Employment Equity and Pay Equity

And Never the Twain Shall Meet?

By Patricia McDermott

Maintenant que le Canada semble être en train d'affecter l'équité en matière d'emploi et de salaire, il faut s'adresser à la manière dont ces deux aspects de l'équité marchent l'un contre l'autre, donnant en même temps une fausse impression de progrès. Cet article met en question la séparation de l'équité en matière d'emploi et l'équité en matière de salaire. L'équité d'emploi ne peut plus être achêtée avec de bas salaires !

In 1981 the federal government introduced an equal pay for work of equal value provision into the Canadian Human Rights Act. This statute was the first in Canada to signal the state's commitment to seriously attempting to reduce the 35 to 40 per cent gender-based wage gap. In 1986 the federal government then introduced one of the first statutes in the world aimed specifically at ending discriminatory hiring and promotion practices—the Employment Equity Act. This legislation is directed at the goal of achieving equitable, integrated and representational workplaces and requires employer commitment to hiring and promoting disadvantaged groups. This initiative involves moving what are referred to as 'designated groups'—women, visible minorities, Aboriginal and disabled persons *into* the workplace and moving them *up* the employment hierarchy. With the passage of these two federal statutes, and some parallel provincial legislation, Canada began the route of treating pay equity from employment equity separately. This paper will examine these two legislative initiatives and argue that the separate implementation of these to fundamental elements of equity has not served the interests of those who face systemic barriers in both securing equal pay and advancing within the workplace.

Equal Value Legislation: A Major Breakthrough

In 1981 the Canadian government added a clause to the Canadian Human Rights Act that allowed employees to launch complaints against their employers if they were not receiving "equal pay for work of equal value." Although this legislation has only been used by women, the statute is also available for complaints based on race or ethnicity, as well as gender. Interestingly the provisions could also be used by those doing men's work to complain about their pay when compared to others doing male-dominated work.

Although, in many ways the CHRA's equal value clause is weak remedial legislation, it must be noted that it was a major breakthrough in the way the wage gap was being addressed. Previously the only legislative remedies available federally and provincially were "equal pay for equal work" provisions. Even when these were expanded to include a broader measure, namely "equal pay for *substantially* the same work," in the federal as well as most provincial jurisdictions (typically located in provincial employment standards acts) it was clear they were not much use to Canadian women, since the Canadian labour force is highly segmented along gender lines—women do women's work and men do men's work. Once, separate male and female wage grids for the same job were essentially abolished in Canada by the 1960's—historically the main accomplishment of equal pay for equal work legislation—few women were in a position to make a claim that they were doing the same work as men. They needed an 'equal value' measure to argue that although they are doing different work, it is equally valuable and should attract equivalent pay.

Before we discuss the details of how equal value legislation operates, several points must be made. First, since the Canadian Human Rights is a federal statute it covers only about ten percent of the Canadian workforce. These employees work either directly for the federal government, or in workplaces which are 'federal undertakings,' such as inter-provincial travel or communi-cations (such as Air Canada, CN Rail, CBC Radio and Television, Canada Post and all large banks). Thus, although the federal government took this step, the actual impact on Canadian women was minimal, because of the small size of the federal jurisdiction in terms of the number of employees covered.

The second point that must be made about this legislation is that its 'complaint-based' nature makes it extremely difficult for non-unionized employees to use. Individual employees, or their unions, have to launch a legal challenge against their employer to make a claim that they have not been receiving equal pay for work of equal value. Although theoretically this process is supposed to be free, many have been lengthy and expensive, given the amount of time that has to be devoted to mounting and presenting a case. It is indeed a rare individual who will come forward alone to make a complaint against their employer for fear of reprimands. Although there have been a handful of victories under the equal value provision, all of the challenges were made by unions on their members' behalf—not one individual has ever made a complaint on her own. The most revealing fact about the weakness of this equal value provision; however, has been that in over a decade there has not been a significant reduction in the gender-based wage gap for federally regulated employees.

When faced with how to implement their new equal value provision the Canadian Human Rights Commission looked to how equal pay cases had been settled. In assessing whether a female job is 'substantially the same' as a male job, the practice had been to employ a standard job evaluation technique based on the well-known factors: skill, effort, responsibility and working conditions. If the two jobs differed significantly on any one of the four factors the two jobs were found not to be the same and the female job lost its claim for equal pay. This was true even if the jobs involved similar work and the evaluation scores balanced each other to result in the same overall score. Claimants under the *equal pay for equal work* legislation had to be doing almost identical work to be successful: female cleaners and male maintenance workers; female nursing aids and male hospital orderlies.

Thus the breakthrough in *equal value* legislation was acknowledging that the work could be different. When a job evaluation technique was employed, the results of the exercise were based on the total scores for two totally different jobs.

Pay Equity: Getting Closer

The realization that the complaint-based nature of the federal equal value provisions severely restricted its effectiveness, five provinces, starting with an NDP-sponsored initiative in Manitoba in 1984, passed what has come to be called 'pay equity' legislation. Since 1984, Ontario, Nova Scotia, New Brunswick and Prince Edward Island have passed similar pay equity acts. The British Columbia government is also planning to bring in an act in 1993. This new wave of legislation is what is termed "pro-active" in that it does not require complaints by employees. Instead, it mandates that employers initiate a pay equity exercise to demonstrate that they are not engaged in discriminatory pay practices. If they are, a wage adjustment program for those doing 'female dominated' jobs must be undertaken. On the whole most Canadian pay equity legislation is weak (see McDermott, 1990). First of all, only Ontario's Pay Equity Act covers the private sector—an amazing lack of commitment to ending the wage gap on the part of all other provinces. Secondly, all Canadian pay equity legislation employs the traditional mechanism of job evaluation. A major problem given the long-standing critiques of such tools as gendered and socially biased. In Ontario there has been some litigation to challenge traditional job evaluation, but the results of the few cases has not had an effect on the bulk of pay equity that has gone on there (See Fudge, 1991).

Despite its weaknesses, pay equity legislation, like its precursor the equal value provisions, has a noble goal—eradicating the long-standing Canadian gender-based wage gap. Canada has one of the highest wage gaps of an industrialized nation and we have known about it since the government started to keep official statistics on wages at the turn of the century. Thus any attempt, however flawed, to begin to close this gap must be applauded. Now let us look at how employment equity legislation operates and assess how it fits with pay equity. Rather than being complementary, we are arguing that employment and pay equity legislative initiatives have been separated to the point where, rather than reinforcing each other, they work to mask the extent of discriminatory employment practices.

Employment Equity

In 1986 the government introduced both the *Employment Equity Act* for federally regulated employees as well as the *Federal Compliance Program.* Both of these initiatives, however weak, did represent the first step on the government's part to remove systemic discrimination from Canadian work-places. The EEA directed employers to develop an employment equity plan and submit an annual report to the government, signed by the most senior official for an organization, outlining the steps the employer has taken in the past year to improve their performance in hiring and promoting members of the four designated groups. There are no clear targets set out for the achievement of employment equity, nor are there any sanctions for not making progress toward a more representative workplace. In other words, the EEA is quite voluntary in character and it has been severely criticized for lacking mandatory 'goals and timetables' which most employment equity advocates feel are necessary to accomplish action in this area. Amazingly, the EEA does not apply to employees employed directly by the government, but only federally regulated employees.

The Contractor Compliance program requires that employers wanting to enter into a contract for supplies and services with the federal government worth more than $200,000 must sign a document stating that they are committed to becoming a contractor 'in compliance'. The program also involves an annual filing for employers which sets out the initiatives they have taken to become an equitable employer. The sanction for non-compliance could be the loss of the right to do business with the federal government—to date a rarely applied penalty. Again this program does not set out specific goals that have to be met within a certain period and there is nothing stopping an employer from getting two separate contracts for $195,000 (both below the $200,000 limit) without becoming a compliance contractor. Also, the program exempts the construction industry, a move that was considered a scandal by those interested in moving women into non-traditional trades.

Both the EEA and the Contractors Program are very modest steps taken in the direction of equity. So modest, in fact, that one could argue our federal government is not seriously committed to employment equity. We do, however, have to acknowledge some intent to improve the opportunities of the large majority of the population that comprise the four designated groups. The government is also currently engaged in a review of the legislation and has indicated that it will be strengthened as a result of this process.

The Ontario government is also planning to introduce the first provincial employment equity act in Canada in 1993. The discussion document released by the Employment Equity Commissioner sets out some basic principles about how the act will operate. If the final legislation remains true to this document, it appears Ontario's act will move beyond the federal EEA. For example, in the critical area of mandating the establishment of goals and timetables, Ontario's NDP government has expressed a clear commitment to this approach.

The Results of Pay and Employment Equity Implementation

Although, as we have argued, there are serious flaws in the way both pay and employment equity have been delivered in Canada, the goal in this paper is not to focus on these weaknesses but to assess the implications of establishing essentially two separate legislative initiatives, whether provincial or federal, to accomplish equity in the workplace. To be able to assess the implications of this separation, we must first look at the *results* of a pay equity and an employment equity exercise.

When an employer conducts an employment equity exercise, one of the expected results should be a set of data revealing a statistical profile of their own workforce, an analysis of the 'availability pool' of potential applicants from the geographic area and an annual analysis of progress made towards a goal of reasonable representation from each of the four designated groups. Although there is usually a requirement, as there is under the federal EEA, and one assumes there will be in Ontario's new EEA, to file salary data, employment equity implementation does not focus on the wage data at all. It is simply there to ensure that a 'promotion,' for example, has occurred. An employer can conceivably promote a woman to a senior job but not pay her as much as men who have been promoted to similar jobs in the past. Thus the employer has complied with the requirements of an employment equity program, yet a pay inequity has been the result.

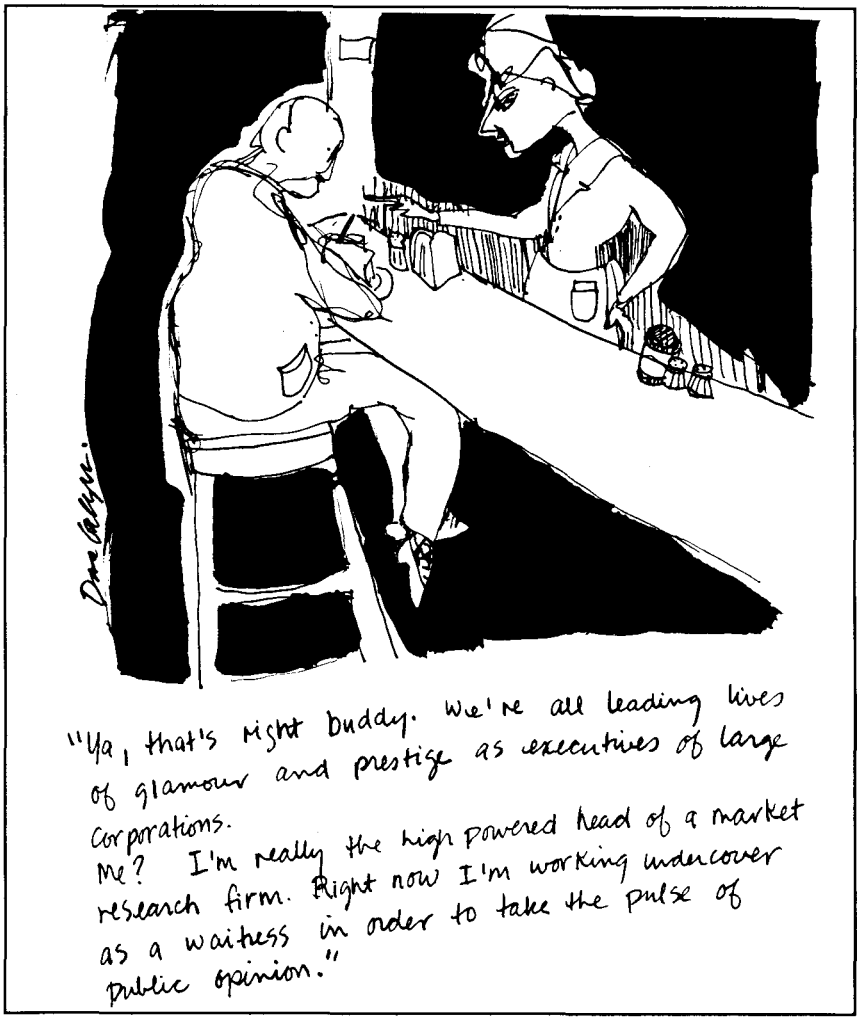
When some employers 'complied' with the contractors program in the initial years of its operation, they were found to merely be renaming female 'supervisor' jobs to 'junior management' and thus counting current employees into the 'success' of their program, without actually changing the pay or the responsibilities of these women.

The focus on 'counting' has led some employers to hire people from the designated groups, count them for the purpose of employment equity, and then lay them off. This is a practice that only shows up in a detailed longitudinal analysis of an employer's 'turnover' data, a process which is essential to demonstrate an employer's committment to employment equity. Employers have also privately expressed the desire to hire members of the four designated groups because they are "cheaper and less likely to unionize," an ironic twist in the clash between employment and pay equity efforts.

Without clear guidelines about the wages that those from the designated groups will be paid when they are hired and promoted, an employment equity program can foster a serious systemic barrier to advancement. This difficulty of collecting and analyzing these data are often over-estimated given the relatively cheap computerization available today. It is essential that detailed analysis of each employer's pattern of the relationship between hiring, promotion and pay be undertaken because without such analysis how can we be sure that employment equity is not being purchased with a savings in payroll?

The results of a pay equity exercise involves the matching those doing women's work with those doing men's work. Since pay equity legislation implementation only addresses the gendered division of labour, already low paid females are awarded the wages of males whose wages may be driven down because of race and ethnicity, an employment equity issue. The data generated from a pay equity exercise should be mapped onto the data resulting from an employment equity exercise. The data must therefore be compatible to ensure that employers do not play one issue off against the other.

Another problem with a pay equity exercise is that when one looks at a group of undervalued women and awards them a 'wage adjustment,' one must quickly ask the questions: "How undervalued was this group?" and "Now what happens to this group's role within the hierarchy of the organization?" What precisely does the acknowledgement of severe undervaluation with a minimal increase in wages mean to this female dominated job? There is no requirement to acknowledge that



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such a group has moved up the employer's career path. Has this group of women been promoted? Such questions must be answered to make pay equity and employment equity function *together* to produce true equity.

One of the most glaring clashes between employment and pay equity initiatives is the requirement of the use of a 'job class' in a pay equity implementation exercise. This is the requirement that a job class must be designated at least 60 percent or 70 percent female, depending on the province, to qualify for a pay equity adjustment. What about, for example, a group of female engineers, professors or accountants hired in the past ten years, perhaps because of an employment equity initiative? They are in a male dominated job class, yet data reveals that they are, on average, paid less than their male counterparts in the same organization and with the same seniority and experience. They, in fact, are likely to have more experience since they may be older and have been working part-time or on temporary contracts because of systemic discrimination. Since these groups of women are not in female job classes they do not qualify for a pay equity adjustment under Canadian legislation. Again a careful analysis of wage data in an employment equity exercise would reveal this problem.

Conclusion

Now that Canada appears to be on the route to some form of both employment and pay equity legislation we have to address the way these issues are working against each other and presenting a false picture of progress. There seems to be no reason to treat these issues separately. In 1993, Ontario will be the only province with *both* a pro-active Pay Equity Act and an Employment Equity Act that cover both the private and the public sectors. This setting will be a forum to monitor and argue for the integration of these two equity initiatives. Employment equity must not be bought with low wages! The task of monitoring this experiment will be great and given the propensity of governments to introduce weak equity legislation filled with more loopholes than the Income Tax Act, feminist activists certainly have their work cut out for them in the decade ahead.

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YWCA and CUPE (Local 2189)

THE YWCA OF METROPOLITAN TORONTO WAS one of the first organizations that agreed to include in its negotiated contract with unionized employees a program to assist with child care. A clause built into the agreement between the YWCA and the Federation of Community Agency Groups (now CUPE) provides a small monthly payment for employees with children to help with child care expenses. That payment is a taxable benefit. The program has been acclaimed by the union as highly progressive and very beneficial to its members.

Almost all of the people who work for this social service agency on a permanent basis are women, and many have young children. Proposals for an on-site child care centre were considered but there were not enough children to justify the investment required. Instead the decision was made to provide employees with a cash benefit of $50 a month for their first child under the age of 12, and $20 a month for each additional child. This money is used by employees to help offset their child care costs.

The YWCA also has a flexible system of alternative work arrangements. As long as the demands of the job will allow it, the days worked each week, and even the hours, can be determined by the employee on a day-by-day basis, provided the employee's job can be satisfactorily performed, and no one else is adversely affected.

Representatives of the CUPE local representing YWCA employees say they fully support these programs, not only as union members but also as employees with family responsibilities.

The YWCA's sick leave and vacation policies also help employees balance work and family demands. All permanent employees are entitled to one-and-one-half days of sick leave a month and sick days can be used by employees either for themselves or for the care of an ill spouse or child. Full-time employees are also entitled to four weeks of vacation annually; for part-time staff, all benefits are prorated.

Finally, in the area of maternity and adoption leave, the agency allows permanent employees a six-month leave of absence, during which they continue to accumulate sick leave and seniority credits. The association continues to pay Canada Pension Plan contributions. At the end of their leave, employees are entitled to a benefit equal to seven days' salary. While there are only a few men currently working for the YWCA, they are entitled to five days' paternity leave with pay, and an additional two weeks without pay.

The YWCA's experience with family supportive programs proves that what works in the best interests of employees usually works in the best interests of the organization as well.

"Our sick leave plan, combined with a four week vacation package has enabled us to retain staff with families and also to attract candidates for employment," says Rose-Marie Fernandez, Director of Human Resources for the YWCA. "We believe these policies have made us a leader in the area of providing family-based benefits."

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