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BRINGING PAY EQUITY TO THOSE PRESENTLY EXCLUDED  
FROM ONTARIO'S PAY EQUITY ACT

Submission by the Equal Pay Coalition to the Pay Equity Commission concerning its legislated Study on Implementing Pay Equity for Female Job Classes with No Appropriate Male Comparators.

December 13, 1988

The member groups of the Equal Pay Coalition are:

THE ONTARIO FEDERATION OF LABOUR  
THE YWCA OF METROPOLITAN TORONTO  
THE ONTARIO PUBLIC SERVICE EMPLOYEES UNION  
THE CANADIAN UNION OF PUBLIC EMPLOYEES (NATIONAL  
OFFICE AND ONTARIO DIVISION & LOCALS 79 AND 1996)  
THE CONFEDERATION OF CANADIAN UNIONS  
THE BUSINESS & PROFESSIONAL WOMEN'S CLUBS OF ONTARIO  
ONTARIO ASSOCIATION OF PROFESSIONAL SOCIAL WORKERS  
ASSOCIATION OF ALLIED HEALTH PROFESSIONS: ONTARIO  
BEACHES WOMEN'S GROUP  
THE COALITION OF VISIBLE MINORITY WOMEN  
CHINESE CANADIAN NATIONAL COUNCIL  
CONFEDERATION OF ONTARIO UNIVERSITY STAFF ASSOCIATION  
LABOUR COUNCIL OF METROPOLITAN TORONTO  
WOMEN WORKING WITH IMMIGRANT WOMEN  
IMMIGRANT WOMEN'S CENTRE  
ORGANIZED WORKING WOMEN  
THE LAW UNION OF ONTARIO  
THE CANADIAN TEXTILE & CHEMICAL UNION  
THE CANADIAN WOMEN'S EDUCATIONAL PRESS  
ONTARIO FEDERATION OF STUDENTS  
ONTARIO COALITION FOR BETTER DAYCARE  
TIMES CHANGE  
WOMEN'S PRESS  
ELIZABETH FRY SOCIETY  
YORK UNIVERSITY STAFF ASSOCIATION  
CANADIAN UNION OF EDUCATIONAL WORKERS  
FEDERATION OF WOMEN TEACHERS' ASSOCIATION OF ONTARIO  
ONTARIO SECONDARY TEACHERS' FEDERATION  
INTERNATIONAL WOMEN'S DAY COMMITTEE  
SUDBURY WOMEN'S DAY COMMITTEE  
COMMUNICATION WORKERS OF CANADA  
TORONTO AREA CAUCUS OF WOMEN AND THE LAW  
THE SUDBURY WOMEN'S ACTION GROUP  
UNIVERSITY OF GUELPH STAFF ASSOCIATION  
THE ONTARIO COUNCIL OF THE FEDERATION OF UNIVERSITY WOMEN  
SOCIAL PLANNING COMMITTEE OF METROPOLITAN TORONTO  
SERVICE EMPLOYEES INTERNATIONAL UNION

### What is the Problem

It is universally recognized that systemic gender discrimination has led to the undervaluation of women's work. We know that the more a position is associated with women's work, the less it pays. This problem remains endemic to Ontario's compensation system.

The Ontario Government has said it is committed to redressing this problem for all women but the Pay Equity Act has not accomplished this

The Green Paper on Pay Equity expressed this commitment as follows:

The achievement of equal opportunity and social justice for all Ontarians is a fundamental and unalterable commitment of the Ontario Government. For women, this must include employment equity in all its aspects. Therefore implementation of pay equity or equal pay for work of equal value, is not at issue; only the method and timing of its achievement are open for discussion and ultimate decision.

The preamble to the Pay Equity Act proclaimed on January 1, 1988 recognizes that "affirmative action" is necessary to "redress gender discrimination in compensation of employees employed in female job classes in Ontario".

The Ontario Government won a majority mandate from electors in the fall of 1987 on a platform which focussed on its promise of bringing pay equity to women's work.

Yet, in spite of these commitments and promises, the restrictions and loopholes in the Pay Equity Act mean



that a substantial percentage of women workers in Ontario are not protected, close to thirty-five percent.

The Pay Equity Commission has a unique opportunity and a legislated mandate to show strong leadership on this issue by recommending to the Minister of Labour effective ways to redress the inequities of coverage in the Act.

As a result of lobbying by the Coalition, the Pay Equity Act required a Government study on how to achieve pay equity for those women who do not have appropriate male comparators in their workplace. Section 33 provides that the Commission:

shall conduct a study with respect to systemic gender discrimination in compensation for work performed, in sectors of the economy where employment has traditionally been female, by female job classes in establishments that have no appropriate male job classes for the purpose of comparison under section 5 and, within one year of the effective date, shall make reports and recommendations to the Minister in relation to redressing such discrimination.

As part of this study, qualitative studies of various predominately female sectors were commissioned and released in October. These studies paint a similar but shocking picture of the many hundreds of thousands of Ontario women who will be excluded from coverage unless the Ontario Government takes immediate action to amend the Act to include them.

Until now, the Government has argued that only women working for private sector employers in establishments

with less than 10 employees and workers in all-female establishments would not benefit from Ontario's pay equity legislation. The sectoral studies show that women in many more workplaces will suffer the same fate because they have no male comparator.

The basic problem is that the present Act only addresses the problem of undervaluation of women's wages in circumstances where an appropriate and comparable male comparator can be found in the establishment. Once found, this comparator job is used as the yardstick for identifying the extent of discrimination in the compensation for the female-dominated position.

The absence of an appropriate male comparator in the establishment does not mean there is no discrimination. It just means that another legislated measure must be used to identify it.

Many women work in establishments with no male jobs (eg. day care workers) while many others work in establishments in which the male jobs are clustered at the top and/or the bottom of the job hierarchy so that the work performed by the female job classes is not of equal or comparative value to the work performed by the male job classes.

According to the sectoral studies the following groups of women will likely be excluded from the Act's coverage, not because their wages are not undervalued, but because they do not either have any male comparators in their establishment or there is no appropriate male comparator:



- (a) Health care workers (e.g. nurses and other staff working for the VON and in nursing homes or small hospitals, lab technologists, visiting homemakers);
- (b) Clothing manufacturing workers;
- (c) Personal service workers (e.g. laundry workers, hairdressers and hairstylists, live-in and live-out housekeepers and nannies);
- (d) Community and Social Service workers (e.g. counsellors, support workers with the elderly and handicapped, clerical support staff, shelter workers, staff providing services for immigrants, visible minority and native people);
- (e) Child care workers;
- (f) Library workers;
- (g) Travel agency employees and female employees in all but the largest cultural institutions.

And this is certainly not a complete list of all those who will be excluded. Many thousands of clerical workers in the manufacturing sector, female sales clerks, cashiers and clerical staff in the retail sector, and female hotel and restaurant employees, had no appropriate male comparators clearly identified in the sectoral studies.

In addition, there are many other predominantly female job categories which the Commission failed to study where appropriate male comparators may well be lacking. These include the thousands of workers who are:

- (a) Clerical employees in financial and business services sectors (e.g. insurance, trust companies, banks, real estate and advertising firms);
- (b) Clerical workers employed by temporary agencies;

- (c) Clerical workers employed by professionals (e.g. doctors, dentists, lawyers, architects).

Furthermore, 238,000 women work in establishments with less than 10 employees and are thereby excluded from this Act and approximately 200,000 of the 481,000 women in Ontario who work part time are excluded because of the way in which the Act defines casual workers.

Immigrant and visible minority women who most need the protection of the legislation appear to be the most disadvantaged since they are concentrated in many of the jobs and sectors noted above.

The coverage problems identified by the sectoral studies should not surprise anyone. During the Justice Committee hearings in Bill 154, the Coalition and other lobby groups pleaded with the Government to broaden the scope and coverage of the Act because they foresaw that the Act's restrictions would leave many women condemned to low wages.

The Act's structure presents only limited opportunities for some women to get redress for the wage discrimination they suffer. It allows employers to avoid paying fair wages to their undervalued female workers because of arbitrary factors which are unrelated to whether the women suffer discriminatory wages such as whether there is any or an appropriate male comparator, how many employees are

employed by their employer or their schedule of part-time work.

The fact that the women excluded from coverage are doing work which is seriously undervalued and clearly identified as "women's work" is irrefutable. The responsibility of the Ontario Government to these many hundreds of thousands of women is also clear.

The purpose of the Commission's legislated study is not to see if discrimination exists but to recommend effective means to identify the extent of the undervaluation and to ensure payouts are made to eliminate the wage gap attributable to systemic undervaluation of women's work. Put at its simplest, the Commission must recommend to the Minister of Labour the best way to ensure that all women in undervalued jobs receive the necessary pay equity adjustments.

The Commission did not commence its study until late in the spring. First it sought briefs from the public. The Equal Pay Coalition declined to make a submission, and requested instead that the Commission proceed quickly to carry out studies by experts which could be distributed to



lobby groups to review. The Coalition also requested public meetings so that it could respond to the information and discuss ways to achieve pay equity for these women. The Commission shied away from any public discussion, preferring to "consult" individually with various groups rather than hold public hearings.

The quantitative studies which are to identify the size of the problem have not been released to us.

We have reviewed the sectoral studies and consulted with women's groups and unions representing employees who will likely be excluded from the Act. Our recommendations are set out below and are grouped into three categories; those requiring an amendment to the Pay Equity Act, those dealing with the public sector and those requiring other legislative changes. A summary of our recommendations is attached as Appendix "A".

#### Recommendations Requiring Amendment to the Pay Equity Act

1. Extend coverage of the Act to women in private sector workplaces with less than ten employees.

The Equal Pay Coalition is on record as opposing the present exclusion of these workers from coverage. The Act should provide for universal coverage for all women in

Ontario. The sectoral studies provide abundant proof that this exclusion is unfair and discriminatory and many recommend abolition of this restrictive component of the current Act.

2. Include all casual workers under the Act.

Paragraphs 3 and 4 of section 8 of the Pay Equity Act should be deleted so that all casual workers are included. This would bring coverage to approximately 200,000 women who work part-time who are now excluded from the benefits of the Act because of the way the Act defines casual positions.

3. Expand the definition of establishment to a corporate rather than municipality definition.

A primary reason that so many women are excluded from the present Act is that the definition of "establishment" is too narrow. As comparisons can only be made with predominantly male job classes within one's establishment, the definition of establishment is crucial to being able to find male comparators. In the Report of the Consultation Panel on Pay Equity, it is clear that the Government was warned repeatedly that a narrow definition of establishment would effectively remove a substantial number of women from the Act. This prophecy now appears to be proven true and the definition of "establishment" should therefore be extended to include all workplaces of the corporate employer.

4. Expand the definition of employer to include "related employers" and the definition of employee to include "dependent contractors."

Employers often structure their business so that their operations are technically divided into two or more



corporate entities although the business as a whole is centrally administered. At present, each corporate entity will likely be treated as a distinct employer thus limiting the comparisons available to women employed by the overall business. To remedy this the Act should be amended to include "related employers" as defined by the Labour Relations Act and to specifically include all franchised operations as one employer for pay equity purposes.

Employers also structure the employment of employees as independent contractors or freelancers when they are really employees. This results in the affected female job classes being denied a right to a pay equity adjustment either because their job is no longer part of the workplace or their possible male comparator has been removed.

Accordingly, the definition of employee must be expanded to include "dependent contractors" as defined by the Labour Relations Act.

5. Allow proportionate comparisons when equal value comparisons are not available.

In many of the sectors studied, it appears that women will be prevented from getting redress for their undervalued work because the male job classes are either at the very top or at the very bottom of the job hierarchy. Therefore, allowing upward and downward proportionate comparisons would allow employees to compare themselves with male job classes which are not comparatively equal. For example, take the situation of social agency with a female job class of social workers and the only male job class being the Director. The present Act may well leave the social workers with no redress since the Director's position is



likely more responsible and therefore not comparable. Under a proportionate system, if the social worker were paid let's say, one half of the Director's compensation but was judged to be worth three quarters or more of the Director's position, then the social worker would get the appropriate upward adjustment. We believe that proportionate comparisons plus expanded definitions for "establishment", "employer" and "employee" would result in bringing pay equity to many of the women presently excluded.

6. Allow women who still can't find male comparators to apply to Pay Equity Tribunal for adjustments.

There will likely still be some female job classes who perform undervalued work but who still can't find comparators under any of the above mechanisms. We recommend that those women be allowed to make an application to the Pay Equity Tribunal which will have the power to determine mechanisms for achieving their pay equity.

7. All women who are presently excluded should receive pay equity adjustments on the same time schedule as those who are presently covered.

Women who are presently excluded from the Act must not suffer from delayed pay equity adjustments. By January 1, 1990 the Government must determine how it is going to establish pay equity for excluded women workers and make sure the first pay equity adjustments are made as required for the public and broader public sectors. If any delay is necessary adjustments should be back-dated and interest payable.

#### Recommendations for the Public Sector

The provincial Government is the major funding

source of public services which are predominantly female establishments (i.e. women form the majority of the workforce in such public services as libraries, health care institutions, child care institutions, social service institutions). As such the provincial Government plays the major role in setting wage rates and so helps to perpetuate the present wage gap.

Many of the sectoral studies suggest that the Government has a special responsibility to ensure that sufficient funds are available for pay equity adjustments in establishments receiving public funds:

"Ministry of Community and Social Services officials have indicated informally to agencies that they cannot expect increases in funding to cover the costs of compensation related to the legislation." (Community and Social Services Study)

"The substantial control the province has over the mechanics of the sector would seem to indicate that the provincial Government has a responsibility as an employer." (Childcare Study)

To date, this responsibility is not being taken seriously. We recommend the following actions:

8. A provincial pay equity fund needs to be established to provide pay equity grants to cover the costs of paying women fairly and ending systemic discrimination in wages.

This is especially critical for all areas of Community and Social Services and the Ministry of Health which is responsible for providing services. A separate pay equity fund for this purpose will give crucial services budget adjustments so that undervalued women are not absorbing service costs through low wages.

A pay equity fund is also needed to pay the costs



of pay adjustments determined by pay equity plans that are now being bargained in the public sector (e.g. hospitals, school boards, etc.).

9. Recommendations for various groups of women workers who are paid by publicly funded.

- A. Library Workers - The funding municipality should be considered the employer of library workers for the purposes of pay equity.

The library sector study shows that the major funding source for libraries is the municipal Government in which they are located. Our recommendation would allow the library workers who have no male comparators to compare themselves with male job classes within the establishment of the municipal Government.

- B. Day care workers - Day care workers in either one of the municipalities or the community college system in Ontario should be compared with male job classes in that municipality/college and whatever the required pay equity adjustment is for those workers should be applied to all day care workers in Ontario through a direct pay equity grant from the Government of Ontario to the employees themselves.

Day care workers will not generally benefit by an extended definition of establishment since there are usually no males working for the employer at any location. However, there are two entities that will have male comparators for day care workers -- municipalities and community colleges. Our recommendations would work as follows: If one of the municipalities or community colleges was to be used and day care workers were compared to a male job class and found to need a \$5.00 pay adjustment, the wages of all day care workers in Ontario will be raised by \$5.00 through a pay



equity grant to them personally. The municipality or college which is to be used to make the comparisons should be determined through negotiation with the Coalition for Better Day Care and the unions representing day care workers.

It is absolutely crucial that this grant be funded by the Ontario Government as it is impossible for the users of day care in Ontario (i.e. the parents) to pay this difference and it is unacceptable for day care workers in Ontario to continue to be underpaid because of their commitment to providing a service which is fundamental to the ability of women to work in Ontario.

- C. Other classifications such as visiting homemakers- Where possible, dollar adjustments which have been determined for workers who have found comparators should be applied to workers in the same occupations who have not been able to find comparators.

Even if all of the above recommendations are implemented, many women will still be excluded from benefits of the Pay Equity Act. For example, we expect that visiting homemakers employed by the Red Cross will be able to find comparators under a corporate definition of employer plus a proportionate comparison. We recommend that homemakers who do not work for the Red Cross should receive the same dollar increase adjustment, through the Government's pay equity fund, as those who manage to find a comparator.

#### Other Recommendations to Achieve Pay Equity for Women

Other measures, apart from pay equity legislation, will go a long way to redressing the undervaluing the work performed by the following groups of women workers

- (a) Women earning minimum wage;
- (b) Visible minority women concentrated in some of the most undervalued and essential occupations in Ontario;
- (c) Women who work part-time many of whom have no choice because full-time jobs are not available; and
- (d) Women workers who lack the protection of a union.

The Equal Pay Coalition proposes the following legislative recommendations to redress blatant and/or subtle discrimination experienced by these women workers.

10. Increase the minimum wage to \$8.30 per hour.

The largest growing group of jobs over the past three years has been those with wages hovering somewhere around minimum wage. The majority of those entering these jobs are women, many of whom are working part-time involuntarily. Therefore, we strongly recommend that the minimum wage be raised to a living wage and suggest the \$8.30 figure recommended and documented by the Ontario Federation of Labour. This may be the single most important pay equity adjustment which can be made for working women in Ontario.

11. Immediately implement strong employment equity legislation.

We recommend that the Ontario Government move quickly to develop mandatory employment equity legislation with special emphasis for visible minority women.

12. Provide more protection for part-time workers.

We recommend that the Government amend the Employment Standards Act to improve minimum standards for all



workers with special attention to part-time and casual workers, providing the same protection and benefits to them as to full-time workers.

13. Remove legal obstacles to organizing women into Unions.

Statistics show that the most important factor in determining women's wages is whether or not they have a union. On average a women goes up by \$3.35 per hour or 43 percent if her job is unionized. However, there are many obstacles inherent in our labour relations system in Ontario which impede the unionization of women. At the present time, the procedures and policies of the Ontario Labour Relations Board make it especially difficult to organize women who work part-time. We recommend that there be a policy review to examine the obstacles which the system presents to the organization of women and that any barriers which are found to exist be removed and any amendments to the Act required to facilitate organizing be implemented. For example, we believe that legislation which prohibited the hiring of replacement workers during a strike would substantially improve the possibility of organizing women workers. We also believe that legislation which required employee lists to be available to unions would assist in the organization of women workers.

CONCLUSION

In considering these recommendations we point out that Ontario is presently in violation of international labour laws guaranteeing all women workers freedom from discrimination in compensation.

ILO Convention 100 binds the Liberal Government to



implement effective measures for equal pay for work of equal value - ie. where systemic gender discrimination has led to undervaluation of women's wages, adjustments must be made to correct it.

The Government of Ontario must find a way to bring pay equity to all women receiving discriminatory wages. We have suggested the solutions which seem most appropriate to us after consultation with the member groups of the Equal Pay Coalition as well as unions and other women's organizations.

The Government's Pay Equity Act represented a significant but inadequate step in the fight to redress the massive discrimination faced by women workers every week in their compensation packages. Without speedy passage of laws to implement our recommendations, the Liberal Government's promises of pay equity for all Ontario women will be a sham.

We are looking to the Pay Equity Commission to play a strong leadership role in recommending to the Minister comprehensive and effective measures to ensure all women in undervalued jobs receive their pay equity adjustments.

SUMMARY OF RECOMMENDATIONS BY THE EQUAL PAY  
COALITION TO THE PAY EQUITY COMMISSION CONCERNING  
ITS LEGISLATED STUDY ON IMPLEMENTING PAY EQUITY FOR  
FEMALE JOB CLASSES WITH NO APPROPRIATE MALE  
COMPARATOR

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6. Allow women who still can;t find comparators to apply to Pay Equity Tribunal for adjustments.
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municipality/college and whatever the required pay equity adjustment is for those workers, should be applied to all day care workers in Ontario through a direct pay equity grant from government of Ontario to the employees themselves.

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Other Recommendations to achieve pay equity for women

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- 12. Provide more protection for part-time workers.
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