

REPRESENTATION AND REGULATION: THE ROLE OF STATE BUREAUCRACY IN LIMITING EQUAL EMPLOYMENT OPPORTUNITIES FOR WOMEN

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Sue Findlay examine les limitations importantes des recommandations contenues dans le récent rapport de la Commission Royale, "L'égalité dans l'emploi". Le rapport Abella peut être vu comme une solution libérale classique, au problème de l'inégalité: il compte sur la loi pour établir des normes acceptables de comportement et pour encourager le respect de ces normes.

Dans le rapport, l'inégalité n'est pas définie comme une caractéristique inhérente à une société dominée par les intérêts capitalistes et patriarcaux. Notre attention est ainsi détournée de la façon par laquelle les limites dans l'égalité dans l'emploi pour les femmes sont imposées par la structure, et par la pratique de la bureaucratie d'État.

Affirmative action is the latest strategy to promote equal employment opportunities for women in the Public Service. It was established in 1981 as a pilot project in three departments by the Minister of Employment and Immigration and the Status of Women in response to the continuing pressure of the Canadian Advisory Council on the Status of Women (CACSW); the recommendations of the report from the Special Committee on the Disabled and the Handicapped; and the analyses of the Task Force on Labour Market Development and the Parliamentary Task Force on Employment Opportunities for the '80's. A permanent program was announced in 1983, to be administered by the Treasury Board Secretariat.

The development of the Affirmative Action program could be considered to be an improvement over the 1971 Equal Opportunities for Women (EOW) program in that it requires both goals and timetables from departments; but in October 1984 the report of the Royal Commission on Equality in Employment concluded that "Voluntary programs in the federal government have had little impact on the composition of the public sector workforce", and recommended that all programs to promote equal employment opportunities should have a

legislative base that would make them mandatory.¹ In this sense, the Commission would appear to be advocating a more radical approach. However, upon further examination it becomes clear that, while the Commission has proposed to strengthen the enforcement of the program, it has at the same time taken some major steps to limit the definition of equal employment opportunities as proposed by feminists to the removal of systemic discrimination to bring the designated groups (women, natives and the handicapped and disabled) to a point of "fair competition" (p. 254). Quotas are rejected and the goal of proportional representation seems to have been replaced by a recommendation for a more representative bureaucracy: "Government agencies should ensure that more individuals from among the designated groups are employed to deliver those services to assist these groups (p. 269)."

In the end, the Commission's report can be seen as an articulation of a classic liberal solution to the problem of inequality: that is, reliance on the law to establish acceptable standards of behaviour and to encourage compliance with these standards. Societal commitment to equality is assumed, and the problem is reduced to a question of the time it will take for employers to realign their employment practices with the definition of employment equity, and for the designated groups to be brought to the point of fair competition through remedial and support programs developed by the federal and provincial governments (p. 202). Inequality is defined as a phenomenon experienced by the designated groups due to inherent or acquired differences which at one point would have legitimately limited their capacity to participate in the labour force, and the perpetuation of these differences through obsolete employment practices. Inequality is *not* defined as an inherent feature of society dominated by capitalist and patriarchal interests: our attention is diverted both from the limits of the political commitments to women's equality that

reflect these interests, and from the way in which these limits are imposed on policies and programs by the very structures and practices of the state bureaucracy.

The Government of Canada has not, however, been completely reliant on EOW programs and affirmative action to promote equal employment opportunities for women in the Public Service. Since 1978 the Canadian Human Rights Commission (CHRC) has had the capacity to enforce equal pay for work of equal value. The struggle for the implementation of this legislation is another example of how an "unequal structure of representation" within the bureaucracy can establish limits to reform.

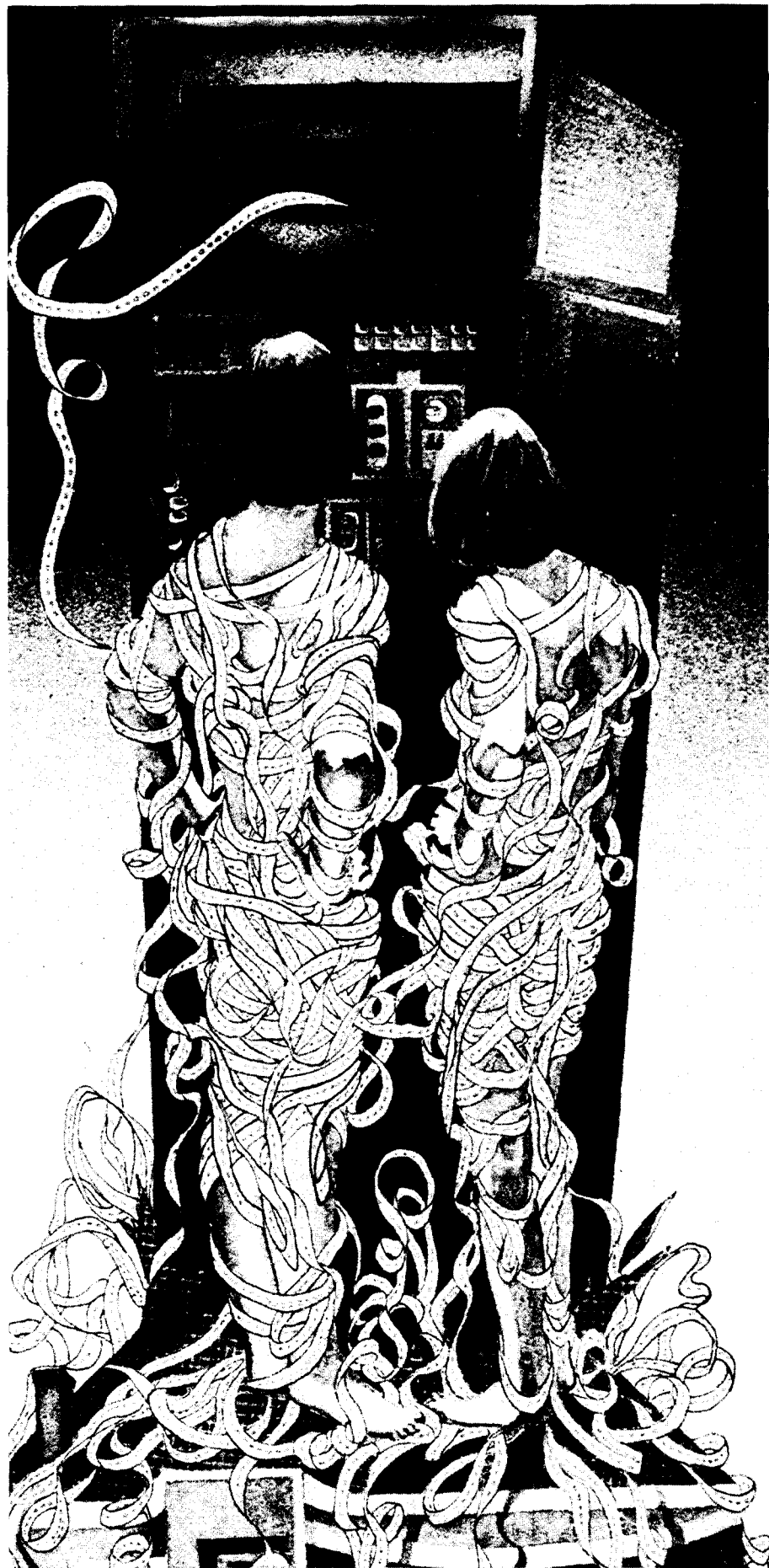
In 1972 Canada officially (but very quietly) ratified Convention 100 of the International Labour Organization (ILO) which the ILO had adopted in 1951. In theory, this meant that Canada had embraced the concept of equal pay for work of equal value. At the same time, unaware that the government had taken this step, the National Action Committee on the Status of Women (NAC) and the Ontario Committee on the Status of Women (OCSW) discovered that equal pay was not a winning strategy to close the wage gap for the majority of women locked into job ghettos; these two organizations began to lobby the federal government to align the Canada Labour Code with the principle of equal value. Their arguments to extend the Canada Labour Code were based on an assessment of the advantage there would be in placing the provisions in legislation that had an existing enforcement mechanism which, in this case, was the Department of Labour. They later argued against the government's intention to include the provisions for equal value in the Canadian Human Rights Act, pointing to the relative weakness of human rights legislation that had no constitutional base and could thus be superseded by other federal legislation.

But however logical their arguments were, they were secondary to the battles in Cabinet between those supporting the

Department's claim to the responsibility, and the determination of the Department of Justice to lodge it in the new human rights legislation. Justice won the battle, as we know. The Department of Labour, despite its symbolic value as the representative of the working class, had never had a status equal to the Department of Justice: since the creation of the Department of Manpower and Immigration in 1967, it had deteriorated markedly under weak political leadership and inadequate departmental management. In this period, Labour bid unsuccessfully for the responsibility for both the equal pay provisions, and for the responsibility to develop an affirmative action program for the private sector which went to the Department of Manpower and Immigration.²

The limitations facing equal pay for work of equal value have not, however, been related primarily to the weakness of the Canadian Human Rights Act; they relate more to the difficulties of defining "equal value" in order to be able to compare jobs. And these difficulties have certainly been exacerbated by the position of the CHRC within the government structure and the priority that is given to its objectives.

Despite the political commitments to human rights that have been made in Canada since the 1940's,³ it has taken governments some time to establish enforcement mechanisms. It was not until the mid-1970's that both the provincial and federal governments had finally established human rights commissions. "Prior to the establishment of these agencies, those discriminated against had to initiate court action on their own, and to prove a violation, a difficult and costly process."⁴ The RCSW had considered a human rights commission essential for the promotion of equality for women – recommending that such a commission "include within the organization for a period of seven to ten years a division dealing specifically with the protection of women's rights."⁵ The delays in establishing the commissions suggest that governments were more anxious to demonstrate a public commitment to human rights than to invest in its enforcement. This political ambivalence could explain the relatively low profile that the CHRC has had since 1978, and the relative ease with which the Treasury Board Secretariat has controlled the attempts of the CHRC to gain its co-operation in the implementation of the



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equal pay provisions for women in the Public Service. The CACSW, commenting in 1983 on the limits of the equal pay legislation, notes the negative effect of the Treasury Board Secretariat:

*The Treasury Board has not demonstrated any enthusiasm for implementing equal pay for work of equal value, and has both delayed the processing of complaints and failed to initiate the position evaluations needed to implement the legislation independent of the complaint procedure. Consequently the legislation has been applied slowly and only to a limited number of occupations within the federal public service.*⁶

Some cases have been won, but it is difficult to tell if they are landmark victories that herald future successes, or if they should be considered as anomalies of the system.⁷

As for the CHRC itself, although the CACSW warned women in 1979 about the potential danger of the autonomy of the CHRC to interpret and enforce legislation as it saw fit – “Thus women in Canada are not guaranteed of any action to provide equal pay by the Human Rights Act itself”⁸ – a more appropriate concern might be the extent to which the CHRC shared the same patriarchal values that permeated the other departments and agencies of the government and that contributed to the resistance that seemed to surround the implementation of the legislation. The RCSW had been quite definite about the necessity of a Women’s Division in a human rights commission to ensure the protection of women’s rights, but feminists seemed to have abandoned the idea. However, as both the American experience of the difficulties in implementing the sex discrimination provisions through the Equal Employment Opportunity Commission (EEOC) and the instances of sex discrimination within provincial human rights commissions in Canada indicate, equating a concern for human rights with a commitment to women’s equality is not always justified.

The conclusion drawn by the Commission on Equality in Employment is that the concept of equal pay is integral to any program to promote employment equity and that more resources must be put into the CHRC and Labour Canada to make the enforcement of equal pay for work of equal value more effective. There is an acknowledgement that the job evaluation exercise necessary for the comparison of jobs and the determination of “equal value” is a formidable task, but one that the Commission believes can be solved in

time, and with sensitivity and discretion.⁹

Promoting equal employment opportunities for women in the private sector is much more of a problem for the federal government than demonstrating its own willingness to become a model employer – although the problems that women experience in both sectors are not significantly different in nature or scope. Government has always intervened in the economy to develop policies and programs that support the process of capital accumulation and to promote the co-operation of the working class in this process; but it has been reluctant and extremely inefficient in intervening on issues that either affect the composition of the labour market or interfere in the employment practices of the private sector employers. While some of the blame must be placed on the employers who clearly prefer to control their relations with their employees without the interference of government and tend to withhold information on their manpower requirements even when shortages are critical, the government’s continuing commitment to the definition of the labour market in terms of white prime-age able-bodied full-time male workers makes the integration of groups with “special employment needs” (as the Task Force on Labour Market Development categorized women, Natives and the handicapped) virtually impossible. Labour market policy has tended to rely on the manipulation of immigration policy, rather than on investment in developing the full potential of Canadian workers regardless of sex, race or physical handicaps. Other methods of forcing private sector employers – even those under federal jurisdiction or contract – to integrate women on a more equitable basis have never been treated seriously as a part of either economic or social policy development; the attempts by Status of Women Canada (and other women’s advisors in departments with economic responsibilities) to introduce policy options on employment issues for women have been largely ignored. A legal base for contract compliance related to employment equality was built into the Canadian Human Rights Act (section 19), but the CHRC was actively discouraged from developing the guidelines necessary to use it by the resistance of the department with the major responsibility for the negotiation of contracts with the private sector – the Department of Supply and Services.

What activity there has been has

emerged in Employment and Immigration Canada (formerly Manpower and Immigration), a department whose responsibility for labour market policy has placed it in a contradictory position between the demands of the capitalist class for a program that would respect their right to control their own employment practices and those of an increasingly militant working class for more equal employment opportunities. While political realities – particularly the protests of women’s groups against the sexism of the Canada Employment Centres in the early 1970’s – prompted the department to establish a Women’s Division in 1974, establish a priority for women’s projects in various job creation programs, and initiate a voluntary affirmative action program for the private sector in 1976, all of these activities suffered the consequences of being located in a department that constantly had to mediate the contradictions of its responsibilities. Inaction seemed to be the major problem faced by those attempting to make these programs work. It took the affirmative action program approximately four years to gain departmental approval for guidelines to begin to work with the private sector employers. Any leadership that was generated at the political level was quickly dissipated within the department. And in terms of the programs themselves, it was only the affirmative action program that addressed the private sector itself, whereas the Women’s Division and the job creation projects were directed to women and usually focussed on training and access to non-traditional work. However, the affirmative action program had no legislative base nor enforcement mechanism and, by 1984, only 71 out of 1400 private sector employers contacted had agreed to participate in the development of affirmative action programs for their employees.¹⁰

As Canada entered the 1980’s, the labour market requirements of the new resource industries emerging in the West forced the government to examine employment issues more closely and, at the same time, opened up an opportunity for the “disadvantaged” groups to press their demands for equality. Both the Task Force on Labour Market Development (reporting to the Minister of Employment and Immigration Canada) and the Parliamentary Task Force on Employment Opportunities in the ’80’s found themselves debating and/or besieged by arguments for a labour market policy that would include mechanisms to recognize the contribu-

tions to the economy of the "disadvantaged" groups, their need for equal pay, and the barriers to their full integration into the labour market. Some even tried to argue that the integration of these groups into the labour market could solve the problem of the critical skill shortage. By 1981 the Minister of Employment and Immigration Canada found himself making a public commitment to introduce mandatory affirmative action for both the public and the private sector under federal jurisdiction.

If the contradictory position of Employment and Immigration Canada made it more vulnerable to the interests of the "disadvantaged" groups as noted above, the Treasury Board Secretariat suffered none of the same problems: it was in the ideal position to limit the government's response to the demands of these groups for mandatory affirmative action. And it did. Already constrained by the resistance of the department's senior management, it was not long before the Minister was describing affirmative action as "progressive employment practices" (the PEP program), and had abandoned discussions of enforcement mechanisms. The recommendations on affirmative action that had emerged from the analysis of groups with special employment needs by the Task Force on Labour Market Development were very carefully edited by analysts from the central agencies to emphasize the development of progressive practices and disavow the need for quotas or timetables. For those advocating the use of labour market policies to promote equality, the final statement in the report offered some hope:

Given the urgency and magnitude of the basic objective (that is, to give the disadvantaged groups equal access to jobs), this program should, to the extent feasible, be supported by appropriate legislative and other compliance mechanisms.¹¹

In 1984 the Commission on Equality in Employment – presumably established by the government in part as one way of assessing the implications of the introduction of the equality clause in the Charter of Rights for its employment programs and policies – basically picked up on this recommendation in its call for legislation and enforcement mechanisms. In this sense it is a step forward. However, as noted above, the Commission also took several steps backwards in narrowing the definition of equal employment opportunities to 'employment equity' and the removal of systemic discrimination. Its

enforcement proposals are rather meaningless since the program has been stripped of its goals or quotas in favour of equal access defined in terms of "fair competition."

A review of the federal government's initiatives to promote equal employment opportunities for women in the Public Service and the private sector illustrates both an impasse in public policy that emerges when the contradictory unity of the state is challenged by demands for women's equality,¹² and the particular way in which the state bureaucracy struggles to reassert this unity by reasserting the interests of the dominant groups or subordinating the interests of feminists. Despite the creation of a network of programs and advisors, the resistance of a male-dominated state to women's equality, together with its reluctance to intervene in the private sector to enforce proportional representation, has severely limited progress on this issue. For women employed in either of these sectors, the gap persists and there has been little change in the segregation of women's work. For now, the faith that liberal feminists have in reform by the state must be sustained by the existence of the programs and offices established to represent women's employment issues and the belief that this "structure of representation" will succeed in persuading the bureaucracy to integrate their issues into the policy development process.

¹Canada. Royal Commission on Equality in Employment. *Equality in Employment*. (Ottawa: Minister of Supply and Services Canada, 1984), p. 195.

²Lorna Marsden, "The 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).

³Carole Geller, *Integration of Affirmative Action into Government Mandates* (September 1984), p. 25. Prepared for the Human Rights Program of the Department of the Secretary of State.

⁴Geller, p. 25.

⁵Canada. Royal Commission on the Status of Women. *Report* (Ottawa: Information Canada, 1970), recommendation 165.

⁶Canada. Canadian Advisory Council on the Status of Women. *Current Issues for Women in the Public Service* (May 1983), p. 6.

⁷*Ibid.*, p. 5.

⁸CACSW, 1979, p. 76.

⁹Royal Commission on Equality in Employment, pp. 232-254.

¹⁰*Ibid.*, p. 197.

¹¹Canada. Employment and Immigration Canada. *Labor Market Development in the 1980's*, p. 207.

¹²The concept of "contradictory unity" is most commonly associated with the definition of the capitalist state developed by Nicos Poulantzas; but it has been adopted by Zillah Eisenstein in her analysis of the capitalist patriarchal state: see Eisenstein, *The Radical Future of Liberal Feminism* (New York: Longman Inc., 1981).

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TOI, TU OSES RÊVER

Toi, tu oses rêver
Comme les femmes
N'osent plus rêver
Dans tes cuisses serrées
Tu emprisonnes
Le désir des hommes
Et leur volonté
De te prendre
Et de te garder

Femme
C'est pour ta beauté
Que tu rêves
Le monde
Et l'humanité
Sens ton corps
Qui gronde
Quand tu désires
Aimer

Aimer les hommes
Aimer les femmes
C'est ta destinée
Aimer pour vivre
Et pour aimer
Survivre
Et se révolter.

Céline Messner
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