

Male-Female Pay Inequity and Public Policy in Canada and the U.S.

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Article abstract

This paper provides a detailed review of the empirical studies that have attempted to disaggregate the observed earnings differentials between men and women into discriminatory and non-discriminatory components. It also examines the existing public policy on equal pay including the equal value/comparable worth concept. A U.S.-Canada perspective is used to see if the two countries have dealt differently with the problem they commonly face.

Male-Female Pay Inequity and Public Policy in Canada and the U.S.

Naresh C. Agarwal

This paper provides a detailed review of the empirical studies that have attempted to disaggregate the observed earnings differentials between men and women into discriminatory and non-discriminatory components. It also examines the existing public policy on equal pay including the equal value/comparable worth concept. A U.S.-Canada perspective is used to see if the two countries have dealt differently with the problem they commonly face.

In the last three decades, both Canada and the U.S. have witnessed a significant shift in the sex-composition of their labor force. Over the period 1951-80, the female share of the civilian labor force increased from 30.7 percent to 42.6 percent in the U.S., and from 22.2 percent to 40.1 percent in Canada¹. While the issue of the earnings gap between men and women has long existed, the changing sex-composition of labor force has brought it to the forefront. In recent years, a significant controversy has emerged on this issue, particularly surrounding two questions. One relates to the discriminatory nature of the observed earnings differentials between men and women and the other to the type of public policy needed to deal with it.

A considerable amount of literature has appeared in recent years on the above two questions. The present paper is essentially an in-depth review of

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¹ The change in the sex-composition of labor force has resulted from the opposite trends in the labor force participation (LFP) rates of men and women. During 1951-80 in the U.S., the LFP rate of women increased from 34.6 percent to 51.6 percent while that of men declined from 86.5 percent to 77.5 percent. Similarly in Canada, over the same period, the LFP of women increased from 24.2 percent to 50.3 percent and that of men declined from 84.1 percent to 78.3 percent. Data Sources: For the United States, the 1951 figures were taken from *Handbook of Labor Statistics*, Washington, U.S. Department of Labor, 1978, p. 33; and the 1980 figures were computed from the monthly data provided in *Employment and Earnings*, vol. 28, no. 2, Washington, U.S. Department of Labor, 1981, p. 134. For Canada, the 1951 figures were taken from *Historical Estimates of the Canadian Labor Force*, by F.T. DENTON and S. OSTRY, Ottawa, Dominion Bureau of Statistics, 1967, p. 27; and 1980 figures were computed from the 1980 monthly issues of *Labor Force Information*, Ottawa, Statistics Canada, 1980.

this literature with a view to identify any answers that seem emerging, issues that remain unresolved and future research that is needed. The paper is organized in three parts. The first part examines the empirical studies that have attempted to disaggregate the observed earnings differentials between men and women into discriminatory and non-discriminatory components. This will help us to understand the nature and the extent of the problem of pay inequity women face. In the second part, the emerging issues are discussed along with the new initiatives in public policy that have been recently suggested. A U.S.-Canada perspective is employed throughout the paper to see if the two countries have dealt with any differently the problem they commonly face.

MAGNITUDE OF PAY INEQUITY

The issue of pay inequity between men and women has been discussed in academic journals since the turn of the century. Infact the following classic case appeared in one of these early writings:

“John Jones earned good wages from a firm of outfitters by braiding military tunics. He fell ill and was allowed by the firm to continue his work in his own home. He taught his wife his trade, and as his illness became gradually more severe she did more and more of the work until presently she did it all. But as long as he lived it was taken to the firm as his work and paid for accordingly.

When, however, it became quite clear, John Jones being dead and buried, that it could not be his work, Mrs. John Jones was obliged to own that it was hers, and the price paid for it by the firm was immediately reduced to two-thirds of the amount paid when it was supposed to be her husband’s.”²

Despite the long concern with the issue of pay inequity, systematic empirical studies are of recent origin. Two overall methodologies can be employed to measure pay discrimination against women³. The first method may be called the sampling approach. It involves a comparison of earnings between homogeneous samples of men and women, that is, men and women holding equal jobs within the same establishment, and having equal qualifi-

² Millicent G. FAWCETT, “Equal Pay for Equal Work”, *Economic Journal*, vol. 28, March 1918, pp. 1-6. Also see F.Y. EDGEWORTH, “Equal Pay to Men and Women for Equal Work”, *Economic Journal*, vol. 32, December 1922, pp. 431-457; Eleanor F. RATHBONE, “The Remuneration of Women’s Services”, *Economic Journal*, vol. 27, March 1917, pp. 55-68.

³ The implicit assumption underlying both methodologies is that men and women have equal access to all occupations which in turn assumes equal opportunities to acquire qualifications (education, training and the like) necessary to enter such occupations. The implications of these assumptions for the validity of pay discrimination estimates are discussed later in the paper.

cations, performance and other wage determining characteristics. Such homogeneity did in fact obtain in the Jones case cited above, but it is highly unlikely in most samples of male and female labor force. The second general method of measuring pay discrimination — the one that most empirical studies have employed — may be called the adjustment approach. It starts out by computing female to male gross earnings ratio from the raw data. These ratios are then adjusted for differences in work-productivity related factors between the male and female groups. The adjustments can be made by using distribution equalization indices⁴ or multiple regression analyses⁵. The extent of pay discrimination is then inferred from the adjusted earnings ratio, or more specifically from the residual earnings differential.

Using one or the other adjustment method, a number of empirical studies have provided estimates of pay discrimination in Canada and the U.S. For the two countries separately, a detailed summary of each study is provided in Table 1⁶. The summary shows gross (raw) and net (adjusted) earnings differential between males and females, work-productivity factors for which adjustments were made, and data base. As explained above, the

4 Some of the early studies employed distribution equalization indices in computing female to male adjusted earnings ratio. See Henry SANBORN, "Pay Differences Between Men and Women", *Industrial and Labor Relations Review*, vol. 17, July 1964, pp. 534-550; Sylvia OSTRY, *The Female Worker in Canada*, Ottawa, Information Canada, 1968. Two alternative indices may be used,

$$\frac{e_f q_f}{e_m q_f} \quad \text{or} \quad \frac{e_f q_m}{e_m q_m} \quad \text{where}$$

e_m and e_f are the mean earnings of males and females respectively, and, q_m and q_f are the proportion of men and women respectively in each of the selected classes of a given work-productivity factor such as occupational distribution.

5 Put simply, this involves re-estimating female earnings using the coefficients from the male wage regression equation. The difference between the expected earnings of females if their work-productivity characteristics were paid for according to the male earning function and the actual earnings of females is treated as a measure of pay discrimination. Statistically, this can be shown as:

$$\bar{y}_m - \bar{y}_f = b_m(\bar{x}_m - \bar{x}_f) + (b_m - b_f)\bar{x}_f$$

where y_m and y_f are the average male and female earnings respectively, x_m and x_f are the average values of a given work-productivity characteristic for males and females respectively, and b_m and b_f are the regression coefficients on that work-productivity factor from the male and female wage equations respectively. Obviously, the second term of the right hand side of the equation measures the portion of earnings differential that can be attributed to different wage payment system for males and females i.e. wage discrimination. For a thorough discussion of this methodology see Alan S. BLINDER, "Wage Discrimination: Reduced Form and Structural Estimates", *Journal of Human Resources*, vol. 8, Fall 1973, pp. 436-455.

6 Table 1 should not be viewed as being exhaustive though every effort was made to include as many studies as possible.

net earnings differential is the wage gap that cannot be explained by the work-productivity factors included in a study, and hence can be treated as an index of pay discrimination women face relative to men.

Although similar between the two countries, the range of net earnings differential across the studies is quite wide — 5 to 47 percent in the U.S. and 7 to 44 percent in Canada. This perhaps results from the differences in research designs of these studies. Two differences are particularly relevant here, one relating to the data base employed and the other to the factors for which adjustments were made in arriving at net earnings differential. In terms of the former, the studies in Table 1 can be classified into three main categories:

aggregative studies, based on inter-occupation, inter-firm samples;

occupational studies, based on intra-occupation, inter-firm samples; and

establishment studies, based on intra-occupation, intra-firm samples.

Of the ten U.S. studies included in Table 1, eight are of the aggregative type⁷, and one each of the occupational⁸ and establishment⁹ types. Similarly, of the five Canadian studies included in Table 1, three are of the first type¹⁰ and one each of the second¹¹ and third¹² types.

7 Malcolm S. COHEN, "Sex Differences in Compensation", *Journal of Human Resources*, vol. 6, Fall 1971, pp. 434-447; Victor R. FUCHS, "Differences in Hourly Earnings Between Men and Women", *Monthly Labor Review*, vol. 98, May 1971, pp. 9-15; Morley GUNDERSON, "The Influence of the Status and Sex Composition of Occupations on the Male-Female Earnings Gap", *Industrial and Labor Relations Review*, vol. 31, January 1978, pp. 217-226; Ronald L. OAXACA, "Sex Discrimination in Wages", in Orley Ashenfelter and Albert Rees eds., *Discrimination in Labor Markets*, Princeton, Princeton University Press, 1973; Henry SANBORN, *ibid.*; Isabel V. SAWHILL, "The Economics of Discrimination Against Women: Some New Findings", *Journal of Human Resources*, vol. 8, Summer 1973, pp. 383-395; Larry E. SUTER, and Herman P. MILLER, "Income Differences Between Men and Career Women", *American Journal of Sociology*, vol. 78, January 1973, pp. 962-974; Edward N. WOLFF, "Occupational Earnings Behavior and the Inequality of Earnings by Sex and Race in the United States", *Review of Income and Wealth*, vol. 22, June 1976, pp. 151-166. (1964), SAWHILL (1973), SUTTER and MILLER (1973), and WOLFF (1976).

8 M.A. LASORTE, "The Differences in Salary Among Academic Sociology Teachers", *American Sociologist*, vol. 6, November 1971, pp. 304-307.

9 Burton G. MALKIEL and Judith A. MALKIEL, "Male-Female Pay Differentials in Professional Employment", *American Economic Review*, vol. 63, September 1972, pp. 692-705.

10 Morley GUNDERSON, "Decomposition of Male-Female Earnings Differential Canada, 1970", *Canadian Journal of Economics*, vol. 12, August 1979, pp. 479-485; R.A. HOLMES, "Male-Female Earnings Differentials in Canada", *Journal of Human Resources*, vol. 11, Winter 1976, pp. 109-117; Sylvia OSTRY, *ibid.*

11 R.A.H. ROBSON and Mireille LAPOINTE, *A Comparison of Men's Salaries and Employment Fringe Benefits in the Academic Profession*, Ottawa, Royal Commission on the Status of Women in Canada, Study I, 1971.

12 Morley GUNDERSON, "Male-Female Wage Differentials and the Impact of Equal Pay Legislation", *Review of Economics and Statistics*, vol. 57, November 1975, pp. 462-470.

TABLE I
Earnings Differential by Sex in the United States and Canada

<i>Author^a</i>	<i>Earnings Differential^b</i>		<i>Adjustment Factors</i>	<i>Data Base</i>
	<i>Gross</i>	<i>Net</i>		
<i>THE UNITED STATES</i>				
Sanborn (1964)	46	12	Detailed occupation, hours, age, education, color, and urbanness within detailed occupations. Rough estimates of effects of turnover, absenteeism, and experience	Experienced civilian labor force; 1950
Cohen (1971)	45	31	Hours, fringe benefits, absenteeism, seniority, education, and unionization	Nonprofessional workers aged 20-64 with a steady job working 35+ hours per week; 1969
Fuchs (1971)	40	34	Color, schooling, age, city size, marital status, class of worker, and length of trip to work	Nonfarm employed persons; 1960
LaSorte (1971)	15	5	Degree, rand, second work activity, age, professional experience, and geographic location	College and university sociology teachers; 1967-68
Malkiel and Malkiel (1973)	35	9	Schooling, experience, degree held, publications, marital status, field of study, and absenteeism	Professional workers in a single firm; 1971
Oaxaca (1973)	35	29	Experience, health, migration, hours, marital status, city size, region	Urban white workers; 1967
Sawhill (1973)	54	44	Race, region, age, education, hours worked per week, and weeks worked per year	Civilian labor force; 1966
Suter and Miller (1973)	61	38	Education, occupation, weeks worked, and lifetime career experience	Workers aged 30-44 years with at least six months experience each year since school; 1967
Wolff (1976)	53	47	Occupational distribution	Workers; 1970
Gunderson (1978)	39	21	Age, schooling, propensity to work full-time, job status, sex-composition of employment, and occupation	Workers; 1970

TABLE 1 (cont'd)

Author ^b	Earnings Differential ^b (%)		Adjustment Factors	Data Base
	Gross	Net		
			<i>CANADA</i>	
Ostry (1968)	46	20	Occupational distribution, hours worked, age, and education	Civilian workers; 1961
Robson and Lapointe (1971)	20	10	Rank, field, degree, age, and university size	University teachers; 1965-66
Gunderson (1975)	18	7	Incentive system, and labor productivity	Ontario workers in narrowly defined occupations within the same establishment; 1969
Holmes (1976)	59	44	Occupation, part-time/full-time, class of worker, residence, region age, and immigration status	Civilian workers; 1967
Gunderson (1979)	40	18	Education, experience, training, marital status, language, residence, province, hours worked, occupation, and industry	Civilian workers employed full-time, full year; 1970

^a The entries are arranged in ascending order according to the year of publication.

Computed as $(1-F/M) \times 100$ where F and M represent female and male earnings in some form (varying from study to study).

Examining the net earnings differential data in Table 1 by above types of studies, a pattern does seem to emerge. The aggregative studies as a group show much higher net earnings differential between males and females than do the disaggregative — occupational or establishment — studies. For example, the average net earnings differential between males and females computed across the U.S. aggregative studies in Table 1, comes to 32 percent compared to only 7 percent across the disaggregative studies. A similar pattern obtains among the Canadian studies as well, the corresponding figures being 27 percent and 8.5 percent respectively.

Within the aggregative studies a further differentiation can be made in regard to their research design. This relates to the nature of factors for which male-female earnings differential were adjusted in each study. Adjustments have been made for male-female differences in occupational distribution of productivity related characteristics such as education, training, experience, hours worked and the like or both. Concentrating on the U.S. aggregative studies first, we find that Wolff (1976) made adjustments only for differences in broad occupational distribution, and the resultant net earnings differential figure is the highest (47 percent) in this case. The figure is relatively lower when adjustments are made for male-female differences in productivity related characteristics as was done in Cohen (1971), Fuchs (1971), Oaxaca (1973) and Sawhill (1973). The average net earnings differential between males and females across these studies is 35 percent. The figure is the lowest when adjustments are made for differences in both occupational distribution and productivity related characteristics. Gunderson (1978), Sanborn (1964), and Suter and Miller (1973) have made both types of adjustments; the average net earnings differential across these three studies comes to 24 percent. All the three Canadian aggregative studies — Gunderson (1979), Holmes (1976), and Ostry (1968) — have made both types of adjustments. The average net differential across these studies is 27 percent which is quite consistent with the findings of the U.S. studies in the same category.

Thus it is clear that the estimate of net earnings differential between males and females varies according to the research design of the study providing the estimate. The estimated differential seems to be much higher in studies that are macro-aggregative than those which are micro-disaggregative. Since most available studies of male-female earnings differential both in the U.S. and Canada are macro-aggregative, the question then is: how acceptable are the estimates of earnings differential these studies provide as measures of sex-discrimination in pay?

The above question can be explored by examining the conceptual approach underlying the macro-aggregative studies of male-female earnings

differential. One might argue that the models of wage determination implicit in these studies are underspecified. On the supply side (worker characteristics), education, experience, occupation and hours/weeks worked have been generally included, but direct measures of performance, seniority, absenteeism and turnover are not. On the demand side (employer characteristics), the underspecification appears to be even greater. With one partial exception¹³, none of the studies has included any demand side factor such as nature of the firm's product market, industry membership, technology, and size of firm. Theoretically, the relevance of demand side factors is obvious in terms of their implication for employers' ability to pay. Thus, different firms operating in the same local labor market may pay different wage rates to workers in the same occupation. Empirically too, there is considerable evidence supporting such an expectation. Ullman¹⁴ analyzed inter-firm differences in pay rates for typists and keypunch operators in the Chicago labor market. He found that education, training and experience of individual workers could only partially explain wage differences among them; the remaining wage differences presumably resulted from inter-firm characteristics that were not included in the study. This finding was later confirmed in a more detailed study by Rees and Schultz¹⁵. Thus both theoretically and empirically, different firms can be expected to maintain different wage levels. Blau¹⁶ has recently found an inverse relationship between the wage standing of a firm and the representation of women in the total workforce in that firm; the lower the wage standing, the higher the proportion of women in the workforce¹⁷. If so then the unequal distribution of males and females between high wage and low wage firms may partly explain the sex-differential in average earnings that the macro-aggregative studies have empirically found.

The preceding argument suggests that the adjustments that empirical studies have carried out in computing the net earnings differential between men and women are essentially incomplete. Had more complete adjustments been made, the net earnings differential would have been considera-

¹³ Morley GUNDERSON, *ibid.*, included a demand side variable, namely industry classification.

¹⁴ Joseph C. ULLMAN, "Interfirm Differences in the Cost of Search for Clerical Workers", *Journal of Business*, vol. 41, April 1968, pp. 153-165.

¹⁵ Several blue and white-collar occupations in the Chicago labor market were covered in Albert REES and George P. SCHULTZ, *Workers and Wages in an Urban Labor Market*, Chicago, University of Chicago Press, 1970.

¹⁶ Francine D. BLAU, *Equal Pay in the Office*, Lexington, Mass., D.C. Heath, 1977.

¹⁷ The study covered male and female workers in a wide variety of clerical, professional and technical occupations in Boston, New York, and Philadelphia labor markets.

bly smaller than those estimated¹⁸. According to this reasoning then the actual extent of sex discrimination in pay is much less than what the macro-aggregative studies suggest.

On the other hand, one might question the very validity of the adjustment approach, and on that basis argue that the empirical studies using this approach might actually underestimate rather than overestimate the actual extent of pay discrimination. The adjustment approach implicitly assumes a free market society in which men and women have equal access to all occupations including opportunities to acquire education and training necessary to enter these occupations. Edgeworth¹⁹ and more recently Bergmann²⁰ have argued that such equality does not exist due to sex-stereotyping of occupations and discriminatory practices of employers and unions. This results in "overcrowding" of women into certain occupations which in turn exerts a downward pressure on wages. According to Bergmann then to adjust the male-female earnings differentials for the occupational factor is to mask the effects of employment discrimination. In a similar vein, Oaxaca²¹ claims that adjusting for personal characteristics such as education, training, and skill neglects the feedback effects of labor market discrimination. Women workers might have less incentive to invest in acquiring such human capital attributes before entering labor market if they expect post entry discrimination. Support for this line of reasoning comes from behavioural science as well. Adams²² and his followers who have developed Equity Theory suggest that the employee must perceive a just balance between his/her inputs to the organization and the reward he/she receives in return. In the case of perceived underpayment, the employee may simply respond by lowering his/her inputs in order to attain equity. If so, then lower productivity, and high absenteeism and turnover among women even if true, might be the

18 Of the macro-aggregative studies in Table 1, the two that employ most detailed adjustment factors are Henry SANBORN, *ibid.*, in the U.S. and Morley GUNDERSON, *ibid.*, in Canada. The net earnings differentials are very low in these two compared to other macro-aggregative studies. The same is true of the intra-firm studies such as Burton G. MALKIEL and Judith A. MALKIEL, *ibid.*, in the U.S. and Morley GUNDERSON, *ibid.*, 1975, in Canada. In such studies, the demand side factors are controlled for by implication.

19 F.Y. EDGEWORTH, *ibid.*

20 Barbara R. BERGMAN, "Occupational Segregation, Wages and Profits when Employers Discriminate by Race and Sex", *Eastern Economic Journal*, vol. 1, April/July 1974, pp. 103-110.

21 Ronald L. OAXACA, "Theory and Measurement in the Economics of Discrimination", in Leonard J. Hauseman, Orley Ashenfelter, Bayard Rustin, Richard F. Schubert, and Donald Slaiman eds., *Equal Rights and Industrial Relations*, Madison, Wi., Industrial Relations Research Association, 1977, pp. 1-30.

22 J. Stacy ADAMS, "Wage Inequities, Productivity and Work Quality", *Industrial Relations*, vol. 3, February 1963, pp. 9-16.

consequence of discriminatory pay practices. The preceding line of reasoning suggests that gross (unadjusted) rather than net (adjusted) earnings differentials are better estimates of the existing pay discrimination.

Thus no agreement exists over the methodology to be employed in measuring pay discrimination in the macro-aggregative context. At one end are those who hold what one's job is and how well one performs that job²³ are the most critical determinants of one's pay. Thus it is only logical to fully control for these factors in making any pay comparisons including those between men and women. At the other end are those who believe that the so called pay determining factors reflect past and current discriminatory practices, and hence should not be controlled for in making pay comparisons. The truth perhaps lies somewhere between these positions. But to determine which wage determining factors are discriminatory and to what extent poses a real challenge to researchers in this field. Until this challenge is met, no acceptable estimates of pay discrimination are likely to emerge from the macro-aggregative studies. Of course, such methodological disagreement does not imply that the problem of pay inequity does not exist. The micro-disaggregative studies reported in Table 1 where such methodological issues are much less involved indicate that women earn 7 to 9 percent less than men. Clearly, elimination of pay discrimination can be justified on purely ethical and moral grounds. But as women are increasingly constituting a critical source of labor supply, we need to address this problem out of pure economic necessity as well. The following section analyses the public policy initiatives that the United States and Canada have taken in this regard.

PUBLIC POLICY ON EQUAL PAY

U.S.A.

The issue of equality of pay between men and women is covered under two legislations: The *Equal Pay Act* of 1963 which was passed as an amendment to the *Fair Labor Standards Act* of 1938, and Title VII of the *Civil Rights Act* of 1964. The essential provisions of the *Equal Pay Act* are that:

No employer... shall discriminate... between employees on the basis of sex by paying wages to employees... at a rate less than the rate at which he pays wages to employees of the opposite sex... for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar work-

²³ Job performance can be directly measured based on output data or performance ratings. Indirectly, it can be proxied through such measures as education, training, experience and seniority.

ing conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity, quality, or production; or (iv) a differential based on any other factor other than sex...

Two essential features of the *Equal Pay Act* should be noted. The first relates to the criterion to be used in determining which jobs must be paid for equally. The Act employs the criterion of equal work defined in terms broader than identical work but narrower than comparable work²⁴. The other essential feature of the Act pertains to the four exceptions permitting male-female pay differentials, namely seniority, merit, incentive system and any factor other than sex. In other words, the *Equal Pay Act* prohibits pay differentials between men and women performing equal work unless those differentials derive from the above exceptions.

Since its passage in 1963, the *Equal Pay Act* has been defined and interpreted more precisely by the courts. In a landmark decision in the Wheaton Glass Company case²⁵ in 1970 — which was the first equal pay case to reach an appellate court — the U.S. Court of Appeals ruled that a) the “equal work” standard does not imply identical work but rather “substantially equal work”; small differences in job content do not make jobs unequal, b) formal classification and job descriptions are completely irrelevant in establishing that jobs are unequal, unless they accurately reflect job content; and c) where some, but not all members of one sex perform significant extra duties on their jobs, these extra duties do not justify giving all members of that sex a higher wage. Only those employees performing the extra duties are entitled to the higher rate of pay.

The *Equal Pay Act* specifies that work equality must be established on the basis of equality in effort, skill, responsibility and working conditions. Here too, the courts have tended to interpret these criteria in broad terms. In the American Can Company case²⁶ in 1970, the U.S. Court of Appeals ruled that the men’s handling and loading functions did not involve substantially additional effort, as this duty was performed only for 2 to 7 percent of males’ work time. For 93 to 98 percent of the time, the male machine

²⁴ During the congressional debate preceding the passage of the Act, the question of what criterion to use in determining when equal pay would be required was discussed. It was felt that the *comparable* work standard was too broad and the *identical* work standard too narrow. The Congress finally chose the *equal* work standard which was in the middle. For a historical account of the developments leading up to the passage of the *Equal Pay Act* and the subsequent court decisions see Donald ELISBURG, “Equal Pay in the United States: The Development and Implementation of the Equal Pay Act of 1963”, in *Issues and Options: Equal Pay/Equal Opportunity*, Toronto, Ontario Ministry of Labour, 1979, pp. 24-39.

²⁵ *Shultz v. Wheaton Glass Co.*, 412 F. 2d 259 (C.A. 3, 1970).

²⁶ *Shultz v. American Can Co. - Dixie Products*, 424 F. 2d 356 (C.A. 8, 1970).

operators performed duties identical to the female operators' duties. Similar decisions have been handed down in respect to equal skill (the Brookhaven General Hospital case²⁷, and the Prince William Hospital Corporation case²⁸) and equal responsibility (the American Bank of Commerce case²⁹, and the Sears, Roebuck & Company case³⁰).

The courts have also ruled on the general exception to equal pay requirement which allows employers to justify unequal pay based on any factor other than sex. In the First Victoria National Bank case³¹ in 1969, the employer invoked this provision justifying wage differences between male and female bank tellers on the grounds that all male tellers were management trainees while the female tellers were not. The Court rejected the employer's claim on the grounds that the so called trainees had never been informed that they were on a training program, that the training program had no clear, identifiable content, and that it had been limited to men only.

Title VII [section 703(a)] of the *U.S. Civil Rights Act* of 1964 also deals with sex-based pay differentials. Title VII is however a much broader anti-discrimination law. It prohibits all forms of job discrimination including that pertaining to pay based on sex as well as race, color, religion and national origin. In order to ensure consistency with the *Equal Pay Act*, section 703(h) of the *Civil Rights Act* — better known as the Bennet Amendment — states that:

“It shall not be unlawful employment practice under this title for any employer to differentiate upon the basis of sex in determining the amount of wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 6(d) of the *Fair Labor Standards Act* of 1938, as amended” (i.e., the *Equal Pay Act*).

There is however some confusion concerning the exact interpretation of section 703(h). It is clear that it includes the four exceptions to equal pay between men and women authorized under the *Equal Pay Act*. But it is not clear whether this section also accepts the equal work standard of the *Equal Pay Act*. If it does not, then another albeit a broader standard such as comparable work may be used under the *Civil Rights Act*. In this context, a case currently going through the legal system is of critical importance³². The case involves four matrons at a Washington County jail in Hillsboro, Oregon.

27 *Hodgson v. Brookhaven General Hospital*, 436 F. 2d 719 (C.A. 5, 1970).

28 *Brennan v. Prince William Hospital Corp.*, 503 F. 2d 282 (C.A. 4, 1974).

29 *Hodgson v. American Bank of Commerce*, 447 F. 2d 419 (C.A. 5, 1971).

30 *Brennan v. Sears, Roebuck & Co.*, 410 F. Supp. 84 (N.D. Iowa 1976).

31 *Shultz v. First Victoria National Bank*, 420 F. 2d 648 (C.A. 5, 1969).

32 The exact citation of the case is not currently available. The case involves County of Washington v. Gunther. It was reported in *New York Times*, March 22, 1981, p. 20E.

The matrons guarded female prisoners and were being paid about \$200 a month less than the male deputy sheriffs who guarded male prisoners. The matrons sued for pay discrimination under Title VII of the *Civil Rights Act*. The U.S. District Court threw out the suit ruling that in matters relating sex-based pay discrimination, Title VII was governed by the standards of the *Equal Pay Act*, i.e., the jobs must be equal in order that the equal pay requirement can be applied. The court held that since matrons guarded fewer prisoners than deputies and had more clerical duties, the jobs were not equal. The U.S. Court of Appeals for the Ninth Circuit however reversed the decision. The appeals court concurred with the lower court that jobs were not equal and as such the pay differential did not violate the *Equal Pay Act*. But it disagreed that Title VII should be governed by the standards of the *Equal Pay Act*. The appeals court ruled that the former is a much broader law under which plaintiffs should be allowed to try to prove sex discrimination using "some other theory" than a denial of equal pay for equal work. While the court did not specify what such a theory might be, it did uphold the jail matrons right to a trial. The employer (County of Washington) has successfully petitioned for Supreme Court review which is currently underway³³. The outcome of this review would help clarify how the *Civil Rights Act* (Title VII) should be interpreted particularly in relation to the *Equal Pay Act*.

The equal pay legislation at the federal level covers all workers engaged in inter-state commerce or in the production of goods for inter-state commerce. In addition to the federal legislation, 45 states and the District of Columbia and Puerto Rico also have equal pay laws. The actual effect of state legislations is to supplement the federal law by extending the equal pay principle to areas not covered by federal legislation. It is so because in case of conflict or overlapping, the federal law takes precedence.

Canada

Federal labor laws in Canada apply to designated industries or undertakings employing only about ten percent of the total labor force. The provincial governments enjoy full jurisdiction in matters of employment pertaining to the remaining ninety percent of the labor force³⁴. All jurisdictions in Canada have laws which require equal pay for equal work within the

³³ Since the writing of this paper, the Supreme Court has ruled on this case. The Court has agreed with the earlier decision that the matrons have the right to a trial under Title VII of the *Civil Rights Act*.

³⁴ For a more detailed explanation of the distribution of power between the federal and provincial governments see ILO, "Equality of Opportunity and Pluralism in a Federal System" 'The Canadian Experiment', *International Labor Review*, vol. 95, May 1967, pp. 381-416.

same establishment, without discrimination on the basis of sex. These provisions have been incorporated either in human rights legislation (federal jurisdiction, Alberta, British Columbia, New Brunswick, Newfoundland, Northwest Territories, Prince Edward Island and Québec) or in labor standards legislation (Manitoba, Nova Scotia, Ontario, Saskatchewan, and Yukon Territory).

Historically, Ontario enacted in 1951 the first equal pay legislation in Canada. By 1961, the federal and seven provincial jurisdictions³⁵ had followed Ontario's lead; by 1973; the remaining four jurisdictions had done the same³⁶. The legislation in all cases required equal pay for men and women performing the same work³⁷ within the same establishment. The sameness of work was to be established on the basis of skill, effort, responsibility and working conditions³⁸. The legislation in all jurisdictions included exceptions permitting male-female pay differentials on the same job. These were seniority, merit, productivity and/or any factor other than sex.

In Canada also a number of court decisions have helped to provide a more precise interpretation of equal pay legislation³⁹. In the Greenacres Nursing Home case in 1970⁴⁰, the Ontario Court of Appeal ruled that "the same work", did not necessarily imply "identical work", and added that job comparisons should be based on work actually performed rather than on formal job descriptions. In the Riverdale Hospital case in 1973⁴¹, the concept of equal work was broadened even further. In this case, the Ontario Court of Appeal ruled that (a) different job titles do not necessarily indicate different work, (b) slightly different job assignments do not make the work unequal and (c) within an occupation, as long as some men do the same work as women, equal pay is justifiable for the whole occupation. The last point was further clarified in a case⁴² in which the Saskatchewan Court of

³⁵ Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, and Saskatchewan.

³⁶ Newfoundland, Northwest Territories, Quebec and Yukon Territory.

³⁷ The legislation in nine jurisdictions employed the term "same work", in three others "identical/substantially identical", and in Saskatchewan "work of comparable character".

³⁸ These criteria were explicitly stated in the legislation in the federal, Ontario, New Brunswick, Newfoundland, Nova Scotia, Prince Edward Island and Saskatchewan jurisdictions.

³⁹ For a thorough discussion of court decisions on equal pay in Canada, see Bartah M. KNOPPERS and Laurel L. WARD, *Equal Pay and Québec's Charter of Human Rights*, Unpublished paper, Montréal, McGill University, 1978.

⁴⁰ *Regina v. Howard et al.*, *Ex parte Municipality of Metropolitan Toronto*, 13 D.L.R. 3d 451 (Ont. C.A. 1971).

⁴¹ *Re Board of Governors of the Riverdale Hospital and the Queen in Right of Ontario*, 34 D.L.R. 3d 289 (Ont. C.A. 1973).

⁴² *Re Department of Labor and University of Regina*, 62 D.L.R. 3d 717 (1976).

Appeal held that the fact of 5 out of 46 male caretakers performing work similar to female cleaners was sufficient to warrant equal pay.

The courts have also dealt with what might properly constitute "a factor other than sex" in justifying male-female pay differentials. In two separate decisions at the federal level — the *C.T.V. Television Network* case in 1975⁴³ and the *La Société Radio-Canada* case in 1977⁴⁴ — the Court ruled that differences in quality of employees' work as assessed by management are sufficient to justify unequal pay. While the Court acknowledged that such assessment might be subjective and thus might involve error of judgment, it held that it was not within the competence of the judiciary to review the management's judgment. The courts have also ruled that the existence of two separate bargaining units could not be considered "a factor other than sex" to permit pay differentials between males and females⁴⁵.

In response to the above court decisions particularly the Greenacres Nursing House case and the Riverdale Hospital case, the equal pay legislation in most jurisdictions has been amended. Specifically, the narrow criterion of the sameness of work has been replaced by somewhat broader terms such as similar work or substantially similar work in many jurisdictions. At the federal level, this change was made in 1971. It remained in effect until 1977 at which time a more fundamental broadening of the legislation took place. The *Canadian Human Rights Act* was passed in 1977. Section 11 of the Act requires that men and women performing work of *equal value* must be paid equal remuneration by the employer. The value of work, the Act specifies, must be assessed on the basis of the composite of the skill, effort, and responsibility required in the performance of the work and the conditions under which the work is performed. The "work of equal value" criterion is much broader than the previously applicable criterion of "same or similar work". The new criterion permits comparisons of predominantly female jobs to predominantly male jobs that contribute equivalent value to the employer. The underlying rationale is that female jobs as a class are undervalued relative to male jobs; as such comparisons between the two would help to raise wages in female jobs to the levels of male jobs.

Comparison and Evaluation

In the matter of initiating public policy on equal pay, Canada seems to be ahead of the U.S. It was only in 1963 that the first equal pay legislation

⁴³ *McLellan v. C.T.V. Television Network Ltd.*, 10 O.R. 2d 107 (1975).

⁴⁴ *Sa Majesté la Reine v. La Société Radio-Canada*, Cours des Sessions, District de Montréal Cause No. 27 - 010031 - 76 (1977).

⁴⁵ *Re Attorney-General for Alberta and Gares et al.*, 67 D.L.R. 3d 635 (1976).

was enacted in the U.S. By that time, such legislation was already in place in nine of the thirteen jurisdictions in Canada including the federal. Also, while the equal value/comparable worth concept is still being debated in the U.S., it has already been incorporated into the legislation at the federal level in Canada.

In the U.S., the subject of equal pay between men and women is covered concurrently under two legislations — the *Equal Pay Act* (EPA) of 1963 and the *Civil Rights Act* (CRA) of 1964. While the equal pay section of the CRA does refer to the EPA, the relationship between the two is not entirely clear. One interpretation is that in situations of concurrent coverage, the EPA is the governing law, and that the CRA simply and totally incorporates the EPA's provisions. The other interpretation is that the CRA includes only the four exceptions permitted under the EPA⁴⁶ but not its equal work standard. Thus a different standard may be used under the CRA. In Canada, no such concurrent coverage and the resultant ambiguity exist. Equal pay is covered under a single legislation⁴⁷.

Another differentiating factor between the American and the Canadian public policy on equal pay pertains to the relationship between the federal and the state/provincial sectors. In both countries, the federal and the state/provincial sectors have separate equal pay legislation. But while in the U.S. the state legislation must be consistent with the federal legislation, no such requirement exists in Canada. Each province enjoys full and independent jurisdiction in employment matters. In fact at present, the equal pay legislation at the provincial level in Canada is much narrower than that at the federal level⁴⁸.

Notwithstanding the above differences, the essential structure of equal pay legislation in the two countries is highly similar. In both cases, the legislation applies to situations where men and women are employed in the same or substantially similar jobs within the same establishment. The sameness or similarity between jobs is to be judged not in terms of formal job titles but rather the actual job content and requirements⁴⁹. The legislation in both countries also permits pay differentials between males and females if such differentials arise due to seniority, merit, incentive system or any factor

46 Seniority, merit, piece rate system or any factor other than sex.

47 In Manitoba, Nova Scotia, Ontario, Saskatchewan, and Yukon Territory, the coverage is under employment standards legislation. In the remaining jurisdictions including the federal, the coverage is under human rights legislation.

48 The federal legislation embodies the equal value/comparable worth standard while the provincial legislations still follow the narrower "same or substantially similar" standard.

49 Except for the Canadian federal jurisdiction in which case the jobs are to be judged in terms of their value to the employer.

other than sex. Clearly, some of these exceptions — specially merit — involve rating of people and not of jobs.

Equal pay legislation has been in effect for well over 15 years in both the U.S. and Canada. The obvious question in this regard is how effective this legislation has been in dealing with the problem of unequal pay for women. Unfortunately, very few longitudinal studies of net (adjusted) earnings differential between men and women are available. But the ones that are available⁵⁰ do indicate that the legislation has had a very limited impact. Two additional albeit indirect indicators of effectiveness may be employed here. The first of these relates to the trends in the gross (unadjusted) earnings differential between men and women. In the U.S., the gross earnings differential between men and women employed full-time full-year was stable at 41 percent during 1961-63. The *Equal Pay Act* became operational in 1964 and the *Civil Rights Act* in 1965. Since these legislations became effective, the gross earnings differential between men and women has shown virtually no decline⁵¹, the differential varying between 40 to 43 percent during the period 1964 to 1978. The same is true of Canada also. By 1961, the federal and most major industrial provinces had instituted equal pay legislation. In spite of this, the gross earnings differential between men and women employed-full year⁵² remained stable around 40 to 43 percent over the period 1957-78⁵³.

Another indirect measure of effectiveness of equal pay legislation we could examine pertains to the results of the enforcement activity. In the U.S., from 1963 the year in which the *Equal Pay Act* was passed to 1977, “investigations have disclosed more than \$150 million in wage underpayments in violation of the equal pay provisions of the FLSA, involving approximately 260,000 employees”⁵⁴. It must be pointed out that the dollar amounts alleged to be in violation are not necessarily recovered. Thus dur-

50 For Canada, see Morley GUNDERSON, *ibid* and *idem*, “Time-Pattern of Male-Female Wage Differentials: Ontario 1946-1971”, *Industrial Relations/Relations industrielles*, vol. 31, no. 1, 1976, pp. 57-71; and for the U.S., see Edward LAZEAR, “Male and Female Wage Differentials: Has the Government had Any Effect?”, in Cythia B. Lloyd, Emily S. Andrews and Curtis L. Gilroy eds., *Women in the Labor Market*, New York, Columbia University Press, 1979, pp. 331-352.

51 The gross earnings differential is computed from data on median annual earnings of year-round full-time civilian workers by sex published annually in *Current Population Reports*, Series p. 60, U.S. Department of Commerce, Bureau of Census.

52 A full-year worker is one who worked 50-52 weeks/year either in full-time or part-time employment.

53 The gross earnings differential was computed from the data on average annual earnings of male and female workers employed full-year published once every two years in *Income Distribution By Size in Canada*, Ottawa, Statistics Canada.

54 Donald ELISBURG, *ibid*.

ing 1977, the total amount alleged to be in violation was about 16 million dollars owing to about 19,000 workers. But only about 7 million dollars were actually restored to about 13,000 workers. This works out to an average recovery figure of only about 540 dollars per worker in 1977. Besides, the number of female workers actually benefited is less than .05 percent of the total female employed population in 1977. In Canada, systematic data on enforcement activity under equal pay legislation are not available for all jurisdictions. But from the data that are available⁵⁵, the results seem equally insignificant. For example in Ontario, from 1969-70 to 1976-77, 6 808 female employees were awarded a total of 2,252,201 dollars. This averages out to 851 employees benefited each year, with the average total annual recovery being 281,525 dollars and the average recovery per employee being 331 dollars. At the federal level, only two settlements have been reported over the period 1957 to 1977. A total of 11,963 dollars were awarded to 19 employees, resulting in an average settlement of only 629 dollars per employee.

Thus, equal pay legislation appears to have had a very limited impact on reducing male-female pay differentials. Perhaps, the restrictive nature of legislation partly accounts for this. As pointed out above, the legislation in both the U.S. and Canada applies only to situations in which both men and women perform same or substantially similar jobs within the same establishment. As is well known, the majority of men and women continue to be employed in widely different occupations. Thus, if only women are employed in a given job category in a company, the existing equal pay legislation would not apply. In fact, employers may even be encouraged to segregate women into selected jobs in order to evade equal pay legislation. Even when men and women are employed in the same occupational category, the legislation leaves open the possibility of differential pay based on minor differences in job duties. For example, in the same plant, a male machine operator may be assigned minor maintenance chores while his female counterpart is responsible for cleaning up duties — the former carrying a slightly different title and having higher valued “extra” responsibility. Such practice may also be justified under the general exception “any factor other than sex” provided for in the legislation in both countries. Some specific exceptions are also listed in the legislation including seniority, incentive system and merit. Though otherwise justified, seniority or experience factors may work

⁵⁵ Two studies have attempted to compile this information: Mary EBERTS, “Enforcing Equal Pay and Equal Opportunity Legislation: Mission Impossible”, in *Issues and Options: Equal Pay/Equal Opportunity*, Toronto, Ontario Ministry of Labor, 1979, pp. 58-76; and a *Report on Equal Pay* prepared by the C.A.A.L.L. Women’s Policy Committee for the 36th Annual Conference of the Canadian Association of Administrators of Labor Legislation, Saskatoon, Saskatchewan, September 1977, pp. 13-15.

against women. Owing to prevailing notions of their role in society, women are more prone than men to have discontinuous work patterns thus lowering their seniority and experience.

Keeping in view our discussion in Part I, we can say that the existing equal pay legislation in both countries⁵⁶ is designed to deal with the problem of pay inequity at the micro-disaggregative level only. Our review of empirical studies in Part I shows that the magnitude of sex-based pay differentials appears to be much smaller at the micro-disaggregative than the macro-aggregative level. The forces that produce sex-based pay differentials at the macro level are much broader and systemic in nature, and by implication beyond the scope of the existing equal pay legislation. For this reason, the governments in both the U.S. and Canada are under strong pressure to broaden the scope of the existing equal pay legislation. This issue is discussed in greater detail in the following section.

SUMMARY AND DISCUSSION

During the past two decades, numerous studies of male-female pay differentials have been undertaken in the U.S. and Canada. The studies indicate a similar pattern of results in the two countries. In general, the estimates of sex-based pay differentials seem to vary according to the research design of the study in question. The macro-aggregative studies show much higher pay differentials between men and women than the micro-disaggregative studies. Within the group of macro-aggregative studies, those that control for either the occupational factor or the worker productivity related characteristics show higher pay differentials than those which control for both.

There seems to be some disagreement among researchers over what factors should or should not be controlled for in estimating sex-based pay differentials. There are some who argue for the inclusion of each and every factor that enters into the determination of the individual worker's pay. This view would tend to favor the estimates of sex-based pay differentials provided by the most disaggregative studies. In contrast, there are others who argue that some of the adjustment factors may themselves be discriminatory in nature. Thus education, training and experience that women possess and the jobs they hold or aspire for may reflect past and present discriminatory practices of employers, unions, and a male-dominated society in general. According to this view then to adjust male-female pay differentials for these factors is equivalent to legitimizing these discriminatory policies.

⁵⁶ Except at the federal level in Canada.

The main implication emerging from the above controversy is that the problem of pay inequities between men and women can be viewed in two contexts: corporate or systemic. In the corporate context, pay inequities are seen as arising mainly from the discriminatory pay policies of employers. The problem would accordingly manifest itself in the form of unequal pay for equal (i.e. same or substantially similar) jobs held by men and women. In the systemic context, the problem of unequal pay for women is viewed as being caused by societal attitudes and prejudices. Due to such factors, women's jobs as a class may be undervalued and underpaid relative to men's jobs. According to this view then, the problem of pay inequities between sexes would take the form of unequal pay for jobs of equal value/comparable worth to the employer⁵⁷.

The existing equal pay legislation in the U.S. and all the provincial jurisdictions in Canada requires equal pay for men and women holding the same or substantially similar jobs within the same establishment. Thus the legislation is designed to deal with the corporate rather than systemic pay inequities. There is some evidence indicating that despite the long existence of equal pay legislation, the male-female earning differentials show virtually no signs of narrowing down. Also, the results of enforcement activity under the legislation — judged in terms of the number of women affected and the average dollar amount of settlement — seems truly meagre. Finally, in the organized sector, pay rate for a given job is normally set without any reference to the sex of the worker. All these facts imply that the problem of pay inequity between sexes cannot be corporate in nature to any significant degree. This conclusion is also supported by the comparative results of the macro and micro empirical studies of male-female pay differentials.

There is mounting pressure on the government in both the U.S. and Canada to recognize the systemic nature of the problem of unequal pay for women and the inadequacy of the current public policy in dealing with it. Women continue to be employed in occupations widely different than men. Given this, a legislation which ensures that male and female secretaries in a given company or male and female kindergarten teachers in a given school are paid equally for doing the same job is not very relevant. What is needed is a legislation that allows comparison between dissimilar jobs held by men and women. The federal government in Canada has already taken the lead in enacting such legislation. Section 11 of the *Human Rights Act* which was passed in 1977 incorporates the equal value/comparable worth criterion permitting dissimilar jobs to be compared.

57 Such jobs need not be similar in content.

While the rationale underlying the equal value/comparable worth approach is obvious, its operationality is not. Perhaps the most important issue in this regard concerns job evaluation. The equal value/comparable worth approach requires a single job evaluation scheme encompassing the entire range of jobs in a given company. Can such a job evaluation scheme be developed which is general enough to apply to all the different jobs and at the same time specific enough to take into account the unique characteristics of each of these jobs? Assuming that such a job evaluation scheme was available, it can identify men's and women's jobs that are of comparable value and as such should be paid equally. But what that pay should be still remains to be decided. Implicit in the systemic approach is the notion that the traditional market mechanism cannot be trusted to produce equitable pay structures. After all, that is what produced "lower" pay for women's jobs and "higher" pay for men's jobs in the first place. If so, what alternative mechanisms can be used to price the job hierarchy established through job evaluation? The equal value/comparable worth approach has implications for the collective bargaining process as well. A single job evaluation scheme would produce a job hierarchy in which all jobs would be systematically interrelated. Given this, once the wage rate for one job is somehow determined, the entire wage structure would be automatically determined. What does this imply for the wage negotiating process in multiunion plants?

These are some of the issues which need to be examined and researched before the concept of equal value/comparable worth can become an operational reality.

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L'action gouvernementale en matière d'égalité de salaire: Canada et États-Unis

Au cours des deux dernières décennies, nombre de travaux ont traité des différences de salaires entre les hommes et les femmes aux États-Unis et au Canada. Ces études donnent des résultats identiques pour l'un et l'autre pays. En général, les estimations fondées sur les différences de salaires entre les employés des deux sexes semblent varier selon le plan de recherche utilisé dans chaque étude. De façon plus précise, plus on retient de facteurs d'appréciation, plus les différences de salaires sont faibles. Les études qui ne font que retenir les caractéristiques des employés telles l'éducation, la formation professionnelle et l'expérience donnent comme résultat les différences de salaires maximales. Les études qui, en outre, tiennent compte du poste que la personne occupe et de son comportement au travail comme le rendement et l'absentéisme présentent des différences de salaires plus faibles. Les estimations apparaissent les plus basses dans les études qui reposent, non seulement sur les caractéristiques des employés, mais aussi sur celles des employeurs comme l'importance de l'entreprise, la qualité de l'industrie, la technologie, le niveau de profit et la localisation.

Il semble y avoir désaccord entre les chercheurs sur les facteurs qui devraient ou ne devraient pas entrer dans l'appréciation des différences de salaires fondées sur le sexe. Il y en a qui sont favorables à l'inclusion de tous les facteurs qui entrent dans la fixation du salaire individuel du travailleur. Ceci tendrait à favoriser les évaluations de différences de salaires fondées sur le sexe tirées des études des plus fragmentées qui tiennent compte des caractéristiques de l'employé et de l'employeur. Par contre, il y en a d'autres qui soutiennent que quelques-uns des facteurs d'ajustements peuvent être discriminatoires de par leur nature. Ainsi, l'éducation, la formation professionnelle et l'expérience que les femmes possèdent, les emplois qu'elles occupent ou auxquels elles aspirent peuvent dans une certaine mesure refléter les pratiques discriminatoires actuelles ou passées des employeurs, des syndicats et d'une société généralement dominée par les hommes. Selon ce point de vue, fixer les différences de salaires entre les hommes et les femmes selon ces facteurs équivaut à légitimer ces politiques discriminatoires.

La principale conséquence qui ressort de la controverse précédente, c'est que le problème des inégalités de traitement entre les hommes et les femmes peut être envisagé dans un double contexte: attribuable aux entreprises ou résultant du système. Dans le premier cas, les inégalités de traitement paraissent dériver principalement des politiques discriminatoires des employeurs en matière de salaires. Le problème se présente sous la forme d'un salaire inégal pour des emplois égaux (les mêmes emplois ou des emplois substantiellement semblables) occupés par les hommes et les femmes. Dans le contexte systémique, le traitement inégal versé aux femmes serait perçu comme attribuable aux attitudes et aux préjugés de la société elle-même. Pour ces raisons, les emplois des femmes, en tant que classe sociale, peuvent être sous-évalués et sous-payés par rapport aux postes de travail des hommes. Selon ce point de vue, le problème des inégalités de traitement entre les sexes prendrait donc la forme d'un traitement inégal pour des emplois d'égale valeur ou de valeur comparable en ce qui concerne l'employeur.

La législation existante en matière d'égalité de traitement aux États-Unis et dans toutes les provinces canadiennes impose un salaire égal pour les hommes et les femmes qui occupent des tâches semblables. Par conséquent, cette législation a pour but de corriger les inégalités de traitement attribuables à l'entreprise plutôt qu'au système. Il y a là preuve que, malgré l'existence déjà assez ancienne de la législation en matière de traitement entre les deux sexes, les différences de salaires entre les hommes et les femmes ne s'estompent pas. Ainsi, les résultats de sa mise en vigueur, quand on les apprécie en ce qui a trait au nombre de femmes touchées et à la moyenne des salaires payés, semblent vraiment maigres. En fin de compte, dans le secteur organisé, le taux de salaire pour un emploi donné s'établit sans aucune référence au sexe de l'employé. Tous ces faits signifient que le problème de l'inégalité des salaires entre les sexes ne peut pas être à un degré significatif attribuable à l'entreprise.

Il se fait de plus en plus de pression sur les gouvernements tant aux États-Unis qu'au Canada pour faire reconnaître que le problème de l'inégalité de traitement des hommes et des femmes résulte du système dans lequel on est et de l'insuffisance des politiques courantes à le corriger. Les femmes continuent d'être placées dans des occupations différentes de celles des hommes. Ceci étant, une législation qui garantit que les secrétaires, hommes ou femmes, au service d'un employeur ou des professeurs, femmes ou hommes dans une école maternelle reçoivent le même salaire n'est pas très indiquée. Ce qu'il faut, c'est une législation qui permette de faire des comparaisons entre des tâches dissemblables occupées par des hommes et des femmes. Le gouvernement fédéral canadien a déjà donné le ton en adoptant une telle législation. La section II de la Charte des droits de la personne, votée en 1977, inclut le critère d'un salaire égal pour le travail de valeur comparable qui permet de comparer des fonctions dissemblables.

Bien que la raison sous-tendant l'approche en fonction de la valeur comparable soit indiscutable, son application ne l'est pas. Il se peut que la question la plus importante en cette matière soit l'évaluation des tâches. L'approche fondée sur la valeur comparable exige l'évaluation d'une tâche unique qui renferme l'ensemble des tâches dans une entreprise donnée. Peut-on mettre au point un schéma semblable d'évaluation des tâches qui soit assez général pour s'appliquer aux différentes tâches et assez spécifique en même temps pour tenir compte des caractéristiques propres à chacune de ces tâches? Assumant qu'un tel schéma d'évaluation des tâches existe, il pourrait identifier les emplois des hommes et des femmes qui sont de valeur comparable et

qui, en tant que tels, pourraient être rémunérés également. Mais il resterait encore à décider quel en serait le traitement. L'idée que l'on ne peut se fier au mécanisme des marchés traditionnel pour assurer des structures de salaires équitables est implicite selon l'approche systémique. Après tout, c'est ce qui engendre un salaire «moindre» pour les femmes et un salaire «plus élevé» pour les hommes. S'il en est ainsi, quels mécanismes autres peut-on utiliser pour apprécier la hiérarchie des emplois établie par l'évaluation des tâches? De plus, l'approche de la valeur comparable a des conséquences dans le domaine de la négociation collective. Un schéma unique d'évaluation des tâches donnerait lieu à une hiérarchie des emplois qui ferait que tous les postes seraient interreliés. Ceci étant, une fois déterminé le taux de salaire de cette fonction, la structure tout entière des salaires serait déterminée. Qu'en devient-il alors de l'ensemble du processus de négociation des salaires?

Ce sont là quelques-unes des questions qu'il faut considérer et au sujet desquelles il faut poursuivre les recherches avant que le concept de salaire égal pour valeur comparable puisse devenir une réalité opérationnelle.

Labour Relations Law in the Public Sector

Cases, Materials and Commentary

by C. Gordon Simmons and Kenneth P. Swan

XVIII - 422 pp. — \$25.00

The scope of the casebook is broad covering the main facets of the labour law framework for Canadian public sector labour relations. The development of public sector bargaining structures in Canada is first discussed and compared with both the U.S. and the private sector. The authors then examine "specific areas which are or have been most controversial", stressing the divergence of the public and private sector models. Illustrative and precedent-setting cases, both Board and Court, and legislative examples are drawn from all Canadian jurisdictions and cover the federal and provincial civil services, the post office, hospitals, education, police. Throughout, the recommendations of individual expert in this area and of government committees and commissions appointed to study various public sector bargaining issues are recorded.

Although the publication was conceived as a textbook for courses in public sector labour law, it is also an invaluable reference source for practitioners, policy makers, and lawyers involved in public sector labour relations.

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