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**EQUAL PAY LEGISLATION: THEORY AND PRACTICE IN CANADA**

Claudia Trudeau

A Thesis

in

The Department

of

Political Science

Presented in Partial Fulfilment of the Requirements for the  
Degree of Master of Arts in  
Public Policy and Public Administration at  
Concordia University  
Montreal, Quebec, Canada

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## **ABSTRACT**

### **EQUAL PAY LEGISLATION: THEORY AND PRACTICE IN CANADA**

Claudia Trudeau

In this study of equal pay legislation in Canada, analysis has focused on the source of the male-female wage gap, and the ability of a policy of equal pay for work of equal value to close the gap. The various economic theories supporting and opposing the adoption of equal value legislation are described. In addition, the development of equal value and pay equity policies in Quebec, the federal government, and Ontario are examined. The practical implications of existing legislation in these jurisdictions are also considered. Finally, the contribution of feminist analyses of equal pay policies to the development of a theoretical understanding of the state, and the limits of state reform are assessed.

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## CHAPTER I

### INTRODUCTION: THE WAGE GAP AND POLICY RESPONSE

In the last few decades, perhaps no other phenomenon has affected the labour force more than the increasing participation of women in the paid workforce. In the post-war era, women have entered the labour force in unprecedented numbers. This trend has been described by labour researcher Morley Gunderson as "The single most important development in the labour market over the last 40 years."<sup>1</sup> Canadian women's labour market participation was 27.9% in 1960. Figures for 1986 put women's labour market participation at 55.9%.<sup>2</sup> The rapid increase in women's labour market participation has occurred not only in Canada, but in most industrialized countries.<sup>3</sup>

In examining women's position in the workforce, women's continued inequality is evident. In Canada, the increased participation of women in the labour market has been accompanied by an increase in their earnings relative to men. However, a substantial gap still remains between male and female earnings. A number of sources in Canada document the male-female earnings differentials. Statistics Canada figures on male-female wage differentials for full-time workers reveal that the ratio of women's to men's earnings in 1970 was 59.9%. The ratio increased to 63.8% by 1980.<sup>4</sup> In 1989, full-time female workers earned 65.8% of the average male wage.<sup>5</sup>

Canadian studies have found that women in every occupation continue to earn less than men on an intra-occupational basis. The gap in wages persists even when adjustments are made for differences in schooling, skill level, hours of work, and occupational groupings. In addition, an important part of the wage gap between men and women can be attributed to the different jobs they perform. Studies on the distribution of women in different occupations demonstrate that the labour market is characterized by a high degree of job segregation by sex. These studies show that despite the profound increase in the percentage of women in the paid labour force, the vast majority of women continue to work within traditionally female occupations. Women are still overwhelmingly present in clerical, service, and sales occupations, occupations characterized by low pay, low productivity, and low prospects for advancement. Most of the jobs performed predominantly by women are referred to as female job ghettos, or the pink ghetto. These characteristics of female labour market participation illustrate the continued inequality of women in the paid labour force.

### POLICY RESPONSE TO THE WAGE GAP

In recent years, governments have come under growing pressure to initiate measures aimed at abolishing the unequal position of women in the workforce. Growing awareness of the wage gap and pressure on government have led to the adoption of numerous equal employment policies designed to establish equality for women as paid workers in the labour force. Equal employment policies in Canada have undergone many changes in their shape



and strength over time. Currently in Canada, equal employment policies consist of a wide range of responses to the wage gap, including equal pay policies, daycare policies, training programs for women, employment equity policies, and educational programs designed to encourage women to pursue less traditional careers.

The development of equal employment policies aimed at reducing the wage gap is influenced by different explanations of the wage gap. Each theoretical framework emphasizes different reasons for women's inequality and stresses an alternative manner of alleviating it. The differences in these theories are important because each theoretical perspective supports a unique policy solution to the problem of the wage gap, and recommends a different direction for the government to take.

Most equal employment policies draw upon theories which support the existence of discrimination against women as a component of the wage gap. Equal employment legislation is based on the belief that the wage gap is at least partially attributable to a labour market which discriminates against women on a systemic basis. With systemic discrimination, the disadvantages that women face are not the result of deliberate prejudice on the part of employers, but rather that women are often unintentionally negatively affected by the actions of employers. Systemic discrimination must be redressed on a systemic basis:

Rather than approaching discrimination from the perspective of the single perpetrator and the single victim, the systemic approach acknowledges that by and large the systems and practices we customarily and often unwittingly adopt may have an unjustifiably negative effect on certain groups in society.<sup>6</sup>

Special measures are required of employers covered under legislation to restructure and eradicate employment policies and practices that have unnecessarily negative effects on women. Thus, these policies represent more intensive and interventive strategies on the part of the government to eliminate the wage gap.

One of the most important theories on the wage gap concerns the discrimination in pay scales for women performing traditionally female occupations. The Canadian labour market is characterized by a high degree of occupational segregation between men and women. Analyses of the segmentation of the labour force by sex demonstrate that the jobs women are concentrated in are at the bottom of the pay scale. Many studies on occupational segregation provide evidence that the jobs performed predominantly by women are undervalued and underpaid relative to predominantly male jobs that require the same levels of skill, effort, responsibility, and with equivalent working conditions. The segregation by sex of the workforce has resulted in systemic wage discrimination that is an important part of the pay gap. The policy solution most often advocated for the undervaluation of women's work is equal pay for work of equal value.

The goal of equal pay for work of equal value is the elimination of the portion of the earnings difference that stems from the undervaluation of the types of work done predominantly by women. This legislation requires the examination of predominantly male and female jobs, commonly through a job evaluation procedure, with the predominantly female jobs accorded a higher rate of pay where warranted.

Such policies have received increasing attention in Canada and in many other industrialized countries. Unions and women's groups have turned their attention to equal value and have pursued it through increasing pressure on government to adopt equal value legislation, more sophisticated use of existing legislation, and increasing efforts to incorporate equal value principals in collective negotiations.

As the profile of equal value legislation has increased, so has criticism of this policy. Criticism of equal value has been stimulated primarily by neoclassical economic analyses, which have been used by conservatives to attack the concept of equal pay for work of equal value. They argue that interference of this nature in the determination of wages in the marketplace will have serious economic consequences. Yet despite opposition to equal pay for work of equal value, it has gained credence in Canada and other industrialized countries.

In chapter II, "Economic Theories Supporting and Opposing Equal Pay for Work of Equal Value," neoclassical wage theory is explained in greater detail. Human capital theory, which emphasizes the role of education, experience and commitment to work as wage determinants, is offered as the neoclassical explanation of the wage gap. Neoclassical predictions of the results of pay equity on the economy are also considered. In addition, theories from within the institutionalist paradigm are examined. The institutionalist position is supported by the emergence of historical studies on the explicit undervaluation and underpayment of women's occupations in the past, and the continuing effect of such historical discrimination on present day wages. Also included in the institutionalist paradigm

are the dual labour market theory and the internal labour theory.

In Canada, the potential benefits and consequences of equal value have moved beyond the realm of theoretical discussion. In Canada, equal pay for work of equal value legislation was enacted in the 1970's at the federal level, and in the province of Quebec. Legislation in both of these jurisdictions is based on complaints lodged with either the Canadian or the Quebec Human Rights Commission. More recently, other provinces have adopted a revised form of equal value legislation requiring implementation on a pro-active basis, which is referred to in Canada as pay equity legislation. While most of the pay equity legislation adopted in Canada affects only the public and para-public sectors, Ontario has implemented pay equity legislation covering both the public and private sector.

Efforts to adopt and implement equal value and pay equity legislation in Canada have demonstrated the difficulty of achieving a legislative initiative that is effective in reducing the wage gap. Chapter III, "Equal Pay for Work of Equal Value in Quebec and the Federal Government" examines the equal value legislation in effect in both of these jurisdictions. The limited effectiveness of the legislation is discussed, highlighting the various weaknesses of both laws. In addition, the efforts of the unions within both jurisdictions to obtain more equitable wages under the legislation, and the governmental response to their actions are analyzed.

In Chapter IV, "Pay Equity in Ontario," the implementation of pay equity in Ontario

is examined. The weakness of the legislative language, the dependence on a job evaluation process, and the exemptions in coverage, all serve to limit pay equity as a tool for reducing the wage gap. Possible alternatives offered from within the feminist movement help to inform the debate over this controversial policy. While Ontario's Pay Equity Act would seem to demonstrate the state's potential in helping to create a fair and equitable labour market, feminist analyses of the legislation have led to a new awareness of the limitations of state responsiveness to women's demands for wage justice, and the state's role in the minimizing the radical potential of equal pay for work of equal value.

The concluding chapter recapitulates the topics of Chapters II through IV. Furthermore, it is suggested that pay equity, if it is to be a valid and effective policy, must be developed in a manner that overcomes its potential divisiveness. The inherent tendency of existing legislation to benefit middle class, professional and organized women at the expense of other women and men must be addressed if the broader goals of an equitable society and wage justice are to be achieved.

1. Morley Gunderson, "Male-Female Wage Differentials and Policy Responses," Journal of Economic Literature, Vol. XXVII, March 1989, p.46.
2. Statistics Canada, Women and the Labour Force, Catalogue 98-125, Ottawa, Minister of Supply and Services, 1990, p.7.
3. Gunderson, 1989, p.47.
4. Statistics Canada, 1990, p.25.
5. Statistics Canada, Earnings of Men and Women, Catalogue 13-217, Ottawa, Minister of Supply and Services, 1989.
6. Rosalie Silberman Abella, Report of the Royal Commission on Equality in Employment, Ottawa: Supply and Services Canada, 1984, p.9.

## **CHAPTER II**

### **ECONOMIC THEORIES SUPPORTING AND OPPOSING EQUAL PAY FOR WORK OF EQUAL VALUE**

In the debate over equal pay for work of equal value, much of the argument has focused on the source of the male-female wage gap, and the ability of equal value to close the gap. In this chapter, the widely divergent explanations offered by economists and other analysts of equal value will be divided into two different economic paradigms: the neoclassical paradigm and the institutionalist paradigm.

The neoclassical economic paradigm posits that the labour market operates in accordance with the competitive forces of supply and demand. Within the neoclassical paradigm, rational, profit maximizing employers hire labour on the basis of its marginal productivity. The existence of discrimination is described as a matter of 'taste'; because it is not profit-maximizing, it is deemed irrational. Any companies that persist in discriminating will be eliminated by the competition. Thus, existing differences in male and female occupations and earnings are productivity related. Women's inferior economic status is due to their lack of human capital, which is the result of sex role socialization, and women's choice to devote more time to their families. Interference in the wage setting process in the

form of equal pay for work of equal value is unnecessary, and represents a serious threat to the well-being of the economy.

Institutionalist analysis of the labour market differs from the neoclassical analysis in that emphasis is placed on institutional features and their relative inflexibility in determining wages, and other conditions of employment. Institutionalists stress the role that social and legal institutions play in economic decision-making. Institutional constraints also include internal labour markets, and the segmentation of the labour market into non-competing groups on the basis of sex and ethnicity. Analysis stemming from the institutionalist paradigm provides a more accurate description of the functioning of the labour market than neoclassical theory. From an institutionalist perspective, neoclassical criticisms of equal pay for work of equal value are based upon a flawed economic analysis of the labour market and the determination of wages, and are thus unfounded. The introduction of equal pay for work of equal value will not adversely affect the economy; rather the equal value would serve to eliminate discrimination from the determination of women's wages, and allow their wages to be set at a fair market rate.

### NEOCLASSICAL ECONOMIC PARADIGM

The neoclassical economic paradigm is based on the supposition that all prices, including wages, are set in the competitive marketplace by the forces of supply and demand.



All economic actors are both profit maximizers, and cost minimizers, who rationally weigh cost and benefits before choosing to act, whether it be in accepting a job, or in determining a wage. These economic actors will weigh the utility of every action, so that total utility is maximized. The result is that demand and supply will interact in an auction-like manner, with wages proposed until a wage is reached where supply and demand are equal, which will be the market-clearing wage. At this point, the worth of the job is the same for the employer as it is for the employee.<sup>1</sup>

Within the neoclassical paradigm, wage theory rests on the belief that when the market is in equilibrium, workers will receive a wage equal to their marginal productivity. Marginal productivity determines employers' demand for labour because employers are profit-maximizers, who will add units of labour only to the point where the additional unit of labour increases profits over the increase in the cost of production. Employers will not continue beyond this point, as to do so would lead to a decrease in profits, and would thus be irrational. Marcy Cohen describes neoclassical wage theory as follows:

Everyone gets a wage exactly equal to the value of his labour because any wage less than that would force the individual to seek out another employer - one who was behaving more rationally. In a perfectly competitive economy, an employer who tried to pay some workers a wage less than the marginal productivity of their labour would have to accept a lower profit because he would be forced to operate with a smaller labour force at a scale of production which was less than optimal.<sup>2</sup>

Thus the notion that the worth of labour is accurately indicated by the paid wage is central to neoclassical theory. The neoclassical paradigm also involves important assumptions about

the market, such as that it is perfectly competitive, there is total freedom of contract, labour is perfectly mobile, and full employment is the rule.

### NEOCLASSICAL 'TASTE' THEORY

Neoclassical economists argue that wages are set by the free exchange of labour for wages in the marketplace. The wages for all occupations, male and female, are determined by the supply and demand for labour within each occupation. While some companies may have a 'taste' for discrimination, any such companies' wage costs will be unnecessarily high, and competitive companies will drive them out of business.

The neoclassical position on discrimination is best articulated by Gary Becker. Becker developed his theory of discrimination based on the neoclassical premise that consumers, employers, and employees are rational agents pursuing their own self-interest. He posits that some employers have a 'taste' for discrimination, such as preferring men over women. Discrimination is not cost-effective; the employer is paying higher than a true utility-maximization wage in order to indulge in a preference not to associate with female workers, and is thus forgoing profit. Becker describes the process as follows:

Money, commonly used as a measuring rod, will also serve as a measure of discrimination. If an individual has a 'taste for discrimination,' then he must act as if he is willing to pay something, either directly or in the form of a reduced income, to be associated with some persons instead of others. When actual discrimination occurs, he must, in fact, either pay or forfeit income for this privilege.<sup>3</sup>

Other firms which do not have a taste for discrimination are minimizing costs, and will thus have higher profits.<sup>4</sup>

Becker predicts two scenarios based on his theory. Either the non-discriminating employer will eventually drive the discriminating company out of business, or the discriminating firms will realize what discrimination is costing them, and will move towards a utility-equilibrium position by eliminating discrimination. With Becker's theory, employers will either have to stop discriminating or be driven out of business.<sup>5</sup> Thus, according to Becker's model, the best policy solution to eliminate employers' discriminatory taste is less government interference; the free market and competition will eliminate companies that discriminate.

### CROWDING THEORY

In another model based upon a neoclassical understanding of the labour market, Barbara Bergman has applied the concept of overcrowding to discrimination. With the overcrowding model, employers distaste for women is strong enough to exclude them from many jobs, leading to job segregation by sex. The result is in an increase in supply in the jobs where employers do accept women, and a decrease in supply in the jobs where employers do not accept them. The changes in labour supply have an affect on wages; in the jobs where women are excluded, the market wage is driven up over what it would be if women were allowed access to them, and in the jobs where women are employed, the

market wage is driven down below what it would be if women were not crowded into them. In this model, the free market without crowding would allocate resources more efficiently. Just as in Becker's model, discrimination would disappear in time because employers who do not exclude women would have a competitive advantage over employers who incur higher costs by excluding them.<sup>6</sup>

Although Bergmann's model postulates that employers' distaste for women is the source of segregation, the overcrowding model could be used in conjunction with other explanations of segregation. It is sometimes linked with an analysis of statistical discrimination, where potential employees are judged on the basis of perceived group averages, thus resulting in women's exclusion from many types of employment. In this sense, the overcrowding model serves more as a description of the consequences of segregation, but does not in actuality explain the causes of it. As Martha MacDonald explains, the overcrowding model "fails to provide an explanation of the multiple phenomena of wage inequality, occupational segregation and general discriminatory practices in the market for labour and human capital."<sup>7</sup>

## HUMAN CAPITAL THEORY

Neoclassical economists have argued that with a free market, employers with a distaste for women will eventually cease discriminating, or be driven from the market. The continued existence of the wage gap between men and women cannot be explained within

neoclassical taste theory. In more recent years, neoclassical economists have tried to explain the continued existence of the wage gap by turning to human capital theory as an explanation of the wage gap. Neoclassical economists explain the existence of the wage gap by arguing that the wages men and women receive in the market corresponds with their level of education, experience, and commitment to paid work. Human capital theory argues that if the average female wage is lower than the average male wage, it is because women on average possess these qualities in lesser quantities. Human capital theory focuses on the characteristics of women as the explanatory variable of the wage gap. The aspirations, skills, and occupational choices of women as compared to men are offered as an explanation of the wage gap.

Human capital is a label for the personal skills that people contribute to a job. It consists of an extremely wide range of factors, including technical skill and ability, mental ability, attitude and inclination. From this perspective, the wage gap is due not to discrimination against women, but to differences in the level of commitment and training for work. Women are paid less because they choose to 'invest' less in human capital such as education and experience. Women freely choose to go into lower paying, predominantly female occupations, and to commit less to their jobs than men do. Thus women victimize themselves because their socialization, and devotion to family lead them to invest less in human capital factors. The end result is a combination of poorly trained and poorly equipped women for the job market, which leads them into poorly paid positions.<sup>8</sup>

With regard to the socialization process, studies have shown that the sex role socialization does affect occupational choice. Sex role socialization refers to the process of learning sex appropriate behavior. Parents, peers, schools, and the media, all communicate and shape the occupational expectations of boys and girls. Differences in human capital exist because the socialization process perpetuates ideas concerning appropriate male and female roles. Many of the messages in our society still discourage young girls from achieving higher levels of human capital. Marini and Brinton's study on sex role socialization points out that, on the degree to which gender differences in occupational aspirations approximate sex segregation in employment, socialization prior to entry into the labour market would appear to be an important determinant of occupational outcomes.<sup>9</sup> Indeed, sex role socialization is pervasive enough that studies such as Corcoran and Courant's have shown that consistency with traditional sex roles regarding child rearing versus market work seems to be more important in determining household division of labour than is income maximization.<sup>10</sup>

Leading proponents of the human capital theory such as Solomon Polachek find that family responsibilities induce women to acquire limited jobs skills and seek a narrow range of jobs. Polachek explains that the overall wage differentials between men and women are related to the differentials in lifetime labour force participation. Because women have the primary responsibility for housework and child care and are thus undertaking second jobs when they enter the labour force, they are frequently unable to commit themselves fully and continuously to their paid employment. He argues that because of their anticipated or

existing child-rearing responsibilities, women tend to choose those occupations for which intermittent labour force behavior is not penalized. Polachek points out that while women are out of the labour force, their job skills are depreciating. He reasons that women who anticipate intermittent employment will choose occupations that require skills that do not depreciate rapidly from nonuse. Thus, women segregate themselves through choice into jobs with low depreciation.<sup>11</sup>

Neoclassical economists would argue that because the wage gap between men and women is attributable to women's lack of human capital, and not to discrimination, no intervention in the economy is necessary in order to eliminate it. From the neoclassical position, the intervention of equal employment policies in the normal determination of wages restricts the free market, reducing employment opportunities for women. Only the operation of the free market, with true competition between companies, will eliminate discrimination in the labour market. The general characteristics of women workers are the cause of the wage gap, and the wage gap will close when women workers develop the same worker characteristics as men, and when they choose demanding occupations that are higher paying. From this perspective, no special policies for women should be adopted because the wage gap is not the result of discrimination.<sup>12</sup>

### NEOCLASSICAL ECONOMIC PREDICTIONS

The position of neoclassical economists is that the market sets rates of pay that are

efficient and fair. They oppose pay equity legislation on the grounds that it would interfere with the process of setting wages and prices. These economists argue that wages are set by market forces, and to interfere with this process would be a mistake. Forcing employers to raise pay scales in predominantly female occupations would harm businesses, and the whole economy. Finally, neoclassical economists opposed to equal value also cite the cost to women of equal value legislation. They argue that allocative inefficiencies in the labour market resulting from the legislation would lead to increased unemployment for women. As economist George Hildebrand explains "It is supposed to help women workers when in fact it will make them worse off."<sup>13</sup>

The potential allocative inefficiencies in the labour market stem from the fact that equal value legislation requires that wages be based on a job evaluation rather than market forces. Hildebrand, in his analysis of the consequences of equal pay for work of equal value, writes that there are three ways that equal value will increase unemployment. Firstly, increased unemployment for women might occur because the increased price of low-productivity workers, without any corresponding increase in productivity, would induce employers to shrink the amount of labour in such occupations to hold down the rise in their costs. Secondly, the rising costs will result in bankruptcy or voluntary closure in smaller firms where many women are employed, leading to disemployment for these workers. Thirdly, the increase in labour costs would encourage employers to replace women workers with capital.<sup>14</sup>



Other neoclassical economists have suggested additional reasons why equal pay for work of equal value might increase women's unemployment. Some employers might want to replace women workers with men if they are forced to pay wages high enough to attract men.<sup>15</sup> Another point raised by neoclassical economists is that equal pay for work of equal value might have the effect of exacerbating occupational segregation. If the pay for women's work is increased, the incentive for women to take other kinds of work would be diminished. Women's desire to train for, and overcome barriers to men's jobs would be reduced.<sup>16</sup>

Walter Block of the Fraser Institute is another neoclassical economist who writes that legislation interfering with the wage setting process has a negative effect on those workers which they purport of help. In his analysis of governments attempt to eliminate wage discrimination through minimum wage laws, Block contends that "The actual effect of such legislation has been to cut off the bottom few rungs of the ladder, thus making it far more difficult for lesser skilled workers to achieve high or even moderate paying jobs."<sup>17</sup> He is supported by Walter Williams, who feels that much of existing discrimination is caused by such legislation. Williams writes that "The best safeguard for blacks and other minorities is the free market, not government intervention. Asking for further constraints on voluntary exchange is the very opposite of what is needed."<sup>18</sup>

Finally, in his study of the economics of equal pay for work of equal value, Mark Killingsworth has argued that even in the case where two jobs are equal in value, if there is a large supply of workers relative to demand in one of them, this overcrowding drives the

wages for that occupation down relative to wages for workers in occupations with similar characteristics. If there is a large supply relative to demand for a predominantly female occupation, then equal value legislation will probably eliminate the wage differentials that would normally occur. Killingsworth concludes that the increase in labour costs will lead to increased unemployment for women in predominantly female occupations. He also predicts that higher costs for employers in predominantly female occupations will lead to higher prices, creating a decrease in demand. In turn, the decrease in demand will lead to an increase in unemployment in other occupations. Thus, equal pay for work of equal value has a harmful effect on the economy as a whole by decreasing employment and output, and increasing consumer prices.<sup>19</sup>

Although neoclassical economists have maintained that equal pay for work of equal value would have a harmful effect on women workers, empirical studies do not support their position. The positive effect of Britain's Equal Pay Act on British women's wages provides a good example. Before the implementation of the Equal Pay Act, the British labour market institutions explicitly recognized pay discrimination. Different rates of pay for men and women who performed the same job were written into wage agreements, and it was common not to provide equal pay for equal work.<sup>20</sup>

In 1970, Britain enacted the Equal Pay Act, to become effective in December, 1975. In addition to requiring equal pay for equal work, the act provides for a pay change if a female job had been given equal value to a different male job by means of a job evaluation.

The act was carried into the labour market by the extensive set of wage agreements and the large degree of unionization (41% of female workers in Britain are directly covered by agreements).<sup>21</sup>

In their studies on the effect of Britain's equal pay legislation, Anton Zabalza and Zafiris Tzannatos note that in the early 1970's, after very little change in over two decades, women's pay ratio suddenly began to increase. The ratio of female to male earnings in Britain was roughly constant throughout the 1950's and 1960's. However, from 1970 to 1977, relative pay rose from 58% to 68.5%, a dramatic reduction of the pay gap. From 1977 to 1978, there was a slight falling off of the gains. Zabalza and Tzannatos examine the possibility that the increase in women's relative pay in Britain could be attributable to other factors, and conclude that no other factors can explain the increase in female relative levels of pay that takes place in the 1970's. They explain their findings as follows:

We find that even after taking into account the concomitant change of other variables, together with their inter-relations within the labour market, anti-discriminatory legislation has had a positive and significant effect on relative earnings of women.<sup>22</sup>

With regard to the neoclassical assertion that equal pay for work of equal value will create increased unemployment for women, an examination of the implementation of equal value legislation in Australia would suggest that the increase would be quite small. In Australia, the female earnings ratio is greatly influenced by federal and state tribunals that set minimum rates of pay for each occupation. The pay is set for all workers, from university professors to bus drivers. Before 1975, the tribunals categorized jobs according

to whether they were filled predominantly by males or females. With female occupations, the tribunals went through the same evaluation process as for male jobs, but adjusted the rate downward by 25%. Thus the wage system explicitly discriminated against women by paying them 75% of men's wages.<sup>23</sup>

In 1972, Australia adopted the following clause of the new Principle regarding equal pay for work of equal value: "Adoption of the new principle requires that female rates be determined by work value comparisons without regard to the sex of the employees concerned."<sup>24</sup> Equal value was introduced in three uniform steps over the period from 1972 to 1975. After 1975, the sex of workers was eliminated as a factor in the determination of award rates.<sup>25</sup>

In their study of the effects of equal pay for work of equal value policy in Australia, R.G. Gregory and R.C. Duncan point out that the resulting gains outweigh the negative effects on employment. Prior to any form of pay equity, the unadjusted female-male earnings ratio in Australia was about .60. The ratio increased to .77 after the introduction of equal pay for equal work, and equal pay for work of equal value legislation. Gregory and Duncan conclude that the policy's impact on female unemployment was approximately 0.5% , and the policy reduced the rate of growth of female employment below what it would have been by around 1.3% per year. Women's large wage gains, and the moderate reduction in their employment growth led to a substantial increase in female income share.<sup>26</sup>

## INSTITUTIONALIST ECONOMIC PARADIGM

Institutionalists note that the determination of wages is not conducted in a vacuum. Our society's history, culture, and tradition play important roles in the process. They also emphasize the importance of psychological motivations, which are not economic and are often not even rational in economic terms. Unlike the neoclassical paradigm, the institutionalist paradigm does not involve one fixed framework from which to analyze the world.<sup>27</sup> Stephen Mangum describes the institutionalist as follows:

The institutionalist's is an integrative approach, recognizing the interdependence of economic, social, political and institutional phenomena. The institutionalist is political scientist, lawyer, sociologist, psychologist, and anthropologist as well as economist.<sup>28</sup>

A variety of work falls under the institutionalist paradigm, including studies on the influence of historical wage-setting patterns on present day wages. A good example of this type of analysis is Marlene Kim's study of the historical basis of gender bias in the compensation structure of the California civil service. Kim shows that salaries within the California civil service became systemic after a comprehensive classification and salary study done in the early 1930's lowered salaries in female dominated jobs. The salary structure established in the 1930's was explicitly gender-biased, paying female dominated jobs 22%-27% less than male dominated jobs. Kim then empirically tests the extent to which salary relationships established in the 1930's continue to influence present day salary levels, limiting her analysis to jobs within the civil service which are surveyed for prevailing market rate data, and whose salaries are supposedly determined by the surveyed rates. Kim describes

the results as follows:

Quantitative evidence supports the existence of long-term wage inertia. Salaries in 1986 were very highly correlated with 1931 salaries. Even after controlling for salaries paid by similar agencies, the salaries established in the 1930's continue to predict the present day structure.<sup>29</sup>

Analyses of the psychological factors affecting job segregation and wages also fall within the institutionalist paradigm. These analyses show that much of the value assigned a task is determined by the status of the person performing it. Thus, women's jobs are paid less because they are done by women, and any work done by women is characterized as less valuable.

In their review of a multitude of psychological studies, Sharon Shepela and Ann Viviano argue that there is a significant psychological component to the relationship between occupational segregation and wage differentials. They present studies demonstrating that when a piece of work is attributed to a male, it is rated more highly than when the same work is attributed to a female. Female credentials are also evaluated less favourably than identical male credentials. In addition, studies also demonstrate that men and women are assessed differently regarding the reasons for their successes and failures, with men's success being attributed to ability, and their failure to bad luck, while the results were the opposite for women, with women's success being attributed to good luck, and their failure to lack of ability. Finally, several studies show that identical performances by males and females result in uneven rewards, including male applicants being recommended for promotion significantly more often than female applicants. Shepela and Viviano conclude:

If a job is perceived as a woman's job, associated with female attributes, it will be paid less, and if a woman is doing a neutral or male dominated job, she will be seen as bringing to that job her female attributes, and the tendency will be to want to pay her less for the same jobs.<sup>30</sup>

Also prevalent within the institutionalist paradigm are studies on labour market segmentation. With labour market segmentation theories, barriers to employment for women are entrenched in employment policies and practices of organizations. Job markets are segmented in ways that enable men to achieve positions of prestige and power more easily than women. Internal labour market theory focuses on the manner in which most women are excluded within the firm, while dual labour market theory emphasizes the segmentation of the labour market into two non-competitive groups based on sex and race. Discrimination in this sense is part of the organizational structure of the firm, and the economy.

### DUAL LABOUR MARKET THEORY

The dual labour market theory describes the labour force as divided between two non-competitive groups of labour: a primary, 'core' sector of workers, and a secondary sector of 'periphery' workers. Primary sector jobs are characterized by higher wages, stable employment, job security, opportunity for advancement, and established work rules. Jobs in the secondary sector have the opposite characteristics. They offer poor wages, no job security, virtually no promotional opportunities, and they call for little capital investment in the form of training and education. Women, and men from ethnic minorities are relegated

to the peripheral sector. Between these two groups of labour, there is very little mobility. The two categories of labour do not compete with each other. With the dual labour market theory, the forces of competition emphasized by neoclassical economics play a minimal role in wage determination.<sup>31</sup> Morley Gunderson explains the implications of the dual labour market as follows:

It suggests that the characteristics of the jobs, rather than the workers, are the most important in determining wages. It would suggest that improvements in the education or training of women will do little to improve their earnings to the extent that they would remain in the secondary labour market, and there is no guarantee that improvements in such factors enable them to move from the secondary to the primary labour market.<sup>32</sup>

More radical versions of segmentation have emphasized the important functional role of discrimination in making the market system work. Writers like Phillips and Phillips point out that this type of labour allows the organization to expand output in good times and contract in bad times, leaving the organization's elite primary labour force unaffected. The existence of two categories of labour gives the organization more control over its internal and external environment than it would otherwise have. Thus it is economically beneficial to the organization to maintain the dual labour market. They explain that labour market segmentation "provides a variable labour supply to accommodate the anarchy of the market while reducing the risks to capital."<sup>33</sup> The Phillips conclude women workers are essential to the economic structure in that fundamental changes would be required in those sectors which rely on a cheap and flexible labour supply in order to desegregate the labour force.<sup>34</sup>

While the dual labour market theory provides important insight into women's unequal



position in the labour market, one of the problems with the theory is that it does not account for the concentration of women in the peripheral sector. Michael Ornstein writes that, in attempting to explain the women's segregation in the periphery, "segmented labour market theorists resort to the combination of overt discrimination, statistical discrimination, and socialization mechanisms. This is not very satisfactory, as discrimination is again rooted in exogenous factors."<sup>35</sup> Dual labour market theory also fails to explain some of the unique elements of women's inequality in labour market, such as why women earn less than men when performing the same job, or the differences amongst women workers. The categorizing of women with other minorities is a problem which Martha MacDonald refers to as the "women and other minorities approach."<sup>36</sup> The limitations of the dual labour market theory in this respect are also discussed by Armstrong and Armstrong, who emphasize that the theory is limited because it fails to link women's work in the labour market to their domestic work.<sup>37</sup>

### INTERNAL LABOUR MARKET THEORY

Internal labour market theory posits that the internal operations of the firm are significant in determining the wage setting process, in that many jobs within the firm have elements unique to that firm which limit the competition for the jobs from outside of the firm. Peter Doeringer and Michael Piore write that, with internal labour market theory, the job structure of the firm can be divided into two categories of occupations, with entry level positions filled from the external labour market, while the higher level positions within the

firm are filled through the promotions and upgrading of current employees. The wages for entry level positions may respond to the forces of supply and demand, however, higher level positions filled through internal promotions are shielded from competitive pressures because the only demand is from within the firm, and the only supply is current employees. Because many higher level positions require firm-specific knowledge and training, employers can limit their costs by meeting their employment needs in this manner. For employees, this process also provides job security and advancement opportunities. Thus, the internal cohesion and smooth functioning of the firm becomes of paramount importance, and overrules supply and demand as the main determinant of wages.<sup>38</sup>

With internal labour market theory, internal cohesion is achieved through the establishment of rules and customs. Doeringer and Piore write that "Custom at the workplace is an unwritten set of rules based largely upon past practice or precedent. These rules can govern any aspect of the work relationship from discipline to compensation."<sup>39</sup> The rules and customs governing the internal workplace often include ideas and practices that discriminate against women. For example, employers attempting to distinguish amongst potential employees, and to determine promotions rely on statistical discrimination and screening devices. Monica Boyd points to studies which show statistical discrimination in companies' recruitment, hiring, and promotion practices as contributing to women's occupational segregation and lower wages. In the hiring process, employers hire men and women for different jobs based on perceived differences in productivity related characteristics. With regard to promotions, Boyd writes that "Women are not given access

to the more responsible and prestigious jobs which pay more because companies have outdated stereotypes about women workers."<sup>40</sup> Thus companies often operate in ways that produce gender-related biases in the way the organization is created and sustained.

In her studies on organizations, Rosabeth Kanter shows the inherent biases against women in the structures, rules and regulations of companies. Kanter explains that when women get hired, they are often restricted to jobs which do not lead to advancement. Opportunity is structured and built into the design of jobs. Jobs can be divided into those with high and low levels of opportunity, or long and short career ladders. Kanter refers to these two categories as "the moving" and "the stuck", and argues that those in moving positions tend to behave in ways that confirm their selection as those that should be moving. On the other hand, those that are stuck tend as a result of their situation to act in ways that confirm the organization's lack of attention to them. She writes that "Opportunity affects such key organizational behaviour variables as aspirations, self-esteem, work engagement, self-preparation, and style of expressing dissatisfaction."<sup>41</sup> Kanter concludes that negative characteristics associated with women workers are not sex-related but rather reflect characteristics of all workers in 'stuck' positions.

Internal labour market theory provides an important understanding of how the wages within the firm can be determined independently of the forces of supply and demand so emphasized by neoclassical economists. However, as with the dual labour market theory, internal labour market theory relies on statistical discrimination, and screening devices as an

explanation for the barriers to women's progress.<sup>42</sup> In the end, internal labour market theory is more of a descriptive analysis of the internal functioning of the firm than it is an explanation of the causes of women's labour market inequality. As MacDonald explains "It [Internal labour market theory] illuminates the *process* of sex segregation and pay differentials but not the *necessity* of them."<sup>43</sup>

### INSTITUTIONALIST ASSESSMENT OF NEOCLASSICAL ECONOMICS

Institutionalist theorists argue that neoclassical analysis is based upon an abstract model of the wage-setting process, which takes no account of the psychological and social aspects of economic relations. The arguments neoclassical economists use against equal pay for work of equal value are based upon overly simplistic notions of how the labour market works. For example, neoclassical economists' use of marginal productivity analysis has been widely criticized. As Frances Hutner describes:

Business people, the economists' "entrepreneurs", do *not* use marginal analysis in making business decisions. They do *not* calculate marginal quantities that may be difficult, if not impossible, to ascertain. They do *not* balance marginal productivity and marginal cost in hiring factors of production. They do *not* use marginal revenue and marginal cost to determine output and price decisions. These latter decisions are made, critics would claim, on the basis of a desired markup over average cost and on such considerations as market-share goals.<sup>44</sup>

Neoclassical theory's assumption of pure competition has also been attacked by institutionalists. Neoclassical economics posits that through a perfectly competitive economy, any firms that discriminate against women will be eliminated. The validity of this premise

depends upon the existence of a large group of employers who do not discriminate and competitive conditions strong enough for discriminators to be driven out of business. However, as Barbara Bergmann notes, large and successful corporations such as AT & T and Hertz have been shown in court to be guilty of serious discrimination against women workers, yet have flourished nevertheless.<sup>45</sup>

Other critics have focused on neoclassical theory's assumption that the size of the labour force is a given, and full employment is the normal condition of the economy. Economist Majorie Cohen explains that with neoclassical theory, the total number of labourers is a given, and that any changes in the number of labourers lies outside the theory of wages. Therefore, if there is any unemployment, it is because some workers are unwilling to accept the wage they are worth. Cohen writes:

For women, one of the most important issues is why the size of the labour force changes; this is an issue which economics feels is beyond its purview. If the size of the labour force varies and unemployment does exist, which we know it does, then the whole framework of assuming that employers are competing against each other for scarce workers simply is not true: the result is that the whole neoclassical analysis falls.<sup>46</sup>

Institutionalist theorists also argue that there are many problems with the neoclassical use of human capital theory to explain the wage gap. While they do acknowledge that human capital differences between men and women exist, they argue that these differences are a reflection of pre-market discrimination against women that needs to be addressed. Institutionalists would dispute the emphasis on voluntarism within human capital theory. They would argue that segregation is not a matter of women's choice, but that barriers to

women's entrance into male dominated positions are a more likely determinant of women's occupational segregation.<sup>47</sup>

Paula England's studies support the institutionalist criticism of human capital theory. Human capital theory is premised on the notion that there is less depreciation for intermittent labour market participation in female predominantly occupations, a premise contradicted by England's empirical evidence. England notes that "Two national data sets show that the penalty to current wages for past time spent out of the labour force is no less for women in predominantly female occupations than for women in male jobs."<sup>48</sup> England also questions the emphasis on continual labour market participation as component of the women's occupational segregation as well. She explains that even for entry level positions, when men and women both have zero experience, jobs remain highly sex segregated. Her studies find that female occupations average lower earnings than male occupations at every educational level and stage of the life cycle.<sup>49</sup>

Jane Gaskell also bring into question some of human capital theory's premises. In her study of training, education, and socialization, she writes that women's inequality is not a matter of lacking education, as human capital posits, but rather that women's education does not produce economic returns. Gaskell writes that women receive jobs that offer insufficient pay for the number of years of education they require, and that "Even when the kind of education women get is taken into account, women still do not get income returns to their education that are equal to men's."<sup>50</sup> She suggests that it is not the characteristics

of women workers, but the structure of the labour market that explains women's inequality in the workforce.

In addition, some theorists argue that human capital theory's emphasis on the role of the socialization process in perpetuating women's labour market inequality leaves unexplained the source of the ideas about appropriate male and female behaviour, the origin of changes in them and the dominance of some ideas over others. Pat and Hugh Armstrong argue that our socialization process is a reflection of power-based reality construction. False ideas about women exist because employers benefit directly from them. As the Armstrongs explain "These ideas allow them to hire cheap, uncomplaining female labour. They have a direct interest in maintaining ideas about appropriate male/female behaviour."<sup>51</sup> They argue that if the problem of equality could be solved by demonstrating that women have capacities comparable to men, the issue would have been resolved by women's extensive and varied participation in the war economy.

The Armstrongs are critical of research which focuses on false ideas about women as the cause of inequality, as it ignores the fact that some people have a vested interest in continuing a stereotype of women and the means of perpetuating this image. These sources lend credence to the argument that "Like the poor, women have merely to change their attitudes and they too will succeed."<sup>52</sup> They argue that any attempt to alter the socialization process and ideas about women will not be successful unless it is accompanied by structural change in the labour market.

## CONCLUSION

The various institutionalist factors influencing the wage setting process and contributing to women's labour market inequality highlight the inadequacy of the neoclassical explanation of wages as an outcome of the forces of supply and demand. Institutional analysis, with its emphasis on historical, institutional, and social forces, provides a more accurate understanding of the nature of labour markets and the wage determination process.

From an institutionalist perspective, the discriminatory barriers inhibiting women's labour market equality would be reduced by a policy of equal pay for work of equal value. The existence of systemic discrimination in the labour market demonstrates that ability and opportunity have not been matched for maximum efficiency. Theorists like Heidi Hartmann thus assert that it is not equal value, but rather discrimination that interferes with the free market. It is argued by institutionalists that equal value would bring wages closer to what they would be in a non-discriminating market. Janice Peterson writes that:

Comparable worth advocates conclude that intervention in the labour market is necessary to correct the market wage to remove the distortions caused by discrimination. It is argued that comparable worth will not disrupt the functioning of the market, but will simply cleanse it of the external, distorting influence of discrimination.<sup>53</sup>

The results from introducing equal pay for work of equal value would be a reduction in the effects of systemic discrimination and an increase in efficiency and productivity, thus maximizing social and economic benefits.



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### **CHAPTER III**

#### **EQUAL PAY FOR WORK OF EQUAL VALUE IN QUEBEC** **AND THE FEDERAL GOVERNMENT**

In Canada, women's historical struggle for wage justice has included the implementation of equal pay for equal work. Awareness of the ineffectiveness of equal pay for equal work legislation in combatting discrimination developed with the rise of the modern women's movement, and an understanding of the segregated nature of women's work. Pressure by women's groups on government led to the enactment of a new type of equal pay legislation; equal pay for work of equal value.

Despite the existence of equal value legislation, the wage gap has not been reduced by any significant degree. The complaints based method of implementation has limited the potential impact of equal value legislation. However, unions in the sectors where equal value is in effect have demonstrated a serious intention to use the legislation on behalf of their members. The often contradictory governmental responses to union efforts to achieve equal pay for work of equal value reveals the underlying power struggle between the various players within the state with conflicting interests at stake.

## EQUAL PAY FOR EQUAL WORK AND THE MODERN WOMEN'S MOVEMENT

In the 1950's, both the federal and provincial governments implemented legislation requiring equal pay for equal work. Equal pay for equal work legislation was implemented in Ontario in 1951. Within the next few years, many provinces introduced equal pay for equal work legislation, including Saskatchewan, British Columbia, Manitoba, Nova Scotia, Alberta, and Prince Edward Island. The federal government also adopted equal pay for equal work covering federal jurisdiction employees, but not the Civil Service. All of the equal pay acts enacted were similar in format. They prohibited employers from paying a female employee at a rate of pay less than that paid to a male employee for the same kind of work performed in the same establishment. Most acts defined equal work as identical or substantially identical work.<sup>1</sup>

In the 1960's and 1970's, various governments made changes to the language of the legislation. The legislation was modified from requiring the same or identical work to requiring only that the work be similar or substantially similar. Other changes included moving provisions from equal pay statutes to human rights codes. For example, in 1953 British Columbia enacted The Equal Pay Act, requiring that employers pay equal wages for the same work done in the same establishment. In 1969, the Equal Pay Act was replaced by the Human Rights Act, which called for equal pay for "the same or substantially the same work." Finally in 1973, the Human Rights Code of British Columbia Act prohibited wage differentials for "similar or substantially similar work."<sup>2</sup>

By the late 1960's, recognition of the ineffectiveness of equal pay for equal work legislation was developing, and was directly influenced by the rise of the modern women's movement. Debra Lewis notes that:

Equal pay for equal work did provide women performing the same jobs as men with a mechanism to obtain equal wages. It did nothing, however, for the vast majority of women doing 'women's work.' The rise of the modern women's movement forced the state to respond to the inadequacy of this approach.<sup>3</sup>

In 1966, well-known and influential feminist Laura Sabia, who was then National President of the Canadian Federation of University Women, invited the presidents of thirty-five women's organizations to a meeting in Toronto. These influential women made a decision to fight for a Royal Commission on the Status of Women. In November 1967, Sabia and representatives from the women's organizations went to Ottawa and presented their case before the Prime Minister and the Cabinet. When she heard rumours that the government had turned down the request for a Royal Commission, Sabia threatened to march two million women on Ottawa. Sabia writes that "The fear of two million women marching on Parliament Hill sent the politicians scurrying back to their drawing boards. The Prime Minister reopened the file and appointed the Royal Commission on the Status of Women."<sup>4</sup> Thus, the demands of Canadian women like Laura Sabia led to the formation of the Royal Commission on the Status of Women in 1967.

In 1970, the Report of the Royal Commission on the Status of Women was presented to the federal government. The Report led to a rethinking of discrimination as a more

complex and pervasive phenomenon than was previously understood. With a better understanding of discrimination came the recognition that existing equal pay legislation was inadequate in dealing with wage discrimination. The Report states that the use of the terms equal pay for the same or identical work is "much too restrictive."<sup>5</sup> Equal pay for equal work is designed to help women doing the same work as men. However, most women are not doing the same work as men; they are doing work in which their co-workers are other women. Because equal pay for equal work legislation does not deal with the differences in wages stemming from the segregation of women's work, it does not affect the majority of women.<sup>6</sup>

The Report also lays out the basic features necessary for an effective equal pay law. It recommends equal pay laws be based on the following definition of equal work: "equal work on jobs the performance of which requires equal skill, effort, and responsibility and which are performed under similar working conditions."<sup>7</sup> The Report is explicit in stating that the adoption of the above principle would bring equal pay legislation in Canada closer to the intent of Convention 100 of the International Labour Convention, which calls for equal pay for work of equal value.<sup>8</sup>

Another legacy of the Royal Commission on the Status of Women was the formation of a new women's group in 1972 called the National Action Committee on the Status of Women (NAC). NAC was formed from a coalition of women's groups, with a mandate to maintain a national communications network and to get the recommendations of the Report



implemented. In the 1970's, NAC began to pressure the government to enact legislation that would incorporate the concept of equal pay for work of equal value. Although Canada ratified the ILO's Convention 100 in 1972, the ratification did not entail any changes to Canada's existing legislation. In 1975, NAC intensified its pressure on the federal government after the government's introduction of bill C-72 for the Canadian Human Rights Act, which did not call for equal value, but rather equal pay for similar work. According to former NAC president Lorna Marsden, NAC played a key role in lobbying for changes to the bill. NAC was successful in achieving its aim, which was the adoption by the federal government of equal pay for work of equal value.<sup>9</sup>

### EQUAL PAY FOR WORK OF EQUAL VALUE LEGISLATION

Equal pay for work of equal value is intended to remedy sex-based occupational discrimination of a systemic nature that affects wage relationships between male and female occupational groups. Under equal pay for work of equal value legislation, it is a discriminatory practice for an employer to pay a different wage for work performed by one class of people as compared to another class of people when that work is of equal value.

In the 1970's, two jurisdictions brought in equal pay for work of equal value. In 1977 the federal government included equal value in the Canadian Charter of Human Rights. Section 11(1) of the Charter reads:

It is a discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value.<sup>10</sup>

This legislation affects all employees of the federal public service, Crown corporations, as well as the banking, interprovincial transportation, and telecommunications industries. The law is administered by the Canadian Human Rights Commission. In addition, the Canada Labour Code empowers Labour Canada officers to monitor federally regulated workplaces and attempt to encourage employers to comply with the legislation, although it has no powers of enforcement. It may only file reports and make recommendations to the Canadian Human Rights Commission in this regard.<sup>11</sup> In 1976 Quebec passed The Quebec Charter of Human Rights and Freedoms, in which Article 19 reads:

Every employer must, without discrimination, grant equal salary or wages to the members of his personnel who perform equivalent work at the same place.<sup>12</sup>

Quebec's law affects both public and private sector employers, and is administered by the Quebec Human Rights Commission.<sup>13</sup>

Both the federal law and Quebec's law are complaints based. When a complaint is lodged with the Quebec or Canadian Human Rights Commission, the allegations are examined to confirm whether or not the complaint is warranted. Once the case is accepted, an investigator is appointed who gathers job related information and conducts a job evaluation. The investigator reports back to the Commission on whether discrimination exists, and what wage adjustments are necessary. The Commission then tries to reach a

settlement between the two parties. In the federal jurisdiction, if it is not possible to reach an agreement in this manner, the case then goes before a Human Rights Tribunal, which functions like a court of law. The tribunal reviews the proceedings and can order the compensation of the complainant. A tribunal's orders can be challenged in a court of law.<sup>14</sup> In the province of Quebec, if the parties cannot reach a settlement, the Quebec Human Rights Commission may initiate a court action and seek an injunction to stop discriminatory practices, along with monetary damages.<sup>15</sup>

The assessment of value for predominantly male and female jobs is through a job evaluation procedure. Jobs are compared that are substantially different but equal in value using a composite of skill, effort, responsibility required in the performance of work, and the conditions under which the work is performed. Predominantly female occupations are compared to predominantly male occupations in the same establishment. If a wage differential is determined to be discriminatory, it is required that the wage for the female occupation be raised (the wage in the male occupation cannot be lowered to make the wages equal).<sup>16</sup>

An important feature of equal value policy is that not all of the wage differentials are assumed to be discriminatory. Differentials due to certain factors are allowable, and do not warrant wage adjustments. In Quebec, wage differences based on experience, seniority, years of service, merit, productivity, or overtime are not considered discriminatory if such criteria are common to all members of the personnel.<sup>17</sup> Under the federal legislation, the

provisions for allowable wage differences are based on merit pay, seniority, red-circling (downgrading of a job that results in wages that are temporarily fixed), rehabilitation assignments, demotion pay procedures, temporary training positions, labour shortages, reclassification of a position to a lower level where the employee continues to receive wages on the scale established for the former high position, and regional pay structures.<sup>18</sup>

### THE INEFFECTIVENESS OF EQUAL VALUE LEGISLATION

Although equal pay for work of equal value was heralded as a major breakthrough in trying to eliminate the wage gap, studies completed in the 1980's have shown that the legislation has been ineffective. The differences between male and female earnings in Quebec and for federal employees have shown little improvement. Statistics Canada figures for 1989 show the wage gap between Quebec men and women is 62.4%, the second worst provincial wage gap in Canada.<sup>19</sup> Thus, the wage gap remains a serious problem.

In the federal government, the legislation has been largely ineffective in reducing the wage gap by any significant degree. In a 1987 study of the effectiveness of the federal legislation, it was found that only 80 complaints had been registered with the Canadian Human Rights Commission, approximately half of which were dismissed. Of the 45 cases that had been accepted for investigation, only 22 had been successful in achieving wage adjustments for women, five were before tribunals, 12 were under investigation, and six had

been withdrawn. The study showed that in its ten years of operation, less than 3.3% of all the women who fall under federal jurisdiction have been beneficiaries of the federal government's equal value legislation.<sup>20</sup>

One of the major problems with equal value legislation is that enforcement has rested on the lodging and investigation of complaints, a process that is fraught with difficulties. The ability of individual women to proceed with a complaint is very restricted. Complaints must be based on establishing at least a *prima facie* case of systemic discrimination. As a rule, this requires the complainant to produce some sort of statistical evidence showing workforce composition and sex-based segregation, which has resulted in wage discrimination.<sup>21</sup> While unions may have the ability to prepare a case, it is very difficult for non-unionized employees to do. They do not have access to all the requisite information, and they don't have the expertise to document and put forward a complex complaint of this nature.

Another problem with equal pay for work of equal value stems from the fact that it is modelled after our court system, whereby the validity of the case between two opposing parties is decided by a court or tribunal. Trish Blackstaffe, co-chair of the Canadian Labour Congress Women's Committee, notes "The complaint-based model tends to produce adversarial situations which are time-consuming because of the necessity of investigations and hearings, and has tended to benefit only small groups of underpaid women workers."<sup>22</sup> Furthermore, although systemic discrimination is not necessarily intentional discrimination, the tribunals are geared to finding a criminal. Given the nature of systemic discrimination,

the tribunals have a difficult time applying the notion of culpability. Ginette Dussault explains the problem:

Il faut être conscient que la preuve de discrimination systémique est difficile à faire admettre aux tribunaux. Ces tribunaux ont l'habitude de chercher un "coupable". Mais puisque la discrimination systémique n'implique pas une intention particulière de discriminer, les tribunaux ont beaucoup de difficulté à appliquer la notion de culpabilité dans ces cas-là.<sup>23</sup>

Equal pay for work of equal value in Quebec has essentially the same shortcomings as the federal legislation. In one study done on the cases filed with the Quebec Human Rights Commission between 1976 and 1984, it was determined that only 51 files had been closed, and that the Commission had decided in favour of the complainants in only 26 of the cases. A total of 3,500 unionized women were affected by the judgements, out of the 1.4 million Quebec women in the paid labour force.<sup>24</sup>

In analyzing the effectiveness of Quebec's equal value legislation, the nature of the cases dealt with by the Quebec Human Rights Commission is a significant factor. Studies on the cases that have been successful before the Commission indicate that they almost all involve situations in which women have been paid less than men for doing identical or almost identical work.<sup>25</sup> This type of overt discrimination was dealt with in the past under equal pay for equal work legislation.

One of the reasons why Quebec's equal value legislation has been ineffective in reducing the pay gap is because the Quebec Human Rights Commission's enforcement of

the concept of equal pay for work of equal value is weak, reducing the scope and strength of the law. The limitations of the equal value legislation stem from the Quebec Human Rights Commission's unwillingness or inability to analyze many of the complaints lodged with them. Reine Grenier, until recently a researcher with the Quebec Council on the Status of Women explains the situation in Quebec:

I don't think the Commission has the expertise to handle cases of equal pay for work of equal value. They don't know how to measure the jobs and so they drop them too quickly.<sup>26</sup>

In addition, almost all of the cases accepted by the Quebec Human Rights Commission have come from the unionized sector. Daniel Carpentier writes that in the case studies of Alberte Ledoyen and Mureil Garon, they both observe that the cases before the Commission involve unionized employees almost exclusively.<sup>27</sup> Given that the majority of working women in Quebec are not unionized, the legislation in practice applies to only a small percentage of women.

Also, although equal value legislation was enacted to address the systemic discrimination experienced by women workers in predominantly female occupations whose work is undervalued, it has not been applied in this respect. Over 80% of women work in the tertiary sector, but almost all of the cases accepted by the Quebec Human Rights Commission have concerned workers from the manufacturing sector, which is a male dominated sector with only a small percentage of female workers. Of the nine complaints involving employees in finance and commerce, all were judged to be unfounded.<sup>28</sup>

The reason almost all the cases accepted by the Commission have been from the unionized, manufacturing sector, and involve discrimination against women doing substantially the same jobs as men is clear. These cases do not require the Commission to initiate a complex job evaluation to determine the worth of a job. Reine Grenier explains that by accepting cases involving unions, the Commission avoids the difficulty of the job evaluation process:

Etre syndiquée constituerait un très grand avantage selon la CDP parce que, les conditions de travail étant inscrites dans une convention collective, il serait plus facile d'identifier les éléments discriminatoires. Cette interprétation soulève toutefois le problème de l'expertise de la CDP et de ses outils d'analyse.<sup>29</sup>

Equal pay for work of equal value has thus proven to be a highly restrictive and inefficient means by which to eliminate wage discrimination. The ineffectiveness of equal value legislation leads researcher Marilee Marcotte to question how long interest groups will be satisfied with legislation that is so limited by inappropriate administration and lack of enforcement. She notes that "the emphasis at that point will shift towards the method of application...changes relating to information programs, compliance efforts, enforcement and follow-up procedures."<sup>30</sup> Indeed, in more recent years, public sector unions in Quebec and the federal government have turned their attention to equal value with new interest, and have demonstrated their intention of push for its enforcement beyond the manner in which it has been previously applied.



## EQUAL VALUE AND QUEBEC UNIONS

In the late 1970's through the mid-1980's, the low level of awareness of equal value legislation in Quebec resulted in relatively few complaints being lodged with the Quebec Human Rights Commission. Part of the reason for the lack of awareness is that the government did not make a serious attempt to inform Quebecers of its existence. The dearth of information made available to the public about the legislation illustrates the government's passivity in this regard.<sup>31</sup> The Quebec Human Rights Commission's neglect is exemplified by the fact that the Commission omitted to have pamphlets on equal value provisions reprinted when the copies from the original printing ran out.<sup>32</sup>

However, in the late 1980's awareness of Quebec's equal pay for work of equal value legislation began to grow amongst Quebec's unions, leading to increasing pressure for change. The composition of the unions' executives was an important factor in the level of pressure exerted by the unions for equal pay for work of equal value. In the late 1980's, the leaders of three of Quebec's largest unions were women: Monique Simard for the Conseil des syndicats nationaux, Lorraine Pagé for the Centrale de l'enseignement du Québec, and Diane Lavallée for the Quebec Federation of Nurses. It was these women that succeeded in making pay equity a priority in the unions. Helen Wavroch, vice-president of the Institut de recherche et d'information sur la rémunération notes "Pay Equity was never discussed in Quebec until union leaders like Simard brought the issue forward."<sup>33</sup>

The union's new awareness of equal value was expressed in a variety of different ways. They began to study the issue of equal pay for work of equal value in more depth, setting up women's committees in the unions to do research on the subject. As they began to fully grasp the concept of equal pay for work of equal value, they also started to lay complaints based on equal value for their female members. In 1987, the public sector unions filed fourteen cases with the Quebec Human Rights Commission requiring judgements of equal pay for work of equal value.<sup>34</sup> The Centrale des professionnels de la santé provides a good example: in 1986 they laid a complaint of discrimination on behalf of physiotherapists and social workers, and in 1988 they laid another on behalf health technicians.<sup>35</sup>

In addition, the unions began to focus on using equal pay for work of equal value when negotiating their collective agreements. In particular, unions began looking at the differences in the base pay rates, and in the pay scales between predominantly male and female jobs. By 1988, one of Quebec's biggest unions, the Conseil des syndicats nationaux had stated it's intention to pursue equal pay for work of equal value in its next round of negotiations.<sup>36</sup> The CSN leadership discussed the issue of pay equity with its members for two or three years before making the issue a priority in negotiations.<sup>37</sup>

In the spring of 1989, a conference entitled "Les femmes et l'équité salariale: un pouvoir à gagner" was held in Montreal. From this conference, a coalition of unions and women's groups was formed with the following mandate: make equal value a priority in

public sector negotiations, diffuse information regarding equal value in Quebec, and work to reform Quebec's equal value legislation.<sup>38</sup>

The 1989 negotiations between the public sector unions and the Quebec government can be viewed as a mixed success. Estimates at the time of the cost of eliminating discrimination were about \$500 million. Faced with such a substantial cost, Treasury Board President Daniel Johnson argued that there was no discrimination because all jobs in the public sector are open to men and women.<sup>39</sup> In the fall, the nurses went out on strike illegally, where they were joined by other hospital workers, civil servants, and teachers. The punishments imposed on the unions were severe, including losing two day's pay and one year of seniority for every day on strike for the nurses.<sup>40</sup>

In the end, the unions did succeed in getting some money to redress wage discrimination, although not the total of the estimated cost for eliminating it. The Quebec government, which had denied discriminating against women, allocated \$240 million to redress systemic discrimination. Quebec economist Ginette Dussault writes "Maybe the sums of money aren't dazzling, but they aren't negligible, either."<sup>41</sup> The unions were also successful in bringing the issue of pay equity to the attention of the public. The 1989 negotiations forced the public to think about pay equity, a feat which labour leaders considered a major victory.<sup>42</sup>

However, the negotiations did not give women equal pay for work of equal value, and

the difficulty in the future will lie in trying to address a problem that the government will argue it has corrected. As Huguette Coté of the Centrale des professionnels de la santé points out "We're not moving fast enough, and every time we win some small thing, the government behaves as though it gave us a nice gift and we should now shut up and go away."<sup>43</sup>

### EQUAL VALUE AND THE FEDERAL PUBLIC SECTOR UNIONS

The ineffectiveness of equal pay for work of equal value legislation in the federal sector also led to the increased action of the federal public sector unions in the 1980's. In particular, the Public Service Alliance of Canada (PSAC) has been at the forefront in demanding equal pay for work of equal value for its members.<sup>44</sup> However, unlike the Quebec unions, whose main strategy was negotiating for equal value in their collective agreements, the federal unions have focused on the filing of complaints with the Canadian Human Rights Commission. This is because the Treasury board has continually refused to enshrine the principle of equal pay for work of equal value in their collective agreements.<sup>45</sup>

One of the earliest and best known equal value cases was filed by PSAC with the Canadian Human Rights Commission on behalf of librarians in February, 1979. The predominantly female librarians were paid twenty percent less than the predominantly male historical researchers for work of equal value. A settlement was reached between PSAC and

the Treasury Board in December, 1980, which provided for adjustments from \$500 to \$6,000, with adjustments retroactive to April, 1978.<sup>46</sup>

The success of the librarians' case encouraged the filing of other complaints with the Canadian Human Rights Commission, the most important of which was filed by PSAC in December, 1984, on behalf of 50,000 of its clerical workers. In the complaint, PSAC states that members of the predominantly female clerical and regulatory group of the federal public service perform work of equal value to members of the predominantly male program administration group, and that by applying different standards to measure the value of these two job classifications, the Treasury Board discriminates against the clerical group.<sup>47</sup> Because of the large number of complainants involved, and the potentially high cost the government could incur, the filing of this complaint provoked a change in government behavior. As one PSAC document explains "It was then that the government finally realized the issue wasn't going to go away."<sup>48</sup>

In March, 1985, the Treasury Board invited all thirteen public sector unions to work together in identifying where discrimination existed. The unions accepted the invitation, and they began a study known as the Joint Union-Management Initiative, a major study on wage rates in the public sector. A joint union-management committee was set up, with representatives from the Treasury Board, and equal representation from each of the unions. Working out the parameters of the study took two years for the joint union-management committee to achieve. Unions such as PSAC felt that equal pay for work of equal value

could not be achieved without a serious examination of the existing classification system.<sup>49</sup> However, as Lise Ouimet of the Treasury Board makes clear, the government was not prepared to review the classification system:

This venture was not to restructure the classification system, but only to ascertain whether disparity existed or not between the female-dominated groups and the male-dominated groups. The position of the employer was that the classification system was good, and we did not want to tamper with it.<sup>50</sup>

Finally in March 1987, the committee presented the plan of action to the Presidents of the Treasury Board and the unions, and proceeded with the study.

The joint committee selected a universal job evaluation plan, and identified 53 male dominated and nine female dominated occupational groups in existence in the federal government. Six of the predominantly female occupational groups are represented by PSAC<sup>51</sup>, while the other three are represented by the Professional Institute of the Public Service (PIPS).<sup>52</sup> A total of 68,000 public servants are employed in these female occupational groups, the vast majority of whom are employed in the occupational groups represented by PSAC.<sup>53</sup> It was determined that a sample size of 4,300 jobs would need to be assessed to determine whether discrimination existed; 2,800 from predominantly female groups, and 1,500 from predominantly male groups. In the fall of 1987, lengthy questionnaires were mailed out to employees in 54 departments across Canada to garner the necessary job information, with a response rate of 95%.<sup>54</sup>

With the job information in hand, the evaluation process began. In November, 1987,

a master evaluation committee composed equally of management and union representatives began evaluating 500 benchmark positions, to be used as a frame of reference by other evaluation sub-committees in evaluating the rest of the jobs. The master evaluation committee finished its evaluations in July, 1988, and nine other evaluation sub-committees, also composed of management and union representatives began their job.<sup>55</sup> Achieving consensus in the evaluation process proved to be very difficult for the committees to accomplish. As one PSAC document explains "People had to listen, be open-minded and willing to change their minds; at the same time they had to use their persuasive powers when deeply-held convictions were challenged."<sup>56</sup> The final rating assigned by the committee required the agreement of at least two-thirds of the committee.<sup>57</sup>

The evaluation process finally ended in September 1989, with the results showing that the nine female dominated groups in the public sector were substantially underpaid for their work.<sup>58</sup> The Treasury Board did not immediately respond to the study. Then in January, 1990, the Treasury Board unilaterally announced the wage adjustments that they had decided upon. Only three out of nine female dominated occupational groups were affected by the wage adjustments.<sup>59</sup> In addition, the Treasury Board's wage adjustments were approximately one half to three quarters lower than the wage gaps shown in the evaluations.<sup>60</sup>

PSAC's response to the Treasury Board's actions was quick. In February, 1990, they lodged a complaint with the Canadian Human Rights Commission on behalf of the female

groups within their union, alleging that the wage adjustments by the Treasury Board were not sufficient to eliminate wage discrimination. They were followed in September, 1990, by PIPS, who lodged a similar complaint on behalf of the three female groups within their union.<sup>61</sup> After further analysis of the data from the Joint Union-Management Initiative, the Canadian Human Rights Commission concluded in the fall of 1990 that not all discrimination had been dealt with. On October 18, 1990, the Commission referred the complaints to a Human Rights Tribunal.<sup>62</sup>

However, before the Human Rights Tribunal could begin formal hearings, the Treasury Board attempted to block the process by adopting a different strategy. The Treasury Board contested through the courts the Canadian Human Rights Commission's decision to accept the complaints by filing a Statement of Claim in April, 1991. In the Statement of Claim, the Attorney General asserts that the Canadian Human Rights Commission has exceeded its authority in ordering the inquiry into the complaints, and that the Commission's equal pay guidelines are too far-reaching, and are thus invalid.<sup>63</sup> In response, PSAC requested that the courts not deal with the case until after the Tribunal hears the evidence and decides on these issues.<sup>64</sup> When the federal court agreed with PSAC's motion to delay, the Treasury Board appealed. The appeal was heard in December, 1991, and was denied.<sup>65</sup> However, this does not resolve the Treasury Board's objections, but only delays them until the Human Rights Tribunal makes a decision.<sup>66</sup>

Given the delays in achieving equal pay for work of equal value via the complaints



route, the unions pushed to make equal value a priority demand in its collective bargaining in the summer of 1991. However, the Treasury Board continued to refuse any discussion on the issue. The government's refusal to discuss equal value, and their insistence on no salary increases for that year, led to strike action by the unions in the fall of 1991. In October, 1991, the government imposed a back-to-work order on public servants, leaving PSAC president Daryl Bean vowing to continue the battle for pay equity through the Commission, and complaining bitterly about the government's hypocrisy: "On the one hand, they say we can't bargain pay equity at the bargaining table, that we should do it through the Commission - and then they try to stop the Commission from investigating."<sup>67</sup>

The Human Rights Tribunal began its formal hearings in September, 1991, despite the fact that the Treasury Board's case was still before the courts. The complexity and sheer volume of evidence being presented makes this process an extremely lengthy one. As one PSAC document explains "Every step of the equal pay study has to be painstakingly presented and justified before the Tribunal to substantiate the equal pay complaints."<sup>68</sup> In addition, the number of parties before the tribunal also contributes to the complexity of the process. The Canadian Human Rights Commission, PIPS, PSAC, and the Treasury Board must all present and cross-examine, further delaying the outcome.<sup>69</sup> Once the Tribunal does reach a decision, it is likely at that point that the government will challenge any decision by the Tribunal in court, leading to further delays.

## CONCLUSION

The struggle to achieve equal pay for work of equal value in Quebec and the federal government has highlighted the complex and often contradictory role of the state in the process. Rianne Mahon has developed a theory of the state that is useful in understanding the state's contradictory behavior towards equal value. Mahon conceives of the state as "an unequal structure of representation."<sup>70</sup> The state is described as an entity composed of contradictory elements, whose activities are the outcome of internal conflicts between and within different classes. However, these conflicts are not between players of equal strength. Mahon writes that within the state, "contradictions are likely to be resolved in such a manner that the general political interest of the power bloc is maintained."<sup>71</sup>

Researcher Rosemary Warskett has drawn upon Mahon's theory of the state in her analysis of the struggle for equal value. Warskett finds the limitations of state reform rooted in women's lack of political power in the strategic decisions made regarding equal pay. With this conception of the state, women's struggle for equal pay for work of equal value is responded to by the state, however, in a manner in which it does not achieve meaning, and thus does not in actuality threaten the interests of the politically powerful.<sup>72</sup>

With this understanding of the state, the state's actions regarding equal value can be assessed. On the one hand, the state has passed equal value legislation that sounds progressive and gives the impression that they are committed to equal value for their

constituents. However, at the same time, they have not provided adequate public information or resources, so that equal value legislation is rarely used. Complaints based equal value legislation is also structured in such a way that only the most organized and determined workers are able to utilize it, while unorganized workers have virtually no recourse to it.

In addition, different branches within the government respond to equal value in a contradictory manner. Agencies set up on behalf of women, while recognizing the legislation's flaws, have pushed for compliance with it. For example, the Quebec Advisory Council on the Status of Women has published research highlighting the problems with Quebec's equal value law, which has been critical of the passivity of the Quebec Human Rights Commission.<sup>73</sup> Also, the Women's Bureau of Labour Canada has produced publications and held seminars advocating compliance with federal equal value legislation.<sup>74</sup> However, these agencies are relatively less powerful within the state, in that they do not have the power to enforce equal value legislation, but serve an educational purpose.

The difficulties experienced by PSAC in their pursuit of equal value complaints, and the Treasury Board's active resistance to attempts to use the legislation by their own workforce, have had the effect of revealing the power balance within the government. In her analysis of the struggle between PSAC and the Treasury Board for equal value in the federal government, Warskett writes that "as one of the most powerful departments in the system, the Treasury Board moved to assert its dominance."<sup>75</sup> She describes the conflict

between the different parties as follows:

It is a matter of political power rather than technical rationality whose view will prevail and be implemented. Attempting to use the technical processes of the CHRC's complaint mechanism and job-evaluation process in order to rectify what is essentially a question of political power, women in the federal government came up against or rather met 'head on' with the political power of the Treasury Board.<sup>76</sup>

Warskett concludes that the unilateral actions of the Treasury Board are not without consequence. They reveal that the definition of job value is an outcome of the political power structure. They also lead women to develop an awareness of the dynamics of power, and the best strategies to develop for future action. Thus through the work of theorists such as Mahon and Warskett, a better understanding is developed of the role of the state in limiting the achievement of equal pay for work of equal value.

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51. These groups are (CR) Clerical and Regulatory, (DA) Data Processing, (EU) Education Support, (HS) Hospital Services, (LS) Library Science, and (ST) Secretarial, Stenographic, Typing.
52. These groups are (HE) Home Economics, (NU) Nursing, and (OP) Physical and Occupational Therapy.
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58. PSAC, Equal Pay for Work of Equal Value: We're Fighting for Pay Equity, PSAC Print Shop, July 1991.

59. These groups are (CR) Clerical and Regulatory, (ST) Secretarial, Stenographic, and Typing, and (EU) Education Support, all represented by PSAC.

60. The exact figures are as follows:

	Evaluation	Adjustment
(CR) -	\$3,800	\$ 994
(ST) -	\$3,800	\$1,289
(EU) -	\$9,100	\$4,426

See PSAC publication Equal Pay: It's the Law.

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70. Rianne Mahon, "Canadian Public Policy: The Unequal Structure of Representation," in Leo Panitch (ed), The Canadian State, Toronto, 1977.

71. Mahon, 1977, p.170.



72. Rosemary Warskett, "Valuing Women's Work - Dealing with the Limits of State Reform," Resources for Feminist Research, Vol. 17, No. 3, September 1988, p.68.
73. Grenier, 1988, p.10.
74. Warskett, 1988, p.68.
75. Rosemary Warskett, "Political Power, Technical Disputes, and Unequal Pay," in Judy Fudge and Patricia McDermott (eds), Just Wages: A Feminist Assessment of Pay Equity, Toronto: University of Toronto Press, 1991, p.185.
76. Warskett, 1991, p.190.

## CHAPTER IV

### PAY EQUITY LEGISLATION IN ONTARIO

In the 1980's, the limitations of equal pay for work of equal value legislation led to pressure for stronger and more effective legislation to address the wage gap. Pay equity legislation was formulated to meet those demands. Pay equity legislation differs from equal pay for work of equal value in that it is proactive legislation. Proactive legislation places the primary responsibility on the employer to put programs and mechanisms in place that identify unwarranted wage discrimination caused by systemic discrimination. Under pay equity legislation, employers affected are required to analyze their workforce composition and draw up a plan to eliminate salary discrimination based on bias-free jobs evaluations. This legislation places the obligation on employers to scrutinize their pay practices, and put programs of positive remedy into effect, without waiting for a complaint to be lodged. This legislation usually includes the establishment of a regulatory agency with responsibility for the implementation of pay equity. The underlying rationale of proactive pay equity is the notion that sex based occupational discrimination exists in the majority of workplaces. Thus pay equity legislation addresses systemic discrimination in a way that complaints based legislation does not.

In 1987, the Ontario government introduced pay equity legislation to the province. While other provinces also introduced pay equity legislation in the late 1980's, Ontario's legislation is unique in that both the public and private sectors are affected.<sup>1</sup> Ontario's pay equity law is thus regarded as the most far-reaching pay equity legislation in North America. The effective alliance of the feminist and labour movements played an important role in the adoption of a proactive pay equity law and the inclusion of the private sector in the legislation. On the other hand, business interests and other groups opposed to the legislation were also successful in influencing the law, and limiting the extensiveness of its coverage. In the final outcome, the state gained legitimacy by enacting legislation that had the explicit support of feminist organizations like the Equal Pay Coalition, while limiting the legislation's potential impact through technical details.

Although Ontario's pay equity legislation avoids many of the problems of complaints based legislation, recent feminist analyses have begun to examine how the technicalities of the legislation have restricted the legislation's effectiveness. In particular, feminists have focused on the limitations of the job evaluation process in achieving wage adjustments for women. Criticism has also been directed towards certain details of the law that have resulted in the exclusion of many women from coverage.

The inadequacy of pay equity legislation has thus led some feminists to challenge the dominance of pay equity legislation as a solution to the problem of wage discrimination. These feminists have begun to examine alternative strategies for reducing the wage gap that

are based on a wage solidarity approach. These alternatives include increases in the minimum wage, equal base rates, the shrinkage of long job scales, and wage increases based on across the board as opposed to percentage increases.

In the final analysis, Ontario's pay equity legislation falls far short of providing women with equal pay for work of equal value. As with equal value legislation, feminist analyses of the struggle for pay equity have further developed the theory of the state as the mediated expression of the interests of unequal players. Moreover, analyses of pay equity have led feminists to examine the role of the women's movement in the struggle for equal pay, and to understand feminists' role in facilitating the state's transformation of the radical potential of equal pay for work of equal value into the limited pay equity legislation presently in effect.

### THE ADOPTION OF PAY EQUITY LEGISLATION IN ONTARIO

The adoption of pay equity legislation in Ontario was influenced by the shift in political power during the mid-1980's, and the influence of different interest groups supporting and opposing the legislation. Advocates of pay equity were successful in achieving proactive legislation affecting both the public and private sectors. However, opponents also succeeded in influencing the legislation through the technical details written into law, details that severely restricted the potential impact of pay equity. The stated

commitment of advocates to achieving pay equity legislation made it unfeasible for them to withdraw their support from the legislative initiative at that late date despite their awareness of the limitations imposed on the proposed law.

The shift in power amongst the three major political parties formed the political catalyst in the passage of pay equity legislation. Two political events are important in this respect: the 1985 election, and the accord between the Liberal and the NDP parties. Prior to June 1985, the Progressive Conservative party held office in Ontario for 42 years. In January 1985, Frank Miller replaced Bill Davis, the popular leader of the Progressive Conservative party. In March 1985, Miller called a general election with the Conservative's popularity still above 50 percent in the polls. The position of the different parties with regard to pay equity is explained by Elaine Todres:

Pay equity became an important economic issue in the 1985 provincial election campaign. Both the Liberals and the New Democratic Party publicly supported implementation in the public and private sectors. In the last days of the Conservative government, Frank Miller came out, mid-campaign, in favour of public sector implementation.<sup>2</sup>

The election reduced the Tories to a minority government with 52 seats compared to the Liberals' 48 seats, and the NDP's 25 seats.

As a result of the election, the Liberals attempted to gain NDP support to wrest power from the Conservatives. In May 1985, the Liberals and the NDP signed a formal two year accord. In exchange for a promise not to offer or support a vote of non-confidence in

the Liberal government for two years, the NDP obtained promises to put into law a large number of items on the NDP agenda, including equal pay for work of equal value, within the first session of the new government. In June 1985, the Liberals and the NDP combined to defeat the Tory government, and the Liberals were called upon to form the new government. The role of the accord in the adoption of pay equity is described as follows:

The accord gave the Liberals the majority needed to displace the Tories and their party's hold on political power in the provincial government. In the accord, the Liberals made a commitment to introduce pay equity legislation.<sup>3</sup>

Although pay equity was part of the Liberal's election campaign, the net effect of the accord was to place pay equity high on the legislative agenda, and to set a deadline for implementation.

In July 1985, the Liberal government established an interministerial task force on pay equity, whose steering committee was chaired by the Assistant Deputy Minister of the Women's Directorate. The purpose of the task force was to prepare a green paper on the implementation of pay equity. In November 1985, the attorney general government tabled the *Green Paper on Pay Equity*. From February to May 1986, consultations were held on the green paper by a panel of three persons appointed from the business and academic communities. The consultation panel released its findings in September 1986.<sup>4</sup> Because of the business orientation of the appointees to the panel, the NDP and the Ontario Federation of Labour appointed a shadow panelist, who attended all of the hearings, and produced a separate report. During this time, the government also established the Premier's

Labour Advisory Committee on Pay Equity and the Premier's Business Advisory Committee on Pay Equity, which considered specific implementation questions, and potential problems.<sup>5</sup>

In conjunction with the consultation panel's hearings, the Minister of Labour introduced Bill 105: An Act to Provide Pay Equity for Employees in Predominantly Female Groups in the Public Service on February 11, 1986. During the public hearings on Bill 105, it was criticized for being too narrow in scope. In September, Bill 105 received second reading. The Standing Committee on the Administration of Justice then began examining each clause in Bill 105. The NDP and the Tories succeeded in introducing amendments to Bill 105, significantly broadening the Bill to include the broader public sector. However, before the Committee had completed its hearings, the attorney general introduced another bill. On November 24, 1986, Bill 154 was introduced, requiring pay equity in the broader public sector and private sector. The introduction of Bill 154 led to some confusion, and eventually it was agreed to add the public sector to Bill 154, and drop Bill 105. After public hearings on Bill 154 were held, the revamped Committee on the Administration of Justice began a clause by clause examination, which produced various amendments to the Bill. Bill 154 was finally passed in June 1987, and became law in January 1988.<sup>6</sup>

The development of pay equity in Ontario was heavily influenced by the different interest groups who actively supported and opposed the proposed legislation. The leading advocates of pay equity were women's groups and labour organizations, who formed a close and effective alliance. The most influential interest group supporting pay equity was the

Equal Pay Coalition. Labour lawyer Mary Cornish, spokesperson for the group, managed to unite widely disparate organizations on this issue, including the Business and Professional Women's Clubs of Ontario, the Canadian Union of Public Employees (CUPE), the Canadian Textile and Chemical Union, the Law Union of Ontario, and the National Association of Women and the Law. The Coalition represents one million men and women in Ontario.<sup>7</sup>

The Equal Pay Coalition played an important role in the formulation of the new legislation. Because of their widespread membership, the Coalition could portray itself as representative of the public interest. These proponents of pay equity legislation sought to transform the issue of pay equity from a measure with relatively few beneficiaries to one perceived as a universal issue, a matter of just and equitable treatment of individuals who had been subject to systemic discrimination. Elaine Todres, Assistant Deputy Minister of the Women's Directorate, credits the Coalition's commitment and broad-based support for pay equity's eventual recognition within the province as a political issue affecting at least half of the electorate.<sup>8</sup>

In addition, the Coalition is attributed as the driving force in getting the government to believe that only a pro-active model would be politically viable.<sup>9</sup> Pat and Hugh Armstrong explain:

The Coalition convinced the Task Force that only a proactive model, one which required employers to take positive action to rectify inequities and which assumed all employers guilty of discrimination, would be effective and acceptable to the groups represented by the Coalition.<sup>10</sup>



Thus the proponents of pay equity in Ontario were widespread, well organized, and successful in both defining pay equity as a universal issue and in influencing the format of the new legislation.

In contrast to the formal alliance of feminists and labour, opponents to the legislation were allied in an ideological sense only. Opposition derived from employers, business associations, and neo-conservative groups.<sup>11</sup> The business sector claimed that higher wages would lead to higher consumer prices and would discourage foreign investment in Ontario. They argued that they would be unable to afford the cost of closing the wage gap, and that the legislation would make them uncompetitive and drive them out of business. Business spokesmen like John Dodderidge, president of Hayes-Dana, publicly assailed the proposed legislation: "The cost of new social legislation, particularly pay equity for women, will cause hardship to Canadian industry and harm its ability to compete in export markets."<sup>12</sup>

Business opposition took different forms depending on the size of the employer. Small employers objected by arguing that they could not afford pay equity. They were represented by groups such as the Canadian Organization of Small Business and the Canadian Federation of Independent Business.<sup>13</sup> Large employers were also opposed to the legislation, however, realizing that legislation was inevitable, their efforts focused on limiting the damage through technical details restricting the impact of the legislation.<sup>14</sup>

In addition to business groups, neo-conservative organizations like the National

Citizens Coalition also opposed the legislation. The National Citizens Coalition is a non-partisan, non-profit organization with a membership of 36,000. It is based on support for the free market system, limited government, and the traditional patriarchal family.<sup>15</sup> In 1987, the National Citizens Coalition attempted to rally grass roots opposition to Bill 154 through a series of advocacy advertisements on radio and in the newspapers. In addition, it sent out 125,000 solicitation letters in Ontario.<sup>16</sup>

While it was difficult for opponents of pay equity legislation to lobby against an issue advocates had portrayed as one of justice and fairness, opponents did succeed in limiting the effects of the law by manipulating technical details.<sup>17</sup> The influence of employers and business associations on both the Progressive Conservatives and the Liberals is important in this respect, particularly during the amending process on Bill 154. While the NDP introduced many amendments designed to strengthen Bill 154, the Tories sided with the Liberals to vote against NDP amendments, with the result that in the end, none of the NDP amendments were passed.<sup>18</sup> While the Progressive Conservatives had been supportive of amendments to strengthen Bill 105, their strategy at that point was likely designed to insure that a stronger Bill 105 would not be expanded to include the private sector.<sup>19</sup> When Bill 105 was dropped and Bill 154 went through hearings, the Conservatives did an about-face, seeking to limit as much as possible any efforts to strengthen Bill 154. In the end, both of the Tories and the Liberals served to overrule the amendments introduced by the NDP, thereby restricting the potential impact of the Bill 154 through technical details.<sup>20</sup>

Finally, in the process of Bill 154 becoming law, the efforts of the Equal Pay Coalition to achieve the most effective legislation were restricted. There was an urgency on the part of the Coalition to see pay equity enacted as quickly as possible, as a new election was forthcoming, which might result in a new government less inclined to pass pay equity legislation. For this reason, the Coalition had already given its support to the legislation as a first step by the time the Justice Committee hearings on Bill 154 commenced. As Debra Lewis writes, "The threat of an election induced many feminists to conform to the government's timetable, and stifled debate on the merits of the Bill."<sup>21</sup> Patricia McDermott explains that there was pressure put on feminists during this time not to be too critical of the Bill, in order to avoid extending the Justice Committee's hearings for too long. This led to the situation where feminists gave public support to proposed legislation for which there was considerable private misgivings. McDermott writes that "This decision is critical since once a group comes out in favour of or against a particular legislative initiative it is difficult to say later that it has changed its mind."<sup>22</sup> In this sense, important debate and criticism over Bill 154 was cut off in a rush to fit the timetable established by the state.

### ONTARIO'S PAY EQUITY LEGISLATION

Ontario's Pay Equity Act became effective on January 1, 1988. In the public sector, the legislation calls for all employers to develop pay equity plans. In the private sector, employers with more than 100 employees are required to develop and implement pay equity

plans. Private sector employers with 10-99 employees are not required to develop pay equity plans, but must still achieve pay equity, and are subject to a complaints mechanism. Private sector employers with less than 10 employees are not covered under the act.

In calculating the number of employees in an establishment, all full-time and part-time employees are covered, as are casual workers who work one third of a normal full-time load on a regular basis. Contract workers and summer students are excluded under the Act. Mandatory dates for posting pay equity plans, and for starting wage adjustments are staggered according to which sector the employer is in, and the number of employees. Public sector employers must have begun wage adjustments by January 1, 1990. Employers with over 500 employees must have commenced by January 1, 1991. The deadline was January 1, 1992 for employers with 100-499 employees. Employers with 50-99 employees and 10-49 employees had deadlines of January 1, 1993 and January 1, 1994 respectively.<sup>23</sup>

Under the legislation, who the employer is, and what constitutes the employer's establishment are important considerations. The term employer is not defined, although some guidelines are provided for the cases where there is uncertainty over who is the employer. This includes whoever exercises direction and control over the employees, whoever determines compensation, whoever hires, disciplines, and dismisses employees, and whoever the employees perceive to be the employer.<sup>24</sup> The definition of establishment is all employees of an employer who work in a geographic region, which can be a county, territorial district, or regional municipality.<sup>25</sup>

Employers must prepare one pay equity plan for each bargaining unit, and one for non-union employees in each of the employer's establishments. In developing a pay equity plan, the Act requires that female job classes be compared with male job classes in each establishment. This involves a two step process: firstly, job classes must be determined, and secondly, a comparison system must be chosen that is gender-neutral (the Act does not specify any particular system). Where bargaining agents are involved, both the job classes and the gender-neutral comparison system must be jointly agreed upon. For non-unionized employees, employers are not required to involve employees in the process.<sup>26</sup> A job class is defined as those positions that have similar duties and responsibilities, and require similar qualifications. In establishing whether a job class is male or female, gender predominance must be determined. Under the Act, a female job class is any job class with 60% or more females employees. A male job class is any job with 70% or more male employees. The Act also allows, but does not require, employers to consider historical incumbency and gender stereotypes of a job class when determining whether a job class is male or female. All jobs within an establishment are classified as belonging to a male job class, female job class, or gender-neutral job class.<sup>27</sup>

Male and female job classes must then be evaluated using a gender-neutral job comparison system. The Act does not provide a definition of gender neutrality. However, the system chosen must be based on a comparison using skill, effort, responsibility, and working conditions as criteria. The Act also specifies that the system chosen must be bias-free, and must be applied in a bias-free manner. With the job analysis complete, male and

female job classes of a comparable value must be determined. Jobs of comparable value do not have to be identical in their evaluations, but must fall within a certain range established in the gender-neutral comparison system.<sup>28</sup>

Once comparator classes are established, compensation in female job classes is compared with that of their male comparator classes. Differences in compensation between male and female job comparator classes are then assessed. In the case where more than one male comparator exists for a female job class, the Act requires that the female compensation rate be compared with the lowest male compensation rate. If no comparators can be found in the male job classes within one pay equity plan, a comparator must be sought in the other pay equity plans within the establishment. If more than one male comparator is found in the other plans, the one with the lowest compensation serves as the comparator. If there is no male job class of comparable value to the female job class, the male job class that is of lower value but that receives higher pay than the female job class is the comparator. In the case where there is no male job class that meets these specifications, the female job class does not have access to pay equity under the Act.<sup>29</sup>

The Act does allow for differences in compensation between comparable male and female job classes based on certain factors. These factors include: a formal gender-neutral seniority system, a temporary employee training or development assignment, a merit compensation plan based on formal performance evaluations that employees are aware of, red-circling (where a position has been downgraded and salaries have been frozen until the

salary for the position matches the salary being received by the incumbent), and a skills shortage that causes a temporary inflation in compensation.<sup>30</sup>

With the above factors taken into consideration, the necessary wage adjustments to achieve pay equity are calculated. In determining wage adjustments, employers must use one percent of the previous year's payroll each year until pay equity is achieved. Employers are prohibited from reducing the compensation of any jobs to achieve pay equity.<sup>31</sup>

Finally, pay equity plans listing the details of the pay equity process must be written up and publicly posted in the place of business by the mandatory posting date. Plans that have been negotiated between employers and unions where both have agreed to its terms are deemed as accepted. In the case of non-unionized workers, complaints must be registered within 90 days after the posting of the plan, after which the plan is considered approved.<sup>32</sup> Employers must then begin making the wage adjustments as detailed in the plan.<sup>33</sup>

The administration and enforcement of pay equity is achieved through the Pay Equity Commission, which is divided between the Pay Equity Hearings Tribunal and the Pay Equity Office. The Hearings Tribunal is described as "an independent body that has the statutory power to settle disputes that cannot otherwise be resolved and serves as an appeal mechanism for all parties involved."<sup>34</sup> The Pay Equity Office is divided into three different branches: Information and Education Services, Policy and Research, and Review Services.

Information and Education Services has a staff of educators, runs a hotline service, and has developed a range of publications from basic to more advanced guidebooks for practitioners. Policy and Research is responsible for further studying related issues, such as how to deal with women in predominantly female sectors with no male comparators who are presently excluded under the legislation.<sup>35</sup> Review Services provides assistance in situations where a complaint or objection has been filed. A review officer is then dispatched to investigate and try to achieve a settlement. If the parties involved remain unsatisfied, the matter is then referred to the Hearings Tribunal, who hold a hearing, and reach a decision on the matter.<sup>36</sup>

### THE LIMITATIONS OF PAY EQUITY LEGISLATION

With pay equity legislation now in effect in the province of Ontario, the focus has shifted to issues surrounding the implementation of the legislation. At this point, numerous technical difficulties emerge; problems of definition, measurements, and systems. Technical issues are not unimportant; their outcome significantly influences the legislation's effectiveness in reducing the wage gap. Fudge and McDermott write that "as...the resolution of technical issues is essentially political, it is necessary to look at the technique of politics - the resources and strategies used both to implement and to resist pay equity's social vision."<sup>37</sup> From this perspective, feminist analyses reveal that at every stage in the implementation of pay equity, the technicalities of the legislation are political, in that they



serve to limit the extent to which women's undervaluation is recognized and redressed. In this sense, the state gains legitimacy from the legislation, while limiting its impact through technical details.

### The Job Evaluation Process

The strongest criticisms of Ontario's pay equity legislation have focused on the job comparison system required under the law. While the law does not specify that employers must conduct job evaluations to comply with this requirement, in actuality the Act's stipulation for a job comparison system has meant the almost exclusive use of a job evaluation process by employers. Feminist analyses have identified a number of problems with the use of job evaluation as a means of achieving pay equity for women. One of the most important problems with job evaluation is the persistence of gender bias in the evaluation process. Although Ontario's pay equity law requires that the system used must be gender bias-free, little effort has been made to ensure that gender bias has been removed.

Gender bias can influence the outcome of a job evaluation in a number of ways: in the selection of the compensable factors that determine the value of the jobs, in the weighting of the compensable factors, and in the evaluation of the compensable factors contained in each job. Studies on job evaluation have shown that gender bias pervades each of these three steps. Pat and Hugh Armstrong have argued that, in terms of what

compensable factors are counted in job evaluations, women's skills, efforts, responsibilities, and working conditions are frequently overlooked. They offer an example: "The objectionable nature of garbage is used to justify higher wages for those collecting refuse. The objectionable nature of human waste or vomit is often not recorded, however, when the work of nurse's aides is evaluated."<sup>38</sup> Even if evaluation plans include appropriate compensable factors, the weighting of these factors is often biased against women. Rosemary Warskett points out that the revision of popular evaluation plans like the Willis Plan to include interpersonal skills should positively influence ratings of jobs involving care of the sick and the elderly. However, the Willis plan assigns the highest ratings to interpersonal skills that involve influencing or motivating others to get something done that they might not otherwise do; skills most often employed by men.<sup>39</sup>

With regard to gender bias in the evaluation of compensable factors, a number of studies have implications. Leslie McArthur has studied the manner in which social judgement biases affect job evaluations. She writes that a "halo" bias can have a significant effect on job evaluations in that a previously held judgement of a job's prestige or assumed salary can favourably influence the evaluation of that job. Conversely, the perception of a job's low salary or status can result in a lower rating. She reviews a number of studies in which the evaluators' judgements about the job's salary and desirability strongly predicted its rated worth.<sup>40</sup> McArthur is supported by Michael Mount and Rebecca Ellis' review of various studies on bias in job evaluation. They write that, with all other factors equal, "It has been consistently found that when a job is perceived as high paying, it will be assigned

higher job evaluation ratings (or higher pay rates) than when it is perceived as low paying."<sup>41</sup> On this basis, Mount and Ellis conclude that the low pay in female-dominated jobs will lead to their undervaluation in the job evaluation process.<sup>42</sup>

Job evaluation is also criticized because its complicated nature allows management consultants and specialists to take over the process. The technocratic nature of the pay equity puts the process in the hands of experts and consultants who work at the behest of employers, leaving women with little control over the outcome. Lorraine Mitchell describes consultants' role as follows:

These programs are so complicated that often the only people who truly understand what is going on are a small group of "experts." And we know from past experience that these "experts" rarely like to share information or make their systems more understandable. The result, of course, is that women lose control of a process that was supposed to be helping them.<sup>43</sup>

In a study conducted by SPR Associates on public sector organizations and private sector organizations of over 500 employees, the results showed that over two thirds of all the organizations surveyed reported using consultants in the development of pay equity.<sup>44</sup> Established management consultants are loath to make changes in the classification systems that they have been using for years, although these systems were not designed with gender neutrality as an objective. Management consultants are usually chosen by the employers; since future work in the field often depends on good references, consultants will strive to ensure that their systems work to the satisfaction of employers trying to minimize costs. In a study on the implementation of pay equity conducted by Avebury Research & Consulting

for the Pay Equity Office, it was found that consultants were reluctant to modify their traditional job evaluation systems significantly. Most managers simply accepted their consultant's assurance that their system was bias-free. The study concludes that "Although some employers expressed concern that their job evaluation system may prove not to be bias-free if challenged, these employers absolved themselves of any responsibility. In effect, their position is that the consulting company is ultimately responsible for ensuring that the system is bias-free."<sup>45</sup>

The use of a merit compensation system as a good example of how wage adjustments can be minimized by savvy consultants, while still complying with the legislation. It is perhaps even more difficult to ensure gender neutrality in the assessment of merit than it is in the evaluation of jobs. Indeed, writers like Jeffrey Gandz advise human resources practitioners that the best possible scenario for employers is to strive for really broad band classifications and very few pay levels, with pay-for-performance distinctions.<sup>46</sup> Thus management consultants work not to achieve pay equity for women, but to minimize wage adjustments on behalf of employers.

Another issue with regards to job evaluation is the lack of input that non-unionized women have in the process. Employers are not required to involve unorganized women in the job evaluation process, with the result that most of them do not. In the Avebury study cited earlier, it was found that many employers spent little time developing pay equity plans for their non-unionized staff, particularly if the non-unionized staff were women in lower

level positions. The report notes one case in particular:

One employer admitted that the company had left the non-unionized employees until after the union plans were negotiated. In this case, the union plans were not settled until the middle of December, 1989. The plan for remaining staff was developed and posted before the Christmas holiday break.<sup>47</sup>

While non-unionized women may file a complaint within 90 days after the plan is posted, experience with the complaints-based system in the federal government and in Quebec have shown that women not protected by a union are often too worried about reprisals to initiate such a complaint. The process of lodging a complaint is time-consuming, and places an enormous financial and emotional strain on the women. In addition, women may bear the wrath and possible retaliation of co-workers and company management. Thus it is not surprising that many women may decide in the end not to lodge complaints.<sup>48</sup>

Also, many women are not knowledgeable enough about the intricacies of the legislation to know if the posted plan warrants a complaint. The Avebury study notes that through informal discussions held with non-unionized employees, it was found that these employees were very poorly informed about the requirements of the Act. The study concludes that "In several instances, female employees had no knowledge of what their employers were doing to implement the Act."<sup>49</sup> The Pay Equity Coalition has proposed that pay equity centres or clinics, coordinated through community legal centres, should be established for the purpose of providing these women with the advice, education, advocacy and anonymity they need to fully benefit from existing legislation.<sup>50</sup>

Finally, another criticism is that job evaluation schemes are not reviewed, as companies are not required to file their plans with the Pay Equity Commission. No monitoring mechanism exists for reviewing what is in the pay equity plans posted across Ontario. As McDermott explains, "Remedial employment legislation, especially in the area of compensation practices, that does not have compliance monitoring built into it is literally asking to be ignored."<sup>51</sup>

### The Exclusion of Women

In addition to the problems associated with the job evaluation process, some of the most important difficulties with the legislation arise from the various ways in which women are excluded from coverage. The exemption of small employers with under 10 employees is a good example. In 1989, the Equal Pay Commission stated that the small business exemption left 217,883 women, or 10% of the female labour force without coverage. The Equal Pay Coalition's figures show that 12% of the total female population are excluded from coverage because of the small business exemption.<sup>52</sup> Also, small employers represent a significant portion of future employment growth. Isabella Bakker explains that in Ontario, 87% of the jobs created between 1976 and 1984 were generated by employers with less than 20 employees. She writes that while small establishment growth is subject to some debate, if the present trend continues, it could have major implications for the composition of the labour force by size of employer. Bakker concludes that "Given the current trend towards small establishments, pay equity and equal employment initiatives may be less and less

effective alternatives to promoting economic equality of women."<sup>53</sup>

The definition of establishment as specified in the Act also results in exclusion of women from coverage. The legislation clearly states that comparisons have to be made within an establishment. In Ontario, an establishment is defined as a corporate entity within a county, territorial district, or regional municipality. The fact that comparisons between workers for pay equity purposes are limited to employees within the same establishment means that many women cannot find male comparators because they work in organizations that are almost exclusively female, where no appropriate male comparators exist. Roberta Robb explains the problem:

This [definition of establishment] restricts effective coverage of the Act because some firms and industries have become female dominated...In such cases, there is unlikely to be a comparable male group within an establishment with which wage comparisons can be made.<sup>54</sup>

This problem affects a great deal of women; childcare workers in private daycares, sales clerks in small retail outlets, health care and social services workers in local clinics and offices, are all potentially excluded because of this provision.<sup>55</sup> The result is that these women are effectively disqualified from receiving wage adjustments. In an example of the restrictiveness of the definition of establishment, Cuneo writes that low-waged women working in a retail grocery chain in a regional municipality would not be able to compare themselves to high-paying male workers in the chain's warehouse in another regional municipality. Although employers and employees may agree to expand the definition of establishment,<sup>56</sup> Cuneo points out that it is highly unlikely that an employer would agree,

since to do so would result in a higher wage cost for the employer.<sup>57</sup> Thus the restrictive definition of establishment excludes many women from qualifying for pay equity adjustments.

Another technical detail that has resulted in the exclusion of women from wage adjustments is the job-to-job method of establishing wage increases as called for by Ontario's Pay Equity Act. To be entitled to a pay equity adjustment under the law, a female job class must be in an establishment with an appropriate male comparator, which means a male job class with the same range of value points of the female job class seeking a wage adjustment. The result of such a system is that in many instances where no male job class of equivalent value exists, women are denied wage adjustments. The job-to-job comparison method thus represents a serious obstacle in the struggle for pay equity.<sup>58</sup>

A much simpler and more accessible method of determining wage increases is the average wage line approach, which was developed in the United States, and has been used there for over two decades. McDermott describes the average wage line approach as follows:

The mathematical tool is a simple linear regression line understood by most people as the "average of averages." Once these revealing wage graphs are produced, the goal is to push the female wages up towards the average wage line by increasing the earnings of every female job class below the line.<sup>59</sup>

With the average wage line approach, the need for each female job class to find an appropriate male comparator is eliminated. Every women has access to pay equity in that every women below the wage line receives a wage increase. Given that an alternative like



the wage line approach would be a much easier and more effective method of determining wage adjustments, feminists have remained highly critical of the job-to-job method, and continue to call for its replacement.<sup>60</sup>

Technical details like the definition of establishment and job-to-job method described above have resulted in women lacking male comparators being disqualified from wage adjustments. The SPR Associates study cited earlier reveals the magnitude of the problem. The results of the study show that substantial numbers of female job classes have no comparators. Overall, about 30% of private sector employees in female job classes, and 42% of public/regulated sector employees in female job classes had no comparators, and thus were excluded from pay equity adjustments. The study notes that the problem is particularly pronounced in social services, and private sector services, where approximately three quarters of employees in female job classes had no comparators.<sup>61</sup>

Finally, although the Ontario's NDP government has announced that it will introduce amendments to extend the existing pay equity law, these changes do not represent a genuine effort to restructure the legislation in a way that will effectively deal with its many flaws. The proposed amendments would broaden pay equity in two ways: proportional comparison, and proxy comparison. With proportional comparison, female jobs can be assessed at a proportion of a male job with a higher job evaluation score, in a method that is suggestive of the wage line approach. With proxy comparison, jobs in one workplace can be compared to jobs in another workplace. The proxy amendment will only affect the public sector.<sup>62</sup>

In her assessment of the proposed amendments, McDermott makes clear that they do not represent the overhaul needed to make the Act effective, but rather further complicate an already overly complex law. She describes the amendments as follows:

The amendments would permit an already arbitrary and idiosyncratic process to become even more convoluted by introducing yet another layer of possibilities that hold little promise of truly tackling the wage gap in an effective and forthright manner.<sup>63</sup>

For example, proportional value will not replace the job-to-job method, but will only be used where the job-to-job method cannot be utilized. Yet McDermott notes that if proportional value is in actuality similar to the wage line approach, this approach is incompatible with the job-to-job approach.

Also, the proposed amendments do not prescribe the particular manner in which proportional value will be determined, yet how proportional value is defined will have far-reaching implications for how wage adjustments are assessed. In the United States where the wage line approach has been utilized, Ronnie Steinburg writes that one tactic used by employers to minimize costs is to create an average wage line that includes women's jobs, instead of using strictly male wages within the establishment, thereby lowering the line by including jobs that are depressed through discrimination. Another tactic is the creation of what Steinburg refers to as a "zone of error" around the wage line. Steinburg notes that even though compensation consultants cannot justify their use of an error zone on technical grounds, error zones have been used that are as wide as plus or minus 15%. If jobs are over or under the wage line by less than the assigned percentage, then these jobs do not warrant

adjustments. Jobs that are outside the zone are not adjusted to the wage line, but are only raised to the point where they are within the zone.<sup>64</sup> Given that such tactics have already been used in the United States, it is a safe bet that Canadian employers will also attempt to employ them, unless otherwise prohibited.

Thus, the technical details of Ontario's Pay Equity Act have effectively limited the potential impact of such a policy on the existing wage gap between men and women. While the NDP government has proposed amendments to the Act, the limited nature of these amendments do not represent the substantial restructuring necessary to achieve a truly effective pay equity law.

### ALTERNATIVES TO PAY EQUITY

Pay equity legislation's limitations as a means of eliminating wage discrimination has led some feminists to begin looking at alternative methods of reducing the wage gap, methods that have focused on wage solidarity as a goal. These alternatives can be divided into two categories: collective bargaining strategies and legislative strategies.

The various alternatives open to unions in their efforts to reduce the wage gap are generally referred to as a wage solidarity approach. Wage solidarity means that unions use their collective power to reduce the wage differential between members by focusing on

raising the wages of the lowest paid members.<sup>65</sup> Potential union strategies include bargaining for equal base rates, flat rate increases, and the elimination of increment steps. A policy of equal base rates is effective in situations where there are a large number of men and women with a wage structure that has different entry rates for men and women. It provides the advantage of getting more money for women quickly without the necessity of a complex implementation scheme. With flat rate increases, every worker receives the same increase, regardless of the original wage. Flat rate increases serve to decrease the gap between higher paid workers and those workers at the lower end of the wage scale, most of whom are women. Finally, efforts to eliminate increment steps also benefit women. With an increment steps system, workers are initially paid less than the full job rate. Only after a certain period of time do employees eventually attain the full rate. Debra Lewis discusses the increment steps system as follows:

Increments are normally restricted to clerical workers - i.e. to women. So while these women are forced to wait years before achieving the full job rate, manual workers, generally men, usually receive the 'final' job rate from the first day of employment.<sup>66</sup>

The success of union strategies that focus on a wage solidarity approach is demonstrated in Sweden. There, union policy in the past included a concerted effort to narrow the gap between high and low wage earners. In her examination of Swedish wage policy, Alice Cook explains that wage solidarity in that country was implemented over a number of years, and through a variety of measures. The results of the policy led to a significant decrease in the wage gap between men and women. She writes that, as a consequence of this policy, "each year the gap between men's and women's earnings has

narrowed and, as of 1977, it stands at less than 12 percent, women earning 88.7 percent of men's incomes, the highest competitive rate of any country."<sup>67</sup> However, Joan Acker reveals that in the 1980's, the reduction in the wage gap reversed and started to increase. Acker writes that several reasons for this trend reversal exist, including the "virtual abandonment of the wage-solidarity policy", which was the result of, among other things, the growing influence of neo-liberal ideology.<sup>68</sup>

While it may be argued that the alternatives described above would prove useful in efforts to reduce the wage gap, they are only open to unionized women. These women are already in a relatively privileged position as compared to non-unionized women. Thus these strategies leave unaffected the very women who are the most in need of effective intervention. Rosemary Warskett explains that it is important to find alternatives that extend the wage solidarity approach to non-unionized women. She writes that "Wage solidarity must not stop at those who are inside 'the house of labour.' Wage solidarity strategies which directly seek to narrow the wage gap are needed to address the low pay of workers left outside the organized labour movement."<sup>69</sup> For this reason, legislative alternatives would potentially have a more far-reaching affect on women workers.

Of the legislative alternatives to pay equity that have been discussed by feminists, increasing the minimum wage is the one most often advocated. Mitchell explains that an increase in the minimum wage would have been a much simpler and quicker method of decreasing the wage gap, as the majority of minimum wage earners are women. She

discusses the minimum wage alternative as follows:

This proposal has the advantage of avoiding complicated job comparison systems. It also focuses on giving more money to the women at the bottom of the female job ghetto. While there may be some problems with this approach, it does show a way of narrowing the wage gap that avoids the dangers of job evaluation.<sup>70</sup>

An increase in the minimum wage would prove to be an effective strategy, given the concentration of women in the low-paid, non-unionized service sector.

In addition, McDermott points to the strengthening of the *Ontario Labour Relations Act* to enable broader-based and easier unionization.<sup>71</sup> There is no doubt that unionized women are better paid than non-unionized women. Mary Cornish writes that "on average a women's pay goes up by \$3.35 an hour or 43% if her job is unionized. No other single step is likely to bring a greater increase in pay."<sup>72</sup> Thus efforts to increase the level of unionization amongst women would clearly have a positive effect on reducing the wage gap.

## CONCLUSION

Pay equity legislation as it presently exists in Ontario has left a large number of women excluded from wage adjustments. For the women who have received wage adjustments, it is unlikely, given the difficulties with the legislation, that these adjustments represent equal pay for work of equal value. Thus, the policy of pay equity has proven to

be an inadequate solution to the problem of the wage gap between men and women.

With this assessment of pay equity legislation, feminist have begun to question why Ontario has enacted legislation of such a limited nature. In doing so, feminists have enhanced their understanding of the role of the state in limiting women's struggle for equal pay. Furthermore, feminist analyses of pay equity have begun to examine the state's influence on the women's movement itself. The weakness of pay equity legislation has led some feminists to question why the women's movement has continued to support pay equity in light of its lack of success. This has led to an important examination of feminists' role in the development of pay equity, and their interaction with the state.

From a feminist perspective, the state, in endeavouring to maintain legitimacy, has had to respond to the demands of feminist activists. However, it has responded by accommodating women's demands in a manner that does not threaten the status quo. Carl Cuneo has described the state's efforts using Antonio Gramsci's concept of passive revolution. The state, faced with the growing demand for equal pay for work of equal value from the women's movement, will attempt to absorb into itself the leading elements of that concept in order to preserve its own power. In the process, the state will de-radicalize the concept to make it less threatening to the dominant groups in society and the state. In this sense, the state has enacted pay equity legislation that ostensibly addresses the wage gap, but that is severely limited through technical details inhibiting its effectiveness.<sup>73</sup>

In responding to women's demands in this limited fashion, the state forces feminists to modify their demands to take a more "reasonable" position.<sup>74</sup> Feminist's support of the enactment of the existing pay equity legislation allows the state to argue that it has given feminists what they wanted. By drawing feminists into the legislative process, the state makes it very difficult for feminists not to publicly support the legislative result.<sup>75</sup>

The state has also impacted on feminist strategy by absorbing personnel from the labour and women's movements into the state. Absorption tends to de-radicalize the people who move into the state, with the result that these groups lose some of their critical activists. In her analysis of the state, Debra Lewis explains that the state's willingness to accept pay equity is heavily influenced by its interest in taking control of the feminist agenda and in demobilizing those activists who have a clear grasp of the problem. In the case of pay equity, a number of activists from the women's and labour movements were given positions in the pay equity offices and hearings tribunal set up to administer the law. Former activists who once critiqued and organized against defective pay equity laws are now in positions where they must defend and implement them. While Lewis does not question the motivations of feminist bureaucrats, or that their work has some positive results, she notes that their roles are confined by the bureaucracy of which they are a part. Lewis describes the process as follows:

The state limits the scope of the debate by the reform it chooses, and then puts feminists in the role of selling that limitation. And while their personal allegiances may not change, the allegiance expected of the role - allegiance to the specific reform and to the structures that implement it - is another thing altogether.<sup>76</sup>



In all of the ways described above, the state succeeds in defusing the radical potential of the concept of equal pay for work of equal value for women, and minimizes any future action on the issue. In the end, pay equity legislation does little more than create the appearance of change without fully addressing women's economic inequality.

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24. Pay Equity Commission, "Definition of Employer," Pay Equity Implementation Series #2, March 1988, p.2.
25. Pay Equity Commission, "Definition of Establishment," Pay Equity Implementation Series #4, March 1988, p.1.
26. Pay Equity Commission, "Disclosing Information," Pay Equity Implementation Series #8, July 1988, p.1.
27. Pay Equity Commission, "Determining Gender Predominance," Pay Equity Implementation Series #7, May 1988, p.1-3.
28. Pay Equity Commission, "Gender-Neutral Job Comparison," Pay Equity Implementation Series #9, July 1988, p.1-2.
29. Pay Equity Commission, "Which Job Classes to Compare," Pay Equity Implementation Series #10, July 1988, p.1-4.
30. Pay Equity Commission, "Permissible Differences in Compensation," Pay Equity Implementation Series #13, November 1988, p.1-2.
31. Pay Equity Commission, "Pay Equity Adjustments," Pay Equity Implementation Series #14, November 1988, p.1-3.
32. Pay Equity Commission, "Dispute Resolution I - Review Services," Pay Equity Implementation Series #16, July 1989, p.1-3.
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## CHAPTER V

### CONCLUSION

In this study of equal pay legislation in Canada, much of the analysis has focused on the source of the male-female wage gap, and the ability of a policy of equal pay for work of equal value to close the gap. This thesis has attempted to explain the various economic theories supporting and opposing the adoption of equal value legislation. In addition, the process whereby equal value and pay equity policies have been adopted in Quebec, the federal government, and Ontario has been examined. The practical implications of existing legislation in these jurisdictions have also been described. Finally, the contribution of feminist analyses of equal pay policies to the development of a theoretical understanding of the state, and the limits of state reform have been considered.

The widely divergent explanations offered by economists and other analysts of equal value can be divided into two different economic paradigms: the neoclassical paradigm and the institutionalist paradigm. The neoclassical economic paradigm is dependent on the notion of the marginal productivity of labour. In addition, the neoclassical theory explains that discrimination is a matter of 'taste' that will be eliminated through competition. Women's inferior economic status is the result of their lack of human capital. Finally,

neoclassical economists are highly critical of equal value legislation, considering it to be allocatively inefficient, and harmful to women.

The institutionalist analysis of the labour market offers as a more realistic understanding of the functioning of the labour market than neoclassical theory. The institutionalist paradigm emphasizes the role of social and legal institutions in economic decision-making, in addition to the structural barriers that lead to the segmentation of the labour market. Institutionalists' criticisms of neoclassical theory are successful in pointing out the many problems with the neoclassical analysis of the labour market. From an institutionalist perspective, neoclassical criticisms of equal pay for work of equal value are unfounded; equal pay for work of equal value does not adversely affect the economy, but rather serves to eliminate discrimination from the determination of women's wages.

In Canada, equal pay for work of equal value legislation is presently in effect in two jurisdictions: Quebec and the federal government. In examining the development of equal value legislation, the influence of the modern women's movement is important, in that women's groups created a growing awareness of the segregated nature of women's work, and launched an extensive lobbying campaign which succeeded in pressuring the government to enact equal value legislation.

Equal value legislation as it exists in Quebec and the federal government has been unsuccessful in reducing the wage gap by any significant degree. In particular, the



complaints based method of implementation has served to limit the potential impact of equal value legislation.

However, despite the limitations of equal value legislation, unions in Quebec and the federal government have made a serious attempt to use equal value legislation on behalf of their members. Governmental efforts to thwart union initiatives to force them to comply with their own law reveal the contradictory nature of government's response to equal value, and the underlying power struggle between the various players within the state with conflicting interests at stake.

In examining equal pay legislation in Canada, the province that has the most far-reaching legislation in effect is Ontario. In the development of pay equity legislation in Ontario, interest groups that supported and opposed the legislation had an important influence on the final shape of the legislation. The feminist-labour alliance succeeded in securing the government's adoption of a proactive law that included the private sector, while the neo-conservative business alliance limited the extensiveness of the law's coverage.

A detailed examination of the technicalities of the legislation that focuses on the limitations of the job evaluation process and the exclusion of many women from coverage reveals how the technical details of the law have restricted the legislation's effectiveness. Alternative strategies that seek to avoid the problems associated with pay equity offer some promise.

In the final assessment, Ontario's pay equity legislation falls far short of providing women with equal pay for work of equal value. Feminist analyses of pay equity in Ontario have further developed the theory of the state as a structure of unequal representation. Moreover, analyses of pay equity have led feminists to examine the state's de-radicalization of equal pay for work of equal value, and to understand feminists' role in facilitating the state's minimization of equal value's radical potential.

In examining the development and implementation of equal pay for work of equal value and pay equity in Canada, it is evident that several factors have served to undermine the goals represented by these policies. Pay equity as it is presently conceived, has the potential to deepen racial, gender, and status lines. The legislation now in effect is being used mainly by unionized women in the public sector. Thus the women who benefit the most are those women who are already in relatively privileged positions. The women who are not covered by the legislation are precisely those women who need it the most. The effect may be to increase the wage gap between different groups of women.<sup>1</sup>

In addition, existing legislation also threatens to divide women and men. With Ontario's Pay Equity Act, there is no guarantee that money for pay equity adjustments will not be diverted from part of the general wage increase. Although the NDP did try to introduce an amendment prohibiting employers from shifting money for wage increases into pay equity adjustments, it was defeated. Indeed, Cuneo writes that the defeat of this amendment offers a partial explanation of why, despite their original opposition to the

legislation, business interests came to accept it. As a result, there is a danger that male workers may blame women for their lower wage increases. Cuneo describes the problem as follows:

This issue is fraught with negative class and gender implications. In a number of workplaces, resentment by male workers against women workers has already arisen over the belief that their general wage increases will be lower, so that employers can make their pay equity adjustments...This situation potentially harms working-class solidarity around pay equity.<sup>2</sup>

The red-circling of men's jobs is another way in which employers seek to pass the costs of women's increased wages to men that will have much the same effect.

In the final analysis, the concept of equal pay for work of equal value must be developed in a manner that overcomes its potential divisiveness. Feminists must use their experiences with equal value and pay equity legislation to develop strategies that address the wage gap while avoiding the problems associated with these legislative initiatives. Ultimately, strategies that strive to unite all workers will have the greatest potential to challenge the power and the practices that serve to perpetuate discriminatory wage practices and maintain the wage gap between men and women.

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