

Supreme Court of Canada Finds Quebec Pay Equity Legislation Unconstitutional

The Supreme Court of Canada recently issued two decisions that found that Quebec's pay equity legislation, which was intended to ensure equal pay for men and women, is unconstitutional.

Quebec (Attorney General) v. Alliance du personnel professionnel et technique de la santé et des services sociaux

The Quebec government amended the *Pay Equity Act* in 1997 to combat wage discrimination against women. The new legislation imposed an ongoing obligation to maintain pay equity with a system of mandatory audits every five years. Employers found to be in violation were obliged to adjust future salaries accordingly, but no retroactive compensation was required, or included in the process.

Labour organizations and women's organizations challenged the new provisions, arguing that the amendments substantially reduced the rights and benefits of employees.

The Supreme Court criticized the legislation on the basis that even when an audit revealed the emergence of pay inequity during the previous five years, employers were only required to adjust payments going forward. As a result, the Supreme Court found that the five year delay was unconstitutional, and upheld the Quebec Court of Appeal decision that struck down provisions of the Quebec *Pay Equity Act*.

Centrale des syndicats du Quebec vs. Quebec (Attorney General)

At the time the changes to the *Pay Equity Act* were implemented, Quebec had challenges calculating the appropriate compensation for female dominated workplaces and allowed the province's pay equity committee six years longer to find a solution for these workplaces.

Unions challenged this six year delay on the basis that it was discriminatory to women.

The Supreme Court agreed with the Quebec Court of Appeal that the delay was discriminatory, but ultimately did not strike down the law on the basis

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that the delay was justified because the aim of the delay was to properly apply the law.

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