



Women's Legal  
Education and  
Action Fund | Fonds d'action et  
d'éducation juridiques  
pour les femmes

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Dear Committee Members:

## **Re: Closing the Gender Wage Gap**

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The Women's Legal Education and Action Fund Inc. (LEAF) welcomes the Premier's commitment to prioritizing the closing of the gender wage gap.<sup>1</sup> The Ministry of Labour's Background Paper<sup>2</sup> (the "Background Paper") highlights the complexity and multi-dimensional nature of both the causes and repercussions of the gender wage gap.

The gender wage gap persists despite policy- and legislative-based initiatives, and despite women's increased participation in post-secondary education,<sup>3</sup> paid and full-time employment,<sup>4</sup> and subsequent entry into predominantly male-dominated industries, including the skilled trades.<sup>5</sup> Importantly, the Background Paper also recognizes that the gender gap increases for women who

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<sup>1</sup> LEAF gratefully acknowledges the contributions of volunteers Kristen Pennington, Stephanie Pike and Maryellen Symons to this submission.

<sup>2</sup> Ministry of Labour, *Closing the Gender Wage Gap: A Background Paper* (October 2015), [http://www.labour.gov.on.ca/english/about/pdf/gwg\\_background.pdf](http://www.labour.gov.on.ca/english/about/pdf/gwg_background.pdf) ["Background Paper"].

<sup>3</sup> Martin Turcotte, *Women in Canada: A Gender-Based Statistical Report - Women and Education*, Statistics Canada (December 2011), <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11542-eng.pdf>.

<sup>4</sup> *Background Paper*, *supra* note 2, p. 25.

<sup>5</sup> Status of Women Canada, *Fact Sheet: Economic Security* (February 25, 2015), <http://www.swc-cfc.gc.ca/initiatives/wesp-sepf/fs-fi/es-se-eng.html>.

experience intersectional discrimination, including racialized and Indigenous women, women with disabilities, immigrant women, and members of the LGBT community.<sup>6</sup>

### **LEAF's Expertise Regarding Closing the Wage Gap**

LEAF is a national, charitable, non-profit organization dedicated to promoting substantive equality for women and girls through litigation, law reform and public education. LEAF has intervened in dozens of cases since its founding in 1985 and is a leading expert in the inequality and discrimination experienced by women and girls in Canada.

LEAF's previous initiatives relating to the gender wage gap include, most recently, a submission to Ontario's Changing Workplaces Review,<sup>7</sup> which focussed on the effect of scheduling irregularity on women's childcare obligations, income insecurity and participation in the labour force. Other recent related work includes submissions to provincial and territorial securities regulatory authorities regarding increasing the representation of women on boards and in executive management positions.<sup>8</sup> LEAF made a submission to the House of Commons Status of Women Committee in 2009, expressing concern that the *Public Sector Equitable Compensation Act*<sup>9</sup> was not consistent with Canada's statutory, constitutional and international commitments and obligations to women's substantive equality. LEAF also intervened in *Newfoundland (Treasury Board) v. N.A.P.E. (Newfoundland Association of Public Employees)* at the Supreme Court of Canada.<sup>10</sup> The Court unanimously accepted LEAF's argument that the Newfoundland government discriminated against female workers by paying them unequal wages, but in a disappointing decision, it went on to hold that the Newfoundland government's discrimination against women was justified for fiscal reasons. Prior to *NAPE*, LEAF sponsored the intervention of the Equal Pay Coalition in *Haldimand-Norfolk Regional Board of Commissioners of Police et al v. Ontario*

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<sup>6</sup> *Background Paper*, *supra* note 2, p. 12.

<sup>7</sup> LEAF, "Changing Workplaces Review Submission" (September 18, 2015) <http://www.leaf.ca/wp-content/uploads/2015/09/2015-09-18-LEAF-submission-Changing-Workplaces-Review.pdf>

<sup>8</sup> LEAF, "Improving Representation of Women on Boards and in Senior Management" (October 4, 2013) [http://origin.library.constantcontact.com/download/get/file/1100520459480-357/com\\_20131004\\_58-401\\_womlegaledfund-1.pdf](http://origin.library.constantcontact.com/download/get/file/1100520459480-357/com_20131004_58-401_womlegaledfund-1.pdf); LEAF, "Disclosure of Corporate Governance Practices" (September 2, 2014) <http://www.leaf.ca/wp-content/uploads/2014/06/2014-09-02-LEAF-CSA-submission.pdf>

<sup>9</sup> SC 2009, c 2, s 394.

<sup>10</sup> *Newfoundland (Treasury Board) v. N.A.P.E.*, [2004] 3 SCR 381

*Nurses Association et al*, in which the Ontario Court of Appeal sustained the decision of the Pay Equity Hearings Tribunal that nurses' pay could be compared with that of police officers. The Coalition argued that the purpose of the newly enacted Ontario *Pay Equity Act* was to promote equality for women and that the *Act* should be interpreted so as to maximize the number of women who could enjoy its benefits.<sup>11</sup>

In keeping with its dedication to realizing the promise of equality for women articulated in the *Canadian Charter of Rights and Freedoms* and human rights legislation, LEAF's submissions in response to the Background Paper will frame the gender wage gap as an issue of women's human rights.

### **Discrimination and Gender Stereotyping as a Contributor to the Gender Wage Gap**

The Background Paper identifies discrimination, occupational segregation, caregiving responsibilities, workplace culture and education as "key factors associated with the gender wage gap".<sup>12</sup> While it is analytically important to distinguish these various contributors to the persisting wage gap, they are all interrelated and premised on pervasive gender stereotypes.

Gender stereotypes refer to structured sets of differential beliefs about men and women based on their different physical, biological, sexual and social functions.<sup>13</sup> These stereotypes include generalizations about women's intellectual or cognitive abilities (i.e. as being weaker than those of men), psychosocial profile (i.e. as being cooperative rather than assertive, and therefore less equipped than men for leadership positions), and biological attributes (i.e. motherhood and women's natural fitness for caregiving work).<sup>14</sup>

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<sup>11</sup> *Haldimand-Norfolk (Regional Municipality) Commissioners of Police v. Ontario Nurses' Association (ONA)* (1990) 41 O.A.C. 148 (ONCA)

<sup>12</sup> *Background Paper*, *supra* note 2, p. 33-47.

<sup>13</sup> Rebecca J. Cook and Simone Cusack, *Gender Stereotyping: Transnational Legal Perspectives* (University of Pennsylvania Press, 2010), p. 20.

<sup>14</sup> *Ibid.*

Stereotypical assumptions about women's abilities, interests and priorities ignore women's individual differences. Historically, these stereotypical assumptions have been used to justify the denial of women's entry into particular sectors of the labour force, and overrepresentation in others. Underpinning both overt (or "direct") and systemic discrimination, gender stereotypes can lead even fair-minded, well-intentioned employers to make implicit assumptions and unconsciously discriminate against women in the workplace.

Biologically-based stereotypes are endemic and harmful to the closing of the gendered wage gap. Despite women's increased participation in the workforce, pervasive gender stereotyping about unpaid caregiving work continues to contribute to androcentrism in the workplace. "[M]en's lives and interests define what we think of as work", and the normative worker is viewed as he who is able to devote his full time, energy and attention to paid work.<sup>15</sup> Women's perceived natural "fitness" for caregiving work, based on their biological ability to bear children, relegates women to unpaid and undervalued caregiving work, often facilitating the advancement of their male partners in the paid work sphere at the expense of women's own careers.<sup>16</sup> Stereotypes about women's maternal instincts, docility or inferior intellectual ability also contribute to the overrepresentation of women in service- and caregiving-based occupations (such as retail or healthcare work) that are historically lower-paying, lower-status and more precarious sectors than traditionally male-dominated occupations.<sup>17</sup>

Even when women are able to access higher-status, higher-paying jobs in traditionally male-dominated career paths, their advancement, seniority and remuneration remains unequal. Parental or family caregiver leaves, although statutorily available to both men and women, are disproportionately taken by female caregivers,<sup>18</sup> and consequently, continue to be perceived as "special accommodations" that are not required by the male normative worker. Promotions – and, accordingly, increased remuneration – in the workplace are often predicated on uninterrupted

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<sup>15</sup> Susan A. Basow, "Androcentrism" in *Encyclopedia of Women and Gender: Sex Similarities and Differences*, ed. Judith Worell (Academic Press, 2002): 125 at p. 130.

<sup>16</sup> *Ibid.*, pp. 130-1.

<sup>17</sup> *Ibid.*

<sup>18</sup> A 2009 Statistics Canada study found that nearly 90 percent of new mothers took a parental leave, averaging 48 weeks, while just 11 percent of men took any paid time off work following the birth of a child. See McMahon, Tamsin, "Is maternity leave a bad idea?" *Maclean's Magazine* (January 20, 2014), <http://www.macleans.ca/society/life/is-maternity-leave-a-bad-ideathe-motherhood-gap/>.

participation in paid labour, therefore women's increased tendency to require leaves to partake in unpaid caregiving work adversely affects their professional advancement and salary. Reframing the normal working life as one that includes both paid labour force participation, and potentially interruptive unpaid caregiving responsibilities for both men and women, may bring the discrimination that contributes to the gender wage gap into sharper focus.

In addition to considering and combatting the sex discrimination that contributes to the gendered pay gap, it is important to understand that the gender pay gap has serious implications for women's equality throughout their lives, regardless of whether or not it is caused by unlawful discrimination. An important and timely example is retirement income. Since women's pensions are largely based on their earned income, they are directly and negatively affected by gender pay gap, regardless of whether or not some portion of that gap can be justified by reasons unrelated to unlawful discrimination.<sup>19</sup>

### **Gender Mainstreaming**

Leadership by elected representatives, government bureaucrats, as well as industry and civil society leaders is required if we are to make any headway in addressing the inequality endemic in our society. Accordingly, LEAF emphasizes the necessity of directing government ministries to undertake a gender-based analysis in designing, drafting and implementing policies with respect to work.

Gender mainstreaming is one strategy for achieving gender equality. The United Nations Economic and Social Council has defined gender mainstreaming as:

...the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all

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<sup>19</sup> See Elizabeth Shilton, "Gender Risk and Employment Pension Plans in Canada" (2013) 17 *Canadian Labour and Employment Law Journal* 101 – 141.

political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.<sup>20</sup>

In other words, gender mainstreaming requires policymakers to explicitly turn their minds to whether each policy or piece of legislation reduces or perpetuates gender inequality, explicitly prioritizing gender equality in a given political agenda.

One danger of gender mainstreaming lies in the possibility of further “mainstreaming” only the views and concerns of a certain class of women, namely the white, middle- or upper-class, educated women who are most likely to participate in policymaking. Effective gender mainstreaming must account for the different forms of discrimination or disadvantage experienced by all women, including those who are racialized, Indigenous, low income, members of the LGBT community, aging, impacted by a disability, and/or part of any other marginalized group. As outlined in the Background Paper, women who experience intersectional inequality are most acutely impacted by the gendered wage gap, therefore their perspectives and lived experiences must be prioritized in the development of any government initiatives in this respect. Accordingly, LEAF submits that inclusivity must be at the heart of any public consultation conducted about the gendered wage gap, and that the impact of any resultant policies must be considered not only from a gendered perspective, but also through an intersectional lens.

Intersectional gender mainstreaming can help to avoid the unintended consequences of other policies and programs that, on their face, may not seem to impact women in the workforce. For example, while strong policies with respect to paid caregiving leaves can make it easier for women to spend time outside of the workforce, they also contribute to the loss of important mentorship and promotion opportunities for women on leaves, effectively intensifying workplace inequality and contributing to the gendered pay gap.<sup>21</sup> In order to make true progress in closing the gendered gap, policymakers must commit to adopting an intersectional gender mainstreaming approach to all policies and legislation, and be sure to inquire if and how such policies may directly or indirectly impact women’s experience in the workplace.

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<sup>20</sup> Office of the Special Adviser on Gender Issues and Advancement of Women, *Gender Mainstreaming: An Overview* (United Nations, New York, 2002), <http://www.un.org/womenwatch/osagi/pdf/e65237.pdf>, p. 2.

<sup>21</sup> See McMahon, *supra* note 18.

Importantly, intersectional gender mainstreaming that is itself premised on a stereotypical view of women is equally harmful. Policies that continue to reinforce women's implicit caregiving responsibilities on the basis of their biological ability to mother are, in fact, counterproductive and may also maintain or even widen the gendered wage gap. For example, while publicly funded or subsidized child care is essential to enabling mothers to enter or re-enter the paid work force on a part- or even full-time basis, the potential unintended consequence of expanded subsidized childcare in the province may be to reproduce the gendered wage gap by creating additional low-paying jobs in the childcare sector. While affordable childcare is certainly a necessary piece of the wage gap puzzle, a failure to address the stereotypes that make even paid caregiving work under-valued, precarious, and largely done by women will only compound the problem, particularly for less-educated women.

Policy must facilitate, if not encourage, the view that caregiving work can and should be undertaken by both genders, and that it is of value. The Québec Parental Insurance Plan<sup>22</sup> (the "Plan") is an interesting model in this regard. By granting fathers five weeks of non-transferable paid paternity leave, the Plan encourages the increased involvement of men in childcare. Stereotype-based stigmatization of paternity leave is reduced by making men feel as if they are wasting an opportunity by not taking the paid leave. While the long-term effects of the Plan have yet to be assessed, the percentage of Québécois fathers taking paternity leave has skyrocketed from 10 percent in 2001 to more than 80 percent in 2010.<sup>23</sup> The Plan illustrates the potential power of considering, identifying and combatting stereotypes through intersectional gender mainstreaming and creative policymaking.

### **Education, Mentorship & Non-Traditional Professions**

It appears that simply obtaining post-secondary education does not immunize women against the gendered wage gap. While the wage gap largely decreases with increasing education, women at

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<sup>22</sup> Government of Québec (April 17, 2013), [http://www.rqap.gouv.qc.ca/travailleur\\_salarie/types/parentales\\_en.asp](http://www.rqap.gouv.qc.ca/travailleur_salarie/types/parentales_en.asp).

<sup>23</sup> Liza Mundy, "Daddy Track: The Case for Paternity Leave", *The Atlantic* (January/February 2014), <http://www.theatlantic.com/magazine/archive/2014/01/the-daddy-track/355746/>.

the highest income levels for those with a university education are experiencing an increasing gap.<sup>24</sup> LEAF submits that this is demonstrative of lacking or differential mentorship and professional development opportunities for women at this level. A 2014 survey linked mentorship in youth to high self-confidence in adulthood, a trait that empowers women to explore non-traditional careers, accept leadership opportunities, negotiate pay raises, and advocate for fair workplace policies, all of which contribute to women's increased earnings.<sup>25</sup> Supporting and encouraging diverse mentorship opportunities is critical for all women, but particularly for those who experience intersectional inequality and who are statistically even less likely to see themselves reflected in male-dominated positions. While the Canadian government assembled an expert panel on Championing and Mentorship for Women Entrepreneurs, and has encouraged both male and female business leaders to mentor or sponsor female entrepreneurs through the national Be Her Champion program, few, if any, policy-based initiatives have adequately addressed the mentorship and advancement of women who are not entrepreneurs.

The entrance and retention of women in male-dominated professions or trades must also remain a priority for the provincial government. Although women make up at least half of post-secondary students, they are underrepresented in scientific and technical fields, as well as in apprenticeships and trades programs. “[G]ender differences in major fields of study may [therefore] play a role in the gender wage gap.”<sup>26</sup> Teachers’ assumptions, parents’ attitudes and social pressures – all founded on gendered stereotypes – often unknowingly divert girls and young women away from particular fields. Policies relating to curriculum reform and financial support for programs and scholarships that encourage female participation in male-dominated forums must be pursued in order to address women’s lack of entrance into these professions. Further, renewed commitment to anti-discrimination measures is necessary, particularly with respect to pervasive sexual harassment that has the effect of forcing many women out of male-dominated blue collar or skilled trades jobs, or discourages them from seeking entry in the first place. LEAF strongly supports the Ontario government’s proposed *Sexual Violence and Harassment Action Plan Act* (Bill 132) and

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<sup>24</sup> *Background Paper*, *supra* note 2, p. 46.

<sup>25</sup> Canadian Women’s Foundation, “Survey finds youth mentorship is a strong driver of confidence in Canadian women” (November 19, 2014), <http://www.canadianwomen.org/press-mentorship-women>.

<sup>26</sup> *Background Paper*, *supra* note 2, p. 47.



accompanying “It’s Never Okay” campaign, and highly encourages continued investment in similar policies.

## **Conclusion**

The inequality experienced by women in the workforce, particularly with respect to the ongoing gendered wage gap, is the product of a systemic undervaluing of women’s work. Occupational segregation, biased assumptions about male and female capabilities and priorities, the diversion of girls and young women from scientific, technical or skilled trades fields, and the predominance of women in unpaid and low-paid caregiving activities, can only be addressed by adopting a rigorous intersectional gendered and intersectionality mainstreaming approach to any proposed government policies and programs.

LEAF is grateful for the opportunity to respond to the Background Paper and is hopeful that the Committee will take the above proposals and evidence into consideration when recommending initiatives to close the gender wage gap in Ontario.

All of which is respectfully submitted,

The Women’s Legal Education and Action Fund Inc. (LEAF)