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# IN BRIEF

Nancy Holmes  
June Dewetering

1 December 1999

## Pay Equity in the Federal Workplace

Equal pay for equal work is the most basic and commonly understood concept related to the achievement of equality in pay between women and men in the Canadian labour force. Persons performing identical jobs in a particular workplace must be paid the same salary, regardless of their gender. Equal pay for equal work rules seek to combat overt or direct forms of sex discrimination in the payment of wages. The concept of equal pay for similar or substantially similar work also deals with direct forms of pay discrimination by prohibiting employers from differentiating between the wages paid to male and female employees who perform the same work but under different titles (e.g., orderly and nurses' aid). Most federal and provincial labour laws contain these equal pay provisions.

Those advancing the concept of pay equity, or equal pay for work of equal value, go one step further. They argue that pay inequities are a form of systemic discrimination whereby the undervaluation and segregation of women's work have become integrated into employer pay systems. Under pay equity the intrinsic **value** of different jobs is compared, rather than the jobs themselves. Jobs are determined to be of "equal value" if the composite of skill, effort, responsibility and working conditions that apply are the same, even if the jobs themselves are dissimilar. For example, the work of nurses has been compared to that of police officers.

Those opposed to pay equity contend that a strict application of job evaluation schemes to determine the appropriate pay structure for different positions flies in the face of such labour market pay regulators as employer/employee negotiations and workforce supply and demand. They also assert that sex is not the true predictor of wages; rather, pay differences between men and women can be accounted for by different personal characteristics and work patterns.

The federal approach to pay equity is essentially complaint-driven. Section 11 of the *Canadian Human Rights Act* (CHRA) provides that it is a discriminatory practice for an employer to establish or maintain differences in wages for male and female employees who perform work of equal value. Upon receipt of an equal pay complaint, the Canadian Human Rights Commission has the power to investigate and then to settle, dismiss or refer the matter to a tribunal hearing for consideration and resolution. On a more proactive track, the Department of Human Resources Development has created an Equal Pay Program pursuant to section 182 of the *Canada Labour Code* in order to promote voluntary employer compliance with the provisions of the CHRA. The Program applies only to employers in the federally regulated private sector. In encouraging these employers to comply with the law, the Program provides assistance, advice and counsel. Where the employer still fails to implement a pay equity plan, the matter may be referred to the Human Rights Commission for investigation and resolution. The implementation and monitoring of pay equity within the federal public service is the responsibility of the Treasury Board Secretariat.

Both proponents and opponents of pay equity agree that the current federal system is not working, being too divisive, adversarial and litigious. For example, alleging that the Canadian Human Rights Commission is biased in favour of pay equity complainants, Bell Canada recently tried, unsuccessfully, to have the Federal Court of Canada prevent a human rights tribunal from hearing pay equity complaints against the company. These complaints are the largest yet involving a private company under the federal pay equity law; a favourable ruling could cost Bell as much as \$400 million. Cost was also a factor in *PSAC et al. v. Treasury Board*, a long-standing pay equity case that involved almost 30% of the federal public service and potentially billions of dollars.

On 29 July 1998, a human rights tribunal upheld the equal pay complaint of the Public Service Alliance of Canada (PSAC) and ordered the Treasury Board to adjust the salaries of employees in the affected job categories to reflect the value of their jobs relative to the value of jobs performed mostly by men. The Treasury Board appealed this decision to the Federal Court of Canada (Trial Division), where it was dismissed. On 29 October 1999, the President of the Treasury Board of Canada, Lucienne Robillard, and the Minister of Justice, Anne McLellan, announced that an agreement had been reached with the PSAC on how to implement the Tribunal's ruling and that the government would not be appealing the Federal Court decision. Under the agreement, which has been endorsed by the Tribunal, between \$3.3 and \$3.6 billion will be paid out retroactively to some 230,000 current and former federal public service employees.

The Minister of Justice has stated that the government intends to review section 11 of the *Canadian Human Rights Act* to ensure clarity in the way pay equity is implemented in the future. There are also indications that pay equity reforms may be coming in the form of legislation whereby pay equity would be considered as an element of pay and compensation, rather than of human rights.

## SELECTED REFERENCES

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