

# Equal Pay for Work of Equal Value

**Marilee Marcotte**

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## FOREWORD

The Industrial Relations Centre is pleased to include this study, Equal Pay for Work of Equal Value, in its publication series School of Industrial Relations Research Essay Series. The series is intended to give wider circulation to selected student research essays, chosen for both their academic merit and their interest to industrial relations practitioners and policy makers.

A substantial research essay is a major requirement of the Master's Program in Industrial Relations at Queen's. The essay may be an evaluation of a policy oriented issue; a limited empirical project; or a critical analysis of theory, policy, or the related literature in a particular area of industrial relations.

The author of the essay, Marilee Marcotte, graduated from the School of Industrial Relations in September 1985. She is now attending Law School at the University of Windsor.

I would like to express my appreciation to the author for granting permission to publish this excellent study.

D.D. Carter, Director  
Industrial Relations Centre  
and School of Industrial Relations  
Queen's University

February, 1987

## **ABSTRACT**

Research on the male-female wage differential in Canada has produced evidence of a substantial link between occupational segregation and low female earnings. Because most Canadian labour jurisdictions have enacted equal pay for equal work legislation, this component of the wage gap is unaffected. Consequently, programs which attempt to desegregate occupations and/or resolve pay inequities arising from occupational segregation are being debated.

A possible alternative, equal pay for work of equal value, is the subject matter of this paper. The purpose of the essay is to evaluate the principle and experience of equal pay for work of equal value at the Canadian federal level, to discover whether broader application is warranted.

Essential background information on the issue includes a review of relevant statistical and empirical data, the evolution of the concept in Canada and how the legislation is interpreted and applied by the Canadian Human Rights Commission. Following this, an analysis of case results at the federal level is conducted. While an appraisal of the legislation must contain an examination of its direct impact, possible indirect effects should also be taken into consideration. As a result, various other factors enter into the evaluation.

The following conclusions are offered: (1) evidence of implementation and enforcement problems have been observed at the federal level - they do not only exist in theory; (2) case results indicate that equal pay for work of equal value does not appear to be an effective method of reducing the male-female wage differential. However, when other factors are considered (i.e., educational tool, strengthen unions position on issue during bargaining, etc.) the legislation may be helpful to those trying to achieve improvement in this area; (3) due to potential adverse employment effects of equal value legislation, other public policies are realized (i.e., equal opportunity, affirmative action, etc.).

## INTRODUCTION

The principle of equal remuneration for work of equal value and its applicability is an issue that has frequently been debated in the last ten to fifteen years. At the present time only the federal and Quebec labour jurisdictions have incorporated the concept within a legislated framework. However, as provincial labour jurisdictions are pressured to seek more effective policy measures to reduce the male-female wage differential, equal pay for work of equal value receives greater attention. Whether discussions will lead to a broader application of the principle is, as yet, to be decided.

Initially equal pay for equal work legislation was thought to be an appropriate method of narrowing the wage gap between men and women. Although there are slight variations in the wording of these provisions, most provincial jurisdictions state that employers must pay equal wages to men and women performing the same or substantially the same work within the same establishment. While some continue to regard this as the best approach to take, a sizeable and growing fraction have expressed their concerns about the past and potential impact of this type of legislation on the earnings gap. A search for alternative measures is a direct result of the latter group's conclusions.

Equal pay for work of equal value was and is a concept that has attracted a large following. It basically allows comparisons to be made between predominantly male jobs and predominantly female jobs even though the nature of the work performed is not identical, the same, or substantially the same. It may be determined that two very different jobs require equal pay as long as they contribute equivalent value to their employer. "The underlying rationale is that female jobs are undervalued relative to male jobs; as such comparisons between the two would help to raise wages in female jobs to the levels of male jobs."<sup>1</sup> This popular recommendation attempts to eliminate that portion of the wage gap caused by occupational segregation, a component economists suspect is substantial.

While examining this concept and reviewing the federal government's experience, it soon became evident that interest groups have become entrenched in certain positions. Women's organizations, unions, employers and politicians have been able to agree that male-female wage differentials exist in the Canadian labour market but disagreement as to the extent and composition of the gap, as well as the efficiency and suitability of various remedies is quite intense. Women's groups tend to support the implementation of equal pay for work of equal value without much hesitation. Unions publicly endorse the concept but firmly believe that collective bargaining strategies are a necessary supplementary tool to legislated provisions. Employers generally resist either of the methods mentioned, citing costs and the practicality of applying the principle as major deterrents. Their preference is for more extensive educational policies. Finally, economists continue to be skeptical, anxious about the potential adverse effects of such government intervention in the labour market. Consequently, discussions between the parties are often polarized and usually conclude with very little accomplished.

An evaluation of equal value legislation at this point in time may be regarded as a hasty endeavor given the lack of empirical research and the short length of time the legislation has been in effect. Although both remarks are valid, requests for an appraisal by those considering this type of policy cannot be ignored. Therefore, it is with this understanding that an assessment has been undertaken. The purpose of this paper is to evaluate the principle and experience of equal pay for work of equal value at the Canadian federal level to discover whether broader application is warranted.

This essay is a composite of a variety of views gathered from a number of different sources: books, articles, newspapers, discussion papers and conferences. The discussion will focus primarily on the federal labour jurisdiction since it is the example most often referred to. Given the complexity of the subject and the limited scope of this study, an exhaustive survey has not been produced. Rather, an attempt was made to collect as much background information and opinions as constraints would allow so that a better overall understanding of equal pay for work of equal value, the concept and its application, could be presented.

The paper is organized in 5 sections. Section 1 examines relevant female labour force statistics and empirical evidence on the male-female wage differential; section 2 describes the evolution of equal pay legislation in Canada; section 3 reviews the principles, definitions and investigative procedures associated with the federal equal pay provision; section 4 provides a summary of case experiences thus far and section 5 discusses the implications of Section 11 and the, federal government's approach.

Those who dismiss the idea (equal pay for work of equal value) as totally unworkable and those who call for its immediate across-the-board application, have a responsibility to reassess their positions.<sup>2</sup>

If this challenge is to be met, additional research is essential. The issues should be explored at greater lengths so that the knowledge necessary for a more reasonable appraisal of equal pay for work of equal value is distributed to all interested parties. It is hoped that this essay makes a minor contribution towards this requirement.

# 1. FEMALE LABOUR FORCE STATISTICS AND EMPIRICAL EVIDENCE ON THE MALE-FEMALE WAGE DIFFERENTIAL

Rising labour force participation rates of women and the conclusions of recent empirical studies on the male-female wage differential in Canada have brought the equal pay issue to the forefront. This section will discuss the relevant labour market variables and research findings.

Female participation in the labour force has increased dramatically over the years and is expected to continue in the future. Table 1 depicts past and projected labour force participation rates for both females and males. Those economic and non-economic forces which have encouraged greater female involvement in the workplace appear to be long-lasting. Higher education levels, increased divorce rates, lower birth rates, financial pressures, changing societal attitudes, etc. contribute to the decision to enter the labour force and perhaps remain attached to it for longer periods of time. The extent of the growth between 1966 and 1983 is clearly illustrated in Figure 1. A larger number of female workers in the Canadian labour market is an inevitable prospect. Women are rapidly becoming a critical source of labour.

Does this labour supply experience wage discrimination? A number of empirical studies have attempted to decompose the observed earnings differential between men and women into discriminatory and non-discriminatory fractions. The method of measuring pay discrimination in the studies selected is the adjustment approach. Professor Agarwal describes the method used:

It starts out by computing female to male gross earnings from the raw data. These ratios are then adjusted for differences in work-productivity related factors between male and female groups. The adjustments can be made by using distribution equalization indices or multiple regression analysis. The extent of pay discrimination is then inferred from the adjusted earnings ratio, or more specifically from the residual earnings differential.<sup>3</sup>

These derivations are estimates - approximations of pay discrimination in the Canadian labour market. Although various calculations have produced different results and many have argued over accuracy, the conclusion is the same - pay discrimination against women exists.

Table 2 lists the gross unadjusted female/male earnings ratio, the net adjusted ratio and the productivity variables used as adjustment factors in some of the major studies performed in Canada. Although the data base and variables employed vary, a few generalizations can be made:

1. The gross unadjusted ratio of female/male earnings for full-time workers is approximately 60 per cent.
2. The net adjusted ratio falls between 72 and 85 per cent.

The first observation may represent:

wage discrimination as well as occupational and industrial segregation in the labour market, and it may reflect different endowments of productivity-related characteristics - differences that may result from discrimination both in the labour market and prior to entering the labour market.<sup>4</sup>



**Table 1, Past and Projected Female and Male Labour Force Participation Rates 15 Years and Over, 1901-2000, Canada**

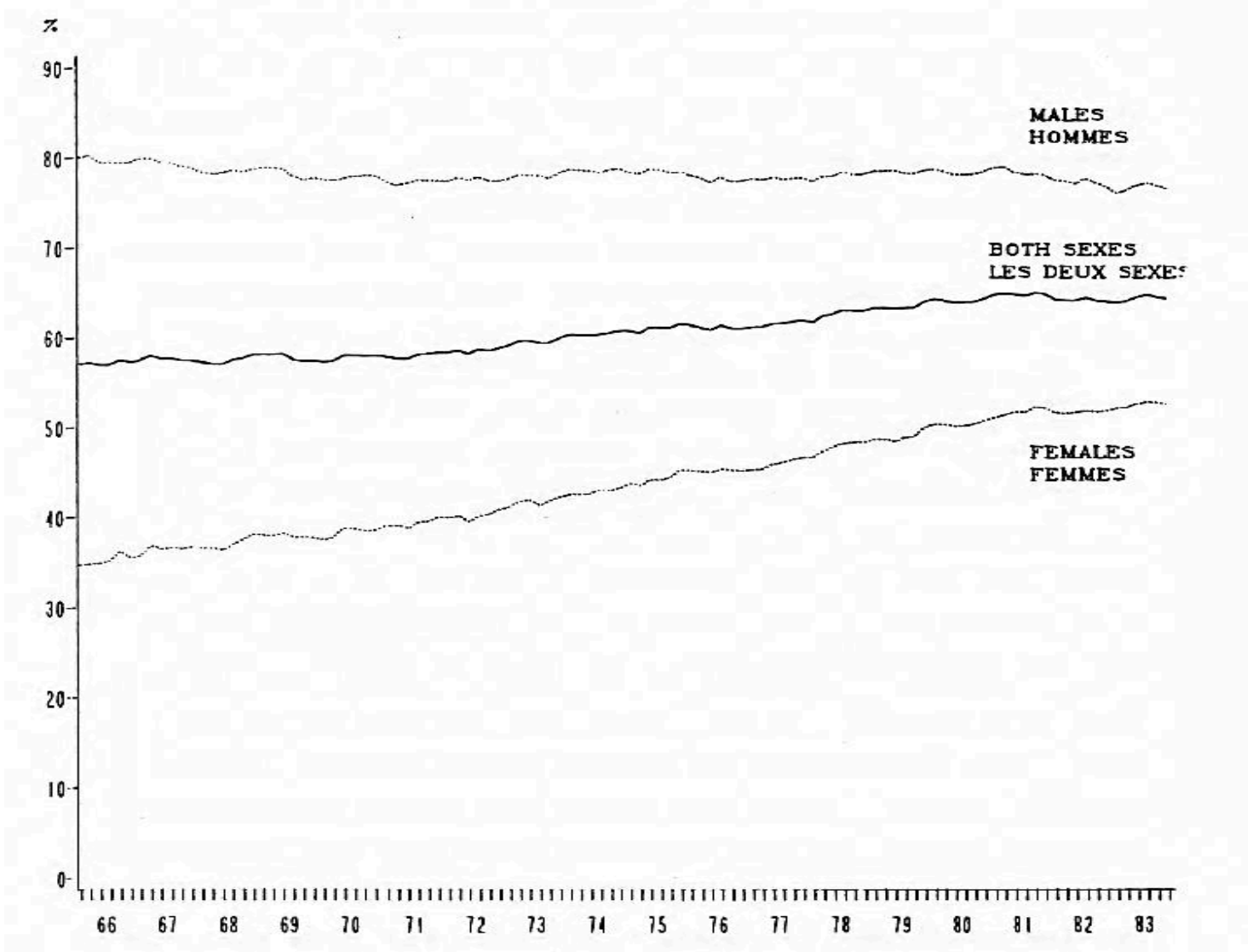
	Females		Males
	Low	High	
1901		16.1	87.8
1911		18.6	90.6
1921		19.9	89.8
1931		21.8	87.2
1941		22.9	85.6
1951		24.1	84.0
1961		29.7	78.1
1971		39.9	76.4
1981		52.9	78.2
1990	59.4		80.8
1995	62.6		80.0
2000	65.3		79.2

Source: S. Ostry and F. Denton. Historical Estimates of the Canadian Labour Force. 1961 Census Monograph for the years 1901-1961.

Census 1971, 1981. Statistics Canada.

Ciruiak and Sims. Participation Rate and Labour Force Growth in Canada. Department of Finance (1980), p 16.

Figure 1, Participation Rate by Sex, 15 Years and Over, Canada (1966-1983)



Source: Historical Labour Force Statistics, Statistics Canada, 1983, Cat. 71-201, p 214.

**Table 2, Female/Male Earnings Ratio Unadjusted and Adjusted for Various Productivity-Related Factors**

<b>Study</b>	<b>Year &amp; Ratio</b>	<b>Gross Unadjusted Ratio</b>	<b>Net Adjusted Ratio</b>	<b>Productivity Adjustment Factors</b>
<b>Ontario</b>				
1. Robb (1978)	1970 Census	0.60	0.76	Age, marital status, education training, time worked, occupation, and industry.
2. Gunderson (1980) Chapter 3	1970 Census	0.60	0.76	Potential experience, marital status, education, training, language, time worked, occupation, industry residence.
<b>Earlier Canadian Studies</b>				
3. Ostry (1968)	1960 Census	0.59	0.81	Age, education, occupation.
4. Robson & Lapointe (1971)	University Faculty	0.80	0.90	Age, rank, field, degree, university size and region.
5. Holmes (1976)	1967 Survey	0.49	0.56	Age, marital status, education, immigration status, time worked, occupation, residence and region.
<b>Recent Canadian Studies</b>				
6. Gunderson (1979)	1971 Census	0.60	0.77	Potential experience, marital status, education, training, language, time worked, occupation, industry, residence, region
7. Shapiro & Stelcner (1980)	1971 Census	0.65	0.83	Age, marital status, education, training language, time worked, occupation, city size and region.
8. Stelcner and Shapiro (1980)	1971 Census	0.60	0.82	As in Shapiro and Stelcner (1980)

Source: M. Gunderson, “The Male-Female Earnings Gap: A Current Assessment,” Ontario Ministry of Labour, October 1980, p 5.20 -5.21

Note: (a) For comparability purposes the ratio for full-time, full-year workers was used.

Pure wage discrimination is defined as unequal pay for the performance of equal work. Table 3 lists a collection of twenty-nine narrowly defined occupations and their respective female/male wage ratios. These are wage differentials that could potentially be remedied by equal pay for equal work legislation. Gunderson comments:

The unweighted average ratio of the female/male wage ratio is .85 and if this were weighted by the number of males and females in each occupation, the ratio would presumably be lower, reflecting the larger proportion of females in the low-wage occupations.<sup>5</sup>

Consequently, only part of the wage gap is being addressed under equal pay for equal work legislation.

Occupational and industrial segregation occurs when one sex dominates a particular occupation or industry. Appendix A contains tables showing the distribution of women among occupational and industrial groups over the last two decades. A survey carried out by York University during 1981 studied the effects of a number of variables on gender differentials in job income in Canada. The conclusions regarding the impact of occupational and industrial distributions are as follows:

1. The resulting difference in the average wages of women and men by occupation is \$7,200, or just over 80 per cent of the total observed difference between individual income values for the entire sample.
2. The corresponding figure based on mean incomes for industries is \$2,700, so industrial segregation and wage structures are not nearly as large a cause of income differences between men and women.<sup>6</sup>

The greater importance of occupational segregation as opposed to industrial segregation found in this study is a generally accepted observation.

The final factor mentioned concerns productivity-related characteristics such as education, age, training, work experience, etc. Different endowments of these traits may be the result of individual choice or discrimination. Gunderson claims that:

Certainly, some differences in such factors as continuous labour force experience, seniority, mobility, type of education and time worked reflect discrimination within the household as well as in educational institutions prior to entry into the labour market.<sup>7</sup>

As well, discrimination within the labour market may explain some of the differences exhibited between men and women. For whatever reason, the lack of appropriate or higher qualifications decreases the potential earning power of female workers.

**Table 3, Male-Female Wages in Select Narrowly-Defined Occupations With Identical Job Descriptions, Canada 1971**

<b>Occupation</b>	<b>Male Wage</b>	<b>Female Wage</b>	<b>Female/Male Wage Ratio</b>
1. Fitter, men's clothing	2.67	1.73	0.65
2. Inspector, electrical equipment	3.42	2.23	0.65
3. Machine operator	3.54	2.43	0.69
4. Inspector, rubber products	2.76	1.94	0.70
5. Assembly wirer	2.93	2.14	0.73
6. Circular knitter	2.36	1.87	0.79
7. Bundler	2.86	2.28	0.80
8. Knitter	2.19	1.75	0.80
9. Machinery operator	3.23	2.58	0.80
10. Assembler, small appliances	2.51	2.03	0.81
11. Baker wrapping machine operator	3.00	2.50	0.83
12. General bakery helper	2.70	2.32	0.86
13. Sewer, men's clothing	2.16	1.88	0.87
14. Selector, glass products	3.25	2.83	0.87
15. Twister, wool and yarn	2.24	1.96	0.87
16. General helper, biscuits	2.85	2.54	0.89
17. Electrical receiver inspector	3.23	2.89	0.89
18. Labourer	3.81	3.44	0.90
19. Assembler, simple	2.59	2.34	0.90
20. Warper and beamer	2.29	2.07	0.90
21. Wet and dry operator	2.37	2.15	0.91
22. Filler and packager	2.57	2.33	0.91
23. Aligner	3.00	2.76	0.92
24. Assembler, office machinery	3.30	3.09	0.94
25. Operator	4.24	4.02	0.95
26. Dishwasher, small hotel	1.72	1.65	0.96
27. Veneer patcher	3.61	3.53	0.93
28. Dishwasher, large hotel	1.82	1.80	0.99
29. Grader, textiles	2.14	2.49	1.16

Source: Neville, E., and Eastham, K., "Employment Status of Women in Ontario," paper for 1972 meeting of American Statistical Association, Montreal, Canada, 1972, p. 15. Based on data from Canada Department of Labour, 1971 Survey of Wage Rates, Salaries and Hours of Labour.

The combination of the above factors contributes to the gap between male and female earnings. While some of these items are discriminatory, others are not. For example, individual preferences for part-time employment or certain types of work may adversely affect female wages but they are not a result of an unjust labour market or educational setting. This point highlights one of the difficulties encountered in the measurement of male-female wage differentials.

The spread found in the net adjusted ratios across the studies presented in Table 2 also identifies potential problems with productivity-related factors. The concern raises two questions:

1. What factors should be considered when adjusting for productivity-related factors?
2. Can these variables be measured quantitatively, and if so, how are they to be measured?

To illustrate this point, notice the figure outside the normal range. This was a result of Robb's attempt to capture the "work experience" component. When Robb compared single females thirty and over to all males, the adjusted female/male earnings ratio increased significantly. However, a higher adjusted ratio was not observed in the Shapiro and Stelcner study which compared all single males and females thirty and older. These conflicting results indicate that improved measurement techniques may be required before the impact of this variable can be accurately determined.

Two other interesting findings deserve some comment. First, the results of the Ontario and Quebec studies are very similar to those of the Canadian research. This would suggest that the problem exists in all jurisdictions.

Secondly, the figures produced by Shapiro and Stelcner (1980) support the claim that the wage gap is not as great in the public sector compared to the private sector. Ornstein comments further on this observation:

data suggests that government employers are much more seriously concerned than private industry with changing the position of women. Private sector employers thus constitute a significant impediment to the elimination of wage differentials.<sup>8</sup>

On the basis of the studies mentioned, estimates of the components of the wage gap have been approximated. Table 4 outlines the proportions contributing to the male-female wage differential. The combination of broad occupational distributions and female distributions within occupational categories are important factors in explaining the wage gap - perhaps even more influential than the pure wage discrimination element. It is for this reason that observers request a change in public policy. Equal pay for equal work legislation can only affect discrimination in narrowly defined occupations. The nature of the work must be substantially the same; therefore, a wage difference caused by occupational segregation remains untouched. If a more effective method of closing the male-female wage gap is the desired goal, then policies aimed at reducing occupational segregation and the inequity arising from this occurrence should be implemented. A program of this nature is likely to have the largest impact on female earnings.

**Table 4, Components of the Male-Female Earnings Differential**

<b>Components</b>	<b>Percentage Points</b>
1. Productivity Characteristics	6 – 10
2. Broad Occupational Distribution	10
3. Purge Wage Discrimination	5-10
4. A. Omitted Variables (innate ability, actual labour market experience) B. Differences in Occupational Distributions within Broad Occupational Distributions	
Combined Percentage points for A and B	10
<b>Total Male-Female Earnings Differential</b>	<b>40</b>

Source: Roberta Edgecombe Robb, Conceptual and Operational Issues Confronting the Equal Value Approach to Equal Pay, A Paper Presented at the Annual Meetings of the Canadian Industrial Relations Association, University of Guelph, May 1984, p. 1.

How has occupational segregation developed in the Canadian labour market? What are its causes and effects? At the turn of the century, 60 per cent of all female employment was contained in teaching, domestic service and dressmaker or seamstress occupations. In 1981, only the occupations have changed - 60 per cent of all females are now concentrated in clerical, service and sales work. The significance of this phenomena should not be underestimated, particularly in light of the conclusions offered by researchers on the subject.

Studies on occupational segregation have discovered that:

1. It reduces the mobility opportunities of women.
2. It results in lower incomes for women.
3. It can reduce morale and increase job turnover.<sup>9</sup>

Consequently, most female-dominated occupations are labelled "job ghettos," falling into what is described as the secondary labour market.

Table 5 provides an evolutionary view of the changing occupational structure in Canada. The figures are evidence of the increasing importance of white-collar and service occupational groups in our economy. This shift has accommodated the involvement of women in the labour force. The declining importance of physical attributes and better working conditions attracted women into the workplace and stimulated employer interest in female labour. Although the trend is expected to continue, it is uncertain if the benefits to women will be as great as they were in the past. Certain interrupting trends should be kept in mind:

1. Within these broad occupational categories, women tend to be employed in specific sub-occupations for which demand may not be increasing, i.e., teaching, nursing.
2. Occupational demand projections are hazardous because they do not fully account for the possibility of substitution, i.e., the demand for clerical workers may be significantly affected with the increased use of computers and office automation.<sup>10</sup>

If women continue to dominate specific occupations and jobs within occupational categories, rather than distributing themselves, the impact of technological change, lower birth rates, etc. on female employment could be severe.



**Table 5, Percentage of the Total Labour Force in Major Occupation Groups, 1901-1981**

Occupation	1901	1911	1921	1931	1941	1951	1961	1971	1981
WHITE-COLLAR	15.2	16.8	25.1	24.5	25.2	32.4	38.6	42.5	49.7
Proprietary and Managerial	4.3	4.6	7.2	5.6	5.4	7.5	7.7	4.3	7
Professional	4.6	3.7	5.5	6.1	6.7	7.4	10.0	12.7	15
Clerical	3.2	3.8	6.8	6.7	7.2	10.8	12.9	16.0	18.2
Commercial and Financial	3.1	4.7	5.6	6.1	5.9	6.7	7.8	9.5	9.5
MANUAL	32.2	36.1	31.3	33.8	33.4	37.7	34.9	29.2	27.5
Manufacturing and Mechanical	15.9	13.7	11.4	11.5	16.0	17.4	16.4	13.7	14.2
Construction	4.7	4.7	4.7	4.7	4.7	5.6	5.3	5.6	6.4
Labourers	7.2	12.0	9.7	11.3	6.3	6.8	5.4	3.2	-
Transportation and Communication	4.4	5.7	5.5	6.3	6.4	7.9	7.9	6.7	7.0
SERVICE	8.2	7.7	7.1	9.2	10.5	8.6	10.8	11.2	11.9
PRIMARY	44.4	39.4	36.3	32.5	30.6	20.1	13.1	7.7	5.8
Agriculture	40.3	34.3	32.7	28.8	25.8	15.9	10.2	5.9	4.2
Fishing, Trapping	1.6	1.3	0.9	1.2	1.2	1.0	0.6	0.3	0.3
Logging	0.9	1.5	1.2	1.1	1.9	1.9	1.3	0.8	0.7
Mining, Quarrying	1.6	2.3	1.5	1.4	1.7	1.3	1.0	0.7	0.6
NOTE STATED	-	-	0.2	-	0.3	1.2	2.6	8.5	3.5
NOT ELSEWHERE CLASSIFIED	-	-	-	-	-	-	-	0.9	1.5
All Occupations									
percent	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
number (in thousands)	1782.8	2723.6	3164.3	3917.6	4196.0	5214.9	6342.3	8626.9	12005.3

Source: Noah M. Meltz, Changes in the Occupational Composition of the Canadian Labour Force, 1931-1961, table A.1; Census of Canada, 1971, Catalogue 94-788, table 1; Census of Canada, 1981, Catalogue 92-920, table 1.

In addition to employment effects, occupational segregation has income implications. Occupations that are female-dominated tend to receive low wages because:

1. Female occupations rank relatively low on task attributes and training requirements which are associated with high incomes.
2. Predominantly female occupations provide less pay than is commensurate with their task characteristics and training requirements.<sup>11</sup>

A movement of women into nontraditional areas of work may help to reduce the earnings differential, but this task is not an easy one to accomplish. Substantial income gains have been attained by women who have taken this step; however, that portion of the female labour force is still few in number. Table 6 shows the rise of females employed in twenty of the highest-paying occupations and the significant narrowing of the earnings gap within those occupations during the last decade. While some progress has been made, it is not widespread. The training necessary for entry into better-paid occupations often takes time and is generally more actively pursued by single and younger women. As well, structural and attitudinal barriers tend to make this transition more difficult. Consequently, the number of women in low-paying occupations is substantial. Table 7 provides the exact employment figures and earnings in those lower-paid occupations. During the last decade the differential closed by a minimal amount.

A number of explanations have been given for the origin and persistence of occupational segregation in the Canadian labour market. They can be categorized under three broad headings: historical factors, occupational preferences, and the work environment. Trade union activity and protective legislation are two of the earliest institutional barriers to occupational diversification. Restrictions on female participation in unions and specified conditions of employment for women limited any significant access of women in blue-collar jobs. As technology changed and the nature of certain kinds of work became more suited to perceived female capabilities, women found a demand for their skills and services. Less expensive female labour became an attractive substitute for male workers in certain occupations.

**Table 6, Numbers and Average Annual Earnings of Women and Men in the Twenty Highest-Paid Occupations, Canada, 1970-71 and 1980-81**

	Women				Men			
	Number		Earnings		Number		Earnings	
	1971	1981	1970	1980	1971	1981	1970	1980
Directors general	1480	2535	14745	28952	39445	36320	26823	59131
Physicians and surgeons	2810	6505	11774	30708	25345	30255	27469	57273
Dentists	280	700	11434	33076	6040	7605	22310	54312
Judges and magistrates	70	200	10185	31144	1195	1770	21785	50791
Lawyers and notaries	770	4890	8874	18416	15340	26530	20218	38380
Osteopaths and chiropractors	75	285	7312	13193	980	1600	18676	34849
Optometrists	95	330	6669	18065	1410	1365	17433	39328
Sales, advertising and purchasing managers	700	13475	6288	14199	15000	68925	16055	28227
Veterinarians	70	510	6685	12590	1615	2180	15202	31242
Architects	105	490	5785	15949	3835	5730	14787	26415
Air pilot, navigators and flight engineers	20	240	5325	15024	4120	7560	14194	32721
University teachers	3850	8030	8902	19707	19355	24780	14390	33274
Members of legislative bodies	100	510	5371	9910	1010	1795	14074	30168
Administrators – teaching	5690	7970	9775	23097	22750	25965	13998	34896
Personnel and industrial management	420	6905	6219	18021	3585	17920	13877	29249
Management occupations	11630	59930	5449	16074	37155	189860	15237	28633
Administrators in medicine and health	2305	5560	8622	22020	2520	5245	16281	34084
Government administrators	1510	6485	7254	1870	13795	22865	12971	29680
Air transport foremen	30	135	8219	19179	1250	1785	11378	29668
Physicists	40	70	7210	19872	725	1165	11435	28185
Total	32050	125755	8118	18253	216470	481220	19024	34520

Source: Statistics Canada 1971 and 1981 censuses special tabulations.

**Table 7, Numbers and Average Annual Earnings of Women and Men in the Twenty Lowest-Paid Occupations, Canada, 1970-71 and 1980-81**

	Women				Men			
	Number		Earnings		Number		Earnings	
	1971	1981	1970	1980	1971	1981	1970	1980
Babysitters	17490	37,505	661	2,640	645	1,315	920	4,311
Waiters(esses), hosts(esses) and stewards	105885	205,810	1,766	4,418	22,530	35,690	3,182	6,677
Guides, hosts(esses), stewards and others	55810	39,860	1,908	5,532	8,115	7,455	3,377	8,346
Other farm, horticulture, and animal husbandry	22800	44,370	1,750	4,696	104,420	125,140	2,632	7,399
Inspecting and sampling, fabrication of textile products	2035	4,610	2,690	7,320	385	900	5,014	12,311
Sewing machine operators	54040	85,905	2,861	7,374	6,135	4,665	4,824	10,303
Other fabrication of textile products occupations	9230	13,230	2,720	6,969	3,850	6,695	4,162	9,750
Other apparel and furnishing service occupations	21850	24,335	2,693	7,065	10,080	9,780	4,492	9,853
Packaging occupations	35520	45,025	2,913	7,814	27,495	29,185	3,823	9,073
Other occupations - fishing, hunting, trapping	445	1,870	2,121	4,390	23,980	31,325	3,366	10,044
Tailors and dressmakers	14930	8,580	2,609	6,936	6,045	4,080	5,283	12,787
Chefs and cooks	35215	73,820	2,566	6,127	37,195	67,080	4,196	8,284
Knitting occupations	1990	2,160	2,566	6,867	1,565	1,505	4,534	10,735
Other service occupations	73565	120,955	2,089	5,864	142,710	181,025	4,129	8,824
Other occupations - library file and correspondence clerks	26700	39,180	3,235	7,420	6,185	6,690	4,422	8,834
Other sales occupations	165595	286,395	2,060	5,371	177,130	228,870	4,800	11,783
Shoemakers and repairers	5855	7,670	2,791	7,377	6,025	4,340	4,253	10,383
Barbers and hairdressers	33235	46,150	2,872	7,332	20,375	14,530	4,766	12,451
Other occupations - health care	57665	73,640	3,306	8,607	19,525	21,045	4,969	12,332
Labouring occupation - not elsewhere classified	10190	14,360	2,712	6,842	74,190	64,645	3,936	9,145
Total	750045	1,175,430	2,319	6,076	698,580	845,960	4,047	9,559

Source: Statistics Canada, 1971 and 1981 censuses, special tabulations.

The persistence of occupational segregation is thought to be due to both supply and demand factors. On the supply side, household considerations and sex role socialization account for the types of occupational choices made by men and women. The theory predicts that men and women choose employment in different occupations because they possess dissimilar expectations, aspirations and productivity-related skills. Critics of this explanation argue that:

1. Empirical research questions the argument that women choose occupations in which there is no penalty for labour force exits. (Beller, 1980; England, 1982)
2. Much of the discussion on female aspirations and work preference is based on erroneous assumptions, most notably that men are the breadwinners.
3. The assumption of free choice in the occupational choice model is an unrealistic one.<sup>12</sup>

The last criticism reveals the necessity of looking into demand-side forces. Job opportunities, work practices and the work environment are important considerations in occupational choice. Discrimination in recruitment, training and development, promotion, etc. practices limit the number of women employed, the types of jobs offered to women and advancement opportunities. Since discriminatory attitudes against women are more likely to occur in male-dominated occupations, there are fewer women found employed in those occupations.

In concluding this section there are a few points that should be restated:

1. Occupational segregation by sex exists and has not declined by an appreciable amount during the last decade.
2. As female labour force participation rates continue to expand, wage inequity is distributed among a growing portion of the labour force.
3. Policies aimed at reducing occupational segregation, if properly implemented, have the potential of making a larger impact on the wage gap than equal pay for equal work legislation.

The negative relationship between occupational segregation and female earnings has been established.

## 2. THE EVOLUTION OF EQUAL PAY FOR WORK OF EQUAL VALUE IN CANADA

Female labour in industries in which formerly men only were employed has become so common in Great Britain as no longer to excite comment. In Canada, however, the employment of women, except in certain kinds of industries, is as yet an experimental state . . . .<sup>13</sup>(1918)

As the involvement of women in the labour force developed from an "experimental state" to an active permanent phenomena, public policy regarding working women became more extensive and subject to various alterations. Legislated provisions and amendments tended to reflect the modified attitudes and perceptions pertaining to the employment of women, wage equity and the status of women in Canadian society. The evolution of equal pay legislation in the federal labour jurisdiction was a product of both internal and external forces representing those changing views. A brief historical review provides some insight as to how and why equal pay for work of equal value was adopted.

In 1948, the World Federation of Trade Unions presented the principle of equal pay for equal work for men and women workers to the United Nations Economic and Social Council for deliberation. The Council responded by adopting a resolution that sustained the principle of equal rights for men and women, supported the principle of equal remuneration for work of equal value and assigned the query to the ILO for further contemplation.

The result was Convention 100 - a convention addressing the concept of equal remuneration for men and women workers for work of equal value. The ILO highlighted the "importance of taking appropriate measures to secure the effective application of the principle"<sup>14</sup> at the General Conference held in the same year. The following year a study and questionnaire were distributed to prepare for the discussion session in 1950. According to the Labour Gazette "a considerable measure of agreement had been reached"<sup>15</sup> at the close of these discussions.

With the majority accepting the concept, the only outstanding matter in 1959 related to what form the international regulation should take. The choice was between the adoption "of a Convention on the general principle of equal pay, supplemented by a Recommendation on methods of application or a Recommendation covering both parts."<sup>16</sup>

Voting records clearly indicate that the Canadian government favoured the second alternative, however, the majority endorsed an international standard in the form of a Convention. Later, when a vote was held to finally adopt Convention 100, the Canadian official abstained from voting. Two reasons have been offered to explain this reaction:

1. After consultation with the provinces in advance of the Conference most were of the opinion that the matter of equal pay was more appropriate for collective bargaining than for legislation.
2. Very few governments would be in a position to ratify an equal pay Convention, and that such a Convention would thus be a failure.<sup>17</sup>

Therefore, while favouring the substance of the text, Canada was adamantly opposed to its adoption as a Convention.

Because the majority did not share the same opinion, Convention 100 and Recommendation 90 were adopted on June 6, 1951. Four particularly important articles of the Convention appear in Table 8. Article 1 attempts to define the two most significant terms; Article 2 very briefly suggests how the principle may be applied; Article 3 promotes job evaluation procedures as the method of executing the provisions of the Convention; and Article 4 requests cooperation amongst the parties involved in the implementation process. Recommendation 90 deals more specifically with suggested procedures for applying the principles set out in the Convention. While it was realized that countries would implement the principle in different ways, this Recommendation proposed general guidelines and established a duty to periodically report on measures instituted. These articles are presented in Appendix B.

What happened in Canada as a result of this event? The level of awareness concerning low female wages was ultimately raised by the information communicated in the ILO studies and discussions. However, this new awareness was not to have a dramatic effect on the parties holding power in the various Canadian labour jurisdictions. While a surge of equal pay legislation was enacted in Canada between 1951 and 1959, none of the provisions were in accordance with the articles of the Convention. The legislation provided equal pay for equal work, the latter term narrowly defined as the same or identical work. As Leslie Niemann describes "this was barebones legislation, with hardly any of the provisions necessary for effective implementation."<sup>18</sup>

The federal government was no exception to the above. The Female Employee Equal Pay Act (1956) declared:

No employer shall employ a female employee for any work at a rate of pay that is less than the rate of pay at which a male employee is employed by that employer for identically or substantially identical work.<sup>19</sup>

Under this type of provision, exemptions to the Act were not clearly established, the term "rate of pay" was commonly interpreted as wages only, and no criteria existed to accommodate the evaluation of jobs thought to be identical or substantially identical. The language and interpretation of the provision, ineffective enforcement procedures, and the lack of knowledge and confidence among Canadian women regarding these provisions contributed to its disappointing record:

At the federal level only two settlements had been reported over the period 1957 to 1977. A total of \$11,963 was awarded to 19 employees, resulting in an average of only \$629 per employee.<sup>20</sup>

## Table 8, Convention 100

### Article 1

For the purpose of this Convention -

- (a) the term "remuneration" includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment;
- (b) the term "equal remuneration for men and women workers for work of equal value" refers to rates of remuneration established without discrimination based on sex.

### Article 2

1. Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, insofar as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers of equal value.

2. The principle may be applied by means of -

- (a) national laws or regulations;
- (b) legally established or recognized machinery for wage determination;
- (c) collective agreements between employers and workers; or
- (d) a combination of these various means.

### Article 3

1. Where such action will assist in giving effect to the provisions of this Convention measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed.

2. The methods to be followed in this appraisal may be decided upon by the authorities responsible for the determination of rates of remuneration, or, where such rates are determined by collective agreements, by the parties thereto.

Differential rates between workers which correspond, without regard to sex, to differences, as determined by such objective appraisal, in the work to be performed shall not be considered as being contrary to the principle of equal remuneration for men and women for work of equal value.

### Article 4

Each Member shall cooperate as appropriate with the employers' and workers' organisations concerned for the purpose of giving effect to the provisions of this Convention.

Source: Equal Remuneration for Work of Equal Value, International Labour Affairs Branch,  
Canadian Department of Labour (1970, Appendix A).



Similar observations are recorded in other labour jurisdictions. For example, "during the 17 years in which the equal pay legislation was in the Human Rights Commission in Ontario (1951-1969) there were only 100 complaints and recovery of money, in only 2 cases."<sup>21</sup>

Amendments to these provisions were later introduced by most jurisdictions. This came in response to two major court decisions, and mounting criticism of the existing legislation. In the Greenacres Nursing Home case (1970), an appeal court interpreted the same work as:

Work in fact being performed for an employer in the same establishment by females and males which is of the same nature or kind and the performance of which required equal skill, effort and responsibility and which is performed under similar working conditions.<sup>22</sup>

In the Riverdale Hospital case (1973), an Ontario Court of Appeal further broadened the interpretation of the provision by elaborating on what constituted equal work. A wider legal interpretation and pressure for a more effective piece of legislation led to a modification in the wording of the Female Employees Equal Pay Act. The revised version read:

No employer shall establish or maintain differences in wages between male and female employees employed in the same industrial establishment, who are performing, under the same or similar working conditions the same or similar work on jobs requiring the same or similar skill, effort and responsibility.<sup>23</sup>

While the definition of equal work may have been broadened, the legislation still required that the work be similar in nature and the comparison was based on an independent evaluation of skill, effort and responsibility. As well, the acceptance of a difference in wages based on any factor other than sex still left the employer with a fairly wide range of explanations to choose from.

The equal pay for work of equal value principle received a lot of attention in the 1970's. The formation of women's organizations concerned with the status of women in Canadian society appears to have been influential in initiating political, economic and social change. Coordinated national lobbying incited the creation of the Royal Commission on the Status of Women which recorded several recommendations, one being the introduction of equal pay for work of equal value.

NAC and OCSW, while concerned with the equal pay problem did not stress the usefulness of the equal value concept embodied in ILO Convention 100 until late in 1972. We began to realize how job ghettos<sup>2</sup>wade any existing legislation unworkable.<sup>24</sup>

At the same time, interest in ILO issues inspired the establishment of annual meetings with representatives of all labour jurisdictions in attendance. During the first meeting it was agreed that a study of the necessary actions to fulfill the requirements of Convention 100 in each jurisdiction was needed. This subsequent report may have contributed to the ratification decision. The report stated the following conclusion:

Considering that the Convention requires the acceptance and promotion of basic principles regarding equal remuneration and allows progressive application of its provisions, it appears that the present legislative measures in operation in Canada form a sufficient basis for giving serious consideration to ratification of this Convention by Canada.<sup>25</sup>

Intensified lobbying campaigns and pressure to incorporate the equal value principle within the Canadian Human Rights Act were successful in getting the federal government to act on this issue. The equal pay section of the Act became law in July 1977 and fully operational in March 1978. Section 11 as found in the Interpretation Guide distributed by the Canadian Human Rights Commission appears in Table 9. For a brief description of current equal pay legislation in each labour jurisdiction in Canada, see Appendix C.

When ratifying the Convention, Canada made a binding international commitment to promote and enforce the articles agreed to at the ILO Conference. The principle of equal pay for work of equal value was expected to gradually be brought into operation in Canada at both the federal and provincial levels within a certain reasonable time frame. Twelve years have passed and the majority of jurisdictions are still not in compliance with ILO regulations. Thus far, Quebec has been the only provincial jurisdiction to make a move in this direction.

During International Women's Year (1975), the Quebec government informed working women that a provision guaranteeing equal remuneration for work of equivalent value was to be included in the Quebec Charter of Rights and Freedoms. Ontario has introduced a change to the equal pay provision but it falls short of ILO standards and demands from women's groups. The alteration would require equal pay for work of equal value for similar jobs; therefore, occupational segregation is not affected.

## Table 9, Section 11

Here is what Parliament said about pay discrimination between men and women when it adopted the Canadian Human Rights Act:

11. (1) It is a discriminatory practice for 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.
- (2) In assessing the value of work performed by employees employed in the same establishment, the criterion to be applied is the composite of the skill, effort and responsibility required in the performance of the work and the conditions under which the work is performed.
  - (2.1) Separate establishments established or maintained by an employer solely or principally for the purpose of establishing or maintaining differences in wages between male and female employees shall be deemed for the purposes of this section to be a single establishment.
- (3) Notwithstanding subsection (1), it is not a discriminatory practice to pay male and female employees different wages if the difference is based on a factor prescribed by guidelines issued by the Canadian Human Rights Commission pursuant to subsection 22(2) to be a reasonable factor that justifies the difference.
- (4) For greater certainty, sex does not constitute a reasonable factor justifying a difference in wages.
- (5) An employer shall not reduce wages in order to eliminate a discriminatory practice described in this section.
- (6) For the purposes of this section, "wages" means any form of remuneration payable for work performed by an individual and includes salaries, commissions, vacation pay, dismissal wages, bonuses, reasonable value for board, rent, housing, lodging, payments in kind, employer contributions to pension funds or plans, long-term disability plans and all forms of health insurance plans and any other advantage received directly or indirectly from the individual's employer.

Source: Equal Pay for Work of Equal Value, Interpretation Guide for Section 11 of the CHRA, Canadian Human Rights Commission, 1983, p 2.

### 3. REVIEW OF FEDERAL EQUAL PAY LEGISLATION

Section 11(1) of the Canadian Human Rights Act stipulates that:

It is a discriminatory practice for 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.<sup>26</sup>

The introduction of the equal value principle is an attempt to "eliminate, in the long run, job ghettos and push for a reappraisal of existing compensation and job evaluation systems in organizations under federal jurisdiction."<sup>27</sup> The underlying expectation is that the male-female wage differential will narrow as the provision is implemented. This objective substantiates and directs the activities of the Canadian Human Rights Commission.

The prevailing principles relied upon in the equal pay section do not appear to deviate significantly from the priorities outlined in ILO Recommendation 90. The Commission is responsible for both educating the public, particularly employees, employee representatives and employers, and responding to complaints. Thus, the emphasis on consultative approaches and exhaustive cooperative measures. Their task is to effectively apply Section 11 with as little disruption to the workplace and work relationship as possible. It is only when consultative sessions have failed between the parties that legal procedures are activated.

The Commission has respected the employer's right to assess the "value" of the work performed in the establishment in question.

It is the employer's judgements of value which should form the primary basis of the decisions made by the Commission. The mandate of the Commission is to ensure the employer's judgements are free from proscribed bias, not to impose its own set of judgements.<sup>28</sup>

Therefore, as long as the employer utilizes the criterion set forth in Section 11(2) without sexual bias, the organization's job evaluation plan is acceptable. If, however, those requirements are not met, the Commission, during the course of the investigation, has the authority to recommend and insist on a job evaluation system that does comply with the provisions of the Act.

As previously stated, the goal of the CHRA is to encourage wage equity between male and female workers. Complaints based on regional comparisons are not investigated. Factors such as geographical location, industrial concentration, population size, living costs, etc. are recognized as affecting the wages offered and demanded in the labour market. Consequently, an evaluation of jobs performed within different regional locations, no matter how homogeneous, is not considered within the scope of the Act. Regional economic disparities will not be resolved by the Commission.

In a Commission guideline, establishment has been defined as the largest in a series of increasing geographical areas and is understood to serve both as a means of preventing too limited a

comparison (such as within the immediate working area of an employee), and as a protection for regional wage structures."<sup>29</sup>

As with most pieces of legislation, Section 11 has exceptions. The Commission contends that not all differences in male-female earnings are necessarily discriminatory. Certain justifiable reasons have been identified and are carefully discussed in an article dealing exclusively with those factors. Admissible explanations include performance ratings, seniority, redcircling, rehabilitation assignments, demotion pay procedures, phased-in wage reductions and temporary training assignments. As long as the above are applied "consistently and equitably" the Commission will acknowledge them as appropriate explanations for variances in pay scales between male and female workers.

On January 13, 1982, this list was expanded to account for internal labour shortages and changes in work performed. If an employer offers either of the latest reasonable factors "the Commission will compare the jobs and pay of complainants with those of a control group to see whether the labour shortage or job-content situations are truly exceptional."<sup>30</sup> The term exceptional is as yet to be defined by the Commission. For the complete list of the "reasonable factors" see Appendix D.

The last two principles will be dealt with simultaneously since they are somewhat related. Section 11(5) reads:

An employer shall not reduce wages in order to eliminate a discriminatory practice described in this section.<sup>31</sup>

In effect, compensation administrators are not allowed to automatically decrease the wages of their male employees by cutting either or both indirect and direct remuneration to avoid or remedy equal pay complaints. The idea is to improve the equity of existing pay scales, not to penalize the higher wage earner. Theoretically, no party should be worse off after the adjustment. Employers have frantically expressed that this is a principle that will once and for all put them out of business. On several occasions the Commission has tried to make it abundantly clear that they have no intention of jeopardizing the future of any firm they investigate, however, this assurance does not seem to be of much comfort to employers. The Commission advocates phased-in wage increases to achieve parity so that dramatic changes in the workplace are avoided. This allows management time to prepare for possible total labour cost increases and plan appropriate compensation strategies in future periods.

Wages, as understood by the Commission, are explicitly defined in Section 11(6). As the indirect wage component of the benefit package has become quite substantial over the years, it would be inconceivable to exclude it from the meaning. Fringe benefits have not as yet been included and are not likely to be due to the difficulty in quantifying such a reward. As it now stands, the calculation is not an easy one to make.

In any discussion about equal pay for work of equal value one cannot neglect the complex issue of what the "value of work" actually means and how it is to be measured. Two conflicting definitions will be examined in this section to shed some light on the problem. It soon becomes apparent that the discrepancy between the parties is based upon views regarding the labour market.

For most economists, "The value of any commodity (or service) is the amount of some other commodity or service for which it will exchange in the market."<sup>32</sup> Robb advances the economic perspective by addressing the specific idea of equal value between jobs. The following illustration is employed:

Let us assume, for example, that we have two occupations with given sets of job requirements and job characteristics. If there are workers who have the requisite skills and abilities to do either job, and if they are indifferent between the two jobs, in the long run individuals should supply themselves between the two occupations until the wages in the two jobs are equal.<sup>33</sup>

This argument predicts that in perfectly competitive markets, equal pay for work of equal value will be obtained naturally through the market mechanism. Two points of qualification should be made:

1. Rarely do we observe perfectly competitive markets - they generally only exist in theory; therefore, the argument is limited to theory only.
2. Even in perfectly competitive markets, skill shortages and work preferences may result in short and long-term wage differentials between some occupations. Economists fear that these nondiscriminatory factors may be labelled discriminatory in nature through the application of equal pay for work of equal value.

To most economists then, value is determined and measured by the operation of supply and demand in the labour market. The CHRC has submitted its own definition of value:

Value of work is the value which the work performed by an employee in a given establishment represents in relation to the value of the work of another employee, or a group of employees, the value being determined on the basis of approved criteria, without the wage or negotiated wage rates being taken into account.<sup>34</sup>

Their interpretation contains a sense of fairness or equity that is not found in the labour market definition. Policy makers have decided that leaving the determination of female wages to the labour market is not "fair." In effect, the legislation:

challenges the economic principle of supply and demand, considering that it has been distorted in its application to the wage market because the methods used to categorize the wage market were developed on the basis of unbalanced factors.<sup>35</sup>

The alternative measurement of value suggested by the Commission is job evaluation. This technique is:

an attempt to determine and compare the demands that normal performance of particular jobs makes on normal workers without taking account of individual abilities or performance of the workers concerned...it means the comparison of jobs by the use of formal and systematic procedures in order to determine the relative position of one job to another in a wage or salary hierarchy.<sup>36</sup>

While the subjective element of judgement cannot be avoided, the Commission regards this method as the one which at least reduces it to a minimum since the evaluation is based on job content. It has also been recommended that perhaps the involvement of the parties concerned may decrease the degree of subjectivity. Generally, advocates of equal pay legislation realize that there is a need for improvement in this area, but they are not willing to wait for such advancements before some progress can be made with equal pay legislation.

Critics of this approach raise two points of concern:

1. Are job evaluations adequate measurements of the value of work?
2. How does one accurately establish a wage rate to coincide with the value of the work performed?

A study out of the University of Saskatchewan, measured wage discrimination against women in one organization using three job evaluation plans. Their findings are as follows:

1. The original evaluation plan applied within the organization resulted in an average amount of discrimination of \$1.67.
2. An evaluation system commonly found in manufacturing plants produced a wage discrimination figure of \$0.21.
3. An evaluation plan then currently in use by an employer in Saskatchewan that covered a range of jobs, both blue- and white-collar, determined that the average level of wage discrimination was \$1.052<sup>37</sup>

Obviously the judgements made as to what compensable factors are chosen and how they are weighted significantly affects the outcome of such a test.

The second point is of particular concern in terms of the cost implications arising from the use of job evaluations to determine value. Because it is impossible to readjust the whole organization's pay scale according to job value, the only wage considered is that of the predominantly male comparison group. A number of scenarios can be elaborated upon - the following is just one. Let us assume that the male job is paid a wage above the marginal value of productivity (possibly due to the association with a powerful union), and it is decided that a predominantly female group of workers perform work of equal value. Even if gradual steps are taken, both the union and the employer are in particularly difficult positions. 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 are not an option, female equalization adjustments may, in some cases, be expensive in terms of labour costs, productivity, and union membership.

A few other important terms that require some clarification appear in Table 10. The criterion to be applied in evaluating the value of work are briefly described to alert various parties as to the understanding of the Commission. The emphasis has been placed on both intellectual and physical efforts and skills to remind employers of the danger in completely neglecting one or the other. In addition, a loosely defined "establishment" is given to accommodate complaints from diverse geographic conditions.

The Canadian Human Rights Commission's equal pay division is responsible for the promotion and enforcement of the principles contained in Section 11. Before commenting on the investigative procedure, it may be beneficial to reveal who is actually covered by the Act. Employees normally regulated by federal labour legislation, approximately ten per cent of the total labour force, have the right to file a complaint. More precisely, they are workers in federal government departments, crown corporations, banks, railways, and interprovincial industries such as communication and transportation operations. If the Quebec labour force is included, the percentage of employees covered increases to 33% of the Canadian labour force.

An inspection of the chart presented in Table 11 reveals two main features of the process:

1. It is complex.
2. It is primarily conciliatory in nature.

Both of these characteristics contribute to the considerable amount of time needed to complete one investigation. The three key phases of the procedure - job analysis, job evaluation and wage determination - cannot be quickly accomplished. They require an extensive information search, a review of existing practices and the possible implementation of an appropriate evaluation method, not presently in use. Then if a settlement cannot be reached, the appointment of a tribunal and the opportunity to appeal the decision to the Federal Court of Appeal adds further delays.

The second quality of the investigation procedure also tends to lengthen the duration of the process. The Commission has justified their efforts to reduce or avoid conflict with the following statement:

. . . Because we think it best to emphasize a relationship of confidence rather than the balance of power between the parties concerned, . . . the Commission has developed an investigation procedure which provides for consultation among the various parties with the possibility of conciliation at each stage of the investigation.<sup>38</sup>

In one case an appointed tribunal was postponed to accommodate a settlement between the parties.



## Table 10, Definitions

To turn Parliament's intentions into everyday reality for working men and women, the Canadian Human Rights Commission has developed definitions and guidelines for assessing complaints.

### Establishments

An establishment refers to all buildings, works or other installations of an employer's business that are located within the limits of a municipality, a municipal district, a metropolitan area, a county or the national capital region, whichever is the largest, or such larger geographic limits that may be established by the employer or jointly by the employer and the union.

### Skill

Under guidelines adopted by the Commission, skill includes "any type of intellectual or physical skill required in the performance of (the) work (concerned) that has been acquired by the employee through experience, training, education or natural ability, and the nature and extent of such skills of employees employed in the same establishment shall be compared without taking into consideration the means by which such skills were acquired by the employees."

### Effort

Effort is taken to include "any intellectual or physical effort normally required in the performance of (the) work."

When the efforts of workers are compared,

- (i) "such efforts may be found to be of equal value whether such efforts were exerted by the same or different means" and
- (ii) "the assessment of the effort required in the performance of the work of an employee shall not normally be affected by the occasional or sporadic performance by that employee of a task that requires additional effort."

### Responsibility

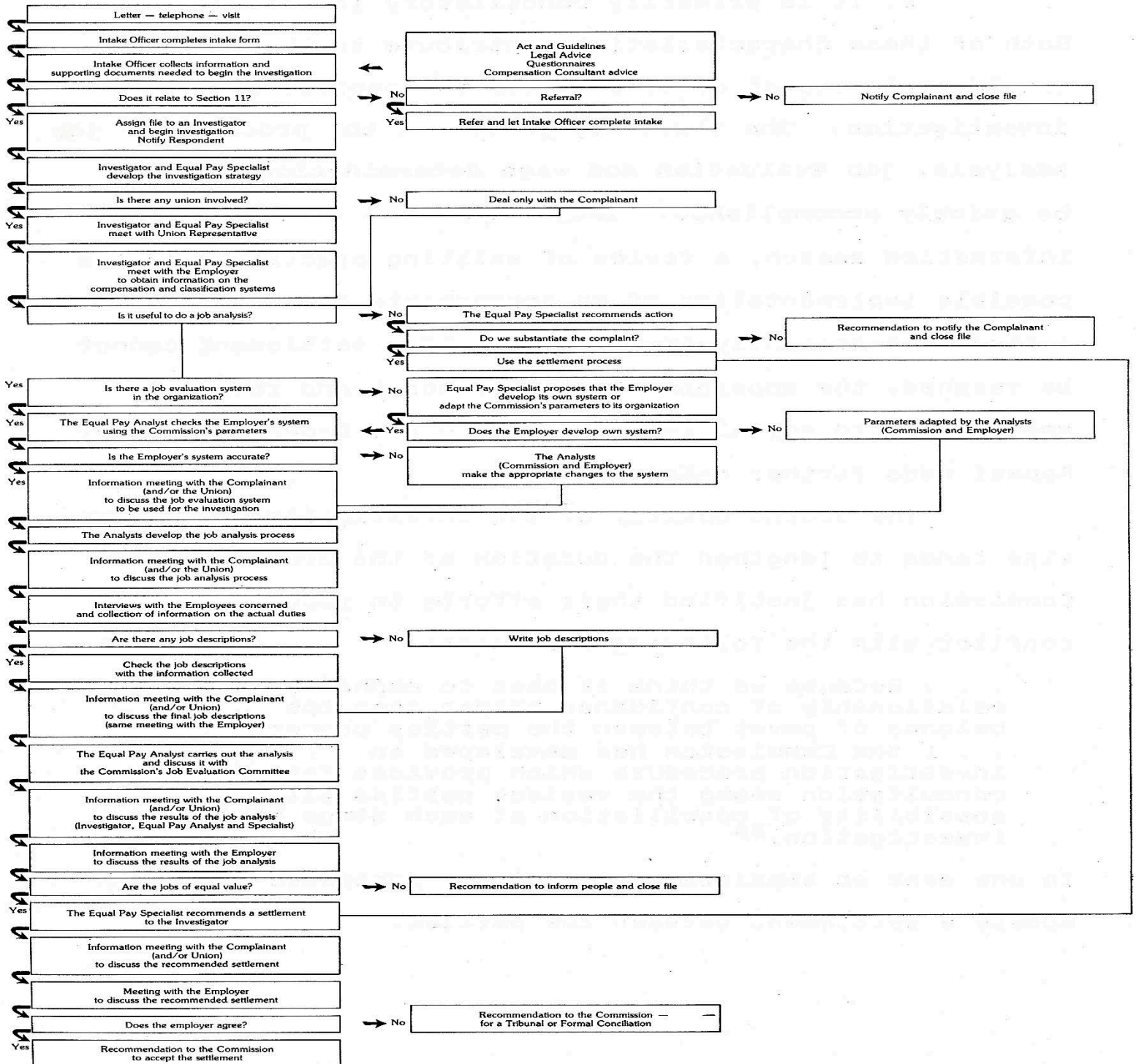
This is assessed "by determining the extent to which the employer relies on the employee to perform the work having regard to the importance of the duties of the employee and the accountability of the employee to the employer for machines, finances and any other resources and for the work of other employees."

### Working Conditions

These include "noise, heat, cold, isolation, physical danger, conditions hazardous to health, mental stress and any other conditions produced by the physical or psychological work environment." But they do not include "a requirement to work overtime or on shifts where a premium is paid to the employee for such overtime or shift work."

Source: Equal Pay for Work of Equal Value, Interpretation Guide for Section 11 of the CHRA, Canadian Human Rights Commission, 1983, p 3-4.

**Table 11, The Investigation of Equal Pay Complaints**



Source: Methodology and Principles for Applying Section 11 of the Canadian Human Rights Act, Canadian Human Rights Commission.

## 4. A SUMMARY OF CASE EXPERIENCES

Out of a total of 53 equal pay complaints received by the Commission since 1978, 5 cases have been settled, 3 were investigated and dismissed, and 16 complaints are still under investigation. Because the federal government is the primary employer within the federal jurisdiction, most of the complaints submitted came from workers or unions in the public sector. A brief summary of the above provides some idea as to when and how Section 11 is implemented by the CHRC.

The first complaint investigated involved nurses and care technicians in federal penitentiaries. Although "the technicians' job descriptions were much more imposing than the nurses and twice as long on paper, and their collective agreement established significantly higher rates of pay,"<sup>39</sup> the Commission confirmed that in fact the nurses and technicians were performing equal work and the nurses were better qualified. Ninety-four female registered nurses in the Montreal, Saskatchewan and Atlantic regions received bi-weekly equalization payments to capture lost remuneration and revised wage rates.

Since two collective agreements with slightly different compensation packages were in effect, a formula was developed to determine the salary adjustment necessary to achieve wage parity with the technicians. A final point worth noting: "A classification phase-out of the unqualified male employees, as registered nurses became available, has eliminated the need for continuing pay adjustments."<sup>40</sup> The elimination of a comparison group effectively terminates a legislated remedy.

The second settlement was obtained after the Commission established that a Montreal hospital's nursing director was performing work of equal value to an assistant general director. It was concluded that the salary difference (\$10,000) occurred because the nursing profession is female-dominated. Consequently, the complainant received \$14,000 in retroactive pay and a salary increase of \$10,000 per year. The employer was further directed to review conditions in other hospitals and as a result one other nursing director's salary was adjusted.

After an unsuccessful attempt by the Public Service Alliance of Canada to achieve equal pay for work of equal value through collective bargaining, a complaint was lodged with the CHRC in February 1979. It was thought that the librarians and historical researchers employed by the Treasury Board were performing work of equal value. With the use of the Aitkin job evaluation plan, the Commission found that discrimination existed and that salary adjustments were required. A detailed account of the method used to determine appropriate equalization payments is presented in Table 12. While obviously complex, the task was not impossible. A total of \$2.5 million was distributed among 491 female employees.

### **Table 12, Equalization Calculation for the Federal Government Librarians**

This case involved a large number of positions: 470 federal government librarians (LS) and 230 historical researchers (HR). The evaluation of the positions was done by a representative sample of 30 positions from the LS group and 25 positions from the HR group. Then, the sample positions were compared by salaries paid and a pay disparity was found. The comparison of salaries was done statistically by computer by using regression analysis. Non-salary elements of total wages were not considered because no significant value difference was found between the two groups.

There were six levels of pay in the librarians' collective agreement and five levels of pay in the historical researchers' collective agreement. First, the salary line of the HR positions was plotted on a graph, using the evaluations of the Aiken plan as one variable and the mid-point salary of the HR positions as the other variable. This was repeated for five different periods of time because of the differing expiry dates of the two collective agreements during the retroactive period from March 1, 1978 to December 31, 1980. For each of the LS levels, the mid-point salary was determined and subtracted from the salary on the HR trend line. The difference for each level was the agreed-upon adjustment for all employees within each level. Adjustments by level were calculated by using the mid-point of the salary ranges and the mean point rating for each level. Equalization adjustments were restricted to salary. Lump sum adjustments were made ranging from \$479 to \$6,300.

After December 31, 1980 equalization adjustments were calculated annually, using the same methods, subject to any changes in the classification system or the collective bargaining system. The total estimated cost of the settlement was \$2,495,799.15 for 491 employees. Payments were retroactive to March 1, 1978 and were available for all employees who had been employed during the period.

Source: Lynn Kaye. A Review of the Enforcement of Equal Pay for Work of Equal Value Legislation in Canada, A Paper Presented to the Women, the Law and the Economy Conference, October 1983, p. 19.

The fourth and largest claim settled by the Commission so far involved 2,300 female and 1,000 male workers in female-dominated subgroups of the General Services department. Both the union and employer agreed that the work performed was of equal value, but a consensus could not be reached on the amount of the adjustment. The union argued that the female-dominated group rates should be adjusted to the highest paid male subgroup. Alternatively, the employer proposed that increments should be given to the point where the average of the female subgroup rates equalled the average of the male subgroup rates. Neither solution was accepted by the Commission and a tribunal was appointed. When further discussions between the parties resulted in some progress, the tribunal was postponed. The final outcome was as follows:

Eventually the employer obtained acceptance by the Commission and the union of a settlement that lumped all zones and equalized each female subgroup pay line to the average pay line for the four male subgroups. The cost for the 2.1 year retroactive period was 19 million and averaged 20 per cent of the base pay for adjusted employees.<sup>41</sup>

The most recent settlement cited by the Commission is really not a Section 11 complaint. Discrimination was found in the evaluation method employed, rather than in pay schedules; therefore, the complaint fell under the protection of Sections 7 and 10 of the CHRA. However, since most CHRC equal pay representatives tend to discuss this case, it may be worthwhile to mention it:

The PSAC filed a complaint objecting to the fact that nursing assistants and nursing orderlies had been give the same point ratings in the classification system even though there was a significant difference in the training requirements.<sup>42</sup>

As part of their employment requirements, nursing assistants completed a training program of approximately ten months in duration and were then licensed or certified. The nursing orderlies were only to complete a 2-week program. The classification standard was subsequently altered to account for the differences in qualifications. In monetary terms, this meant an average adjustment of 2,200 for about 200 nursing assistants.

The three Section 11 complaints investigated and dismissed by the Commission may actually reveal more than the settled cases. The first complaint dismissed was submitted in 1980. Unfortunately, full details of this early case are not readily available. All that is known is that the comparison groups were found to be either employed by a different employer or were performing work of greater value, thereby justifying the decision to terminate the investigation.

The other two complaints were made on behalf of the national research council librarians and hospital technicians, during 1981, by their respective bargaining agents. In both cases, the original complaint was an attempt to achieve equal pay for work of equal value, however, after successfully negotiating this item, the grievance was modified. The claim before the CHRC requested retroactive pay only for the period 1978-1981. Both complaints were rejected but for different reasons. In the National Research Council situation "the Commission found that it could not compare the NRC librarians with those employed by the Treasury Board since the NRC is a separate employer."<sup>43</sup> In addition, the NRC librarians would not have been able to continue with their claim because there were no research

assistants working at the NRC. An appeal by the PIPSC to the Federal Court of Canada proved fruitless; the Federal Court upheld the CHRC's decision.

The explanation given for the dismissal of the hospital technicians' application was as controversial, if not more so, than the previous decision. The complaint was discharged in 1982 due to the Commission's finding that the hospital technician group was not conclusively female-dominated. Since the percentage of females in the group slightly fluctuated around 51%, some questioned the Commission's conclusion. The percentage required to classify a job category as female-dominated continues to be one of the unresolved issues in the application of Section 11.

Some of the outstanding complaints include Bell telephone operators and house servicewomen, home economists, hospital service employees and office clerks. The case of thirty-one office clerks employed at the Atomic Energy of Canada Ltd.'s heavy water plant in Glace Bay, Nova Scotia is of some interest, if only to make a point. The complaint was initially lodged in 1979. Last year, the Commission supported the application with a determination that the women were receiving \$0.70 an hour less than male employees at each level. The company refused to accept this conclusion "or acknowledge that it was guilty of discrimination on the basis of sex, arguing instead that pay variations were based on varying worker responsibilities."<sup>44</sup> A tribunal, expected to hear the evidence in the summer of 1984, was appointed by the Commission. It is not likely that a decision will be made before the fall; therefore, if either party decides to appeal the verdict, a final settlement could be postponed to the following year.

In summary, the settled cases have covered about 3,000 female and 1,000 male workers at a "cost to the government of approximately one-half of one per cent of the total budget it pays in salaries,"<sup>45</sup> roughly \$20 million. Depending on when the complaint was laid, it has taken anywhere from two to five years for these decisions to be made. Equal pay for work of equal value legislation has hardly been the overnight solution to the wage gap that some have described it as. In fact, after reviewing the federal experience, one has to wonder if any meaningful impact on the male-female wage differential has occurred during the last six years.

As mentioned earlier, an empirical study has not been conducted at the federal level to determine if the legislation has indeed had an impact on the wage gap. This is an unfortunate research vacuum because the issue of whether or not it is an effective method in reducing the male-female wage differential has become secondary to the issue of whether or not it is a workable alternative. At a recent conference, John Campbell, a senior official of the Treasury Board, revealed that a proposal for an empirical study on the effects of equal pay legislation had been submitted, but has not as yet been approved.

The question then is: Shall we wait for that empirical report before evaluating the federal government's experience? As pressure for action reaches peak levels in a majority of provinces, an appraisal of the equal pay for work of equal value provision under the federal labour jurisdiction is inevitable. One must make the attempt to objectively discuss the effectiveness of such a measure.

The federal case analysis shows that relatively few complaints have been successful and of those, only three were truly equal value cases. Therefore, it would not be unreasonable to conclude that given the number of females affected and the amount of money involved, the direct effect of equal value legislation has not reduced the male-female earnings differential significantly. Having said this, I would caution that

a narrow evaluation of the legislation is not sufficient. Even though the positive and negative indirect consequences are at this time not quantifiable, they too must be considered. For example, is it possible that equal value legislation has had an influential role in a movement towards more progressive practices that would eventually lead to a reduction in the wage gap? The use of bias-free job evaluation systems is just one example of a personnel policy that helps to reduce inequities within the organization. Or, on the other hand, could the legislation in fact harm the position of some so that others can gain a higher wage? Economists predict that the application of an equal value provision by itself will be accompanied by adverse employment effects. Declining job opportunities and increased competition for work may reduce or eliminate the positive benefits gained from equal pay for work of equal value legislation. An evaluation obviously becomes more complex when these additional features are taken into consideration.

In conclusion, if the decision to introduce equal value legislation in other jurisdictions is based solely on the case results at the federal level, broader application of the principle is not warranted. A legislated provision of this kind can rarely dramatically affect the cause of the problem (largely attitudinal and behavioral) without full enforcement. Financial resources are essential so that trained personnel are able to make routine investigations in areas where unequal pay for work of equal value is suspected. Without appropriate funding, legislative efforts will not produce the direct consequences expected, i.e., the male-female wage gap will not decline.

## 5. IMPLICATIONS OF SECTION 11 AND THE FEDERAL GOVERNMENT'S APPROACH

In the previous section, equal pay for work of equal value legislation as enforced at the federal level was not found to be an effective policy measure. Due to a lack of empirical evidence this judgement was based on case outcomes thus far. If this observation is found accurate, why then is there such a strong collective voice advocating its implementation, and why are those opposing equal value legislation becoming more adamant? This section discusses a few of the reasons accounting for these divergent views.

There are basically four explanations for the continued support of equal pay for work of equal value legislation:

1. In theory, the concept addresses the potentially largest cause of the wage gap between men and women, i.e., occupational segregation.
2. It is perceived that over a period of time, legislated provisions will reduce the size of the male-female wage differential.
3. A legislated policy of this kind, promoting the concept of equal pay for work of equal value educates the public by bringing the issue to their attention in a formal manner.
4. All employees governed by provisions outlined in their labour jurisdiction would be entitled to file a complaint for equal pay for work of equal value.

As mentioned earlier, research has produced estimates of the magnitude of elements contributing to the wage gap. They indicate that occupational segregation is a major cause of the observed wage differential. Since equal pay for equal work is not capable of resolving this component, the equal value alternative has become the recommended option. In theory then, the equal value principle is capable of reducing existing pay inequities arising from occupational segregation and this will ultimately result in a narrowing of the earnings differential.

When the theory is transferred into reality, advocates are optimistic that the legislation will have the desired impact on the wage gap. While a few have criticized some of the guidelines and enforcement practices associated with Section 11, the majority remain confident that in the long run these difficulties will be resolved. Economists' predictions that the legislation may actually harm some women are rarely discussed. Supporters prefer to view them as minor and negligible side effects of the legislation. Besides it is generally thought that over time the positive benefits will outweigh any of the negative effects. At this point it appears that success is measured by the "workability" of the concept rather than by how effective it is.

One of the great indirect benefits of having a formal policy dealing with equal value is that it publicly identifies a problem and solution for others to review and consider. A more knowledgeable public, particularly workers, employers and employee representatives, should be better equipped to understand



the issues involved. It is also believed that a legislated provision will encourage those who are in positions of power to promote and secure equal pay for work of equal value. As awareness levels rise, it is expected that greater efforts to achieve this objective will increase and resistance will diminish. Attitudinal and behavioral change is a priority in the implementation of this principle. Some evidence of this has already been observed. For instance, at the Canadian Labour Congress Constitutional Convention held in May of this year, a policy paper on women and affirmative action emphasized the importance of equal pay for work of equal value provisions. The number of complaints filed by unions covered by federal and Quebec equal value legislation also indicates the growing interest in this area by unions. On the employer's side more progressive organizations:

are recognizing that it is not fair to have great disparities in their compensation scales and they feel it is important to them as well as to their employees to minimize any imbalances.<sup>46</sup>

Improvements, in terms of nondiscriminatory job evaluation plans and employment practices are currently under study and being implemented to accommodate the changing workforce.

The fourth feature of a legislated provision is appealing to female employees in general. This kind of extensive coverage protects both unionized and nonunionized employees. Consequently, female workers who want to obtain equal pay for work of equal value do not necessarily have to organize - there is an alternative agency available. As well, if union leaders are not actively pursuing equal value grievances, the unionized worker has the same alternative.

The above arguments for legislated equal value are espoused almost irregardless of the requirement that the piece of legislation be effectively enforced. As long as there are some signs of progress being made, as in the case of the federal government's experience, advocates would argue that the concept should be implemented on a broader basis. The question is how long can interest groups be satisfied with legislation that may not be able to fulfill desired goals due to inappropriate administration and lack of enforcement. The emphasis at that point will shift towards the method of application by the authority in charge. Changes relating to information programs, compliance efforts, enforcement and follow-up procedures are areas that will receive the most attention. If recommendations for improvements are ignored, there is little that employers, unions or economists can complain about. However, if the government is responsive, equal value legislation could have a significant impact on the labour market. This scenario is the reason why opposing interest groups are so reluctant to endorse the application of the principle.

Traditional arguments against equal value legislation include complaints of excessive labour costs, harmful labour market consequences and increased government intervention. Jack McArthur summarizes the cost dilemma:

If you can't cut the pay of someone whose work is of less value, you must then give increases to almost everyone else. That kind of inflation is murderous. One thing's sure: Most employers in that spot would become less competitive, having fewer jobs to offer. Many probably would go out of business or decide not to expand.<sup>47</sup>

Unfortunately, as with any policy advocating social change, costs are involved and in this case, it is employers who must pay the bill. Costs include direct wage adjustments and indirect expenses incurred in the improvement of existing employment practices. However, it should be restated that the Canadian Human Rights Commission and any other governing body in a similar position would not disregard the cost factor when implementing the equal value concept. Phased-in adjustments have been agreed to both in principle and in practice at the federal level, and there is no reason to believe that this policy would be altered if any of the provincial jurisdictions decided to implement equal value legislation. As well, it seems that whenever measures attempting to bring about social change in the labour market are discussed, the economic hardship on the firm is somewhat overexaggerated. Minimum wage standards, equal pay for equal work, etc. did not have the devastating impact employer organizations predicted it would. Therefore, while the costs of implementing equal pay for work of equal value on a broader basis will prove to be substantial, especially for smaller firms, they can most likely be absorbed over time without dramatic changes in the work environment.

In theory it may be argued that extensive use of nonmarket criteria for determining wages would impair the efficiency of the labour market and even make it necessary for increased direct government intervention in the labour allocation process.<sup>48</sup>

Equal pay for work of equal value interferes with the determination of wages by supply and demand forces. The use of nonmarket criterion, namely, job evaluation factors, disregards market forces unless it can be proven that a labour shortage is a direct cause of the existing wage differential. The concerns of two economists, Robb and Walker, are expressed in order:

1. Enforcement of the legislation can be expected to make some women better off in the sense that wage parity with males in jobs of equal value will be achieved . . . however, it is suggested that some negative side effects will occur (unemployment and increased competition with males for the female jobs), but the analysis does not permit us to say how large these effects will be.<sup>49</sup>
2. The net effect of dramatic changes in pay scales unwarranted by demand and supply conditions would be to cause there to be an oversupply of women in those jobs and to provide less of an incentive to women to move out of the traditional jobs.<sup>50</sup>

Given this information, policies or organizations that protect female employment levels and encourage female recruitment may also be required as supplements to equal value legislation. While Robb considers equal value legislation as one of a number of worthwhile measures, the warning is that it should not be applied in isolation. Walker, on the other hand, is of the opinion that the legislation should have never been. The labour market should have been left alone, allowing demand and supply conditions to reduce occupational segregation.

Originally, employers were the group complaining about government intervention in the area of equal pay. Just one more policy in an already overregulated labour market. This attitude appears to be even more widespread among businessmen as discussion on the equal value concept at the provincial level take place. Geoffrey Hale, President of the Canadian Organization of Small Business responded to the latest Ontario equal pay amendment with the following comment:

Changes to Ontario's equal pay law would give Government inspectors the right to harass and second-guess businessmen, considering them guilty until they prove their innocence.<sup>51</sup>

Those employers opposed to any movement toward the equal value principle are fiercely opposed.

Unions have recently been critical of the effectiveness of enforcement procedures at the federal level. Why? Because unions are now in the position where they are essentially competing with the government to supply the services of obtaining equal pay for work of equal value. Limited success in this area has been achieved through collective bargaining strategies, but widespread action of this type is restricted because of the low percentage of unionized females. Since the provision is already in legislated form, organizing attempts concentrating on this issue may not be completely successful. Government involvement in this area tends to reduce the attractiveness of the service package offered by unions to women during organizing drives. Although this is not a major problem at this time, it is a potential point of conflict in the future.

## CONCLUSION

Equal pay for work of equal value legislation is an extremely difficult issue to discuss objectively. Self-interest seems to interfere with the cooperative approach suggested by the International Labour Organization. Therefore, agreement tends to be limited to the realization that occupational segregation is a major contributing factor of the male-female wage differential.

The impact of equal pay for equal work legislation on the wage gap has been disappointing, yet it still receives support from certain interest groups and government agencies. In fact, only two labour jurisdictions have ventured to introduce the equal value concept. The main deterrents to wider acceptance of the principle include implementation problems, costs, harmful labour market consequences, and greater government intervention. These negative factors, when combined with an analysis of cases at the federal level, would indicate that perhaps equal value provisions are not worth legislating. The problems appear to be too large and the benefits too small. However, when other factors are taken into consideration, equal value legislation may be viewed as being an essential "weapon, one of an arsenal" needed to attain reduced wage differentials between men and women.

The indirect benefits of equal value legislation at the federal level justifies broader application of the principle in other labour jurisdictions. Legislated efforts serve to both educate and stimulate the public in terms of altering attitudes and acting upon them. While progress may be slow, changes in employment practices, collective bargaining strategies and female career guidance prior to entering the labour market will affect the earnings position of the female labour force in the long run. More extensive legal enforcement of the concept then will ultimately lead to a narrowing of the male-female wage differential.

## APPENDICES

### Appendix A

#### Women as a Percentage of the Total Employed Labour Force and the Percentage Distribution of Men and Women by Industry Canada, 1971 and 1981

Industry	Women '000	Men '000	Women as percentage of the total employed labour force	Percentage Distribution	
			%	%	%
			1971		
Agriculture	68	423	13.8	2.6	8.0
Manufacturing	412	1354	23.3	15.5	25.5
Construction	24	465	4.9	0.9	8.8
Transportation, communication and other utilities	106	589	15.2	4.0	11.1
Trade	466	845	35.6	17.5	15.9
Finance, insurance, real estate	199	183	52.0	7.5	3.5
Community, business, personal service	1236	851	59.2	46.5	16.1
Public administration	136	379	26.4	5.1	7.1
Other primary industries	9	212	4.1	0.3	4.0
All industries	2656	5302	33.4	100.0	100.0
			1981		
Agriculture	132	352	27.3	3.0	5.4
Manufacturing	570	1550	26.9	12.9	23.8
Construction	61	583	9.5	1.4	8.9
Transportation, communication and other utilities	202	701	22.3	4.6	10.7
Trade	806	1068	43.0	18.3	16.4
Finance, insurance, real estate	360	232	60.8	8.2	3.6
Community, business, personal service	1968	1269	60.8	44.6	19.5
Public administration	277	484	36.4	6.3	7.4
Other primary industries	34	2810	10.8	0.8	4.3
All industries	4411	6522	40.3	40.3	100.0

Source: 1971: Data provided by Statistics Canada, Labour Force Survey Division.

### Labour Force 15 Years and Over by Major Occupational Group and Sex for Canada, 1971 and 1981

Occupations	Female	Male	Both Sexes
1971			
Managerial, administration and related occupations	58305	313935	372240
Occupations in natural sciences, engineering and mathematics	17105	217025	234130
Occupations in social sciences and related fields	29530	49525	79005
Occupations in religion	3710	19880	23590
Teaching and related occupations	211120	138170	349290
Occupations in medicine and health	242685	83865	326550
Artistic, literary, recreational and related occupations	21895	58585	80480
Clerical and related occupations	940180	433380	1373560
Sales occupations	247760	567980	815745
Service occupations	447985	521935	969920
Farming, horticulture and animal husbandry occupations	106845	405300	512145
Fishing, hunting, trapping and related occupations	525	26655	27180
Forestry and logging occupations	1415	65850	67265
Mining and quarrying including oil and gas field occupations	380	58780	59160
Processing occupations	59565	175180	334745
Machining and related occupations	13675	227260	240935
Product fabricating, assembling and repairing occupations	150205	484145	634350
Construction trades occupation	5130	563435	568565
Transport equipment operating occupations	8190	330240	338430
Materials handling and related occupations	40455	165390	205845
Other crafts and equipment operating occupations	13545	95295	108840
Occupations not elsewhere classified	21730	145900	167630
Occupations not stated	319270	417995	737265
Occupations not applicable	91890	94530	186420
All occupations	2961210	5665715	8626925
1981			
Managerial, administration and related occupations	202300	611735	814035
Occupations in natural sciences, engineering and mathematics	56880	346085	402965
Occupations in social sciences and related fields	99045	89560	188605
Occupations in religion	8540	23730	32270
Teaching and related occupations	290935	198230	489165
Occupations in medicine and health	403055	116125	519180
Artistic, literary, recreational and related occupations	65815	99650	165465
Clerical and related occupations	1702515	488075	2190590
Sales occupations	467395	678855	1146250
Service occupations	748260	682785	1431045
Farming, horticulture and animal husbandry occupations	107560	401130	5087100
Fishing, hunting, trapping and related occupations	2235	37590	39825
Forestry and logging occupations	5105	76430	81535
Mining and quarrying including oil and gas field occupations	1625	73635	75260
Processing occupations	104615	367380	471995
Machining and related occupations	20900	286170	307070
Product fabricating, assembling and repairing occupations	226725	703590	930315
Construction trades occupation	15355	754280	769635

Transport equipment operating occupations	15355	754280	769635
Materials handling and related occupations	29650	427685	457335
Other crafts and equipment operating occupations	55035	188105	243140
Occupations not elsewhere classified	30240	113240	143480
Occupations not stated	31050	147710	178760
Occupations not applicable	178280	240410	418690
All occupations	147150	114605	261755

Source: Census of Canada, Statistics Canada, Cat 92-920, Population: Labour Force – occupation trends.

## Appendix B

### International Labour Conference / Conference internationale du Travail

#### RECOMMENDATION 90

RECOMMENDATION CONCERNING  
EQUAL REMUNERATION FOR MEN AND  
WOMEN WORKERS FOR WORK OF EQUAL VALUE,  
ADOPTED BY THE CONFERENCE AT ITS  
THIRTY-FOURTH SESSION, GENEVA, 29 JUNE 1951

#### RECOMMANDATION 90

RECOMMANDATION CONCERNANT  
L'EGALITE DE REMUNERATION ENTRE LA  
MAIN-D'OEUVRE MASCULINE ET LA MAIN-D'OEUVRE  
FEMININE POUR UN TRAVAIL DE VALEUR EGALE,  
ADOPTEE PAR LA CONFERENCE A SA  
TRENTE-QUATRIEME SESSION, GENEVE, 29 JUIN 1951

#### Recommendation 90

RECOMMENDATION CONCERNING EQUAL REMUNERATION FOR MEN AND WOMEN  
WORKERS FOR WORK OF EQUAL VALUE.

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and  
having met in its Thirty-fourth Session on 6 June 1951, and

Having decided upon the adoption of certain proposals with regard to the principle of equal  
remuneration for men and women workers for work of equal value, which is the seventh item  
on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing  
the Equal Remuneration Convention, 1951,

adopts this twenty-ninth day of June of the year one thousand nine hundred and fifty-one the following  
Recommendation, which may be cited as the Equal Remuneration Recommendation, 1951 :

Whereas the Equal Remuneration Convention, 1951, lays down certain general principles  
concerning equal remuneration for men and women workers for work of equal value ;

Whereas the Convention provides that the application of the principle of equal remuneration for  
men and women workers for work of equal value shall be promoted or ensured by means appropriate  
to the methods in operation for determining rates of remuneration in the countries concerned ;

Whereas it is desirable to indicate certain procedures for the progressive application of the  
principles laid down in the Convention ;



Whereas it is at the same time desirable that all Members should, in applying these principles, have regard to methods of application which have been found satisfactory in certain countries ;

The Conference recommends that each Member should, subject to the provisions of Article 2 of the Convention, apply the following provisions and report to the International Labour Office as requested by the Governing Body concerning the measures taken to give effect thereto:

1. Appropriate action should be taken, after consultation with the workers' organisations concerned or, where such organisations do not exist, with the workers concerned—

- (a) to ensure the application of the principle of equal remuneration for men and women workers for work of equal value to all employees of central Government departments or agencies ; and
- (b) to encourage the application of the principle to employees of State, provincial or local Government departments or agencies, where these have jurisdiction over rates of remuneration.

2. Appropriate action should be taken, after consultation with the employers' and workers' organisations concerned, to ensure, as rapidly as practicable, the application of the principle of equal remuneration for men and women workers for work of equal value in all occupations, other than those mentioned in Paragraph 1, in which rates of remuneration are subject to statutory regulation or public control, particularly as regards—

- (a) the establishment of minimum or other wage rates in industries and services where such rates are determined under public authority ;
- (b) tries and undertakings operated under public ownership or control ; and
- (c) where appropriate, work executed under the terms of public contracts.

3. (1) Where appropriate in the light of the methods in operation for the determination of rates of remuneration, provision should be made by legal enactment for the general application of the principle of equal remuneration for men and women workers for work of equal value.

(2) *The* competent public authority should take all necessary and appropriate measures to ensure that employers and workers are fully informed as to such legal requirements and, where appropriate, advised on their application.

4. When, after consultation with the organisations of workers and employers concerned, where such exist, it is not deemed feasible to implement immediately the principle of equal remuneration for men and women workers for work of equal value, in respect of employment covered by Paragraphs 1, 2 or 3, appropriate provision should be made or caused to be made, as soon as possible, for its progressive application, by such measures

as—

- (a) decreasing the differentials between rates of remuneration for men and rates of remuneration for women for work of equal value ;
- (b) where a system of increments is in force, providing equal increments for men and women workers performing work of equal value.

5. Where appropriate for the purpose of facilitating the determination of rates of remuneration in accordance with the principle of equal remuneration for men and women workers for work of equal value, each Member should, in agreement with the employers' and workers' organisations concerned, establish or encourage the establishment of methods for objective appraisal of the work to be performed, whether by job analysis or by other procedures, with a view to providing a classification of jobs without regard to sex ; such methods should be applied in accordance with the provisions of Article 2 of the Convention.

6. In order to facilitate the application of the principle of equal remuneration for men and women workers for work of equal value, appropriate action should be taken, where necessary, to raise the productive efficiency of women workers by such measures as—

- (a) ensuring that workers of both sexes have equal or equivalent facilities for vocational guidance or employment counselling, for vocational training and for placement ;
- (b) taking appropriate measures to encourage women to use facilities for vocational guidance or employment counselling, for vocational training and for placement ;
- (c) providing welfare and social services which meet the needs of women workers, particularly those with family responsibilities, and financing such services from general public funds or from social security or industrial welfare funds financed by payments made in respect of workers without regard to sex ; and
- (d) promoting equality of men and women workers as regards access to occupations and posts without prejudice to the provisions of international regulations and of national laws and regulations concerning the protection of the health and welfare of women.

7. Every effort should be made to promote public understanding of the grounds on which it is considered that the principle of equal remuneration for men and women workers for work of equal value should be implemented.

8. Such investigations as may be desirable to promote the application of the principle should be undertaken.

The foregoing is the authentic text of the Recommendation duly adopted by the General Conference of the International Labour Organisation during its Thirty-fourth Session which was held at Geneva and declared closed the twenty-ninth day of June 1951.

IN FAITH WHEREOF we have appended our signatures this second day of August 1951.

## Appendix C

### Equal Pay Legislation in Various Canadian Labour Jurisdictions

<b>Jurisdiction and date of First Equal Pay Law</b>	<b>Present Legislation</b>	<b>Definition of Equal Work</b>	<b>Definition of Equal Pay</b>	<b>Present Enforcement Agency</b>
Canada 1956	Canada Labour Code 1970 cl -1 s 38.1 Canadian Human Rights Act c 33 s 11(2)	Employed in same establishment performing work of equal value  In assessing value of work performed criterion used are skill, effort, responsibility, working conditions	Any form of remuneration including salaries, pension funds, insurance benefits, vacation pay, etc.	Canadian Human Rights Commission Regional Offices Labour Canada
Nfld 1971	Newfoundland Human Rights Code (1969)	Same or similar work performed under the same or similar working conditions and requiring the same or similar skill effort and responsibility	Wages and benefits	Human rights commission department of justice
PEI 1959	Human rights act (1968)	Substantially the same work, performance of which requires equal education, skill, experience, effort, responsibility and work conditions	Rate of pay, equal benefits included	Human rights commission department of labour
NS 1957	Labour standards code (1972)	Substantially the same work in the same establishment, the performance of which requires substantially equal skill, effort, and responsibility and which is performed under similar working conditions	Wages, equal benefits included	Labour standards division department of labour
NB 1961	Human Rights Act (1971)	Same work	Any terms and conditions of employment	Human right's commission department of labour and manpower
PQ 1964	Charte des droits et libertes de la personne (1975)	Equivalent work	wages	Commission des droits de la personne
Ont 1951	Employment standards act (1974)	Substantially the same kind of work performed under similar working conditions and requiring substantially the same skill, effort and responsibility	All monetary remuneration and benefits (insurance, sickness and disability)	Employment standards branch department of labour

Man 1956	Employment standards act (1975)	Same or substantially the same work	wages	Employment standards division department of labour
Sask 1952	Labour standards act, rrs 1978, cl-1	Similar work performed under similar working conditions and requiring similar skills, effort and responsibility	Rate of pay, some equal benefits included – also covered in fair employment practices act	Women’s division department of labour
Alberta 1957	Individual rights protection act (1973)	Similar or substantially similar work	Rate of pay, covered in another section of the act	Human rights commission or directly to the court
BC 1953	Human rights code of British Columbia 1977	Similar or substantially similar work	Rate of pay, covered in section 8 of the code	Human rights branch, ministry of labour
Yukon	Labour standards ordinance (1973)	Same work performed under similar working conditions	Rate of pay	Officer appointed by commissioner
NWT 1966	Fair practices ordinance (1966)	Similar or substantially similar work	Rate of pay	Officer appointed by commissioner
<b>Jurisdiction</b>	<b>Investigation on complaint only?</b>	<b>Restrictions</b>	<b>Penalties</b>	
Canada 1956	Routine investigations also	No monetary limits imposed but collection confined to two year period prior to initiating complaint	On conviction: maximum fine \$1000 or maximum prison term one year	
Nfld 1971	yes	No limit on amount of wages to be recovered or period of time in which wages are recoverable	On conviction: natural person maximum fine \$100, trade union, employers’ organization, employment agency - \$500	
PEI 1959	Probably on complaint or routine investigation	Through supreme court action: recoverable wages restricted to 12 month period prior to termination or commencement of proceedings, or Complaint before commission: no restrictions	For contravention of act or failure to comply with order: individual - \$100-\$500 Corporation - \$200-\$2000	
NS 1957	Routine investigation also allowed	No restriction	For contravention of act - \$100 or 50 day term For contravention of order of tribunal – individual \$500 or 90 days or both Corporation \$1000	
NB 1961	yes	No restriction	Individual \$500 Corporation \$2000	

PQ 1964	Commission may also initiate investigation	No restriction	Cease and desist order Payment of indemnity for time period
Ont 1951	Routine investigations also allowed	Recovery of wages restricted to two year period from the time the facts first become known to the director	On conviction: maximum fine \$10,000 or imprisonment for 6 months
Man 1956	Routine investigations also allowed	Wages may only be recovered for period of one year prior to date of information and complaint	Maximum fine \$500
Sask 1952	Routine investigations also allowed	No monetary restrictions	Individual fine \$25-500 Corporation \$200-2000
Alberta 1957	Human rights commission can initiate a complaint	Where court action: may only recover for 12 month period prior to termination or commencement of action	Cease and desist Make available to person rights, opportunities, privileges denied contrary to act \$200 for individual \$1000 corporation
BC 1953	Director human rights commission, may initiate a complaint	Recovery of wages restricted to 12 month period prior to termination or commencement of proceedings	Individual \$1000 Corporation \$5000
Yukon	Authority exists for routine investigation	No restrictions	Individual \$1000 Corporation \$1000
NWT 1966	yes	No restrictions	Individual \$100 Corporation \$500

## **Appendix D**

### **Reasonable Factors**

The Commission has also identified, by guidelines, nine "reasonable factors" that may justify differences in what men and women are paid. They are:

#### **Different Performance Ratings**

Where individual performance is above or below average, if the difference is in line with a formal system of performance appraisal that workers have been told about.

#### **Seniority**

Where a wage and salary administration "provides that (employees) receive periodic pay increases based on their length of service with the employer."

#### **Red Circling**

"Where the position of an employee is reevaluated and as a result is downgraded, and the wages of that employee are temporarily fixed, or the increases in the wages of that employee are curtailed, until the wages appropriate to the downgraded position are equivalent to or better than the wages of that employee."

#### **Rehabilitation Assignments**

"Where an employer pays to an employee wages that are higher than justified by the value of the work performed by that employee while that employee recuperates from an injury or illness of limited duration."

#### **Demotion Pay Procedure**

"Where the employer reassigns an employee to a position at a lower level because of

- (i) the unsatisfactory work performance of the employee caused by
  - (a) the deterioration in the ability of the employee to perform the work,
  - (b) the increasing complexity of the job, or
  - (c) the impaired health or partial disability of the employee or other cause beyond the control of the employee, or

(ii) an internal labour force surplus that necessitates the reassignment of the employee to a position at a lower level, and the employer continues to pay to the employee the same wages that he would have paid if he had not reassigned the employee to a position at a lower level."

### **Phased-in Wage Reductions**

Where the wages of an employee are gradually reduced because of unsatisfactory work performance as set out under demotion pay procedures above.

### **Temporary Training**

"Where for the purposes of an employee development program that is equally available to male and female employees and leads to the career advancement of the employees who take part in that program, an employee is temporarily assigned to a position but receives wages at a different level than an employee who works in such a position on a permanent basis."

(None of these factors justify a difference in wages unless they are applied consistently and equitably in calculating and paying the wages of all male and female employees employed in the same establishment and doing work of equal value.)

### **Labour Shortage**

Where, in a particular job classification, an employer must pay premium wages to attract workers.

### **Change in the Work Performed**

Where, in a particular job classification, positions are reclassified at a lower level because of a change in job content and the employer continues to pay the group the same wages that would have been paid had the position not been reclassified.

(When an employer invokes either labour shortage or change in work performed, the Commission will compare the jobs and pay of complainants with those of a control group to see whether the labour shortage or job-content situations are truly exceptional.)

(For example, if a group of women complained that they were paid less than a group of men for work of equal value, it would not be enough for the employer to say this was because of a labour shortage or a change in job content. It would also have to be shown that a third type of work of equal value performed by men was paid at a lower rate than the work done by the higher-paid group.)

Source: Equal Pay for Work of Equal Value, Interpretation Guide for Section 11 of the CHRA, Canadian Human Rights Commission, 1983, pp. 5-7.

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Industrial Relations Centre (IRC)  
Queen's University  
Kingston, ON K7L 3N6  
[irc.queensu.ca](http://irc.queensu.ca)



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