

# PAY EQUITY LEGISLATION IN CANADA BY JURISDICTION<sup>1</sup>

Jurisdiction	Female/Male-Dominated Job Classes	Measuring the Value of Work		Factors that Justify a Difference in Pay	Ceiling on Wage Adjustments	Achievement of Pay Equity
		Criteria for Assessing Value	Calculating Compensation			
<b>Federal Jurisdiction</b> <i>(Canadian Human Rights Act, Equal Wages Guidelines, 1986 – applies to the Federal public sector and Federally-regulated undertakings)</i> <sup>2</sup>	(1) at least 70% of the group is of one sex, if the group has less than 100 members;  (2) at least 60% of the group is of one sex where the group has from 100 to 500 members; or  (3) at least 55% of the group is of one sex, where the group has more than 500 members. (Guidelines, s. 13)	The skill, effort and responsibility required in the performance of work and the conditions under which work is performed. <sup>3</sup> (Act, s. 11(2))	Wages. <sup>4</sup> (Act, ss. 11(1), (7))	Different performance ratings; seniority; a re-evaluation and downgrading of an employee's position; a rehabilitation assignment; a demotion procedure or a procedure of gradually reducing an employee's wages on the same grounds that justify a demotion procedure; a temporary training position; the existence of an internal labour shortage in a particular job classification; a reclassification of a position to a lower level; or regional rates of wages. Gender is not a reasonable factor justifying a difference in pay. <sup>5</sup> (Act, ss. 11(4), (5); Guidelines, s. 16)	No	No provisions
<b>Manitoba</b> <i>(Pay Equity Act – applies to certain portions of the public sector)</i> <sup>6</sup>	(1) A job class with at least 10 existing employees, of whom at least 70% are of the same sex; or  (2) Where the employer employs at least 500 employees, any other job class considered male or female-dominated by the agreement of the employer and the bargaining agents/employee representatives. <sup>7</sup> (s. 1)	The skill, effort and responsibility normally required in the performance of work and the conditions under which work is performed. (s. 6(1))	Wages (i.e., any form of remuneration payable or a benefit that an employer provides for work that an individual performs). (s. 1)	No provisions	Yes (s. 7(3))	Where female-dominated classes are assigned a schedule or grade of pay that is equal to the average or projected average schedule or grade of pay of male-dominated classes who are performing work of equal or comparable value. (s. 6(2))

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<p><b>New Brunswick</b> (<i>Pay Equity Act</i> – applies to certain parts of the Public Service)<sup>8</sup></p>	<p>(1) A job class with at least 10 existing employees, of whom</p> <ul style="list-style-type: none"> <li>at least 60% are women; or</li> <li>at least 70% are men; or</li> </ul> <p>(2) A job class that the employer and bargaining agents agree to treat as a male-dominated (or female dominated) job class, based on the historical incumbency of the job class or other similar criteria. (s. 1(1))</p>	<p>The skill, effort and responsibility normally required in the performance of work and the conditions under which the work is performed. (s. 1(2))</p>	<p>Pay (i.e., straight-time wages and salary, calculated on an hourly basis for the purposes of comparison). (ss. 1(1), 7(2))</p>	<p>A formal seniority system; a temporary employee training or development assignment; a merit pay plan; red circling;<sup>9</sup> a skills shortage. (s. 4)</p>	<p>Yes (s. 9(2))</p>	<p>Where female-dominated classes are assigned a maximum rate of pay that is equal to the average or projected average maximum rate of pay of male-dominated classes who are performing work of equal or comparable value. (s. 8)</p>
<p><b>Nova Scotia</b> (<i>Pay Equity Act</i>-applies to specified employees and employers of the public sector)<sup>10</sup></p>	<p>A group of at least 10 employees of the same employer in the same classification and at least 60% of the employees are of the same sex. (ss 3(1)(j),(m))</p>	<p>The skill, effort and responsibility normally required in the performance of work and the conditions under which work is performed. (ss. 13(5))</p>	<p>Pay (i.e., salary or compensation in respect of employment, excluding benefits such as the value of living, residential, clothing and automobile allowances, gratuities and overtime pay). (ss. 2, 3(1)(o))</p>	<p>A formal seniority system; a temporary employee training, development program or assignment; a merit pay plan; or a skills shortage. (s. 13(4))</p>	<p>No</p>	<p>Where a female-dominated class is assigned a pay rate that is at least equal to the only male-dominated class of the same employer that is performing work of equal or comparable value. Other provisions apply where there is more than one such male-dominated class or no such class at all.<sup>11</sup> (s. 17)</p>

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<p><b>Ontario</b> (<i>Pay Equity Act</i> - applies to the public sector and to all employers in the private sector who employ 10 or more employees)<sup>12</sup></p>	<p>(1) A job class in which 60% of the members are women or 70% of the members are men;</p> <p>(2) A job class that the employer and bargaining agent(s) (if any) for the employees agree is a female or male job class; or</p> <p>(3) A job class that a review officer designated under the Act<sup>13</sup> or the Pay Equity Hearings Tribunal established under the Act decides is a female or male job class.</p> <p>In deciding whether a job class is female or male, the historical incumbency of the job class and gender stereotypes of fields of work must be considered.<sup>14</sup> (ss. 1(1), (5))</p>	<p>The skill, effort and responsibility normally required in the performance of the work and the conditions under which it is normally performed. The fact that an employee's needs have been accommodated in accordance with the <i>Human Rights Code</i> cannot be considered in determining the value of work performed. (s. 5(1))</p>	<p>Compensation for work performed (i.e., all payments and benefits paid, provided to or for the benefit of a person who performs functions that entitle him/her to be paid a fixed or ascertainable amount). (s. 1(1), 4)</p>	<p>A formal seniority system; a temporary employee training or development assignment; a merit compensation plan; red-circling; a skills shortage; or, after pay equity has been achieved in a job class, a difference in bargaining strength. (ss. 8(1), (2))</p>	<p>Yes (s. 13(6))</p>	<p>When every female job class in the establishment has been compared to a job class or job classes under the applicable method of comparison (i.e. job-to-job,<sup>15</sup> proportional<sup>16</sup> or proxy<sup>17</sup>) and any adjustment to the job rate of each female class that is indicated by the comparison has been made.<sup>18</sup> (s. 5.1)</p>
<p><b>Prince Edward Island</b> (<i>Pay Equity Act</i> – applies to the public sector)<sup>19</sup></p>	<p>60% of the class is of one sex.</p> <p>In determining if a class is female or male-dominated, the historical incumbency of the class and gender stereotypes of fields of work must be considered. (ss. 1(g), 1(h), 2(4))</p>	<p>The skill, effort and responsibility normally required in the performance of work and the conditions under which work is performed. (s. 7(1))</p>	<p>Wages (i.e., all forms of pay and benefits paid or provided, directly or indirectly, to or for the benefit of an employee, including relevant salary scales). (ss. 1(j), 1(m), 2)</p>	<p>A formal performance appraisal system; a formal seniority system; or a skills shortage.<sup>20</sup> (s. 8)</p>	<p>Yes (s. 11(1))</p>	<p>Where female-dominated classes are assigned a schedule or range of pay equal to the average or projected average schedule or range of pay of male-dominated classes performing work of equal or comparable value. (s. 7(2))</p>

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<p><b>Quebec</b> (<i>Pay Equity Act</i> applies to every employer in the public<sup>21</sup> or private sector whose enterprise employs at least 10<sup>22</sup> employees<sup>23</sup>)</p>	<p>(1) at least 60% of the positions in the class are held by employees of the same sex;</p> <p>(2) the difference between the rate of representation of women or men in the job class and their rate of representation in the total workforce of the employer is considered significant;</p> <p>(3) the historical incumbency of the job class in the enterprise indicates that it is predominantly female or male; or</p> <p>(4) due to gender stereotypes of fields of work, the job class is commonly associated with women or men.</p> <p>For the purpose of identifying predominantly female and predominantly male job classes, positions held by employees having the following common characteristics must be grouped together: similar duties or responsibilities; similar required qualifications; and the same remuneration (i.e. the same rate or scale of compensation).<sup>24</sup> (ss. 54, 55)</p>	<p>Required qualifications; responsibilities; effort required; and the conditions under which work is performed. (s. 57)</p>	<p>Remuneration (i.e. rate or scale of compensation).</p> <p>Remuneration also includes flexible pay and/or benefits having pecuniary value where these are not equally available to all the job classes that are the subject of the comparison.<sup>25</sup></p>	<p>Seniority; an assignment of fixed duration; geographical region of work; a skills shortage; red circling<sup>26</sup> or the non-enjoyment of benefits that have pecuniary value due to the temporary, casual or seasonal nature of a position. (s. 67)</p>	<p>No</p>	<p>No provisions</p>

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## Notes:

<sup>1</sup> There is no pay equity legislation in Alberta, British Columbia, Newfoundland and Labrador, the Northwest Territories, Nunavut, Saskatchewan or Yukon; however, British Columbia and Newfoundland and Labrador have implemented administrative pay equity programs for their public service employees.

<sup>2</sup> In addition, some administrative and investigatory provisions of the *Canada Labour Code* apply to the determination of whether a discriminatory practice has been engaged in contrary to section 11 (i.e. the equal pay/pay equity provision) of the *Canadian Human Rights Act*. Furthermore, an inspector designated under the Code can notify, or file a complaint with, the Canadian Human Rights Commission where he/she has reasonable grounds to believe that an employer is or has engaged in such a discriminatory practice (ss. 182(1), (2) of the Code).

<sup>3</sup> The *Equal Wages Guidelines, 1986 (Guidelines)* prescribe the factors that must be considered in assessing the skill, effort and responsibility required and the working conditions under which work is performed. The *Guidelines* provide that intellectual and physical qualifications acquired by experience, training, education or natural ability must be considered in assessing the skill required in the performance of work; however, the methods by which employees acquired these qualifications cannot be considered in assessing the skill of different employees. Intellectual and physical effort must be considered (and can be compared) in assessing the effort required. Moreover, the extent of responsibility by the employee for technical, financial and human resources must be considered in assessing the responsibility that is required. Finally, in assessing the conditions under which work is performed, the *Guidelines* require the consideration of the physical and psychological work environments, including noise, temperature, isolation, physical danger, health hazards and stress. The requirement to work overtime or to work shifts cannot be considered in assessing working conditions where a wage in excess of the basic wage is paid in respect of that time (ss. 3 to 8). Moreover, where an employer relies on a system in assessing the value of work performed by employees employed in the same establishment, that system must be used in the investigation of any complaint alleging a difference in wages, provided that (1) it operates without any sexual bias, (2) is capable of measuring the relative value of work of all jobs in the establishment and (3) assesses the skill, effort, responsibility and working conditions in accordance with the *Guidelines* (s. 9).

<sup>4</sup> “Wages” is defined as any form of remuneration payable to an individual for the performance of work, including the following: salaries, commissions, vacation pay, dismissal wages and bonuses; reasonable value for board, rent, housing and lodging; payments in kind; employer contributions to pension funds, pension plans, long-term disability plans and all forms of health insurance plans; and any other advantage received directly or indirectly from the employer (s. 11(7) of the Act).

<sup>5</sup> To justify a difference in wages on the basis of one of these factors, the employer is required to establish that the factor in question is applied consistently and equitably in calculating and paying the wages of all male and female employees employed in the same establishment who are performing work of equal value. Where the employer seeks to justify a difference in pay on the grounds of the existence of an internal labour shortage in a particular job classification or on the grounds of the reclassification of a position to a lower level, he/she must also meet additional requirements (*Guidelines*, ss. 17, 18, 19).

<sup>6</sup> Manitoba’s *Pay Equity Act* applies to the civil service, the government of Manitoba, all government entities and specified external agencies (e.g., some health care facilities and post-secondary institutions). However, public schools, municipalities and local government districts are excluded, as are communities under the jurisdiction of the *Northern Affairs Act*. Moreover, the following employees of the civil service are excluded from the application of the *Pay Equity Act*: persons employed to make or conduct a temporary and special inquiry, investigation or examination, on behalf of the Legislative Assembly or the government; patients, residents or inmates in a provincial institution who help in the work of that institution; and any person paid by fees, hired on a special contractual basis or as an independent contractor (ss. 1, 3).

<sup>7</sup> An “employee representative” is a person who is elected, in accordance with the regulations, by persons employed by a government entity or external agency who are employees within the meaning of the *Labour Relations Act* but have no bargaining agent (s. 1)

<sup>8</sup> New Brunswick’s *Pay Equity Act* applies to the parts of the public service listed in Part I of Schedule I to the *Public Service Labour Relations Act*, including government departments, the Civil Service Commission and other specified commissions and corporations (ss. 1(1) and 3 of the *Pay Equity Act*).

<sup>9</sup> Red circling is the personnel practice in which, based on a gender-neutral process, the value of a position is downgraded and the incumbent employee’s pay is frozen or his/her increases in pay are curtailed until the pay for the downgraded position is equal to or greater than that which is payable to him/her.

<sup>10</sup> The *Pay Equity Act* of Nova Scotia applies to employees of the civil service, corrections employees, highway workers, and employees of the Victoria General Hospital and Nova Scotia Hospital who are not part of the civil service; hospitals, school boards and specified Crown corporations; and universities, municipalities and municipal enterprises (s. 4).

<sup>11</sup> The *Pay Equity Act* provides that pay equity is achieved for a female-dominated class where its pay rate is equal to the lowest pay rate of the male-dominated classes of the same employer performing work of equal or comparable value, where there are at least two such male-dominated classes. Where there are no such male-dominated classes, pay equity is achieved when the pay rate of the female-dominated class is equal to the pay rate of the male-dominated class of the same employer with a previously higher pay rate but performing work of lower value (or, where there are at least two such male-dominated classes, to the class with the highest pay rate) (s. 17). It should also be noted that when an employee receives a pay equity adjustment in accordance with the Act, his/her employer must also consider whether an adjustment must be made to the pay of any person who is subordinate to him/her based on the duties and responsibilities of the subordinate in relation to those of the employee (s. 16).

<sup>12</sup> The *Pay Equity Act* applies to a private sector employer, if, at any time on or after January 1, 1988, he/she employed 10 or more employees, regardless of whether the number of his/her employees was subsequently reduced to less than 10 (s. 3(2)).

<sup>13</sup> The duties of a review officer include monitoring the preparation and implementation of pay equity plans and investigating objections and complaints filed with the Pay Equity Commission established under the Act (ss. 1(1), 34).

<sup>14</sup> Note that an employer can treat job classes that are arranged in groups as one female job class if at least 60% of the employees in the group are female. An employer can also, by agreement with the bargaining agents (if any), treat job classes that are arranged in a group as one female job class. A review officer or the Hearings Tribunal can also determine that job classes arranged in a group of jobs should be treated as one female job class. Furthermore, a position that an employer designates as “casual” can be excluded in determining whether a job class is male or female and does not need to be included in compensation adjustments under a pay equity plan, unless the position falls into one of the following categories: the work is performed for at least one-third of the normal work period that applies to similar full-time work; the work is performed on a seasonal basis in the same position for the employer; or the work is performed on a regular and continuing basis for less than one-third of the normal work period that applies to similar full-time work (ss. 6(6)-(8), 8(4)).

<sup>15</sup> Under the job-to-job method of comparison, each female job class is compared with a male job class of equal or comparable value (s. 6(1)).

<sup>16</sup> The proportional method of comparison requires an employer to look at the relationship between the value of the work performed and the pay received by male job classes and apply the same principles and practices to setting the appropriate pay for female job classes. An employer must use the proportional method of comparison where it is not possible to compare a female job class with a male job class in the same establishment using the job-to-job method of comparison. Even if the job-to-job method is possible, an employer can use the proportional method; however, the compensation adjustment made for members of the female job class cannot be less than that which would be indicated by the job-to-job method (ss. 21.2, 21.3).

<sup>17</sup> A public sector employer can apply to the Pay Equity Office established under the Act for an order that he/she is a “seeking employer”, and therefore eligible to use the proxy method of comparison, where a female job class cannot be compared with a male job class using either the job-to-job or proportional methods of comparison. The seeking employer must select the proxy establishment to be used for the purposes of comparison, in accordance with the *Proxy Method of Comparison Regulations*. Under the proxy method of comparison, unless the employer and bargaining agent agree otherwise, a “key” female job class in a bargaining unit of the employer must be compared to the female job class or group of female job classes in a proxy establishment whose duties and responsibilities are similar to those of the key class. (A “key” female job class is the female job class that has the greatest number of employees and any other female job class whose duties are essential to the delivery of service that the employer provides). The comparison must be carried out as if the female job classes in the proxy establishment were male job classes of the seeking employer. Finally, the other female job classes of the seeking employer must be compared with the key female job classes of the seeking employer as if the latter were male job classes. Comparisons must be carried out using the proportional method of comparison. To facilitate the comparison process, the Act provides that a seeking employer can request and obtain certain information from a potential proxy employer (e.g. information about the duties and responsibilities of each female job class whose duties and responsibilities are similar to those of the seeking employer) (ss. 21.11 to 21.15).

<sup>18</sup> *Job-to-Job Method*: pay equity is achieved under the job-to-job method when the job rate for a female job class is at least equal to that of a male class in the same establishment performing work of equal or comparable value. Where there is no male job class with which to make a comparison, pay equity is achieved when the job rate for the female job class is at least equal to the job rate of a male job class in the same establishment that performs work of lower value than the female job class but, at the time of comparison, had a higher job rate than the female job class. Where more than one comparison is possible between the female job class 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 with the lowest job rate (if the work performed in both job classes is of equal or comparable value) or with the highest job rate (if the work performed in the male job class is of less value) (s. 6). *Proportional Method*: pay equity is achieved under the proportional method of comparison when the job rate for the female job class bears the same relationship to the value of work performed in the class as the job rate for the representative male job class(es) bears to the value of work performed in those class(es) (s. 21.3). *Proxy Method*: pay equity is achieved in an establishment of a “seeking” employer when the job rate for its key female job class bears the same relationship to the value of work performed as the job rate for the female job classes in the proxy establishment. Furthermore, pay equity is achieved for the remaining female job classes of the seeking employer where the job rate for those classes bears the same relationship to the value of the work performed as the job rate for the key female job class of the seeking employer (s. 21.15(1)).

<sup>19</sup> Under the *Pay Equity Act*, the “public sector” includes the government, specified agencies of the government, the University of Prince Edward Island and Holland College (s. 1(k)).

<sup>20</sup> Where an employer seeks to justify a difference in wages on the basis of a skills shortage, he/she must establish to the satisfaction of the Commissioner of Pay Equity appointed under the Act that similar differences exist between the employees in the male-dominated class affected by the shortage and another male-dominated class performing work of equal or comparative value (s. 8(2)).

<sup>21</sup> Under the *Pay Equity Act*, the public sector is composed of the “public service enterprise” (which includes government departments and bodies and persons other than the National Assembly whose personnel is appointed in accordance with the *Public Service Act*) and the “parapublic sector enterprise” (which includes colleges, school boards and institutions to which the *Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors* applies).

<sup>22</sup> Section 7 of the Act provides that a person remains subject to the obligations that the Act imposes on him/her, regardless of a change in the number of employees.

<sup>23</sup> The following persons are excluded from coverage: an independent operator who is not considered to be an employee under the Act; a ‘co-op’ student; a student employed during his/her vacation period; a trainee undergoing professional training; a person engaging in an activity under income-support/employment assistance legislation; a senior management officer; a police officer; or a firefighter (ss. 8-9).

<sup>24</sup> Under the *Regulation respecting pay equity in enterprises where there are no predominantly male job classes*, if an enterprise does not have predominantly male job classes, the job classes of “foreman” or “maintenance worker” (as described in the *Regulation*) must be used for the purposes of identifying predominantly male job classes and determining their typical hourly rates of pay.

<sup>25</sup> Flexible pay includes merit and performance pay and income from gain-sharing schemes. The terms “benefits having pecuniary value” are defined under the Act to include the following: indemnities; bonuses; the various forms of paid leave including sick leave, family-related and parental leave, vacation and holidays, rest and meal periods and other benefits of that nature; retirement and group protection plans including pension funds, health and disability insurance and other group plans of that nature; non-salary benefits including the supply and maintenance of tools and uniforms or other clothing (except where required under the *Occupational Health and Safety Act* or where the uniforms or other clothing are a job requirement), parking privileges, meal allowances, the supply of vehicles, payment of professional dues, paid educational leave, reimbursement of tuition fees, low-interest loans and other benefits of that nature (ss. 65, 66).

<sup>26</sup> The Act defines “red circling” as a situation in which a person’s compensation is maintained, following a reclassification, demotion or special arrangement for the handicapped, at its former level until the compensation in the person’s new job class attains that level (s. 67(5)).

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