

EQUAL PAY

THE PAST AND PRESENT

Equal pay for work of equal value is not a new idea. It has been discussed internationally for many decades. The International Labour Organization (ILO) adopted Convention 100 on Equal Remuneration in 1951. Canada ratified Convention 100 in 1972. Other ILO Conventions and Recommendations also address this issue, as well as a number of UN international instruments, such as the UN Convention on the Elimination of All Forms of Discrimination Against Women.

Studies have shown that in the early to mid-80's, women continued to be paid on average about two-thirds of men's wages. Considerable empirical research indicates that the existing wage-gap can be attributed to essentially two factors: a segregated labour force and the historical undervaluation of women's work.¹

“According to the 1996 Survey of Consumer Finances, women working full-time, full-year earned 73 cents for every dollar earned over the year by male full-time, full-year workers. This earnings ratio (which includes the earnings of the self-employed) has followed an upward trend since the data were first collected in 1967. That year, women earned 58 cents to each dollar earned by men. Most of the advance in the ratio since the mid-1980s has been due to the significant gains in average female earnings, which occurred while average male earnings changed relatively little.”²

1 - See, for example: SHAPIRO, C.M. and STELCNER, M., "The Persistence of the Male-Female Earnings Gap in Canada, 1970-1980: The Impact of Equal Pay Laws and Language Policies", in **Canadian Public Policy**, Vol. XIII, No. 4, December, 1987, pp. 462-475; Robb, R.E., "Equal Pay for Work of Equal Value: Issues and Policies", in **Canadian Public Policy**, Vol. XIII, No. 4, December, 1987, pp. 445-461; Armstrong, Pat and Hugh Armstrong, **The Double Ghetto**, Toronto, McClelland and Stewart, 1978.

2 - From Labour Force Update. A New Perspective on Wages. Summer 1998. Vol. 2, No. 3. Page 9. Statistics Canada. 71-005-XPB

Statistics Canada's Labour Force Update, A New Perspective on Wages - Summer 1998 indicates that in 1997, "female employees earned an average of \$13.83 per hour or 81 cents for every dollar earned in an hour by men (\$17.10)." The Statistics Canada publication also shows that "women with graduate degrees made 85 cents [per hour] for every dollar earned by men with the same level of education, compared to 71 cents for the least educated."³ These numbers appear to indicate that the difference in male and female wages is more significant over a longer period than if it is calculated on a hourly basis. This may be because circumstances that traditionally affect women's employment (such as family and work patterns) have a greater impact over the longer term.

Women are concentrated in lower-level and lower-paying jobs where there is low unionisation (with the exception of the public service) mainly in sales, service, clerical and health-related fields. While there has been some increase in female participation in fields such as administration, natural sciences, engineering, and the social sciences, women have been slow to enter the traditionally male-dominated fields, both in formal education and in government-sponsored training programs.

Despite changes in labour force participation, marital and family status, training, and education, the effects of the historical undervaluation of work done by women are evident today in a persistent wage gap between women and men. Experts evaluate that a portion of the wage-gap could be corrected through equality in remuneration laws and part of the remainder, through employment equity programs that combat job segregation and encourage women to consider non-traditional employment, and other policies and programs that address other contributing factors such as interrupted work due to child bearing.

CONCEPTS

It is necessary to distinguish between the following concepts: a) equal pay for equal work, b) equal pay for work of equal value, and c) pay equity.

- a) **Equal pay for equal work** addresses the more overt form of discrimination in the payment of wages on the basis of sex. Equal pay for equal work involves direct comparison of jobs occupied by opposite sexes where they are the same or substantially the same

3 - From Labour Force Update. A New Perspective on Wages. Summer 1998. Vol. 2, No. 3. Page 3. Statistics Canada. 71-005-XPB

- b) **Equal pay for work of equal value** provides for the reduction of the wage gap by comparing male and female jobs of a different nature. For instance, the employment of a nurse and that of a parking lot attendant can be compared using job evaluation techniques.
- c) The concept of **pay equity** refers to legislated programs that aim to achieve equity in pay in a predictable and organized fashion. Pay equity laws are pro-active in that they do not rely on a complaint being filed in order to engage. These laws provide specific targets and deadlines, and use the collective bargaining process to get the parties to agree on a job evaluation system and on pay adjustments. As is the case for equal pay for work of equal value, pay equity allows for the comparison of male and female jobs of a different nature.

In comparing occupations, four criteria are normally used: 1) Skill; 2) Effort; 3) Responsibility, and 4) Working conditions. These criteria are used in pay equity legislation in all six provinces that have enacted such legislation, and are used regularly in human rights and labour standards legislation. Other criteria for comparison include duties, services, education, and experience. Some laws do not mention criteria for comparison.

OVERVIEW OF THE SITUATION IN CANADA

In Canada, the provisions on equality of pay are found in three types of legislation: human rights legislation, employment standards legislation, and pay equity legislation. Canada's thirteen jurisdictions provide for some form of equality in pay in their human rights legislation, although the legislation may only refer to job discrimination, rather than specifically to equality in wages. In six jurisdictions, there are equality of pay provisions under the employment standards laws, and six have pay equity laws. The majority of jurisdictions have more than one of the three types of legislation. This can be attributed to the fact that these laws have an impact on different segments of the labour market, such as the size of the employer, private and/or the public sector, or that they address more than wage discrimination (i.e., human rights legislation), or that they are concerned with systemic discrimination, rather than individual circumstances.

CANADA'S LEGISLATION

Human rights legislation and **employment standards legislation** tend to address the most overt form of discrimination, that is, the difference in wages between men and women who hold similar employment. Generally, these laws deal with individual circumstances. However, some of the laws specifically allow group complaints. These laws normally rely on complaints being filed by individuals who are victims of discrimination (or, in some cases, by human rights commissions) in order to trigger the redress mechanism. A few human rights laws, including the federal legislation, address differences in pay for work of equal value.

The *Canadian Human Rights Act* and the *Equal Wages Guidelines, 1986* include provisions on the composition of occupational groups who can collectively file a complaint. These groups must be predominantly of one sex. For instance, according to the Guidelines, an occupational group with less than 100 members needs to have at least 70% of its members of the same sex, 60% for a group of 100 to 500 members, and, 55% if the group has more than 500 members. Comparison is made with an occupational group predominantly of the other sex. The *Canadian Human Rights Act* applies to the federal public service and the federally-regulated private sector (such as banking, telecommunications and inter-provincial transport).

Pay equity legislation provides a systematic and mandatory approach to eliminate systemic sex discrimination in pay in female-dominated occupational classes, compared to male-dominated occupational classes. Of the six jurisdictions with pay equity legislation, Ontario's and Quebec's apply to both the private and public sectors. In the four other jurisdictions, Manitoba, New Brunswick, Nova Scotia and Prince Edward Island, it applies only to the public sector. Two provinces, Newfoundland and British Columbia, have adopted administrative policies which aim to achieve pay equity in the public sector in much the same way legislation would.

Employers that come under the purview of these laws must achieve pay equity in their establishment within the prescribed time periods. Where there is a union, it participates actively in the process. Employers and unions are obligated to follow prescribed steps to evaluate the employment of predominantly female groups versus the employment of predominantly male groups.

Usually, an occupational group will be considered to be predominantly female, or male, when 60% of its members are women or men, as the case may be. In some legislation, other factors, such as gender stereotyping, may also be considered. The laws also provide a schedule of payment of wage adjustments in order to achieve pay equity. Often, the schedule provides a yearly wage adjustment of the order of 1% of the employer's payroll, until pay equity is achieved, or to a maximum period of four years.

All the laws provide for instances where differences in pay are not considered discriminatory. These instances often include differences in pay by reason of a merit system, seniority, pay based on quantity or quality of production, some assignments, or simply put, any factor other than sex.

For additional information on the federal, provincial or territorial legislation, please review the attached tables.

Labour Law Analysis
Strategic Policy and Partnerships
Labour Branch
Human Resources Development Canada
November 1998

Jurisdiction	Legislation	Basis for Measuring Equality of Pay	Basis for the Comparison of Work
Federal	<p><i>Canadian Human Rights Act</i> and the <i>Equal Wages Guidelines, 1986</i> (applies to federally-regulated undertakings and the federal public service).</p>	Wages (any form of remuneration). Act s. 11(1), (7)	Equal value - composite of skill, effort, responsibility and working conditions. Act s. 11(1), (2)
<p><u>Note regarding the <i>Canada Labour Code</i></u> The <i>Canada Labour Code</i> applies to federally regulated undertakings. By virtue of section 182(1) of the <i>Canada Labour Code</i>, investigative and administrative provisions of the Code are applicable for the purpose of ascertaining whether a discriminatory practice under section 11 of the <i>Canadian Human Rights Act</i> has been engaged in. Section 182(2) extends to <i>Canada Labour Code</i> inspectors the right to notify, or file a complaint with, the Canadian Human Rights Commission in regard to possible discriminatory practices.</p>			
Alberta	<p><i>Human Rights, Citizenship and Multiculturalism Act</i> (applies to the private and public sectors).</p>	Rate of pay. Any term or condition of employment. ss. 6(1), 7	Same or substantially similar work. s. 6(1)
British Columbia	<p><i>Human Rights Code</i> (applies to the private and public sectors).</p>	Rate of pay. s. 12(1)	Similar or substantially similar work. Based on the concept of skill, effort and responsibility. s. 12(1), (2)
Manitoba	<p><i>Employment Standards Act, Part IV</i> (applies to the private and public sectors).</p>	Wages. s. 45(1)	Same or substantially the same work, if job, duties, responsibilities or services are the same or substantially the same in kind or quality and substantially equal in amount. s. 45(1), (2)

Jurisdiction	Legislation	Basis for Measuring Equality of Pay	Basis for the Comparison of Work
Manitoba (Cont'd)	<p><i>Human Rights Code - Part II</i> (applies to the private and public sectors).</p> <p><i>Pay Equity Act</i> (applies to the public sector).</p>	<p>Any form of remuneration. s. 14(1), (2)</p> <p>Wages (i.e., any form of remuneration or benefit for work performed) s. 1</p>	<p>Not specified.</p> <p>Work of equal or comparable value - composite of skill, effort, responsibility and working conditions. s. 1, 6</p>
New Brunswick	<p><i>Human Rights Act</i> - general discrimination (applies to the private and public sectors).</p> <p><i>Employment Standards Act</i> (applies to the private and public sectors).</p> <p><i>Pay Equity Act</i> (applies to Part I of the Public Service, comprised of all departments and most governmental agencies).</p>	<p>Employment or any term or condition of employment. s. 3(1)</p> <p>Rate of pay. s. 37.1</p> <p>Wages and salary. s. 1</p>	<p>Not specified.</p> <p>Work substantially the same requiring substantially the same skill, effort and responsibility, under similar working conditions. s. 37.1(1)(b), (c), (d)</p> <p>Work of equal or comparable value, based on the composite of skill, effort, responsibility and working conditions. s. 1(1), (2)</p>

Jurisdiction	Legislation	Basis for Measuring Equality of Pay	Basis for the Comparison of Work
Newfoundland	<i>Human Rights Code</i> (applies to the private and public sectors).	Wages, pension rights, insurance benefits. s. 11(1), (2)(b)	Same or similar work under the same or similar working conditions, requiring the same or similar skill, effort and responsibility. s. 11(1)
Northwest Territories	<i>Fair Practices Act</i> (applies to the private and public sectors).	Rate of pay. s. 6(1)	Similar or substantially similar work if job, duties or services are similar or substantially similar. s. 6(1), (2)
Nova Scotia	<p><i>Labour Standards Code</i> (applies to the private and public sectors).</p> <p><i>Human Rights Act</i> - general discrimination (applies to the private and public sectors)</p> <p><i>Pay Equity Act</i> (applies to the civil service and to the greater part of the broader civil service, i.e., to universities, municipalities and municipal enterprises as well as to public sector corporations or bodies specified in the regulations)</p>	<p>Rate of wages. s. 57(1)</p> <p>Discrimination in respect of employment, on the basis of sex. s. 5(1)(d), (m)</p> <p>Salary or compensation. s. 3</p>	<p>Substantially the same work, requiring substantially equal skill, responsibility, effort and similar working conditions. s. 57(1)</p> <p>Cannot discriminate in respect of employment. Not specified. s. 5(1)(d), (m)</p> <p>Work of equal or comparable value. The criteria for the determination of the value of work are skill, effort, and responsibility and working conditions. s. 13(5), 17</p>

Jurisdiction	Legislation	Basis for Measuring Equality of Pay	Basis for the Comparison of Work
Ontario	<p><i>Employment Standards Act</i> (equal pay provisions apply to the private and public sectors).</p> <p><i>Human Rights Code</i> - general discrimination (applies to the private and public sectors).</p> <p><i>Pay Equity Act</i> (applies to the public and private sectors, i.e. employers with 10 or more employees).</p>	<p>Rate of pay. s. 32(1)</p> <p>Equal treatment with respect to employment. s. 5</p> <p>Compensation for work, i.e., all payments and benefits. ss. 1, 4(2)</p>	<p>Substantially the same kind of work, requiring substantially the same skill, responsibility, effort under similar working conditions. s. 32(1)</p> <p>Not specified.</p> <p>Work of equal or comparable value. Determination of value is based on the composite of skill, effort, and responsibility normally required and conditions under which work is normally performed. ss. 5(1), 6(1)</p>
Prince Edward Island	<p><i>Human Rights Act</i> (applies to the private and public sectors).</p> <p><i>Pay Equity Act</i> (applies only to the public sector).</p>	<p>Rate of pay. s. 7</p> <p>Wages. s. 2</p>	<p>Substantially the same work, requiring equal education, skill, experience, effort and responsibility, under similar working conditions. s. 7</p> <p>Work of equal or comparable value. Composite of skill, effort, responsibility and working conditions. ss. 2, 7, 8</p>

Jurisdiction	Legislation	Basis for Measuring Equality of Pay	Basis for the Comparison of Work
Quebec	<p><i>Pay Equity Act</i> (applies to employers of the public, para-public and private sectors with 10 employees or more. ss. 3, 4)</p> <p><i>Charter of Human Rights and Freedom</i> (applies to employers of all sectors who have less than 10 employees and who are not covered under the Pay Equity Act. (s. 19 of the Charter; s. 4 of Pay Equity Act)</p>	<p>Compensation. s. 1</p> <p>Equal salary or wages. s. 19</p>	<p>Value of job classes. Factors considered: required qualifications; responsibilities; effort required; conditions under which work is performed. s. 57</p> <p>Criteria for comparison not mentioned. The Charter stipulates that the employer must grant equal salary or wages for equivalent work s. 19</p>
Saskatchewan	<p><i>Human Rights Code</i> (applies to the private and public sectors)</p> <p><i>Labour Standards Act, Part III</i> (applies to the private and public sectors).</p>	<p>Any term or condition of employment. s. 16(1)</p> <p>Rate of pay. s. 17(1)</p>	<p>Not specified.</p> <p>Similar work, similar skill, effort and responsibility under similar working conditions. s. 17</p>
Yukon Territory	<p><i>Employment Standards Act</i> (applies only to the private sector).</p> <p><i>Human Rights Act</i> (applies only to the public sector, which includes municipalities).</p>	<p>Rate of pay. s. 42</p> <p>Wages. Any form of payment for work performed. s. 14 (2), (4)</p>	<p>Similar work under similar working conditions, requiring similar skill, effort and responsibility. s. 42</p> <p>Work of equal value. Composite of skill, effort, responsibility and working conditions. s. 14(2), (3)</p>

Jurisdiction	Reasonable Factors which Justify a Difference in Pay	Complaint Procedure	Restriction on Recovery of Wages - Time or Monetary Limit
Federal	<p>Under the <i>Equal Wages Guidelines, 1986</i>, different performance ratings, seniority, red circling, rehabilitation assignments, demotion, phased-in wage reductions, temporary training position, internal labour shortage, salary protection for downward reclassification and regional rates of wages.</p> <p>s. 16</p>	<p>A person, or a group of persons, or the Canadian Human Rights Commission, or an inspector under the <i>Canada Labour Code</i>, may initiate a complaint; a Human Rights Tribunal may be appointed to decide the matter. The parties may agree on a settlement; to facilitate the reaching of a settlement, the Commission may appoint a conciliator. For enforcement purposes, a settlement between the parties approved by the Commission or an order of a Tribunal may be made an order of the Federal Court.</p> <p>ss. 40, 47-60 of the <i>Canadian Human Rights Act</i>, s. 182 of the <i>Canada Labour Code</i></p>	<p>No monetary limit, limitation period of one year (or such longer period as the Commission considers appropriate) prior to complaint.</p> <p>s. 41(1)(e)</p>

Jurisdiction	Justify a Difference in Pay	Complaint Procedure	Time or Monetary Limit
Alberta	Under the <i>Human Rights, Citizenship and Multiculturalism Act</i> : reasonable and justifiable circumstances. s. 11.1	Complaint is referred to a conciliator and/or investigator. If there is no settlement between the parties, or if the complaint should not have been dismissed, or if a settlement is not fair and reasonable, a human rights panel is appointed. An order of the panel may be enforced as if it was an order of the Court of Queen's Bench. An appeal may be filed with that Court. ss. 19.1, 23, 32, 33	Recovery of wages by action against the employer is restricted to the 12-month period prior to the termination of an employee's services or the commencement of proceedings. s. 6(6)
British Columbia ¹	Under the <i>Human Rights Code</i> : seniority, merit, or system which measures quantity or quality of production; a factor other than sex. s. 12(2), (3)	Any person or group of persons may file a complaint. There is an investigation by a human rights officer; if there is no settlement, the matter is referred to the Human Rights Tribunal. The decision of a member or panel of the Tribunal may be enforced as a judgement of the Supreme Court. ss. 21-39	Recovery of wages by action against the employer is restricted to the 12-month period prior to the termination of an employee's services or the commencement of proceedings. s. 12(5)

¹ British Columbia has adopted an administrative policy providing pay equity in the public sector

Jurisdiction	Reasonable Factors which Justify a Difference in Pay	Complaint Procedure	Restriction on Recovery of Wages - Time or Monetary Limit
Manitoba	<p>Under the <i>Employment Standards Act</i>: any factor other than sex which, in the opinion of the wages board, would justify the difference. s. 45(3)</p> <p>Under the <i>Human Rights Code</i>: "bona fide and reasonable requirements or qualifications for the employment or occupation". s. 14(1)</p>	<p>Employee has six months from the due date of the payment of wages to file a complaint with the Director of Employment Standards. The Director's decision may be referred to the Manitoba Labour Board, and its decision may be appealed to the Court of Appeal, depending on the grounds for appeal. ss. 8(1), 8(12), 15, 16 of the <i>Payment of Wages Act</i></p> <p>Complaint to the Human Rights Commission may be filed by a person or the Commission itself, which will investigate. Mediation may take place to settle the complaint. If there is no settlement, the Commission may request the Minister to appoint an adjudicator or recommend a prosecution for an alleged contravention of the Code. An adjudicator may issue a remedial order which may be filed in the Court of Queen's Bench and enforced as a judgement of the court. ss. 22, 26, 29, 43, 48</p>	<p>Recovery of wages is limited to wages payable in the six months preceding the date of complaint, or the last six months of employment when employment has ceased. In the case of unpaid vacation pay or general holiday pay, recovery is limited to 22 months. s. 8(2.1) of the <i>Payment of Wages Act</i></p> <p>Complaint must be filed within six months of the alleged contravention or within six months of the last instance of a continuing contravention (extension possible). s. 23(1)</p>

Jurisdiction	Reasonable Factors which Justify a Difference in Pay	Complaint Procedure	Restriction on Recovery of Wages - Time or Monetary Limit
Manitoba (Cont'd)	The <i>Pay Equity Act</i> does not specify any factor.	Management and labour are responsible for the development or selection, and application of a job-evaluation system. They must also reach a subsequent agreement respecting the allocation of the pay equity wage adjustments. Should the parties fail to reach the required agreements in the time prescribed, impasses are to be resolved by an arbitration board for the Civil Service and by the Manitoba Labour Board for Crown entities and external agencies. ss. 9, 10, 14, 15	Wage adjustments may be limited to 1% of the employer's total payroll per year, over a period of four consecutive years. s. 7(3)
New Brunswick	Under the <i>Human Rights Act</i> : bona fide occupational qualifications as determined by the Commission. s. 3(5)	Complaint is filed with the New Brunswick Human Rights Commission which investigates and attempts to effect a settlement. The matter may be referred to a Board of Inquiry or the Labour and Employment Board, and their decision is final. ss. 17-21	None

Jurisdiction	Reasonable Factors which Justify a Difference in Pay	Complaint Procedure	Restriction on Recovery of Wages - Time or Monetary Limit
New Brunswick (Cont'd)	<p>Under the <i>Employment Standards Act</i>: seniority system; merit system; quantity or quality of production; or any other system or practice that is not otherwise unlawful. s. 37.1</p> <p>Under the <i>Pay Equity Act</i>: seniority system; temporary training or development assignment; merit pay plan; red-circling; skills shortage causing a temporary inflation in pay. s. 4</p>	<p>In case of violation of the <i>Act</i>, or when a person has not complied with the <i>Act</i>, the Director of Employment Standards investigates and decides the case, including ordering the employer to compensate for the loss in pay. He/she may appoint a mediator. An appeal may be lodged to the Labour and Employment Board. The Director's or the Board's order may be filed as a certificate in the Court of Queen's Bench and be executed as a judgement of that Court. Civil remedy may also be sought. ss. 37.1, 63-79</p> <p>An arbitrator must be named if it becomes apparent that the parties will fail to reach an agreement required under the <i>Act</i>, within the specified period. The arbitrator must render a decision within 60 days. ss. 12, 15</p>	<p>Recovery of wages is limited to the 12-month period preceding the complaint or 12 months before the order, if the investigation is not pursuant to a complaint. s. 63(1), (2)</p> <p>The parties must agree on how the allocated amount is to be distributed among the female-dominated classes and how the pay equity adjustments are to be implemented. This agreement takes precedence over the terms of a collective agreement. The pay equity adjustments are limited to one percent of the government's annual payroll for the preceding year and must not be implemented after the employer has implemented adjustments during four consecutive twelve month periods. ss. 9, 11</p>

Jurisdiction	Reasonable Factors which Justify a Difference in Pay	Complaint Procedure	Restriction on Recovery of Wages - Time or Monetary Limit
Newfoundland ²	Under the <i>Human Rights Code</i> : seniority or merit system. s. 11(1)(a), (b)	Complaint may be filed with the Executive Director of the Human Rights Commission who investigates and attempts to settle the matter. The Commission may refer the matter to a Board of Inquiry; the decision of the Board may be appealed to the Trial Division. A complaint may be filed instead with the Provincial Court. ss. 20-34	Complaint must be made within 6 months of the contravention, or within 6 months of the last incidence of a continuing contravention. s. 20(2)
Northwest Territories	Under the <i>Fair Practices Act</i> : any factor other than sex. s. 6(3)	Complaint may be made to a Fair Practices Officer who investigates, mediates disputes and may make orders. There is an appeal to the Supreme Court. ss. 7, 8	None

² Newfoundland has adopted an administrative policy providing pay equity in the public sector

Jurisdiction	Reasonable Factors which Justify a Difference in Pay	Complaint Procedure	Restriction on Recovery of Wages - Time or Monetary Limit
Nova Scotia	<p>Under the <i>Labour Standards Code</i>: seniority or merit system, quantity or quality of production; any factor other than sex. s. 57</p> <p><i>Human Rights Act</i>: None mentioned.</p> <p>Under the <i>Pay Equity Act</i>: seniority system; temporary training or development program or assignment; a merit pay plan based on formal performance ratings; skills shortage causing a temporary inflation in pay. s. 13(4)</p>	<p>A complaint is made to Director of Labour Standards and an investigation is done. The parties may appeal to the Labour Standards Tribunal, and from there to the Appeal Division of the Supreme Court. ss. 20, 21, 58</p> <p>The Nova Scotia Human Rights Commission investigates and tries to effect the settlement of complaints. The matter can be referred by the Commission to a board of inquiry, the decision of which may be appealed to the Appeal Division of the Supreme Court. ss. 29, 32A(1), 36(1)</p> <p>If an employer and its employee representatives fail to come to an agreement respecting a job evaluation system, its implementation or the exact quantum of pay adjustments, the matter is referred to the Pay Equity Commission. ss. 12, 13, 14</p>	<p>None</p> <p>None</p> <p>Each employer and its employee representatives must agree to the exact quantum, allocation and orderly implementation, over a period not exceeding four years, of the pay adjustments required to achieve pay equity. s. 14</p>

Jurisdiction	Reasonable Factors which Justify a Difference in Pay	Complaint Procedure	Restriction on Recovery of Wages - Time or Monetary Limit
Ontario	<p>Under the <i>Employment Standards Act</i>: seniority system; merit system; quantity or quality of production; any "factor other than sex". s. 32</p> <p>Under the <i>Human Rights Code</i>: special program designed to relieve economic disadvantage, or to assist persons to achieve equal opportunity; reasonable or bona fide qualification because of the nature of the employment. ss. 14(1), 24</p>	<p>An employment standards officer investigates and decides the case. He/she may determine the amount of money owed, and such amount is considered to be unpaid wages. The unpaid wages recovery procedures of the Act can be applied. If no complaint is filed, civil action is possible. ss. 32, 64.3</p> <p>A complaint may be filed with the Ontario Human Rights Commission which may also initiate it. The Commission investigates the complaint and may endeavor to effect a settlement. If it does not, the matter may be referred to the board of inquiry whose decision may in turn be appealed to the Divisional Court. ss. 32, 33, 36, 42</p>	<p>Assessment by employment standards officer is limited to \$10,000. Normally, the recovery is limited to money that became due not more than six months before the facts came to the knowledge of the director. ss. 65, 82.3(1)</p> <p>The Commission may decide not to deal with a complaint if the subject of the complaint occurred more than six months before the complaint was filed. There is no limit on the amount. Art. 34(1)(d), 41(1)(b)</p>

Jurisdiction	Reasonable Factors which Justify a Difference in Pay	Complaint Procedure	Restriction on Recovery of Wages - Time or Monetary Limit
Ontario (Cont'd)	Under the <i>Pay Equity Act</i> : seniority system; temporary training or development assignment equally available to male and female employees; red circling; merit compensation based on formal performance ratings; skills shortage causing a temporary inflation in compensation; differences resulting from bargaining strength, once pay equity has been achieved; some casual employment. 8(1), (2), (3), (4)	A review officer first investigates objections and complaints, and endeavors to effect a settlement; the review officer may monitor the preparation and implementation of pay equity plans and assist the parties; appeals may be lodged, or referrals made to the Pay Equity Hearings Tribunal; review officers and Hearings Tribunal are invested with sufficient powers to correct a situation in order that pay equity be achieved. ss. 16, 22-26	Employers are required to make annual adjustments of at least 1% of annual payroll until pay equity is achieved. Specific timetables for achieving pay equity are set out in the Act and apply to various categories of employers with 10 or more employees. s. 13
Prince Edward Island	Under the <i>Human Rights Act</i> : seniority; merit; quantity or quality of production or performance; factors may not be based on discrimination. s. 7	Civil action may be initiated in the Supreme Court, or a complaint may be made to the Commission followed by an investigation by the Executive Director of the Commission. His/her decision may be reviewed by the Chairperson of the Commission. If the dispute has not been settled, or if the complaint should not have been dismissed or if a proposed settlement is not fair or reasonable, the complaint is referred to a Human Rights Panel whose decision is final and binding. The Minister may also apply for a court order prohibiting a person from continuing an offence under the Act. ss. 7, 22, 25, 26, 28.8, 32	Civil action must commence within 12 months from the cause of the action. A person can only claim wages which would have been earned during 12 months immediately preceding termination of employment or preceding the commencement of the proceedings, whichever occurred first. s. 7

Jurisdiction	Reasonable Factors which Justify a Difference in Pay	Complaint Procedure	Restriction on Recovery of Wages - Time or Monetary Limit
Prince Edward Island (Cont'd)	Under the <i>Pay Equity Act</i> : performance appraisal system; seniority system; skills shortage causing a temporary inflation in wages. s. 8	If the parties cannot come to an agreement respecting the choice or development of a single gender-neutral job-evaluation plan or system, or its implementation, or the exact quantum of pay equity adjustments to be made, the matter is referred to an arbitration board constituted under s. 40 of the <i>Labour Act</i> . A Pay Equity Bureau is established which has sufficient powers to ensure compliance with the requirements of the Act. The Act sets out a complaint mechanism, as well as protection from intimidation, coercion, penalties or discrimination for participating in a proceeding under the Act or for seeking its enforcement. ss. 5, 6, 16, 18	Employers are required to make annual pay adjustments of not more than 1% of annual payroll until pay equity is achieved. s. 11

Jurisdiction	Reasonable Factors which Justify a Difference in Pay	Complaint Procedure	Restriction on Recovery of Wages - Time or Monetary Limit
Quebec	<p>Under the <i>Pay Equity Act</i>: seniority; fixed duration assignments; the region in which the employee works; shortage of skilled workers; red circling; temporary employment. Also, coverage excludes: independent operators not considered to be employees of a single person; coop students; persons in summer employment; trainees; recipients of last resort benefits under income security legislation; senior managers; police officers; and fire fighters. ss. 8, 9, 67</p>	<p>A Joint Pay Equity Committee³ or the employer must post the pay equity plan. Within 60 days, employees may request further information, or submit observations. Committee or employer to respond within 30 days. Complaints that the pay equity program is deficient or absent, or that the Committee is acting in bad faith may be addressed to the Pay Equity Commission, which investigates and determines measures to be taken. Any party may apply to the Labour Court within 90 days, when dissatisfied with the measures determined by the Commission. The Commission refers matters to the Labour Court when measures it has determined are not implemented. Other matters may also be referred to the Labour Court by the Commission. Decisions of the Labour Court are final and without appeal. ss. 35, 75, 76, 96-101, 104-107, 113</p>	<p>This <i>Act</i> is not retroactive. First pay adjustments to be made at the latest on November 21, 2001, with equal subsequent yearly installments over the next four years, to achieve full equity in wages by November 21, 2005. Possible extension of up to three years, on approval by the Pay Equity Commission on a case by case basis. No monetary limit on pay adjustments. ss. 70-72</p>

³ A Pay Equity Committee is mandatory for employers with 100 or more employees. It is optional for employers with 50 to 99 employees, and not required for other employers.

Jurisdiction	Reasonable Factors which Justify a Difference in Pay	Complaint Procedure	Restriction on Recovery of Wages - Time or Monetary Limit
Quebec (Cont'd)	Under the <i>Charter of Human Rights and Freedom</i> : experience; seniority; years of service; merit; productivity or overtime if these criteria are common to all members of the personnel. s. 19	Complaints in matters affecting pay equity must be addressed to the Commission de l'équité salariale, with a possible recourse to the Labour Court. ss. 93(7) and 112 of the <i>Pay Equity Act</i>	None
Saskatchewan	Under the <i>Human Rights Code</i> , sex, ability, or age, when it is a reasonable occupational qualification and requirement. s. 16(7) Under the <i>Labour Standards Act</i> : seniority or merit system. s. 17(1)	A complaint is filed with the Saskatchewan Human Rights Commission which investigates and tries to effect a settlement of the matter. If not, the matter can be reviewed by a board of inquiry, the decision of which may be appealed to a judge of the Court of Queen's Bench and from there to the Court of Appeal. ss. 27(1), 28(1), 29(1), 32(1), (5) The Director of Labour Standards appoints an officer to investigate the case and try to effect a settlement. If no settlement is reached, the Human Rights Commission will make a formal inquiry. Failure to comply with the decision is a summary conviction offence. ss. 18-20, 22 <i>Labour Standards Act</i> ss. 31, 32 <i>Human Rights Code</i>	None. No restriction. s. 31(7)(c) <i>Human Rights Code</i>

Jurisdiction	Reasonable Factors which Justify a Difference in Pay	Complaint Procedure	Restriction on Recovery of Wages - Time or Monetary Limit
Yukon Territory	<p>Under <i>the Employment Standards Act</i>: seniority; merit; quantity or quality of production; factor other than sex. s. 42</p> <p>Under the <i>Human Rights Act</i>: reasonable requirements or qualifications for the employment; other factors establishing reasonable cause for discrimination. s. 9(a), (d)</p>	<p>The Director of Employment Standards can determine the amount of unpaid wages. If the Director can't resolve the complaint, he/she may refer it to the Employment Standards Board. The decisions of the Director may be appealed to the Board. There is a right of appeal to the Supreme Court. ss. 45, 72-74.1</p> <p>The Human Rights Commission investigates a complaint and decides the matter; the Commission may ask a Board of Adjudication to decide the complaint. An appeal may be lodged to the Supreme Court. ss. 19-26</p>	<p>A complaint must be made within six months after the last date the payment of wages was to be made by the employer. s. 69(a)</p> <p>A complaint must be made within six months of the alleged contravention. s. 19</p>

Labour Law Analysis
Strategic Policy and Partnerships
Labour Branch
Human Resources Development Canada
November 1998