

THE IMPORTANCE OF STUDYING AFFIRMATIVE ACTION

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Selon bien des gens l'égalité économique est la clé à l'amélioration des conditions des femmes dans notre société. Ce que cela signifie et la façon dont on pourrait y parvenir constituent des sujets importants de débat. Pendant les 20 dernières années les Etats Unis d'Amérique se sont servis de l'action positive comme d'un processus pour l'amélioration de la situation économique des femmes et des minorités. Les résultats de cette expérience sont sujets à controverse, mais la documentation montre que l'interprétation culturelle de ce concept de base, ainsi que l'application de ces idées dans les endroits de travail, peuvent constituer des problèmes.

Au Canada, la Commission Abella a été établie pour examiner ces concepts dans le contexte canadien – dans le contexte juridique tout autant que dans le politique et le social. La Commission a porté son attention aux conséquences juridiques et économiques possibles au cas où l'action positive (qu'elle définit comme équité dans l'emploi) prendrait force de loi au Canada. Plusieurs compagnies sont maintenant en train d'examiner hâtivement leur propre situation interne, par peur d'imposition légale de l'action positive et à cause de certaines plaintes déposées récemment par la Commission canadienne des droits de l'homme.

Par conséquent, en tant que problème philosophique, culturel, social, économique et d'organisation, l'action positive est un sujet mûr pour une recherche plus approfondie au Canada. Cette discussion va passer en revue la recherche qui a déjà été ultimée et suggérer certains domaines dans lesquels la recherche est absolument nécessaire pour des raisons théoriques autant que pratiques.

Within the general context of women's studies, there is a large group of scholars whose primary interest lies in the relationship between sex and gender and the economy. Historians, economists, demographers and sociologists have all written on this topic at length. Valerie Kincaid Oppenheimer, for example, was one of the earliest to examine the situation of women in the paid labour force in the

United States in terms of demographic data over time. She concluded that both a demand for "female" labour as opposed to any other sort of labour (i.e. cheap or available or ethnically defined) and changes in the family composition and timing were major reasons for the high rates of labour force participation among women in the USA from 1900 to 1960 (1970).

While in theoretical terms sociologists have been interested from the beginning in questions of production, workers, and stratification or class, the specific interest in women's status in the economy is of more recent origin and might be said to parallel the consciousness raising efforts of the women's movement from the late 1960's in North America.¹ Analysis of the relationship, therefore, can be of the political pressures and forces for change² as well as of the economic outcomes³ and the analysis of the barriers to equality.⁴

In this paper, I would like to deal with one specific remedy which has been used to counteract the effects of discrimination or, at the very least, the inequality of the conditions of women in the paid labour force.

Affirmative action is a term most often associated with the mandated or legislated programme introduced by President Lyndon Johnson in 1964 (Executive Order 11246) which prohibits employment discrimination by federal government contractors, sub-contractors, and employers with federally associated construction contracts. The order also carries the requirement that contractors must develop a written plan of affirmative action and establish numerical integration goals and timetables to achieve equal opportunity regardless of race, colour, religion, sex, or national origin. Equal opportunity law lies in the 1964 Civil Rights Act, Title VII. The enforcement procedures and coverage of that act were extended in the Equal Employment Opportunity Act of 1972.

Whatever else affirmative action may mean in a positive, negative or ambiguous sense,⁵ the chief association with the term

in the literature is the U.S. law which has the following characteristics: it is related to employment; it is mandatory or legislated and not voluntary; it requires reporting with the possibility, therefore, of statistical analysis of results; it requires some sort of enforcement agency; and it is a legal form of positive action.

Because the United States has had experience with affirmative action for twenty years there is a vast literature on the subject. Many types of analysis have been undertaken. Lawyers, policy makers, enforcement agencies, statisticians and labour market analysts have been involved in the field.⁶

Here I will raise some questions of a "women's studies" nature. That is, I will not raise questions relating to the legal aspects of the issue on which subject I am a naive and interested observer; nor about the statistical analysis which is not of much importance yet in Canada (there being nowhere mandatory affirmative action with any data to report); nor about enforcement on which subject political scientists and sociologists will no doubt have much to say in the coming years. I will question what and how one might teach about affirmative action or employment equity and carry out research in this country.

AFFIRMATIVE ACTION IN THE CANADIAN CONTEXT

Sociologists have long understood that one cannot simply adopt ideas from the United States and apply them in the Canadian context. There are three screens for the interpretation of Canadian society through which any U.S. or other foreign idea must pass: the historical screen; the economic screen; and the cultural screen.

In terms of the first, the history of civil rights is quite different in a system of law such as our own has been. We are a federal state with eleven feuding jurisdictions. The courts and the stated rights which have characterized the U.S. system from the start are only since 17 April 1985 parti-

cularly relevant in Canada. Therefore, the idea of affirmative discrimination has not been very useful in Canada. It has become very useful recently.⁷

The economic screen is even more complex. The basis of our economy is quite different from that of the United States. Jacques Zighera who has studied the industrial-occupational matrices of the OECD countries, argues that the proper comparison to the Canadian economy is that of Norway.⁸ But certainly the huge industrial organization of production, the vast agribusiness and the highly developed service sectors of the U.S. labour force cannot be compared with that of Canada (even if Canadians make such comparisons continually). But there are even more important economic questions in terms of the organization of the labour markets of Canada (largely organized in regional terms) and in the penetration of foreign firms, unions, and other economic instruments into the Canadian economy. In this field it matters that a great many Canadians have been subject to the policies of U.S. multinational firms where affirmative action has been understood.

In economic terms (as well as in social terms) we are semi-peripheral to the U.S. economy, or we are a colony of the United States if you prefer that term, or we are a "branch plant economy."⁹ As Daniel Chirot makes very clear in his analysis of the world economy, with technology and machinery come ideas about the social organization of the workforce, of research and development, and of the "proper way of running the society."¹⁰ Affirmative action is a good example of this. It entered into our society from the United States but has been applied in a voluntary and very partial sense. People think they know what affirmative action means, but in fact they have a peculiar version of it in mind. Scientific management as a way of organizing industrial and white-collar workers was introduced into Canadian society seventy years ago in much the same way.¹¹

The cultural screen is even more important in the sense in which I am using the term. I subsume under this the relevance of issues such as skin colour and nationalism, as well as the crucial nature of industrial relations and the culture of the organization of work. It is obvious, for example, that in the United States black-white relations were the main cause of the introduction of affirmative action after the sometimes violent civil rights upheavals of the 1960's. No similar situation on the

basis of colour has existed in Canada. Where we have a faint parallel, in the French-English relationship, affirmative action programmes in the public service have taken less controversial forms – partly because appeal to the courts was not clearly available. Hardly ever is a parallel drawn between the impact of the Royal Commission on Bilingualism and Biculturalism which published its findings in the late 1960's and the affirmative action of the United States. Yet when it comes to the participation and integration of women in the economy, affirmative action is the chosen parallel.

By the late 1970's, in Canada the pressure on governments – federal and provincial – to take some positive action to reduce the unequal chances facing women in the paid labour force had reached tremendous proportions. Equal pay for work of equal value had been put into federal law by 1977 and into the law of the province of Quebec. But that touched a very small proportion of workers. Clearly, the federal government had to show leadership and they had to show that concepts of such positive action could work in the Canadian economy from coast to coast and with the historical development of federal-provincial jurisdictions and relationships.

The major step was taken by the Honourable Lloyd Axworthy, then the Minister of Employment and Immigration, to find the Canadian method of positive action in 1983 when, after extensive discussions and negotiations, Judge Rosalie Silberman Abella was appointed as a one-person Royal Commission to "inquire into the most efficient, effective and equitable means of promoting employment opportunities, eliminating systemic discrimination and assisting all individuals to compete for employment opportunities." As a bit-player in this process, I can assure you that it was not easy for the Minister to establish this Commission or its terms of reference. An important role in all this was played by the Commissioner herself, of course, who by no means instigated the idea but who was consulted and helped to refine those terms, and by the Minister's Executive Assistant, Patricia Preston, a well-known feminist and long-time activist in status of women groups (including the National Action Committee on the Status of Women).

For my part, the most important objective was to ensure that when the Report was finished Canadians (both as workers and employers) could see themselves and

their own society reflected in the recommendations. We are talking about a process by which the abstract objective of equal economic opportunity is institutionalized in the society. The institutions – the workplace, the educational system, the families in which socialization takes place, the workers' associations and the women's movement – have to be able to relate to and understand the ideas in terms of their own experience and objectives.

Judge Abella held public meetings and hearings across the country and made the most of a somewhat confining mandate. After all, the federal jurisdiction includes only 11% of the Canadian labour force. Her terms referred explicitly to the study of a number of Crown Corporations, corporations which already had in place programmes of language equality on which they report to the Commissioner of Official Languages on a quarterly basis. Yet Judge Abella managed, brilliantly in my opinion, to include so much in her discussion that less alert employers can see themselves in her report.

What does all the above amount to in terms of affirmative action and women's studies? I see a segment of a course on Canadian history and Canadian societies. It involves looking at the role of governments as leaders of change and at royal commissions as one instrument of change. It involves an examination of the political system and of the constant civil war between public servants and political masters (a story which it is not my privilege to tell but which will be told I hope). It involves studying how the elite structure of Canada recruits and influences the process and how determined bands of individuals (and here I refer specifically to feminists who have set out to capture certain key positions in Canadian government and Canadian society) can bring about change. In short, by the time that Judge Abella's report *Equality in Employment: A Royal Commission Report* appeared in the fall of 1984, it was already clear that an entire undergraduate course could be based on the process, as a case study.

THE ABELLA REPORT

Judge Abella's Report promises to become one of the most useful books for courses in women's studies for years to come. It passes the historical, the economic and the cultural screens in terms of its analysis, its recommendations and the



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technical papers which accompany it. Furthermore, it is fun to read – elegant, witty and acerbic. First, Judge Abella astutely Canadianized the issue by using the term “employment equity.” All the nasty baggage of “affirmative action” was dropped. Within days of her report being circulated the Honourable Robert Welch, then Minister Responsible for Women’s Issues in Ontario, was using the term “employment equity” in speeches. The beauty of the term is that it refers to the objective without precluding a variety of means of achieving the objective.

Second, the Abella Report defines and analyzes the problem of systemic discrimination in Canada. She looks at the U.S. legal cases; at the potential remedies and at the proper definitions:

Systemic remedies are a response to patterns of discrimination that have two basic antecedents:

a) a disparately negative impact that flows from the structure of systems designed for a homogeneous constituency; and

b) a disparately negative impact that flows from practices based on stereotypical characteristics ascribed to an individual because of the characteristics ascribed to the group of which he or she is a member.

The former usually results in systems primarily designed for white able-bodied males; the latter usually results in practices based on white able-bodied males’ perceptions of everyone else.

That last phrase is surely going to be one of the most useful in the history of writing

about women’s situation in Canada.

The purpose of the Abella Commission was not confined to studying the economic situation of women alone; it included the disabled, visible minorities and native peoples as well – a very tall order indeed. But as the Report documents so well, this is about 60% of the Canadian workforce. One of the results and recommendations here has to do with data requirements. We do not know how many Canadians there are who are disabled or members of visible minorities. Thus the Abella Report and the reports on the handicapped and visible minorities which preceded it and added to the pressure for her Commission have led to changes in the 1986 census which will, for the very first time in Canadian history, allow us to examine the detailed composition of the Canadian population. Before expanding on the reasons for this, let me just say that the entire Abella Report is rich with information and detail and I do not propose to elaborate further here.

EMPLOYMENT EQUITY: WHY?

Examined at a very general level, affirmative action (by which I mean the American version) may be seen as a determination by the federal government of that country to reduce discrimination on the basis of race, sex, and other grounds. But when one examines the literature from the United States, it becomes apparent at once that a variety of motives exist

for affirmative action programmes.¹² In their background paper for the Abella Commission, Edward Harvey and John H. Blakely have outlined these reasons and more recently Marsden, Harvey and Blakely in a report to SSHRCC (1984) have organized those data into categories potentially useful in the Canadian context.¹³ At present, Harvey and Blakely are in the field with a research project to study the situation in a sample of employees in Ontario.

The U.S. literature indicates to us that there are five major categories of reasons for the existence of an affirmative action programme. The first is to remedy current or past discrimination. Typically a firm might put into place a programme after having been found to discriminate by a court or human rights commission. CN in Canada, for example, will have such a programme but this is a response to a particular situation or problem brought forcefully to their attention.

A second reason is to act as a component of an explicit human resource policy. Typically in Canada, a government agency might seek out individuals who filled the requirements of an affirmative action programme either because of contract compliance pressures or for leadership reasons. This approach is also predicated on labour force projections which suggest that women, or minorities, may soon constitute the largest source of labour force growth, so affirmative action becomes a rational response to projected employment needs.

A third reason is to generate a new labour supply. One example would be an employer who wishes to find better educated workers than are available in the local market without going outside the local market. Such an employer would use affirmative action to induce housewives, perhaps, into the paid work force. Or, in another instance, seeing mandatory hiring of minorities around the corner, an employer might try to hire women and minorities in order to get the “best” workers in those categories before the competition was stepped up by government requirements.

A fourth reason could be to overcome discrimination inherent in labour market structures. In Canada, for example, the marginal work world studies¹⁴ or the segmented labour market studies elsewhere¹⁵ show that women and minorities tend to be clustered in the secondary or marginal labour markets or work worlds. It is conceivable that affirmative action programmes might break through those insti-

tutionalized barriers taking into account what supports that segmentation. For example, the education and training system, public policies that enhance or restrict the mobility of labour, child care policies and internal labour markets in firms are part of the labour markets system in such an analysis.

Finally, all the above categories of motives are based on the assumption that qualified people are available for labour markets. But it is entirely possible that they are not. The final motivation for affirmative action, then, may be to locate groups of "disadvantaged" or "protected" people and, then, out of social policy or humanitarian reasons change institutional arrangements to bring these groups into employment equity.

Although the research that my colleagues and I are engaged upon deals with the methods of supplying data for standards and the establishment of numerical goals given any one of the sets of motivations above, I would like to develop a different set of ideas possibly useful in women's studies programmes.

EMPLOYMENT EQUITY, AFFIRMATIVE ACTION AND THE STUDY OF WOMEN IN THE ECONOMY

On 8 March 1985 the Honourable Flora MacDonald, the Honourable Walter MacLean and the Honourable Robert de Cotret all made announcements related to the recommendations of the Abella Commission. The three announcements were welcomed by representatives of the women's movement and not publicly decried by most employers – with the exception of the small business lobby. To the academic analyst, however, the motivations are rather confusing. Besides the obvious need to respond to the Abella Commission, what does the Government have in mind in Canada? Leadership to the provinces and the private sector is clearly stated. But what else? In *Employment Equity and Economic Growth, A Background Paper* which accompanied the Ministers' statements, economic growth and removing the barriers to economic growth is stressed. "Equity in the workplace is not only just in a democratic society but is a key to economic growth" it says (March 8, 1985: unnumbered page 1), "A priority on jobs and economic renewal must therefore involve an attack on barriers to equity just as it involves an attack on obstacles to growth."¹⁶

The action which the Honourable Flora MacDonald announced in the House of Commons consists of the following: Crown corporations and federally-regulated businesses, and contractors to the federal government, are required to "implement employment equity." Employers in the federal jurisdiction with 100 or more employees are required to "report annually to Parliament on their plans and progress;" businesses seeking contracts of \$200,000 or more will "have to show their compliance." But no enforcement agency is created (subsequently it seems that the Canadian Human Rights Commission is to act in that capacity) and "we are not going to impose an unwieldy set of rigid procedures." The difficulty is to know what it is that employers have to report; what standards are to be set for their plans for employment equity; what help they are to receive in terms of establishing those plans on some comparable basis; and how they show compliance. In short, there are lots of new clothes and no emperor. We will wait until June for him to turn up.

It is impossible to distill, from the statements made so far, what the objectives of the government with respect to affirmative action are. It is possible to suggest that they have no interest at all in generating a new labour supply, in overcoming discrimination inherent in labour market structures or in bringing protected groups into employment equity (because other institutional arrangements such as training, child care, etc. are not touched). By deduction, it appears that the main motives are to remedy discrimination from the past and the present and to begin to set national standards for an explicit human resource policy of employers. In the meantime, of course, the reactions from the provinces, which are still struggling to come to grips with the Charter of Human Rights and Freedoms proclaimed three years ago, have been quiet ones – probably gearing up for a massive lobby against enforcement, reporting, and any effective implementation. Studying those groups and their activities is worthwhile indeed.

Inside the public service, it becomes apparent that there is no interest in generating a new labour supply. Mr. de Cotret announced simultaneously with the Minister of Employment and Immigration that a survey of all public service employees would be made in the month of April to see if there is a need for corrective action in the employment of visible

minorities. By the end of June, the Minister said, he would know whether or not it was necessary to take corrective action. By what standard will the Minister and his public service know if they must take corrective action? How many visible minority members are in the occupational categories employed by the public service? No one knows. What is the proportion of visible minority members living in the labour markets on which the public service draws? No one knows. The problem is that the data base is missing for visible minorities, and many aspects of the labour markets for women and native peoples. Those data could be available by the 1986 census or by special studies.¹⁷ Consultations are being held with the public service unions to prepare an implementation plan for making equal pay for work of equal value available on a regular basis, rather than on complaint.

For researchers in the field the process of change in the union – management relations, the process of data collection, and the process of analysis and definition of local labour markets and the people in them is crucial. Refined measures to determine the impact on wages and average incomes of women, on labour supply and demand, on social conflict and industrial relations, as traditional patterns of social recruitment, payment and career progress are changed, are vital. For researchers interested in the theory of organizations and of the workplace other questions become more important.

THE VITAL PROCESSES OF CHANGE IN THE WORKPLACE AND EMPLOYMENT EQUITY

The very first paragraph of the Abella Report touches on an issue which women's studies is bound to watch. Judge Abella stresses that the meaning of equality changes continuously even within one society: "Equality is thus a process – a process of constant and flexible examination, of vigilant introspection, and of aggressive open-mindedness." Nothing in Canadian society is changing faster than the labour markets and the labour process – the latter through technological change and the new strategies of worker organization in the information society, and the former through the changed composition of the labour force by sex, age, ethnicity and education.¹⁸ Governments – federal and provincial – are relying on small business to pull us out of the end of the depression through which we have

just suffered. Small business is excluded from the requirements of the federal Government's employment equity programme. Small business is becoming technologically much more advanced. Jobless growth is therefore occurring at rates yet to be measured and established, but which are clearly identifiable in terms of firms and regions of the country.¹⁹ There is an increased trend toward self-employment. More and more firms are contracting out the many aspects of their business which were previously internal – the newsletter for the company, the personnel process, accounting, research, wordprocessing, catering – to individuals or small businesses.

None of these processes of change will be compatible with the type of employment equity which seems to be envisaged by the announcements of the federal government. The idea of what constitutes equality will soon have to be assessed differently, such as by a link between returns to education, or income against overhead, or some such measures. Being in the paid labour force is impossible for a large number of unemployed Canadians who have given up the search for work; having a "career" in an organization, large or small, is open to a diminishing proportion of the work force; working within a single jurisdiction is difficult to contemplate; and, in fact, the face of the labour market is changing very rapidly indeed. While no one can yet tell us what the 1990's and the next century will look like in terms of economic life in Canada, it is time now to begin to theorize and conceptualize about the information we do have in order to begin to define what equality for women and minorities will be in terms of a redefined labour market.

I do not believe it is an exaggeration to suggest that the same mammoth questions worked on by Karl Marx, Max Weber and Emile Durkheim in the 19th and early 20th centuries as they saw the impact of industrialization on communities, society and the individuals of their period, are once again open to fundamental review. The industrial era is rapidly drawing to a close.

Who will be the giants of social and economic thought in the field now? Who will be the authors of the great works which the students of 2085 will discuss? Will the questions about equality, about women in the economy, and the systems of production be based upon the contemporary work of women's studies programmes and researchers? It is up to those of us who look at these questions

from a women's studies perspective to consider the past, to monitor the present and to prepare our students to propose the future.

¹Joan Acker, "Women and Social Stratification: A Case of Intellectual Sexism," *American Journal of Sociology*, 78 (1973), pp. 936-45; and Margrit Eichler, "The Prestige of Occupation Housewife," in Patricia Marchak (ed.), *The Working Sexes, Symposium Papers on the Effects of Sex on Women at Work* (Vancouver: UBC Institute of Industrial Relations, 1977).

²Jo Freeman, *The Politics of Women's Liberation* (New York: David MacKay, 1975); and Lorna R. Marsden, "Role of the National Action Committee on The Status of Women in Facilitating Equal Pay Policy in Canada," in Ronnie Steinberg Ratner (ed.), *Equal Employment Policy for Women* (Philadelphia: Temple University Press, 1980), pp. 242-260.

³Anne (ed.) Hoiberg, *Women and the World of Work* (New York: Plenum Press, 1982); and Marcia Freedman, *Labor Markets: Segments and Shelters* (Montclair: N.J. Allanheld, Osmun and Co., 1976).

⁴Lorna R. Marsden, "The Relationship between the Labour Force Employment of Women and the Changing Social Organization in Canada," in Anne Hoiberg, *op.cit.*, pp 65-76; and Harish C. Jain and Peter J. Sloane, *Equal Employment Issues: Race and Sex Discrimination in the United States, Canada and Britain* (New York: Praeger, 1981).

⁵Mary E. Hawkesworth, "The Affirmative Action Debate and Conflicting Conceptions of Individuality," *Women's Studies International Forum*, 7,5 (1984), pp. 335-347.

⁶Rosalie Silberman Abella, *Equality in Employment, A Royal Commission Report*, Government of Canada, 1984, and Volume II, Technical Background Reports, to be published, 1985.

⁷Thomas S. Axworthy, "Colliding Visions: The Debate Over the Charter of Rights and Freedoms, 1980-81," unpublished paper to the Conference on the Canadian Charter of Human Rights and Freedoms, Vancouver, U.B.C., 28-29 March 1985.

⁸Jacques Zighera, Comments at "Workshop on Techniques of Analysis and Policy Implications: Female Labour Force Participation," Institute for Policy Analysis, University of Toronto, 14-15 February 1980.

⁹Lorna R. Marsden and Edward Harvey, 1978.

¹⁰Daniel Chirot, *Social Change in the*

Twentieth Century (New York: Harcourt Brace Jovanovich, 1977).

¹¹Graham Lowe, "The Administrative Revolution: The Growth of Clerical Occupations and the Development of the Modern Office in Canada, 1911-1931," D Dissertation, Department of Sociology, University of Toronto, 1979.

¹²Edward B. Harvey and John H. Blakely, "Strategies for Establishing Affirmative Action Goals and Timetables," Abella Commission, Technical Reports, Vol. II.

¹³Lorna R. Marsden, Edward Harvey and John Blakely, "Women, Work and Affirmative Action," Report to the SSHRCC and Research Proposal for Grant #482-85-001, February, 1985.

¹⁴Martha MacDonald, "Implications for Understanding Women in the Labour Force of Labour Market Segmentation Analysis: The Unanswered Question." SSHRCC Workshop on *Women and the Canadian Economy*, Vancouver, B.C., October, 1980. Published in Proceedings. And Donald H. Clairmont, Martha MacDonald, and Fred C. Wien, "A Segmentation Approach to Poverty and Low-Wage Work in the Maritimes," in John Harp and John R. Hofley (eds.), *Structured Inequality in Canada* (Scarborough: Prentice-Hall, 1980), pp. 285-315.

¹⁵Marcia Freedman, 1976.

¹⁶Honourable Flora MacDonald, "Statement to the House of Commons on the Federal Government's Response to the Royal Commission Report on Equality in Employment," 8 March 1985. 18 pp.; "Employment Equity and Economic Growth," Background Paper, 8 March 1985, 12 pp.; and "Notes for a statement by the Honourable Robert R. de Cotret, President of the Treasury Board Announcing Measures on Employment Equity," 8 March 1985, 4 pp.

¹⁷Statistics Canada has been concerned with these data problems since at least 1982. Disability has been measured through supplements to the Labour Force Survey in 1983-84. The Abella Report includes estimates and findings. But the census is the only good time series data which will provide the basis for establishing numerical goals for employment equity programmes.

¹⁸Economic Council of Canada, *Towards Equity*, Ottawa, 1985.

¹⁹Lorna R. Marsden, "Women in the Automated Office." Monograph in preparation.

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