

WOMEN'S WORK IN ONTARIO: PAY EQUITY AND THE WAGE GAP

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This paper presents the issue of pay equity in Ontario from the vantage point of the civil servant responsible for the drafting of the Ontario Pay Equity Act, 1987 and the subsequent implementation of pay equity for the Ontario government.

The Pay Equity Act, 1987 was proclaimed law in Ontario on January 1, 1988. This legislation is exceptional in terms of its scope (it covers both the public and private sectors), its degree of specificity regarding how pay equity is to be achieved and its pro-active stance (it is not complaint-driven).

It reviews historical precedents and early legislative attempts to reduce gender-based wage discrimination and highlights the Ontario wage gap reality, the goal of the pay equity legislation and the factors which contributed to the strengthening of support for pay equity over the past decade. In particular, the impetus provided by the shift in political power to a minority government in 1985, coupled with the increasing pressure from supporters of pay equity are addressed.

The paper examines the Ontario experience from 1985 to 1990 and presents it as a model for procedural and legislative activity in support of pay equity. It discusses key issues related both to the process of development and the implementation of pay equity, including cost and definition of employer and establishment.

The importance of the interaction between the implementation of pay equity and the collective bargaining process are

Dans cet article, la question de l'équité salariale en Ontario est abordée par la fonctionnaire responsable de la rédaction de la Loi de 1987 sur l'équité salariale de l'Ontario et de la mise en œuvre ultérieure de l'équité salariale pour le gouvernement de l'Ontario.

La Loi de 1987 sur l'équité salariale a été promulguée en Ontario le 1^{er} janvier 1988. Cette loi est exceptionnelle en raison de sa portée (elle vise à la fois le secteur public et le secteur privé), des moyens particuliers prévus afin d'atteindre l'équité salariale et de sa position «pro-active» (elle n'est pas axée sur les plaintes).

L'auteure passe en revue les précédents et les premières mesures législatives que l'on a tenté d'adopter afin de réduire les cas de discrimination salariale fondée sur le sexe. De plus, elle souligne l'écart des réalités en matière salariale en Ontario, les objectifs de la loi sur l'équité salariale et les facteurs qui ont contribué à affirmer l'appui en faveur de l'équité salariale ces dix dernières années. Elle traite en particulier de l'élan donné par le changement de pouvoir lors de la formation d'un gouvernement minoritaire en 1985, élan qui s'est combiné aux pressions croissantes des personnes en faveur de l'équité salariale.

L'expérience de l'Ontario de 1985 à 1990 est examinée et présentée par l'auteure comme un modèle de procédure et de mesure législative en faveur de l'équité salariale. Elle discute aussi de questions

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discussed and the nature and extent of that process in developing the pay equity plan for bargaining unit employees in the Ontario Public Service is also discussed. A description of the process used to apply the Pay Equity Act, 1987 to the existing, complex job evaluation system in the Ontario Public Service is presented.

The paper examines concerns regarding implementation of pay equity in the private sector, particularly regarding women who work in all-female establishments. It reviews established appeal and dispute mechanisms to correct non-compliance. In conclusion it suggests further measures which are required to fully eliminate gender-based wage gaps.

importantes ayant trait au processus d'élaboration et à la mise en œuvre de l'équité salariale, dont les coûts et la définition d'employeur et d'établissement.

En outre, elle aborde l'importance de l'interaction entre la mise en œuvre de l'équité salariale et le processus de négociation collective ainsi que la nature et la portée de ce processus dans l'élaboration du plan d'équité salariale pour les employées et employés faisant partie de l'unité de négociation de la fonction publique de l'Ontario. Elle décrit le processus utilisé pour appliquer la Loi de 1987 sur l'équité salariale à l'actuel système complexe d'évaluation du rendement de la fonction publique de l'Ontario.

Les préoccupations concernant la mise en œuvre de l'équité salariale dans le secteur privé sont analysées, particulièrement en ce qui touche les femmes travaillant dans des établissements dont la main-d'œuvre est entièrement féminine. L'auteure passe en revue également les mécanismes d'appel et de règlement des différends mis sur pied afin de remédier au non-respect de la loi. En conclusion, elle propose d'autres mesures nécessaires afin d'éliminer complètement les écarts de salaire fondés sur le sexe.

I. INTRODUCTION

Some eighteen years prior to the release of the September, 1970 REPORT OF THE ROYAL COMMISSION ON THE STATUS OF WOMEN IN CANADA,¹ then Ottawa Mayor, Charlotte Whitton, startled the Empire Club of Canada with these words: "Whatever she does woman must do twice as well as any man to be thought just half as good."² Whether intended or otherwise, Whitton's remark captured as well as any other the newly-emerging post-war sentiment of a small but determined minority of Canadian women.

In the years that followed, that minority sentiment initiated a journey towards majority consensus in Canadian public policy, programming and legislation. For millions of women in Ontario, one of the most significant events came some eighteen years following the release of the REPORT of the Royal Commission, on the coming into force of Ontario's *Pay Equity Act, 1987*.³ While the Royal Commission did not speak directly to the issue of pay equity, a substantial focus of its work was directed at the "economic power of women",⁴ including analysis of both paid and unpaid work.⁵ Indeed, the difficult and complex struggling towards reasoned public policy which still characterizes Canadian debate on women's wages was clearly evident in 1970. For example, the Royal Commission's recommendation No. 11,⁶ calling for pay rates for federal government nurses, dieticians, home economists, librarians and social workers to be set by comparison with other professions "in terms of the value of the work and the skill and training involved" was itself the subject of separate (minority) statements by two male Commissioners.⁷ Nonetheless, the Commission successfully placed issues of the gender-based wage gap on the national agenda and, more importantly, articulated their place in the wider context of labour law, feminist sentiment, economic theory and social justice.

This article is written from the vantage point of a civil servant blessed with the opportunity of being responsible both for the ultimate drafting of the *Pay Equity Act* and, with a subsequent career move, the implementation of pay equity for the Ontario Government (the third largest employer in Canada).

¹ (Ottawa: Information Canada, 28 September 1970) (chair: F. Bird) [hereinafter REPORT].

² C. Whitton, *The Fundamental Liberties* (Address to the Empire Club of Canada, 13 November 1952) in THE EMPIRE CLUB OF CANADA: ADDRESSES 1952-53 (Toronto: T.H. Best, 1953) 83.

³ S.O. 1987, c. 34 [hereinafter *Pay Equity Act*].

⁴ REPORT, *supra*, note 1 at 21.

⁵ *Ibid.* at 30 and 52.

⁶ *Ibid.* at 80.

⁷ *Ibid.* at 421 (Commissioner J. Henripin) and 439 (Commissioner J. Humphrey).

II. LEGISLATIVE HERITAGE

Ontario's efforts in the promotion and legislation of pay equity and the narrowing of the wage gap were framed by a number of precedents both international and local in scope.

As early as 1919, Article 427 of the *Treaty of Versailles* affirmed the principle that men and women should receive equal remuneration for work of equal value.⁸ Canada's principled support for the United Nations General Assembly resolution of December 10, 1948, adopting the *Universal Declaration of Human Rights*,⁹ provided direction and impetus. So too, did Canada's 1972 status as one of the 105 signatory nations to the *International Labour Organization Convention (No. 100) Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value*,¹⁰ calling for government action on equal pay for work of equal value.

The *Canadian Human Rights Act* defines as a "discriminatory practice" actions by an employer to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value.¹¹ This *Act* — the first in Canada to employ composite job value criteria — applies to employees in the federal public sector, crown corporations, and private sector, federally-regulated companies, and relies on a composite value measure of skill, effort, responsibility and working conditions.

Substantial national impetus resulted from Commissioner Abella's report on behalf of the Royal Commission on Equality in Employment in 1984,¹² including the coining of "employment equity" and its proposed application to all forms of workplace equity.

III. EARLY INITIATIVES IN ONTARIO

Canada's first legislation aimed at reducing the gender-based wage gap was Ontario's *The Female Employees' Fair Remuneration Act* of 1951.¹³ Seeking to require equal pay for equal work, it applied only to identical work performed by men and women:

⁸ See T. Flanagan, *Equal Pay for Work of Equal Value: An Historical Note* (1987) 22:3 J. CAN. STUDIES 5 at 6.

⁹ GA Res. 271A, 3 UN GAOR Pt 1, UN Doc. A/810 (1948).

¹⁰ Can. T.S. 1973 No. 37, 165 U.N.T.S. 303.

¹¹ R.S.C. 1985, c. H-6, s. 11(1). A section of similar effect is found in the Quebec *Charter of Human Rights and Freedoms*, R.S.Q. c. C-12, s. 19.

¹² Canada, EQUALITY IN EMPLOYMENT: A ROYAL COMMISSION REPORT (Ottawa: Supply and Services Canada, October 1984) (Commissioner: R.S. Abella J.) [hereinafter EQUALITY IN EMPLOYMENT].

¹³ R.S.O. 1960, c. 139 [hereinafter *Fair Remuneration Act*], as rep. *The Ontario Human Rights Code*, 1961-62, S.O. 1961-62, c. 93, s. 19.

No employer and no person acting on his behalf shall discriminate between his male and female employees by paying a female employee a rate of pay less than the rate of pay paid to a male employee employed by him for the same work done in the same establishment.¹⁴

The proponents of pay equity legislation were primarily labour organizations and women's groups. Following a period of relative inactivity in the 1960s and early 1970s, an umbrella group of over 30 labour and women's organizations banded together in 1976. The Equal Pay Coalition was instrumental in reviving momentum for equal pay issues in Ontario by promoting an amendment to the *Employment Standards Act*¹⁵ requiring equal pay for the same work performed under similar working conditions and requiring substantially the same levels of skill and responsibility.

During the period from 1979 to 1983 four private member's bills respecting pay equity were introduced in the Ontario Legislature.¹⁶ In October 1983, an opposition member's motion in support of the principle of equal pay for work of equal value had received the support of the Ontario Legislature.¹⁷ Following these initiatives, the government, in December 1983, introduced new amendments to the *Employment Standards Act* in Bill 141.¹⁸ These amendments were cautious at best, requiring equal pay only for "substantially the same kind of work" and generated considerable criticism from the opposition.

In March 1984, a private member's bill to provide for affirmative action and equal pay for work of equal value was again introduced.¹⁹ However, progress in the Ontario of the mid-1980s relied on improvements in public understanding and acceptance in three major areas: bringing certainty and clarity to the meaning of pay equity; capturing new and evolving bases for the support of pay equity; and recognizing the practices of overt and systemic gender discrimination in wage setting.

¹⁴ *Fair Remuneration Act*, s. 2(1). The assumed status of employers as male represents an interesting comment on the era.

¹⁵ R.S.O. 1980, c. 137.

¹⁶ Bill 3, *The Employment Standards Amendment Act*, 1979, 3d Sess., 31st Leg. Ont., 1979 (1st reading 8 March 1979); Bill 157, *The Women's Economic Equality Act*, 1980, 4th Sess., 31st Leg. Ont., 1980 (1st reading 6 October 1980); Bill 82, *Employment Standards Amendment Act*, 1983, 3d Sess., 32d Leg. Ont., 1983 (1st reading 21 June 1983); Bill 108, *Women's Economic Equality Act*, 1983, 3d Sess., 32d Leg. Ont., 1983 (1st reading 1 November 1983).

¹⁷ Ontario, Legislative Assembly, *Debates*, No. 62 at 2276 (20 October 1983) (Ms S.M. Copps, M.P.P.).

¹⁸ Bill 141, *Employment Standards Amendment Act*, 1984, 4th Sess., 32d Leg. Ont., 1984, s. 1 (this Bill did not progress beyond 2d reading, 20 March 1984).

¹⁹ Bill 15, *Women's Economic Equality Act*, 1984, 4th Sess., 32d Leg. Ont., 1984 (1st reading 27 March 1984).

A. Clarity of Meaning

A great deal of confusion accompanies the meaning of the terms equal pay, equal pay for equal work, equal pay for work of equal value, and comparative worth. In Ontario, equal pay for equal work has been the law since 1951.²⁰ Equal pay for equal work legislation requires that an employer pay the same wages to men and women for the same or substantially the same work. Pay equity, a term having the same meaning as equal pay for work of equal value,²¹ requires that an employer also pay the same wages to men and women who are doing dissimilar work, if that work is of equal or comparable value to the employer, exclusive of non gender-related factors. Fundamentally, pay equity requires that wages should be paid on the basis of the value to an employer of the work performed, regardless of the gender of the worker, and where it can be shown that such work involves substantially the same skill, effort and responsibility, and is performed under similar working conditions.

B. Factors of Support

The principle of pay equity has historically found support in the simple and direct aspirations for economic and social justice, and in a wider feminist ideology. Extra-labour market factors which contribute to the lower earnings of women are now well understood, and include stereotyping in education, cultural bias, time spent in child-rearing, and traditional male-biased social values. Over the past decade, new levels of support for pay equity have been generated as a result of advances in human rights legislation, in the development of issue-specific lobbyist organizations and activities, and in the rapidly evolving roles of women in activities related to family, home and work. Among these, the increasing number of women in the workforce and the changing demographic characteristics of these women may be the most significant. Participation by women in the Canadian labour force rose steadily from 16.1% in 1901 to 24.1% in 1951, 29.5% in 1961 and 56.2% in 1987.²² The percentage of women over 15 years of age in the Canadian labour force rose from 35.4% in 1966 to 44.4% in 1975 and 54.3% in 1985.²³ Given the emerging need for two-income households, and increasing rates of separation and divorce, significant labour force increases in married, separated and divorced women

²⁰ *Fair Remuneration Act*, R.S.O. 1960, c. 139, as rep. *The Ontario Human Rights Code*, 1961-62, S.O. 1961-62, c. 93, s. 19.

²¹ The same meaning is described as "comparable worth" in American practice.

²² P. Connelly, *LAST HIRED, FIRST FIRED: WOMEN AND THE CANADIAN WORK FORCE* (Toronto: The Women's Press, 1978) at 84.

²³ Statistics Canada, *WOMEN IN THE WORK PLACE: SELECTED DATA* (Ottawa: Supply and Services Canada, March 1987) at 26.

have occurred over time. In turn, these have created new and advanced interest in financial self-dependency and in gender-based wage disparities.

C. The Wage Gap Reality

In Ontario in 1982, the average annual earnings for full-time working women was \$15,910, compared to \$25,562 for men.²⁴ That is, women workers earned, on average, 62% of what men earned.²⁵ Close scrutiny of more recent statistics reveals the wage gap remaining somewhat static at or about this level. The wage gap of 38%²⁶ is the result of a number of factors, including differences in hours worked, the degree of unionization, the level of education, occupational segregation and discrimination. When the former three factors are excluded, a wage gap in the order of 15-20% persists. This gap is due specifically to occupational segregation²⁷ and the consequent undervaluation of women's work, and — to an extent estimated at 5-10% — to overt gender discrimination. It is this gap that pay equity legislation seeks to address.

IV. ONTARIO EXPERIENCE: 1985 - 1990

Ontario's experience during the period 1985 - 1990 represents an instructive and successful model for procedural and legislative activity in support of pay equity. The proclamation of the *Pay Equity Act* on January 1, 1988 confirmed a public and government commitment to redress systemic gender discrimination in compensation.

While the development of the *Act* benefitted from legislative experience in the European Economic Community, Australia, New Zealand, the United Kingdom, American states such as Minnesota and Washington, and the Canadian jurisdictions of Yukon Territory and the provinces of Quebec and Manitoba,²⁸ Ontario's model represented new legislative territory of its own. In particular, the *Pay Equity Act* has

²⁴ Ontario, Minister Responsible for Women's Issues, *GREEN PAPER ON PAY EQUITY* (Toronto: Minister Responsible for Women's Issues, 1985) at 74.

²⁵ A popular tongue-in-cheek expression of this differential lies in the question: "If a woman had to work as many hours as a man each day in order to earn the same average pay, she'd have to stay at the office until 10 p.m. each night: then who'd make the dinner?"

²⁶ It is generally accepted that private sector wage gaps are larger.

²⁷ Occupational segregation refers to the traditions of concentration and segregation of women in certain categories of work, labelled as "women's". These categories typically include clerical, sales and service jobs.

²⁸ Manitoba's Legislation, *The Pay Equity Act*, S.M. 1985-86, c. 21, C.C.S.M. P13, was of particular relevance to Ontario policy-makers.

application in both the public and private sectors (to firms with ten employees or more), and it follows a proactive rather than a complaint-driven model which requires each employer to create plans to achieve pay equity for employees in predominantly female job classes. This means that employers must carry out job comparisons of all predominantly female job classes with predominantly male job classes on the basis of the skill, effort, responsibility and working conditions inherent in the job. Where jobs are determined to be of equal or comparable value, the female job class must be paid at least at the same rate as the lowest paid male job class of equal value. The *Act* allows for varied approaches to job comparison by employers, as long as the system used is gender-neutral.

Separate plans must be posted for employees in each bargaining unit in the establishment, and for non-bargaining employees. Each plan must identify the group covered by the plan, define the establishment, and identify all job classes which formed the basis of the comparisons. The plan must also describe the gender-neutral comparison system used and the results of the comparisons. Finally, it must identify all the female job classes for which pay equity adjustments are required and state the date on which the first pay adjustments will be made.

Ontario's experience also benefitted from the timely confluence of a series of external events of the mid to late 1980s. In particular, the remarkably strong economic performance of the Ontario economy was instrumental in creating a favourable environment for social change, and served to moderate private sector cost concerns. In addition, the emergence of vocal and dedicated proponent organizations was a motivating force; these viewed pay equity primarily as an issue of social justice for women and as the next logical step in addressing women's issues.

Other influences were also at play: the release in 1984 of the federal Royal Commission report, *EQUALITY IN EMPLOYMENT*;²⁹ the public acceptance of related social and human rights issues, such as tenants' rights, multiculturalism and employment equity; the emergence of voting patterns in Canada and the United States which demonstrated the electoral relevance of issues of concern primarily to women; the demonstration of these issues as having long-term economic significance and benefits; and the presence of a well-organized and articulate pay equity lobby. In addition, increasing organizational status was being given to women's issues in the structuring of the Ontario government. In 1974 the province had set up its own Advisory Council on the Status of Women, and in 1983 the Ontario Women's Directorate was established. Then, in 1985, a shift of political power, a minority government and a two-year "accord" signed by the new government and opposition, assured the introduction of pay equity legislation.

²⁹ *Supra*, note 12.

Women's issues had been in the forefront and were a major factor in the change of government. They were supported by both signatories of the "accord".

Each of these influences had a timely place in the attitudinal shifting towards the development of a right, and in the preparation of a foundation for legislative change. In the summer of 1985, Manitoba had introduced pay equity legislation for its public service, provincial crown corporations, and agencies such as hospitals and universities.³⁰ In July 1985, the Ontario government announced its intention to proceed with two pay equity bills: one for the public services, and the other for the private sector and the broader public sector (which includes school boards, municipalities, hospitals and universities). This two-track approach was proposed as wage gaps had to be corrected throughout a highly diverse economy, including government offices, hospitals and schools, and large and small business across all industrial and service sectors.

In November 1985, the Minister Responsible for Women's Issues released the *GREEN PAPER ON PAY EQUITY*.³¹ That paper assessed the 38% wage gap in the average annual full-time earnings of Ontario men and women, and proposed some principles on which its partial remedy would be based:

- the purpose of pay equity would be to correct gender-based pay discrimination only, not to address the issue of general wage levels;
- only female employees and employees in female-predominated job groups would be eligible for pay adjustments;
- pay equity would not require jobs to have identical value — a range of values would be permitted;
- equal value comparisons would be limited to a given employer's establishment — in other words, comparisons would not be made between wages paid by one employer and those paid by another;
- the legislation would not be retroactive — no retroactive adjustments would be required; and
- wage reductions would not be permitted.

Beginning with these premises, and using the *GREEN PAPER ON PAY EQUITY* as a basis for discussion, a government appointed panel conducted four months of public hearings across the province. During that time, it received hundreds of oral and written presentations which raised concerns and suggestions about the introduction of pay equity, particularly in the private sector. At the same time, two advisory groups — one representing business, the other labour — were appointed to meet regularly with the Premier and senior government officials.

³⁰ *The Pay Equity Act*, S.M. 1985-86, c. 21, C.C.S.M. P13.

³¹ *Supra*, note 24.

On February 11, 1986, the Minister of Labour introduced Bill 105, the *Public Service Pay Equity Act, 1986*.³² The Bill was to apply to some 65,000 unionized employees and almost 24,000 non-bargaining employees of the Ontario government. After second reading on July 10, 1986, the Bill was referred to the Justice Committee for consideration. Bill 105 was strongly criticized by the opposition, women's groups and labour as being too narrow in scope. In March 1987, after extraordinary amendments, it died in Committee.

Meanwhile, following the public hearings on the **GREEN PAPER ON PAY EQUITY**, government Bill 154,³³ which provided for pay equity in the broader public sector and the private sector, was introduced on November 24, 1986. After second reading on February 3, 1987, it was referred to the Justice Committee. Public consultation followed in February and March 1987. At this point a decision was made to merge key components of Bill 105 into Bill 154. The government then introduced a composite bill covering both the private and public sectors. The overriding principle was that the government could not impose obligations on private sector employers that were not identical to those it posed upon itself as employer. The widened provisions of Bill 154 were intended to cover approximately 300,000 women in public sector jobs and 735,000 in private sector employment.

The Ontario Federation of Labour and its member unions wanted further amendments to the Bill. Their pressure resulted in additional government amendments on April 1, 1987. The threshold for private sector employees was reduced from 100 to 10, and "all employees in the public sector" was substituted for the term "broader public sector".

The *Pay Equity Act* received royal assent on June 29, 1987, and came into force on January 1, 1988. The dates for mandatory posting of pay equity plans were phased by sector and number of employees: public sector employers and private sector employers (with 500 employees or more) for example, were the first required to post their plans by January 1, 1990.³⁴ While the pay equity achievement date is not specifically defined for larger private sector firms of 100 or more employees, these organizations are expected to make pay adjustments either in full or at least equal to 1% of the annual payroll until equity is achieved. Small organizations of less than 100 employees can also follow this procedure rather than meet the applicable pay equity dates, provided that a pay equity plan is posted.

³² 1st Sess., 33d Leg. Ont., 1986.

³³ *Pay Equity Act, 1986*, 2d Sess., 33d Leg. Ont., 1986.

³⁴ A 1989 research project conducted on behalf of the Pay Equity Commission, the enforcement agency responsible for the *Pay Equity Act*, to determine likely rates of compliance with this posting date found that a large majority (81%) of employers had already met the posting deadline or were confident that they would do so. Eight out of ten of those not likely to meet the deadline nonetheless indicated a strong desire to do so.

V. ISSUES AND HIGHLIGHTS

The most significant components of Ontario's pay equity legislation are its coverage of both public and private sector employees, its requirement for employer-initiated planning and implementation, its directions for union involvement, its mandatory posting and implementation schedules, and its complaint and review mechanisms.

Prior to and following its coming into force, the *Pay Equity Act* has generated contention and debate in a number of related areas. Not surprisingly, one of the most contentious issues during the consultative process was the potential cost of pay equity. It was argued by some that many private sector companies would be unable to afford the cost of closing the wage gap, and that higher wages would lead to higher consumer prices and discourage investment in Ontario.

The implementation of pay equity does indeed involve costs. There are compliance costs due to administrative expenses and wage adjustments, and in some jurisdictions there have been non-compliance costs, such as sanctions and imposed back-pay awards. In Canada, federal experience to date indicates a typical one-time adjustment for an undervalued job to be in the range of \$2,000 to \$3,000 per person. The Ontario Public Services pay equity plan yielded an average pay equity adjustment of \$4,000.

While the wage gap in the private sector is larger than in the public sector, those wage costs are tax deductible. It should also be noted that costs need not be absorbed all at once. In Manitoba, for example, legislation limits the increase in payroll costs to 1% per year, with a cap of 4%. In the United States, the completion of Minnesota's pay equity program over a four year period for its 34,000 state employees raised payroll costs by a total of 3.7%. In Ontario, as in Manitoba, costs associated with the implementation of pay equity can be phased in over time.

The very application of the concept of pay equity within the private sector presents a number of questions. One of the fundamental issues raised during the consultative process was how to define the area or "establishment" in which specific pay equity measures would be implemented. The definition of "establishment" simultaneously determines the parameters for comparison and, in turn, costs. Three possible definitions were examined. Some believed that an establishment should include all of an employer's operations throughout the province. Others advocated a narrower definition, whereby a specific geographic boundary, such as a municipality, would outline the area. Other submissions favoured a functional approach, which would mean that job comparisons would not be made between different bargaining units, or between union and non-union categories.

Many agreed that the main problem was devising an approach that would be flexible enough to work effectively throughout the province, while at the same time assuring that the prime objective,

redress for systemic discrimination in a wage setting, was met. Too narrow a focus would preclude many women from pay equity comparisons — let alone adjustments. That concern was foremost in policy-makers' minds when they decided to use a combined approach for the definition of "establishment". A geographic definition made sense because it acknowledged that regional markets and rates of pay vary across Ontario. Into this definition a more flexible interpretation of the functional approach was incorporated, in which every effort was first made to carry out job comparisons within a bargaining unit. If not possible, comparisons were to be made with other units, or between union and non-union jobs in the same establishment.

The absence of an employer definition in the legislation has in fact been a source of frustration to some employers and unions in Ontario, particularly those in the broader public sector. Some (public sector) employees of those public sector agencies, where male comparators are absent or are likely to yield very low pay equity adjustments, find it useful to seek a public sector employer in a larger entity. This route, if successful at the Pay Equity Hearings Tribunal, results in a larger number of potential male comparators, and (if the employer is the Province of Ontario) a larger pool of adjustment funds. The Pay Equity Hearings Tribunal has embraced a new test of employer that encompasses some of the common law criteria of employment and a fourth criteria, namely, what best meets the intent and purpose of the *Pay Equity Act*. In the absence of an employer definition being included in the *Act*, there is every indication that disputes will continue to be pursued at the Tribunal with the intent of widening the scope of coverage and increasing pay equity settlements for women in certain sectors of the economy.

The role of collective bargaining is not diminished by pay equity, and it remains an important component of pay equity practice. Approximately 30% of the employed Ontario labour force (more than one million people) is unionized. In the private sector, some 22% of the union membership is female, and the figure is approximately 50% in the broader public sector. Pay equity's interaction with the nature and scope of the collective bargaining process is very important, and must be taken into account in designing implementation strategies.

As an employer, the government of Ontario has reached a negotiated agreement with the Ontario Public Service Employees Union (O.P.S.E.U.) on February 28, 1990, involving pay adjustments for approximately 29,000 classified employees in over 162 female job classes. The Ontario government also posted a separate pay equity plan which provided for pay adjustments for close to 3,000 employees in female classes in its management group and excluded classes. The combined cost of the two plans is \$96 million, or 2.5% of the total public service payroll.

The Ontario government is the employer of close to 90,000 people working in almost 1,000 different job classes covering a uniquely broad variety of work. This was an advantage in terms of the number

of potential male comparators for female job classes which many private sector or broader public sector employers do not have. On the other hand, the task of applying pay equity principles to an existing and complex job evaluation system raised many issues which purportedly were of an implementation nature but which in fact required major policy decisions within the Ontario Public Service.

1) *The Nature and Extent of the Bargaining Process:* All public servants in the Ontario public service bargaining unit are represented by the O.P.S.E.U.³⁵ The Ontario *Pay Equity Act* stipulated that where the employees are represented by a bargaining agent, the Pay Equity Plan must be negotiated. The nature and extent of negotiations were not spelled out in the *Act*. Unlike the adversarial and often polarized objectives of employers and unions in many collective bargaining environments, to a certain extent, the union and the government shared a common goal of attempting to ensure that wage gaps were correctly identified and appropriate payouts were agreed upon. As a result, the employer and the union attempted to ensure that a positive labour relations environment was maintained throughout the pay equity negotiation process. Central to maintaining this positive relationship was a commitment by both the employer and the union to negotiate all aspects of the Pay Equity Plan, including the actual process of negotiation itself. Communication with employees was maintained through joint communication programs. The survey to determine the value of work was negotiated. Sample sizes were negotiated. Decisions around pilot tests were negotiated, and, of course, so was the determination of factors, factor weights, job classes, and ultimately payouts.

2) *The Office and Administration Group:* Although the *Crown Employees Collective Bargaining Act*³⁶ prescribes one bargaining unit for public servants, the government and O.P.S.E.U. have traditionally negotiated salaries for eight occupational subdivisions of the bargaining unit. Of these eight pay categories, the Office and Administration Group (O.A.G.) represented by far the largest single grouping of women. Approximately 14,000 of the 17,000 people in the Office and Administration Group are women. The group is a relatively new job evaluation plan based on a point factor system. It encompasses secretaries, word processors, mail clerks and many other administrative functions. The government and O.P.S.E.U. agreed, when the category was introduced in 1985, to treat the various administrative functions as one large stream of jobs divided into thirteen hierarchical levels. A difficult question arose during the development of the Pay Equity Plan as to whether the number of different administrative jobs within the

³⁵ Bargaining unit staff at Crown agencies are not necessarily represented by O.P.S.E.U. (that is, the employees at the Ontario Housing Corporation are represented by the Canadian Union of Public Employees).

³⁶ R.S.O. 1980, c. 108.

O.A.G. would justify occupational subdivisions of the category for pay equity purposes. In the end, the government and O.P.S.E.U. agreed at the bargaining table to maintain the integrity of the O.A.G. job evaluation system by treating the entire category as a large female job class. The most populous level within O.A.G. was chosen as the female job class and an appropriate male comparator was found. The wage gap, so identified, was applied to everybody in O.A.G. In this way, the integrity of the category was maintained.

3) *Factor Weights*: Although the *Pay Equity Act* stipulates four statutory factors — skill, efforts, responsibility, and working conditions — the regression analysis identified approximately fifteen distinct subfactors that determine, in varying degrees, the value of the job. Factors such as use of computers, caring for people, and knowledge were identified as the factors that determine compensation. A question arose at the bargaining table as to whether the relative weights of the factors, based on the way we currently pay people, should be altered to remove gender bias. For instance, did the substantially higher weight attached to knowledge, as compared to caring for people, reflect gender bias in our compensation practices? In the end, the parties agreed to an approach proposed by O.P.S.E.U. which involved computer adjustment of the factor weights based on a formula that the parties agreed removed gender bias.

The cascading effect of pay and pay equity bargaining is still indeterminate. Too few private sector establishments have posted plans and subsequently concluded pay bargaining for the full effect to be known. There is no question, however, that certain long-term adjustments are required. Where an employer is deemed to have one bargaining unit for pay equity purposes, and several for the purpose of pay bargaining, bilateral arrangements will have to be made in the long run between the two parties to ensure that, on the one hand, collective bargaining strength is recognized and, on the other, that pay equity is not deliberately undermined.

The actual mechanics of implementing pay equity have also come under scrutiny by the private sector, particularly when it has involved the prospect of devising ways to compare the value of dissimilar jobs. Some feared the government would simply impose a single job evaluation system across the board, or that companies would have to hire expensive consultants to devise complex systems.

Ontario's answer is that the process begins with employers examining their workplaces to identify job categories that are either female-dominated (in Ontario, that is defined as a group in which at least 60% of employees are women) or male-dominated (at least 70% are men). Then, each female job is evaluated in terms of the factors of skill, effort, responsibility and working conditions, and compared with the value of jobs in the male-predominated groups.

The type of job evaluation scheme is determined by the employer. Employers may choose anything from a simple ranking system to a sophisticated plan devised by outside experts — in short, whatever

works for them, but it must be free of gender-bias. If necessary, they can call on the government's Pay Equity Commission for guidance in devising a suitable approach. Formal pay equity plans are mandatory for both public sector employees and private sector firms with more than 100 employees. Smaller companies are not required to develop specific plans, but they must still correct any pay inequities that exist in their workplaces.

The Ontario government announced on March 2, 1990, its intention to permit the use of proportional value, or pay lines, to achieve pay equity. Experience with implementation has demonstrated that many large employers are accustomed to using wage lines. The new government will be announcing shortly its approach to this issue.

Another concern that arises in the context of pay equity in the private sector is the treatment of part-time workers. More than one-quarter of the women in Ontario's workforce are employed on a part-time basis. Would they be able to benefit from pay equity measures? The view reflected in the Ontario legislation is that part-time work does not mean less responsibility, less skill or less value to the employer. It provides for the jobs of part-time female employees to be evaluated along with those of their full-time colleagues, as long as they meet certain criteria. The women must be seasonal workers, or be employed for at least one-third of a normal work week. Those women employed for less than one-third of a work week can still qualify for job comparisons if they are performing their jobs on a regular and continuing basis.

Women who are not presently covered by pay equity legislation include those who work in an all-female establishment. Because the *Pay Equity Act* calls for the comparison of male and female jobs to establish pay equity, these women are excluded. Unfortunately, many of them, especially child-care workers, are underpaid. For that reason, a commitment has been made that the wage levels of these women will be studied and that recommendations on how to remedy their situation will be considered by the government. In addition, exclusions apply to women who are either self-employed, employed in male-dominated job classes where they may be compensated less than their male peers, or employed in firms with fewer than ten employees.

Even upon the full implementation of pay equity plans, it is important to note that wage differences will remain justifiable on various grounds. The primary stipulation of the pay equity initiative is that male and female wages for the performance of work of equal value should not be differentiated solely on the basis of gender. Pay differences between otherwise equivalent job classes may be allowed on the basis of seniority systems, temporary training assignments or merit pay schemes. Formal merit schemes, however, must be established on a thoroughly gender-neutral basis and communicated to all workers so that everyone understands the criteria on which performance is evaluated. Employers also bear the responsibility of demonstrating that higher wages are clearly the result of the above exceptions.

Where the conditions are equally available to all employees, wage inequities may continue to exist for:

- performance where a formal merit pay system is in place, or for differences in job seniority where there is a formal seniority system;
- students working in their holiday breaks, and those in trainee positions;
- part-timers who work less than one-third of the standard work time in an organization where the work is not on a continuing, recurring basis;
- occupations where there is a temporary skills shortage; and
- red-circled employees, whose job worth is judged to be less than their current rate of pay.

Important functions in the management of pay equity in Ontario fall to the Pay Equity Commission.³⁷ In addition to the educational and consultative services it provides to employers and employees, it is responsible for administering the implementation of the law, and for investigating complaints. The Commission rules on complaints and attempts to resolve disputes.

The creation of the Commission has fuelled criticism that, in effect, the long arm of government will be reaching too far into the private sector. In fact, the *Pay Equity Act* simply sets out the framework within which each public and private sector employer will manage its own pay equity plan. There is leeway for each one to tailor its plans to its own needs, and there is minimal government involvement. While the Pay Equity Commission may serve as advisor and arbitrator, the real onus for ensuring that pay equity works remains with employers and employees.

Appeal and dispute mechanisms are managed by the Pay Equity Appeals Tribunal, which may issue orders to both employers and bargaining agents to correct instances of non-compliance. The penalties for non-compliance include personal financial implications for any officer or agent of an organization, or any bargaining agent found guilty of thwarting the process of pay equity review achievement or the legitimate investigations by a provincial pay equity review officer.

VI. CONCLUSION

Ontario's experience with the *Pay Equity Act*, while limited, is instructive. In spite of the fears accompanying legislative intrusion into the human resource practices of the private market place, including the limitations of current job evaluation instruments, increased admin-

³⁷ The Pay Equity Commission consists of a Pay Equity Office and the Hearings Tribunal.

istrative and wage costs, potential interference with the collective bargaining process and the regional and sectoral allocation of labour, the program works. A fair and flexible format for the phased achievement of pay equity is both reasonable and manageable. In the long run, there is reason to believe that employees — women and men — who themselves believe that they are fairly treated and compensated by their employers are more likely to remain responsive and productive.

Pay equity also represents good public policy in support of the self-sufficiency of women and the assistance that increased compensation provides in meeting pension, medical and other costs associated with old age. Poverty associated with older women in Canada remains a serious and compelling issue which cannot be overlooked.

Finally, it must be observed that pay equity measures are themselves inadequate in fully eliminating gender-based wage gaps. Skills training, affirmative action programming, employment equity measures, access to child care and public education; each constitutes a part of the strategic long term management of the wage gap and improvements in access by all women to the institutions of government and the community.

The Royal Commission on the Status of Women in Canada heralded a profound change in the treatment of women in this country. Much has been accomplished. Much has yet to be.

