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ONTARIO PAY EQUITY LAW
Cheryl J. Elliott, Jordan Kirkness and Ajanthana Anandarajah
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This year's release has been converted into a more user-friendly softbound book. Subscribers will receive a softbound book to replace any relevant revised content within the work. This should enhance the reader's experience in terms of no longer filing pages within a limited binder system—allowing the work to easily expand as discussion of the law dictates.

What's New in this Update:
This release updates the caselaw and commentary in Chapters 23 (Jurisprudence) and 25 (Digests of Arbitral Decisions).

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Highlights

- ***OPSEU v. Canadian Blood Services*, 2023 CarswellOnt 15627 (Ont. P.E.H.T.):** The Tribunal in this case considered the sort of language that must be included in an agreement for the Tribunal to enforce joint pay equity maintenance obligations. The parties entered into minutes of settlement where they jointly acknowledged that pay equity must be maintained, and the parties would meet to resolve issues when a new position is created. The union argued the agreement was sufficient to require the employer to negotiate pay equity maintenance issues, but the Tribunal disagreed. It held that the language contained in minutes of settlement did not confer an obligation on the employer to negotiate pay equity maintenance or perform such maintenance jointly with the union.
- ***Maclean's Magazine (No. 2)* (1993), 4 P.E.R. 45:** The Tribunal fashioned a compensatory remedy after concluding that the employer had breached its obligation to bargain in good faith by misleading the union about its intentions concerning an order issued by a Review Officer. The Tribunal noted that the purpose of a remedy for bad faith bargaining was to put the aggrieved party in the bargaining position it would have been in if the breach had not occurred. This remedy is intended to rectify, not punish. The union had also requested that, as part of the remedy, the employer be required to pay its legal costs. The Tribunal concluded that it would not award costs in this case and hence did not need to decide if it had the jurisdiction to do so. It noted that administrative law tribunals have generally declined to order costs on the basis that such an award would be inappropriate disincentive to parties seeking to exercise their statutory rights and that therefore costs had generally only been awarded in the context of an egregious breach of statutory rights.
- ***Bluewater Health v. SEIU, Local 1*, 2023 CarswellOnt 9614 (Ont. P.E.H.T.):** The Tribunal considered whether the applicant employer was permitted to unilaterally complete an amended pay equity plan notwithstanding its agreement with the union to negotiate the pay equity plan in accordance with the Act. The Tribunal found that the employer was not permitted to finalize the pay equity plan unilaterally after negotiations broke down and directed a Review Officer to prepare the pay equity plan. The employer did not negotiate in good faith when it unilaterally completed the pay equity process and repudiated the Terms of Reference to negotiate a new pay equity plan and maintenance procedure.
- ***Peel (Regional Municipality) and CUPE, Local 966 (TP 2016-08)*, Re, 2023 CarswellOnt 15312, 354 L.A.C. (4th)**

186 (Ont. Arb.): The parties disputed an employer's obligation to disclose gender incumbency data to the union. The parties agreed to share certain information, but the employer declined to provide gender incumbency data for any job classifications. The arbitrator found that the employer was required to provide the union with the gender incumbency data for all job classifications listed in the Pay Equity Maintenance Summary.

- ***Power Workers' Union and PUC Services Inc. (Pruce), Re*, 2023 CarswellOnt 12626 (Ont. Arb.):** This decision concerned two job classification grievances. The parties agreed to convene the Joint Job Classification Committee and agreed the committee would jointly evaluate the two Office Assistant positions, with the aim of trying to reach consensus. They carried out the process using their existing job evaluation manual which consisted of 10 job evaluation criteria. The committee agreed on all but two criteria for one employee, and all but four for the other. The dispute arose because the employer representatives on the committee adopted the same evaluation that had been made in the 2010 Joint Rating whereas the union representatives scored the disputed items higher. The arbitrator denied both grievances. For both employees, the arbitrator ruled they should be scored closer to the employer's score than the union's score, and neither employee's job class should change as a result.
- ***Kendall v. Sinai Health System*, 2023 CarswellOnt 3086, 2023 C.L.L.C. 230-033 (Ont. P.E.H.T.):** The Tribunal clarified that, despite the absence of a defined timeframe in the Act, employers are expected to act within a "reasonable period". The case involved an employee who requested a list of male comparators to assess pay equity. The employee had made the request during 2015/2016, and only after raising concerns about the assessment again in 2019 did the employer take steps to provide the requested list. The employer claimed that the request had fallen through the cracks, but the Tribunal found this excuse unacceptable and ruled that the employer's delay was unreasonable. As a result, the employer's actions were deemed a violation of the Act.