Bill C-86
A second Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018
and other measures

Brief submitted by CPHR/CRHA Canada to
The House of Commons Standing Committee on Finance
The Standing Senate Committee on National Finance
And the Honourable Patty Hajdu, P.C., M.P,
Minister of Employment, Workforce Development and Labour

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About CPHR/CRHA Canada

CPHR Canada is the national voice on the enhancement and promotion of the human resources profession. On the strength of established and credible designation, CPHR Canada collaborates on national issues related to the profession and proactively positions the national human resources agenda around the world. We represent more than 27,000 members across Canada.

Introduction

First, we would like to congratulate the government for introducing a pay equity bill as part of Bill C-86 – A second Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018 and other measures. Pay equity is a right enshrined in the International Labour Organization’s Equal Remuneration Convention, and working towards recognition of that right is therefore among the values of human resources professionals across Canada. As a result, it is essential to identify the most effective ways to achieve pay equity.

Our comments will focus on four distinct elements:
- The obligation to set up a single pay equity committee
- Requests to be made to the Pay Equity Commissioner
- Estimating wage differentials
- The contents of the plan to be posted

Summary of recommendations

1. That the Government of Canada’s Pay Equity Act allow separate plans to be established when the employer and a union wish to exercise this option, without having to obtain approval from the Pay Equity Commissioner.

2. That in the specific case of subsection 30(5), the Act clearly establish the threshold for the number of predominantly male job classes from which more than one pay equity plan may be established. This threshold could be, for example, 10% to 15% of job classes.

3. That where the Act requires that a request be made to the Pay Equity Commissioner, the latter must respond within no more than 60 days, in order to avoid causing additional delays in the implementation of pay equity plans.

4. That the compensation for each female class be compared with the average compensation for the male classes in the same band.

5. That the condition that the average compensation for female classes be lower than the average male compensation in the same band be removed so that an adjustment can be made for a specific female class that is paid less than the average.

6. That where there is no male class in the band, no mathematical formula be imposed and that the Act simply set out the principle that the compensation for a female class must be calculated in proportion to the closest male classes.
7. That the job-to-line method be used rather than the line-to-line (or equal line) comparison method, as is the case in the Quebec and Ontario statutes.

8. That the Act be clarified to indicate that the results posted do not include the points attributed to each job class.

9. That the salary adjustment indicated in the posting may be expressed as a percentage or in absolute numbers.

The obligation to set up a single pay equity committee
Although commendable, the obligation for the employer to establish a single pay equity committee (ss. 12, 30) will be difficult to apply. Indeed, under the current provisions of the bill, an employer with 100 or more employees must appoint a committee composed of various representatives of unionized and non-unionized employees to implement a single pay equity plan for all its employees. Of course, exceptions may be made to the single-plan rule, but approval must be sought from the Pay Equity Commissioner for the implementation of separate plans (for each union or for non-unionized employees, for example). This would appear to be very cumbersome for employers.

It should be recalled that Ontario went with the completely opposite approach in its Pay Equity Act: it requires one pay equity program per bargaining unit and a general program for non-unionized employees. Although Quebec’s Pay Equity Act favours the principle of a single pay equity program, it does allow certified associations to request that the employer establish separate pay equity programs. The employer is not allowed to refuse such a request. Most pay equity programs in Quebec have been implemented on this basis: a general program for all non-unionized employees and a separate program for each certified association represented in the company.

Recommendation:
• That the Government of Canada’s Pay Equity Act follow the examples of Quebec and Ontario and relax the requirement for the employer to establish a single pay equity plan, instead allowing separate plans to be established when the employer and a union wish to exercise this option, without having to obtain approval from the Pay Equity Commissioner.

Requests to be made to the Pay Equity Commissioner
The bill often refers to the requirement to obtain approval from the Pay Equity Commissioner, which could considerably increase timelines for companies.

We note the bureaucratic complexity of such a process and hope that employers and pay equity committees will retain responsibility for pay equity plans, given that employee participation and transparency are at the very heart of the bill. For example, under subsection 30(5), for pay equity plans where there are few predominantly male job classes, employers or pay equity committees must await the decision of the Pay Equity Commissioner before continuing work on a pay equity plan, whereas they could pursue this work without delay if the law clearly indicated the guidelines to be respected.

Recommendations:
• That in the specific case of subsection 30(5), the Act clearly establish the threshold for the number of predominantly male job classes from which more than one pay equity plan may be established. This threshold could be, for example, 10% to 15% of job classes.

• That where the Act requires that a request be made to the Pay Equity Commissioner, the latter must respond within no more than 60 days, in order to avoid causing additional delays in the implementation of pay equity plans.

Estimation of wage differentials

Section 49 – Equal average method

This method is based on the individual valuation of differences in compensation provided for in the Quebec Pay Equity Act. It allows each female job class to be compared with the average compensation in male job classes of equal value.

However, the federal bill adds a much more stringent condition for allowing female job classes to be eligible for a wage adjustment. It provides that, in order for each of the female classes (that fall within the same band) to be entitled to the salary adjustment, the average compensation of all the female classes must be lower than the average compensation of the male classes in the same band.

This may discriminate against many predominantly female job classes whose compensation is below the average compensation of male job classes. Indeed, they could lose the right to a salary adjustment by the simple fact that the compensation for a single female class (still in the same band) raises the average compensation for the female classes above the average compensation for the male classes.

To illustrate the situation, let’s take an example with annual compensation values.

Within the same band determined by the job valuation, we have:

• 3 male classes with average compensation of $80,000
• 1 female class (Human Resources Advisor) at $78,000
• 1 female class (Communications Advisor) at $75,000
• 1 female class (Family Lawyer) at $90,000

The average compensation of the female classes is therefore $81,000. Under the current terms of the bill:

• The female class (Human Resources Advisor) is not entitled to the $2,000 salary adjustment that would raise it to the average compensation of $80,000 for the male classes;
• The female class (Communications Advisor) is not entitled to the $5,000 salary adjustment.

These results are due to the simple fact that one female category in the band has a more generous salary. In a pay equity context, it would be surprising to choose a method for determining differences in
compensation that results in a female class that is already better paid preventing other female classes in the same band from being entitled to a wage adjustment.

**Technical change to subparagraph 49 (1)(b)(i)**

It would be preferable to include only the principle that where there is no male-dominated job class in the comparison band, the compensation of the female-dominated job class will be calculated in proportion to the closest male-dominated job classes (work value).

Based on experience with the application of section 63 (subsection 3) of the Quebec Pay Equity Act, basing the proportion on a single male job class can lead to mathematical absurdities (for example, the formula would have a female class with double the points of the nearest male class receiving double the remuneration).

If the legislature does not want to limit itself to establishing the principle of proportion (which stakeholders could then apply based on their specific situations), we recommend that the mathematical equation be changed.

For the purposes of making the calculation in paragraph 49(1)(b)(i) understandable and accessible, the equation \((A/C) \times B\) should be substituted for the one currently found in the bill. Although the two formulas are mathematically equivalent, it would be easier to understand the principle that what is being determined is compensation for the female class in proportion to the predominantly male class or classes in the closest band.

**Recommendations:**

- That the compensation for each female class be compared with the average compensation for the male classes in the same band.

- That the condition that the average compensation for female classes be lower than the average male compensation in the same band be removed so that an adjustment can be made for a specific female class that is paid less than the average.

- That where there is no male class in the band, no mathematical formula be imposed and that the Act simply set out the principle that the compensation for a female class must be calculated in proportion to the closest male classes.

**Section 50 - Equal Line Method**

It is surprising to see that the female-line-to-male-line method was chosen in the bill rather than a female-job-to-male-line method.

Indeed, the 2004 Bilson report states that “The job-to-line method best meets the objective of pay equity because it is inclusive and the consistency it brings to the pay structure of predominantly female
job classes makes it more adaptable to changing conditions.” In addition, the job-to-line method was included in Recommendation 11.5 of this task force.

What happens when comparing the female job line with the male job line is that even if these lines coincide (or overlap), a disadvantageous wage situation may persist for many female classes. With the current bill, in such cases none of the predominantly female job classes that are paid below the male class line would receive a salary adjustment.

The figure below illustrates a case in which, with the equal line method, no female class would receive a salary adjustment, even though three of them are paid below the male class line.

Illustration
Equal Line Method
(Line to Line)

Compensation / Value of job classes

Male classes
Female classes
Exponential (male classes)
Exponential (female classes)

Female job classes not eligible for a salary adjustment even though they receive compensation below the male class line
With the job-to-(male)line method: these three classes would receive a salary adjustment

Terms used in this document
The Quebec Pay Equity Act uses the term “curve” to explain the overall method; i.e., the comparison of each predominantly female job class with the earning curve of all predominantly male job classes.
Ontario uses a more general term than “line” or “curve” for the proportional method (job to line): “the same relationship to the value of the work.” It also introduced the concept of “representative group of male job classes.”

It would be helpful to retain this nuance of representativeness of the observations in drawing the line in the new federal Act because it would allow stakeholders to remove outliers or data that would create statistical aberrations.

This may appear to be strictly semantic, but a line is a curve. Not everyone agrees that a curve is a line, however. To avoid this ambiguity and provide stakeholders with flexibility, the term “curve” should be used rather than “line.”

Recommendations:
- That the job-to-line method be used rather than the line-to-line (or equal line) comparison method, as is the case in Quebec and Ontario.

This would also eliminate the need for complex mathematical regulations, as currently provided for in sections 50(1)(c) and (d) and 50(2).

**The content of the plan to be posted**

**Subsection 51(h) Results of the evaluation**
Subsection 51(h) requires that the posting of the pay equity plan include a description of the method and results of the valuation. There should not be a requirement in the Act to set out the results of the valuation. This is an expert level of detail that adds considerably to the work involved and that should remain confidential within the pay equity committee or with the employer, as the case may be.

**Subsection 51(k) Pay equity adjustment only in dollars per hour**
Pay equity adjustments should be allowed to be indicated in dollars or percentages. Adjustment calculations can be very complex if only a dollar adjustment is permitted. An example would be when pay equity adjustments are spread over several years, and general wage increases or collective agreements are interspersed between them. For an illustration of this complexity, see the example on pages 80 and 81 of the *Guide pour réaliser l’équité salariale et en évaluer le maintien* (January 2018)¹ published by the Commission des normes, de l’équité, de la santé et de la sécurité du travail (Québec).

Moreover, in terms of confidentiality, it would be better, at least for the private sector (and even more so when a job class is occupied by a single person) if the salary adjustment were indicated in the posting as a percentage rather than a dollar amount per hour (e.g., if the hourly adjustment is $2.50, it would then become public knowledge that the person would be receiving $4,875 annually for a 37.5-hour week). Confidentiality is better maintained when a salary adjustment is expressed as a percentage (e.g., 3% of salary).

¹ Page 80 and 81 of the *Guide pour réaliser l’équité salariale et en évaluer le maintien*, 8e édition (January 2018), Commission des normes, de l’équité, de la santé et de la sécurité du travail.
Recommendations:

- That the Act be clarified to indicate that the results posted do not include the points attributed to each job class.

- That the salary adjustment indicated in the posting may be expressed as a percentage or in absolute numbers.

Closing remarks
We thank you for the opportunity to make this presentation and to participate in the discussions on the development of pay equity legislation for federal organizations in Canada. We are entirely at your disposal to answer any questions that this brief may have raised. We reiterate our sincere hope that the Act will be adopted, giving us the most effective means to achieve pay equity.