

Labour Policies that **WORK**  
*A New Vision for BC*

**Coalition of BC Businesses**

**Submission to the Pay Equity Task Force**

**December 2001**

## **I. Introduction**

The Coalition of BC Businesses (the "Coalition") is pleased to make this submission to the Pay Equity Task Force on behalf of its members.

The Coalition consists of organizations that collectively represent over 50,000 small and medium-sized businesses active in all sectors of B.C.'s economy. The Coalition's objective is the development of labour and employment policies in the province that foster a positive relationship between employers and employees and provide a positive climate for economic growth, opportunities and jobs.

The Coalition unequivocally endorses the goal of equal opportunities for women in the workplace, including equal pay for work of equal value. However, the Coalition is opposed to the introduction of a legislated pay equity scheme in the private sector in B.C. to achieve this result.

In the Coalition's view, private sector pay equity legislation is ineffective and would drastically increase the heavy regulatory and economic burden already imposed on employers in British Columbia, without providing enough corresponding benefit to justify its cost. A more effective approach to achieving pay equity would be to focus on education, training and similar resources for both women and employers.

The Coalition believes pay equity legislation is inappropriate for a number of reasons.

First, a legislated pay equity scheme does not and the Coalition submits cannot work. While the concept of equal pay for work of equal value appears simple on its face, in fact it is virtually impossible to convert into workable legislation. Legislated pay equity schemes are invariably arbitrary and unpredictable. Further, a legislated pay equity scheme cannot realize its objective of eliminating the differential between women's and men's wages. Rather it may undermine the very goals it seeks to achieve by creating a burdensome administrative toll, high costs and low levels of compliance, which adversely impacts upon employers' competitiveness, growth and job creation ability.

Second, such legislation would constitute a significant governmental interference with our labour market, frustrating the efficient allocation of resources, ignoring the demand for skills in the workplace and rendering B.C. businesses less competitive.

Third, legislated pay equity assumes that unexplained disparities in earnings between women and men are a result of discrimination, and fails to take into account many non-discriminatory reasons why individuals might choose lower-paying jobs. It also overlooks many of the realities of today's workplace, such as increased flexibility in work arrangements and in job duties. Moreover, the wage disparities between men and women are narrowing over time without regulatory intervention.

The trend is that more women than men are obtaining post-secondary education, and level of education is directly correlated to average earnings. Thus, increasingly, women are displacing men in higher paid positions and occupations. Given this, and the existence of many other pressing economic and societal concerns that face our province, we submit that a legislated pay equity scheme is also unjustified.

Finally, in the present economic climate in British Columbia, employers and particularly small business employers, simply cannot face further regulatory and labour cost-related burdens being placed upon them. Now is the time for deregulation, not dramatically increasing the level of regulation through legislated pay equity in the private sector. Legislated pay equity, by its nature, is inflexible and contrary to market realities, and places those employers faced with compliance requirements at a serious competitive disadvantage.

The Coalition is concerned about protecting employees' rights. It strongly believes, however, that legislated pay equity will not further this interest. Rather, the Coalition supports existing mechanisms for addressing discrimination in the workplace, as well as new educational and other voluntary initiatives aimed at addressing any systemic discrimination, including pay inequities. These measures are more likely to bring about sex equality in the workplace.

We will elaborate on each of these points below.

## **II. Legislated Pay Equity is Arbitrary and Unworkable**

### (i) Pay Equity is Arbitrary and Complex

The apparent simplicity of pay equity's guiding principle—equal pay for work of equal value—conceals the fact that determining work of equal value is exceedingly complex, and indeed arbitrary, in its application. While we can all agree that ensuring equal pay for work of equal value is a laudable goal, the real question is how is "equal value" determined?

Legislated pay equity rejects the premise that the market determines the true value of work, since it posits that the market itself is tainted by discriminatory factors. Thus, legislation addressing pay equity generally attempts to define equal value in relation to certain key factors, such as skill, effort and responsibility. However, these factors are incapable of objective measurement; rather, they necessarily import subjectivity into the analysis, which makes the process both unpredictable and arbitrary.

Even assuming that effective and efficient valuation schemes could be found, legislated pay equity schemes are inherently arbitrary and unfair in their application. First, in the context of small business, talking about female-dominated or male-dominated jobs is often itself arbitrary.

Organizations that have less than 20 employees have few job categories, which renders meaningful comparison between them impossible. Nor can this difficulty be overcome by comparing jobs across different employers, in view of the necessity of taking countless differences among employers into account in order to achieve a meaningful comparison. Further, many of these job categories may only have one or two employees in them, and whether the employees in any given position are men or women can be as likely attributed to chance and timing as any sort of gender-related aspect of the work. As well, particularly with smaller employers and often as a matter of employee choice, initiative and retraining, many jobs are fluid and evolve over time. These jobs do not readily fit into static job categories, making comparison among them impossible.

Nor can pay equity principles be applied on a basis that can be said to be fair and just for all. Rather, whether pay equity applies to any given job or any particular group of employees is entirely dependent upon the context in which a particular job is situated. Thus, under pay equity principles, it is only female-dominated and male-dominated jobs within an organization which are affected and compared; "gender

neutral” jobs, which are perhaps most likely to have been valued by the market in a fair and non-biased manner, are ignored entirely, whether for the purposes of comparison with “gender specific” jobs or for their own valuation. This result is entirely arbitrary and illogical.

Whether or not a particular job class benefits from the application of pay equity principles depends upon a number of arbitrary factors: whether a designated percentage of occupants of the position are female at the specific time at which the evaluation is being performed; whether there is a male-dominated comparator job within the organization at the relevant time for comparison purposes; the effect of the market on the compensation paid to either of the jobs in issue at the particular time; and the particular mix of benefits and non-monetary compensation applicable to the positions in question; and the emphasis which may have been placed by the employer and its employees on monetary vs. non-monetary forms of compensation in the past.

The concept of valuation of work is also inherently complex, and thus legislated pay equity is very costly to apply. Few employers have the human resources personnel necessary to understand and administer legislated pay equity, or the expertise to perform pay equity valuations “in house”, so employers usually must hire pay equity consultants to perform the valuations, whether at the stage of defending against a pay equity complaint or as a proactive measure to prevent such a complaint and to comply with legislation, and to assist employers with legislated pay equity implementation.

The complexity and cost of compliance with pay equity legislation have a disproportionate impact upon smaller employers, who neither have the resources to perform pay equity analyses or administer a legislated pay equity scheme themselves, nor to pay an external consultant to perform analyses for them.

There is no way to overcome the arbitrariness of a legislated pay equity scheme. Such a scheme assumes that different jobs can be easily and readily compared to one another. This is simply not the case.

(ii) Pay Equity Does Not Achieve Its Objectives

One of the Coalition's greatest concerns about pay equity is that a legislated pay equity scheme does not and cannot achieve its objectives.

First, legislated pay equity does not work because employers do not comply with it. Smaller employers simply do not have the time, expertise or resources to engage in complex variations of the jobs within their organizations.

The experience in jurisdictions with pay equity, such as the federal jurisdiction and Ontario, bears out this result. Many employers, particularly smaller ones, have determined that it is too expensive and too consuming of scarce resources for them to comply. They thus take their chances that none of their employees will launch a pay equity complaint. Once there is non-compliance among some employers, it is inevitable that others will likewise refuse to comply, to maintain their competitive position in the market.

A 1995 Ontario Provincial Survey conducted by the Canadian Federation of Independent Business (CFIB) some six years after pay equity was introduced in Ontario, revealed a significant disparity between small and large employers in terms of who was complying with the legislation.

Only about 10% of employers employing 10-19 employees answered "yes" to the question "has your company followed any of the steps described in the [pay equity] legislation?" while among employers employing 100 or more employees, about 50% answered "yes". Among the most common reasons given for the lack of compliance by small and medium-sized employers were lack of time and money, and the excessive complexity and difficulty of the statutory requirements. Tellingly, the CFIB survey revealed that, almost across the board, the cost of complying with the legislation outweighed the pay adjustments that were indicated by pay equity plans.

The experience in other jurisdictions also establishes that where pay equity complaints are filed, they lead to lengthy and costly litigation, involving many experts and many years before a resolution is achieved. This is clearly an unproductive and ineffective means of addressing any prevailing problem in the workplace.

Second, legislative pay equity does not work because, in addition to deciding not to comply with legislated pay equity requirements, employers may find legitimate methods of avoiding its impact in their workplace. In this regard, another response from employers in jurisdictions that have pay equity legislation has been to restructure that part of their workforce most likely to make a pay equity complaint, by contracting out the work.

Alternatively, employers could eliminate other jobs in the workplace so that only the predominantly female positions remain; if there are no comparable male jobs in the establishment, female employees cannot complain. Finally, another response on the part of employers could be to ensure that their workforce is single-sex, as a means of precluding a successful pay equity complaint, which is also a response that inarguably worsens the situation facing many women in the workplace.

Third, the high level of non-compliance among employers in legislated pay equity jurisdictions risks undermining the importance of the goals it seeks to achieve. The Coalition opposes the introduction of regulations that will be widely ignored. Its concern is that such noncompliance could cause the goals—countering the wage gap between men and women, and ensuring equal pay for work of equal value—to be associated with legislated pay equity as the means of achieving them. This could cause other means preventing discrimination in the workplace to be discredited as well, and to lose their force and popular support.

Fourth, pay equity does not work because it has little or no impact on occupational segregation, which is likely the largest source of the gender wage gap. This is because where occupational segregation is most pronounced, there are no male comparator jobs: see Fudge, Judy, “Fragmentation and Feminization: the Challenge of Equity for Labour-Relations Policy” in Women and Canadian Policy, Brodie, Janine (ed), Toronto: Harcourt Brace and Co., Canada, 1996. The problem of occupational segregation and what have been termed “women’s ghettos” requires a solution other than legislated pay equity.

That is not to say that the notion of equal pay for work of equal value should be abandoned. Indeed, the Coalition strongly supports education for employers regarding job valuation and awareness of systematic stereotypes. Further, s. 12 of the *Human Rights Code* already provides an avenue for a complainant who feels that he/she has been discriminated against in his/her wages. Thus, the core concerns fuelling the pay equity debate can and are being addressed by means other than introducing complicated and what invariably appears to be largely ineffective pay equity legislation.

### **III. Pay Equity Distorts the Labour Market, Rendering Employers less Competitive**

In order to remain competitive, BC employers must be able to attract labour and pay employees in accordance with the “going rates”. In a free labour market, the principle of supply and demand determines these rates. For example, as need increases for certain skills, they become more valuable and typically attract higher wages. This, in turn, provides workers with an incentive to obtain the skills that employers need.

Legislated pay equity schemes, however, fail to have regard for the economic forces at play in the labour market and thus render employers unable to respond to changes in supply and demand.

An example best illustrates this point. Assume that Vancouver has a shortage of pharmacists, but an over-supply of librarians. In a free labour market, the effect of the latter is to drive down the rate of pay for librarians in the city. However, suppose that a legislated pay equity scheme is introduced in Vancouver, and based on an assessment of the equal value factors, it results in an increase in the rate of pay for librarians, to a rate that exceeds the pay for pharmacists. People are then motivated to obtain training as librarians, rather than pharmacists, and some pharmacists move from their field into the more highly compensated field of library science. However, this exacerbates the already existing shortage of supply of pharmacists, and over-supply of librarians.

Pay equity has produced this impact; it disregards supply and demand forces and the allocation of scarce resources and may produce a serious shortage of labour in areas of the economy not deemed by pay equity experts to be of high value.

To cite another example, suppose that, under a legislated pay equity scheme, an employer has performed a valuation of all job classifications, and has modified wages to ensure that each job classification is being paid according to its value under the pay equity scheme. After some time, market demand for one particular job increases dramatically, with the result that people in that job outside of the organization receive significant raises. The employer cannot attract and retain people in that job without awarding a large raise. This raises the question of what happens to other jobs within the organization.

According to pay equity principles, the wages of other jobs involving work of equal value to the job involving the raise must be raised as well, even though there is no corresponding increase in the demand for those jobs in the market. This creates an untenable situation for the employer due to the inability to recruit talented workers in the positions it needs filled, without incurring unwarranted costs throughout its organization.

The present reality in the BC marketplace is that certain skills are in high demand. Employers need to be able to attract workers with those skills in order to remain competitive. Legislated pay equity restricts employers' ability to do so.

#### **IV. Pay Equity Fails to Take into Account Non-Monetary Benefits and Preferences**

Legislated pay equity schemes assume that any wage differential between men and women is attributable to discrimination. What is not incorporated into the concept of pay equity are the non-discriminatory factors and choices which often determine individuals' decisions in and about the workplace, including lifestyle and family planning considerations.

For example, a decision to accept a lower paid job may be motivated in part by non-monetary benefits such as medical and dental coverage, paid pregnancy and parental leave, job flexibility, hours of work, vacation time and proximity between home and work. It is easy to see how such benefits may be especially attractive to women, who generally shoulder more childcare responsibilities. Female employees accepting a lower rate of pay in exchange for some or all of these benefits may do so not because they are unable to find higher paid positions, but rather because they place a higher value on the non-monetary benefits which accompany the lower rate of pay, or chose to work fewer hours in the first place.

These considerations, however, are not factored into the pay equity analysis, because they do not fit readily into most systems of work valuation and compensation. The effect of this is that employers, forced to increase the wages of employees under pay equity, may eliminate some or all of these benefits in the workplace, in favour of standardized job terms and conditions. This would clearly have a detrimental impact upon all employees who value these benefits more than an increase in their rate of pay, and likely have a disproportionate impact on female employees.

Related to this point is that, to some extent, wage differentials between men and women are caused by societal forces over which employers have no control. For example, many women may choose not to obtain higher levels of education in favour of starting a family, or prefer to work at a lower rate of pay in exchange for a flexible work schedule which allows them to meet child care responsibilities.

Finally, even where existing wage differentials can be attributed to discrimination, as opposed to the cumulative effect of individual preferences, the Coalition questions the propriety of imposing the cost of rectifying systemic discrimination on small and medium-sized employers. Clearly, governmental entities may legitimately decide to take the lead by instituting pay equity systems for their own workforces, who are large enough both to permit meaningful comparisons between job classifications and to justify the costs of implementing a pay equity scheme.

Most British Columbians, however, work for small and medium-sized employers in the private sector, who, as discussed, are least able to spare the resources required to comply with pay equity legislation. It is these employers, nevertheless, who would bear the brunt of the costs of attempting to reverse systemic discrimination through private sector pay equity legislation.

## **V. The Wage Gap Between Men and Women is Narrowing Over Time**

The Coalition submits, with respect, that focusing scarce resources on legislated pay equity schemes instead of the many other pressing economic and discrimination issues that face our province cannot be justified.

First, as stated above, legislated pay equity schemes do not eliminate wage disparities.

Second, the wage gap between men and women is in the process of narrowing over time. The 1996 Census indicates that workers' average earnings increase with their level of education. (See also: Butlin, George and Oderkirk, Jillian, "Educational Attainment: A key to Autonomy and Authority in the Workplace", December 1996, SLID Research Paper Series Catalogue No. 96-09.) Part of the disparity between the earnings of men and women can be attributed to the fact that men were historically more likely than women to obtain post-secondary education. This gap in levels of education prevented many women from obtaining access to the most highly paid jobs.

This trend has been reversed. For some time now, women have comprised a majority of post-secondary enrolment, and have received a majority of university degrees, with the proportion received by women increasing from 51 percent in 1982 to 55 percent in 1990 (Wannell and Caron, *The Gender Earnings Gap Among Recent Postsecondary Graduates, 1984-92*, Research Paper Series No. 68, Ottawa: Analytical Studies Branch, Statistics Canada, 1994).

Although female university and college graduates still earn less, on average, than their male counterparts, this gap has also narrowed over time. The wage gap is narrowest for women with graduate degrees, and in the case of women with Ph.D.s, has disappeared altogether.

As the female workforce becomes increasingly educated, this will have implications for earnings equality (Statistics Canada, *Labour Force Update: A New Perspective on Wages*, Summer 1998, at p. 15). Thus, over time much of the wage gap between men and women should disappear as a natural result of the increase in women's education relative to that of men.

This is not to say that the trend in increasing education for women will, on its own, eliminate the wage gap. It does, however, suggest that the most reliable means of eliminating the disparity between men's and women's earnings over the long term is to encourage and assist women in acquiring the skills necessary to enter higher-paying occupational fields which have, to date, been disproportionately occupied by men.

Not only does this result in higher pay for the women occupying these positions, but also it places women in higher positions within organizations, giving them more autonomy, authority and decision-making power. With this, women are positioned to make hiring and promotion decisions and act as role models and mentors to other women, with the increased likelihood that discriminatory barriers to women's participation in the workplace will be eliminated.

The intangible benefits associated with increased autonomy and authority are also likely to help women in the workforce by raising their level of job satisfaction. This process, instead of artificially imposing wage rates dictated by legislated pay equity models, is the most rational and fair means of redressing the wage disparity between men and women.

Third, there are other equally, if not more, pressing economic and societal issues for our province at this time. Many of the economic issues facing our province have a particularly detrimental impact on women, children or minority groups, and this impact is arguably more serious than the wage gap, which could be addressed by legislated pay equity.

In view of all of these considerations, the Coalition submits that scarce resources should not be allocated to a legislated pay equity scheme.

## **VI. Small Business Employers in B.C. Cannot Face Added Economic Burdens at this Time**

The Coalition's members are very concerned about our province's economic situation. Employers are already much more heavily regulated than those in other provinces and American states, making it more difficult for them to remain competitive in an increasingly global marketplace. Introducing a legislated pay equity scheme that imposes additional costs and regulation on employers in B.C. will not assist employers to become more competitive, or even remain so. Rather, such a scheme would clearly make many employers much less competitive. Given our economic times, this is simply not a result that our province can afford.

In view of the cost and complexity of legislated pay equity schemes, if it is to be introduced at all in B.C., the Coalition submits that small and medium-sized employers, who are more vulnerable to changes in their cost structure and already heavily regulated in B.C., must be excluded from such legislation. The increased burden that would be imposed by legislated pay equity is one, which cannot be borne by small and medium-sized business employers in B.C.

## **VII. Alternatives to Legislated Pay Equity**

The Coalition firmly endorses equal opportunities for women in the workplace. This is an imperative not only from the perspective of human rights law, but also to guarantee the competitiveness of our market. The elimination of artificial or discriminatory barriers to women's access to or advancement in the workplace is fundamental to the health of our economy. The Coalition supports measures aimed at removing these barriers, including outreach and mentoring programs, education regarding recruitment and selection policies, and anti-discrimination seminars.

The aim of such measures would be two-fold: to encourage women to consider careers and obtain training in traditionally male-dominated fields and positions, and to assist employers to identify and eliminate barriers to women's access and advancement in the workplace.

The Coalition also supports education of both employers and employees regarding existing mechanisms for addressing discrimination in the workplace, as well as education targeted more specifically at eliminating wage discrimination. In particular, the Coalition supports employer focused seminars to increase awareness, disseminate information on appropriate pay scales for various occupations, and educate employers about job evaluation and pay setting.

The Coalition also supports a continuing policy discourse on pay equity among all stakeholders as a means of encouraging all employers in the province to inform themselves about pay equity and to do their best to ensure that jobs in their workplaces are compensated in relation to their real value.

## **VIII. Conclusion**

Employers in B.C. are deeply concerned about our province's economic situation and competitiveness. The Coalition believes that we, as a province, need to rethink workplace regulation to make B.C. a more effective and competitive market, and to make the workplace more responsive and fair to the changing needs of employers and employees.

The Coalition does not see legislated private sector pay equity as a means of furthering these goals. Rather, because of its cost and complexity, pay equity will dampen the potential vibrancy of our provincial economy, by making our employers less competitive in the Canadian and North American marketplaces.

A loss of competitiveness translates quickly and inevitably into a loss of jobs. Legislated pay equity cannot serve any useful purpose if British Columbians are, as a result, unable to find employment.

Most significantly, although the Coalition is concerned about protecting employee rights, it does not believe that legislated pay equity can be effective in furthering their protection. While the Coalition therefore opposes the introduction of any pay equity legislation involving mandatory compliance for private sector employers in the province, it does, however, support educational and other voluntary measures aimed at addressing pay inequities and, more generally, at promoting women's meaningful and full participation in the working world.

## **Coalition of BC Businesses – Member Organizations**

BC & Yukon Hotels' Association  
BC Automobile Dealers Association  
BC Chamber of Commerce  
BC Horticultural Coalition  
British Columbia Restaurant and Foodservices Association  
British Columbia Technology Industries Association  
British Columbia Trucking Association  
Building Owners & Managers Association  
Building Supply Dealers Association  
Canadian Federation of Independent Business  
Canadian Home Builders' Association  
Canadian Restaurant & Foodservices Association  
Canadian Retail Hardware Association  
Council of Tourism Associations  
Greenhouse & Nursery Trades  
Independent Contractors & Businesses Association  
Insurance Brokers Association of BC  
International Council of Shopping Centers  
Recreation Vehicle Dealers Association  
Retail Council of Canada  
Retail Merchants' Association of BC  
Steel Service Centre Institute  
Vancouver Board of Trade  
Western Silvicultural Contractors' Association