 2017-04-11 — The Tribunal found that the Union and Employer violated the Act when the Union made an agreement that reduced an employee's wages below the pay equity job rate she had previously achieved. When considering how to interpret section 7, the Tribunal notes that it would be inconsistent with the underlying purpose and the entire scheme of the *Act* to allow employers to introduce wage grids that reduce the wages of female employees after having achieved pay equity. At para. 44 they note that such interpretation would not be appropriate, just as an employer's inability to pay is an inappropriate consideration when it comes to compliance under the *Act*.

Pay Equity Office v. Sexual Assault Support Centre of Ottawa, 2016 CanLII 28877 (ON PEHT) 2016-05-12 — In their application, the employer claimed that they did not have the ability to pay the entire amount of the Order which they disputed. The employer noted it was not unwilling to comply, but that it was financially unable to meet the 30-day timeline of the Order. The Tribunal dismissed the application, stating that lack of funding is not a defence to an employer's failure to meet its obligation to comply with the *Act*.

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.

Ontario Northland Transportation Commission v. Transportation Communications International Union, 1992 CanLII 4696 (ON PEHT) 1992-09-30 — Although an agreed upon pay equity plan between a bargaining agent and an employer is a deemed approved plan, the Tribunal has jurisdiction to inquire into it in some situations. This includes reviewing a plan's compliance where one party alleges a violation of the Act. At para. 18, the Tribunal notes that employers and bargaining agents cannot agree to something which contravenes the Act.

Ontario Northland Transportation Commission v. Pay Equity Hearings Tribunal, 1993 CanLII 5424 (ON PEHT) 1993-06-28 — This application was heard at the Divisional Court. The applicant alleged the Tribunal had no jurisdiction over deemed approved plans agreed upon by bargaining agents and employers. The Court disagreed and found that parties cannot contract out of the Act and rely on the deemed approval of a plan where a plan clearly contravenes the Act.

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.

Management Board Secretariat, (1993) 4 P.E.R. 58 — When considering the scope of employees' ability to complain, it is determined that the right to complain does not include complaints about contraventions of Part II of the Act where the plan is deemed approved. At para. 29, it is stated that the Act accords no role to represented employees with respect to the negotiation and implementation of pay equity. The bargaining agent exercises these rights on behalf of its members.

Group of Employees v. Ontario (Management Board Secretariat), 1999 CanLII 14827 (ON PEHT) 1999-03-05 — A group of employees alleged the deemed approved pay equity plan violated the *Act.* Pursuant to para. 6, complaints regarding a deemed approved plan must be grounded in a violation of Part I of the *Act*. At paras. 9.9-10, the Tribunal notes that some provisions of Part I are capable of exact determination, but some imply an exercise of discretion. Correctness is the proper standard when reviewing if a plan contravenes a precise provision of the *Act*, and reasonableness is appropriate when considering use of discretionary.

Fedoruk v. Thunder Bay Police Service, 2007 CanLII 62085 (ON PEHT) 2007-01-16 — An employee was found to not have pleaded a *prima facie* contravention of the *Act* in their application. At para. 10, the Tribunal held that although they must consider the issue where a member of a bargaining unit alleges that a pay equity plan does not meet standards set out in the *Act*, deference must be given to negotiating parties. Many provisions of the *Act* cannot be exactly determined and discretion is given to the negotiating parties to make decisions. Specifically, the decision not to use the group of jobs the employee believed should be used for evaluation was within the scope of the negotiating parties' discretion.

Munro v. Ottawa Heart Institute, 2004 CanLII 60148 (ON PEHT) 2004-05-13 — A group of employees represented by a union made an application complaining about the job evaluation process. At paras. 12-13, the Tribunal discussed that represented employees can only succeed in a job evaluation complaint against the employer and bargaining agent if they make out a *prima facie* case that the parties acted unreasonably with respect to job evaluation or comparison between female and male job class. The *Act* does not require internal equity nor comparisons between female job classes as desired by the complainants.

McNeil v. Kirkland Lake (Town), 2002 CanLII 49446 (ON PEHT) 2002-09-25 — An employee brought an application stating that the bargaining agent failed to negotiate the proper male comparator for her job class. At para. 32-37 and 46, the Tribunal declined to inquire further into the deemed approved plan because the applicant failed to make out a *prima facie* case. The applicant disagreed with the evaluation results and male comparator used but failed to make out a *prima facie* case of a contravention of Part I of the *Act*, under which the negotiating parties had acted within the scope of their discretion. The Tribunal declined to "pierce the veil" to examine a "deemed approved plan".

Ottawa Board of Education v. Ontario Secondary School Teachers' Federation, 1996 CanLII 7947 (ON PEHT) 1996-05-28 — At para. 24, the Tribunal discussed what deemed approval is and when it takes place. The same standard of review applies for both negotiated plans or plans implemented by the employer only. At para. 31, they state that deemed approval is not a certification

that the plan fully complies with the *Act* however, the onus is put on the party challenging the plan to demonstrate a contravention of Part I of the *Act* when a deemed approval plan is challenged. The standard of review depends on whether the *Act* requires correctness or implies a range. Job evaluation and comparisons imply a range and therefore a complainant must show unreasonableness. For the facts of the case, see the case summary under s. 5.1(1).

Association of Professional Student Services Personnel v. Toronto Catholic District School Board, 2006 CanLII 61262 (ON PEHT) 2006-03-23 — The Applicant argued that the employer had to prove that the negotiators considered certain factors. At para. 24, the Tribunal notes that in the face of a deemed approved plan, if an Applicant is complaining about a provision of the *Act* which is subject to a reasonableness standard of review, the applicant must demonstrate that parties contravened the *Act* by agreeing to something that was unreasonable. Specifically, the standard for gender predominance is reasonableness, not correctness. As such, the employer was entitled to rely on the deemed approval and not required to provide evidence regarding bargaining of their pay equity plan.

Quach v St. Christopher House and Canadian Union of Public Employees, Local 3393, 2012 CanLII 71616 (ON PEHT) 2012-11-15 — An employee made an application alleging that she was entitled to but did not receive a pay equity adjustment. At para. 16, the Tribunal states that a deemed approved plan is binding on the parties and bargaining unit members. They found that the applicant made a bald allegation with respect to the job evaluation results she disagreed with but failed to provide any facts in support of her allegations. Disagreement with job evaluation is not sufficient to make out a contravention of the *Act*.

Houston v. Centennial College, 2002 CanLII 49436 (ON PEHT) 2002-01-25 — A group of employees complained that the job class evaluation undertaken by the employer did not properly value some of their work. The relevant plan was deemed approved in January 1999. The Tribunal dismissed the application and noted that disagreement regarding job evaluation results does not make out a *prima facie* case of contravention against a deemed approved plan. Once a plan is deemed approved, subsequent events don't open it up to objections.

Call-A-Service Inc v An Anonymous Employee, 2008 CanLII 88827 (ON PEHT) 2008-04-28 — This application asked the Tribunal to determine what constituted "changed circumstances" under the *Act* which required an employer to amend a deemed approved plan. At paras. 24-30, the Tribunal notes that maintenance of pay equity is an ongoing responsibility and changes due to maintenance do not open up a deemed approved pay equity plan to objections.

MacKay et al v. Brant Community Healthcare System, 2017 CanLII 37589 (ON PEHT) 2017-06-12 — The Tribunal dismissed an application of a group of

employees alleging that in updating the relevant pay equity plan, their union and the employer violated the *Act* by the manner in which they valued a particular job class. Once a pay equity plan has been executed by the employer and the union, it is considered to be a deemed approved plan. Per para. 15, a deemed approved plan can only be challenged by section 22 of the *Act* which requires there to be a violation contrary to the *Act* or its Regulations.

Reynolds et al v. Southlake Residential Care Village, 2017 CanLII 59582 (ON PEHT) 2017-09-07 – A deemed approved plan will not be set aside. Challenging a deemed approved plan for a failure to act in accordance with the provisions under the *Act*, for whatever reason, is not an adequate reason to strike the deemed approved plan. Per para. 11, an executed pay equity plan between the Employer and Union will be deemed approved if no timely objection is made under the *Act*.

Maitland Manor Health Care Centre v. Mattuci, 2015 CanLII 67576 (ON PEHT) 2015-10-19 – The applicant objected to an order that concluded their non-union pay equity plan did not comply with the *Act.* At paras. 28 and 30, the Tribunal notes the review and objection periods available to employees. Where a pay equity plan has been posted in accordance with the *Act*, without objections, and implemented, it becomes a deemed approved pay equity plan in accordance with the *Act* despite defects in the plan. In particular, the Tribunal was concerned with the delay in any objection by 11 years after the plan was posted.

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.

Glengarry Memorial Hospital v. Ontario Nurses' Association, 1991 CanLII 4447 (ON PEHT) 1991-06-06 — The employer applicant disputed an order that it alleged failed to incorporate pay equity adjustments into the collective agreement pursuant to this section. At para. 8, the Tribunal clarifies that this section requires the adjustments to rates of compensation required by the pay equity plan shall be incorporated into, and form part of the relevant collective agreements. The collective agreement would continue to operate as before but with the pay equity adjustments included in the rates of compensation. Section 13(10) enables the Tribunal to examine collective agreements and the payment of wage rates under it, to exercise its jurisdiction to determine whether a party has complied.

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).

Regional Municipality of Peel (1992) 3 P.E.R. 191 — Any compensation practice occurring after the effective date which has the effect of widening the wage gap is a contravention of ss. 13(11) and 7(1). Employers are required to correct this contravention using funds in addition to the 1% of payroll which must be made available to reduce the wage gap. This maintenance obligation is separate from that imposed under ss. 13(4) and (5) which deal with adjustments to be paid out to narrow the wage gap, and which are limited to not less than 1% of payroll.

Law Society of Upper Canada v. Unknown Respondents, 1999 CanLII 14823 (ON PEHT) 1999-02-18 — The employer applied for an order revoking the Review Officer's order that their pay equity plan contravened the *Act* by widening the pay gap after its effective date. The Tribunal determined that a wage gap which widens prior to the implementation date contained in the *Act* will result in a contravention of s. 13(11). Adjustments are required to redress the widening are payable immediately and not subject to the cap on payouts in s. 13(6).

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.

Saydat Hospitality Inc. v. 2059419 Ontario Inc., 2010 CanLII 63607 (ON PEHT) 2010-11-02 — The applicant sought a variance to the Order removing it as a respondent and confirming that the employer is not jointly and severally liable to make the payments required to be paid to a previous operator for motel, that it purchased all of the assets of. The Tribunal found employers are jointly and severally liable in the context of sale of business, but section 13.1 does not apply to employers who were never subject to Part II. Here, the applicant was not an employer to whom Part II of the *Act* applied.

Child's Place v. Fitzpatrick, 2002 CanLII 49459 (ON PEHT) 2002-10-07 — At para. 14, the Tribunal discusses the interpretation of section 13.1. They note that section 13.1 can be interpreted as placing joint and several liability on both the purchaser and seller of a business. It does not absolve a seller of liability for outstanding adjustments at the point a sale is made.

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.

Riverdale Hospital (No. 1) (1990) 2 P.E.R. 1 — Section 14 of the Act imposes a joint obligation upon the employer and a bargaining agent to negotiate in good faith and endeavour to agree upon a gender-neutral comparison system and a pay equity plan. This duty includes the obligation to disclose information necessary or relevant to pay equity negotiations. In the process of negotiating a gender-neutral comparison system and a pay equity plan, the parties must disclose sufficient information to ensure that rational and informed discussion can take place between the parties. The information requested in this context must be rationally related and relevant to an issue in the process.

Haldimand-Norfolk (No. 6) (1991) 2 P.E.R. 105 — The Ontario Nurses Association alleged that the employer adopted a gender biased comparison system. There are 4 components to a gender-neutral comparison system:

(I) the accurate collection of job information;

(II) deciding on the mechanism or tool to determine how the value will attach to the job information;

(III) applying the mechanism to determine the value of the work performed; and

(IV) making the comparisons

In negotiating the system, parties have the flexibility to fashion a comparison system to meet their needs. As a starting point, they are required to ensure that each component which forms part of the comparison system is gender neutral. Bias in one part means the system as a whole is not gender neutral. Gender bias must be eliminated from all parts of the comparison system. Whatever system is proposed, it must consider the establishment to which it will be applied and must specifically address the range of work performed by female job class.

Haldimand-Norfolk (No.6) (1991), 2 P.E.R. 105 — This case sets out the criteria used to determine whether parties have met the requirement to bargain in good faith. For an in-depth look, see the case summary under s.12.

Ontario Nurses' Association v. Women's College Hospital, 1992 CanLII 4706 (ON PEHT) 1992-08-04 — The Tribunal determined that the proposed comparison system did not meet the standard of gender neutrality and the parties were directed to negotiate and design one that did. The system’s ability to measure and

value skills required by nurses in the complexity, judgement, education, experience, initiative, contact, scope of supervision, physical demands, result of errors, and working conditions factors was incomplete.

Ontario Public Service Employees Union v. Cybermedix Health Services Ltd.1989 CanLII 1459 (ON PEHT) 1989-07-06 — The union's application alleges that the employer did not negotiate in good faith. The Tribunal held that more information needed to be disclosed and parties are jointly responsible for the process and content of the pay equity negotiations. To meet these obligations, information relevant to pay equity issues must be disclosed so that rational and informed discussions may occur. Disclosure must be made whenever the parties cannot agree on an issue without the information requested. Both parties are entitled to sufficient information to make informed choices at all stages.

Ontario Nurses' Association v. St. Joseph's Villa, 1993 CanLII 5412 (ON PEHT) 1993-08-19 — Where there are bargaining agents in the employer's establishment, section 14 stipulates that the employer cannot establish pay equity unilaterally but must do so through negotiations with various bargaining agents representing employees. Section 7(2) requires a bargaining agent and employer not to bargain for compensation practices that would disrupt achieving pay equity. To do so, the bargaining agent must have knowledge of the terms of the plan that has been implemented and must have the knowledge of the content of other jobs and their conditions of employment, thus requiring disclosure from the employer.

TRW Canada Limited v. Canadian Auto Workers, 1995 CanLII 7216 (ON PEHT) 1995-05-12 — During negotiations, the parties were unable to agree on comparability, but did agree on a gender-neutral comparison system. The Tribunal held that parties are bound by agreements entered into before and during the Review Services process when negotiating a pay equity plan.

Ottawa Public Library Board v. Ottawa-Carleton Public Employees Union, 2015 CanLII 6950 (ON PEHT) 2015-02-03 — This case provides a detailed interpretation of an agreement between a union and employer. In particular, they look at the availability of an arbitration clause and found that parties are bound by the agreements they have reached.

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.

Ontario Northland Transportation Commission v. Transportation Communications International Union, 1992 CanLII 4696 (ON PEHT) 1992-09-30 — Although an agreed upon pay equity plan between a bargaining agent and an employer is a deemed approved plan, the Tribunal has jurisdiction to inquire into it in some situations. This includes reviewing a plan's compliance where one party alleges a violation of the *Act.* At para. 18, the Tribunal notes that employers and bargaining agents cannot agree to something which contravenes the *Act.* Deemed approval status does not render parties immune from scrutiny.

Ontario Northland Transportation Commission v. Pay Equity Hearings Tribunal, 1993 CanLII 5424 (ON PEHT) 1993-06-28 — This application was heard at the Divisional Court. The applicant alleged the Tribunal had no jurisdiction over deemed approved plans agreed upon by bargaining agents and employers. The Court disagreed and found that parties cannot contract out of the *Act* and rely on the deemed approval of a plan where a plan clearly contravenes the *Act*.

Ottawa Board of Education v. Ontario Secondary School Teachers' Federation, 1996 CanLII 7947 (ON PEHT) 1996-05-28 — At para. 24, the Tribunal notes that deemed approval is contingent on the passage of time. Where there is no bargaining agent, deemed approval occurs after the requisite objection period, and where there is a bargaining agent, it occurs upon the plan's execution by the parties. In addition, at para. 28, they clarify that the deemed approval provision does not insulate a negotiated plan which contravenes the *Act* from being challenged under section 22(1). For the facts of the case, see the case summary under s. 5.1(1).

Group of Employees v. Parry Sound District General Hospital, 1995 CanLII 7205 (ON PEHT) 1995-05-29 — In an application brought by a group of union-represented employees, the applicants are unable to make out a *prima facie* case without further submissions. At para. 68, the Tribunal clarifies that with respect to the gender characterization of job classes, there are a range of possible outcomes

in the *Act* which are available to negotiating parties. As such, deference must be afforded to a deemed approved plan.

Houston v. Centennial College, 2002 CanLII 49436 (ON PEHT) 2002-01-25 — A group of employees complained that the job class evaluation undertaken by the employer for a deemed approved plan did not properly value some of their work. Per paras. 18-20, a complaint against a deemed approved plan is required to be based on a contravention of Part I. The Tribunal dismissed the application and noted that disagreement regarding job evaluation results does not make out a *prima facie* case of contravention against a deemed approved plan. Once a plan is deemed approved, subsequent events don't open it up to objections.

McNeil v. Kirkland Lake (Town), 2002 CanLII 49446 (ON PEHT) 2002-09-25 — An employee brought this application alleging that her bargaining agent and the employer failed to negotiate the proper male comparator for her job class and bring the Application on her behalf. At paras. 41-43, the Tribunal found that the Applicant challenged the process significantly, but failed to make out a *prima facie* case of a breach of Part I of the *Act*.

Management Board Secretariat (1993) 4 P.E.R. 58f Part I of the *Act* — The parties cannot contract out of the standards of the *Act*. At the same time, the Tribunal must accord considerable deference to parties who are obligated by the *Act* to negotiate and implement pay equity. This deference is necessary not only because of the deemed approved provisions of the *Act*, but also because the standards in the *Act* are not always easily discernible and some are specifically subject to negotiations.

Humber College of Applied Arts and Technology (Re), 2000 CanLII 22417 (ON PEHT) 2000-06-20 — An employer argued that a Review Officer did not have jurisdiction to make an Order where no objection or complain had been made with respect to a deemed approved plan. The Review Officer learned of the plan's deficiencies undergoing a related investigation. The Tribunal held that Review Officers have the jurisdiction to issue an order in the absence of a complaint or objection where they have formed an opinion there has been a contravention of the *Act*. At para. 28, they hold that a Review Officer stands in no better position than any Applicant complaining about a deemed approved plan.

Ontario Northland Transportation Commission v. Transportation Communications International Union, 1992 CanLII 4696 (ON PEHT) 1992-09-30 — Although an agreed upon pay equity plan between a bargaining agent and employer is a deemed approved plan, the Tribunal has jurisdiction to inquire into it in some situations. This includes reviewing a plan's compliance where one party alleges a violation of the *Act.* The Tribunal may also examine the circumstances

to determine whether a misrepresentation during negotiations constituted failure to bargain in good faith. At para. 18, the Tribunal notes that employers and bargaining agents cannot agree to something which contravenes the *Act.*

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.

Ottawa Board of Education v. Ontario Secondary School Teachers' Federation, 1996 CanLII 7947 (ON PEHT) 1996-05-28 — The Tribunal considers the significance of the certification of a bargaining agent after a plan has been deemed approved. At para 8-14, they discuss that such certification amounts to a changed circumstance that renders a plan inappropriate due to there being a resulting bargaining unit separate from the non-bargaining unit. As such, the Tribunal notes that splitting a plan is appropriate, but they hold that certification of a bargaining unit is not a changed circumstance that requires *negotiations* for a pay equity plan. It is a matter of form only. For the facts of the case, see the case summary under s. 5.1(1).

Ontario Nurses' Association v. St. Joseph's Villa, 1993 CanLII 5412 (ON PEHT) 1993-08-19 — The issue in this case was whether a bargaining agent's certification to represent previously non-union employees for whom a pay equity

plan was already posted constitutes a changed circumstance that renders the planin appropriate and requires negotiations. As in Ottawa Board, the Tribunal ordered that the Plan be split but not that a new plan be negotiated.

Niagara (Regional Municipality) v. CUPE, Local 1287, 1999 CanLII 14829 (ON PEHT) 1999-02-18 — The municipality sought to revoke an order that the pay equity plan was no longer valid due to a continuing vacancy of the male comparator class being a changed circumstance. At paras. 18-19 and 23, the Tribunal found that a vacant male comparator job class does not amount to changed circumstances if there is no pay equity impact or substantive change in job content. Notwithstanding the on-going vacancy of the male job class, pay equity was achieved and maintained in accordance with s. 7 of the legislation.

Women's College Hospital (No. 2) (1990), 1 P.E.R (ON PEHT) 1990-01-09 — This was a request for a reconsideration of a previous unanimous decision by the Tribunal. The Tribunal notes that its decisions are final and the Tribunal's discretion to reconsider a decision ought to be exercised only where there are compelling and extraordinary circumstances which make it appropriate. They note that one of the considerations is whether there has been a change in circumstances making the order inappropriate, but such was not found here.

Hilton Works v. MacDonald, 1993 CanLII 5422 (ON PEHT) 1993-10-13 — An employer made an application alleging that there had been a change in the identity of the employer constituting a change in circumstances. The Tribunal found that there is no jurisdiction to consider changed circumstances at every point during the development of a pay equity plan. They found that a pay equity plan must exist as a precondition to any inquiry into an allegation of changed circumstances. Once an employer is identified as the pay equity employer it cannot access the change in circumstances provision until a pay equity plan is in place.

Canadian Union of Public Employees, Local 883 v. Salvation Army Grace General Hospital, 1995 CanLII 7211 (ON PEHT) 1995-07-20 — After starting negotiations, changes in the workplace caused the employer to attempt to use different male comparators than those agreed in the Memorandum of Agreement. The Tribunal ordered the parties to conclude the negotiations of the pay equity plan in accordance with the memorandum of Agreement, stating that the employer could give notice to union thereafter if it believed there were changed circumstances. Parties are required to examine compensation practices at a particular snapshot in time during the implementation stage based on the employer's obligation date. Changes in circumstance can be considered after pay equity has been implemented.

University of Western Ontario Faculty Association - Librarians & Archivists v. University of Western Ontario, 2018 CanLII 116055 (ON PEHT) 2018-11-28

– A bargaining unit asserted that the Letter of Understanding that represented the parties' agreement to create a new pay equity plan was akin to giving notice under section 14.1 for "changed circumstances". They also argued that certification of the new union constituted a changed circumstances under the Act. The Tribunal noted that neither party asserted the previous Plan was no "longer appropriate" under section 14.1 so there was no obligation to enter into negotiation efforts. Where no such assertion is made, the only action the parties were required to take was to split the previous Plan so that, on a going forward basis, there would be a pay equity plan that applied only to the members of the bargaining unit.

Ontario Secondary School Teachers' Federation v Ottawa-Carleton District School Board, 2019 CanLII 94412 (ON PEHT) 2019-10-03 — The bargaining unit took issue with a Notice of Decision issued by a Review Officer. The Review Officer's decided that a new pay equity plan did not need to be bargained pursuant to section 14.1 and the union alleges a lack of procedural fairness. The Tribunal held that their jurisdiction only covers those issues that have been addressed by a Review Officer. Here, the Tribunal would only be able to review the issue of whether there has been changed circumstances that statutorily require a new pay equity plan under section 14.1, which was an uncontested issue. Until the Review Office has declined to inquire into a complaint, an application filed out of concern that the Office would not act on an application to review services is premature.

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.

BICC Phillips Incorporated v. Group of Employees, 1997 CanLII 12223 (ON PEHT) 1997-10-07 — Non-unionized employees believed their employer should post a new plan based on changes in circumstances, along with actions to maintain pay equity. At para. 16-18, the Tribunal found that an allegation of changed circumstances cannot be used as a justification for failure to maintain. An employer has a unilateral right to revise and repost the plan due to changed circumstances.

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.

Corporation of the Municipality of Wawa v. Confidential Employee, 2010 CanLII 63656 (ON PEHT) 2010-11-03 — The municipality, who had a previous pay equity plan in place which covered all non-union employees, amended the plan to reflect changes in job content and restructuring that took place. At para. 39, the Tribunal upheld the employer's new pay equity plan and found that the changes made by the employer which they classified under changed circumstances could also have been made under maintenance.

Call-A-Service Inc v An Anonymous Employee, 2008 CanLII 88827 (ON PEHT) 2008-04-28 — The Tribunal held that that an employer contravened s. 7(1) of the Act by introducing salary scales that were inconsistent with the Act, after the plan had been approved. Looking at the employer's ability to amend a plan, the tribunal noted that the *Act* does not define the term "changed circumstances". It is clear, however, that the existing plan must be "no longer appropriate" for the establishment. Implicitly, in changed circumstances, the employer must prepare and implement a new pay equity plan because the existing one is no longer suitable for the establishment. Some examples of changed circumstances could

be restructuring of the establishment; the certification of a union in a non-union establishment; and the amalgamation or merger of two or more employers.

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

Brampton Public Library (No.2) (1994), 5 P.E.R. 51 [HT/76] — The Tribunal confirmed that parties to a pay equity plan can broaden the definition of establishment. They examined what the parties agreed to given that no male job classes were found to be comparable to female job classes within the Board. They found that because the parties entered into a pay equity agreement using comparators from the City for female job classes, the parties agreed to an establishment wider than the Board. Under this agreement, the employer exceeded the statutory minimums and could not retract from that agreement.

(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).

Reynolds et al v. Southlake Residential Care Village, 2017 CanLII 59582 (ON PEHT) 2017-09-07 — A group of employees made an application challenging a pay equity plan for which they were not notified of the posting. As such, the plan was deemed approved. At para. 11, the Tribunal held that the *Act* is unequivocal in that if no objection is filed under s. 15(7), the pay equity plan is deemed approved by the Pay Equity Commission.

Maitland Manor Health Care Centre v. Mattuci, 2015 CanLII 67576 (ON PEHT) 2015-10-19 — An employer, in an application against a Review Officer's order, argued that the complaint of an employee about the non-union pay equity plan cannot prevent the plan from being deemed approved as it was delayed. At paras. 28 and 30, the Tribunal confirms that where a pay equity plan is posted in accordance with the *Act*, without objections and implemented, it becomes deemed approved in accordance with the *Act* despite defects in the plan.

Ontario Nurses' Association v. Participating Nursing Homes, 2016 CanLII 2675 (ON PEHT) 2016-01-21 – The pay equity plan entered into used the proxy method of comparison prior to the government changing and repealing the

provisions. At para. 45, the Tribunal cites the agreed statement of facts, which notes that pay equity plans may be deemed approved, even if arrived at outside the parameters of the *Act*, so long as the plan has been posted and no objections have been filed under s. 15(7) of the *Act*. As such, the Tribunal confirms that the proxy plans' deemed approved nature are not in question.

Royal Crest Lifecare Group v. Warner, 2002 CanLII 49458 (ON PEHT) 2002-11-18 – An employer objected to an order concluding it had not made the pay equity adjustments required in the pay equity plans it had posted for non-union staff. Under the plan the employer was to adjust the job rate of each female job class by $1.50, which it failed to do contrary to its obligations. The Tribunal, at para. 12, found that calling certain adjustments "pay equity adjustments" was not enough to fulfill the employer's obligations. Further, an employer cannot re-configure its compensation practices, label the exercise "pay equity" and avoid making the pay equity adjustments required.

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.

Civic Association of Non-Union Employees at the City of Windsor and Laurie Parent v Corporation of the City of Windsor, 2011 CanLII 35855 (ON PEHT) 2011-06-16 — A Review Officer issued an order pursuant to section 16(2) of the *Pay Equity Act* (the "*Act*") directing the Employer to post the 2005 Plan on November 8, 2010. Objections with respect to such a plan were permitted by way of section 16(4)3. Ms. Parent's "Application for Review Services" is an objection to the 2005 Plan pursuant to section 16(4). Pursuant to section 17 of the *Act*, when the Commission receives a notice of objection under subsection 16(4) of the *Act* "the Hearings Tribunal shall hold a hearing, and, in its decision, shall settle the pay equity plan to which the objection

relates." Thus, all objections to the 2005 Plan, because it is a plan that was posted pursuant to section 16(4), are determined by the Tribunal and not by Review Services.

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.

Upper Grand District School Board v Ontario Secondary School Teachers' Federation, 2013 CanLII 5971 (ON PEHT) – The Applicant brought an application regarding an order by a Review Officer. The Respondent argued that the Applicant did not object the pay equity plan within the time limits imposed by the Order and therefore, the plan became a "deemed approved pay equity plan" pursuant to subsection 16(5) of the *Act*. The Tribunal found that subsection 16(4) sets out a condition precedent for deemed approval under subsection 16(5), i.e. the pay equity plan must first be posted. Only in circumstances where the pay equity plan has been posted and the objection period has passed with no objections, is a pay equity plan deemed to be approved by the Pay Equity Commission.

Canadian Union of Public Employees Local 896 v Au Chateau Home for Aged, 2013 CanLII 67138 (ON PEHT) 2013-10-04 — This application was brought under subsection 25.1(4) to enforce the terms of a settlement. The Tribunal held that in dealing with a complaint under subsection 25.1(4), the Tribunal's first task is to determine whether or not a party is failing to comply with a settlement. If, and only if, the Tribunal finds non-compliance is it then authorized

by subsection 25.1(6) of the *Act* to make an order against the non-complying party. The Tribunal also held that where the parties compromised for the sake of reaching a voluntary settlement, the Tribunal is not about to go behind the settlement, in order to force the application of subsection 13(10) or any other statutory provision.

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.

Bertrand v York Catholic District School Board, 2014 CanLII 23635 (ON PEHT) 2014-05-01— The York Catholic District School Board posted a revised non-union pay equity plan pursuant to an Order dated April 8, 2013. Ms. Smith filed an objection with Review Services of the Pay Equity Office within 30 day of the revised plan posting. Here, the Tribunal held that the objection is properly before the Board and it will hear and determine the plan even though it was filed after the date of the Order (April 23, 2018), since the objection was filed within thirty days of the amended plan posting, pursuant to subsection 17(1) and 16(4).

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).

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.

Canadian Union of Public Employees, Local 543.3 v. Windsor-Essex County Health Unit, 2010 CanLII 61201 (ON PEHT) 2010-10-20 — The Applicant submitted that it agreed with the Employer to make adjustment in accordance with the Combination Method of job-to-job and Proportional Value (PV) comparison. The Applicant claimed that the *Act* requires the Employer to use the Combination Method. The Respondent submitted that it did not agree to use the Combination Method. The Tribunal found that the *Act* did not require the Employer to use the Combination Method. The Tribunal held that employers who had not yet prepared a pay equity plan may use either or both the PV and the job-to-job as a Comparison Method for all female job classes covered by the plan. However, where a female job class could be compared under either method, the adjustment made under the PV method could not be less than what would be required under job-to-job. This is outlined in section 21.2(2).

Hudson v. Hamilton Police Association, 2010 CanLII 61163 (ON PEHT) 2010-10-19 — The Tribunal found that the *Act* is clear with respect to the use of the PV method for comparing the value/compensation ratio of female job classes to the value/compensation ratio of male job classes in an establishment. The Tribunal interpreted that the male job classes are to be determined by having regard to one or more "representative male job classes" and that "representative" does not include every male job class in the PV analysis.

Canadian Union of Public Employees v. Corporation of the City of Peterborough, 2015 CanLII 55324 (ON PEHT) 2015-08-31 — The Tribunal held that there is no express language under the *Act* to support a proposition that a male job class that was representative for the purpose of achieving pay equity may not be representative for the purpose of pay equity maintenance. *Hudson* distinguished here because it concerned establishing pay equity, not maintenance, and because in *Hudson,* the wage rate set for the male job classes was not set by the Employer.

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

> **Hudson v. Hamilton Police Association, 2010 CanLII 61163** (ON PEHT) 2010-10-19 — The Tribunal found that two male job classes under consideration were not 'representative' male job classes because their respective rates of compensation were influenced by external factors and was not based solely on the value of the work performed. Such external factors include who the employer is and what its sources of revenue are, the economic conditions of the local market, whether the employees are unionizes and the strength of their union.

(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.

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.

Helen Henderson Care Centre v. Service Employees' International Union, Local 183, 2001 CanLII 28094 (ON PEHT) 2001-12-17 — The Applicants objected to an Order by the Review Officer declaring that a co-located retirement homes and nursing homes were seeking employers, This matter involved determining whether the Applicants are public sector employers, given that seeking employers must be public sector employers. The Tribunal found that section 1(i) of the Schedule has clear and unambiguous language about the entities that constitute the public sector. Considering this, the Employers were found to be seeking employers. The Tribunal also held that in deciding whether an entity is a public sector, only the provisions of Act needs to be considered, and not any other statutes.

Parkdale Focus Community Project v. Group of Employees, 2000 CanLII 22422 (ON PEHT) 2000-06-19 — The Applicant sought to revoke the Order of a Review Officer that declared it a public sector employer and thereby, a seeking employer. The Review Officer found that the Applicant is a public sector employer because it provides services relating to addiction, according to s.1(h.1) of the Appendix. The Applicant argued that it has never provided services relating to addiction and therefore is not a public sector agency. The Tribunal found that the Applicant provided services aimed at preventing alcoholism and the abuse of alcohol and other drugs, which constitutes as services related to addiction. The Tribunal held that such services are funded by the Ministry of Health and falls under s.1(h.1) of the Appendix and the Applicant is considered to be public sector employer for the purpose of the Act.

Pioneer Youth Services (Toronto) Inc. v. Ontario Public Service Employees Union, 2002 CanLII 49451 (ON PEHT) 2002-02-26 —The Applicant sought to revoke an Order of a Review Officer that found it a public sector employee and therefore, declared it a seeking employer. The Applicant argued that it is a private sector employee. The Tribunal ruled that it is the identity of the employer, rather

than the nature of the employer's operations that determine whether it is a public or private employer. The Tribunal decided that the Applicant is a public sector employee under the *Act* since it operates under the *Child and Family Services Act*.

Regesh Family and Child Services v. Mercer, 2002 CanLII 49452 (ON PEHT) 2002-01-22 — The Applicant sought a declaration concluding that it is not a public sector employer. The Tribunal concluded that by being licenced under the *Child and Family Services Act*, the Applicant is drawn into the broader public sector for the purpose of the *Pay Equity Act*, despite having a private sector nature.

Three Trilliums Community Place Inc. v. Confidential Employee, 2011 CanLII 43021 (ON PEHT) 2011-07-15 — The Applicant sought to rescind the 2003 Order that declared it a seeking employer, arguing that it is not a public sector employer. The Tribunal found that following the seeking employer declaration, the Applicant proceeded to prepare a pay equity plan using the proxy methodology. Therefore, regardless of the whether the Applicant is a public or private sector employer, since it did not object to the Order, the pay equity plan is binding. The Tribunal ruled that rescinding the order does not rescind the contracts entered pursuant to it.

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 in accordance 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 than $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.

Helping Hands Daycare (No. 2) (unreported, October 11, 2006, P.E.H.T., File No. 2387-05) — The issue was whether the Applicant used the proxy method of comparison to compose the required pay equity plan and whether the plan meets the requirements in section 21.18(2). The Tribunal held that employers must sequentially follow every step under section 21.18(2) in order to prepare and post a plan. The Tribunal also found that in order to properly determine job rate for the proxy female job class, the Employer needs to develop a gender-neutral comparison system.

Royal Crest Lifecare Group v. Warner, 2002 CanLII 49458 (ON PEHT) 2002-11-18 — The Tribunal found that the Employer carried out a pay equity plan in good faith but did so without adhering to the *Act*. The Tribunal ruled that the Employer cannot independently create a compensation system and label it a pay equity plan. The Employer must follow the precise methodologies prescribed in the sections 21.11 – 21.23 of the *Act* when posting a plan.

Maitland Manor Health Care Centre v. Mattuci, 2015 CanLII 67576 (ON PEHT) 2015-10-19 — The Review Officer issued an Order fourteen years after the Applicant's non-union proxy pay equity plan was posted, concluding that the plan failed to comply with the Act. The Tribunal held that notwithstanding the precise requirements of the proxy methodology, where a pay equity plan has been posted in accordance with the *Act*, without timely comments or objections, it becomes a deemed approved pay equity plan in accordance with the *Act* despite defects in the plan.

Ontario Nurses' Association v. Participating Nursing Homes, 2016 CanLII 2675 (ON PEHT) 2016-01-21 – The Tribunal found that pay equity under a proxy plan must be maintained but this maintenance does not require on-going comparisons with the external proxy employer. The Tribunal found that this would be inconsistent with the principle of the *Act*. Instead, maintenance requires the monitoring of the compensation and value relationship of the non-key female job classes and key female job classes as compared to the compensation/value relationship that has already been determined for the initial pay equity plan.

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.

Kensington Village v. Service Employees International Union, Local 220, 2000 CanLII 22420 (ON PEHT) 2000-10-13 — The issue was whether the parties can defer compensation adjustments pending the receipt of government funding.

The Tribunal concluded that lack of government funding is not a defense to an employer's obligation to comply with its statutory obligation of paying compensation adjustments, even if the language of the pay equity plan allows parties to defer paying adjustments pending government funds.

Pay Equity Office v. Community Living Guelph Wellington, 2015 CanLII 16351 (ON PEHT) 2015-03-16 — The Applicant requested that the Tribunal stay the Order requiring compensation adjustments until the Applicant receives funding from the Ministry of Community and Social Services. The Tribunal concluded that even financial hardship does not exempt an employer from meeting its obligations under the *Act* with respect to adjustments.

Addiction Services of Eastern Ontario v. Canadian Union of Public Employees (CUPE Local 1997-02) , 2009 CanLII 31617 (ON PEHT) 2009-06-09 —The Tribunal confirmed that there is no provision in the Act that allows an employer to stop making compensation adjustments because of a lack of funding or inability to pay.

Pay Equity Office v. Children's Corner Day Nursery Inc. , 2006 CanLII 61263 (ON PEHT) 2006-02-15 — The Tribunal found that the implementation of pay equity cannot be carried out on a selective basis based on an employer's ability to pay adjustments.

Canadian Union of Public Employees, Local 2577 v. Children's Aid Society of the County of Lanark and the Town of Smith Falls, 2006 CanLII 61259 (ON PEHT) 2006-01-05 —The new collective agreement between the Union and the Employer implemented that overtime for full and part-time employees is paid only when the employees work 2 ½ hours past 35 hours of work. The Union argued that this overtime threshold widened the wage gap as the part-time workers have seen their wages reduced. The Tribunal found that the Union failed to establish a wage gap as it did not assert how the affected employees are only part of a female job class while the compensation remained unchanged for the comparable male job class. The Tribunal also concluded that not all changes in compensation amounts to a violation of the Act.

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).

NOTE: Sections 21.11 to 21.23 were amended by 1996, c. 1, Sch. J, s. 3 by re-enacting s. 21.22(l) to (3), and repealed by 1996, c. 1, Sch. J, s. 4. In a court decision, S.E.I.U., Local 204 v. Ontario (Attorney General) (1997), 151 D.L.R. (4th) 273, 97 C.L.L.C. 1230 035 (Ont. Ct. (Gen. Div.)), Schedule J of the Savings and Restructuring *Act*, 1996, S.O. 1996, c. 1, was declared unconstitutional and of no force and effect.

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) (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);

PART IV
ENFORCEMENT

Complaints

22. (1) Any employer, employee or group of employees, or the bargaining agent, if any, representing the employee or group of employees, may file a complaint with the Commission complaining that there has been a contravention of this Act, the regulations or an order of the Commission.

Peterborough (City) v. Peterborough Professional Fire Fighters' Association, Local 519, 1991 CanLII 4448 (ON PEHT) 1991-03-21 — Counsel for the Applicant argued that the Tribunal does not have the authority to dismiss an application solely on the basis of written material and that the Applicant should be entitled to call evidence under the Act. The Tribunal ruled that it does have the authority to dismiss an application on the basis that it fails to present a *prima facie* case, according to section 25(1)(b) of the *Act*. The Tribunal defined that making out a *prima facie* case means that the Applicant has made out a case on the face of the written material it has filed.

Ontario Northland Transportation Commission v. Transportation Communications International Union, 1992 CanLII 4696 (ON PEHT) 1992-09-30 — *Confirmed on Judicial Review*. The Tribunal finds that section 22 (1) provides an unlimited right to a bargaining agent to complain to the Commission alleging a breach of the *Act*. This right includes complaints about a plan to which the bargaining agent had agreed, and which was deemed approved pursuant to s.14(5) of the *Act*. The Tribunal also concluded that it has the jurisdiction to inquire into a deemed approved pay equity plan in certain circumstances.

Michelle MacKay et al v. Brant Community Healthcare System, 2017 CanLII 37589 (ON PEHT) 2017-06-12 and **MacKay v. Brant Community Healthcare System, 2017 CanLII 22872** (ON PEHT) 2017-04-03 — The Tribunal confirmed that in order for unionized employees to invoke section 22 of the *Act*, they must assert a contravention of the *Act* or a regulation. The Tribunal found that instead of asserting a violation, the Applicant here is complaining that the Union and Employer did not arrive at the same conclusion as the Applicant regarding the evaluation of a particular female job class.

Maitland Manor Health Care Centre v. Mattuci, 2015 CanLII 67576 (ON PEHT) 2015-10-19 — Review Officer issued an Order fourteen years after the Applicant's non-union proxy pay equity plan was posted, concluding that the plan failed to comply with the Act. The Tribunal found that this unexpected fourteen-year delay in between the posting and the Order is an abuse of process and it brings the system of pay equity into disrepute. The Tribunal also commented that despite

there being no time restriction of raising a complaint, the Act does require employees to raise concerns in a timely fashion.

Idem

(2) Any employee or group of employees, or the bargaining agent, if any, representing the employee or group of employees, may file a complaint with the Commission complaining with respect to a pay equity plan that applies to the employee or group of employees that,

(a) the plan is not being implemented according to its terms; or

(b) because of changed circumstances in the establishment, the plan is not appropriate for the female job class to which the employee or group of employees belongs.

Group of Employees v. Parry Sound District General Hospital, 1995 CanLII 7205 (ON PEHT) 1995-05-29 — The Applicants challenged the pay equity plan, arguing that it is contrary to the *Act*. The Tribunal found that the wording of section 22(2)(b) makes it clear that employees making a complaint under this section must establish violations in respect of their own job classes and their own pay equity rights or statuses. Employees cannot ask the Tribunal to re-open an approved plan based on alleged violations that does not impact their own rights or treatments.

Peterborough (City) v. Peterborough Professional Fire Fighters' Association, Local 519, 1991 CanLII 4448 (ON PEHT) 1991-03-21 — Counsel for the Applicant argued that the Tribunal does not have the authority to dismiss an application solely on the basis of written material and that the Applicant should be entitled to call evidence under the Act. The Tribunal ruled that it does have the authority to dismiss an application on the basis that it fails to present a *prima facie* case, according to section 25(1)(b) of the *Act*. The Tribunal defined that making out a *prima facie* case means that the Applicant has made out a case on the face of the written material it has filed.

Southern Ontario Newspaper Guild v. Maclean Hunter Limited, 1993 CanLII 5415 (ON PEHT) 1993-09-14 — The Applicant Employer brought the application with respect to Orders of a Review Officer. The Union argued that the Tribunal should dismiss the application on the basis of delay and abuse of process. The Tribunal refused to dismiss the application because it found that despite the Employer failing to promptly bring the application, the parties engaged in meaningful bargaining up to the point that the application was filed.

Combining of complaints

(3) The Hearings Tribunal may combine two or more complaints and deal with them in one proceeding if the complaints,

(a) are made against the same person and bring into question the same or a similar issue; or

(b) have questions of law or fact in common. R.S.O. 1990, c. P.7, s. 22.

Investigation of complaints

23. (1) Subject to subsection (2), when the Commission receives a complaint, a review officer shall investigate the complaint and may endeavour to effect a settlement.

Idem

(2) The review officer shall notify the parties and the Hearings Tribunal as soon as he or she decides that a settlement cannot be effected and that he or she will not be making an order under subsection 24 (3).

Decision to not deal with complaint

(3) A review officer may decide that a complaint should not be considered if the review officer is of the opinion that,

(a) the subject-matter of the complaint is trivial, frivolous, vexatious or made in bad faith; or

(b) the complaint is not within the jurisdiction of the Commission.

Hearing before Tribunal

(4) The review officer shall notify the complainant of his or her decision under subsection (3) and the complainant may request a hearing before the Hearings Tribunal with respect to the decision. R.S.O. 1990, c. P.7, s. 23.

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 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. R.S.O. 1990, c. P.7, s. 24(l); 1993, c. 4, s. 14(l); 1996, c. 1, Sch. J, s. 5(l).

Idem

(2) Where a review officer is of the opinion that a pay equity plan is not being implemented according to its terms, the review officer may order the employer to take such steps as are set out in the order to implement the plan. R.S.O. 1990, c. P.7, s. 24 (2).

Same

(2.1) If a review officer is of the opinion that because of changed circumstances a pay equity plan is no longer appropriate, the officer may order the employer to amend the plan in such manner as is set out in the order or to take such steps with a view to amending the plan as are set out in the order. 1993, c. 4, s. 14 (2).

Same

(3) If a review officer is of the opinion that there has been a contravention of this Act by an employer, employee or bargaining agent, the officer may order the employer, employee or bargaining agent to take such steps to comply with the Act as are set out in the order. 1993, c. 4, s. 14 (3).

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. R.S.O. 1990, c. P.7, s. 24 (4); 1993, c. 4, s. 14 (4); 1996, c. 1, Sched. J, s. 5 (2).

Humber College of Applied Arts and Technology (Re), 2000 CanLII 22417 (ON PEHT) 2000-06-20 — The Tribunal held that Review Officers have the jurisdiction to issue an order in the absence of a complaint or objection where they have formed an opinion there has been a contravention of the *Act*. A Review Officer stands in no better position than any Applicant complaining about a deemed approved plan.

Pay Equity Office v. Sexual Assault Support Centre of Ottawa, 2016 CanLII 28877 (ON PEHT) 2016-05-12 — The Applicant failed to make out *prima facie* case for varying or revoking orders as the Tribunal confirmed that a Review Officer has jurisdiction to issue an order in the absence of a complaint.

Reference to Tribunal

(5) Where an employer or a bargaining agent fails to comply with an order under this section, a review officer may refer the matter to the Hearings Tribunal. R.S.O. 1990, c. P.7, s. 24 (5).

Same

(5.1) The Pay Equity Office shall be deemed to be the applicant for a reference under subsection (5).

Same

(5.2) On a reference under subsection (5), the Hearings Tribunal shall not consider the merits of the order that is the subject of the reference.

Burden of proving compliance

(5.3) On a reference under subsection (5), the person against whom the order was made has the burden of proving that he, she or it has complied with the order. 1993, c. 4, s. 14 (5).

Hearing before Tribunal

(6) An employer or bargaining agent named in an order under this section may request a hearing before the Hearings Tribunal with respect to the order, and, where the

order was made following a complaint but the complaint has not been settled, the complainant may also request a hearing. R.S.O. 1990, c. P.7, s. 24 (6).

Canadian Union of Public Employees, Local 2553 v. Villa Colombo Homes for the Aged Inc., 1997 CanLII 12230 (ON PEHT) 1997-07-23 — The Tribunal commented that it has jurisdiction to hear and decide applications in two circumstances: (1) when pay equity plans are not timely posted and when a party is dissatisfied with the plan; and (2) where a provision of the *Act* has been contravened. In both circumstances, the Tribunal stated that it has jurisdiction to hear a matter only after a Review Officer has investigated and attempted to settle it. Furthermore, the Tribunal also found that an application before it must be a *prima facie* case, where the case must allege facts that, if proven, constitutes a violation of the *Act*.

Canadian Union of Public Employees, Local 1328 v Toronto Catholic District School Board, 2020 CanLII 90039 (ON PEHT) 2020-11-13 — The Applicant submitted that the Employer has failed to take steps to maintain pay equity. However, the Applicant requests that the Tribunal remits the matter back to Review Services for investigation rather than hearing the merits of the application. The Tribunal described that the purpose of the Act is to redress systemic gender discrimination in compensation. Therefore, it held that holding a hearing to merely consider whether remitting the issue back to Review Services rather than determining the merits of the application fails to serve the purpose of the Act. The Tribunal also commented that it hears matters before it on a *de novo* basis. This means that parties can present all its evidence and arguments to the Tribunal for consideration, but the findings or processes contained in the Review Officer's Order are not considered when the Tribunal arrives at its decision. The Tribunal dismissed the application and ordered that the applicant files a fresh application with Review Services.

Hearings

25. (1) The Hearings Tribunal shall hold a hearing,

(a) if a review officer is unable to effect a settlement of a complaint and has not made an order under subsection 24 (3);

(b) if a request for a hearing, as described in subsection 23 (4) or 24 (6), is received by the Hearings Tribunal; or

(c) if a review officer refers a matter to the Hearings Tribunal under subsection 24 (5). R.S.O. 1990, c. P.7, s. 25 (1).

Ontario Public Service Employees Union v. Ontario (Ministry [2009] O.P.E.D. No. 20 ONPayEquHearTrib - 2009 May 28 — Tribunal has repeatedly determined that it does not have jurisdiction over an application until a Review Officer has investigated and attempted to settle it (see by way of example: Haldimand-Norfolk (Regional Municipality), [1989] O.P.E.D. No. 1 (April 25, 1989) and the decisions referred to therein).

Ontario Nurses' Association v. St. Michael's Hospital, 1991 CanLII 4450 (ON PEHT) 1991-08-20 — The Union made an application to the Tribunal alleging that the Employer breached several provisions of the *Act*. The Employer argued that the Tribunal has no jurisdiction to hear the matter since a Review Officer did not notify the parties and the Tribunal that a settlement cannot be offered or that they will not be making an Order. The Tribunal held that it must find that a Review Officer was unable to affect a settlement before it can hear the matter and finding this is a decision for the Tribunal. The Tribunal must balance the efficacy of the Review Services process with the parties' right to have the matter determined with the Tribunal. In this case, the Tribunal decided that there was no reasonable opportunity for a settlement by a Review Officer and the application to the Tribunal was premature.

Beaton v Brant Haldimand Norfolk Catholic District School Board, 2013 CanLII 62327 (ON PEHT) 2013-09-18 — The Respondent brought a motion to dismiss the application since there is a six-year delay between the Applicant's application and the Review Officer's Notice of Decision. The Tribunal held that the onus is on the moving party to establish an abuse of process and show that it is not possible for the Tribunal to conduct a fair hearing as a result of the delay. The Tribunal also found that when deciding if there has been an abuse of process, it is important to consider the length of the delay and which party or entity has contributed to the delay.

Reference stayed

(1.1) A reference under subsection 24 (5) respecting an order shall not proceed if the Hearings Tribunal has confirmed, varied or revoked the order following a hearing requested under subsection 23 (4) or 24 (6). 1993, c. 4, s. 15 (1).

Orders

(2) The Hearings Tribunal shall decide the issue that is before it for a hearing and, without restricting the generality of the foregoing, the Hearings Tribunal,

Maitland Manor Health Care Centre v. Mattuci, 2015 CanLII 67576 (ON PEHT) 2015-10-19 — The Tribunal held that it may confirm, vary or revoke an RO Order under subsection (d) or may order a party to the proceeding take or refrain from

such action as is required in the circumstances under subsection (g) where the rights of the requesting party are found to have been substantially and irreparably prejudiced.

BICC Phillips Incorporated v. Group of Employees, 1997 CanLII 12223 (ON PEHT) 1997-10-07 — A Review Officer made and Order finding that the employer failed to maintain pay equity. The Employer sought to have the Order revoked by the Tribunal arguing that it could not maintain pay equity given the changed circumstances it its establishment. The Tribunal found that it can only revoke the Order if it is satisfied that the "job rates for the female job classes are at least equal to those of the male job classes identified under the plan as performing work of equal or comparable value to them and this consistently been the case from the date that pay equity was achieved under the plan." If this element is not satisfied, the Tribunal must find that there are any justifications under the Act for the differences in job rates.

(a) (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;

(b) where it finds that an employer has contravened subsection 9 (2) by dismissing, suspending or otherwise penalizing an employee, may order the employer to reinstate the employee, restore the employee's compensation to the same level as before the contravention and pay the employee the amount of all compensation lost because of the contravention;

(c) where it finds that an employer has contravened subsection 9 (1) by reducing compensation, or has failed to make an adjustment in accordance with subsection 21.2 (2), may order the employer to adjust the compensation of all employees affected to the rate to which they would have been entitled but for the reduction in compensation and to pay compensation equal to the amount lost because of the reduction;

(d) may confirm, vary or revoke orders of review officers;

(e) may, for the female job class that is the subject of the complaint or reference, order adjustments in compensation in order to achieve pay equity, where the Hearings Tribunal finds that there has been a contravention of subsection 7 (1);

(e.1) may determine whether a sale of a business has occurred;

(f) may order that the pay equity plan be revised in such manner as the Hearings Tribunal considers appropriate, where it finds that the plan is not appropriate for the female job class that is the subject of the complaint or reference because there has been a change of circumstances in the establishment; and

(g) may order a party to a proceeding to take such action or refrain from such action as in the opinion of the Hearings Tribunal is required in the circumstances. R.S.O. 1990, c. P.7, s. 25 (2); 1993, c. 4, s. 15 (2-4); 1996, c. 1, Sched. J, s. 6 (1).

Idem

(3) An order under clause (2) (a) may provide that a review officer may retain the services of such experts as the review officer considers necessary to prepare a pay equity plan. R.S.O. 1990, c. P.7, s. 25 (3).

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

(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;

(c) the review officer shall perform the duties of the employer and the bargaining agent, if any;

(d) when the review officer posts the plan in the workplace as subsection 14(4) or 15(6) provides, the employer, the bargaining agent (if the plan relates to a bargaining unit), or any employee or group of employees to whom the plan applies (if the plan does not relate to a bargaining unit) may file an objection with the Hearings Tribunal; and

(e) an objection under clause (d) shall be dealt with by the Hearings Tribunal under section 17. R.S.O. 1990, c. P.7, s. 25(4); 1993, c. 4, s. 15(5 7); 1996, s. 1, Sch. J, s. 6(2 4).

Same

(4.1) Despite subsection (4), section 16 does not apply with respect to a pay equity plan prepared under clause (2) (a). 1993, c. 4, s. 15 (8).

Retroactive compensation adjustments

(5) An order under clause (2) (e) may be retroactive to the day of the contravention of subsection 7 (1).

Idem

(6) An order under clause (2) (f) may provide that adjustments in compensation resulting from the revision of the pay equity plan be made retroactive to the day of the change in circumstances that gave rise to the order. R.S.O. 1990, c. P.7, s. 25 (5, 6).

Burden of proof

(7) In a hearing before the Hearings Tribunal, a person who is alleged to have contravened subsection 9 (2) has the burden of proving that he, she or it did not contravene the subsection. 1993, c. 4, s. 15 (9).

Settlements

25.1 (1) The parties to a matter in respect of which the Hearings Tribunal is required to hold a hearing may settle the matter in writing.

Binding effect

(2) A settlement under subsection (1) binds the parties to it.

Joan Mills v City of Hamilton, 2020 CanLII 62090 (ON PEHT) 2020-08-21 —The Applicant negotiated a settlement and signed a release with the previous employer, the Hamilton Entertainment and Conventions Facilities Inc (HECFI) resolving all matters related to her employment after she was terminated. The settlement required the Applicant to be paid a salary continuance, including any cost-of-living-adjustments ("COLA"). The Applicant became aware that she did not receive 1.9% of the COLA that she was entitled to. The Applicant argued that HECFI repudiated her contract by not paying this COLA, which relieves her of the release. Therefore, she filed a Statement of Claim alleging that her new employer, the City of Hamilton, is required to fulfil this pay equity obligation. The City of Hamilton argued that her position is included in HECFI's pay equity plan and not the City of Hamilton's. The Tribunal held that applicants must make an election between suing for damages and treating a settlement contract as repudiated and cannot elect both options. The Tribunal concluded that since HECFI paid 98.1% of the compensation guarantees by the settlement, the contract was not repudiated. Therefore, the Applicant was not relieved of the signed release and the City of Hamilton was not obligated to pay the Applicant.

Bargaining unit employees

(3) If a bargaining agent is a party to a settlement under subsection (1), the settlement also binds the employees who are represented by the bargaining agent.

Complaint

(4) A party to the settlement may file with the Hearings Tribunal a complaint that the settlement is not being complied with.

Hearing

(5) The Hearings Tribunal shall hold a hearing respecting the complaint.

Finding

(6) If the Hearings Tribunal finds that a party is not complying with the settlement, it may order the party to take such steps as it may specify to come into compliance or to rectify the failure to comply. 1993, c. 4, s. 16.

Offences and penalties

26. (1) Every person who contravenes or fails to comply with subsection 9 (2) or subsection 35 (5) or an order of the Hearings Tribunal 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 than $50,000, in any other case.

Parties

(2) If a corporation or bargaining agent contravenes or fails to comply with subsection 9 (2) or subsection 35 (5) or an order of the Hearings Tribunal, every officer, official or agent thereof who authorizes, permits or acquiesces in the contravention is a 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. R.S.O. 1990, c. P.7, s. 26 (1, 2).

Confidentiality

(2.1) Every person who uses information obtained under Part III.2 other than for the purposes of this Act 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 than $50,000 in any other case.

Parties

(2.2) If a corporation or bargaining agent contravenes subsection (2.1), 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. 1996, c. 1, Sched. J, s. 7.

Prosecution against bargaining agent

(3) A prosecution for an offence under this Act may be instituted against a bargaining agent in its own name.

Consent

(4) No prosecution for an offence under this Act shall be instituted except with the consent in writing of the Hearings Tribunal. R.S.O. 1990, c. P.7, s. 26 (3, 4).

PART V
ADMINISTRATION

Commission continued

27. (1) The commission known in English as the Pay Equity Commission of Ontario and in French as Commission de l’équité salariale de l’Ontario is continued. R.S.O. 1990, c. P.7, s. 27 (1).

Idem

(2) The Commission shall consist of the Pay Equity Hearings Tribunal and the Pay Equity Office. R.S.O. 1990, c. P.7, s. 27 (2).

Employees

(3) Such employees as are necessary for the proper conduct of the Commission's work may be appointed under Part III of the *Public Service of Ontario Act, 2006* to serve in the Pay Equity Office. R.S.O. 1990, c. P.7, s. 27 (3); 2006, c. 35, Sched. C, s. 107 (2).

Services of ministries, etc.

(4) The Commission shall, if appropriate, use the services and facilities of a ministry, board, commission or agency of the Government of Ontario. R.S.O. 1990, c. P.7, s. 27 (4).

Hearings Tribunal

28. (1) The Hearings Tribunal shall be composed of a presiding officer, one or more deputy presiding officers and as many other members equal in number representative of employers and employees respectively as the Lieutenant Governor in Council considers proper, all of whom shall be appointed by the Lieutenant Governor in Council. R.S.O. 1990, c. P.7, s. 28 (1).

Alternate presiding officer

(2) The Lieutenant Governor in Council shall designate one of the deputy presiding officers to be alternate presiding officer and the person so designated, in the absence of the presiding officer or if the presiding officer is unable to act, shall have all of the powers of the presiding officer. R.S.O. 1990, c. P.7, s. 28 (2).

Remuneration and expenses

(3) The members of the Hearings Tribunal who are not public servants employed under Part III of the *Public Service of Ontario Act, 2006* shall be paid such remuneration as may be fixed by the Lieutenant Governor in Council and, subject to the approval of Management Board of Cabinet, the reasonable expenses incurred by them in the course of their duties under this Act. R.S.O. 1990, c. P.7, s. 28 (3); 2006, c. 35, Sched. C, s. 107 (3).

Resignation of member

(4) Where a member of the Hearings Tribunal resigns, he or she may carry out and complete any duties or responsibilities and exercise any powers that he or she would have had if he or she had not ceased to be a member, in connection with any matter in respect of which there was any proceeding in which he or she participated as a member of the Hearings Tribunal. R.S.O. 1990, c. P.7, s. 28 (4).

Powers and duties of Tribunal

29. (1) The Hearings Tribunal may exercise such powers and shall perform such duties as are conferred or imposed upon it by this Act or the regulations. R.S.O. 1990, c. P.7, s. 29 (1).

Idem

(2) Without limiting the generality of subsection (1), the Hearings Tribunal,

(a) may decide in an order made under subsection 17 (1) or clause 25 (2) (a) that any job class is a female job class or a male job class;

(b) may make rules for the conduct and management of its affairs and for the practice and procedure to be observed in matters before it;

(c) may require that any person seeking a determination of any matter by the Hearings Tribunal shall give written notice, in such form and manner as the Hearings Tribunal specifies, to the persons that the Hearings Tribunal specifies;

(d) may, upon the request of the parties or on its own initiative, convene one or more pre-hearing conferences;

(e) may order a party to disclose such evidence and to produce such documents and other things as the Tribunal may specify before the commencement of a hearing;

(f) may authorize the presiding officer or a deputy presiding officer to exercise the powers of the Tribunal under clause (d) or (e); and

(g) may in a hearing admit such oral or written evidence as it, in its discretion, considers proper, whether admissible in a court of law or not. R.S.O. 1990, c. P.7, s. 29 (2); 1993, c. 4, s. 17.

Panels

(3) The presiding officer may establish panels of the Hearings Tribunal and it may sit in two or more panels simultaneously so long as a quorum of the Hearings Tribunal is present on each panel.

Quorum

(4) The presiding officer or a deputy presiding officer, one member representative of employers and one member representative of employees constitute a quorum and are sufficient for the exercise of all the jurisdiction and powers of the Hearings Tribunal.

Decisions

(5) The decision of the majority of the members of the Hearings Tribunal present and constituting a quorum is the decision of the Hearings Tribunal, but, if there is no majority, the decision of the presiding officer or deputy presiding officer governs. R.S.O. 1990, c. P.7, s. 29 (3-5).

Death or incapacity of member

29.1 (1) If, after a panel of the Hearings Tribunal begins holding a hearing respecting a matter but before it reaches a decision on all the issues before it, the presiding officer or deputy presiding officer dies or becomes incapacitated, another panel of the Tribunal shall decide whether,

(a) the hearing should continue but with the member who died or became incapacitated having been replaced by a presiding officer or deputy presiding officer; or

(b) a new hearing should be held before another panel.

Same

(2) If, after a panel of the Hearings Tribunal begins holding a hearing respecting a matter and before it reaches a decision on all the issues before it, a member who is a representative of employers or employees dies or becomes incapacitated, another panel of the Tribunal shall decide whether,

(a) the hearing should continue but with the member who died or became incapacitated having been replaced by another representative of employers or employees, as the case may be;

(b) the hearing should continue but with the members who are representative of employers and employees having been replaced by other representatives of employers and employees;

(c) the hearing should continue without representatives of either employers or employees; or

(d) a new hearing should be held before another panel.

Panels

(3) If it is decided that there should be a new hearing before another panel, that panel may include a member of the panel one of whose members died or became incapacitated.

Severable matters

(4) A panel that decides that there should be a new hearing under clause (1) (b) or (2) (d) may, if the previous panel had reached a decision respecting some of the issues before it, direct that any decision respecting those issues stands and that the new panel should consider only the issues that remain outstanding.

Hearing

(5) Before making a decision under subsection (1) or (2), the panel shall hold a hearing.

One-person quorum

(6) If it is decided that a hearing should continue under clause (2) (c), the presiding officer or deputy presiding officer, as the case may be, shall constitute a quorum and shall resume the hearing without the other member.

New panel

(7) If a new hearing is held under this section, subsections 29 (4) and (5) apply, with necessary modifications. 1993, c. 4, s. 18.

Exclusive jurisdiction

30. (1) The Hearings Tribunal has exclusive jurisdiction to exercise the powers conferred upon it by or under this Act and to determine all questions of fact or law that arise in any matter before it and the action or decision of the Hearings Tribunal thereon is final and conclusive for all purposes.

Ontario Secondary School Teachers' Federation v. Ottawa-Carleton District School Board, 2019 CanLII 94412 (ON PEHT) 2019-10-03 — The bargaining unit challenged a Notice of Decision issued by a Review Officer. The Review Officer decided that a new pay equity plan did not need to be bargained pursuant to section 14.1 and the union alleged a lack of procedural fairness. The Tribunal held that their jurisdiction only covers those issues that have been addressed by a Review Officer. Here, the Tribunal would only be able to review the issue of whether there has been changed circumstances that statutorily require a new pay equity plan under section 14.1. Until the Review Officer has declined to inquire into a complaint, an application filed out of concern that the Officer would not act on an application to review services is premature.

Reconsideration of decisions, etc.

(2) The Hearings Tribunal may at any time, if it considers it advisable to do so, reconsider a decision or order made by it and vary or revoke the decision or order. R.S.O. 1990, c. P.7, s. 30.

General Health Services Inc. v. Buchanan, 2004 CanLII 12359 (ON SCDC) 2004-04-06 — The Applicant sought Judicial Review of the decisions made by the Tribunal after the Tribunal denied the Applicant's request for reconsideration of the decisions. The Court found that section 30 of the *Act* has a strong privative clause, where the decisions of the Tribunal are final and conclusive. The Court held that the Tribunal's decision in this case was not patently unreasonable and therefore, dismissed the application for judicial review.

Ontario Nurses' Association v. Women's College Hospital, 1990 CanLII 3994 (ON PEHT) 1990-01-09 — The Applicant requested a reconsideration of the Tribunal's decision regarding an intervenor party status. The Tribunal held that its discretion to reconsider a decision should be exercised under compelling and extraordinary circumstances. The Tribunal found that it will consider the following factors when reconsidering decisions: whether there was evidence available at the time of the hearing but was not presented but is likely to make a substantial difference to the outcome of the matter; whether there have been any circumstantial changes since that decision such that the decision should not stand; and whether the decision is wrong in law.

Helen Henderson Care Centre v. Service Employees' International Union, Local 183, 2002 CanLII 49434 (ON PEHT) 2002-05-06 — The Tribunal denied the Applicant's request for reconsideration of the decision. The Tribunal held that it will not exercises its discretion to reconsider a decision to give a party the

opportunity to reargue its case. The Tribunal's decisions are intended to be final and that parties are not entitled a right to have the decisions reconsidered.

Testimony in civil proceedings

31. Except with the consent of the Hearings Tribunal, no member of the Hearings Tribunal, employee of the Commission or person whose services have been contracted for by the Commission shall be required to testify in any civil proceeding, in any proceeding before the Hearings Tribunal or in any proceeding before any other tribunal respecting information obtained in the discharge of their duties or while acting within the scope of their employment under this Act. R.S.O. 1990, c. P.7, s. 31.

Parties to proceedings

Definition

32. (0.1) In this section,

"representative" means, in respect of a proceeding under this Act, a person authorized under the *Law Society Act* to represent a person or persons in that proceeding. 2006, c. 21, Sched. C, s. 127 (1).

Parties to proceedings

(1) Where a hearing is held before the Hearings Tribunal or where a review officer investigates for the purposes of effecting a settlement of an objection or complaint, the parties to the proceeding are,

(a) the employer;

(b) the objector or complainant;

(c) the bargaining agent (if the pay equity plan relates to a bargaining unit) or the employees to whom the plan relates (if the plan does not relate to a bargaining unit); and

(d) any other persons entitled by law to be parties. R.S.O. 1990, c. P.7, s. 32 (1); 1993, c. 4, s. 19 (1).

Pay Equity Office v. Community Living Guelph Wellington, 2015 CanLII 16351 (ON PEHT) 2015-03-16 — In this case, the Tribunal received 22 responses from "interested parties" named in the Applicant's file. The Tribunal found that the interested parties only share a general interest in pay equity with the Applicant, but this shared interest does not grant them status as parties. The Tribunal held that in order to obtain party status, the interested parties must establish that they have a direct and substantial interest in the outcome of the proceeding. Furthermore, the Tribunal concluded that if interested parties want to participate as interveners, they must establish a factual basis that adds beyond what the Applicant wishes to present.

Same

(1.1) The Hearings Tribunal or a review officer may require an employer to post a notice relating to this Act in a workplace. 1993, c. 4, s. 19 (2).

Notice

(2) Where the Hearings Tribunal or a review officer requires that a notice be given by the employer to employees, the employer shall post the notice in the workplace and such notice shall be deemed to have been sufficiently given to all employees in the workplace when it is so posted. R.S.O. 1990, c. P.7, s. 32 (2).

Same

(2.1) If the Hearings Tribunal is satisfied that a notice required to be posted under subsection (1.1) has not been posted, the Tribunal may order a review officer to enter the workplace and post the notice. 1993, c. 4, s. 19 (2).

Representation

(3) An employee or a group of employees may appoint a representative to represent the employee or group of employees before the Hearings Tribunal or before a review officer. 2006, c. 21, Sched. C, s. 127 (2).

Idem

(4) Where an employee or group of employees advises the Hearings Tribunal or the Pay Equity Office in writing that the employee or group of employees wishes to remain anonymous, the representative of the employee or group of employees shall be the party to the proceeding before the Hearings Tribunal or review officer and not the employee or group of employees. R.S.O. 1990, c. P.7, s. 32 (4); 1993, c. 4, s. 19 (3); 2006, c. 21, Sched. C, s. 127 (3).

Group of Employees (Anonymous) v. Salvation Army, 1995 CanLII 7201 (ON PEHT) 1995-03-07 — One of the applications before the Tribunal was brought by a group of anonymous employees for the confirmation and compliance of an Order by a Review Officer. The Tribunal found that the counsel for an employee or group of employees, or the Pay Equity Advocate or Legal Service may be the representative of the employee(s) under section 32(4) for the purpose of ensuring that the employee(s) have standing to bring an application before the Tribunal. The Tribunal also stated that it should be reluctant to undermine employees' right to remain anonymous under the statute.

Idem

(5) Where subsection (4) applies, the representative, in the representative's name, may take all actions that an employee may take under this Act including the filing of objections under Part II and the filing of complaints under Part IV. R.S.O. 1990, c. P.7, s. 32 (5); 2006, c. 21, Sched. C, s. 127 (4).

Pay Equity Office

33. (1) The Pay Equity Office is responsible for the enforcement of this Act. R.S.O. 1990, c. P.7, s. 33 (1); 1993, c. 4, s. 20 (1).

Idem

(2) Without limiting the generality of subsection (1), the Pay Equity Office,

(a) may conduct research and produce papers concerning any aspect of pay equity and related subjects and make recommendations to the Minister in connection therewith;

(b) may conduct public education programs and provide information concerning any aspect of pay equity and related subjects;

(c) shall provide support services to the Hearings Tribunal;

(d) shall conduct such studies as the Minister requires and make reports and recommendations in relation thereto;

(e) shall conduct a study with respect to systemic gender discrimination in compensation for work performed, in sectors of the economy where employment has traditionally been predominantly female, by female job classes in establishments that have no appropriate male job classes for the purpose of comparison under section 5 and, within one year of the effective date, shall make reports and recommendations to the Minister in relation to redressing such discrimination; and

(f) shall prepare and make available to employers a form of notice to be posted under subsection 7.1 (1). R.S.O. 1990, c. P.7, s. 33 (2); 1993, c. 4, s. 20 (2).

Chief administrative officer

(3) The Lieutenant Governor in Council shall appoint a person to be the head of the Pay Equity Office and that person shall be the chief administrative officer of the Commission.

Minister may require studies, etc.

(4) The Minister may require the Pay Equity Office to conduct such studies related to pay equity as are set out in a request to the head of the Office and to make reports and recommendations in relation thereto.

Annual report

(5) Not later than the 31st day of March in each year, the head of the Pay Equity Office shall make an annual report to the Minister on the activities and affairs of the Commission and the Minister shall table the report before the Assembly if it is in session or, if not, at the next session. R.S.O. 1990, c. P.7, s. 33 (3-5).

Review officers

34. (1) The head of the Pay Equity Office shall designate one or more employees of the Office to be review officers.

Review officers, duties

(2) Review officers shall monitor the preparation and implementation of pay equity plans, shall investigate objections and complaints filed with the Commission, may attempt to effect settlements and shall take such other action as is set out in this Act or in an order of the Hearings Tribunal.

Powers

(3) A review officer, for the purpose of carrying out his or her duties,

(a) may enter any place at any reasonable time;

(b) may request the production for inspection of documents or things that may be relevant to the carrying out of the duties;

(c) upon giving a receipt therefor, may remove from a place documents or things produced pursuant to a request under clause (b) for the purpose of making copies or extracts and shall promptly return them to the person who produced them;

(d) may question a person on matters that are or may be relevant to the carrying out of the duties subject to the person's right to have counsel or some other representative present during the examination; and

(e) may provide in an order made under subsection 16 (2) or 24 (1) that any job class is a female job class or a male job class.

Procedure

(4) The *Statutory Powers Procedure Act* does not apply to a review officer and he or she is not required to hold a hearing before making an order authorized by this Act. R.S.O. 1990, c. P.7, s. 34.

Warrants

35. (1) A person shall not exercise a power of entry conferred by this Act to enter a place that is being used as a dwelling without the consent of the occupier except under the authority of a warrant issued under this section.

Warrant for search

(2) Where a justice of the peace is satisfied on evidence upon oath that there are in a place documents or things that there is reasonable ground to believe will afford evidence relevant to the carrying out of a review officer's duties under this Act, the justice of the peace may issue a warrant in the prescribed form authorizing the review officer named in the warrant to search the place for any such documents or things and to remove them for the purposes of making copies or extracts and they shall be returned promptly to the place from which they were removed.

Warrant for entry

(3) Where a justice of the peace is satisfied on evidence upon oath that there is reasonable ground to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered so that a review officer may carry out his or her

duties under this Act, the justice of the peace may issue a warrant in the prescribed form authorizing such entry by the review officer named in the warrant.

Execution and expiry of warrant

(4) A warrant issued under this section,

(a) shall specify the hours and days during which it may be executed; and

(b) shall name a date on which it expires, which date shall not be later than fifteen days after its issue.

Obstruction

(5) No person shall hinder, obstruct or interfere with a review officer in the execution of a warrant or otherwise impede a review officer in carrying out his or her duties under this Act.

Idem

(6) Subsection (5) is not contravened where a person refuses to produce documents or things, unless a warrant has been issued under subsection (2).

Admissibility of copies

(7) Copies of, or extracts from, documents and things removed from premises under this Act and certified as being true copies of, or extracts from, the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts. R.S.O. 1990, c. P.7, s. 35.

PART VI
REGULATIONS AND MISCELLANEOUS

Regulations

36. (1) The Lieutenant Governor in Council may make regulations,

(a) prescribing forms and notices and providing for their use;

(b) prescribing methods for determining the historical incumbency of a job class;

(c) prescribing criteria that shall be taken into account in deciding whether a job class is a female job class or a male job class;

(c.1) prescribing bodies for the purposes of clause 1.1 (1) (b);

(d) prescribing the method of valuing any form of compensation;

(e) prescribing criteria that shall be taken into account in determining whether work performed in two job classes is of equal or comparable value;

(f) prescribing criteria that shall be taken into account in deciding whether or not a difference in compensation between a female job class and a male job class is a difference that is permitted by subsection 8 (1) or (2);

(f.1) prescribing limitations on the requirement that an employer maintain pay equity for a female job class;

(g) permitting the Hearings Tribunal, on the application of an employer and in accordance with such criteria as may be prescribed in the regulations, to change the mandatory posting date and the dates for adjustments in compensation to dates later than those set out in Part II and to vary the minimum adjustments in compensation required by that Part, subject to such conditions as the Hearings Tribunal may impose in its order granting the application;

(g.1) prescribing one or more methods of comparing male and female job classes as proportional value methods of comparison;

(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);

(h) amending the Appendix to the Schedule and providing that the mandatory posting date for an entity included in the Appendix by amendment is the date set out in the regulations. R.S.O. 1990, c. P.7, s. 36; 1993, c. 4, s. 21 (1, 2); 1996, c. 1, Sched. J, s. 8; 2006, c. 35, Sched. C, s. 107 (4).

Retroactivity

(2) A regulation made under clause (1) (f.1) is, if it so provides, effective with reference to a period before it was filed. 1993, c. 4, s. 21 (3).

Review of Act

37. (1) Seven years after the effective date, the Lieutenant Governor in Council shall appoint a person who shall undertake a comprehensive review of this Act and its operation.

Report to Minister

(2) The person appointed under subsection (1) shall prepare a report on his or her findings and shall submit the report to the Minister.

Idem

(3) The Minister shall table the report before the Assembly if it is in session or, if not, at the next session. R.S.O. 1990, c. P.7, s. 37.

Crown bound

38. This Act binds the Crown in right of Ontario. R.S.O. 1990, c. P.7, s. 38.

Schedule

1. The public sector in Ontario consists of,

(a) 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;

(b) the corporation of every municipality in Ontario, every local board as defined by the *Municipal Affairs Act*, and every authority, board, commission, corporation, office or organization of persons whose members or officers are appointed or chosen by or under the authority of the council of the corporation of a municipality in Ontario;

(c) every board as defined in the *Education Act*, and every college, university or post-secondary school educational institution in Ontario the majority of the capital or annual operating funds of which are received from the Crown;

(d) 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* and every private hospital operated under the authority of a licence issued under the *Private Hospitals Act*;

(e) every corporation with share capital, at least 90 per cent of the issued shares of which are beneficially held by or for an employer or employers described in clauses (a) to (d), and every wholly-owned subsidiary thereof;

(f) every corporation without share capital, the majority of whose members or officers are members of, or are appointed or chosen by or under the authority of, an employer or employers described in clauses (a) to (d), and every wholly-owned subsidiary thereof;

(g) every board of health under the *Health Protection and Promotion Act*, and every board of health under an Act of the Legislature that establishes or continues a regional municipality;

(h) the Office of the Lieutenant Governor of Ontario, the Office of the Assembly, members of the Assembly, the Office of the Ombudsman and the Auditor General; and

(i) any authority, board, commission, corporation, office, person or organization of persons, or any class of authorities, boards, commissions, corporations, offices, persons or organizations of persons, set out in the Appendix to this Schedule or added to the Appendix by the regulations made under this Act.

2. Repealed: 2002, c. 17, Sched. C, s. 21.

Helen Henderson Care Centre v. Service Employees' International Union, Local 183, 2001 CanLII 28094 (ON PEHT) 2001-12-17 — The Applicants objected to an Order by the Review Officer declaring that the Employers in the retirement home and nursing home are seeking employers. This matter involved determining whether the Applicants are public sector employers, given that seeking employers must be public sector employers. The Tribunal found that section 1(i) of the Schedule has clear and unambiguous language about the entities that constitute the public sector. Considering this, the Employers were found to be seeking employers. The Tribunal also held that in deciding whether an entity is a public sector, only the provisions of Act needs to be considered, and not any other statutes.

Parkdale Focus Community Project v. Group of Employees, 2000 CanLII 22422 (ON PEHT) 2000-06-19 — The Applicant sought to revoke the Order of a Review Officer that declared it a public sector employer and thereby, a seeking employer. The Review Officer found that the Applicant is a public sector employer because it provides services relating to addiction, according to s.1(h.1) of the Appendix. The Applicant argued that it has never provided services relating to addiction and therefore is not a public sector agency. Tribunal found that the Applicant provided services aimed at preventing alcoholism and the abuse of alcohol and other drugs, which constitutes as services related to addiction. The Tribunal held that such services are funded by the Ministry of Health and falls under s.1(h.1) of the Appendix and the Applicants are considered to be public sector employers for the purpose of the Act.

Three Trilliums Community Place Inc. v. Confidential Employee, 2011 CanLII 43021 (ON PEHT) 2011-07-15 — The Applicant sought to rescind the 2003 Order that declared it a seeking employer, arguing that it is not a public sector employer. The Tribunal found that following the seeking employer declaration, the Applicant proceeded to prepare a pay equity plan using the proxy methodology. Therefore, the Tribunal decided that regardless of the whether the Applicant is a public or private sector employer, since it did not object to the Order, the pay equity plan is binding. The Tribunal ruled that rescinding the order does not rescind the contracts entered pursuant to it.

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

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 clause 193 (1) (a) of the *Child and Family Services Act* (R.S.O. 1990, c. C.11);

(b) provides residential care under the authority of a licence issued under clause 193 (1) (b) of the *Child and Family Services Act* (R.S.O. 1990, c. C.11) 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 day nursery or private-home day care agency licensed under the *Day Nurseries Act* (R.S.O. 1990, c. D.2);

(o) operates programs providing services to day nurseries funded under the *Ministry of Community and Social Services Act* (R.S.O. 1990, c. M.20) and day nursery services directly funded under the *Day Nurseries Act* (R.S.O. 1990, c. D.2);

(p) operates an elderly persons centre funded under the *Elderly Persons Centres Act* (R.S.O. 1990, c. E.4);

(q) provides services for young persons under Part IV of the *Child and Family Services Act* (R.S.O. 1990, c. C.11) or under an agreement with the Ministry of Community and Social Services under the *Ministry of Community and Social Services Act* (R.S.O. 1990, c. M.20);

(r) provides children's services funded and purchased by the Ministry of Community and Social Services under the *Child and Family Services Act* (R.S.O. 1990, c. C.11);

(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 an approved service as defined in the *Child and Family Services Act* (R.S.O. 1990, c. C.11).

2. Societies and approved agencies, as defined in the *Child and Family Services Act* (R.S.O. 1990, c. C.11).

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. The Ontario Mental Health Foundation.

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.

R.S.O. 1990, c. P.7, Sched.; O. Reg. 395/93; 1998, c. 18, Sched. G, s. 67; O. Reg. 81/99; 2001, c. 13, s. 23; O. Reg. 37/02; 2002, c. 17, Sched. C, s. 21; 2004, c. 17, s. 32; 2006, c. 4, s. 50 (2-5); 2006, c. 19, Sched. D, s. 17; 2006, c. 19, Sched. M, s. 6; 2007, c. 8, s. 223; 2008, c. 14, s. 57; 2009, c. 33, Sched. 18, s. 24.

GENERAL LEGAL ISSUES

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Addiction Services of Eastern Ontario v. Canadian Union of Public Employees (CUPE Local 1997-02), 2009 CanLII 31617 (ON PEHT) 2009-06-09

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Pay Equity Office v. Community Living Guelph Wellington, 2015 CanLII 16351 (ON PEHT) 2015-03-16

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Ontario Nurses' Association v. Central Community Care Access Centre, 2017 CanLII 22918 (ON PEHT) 2017-04-11

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Ottawa Public Library Board v. Ottawa-Carleton Public Employees Union, 2015 CanLII 6950 (ON PEHT) 2015-02-03

London Professional Fire Fighters Association v. Corporation of the City of London, 2013 CanLII 84255 (ON PEHT) 2013-12-19

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Ontario Nurses Association v. Haldimand-Norfolk (Regional Municipality) (No.3), 1989 CanLII 1454 (ON PEHT) 1989-06-30

Ontario Nurses' Association v. Middlesex (County), 1989 CanLII 1458 (ON PEHT) 1989-11-30

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Canadian Union of Public Employees, Local 1582 v. Metropolitan Toronto (Municipality), 1989 CanLII 1461 (ON PEHT) 1989-12-05

Canadian Union of Public Employees, Local 2175 v. Ontario (Community and Social Services), 1992 CanLII 4693 (ON PEHT) 1992-09-14

Ottawa Board of Education v. Ontario Secondary School Teachers' Federation, 1996 CanLII 7947 (ON PEHT) 1996-05-28

Hilton Works v. MacDonald, 1993 CanLII 5419 (ON PEHT) 1993-06-17 and **Hilton Works v. MacDonald, 1993 CanLII 5422** (ON PEHT) 1993-10-13

Thomson Newspapers Corporation v. Southern Ontario Newspaper Guild, 1993 CanLII 5427 (ON PEHT) 1993-07-28 — See Also Helen Henderson.

Appropriate Standard of Review / *prima facie* Case

Group of Employees v. Parry Sound District General Hospital, 1996 CanLII 8067 (ON PEHT) 1996-07-11

Ottawa Board of Education v. Ontario Secondary School Teachers' Federation, 1996 CanLII 7947 (ON PEHT) 1996-05-28

Group of Employees v. Parry Sound District General Hospital, 1995 CanLII 7205 (ON PEHT) 1995-05-29

MacKay v. Brant Community Healthcare System, 2017 CanLII 22872 (ON PEHT) 2017-04-03

MacKay et al v. Brant Community Healthcare System, 2017 37589 (ON PEHT) 2017-06-12

Pay Equity Office v. Sexual Assault Support Centre of Ottawa, 2016 CanLII 28877 (ON PEHT) 2016-05-12

Canadian Union of Public Employees, Local 87 v. Thunder Bay (City), 2004 CanLII 60158 (ON PEHT) 2004-07-30

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Clow v. Peterborough (City), 1996 CanLII 8060 (ON PEHT) 1996-06-25

Notre Dame of St. Agatha (Township) v. Tucker, 2001 CanLII 28099 (ON PEHT) 2001-02-26

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ONTARIO REGULATION 491/93

LIMITATIONS ON MAINTAINING PAY EQUITY

Consolidation Period: From June 11, 2012 to the e-Laws currency date.

Last amendment: O. Reg. 145/12.

- ***This is the English version of a bilingual regulation.***

1. The requirement to maintain pay equity for any female job class is limited in the manner prescribed in this Regulation where,

(a) a male job class has been used as the basis of a job-to-job comparison to a female job class in a pay equity plan; and

(b) the compensation for that male job class is increased as a result of a decision of an arbitrator, board of arbitration or other tribunal other than a decision that results from the failure of the parties to a collective agreement to reach an agreement in the course of bargaining for a collective agreement or the renewal of one. O. Reg. 491/93, s. 1.

Stevenson Memorial Hospital v. Ontario Public Service Employees Union, Local 360, 2000 CanLII 22419 (ON PEHT) 2000-02-24 — Tribunal stated caution should be exercised when using Regulation 491/93 as an aid to interpreting section 8(2).

2. Despite section 1, this Regulation does not apply so as to reduce the compensation paid to the members of the female job class. O. Reg. 491/93, s. 2.

3. (1) The employer may declare that the male job class for which the compensation has been increased shall no longer be used for comparison with the female job class in the pay equity plan. O.Reg. 491/93, s. 3 (1).

(2) The employer shall, within thirty days after the decision of the arbitrator, board or tribunal, give written notice of the declaration to the bargaining agent for the female job class and the employer and bargaining agent shall negotiate a new comparison for the female job class. O. Reg. 491/93, s. 3 (2).

(3) If the employer declares that a male job class shall no longer be used, the increase in compensation shall not apply to the female job class which had been compared to it. O. Reg. 491/93, s. 3 (3).

(4) Subsection (3) applies to all decisions of the arbitrator, board or tribunal even if the increases are retroactive. O. Reg. 491/93, s. 3 (4).

4. (1) Within ninety days after the employer gives written notice under subsection 3 (2), the parties shall negotiate the new comparison for the female job class using the job-to-job method of comparison or the proportional value method of comparison. O. Reg. 491/93, s. 4 (1).

(2) If the parties cannot agree on the new comparison within the ninety-day period, they shall use the job-to-job comparison method described in section 5 if applicable and, if not, the proportional value comparison method described in section 6. O. Reg. 491/93, s. 4 (2).

5. (1) If the parties in preparing the pay equity plan have previously identified a male job class as being of equal or comparable value to the female job class and the job rate for that male job class is the same as the rate for the former male job class before it was increased under clause 1 (b), that previously identified male job class shall be used for the purposes of a job-to-job comparison with the female job class. O. Reg. 491/93, s. 5 (1).

(2) If subsection (1) does not apply but there are male job classes previously identified in preparing the pay equity plan as being of equal or comparable value to the female job class, the previously identified male job class with the job rate nearest to but higher than the rate of the former male job class before it was increased shall be used for the job-to-job comparison with the female job class. O. Reg. 491/93, s. 5 (2).

6. If the parties are not able to make a comparison under section 5, they shall negotiate a comparison using the proportional value method of comparison and Part III.1 of the Act applies with necessary modification to the comparison. O. Reg. 491/93, s. 6.

7. The parties shall incorporate any changes made under this Regulation into their pay equity plan and the employer shall post a copy of the changes to the plan in accordance with subsections 1 (2) and (3) of the Act. O. Reg. 491/93, s. 7.

8. Omitted (provides for coming into force of provisions of this Regulation). O. Reg. 491/93, s. 8.

ONTARIO REGULATION 387/07

PRESCRIBED BODIES, CROWN AS EMPLOYER

Consolidation Period: From June 6, 2011 to the e-Laws currency date.

Last amendment: O. Reg. 208/11.

- ***This is the English version of a bilingual regulation.***

Prescribed bodies

1. The following bodies are prescribed for the purposes of clause 1.1 (1) (b) of the Act:

1. Colleges of applied arts and technology established under the *Ontario Colleges of Applied Arts and Technology Act, 2002*.
2. Each local health integration network as defined in section 2 of the *Local Health System Integration Act, 2006*.
3. Algonquin Forestry Authority.
4. Greater Toronto Transit Authority.
5. Greater Toronto Transportation Authority.
6. Liquor Control Board of Ontario.
7. McMichael Canadian Art Collection.
8. Metropolitan Toronto Convention Centre Corporation.
9. The Niagara Parks Commission.
10. Ontario Public Service Pension Board.
11. Revoked: O. Reg. 208/11, s. 1.
12. Ottawa Congress Centre.
13. Science North.
14. Workplace Safety and Insurance Appeals Tribunal.
15. Workplace Safety and Insurance Board. O. Reg. 387/07, s. 1; O. Reg. 208/11, s. 1.

2. Omitted (provides for coming into force of provisions of this Regulation). O. Reg. 387/07, s. 2.

CASE INDEX

Terms noted in this index are primarily tied to cases and case synopsis and not to the text of the Act.

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