Effective Redress of Pay Inequities

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L’expérience canadienne concernant l’équité salariale a commencé en 1976 : il s’agissait de corriger les inégalités salariales dues à la ségrégation professionnelle fondée sur le sexe et au fait que le travail des femmes était sous-payé. Peu à peu, une meilleure compréhension de cette ségrégation systémique a conduit à une modification des façons de penser et des approches afin de remédier le mieux possible à cette forme de discrimination selon le sexe qui est ancrée dans les systèmes de compensation. Nous réexaminons l’histoire de la législation concernant l’équité salariale au Canada. Puis nous étudions les diverses composantes de l’équité salariale en fonction des leçons apprises, afin de fournir le remède le plus efficace. Les composantes étudiées sont : les réactions proactives en comparaison avec celles qui ont pour base des récriminations, l’identification de l’employeur, la définition des emplois masculins et féminins, le système d’évaluation des emplois sans discrimination sexuelle, les exceptions permettant des différences de salaires, la méthodologie employée pour déterminer des salaires équitables et l’acquiescement des intéressés.

Canadian experience with pay equity began in 1976 to redress the pay inequities due to gender-based occupational segregation and the underpayment of women’s work. Over time, a greater understanding of systemic discrimination has resulted in changes in thinking and approaches to best redress the kind of gender-based wage discrimination built into compensation systems. The legislative history of pay equity in Canada is reviewed. Then the various components of pay equity are discussed in terms of the lessons learned to provide the most effective remedy. The components discussed are: proactive compared to complaint-based, role of unions, identification of the employer, definition of female and male jobs, gender-neutral job-evaluation system, exceptions allowing pay differences, methodology to determine fair wages, and compliance.

BACKGROUND

Pay equity is a means to redress a particular kind of gender-based wage discrimination. Such discrimination results from a combination of gender-based occupational segregation and the underpayment of women’s work. While pay equity is an issue in much of the western industrialized world, this paper focuses on Canada, which is a leader in the area. The first pay equity legislation was passed in 1976 by the province of Quebec. In the 25 years since then, a better understanding of the problem and how to redress it have become clearer. For example, a key lesson learned is that a human-rights-style complaint mechanism is not as effective for redressing discrimination built into compensation systems such as pay inequity; rather, a proactive approach is needed. This paper summarizes this and other lessons about effective redress of unequal pay for work of equal value.

Pay equity is concerned with the wage-determination aspect of compensation — the establishment of a salary, or a salary range, for jobs...
within an organization. There are a number of typical wage-determination systems: evaluation of job content (job evaluation), match to market rates (salary surveys), collective bargaining, or a combination of any of these. Pay equity defines fairness in terms of job content: jobs of equal value to the organization should be assigned the same salary or salary range. A critical point to keep in mind is that pay equity focuses on jobs, specifically, female-dominated and male-dominated jobs. The “pay” in pay equity is the institutionalized wage established for a job (i.e., the maximum salary in the salary range). It is not the average wage of the job incumbents. The need for pay equity is premised on the hypothesis that female jobs have been undervalued and underpaid because they have been performed primarily by women and have not been paid fairly in terms of their intrinsic value to the organization.

Pay equity requires that compensation for gender-predominant jobs be based on the job’s skill, effort, responsibility, and working conditions. The total value (or composite) of skill, effort, responsibility, and working conditions of female jobs is compared to the total value of male jobs. If the value of the work is comparable, then “equal pay” is needed, but the actual duties and responsibilities of the female and male jobs can be totally different. Both men and women in female jobs benefit if their job is found to be under-paid relative to its value, while neither men nor women in male-dominated jobs benefit from pay equity.

Pay equity is often confused with employment equity. Both, as discussed later, are redressing systemic discrimination and relate to occupational segregation. However, they differ in the employment systems they redress, their methodology, and their scope. Employment equity (EE) focuses on employment systems such as hiring, training, promotion, and discipline systems. Further, EE is concerned with discrimination in these systems based not just on gender but on race (Aboriginal peoples and visible minorities) and disability status. The goal of employment equity is to have an internal labour force within an organization that reflects the proportion of the four designated groups covered by EE found in the external labour market for various occupations within specific geographic areas. The difference in goal and employment systems results in totally different approaches to redressing pay and employment equity. Employment equity legislation was passed by the federal government in 1986 and strengthened in 1995. No province has employment equity legislation at this time.

Both pay and employment equity are each linked to occupational segregation, but differently. Occupational segregation is the association, stereotypically and/or in practice, of certain kinds of work with particular kinds of workers (e.g., based on gender or race). Pay equity is directed at redressing underpayment of women’s work while “accepting” (Armstrong and Cornish 1997, p. 71) occupational segregation. As long as women’s jobs are paid fairly given their value, pay equity is achieved even though occupational segregation continues. Employment equity, on the other hand, is designed to reduce occupational segregation among traditional male jobs by removing the barriers that have kept women (and other designated groups) out. Employment equity “accepts” the wages associated with traditionally female jobs, that is, it is unconcerned that female jobs may be underpaid relative to their value. Given their differing relationships to occupational segregation, pay and employment equity provide equality for different groups of employees. Some (Schwartz and Zimmerman 1992) feel that pay equity is not needed because employment equity will remove the barriers that prevent women from moving into higher paid male jobs. Such a view makes two inappropriate assumptions. First, that all men’s jobs pay more than all women’s jobs; janitors compared to nurses show that this is not true. Second, that all women will move into higher level male jobs; this denies the continuing need for what have traditionally been female jobs.

Pay equity is needed because of the presence of both occupational segregation and the underpayment
of women’s work. The gender wage gap between full-time wage earners was $13,774 in 1999, indicating that women, on average, earn 30 percent less than men do. This gender wage gap could be due to:

- men working in higher valued jobs (valid differential),

- men and women working in substantially the same jobs, but
  - men work in higher-wage industries (this is a kind of employment, rather than pay, discrimination),

- men and women working in substantially the same jobs for the same employer and
  - men have higher human capital or productivity (valid differential), or
  - men are paid more (unequal pay for equal work discrimination)

- men and women working in equally valued job for the same employer and men are paid more (discrimination that pay equity is designed to redress).

**Legislative History of Pay Equity in Canada**

**Systemic Discrimination**

Before discussing the legislative history of pay equity in Canada, it is necessary to make a distinction between direct and systemic discrimination. Direct or individual discrimination is promulgated by prejudiced individuals. Systemic discrimination involves discrimination that is built into employment systems, often unintentionally. Such systems always have an adverse impact on one group (i.e., women) compared to another (men); they may reflect old social values (e.g., men are breadwinners and should be paid more). The embedding of discrimination into employment systems means that it is difficult for individual employees to determine, or in many cases to suspect, that the systems are working in a manner that has an adverse impact on them. For example, wage-determination systems are complex, the intricacies of which may not be well-understood by individual employees. Human resource professionals and managers did not design these systems to discriminate and are often unaware of the subtle ways discrimination can operate. Thus, they do not undertake the necessary assessment to ascertain if the systems are biased. For example, wage-determination systems historically have tended to differ for various job families (e.g., management, clerical, manual work) that are often gender-specific. Such compartmentalization of wage-determination systems have made it unlikely that compensation professionals would compare salaries for female and male jobs, or even think that it is necessary to ascertain if gender-based wage discrimination is operating.

Pay (and employment) equity redress systemic discrimination. Systemic discrimination requires a systemic remedy (Abella 1984; Black 1985). Such remedies differ from remedies for individual discrimination. Under individual discrimination the remedy is to “make the person whole,” as if the discrimination had not occurred; the focus is on the past: Did discrimination occur or not, and if so, what should have happened and did not? Systemic remedies are meant to be preventative (forward looking), that is, to remove discrimination from the employment systems from this point forward. Systemic remedies involve a proactive process of looking to ascertain if the discrimination exists within a particular employment system and, if it does, to then develop a plan to redress it over time. Human rights legislation has been constructed on premises consistent with individual discrimination and use a complaint-based (rather than proactive) approach.

**Legislative History**

Employment equity has always been understood to require a systemic approach and so requires employers to study their employment systems to determine if systemic problems exist. Initially, pay equity was incorporated into human rights legislation with a
complaint-based approach. Pay equity legislation was first passed as a provision in human rights legislation in Quebec (effective in 1976) and then in the federal sector (effective in 1978). In 1985, a new approach to pay equity began in Manitoba, followed by Ontario and the Atlantic provinces. This legislation/program recognized that pay equity redresses systemic discrimination. Thus, the new legislative approach is proactive, requiring organizations to evaluate job content of female and male jobs using a gender-neutral evaluation tool and process to ascertain if jobs of comparable value are paid the same. If female jobs are found to be underpaid relative to their value, the salary rate for these jobs must be increased, over time, to equal that of comparably valued male job(s).

Thirteen of the 14 Canadian jurisdictions are involved with pay equity. Table 1 summarizes the kind of approaches to pay equity found in each jurisdiction in terms of whether they were legislated or a program, a proactive or complaint-based approach, and whether private sector organizations are covered.

Pay equity has been legislated in nine provincial or territorial jurisdictions and the Canadian Human Rights Act covers two of the territories plus the federal jurisdiction. In three provinces, pay equity has been implemented for the public service by a government program, which often includes some broader public sector organizations. Only in Alberta is there no pay equity activity at the provincial level. All pay equity remedies since 1985 have been proactive except for the one in the Yukon, which included pay equity in its human rights legislation. Private sector organizations are covered in six jurisdictions: two with proactive legislation (Ontario since 1988 and Quebec since 1996), and four jurisdictions where pay equity is covered by human rights legislation (federally regulated industries and territories covered by the Canadian Human Rights Act: Northwest Territories, Nunavut, and Yukon).

Lessons from the Canadian Experience

Outlined below are the lessons learned about key aspects of pay equity. Eight aspects of pay equity are discussed, comprising both the basic steps required to achieve pay equity and parameters of the context in which pay equity takes place. The basic three-step pay equity process includes: defining female and male jobs, using a gender-neutral job-evaluation system to assess the value of female and male jobs, and a methodology to determine fair wages for female jobs that are of comparable value to male jobs. Five additional components provide context either definitionally (e.g., “who’s the employer”) or procedurally (e.g., allowable reasons for compensation differences between female and male jobs).

Proactive Compared to Complaint-Based Approach

The major procedural issue has been alluded to earlier — relying on complaints where direct discrimination is involved or requiring a proactive review to redress systemic discrimination. In reality, where a proactive review is required, there is also a complaint mechanism in case the required proactive process has not been undertaken correctly. However, this is very different from using complaints to trigger an examination as to whether pay equity is present or not, the complaint-based approach. For a complaint-based approach to remove gender-based wage discrimination in the wage-determination process, employees must know and understand the intricacies of the wage-determination process. This is unlikely. Employees do not know which jobs are of comparable value to theirs, and even if they know something about the job-evaluation system being used, they are unlikely to understand the subtlety of gender bias within job evaluation.

All the cases of the complaint-based approach to pay equity are found when pay equity is included in human rights legislation, rather than in its own separate legislation. Inclusion of pay equity provisions
### Pay Equity in Canadian Jurisdictions

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Kind of coverage</th>
<th>Approach</th>
<th>Coverage of Private Sector</th>
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<tbody>
<tr>
<td></td>
<td>Legislation</td>
<td>Program</td>
<td></td>
</tr>
<tr>
<td>Federal*</td>
<td>X</td>
<td>1977**</td>
<td>federally regulated industries such as banking, communications and transportation.</td>
</tr>
<tr>
<td>Newfoundland</td>
<td>X</td>
<td>1988</td>
<td>no</td>
</tr>
<tr>
<td>Nova Scotia</td>
<td>X</td>
<td>1988</td>
<td>no (originally had intended to extend to the private sector).</td>
</tr>
<tr>
<td>Prince Edward Island</td>
<td>X</td>
<td>1988</td>
<td>no</td>
</tr>
<tr>
<td>New Brunswick</td>
<td>X</td>
<td>1989</td>
<td>no</td>
</tr>
<tr>
<td>Quebec 1st</td>
<td>X</td>
<td>1976***</td>
<td>yes, since included in human rights legislation.</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>all private sector employers with ten or more employees. Must identify adjustments by November 2001 and rectify by November 2005; there are greater implementation requirements for employers with 50 or more employees.</td>
</tr>
<tr>
<td>Quebec 2nd</td>
<td>X</td>
<td>1996</td>
<td></td>
</tr>
<tr>
<td>Ontario</td>
<td>X</td>
<td>1988</td>
<td>all private sector employers with ten or more employees, though those with 100 or more have more stringent requirements.</td>
</tr>
<tr>
<td>Manitoba</td>
<td>X</td>
<td>1985</td>
<td>no</td>
</tr>
<tr>
<td>Saskatchewan</td>
<td>X</td>
<td>1991</td>
<td>no</td>
</tr>
<tr>
<td>Alberta</td>
<td></td>
<td></td>
<td>no</td>
</tr>
<tr>
<td>British Columbia****</td>
<td>X</td>
<td>1991</td>
<td>no</td>
</tr>
<tr>
<td>Yukon</td>
<td>X</td>
<td>1986**</td>
<td>yes, since included in human rights legislation.</td>
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<tr>
<td>NWT</td>
<td>#</td>
<td>#</td>
<td>yes, since included in human rights legislation.</td>
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<tr>
<td>Nunavut</td>
<td>#</td>
<td>#</td>
<td>yes, since included in human rights legislation.</td>
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**Notes:**
- *There is currently a parliamentary review of pay equity.
- **Complaint-based legislation is part of human rights legislation while proactive is either a separate pay equity act or program.
- ***Quebec first included pay equity as part of its human rights legislation in 1976; in 1996, it replaced this with proactive legislation.
- ****British Columbia’s NDP government passed legislation in March 2001 covering the private sector by adding a provision to its Human Rights Act. However, at that time it was known that the provincial election held on 17 May 2001 was likely to replace the NDP with the Liberal Party. The Liberal government repealed the pay equity provision and appointed a one-person task force that recommended in February 2002 only equal pay for equal work.
- # Covered by federal human rights legislation.
in human rights legislation signals a lack of understanding of systemic discrimination. Over time, pay equity redress has tended to incorporate a proactive approach. Quebec, the first jurisdiction to require pay equity (1976), changed its initial complaint-based approach to a proactive one in 1996. The federal government, which included pay equity in its 1977 Human Rights Act, is currently reviewing the pay equity provisions. After almost 25 years of pay equity experience involving 400 complaints, the Canadian Human Rights Commission finds that "complaints are not particularly well-suited to addressing forms of discrimination that are subtle, largely unintentional and integrated into complex systems" (2001, p. 5). The experience at the federal level is that complaints tend to be protracted, involving costly and time-consuming litigation, resulting in uneven coverage. Because of this, the Canadian Human Rights Commission has recommended a proactive approach (ibid., pp. 12-13).

A proactive approach does not assume guilt of those involved in setting salaries/wages. It recognizes the systemic nature of the problem and requires organizations to examine their wage-determination systems and, if any inequities are found, to redress them. The advantages of a proactive approach are that it will ensure greater coverage and avoid massive retroactivity. Coverage is increased in three ways. First, a greater number of organizations are required to ascertain if there are any inequities. When pay equity applies to the private sector, as in Ontario and Quebec, this helps ensure that an organization and its competition face the same requirements (assuming the competition is within the province). Second, coverage extends to all female jobs in organizations under the proactive approach rather than just those in a complaint. Finally, coverage is improved because there are deadlines for identifying and redressing any inequities, unlike complaints that can happen (or not happen) at any time. Typically, under a proactive approach, pay equity will be achieved in about six years — two years to identify any adjustments and up to four years to pay out adjustments.12

A clear advantage to employers under the proactive approach is the removal of the certainty of retroactive payments. Under the complaint-based approach there is no time frame, and from the time of the complaint, retroactivity costs are accruing. This second advantage of the proactive approach flows from an understanding of systemic remedies — that they should be preventative and forward looking rather than punishing and regressive. A proactive approach provides a period of time in which to ascertain if there are any inequities, followed by the phasing-in of any adjustments owed, thus avoiding retroactivity if the pay equity process is completed on time.13 Since systemic remedies are designed to overcome old societal values, often unintentionally built into employment systems, they do not provide redress for the past. Complaint-based approaches are unable to take this reasoning into account and so involve retroactive pay going back to the date of the complaint, even though at the time of the complaint it was impossible to know what, if any, pay inequities existed. In large organizations (e.g., federal public service, Bell Canada, Canada Post), the retroactivity required under the complaint-based approach is often substantial, thus encouraging employers to engage in lengthy litigation to avoid it, but increasing the retroactivity if they lose. Such retroactivity becomes a major financial, and often political, issue in pay equity rather than maintaining the focus on fairness.

On the negative side, the proactive approach is an extensive administrative and cost burden and not one that many organizations choose to undertake without being required to. Further, a complaint-based approach can deal with isolated problems in a much more efficient manner than does an entire review of all jobs. On balance, the proactive approach is consistent with the systemic nature of pay inequities and how to redress them.

Role of Unions
For unionized jobs, unions are involved in the wage-determination process. This always involves negotiations, and in some cases, job evaluation (e.g.,
steelworkers). Unions and employers alike have been influenced by societal forces which have introduced gender bias into wage-determination systems. In fact, if systemic discrimination exists, it exists within the collective bargaining process. What then is the appropriate role for unions in the pay equity process? Under the federal complaint-based approach and the Ontario proactive approach, all the large pay equity complaints have been brought by a union. Unions, rather than individual employees, typically have the where-with-all to understand how systemic discrimination could result in gender wage discrepancies, in wages that they and the employer negotiated. So the complaint-based approach leads to the situation where one of the parties to bilateral negotiations complains about the outcome as if it was done unilaterally.

The requirement to involve unions has been incorporated into all proactive legislation since they are a party to the wage-setting process. Some unions have wanted to be involved in the actual evaluation of jobs, while others wanted to critique the outcomes. Not surprisingly, experience in Ontario found that it took longer to complete pay equity plans where a union was involved (SPR 1991). Union involvement under proactive legislation, however, has not ensured that there will be full acceptance of the outcomes. In Ontario, the Pay Equity Hearings Tribunal has concluded that unionized employees can bring a complaint against their employer and their union, but that a higher standard is applied to assessing such situations.

Another key issue is the relationship between pay equity and collective bargaining. Ontario’s legislation dealt with this by requiring that pay equity be completed within a bargaining unit; only if this could not be achieved could unionized female jobs look for male jobs in other bargaining units or among non-unionized jobs. Interestingly, two strong union proponents feel that the Ontario legislation was flawed in its requirement that pay equity be done within bargaining units rather than for the entire organization (Armstrong and Cornish 1997, p. 80) since this is perceived as limiting pay equity. Under Quebec’s new legislation, pay equity is done for the entire organization unless a union makes a request that it be able to do a separate pay equity plan for the jobs it represents. However, requiring pay equity to be accomplished within a particular collective agreement respects the collective bargaining processes to the greatest extent, facilitates both collective bargaining and maintenance of pay equity, and avoids the need to simultaneously involve more than one union in a single job-evaluation system. Both union and management should be involved in evaluating jobs and jointly identifying the appropriate methodology (discussed below) to be used, and in maintaining pay equity.

Identification of the Employer
Pay equity in Canada takes place within a single organization, as compared to countries with more centralized wage-setting mechanisms (e.g., Australia). Under both complaint-based and proactive legislation, there have been issues as to what constitutes a single employer. For example, in Ontario, many public libraries have been found to be part of the municipality even though they have a separate management structure and a separate board of directors. At the federal level, Air Canada has tried to make a case that each bargaining unit is a separate establishment, thus denying pay equity to the union representing the predominantly female jobs of flight attendants. Clear criteria for identifying the employer have not been adequately set out in any pay equity legislation, resulting in litigation. Unlike many of the key issues under pay equity where compensation practices and standards are a concern, this issue is primarily a legal one and should thus be consistent with other labour legislation. In this vein the Ontario Pay Equity Commission guidelines refer to the following criteria: overall financial responsibility, nature of business/service, and responsibility for compensation practices. Obviously, the wage-setting scope should be a key criterion under pay equity.

Ontario is the only jurisdiction that has required some organizations to cross organizational lines to
achieve pay equity via the “proxy comparison” approach. Within the broader public sector, the Ontario Pay Equity Commission found that the pay equity process could not redress potential inequities in organizations that are totally staffed with female jobs, e.g., childcare centres, social service organizations. Yet, it was obvious that the jobs employed in such female-dominated organizations were underpaid since similar jobs in organizations that employed these female jobs and male jobs (e.g., municipality) tended to find that the female jobs were underpaid. Proxy comparison allows predominantly female organizations to compare with a public sector organization that employs similar female jobs (and male comparators) such as a municipality or hospital. This radical approach overcame the lack of pay equity coverage for female jobs in sectors of the economy most likely to require it. Still, proxy comparison was limited to the public sector only because it was felt to be too intrusive to require private sector organizations to share wage information with their competitors.

Definition of Female and Male Jobs
All legislation and programs use percentage cut-offs to define gender predominance (60 percent or 70 percent of incumbents of one gender). Legislation in Manitoba, Nova Scotia, and New Brunswick only applied to jobs with ten or more incumbents. This is both overly restrictive and can itself be linked to a kind of gender bias. This is overly restrictive since all jobs, regardless of the number of incumbents, have a salary and can be evaluated, thus they can be included in the pay equity process. Further, a rule of ten is likely to remove many male jobs from the pay equity process. Because men have traditionally had a more permanent attachment to the labour force, there tend to be more specific titles for male jobs while many women’s jobs have generic titles (nurse, secretary) and larger numbers of employees. Manitoba found, for example, that it had about the same number of employees in male- and female-dominated jobs, but substantially more job titles for male jobs. Thus, only including jobs with at least ten incumbents will tend to restrict the potential male jobs on the one hand and, on the other, prevent more senior (single-incumbent) women’s jobs from being able to determine if they are underpaid or not. For instance, regardless of how many nurses there are at a hospital, there will only be a single incumbent in the director of nursing services job. Further, some authors warn that a restriction to jobs with ten or more incumbents can be manipulated to avoid large pay equity increases (Gallant and Streiner 1998). In legislation that includes jobs regardless of the number of incumbents, the percentage cut-off is not a sufficient criterion for jobs with no or very few incumbents.

Some legislation (e.g., Quebec and Ontario) uses additional criteria — historical incumbency (gender of those who have typically worked in the job within a particular organization) and gender stereotype (gender generally associated with a particular kind of work in the labour force). These additional criteria do not have to be rigidly applied (i.e., in Ontario there is no definition of how many years constitute “historical”), but serve as guidelines to help one think about gender predominance in a manner that is consistent with redressing the underlying concern about underpaying traditional women’s jobs. These additional criteria are particularly useful where there are single incumbent jobs or a small number of incumbents in jobs, since usage of the percentage cut-off may not accurately result in the underlying principle of pay equity being applied. A couple of illustrations using the three criteria will help clarify how they work together. The pathologists at Women’s College Hospital in Toronto were predominately women, and this had been so for a long time when the hospital had to implement Ontario’s pay equity legislation. However, pathologists are a male job at virtually all other hospitals in the city and those at Women’s College Hospital were paid the same salary as pathologists in other Toronto hospitals. Thus, this job (based on gender stereotype) is appropriately treated as a male job for pay equity purposes. In another example, the job of dispatcher at one Ontario police service had been done by uniformed police officers (typically those who
had become disabled): a male-dominated job. When the dispatcher job was made a civilian (non-uniform) job, the salary range was lowered and the job was staffed with women. In this case, the current percentage cut-off (rather than the historical incumbency) appropriately indicated that this was a female-dominated job. Using the three criteria found in the Ontario legislation does a better job of capturing the underlying concern that pay equity legislation was designed to redress.

**Use of Gender-Neutral Job-Evaluation System**
Job-evaluation systems are the mechanism used to assess the value of job content. Gender-neutral job evaluation is the key to pay equity and its main contribution to ongoing compensation practice. Job evaluation, which has been used since the 1930s, was always intended to achieve internal equity: a fair comparison of the value of work within an organization. Thus, job evaluation, as intended, is totally compatible with pay equity (no gender bias). However, in reality, job-evaluation systems either incorporate gender bias or were used in a gender-biased manner because of societal values downgrading women’s work. For example, a job-evaluation system might give credit to mechanics and garbage collectors for having to deal with dirt but not recognize the “dirt” in nursing work, such as pus, blood, and other bodily fluids. One major source of potential gender bias in the past was the use of different job-evaluation systems for female and male job families (e.g., clerical, manual).

Job-evaluation systems include the factors on which jobs are assessed, the weightings of these factors, the way in which job information is collected, and the application of the factors to the job information. As noted in Weiner and Gunderson (1990, pp. 38-43), there are numerous ways that gender bias can enter into job-evaluation factors including:

- valuing a factor when it is found in male jobs but not in female jobs (e.g., giving credit to male meter readers for danger when they go into peoples’ homes, but not giving credit to female public health nurses who go into peoples’ homes).
- confusing job content with stereotypes of inherent female attributes (e.g., assuming all women are nurturing, therefore not valuing caring skills found in many traditional female jobs, such as ranking animal shelter attendant higher than childcare workers).
- ignoring aspects of work that are typically found in women’s jobs (e.g., interruptions, caring, responsibility for confidential information).
- insufficient range of a compensable factor (e.g., not having enough levels to adequately differentiate between jobs that are truly different).

In addition to the criteria (referred to as factors or sub-factors), job-evaluation systems also require accurate, complete, and up-to-date job information. Before proactive pay equity, job-evaluation criteria were often applied to job descriptions. However, women’s jobs were often poorly described in comparison to men’s jobs, and this introduced gender bias into the process. It has become the practice to collect job information from job incumbents (with a review by the supervisor) via a job questionnaire in which the questions correspond to the sub-factors used to evaluate jobs. This ensures that information is collected on each sub-factor on all jobs and is collected from job incumbents who know the job best. A third component of job evaluation is the actual assessment of jobs — applying the job-evaluation tool to the job information. Everyone has certain biases about work and how it should be valued. For this reason an evaluation committee is often used. Committee members need to be trained on subtle gender bias and how to avoid it (e.g., such as rating jobs across a factor rather than rating a job on all factors).

While much has been learned about how to correct gender bias, more continues to be learned. This
again is a difference between direct and systemic discrimination. It is recognized that systemic discrimination is often built into employment systems in subtle ways, some of which only become known over time.

**Exceptions**

The purpose of pay equity is to remove a particular kind of gender bias in wages assigned to female jobs, not to ensure that there are no wage differentials between individual men and women. There are appropriate reasons for individual men and women doing jobs of comparable value to earn different amounts (e.g., differences in experience). Both complaint-based and proactive pay equity have allowed certain exceptions.

Many feel that “the market” should be an exception. In fact, the reliance on job evaluation rather than the market mechanisms is a concern about pay equity for many economists and others (Fudge, 2000). When considering pay equity and “the market,” it is necessary to consider two separate market mechanisms. There is “the market wage” as determined by supply and demand factors, and “the market wage” as determined by ascertaining what other organizations are paying for the same work (i.e., competitive wages ascertained from salary surveys). For many jobs, these are not the same markets (though wages affected by supply and demand considerations will be “picked up” in salary surveys). Most large, bureaucratic organizations buffer themselves from all but the most severe under-supply situations by institutionalizing a compensation structure with set salary ranges for jobs. New hires are not paid below the minimum salary set and long-term and/or superior performers are not paid above the maximum unless there is a severe undersupply situation — which is the exception, not the rule. These organizations rely on salary surveys to learn about competitive salaries, what other organizations are paying for the same work. However, since large, bureaucratic organizations tend to survey other large, bureaucratic organizations, salary surveys pick up the institutionalized salaries that organizations pay, not a wage set by supply and demand in most cases. Despite what economists feel happens — that supply and demand set a single wage for any particular job — there tend to be wide variations in what organizations pay for similar work (Milovich and Newman 1990, pp. 170-73). With respect to that part of “the market” affected by severe undersupply, virtually all pay equity legislation allows for a pay differential based on a temporary, demonstrable skill shortage. However, the market as determined by salary surveys is not exempt. That is, just because an organization’s competition is paying less for a female job, the organization cannot pay less than that paid to comparably valued male jobs within the organization. To help achieve pay equity, salary surveys of women’s jobs should be avoided until pay equity is widely achieved, since such surveys will simply incorporate any underpayment of women’s work that exists among organizations in general. However, salary surveys of male jobs are perfectly compatible with pay equity. The market provides information as to competitive market rates for male jobs, and gender-neutral job evaluation indicates which female jobs are of comparable value to which male jobs.

While the exception for labour shortage relates the salary assigned to jobs, other exceptions typically allow differences in pay between individual female and male employees. One common exception is red-circling, a practice of allowing employees to be paid more than the maximum salary established for their job when the job has been lowered in value. The reasoning behind red-circling is that there is an implicit contract between existing employees and the employer that the employee would be paid up to a certain sum for being in a particular job. When a job is found to be of lower value than its current salary warrants, newly hired employees are hired at the new (lower) salary rate but the pay of current employees is not lowered. Rather, it is typical for red-circled employees to receive only a portion of any across-the-board salary increases so that, over time, the new, lower maximum “catches-up.” In addition to red-circling, other exceptions that apply to
individual employees include merit, seniority, and training assignment. (For a summary of exemptions in various Canadian jurisdictions, see Weiner and Gunderson 1990, p. 112).

Methodology to Determine Fair Wages for Jobs of Comparable Value

One characteristic of systemic discrimination is that there is more than one way to correct it. Pay equity is no exception. The most typical and best way to identify any pay inequities is to use a male wage line as the standard (Armstrong and Cornish 1997). A wage line indicates the relationship between job value (job-evaluation results) and pay. There are two typical wage line approaches: job-to-line and line-to-line. Under job-to-line each female job below the male wage line is brought up to the line; under the line-to-line approach the entire female line is brought up to the male line with each female job maintaining its same relationship above or below the line as existed before. Each approach has its advantages and disadvantages. It is impossible to say, a priori, which approach will result in larger adjustments or lower costs, so it is best to select a methodology based on the needs of the particular situation. For example, one employer felt that differing pay equity adjustments to various female jobs would be disruptive and so a line-to-line approach was used since with the female and male line being parallel this results in the same adjustment to all female jobs.

A job-to-job approach was originally the only methodology allowed under the Ontario and Nova Scotia legislations and has been used in cases where there are few female jobs in complaints under the federal legislation. A wage line methodology was added to Ontario’s legislation in 1993. While conceptually easy to understand, the job-to-job approach can be problematic because it can create anomalies in the relationship between compensation and job value (Ames 1995). Ames (1995) found that the job-to-job approach resulted in lower pay equity adjustments than a policy-capturing methodology. Policy-capturing (see Steinberg and Haignere 1987) requires a particular way of collecting job information (closed-ended questionnaire), factor analysis, and then regression analysis (developing a wage line). This methodology was originally touted as the way to do pay equity among many women’s groups and unions in Ontario. However, it has not been widely used given its “black box” methodology (jobs are not evaluated by a committee but calculated by a computer) and highly statistical approach. It remains a viable means of doing pay equity but not the only means.

Based on both equity and compensation considerations, the wage line approach — either job-to-line or line-to-line — is a methodology that can redress systemic discrimination and provide rational compensation outcomes (i.e., appropriate relationship between value and pay). Such rational compensation outcomes lend themselves to being sustained over time because there is integrity between job value and pay. Ontario currently has an approach that can be inconsistent with rational compensation outcomes because it requires female jobs to look for a job-to-job male comparator outside a bargaining unit (or non-union group of jobs) before using the wage line approach based on male jobs within the same unit.

Compliance

A number of authors (Canadian Facts 1992, 1993; Institute of Social Research 1994; Armstrong and Cornish 1997, p. 80; McDonald and Thornton 1998; and Baker and Fortin 2000) have identified the need for stronger pay equity enforcement in Ontario, particularly for small employers. Only 20 percent of small employers (those with less than 50 employees) were found to have completed pay equity on time in Ontario (Institute for Social Research 1994). Smaller employers tend to have less formal compensation systems and are less likely to be familiar with job evaluation. Thus, pay equity requires them not just to incorporate gender neutrality into their existing systems but also to create formal wage-determination systems in the first place. Poor compliance among small employers is a significant problem, since these employers employ 65 percent of working females.
and 60 percent of working males (Baker and Fortin 2000, p. 28). It is likely that small federally regulated employers are also remiss in compliance. There have been few complaints and little incentive for them to comply without motivation.

Compliance monitoring is required to overcome two forces. First, of course, is the desire of organizations to keep their costs down. Second is a sense that low pay equity adjustments demonstrate that firms were “doing the right thing” in the first place and were not discriminating (McDonald and Thornton 1998). Rather than seeing pay equity adjustment as reflecting changes in societal values, they are seen as signs of corporate wrongdoing. Most jurisdictions with proactive legislation have required the filing of pay equity plans as the key to monitoring. Ontario does not require filing, but allows complaints that the proactive process has not been implemented correctly; employees or unions could file a complaint. The Ontario Pay Equity Office has found that the lack of the requirement to file pay equity plans detracted from compliance, in addition to making it difficult to ascertain pay equity effects (Ontario Pay Equity Office 1996).

Lack of routine compliance monitoring has resulted in pay equity legislation having less impact then it might otherwise have had. Compliance systems could involve submission of pay equity plans or audits of such plans. Yet, compliance must be balanced against bureaucratic overload.

CONCLUSIONS

Overall, based on 25 years of Canadian experience a number of key lessons can be learned about facilitating an effective approach to remedying unequal pay for work of equal value. Of critical importance is that pay equity legislation be proactive, this is essential since a proactive approach takes into account how discrimination unintentionally built into employment systems operates. Since union and management have been parties to the wage-determination process, they both need to be involved in the pay equity remedy. Given the increasing complexity of organizational boundaries, pay equity would be aided by legislation that more clearly defines organizational boundaries. All female and male jobs, regardless of the number of incumbents should be included in the pay equity process and the definition of female- and male-dominated jobs should be based on the percentage of incumbents of each gender in the job, historical incumbency, and gender stereotyping of the job. Legislation must prohibit gender bias in all aspects of the evaluation process (factors, weightings, job information, and application of the system). Except in a situation where there are only a very few female jobs, the methodology to identify any adjustments should be restricted to wage line or policy-capturing approaches that are consistent with pay equity principles and an outcome that provides a rational, sustainable set of relationships between job value and compensation. Appropriate exemptions, such as red-circling, seniority, etc. should be allowed. The compliance mechanism should include an audit system, not just complaints. At present, no Canadian jurisdiction has legislation or a voluntary program that is fully consistent with these recommendations.

Beyond good legislation in various jurisdictions, another important provision of pay equity legislation is now needed. Currently, two provinces with proactive pay equity legislation cover the private sector (Ontario and Quebec), and British Columbia has considered such coverage. For employers who have a single wage-determination process across provinces, it is vital that they be able to achieve pay equity using the same gender-neutral job evaluation system and methodology for identifying any pay equity adjustments. Otherwise, employers will find compliance with pay equity to be unnecessarily disruptive to their compensation system with no additional benefit for equality.

The best way to ensure that pay equity is maintained, where it has been achieved, is to make it compatible with the organization’s compensation
structure, so that maintenance is ongoing. This is best accomplished by putting female and male jobs into the same salary structure, and then monitoring the re-classification system to ensure that male jobs are not creeping up into higher salary grades while women’s jobs are not. Lack of integration of pay equity into regular compensation systems has been found in organizations that have issued a separate cheque for ongoing pay equity adjustments, thus implying they are not really a part of base pay. Also some employers have used a gender-neutral job-evaluation system for pay equity but not for ongoing compensation purposes. Only if pay equity principles are institutionalized into compensation systems can it be assured that the underlying principle of fairness is not lost.

A final point is that systemic research, at the level of the organization, is needed to ascertain the impact that pay equity has, or has not, had. There is not enough room in this paper to review the research on pay equity effectiveness. However, it should be noted that systematic research is needed to fully assess the effects of pay equity in both the public and private sectors. It would be interesting to know, across jurisdictions, what kinds of female jobs received what kinds of increases. For example, how did clerical work compare to professional female work? Did factors such as organizational size, unionization, province, and a complaint-based, compared to proactive, approach make any difference? It would be easier to get information from the public sector organizations, which would make the comparison across jobs easier. Other questions have to do with the longer run outcomes — the effect on employment and on gender predominance of the jobs. In addition, there are a number of interesting questions related to the impact of the pay-equity process on ongoing job-evaluation and compensation systems.

Notes

1 Also known as “comparable worth,” “equal wages,” “fair pay,” and “equal pay for work of equal value.”

2 For instance, the European Union has a requirement for pay equity in the public and private sectors (at http://citizens.eu.int/en/en/gt/eq/en/gt/98/gitem.htm) 13 March 2001; Australia has also been involved in pay equity; and at least 20 of the 50 states in the US have been involved with pay equity (Hartmann and Aaronson 1994).

3 However, it is theoretically possible that over time the higher wages that become associated with female jobs because of pay equity could attract a higher proportion of men to the occupation.


5 There has been extensive research to try to explain the female-male wage differential. However, these studies have only limited relevance to pay equity. Such research examines the average earnings of individual men and women in the economy, not the pay for jobs within a single employer. In other words, the male-female differential measures neither the value of jobs nor the pay for jobs. Another set of research has looked at the relationship between the proportion of men and women in an occupation and their pay. This is somewhat related to pay equity since the proportion of women in an occupation is expected to be related to female-dominated jobs at the level of the firm. A study by Baker and Fortin (1999) shows that in the US there is a negative relationship between hourly wages and the proportion of women in an occupation (at the four-digit level). However, this same relationship does not exist in Canada. This study was based on wages of individuals, not jobs.


7 “Equal pay for equal work,” which addresses systemic discrimination, has been prohibited in employment standards legislation and dealt with via complaints, since this legislation was introduced long before systemic discrimination was understood.

8 As noted in Table 1, some provinces passed legislation while others developed a program to redress pay inequities in the provincial government and often the broader public sector. The term “legislation” will be used throughout this paper to avoid awkwardness.

9 The 14 jurisdictions are: the federal government, which covers federal public service, federal Crown
corporations, and firms crossing provincial boundaries particularly in banking, communication, and transportation industries; ten provincial governments, which covers provincial public service, broader public sector organizations (e.g., schools, hospitals), and firms operating within their provincial boundaries; and three territories.

10 For more details on the content of pay equity legislation in various jurisdictions, see Weiner and Gunderson (1990, ch. 8).

11 All pay equity legislation has required raising the pay for female jobs found to be of comparable value but paid less than male jobs; the pay for the male job cannot be lowered.

12 In most legislation, there is up to a four-year time period to complete pay-out of adjustments.

13 Under the proactive approach the most typical pay-out schedule is 1 percent of payroll until all adjustments have been completed. Quebec’s new legislation sets a four-year limit for achievement of pay equity.

14 Pay equity is implemented using “jobs” except under the federal legislation, which refers to occupations. While pay equity has successfully been done using occupations, jobs are more appropriate, since a job has a salary associated with it while an occupation has a number of salaries — those of the various jobs comprising the occupation. Further, while many occupations are gender-specific because most of the jobs within it are gender-specific (e.g., manual work), it can happen that some jobs within an occupation are female dominated while others are male dominated (e.g., financial occupations).

15 Pay equity can be done with jobs that are vacant as long as the job content is known and can be evaluated.

16 This has been the practice in Canada, although in some US jurisdictions there has been some debate about using a wage line based on female and male jobs. Only using the male wage line is consistent with an understanding of pay equity. If there is no pay inequity between female and male jobs this will be demonstrated by the use of a male wage line. To use both female and male jobs is saying that the standard of equity includes the very thing, female jobs, for which there is a concern that discrimination exists.

REFERENCES


Ontario Pay Equity Office. 1996. Submission of the Pay Equity Office to Jean Read, Reviewer of the *Pay Equity Act*.


