

Equal Pay for Work of Equal Value



The Equal Pay coalition is a group of representatives from labour, legal and women's organizations whose purpose is to raise the pay of the "female job ghettos" relative to the pay of male-dominated work. On March 12, 1977, The Coalition held a day-long seminar to explain the concept of equal pay for work of equal value and to discuss means by which equal pay can be achieved both through legislation and collective bargaining. This publication includes texts of the speeches given at that seminar.

The concept of equal pay for work of equal value

by Margot Trevelyan

Five main factors which influence a person's pay

To understand the concept of equal pay for work of equal value it is first necessary to understand how the present method of paying people discriminates against women and why an alternative method is necessary. We will then explain the concept of equal pay for work of equal value and show how this is a fairer way of compensating women for the work they do.

First of all, what is it in our free enterprise economy that results in one job receiving more pay than another? Because of time restraints I am going to have to greatly over-simplify and say that a worker's pay is influenced for the most part by five main factors:

1. labour market conditions
2. discrimination (such as sexism and racism)
3. the presence and strength of a union
4. the nature of the work being performed or job content
5. legislation

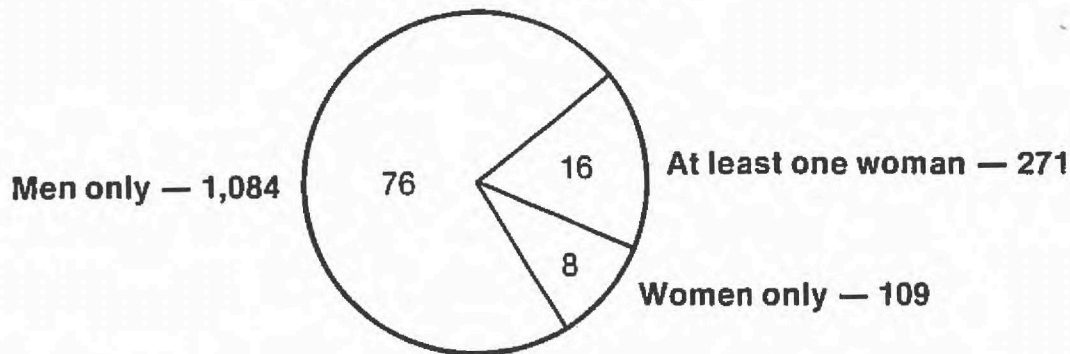
I Labour market conditions

Labour market conditions are probably the strongest and most important influence on wages, and, for reasons which we will look at as we go along, they are probably an even greater influence on women's wages than they are on men's.

When we refer to labour market conditions we are talking about the law of supply and demand in the labour market, or the number of workers that are all trying to get a certain job at one time. If an employer has 100 people begging for one job, for example, he can pay very little for that job because no matter what he pays, he will always find someone willing to work for less. If, on the other hand, he has many jobs that need to be filled, and there are few people who want to fill them, he must raise the pay of these jobs in order to attract people to do this work rather than going elsewhere. In short, large numbers of people after a few jobs will eventually lower wages in these jobs. That is why we seldom hear employers, or organizations that represent employers, worrying about unemployment.

How do women workers fare in this economy which pays people through the law of supply and demand? Through sexist socialization, education, training, and hiring, women are channelled into very few kinds of jobs. In the Task Force on Women in the CBC, for example, we found that men had access to 92% of the jobs in the Corporation, whereas women had access to 24% and dominated only 8%.

1,425 POSITION TITLES
(Percentage occupied by:)



from *The Report of the CBC Task Force on the Status of Women*

Statistics such as these indicate that not only are men and women channelled into different kinds of work, but men are channelled into *most* jobs whereas women are channelled into a few jobs. Labour market conditions for men are therefore much better than they are for women who, because they live in a sexist society, are forced to glut the labour market in the few jobs available to them, thereby depressing wages in these jobs.

Labour market conditions then are a very strong factor in determining a person's wages. Furthermore, we shall see as we go along, that the labour market influences the importance of the other factors as well, and furthermore, that it plays an even greater role in determining women's wages than it does men's.

Women demanding equal pay for work of equal value "haven't examined what it means. It doesn't apply anywhere in our system . . . It ignores that supply and demand fixes the levels of wages in our society."

Sylva Gelber, as reported in the *Globe and Mail*, January 15, 1976.

II Discrimination

A second factor determining a person's pay is sexism, racism and other forms of discrimination. I am going to refer only to sexism which is, according to Robert Laxer in his book *Canada's Unions*, "the most important single factor in determining the pay scale for a given job . . ." In other words, many employers — particularly those who don't have a union to contend with — will give a job a certain wage according to the sex of the person he expects will fill that job. He will assign low salaries to such jobs as secretaries and seamstresses because he expects — and sometimes insists — that these jobs be filled by women. He usually justifies this with the belief that women don't need the money and he might as well exploit this fact and make some extra profits. These women then receive the pay they do — not because of the work they are performing — but *because they are women*. This phenomenon has resulted in the relative pay of some jobs decreasing simply because women took it over.

A good example is the pay now given to bank tellers. Do you remember those old black and white movies where boy falls in love with girl in a small town? One day boy runs home to girl and tells her their future is assured because he has secured a job as a bank teller. The pay is good and the chances are he'll one day be the bank president. This picture of the bank teller is a far cry from the low status we know it to have now. What happened? As women began to be bank tellers, employers paid individual women less than what they paid the male tellers. Soon they realized that the women could do the work as well as the men for much less pay. It wasn't long before the job of bank teller became a "female occupation" — low paid, and instead of a stepping stone to management, a sex object for customers. The whole transition had nothing to do with the complex economic theories discussed today in the universities. It was simply a matter of sexism.

The degree to which employers can exercise sexism, is to some extent influenced by labour market conditions. The more unemployed women are, the less likely the employers' attitudes will be contested. Conversely, as we saw earlier, the more need there is for women workers, the more they have to be paid, (although often the only competition an employer has is unpaid housework). It is interesting to note that in the two world wars, and in particular World War II, when women were being begged to take jobs formerly denied them, equal pay became a matter of policy and limited practice in both England and the U.S. As World War II ended, women again swelled the ranks of the unemployed, and the policy of equal pay was abandoned.

The most important single factor in determining the pay scale for a given job is the worker's sex. Although they made up 33.2% of the labour force in 1972, the three million women in the Canadian labour force, on the whole, are paid less than men, even when they are performing similar or identical jobs.

Canada's Unions by Robert Laxer, James Lorimer and Company, 1972, p22.

III The presence and strength of a union

The presence and strength of a union is a third factor which can influence a person's pay. A very strong union which sees equal pay as a major issue, for example, can sometimes negotiate a wage which is totally out of line with what that job is being paid in other establishments. Even unions, however, are effected by the labour market. During times of high unemployment, such as the depression, unions are weakened and forced to lessen their demands. Even in relatively good times, many union negotiators are willing to accept the labour market as a basis for negotiations. They refer the employer to so-called "bench-mark" jobs in the labour market; that is, they find a job in other establishments which is similar to the one for which they are negotiating a wage and say that because this job is getting paid more in other establishments, it should get paid more in theirs. The effect of

this kind of negotiating on women is obvious. As women are already getting low wages relative to men everywhere else, the union negotiator drags this low wage into his or her own bargaining unit.

Unions, nevertheless, are extremely important to women workers — probably even more important than they are to men *because unions have the power to fix wages according to factors other than the labour market*. In fact, one could say that from the point of view of women's work, a union is good or bad according to the degree in which it removes a woman's wage from total dependance on labour market conditions.

IV The nature of the work

A fourth factor which influences the pay a job is assigned is the nature of the work itself — job content — or what we will later call the "value" of the work. This factor is most often present in work places that are organized. A negotiator may argue, for example, that although a carpenter in one establishment gets \$250.00 a week, the carpenters in his or her establishment have much heavier and more difficult work and for this reason should get paid more than other carpenters in the labour market. The content of a job can also influence the pay it gets relative to other jobs in the same establishment. Once the salaries of a few "benchmark" jobs have been agreed upon, the salaries of the other jobs are determined partly according to whether they are more or less difficult than these benchmark jobs. This relieves the negotiators of the necessity of having to find what every single position in the establishment is being paid by other employers in other establishments.

Paying a job according to the content of the work itself is obviously a factor which is fairer than some of the other factors we have looked at, such as labour market conditions and sexism. Most people would agree that if one job is to be paid more than another, then that difference should be based on things that are intrinsic to the work itself, on job content, and not on the personal misfortunes of those applying for the job, or the degree to which one can exploit the oppression of various groups in our society. It is significant, however, that job content seems to be a factor which more often influences the pay of jobs dominated by men, than it does those dominated by women. A study carried out by the Canadian University Services Overseas found, for example, that although the differences in salary of the male staff could be accounted for by the varying degrees of difficulty and complexity of work, there was no logical reasons for the differences in salary received by the women. Their job content did not seem to be a factor in determining their pay. Also, in establishments where formal job evaluation plans have been instituted — plans which attempt to determine the relative value of the jobs according to the content of the jobs themselves — the pay for women's jobs have tended to go up, and that of the men's to go down. In other words, it seems that if work was paid according to its value, or its job content, the work that women now perform would receive a higher wage than it does, relative to work done by men. (This is only the case, however, when women, through their union, have some control over the job evaluation plan. Job evaluation plans imposed by the employer have tended to do nothing to raise the pay of the female ghettos: the plan simply exploits and rationalizes their low status in the labour market).

V Legislation

A fifth factor which can influence a person's pay is legislation. Minimum wage legislation, for example, ensures that there is some limitation — however slight — on the degree to which an employer can exploit a worker. Many women working today — particularly immigrant women — would be earning far less than they are were it not for this legislation. Unfortunately, during times of high unemployment, many desperate workers do not insist that minimum wage laws be observed, and many more do not even know they exist.

Wage controls are another example of the way in which legislation can effect wages. It is important to notice that one of the few times when workers can receive increases above the "guidelines" is if they can prove that a historical relationship exists between them and workers in another establishment. In other words, the government does not want to disturb traditional labour market conditions. If you have always been exploited a lot, then you should go on being exploited a lot; if you have only been exploited a little, then it's all right for you to go on being exploited only a little. As the most exploited sector of the labour market, women stand the most to gain in not only "disturbing" labour market conditions, but of eliminating them all together as a factor in determining wages.*

There are of course many other factors which can influence a person's pay. Nevertheless, the five just discussed — the labour market, sexism, job content, unions and legislation — are the most important to women. Furthermore, we have seen that of these five factors, the labour market is the most important and finally, that women's unfavourable position in the labour market is the result of both past and present discrimination against us.

Equal pay for work of equal value

How then should women be paid? In a free enterprise economy it is impossible for an employer to completely ignore the labour market when determining wages for all his employees. It is possible, however, for him to ignore the labour market when paying his female employees, and thereby take out the most discriminatory feature of this method of payment. He or she does this by (1) paying jobs filled by men according to labour market conditions or union demands and (2) determining the pay of jobs glutted by women by giving them the same pay as that given to male jobs which are of equal value. In other words, he is paying the women what they would probably get if they were men.

The graph below shows the wage scale for the workers of a city government. The technical workers are in one bargaining unit and are practically all men. The clerical workers are in another bargaining unit and are mostly women. All but a few of the men who are in the clerical unit find themselves toward the top of the salary scale.

* The Anti-Inflation Board has said much about the possibility of negotiating a wage above the guidelines if it is for the purpose of achieving equal pay for equal work. The loop-hole which makes this provision next to useless is the same as that which exists in the provincial law requiring equal pay for equal work: women are in job ghettos and have no male workers to compare their work to. Mary Cornish talks about this in detail in her paper.

**Technical
(Male)**

Building Inspector	5.28
Safety Inspector	4.81
Instrumentman	4.39
Stockkeeper No. 3	4.12
Draftsman No. 3	3.96
Levelman	3.82
Field Office Clerk	3.67
Field Inspector	3.53
Rodman	3.42
Mail and Duplicating Operator	3.29
Stockkeeper No. 1	3.11

**Clerical
(Mostly female)**

Supervisor	4.36
Paymaster	3.98
Tax Collector	3.59
Bookkeeper	3.41
Secretary	3.30
Senior Cashier	3.13
Switchboard Operator	2.97
Clerk Typist	2.70
_____	2.46
Keytape Operator	2.26
Typist	2.15

Hourly Rates (1970) for City Workers

Let us now suppose that there were a law calling for equal pay for work of equal value. A typist earning \$2.15 an hour feels she should get paid the same as the mail clerk who is earning \$3.29 an hour. A union officer or government inspector comes in and compares the two jobs according to the degree of skill, effort, responsibility and working conditions of each. He decides that the typist needs to know typing and other skills, whereas the mail clerk can be taught his job in a couple of days, so on a scale of 10, he gives the typist 8 and the mail clerk 2. When looking at "effort", the officer decides that the mail clerk has to go up and down stairs carrying bags of mail and so for that physical effort, the officer gives the mail clerk a 5. He decides, however, that a lot of mental effort is exerted by the typist in trying to meet deadlines and so on, so he also gives her 5 points for effort. The officer then finds that the mail clerk has a good deal of responsibility in making sure that no important mail is lost, whereas the responsibility of the typist is less: for "responsibility" the mail clerk gets 7 and the typist 4. When looking at "working conditions" the officer gives them each 5. The mail clerk works in a stuffy mail room all day, but the typist must remain seated during the day — an occupational health hazard, as sedentary workers (those who sit all day) run six times the risk of a heart attack as other workers.

When the equal pay officer is finished his examination, he draws up a table that looks something like this:

	Mail Clerk	Typist
Skill	2	8
Effort	5	5
Responsibility	7	4
Working Conditions	5	5
TOTAL:	19	22

Let us also say that the officer has a standing rule that says if the total points for the two jobs are within three points of each other they will be considered to be of equal value. The jobs of mail clerk and typist are, then, of equal value *in this establishment*.

That being the case, what should these two jobs be paid? The present law of equal pay for equal work says that the salary of no job can be lowered to provide equal pay. This principle must be carried over to the new legislation of equal pay for work of equal value. In other words, the typist would now get paid the same as the mail clerk — \$3.29 an hour. She receives equal pay for work of equal value.

Of course the work of the equal pay officer is much more complex than that described above. The job content of the two jobs must be examined in detail. What exactly do these two jobs entail? Furthermore, the point scale would probably be more like 100 than 10, and it is possible that one factor could be given more "weight" or maximum points than another. Finally, the way the factors are defined could be debatable. By "skill" do we mean education required? training? talent? experience or what? Despite these problems, however, we must keep in mind that in hundreds of establishments across the country now, job evaluation plans, similar to the method described above, are already in effect. Furthermore, experience with these plans has shown us the necessity of being involved in any job evaluation plan.*

Equal pay for work of equal value ensures that women do not have to depend on discriminatory labour market conditions to determine their pay. By eliminating the labour market as a condition, we are, in effect, eliminating sex as a factor in determining women's wages, because the situation of women in the labour market is a direct result of their being women. We would therefore be removing sex as a factor in determining women's wages, in the same way as we have made sex an illegal factor in hiring, promotion, housing and so on.

* See, for example, "Chapter Seven" of the CUPE Manual, *Equal Opportunity at Work*, which shows how job evaluation can be used to rationalize and maintain low wages for women.

Equal pay for work of equal value through collective bargaining

by Madeleine Parent

Collective bargaining is the process by which those persons working for a given employer get together, study their conditions and pay, and together decide to make demands upon the employer. They then send their representatives to negotiate with the employer the remuneration and the conditions under which they are willing to work for that employer. When the union which represents the employees is certified, the employer is obliged by law to negotiate with his working people as a party equal to him and to work out in detail the conditions under which they agree to work.

What are the clauses in a collective agreement? There are two kinds: clauses which cover the various kinds of remuneration we get, and clauses which define our rights.

Remuneration clauses

Clauses covering remuneration include those touching on wages, salaries, incentive pay, cost of living adjustment bonuses, increments and so on. There is a clause providing for a certain number of paid holidays in a year and a clause providing for paid vacations and the terms of payment for each. Welfare clauses determine the amount the employer will pay toward OHIP premiums, and toward additional premiums for group insurance plans and pensions, the terms of these plans to be spelled out also. The hours clauses determine the regular working hours per day and week and the overtime (or afternoon and night shift) premiums to be paid. Hours clauses also spell out frequency of, and payment for, coffee breaks and, in some cases, payment for lunch breaks.

The monetary clauses with which we are most concerned, in relation to equal pay, are first and by far, the wage and salary clauses. (Another important one, which I do not have time to go into here, is the welfare benefits clause). The other monetary clauses do not usually lend themselves to the same discrimination against women in the work force.

Negotiating equal pay for work of equal value

Negotiating equal pay for work of equal value will differ somewhat, depending on whether or not you have a job evaluation plan in your establishment. If you've got a job evaluation plan already, you've got to change it, perfect it and hold it as an instrument against discrimination. Most job evaluation plans in existence — especially those that have been brought in by companies, and engineered by efficiency agencies, were devised so that the employer can take advantage of the unfavorable position of women in the free labour market. They have been devised in

such a way, for example, as to give less value to white collar jobs in relation to factory jobs where there is a longer history of fighting discrimination.*

Proposing adjustments to some classifications of work

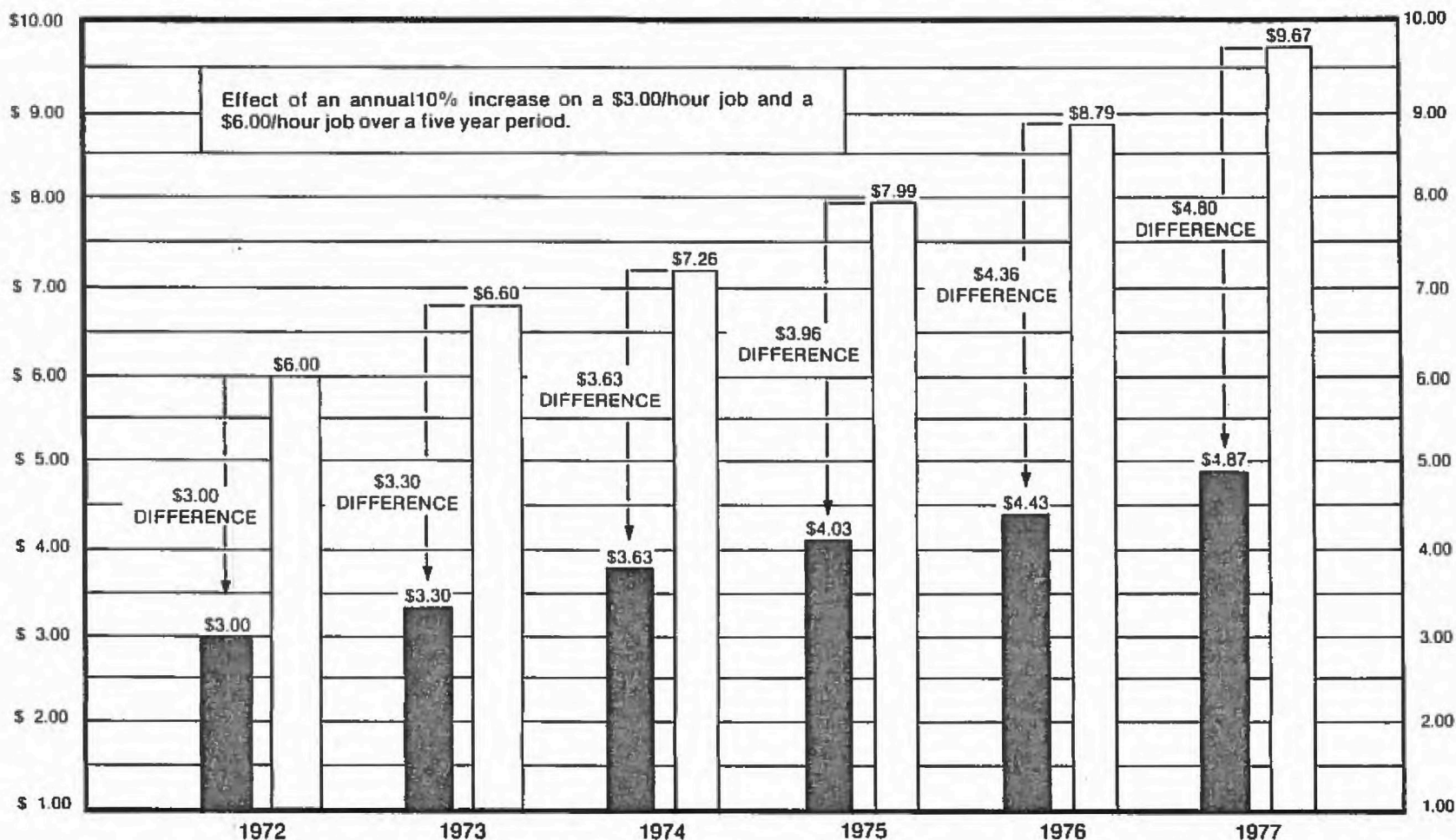
Another way of working toward equal pay for work of equal value is to propose adjustments to some of the classifications which are at present underpaid in relation to other classifications of work. Let us say, for example, that in a knitting plant, winders are paid at \$3.30 an hour and knitters are paid at \$4.50 an hour. Although not always the case, winders are usually women, and knitters are often men (and when the knitters are female, they are not often paid \$4.50). In this case you say that the winders should get a bigger adjustment because there is not that much of a difference between the value of the work they are doing and the value of the work done by the male knitters. You therefore allow for a 30-cent-an-hour adjustment for the winders before you go on to the general, across-the-board hourly increase (whether 50 cents, or \$1.00) for everyone. By negotiating in this way, you address yourself to the most glaring injustices in classifications; you eliminate the most flagrant cases of discrimination in pay, and then attempt to negotiate for an across-the-board increase, of so many cents an hour, for everyone.

In opposition to this method of negotiating is the unjust tendency, further encouraged by the government Anti-inflation Board, to negotiate a percentage increase across the board. A percentage increase discriminates against the lowest-paid workers of whom many are women. When this happens, it is too often because a small group of workers — especially high-paid men — are the only ones who go prepared and in support of each other to the union meetings, where contract demands are discussed and voted upon. Women must attend union meetings, take part in the decision-making process, and elect the best-informed and most dedicated from their ranks to the bargaining committee. Only thus can women expect their union committee to be mindful of their grievances and to stand up for their interests.

* See the publication of The Canadian Union of Public Employees, *Equal Opportunity at Work*, Chapter Seven, "Job Evaluation".

GRAPH 'A'

Percentage increases across the board — that is, the same percentage increase for all jobs — increases the hourly wage gap between the lower and higher paid jobs, as women dominate the lower-paid jobs. This percentage increase has the effect of increasing the salary gap between men and women.



In 1972, the wage gap between a job paid \$3.00/hour and a job paid \$6.00/hour was \$3.00/hour. By 1977, after an across-the-board percentage increase of 10% each year, the wage gap had increased to \$4.80/hour — or

Rights clauses

THE GRIEVANCE PROCEDURE is the tool whereby we complain about injustices and obtain redress; THE SENIORITY CLAUSE relates closely to equal pay by ensuring more equal opportunity. This clause may recognize seniority rights only within one *occupation*: typists, for example. Or again, this clause may recognize seniority rights within one *department*, which is a slight improvement.

The objective, however, should be recognition of seniority rights of a person over the whole bargaining unit. Where seniority is established bargaining-unit wide, women confined to low-paid, traditional jobs can climb the ghetto walls and train themselves for better-paid jobs in other departments, formerly reserved for men. With bargaining-unit wide seniority, senior women workers would be transferred to other departments when a lay-off occurs, and would learn other skills, while junior male workers would be laid off. Similarly, when job postings occur, women applicants would have a more equal chance of being accepted and of training in skills that pay higher wages.

When women are not restricted to traditional jobs, through narrow seniority provisions in a contract, they will seize the opportunity to desert the low-paid jobs and get into the higher-paid jobs. In consequence, the Company will be under pressure to raise the pay in traditional women's jobs, in order to keep trained workers in them. Therefore, there is a close relationship between the struggle for equal pay for work of equal value and the struggle for a strong seniority clause. If a union fights on both issues, it will be successful to the degree that it is consistent and uses its bargaining strength to best advantage.

Making the most of the present contract

In between negotiations for a new collective agreement, it is important to make use of the rights clauses in the current contract. For example, if we have a contract with only department-wide seniority now, and we never complain when there's an injustice, we are not in a strong position when we go to bargain for plant-wide, or bargaining-unit-wide seniority later. The employer will say, "The employees are satisfied, nobody's ever complained. Why should we change things?" Make sure the employer has heard about dissatisfaction with the present limitations in seniority, when you go in to bargain for a stronger clause.

Know all aspects of your union

It is often said that when women speak about their rights at meetings, the men don't listen; they may read a newspaper or talk amongst themselves. It is part of the discrimination shown against us, but in many instances it is because we don't go about it the right way.

If we attend union meetings regularly and learn to understand most of the important problems that all union members — men included — have to contend with, we will give intelligent and effective support to the struggle for greater justice in all aspects of union life.

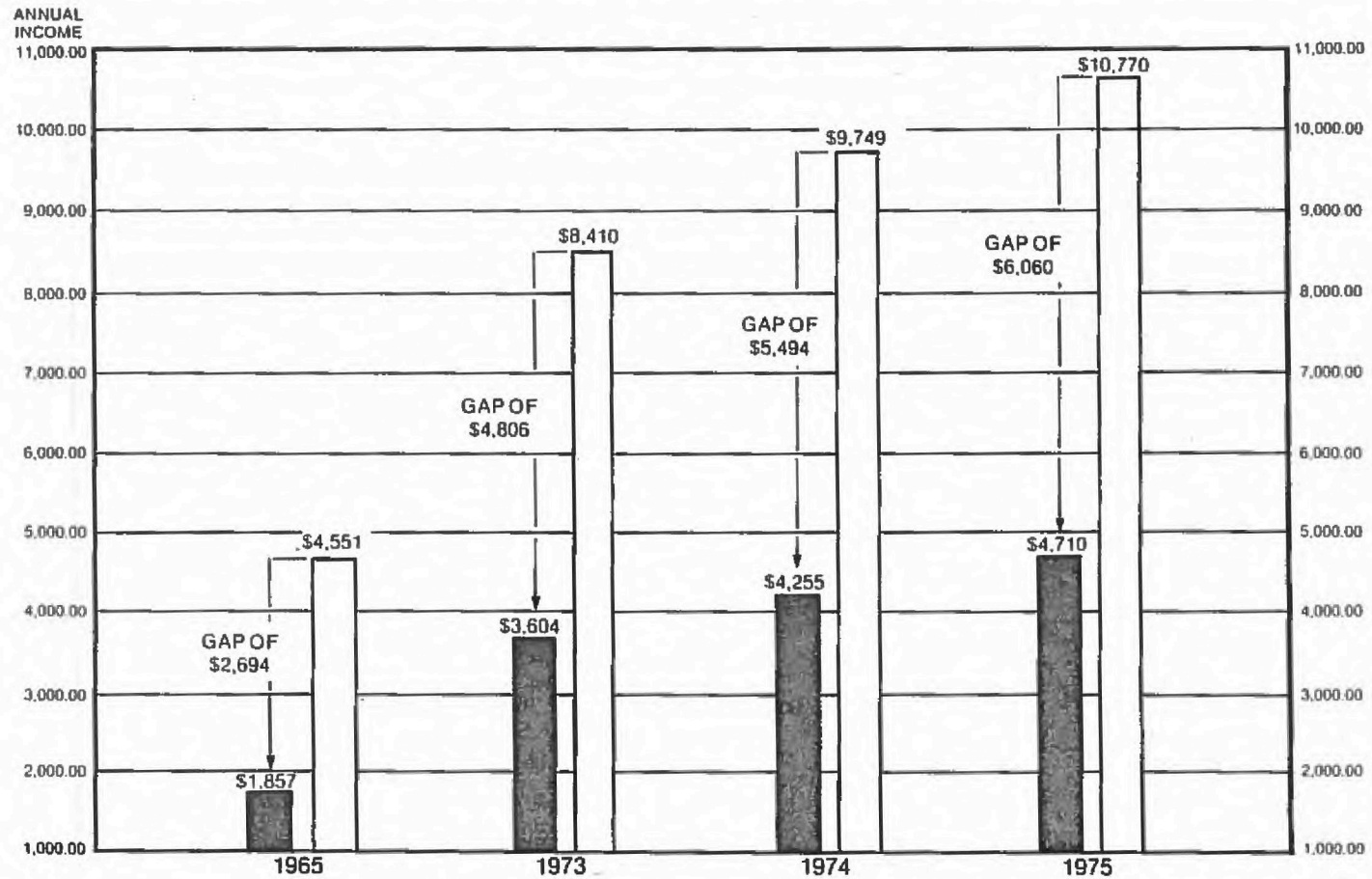
In such circumstances, we will have the respect and attention of our fellow-workers, whether we speak of our common problems, or of our

particular problems, or again, of the particular problems of other groups or members. We will also be better able to show the relationship between our immediate interests and those of other underpaid workers with those of the higher-paid men.

We must try to achieve our aim of equality in solidarity with other union members. In this way, management will be unable to use a divided membership to frustrate our aims as women workers, or those of our fellow workers.

EDITOR'S NOTE: On October 3rd 1977 The Equal Pay Coalition held a press conference at Toronto City Hall to expose the unjust decisions of the Anti-Inflation Board as they relate to women workers. Speakers at the Press Conference dealt with the cases of the Canadian Union of Public Employees (Winnipeg Health Sciences Centre and Toronto City Hall), the Canadian Textile and Chemical Union and the Nova Scotia Government Employees Association. The A.I.B. ordered rollbacks in the negotiated settlements of these unions where they had won additional increases for women based on the equal value concept. These rollbacks were ordered despite the provision in the anti-inflation legislation which allows an exemption from the guidelines for payments made to remedy sex discrimination. The Coalition has written Gordon Fairweather, Chairman of the Federal Human Rights Commission asking that he investigate the A.I.B.'s practices as they would appear to violate the spirit of the new Human Rights Act.

GRAPH 'B'
Average annual income of all earners employed 50-52 weeks/year.



Source: Statistics Canada: *Income Distribution by Size in Canada* (for 1975 preliminary estimates).

How will the court rule?

by Marymay Downing

Learning about the Mediterranean a few years ago made me appreciate the state of affairs that I thought existed here in my own corner of the globe. In contrast to the strongly restricted position of women there, here, I thought, in the "New York World" women at least now receive equal pay for equal work. It may still take a long time for general social attitudes to change enough to give women back their dignity, but at least that important legislation was on the books. You had to pay women as much as men if they were doing substantially the same work. After all, that is the law. And the law is the law. Or is it?

My father always used to say, "She has to learn it the hard way!" and I guess he was right. I've just learned, the hard way, that the law on the books and the law in practice are two very different things. For when, back in the Ontario work force again, and finding myself in need of the existing equal pay legislation, inadequate as it is, I learned the hard way how difficult it is to obtain one's legal rights in practice if the powers that be don't put teeth in their laws.

I was working in a small picture-framing factory (appropriately named The Frame-Up) hired at \$2.50/hr. until I found out from the men that they were all making upwards of \$2.75/hr. At least 10% more! And we were all doing basically the same work. Even the men agreed we should be paid the same. So, trusting in my country's laws, I approached my boss, the entrepreneur-owner, and pointed out that he really ought to be paying me more. After all, there was a law . . . He laughed at me and told me he knew the law and I didn't stand a chance. A few months later he found a pretext to fire me so that, by the time I had found a lawyer and set the wheels of investigation in motion, the Employment Standards Officer assigned by the provincial government to investigate my complaint was unable to observe me in the workplace. She had to decide whether my complaint was justified under the Equal Pay Act, that is, whether I was doing "substantially the same work", etc., and all she had to go on was my word and his word. She utterly ignored my lawyer and therefore successfully avoided questions about the interpretation of the facts and the law. She interpreted the law very narrowly, adding a few more restrictions not spelled out in the statute. Her interpretations were subsequently partially overturned by the next officer assigned to do the review I requested.

Under present legislation, if the initial decision goes against the employee she has the right to have another officer take another look at the complaint. It's called a "review". However, if the decision goes against the employer, he has the right to an "appeal", which is conducted by someone outside the government. One government official, when asked why he thought the legislation didn't afford the employee a full appeal as well, replied that too many crackpot employees would appeal.

During the review the second officer did acknowledge my lawyer but nonetheless refused to accept submissions from her on the interpretation of either the facts or the law. Nor would he tell us on what he was basing his

decision. Not having this information implies trust in the official's intention and ability to get at the truth and enforce the law. Am I to trust an official who candidly, and with a shrug, declares we all know that the law in print and the law in practice are not the same thing? Ironically, when I finally did obtain a partial (less than 10%) finding in my favour and the company was ordered to pay the \$25.00 fine, the company appealed the order! Crackpot employees indeed.

The appeal has not yet taken place because I have requested a "judicial review". I learned the appeal requested by the employer would not consider the bulk of my complaint, so I had little choice but to take the Ontario Government to court to have the court rule on the adequacy of the government's procedure of investigation under the statute. My lawyer is arguing that the government, in refusing to admit my lawyer's submissions, or to inform me of its findings so that I may comment on them, is violating principles of what is called representation, to know the case against me, and subsequently to equal pay for equal work. After a wait of more than a year the case was heard in March of this year. The substance of the government's defense was that indeed we must trust our officials to do the job sufficiently themselves. We are still waiting for the court's decision.

It's been two years since I began this long, involved process. It has been a radicalizing process. I may still lose. Even if I win the judicial review, there will probably still have to be yet another investigation, two years after the first . . .

As usual, I'm learning my lessons about the hard, cruel world, sir, the hard way. I think I'll go to the Mediterranean with the money still owing me, if I ever get it. And stay there. There'd only be enough for a one-way ticket anyway. Besides, maybe it's not so much better here after all.

EDITOR'S NOTE: On August 25th 1977 the Supreme Court of Ontario ruled that the Ontario Government did not have to comply with Ms. Downing's requests. The judges found that giving employees an opportunity to be heard would slow down the procedures of the Employment Standards Branch. Ms. Downing is pursuing her case to the Court of Appeal.

Ontario Labor Minister John MacBeth turned to the Bible in the Legislature yesterday in an attempt to explain what he meant by saying society was "not completely sold" on the concept of equal pay for equal work . . . "Maybe it's time," Mr. MacBeth told the Legislature, "that I turned to the Bible, the New Testament, I think. You remember the parable about the workers going into the field? Well, there were different rates of pay . . ." The Labor Minister was interrupted by cries of disbelief from the Liberal members.

from the Globe and Mail, April 16, 1975.

An historical perspective on the ghettoization of women's work

by Michelle Swenarchuk

To understand the factors that have led to and perpetuated the inferior status of women in the economy, I think it is useful to look at the historical period of the 1880's when the first laws were passed regarding women's work in Ontario. Two factors led to these laws: a desire to protect women workers and, simultaneously, a desire to exclude them from some jobs. I believe these factors still operate now, but in an institutionalized way.

The era of the 1880's in Ontario was a period of industrialization and rapid urbanization. Economic growth occurred at an uneven rate, with alternate booms and depressions, but the Gross National Product had an overall high rate of growth. This rapid urbanization led to the familiar conditions of the Industrial Revolution: slums, poor social services, low wages, and job uncertainty. There was pressure from the unions of the time to stop immigration on grounds that immigrants were taking jobs needed by Canadians. The conditions of women workers were even worse than that of the men's, and a delegate to the 1883 convention of the Canadian Labour Congress in Toronto commented that if trade unionists were treated like women workers, they would revolt without delay. An 1884 survey showed that the average wage for men (for a 59.05 hour week) was \$394.34 per year; for women, working a 59.47 hour week, it was \$133.09 per year. That is, the women received about one third of the men's salary. It was in this historical context that three protective Acts were passed to regulate work women were doing: The Factories Act of 1884; the Shops Regulation Act of 1888; and the Mines Act of 1892.

On its terms and in the focus of its enforcement, the Factories Act was aimed almost exclusively at protecting women and children. It established a general prohibition against employing anyone so that his or her health would be likely to be permanently impaired. But much more explicitly, it made it unlawful to employ in factories boys under the age of 12 and girls under the age of 14. . . . young boys and girls and women could be kept at work for no more than 10 hours a day and 60 hours a week; they had to be given one hour for a noon meal and sometimes a lunchroom would have to be provided for them . . . there were specific provisions prohibiting young girls and women from standing near, cleaning or working on various kinds of machines having moving parts. The Shops Regulation Act prohibited young persons (defined to mean primarily young women) from working in shops before 7 a.m. or after 6 p.m. Female employees had to be provided with seats and permitted to sit on them when not engaged in work. Again, a lunch hour had to be provided.

The Mines Act of 1892 prohibited the employment of young girls and women in and around mines.

The first question that arises in relation to these acts is, why were they passed? And why did the provisions regarding hours of work, and special

safety provisions apply only to women and children and not to male workers as well? It appears that women were considered to need protection. Women's unions at that time had not been successful. There was an active middle class reform movement in Toronto including women's suffrage and the temperance movement, but its tone was moralistic, and its concern for working women was a concern that factory work corrupted their morals.*

These reformers considered that women leaving their homes to work in factories or shops threatened the family and social structure in which women were supposed to raise children. It was believed that factory work would impair their ability to do so. This view of women workers can be seen in the 1919 argument for a minimum wage for women.

It is a very sad thing indeed if the mothers of the future generation are not physically fit and able to bring healthy, happy children into the world . . . It is equally necessary that they shall have a minimum wage for their own sake as well as for the future generation.

So one influence on the passage of the protective legislation was the desire of the middle class to protect the traditional structure of the family, and women's perceived primary role of mother and housekeeper. But there was another influence on the legislation: a trade union lobby that saw women workers as a threat.

Working men viewed working women the same way as they viewed immigrants and convict labourers: they took jobs away from men who needed them to support families and by increasing the labour supply and (supposedly) voluntarily accepting lower wages, they depressed wage rates for men. Since women and children worked long hours, men had to work long hours to compete with them and they couldn't claim overtime rates. Factory owners who employed men at reasonable rates for reasonable hours were at a competitive disadvantage compared to owners employing women and children at low wages for long hours.

An 1889 resolution by the Trades and Labour Congress in Montreal indicates that men considered women workers to be manipulated by employers to depress male wages:

"Whereas at the present time male labour is manipulated and used as a means of reducing the price of labour in general; and in trades where the female is so used to the printing business, she is scarcely ever properly taught said trade, or given an opportunity of earning a fair rate of wages, being merely used for the time being as a lever to reduce the price of labour; and whereas, if woman is to be recognized as a competitor in the labour market, such competition should be on a fair basis, brought about by her going through the same routine of learning a trade as the male."

There were also opinions expressed that by flocking to office work, telegraphy, and teaching, women had driven men out of these occupations.

Whether or not these opinions were true, the unions were prepared to campaign for laws that would permit women to work, but would protect

the male competitive advantage by restricting women workers. In 1906 the Canada Trades and Labour Congress urged the abolition of all child and female Industrial Labour, but by 1911 it was supporting the position of equal pay for equal work. This confinement of women to female job ghettos, however, meant that there was no similar male work to compare their jobs to so that even when the principle of equal pay for the same or similar work became law, it was ineffective raising the relative pay of women's work.

Whereas at the present time, female labour is manipulated and used as a means of repressing the price of labour in general; and in trades where the female is so used to the detriment of the male labour . . . and whereas if woman is to be recognized as a competitor in the labour market, such competition should be going on a fair basis, brought about by her going through the same routine of learning as the male, and consequently getting the same rate of wages; therefore, resolved that the Dominion Trades and Labour Congress strongly discountenances the evil, and requests that employers of labour be urged to pay the woman the same wages as the man for the same class of work properly done.

From the minutes of the Dominion Trades and Labour Congress, 1890.

* There was an investigation into the morals of working women by The Royal Commission on the Relations of Labour and Capital in 1889. It showed concern for women working in mixed factories and for the propriety of women working under male foremen; it concluded that most women workers were moral creatures and that the few who became prostitutes did so because of low wages and bad working conditions.

The need for legislation to provide equal pay for work of equal value

by Mary Cornish

In Ontario today, women are required to be paid equally with men when they can prove that they are doing a job that requires substantially the same 'skill, effort and responsibility' as men under the same working conditions. This requirement is set out fully in section 33 of the Employment Standards Act, 1974 which provides as follows:

PART IX

EQUAL PAY FOR EQUAL WORK

Equal pay
for equal
work

33.—(1) No employer or person acting on behalf of an employer shall differentiate between his male and female employees by paying a female employee at a rate of pay less than the rate of pay paid to a male employee, or *vice versa*, for substantially the same kind of work performed in the same establishment, the performance of which requires substantially the same skill, effort and responsibility and which is performed under similar working conditions, except where such payment is made pursuant to,

- (a) a seniority system;
- (b) a merit system;
- (c) a system that measures earnings by quantity or quality of production; or
- (d) a differential based on any factor other than sex.

Pay not to
be reduced

(2) No employer shall reduce the rate of pay of an employee in order to comply with subsection 1Q.

(3) No organization of employers or its agents shall cause or attempt to cause an employer to agree to or pay to his employees rates of pay that are in contravention of subsection 1.

(4) Where an employment standards officer finds that an employer has failed to comply with subsection 1, the employment standards officer may determine the amount of moneys owing to an employee because of such non-compliance, and such amount shall be deemed to be unpaid wages. R.S.O. 1970, c. 147, s. 25 (1-4), *amended*.

Employer
not to be
requested to
contravene
subs. 1.
Determina-
tion by
employment
standards
officer

Under the present legislation, when assessing equality, investigators must find that each of the criteria, "Skill", "effort", "responsibility" and "working conditions" are substantially the same. Prior to the amendment in the 1974 Act which added the word 'substantially', the investigators gave a very narrow interpretation to the word "equal". Now, minor variances in the various criteria are allowed as long as the jobs are substantially equal.

If the province were to implement equal pay for work of equal value then investigators would still use the same criteria of skill, effort, responsibility and working conditions but they would not have to find that *each criteria* was substantially the same, but rather that the jobs, even though dissimilar *as a whole*, had the same value. The following tables illustrate the differences in the application of the equal pay law before and after the amendment.

Pre-1974 Legislation

The legislation protected only women who performed exactly the same jobs as men. If the investigator used a point system, then each of these criteria would have to receive the same points.

	Skill	Effort	Respon- sibility	Working Conditions
eg. male secretaries	10	10	10	10 = 40
female secretaries	10	10	10	10 = 40
male nurses	10	10	10	10 = 40
female nurses	10	10	10	10 = 40

Therefore these jobs would be found to be equal as each criteria received the same points.

Post 1974 Legislation

The legislation protected women who performed substantially the same jobs as men.

eg. male orderlies	9	10	10	11 = 40
female nurses	10	10	10	10 = 40
aides	10	10	10	10 = 40

In the above example, an investigator would allow a slight variation in the points allowed to each criteria as long as the differences in each criteria are minimal. If the female aide proved that she had more skill than the orderly and the other criteria were equal, then she would be *disentitled* to equal pay as the jobs were not equal. This is the absurdity which equal value legislation is designed to correct.

Equal value legislation

If this were implemented, women would be protected who performed jobs that were of the same value as men's.

Possible examples are:	Skill	Effort	Respon- sibility	Working Conditions
Female Public Health Nurses	5	10	15	5 = 40
Male Health Inspectors	10	15	5	5 = 40

Other examples might be dietician (female) and x-ray technician (male) sewing machine operator (female) and janitor (male).

Under the equal value legislation, women who have been put into job ghettos would be able to reach out and compare their jobs to those found in the ghettos where wages are significantly better.

The Federal Government in its proposed Bill—C—25, Canadian Human Rights Act, has included the principle of equal pay for work of equal value in section 11 which reads as follows:

Equal wage 11. (1) It is a discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value.

Assessment of
value of work (2) In assessing the value of work performed by employees employed in the same establishment, the criteria to be applied are the skill, effort and responsibility required in the performance of the work and the conditions under which the work is performed.

Different wages
based on
reasonable
factors (3) Notwithstanding subsection (1), it is not a discriminatory practice to pay to male and female employees different wages if the difference is based on a reasonable factor that justifies the difference.

Interpretation
of reasonable
factor (4) For greater certainty, sex does not constitute a reasonable factor justifying a difference in wages.

No reduction
of wages (5) An employer shall not reduce wages in order to eliminate a discriminatory practice described in this section.

"Wages"
defined (6) For the purposes of this section, "wages" means any form of remuneration payable for work performed by an individual and includes salaries, commissions, vacation pay, dismissal wages, bonuses and reasonable value for board, rent, housing, lodging, payments in kind and any other advantage received directly or indirectly from the individual's employer.

EDITOR'S NOTE: On July 14th 1977 the Canada Human Rights Act, Bill C-25, was proclaimed. As amended the new Act Section 11(2) reads "... the criteria to be applied are the composite of skill, effort and responsibility" and working conditions. The new Chief Commissioner is Gordon Fairweather and the Commission is now accepting complaints. Employees in federal jurisdiction can address complaints to: Canada Human Rights Commission, The Journal Tower North, 6th floor, 300 Slater Street, Ottawa. Telephone: (613) 995-1151.

As you can see, the wording is not that different from the present Ontario legislation except for the crucial words "equal value". One serious loophole that still remains in the federal legislation is section 11(3) which allows employers to escape liability if they can prove that they are paying unequal wages for a reasonable factor other than sex. As this opens up many of the familiar biased arguments concerning what is reasonable discrimination, such as the need for a man to provide for his family, it is necessary to oppose this general exclusion and instead put in specific exclusions, such as — seniority system, piece work, etc.

The Federal government in proposing equal value legislation responded to many years of agitation by women concerning the issue.

This proposal, when passed, will serve to bring Canadian federal legislation* into compliance with the UN's International Labour Organization Convention 100, concerning equal pay for work of equal value passed in 1952, and ratified by Canada in 1972. When countries ratify these Conventions, which set out world-wide labour standards, they acknowledge that their present legislation — both federal and provincial — complies with those standards. Presently Ontario is in violation of those standards. However, it is not enough to win changes in the legislation to provide for equal value. In Ontario, enforcement has always been a problem. Presently, the Ontario government through its equal pay investigators has been interpreting the legislation very narrowly. Further, as the Ministry of Labour is underfinanced and undervalued, there are not enough resources directed towards the aggressive pursuit of complaints, and complainants find themselves with an uphill battle to convince investigators they have a good case. Complainants often do not have enough money to hire a lawyer to defend them against the Company lawyer and the investigator.

As it has been very clearly established that there is widespread inequality in men's and women's wages, the onus should be on the employer, once a complaint has been made, to show that on the basis of his formal or informal evaluation system, the jobs are equal in value. The employer must produce some justification for the inequality in wages since it is he who knows best why he valued them differently. Once that justification is put forward, then both the investigator and the Complainant can put forward evidence to disprove those justifications or to disallow them as discriminatory. Further, the present legislation does not adequately protect the employees' procedural rights. There is presently a case before the Supreme Court of Ontario which alleges that the Employment Standards Branch in their investigations are denying the right of a fair hearing to employees.

In order to aggressively pursue the problem, it is also necessary for the legislation to allow for group complaints without the consent of the victim and for complaints to be initiated by the Branch itself when they see that the problem is becoming serious in a certain industry plant or office.

* This legislation, however, will apply only to federal employees, such as federal civil servants, employees of Canadian National Railway, the Canadian Broadcasting Corporation and so on.

Partial Bibliography on the subject of Equal Pay For Work of Equal Value

1. "Affirmative Action — What Women Stand to Lose", Laurell Ritchie, *This Magazine*, Feb.-March, 1976.
2. Briefs available from the Equal Pay Coalition as to the federal Human Rights Act, (which includes the principle of Equal Pay for Work of Equal Value). Statements are from the Nova Scotia Action Committee, the University of Ottawa caucus of the Women and Law Association, The Law Union of Ontario, the Canadian Labour Congress, the National Action Committee on the Status of Women, the Canadian Federation of Business and Professional Women's Clubs, the Advisory Council on the Status of Women, and The Canadian Bar Association.
3. "Brief on Equal Pay for Work of Equal Value", the Provincial Council of Women in Manitoba, January, 1977.
4. "Equal Opportunity at Work", Margot Trevelyan, 1977, (available from the Canadian Union of Public Employees).
5. "Equal Pay for Work of Equal Value — A Discussion Paper", Ontario Ministry of Labour, October, 1976.

"Once you start talking about equal pay for work of equal value, it is really not valid to do it on the basis of sex. You must then be talking about jobs in general. Then you've got to say anybody regardless of sex, should get equal pay for work of equal value. Then you start to compare values and start to get into very complicated areas."

Don Radford, Operations Chief for the Employment Standards Branch, as reported in the *Globe and Mail*, June 9, 1977.

"Equal pay for work of equal value would have a much greater impact on wages than bargaining power, the availability of workers, the location of the job and the ability to pay." This could "alter the system itself" . . . Since it is "practically impossible" to reduce wages . . . this would increase labor costs.

Bette Stephenson, Labor Minister speaking to the Personnel Association of Toronto, as reported in the *Globe and Mail*, January 14, 1976.

Lynn McDonald, using Statistics Canada, reported in The Labour Force, May, 1974 (pp. 80-81) that women in Ontario alone lost three billion dollars annually in potential wage and salary income due to male-female wage inequalities. The figure for all of Canada was 7 billion dollars.

The Equal Pay Coalition has been sponsored in its various activities by the following organizations:

The Business and Professional Women's Clubs of Ontario
The Canadian Textile and Chemical Union
The Canadian Union of Public Employees (National Office and Ontario Division, and Locals 79 and 1996)
Canadian Women's Educational Press
Centre for Women (Humber College)
Confederation of Canadian Unions
Eastminster Community Services
Federation of Community Agency Staffs
Graduates Assistants Association — Local 2
Law Union of Ontario
Lount Press Graphics Ltd.
National Association of Women and the Law (Toronto articling students caucus, University of Ottawa and Osgoode Hall)
Ontario Federation of Labour
Organized Working Women
Times Change
Women's Counselling, Referral and Education Centre
Women's Kit (O.I.S.E.)
York University Staff Association
YWCA of Metropolitan Toronto.

The coalition has held public meetings, addressed by labour leaders and members of parliament, held educational seminars, and sent speakers to union meetings and women's organizations. For more information about the coalition, or for films and printed resource material, write:

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