ACFO's response to the TBS application for multiple pay equity plans

File # ARDA-2022-0001

Association of Canadian Financial Officers

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Factum

Submission re. TBS Multiple Plan Pay Equity Application

File # ARDA-2022-0001

Parties: Treasury Board Secretariate (TBS) (Respondent)

Association of Canadian Financial Officers (ACFO) (Complainant)

Overview

TBS Application for Multiple Plans

1. The Complainant, ACFO, does not support the TBS application for multiple pay equity plans for the Core Public Administration (CPA). This submission will address the arguments raised by TBS in support of the application, the requirements of the *Pay Equity Act*, (*PEA* or *Act*), the Pay Equity Commissioner's *Multiple Plans, Interpretations, Policies and Guidelines document*. (IPG) and the Pay Equity Commissioners CN Decision in ARDA-2002-0002 dated 2022-12-08[1]

2. Of most concern to ACFO is the inclusion of some of our members in Plan 1. More specifically, we have concerns about the TBS's rationale for Plans 1 and 2 at paragraph 4.2.6.5 of its application that states the following:

   > "TBS submits that its proposal for three pay equity plans best reconciles the public policy aims of collective bargaining and pay equity, to the extent possible. For two of the three plans, representing three-quarters of the CPA population, it would require the employer and the relevant bargaining agent to be accountable for any wage discrimination that results from collective bargaining, without introducing opportunities for free-riding." (Emphasis added)

3. This will be discussed at greater length in this submission. However, it is ACFO's position that this statement may be the key reason why TBS has applied for multiple plans that will separate out the two largest CPA bargaining agents and, as highlighted above, would require both the employer and the bargaining agents to, "be accountable for any wage discrimination that results from collective bargaining". It is ACFO's position that if this application is granted, TBS's position will possibly contravene both the *PEA* and section 2(d) of the *Canadian Charter of Rights and Freedoms.*

[1] *Canadian National Railway Company v Unifor, United Steelworkers, IBEW, and the Teamsters.*

TBS Arguments for Multiple Plans

4. In its application[2], TBS presents its arguments for being permitted to undertake multiple plans in the CPA. These arguments primarily demonstrate to the Commissioner that there are sufficient male predominant job classes in each of the 3 proposed plans to ensure female predominant job classes can be compared to male-predominant job classes within the same proposed plan as per 30(1)(5) of the *PEA*. Further, it argues that it would be too complex and time consuming to have 16 bargaining agent representatives and unrepresented employees on one pay equity committee. Currently, ACFO members are included in both Plan 1 and Plan 3 of the Application[3].

5. In its application, TBS outlines the following reasons in support of its application for multiple plans. ACFO will address each of these reasons individually[4].

Negotiations at a single pay equity committee for the CPA would be extremely challenging and may require a significant amount of dispute resolution.

6. Developing a pay equity plan under the *PEA* is not a negotiation in the same way collective bargaining is. In fact, the *Act* and Regulations make it very clear that this is supposed to be a collaborative effort between the Employer and Employees. Furthermore, the Employer has the benefit of the *PEA* requirement at section 20(1) that the Employee representatives have only one vote and must organize amongst themselves if they wish to defeat a decision of the Employer. Further, dispute resolution is encouraged throughout this process and may in fact lead to better relationships between the Employer and Employees.

Developing a single pay equity plan for the CPA is likely to significantly increase the time required to implement proactive pay equity in the CPA.

7. Had TBS utilized its time and early-engagement[5] process effectively, it is likely that a PE Committee and the Job Evaluation Tool selection might already have been completed. TBS should not benefit from its own lack of organization, nor should it be allowed to base its argument on speculation. The parties have not met through early engagement since February 16th, 2022. Since that time, TBS has been developing this 3-plan model while it could have used that time to work with bargaining agents and unrepresented employees to develop a single Pay Equity Committee. Now, over a year later, this application is delaying the process even further.

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[2] *Application for Multiple Plans for the Core Public Administration,* Treasury Board of Canada Secretariat, 2022/07/20 at page 19.
[3] Op. Cit at page 5.
[4] Op. Cit. at page 23 (4.2.2).
[5] In early 2021 the Treasury Board Secretariate established an early engagement working group to begin the task of developing a pay equity plan under the new *Pay Equity Act (PEA)*. This working group met numerous times and bargaining agents were encouraged by this format, allowing for on-going discussions and education about pay equity in general, and the requirements of the *PEA*.

Using a single job evaluation tool for the entire CPA may lead to decreased accuracy and reliability of pay equity results.

8. This argument is speculative and unsupported. Having three different job evaluation tools with different committee members measuring the value of work, would more likely lead to vast discrepancies between the 3 plans that could bring legal challenges to the entire process. More importantly, some plans may not fully address or ameliorate wage gaps for female predominant job classes in the CPA.

9. Plan 3 for example is comprised of 14 bargaining agents and 5 non-unionized occupational groups. For this reason, it must be queried why 16 bargaining agents and 5 non-unionized occupational groups would have been "extremely challenging" when Plan 3 is almost identical but for PIPSC and PSAC?

10. With the requirement in the *Act* that the finalized pay equity plans and wage gap information must be posted in the workplace, three different plans, using three different job evaluation tools has the potential of litigation from those female predominant job classes that did not receive similar pay equity payments as their colleagues. Colleagues who may be doing similar or identical work but are represented by different bargaining agents. Job evaluation tools are not limited by the number of positions being evaluated, especially when the wage and personnel policies are identical, which is the case in the CPA.

Challenges are anticipated as it relates to acceptance of the results of a single pay equity plan for the CPA.

11. As discussed above, it is far more likely that the results of 3 different plans, using different committees and different job evaluation tools could be successfully challenged, than a single pay equity plan that has consistent male comparators for all female predominant job classes and is conducted by the same committee, using the same job evaluation tool.

Developing a single pay equity plan for the CPA would contradict the existing community of interest structure and cause disruption in current labour relations.

12. It is unclear how a single pay equity plan would contradict and cause disruption to the current CPA labour relations regime, but three different plans wouldn't. For example, the proposed Plan 3, which includes ACFO members, is a mix of all the bargaining units/agents that aren't covered in Plans 1 and 2. If this won't cause contradictions and disruption of current labour relations, why would a single plan?

13. Further, the Federal Court of Appeal had the opportunity to address the issue of labour relations and the role labour relations and collective agreements play in pay equity complaints filed under the former *CHRA* pay equity regime in *Canada (Human Rights Commission) v. Canadian Airlines International Ltd.*, 2004 FCA 113. The Supreme Court of Canada later upheld this decision in *Canada (Human Rights Commission) v. Canadian Airlines International Ltd.* 2006 SCC 1

Per Justice Evans for the FCA:

> [83] First, bargaining strength may well be the non-gender-related factor that explains wage differences between flight attendants on the one hand, and pilots and maintenance mechanics on the other. The fallacy of this argument is its assumption that differences in bargaining power, and hence in the wages paid to men and women performing work of equal value, have not been gender related. In fact, the labour market has historically been highly gendered. It has been segregated by gender in that some jobs have overwhelmingly been performed by men, while others have typically been performed by women. "Women's work" has been systemically undervalued. An important goal of pay equity legislation is to remedy the discriminatory effects of the operation of a gendered labour market.[6] (Emphasis added)

Per Justices Abella and Lebel for the SCC:

> [39] This is not to say that the terms of collective agreements are irrelevant, but only that their relevance is limited. The question is the existence of common policies and objectives governing the bargaining process on behalf of the employer. The nature of the underlying bargaining policy and of its impact and constraint on the bargaining process is of more salience than the actual terms ultimately negotiated. This is so particularly since, by their very nature, the terms of employment contracts and collective agreements will vary with the imperatives of the particular employee or bargaining unit. To use those differences as barriers to wage comparisons would thwart the very purpose of s. 11 of the Act, namely, to determine whether incidence differences in wages between male- and female dominated bargaining units or job classifications are discriminatory.
>
> [40] If the inquiry were to focus on differences in the terms of collective agreements, as suggested by Air Canada, workplaces would be exempt from the very comparisons the Act contemplated. "Establishment" would be equated with "bargaining unit", thereby undermining the purpose of the Act, namely, to determine whether wages paid to women reflect an under evaluation based on systemic discrimination resulting not only in occupational segregation, but also in diminished bargaining strength, and, likely, diminished wages and benefits. As this Court said in *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3, at para. 42, in the human rights context, an interpretation by which "the edifice of systemic discrimination receives the law's approval . . . cannot be right".
>
> [41] In the end, the interpretive approach advanced by Air Canada would turn collective bargaining into a tool to consolidate discriminatory practices. Freedom of association is a basic constitutional right protected by s. 2(*d*) of the *Canadian Charter of Rights and Freedoms*. The present methods of union certification and collective bargaining have been long and well established. Labour codes seek to give a large scope to the freedom of collective bargaining, in order to attain a degree of balance as well as of stability and peace in labour relations. Nevertheless, collective bargaining does not operate in a vacuum and labour agreements are not interpreted and applied in a void. They are constrained by a legal environment which, among other things, prohibits discriminatory practices (F. Morin and J.-Y. Brière, *Le droit de l'emploi au Québec* (2nd ed.2003), at pp. 973-77). Pay equity may well impact on the conduct or outcome of negotiations as part of a legal environment which parties must factor into the collective bargaining process. Human rights principles often become part of collective agreements, explicitly or implicitly (*Parry Sound (District) Social Services*

[6] *Canada (Human Rights Commission) v. Canadian Airlines International Ltd*., 2004 FCA 113 at para 83.

Administration Board v. O.P.S.E.U., Local 324, [2003] 2 S.C.R. 157, 2003 SCC 42).[7] (Emphasis added throughout)

14. At paragraph 4.2.6 of the TBS application, it becomes more obvious that this line of reasoning is a key concern that TBS has with a single plan approach. Citing a 20-year-old paper written by Paul Weiler for the Pay Equity Task Force, on behalf of the Federally Regulated Employers Transportation and Communications (FETCO). At page 10, Weiler writes, "From a principled perspective, an equal pay or pay equity statute which allows comparisons of the value of work regardless of bargaining unit boundaries would wholly undermine the notion of free collective bargaining." It must also be noted that Prof. Weiler was, at that time, supporting Air Canada in its litigation against CUPE and the CHRC. Further, his paper was written prior to both the 2004 Federal Court of Appeal and 2006 Supreme Court of Canada decisions, cited above.

15. As discussed briefly in the overview, paragraph 4.2.6.5 of the TBS application becomes even more concerning and reflects why TBS used this outdated Report in support of its position that 3 plans are required when it states:

> "TBS submits that its proposal for three pay equity plans best reconciles the public policy aims of collective bargaining and pay equity, to the extent possible. For two of the three plans, representing three-quarters of the CPA population, it would require the employer and the relevant bargaining agent to be accountable for any wage discrimination that results from collective bargaining, without introducing opportunities for free-riding." (Emphasis added)

16. It is ACFO's position that this "rationale" provides the Commissioner with sufficient evidence that TBS is trying to circumvent the essence of the *PEA* for the two largest Unions in the CPA and as ACFO is included in Plan 1, our members will presumably be directly affected by this, if TBS's application is approved.

17. Even if ACFO was not implicated in this through Plan 1, this rationale for multiple plans appears to be making attempts to change the very nature and purpose of the *PEA*. This is reminiscent of the much-maligned and likely-unconstitutional *Public Sector Equitable Compensation Act* (PSECA) brought in under the Harper government in 2009. While this *Act* never came into force, there was overwhelming criticism from both pay equity experts[8] , unions, and employees about making Unions and unionized employees (through their union dues) somehow liable for the gendered wage gaps perpetuated by the Employer.

[7] *Canada (Human Rights Commission) v. Canadian Airlines International Ltd.* 2006 SCC 1 at paras 39 – 41.
[8] See Sydney, Kruth; *A Case for Canadian Pay Equity Reform*, 2015 CanLIIDocs 374, Western Journal of Legal Studies Volume 5 Issue 2, 2014

18. Further, the *PEA* requires only the Employer to remedy any wage gaps identified through a Pay Equity Plan.

> Obligation to increase compensation
>
> **60** If a pay equity plan posted by an employer in accordance with section 55, subsection 57(2) or paragraph 94(1)(b), as the case may be, discloses differences in compensation between predominantly female job classes and predominantly male job classes or, if there are no predominantly male job classes, differences in compensation that are determined in accordance with regulations made under paragraph 181(1)(c), the employer must increase — in accordance with the provisions of the pay equity plan that meet the requirements set out in paragraph 51(k) — the compensation that is payable to its employees who occupy positions in the predominantly female job classes for which an increase in compensation is required to be made under that pay equity plan.

> Obligation to increase compensation
>
> **88 (1)** If a revised pay equity plan posted by an employer in accordance with section 83 or subsection 85(2) discloses differences in compensation identified in accordance with section 78, the employer must increase — in accordance with the provisions of the revised pay equity plan that meet the requirements set out in paragraph 51(k) — the compensation that is payable to its employees who occupy positions in the predominantly female job classes for which an increase in compensation is required to be made under that revised pay equity plan.

> Effect on collective agreements
>
> **95** In the event of an inconsistency between the version of a pay equity plan most recently posted in accordance with section 55, 57, 83 or 85 or paragraph 94(1)(b), as the case may be, and any collective agreement governing the employees to whom the pay equity plan relates, that pay equity plan prevails to the extent of the inconsistency. Any increase in compensation payable by an employer to employees under this Act is deemed to be incorporated into and form part of the collective agreements governing those employees. (Emphasis added throughout)

19. It is unclear why the Employer of this government's own public service, that brought the *PEA* into force, would suggest that making bargaining agents/union members liable for the Employers' wage discrimination one of its key arguments for implementing multiple plans divided up by the two largest CPA bargaining agents. Then Plan 3, which seems to be an afterthought that includes all the other bargaining agents and non-unionized employees. The only conclusion that ACFO draws from this argument is that TBS is really only concerned with the monetary liability of pay inequity for the two largest Union's in the CPA and are attempting to make them jointly liable for any gendered wage gap.

20. Again, it is ACFO's position that if TBS's application is successful, it will violate the *PEA* and quite possibly section 2d (freedom of association) of the *Canadian Charter of Rights and Freedoms* by treating CPA employees and union members differently under the *PEA* because of their Union affiliation.

Development of a single plan for an employer as large and complex as the CPA would be unprecedented.

21. This argument in support of multiple plans for the CPA demonstrates a lack of understanding of how job evaluation works. Not every gender predominant job/position description needs to be evaluated. Representative jobs that exist throughout the entire CPA and across many departments can be used. For example, taking a statistically reliable sampling of job descriptions in each job class (as identified in the *PEA*) will allow for an equally reliable assessment of the job value. However, this will only work if the job evaluation tool and the committee evaluating the work is consistent across the CPA.

22. TBS has known for decades that the complex and outdated classification system is, and continues to be, discriminatory. Allowing TBS to circumvent the *PEA* default of a single plan because the system it created and failed to fix over the last 60 - 70 years makes it too "difficult" and "complex" to meet the requirements of the *Act* of a single plan for the entire CPA is unacceptable and may in fact be discriminatory. Resulting in the kinds of litigation that the *PEA* was supposed to alleviate.

23. At page 18 of the Application, TBS asserts the following: "Since TB's decision to terminate the UCS project in 2002, reform of the classification system has been pursued at a more measured pace via a multi-year, group-by-group classification reform process, rather than focusing on a single value of work methodology for the entire CPA. Consequently, the classification system will not address the challenge of proactive pay equity for the CPA. Instead, the TB will have to develop or acquire one or more job evaluation methodologies to implement pay equity in the CPA (emphasis added)"[9]

24. This again represents a misunderstanding of job evaluation. Any job classification system that does not measure work using an identical job evaluation tool and the same evaluators across all jobs will never be useful for pay equity purposes. The TBS classification system continues to rely on outdated classification standards, many of which do not measure the four pay equity factors of skill, effort, responsibility and working conditions. This classification system, even with recent updates, could never be used as a job evaluation tool as, for example, many female-predominant classification standards, including the FI classification standard, do not refer to working conditions at all. Presumably because of the long-held assumption that working long hours in a cubical or office doesn't have any effect on the conditions of work.

25. Again, it appears from this statement that the TBS does not understand the job evaluation process required to determine whether male and female jobs are doing work of equal value that may demonstrate a wage gap. Further, also mentioned above, the job classes for the CPA

[9] Ibid FN 1 at 2.4.4.11.

have already been determined in the *Act* at section 34[10]. Employees working in female predominant job classes should not continue to be potentially discriminated against because of TBS's ineffective measures to fix the broken classification system. Bargaining agents across the CPA have demonstrated how the classification system has not been working for female-predominant work for decades. Starting with numerous pay equity complaints from the time the provisions were included in the *CHRA* in the late 1970s, over 50 years ago.

The Potential Effect of Multiple Plans on achieving pay equity in the CPA

26. It cannot be overstated that the TBS three plan proposal will continue to deny equal pay for work of equal value to some of the lowest paid female predominant job classes in the CPA, namely clerical and administrative positions under several classifications including CR's, AS's and PM's that will only be compared to PSAC male predominant job classes such at GS's and SV's, primarily "blue-collar" workers that also tend to be the lowest paid male workers in the CPA.

27. This is especially concerning when we know that the CR, AS and PM female predominant classifications, all represented by the PSAC, have the largest number of employees in female predominant work in the CPA. March 31, 2021, data provided by the TBS to bargaining agents demonstrates that the AS classification had 39,339 employees with 74% identifying as female. PM had 33,899 employees with 69% identifying as female, and the CR group had 20,876 with 77% identifying as female. In total, just under 95,000 CPA employees are in these three classifications, over a third of the 250,000 employees in the CPA are employed in 3 female predominant classifications with some of the lowest wage rates.

28. This is particularly concerning to ACFO, as approximately 400 former AS employees doing the work of auditors and a group of approximately 150 internal auditors, formerly represented by PIPSC in the AV occupational group, will soon be represented by ACFO. These transfers will not be finalized until the fall of 2023. Upon transition, both groups will fall under the newly established CT-IAU occupational group. However, the TBS application designates the former AS group to Plan 1 with the PSAC, and the latter group of employees, transitioning from PIPSC, are included in the catch-all Plan 3. There is an extremely high possibility that the two groups, doing almost identical work, will receive different levels of compensation if a wage gap is identified[11]. This scenario would be avoided with a single plan by allowing all female predominant job classes in the CPA to have the same access to all male comparators in the CPA, using the same job evaluation tool, with the same committee evaluating all the jobs. It is ACFO's position that this is the only way that true pay equity, as the purpose of the *PEA*, will ever be meaningfully achieved in the CPA.

[10] Ibid FN 2 section 34 states: "Positions in the core public administration that are of the same group and level comprise a single job class."
[11] See embedded hyperlink: CT Group Implementation Update – ACFO-ACAF.

TBS Failure of previous attempts at Classification Reform

29. From pages 13 through 18 TBS cites, in detail, the various failed attempts at classification reform. Apart from JUMI[12], which was not a classification reform process but a job evaluation comparison process, that TBS acknowledges provided a basis for equalization payments for numerous female predominant classifications and demonstrated that there were indeed wage gaps between male and female predominant classifications in the CPA and also provided sufficient evidence for pay equity complaints under the *Canadian Human Rights Act* (CHRA) pay equity regime[13].

30. What TBS does not acknowledge is that the *PEA* and the resulting pay equity plans will not affect the CPA classification or occupational group systems at all. Further, the drafters of the *PEA* clearly included the CPA when it states at section 34. *Positions in the core public service that are at the same group and level comprise a single job class*[14] . Making it very clear that the *PEA* is about rooting out existing pay inequities in the CPA and not about starting another classification reform process. It is ACFO's position that the TBS application is attempting to persuade the Commissioner that a single pay equity plan will become like the many other failed undertakings to sort out the historical problems with the CPA classification system when this is clearly not the objective of the *PEA*.

Requirements outlined in the Pay Equity Commission's Multiple Plans IPG[15]

- Whether an attempt to meet the standard of a single plan was made before filing an application for multiple pay equity plans.

31. As discussed previously, TBS established an early engagement working group to begin what the bargaining agent participants expected to be the task of forming and training a pay equity committee and developing a pay equity plan under the new *Pay Equity Act (PEA)* in 2021.

32. In early 2022, TBS requested bargaining agent feedback on Multiple Plans for the CPA. In discussions with other bargaining agents, ACFO was under the impression that none of the bargaining agents that completed the questionnaire supported multiple plans. As such, it was disappointing when TBS filed an application with the PE Commissioner for multiple plans in July 2022.

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[12] JUMI (Joint Union Management Initiative) implemented in the early 1980s to measure potential wage gaps between female-predominant work and male predominant work in the federal public service. This initiative resulted in over $3 billion dollars in both retroactive pay and ongoing salary increases to tens of thousands of employees working in female-predominant classifications in the federal public service.
[13] TBS Application for Multiple Plans for the Core Public Administration at para 2.4.2.3.
[14] *Pay Equity Act,* Government of Canada

[15] At page 9.

33. It is ACFO's position that the TBS application is premature as per the PE Commissioners own IPG on multiple plans. Notwithstanding that TBS informed the bargaining agents that it was seeking to apply for multiple plans, it did not make any attempt to try and convene a single plan pay equity committee for the CPA under section 16 (1) of the *PEA* prior to submitting this application.

34. No discussions took place with bargaining agents and TBS about the committee development process. Furthermore, as the Commissioner advised previously, TBS had not yet secured any representatives from non-unionized employees as per 19(2) of the *Act*, leading to further delay having this application heard by the Commissioner. However, TBS is now asserting that it requires multiple plans in order to meet the timelines for a Pay Equity Plan to be finalized because meeting the timeline for developing a single pay equity plan will be nearly impossible.

35. Now, in early 2023, this application to the PE Commissioner is delaying the process further. It is ACFO's position that the early engagement working group was a clear opportunity to develop a single plan as soon as unrepresented employees elected a representative.

- The interaction between the compensation policies, structures and practices and the pay equity process.

36. As noted previously, the compensation and personnel structure and policies for the entire CPA, including unrepresented employees, is directed by the TBS. This too contradicts the argument that it would be too difficult and cumbersome to do one PE plan across the entire CPA. Information on wages, benefits, and personnel structures in the CPA is widely available online to employees, employers and the general public. This also challenges TBS's argument that a single PE plan would cause "harm" to the labour relations and collective bargaining process. A PE plan requires the following: a statistically significant number of sample job descriptions for all female and male predominant job classes, and compensation data for those job classes including certain allowances, etc. Furthermore, it has already been determined that the CPA, through the National Joint Council, provides the same benefits, pensions, and insurances to all employees in the CPA, including unrepresented employees. As a result, these complex forms of compensation will not need to be included in the wage gap comparisons.

37. Given the recent decision of the Commissioner in the CN matter, it is ACFO's position that as all the pay and personnel policies in the CPA fall under the control of TBS, there is no valid reason for multiple plans.

- Whether the bargaining units or communities of interest are comprised of predominantly male or female job positions.

38. ACFO does not dispute that TBS has sufficient male comparators in its 3-plan application. However, as mentioned above, dividing the plan's by bargaining agent (PSAC, PIPSC, and "all others") will perpetuate existing occupational and bargaining agent/unit gender segregation.

39. It is well established that PSAC has been the bargaining agent primarily for clerical support, administrative employees, library science, and education workers (all female predominant) and "blue collar" or labourer employees (male predominant) since it was established in 1966.

40. PIPSC, on the other hand, is known to have the "professional" employees, including Applied Science and Patent Examination Group (SP), Audit, Commerce & Purchasing Group (AV), Computer Systems Group (CS), Engineering, Architecture and Land Survey Group (NR), Health Services Group (SH), Research Group (RE)[16] .

41. This is supported in the TBS submission at paragraph 4.1.3.4, when it states the following:

> The predominantly male job classes under each of the proposed plans represent a variety of work, expertise, and rates of compensation, which TBS anticipates will translate into a range of values of work (although TBS also acknowledges that the value of work cannot be known until determined by the pay equity committee(s) at a later stage in the pay equity process). For example, plan 1 would include a breadth of administrative, clerical, and technical work; plan 2 a variety of professional, scientific and management work; and plan 3 an array of functions ranging from finance to law, to foreign service and ship repair, among others.

42. It is ACFO's position that dividing up the proposed plans in this way was made in a calculated effort to try and minimalize the financial liability, in particular, to those female predominant job classes in Plan 1. This is being done by ensuring that the largely female predominant PA occupational group will only be compared to male predominant classes in the lower paid, "technical" work of the Technical Services (TC) occupational group, described by PSAC as 10,532 members under the following classifications: Drafting and Illustration (DD), Engineering and Scientific Support (EG), General Technical (GT), Photography (PY), Primary Products Inspection (PI) and Technical Inspection (TI). Or, the Operational Services occupational group (SV) also represented by PSAC and described as a "group of 9,999 employees responsible for the operation of federal buildings and services, including firefighters, trades workers, stores people, cooks and hospital workers, lightkeepers and ships' crews."[17] This is not meant to demean the work that any of these employees do, as it is necessary work, however, the wages paid to these workers are lower than other potential male comparator job classes in other bargaining units across the CPA.

[16] See chart in TBS Application, pgs 11 and 12.
[17] PSAC website: https://psacunion.ca/bargaining.

43. This, combined with TBS's position that both Plan 1 and Plan 2 bargaining agents (possibly including ACFO)… "would require the employer and the relevant bargaining agent to be accountable for any wage discrimination that results from collective bargaining, without introducing opportunities for free-riding appears to be increasingly punitive to the two largest bargaining agents, in particular, to PSAC that represents the largest number of female-predominate job classes in the CPA.

44. Also mentioned above, in the fall of 2023, the transition of over 500 former PSAC and PIPSC members doing internal auditing work to ACFO will be reclassified as CT-IAU's. The TBS application places these Employees in Plan 1 and Plan 3 respectively. Neither group doing internal audit work will be compared with PIPSC Plan 2 grouping that includes the AV occupational group doing work in Audit, Commerce & Purchasing. Further, ACFO represents the CT-FI (Comptroller) occupational group who are professionals, requiring significant education and training and will be in Plan 3. This means they will be compared to ship repair workers, correctional officers, and electricians, to name a few. This appears to contradict TBS's own expert, Dr. John Kervin, who states the following at page 2 of his report: "…that the Commissioner should support multiple plans based on two criteria, 1) Work Tasks that are somewhat similar, 2) sufficient male comparator job classes in each partial plan."[18] (emphasis added)

45. As stated previously, ACFO agrees that each plan likely has a sufficient number of male comparators but clearly, from the information provided above, neither Plan 1 or 3 will meet the criteria of "work tasks that are somewhat similar" to the work of ACFO's membership.

Whether the bargaining units or communities of interest reinforce occupational gender segregation.

46. It is ACFO's position that the history of the CPA's gender-segregated classifications and bargaining unit/agent affiliations continues to perpetuate a discriminatory wage gap for female predominant work in the CPA to this day. Notwithstanding, that people who identify as women now represent over 50% of the employees in the CPA, these positions, for the most part, perpetuate the gendered occupational and bargaining unit/agent system from the last 70+ years.

47. For example, clerical and administrative work in the CPA continues to be female predominant in similar classifications that existed in the 1960s and '70s. In general terms, collective bargaining in the CPA often results in an across-the-board percentage increase on wages for all bargaining units of the bargaining agent. While female predominant classifications will receive the same percentage increase negotiated by the Union for all its members, it is ACFO's position

[18] Dr. John Kervin, The New Pay Equity Act: Comparing single and Multiple pay equity plan formats for the Core Public Administration. At page 2.

that these female predominant classifications started out with lower wages and a percentage increase on that lower wage perpetuates, and in fact, increases the wage gap over time.

48. Much has been written documenting the gender segregation and discriminatory practices in the Federal Public Service over the last century. Starting with the Report of the Royal Commission on The Status of Women in Canada released in 1970.[19] "The Summary of Selected Provisions in Equal Pay Legislation in Canada" report highlights that federal legislation titled the "*Female Employees Equal Pay Act*" of 1956 required the employer to compensate female workers, "Employed by the same employer on identical or substantially identical work", if the employee filed a complaint under the *Act* that was substantiated. In this case, only individual complainants would have redress, however, the fact that this was available to the women working in the federal public service in 1956 is certainly momentous. It does, however, raise the question as to why it took another 60+ years, and many pay equity complaints under the *CHRA*, for a Federal government to enact a pro-active pay equity regime. It is ACFO's position that by including section 34 in the *Act* addressing how job classes are to be determined in the Core Public Administration we can assume that the Legislator turned its mind to how the CPA would address the historical and complex classification system in order to conduct a single pay equity plan as the default in the *Act*.

49. This Report was followed by Justice Abella's seminal *Report of the Commission on Equality in Employment* in 1984[20] highlighting the gendered occupational segregation in numerous federally regulated establishments, including Air Canada, Canada Post, Atomic Energy, etc. and found that the vast majority of women were working in clerical positions earning the lowest wages in these enterprises.

50. This was followed 4 years later with the in-depth study by the "Task Force on Barriers to Women in the Public Service". Entitled "*Beneath the Veneer*"[21], this 4-volume Study focused on why women were still not progressing in the Federal Public Service even though their numbers were growing. The following is an excerpt from the researchers about their task:

> Our task was clear at the outset:
> - to identify and rank the barriers to the advancement of women in the federal public service;
> - to pay particular attention to occupational groups where women were compressed into the lowest levels of pay and status;

[19] Bird, Florence, Report of the Royal Commission on The Status of Women in Canada, September 1970, at page 68.
[20] A Report of the Commission on Equality in Employment / Judge Rosalie Silberman Abella, commissioner., https://publications.gc.ca/site/eng/9.699768/marcXml.html?MODS=1 .
[21] Beneath the Veneer Volumes 1-4, Published in April, 1990 authors Jean Edmonds, Jocelyne Cote-O'Hara, Edna MacKenzie Beneath the veneer (1990 edition) | Open Library.

- to examine the experiences of pioneers and pathfinders – women who were in non-traditional occupations or in predominantly male organizational units; and
- to report to the President of the Treasury Board on our findings, and on their significance to the effective management of the federal public service in the 1990's and beyond.

51. At pages 18-23 of Volume 1 the researchers surveyed the number of female workers in each CPA Occupation Group in or about December 1988.

    - Management Category – 4,283 employees - 12% female (salary band $56,200 – 111,700)
    - Scientific and Professional Category – 22,904 employees – 24% female (salary band $18,000 - $50,000)
    - Administrative and Foreign Service Category – 56,348 employees – 39% female (salary band $15,000 - $70,000)
    - Technical Category – 26,200 employees – 14% female (salary band $15,000 - $70,000)
    - Administrative Support Category – 67,665 employees – 83% female (salary band $15,000-$45,000 (the higher end in the Data Processing Group that was male predominant)
    - Operational Category – 39,433 employees – 13% female (salary band $22,000 - $45,000)

52. While this highlights the lower salaries in Administrative Support and Clerical work done primarily by women, it also highlights the lower starting wages in "blue collar" male-predominant work in the Technical and Operational Categories. While this information is dated, as mentioned previously, we can establish that using the across-the-board percentage increases to determine salary increases in collective bargaining will always mean that higher paid workers will receive higher increases, resulting in the lowest paid female predominant class salaries having no way of catching up. The Collective Bargaining process only perpetuates and increases the existing wage gaps without ever actually relating salaries directly to the work being done. This is why most pay equity experts applauded the proactive and inclusive measures in the *PEA* requiring a single plan across all organizations. In ACFO's opinion, Plan 1 of the TBS application will continue to compare female predominant work to male comparator groups that are also paid lower salaries and any existing wage gap will continue to grow over time.

53. More recently, the Federal Pay Equity Task Force Report (2004) contracted with several researchers about the subject of occupational gender segregation and reported the following:

> Access to collective bargaining has had an important effect for women, as it has for men, in raising wages. The decentralized nature of collective bargaining, however, and the continuing significance of the "community of interest" criterion in defining bargaining units, appears in some sense to have reinforced occupational segregation for women. One study of a sample of Ontario collective agreements covering 200 or more workers concluded that more than two thirds of unionized women would have to change jobs to eliminate occupational segregation; this was roughly the same scale of change which would be required across the economy as a whole. Study of the effects of collective bargaining has drawn attention to the decrease in wage disparity within groups of unionized workers, as well as the fact that personal factors such as educational qualifications and labour market experience have less of an impact on wage levels. The emphasis on reducing differentiation between employees has generally been to the benefit of disadvantaged workers, and it might be expected that it would have a positive effect for women. In the case of women, however, this effect seems to be counteracted by the high degree of occupational segregation, which is manifested in the unionized sector by membership in different bargaining units. The legislation which governs collective bargaining in Canada may be said to mandate a process rather than an outcome. These statutes give legal legitimacy to trade unions and set out the rules for the bargaining process.[22] (Emphasis added)

54. The Task Force also discussed Occupational Segregation in the federal Public Service that after almost 15 years since the *Beneath the Veneer* Reports, highlighted many of the same issues of on-going gender-segregation and low pay:

> Women are also highly segregated by occupational category…Almost 80 percent of women (4 out of 5) are concentrated in two of the six occupational categories—Administration and Foreign Service (44.8%) and Administrative Support (33.8%) compared to less than 50 percent of males (42.6%). Only 1.5 percent of women compared to 3.5 percent of males are in the Executive category and 6.2 percent of women, compared to 16.0 percent of males, are in the Technical category. Women are also highly segregated within occupational categories. For example, almost three quarters (74.1%) of women in the Technical category are concentrated in two of the 14 occupational groups—Engineering and Scientific Support (33.0%) and Social Science Support (41.1%)—compared to less than 50 percent (47.8%) of males. The Scientific and Professional category accounts for 9.4 percent of the female workforce in the Public Service and is more varied in terms of occupational distribution. However, 54 percent of women in this category can be found in three of the 29 occupational groups (Economics, Sociology and Statistics; Law; and Nursing) compared to only 31 percent of males.[23]

55. While some of this information is dated, it is still a useful depiction of how the CPA looked over 20 years ago and how those gendered classifications and occupational groups are similar today, with perhaps the exception of the Executive category. ACFO also recognizes that the Federal Pay Equity Task Force discussed single vs. multiple plans for the Federal Public Service after hearing from TBS that the UCS project had gone so wrong and was very costly without any

[22] Federal Pay Equity Task Force Final Report (2004) pg 440.
[23] Ibid at pg19, based on 2001-2002 data.

noticeable benefit to either classification reform or gendered pay inequities. ACFO also recognizes that one of the larger CPA unions, PIPSC, made the following submission based on the disappointing UCS project.

> "The efforts to develop a single classification plan covering all federal public jobs has failed. Clearly a single classification plan covering diverse work undertaken in the federal public service is not feasible nor desirable. Furthermore, the size and diversity of the federal public service rendered the development of a single classification scheme a monstrous undertaking that in the end, would have resulted in many more problems than it set out to resolve. Professional Institute of the Public Service of Canada. Submission to the Pay Equity Task Force, November 7, 2002, p. 302."

56. The Task Force repeated this concern when it stated: "Admittedly, however, in some cases a single evaluation plan may not seem possible at first sight. Recently, the Treasury Board of Canada Secretariat had planned to establish a general classification standard with a single evaluation tool for all, or almost all, occupations in the federal Public Service. The project was eventually abandoned in favour of separate classification standards."

57. The Task Force elaborated on the single vs. multiple pay equity plan in the following Recommendation, with a dissenting recommendation from Professor Marie-Thérèse Chicha.

> 6.11 The Task Force recommends that the new federal pay equity legislation provide that the pay equity oversight agencies described in Chapter 17 be empowered to approve modifications of the definition of the pay equity unit in special circumstances which would include the following, where this configuration is not inconsistent with the effective implementation of the legislation:
>
> - a corporate structure where entities which are related operate *de facto* as separate employers;
> - operations by an employer which are in separate and distinct industrial sectors;
> - operations of an employer which are carried out in different regions of the country where there are differing economic environments; and
> - situations where pay equity legislation could be applied more effectively if related employers were treated as a single pay equity unit.

Recommendation 6.11

Dissenting recommendation by Professor Marie-Thérèse Chicha, Member, Pay Equity Task Force.

> I fully endorse the principle that employers should have a single pay equity plan to cover all employees. Exceptions from this principle, as we indicate in our Report, must be narrowly construed. Nevertheless, I am proposing an additional recommendation that extends the same rights to employee representatives as those given to employers under Recommendation 6.12.

58. As noted above, this was not a unanimous recommendation and was only supported by PIPSC and Prof. Weiler, both, prior to the "establishment" ruling of the FCA and the SCC (cited earlier).

59. ACFO submits that the failure of the many attempts to fix both the complex and outdated classification system and pay inequities in the CPA appears to be a daunting task. However, it must be made clear, as highlighted previously, that unlike these failed attempts, the *PEA* is not designed to fix or make changes to the classification and occupational group structure in the CPA. Rather, the *PEA* outlines how job classes are to be selected in the CPA, allowing for a single plan to be conducted using the existing classification and level system in place.

60. Further, in discussions with other CPA bargaining agents, including PIPSC, most CPA bargaining agents with female predominant job classes now agree that a single pay equity plan is necessary if pay inequities in the CPA are ever going to be reduced and/or eliminated and many are also making submissions to the PE Commissioner arguing against this Application.

- The impact on non-unionized employees.

61. It appears from the TBS application that non-unionized workers will be divided up into different plans depending on the similarity of their work to unionized employees. Multiple plans will likely lead to difficulties for proper representation on committees and across the 3 different plans to ensure that the representative(s) elected by non-unionized employees all receive acceptable representation, both amongst the plans and between 3 plans. The Unionized representatives will clearly outweigh the number of non-unionized representatives and have a legal obligation to work in their members best interests. Of course, there is no guarantee that one plan will assist non-unionized employees any better, however, one plan would allow for consistency with regards to the job evaluation tool and the committee members conducting the job evaluation across the entire CPA with all representatives, both unionized and non-unionized. It is ACFO's opinion that a single plan in the CPA will be more consistent and fairer to all employees in female predominant job classes, including unrepresented employees.

- Whether there are any objections to the application by those who will be affected by it and the nature of those objections. An application for multiple pay equity plans that replicates the current bargaining unit or community of interest structure must demonstrate that it offers a suitable solution to meet the purpose of the Pay Equity Act to redress gender-based discrimination in the pay practices and systems of employers.

62. Some of these bargaining agents, for example PSAC, have had decades of experience fighting for pay equity for its female union members, and while some cases have been successful, they have never fully addressed or eliminated the gendered pay inequities that exist in the CPA. Inequities that continue to get larger as discussed previously when across-the-board wage rate percentages are the standard in collective bargaining in the CPA. This will always mean that lower paid female predominant work in the CPA will continue to see significantly lower wage

increases than many of their counterparts in higher paid male predominant classifications. Both do important work in the CPA, but women were undervalued in the early days of the Federal Public Service and that has been perpetuated through the collective bargaining process, occupational gender segregation, and the community of interest system.

Conclusion

63. As demonstrated above, much has been written documenting the gender segregation and discriminatory practices in the Federal public service over the last century, When the Federal Government announced it was proceeding with a pro-active pay equity regime in 2016, many of us on the front lines of pay equity felt vindicated that our calls for an end to the CHRA complaint system, that in many cases took decades of litigation and millions of dollars in legal fees, etc. would no longer be required. While not perfect, the final *Pay Equity Act* was lauded when it called for a single pay equity plan for all organizations. Those of us working for pay equity in federal public service Unions believed that our decades of calling for a robust, proactive federal pay equity regime had finally been heard and recognized that a single plan across the CPA was the only way people working in female predominant job classifications in the CPA were going to see real pay equity during their careers.

64. If the TBS application is approved, this optimism will be lost, and our decades of hand-wringing and broken promises made by the government about pay equity will continue for the next generation of workers. Pay equity does not only benefit the women who may get a pay raise, it also tells employees that they are valuable, respected, and equal. Something that Canada and the current Canadian government speaks of often. It also shows that Pay Equity is recognized as a human right that cannot be bargained away, the Commissioner must give the same deference to this human rights legislation as the Courts.

65. TBS, as both the largest federally regulated employer and this governments employer for federal government employees, has a responsibility to all federally regulated employers and employees to lead by example and retract its application for multiple plans.

66. As stated above, bargaining agents for the CPA, most representing at least some female predominant job classes have come together to challenge the TBS application for multiple plans based on the human rights principles of pay equity. It is well established that pay equity falls squarely under the scope of human rights legislation in Canadian law. It is therefore incumbent on the Pay Equity Commissioner to review the TBS application for multiple plans by giving the *PEA* "a broad and liberal interpretation" as per the Supreme Court of Canada.[24]

[24] *Commission v. Simpsons-Sears Ltd.,* 1985 CanLII 18 (SCC), [1985] 2 S.C.R. 536, at pp. 546-47

67. ACFO takes the position that allowing the largest federal employer in Canada to successfully apply to use multiple plans when its own government saw fit to default to a single plan in the PEA will set a precedent for other organizations, including private enterprises, that may want to use multiple plans to limit its wage gap liability. This can be done by carefully selecting the male and female job classes to be included in each plan. For example, female predominant clerical and administrative workers may find themselves being compared to male predominant cleaners or custodians who likely have some of the lowest wages in an organization. It is ACFO's position that this would be a direct violation of the principles of Pay Equity and the very essence of the *PEA*. It could be construed from the recent CN matter that this was the goal the Employer wanted with its application for 4 plans. ACFO supports the decision of the Interim Pay Equity Commissioner in this matter.

Prepared by Helen Berry, Human Rights and Pay Equity Specialist at ACFO and respectfully submitted on January 27, 2023.

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