Legislating Wage Equality

Quoique la campagne du salaire égal lance un défi à la discrimination institutionnalisée des salaires, les gouvernements hésitent à promulguer la non discrimination dans la loi.

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If the fight for effective legislative protection against wage discrimination has demonstrated anything to Canadian women, it is the degree of consuming effort and frustration that awaits any attempt to alter the supports for structural discrimination in our society. It is within this context, of eradicating wage inequality, that the role and significance of 'legal value' legislation must be placed.

Sex discrimination as an active factor in the setting of wages rates has been identified for some time by government officials and politicians as the kind of social ill that demands a remedy, or at least so goes the rhetoric. But such words give little comfort to the many women who experience the direct effects of wage discrimination each time they receive a pay cheque, and are confronted with the task of supporting themselves and their families on an income depleted by inflation. Wage discrimination should not be viewed merely as an isolated phenomenon, but rather as a concrete application of the prevailing ethic of structural inequality. Considered in this perspective, it is perhaps easier to appreciate the campaign of opposition that has greeted equal value legislation.

In attacking the problem of wage equality, government officials and administrators have exhibited great enthusiasm for identifying attitudinal change as the major route to wage equality. This view clearly implies that attitudes alone have maintained institutionalized wage discrimination. The belief that a change of attitude is the sole prescription necessary for a cure seems a markedly short-sighted view of the problem and the solution. What this approach to wage discrimination ignores is the economic reality that it is profitable to maintain large pools of labour in the work force at depressed wages:

> **Discriminatory behaviour against women in the labour market can be understood within either a utility-maximizing or profit-maximizing framework. Because of men's dominance in the market, it is clear that they have the power to discriminate. A majority of the labour force is male and even if housewives are the most vocal consumers, their husbands have the majority of dollar votes. Their desire to exercise that power may come from a well-evolved culture of expectations about women's place or, alternatively, from a vision of increased profits.**[1]

Furthermore, with the transformation that has taken place in Canadian society as a result of marital breakdown and the dissolution of familial ties, the 'male provider' myth is also being laid to rest, and with it the economic justifications used to perpetuate wage discrimination. The argument that men are primary wage-earners no longer holds, as a significant number of Canadian women either wholly support or contribute to the support of the family unit.

However, one fact is apparent, and made even more apparent by each new release of statistics on male/female wage rates: the traditional approaches or remedies for wage discrimination have not been a success. The gap in earnings between men and women has steadily grown over the last decade.[2]

For legislators, it would seem that the real issue for consideration is the purpose or intent of legislative remedies for wage discrimination. If the purpose of such legislation is to end the inequality in wages which is so tellingly reflected in the statistics, then the present legislation has been a sad failure. The debate which has centred on the appropriate remedy to combat wage discrimination has also served to obscure or blur the conceptual distinction between equal value and equal pay provisions and the importance of each as a remedy.

Although the International Labour Organization (the labour division of the United Nations) first recognized the principle of equal pay, or rather equal *remuneration*, for work of equal value through its *Convention 100* in 1951,[3] and ratification or approval of this Convention by Canada occurred in 1971, there has been visible reluctance if not outright opposition in this country to the expansion of existing legislation to include the remedy of equal value. At this time only two jurisdictions in Canada, Québec and the federal government, have explicitly accepted equal value by incorporating it into legislation. But because authority or jurisdiction in labour issues is for the most part a matter of provincial concern, this also means that the majority of working women in Canada are not able to invoke the remedial benefits that equal value provisions offer.

The confusion surrounding the concept of equal value — confusion which has served to cast doubt on the legitimacy of equal value in redressing wage discrimination — lies with the equation of 'equal pay for work of equal value' with the much more limiting provisions of 'equal pay for equal work' or 'equal pay for substantially the same work' (the latter allowing a slightly more liberal assessment of the nature of the work in question). But there is a significant difference between the two principles, as is clearly pointed out in a report submitted on the application of *Convention 100*:

> **All too often the principle has been enshrined in law and practice in a simplified fashion in the form of the slogan 'equal pay for equal work,' no attempt being made to decide what is meant by 'equal pay,' and 'work'! Thus definitions expressly restrictive have been adopted. The definition of 'equal work' which is still most frequently encountered is that of the 'same work' done in the same undertaking or for the same employer; such re-**

strictions are sometimes tempered by a qualification: 'substantially the same,' 'substantially equal,' and so on. But this is by no means the same thing as equal pay understood by the Convention, which tried to give full effect to the principle by speaking of 'work of equal value,' defined as the fixing of wage rates without discrimination as to sex.[4]

Thus, under the guise of eliminating wage discrimination, equal pay provisions have allowed governments to plead their strong commitment to ending sex discrimination while failing to give the legislation the latitude of equal value, which had the potential of making real inroads into wage inequality. In addition, what was not evident on first glance was that in order to launch a successful equal pay complaint, the key requirement was, and in most areas still is, the presence of a 'comparable male.' A complaint would be defeated from the outset unless a male occupied a parallel job, thereby allowing the wages of the male worker to be assessed in relation to those of the complainant. Equal value, on the other hand, simply requires that the wages or remuneration attached to each job be ranked according to the value of that job to the organization.

Prior to its implementation, and after a sustained lobby by women's groups, the *Canadian Human Rights Act* was finally amended to include equal value as the remedy for wage discrimination. As stated in s.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.**

The term 'wages' is broadly defined as 'any form of remuneration payable' and includes 'any other advantage received directly or indirectly from the individual's employer.'

The impact of the equal value standard is that the personal characteristics of the person occupying the position or performing the job are limited or restricted to those which are relevant to the job itself — such as skill, effort, and responsibility. Consequently, the gender of the employee would not be an acceptable criterion for paying a wage differential to that person. The real asset and corresponding threat of equal value is that, because wages are assessed according to the value of the work to the organization, the need for a comparable male has been removed. It is precisely because of this result that equal value, in effect, represents the Achilles heel of systematic discrimination, for it attacks occupational segregation as the basis of wage inequality. Equal value, as a remedy, allows access to those large pools of women workers in what have been termed 'job ghettos,' who had previously been beyond the reach of equal pay provisions.

But the success of equal value does not follow automatically from its adoption into legislation. Close scrutiny must be given to the enforcement mechanisms instituted. Certainly, non-discriminatory job evaluation schemes are fundamental to the effective application of equal value:

> **These systems, with all their limitations, provide a tool for comparing equity or salaries in non-related, sex-segregated jobs; we can answer the question, for example, whether clerical workers are compensated for effort, skill, and responsibility in the same manner as mechanics or the crafts and trades. We can ascertain whether jobs or comparable worth receive comparable pay.**[5]

It would be naive to assume that equal value by itself can serve to end all forms of discrimination in the workplace. It is not a panacea. Wage discrimination is directly linked, in a vicious cycle, to occupational segregation and unemployment:

> **Over the last few years, many economists have argued that the trade-off between inflation and unemployment has worsened; thus for a given level of inflation, women now must accept a higher rate of unemployment. I have frequently heard the argument used that this trade-off results from more women being in the labour force. In other words, the greater number of women in the labour market forces us to accept a higher rate of inflation if historical unemployment rates are to be achieved. My response is that if more women are unemployed, is it not partly because they are forced by discriminatory hiring practices into already overcrowded occupations?**[6]

Surely the merit of equal value as a remedy is that it can be used to breach the barriers of occupational segregation. The position currently taken by the provinces with respect to equal value appears to be that of waiting to test the experience of the federal government in applying the legislation. In the meantime, alliances are being formed between women's groups and trade union women, such as the Equal Pay Coalition in Ontario, to press for the adoption of equal value legislation. The provinces fall back on the party line, so to speak, that equal value legislation is impossible to enforce, but one wonders if it is the difficulty of enforcement they truly fear, or the access that equal values gives to wage equality for the women employed by the corporate empires.

[1] C. Lloyd, 'The Division of Labour Between the Sexes: A Review,' *Sex, Discrimination and the Division of Labour*, C. Lloyd, ed. (New York: Columbia University Press, 1975), p. 15.

[2] For example, rates of average earnings in the years 1972 and 1977 released by Statistics Canada reveal the fall in women's wages.

	1972	1977
Male	9,455	15,818
Female	5,166	9,143

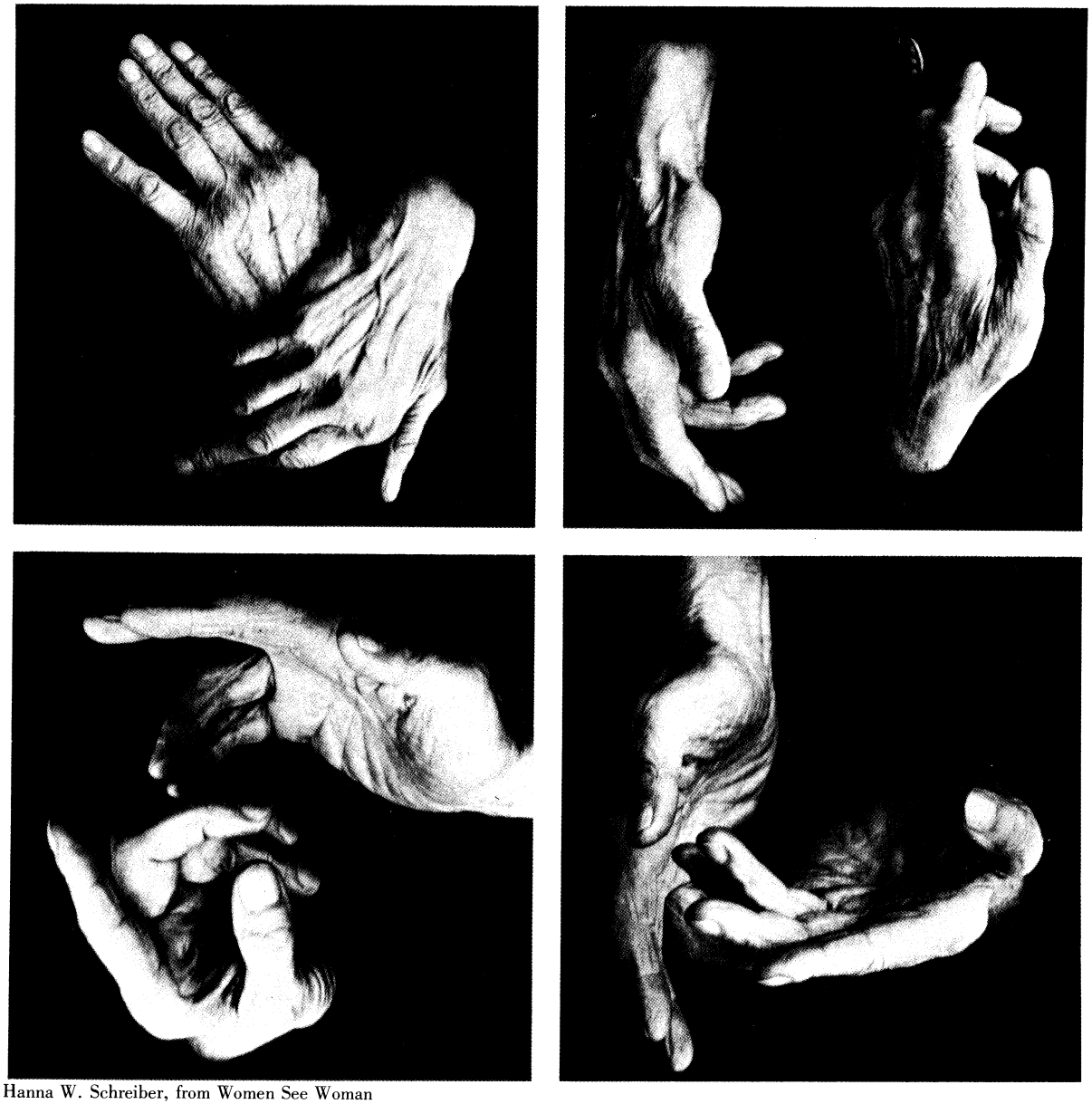
Remuneration

[3] *Convention 100: Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value*, adopted by the Conference at its thirty-fourth session, Geneva, June 29, 1951.

[4] *Equal Remuneration*, International Labour Office, General Survey by the Committee of Experts on the Application of Conventions and Recommendations (Geneva: 1975), p. 69.

[5] H. Remick, 'Beyond Equal Pay for Equal Work: Comparable Worth in the State of Washington,' *Equal Employment Policy for Women*, R. Ratner, ed. (Philadelphia: Temple University Press), p. 407.

[6] M. Griffiths, 'Can We Still Afford Occupational Segregation: Some Remarks,' *Women and the Workplace*, U. Blaxau and B. Reagan, eds. (Chicago: University of Chicago Press, 1976), p. 12.



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