



Association of
Ontario **Midwives**
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Association of Ontario Midwives

Submission to the Standing Committee on Social Policy on
the Pay Transparency Act (Bill 3)

April 2018

Introduction

The Association of Ontario Midwives (AOM) appreciates the opportunity to respond to the *Pay Transparency Act* (Bill 3) (the Act) on behalf of Ontario midwives. Midwives have provided comprehensive primary care to nearly 225,000 pregnant women and their newborns since integrating midwives into Ontario's health system in 1994. There are approximately 800 midwives providing care in more than 86 communities, including more than 90 hospitals across the province.

As you may be aware, in 2013, the AOM filed an application with the Human Rights Tribunal of Ontario (HRTO) against the government of Ontario, represented by the Ministry of Health and Long Term Care¹. This legal action, brought by the AOM on behalf of our members, alleged that midwives have experienced a gender penalty in their pay set by the government for almost two decades. We fully support the adoption of effective pay transparency legislation, with an aim to close the gender pay gap, and to prevent other workers from enduring similar gender penalties. Although the majority of Ontario midwives are independent contractors, and would not be subject to the proposed legislation, many Aboriginal Midwives in Ontario are employed through Indigenous Health Service organizations. Furthermore, there are an increasing number of Registered Midwives in the province who are also beginning to work under employee models through a new Expanded Midwifery Care Model (EMCM) framework, for organizations such as community health centres, and family health care teams. Effective pay equity / transparency legislation is key to ensuring midwives are fairly compensated for the work that they do as they begin working under these new models, particularly considering the history of inequitable compensation set by the government and provided to the profession in Ontario.

Midwives have a particular experience and vantage point with respect to the gender pay gap in Ontario. Not only have midwives themselves experienced a gender pay gap in their compensation but they also work on the front lines each and every day with women and transgender people (who midwives refer to as clients instead of patients, as pregnancy is not an illness but rather a healthy life event), and witness first hand through the experience of their clients the impact of gender on their professional and personal lives.

Midwifery clients come from a wide variety of backgrounds and experiences. As a profession that strongly supports principles of social justice², midwives support the principle of pay transparency legislation that will address the pay equity gap for all midwifery clients, and all Ontarians. The pay gap for Ontario women on average is 30%; however this gap is strikingly higher for trans women, Indigenous women, racialized women, and immigrant women, as is widely documented.

¹ <https://www.ontariomidwives.ca/pe-resources>

² <https://www.ontariomidwives.ca/diversity-equity-inclusion>

The AOM's concerns about the proposed act are as follows:

- 1. The proposed bill, under section 6 of the act, would require only a small number of Ontario businesses to prepare and post annual pay transparency reports;**
- 2. The act does not include any requirements regarding what information must be in the transparency reports, including compensation structure and wage grids by gender, job classification, and job status.**
- 3. Bill 3 lacks a clear, well defined purpose clause and preamble;**
- 4. The bill omits much of the necessary detail regarding timelines required for filing pay transparency reports, penalty and enforcement, to be clarified in the yet to be drafted regulations;**

Each of these concerns is addressed in greater detail below.

- 1. The proposed bill, under section 6 of the act, would require only a small number of Ontario businesses to prepare and post annual pay transparency reports**

It is our understanding that section 6 of the Act, when adopted, will apply first to the Ontario Public Service, then extend to employers with more than 500 employees, until finally to employers with more than 250 employees. This particular requirement will therefore only apply to a small segment of Ontarians, considering that only 2% employers in Ontario have more than 50 employees, according to Ontario government reports. This restriction also puts Ontario behind other jurisdictions that have enacted pay transparency legislation – Australia, Denmark, Iceland and Belgium all require reports be posted by employers ranging from 100 – 25 employees. By limiting this requirement to employers who have 250 employees and over, the Act will exclude 98% of Ontario women from the significant benefits that this measure may have in closing the gender wage gap. A recent survey has indicated that the majority of Canadians are in support of enacting pay transparency by revealing their salaries, if such a measure would reveal compensation inequities between men and women³.

It is likely that as written that the bill would apply to most midwives working under employee models, as most will be working as part of the Ontario Public Service (e.g. community health centres). However, it would leave out many midwifery clients, some of whom are part of Indigenous, racialized, and marginalized communities particularly affected by the gender pay gap, and who may not feel safe in requesting salary information from their employers, even given the anti-reprisal clause as set out in the proposed act. As part of the AOM's continued commitment to social justice and anti-oppression principles, we therefore request that the section 6 apply to all employers with ten or more employees.

³ <http://www.macleans.ca/society/nearly-three-quarters-of-canadians-want-pay-transparency/>

2. The Act does not include any requirements regarding what information must be in the transparency reports, including compensation structure and wage grids by gender, job classification, and job status.

As written, the Act requires that employers covered by the legislation must comply “with the requirements in the regulations and that prescribed information relating to the employer, the employer’s workforce composition and differences in compensation in the employer’s workforce with respect to gender and other prescribed characteristics”. Again, this clause leaves the other “prescribed characteristics” to be defined within the yet to be drafted regulations. Given the inherent inequities impacted by intersectionality within the battle for pay equity, we call for the Act to be revised to define these “prescribed characteristics” within the Act, rather than being left to the regulations.

3. Bill 3 lacks a clear, well defined purpose clause and preamble

As it stands, Bill 3 does not include a purpose clause, or a preamble, to set the context, purpose and intentions of the Act. These are key components that should be included to ensure all employers, and employees, can clearly understand the purposes and spirit of the bill to better understand their expectations and rights. A clear preamble will furthermore set the stage to developing and implementing a meaningful and fulsome process to evaluate the results of the bill in the future. This preamble is key, particularly considering it may take some time for the regulations guiding this bill to be drafted and approved – a clear preamble and purpose clause will similarly set out key principles that the regulations must meet.

4. The bill omits much of the necessary detail regarding timelines required for filing pay transparency reports, penalty and enforcement, to be clarified in the yet to be drafted regulations

As Ontario midwives have discovered over the past two decades, it is essential that clear processes are set out to guide any equity based requirements and enforcement. Our application (decision pending) to the HRTO spells out in detail multiple and repeated instances in which the Ontario government – not strictly midwives’ employer, but very much in control of midwifery compensation – either deliberately ignored pay equity principles, or failed to establish clear processes that would have prevented the case of gender pay discrimination upon which our case is founded. Clearly setting out required report filing timelines, penalties for omission, and methods of enforcement within the bill may ensure a similar inequity is created in future within the context of the proposed legislation. It is critical that clear expectations around these aspects of compliance are included in the act, rather than the regulations, to ensure they are effectively included.

Summary

In summary, the AOM is fully supportive of enacting effective pay transparency legislation. We have reviewed the Equal Pay Coalition’s submission to the Standing Committee on Social Policy, and support the suggested wording amendments they have proposed, all of which

address our concerns as outlined above. We are confident that the goal of closing the gender pay gap can be achieved in part by enacting effective pay transparency legislation – but to be effective this legislation must be comprehensive and robust, and not exclude 98% of Ontarians from the full potential of the Act.

Thank you for considering our comments on Bill 3.

For more information, contact:

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