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IN CANADA : ISSUES AND POLICIES

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## Pay discrimination against women in Canada: issues and policies

Naresh C. AGARWAL and Harish C. JAIN \*

Since the mid-1950s, labour market discrimination against women has been a matter of considerable social and political concern. The increasing female labour force participation rate over the years and its projected continued increase in the future render this issue even more important. Labour market discrimination can take two conceptually different forms: employment discrimination and pay discrimination. Employment discrimination can be defined as unequal job levels for men and women with similar qualifications, and pay discrimination as unequal pay for men and women with equal qualifications and performing similar jobs. It is with the latter form of discrimination that the present paper is concerned. Specifically, the objects of this study are (a) to analyse some of the issues relating to the measurement of pay discrimination against women, and (b) to review current public policy in Canada in regard to such discrimination.

### Pay discrimination: issues in measurement

Two methodologies can be employed to measure the extent of pay discrimination against women. The first, which may be called the sampling approach, is conceptually more appropriate but operationally less feasible. It involves a comparison of the earnings of men and women holding identical jobs within the same establishment, and having identical qualifications, performance and hours worked. Needless to say, such homogeneous samples are extremely difficult to find. Generally, the samples of men and women on whom data are available for empirical research do in fact differ from each other in respect of one or more of these characteristics.<sup>1</sup> The second method of measuring pay discrimination may be called the adjustment approach. It starts out by computing female-to-male earnings ratios from the available sample data. The ratios are later adjusted to account for differences in the relevant characteristics between the two groups. The extent of pay discrimination is then inferred from the adjusted ratios. The higher the adjusted female-

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to-male earnings ratio, the lower the degree of pay discrimination against women, and vice versa.

Very few empirical studies have been made of male-female earnings differentials in Canada; most of them employ the adjustment approach. Table 1 provides a summary of these studies showing the occupational groups investigated, the factors for which adjustments were made, and the resulting female-to-male earnings ratios. Two conclusions emerge from these data. First, the earnings differentials between men and women tend to be considerably narrower after adjustments are made for differences in occupational distribution, weeks worked, education and experience. Judged on this basis, the extent of earnings differentials attributable to pay discrimination appears to range from 8 to 44 percentage points, the average being 23. Second, both the gross and the adjusted earnings ratios are somewhat lower in managerial, sales and service occupations than in clerical and manual occupations. Although not firmly established, this suggests that pay discrimination against women is higher in (non-clerical) white-collar jobs than in blue-collar ones. Perhaps this may be explained by differences in the nature of the pay systems in the two job categories: Managements generally enjoy considerable discretion in determining the pay of their white-collar employees, whereas, owing to greater unionisation, the rates for blue-collar workers tend to be standardised to a large extent.

The above estimates should be viewed only as tentative indices of the extent of pay discrimination against women in Canada. One might argue that none of the studies took into account male-female differences in performance, turnover and absenteeism; if adequate data were available and were incorporated in estimation procedures, the female-to-male earnings ratio would be even higher. Thus, according to this reasoning, the actual degree of pay discrimination may be lower than that indicated by the empirical studies. On the other hand, one may in fact argue just the opposite by questioning the validity of the "adjustment approach" itself. This point of view can be defended in terms of the equity theory developed by behavioural scientists<sup>2</sup> and the empirical research based on it. According to this theory, in any work setting there is an exchange of inputs and outcomes between the employer and the employee. The employer requires certain inputs from the employee such as effort, experience, skill and performance, in return for which the employee can expect certain outcomes (pay, benefits, etc.). In this exchange process the employee must perceive a parity between inputs and outcomes and, in the absence of such a parity, is likely to experience a feeling of inequity which may have important behavioural consequences. For example, in the event of perceived underpayment, the employee may attempt to attain equity by reducing his or her inputs, or in extreme situations, may throw up the job. Thus lower productivity and higher turnover among women, where such is the case, may in fact be the consequences of past pay discrimination. Added to this is the claim by the women's liberation movement that a large part of the earnings differentials attributed to weeks worked,

Table 1. Ratio of female to male earnings in Canada

Study	Occupations	Gross ratio	Adjusted ratio	Factors adjusted
Ostry <sup>1</sup>	All	.54	.81	Occupational distribution, part-time work, education and experience
	Managerial	.48	.65	
	Sales	.35	.69	
	Service and recreation	.47	.69	
	Professional/technical	.43	.71	
	Clerical	.61	.89	
	Labourers	.67	.92	
Holmes <sup>2</sup>	All	.41	.56	Occupational distribution, weeks worked, marital status, class of worker, region and immigration status
Robson and Lapointe <sup>3</sup>	Academic	.80	.90	Age, rank, field, degree, region and university size
Gunderson <sup>4</sup>	Selected occupations		.88	Occupation, job functions and incentive systems

<sup>1</sup> S. Ostry: *The female worker in Canada* (Ottawa, Dominion Bureau of Statistics, 1968). <sup>2</sup> R. A. Holmes: "Male-female earnings differentials in Canada", in *Journal of Human Resources* (Madison (Wisconsin)), Winter 1976, pp. 109-117. <sup>3</sup> R. A. H. Robson and M. Lapointe: *A comparison of men's and women's salaries and employment fringe benefits in the academic profession*, Studies of the Royal Commission on the Status of Women in Canada, No. 1 (Ottawa, 1971). <sup>4</sup> M. Gunderson: "Male-female wage differentials and the impact of equal pay legislation", in *Review of Economics and Statistics* (Cambridge (Massachusetts)), Nov. 1975, pp. 462-469.

class of worker, and occupation could actually be ascribed to "discrimination".<sup>3</sup> Male-female differences in these respects may, to a large extent, be caused by employment discrimination against women.<sup>4</sup> On this basis, one could argue that the real pay discrimination against women is higher than the average 23 percentage points indicated by the empirical studies.

Thus there appears to be a controversy over the accuracy of the estimates of pay discrimination. Irrespective of the position one may take in this controversy, it is obvious that even the most conservative estimates indicate considerable pay discrimination against women. Clearly, elimination of such discrimination should be an important goal in a society like Canada's which is committed to social and economic equality for all its members. Even apart from this, employers may need to face up to the problem out of pure economic necessity. Over the past four decades or so, the female labour force participation rate has significantly increased from 21.8 per cent in 1931 to 45.0 per cent in 1976, while that of males has declined from 87.2 to 77.7 per cent over the same period.<sup>5</sup> These trends are expected to continue in the future, so that the female labour force will increasingly constitute a critical source of labour supply. It is imperative, therefore, that employers

develop equitable, non-discriminatory pay systems to attract, retain and motivate female employees.

Public policy: a review

In 1951 the ILO adopted the Equal Remuneration Convention (No. 100), embodying the principle of equal remuneration for men and women workers for work of equal value.<sup>6</sup> Under Article 1 (a) of the Convention, remuneration is defined as including "the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment". Article 3 of the Convention also recommends the use of job evaluation methods ("objective appraisal of jobs") as a key to measuring work value. As the ILO's Committee of Experts on the Application of Conventions and Recommendations has pointed out, the concept of work of equal value is—

so abstract and lacking in precision that it allows the bodies responsible for implementing it quasi-discretionary powers of appreciation, with the implied risk that arbitrary, ill-founded and consequently unpalatable decisions may be taken. Job evaluation may be the "essential tool" whereby effect may be given in practice to the principle of equality based on work of equal value.<sup>7</sup>

At present all jurisdictions in Canada<sup>8</sup> have laws which require equal pay for equal work without discrimination on the basis of sex. These provisions have been incorporated either in human rights legislation (Alberta, British Columbia, Newfoundland, Northwest Territories, Prince Edward Island and Quebec) or in labour standards legislation (federal jurisdiction, Manitoba, Nova Scotia, Ontario, Saskatchewan and Yukon Territory).

Table 2 summarises the definitions of equal pay and equal work under the existing legislation. These definitions are clearly narrower than those of Convention No. 100. For example, the legislation in only two jurisdictions, Newfoundland and Ontario,<sup>9</sup> defines pay to include both wages and fringe benefits. In four jurisdictions the term used is "wages", which may be interpreted to include fringe benefits although this remains to be tested in the Courts. In six jurisdictions the present legislation defines equal pay in terms of "rate of pay", which by implication appears to exclude fringe benefits.<sup>10</sup>

Similarly, the definition of equal work is narrower than the ILO Convention's "work of equal value". The legislation in the various jurisdictions defines equal work in terms ranging from "the same work" or "the same or similar work" to "substantially the same work" or "substantially similar work". In some (federal, New Brunswick, Newfoundland, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan) the legislation also goes on to enumerate the factors to be taken into account in determining whether the work performed is the same or similar, namely education, skill, experience effort, responsibility and working conditions. In all jurisdictions, however, the legislation applies only to work performed in the same establishment.

## Pay discrimination

Table 2. Equal pay and equal work as defined in various jurisdictions in Canada (as of March 1977)

Jurisdiction	Equal pay	Equal work
Federal	Wages	Same or similar work performed under the same or similar working conditions on jobs requiring the same or similar skill, effort and responsibility <sup>1</sup>
Alberta	Rate of pay	Similar or substantially similar work
British Columbia	Rate of pay	Similar or substantially similar work
Manitoba	Wages	Same or substantially the same work
New Brunswick	Any terms and conditions of employment	Same work
Newfoundland	Wages and benefits (e.g. pension rights and insurance benefits)	Same or similar work performed under the same or similar working conditions and requiring the same or similar skill, effort and responsibility
Northwest Territories	Rate of pay	Similar or substantially similar work
Nova Scotia	Wages	Same work performed under similar working conditions and requiring equal skill, effort and responsibility
Ontario	All monetary remuneration and benefits (e.g. insurance, sickness and disability)	Substantially the same kind of work performed under similar working conditions and requiring substantially the same skill, effort and responsibility
Prince Edward Island	Rate of pay	Substantially the same work, performance of which requires equal education, skill, experience, effort, responsibility and working conditions
Quebec	Wages	Equivalent work
Saskatchewan	Rate of pay	Similar work performed under similar working conditions and requiring similar skills, effort and responsibility
Yukon	Rate of pay	Same work performed under similar working conditions

<sup>1</sup> See also note 24.

Sources: Statutes of the various jurisdictions; *Human rights in Canada 1976* and *The law relating to working women*, both published by Canada Department of Labour, Ottawa; and telephone interviews with officials of the agencies concerned.

Court decisions appear to have had considerable influence on the definition of equal work. For example, in 1975 the definition of equal work in Ontario was amended from "the same work" to "substantially the same work" in response to two Court decisions.<sup>11</sup> In the first of these, relating to the Greenacres Nursing Home case in 1970, the Ontario Court of Appeal ruled that "the same work" did not necessarily imply "identical work". The Court interpreted "the same work" to mean "work in fact being performed for an employer in the same establishment by females and males which is of the same nature or kind and the performance of which requires

equal skill, effort and responsibility and which is performed under similar working conditions". The Court also ruled that comparisons in equal work cases should be made on the basis of the work actually performed rather than on the nature of the job description or terms of employment. In the Riverdale Hospital case in 1973, the concept of equal work was broadened even further. The Court ruled that (a) different job titles do not indicate different work; (b) within an occupation, as long as some men do the same work as women, equal pay is justifiable for the whole occupation; and (c) slightly different job assignments do not make the work unequal.

Enforcement procedures, both in terms of the agency administering equal pay legislation and the method of enforcement, also vary. In seven jurisdictions<sup>12</sup> the Department of Labour is the administering agency; in the remainder it is the Human Rights Commission, which also administers other anti-discrimination legislation. The enforcement method common to all jurisdictions is investigation based on employee complaints. To overcome possible reluctance on the part of employees to file complaints due to fear of reprisals, several jurisdictions have also instituted independent inspection by the staff of the enforcing agency. Thus in the federal, Nova Scotia and Ontario jurisdictions the field staff of the respective Departments of Labour may initiate such inspections; in others the director of the appropriate agency or even the Minister of Labour may take the same action.

Evidence from two sources can be used to judge the effectiveness of the existing equal pay legislation in Canada. The empirical studies of male-female earnings differentials mentioned earlier showed, it will be remembered, a range from 8 to 44 percentage points attributable to pay discrimination. However, all these studies are based on cross-sectional data, referring to a particular point in time. Only one systematic study of the time pattern of male-female earnings differentials is available:<sup>13</sup> this was confined to nine occupations<sup>14</sup> in Ontario for which continuous data were available from 1946 to 1971. It found no clear indication of a narrowing of differentials, even after 1969 when enforcement procedures were changed to make the equal pay legislation more effective. In fact, in most cases, a trend towards larger rather than smaller differentials was observed.

The relative ineffectiveness of the equal pay legislation is also reflected in the small number of complaints and awards made under it. The Royal Commission on the Status of Women observed that "in provinces with equal pay laws, only a handful of complaints has been received. Obviously, the legislation is not effective."<sup>15</sup> For example, during 1974-75, Alberta, British Columbia, Nova Scotia and Ontario recorded 57, 44, 72 and 32 complaints respectively regarding equal pay.<sup>16</sup> The total wage adjustments awarded under the existing legislation have also been quite limited. From January 1969 to March 1975, \$1,624,346.91 were awarded in Ontario, affecting only 186 employers and 4,602 employees.<sup>17</sup> From November 1973 to October 1974, the total amount awarded in Manitoba was \$11,942.41, affecting three employers and ten employees.<sup>18</sup>

Thus it is clear that equal pay legislation in Canada has had only a limited impact on female pay levels. The fact that its application is restricted to cases in which the same or similar work is performed by men and women within the same establishment may have been partly responsible for this. The legislation first requires that the "sameness" of work be established, although in most cases it does not specify how this is to be done. It therefore leaves open the possibility of differential pay rates 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 the higher-valued "extra" responsibility.<sup>19</sup> Also, the present legislation is only applicable where both men and women are employed in a given job so that their pay levels can be compared. If only women are employed in a job—as is true in several cases—employers can continue to pay them less. In fact, employers may even be encouraged to segregate females into selected jobs in order to evade the equal pay legislation. Finally, the legislation also limits work and pay comparisons to employees within the same establishment. If this were defined narrowly, the employer could put all his female employees in one building and pay them less than all the male employees in the next building.<sup>20</sup>

Two additional factors may also explain the limited impact of the Canadian pay legislation; namely the types of exceptions allowed and the lax enforcement procedures.

In the majority of jurisdictions<sup>21</sup> the legislation contains a general exception permitting differentials between male and female pay based on any factor other than sex. In other cases, specific exceptions are listed which include seniority, experience and merit. The general exception may have the effect of allowing employers, as previously mentioned, to pay female employees less by marginally adjusting their duties. Some of the specific exceptions, though otherwise justified, may also work against female employees. For example, owing to prevailing notions of their role in society,<sup>22</sup> women are more prone than men to have discontinuous work patterns, thus lowering their seniority and experience.

As regards the enforcement of equal pay legislation, action in several jurisdictions is confined to the investigation of employee complaints. As previously mentioned, the number of complaints has been much lower than expected considering the size of the female labour force and of the estimated pay discrimination against them. Ignorance of the legislation, lack of resources and fear of employer reprisals may have kept the number of complaints down to artificially low levels. Several jurisdictions have also instituted independent inspections to enforce the legislation. In some of these cases, however, the equal pay and equal opportunity laws are administered by separate bodies, resulting in the division and fragmentation of enforcement work.<sup>23</sup> In others a single body, the Human Rights Commission, administers both types of legislation but even in these cases the lack of resources has tended to hamper enforcement efforts.

### Conclusion

In the preceding pages we have looked at the extent of pay discrimination against women in the light of available empirical studies. In general, women appear to receive lower rates of pay than men (table 1). All jurisdictions in Canada have enacted equal pay laws prohibiting pay discrimination based on sex. Though many of these laws have existed for more than 15 years, the male-female pay differentials have tended to remain generally stable, or even to increase in some cases. The present short study has attempted to provide several possible explanations for the limited effectiveness of the equal pay legislation. Based on these hypotheses, the following recommendations can be made:

(1) Equal pay should be defined to include wages, fringe benefits and any other remuneration arising out of employment. At present, this is the case in only a few jurisdictions.

(2) Equal work should be defined in terms of the value of work rather than the sameness or similarity of work.<sup>24</sup> This will facilitate comparisons among dissimilar as well as similar jobs.

(3) The legislation should provide guidelines on how the value of work is to be assessed. Specifically, employers should be encouraged to develop appropriate job evaluation schemes in full consultation with their employees of both sexes and all job categories.

(4) The legislation should refer to the same employer rather than the same establishment. This would ensure pay equality in all establishments run by the same employer.

(5) The enforcement procedures should be strengthened by affording complete anonymity to employees filing complaints, instituting a system of independent investigation, centralising responsibility for the enforcement of all anti-discriminatory legislation in one agency, and allocating adequate resources for enforcement efforts.

(6) The legislation should ensure that the derogations provided for are not misused by employers for discriminatory purposes. The derogations and the circumstances in which they may be invoked should be clearly specified.

### Notes

<sup>1</sup> Male-female differences in many of these characteristics are well documented; see Women's Bureau, Canada Department of Labour: *Women in the labour force: facts and figures* (Ottawa, Information Canada, 1975).

<sup>2</sup> J. S. Adams: "Wage inequities, productivity and work quality", in *Industrial Relations* (Berkeley (California)), Oct. 1963, pp. 9-16. See also idem: "Injustice in social exchange", in L. Berkowitz (ed.): *Advances in experimental social psychology* (New York, Academic Press, 1965), pp. 267-299.

<sup>3</sup> Holmes, op. cit. (see table 1), p. 116.

<sup>4</sup> Examination of issues relating to employment discrimination against women is beyond the scope of the present paper.

Pay discrimination

<sup>5</sup> S. Ostry and M. A. Zaidi: *Labour economics in Canada* (Toronto, Macmillan of Canada, 1972), p. 25. See also Statistics Canada: *Review of labour force survey data, 1976*, Research paper No. 9 (Ottawa, 1977), p. 18.

<sup>6</sup> This Convention was ratified by Canada in 1972.

<sup>7</sup> ILO: *Equal remuneration*, General survey by the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4 B), International Labour Conference, 60th Session, Geneva, 1975, p. 55.

<sup>8</sup> Federal labour laws in Canada cover employment in designated industries or undertakings and thus affect only a small proportion (5-10 per cent) of the labour force. The provincial governments have full jurisdiction in matters of employment in undertakings employing more than 90 per cent of Canada's labour force. However, in spite of the limited jurisdiction of the federal laws, they serve as a model for provincial and territorial legislation. For a more detailed explanation of the distribution of power between the federal and provincial governments see "Equality of opportunity and pluralism in a federal system: the Canadian experiment", in *International Labour Review*, May 1967, pp. 381-416.

<sup>9</sup> The Ontario Employment Standards Act, 1974, was amended in 1975 to prohibit discrimination in employee benefit plans on the grounds of sex, age or marital status. However, these amendments were applied only to future benefit levels; acquired benefit rights (such as pensions) were allowed to stand.

<sup>10</sup> In telephone interviews conducted by the authors, a majority of the responsible officials in these jurisdictions interpreted the existing legislation as excluding fringe benefits.

<sup>11</sup> For a full discussion of the two cases see Ontario Ministry of Labour: *Labour law in action: six case studies about women* (Toronto, Ministry of Labour, no date).

<sup>12</sup> Federal, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan and Yukon Territory.

<sup>13</sup> Morley Gunderson: "Time pattern of male-female wage differentials: Ontario 1946-1971", in *Industrial Relations* (Quebec), Vol. 31, No. 1, 1976, pp. 57-71.

<sup>14</sup> These occupations were: general bakery helper; circular knitter, hand operator and cutter (all three in hosiery and knitted goods); assembler, inspector and machine operator (all three in motor vehicle parts and accessories); assembler (in household radio and television receivers); and coil winder (in electrical industrial equipment).

<sup>15</sup> Royal Commission on the Status of Women in Canada: *The status of women in Canada* (Ottawa, Information Canada, 1970).

<sup>16</sup> Louise Langlois-Trudel: *A preliminary study on the principle of equal remuneration for work of equal value*, Discussion paper (Ottawa, Department of Labour, 1976), p. 29.

<sup>17</sup> The Equal Pay Committee: *Minutes of the meetings* (Toronto, Ontario Ministry of Labour, 1975).

<sup>18</sup> Women's Bureau: *Working paper on equal pay for work of equal value* (Winnipeg, Manitoba Department of Labour, 1976), p. 11.

<sup>19</sup> J. E. Bennet and P. Loewe: "Despite our equal-pay laws, lower salaries and benefits persist for female workers", in *Financial Post* (Toronto), June 1975, p. E-6.

<sup>20</sup> E. G. MacGill: "Brief on the proposed federal Human Rights Bill", presented to the Canadian Federation of Business and Professional Women's Clubs; see *Globe and Mail* (Toronto), 17 Feb. 1977, p. F-3.

<sup>21</sup> Federal, Alberta, Manitoba, Northwest Territories, Nova Scotia, Ontario, Saskatchewan and Yukon Territory.

<sup>22</sup> In a recent survey of work values and job attitudes, the majority of respondents felt that a woman's place is in the home. The survey also found that women are more reluctant than men to make long-term commitments to work. See M. Burstein, N. Tienhaara, P. Hewson and B. Warrander: *Canadian work values. Findings of a work ethic survey and a job satisfaction survey* (Ottawa, Department of Manpower and Immigration, 1975).

<sup>23</sup> See Women's Bureau: *Women and work in Canada: a study of legislation* (Ottawa, Information Canada, 1975).

<sup>24</sup> Since this paper was written, a new federal Human Rights Act has been passed by Parliament (on 2 June 1977), section 11 (2) of which does embody the equal value concept. In the province of Manitoba, public hearings are under way on the issue of equal pay for work of equal value.