

PAY EQUITY LESSONS FROM CANADA

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Pay Equity in Canada

In Canada, as elsewhere, there is a long history of attempts to address discrimination against women in the labour force. In the process of developing and applying regulatory initiatives, a number of important lessons have been learned. This paper sets out some of these lessons in relation to pay.

However, pay equity initiatives offer only one piece of the puzzle in addressing inequality for women. Indeed, this lesson has long been known and was certainly recognized by those struggling for pay equity. Pay strategies must be linked to other strategies such as employment equity and universal childcare in order to create equitable conditions for women in paid employment. Pay equity is only one piece in the massive effort to achieve equity

I want to focus on five main lessons, each with a number of aspects.

1. Pay equity requires systemic solutions.
2. Pay equity requires ways of responding to critics
3. Pay equity is complicated
4. Pay equity needs constant renewal
5. Pay equity is worth it

Lesson # 1 because pay inequality is systemic, it requires systemic solutions

A Royal Commission in the late 19th century heard repeated testimony about both wage inequality and women's need for employment income. Minimum wage regulation in Canada can be traced to this evidence. It was a universal strategy introduced to protect women from the pervasive pay discrimination. It was a systemic solution to a systemic problem. Minimum wage remains a critical piece in the struggle for pay equity but the intervening years have demonstrated that such legislation is only one step in the many required. Minimum wage legislation can only address the wages of those at the bottom of the wage scale, leaving many women without wages equal to those of men doing either the same or comparable work.

Since then, there has been a multitude of studies examining and exposing the persistent wage gap between women and men that accompanies the segregation of the labour force into men and women's jobs.¹ A second Royal Commission, this one focused solely on women, heard testimony similar to that heard almost a century earlier.²

Research became increasingly sophisticated, controlling for all those factors such as marital status, hours of work, experience and education that defenders of the status quo have used over the years to justify pay inequality. Yet another Royal Commission a decade later investigated the link between pay and employment equity,³ and the research still found a pay gap that could not be explained by any of these factors. The only reasonable explanation was discrimination.

Often following the lead of other countries, we developed various strategies to deal with the inequality the evidence revealed. We had equal pay for the same work. Then we added on equal pay for similar work. And after that we required equal pay for work of equal value. We also had voluntary compliance, expecting that employers would willingly ensure that they did not discriminate. And we had some unions putting pay equity on the bargaining table.

Each strategy has helped reduce inequality. But each strategy failed to eliminate or even significantly reduce pay inequalities because they were not sufficiently systematic to address such a systemic problem, especially in light of many employers' efforts to avoid paying female dominated work on the same basis as male dominated work. Those employers who did pay equitable wages were put at a disadvantage when equity was not universal.

Experience has taught us that systemic discrimination requires systemic strategies of the following sort:

- Regulations must go beyond comparing women and men to compare female and male dominated jobs. The issue is not only the wages of individual women and individual men but also different pay assigned to jobs done primarily by women or men.
- Regulations must be pro-active. Our initial efforts were complaints-based, requiring women to complain about and demonstrate unequal treatment in what was assumed to be the unlikely event that employers did not comply. Complaints required knowledge of the legislated right, sufficient confidence that the law could protect the complaining women from job loss and sufficient knowledge as well as the research resources required to defend a complaint. They also required time, time many women do not have. One case heard by a Canadian Human Rights Tribunal began in the 1980s and we still do not have a decision under the federal complaints-based system.

Proactive legislation requires employers to introduce pay equity plans, instead of waiting for complaints. It recognizes equal pay as a fundamental right that cannot be bargained away or left to another day. It recognizes the evidence on the systemic and pervasive nature of pay discrimination. It recognizes that discrimination need not be intended or consciously produced. Pay equity thus puts all employers on the same footing, without discriminating against those who already provide equal pay for work of equal value and without blaming those who reveal pay inequities.

- Regulations should cover both the private and the public sector. The provinces of Ontario and Quebec not only introduced proactive legislation but also applied this legislation to both public and private employers. This too was based on the recognition that discrimination exists throughout the economy and that employers must be treated equally. There are no reasonable grounds to suggest rights should

only extend to public employees. Given that most people are employed in the private sector, it obviously must be included if systemic discrimination is to be addressed. Moreover, current strategies to downsize government and privatize services make it particularly important to ensure that both private and public sectors are treated equally. Otherwise, pay equity may become a motive to privatize and a means of reintroducing inequality. In the province of British Columbia, for example, the contracting out of services in health care has resulted in the loss of pay equity gains for the female dominated jobs.⁴

- It is not only privatization that can end pay equity gains. So too can contracting out within those parts of the private sector where pay equity has been achieved. For this reason, regulations should include successor rights that ensure that pay equity rates do not disappear in the process, undermining efforts to reach system-wide practices and reinforcing systemic discrimination. This means a strategy to include own-account self-employed who take such work as a result of contracting out. We have not been very successful in these terms but recognize that it is an issue.
- Regulations need to have specified time lines and appropriate penalties. There are many ways to stall the pay equity process and without clear rules about completion dates for pay equity plans and payments, the application of pay equity will be uneven, delayed and even put off indefinitely. Such measures in Ontario have been quite effective in ensuring plans are developed.
- Regulations should also be monitored and enforced. Monitoring can allow both an assessment of progress and encourage progress. Ontario failed to require or keep a central record of pay equity plans and as a result it is not possible to produce an accurate assessment of the pay equity strategies.
- Regulations should also provide for maintenance of pay equity wages or pay equity could be quickly undermined by new wage settlements or new employment practices. Ontario requires maintenance but there are no clear ways of ensuring that plans are maintained in new contracts and under work reorganization.
- Pay should include all benefits and additional means of rewarding employees or bonus schemes. Inequalities can creep in through such things as car allowances. Exemptions must be carefully scrutinized for gender bias and collective bargaining strength cannot become a justification for inequality because such strength can be just another work for inequality.
- Some means of assessing female dominated workplaces is required. Pay equity is based on comparisons so some comparator is required. In Ontario, comparisons were to be made within an employer's establishment. This requirement often meant there were no male-dominated jobs in the establishment. Ontario introduced a proxy system within the public sector which allowed female-dominated workplaces to use other workplace evaluations as proxies. Broad-based bargaining across workplaces could avoid the more complicated proxy process because it is much more likely that there would be male-dominated jobs to serve as comparators. Quebec seeks to do this through sectoral committees which not only provide comparators but also allow employers to share resources. Proportional comparisons systems that allow indirect comparisons can also help address the problem of workplaces that have few male-dominated jobs.

- Similarly, some means of including small businesses is required. Pay equity legislation in Ontario excluded small businesses, in part because it was difficult to apply the details of the legislation to small organizations. However, it is a critical gap in developing a systematic approach, especially as the number of small businesses is growing. Sectoral bargaining could include smaller businesses, reducing their costs and providing comparators

Lesson # 2 Responding to the critics

Sophisticated statistical analysis helped establish the pervasive nature of wage discrimination. Pressure from women's groups and unions helped introduce as well as enforce legislation. But in Canada there is still the need to constantly defend and explain the basis for pay equity. The following are just some of the ways we have learned to do this.

- The wage gap is different from the pay equity gap. The overall wage gap tells us that women are paid less than men. These data can be refined to compare hourly, weekly and yearly rates and thus eliminate differences related to differences in the number of hours women and men work. They can also be used to demonstrate the segregation of the labour force and the way this segregation is combined with consistently lower pay attached to work done predominately by women. But this overall gap still cannot be used as the basis for addressing inequality, in part because other factors such as the location of the job in a hierarchy or the location of the work in the country may help explain the gap. At issue in pay equity is not the overall gap but rather the gap between jobs done predominately by women and those done predominately by men. What are compared are the demands of the jobs, usually understood as the skill, effort, responsibility and conditions required to do the work. If predominately male jobs are paid more than predominately female jobs, even though the overall demands are equivalent, then there is a pay equity gap that must be eliminated.
- A second but similar issue frequently raised relates to justifications for wage inequalities. We continue to hear that women are paid less because they choose to have children, they are less committed to their paid work, they have less experience, they work fewer hours etc. While each of these issues can be addressed either in terms of the statistical analysis on the overall wage gap or through the analysis of other data, none of them are factors in pay equity. They are not factors because pay equity compares jobs demands and not people. A woman may take years out of the labour force to have children or stay in paid work throughout her life but neither practice is relevant in pay equity. The job requirements are the issue not the person doing the work. The characteristics of individual women or even of women as a group are irrelevant to this assessment.
- A third issue relates to markets. Markets, we are told, determine wages, and markets need to prevail in order to ensure an efficient economy. However, these markets seem to discriminate consistently against women, suggesting that something other than objective market forces are at work. In any case, the market still determines male wages under pay equity. Pay equity requires that predominately female jobs be paid on the same basis as predominately male jobs; with market forces left undisturbed to the extent they determine these male wages.
- A fourth issue relates to arguments from choice. The claim is often made that women choose to work in low-paid jobs, often because they chose to get married and have children. Choice arguments may also be linked to employment equity, assuming that

more women in men's jobs will solve the problem. The argument from choice ignores the ways women have struggled for higher wages and better working conditions. It also fails to address the problem of few men doing women's work and the low value attached to essential labour. Unless pay in female dominated jobs is raised, few men will do the work. Indeed, we have watched men move into jobs like elementary school teaching as women successfully raised wages.

- A fifth argument relates to intent. Employers often do not think they discriminate and even more often, do not intend to do so. Systemic discrimination acknowledges the pervasive nature of inequality and requires an assessment of practices precisely because they are often invisible and unintended. It does not require proof of intent but rather requires systematic comparisons to ensure equity.

Lesson # 3 Pay equity is complex

Even supporters find pay equity a complicated process. It is important to recognize this and build in means to ensure all those involved understand the principles and to reduce the complexity. A number of approaches have helped in Ontario.

- An independent, accessible source of expertise is required. Ontario established a Pay Equity Commission charged with providing education, information, assistance in developing pay equity plans, mediation and investigation. Both employers and employees have used this agency and found it useful.
- An independent tribunal to hear cases related to pay equity is also an asset. Ontario employed a pool of individuals with expertise in pay equity and the legislation. No time was wasted explaining the principles or the legislation and there was some consistency in the way legislation was applied across the province. The tribunal has established critical principles for the application of legislation, in the process reducing the need for further debates about such issues as gender neutrality in job evaluation and the definition of workplace.
- A tribunal that makes the final decision can simplify matters and help ensure systematic application. In Ontario, the tribunal with expertise is the body which decides about pay equity and enforces the legislation. This prevents endless appeals delaying and complicating implementation.
- Job evaluation creates particular challenges. In order to compare jobs, it is necessary to evaluate them. But there is no single right way to assess the demands in a job. There are both simple and complex methods for assessing job worth and the Ontario pay equity Commission offers templates for a range of approaches. However, tribunal decisions make it clear that in applying any system of evaluation assessors must be aware of how bias can enter any stage of an assessment process, from the determination of how jobs are defined, to what is counted, how it is counted and how what is counted is evaluated and compared. It is therefore important to educate people about the entire process of job evaluation, especially in relation to the past failure to recognize the value of women's work. It requires a thorough understanding of both why pay equity is required and how pay equity can be undermined. It does not require a complex point system of job evaluation, although many employers in Canada already have such systems in place. Pay equity assessments allowed women to challenge the structure of these plans and expose their gender bias.

- Equally important, the involvement of employees as well as employers is critical to both the understanding and the acceptance of job evaluation for the purposes of pay equity. A joint process allows employers and employees to share their knowledge of what is involved in doing the work.
- It is important to develop strategies to reduce technical complexity and ensure it can be understood by the largest number of people. Employee participation can help, as can simplified evaluation methods.
- Job evaluation for the purposes of pay equity can be expensive, but the costs can be reduced if resources and information are shared. Moreover, employers and employees can benefit from the process of working through and establishing job evaluation for the purposes of pay equity.
- The most expensive, disruptive, complex and unequal comparisons are those based on job-to-job. When they are possible, proportional comparisons based on pay lines are a significantly better alternative because they allow indirect comparisons and do not pit individual jobs against each other. Proportional comparisons can also deal with workplaces that have few male-dominated jobs, or few that provide appropriate matches for female-dominated jobs.

Lesson # 4 Pay equity needs constant renewal

There is no single, right solution, even with a stable work force and labour relations. Moreover, new ways of addressing pay equity are continually required to deal with both new forms of work organization and new means of avoiding pay equity

Even with our proactive legislation and Commission help, some women did not benefit from pay equity. Some pay inequalities increased among women because some were able to use the legislation to win significant increases and to maintain them, others were unable to maintain gains and still others had inadequate pay equity plans or none at all. In Ontario, those introducing the legislation were well aware that some women would not benefit. As a result, written into the legislation was the requirement for an examination of those women's jobs least likely to benefit and for a proposal of ways to deal with these omissions. Amendments did result from these studies but the process is never-ending. Just as corporations need to constantly seek means for improvement so too must pay equity legislation and practice. This search for better ways does not demonstrate either failure or obsolescence but rather rigour and innovation.

Lesson # 5 Pay equity is worth it

Many women in Ontario have better pay as a result of pay equity. Equally important, ideas about women's worth and their right to fair wages have changed in the process. Undoubtedly there has been some backlash but that is common with many gains. Rather surprisingly for many critics however, many employers in Ontario see benefits in the process. An Ontario survey found that 65% of organizations responding saw more positive than negative effects of pay equity. Better systems of evaluation were put in place and some understanding of job content was the result. An improved working environment was the result, as employees saw fairer wages practices. Other surveys show similar results.⁵

The real challenge is to ensure these gains are not lost and that we do not return to old discriminatory practices in new forms, intended or not.

This paper was prepared before a federal government task force on pay equity reported. I am delighted to say that this report draws lessons very similar to those set out above. The consistency is no accident. The evidence is clear. As the report succinctly puts it, “there is evidence of wage discrimination in Canadian workplaces and...effective strategies must be consistently applied to eliminate this discrimination”.⁶ The Report recommends federal pay equity legislation based on many of these lessons.

Employment Equity in Canada

However, pay equity addresses only one aspect of discrimination; namely the systematic underpayment of jobs done primarily by women. It is intended to value and pay work done mainly by women on the same basis as work done mainly by men. It can help desegregate the labour force by making traditional women’s work more attractive to men. But it does not necessarily promote the movement of women into jobs done mainly by men throughout the labour force. Nor does it address the segregation of other equity seeking groups, identified in Canada as Aboriginal Peoples, visible minorities and persons with disabilities. The redistribution of individuals from such groups has been the subject of employment equity policies in Canada.

According to the federal legislation, employment equity means more than treating persons in the same way. It also requires special measures and the accommodation of differences. Large employers in the public and private sectors under federal jurisdiction are required to prepare and report employment equity plans for individuals self-identifying in one of the four designated groups. In part because it does not incur costs like those in pay equity and in part because both merit and “undue hardship” are the basis for exclusion from the Act, there has not been a great deal of open resistance to this legislation. Moreover, it is easier for employers to see some benefit from hiring those in the designated groups especially when there are few additional costs involved. And it has helped promote some redistribution.

Nevertheless, the Ontario government repealed provincial employment equity legislation when the Conservatives came to power. The Government ordered all the information collected for pay equity reasons destroyed. This action reflected an ideological opposition to equity programmes that was combined with a more general resistance to any form of government policy defined as interfering with business. It is interesting to note that some major private sector employers openly opposed the repeal of the legislation because they found both the policy and the information useful. Some proceeded with affirmative action plans.

It is difficult to protect policies from governments with overwhelming majorities and an approach that resists equity strategies entirely. However, it was possible to successfully defend an attempt by the same Government to repeal sections of the Pay Equity Legislation so the outcome is clearly not inevitable.

The Ontario employment equity legislation might have been more successfully defended if more effort had been put into public education and if there had been an organized group prepared to challenge the Government, as was the case of pay equity. A less technically complicated policy might also have been easier to defend. The other lessons from pay equity are relevant to employment equity as well.

Employment equity is nonetheless often easier to introduce because it costs less and is more frequently understood as based on individual merit rather than on addressing systemic discrimination. It is a critical component in the search for equity but alone cannot produce a desegregated labour force. Similarly, older strategies such as equal pay for equal work still have their place, as do efforts to change the conditions for women's employment created by such things as access to day care and public transport.

Pay and employment equity are constantly evolving and connected strategies. They can only be effective with support and renewal. There is obviously no single right way to achieve equity, but rather multiple and varied strategies. Much depends on context and time but there are also important lessons we can learn from each other, applying them to our own particular circumstances.

These are only some of our lessons. I hope we can learn from each other in developing continuing strategies for equity.

¹ For the use of the term segregation, see Pat Armstrong and Hugh Armstrong, *The Double Ghetto: Canadian Women and Their Segregated Work*, Toronto: McClelland and Stewart, 1968. For recent data see Marie Drolet, *The Who, What, When and Where of Gender Pay Differentials*. Ottawa: Statistics Canada, 2002.

² Canada, Royal Commission on the Status of Women, *Report*. Ottawa: Information Canada, 1970.

³ Canada, Royal Commission Report, *Equality in Employment*. Judge Rosalie Abella. Ottawa: Minister of Supply and Services Canada, 1984.

⁴ Marjorie Griffin Cohen and Marcy Cohen, *A Return to Wage Discrimination. Pay Equity Losses through the Privatization of Health Care*. Vancouver: Canadian Centre for Policy Alternatives, April 2004.

⁵ Pay Equity Task Force Final Report, *Pay Equity: A New Approach to a Fundamental Right*. Ottawa: Department of Justice Canada, 2004, p. 136.

⁶ Pay Equity Task Force Final Report, *Pay Equity: A New Approach to a Fundamental Right*. Ottawa: Department of Justice Canada, 2004, p.155.