

Pay Equity Legislation

A Study of the Public Service

BY KIM HERTWIG

Even though Ontario's statute says to use a job comparison system, Ontario's pay equity exercises have become synonymous with job evaluation.

Cet article examine la question controversée de l'égalité salariale et met en évidence le cas de l'Alliance des services publics du Canada où un groupe d'employés ont porté plainte devant la Commission des droits de la personne au sujet de la disparité des salaires entre les hommes et les femmes à l'intérieur des structures même de l'emploi fédéral.

"Pay equity" and "comparable worth" are currently two very hot phrases. While women and unions have been fighting for pay equity for decades, it was not until recently that the Canadian response to the issue has come to the fore.

What does "pay equity" mean? The terms "pay equity" and "comparable worth" have been used interchangeably to describe the notion that employees in female-dominated jobs should be paid the same wages as employees in male-dominated jobs that both have the same value system attributed to them. It is only possible to have the same value attributed to them if the employees have the same employer. This article will focus on the concept of pay equity, and what it means for Canadian women. I will also provide a brief examination of pay equity by looking at the implementation of the federal legislation for pay equity through a study of the Public Service Alliance of Canada (PSAC) case.

Provincial responses to pay equity legislation

Since 1985, five provinces have implemented pay equity legislation that takes on a pro-active stance, including: Manitoba (1985); Ontario (1987); Nova Scotia (1988); Prince Edward Island (1988), and New Brunswick (1988). Nevertheless, these statutes are limited in their application, as will be examined below.

The pro-active legislation implemented within the five provinces have four similarities: the legislation is based on a system that compares female-dominated occupations with male-dominated occupations; jobs must be divided into classes and groups and then designated as male- or female-dominated; all jobs within the establishment must

be evaluated using gender-neutral evaluative schemes; once evaluations are complete, the compensation must be paid until the wages are comparable. In every jurisdiction, it is written into the statute that no one's wages will be lowered to close the wage gap (McDermott 22).

Job classification is a type of evaluation whereby the total job is evaluated, and is then slotted into a pay grade that has been defined. Each job is then placed into the grade where the grade description most closely fits that particular job being evaluated (PSAC case, appendix A, glossary). Points are awarded according to the importance of the examined occupation in relation to a certain category. For instance, the level of skill required to be a chartered accountant is higher than the level of skill required of a general accountant. After the chartered accountant's occupation has been rated according to the four criteria (skill, responsibility, work effort, and work conditions) which are common to both the provincial and federal legislations, the total of each criteria will added, and then the occupation will be placed on the scale, to be compared with other occupations within the same establishment.

The job class consists of a group of positions that have similar qualifications, duties, responsibilities and pay schedules. The major concern is about creating the appropriate job class. Typically a job class should include people who do similar work. This translates into performing similar work, and of relatively the same value (McDermott 29).

When establishing value, the value assigned is reliant upon four standard factors: skill, effort, responsibility, and work conditions. Even though Ontario's statute says to use a job comparison system, rather than job evaluation system, Ontario's pay equity exercises have become synonymous with job evaluation (McDermott 31). Essentially the method is highly influenced by political and technical considerations, including the biases commonly held towards the nature of woman's work. This can lead to the continued undervaluation of woman's work. There is also a need for surveyors who are unbiased, and have no affiliation with the management of the establishment they are surveying (McDermott 31).

The scope of the legislation differs between the provinces. Aside from Ontario, the provincial legislation only applies to employees within the public sector. Manitoba's legislation is pro-active, and makes use of the collective bargaining process and calls for the establishment of a Pay

in Canada

Alliance of Canada Case

Equity Bureau (Pay Equity Bureau iii). The pro-active approach obliges the legislated public sector employees to apply a single, gender-neutral, job evaluation system to compare the wages of female-dominated and male-dominated occupational groups. Once the job evaluation is completed, a second round of job negotiations begins, dealing with the exact allocation and phasing-in of necessary wage adjustments (Pay Equity Bureau iii, v-vi).

Ontario's legislation is the only one that covers both the public sector and the private sector. Before the legislation will apply to a private sector establishment, the corporation must employ ten or more employees. And within Ontario, the legislation permits a job class to consist of a single employee. However, if the work that that person does is unique to the establishment, then they cannot be classified as a separate job class (McDermott 23-34).

Pro-active legislation moves beyond the complaint-based legislation that is used by the federal government, the Yukon, and Quebec. In these three jurisdictions, employees must complain first, before the system will be evaluated; whereas the pro-active legislation, as discussed above, obliges the employer to evaluate the occupations within the establishment even without a complaint being waged. By implication the pro-active legislation will be more effective (McDermott 21). This forecast assumes, however, that employers will be willing to change wages once they are shown the error of their ways. One only has to review the PSAC case to see that this is not necessarily so.

Implementing federal pay equity legislation: a case study

Fourteen years ago, the PSAC union sought back-pay for female-dominated occupation workers on the principal of comparable worth. Setting wages according to the principles of comparable worth requires some form of direct job evaluation. Job evaluation deals with jobs, not their incumbents. Managers have the responsibility to use information on education, training, experience, and other characteristics to match people to work for which they are best suited. Jobs held by men are used to determine how much particular job attributes are worth. These values are then used to impute a wage to jobs held predominantly by women (Aaron and Lougy 26-27).

A wage adjustment methodology is a statistical method used to implement pay equity. Each of the methods

advanced by the three parties in the PSAC case used the statistical procedure of regression analysis to calculate wage regression lines. The regression line estimates the relationship between point values of the sample of jobs evaluated and hourly wages paid for each job. Regression lines are a form of averaging and are used by the parties in the respective wage adjustment methodologies to calculate whether a difference exists between the average wage paid to a female complainant group and the average wage paid to a male comparator group (PSAC, para. 74).

Where a group complains, such as in the PSAC case, s.12 of the *Canadian Human Rights Act* limits the action to situations where the complaining groups are predominantly of one sex, and the group to which the comparison is being made is predominantly of the opposite sex.

Where a direct comparison of the value of the work performed and the wages received by the employees cannot be made, then for the purposes of s.11 of the *Act*, the work performed and the wages received will be compared indirectly, through various wage adjustment methodologies. This is one of the two controversial aspects about pay equity. In the case of *Public Service Alliance of Canada* a great deal of the argument addressed the question of which method was the most accurate.

In the PSAC case, the government, the union, and the Human Rights Commission each had their own methodology which they were arguing was the most accurate for the given situation. When compared, the union and the tribunal's methodologies determined an amount of remuneration which was relatively close, but the government's methodology was providing far lower numbers.

The federal government's methodology is based on the use of whole occupational groups as a basis for comparison (PSAC, para.118). The first approach, the "preferred methodology" is the "whole group methodology" whereby the pay of the female-dominated occupational group is adjusted to equal that of the "single, lowest-paid, whole male-dominated occupational group performing work of equal value to the value of the work of the female-

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dominated occupational group.”

In the second approach, the government argued that the deemed group approach permits only the whole group methodology to the exclusion of either the level-to-segment or the level-to-composite approaches (PSAC, para. 120). In using the second approach, the government argued that the deemed group approach permits only the whole group methodology to the exclusion of either the level-to-segment or the level-to-composite approaches (PSAC, para. 120).

The Commission accepted the analysis by Mr. Sunter, a statistician, as the best estimate of the wage gap, and provided a measure of fairness to the Complainants. To improve the reliability of the results, Mr. Sunter used weighted regression lines to account for the differences in sampling probability (PSAC, paras. 82–85).

The level-to-composite methodology involves adjusting the female wages using values calculated by their occupational group and level, and where applicable, by subgroup and level for the complainant groups to a male composite line (PSAC, para. 102).

To enact a level-to-composite calculation, one must first calculate the average for both wages and points, for the female group under consideration. Then the male regression for the whole male comparator is evaluated at the female's points average. The difference between the male and female groups is the wage adjustment that must be remedied.

There are two attributes about regression estimates that concern statisticians, one is “unbiasedness” and the other is “efficiency.” An unbiased estimate is one which, if the process is replicated many times, results in the average of the estimates being virtually identical to the slope of the regression line or the true population. Regression estimates are said to be efficient when there is no other process which is unbiased—so it may not be the ideal process (PSAC, para. 109).

The actual method of calculation is similar to Mr. Sunter's level-to-segment methodology except the Alliance uses the weighted quadratic composite line in calculating differences between the female and male groups rather than individual segmented lines (PSAC, para. 112).

Critique of the methodologies presented

Of the three methodologies presented, the Commission's “level-to-segment” approach appears to be the most stable, and the provides the fairest assessment of the value of the occupations compared. Mr. Sunter's use of the

weighted regression lines, provides a level of certainty whereby if this procedure was to be repeated, very similar results would arise. Another benefit of this analysis is that discrepancies that are inherent to statistics have been considered, and acknowledged, and to some extent a solution has been provided by using the weighted regression line.

The Alliance said it was concerned about “unbiasedness” with the level-to-segment methodology. However, I cannot see that this is a reasonable fear considering that the evaluation will only pertain to the different occupations within the federal government. It is not going to use the same numbers within separate establishments, for each establishment is considered independently. And while there are numerous federal employees, the variety of the work performed across the nation does not correlate with the numbers of people employed.

Moreover, the Commission is also the party with the least at stake. The federal government is clearly going to use a methodology that produces the lower amount of money to be paid out to the female-dominated group; whereas the Alliance is clearly going to use a methodology that produces a greater amount of compensation to be paid out to its members. While the level-to-segment analysis may not be the best, it has the potential to be the best indicator of the three choices available in this case.

After hearing the advantages and disadvantages of the three methodologies presented, the Canadian Human Rights Tribunal (CHRT) decided to calculate the wage gap according to the level-to-segment favoured by the Canadian Human Rights Commission's statistician, Mr. Sunter.

The female employees of the federal government are also entitled to interest, to be calculated on a semi-annual basis, and which shall be paid on the net amount of direct wages calculated as owing for each year of the retro-active period (March 8, 1985). Post-judgment interest, between the date of the Tribunal's decision and the date of ultimate payment, shall be paid to the employees based on the semi-annual calculation (PSAC, Part XI Orders, nos. 10–12).

The administrative argument

What is required before the government can appeal to the Federal Court? There are only two legal grounds for appeal, and financial considerations do not qualify. The federal government must argue that either the Tribunal erred in law, or denied the parties natural justice. The court cannot consider the issues afresh, and has no power to substitute its own opinion for that of the Tribunal. Only in extreme circumstances will the court question the Tribunal's finding of fact. The government has appealed on the basis of error of law, namely the interpretation of the pay equity provisions of the *Canadian Human Rights Act (CHRA)*, and the 1986 Guidelines.

In a reply to the PSAC criticisms for appealing to the Federal Court, the Treasury Board Secretary “[tried] to

caution the PSAC that the manner in which the law defines the methods for determining pay equity are vague and imprecise.”¹ The Secretary was referring to s.14 of the Guidelines when he spoke of the vague and imprecise definition of determining pay equity.

The federal government’s contention with s.14 of the Guidelines was that its purpose was to implement the broad general principle of equal pay for work of equal value found in s.11 of the CHRA. The fact that s.14 provided for the combination of the comparator male-dominated occupational groups into a “deemed” group was invalid.

In short, s.14 of the Guidelines was inconsistent with the concepts of causation and equal value required by s.11 of the Act, and in order to eliminate discrimination, the female complainant occupational group can only be compared to the lowest-paid male-dominated occupational group of equal value. Accordingly, so says the government, any differences in wages from this group comparison would be the result of gender-based discrimination and will therefore satisfy the “causation” requirement of s.11 of the Act (PSAC, para. 44).

Essentially, in the PSAC case, the government wanted to convince the Tribunal that s.14 (requiring a comparison to be made between the occupational groups that filed a complaint alleging a difference in wages and other occupational groups) is too vague in its terminology to be valid. There is no certainty as to which groups are to be grouped together and become the “deemed group.” If the tribunal did indeed find the section to be valid, then one of the two methods proposed by the government should be followed for it painted a more accurate picture of the wage disparity that existed.

In reference to the government’s contention with s.14 of the Guidelines, the Commission argued in PSAC that fairness implies reasonableness, and as such, s.11 should be interpreted as requiring “reasonable” or “fair” treatment, not necessarily the best possible treatment (PSAC, para. 50). In order to achieve this result, the Commission argued that “it [was] necessary to test for patterns of treatment of male work to obtain equality of result which will result in ‘on-average fairness’” (PSAC, para. 52).

To best detect these patterns, the Commission asserts that the level-to-segment methodology is best. In support of this, the Commission relies upon the liberal approach adopted by the Supreme Court of Canada in interpreting the provisions of the Act in *Canadian National Railway Co. v. Canada* and Ontario Human Rights Commission and *O’Malley v. Simpson’s Sears Ltd.* The Commission advocates a “purposive approach to the interpretation of s.11, one that is compatible with the scheme of the Act” (PSAC, para. 53).

The Commission also sought a broad meaning for “work” rather than restricting it to “groups” which would render s.11 inoperative, and therefore inconsistent with the purpose and goals of the legislation (PSAC, para. 55).

The Commission relied upon the Guidelines them-

selves to set out the means for identifying whether or not the “work” is male or female. Further, s.14 of the guidelines permits the amalgamation of the identified male work whereby the combination of the male work becomes the “deemed” group—this is exactly what the federal government is trying to argue is invalid (CHRA ss.12, 13, taken from PSAC para. 56).

Moreover, the Commission argues that it is not required by s.11 of the Act to find that the cause of the pay inequity is based on “sex.” The differences in pay arising from their methodology are based on the factors evaluated, namely: skill, knowledge, responsibility, and working conditions (PSAC, para. 59; s.11 of CHRA, and further clarified in ss.3–8 of the Guidelines). In addition, the Commission contends that if it must show causation to be a factor, “sex” need only be shown to be one of several possibilities (PSAC, para. 60).

The Alliance’s response

Representing the women who filed the complaint against the government, the Alliance, in reaction to the government’s contention with s.14 of the Guidelines, stressed that s.11 of the Act was intended to address one type of systemic discrimination: payment of different or unequal wages between groups of predominantly male and predominantly female employees performing work of equal value.

By using the phrase “systemic discrimination,” the Alliance is not asserting that the discriminatory wages are intentional, rather, they are a by-product of historically traditional thoughts about the value of women’s work. And as such, section 11 is not aimed at the general wage gap that exists, but the “systemic problem rooted in history and in attitudes about female work which tended to undervalue work traditionally performed by females” (PSAC, para. 61).

First, the Alliance argued, cause need not be proven. When reading s.11 of the Act together with s.16 of the Guidelines, which lists reasonable factors for paying women and men different wages, this legislation itself rebuts the government’s assumption that cause has to be shown. Secondly, any question about causation should be directed at determining whether the wage gap is a result of employers biased practices and pay systems (PSAC, para. 64).

The Alliance is pursuing the argument of pay inequity by using the very positions that were used in the JUMI Study. The JUMI Study selected positions to be evaluated from nine female-dominated occupational groups and 53 male-dominated occupational groups. This selection and sample, submits the Alliance, is reflective of the parties’

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intentions and agreement at the time that the wage-adjustment methodology would be a composite line for the male comparator group. Rejecting the government's allegation of non-compliance to the legislated standard, the Alliance claims the legislated standard in 1987 with the newly revised Guidelines was the composite, and was the standard adopted by the parties (PSAC, para. 71).

By granting the equal points between the female-dominated occupational groups scores the same point value, the Alliance contends that they have met the equal value requirement of s.11 of the *Act*. The composite line reflects the government's wage/value relationship for male-dominated occupational groups (PSAC, para. 72).

Within a year of placing the complaint against the federal government, PSAC had agreed to participate in an effort to achieve pay equity not just for the clerks who filed the complaint, but also for the other workers represented by the Alliance in female-dominated bargaining units. Equal numbers of union and management representatives rated several thousand jobs as part of the study which took four years to complete. While the government had participated fully in the study itself, it began to

get cold feet once the study results were analyzed. The analysis clearly showed that there was a large wage gap between workers in female-dominated occupations and workers in male-dominated occupations.

In early 1990, the government arbitrarily initiated some pay equity adjustments to the clerks and secretaries, ignoring the study results, in an attempt to placate the employees. Within a month, the union filed a complaint with the CHRC based on the joint study results.

Upon investigation the CHRC agreed with the Alliance and rejected the government's adjustments as too little, too late: more money was owed. A Tribunal was set up to hear the complaint starting January of 1991. The day before the Tribunal hearings began, the government applied to the Federal Court to stop the Tribunal from hearing the evidence, on the basis that the study results that were to be used were unreliable. The government's challenge failed; they appealed and failed again.

Undaunted the government tried to get the study results thrown out as evidence in 1992. The Tribunal ... ruled the results were reliable. For three more years the government continued to challenge all aspects of the study—the same study they ... initiated and in which they were full partners. In early 1996, the Tribunal again confirmed the reliability of the study results. The hearings concluded in January.

Feasibility of pay equity: a Canadian example?

There is strong resistance to comply with the Canadian Human Rights Tribunal's decision, both on behalf of the

government, and some private citizens. In an article, "We Can't Afford the Pay-Equity Decision," the author of the article admitted that the principle of pay equity was important, and that as the nation's largest employer, the government had the opportunity to set an "important example for other employers by correcting historic inequities in the way women are paid in the federal public service."

Nevertheless, according to the author, this is less important than the amount of money it will cost taxpayers to remedy the situation. If the government and Alliance "can't reach a deal, Ottawa should not hesitate to appeal to the tribunal's ruling—in the public's interest."

It is undeniable that health care is being cut across the country, and that a large portion of tax revenue is slotted for the national debt, however, much of the money paid out to the employees as a result of this decision will be collected again by Revenue Canada. In this instance I do not think that the statement implying the federal governments' obligation to taxpayers is superior to its obligation to treat its taxpaying employees fairly is valid. Is pay equity feasible? Is it too expensive?

How does one effectively freeze the real earnings of a category of workers, especially if that group comprises a large proportion of the total labour force within the organization, without experiencing morale and membership problems. Since downward adjustments may, in some cases, be expensive in terms of labour costs, productivity, and union membership.

In the 1980s there was a forum held in the University of Calgary where a great number of American and Canadian women gathered to discuss the progressive effect of feminism, and also to consider the current status of women's worth in the law and the economy. In a discussion paper prepared for the forum it was considered whether Alberta should adopt its own pay equity legislation. The writer, Janet Keeping, considered it to be a valuable notion, but also considered it to be too early to determine if doubts about the effectiveness of pay equity legislation were without grounds "merely because the principle of equal-pay-for-work-of-equal-value is enshrined in the *Canadian [Human Rights] Act*" (Keeping 12). Keeping had much to say about the problems with the other jurisdictions' pay equity legislation, namely that they have had little impact upon the existing general wage gap. Essentially, the pay equity legislation is not broad enough. Only Ontario's legislation includes employment within the private sector. The remaining jurisdictions that have pay equity legislation only require that corporations within the public sector be covered by the legislation. This greatly narrows the potential for the legislation to effectively eliminate the wage gap.

Due to the small number of complaints filed, she

inferred that only a small percentage of women had benefitted, and that with legislation such as Alberta's—s.6(3) "similar or substantially similar"—if a woman's employment involves duties some of which are more onerous and some of which are less so than a male counterpart, she may fall through the cracks because it may be argued that the jobs are not "substantially similar" (Keeping 6).

In addition, Keeping believes that pay equity legislation would be worthless. Why? In her view, if a woman's job is not seen as being as valuable as a man's receiving more income, then her wages are not going to increase no matter what the pay equity legislation says. Furthermore, lower-paying jobs are not likely to be seen by the CHRC or courts to be of equal value to better ones. Finally, pay equity legislation is not the complete solution. She does not think that bitter struggle against opposition is worth acquiring a minor wage increase (Keeping 7–8).

Keeping is not alone in her opinions. The main fear shared by many pay equity critics is that no one knows whether the value system being applied is accurate (McDermott). However this is not a valid reason for inaction. It is apparent that the current system is not accurate, nor is it equitable. To lessen the wage gap is a step in the right direction, and it is unlikely women will suddenly be awarded greater salaries than men, given the great hesitancy already illustrated, so any increase in the compensation awarded to women, even if it is conservative at first, is good. After all, once a few occupations have been evaluated, and compensation awarded accordingly, then the wage gap for that establishment can be re-evaluated and action can be taken accordingly.

Nevertheless, pay equity challenges the use of the market as the sole determinant of women's wages and insists upon employers to evaluate and pay those doing women's work according to the same measures of value used for their male employees (McDermott). While there is not certainty that the value systems being applied are accurate, many are willing to argue the positive aspects of pay equity without acknowledging this major criticism.

It is unfortunate that focus is placed upon whether or not pay equity is a workable alternative, instead of whether it is an effective method in reducing the wage gap. In the federal level, relatively few complaints have been successful, and of the ones that do come before the CHRC, few are truly equal value cases. It would be reasonable to conclude that given the number of females affected by the wage gap, equal value legislation has been largely ineffective (Keeping).

However, some are hesitant to say that pay equity legislation is ineffective. Indeed, they consider the possibility that the legislation has had an influential role in the movement towards more progressive practices that will eventually lead to a reduction in the wage gap. Nevertheless, given the history of the government's stall tactics, it is difficult to believe that the government, employers, and

some members of society have been influenced by pay equity legislation when great sums of money are involved. It appears as though, if it won't hurt too much, then the government is pro-pay equity, but as soon as they are presented with the bill, they change their minds.

Unions have traditionally opposed the job evaluation process for pay equity purposes, and generally accepted only the job classification component of the full job evaluation system. Typically unions will continue to bargain the wages, and have accepted the classification system as a framework within which to do so (McDermott).

Pay equity's impact upon the economy

While many will publicly state that women should be paid similar wages for comparative work, many also fear that if the employer is responsive the results would heavily impact the labour market. Traditional arguments include complaints of excessive labour costs, harmful labour market consequences, and increased government intervention.

The basic cost of pay equity is the addition to labour costs, including wages, and wage-related benefits are paid by businesses. In the private sector, there are four possible responses that employers can invoke. First, the employers can threaten to hire less labour. Reducing the amount of labour used can be accomplished by reducing output and laying workers off, or replacing labour with capital.

Second, the profit level can be decreased, leading to a decrease in the rate of return on business investments. This in turn would decrease the incentive for people to invest and consequently reduce the growth rate of investments, employment, and business expansion. Third, raising prices would decrease the number of goods purchased, leading to a reduction of output and consequently employment. Raising prices, it is feared, would also lead to inflation. "However, it may be that this is the best way to absorb higher labour costs since the increase in labour costs is specifically meant to redress an imbalance in our social values" (Day 11). The final option is for employers to become more efficient, and "trim the fat."

The overall impact of these responses would be short-term displacement of some workers due to reduced levels of production and increased substitution of capital goods, a reduced tax base, and an overall improvement in productivity. This does not negate the fact that many federal government employees who are faced with the benefit of an increase in pay would rather keep their \$9/hour wages at full-time hours, rather than be paid \$12/hour wages for part-time work. At least with the full-time hours come medical and dental benefits, too.² In fact, some federal government employees do not share the enthusiasm that has been published in many of the newspapers, and these very women are the ones the Alliance is trying to benefit. It is feared that the government's coffers cannot afford to pay the increase, and will subsequently result in fewer hours of employment.

But what are the benefits that are costing the economy such a high price? There are financial benefits. Many women today earn too little to be financially self-sufficient, and rely on government subsidies to assist them. Women are disproportionately represented among Canadians living in poverty. Payments directly affected by women's low earning power include social assistance and pensions. With a larger pay cheque, women would be less likely to need social assistance and be better able to save for their pensions. By eliminating the need to subsidize, society could use this money towards something else, such as health care (Day). Increasing women's pay would increase the standard of living for employed women and their families, and would make it financially worthwhile for more women to enter the labour force.

The more money available to women, the greater their purchasing power, which would lead to a ripple effect as these dollars would then spread through the economy (Day). If women were also bringing home more money, it wouldn't be so difficult for two-income families to survive a pay freeze to men's wages. This concept of wage freezing for male salaries until equity is achieved is not contrary to the pay equity legislation that stipulates that wages cannot be lowered to achieve comparable pay policies within an establishment, nevertheless, very little discussion has been centred on this very topic.

If women were paid more for their services, then perhaps men would be more willing to move into occupations traditionally held by women, and society could make better use of peoples' talents by increasing productivity resulting from the reallocation of personal resources (Day).

Another benefit, as mentioned above, is an increased tax base. Through increasing taxes collected, and decreasing the total number of expenditures and credits paid to low-income women, there would be more revenue at the government's disposal.

The critics argue that pay equity is neither possible, nor desirable. Why? There are five reasons: first, job values are not something that can be determined objectively and fairly. Second, woman's oppression is endemic to the system and cannot be addressed by "minor tinkering." While this may be so, it is better to do something to alleviate the problem until the solution is implemented, than sit back and let the discrimination continue. Third, the critics argue that the employer's standpoint of what is valuable in terms of the goals of the organization is epitomized by pay equity. Essentially, the ideology that there should be class differentials on the basis of job content is upheld by pay equity proponents. Fourth, pay equity does not contest the notion that occupational hierarchy should determine peoples' income. Finally, since job-evaluation is so complex, only the experts can understand it, and this leads to the depoliticizing and demobilizing of women (Warskett).

Neither side really comes to a solid conclusion because they simply focus on the advantages and disadvantages of

pay equity reform, and leave aside the historical realities women have faced in the past 20 years fighting for equal pay. Although women make their own history, they can only do so in the context of their political environment (Warskett).

If there is a trend towards contracting out and privatization, it will lead to a greater reliance on a contingent workforce, and this will have a significant impact upon the coverage of pay equity, comparisons of all-female establishments or female-dominated establishments, and possibly upon future job and occupational structures. Continued movements towards smaller establishments will affect the nature of employment and coverage of workers. The polarization of jobs and skills will influence where women work and the skills they acquire (Baker).

Judy Fudge examined pay equity hearing tribunals approach to the *Ontario Pay Equity Act*. She concludes it has the potential to become a litigation nightmare. Ontario is the only jurisdiction that establishes an independent tribunal to resolve disputes that arise during the implementation process (Fudge). There is a problem with an approach that requires us to litigate our way to gender neutrality—litigation favours a few at the expense of the many. Only large, well-financed women-dominated unions can afford both the political and economic expenses associated with litigation. Also, because the Canadian Human Rights Tribunal (CHRT) has said it will not issue a minimum standard for a gender-neutral job-comparison system, the effectiveness of the litigation is limited to that particular case. It will not create a precedent, for each establishment will have to determine its own minimum standard for gender-neutral job-comparison system (Fudge).

Woman's relative underrepresentation in unions and collective bargaining processes limits their input into pay equity negotiations and the job-evaluation process. Yet without the economic backing and efforts of the union, women without union support are in an undesirable position. Despite the limited use of unions, women should still seek entry into the unions, for the benefits of union membership in reference to pay equity hearings, and collective bargaining. "We have not yet exhausted the range of policies [macro and micro-economic] that can help realize greater income equity" (Baker 279).

Conclusion

Even now, after the CHRT handed down its ruling, the federal government is still appealing—and not on whether or not pay equity is a valid option, but on which methodology should have been implemented. The federal government is not opposed to pay equity—after all, pay equity provisions are in existence in both the federal and provincial jurisdictions.

Now that the federal government is faced with the Tribunal's ruling, it should abide by the Tribunal's deci-

sion. Not necessarily because pay equity is the solution to the wage gap, but because the Tribunal, after hearing the evidence, has decided that under the present legislation, the methodology of the Commission was equitable and fair given the three methodologies presented.

It is important to realize that pay equity legislation, as it now stands, neglects to help the women in "job ghettos," where there are no male employees with whom to compare their wages. Pay equity legislation does not benefit all women who are earning wages that keep them at or below the poverty level.

While union representation is beneficial to women, there are many women who are not represented by unions. For women who are not in jurisdictions with proactive pay-equity legislation, or for those not involved in a union, it is likely that the price to be paid to litigate through the courts will be too high. In terms of economics, being faced with numerous appeals, and a lengthy hearing, coupled with the possibility of having to appear before the Federal Court, it is prohibitive to many women fighting for wages that will enable them, in many cases, to become self-sufficient. Furthermore, without having a union to represent them, it is unlikely that many women will have the strength to face their fellow employees, and employers, at work, or have the economic means to continue litigation through the judicial process.

I do not know if job evaluation studies are the solution to the wage gap. But I do believe that they are a significant part of the solution. Despite the ability of statisticians to wrangle with the numbers, there can be no doubt that a wage gap exists. Its mere existence is a snub to the worth of women's work, and steps should be taken to remedy the problem. I do not believe that the free market will correct itself, nor that it accurately reflects the worth of the jobs that women traditionally hold. Corporations rely too heavily upon the work of females for their value to be minute.

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Kim Hertwig graduated from Brock University with a Bachelor of Arts Degree in politics and history. At the end of May 1999, she will graduate from the University of Manitoba, Faculty of Law. She will be completing her Bar Admissions Course in Ontario, and will complete her articling in St. Catharines, Ontario at the firm of Sullivan, Mahoney.

¹For a comprehensive archive of the documents relating to PSAC's case, please visit their website at <http://www.psc.com>.

²I had an interview with someone who wishes to remain anonymous, but works for a federal government office here in Winnipeg. She was reiterating the sentiments of her fellow employees who fear that the state of the government budget would not be able to handle the wage

increase, and would result in a decrease in hours. She stated that there was a large inter-office memo circulated around the office in regard to the PSAC case, but because it was labelled "confidential" she did not want to discuss specifics. I did get the impression that she thought the Tribunal's award would come at too high a price for herself, and other employees that are to benefit.

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