

Implementing Pay Equity in Ontario

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FOREWORD

The Industrial Relations Centre is pleased to include this study, *Implementing Pay Equity in Ontario*, 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, Lynn Burkart, graduated from the School of Industrial Relations in October 1989.

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

January 1990

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Lynn Burkart

ABSTRACT

The purpose of this paper is to evaluate issues in the implementation of pay equity, based on the experience of Ontario. The Ontario Act is considered as having the broadest scope of coverage of pay equity legislation, not only in Canada but in North America. This paper compares the Pay Equity Act of Ontario to other pieces of Canadian equal pay for work of equal value legislation, exploring the similarities and dissimilarities, highlighting the unique features and discussing the implications of various provisions.

A number of issues surround the implementation of pay equity legislation in Ontario. Based on information gathered from conferences, seminars, published documents and interviews with various employers, unions, advocacy groups, and the Pay Equity Commission, the issues discussed relate to the implementation process, the legislation, the role of the Pay Equity Commission, pay equity and collective bargaining and excluded women.

Despite the many issues and problems that the parties face in the implementation of pay equity, there have been a number of settlements that have been reached. Two of these success stories are summarized. As these and other cases are examined, the ability to settle in a timely manner can be attributed to several elements: earlier commencement, favourable labour-management relationships, favourable attitudes towards the premise of pay equity, and the choice of a gender-neutral comparison system. The general impact of pay equity legislation and negotiations have on labour-management relationships, inter-union relationships and intra-union relationships is also examined. This paper concludes with comments on whether Ontario's equal pay for work of equal value legislation will work, that is, eliminate the portion of the wage gap that is attributed to the undervaluation of women's work.

I. INTRODUCTION

One of the most prominent issues on the industrial relations scene today is that of pay equity. This, undoubtedly, reflects some of the characteristics of modern industrial society. An increase of women in the workforce and a conscious effort to eliminate the discrimination that exists against this group in the workplace are two of the underlying premises to pay equity.

Legislated pay equity or equal pay for work of equal value is not an altogether new phenomenon. It has been around internationally since 1919ⁱ, federally since 1977 and in Quebec since 1975. Since 1977, Manitoba, the Yukon, Ontario, Nova Scotia, Prince Edward Island and, most recently, New Brunswick, have also taken legislative steps towards equal pay for work of equal value.

Three types of practices are held responsible for the "unexplained" differentials that exist between female and male wages: unequal pay for equal work; discriminatory job placement opportunities; and, undervaluation of jobs performed by women or unequal pay for work of equal valueⁱⁱ. Between the period of 1951 and 1971, the federal, provincial and territorial governments in Canada addressed the first of these practices in their equal pay for equal work legislationⁱⁱⁱ. This legislation prohibits women from being paid less than men in situations where the work is of the same, similar or substantially similar value^{iv}. Pre-employment conditions that limit women from entering certain occupations or industries are addressed in affirmative action or employment equity programs^v. These programs attempt to limit the second of these practices by making recruitment, hiring and promotion of women more equitable^{vi}. The public policy response to the third practice, the undervaluation of jobs held by women, is the more recent legislation on pay equity, comparable worth or equivalent worth^{vii}. Pay Equity or equal pay for work of equal value is defined as

the compensation practice which is based primarily on the relative value of the work performed, irrespective of the gender of the employees and includes the requirement that no employer shall establish or maintain a difference between the wages paid to male and female employees, employed by that employer, who are performing work of equal or comparable value^{viii}.

Equal pay for work of equal value legislation attempts to accomplish what equal pay for equal work legislation was unable to do. While equal pay for equal work laws prohibit differentials in wages to be paid to workers doing the same or substantially the same work, this legislation is limited and unable to remedy the systemic discrimination^{ix} and the undervaluation of the positions traditionally held by women. As women are often employed in industries and occupations that are traditionally and predominantly female, comparisons under equal pay for equal work are very difficult, if not impossible. Conversely, equal pay for work of equal value legislation allows dissimilar jobs to be compared. It attempts to challenge the discriminatory undervaluation tenancies that have resulted in large wage gaps between men's and women's earnings. For example, in Canada in 1985 that gap was found to be 40.4 per cent and in Ontario slightly higher at 46.3 per cent^x. The responsibility of pay equity legislation in Ontario is to correct one-quarter to one-third of this wage gap^{xi}.

The fundamental task in the insurance of pay equity is the comparison of dissimilar positions or occupations by way of a gender-neutral comparison system or job evaluation system^{xii}. Four factors

must be considered in this evaluation - skill, effort, responsibility and working conditions. These factors are used to evaluate positions without gender-bias so that their relative worth can be compared. A job evaluation is defined by the Ontario Department of Labour as:

an attempt to determine and compare the demands that normal performance of particular jobs makes on normal workers without taking into account of the individual abilities or performance of the workers concerned...it means the comparison of jobs by the use of formal and systemic procedures in order to determine the relative position of one job to another in a wage or salary hierarchy^{xiii}

The purpose of this paper is to evaluate issues in the implementation of pay equity, based on the experience of Ontario. The following section will compare the Pay Equity Act of Ontario to other pieces of Canadian equal pay for work of equal value legislation. The Ontario Act is considered as having the broadest scope of coverage of pay equity legislation, not only in Canada but in North America. All public and private employers with more than nine employees will be mandatorily and pro-actively covered in the attempt to provide equal pay for work of equal value to women. This paper will explore the similarities and dissimilarities of the Ontario and other Canadian legislation, highlighting the unique features of the Ontario Act and discussing the implications of its various provisions. The comparison will focus on the following; A) scope; B) definitions of establishment; C) implementation models; D) definitions of job classes; E) job class comparisons; F) allowances for pay differences; G) the responsibilities of employers, bargaining agents and the negotiation process; H) administration, monitoring and enforcement of the legislation; I) complaints, objections or inability to settle; J) definitions of pay; and, K) wage adjustments.

The third section provides perspectives on issues surrounding the implementation of pay equity legislation in Ontario based on conferences, seminars and interviews, and from information gathered from employers, unions, women's rights advocates, and the Pay Equity Commission^{xiv}. Those interviewed include: employer representatives from the City of Kingston, St. Mary's of the Lake Hospital and Hotel Dieu Hospital in Kingston, the Ontario Hospital Association, Northern Telecom's Kingston Communications Cable Division, Alcan Rolled Products Company, Dupont Canada's Kingston Nylon Plant, St. Lawrence College in Kingston, Queen's University in Kingston, the Canadian Manufacturers' Association, Toronto, union representatives from the Canadian Union of Public Employees (C.U.P.E), the Ontario Public Service Employees' Union (O.P.S.E.U.), Kingston Independent Nylon Workers (K.I.N.W.), Ontario Federation of Labour (O.F.L.), Ontario Nurses Association (O.N.A.), Communication and Electrical Workers of Canada (C.W.C.), Southern Ontario Newspaper Guild (S.O.N.G.), Canadian Automobile Workers (C.A.W.), and the United Steelworkers; representatives from the Pay Equity Commission; and, finally, representatives from the Pay Equity Coalition and Times Change Women's Employment Service of Toronto. In this section, an attempt will be made to provide a link between the theory and the practice of pay equity implementation. Highlighted are: A) issues relating to the implementation process; B) issues relating to the legislation; C) issues relating to the role of the Pay Equity Commission; D) issues relating to collective bargaining; and, E) issues relating to excluded women.

Despite the many issues and problems that the parties face in the implementation of pay equity, there have been a number of settlements that have been reached. The final section examines two of these

success stories, summarizing the key elements of the settlements and outlining what the parties feel to be the reasons for their early settlement. This section will discuss the general impact of pay equity legislation and negotiations on labour-management relationships, inter-union relationships and intra-union relationship. Finally, this paper will conclude with comments on the progress that has been made to date and the future that lies ahead in the implementation of pay equity in Ontario.

II. PAY EQUITY LEGISLATION IN CANADA: A COMPARATIVE PERSPECTIVE

Quebec's Charter of Human Rights and Freedoms was the first to address equal pay for equivalent work. In June of 1975, this legislation demanded immediate compliance by all employers operating in the Quebec jurisdiction. Section 19 defines the right to equal pay for work of equal value as:

every employer must, without discrimination, grant equal salary or wages to the members of his personnel who perform equivalent work at the same place.

This was followed by the Canadian Human Rights Act at the federal level. Enacted in 1977, this Act states:

It is 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 (Section 11 (1)).

In March 1978, this provision placed the responsibility of ensuring that pay equity existed within establishments of federally-regulated employers.

In July of 1985, Manitoba became the third jurisdiction to pass equal pay for work of equal value legislation in Canada and the first to enact special legislation to address discriminatory pay inequities. The Act, effective in October of the same year, outlines the timelines for developing Job Evaluation Development Reports and making adjustments for the two groups of employers that it covers, civil service employers (Part 11) and crown entities and external agencies (Part iii).

Under the Yukon Territory Human Rights Act of February 12, 1987, equal pay for work of equal value became effective the following July 1. Section 14 (2) reads:

It is discrimination for an employer to establish or maintain a difference in wages between employees who are performing work of equal value, if the difference is based on any of the prohibited grounds of discrimination.

Ontario's 1987 Pay Equity Act, passed in June of that year, establishes detailed implementation dates and deadlines to correspond to the detailed public and private implementation process outlined in the Act. Sections 10 and 13(2e) state the deadlines for plans and adjustments over a total of a seven year period from the January 1, 1988 effective date.

Nova Scotia passed An Act to Provide for Pay Equity in May 1988. The Act became effective in September of 1988 and established a 6 month period for determining an appropriate evaluation system, 21 months to apply the evaluation system and 24 months to make the necessary wage adjustments (Sections 12-15). This pay equity process begins in either September 1988 or September 1989, depending on the group of public employers as outlined in the Act^{xv}.

Prince Edward Island assented to its pay equity legislation on May 17, 1988 with an effective date of October 1, 1988, outlining four stages to its implementation (Section 17). These stages include negotiating a single gender-neutral job evaluation plan and the classes to which it is to be applied (within 9 months of the commencement of negotiations), applying the plan and comparing the value of the job classes within (12 months of the end of the first stage), joint determination of the necessary wage adjustments (within 3 months of the end of the second stage), and making the wage adjustments (within 24 months of the beginning of stage one).

New Brunswick is the latest province to enact pay equity legislation. The Act became effective immediately following the June 22, 1989 enactment date. The employer and bargaining agent must endeavour to reach an agreement on the gender-neutral job evaluation system, identification of male and female-dominated job classes and the manner to which the system is to be applied within the period of 12 months after commencement of the Act. Within the 24 months from the commencement of the Act, the agreed upon job evaluation system must be applied and any inequities between the classes identified. The pay adjustment amounts are also to be determined in this period, as is the process to which the pay adjustments are to be made. Finally, pay adjustments are to be made within 27 months of the commencement date.

British Columbia, Alberta, Saskatchewan, the Northwest Territories and Newfoundland and Labrador do not have pay equity legislation. Newfoundland and Labrador, however, has reached an agreement with five public service unions to use collective agreements as the mechanism of implementing pay equity^{xvi}. For the purposes of this paper, this mechanism will not be discussed. Comparisons will be limited only to those jurisdictions which have promulgated legislation.

The object of Ontario's law is to eliminate wage differences due to sex-based, systemic discrimination (Section 4(1)), providing equality in pay to those in female-dominated job classes. This is similar to all other jurisdictions with the exception of Quebec and the Yukon Territory. The Quebec Charter of Human Rights and Freedoms and the Yukon Human Rights Act prohibit employers to differentiate in wages paid to employees performing work of equal value, not only on the grounds of sexual discrimination but on all other grounds prohibited under these pieces of legislation.

The approach taken by Ontario to reach this objective is in some instances much like the approaches taken by the other jurisdictions. In other instances, the Ontario legislation is distinct. In this section, these similarities and dissimilarities will be highlighted in the areas of:

A) scope; B) definition of establishment; C) implementation models; D) definition of job classes; E) job class comparisons; F) allowances for pay differences; G) the responsibilities of employers, bargaining agents and the negotiation process; H) administration, monitoring and enforcement of the legislation; I) complaints, objections or inability to settle; J) definition of pay; and, K) wage adjustments. In addition, a matrix of some of the key similarities and dissimilarities of the nine pieces of legislation is provided in the appendices of this paper.

A. Scope

Without question, the scope of Ontario's legislation reaches further than other acts. All public and private sector employers under Ontario jurisdiction will be mandatorily and proactively covered (Section 3). An establishment with more than 9 employees will be involved in developing and implementing equal pay for work of equal value over a seven year period commencing January 1, 1988. Although both Quebec and federal legislation cover all employers, the absence of pro-active implementation and enforcement will limit those employers who will actually comply with the legislation.

The Pay Equity Acts of New Brunswick (Section 3), Manitoba (Section 3), Nova Scotia (Section 4(1)) and Prince Edward Island (Section 3) cover all of the civil service, crown corporations, universities and colleges and health care facilities (with the exception of New Brunswick which does not cover the two later sectors, and Manitoba which includes only the 23 largest health care facilities at this time). Prince Edward Island, New Brunswick and Nova Scotia also cover school boards and some (Nova Scotia, New Brunswick) or most (Prince Edward Island) of external or para-public agencies^{xvii}. The Yukon Human Rights Act applies only to the Government of the Yukon and municipalities and their corporations, boards, and commissions (Section 14(1)).

B. Definition of Establishment

Establishment is defined in the Ontario Act as meaning "all of the employees of an employer employed in a geographic division or in such geographic divisions as are agreed upon under Section 14 or decided upon under Section 15" in Section 1 of the Act. This limits the comparison of job classes to those of the same employer in the same geographic location unless otherwise negotiated by the employer and bargaining agents.

Manitoba, the Yukon, Prince Edward Island, Nova Scotia and New Brunswick, legislation do not include a definition of establishment, but the "establishments" to which the Act apply are clearly specified^{xviii}. The difference in approach is due to the restricted scope of the legislation to public sector employers.

Quebec and Canada follow the Ontario approach. The scope of the legislation in these jurisdictions subsume private sector employers, and therefore "establishment" must be defined. In Section 19 of the Quebec Charter of Human Rights and Freedoms, "establishment" is defined as the "same place" and further defined by the Commission des droits de la personne as "Nile overall facilities or group of facilities belonging to the same individual or legal entity, which has all the necessary components to operate autonomously and separately"^{xix}. Section 11 of the Canadian Human Rights Act applies to work performed in the "same establishment" and Section 10 of the Guidelines elucidates this as including all employees of the establishment "subject to a common personnel and wage policy, whether or not such policy is administered centrally".

C. Implementation Models

There are models to implement and enforce pay equity legislation. These include 1) the complaint-based model, 2) the employer-initiated model, and 3) the integrated model^{xx}.

- 1) The complaint-based model requires complaints to be filed before pay equity can be enforced. This type of model is now in place in Quebec, the Yukon and at the federal level. It places the burden on the employee or the employee representative to file a complaint against the employer^{xxi}. The Human Rights Commission, in federal jurisdiction or in the Yukon, or the Commission des droits de la personne in Quebec will start the investigation process only upon the receipt of such a complaint.
- 2) The employer-initiated model or pro-active model has been adopted by Manitoba and Nova Scotia. This model places the responsibility for pay equity on the employer. The pro-active approach relies heavily on unions and their involvement in the pay equity process and is more suitable to a largely unionized public sector, as is the case in these provinces. Under this approach, plans or reports must be filed with the body administering the legislation.
- 3) The third and final of these models has been embraced by the Ontario, New Brunswick and Prince Edward Island pay equity Acts. The integrated model combines the complaint-based and pro-active models of implementation. Integrated models may allow for mandatory posting (Ontario), mandatory agreement filing (New Brunswick and Prince Edward Island), filing of objections or complaints that the parties are unable to reach agreement or that an agreement is not being carried out (Ontario, New Brunswick^{xxii} and Prince Edward Island), or that individual employees are unsatisfied with the proposed plan (Ontario).

The integrated model of enforcement and implementation of pay equity appears most suitable where the legislation covers both the public and private sectors as in Ontario.

D. Definition of Job Classes

A job class means "those positions in an establishment that have similar duties and responsibilities and require similar qualifications, are filled by similar recruiting procedures and have the same compensation schedule, salary grade or range of salary rates^{xxiii}".

The Ontario Act defines a female-dominated job class as one consisting of 60% women and a male-dominated job class as consisting of 70% men with an allowance for variance should the parties agree or Review Officer/Hearings Tribunal decide (Section 1). This flexibility allows the employer and bargaining agents to negotiate percentage thresholds that may be more appropriate to their particular situation.

Section 1 of the Manitoba Act defines a female-dominated job class as having 70 per cent women, but also sets a minimum of 10 "incumbents" before the job class can benefit from the Act. Manitoba also allows for exceptions to this percentage should an accord be reached between the parties (in the, case of public sector employees with 500 or more employees). Male-dominated job classes are defined in the same way as female job classes.

Nova Scotia (Section 3(1)), New Brunswick (Section 1(1)) and Prince Edward Island (Section 1) define a female-dominated job class as a class in which 60% or more of the workers are female. New Brunswick

and Nova Scotia restrict the application of legislation to job classes with 10 or more incumbents, although New Brunswick allows bargaining agents to apply to the Pay Equity Bureau to have female-dominated classes with less than 10 incumbents included (Section 19(1)). The same definitions apply for the male-dominated job classes in Nova Scotia and Prince Edward Island. New Brunswick has a 70 per cent threshold for male-dominated job classes.

The guidelines under the Canadian Human Rights Code (Section 13) do not make a distinction between male and female-dominated job classes or occupational groups but relate them to the size of the group. Job classes are those where either males or females constitute:

- a) 70% of the occupational group if there are less than 100 members in the group;
- b) 60% of the occupational group if there are between 100 and 500 members in the group;
- c) 55% of the occupational group if there are more than 500 members in the group.

Ontario (Section 1(5)), Prince Edward Island (Section 2(4)) and New Brunswick (Section 1(1)) have included "historical incumbency" clauses in their legislation which allow the employer and, if applicable, bargaining agent to consider the historical pattern of employment of the job classes in determining whether the job class is male or female. In Ontario and Prince Edward Island these clauses include gender stereotypes of fields of work and any other criteria prescribed in the regulations of the Acts (of which there are none so far) as considerations in determining the sex domination of a job class.

Percentage thresholds and historical incumbency/gender stereotype provisions may have considerable importance. Those definitions that allow for lower percentages in defining a job class provide an easier access to legislation. From the employers' point of view, lower percentages may increase the wage adjustments that must be paid, thus increasing the overall costs of pay equity.

E. Job Class Comparisons

In all jurisdictions except Quebec, four factors are considered in the determination of the value of the work performed: skill, effort, responsibility and working conditions^{xxiv}. A gender-neutral comparison system (GNCS) must be chosen that uses these criteria to evaluate and compare the jobs. None of the legislation in Canada designates a specific GNCS for this purpose, but rather, the Acts rely on employees and bargaining agents (or employers alone in the Canadian, Quebec and Yukon legislation and, in Ontario if the employees are unorganized) to agree upon a single GNCS or method of comparison. In Ontario, however, the employer must negotiate a system with each bargaining unit and determine a system for any non-union group. Therefore, the possibility of having more than one system in an establishment exists in this province.

Once the female-dominated jobs and male-dominated jobs (those that are potential comparators) are evaluated, comparisons are made. Under Section 6(1) of the Ontario Act, "pay equity is achieved when the job rate for the female job class that is subject of the comparison is at least equal to the job rate for a male job in the same establishment". These comparisons must be made within the bargaining unit when possible. Section 6(4) provides that in a situation where there is not a male-dominated job class within the bargaining unit with which the female-dominated job class can be equally compared, a comparison can

be found within the same establishment. Further, if there is no male comparator of equal value, the female-dominated job class may be compared to the next lowest male-dominated class (Section 6 (2)). Where inequities exist, in either of the cases, the undervalued female-dominated job class rate is adjusted to reflect the maximum range of pay of the male-dominated comparator^{xxv}.

Similar to Ontario, in Nova Scotia (Section 14(2)) and New Brunswick (Section 8), the maximum rate of the male-dominated job class comparator is used to reach pay equity. In Prince Edward Island, Manitoba and at the federal level, the rate of the female-dominated class is increased to the "average" rate of the male-dominated comparator (Section 17; Section 6(2); Section 11(2) of the Guidelines; respectively). The Nova Scotia Act, like Ontario, also provides adjustment guides for cases where there are more than one male-dominated comparator or where there are no comparators doing equivalent work (Section 17). The legislation of Quebec and the Yukon do not address the method to achieve pay equity.

F. Pay Difference Allowances

Most of the pieces of legislation provide for exceptions to the provision that wages must be equal in all circumstances. Except for Manitoba^{xxvi}, pay equity legislation in all jurisdictions list considerations such as experience, seniority, merit, temporary assignments, and skills shortages that may allow for wage inequality. Some designate additional exclusions such as red circling (federal, Ontario and New Brunswick) and geographical differences (federal).

In Section 8(2), the Ontario Act addresses an issue that is not addressed by other jurisdictions. It states that, once pay equity is achieved, wage-gaps due to bargaining strength can occur and are permitted under the Act. However, what appears as a contradiction to this provision, Sections 7(1) and (2) place the obligation of maintaining pay equity on employers and bargaining agents, prohibiting them from bargaining for anything less than equity in wages.

It would appear from these exceptions that legislators have recognized that wage-gaps do not exist solely due to gender discrimination. Economical factors such as regional disparities, temporary labour shortages, differences in individual abilities and union or employer bargaining strength are accepted as viable grounds for differences in pay.

G. The Responsibilities of Employers, Bargaining Agents and the Negotiation Process

With the exception of the jurisdictions with a complaint-based model to implement pay equity, the Acts, while placing the ultimate responsibility of implementing pay equity on the employer, recognize employee representatives or bargaining agents as "key players" in this process. The roles of the employer and bargaining agents and the negotiation process are specified in some detail in each of the Acts.

In Ontario, bargaining agents have explicit duties to aid in the implementation process and monitor the development of programs (Section 14). Agreements between employers and unions are sought in the areas of: geographic divisions in the definition of establishment (Section 14(3)), determining job classes (Section 14(3)), determining the gender-neutral job comparison system to be used (Section

14(2)), and establishing a pay equity plan for each bargaining unit (Section 14(0)^{xxvii}. The process necessitates agreements to be reached on the results of the comparisons made between the female-dominated job classes to male-dominated job classes, identifying where pay inequities exist, setting out how these inequities are to be redressed, the dates of the first adjustments, how much is allotted to each class (Section 13)), and finally, maintaining pay equity in the establishment (Section 7).

Manitoba, Prince Edward Island, New Brunswick and Nova Scotia provide for the same process although legislation in these provinces deal solely with the strongly unionized public sector and therefore the implications are somewhat different. In these provinces pay equity negotiation, comparisons, and maintenance is centralized within the establishment (Prince Edward Island, New Brunswick, Nova Scotia) or sector (Manitoba). This allows for the same systems and benefits to be applied to all covered employees within one establishment or within the sector(s). In Ontario, the negotiation is highly decentralized and as such, the results of the individual negotiations could be widely varied.

The legislation in Manitoba (Section 14), Prince Edward Island (Section 17), Nova Scotia (Sections 12-15) and New Brunswick (Section 11) delineates exact stages or timeframes in which the parties must negotiate the various dimensions of pay equity (ie. determination of bargaining agents, negotiation of the gender-neutral comparison system, determination of wage adjustments etc.) The Ontario Act does not approach implementation in the same way. In Ontario mandatory posting and adjustment dates are given (Sections 10, 13(2), 21(1)), however, no stages are outlined to reach those dates.

Prince Edward Island, New Brunswick and Nova Scotia have included clauses that provide for the negotiation of pay equity to be kept separate and apart from the normal collective bargaining process (Sections 13(3); Section 10(3); Section 18(3); respectively). The Ontario legislation does not contain a comparable provision.

Another area where the Ontario Act differs from legislation in other jurisdictions is in "information disclosure". In Manitoba (Sections 8 (2) and 13(2)), Prince Edward Island (Sections 13(1)), Nova Scotia (Section 18(1)) and New Brunswick (Section 10(1)(b)), the legislation requires an employer to provide the bargaining agent with the information necessary in the implementation of pay equity. Ontario does not have a similar provision. However, legislation in all jurisdictions explicitly call for "bargaining in good faith" by both employers and bargaining agents.

H. Administration, Monitoring and Enforcement of the Legislation

Specific administrative, monitoring and enforcement responsibilities are delegated to special agencies in each of the jurisdictions. The underlying role of these administrative bodies is the effective "implementation of pay equity".

In Ontario, the Pay Equity Commission consisting of the Pay Equity Office and the Hearings Tribunal, is the implementation agency. Appointments to these bodies are made under the Public Service Act (Section 27). The Pay Equity Office is responsible for a number of administrative duties that are similar to all the other jurisdictions, namely: research and publication in related areas, conducting public education programs and providing information and guidance concerning pay equity, and reporting and making recommendations to the Minister^{xxviii}. The Ontario Pay Equity Office is also responsible for providing

support services to the Hearings Tribunal, and for conducting studies of systemic discrimination in sectors of the economy that are predominantly female and have no male comparators (Section 3(2)). The Pay Equity Office is also responsible for monitoring the preparation and implementation of pay equity plans (although plans do not have to be filed with the Commission), investigating objections and complaints, attempting to reach settlements with the parties, and finally, ordering a settlement (Section 34), if necessary. The Hearings Tribunal is composed of a presiding officer^{xxxix}, one or more deputy presiding officers^{xxx} and other members representing employers and employees^{xxxi} (Section 28(1)) and has exclusive jurisdiction in deciding over all matters relating to the Pay Equity Act. The Hearing Tribunal Panel is a tripartite panel consisting of a Pay Equity Commission representative (the chairperson or a vice-chairperson), and one representative of employers and employees (Section 29(4)). The Pay Equity Office enforces both the Act and the orders of the Hearings Tribunal (Section 33(1)).

Nova Scotia (Section 6(1)), Prince Edward Island (Section 5(1)), New Brunswick (Section 20(1)), and Manitoba (Section 5(1)) have created similar special bodies to administer, monitor and enforce their pay equity legislation. In Nova Scotia, the administrative apparatus is called the Pay Equity Commission, while the other three provinces have chosen a Pay Equity Bureau. All of these entities have administrative duties very similar to that of the Ontario Pay Equity Office. Manitoba's Bureau, in addition to the usual administrative functions, is responsible for monitoring the negotiation of pay equity between the employer and employee representative, through a Pay Equity Commissioner (Section 12(1)) and Pay Equity Officer (Section 17(1))^{xxxii}, and monitoring the reports that must be filed. However, unlike Ontario, neither the Commissioner or the Pay Equity Officer have the power to order a settlement, nor is there a special pay equity hearings body to hear complaints; all such matters are referred to the Labour Board or an arbitrator, depending on the circumstances (Section 10(9) or 15(6)). The specific duties of the Commissioner and Pay Equity Officer in Manitoba include overseeing the negotiations of pay equity, preparing reports, information etc. for the executive director and generally, ensuring that pay equity is being implemented (Sections 12(2) and 17(2)).

In Nova Scotia and Prince Edward Island, the Pay Equity Commission and Pay Equity Bureau, respectively, also monitor pay equity in the public sector. In Nova Scotia, representatives of employers and employees are named to the Commission (Section 6) whereas, in Prince Edward Island, employees of the Bureau are, as in Ontario, civil servants (Section 5(4)). Like Manitoba, Prince Edward Island designates Pay Equity Officers to oversee the negotiations and file reports with the Bureau (Section 5(4)), however, these officers are not a part of the staff of the Pay Equity Bureau, they are employees of the entities^{xxxiii}. Failure to comply with the legislation and/or implementation of pay equity in Prince Edward Island results in a referral to Labour Board arbitration (Section 16). In Nova Scotia, a failure to reach an agreement or failure to comply results in a Commission "decision" (Section 14(1)(a)). Both of these jurisdictions require, for monitoring purposes, the filing of agreements during the implementation process (Prince Edward Island, Section 14(4); Nova Scotia, Section 20(1)).

New Brunswick does not differ from other jurisdictions either vis-a-vis the administrative duties of the Bureau. Like Ontario, the employees of the Bureau are civil servants (Section 20(2)). The dissimilar trait of the New Brunswick Pay Equity Bureau stems from Section 20(3) that states that the Bureau shall "(a) represent the employer in the process of the implementation of pay equity," and "(b) determine the procedure for and initiate and oversee the selection of one or more employee representatives to represent employees to whom [the] Act applies who have no bargaining agent to represent them under

[the] Act". In September of this year, a Pay Equity Committee, consisting of union, management (the Bureau) and unorganized employee representatives, will be formed. The Committee will be responsible for negotiating the implementation of Pay Equity. Although complete regulations and procedures have not yet been determined, Ellen Barry, Director of the New Brunswick Pay Equity Bureau, advises that the Committee will likely deal with complaints (concerning the incumbency limitations) and decide on most matters in the process.

As pay equity legislation is under the Human Rights Act in Canada and the Yukon and the Charter of Human Rights and Freedoms in Quebec, the Canadian and Yukon Human Rights Commissions and the Commission des droits de la personne have the administrative responsibilities. Administrative duties are, again, similar to that of Ontario. The duties of the Commissions include receiving complaints, followed by investigations, and decisions and/or orders (Yukon, Section 15(1); Quebec, Sections 69-73 and 81-83; and federal, Sections 40, 43, 47-49). Since these jurisdictions have complaint-based implementation and enforcement models, responsibilities of these Commissions do not include monitoring.

I. Complaints, Objections or Inabilities to Settle

There is an elaborate objection/complaint system in place in Ontario. Where either the employer or the bargaining agent is not satisfied with a proposed plan (Section 15(7)) or if pay equity is not being implemented as proposed (Section 15(7)), a "notice of objection" may be filed with the Commission. Non-unionized employees may also file "complaints" if they feel the employer's proposed or implemented plan is gender-biased, the job classes are inappropriate, the method of job evaluation is not being applied correctly or wage adjustments are not being made as proposed (Section 15(7)). It should be noted that the Act does not require the Commission to review wage-setting practices following the initial planning stage unless there has been a complaint. On receipt of a complaint or objection, the Commission will dispatch a review officer to investigate the matter (Section 23). That officer will, in turn, attempt and if necessary, order a settlement. The parties, if unsatisfied, may place a further objection to the Commission who will refer, the matter to the Hearings Tribunal to hold a hearing and decide on the matter (Section 23(4)). A schematic representation of this process is provided below.

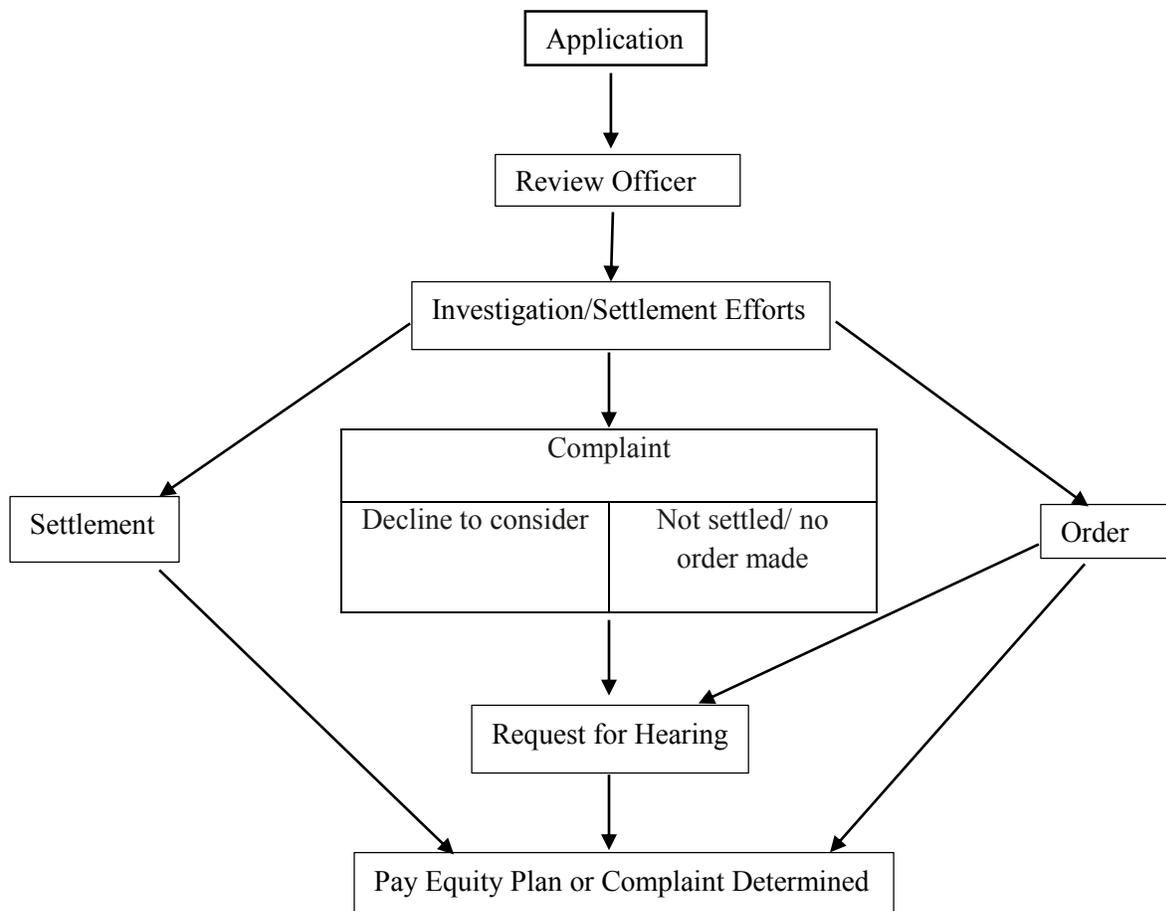
The Ontario Act allows for a variety of remedies in the case of failure to comply. Should an employer not prepare a pay equity plan, a review officer may be ordered to prepare one, the costs of which will be paid by the employer and/or bargaining agent (Section 25 (2a)). Where an employee is penalized, dismissed, or suspended as a result of a pay equity dispute, the Commission may order reinstatement or restoration of compensation (Section 25 (2b)). The Commission may order any adjustments to achieve pay equity (Section 25 (2c)) and may include revision, varying and revoking of existing plans/orders/actions (Section 25 (2d)). An employer, employee and/or bargaining agent can complain to the Commissioner should a contravention of the Act occur. The Commission may impose fines from \$2,000 to \$25,000 on any of the negligent parties (Section 26 (1)).

In Manitoba (where a complaint-mechanism is not in effect), should the parties fail to reach agreement on any of the issues to be negotiated, either of the parties (employer, employee representative or executive director) may refer the matter to arbitration (Section 10(1), for the civil service) or the Labour Board (Section 15(1) for crown entities and external agencies). In Nova Scotia, also lacking a complaint

mechanism, the Commission is responsible for determining or "deciding" where the parties do not reach an agreement (Section 7(1)(c)).

In Prince Edward Island, which like Ontario uses an integrated implementation and enforcement model, two mechanisms are provided. Where an agreement cannot be reached between the parties there is a referral to arbitration under the Labour Relations Act of that province (Section 16). In the matter of complaints under Section 6(1)(2)), the Bureau will investigate and may order any appropriate actions deemed necessary. In New Brunswick, failure to reach an agreement is also referred to arbitration (Section 12 and 15), but, limited complaints or applications³⁴ may also be filed with the Bureau (Section 19(1))

Dispute Resolution Process



Source: Pay Equity Implementation Series; Guideline 16 July, 1989

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J. Definitions of Pay

Section 1(1) of the Ontario Pay Equity Act defines "pay" as "compensation" (as termed in the Act) including "all payments and benefits paid or provided to or for the benefit of a person to be paid a fixed or ascertainable amount". The Yukon, Prince Edward Island, Manitoba and Canadian Acts also define "pay" in similar terms^{xxxv}, that is, including all items of pay and benefits.

New Brunswick, Nova Scotia and Quebec's definition is much more limited as "pay" is restricted to salary and wages only.

In this regard, Ontario is one of the jurisdictions that has taken a more progressive approach to its definition of "pay". Including benefits in the definition of "pay" is deemed critical in the determination of the actual inequities in male and female wages as the distribution of benefits may also involve discriminatory practices and gender-bias^{xxxvi}.

Each of the pieces of legislation, with the exception of Quebec, have included a clause that prohibits an employer from reducing the compensation paid to an employee/position in order to achieve pay equity^{xxxvii}. Manitoba, Nova Scotia, Prince Edward Island and New Brunswick prohibit the placing of an employee at a lower step or pay rate to achieve pay equity. New Brunswick goes even further to prohibit freezing or red-circling the pay of any employee.

K. Wage Adjustments

In the legislation of Ontario, Manitoba, New Brunswick, and Prince Edward Island specific deadlines for pay equity wage adjustments are outlined. The Yukon has also provided adjustment timelines, although these are not specified within the Act itself^{xxxviii}.

Section 13(4) of the Ontario Act states that pay adjustments shall be the lesser of either 1% of the total payroll in the previous 12 month period or the total amount necessary for the adjustment. In the public sector^{xxxix} all adjustments must be made no later than the 7th anniversary of the effective date of January 1, 1988 (Section 13(7)); wage adjustments commence January 1, 1990. In the case of private sector wage adjustments are to start January 1, 1991 for employers with over 500 employees, January 1, 1992 for employers with fewer than 500 but more than 100 employees, January 1, 1993 for employers with fewer than 100 but more than 50 employees, and finally, January 1, 1994 for those employers with less than 50 and more than 9 employees (Section 13 (2)(e)). In the private sector, the 1% adjustments per year continue until pay equity is achieved^{xl}. Employers may commence adjustments before the mandatory dates provided by the legislation. The Act does not stipulate how the 1% is to be divided amongst the employees. If there are bargaining agents, this too must be negotiated and all female job classes must be included in this division (Section 13(2)(d)). The lowest paid female dominated job classes are to receive increases at a faster rate to either the point that they have reached pay equity or the level of the next lowest paid female job class^{xli}.

New Brunswick (Sections 9(2)), Manitoba (Section 7(3)), Prince Edward Island (Section 10), and the Yukon (Human Rights Commission Requirements) also require employers to make 1% wage adjustments per year. However, in New Brunswick and Manitoba, the period of adjustments is limited to 4 years. In the other two jurisdictions, the period of adjustments is not limited, but is to continue until pay equity is achieved. Bargaining agents and employers must reach agreement on how adjustments are to be made (Manitoba, Section 9(1)(c); New Brunswick, Section 11(1)(a)(b); Prince Edward Island, Section 14 (1)(2); Yukon, Human Rights Commission Requirements)).

In Nova Scotia, the employee representative and the employer must also endeavor to reach an agreement respecting the quantum, allocation and orderly implementation of pay equity adjustments. Rather than limiting the adjustments to 1 per cent, this Act allows for the total adjustments to be equally divided over four successive years (Section 14(1)).

At the federal level and in Quebec, the complaint-based implementation model has resulted in a different approach to wage adjustments than the other Canadian jurisdictions with pro-active implementation models. Should the Human Rights Commission or Commission des droits de la personne find, after complaint and investigation, that wage adjustments must be made, these adjustments are usually back-dated or made retroactive up to the commencement of the legislation or complaint date^{xlii}.

The two types of approaches to wage adjustments are a product of the timing provisions and the implementation model used. In jurisdictions with the pro-active model, employers must comply with the implementation procedures and timelines, which include the timelimits for adjustments. Under the complaint-based models, the legislation prohibits the employer from establishing and/or maintaining discriminatory inequities from its effective date therefore, placing the onus on the employer to correct the

inequities before the complaints are made. The difference in implementation justifies the retroactive payments that may have to be, and have been, ordered by the Canadian, Yukon and Quebec Commissions^{xliii}.

In summary, there are many similarities and dissimilarities in pay equity legislation across the various Canadian jurisdictions, relating to the scope of the legislation and the nature of pay equity implementation. For example, in Ontario where both the private and public sectors are covered by legislation, complex administration, monitoring and enforcement systems are called for. In Manitoba and similar jurisdictions that cover only the public sector, a more centralized negotiation process is practical.

III. PAY EQUITY IN ONTARIO: CURRENT ISSUES

The various provisions of the Ontario Pay Equity Act, guidelines, regulations and their interpretations, as well as the implementation process, have given rise to many issues. This section examines some of these issues, based on information gathered from conferences, seminars, published documents and interviews with various employers, unions, advocacy groups and the Pay Equity Commission. Five groups of issues will be discussed: A) issues relating to the implementation process; B) issues relating to the legislation; C) issues relating to the role of the Pay Equity Commission; D) issues relating to collective bargaining; and, E) issues relating to excluded women.

A. Issues Relating to the Implementation Process

Although the implementation of pay equity in a non-unionized environment is the sole responsibility of the employer, in a unionized setting, the Act places the obligation of negotiating pay equity on both employers and bargaining agents. This process appears to have thrust the two parties into a classic bargaining relationship, with the union trying to maximize worker earnings and the employer trying to minimize the cost. Some employers complain that bargaining agents, wearing their "union hats", are using pay equity process to advance their collective bargaining agenda. Unions, on the other hand, charge employers, or their hired consultants, with trying to "keep costs down", saying they are not serious in the implementation of pay equity. Despite the conflict many employers and unions have managed to meet, negotiate and agree on many, if not all, of the steps leading to pay equity in their organizations.

The Pay Equity Commission has provided employers, bargaining agents and other concerned parties with an Implementation Checklist^{xliv}. The checklist provides a logical sequence to the process. In an effort to present the issues arising out of implementation clearly and coherently, this paper follows the checklist framework.

Step One

The first step in the pay equity implementation process is that the employer, number of employees, number of establishments and number of required plans must be determined.

One of the initial issues faced by employers and bargaining agents which resulted in several complaints to the Commission is the question of "Who's the employer?". This problem is similar to that of other legislation dealing with employers and employees, such as the Labour Relations Act. It is to be determined whether the employer is actually an employer, an independent contractor, subcontractor or other. In the case of municipalities and some public sector establishments, the question of who is the employer has come to surface in workplaces such as libraries, fire departments, and care homes. Employees in female-dominated occupations wish to be included as employees of the largest employer possible to ensure the most beneficial comparisons. The employees and/or their bargaining agents argue that even though the employment contract (individual or collective) is negotiated between them and individual employers (e.g. libraries), the funding and power to operate falls under a broader administrator (e.g. a municipality) and therefore that administrator should be the employer. This issue is of particular concern to unions such as the Ontario Nurses Association (ONA).

Their members work in nursing or care homes that may be funded by one body (e.g. a municipality) yet administered by another (e.g. the Board of Directors). As the Act does not define employer per se^{xlv}, this issue is not formally addressed in the legislation.

In a very recent decision involving the ONA and the Regional Municipality of Haldimand-Norfolk^{xlvi}, the Hearings Tribunal addressed this question. The ONA applied to the Tribunal for a decision on who was the employer in the case of the Municipality and its Regional Board of Commissioners of Police. The ONA felt that the Board of Police should be included as employees of the Municipality, for the motive of comparison, but the Municipality did not agree. The Tribunal, in deciding the case, considered a number of issues: the nature of the Act (ie the purpose and objectives of the Act); the definition of employer for pay equity purposes; the nature of existing employment and labour relations jurisprudence and the common law as tests for the employer and establishment; and, the tests that the Tribunal should apply in a pay equity context. The majority decision reflected these issues. The Tribunal found that the intention of the Act was to redress systemic gender discrimination through affirmative actions of the employers, not to "punish" one particular employer, but to correct inequities in compensation systems in general. The definition of the Ontario Labour Relations Act was not accepted as appropriate. The Tribunal felt that four tests or criteria should be applied: 1) Who has the overall financial responsibility? 2) Who has the responsibility for compensation practices? 3) What is the nature of the business, the service, or the enterprise? and, 4) What is most consistent with achieving the purpose of the Pay Equity Act? It was with these four tests that the Tribunal found that employees of the Board of Commissioners of Police were, in fact, employees of the Municipality and could therefore be used as comparators by the ONA. This decision has answered many questioned posed by both employers and unions as to "Who is the employer?" Advocates for women's equality will undoubtedly be content with this decision; a decision that appears to demonstrate the Tribunal's approach to pay equity and the true intention of the Act.

Other unions have found that relentless discussion and arguments with the employer may save a trip to the Tribunal. Linda Dumbleton, a Regional Staff Representative of C.U.P.E. in Kingston, was involved in a discussion on the question of who is the employer with the City of Belleville. She explains that the City initially did not want to include the police and fire departments in their definition of "establishment", as these employees could then be used as comparators. She persisted and reports that eventually she was able to "turn them around".

Section 1 of the legislation states that the employees working for an employer in one geographic location are considered to be in one establishment, unless an agreement is reached under Sections 14 and 15 of the Act to broaden this definition to include other locations. If an agreement cannot be reached on the issue, controversy arises out of the fact that two employees doing exactly the same job could be paid varying amounts because they are in two geographic locations. It has been suggested that this "land-locking" is not a just and equitable situation. It could leave some women, for instance, without a male-comparator because they have chosen to live outside of a metropolitan area, in a smaller center.

What happens when there are two very different companies within the same geographic location but with the same owner? Would this or could this be considered one establishment? The Commission advises that they have not been faced with this question to date and therefore do not have an answer.

The officials state, however, that this would depend on the legal framework of the companies, previous practices and policies. Each case will be judged on its own merits.

The Canadian Manufacturer's Association contends that the question of "Who's the employer" and the definition of "establishment" have caused problems for large employers with diversified structures. Corporate and labour lawyers must decide what definitions best suit the employers' interests. One could posit that, unless unions are involved in this process (ie the workplace is unionized), the interests of female employees will not be a consideration.

Step Two

This step involves the determination of female job classes and male job classes. Where bargaining agents are involved, job classes must be jointly agreed upon. There appear to be two common approaches to this determination: the parties may choose to negotiate the classes together before the actual choice of the gender-neutral comparison system (GNCS) is made or, after the evaluation of the jobs with the GNCS.

If job descriptions do not exist within the establishment or there is some question as to their timeliness or gender-neutrality, the parties would normally determine the job classes after the evaluation is complete or, at very least, a compilation of what is performed on the job must be made. Employers complain that, even for those organizations that had up-to-date descriptions, the compilation of the information, salaries, duties, qualifications etc., coupled with the grouping of these jobs into appropriate classes, has required an enormous amount of time. This, of course, is also demanding of the bargaining agent who must verify and agree to the gender-neutrality and completeness of the descriptions and to the female and male job classes.

Section 1 (5) of the Act allows for the historical incumbency of the job class and gender stereotypes of fields of work to be considered when deciding or agreeing whether a job class is female or male. Nan Weiner, Research Manager of the Pay Equity Commission, suggests that this clause permits flexibility when determining the job classes which is a further benefit for women. In this way, percentage thresholds are not firmly set by the definition of job classes in the Act.

The historical incumbency clause has given rise to an issue faced by the Kingston Independent Nylon Workers (K.I.N.W.) and Dupont Canada's Kingston Nylon Plant. Gary Hoeg, President of the union, explained that although all of the job classes in the union are now male-dominated, the position of Process Laboratory Operator was considered a female job from 1942 (when the plant started) to 1972 (when Human Rights legislation prohibited it). From 1972 to 1985 the job class remained female-dominated. Since 1985 the position is no longer dominated as the incumbents are equal female/male. The K.I.N.W. contends that this is historically a female job class and wish to go through the pay equity process with this group. Dupont disagrees on the grounds that the class is no longer female-dominated and has not been for several years. The Pay Equity Commission was unable to respond to this question of historical incumbency time limits. The K.I.N.W. states that they will go to the Tribunal over this issue.

Both employers and unions alike complain of the vagueness of the guidelines in respect to the determination of job classes. For example, jobs are deemed to be in the same class, if they have similar duties, responsibilities, and qualifications. Although the guidelines state that the jobs need not be

identical, the question arises as to what similar means? The guidelines attempt to explain this very subjective term, however, a satisfactory definition is not given^{xlvii}.

Step Three

In a unionized establishment, the joint selection of a gender-neutral comparison system (GNCS) follows. The Pay Equity Commission will not suggest, recommend or approve a GNCS. This is left up to the employer and bargaining agent to resolve. Large costs are most often involved. This is especially true if consultants are hired and even more so if the GNCS is "custom designed".

Although there are a surprising number of employers who have not reached this step^{xlviii}, there have been various approaches undertaken to determine GNCSs within establishments. One approach is the joint, labour-management evaluation of jobs. Queen's University in Kingston established a joint job evaluation committee to steer the implementation of pay equity at the university. The committee, consisting of management, union and faculty and staff association delegates with advising consultants (three in total, one representative from each of the parties; Queen's, the Queen's University Staff Association and the C.U.P.E.), had the mandate of designing a GNCS, not only for the purpose of pay equity implementation, but to be used through all levels and for all job description/evaluation activities at the University. According to Les Guest, Acting Director of Personnel, this turned out to be a "monumental job". Although 85% of the positions at Queen's had some sort of job description, 15% did not. The initial task of the committee was to create a questionnaire that would gather information on the positions for job description purposes, so as to allow for their subsequent evaluations. As the assignment became more than was planned for, the memorandum of the joint committee expired before they were able to finish the task. A decision was made to continue the process with the three consultants, each still representing the interests of their individual clients. Although the main framework of the GNCS/questionnaire had been established, the consultants continued to fine-tune the system and set-up pilot projects to ensure its reliability. They are presently finishing this stage. Agreements to proceed with the job evaluations for pay equity purposes are being obtained. Although complete consent has not yet been given, Margaret Gow, Manager of Compensation for Queen's, does not anticipate too many problems as, in effect, the initial GNCS was designed by the joint committee and the subsequent changes were made by consultants representing each party. They hope to complete this step by mid-July.

The City of Kingston and C.U.P.E., the union representing the majority of the City's employees, also have a joint committee which has been negotiating the various steps of pay equity since early this year in a climate that was initially somewhat adversarial. After much debate, they agreed to approach the implementation of pay equity as "something completely removed from their normal, everyday activities and systems"^{xlix}. This meant that any job descriptions, information or procedures used in the implementation of pay equity would be restricted to that process only. Initially, the choice of an appropriate GNCS was a source of conflict. The City chose the Hay System, whereas, CUPE had presented their own GNCS. After much argument, deadlock and a dissatisfied trip to the Pay Equity Review Officer, a decision to design a hybrid version was made (they would select the best features of each plan). Since this time, the atmosphere of the negotiations has calmed. They have been able to negotiate the job classes, plan the questionnaire and the process of the evaluation, and have started the actual evaluations for all non-unionized employees and those represented by C.U.P.E. Negotiations with

the Ontario Nurses Association, Kingston Professional Firefighter's Association, and the unions or associations representing the Police, Library Board and Grand Theatre have not yet commenced.

Also advanced in the process is the Frontenac County Board of Education. Like the City of Kingston, the Board of Education was able to reach an agreement with C.U.P.E., without too many difficulties arising. They agreed to use a slightly modified version of the C.U.P.E. gender-neutral comparison system and have progressed beyond the actual evaluations to the comparison stage. Like the City of Kingston, the Board of Education is using this system for their unrepresented employees but have yet to start negotiations with the teacher's bargaining units.

Dupont Canada's Kingston Nylon Plant is an example of the process in a non-unionized setting. Although the workers of the plant itself are organized, the company claims that female job classes within this section do not exist. Therefore, the only employees that will be affected by the legislation are those "office" staff who are unorganized. Gordon Johnston, Site Planner advises that Dupont has been using the Hay System for many years and with slight changes to include working conditions, this system was unilaterally chosen to evaluate the positions for the purpose of pay equity.

The Ontario Hospital Association (OHA) is a lobby group that represents the 220 hospitals in the Ontario health care sector. The OHA centrally bargains the master agreement for the hospitals across Ontario. Gwen Pooley, a member of the OHA Pay Equity Committee, states that the association had hoped to centrally negotiate pay equity as well. The committee chose the Aiken Plan as they felt that this GNCS could be used by any hospital at all job levels. To date a number of non-union hospitals have purchased the plan, but the vast majority of unionized hospitals have not. The OHA was also able to reach agreement with the Service Employees International Union on an amended version of its GNCS. Hospitals who have SEIU bargaining units will now be able to start their job evaluations with that group. Some hospitals, such as St. Mary's of the Lake Hospital in Kingston, will also use this system for the non-unionized employee group. With the other unionized groups (the Ontario Nurses Association and the Association of Allied Health Professionals), negotiations have not reached this point. In general the pay equity process does not seem to have progressed substantially in unionized hospitals. In many hospitals, initial meetings between employers and employee representatives are just now being confirmed.

Section 14 of the Act states that employers must negotiate pay equity with each bargaining agent from each bargaining unit within the establishment. The possibility exists to have one umbrella plan for the establishment covering all bargaining units. All of the employers interviewed agree that this would be the most desirable for the employer in terms of costs, time and administration. The unions, however, less affected by these factors, do not see the umbrella plan in the same light. They state that their one and only concern is that the plan is truly gender-neutral, yet at the same time, appropriate to the members that it affects. For example, the Ontario Nurses Association believes that their occupation is unique and as such, will not agree to a GNCS for the convenience of the employer or another union, but will aim for a system that is best matched to their special needs.

Should the parties not agree to a joint committee, the normal procedure is for employers to start negotiations with the biggest and/or most powerful of bargaining agents as the City of Kingston, Frontenac County Board of Education, St. Mary's on the Lake and others have done. They would then attempt to reach a consensus on this GNCS or a variation of the initially agreed to plan with the other

bargaining agents. In establishments with highly adversarial labour relations or where acrimonious rivalry exists between bargaining agents, this will be very difficult. Other reasons, such as that of the ONA described above, also impede this possibility. The only alternative open to the employer may be a complaint lodged with the Pay Equity Commission. If the union does not have an alternative suggestion, the onus to prove the GNCS is not appropriate and/or gender-biased would be on the union. If the union is suggesting an alternative GNCS, the Review Officer, upon receipt of a complaint, would attempt to mediate a settlement between the parties. If no accord could be obtained, the Review Officer would then order one or the other of the GNCSs or a third system. The Pay Equity Commission exhorts that in situations where more than one GNCS has been negotiated in the establishment, it is in the best interests of both employers and bargaining agents to find bridges between the various comparison systems, particularly if cross-comparisons (discussed in Step 6) may be required.

To date the Pay Equity Commission has not made a decision on any particular GNCS to be used within an establishment. In fact, Nan Weiner of the Commission advises that they are "trying very hard not to chose". It is understandable that the Commission would avoid taking a stance on this issue for the longest possible period. One can imagine the political consequences and the controversy that will arise when, and if, the Commission must make the choice of one comparison system over another, particularly when dealing with the "big name" comparison systems.

It has been suggested that the Act or the Pay Equity Commission should have designated a GNCS that could be adapted to all industry or, at least, provided a framework for the factors and sub-factors to be compared. In this way, employers and unions, particularly smaller, financially-restricted organizations, would have been spared some of the direct and indirect costs of pay equity implementation. Also, unorganized women may have been more protected had this approach been taken, with a better guarantee that the Act was being implemented as it was intended.

Although she admits that a single GNCS may not have worked, Pat Bird of the Pay Equity Coalition suggested that a pamphlet be distributed to all employers containing a gender-neutral description of the 20 most common jobs that women do. This information could be tailored to each major industry. This was proposed to the Pay Equity Commission but the Commission did not follow it up.

The Pay Equity Commission states that the intention of the Act was to cause the least amount of disruption possible within the establishment. A dictated GNCS would not have paralleled this principle. They believe that because of the individual values of the individual establishments, one GNCS could not be adopted in all industries or organizations.

Although the traditional job evaluation systems used by private sector employers have been "checked for gender-neutrality", more than one reported that major changes to the plans were not necessary. The checks resulted in minor changes to the terms/words of the plans. One might question the true gender-neutrality of such plans. Can the traditional systemic discrimination existing within the plans be lost with the addition or deletion of a few words? These are the plans, which in effect, have served to fuel the problem that this legislation attempts to eliminate. This is a more serious problem in establishments where the actual job evaluation is being performed by an "all management" team. In this way, the skepticism of employers job evaluation systems seem warranted.

Step Four

The fourth step in the implementation process is the evaluation of all female job classes and all male job classes which appear to be potential comparators. One of the most difficult, yet most important, issues facing employers and bargaining agents in the evaluation of jobs is the insurance of gender-neutrality. Assessing the value of female and male job classes without gender-bias is not an easy task. "Gender-neutrality" gives rise to many problems. It is not a concept that is easily understood or visualized. The subtleness of systemic discrimination and the abstractness of the four evaluation factors, effort, skill, responsibility and working conditions, make the process very subjective. For example, the position of a "receptionist" within an establishment involves the receiving and transferring of telephone calls and the greeting and coordination of visitors. Often this position is given a very low surface value. Pay equity evaluations require that traditional impressions and attitudes towards this position be pushed to one side as other considerations are advanced: the space in which a receptionist works is very confined; continual voice control is required; a receptionist must be personable and pleasant at all times; diplomacy is expected; the organization (e.g. departments and structures) and its organizational chart (e.g. department heads and employees) must be known; and, the speed and concurrence of these tasks requires someone that is both efficient and effective. A receptionist is often the organization's first contact with the outside world. It is factors like these that make gender-neutrality and gender-neutral job evaluation a very difficult and nontraditional concept.

"Gender-neutrality" is not defined within the Act, nor does the Pay Equity Commission provide a definition. Further, Nan Weiner of the Commission advises that there is no test for gender-neutrality: it is a matter of educating people so that they understand and are able to identify gender-bias in pay systems. None of the guidelines issued by the Commission address gender-neutrality. However, through a brief document distributed at the Commission's conferences and seminars, an explanation of the concept is provided and a few of the common areas of gender-bias are outlined.

Because of the difficulties gender-neutrality poses, those who are involved in the actual design of the GNCS, the collection of job data or in job description and job evaluation, must be educated, not only of the meaning and principle of gender-neutrality, but of the ways that it is systemically hidden and assumed, and of the resulting implications. Expert trainers are required to provide this type of education. Unions have developed their own expertise in this area, whereas large employers have used consultants. Some employers have chosen to create a "pay equity coordinator" position, while others have combined the coordination of pay equity into existing employment equity coordinator positions. These persons are required to learn and, in turn, teach gender-neutrality to others implicated in the pay equity process.

Generally, those employers and unions that have established a joint pay equity committee have used a committee (the same or another) to evaluate the concerned jobs, using the negotiated GNCS. These joint job evaluation committees usually include equal representatives of labour and management. Queen's University, the City of Kingston and the Frontenac County Board of Education have taken this route. The committee members were trained by a management consultant and a C.U.P.E. expert at both the City of Kingston and the Frontenac County Board of Education. At Queen's, the three consultants that are presently involved in the design of the GNCS have also trained the members of the committees. In each of these cases, a separate committee consisting of non-union employees and management members has been or will be formed to evaluate the jobs of the non-union group.

Step Five

Once evaluations of the jobs are completed, possible comparable jobs have to be determined, as required in Section 4(2) and 12 of the Act. Section 6 (3), (4) and (5) outlines the sequence for determining which female job classes will be compared to which male job classes. "Equal or comparable" jobs do not have to be identical to be compared, but should fall within an established range, determined by the GNCS.

If comparable male jobs are not found within the bargaining unit, employers and bargaining agents must look for a comparator within the rest of the establishment. In cases where male comparators do not exist within the establishment, the Act allows for female job classes to be compared to the next lowest male-dominated job class. As discussed earlier, more than one GNCS may have been negotiated within an establishment. In these instances, cross-comparisons between bargaining units are made. If two very different gender-neutral comparison systems have been used, the employer and union are faced with the choice of either using the female-dominated unit's GNCS, the male-dominated unit's GNCS or negotiating a third system. The Pay Equity Commission suggests that the latter option would be less likely to occur as it would involve additional time and costs. The Commission feels that the normal procedure would be to adopt the female-dominated unit's system. The Commission does not believe that this will be a difficult process and compare the issue to collective bargaining cross-comparisons regularly performed during collective agreement negotiations when exact job types do not exist. Employers and bargaining agents determine this to be true or false as the pay equity implementation process continues.

Employers and unions should be aware of this potential problem when negotiating the GNCS. Where the possibility of comparing outside the bargaining unit exists, they must choose a system that is capable of measuring a wider variety of jobs. Universities, hospitals and other establishments employing a large variety of job types (ie professors and maintenance persons) should be particularly aware of the situation.

If comparators do not exist within the establishment, pay equity adjustments will not be allowed. The Act does not provide other mechanisms to compare female-dominated job classes with male-dominated job classes outside of the establishment. This will be discussed in more detail in Section E of this part.

Step Six

Once comparable job classes are found, the compensation of the two classes are compared. A common wage base is determined for the classes and the data is sorted by male and female job class, value and job rate. All benefits are included in the job rate.

Where male comparators do not exist within the establishment, Section 6 (2) allows for female job classes to be compared to the next lowest male-dominated job class. Where inequities exist, the wages of the female-dominated group will be increased to the average of the male comparator. In only allowing for the female-dominated job class to receive increases equal to the lesser-valued male-dominated job class, it would appear that the Act is permitting further discrimination in wages.

Margaret Gow of Queen's University advises of an issue that is common to university type settings. Professors have wage ranges with floors, but these ranges do not have ceilings. As the Act states that comparisons of the female job class are made with the maximum of the male-dominated job class, the University and bargaining agents, or the joint committee, must determine the maximum values of the male-dominated groups. Gow feels that the Act was insufficient in this respect.

Similarly, Penny Smiley, Employment Equity Officer of the Frontenac County Board of Education, believes that the Act did not deal adequately with another issue related to maximum wage ranges as it does not consider the number of steps that it takes to reach the maximum level. For example, male caretakers may go from the lowest to highest rates of pay in two or three steps. Secretaries may take four, five or even six steps to reach the maximum. There appears to be a tendency for women's jobs to contain more and smaller increases to reach the maximum wage rate. The Act should have gone farther to address this form of discrimination.

Step Seven

In this step, the adjustments required to achieve pay equity are determined. Again, the Act outlines the adjustment process and the parties must agree on where to make the adjustments, and the timetable for these adjustments. As only "up to one per cent of the payroll" need be expended by the employer annually, the division of the one per cent must be negotiated between the concerned parties. Although most parties have not yet progressed this far, both anticipate problems in this area. For example, are adjustments to be made proportionally? By unit size? By adjustment size? Will the more powerful of unions be able to negotiate larger proportions of the adjustments on strength alone? Only time will tell.

Step Eight

In this stage, a pay equity plan is prepared. A plan must be completed for each bargaining unit and one for the non-union group of employees. The plan must contain certain information as outlined in the Act: the establishment, the bargaining unit description, wage adjustment dates, job classes, the comparison system used, the criteria used and the factors weighed with the results, the classes to be compared with the differences in compensation, and a description of how the classes are to be adjusted. The parties hope that by this point all the intricacies of the process will have been worked out and neither party will attempt to "re-hash" or renege on their previously reached agreements.

Step Nine

Once completed, the pay equity plan must be posted for employees to review. Mandatory posting dates are prescribed in the Act and the Pay Equity Commission advises that these dates will not be changed. This means that employers and bargaining agents must, despite what appears to be a late start for many establishments, complete negotiations prior to that date. The Commission states that only under extreme circumstances (for example, where a bargaining agent is certified two weeks before the posting date) will the pre-determined dates be waved. In establishments where a plan has not been agreed upon by this date, a review officer will be dispatched to investigate. It will then be up to that officer to determine the steps that should be taken. A Review Officer may appoint a consultant to establish a plan or plans for the establishment. The costs of such action will have to be borne by the employer, the bargaining agent or

both. Keith Oleksiuk of the United Steelworkers is one of many who feel that in many cases mandatory posting deadlines will not be met. His hope is that the Review Officers will look at the entire situation before making any "rash decisions". He believes that in situations where the employer and bargaining agent/s are in serious negotiations over pay equity, the parties should be left to finish on their own. In other instances where the employer and bargaining agent have done nothing, it would be a different matter and may require intervention on the part of the Commission.

There is a concern that hasty negotiations between employers and bargaining agents rushing to meet deadlines will result in inadequate negotiations and results. The consequences of rushed implementation may be, for example, compromise or a failure to find all sources of gender-bias in the evaluations of jobs. This situation would undermine the intention of the Act.

Step Ten

Following posting, those employees not represented by a bargaining agent have 90 days in which to review the plan. Approval of the plan is automatic when no concerns or complaints are filed and 127 days after the posting date has elapsed. The same does not apply for unionized employees. The plan is deemed to have been approved once agreement to its terms has been reached between the employer and the bargaining agent.

Several issues arise in this respect. First, there is the question of protection. What will happen to the unorganized women in small establishments? Are they really protected should they choose to file a complaint? Although protection in "theory" is provided within the Act¹, reprisal by the employer in non-obvious forms may still result. Many women may choose not to complain for this very reason. The Pay Equity Coalition believes that protection for these women should be provided by the Minister of Labour. The Coalition has proposed that pay equity centers or clinics be established. The Coalition feels that such clinics could easily be coordinated through community legal centers and could offer women the advice, education, advocacy and anonymity they would need to benefit from the Act.

Another concern relates to male-dominated unions, their understanding of pay equity, and their devotion to its implementation. Will male-dominated unions negotiating with male-dominated employers agree to a plan that truly represents the interests of women? As the Act deems agreements between bargaining agents and employers approved and final, individual members do not have the opportunity to voice their objections. This type of concern appears to strengthen the case for "pay equity clinics" proposed by the Pay Equity Coalition. Organized women would also be provided with a protection mechanism through such a resource.

A final noteworthy issue relates to the start date of the complaints process. Should a plan be posted prior to the actual mandatory posting date, for example six months early, a complaint cannot be filed until the commencement of the complaint period, or, the posting date specified in the Act. Even the Pay Equity Commission finds this an unsatisfactory situation, but one that the parties "must live with".

Step Eleven

In final step of the implementation process, wage adjustments are made. These adjustments of up to 1% of the annual payroll are a concern to many employers. Smaller, labour intense employers say they don't

have the money...times are tough. They foresee layoffs, even business closing. Public employers ask "Where is the money going to come from?", currently they have very tight budgets to work with. The government grants do not make allowances in budgets to cover the costs of pay equity. Public sector employers are worried that cuts in services, lay-offs, or even closures in some cases may result in order to meet Pay Equity Act requirements and adjustments within the narrow limits of available funds. Sarah Van Dalen of the Hotel Dieu Hospital reiterates this fear, but adds that it is the intention of that hospital to avoid any of these measures. It will, of course, depend on the amount of adjustments to be made.

Kathryn Running, Employment Equity Coordinator at St. Lawrence College in Kingston, feels that much of the "hype" of employers is simply paranoia. As she points out, it is difficult to believe that employers are "living so close to the margins" that pay equity adjustments will make that much of a difference. Pat Bird of the Pay Equity Coalition speaks about the plethora of wage adjustment complaints by employers as "non-issues". Wage discrimination has cost women hundreds of years of lower salaries. Employers have made significant profits as a result of women's work. It is time they pay the "just wage".

One issue that has been causing concern among both parties at all steps of the implementation process is that of "information sharing" or the disclosure of information by the employer to the bargaining agent. The sharing of information can be very difficult for the employer who has traditionally considered much of this information to be confidential. Employers complain that some unions are trying to take advantage of the situation, making unrealistic and inappropriate demands. Should an employer feel that the union is making frivolous requests, the employer would make a complaint to the Pay Equity Commission, who would advise the union of the limitations. Unions have argued that they should be entitled to complete data on all jobs as the employer has to ensure a balance of power in the Pay Equity process.

The Act does not deal specifically with the issue of disclosure of information. The Pay Equity Commission has released a guideline dealing with the subject^{li}. The Commission considers the release of information on a "need to know" basis. Should a union feel that information is necessary and the employer refuses to supply the information, a complaint could be filed with the Commission. A Review officer will investigate and decide how much information is needed for the union to fulfill the obligations placed on it by the Pay Equity Act. This will be based on "reasonable need". The Commission may order that information be released incrementally or all at once, depending on the circumstances and what stage of the implementation process is being negotiated. This disclosure order could include information regarding positions outside the bargaining unit if, for instance, all the members of the demanding unit are female. However, it would not include salary information in the initial stages of the joint planning process. It would not be until comparisons and matches between male and female-dominated job classes have been made that wage information is released. At this time, such information is necessary to determine if pay inequities exist. Wages do not become a necessary element until the value has been given to the job.

The Ontario Nurses Association is among those unions that disagree with this interpretation of the Act. The Association feels that informed decisions are the result of complete information. The Association believes that all information should be provided the bargaining agent prior to the negotiations to avoid imbalance of power. Because of the unique situation of nurses (working in predominantly female environments coupled with their qualifications, working conditions, salary schedule, promotion ability

etc), they do not have easily identified comparators. Without complete information, salary and other, from throughout the organization, the ONA feels it will not be able to find the best, or the only, comparator available.

The Hearings Tribunal has reached one decision in this regard. The Ontario Public Service Employees Union made application to the Hearings Tribunal on the issue of information sharing, and more specifically in two contentious areas on which the union and Cybermedix Health Services Ltd. were unable to agree: what information must be disclosed for the purposes of bargaining pay equity and, when during the bargaining process must that information be released? OPSEU represents approximately one quarter of Cybermedix employees. As there were no male job classes within the bargaining unit, OPSEU sought complete information about employees outside the unit (ie names, job titles, earnings, gender composition, and exact job descriptions), to utilize for comparator purposes. Cybermedix agreed only to provide OPSEU with the job titles and the gender composition of positions outside the bargaining unit. OPSEU's position was that this information was necessary to formulate an informed bargaining position. Cybermedix objected to name release for confidentiality reasons and to earning and job descriptions release as neither was relevant and may never be.

The Tribunal decision reflected its belief that in order to redress systemic gender discrimination in compensation, the parties must negotiate in good faith and endeavour to agree on various elements of pay equity. The Tribunal concluded that:

not all information requested must be disclosed. The information requested must be necessary to negotiate pay equity. The information must be rationally related to an issue or issues in pay equity bargaining. The information may be necessary to test the quality or impact of a decision in the pay equity bargaining process...The parties are entitled to information so rational and informed bargaining on these issues can take place and the parties can move towards a settlement.

The Tribunal, in this instance, believed that all information requested by the union apart from the names of the persons in the positions (the Tribunal felt that there was not evidence establishing such a need) was necessary to ensure informed bargaining. As to when during the process must disclosure be made, the Tribunal decided that the need for this information was immediate.

B. Issues Relating to the Legislation

Both employers and bargaining agents anticipate potential problems arising out of Section 8 (2) of the Act. This provision states that once obtained, pay equity may be lost due to the bargaining strength of either party. Section 7 (1) and (2) obliges employers and bargaining agents to maintain pay equity and prohibits them from bargaining anything less. There appears to be a contradiction within the Act itself, opening the doors for a multitude of future implications and possible problems. Will it be difficult to prove that pay inequities are due to bargaining strength and not other actions by the employer? Will male unions, traditionally and systemically more powerful, leave women and their wages behind? Will further legislation be required that prohibits differences due to bargaining strength? It is still too early in the process for the Pay Equity Commission to have to deal with these potential problems. The Commission has stated that they will deal with these problems as they arise.

In the Pay Equity Acts of Manitoba, Nova Scotia and New Brunswick, the negotiation and implementation process is set out in stages with specific dates by which segments of the process are to be completed. This is not provided for in the Ontario Act. Employers and unions are left to their own timeframes, the only constraint being the mandatory posting date and wage adjustment date. As it appears that so many employers and/or bargaining agents were late in starting negotiations, this type of provision may have guaranteed a progressive approach to pay equity implementation and would have ensured that the posting and adjustment deadlines will be met. In this way, mandatory filing requirements would have also permitted the Commission to easily acquire information as to who was and who was not implementing pay equity.

The Pay Equity Act of Ontario has a lifespan of seven years, to 1995. A strong concern stems from this legislative limitation, focusing on the question of whether or not pay equity will be maintained after the Act is gone. The Pay Equity Commission believes that pay equity will not be lost after this date. They feel that society, and in particular women and unions, will not let the principle of pay equity drop. They hope that by 1995, social attitudes, knowledge and understandings will have been imbued and there will be too many social pressures against discriminatory pay inequities for it to revert back to the pre-legislation situation. Unions, the Pay Equity Coalition and some employer representatives do not agree. They foresee the necessity of other legislation to start where the Pay Equity Act leaves off. They do not believe that hundreds of years of discriminatory undervaluation can be swept away in the short period allowed in the Act.

Another criticism of the Act is its emphasis on upholding the integrity of collective bargaining. This stems from the various elements of the process that are left entirely in the hands of employers and unions. There is an implicit assumption that these two parties can decide what is best for women without disrupting the existing labour management relationship. Unfortunately, this is not always the case, although unions like C.U.P.E. have ensured acceptance by educating its membership and allowing the membership to accept, by ratification, the negotiated pay equity plan. The Act could have established perimeters to ensure that, in fact, women's interests were foremost and that situations of compromise were not a concern. It could have, as C.U.P.E. has done, allowed for union members to ratify pay equity proposals.

The complaint most made by all parties concerns the general vagueness of the legislation, in particular, the lack of appropriate definitions, explanations and other details within the Act. Many feel that this could be the consequence too much haste in enacting the legislation, without an example or model to follow, and without enough thought given to the various implications and potential problems.

C. Issues Relating to the Role of the Pay Equity Commission

There have been many criticisms about the clarity and fulfillment of the role of the Pay Equity Commission. The Act outlines the Commission's role as two-fold: administrating, and enforcing the legislation.

The guiding philosophy of the Commission is unclear to many of those involved in pay equity implementation. Is the ethos of the Commission one of leader/director or simply one of monitor? Employers and bargaining agents complain that they look to the Commission for guidance and advice,

but the Commission is reluctant to provide concrete direction. They feel that the Act contains provisions that state the action to be taken or objective to be reached, but does not go any farther to explain how these are to be obtained. The parties complain that the Commission tries to deal with problems or questions as they arise but the guidelines are, often too general and/or vague, and do not deal with the specific questions being asked. Some feel that the Commission is not capable of giving specific answers as it does not have the answers.

In an interview earlier this year, Ed Shaw, Director of Human Resources of the City of Kingston, stated that the City and the union were trying to avoid going to the Commission at all. They tried on two occasions to involve the Pay Equity Commission in problems they were having. In both instances, a Review Officer was sent to investigate the problem, but, according to Shaw "she did not deal with the problem but acted more like a mediator, but a mediator that doesn't give direction....it's like they are trying not to get involved". His view was that employers want "yes" and "no" answers to their questions and the Pay Equity Commission is not capable and/or willing to give these answers. Many other employers agree with this conclusion. Employers are not the only group frustrated with the Commission. Isla Peters of the Ontario Public Service Employees Union also voices similar concerns. Her experience with Review Officers has shown that they are not making informed decisions. They are not responding to the demands of unions and employers because they do not know how to respond. She now views the "Review Officer Stage" as "something we have to do to get to the Tribunal", especially now that all decisions could be precedent-setting.

Murray Lapp, Director of Review Services for the Pay Equity Commission defends the role of the Commission, arguing that the function of his service is "the last step in a self-managed process". He states that the intention of the Act is for the parties to achieve pay equity themselves and the role of his department is to help them find solutions to the problems. In situations where employers and bargaining agents are negotiating pay equity, the last resort for the Review Officers is an order. This is different to the situation where there is not a union. Where plans are posted and a complaint is made by an employee, the approach of Review Services is not one of mediator. In this circumstance, where negotiation is not a factor, the Review Officer would investigate and, if necessary, order the appropriate change. He defends the orders of Review Officers as being "very informed" and suggests that these orders cannot suit all parties.

In a more recent discussion with Ed Shaw he advises that, in retrospect, the Review Officer did put pressure on the parties to settle on their own and eventually they did. Now, he states that he would not hesitate to call them in a situation where a union and the City were stale-mated over an issue. He feels that Review Officers are useful "to get movement going".

The Ontario Hospital Association feels that the Tribunal has not been tested in the Health Care Sector and they do not want to be the first in the health industry to experiment in this regard. Their fears are only mounted by the fact that Ms. Beth Symes, the Chairperson of the Tribunal, is considered by the OHA to have strong union ties and tendencies. Before accepting her position as chairperson, Symes was in private practice. One of her biggest clients and to whom she provided much legal advice was the Ontario Nursing Association. The OHA worries that should Symes have the intention of leaving her current position to return to private practice (she has a three year term), she will want to keep a good

rapport with previous clients, particularly those who have provided enormous amounts of business in the past.

As of February 3, 1989, 23 complaints had been received by the Pay Equity Commission. Nineteen more were received by April 3, 1989 and the total as of the end of July 1989 was 146. To date, ten orders have been made by Review Officers and the Hearings Tribunal has made four decisions. Nan Weiner and Murray Lapp of the Commission advise that the types of complaints received by the Commission have been more complicated than was initially expected as they are often multi-faceted, containing a number of issues. The Commission is approaching this situation on an "issue by issue" basis. This is seen in the recent decisions released by the Tribunal. An application made by the Ontario Nurses Association with the Regional Municipality of Haldimand-Norfolk as respondent, resulted in three individual decisions by the Tribunal^{lii}. The first of the three decisions concerned the preliminary issue of whether the Tribunal had the jurisdiction to hear and determine the case, as the Review Officer was unable to effect a settlement and had not yet made an order or referred the matter to the Tribunal. Once an affirmative determination was made by the Tribunal, the second issue dealt with a motion to stay a Review Services order made subsequent to the application but prior to the hearing. In the third issue the Tribunal decided the question of employer and establishment (as discussed in Section III, Part A of this paper).

The fourth decision released by the Tribunal was the result of an application made by the Ontario Public Service Employee Union (OPSEU), between that union and Cybermedix Health Services Ltd.^{liii}. This issue in this instance was information sharing: what information must be disclosed and when must it be disclosed (also discussed in Section III, Part A).

Although there has not been a real trend to the types of complaints that are being filed, there are some recurring type questions, often related to the definition of employer, establishment, the GNCS, comparators, job classes etc. These types of questions coincide with the phase of the implementation process being negotiated.

In its administrative role, the Pay Equity Commission is responsible for the general education of the public. Although all employers agree that despite the vagueness of some of the caveats, the information obtained from the Commission, such as the guidelines, has been very good. Some employers feel that the information should have been released at an earlier date with some guidance as to how long the various steps of implementation would take. Penny Smiley of the Frontenac County Board of Education, criticized the Commission for not having been established and organized sooner. She felt that due to the late start, the Commission was less prepared than it could have been. It also lacked a complete staff complement in the initial stages which also acted as an impediment to those employers wishing to commence their preparation activities.

Unions and the Pay Equity Coalition are also not entirely satisfied with the Commission. They accuse the Commission of favouring employers. They complain that an enormous amount of money has been spent on the employer oriented guidelines, seminars and other resources, yet virtually nothing has been done to inform and educate the "average worker". There is a particular concern for those women working in unorganized establishments, usually at the bottom of wage hierarchies and often facing other problems such as language barriers and racial discrimination. These are the women who are in desperate need of the legislation and the rights and benefits therein. It is felt that these workers are unaware of the

meaning of pay equity (they are, for example, confused with equal pay for equal work), or even that an Act exists. Although the blame for the ignorance or apathy of workers cannot be placed entirely on the Commission, a general consensus is that the Commission can and should play a catalytic role by making the general public more aware of pay equity. This could be in the form of a mass advertising campaign, the distribution of pamphlets or whatever else is required to get the information out to the public. The Pay Equity Coalition suggests that the education budget of the Commission should be equally divided between employers and women, but to date, women have not received their share.

The media appears to be partially to blame in this matter. Articles, updates and reports on pay equity are seldom found in newspapers and are seen or heard even less on television or the radio. Other legislation, Workplace Hazardous Materials Information System (W.H.M.I.S.) for example, receives continual coverage. One might conclude that the reason for this stems from the fact that other laws have more of an effect on men than women and are therefore given more value.

The Officials of the Commission contend that they are aware and concerned about educating and informing workers. They advise that they will be translating information in several languages in the near future and have been studying how to reach unrepresented women. They realize the importance of the matter, particularly as this group represents a main element in the enforcement of the Act.

As enforcers and monitors of the Pay Equity Act, Review Officers and the Hearings Tribunal receive, investigate and decide/order in related matters. Gary Hoeg of the Kingston Independent Nylon Workers believes this process to be appropriate in a situation dealing with employers and unions. Because of its similarity to the arbitration/jurisprudence process common to labour relations and familiar to the parties, he believes the pay equity process to be easily understood.

D. Issues Relating to Collective Bargaining

A consideration on the minds of unions and employers is that of combining the negotiation of pay equity into the collective bargaining process. Should it be done? The response from both parties is "no". There are several reasons for this response. / First strikes are verboten under the Pay Equity Act. Hence, if pay equity and collective bargaining are separate, there is no concern over work stoppages that may occur due to unresolved pay equity issues. A second argument in this regard is put forth by unions who say that concession bargaining tactics by employers can be avoided if the two processes are separated. Unions are concerned that management would attempt to trade other benefits for pay equity if it were to be included in collective bargaining. A third concern is that if collective bargaining (traditionally and legally "for the good of all members") is combined with pay equity (considered a "women's issue"), pay equity may not be a priority for the union, particularly among those that are predominantly male. A fourth reason to keep collective bargaining and the negotiation of pay equity separate involves costs. Under the Pay Equity Act, any disputes resulting from the provisions therein are dealt with by the Commission, Review Officer, or Tribunal at no cost to either party. Under collective bargaining, the disputes would be considered grievances and eventually end up in an arbitration hearing, with high costs to both parties. Fifth with collective bargaining and pay equity separate, there would not be confusion as to what is a salary increase and what is the adjustment under the Pay Equity Act. Lastly, the pay equity implementation process by its very nature is complicated and very time consuming. The collective bargaining process, already lengthy, would be even longer if the two were combined. This would not be

desirable for the employer or the union. The negatives seems to outweigh the positives on this issue. The only positive consideration for unions would be in a case where the union is in a much stronger position than the employer. In this instance, a union may be able to negotiate more than the minimum legislated benefits and would therefore consider combining the two processes.

Other jurisdictions in Canada^{liv} found it in the best interests of the parties to legislate the separation of pay equity negotiation from collective bargaining. Ontario's Pay Equity Commission believes that Ontario legislature recognized the marked differences in employers, bargaining agents, and in attitudes and approaches within the multitude of Ontarian organizations and wanted to cause the least amount of disruption to the operating systems. Therefore, the choice to combine or not to combine the pay equity process and collective bargaining was left to the parties.

Although pay equity negotiations can be theoretically separated from collective bargaining, the intent and importance of the Act cannot be separated in practice, as evidenced by the recent and continuing (at the time of the writing of this paper) strike of Local 87 of the Southern Ontario Newspaper Guild (SONG) at The Spectator newspaper in Hamilton. The strike that began on June 9, 1989 is over wages. The union is demanding an increase of \$4.54 per hour, on pay equity considerations. The union claims that the members of the bargaining unit, with 95 per cent women, are, underpaid relative to their male bargaining unit counterparts. Although a formal evaluation has not been performed, the union believes that it is not difficult to find a comparator within the male units of the establishment and to calculate the large difference that arises. To determine the \$4.54 per hour that is demanded, the female-dominated bargaining unit consisting of one job class of "inserters" was compared to "part-time delivery helpers" (this job involves driving in the delivery trucks as a passenger and dropping off bundles of newspapers). Inserters are paid \$7.20 an hour while part-time delivery helpers earn \$11.74.

As The Spectator has some 600 employees and has a January 1, 1990 mandatory pay equity plan posting date and until January 1, 1991 to commence adjustments. To implement pay equity, a joint committee was established with representatives of the various bargaining units. To date, the committee has chosen a GNCS and a pilot study has been completed by the consultants involved. Complete job evaluations will be commencing in the near future.

The SONG local did not want to wait for the completion of the process to give its members the increase that they feel they are entitled to now. The Local contends that since the job women of the local are performing is of equal value to that performed by men, the employer should recognize the discriminatory practice and pay them accordingly.

E. Issues Relating to Excluded Women

Although the Pay Equity Commission is adamant that the Act will eliminate the portion of the wage gap begot by the undervaluation of women's work, employers, unions, and the Pay Equity Coalition disagree. They state that the extent of exclusions is too vast and only a modicum of women in the workforce will benefit from the legislation.

The Pay Equity Commission, in fulfillment of its obligation under Section 33(2)(e) of the Act, have reported on the sectors of the economy that employ predominantly female employees^{lv}. The Commission

has identified 9 sectors falling into this category: childcare, health care, community and social services, libraries, leather, textile and apparel manufacturing, retail, personal services and tourism. In these industries where there are no male comparators to women's work, and as such, they are excluded from the benefits of the Act. Apart from the geographic division definition of establishment, limiting comparisons within a single establishment, as discussed in Step One of Part A of this section, this situation is also a result of two additional factors.

The small size of the enterprises is one factor. Many women employed in these enterprises are excluded from the Act as male comparators simply do not exist. Childcare centres would be an example of this situation. Childcare workers employed by a municipality would have male comparators within the organization. However, those childcare workers employed by a small private daycare would likely find themselves without a male job class with which they could compare. Smaller, private centres are common in Ontario, and employ the majority of childcare workers.

The other factor resulting in the exclusion of women from pay equity under the Act is the employment of women in organizations, large or small, that employ only women. Manufacturing, larger retail outlets and smaller clinics both in the health care sector and community and social services, are examples of these types of organizations. Often women work in occupations that tend to contain a very high proportion of women as a result of occupational segregation. If the organization that employs these women has only one function, male comparators are unlikely to exist.

The scope of this problem is vast. The Commission has calculated the number of women that are exempt from the benefits of the Act due to a dearth of male comparators to be 867,000, approximately 50 per cent of the 1,715,000 women in the Ontario workforce covered by the Act^{lvi}.

The Commission has suggested a number of options to address the problem. Four of the options would rely on additional means of identifying appropriate male comparators for female job classes. This could be done by either reducing the 60 per cent and 70 per cent job class thresholds to make it easier to find comparators, by allowing comparisons anywhere within the organization, by making proportional value comparisons via wage lines and/or by proxy comparisons outside the organization. The fifth option deals with determining pay equity adjustments without using comparators by making average adjustments either in the establishment or across Ontario^{lvii}. The Report recommends that the Pay Equity Commission define the parameters for the implementation of these options, determining how each could be implemented and conducting pilot tests of each option in various sectors^{lviii}.

Women working in enterprises that employ less than 10 employees are not included in the purview of the Act. This provision excludes 10 per cent of the women in the Ontario workforce from legal assurance of pay equity. In the retail sector, for example, 84 per cent of employers employ less than 10 persons. Library employees are 90 per cent women, and 64 per cent of the province's libraries have less than 10 employees^{lix}.

The Pay Equity Coalition has been lobbying against exclusions and limited comparisons since well before the legislation was adopted. However, their warning that the Act would not work unless this issue was addressed, fell on deaf ears. The Coalition holds the government responsible for the thousands of women excluded from the legislation. Although the Act requested that predominantly female sectors of

the economy be investigated and reported on by the Commission, the Pay Equity Coalition feels that they would never have gone to the length and effort that they eventually did had the Coalition not put pressure on them. Now that the report is published, the Coalition wants immediate action.

Following the study on predominantly female sectors, the Pay Equity Coalition made a submission to the Commission^k. The Coalition made several recommendations in the three categories: those requiring an amendment to the Pay Equity Act, those dealing with the public sector, and those requiring other legislative changes. The recommendations included: extension of the Act to include employers with less than ten employees; expansion of the definitions of establishment, employer and employee; inclusion of casual workers; allowance for proportionate comparisons when equal value comparisons are not available; allowance for women who can't find male comparators to apply to the Tribunal for adjustments; women presently excluded should receive adjustments on the same schedule as those women who are presently covered; establishment of a pay equity fund; library workers be considered the employees of the funding municipality; day care workers throughout the province should be paid the same by comparing them to day care workers in municipalities or community colleges; visiting homemakers should be compared to other homemakers with existing comparators; the implementation of strong employment equity legislation; more protection for part-time workers; increase the minimum wage to \$8.30 per hour; and, the removal of legal obstacles to organizing women into unions.

The Minister of Labour has given the Pay Equity Commission the mandate for studying further the issue of excluded women, making further recommendations in the matter and initiating pilot studies to investigate the value of those options earlier proposed. The findings and further recommendations will be presented to the Minister in late December of this year. It will be at this time that the public will be made aware of the actions, if any, that will be taken to address the issue of excluded women, an issue that may well determine the success of pay equity in Ontario.

IV. OUTCOMES: WILL IT WORK?

Despite the many issues and problems facing labour and management in the implementation of pay equity, a number of settlements have been reached. This section examines two of these success stories, summarizing the key elements of the settlements and outlining what are felt to be the reasons for the early completions. A discussion of the general impact of pay equity legislation and negotiations on labour-management relationships, inter-union relationships and intra-union relationships will follow. The section concludes with comments on the pay equity implementation process in Ontario and the future that lies ahead.

A. Two Success Stories

C.U.P.E. and a number of employers have managed to navigate to the end of the difficult road of pay equity implementation. C.U.P.E. has reported eleven settlements with various employers and locals across Ontario^{lxi}. Two of these settlements are worthy of special note.

C.U.P.E. Local 1734 and the York Region Board of Education have reached a pay equity settlement that was subsequently negotiated into the collective agreement binding the two parties for three years^{lxii}. Local 1734 is a female-dominated local with 600 members. The settlement will see adjustments in the amount of \$2.3 million dollars made to the vast majority of the members. The uniqueness of this settlement results from the retroactivity of the adjustments to January 1, 1989. All adjustments will be made immediately in one lump-sum payment and will not be paid in intervals as set in the Act.

In this settlement, various female-dominated positions in the bargaining unit were compared with male-dominated positions outside the bargaining unit to establish the adjustments to be made. The amounts of the adjustments range from \$1.11 to \$4.86 per hour. In the process, 85 elementary school head secretaries were compared to audio-visual technicians. The secretaries will receive the largest hourly adjustments amounting to \$4.86 per hour. As a result of comparisons made with maintenance foremen, twenty high school head secretaries receive \$4.83 more per hour. Eleven assistant head secretaries doing work valued equivalent to maintenance persons receive hourly wage increases of \$3.01. These adjustment examples and those shown in Table 1, were calculated by comparing the value of the women's jobs with male comparators, most of whom were in custodial positions.

To simplify the procedure, the employer and C.U.P.E. local divided the implementation process into three parts: system of comparison and role of the rating committee; role of the pay equity bargaining committee; and, schedule of pay adjustments. A joint rating committee was established consisting of five representatives of C.U.P.E and three employer representatives. Using the questionnaire of the GNCS, a hybrid version of the existing Touche Ross plan and the C.U.P.E system agreed to early in 1988, was completed by each member of the bargaining unit. The jobs in both this female-dominated local and another male-dominated local were rated by the committee. The ratings were posted and an appeal process was developed for members unsatisfied with the ratings their jobs had been given. In the second part, up to five members were appointed by the Board and the local to form a bargaining committee. Once the job rating process was completed, the information needed to complete the process was

negotiated and outlined, and an agreement was reached on the cross-comparison system to be used. The bargaining committee then met and agreed upon: male and female job classes; value of compensation of the job classes; definition of establishment; appropriate male job class comparators for each female job class; grade point ranges to be used; and, the date of the first wage adjustment and targeted date for the final adjustments. The third part consisted of the negotiation of a wage adjustment schedule by the same committee. Once completed, the agreements reached in each of the three parts of the process were sent to the general membership for ratification.

C.U.P.E. Local 1477 and the Perth County Board of Education have also reached an early settlement^{lxiii}. Local 1477 has one bargaining unit which is female-dominated. The employer and local agreed upon 11 job classes, ten of which are female-dominated (clerk/typist, receptionist, stenographer, purchasing secretary, accounting clerk, senior elementary secretary, senior purchasing secretary, enrollment and assessment Clerk, and library/film technician) and the eleventh is male-dominated (audio-visual technician).

Table 1 - Wage Adjustments and the Comparators

Female-Dominated Jobs	Male-Dominated Jobs	Pay Equity Increase
Clerical Office Services	Booking System Operator	\$1.11
Clerical 2- Human Resources A.V. Assistant Acct. Clerk	Caretaker 1	\$1.62
Payroll Clerk A	Caretaker 2	\$1.87
Computer Lab Asst.		\$2.36
School Secretary		\$2.36
Payroll Clerk B	Maintenance	\$1.95
Clerical 3	Person 2	\$2.52
Devel Handicap Asst.		\$1.18
Asst. Head Secretary		\$3.01
Health Asst.		\$1.18
Child Care Worker		\$0.93
Head Secretary - Elementary School	A.V. Technician	\$4.83
Head Secretary	Maintenance Foreman	\$4.83

Source: Equal Times, C.U.P.E. Newsletter #3.

Even before the Act was enacted, C.U.P.E. explained the gender-neutral job evaluation program to the employer. Once the legislation became effective, C.U.P.E. proposed the system to the Perth County Board of Education. The GNCS was agreed upon and the two parties began the evaluations immediately. Evaluation results showed that two of the female-dominated job classes, the library film technician and the head secretary, were equal to the male-dominated audio-visual technician. The other eight female-dominated job classes were valued lower than these three jobs. Two options were available to the parties: going outside the bargaining unit to find comparators in other units; or, clustering the eight job classes into one "group of jobs"^{lxiv}. The parties agreed to the "group of jobs" approach, as per Table 2.

Table 2 - The “Group of Jobs” Approach

Clerk Typist *	
Receptionist *	
Stenographer *	
Purchasing Secretary *	
Accounting Clerk *	
Senior Elementary Secretary	
Senior Purchasing Secretary *	
Enrollment and Assessment Clerk *	
Secondary Head Secretary *	
Library/Film Technician	
Audio-Visual Technician (M) *	Group of jobs compared to audio visual job

* Treated as one group

Source: Equal Times, CUPE Newsletter #2

As the difference between the Secondary Head Secretary and the Audio-Visual Technician is 65 cents per hour, the hourly wage of each job class in the group of jobs will increase by 65 cents. This will maintain the difference and internal relativity between the jobs while allowing for a pay equity increase. The parties agreed that all adjustments will be made on January 1, 1990.

B. Reasons for Early Settlement

The ability to reach an early settlement can be attributed to various reasons. First, the parties commenced the implementation process early in 1988. Local 1477 and the Perth County Board of Education went so far as to anticipate the legislation, actually discussing the GNCS before the Act became law. Neither group lost any time but dove into the process in a timely manner. Secondly, both establishments enjoyed what were thought of as good labour-management relations. The relationships were mature and the parties knew and understood each other. Another reason going hand in hand with the state of pre-existing

labour-management relations was the attitudes of the parties towards pay equity. Both parties were serious and sincere in their approach to pay equity implementation which facilitated co-operation. In both situations, issues such as information sharing were not a hindrance to negotiations. Information necessary to the pay equity implementation process was provided, unnecessary information was not requested. The choice of a GNCS was another reason for the ability to reach a timely settlement. Neither of the two systems were "customized" specifically to the organizations, consultants were not involved and the parties were not concerned with finding a "perfect" system, but rather, a system that was gender-neutral and appropriate to their situation. The use of pre-existing systems (with slight variations in the case of Local 1734) avoided lengthy negotiations to design or redesign a GNCS. All or most of these elements were evident in discussion with other employers and unions who were advanced in the implementation process. Although the implementation of pay equity is not impossible should none of these criteria exist, their presence appears to simplify the process.

C. The Effect of the Legislation on Relationships

As was alluded to earlier, the state of labour-management relations could have a direct impact on the pay equity implementation process. It is only logical that pay equity negotiations would be a continuum of pre-existing relationships, whether they be adversarial or cooperative. But what of the effect that pay equity implementation is having on labour-management relations? Are pay equity negotiations changing the way employers or unions address each other? In most of the cases the parties indicate that, although it may be too early to tell, pay equity does not appear to be having an effect on the established relationship. If the relationship was initially good, this will likely continue into the negotiation of pay equity. If the reverse is true, pay equity negotiations may exacerbate the situation but likely the parties will encounter the same type of responses as they would in any of their other negotiation activities, distrust often being foremost. Some employers and unions, however, feel that the process has had or will have a positive effect on labour-management relations. Employers believe that since unions and/or employees have had to work on job evaluations, they have learned firsthand of the types of problems the employer faces in what are normally considered "management tasks". Unions contend that employers will see that the unions have done their jobs effectively in the pay equity process and a new respect should emerge, making it easier at the negotiating table in contracts to come. Also, the pay equity process will ensure that formal or informal job descriptions are up-to-date, compensation systems are established, information is shared and intra-organizational communications (either between management and employees regarding pay equity or through negotiations with the union) are improved. Their belief is that these new and improved systems can only have a positive effect on labour-management relations. Even though these systems may only be in place for one exercise - that of pay equity - collective bargaining spin-offs resulting in benefits such as improved relations, may occur.

The pay equity implementation process appears to have had a positive impact on intraunion relations for several reasons. Through the process, the membership is able to see that the staff or elected representatives are ready and able to confront, fight and win on pay equity issues. Members see that the union is prepared, organized and focused and that this is being substantiated by positive results. Isla Peters of O.P.S.E.U. comments that pay equity has improved a "field vs. head office" feeling that occasionally existed in the regular intra-union collective bargaining relationship. Because of pay equity and the "working together" approach taken, the relationship is healthier between headquarters and the local offices. Linda

Dumbleton of C.U.P.E feels that pay equity has improved militancy within the union. She states that women who normally did not attend union meetings are now not only attending but getting directly involved, and this enthusiasm is spinning-off into other union activities such as collective bargaining itself.

Although there was some concern initially that male members would suffer or a fear of potential loss would occur because of pay equity (e.g. red-circling, lower wage increases), each of the unions report that this has not transpired within their memberships and is not expected to be a problem. As Kevin Oleksiuk of the United Steelworkers suggests, this may be due to the message that most unions promote - exploitation of any worker is not acceptable.

The impact on inter-union relationships is also felt to be, in general, positive. Unions are working together more than they have ever done before, albeit some work better together than others. Pay equity legislation has, at times, given unions the opportunity to collaborate in one common goal, something that had not been attempted up to this point. Of course, there have been occasions that have demonstrated the inabilities of some unions to work together. In these instances, it would appear that pay equity serves only to highlight the differences between the two groups.

D. Conclusion

In conclusion and in retrospect, the progress made to date in the both the introduction and the implementation of pay equity in Ontario has been substantial. Just two short years ago, an act had yet to be promulgated. Today, some Ontarian women have already received pay equity revisions and adjustments of their wages, with many more to come on January 1, 1990 and the five years that follow. Although this legislation is a not a panacea for all the problems of the undervaluation of women's work, it is a departure point. Perhaps the most vital of the Act's strengths lie in the fact that there is an Act, despite its many imperfections. The Act is allowing the scrutinization of women's work as never before and the "invisible" work of women is finally being seen. Women now exhibit a growing consciousness and are no longer fooled by arguments that the work they do is worth less. The Act has accomplished a monumental feat in a very short time. It would be illusionary to think that employers would have implemented pay equity voluntarily: many admit to this fact. Certainly, some may have considered pay equity and the justification and justice behind the premise, however, legislation was necessary to put words into action and to ensure the awareness, completeness, and seriousness required in the attempt to eliminate or reduce the inequities between men and women's wages.

Whether this legislation can reverse the systemic discriminatory trend of undervaluation of women's work remains to be seen. It will depend on the responses to a number of questions in several areas:

- (i) Will amendments be made to the Act to include those hundreds of thousands of women that are currently excluded, whether it be due to the size of the employer or because these women work in predominantly female sectors?
- (ii) Will unorganized workers become aware of the legislation and the benefits it can produce? Will the Pay Equity Commission make the effort required to inform these difficult to reach women of their rights under the Act in a manner that is understandable? Will allowances be made, either by the Minister of Labour or the Commission to establish centres that will help

women to take full advantage of the Act, by offering them the representation, information and support they will not otherwise receive? Will unorganized women, as one union representative stated, "stick up for their rights and not take pay equity lying down"^{lxv}?

Will, as the Pay Equity Commission suggests, social attitudes, beliefs and values change enough over the life of the Act to permanently capsize the traditional undervaluation of women's work? If not, will new legislation be introduced that will address this continuing problem so as not to let equal pay for work of equal value be a "one time deal"?

- (iii) Will employers, especially those in the private sector, treat the implementation of pay equity with the sincerity required to truly succeed? Will they inform and involve employees in the process, working towards a common goal? Will employers maintain pay equity in their organizations, even beyond the Act's time limits?
- (iv) Will unions continue the uphill battle of pay equity? Will they fight for its maintenance? Will unions persist in their attempt to organize those women in grossly undervalued positions so as to provide the representation that they require? Will unions strongly resist any attempts to reduce future wage increases that undermine pay equity?
- (v) Will decisions of the Tribunal uphold the purpose of the Act, defending its genuine intention and principles? Will the rulings of the Tribunal be consistent, establishing a concrete precedence for years to come? If necessary, will they push aside "upholding the integrity of collective bargaining" and decide in favour of women?

If the answer is "Yes" to each of these questions, the Pay Equity Act will work, that is, eliminate wage gaps due to the historic undervaluation of women's work. Unfortunately, it is difficult to foresee affirmative responses to a vast number of these issues.

Perhaps the prophecy of the Ontario Federation of Labour is more realistic. The Federation cautions that this legislation will work in the public and unionized private sector but not in the non-unionized private sector. The expedience of those presently involved in the process, public sector and large private sector employers, is somewhat different than those in the smaller private sector. The large employers have a "public image" to protect and wish to be viewed as a good employer. This is not always true of smaller private sector employers. This factor will make pay equity implementation much more difficult and uncertain in the small business sector.

With only months remaining until the first round of mandatory postings are due, one can only speculate as to the outcomes and success, immediate and longterm, of pay equity legislation in Ontario.

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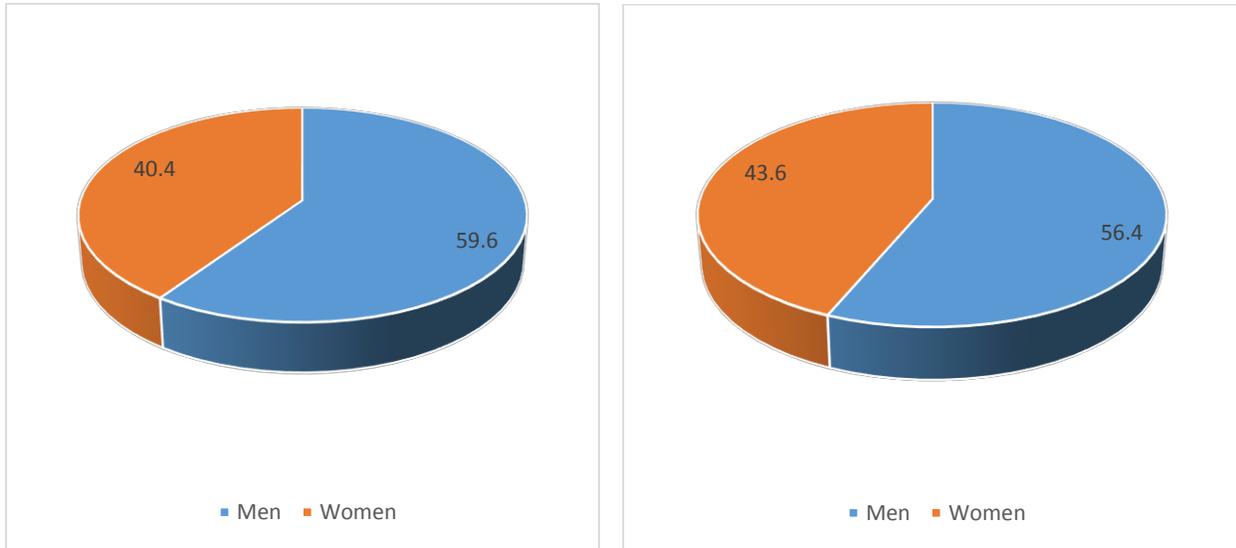
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APPENDIX A: THE WAGE GAP IN CANADA AND ONTARIO



Source: Women in the Labour Force, 1987

APPENDIX B: PAY EQUITY LEGISLATION IN CANADA: A Matrix of Comparison

	Canada	Ontario	Quebec	Nova Scotia
Legislation	Canadian Human Rights Act	Pay Equity Act	Charter of Human Rights and Freedoms	An Act to Provide for Pay Equity
Year Elected	14-Jul-77	15-Jun-87	June, 1975	25-May-88
Effective Date	1-Mar-78	1-Jan-88	June, 1975	1-Sep-88
Legislation Applies to	Federally regulated employers	All public sector employers and private sector employers with 10 or more employees	Provincially regulated employers	Civil service, corrections employees, highway workers, hospital employees, crown corporations, school boards
Female Dominated Job Classes	<ul style="list-style-type: none"> a) 70% of the occupation group if less than 100 members b) 60% of the occupation group if between 100-500 members c) 55% of the occupation group if more than 500 members 	<ul style="list-style-type: none"> a) Job class in which 60% or more are female b) Class determined by a Review Officer. Use hearings Tribunal or upon agreement of the parties. Allowances for historical incumbency and gender stereotyping consideration 	Not defined	a) 10 or more employees where 60% or more are female
Male Dominated Job Classes	<ul style="list-style-type: none"> a) 70% of the occupation group if less than 100 members b) 60% of the occupation group if between 100-500 members c) 55% of the occupation group if more than 500 members 	<ul style="list-style-type: none"> a) job class in which 70% or more are male b) a class that a review officer or tribunal deems as a male job class or where the employer and bargaining agent agree on as a male job class 	Not defined	a) 10 or more employees where 60% or more are male
Administrative Bodies	Canadian Human Rights Commission	Pay Equity Commission	Commission des droits de la personne	Pay Equity Commission
Implementation Mode	Complaint - based	Pro-active and complaint-based	Complaint-based	Pro-active
Mandatory Filing of Pay Equity Plans/Reports	No	No mandatory filing. Plans of public sector employers and private sector employers with 100 employees or more must be posted	No	Yes
Value Determination	Skill, effort, responsibility and working conditions	Skill, effort, responsibility and working conditions	Skill, effort, responsibility and working conditions	Skill, effort, responsibility and working conditions

Exceptions	Individual performance rating, seniority, red-circling, rehabilitation assignment, demotion, reassignment due to changes, internal labour surplus or shortage, geographical/regional differences	Formal seniority system, temporary training development or assignment, merit compensation plan, gender neutral red-circling, skill shortages, bargaining strength	Experience, seniority, years of service, merit, productivity, overtime	Formal seniority system, temporary training or development or assignment, merit pay plan, skills shortage causing temporary inflation
Information Sharing Provision	No	No	No	No
Implementation Dates	Effective March 1, 1976	Pay Equity Plan: Public Sector – Jan 1, 1990 Private Sector: 500 + employees – Jan 1, 1990 100-499 emp. – Jan 1, 1991 50-99 – Jan 1, 1992 10-49 emp. – Jan 1 1993 Pay Equity Adjustments: Public Sector – Jan 1, 1991 500 + employees – Jan 1, 1992 100-499 emp. – Jan 1, 1992 50-99 – Jan 1, 1993 10-49 emp. – Jan 1 1994	Effective June, 1975	6 months after pay equity, process begins (Sept 1988 or Sept., 1989, depending on employer) to determine job evaluation system; 21 months to apply the evaluation system and to compare classes; 24 months to make adjustments
Definition of Pay	Any form of payment for work performed includes salaries commissions, vacation pay, dismissal wages, bonuses, value for board, rent, housing, lodging, payments in kind, employer contributions to pension funds, or plans, long-term disability, health insurance or other	All payments and benefits paid or provided to or for the benefit of an employee	Salary and wages do not include compensation or benefits of pecuniary value with the employment	Salary or compensation does not include benefits such as value of living, residential, auto, or clothing allowances, gratuities, overtime, or payments in lieu of overtime
Wage Adjustment Time Frame	none	For the public sector, adjustments are to be 1% per year for 4 years, in the 5 th year remainder is paid. In the private sector 1% per year until pay equity is achieved	non	Adjustments divided equally over 4 successive years

	Manitoba	New Brunswick	Prince Edward Island	Yukon
Legislation	Pay Equity Act	Pay Equity Act	Pay Equity Act	Human Rights Act
Year Elected	11 Jul 85	22 Jun 89	17 May 88	12 Feb 87
Effective Date	1 Oct 85	22 Jun 89	1 Oct 88	1 Jul 87
Legislation Applies to	Civil service, every crown entity and external agency	Employees in Part 1 of the First Schedule of the Public Service Labour Relations Act	Civil service, crown corporations, university and colleges, and health and care facilities	Government of the Yukon and municipalities and their corporations, boards, and commissions
Female Dominated Job Classes	<p>a) 10 or more incumbents of whom 70% or more are women</p> <p>b) public sector employers with more than 500 employees and bargaining agents may agree on a female dominated class</p> <p>c) public sector with less than 500 employees if stated in regulations</p>	<p>a) 10 or more incumbents of whom 60% or more are women. The bargaining agent can make application to have classes with less than 10 incumbents included. Allowances for historical incumbency considerations.</p>	<p>a) 60% or more of the incumbents are women. Allowances for historical incumbency and gender stereotyping considerations.</p>	Not defined
Male Dominated Job Classes	<p>a) 10 or more incumbents of whom 70% or more are men</p> <p>b) public sector employers with more than 500 employees and bargaining agents may agree on a male dominated class</p> <p>c) in public sector with less than 500 employees if state in regulations</p>	<p>a) 10 or more incumbents of whom 70% or more are men. Allowances for historical incumbency considerations.</p>	<p>a) 60% or more of the incumbents are men. Allowances for historical incumbency and gender stereotyping considerations.</p>	Not defined
Administrative Bodies	Pay Equity Bureau	Pay Equity Bureau (representing employer only) Committee representing employers and labour to be established.	Pay Equity Bureau	Human Rights Commission

Implementation Mode	Proactive	Proactive and complaint based (limited)	Proactive and complaint based	Complaint based
Mandatory Filing of Pay Equity Plans/Reports	Yes	No	Yes	No
Value Determination	Skill, effort, responsibility and working conditions	Skill, effort, responsibility and working conditions	Skill, effort, responsibility and working conditions	Skill, effort, responsibility and working conditions
Exceptions Information Sharing Provision	Yes	Yes	Yes	No
Implementation Dates	Job evaluation development report – July 30, 1986 Pay Equity Adjustments – October 30, 1987	Phase 1 – 12 months following commencement of the Act to negotiate comparison systems and classes Phase 2 – 24 months to apply system and identify inequities Phase 3 – 28 months to make adjustments	Stage 1 – 9 months to negotiate job evaluation system and fix classes Stage 2 – 21 months to apply system and compare classes and agree on quantum of adjustments Stage 3 – 24 months to allocate wage adjustments Stage 4 – 24 months to make adjustments	Effective Jly 1, 1987
Definition of Pay	Any form of remuneration payable or benefit provided by an employer	Straight time wages and salary	All forms of pay and benefits paid or provided, directly or indirectly	Any form of payment for work performed includes salaries commissions, vacation pay, dismissal wages, bonuses, value for board, rent, housing, lodging, payments in kind, employer contributions to pension funds or plans, long-term disability, health insurance, or other
Wage Adjustment Time Frame	Up to 1% over 4 consecutive years	1% per year for 4 years	1% per year until pay equity is achieved	1% per year until pay equity is achieved

APPENDIX C: PERSONS INTERVIEWED

Brian Atkinson, Representative, Canadian Union of Public Employees, Toronto.

Dianne Amyot, Employment Equity Co-ordinator, City of Kingston. Ellen Barry, Director, New Brunswick Pay Equity Bureau, Fredericton.

Trish Blackstaffe, Senior Researcher, Communication Workers of Canada, Co-Chair of Women's Committee, Canadian Labour Congress, Ottawa.

Pat Bird, Pay Equity Coalition, Time Change Women's Employment Centre, Toronto.

Betty Conner, Office Services Section Head, Dupont Canada, Kingston Nylon Plant.

Linda Dumbleton, Representative, Canadian Union of Public Employees, Kingston.

Paul Durber, Pay Equity Director, Canadian Human Rights Commission, Ottawa.

Eleanor Holroyd, Employment Relations Officer, Ontario Nurses Association, Kingston.

Margaret Gow, Manager of Compensation, Queen's University, Kingston.

Les Guest, Acting Director of Human Resources, Queen's University, Kingston.

Gary Hoeg, President, Kingston Independent Nylon Workers, Kingston.

Ian Howcroft, Employer Relations Policy Advisor, Canadian Manufacturers' Association, Toronto.

Gordon Johnston, Site Planner, Dupont Canada, Kingston Nylon Plant.

Murray Lapp, Director of Review Services, Pay Equity Commission, Toronto.

Gordon Marshall, Personnel Services Manager, Mean Rolled Products Co., Kingston.

Margaret McCullough, Human Rights Officer, Yukon Human Rights Commission, Whitehorse.

Leslie McLeod, Legal Advisor, Pay Equity Commission, Toronto .

John Mignault, Director of Human Resources Administration, Northern Telecom, Kinston.

Keith Olecsiuk, Associate Canadian Council, United Steelworkers, Toronto.

Isla Peters, Pay Equity Advisor, Ontario Public Service Employees Union, Toronto.

Carol Phillips, Assistant to the President, Canadian Auto Workers, Toronto.



Gwen Pooley, Director of Human Resources, St. Mary's of the Lake Hospital, Member of the Pay Equity Advisory Committee, Ontario Hospital Association, Kingston.

Kathryn Running, Employment Equity Co-ordinator, St. Lawrence College, Kingston.

Carrol Anne Sceviour, Human Rights Director/Women's Issues, Ontario Federation of Labour, Toronto.

Ed Shaw, Director of Human Resources, City of Kingston.

Penny Smiley, Employment Equity Officer, Frontenac County Board of Education, Kingston.

Barry Stephens, Representative, Southern Ontario Newspaper Guild, Hamilton.

Sarah Van Dalen, Labour Relations Officer, Hotel Dieu Hospital, Kingston.

Nan Weiner, Research Manager, Pay Equity Commission, Toronto.

APPENDIX D: INTERVIEW QUESTIONS

The purpose of this interview is to explore the perspectives of various organizations on the issues surrounding the implementation of the Pay Equity Act in Ontario.

EMPLOYERS

- 1) Presently, what stage are you at in your implementation of PE?
- 2) What unions are you dealing with?
- 3) Do you have non-union employees? How are you approaching the implementation of PE for these employees?
- 4) What sort of staff training was involved for those implementing PE? Did staffing of these positions cause problems? ie no experienced people, new legislation etc.
- 5) Do/did you have up-to-date job descriptions? If not, what have you done in this area? Any problems arising out of job descriptions?
- 6) Did you combine the negotiation of PE with the collective bargaining process? Why or why not? In general, could/should it be combined?
- 7) Have you chosen a GNCS? By what process? Which one/s were chosen or which ones are being considered? Do you feel this is the most effective choice? Which type of GNCS is most effective and why? eg custom made, "big name" etc.

(If more than one union or employee groups) Do/did you negotiate for an umbrella plan? Is this/would this have been desirable? Why or why not? If not (and if applicable), how are you/did you cross-compare between bargaining units? Were there/ are there difficulties encountered/foreseen?

Could/should the Pay Equity Commission or Act have designed a GNCS that was appropriate to all industry? eg a standard GNCS for all employers.

- 8) Was information sharing with the union/s an issue? How was/is this being approached? ie little by little, all at once.
- 9) Apart from those areas already discussed, what have been the major problems in implementation to date?
- 10) What has been your involvement with the Pay Equity Commission to date ie education, research and information branches, review officers, tribunal, employee-lodged complaints etc.? Do you find them helpful? What do you see as the role of the PEC? In what areas are you satisfied and dissatisfied? Can you see any potential changes to provide a better system? Do you feel that the PEC is biased or there is potential for bias in its treatment of employers, unions, employees etc.?

- 11) Do you feel there are potential problems that could arise from the 1% annual wage adjustments that must be made until PE is achieved (up to 7 years)? eg financial impact - payroll, competitiveness, strain on organization/taxpayers.
- 12) Section 7(1)(2) of the Act says that PE, once obtained, must be maintained and nothing less than PE can be negotiated by the employer and bargaining agents. Whereas, Section 8(2) says PE may be lost due to bargaining strength. Do you see any potential problems or issue arising from these sections in the Act?
- 13) Any issues arising from "Who's the employer?"
- 14) Any issues arising from the definition of "establishment"?
- 15) Has the negotiation of pay equity had any impact (positive or negative) on the labour-management relationship within your organization?
- 16) Was it necessary to enact PE legislation? ie Would employers have done it anyway?
- 17) Will it work? ie reduce the wage gaps between male and female earnings, reduce gaps to the established objective of the Pay Equity Commission. Why or why not? If not, what changes would make it more effective?
- 18) Do you see any major weaknesses/faults within the Act? Strengths?
- 19) In the report made by the Pay Equity Commission to the Minister of Labour on sectors of the economy which are predominantly female, five options were submitted to address the issue of excluded women and recommendations were made in this regard.

What do you feel should be done in this area? ie which of the options and recommendations are the most appropriate or inappropriate and why? Could there have been other options or recommendations made?

- 20) Do you feel that the average worker is aware of the individual impact that this legislation will have on her/his wages? ie expectations. Has this been adequately addressed by the parties involved? ie unions, employers, Pay Equity Commission.
- 21) Are you minimally applying the Act or are you going beyond what is required? eg if male dominated job classes are found to be underpaid, will wage adjustments be made, employment equity, possibilities of changing employment standards etc.
- 22) (If applicable) What do you feel are the reasons that early settlements were able to be reached? ie advance planning, mature labour-management relationship, professional help (ie consultants, expert staff etc). Particulars of any settlements.

UNIONS

- 1) Presently, what stage (or stages if negotiating with more than one employer) are you at in your implementation of pay equity?

- 2) What employer(s) are you dealing with?
- 3) What sort of staff training was involved for those implementing the legislation? Did staffing of these positions cause problems? eg no experienced people, new legislation etc.
- 4) Do/did you have up-to-date job descriptions? If not, what have you done in this area? Any problems arising out of job descriptions?
- 5) Did you combine the negotiation of pay equity with the collective bargaining process? Why or why not? In general, could/should it be combined?
- 6) Have you chosen the gender-neutral comparison systems to be used? Which one/s were chosen or which ones are being considered? Do you feel this is the most effective choice? Which type of GNCS is most effective and why? eg custom made, "big name" etc.

(If more than one union or employee groups) Do/did you negotiate for an umbrella plan? Is this/would this have been desirable? Why or why not? If not (and if applicable), how are you/did you cross-compare between bargaining units? Were there/ are there difficulties encountered/foreseen?

Could/should the Pay Equity Commission or Act have designed a GNCS that was appropriate to all industry? eg a standard GNCS for all employers.

- 7) Is/was information sharing from the employer an issue? How was/is this being approached? eg little by little, all at once.
- 8) Apart from those areas already discussed, what have been the major problems in implementation to date?
- 9) What has been your involvement with the Pay Equity Commission to date ie education, research and information branches, review officers, tribunal? Do you find them helpful? What do you see as the role of the Commission? ie one of leader/director or monitor. In what areas are you satisfied and dissatisfied? Can you see any potential changes to provide a better system? Do you feel that the Commission is biased or there is potential for bias in its treatment of employers, unions, employees etc.?
- 10) Do you feel there are potential problems that could arise from the 1% annual wage adjustments that must be made until PE is achieved (up to 7 years)? eg financial impact - payroll, competitiveness, strain on organization/taxpayers.
- 11) Section 7(1)(2) of the Act says that pay equity, once obtained, must be maintained and nothing less than pay equity can be negotiated by the employer and bargaining agents. Whereas, Section 8(2) says pay equity may be lost due to bargaining strength. Do you see any potential problems or issue arising from these sections in the Act?
- 12) Any issues arising from "Who's the employer?"
- 13) Any issues arising from the definition of "establishment"?

14) Has the negotiation of pay equity had any impact (positive or negative) on the labour-management relationships, union-union relationships, intra-union relationships?

15) Was it necessary to enact PE legislation?

16) Will it work? ie reduce wage gaps between male and female earnings, reduce gaps to the established objective of the Commission. Why or why not? If not, what changes would make it more effective?

17) Do you see any major weaknesses/faults within the Act? Strengths?

18) In the report made by the Pay Equity Commission to the Minister of Labour on sectors of the economy which are predominantly female, five options were submitted to address the issue of excluded women and recommendations in this regard were made. What do you feel should be done in this area? eg which of the options and recommendations are the most appropriate or inappropriate and why? Could there have been other options or recommendations made?

19) Do you feel that the average worker is aware of the individual impact that this legislation will have on her/his wages? ie expectations. Has this been adequately addressed by the parties involved? ie unions, employers, Pay Equity Commission.

20) Are the employers that you are dealing with minimally applying the Act or are you going beyond what is required? ie if male dominated job classes are found to be underpaid, will wage adjustments be made, employment equity, possibilities of changing employment standards etc. What are your goals in this area?

21) (If applicable) What do you feel are the reasons that early settlements were able to be reached? ie advance planning, mature labour-management relationship, professional help (consultants, staff experts etc).

General particulars of most recent settlements made (one or two) or Tribunal rulings?

GENERAL QUESTIONNAIRE

1) Ontario's legislation is considered to be the most far-reaching and innovative in Canada. What are your general impressions in this regard? eg mandatory coverage of the private sector, inclusion of women only, limits of cross-comparisons, implementation deadlines/dates. Could the Act have gone farther? Did the Act go too far? Where do the strengths and weaknesses of the Act lie?

2) Will it work? ie reduce the wage gaps between male and female earnings, reduce the gap to the established objective of the Act /Commission. Why or Why not? If not, what changes would make it more effective?

3) What areas of the Act are causing problems for the parties implementing equal pay for work of equal value? eg definition of establishment, cross-comparisons, job descriptions, negotiations of pay equity plans, information sharing, who's the employer. What are those problems?

- 4) Which type of gender-neutral comparison system is the best and why? Is one "umbrella" gender-neutral comparison system within one establishment the best approach? Could/should have the Pay Equity Commission/Act designed a GNCS that was appropriate for all industry? eg a standard GNCS for all employers.
- 5) In the report made by the Pay Equity Commission to the Minister of Labour on sectors of the economy which are predominantly female, five options were submitted to address the issue of excluded women and recommendations in this regard were made. What do you feel should be done in this area? eg which of the options and recommendations are the most appropriate/inappropriate and why? Could there have been other options/recommendations given?
- 6) Do you feel there are potential problems that could arise from the 1% annual wage adjustments that must be made (up to 7 years)? ie financial impact - payroll, competitiveness, strain on the organization/taxpayers.
- 7) Section 7(1)(2) of the Act says that pay equity, once obtained, must be maintained and nothing less than pay equity can be negotiated by the employer and bargaining agents. Whereas, Section 8(2) states that pay equity may be lost due to bargaining strength. Do you see any potential problems or issues arising from these sections?
- 8) What do you see as the role of the Pay Equity Commission? ie one of leader/director or monitor? Are you satisfied or dissatisfied with the various branches/services of the Commission? eg education, research and information branches, review services, the Tribunal. Can you see any potential changes to better the system? Do you feel that the Pay Equity Commission is biased or there is potential for bias in its treatment of employers, unions, employees etc.
- 9) What impact, if any, do you feel that pay equity is having on labour-management relations, union/union relations, intra-union relations?
- 10) Do you feel that the average worker is aware of the individual impact that this legislation will have on her/his wages? Has this been adequately addressed by the parties involved? ie the union, employer, Pay Equity Commission.
- 11) Are you aware of recent settlements? To what do you attribute these settlements? eg advance planning, mature labour-management relationships, professional help (consultants, staff experts etc).
- 12) Do you think that employers will go beyond pay equity to address all inequities within the establishment?

END NOTES

ⁱ Canada was a member country of the International Labour Office. The convention of the Office promoted the principle of equal pay for work of equal value regardless of sex.

ⁱⁱ Arrowsmith, David. *Pay Equity: Legislative Framework and Cases*, Kingston, Ont., Industrial Relations Centre, Queen's University, 1986, p.1.

ⁱⁱⁱ This type of legislation was enacted in Ontario, 1951; Saskatchewan, 1952; B.C., 1953; Manitoba and Canada, 1956; Alberta and Nova Scotia, 1957; P.E.I., 1959; New Brunswick, 1961; Quebec, 1964; N.W.T., 1966; Nfld. 1971, and the Yukon, 1973. For details see Maricotte, Marilee, *Equal Pay for Work of Equal Value*, 1987, School of Industrial Relations, Queen's University, Kingston, Ont., Appendix C, pp.84-86.

^{iv} 4 Differentiation in wages paid to female and male employees performing the same, similar or substantially similar work is prohibited in:

- Section 6 of the Individual Rights Protection Act of Alberta;
- Section 40 of the Employment Standards Act of Manitoba;
- Section 7 of the Human Rights Act of British Columbia;
- Section 37.1 of the Employment Standards Act of New Brunswick;
- Section 10 of the Human Rights Code of Newfoundland, Section 55 of the Labour Standards Code of Nova Scotia;
- Section 33 of the Ontario Employment Standards Act;
- Section 7 of the Human Rights Act of Prince Edward Island;
- Section 17 of the Labour Standards Act of Saskatchewan;
- Section 43 of the Employment Standards Act of the Yukon; and
- Section 6 of the Fair Practices Act the Northwest Territories.

At the federal level and in Quebec, equal pay for equal work is not differentiated from equal pay for work of equal value and is therefore found in the Human Rights Act and Charter of Human Rights and Freedoms, respectively. Equal pay for equal work is confined to the same establishment except in British Columbia, Prince Edward Island and the Northwest Territories. With the exception of the Northwest Territories, Alberta and Manitoba, all jurisdictions have specified the criteria with which the same, similar or substantially similar work is to be measured: skill, effort and responsibility - all: working conditions - New Brunswick, Newfoundland, Nova Scotia, Ontario, Prince Edward Island, Saskatchewan and the Yukon; education - Prince Edward Island.

The reasonable factors that justify differences in pay also differ between jurisdictions. Alberta, Manitoba, Nova Scotia, British Columbia, Ontario, Prince Edward Island, the Yukon and the Northwest Territories state that any factor other than sex that normally justifies differences is a reasonable factor. Newfoundland, Saskatchewan, British Columbia, Ontario, Prince Edward Island, the Yukon and New Brunswick permit "seniority" and "merit" and, "production" is allowed by New Brunswick, British Columbia, Ontario, Prince Edward Island and the Yukon. For additional information regarding equal pay for equal work legislation in Canada, see *The Current Industrial Relations Scene in Canada*, 1988, Kumar, Coates and Arrowsmith, eds., Industrial Relations Centre, Queen's University, Kingston, Ont, pp. 392-394.

^v In *The Current Industrial Relations Scene in Canada* (1988), affirmative action is defined as "any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, colour, religion, sex, ethnic or national origin, or mental or physical disability" (p. 756), and, employment equity is "the development and implementation of employment practices and special programs that are designed to improve the status of certain groups of employees such as women, disabled persons, aboriginals and visible minorities" (p.768).

Coates refers to affirmative action as the "measure needed to make employment equity possible". For further information in this regard, see *Employment Equity: Issues, Approaches and Public Policy Framework*, Coates, Mary Lou, 1986, Industrial Relations Centre, Queen's University, Kingston, Ontario.

^{vi} Each government in Canada has enacted legislation that allows for special programs, plans and arrangements to be adopted or carried out by employers to provide equal opportunity in employment and to eliminate, reduce or prevent disadvantages (e.g. employment) to individuals or groups based on, amongst others, sex. These are found in:

- Canadian Human Rights Act, section 15;
- Employment Equity Act, Canada, section 2;
- Individual's Rights Protection Act, Alberta, section 13;
- Human Rights Act, British Columbia, section 19(2);

- Manitoba Human Rights Code, section 11;
- New Brunswick Human Rights Act, section 13;
- Newfoundland Human Rights Code, section 15.1;
- Nova Scotia Human Rights Act, section 19;
- Ontario Human Rights Code, section 13;
- Prince Edward Island Human Rights Act, section 19;
- Charter of Human Rights and Freedoms, Quebec, sections 86.1 –86.7;
- Saskatchewan Human Rights Code, section 47;
- Fair Practices Act, Northwest Territories, section 14, Human Rights Act, Yukon, section 12.

Of these, only the Canadian government has initiated pro-active programs. All other jurisdictions encourage voluntary compliance. See *The Current Industrial Relations Scene in Canada*, *ibid.*, p. 398-402.

^{vii} The definition of comparable worth, used by our American counterparts, and equivalent worth, the choice of Quebec, are synonymous with that of pay equity or equal pay for work of equal value in Canada.

^{viii} As defined by The Pay Equity Act of Manitoba. This definition was chosen because of its comprehensive scope, concurrent with other Canadian legislation.

^{ix} Systemic discrimination is defined as "a term referring to all actions which result in the denial of opportunity, privileges, or basic human rights on the basis of sex" in the Green Paper on Pay Equity, 1985. Abella (1984) describes discrimination as meaning the "practices or attitudes that have, whether by design or impact, the effect of limiting an individual's or group's right to opportunities generally available because of attributed rather than actual characteristics" and, that the discrimination can be "motivated by an intentional desire to obstruct someone's potential [or] the accidental by-product of innocently motivated practices or systems"(p.2). Abella refers to the later form as systemic discrimination.

^x *Women in the Labour Force, 1986-87 Edition*, Labour Canada 1987, Minister of Supply and Services Canada.

^{xi} The Pay Equity Commission, January 1989, Report to the Minister of Labour by the Ontario Pay Equity Commission; on Sectors of the Economy which are Predominantly Female as Required under the "Pay Equity Act", Section 33(2)(e), p.2

^{xii} There are basically four types of job evaluation systems: Ranking is the placement of jobs into an order based on the importance of the job in the organization.

Classification or Grade Description fits jobs into a categorized hierarchy based on established criteria.

Characteristics of each job are compared to the characteristics of this hierarchy to determine their relative value.

Factor Comparison involves the comparison of jobs to "benchmark" jobs based on an established set of weighted factors.

Point Methods or Factor Point Methods require a list of factors and their relative weighting and value (eg percentages) to be determined. Each factor is then broken down into levels or degrees, the lowest level equal to the least of possible scores within in the organization and the highest level equal to the highest of possible scores. Points are then given each level following either an arithmetic or geometric progression. Jobs are then evaluated by using the system to determine their total point worth and thus, relative worth.

For an indepth discussion of job evaluation systems, see *Job Evaluation Systems: Concepts and Issues*, Lorna Kaufman, 1986, Industrial Relations Centre, Queen's University, Kingston, Ont.

^{xiii} Ontario Ministry of Labour, *Equal Pay for Work of Equal Value*, Toronto, 1976, p.32.

^{xiv} Appendix C provides a list of the persons interviewed for the various sections of this paper. Appendix D contains some of the questions asked the various parties interviewed in four categories: the Pay Equity Commission, Employers, Unions and General.

^{xv} For the civil service, corrections employees, highway workers and employees of the Victoria General Hospital and Nova Scotia Hospital, the pay equity process begins September 1, 1988 (Section 11(1)). For employees of Crown Corporations, hospitals other than the two named earlier, and school boards, the process starts September 1, 1989 (Section 11(2)).

^{xvi} The Government of Newfoundland/Labrador announced a pay Equity Program on April 8, 1988 involving five public sector unions: The Association of Allied Health Professionals, the International Brotherhood of Electrical Workers, The Canadian Union of Public Employees, The Newfoundland Association of Public Employees; and the Newfoundland and Labrador Nurses' Union. The agreement to implement pay equity was amended into a clause in the existing collective agreements. The Pay Equity Steering Committee consisting of twenty members, equally represented by labour and management, 50 per cent of which are women, will act as the negotiator, administrator and enforcer of pay equity implementation.

^{xvii} *Equality at Work*, Manitoba Pay Equity Bureau, Winnipeg, Man., v. 4, no. 1, April 1989, vp.6-7.

^{xviii} The establishments to which the Acts apply are cited in Manitoba – Section 3 (definitions of “employers” to which the Act applies are given in Section 1 with Schedule A naming the external agencies).

Prince Edward Island – Section 3 (definitions in Section 1(k)).

New Brunswick – Section 3 (definitions in Section 1(1)).

Nova Scotia – Section 4(1) (definitions in Section 3(1)).

Yukon – Section 4(1) (definitions in Section 3(1)).

^{xix} Equal Pay for Equivalent Work, Without Discrimination, Commission des droits de la personne, 1980, Bibliotheque nationale du Quebec, Montreal.

^{xx} Ontario Ministry Responsible for Women's Issues, 1985, Green Paper on Pay Equity, p. 29.

^{xxi} There are exceptions, however. In the federal jurisdiction, the Federal Contractors Program requires employers with more than 100 employees to have an employment and pay equity plan if they wish to bid on contracts to provide services or goods to the government valuing \$200,000 or more. A similar program was introduced by the Quebec cabinet in September 1987 for those employers with over 100 employees bidding on contracts valued at 100,000 or more. The Yukon does not have a similar program.

^{xxii} There is a complaint process in New Brunswick, albeit very limited. The process allows bargaining agents to file an objection with the Pay Equity Bureau if the agent believes that female-job classes with less than 10 incumbents should be included in the process.

^{xxiii} As defined in Section 1 of the Ontario Act, New Brunswick (Section 1(1)); Nova Scotia (Section 3(1)(b)); Manitoba (Section 1); and Prince Edward Island (Section 1 (c)) have similarly defined "job Classes" (class, classification). Quebec, the Yukon and the federal legislation do not provide a definition.

^{xxiv} Ontario, Section (1); Manitoba, Section 6(1); Nova Scotia, Section 13(5); Prince Edward Island, Section 7(1); New Brunswick, Section 1(2); Yukon, Section 14(3); federal, Section 11(2) (with Sections 3 through 8 of the guidelines defining these factors). In Quebec, the Charter does not state the factors to be considered. The Commission des droits de la personne, however, suggests these four factors in Equal Pay for Equivalent Work, Without Discrimination (1980).

^{xxv} See Guideline number 11 of the Ontario Pay Equity Commission's Implementation Series.

^{xxvi} Although exclusions are not specified in the Manitoba Pay Equity Act, Pay Equity in Manitoba: A Discussion Paper (1988) explains that the definition of "pay equity" in this Act states that it is “based primarily on the relative value of the work performed”, thus leaving the interpretation and application of primarily up to the employer and bargaining agent (p. 28).

^{xxvii} Pay equity plans must be established and posted even for those job classes that are all male. These are "abbreviated plans" that are very simple stating the name of the employer, the bargaining agent, and the number of employees. This will be elaborated upon if it is necessary to use these male employees as a comparator in the future.

^{xxviii} This may include duties such as preparing and maintaining statistics, providing guidelines, and other related duties as necessary or directed by the Minister. Reporting in Ontario is annually, however, New Brunswick, Prince Edward Island, and Nova Scotia require that a report be sent to the Minister responsible at least once every six months.

^{xxix} More commonly called the "Chairperson" of the Hearings Tribunal. Currently, Beth Symes is Chairperson.

^{xxx} There are presently three deputy presiding officers appointed. These positions are commonly called "Vice-chairpersons". Currently, these positions are held by Ralph Palumbo, Janis Sarra and Kevin Burkett.

^{xxxi} There are presently four persons appointed to the panel positions. Two of these are representatives of "labour" (Geri Sheedy, Susan Genge) and two of "management" (Sharon Laing, Donald Dudar).

^{xxxii} The Pay Equity Commissioner is responsible for the civil service (Section 12(1)(2)) and the Pay Equity Officer is responsible for the entity or agency (Section 17(1)(2)).

^{xxxiii} This point is not evident in the Act, however, it is explained in Pay Equity in Manitoba: A Discussion Paper (1988).

^{xxxiv} Section 19(1) of the Act reads:

A bargaining agent that represents an employee or group of employees in a job class (a) in which there are fewer than ten incumbents, and (b) in respect of which the job evaluation system as referred to in subparagraph 11(1)(a)(i) has not been applied, may in accordance with the regulations and within the period of time established by the regulations, file an application with the Bureau maintaining that the job class of the employee or the group of employees is a female-dominated class and that the employer has not taken such action as may be necessary to implement pay equity in relation to the job class of the employee or the group of employees.

^{xxxv} The term "pay" is used in this paper to include all of the terms chosen by the various jurisdictions. These are "compensation", Ontario (Section 1 (1)); "wages", Manitoba (Section 1); "pay", Nova Scotia (Section 3 (1)(o));

"wages, Prince Edward Island (Section 1 (m)); "pay", New Brunswick (Section 1(1)); "wages", the Yukon (Section 14 (5)); "salary and wages", Quebec Sections 56(2) and 90); and "wages", Canada (Section 11 (6)).

^{xxxvi} A discussion of this point is found in Pay Equity at Work; A Discussion Paper, Manitoba Pay Equity Bureau, November 1988, pp.27-28.

^{xxxvii} Ontario, Section 9(1); Manitoba, Section 7(1)(2); Nova Scotia, Section 15(3); Prince Edward Island, Section 9(1)(2); New Brunswick, Section 9 (1); Yukon, Section 14(5); Federal, Section 11(5).

^{xxxviii} The compliance requirements for public sector employers concerning wage adjustments are outlined in Equal Pay for Work of Equal Value, The Yukon Human Rights Commission, Whitehorse, Yukon.

^{xxxix} Should adjustments at 1% for four years not cover the total of the adjustments to be made, in the fifth year, the employer must make up the total amount (e.g. if total adjustments to be made are 7% –Year 1: 1%, Year 2: 1%, Year 3: 1%, Year 4: 1%, Year 5: 3%). This is explained in Guideline No. 14 of the Implementation Series.

^{xl} Also explained in Guideline 14 of the Pay Equity Commission's Implementation Series.

^{xli} Pay Equity in the Workplace: Questions and Answers, The Pay Equity Commission, Toronto, Ont. 10.

^{xlii} For a more indepth discussion of this issue see Equal Pay for Equivalent Work; Without Discrimination (1980) of the Commission des droits de la personne, pp. 87-93.

^{xliii} Pay Equity in Manitoba; A Discussion Paper (1988), p.55.

^{xliv} Pay Equity Commission, Implementation Checklist, see Appendix E.

^{xlv} As discussed in the first section of this paper, Section 1(1) of the Act defines "establishment" rather than "employer".

^{xlvi} The decision was made May 11, 1989 under Pay Equity Hearings Tribunal file number 0003-89.

^{xlvii} Guideline 5 of the Implementation Series.

^{xlviii} Of the 10 employers interviewed that were responsible for January 1, 1990 posting, only 4 had actually reached this point.

^{xlix} Ed Shaw, Director of Human Resources for the City of Kingston, during a seminar at Queen's UOniversity on March 10, 1989.

^l Section 9 (2) of the Act states that employers may not intimidate, coerce, penalize or discriminate against a person for exercising a right, complying with a requirement or participating in a proceeding under the Act.

^{li} Guideline number 8 of the Implemenation Series.

^{lii} Each of these decisions falls under Pay Equity Hearings Tribunal file number 0001-89. Decisions were dated April 25, May 11 and June 30, 1989.

^{liii} This decision, Pay Equity Hearings Tribunal file number 0003-89, was released July 6, 1989.

^{liv} Prince Edward Island, Nova Scotia and New Brunswick have clauses prohibiting the combination of collective bargaining and pay equity negotiation.

^{lv} Report to the Minister of Labour by the Ontario Pay Equity Commission: on Sectors of the Economy which are Predominantly Female as Required under the "Pay Equity Act", Section 33(2)(e). he Pay Equity Commission, January, 1989.

^{lvi} Ibid., (p. 5)

^{lvii} Ibid., (pp.70-89)

^{lviii} Ibid., (pp.90-97)

^{lix} Ibid., (pp.27, 34)

^{lx} The Pay Equity Coalition's Bringing Pay Equity to those Presently Excluded from Ontario's Pay Equity Act, 1988.

^{lxi} These are reported in C.U.P.E.'s pay equity newsletter Equal Times, a "how-to newsletter on pay equity for C.U.P.E. Activists across Ontario" (Newsletter #1). At the time of the writing of this paper, four newsletters had been released. The three most recent give a brief outline of the individual settlement cases.

^{lxii} Equal Times, Newsletter #3. *ibid.*

^{lxiii} Equal Times, Newsletter #2, *ibid.*

^{lxiv} As mentioned in an earlier section, the Act (Section 6(6)) allows for job classes to be arranged into asroup of jobs if 60 per cent or more of the employees in the group are female.

^{lxv} Gary Hoeg, President of the Kingston Independent Nylon Workers.



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