

PART II

IMPLEMENTING EQUALITY

Chapter 4

EDUCATION AND TRAINING

"While there is disagreement regarding the exact nature of the link between training and education on the one hand, productivity and socioeconomic mobility on the other, it is generally conceded that they are related. All other things being equal, a labour force that is highly skilled will outperform one that is not. ... It is also essential to consider the importance of training in improving the prospects of those who experience difficulties in the labour market. ... The development of vocational skills can serve both the promotion of economic efficiency and the pursuit of a more equitable society."¹

Education develops the skills that permit us to communicate, to interpret the messages others communicate, and to formulate opinions of our own. We learn through education to think and express our thoughts, and we learn facts upon which to base our reasoning. This first benefit of education, its role as a generator of skills of reasoning and articulation, is crucial in its ability to promote, among other things, a willingness to be open to the differences in others. Through proper education, we can learn not to make arbitrary judgements about people that disadvantage them unfairly.

A second function education performs is that it provides us with the more technical skills that ultimately translate into economic results. This type of education is a preparatory mechanism for entry into the marketplace. Combined with the skills of communication and reasoning which basic education is intended to develop, this aspect of learning teaches facts, methods, and systems to enable the performance of a job. A good education facilitates the ability to reason, communicate, and contribute to a personal state of economic well-being.

Jobs can realistically be made available only to those who are qualified to undertake them. No strategy designed to increase the participation of particular groups or individuals in employment systems can work unless the proposed employees have the skills to do the job.

1. Canada. Economic Council of Canada. *In Short Supply: Jobs and Skills in the 1980s*. Ottawa, 1982, p.79.

Although gaining these skills through education and training does not itself guarantee access to the labour force, it helps ensure that where there are jobs, a matching supply of qualified or qualifiable candidates is available.

Representatives of business told this Commission that in their opinion one of the major reasons women, native people, disabled persons and members of minorities were underrepresented across the full job spectrum was the scarcity of qualified candidates.

Often this scarcity is rooted in and reinforced by stereotyped assumptions about ability that operate in the school system and the workplace alike. The public must be educated to increase its level of tolerance and to allow its mythological and stereotypical assumptions about these groups to atrophy. This education focusses on attitudes and can expand the willingness of employers to hire from among traditionally excluded groups. But the extent to which discriminatory attitudes can be altered through education alone is limited. Any such efforts must be more than matched by changes in entrenched employment practices and behaviour.

There are jurisdictional barriers to the design and implementation of effective education and training programs. The potential trainee may slip easily between the cracks of the Constitution. Education is a provincial responsibility pursuant to section 93 of the Constitution. National economic development is a federal responsibility pursuant to section 91.² Both levels of government have different but overlapping objectives and responsibilities in the field of education and training. While the federal government makes significant financial contributions to education, the provinces control the curriculum and delivery of education and training programs.

Major financial contributions by the federal government to post-secondary education are made through the Established Programs Financing Act, by means of block funding transfer payments to the provinces, as well as through Employment and Immigration Canada's vocational training programs. For example, through the National Institutional Training Program, the federal government "purchases" training courses from the provinces or territories and provides allowances for trainees. In 1981-82, it spent \$419.9 million on program seats in post-secondary institutions,³ where the programs were offered.

2. *Constitution Act, 1867.*

3. Canada. Employment and Immigration Canada. *Annual Statistical Bulletin 1981-82: Canada Manpower Training Program.* Ottawa, 1983, p.5.

The critical role education and training play in providing job opportunities is beyond dispute. Indeed, various departments, agencies, and commissions of the federal government have made the point in study after study in recent years. The Commission of Inquiry on Educational Leave and Productivity (1979), the Special Parliamentary Committee on the Disabled and the Handicapped (1981), the Parliamentary Task Force on Employment Opportunities for the '80's (1981), the Task Force on Labour Market Development (1981), the Economic Council of Canada in its report *In Short Supply: Jobs and Skills in the 1980s* (1982), the Labour Canada Task Force on Micro-Electronics and Employment (1982), the Skill Development Leave Task Force (1983), and the National Advisory Panel on Skill Development Leave (1984) have all underlined the need to allocate human and financial resources to the repair of educational deficiencies⁴.

For women, the problem is not so much the level as the type of education; for native people, low levels of education are the major barrier; for disabled persons, low levels of education combine with a segregated education to become the hindrance; and for many from the minorities, education is nullified by an inability to speak English or French.

This chapter does not attempt to deal comprehensively with the educational system and the multitude of training courses and programs relating to each of the four groups. Rather, it concentrates on how education and training generally can help make them better able to compete for employment opportunities.

The economic disadvantages faced by members of the designated groups stem, in no small part, from deficiencies in their education. The amount of schooling a person gets has been called "the

4. Adams, R.J.; Draper, P.M.; and Ducharme, Claude. *Education and Working Canadians: Report of the Commission of Inquiry on Educational Leave and Productivity*. Ottawa: Labour Canada, 1979; Canada. Parliament. House of Commons. Special Committee on the Disabled and the Handicapped. *Obstacles*, 1981; Canada. Parliament. House of Commons. *Work for Tomorrow: Employment Opportunities for the '80s*. Report of the Parliamentary Task Force on Employment Opportunities for the '80s, 1981; Canada. Employment and Immigration Canada. *Labour Market Development in the 1980s*. Report of the Task Force on Labour Market Development, Ottawa, 1981; *supra*, footnote 1; Canada. Labour Canada. *In the Chips: Opportunities, People, Partnerships*. Report of the Labour Canada Task Force on Micro-Electronics and Employment. Ottawa, 1982; Canada. Employment and Immigration Canada. *Learning a Living in Canada*, 2 vols. Report to the Minister of Employment and Immigration by the Skill Development Leave Task Force, Ottawa, 1983; National Advisory Panel on Skill Development Leave. *Learning for Life: Overcoming the Separation of Work and Learning*. Ottawa, Employment and Immigration Canada, 1984.

best readily observable predictor of how much a person earns".⁵ Among the factors that may affect this cycle of educational disadvantage are the child's parents' socio-economic background⁶ and frequently the child's gender.⁷

CHILDHOOD EDUCATION

Almost from birth, people absorb cultural messages from their surroundings. Some of the strongest signals come from the school, a key progenitor of cultural and personal judgements, and many career choices made in later life reflect these signals consciously or unconsciously.

The school is society's instrument for preparing children for full participation in the community.⁸ That is why, in the nineteenth century, we accepted the principle of compulsory, universally accessible public education. Schools prepare children for their metamorphosis into effective and productive adults. But advice about courses, the behaviour and status of available role models, formal or informal guidance counselling on careers, even the prevailing attitudes to differences — all these can be subtle or decisive instruments to alter the form this metamorphosis might otherwise take. They affect all the groups under study.

Counselling

Though some teachers and guidance counsellors undoubtedly resist stereotyped thinking, their advice about courses and their

5. Jencks, Christopher, and Bartlett, Susan, et al. *Who Gets Ahead?: The Determinance of Economic Success in America*. New York: Basic Books, 1979.

6. Anisef, Paul, Paasche, J. Gottfried, and Turritin, Anton H. *Is the Die Cast? Educational Achievements and Work Destinations of Ontario Youth*. Toronto: Ontario Ministry of Education/Ontario Ministry of Colleges and Universities, 1980; Anisef, Paul, and Okihiro, Norman (with Carl James). *Losers and Winners: The Pursuit of Equality and Social Justice in Higher Education*. Toronto: Butterworths, 1982, pp.100-103; Porter, John. *The Vertical Mosaic: An Analysis of Social Class and Power in Canada*. Toronto: University of Toronto Press, 1965, pp.186-187; Pike, Robert M. *Who Doesn't Get to University and Why? A Study on Accessibility to Higher Education in Canada*. Ottawa: Association of Universities and Colleges of Canada, 1970; Porter, Marion R., Porter, John, and Blisshen, Bernard R. *Does Money Matter? Prospects for Higher Education in Ontario* (revised edition). Toronto: Macmillan of Canada; Ottawa: Institute of Canadian Studies, Carleton University, 1979.

7. A 1973 study of Ontario Grade 12 students of high ability found that 82 per cent from the upper socio-economic levels expected to complete Grade 13, while only 59 per cent from the lower levels had this expectation. *Ibid.*, Porter, Marion R., Porter, John, and Blisshen, Bernard R., p. 65. But, refining the data, the study concluded that "the most deprived group in Ontario as far as educational opportunity is concerned are lower class girls, particularly those with high mental ability", p.94.

8. *Wisconsin v. Yoder*. 92 S.Ct. 1526 (1972).

suggestions for career or job choices are all too often swayed by the child's gender, race, ethnicity, or disability. They offer traditional suggestions, tending to encourage a restrictive rather than an expansive approach to educational options and reflecting less the real aptitude of the child than their own — often well-meant — perceptions of what the child, as a member of a particular gender or group, can or ought to do. Thus young girls, for example, may be steered away from mathematics or science courses, and members of minorities may find themselves diverted into the commercial or vocational stream.⁹ At the same time, the curriculum and supporting texts may inadvertently be reinforcing the restrictive message.

Many parents rely heavily on the judgement of school officials, who are assumed to have expertise in everything from standard aptitude testing to current labour market trends. Unfortunately, teachers get little training in identifying and eradicating bias in their assumptions. Equally unfortunate is the fact that few guidance counsellors are trained in "...labour-market information, sociology of work, vocational development theory and career education."¹⁰

It is obviously urgent that a realistic view of work, job prospects, and the role of education be communicated to students through both counsellors and teachers.¹¹ It is also imperative that provincial education ministries put more effort into helping teachers learn to fight stereotypes. A guidance counsellor's or teacher's opinion may be determinative in developing or underdeveloping a child's ambitions or economic potential. Job segregation, economic disadvantage, and psychological withdrawal may be the legacies of a teacher's or counsellor's uninformed and arbitrary miscalculation about a child's ability.

Role Models

The influence of role models is subtle but often decisive. For example, there are few women in Canada in science and engineering. When one considers that, as recently as the mid-1970s, guidance counsellors were reluctant to advise girls to enter careers in

9. One study of West Indian students in a metropolitan high school found they tended to be discouraged from entering academically oriented programs. (Study by Subhas Ramcharam cited in Anisef, Paul, and Okihiro, Norman (with Carl James), *supra*, footnote 6.)

10. Menzies, Heather. *Computer Technology and the Education of Female Students*. An Information Paper for the Canadian Teachers' Federation. Ottawa, 1982, p.7. Reference is to a 1980 study by the Canadian School Trustees' Association.

11. *Ibid.*, p.8.

math-related areas or the sciences,¹² this paucity of women is not surprising. Moreover teachers of science in the schools are primarily male.¹³

Even though the elementary school teaching profession is predominantly female, few of the key administrative positions in the schools are held by women. In Ontario, for example, where 71.6 per cent of elementary school teachers in 1982 were female, only 12.5 per cent of principals, only 18.9 per cent of vice-principals, and only 37.4 per cent of departmental and assistant heads were women.¹⁴ At the secondary school level, where 32.4 per cent of the teachers were female, only 3.9 per cent of principals, only 9.1 per cent of vice-principals, and only 21.3 per cent of departmental chairmen, departmental heads, and assistant heads were women.¹⁵

But why does it exist? Why no administration?

This situation is troublesome on two levels. First, the student body perceives that positions of authority are male-dominated, which has a tendency to reinforce in children society's perceptions of women in exclusively supportive rather than authoritative roles. Secondly, the absence of women from the decision-making process may perpetuate discriminatory systems and approaches.

The scarcity of role models is no less a problem for members of the other designated groups, who may feel that the absence of co-members in positions of authority reflects the inappropriateness or impossibility of their aspiring to these positions. They may circumscribe their own job aspirations accordingly.

Access to Education

The issue of equitable access to education must be seriously addressed for two of the groups under study — the disabled and native people.

12. Casserly, P.L. *An Assessment of Factors Affecting Female Participation in Advanced Placement Programs in Mathematics, Chemistry and Physics*. Report to the National Science Foundation 1975; Luchins, E.H. *Women Mathematicians: A Contemporary Appraisal*. Paper presented at the 1976 meeting of the American Association for Advancement of Science, Boston 1976. Both cited by Heather Menzies. *Ibid*, p.7.
13. The proportion of women teaching science is higher at the elementary school level. Canada. Science Council of Canada. *Who Turns the Wheel? Proceedings of a Workshop on the Science Education of Women in Canada*. Ottawa, 1981, p. 18.
14. Speech by Ontario Deputy Premier Robert Welch, minister responsible for women's issues. Quoted in *The Toronto Star*, March 30, 1984, p.A7.
15. *Ibid*; Ontario: Ministry of Education, memo of March 1984 providing updated figures for Ministry of Education. "A comparative analysis of Male/Female Staff in the Ontario Education System 1972-79". Toronto: Ministry of Education 1980.

Children who are disabled suffer tremendous disadvantages at the hands of the school system, partly because there is no consensus on whether separate facilities or integration into the public school system serves them better.

The key to maximizing options for disabled children, as for disabled adults, is the individual approach. In the United States, The Education of All Handicapped Persons Act¹⁶ codifies the government's responsibility in the provision of education for disabled children. These children are entitled to free public education in the educational environment judged "least restrictive" in their particular circumstances. Segregated educational facilities have been held to be violations of constitutional guarantees if they result in a poorer quality of education.¹⁷

The range of systems and programs in Canada for disabled children must be increased. At the same time, better counselling is needed for parents about what choices are available.

Wherever possible, the disabled child should learn alongside children who are not disabled. This should be the rebuttable presumption. It may involve extra tutoring, the use of an attendant, or specially designed programs to supplement the classroom instruction. It will most certainly involve provincial ministries of education in putting more resources into facilities, aids, and teachers for disabled children. It may be unfair to place a disabled child in a regular class in the public school system without appropriate supports, since integration may come at the cost of learning. As the child falls further and further behind, confidence and motivation may ebb accordingly. Yet in many parts of Canada no special educational facilities exist for children with special needs, and to get a basic education they have to be separated from their major support centres — their families. Where integration is not feasible, instruction should be available close to home with as early an entry into the regular school stream as possible.

From the earliest age, disabled children should see themselves as part of the mainstream of society, and children who are not dis-

16. *The Education of All Handicapped Persons Act* 1975, 20 U.S.C. paras. 1401-1461 (1976).

17. *Brown v. Board of Education* 347 U.S. 483 (1954). See also *Pennsylvania Association for Retarded Children v. Pennsylvania* 334 F.Supp. 1257 (E.D. Pa., 1971), modified, 343 F.Supp. 279 (E.D. Pa., 1972); *Mills v. Board of Education* 348 F.Supp. 866, 878 (D.D.C., 1972).

abled should see them the same way. These enabling perceptions, carried into adulthood, have the power to affect, on both sides, expectations about the extent to which the community is and should be accessible and about standards of behaviour in the workplace, both for employers and employees.

For native children, the problem is severe because schools largely ignore their cultural differences. Native people have little input into what is taught or how it is communicated, and too few teachers are themselves native people. As recently as 1979, 73 per cent of the teachers in federal schools on reserves were not native.¹⁸ Nor, in many cases, have the non-native teachers been adequately prepared to understand or cope with cultural differences.¹⁹ The result is that a disproportionate number of the children do not progress beyond public school.²⁰

Language in particular acts as a barrier to native students. Improved English/French as a Second Language training is needed;²¹ at the same time, native languages should be used for teaching.²² Such bilingual programs would greatly increase the number of native people able to serve their own communities.

Schooling for native people in their home communities must be expanded and strengthened. Native people have all too often had to leave their communities for schooling, particularly in the secondary grades:²³ in 1980-81, only 17.8 per cent of Status Indian high school students attended on-reserve schools.²⁴ This separation

18. Frideres, James S. *Native People in Canada: Contemporary Conflicts*. (2nd ed.) Scarborough, Ontario: Prentice-Hall Canada, 1983, p.167.

19. National Indian Brotherhood. *Indian Control of Indian Education — Policy Paper*. Ottawa, 1972, p.19; Northwest Territories Legislative Assembly. Special Committee on Education. *Learning: Tradition and Change — Final Report*. Yellowknife, 1982, p.31.

20. In 1981, of the native population 15 and over (reporting single ethnic origin), 42.2 per cent of the males and 42 per cent of the females had less than a Grade 9 education. Of the native population aged 15 and over not attending school and reporting a multiple ethnic origin as well as a single ethnic origin, 52.4 per cent of the males and 52.3 per cent of the females reported less than a Grade 9 education. (Statistics Canada. Unpublished data from the 1981 Census.)

21. See Northwest Territories Legislative Assembly. Special Committee on Education, *supra*, footnote 19, pp.95-97; Nishnawbe-Aski Nation Submission to the Commission of Inquiry on Equality in Employment. November 25, 1983.

22. Northwest Territories Legislative Assembly. Special Committee on Education, *supra*, footnote 19, p.87.

23. *Ibid.*, p.78.

24. Canada. Indian Affairs and Northern Development. *Indian Education Paper, Phase I*. Ottawa, 1982, p.15.

from family, community, and culture has not been conducive to success in the school system. Yet the funding, facilities, and maintenance of existing schools in Indian communities are demonstrably inferior to those of provincial schools, as has been acknowledged by the Department of Indian Affairs and Northern Development.²⁵ And, despite the federal government's official policy of Indian control over their own education, the Special Committee on Indian Self-Government concluded in its recent report that Indian bands still have limited influence over education in both Indian reserve schools and provincial schools.²⁶

The federal government gives financial support to provincial schools attended by Indian children through tuition agreements and capital-contribution agreements with provincial school boards or provincial governments. But Indian people have limited input into the negotiation of these agreements. On the other hand, where Indian people participate in and control education, there have been important benefits. Most significantly, the number of children graduating from school increases.²⁷

More autonomy should be given to native people in the design and management of their own and their children's schooling so that more relevant and effective systems can be adopted. The aim should be to develop educational systems that permit but do not enforce cultural integration. Some will live on their reserves, some will not, but all wish to be economically productive. At the very least, their education should give them what they need to do this on their own terms.

For all designated groups, failure to be educated properly in the early stages of childhood almost inevitably prevents full societal or employment participation in later years. Our unwillingness to invest financial resources and creative energy in educational systems that accommodate the distinct and particular needs of the members of each of these groups inhibits their eventual ability to become full partners in the community.

25. *Ibid.*, pp.3 and 22.

26. Canada. Parliament. House of Commons. Special Committee on Indian Self-Government. *Indian Self-Government in Canada*. Report of the Special Parliamentary Committee on Indian Self-Government. Ottawa, 1983, p.28

27. *Supra*, footnote 18, p.162; Union of Ontario Indians. Submission to the Commission of Inquiry on Equality in Employment. October, 1983. Appendix B.

Although schools cannot be held exclusively accountable for the decisions made by their graduates, neither can they escape their duty to provide full, fair, and bias-free information upon which students can base these decisions. By limiting, however unintentionally, the choices they enable their students to make, they limit the human resources society expects them to produce. Society is deprived of fully participating adults, adults are deprived of the opportunity to maximize their talents and abilities. Everyone loses.

It is unfair and unwise, however, to concentrate exclusively on the schools in attempting to confront stereotypes that circumscribe an individual's economic prospects. Society too has changes to make which are no less urgent. Those changes external to the education process are parallel but must work in tandem. Changes in the schools are slow to yield results. External changes produce both more immediate results and a favourable climate in which the products of the school system can flourish.

POST-SECONDARY EDUCATION

In Canada, post-secondary education is available from community colleges, collèges d'enseignement général et professionnel (CEGEPs) in Quebec, technical training institutes, universities, and various institutions with adult and continuing education programs. Despite the wide range of diplomas, certificates, and degrees being offered to adults, however, of Canadians over the age of 15 and not attending school full time in 1981, 22.3 per cent have only an elementary school education and 42.3 per cent have only a fully or partly completed secondary school education. Twenty per cent have an elementary or secondary education plus further education in trades or at a community college (or at some institution other than an elementary or secondary school), while only 15.3 per cent have some university training. Only 8.2 per cent have a university degree.²⁸

Full-time Degrees and Diplomas

Today, half of university undergraduate degrees are awarded to females,²⁹ an increase from 38 per cent in 1971, as Table 1 shows.

28. Canada. Statistics Canada. Census of Canada 1981. *Population: School Attendance and Level of Schooling*. Catalogue No. 92-914 (Vol. 1 - National Series). Ottawa, January 1984. Table 1, p. 1-1.

29. Women were first admitted to universities only at the end of the last century.

Table 1

**Per Cent of Full-Time Degrees Awarded to Women
1971 — 1981**

Degree	1971	1981
BA	38%	50%
MA	22	39
PhD	9	24

Source: Canada. Statistics Canada. *Education in Canada: A Statistical Review for 1981-82*. Catalogue No. 81-229 Annual. Ottawa, 1983, pp. 34, 35, 146.

But, although more women are earning degrees in "non-traditional" areas and professions, women still account for a high percentage of students in the traditional areas of education, languages, nursing, psychology, sociology, and social work and a much lower percentage in physics, engineering, and other mathematics and science areas.³⁰ Since considerably fewer girls than boys are studying advanced physics, chemistry, and mathematics in the high schools,³¹ this is perhaps not surprising. Table 2 shows the differential increase of female representation among graduates of some professional and specialty university courses from 1972 to 1982.

It should be a cause for rejoicing! Note number where % has tripled!

Similar trends are evident in the community colleges as Table 3 shows. Women continue to receive most of their diplomas in the traditional areas of business secretariat, education, nursing and medical technology, community and social services, while they receive very few in the electronics and engineering areas. From 1971 to 1981, full-time female enrolment increased by 80 per cent compared with a 50 per cent rise in full-time male enrolment.³²

Reliable post-secondary data on disabled persons are currently very limited. As for members of visible minorities, Tables 4 and 5 show that there is a wide range of educational level.

30. Canada. Statistics Canada. *Education in Canada: A Statistical Review for 1981-82*. Catalogue No. 81-229. Annual. Ottawa, 1983, pp. 69-72. See also Table 2 of this Report.

31. *Supra*, footnote 13, p.23-24.

32. Canada. Statistics Canada. *A Statistical Portrait of Canadian Higher Education From the 1960's to the 1980's: 1983 Edition*. Catalogue No. 81-X-502E Occasional. Ottawa, 1983, p.26. Cited by the Economic Council of Canada, *On the Mend: Twentieth Annual Review*, p. 84. Ottawa, Minister of Supply and Services, 1983.

Table 2

**Female Graduates as a Percentage of Total BAs and
First Professional Degrees by Selected Fields
and Specializations**

	1972-73	1981	1982
<i>Agriculture and Biological Sciences</i>			
Agriculture	18.1%	34.6%	38.6%
Biology	32.8	45.1	46.4
Household science	99.0	97.2	97.0
Veterinary medicine	10.8	43.3	44.6
Zoology	24.9	36.9	41.8
<i>Education</i>			
Education	54.6	73.5	73.5
Physical education	39.3	49.7	52.9
<i>Engineering and Applied Sciences</i>			
Architecture	9.2	24.4	24.7
Engineering	1.2	6.3	7.2
Forestry	1.5	19.2	20.7
<i>Fine and applied arts</i>			
	60.4	63.1	64.1
<i>Health Professions</i>			
Dental studies & research	6.8	17.1	20.5
Medical studies & research	18.3	34.3	36.6
Nursing	96.9	94.9	97.1
Pharmacy	49.5	65.5	65.1
Rehabilitation medicine	90.8	89.4	90.6
<i>Humanities</i>			
History	34.4	44.3	46.8
Languages	65.3	73.3	76.2
<i>Math and Physical Sciences</i>			
Mathematics	30.1	34.0	30.9
Chemistry	20.8	29.6	29.7
Geology	9.2	19.6	25.1
Physics	9.8	11.3	11.5
<i>Social Sciences</i>			
Commerce	10.3	31.5	34.2
Economics	11.2	28.1	28.4

Table 2 (continued)

**Female Graduates as a Percentage of Total BAs and
First Professional Degrees by Selected Fields
and Specializations**

	1972-73	1981	1982
Geography	22.2	37.7	36.4
Law	13.9	35.8	37.6
Political Science	19.9	36.1	37.1
Psychology	55.2	70.8	72.8
Social Work	70.4	77.6	78.0
Sociology	51.7	67.9	67.8

Sources: Canada. Statistics Canada. *Education Statistics for the Seventies*. Catalogue No. 81-569 Occasional. Ottawa, 1984, Table 54; Canada. Statistics Canada. *Education in Canada: A Statistical Review for 1982-1983*. Catalogue No. 81-229 Annual. Ottawa, 1984, Table 10.

Table 3

**Community College Diplomas Granted in Career Programs
by Field of Study — Percentage of Women**

	1977-78	1981-82
Arts	58.8%	63.8%
Business/Secretarial	99.7	99.7
Management and Administration	42.6	52.2
Data Processing	43.2	49.0
Financial Management	52.7	60.9
Community and Social Services	74.9	83.2
Education	77.8	81.2
Engineering — architecture	13.7	16.0
Engineering — mechanical	1.2	1.7
Engineering — general	6.7	10.1
Medical/Nursing	96.7	94.8
Medical Treatment Technology	80.0	76.9
Natural Resources	24.5	28.7
Technology Chemical	44.8	43.5
Electrical/Electronic	1.9	1.9
Transportation	6.0	2.5

Sources: Canada. Statistics Canada. *Education in Canada: A Statistical Review for 1981-82*. Catalogue No. 81-229 Annual. Ottawa, 1983, Table 9; Statistics Canada. *Education in Canada: A Statistical Review for 1982-83*. Catalogue No. 81-229 Annual. Ottawa, 1984, Table 9.

In 1981, slightly more than one per cent of native people had a university degree as compared to eight per cent of the population as a whole.³³ Concern has been expressed that native people are consistently being streamed into vocational training programs rather than university programs.³⁴ Poverty is the other probable determinant: many native people lack the resources to embark upon a post-secondary education. While Status Indians and Inuit receive allowances from the Department of Indian Affairs and Northern Development under its Post-Secondary Education Assistance Program to attend university or undertake long-term community college programs, Non-Status Indians and Métis must rely upon loan programs and bursaries.

One way of improving native people's access to community college and university education is through educational institutions developed primarily by and for native people. In Saskatchewan, at least four native post-secondary educational institutions successfully perform this function: the Gabriel Dumont Institute of Native Studies and Applied Research, the Saskatchewan Federated Indian College, the Saskatchewan Indian Cultural College, and the Saskatchewan Indian Community College. In Ontario, the proposed Ontario Indian Training College will be another positive contribution to this educational route.

The Saskatchewan Federated Indian College, which operates in conjunction with the University of Regina, not only has several hundred native students on campus but also offers classes on reserves. This is a model of the kind of decentralization needed to serve the large number of native people living in rural and remote areas who otherwise have to leave family and community if they are to obtain a post-secondary education.

The need for decentralization also underlies the recommendation of the Special Committee on Education of the Legislative Assembly of the Northwest Territories that an Arctic College be created to consist of several campuses in various parts of the Northwest Territories.³⁵

33. Statistics Canada. Unpublished data from the 1981 Census.

34. Inuit Tapirisat of Canada. *Within the South: Inuit Education, Training, Employment*. Ottawa, 1980, p.6; Union of Ontario Indians, *supra*, footnote 27, p.9.

35. Northwest Territories Legislative Assembly. Special Committee on Education, *supra*, footnote 19. See, especially, p.138.

Table 4

**Males 15 Years and over by Ethnic Group, Showing Percentage Distribution
by Highest Degree, Certificate or Diploma — 1981**

	Total Degree, Certificate, or Diploma	No Certificate or Diploma, and less than Gr. 9	No Certificate or Diploma and Grs. 9 to 13	High School Certificate or Diploma	Trade Certificate or other Diploma, Community College or some University	University Degree
Percentage Distribution: Male						
Total*	100.0	20.0	29.7	17.5	22.9	9.9
British Isles	100.0	15.6	34.4	17.0	22.7	10.3
French	100.0	25.9	23.6	20.1	23.0	7.4
Other European	100.0	23.7	27.6	14.9	24.0	9.8
Indo-Pakistani	100.0	8.9	21.3	16.2	24.0	29.7
Indo-Chinese	100.0	16.0	28.9	20.3	17.2	17.6
Japanese	100.0	10.8	24.6	20.5	23.8	20.4
Korean	100.0	4.0	22.5	21.8	16.8	34.8
Chinese	100.0	16.7	26.5	18.6	17.1	21.1
Pacific Islands	100.0	13.4	31.9	17.2	27.6	9.9
Philippines	100.0	6.9	16.7	18.9	24.6	33.0
Black	100.0	9.7	28.7	16.5	31.4	13.7
Native People	100.0	42.2	35.8	7.7	12.7	1.6
Central South American	100.0	12.7	27.5	20.1	25.0	14.7

*Does not necessarily equal 100 per cent because of rounding.

Source: Canada. Statistics Canada. Unpublished data. 1981 Census.
(Ethnics reporting single origin only.)

Table 5

**Females 15 Years and over by Ethnic Group, Showing Percentage Distribution
by Highest Degree, Certificate or Diploma — 1981**

	Total Degree, Certificate, or Diploma	No. Certificate or Diploma, and less than Gr. 9	No Certificate or Diploma and Gr. 9 to 13	High School Certificate or Diploma	Trade Certificate or other Diploma, Community College or some University	University Degree
Percentage Distribution: Female						
Total*	100.0	20.8	31.7	21.3	20.0	6.2
British Isles	100.0	13.9	38.0	20.6	21.1	6.3
French	100.0	28.1	23.8	24.6	19.3	4.2
Other European	100.0	27.0	29.5	18.7	18.5	6.3
Indo-Pakistani	100.0	21.3	22.6	18.1	19.7	18.2
Indo-Chinese	100.0	27.4	27.2	17.8	14.6	13.1
Japanese	100.0	11.5	25.4	26.2	23.7	13.2
Korean	100.0	13.1	25.3	27.2	18.2	16.2
Chinese	100.0	27.6	24.6	19.9	16.3	11.6
Pacific Islands	100.0	19.7	32.9	19.7	20.5	6.9
Philippines	100.0	10.0	13.3	16.4	25.5	34.9
Black	100.0	13.7	31.4	18.4	29.8	6.7
Native People	100.0	42.0	37.2	8.7	10.9	1.1
Central South American	100.0	18.9	25.3	20.8	24.6	10.5

*Does not necessarily equal 100 per cent because of rounding.

Source: Canada. Statistics Canada. Unpublished data. 1981 Census.

(Ethnics reporting single origin only.)

on what basis demographic?

Although women are still underrepresented in universities as faculty members,³⁶ they are increasingly represented in student bodies. So long as the entrance standards in universities are reasonable and non-discriminatory, and so long as these schools are sensitive to the need to encourage the enrolment of qualified individuals in specific groups whose admission levels seem anomalous, these institutions should be enlisted rather than regulated in the development of practices intended to widen accessibility to students in the designated groups who are qualified or qualifiable. This includes, for example, creative recruitment policies to attract a wide range of students, particularly in courses or professions in which they are underrepresented.³⁷

Those post-secondary institutions and programs mandated to respond directly to the needs of the labour market in their vocational training should be required to take measures to improve the equitable participation rates for members of designated groups in those courses in which they are underrepresented.

Part-time Education

Part-time, post-secondary education has always been an important avenue for people needing to upgrade and retrain; in the past decade it has become even more significant, especially for women.³⁸

Colleges and universities are the major agents of credit level adult education. Data from some community colleges indicate that part-

36. Early this year the Commission on Canadian Studies reported that despite the increase in female university students during the 1970s, only 15.5 per cent of the full-time teaching staff at universities in 1980-81 was female. It also noted that little change had taken place in the past decade in female hiring, promotion, and tenure policies, and salary differentials between men and women. Symons, Thomas H.B., and Page, James E. *Some Questions of Balance: Human Resources, Higher Education and Canadian Studies*. Volume III of *To Know Ourselves: The Report of the Commission on Canadian Studies*. Ottawa: Association of Universities and Colleges of Canada, 1984, pp.190-201.

37. The University of Saskatchewan's Native Law Program, which is designed to assist native people to qualify for law school, is a good example.

38. Canadian Association for Adult Education, L'institut Canadien d'éducation des adultes. *From the Adult's Point of View*. Toronto, 1982, pp.13-14; Humphreys, Elizabeth, and Porter, John. *Part-time Studies and University Accessibility*. Ottawa: Department of Sociology, Carleton University, October, 1978, pp.44-47, 128-131; Pike, Robert M. "Part-time Undergraduate Studies in Ontario", in *Innovation in Access to Higher Education*. New York: International Council for Education Development, 1978, pp.52-54, 63-64. See also Waniewicz, Ignacy. *Demand for Part-Time Learning in Ontario*. Toronto: Ontario Educational Communications Authority/Ontario Institute for Studies in Education, 1976, p.12, p.17, p.19, pp.25-26, pp.41-42.

time enrolment in some community colleges is double and triple the full-time enrolment, and data from universities show a similar surge in part-time studies.³⁹ A recent Statistics Canada survey suggests that part-time university students may be "tomorrow's majority".⁴⁰ Both the phenomenal growth in their numbers and the profile of the part-time learners suggest that this sector could function as a major equalizer of educational opportunities.

Data from community colleges are sketchy, but data from the universities make it clear that women in particular have taken advantage of part-time education. Between 1971 and 1981, while full-time enrolment of women aged 25 years or more increased by 70 per cent, part-time enrolment increased by 146 per cent. The corresponding figures for men were 35 and 55 per cent.⁴¹ In 1981-1982, women constituted 59.9 per cent of part-time university students at the undergraduate level.⁴²

Although they remain heavily concentrated in the arts and education fields, there is some movement into other areas. Between 1976-77 and 1981-82, the percentage representation of part-time female undergraduate students in the combined faculties of arts and education rose from 65.9 per cent in 1976-77 to 68.2 per cent in 1981-82.⁴³ In the same period, their representation among students in business and commerce rose from 22.6 per cent to 42.7 per cent.⁴⁴ A shift towards the general sciences, although not as dramatic, has also been noticeable: between 1976-77 and 1981-82 women's representation among part-time students of the sciences increased from 38.7 to 44.2 per cent.⁴⁵ When examining part-time enrolment data, it is important to remember that part-time students often have a more limited range of degrees available to them and

39. Between 1976-77 and 1981-82, full-time university undergraduate enrolments increased by 5.6 per cent, from 335,559 to 354,503, while part-time university undergraduate enrolments increased by 34.4 per cent, from 163,272 to 219,461. Canada. Statistics Canada. *Education in Canada: A Statistical Review for 1981-82*. *Supra*, footnote 30, pp.60-63. Community college data on part-time enrolment is not systematically collected; however indications point to high enrolments.

40. Bélanger, R.; Lynd, D.; and Mouelhi, M. *Part-time Degree Students: Tomorrow's Majority?* Ottawa: Statistics Canada, November, 1982.

41. Canada. Statistics Canada. *Update from the 1981 Census*. Vol. 1. No.5 (May 15, 1983), p.2.

42. *Supra*, footnote 39, p.63.

43. *Ibid.*, pp.62-63.

44. In 1976-77, 4,882 women were enrolled part-time in business and commerce, compared to 13,654 in 1981-82. *Ibid.*, p.62.

45. In 1976-77, 2,904 women were enrolled part-time in the sciences, compared to 4,828 in 1981-82. *Ibid.*, p.62.

have fewer opportunities for part-time study at more advanced levels and in a number of professions.

The data indicate another phenomenon. Between 1971 and 1979, the percentage of post-secondary part-time students 30 years of age or older rose from 44 to 52 per cent.⁴⁶

In general, the adequacy of access is governed by the level of financial support for part-time study; the location of the institutions offering part-time courses; their relative flexibility in scheduling classes; and their degree of commitment to adult education. In particular, the adequacy of access is limited by full-time residency requirements in some programs; lack of adequate counselling for adults; lack of childcare facilities on campus; and an absence of attendants, interpreters, and other support systems for handicapped students.

ADULT BASIC EDUCATION: LITERACY AND LANGUAGE TRAINING

Adult Basic Education (ABE) may encompass upgrading, high school equivalency, and life-skill courses, as well as literacy training and English/French as a Second Language and can be available either full- or part-time. While current national data are not available, indications are that a significant amount of adult basic education goes on through a variety of agencies including school boards, voluntary associations, and community-based groups. There is no nationally coordinated policy on the provision of ABE, and funding for these programs varies from province to province.

The largest identifiable federal adult basic education program, funded and co-ordinated directly by the federal government, is the Canada Employment and Immigration Commission's (CEIC) Basic Training for Skill Development (BTSD). It should be noted that as a result of policy changes in the late 1970s, this program was altered to concentrate on people with higher levels of education. In addition, the 1982 National Training Act,⁴⁷ with its concentration on critical skills, further emphasized the federal government's reluctance to focus support directly on traditional adult basic education at the lower levels.

46. *Supra*, footnote 40, p. 12.

47. S.C. 1980-81-82-83, C. 109.

A fuller discussion of CEIC programs as they relate to preparing people for more equitable participation in the labour force can be found later in the chapter under training. This section concentrates on literacy and language training.

Literacy Training

Many skilled jobs and many programs to teach skills require at least a Grade 10 level of education; moreover, it is not unusual for employers to demand a Grade 12 education. As technological innovations eliminate jobs traditionally held by the less well-educated, and jobs are created with more sophisticated tasks, entry requirements can be expected to keep on climbing.

Only two decades ago, a widely used definition of functional illiteracy was less than five years of schooling.⁴⁸ By the 1981 Census, the definition had broadened to include those with less than a Grade 9 education. This resulted in the finding that "...about one-fifth of the population have not attained a level of schooling which some experts consider to be a minimal level of educational ability needed to function in our word-oriented information society".⁴⁹ According to Statistics Canada, 3,664,760 adults — or 22.3 per cent of Canadians 15 years of age and older and not attending school full time — had less than a Grade 9 education.⁵⁰ In 1981, 4.7 per cent or 775,650 of the adult population 15 years of age and older and not attending school full time had even less than a Grade 5 education.⁵¹ There is much regional and provincial variation in the location of undereducated Canadians.⁵²

48. Dickinson, Gary. "Educationally Disadvantaged Adults in Canada", *Adult Literacy and Basic Education* (Summer, 1978), p.84.

49. Canada. Statistics Canada. *Update from the 1981 Census* (March 1, 1983), p.14. Organizations such as the Canadian Association for Adult Education have considered the equivalent of at least the eighth grade as necessary for functional literacy.

50. *Supra*, footnote 28.

51. *Ibid*, Table 2, p.2-1.

52. Data from the 1981 Census show that the problem of illiteracy is most severe in the Northwest Territories, Newfoundland, New Brunswick, and Quebec. *Supra*, footnote 28, Tables 1 and 2. In 1981, nearly 70 per cent of the population not attending school with less than Grade 9 lived in Ontario and Quebec. In Ontario, however, only 17.4 per cent of the provincial population had less than a Grade 9 attainment, while for Quebec the proportion was nearly 27 per cent. Furthermore, while 3.2 per cent of the total population with less than Grade 9 was located in Newfoundland, this represented 30.4 per cent of that province's total population. Thus two aspects must be considered: the distribution of the under educated population among provinces, and the proportions of provincial populations that are under educated. (Canada. Employment and Immigration Canada. *Adult Illiteracy in Canada: A Review of Recent Experience and Evidence*. Ottawa, May, 1984, p. 17.)

Undereducated Canadians who are employed are mainly to be found in low-paying, potentially redundant jobs,⁵³ with limited, if any, access to vocational training courses. As individuals, they often lack the funds to undertake upgrading on their own. Yet without assistance they have little hope of improving their educational level.

But are there jobs that still have to be done? If so, so what?

In 1981, 42 per cent of the adult native population had less than a Grade 9 education, twice the average for the Canadian population as a whole.⁵⁴

Reliable national data on the literacy rates of disabled persons are not known.⁵⁵

As a signatory to the United Nations Universal Declaration of Human Rights, Canada has pledged that "everyone has the right to education"; that "education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms"; and that, as a society, "it shall promote understanding, tolerance and friendship among all nations, racial or religious groups..."⁵⁶

As well, Article 13(2)d of the International Covenant on Economic, Social and Cultural Rights requires that "fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education".

Despite these international commitments, and despite recent publications urging the federal government to address the issue of literacy,⁵⁷ no coordinated national effort has been mounted. The

53. Stoodley, Noel. *Problems Faced by Workers in the Prairie Region and Territories whose Access to Future Education and Employment is Affected by their Need for Basic Adult Education*. Background Paper 21. Skill Development Leave Task Force. Ottawa: Employment and Immigration Canada, 1983, p. 16-17.

54. Canada. Statistics Canada. Unpublished data from the 1981 Census.

55. Thomas, Audrey M. *Adult Illiteracy in Canada: A Challenge*. Occasional Paper No. 42. Ottawa: Canadian Commission for Unesco, 1983, p. 102.

56. Article 26(1).

57. Adams, R.J.; Draper, P.M.; and Ducharme, Claude. *Education and Working Canadians*, *supra*, footnote 4. Canada. Parliament. House of Commons. *Work for Tomorrow: Employment Opportunities for the '80s*; National Advisory Panel on Skill Development Leave. *Learning for Life: Overcoming the Separation of Work and Learning*, *supra*, footnote 4.

most dedicated efforts have been the work of small, isolated volunteer organizations across the country, most of which have been critically underfunded.

Before 1978, the federal government offered its major program for academic upgrading from functional illiteracy levels through Employment and Immigration's Basic Training for Skill Development program. At that time, the Basic Training for Skill Development program offered academic upgrading leading to employment or entrance to skill courses at levels equivalent to 0-12 years of education. In the late 1970s, however, Basic Training for Skill Development began restricting its courses to Grades 7 to 12, thus reducing the opportunities for undereducated Canadians.

Provincial government initiatives in the field of literacy education are uneven. It is important to ensure that efforts in this area be supported by a permanent funding commitment and that literacy programs become fully integrated into provincial programs rather than remaining as "... marginal and experimental activities".⁵⁸ Funding commitments must take into account the need for support services such as childcare and travel expenses.

A major responsibility for the provinces should be the development of formalized mechanisms for collaboration between various government departments involved in literacy and English/French as a Second Language. In addition, stable financial support for both national and local volunteer organizations involved in the field is needed.

Coordination should also extend to the development of centralized resource centres where materials relating to program content, teaching methods, and delivery systems can be collected. It is obvious, but also necessary, to point out that innovative delivery systems must be used to inform the undereducated about the existence of literacy programs.

Language Training

Canada's multiculturalism policy, formulated in 1971, maintains, as its fourth objective, that "the Government will continue to assist

58. *Supra*, footnote 55, p.88.

immigrants to acquire at least one of Canada's official languages in order to become full participants in Canadian society".⁵⁹

But as one writer has observed: "An over-emphasis upon the short-run economic integration of adult...immigrants overlooks the need for longer-term services designed to facilitate social integration. Failure to implement such programs now will generate greater economic and social costs later. Multiculturalism cannot be bought cheaply."⁶⁰

A discussion of the merits of different types of education or of new employment opportunities is largely irrelevant for those people unable to speak and read either of Canada's two official languages. Submissions to the Commission from members of minority groups stressed the inaccessibility of language training as a barrier to equality in employment.

The Calgary Vietnamese Canadian Association, for example, said that, despite existing programs and good intentions, the federal and provincial governments seemed not to realize that "language is a basic need just as shelter or food". The association went on to say:

The longer we have been in Canada, the more we become aware that language deficiency is, for all practical purposes, the paramount stumbling block preventing us from equal opportunity and full participation in the society.⁶¹

The Inter-Cultural Association of Greater Victoria, an umbrella organization for 37 ethno-cultural groups in Victoria, also emphasized the fundamental relationship between language ability and employment:

... one of the crucial factors holding visible minorities back from full and equal participation in the Canadian workforce (especially in the higher echelons and the jobs

59. Canada. Parliament. House of Commons. *Debates*. Statement of Prime Minister Trudeau. October 8, 1971. Quoted in Evelyn Kallen, *Ethnicity and Human Rights in Canada*. Toronto: Gage, 1982, p.166.

60. Richmond, Anthony H. "Canadian Unemployment and the Threat to Multiculturalism", 17 *Journal of Canadian Studies* (Spring, 1982), p.90.

61. Calgary Vietnamese Canadian Association. Submission to the Commission of Inquiry on Equality in Employment. October, 1983, p.6. Appendix B.

of the future) is the lack of adequate language training for immigrants and their families. This is a factor that the Government of Canada is in a position to do something about: by funding, upgrading, and committing itself to provision of adequate levels of service to new Canadians, most of whom are new visible minorities wishing to master one or other of Canada's official languages.

And:

The Government of Canada, if it wishes to offer effective assistance to visible minorities to participate equally in the Canadian workforce (especially at the professional and executive levels), must recognize that present policy on the provision of ESL [English as a Second Language] training is part of the problem.⁶²

The Vietnamese and Chinese were prominent among the groups expressing serious concern about language acquisition. Many of the Vietnamese in Calgary arrived as refugees in 1979 and 1980, but "after four years of settlement, it is estimated that only about 20 per cent of Vietnamese Canadian adults can communicate in some kind of English for everyday transactions. As for those who can use their English to work or to pursue further education, the number is a tiny three to five per cent."⁶³

A 1980 survey of Metropolitan Toronto immigrants who had been in Canada for more than three years found that half of the respondents felt the need for continued assistance in the areas of language or employment. The highest percentage of those reporting language difficulties had been born in China, Greece, Italy, and Portugal.⁶⁴

62. Inter-Cultural Association of Greater Victoria. Submission to the Commission of Inquiry on Equality in Employment. October, 1983, pp.12-15. Appendix B.

63. *Supra*, footnote 61, p.3.

64. Sharma, R.D. "Immigrant Needs in Metropolitan Toronto". Toronto: Ontario Council of Agencies Serving Immigrants, September, 1980, pp.30 and 32.

One-quarter of the sample indicated language problems, while almost one-quarter reported employment problems. The total number of persons responding was 429.

And their children?

The importance of language acquisition to successful social, political, and economic integration into Canadian society is obvious.⁶⁵ But many problems in the delivery of this service exist. Some have to do with the availability of programs, the length of existing programs, the method by which candidates are selected, the quality of the training, and accessibility to the courses.

As in other areas of education and training, the problems are clouded by federal-provincial jurisdictional considerations. In the case of language training, moreover, two federal departments are involved. The Department of Secretary of State and the Canada Employment and Immigration Commission share responsibility for language training for new immigrants.

The program of the Department of Secretary of State is authorized by the Canadian Citizenship Act and the Multiculturalism Policy of 1971. This program is the smaller of the two, offers predominantly part-time courses aimed specifically at assisting newcomers to attain citizenship and adjust to Canadian society. Those who have already become citizens are deemed ineligible.⁶⁶ Costs are shared with the provinces and the training is delivered through a variety of agencies, including major educational bodies such as school boards and community colleges, government agencies, volunteer organizations, and community-based groups.

65. A recent federal proposal to revise immigrant language training programs states that language acquisition is "...one of the key factors in the effective settlement and integration of immigrants into Canadian society". (Canada. Employment and Immigration Commission. *A Discussion Paper on a New Framework for Immigrant Language Training*. Ottawa, 1983, p.1 and 8.)

At the provincial level, Ontario and British Columbia have prepared discussion papers investigating the provincial delivery systems for English as a Second Language. In Quebec, the report of the Commission d'étude sur la formation des adultes recommended expansion of French-language training programs for immigrants. Quebec's language training program, which runs for 30 weeks, is already one of the longest programs in the country. (Selman, Mary. *English as a Second Language for Adults. Discussion Paper 04/79*. A Report to the British Columbia Ministry of Education, Science, and Technology. Vancouver, 1979; Sub-committee on Language Training of the Settlement Program and Planning Committee: An Intergovernmental Committee with representation from the Ontario and federal governments. "Consultation paper on the Delivery of English in Metropolitan Toronto". Toronto, 1981; Quebec. Commission d'étude sur la formation des adultes. *Learning: A Voluntary and Responsible Action. Summary Report*. Quebec: Government of Quebec, 1982, p.49.)

66. The *Citizenship Act*, S.C. 1974-75-76, C.108, as amended, S.C. 1976-77 C.52, s.128(2), S.C. 1977-78, C.22.

CEIC's program is offered under the National Training Act⁶⁷ and is "...intended to provide language skills mainly to adult immigrants, Canadian migrants and natives who are unable to find employment in their usual or related occupation because of a lack of knowledge of one of the official languages".⁶⁸ The program is generally provided on a full-time basis. The training is purchased from the provinces and delivered primarily through the community college systems, although there are provincial variations.

Most trainees are skilled labourers, though unskilled workers have recently been admitted. Income support systems generally are available to trainees enrolled in these programs.

These income support systems are, however, unavailable to sponsored "family class" or "assisted relative" categories of immigrants.⁶⁹ Women predominate in the adult "family-class" category. One of the requirements for admission to CEIC's language program is that the language training is necessary to obtain a job. For many immigrant women, this may result in job ghettos, since a lack of English or French does not prevent them from obtaining jobs in marginal sectors of the economy where English or French is not required.⁷⁰

67. S.C. 1980-81-82-83, C.109.

Under the *National Training Act*, language training is possible in either of two broad programs, Industrial and Institutional. In practice, the Institutional language-training program, Canada's largest full-time program, is significantly larger than the Industrial one. In the context of other full-time Institutional training, language training is one of the smaller programs. In 1982-83, trainees in the language program accounted for 7.5 per cent of all Institutional full-time trainees (13,169 out of 174,424). Skill and apprenticeship training dominated the Institutional area. (Canada, Employment and Immigration. Canada. *Annual Report 1982-83*. Ottawa, 1983, p.67.)

68. Language training for immigrants accounts for between 92 and 95 per cent of CEIC's total language training expenditures under the National Training Program. Canada. Employment and Immigration Canada. *A Discussion Paper*. *Supra*, footnote 65, p.5-6.

69. This policy was recently reaffirmed. Canadian Employment and Immigration Commission. *A Discussion Paper*. *Supra*, footnote 65, p.17. Sponsored immigrants from the "family class" or "assisted relative" categories have been allowed into Canada on the understanding that they be supported by their sponsors.

70. Arnpoulos, Sheila McLeod. *Problems of Immigrant Women in the Canadian Labour Force*. Ottawa: Canadian Advisory Council on the Status of Women, January, 1979, pp.33-35.

Of those enrolled in CEIC language training in 1981-82, only slightly more men than women were represented in language training (52.1 per cent male, 47.9 per cent female). Provincial differences are evident. Males make up at least 60 per cent of trainees in Newfoundland, Prince Edward Island, and Alberta. In Ontario, males make up a slightly higher percentage than women (51.7 per cent compared to 48.3 per cent). In Quebec, however, women make up a larger percentage (53 per cent compared to 47 per cent for men). (Canada. Employment and Immigration Canada. *Annual Statistical Bulletin 1981-82: Canada Manpower Training Program*. Ottawa, 1983, p.55.)

Part-time language training programs offered by the Department of the Secretary of State are available to these women, if they have not yet become citizens. A variety of other local part-time programs may also be available. Frequently, however, fatigue, and the knowledge that it will take four to five years to achieve fluency, causes them to drop out. The lack of childcare facilities is also a major deterrent.⁷¹ Language training with the necessary incidental income allowances should be easily available to all immigrants who wish it, regardless of their labour market intentions or immigrant classification at the time of entry into Canada.

Immigrants who are restricted in their access to language training include men and women not immediately destined for the labour force,⁷² those living in rural areas, those undereducated in the language of their country of origin, both men and women in full-time jobs, and those seeking further education.⁷³

English- or French-language training at the workplace may not be a substitute for full-time courses for immigrants, but it does at least offer an opportunity to improve fluency.⁷⁴ There are examples of such arrangements for language training in the workplace in Canada organized and funded by government, industry, community groups, boards of education, unions, or a combination of these.⁷⁵ The potential that exists in the National Industrial Training Program

71. A recent study of all language training in Metropolitan Toronto indicated that only 21.5 per cent (75 out of 348) of the programs offered childcare. (Sub-committee on Language Training of the Settlement Program and Planning Committee: An Intergovernmental Committee with representation from the Ontario and federal governments, *supra*, footnote 65, Appendix: Distribution of ESL by Categories in Boroughs Including Childcare.)

A 1979 report by the Joint Task Force on Immigrant Women (Toronto: Ontario Ministry of Culture and Recreation, p.33) and the Greater Toronto Southeast Asian Refugee Task Force *Report* (1980, p.xi) recommended that all English as a Second Language classes provide childcare.

72. The majority of this group are women. In 1982-83, of the 13,865 immigrants who needed language training and indicated they would not enter the labour market, 75 per cent were female. (Canada. Employment and Immigration Canada. Data from the Immigration 1000 system: A computerized data base of Immigration information, Ottawa, 1984.)

73. Canada. Employment and Immigration Canada. *A Discussion Paper*. *Supra*, footnote 65, p.8.

74. In Sweden, immigrant workers are permitted a certain number of paid hours off work annually for language training.

75. A recent analysis of six such projects in four urban centres identified the following factors responsible for the success of programs: the commitment of all participants - management, teachers, workers - especially middle managers; sufficient time to design and offer a course to cover the needs identified; and the personality and experience of the teacher. Sauve, Virginia, "EWP: A Study of Six Projects in Alberta and Ontario", 13 *TESL Talk* No.4 (Fall, 1982), p.20.

for workplace language training could provide an opportunity to reach immigrants who have forgone language training due to immediate pressures to find employment. Poorly skilled women who accept ghettoized jobs, where they rarely have the opportunity to learn English or French, could be prime clients.

While on-the-job programs should be encouraged, the real need is for changes in the overall language-training policy to provide more equal access for all immigrants, whether or not they state they are destined for the labour force.

Although the federal government provides funding for language-training programs, decisions relating to delivery and content are left to the provinces, resulting in wide differences in the quality and length of courses.⁷⁶ Adequate knowledge of a language takes no less than a year's training.⁷⁷ Income, transportation, and childcare allowances are essential for all categories of immigrants. A discussion of the defects in current training allowances appears in the next section of this chapter.

A new language-training framework is required and indeed has been recommended in a recent review by the two federal departments involved. Recommendations from this review include the provision of survival-level language training for all adult immigrants whether or not they are destined for the labour force, while those entering the labour market should acquire language ability "... to a level commensurate with their employment requirements, qualifications and aspirations". In addition, the discussion paper recommends the negotiation of a new umbrella agreement between the federal government and each of the provinces which would "... design the type of framework required to facilitate: needs analysis, prioritization, co-ordination of service delivery, quality standards, and program evaluation".⁷⁸

76. Quebec offers 30-week courses, while Ontario offers 24-week courses initially.

77. The duration of basic level bilingual training for employees of the Public Service Commission of Canada who already speak one of Canada's official languages is 12 months at the highest level. *Official Languages in the Public Service of Canada: A Statement of Selective Policy Changes*. Prepared jointly by Treasury Board Secretariat and the Public Service Commission. Ottawa, 1981. p.16, section 4B. Recommendations made by the Commission d'étude sur la formation des adultes, *supra*, footnote 65, p.49; in Quebec, a province that already has one of the longest language training programs in the country, stated that full-time courses may need to be longer than the existing 30 weeks. The overall recommendation of this Commission proposed "...a comprehensive adult education policy which would advance the right of every adult to an education and that this would be guaranteed in law" (p.13).

78. Canada. Employment and Immigration Commission. *A Discussion Paper*, *supra*, footnote 65, p.9-10.

Not all teachers in this area have had specific training in English/French as a Second Language. English or French immersion classes are not generally as successful for adult immigrants as those taught in the language of the immigrant. Some bilingual classes exist, but this approach should be expanded. Most courses are at the general proficiency level. Very few advanced courses, and almost no vocationally oriented ones, are available.⁷⁹ This means few opportunities exist for skilled or professional immigrants to acquire the level of expertise needed for employment in their field of specialty. An extended program should be available for these immigrants, some of whom need advanced levels of English/French to meet trades licensing requirements.⁸⁰ Consideration should also be given to replacing the time limitation on CEIC programs by a "desired competency level" goal.⁸¹

Bridging programs between the National Training Act's language program and skill training programs should also be investigated. A new type of course might combine skill acquisition with the vocabulary training in English/French needed to obtain a job in a particular area.

Another issue is the discretion a CEIC counsellor has in deciding whether or not someone is eligible for language training. These counsellors play a critical role in controlling access both to language training and to occupational opportunities. This discretion should be reduced significantly and should be counterbalanced by appeal provisions. Counsellors, wherever possible, should have expertise in the language and culture of new immigrants.

79. Many of these findings were reinforced by the results of a 1981 analysis of all language training programs in Metropolitan Toronto undertaken by the Sub-committee on Language Training of the Settlement Program and Planning Committee, an Intergovernmental Committee with representation from the Ontario and federal governments, *supra*, footnote 65.

80. Some professional accreditation and licensing agencies require applicants to pass the Test of English as a Foreign Language (TOEFL) test before accreditation is awarded. The TOEFL test is also often a requirement for university entrance, either as a full-time or part-time student. A score of 500 on this test is required for accreditation by many professional associations and for entrance into many universities.

81. Kosonen, Robin D. *A Study of the Adult Education Needs of Non-English Speaking Chinese*. Prepared for the Vancouver School Board Career and Community Education Services and the Ministry of Education in co-operation with the Strathcona Manpower Outreach Project. Vancouver: Vancouver School Board Career and Community Education Services, 1981, p.15.

The process of settlement could begin prior to immigration by providing potential immigrants with employment and accreditation information.⁸²

To assist highly skilled immigrants to become established as professionals, an agency is required to provide counselling services, advice on how to pursue professional accreditation, and language referral services.

Lack of awareness by immigrants of the range of language programs available and of the importance of learning one of the two official languages are both critical problems. There is insufficient publicity about the variety and type of community, school board, community college, university, voluntary, and government-run language programs.⁸³ Part of this may be attributed to short-term funding and the resulting instability of language programs offered.

TRAINING

Three needs must be met simultaneously in the delivery of training programs. First, they must be relevant. Second, they must be effective. Third, they must be accessible.

The continuing fluidity of the economic base of the country causes dislocation for certain sectors, and the emergence of new requirements in others. Because of the dynamics of this transformation, it is sometimes difficult to assess what the nature of these new requirements might be. This creates difficulties for the architects of training and educational programs who must necessarily attempt to match training programs with prospective employment needs. This symbiosis is the essence of an effective training and educational strategy — generating a supply of qualified candidates to match the demands of existing or anticipated job opportunities. It requires the kind of careful and comprehensive planning that is made so difficult by a shifting market.

82. In Australia, the Department of Immigration and Ethnic Affairs facilitates the assessment of the educational qualifications of migrants prior to their immigration by forwarding their credentials to the appropriate accrediting body for assessment.

83. A significant step in improving accessibility has been undertaken by some provinces through the publication of directories of English as a Second Language programs. *English as a Second Language/Dialect Directory of Services and Resources* is published by the Ontario Ministry of Culture and Recreation (now Citizenship and Culture), the Ontario Ministry of Education, and the Teachers of English as a Second Language (TESL) Association of Ontario, 1981.

Both the Task Force on Labour Market Development and the Parliamentary Task Force on Employment Opportunities for the '80s referred to the need for better labour market intelligence to define where training would be most relevant.⁸⁴

It is imperative that in the development of training programs the needs of the existing and prospective markets are addressed. Training opportunities should, insofar as it is possible, match job prospects.

To do this effectively requires community and regional as well as national job forecasting. The emphasis should be on training that is locally rather than generally relevant and useful.

Labour market analysts, however, admit that even the most sophisticated projection systems are not totally adequate forecasters in emerging areas like microelectronics.⁸⁵ Furthermore, there is no consensus on what sectors of the economy are likely to experience the largest growth over the next decade.

The impact of technology lends urgency to the growing stress on generic training — training with a component of skills common to a number of occupations — as a means of making it easier to change jobs.⁸⁶

Although a comprehensive training system requires a degree of flexibility, there is a tendency to call "flexible" what is in reality a diffuse and unstructured approach to training and education. Submissions to this Commission have made it clear that in the design and delivery of programs, more effort must be made to meet the particular needs of the designated groups. Many complained of the dizzying speed with which programs are revised, replaced, or renamed, making it exceptionally difficult to keep up with what is available.

84. Canada. Parliament. House of Commons. *Work for Tomorrow: Employment Opportunities for the '80s*, *supra*, footnote 4, pp.112-117; Canada. Employment and Immigration Canada. *Labour Market Development in the 1980s*, *supra*, footnote 4, pp.83-87.

85. Humphreys, Elizabeth. *Technological Change and the Office*. Technical Study No. 17. Labour Market Development Task Force. Ottawa: Ministry of Supply and Services, 1981, p. 5. Canada. Labour Canada. *In the Chips: Opportunities, People, Partnerships*, *supra*, footnote 4, p.68.

86. Smith, Arthur. *Generic Skills: Improving Transferability in Occupational Training*. Technical Study No. 34. Labour Market Development Task Force. Ottawa: Ministry of Supply and Services, 1981; Canada. Labour Canada. *In the Chips: Opportunities, People, Partnerships*, *supra*, footnote 4, pp.66-67.

There is especially a need for more on-the-job training,⁸⁷ training that is directly linked to a job,⁸⁸ "bridging" and pre-trades training,⁸⁹ and local instruction in the more remote regions of Canada. According to some of the people with whom the Commission met, there are insufficient numbers of training programs, resulting in waiting periods of up to two years. Where programs exist, they are designed to teach a "homogeneous" student body, ignoring the need for different forms of instruction for different designated groups.

Native people expressed concern over the depressingly common occurrence of being left without a job at the completion of a subsidized training or employment program. Time-limited wage and training subsidy programs should be re-examined to address this concern.

National Training Act Programs

Canada's major government-supported vocational and industrial training programs, carried out under the National Training Act,⁹⁰ are the National Institutional Training Program and the National Industrial Training Program. The former succeeded the Canada Manpower Training Program and the latter the Canada Manpower Industrial Training Program. Both current programs are administered by CEIC.

The National Institutional Training Program has a number of components, the two largest being skill training and apprenticeship training. The first provides classroom training in a wide range of occupational skills. The second normally provides on-the-job training along with classroom training. In the latter case, the classroom training is funded through CEIC's National Institutional Training program while the on-the-job training may be supported by CEIC through a contractual agreement between CEIC and the employer.

The balance of the National Institutional Training Program consists of smaller, more general programs. Basic Training for Skill

87. Goldman, Barbara. *New Directions for Manpower Policy*. Montreal: C.D. Howe Institute, 1976, p.40; Canada. Parliament. House of Commons. *Work for Tomorrow: Employment Opportunities for the '80s*, *supra*, footnote 4, p.74; Canada. Employment and Immigration Canada. *Labour Market Development in the 1980s*, *supra*, footnote 4, pp.174-176; Canada. Labour Canada. *In the Chips: Opportunities, People, Partnerships*, *supra*, footnote 4, p.65.

88. Canada. Employment and Immigration Canada. *Labour Market Development in the 1980s*, *supra*, footnote 4, p.105.

89. *Ibid.*, pp.105-106.

90. S.C. 1980-81-82-83, C.109.

Development is an educational upgrading course covering Grades 7 to 12. Basic Job Readiness Training teaches participants basic work skills, job search techniques, the setting of career goals, and skills useful in handling situations on the job. Work Adjustment Training places the person in a work situation (at CEIC's expense), provides counselling, and is directed to helping the participant develop good work habits and attitudes. Occupational Orientation provides practical experience in a variety of trades to assist participants in making choices. In addition, language training is available to those who need French or English in order to get and keep a job.

All adults without a university education are eligible, provided they have been out of school for at least 12 months. There are, however, efforts to assure inclusion of particular groups — most notably, women — at least in minimum numbers.

The second program under the National Training Act, the National Industrial Training Program, provides on-the-job training with private and public employers. Employers are reimbursed by CEIC for most of their training costs and part of the wages paid to trainees. These subsidies are usually available for up to 52 weeks under the General Industrial Training Program. Under the Critical Trade Skills Training Program, subsidies are available for up to 104 weeks.⁹¹

Despite the availability of subsidies, employers do not always take advantage of them.⁹²

91. Under the *National Training Act*, S.C. 1980-81-82-83, C. 109, the Canada Employment and Immigration Commission may designate certain occupations as occupations of national importance if it is "satisfied that there is or will be a national or regional shortage of workers in that occupation sufficiently serious to justify special action" (Section 2(3)). This determination is made after consulting provincial governments, business, and labour organizations. Critical Trade Skills Training has involved occupations such as tool and die-making and industrial maintenance mechanics.

92. Crawford, Trish. "\$27 Million for Job Training Goes Unused". *The Toronto Star*, September 5, 1983, p.A1.

During the recession in 1982, when hirings were generally down, Ontario industries turned back \$27 million in wage subsidies for apprenticeship training. As a result only one-half the quota of 8,000 trainees were signed up for training in critical skills trades.

Employers are usually reimbursed 50 per cent of a trainee's wages up to a maximum of \$250 a week. Special provisions, however, are made for certain groups of trainees. Employers who train women in non-traditional jobs under either General Industrial Training or Critical Trades Skills Training may be reimbursed for 75 per cent of the trainee's wages. Employers who train persons with special needs, that is, persons who "have not been able to obtain or hold regular employment because of a social, physical or mental handicap" (Canada. Employment and Immigration Canada, *supra*, footnote 70, p. 107), may be reimbursed for up to 85 per cent of the trainee's wage, but only under the shorter-term General Industrial Training. Native persons, as well as physically and mentally handicapped persons, fall into the "special needs" category.

Under the impetus of the National Training Act, training for adults in Canada has largely come to mean specialized or skill training. This concept of training may be useful for many, but it does not serve the urgent needs of the groups this Commission was established to consider. This is partly because specialized training requires the existence of core skills, which many lack. The inability to acquire these basic or core skills contributes to the perpetuation of economic disadvantage.

Most National Training Act programs generally require a Grade 8 education, many a Grade 10 or Grade 12,⁹³ especially for the technology courses. Provincial apprenticeships increasingly favour those with advanced levels of education,⁹⁴ making the programs inaccessible to undereducated Canadians, individuals for whom the need for training is acute. By relying on educational criteria instead of including the criterion of aptitude, many who could otherwise qualify are excluded.

Moreover, specialized education provides labour-market training for specific positions identified through an elaborate projection system. As long as the projection is accurate, the system is useful. But often it is not. People are then trained for specific jobs that are not there, or not there in sufficient number, by the time they graduate. Because the training is so specific, the training skills tend not to be portable. And thus is created a treadmill situation in which the trainee, having just graduated from one course in employment training, must enrol in another for a different job.

93. The educational level of those attending CEIC training programs is rising. In the industrial training sector those with 12 years of schooling or more represented 54.1 per cent of all those enrolled in 1981-82 as compared to 43.8 per cent in 1977-78. Those with eight years of education or less represented 10.1 per cent of those enrolled in 1981-82 as compared to 14.5 per cent in 1977-78.

A similar trend is reflected in the institutional training sector. In 1981-82, those enrolled with 12 years of schooling or more represented 36 per cent of all trainees as compared to 25.3 per cent in 1977-78. Those with eight years of schooling or less represented 16.4 per cent of all trainees in 1981-82 as compared to 24.4 per cent in 1977-78. (Canada. Employment and Immigration Canada, *supra*, footnote 70, p. 78, p. 53.)

This trend to high educational levels was evident even before the passing in 1982 of the *National Training Act*, with its increased emphasis on high skill training. The majority of nationally identified occupations under the NTA require a Grade 12 education.

94. Adams, R.J.; Draper, P.M.; and Ducharme, Claude, *supra*, footnote 4, p. 161.

Entrance to trades training often requires Grade 10, but in recent years employers have preferred applicants with post-secondary credentials as demand for apprenticeship positions has increased.

It is partly because of this risk that the whole concept of employment education and training has undergone a transformation in the thinking of experts in the area. According to the Organization for Economic Co-operation and Development, future social and economic development will increasingly depend on the possession by members of the labour force of both technical skills and a high level of judgement.⁹⁵ "Skill training", the OECD reports, "is coming to look more like the traditional view of 'education' and less like the traditional notion of instruction in how to carry out specific procedures."⁹⁶ In other words, people must be taught how to teach themselves. This transformation is of the sharpest relevance to the groups this Commission is charged to consider.

The purpose of core education is to teach mathematics, communication, interpersonal, reasoning, and problem-solving skills, all of which have been identified as fundamental, general-purpose skills. Core education prepares people for a wide range of work by equipping them to learn on the job.

Women

The present programs offered by the National Training Program do not meet the needs of women, particularly older women, women with dependants, and women working in potentially redundant occupations. Though current programs understandably focus on the unemployed, they should take cognizance of the particular need many women have for retraining.⁹⁷

It is anticipated that the impact of technology will be felt most sharply in the "women's sector" of the labour market, where automation is being rapidly introduced into traditional office jobs, such as those found in banks and insurance companies.⁹⁸ Surveys show,

95. Organization for Economic Co-operation and Development. *The Future of Vocational Education and Training*. Paris, 1983, pp.20-21.

96. *Ibid.*, p. 18.

97. For a comprehensive review of the deficiencies of Canada's training programs for women, see Canada. Status of Women Canada. *Not Working: Strategy for Improving Women's Status in Federal Government Employment Programs*. Ottawa, March, 1984.

98. Menzies, Heather. *Women and the Chip: Case Studies of the Effect of Informatics on Employment in Canada*. Montreal: Institute for Research on Public Policy, 1981, pp.75-80; Menzies, Heather. *Computers on the Job: Surviving Canada's Microcomputer Revolution*. Toronto: James Lorimer and Company, 1982, pp.41-42, 119-123, 139-140; *Supra*, footnote 10, p.4. See also Werneke, Diane. *Microelectronics and Office Jobs: The Impact of the Chip on Women's Employment*. Geneva: International Labour Organization, 1983.

however, that the majority of young women are headed for the type of work that is being automated, "... support work as opposed to work exercising initiative and responsibility".⁹⁹ It has been predicted that up to a million women who want to work could be swelling the unemployment statistics by 1990.¹⁰⁰ According to one writer, "Not only is clerical job growth not keeping up with growth in the female labour force but women aren't assuming their share of professional-managerial jobs where employment opportunities are increasing."¹⁰¹ Another concern is with the phenomenon emerging in the microelectronics area and known as the "deskilling" of women. Deskilling occurs particularly in keyboard areas, where the traditional skills of a typist, including editing and layout, are made redundant by machine capabilities. The deskilling of jobs can lead to lower rates of pay as well as stress arising from boredom.¹⁰²

Counselling has an important role to play in the training or retraining of women.

Many adult women are re-entering the labour market, and they are finding it a different world from the one they left or the one they were educated to enter. On average, women have had as many years of schooling as men but lack sufficient background in science, mathematics, and the technical areas to take advantage of many new job opportunities. The training, retraining, and upgrading of women must eradicate this mismatch between the skills required by employers in high demand occupations and women's current qualifications and expectations, to avoid job segregation and other related employment problems.

To expect, for example, that women will take advantage of the highly specialized Critical Trade Skills Training Program by reserving 10 to 15 per cent of the training spaces for them without prior preparatory programs is to ignore the reality of women's past experience. In addition, to train women in occupationally specific areas is short-sighted. It reduces their mobility and increases their risk of being confined to new job ghettos.

What is needed is transitional training to provide women with a generic grounding in the basic sciences, computers, and communi-

99. *Supra*, footnote 10, p.4.

100. Menzies, Heather, 1981, *supra*, footnote 98, p.75.

101. *Supra*, footnote 10, p.4

102. Canadian Advisory Council on the Status of Women. *Microtechnology and Employment: Issues of Concern to Women*. Ottawa, July, 1982, pp.14-15.

cation, both written and verbal, and to familiarize them with industry and technology areas. This approach would increase their occupational flexibility and help reduce both occupational segregation and its resulting wage disparities. In 1982-83, women constituted 44.8 per cent of the participants in Basic Training for Skill Development, 53.5 per cent in Basic Job Readiness Training, 40.7 per cent in Work Adjustment Training, 83.3 per cent in the Occupational Orientation courses, and 45.3 per cent in language training.¹⁰³ Yet some of these very courses are being offered in decreasing numbers through the National Institutional Training Program.

The Canadian Congress for Learning Opportunities for Women notes that "the fact that women are not filling all the places reserved for them in non-traditional courses may be an indication that these courses are not accessible to them without some form of bridging program".¹⁰⁴ In 1982-83, though the paid labour force was 41 per cent female, women constituted only 25.7 per cent of full-time trainees in the National Institutional Training Program,¹⁰⁵ a decline from 1979-1980 when they represented 32.5 per cent.¹⁰⁶

While women made up about one-third of the participants in the skill training component of the program in 1982-83, most were in traditionally "female" occupations: 46.2 per cent were being trained in clerical skills and a further 12.9 per cent in sales skills.¹⁰⁷ Only 11 per cent were being trained in "non-traditional occupations",¹⁰⁸ which are defined by CEIC as those in which women constitute less than 10 per cent of the workforce.¹⁰⁹ In 1981-82, for example, women made up only 5.5 per cent of trainees in machining.¹¹⁰ And only 3.3 per cent of all apprenticeship trainees in 1982-83 were women — again in the traditionally "female" occupations of cooking and hairdressing.¹¹¹

103. Katz, Sharon. "CEIC and Target Group Members." Paper prepared for the Commission of Inquiry on Equality in Employment. December 1983, pp. 10-12.

104. Canadian Congress for Learning Opportunities for Women. *National Training Act: Its Impact on Women*. Ottawa, 1984, p. 5.

105. *Supra*, footnote 103, p. 7. Canada. Statistics Canada. Unpublished data. 1981 Census.

106. Canada. Employment and Immigration Canada, *supra*, footnote 70, p. 53.

107. *Supra*, footnote 103, p. 8.

108. *Ibid.*, p. 8.

109. Canada. Employment and Immigration Canada, *supra*, footnote 70, p. 107.

110. *Ibid.*, p. 66.

111. *Supra*, footnote 103, p. 9.

Women form an even smaller proportion of the trainees in the National Industrial Training Program. In 1982-83, women constituted 22.7 per cent of the trainees in General Industrial Training,¹¹² a decline from 1979-80, when they represented 27.4 per cent,¹¹³ and only 2.2 per cent of the trainees in Critical Trade Skills Training in 1982-83.¹¹⁴ Of those in General Industrial Training, only 17.6 per cent were being trained in non-traditional occupations,¹¹⁵ though of the 138 women in Critical Trade Skills Training, 92.8 per cent were training in non-traditional occupations.¹¹⁶

Native People

Native people are expected to account for as much as 20 per cent of labour-force growth during this decade in the western provinces,¹¹⁷ yet relatively little is being done to address the particular difficulties they face in preparing themselves. They are generally hampered by low levels of education and by limited skills. In the past, their disadvantages have resulted in jobs in the most vulnerable sectors of the economy and in significantly higher unemployment levels than those experienced by the non-native population.¹¹⁸

Little in the pattern of native people's participation in the National Institutional Training Program gives cause for optimism. In 1982-83, for example, native people constituted 5.4 per cent of full-time trainees,¹¹⁹ but slightly less than 1 per cent of apprenticeship trainees.¹²⁰ The bulk were enrolled in more basic courses, constituting 16.4 per cent of participants in Basic Training for Skill Development, 19.3 per cent in Basic Job Readiness Training, 5.7 per cent in Work Adjustment Training, and 10.7 per cent in Occupational Orientation.¹²¹

And, while native people accounted for 7.1 per cent of the trainees in General Industrial Training in 1982-83, they constituted

112. *Ibid.*, p. 13.

113. Canada. Employment and Immigration Canada, *supra*, footnote 70, p. 78.

114. *Supra*, footnote 103, p. 13.

115. *Ibid.*, p. 13.

116. *Ibid.*, p. 13.

117. Canada. Employment and Immigration Canada. Labour Market Development in the 1980s, *supra*, footnote 4, p. 95.

118. Canada. Statistics Canada. Unpublished data from the 1981 Census.

119. *Supra*, footnote 103, p. 7.

120. *Ibid.*, p. 9.

121. *Ibid.*, pp. 10-11.

only 0.4 per cent of the trainees in Critical Trade Skills Training.¹²² It bears repeating that CEIC has cut back its basic adult education training courses in favour of skilled training without offering transitional courses to help disadvantaged persons qualify for skilled training.

The Parliamentary Task Force on Employment Opportunities for the '80s, which recognized the need for pre-employment training for women, natives, minorities, and the handicapped, stressed such programs, particularly life-skills training,¹²³ and recommended that innovative, mobile, and regionally based training centres be established in northern and remote areas.¹²⁴ There is no reason to expect people in any group to leave willingly their homes and families for months to train for jobs. Since a majority of native people (65 per cent) live in rural and remote areas, compared to 25 per cent of the national population,¹²⁵ this Commission endorses the recommendation of the Parliamentary Task Force on Employment Opportunities for the '80s.

Disabled Persons

Only 0.2 per cent of the full-time trainees in the National Institutional Training Program in 1982-83 were physically or mentally disabled persons.¹²⁶ At the time, they constituted 2 per cent of trainees in General Industrial Training. But, of the more than 6,000 trainees in the Critical Trade Skills Training Program, only three were disabled.¹²⁷ Without training, the high unemployment rate¹²⁸ of disabled persons, is only marginally reducible.

One of their problems, physical access, is capable of solution, given the social will to do so. All centres offering education and training programs can be made physically accessible to those with mobility handicaps. Other disabilities can also be accommodated, through the provision either of additional personnel or of facilities.

122. *Ibid.*, p. 13.

123. Canada. Parliament. House of Commons. *Work for Tomorrow. Employment Opportunities for the '80s*, *supra*, footnote 4, pp.99, 102.

124. *Ibid.*, p. 102.

125. Canada. Minister of Indian Affairs and Northern Development. *Indian Conditions: A Survey*. Ottawa, 1980, p. 12.

126. *Supra*, footnote 103, p. 7.

127. *Ibid.*, p. 14.

128. Sampson, Frank. *Issues Relating to the Labour Force Position of the Disabled in Canada*. Technical Study No. 30. Labour Market Development Task Force. Employment and Immigration Canada. Ottawa, 1981, p.5.

But a major training disincentive for disabled persons is that so often it results in no job. One study found that disabled persons with a university degree nonetheless had an unemployment rate of 26.3 per cent; for able-bodied university graduates, the unemployment rate was 2.7 per cent.¹²⁹

Problems of transportation exist not only for those people in inaccessible parts of Canada but for disabled persons everywhere. Physical access to training and education programs includes not only the ability to get to and from the program, but to have other supports available. Funding should be available for assistive personnel and devices,¹³⁰ and every effort should be made to guarantee that training programs take place in buildings that are fully accessible.

There are financial disincentives for disabled people who wish to upgrade their skills. The interlocking system of benefits and pensions must be re-examined to ensure that those who wish to train or educate themselves are encouraged rather than economically penalized for wanting to improve their skills.

Vocational Rehabilitation of Disabled Persons (VRDP) is a federal program whereby, under agreements concluded with all provinces and territories except Quebec, the federal government contributes 50 per cent of many of the costs incurred by the province in providing a program for the vocational rehabilitation of physically and mentally disabled persons. The objectives of the program are to remove the disadvantages experienced by disabled persons, to avoid their dependence upon the public or relatives and to restore them to usefulness by making available to them appropriate vocational rehabilitation services. The aim is to have a client who is ultimately capable after rehabilitation of substantially gainful employment.¹³¹ The program is administered through Health and Welfare Canada. Services provided include medical, social, and vocational assessments; counselling; restoration services; training; maintenance allowances; and the provision of tools or books.

These services are provided directly by the provincial government or purchased from voluntary agencies. The number of disabled per-

129. Ontario Manpower Commission. *Employment and the Physically Handicapped in Ontario*. Toronto: Ontario Ministry of Labour, January, 1982, pp.8, 64.

130. Canada. Parliament. House of Commons. Special Committee on the Disabled and the Handicapped. *Obstacles*, *supra*, footnote 4, p. 107.

131. *Vocational Rehabilitation of Disabled Persons Act*, S.C. 1960-61, C.26.

sons receiving services through VRDP for 1979-80 was 111,344, of whom 79,602 were in alcohol programs. That same year federal contributions to the provinces for these programs totalled \$36,516,477.¹³² In 1980-81, the contribution was \$31,673,092.¹³³

The program is essentially welfare oriented and, by isolating services available under the program from services available through regular employment agencies, does not integrate disabled persons sufficiently. Disabled persons are required to go through a complicated social service bureaucracy before being able to use the services of regular government employment agencies such as Canada Employment and Immigration Commission.¹³⁴

The legislation authorizing VRDP is limited in the range and scope of services that may be cost-shared with the provinces. It does not include adequate employment support services such as technical aids, attendant services, reader services, and sign interpreters.¹³⁵

The legislation is limited to disabled persons who have an identifiable vocational goal, thus excluding some adults.¹³⁶

Visible Minorities

Members of visible minorities have their own training needs. Many arise for those who are recent immigrants and new to the paid labour force. Being in the lower and more vulnerable sectors of the economy creates one barrier to vocational training; language creates another. Inadequate language-training opportunities in turn restrict access to opportunities for upgrading, skill training, or adult education.

132. Canada. Health and Welfare Canada. *Vocational Rehabilitation of Disabled Persons Act, Annual Report For the Fiscal Year Ending March 31, 1980*. Ottawa, 1980. Table II and Table I.

133. Canada. Health and Welfare Canada. *Vocational Rehabilitation of Disabled Persons. Annual Report 1980-81*. Ottawa, 1981, p.3.

134. National Union of Provincial Government Employees and The Coalition of Provincial Organizations of the Handicapped. *Together for Social Change: Employing Disabled Canadians*, 1983, p. 23. A joint study by the Coalition of Provincial Government Organizations of the Handicapped and the National Union of Provincial Government Employees stated that the services under the present vocational rehabilitation system should be integrated into the regular government agencies dealing with employment, labour, and education.

135. *Ibid.*, p.23.

136. *Ibid.*, p.24.

A third barrier is the entrance requirements for some training programs. Many are set arbitrarily and unrealistically high. A Grade 10 certificate may be irrelevant to the actual job or the training program; yet people with the ability and aptitude to complete the program may be excluded because they lack the educational credentials. All training course entrance requirements should be re-evaluated to prevent the exclusion of otherwise able candidates. One writer aptly observed in confronting what he called the "myth of meritocracy" that "...the great majority of all jobs can be learned through practice by almost any literate person. The number of esoteric specialties requiring unusually extensive training or skills are relatively small."¹³⁷

Delivery Systems

The 1979 Commission of Inquiry on Educational Leave and Productivity concluded that "the opportunities available to working Canadians to prepare for occupational careers, to advance upward in organizational hierarchies, and to upgrade and maintain their skills, are inadequate".¹³⁸

The shortcomings range from failure to advertise the programs adequately to mismatches between training offered and actual employment forecasts, and from a significant unevenness of availability and quality to unrealistically high eligibility requirements and the streaming by counsellors of individuals into arbitrarily and stereotypically restrictive programs.

One option in addressing the coordination problem is to institute local advisory panels¹³⁹ consisting of labour force analysts and representatives from the designated groups and from the educational institutions concerned. The local panels would meet regularly to determine:

- a) the design and range of training programs;
- b) their effectiveness in securing employment;
- c) the best way to increase the participation rate of designated groups;

137. Collins, Randall. *The Credential Society: A Historical Sociology of Education and Stratification*. New York: Academic Press, 1979.

138. Adams, R.J.; Draper, P.M.; and Ducharme, Claude, *supra*, footnote 4, p.219.

139. The value of local or regional input into training needs has been recognized by a variety of bodies including the Parliamentary Task Force on Employment Opportunities for the '80s. Ottawa, 1981, *supra*, footnote 4, p.75, which endorsed the concept of industrial training advisory boards to help identify industrial training needs.

- d) the communications networks that should be used to advise potential applicants of the existence of the programs and to advise employers of qualified potential employees; and
- e) solutions to the traditional underrepresentation of members of the designated groups in the range of occupations.

To ensure that the programs are not only relevant, but of adequate and consistent quality across Canada, conditions relating to quality, design, and accessibility should be attached to the allocation of training funds to provinces and institutions. Every effort should be made to serve the various regions of the provinces, however remote.

The advisory panels might also solicit the opinion of local business and labour representatives. Native people in particular complained to the Commission that they were consistently denied the types of training they felt most appropriate to economic advancement in their area and were assigned instead to irrelevant training programs.

The communications systems to connect potential trainees with programs and graduate trainees with jobs are underdeveloped, at best.¹⁴⁰ It is particularly difficult for people who live in geographic or personal isolation to learn easily what training programs are available or, having completed training, what job possibilities exist. That the communications gap is also a drawback to potential employers is obvious.

Local advisory panels should also enlist the services of workers in the Outreach program, which provides a communications link between groups and government programs and services. Indeed, properly remunerated and securely employed, these Outreach workers could be the centrepiece of an effective and sensitive support system that helps candidates select training programs and deal with related problems. Themselves often members of the designated groups, Outreach workers should not be hired on short-term contracts to do the same work permanent government employees do for better wages and more job security. The universally acknowledged success and future potential of the Outreach

140. For a full discussion of problem areas in federal government information services relating to disadvantaged groups, see *To Know and Be Known: The Report of the Task Force on Government Information*. (Canada. Task Force on Government Information. Ottawa, 1969, pp.283-295.)

program¹⁴¹ should be recognized by formalizing and entrenching the position of Outreach workers as full-time, adequately paid employees of government.

Voluntary, consumer-based groups providing counselling and information to members of the four designated groups should also be assured of the funding they require to continue their invaluable work on a long-term basis.

Training Allowances and Benefits

Training allowances offered by CEIC do not reflect the cost of living.¹⁴² It has been estimated, for example, that the total allowance, including a childcare allowance, for a single woman with one dependant living in a major urban centre would equal 62 per cent of the poverty-line income. If the childcare allowance is deducted from this total amount, the training allowance equals only 44 per cent of a poverty-line income.¹⁴³ Either childcare allowances should be increased until they reflect the actual cost of childcare, or facilities should be made available at the training centres.¹⁴⁴

Training allowances drop to \$25 per week for those who live with working spouses and parents.¹⁴⁵ This has the effect of keeping particularly women largely dependent and discourages them from applying for training. Trainees should receive an adequate allowance whether or not they are living with a working spouse or parent.

Part-time trainees are not eligible for training allowances.¹⁴⁶ For women with primary family responsibilities who choose to retrain on a part-time basis, this is an unreasonable penalty that may unduly delay access to or force premature entry into the labour force. Training allowances should be extended to part-time trainees.¹⁴⁷

141. Williams, Blair. "The Future Direction of Outreach Policy." Report prepared for Employment and Immigration Canada. January 1, 1983, p.21.

142. *Supra*, footnote 97, p.32.

As of August, 1984, the training allowance for a single person was \$70 per week, increasing to \$100 per week for a trainee with one dependant, with increments of \$15 for each additional dependant. A childcare allowance is available starting at \$50 per week for one child and rising to \$130 per week for five children, with increments of \$10 for each additional child.

143. *Ibid.*, p.33.

144. *Ibid.*, p.40, p.42.

145. *Ibid.*, p.33

146. *Ibid.*, p.36.

147. *Ibid.*, p.36.

Women who have removed themselves from the labour force for the care of home and children should have access, as and when they wish during their stay at home, to skills, training, and counselling programs for their prospective re-entry into the paid labour force.

Trainees who have to move to attend a training course under the National Institutional Training Program receive funds to cover the cost of only one return trip. This has a negative impact, particularly on native people, who often must leave their homes in rural and remote communities to come to cities for training. Provision should be made for phone calls and additional visits home during the training.

Those receiving or about to receive Unemployment Insurance benefits are eligible for training courses under the National Institutional Training Program; they continue to receive UIC benefits and are also eligible for some of the supplementary training allowances, including the childcare allowance. But they cannot obtain a training allowance instead of UIC benefits even if the training allowance is higher. This works against women who have been working at part-time or low-paid jobs, since their average wages when working, either full-time or part-time, are lower than men's, resulting in lower UIC benefits.

Education Leave and Training Programs in Industry

Very little long-term skill training or educational leave appears to be offered to the designated groups by employers. Moreover, where such opportunities are available, they tend to be limited to the small percentage of employees at the executive, professional, and managerial levels.¹⁴⁸ Paid education and skill-training leaves should be available at all levels. A fair proportion of the leaves should be available to members of designated groups. Rather than only those selected as candidates by the company, any qualified employee who wishes it should be able to apply for leave for extra education or training.

Given the rapidity with which change is occurring and is likely to continue to occur, employees must be protected from imminent expendability or obsolescence. Training and education need to be as dynamic as the market they are intended to serve. They must be

148. Litvak, I.A., and Maule, C.J. "Educational Leave Policies and Practices of Select Organizations in Canada". Report prepared for the Commission of Inquiry on Educational Leave and Productivity. March, 1979.

both preparatory *and* anticipatory, on one hand readying beginners for employment, and on the other readying employees for new assignments as existing jobs diminish or disappear. The process should be one similar to that developed by the OECD Centre for Educational Research and Innovation and called "recurrent education".¹⁴⁹ Training becomes a lifelong continuum rather than episodic preparation for job entry and promotion.¹⁵⁰

Retraining schemes must take into account the reality of the education and employment experience of the designated groups. These schemes must also keep current with emerging trends in the workplace, such as the recent surge in part-time work. Some women who work part-time would prefer to work full-time and some work part-time by choice.¹⁵¹ There is evidence that a sizeable number of women work part-time because of home responsibilities.¹⁵²

Part-time jobs are increasing. Between 1975 and 1980, part-time jobs accounted for 30 per cent of new employment growth, and they are expected to account for a still larger share through this decade.¹⁵³ Many of the part-time jobs are occurring in businesses where new technology is being introduced, such as banks, where women predominate and where automation is beginning to result in an increasing use of part-time workers.

Women account for 72 per cent of all part-time workers. Though the greatest numbers are in the 15 to 24 age group, they are represented in large numbers in all age groups. Fewer men work part-time, and they are apt to be either very young or past retirement. Few men work part-time in the prime working years of their lives;

149. *Supra*, footnote 95.

150. Adams, Jane (Canadian Congress for Learning Opportunities for Women). "First Things First: Equity for Women Through Paid Skill Development Leave". Background Paper 8 prepared for the Skill Development Leave Task Force. Ottawa: March, 1983, p.37; Economic Council of Canada. *In Short Supply*, *supra*, footnote 1, p.95; Adams, R.J.; Draper, P.M.; and Ducharme, Claude, *supra*, footnote 4, p.221; Canada. Labour Canada. *In the Chips: Opportunities, People, Partnerships*, *supra*, footnote 4, pp.60-62; National Advisory Panel on Skill Development Leave. *Learning for Life*, *supra*, footnote 4, p.4.

151. Economic Council of Canada, *supra*, footnote 32, p.84.

152. *Supra*, footnote 102, p.13.

153. *Supra*, footnote 10, p.5. See also the Report of the Commission of Inquiry into Part-time Work in Canada, *Part-time Work in Canada*. Ottawa: Labour Canada, 1983, p. 123 concerning the belief of employer associations that part-time work will continue to grow.

only in the 65-and-over age group are their numbers greater than those of women workers of similar age.¹⁵⁴

This situation increases the vulnerability of women. As part-time workers, they will lack most job benefits such as pensions, and are rarely considered for promotion¹⁵⁵ or educational leave. Yet, part-time workers are perfect candidates for expanded training opportunities in industry and expanded programs of educational leave. These must be supported by appropriate changes in the National Training Act programs.

CONCLUSION

As the Task Force on Labour Market Development observed:

Inherent in...past policies has been the view that "ownership" of the employment problem rested with the individuals or groups rather than with their circumstances and with barriers in society and in the labour market. ... *For target group members, this approach has too often been reduced to providing repeated periods of low-level training, temporary job creation and segregated job-experience training.* (Emphasis added.)¹⁵⁶

Without the necessary education and training, members of the designated groups cannot hope to join the economic competition on an equitable basis. It is important to remember that barriers to their access exist at this outer gate and that they are no less formidable than the ones in the main employment arena.

154. *Ibid.*, p.46.

155. Menzies, Heather, 1982, *supra*, footnote 98, p.48. The Commission of Inquiry into Part-time Work (*supra*, footnote 153, p. 87) identified five problem areas associated with part-time work: (a) lack of pensions and fringe benefits; (b) wages, benefits and working conditions are not as good as those of full-time workers; (c) lack of seniority and job security and union discrimination; (d) the pressures of family responsibilities; and (e) inadequate career, promotion, and upgrading opportunities.

156. Canada. Employment and Immigration Canada. *Labour Market Development in the 1980s*, *supra*, footnote 4, pp.91-92.

Chapter 5

CHILDCARE

"A government really committed to equality for women would devise social policies which would make it easier rather than harder for women and men to combine their family responsibilities with paid employment."¹

"... policies [to support daycare or parental leaves] can facilitate equality in employment in a number of ways: by facilitating the labour force participation of females; by enabling them to work full-time as opposed to part-time; by expanding their choice of jobs beyond those that provide proximity to their household; by reducing their absenteeism ...; and by reducing their career interruptions and withdrawals from the labour force that prevent them from acquiring continuous work experience. It is hard to imagine any set of policies that would facilitate equality of employment in so many dimensions."²

For women who are mothers, a major barrier to equality in the workplace is the absence of affordable childcare of adequate quality. The urgency and unanimity of the submissions made by women in all groups on this issue impel this Commission to give it special attention.

The demand and the need for remedial measures derive from the increasing number of mothers in the workforce. Their children need adequate care. By Canadian law both parents have a duty to care for their children, but by custom this responsibility has consistently fallen to the mother. It is the mother, therefore, who bears any guilt or social disapprobation for joining the workforce. And it is the mother who normally bears the psychological and actual responsibility for making childcare arrangements.

It is time to set aside the emotional tangents of this issue and confront it directly. Women work. They have the same right to work

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1. Land, Hilary. "Social Policies and the Family: Their Effect on Women's Paid Employment in Great Britain", in *Equal Employment Policy for Women: Strategies for Implementation in the United States, Canada and Western Europe*, ed. Ronnie Steinberg Ratner, Philadelphia: Temple University Press, 1980, p. 386.
 2. Gunderson, Morley. "Labour Market Aspects of Inequality in Employment and Their Application to Crown Corporations". Paper prepared for the Commission of Inquiry on Equality in Employment. October, 1983.

as do men.³ Thus, many parents must take advantage of whatever childcare happens to be available,⁴ however uneven in quality. Some parents undoubtedly manage to find adequate care for their children; others do not.

There are those who argue⁵ that the need for childcare is not demonstrable; otherwise more women would be staying home. The absence of adequate childcare, they claim, does not seem to be inhibiting women from participation in the workforce. This is simply untrue. Women are not only inhibited from working by the absence of this support system but the quality of their participation is impaired. Childcare is the ramp that provides equal access to the workforce for mothers.

There is a consideration that is of even more importance. Ignoring the paucity of childcare ignores the real beneficiaries of childcare — children. Studies show that children are not only unharmed by quality childcare, some children benefit greatly.⁶ To provide quality childcare is to address their needs, and only secondarily to satisfy the needs of their parents.

CHILDCARE/DAYCARE

Both "childcare" and "daycare" have been used to describe those facilities available on a regular basis for pre-school children when they are not being attended to by their parents or guardians.

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3. The 1979 United Nations Convention on the Elimination of All Forms of Discrimination Against Women, which has been ratified by Canada, provides in Article 11(1) that:
States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) The right to work as an inalienable right of all human beings.
In 1975 the International Labour Organization adopted the Resolution Concerning a Plan of Action with a View to Promoting Equality of Opportunity and Treatment for Women Workers, which provides that: "Any action aimed at establishing equality of opportunity and treatment of women workers must be determined on the basis of the fundamental principle that all human beings (men and women) have the undeniable right to work."
 4. National Day Care Information Centre. *Status of Day Care in Canada, 1977. A Review of the Major Findings of the National Day Care Study 1977*. Ottawa: National Health and Welfare, 1977, p. 1.
 5. Statistics Canada. *Labour Force Survey Research Paper No. 31: Initial Results from the 1981 Survey of Child Care Arrangements*. Ottawa, October 1982.
 6. Belsky, Jay, and Steinberg, Lawrence O. "The Effects of Day Care: A Critical Review", *Child Development*, 49, No. 4 (1978); Johnson, Laura C., and Dineen, Janice. *The Kin Trade*. Toronto: McGraw-Hill Ryerson, 1981; Rudder, Michael. *Maternal Deprivation Reassessed*. London: Penguin, 1972.

The term "childcare" is preferable because it is more comprehensive than "daycare".

Daycare has traditionally been used to describe care for children aged two to six outside the school system, during the day, five days a week, by someone other than their parents or guardians. These conditions do not begin to meet the full range of needs. Although the term is by no means misleading, and is in fact widely used by groups and organizations that intend a broader meaning, it is generally understood by the public in this narrow sense.

Moreover, daycare tends to be associated with "women's rights" issues and is therefore subject to the sophistry of those who advocate that all women have a duty to stay home during the early years of their children's lives. As one writer observed: "Because the issue of daycare for pre-school children is discussed predominantly in relation to the mother's employment, the use of such an ideological justification for restricting daycare facilities serves to confirm the view that women's attachment to the labour market is, and should be, of secondary importance only. This is particularly useful in times of high unemployment."⁷

The term childcare, on the other hand, states the issue exactly. It suggests a system intended to care for children whenever the absence of the parent(s) requires an alternative form of care. The issue can be seen to flow as part of a syllogism:

Society has a duty to ensure that dependent children receive at least minimal standards of care;

Parents have the primary responsibility for this care;

Parents may not be able to give this care on a full-time basis;

Therefore care must be provided by society for children when their parents are unable to provide it.

high
school
level
parental

There is no doubt that children should — and do — look to parents for the provision of primary care and the necessities. This parental primacy, a central tenet of our society, would not be threatened by the general availability of childcare.

In education, for example, the state intervenes whether or not there are primary caretakers to provide instruction to children. The existence of a universally accessible system of education is in no

7. *Supra*, footnote 1, p. 382.

way meant to, nor does it, threaten the primacy of parents over the care of their children. It is, rather, a supplementary, albeit pervasive, system to assist in the provision to children of the skills necessary to function adequately as adults in society.

Many of the arguments made today against the introduction of universally accessible, quality childcare are identical to those made in the nineteenth century before universally accessible public school education was introduced.⁸ The threat to the primacy of the parents, the danger to the emotional stability of children in being removed from the home to spend hours in a classroom, the peril to the sanctity and cohesiveness of the family, and the enormous expense were all proffered as arguments against free public school education.

We have, of course, come to realize that our public education system represents a fruitful partnership between state and parent, with the child as beneficiary. Since all of society benefits from the education of children, and since parents cannot be expected to teach all the basic preparatory skills to their children, the state invests heavily in its own future by educating its young. Education is seen as part of the care of children and no one thinks women — or for that matter either parent — should stay home so their children will not have to go to school. The parents are still primary, the state indispensably auxiliary.

Childcare is a logical extension of this philosophy. If education is the state's legitimate concern, and if standards of care for children are equally the state's concern, then the partnership of parent and state should start when a child is born and continue as long as the dependent child, as beneficiary, needs it, regardless of age, of whether he or she goes to school, or of whether there is a parent at home full time.

Canada lags behind many other Western industrialized nations in its childcare provisions. In France, for example, where only 44 per cent of mothers are employed outside the home, free, non-compulsory pre-schools are part of the regular school system, and 95 per cent of all French children aged three to six attend these schools.⁹ In West Germany, 75 per cent of children attend full-day pre-

8. Prentice, Alison. *The School Promoters: Education and Social Class in Mid-Nineteenth Century*. Toronto: McClelland and Stewart Limited, 1977.

9. Landau, Reva. "Parental Leave — A Comparative Study", in *Women in the Workforce: Affirmative Action and Parental Benefits. Sourcebook*. Ottawa: National Association of Women and the Law, 1983, pp. 84, 93.

schools; in Italy, the attendance rate is 67 per cent.¹⁰ Either free or low-cost infant care is also available in other European countries, including Sweden. In most cases, the government takes full or partial responsibility for the provision of pre-school childcare.¹¹ Canada, in contrast, has licensed daycare spaces for less than 15 per cent of pre-school aged children of working mothers.

It also appears from the available data that significantly more daycare is available in the United States than in Canada, though facilities fall short of requirements in both quantity and quality.¹² Financial arrangements vary widely, and most American children receive care in unlicensed facilities of unknown quality.¹³

The United Nations and the International Labour Organization have recognized that adequate childcare services are essential if women are to have equal access to employment.¹⁴ The United

10. *Ibid.*, pp. 85-86.

11. *Ibid.*, pp. 82-89.

12. United States Department of Labor. Women's Bureau. *Community Solutions for Child Care: Report of a Conference*. Washington, D.C., August, 1979, p. 58.

13. *Ibid.*, p. 9.

14. The most extensive treatment of childcare appears in the International Labour Organization's 1981 Recommendation Concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities. Article 6 of that document contains the following general provision:

With a view to creating effective equality of opportunity and treatment of men and women workers, each Member should make it an aim of national policy to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities.

In particular, ILO members are to take measures to develop or promote childcare services (Article 9(c)), to promote information and education to create broader public understanding of the problems of workers with family responsibilities (Article 10), and to undertake or promote research on "the various aspects of the employment of workers with family responsibilities" (Article 11(a)).

Section V, which focuses on childcare and family services and facilities, says members should, in cooperation with public and private organizations, take measures to collect and publish adequate statistics on childcare needs and preferences (Article 24) and take steps to meet these needs and preferences (Article 25). They should also "encourage and facilitate the establishment, particularly in local communities, of plans for the systematic development of childcare and family services and facilities" (Article 25(a)) and "themselves organize or encourage and facilitate the provision of adequate and appropriate child-care and family services and facilities, free of charge or at a reasonable charge in accordance with the workers' ability to pay, developed along flexible lines and meeting the needs of children of different ages, of other dependants requiring care and of workers with family responsibilities" (Article 25(b)). Article 26(1) provides that: "Child-care and family services and facilities of all types should comply with standards laid down and supervised by the competent authorities." Article 26(3) states that "the competent authorities should provide or help to ensure the provision of adequate training at various levels for the personnel needed to staff child-care and

Nations Convention on the Elimination of All Forms of Discrimination Against Women, which was ratified by Canada in 1981, requires that, "in order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work", countries take measures "to encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of childcare facilities".¹⁵

From the perspective of the needs of children, who represent about one-quarter of Canada's population,¹⁶ as well as that of parents, the ideal childcare system would be affordable, of acceptable quality, and universally accessible though non-compulsory. For many, this position requires a fundamental revision of their approach to the care and raising of children. For others, it is a truism remarkable only for the want of implementation.

As a practical matter, a childcare system as universal as our educational system may be some time away. While such a system should continue to be the ultimate goal, it is necessary to consider interim measures. The highest priority should be to provide access to childcare from birth to every child who needs it. Need should largely be determined by two circumstances:

- Where parents are unable to provide full-time care;
- Where the child has special needs arising from a disability.

family services and facilities". Finally, Article 33 provides that measures should be taken to "develop home-help and home-care services which are adequately regulated and supervised and which can provide workers with family responsibilities, as necessary, with qualified assistance at a reasonable charge in accordance with their ability to pay". While not binding on ILO members, recommendations are part of the International Labour Code, and as such have some moral force. In addition, ILO members must report to that organization on their implementation of recommendations.

15. Article 11(2), subsection (c). The United Nations Declaration on the Elimination of Discrimination Against Women (1967) contains a similar provision (Article 10(2)).
16. According to the 1981 Census, children under 16 made up 24.3 per cent of the total population.

WORKING PARENTS

The majority of parents do not provide full-time care for their children. During the 1960s the pattern for most married women was to continue in the labour force until the birth of their first child and to return, if at all, when their last child entered school.¹⁷ The more recent pattern is that of increasing numbers of mothers continuing in the labour force even after the birth of their first child.¹⁸ In 1976, for example, there were 282,000 mothers in the labour force with children under three years. This figure rose to 460,000 in 1983, an increase of 63 per cent.¹⁹

Of equal significance to the issue of childcare is that the participation rate in the labour force of mothers with children under six rose from 19 to 51.5 per cent between 1967 and 1983,²⁰ an increase at least as great as that of mothers whose children were all aged six or over. This trend is expected to continue.²¹

The most current figures available indicate that in 1983 the participation rate for mothers of children under 16 was 56.8 per cent. For mothers of children under three it was 48.9 per cent; for mothers of children three to five it was 55.6 per cent; and for mothers of children six to 15 it was 62 per cent.²²

Although Statistics Canada does not usually publish data on the total number of children of working mothers, its 1981 childcare survey showed that women in the labour force had 963,000 pre-school age children.²³ Yet in 1982 there were only 123,962 childcare spaces in Canada.²⁴

Pre-school aged children of working mothers receive care from a variety of sources. In 1981, almost three-quarters — 73.2 per cent — of pre-school aged children participated in some form of shared

17. Ostry, Sylvia. *The Female Worker in Canada*. Ottawa: Dominion Bureau of Statistics, 1968, p. 19.

18. Eichler, Margrit. *Families in Canada Today: Recent Changes and their Policy Consequences*. Toronto: Gage Limited, 1983, p. 247.

19. Statistics Canada, Labour Force Survey Division. Unpublished data, 1983.

20. *Ibid.*

21. Ciuriak, Dan, and Sims, Harvey. "Participation Rate and Labour Force Growth in Canada." Ottawa: Department of Finance, 1980, p. 17.

22. *Supra*, footnote 19.

23. *Supra*, footnote 5, Table 8. In addition, working mothers had 1,727,000 school age children, for a total of 2,690,000 children whose mothers worked.

24. National Day Care Information Centre. *Day Care Spaces in Canada, 1982*. Ottawa: National Health and Welfare, 1982, p. 2.

childcare arrangement, including nursery schools or kindergartens, care in the home by someone other than a parent, care in another private home, and daycare centres.²⁵

The statistics make it plain that a role once exclusively assumed by the majority of mothers is less and less being assumed by them. Fathers are not taking up the slack: there has been no concomitant decrease in fathers' labour force participation.²⁶ Yet in three provinces — Quebec, New Brunswick, and Prince Edward Island — there were fewer childcare spaces in 1982 than in 1980.²⁷

This inconsistency of availability, and probably of quality, is noteworthy not only for the inequities it produces but for the problem it raises of portability of service. Parents and children moving from an area with childcare to an area without it face obvious difficulties; in 1980, more than 400,000 Canadians moved from one province to another.²⁸

A recent American survey reported that there was "...an expressed preference among parents of virtually all classes and ethnic backgrounds for supervised and licensed group care for pre-school children".²⁹ Yet under existing market conditions, only those parents at the top and bottom extremes of the income scale can use this mode of childcare.³⁰

The average cost of childcare in Canada in 1982 was \$2,500-\$3,500 per child per year.³¹ When one considers that women earn, on average, \$10,472³² annually, the cost almost as much as the

25. *Supra*, footnote 5, Table 8.

26. *Supra*, footnote 18, pp. 247-248.

27. *Supra*, footnote 24, p. 10.

28. Hill, Karen, and Norquay, Jeff. "Issues Paper: Parliamentary Task Force on Federal/Provincial Arrangements". Ottawa: Canada Council on Social Development, April, 1981, p. 10.

29. Auerbuch, Stevanne, and Rivaldo, James A. *Rationale for Child Care Services: Programs versus Politics*. New York: Human Sciences Press, 1975, p. 35; see also, Ontario Ministry of Community and Social Services. *Family Benefits for Mothers in Metropolitan Toronto*. Toronto, 1973, and Saskatchewan Social Services. *Summary of Day Care Needs and Demands in Saskatchewan*. Regina, 1980. These studies show that more than 50 per cent of parents are dissatisfied with their daycare arrangements.

30. Social Planning Council of Metropolitan Toronto. *100,000 Children: Alternatives for Service Delivery*. Report for the Project Child Care Policy Task Force. Toronto, November, 1979, p. 2.

31. Day Care Research Group. *The Day Care Kit*. Toronto, 1982, p. 21.

32. Statistics Canada. *Income Distributions by Size in Canada, 1982*. Catalogue No. 13-207 Annual. Ottawa, 1982.

unavailability of childcare operates as a disincentive to women entering the paid labour force.³³

From the child's perspective it matters little why the majority of mothers are working; but it is not without significance that many mothers do so purely as a result of economic pressures. The decline in the number of Canadian families below the poverty line between 1969 and 1980 has been attributed to the addition of a second worker in the family (women who work full time contribute an average of 39 per cent of the family income³⁴). A 1979 National Council of Welfare report, *Women and Poverty*, showed that if wives' incomes were deducted from family incomes, 51 per cent more two-parent families would have fallen below the poverty line.³⁵ It is also significant that in 1982, nine per cent of working mothers had a husband who was unemployed or not in the labour force, and 12.4 per cent had no husband present.³⁶

From the point of view of mothers, access to childcare and the nature of such care limits employment options. "In balancing the responsibilities of family and career, women more frequently than men must make decisions (such as to withdraw from the labour force to care for young children) of consequence to their career."³⁷ According to a Labour Force Survey, about 121,000 working mothers had to leave or refuse a job in 1980 because of problems with childcare arrangements.³⁸

There is little doubt that a positive relationship exists between the availability of childcare and women's participation in the labour force.³⁹ Various studies show that a major reason women are over-

33. Ontario Manpower Commission. "The Employment of Women in Ontario: Background Paper". Toronto, October, 1983, p. 18.

34. *Ibid.*, p. 17.

35. National Council of Welfare. *Women and Poverty*. Ottawa, 1979, p. 21.

36. Statistics Canada, Labour Force Survey Division. Unpublished data, 1982.

37. *Supra*, footnote 33, p. 17; see also Canada Employment and Immigration. *Labour Market Development in the 1980s*. Report of the Task Force on Labour Market Development. Ottawa, July, 1981, p. 95.

38. *Supra*, footnote 5, p. 43.

39. *Supra*, footnote 33, p. 17; see also Chadima, Stephen, et al. *Children and Pre-School: Options for Federal Support*. Washington, D.C.: Congressional Budget Office, Congress of the United States, September, 1978, pp. 43-51.

represented in part-time work is that they are combining childcare responsibilities with jobs in the paid labour market.⁴⁰

As a 1981 American study pointed out, "National statistics, collected and tabulated for the Bureau of Labor Statistics by the Bureau of the Census, show that a larger percentage of mothers with young children are employed part-time than are adult women in general."⁴¹ The same study concluded, "Lack of child care or inadequate child care keeps women in jobs for which they are over-qualified and prevents them from seeking or taking job promotions or the training necessary for advancement".⁴²

When need is used as a criterion for making childcare available, the children of Canada with disabilities must be taken into particular account. Parents of these children face tremendous responsibilities and need assistance.

ELEMENTS OF CHILDCARE SYSTEMS

One reason for Canada's poor record on childcare facilities is the absence of a national policy dealing with the care of young children. The traditional family is no longer the dominant pattern in our society, but social policy does not yet reflect this reality. Research shows that parents have difficulty evaluating the care provided to their children.⁴³ Designers of a quality childcare system in Canada should take into account the following considerations.

Jurisdictional Issues

The federal government has, through the Canada Assistance Plan, provided up to 50 per cent of the provinces' and territories' costs of daycare since 1972 for families of low income. The subsidies are available only in provincially or municipally licenced and approved facilities. Parents who are not deemed financially in need must pay for the same service, with only some of the payment

40. Saskatchewan Department of Labour, Women's Research Unit. "A Study of Part-Time Employment in Saskatchewan". September, 1979, p. 35; White, Julie. *Women and Part-Time Work*. Ottawa: Canadian Advisory Council on the Status of Women, March, 1983, pp. 3-10, 29-30.

41. United States. Commission on Civil Rights. *Child Care and Equal Opportunity for Women*. Clearinghouse Publication No. 67. Washington, D.C., June, 1981, pp. 10-11.

42. *Ibid.*, p. 10.

43. Krashinsky, M. *Day Care and Public Policy in Ontario*. Toronto: Ontario Economic Council Research Studies, University of Toronto Press, 1977.

being deductible for income-tax purposes.⁴⁴ Because the program depends on provincial and territorial initiatives, there is uneven distribution of federal funding and access to childcare across Canada.⁴⁵

One result of the current system is to segregate children on the basis of socio-economic status.⁴⁶ Another is to discourage working mothers from taking better paid jobs or promotions, since the penalty for an improved income may be the loss of affordable childcare or a facility beneficial to their children. Children of the poor and the rich are more likely to find adequate childcare than children of families in the middle-income ranges.

Ideally childcare, like education, should be available to children whatever the source and size of their parents' income. The Canada Assistance Plan is not the appropriate funding vehicle, since it perpetuates the notion of childcare as an aspect of the welfare system.

In the interests of guaranteeing some consistent national standards, a National Childcare Act,⁴⁷ devised on the basis of consultations with the provinces and territories, needs to be legislated with appropriate funding mechanisms. There is precedent in Canada for such a federal statute. During the Second World War, a dominion-provincial agreement resulted in the enactment on July 20, 1942, of the Wartime Day Nurseries Act,⁴⁸ which split operating and capital costs evenly between the two levels of government. The agreement was, as the preamble states, a response to the "increasing numbers of women who are the mothers or foster mothers of young children [who] are being presently employed in more industries in Canada...".⁴⁹ In 1946, when men returned home to take jobs, women were encouraged to leave the labour force. The daycare centres closed.

44. Canadian Advisory Council on the Status of Women. *As Things Stand: Ten Years of Recommendations*. Ottawa, 1983, p. 78; *Supra*, footnote 31, p. 19.

45. McCormick, Norma, and Johnson, Laura C. Unpublished daycare study for the Canadian Advisory Council on the Status of Women. Cited by Susan Shaw in *Better Day Care for Canadians: Options for Parents and Children*. Ottawa: Canadian Advisory Council on the Status of Women, 1982, p. 12.

46. *Supra*, footnote 18, pp. 254-255.

47. Such an Act was first recommended in 1970 by the Royal Commission on the Status of Women in Canada. (Canada. Royal Commission on the Status of Women in Canada. *Report*. Ottawa, 1970, p. 411, Recommendation No. 118.)

48. *Wartime Day Nurseries Act*, Order in Council P.C. 6242, July 20, 1942. (Pursuant to the *War Measures Act*, R.S.C. 1927, C. 206); amended by P.C. 2503, April 6, 1944, and P.C. 3733, May 18, 1944; revoked by P.C. 2326, June 7, 1946.

49. *Ibid.*

The guidelines and standards should take into account an appropriate child/staff ratio, regional differences, urban and rural needs, cultural needs of native children and minorities, and facilities for disabled children. The cost sharing should be tied to ongoing consultation on the development of standards, not only with the provinces and territories but with various consumer and education groups that have an interest or expertise in childcare systems.

Hours of Service

The key to an effective childcare system is flexibility. At minimum, the facilities' hours should accommodate the average adult's working schedule. Children normally attend school between nine a.m. and four p.m. This is not the usual working day and often results in a period before and/or after school when no parent is available.

Many parents who work on shifts that do not coincide with regular school hours have particular difficulty providing care for their children. Childcare should also ideally be available for these children.

Delivery Systems

The concept of flexibility should extend not only to the hours of service but to its nature as well. Until childcare becomes generally available, a variety of delivery systems should be supported by a range of subsidies and governed by adequate but flexible standards. Childcare centres are not the best solution for all children or all families.⁵⁰ Informal neighbourhood arrangements, the use of relatives or friends, and other private solutions should all be encouraged so long as the care is adequate.

When children are sick and must remain at home, not only for their own health but for the sake of other children at the childcare facility or school, arrangements should be introduced whereby employers permit either parent to remain home with the child. These arrangements should be extended to include either parent's being free to look after other needs of their children, such as medical or school-related appointments. It may be that eventually we can develop a childcare system of sufficient sophistication to provide care for sick children in their homes⁵¹ or supply escorts for appointments.

50. *Supra*, footnote 18, p. 255.

51. *Ibid.*

A more practical approach is to insist that the workplace acknowledge the reality of parenthood by permitting either parent a certain number of days annually for child-related eventualities,⁵² in the same way that employees are entitled to sick leave.

Location and Staff

Childcare can be carried out in school buildings, in other settings in the neighbourhood, or at a parent's workplace. Where childcare centres are in the main undeveloped, the public school offers an ideal setting as an existing facility. A neighbourhood location avoids the difficulty many parents face in transporting children long distances to facilities before and after work, a task one study showed fell largely to women.⁵³ It has the advantage, too, of keeping the child in his or her own community.

A workplace centre may not be ideal⁵⁴ but it represents a significant improvement over distant facilities or none. The main disadvantage is that it may tie a parent to an unsatisfactory job.⁵⁵ On the other hand, it may, by its convenience, alleviate problems of absen-

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52. The International Labour Organization's 1981 Recommendation No. 165 concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities provides that: "It should be possible for a worker, man or woman, with family responsibilities in relation to a dependent child to obtain leave of absence in the case of its illness" (Article 23(1)). According to Sheila B. Kamerman and Alfred J. Kahn, in *Child Care, Family Benefits, and Working Parents: A Study in Comparative Policy* (New York: Columbia University Press, 1981), in Germany, "employed parents are entitled to a paid leave of up to five days per year, at 80 per cent of wages, to care for an ill child under the age of eight at home." In Sweden there has been since 1974 a parent allowance for the temporary care of children under the age of ten. An employed parent is entitled to a cash benefit equal to 90 per cent of his or her wages up to a stated maximum. The benefit can be used to take care of a sick child, to substitute for the usual care-giver should that person become ill, or to take a child for medical treatment. The benefit is available for up to 60 days per year per child, and can be shared between parents. It is financed from government revenue (85 per cent) and employer contributions (15 per cent). (pp. 49-50, 65).
 53. Michelson, William. "The Logistics of Maternal Employment: Implications for Women and Their Families". Child in the City Report No. 18. Toronto: University of Toronto Centre for Urban and Community Studies. October, 1983, pp. 97-110.
 54. AT & T. *Two Experimental Day Care Centers that Closed*. World of Work Report. New York: Work in America Institute Inc., February, 1977; United States. Department of Labor, Women's Bureau. *Child Care Centers Sponsored by Employers and Labor Unions in the United States*. Results of a 1978 survey. Washington, D.C., 1980.
 55. Friendly, Martha, and Johnson, Laura C. "Perspectives on Work-Related Day Care". Child in the City Report No. 11. Toronto: University of Toronto Centre for Urban and Community Studies, 1983.

teeism, turnover, productivity, and transportation.⁵⁶ The Ontario Federation of Labour has consistently recommended that childcare centres be established at places of work, and that "in new plants, every effort ... be made to have facilities planned and built in".⁵⁷ A number of groups meeting with this Commission identified the lack of childcare facilities in institutions offering employment training programs as one reason women cannot take advantage of such programs.

Contributory plans at the workplace, with the necessary modifications to the tax system to permit full deductions, and the inclusion of childcare as an option in corporate benefit plans may provide interim relief to families.

Quality care is impossible without quality staff. More people of different cultural and racial backgrounds and of both genders should be encouraged to train as childcare providers. In addition, better training should be available for teachers caring for children with special needs. This is not to argue for more or better paper credentials but for better training and supervision of workers with an aptitude for the care of children.

Critical to attracting able employees to the field is paying them adequately. Currently, childcare providers earn about \$10,000⁵⁸ annually, a grievously inadequate amount for people given so significant a responsibility. The average annual salary in 1980 for kindergarten and elementary school teachers, by contrast, was

56. *Supra*, footnote 33, pp. 17, 21; "The Impact of Child Care on Employee Absenteeism, Turnover and Productivity" and "The Realities and Fantasies of Industry Related Child Care". Proceedings of Symposiums. Denver: University of Colorado Medical Centre, May, 1973.

57. Ontario Federation of Labour. "Position Paper on Day Care". Toronto, June, 1972. At its 1980 annual convention, the OFL endorsed a policy calling for an overhaul of the present childcare system. (Ontario Coalition for Better Daycare. "Daycare: Deadline 1990". Brief to the Government of the Province of Ontario on the future of daycare service in Ontario. Toronto, 1982, p. 16.)

At its May, 1984, convention in Montreal, the Canadian Labour Congress passed a resolution reiterating its support for universal access to publicly funded, quality childcare.

58. Action Day Care. "For Universally Accessible Non-Compulsory Day Care in Canada". Toronto, 1982. (Cited in Colley, Susan. "Free Universal Day Care: The OFL Takes a Stand", in *Union Sisters: Women in the Labour Movement*, eds. Linda Briskin and Lynda Yanz, Toronto: Women's Educational Press, 1983, p. 307.)

In 1980, the average income of a female babysitter was \$2,640 per year while the average income of a male babysitter was \$4,311 per year. (Economic Council of Canada. *On the Mend*. Twentieth Annual Review, Ottawa, 1983, p. 89.)

\$20,440.⁵⁹ Childcare providers must be better paid if we expect to attract, train, and retain a body of professionals committed to this work.

Funding

The newly appointed federal Task Force on Childcare⁶⁰ fills an urgent need to investigate funding mechanisms for childcare in Canada. It is expected that the task force members will examine federal-provincial cost-sharing arrangements as well as the efficacy of various contributory and non-contributory methods of supporting a childcare system. Some preliminary observations may nonetheless be made by this Commission for the task force's consideration. Its study, moreover, need not delay the immediate allocation of more resources by the provincial, territorial, and federal governments to childcare facilities.

The tax system fails to accommodate working parents in several respects.⁶¹ The childcare expense deduction is unrealistically low; while other employers can deduct the full wages of employees, parents employing childcare providers cannot; and the refundable child tax credit is too low. The tax system should be based on an assumption that parents have equal and androgynous childcare and homemaking responsibilities.

Currently, childcare expenses are deductible only if they are incurred to enable a person to earn an income or undertake training or research. They should also be deductible when they are incurred to enable a person to seek employment.

The inability to deduct the full cost of childcare annually⁶² operates as a disincentive to paying childcare workers and housekeepers what they deserve. This victimizes yet another class of women.

59. Statistics Canada. *The Labour Force*. Catalogue No. 71-001 Monthly. Ottawa, November, 1983.

60. The appointment of the Task Force on Childcare was announced on May 30, 1984, by The Honourable Judy Erola. A study of this kind was specifically recommended to this Commission by the Canadian Day Care Advocacy Association ("Beginning to Solve Canada's Daycare Crises: Short-Term and Long-Term Proposals". Submission to the Commission of Inquiry on Equality in Employment, November, 1983, p. 19) and the Canadian Union of Public Employees (Submission to the Commission of Inquiry on Equality in Employment, December, 1983, pp. 43-44).

61. Shaw, Susan. *Supra*, footnote 45, pp. 23-28.

62. *Ibid.*, p. 24.

Our society purports to value children but is not willing to pay adequately people, usually women, for looking after them. If mothers stay home, they are unpaid. When they join the labour force, they are underpaid. And when parental substitutes are hired, these alternative care-givers are likewise underpaid.

Childcare is a social investment in the future. It is not, therefore, the exclusive financial responsibility of an employer, or a union, or a worker, or a parent. It is a public expense that should ultimately be borne by all taxpayers, much as education is. Childcare should be seen as a public service to which every child has a right.

At the moment, most childcare is privately financed by families.⁶³ The debate has been whether childcare is to be considered a privately financed discretionary expenditure for higher income groups or whether it should be regarded as a system supported, as with health and education, primarily from tax revenue.⁶⁴ Based on the consistency of the message this Commission received from women across Canada, it is a debate we can no longer afford to continue.

Childcare is not a luxury, it is a necessity. Unless government policy responds to this urgency, we put women, children, and the economy of the future at risk. Considering that more than half of all Canadian children spend much of their time in the care of people other than their parents; and that more than half of all parents need childcare services for their children, social policy should not be permitted to remain so greatly behind the times.

63. Cook, Gail C.A., and Eberts, Mary. "Policies Affecting Work", in *Opportunity for Choice: A Goal for Women in Canada*, ed. Gail C.A. Cook, Ottawa: Statistics Canada/C.D. Howe Research Institute, 1976, p. 167.

64. *Ibid.*, p. 168.

Chapter 6

EMPLOYMENT EQUITY: ELIMINATING WORKPLACE BARRIERS

"It is precisely because the force of circumstances tends continually to destroy equality that the force of legislation should always tend to its maintenance."¹

Two options are specifically cited in this Commission's Terms of Reference for eliminating systemic discrimination and promoting equal competition for employment opportunities in crown corporations. One is an enhanced voluntary program, possibly linked to mandatory reporting requirements; the second is a mandatory affirmative action program.

"Affirmative action" or "employment equity" programs are comprehensive planning processes "for eliminating systemically induced inequities and redressing the historic patterns of employment disadvantage suffered by members of target groups".²

This approach, known as the systemic approach, identifies discrimination in the workplace in terms of the impact of employment practices on the employment opportunities of designated group members. The impact, rather than the intention behind behaviour or employment practices, is what defines systemic discrimination.

As a strategy for eliminating systemic discrimination, employment equity consists of the following steps:

- a) a clear statement of executive support, the appointment of senior management accountable for implementing an employment equity program, the establishment of an implementation structure, the assignment of appropriate resources, and the development of a suitable labour-management consultative process;³

1. Rousseau, Jean-Jacques. *The Social Contract and Discourses*. London: J.M. Dent & Sons Ltd., 1968, p.42.
2. Canada. Employment and Immigration Canada. *Affirmative Action Technical Training Manual*. Ottawa, 1982, p.41. This manual contains an analysis of, and methodology for, the implementation of affirmative action programs.
3. Based on D. Rhys Phillips, "Equity in the Labour Market: The Potential of Affirmative Action". Paper prepared for the Commission of Inquiry on Equality in Employment. February, 1984.

- b) the design and implementation of an organizational plan to include:
 - i) the identification and removal of discriminatory barriers in a company's hiring, training, promotion, and income policies;
 - ii) alternative, corrective systems;
 - iii) special remedial measures designed to remove the effects of previous discrimination;
 - iv) quantifiable goals with an appropriate monitoring and assessment system to ensure that women and minorities are equitably represented and remunerated at all levels within the organization.

Employment equity is essentially a function of a company's human resource and strategic planning operations.

The Special Committee on the Disabled and the Handicapped, the Parliamentary Task Force on Employment Opportunities for the '80s, and the Task Force on Labour Market Development have all advocated affirmative action to permit the fullest use of the skills and abilities of those who have been unjustly restricted in their employment opportunities.⁴

VOLUNTARY VERSUS MANDATORY MEASURES

Voluntary Programs

Voluntary employment equity means that employers are encouraged, rather than required, to adopt measures intended to rectify employment inequities. There is no provision for an enforce-

4. Canada. House of Commons. *Obstacles*. Report of the Special Committee on the Disabled and the Handicapped. February, 1981, Recommendation 19, p.31; Recommendation 20, p.32; Recommendation 25, p.35; Recommendation 26, p.35; Recommendation 27, p.36; Recommendation 38, p.51. Canada. Employment and Immigration Canada. *Labour Market Development in the 1980s*. A report of the Task Force on Labour Market Development. Ottawa, July 1981, pp.107-108. Canada. House of Commons. *Work for Tomorrow: Employment Opportunities for the 80s*, Ottawa, 1981, Recommendation 105, p.98; Recommendation 106, p.99; Recommendation 107, p.99. See also Canada. House of Commons. *Equality Now! Report of the Special Committee on Participation of Visible Minorities in Canadian Society*. March, 1984, Recommendation 14, p.38, recommending contract compliance and affirmative action in the federal government and crown corporations, and Recommendation 12, p.35, recommending, not an immediate implementation of an affirmative action program, but rather a five-year voluntary strategy. However, this recommendation states: "At the end of five years, review the incentives, programs and the success of voluntary affirmative action. Mandatory affirmative action should be introduced at this time if insufficient progress is detected under the voluntary programs."

ment component. A voluntary program with a mandatory reporting requirement is nonetheless voluntary in the absence of a requirement to remedy the discriminatory practices disclosed by the information reported.

A requirement of public reporting may result in public pressure on a company to revise its systems but it is unrealistic to rely on public opinion as an effective monitoring agent. It results in a speculative and scattered approach and creates the perception, in the absence of enforcement, that the issue is deserving of only casual attention.

Voluntary programs of various kinds on behalf of women were attempted in Canada after the Royal Commission on the Status of Women reported in 1970.⁵ Certain of these programs were revitalized and expanded, at least in the public sector, in and after 1975, International Women's Year. Voluntary programs in the federal government have had little impact on the composition of the public sector workforce.

The following table shows the change in the representation of women in the federal public service by occupational category from 1976 to 1982.

The proportion of women in the federal public service was 40.6 per cent in 1983.⁶ Women held 5.9 per cent of jobs in the management category. In addition, women constituted 82 per cent of all workers in the administrative support category, which consists primarily of clerical positions.⁷ Within the public service generally, they work at the lowest levels and receive the lowest pay.⁸

5. Canada. Royal Commission on the Status of Women in Canada. *Report*. Ottawa, 1970.

6. Canada. Public Service Commission of Canada. *Annual Report 1983*. Ottawa, 1984.

7. *Ibid.*

8. In 1982 women represented 65.5 per cent of all full-time public service employees earning less than \$20,000. (Canada. Public Service Commission of Canada. *Annual Report 1982*. Ottawa, 1983.); see also Quiring, D.D., "The Representation of Women in the Federal Public Service". Prepared for the Public Service Commission of Canada. November, 1982.

Table 1

**Total Employees and Representation Change of Women in the
Federal Public Service by Occupational Category,
1976 and 1982**

Category	1976		1982	
	Total	% Women	Total	% Women
Management	1,268	2.4	3,175	5.4
Scientific & Professional	24,076	23.4	22,497	22.9
Administrative & Foreign Service	49,240	20.4	54,184	32.5
Technical	26,181	9.8	27,321	12.0
Administrative Support	71,748	78.4	70,757	82.2
Operational*	106,352	18.2	44,267	12.3
TOTAL	279,314	33.7	222,582	40.4

*In September, 1980, Canada Post became a separate employer. At that time, proportions of men and women employed at the old postal department were 71 and 29 per cent, respectively. The act of creating Canada Post removed 60,000 employees from the population of the Public Service (Source: Public Service Commission. *Annual Report 1981*. Ottawa, 1982).

Source: 1976 data: Public Service Commission of Canada, Office of Equal Opportunities for Women. "History of the Office of Equal Opportunities for Women and Public Service Commission Objectives and Initiatives in Support of the Federal EOW Program". Ottawa, February, 1983, Table 1.

1982 data: Canada. Public Service Commission of Canada. *Annual Report 1982*. Ottawa, 1983, Table 10, pp. 57-58.

In 1983, 11.9 per cent of all male public service employees earned less than \$20,000; 37.9 per cent of all female public servants earned less than this amount.⁹

A program to increase the participation of disabled workers in the federal public service was initiated in March, 1978. The program, according to available figures, has had limited impact. "Handicapped persons represent less than one-half of one per cent [of the public service]. Yet it is estimated that five per cent of the population are employable handicapped persons."¹⁰

9. Canada. Public Service Commission of Canada. *Annual Report 1983*. Ottawa, 1984; Canada. Public Service Commission of Canada. Office of Equal Opportunities for Women. "History of the Office of Equal Opportunities for Women and Public Service Commission Objectives and Initiatives in Support of the Federal EOW Program". Ottawa, February, 1983.

10. Canada. Treasury Board of Canada. *Affirmative Action Press Kit*. Ottawa, June 27, 1983. Annex E, p.4.

There is a Black Employment Program in Nova Scotia, instituted in 1973 and administered by the federal government. Its mandate is to promote black employment in the federal public service in Nova Scotia. In 1981 and 1982, 2.2 per cent of federal public service employees in Nova Scotia were black, compared to a black participation rate in the Nova Scotia labour force of 4.5 per cent.¹¹

The Affirmative Action Directorate of Canada Employment and Immigration Commission has contacted more than 1,400 employers since 1979 to encourage them to participate in a voluntary affirmative action program. As of July, 1984, 71 companies had agreed to do so.¹²

It is difficult to see how a voluntary approach, that is, an approach that does not include an effective enforcement component, will substantially improve employment opportunities for women, native people, disabled persons, or visible minorities. Given the seriousness and apparent intractability of employment discrimination, it is unrealistic and somewhat ingenuous to rely on there being sufficient public goodwill to fuel a voluntary program.

Mandatory Programs

a) The Canadian Experience. Mandatory employment equity means that employers are required, rather than requested, to implement measures designed to eliminate discriminatory employment barriers. In Canada, mandatory programs have been used only rarely.¹³

The federal, and most provincial, human rights commissions have the right to approve and in some cases to order the adoption by an employer of special measures to improve the employment disad-

11. Seydegart, Kasia, and Spears, George. "You'd Think You Were In Heaven : Federal Government Legislation, Policy, and Programs that Affect Equality in Employment of Four Target Groups." Paper prepared for the Commission of Inquiry on Equality in Employment, October, 1983.

12. Canada. Employment and Immigration Canada. Affirmative Action Directorate. Unpublished Data, Ottawa, 1984.

13. At the end of the Second World War, a preferential hiring program for veterans was introduced in the federal public service. This provision continues to exist as s. 16(3) of the *Public Service Employment Act*, R.S.C. 1970, C.P-32, as amended.

vantages faced by certain groups.¹⁴ Moreover, as is discussed in Chapter I of this Report, the courts will be entitled, after April 17, 1985, pursuant to section 24 of the Canadian Charter of Rights and Freedoms, to order the kind of ameliorative measures for disadvantaged groups contemplated by section 15(2) of the Charter.¹⁵

Mandatory measures have been successfully implemented through resource development surface lease agreements in Saskatchewan, in some cases dramatically increasing the proportion of native people in certain corporations' workforces to as much as 50 per cent over a five-year period.¹⁶

The new Canada Oil and Gas Lands Act (COGLA)¹⁷ seeks to compel the "employment of Canadians" and may require the "employment and training of disadvantaged individuals or groups" by corporations undertaking resource development.

14. Under the *Canadian Human Rights Act*, (S.C. 1976-77, C.33, as amended, s.41(2)), and the *Saskatchewan Human Rights Code*, (S.S. 1979, C.S-24.1, s.31(7)), the board of inquiry, or comparable body, is specifically authorized to order implementation of an affirmative action program in a case where discrimination has been established. A board of inquiry appointed by the Canadian Human Rights Commission first utilized this provision in August, 1984, requiring Canadian National Railways to hire women for blue-collar positions. (Unreported as of October, 1984.)

The *Ontario Human Rights Code*, (S.O. 1981, C.53, s.13(1)), the *New Brunswick Human Rights Act*, (R.S.N.B. 1973, C.H-11, s.13), the *Northwest Territories Fair Practices Ordinance*, (R.O.N. W.T. 1974, C.F.2, s.14), the *Nova Scotia Human Rights Act*, (S.N.S. 1969, C.11, as amended, s. 19), the *Prince Edward Island Human Rights Act*, (S.P.E.I. 1975, C.72, s.19), the *British Columbia Human Rights Act*, (S.B.C. 1984, c. 22, s. 19(2)), the *Manitoba Human Rights Act*, (S.M. 1974, c. 65, s. 9), the *Quebec Charter of Human Rights and Freedoms*, (R.S.Q. 1977, c. C-12, ss. 86-1-86-7, added by S.Q. 1982, c. 61), and the *Alberta Individual Rights Protection Act*, (R.S.A. 1980, C-I-2, s.13(1)(b)), all permit affirmative action programs by providing mechanisms for their protection or approval.

Successful affirmative action programs have been implemented under the direction of the Saskatchewan Human Rights Commission (see *Saskatchewan Human Rights Commission. Affirmative Action: A Case Book of Legislation and Affirmative Action Programs in Saskatchewan*. Saskatoon, March 1983.)

15. Canadian Charter of Rights and Freedoms. *The Constitution Act 1982*, C.11 (U.K.). Section 15(2) states:

Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

16. A Surface Lease Agreement between the Government of Saskatchewan and Amok/Cluff Mining included the requirement that 50 per cent of all employees would be "Northerners". The program has been extremely effective in increasing the participation rates for native people by adjusting to their lifestyle needs, providing on-the-job training, and flying native employees to and from their homes every other week.

17. *Canada Oil and Gas Lands Act*, S.C.1980-81, C.81, s.10(4). See also the *Northern Pipeline Act*, S.C.1977-78, C.20, as amended S.C.1980-81, C.80, s.6.

In the federal public service, largely through the requirement of bilingual fluency,¹⁸ and in Quebec,¹⁹ mandatory measures have been successful in reversing historic employment disadvantages for francophones.

In 1983, Treasury Board announced an affirmative action program designed to increase the participation of women, native people, and disabled persons in the federal public service.²⁰ There are no goals or timetables set for native people or disabled persons. The only goals are those aimed at increasing the number of women in management.²¹ The program's target for women in management is to increase their participation from the 1983 number of 217 to 475 by March 31, 1988.²²

b) *The American Experience.* The United States and Canada have in common a commitment to the rule of law and to the pursuit of equality. For that reason, although these countries are undeniably different in important historical, political, and social respects, the American experience with mandatory affirmative action is worth examining.

Three recent American reports confirm that enforceable legal requirements are essential to the success of affirmative action pro-

18. After the *Official Languages Act* (1968-69, C.54, s.2) was adopted by Parliament in 1969, a resolution was adopted by Parliament in June, 1973, that stated clearly the commitment that federal public servants should be able to work in the official language of their choice and that members of the public could obtain services from them in both official languages.

Pursuant to this policy, and subsequent revisions, special recruiting was done. By 1982, the representation of francophones in the federal public service was 26.8 per cent, a figure corresponding to their representation in the Canadian population. (Canada. Public Service Commission of Canada. *Annual Report 1982*. Ottawa, 1983.)

19. In Quebec, the *Charter of the French Language* was adopted on August 26, 1977, making French the official language of the province of Quebec in government and the everyday language of work, education and business.

Every organization subject to the Quebec *Charter* (including businesses with 50 or more employees) is obliged to set goals and timetables designed to ensure the general use of French. The six-year program, beginning in 1977, required those covered by the legislation to attain their goals by no later than December 31, 1983.

20. Canada. Treasury Board of Canada. *Affirmative Action Press Kit*. Ottawa, June 27, 1983.

21. *Ibid.*

22. Canada. Treasury Board of Canada. *News Release 83/36, October 13, 1983*. Ottawa, 1983.

The Commission was told by individuals across Canada that, although they were relieved that an initiative had been taken by the federal government, they felt the enforcement component was inadequate. The targets for women were felt to be too low, unnecessarily restricted to management levels, and scheduled over an unduly long period of time, given the small increase in participation sought. Visible minorities were deeply concerned over having been excluded from the program.

grams and, further, that they encourage voluntary compliance by businesses not directly covered by such requirements.²³

In the United States, the federal statutory obligation not to discriminate is found in Title VII of the Civil Rights Act of 1964,²⁴ administered by the Equal Employment Opportunity Commission. Executive Order 11246²⁵ regulates through contract compliance the employment practices of businesses that contract with the American government. Contract compliance is regulated by the Office of Federal Contract Compliance Programs.

Under the Executive Order, affirmative action is a contractual obligation, independent of a finding of discrimination against the contractor. Under Title VII, although there is a statutory duty not to discriminate, affirmative action can be ordered as a remedy only after there has been a judicial finding of discrimination. Despite this difference, the intent of both laws is the same: to ensure that employers' practices neither intentionally discriminate against nor have an adverse impact on minorities and women.

Affirmative action has, on the whole, been an effective method for increasing the participation rates in employment of minorities and women. Government intervention has successfully resulted in improved participation rates for minorities in every occupational category.²⁶

A recent study compiled by the United States Census Bureau and the Bureau of Labor Statistics found women holding 30.5 per cent of that nation's executive, administrative, and managerial posi-

23. United States Senate. Committee on Labor and Human Resources. *Committee Analysis of Executive Order 11246 (The Affirmative Action Program)*. Hatch Committee Report. Washington, D.C.: U.S. Government Printing Office, 1982; United States. Department of Labor. Employment Standards Administration. *Employment Patterns of Minorities and Women in Federal Contractor and Noncontractor Establishments, 1974-1980: A Report of the Office of Federal Contract Compliance Programs* [the Crump Report]. Washington, D.C.: Department of Labor, 1984. Leonard, Jonathan S. "The Impact of Affirmative Action". A research report undertaken in co-ordination with the National Bureau of Economic Research, Cambridge, Massachusetts and the Institute of Industrial Relations and the School of Business Administration, University of California at Berkeley, 1983.

24. *Civil Rights Act of 1964*, Pub. L. No.88-352, 78 Stat.253 (codified at 42 U.S.C. para. 2000e (1976)).

25. President Johnson's Executive Order 11246, Sept. 24, 1965 (3 CFR 339), amended by Executive Order 12086. Superseding Executive Orders 10590, 10722, 10925, 11114 and 11162.

26. Blumrosen, Alfred W. "Six Conditions for Meaningful Self-Regulation", 69 *American Bar Association Journal*, pp.1264-1266 (September 1983).

tions in 1980, compared to 18.5 per cent in 1970. In 1970, women were 21.7 per cent of the country's public officials but no women were chief executives of government agencies. By 1980, 11,876 women headed government agencies to constitute 25.6 per cent of those chief administrators, and women increased their representation as public officials to 33.6 per cent.²⁷ The participation rate of women in the labour force in the United States increased from 43.3 per cent in 1970 to 52.6 per cent in 1982.²⁸

The main strategy in the United States for eliminating employment discrimination is the systemic approach, which emphasizes the impact of practices on minorities and women rather than the intention of an employer. This approach was confirmed as salutary in the 1971 watershed case of *Griggs v. Duke Power Co.*²⁹ The court held:

The touchstone is business necessity. If an employment practice which operates to exclude [minorities] cannot be shown to be related to job performance, the practice is prohibited.³⁰

This strategy confronts employment discrimination by defining discrimination objectively in terms of the:

...statistical impact of employment practices and [requiring] the justification of such practices by a business necessity standard instead of focusing only on subjective proof that the state of mind of the employer was deliberately to exclude blacks or women or some other group.³¹

27. Schmid, Randolph. "Women Hold Almost 33% of U.S. Management Jobs". *Toronto Star*, April 21, 1984, p.F6.

The study by the United States Census Bureau and the Bureau of Labor Statistics referred to in this article confirms, however, that there has been little improvement in the areas of wage discrimination and occupational segregation. See Bianchi, Suzanne M., and Rytina, Nancy. "Occupation Change, 1970-80". Paper prepared for presentation at the annual meeting of the Population Association of America in Minneapolis, Minnesota on May 4, 1984. See also, Fraker, Susan. "Why Women Aren't Getting to the Top". *Fortune*, April 16, 1984, pp.40-45.

28. U.S. Bureau of Labor Statistics. "Supplement to Table 12. Labor Force Participation Rates (Civilian Labor Force Basis) By Sex, 1960-82 — continued."

29. *Griggs v. Duke Power Co.* 401 U.S. 424 (1971).

30. *Ibid.*

31. Robertson, Peter C. "Strategies for Improving the Economic Situation of Women: Systemic Thinking, Systemic Discrimination, and Systemic Enforcement" in *Equal Employment Policy for Women: Strategies for Implementation in the United States, Canada, and Western Europe*. ed. Ronnie Steinberg Ratner (Philadelphia: Temple University Press, 1980), p. 130.

There are demonstrated difficulties relating to the administration of affirmative action in the United States.³² Difficulties appear to flow from a duplication of function and a sometime inconsistency of requirements between the Office of Federal Contract Compliance Programs and the Equal Employment Opportunity Commission, an unnecessarily overwhelming burden of paperwork on employers,³³ and bureaucratic inefficiencies.

Many of these problems arose because of the incremental way in which the American system developed after being introduced in 1964. The difficulties in process, although instructive in the design of a Canadian model, should not detract either from the credit due the United States for its willingness to deal with the problem in a credible way, or from the fact that affirmative action has been an effective instrument for redressing employment discrimination.

INSTRUMENTS OF IMPLEMENTATION

The sense of urgency expressed by individuals in the designated groups across Canada and validated by the evidence of their economic disadvantage is irreconcilable with the voluntary and gradual introduction of measures to generate more equitable participation. The choice for government is between imposing and hoping for equality in employment, between ensuring the right to freedom from discrimination and its mere articulation. In a society committed to equality, the choice is self-evident.

Laws reflect commitment. They entrench objectives and they advertise the genuine determination to inhibit or encourage certain behaviour. They define the limits of acceptable behaviour.

A law communicates to its applicable community that it represents a minimum standard below which conduct will not be tolerated. It is a signal of a community expectation.

This is law as the promulgation of public policy, the expression through Parliament of a societal ideal. The character of a community is developed and defined by the laws it passes, the cumulative

32. These difficulties are discussed in the reports cited in footnote 23 (The Hatch Committee Report, the Crump Report, and the report by Jonathan S. Leonard).

33. Nearly all federal contractors who are subject to Executive Order 11246 are also subject to Title VII of the *Civil Rights Act of 1964*, and the agencies administering each may investigate corporations for the same purpose.

observance of which represents the essence of what society sees as its most desirable self.

Sincerity is often judged by a willingness to act on a stated belief. Through laws, governments are able to make known the sincerity of their commitment. In making fair laws they encourage behaviour and influence beliefs. In failing to make fair laws, they do likewise.

A government genuinely committed to equality in the workplace will use law to accomplish it and thereby give the concept credibility and integrity.³⁴

This Commission recommends that a law be passed requiring all federally regulated employers, including crown corporations, government departments, agencies, and businesses and corporations in the federally regulated private sector, to implement employment equity.

This legislation should include three major components:

- a requirement that federally regulated employers take steps to eliminate discriminatory employment practices;
- a requirement that federally regulated employers collect and file annually data on the participation rates, occupational distribution, and income levels of employees in their workforces, by designated group; and
- an enforcement mechanism.

Employment Equity

The statutory requirement to implement employment equity would oblige all federally regulated employers to develop and maintain employment practices designed to eliminate discriminatory barriers in the workplace and to improve where necessary the participation, occupational distribution, and income levels of women, native people, disabled persons, and individuals in specified ethnic and racial minority groups.³⁵ The obligation would apply on a “no-fault” basis³⁶ — no prior finding of discrimination is necessary. The

34. The Chief Executive Officers of the 11 designated crown corporations acknowledged that the elimination of discriminatory employment barriers would likely be more rigorously addressed by businesses if required by law.

35. The designation of these minority groups is further explained in the section on data in this chapter.

36. Norman, Ken. “The Future for Affirmative Action Practitioners”. Notes for an Address to a Practitioners’ Workshop on Affirmative Action. April 15, 1983, p. 12.

requisite amendments to the Canadian Human Rights Act should be made so that employers may undertake these ameliorative programs without requiring the prior approval of the Canadian Human Rights Commission.³⁷

Although it is unnecessary to list in the statute all the areas in which employers and unions would be expected, where necessary, to adjust their practices, the main ones should be itemized. These areas include recruitment and hiring practices;³⁸ promotion practices; equal pay for work of equal value; pension and benefit plans; reasonable accommodation and workplace accessibility; occupational testing and evaluation; occupational qualifications and requirements;³⁹ parental leave provisions; and opportunities for education and training leaves.

Employers would be given flexibility in the redesign of their employment practices in order to accommodate the uniqueness of

37. Sections 15 and 15.1 of the *Canadian Human Rights Act* S.C.1976-77, C.33, as amended, now states:

15. (1) It is not a discriminatory practice for a person to adopt or carry out a special program, plan or arrangement designed to prevent disadvantages that are likely to be suffered by, or to eliminate or reduce disadvantages that are suffered by, any group of individuals when those disadvantages would be or are based on or related to the race, national or ethnic origin, colour, religion, age, sex, marital status, family status or disability of members of that group, by improving opportunities respecting goods, services, facilities, accommodation or employment in relation to that group.

15.1 (1) A person who proposes to implement a plan for adapting any services, facilities, premises, equipment or operations to meet the needs of persons arising from a disability may apply to the Commission for approval of the plan.

38. See Gerdes, Eugenia Proctor, and Garber, Douglas M. "Sex Bias in Hiring: Effects of Job Demands and Applicant Competence". 9 *Sex Roles* No. 3, (1983), p.307. The article points out how benign discrimination on the part of interviewers can exclude qualified women from jobs.

39. The courts and boards of inquiry appointed under human rights legislation have held that the determination of whether an occupational requirement that has an adverse impact is bona fide (that is, necessary for the safe and efficient operation of the enterprise) depends on:

(a) whether there is an alternative practice able to meet the employer's objective with no, or at least a lesser, adverse impact; and, if not,
(b) whether the practice or requirement is objectively relevant to the job or an objective indicator of a person's ability.

See *Singh v. Security and Investigation Services Ltd.*, unreported, May 31, 1977, Ontario Board of Inquiry; *Colfer v. Board of Commissioners of Police and the Ottawa Police Chief*, unreported, January 12, 1979, Ontario Board of Inquiry; *Foster v. B.C. Forest Products Ltd.* (1979), aff'd., [1980] 2 W.W.R. 289 (B.C.S.C.); *Grole v. Sechelt Bldg. Supplies*, 1971; *Ontario Human Rights Commission et al v. The Borough of Etobicoke* (1982) 3C.H.R.R. D1781, Supreme Court of Canada; *Foreman, Butterill and Wolfman v. VIA Rail Canada Inc.*, (1980) 1C.H.R.R. D/111.

each employer's structure, location, and type of business. But because this would be for most employers a relatively new kind of undertaking, employment equity guidelines would be formulated by the enforcement agency in each relevant area to assist them in their planning process. These guidelines would be developed through an ongoing regional and national consultation process with representatives of business, labour, and the designated groups to assist employers in the design of non-discriminatory employment practices. Employment equity plans would not be required to be submitted for prior approval to the enforcement agency.

Employers would be required to have at their workplaces employment equity committees consisting of representatives of management, labour, and the designated groups.⁴⁰

It would also be expected that employers would set annual internal objectives but these would not be required by statute. No quotas would be imposed.

The goal of establishing a statutory obligation to implement employment equity is to eliminate discriminatory barriers in the workplace and to expand the employment opportunities of qualified individuals in designated groups who have previously suffered employment discrimination.

Employment equity is a methodology that measures successful compliance by whether the results are reasonable in the circumstances, regardless of the system used by an employer to improve employment practices.⁴¹ When results have been determined by the enforcement agency to be unreasonably low, taking into account the employer's job openings, prior record, and the realities of the local labour force, then the agency would determine whether these results reflect discriminatory employment practices. If they do, the employer would be advised to amend these employment practices.

The effective enforcement of such an approach requires two significant features:

- a) the availability of data; and

40. The occupational health and safety committees serve as useful models in the establishment of representative policy committees.

41. This has been referred to as the "bottom-line" approach. See Blumrosen, Alfred W. "The Bottom Line Concept in Equal Employment Opportunity Law". 12 North Carolina Central Law Journal (Fall 1980, No. 1) pp. 1-20.

b) an adequate enforcement agency staffed by appropriately skilled personnel.

Data Collection

Data are indicators. They can signal the possibility that a group is being adversely affected by discriminatory practices. Most people do not intend to discriminate.⁴² Yet it matters little whether discrimination derives from an oblivious or a myopic outlook. If we are to design a system imposing an obligation on employers to remedy the impact of discrimination, whatever its source, then, in fairness to both the employers and the individuals they are expected to assist, there must be a barometer to measure whether the remedy has been effective. Data provide such a barometer.

But data are by no means determinative. They simply indicate where further investigation is necessary. An employer's meagre rate of improvement may reflect an absence of hiring opportunities or qualified applicants rather than an inequitable employment practice.

There is in Canada at present an insufficient data base to determine with accuracy the number of available and qualified women and minorities in the relevant labour market. When this data base is improved, it would be one of the appropriate indicators against which to test the reasonableness of an employer's results.⁴³ It would also provide information to assist employers in setting their own annual internal objectives. Until the data are refined, employers would more usefully be compared, and even ranked, with the performance of other businesses in the same industry or region, and with their own data from previous years.

It is to the data we look to see the extent to which the cumulative impact of discrimination is being reversed.⁴⁴

42. Canada. Minister of State Multiculturalism. Gallup Omnibus Study. November, 1981.

43. This barometer — the currently available external labour supply — was recommended in the Hatch Committee Report (*Supra*, footnote 23, p.76).

Under Executive Order 11246, federal contractors are obliged to declare "underutilization" of minorities and women where the composition of their workforce does not more or less correspond to the currently available relevant external labour supply. This declaration requires the contractor to take remedial steps by means of an affirmative action plan.

44. See also Belton, Robert. "Discrimination and Affirmative Action: An Analysis of Competing Theories of Equality and Weber", 59 *North Carolina Law Review* (1981), p.570.

Data requirements would include:

a) Employers would be required to provide information on work-force participation — on the total number of women, and on the number of native people (Status Indian, non-Status Indian, Métis and Inuit), disabled persons, and specified ethnic and racial minorities, by gender, in every occupational category and in each salary quartile. The salary range for each occupational category would have to be reported.

Data showing the representation of individuals in the designated groups in hirings, promotions, terminations, lay-offs, part-time work, contract work, corporate task forces or committees, and training or educational leaves would also have to be provided by the employer.

b) All employers would be required to request the necessary information from employees.⁴⁵ Employees would be assured of confidentiality.

c) Information would be collected and filed annually on a standardized form to permit comparison.

d) The standardized data collection requirements would be formulated by the enforcement agency in consultation with Statistics Canada.

e) To permit better analysis and assessment, the data classifications developed for the implementation of employment equity should match as closely as possible the data classifications of Statistics Canada.

This Commission requested information from crown corporations in 12 broad occupational categories⁴⁶ based on Statistics Canada's 500 job classifications to provide an overview. In any ongoing data

45. This would require an amendment to section 8 of the *Canadian Human Rights Act*, S.C. 1976-77, C.33 as amended. At present, this section states:

It is a discriminatory practice

(a) to use or circulate any form of application for employment, or
(b) in connection with employment or prospective employment,
(i) to publish any advertisement, or
(ii) to make any written or oral inquiry

that expresses or implies any limitation, specification or preference based on a prohibited ground of discrimination.

The Chief Executive Officers of the eleven designated crown corporations had no objection to the collection of data.

46. These were developed by Dr. Marilyn Mohan for the Commission (See Appendix D).

collection system, however, more precise categories should be used to indicate more accurately the distribution of designated groups in the workplace. Statistics Canada's existing two-digit level of 23 occupational categories, for example, would provide more refined information.

f) The enforcement agency would send the data for analysis to Statistics Canada, an independent body and the best source of statistical information in Canada. Statistics Canada would determine the rates of change for each employer and rank them by industry. The results would be returned to the enforcement agency for assessment. Amendments to the Statistics Act should be made to permit analysis and disclosure of employers' data.⁴⁷

47. At present, the *Statistics Act*, S.C. 1970-71-72, C.15 as amended; S.C. 1976-77, C.28, S.41; S.C. 1981, C.47, S.41, in section 16 defines the responsibilities of the Minister and the Chief Statistician by authorizing discretionary exceptions to the general prohibition against divulging information.

Section 16 states:

- (1) Except for the purpose of communicating information in accordance with any conditions of an agreement made under section 10 or 11 and except for the purposes of a prosecution under this Act but subject to this section,
 - (a) no person, other than a person employed or deemed to be employed under this Act, and sworn under section 6, shall be permitted to examine any identifiable individual return made for the purposes of this Act; and
 - (b) no person who has been sworn under section 6 shall disclose or knowingly cause to be disclosed, by any means, any information obtained under this Act in such a manner that it is possible from any such disclosure to relate the particulars obtained from any individual return to any identifiable individual person, business or organization.
- (2) The Minister may, by order, authorize
 - (a) the particulars of any information obtained in the course of administering this Act to be communicated to a statistical agency of a province pursuant to an agreement under section 10; and
 - (b) the particulars of any information collected jointly with a department or corporation pursuant to an agreement under section 11 to be communicated to the department or corporation that was party to the collecting of the information.
- (3) The Chief Statistician may, by order, authorize the following information to be disclosed:
 - (a) information collected by persons, organizations or departments for their own purposes and communicated to Statistics Canada before or after this section comes into force, but such information when communicated to Statistics Canada shall be subject to the same secrecy requirements to which it was subject when collected and may only be disclosed by Statistics Canada in the manner and to the extent agreed upon by the collector thereof and the Chief Statistician;
 - (b) information relating to a person or organization in respect of which disclosure is consented to in writing by the person or organization concerned;
 - (c) information relating to a business in respect of which disclosure is consented to in writing by the owner for the time being of the business;

g) The enforcement agency would make the employers' data, the analysis, and the assessment available publicly by tabling annually a report in Parliament.

h) Although the requirement to implement employment equity would take effect immediately upon the enactment of legislation and the duty to collect data would take effect upon the development of standardized data collection requirements, the duty to file data would not take effect for three years. This would permit the development and coordination of data requirements, the reorganization of an employer's information systems, and the necessary restructuring of an employer's human resource or strategic planning systems.

i) At present, data are collected through the census every five years⁴⁸ and include, among other things, current occupation, edu-

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- (d) information available to the public under any statutory or other law;
 - (e) information relating to any hospital, mental institution, library, educational institution, welfare institution or other similar non-commercial institution except particulars arranged in such a manner that it is possible to relate such particulars to any individual patient, inmate or other person in the care of any such institution;
 - (f) information in the form of an index or list of
 - (i) the names and locations of individual establishments, firms or businesses,
 - (ii) the products produced, manufactured, processed, transported, stored, purchased or sold, or the services provided, by individual establishments, firms or businesses in the course of their business, and
 - (iii) the names and addresses of individual establishments, firms or businesses that are within specific ranges of numbers of employees or persons engaged or constituting the work force; and
 - (g) information relating to any carrier or public utility.
 - (4) In this section,
 - (a) "carrier" means any person or association of persons that owns, operates or manages an undertaking that carries or moves persons or commodities by any form of land, sea or air transport; and
 - (b) "public utility" means any person or association of persons that owns, operates or manages an undertaking
 - (i) for the supply of petroleum or petroleum products by pipeline,
 - (ii) for the supply, transmission or distribution of gas, electricity, steam or water,
 - (iii) for the collection and disposal of garbage or sewage or for the control of pollution,
 - (iv) for the transmission, emission, reception or conveyance of information by any telecommunication system, or
 - (v) for the provision of postal services.

48. Statistics Canada is required by law to conduct the census. The revision of the Statistics Act in 1970 stipulated that: "A Census of Population of Canada shall be taken in the month of June in the year 1971, and every fifth year thereafter in a month to be fixed by the Governor in Council".

cation, unemployment and participation rates. The census should also seek information on promotions, absenteeism, past employment, pre-employment training and education, length of time and wages paid in the current occupation, hours worked weekly, length of time with a particular employer, and number of years in the labour force. The data would be analysed by gender, race, minority status, and disability, by industry, and by the smallest possible geographic area.

This new information, plus the data Statistics Canada now collects on labour force participation, educational qualifications, and populations, would contribute to the accuracy of analysis and assessment. More longitudinal studies should be undertaken by Statistics Canada to measure the integration of designated groups.

j) Statistics Canada would provide the enforcement agency with available data, by region and industry, necessary to assist employers in the formulation of annual internal objectives.

k) Based on the most current information available from Statistics Canada, and on consultations with representatives of the relevant groups, the enforcement agency would determine, by region, the ethnic and racial minorities to be specified as subjects for employment equity. These specified minorities would be included in any employment equity program in addition to women, native people, and disabled persons. The objective is to concentrate on those who have been disadvantaged by discrimination by taking into account their participation rates, income levels, unemployment rates, or occupational segregation.⁴⁹

This Commission was instructed to look at the employment situation of visible minorities. These groups were defined by the Commission as persons who are non-white.

The evidence is that some visible minorities are doing less well than others in employment.⁵⁰ Consideration may be given to the possibil-

49. Phillips, D. Rhys, *supra*, footnote 3; Blumrosen, Alfred W., *supra*, footnote 41.

50. Podoluk, Jenny. "Profiles of the Canadian Labour Market." Paper prepared for the Commission of Inquiry on Equality in Employment, 1983.

See also a 1975 Canadian Employment and Immigration Commission study which showed that, compared to other immigrants entering Canada, Third World immigrants, despite better educational qualifications than other immigrants, are underrepresented in managerial, craft, and professional categories as well as in occupations of their choice. Blacks are underrepresented no matter how long they have been in Canada. (Saunders, George. "The Labour Market Adaptation of Third World Immigrants". Text (preliminary draft) of Presentation at the Conference on Multiculturalism and Third World Immigrants in Canada, University of Alberta. September 5, 1975.)

ity that those visible minorities who appear not to be in need of the benefit of employment equity programs be excluded from them. At present, however, the data available from Statistics Canada are not sufficiently refined by occupational segregation, income levels, or other employment indicators, or by race or region, to determine which visible minorities should be excluded from employment equity programs. Any such decisions should be made not only on the basis of better data but also on the basis of consultation with members of the relevant minorities.

l) Self-identification by employees of their gender, race, minority status, or disability would be voluntary.⁵¹ The possibility that incomplete information might be obtained by this method would have to be accommodated in any analysis or assessment of an employer's data.

In the United States, the existence of corporate objectives set annually⁵² and consideration of the extent to which these objectives have been met in appraising a manager's performance have been shown to be components of a successful affirmative action program. Given the methodology recommended by this Commission, however, these are factors more appropriately encouraged by employment equity guidelines rather than imposed by statute.

Initially, the concentration in enforcement should be on the rates of change in participation, promotions, pay practices and other aspects of employment systems within each workplace, rather than on whether the internal labour force of any one corporation mirrors the putative external supply in the relevant labour market. The data on external supply do not in any event necessarily represent an accurate picture of what is feasible. Not all who are qualified, for example, will be immediately available for, or willing to join, the workforce, or interested in working in the kind of jobs for which they are trained.

Concentrating on existing supply may limit efforts required to increase the supply of qualified applicants from among the desig-

51. Most individuals in the four designated groups with whom the Commission met had no objection to providing data to corporations on a voluntary basis since they understood that only with the existence of this data can change be measured. They were beyond worrying that such information tends to categorize them unfairly and felt that until such time as they were equitably integrated into the employment systems of this country, they were prepared to live with the need for the collection of data.

52. According to the Hatch Committee Report (*supra*, footnote 23, p.66), the setting of specific goals is a common practice of business and industry.

nated groups. Many more women, native people, minorities, or disabled persons who are qualifiable would undoubtedly apply for education, training, or employment opportunities if they had greater confidence that they would not be rejected; if the workplace were more physically accommodating in both environmental and structural respects; if they had more personal support systems such as childcare or a better transportation system in geographically remote areas; if the job requirements were more relevant to the job to be performed; or if there were more flexible work opportunities such as part-time work or varied hours. Minus some compelling obstacle, if the barriers are eliminated and if more aggressive and creative recruitment by employers takes place, the participation of individuals in the designated groups is almost certain to increase and become more equitable.

At the same time that these requirements are being imposed on employers, governments at all levels would be expected to work toward correcting the legislative, economic, social, physical, educational, and communication barriers that depress the expectations and opportunities for women, native people, minorities, and disabled persons.

In time, a contrapuntal policy approach by government, educators, and employers will increase the ranks of qualified labour in the designated groups. At the moment, however, the approaches are syncopated and not at all conducive to making maximum use of the country's human resources. Only with a synchronized attack on the problem, will all who are qualifiable be sought out, encouraged, and assisted in qualifying for employment opportunities.

If the collection, filing, and reporting of data and the statutory requirement to improve practices produce inadequate results, consideration may then be given to the use of quotas. Such quotas are not being recommended in this Report as a general strategy for a number of reasons:

- a) They tend to be set low on the understanding that they are to be a minimum objective, yet end up being the maximum beyond which organizations believe they need not strive.
- b) They may overlook regional considerations and the different demand and supply issues faced by different industries and groups.
- c) They may foster resistance, condescension, and resentment in the workplace and can be gratuitously insulting to, and undermining of the individuals so hired or promoted.

d) They are inflexible and arbitrary.

Those who argue in favour of quotas, however, point to the ease with which they can be monitored and the clarity of the expectation they produce. They may also be appropriate in regions or industries in which designated groups have been severely underrepresented.

In two landmark American cases,⁵³ the United States Supreme Court confirmed that in certain circumstances quotas were an appropriate remedy to redress historical discriminatory exclusions. As was observed by one of the judges in the *Bakke* case:

In order to get beyond racism, we must first take account of race. There is no other way ... We cannot let the equal protection clause perpetuate racial supremacy.⁵⁴

A case -
for quotas
or EE?

As for the argument that quotas result in the hiring of unqualified employees, it is worth remembering that, even in the absence of quotas, a presumption of an absence of qualifications often operates to exclude members of the designated groups from consideration by employers. To be unwilling to hire someone because he or she lacks qualifications is entirely legitimate; to presume an absence of qualifications because of some stereotypical disqualifying assumption attributed to all individuals in a certain group is not.

It is wrong to suggest, as many have, that the main reason women, native people, disabled persons, and some minorities are underemployed is their lack of qualifications. It may be one of the reasons, certainly, but it is a distant second to the subtle but powerful wall of systemic discrimination that surrounds employment opportunities.

Many individuals in these groups are, or could be, qualified but are never given the opportunity, that is, the training or the job, within which to demonstrate an aptitude. Quotas are one way of

53. *United Steelworkers of America, AFL-CIO-CLCU v. Weber*, 443 U.S. 193 (1979); *Regents of the University of California v. Bakke*, 98 S.Ct. 2733 (1978). The latter case was decided pursuant to Title VI of the *Civil Rights Act of 1964*, dealing with funding of educational institutions.

Section 15(2) of the *Canadian Charter of Rights and Freedoms* appears to be an attempt to deal with the potential problem of "reverse discrimination" discussed in the *Bakke* case. Section 15(2) provides that ameliorative programs for disadvantaged persons are neither violations of equality nor discriminatory. Similar provisions are found in the *Canadian Human Rights Act*. *Supra*, footnotes 15 and 37.

54. *Regents of the University of California v. Bakke*, 98 S.Ct. 2807 per Blackmun, J., dissenting.

insisting that organizations provide these opportunities. They are not the best way.

Imposed quotas, when set too low, tend to freeze opportunities at a reduced level. Quotas as arbitrary objectives represent short-term solutions. The elimination of barriers, on the other hand, is a long-term approach in the pursuit of equality.

Enforcement Mechanisms

The requirement to implement employment equity lacks credibility without an enforcement component. An ideal instrument of enforcement for monitoring the promotion of equality in employment would be an agency independent from government,⁵⁵ with a qualified staff familiar with labour relations, employment systems, and human rights issues, and with sufficient resources to discharge its mandate adequately.

The agency would formulate and issue employment equity guidelines based on research and on ongoing consultations with regional and national representatives of business, labour, and the designated groups. The process of investigation and review should be as streamlined as is consistent with due process.

Monitoring of employers' results can be done either on a random basis or on a "worst first" basis.⁵⁶ It would also be appropriate to focus on certain industries.

Employers should be monitored not only for improvements in the participation rates by group but also for improvements in distribution throughout occupational classifications and pay levels, by designated group. The question is not only how many more of those who were injured by systemic discrimination are working, but whether they are beginning to occupy places they had not previously occupied.

The following four models are presented as alternative enforcement mechanisms. In every model, the assumption is that the statutory requirement to implement employment equity and to collect

55. The European Economic Community regards the establishment of an independent agency as the most effective means of ensuring that the principles of equality are applied. ("West Germany: Re-defining the Equality Principle", 69 *European Industrial Relations Review* (1979), p.9.)

56. Hatch Committee Report, *supra*, footnote 23, p.74.

data would be imposed by legislation. In all models, Statistics Canada would analyze the data. The enforcement agency should be independent from government and should have an ongoing consultative relationship in the development of employment equity guidelines with national and regional representatives from business, labour and the designated groups.

Model 1

The Canadian Human Rights Commission would co-exist with a new, independent agency, the latter being established primarily to facilitate the implementation by employers of employment equity.

The role of the Canadian Human Rights Commission would be to:

- issue employment equity guidelines;
- collect, review, and assess data obtained from employers;
- investigate and adjudicate complaints to determine whether there has been discrimination;
- refer disputes for settlement negotiations to conciliation services available from the facilitative agency; and
- retain jurisdiction over contract compliance.⁵⁷

The new, independent, facilitative agency would:

- have no enforcement powers;
- establish an ongoing consultative process with regional and national representatives of business, labour and the designated groups;
- act primarily as a consultant on a confidential basis to employers by providing expertise on how to implement employment equity;
- act as a consultant to the Canadian Human Rights Commission in the development of employment equity guidelines; and
- provide conciliation services to the Canadian Human Rights Commission. The conciliation process would be "without prejudice", and disclosures or offers made to the conciliator would be deemed to be privileged information. If no settlement is reached, the dispute would be referred back to the Canadian Human Rights Commission for adjudication.

57. This involves vitalizing section 19 of the *Canadian Human Rights Act* by passing the necessary regulations.

Section 10 of the Canadian Human Rights Act provides that it is discriminatory to establish or pursue a policy or practice that "tends to" deprive a member or members of a protected class of an employment opportunity.⁵⁸ This is the basis of the Canadian Human Rights Commission's jurisdiction over systemic discrimination. If, notwithstanding this provision, the Supreme Court of Canada determines that the intention rather than the impact of behaviour is determinative of whether discrimination has occurred,⁵⁹ the Canadian Human Rights Act should be amended to affirm its jurisdiction over systemic discrimination.

Model 2

A new, independent agency to deal exclusively with the monitoring and enforcement of employment equity would:

- provide information and issue employment equity guidelines to employers;
- collect data from employers;
- review and assess an employer's data, and investigate where necessary the employer's employment practices to determine whether there has been compliance with the requirement to implement employment equity;
- refer disputes over the requirement to amend employment practices to an independent conciliator;
- where no settlement has been effected by the conciliator, refer these disputes to binding arbitration; and
- have jurisdiction over contract compliance.⁶⁰

58. *Canadian Human Rights Act* (S.C. 1976-77, C.33 as amended, s.10).

59. In *Bhinder v. Canadian National Railway* (1983) 147 D.L.R. (3d) 312, the majority of the Federal Court of Appeal found that the *Canadian Human Rights Act* had not been violated because the employer had acted without discriminatory intent. This decision is on appeal to the Supreme Court of Canada.

60. To avoid duplication, this would require the repeal of section 19 of the *Canadian Human Rights Act*, S.C. 1976-77, C.33 as amended 1977-78, C.22; 1980-81, C.54; 1980-81, C.111; 1980-81-82, C.143.

Section 19 states:

19. The Governor in Council may make regulations respecting the terms and conditions to be included in or applicable to any contract, licence or grant made or granted by Her Majesty in right of Canada providing for

- (a) the prohibition of discriminatory practices described in sections 5 to 13; and
- (b) the resolution, by the procedure set out in Part III, of complaints of discriminatory practices contrary to such terms and conditions.

The general jurisdiction of the Canadian Human Rights Commission over discrimination would remain intact. This leads to a potential for duplication, even though the object of the Canadian Human Rights Commission is to investigate allegations of discrimination and the object of employment equity is to ensure employment opportunities are provided for designated groups. Although both ultimately seek to eliminate discriminatory practices, they differ in emphasis.

One solution to the possibility of simultaneous review by these two agencies is, where appropriate, to rely on the discretion given to the Canadian Human Rights Commission by section 33⁶¹ of its legislation to delay proceeding with a complaint pending investigation by another investigating body. A similar discretion could be given to the new agency created to enforce employment equity.

It is not unusual to have spheres of expertise separated from general policy themes. Although related to, and an aspect of, labour relations, for example, workers' compensation is accepted as a unique aspect of the field, best administered by apposite systems and personnel. In the same way, the implementation of employment equity, though related to and an aspect of human rights, is also related to labour relations. It is an exercise in workplace dynamics, arguably calling for a different approach and expertise from the one traditionally found in human rights commissions.

Model 3

Two existing bodies would be relied upon: the Canadian Human Rights Commission and the Canadian Labour Market and Productivity Centre.⁶² The Canadian Human Rights Commission would be responsible for:

61. *Canadian Human Rights Act*, S.C. 1976-77, C.33 as amended. The section states:

33. Subject to section 32, the Commission shall deal with any complaint filed with it unless in respect of that complaint it appears to the Commission that the complaint is one that could more appropriately be dealt with, initially or completely, according to a procedure provided for under an act of Parliament other than this Act;

62. The Canadian Labour Market and Productivity Centre was established in response to an initiative proposed in the federal Budget Speech of April, 1983. It will examine the issues of productivity improvement, labour market requirements, and employment growth in Canada, and will consist of two branches: the Productivity and Employment Growth Branch, which is to involve labour and business in examining productivity in both the public and private sectors, and the Labour Market Branch, which will examine the supply and demand for key skills and make recommendations to address these issues. The signing of a Memorandum of Understanding to establish the Centre as a joint undertaking among business, labour, and the federal government was announced on January 27, 1984.

- collection, review, and assessment of data obtained from employers;
- issuing employment equity guidelines;
- investigation and adjudication of complaints to determine whether there has been discrimination; and
- enforcement of contract compliance.

The Canadian Labour Market and Productivity Centre would:

- act as a consultative body to the Canadian Human Rights Commission in the development of guidelines, with the benefit of consultation with representatives from the designated groups and the Centre's business and labour members.

Model 4

This model relies on the provisions of the Canada Labour Code⁶³ and the Canadian Human Rights Commission.

The Canadian Human Rights Commission would be responsible for:

- issuing employment equity guidelines;
- collection, review, and assessment of data;
- investigation and adjudication of disputes; and
- contract compliance.

Inspectors under the Canada Labour Code would:

- be required to supplement investigations by the Canadian Human Rights Commission by monitoring and referring possi-

63. *Canada Labour Code*. R.S.C. 1970, C. L-1, proclaimed in force July 15, 1971; as amended R.S.C. 1970 (1st Supp.), C. 22; R.S.C. 1970 (2nd Supp.), C. 17; 1972, C. 18; 1974-75, C. 66, s. 23; 1976-77, C. 28, s. 21 and Schedule I, effective June 29, 1977; 1976-77, C. 54, s. 74(2), effective August 15, 1977; 1976-77, C. 33, s. 66, proclaimed effective March 1, 1978; 1977-78, C. 27, assented to April 20, 1978, ss. 1-20, 22-27.2, 31, 32, 35-51 and 53-74, proclaimed effective June 1, 1978, s. 52, proclaimed effective July 1, 1978, ss. 21, 28-30, 33 and 34, proclaimed effective September 1, 1978; 1980-81, C. 47, s. 27, effective February 19, 1981; 1980-81-82, C. 89, ss. 31-34, proclaimed effective October 1, 1982. The *Canada Labour Code* was further amended by Bill C-34, given Royal Assent on June 29, 1984.

ble violations of employment equity to the Canadian Human Rights Commission for enforcement.⁶⁴

This Commission is not recommending that the requirement of employment equity be included in the Canada Labour Code because of the absence of an independent enforcement mechanism.

LABOUR AND SENIORITY

Most representatives of labour with whom the Commission met supported the need for mandatory affirmative action.⁶⁵ They acknowledged, however, from their observations of the American experience, that the potential for collision exists between the principles of affirmative action and of seniority.

Unions are under a duty imposed by labour legislation to represent all members of the bargaining unit fairly⁶⁶ and are also, when they represent employees in federally regulated workplaces, subject to the requirements of the Canadian Human Rights Act not to discriminate and to avoid practices that "tend to" discriminate.⁶⁷ The obligations on both employers and unions under these statutes, the existence of remedies under the Canadian Charter of Rights and Freedoms, and the requirements proposed in this Report to make practices equitable and improve participation rates of designated

64. This is similar to section 38.1 of the *Canada Labour Code*, which provides this kind of monitoring and referral in suspected equal pay violations. The section states:

S. 38.1 Application of sections.—(1) For the purposes of ascertaining whether a discriminatory practice under section 11 of the *Canadian Human Rights Act* is being or has been engaged in, sections 63, 64, 66, 67, 68, 68.1 and 76 of this Act apply *mutatis mutandis* as if this Part expressly required an employer to refrain from that discriminatory practice.

(2) Report to Commission.—Where an inspector has reasonable grounds at any time for believing that an employer is engaging or has engaged in a discriminatory practice described in subsection (1), the inspector may notify the Canadian Human Rights Commission or file a complaint with that Commission under section 32 of the *Canadian Human Rights Act*. (R.S.C. 1970 (2nd Supp.), C. 17, s. 9; 1976-77, C. 33, s. 66(2).)

Since its enactment, this section has never been used.

65. Both the Canadian Labour Congress and the Canadian Union of Public Employees have endorsed a policy of mandatory affirmative action. Canadian Labour Congress. Submission to the Commission of Inquiry on Equality in Employment. October, 1983, p.5; Canadian Union of Public Employees. Submission to the Commission of Inquiry on Equality in Employment. December, 1983, pp.28-31.

66. *Canada Labour Code*, R.S.C. 1970, C.L-1, as amended, s.136.1.

67. *Canadian Human Rights Act*, S.C. 1976-77, C. 33 as amended, s.10.

groups should, in combination, inspire the desired creativity and co-operation necessary to revise seniority systems.⁶⁸

The presumption should continue in favour of bona fide seniority systems. It is important to remember that seniority has been labour's premier equity tool and should be respected as such.

It is clear that, in some cases, limitations to seniority may be required,⁶⁹ but the solution to the discriminatory potential of seniority systems, at least at the outset, should be left to collective bargaining, rather than imposed by legislation.⁷⁰

In the United States, section 703(h) of Title VII protects from findings of discrimination bona fide seniority systems that do not intentionally discriminate.⁷¹ This protection exists despite the fact that these systems may have an ongoing discriminatory impact on members of some groups or perpetuate the effects of prior discrimination.⁷² Only if the seniority system can be shown to have been adopted with the purpose of discriminating can it be successfully attacked under anti-discrimination legislation.⁷³

Where discrimination has been found by the American courts, a number of remedies have been applied, including proportionate lay-

68. Existing collective agreements may be amended, where necessary, to achieve this goal by agreement of the parties, pursuant to section 160 of the *Canada Labour Code*, R.S.C. 1970, C.L-1, as amended.

69. The United States Commission on Civil Rights reached this conclusion after noting that lay-offs by seniority lock in the effects of past discrimination by continuing the prior advantage white males gained in employment. See United States. Commission on Civil Rights. *Last Hired, First Fired, Layoffs and Civil Rights*. Washington, D.C., February, 1977, p.36.

70. The validity of negotiated, private, affirmative action programs was upheld by the United States Supreme Court in *United Steelworkers of America, AFL-CIO-CLCU v. Weber*, *supra*, footnote 53.

71. *Civil Rights Act of 1964*, Pub. L. No.88-352, 78 Stat. 253 (codified at 42 U.S.C. para. 2000e (1976)), s.703(h).

Section 703(h) states:

Notwithstanding any other provision of this title, it shall not be an unlawful employment practise for an employer to apply different standards of compensation, or different terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system ... provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex or national origin...

72. *International Brotherhood of Teamsters v. United States*, 431 U.S. 324 (1977); *Firefighters Local Union No. 1784 v. Stotts et al* (No. 82-206), 1984. (U.S. Supreme Ct.)

73. *United Airlines v. Evans*, 431 U.S. 533 (1977); *American Tobacco Co. v. Patterson* 102 S.Ct. 1534 (1982); *Pullman-Standard v. Swint* 102 S.Ct. 1781 (1982).

offs,⁷⁴ constructive or retroactive seniority to give the employees the seniority they would otherwise have had,⁷⁵ and broadening the departmental seniority base to company-wide seniority in order to open up competition.⁷⁶

The United States Supreme Court has considered the adverse impact of seniority systems on the women and minorities who have been more recently employed pursuant to affirmative action hiring practices designed to overcome the effect of prior discrimination.⁷⁷ Despite this impact, bona fide seniority systems have been held to prevail in the absence of malevolent design. The Supreme Court appears to have relied on the wording of section 703(h) of Title VII, which requires an intentionally discriminatory seniority system to trigger remedial court intervention.

In this way, seniority cases are distinguishable from the U.S. Supreme Court's previous ruling in *Griggs v. Duke Power Co.*⁷⁸ In *Griggs*, the U.S. Supreme Court had held that the consequences of, rather than the motives behind, employment practices should ordinarily govern the court in determining whether discrimination has taken place, unless the practice can be justified by business necessity.⁷⁹

The problem of reconciling the equity of seniority systems designed to protect employees from the arbitrary employment practices of employers and to ensure fairness among employees themselves, with the inequitable effect these systems can have on newly protected groups in promotional, lay-off, and termination practices, has spawned an effort in the United States to integrate the need for seniority systems with the need to continue the momentum generated by affirmative action.⁸⁰

74. *Watkins v. United Steelworkers Local 2369*, 516 F.2d 45 (1975), (reversed); *Jersey Central Power and Light Company v. IBEW Local 927*, 508 F.2d 1309 (reversed); *Waters v. Wisconsin Steelworkers*, 502 F.2d 1309.

75. *Franks v. Bowman Transportation Co.*, 424 U.S. 747 (1976).

76. *Quarles v. Philip Morris Inc.*, 279 F.Supp. 505 (1968); *Local 189 United Papermakers and Paperworkers v. United States*, 416 F.2d 980 (1969).

77. *United States v. City of Chicago*, 663 F.2d 1354 (1981); *Boston Firefighters Union, Local 718 v. Boston Chapter NAACP*, 103 S.Ct. 2076 (1983); *Guardians Association v. Civil Service Commission of City of New York*, 103 S.Ct. 3221 (1983); *Firefighters Local Union No. 1784 v. Stotts et al.*, (No.82-206), 1984. (U.S. Supreme Court.)

78. *Supra*, footnote 29.

79. *Ibid.*

80. See Offerman, Bernard J. "Seniority Systems and Affirmative Action: Are They Legally Compatible in a Slack Economy?", 7 *Labour Studies Journal* 99 (No.2, Fall, 1982).

Proposals include plant-wide seniority or more broadly based seniority systems, super-seniority for target group members,⁸¹ alternatives to lay-offs such as work-sharing plans,⁸² reduced work weeks, and proportionate or rotational lay-off systems.⁸³

As well, the requirement under employment equity that corporations re-examine their practices and job requirements may illuminate some of the needless barriers seniority systems can erect. The loss of seniority in moving from one classification or department to another can inhibit an employee who may wish to change jobs but not at the expense of years of accumulated benefits. For employees in job ghettos, it may be a prohibitive restriction, permanently circumscribing their economic options, regardless of their abilities or qualifications. As such, it could be held by the Canadian Human Rights Commission to be systemic discrimination. Plant-wide, rather than departmental, seniority is a possible solution, with the methods and phasing to be left to negotiation.

Portability of benefits and of seniority rights within a corporation should ultimately be protected by legislation. Beyond this, there is no need to qualify or protect seniority in any new legislation. If the arrangements of a particular employer call for modification, the appropriate modification should be left in the first instance to the employer and union to resolve. Employers and unions which fail to negotiate a solution may be made vulnerable to sanctions and remedies imposed by the appropriate enforcement agency.

THE PRIVATE SECTOR

It is the recommendation of this Commission that the government should require federally regulated employers, including the federally regulated private sector, to implement employment equity. This recommendation is based on the pervasiveness of systemic discrimination and on the belief that fairness demands a general application of the law. For this reason, provincial governments should give serious consideration to requiring provincially owned and regulated employers to implement employment equity. These

81. *Supra*, footnote 69.

82. Summers, Clyde W., and Love, Margaret C. "Worksharing as an Alternative to Lay-offs by Seniority: Seven Remedies in Recession", 124 *University of Pennsylvania Law Review* (April, 1976), p.893.

83. Joseph, Ellen R. "Last Hired, First Fired, Seniority, Layoffs and Title VII: Questions of Liability and Remedy", (1975), 11 *Columbia Journal of Law and Social Problems*, pp.398-399.

requirements should, insofar as is possible, be consistent with those of the federal government.

The private sector regulated by the Canadian Human Rights Act includes businesses and industries under federal jurisdiction such as banks, airlines, interprovincial railway and trucking companies, and uranium mining companies.⁸⁴ The federally regulated private sector represents approximately 5.5 per cent of Canada's work-force.⁸⁵

Those representatives of the private sector from whom the Commission heard were not opposed in principle to taking steps to improve the participation rates of members of the four designated groups. They preferred, however, to have the timing of this improvement dictated by the natural forces of the marketplace and by their own organizational needs rather than by government intervention.

At the same time, they appeared to acknowledge the inevitability of some form of intervention. The intention to consider affirmative action expressed in the 1980 federal Speech from the Throne,⁸⁶ the subsequent introduction in June, 1983, of a form of affirmative action by Treasury Board,⁸⁷ the absence of significant change through voluntary means, and the existence for a generation of a similar system in the United States all contributed to this sense of inevitability.

The concern of the private sector was that a mandatory program would ignore economic and corporate realities. Many objected to over-regulation and referred specifically to the American intervention as having been cumbersome and administered in a heavy-handed manner. Their fears were that the costs of affirmative action would outweigh the benefits, and that the imposition of quotas, which most thought to be part of any affirmative action program,

84. Canadian Human Rights Commission. *The Canadian Human Rights Act: Employer Guide*. Ottawa, 1981, p.5.

85. The Canadian Human Rights Commission has jurisdiction over approximately 11 per cent of the Canadian labour force. (Tarnopolsky, Walter Surma. *Discrimination and the Law in Canada*. Toronto: Richard De Boo, 1982, p. 82.)

86. The April 14, 1980, Speech from the Throne made a firm pledge to meet the special employment needs of women, native people and the physically disabled and to play a "leadership role" by implementing affirmative action measures in the federal public service.

87. *Supra*, footnote 20.

could result in the hiring or promotion of unqualified employees to satisfy fixed numerical goals.

Representatives of the private sector urged an evolutionary approach, whereby the increase in participation would coincide with the increased supply of qualified candidates from among individuals in the designated groups. They also suggested the use of tax incentives to encourage compliance.

This Commission agrees with the conclusions of, respectively, the Task Force on Labour Market Development⁸⁸ and the Economic Council of Canada⁸⁹ that neither tax incentives nor inducements such as concessional loans or levy/grants systems are appropriate.

The Task Force on Labour Market Development observed:

Tax incentives have a number of disadvantages:

They are not universally applicable. Many small entrepreneurial ventures are not tax-paying. Depreciation, tax shields, start-up expenses often mean that in their early years new firms are not taxable.

They are normally general, not specific incentives. Considerable "waste" can occur because the incentives may provide unnecessary inducements to firms that would proceed on their own.

"Leakages" outside Canada reduce the effectiveness of these inducements. With 50% of the Canadian manufacturing and mining sectors owned by U.S.-controlled firms, the net value of decreased Canadian tax rates is greatly reduced. Tax benefits in Canada result in increased taxes in the United States when funds are repatriated, the net result being a transfer from the Canadian to the U.S. treasury.

88. *Supra*, footnote 4, Canada. Employment and Immigration Canada. *Labour Market Development in the 1980s*.

89. Canada. Economic Council of Canada. *In Short Supply: Jobs and Skills in the 1980s*. Ottawa, 1982.

They are uncertain, that is, with values contingent on profitability, they do not compare favourably with grants when the expected values of the two instruments to the firm are the same.

They are capital-biased and very difficult to structure in such a way as to relate directly to labour.⁹⁰

It also concluded that concessional loans and loan guarantees are limited in their effectiveness for the following reasons:

They are relevant to only a subset of potential applicants. For firms with ready access to capital markets, the value of concessional loans or guarantees is reduced markedly.

They can influence firms to introduce high debt loads in their capital structures, making them less capable of withstanding cyclical swings and of remaining solvent. Unfortunately, labour will bear the costs of this induced higher risk.

Guarantees in particular can detract from the likelihood of the firm engaging in follow-on investments that would generate additional employment. Because the value of the guarantee will go down as the firm increases its equity investments for expansions, there is a retarding effect on incremental investments.⁹¹

The Economic Council of Canada observed that in Britain there were found to be "undeniable problems" with the levy/grant system, even as a mechanism for encouraging training, particularly in small firms.⁹²

90. *Supra*, footnote 87. Canada. Employment and Immigration Canada. *Labour Market Development in the 1980s*, p. 122.

91. *Ibid.*

92. *Supra*, footnote 89, p.94.

CONTRACT COMPLIANCE

Contract compliance is a method of encouraging employment equity in the private sector by using government purchasing power as leverage.⁹³ It has proven to be an effective incentive for changing discriminatory employment practices in the United States.⁹⁴ It means in practice that government will agree to purchase goods and services only from businesses that agree to implement employment equity.⁹⁵

Contract compliance may be a difficult program to monitor effectively. In a short-term contract, the violation of a commitment to improve the participation of designated groups may go undetected until long after the contract has been completed. On the other hand, the longer-term contracts may end up mired in holdbacks, injunctions, or other interruptions pending an assessment of whether there has been compliance.

Ideally, every business or corporation under federal, provincial, and territorial jurisdictions would be subject to employment equity legislation, just as these businesses are now subject to anti-discrimination laws. Provincial and territorial requirements should, insofar as is possible, be consistent with federal government requirements. Businesses contracting with the federal government would then, being already under a statutory duty to implement employment equity, not have to make contractual commitments to do so.

If there is no such legislation, then contract compliance, though perhaps awkward to enforce, is the next best alternative as a method of implementing employment equity in federally and provincially regulated businesses that contract with the federal government.⁹⁶

93. The International Labour Organization's *Recommendation concerning Discrimination in Respect of Employment and Occupation (No. 111)* provides that ILO members should promote the principles of non-discrimination by "making eligibility for contracts involving the expenditure of public funds dependent on observance of the principles". (Article 3(b)(ii)).

94. *Supra*, footnote 23, Hatch Committee Report, p. viii.

95. *Supra*, footnote 23, Hatch Committee Report, p. 11.

96. The impact of a federal contract compliance program including both federally and provincially regulated businesses would be significant, given the extent of federal government spending.

Under contract compliance, businesses would, by the terms of their contracts, be expected to comply with the same statutory requirements as those binding federally regulated employers, including the implementation of employment equity and the collection and filing of data.⁹⁷ Additional contractual provisions could be negotiated where appropriate to reflect particular local needs, such as specific goals and timetables and the provision of adequate training, transportation, or accommodation in northern or remote areas of Canada. Contract compliance in Canada should apply to subcontractors, as it does in the United States.

In 1980, the Canadian government had contracts with between 25,000 and 30,000 companies, worth \$6.5 billion to the private sector and an additional \$5.5 billion to crown corporations.⁹⁸ A single federal agency, the Department of Supply and Services, signed 333,928 contracts worth \$5 billion to private companies in 1982-83.⁹⁹ In 1983-84, this department is expected to spend \$10 billion on such contracts.¹⁰⁰

The measure of success of the contract compliance program should be the number of employment opportunities created, not the number of corporations to which sanctions have been applied.¹⁰¹

97. In the United States, under s.209(a)(1) of Executive Order 12086, the Secretary of Labor can publish the names of contractors or unions who have complied or failed to comply with the Executive Order.

98. Canadian Advisory Council on the Status of Women. *Critical Skill Shortages: New Opportunities for Women*. Brief to the Parliamentary Task Force on Employment Opportunities for the 80's. January, 1981, p. 24.

99. Estabrook, Barry. "Ottawa Gears Up Affirmative Action". *Financial Times of Canada*, May 28, 1984, p.5.

100. Department of Supply and Services, Ottawa, July 1984.

101. *Supra*, footnote 23, Hatch Committee Report, p. 69.

A recent U.S. congressional study of contract compliance concluded:

Almost every witness felt that the concept behind OFCCP's formation, i.e., the need for a federal program to insure that federal contractors maintain non-discriminatory employment practices, was a worthwhile federal activity and should be retained. Concern lay more with the existing mechanism for insuring this obligation not with the obligation itself.¹⁰²

As previously stated, in the United States there are two federal agencies that enforce anti-discrimination requirements. The Office of Federal Contract Compliance Programs (OFCCP) monitors affirmative action programs in companies that have contracts with the American federal government.¹⁰³ The Equal Employment Opportunity Commission (EEOC) administers anti-discrimination requirements under Title VII of the Civil Rights Act of 1964.¹⁰⁴ The two offices frequently have different requirements.

An American company may be subject simultaneously to the sometimes conflicting requirements of the OFCCP and the EEOC.¹⁰⁵ This kind of duplication may be unnecessarily expensive, inefficient, and frustrating, both to the companies and to the public.¹⁰⁶

Ideally, the same Canadian agency enforcing employment equity in the federally regulated sector should enforce contract compliance in the private sector. The potential for duplication exists at present because section 19 of the Canadian Human Rights Act¹⁰⁷

102. *Supra*, footnote 23, Hatch Committee Report, p.64.

103. The OFCCP was consolidated into a single agency in 1978 by President Carter (Executive Order 12086). This followed years of dividing the administration and enforcement of contract compliance among various federal contracting authorities.

104. Pub. L. No.88-352, 78 Stat.253 (codified at 42 U.S.C. para.2000e (1976)).

105. *Supra*, footnote 23, Hatch Committee Report, p. 14.

106. *Ibid.*, p.21.

107. *Canadian Human Rights Act*, S.C. 1976-77, C.33 as amended.

permits the passage of regulations to effect contract compliance. If the Canadian Human Rights Commission is not designated to enforce employment equity in the federally regulated sector, section 19 should be repealed. If, however, no new enforcement agency is created, section 19 should be vitalized and the necessary regulations passed.

In Canada, the federal government has the authority to require contract compliance pursuant to section 91(1A) of the Constitution, the "spending power" provision.¹⁰⁸ This section permits the government to "spend money ... and impose conditions on the disposition of such funds while they are still in its hands".¹⁰⁹ From this derives its jurisdiction to impose conditions on contractors who wish to do business with the federal government.¹¹⁰

The ability to impose "such restrictions and conditions as Parliament may see fit to enact"¹¹¹ does not, however, validate an exercise of federal authority where it lacks constitutional jurisdiction, regardless of whether the recipient consents to the scheme.¹¹² But there is no apparent constitutional barrier to framing legislation that would allow the federal spending power to be used to require contractors to comply with a condition that they adopt employment equity.

In certain circumstances, a contractor doing business with the federal government may be subject, at the same time, to contract compliance conditions imposed by the federal government and to valid provincial labour relations legislation. Where the federal

108. *Constitution Act*, 1867.

109. *Central Mortgage and Housing Corporation v. Co-Operative College Residences Inc. et al.* (1975), 13 O.R. (2d) 394, p.410.

110. *Four B Manufacturing Ltd., v. United Garment Workers of America and Ontario Labour Relations Board* [1980] 1 S.C.R. 1031, at p.1045. This authority exists even though labour relations are essentially matters under provincial jurisdiction.

111. *In the Matter of a Reference as to Whether the Parliament of Canada Had Legislative Authority to Enact the Employment and Social Insurance Act, Being Chapter 38 of the Statutes of Canada, 1935*, [1936] S.C.R. 427, p.457.

112. *R. v. Dominion Stores Ltd.* (1980), 30 N.R. 399; see also Hogg, Peter W. *Constitutional Law of Canada*. Toronto: Carswell, 1977, p.71.

requirement and the provincial legislation overlap, issues of paramountcy and the possibility of constitutional challenge may arise.¹¹³

Under the constitutional doctrine of paramountcy, if, in the view of the courts, valid provincial legislation or orders and valid federal legislation or orders cannot stand together, then the federal legislation must prevail and the provincial legislation is rendered inoperative. However, the Supreme Court of Canada has recently adopted a narrow doctrine of paramountcy, finding a provincial law inoperative only if there is express conflict with a federal law; conflict has been held to exist only if compliance with one law leads to violation of the other.¹¹⁴

However, given the similarity of human rights legislation across Canada, the likelihood of conflict is limited. It could arise, however, in the case of "equal pay" requirements, where the provincial statutes are less stringent than the Canadian Human Rights Act, but this is an unusual divergence and a court in such a case might avoid finding a conflict simply by requiring compliance with the stricter law.¹¹⁵ The mere existence of federal and provincial legislation covering the same ground does not necessarily mean a conflict and, where possible, both would stand.¹¹⁶ Still, until it has been judicially determined, it remains unclear whether a provincial act applicable to a contractor dealing with the federal government would be inoperative if it conflicted with federal legislation based on the spending power.¹¹⁷

As a practical matter, where there is conflict between federal and provincial requirements, a number of options should be considered. The Continuing Federal-Provincial-Territories Committee of Officials Responsible for Human Rights could be asked to consider solutions

113. *Montcalm Construction Inc. v. Minimum Wage Commission*, [1979] 1 S.C.R. 754. This case involved no direct conflict. In *Four B Manufacturing Ltd.* (*Supra*, footnote 110), the court held that "with respect to labour relations, exclusive provincial legislative competence is the rule, exclusive federal competence is the exception" (p. 1045).

114. Colvin, Eric. "Legal Theory and the Paramountcy Rule", (1979-80) 25 *McGill Law Journal*, pp 82-98. See also *Multiple Access Ltd. v. McCutcheon* (1982), 138 D.L.R. (3d) 1, [1982] 1 S.C.R. 21; *R. v. Baert Construction Ltd.*, [1975] 3 W.W.R. 347.

115. *Ross v. Registrar of Motor Vehicles* [1975], 1 S.C.R. 5, (1974), 42 D.L.R. (3d) 68.

116. Tarnopolsky, Walter Surma "Legislative Jurisdiction with Respect to Anti-Discrimination (Human Rights) Legislation in Canada", 12 *Ottawa Law Review* (No. 1, 1980), p.43.

117. La Forest, Gerard V. *The Allocation of Taxing Power Under the Canadian Constitution* (2nd ed.). Toronto: Canadian Tax Foundation, 1981, p. 48.

to these inconsistencies. Another possibility, since all human rights commissions have a discretion as to whether or not to proceed with a complaint of discrimination,¹¹⁸ would be agreement between federal and provincial human rights commissions to prevent or delay proceedings at one level while proceedings dealing with the same issues were under way at another. Section 33(b)(i) of the Canadian Human Rights Act, for example, permits the federal commission to refrain from dealing with a complaint where it appears "the complaint is one that could more appropriately be dealt with, initially or completely, according to a procedure provided for under an Act of Parliament other than this Act".¹¹⁹

Not only does the federal government have jurisdiction to require contract compliance, it also has the power to pass any necessary legislation and to provide for remedies and enforcement procedures.¹²⁰ A legislative, rather than an administrative, base seems preferable, given the uncertain life span of cabinet directives.¹²¹ The compliance requirement would apply to all the operations of corporations or businesses that contract with the federal government.

118. Under section 39(1) of the *Canadian Human Rights Act* (S.C. 1976-77, C.33, as amended), the Commission has the sole discretion to appoint a tribunal at any stage after the filing of a complaint.

The various provincial statutes provide that a board of inquiry may be appointed if no settlement can be achieved, but in all cases final discretion rests with the Minister. In Ontario, for example, there is a requirement to make a recommendation to the appropriate Minister, while in Manitoba there is a discretion whether or not to make a recommendation. In Saskatchewan, the Commission may require an inquiry, but if it does not do so, the Minister may. In the Yukon and the Northwest Territories, the officer appointed to investigate and seek a settlement must recommend a course of conduct once the complaint has been substantiated.

119. *Canadian Human Rights Act*, S.C. 1976-77, C.33, as amended, s.33(b)(i).

The discretion not to proceed in the federal Act applies where the complaint could be better dealt with under another federal act. The discretion not to proceed under provincial codes applies where the complaint could be better dealt with under another provincial act. Thus, a federal-provincial arrangement would only be effective if made part of respective federal and provincial human rights codes.

120. *Quebec North Shore Paper v. C.P. Ltd.*, [1977] 2 S.C.R. 1054, at p.1063; *The Queen v. Prytula*, [1979] 2 F.C. 516, at p.523; *Rhine v. Her Majesty The Queen*, [1980] 2 S.C.R. 442, per Laskin, C.J.

121. Section 24(b) of the *Financial Administration Act*, R.S.C. 1970, C.F-10, as amended, reads as follows:

The Governor in Council may make regulations with respect to the conditions under which contracts may be entered into and, notwithstanding any other Act, (b) may make regulations with respect to the security to be given to secure the due performance of contracts.

This provision may be viewed as authority to make regulations requiring a contractor to give security to ensure that discriminatory practices prohibited under ss.5 to 13 of the *Canadian Human Rights Act* (S.C. 1976-77, C.33, as amended), will not arise.

The employers subject to contract compliance legislation could include those who seek leases with the federal government for resource extraction,¹²² those who benefit from federal government loans, subsidies, or guarantees, and those who seek supply or service contracts with the federal government.¹²³ Consideration might be given to whether there should be a minimum size of business that would be subject to contract compliance requirements.

EQUAL PAY

Almost everywhere there remains a clear division of labour by sex with jobs labeled as "men's work" and "women's work". ... It creates a situation in which work traditionally done by men commands higher pay and prestige while that traditionally done by women is accorded lower pay and prestige. ... It has no inherent logic.¹²⁴

Equal pay is an integral element in the implementation of employment equity. It must be included in any undertaking by employers to make the practices in the workplace more equitable.

The existence of a gap between the earnings of men and women is one of the few facts not in dispute in the "equality" debate. There are certainly open questions about it, the two main ones being the width of the gap and the right way to go about closing it. But no one seriously challenges the reality that women are paid less than men, sometimes for the same work, sometimes for comparable work.

The lawyer representing the American Federation of State, County, and Municipal Employees, the union that successfully sued the State of Washington for unfairly paying women less than men,¹²⁵ was quoted as saying, "Ending discrimination costs money. But no one would dare raise that as a reason for continuing to pay

122. Such as under the *Canada Oil and Gas Lands Act*, S.C. 1980-81, C.81, and Surface Lease Agreements in Saskatchewan with companies like Amok/Cluff Mining, *supra*, footnote 16.

123. Where there are existing collective agreements, s.160(2) of the *Canada Labour Code* (R.S.C. 1970, C.L-1 as amended) permits modification of any provision (except the agreement's term) before its expiry, in the event that this is necessary to effect compliance.

124. International Labour Office. *Equality of Opportunity and Treatment for Women Workers*. Report VIII (International Labour Conference, 60th Session, 1975). Geneva: 1974, p.20.

125. *American Federation of State, County, and Municipal Employees et al. v. State of Washington et al.* 33 FEP Cases 808.

blacks less than whites".¹²⁶ Yet costs are constantly raised as an excuse for paying women less. In the United States, women earn on average 61 per cent of what men earn.¹²⁷

The current discussion surrounding equal pay issues sometimes seems to suggest that the problem is not critical. But referring to a wage gap as "only" 10 per cent creates a tendency to minimize the problem and to treat it as having decreased to a tolerable level.

It has not. In 1911, the average wage of employed women in Canada was 53 per cent that of men.¹²⁸ In 1982, it ranged from 55 to 64 per cent.¹²⁹ This means an improvement of 2 to 11 percentage points over the course of 70 years. What is particularly noteworthy is, first, the length of time the gap has been tolerated and, second, that it is tolerated at all.

The average annual earnings for male workers full-time, full-year in 1982 were \$25,096. For women they were \$16,056, or 63.9 per cent of male incomes. The average annual earnings for males working full-time and part-time were \$19,164. For women they were \$10,472, or 54.6 per cent of male incomes.¹³⁰ Table 2 shows that women earned significantly less than men in every occupational category. Even in the clerical category, a full-time female employee earned on average only 66.9 per cent of the wages earned by a full-time male employee.

When it is considered too that wages affect the amount of Unemployment Insurance benefits and usually, retirement benefits, the problem is intensified.

In 1982, in families where the husband was the primary earner, the average combined earnings of husband and wife were \$35,265. When the wife was the primary earner, the combined earnings were

126. Newman, Winn, quoted in Tamar Lewin, "A New Push to Raise Women's Pay." *New York Times*, January 1, 1984, sec. 3, p. 15.

127. U.S. Bureau of Labor Statistics, cited by David Lauter. "Pay Bias Enters a New Age", 6 *National Law Journal* (No. 17, January 2, 1984), p. 25.

128. Phillips, Paul, and Phillips, Erin. *Women and Work: Inequality in the Labour Market*. Toronto: James Lorimer, 1983, p.52.

129. Canada. Statistics Canada. *Income Distributions by Size in Canada, 1982*. Catalogue No. 13-207 Annual, Ottawa, 1984. 55 per cent represents a comparison of male and female full-time and part-time workers; 64 per cent represents a comparison of only full-time, full-year male and female workers.

130. *Ibid.*

Table 2**Female Average Earnings by Occupation as a Percentage of Male Average Earnings — 1982**

Occupation	Full-Time & Part-Time Workers	Full-Time/ Full-Year Workers Only
Managerial	55.6%	58.2%
Professional	61.8	68.0
Clerical	62.9	66.9
Sales	46.1	57.1
Service	46.7	55.5
Agriculture, etc.	47.8	56.4
Processing and machining	54.5	57.6
Product fabricating, etc.	50.2	54.0
Transportation	54.1	60.8

Source: Statistics Canada. Unpublished data from the *Survey of Consumer Finances*, 1983.

\$28,716. When only the husband worked, the average earnings were \$24,287 but when only the wife worked, they were \$9,956. In 11.4 per cent of families, wives earned more than or an amount equivalent to, their husbands. There were 557,000 such families.¹³¹

The cost of the wage gap to women is staggering. And the sacrifice is not in aid of any demonstrably justifiable social goal. To argue, as some have, that we cannot afford the cost of equal pay to women is to imply that women somehow have a duty to be paid less until other financial priorities are accommodated. This reasoning is specious and it is based on an unacceptable premise: the acceptance of arbitrary distinctions based on gender as a legitimate basis for imposing negative consequences, particularly when the economy is faltering.

If the argument had logic, let alone fairness, on its side, it would suggest that some redress has been available for women during times of economic strength. But the appeal to women as the economy's ordained shock absorbers was and is a spurious one. We would have witnessed fluctuating differences between male and female incomes over the years, depending on the clemency of the

131. Canada. Statistics Canada. Unpublished data from the *Survey of Consumer Finances*, 1983.

economic climate. There has been no such fluctuation.¹³² The gap persists through good times and bad times. It persists in the face of society's commitment to justice. It persists in defiance of the law.

Equal Pay Laws

It is unlawful in Canada to pay women less than men for the same work in the same establishment. Equal pay laws were first enacted in 1951.¹³³ In some provinces and territories, this law is enforced by human rights agencies. These are Newfoundland,¹³⁴ New Brunswick,¹³⁵ Prince Edward Island,¹³⁶ Quebec,¹³⁷ British Columbia,¹³⁸ Alberta,¹³⁹ and the Northwest Territories.¹⁴⁰

In Ontario,¹⁴¹ Manitoba,¹⁴² Nova Scotia,¹⁴³ Saskatchewan¹⁴⁴ and the Yukon,¹⁴⁵ the law is enforced by departments of labour. Federally, it is administered by the Canadian Human Rights Commission.¹⁴⁶ Collectively and colloquially these laws are called

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132. Canada. Statistics Canada. Consumer Income and Expenditure Division. *Earnings of Men and Women: Selected Years, 1967 to 1979*. Catalogue No. 13-577 Occasional. Ottawa, 1981, p. 11; *supra*, footnote 128, p.52.
 133. Ontario *Female Employees Fair Remuneration Act*, S.O. 1951, C.26. Ontario was followed by Saskatchewan (1952), British Columbia (1953), Canada (1956), Manitoba (1956), Alberta (1957), Nova Scotia (1957), Prince Edward Island (1959), New Brunswick (1961), the Yukon (1963), Quebec (1964), the Northwest Territories (1966), and Newfoundland (1971).
 134. *Newfoundland Human Rights Act*, R.S.N. 1970, C.262, as amended S.N. 1974, No. 114, s. 10.
 135. *New Brunswick Human Rights Act*, R.S.N.B. 1973, C.H-11. (Equal pay provisions have been deemed to be included in the general prohibition against discrimination on the basis of sex.)
 136. *Prince Edward Island Human Rights Act*, S.P.E.I. 1975, C.72, s.7.(1).
 137. *Charter of Human Rights and Freedoms*, R.S.Q. 1977, C.C-12, s.19.
 138. *British Columbia Human Rights Act*, S.B.C. 1984, C.22, s.7.
 139. *Individual Rights Protection Act*, R.S.A. 1980, C.I-2, s.6.
 140. *Fair Practices Ordinance*, R.O.N.W.T. 1974, C.F-2, s.6.
 141. *Employment Standards Act*, R.S.O. 1980, C.137, s.33.
 142. *Employment Standards Act*, R.S.M. 1970, C.E110, as amended S.M. 1975, C.20, Part IV, ss.39-43.
 143. *Labour Standards Code*, S.N.S. 1972, C.10, as amended S.N.S. 1976, C.41; S.N.S. 1977, C.68, 55-56-57.
 144. *Labour Standards Act*, R.S.S. 1978, C.L-1, Part III.
 145. *Labour Standards Ordinances*, R.O.Y.T. 1971, C.L-1, as amended O.Y.T. 1973 (1st), C.13, s.12.1.
 146. *Canadian Human Rights Act*, S.C. 1976-77, C.33, as amended 1977-78, C.22; 1980-81, C.54; 1980-81-82, C.111; 1980-81-82, C.143, s.11(1).

"equal pay" laws. Most legislation permits exceptions based on seniority or merit systems.

The current debate on equal pay laws centres on whether the concept of equal pay can only be applied to substantially similar jobs or whether it can be applied to dissimilar jobs of comparable value. The provincial legislation in all jurisdictions states that women must be paid equally for equal or "substantially similar" work. The early tendency was to enforce the concept of "equal pay for equal work" only where pay differentials could be proven between identical jobs. More recently, the courts have interpreted the legislation as allowing comparison of similar job function as well as actual job description.¹⁴⁷ One court held, for example, that female nurses' aides should be paid the same as male orderlies for similar work, even though there might have been discrepancies in some particulars of the jobs.¹⁴⁸

There is thus no requirement in law that the jobs be strictly equal to justify equal pay for equal or similar work. So long as jobs are similar in content, and performed under similar working conditions, they can reasonably be compared under provincial laws to determine if the wages for one are arbitrarily lower or higher than for another.

Despite the existence of these equal pay laws, many women still earn 10 to 20 per cent less than men even where they are employed in the same occupation and within the same firm.¹⁴⁹ Canadian studies using one of the two accepted approaches for assessing equal pay¹⁵⁰ show that women typically earn 50 to 80 per

147. *Attorney General of Alberta v. Gares* (1976), 67 D.L.R. (3rd) 635 (Alta. S.C., Trial Div.); *Re Board of Governors of Riverdale Hospital and the Queen in Right of Ontario*, [1973], 2 O.R. 441 (C.A.); *Re Leisure World Nursing Homes Ltd. and Director of Employment Standards et al.* (1980), 29 O.R. (2d) 144 (Div.Ct.).

148. *Attorney General of Alberta v. Gares*, *supra*, footnote 147; *Re Board of Governors of Riverdale Hospital and the Queen in Right of Ontario*, *supra*, footnote 147.

149. Gunderson, Morley. "Work Patterns", in *Opportunity for Choice: A Goal for Women in Canada*, ed. Gail C.A. Cook, Ottawa: Statistics Canada/ C.D. Howe Research Institute, 1976, p. 120; Canada. Labour Canada, Women's Bureau. *Women in the Labour Force, 1978-1979, Part II — Earnings of Women and Men*. Ottawa, 1981.

150. There are two basic methods that have been used to measure levels of earnings discrimination. The "sampling" approach compares the earnings of men and women holding identical jobs within the same establishment and having equal qualifications, performance, and work hours. In the "adjustment" approach, the female-to-male gross earnings ratio is computed, and net differences are then obtained by adjusting for differences in work-productivity factors. The unexplained differences that result are said to reflect discrimination.

cent of what men earn.¹⁵¹ A differential of 10 to 20 per cent can be directly attributed to discrimination. The rest is accounted for by differences such as experience, education, training, and absences from the labour force.¹⁵²

But even these differences, which result in adjustments to wages, are themselves apt to be the result of past and present discrimination. Factors such as experience and education may well reflect barriers generated by stereotyping — the public and private expectations society has formed about women.

Similar findings in the United States are instructive. A 1981 report by the National Research Council of the United States¹⁵³ concluded that less than half the wage disparity between full-time male and full-time female workers could be explained by non-discriminatory factors. The rest of the gap, namely, 20 cents on the dollar, could not be accounted for through any non-discriminatory rationale.¹⁵⁴

A recent study by the U.S. Census Bureau showed that the amount of the disparity in wages between white men and women who entered the labour force in 1980 was almost twice that which could be attributed to discrimination in 1970.¹⁵⁵

A study of those who received Master of Business Administration degrees from the Columbia Graduate School of Business from 1969 to 1972 showed that women start out with salaries substantially equal to their male counterparts but in 10 years women with equal training, the same credentials, and similar work experience to the men were earning an average of only 81 per cent of their male counterparts' salaries.¹⁵⁶

151. A number of these studies are reviewed in Gunderson, Morley. *The Male-Female Earnings Gap in Ontario: A Summary*. Employment Information Series Number 22. Toronto: Ontario Ministry of Labour, Research Branch, 1982; Gunderson, Morley, *supra*, footnote 149, p. 120.

152. Ostry, Sylvia. *The Female Worker in Canada*. Ottawa: Dominion Bureau of Statistics, 1968, p. 42.

153. Treiman, Donald J., and Hartmann, Heidi I., eds. *Women, Work and Wages: Equal Pay for Jobs of Equal Value*, A report by the Committee on Occupational classification and analysis, Academy of Behavioral and Social Sciences, National Research Council Washington D.C.: National Academy Press, 1981, pp.13-43.

154. *Ibid.*

155. Study by Gordon W. Green Jr., senior Census Bureau official. Cited by Robert Rear. "Women's Pay Lags Further Behind Men's". *New York Times*, January 16, 1984, p. 1. See also Treiman and Hartmann, eds., *supra*, footnote 153, pp. 17-24.

156. Devanna, Mary Anne, Graduate School of Business, Columbia University. Draft Thesis, p.27. Also cited in Fraker, Susan. "Why Women Aren't Getting to the Top". *Fortune*, April 16, 1984, p.40-45.

In a sense, it matters little whether the earnings gap between genders is caused by blatant, subtle, or benign design. So long as it persists, it signals the need for investigation, continued monitoring, and redress.

The conclusion is inescapable: equal pay legislation has had little impact on the earnings gap.¹⁵⁷ This result occurs partly because most equal pay legislation is applicable only where both men and women are employed at the same or similar jobs in the same firm. It ignores the substantial number of women in segregated jobs or in businesses where there are few men or none with whom to compare salaries. A more important factor is that, as a concept, "equal pay for equal or similar work" fails to deal with the fundamental problem: the undervaluation of work done by women.

A further factor is that the legislation is not being rigorously enforced, although there appears to be better enforcement in the public than in the private sector.¹⁵⁸ The general lack of enforcement was observed by the Royal Commission on the Status of Women as early as 1970¹⁵⁹ which noted that only a handful of complaints are filed, they are processed slowly, and they are inconsistently dealt with across Canada.

The unavailability of class actions under relevant human rights or employment legislation¹⁶⁰ and the need to prove intentional rather

157. Bergmann, Thomas J., and Hills, Frederick S. "Internal Labor Markets and Indirect Pay Discrimination", 14 *Compensation Review* (No.4, 1982), p. 41; Blumrosen, Ruth G. "Wage Discrimination, Job Segregation, and Title VII of the Civil Rights Act of 1964", 12 *University of Michigan Journal of Law Reform* (No. 3, Spring 1979), p. 399; Cook, Gail C.A. and Eberts, Mary. "Policies Affecting Work", in Gail C.A. Cook ed., *supra*, footnote 149, pp. 174-175; Greenberger, Marcia. "The Effectiveness of Federal Laws Prohibiting Sex Discrimination in Employment in the United States", in *Equal Employment Policy for Women*, ed. Ronnie Steinberg Ratner, Philadelphia: Temple University Press, 1980, p. 118; Niemann, Lindsay. *Wage Discrimination and Women Workers: The Move Towards Equal Pay for Work of Equal Value in Canada*. Women's Bureau Series A: Equality in the Workplace, No. 5. Ottawa: Labour Canada, Women's Bureau, 1984, pp. 42-54.
158. Boyd, Monica and Humphreys, Elizabeth. *Labour Markets and Sex Differences in Canadian Incomes*. Ottawa: Economic Council of Canada, 1979; Gunderson, Morley. "Earnings Differentials Between the Public and Private Sectors", 12 *Canadian Journal of Economics* (May, 1979), pp.228-242; Gunderson, Morley. *Labour Market Economics: Theory, Evidence and Policy in Canada*. Toronto: McGraw-Hill Ryerson, 1980, p.A2.19; Shapiro, Daniel, and Stelcner, Morton. *Male-Female Earnings Differentials Within the Public and Private Sectors, Canada and Quebec*, 1980. Montreal: Concordia University, 1980.
159. Canada. Royal Commission on the Status of Women in Canada. *Report*. Ottawa, 1970, pp. 72-75.
160. While the Quebec *Charter of Human Rights and Freedoms*, R.S.Q. 1977, C. C-12, as amended, does not provide for class actions, the *Code of Civil Procedure*, R.S.Q. 1977, C. C-25, which applies to the Quebec *Charter*, does permit them.

than systemic or indirect discrimination, except under the Canadian Human Rights Act,¹⁶¹ also militate against the effective resolution of equal pay cases.

International Commitments

Convention 100, the Equal Remuneration Convention, was adopted by the International Labour Organization in 1951. It supports the concept of equal pay for work of equal value. Canada ratified this Convention in 1972,¹⁶² thus creating a binding international commitment to apply the principle of equal remuneration for men and women for work of equal value.¹⁶³

161. *Canadian Human Rights Act*, S.C. 1976-77, C.33, as amended.

Ontario now provides for constructive discrimination in section 15 of the *Ontario Human Rights Code*, S.O. 1981, C.53, but issues of equal pay are not dealt with by the Ontario Human Rights Commission. They are, rather, dealt with under section 33 of the *Employment Standards Act*, R.S.O. 1980, C.137.

The question of whether or not the Quebec *Charter of Human Rights and Freedoms*, R.S.Q. 1977, C. C-12, as amended, prohibits indirect discrimination has not been finally decided. See *Commission des droits de la personne du Quebec c. L'Homme* (1982), 3 C.H.R.R. D/849 (Que. C.A.); *Commission des droits de la personne du Quebec c. Ekco Canada Inc.* (1983), 4 C.H.R.R. D/1787 (Que. Sup. Ct.).

162. As of January 1, 1984, 105 countries had ratified the Convention. (International Labour Organization. "Chart of Ratifications of International Labour Conventions". Geneva, 1984.)

163. The four substantive provisions of Convention 100 are:

Article 1

For the purpose of this Convention:

- (a) the term "remuneration" includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment;
- (b) the term "equal remuneration for men and women workers for work of equal value" refers to rates of remuneration established without discrimination based on sex.

Article 2

1. Each member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women for work of equal value.
2. The principle may be applied by means of
 - (a) National laws or regulations;
 - (b) Legally established or recognized machinery for wage discrimination;
 - (c) Collective agreements between employers and workers; or
 - (d) A combination of these various means.

Article 3

1. Where such action will assist in giving effect to the provisions of this Convention, measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed.
2. The methods to be followed in this appraisal may be decided upon by the authorities responsible for the determination of rates of remuneration, or, where such rates are determined by collective agreements, by the parties thereto.

In 1976,¹⁶⁴ Canada also acceded to the United Nations International Covenant on Economic, Social and Cultural Rights, which contains a commitment to equal remuneration for work of equal value.¹⁶⁵

Finally, in 1981, Canada ratified the United Nations Convention on the Elimination of all Forms of Discrimination against Women.

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3. Differential rates between workers, which correspond, without regard to sex, to differences, as determined by such objective appraisal, in the work to be performed, shall not be considered as being contrary to the principle of equal remuneration for men and women workers for work of equal value.

Article 4

Each member shall co-operate as appropriate with the employers' and workers' organizations concerned for the purpose of giving effect to the provisions of this Convention.

For a thorough summary of the history of this Convention and its ratification by Canada, see Niemann, Lindsay, *supra*, footnote 157.

164. Similarly, the European Economic Community issued a directive on equal pay to its member countries in 1975. The directive, which came into force in 1976, "requires equal pay for the same work or for work to which equal value is attributed". (Organization for Economic Co-operation and Development. *Equal Opportunities for Women*. Paris, 1979, p.80.)

In France, the Netherlands, Italy, Sweden, Greece, Portugal, Switzerland, West Germany, Ireland, and Denmark, laws were enacted during the 1970s to require equal pay for work of equal value.

France, the Netherlands and Italy: see Chester, R. Simon G. "Equality in Employment — Observations from International and Comparative Law". Paper prepared for the Commission of Inquiry on Equality in Employment. November, 1983, pp.199, 211, and 218.

Sweden: *Equality of Treatment Between Men and Women in Employment*. Geneva, International Labour Office: 1980, p.40.

Greece: Spiliotopoulos, Sophia (International Labour Office). "The Way the Law Works in Greece", *Women at Work* (1981, No. 1), p.19.

Portugal: "Equality of Opportunity and Treatment in Portugal", *Women at Work* (1980, No. 1), pp 22-23.

Switzerland: "Switzerland: Constitution Makes Equality of Treatment More Explicit", *Social and Labour Bulletin* (1981, No. 3), pp. 354-356.

West Germany: see International Labour Office. "Law on Equal Opportunities at Work and for Maintenance of Acquired Rights in Case of Merger or Takeover", *Social and Labour Bulletin* (1980, No. 4), pp.466-467.

Ireland and Denmark: see Forman, John. "The Equal Pay Principle Under Community Law: A Commentary on Article 119 EEC", *Legal Issues of European Integration* (No. 1, 1982), p.23.

165. Article 7 of this Covenant requires:

Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.

Article 11(1) of this Convention requires that member governments provide men and women with equal remuneration in respect of work of equal value.¹⁶⁶

Despite the ratification of these international instruments, and though they are binding on the provinces, the provinces have done little to enact the legislation necessary to ensure compliance.¹⁶⁷

The federally enacted Canadian Human Rights Act specifically requires that there be equal pay for work of equal value.¹⁶⁸ Since the Canadian Human Rights Commission has jurisdiction over only 11 per cent¹⁶⁹ of the Canadian workforce, provincial compliance with these international obligations is critical to most working women. Until provincial laws are changed to articulate and effectively enforce the "equal pay for work of equal value" concept, little change in the income gap is likely to occur.

Equal Value

The Canadian Human Rights Act¹⁷⁰ applies to all federal departments, agencies, crown corporations, and corporations under federal jurisdiction. Section 11 of the Canadian Human Rights Act states:

166. Article 11(1) of this Convention requires State Parties to:

... take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.

167. Section 19 of the Quebec *Charter of Human Rights and Freedoms*, R.S.Q. 1977, C.C-12, states:

Every employer must, without discrimination, grant equal salary or wages to the members of his personnel who perform equivalent work at the same place.

A difference in salary or wages based on experience, seniority, years of service, merit, productivity or overtime is not considered discriminatory if such criteria are common to all members of the personnel.

See *M. Robert Senay v. La Corporation Les Aliments Ault Limitée*, an as yet unreported judgement of the Cour des Sessions de la Paix District de Montreal, February 17, 1984, where section 19 of the Quebec *Charter* was interpreted to mean equal pay for substantially the same work but involving separate job categories.

168. S.C. 1976-77, C.33, as amended, S. 11.

169. *Supra*, footnote 128, p. 171; see also Mossman, Mary Jane, and Jai, Julie Ramona. "Women and Work and the Canadian Human Rights Act", in *(Un)Equal Pay: Canadian and International Perspectives*, ed. Ceta Ramkhalawansingh, Toronto: Resources for Feminist Research, Ontario Institute for Studies in Education, 1979, p.9.

170. S.C. 1976-77, C.33, as amended.

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.

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

2.1) Separate establishments established or maintained by an employer solely or principally for the purpose of establishing or maintaining differences in wages between male and female employees shall be deemed for the purposes of this section to be a single establishment.

3) Notwithstanding subsection (1), it is not a discriminatory practice to pay to male and female employees different wages if the difference is based on a factor prescribed by guidelines issued by the Canadian Human Rights Commission pursuant to subsection 22(2) to be a reasonable factor that justifies the differences.

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

5) An employer shall not reduce wages in order to eliminate a discriminatory practice described in this section.

6) For the purposes of this section, "wages" means any form of remuneration payable for work performed by an individual and includes salaries, commissions, vacation pay, dismissal wages, bonuses, reasonable value for board, rent, housing, lodging, payments in kind, employer contributions to pension funds or plans, long-term disability plans and all forms of health insurance plans and any other advantage received directly or indirectly from the individual's employer.

The nine circumstances justifying a pay differential are: different performance ratings; seniority; red circling (wage curtailment following downgrading); a rehabilitation assignment; a demotion pay procedure; a procedure of phased-in wage reductions; a temporary

training position; a labour shortage requiring premium wages; and a change in the work performed.¹⁷¹ The requirement that the employees be in the same establishment is a potential barrier to the comprehensive enforcement of the federal equal pay law.

A provision of the Canada Labour Code permits an inspector under the Code, where he or she has reasonable grounds to believe that section 11 of the Canadian Human Rights Act has been breached, to refer the matter to the Canadian Human Rights Commission for enforcement. This provision came into force in 1978 and has not yet been used.¹⁷²

Under Section 11 of the Canadian Human Rights Act, equal pay cases are to be examined using the standard that men and women must be paid equally for work "of equal value". In the United States, the analogous term is "comparable worth". The United States Supreme Court has held that the concept of comparable worth encompasses claims by women for "increased compensation on the basis of a comparison of the intrinsic worth or difficulty of their job with that of other jobs in the same organization or community".¹⁷³

In the *County of Washington v. Gunther*,¹⁷⁴ the Supreme Court also ruled that claims of sex-based wage discrimination can be brought under either of two statutes: Title VII of the Civil Rights Act¹⁷⁵ or the Equal Pay Act.¹⁷⁶ The American Equal Pay Act of 1963 describes equal work as that requiring equal skill, effort, and responsibility being performed under similar working conditions.¹⁷⁷ Title VII of the Civil Rights Act¹⁷⁸ prohibits discrimination on the

171. Canadian Human Rights Commission. *The Canadian Human Rights Act: Employer Guide*. Ottawa, 1981, pp.29-30.

172. *Canada Labour Code*, R.S.C. 1970, C.L-1, as amended, s. 38.1. The newly-established Equal Pay Unit of Labour Canada is to have a consultative and educational role.

173. *County of Washington v. Gunther*, 25 FEP Cases 1521 (1981).

174. *Ibid.*

175. *Civil Rights Act of 1964*. Pub.L. No.88-352, 78 Stat. 253 (codified at 42 U.S.C. para. 2000e (1976)).

176. *Equal Pay Act*, 1963. Pub.L. No.88-38, 77 Stat. 56 (codified at 29 U.S.C. para. 206(d)(1)(1976)).

177. "Equal Work" pursuant to the *Equal Pay Act*, 1963 has been held to mean that the jobs should be "substantially equal" rather than identical, even if the nature of the jobs make it impractical for both sexes to work interchangeably. *Shultz v. Wheaton Glass Co.*, 421 F.2d 250 (3rd Cir., 1970); *Hodgson v. Robert Hall Clothes, Inc.*, 473 F.2d 589 (3rd Cir., 1973); *Hodgson v. Brookhaven General Hospital*, 436 F.2d 719 (1973); *Brennan v. City Stores, Inc.*, 479 F.2d 235 (5th Cir., 1973).

178. Pub.L. No.88-352, 78 Stat. 253 (codified at 42 U.S.C. para. 2000e (1976)).

basis of sex and other factors. Similarly, it may be that an "equal pay" claim in Canada also can be brought in alternative forums — either pursuant to "equal pay" legislation or, after April, 1985, pursuant to section 15 of the Charter of Rights and Freedoms.¹⁷⁹

The "equal value" approach goes beyond the obvious prohibition against paying lower wages to women for the same work as men do, by directing attention to the lower wages women are generally paid in the workforce. As Table 2 shows, the problem is inequitable pay practices throughout the workforce rather than isolated cases of wage discrimination.

Under the "equal value" concept, the value of the job, rather than the job function or description, becomes determinative, an approach that at least one author says is consistent with basic economic theory which dictates that competitive market forces would ensure that people be paid a wage that reflects the value of their contribution to the output.¹⁸⁰

The "equal value" approach calls for using job evaluations¹⁸¹ to examine pay structures in the labour force. It means looking at those jobs in which women predominate and comparing their wage rates with those paid for jobs at a comparable level in which men predominate. If a wage difference is found, it then becomes a question of trying to determine whether it is a legitimate or fair one. Wages should be defined, as they are in the Canadian Human Rights Act¹⁸² and in the International Labour Organization Conven-

179. *The Constitution Act*, 1982, C.11 (U.K.). Section 15 does not come into force until after April 17, 1985.

In *Board of Governors of the Seneca College of Applied Arts and Technology v. Pushpa Bhaduria*, [1981] 2 S.C.R. 181, (1981), 124 D.L.R. (3d) 193, the Supreme Court of Canada held that no civil cause of action was available in Ontario for the violation of the right not to be discriminated against in employment. This case was decided prior to the Charter and thus does not necessarily mean that there is not now a civil cause of action. In *Re Ontario Film and Video Appreciation Society and Ontario Board of Censors* (1983), 41 O.R. (2d) 583 (Ont.H.C.); aff'd (1984), 45 O.R. (2d) 80 (Ont.C.A.), it was held that the common law was subject to the Charter.

180. Gunderson, Morley. "Labour Market Aspects of Inequality in Employment and Their Application to Crown Corporations". Paper prepared for the Commission of Inquiry on Equality in Employment. October, 1983.

181. International Labour Organization Convention 100 (Equal Remuneration Convention) calls for the use of job evaluations in determining equal pay for male and female workers doing work of equal value.

182. S.C. 1976-77, C.33, as amended, s.11(6).

tion 100,¹⁸³ to mean total remuneration received, including all forms of benefits and employer contributions, direct or indirect.¹⁸⁴

Occupational Segregation

For women, it is vital that equal pay be seen through the "equal value" lens. There are some jobs that have traditionally been held mainly by women and will probably continue so to be held. As Table 3 shows, despite a decade of equal opportunity programs, 62

Table 3
Occupational Distribution of Women, 1982

Occupation	% of All Female Workers
Managerial, administrative	5.6%
Natural sciences	1.3
Social sciences	1.8
Religion	0.1
Teaching	5.8
Medicine, health	8.5
Artistic, recreational	1.4
Clerical	33.2
Sales	10.0
Service	18.8
Agriculture	2.6
Processing	1.8
Machining	0.3
Product fabrication	4.8
Construction trades	0.2
Transport equipment operation	0.5
Materials handling	1.3
Other crafts and equipment operating	0.5
Unclassified	1.1
Total Female Labour Force	99.6%*

*Does not equal 100 per cent because figures are not available for every occupational category.

Source: Statistics Canada. *The Labour Force, Annual Averages*. Catalogue No. 71-529. Ottawa, 1983.

183. Article 1(a).

184. This broader definition has been recommended for inclusion in provincial legislation by the Nova Scotia Federation of Labour. ("Improvements to Working Conditions of Women Through Changes to N.S. Labour Standards Code". Brief Submitted to the Nova Scotia Advisory Council on the Status of Women, September, 1983, p.4.)

per cent of women are still to be found in only three occupational categories — clerical, sales, and service. These are the same general categories into which they were segregated in 1901.¹⁸⁵ Table 4 shows the extent to which women are concentrated in the lower salary ranges.

Table 4
Percentage Distribution of Earners
By Earnings Groups and Gender — 1982

Full-Time Workers	% Males	% Females
Under - \$1,000	1.0	1.2
\$1,000 - 1,999	0.7	1.2
2,000 - 3,999	1.4	2.1
4,000 - 5,999	2.2	3.5
6,000 - 7,999	2.1	5.7
8,000 - 9,999	3.1	8.6
10,000 - 11,999	3.6	9.2
12,000 - 14,999	7.0	18.2
15,000 - 19,999	16.2	24.1
20,000 - 24,999	17.7	12.5
25,000 - 29,999	15.4	7.8
30,000 and over	29.7	6.0
Total*	100%	100%
Average earnings	\$25,096	\$16,056
Median earnings	\$23,608	\$15,075

*Does not equal 100 per cent because of rounding.

Source: Statistics Canada. *Income Distributions By Size in Canada*. Catalogue No. 13-207. Ottawa, 1984.

When a list of the 10 jobs in which women workers predominated in 1971 is compared with the equivalent list for 1981, nine of the 10 jobs are the same. The 10 jobs listed in Table 5 accounted for 42 per cent of the total female labour force in 1981; in 1971 they accounted for 41 per cent.¹⁸⁶ Considering that the participation rate

185. Ostry, Sylvia. *The Occupational Composition of the Canadian Labour Force*. 1961 Census Monograph. Ottawa: Dominion Bureau of Statistics, 1967, pp.6-8, 27-28, 50-53.

186. Canada. Statistics Canada. *Population: Labour Force Occupation Trends*. Catalogue No. 92-920. Ottawa, 1983. Census of Canada 1981.

for women in the general labour force increased by more than 10 percentage points during this period, the continued occupational segregation is even more striking.¹⁸⁷

In the United States, 80 per cent of the women in the workforce are in only 20 of the Labor Department's 427 job categories.¹⁸⁸

Although every effort should be made to encourage women to diversify into jobs traditionally held by men, many women will still go on preferring clerical, service, and sales jobs, jobs characterized

Table 5

Selected Occupational Distribution of Women, 1981

Job Categories	Number of females employed	% of all female workers	% female in job category
1. Secretaries and stenographers	368,025	7.6	98.9
2. Bookkeepers and accounting clerks	332,325	6.8	81.9
3. Salespersons/Clerks	292,915	6.0	59.4
4. Tellers and cashiers	229,320	4.7	92.7
5. Waitresses and hostesses	200,710	4.1	85.7
6. Nurses	167,710	3.5	95.4
7. Elementary and kindergarten teachers	139,625	2.9	80.4
8. General office clerks	115,015	2.4	80.5
9. Typists and clerk typists	102,970	2.1	97.8
10. Janitors, charworkers, and cleaners	96,735	2.0	41.2
	2,045,350		

Source: Compiled from Statistics Canada. Census of Canada 1981. *Population: Labour Force Occupation Trends*. Catalogue No. 92-920. Ottawa, 1983.

187. Canada. Statistics Canada. *Historical Labour Force Statistics — Actual Data, Seasonal Factors, Seasonally Adjusted Data*. Catalogue No.91-201 Annual. Ottawa, 1983, p.225.

188. Cited by Tamar Lewin. "A New Push to Raise Women's Pay". *The New York Times*, January 1, 1984.

by lower levels of income, status, and mobility rather than the occupations in which men are concentrated.¹⁸⁹

In 1982, 50 per cent of women with full-time jobs earned less than \$15,000 per year. Fewer than 22 per cent of men worked full-time for this amount or less.¹⁹⁰

The chance for promotion or transfer from these female-dominated jobs has historically been remote. And the jobs themselves tend to produce habits that flow from the nature of the work rather than the gender of the employee. As one researcher comments, "Low-paying, dead-end, marginal jobs with little future prospects have high rates of turnover, absenteeism, and tardiness, no matter who is in the job".¹⁹¹ The U.S. National Research Council found that job segregation by sex, race, and ethnicity is common in today's labour market and is an important source of wage differentials. "Not only do women do different work than men, but ... the work women do is paid less, and the more an occupation is dominated by women, the less it pays."¹⁹²

The argument has effectively been made that throughout society we undervalue and therefore underpay work done by women, and that this is a reflection of community expectations regarding male and female behaviour.¹⁹³ There is no disputing that sex-role stereotypes have affected labour market decisions, thus limiting women's options and expectations, and shaping their behaviour.¹⁹⁴

189. Boyd, Monica. "Occupational Segregation: A Review", in *Sexual Equality in the Workplace: Proceedings of a Conference*. Ottawa: Labour Canada, Women's Bureau, March, 1982, pp.66-92; see also Werneke, Diane. "The Economic Slowdown and Women's Employment Opportunities", 117 *International Labour Review* (No. 1, January-February, 1978), pp.37-51.

190. *Supra*, footnote 129.

191. Blumrosen, Ruth, *supra*, footnote 157, p. 421; see Atkinson, Tom. "Differences Between Male and Female Attitudes Toward Work", 10 *Canadian Business Review* (No.2, Summer, 1983), pp.47-51; see also Boyd, *supra*, footnote 189, p.69.

192. *Supra*, footnote 153, p.28.

193. Barrett, Nancy S. "The Impact of Public Policy Programs on the Status of Women: Obstacles to Economic Parity for Women", 72 *American Economic Review* (No.2, May, 1982), pp.160-165; Blumrosen, Ruth, *supra*, footnote 157, p.155; *supra*, footnote 153, p.93.

194. Koziara, Karen S., Pierson, David A., and Johannesson, Russell E. *The Comparable Worth Issue: Current Statistics and New Directions, Proceedings of the 1983 Spring Meeting*. Madison, Wisconsin: Industrial Relations Research Association, p.505.

But it matters little whether female-dominated jobs pay less because they are held by female workers¹⁹⁵ or because the jobs are undervalued by the company or marketplace.¹⁹⁶ The issue is whether job segregation should go on being permitted to justify income differentials that are inequitable. As one writer has observed: "...if the crucial importance of women's jobs in our society suggests that these jobs are undervalued only because they are held by women, why should women be asked to change their choices, rather than asking society to change how it rewards those choices?"¹⁹⁷

Effect of Unionization

It has been demonstrated that unionization significantly improves women's earnings and decreases the earnings gap between men and women.¹⁹⁸ One study showed that the male/female differential in unionized establishments is 10 per cent smaller than in non-unionized establishments.¹⁹⁹ The American Federation of Labor-Council of Industrial Organizations (AFL-CIO) at its 1979 convention adopted a motion supporting equal wages for jobs of comparable worth. The Canadian Labour Congress (CLC) and the Canadian Union of Public Employees (CUPE) in Canada also strongly support "equal value" laws.²⁰⁰

The number of women unionists increased by almost 300 per cent between 1962 and 1981, compared to a 72.5 per cent increase for men.²⁰¹ Even with this enormous increase, female union

195. Spelfogel, Evan J. "Equal Pay for Work of Comparable Value: A New Concept". 32 *Labour Law Journal* (No. 1, January, 1981), p.31; *supra*, footnote 153, pp.56-62.

196. Breton, Albert. *Marriage, Population and the Labour Force Participation of Women*. Ottawa: Economic Council of Canada, 1984.

197. "Paying Women What They're Worth", *QQ — Report from the Center for Philosophy and Public Policy* 3, (No.2, Spring, 1983), pp.3-4.

198. Gunderson, Morley. "Equal Pay in Canada", in *Equal Pay for Women: Progress and Problems in Seven Countries*, ed. Barrie O. P. Pettman, London: MCB Books, 1976, pp.129-146. White, Julie. *Women and Unions*. Ottawa: Canadian Advisory Council on the Status of Women, 1980, pp.53-73.

199. Gunderson, Morley. "Male-Female Wage Differentials and the Impact of Equal Pay Legislation", 57 *Review of Economics and Statistics* (November, 1975), p.467.

200. Canadian Labour Congress, Women's Bureau. *Equal Partners for Change: Women and Unions*. Ottawa: CLC Labour Education and Studies Centre, 1982; Canadian Union of Public Employees. "Equal Pay", in *Equal Opportunities Kit*, Ottawa, 1982.

201. During this period the number of women union members increased from 248,884 to 979,862. The number of unionized men increased from 1,268,701 to 2,188,206. (Statistics Canada data. Cited by Jackie Smith, *The Toronto Star*, March 19, 1984, p. 81.)

members represented only 29 per cent of all women in the labour force, while almost 40 per cent of all male workers are unionized.²⁰²

Collective agreements are bound by equal pay legislation.²⁰³ Both management and unions are accountable for violations of equal pay legislation.

Job Evaluations

There are undeniable problems in comparing dissimilar jobs. The current methods²⁰⁴ involve a point system by which each job is measured in each of four areas — skill, mental and physical effort,²⁰⁵ responsibility, and working conditions.

Under “equal pay for equal work” laws, each of these four aspects of a job has to be similar to justify similar pay. Under “equal pay for work of comparable or equal value” laws, the sum of the points represents what the job is worth. The evaluator looks at the total points rather than the points given to each of the four components. In this way, the work of a female typing-pool supervisor can be compared to the work of a male painter. Table 6 compares predominantly male occupations with predominantly female occupations judged to be of comparable worth, based on a study of monthly salaries for American government jobs in designated locations.

While this is theoretically a workable method, and is a great improvement over systems that compare jobs aspect-by-aspect, it is limited by the latitude for discretion it allows.²⁰⁶ Effort and responsibility are difficult to measure objectively.

202. *Ibid.*

203. *Attorney General of Alberta v. Gares*, *supra*, footnote 147; *Canadian Human Rights Act*, S.C. 1976-77, C.33, as amended, s.10.

204. See, for example, the method, known as the Aiken Plan, outlined by the Canadian Human Rights Commission in *Methodology and Principles for Applying Section 11 of the Canadian Human Rights Act*. (Ottawa, undated.) In the United States, one of the major methods used is the one developed by Hay Associates, the largest job evaluation consultants in the U.S., which takes into account knowledge and skill, problem-solving, accountability, and working conditions.

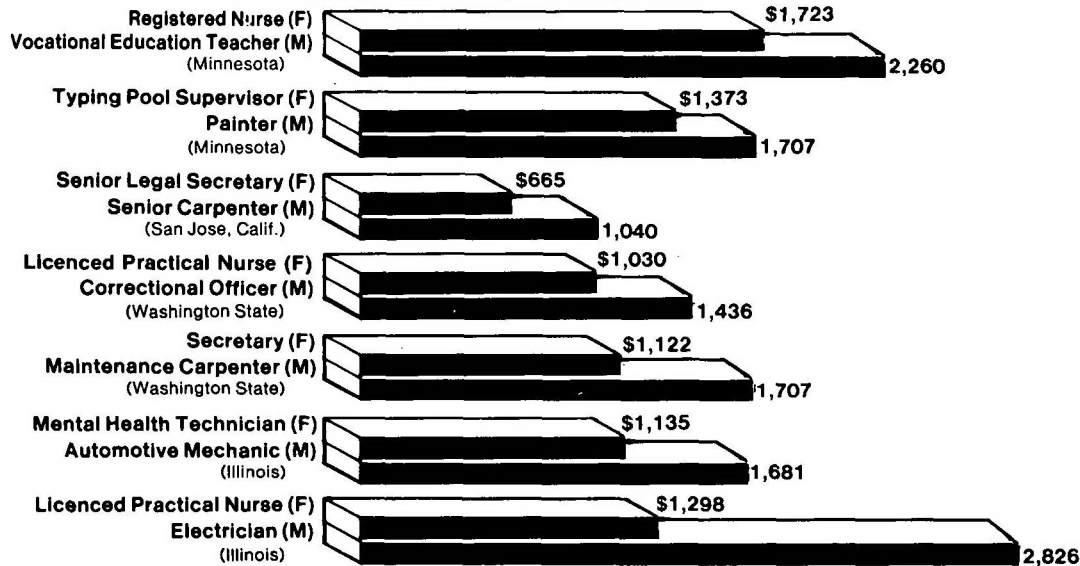
205. In *Hodgson v. Daisy Manufacturing Co.* 317 F.Supp. 538 (W.D.Ark. 1970), the Court held that “effort” includes both physical and mental labour, with neither automatically commanding higher wages if the degree of effort expended is comparable. See also the *Canadian Human Rights Act*, S.C. 1976-77, C.33, as amended, s.11(2).

206. Alexander, Judith A. *Equal-Pay-for-Equal-Work Legislation in Canada*. Discussion Paper No. 252. Ottawa: Economic Council of Canada, 1984, pp.62, 71.

Table 6

The Gender Gap

Below is a comparison of predominantly male and female occupations judged to be of comparable worth, based on a study of monthly salaries for Government jobs in designated locations.



Source: *Commission on the Economic Status of Women, State of Minnesota; Hay Associates; Norman D. Willis & Associates.*

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It remains to be determined what percentage of employees of a particular gender must be in a job before it begs comparison with a job dominated by the other gender: a simple or a substantial majority. In the United States, a predominantly female job is one in which 70 per cent of the occupants are women.²⁰⁷ More realistically, any job in which more than 50 per cent of the occupants are of one gender should be considered a job dominated by that gender.²⁰⁸

Although job evaluations of this kind may seem a formidable exercise in human and market judgement, it is already the case that most large companies have job-classification and job-evaluation systems by which they determine how much to pay employees. The exercise therefore does not require the introduction of a foreign mechanism into the corporate system. It simply means adding to existing corporate practices a component designed to fine-tune classification systems which themselves were established ostensibly to ensure an equitable and reasonable pay structure for employees. The new component must screen for the discriminatory undervaluation of jobs held by women and must cancel the bias that led to the lower wage in the first place.

It will take time before such a system is refined to the point where it can easily and precisely be applied. It will also take sensitivity and discretion. But it is essential to making pay structures finally equitable.

In two recent cases, the method has been successfully used by the Canadian Human Rights Commission to recover lost wages for women. In one,²⁰⁹ a complaint was filed as a result of a wage difference of almost 20 per cent between government employees in the Library Sciences Classification, which was more than 56 per cent female, and employees in the Historical Research Classification, which was more than 75 per cent male. A job evaluation of the two tasks was performed and it was concluded that the librarians did

207. Waldman, Elizabeth and McEaddy, Beverly J. "Where Women Work — An Analysis by Industry and Occupation" 97 *Monthly Labor Review* (1974), pp. 10-11.

208. The Canadian Human Rights Commission has ruled that "50 per cent plus one does not constitute dominance, and that a clear majority of one sex would have to be sustained over a period of time for the group to be considered sex-dominated". (Canadian Human Rights Commission. "Hospital Technicians", from the Summary of Decisions, May-June, 1982, in *Equal Pay Casebook, 1978-1983*. Ottawa, 1983, p.8.)

209. Canadian Human Rights Commission. "Librarians and Historical Researchers", from the *Summary of Decisions*, December, 1980; news release of Dec. 17, 1980, in *Equal Pay Casebook, 1978-1983*. Ottawa, 1983, pp.5-6.

work of equal value to that done by historical researchers. The settlement provided for \$2.3 million in back pay as well as continuing annual adjustments ranging from \$500 to \$2,500.

In another case,²¹⁰ a claim was instituted by the Public Service Alliance because tasks performed primarily by women in the General Services Occupation Group (kitchen, laundry, and miscellaneous personal service) attracted considerably lower wages than those performed primarily by men in the same occupation group (messenger, custodial, building, and store services). A \$17 million settlement was negotiated with Treasury Board.

This does not mean that the only way to narrow the income gap is through the complex "equal value" test. Other methods that have been advanced include equalizing base or entry pay rates;²¹¹ eliminating the use of separate seniority lists for men and women; reducing the steps within job classifications or at least making sure that "female" jobs have no more of these steps than do "male" jobs; expressing wage rates for "female" jobs exactly as they are for men, either by hour or by month; giving similar wage increases across the board; bottom-end loading increases to add an extra per-hour increase for lower-paid workers;²¹² and eliminating "rug-ranking", a system that bases the earnings of secretaries based on the status of the persons for whom they work rather than on the work they do. These are all methods worth considering seriously.

The alternative to exploring ways in which to close the wage gap is to leave the issue to the vagaries of the marketplace. Those who suggest that equal pay and other economic issues for women be left to the awakening sensibilities of the marketplace either do not appreciate that the values of the marketplace may themselves be discriminatory²¹³ or do not care that they are. The marketplace is a convenient altar upon which many needs are sacrificed. The economically and strategically powerful elements in society have not in the past exhibited any great ability to isolate and address the discrimination women and minorities have experienced in employ-

210. Canadian Human Rights Commission. "General Services", news release of March 19, 1981; news release of March 2, 1982, in, *Equal Pay Casebook, 1978-1983*. Ottawa, 1983, pp. 7-8.

211. Equal Pay Information Committee (Vancouver, British Columbia). Submission to the Commission of Inquiry on Equality in Employment. November, 1983.

212. *Ibid.* This was done in 1981 with the British Columbia Government Employees Union workers. Lower paid workers were given an increase of 6 per cent while higher paid workers received only a 3 per cent wage increase.

213. *Supra*, footnote 180, pp. 6.10-6.18.

ment, particularly when economic imperatives urged insensitivity. It is unreasonable to expect that this will change in any significant way unless the marketplace is directed by statute to concentrate on the problem.

CONCLUSION

Employment equity is a strategy designed to obliterate the present and the residual effects of discrimination and to open equitably the competition for employment opportunities to those arbitrarily excluded. It requires a "special blend of what is necessary, what is fair and what is workable".²¹⁴

To ensure freedom from discrimination requires government intervention through law. It is not a question of whether we need regulation in this area but of where and how to apply it. Based on history, present evidence, and apprehensions for the future, the elimination of all forms of discrimination requires more, rather than less, law.

We need equal opportunity to achieve fairness in the process, and employment equity to achieve justice in the outcome.

Law in a liberal democracy is the collective expression of the public will. We are a society ruled by law — it is our most positive mechanism for protecting and maintaining what we value. Few matters deserve the attention of law more than the right of every individual to have access to the opportunity of demonstrating full potential.

What is needed to achieve equality in employment is a massive policy response to systemic discrimination. This requires taking steps to bring each group to a point of fair competition. It means making the workplace respond by eliminating barriers that interfere unreasonably with employment options.

It is not that individuals in the designated groups are inherently unable to achieve equality on their own, it is that the obstacles in their way are so formidable and self-perpetuating that they cannot be overcome without intervention. It is both intolerable and insensitive if we simply wait and hope that the barriers will disappear with time. Equality in employment will not happen unless we make it happen.

214. *Lemon v. Kurtzman*, 411 U.S. 192, 201 (1973).

SUMMARY OF RECOMMENDATIONS

1. All federally regulated employers should be required by legislation to implement employment equity. Measures to eliminate discriminatory employment barriers and practices should be referred to as employment equity, rather than as affirmative action.
2. Employment equity legislation should have three major components:
 - a) a requirement that employers implement employment equity;
 - b) a requirement that employers collect and annually file data, by designated group, on the participation rates, occupational distribution, and income levels of employees in their workforces; and
 - c) an enforcement mechanism.
3. The statutory requirement to implement employment equity should oblige employers to develop and maintain employment practices designed to eliminate discriminatory barriers and to improve where necessary the participation of women, native people, disabled persons, and specified ethnic and racial groups in the workplace. No quotas should be imposed.
4. Sections 15 and 15.1 of the Canadian Human Rights Act should be amended to ensure that employers subject to employment equity legislation are not required to seek the approval of the Canadian Human Rights Commission prior to introducing ameliorative programs in their workplaces.
5. Employers should be required to have in their workplaces employment equity committees consisting of representatives of management, labour, and the designated groups.
6. Employers should be given flexibility in the redesign of their employment practices.
7. Since the goal of imposing a statutory obligation to implement employment equity is to expand employment opportunities of qualified individuals in the designated groups by eliminating discriminatory barriers in the workplace, results, not systems, should be reviewed initially.

If the results are found to be unreasonably low by the enforcement agency, taking into account the employer's job openings, prior record, and the realities of the local labour force, the enforcement agency would determine whether or not the results reflect discriminatory practices. If they do, the employer would be advised to amend these practices.

8. Guidelines for the implementation of employment equity should be developed by the enforcement agency to assist employers in the design of non-discriminatory employment practices. This should be done through ongoing consultation with regional and national representatives of business, labour, and the designated groups.
9. Statistics Canada should provide the enforcement agency with relevant data to be used by the enforcement agency in the formulation of guidelines and by employers in the formulation of reasonable employment objectives.
10. Employers should, with an assurance to their employees of confidentiality, be required to request and collect information on the participation in their workforces of women, native people (Status Indian, non-Status Indian, Métis, and Inuit), disabled persons, and specified ethnic and racial groups by occupational category, by salary quartile, and by salary range. This data should be filed annually with the enforcement agency.

Data should also be collected on the representation of these groups in hirings, promotions, terminations, lay-offs, part-time work, contract work, internal task forces or committees, and training and educational leave opportunities.

11. The data collection requirements should be standardized. They should be formulated by the enforcement agency in consultation with Statistics Canada.
12. To permit better analysis and assessment, the data classifications developed for the implementation of employment equity should match as closely as possible the data classifications of Statistics Canada.
13. An employee's self-identification of gender, race, ethnicity, or disability should be voluntary.

14. Section 8 of the Canadian Human Rights Act should be amended to permit the collection of data by gender, race, ethnicity, or disability for the purposes of complying with employment equity legislation.
15. Statistics Canada should analyze the data obtained from employers. The results of this analysis should be sent to the enforcing agency for assessment.
16. Amendments to the Statistics Act should be made to ensure that Statistics Canada has jurisdiction to analyze employers' data and disclose the analysis to the enforcement agency.
17. The performance of each employer should be compared with the performance of other employers in the same industry or region and with each employer's previous performance. A more sophisticated and refined data base should be developed to permit comparison of the composition of an employer's workforce with the externally available local supply of labour.
18. The enforcement agency should make available publicly the employer's data, the analysis by Statistics Canada, and the assessment by the enforcement agency by tabling a report annually in Parliament.
19. The requirement to implement employment equity should take effect immediately upon the passage of legislation. The obligation on employers to collect data should take effect upon the development of standardized data collection requirements.

The obligation to file data should not take effect for three years in order to permit the development and coordination of data requirements, the reorganization of employers' information systems, and the necessary restructuring of human resource and strategic planning systems.

20. Additional labour force questions should be included in the census questionnaire to solicit information on promotions, absenteeism, past employment, pre-employment training and education, length of time and wages paid in the current occupation, hours worked weekly, length of time with a particular employer, and number of years in the labour force. Labour force information should be solicited and analyzed by gender, ethnic or racial origin, and disability.

21. Statistics Canada should undertake more longitudinal studies to measure the integration of designated groups into the labour force.
22. Employment equity programs for specified ethnic and racial groups and for native populations would vary by region and industry.
23. The enforcement of employment equity requires an agency that:
 - a) is independent;
 - b) has a qualified staff familiar with labour relations, employment systems, and human rights issues;
 - c) has sufficient resources to discharge its mandate; and
 - d) has an ongoing consultative relationship in the development of employment equity guidelines with national and regional representatives from business, labour, and the designated groups.

The process of review and investigation should be as streamlined as is consistent with due process.

24. Monitoring of employers' results can be done either on a random basis or on a "worst first" basis. Certain industries could be appropriately targeted for specific attention. Employers should be monitored not only for changes in the participation rates of the designated groups, but also for improvements in their distribution throughout classification and pay levels.
25. Several alternative enforcement models are offered for the government's consideration. Each model is assumed to contain the statutory requirement to implement employment equity and to collect data as outlined in these recommendations. In all models, Statistics Canada analyzes the data and the enforcement agency is independent from government.

Model 1:

- a) The Canadian Human Rights Commission would be responsible for issuing employment equity guidelines, collecting, reviewing, and assessing data, and enforcing employment equity by investigating and adjudicating complaints.

- b) The Canadian Human Rights Commission would retain jurisdiction over contract compliance. The necessary regulations should be enacted pursuant to section 19 of the Canadian Human Rights Act.
- c) A new, independent, facilitative agency would be established:
 - i) to act primarily as a consultant to employers on a confidential basis on how to implement employment equity;
 - ii) to act as a consultant to the Canadian Human Rights Commission on the development of employment equity guidelines;
 - iii) to establish a consultative process on a local and national basis with representatives from business, labour, and designated groups; and
 - iv) to provide conciliation services in employment equity disputes to the Canadian Human Rights Commission on a "without prejudice" basis. Where there is no settlement, disputes would be referred back to the Canadian Human Rights Commission for adjudication.

Model 2:

- a) A new, independent agency would be established to deal exclusively with the monitoring and enforcement of employment equity. This agency would be responsible for issuing employment equity guidelines, collecting, reviewing, and assessing data, investigating employment practices, where appropriate, and referring disputes to conciliation. Where no settlement is reached, disputes would be referred to binding arbitration.
- b) This agency would have jurisdiction over contract compliance.
- c) To avoid duplication, section 19 of the Canadian Human Rights Act, dealing with contract compliance, should be repealed.

Model 3:

- a) The Canadian Human Rights Commission would be responsible for issuing employment equity guidelines, collecting, reviewing, and assessing data, investigating and adjudicating complaints, and enforcing contract compliance.
- b) The Canadian Labour Market and Productivity Centre would act as a consultative body to the Canadian Human

Rights Commission in the development of employment equity guidelines with the benefit of input from representatives of the designated groups, in addition to that received from representatives of business and labour.

Model 4:

- a) The Canadian Human Rights Commission would be responsible for issuing employment equity guidelines, collecting, reviewing, and assessing data, investigating and adjudicating complaints, and enforcing contract compliance.
 - b) The Canada Labour Code would be amended in order to require labour inspectors to supplement investigations by the Human Rights Commission by monitoring and referring possible violations of employment equity to the Canadian Human Rights Commission for enforcement.
26. Provincial and territorial governments should give serious consideration to requiring provincially and territorially regulated employers to implement employment equity. Provincial requirements should, insofar as is possible, be consistent with those of the federal government.
27. In the absence of legislation requiring federally and provincially regulated employers to implement employment equity, the federal government should utilize contract compliance.
- Under contract compliance, the federal government would purchase goods and services only from businesses that agree to implement employment equity.
- Contract compliance should be imposed by legislation.
28. Contracts with the federal government may include, in addition to the requirement to implement employment equity, other clauses to accommodate local needs, such as specific goals and timetables and the provision of adequate training, transportation, or housing in northern and remote regions of Canada.
29. The same agency used to enforce employment equity should be used to enforce contract compliance.
30. If the Supreme Court of Canada holds that the intention behind, rather than the impact of, behaviour is determinative of a finding of discrimination, section 10 of the Canadian

Human Rights Act should be amended to affirm the jurisdiction of the Canadian Human Rights Commission over systemic discrimination.

31. Any limitations to seniority rights should be left to collective bargaining. Employment equity legislation should not include provisions restricting or further protecting seniority rights.
32. The provinces and territories should enact equal pay for work of equal value legislation to comply with international obligations to do so. Wages should be defined as total remuneration received, including all forms of benefits, direct or indirect.
33. Equal pay for work of equal value should be part of all employment equity programs.
34. Greater resources should be allocated for the enforcement of section 11 (the equal pay provisions) of the Canadian Human Rights Act, both through the Canadian Human Rights Commission and through section 38.1 of the Canada Labour Code.
35. Section 11 of the Canadian Human Rights Act should be amended to delete the requirement that job comparisons be made only within the same establishment.
36. Employers should give consideration to using alternative methods of narrowing the income gap. These other methods include equalizing base or entry pay levels; eliminating the use of separate seniority lists for men and women; reducing the steps within job classifications, or at least making sure that "female" jobs have no more steps than do "male" jobs; expressing wage rates for men and women in the same way, either by the hour or month; giving similar wage increases across the board; bottom-end loading increases to benefit lower paid workers; and eliminating "rug-ranking".
37. Human rights statutes across Canada should be amended where required to ensure that human rights commissions have jurisdiction over systemic discrimination and can order employment equity as a remedy. These commissions should be given the necessary resources to exercise their authority effectively.
38. Course material and textbooks used in schools should be monitored to ensure that discriminatory stereotypes are avoided.

39. There should be greater representation in educational institutions of members of the designated groups in administrative positions and as teachers of subjects not traditionally taught by them.
40. Teachers and guidance counsellors should receive training to assist them in identifying discriminatory stereotypes and practices.
41. Guidance counsellors and teachers should be trained to ensure that they are not streaming children of a particular gender, ethnicity, or race, or with a disability, into programs that lead to restricted employment opportunities.
42. Guidance counsellors should have access to information about labour market patterns.
43. Although disabled children require an individualized approach to their education, there should be a presumption in favour of educating them with children who are not disabled.

Facilities and personnel should be made available so that the disabled child, as early as possible in his or her education, can integrate into the public school system. These children should be educated in the least restrictive educational environment and as close to their families as possible.

44. The range and number of programs and systems to educate disabled children must be increased, and more information must be available to families about various educational options.
45. Educational facilities and training centres should be, in all respects, accessible to disabled persons.
46. Native people should be actively recruited for teaching positions. Non-native teachers of native children should be familiar with the culture of their students.
47. Curriculums should reflect the cultural differences of native people.
48. Native children should be taught in their own language, as well as in either English or French. Where required, steps should be taken to provide English/French as a second language.

49. For native students, a decentralized education model is required to serve the large numbers of native people living in rural and remote areas.
50. Wherever possible, schooling for native people should be in their home communities.
51. Educational institutions developed primarily by and for native people should be encouraged.
52. Native people should be able to participate in the negotiations of tuition and capital-contribution agreements for native schools.
53. Métis and non-Status Indians should receive the same allowances to complete post-secondary education as do Inuit and Status Indians.
54. The federal government in consultation with provincial governments should develop a national, coordinated policy on adult basic education.
55. A new framework agreement with the provinces is required so that language, literacy, and training programs offered are of consistent quality, are delivered through a coordinated mechanism, and are subject to evaluation.
56. Part-time post-secondary education should be made more generally available to permit access by students from among the designated groups. This education should be offered at convenient times and include a wide range of courses.
57. Universities should undertake creative recruitment policies aimed at attracting students from among the designated groups particularly into courses and professions in which they are under-represented.
58. Post-secondary institutions and training programs mandated to respond directly to the needs of the labour market should be required to take measures to increase the participation of members of the designated groups in the relevant vocational training courses and programs.
59. Language training, including the necessary incidental income allowances, should be easily available to all immigrants who wish it regardless of their labour market intentions or immigrant classification at the time of entry into Canada.

60. Language training should be available in either of Canada's two official languages in all parts of Canada.
61. More language instruction should be available and existing programs lengthened in order to ensure language fluency. Candidates, not Employment and Immigration counsellors, should determine whether or not they need this training. The time limitation on language programs should be replaced by a "desired competency level".
62. Language courses should be available not only at the general proficiency level, but also at an advanced level for those who wish to learn the language of their particular skill or profession. More vocationally oriented language programs should be available.
63. Language training should be available in rural and in remote areas.
64. There should be more on-the-job language training.
65. Part-time language training should be available to men and women whether or not they have full-time employment.
66. Transportation and childcare allowances should be available to those taking language or literacy training.
67. The use of English or French immersion classes should be re-evaluated and consideration given to the use of bilingual classes using the language of the immigrant as the basis for instruction.
68. Volunteer organizations providing literacy and language training of an adequate standard should receive better and more secure funding.
69. The range of programs available to immigrants should be more effectively publicized.
70. Employment and Immigration counsellors should be expert in the language and culture of the immigrants to whom they deliver information and services, or should have access to this expertise.
71. The process of acculturation for immigrants should be started prior to their emigration.

72. A new agency should be established to assist skilled immigrants in pursuing their careers in Canada. This agency would provide counselling services, advice on obtaining professional accreditation, and information on language training. It would also assist employers in assessing qualifications acquired by immigrants in other countries.
73. The criteria used by professional accreditation bodies to assess credentials should be reviewed to ensure that requirements are objective and fair. There should be no requirement of citizenship to practise a profession in Canada.
74. To ensure that training programs are relevant, effective, and accessible, there should be local advisory panels consisting of labour force analysts and representatives of the designated groups, business, labour, educational institutions, and federal, provincial, and territorial governments. These panels would meet regularly to determine:
 - a) the design and quantity of training programs;
 - b) their effectiveness in increasing employment opportunities;
 - c) how best to increase the participation rate of designated groups in vocational, training, and post-secondary institutions;
 - d) how best to recruit members of the designated groups for jobs in which they are traditionally underrepresented;
 - e) what communications networks should be available to advise potential applicants of the existence of these programs; and
 - f) future job availability.
75. Conditions relating to the quality, design, and accessibility of training programs should be attached to the allocation of training funds by the federal government.
76. To ensure that training opportunities better match job prospects, more effective job forecasting and labour force analysis should be encouraged at both the regional and national level.
77. The existence of programs should be communicated more effectively to the intended beneficiaries. A communications network should exist to publicize training and employment

opportunities. It should enlist the assistance of local volunteer consumer groups to ensure that training and employment opportunities are communicated to potential employees and that potential employers can more easily find a pool of qualified labour.

78. The participation of members of the designated groups in programs under the National Training Act should be encouraged to increase their participation in those areas in which they are not traditionally represented. Selection of the courses should be at the instigation of the member of the designated group rather than at the discretion of a government counsellor.
79. There should be more "bridging", pre-trades, and on-the-job training programs that, at completion, promise a job, and more local training in remote areas.
80. There should be more generic training, that is, training with skills common to a number of occupations, so that there is an opportunity to develop portable skills.
81. Educational requirements for training programs should be re-evaluated to ensure that they are not unreasonably high and are relevant. Determination of eligibility for training programs should be based on aptitude for the particular skill rather than on educational qualifications.
82. Mobile and regionally based training centres should be established so that native people living in remote areas can train without having to leave their communities for extensive periods of time. Where it is not possible to take training courses locally, financial provision should be made for transportation and communication expenses. Either adequate childcare allowances should be available to parents taking training programs or childcare facilities should be made available at training centres.
83. Programs in core and basic training as well as in occupation-specific areas should be available for women re-entering the labour market and for women whose jobs may or have become redundant by technology.
84. The interlocking system of benefits and pensions must be re-examined to ensure that those disabled persons who wish to train or educate themselves or seek employment are encouraged rather than economically penalized for wanting to improve their skills.

85. Training allowances should reflect the cost of living.
86. Individuals living with a working spouse or with parents should receive the same training allowances as persons not in these living arrangements.
87. Part-time employees should be eligible for training and retraining programs. Part-time trainees should be eligible for training allowances on a prorated basis.
88. Employers should increase efforts to ensure that qualified members of the designated groups at all occupational levels receive a fair proportion of education and skill training leaves.
89. Outreach workers should not be hired on short-term contracts but should be made part of the permanent government public service.
90. The government should hire more representatives from among the designated groups to act as Canada Employment and Immigration Commission counsellors.
91. The term "childcare", rather than the term "daycare", should be used to describe a system intended to care for children whenever the absence of a parent requires an alternative form of care.
92. The ideal childcare system should be publicly funded, of acceptable quality, and universally accessible, though not compulsory. It should provide care for children from birth until the age at which they are legally permitted to remain home unattended by an adult.

Until this is possible, childcare should be available for children whose parents are unable to care for them on a full-time basis and for children with special needs arising from a disability.

93. The federal government should, in cooperation with the provinces and territories, develop an appropriate funding mechanism for childcare. The Canada Assistance Plan is an inappropriate funding mechanism for childcare as it perpetuates the suggestion that childcare is an aspect of the welfare system.
94. A National Childcare Act should be enacted, based on consultation with the provinces, territories, and interest groups, to guarantee consistent national standards.

95. The provisions of a National Childcare Act should take into account an appropriate child/staff ratio, urban and rural needs, and special needs of children who are native, members of minority groups, or disabled.
96. The hours of service of childcare facilities should be as flexible as possible and should at the very least accommodate the average person's working or training schedule.
97. A range of delivery systems should be supported by subsidies and governed by flexible standards. Delivery systems can include childcare facilities in school buildings, in other settings in the neighbourhood, or at a parent's workplace.
98. Employers should permit either parent to take a fixed number of days off annually for child-related reasons.
99. Adequate training should be more generally available for childcare providers, including specific training to meet the requirements of children with special needs.
100. Childcare providers should be paid adequately.
101. Childcare providers of both genders from minority groups should be actively recruited.
102. Childcare expenses should be fully deductible by either parent.
103. Part-time workers should receive on a prorated basis the same protection, rights, and benefits as those now guaranteed to full-time workers.
104. Any program intended to benefit the designated groups should be designed with their input.
105. Homemaking and volunteer work should be considered legitimate work experience.
106. Paid domestic workers should be protected by human rights and employment standards legislation.
107. Employers should provide a process for dealing effectively and quickly with sexual harassment in their workplaces.

108. The various governments providing economic and social assistance to native people should coordinate services and ensure consistent standards.
109. Section 12(1)(b) of the Indian Act, whereby native women who marry non-native men lose their Indian status, should be repealed.
110. Benefits available to Status Indians should be provided whether or not they live on reserves. Benefits available to Status Indians and Inuit should be extended to non-Status Indians and Métis.
111. Workplaces should be made accessible in all respects to disabled persons, with appropriate adjustments to the tax system to facilitate this accommodation.
112. Technical aids, assistive devices, and medical benefits available to disabled persons while on welfare or disability pensions should continue to be available to them once employed. Funds should be made available to disabled persons to cover certain employment-related costs, such as transportation.
113. Employment opportunities should be expanded for disabled persons by making available adequately remunerated part-time employment and work-sharing.
114. Sheltered workshops should pay disabled persons at least the minimum wage. They should also provide job placement services so that a greater number of disabled persons trained at these facilities are assisted in entering the workforce. Guidelines should be developed as to the duration, quality, and evaluation of training in sheltered workshop programs.
115. An employer's requirement of Canadian experience should be permitted only in those cases where it is demonstrated to be essential to the performance of the job.
116. Financial institutions should ensure that their lending practices do not unfairly restrict individuals in the designated groups from receiving credit.
117. Government agencies should ensure that more individuals from among the designated groups are employed to deliver those services designed to assist these groups.