Written Submission for the Review of the Public Sector Compensation Transparency Act (PSCTA) before the Standing Committee on Resource Stewardship

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Thank you for the opportunity to provide a submission with regards to the current review of the *Public Sector Compensation Transparency Act* (PSCTA). I make this submission in my academic capacity as a Professor of Law at the University of Alberta, and not on behalf of any client or organization. My submission focuses on the need for a person's gender to be included in the information that is required to be disclosed by the PSCTA, assuming that the Committee's review will conclude in favour of continuing with public sector compensation disclosure.

Rationale for Proposal

A large amount of data is generated each year through the statutorily-required disclosure of the amounts of compensation or severance paid to those working in the public sector. It remains unclear as to the use that is made of this compensation data, with some having argued that the main effect of public sector compensation disclosure is to trigger requests for salary increases from those who learn that they earn less than their co-workers.

To be useful, data needs analysis, with effective analysis relying on data organization and classification. If the required annual disclosure of public sector compensation data is to be continued, it would assist if additional information was provided by which to organize this data into useful categories. Two categories are presently in use: the law separates out public sector from private sector compensation, and then provides position title as an organizing element. The addition of information on gender would be another data organization element.

Effective data organization is important for analysis, as well as legal discovery and compliance, including compliance with the "equal pay" obligation imposed by section 6 of the *Alberta Human Rights Act*. This equal pay obligation suggests a practical need for an individual's gender to be recorded as part of the annual public sector compensation disclosure. Inclusion of this information would facilitate a gender-based analysis of the resulting data, with a view to determining whether or not there exist gender pay gaps in public sector compensation.

Current Information Disclosed

As Committee members will be aware, the general purpose of the PSCTA is to require the public disclosure, on an annual basis, of the pay and severance received by those working in the public sector whose earnings exceed a certain specified threshold. However, under the terms of the PCSTA, the information required to be disclosed goes beyond amounts paid as compensation,

non-monetary benefits and severance. The PCSTA also requires the disclosure of an individual's name, as well as the position they held during the previous calendar year. A public sector compensation disclosure scheme need not require such personalization. This is a choice that has been made by the law's drafters. To balance concerns of privacy with transparency, one could design a compensation disclosure scheme that requires salary information to be disclosed using only the position title (but not the name) as the identifier of the compensation recipient. (Note that ideally, the PSCTA should refer to position titles in the plural, since an individual may hold more than one position, with a consequent effect on the compensation received).

Personalization Leads to Further Research

Personalization has consequences. With the disclosure of a person's name, any reader of the annual compensation disclosure can choose to undertake further efforts to find out more about the individuals listed. This search for further information can include information on personal characteristics such as gender.

For example, it was reported in mid-2018 that *The Ottawa Citizen* newspaper had undertaken an analysis of the data resulting from five years of Ontario's public sector compensation disclosure law by assigning a gender to each entry using what it called "a combination of online profiles and historical precedent". The latter technique for organizing or coding the data made use of certain assumptions, such as assuming that the name Richard indicated a male. This analysis led to the published conclusion that significant wage gaps existed between male and female professors at two universities in Ottawa. See Elizabeth Payne, "Sunshine List analysis reveals $10,000 gender pay gap at Ottawa's main universities" *The Ottawa Citizen* (updated 16 July 2018).

These additional research efforts can be useful. However, they could also include inaccuracies. A legal requirement in the PSCTA to disclose an individual's gender, alongside their name and positions held, in the compensation disclosure would help secure the accurate classification of the data for undertaking gender pay analyses. It could also encourage employers to self-reflect on the resulting data with respect to meeting their own existing equal pay obligations.

Expanding Requirements to Include Gender

Alberta law has long imposed a statutory equal pay requirement on employers in the private and public sectors. Section 6(1) of the *Alberta Human Rights Act* stipulates that: "Where employees of both sexes perform the same or substantially similar work for an employer in an establishment the employer shall pay the employees at the same rate of pay." This law has existed for some time and thus it should not be an onerous obligation on employers to add gender to the information that is required to be disclosed under the PSCTA. Statisticians may also be a source of information for the Committee, with Statistics Canada engaged in the organization of data by gender, using the classification structure of M (male gender), F (female gender) and D (gender diverse). See further, https://www.statcan.gc.ca/eng/concepts/definitions/gender-sex-variables