PAY EQUITY HEARINGS TRIBUNAL

Pay Equity Act

PEHT Case No: 2001-18-PE

Pay Equity Act

Glen Hill Terrace Christian Homes Inc., Applicant v Canadian Union of Public Employees (CUPE) Locals 2225-06/12 and 5110, Respondent v Pay Equity Office, Participating Nursing Homes, Ontario Public Service Employees Union, Attorney General on behalf of the Crown in Right of Ontario, Equal Pay Coalition and the Ontario Federation of Labour, Service Employees International Union, Local 1, Ontario Agencies Supporting Individuals with Special Needs, Ontario Long Term Care Association, and Ontario Nurses' Association, Intervenors

RS File No: 16-22966.2

COVER LETTER

TO THE PARTIES LISTED ON APPENDIX A:

The Tribunal is attaching the following document(s):

Decision - March 17, 2026

DATED: March 17, 2026

Catherine Gilbert
Registrar

Website: www.peht.gov.on.ca

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BEFORE: M. David Ross, Chair, and Lori Bolton, Stephen Roth, Members

APPEARANCES: Kate McNeill-Keller, Adam Goldenberg et al. on behalf of the Applicant; Fay Faraday et al. on behalf of the Canadian Union of Public Employees Locals 2225-06/12 and 5110; Grace McDonell et al. on behalf of the Participating Nursing Homes; Stephanie Jeronimo on behalf of the Pay Equity Office; Lauri Reesor on behalf of the Ontario Agencies Supporting Individuals with Special Needs and the Ontario Long Term Care Association; Carolyn Kay on behalf of the Attorney General on behalf of the Crown in Right of Ontario; Jan Borowy on behalf of the Equal Pay Coalition and the Ontario Federation of Labour; Adrienne Telford on behalf of the Service Employees International Union, Local 1; Karen Ensslen on behalf of the Ontario Public Services Employees' Union

DECISION OF THE TRIBUNAL: March 17, 2026

1. This is an application under the *Pay Equity Act*, R.S.O. 1990, c.P.7, as amended ("the Act"). The applicant, Glen Hill Terrace Christian Homes Inc. ("Glen Hill") requested a hearing before the Tribunal to consider the issues raised before Review Services in its Order dated December 14, 2017.

2. The underlying application in this matter was originally filed with the Tribunal on September 24, 2018.

3. No Notice of Constitutional Question has been filed in these proceedings.

The Issue

4. At the outset of this decision, the Tribunal reiterates that the issues that are brought before this Tribunal address a recognized historic systemic gender discrimination in how jobs that are/were considered "women's work" were undervalued and underpaid.

5. The purpose of the Act is set out in section 4(1):

> The purpose of this Act is to redress systemic gender discrimination in compensation for work performed by employees in female job classes.

6. The Act's preamble references the use of affirmative action to redress the systemic discrimination that the Act intends to ameliorate. The preamble states:

> Whereas it is desirable that affirmative action be taken to redress gender discrimination in the compensation of employees employed in female job classes in Ontario.

7. The Courts have consistently referred to the Act as quasi-constitutional human rights legislation, and decision makers interpreting the Act must not place unreasonable limits on the *Charter* protections when interpreting ambiguous statutory language (see *Participating Nursing Homes,* 2021 CanLII 148 at paragraph 26, quoting *Doré v. Barreau du Québec*, [2012] 1 S.C.R. 395).

8. The Court of Appeal referenced the role of *Charter* values at paragraph 142 of its dissenting decision in *Participating Nursing Homes*, *supra*:

> [142] With respect, these passages misstate the law. The limited role of *Charter* values in interpreting legislation was outlined by the Supreme Court in *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559, [2002] S.C.J. No.

> 43, 2002 SCC 42. In that case, Iacobucci J., writing for the court, stated at para. 62:
>
> > Statutory enactments embody legislative will. They supplement, modify or supersede the common law. More pointedly, when a statute comes into play during judicial proceedings, the courts (absent any challenge on constitutional grounds) are charged with interpreting and applying it in accordance with the sovereign intent of the legislator. In this regard, although it is sometimes suggested that "it is appropriate for courts to prefer interpretations that tend to promote those [*Charter*] principles and values over interpretations that do not" (Sullivan, *supra*, at p. 325), it must be stressed that, to the extent this Court has recognized a "*Charter* values" interpretive principle, such principle can *only* receive application in circumstances of genuine ambiguity, i.e., where a statutory provision is subject to differing, but equally plausible, interpretations.

9. In this case, the Tribunal has been tasked with interpreting and applying a statute that is silent on the process of how pay equity maintenance is to be completed. In the Act, there is an obligation to maintain pay equity but no guidance about how that is done. The purpose of pay equity maintenance is to ensure that any "re-emergence" of pay equity gaps is remedied.

10. The overarching challenge is that, as described in the Tribunal's *Participating Nursing Homes,* 2016 CanLII 2675 (ON PEHT) decision, the Participating Nursing Homes, the majority of the bargaining agents representing employees who work in female job classes in the sector, and the government at the time, agreed to implement was referred to as the "$1.50 Plan" to achieve pay equity in 1995.

11. The "$1.50 Plan" was not compliant with the Act because it did not use a gender-neutral comparison system ("GNCS") to evaluate the key female job classes that are necessary to do job comparison. Pay equity was deemed to be achieved pursuant to the language of the Act when the pay equity adjustments were paid out in the mid-1990's for the hundreds of organizations that adopted the "$1.50 Plan". Therefore, the requisite information that can be used as a baseline does not exist as of the date that pay equity was achieved for these organizations to compare against when determining whether any pay equity gaps have re-emerged.

12. The decision to implement the "$1.50 Plan" was done jointly by the organizations and their bargaining agents, and as such they are the joint architects and share responsibility for the conundrum that this sector finds itself in 30 years after the fact as it pertains to pay equity maintenance in the long-term care sector.

13. The Tribunal has been tasked by the Court of Appeal with specifying the procedures that should be used to ensure that those employees, represented by the bargaining agents, who have established pay equity through the proxy method, will continue to have access to male comparators to maintain pay equity.

14. Accordingly, because the "$1.50 Plan" that was adopted by Glen Hill's predecessor and CUPE was flawed, any process that the Tribunal attempts to specify will likely be imperfect by some metric. However, the Tribunal must attempt to do the best that it can, understanding the statutory, temporal, and factual limitations applicable in this case.

Background and History of this Case

15. The background and procedural history of this case is extensive. This application involves two long term care homes, Strathaven and Marnwood. In 1995, those homes were owned and operated by Royal Crest Lifecare Group.

16. On June 30, 1995, the Pay Equity Office ordered that Royal Crest – County of Durham was a seeking employer for the purpose of using the proxy method of comparison in accordance with Part III.2 of the Act.

17. Also, on June 30, 1995 Royal Crest Lifecare Group posted and implemented a proxy pay equity plan which required it to make $1.50 adjustments to all female job classes represented by the Canadian Union of Public Employees, Locals 2225-06/12 and 5110 ("CUPE"). This pay equity plan is the "$1.50 Plan" referenced above.

18. This pay equity plan was deemed approved in 1995 in accordance with the Act, and there is no dispute that pay equity was achieved pursuant to the pay equity plan, and this aspect of the decision was not overturned by the Divisional Court or the Court of Appeal.

19. Pay equity adjustments were made to all female job classes at Strathaven and Marnwood. This included the position of maintenance

worker which was identified as a female job class in the proxy pay equity plan.

20. Royal Crest declared bankruptcy in 2002 and the Strathaven and Marnwood homes were put in receivership. For the next nine years, those homes were operated by Extendicare. During this time, there was a loss of documents and information as described in the November 23, 2021 decision.

21. On March 1, 2011, Glen Hill purchased the Strathaven and Marnwood homes out of receivership. Pursuant to section 13.1(1) of the Act, Glen Hill became bound to the 1995 proxy pay equity plan.

22. On October 16, 2016, the Pay Equity Office contacted Glen Hill as part of its monitoring program. As such, the process before Review Services was not initiated because of a concern raised by CUPE on behalf of its members. Therefore, this is not a case where CUPE raised concerns to the employer that pay equity was not being maintained prior to Review Services contacting Glen Hill as part of its monitoring problem in 2016.

23. The Review Officer issued her Order on December 14, 2017. The sole issue considered by the Review Officer was:

> Has the employer demonstrated it is maintaining pay equity for female job classes represented by CUPE Locals 2225-06/12 and 5110 under Part 1 of the *Act* **using the proxy method of comparison**?
>
> [emphasis added]

24. The Review Officer's findings were set out in paragraphs 28 and 29 of the Order:

> 28. The Employer achieved pay equity in accordance with a deemed approved proxy pay equity plan.
>
> 29. The Employer is required to disclose information demonstrating that it is maintaining pay equity under Part 1 of the Act, **in accordance with the proxy method of comparison** for its female job classes represented by CUPE Locals 2225-06/12 and 5110.

25. The Review Officer's Order included the following directions:

List the female job classes represented by CUPE Locals 2225-06/12 and 5110 at the Employer since 2005, and provide the year the job class was created, if it was created after 2005, and provide results to me within 4 months of the date on this Order;

Submit the job rate for each female job class represented by CUPE Locals 2225-06/12 and 5110 within 5 months of the date on this Order;

Negotiate and endeavour to agree on an amendment to the $1.50 Plan to stipulate a gender-neutral evaluation system, and provide the system to me within 6 months of the date on this Order;

Complete evaluations for all female job classes represented by CUPE Locals 2225-06/12 and 5110 and submit evaluation scores within 8 months of the date on this Order;

Identify the key female job classes, and provide me with the job rates and job values for each year since 2005 within 8 months of the date on this Order;

Identify the non-key female job classes, and provide me with their job rates and job values for each year since 2005 within 8 months of the date on this Order;

Perform a proportional value analysis for each year since 2005, comparing key female job classes in job rate and job value with the pay equity achieved job rate line that established pay equity for the key female job classes on January 1, 1994, adjusted each year by the non-pay equity increases provided if any, since 1994, within 9 months of the date on this Order; and

Perform a proportional value analysis for each year since 2005, comparing non-key female job classes in job rate and job value with a pay equity achieved job rate line for each year constructed using the pay equity achieved job rates and job values of the key female job classes within 9 months of the date on this Order.

26. Glen Hill filed an application with the Tribunal on September 24, 2018. Glen Hill requested the Tribunal consider the issues raised in the December 14, 2017 Order.

27. In the application, Glen Hill submitted that the Orders should be revoked for three reasons:

> 1. The Maintenance of the Proxy Method of Comparison as set out in the Review Officers Orders are not founded in the Act;
>
> 2. The Proxy Pay Equity Maintenance Methodology as ordered by the officer do not meet the objectives of the Act in redressing system gender discrimination in compensation for work performed by employees in female job classes; and
>
> 3. The Employer does not have the records required to comply with the Orders.

28. The applicant filed its submissions with respect to its first two challenges to the Review Officer's Order in its application. The basis of the applicant's argument is that the proxy method is an inappropriate method of comparison for pay equity maintenance, and this was not a surprising argument as it was consistent with the Tribunal's (differently constituted) jurisprudence at that time pursuant to the 2016 *Participating Nursing Homes,* 2016 CanLII 2675 (ON PEHT) decision.

29. At paragraph 52 of the application, Glen Hill pled:

> The applicant asserts that maintenance for those homes who achieved pay equity under the proxy comparison method should not be treated differently when it comes to maintenance of pay equity in the establishment. If a male job class is created in the establishment, this would engage an analysis by the Employer of their pay equity obligations. Until such time, the Employer has maintained pay equity and there is no gender discrimination.

30. What is noteworthy about the above submission is that Glen Hill claimed that there were no male job classes as of the application filing date, and therefore the obligations for maintenance are not required. If Glen Hill had any male comparators at the time the application was filed, it would have set this fact out in its application and was obligated to do so pursuant to the Tribunal's *Rules of Practice*.

31. Section 12(d) of the Tribunal's *Rules of Practice (*as they were in 2018) states:

> in consecutively numbered paragraphs set out the issues in dispute, the reasons for making the Application, identify the sections of the *Act* which relate to the Application, and provide a clear and concise statement of the facts and events upon which the Applicant relies

32. Section 13 of the Tribunal's *Rules of Practice* states:

> Except with the Tribunal's permission, and subject to Rule 21, no Applicant will be allowed to raise any issue, fact, or event which the Tribunal considers was not set out in the Application.

33. By registrar's letter dated June 6, 2019, this matter was adjourned *sine die* on consent of the parties to allow for the appeal of the *Participating Nursing Homes, supra* decision to be heard by the Divisional Court.

34. The Divisional Court issued its decision in *Participating Nursing Homes,* 2019 CanLII 2168 ("the Divisional Court Decision"). In that decision, the Court found that the Tribunal's decision that the proxy method did not apply to pay equity maintenance was unreasonable. This decision was appealed to the Ontario Court of Appeal.

35. The Ontario Court of Appeal issued its decision in *Participating Nursing Homes,* 2021 ONCA 148 (ON CA) ("the Court of Appeal Decision"). In a 3-2 decision, the majority confirmed that the Tribunal's conclusion was unreasonable. The Court of Appeal's direction to the Tribunal on this matter is found at paragraph 87 of the decision:

> I agree with the Divisional Court that the matter should be remitted to the Tribunal to specify what procedures should be used to ensure that those employees, represented by the Unions, who have established pay equity through the proxy method, will continue to have access to male comparators to maintain pay equity.

36. On August 2, 2021, CUPE requested the Tribunal to dismiss the application in its entirety because the Court of Appeal's decision is determinative of the matters in this application. The Tribunal directed response submissions to be filed. Those submissions were filed on August 24, 2021.

37. By decision dated August 26, 2021, the Tribunal held that it made no procedural sense for the Tribunal to consider the issue about whether the proxy method was to be used for pay equity maintenance while the request for leave to appeal was being considered by the Supreme Court of Canada.

38. In the August 26, 2021 decision, the Tribunal also directed the parties to comply with the Review Officer's Orders iii) and iv) which include creating a GNCS and evaluating all female job classes at Glen Hill.

39. Leave to appeal to the Supreme Court of Canada was denied in *Participating Nursing Homes,* 2021 ONSC 98079 on October 14, 2021.

40. On November 23, 2021, the Tribunal issued its final decision on the issues raised by Glen Hill in its application. The decision is cited as *Glen Hill Christian Homes Inc.*, 2021 CanLII 126444 (ON PEHT).

41. Paragraphs 2 and 3 of that decision address the first two issues raised in Glen Hill's application. Those paragraphs state:

> 2. By decision dated August 26, 2021, the panel disposed of the issue of whether Glen Hill had an obligation to maintain pay equity. It does.
>
> 3. In the August 26, 2021 decision, the Tribunal also deferred the issue of whether the proxy methodology is required with respect to pay equity maintenance. On October 14, 2021 the Supreme Court of Canada dismissed leave to appeal. Accordingly, given the Court of Appeal's decision in *Participating Nursing Homes,* 2021 ONCA 148 (CanLII), that position is dismissed as the Tribunal cannot arrive at a conclusion inconsistent with the Court of Appeal's without violating the doctrine of *stare decisis*.

42. The Tribunal then addressed the issue of whether it was impossible to comply with the Review Officer's orders. The Tribunal agreed with Glen Hill that it was impossible to comply with the order prior to March 1, 2011 because of the unique circumstances of purchasing Strathaven and Marnwood after they had been in receivership for nine years.

43. In the normal course, this would have been the end of the matter, as the November 23, 2021 decision is a final decision with respect to the three issues that were raised in the application by Glen Hill. Any further disputes between the parties about amending the pay equity plan or whether pay equity has been maintained would normally have to return to Review Services before proceeding back to the Tribunal. However, Review Services was not equipped to address the issue of how maintenance is to be conducted using proxy male comparators because the Court of Appeal's direction regarding the issue of how to ensure pay equity was maintained when the pay equity plan was completed using the proxy method was made specifically to the Tribunal, and not to the Pay Equity Commission as a whole. As such, the Tribunal directed the parties to return to the Tribunal for such

direction once they had completed the steps of the pay equity process internal to Glen Hill. Paragraph 28 states:

> Once the parties have completed the steps of the pay equity process internal to Glen Hill, the parties are directed to write to the Tribunal indicating this fact, and the Tribunal will provide direction about how they are to use proxy male comparators for the purpose of pay equity maintenance.

44. Neither the applicant nor the respondent filed a request for reconsideration or sought judicial review of the November 23, 2021 decision.

45. As of the November 23, 2021 decision, it was reasonable to believe that the parties to the Court of Appeal decision would be the first to return to the Tribunal to make submissions about specifying the procedures to ensure workplaces that established the pay equity plans using the proxy method continue to have access to male comparators. However, those parties (all three of whom are intervenors in this proceeding) could not agree on elements of their internal GNCS (PHN and ONA) or internal job evaluations (PHN and SEIU). By decisions dated June 1, 2022, the Tribunal directed the parties to return to Review Services to resolve their differences, by mediation or Review Officer Order. As of the date of this decision, the Tribunal understands that those processes are still ongoing.

46. By letters dated April 17 and 20, 2023, Glen Hill and CUPE wrote to the Tribunal and confirmed that they had accomplished all the internal steps necessary and could not proceed further until the Tribunal provides direction about pay equity maintenance.

47. In their correspondence, the parties confirmed that they had complied with the Review Officer's orders iii) and iv), which included establishing a gender-neutral comparison system, and evaluating the female job classes using that system.

48. The female job classes that were evaluated as part of this process were:

> Laundry
> Housekeeper
> Dietary aide
> Maintenance
> Activity aide
> RAI
> BSO RPN

Restorative Care Aide
PSW
Cook
Assistant Cook
RPN

49. Glen Hill requested this matter be adjourned pending the Tribunal giving direction to the parties in the *Participating Nursing Homes* cases.

50. The Tribunal did not agree that this matter should be adjourned indefinitely pending another case. By decision dated May 19, 2023, the Tribunal wrote:

> 7. The Tribunal agrees with the union that this direction should not be delayed indefinitely pending the Tribunal providing directions to the parties to Tribunal Nos. 1507-11-PE and 3696-10-PE. The Tribunal has no estimate as to when it will be in the position to provide any direction to those parties. Those parties have been directed to return to Review Services to resolve substantive differences that need to be completed before the Tribunal can provide any directions regarding pay equity maintenance using proxy comparators, and the Tribunal has received no timetable for when this is expected to be completed.
>
> 8. The Tribunal also agrees with the union and the employer that the Tribunal's direction about how the maintenance process is completed using proxy comparators could have broad applications and implications for the community at large. As such, in the Tribunal's view, it is prudent to provide the opportunity for any person or organization to seek intervenor status in this application to make submissions that they wish the Tribunal to consider about what procedure should be directed about how pay equity maintenance using proxy comparators should be completed in this case.

51. As such, a Notice to Community was posted and the Tribunal received nine requests to intervene. No objections were received to any of the interventions, and the Tribunal granted those interventions by decision dated September 15, 2023.

52. The Tribunal directed submission schedules, which included allowing the parties to file any written submissions, and to file any affidavits on behalf of any witness the parties wished the Tribunal to

consider. All parties were provided with ample opportunity to respond to one another's submissions.

53. The Tribunal heard oral submissions on September 17 and 18, 2025 on the issue of how it should specify the procedures to ensure that those employees, represented by Unions, who have established pay equity through the proxy method, will continue to have access to male comparators to maintain pay equity in the context of this case.

Summary of the Proposed Expert Evidence

54. By decision dated May 15, 2024, the Tribunal set out a schedule for the parties to file any expert evidence that they wished the Tribunal to consider. This schedule was amended to allow for response affidavits to be filed.

55. CUPE filed affidavits of Dr. E. Richard Shillington and Dr. Pat Armstrong.

56. The Pay Equity Office filed an affidavit of Dr. Parbudyal Singh.

57. Glen Hill filed a reply affidavit of Ms. Renée Caron.

58. Each of these individuals adopted their affidavits and were cross-examined.

59. The Tribunal is guided by the test set out in *R. v. Mohan,* [1994] 2 S.C.R. 9 for determining whether expert evidence should be admitted in any case. However, the Act also explicitly permits the Tribunal to consider evidence that is otherwise inadmissible in Court. Section 29(2)(g) states:

> may in a hearing admit such oral or written evidence as it, in its discretion, considers proper, whether admissible in a court of law or not.

60. As such, while some of the evidence tendered may not have fulfilled the technical requirements under the *Mohan* test, the Tribunal has the statutory authority to admit the evidence for the purpose of this proceeding.

61. After hearing and considering the evidence from the proposed experts, the Tribunal is satisfied that the evidence tendered was not misused or distorted the fact-finding process, and the conclusions made in this case are not the result of "a battle of experts".

Dr. Shillington

62. Dr. E. Richard Shillington is a statistician who obtained his Ph.D. in Statistics from the University of Waterloo. He testified before the Tribunal on March 27, 2025.

63. Dr. Shillington's report is titled "Report on the Construction of a Male Pay Line". For the most part, Dr. Shillington's evidence pertained to the best practices for creating job rate lines (using regression analysis). The report did not consider data that was specific to the fact situation at Glen Hill.

64. Dr. Shillington's evidence was clear that single data points, such as relying on a single male comparator, is not ideal because it causes an unreliable job rate line. This is mostly because the variability is very high with a single data point. Dr. Shillington's conclusion is that it is not possible to develop a reliable proportional value line, or pay per points system, using a single male job class as the only data point.

65. Dr. Shillington's evidence was that three data points are the minimum number of male job classes to create a reliable regression line, however, he was clear that the more data points used in the model, the more reliable the model will be.

66. Dr. Shillington's evidence was that the more variables that are present, the less reliable a mathematical model becomes. As such, Dr. Shillington agreed with the proposition that reducing the number of variables increases the reliability of a regression line analysis. Therefore, from a mathematical perspective, it is preferable to compare job classes within the same organization than with a proxy organization if there are sufficient comparators internally.

67. The Tribunal recognizes Dr. Shillington as an expert in statistics.

Dr. Pat Armstrong

68. Dr. Pat Armstrong is a Distinguished Research Professor Emeritus of Sociology at York University. Dr. Armstrong is recognized as an international expert in women's work, compensation, pay equity, job evaluation, social policy (gender equality promoting analysis, policies and laws), and in health care and social services.

69. Dr. Armstrong gave her evidence before the Tribunal on March 26, 2025. Dr. Armstrong's evidence did not address the specific facts of Glen Hill.

70. Dr. Armstrong's evidence was that there remains gender segregation in the health sector, and it is especially high in the long-term care sector. She confirmed that pay equity legislation was enacted in recognition of the historic systemic discrimination in compensation for women's work.

71. Dr. Armstrong's evidence is that much of the pay gap between men and women can be understood in undervaluing women's work but admitted that differences in compensation between how one employer pays its employees as compared to another would be influenced by "non-discriminatory factors" such as contracting out; low or uneven levels of government funding; overseas competition; low profit margins; and the degree and extent of unionization

72. Dr. Armstrong's evidence relies on the studies pre-1989 where 25-33% of the gender wage gap that existed was due to the undervaluation of women's work. Dr. Armstrong admitted that she is unaware of any study or research that has been conducted since that time to examine the impact that the Act has had on closing the wage gap because of its purpose of targeting the valuation and comparison of men's work to women's work since its implementation in 1990.

73. Glen Hill suggested during its submissions that Dr. Armstrong does not meet the prerequisites for being declared an expert witness. The Tribunal does not agree. Dr. Armstrong has been recognized as an expert by Tribunals and Courts several times and has been explicitly recognized by this Tribunal as a pay equity expert. The fact that Dr. Armstrong's publications focus on the systemic discrimination in pay practices against women, and that she is typically retained by trade unions as an expert witness on these issues is not surprising to the Tribunal. Pay equity is a niche area of law, where the purpose of the Act is to redress systemic discrimination. The fact that trade unions are the typical parties advocating before the Tribunal and the Court for relief against these historically recognized systemically discriminatory practices, and who are the parties who retain experts whose life work has studied these discriminatory practices does not disqualify Dr. Armstrong as an expert. Quite the opposite. It is understood that her published research as a university professor is peer-reviewed which increases her credibility as an expert. She is asked for her opinion on pay equity matters in Ontario, and all over the world. Her credentials

as an expert witness are not invalidated because her research and opinions generally align with the respondent's position.

74. Saying the above, in this case much of Dr. Armstrong's report relied on historical information that is already known, as much of the same information has been tendered as evidence in previous cases, to the Tribunal. The Act recognizes the historic systemic discrimination in the pay of women's work as compared to men's work, and the purpose of the Act is to remedy that discrimination. The Tribunal is also aware that job classes in the long-term health sector have been and remain predominantly female. This fact is why there is a continuing need to determine how an organization with insufficient male job classes continues to have access to male comparators for the purpose of pay equity maintenance, which was the Court of Appeal's conclusion and the reason for this proceeding.

75. Unfortunately, for the purposes of this proceeding, Dr. Armstrong, who is likely the person who is most well-studied on pay equity publications and research in Ontario, is also unaware of any studies that attempt to isolate and determine the extent of how the Act has remedied the pay equity wage gap in the long-term care sector following these long-term care homes establishing their pay equity plans in 1995.

76. Such information would have been/would be helpful for the Tribunal, as that kind of evidence would have provided the parties with more recent evidence to support their arguments about whether differences in pay rates between different employers is because of "non-discriminatory factors" or whether a pay equity gap has reemerged.

Dr. Parbudyal Singh

77. The Pay Equity Office filed an affidavit on behalf of Dr. Singh. Dr. Singh testified before the Tribunal on March 28, 2025. Dr. Singh is a compensation scholar, and he received a Ph.D. in management and industrial relations.

78. Dr. Singh's opinion is that organization size should be a criterion for selecting a proxy employer. Dr. Singh's research suggests that larger employers pay more than smaller employers in the same field without regard to whether job classes are male or female. Dr. Singh relied on a "long-established" correlation between organization size and compensation. His conclusion is that larger organizations pay higher wage rates, and that factor has nothing to do with whether a job class is considered "male" or "female". Dr. Singh noted that there are several

factors that contribute to this correlation, such as sorting (stronger candidates who can demand higher pay gravitate towards larger organizations); larger firms require work that is greater in scope, complexity, and impact, thus resulting in higher pay; and larger firms generally generate more revenues, thus providing them with a greater ability to pay the higher wage rates.

79. Dr. Singh's evidence was that although the proxy method that was used in 1993 made sense for establishing pay equity plans, it does not make sense for maintaining pay equity plans and concluded that the effect would be obtaining pay parity between two different organizations and not pay equity.

80. His opinion is that to compare organizations of similar size is to reduce the number of variables that could account for non-discriminatory pay differences between organizations, the concept being that the closer two organizations are in size and compensation models, there will be less variability, and therefore, more reliable data points that go into a proportional value analysis using proxy comparators.

81. Under cross-examination however, Dr. Singh admitted that content contained in his report used hypothetical wage rates, and when he was confronted with the actual data of proxy comparators in this case, he admitted that he had reviewed the data, and that the four comparators that the Schedule to *Ontario Regulation 396/93* would identify for Glen Hill are of various sizes but provide identical compensation. This admission significantly weakens Dr. Singh's conclusions as they pertain to this case, as the Tribunal cannot accept his hypothesis and conclusions based on the facts of this case. As such, while Dr. Singh's premise is that his research shows that larger organizations pay higher wages may be generally accurate, this highlights exactly why each case needs to be reviewed in its individual context.

82. The Tribunal recognizes Dr. Singh as an expert as a compensation scholar.

Ms. Renée Caron

83. Ms. Caron worked as the pay equity lead executive for the Treasury Board Secretariat in the federal public sector. One of her tasks in that role was to assist in the creation of the federal *Pay Equity Act*, S.C. 2018, c. 27, s. 416. In doing so, she studied the experiences with the pay equity systems in Quebec and Ontario.

84. For the most part, Ms. Caron's affidavit agrees with Dr. Singh's report. Ms. Caron's opinion was that internal comparisons should be used first, and if a proxy is needed that the comparator should be "from the right neighbourhood" meaning as close to the seeking employer in terms of size and compensation structure as possible.

85. In cross-examination, Ms. Caron admitted that she had virtually no experience applying the Act in Ontario, that her knowledge comes from others' reports, and that she did not examine any of the factors that are specific to the parties in the instant case.

86. While Ms. Caron's evidence was enlightening about how another jurisdiction has approached drafting pay equity legislation when they had a "green field", her evidence was limited in value given that the Act exists and continues to apply in Ontario. As the Tribunal noted in its procedural decisions in this case, this case involves a pre-existing pay equity infrastructure, and the pay equity maintenance process must be retrofitted to that infrastructure following the Court of Appeal decision. The Tribunal appreciates that if it had a "green field" without the statutory restrictions to create whatever processes it wished, the process it would specify could very well look nothing like what the legislature chose to codify in the 1980's and 1990's, but those are not the facts of this case, and those decisions would be appropriately made by the legislature, not an administrative tribunal.

87. Ms. Caron is an expert in the creation of the federal pay equity legislation, but the Tribunal does not find that she is an expert in Ontario pay equity such that she possesses special knowledge that the very capable counsel to the parties in this proceeding do not possess.

Summary of the Parties' Submissions

88. Each party was provided the opportunity to file whatever written submissions they wished for the Tribunal's consideration. There were no page restrictions, and any affidavits that they wished to attach to their submissions were considered by the Tribunal. The parties were each provided with time to make oral submissions to the Tribunal on September 17 and 18, 2025.

89. The following summarizes the submissions of the parties. A complete summary of each submission is not possible, nor appropriate, in this decision given the length and volume of the submissions. The Tribunal recognizes that the following summation of the submissions

does not adequately reflect the quality and thoroughness of the submissions it received both in writing and orally on the September 17 and 18, 2025 hearing dates. However, the Tribunal confirms that it has reviewed and considered all of the submissions, and attached documents, made in writing and orally, several times before arriving at the conclusions in this decision.

Glen Hill

90. Glen Hill submitted that the *Participating Nursing Homes, supra,* decision does not require the Tribunal to specify a procedure that is identical to how pay equity is established using the proxy method. All that is required is that the employer continues to have access to male comparators.

91. Glen Hill submitted that internal comparators should be used rather than the proxy method when conducting pay equity maintenance, and if there are male comparators the Tribunal should direct that those be used instead of the proxy methodology. Glen Hill submitted that it has internal comparators that can be used in the instant case. It relied on the language in the Act which requires that an employer be declared a seeking employer by the Pay Equity Commission in support of its submission that internal comparators should be used over proxy comparators where possible.

92. Glen Hill submitted that proceeding with the proxy method in the same way as when pay equity was established will result in pay parity and not pay equity. Glen Hill submitted that the union parties' submissions made it clear that their goal is to achieve pay parity without regard to the fact that there are non-discriminatory reasons, unrelated to pay equity, that different employers pay different wage rates to their employees.

93. In the alternative, Glen Hill submitted that if there are no internal male comparators, then the Tribunal should create a procedure that allows the parties to consider key factors such as compensation practices, funding, and organizational size when selecting an appropriate proxy employer. Glen Hill submitted that this would be appropriate because it is necessary for parties to identify and remove non-discriminatory factors when comparing its job rates with the proxy employers.

94. Glen Hill submitted that CUPE's position that the same method is used when establishing and maintaining pay equity cannot be so simple, because if it was, the Court would have ordered it.

95. Glen Hill also filed affidavits on behalf of Ruth McFarlane, Mark Chodos, Jill Wright, Sandra Fougrere, Linda Calabrese, Dave Pielas, and Virginia Fletcher during this proceeding, all of which have been considered by the Tribunal.

Canadian Union of Public Employees Locals 2225-06/12 and 5110 ("CUPE")

96. CUPE submitted that the way parties use the proxy method to establish pay equity must continue to be used for pay equity maintenance, and the only question is how it should be maintained.

97. CUPE submitted that the facts of this case are clear: That the parties established a pay equity plan using the proxy method after the employer was declared as a seeking employer. CUPE submitted that all of the job classes have been evaluated internally, and at no time prior to 2024 had Glen Hill raised the issue of having internal comparators.

98. CUPE submitted that if Glen Hill did/does have internal male comparators which could be used, and Glen Hill believed that the current pay equity plan has become inappropriate, it could have provided notice under section 14.1 of the Act.

99. CUPE submitted that the Tribunal should direct that pay equity should be maintained by referring to the Schedule in the *Proxy Comparison Method, Ontario Regulation 396/93* to identify the proxy employer; the seeking employer must obtain information from the proxy employer for the purpose of making comparisons with key female job classes; the proxy employer must provide the requested information to the seeking employer within sixty days; the parties must conduct the comparison by treating the female job classes at the proxy employer as if they were male job classes at the seeking employer; and the pay equity adjustments identified through the comparison method must be paid out.

100. CUPE submitted that the Court of Appeal's decision in *Participating Nursing Homes, supra*, requires the Tribunal to direct a process consistent with the method it has proposed.

101. CUPE submitted that a minimum of three job classes need to be evaluated to use the proportional value method, and this is supported by Dr. Shillington's evidence that a single data point is not sufficient to reliably determine a proportional value line.

102. CUPE submitted that it is not arguing for pay parity. Rather the proxy method must be used to determine whether there is a pay equity gap.

Participating Nursing Homes ("PNH")

103. PNH is a party to the other two *Participating Nursing Homes, supra*, cases. It represents more than 140 long-term care homes in Ontario.

104. PNH's submissions are largely consistent with those of Glen Hill. It supports Glen Hill's position that pay equity maintenance can be conducted using a single male comparator, internal to the organization.

105. PNH submitted that the Tribunal should follow the Federal and Quebec "blueprints" for maintaining pay equity. PNH highlighted that neither of those other two jurisdictions that have implemented pay equity legislation copied the Ontario model for pay equity. PNH noted that the criticism of the Ontario Act is that the legislation is "too complicated" and creates uncertainty.

106. PNH submitted that the Tribunal is not bound to follow the process for establishing pay equity and can specify procedures that consider other factors.

Service Employees' International Union ("SEIU")

107. SEIU is one of the parties to the *Participating Nursing Homes, supra,* cases. SEIU's submissions are largely aligned with CUPE's.

108. The SEIU submits that the Court of Appeal's decision in *Participating Nursing Homes, supra,* is binding on the Tribunal, and that the proxy method set out in the Act must continue to be used in the maintenance process, and Glen Hill's position is an attempt to rewrite the Act.

109. SEIU submitted that the proxy method is required when there are insufficient male comparators, which means that it is possible for an

organization to have internal male comparators and those still be insufficient for the purposes of the Act.

110. SEIU submitted that the Tribunal must consider *Charter* values in this case. SEIU highlighted that the Act is quasi-constitutional legislation where the purpose is an affirmative action to remedy historical systemic discrimination.

Ontario Nurses' Association ("ONA")

111. ONA is the other party to the *Participating Nursing Homes, supra*, decisions. ONA's positions are largely aligned with CUPE's.

112. ONA submitted that Glen Hill must maintain its proxy pay equity plan using the proxy method of comparison and proposed a process that should be followed.

113. ONA submitted that there is a clear process for addressing circumstances where a pay equity plan is no longer appropriate, and that is section 14.1 of the Act. Since notice under section 14.1 of the Act has not happened, the Tribunal must interpret quasi-constitutional legislation in a large, purposive, and liberal manner, and the Act should not be narrowly interpreted to defeat its stated purposes.

Ontario Public Service Employees' Union ("OPSEU")

114. OPSEU is a trade union that represents thousands of employees in the long-term care sector. Unlike CUPE, SEIU, and ONA, OPSEU did not agree to implement the $1.50 Plan in 1995 for its bargaining units.

115. OPSEU submitted that the Tribunal must implement a process that mirrors how an employer establishes pay equity using the proxy method. It submitted that an employer should not be permitted to expand the scope of seeking employers who can be compared with and the same employer should be used to establish pay equity as maintaining pay equity; and that the ability to pay should not be a factor, as the systemic underfunding of sectors with female dominated job classes can be a factor to the systemic discrimination of lower paid female job classes within those establishments.

116. OPSEU supported CUPE's proposed process for using the proxy method for pay equity maintenance.

117. OPSEU submitted that the Tribunal does not have to determine or know why a pay equity gap has reemerged, but the Act sets out a method for determining whether one has and how to close that gap.

Equal Pay Coalition/Ontario Federation of Labour ("EPC/OFL")

118. The EPC/OFL represent thousands of members who are affected by this issue. Generally, the EPC/OFL support CUPE's submissions.

119. The EPC/OFL submitted that the proxy comparison is core to the purposes of the Act; that maintenance of pay equity using the proxy comparison method must be consistent with the Act and Tribunal's jurisprudence; and the Pay Equity Office must fulfill its obligation to produce practical tools and educational materials that reflect the enforcement of maintenance using the proxy method.

120. The EPC/OFL reiterated that the sex segregation in the long-term care sector has not changed, that is still a highly predominantly female workforce, and as such, without internal male comparators employees in the sector remain susceptible to the systemic discrimination which the Act ameliorates.

Ontario Agencies Supporting Individuals with Special Needs and Ontario Long Term Care Association ("OASIS/OLTCA")

121. OASIS/OLTCA represent hundreds of employers in the developmental services and long-term care sectors which have established their pay equity plans using the proxy method.

122. OASIS/OLTCA submitted that many of the processes or factors that have been proposed by Glen Hill and PNH may require legislative amendment to either the Act, or *Ontario Regulation 396/93*.

123. OASIS/OLTCA submitted that there should be no concern about changing the method in which pay equity is maintained, so long as it is compliant with the requirements of the Act, and submitted that *Participating Nursing Homes, supra*, did not preclude an employer from changing methods if internal comparison methods have become available.

124. OASIS/OLTCA submitted that the Tribunal must be mindful when deciding this case, about the implications that its decision could have to the rest of the sector as it will be relied upon for guidance.

125. Some examples are that broader public sector organizations without internal male comparators are the only organizations at risk by having their compensation set by external forces which the employer has no control.

126. OASIS/OLTCA also highlighted that there is a "very real issue of difference in bargaining strength between large public sector unions such as OPSEU, SEIU, ONA, and CUPE for hospital and municipal proxies and the seeking employers who may have either very small locals of those unions, or much smaller unions such as CLAC, UNITE, IBEW or others. OASIS/OLTCA highlighted that section 8(2) of the Act is only available once pay equity has been achieved and therefore was not available at the time pay equity was established, but it is available during the pay equity maintenance process.

127. OASIS/OLTCA submitted that requiring a seeking employer to use a proxy within its geographic division makes sense, because it accounts for variables such as similar cost of living and local economic influences.

128. OASIS/OLTCA highlighted that the Court of Appeal referenced "male comparators" in its decision, but what in fact is happening under *Ontario Regulation 396/93* is the female job class is being compared against the same female job class at the proxy (which has been compared to the proxy employer's male job classes). As such the information that the seeking employer can request only pertains to the key female job classes.

129. OASIS/OLTCA submitted that retroactivity should be limited because the law was consistent, and employers complied with the law until it was overturned in 2021.

The Pay Equity Office ("PEO")

130. The PEO made no submissions regarding the factual disputes between CUPE and Glen Hill.

131. The PEO submitted that two criteria should be added under the proxy method where there are multiple organizations that meet the criteria: 1) seeking employers should consider organizational size; and 2) seeking employers should utilize more than one comparator job class from the proxy employer.

132. The basis for the PEO's submissions was to ensure that the purpose of the Act was being complied with, and not to conduct a "market review" or accomplish "pay parity" in a sector.

Ministry of the Attorney General ("MAG")

133. The MAG did not take any positions with respect to the disputes between the parties. It did not make written submissions regarding the procedures that the Tribunal has been directed to specify.

134. In oral submissions MAG responded to some of the submissions made. Specifically, MAG highlighted that the Act does not require three comparators, and that the Tribunal must consider what the pay equity job rate would be in section 21.11 of the Act, as it references January 1, 1994.

The *Participating Nursing Homes* Court of Appeal Decision

135. The parties made submissions about the effect and the impact that the Court of Appeal's *Participating Nursing Homes, supra,* decision has, or should have, on the Tribunal's task of specifying what procedures should be used to ensure continued access to male comparators throughout the proceeding.

136. CUPE and the other trade union parties submitted that the Tribunal must order the proxy method of comparison to be applied to pay equity maintenance when an employer established the pay equity plan using proxy comparators. Glen Hill's position is that the Court of Appeal decision does not require the proxy methodology to be applied in the same way when establishing and maintaining pay equity, and the Tribunal has discretion to consider other factors for how parties can ensure they have continued access to male comparators during pay equity maintenance.

137. CUPE and the union parties relied on paragraphs 6 and 7 of the *Participating Nursing Homes, supra,* decision in support of their position that the decision is clear that the Court has directed the Tribunal to stipulate a procedure using the proxy method. Paragraphs 6 and 7 of that decision state:

> 6. The Divisional Court concluded that the Tribunal's decision was unreasonable. It held that a proper interpretation of the Act requires ongoing access to male comparators -- as set out in the proxy method -- to maintain pay equity. The Divisional Court remitted the matter to the

> Tribunal to specify what procedures should be used to ensure continued access to male comparators.
>
> 7. For the reasons that follow, I conclude that the Tribunal's decision is unreasonable, as the text, context, scheme and purpose of the Act make it clear that ongoing access to male comparators through the proxy method is required to maintain pay equity. I would dismiss the appeals and the cross-appeal.

138. The Court's direction to the Tribunal is found at paragraph 87. The wording is consistent with the Divisional Court's direction. Paragraph 87 states:

> The Divisional Court concluded that the Tribunal's decision was unreasonable. It held that a proper interpretation of the Act requires ongoing access to male comparators -- as set out in the proxy method -- to maintain pay equity. The Divisional Court remitted the matter to the Tribunal to specify what procedures should be used to ensure continued access to male comparators.

139. However, neither the Divisional Court nor the Court of Appeal specified the procedures that must be followed or concluded that the same process that was used to establish the proxy pay equity plan must be the identical methodology for maintaining the plan. The Court of Appeal found that the "Tribunal routinely directs parties to use the same process, but that conclusion is far from an absolute one".

140. In the Tribunal's view, it was within the Court's power to have clearly stated that the proxy methodology that was used to establish pay equity must be used to maintain it. This is especially the case when the Court decided not to remit the issue back to the Tribunal once it found that the Tribunal's decision that the proxy methodology did not apply to pay equity maintenance to be unreasonable.

141. If the Court had concluded that the same process must be followed, and not remitted it back to the Tribunal, that would have resolved the issues that have been litigated before the Tribunal over the past half-decade, and subsequent disputes about the application of that process would then arise on a case-by-case basis. If the parties to any new dispute were unable to resolve it, they would have had the right and ability to file an application with Review Services, and then to the Tribunal if there was disagreement with the Review Officer's Order or Notice of Decision, as in the normal course. This would have resolved

the issue being determined by this panel, the moment that the Supreme Court of Canada denied leave to appeal in 2021.

142. A reason that the Divisional Court provided for not remitting the issue back to the Tribunal to reconsider was to avoid further delay. Since delay was a stated concern for not remitting the issues back to the Tribunal as would be in the normal course, the Tribunal must believe that if the issue was as clear as it has been suggested by CUPE, the Divisional Court, or the Court of Appeal, would have just said so, and eliminated the delay that has occurred since those decisions were issued.

143. Furthermore, since this is a case of first instance, as the state of the law up until 2019 was that the proxy methodology did not apply to pay equity maintenance, there is no Tribunal or Court jurisprudence to provide guidance on this specific issue.

144. It is clear to the Tribunal that the Court's direction was that a proxy methodology must be used when an organization does not have sufficient internal male comparators. Paragraph 6 of the Court of Appeal decision, cited above, confirms this and the Tribunal has referenced this in paragraph 3 of its November 23, 2021 decision.

145. However, the Court's choice of its language in its direction to the Tribunal is important as it was specific. The choice of the wording in the direction to the Tribunal has complicated the Tribunal's analysis on this issue, because the Court was explicit that the Tribunal must ensure that employers that established their pay equity plans using the proxy method must continue to have access to **male comparators**.

146. However, in the proxy provisions of the Act, the comparators are female, not male, and are expressly called "key female job classes" not "male comparators". Section 21.13 of the Act states:

> For the purposes of this Part and despite subsection 4(2), systemic gender discrimination in compensation shall be identified by undertaking comparisons, in terms of compensation and in terms of the value of the work performed, using the proxy method of comparison,
>
> a. between each key female job class in the seeking employer's establishment and female job classes in a proxy establishment; and

> b. between the female job classes in the seeking employer's establishment that are not key female job classes and the key female job classes in that establishment.

147. In section 21.15, key female job classes are said to be "as if they were male job classes", it does not say "male comparators". Section 21.15(2) states:

> The comparisons referred to in subsection (1) shall be carried out using the proportional value method of comparison,
>
> (a) in the case of a comparison under clause (1)(a), as if the female job classes in the proxy establishment were male job classes of the seeking employer; and
>
> (b) in the case of a comparison under clause (1)(b), as if the key female job classes of the seeking employer were male job classes of the seeking employer.

148. Section 58 of the *Participating Nursing Homes, supra*, decision has the Court referring to "deemed male comparators":

> The proxy method was added to the Act **specifically to provide for deemed male comparators** for establishments where no male job classes exist. Part III.2 of the Act sets out how the comparison between the seeking employer and the proxy employer works and how the value/compensation relationship for the key female job class in the seeking employer's establishment permits pay equity to be achieved for the rest of the female job classes in that establishment.
>
> [emphasis added]

149. Again, at paragraph 61, the Court of Appeal highlighted that a key female job class is a "deemed male comparator", not a "male comparator":

> To sum up, all three comparison methods involve a direct or indirect comparison between female and male job classes. As I will explain, it is unreasonable to interpret the Act as **doing away with an ongoing deemed male comparator** when it comes to the employer's duty to maintain pay equity in female-dominated establishments that used the proxy method to establish pay equity.

150. As such, in this instance, we have female job classes at a seeking employer being referred to "as if they were male job classes of the seeking employer", and by the Court as "deemed male comparators". Nowhere in the Act, nor the Court's decision is it referenced that key female job classes at the seeking employer are called "male comparators".

151. In pay equity, male comparators are just that: male job classes that have been chosen to be the male comparators for the female job classes. Internal comparison is done using the job-to-job or proportional value method, not the proxy method.

152. The Tribunal is not comfortable concluding that this choice of wording was an oversight on behalf of both the Divisional Court and the Court of Appeal, and that the Courts meant "deemed male comparators"/"key female job classes" and "male comparators" to be the same thing.

153. This is especially the case given that the Court of Appeal cited *Sullivan on the Construction of Statutes, 6th ed.* for the well-known premise that "different words used have different meanings". At paragraph 68, the Court held:

> First, "achieve" in s. 5.1(1) is not synonymous with "establish" in s. 7(1). As a matter of statutory interpretation, "[i]t is presumed that the legislature uses language carefully and consistently so that within a statute or other legislative instrument **the same words have the same meaning and different words have different meanings**": Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. (Markham: LexisNexis, 2014), at 8.32.
>
> [emphasis added]

154. While the Tribunal appreciates that a judicial decision is not a statute or legislative instrument, the Tribunal must assume that the Court of Appeal would have also followed this interpretive principle, and not intentionally confused the Tribunal, and the community, by using different terms, which have different meanings in the pay equity legislative scheme, to mean the same thing.

155. The Tribunal is of the view that the choice of the term "male comparators" confirms a preference to use internal male comparators where possible, and this analysis will be set out in more detail below. For organizations that have a proxy pay equity plan that did not use

internal male comparators, the question turns on how to interpret the Court's direction.

156. In the instant case, one interpretation of this direction could be to require a seeking employer to compare its female job classes against the proxy employer's male job classes, and then select the appropriate male comparators based on the GNCS. These would be many of the same male job classes could be used as male comparators for the "key female job classes" that are referred to in sections 21.13 and 21.15 of Part III.2 of the Act. This would also follow a process that is much closer to the processes used when an organization has its own male job classes and would be responsive to one of Glen Hill's alternative positions.

157. Allowing a seeking employer to compare against the proxy employer's male job classes would also eliminate the variable that the proxy and seeking employers use different GNCS's.

158. The Act does not direct that each organization use the same GNCS when determining the value of a job class. Discretion is provided to the parties establishing a pay equity plan about which subfactors that they evaluate, and the weighting that gets attributed to each subfactor. The only requirement is that the statutory factors must be evaluated. However, like many important concepts in pay equity, the Act provides little guidance on how a GNCS must be constructed. Section 5(1) of the Act states:

> For the purposes of this Act, the criterion to be applied in determining value of work shall be a composite of the skill, effort and responsibility normally required in the performance of the work and the conditions under which it is normally performed.

159. From the Tribunal's experience, most sophisticated GNCS break those statutory factors down into several subfactors. As such, the GNCS used by the proxy employer and seeking employer will almost certainly evaluate different subfactors and provide different weightings. The practical application of this effect is that the same job class could result in different evaluations of "value" using the different GNCS's of the seeking and proxy employer. Section 6(1) of the Act requires jobs of "equal or comparable value" to be compared against each other:

> For the purposes of this Act, pay equity is achieved under the job-to-job method of comparison when the job rate for the female job class that is the subject of the comparison is at least equal to the job rate for a male job class in the same

> establishment where the work performed in the two job classes is of equal or comparable value

160. How a GNCS under a pay equity plan "values" job classes can differ based on what factors they statistically value more. To exemplify this concept, we will set out the following hypothetical. For this hypothetical, both GNCS's are quite simple and evaluate only 4 factors: working conditions, qualifications, responsibility, and skill and effort. In this hypothetical example, the proxy employer's GNCS weighs all four factors evenly at 25%, but the seeking employer's GNCS weighs working conditions at 50%, qualifications at 25%, responsibility at 15%, and skill and effort at 10%. The result would be that evaluation of the same jobs would yield different scores. The seeking employer's GNCS would "value", and score higher, job classes that have more points in the factor of working conditions and devalue the job classes that have more points in responsibility and skill and effort relative to the proxy employer's evaluation. These differences in evaluation could affect which male job classes can be considered "equal or comparable value" to the female job classes, and therefore, what is the appropriate male comparator for the female job class.

161. However, the option of directing the seeking employer's female job classes to be compared against a proxy employer's male job classes is not feasible because the Act does not provide the Tribunal with any jurisdiction to enforce compliance on the proxy employer to provide information to the seeking employer about its male job classes. The Tribunal does not read the Court of Appeal decision to provide it with jurisdiction to ignore the limitations of its enabling statute.

162. The Act is clear that proxy employers are only required to provide information to the seeking employer about its key female job classes.

163. Section 21.17(1) prescribes what information a seeking employer can request from a proxy employer:

> For the purpose of making a comparison for a key female job class using the proxy method, a seeking employer may request any potential proxy employer to provide it with the following information relating to a potential proxy establishment of the potential proxy employer:
>
> Information about the duties and responsibilities **of each female job class in the potential proxy establishment**

whose duties and responsibilities are similar to those of the key female job class of the seeking employer.

The pay equity job rate for each female job class in the potential proxy establishment referred to in paragraph 1.

The total cost of benefits provided to or for the benefit of the employees of the potential proxy establishment, expressed as a percentage of the total amount of all wages and salaries paid to those employees.

Such other information as may be prescribed in the regulations.

[emphasis added]

164. Section 21.23(1) limits the Tribunal's jurisdiction to order proxy employers only to provide the information set out in the Act, as referenced above. Section 21.23(1) states:

A review officer or the Hearings Tribunal may order,

(a) a proxy employer or a potential proxy employer to provide to a seeking employer any information that the proxy employer or potential proxy employer is required to provide by this Act or the regulations; and

(b) a seeking employer to provide to a proxy employer or a potential proxy employer any information that the seeking employer is required to provide by this Act or the regulations.

165. While the Act does not expressly prohibit a seeking employer from requesting information about male comparators from the proxy employer, nor a proxy employer voluntarily providing that information, the Tribunal has no power to order a proxy employer to produce information about male job classes/male comparators at the proxy employer if the proxy employer does not wish to do so voluntarily. The proxy provisions of the Act also do not contemplate comparisons between female job classes at the seeking employer and male job classes at the proxy employer. The proxy provisions of the Act are unambiguous that the comparison made is between key female job classes at both the seeking and proxy employer.

166. As such, it is not consistent with the intent of the Act for the Tribunal to specify a procedure that a proxy employer, an entity that is not party to the proxy pay equity plan, can entirely frustrate by simply refusing to provide the information required to complete a pay equity

maintenance process. The Tribunal does not have the authority to expand the plain wording of section 21.23 of the Act, and it would be an error of law to assume the Tribunal could do so. A similar conclusion is arrived at when considering which establishment should be the proxy employer for a seeking establishment, as will be discussed further below.

167. Legislative change would be required to expand the Tribunal's powers beyond the current framework of the Act.

168. Therefore, it is clear to the Tribunal that the Court of Appeal decision intended the Tribunal, for organizations that do not have sufficient internal male comparators, to specify a process that follows the proxy methodology during the maintenance phase where an establishment has a proxy pay equity plan in place, as opposed to amending the proxy methodology to compare key female job classes with male comparators at the proxy employer.

169. Saying this, as set out below, the Tribunal is confident that the answers to most, if not all, of the parties' consternations with applying the proxy methodology to pay equity maintenance can be addressed within the framework of the Act. As such, the Tribunal's directions in this case are consistent with the findings in the Court of Appeal decision, the Act, and address the parties' concerns raised to the Tribunal for consideration during this proceeding.

Preference for Internal Male Comparators

170. Glen Hill's primary position is that internal male comparators should be used in this case and not the proxy method for comparison.

171. Glen Hill relied on the fact that the job-to-job and proportional value methods of comparison are the default methods of comparison in the Act, and special approval must be given by the Pay Equity Commission before an employer can use the proxy method.

172. CUPE submitted that in this case, there are not sufficient internal male comparators and pointed to the fact that as of 2024, Glen Hill had never raised the position that it could conduct pay equity maintenance using internal male comparators. Furthermore, CUPE highlighted that the Act has a clear statutory mechanism that must be followed if an employer or union believes that a pay equity plan has become inappropriate, and that language is found in section 14.1 of the Act. CUPE submitted that in this case, Glen Hill has not provided notice under section 14.1 of the Act.

173. This argument appears to have arisen as a factual dispute between the parties as to whether Glen Hill can use the job-to-job or proportional value methods of comparison. Glen Hill has submitted that there are now internal male comparators such that all female job classes can be compared to and CUPE disagrees.

174. As set out above, the Tribunal confirms that the Court of Appeal decision suggests a preference towards internal male comparators. The Tribunal also confirms that the language of the Act prefers internal male comparators to be used where it is possible. There is a clear hierarchy in the Act about which method of comparison should be used first.

175. Section 21.2 of the Act places the job-to-job method ahead of the proportional value method as it states that the proportional value method should be used when job-to-job comparison cannot be done. Section 21.2 states:

> If a female job class within an employer's establishment **cannot be compared to a male job class in the establishment using the job-to-job method of comparison**, the employer shall use the proportional value method of comparison to make a comparison for that female job class.
>
> [emphasis added]

176. Section 21.22 of Part III.2 of the Act is clear that the proxy method can only be used where the job-to-job and proportional value methods of comparison cannot be used. Section 21.22(2)(b) of the Act states:

> that there is any female job class within the employer's establishment **that cannot be compared to a male job class within the establishment under either the job-to-job method of comparison or the proportional value method of comparison**.
>
> [emphasis added]

177. Furthermore, parties cannot agree to use the proxy method without first applying to the Pay Equity Commission for a declaration that the employer is a seeking employer pursuant to Part III.2 of the Act.

178. As such, there is no ambiguity that the Act establishes a hierarchy for the three methods: the job-to-job method, then the proportional value method, then the proxy method.

179. The Tribunal wishes to make it clear that a preference for the job-to-job method of comparison does not mean that a pay equity plan that was established using the proportional value method or the proxy method is invalid, or has any less effect than one that used the job-to-job method; it is stating only that there is a hierarchy of preferences of which comparison methods should be considered first when creating a pay equity plan.

180. Therefore, once a pay equity plan has become deemed approved using one of these methods, it remains in effect and that is the pay equity plan that must be maintained.

181. In this case, the pay equity plan was deemed approved and pay equity was achieved using the proxy method of comparison. This means that when the pay equity plan was established, the parties (or their predecessors) must have agreed that there was at least one female job class that could not be compared to an internal male job class using the job-to-job or proportional value methods.

182. Glen Hill submitted that for pay equity maintenance, the parties should be required to look first to internal male comparators before using the proxy method. To characterize it in terms consistent with the Act, Glen Hill has alleged that circumstances have now changed such that it can now compare its female job classes with internal male job classes.

183. The Tribunal does not agree with Glen Hill on this point. More specifically, the Tribunal does not agree with Glen Hill's suggested "order of operations" about how this issue gets considered.

184. This is because pay equity is a process that is driven by the parties to a pay equity plan. With respect to pay equity maintenance, subject to an agreement between the employer and the bargaining agent otherwise, it is a process that is solely within the power and obligation of the employer. It is the employer's obligation to continually ensure that pay equity gaps have not reemerged since pay equity was achieved, and it is a trade union's role to monitor that the employer is doing this on behalf of its members.

185. There are no statutory requirements as to the frequency with which the employer must ensure pay equity has been maintained.

Instead, like most concepts in pay equity, it is a contextual analysis that is done on a case-by-case basis. There will be situations where it should be obvious to an employer that it should consider whether a pay equity gap has reemerged, such as when the qualifications and responsibilities of a female job class or a male comparator change. An example this panel referenced during oral submissions, was when the nurse assistant job class was reclassified as the registered practical nurse in the early 2000s. When changes occur to a job class that affect the statutory factors which are evaluated, or factors that are listed in the pay equity plan, it is prudent to review whether those changes had an impact on pay equity.

186. Another situation that could trigger the obligation to consider whether a pay equity gap has re-emerged is where different job classes received different increases in compensation: for example, if a male comparator job class received a special adjustment during collective bargaining or an interest arbitration[1]. A situation where female and male job classes received different wage adjustments after pay equity has been achieved ought to trigger a review to ensure that a pay equity gap has not re-emerged, and if it has, whether the differential falls within one of the permitted exceptions in section 8 of the Act.

187. There are also situations that arise that have a fundamental impact about whether an organization's pay equity plan continues to be appropriate at all. The Act provides statutory mechanisms for how to address situations where the plan is no longer appropriate because of a sale of business or because of changed circumstances.

188. Not every changed circumstance necessarily causes a pay equity plan to become inappropriate, but the Act is clear that the obligation is on the employer or the bargaining agent to raise this issue with the other, and if they agree that the pay equity plan has become inappropriate because of the changed circumstance, the Act obligates the parties to negotiate an amended pay equity plan. The important aspect of these situations is that it takes the responsibility out of the sole hands of the employer and requires negotiation with the bargaining agent.

189. In circumstances where an employer or a bargaining agent is of the view that because of changed circumstances in the establishment the pay equity plan for the bargaining unit is no longer appropriate, it

[1] The effect of interest arbitration awards to male job classes are addressed in Ontario Regulation 491/93.

can provide notice to the union to negotiate an amended plan. Section 14.1(1) of the Act states:

> If, in an establishment in which any of the employees are represented by a bargaining agent, the employer or the bargaining agent is of the view that because of changed circumstances in the establishment the pay equity plan for the bargaining unit is no longer appropriate, the employer or the bargaining agent, as the case may be, may by giving written notice require the other to enter into negotiations concerning the amendment of the plan.

190. The Tribunal confirms that an employer's or bargaining agent's view that their proxy pay equity plan is no longer appropriate because it can use one of the internal methods of comparison instead of the proxy method would trigger section 14.1 of the Act.

191. The bargaining agent on receipt of this notice has 120 days to agree to an amendment to the pay equity plan, or if the parties do not agree, they must advise the Pay Equity Commission Review Services, which would then assign a Review Officer to assist the parties with their dispute through the normal course. A bargaining agent's disagreement could include a disagreement that it is not appropriate to change the method of comparison, for whatever reason, including but not limited to, there being insufficient male job classes for every female job class to be compared to.

192. The determination of whether the proxy method must continue to be used because there is at least one female job class that cannot be compared to a male job class is then determined on the facts and context of the circumstances before them.

193. Therefore, the Tribunal agrees with both Glen Hill and CUPE in part. The Tribunal agrees that the job-to-job and proportional value methods of comparison are preferred over the proxy method of comparison, but it does not agree that as a matter of course, during pay equity maintenance, parties are obligated to ensure that the proxy method is still required before conducting a review of pay equity maintenance.

194. In the instant case, Glen Hill has not provided notice under section 13 or 14.1 of the Act. Even on Glen Hill's best case, it remains unclear to the Tribunal that there were any male job classes in the establishment as of the date this application was filed. As set out above, Glen Hill and CUPE negotiated the amended GNCS and identified the

female job classes. As of 2024, the "maintenance" job class was still listed and evaluated as a female job class by both parties. The newly created positions relied upon by Glen Hill as potential male comparators did not appear until at least 2021 and 2023.

195. As set out above, Glen Hill represented to the Tribunal in its application that it did not have internal male comparators and represented to CUPE that the maintenance job class was a female job class during the process directed by the Tribunal in its November 23, 2021, decision. As such, there are at least 10 years where it remains clear to the Tribunal that at least one female job class could not be compared to an internal job class, and the pay equity plan that was established using the proxy method was applicable.

196. The Tribunal makes no comment on whether internal male job classes were created such that internal comparators have emerged is now possible, and if so, when those male job classes came into effect. If Glen Hill continues to hold this view, it is to provide notice of changed circumstances pursuant to section 14.1 of the Act to CUPE forthwith. If CUPE continues to disagree and no resolution is obtained within 120 days of that notice, the parties are directed to bring this dispute to Review Services as in the normal course.

Glen Hill's Pay Parity Concern and "Non-discriminatory" Reasons for Differences in Compensation Between the Seeking and Proxy Employer

197. It is obvious to the Tribunal that the overarching concern for Glen Hill and the Participating Nursing Homes is that they do not want their compensation structure to be determined by an unrelated organization. This concern was also echoed by some of the intervening parties. Glen Hill submitted that is in effect what the union parties are seeking in this proceeding, and it would result in pay parity, and not necessarily pay equity.

198. Glen Hill's argument that there are non-discriminatory reasons for why different organizations would pay their female job classes differently is not unfounded in the evidence before the Tribunal. CUPE's expert witness, Dr. Armstrong, agreed that non-discriminatory reasons can account for differences in compensation between female job classes at different organizations. Dr. Armstrong confirmed that factors such as contracting out; low or uneven levels of government funding; overseas competition; low profit margins; and the degree and extent of unionization can influence different job rates between organizations.

199. While none of the union parties in this proceeding took the formal position that pay parity was the predestined result of using the proxy method for pay equity maintenance, it is obvious to the Tribunal that the unions believe that if the Tribunal agrees with their proposed process, it would likely result in an outcome where the job rates of the seeking employer are raised to the same levels as the proxy employer.

200. To ensure the Tribunal understood this argument, the panel took the parties through an example. The starting presumption was that the key female job class at the proxy employer will be evaluated similarly if not identically to the key female job class at the seeking employer using the seeking employer's GNCS. This makes sense given that the entire point of comparing key female job classes, as compared to comparing with male job classes at the proxy employer, is to evaluate jobs that are as similar as possible. For example, an RPN job class at the proxy employer would be compared against the RPN job class at the seeking employer, and as such, they would likely be scored identically if not similarly to the point where differences in scoring would be minimal for the purposes of job evaluation. Therefore, presuming that the job classes score the same, and the proxy employer's key female job class has a higher job rate, the union's interpretation of the Act is that the seeking employer's female job class would be adjusted to the proxy employer's rate.

201. The union parties' position is not surprising to the Tribunal as it makes complete sense that bargaining agents would advocate for positions that are as advantageous to their members as possible, especially when the issue is to ameliorate the historic systemic discrimination that the Act was created to remedy. In the Court of Appeal decision, Huscroft J. specifically comments on this point at paragraph 120 in the dissenting decision:

> **There is no doubt that the unions prefer proxy methodology because they suppose that it will yield greater monetary benefits**. But as the Tribunal was at pains to point out, the pay equity obligation established by the Act is establishment-specific. The Act is not designed to deliver wage parity; it is designed to require pay equity compliant compensation practices in each establishment covered by the Act. This may well mean different pay rates for female job classes across employers -- differences that may be the result of unionization and the nature of bargaining unit configurations in different workplaces.

[emphasis added]

202. The Court has confirmed that the purpose of pay equity maintenance is to ensure that pay equity gaps do not re-emerge once pay equity has been achieved. This is different than the establishment of pay equity where that process is designed to ameliorate the presumed pay equity gap that existed because of the systemic discrimination in pay leading up to the enactment of the Act in 1990. Paragraph 77 of the Divisional Court's decision states:

> In concluding that it is possible to maintain pay equity for women internally in female dominated workplaces without continued resort to deemed male comparators, the Tribunal fails to consider that this denies the claimants' right to quantify and **correct any pay gap that has re-emerged since 1994**; the same opportunity that is available to women in other establishments under the Act where there are male comparators.
>
> [emphasis added]

203. In the Act, there is an initial presumption that there has been historical systemic discrimination which needs to be remedied by establishing a pay equity plan and achieving pay. However, the starting point for pay equity maintenance is not the same. Pay equity maintenance is not considered until pay equity has been achieved. The starting presumption in pay equity maintenance is that when pay equity was achieved, it closed the pay equity gap at that time, and the exercise for pay equity maintenance is to determine whether a pay equity gap has re-emerged, and to close that gap if one has.

204. There are two statutory elements that apply to pay equity maintenance that do not apply when parties are establishing a pay equity plan in the first instance. The first is, as discussed above, that the obligation to maintain pay equity can only be triggered once a pay equity plan has been established and pay equity has been achieved. The second is that section 8(2) of the Act creates a specific exception that permits differentials in job rates only after pay equity has been achieved.

205. In the Tribunal's view, the answer to how to address Glen Hill's concern about pay parity already exists within the Act, and it is captured by the Court of Appeal's comments at paragraphs 78 to 81 of its decision:

[78] The Tribunal also made the point that the Act does not require wage parity, and it emphasized that not all differences in compensation are necessarily attributable to gender discrimination [at paras. 90 and 93]:

The Act does not require wage parity as between different employers. Two different employers operating the same kind of business in the same geographic area may have pay-equity-compliant compensation practices even though the female job classes performing the same or substantially similar duties for each of those employers do not receive similar compensation. In other words, the Act contemplates that the rates of pay for the same or similar women's work may vary depending on *the identity and characteristics of their employer*.

...

The Act recognizes that not all differences in compensation between comparably-valued men's and women's work (where the women's work is paid less) in the same establishment are necessarily attributable to gender discrimination. Section 8(1) of the Act outlines a number of situations where such difference(s) in compensation need not be redressed.

(Emphasis in original)

[79] I accept that wage parity is not the measure of whether there is inequity in compensation that must be redressed. Rather, the Act provides that pay equity is achieved by using one of the three comparison methods and making the required adjustments, whether or not that results in parity between different employers.

[80] I also accept that s. 8 expressly permits some differences in compensation:

8(1) This Act does not apply so as to prevent differences in compensation between a female job class and a male job class if the employer is able to show that the difference is the result of,

(*a*) a formal seniority system that does not discriminate on the basis of gender;

(*b*) a temporary employee training or development assignment that is equally available to male and female

> employees and that leads to career advancement for those involved in the program;
>
> (*c*) a merit compensation plan that is based on formal performance ratings and that has been brought to the attention of the employees and that does not discriminate on the basis of gender;
>
> (*d*) the personnel practice known as red-circling, where, based on a gender-neutral re-evaluation process, the value of a position has been down-graded and the compensation of the incumbent employee has been frozen or his or her increases in compensation have been curtailed until the compensation for the down-graded position is equivalent to or greater than the compensation payable to the incumbent; or [page246]
>
> (*e*) a skills shortage that is causing a temporary inflation in compensation because the employer is encountering difficulties in recruiting employees with the requisite skills for positions in the job class.
>
> (2) **After pay equity has been achieved in an establishment, this Act does not apply so as to prevent differences in compensation between a female job class and a male job class if the employer is able to show that the difference is the result of differences in bargaining strength**.
>
> [81] This section acknowledges that systemic discrimination continues to exist even though there are circumstances in which it does not follow necessarily that differences in compensation are the result of discrimination.
>
> [emphasis added]

206. Sections 8(1) and 8(2) contain the statutory permitted reasons for pay differences to exist between male and female job classes, or in this case, key female job classes at the seeking employer and the key female job classes at the proxy employer. Both provisions place the onus on the employer to show that the differences exist for one of those reasons.

207. Section 8(2) of the Act was not available to organizations when the proxy pay equity plans were created and implemented. However, once pay equity is achieved, as it was deemed to have been achieved in 1995 in this case, an employer can, for example, show that "bargaining strength" is the reason that gaps have re-emerged, which is a statutorily

accepted reason for differences in job rates between two job classes that are scored similarly.

208. "Bargaining strength" is not defined in the Act and there is no other guidance in the Act about how the Tribunal should interpret that phrase. This definition was not argued in this proceeding and will likely have to be considered by the Tribunal in a future proceeding.

209. In the Tribunal's view, the "non-discriminatory" (as they have been called in this case) factors such as organization size, the ability to contract out; low or uneven levels of government funding; overseas competition; low profit margins; the degree and extent of unionization; sorting; complexity of work; and revenue generation are factors that are more appropriately considered with the impact of collective bargaining and the "bargaining strength" exception as opposed to at the front end of the process.

210. Glen Hill has also argued that these non-discriminatory factors affect an organization's "ability to pay" increases that result from a pay equity adjustment. The Tribunal has been clear in its jurisprudence that "ability to pay" cannot be relied upon as a justification not to make pay equity adjustments. But again, "ability to pay" is a well-known concept that is considered in collective bargaining disputes, and specifically in interest arbitration that is used to resolve collective agreements. For example, section 9(1).1 of the *Hospital Labour Disputes Arbitration Act*, R.S.O. 1990, c.H.14 ("*HLDAA*"), requires boards of interest arbitration to consider "an employer's ability to pay in light of its fiscal situation". Section 9(1).1 of *HLDAA* states:

> (1.1) In making a decision or award, the board of arbitration shall take into consideration all factors it considers relevant, including the following criteria:
>
> 1. **The employer's ability to pay in light of its fiscal situation**.
>
> 2. The extent to which services may have to be reduced, in light of the decision or award, if current funding and taxation levels are not increased.
>
> 3. The economic situation in Ontario and in the municipality where the hospital is located.
>
> 4. A comparison, as between the employees and other comparable employees in the public and private sectors, of

> the terms and conditions of employment and the nature of the work performed.
>
> 5. The employer's ability to attract and retain qualified employees.
>
> [emphasis added]

211. Therefore, the Tribunal is not closing the door on an employer's ability to argue that "ability to pay" could be a factor that can be considered in the context of how an employer can show that differences in compensation are a result of the varying bargaining strength of different bargaining units and different employers in a section 8(2) analysis. This is a very different argument than an employer suggesting that it should not be obligated to close a pay equity gap for any of its female job classes because it cannot afford it. However, the time to consider that argument is not in this decision and must be done in the context of each case, based on the evidence put before the Tribunal with the onus resting with the employer.

212. The Tribunal wants to be clear that it is not making any comments in this decision about whether an employer's reliance on any of these factors will or will not be successful in the future. The Tribunal is not setting out a test for how an employer can show that "bargaining strength" is a permissible reason for differential pay rates between key female job classes at a proxy and seeking employer. Evidence was not led on these factors in the context of section 8(1) or 8(2) of the Act, and fulsome submissions on this issue have not been made. The Tribunal is just noting that the "pay parity" factors that Glen Hill and the Participating Nursing Homes ask the Tribunal to consider when specifying directions in this case are not appropriately dealt with when specifying the process for how an employer is to ensure that pay equity gaps have not re-emerged, but it may be appropriate to consider those facts if an employer attempts to show that differentials in job rates between key female job classes between the seeking and proxy employer are explainable under the statutory exception under section 8(2) of the Act.

213. Therefore, the Tribunal's view is that Glen Hill, the PNH, and Dr. Singh have "put the cart before the horse" with respect to its "pay parity" argument. They have assumed that the outcome is predestined without first going through the process (which includes gathering the relevant evidence specific to this case, making the appropriate comparisons, and demonstrating why it believes differential in job rates between organizations is for "non-discriminatory factors" related to

bargaining strength) and have instead ~~have~~ asked the Tribunal to insert non-statutory factors into the process to try and mitigate against that potential outcome.

214. There is no statutory basis for the Tribunal to specify that organization size, or any of the other "non-discriminatory" factors referred to in the evidence must be included in the process that the Tribunal is directing in this decision. It is not the role of this Tribunal, if it even has jurisdiction to do so, to create new exceptions and considerations when the exceptions have already been set out in section 8 of the Act, which is cited in the Court of Appeal decision.

215. Instead, the more appropriate place to address the factors raised by Glen Hill, the PNH, and Dr. Singh is under section 8(2) of the Act, if after the process has completed an employer is of the view, **and can show as required by the Act**, that the differences in the job rates of key female job classes at the proxy and seeking employer are because of bargaining strength differences under section 8(2) of the Act.

The Appropriate Proxy Comparator

216. The *Proxy Method of Comparison,* O Reg 396/93 is clear on how a seeking employer must choose its proxy employer. Section 2(1) of that regulation states:

> For the purposes of the proxy method of comparison, a seeking employer shall select as the proxy establishment a potential proxy establishment of an employer that is of the type described in Column 2 of the Schedule opposite the description in Column 1 that best describes the seeking employer.

217. Subsection 2(5) states:

> (5) The proxy establishment selected shall be,
>
> (a) a proxy establishment whose job classes are located in the same geographic division as the seeking employer's job classes that they are to be compared with; or
>
> (b) if no selection can be made under clause (a), the proxy establishment whose employer's principal administrative offices are located the shortest distance from the principal administrative offices of the seeking employer.

218. The Regulation provides a chart of 55 categories of seeking employers and their respective proxy employers.

219. The Tribunal has no jurisdiction to amend the clear language of this regulation. While seeking employers would have the choice between proxy employers that fall within the enumerated categories, the Act and its Regulation is prescriptive.

220. As such, the Tribunal cannot agree with the suggestion that it has the authority or jurisdiction to specify procedures that select for proxy employers on different factors. Legislative change would be required for that to occur.

221. The Tribunal confirms that *Ontario Regulation 396/93* continues to mandate the selection criteria that must be used when parties to a proxy pay equity plan must look to a proxy employer for information to assist with its pay equity maintenance process.

The Process

222. As described above, the "elephant in the room" during this proceeding has been that the achievement of pay equity was "deemed achieved" after the implementation of the "$1.50 Plan" in 1995. However, as the Tribunal has held, and the parties have acknowledged during this proceeding, that plan was not pay equity compliant because job classes were never evaluated using a GNCS.

223. The Act deems pay equity to be achieved when the conditions of a deemed approved proxy pay equity plan were satisfied and all pay equity adjustments were paid. None of the parties argued that pay equity was never achieved under the "$1.50 Plan". Conversely, the parties agreed that Glen Hill's pay equity plan was established in 1995, and pay equity was deemed to be achieved once the pay equity adjustments were paid out. The Court of Appeal also did not find that the proxy pay equity plans were not deemed approved or that pay equity was not achieved after the implementation of the proxy pay equity plans.

224. Since the "$1.50 Plan" was not pay equity compliant, there will not be a baseline to compare against to determine whether a pay equity gap has "re-emerged". Another complicating factor is that the "$1.50 Plan" did not harmonize wages across the sector, or in many cases between proxy and seeking employers. As such, as of 1995 when the "$1.50 Plans" were implemented and pay equity was deemed achieved, there may be differential job rates with respect to the job rates of key

female job classes between proxy and seeking employers going back to the 1990's when pay equity was deemed to be achieved.

225. The only information that the parties will have to assist them in determining whether a pay equity gap has "re-emerged" is the information that existed the last time that pay equity was deemed to have been achieved.

226. To put it another way, the easiest way to evaluate whether a pay equity gap has re-emerged is to reevaluate a job class and its male comparator, or deemed male comparator, and determine whether there have been changes that affect the pay equity analysis such that a gap has re-emerged. That option is not available to organizations in the long-term care sector that adopted the "$1.50 Plan" because it was not done properly the first time.

227. In a situation where the parties have not replaced the "$1.50 Plan" with a pay equity compliant plan, the first step for the parties to the non-compliant "$1.50 Plan" is to develop a compliant GNCS and to evaluate its female job classes internally. Since this process includes amending a pay equity plan that is not appropriate for pay equity maintenance (as set out in the 2016 Decision), the plan must be amended which invokes the joint obligation of Glen Hill and CUPE negotiating and implementing the amended plan that will be used for pay equity maintenance. As such, this is not a process where the employer would have the sole obligation to maintain pay equity.

228. This part of the process is identical to the Review Officer's Order:

> i) List the female job classes and provide the years they were created;
>
> ii) Identify the job rate for each of the female job classes;
>
> iii) Negotiate an amendment to the $1.50 Plan that uses a gender-neutral evaluation system; and
>
> iv) Evaluate the female job classes using the gender-neutral evaluation system.

229. Glen Hill and CUPE have confirmed that this step has been completed. It is important that parties do this step first so that the

information used in developing the GNCS and evaluating the internal female job classes is first done without influence from external factors.

230. The proxy employer shall be identified pursuant to the Schedule in *Ontario Regulation 396/93*. This is to be done within 30 days of the decision.

231. Glen Hill shall request information from the proxy employer. This is to be done within 90 days of the decision.

232. Upon receipt of the pay equity information from the proxy employer, the parties will identify the key female job classes. This is to be done within 220 days of the decision.

233. CUPE and Glen Hill will evaluate the key female job classes of the proxy employer and plot the job rates for those job classes for each year against the job rates of the seeking employer's key female job classes. This will provide the information for the parties to prepare the proportional value line, or other pay equity compliant method used for comparison if agreed. This is to be done within 280 days of this decision.

234. CUPE and Glen Hill will identify whether a pay equity gap has "re-emerged" for each female job class since the last time pay equity maintenance was completed and achieved, in this case, the date must be March 1, 2011. This will be done within 365 days of this decision.

235. If there are differences in job rates between the proxy employer and seeking employer, and the employer is of the view that it can show these differences are a result of statutory acceptable exceptions set out in section 8(1) or 8(2) of the Act, Glen Hill is to bring those calculations to the attention of CUPE. This is to be done within sixteen months of this decision.

236. Once these processes are completed, and the final pay equity wage gaps are identified, the employer will make the required pay equity adjustments. This is to be done within twenty months of this decision.

Conclusions

237. A summary of the conclusions in this decision is as follows:

(a) An organization that has established its pay equity plan using the proxy method of comparison must continue to use a proxy method of comparison

when determining whether any pay equity gaps have re-emerged, unless and until changed circumstances have occurred such that another method of comparison can be used;

(b) Changing a proxy pay equity plan to one that uses internal comparators constitutes changed circumstances under section 14.1 of the Act which requires notice to the bargaining agent (or employer as the case may be). Notice has not been provided in this case;

(c) The job-to-job and proportional value methods of comparison are preferred over the proxy method of comparison; and

(d) An employer's position that it can show that "non-discriminatory" factors caused permissible differentials in job rates between a proxy and seeking employer are issues to be determined under section 8(1) and/or 8(2) of the Act.

238. Glen Hill and CUPE are directed to:

(a) Use the gender-neutral comparison system and the amended plan that has been created pursuant to the November 23, 2021 decision;

(b) Within 30 days of this decision, identify the proxy employer pursuant to the criteria set out in Schedule in Ontario Regulation 396/93;

(c) Within 90 days of this decision, request information from the proxy employer pursuant to part III.2 of the Act;

(d) Within 220 days of this decision, allowing time for the proxy employer to comply with the information request, identify the key female job classes at the seeking and proxy employer;

(e) Within 280 days of this decision, evaluate the key female job classes, and create the proportional

value line to allow Glen Hill's female job classes to be compared;

(f) Within 365 days of this decision, determine whether any pay equity gaps have re-emerged;

(g) Within sixteen months of this decision, the employer shall provide any information to CUPE that it relies on to show that any pay equity gap that has re-emerged is permissible under section 8(1) or 8(2) of the Act; and

(h) Within twenty months of this decision, the employer is to make the required pay equity adjustments arising out of this pay equity maintenance process.

239. The Tribunal directs the Pay Equity Office to monitor the process directed above. If there are any disputes within the steps, the parties are directed to raise those disputes with Review Services forthwith so they can be addressed in a timely manner. If any party disagrees with a Notice of Decision or an Order of the Review Officer, they can bring the dispute to the Tribunal as per the normal course. If the Pay Equity Office is unable to promptly resolve the dispute using its mediative processes, it is to issue a decision on the dispute in a timely manner. Either party may request the Tribunal to review the dispute after Review Services has issued their Notice of Decision or Order as in the normal course.

"M. David Ross"
M. David Ross, Chair

"I agree"
Lori Bolton, Member

"I agree"
Stephen Roth, Member

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