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ONTARIO PAY EQUITY LAW Cheryl J. Elliott, Jordan Kirkness and Ajanthana Anandarajah Release 2026

What's New in this Update:

This release updates the case law and commentary in Chapters 14 (The Pay Equity Hearings Tribunal), 23 (Digests of Hearings, Tribunal Decisions and Judicial Review) and 25 (Digests of Arbitral Decisions).

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Highlights

- ***Glen Hill Terrace Christian Homes Inc. v. CUPE, Local 2225-06/12, 2025 CarswellOnt 3260 (Ont. PEHT)***: The applicant sought to call an expert witness who is the current Pay Equity Commissioner of the Northwest Territories and had a key role in developing the federal *Pay Equity Act*. The respondent CUPE and intervenor ONA objected to qualifying the proposed witness as an expert. The Tribunal accepted the proposed witness as an expert in the context of this novel case. The Tribunal emphasized that s. 29(2)(g) of the Act permits it to admit evidence that would otherwise be inadmissible in a court of law. The Tribunal was prepared to accept the proposed witness as an expert given her role as Pay Equity Commissioner and her involvement in developing the federal *Pay Equity Act*. The Tribunal noted that federal drafters likely reviewed Ontario's *Pay Equity Act* when creating the new federal legislation. Since the proceeding concerns procedure where the Act is mostly silent, the opinion of someone recently involved in developing pay equity legislation could be relevant. The Tribunal reiterated that admitting a report does not mean it will adopt the opinion. It held that concerns about the expert's qualifications on specific matters can be tested through cross-examination, and the Tribunal will assign appropriate weight to all evidence. The Tribunal was not prepared to exclude the expert based solely on written submissions. In admitting the evidence, the Tribunal noted that the expert report was being filed solely in reply to other expert reports, so the report would be considered through that lens. Statements in the report that stray from appropriate reply evidence will be given appropriate weight.
- ***Injured Workers Community Legal Clinic v Ontario Public Service Employees Union, Local 5118, 2025 CanLII 120681 (Ont. L.A.)***: The union filed grievances alleging race-based discrimination, harassment and a poisoned work environment, including allegations of individual and systemic discrimination based on race, contrary to the *Human Rights Code*. One aspect of the grievances appeared to include the allegation that the grievor's position was unjustifiably and improperly re-evaluated, resulting in lower compensation for her position which the grievor alleged to be contrary to the *Pay Equity Act*. The union acknowledged that the grievor had filed a pay equity complaint at the Pay Equity Commission but maintained that the employer's pay equity process was discriminatory. There had been an earlier, related grievance involving changes to the grievor's job description which had settled. The grievances were dismissed because it was impractical if not impossible to separate the procedural aspects of the pay equity process from the substantive elements. Thus,

the grievor's pay equity concerns were more appropriately dealt with by the Pay Equity Commission. The remaining elements of the grievances were dismissed.