

SEX, POLICIES AND PAYROLL

by

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## **Abstract**

In this thesis I examine the efficacy of the three major governmentally supported systems that address gender inequalities in the labour market in Canada, i.e. the pay equity system, the maternity and parental benefits system within the employment insurance system and the minimum wage system. I compare these systems to alternative concepts like a living wage and a basic income which are the most commonly discussed options for resolving gender inequalities in the labour market. I conclude that all the reviewed systems fail to provide women equal access on the labour market and that the main cause for this is their role as mothers. In order to stop this erosion of the labour market position I propose to encourage women to maximally engage in the labour market as early as possible after giving birth. An important step toward this goal might be achieved with a governmentally funded and regulated childcare service which is free of charge for everybody who is working.

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## **Dedication**

*For my beloved family,  
Mathias, Annatina and Marietta.*

## Chapter 1

### Introduction, Methodology, Objectives and Concepts

#### 1.1 Introduction

The increased participation of women in the paid work force has been one of the most significant social trends in Canada in the past century. Seven and a half million Canadian women had a job in 2004, twice the figure in the mid-1970s. Overall, 58% of all women aged 15 and older are now part of the paid work force, compared to 42% in 1976.<sup>1</sup> The increased participation of women in the labour market and the contribution of women's earnings to household income has been a key factor in reducing family poverty and in equalising the distribution of income in families.<sup>2</sup> Thus one could think that the issue of economic equality for women is rather outdated, given the opportunities women have for higher education and more equal division of work between men and women. Unfortunately women's changing economic and social roles have not been matched by changing economic and social policies that reflect the rising participation of women in education and economic activity.

Even though women represent a significant portion of the labour work force today, they are systematically disadvantaged on the labour market as compared to men. This inequality is manifest in several aspects of the labour market, for example wage inequality, occupational segregation, and unequal distribution of paid and unpaid work.

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<sup>1</sup> During the same period the proportion of men who were employed fell from 73% to 68%. Data from: Statistics Canada, 2006, *Women in Canada, A Gender-based Statistical Report*, Ottawa: Statistics Canada, Cat. 89-503-XIE, at 103. [*Women in Canada, A Gender-based Statistical Report*].

<sup>2</sup> Jane Pillinger, 2002, *Pay Equity in the Public Services*, Final Research Report for the PSI/ILO Partnership on Pay Equity as part of the PSI Pay Equity Campaign, at v.



One direct negative consequence of these labour market inequalities is the unacceptably high poverty rates of Canadian women.<sup>3</sup>

International data show that the gender pay gap in the OECD countries slightly decreased between 1985 and 1995 and yet in 1995 women's average earnings were lower than men's in all countries of the OECD. The biggest pay gap was found in Japan and Korea and the smallest pay gap in France, Belgium and Denmark.<sup>4</sup> One possible reason for the lower wage gap between women and men may be that these countries provide affordable public child care services at high quality and they provide more family friendly workplaces.<sup>5</sup>

In Canada, the gender wage gap is the fifth greatest in the advanced industrial countries and even bigger than in the U.S..<sup>6</sup> Women continue to earn less than their male counterparts, regardless of age, experience, labour market attachment or occupation.<sup>7</sup> Even though women's incomes are lower than those of men in all age groups, there is considerable variation in the gap between the incomes of women and men in different age ranges. In 2003, for example, the average incomes of women between the ages 35 and 54, the range in which women's incomes are the highest, were around 60% of those of their male counterparts, while the figure was close to 70% for both women aged 25 to 34 and

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<sup>3</sup> Since 1983, the poverty rate for women has fluctuated between 12% and 20% and was at 15.1% in 2006 for all women aged 19-64: Data from Feminist Alliance for International Action (FAFIA), 2008, '*Women's Inequality in Canada*', Submission of the Canadian Feminist Alliance for International Action to the United Nations Committee on the Elimination of Discrimination against Women, at 9. [*Women's Inequality in Canada*].

<sup>4</sup> Pillinger, 2002, supra n. 2 at v.

<sup>5</sup> Canadian Labour Congress, 2008, '*Women in the Workforce: Still a Long Way from Equality*', A Campaign for Women's Economic Equality, at 2. [*Women in the Workforce: Still a Long Way from Equality*].

<sup>6</sup> *Ibid*, at 1.

<sup>7</sup> Pay Equity Task Force, Final Report, 2004, '*Pay Equity: A New Approach to a Fundamental Right*', Minister of Justice and Attorney General of Canada, and the Minister of Labour, Catalogue Nr. J2-191/2003E, at 9. [*Pay Equity: A New Approach to a Fundamental Right*].

women over 55.<sup>8</sup> Women's earnings are below those of their male counterparts regardless of their level of education. Looking at a cohort of men and women aged 25-34 with bachelor's degrees in the same major, Hecker found women's pay below that of men in 22 out of 23 majors. From men and women aged 35-44, women's pay was lower in 24 out of 26 majors compared.<sup>9</sup> Men with a university degree, for example, surpassed \$70,000 on average since 1980 compared to a female university graduate who earned \$48,260 for working full-time for a full year in 2000.<sup>10</sup> A U.S. study done in 2003 by Babcock and Laschever found that even starting salaries for male students graduating from Carnegie Mellon University with master's degrees were about 7 percent higher (almost \$4,000) than the starting salaries for similarly qualified women.<sup>11</sup> Other analyses of earnings show that in all types of standard work and non-standard work arrangements women's income consistently averages below men's. This indicates that in all income groups women's work is financially less rewarded.<sup>12</sup>

One reason for the persistence of income inequality between men and women is occupational segregation by gender. Such segregation can be found internationally and is still on the rise in some countries. This indicates that women who have recently entered the labour market have gone into sectors and occupations already dominated by women.<sup>13</sup>

A significant portion of Canadian women remain concentrated in few occupational

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<sup>8</sup> 'Women in Canada, A Gender-based Statistical Report', supra n. 1 at 134.

<sup>9</sup> Daniel E. Hecker, 'Earnings of College Graduates: Women Compared with Men,' *Monthly Labour Review* 121 (March 1998): 62-71, at 64, 65.

<sup>10</sup> Statistics Canada, 2001, 'Analysing Earnings. Overview: University education, experience pay off in higher earnings', 2001 Census, (Analysis series).

<sup>11</sup> Linda Babcock, and Sara Laschever, 2003, 'Women don't ask, Negotiation and the Gender Divide', Princeton University Press.

<sup>12</sup> Monica Townson, 2009, 'Women's Poverty and the Recession', Ottawa: Canadian Centre for Policy Alternatives, at 21.

<sup>13</sup> European Commission, 2008, 'Report on Equality between women and men – 2008', Directorate-General for Employment, Social Affairs and Equal Opportunities, Unit G.1, (Luxembourg: Office for Official Publications of the European Commission), at 8. ['Report on Equality between women and men – 2008'].

groups. In 2006, for example, 67% of all employed women were working in either teaching, nursing or health related occupations, clerical or other administrative positions or sales and service occupations; the comparable figure for men was 30 percent. In fact, there has been virtually no change in the proportion of women employed in these traditionally female-dominated occupations over the past decade.<sup>14</sup>

That the majority of employed women continue to work in nurturing occupations is not intrinsically disadvantageous for women if those jobs are highly valued. The problem is, however, that labour market segregation is often accompanied by low wages and systematic undervaluation of female predominant segments, despite comparable demands on education and job skills. Since women are highly overrepresented in the ten lowest paying occupations and, conversely, highly underrepresented in the ten highest-paying occupations,<sup>15</sup> occupational segregation restricts and diminishes women's ability to realize their full economic potential.

Yet another cause for the prevailing wage inequality between women and men can be found in the unequal distribution of paid and unpaid work and in gender differences in work arrangements. Women in Canada are more likely than men to work in part-time jobs, temporary jobs, or in multiple jobs.<sup>16</sup> In 2008, for example, almost 40% of employed women, compared with 30% of employed men, were in these non-standard work arrangements. In 2004, over 2 million employed Canadian women, 27% of the total female workforce, worked as part-time employees, compared with just 11% of employed

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<sup>14</sup> Statistics Canada, 2006, *Women in Canada: Work Chapters Updates*. Ottawa: Statistics Canada Cat. 89F0133XIE, at 9. [*Women in Canada: Work Chapters Updates*]; *Women in Canada*, supra n. 1 at 14.

<sup>15</sup> *Pay Equity: A New Approach to a Fundamental Right*, supra n. 7 at 14, 16.

<sup>16</sup> *Women's Inequality in Canada*, supra n. 3 at 62.

men.<sup>17</sup> These non-standard work arrangements are more likely to be paid less than full-time jobs and they tend to be associated with lower occupational security, in other words they are the first to be eliminated in tough economic times.

When faced with unemployment, women typically receive less Employment Insurance benefits because their irregular working patterns do not allow them to accumulate enough working hours to be eligible for the benefits. And even if they do qualify, the benefits they receive are replacing just 55% of their lower earnings. Moreover, working in underpaid employment reduces women's chances of saving adequately for their retirement and thus exposes women to a higher risk of poverty when elderly.

In contrast to the pattern of paid working hours, two-thirds of the unpaid work<sup>18</sup> in Canada is done by women.<sup>19</sup> Women and men in Canada have similar total workloads but men spend most of their time, 4.5 hours a day, in paid work and 2.7 hours in unpaid work. Women spend 2.8 hours per day in paid work and 4.4 hours in unpaid work. In total, women perform two-thirds of the 25 billion hours of unpaid work done by Canadians every year.<sup>20</sup>

It is commonly believed that women choose to work part-time or on a temporary basis because this allows them to more easily combine paid employment with family

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<sup>17</sup> 'Women in Canada, A Gender-based Statistical Report', supra n.1 at 109.

<sup>18</sup> Statistics Canada divides unpaid work into three categories: housework, care of children, and care and assistance to seniors. Volunteer work with community or charity organizations is not included. While this definition is limited, it is a significant first step in measuring and recognizing women's unpaid work. Definition from: UN Platform for Action Committee Manitoba, 'Women and the Economy', A Project of UNPAC, Online available at <http://www.unpac.ca>.

<sup>19</sup> Cindy Hanson, Lori Hanson, and Barbara Adams, 2001, 'Who Benefits: Women, Unpaid Work and Social Policy', Canadian Research Institute for the Advancement of Women, CRIAW, online available at <http://www.criaw-icref.ca/factSheets/hanson.htm>, at 4.

<sup>20</sup> Penney Kome, 2000, 'Women's unpaid labour subsidizes the global economy', The CCPA Monitor, June 2000.

responsibilities. And indeed, in 2004, a total of 18% of employed women said they worked part-time either because of child care or other personal or family responsibilities, compared with only 2% of male part-time employees. In the same year 26% of all female part-time employees were searching, unsuccessfully, for full-time employment.<sup>21</sup> Thus the wage gap resulting from gender-based differences in hours of work is disturbing and solutions are sometimes contradictory. Possible solutions may be that women are encouraged to work more hours or that they are compensated for their family responsibilities. Another solution consists in giving mothers a *real* choice to stay at home with their children or work outside the home by establishing federal childcare which is affordable and of high quality. These competing suggestions need to be addressed in future governmental initiatives that aim at reducing sex-based wage inequalities.<sup>22</sup>

Gaps between women and men penetrate other aspects of work. For example, reconciliation of professional and private life leads to work arrangements which do not fully exploit people's skills.<sup>23</sup> Evidence in support of this is the sharp fall in the employment rate for women with children less than age 3 (-13 points on average), while the rate for men and women under age of 55 without children is rising. As a result, the employment rate for women with dependent children younger than age 16 is only 73% compared with 80% of women under age 55 without children and 85% and 87% for men respectively.<sup>24</sup> Even though overall the employment rate of women with children has sharply increased in the last decades, the statistics for female lone parents are less

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<sup>21</sup> 'Women in Canada, A Gender-based Statistical Report', supra n. 1 at 109-110.

<sup>22</sup> Nitya Iyer, 2002, 'Working Through the Wage Gap: Report of the Task Force on Pay Equity', Report commissioned by the Attorney General of British Columbia, Executive Summary, at 2.

<sup>23</sup> 'Report on Equality between women and men – 2008', supra n. 13 at 8.

<sup>24</sup> 'Women in Canada: Work Chapters Updates', supra n. 14 at 7-8.

encouraging. In 2004, only 46% of lone mothers with children under the age of 3 were employed, compared with 67% of their counterparts in two-parent families.<sup>25</sup>

It is not entirely surprising that mothers and especially single mothers with very young children are less likely to be employed than women without children. One key reason why women with children cannot accept full-time or part-time employment is the widespread lack of available and affordable, quality child care. One direct consequence of such part-time employment is a reduction of up to 57% of lifetime earnings for women with children as compared to the earnings of women without similar family ties.<sup>26</sup> In contrast, Canadian men who have had children have higher incomes than those without children (133.6 % in 1996).<sup>27</sup> Time spent outside full-employment also reduces opportunities for professional advancement and reduces access to public benefit programs like employment insurance and pension benefits. Ideally, women and men should have similar economic opportunities and equal opportunities to enjoy meaningful unpaid work, such as parenting.<sup>28</sup>

All the above mentioned inequalities lead to fewer financial rewards for women's work. A higher poverty rate for women is one direct consequence. Since 1983, the poverty rate for women has fluctuated between 12% and 20% and was 15.1% in 2006 for all women aged 19-64,<sup>29</sup> compared to 13.6% for men in the same year and age group.<sup>30</sup>

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<sup>25</sup> 'Women in Canada, A Gender-based Statistical Report', supra n. 1 at 109.

<sup>26</sup> Lorna A. Turnbull, 2001, *Double Jeopardy: Motherwork and the Law*, (Toronto: Sumach Press, 2001), at 15-16.

<sup>27</sup> Shelley Phipps, Peter Burton, and Lynn Lethbridge, 2001, 'In and out of the Labour Market : Long-term Income Consequences of Child-Related Interruption in Paid Work', *Canadian Journal of Economics*, 34(2) : 411-29, at 412.

<sup>28</sup> Judy Goldberg Dey, and Catherine Hill, 2007, '*Behind the Pay Gap*', American Association of University Women Educational Foundation, AAUW, Washington, at 3.

<sup>29</sup> '*Women's Inequality in Canada*', supra n. 3 at 9.

This difference was mainly driven by the higher poverty rates for unattached women<sup>31</sup> and single-parent mothers: unattached women had a poverty rate of 34.1 percent in that year, six points higher than the rate for unattached men. And the poverty rate for single-parent mothers was 42.6% in 2006, the highest rate for any group.<sup>32</sup> The increase of the proportion of women who are lone parents increased from 5% in the early 1970s to 9% in 2001. Indeed, in 2001, there were over 1 million female-headed lone-parent families in Canada.<sup>33</sup> In 2003, 38% of all families headed by lone-parent mothers had incomes which were below the after-tax Low Income Cut-offs (LICO).<sup>34</sup> In comparison, this was the case for 13% of male lone-parent families and 7% of two-parent families with children. As a result, lone-parent-families headed by women continue to be home to a disproportionate share of all children living in low-income situations. In 2003, 43% of all children in low-income families were living with a single female parent, whereas these families accounted for only 13% of all children under age 18 that year.<sup>35</sup> Poverty, with its devastating negative direct and indirect consequences for health, well-being and

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<sup>30</sup> Statistics Canada, *Persons in low income before tax, by prevalence in percent (2003 to 2007)*, Table 202-0802, Catalogue no. 75-202-XIE. [*Persons in low income before tax, by prevalence in percent (2003 to 2007)*].

<sup>31</sup> Unattached individuals are people living on their own or with non-relatives. Unattached individuals are usually broken down into four groups: women under 65, men under 65, women 65 and older, men 65 and older. The group referred to here were women under 65. Data from: National Council on Welfare, 2006, *Poverty Profile 2002 and 2003*, (Ottawa: National Council on Welfare, 2006).

<sup>32</sup> *Persons in low income before tax, by prevalence in percent (2003 to 2007)* supra n. 30; National Council on Welfare, 2006, *Women and Poverty*, (Ottawa: National Council on Welfare, 2006).

<sup>33</sup> *Women in Canada, A Gender-based Statistical Report*, supra n. 1 at 11.

<sup>34</sup> Canada has no official definition of poverty. Statistics Canada does not refer to the LICO as a poverty line. Instead, LICO's are 'meant to convey the income level or threshold at which a family may be in *strained circumstances* because it has to spend a greater portion of its income on the basics (food, clothing and shelter) than does the average family of similar size'. Researchers and analysts, however, agree that living in strained circumstances in a wealthy country like Canada constitutes relative income poverty.

<sup>35</sup> *Women in Canada, A Gender-based Statistical Report*, supra n.1 at 15.

opportunity for economic attainment also affects the offspring of the poor. Growing up in poverty has an adverse impact on children's future economic opportunities.<sup>36</sup>

In summary there are numerous gender inequalities in the labour market and a variety of factors are causing these inequalities. Sex-based wage inequalities have and will continue to have significant negative economic and social impact on women and on society in general and – as shown above – adversely affect women in a number of ways. The spectrum of causes and consequences of gender inequalities on the labour market is broad and there are several possible measures that might improve women's working conditions. In this thesis I review several major governmentally supported systems that address gender inequalities in the labour market in Canada and I discuss their efficacy in reducing these inequalities. This includes pay equity systems, minimum wage laws, and the maternity and parental benefits in the employment insurance system. I compare these systems that are currently in effect to concepts like a living wage or a basic income which are among the most commonly discussed future solutions to resolving these issues. I conclude that no single policy measure is sufficient to reduce all gender inequalities in the labour market and that a combination of systems is needed to ensure equal economic opportunity in employment for women and men.

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<sup>36</sup> Iyer, 2002, *supra* n. 22 at 10.



## 1.2 Methodology, Objectives and Concepts

In this thesis I examine three different Canadian publicly funded systems: the federally administrated pay equity system; maternity and parental benefits within the *Employment Insurance Act*; and the minimum wage system. I chose these three systems because of their historical legal importance and because all have or had as their goal to promote fairer treatment of female employees in the labour market. The relationship of pay equity and maternity benefits to women is obvious. As for minimum wage laws, their original goal was to protect women from exploitation; today it has broadened to guarantee a ‘decent’ or ‘fair’ wage for all workers in the covered sectors. Since the sectors that are primarily affected by low wages are predominantly female, fairer treatment of women is an indirect effect of a minimum wage system. Thus all three systems are key in eliminating alleged women’s inequalities in the labour market and represent important policy instruments for promoting greater wages and increasing women’s income.

I have added to the analysis of these three publicly funded systems the concept of a ‘living wage’, and a ‘basic income’, both of which are grassroots-based campaigns. These two non-governmental initiatives aim to raise the income of low-income families and low-wage workers to a ‘liveable’ level and to improve women’s equality in the labour force market.

My research included a review of the literature on national and provincial policies that are related to the above mentioned governmental and non-governmental systems. I searched official publications from government, from community agencies and research

organizations. I also relied on reports by the different community based campaigns and non-governmental organizations.

My methodological approach is comparative. The focus of this thesis is on the Canadian labour force market and its related policies. Primarily, I describe the applicable governmental and provincial legislations and I discuss and compare these schemes. In the treatment of pay equity, for example, federal and provincial statutes coexist. This allows a direct comparison between the two and thereby allows unveiling possible variations of the two systems. A similar comparison could be made between the federal maternity and parental provisions and Quebec's Parental Leave Program. I have included international comparisons where it was needed to understand the domestic situation. This was the case in the analysis of the living wage because the living wage campaign in Canada is still in its early stages and not much local data is available.

In my treatment of pay equity, I analyse the two major Canadian pay equity models. I pay particular attention to the federally administered complaints-based pay equity system under the *Canadian Human Rights Act* since under this system women's economic equality in the workforce has not been accomplished. I use the most important cases of the last 30 years with the biggest negative impact on women's equality rights to illustrate the deficits of the federal system. The second major pay equity system is the proactive legislation of Ontario, which is the most far reaching of all Canadian legislation. In my analysis of the *Pay Equity Act* I highlight the benefits and drawbacks of the pay equity system in Ontario.

I identify significant modifications of the maternity and parental system in Canada by comparing the former *Unemployment Insurance Act* to the current *Employment*

*Insurance Act*. I cite particularly those case studies that paved the way for the above mentioned legislation to conform the *Canadian Human Rights Act*. On the example of *Quebec's Parental Leave Program* I outline how the federally regulated provision was implemented differently in this province.

For the review of the Canadian minimum wage system I mainly use statistical data on 'Canadian low-wage workers'. With this statistical data, I illustrate the demographic, social, economical, and labour force profile of a typical minimum wage worker. As women account for the vast majority of minimum wage workers in all age groups, a minimum wage worker is typically female. I use official government databases. For the employment effects and social impacts of minimum wages I analyse opinions from groups that advocated for minimum wage and from groups that opposed it. For this I focus on the entire country and less on data from single provinces. I also include some data from other OECD countries, the U.S. and the U.K market, where much research has been done on this topic.

The concept of a living wage, by contrast, is a relatively recent concept worldwide. The Canadian living wage campaign is in particularly early stages. To provide a broad basis for discussion I include much more international data in this section. I review the history of the living wage in the U.S., the birthplace of the living wage movement. The history of the living wage in the U.K., led by the citizens group 'London Citizens' brings in some different European aspects which may help – together with the collected U.S. information – to analyse the reasons for the small impact of the living wage campaign in the Canadian labour market.

For the analysis of the implementation of a “basic income”, also known as guaranteed liveable income, I offer a general overview of basic income and its impact – social and economic – on the labour market. The discussion of the basic income remains theoretical, since such a system has not been introduced anywhere in the world.

In the last chapter I discuss the findings of the preceding chapters and sections and I attempt to answer the main questions of this thesis, which were raised in the introduction. For this I discuss causes for the failure of social policies to provide equal opportunities for women in the labour market. I conclude that all the reviewed systems failed because the main driving force for the persistent discrimination of women in the labour market lies in their role as mothers. Then possible solutions to the erosion of the labour market due to motherhood are discussed and possible future roles of women in society are outlined.

### 1.3 Chapter Description

The thesis is divided into three chapters. In the second chapter I analyse the systems that address women's wage and labour inequality in Canada. First I review the pay equity system, which specifically addresses sex-based wage inequalities. I present a brief overview of the existing legislation and Canada's international commitments. This is followed by a description of the two existing Canadian models for private sector pay equity legislation: the complaints-based model and the proactive model, including Ontario's legislation, which was Canada's first proactive pay equity law to apply to the private sector. The review of the two models is focussed on the adjudication under the *Canadian Human Rights Act* and the legislation of the *Pay Equity Act* in Ontario. I then compare the two existing models with the recently introduced '*Public Equitable Compensation Act*'. I conclude that both the present federal system and the alternative system proposed in the federal '*Public Equitable Compensation Act*' do more harm than good to the postulated aim of women's economic equality in the workforce.

The second part of chapter II is devoted to an analysis of maternity and parental benefits within the former federal '*Unemployment Insurance Act*' and the '*Employment Insurance Act*'. This represents another initiative to address wage inequalities on the labour market. I start with a brief overview of the '*Employment Insurance Act*' and its impact on women's unemployment. The main part of this chapter is devoted to the discussion of maternity and parental benefits and its impact on women's labour market position and on whether these policies are enhancing gender equality. I end this section with the conclusion that current maternity and parental leave benefits fail to promote women's equality and that urgent reform is needed.

The third part of chapter II is divided into four sections. The first section begins with a general introduction to the nature of poverty in Canada. This is followed by an overview of arguments in favour of maintaining a system like the minimum wage, living wage or a basic income. All these systems are praised by different groups to be effective tools to fight poverty.

The second section contains an analysis of the Canadian minimum wage system. I start with a short overview of the history of minimum wage in Canada. This is followed by a profile of minimum wage workers and their coverage. Then, I analyse the employment effects and social impacts of the minimum wage by presenting the main arguments of those who oppose the idea of increasing minimum wage. I end with the conclusion that the minimum wage is only one tool among many and should be considered as part of a greater anti-poverty strategy.

The third section aims to evaluate whether the introduction of a living wage would raise the income of low-wage workers and low-income families and whether the concept of a living wage represents a reasonable tool to reduce poverty. For this, I present the historical background of living wage campaigns in the U.S., England and Canada and I outline similarities and differences. I explain how the living wage is calculated. And, finally, I demonstrate the assets and drawbacks of the living wage by analysing the arguments of the opponents to the living wage. I close with the finding that living wage, like minimum wage, is not effective in fighting poverty if it is not accompanied by other measures against poverty.

In the last section I discuss the idea of a basic income. I start with a brief overview of the history of a basic income in Canada and consider the arguments for and

against such a measure. I conclude that a basic income is – again – one among many others means to reduce poverty.

In the third chapter I compare the systems that are outlined in the previous chapters and I discuss their impact on the labour market. I find that today's legislation and alternative models such as a living wage or a basic income do not guarantee equal access for women in the labour market. The main cause for this lack of equal opportunities for women on the labour market is their role as mothers which keeps women away from the labour market and thereby contributes to the erosion of their labour market position. Based on this I draw possible scenarios regarding how it might be possible to make women's work pay. I end with the conclusion that the best solution to stop the erosion of the labour market position induced by motherhood is to encourage women to engage maximally in the labour market as early as possible after giving birth. This might be promoted with a governmentally funded and regulated childcare service which is free of charge for everybody who is working.

## Chapter 2

### Pay Equity, Maternity and Parental Benefits, Minimum Wage, Living Wage, and the Idea of a Basic Income

#### 2.1 Pay Equity

##### 2.1.1 Introduction

The principle of equal pay for work of equal value is guaranteed on international and national legal levels. It has broad political support and is socially widely accepted.<sup>37</sup> Nevertheless, women continue to have lower income for equal work than men in most industrialized countries. In Canada, the gender wage gap appears to be deeply rooted in the economy.<sup>38</sup> It is the fifth greatest in the advanced industrial (OECD) countries and is bigger than in the U.S.<sup>39</sup> Although over the last decades women's social position has much improved and women are playing stronger roles in the workplace today, they still earn less than men, regardless of where they work in the economy, and regardless of age, education, experience, labour market attachment or occupation.<sup>40</sup>

According to Statistics Canada, in 2005, women working full-time for the full year earned 70% of the wages earned by males.<sup>41</sup> This situation has remained virtually unchanged in the past decade and has improved slowly since data was first collected in

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<sup>37</sup> Respect for the fair value of work of women and the fight for pay equity is a very important concern in public opinion. For instance, a CROP-La Presse survey carried out in 2005 indicated that concerning equality between men and women, pay equity was the chief concern for the population of Quebec. A recent survey by the Ontario Federation of Labour showed that pay equity ranked second in a list of specific priorities for those surveyed: in Andrée Côté and Julie Lasseonde, '*Status Report on Pay Equity in Canada*', National Association of Women and the Law (NAWL), Final Report of the Workshop on Pay Equity, (Ottawa 2007), at 10.

<sup>38</sup> '*Pay Equity: A New Approach to a Fundamental Right*', supra n. 7 at 9.

<sup>39</sup> '*Women in the Workforce: Still a Long Way from Equality*', supra n. 5 at 1.

<sup>40</sup> Canadian Labour Congress, 2005, '*Pay Equity – At the Heart of Equality*', at para 2.

<sup>41</sup> Statistics Canada, 2001, '*Earning of Canadians*', 2001 Census, (Analysis series).



1967. Back then women earned 58 cents to each dollar earned by men.<sup>42</sup> The gap is slightly greater for university-educated women, who earned 32% less than men in 2005, which represents a worsening as compared to a decade ago when the gap was at 25%.

Unions have made a significant difference to the gender wage gap. Unionized women earn 93% as much as unionized men, while non-union women earn 75% as much as non-union men. However, unionization rates for women working in the private sector are lower than among men (14% compared to 23%).<sup>43</sup>

Despite changes in labour force participation, marital and family status, training, and education, the effects of the historical undervaluation of work done by women are evident today in a persistent wage gap between women and men.<sup>44</sup> According to the British Columbia government's 2002 Task Force on Pay Equity 'there is no dispute that substantial sex-based wage disparities exist in British Columbia and across Canada'.<sup>45</sup>

The following section aims to evaluate different Canadian pay equity approaches that address women's labour market disadvantage and foster greater pay equality between women and men. The assets and drawbacks of two established models – the complaint-based and the proactive model – will be scrutinized and analysed. First, I will present an overview of the present concept of pay equity and equal pay for equal work. I will introduce the currently existing legislation and international commitments of Canada. Second, I will compare the different pay equity models, focussing on the adjudication under the *Canadian Human Rights Act* and the legislation of the *Pay Equity Act* in Ontario. Third, I will analyze newly introduced legislation, the *'Public Equitable*

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<sup>42</sup> Human Resources and Social Development Canada, 1998, '*Labour Law Analysis*', Strategic Policy and Partnerships, at 1. [*'Labour Law Analysis*'].

<sup>43</sup> '*Women in the Workforce: Still a Long Way from Equality*', supra n. 5 at 1.

<sup>44</sup> '*Labour Law Analysis*', 1998, supra n. 42 at 2.

<sup>45</sup> Iyer, 2002, supra n. 22, Executive Summary, at i.

*Compensation Act*'. I will embed it in the context of the recommendations of the Federal Pay Equity Task Force as well as within the recommendations of the International Labour Office (ILO). Fourth, I will conclude that the today's federal system does more harm than good to the postulated aim of women's economic equality in the workforce. I suggest replacing it with proactive pay equity legislation as was recommended by the Federal Pay Equity Task Force. Finally the alternative system proposed in the '*Public Equitable Compensation Act*' misconceives the actual problems of the current federal system and disregards national and international recommendations for a successful implementation of pay equity legislation.

### **2.1.2 Concept of Pay Equity and Equal Pay for Equal Work**

*Pay Equity* means that different jobs, which are equally demanding and are being traditionally performed predominantly either by men or by women, are to be remunerated equally.<sup>46</sup> Usually, the comparison of dissimilar work is done by evaluating each job using fixed criteria. Most often, the criteria are skill, effort, responsibility entailed by the job and the working conditions under which it is performed.<sup>47</sup>

Pay equity builds on the older notion of *equal pay for equal work* which addresses the more overt form of discrimination in the payment of wages on the basis of sex. It means that directly comparable jobs performed by men and women must receive equal remuneration. According to a report issued in 2001 by the Canadian Human Rights Commission<sup>48</sup>, equal pay for equal work has been of little use. The majority of Canadian

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<sup>46</sup> Linda McKay-Panos, 2007, '*Pay Equity: Still an Issue?*', Online at:[http://findarticles.com/p/articles/mi\\_m00JX/is\\_/ai\\_n25001746](http://findarticles.com/p/articles/mi_m00JX/is_/ai_n25001746), at para 3.

<sup>47</sup> Iyer, 2002, supra n. 22 at 2; see also *Ontario Pay Equity Act*. R.S.O. 1988, c. P.7, s. 5.

<sup>48</sup> Canadian Human Rights Commission (CHRC), '*Time for Action. Special Report to Parliament on Pay Equity*', Ottawa: Human Rights Commission, 2001, at 3. [ '*Time for Action*' ].

women are concentrated in low-paid, female-predominant fields. This occupational segregation makes it difficult to find direct comparators required under equal pay for equal work legislation. In other words, women doing low-paid ‘women’s-work’, such as secretaries, nurses or telephone operators can usually not compare their salaries with men doing the same work. Equal pay for work of equal value – pay equity – acknowledges this reality and allows comparisons between different types of female- and male-dominated jobs in order to locate and remove wage discrimination.<sup>49</sup>

However the goal of pay equity is not to reduce gender segregation in the workforce. The goal of pay equity laws is to raise the wages in undervalued jobs that are typically done by women and to pay these jobs fairly given their value.<sup>50</sup> Thus pay equity is directed at abolishing underpayment of women’s work while ‘accepting’ occupational segregation.<sup>51</sup>

### **2.1.3 Legislation in Canada**

In Canada, provisions on equality of pay may be found in human rights legislation, employment standards legislation, and pay equity legislation.<sup>52</sup> In general, human rights and employment standards legislation tend to address open discrimination in wage differences between men and women who hold the same or similar employment. In contrast to this, pay equity laws provide a systematic and mandatory approach to eliminate systemic sex discrimination in wages.<sup>53</sup>

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<sup>49</sup> *Ibid.*

<sup>50</sup> Marie-Thérèse Chicha, 2006, ‘*A comparative analysis of promoting pay equity: methods and impacts*’, ILO, Geneva, 2006, at iii.

<sup>51</sup> Pat Armstrong, and Mary Cornish, 1997, ‘Restructuring Pay Equity for a Restricted Work Force: Canadian Perspectives’, *Gender, Work and Organization* 4(2): 67-86, at 71.

<sup>52</sup> ‘*Labour Law Analysis*’, 1998, supra n. 42 at 3.

<sup>53</sup> McKay-Panos, 2007, supra n. 46 at para 4.

The majority of Canada's thirteen jurisdictions have more than one of the three types of legislation, which may be attributed to the fact that these laws target different segments of the labour market, such as employers of differing sizes, and private and/or public sector employers. Some of these different laws do not address exclusively wage discrimination (i.e. human rights legislation), but rather target systemic discrimination.<sup>54</sup>

### **2.1.3.1 International Obligations**

The principle of non-discrimination in wages is a well-established part of international human rights law. As a participant in the international community through the United Nations and the International Labour Organization, Canada is party to a number of legally binding international covenants and conventions that promote respect of human rights, political and civil rights and economic, social and cultural rights.<sup>55</sup>

Various international instruments oblige Canada to eliminate sex-based discrimination in employment and, in particular, to eliminate sex-based wage discrimination. Pay equity has been recognized internationally as a fundamental human right.

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<sup>54</sup> 'Labour Law Analysis', 1998, supra n. 42 at 3.

<sup>55</sup> Canada's International Obligations include: 1) the *ILO Convention No. 100*, the Convention concerning equal Remuneration for Men and Women for Work of equal value, adopted by the International Labour Organization in 1951 and ratified by Canada in 1972, requires that governments take active measures to achieve equal pay for work of equal value; 2) the *International Covenant on Economic, Social and Cultural Rights*, adopted by the United Nations in 1996 and ratified by Canada in 1976, lists equal pay for work of equal value as a fundamental right and stresses its importance to the achievement of fairness in conditions of work; 3) the *International Covenant on Civil and Political Rights*, adopted by the United Nations in 1996 and ratified by Canada in 1976, which contained a number of general protections for human rights; 4) the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, adopted by the United Nations in 1979 and ratified by Canada in 1981, which set out a variety of principles and measures designed to eliminate discrimination against women 'in all its forms and manifestations'; and, finally 5) the *Beijing Declaration and Platform for Action*, the principles and strategies laid out in these documents, insofar they dealt with employment situation of women, were based on the premise that equality in employment is not a luxury but a prerequisite for a sustainable world economy.

## **2.1.3.2 Federal and Provincial Jurisdiction**

### **2.1.3.2.1 Human Rights Legislation**

Pay equity is a human right protected by the *Canadian Human Rights Act* (CHRA), which was enacted in 1977 by Parliament. Section 11 of the Act prohibits differences in wages between female and male employees who work in the same establishment and perform work of equal value.<sup>56</sup> The Act applies to all employees within the federal jurisdiction, regardless of the number of employees.<sup>57</sup> It also includes the federal public service. Roughly 10% of Canadian workers are covered by this legislation.<sup>58</sup> To clarify and to assist the interpretation of section 11 the Human Rights Commission issued guidelines in 1978 which were rectified and replaced by the *Equal Wage Guidelines* in 1986. The current *Equal Wages Guidelines from 1986* define and explain a number of key terms in section 11 of the CHRA. It provides information, for instance, on which work may be compared, how wage adjustments should be calculated, and factors that justify a difference in wages that would otherwise be deemed discriminatory.<sup>59</sup>

### **2.1.3.2.2 Employment Equity Act**

The federal *Employment Equity Act* (EEA) is the only employment equity legislation that includes private sector employers. This Act, unlike the pay equity

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<sup>56</sup> The core of section 11 is contained in the following statement: 11 (1) It is a discriminatory practice for an employer to maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value.

<sup>57</sup> Parliamentary Research Branch, 2002, *The Canadian Human Rights Act Review Panel – 2000 Report: A Summary*, In Brief, Library of Parliament, PRB 01-30E, at 1. [*The Canadian Human Rights Act Review Panel – 2000 Report: A Summary*].

<sup>58</sup> Morley Gunderson, 2002, 'The Evolution and Mechanics of Pay Equity in Ontario', *Canadian Public Policy – Analyse de Politiques*, Vol. 24, No. 2, at 1.

<sup>59</sup> *Time for Action*, 2001, supra n. 48 at 5.

legislation, is not a direct instrument for improving wage inequalities between women and men. The main goal of this Act is to encourage the employment of women and other defined groups in positions where they are historically underrepresented and to foster employment opportunities for these groups. These measures influence women's position in the labour market and indirectly also their incomes.

The Canadian Human Rights Commission believed that the complaints system under the *Canadian Human Rights Act* was not ideal in dealing with alleged pay discrimination integrated into complex systems. According to them the complaint based system was a poor tool for stimulating the long-term, multi-faceted change which was needed to create more equitable work environments, including fair compensation systems and less occupational segregation. That is why a more proactive approach was needed to achieve equality. This led to an update of the *Employment Equity Act* which was enacted by Parliament in 1995.<sup>60</sup> The purpose of the Act was to achieve equality in the workplace to ensure that no employee is denied jobs for reasons unrelated to their abilities. This should be achieved by correcting the employment disadvantages encountered by four defined groups: women, members of visible minorities, aboriginal peoples, and persons with disabilities.<sup>61</sup> All employers covered by the *EEA* – the federal public service, Crown corporations and agencies or federally regulated private businesses with a hundred or more employees – are required to determine whether their workforce fairly represents the

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<sup>60</sup> *Ibid*; Canadian Human Rights Commission, 2003, '*Submission of the Canadian Human Rights Commission to the Pay Equity Task Force*', March 2003, online available at [http://www.chrc-ccdp.ca/legislation\\_policies/equitytaskforce-en.asp](http://www.chrc-ccdp.ca/legislation_policies/equitytaskforce-en.asp).

<sup>61</sup> Section 2 of the *Employment Equity Act* states: 'The purpose of this Act is to achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfilment of that goal, to correct the conditions of disadvantage in employment experienced by women, aboriginal peoples, persons with disabilities and members of visible minorities by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences'.

four disadvantaged groups listed above. Employers must, in particular, identify and remove barriers to the employment of members of the above mentioned four groups and when necessary, establish means for improving their representation.<sup>62</sup> Compliance with the EEA is verified through audits undertaken by the Canadian Human Rights Commission and is not dependent on the filing of complaints.<sup>63</sup>

### **2.1.3.2.3 Employment Standards Legislation**

All Canadian jurisdictions have enacted laws which contain minimum standards for terms and conditions of employment. This includes regulation of minimum wages, hours of work, overtime compensation, vacation entitlements, statutory holidays, work leaves, and termination of employment. In British Columbia, these provisions are found in the *Employment Standards Act*, which provides the minimum standards for most provincially-regulated workplaces in British Columbia.<sup>64</sup> However, in some provinces considerable numbers of workers are wholly or partially excluded from the Act, including babysitters, garment workers employed in their homes, and the members of some regulated professions.

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<sup>62</sup> Human Resources Development Canada, 2007, '*Annual Report: Employment Equity Act 2007*', at 1-2.

<sup>63</sup> '*Time for Action*', 2001, supra n. 48 at 5.

<sup>64</sup> Iyer, 2002, supra n. 22 at 32.

## **2.1.4. Pay Equity Models**

### **2.1.4.1 The Complaints-Based Model**

#### **2.1.4.1.1 The Canadian Human Rights Act**

Section 11 of the *Canadian Human Rights Act* (CHRA)<sup>65</sup> is a prominent example of a complaint-based model of pay equity that applies to the private as well as the public sector. The CHRA prohibits discrimination based on sex, race, ethnic origin, sexual orientation and other grounds of discrimination. In particular, the Act prohibits discrimination in employment, and it specifically states that ‘it is a discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value’. The act further states that the criterion to be applied when assessing the value of work is ‘the skill, effort, and responsibility required in the performance of the work and the conditions under which it is performed’.<sup>66</sup>

The *Canadian Human Rights Act* does not provide for an administrative system dedicated specially to the pursuit of pay equity. Rather, the means that ensure compliance with section 11 are the same ones that are used to enforce the rest of the statute.<sup>67</sup> It is the Canadian Human Rights Commission (CHRC) that screens complaints for whether they fall within its jurisdiction and, if so, whether they merit adjudication by way of a formal hearing.<sup>68</sup> The Canadian Human Rights Commission has a general statutory responsibility

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<sup>65</sup> It was a result of Canada’s ratification of ILO Convention 100 in 1972, and of the International Covenant on Economic, Social and Cultural Rights in 1976, both of which endorsed the concept of equal pay for equal value.

<sup>66</sup> *Canadian Human Rights Act*, section 11(2).

<sup>67</sup> ‘*Pay Equity: A New Approach to a Fundamental Right*’, supra n. 7 at 81.

<sup>68</sup> ‘*The Canadian Human Rights Act Review Panel – 2000 Report: A Summary*’, supra n. 57 at 1.



for pursuing and promoting the goals set out in the (CHRA).<sup>69</sup> To carry out its responsibility for the investigation of complaints that fall under section 11, and for the facilitation of settlement discussions, the CHRC established the Pay Equity Branch.

The CHRA allows parties – usually individual employees or unions – to submit wage discrimination allegations to the CHRC for investigation.<sup>70</sup> When an employer refuses to pay ‘equal pay for work of equal value’ the worker may lodge a complaint with the CHRC. The Commission then launches a pay equity investigation and, if it cannot bring the parties to settle the complaint out of court, it refers the case to the Canadian Human Rights Tribunal for investigation and decision.<sup>71</sup>

Since the Act came into force, the Commission has dealt with slightly more than 400 pay equity complaints, most of which were filed by individuals or small groups of employees. A majority of the complaints were dismissed by the Commission, while others were resolved through negotiated settlements totalling some \$8 million and covering approximately 1500 employees.<sup>72</sup>

Although there have been some significant pay gains for some groups of women under the federal law, these victories happened only after years of protracted negotiations and costly legal struggles. In practice, as shown in the following cases, the legal struggle for pay equity has only benefitted women working for large employers, usually where a union was involved, and often years after the inequities were identified by women workers.

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<sup>69</sup> ‘*Pay Equity: A New Approach to a Fundamental Right*’, supra n. 7 at 81.

<sup>70</sup> ‘*Time for Action*’, 2001, supra n. 48 at 5.

<sup>71</sup> Côté and Lassonde, 2007, ‘*Status Report on Pay Equity in Canada*’, supra n. 37 at 3.

<sup>72</sup> ‘*Time for Action*’, 2001, supra n. 48 at 5.

#### **2.1.4.1.2 Assets and Drawbacks of the Present System under the Human Rights Act**

In 1977, with the adoption of the *Canadian Human Rights Act*, the filing and investigation of complaints was the accepted method for dealing with discrimination issues in the federal jurisdiction. According to the report of the Canadian Human Rights Commission<sup>73</sup> the complaint-based approach continues to work reasonably well for small-scale cases involving comparison of a single female-predominant job with a handful of male-predominant jobs. A prerequisite for this approach is that an employee has the confidence and the support to file a complaint and the patience to wait for the result.

The following cases illustrate the grave deficiencies of the present federal system under the *Canadian Human Rights Act* which particularly arise in the context of complex pay equity claims.

##### **2.1.4.1.2.1 Canada Post Corporation**

On August 24, 1983, the Public Service Alliance of Canada (PSAC) filed a complaint with the Canadian Human Rights Commission (CHRC), alleging that Canada Post had violated section 11 of the Canadian Human Rights Code (CHRC) by paying more to employees in the male-dominated Postal Operations Group than to employees in the female-dominated Clerical and Regulatory Group for work of equal value. The wage rates of the male-dominated group exceeded those of the female-dominated group by as much as 58.9 per cent.<sup>74</sup> During 1984 until 1991 the Commission investigated PSAC's complaint by gathering relevant job information and performing job evaluations. After

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<sup>73</sup> *Ibid.*

<sup>74</sup> *Canada Post Corporation v. Canada* (Canadian Human Rights Commission), [2005] CHRT 39, at para 1.

nine years of investigation, the Commission released its ‘Final Investigation Report’ by January 24, 1992, and recommended that the complaint be referred to the Canadian Human Rights Tribunal (CHRT) for hearing.<sup>75</sup> From November 25, 1992, to August 27, 2003, the Tribunal heard the complaint over the course of 415 hearing days. Another 27 months later, in October 2005, the Tribunal released its 273-page decision.<sup>76</sup>

The Tribunal determined that Canada Post had violated the Act by not paying clerical employees’ wages equal to those of the letter carriers. The Tribunal stated that, before 2002, the Corporation had participated in ‘systemic discrimination’ of wages against a group of Public Service Alliance of Canada (PSAC) members contrary to section 11 of the *Canadian Human Rights Act*. On the grounds that the wage gap had been overestimated, the clerical workers were only entitled to half the amount they claimed.<sup>77</sup> Canada Post Corporation filed an appeal with the Federal Court seeking to quash the decision by the Canadian Human Rights Tribunal. PSAC in turn filed a cross-appeal against the Tribunal’s decision to discount the award by 50%.

In its decision of February 21, 2008,<sup>78</sup> the Federal Court severely criticised the Tribunal’s decision. Three of the five issues to be considered in the appeal were turned down by the Federal Court. The following analysis of the Tribunal’s decision from October 2005 provides an insight into the difficulty the present federal system has in dealing with complex pay equity cases.

In its decision, the Federal Court concluded that the Tribunal erred in applying a new and lower standard of proof, which was created by the Tribunal itself in the context

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<sup>75</sup>*Ibid.*, at para 22.

<sup>76</sup>*Ibid.*

<sup>77</sup>*Ibid.*, at para 931-949.

<sup>78</sup>*Canada Post Corporation v. Public Service Alliance of Canada et al.*, [2008] F.C. No. 223 (Fed. C.A.).

of this particular case. The Federal Court states that ‘the nature of the legislation and the larger purpose behind the Tribunal adjudication is to ensure that the governmental policy on discrimination is implemented. However, this does not mean that the legal standard of burden of proof can be ignored or minimized for the sake of finding discrimination’.<sup>79</sup> Although the Tribunal acknowledged that the job data, the job evaluation process, the resulting job information and thus evidence on the alleged wage gap was uncertain in nature it still came to the conclusion that the Commission and the PSAC had proved their case.<sup>80</sup> Accordingly, the Court concluded ‘that the Tribunal unreasonably and incorrectly applied the wrong standard of proof to vitally important material facts. The evidence about the Clerical and Regulatory Group positions and the Postal Operation Group jobs was not reliable on the balance of probabilities to prove pay discrimination between the complaint and the comparator groups’.<sup>81</sup>

The Federal Court decided that the Tribunal erred in its finding that the Postal Operation Group was an appropriate comparator group for the complaint. Relying on the definition of sex predominance in the 1986 Guidelines,<sup>82</sup> the Tribunal concluded that the Clerical and Regulatory Group was female dominated and the Postal Operation Group was male dominated, in other words the Tribunal accepted PSAC’s choice of comparator groups. However, the Court found that ‘the Tribunal unreasonably ignored the factual reality that the largest group of women at Canada Post were the 10,000 women working as ‘mail sorters’ within the Postal Operation Group, and that these 10,000 women were the best paid unionized employees at Canada Post’. The Court further found it

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<sup>79</sup> *Ibid*, at para 109.

<sup>80</sup> *Ibid*, at para 152 et sqq.

<sup>81</sup> *Ibid*, at para 164.

<sup>82</sup> *Equal Wages Guidelines*, 1986, SOR/86-1082.

‘unreasonable to choose a comparator group that masked the 10,000 women and in fact, considered them men for the purpose of section 11. This is contrary to the intent of section 11 and is illogical’. The Court concluded that ‘it is evident that there was no systemic wage discrimination against female employees in Canada Post since the largest group of women within the Canada Post were the highest paid of all unionized employees’.<sup>83</sup>

Furthermore, the Federal Court stated in its decision that the Tribunal erred in finding that the damages could be discounted by 50% to account for uncertainties in the job information and non-wage forms of compensation. The Court did not decide to award damages because it concluded that the pay discrimination complaint had not been established. Nevertheless the Court mentioned that the award deduction made by the Tribunal in connection with the examination of the correct standard of proof was not correct. The court remarked in paragraph 157 that ‘the Tribunal decided to reduce the damages by 50 percent because the ‘job information’ used to determine the wage gap and the non-wage compensation only met the ‘lower reasonable reliability’ standard on the spectrum of reliability’. The Court went on to state that ‘this finding demonstrates that the Tribunal was so unsure about the reliability of the job information evidence that it only awarded the complainant 50 percent of its damages. In law, the Tribunal cannot decide to award the complainant only 50 percent of its damage where it is unconvinced that the evidence regarding liability was probably reliable. A party cannot be half liable – half liable means that the evidence is less than probable. By reducing the damage award by 50

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<sup>83</sup> *Canada Post Corporation v. Public Service Alliance of Canada et al*, [2008], supra n. 78 at para 166 et seq.

percent, the Tribunal indirectly confirms that it does not think the evidence was reliable on the balance of probabilities'.<sup>84</sup>

Finally, the Court also commented the length of the Tribunal hearing and states that 'it strikes the Court as wrong and unreasonable that 1) a pay equity complaint of this nature could last nearly 25 years from the time the complaint was filed until it was heard on a judicial review before the Federal Court, that 2) the Tribunal hearing would span 10 years and 11 months and that 3) the Tribunal would reserve its decision for 2 years and 3 months'.<sup>85</sup>

Prior to the *Canada Post* decision, no court had dealt with the question of the standard of evidence needed to support a pay equity claim under the CHRA where liability was contested. The Court's decision made it clear that such evidence must meet the normal civil standard.<sup>86</sup> The *Canada Post* case thus clarified certain key issues. But the extensive and severe criticism by the Federal Court of the Tribunal and its methods suggests that the Tribunal's problems are profound and far reaching. In the above mentioned case the Tribunal was found to have failed to fulfill its basic assignment. How is it possible that a Tribunal, which alleges to be specialized in pay equity claims, errs in the most basic principles such as proper definition of comparative groups? And how is it possible that the Tribunal can arbitrarily adjust the standard of proof to meet the needed conditions of the actual case? With its decision the Tribunal seems to infringe the cornerstones of the principle of legal certainty.

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<sup>84</sup> *Ibid*, at para 257 et sqq.

<sup>85</sup> *Ibid*, at para 256 et sqq.

<sup>86</sup> Thomas E.F., Brady, 2008, '*Federal Court sets Standard of Evidence for Pay Equity Claims under the Canadian Human Rights Act*', nota bene, published by Heenan Blaikie Lawyers, at para 13.

Furthermore, the following remark made by Judge Kelen in the *Canada Post* case illustrates how almost 11 years of hearing before a Tribunal's decision offends the public conscience of what is reasonable and responsible: ... 'the hearing lacked the discipline required of a court of law. The Tribunal must control the number of witnesses and the length of cross-examination'.<sup>87</sup>

The Public Service Alliance of Canada took the Federal Court decision to the Federal Court of Appeal, which on February 22, 2010, dismissed PSAC's appeal, ruling that the Canadian Human Rights Tribunal made a significant error in its judgment. The Court maintains that this was serious enough to overturn the Tribunal's original decision in favour of PSAC. PSAC is currently reviewing the Court's decision to determine if there are grounds to seek leave to at the Supreme Court of Canada.<sup>88</sup>

#### **2.1.4.1.2.2 Bell Canada**

In 2006, after over 14 years of fighting for pay equity, 4,766 Bell Canada operators in Quebec and Ontario obtained a settlement over 104 million dollars.<sup>89</sup> In the early 1990's, a number of individual Bell employees filed pay equity complaints alleging that Bell Canada discriminated against the complaints, contrary to section 11 of the *Canadian Human Rights Act*. The complaints involved sixty-two individual complaints from seventy-four clerks. During 1991 and 1992, Bell and the unions – the Canadian Telephone Employees Association (CTEA) and the Communications, Energy and Paperworkers Union of Canada (CEP) – undertook a joint pay equity study, which was, at

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<sup>87</sup> Justice Kelen in *Canada Post Corporation v. Public Service Alliance of Canada et al*, [2008] supra n. 78 at para 258.

<sup>88</sup> PSAC v. Canada Post Corporation, 2010 FCA 56, February 22, 2010; '*Federal Court dismisses Canada Post pay equity appeal*', PSAC Homepage, Press Release, March 8, 2010.

<sup>89</sup> CEP Communications, Energy and Paperworks Union of Canada, 2006, '*CEP Members Ratify Historic Pay Equity Deal*', Press release June 19, 2006. para 1. ['*CEP Press release*'].

the parties' request, used as the basis for assessing the pay equity complaints by the Commission of Human Rights. In 1993, the Commission reviewed the joint study results. Bell and the unions agreed on a first compensatory payment to correct wage discrimination.<sup>90</sup> Unfortunately they then could not agree on the amount of payout necessary to correct the wage inequity. As a result the unions and an ad-hoc employee group called Femmes-Action filed a systemic pay equity complaint on behalf of over 20,000 employees. The Commission tried to mediate a settlement but failed. In 1995, the Commission circulated its final investigation report and Bell Canada cast doubts, for the first time, on the joint study results.

In 1996, the Commission referred the systemic complaints to the Human Rights Tribunal, while withholding the individual complaints until the Tribunal hearings.<sup>91</sup> Since then, Bell Canada has delayed the proceedings by bringing at least eleven procedural motions to the Federal Court on issues ranging from the right of unions to file such a complaint, statistical techniques to identify wage discrimination, the binding nature of the Equal Wages Guidelines, to the institutional independence of the Tribunal and the retention of a particular law firm to represent the Commission.<sup>92</sup> The employer's attempts to hinder and delay the progression of pay equity cases led Justice Pelletier to state: 'By

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<sup>90</sup> Department of Justice Canada, 2002, Pay Equity Submissions, *Brief by the National Association of Women and the Law (NAWL) to the Pay Equity Task Force*, at 9. [ 'NAWL Pay Equity Submission' ].

<sup>91</sup> 'Time for Action', 2001, supra n. 48 at 15-16.

<sup>92</sup> *Ibid*; See for Bell Canada's contention that the Tribunal lacked institutional independence and impartiality: *Bell Canada v. Telephone Employees Association et al*, [1998] F.C.J. No. 313 and [2001] 2 F.C. 392 (T.D); See for the question if the union has the right to file complaints: *Bell Canada v. Telephone Employees Association et al*, [2000] F.C.J. No. 1094; for the question of the fairness of the Commission's investigation methods: *Bell Canada v. Canadian Telephone Employees Association et al*, [1997] F.C.J. No. 207 (Fed.T.D).



all appearances, pay equity claims are like education savings plans: they are investments made by one generation for the benefit of the next.’<sup>93</sup>

On June 26, 2003, in a unanimous decision, the Supreme Court of Canada rejected Bell’s appeal concerning the alleged lack of independence and impartiality of the Canadian Human Rights Tribunal.<sup>94</sup> In the same decision the Court also asserted that ‘more than a decade later, the complaints have yet to be heard by the Tribunal. Instead, the parties have been engaged in litigating Bell’s challenges to the Tribunal, a process has taken them to the Federal Court, Trial Division three times, to the Federal Court of Appeal twice, and now to this Court’.<sup>95</sup>

In May 2003, the Canadian Human Rights Commission formally completed its case and the hearings at the Human Rights Tribunal began. In 2005, at the urging of the Commission, the parties agreed to mediation and reached a settlement covering the years 1993 to 1999. In 2005, some 5,000 current and former mostly female telephone operators employed by Bell Canada voted to accept a \$104 million settlement for their 14 year old dispute over pay equity by 95%.<sup>96</sup>

The Bell case is a good example of the inaccessibility of the current federal pay equity system. Due to the complex legal system, it is virtually impossible for a single employee to file a complaint, unless they are extremely patient, juristically well-versed and financially independent. Those that need pay equity most, however, are non-unionized women in precarious financial situations many of whom may be non-English

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<sup>93</sup> Justice Pelletier in *Bell Canada v. Canadian Telephone Employees Association et al*, [2000] F.C.J. No. 947 (T.D.), para 1.

<sup>94</sup> *Bell Canada v. Canadian Telephone Employees Association et al*, [2003] SCJ No. 36; 2003 SCC; Court File No. 28743, para 3 and para 17-31.

<sup>95</sup> *Ibid*, at para 2.

<sup>96</sup> ‘*CEP Press release*’, supra n. 89 at para 1.

speakers or newcomers to Canada. For these women, the federal pay equity system is out of reach.

The above cases show also that even employees represented by their unions have to struggle a long time before justice is served. The possible procedural interventions are leading to long-lasting pay equity arguments that block the legal system for many years. This results in an unsatisfying situation for both the complainant and the public. After several years of hearings the Bell case was brought to the Human Rights Tribunal. Before a decision was reached, the parties settled with the help of mediation by the Human Rights Commission. The proceedings however caused massive costs, e.g. expenses for the pay equity study, mediation costs, costs for the countless procedural motions by the complainant, and costs for the hearings. Much of this cost was carried by the public, and other costs were borne by the workers themselves through their union dues.

#### **2.1.4.1.2.3 Government of Northwest Territories**

On March 28, 1989, the Public Service Alliance of Canada (PSAC) filed a complaint against the Government of the Northwest Territories (GNWT) for discrimination in the classification and pay of employees in female dominated groups and subgroups contrary to sections 7, 10 and 11 of the *Canadian Human Rights Act* (CHRA).<sup>97</sup> As in the Bell case, the employer and the union cooperated successfully on a joint pay equity study, but were unable to agree on terms for wage adjustments to correct the wage discrimination they found. Here too, the Commission unsuccessfully sought to

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<sup>97</sup> *Northwest Territories v. PSAC* [1996] 3 F.C. 182 (T.D.).

conciliate a resolution, and had to send the pay equity portion of the case for adjudication by the Tribunal when it became clear that a mutual agreement would not be possible.<sup>98</sup>

The Canadian Human Rights Commission decided to appoint two investigators to deal with the complaint. As members of the public service, both investigators were members of a PSAC bargaining unit in Ottawa. One investigator was a voting member of PSAC, whereas the other was not.<sup>99</sup> The GNWT initiated its first legal challenge in 1993, arguing that the appointment of a conciliator should be struck down (1) because the CHRA allegedly did not apply to GNWT employees and (2) because a voting member of PSAC would have a 'pro-union' bias with respect to pay equity matters.<sup>100</sup> Regarding the first issue, the Canadian Court of Appeal decided that it had no merit.<sup>101</sup> Concerning the apprehension of bias by the members of the Commission, J. Morceau found that, 'considering those actions, even if called decisions, if other than one rejecting the complaint, are strictly preliminary and do not bear on the validity of the complaint or affect the rights of the parties' there is no reasonable apprehension of bias with respect to their activities'. Further he added that 'the mere fact that she is a voluntary member of the Alliance, which in turn advocates pay equity, is certainly not a reason, in our view, to suggest, by itself, to a reasonable person that she would lack any objectivity in assessing whether pay equity was in place within the GNWT or she would go out of her way to form a conclusion that it was not'.<sup>102</sup>

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<sup>98</sup> 'Time for Action', 2001, supra n. 48 at 16-17.

<sup>99</sup> Russel Wayne Zinn, and Patricia Parker Brethour, 1997, *The Law of Human Rights in Canada: Practice and Procedure*, Aurora, Ontario, at 18-15.

<sup>100</sup> 'Time for Action', 2001, supra n. 48 at 17.

<sup>101</sup> *Northwest Territories v. PSAC* [1997] 3 F.C.J. No. 143, para 2-3.

<sup>102</sup> *Ibid*, at para 4-6.

Since referral of the case to the Tribunal in 1997, legal actions have questioned issues such as the Commission's authority to send only one portion of a complaint to the Tribunal, the independence of the Tribunal, the review of documents the employer deems privileged, and the location of Tribunal hearings. Although these challenges rarely addressed the core of the case and have rarely been successful, they have delayed the progress of the pay equity complaints.<sup>103</sup> In June 2002, the parties at last reached a settlement under the mediation of the Commission after lengthy negotiations. The Tribunal issued a consent order which ordered the Government of the Northwest Territories to pay the amount of \$50 million on behalf of eligible employees.<sup>104</sup>

All three above mentioned cases show the ineffectiveness of the current federal system even in larger pay equity claims. There are many other aspects of the cases which highlight the ineffectiveness of the Human Rights Tribunal. For instance, although pay equity cases represent less than 8% of all cases that are before tribunals or courts, they absorb about one half of the commission's total spending on legal services. For example, the hearings of the complaints by the Public Service Alliance of Canada against Canada Post had cost the Tribunal close to \$3 million, which includes staff time devoted to these hearings. The case involving the Government of the Northwest Territories cost the Canadian Human Rights Tribunal around \$1.3 million.<sup>105</sup>

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<sup>103</sup> *'Time for Action'*, 2001, supra n. 48 at 17; for the question, whether the Commission has the authority to send just one portion of a complaint to the Tribunal see *Northwest Territories v. PSAC*, [1999] 3 F.C.J. No. 1970; for disputes over the issue of disclosure see *Northwest Territories v. PSAC*, [2001] F.C.J. No. 1374 and [2000] F.C.J. No. 1646 (Fed.T.D); for a reference of Judge Letourneau to the employers' attempt to delay the progression of pay equity cases: 'Need it be repeated, that the complaint was first laid in March 1989 and that, twelve years later and after four judicial review proceedings, the case still has to be completed on its merits', see *Northwest Territories v. PSAC*, [2001] 3 F.C. 566, at para 592.

<sup>104</sup> *'Memorandum of Agreement between PSAC, The Human Rights Commission, and GNWT'* June 25, 2002; *'Pay Equity: A New Approach to a Fundamental Right'*, supra n. 7 at 103.

<sup>105</sup> *'Pay Equity: A New Approach to a Fundamental Right'*, supra n. 7 at 103.

Pay equity complaints tend to be highly specialized and require advanced statistical and other technical procedures. This often leads to lengthy proceedings before the Commission and the Tribunal in these cases. Pay equity cases occupy an average of 176 days of hearings from beginning to end compared with an average of 17 days for complaints involving allegations of discrimination on the basis of race, colour or national or ethnic origin.<sup>106</sup>

Another deficit in the current system is that the *Canadian Human Rights Act* does not clearly explain the nature of the obligation of employers, nor the consequences of their non-compliance. It does not provide adequate instructions with respect to acceptable standards and methods to establish pay equity. This vagueness in legislation encourages and extends costly legal proceedings.<sup>107</sup>

In addition, a number of key terms in section 11 are not clearly defined, leaving room to very different interpretations of what the section actually prohibits. Countless days have been spent, for instance, debating the meaning of ‘establishment’, as section 11 limits pay equity comparisons to work performed ‘within the same establishment’. For example, Tribunal and Court hearings about the definition of ‘establishment’ delayed investigations of pay equity complaints against Air Canada and Canadian Airlines<sup>108</sup> for eight years. Flight attendants had argued that they are underpaid compared to ground and cockpit crews. The Commission was unable to examine this claim because of legal

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<sup>106</sup> *Ibid.*, at 87.

<sup>107</sup> Côté and Lassonde, 2007, ‘*Status Report on Pay Equity in Canada*’, supra n. 37 at 4.

<sup>108</sup> *Canadian Union of Public Employees v. Canadian Airlines International Ltd.*, [2000] F.C.J. No. 1258.

actions by the airlines contending that flight attendants, ground crew, and cockpit crew each work in a different establishment.<sup>109</sup>

As mentioned before, the Commission tried to clarify the meaning of section 11 by issuing the *Equal Wage Guidelines*.<sup>110</sup> But the guidelines also have proved to be controversial and subject to different complaints. For example there has been confusion over the definition of an ‘occupational group’.<sup>111</sup>

In summary, the use of the Human Rights Tribunal in cases of pay equity seems to be more than questionable. There exist enormous deficiencies in the proceedings which are in part due to the countless possibilities to force a Tribunal’s decision into judicial review. In consequence litigation is costly and time-consuming. As far as pay equity is concerned, the delay of justice often equals an actual denial of justice. Retroactive wage payments, even if they are achieved, are not helpful to women who are struggling day to day to pay their expenses.

#### **2.1.4.1.2.4 Newfoundland (Treasury Board) v. N.A.P.E.**

The *N.A.P.E.* case focuses less on the struggle that employees must undertake before winning a pay equity claim. It rather illustrates an example of how the economic situation of a country can lead to limitations on an equality right. In this case, the

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<sup>109</sup> Air Canada insisted that the flight attendants, a predominately female group, and the mechanics and pilots, a predominately male group, all worked in different ‘establishments’, since the three groups were in different bargaining units. In January, 2006, the Supreme Court of Canada dismissed Air Canada’s Appeal on pay equity and awarded costs to CUPE ruling that ‘establishment’ cannot be equated with ‘bargaining unit’ or ‘collective agreement’ and that all work for the same establishment, namely Air Canada. This decision paved the way for the Union to prove that Air Canada is discriminating against flight attendants. According to Megan Reid, Counsel of Air Canada Component of CUPE, the case is ongoing. It is back at the Canadian Human Rights Commission and is still in the investigation stage. The Commission Investigator, Audrey Renault, is currently gathering information. *Canada (Human Rights Commission) v. Canadian Airlines International Ltd.*, [2006] 1 S.C.R. 3, 2006 SCC 1; CUPE Press Release, 2006, ‘Supreme Court of Canada dismisses Air Canada’s Appeal: Flight Attendants can proceed with Pay Equity’, January 26, 2006; ‘Time for Action’, 2001, supra n. 48 at 6.

<sup>110</sup> See section 3.2.

<sup>111</sup> ‘*NAWL Pay Equity Submission*’, supra n. 90 at 11.

Supreme Court of Canada was required to consider whether a governmental fiscal crisis is sufficient for justifying a violation of the Canadian Charter of Rights and Freedoms through section 15 and section 1.

In early 1988, the government of Newfoundland actively initiated pay equity negotiations with public-sector unions as part of the collective bargaining process. Agreements were reached with unions representing some groups of health care workers, employees of Newfoundland Hydro, the Public Service and library workers.<sup>112</sup> Three years after the agreement was made, and before any money had actually reached the intended recipients, the same government passed the *Public Sector Restraint Act* (PSRA)<sup>113</sup> in 1991 in order to erase an obligation for approximately \$24 million from the agreement. The rationale for this Act was that the government's budgetary deficit had unexpectedly and massively increased and was reaching a stage where the provincial credit rating on international money markets was at risk.<sup>114</sup>

The Newfoundland Association of Public Employees (N.A.P.E.) challenged the constitutionality of section 9 of the PSRA on the grounds that it violated the s.15 equality guarantee in the Canadian Charter of Rights and Freedoms. They stated that it 'repudiates recognition by the state of the undervaluation of work done by women, it identifies pay inequity for women as acceptable and it repudiates state responsibility for redressing systemic discrimination for women'.<sup>115</sup> The unanimous ruling of the court was given by Justice Binnie. According to his analysis there was 'no doubt that in the 1980s women hospital workers in Newfoundland and Labrador were being paid less than men for work

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<sup>112</sup> Newfoundland (Treasury Board) v. N.A.P.E., [2004] 3 S.C.R. 381, 2004 SCC 66; *Pay Equity: A New Approach to a Fundamental Right*, supra n. 7 at 72.

<sup>113</sup> Newfoundland. *Public Sector Restraint Act*, S.N. 1991, c.3, s. 9.

<sup>114</sup> LawNow, April-May, 2005; Newfoundland (Treasury Board) v. N.A.P.E., [2004] supra n. 112 at para 3.

<sup>115</sup> Newfoundland (Treasury Board) v. N.A.P.E., supra n. 112 at para 38.

of equal value. By 1988, it had become a significant collective bargaining issue between the provincial government and the public sector unions'.<sup>116</sup> Justice Binnie thus agreed with the lower court's ruling that the legislation had the effect of disproportionately harming women, and thus was a violation of section 15(1) of the Charter. However he stated that the Pay Equity Agreement signed on June 24, 1988 was a major achievement, and once achieved, should not be lightly set aside. Yet, the *Public Sector Restraint Act* not only moved the start of the provincial governments' pay equity adjustments from 1988 to 1991, but it eliminated any liability for amounts otherwise payable to the underpaid female hospital workers for the years between 1988 and 1991. For those workers who retired prior to 1991, the Act meant they derived no benefit at all from the agreement their union had achieved.<sup>117</sup>

Even though the Supreme Court of Canada agreed that the workers' Charter rights were infringed it ruled that the infringement was justified under s. 1 of the Charter. The Court wrote, 'the need to address the fiscal crisis was a pressing and substantial legislative objective in the spring of 1991. The crisis was severe. The cost of putting pay equity into effect according to the original timetable was a major expenditure.'<sup>118</sup> However, the Court also warned that courts should be sceptical about governments that attempt to justify the Charter infringements because of budgetary constraints: 'To do otherwise would devalue the Charter because there are always budgetary constraints and there are always other pressing government priorities'.<sup>119</sup> Thus exceptions are only justified when fiscal problems 'attain a dimension' in which there is no reasonable

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<sup>116</sup> *Ibid.*, at para 30.

<sup>117</sup> *Ibid.*, at para 31.

<sup>118</sup> *Ibid.*, at para 3.

<sup>119</sup> *Ibid.*, at para 3.



alternative but to allow governments ‘significant scope to take remedial measures, even if the measures taken have an adverse effect on a Charter right’.<sup>120</sup> Therefore, ‘the courts cannot close their eyes to the periodic occurrence of financial emergencies when measures must be taken to juggle priorities to see a government through a crisis’.<sup>121</sup>

The ineffectiveness of the current federal system in large pay equity claims and the judgement of the Supreme Court of Canada in the above mentioned N.A.P.E. case illustrate that pay equity claims and pay equity agreements are not among the top ranking concerns of governments in Canada. Rights and freedoms guaranteed by the Charter are not ‘absolute’ and section 1 permits a law to limit a Charter right. The fact that a government has the possibility to implement cost cutting measures in the public or private sector in a way that discriminates against groups protected under section 15 of the Charter raises concerns and requires further discussion since the judgement of the Supreme Court represents a serious infringement of women’s equality rights and a backlash for all pay equity improvements achieved in the past. According to Margot Young, the N.A.P.E. case was the first explicit example of a ‘cost-based justification alone of a claim of sex discrimination’,<sup>122</sup> and in Jennifer Koshan’s opinion, the Supreme Court’s decision ‘is a clear example of the manipulability of legal doctrine and the power of political objectives’.<sup>123</sup>

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<sup>120</sup> National Union of Public and General Employees (NUPGE), 2004, ‘*N.A.P.E. appalled by Supreme Court pay equity decision*’, online at [http://www.nupge.ca/news\\_2004/n28oc04c.htm](http://www.nupge.ca/news_2004/n28oc04c.htm); Newfoundland (Treasury Board) v. N.A.P.E., [2004] supra n. 112 at para 64.

<sup>121</sup> Newfoundland (Treasury Board) v. N.A.P.E., [2004], supra n. 112 at para 3.

<sup>122</sup> Margot Young, 2006, ‘Blissed Out: Section 15 at Twenty’, in Sheila McIntyre and Sanda Rodgers (Eds), *Diminishing Returns: Inequality and the Canadian Charter of Rights and Freedoms*, 45-69, Toronto: Butterworth, at 66.

<sup>123</sup> Jennifer Koshan, 2006, ‘Newfoundland v. NAPE, [2004] 3 S.C.R. 381’, Author’s Note, *Canadian Journal of Women and the Law*, Vol. 18, no. 1, pp. 321-373, at 321.

#### **2.1.4.2 The Proactive Model**

The complaint based regime, which is used, for example, by the *Canadian Human Rights Act*, has been the subject of severe criticism and is considered by pay equity advocates as ineffective.<sup>124</sup> In several provinces these criticisms led to the adoption of legislation requiring positive actions of the employer forcing them to implement pay equity programs in their workplaces. This type of so called ‘proactive legislation’ obliges employers to demonstrate that they have implemented systematic steps to analyse the work done by their employees and to eliminate any discriminatory wage practices which are revealed as a result.<sup>125</sup> The first proactive Canadian pay equity law was enacted in the mid-1980s by Manitoba. It required public sector employers and unions to negotiate a system for job evaluation. The *Prince Edward Island’s Pay Equity Act* and the *Nova Scotia’s Pay Equity Act*, which both passed in 1988, were followed by the *New Brunswick’s Pay Equity Act* in 1989.<sup>126</sup> The most far reaching of all Canadian proactive legislation is found in Ontario and Quebec. These provincial schemes cover all public and all large private-sector employers.

##### **2.1.4.2.1 Ontario’s Pay Equity Act**

*Ontario’s Pay Equity Act* (the Act) came into force in 1988 and was the first proactive legislation to apply to the private sector. The stated purpose of the Act is to

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<sup>124</sup> Iyer, 2002, supra n. 22 at 56.

<sup>125</sup> ‘*Pay Equity: A New Approach to a Fundamental Right*’, supra n. 7 at 66.

<sup>126</sup> ‘*Labour Law Analysis*’, 1998, supra n. 42 at 6-23; Nan Weiner, 2002, ‘Effective Redress of Pay Inequities’, *Canadian Public Policy - Analyse De Politique*, Vol. XXVIII, Supplement/Numero Special, 1 2002, pp. 101- 115, at 105.

‘redress systemic gender discrimination in compensation for work performed by employees in female job classes’.<sup>127</sup>

All employers in the public sector and private organizations with at least ten full or part-time employees are affected by the *Ontario Pay Equity Act*. The employers are required to implement measures to ensure that pay equity has been achieved in their establishment.<sup>128</sup> Pay equity in Ontario is proactive as all public sector employers and private sector employers with at least 100 employees are required to have a pay equity plan in place, independent of whether there has been a complaint or not.<sup>129</sup> Firms with between 10 and 99 employees are not required to develop or post plans, but are still required to ensure that women are paid fairly within the meaning of the statute. Furthermore, Ontario’s legislation stipulates that, if a union is present, the entire pay equity implementation process must be conducted jointly.<sup>130</sup>

The process of attaining pay equity obliges employers subject to the Act to take the following steps: 1) select a pay-equity plan or plans; 2) identify predominantly female and male job classes within the same establishment 3) implement a ‘gender-neutral’ job evaluation system and 4) compare the compensation of female and male job classes of similar value to determine the terms and conditions of payments of compensation adjustments.<sup>131</sup>

When the Act became effective, an independent Pay Equity Commission was created, consisting of the Pay Equity Office and the Pay Equity Hearings Tribunal. The

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<sup>127</sup> *Ontario Pay Equity Act*. R.S.O. 1988, c. P.7, s. 4.

<sup>128</sup> Judith A. McDonald, and Robert J. Thornton, 1998, ‘Private Sector Experience with Pay Equity in Ontario’, *Canadian Public Policy - Analyse de Politiques*. Vol. 24, No. 2, at 186-187.

<sup>129</sup> Gunderson, 2002, *supra* n. 58 at 117.

<sup>130</sup> *Ibid*, at 26-127.

<sup>131</sup> McDonald and Thornton, 1998, *supra* n. 128 at 187.

Pay Equity Office is responsible for implementing and enforcing the Act. It investigates, mediates and resolves complaints under the Act, and provides programs and services to help employers, employees, and bargaining agents understand and comply with the *Pay Equity Act*.<sup>132</sup> The most contentious cases that raise new and complex issues are referred to the Pay Equity Hearings Tribunal. The Tribunal has exclusive jurisdiction to determine all questions of fact or law that arise in any matter before it. The decisions of the Tribunal are final and conclusive for all purposes.<sup>133</sup>

#### **2.1.4.2.2 Assets and Drawbacks of Pay Equity Legislation in Ontario**

While pay equity policies are generally regarded as the furthest in the evolution of equal pay policies, they still have limitations that inhibit their ability to reduce the male-female wage gap.<sup>134</sup> According to the Act, comparisons are made only between male-dominated and female-dominated jobs, whereas gender dominance is defined by 70 percent or more of either sex. All other job classes are considered to be ‘gender-neutral’.<sup>135</sup> Assuming that female-dominated jobs are systematically undervalued relative to male-dominated jobs, women who happen to work in male-dominated jobs or mixed jobs are provided no protection or possibility of redress.<sup>136</sup>

A further limitation originates from the fact that the Act restricts the comparisons to those within the same establishment. This leads to the unsatisfying result that the Act does not provide any possibility to achieve pay equity for those females working for private sector employers that do not have male comparators. In fact, surveys of the

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<sup>132</sup> Homepage of the Pay Equity Commission Ontario, online available at [www.payequity.gov.on.ca](http://www.payequity.gov.on.ca).

<sup>133</sup> *Ibid.*

<sup>134</sup> Gunderson, 2002, *supra* n. 58 at 119.

<sup>135</sup> *Ontario. Pay Equity Act*. R.S.O. 1988, c. P.7.

<sup>136</sup> Gunderson, 2002, *supra* n. 58 at 119.

impact of the *Pay Equity Act* suggest that the inapplicability of the job evaluation and comparison process to workplaces without male job classes significantly reduces the reach of the law. Among the largest employers (500+), 30% of female job classes lacked male comparators. The percentage of unmatched female comparators rises as employer size decreases: 45% of female job classes in employers with 50-99 employees had no male comparators.<sup>137</sup> And according to Gunderson, who analyzed the evolution and mechanics of pay equity in Ontario,<sup>138</sup> evidence indicates that in the early years of pay equity, 31.5 percent of the organizations in the public sector and 27.5 percent in the private sector made no pay equity adjustment because they could not find male comparator groups. The problem was particularly acute in small organizations.

A study by Baker and Fortin<sup>139</sup> questioned the ability of *Ontario's Pay Equity Act* to reduce the male-female wage gap especially in small enterprises. 65 percent of working females are employed in small, low-wage establishments, where implementation and enforcement are difficult and where male comparators are not common. That is why the present law must be developed so that the economically most vulnerable members of the workforce can benefit. This goal may be achieved by applying the law to all employers, regardless of the size of their employee number to ensure fairness. Further ways must be found to adapt the present comparison process so that females working in male-dominated or in mixed jobs can also be evaluated.<sup>140</sup> Pay equity cannot eliminate all

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<sup>137</sup> Iyer, 2002, supra n. 22 at 65.

<sup>138</sup> Gunderson, 2002, supra n. 58.

<sup>139</sup> Michael Baker, and Nicole M. Fortin, 2000, '*Does Comparable Worth Work in a Decentralized Labour Market?*', 2<sup>nd</sup> ed. University of Toronto and NBER, and University of British Columbia, CRDE, and CIRANO, at 28.

<sup>140</sup> Ontario allowed proxy comparisons for women in the broader public sector. In workplaces with fewer or no male job classes, a similar larger workplace nearby are used as a 'proxy' comparator, because that workplace has already identified the wage gap between men and women using the job-to-job method. Nevertheless this method is difficult to use in the private sector (and Ontario excluded the private sector

sources of women's economic inequality and the lack of male comparator groups, especially in small private organisations, is a potential limitation of pay equity legislation. This means that other initiatives, like easier access to unionization, raising the minimum wage, and better on the job training are needed to improve women's position in the labour market.

In January 1, 2008, *Ontario's Pay Equity Act* turned 20 years old. While the Act helped reduce the gender wage gap from 38% in 1985 to 29% today, gender-based pay discrimination is still widespread, with many employers in both the private and the public sector who ignore their legal obligations to achieve and maintain pay equity.<sup>141</sup> Even though the scope of the *Ontario Pay Equity Act* is limited and the enforcement process could be enhanced, there have been some considerable gains for Ontario's working women.<sup>142</sup> In general, pay equity is a vital part of legislation that warrants ongoing reform to ensure it can be applied appropriately.

*Ontario's Pay Equity Act* implicates several substantial advantages. First, the proactive approach does not rely on a complaint to initiate a pay equity review. The positive obligations placed on employers offer an enormous advantage to all single employees who allege being treated unequally by their employers wage policies. Under the Act employers are obliged to review their compensation practices, identify gender-

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from its application) since firms being used for proxy comparisons may object to giving competitors wage and salary information: Sylvia Fuller, 2001, *The Case for Pay Equity*, Submission to the BC Task force on Pay Equity, BC Office: Canadian Centre for Policy Alternatives, December 2001.

<sup>141</sup> Mary Cornish, 2008, *Support Pay Equity – Your Family will Thank You*, Ontario's Equal Pay Coalition. Online at [www.equalpaycoalition.org](http://www.equalpaycoalition.org), at para 6.

<sup>142</sup> According to the Equal Pay Coalition Ontario the following pay equity adjustments after the introduction of the Act were won (choice of examples): 1) secondary school secretaries received an annual increase of \$7,680 based on their comparison with a male job class of audio-visual technicians; 2) female health technicians were compared to male transportation workers, leading to an increase of \$2.79 an hour; 3) female dominated police dispatchers were compared to the radio technical supervisors and received an increase of \$7.179 annually; 4) at a baked goods manufacturer, the female job class of personnel manager was compared to the male job class of service manager, resulting in an adjustment of \$4.65 per hour. See for more details <http://www.equalpaycoalition.org>.

based inequities, and take steps to eliminate them. Furthermore, the onus to identify discriminatory wage gaps is on the employer. This again represents an enormous advantage for the most vulnerable persons in the workforce, the non-unionized women, and those who have no or not enough financial means to file pay equity complaints.<sup>143</sup>

Another positive aspect of *Ontario's Pay Equity Act* is the active role of unions in the pay equity process. Since pay equity claims often tend to be complex, unions can provide an individual employee skill and knowledge. Employees do not know which jobs are of comparable values to theirs and even if they knew, the complexity of the evaluation systems in pay equity cases is beyond easy understanding. For this reason, unions can be especially important in providing information in areas such as job evaluation, finding appropriate comparator groups, the appropriate definition of the employer and pay, estimating pay lines, determining exemptions and exclusions, and representing workers before tribunal hearings.<sup>144</sup>

A report entitled “A comparative analysis of promoting pay equity: models and impacts”, done by Marie-Thérèse Chicha on behalf of the International Labour Organization (ILO) in 2006<sup>145</sup> supports the above described proactive legislation. Chicha compared three models of proactive pay equity systems in six jurisdictions: one model requires employers to adopt an action plan that includes analysis of pay determination systems and the implementation of pay adjustments to ensure that jobs of equal value receive an equal pay (Quebec and Sweden);<sup>146</sup> the second model attempts to encourage

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<sup>143</sup> Weiner, 2002, supra n. 126 at 106.

<sup>144</sup> Gunderson, 2002, supra n. 58 at 127.

<sup>145</sup> Chicha, 2006, supra n. 50.

<sup>146</sup> *Ibid*, at 10; Côté and Lassonde, 2007, ‘*Status Report on Pay Equity in Canada*’, supra n. 37 at 9-10.

the voluntary participation of employers (United Kingdom and the Netherlands);<sup>147</sup> and the third model is based on a better enforcement of the existing general legislation on gender-related discrimination including equal pay (France and Switzerland).<sup>148</sup> The report concludes that the results of the voluntary models used in the United Kingdom are so unsatisfactory that the Equal Opportunities Commission has stated that “voluntarism has proved a failure.”<sup>149</sup> The report finds that the French model entails a ‘low level of compliance’ which is due to scant criteria for carrying out a meaningful assessment of the situation.<sup>150</sup> The ILO experts consider the Quebec model as the best one ‘as its means and goals correspond to those of pay equity as described in the previous chapter’. The model includes a ‘structured, sequential and precise approach, containing the key elements for identifying pay discrimination’.<sup>151</sup>

Furthermore Chicha identifies two points which are critical for the success of pay equity systems: (1) legislation must be obligatory. This is the main factor for successfully reaching a significant level of compliance. (2) The legislation needs support from a specialized body such as a Pay Equity Commission. She concluded that in order to reach pay equity it is necessary to have a proactive law which forces employers to set up mechanism which ensure pay equity. Standards must be clearly defined and regularly assessed.<sup>152</sup>

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<sup>147</sup> *Ibid; Ibid.*

<sup>148</sup> *Ibid*, at 109; *Ibid.*

<sup>149</sup> *Ibid*, at 10; *Ibid.*

<sup>150</sup> *Ibid; Ibid.*

<sup>151</sup> *Ibid*, at 109; *Ibid.*

<sup>152</sup> Côté and Lassonde, 2007, ‘*Status Report on Pay Equity in Canada*’, supra n. 37 at 10.



The ILO report describes other key elements of a successful proactive law: set up pay equity plans, analyze the pay systems, adjust wages as required, and ensure good cooperation between employers and employees in establishing the pay equity plans.<sup>153</sup>

The following section describes the federal *Public Sector Equitable Compensation Act*. The Act has been introduced by the Conservative minority government on February 6, 2009, as part of Bill C-10, the *Budget Implementation Bill*.

### **2.1.5 The Public Sector Equitable Compensation Act**

The *Public Sector Equitable Compensation Act* (PSECA) replaces the complaints-based system of the *Canadian Human Rights Act* with a system where employers and bargaining agents must take ‘proactive’ steps to report on their achievements on ‘equitable compensation’. Under the new system, disputes and complaints regarding equitable compensation matters are handled by the Public Service Labour Relations Board (PSLRB) rather than the Canadian Human Rights Commission (CHRC) and Canadian Human Rights Tribunal (CHRT).<sup>154</sup> The general intent of the PSECA is that ‘equitable compensation matters’ (i.e., situations where equitable compensation is not being achieved) will be addressed at the time employees’ wages are set during the collective bargaining process and/or salary negotiations, rather than after a dispute has arisen and through legal proceedings.<sup>155</sup>

The introduction of the new legislation has been widely criticized. Various groups have alleged that the Act takes away the right of female federal public servants to equal

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<sup>153</sup> *Ibid.*

<sup>154</sup> Report of the Standing Senate Committee on Human Rights re: The Public Sector Equitable Compensation Act, Third Report, June 2009, at 6. [‘*Report of the Standing Senate Committee on Human Rights*’].

<sup>155</sup> *Ibid.*, at 7.

pay for work of equal value. Twelve recipients of the Governor General's Award in Commemoration of the Person's Case and more than ninety experts on human rights law and women's rights have signed a letter calling on Prime Minister Harper to withdraw the *Public Sector Equitable Compensation Act*.<sup>156</sup>

The PSECA was introduced as part of Budget 2009. As a consequence, Parliament was forced to evaluate the legislation in conjunction with the Budget 2009. Since the Act has not been introduced as a cost-saving measure nor can it be defended as a means of saving money in a time of fiscal crisis there are doubts whether the legislation could withstand a section 1 examination under the Canadian Charter of Rights and Freedoms.<sup>157</sup> Two public sector unions, the Professional Institute of the Public Service of Canada (PIPSC) and the Public Service Alliance of Canada (PSAC) separately initiated legal proceedings in the Ontario Superior Court of Justice challenging the constitutionality of the PSECA. Both applicants are alleging, among other arguments, that the PSECA violates the guarantees of freedom of expression and freedom of association (sections 2 (b) and (d)) and the equality rights (section 15) included in the Canadian Charter of Rights and Freedoms.<sup>158</sup>

The new legislated criteria for evaluating 'equitable compensation' has been criticized for introducing new gender discrimination into pay practices, rather than eliminating it. Under Section 11 of the *Canadian Human Rights Act* the value of work was assessed on skill, effort, responsibility and working conditions. The new legislation adopts these criteria, but the value of work will be assessed along with consideration of

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<sup>156</sup> Homepage of the Canadian Postmasters and Assistants Association (CPAA-ACMPA), Letter signed by several key academics against the *Public Sector Equitable Compensation Act*, online at <http://www.cpaacmpa.ca>. [ 'Homepage of the CPAA '].

<sup>157</sup> *Ibid*, at 4.

<sup>158</sup> 'Report of the Standing Senate Committee on Human Rights', 2009, supra n. 154 at 2.

qualifications and market factors.<sup>159</sup> According to critics, this permits any evaluation to take into account that male-dominated jobs are valued more highly in the market, requiring the employer to pay more to attract new employees or retain current ones, even if the value of the work when it is assessed based on skill, effort and responsibility is not greater than that of female-dominated jobs.<sup>160</sup> Furthermore pay equity legislation aims at eliminating systemic discrimination in wages resulting from uncontrolled market forces. The design of the legislation seems to lower federal public wages to the lower level of the private sector.<sup>161</sup>

Furthermore, the new legislation defines a female dominated group as one in which 70% of the workers are women. Only these groups can seek ‘equitable compensation’. The *Canadian Human Rights Act* set the gender predominance threshold at 70% for groups with under 100 employees, 60% for groups between 100 and 500 employees and 55% for groups of over 500 employees. This rigid criterion under the new Act will have the effect that many workers will lose the rights to challenge gender-based wage gaps.<sup>162</sup> According to PSAC the adoption of the new Act would lead to a decrease of its member representation from 10 to only 5 public sector groups that are considered ‘female predominant’.<sup>163</sup> In addition the legislation restricts comparisons of male and female job groups so that comparisons may only be made within defined portions of the

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<sup>159</sup> Section 4(2)(b) of *Public Sector Equitable Compensation Act*: ‘The value of work performed is also to be assessed according to ‘the employers recruitment and retention needs in respect of employees in that job group or job class, taking into account the qualifications required to perform the work and the market forces operation in respect of employees with those qualifications’

<sup>160</sup> ‘Homepage of the CPAA’ supra n. 156 at 1.

<sup>161</sup> Canadian Labour Congress, 2009, ‘Pay Inequity: Canadian Labour Congress Analysis of the ‘Public Sector Equitable Compensation Act’, at 2. [‘Pay Inequity: Canadian Labour Congress Analysis of the ‘Public Sector Equitable Compensation Act’].

<sup>162</sup> ‘Homepage of the CPAA’ supra n. 156 at 2.

<sup>163</sup> Public Service Alliance of Canada, ‘The end of pay equity for women in the federal public service: PSAC’s comments on the Public Sector Equitable Compensation Act’, February 11, 2009, at 4. [‘The end of pay equity for women in the federal public service: PSAC’s comments on the Public Sector Equitable Compensation Act’].

federal public service, or within federal agencies, not across the public service as a whole. Thus it will be more difficult to find groups to compare to, and consequently more difficult to establish that there is a pay equity problem.<sup>164</sup>

There has also been criticism of the new Act for making employers and unions jointly responsible for ‘equitable compensation’, even though federal public sector unions do not have any control over the federal purse.<sup>165</sup> The problem with this approach is that it asserts a false equivalence between management and the union by making the union bear responsibility for the results of bargaining ‘equitable compensation’ without restricting management rights to hire, control information, and determine job classifications.<sup>166</sup> This also has the consequence that ‘equitable compensation’ for female federal public servants is one issue in large bargaining processes between employers and unions and may be sacrificed as bargaining chip to reach other concessions. This is clearly against the recommendation made by the Task Force, since Pay Equity is a non-negotiable human right.<sup>167</sup>

Even though individual women, both non-unionized and unionized, are permitted to carry complaints to the Public Service Labour Relations Board if they believe that their compensation is not ‘equitable’, they have to do that alone, i.e. without assistance.<sup>168</sup> This is because the legislation requires unions to ‘refrain from engaging in any conduct that may encourage or assist any employee in filing or proceeding with a complaint under the Act’ or they may face a fine of \$50,000.<sup>169</sup> This contrasts with the current system where

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<sup>164</sup> *Ibid.*

<sup>165</sup> ‘Homepage of the CPAA’ supra n. 156 at 2.

<sup>166</sup> ‘Pay Inequity: Canadian Labour Congress Analysis of the ‘Public Sector Equitable Compensation Act’, supra n. 161 at 3.

<sup>167</sup> Côté and Lassonde, 2007, ‘Status Report on Pay Equity in Canada’, supra n. 37 at 14.

<sup>168</sup> ‘Homepage of the CPAA’ supra n. 156 at 2.

<sup>169</sup> Section 36 and Section 41 of the *Public Sector Equitable Compensation Act*.

the Canadian Human Rights Commission will investigate, interview witnesses, and examine evidence when a complaint has been filed. Furthermore, individual, group, and policy grievances are prohibited under the new Act.<sup>170</sup>

The new legislation disregards the recommendations of the Federal Pay Equity Task Force Report that called for proactive, inclusive, and timely legislation, which would ensure union involvement, and be supported by a new pay equity agency. The word pay equity is never even mentioned in the new Act. It introduces the new notion of ‘equitable compensation’, which remains ill defined. This expression will create a lot of uncertainty, since it is new and unprecedented in Canadian and international human rights law.<sup>171</sup> By choosing not to use the term ‘pay equity’ the government appears to sidestep all jurisprudence on the question and introduces a new term which is bare of a legal meaning. This will lead to ‘litigious, adversarial and complaints-based’ processes,<sup>172</sup> which is what the government says it wishes to avoid.<sup>172</sup> Finally, it is alarming that workers will lose the right to challenge gender-based wage gaps under human rights law in particular because it is internationally accepted that pay equity is a fundamental human right that is non-negotiable.<sup>173</sup>

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<sup>170</sup> ‘*Pay Inequity: Canadian Labour Congress Analysis of the ‘Public Sector Equitable Compensation Act’*, supra n. 161 at 3.

<sup>171</sup> ‘*The end of pay equity for women in the federal public service: PSAC’s comments on the Public Sector Equitable Compensation Act*’, supra n. 163 at 2.

<sup>172</sup> ‘*Pay Inequity: Canadian Labour Congress Analysis of the ‘Public Sector Equitable Compensation Act’*, supra n. 161 at 8.

<sup>173</sup> Section 399 of the *Budget Implementation Act* amends the *Canadian Human Rights Act* (CHRA) by stating that the Canadian Human Rights Commission does not have jurisdiction to deal with pay equity complaints in the public service; *Pay Inequity: Canadian Labour Congress Analysis of the ‘Public Sector Equitable Compensation Act*, supra n. 161 at 4.

### 2.1.6 Conclusion

As illustrated by the selected cases the present federal pay equity system is incapable of dealing with the problems resulting from systemic gender discrimination. This is partially due to the inherent complexity of pay equity claims and to the limited human and financial resources of the Human Rights Commission and the Human Rights Tribunal. Far more important in this context is the ambiguous terminology of section 11 of the *Canadian Human Rights Act* and the corresponding *Equal Wage Guidelines* which permit different reasonable interpretations and in turn lead to endless and costly proceedings. This deprives the complainants of their rights to pay equity and moreover leads to the unsatisfying impression that the gender based wage-gap seems to be accepted by the judicial system and its representatives.

The reach of the federal pay equity law is also limited by the enormous efforts that are required to file a complaint. A woman alone, for example, has no chance to win a pay equity fight against her employer since the onus of proving the alleged gender-discrimination lies on her.

Unions play an important role in fighting the gender based wage-gap. However, their right to file pay equity complaints and to represent the employees was often challenged by the opponent party because the *Canadian Human Rights Act* does not specify whether unions have the right to file claims.

Proactive pay equity laws are a better but not a perfect solution. As investigations in Ontario have shown, the gender based wage-gap has indeed decreased since the *Pay Equity Act* has been enacted. But the remaining income differences between women and men for work of equal value shows that *Ontario's Pay Equity Act* has not completely kept

its promise of providing fully gender wage equality. This goal can only be achieved by adopting further measures, like, for example, easier access to unionization, ensuring access to education and training, and in adjusting the present law so that it applies to all employers in order that the most vulnerable in the workforce can profit.

The solution proposed in the *Public Sector Equitable Compensation Act* is not an equality enhancing reform. The new legislation rather leads to further confusion by introducing new and ill defined notions like ‘equitable compensation’. This may again lead to lengthy judicial reviews and not improve the situation under the *Canadian Human Rights Act* with its corresponding *Equal Wage Guidelines*.

## 2.2 Maternity and Parental Benefits

### 2.2.1 Introduction

Women's incomes are lower than those of men in all age groups. The size of the gap however depends on the age range and other factors. In 2003, the average income of women between the ages of 35 and 54, the age range in which women's incomes are the highest, was around 60% of those of their male counterparts.<sup>174</sup> In Canada women with children earn less than women who never had a child. In 1996, for example, mothers between age 25 and 54 who worked full-time in the labour market received 87.3 percent of the income received by women without children.<sup>175</sup> This difference – the wage differential between women with and without children – has been observed in many countries and has come to be known as the 'family gap' or the 'maternal wage gap'.<sup>176</sup> In contrast, Canadian men who have had children have higher incomes than those without children (133.6 percent in 1996).<sup>177</sup>

The increased participation of women in the paid work force has brought some major social changes to the family and the labour force structure. The employment rate of women with children rose from 37.7 percent in 1973 to more than 78 percent in 2002.<sup>178</sup> The majority of these working mothers work in fulltime jobs.<sup>179</sup> Over a similar time period (from 1959 to 2002) there has been a steady decline in the birth rate among

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<sup>174</sup> 'Women in Canada, A Gender-based Statistical Report', supra n. 1 at 134.

<sup>175</sup> Phipps, et al, 2001, supra n. 27 at 412.

<sup>176</sup> Jane Waldfogel, 1998, 'Understanding the 'Family Gap' in Pay for Women with Children', *Journal of Economic Perspectives* 12: 137-56, at 137.

<sup>177</sup> Phipps, et al, 2001, supra n. 27 at 412.

<sup>178</sup> Shelley Phipps, 2006, 'Working for Working Parents: The Evolution of Maternity and Parental Benefits in Canada', *IPRP Choices* 12 (2), at 5; Nicole M. Fortin, and Michael Huberman, 2002, 'Occupational Gender Segregation and Women's Wages in Canada: An Historical Perspective'. CIRANO, Centre interuniversitaire de recherche en analyse des organisations, Montreal, at 3.

<sup>179</sup> 'Women's Inequality in Canada', supra n. 3 at 61.



Canadian women. In 2002, there were only 41 births per 1,000 women aged 15 to 49.

This represents about a third of the birthrate from 1959 in the same age group.<sup>180</sup> Over the same period, the average age of mothers giving birth to their first child increased steadily from 23 years in the late 1960s to 27 years in 2002.<sup>181</sup> Statistical data from 2005 indicate that Canadian women aged 30 to 34 have the highest birth rates; they account for 31.4% of total births.<sup>182</sup>

The significant increase in mothers' labour market participation caused changes in intra-household dynamics for couples with young children. This in turn made maternity and parental benefits increasingly important. In 1973, 60.6% of couples with a young child were 'one-earner' families; by 2002, this figure has decreased to only 21 percent. While the income from the father's side still dominates the family earnings, an essential contribution to a household's income comes from the working mother. Mothers' earnings constituted, on average, 11.7 percent of fathers' earnings in 1973. By 2002, this ratio had climbed to 41.6 percent. In 2002, mothers' earnings contributed about 25 percent of the total household income, compared to 10 percent in 1973.<sup>183</sup>

This section aims at investigating the effects of maternity and parental leave policies on women's labour market status and women's position within the family. These policies have been identified as a necessary bridge between a woman's employment and the private family sphere. They play a critical role in securing women's equality by supporting women's dual responsibilities for family and paid work.

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<sup>180</sup> 'Women in Canada, A Gender-based Statistical Report', supra n.1 at 40.

<sup>181</sup> *Ibid.*, at 41.

<sup>182</sup> Statistics Canada, 2007, 'Births' *The Daily*, September 21.

<sup>183</sup> Phipps, 2006, supra n. 178 at 3 and 4.

I will begin with a short overview of the *Employment Insurance Act* and its impact on women. Then I review the history of maternity and parental leave in Canada and examine the modifications to the benefits that were made over time. This section is followed by a discussion on the impact of maternity and parental benefits on women's labour market position and on whether these policies are enhancing gender equality. I conclude that maternity benefits, in today's form, fail to support the child-bearing activity of female workers and that parental benefits promote the traditional division of labour at home and in the labour force.

### **2.2.2 The Employment Insurance Act and its Impact on Women**

In July 1996 the *Employment Insurance Act*<sup>184</sup> (EI) replaced the *Unemployment Insurance Act*<sup>185</sup> (UI) and the *National Training Act*. The new EI system was designed to encourage unemployed to return to work, to strengthen work incentives and to help workers to adjust to economic change. This was done through investment in re-employment benefits and by securing \$1.2 billion in savings by 2001-2002.<sup>186</sup> Under both the new Employment Insurance scheme and the old Unemployment Insurance system, the rules should apply equally to men and women. However women have been treated differently under both programs almost from the time when the Acts were passed. Right from the beginning, applicants for both UI and EI benefits have been required to demonstrate significant attachments to the paid workforce. Implicit assumptions about women's commitment – or lack of commitment – to working outside their homes in paid

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<sup>184</sup> *Employment Insurance Act* 1996 c.23.

<sup>185</sup> *Unemployment Insurance Act* 1971.

<sup>186</sup> Shelley Phipps, and Fiona MacPhail, 2000, 'The Impact of Employment Insurance on New-entrants and Re-entrant Workers', Final Report prepared for Human Resources Development Canada, SP-AH135-11-00E, at 1; Human Resources Development Canada, 'A Guide to Employment Insurance', pp. 1-2.

employment have often made it difficult for women to prove labour force attachment.<sup>187</sup> Also recent changes in the EI program have had an adverse impact on female workers. The eligibility rules for EI benefits are designed for workers with permanent full-time jobs. For example, the new EI Act restricted the access to insurance benefits for many workers by increasing the number of part-time hours and the number of weeks needed to qualify for EI. These new restrictions disproportionately exclude women, a large percentage of whom are part-time/contingent workers, self-employed and/or absent from the workforce for longer stretches due to family responsibilities. Loss of EI eligibility also prevents access to employment- and training services funded through EI: any of the training and employment services that the government funded through Part II of the EI Act can only be accessed by individuals who qualify for EI under Part I.<sup>188</sup>

The next paragraph reviews difficulties that women encounter when applying for EI benefits. This is followed by an examination and discussion of the impact of maternal and parental benefits on women's labour life at home and in the workplace. Of note in this context is that today's maternal and parental benefits are part of the *Employment Insurance Act*. This program aims to provide temporary replacement income for those who lose their jobs and should provide the necessary income support to unemployed women and men until they can find employment again. Therefore the eligibility requirements, which are based on labour force attachment, contributions, and capability and availability at work, are tied to adverse incidents in the labour market, e.g. loss of employment due to sickness, disability, retirement or dismissal. Pregnancy and childbirth

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<sup>187</sup> Monica Townson, and Kevin Hayes, 2007, *Women and the Employment Insurance Program*, Toronto: Canadian Centre for Policy Alternatives (CCPA), at 14.

<sup>188</sup> Paula Wansbrough, and Deanna Yerichuk, 'Environmental Scan of Employment and Training Services for Women in Canada', 2007, Report Submitted to the Canadian Women's Foundation, at 13.

however are not related to a loss of work and even less so to the dynamics of the labour force. The purposes of maternity and parental benefits are rather to support families around the time of the birth of the child.<sup>189</sup> Some policy changes make sense from the perspective of regular EI but not for maternity benefits, like for instance, penalties for repeat claims. Whether maternity benefits should be removed from the *Employment Insurance Act* needs to be discussed.<sup>190</sup>

Since 2003 access to EI benefits under the *Employment Insurance Act* has not improved for women, particularly for those engaged in non-standard work.<sup>191</sup> According to a study done by Townson and Hayes most women are excluded from Employment Insurance coverage in Canada.<sup>192</sup> The difference between men's and women's EI coverage remains significant: in 2004, for example, only 32% of unemployed women received EI benefits compared to 40% of unemployed men.<sup>193</sup> Women's access to EI benefits decreased by 6% in the five years following the introduction of the EI Act in 1996; in comparison, men's access decreased by only 1%.<sup>194</sup>

A key problem with the existing program is the fact that the majority of the unemployed women do not qualify for benefits, and women are more likely than men to be denied benefits. This is because women in general and Aboriginal women, women of colour, immigrant women and women with disabilities in particular, do more non-standard work in traditionally female-dominated occupations, like teaching, nursing, clerical or service and sales occupations. Since the Employment Insurance scheme does

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<sup>189</sup> Leslie A. Pal, 1985, 'Maternity Benefits and Unemployment Insurance: A Question of Policy Design', *Canadian Public Policy* 11(3): 551-60, at 551.

<sup>190</sup> *Ibid.*

<sup>191</sup> 'Women's Inequality in Canada', supra n. 3 at 68.

<sup>192</sup> Townson and Kevin, 2007, supra n. 187 at 11.

<sup>193</sup> *Ibid.*

<sup>194</sup> 'Women's Inequality in Canada', supra n. 3 at 68.

not take into account the effect of non-standard employment patterns, access to benefits are disproportionately restricted for non-standard employees.<sup>195</sup> Under the old program of Unemployment Insurance, at the time of recession in the late 1980s, 83% of all unemployed women did receive benefits. Today, two thirds of the working women who pay into EI are not entitled to benefits if they lose their job.<sup>196</sup>

Under the new system implemented in 1997, eligibility for benefits was based on hours worked (between 420-700 hours, depending on regions and local unemployment rate) in the 52-week period before a claim. Under the UI system 20 weeks of working with at least 15 hours of work per week, totalling 300 hours, were needed to qualify for benefits. Under the new system, 700 hours of work during 20 weeks prior to the claim are required. This means 20 weeks with at least 35 hours a week.<sup>197</sup> Workers in most large urban areas now have to work for 700 hours, roughly the equivalent of 20 weeks of full-time work in order to be eligible for benefits<sup>198</sup> The 35 hours a week reflects the average hours worked by Canadian workers per week. However, in 1996 men worked in average 39 hours a week, while employed women averaged 30 hours. The 35-hour average was lower than men's average weekly hours, but higher than women's average. In turn it became easier for unemployed men to qualify for benefits and more difficult for unemployed women.<sup>199</sup>

Women's paid employment is characterized by variability in both hours and pay. The fact that women work fewer hours than men was a main reason why many could not

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<sup>195</sup> *Ibid.*

<sup>196</sup> Townson, 2009, supra n. 12 at 26.

<sup>197</sup> Townson and Hayes, 2007, supra n. 187 at 5.

<sup>198</sup> Canadian Labour Congress, 2009, 'Statement by the Canadian Labour Congress to the House of Commons Standing Committee Regarding the Status of Women Study on Consequences and Effects the Current Employment Insurance (EI) Programs have on Women in Canada', at 3. ['Canadian Labour Congress'].

<sup>199</sup> Townson and Hayes, 2007, supra n. 187 at 5.

qualify for benefits. Even those women who are officially classified as ‘fulltime’ workers still work fewer hours than men.<sup>200</sup> Nearly three-quarters of men work more than 35 hours, compared to only 49% of employed women. Under EI program rules there is no upper limit on weekly working hours for determining eligibility for benefits. As a result, employees who work overtime on a regular basis will require fewer weeks of work to qualify for EI benefits. Women are far less likely to be able to work overtime because of their family responsibilities and because they are carrying the major load of unpaid work. In addition only one-third of the women are being paid for their overtime hours, while more than half of all men who work overtime get paid for it.<sup>201</sup> Furthermore, in 2004, 27% of the total female workforce, were part-time employees (work less than 30 hours per week), compared with just 11% of employed men. Only 42.8% of unemployed part-time workers qualified for EI in 2004.<sup>202</sup>

So access to EI benefits is overall more difficult for women as compared to men. And for those women who do qualify for EI benefits, the amount of benefits is substantially lower than that for men since women continue to earn less than their male counterpart regardless of age, education, experience, labour market attachment or occupation. The benefits are only 55% of usual earnings and are limited to a maximum amount of \$447 a week.<sup>203</sup> Today’s maximum weekly benefit is more than 25% less than in 1996, and the average benefit now is just \$335. EI support during periods of unemployment, maternity/parental leave, and periods of sickness is important for maintaining stable family incomes. It should also support the economic independence of

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<sup>200</sup> Townson, 2009, supra n. 12 at 26.

<sup>201</sup> For example, in 2004, only 18% of employed women, compared with 25% of employed men, worked overtime hours, in Townson, and Hayes, 2007, supra n. 187 at 23.

<sup>202</sup> ‘*Women’s Inequality in Canada*’, supra n. 3 at 68.

<sup>203</sup> Townson, 2009, supra n. 12 at 27.

women since benefits are not based on family income but rather on insured individual earnings.<sup>204</sup> But women's lower average earnings entail lower EI benefits.

Finally those who quit their jobs for reasons not approved under the EI Act – such as caring for family members – are also excluded from receiving benefits.<sup>205</sup> Women aged 25-44 are least likely to qualify for EI and are most likely to have young children.<sup>206</sup> Workers who have not worked in the past 12 months cannot qualify for benefits, even if they had contributed to the program for many years prior to their recent unemployment. This affects many women.<sup>207</sup> Women who lose their jobs during or immediately after maternity or parental leave may not qualify for regular EI benefits because of their prolonged absence from work. The so-called 'anti-stacking' rules in EI limit the total period during which benefits are paid to 50 weeks. If a woman is laid off during or immediately after her maternity leave and she has already claimed 50 weeks of maternity and parental benefits, she will not be entitled to further regular EI benefits. In April 2009, Chris Charlton, labour critic for the NDP, introduced a private member's Bill in the House of Commons to eliminate anti-stacking rules from the EI program.<sup>208</sup>

After a two-year absence from paid work, the eligibility requirement is raised to 910 hours, or more than six months of full-time work to qualify for regular EI benefits. But special rules apply to those returning to work after maternity or parental leave. If at least one week of maternity or parental benefits was received in the 208-week period before making the current claim, they must accumulate between 420 and 700 further hours of work. Mothers returning from maternity or parental leave may not have enough

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<sup>204</sup> 'Canadian Labour Congress', 2009, supra n. 198 at 1-2.

<sup>205</sup> Townson, 2009, supra n. 12 at 27.

<sup>206</sup> 'Women's Inequality in Canada', supra n. 3 at 68.

<sup>207</sup> Townson, 2009, supra n. 12 at 27.

<sup>208</sup> *Ibid.*, at 27-28.

time to accumulate the required number of hours before a layoff occurs. They are then left without any protection and are ineligible for regular EI benefits.<sup>209</sup>

## **2.2.3 History of Maternity and Parental Leave in Canada**

### **2.2.3.1 From Unemployment Insurance (UI) to Employment Insurance (EI)**

Although Unemployment Insurance (UI) benefits were available in Canada since 1940, they originally were not meant to cover for maternity, paternity or parental leaves.<sup>210</sup> In fact, new mothers were initially regarded as being among potential abusers of UI. It was feared that young married women might enter the paid work force only for the purpose of gaining access to UI benefits, whereas they truly intended to become stay-at-home mothers after giving birth. To avoid such abuse, women were explicitly disqualified from receiving regular UI for six weeks before and six weeks after the expected date of their delivery. It was argued that they were ‘not available for work’ during this time.<sup>211</sup>

During the 1960s and 1970s, women’s groups and unions formed coalitions and alliances to promote maternity benefits.<sup>212</sup> The first official recommendation that maternity benefits should be offered through the UI program was published in 1968. The *Report on Study for Updating the Unemployment Insurance Programme* argued that UI should cover all kinds of work interruptions, and pregnant or sick women should not be excluded when they needed financial assistance the most. The call to add maternity

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<sup>209</sup> *Ibid.*, at 28.

<sup>210</sup> Maternity benefits refer to paid benefits that can be received only by the biological mother. Paternity benefits refer to paid benefits that can be received only by the biological father. Parental benefits can be claimed by either parent and by adoptive parents. It is also important to distinguish maternity leave, which grants the legal right to return to a paid job after a maternity-related absence, but does not involve the receipt of cash benefits: Phipps, 2006, *supra* n. 178 at 33.

<sup>211</sup> Phipps, 2006, *supra* n. 178 at 7.

<sup>212</sup> Julie Lassonde, and Andr e C t , 2007, ‘*Report on the NAWL Pan-Canadian Workshop on Improving Maternity and Parental Benefits outside Quebec*’, available online at [www.nawl.ca](http://www.nawl.ca), at 3.



benefits as part of UI was repeated in the 1970 *White Paper on Unemployment Insurance* and in the *Royal Commission on the Status of Women* from 1971.<sup>213</sup> These two government documents paved the way for the introduction of a maternity and parental benefits regime in Canada, which was finally introduced through Bill C-229 in 1971.<sup>214</sup> Despite objectionable decisions like the case of *Bliss v. Canada*<sup>215</sup> in 1979, in which the Supreme Court of Canada ruled that discrimination on the basis of pregnancy is not discrimination on the basis of sex, maternity benefits were increased and became broadly more accessible with time. This was the result of persistent activism by women, unions, and women's groups. In 1975, women acquired the right to use these benefits any time during the period surrounding the birth and in 1983 maternity benefits were simplified and adjusted to conform to the *Canadian Human Rights Act*. Finally, in 1989, the Supreme Court of Canada overturned the Bliss decision. It recognized in *Brooks v. Canada*,<sup>216</sup> that 'pregnancy discrimination' is a form of sex discrimination because of the basic biological fact that only women have the capacity to become pregnant.<sup>217</sup>

Further significant modifications of the *Unemployment Insurance Act* until its replacement by the *Employment Insurance Act* in 1997 will be discussed in the following section.

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<sup>213</sup> Phipps, 2006, supra n. 178 at 7.

<sup>214</sup> Lassonde and Côté, 2007, supra n. 212 at 3.

<sup>215</sup> *Bliss v. Canada (Attorney General)* [1979] 1 S.C.R. 183: *The Unemployment Insurance Act* initially provided for a maximum of 15 weeks of maternity benefits. But the Act disentitled pregnant women from receiving basic unemployment benefits, restricting them to special maternity benefits during a portion of their pregnancy. In 1979 Stella Bliss challenged this differential treatment before the Supreme Court of Canada. She was told that she was not entitled to maternity benefits under the UI Act because she did not meet the stringent requirements; yet she was not entitled to regular benefits because she was pregnant. The Court ruled that she was not discriminated against because she was a woman, rather there were simply special rules for pregnant persons – 'any inequality between the sexes in this area is not created by legislations but by nature'. Therefore, the *Canadian Bill of Rights* protection against sex discrimination did not apply: Lassonde and Côté, 2007, supra n. 212 at 4.

<sup>216</sup> *Brooks v. Canada Safeway Ltd.* [1989] 1 S.C.R. 1219.

<sup>217</sup> Lassonde and Côté, 2007, supra n. 212 at 4.

## **2.2.3.2 Comparison of the Current Legislative Protection with Former Legislation**

### **2.2.3.2.1 Background**

The types of work leave related to the birth or adoption of a child are maternity leave, paternity leave, and parental leave. Maternity and parental leave in Canada contain two complementary components: a monetary benefit and a leave guarantee.<sup>218</sup>

Eligible claimants receive a monetary compensation for a certain amount of the time that they are off work to have a child or to adopt a child. This benefit regime is delivered under the provisions of the *Employment Insurance Act* (EI) and is a matter of federal jurisdiction.<sup>219</sup>

Concerning the second point, eligible claimants are entitled to a leave, which allows parents to take time off for a defined period of time when a child is born or adopted. During this time their job is protected, i.e. they are guaranteed to be able to return to their previous positions. This is provided by provincial employment standards legislation and federally by the *Canada Labour Code*.<sup>220</sup>

### **2.2.3.2.2 Eligibility Requirements**

In January 1997, unemployment insurance was replaced by employment insurance. This change brought some major modifications. To be eligible for maternity benefit under the old unemployment insurance scheme, a pregnant woman had to show evidence for at least 20 weeks of insurable earnings in the past fifty-two weeks. A week of insurable earning was defined by at least 15 hours of work per week and/or an income

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<sup>218</sup> *Employment Insurance Act* 1996 c. 23, s. 12 and *Canada Labour Code R.S.C. 1985, c.L-2*, s. 206; Gillian Calder, 2005, 'SCC to rule on parental leave', *The Lawyers Weekly*, 25 (19), at 10.

<sup>219</sup> *Employment Insurance Act* 1996 c. 23, s. 12 and s. 14; Calder, 2005, supra n. 218 at 10.

<sup>220</sup> *Canada Labour Code R.S.C. 1985, c.L-2*, s. 206(1) and (2); Calder, 2005, supra n. 218 at 10.

which reached at least 20 percent of maximum insurable earnings.<sup>221</sup> This eligibility requirement was changed to a 700-hour requirement (20 weeks with 35 hours per week) in 1997.

Under unemployment insurance, women working fewer than 15 hours per week were formally disentitled from claiming benefits. With the modification of the provision in 1997 the part-time cut-off was eliminated.<sup>222</sup> Another restriction from the former legislation, the so called ‘Magic 10 Rule’, was abolished in 1983. Before that time women had to demonstrate that they were employed during the 10 weeks preceding the conception of a child. The 1981 Task Force on UI recommended the elimination on the grounds that this would help achieve the goal of protecting women against income loss due to maternity. It has also been pointed out by different authors, that the decision to eliminate the ‘Magic 10 Rule’ was, at least in part, a response to public pressure following the Supreme Court ruling in *Bliss*.<sup>223</sup>

In January 2001, the most recent major modification to the maternity and parental benefits system was introduced. It brought an eligibility reduction from 700 to 600 hours.<sup>224</sup>

### **2.2.3.2.3 Coverage**

In 1990 parental benefits were introduced including both biological and adoptive parents. In January 2001, the benefit period was extended from 10 to 35 weeks<sup>225</sup>. Even though the 15 weeks of maternity benefits still are only available to the biological mother

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<sup>221</sup> *Unemployment Insurance Act 1971*; Iyer, 1997, ‘Some Mothers are Better than Others: A Re-examination of Maternity Benefits’, in ‘*Challenging the Public/Private Divide: Feminism, Law, and Public Policy*’, edited by Susan B. Boyd (Toronto: University of Toronto Press, 1997), pp. 168-194, at 171.

<sup>222</sup> Iyer, 1997, *supra* n. 221 at 173.

<sup>223</sup> Phipps, 2006, *supra* n. 178 at 8.

<sup>224</sup> *Ibid*, at 10.

<sup>225</sup> *Employment Insurance Act 1996* c. 23, s. 12(3b) and s. 12(4b).

the 35 weeks of parental benefits may be split between the biological parents and are also available to adoptive parents.<sup>226</sup> With these alterations the combined maximum of maternity and parental leave benefits was raised up to 50 weeks.<sup>227</sup>

#### **2.2.3.2.4 Amount of Benefit or Replacement Rate**

Replacement rate is the amount of received benefits, expressed as percentage from the previous insured salary. This rate only applies to incomes up to a certain level. Incomes that exceed this maximum all receive the maximum possible benefit.

Since maternity benefits were introduced in 1971 the replacement rate and the ceiling on benefits have been identical to the provisions for regular unemployment insurance. The basic replacement rates declined from 66 percent in the 1970s to 55 percent today. The maximum possible benefit is \$413 per week.<sup>228</sup>

For low-income families (net family income of \$25,921 or less with at least one child requiring support) there is the possibility to raise the replacement rate up to 80 percent of the insurable earnings. These benefits are delivered via 'Family Supplements'.<sup>229</sup>

Only recent changes in 2001 allowed claimants to earn up to \$50 per week, or maximally 25 percent of their employment insurance benefit, during the time they claim benefits without clawbacks.<sup>230</sup> This contrasts sharply to the regular employment insurance benefits which always allowed additional income.<sup>231</sup>

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<sup>226</sup> *Employment Insurance Act* 1996 c. 23, s. 22(1) and 23(1); Phipps, 2006, supra n. 178 at 10-12.

<sup>227</sup> *Employment Insurance Act* 1996 c. 23, s. 12(3) and (4).

<sup>228</sup> *Employment Insurance Act* 1996 c. 23, s. 17, *Employment Insurance Act* 2001 c. 5, s. 6; Phipps, 2006, supra n. 178 at 8.

<sup>229</sup> *Employment Insurance Act* 1996 c. 23, s. 16; Phipps, 2006, supra n. 178 at 12 and 30.

<sup>230</sup> *Employment Insurance Act* 1996 c. 23, s. 19(2).

<sup>231</sup> Iyer, 1997, supra n. 221 at 172.

#### **2.2.3.2.5 Duration of Benefits**

Since the first implementation of the maternity and parental benefits under the *Unemployment Insurance Act* the time period covered by benefits has increased from 15 weeks to 50 weeks today.<sup>232</sup> The two-week mandatory ‘waiting period’ between the last day of employment and the first day of benefits entitlement remains unchanged. This means that women after giving birth do not receive any money at all for two weeks. When parents share the parental benefits the waiting period is reduced to a one-week waiting period for each parent.<sup>233</sup>

#### **2.2.3.2.6 Quebec’s Parental Leave Program**

Through the 1990’s, many organizations in Quebec started fighting for the implementation of a parental leave plan which is distinct from that of the federal government. Following an agreement on securing the financial support through the federal government in 2005, the new ‘Quebec Parental Insurance Plan’ came into effect in January 2006. This plan allowed Quebec to withdraw from the federal maternity and parental benefit program.<sup>234</sup>

The agreement followed a ruling in the Quebec Court of Appeal stating that the maternity and parental benefits offered by the federal government violate the Constitution because they are essentially social benefits and thus fall within provincial jurisdiction. While the Quebec Court of Appeal ruled that this was indeed within provincial jurisdiction, the Supreme Court of Canada was of the opinion that the current maternity and parental benefits provisions do belong in the *Employment Insurance Act* and thus

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<sup>232</sup> *Employment Insurance Act* 1996 c. 23, s. 12(3) and (4); Phipps, 2006, supra n. 178 at 12.

<sup>233</sup> *Employment Insurance Act* 1996 c. 23, s. 13; Phipps, 2006, supra n. 178 at 12.

<sup>234</sup> *Ibid*, at 10; Canada (Procureur général) c. Québec (Procureur général), [2004] C.S.C.R. no. 64; *Reference re Employment Insurance Act (Canada)*, [2005] 2 S.C.R. 669; 2005 SCC 56.

under federal jurisdiction. It decided that these benefits are fundamentally an income-replacement program for workers with newborn or newly adopted children.<sup>235</sup> Before the Supreme Court of Canada rendered its decision on October 20, 2005, Quebec and Ottawa signed the ‘Canada-Québec Final Agreement on the Parental Insurance Plan’ - a crucial step in implementing the system. On June 16, 2005, the ‘Parental Insurance Plan’ was adopted by the National Assembly. Even though the Supreme Court of Canada rejected Québec’s arguments to the effect that maternity benefits, parental benefits and adoption benefits paid under the *Employment Insurance Act* overstep Québec’s jurisdiction and exceed that of the Parliament of Canada, the decision had no effect on the terms of the ‘Québec Parental Insurance Plan’, because the ‘Canada-Québec Final Agreement’ continued to have precedence. Finally, the Québec Parental Insurance Plan came into effect on January 1, 2006.<sup>236</sup>

The new provisions of the Quebec Parental Insurance Plan (QPIP) are a supplement to the provisions formulated in the *Labour Standards Act* in Quebec, which specifies maternity and parental leave. The new plan introduces four major changes in paid parental leave.<sup>237</sup>

The first change provides for weeks reserved for the father that cannot be transferred to the mother: This is unprecedented in North America. Fathers in Quebec are now entitled to a 3-to-5-week paternity leave.<sup>238</sup> The second change involves increased

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<sup>235</sup> Lassonde and Côté, 2007, supra n. 212 at 9; *Canada (Procureur général) c. Québec (Procureur général)*, [2004] C.S.C.R. no. 64; *Reference re Employment Insurance Act (Canada)*, [2005] 2 S.C.R. 669; 2005 SCC 56.

<sup>236</sup> Ministère de l’Emploi et de la Solidarité sociale of Québec, ‘*Québec Parental Insurance Plan*’, online available at <http://www.rqap.gouv.qc.ca>.

<sup>237</sup> Diane-Gabrielle Tremblay, 2007, ‘*Family Policies and Labour Market participation: the situation in Quebec and Canada*’, Research Note no. 2007-01, Canada Research Chair on the Socio-Organizational Challenges of the Knowledge Economy, Université du Québec à Montréal, at 4.3.2.

<sup>238</sup> *An Act respecting Parental Insurance*, R.S.Q. c. A-29.011, 2001, c.9, s.9 and s. 18.

benefits offered by the plan. The 14-day waiting period from the federal parental leave program was cancelled. Moreover the new Quebec plan increased the maximum insurable income from \$39,000 to \$57,000 and offers benefits of 70% of the average weekly income for the duration of 18 weeks of maternity leave and 5 weeks of paternity leave. Regarding parental leave, it offers benefits that correspond to 70% of income for 7 weeks and 55% for the remaining 25 weeks.<sup>239</sup> The third major change is the introduction of more flexibility in the plan. This means that parents can now choose whether they want a plan with longer leave and lower benefits or plan with shorter leave and higher benefits.<sup>240</sup> A fourth novelty in the new Quebec plan is that in order to be eligible for benefits it is sufficient to have generated an income of \$2000 over one year. This replaces the federal requirement of 600 working hours in the preceding 52 weeks.<sup>241</sup>

#### **2.2.4 The Impact of Maternity and Parental Benefits on Women's Labour Market Position and on Gender Equality**

Maternity and parental policies have been identified as a necessary bridge between a parent's employment and the private family sphere. These policies are intended to reduce conflicts originating from competing demands on an individual from the 'public' working sphere and the 'private' family sphere.<sup>242</sup>

Phipps, in her study from 2006,<sup>243</sup> calculated the estimated benefits for a hypothetical set of eight new parents for five historical periods. She concluded that the

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<sup>239</sup> *An Act respecting Parental Insurance*, R.S.Q. c. A-29.011, 2001, c.9, s. 18 (1) and (2).

<sup>240</sup> *An Act respecting Parental Insurance*, R.S.Q. c. A-29.011, 2001, c.9, s.9 and s. 18 (Basic Plan and Special Plan).

<sup>241</sup> Tremblay, 2007, *supra* n. 237 at 4.3.2.

<sup>242</sup> Patricia Evans, and Norene Pupo, 1993, 'Parental Leave: Assessing Women's Interests', *Canadian Journal of Women and the Law*, Vol. 6, no. 2, pp. 402-418, at 406.

<sup>243</sup> Phipps, 2006, *supra* n. 178 at 12-20.

Canadian system serves 'typical' Canadian women rather well.<sup>244</sup> A different conclusion was drawn by Iyer almost one decade earlier, i.e. before the introduction of the positive modifications in 2001. According to her maternity benefits are not universally applicable, as it is generally believed, but they rather systematically exclude some women. She argues that practically benefits are only available to middle- and upper-class women or women who are in relationship with partners who bring in most of the family income.<sup>245</sup> This is because the benefits depend on the previous women's salary and employment status of the family. As families at the lower end of the social scale occupy more part time jobs and have lower salaries, they are either not eligible at all for benefits or the benefits are low. The fact is that in 2003, more than one out of three women with newborns did not qualify for maternity or parental benefits. Most of these were self-employed or had not worked for two years or longer.<sup>246</sup>

In the following section I describe problems that arise from differences in entitlements to maternity and parental benefits. Furthermore I will illustrate that for parents with atypical circumstances access to maternity and parental benefits is impaired.

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<sup>244</sup> According to Phipps the typical Canadian woman is a woman who works full-time/full-year until the birth of her child and receives median earnings (\$30'000 for working 30 hours and more per week in 2001). The typical Canadian woman is married and her husband works full time: Phipps, 2006, supra n. 178 at 12, 20. In her study, however, Phipps finds also that maternity and parental benefits serve new parents in less typical circumstances, e.g. new mothers with high earnings, or workers with precarious jobs, not so well: Phipps, 2006, supra n. 178 at 20.

<sup>245</sup> Iyer, 1997, supra n. 221 at 171.

<sup>246</sup> 'Women's Inequality in Canada', 2008, supra n. 3 at 69. The federal government has introduced the *Fairness for the Self-Employed Act* (Bill C-56), that would provide all Employment Insurance (EI) special benefits, including maternity and parental benefits, to self-employed workers. Under the legislation, self-employed Canadians would be required to opt into the program at least one year prior to claiming benefits. The self-employed would pay the same premium rate that salaried employees currently pay. They would not be required to pay the employer's portion of the premium rate, as they would not have access to EI regular benefits. The opt in process has begun in January 2010, the earliest a self-employed person could make a claim would be January 1, 2011. Data from: Human Resources and Skills Development Canada, 'Fact Sheet, Fairness for the Self-employed.'



#### 2.2.4.1 Workers Excluded from Benefits and Causes for Exclusion

The employment rate of women with children has sharply increased in the last decades. In 2006, 73% of all women with children less than age 16 living at home were part of the employed workforce, up from 39% in 1976. The vast majority of these working mothers hold fulltime jobs. In 2004, almost three out of four employed women with at least one child under age 16 at home were employed full time.<sup>247</sup> In addition, the age of the children appears to have very little impact on the likelihood of mothers being employed full-time.<sup>248</sup>

The statistics do not look quite so good for female lone parents. In 2004, only 46% of lone mothers with children under age 3 were employed, compared with 63% of those whose youngest child was aged 3 to 5 and 75% of those whose youngest child was between the ages of 6 and 15. Female lone parents with very young children are also less likely to be employed than their counterparts in two-parent families. Among women with a child under the age of 3, 46% of female lone parents, compared with 67% of those with a spouse, were employed in 2004.<sup>249</sup>

Overall the number of women joining the workforce continues to rise in Canada. In 2006, 77% of women aged 25 to 54 (prime working years for women) did paid work. These women are, however, more likely than men to be employed in part-time or temporary jobs and they more often have multiple jobs.<sup>250</sup> In 2006, for example, more

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<sup>247</sup> *Women in Canada: Work Chapters Updates*, supra n. 14 at 8.

<sup>248</sup> 74% of employed women whose youngest child was under 3 years of age had full-time jobs in 2004, while the figures were 71% for those whose youngest child was aged 3 to 5 and 75% for those whose youngest child was between the age of 6 and 15. Data from: *Women in Canada, A Gender-based Statistical Report*, 2006, supra n. 1 at 105.

<sup>249</sup> *Ibid.*, at 107.

<sup>250</sup> In 2004, 14% of female employees, compared with 12% of male employees, had a temporary work arrangement. 30% of women aged 15 to 24 had in 2004 temporary employment, compared with 11% of employed women aged 25-44. Furthermore, a small but growing share (6%) of employed women is

than 2 million employed women, 26% of all women in the paid workforce, worked less than 30 hours per week at their main job, compared with just 11% of employed men. In general, women have accounted for about seven in 10 of all part-time employees since the late 1970s.<sup>251</sup>

Since these women often do not follow these work patterns by free choice but rather because of childcare responsibilities, or because they are unable to find full-time work or due to both personal and social barriers to their employment, most women who work in these employment situations cannot satisfy the eligibility requirement for maternal or parental benefits.<sup>252</sup>

#### **2.2.4.1.1 Aboriginal Women, Immigrant Women, and Women with Disabilities**

Aboriginal women, immigrant women, and women with disabilities tend to work in the above mentioned unfavourable employment situations that generate less access to maternal or parental leave.

*Aboriginal women* have higher unemployment rates and lower incomes than their non-Aboriginal and male counterparts. In 2001, the unemployment rate among Aboriginal women in the labour force was twice as high as the rate for non-Aboriginal women (17% as compared to 7%). In total, 47% of all Aboriginal women were employed compared to 56% of non-aboriginal women.<sup>253</sup> Aboriginal women were also less likely than their male counterparts, 47% versus 53%, to be employed that year. In 2000, 57% of

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multiple jobholders, compared with 4% of male employees; Data from: 'Women in Canada, A Gender-based Statistical Report', 2006, supra n. 1 at 111.

<sup>251</sup> 'Women in Canada: Work Chapters Updates', 2006, supra n. 14 at 7-8.

<sup>252</sup> *Ibid*, at 8-9.

<sup>253</sup> 'Women's Inequality in Canada', 2008, supra n. 3 at 62-63.

Aboriginal women worked part-time or part-year, compared with 54% of Aboriginal men and 49% of non-Aboriginal women.<sup>254</sup>

The incomes of Aboriginal women in Canada tend to be relatively low. In 2000, median income of Aboriginal women was \$12,300, about \$5,000 less than the figure for non-Aboriginal women and about \$3,000 less than that of Aboriginal men. In 2000, 36% of all Aboriginal female were classified as living in a household with incomes below Statistics Canada's Low Income Cut-offs.<sup>255</sup> This was more than double the figure for non-Aboriginal women, 17% of whom had low incomes that year. The share of Aboriginal women with low incomes was also higher than for Aboriginal men (32%).<sup>256</sup>

As with other women, Aboriginal women are heavily concentrated in low-paying occupations traditionally held by women. Of all Aboriginal women who were employed at some point in 2000, 60% worked either in sales or service or in business, finance or administration jobs. Aboriginal women were more than twice as likely to work in these occupations as Aboriginal men (26%) but with 57% the figure was only slightly higher than for employed non-Aboriginal women.<sup>257</sup>

*Immigrant women* are generally better educated than women born in Canada. In 2001, 18% of all foreign-born women had a university degree, compared with 14% of Canadian-born women. Nevertheless they are less likely to be employed. In 2001, only 64% of immigrant women between the ages of 25 and 64 were part of the paid workforce,

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<sup>254</sup> 'Women in Canada, A Gender-based Statistical Report', 2006, supra n. 1 at 198.

<sup>255</sup> Canada has no official definition of poverty. Statistics Canada does not refer to the LICO as a poverty line. Instead, LICO's are 'meant to convey the income level or threshold at which a family may be in straitened circumstances because it has to spend a greater portion of its income on the basics (food, clothing, and shelter) than does the average family of similar size'. Researches and analysts, however, agree that living in straitened circumstances in a wealthy country like Canada constitutes relative income poverty.

<sup>256</sup> 'Women in Canada, A Gender-based Statistical Report', 2006, supra n. 1 at 199-200.

<sup>257</sup> *Ibid.*, at 198-199.

compared with 70% of non-immigrant women and 80% of their male counterparts. The more recent the immigration dates back, the less likely women are to be employed: the employment rate declines to only 47% among those women who immigrated between 1991 and 2000. Immigrant women have high unemployment rates of 8.1%, or 12.1% among recently immigrated women. This compared to an unemployment rate of 6.8% for male immigrants and to 7% of men born in Canada. Out of those immigrant women who are employed, 47% work on a non regular schedule, compared to 34% of their male counterparts.<sup>258</sup>

Immigrant women with jobs generally earn about the same as other women in Canada (\$34,000 on a full-time, full-year basis in 2000, about \$500 less than the figure of their Canada-born female counterparts). And like Canadian women, immigrant women earn considerably less than their male counterparts (70% of immigrant men). Furthermore, a relatively large proportion of the foreign-born population in Canada have incomes which fall below Statistics Canada's low Income Cut-off. In 2000, 23% of all immigrant women lived in a low-income situation, compared with 20% of the male immigrants and just 16% of their Canada-born counterpart. 35% of the females who immigrated to Canada more recently (between 1991 and 2000) were living in a low-income household.<sup>259</sup>

In 2001, almost two million women – 13% of the total female population – had disabilities. *Women with disabilities* are generally less likely to be employed than woman without disabilities. In 2001, just 40% of women aged 15 to 64 with disabilities were part of the Canadian work force, compared with 40% of their male counterparts and 69% of

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<sup>258</sup> *Ibid*, at 223-224.

<sup>259</sup> *Ibid*, at 226, 228-229.

women without disabilities.<sup>260</sup> Unemployment rates among women with disabilities between the ages of 15 and 64 years were around 10% in 2001, compared to only 5% of non-disabled women.<sup>261</sup>

Women with disabilities generally have relatively low incomes. In 2000, women with disabilities aged 15 and over had an average income from all sources of \$17,200, compared to their male counterparts' income of \$26,900 and to the income of \$22,000 of women without disabilities.<sup>262</sup> In 2000, 26% of all women with disabilities aged 15 and over had incomes below official low income cut-offs, compared with 20% of men with disabilities.<sup>263</sup>

Like their counterparts without disabilities, substantial shares of female labour participants work in areas which have historically been dominated by women. Indeed, in 2001, 49% of all the female force participants with disabilities worked in either sales or service jobs or in administrative positions, compared to 28% of their male counterparts with disabilities.<sup>264</sup>

The above mentioned women are overrepresented in Canada's lower-paid work sectors, like teaching, nursing and related health occupations, in clerical or administrative work, sales or services related occupations, and are more likely to be engaged in non-standard or part-time work. In 2006, only 30% of men worked in these professions, compared to 67% of women.<sup>265</sup> Generally women occupy 68.8% of all jobs with working hours below 30 hours per week. In 2006, almost 20% of all women in part-time jobs cited

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<sup>260</sup> *Ibid.*, at 291, 294.

<sup>261</sup> *'Women's Inequality in Canada'*, 2008, *supra* n. 3 at 62-63.

<sup>262</sup> *'Women in Canada, A Gender-based Statistical Report'*, 2006, *supra* n. 1 at 296.

<sup>263</sup> *Ibid.*, at 297.

<sup>264</sup> *Ibid.*, at 295.

<sup>265</sup> *'Women's Inequality in Canada'*, 2008, *supra* n. 3 at 9.

caring for children as the main reason for working part-time. At the same time, 23% of all female part-time employees indicated they wanted full-time employment, but could only find part-time work.<sup>266</sup>

In summary, women in general and particularly Aboriginal women, recent immigrant women and women with disabilities are disproportionately likely to earn incomes that yield low levels of maternity benefits.<sup>267</sup> This is complicated by the fact that women represent the majority of claimants for maternity and parental benefits.

#### **2.2.4.1.2 Self-Employed Women**

As mentioned above, women must have 600 hours of insurable earnings over the 52 weeks prior to application in order to be eligible for maternity or parental benefits under the *Employment Insurance Act*. Self-employed women typically do not qualify for employment insurance.<sup>268</sup> In 2006 close to 900,000 women or 11% of all women with jobs, were self-employed. This figure compares to only 9% in 1976. Overall, women accounted for 35% of all self-employed workers in 2006, slightly more than the 31% in 1990 and the 26% in 1976.<sup>269</sup> The majority of these, 59%, were between the ages of 20 and 45.

While self-employment can potentially result in a lucrative income, a significant portion of the self-employed, particularly women without employees, are at the low end of the scale in the job market and earn less than \$20,000 per year.<sup>270</sup> As mentioned

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<sup>266</sup> *Women in Canada: Work Chapters Updates*, supra n. 14 at 8-9.

<sup>267</sup> Iyer, 1997, supra n. 221 at 174.

<sup>268</sup> There are some statutory exceptions for certain occupations such as hairdressers and fishers.

<sup>269</sup> *Women in Canada: Work Chapters Updates*, 2006, supra n. 14 at 9.

<sup>270</sup> Sylvain Schetagne, 2000, 'Maternity leave, parental leave, and self-employed workers: Time for action!' *Perception* 23 (4), Canadian Council on Social Development, available online at: [www.ccsd.ca/perception/234/ml.htm](http://www.ccsd.ca/perception/234/ml.htm), at 1.

above<sup>271</sup> the federal government has introduced the *Fairness for Self-employed Act* to self-employed workers. The Act provides all Employment Insurance (EI) special benefits, including maternity and parental benefits to self-employed workers.

#### **2.2.4.1.3 Women's Fertility Patterns**

Women's fertility patterns are highly relevant in assessing the availability and value of the maternity benefit.<sup>272</sup> In Canada, and in many other OECD countries, the fertility rate between 1990 and 2000 has declined with the increase of women's employment rates.<sup>273</sup> Nevertheless fertility rates among Aboriginal women are much higher than among other Canadian women. Between 1996 and 2001, the fertility rate of Aboriginal women was 2.6, compared with a figure of 1.5 among all Canadian women. However, the fertility rate among Aboriginal women has substantially declined over the past three decades from 5.5 children in the 1960s to the current figure of 2.6.<sup>274</sup> This fertility pattern and the tendency of Aboriginal women and women of colour from certain ethno cultural groups to have children at younger ages than Caucasian women, represent a clear disadvantage for claiming maternity benefits. Another aspect is that fertility is linked to class and education levels: middle-class women and women with more years of education tend to have children at older ages.<sup>275</sup> Due to the longer work history and the better education these women are more likely to fill higher positions in the labour market which are often accompanied by higher wages and benefit "top ups" by employers.

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<sup>271</sup> See for more details footnote 246.

<sup>272</sup> Iyer, 1997, supra n. 221 at 175.

<sup>273</sup> Nicole Fortin, 2007, '*The Impact of Gender Role Attitudes on Women's Labour Market and Fertility Decisions: The persistent Appeal of Housewifery*', Department of Economics, University of British Columbia. Talk held at the 'American Association of Population, March 2007. Available online at <http://paa2007.princeton.edu/sessionViewer.aspx?sessionId=709>, at 40.

<sup>274</sup> '*Women in Canada, A Gender-based Statistical Report*', 2006, supra n. 1 at 189-190.

<sup>275</sup> Iyer, 1997, supra n. 221 at 175.

Currently, only 58% of younger women aged 15 to 24 are part of the paid workforce, compared to 77% of women aged 25 to 44.<sup>276</sup> These young women are also more likely than other women to work part-time. In 2006, 52% of employed women aged 15 to 24 worked part-time, compared with around 20% of those between the ages of 25 and 54.<sup>277</sup> The younger the mother, the less likely she is to have advanced education and working experience. As a result young mothers, at the time they give birth, are less likely to occupy well paid full time jobs and this in turn results in reduced access to maternity benefits. Independent of the occupational categories, young mothers claim much lower levels of maternity benefit as compared to older mothers.<sup>278</sup>

#### **2.2.4.1.4 Summary and Conclusion**

Stable family income around the time of birth or adoption should be the main objective of a social maternal and parental benefit policy. However, as outlined above, some women are disproportionately excluded from benefits, especially Aboriginal women, immigrant women, women with disabilities, and self-employed women. This demonstrates a discrepancy between the intended political will and the reality of the impact of the actual provisions.

Even though the eligibility requirement has been reduced from 700 to 600 working hours per year the working pattern of the majority of the women in the labour force leads to exclusion from the benefit. A woman, for example, who is working less than 12 hours per week cannot take advantage of the benefits since she cannot reach the 600 hour requirement. Furthermore for women who are not working at all, as for example

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<sup>276</sup> *Women in Canada, A Gender-based Statistical Report*, 2006, supra n. 1 at 104.

<sup>277</sup> *Women in Canada: Work Chapters Updates*, 2006, supra n. 14 at 8.

<sup>278</sup> Iyer, 1997, supra n. 221 at 175.



students or stay at home mothers, who expect, for example, a second child, are excluded from receiving benefits. A further inherent discrimination of the provision is the current exclusion of self-employed women. This is particularly unlucky, because they tend to have a lower income, and thus a greater need, than employed women. Thus the provision in its current form leads to an increased economic pressure on poorer women. This in turn reinforces existing social and economical disadvantages of the poor and particularly of Aboriginal women, immigrant women and women with disabilities.

Quebec's approach represents an improvement to the federal regime. Its new Parental Insurance Plan covers workers who only generated an insurable income of \$2000 per year. The plan offers higher benefits than the federal provision. It allows parents to choose between a plan with longer leave and lower benefits and one with shorter leave and higher benefits. This reduces the existing exclusionary pattern and fosters equality between the genders and between the beneficiaries. This is because the higher benefits make the leave more affordable for new parents and might also encourage fathers to take the leave.

In addition to the discriminatory eligibility criteria, the benefits are unequally distributed among those who do qualify. Low-income work leads to low replacement rates. For low-wage families a reduction of income is worse than for high income families. This is because low income families spend a higher proportion of their income on fixed expenses. A 45% percent reduction in income is sufficient for many families to be pushed from well above to below the poverty line. The two week mandatory waiting period worsens the situation for those who do not have financial reserves. The fact that low wage families have the possibility to increase their replacement rates to as much as

80 percent of the insurable earnings through Family Supplements (FS) in theory addresses this problem.<sup>279</sup> Family Supplements depend, however, on family income rather than on individual work history. Based on the false assumption that married women have equal access to family resources as men, poverty is reduced at the expense of gender equity.<sup>280</sup>

The federal government has a chance to learn from the positive changes in Quebec and abolish the 14-day waiting period and increase the replacement rates. The government should also provide families with children the possibility to choose between a longer leave and lower benefits or a shorter leave and higher benefits. This choice takes into account the economic balancing that parents engage in when they have to decide who should take the leave, and for how long.

#### **2.2.4.2 Workers Eligible for Benefits and Negative Effects from Benefits**

##### **2.2.4.2.1 Reinforcement of the Traditional Role of Mother as Caregiver**

Under the former *Unemployment Insurance Act* women were not allowed to work while being on maternity leave. This sharply contrasted with the fact that regular insurance recipients were allowed to earn up to 25% of their benefits without any penalty. This unequal treatment was aimed at removing women completely from the workplace for the duration of the benefit period and thereby was promoting the traditional role of mothers as caregivers. Women were paid not to work, which reflected a broadly accepted belief that taking care of an infant is a full time job and sufficient life content for a

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<sup>279</sup> *Employment Insurance Act* 1996 c. 23, s. 16; Service Canada, 'Employment Insurance and the Family Supplement', online available at [http://www.servicecanada.gc.ca/eng/ei/service/family\\_supplement.shtml#Calculation](http://www.servicecanada.gc.ca/eng/ei/service/family_supplement.shtml#Calculation).

<sup>280</sup> Phipps, 2006, supra n. 178 at 9.

woman. The former policy reinforced the traditional gender division of labour within the family and the labour force.<sup>281</sup>

The new *Employment Insurance Act* brought progress and today both the maternity benefit and the regular benefit receiver are treated equally in this respect. It still has considerable limitations though. The lower replacement rates lead to an increase of the pre-existing gap between the parents' earnings. With the birth of a child and the subsequent necessity of leaving her job, a new mother is not only confronted with a new role but also with a drop of her earnings. New mothers often are forced to stay at home. This is due to, among other factors, the lack of affordable quality childcare.<sup>282</sup> This in turn leads to pressure on the father to earn more and to compensate for the financial loss from the mother. Thus, maternity benefits cushion the impact of loss of her earnings to some extent, but also encourage parents to think of him as the primary breadwinner.<sup>283</sup>

The recently introduced extensions of the parental leave reinforce the gender role division. Even though parental leave is in principle available for men as well as for women, in reality it is mainly used by women. According to Statistics Canada only 10-11% of partners of the women who used the parental leave scheme used a part of the leave in 2003 and 2004. Thus, the declared aim of the new policy to have fathers and mothers share the leave has not been achieved. The longer leave of women leads, obviously, to longer absences from the work market and thus represents a disadvantage on the labour market. Women today have an average leave of 11 months. Low participation by men may be due to the fact that earnings of fathers are still much higher

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<sup>281</sup> Ann Duffy, Nancy Mandell, and Norene Pupo, 1989, *Few Choices: Women, Work and Family* Toronto: Garamond Press, 1989, at 21,23, 27-28,68, 83.; Iyer, 1997, supra n. 221 at 179.

<sup>282</sup> Iyer, 1997, supra n. 221 at 180.

<sup>283</sup> *Ibid.*, at 180.

than those of mothers. It is thus financially more beneficial to a family if the mother takes the leave. According to Fortin, despite women's increasing level of education, the gender-wage gap in Canada remains unchanged since the mid-1990s.<sup>284</sup> The fact is that many new fathers earn more than the current EI maximum insurable earnings, so their effective replacement rates are lower than the official 55%. Altogether, the financial cost of taking time away from paid jobs will be higher for fathers than for mothers.<sup>285</sup>

One purpose of a parental leave is to allow both parents to balance their work and family lives. International data indicate that, if no time is specifically reserved for the father, men are unlikely to take a leave.<sup>286</sup> In countries such as Sweden, that promotes an increased participation of men raising children, 'daddy months' have been introduced. These are leaves that can only be claimed if the women are working during the time of the 'daddy months', because otherwise parental leave translates into a kind of extended maternity leave, thus reproducing the traditional division of roles and economic equalities between men and women.<sup>287</sup>

It is still too early to assess the impact of the new Quebec plan on fathers' participation in parental responsibilities. However, some preliminary data indicate that 40% of Quebec fathers did participate in the parental leave reserved for them since January 2006.<sup>288</sup>

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<sup>284</sup> Nicole Fortin, 2005, 'Gender Role Attitudes and the Labour Market Outcomes of Women Across OECD Countries', *Oxford Review of Economic Policy* 21: 416-38, at 416.

<sup>285</sup> Phipps, 2006, *supra* n. 178 at 27.

<sup>286</sup> Kimberly Earls, 2008, 'Childcare and Parental Leave in Sweden: Implications for Women's Employment and Gender Equality', Paper presented at the workshop Equality and Inequality in the Family, at Work and in Society, Cortona Colloquium 2008 – Gender and Citizenship: New and Old Dilemmas, Between Equality and Difference, at 9, 14 and 15.

<sup>287</sup> Diane-Gabrielle Tremblay, 2007, 'More Time for Daddy'. Canadian Centre for Policy Alternatives. Available online at <http://www.policyalternatives.ca/monitorissues/2007/02/MonitorIssue1593/>.

<sup>288</sup> *Ibid.*

#### 2.2.4.2.2 Lack of Affordable Childcare

As mentioned above, parental leave entitlements have been extended to 35 weeks since the *Employment Insurance Act* amendments have been introduced in 2001. This alteration was advertised to offer Canadian parents a ‘choice’ to stay at home with their young children. According to Madsen this ‘choice’ remains an illusion as long as affordable, quality childcare is absent.<sup>289</sup>

Economic pressures to augment the family’s financial resources should favour an early return of mothers to paid work. At the same time, leaving the home for the workplace may be expensive.<sup>290</sup> At present infant and toddler care costs in licensed daycare centres are as high as \$16,800 per year in cities such as Vancouver.<sup>291</sup> In their calculations a couple thus has to deduct this amount from the theoretical income of the woman. When tax deductions are taken into account, from a financial point of view, it is more lucrative for middle-class women to stay at home than to work and use full time daycare.<sup>292</sup> As childcare costs increase with more children, this cost benefit relationship gets even more precarious. As childcare costs are equal for high as for low income women, the cost benefit calculation is particularly unfavourable for the low income women<sup>293</sup> and for single mothers with only one income.

But many Canadian women are also limited in their choice of paid employment because they are restricted by child care availability. In 2006, for example, the number of

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<sup>289</sup> Lene Madsen, 2002, ‘Citizen, Worker, Mother: Canadian Women’s Claims to Parental Leave and Childcare’, *Canadian Journal of Family Law*, 19: 11-74, at 1.

<sup>290</sup> Iyer, 1997, *supra* n. 221 at 181.

<sup>291</sup> Westcoast Childcare Resource Center, online at <http://www.wstcoast.org/parents/choosing.html>.

<sup>292</sup> Madsen, 2002, *supra* n. 289 at 16.

<sup>293</sup> *Ibid.*

regulated<sup>294</sup> child care spaces could accommodate only 17.2% of all children aged 0-12 years. Coverage in full- or part-time centre-based space was available for only one in five children aged 0-5 years.<sup>295</sup>

The Organization for Economic Cooperation and Development (OECD) has described Canada's child care system as a 'chronically underfunded patchwork of programs with no overarching goals'. The OECD ranked Canada last among developed nations in terms of access to early learning and child care spaces – and last in terms of public investment.<sup>296</sup>

During the 2004 federal election, the Liberals promised \$5 billion to create 250,000 additional child care spaces by 2009. But when the Harper-led Conservatives won the election, they scrapped the Liberal plan. Instead they implemented a \$100-a-month allowance for all children under age 6. The payment is taxable and is only enough to pay for one child care space for about three days – assuming one could be found.<sup>297</sup>

As I mentioned if no time is specifically reserved for the father, parental leave leads to an extension of the maternity leave and thus valorizes home-based care and de-emphasizes at the same time the need for public childcare. This leads to a further limitation of the 'choices' available to women who have young children. In particular, making parental leave available while failing to support public childcare 'emphasizes that parental care is superior to other forms of care provision, as its underlying premise is to extend the practice of privatization surrounding the question of child care'.<sup>298</sup> The policy

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<sup>294</sup> The term 'regulated spaces' refers to child care spaces either in centres or family homes which must meet certain standards for health and safety, ratio of children to teachers, and so on, set by the province.

<sup>295</sup> Townson, 2009, *supra* n. 12 at 24.

<sup>296</sup> *Ibid.*

<sup>297</sup> *Ibid.*, at 25.

<sup>298</sup> Evans and Pupo, 1993, *supra* n. 242 at 416.

assumes a conventional family model in which presumably one or the other partner does not face undue constraints in taking time away from employment'.<sup>299</sup> The message which is sent to parents, and particularly to mothers is that the 'best care is provided at home by a biological or adoptive parent, rather than by other caregivers'<sup>300</sup> and that the caregiver's career is less important.

#### **2.2.4.2.3 Women's Retreat and the Erosion of their Market Position**

In 2006/2007 there were approximately 162,000 maternity benefit claims in provinces other than Quebec, representing a 3.4% increase since 2005/2006. 84.8% of all maternity benefit claims were claimed by biological mothers who were between the ages of 25 and 44. The average duration of the maternity leaves remained stable at 14.6 weeks (maximum allowance is 15 weeks) for the past several years.<sup>301</sup> In 2006, there were an estimated 365,000 mothers with a child younger than 12 months, among those 76.5% had insurable employment in the 12 months prior to childbirth. Of these mothers, 83.5% received maternity or parental benefits.

In the same period, the number of parental claims increased by 3.8% to approximately 180,000. Every year since the benefit was enhanced, the number of men claiming biological parental benefits has increased. Data from the Canadian Employment Insurance Commission (EICS) for 2006 indicate the proportion of fathers who claimed or intended to claim parental benefits was 20%, as compared to 15% in 2005.<sup>302</sup>

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<sup>299</sup> *Ibid.*

<sup>300</sup> Madsen, 2002, *supra* n. 289 at 417.

<sup>301</sup> Canada Employment Insurance Commission (CEIC), 2007, '*Employment Insurance 2007: Monitoring and Assessment Report*', Human Resources and Skills Development Canada, at Chapter II, Income Benefits, I. EI Clients, III. Supporting Working Canadians and their Families, 2. Maternity Benefits.

<sup>302</sup> *Ibid.*, at Chapter II, Income Benefits, I. EI Clients, III. Supporting Working Canadians and their Families, 3. Parental Benefits.

The average duration of shared parental claims was 31.9 weeks. An increasing number of parents choose to share parental benefit: in 2006/2007 15,080 men or 3.7% shared the parental benefit with their spouse. Fathers used about one third of the total duration (10.9 weeks). Similarly, biological parents who did not share the benefit used an average of 32 weeks.<sup>303</sup>

In 2006/2007 average weekly benefits for biological parental claims increased slightly to \$337 whereas men received higher average weekly benefits than women (\$381 compared to \$330).<sup>304</sup>

In summary, even though over the last five years the number of parental claims from men has been increasing, women continued to claim the vast majority of parental benefits (87.3%) and collected on average 31.7 weeks of parental benefits, compared to 16.8 weeks for men.<sup>305</sup>

All women who take advantage of the maternal and paternal benefits retreat from the work force. This contributes to the erosion of their labour market position. Thus those retreats generate economic impacts which exceed the time period of the actual leave. Women also experience a strong decline in earnings during the year following childbirth, and this increases over time. During the 1980s, the birth of a child lead to a 28% reduction of the mother's earnings in the year following childbirth. This reduction increased to about 33% after 2000. The decline of earnings persists well beyond the first year after childbirth. For example, in the first year after childbirth, the mother's earnings dropped between 14% and 18% before 2001 and between 37% and 39% since then. The decline in earnings in the year of childbirth and in the first year thereafter was likely

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<sup>303</sup> *Ibid.*

<sup>304</sup> *Ibid.*

<sup>305</sup> *Ibid.*



related to longer maternity leaves and more generous benefits. For example, beginning in 2001, mothers were able to take at least 52 weeks of maternity leave and receive Employment Insurance benefits up to 50 weeks.<sup>306</sup>

Turnbull has shown in her study from 2001 that time spent outside of full-time employment results in a reduction of lifetime earnings. Women with children earn only 57% of earnings of women without children.<sup>307</sup> Negative effects from long work absence also include fewer opportunities for professional promotion and even possible downgrading upon return to work. Finally, the reduced overall earning potential for women results in reduced access to benefits like unemployment insurance and pensions.<sup>308</sup>

#### **2.2.4.2.4 Summary and Conclusion**

One purpose of a maternal and parental provision is to foster equality between the parents. But the present low basic benefit rate (55% of the average insured earnings or a maximum payment of \$447 per week) has the negative effect of reinforcing traditional gender roles in the labour work force and in families. Since more women than men are occupied in low-wage paying jobs and often only work at minimum wage, their choice to return to paid work is often based on financial considerations only. This economic pressure is accompanied by the lack of affordable childcare. Since working for the cost of the childcare expenses is not a real incentive for returning into the paid labour force the choice to stay at home is often not made by free will but rather the financial status of the family. The fact that the father's earnings are often higher than the mother's leads to a

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<sup>306</sup> Xuelin Zhang, 2007, 'Return to the job after childbirth', *Perspectives on Labour and Income*, 8 (12): 18-24. Ottawa: Statistics Canada. Cat. 75-001-XWE, at 22.

<sup>307</sup> Turnbull, 2001, *supra* n. 26 at 15-16.

<sup>308</sup> Madsen, 2002, *supra* n. 289 at 15.

reinforcement of the traditional role of the mother as caregiver while the father occupies the role of breadwinner. The recently introduced extension of parental leave reinforces this gendered pattern even more and leads to an erosion of women's market position because it is usually women who take advantage of the longer leave.

#### **2.2.4.3 Maternity Benefits and Women's Return to Paid Work after Childbirth**

Not surprisingly, women who are not entitled to benefits return to paid work more quickly than women who are eligible for benefits. According to a study by Marshall from 1999, 80% of the self-employed women who do not receive benefits returned to work by the end of the first month after childbirth.<sup>309</sup> As self-employed women are still not eligible for maternal or parental benefits, this figure is probably similar today.

According to a study by Zhang from 2007 examining both the short- and long-term effects of childbirth on employment, job mobility and earnings of Canadian mothers over the past two decades (1983 to 2004), both the long- and short-term employment rates of mothers were consistently lower than those of other women. For example, among mothers who gave birth in 1984, the employment rate in the first year after childbirth (short-term employment rate) was 84%, 13 percentage points below that of other women. The rate reached 91% among those giving birth in 1999, then dropped for those giving birth just after the millennium: the employment rate among women who had a child in 2001 was 84%, compared to 91% of other working women. Based on this data, Zhang suggests a non-linear relationship between short-term post-childbirth employment rates and the benefits of the job-protected maternity system: when protection is short, employment rates of new mothers in the first post-childbirth year are low. But when

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<sup>309</sup> Katherine Marshall, 1999, 'Employment after childbirth'. *Perspectives on Labour and Income*, 11 (3): 18-25. Ottawa: Statistics Canada. Cat. 75-001-XPE, at 19.

protection is substantially extended to a year or longer, short-term post-childbirth employment rates decline.<sup>310</sup>

In 2006, one-half of the women with a break of their work history due to child-bearing and rearing returned to work when their youngest child was 12 to 47 months old. Another third returned when the child was between 6 and 12 months old. In contrast, 67% of fathers returned to work when their child was less than one month old.<sup>311</sup> There is some evidence, according to Phipps, that provincial regulations on the duration of job-guarantee during an unpaid leave also have an influence on when women return to paid employment. Women tend to return to their paid jobs within the time they have it guaranteed.<sup>312</sup>

### **2.2.5 Conclusion**

The above described federal provisions on maternity and parental leave benefits are rather disappointing. To guarantee women's equality rights, the provisions urgently need reforms. Firstly, a maternity and parental provision should be accessible for all women, independent of their work patterns. Better access for women working in non-standard or part-time jobs can be provided by lowering or even eliminating the hour requirements that are necessary to be eligible for benefits. The benefits coverage should include the increasingly important segment of self-employed women. Secondly, an increased replacement rate or a better adaption for low income families is needed in order to give low-income families or single parents a real chance to stay at home. A higher benefit rate may also increase the parental leave share taken by fathers, given that

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<sup>310</sup> Zhang, 2007, *supra* n. 306 at 18-20.

<sup>311</sup> *Women's Inequality in Canada*, 2008, *supra* n. 3 at 62.

<sup>312</sup> Phipps, 2006, *supra* n. 178 at 24.

financial considerations are essential in such a decision. Third, in order to strengthen women's labour force position and to overcome gender segregation in the labour market a greater part or even half of the parental benefits should be reserved exclusively for the father (or in lesbian couples to the non-biological mother) with no possibility to transfer to the mother. When the biological father is not part of the family, e.g. in the case of single mothers or in lesbian couples, the part reserved exclusively for the father should be transferred either to the biological mother or in lesbian couples to the non-biological mother. I believe that this gender equality focus leads automatically to a more equal distribution of childrearing responsibilities between mothers and fathers. All of the above mentioned reforms need to be supported by a federally promoted and financed child-care service which enables parents to re-enter the labour force without facing financial loss. Only a combination of the above mentioned measures can successfully help mothers and fathers to better balance work and family life.

### **2.3 The Minimum Wage, the Living Wage, and the Idea of a Basic Income**

The following section is divided into four parts. The first part gives a general introduction to poverty in Canadian society. I focus on those aspects of laws and public policy that are relevant for the introduction of a minimum wage system or for the introduction of a living wage or a basic income. All these systems are intended to reduce poverty or to raise the income of low-wage workers and low-income families and thus help the most vulnerable in society.

In the second part, I analyse the Canadian minimum wage system and I investigate whether an increase of the minimum wage would help workers in full-time minimum wage jobs out of poverty or whether – like opponents of the minimum wage argue – increasing the minimum wage would force minimum wage workers out of the labour market.

The third part is dedicated to the introduction of a living wage and aims to evaluate whether the introduction of a living wage is efficient to raise the income of low-wage workers and low-income families and might thus be a reasonable tool to reduce poverty.

In the fourth part I discuss the idea of a basic income and its potential impact on the labour market. I analyse the arguments of the proponents who advocate basic income as remedy for unemployment and poverty and arguments of the opponents who fear both costs and the end of any incentive to work.

### 2.3.1 General Introduction

People working full-time should earn enough to live a decent life. Despite, until very recently, a growing economy and decreasing unemployment rates, the poverty rate<sup>313</sup> in Canada has not substantially changed in the last twenty years.<sup>314</sup> Racialised communities, recent immigrants, Aboriginal people and persons with disabilities are most vulnerable to poverty in Canada. In all the vulnerable groups, poverty rates for women are higher than those for men.<sup>315</sup> Since 1983, the poverty rate for women has fluctuated between 12% and 20% and was 15.1% in 2006 for all women aged 19-64<sup>316</sup> compared to 13.6% of men in the same year and age group.<sup>317</sup> Depending on the social context the poverty rate may vary dramatically: unattached women, for example, had a poverty rate of 34.1 %, six points higher than the rate for unattached men. The highest poverty rate is found in single-parent mothers with 42.6 % in 2006 classified as poor.<sup>318</sup>

Most poor Canadians receive an income from paid employment. In 2003 for example, more than 50% of two parent families with children living in poverty received their principal income from employment and did not get welfare or employment

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<sup>313</sup> Canada has no official definition of poverty. Statistics Canada does not refer to the LICO as a poverty line. Instead, LICO's are used to classify families and unattached individuals into 'low-income' and 'other' groups. Families or individuals are classified as 'low income' if they spend, on average, at least 20 percentage points more of their pre-tax income than the Canadian average on food, shelter, and clothing. Using 1992 as the base year, families and individuals with incomes below the Low Income Cut-offs usually spend more than 54.7% of their income on these items and are considered to be in straitened circumstances. The number of people in the family and the size of the urban or rural area where the family resides are also taken into consideration. Currently, the average household spends about 35% of its pre-tax income on these three necessities, so a low-income household is defined as one which spends more than about 55% on necessities.

<sup>314</sup> The poverty rate was in 1989 at 14%, in 1996 at 20.6% and in 2003 at 15.9%. Data from: National Council on Welfare, *Poverty Facts 2003*, (Ottawa: National Council on Welfare, 2006). [*Poverty Facts 2003*].

<sup>315</sup> Townson, 2009, supra n. 12 at 5.

<sup>316</sup> *Women's Inequality in Canada*, supra n. 3 at 9.

<sup>317</sup> Statistics Canada, *Persons in low income before tax, by prevalence in percent (2003 to 2007)*, supra n. 30.

<sup>318</sup> *Ibid.*

insurance payments.<sup>319</sup> But their employment income plus the associated benefits are not sufficient to bring them above the poverty line.<sup>320</sup> In other words a full time job alone does not guarantee that a family will not live in poverty.

In 2006, 17.6 million Canadians participated in the labour force.<sup>321</sup> Of that number, 2.1 million workers – full and part-time – were low wage<sup>322</sup> workers earning less than \$10/hour. Twenty percent of employed women worked in low-wage occupations compared with just 10% of all employed men.<sup>323</sup>

Close to 37% of all jobs in Canada are considered ‘precarious’, meaning that they generate low wages because employment is part-time, temporary, contract-based or self-employed.<sup>324</sup> The goal of current welfare programs is to move people off social assistance into jobs. But with low wages and poor working conditions, social assistance poverty is often replaced by labour market poverty.

For many Canadian families work does not pay enough for food and shelter. The percentage of working poor who use food banks has more than doubled from 6% in 1989 to 14.5% in 2008. Each month over 704,000 Canadians receive food from a food bank; over a third of them are children (37%) and half (50.3%) are families with children. Almost one fifth of the users reported employment or employment insurance as their primary source of income. Another 63.5% received social assistance cheques or disability

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<sup>319</sup> National Council on Welfare, ‘*Sources of Income 2003*’, (Ottawa: National Council on Welfare, 2006).

<sup>320</sup> Pasma Chandra, 2008, ‘*Towards a Guaranteed Livable Income*’, A CPJ Backgrounder on GLI. Citizens for Public Justice, Ottawa, Ontario, at 2.

<sup>321</sup> Canadian Council on Social Development, CCSD, ‘*Facts and Stats: Labour Market: A Profile of the Labour Market in Canada, Labour Force Rates*’, online available at [http://www.ccsd.ca/factsheets/labour\\_market/rates/index.htm](http://www.ccsd.ca/factsheets/labour_market/rates/index.htm).

<sup>322</sup> Low wage is defined as earning less than two-thirds of the economy-wide median wage.

<sup>323</sup> Townson, 2009, supra n. 12 at 6.

<sup>324</sup> Campaign2000, 2007, ‘*It Takes a Nation to Raise a Generation: Time for a National Poverty Reduction Strategy*’, Report Card on Child and Family Poverty in Canada. Online at [www.campaign2000.ca](http://www.campaign2000.ca), at 3. [‘*Campaign2000*’]; Ron Saunders, 2005, ‘*Defining Vulnerability in the labour Market*’, Ottawa: Canadian Policy Research Networks, at 3-4.

support cheques which do not cover basic needs and are not enough for sufficient and adequate food.<sup>325</sup>

In 1989, the House of Commons resolved to eliminate child poverty in Canada by the year 2000. Eighteen years later, the prevalence of poverty among children was at 11.7%, exactly the same as it was in 1989.<sup>326</sup> The highest child poverty rate, at 15.2%, is reported from British Columbia.<sup>327</sup> Lone parent families headed by women continue to be home to a disproportionate share of all poor children. In 2003, 43% of all children in a low-income family were living with a single female parent, whereas only 13% of all children under the age of 18 were living in such families.<sup>328</sup> Importantly, in 2005, 41% of all low income children in Canada lived in families where at least one income earner had a full-time job all year.<sup>329</sup> Hence child poverty is closely related to low wages.

Poverty takes a far-reaching individual and social toll. People in poverty are far more likely to become physically and mentally ill. This is partially due to the fact that they are marginalized and get socially isolated and thereby are deprived of the opportunity to contribute to society. Poverty also has an economic cost, which arises from health costs, legal costs and loss of productivity.<sup>330</sup> In addition to the negative impact of low wages and associated poverty, low wages affect the amount of resources available to governments by reducing tax returns. This in turn has a negative impact on the ability of

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<sup>325</sup> 50.8% of food bank users receive social assistance cheques and another 12.7% receive disability support cheques. Data from: HungerCount 2008, 'Food Banks Canada, A comprehensive report on hunger and food bank use in Canada', available online at [www.cafb-acba.ca](http://www.cafb-acba.ca), at 4, and 7.

<sup>326</sup> Campaign2000, supra n. 324 at 1.

<sup>327</sup> Statistics Canada's Income Trends in Canada 1980 -2005.

<sup>328</sup> 'Women in Canada, A Gender-based Statistical Report', supra n. 1 at 144.

<sup>329</sup> Campaign2000, supra n. 324 at 3.

<sup>330</sup> Chandra, 2008, supra n. 320 at 3.



citizens to collectively fund public goods and services such as schools, health care, public transit and infrastructure.<sup>331</sup>

### **2.3.1.1 Why Introduce a Minimum Wage, a Living Wage or a Basic Income?**

The following chapter gives an overview of the most important aspects in society that cause poverty and thus lead to the call for a minimum wage, a living wage or a basic income.

#### **2.3.1.1.1 Aspects in Society**

During the late 20<sup>th</sup> century, the gap between the rich and the poor increased in Canada and the United States.<sup>332</sup> In 2007, the richest 10% earned 82 times more than the poorest 10%. By comparison, in 1976 those at the top made 31 times more.<sup>333</sup> Women live traditionally more often in poor financial circumstances than men. These differences often arise from the disadvantages women face in the paid labour force and the disproportionately large responsibilities they have for the care of their children.<sup>334</sup>

Working poor are unevenly distributed among different demographic segments. Even though women's share of the paid workforce has massively increased in the last twenty years and women accounted for 47% of the employed workforce in 2006<sup>335</sup> they still have generally lower income than men. In 2003, the overall average annual pre-tax income of women older than 16 years from employment earnings and other income was

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<sup>331</sup> Public Interest Alberta, no date, *'Making a Living. Defining a Living Wage for Alberta'*, Public Interest Alberta. Edmonton, at 4. [*'Public Interest Alberta'*].

<sup>332</sup> Corinne Younie, and Catherine Scott, 2003, *'Understanding Living Wage'*, Research Report. Y&S Consulting, Report submitted to Calgary Living Wage Action Group, at 12.

<sup>333</sup> Trish Hennessy, 2007, Foreword, in *'Why Inequality matters, In 1000 Words or less'*, Toronto: Canadian Centre for Policy Alternatives.

<sup>334</sup> *'Women and Poverty'*, supra n. 32.

<sup>335</sup> *'Women in Canada: Work Chapters Updates'*, supra n. 14 at 6.

\$24,400. This was just 62% the figure for men, who had an average income of \$39,300 that year.<sup>336</sup>

There have been significant improvements for low-income women in Canada in recent years and the low-income rate among women has decreased steadily since the mid-90s in all provinces. But there are still significant gender differences in low income rates, particularly among immigrant women, Aboriginal women, single senior women, single-parent families headed by women, and women with disabilities.<sup>337</sup>

In 2000, 23% of all immigrant women lived in a low-income situation, compared to 20% of the male immigrants and just 16% of their Canada-born counterparts. Statistics look even worse for females who immigrated to Canada more recently (between 1991 and 2000): 35% of the female immigrants were living in a low-income household<sup>338</sup> and in 2000, over a quarter of recently immigrated full-time wage earners were low paid workers, compared to one-sixth of Canadian-born workers.<sup>339</sup>

Aboriginal women also experience relatively high rates of poverty. In 2000, 36% of all Aboriginal females were found to live in a household with incomes below Statistics Canada's Low Income Cut-offs. This was more than twice the rate than non-Aboriginal women and compares to 32% of Aboriginal men.<sup>340</sup> Average earnings of full-year, full-time employed Aboriginal workers in 2001 were 23 percent lower than the national

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<sup>336</sup> 'Women in Canada, A Gender-based Statistical Report', supra n. 1 at 133.

<sup>337</sup> Yasmin Ratansi, 2007, 'Improving The Economic Security of Women: Time to Act', Report on the Standing Committee on the Status of Women, June 2007, 39<sup>th</sup> Parliament, 1<sup>st</sup> Session, online available at <http://www.parl.gc.ca>, at 5.

<sup>338</sup> 'Women in Canada, A Gender-based Statistical Report', supra n. 1 at 226, 228-229.

<sup>339</sup> Ron Saunders, 2005, 'Does a Rising Tide Lift All Boats? Low Paid Workers in Canada', Vulnerable Workers Series, No. 4, Ottawa: Canadian Policy Research Networks, at 9.

<sup>340</sup> 'Women in Canada, A Gender-based Statistical Report', supra n. 1 at 200.

average; those of part-year or part-time workers, which predominates in the Aboriginal workforce, were 28 percent lower.<sup>341</sup>

Also single senior women often live on a low income in Canada. In 2003, 19% of women aged 65 and over who lived alone were in a low-income situation compared to just 2% of senior women living in a family and compared to 15% of their male counterparts. The incidence of low income among unattached senior women has dropped sharply since the early 1980s, however, when 57% of these women were classified as having after-tax low incomes.<sup>342</sup>

A relatively large proportion of women with disabilities are considered to have low incomes. In 2000, 26% of all women with disabilities aged 15 and over had incomes below official low income cut-offs, compared with 20% of men with disabilities and 16% of non-disabled women.<sup>343</sup> In 2000, 19.9 percent of all full-time wage earners who were low paid workers were persons with disabilities compared to 16% of persons without a disability.<sup>344</sup>

Families headed by female lone parents also have relatively high rates of low income. In 2003, 38% of all families headed by lone-parent mothers had incomes which were below the after-tax Low Income Cut-offs. This compared to 13% of male lone-parent families and just 7% of non-elderly two-parent families with children.<sup>345</sup>

In Vancouver, for example, 80% of single parent families are headed by women, almost half of whom are living below the poverty line. The incidence of poverty among single-parent families in Vancouver exceeds 60% for families headed by a minority

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<sup>341</sup> Saunders, 2005, *Does a Rising Tide Lift All Boats? Low Paid Workers in Canada*, supra n. 339 at 11.

<sup>342</sup> *Women in Canada, A Gender-based Statistical Report*, supra n. 1 at 280.

<sup>343</sup> *Ibid.*, at 297.

<sup>344</sup> Saunders, 2005, *Does a Rising Tide Lift All Boats? Low Paid Workers in Canada*, supra n. 339 at 12.

<sup>345</sup> *Women in Canada, A Gender-based Statistical Report*, supra n. 1 at 144.

parent or an Aboriginal parent. It is even higher (at 70%) in families headed by a recent immigrant.<sup>346</sup> This is despite the fact that the share of female lone parents with jobs has risen dramatically over the last three decades. In 2004, 68% of female lone parents were employed, whereas the figure was below 50% in 1976. The employment of female lone parents depends much on the presence of young children. In 2004, less than half (46%) of lone mothers with children under age 3 were employed, compared with 63% of those whose youngest child was aged 3 to 5 and 75% of those whose youngest child was between the ages of 6 and 15. Female lone parents with very young children are also considerably less likely to be employed than their counterparts in two-parent families. Among women with a child under the age of 3, 46% of female lone parents, compared with 67% of those with a spouse, were employed in 2004.<sup>347</sup> Today's economic situation demands flexible working hours and flexible hiring and job termination conditions. This is especially unfavourable for those who have little flexibility to offer, that is people with binding social obligations such as mothers of small children.

Single-parent mothers living in poverty was the family type most likely to depend on welfare. However, an almost equal number of poor single-parent mothers relied mainly on employment earnings and did not receive any welfare payments in 2003.<sup>348</sup>

These numbers suggest that poverty is not only a result of economic circumstances, but in fact reflects other structural and social problems, some of which I considered in Chapter II (a-d). According to Pasma,<sup>349</sup> who studied the potential of an

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<sup>346</sup> Tim Richards, Marcy Cohen, Seth Klein, and Deborah Littman, 2008, 'Working for a Living Wage. Making Paid Work Meet Basic Family Needs in Vancouver and Victoria', Canadian Centre for Policy Alternatives, CCPA. BC Office, at 19. [Richards et al. 'Working for a Living Wage'].

<sup>347</sup> 'Women in Canada, A Gender-based Statistical Report', supra n. 1 at 107.

<sup>348</sup> National Council on Welfare, 2006, 'Sources of Income', Fact Sheet, (Ottawa: National Council on Welfare).

<sup>349</sup> Chandra, 2008, supra n. 320.

introduction of a guaranteed liveable income<sup>350</sup> in Canada, the higher poverty rate among women is due to: (1) a disproportionate share of non-standard work and unpaid caring work; (2) a wage gap between male and female earners; (3) lack of financial support for child care and elder care; and, (4) a reduced access to government services such as employment insurance (EI) because of non-traditional work patterns. Pasma states that groups that are already vulnerable to marginalization are even more at risk of social exclusion because of their lower incomes.<sup>351</sup>

### **2.3.1.1.2 Aspects in the Labour Market**

Many poor families and unattached individuals worked full-time and all year<sup>352</sup>, but still remained poor. In 2003, for example, 42 percent or 401,000 of all poor families worked between 49 to over 103 weeks during a year and still remained poor. 353,000 or 29% of the unattached poor individuals worked between 49 to 52 weeks in 2003 and still did not escape poverty.<sup>353</sup>

The problem is caused by the fact that there are not enough full-time jobs available, and from the jobs that are available, too many offer very low wages. Average family earnings of a poor family ranged from \$16,333 for families with a full-year full time worker to \$6,403 in 2003 for poor families with a part-year, part-time worker.

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<sup>350</sup> A guaranteed livable income is money paid by governments to citizens on a regular basis to ensure that everyone has an income adequate for meeting basic need.

<sup>351</sup> Chandra, 2008, supra n. 320 at 3.

<sup>352</sup> Statistics Canada considers a full-time job one that provides 30 hours a week or more of work. A full-year job is one that lasts at least 49 weeks a year.

<sup>353</sup> *Poverty Profile, 2002 and 2003*, 2006, supra n. 31 at 102-103.

### 2.3.1.1.3 Aspects of Governmental Actions

In Canada, recent governments have moved away from concepts of collective responsibility and have shifted social responsibilities (and thus costs) onto individuals and families. Cuts in social programs, increases in user fees and an under-funding of public goods and services have increased the economic burden on families.<sup>354</sup>

Social insurance and assistance programs, for example, are not protecting people from poverty. Significant changes in the employment insurance scheme in 1996 resulted in a decline of the number of unemployed Canadians who are able to access these benefits. The numbers dropped from 75% in 1990 to only 39% in 2007, and now only 55% of their usual earnings are replaced.<sup>355</sup>

Women aged 25 to 44 years are least likely to qualify for EI, and they are most likely to have young children. Almost three quarters of employed women have children under the age of 16.<sup>356</sup> Many of these women work part-time because of childcare and other responsibilities. At the same time, a substantial number of women work part-time because they cannot find full-time employment. In 2003, 23% of all female part-time employees indicated that they wanted full-time employment, but could only find part-time work.<sup>357</sup> On the other hand the lack of affordable, good quality child care keeps many women from finding full-time, well-paying work. In Metro Toronto, for example,

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<sup>354</sup> *Public Interest Alberta*, supra n. 331 at 3.

<sup>355</sup> Townson, 2009, supra n. 12 at 7; *Employment Insurance 2007: Monitoring and Assessment Report*, supra n. 301.

<sup>356</sup> Kevin Hayes, 2003, *Falling Unemployment Insurance Protection for Canada's Unemployed – An analysis of B/U ratios (UI beneficiaries to unemployed) by age and gender from 1990 to 2001*, Canadian Labour Congress, Ottawa, at 6.

<sup>357</sup> *Women in Canada: Work Chapters Updates*, supra n. 14 at 8-9.

16,000 families are on waiting lists for child care; one third of these parents are not working but would work if they had childcare.<sup>358</sup>

In 2007 almost 17% of workers who paid into the EI program did not qualify for support because they did not accumulate enough hours.<sup>359</sup> In case of unemployment these workers would depend on welfare for support. In 2005, 1.7 million people – five percent of the Canadian population – were forced to rely on welfare. Nearly half a million of those on welfare were children.<sup>360</sup>

Welfare incomes are well below the poverty line and they continue to decline. In 2005, the incomes were less than two-thirds of the poverty line for all households in all jurisdictions, except for the lone parent in Newfoundland and Labrador.<sup>361</sup> Furthermore, welfare benefits are set arbitrarily by regulation and do not necessarily reflect the actual cost of food, clothing, household expenses and shelter.<sup>362</sup> The number of working-age single people who lived on incomes less than half the poverty line had more than tripled between 1989 and 2003, jumping from 163,000 to 552,000.<sup>363</sup>

In the following sections I analyze the efficiency of the present minimum wage system and I evaluate other systems like a living wage and a basic income for their potential with a special focus on women.

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<sup>358</sup> Canadian Research Institute for the Advancement of Women, 2005, *Women and Poverty*, CRIAW Fact Sheet, Third Edition, Ottawa, Ontario. [*CRIAW Fact Sheet*].

<sup>359</sup> Toronto Star, 2007, *Employment Insurance Surplus Hits \$51B*, February 21, 2007, online available at <http://www.thestar.com/printArticle/184279>.

<sup>360</sup> National Council of Welfare, 2006, *Welfare Incomes 2005*, (Ottawa: National Council on Welfare, 2006) at IX.

<sup>361</sup> *Ibid*, at X.

<sup>362</sup> Chandra, 2008, *supra* n. 320 at 3.

<sup>363</sup> *Poverty Facts 2003*, *supra* n. 314.

## 2.3.2 The Minimum Wage

### 2.3.2.1 Introduction

In 2008, some 751,400 individuals worked at or below the minimum wage set by their province. This represents 5.2% of all employees in Canada.<sup>364</sup>

Minimum wages ranged from \$8.00 per hour in British Columbia and Newfoundland and Labrador, to \$10.23 per hour in Ontario.<sup>365</sup> This amount is not sufficient to keep a full time worker above the poverty line. A family living in Vancouver, for example, with the minimum wage of \$8.00 must work close to 80 hours per week in order to reach \$40,259 per year, which represents the Low Income Cut-Off (LICO)<sup>366</sup> for a family of four (two adults, two children).<sup>367</sup>

Despite this fact provinces did not adjust the minimum wages to price increases for several years, which further eroded the minimum wage.<sup>368</sup> That is why advocacy for a higher minimum wage has become a new impetus and many regional campaigns across the country are now focusing on raising the minimum wage to \$10, a raise which would bring minimum wages above the poverty line for a full time worker.<sup>369</sup>

The second part of this chapter aims at analysing the Canadian minimum wage system and whether or not an increase of the minimum wage will raise workers in full-time minimum wage jobs out of poverty or whether – like opponents of the minimum

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<sup>364</sup> Statistics Canada, 2008, '*Minimum wage*', Perspectives on Labour and Income, Catalogue no. 75-001-X, at 2.

<sup>365</sup> *Ibid*; <http://www.theglobeandmail.com/news/opinions/a-reason-to-celebrate-the-lowest-paid-in-ontario-just-got-a-raise/article1517697/>.

<sup>366</sup> For more information about the LICO and the lack of an official definition of poverty in Canada refer to footnote 313.

<sup>367</sup> National Council on Welfare, 2007, '*Statistic Canada's before-Tax Low Income Cut-Offs (1992 Base) for 2007*', Factsheet 1.

<sup>368</sup> Stuart Murray and Hugh Mackenzie, 2007, '*Bringing Minimum Wages above the Poverty Line*', An Economic and Security Project Report, Canadian Centre For Policy Alternatives, Ottawa, at 5.

<sup>369</sup> *Ibid*.



wage argue - an increase of the minimum wage above the market wage will negatively affect employment and lead to job losses by less skilled and low paid workers by pricing their labour out of the market.<sup>370</sup> First I present a short overview of the history of minimum wage in Canada. This is followed by a profile of minimum wage workers and their coverage. Finally, I analyse the employment effects and social impacts of the minimum wage by presenting the most common arguments of the opponents of a minimum wage against the attempts to increase the minimum wage to a level which would raise workers out of poverty. I end with the conclusion that the minimum wage is only one tool among many to reduce poverty among low-wage working people and should be seen as part of a greater anti-poverty strategy.

### **2.3.2.2 History of Minimum Wage in Canada**

A first attempt to regulate wages in Canada was made with the federal ‘Fair Wages Policy’ of 1900 which was aimed at protecting workers engaged on all public works and government contracts.<sup>371</sup> British Columbia and Manitoba were the first provinces to enact minimum wage legislation in 1918, and by 1920 four other Canadian provinces followed their example. However, these laws applied only to female workers in certain occupations because at the time labour unions generally considered that they were in a better position to ensure adequate wages for men through collective bargaining.<sup>372</sup>

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<sup>370</sup> Nicole M. Fortin, and T. Lemieux, 2000, ‘Income Redistribution in Canada: Minimum Wages Versus other Policy Instruments’, in W.C. Riddell and F.St-Hilaire, eds., *Adapting Public Policy to a labour Market in Transition*. Montreal, Institute for Research on Public Policy, at 211.

<sup>371</sup> Ernest B. Akyeampong, 1989, ‘Working for minimum wage’, *Perspectives on Labour and Income*, Statistics Canada, Catalogue no. 75-001-XPE, 1, no. 3 (Winter): 8-20, at 8.

<sup>372</sup> By 1912, as many as 160,000 Canadians were members of a union – often such areas as mining and the railways. Data from: CBC News, ‘Minimum wage laws - the state of pay in Canada’, online at <http://www.cbc.ca/money/story/2009/01/23/f-money-minimum-wage.html>. [*Minimum wage laws - the state of pay in Canada*].

Nevertheless they supported State intervention to protect working women who were mostly not unionized and therefore more exposed to exploitation.<sup>373</sup>

Over the years young workers and men were also covered by the minimum wage legislation.<sup>374</sup> In British Columbia, the ‘Men’s Minimum Wage Act’ was enacted in 1925 and by the mid-1950s minimum wage laws affecting male workers had become widespread.<sup>375</sup> For many years, provinces legislated higher minimum wages for men than for women, since it was assumed that a man should be a family’s main breadwinner. With the appearance of the principle of equal pay during the 1950s, gender-based minimum wage differences yielded slowly and disappeared entirely by 1974.<sup>376</sup>

Early minimum wage legislation in Canada was motivated by the desire to protect potentially vulnerable workers, e.g. to protect women and children from exploitation.<sup>377</sup> The basic goal of the legislation was to impose minimum standards in the conditions of employment. Over time the objectives of minimum wage legislation in Canada, as in many other industrial countries, have changed. Depending on the prevailing socio-political and economic circumstances, these laws have been considered to be a means for economic stabilization, to be a weapon against poverty or to narrow or maintain the wage gap between organized and unorganized workers.<sup>378</sup> Today’s fundamental goal of minimum wage legislation is to guarantee a ‘decent’ or ‘fair’ wage for all workers in the covered sectors.<sup>379</sup>

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<sup>373</sup> Human Resources and Skills Development Canada, ‘*Database on Minimum Wages*’. [‘*Database on Minimum Wages*’].

<sup>374</sup> Fortin and Lemieux, 2000, supra n. 370 at 211.

<sup>375</sup> Akyeampong, 1989, supra n. 371 at 8.

<sup>376</sup> ‘*Database on Minimum Wages*’, supra n. 373.

<sup>377</sup> Michael Goldberg and David Green, 1999, ‘*Raising the Floor. The Social and Economic benefits of Minimum Wages in Canada*’, Ottawa: Canadian Policy Research Network, at 3.

<sup>378</sup> Akyeampong, 1989, supra n. 371 at 8.

<sup>379</sup> Fortin and Lemieux, 2000, supra n. 370 at 211.

In Canada, every province and territory defines a minimum wage in its employment standards legislation.<sup>380</sup> The federal government has adopted the current provincial or territorial rates as the federal minimums for workers covered by Part III of the ‘Canada Labour Code’.<sup>381</sup> Even though some provinces have legislation requiring a regular review of the minimum wage, these governments are not bound to increase or otherwise modify minimum wages. The rates are rather adjusted on an ad-hoc basis by provincial and territorial governments. Only Yukon has linked its minimum wage to the Consumer Price Index, which has led since 2007 to annual increases.<sup>382</sup>

With minimum wage legislation employers are forced to guarantee a minimum level of income for unskilled and non-unionized workers. Minimum wage standards prevent low-wage workers from undercutting each other by agreeing to work for less than someone else respectively to reduce their wages below the legislated standard. Further protection is secured by prohibiting parties from contracting out of minimum wage legislation.<sup>383</sup>

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<sup>380</sup> In British Columbia, these provisions are found in the *Employment Standards Act*, which applies to most provincially-regulated workplaces in British Columbia. The main purpose of the *Act* is to ensure that employees in British Columbia receive at least minimum standards for conditions of employment and compensation, including wages termination pay, and vacations. To accomplish this basic purpose, the *Act* establishes a set of rights for employees and obligations for employers (Current BC Employment Standard Act (1996); Statistics Canada, 2005, ‘Fact sheet on minimum wage’, *Perspectives on Labour and Income*, at 18.

<sup>381</sup> ‘*Database on Minimum Wages*’, supra n. 373.

<sup>382</sup> *Ibid*; ‘*Minimum wage laws - the state of pay in Canada*’, supra n. 372.

<sup>383</sup> Statistics Canada, 2005, ‘*Fact sheet on minimum wage*’, supra n. 380 at 18.

### 2.3.2.3 Profile of Minimum Wage Workers

#### 2.3.2.3.1 Age Groups and Sex of Minimum Wage Workers

Minimum wage work is common among teenagers who start to work for the first time. However, the following data shows that for some workers minimum wage work persists into later in life.

In 2008, a majority of minimum wage workers were teenagers; nearly 35% or more than 345,000 workers aged 15 to 19 worked for minimum wage. In total, more than 60% of minimum wage workers were under 25, while this age group only represent 17% of all employees. A large majority of these teens and youth were either attending school full-time or part-time or were students.<sup>384</sup>

A sizeable portion, i.e. 29%, of minimum wage workers were aged 25 to 54, and of those a majority were female. In 2008, women accounted for 60% of all 751,400 minimum-wage workers, but just under half of all employees.<sup>385</sup> Nearly 1 in 16 women worked for the minimum wage, compared with about 1 in 25 men. The overrepresentation of women was present in all age groups.<sup>386</sup>

Although the incidence of working for minimum wage declined sharply above age 24, it rose slightly among those 55 and older. Working seniors tend to be concentrated in occupations that are associated with lower wages.<sup>387</sup>

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<sup>384</sup> In 2003, 77% of teens were attending school either full-time or part-time, and 44% of the youth between 20 and 24 were students: Data from Deborah Sussman, and Martin Tabi, 2004, 'Minimum Wage Workers', Perspectives, Statistics Canada, Catalogue No. 75-001-XIE, at 7. Percentage must be similar for 2008, since 'a very large number of young minimum-wage employees attend school full time or part-time': Statistics Canada, 2008, '*Minimum wage*', supra n. 364 at 3.

<sup>385</sup> *Ibid.*

<sup>386</sup> *Ibid.*

<sup>387</sup> These occupations include retail salespersons and sales clerks; general office clerks; janitors, caretakers and building superintendents; babysitters, nannies and parent's helpers; and light duty cleaners. Data from: Sussman and Tabi, 2004, supra n. 384 at 7.

Women and youth account for the vast majority of Canada's minimum wage workers. While for teens and young adults low or minimum wages may be justifiable in light of their lack of experience, a great number of affected women are in their peak earning years and minimum-wage work is less of a transient phase.

#### **2.3.2.3.2 Level of Education of Minimum Wage Workers**

About 40% of minimum wage workers have not finished high school, while another 22% have graduated from high school but have no further education. Those with post secondary education make up the remaining 37% of minimum wage workers. Of these 14.3% have some post secondary formation, 14.7% have a post secondary certificate or diploma, and 10% have a university degree.<sup>388</sup>

#### **2.3.2.3.3 Family Situation of Minimum Wage Workers**

In 2003, for both sexes combined, almost two-thirds of all minimum wage workers lived with their parents or other family members, again reflecting the large number of younger minimum wage workers.<sup>389</sup>

Boyd and Norris,<sup>390</sup> who investigated the behaviour of young Canadians in their transition from adolescence to adulthood, found that young adults are more likely to live at home today than they were in the past. They concluded that the major driving factors for this trend are economic circumstances, which in turn are the result of low wages.<sup>391</sup>

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<sup>388</sup> Statistics Canada, 2008, '*Minimum wage*', supra n. 364 at 4; Murray and Mackenzie, 2007, supra n. 368 at 29-30.

<sup>389</sup> Sussman and Tabi, 2004, supra n. 384 at 11.

<sup>390</sup> Monica Boyd, and Doug Norris, 1999, 'The Crowded Nest: Young Adults at Home', *Canadian Social Trends*, No. 52, Statistics Canada, Catalogue No. 11-008, Spring 1999.

<sup>391</sup> *Ibid*, at 2, 5.

In 2003, one quarter of all minimum wage workers was part of a couple, of these about three-quarters had employed spouses earning more than minimum wage.<sup>392</sup> This may in part reflect women who take lower-paying part-time work while caring for young children.

#### **2.3.2.3.4 Employment Concentration of Minimum Wage Workers**

Minimum wage work is concentrated in the service sector, like accommodation and food services, and has also a high prevalence in trade.<sup>393</sup> These are industries where most workers are unskilled with little work experience and weak attachment to the labour force. The high rate of part-time jobs favours a higher presence of women or young people.<sup>394</sup> Agriculture is another sector with a concentration of minimum wage workers above the average, i.e. more than 1 in 8. Farm labour has traditionally been excluded from minimum-wage provisions and workers in this industry are often not unionized. These low-wage workers may profit from non-wage benefits such as free room and board as compensation for lower wages, although the quality of these is often low.<sup>395</sup> The lowest concentration of minimum-wage workers were found in highly unionized industries such as construction, public administration and manufacturing.<sup>396</sup>

#### **2.3.2.3.5 Employment Patterns of Minimum Wage Workers**

Part-time employment is hallmark of minimum wage work, with a minimum wage rate almost seven times higher than in full-time employment (17.2% vs. 2.6%).

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<sup>392</sup> Statistics Canada, 2008, '*Minimum wage*', supra n. 364 at 6.

<sup>393</sup> More than 1 in 5 workers at or below the minimum wage works in accommodation or food services and 1 in 9 workers work in trade. Data from: Statistics Canada, 2008, '*Minimum wage*', supra n. 364 at 4.

<sup>394</sup> *Ibid.*

<sup>395</sup> *Ibid.*

<sup>396</sup> *Ibid.*

Almost 60% of minimum wage workers worked part-time, compared with less than 20% of all employees.<sup>397</sup> In 2003 teenagers and young adults made up almost four-fifths of all part-time minimum wage workers, reflecting the large contribution of students. Of those older than 25, after all one-third of minimum wage workers was part-time employed.<sup>398</sup>

Since minimum wage workers are more likely to work part-time they are less likely to have access to non-wage benefits such as pension plans, supplemental health insurance, and dental plans. Furthermore, minimum wage jobs are more likely to be temporary and less likely to be unionized.<sup>399</sup>

In 2008, 40% of minimum-wage workers were employed by large firms (more than 500 employees) and another 32% by small firms (less than 20 employees). The incidence of minimum wage work was about two times higher in small firms as compared to large firms. Only 9% of minimum wage workers belonged to a union or were covered by a collective agreement, compared with almost one-third of all employees. On the other side, just 2% of union members worked for a minimum wage or less, versus 7% of non-union members.<sup>400</sup>

Minimum wage jobs are characterized by a high turnover. Over 50% of minimum-wage workers changed their job in the current year, compared with less than one-quarter of all employees. Those who held a job for three months or less were at highest risk of earning a minimum wage (1 in 7) compared to those working at the same place for more than five years, where the prevalence were least common (1 in 71).<sup>401</sup>

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<sup>397</sup> *Ibid.*, at 5.

<sup>398</sup> Sussman and Tabi, 2004, *supra* n. 384 at 10.

<sup>399</sup> Lucy Chung, 2004, 'Low-paid workers: How many live in low-income families?', Perspectives on Labour and Income, Statistics Canada, Catalogue No. 75-001-XIE, at 5.

<sup>400</sup> Statistics Canada, 2008, '*Minimum wage*', *supra* n. 364 at 5.

<sup>401</sup> *Ibid.*

#### **2.3.2.4 Coverage**

Even though minimum wages rates apply to most workers in every Canadian jurisdiction, millions of Canadian workers are still not covered by the minimum wage laws. This is because most provinces have their own set of rules that either exclude employees, like, for example, farm workers, independent contractors, students in training programs, domestic and live-in care people, salespeople paid exclusively by commission or even young workers under the age of 16, or the province may reduce the rate for certain kinds of minimum wage workers.<sup>402</sup> Some provinces, for instance, allow employers to pay less to workers who may receive tips. Ontario is the only province that has lower minimum wage rates for young workers than for older ones. And depending on the jurisdictions, camp counsellors, hunting and fishing guides and inexperienced workers<sup>403</sup> may also have lower minimum wage provisions.<sup>404</sup>

#### **2.3.2.5 Employment Effects and Social Impacts of Minimum Wages**

The concern that the guarantee of minimum wage may negatively affect employment has received much attention among economists and is the main point of criticism of opponents to the minimum wage.<sup>405</sup> In the following paragraphs I review those points of the minimum wage legislation that received the most criticism.

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<sup>402</sup> *Database on Minimum Wages*, supra n. 373.

<sup>403</sup> For example, British Columbia introduced in 2001 a \$6 per hour ‘training wage’ for new workers with fewer than 500 hours of week experience.

<sup>404</sup> *Minimum Wage Laws – the state of pay in Canada*, supra n. 372; *Database on Minimum Wages*, supra n. 373.

<sup>405</sup> Goldberg and Green, 1999, supra n. 377 at 8.



### **2.3.2.5.1 Will Increasing the Minimum Wage Lead to Job Losses?**

According to the Canadian Chamber of Commerce higher minimum wages will cause job losses for young and unskilled workers. It estimates that a 10% increase in the minimum wage results in a 2.5 % decline in employment.<sup>406</sup> Most studies indicate that minimum wage increases have a significant negative effect on the teenage employment rate. They estimate a 1 % to 3.7 % increase in unemployment rate for a 10% increase in minimum wage. Much smaller effects are expected for workers between 20 and 24 years of age. Saunders,<sup>407</sup> in his review of studies by the OECD and the U.K., found no evidence that increases of minimum wage have effects on employment rate for adults over the age of 24. Similar conclusions were made by Murray and Mackenzie,<sup>408</sup> who reviewed Canadian employment rates over the past 30 years. They found that in fact, both a rise and fall of employment rates has been observed after minimum wage increases. Thus other economic factors such as recessions, the growth of female labour participation, and economic growth may have much bigger effects on employment rates than an increase of minimum wage.<sup>409</sup>

### **2.3.2.5.2 Do Minimum Wages Benefit Mainly Teenagers?**

Opponents of the minimum wage claim that mainly teenagers, most of whom live at home in comfortable middle-class families, benefit from a higher minimum wage.<sup>410</sup>

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<sup>406</sup> Canadian Chamber of Commerce, 2005, 'Canada Labour Code Part III Review: Developing a Labour Code for a Competitive Economy', Submission of the Canadian Chamber of Commerce to the Federal Labour Standards Review Commission.

<sup>407</sup> Ron Saunders, 2005, '*Lifting the Boats: Policies to Make Work Pay*', Ottawa: Canadian Policy Research Centre Networks, at 9-10.

<sup>408</sup> Murray and Mackenzie, 2007, *supra* n. 368 at 8.

<sup>409</sup> Goldberg and Green, 1999, *supra* n. 377 at 12, 24

<sup>410</sup> Edward M. Gramlich, 1976, 'Impact of Minimum Wages on other Wages, Employment, and Family Incomes', *Brookings papers on Economic Activity*, vol. 2 (1976) pp. 409-451, at 444, 451.

This criticism is based on a popular misconception about the demographics of minimum wage workers.<sup>411</sup> According to Statistics Canada, 29% of minimum wage workers were older than 25 in 2008. Another 17% of minimum wage workers were between 20 and 25, and nearly 35% were teenagers aged 15 to 19. Most of these young minimum-wage employees were students trying to supplement the funding for their post-secondary education.<sup>412</sup>

The large financial burden of postsecondary education encourages many students to take jobs, particularly during the summer months. The lack of job experience and time constraints usually forces them into minimum wage part time jobs.<sup>413</sup>

### **2.3.2.5.3 Are Minimum Wage Earners Secondary Household Earners?**

Another argument made by opponents is that minimum wage workers are often secondary household earners, and thus, it is said, their income does not contribute to income distribution.<sup>414</sup> According to Goldberg and Green,<sup>415</sup> who studied the social and economic benefits of minimum wages in Canada, the incident of poverty in two-parent families is dramatically higher when there is only one earner compared to families where both parents are earners. These findings suggest that the secondary income is essential. The incidence of poverty in two-parent households with one earner is 27.4% compared to 7.3% in two-parent two-earner households. Importantly, research by Goldberg and Green showed also that minimum wage earners are over-represented among families with low

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<sup>411</sup> Goldberg and Green, 1999, supra n. 377 at 1, 5, 24.

<sup>412</sup> Statistics Canada, 2008, '*Minimum wage*', supra n. 364 at 3.

<sup>413</sup> Sussman and Tabi, 2004, supra n. 384 at 7.

<sup>414</sup> Edward M. Gramlich, 1976, supra n. 410 at 450-451.

<sup>415</sup> Goldberg and Green, 1999, supra n. 377.

incomes.<sup>416</sup> 37% of lone mothers with paid employment, for example, earn less than \$10 per hour. Thus, increasing the minimum wage will disproportionately benefit low-income workers and families.<sup>417</sup>

#### **2.3.2.5.4 Can the Minimum Wage Defeat Poverty?**

The fact that 42% of all families who are poor worked for more than 49 weeks full time leaves no doubt that the current minimum wage is not sufficient to prevent working people from poverty. Not all low-paid workers are poor; some live in households with other earners, or might have access to non-wage forms of income. But in 2000 as many as 30% of all low-paid, full-time workers earning below \$10 per hour lived in poor families.

While the poorest families are not headed by minimum-wage earners – rather they have no earner at all – more than 40% of minimum-wage earners come from low-income families.<sup>418</sup> And as most of these minimum-wage earners are full-time, full-year working poor, there is great potential for increases in the minimum wage to alleviate poverty.<sup>419</sup> Moreover, there is evidence that minimum wages do disproportionately benefit those at the lower end of the wealth scale. According to Fortin and Lemieux<sup>420</sup>, who compared the redistribution impact of minimum wages to that of other policy instruments, like social assistance and the employment insurance, individuals in the lower half of the distribution of family income account for almost 70% of earnings of all minimum wage workers in Canada. In other words, they state that, ‘the minimum wage is almost as ‘progressive’ as

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<sup>416</sup> *Ibid.*, at 6, 24.

<sup>417</sup> ‘*CRLAW Fact Sheet*’, 2005, *supra* n. 358 at 2.

<sup>418</sup> Benjamin Dwayne, 2001, ‘Minimum Wages in Canada’, *Labour Market Policies in Canada and Latin America: Challenges of the new Millenium*, ed. Albert Berry, (Boston: Kluwer Academic Publishers), 2001, pp. 187- 221, at 212.

<sup>419</sup> Saunders, 2005, ‘*Lifting the Boats: Policies to Make Work Pay*’, *supra* n. 407 at 10.

<sup>420</sup> Fortin and Lemieux, 2000, *supra* n. 370.

all government transfer programs considered together since 72% of these transfers are received by individuals in the lower half of the distribution'. However, they also say that, 'other government transfers, especially social assistance, are more directly targeted at individuals in the two lowest deciles of the distribution'. They judged minimum wage laws to be a small program since total earnings at the minimum wage only represent a third of total social assistance payments and a fifth of total unemployment insurance payments. Thus, they conclude that the small size of the program is the main reason why the redistributive impact of the minimum wage is modest relative to other transfer programs, especially social assistance. Nevertheless they consider that the role of the minimum wage as a redistribution program will grow substantially in the future because of, among other things, substantial cuts in the other transfer programs as a result of government efforts to eliminate budget deficits.<sup>421</sup>

### **2.3.2.6 Conclusion**

Overall, minimum wage is a useful instrument to defeat poverty. An increase of the minimum wage has, to date, shown negligible effect on employment rates of adults and it imposes little costs on the government. It has some limitations also: Increasing the minimum wage leads to an untargeted increase of the incomes which may also benefit people who live in well-off households. Furthermore, an increase in minimum wage will reduce the employment rate of teenagers and to a lesser extent, of young adults. Another negative aspect is that even when the minimum wages rates are increased low-wage jobs remain associated with limited access to non-wage benefits such as extended medical coverage, pension plans and professional training and thus chances of promotion remain

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<sup>421</sup> *Ibid*, at 30.

weak.<sup>422</sup> What is required is a comprehensive strategy to bring the most vulnerable in the society not just above the poverty line, but also to give them some positive work incentives.

### **2.3.3 The Living Wage**

The following section aims to evaluate whether the introduction of a living wage raises the income of low-wage workers and low-income families and whether the concept of a living wage represents a reasonable tool to reduce poverty and hence help the most vulnerable in society. First, I present the historical background of living wage movements in the U.S., England and Canada and I outline similarities and differences. I further explain how the living wage is calculated. And, finally, I demonstrate the assets and drawbacks of the living wage by analysing the arguments of the opponents to the living wage, who contend, for example, that the introduction of a living wage may have adverse employment effects and by killing jobs would hurt, rather than help, those people targeted by the living wage. I close with the finding that the living wage represents one among many other means to meet anti-poverty-goals and to bring people above the poverty line.

The living wage is basically an extended version of the minimum wage, but typically far fewer employees are targeted by living wage initiatives than by minimum wage legislation. This is because where such programs have been implemented, governments can require employers to pay a living wage only when their business receives governmental financial assistance. Governments can enforce an increase in the minimum wage. Thus living wages, like minimum wages, cannot be discussed in isolation but rather must be viewed in the context of other social and economic programs. A

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<sup>422</sup> Saunders, 2005, *Does a Rising Tide Lift All Boats? Low Paid Workers in Canada*, supra n. 339 at 13-16.

combination of different means is needed to give working people the tools they require to avoid poverty.

### **2.3.3.1 Definition of a Living Wage**

There are as many definitions of living wage as there are campaigns for its implementation. They all start by asking what wage level is sufficient to allow workers to support their families, enable them to enjoy a safe and healthy life and allow them to participate in the social activities of their community.<sup>423</sup>

In the U.K., for example, the living wage is defined as ‘a wage that achieves an adequate level of warmth and shelter, a healthy palatable diet, social integration and avoidance of chronic stress for earners and their dependents’.<sup>424</sup> In Canada, according to a recently released report from the Canadian Centre of Policy Alternatives (CCPA)<sup>425</sup>, ‘the living wage is based on the principle that work should ensure individuals and families can live with dignity and therefore can fully participate in family, community and work life’.<sup>426</sup> Although the living wage is always higher than a legislated minimum wage, it also represents a conservative measure without the extras that many of us take for granted.<sup>427</sup>

### **2.3.3.2 History of the Living Wage Campaign**

In the following part I introduce the history of the living wage campaigns in the U.S., in England and in Canada. The three countries differ in a number of ways in their

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<sup>423</sup> Richards et al., 2008, ‘*Working for a Living Wage*’, supra n. 346 at 13.

<sup>424</sup> Greater London Authority, 2008, ‘*A Fairer London. The 2008 Living Wage in London*’, City Hall, London, at 35 [‘*A Fairer London. The 2008 Living Wage in London*’].

<sup>425</sup> Richards et al., 2008, ‘*Working for a Living Wage*’, supra n. 346.

<sup>426</sup> *Ibid.*, at 9.

<sup>427</sup> For more information see the following section 3: ‘How is the living wage calculated?’

living wage policies and/or laws. Most importantly Canada seems to be the farthest behind from the three countries and seems little affected by the enormous living wage campaigns of its neighbour.

### **2.3.3.2.1 Living Wage Campaigns in the United States**

In the 1990's, living wage campaigns were launched in the U.S. by collaborative community initiatives in response to increasing poverty faced by workers and their families.<sup>428</sup> The campaigns in the U.S. began on the premise that people who work for a living should not live in poverty nor should they raise a family in poverty.<sup>429</sup>

Most of the U.S. living wage campaigns were implemented by city councils in the form of legally binding ordinances; others were implemented by School Boards in the form of written commitments, or, as in the example of Los Angeles, by the County Community Development Commission and Housing Authority in a living wage policy.<sup>430</sup>

In the U.S., the living wage campaigns seek to pass local ordinances forcing private businesses that benefit from public money to pay their workers a living wage. The ordinances cover employers who hold large city or county service contracts or receive substantial financial assistance from the city in form of grants, loans, bond financing, tax abatements, or other economic development subsidies.<sup>431</sup>

The first living wage law was enacted in Baltimore in 1994 requiring city service contractors to pay a living wage. Since then living wage ordinances and policies have

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<sup>428</sup> Vibrant Communities Calgary, 2008, '*Living Wage Fact Sheet*', at 2. Online at [www.vibrantcalgary.com](http://www.vibrantcalgary.com), [*Vibrant Communities Calgary*].

<sup>429</sup> Younie and Scott, 2003, *supra* n. 332 at 13.

<sup>430</sup> Living Wage Resource Center., 2008, '*Living Wage Wins*', Acorn Org. Brooklin, NY, Online at [www.livingwagecampaign.org](http://www.livingwagecampaign.org). [*Living Wage Resource Center*].

<sup>431</sup> *Ibid*, at 2.

been successfully introduced in 140 other communities across the United States.<sup>432</sup>

California has been at the forefront of the living wage movement, with nearly one-third of the state's cities having living wage laws.<sup>433</sup>

#### **2.3.3.2.2 Living Wage Campaign in the U.K.**

Living wage movements also have gained ground in the UK. A citizen's group, the 'London Citizens', has led the campaign for a living wage since 2001 in London, and present convincing arguments in favour of living wage implementation.

In 2002, the London Citizen's campaign convinced the Greater London Authority (GLA) to introduce a fair employment clause into its contracting procedures. Since then, private contractors working for the GLA are, within their contract limits, asked to pay their staff at least the equivalent of public sector wages.<sup>434</sup>

Under the former Mayor of London, Ken Livingstone, a living wage unit at City Hall was formed and a team of researchers was built, which, since 2005, publishes yearly a report on living wages and poverty issues in London. The amount of the yearly living wage is also calculated by the Mayor of London's Living Wage Unit. At the same time a 'Living Wage implementation group' was formed to coordinate plans for the policy across the GLA-Group. The current Mayor of London, Boris Johnson, is determined that the capital retains and builds on its world-leading reputation and fully supports the London Living Wage initiative.<sup>435</sup>

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<sup>432</sup> Scott Adams, and David Neumark, 2005, '*A Decade of Living Wages. What Have We Learned?*', Public Policy Institute of California, at 2.

<sup>433</sup> Public Policy Institute of California, 2002, '*Do Living Wage Laws Help Low-Wage Workers and Low-Income Families?*', Research Brief, San Francisco, California, para 1.

<sup>434</sup> UNISON, 2007, '*Fair Wages Toolkit*'. Unison, the public service union, London, at. 5-6, online at <http://www.unison.org.uk>.

<sup>435</sup> '*A Fairer London. The 2008 Living Wage in London*', supra n. 424 at 5.



Due to this local government effort and the enormous engagement of London citizens, progress has also been made in implementing the living wage in other sectors.<sup>436</sup> The campaign was initially introduced in hospitals and spread from there to the finance houses of Canary Wharf, universities, art galleries and hotels.<sup>437</sup> A growing group of non-profit organizations have also adopted living wage policies.<sup>438</sup>

An important victory was the secured commitment of the Olympic Delivery Authority to implement living wage for the 2012 Olympics. All new jobs at the Olympic site will be paid a living wage, thereby making sure that the benefits of investments reach at least some of London's working poor.<sup>439</sup> While the details of the terms differ from employer to employer, all of them have signed a basic 'Charter for Socially Responsible Contracting' stipulating that all direct and contract staff are (1) paid no less than a living wage as set annually by the Greater London Authority; (2) eligible for 20 days paid holiday plus statutory holidays; (3) eligible for 10 days full sick pay per year and (3) allowed free and unfettered access to a trade union.<sup>440</sup>

While the implementation of the living wage in the U.S. is made by legislative measures, the implementation in the U.K. is voluntary and its realisation depends to some extent on the state of the economy. Although even the public sector implements the official living wage rate only if contracts allow it, the gains are still considerable. Twenty-seven organisations, including the GLA Group, have committed to paying their staff the London Living Wage. It seems that the public pressure is strong enough to force

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<sup>436</sup> *Ibid*, at 7.

<sup>437</sup> Jane Wills, 2008, 'Researching London's Living Wage Campaign', Department of Geography, Queen Mary, University of London, para 3.

<sup>438</sup> Including Big Issue, Child Poverty Action Group, ACEVO, Institute for Public Policy Research, and Westway Development Trust.

<sup>439</sup> Wills, 2008, *supra* n. 437 at 38.

<sup>440</sup> *Ibid*, at 10.

public and private businesses into voluntarily paying a living wage. For companies to be seen, and advertised, as living wage employers is gaining attraction among informed consumers and this adds a commercial imperative to the process.

### **2.3.3.2.3 Living Wage Campaigns in Canada**

There are a number of local living wage campaigns underway in several communities across Canada, for example, in Waterloo and Victoria.<sup>441</sup> However at this time, neither a living wage policy nor a living wage law has been adopted by a city in Canada. Some cities, like Toronto, Kamloops or Peterborough, have implemented policies resembling living wages.<sup>442</sup>

In April 2008, the Calgary City Council directed the City administration to develop living wage policy options for the city staff and city service suppliers. Results from this report with the according implementation plans were published in January 2009 and revealed that 674 staff members and contractors of the City of Calgary were paid a wage that did not allow them to meet their basic needs. Nevertheless, on April 7<sup>th</sup>, 2009, Calgary City Council voted ‘no’ to paying its staff a living wage.<sup>443</sup>

Canadian initiatives, such as the ones presently underway in Calgary, Waterloo and Victoria seek to engage business owners to voluntarily increase low wages, with the understanding that this is one way to improve the lives of employees and their families.<sup>444</sup>

At the federal level, the Government of Canada has established ‘Fair Wages and Hours of Labour Regulations’ that apply to government contracts for construction related

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<sup>441</sup> Jacquie Maund, 2007, ‘*Report on Campaign2000 National Forum on Living Wages*’, Campaign2000, at 1.

<sup>442</sup> For Toronto: ‘*Ontario’s Fair Wage Policy*’; for Kamloops: ‘*British Columbia’s Skills Development Fair Act*’, and for Peterborough: *Ontario’s Fair Minimum Wage By-Law*.

<sup>443</sup> ‘*Vibrant Communities Calgary*, supra n. 428 at 2; Tamarack Homepage at <http://tamarackcommunity.ca>, link: community update.

<sup>444</sup> *Ibid*; *Ibid*.

work.<sup>445</sup> Under these regulations, fair wages rates have been established for government contracted construction in each of the provinces. Section 4 of the regulation stipulates that fair wage rates may be set at the provincial rate for a class of work if that rate is generally accepted as current. If the rate is not considered to be current, the rate will be calculated based on statistical estimates from occupational surveys by Statistics Canada. The fair wage may not be less than the minimum wage set in each province.<sup>446</sup>

#### **2.3.3.2.4 Discussion**

Intuitively, one might think that the legislated enforcement of a living wage is the only way to spread living wage. The example of England however shows that public pressure alone may be sufficient. Nevertheless, I think that the legislated implementation is the best way to secure achievements of the living wage in the long run. It would prevent abandonment of non-binding policies and commitments in situations of economical difficulties.

Canada is still in the early stages of introducing living wages with currently many local campaigns having been initiated. A possible explanation for this delay might be the protection given through employment standards and similar legislation,<sup>447</sup> which regulate the hours of work, wages and annual vacations etc. Another possible explanation may be that until recently Canadian wages combined with social policies, e.g. Employment Insurance, have been sufficient to help people manage their household budgets. And yet another explanation may be that Canadian cities do not have the same constitutional

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<sup>445</sup> *Fair Wages and Hours of Labour Regulations* (C.R.C., c. 1015).

<sup>446</sup> *Fair Wages and Hours of Labour Regulations* (C.R.C., c. 1015); Younie and Scott, 2003, supra n. 332 at 12.

<sup>447</sup> See for example the *Employment Standards Act [RSBC 1996]* for employees in British Columbia and the *Canada Labour Standards Regulations* (C.R.C., c. 986); for employees in the federal sector.

authority to legislate living wage policies as the cities in the U.S., meaning that any such laws would need to be passed on a larger scale. All this might have reduced the impetus for introduction of a living wage campaign.

### **2.3.3.3 How is the Living Wage Calculated?**

Living wage rates and calculation vary among the campaigns in the different countries. According to a 2003 study by Younie and Scott<sup>448</sup> the scope of the living wage, and the jobs that are covered by it, are varied. Some living wage campaigns set the living wage rate at a level that would raise a family of three or four above the federal poverty line. Other campaigns determine the rate by multiplying the existing federal minimum wage by a certain factor.<sup>449</sup>

Campaigns in the U.S. have calculated their living wage using different family sizes and different poverty levels. But many campaigns in the U.S. have defined the living wage as equivalent to the federal poverty line for a specific family size. Often, living wage levels are equal to what a full-year, full-time worker would need to earn to support a family of four at the poverty line. Some living wage rates are set at 130% of the poverty line. This is the maximum income a family can have to still be eligible for food stamps. Increasingly, living wage coalitions are proposing other community standards in addition to a wage requirement, such as health benefits, vacation days, and community advisory boards.<sup>450</sup>

The living wage in London, for example, has been calculated in two stages. Firstly, a ‘poverty threshold wage’ is calculated. This has been done by calculating the

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<sup>448</sup> Younie and Scott, 2003, *supra* n. 332.

<sup>449</sup> *Ibid*, at 11-13.

<sup>450</sup> ‘*Living Wage Resource Center*’, 2008, *supra* n. 430 at 2.

arithmetic mean of values determined by two different methods: (1) The ‘Basic Living Costs’ approach, which estimates the costs of a ‘Low Cost but Acceptable’ (LCA) budget for a selection of typical or model families and calculates the wage required to meet those costs. (2) The ‘Income Distribution’ approach, which is based on the distribution of income. The ‘poverty threshold wage’ resulting from the two methods was at 6.50 pounds in 2008. In a second stage the London Living Wage is calculated by adding 15% to the calculated ‘poverty threshold wage’. This is done because, according to the Greater London Authority, a living wage must secure a margin ensuring that the person involved does not fall into poverty because of unforeseen events. Accordingly the living wage 2008 in London was at 7.45 pounds.<sup>451</sup>

The calculation formula used in the recently released report from the Canadian Centre for Policy Alternatives (CCPA) uses a hypothetical family of two parents with two young children working a combined total of 70 hours per week. The costs for food, clothing, shelter, transportation, childcare and other basic costs<sup>452</sup> are estimated from the Market Basket Measure (MBM), an index of expenses developed by Human Resources and Social Development Canada. The calculation assumes that this hypothetical family must pay for child care and medical benefits. It also incorporates income from government transfers (e.g. the Canada Child Tax Benefit) and statutory deductions (e.g. taxes, EI and CPP premiums).<sup>453</sup> The family expenses are based on conservative estimates of the lower range of average family expenses. The reason for this is that the

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<sup>451</sup> ‘*A Fairer London. The 2008 Living Wage in London*’, supra n. 424 at 7-8.

<sup>452</sup> Tim Richards, 2008, ‘*Working for a Living Wage. Making Paid Work Meet Basic Family Needs in Vancouver and Victoria, Calculation Guide*’, Canadian Centre for Policy Alternatives, CCPA, BC Office, at 6.

<sup>453</sup> First Call, BC Child and Youth Advocacy Coalition and Canadian Centre for Policy Alternatives, B.C. Office, no date, ‘*Why support a Living Wage campaign? Why now?*’, para 5.

living wage aims to provide an adequate level of well-being based on the requirement of a family.<sup>454</sup> The living wage calculation does not cover credit card costs, loans, other debt/interest payments, savings for retirement, costs of owning a home, savings for children's future education, anything beyond minimal recreation and entertainment, holiday costs, costs of caring for a disabled person, costs of illness, support of elderly family members or savings for emergencies or tough times.

The applied calculation formula estimates the hourly living wage for Metro Vancouver at \$16.74 and for BC's Capital region at \$16.39 per hour. The living wage is based upon both parents working in paid employment for 35 hours per week, which is the norm for families with children in British Columbia. With 70 hours of work per week and per family and 52 weeks of employment each year, this translates into an annual income of \$60,933.60 in Vancouver and \$59,659.60 in Victoria. Note that the Low Income Cut-Off for a family of four (two adults, two children) is at \$40,259.<sup>455</sup>

The living wage for a two-parent, two child family (\$16.74) is sufficient to meet the needs of a single-parent family with one child.<sup>456</sup> This is in part because the single-parent family qualifies for the full child care subsidy. A single-parent with two children however, would require a higher living wage.

Despite the fact that no Canadian city actually has implemented a living wage, the methods for calculating its cost are far more progressive than the ones used in the U.S. In contrast to the U.S., where living wage aims at bringing families up to the poverty line,

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<sup>454</sup> Richards, 2008, supra n. 452, at 7.

<sup>455</sup> *Statistic Canada's before-Tax Low Income Cut-Offs (1992 Base) for 2007*, supra n. 367; Richards et al., 2008, 'Working for a Living Wage', supra n. 346 at 23, 26 and 34.

<sup>456</sup> The calculation is based on a single parent family with one child in which the parent is a woman working 35 hours per week and the child is four years of age. According to Richards et al, 2008, this combination was chosen because the majority of single parent families have one child (62% in British Columbia in 2006). Data from: Richards et al., 2008, 'Working for a Living Wage', supra n. 346 at 25.

living wages in the U.K. and Canada allow for a life with a safe margin above the poverty line. This may allow affected people to participate in society and actively contribute to a community.

### **2.3.3.4 Arguments in Favour of Living Wage**

#### **2.3.3.4.1 Lower Turnover Rates**

The main concern of an employer is how paying a living wage will affect its profit and, thus, competitive advantage amongst employers that might not have adopted a living wage. Concern about accountability and cost can result in barriers to the adoption of a living wage policy by an employer.

Different studies have shown that paying low wages results in higher employee turnover rates, which in turn may generate costs. In a survey of health support workers in 12 hospitals in the U.S., Appelbaum, Berg and others found that turnover rates in the low wage, low skill occupation segment may be up to 100% within one year.<sup>457</sup> The turnover costs are substantial and must be taken into consideration. In the annual survey report from 2005, the Chartered Institute of Personal and Development (CIPD) London estimated the average costs of recruitment (i.e. advertising cost, agency or search fees) and labour turnover to be 8,757 Pounds per departing employee. The median costs for replacing a manual or craft worker is 5,000 Pounds when all turnover costs including vacancy cover, redundancy costs, recruitment/selection, training and induction costs are taken into consideration.<sup>458</sup>

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<sup>457</sup> Eileen Appelbaum, Peter Berg, Ann Frost, and Gil Preuss, 2001, Revised 2002, *The Effects of Work Restructuring on Low-Wage, Low-Skill Workers in U.S. Hospitals*, Russell Sage Rockefeller Research Volume, at 10.

<sup>458</sup> The Chartered Institute of Personal and Development (CIPD), 2005, *Recruitment, Retention and Turnover*, Annual Survey report, at 14.

According to KPMG London turnover rates were cut to half after implementation of a living wage policy for all its direct and contract staff in 2006. Guy Stallard, the head of Corporate Services stated: ‘No one abused the new sick pay scheme, and absenteeism is very low. We get the benefit of reduced training costs and increased staff continuity’.<sup>459</sup>

#### **2.3.3.4.2 Ability to Support Families**

According to a 2005 study on low-paid contract cleaners at the Royal London Hospital<sup>460</sup> the benefits for both the employer and the workers resulting from paying a living wage are significant and measurable. It found that earning a living wage made a significant difference to the ability of workers to support their families.<sup>461</sup> The researchers asked workers how the new pay rate affected their ability to pay for food, clothing, housing, child-related expenses, and holidays. About half of the workers said they had not been able to afford adequate food on their previous salary. Once they received a living wage 85 per cent were able to pay for the food their family needed. The living wage had a similar impact on workers’ ability to pay for other necessities for themselves, and most importantly, for their children.<sup>462</sup>

#### **2.3.3.4.3 Higher Work Motivation and Productivity**

Higher wages have also been shown to be related to higher work productivity. If increasing minimum wages improves motivation and productivity among low-paid

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<sup>459</sup> Richards et al., 2008, ‘*Working for a Living Wage*’, supra n. 346 at 40.

<sup>460</sup> Martin Sokol, Jane Wills, Jeremy Anderson, Marg Buckley, Yara Evans, Claire Frew, and Paula Hamilton, 2006, ‘*The impact of improved pay and conditions on low-paid urban workers: the case of the Royal London Hospital*’, Department of Geography, Queen Mary University of London, London, at 19.

<sup>461</sup> *Ibid*; Richards et al., 2008, ‘*Working for a Living Wage*’, supra n. 346 at 39.

<sup>462</sup> Deborah Littman, 2006, ‘*The Business Case for the Living Wage. Working Brief*’, online at [www.unison.org.uk](http://www.unison.org.uk), at 6.



workers – see for example the above mentioned example of the low-paid contract cleaners at the Royal London Hospital – and stimulates employers to invest more in productivity enhancing skills, alleged negative employment effects, such as job loss among the lowest skilled workers, would be mitigated.<sup>463</sup> Higher wages are also correlated with better overall health. This results in fewer absences due to illness.

#### **2.3.3.4.4 Living Wage as a Marketing Tool for Employers**

A new aspect in adopting a living wage can be observed in the consumer expectations of the 21<sup>st</sup> century: According to Deborah Littman, who has worked extensively with London Citizens' Group in the UK, implementation of living wage allows an employer to use this fact for marketing purposes. The informal label of a 'living wage employer' is rapidly gaining respect in the UK.<sup>464</sup> And Ian Tew, Head of Workplace at KPMG, sees KPMG paying a living wage as a socially responsible and smart business move.<sup>465</sup> In other words private firms are becoming increasingly aware that commitment to corporate responsibility is essential to their public image.

#### **2.3.3.4.5 Living Wage as an Advantage for the Government and the Community**

Higher wages positively affect the government and communities by providing greater positive incentives to work, often leading to a reduction in social assistance rates and a concurrent increase in the tax base. Low-wage workers may currently qualify for social assistance programs but higher wages may enable greater self-sufficiency and reduce reliance on these programs. Higher wages may possibly reduce some types of crime related to poverty, reducing policing and court costs. Finally higher wages allow

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<sup>463</sup> Saunders, 2005, *Lifting the Boats: Policies to Make Work Pay*, supra n. 407 at 9.

<sup>464</sup> Canadian Centre for Policy Alternatives, CCPA, B.C. Office, 'Press Release', 2008, para 9.

<sup>465</sup> Greater London Authority, 'Press Release', 2007, online at [www.london.gov.uk/view\\_press\\_release](http://www.london.gov.uk/view_press_release).

for more disposable income that is spent on consumer goods and services, supporting the local economy. This is especially important since people with marginal incomes are more likely to spend their money locally.

### **2.3.3.5 Arguments Against Living Wage**

#### **2.3.3.5.1 Living Wage Laws and Policies Lead to Job Losses**

A frequently encountered argument in the context of living wages is that the introduction of a living wage leads to job losses, particularly among the lowest skilled workers. This is partially confirmed by a study from Adams and Neumark<sup>466</sup> on living wage policies enacted by California in local governments. They found that although living wages boost the wages of the lowest-wage workers they also reduce employment rates among the least skilled. According to them the adverse effects of living wages impact mostly the least-skilled individuals, who are the least likely to be employable after a mandated wage increase is enacted. They propose that additional policies are needed to help the most disadvantaged.<sup>467</sup> In his study ‘Risk and Opportunity: Creating Options for Vulnerable Workers’,<sup>468</sup> Saunders shares this belief and propagates a concept of mixed instruments that should be used to achieve adequate wages, which allow working people to avoid poverty.

#### **2.3.3.5.2 Costs from Monitoring Compliance and from Introduction of a Living Wage**

Introducing living wages is likely to generate costs for communities. These costs may originate from imposing sanctions against covered businesses, establishing

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<sup>466</sup> Adams and Neumark, 2005, supra n. 432.

<sup>467</sup> *Ibid.*, at 1 and 17.

<sup>468</sup> Ron Saunders, 2006, ‘*Risk and Opportunity: Creating Options for Vulnerable Workers*’, Ottawa: Canadian Policy Research Networks.

grievance procedures for eligible employees, monitoring compliance and introducing reporting requirements.

### **2.3.3.5.3 Living Wage as One Means Among Others to Reduce Poverty**

Low-paid jobs tend to be low-quality jobs, which are characterized by poor access to non-wage benefits (such as life/disability insurance, extended medical coverage, dental insurance, and pension plans). This in turn leads to more precarious work arrangements, such as more temporary work, less access to employer-sponsored training, and finally, low union coverage.<sup>469</sup>

According to the study by Saunders<sup>470</sup>, the combination of pay, benefits from employment, and benefits and supports through government-funded programs should be enough to give working people the tools they need to avoid poverty. He identifies the following objectives to provide access to the above mentioned tools: First, employees should earn an adequate income so that the wages taken together with any government income supplements for the working poor are sufficient for someone working full time to have an income above the Low-Income Cut Off. Second, all workers should be provided with minimal standards regarding their working conditions. This includes minimum wages, overtime and vacation pay, public holidays, and job-security during parental leave. Third, all workers should have access to benefits and supports that are important to well-being, such as coverage for pharmaceutical costs, affordable housing, affordable child-care. Fourth, workers who are low-paid or work part-time should have opportunities

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<sup>469</sup> Saunders, 2005, *Lifting the Boats: Policies to Make Work Pay*, supra n. 407 at 4.

<sup>470</sup> Saunders, 2006, *Risk and Opportunity: Creating Options for Vulnerable Workers*, supra n. 468.

to improve their labour market prospects, for example by participating in skills upgrading activities.<sup>471</sup>

### **2.3.3.6 Conclusion**

A living wage represents one among many other means that could help people to get above the poverty line. A comparison of the minimum wage with living wage suggests that only the latter is suited to improve people's living standard. Based on the premise that no one should be forced to live in poverty, it seems ironic that people working full-time cannot get above the poverty line and live a decent life. The minimum wage, as it is realized today, cannot fulfill this demand.

Living wages, on the other hand, do not represent a miracle cure for prevention of working poor. Their application can only be helpful if governments continue and expand their responsibility for improving the living standard of their citizens by providing them the means they need for leading a better life. Low priced childcare and affordable housing represent two examples of calls to be realized by the government.

Reduction of poverty should be a primary governmental interest, which is rewarded by better situated tax payers that may contribute more to the community life. The medical expenses and negative social impacts that accompany insufficient wages impose more costs on governments and the tax-payers than what can be saved from not introducing a living wage.

Governments also have the important and unpopular role of informing the public about the correlation between low wages, poverty and the associated lack of opportunities for low wage workers. More public awareness of these problems leads to better public

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<sup>471</sup> *Ibid*, at 51.

support of political forces aiming at introducing living wages. In daily politics though, low paid work enables governments to embellish their statistics, as low paid workers do not count as unemployed. Political promises to create new and more jobs are not sufficient. The jobs should provide for a realistic living wage.

Greater public awareness may motivate more private enterprises to improve their public image with living wage policies. Private enterprises should be part of the public claim for a living wage, although leadership from the public sphere may be crucial. Even if altruistic care for poor people may not be a driving force for a business owner there are some reasonable economic rationales supporting adoption of a living wage: fewer turnovers, less sickness leave, better motivation and more loyalty toward the employer. All that leads to increased productivity and finally to increased shareholder value. In conclusion the benefits from introducing a living wage outweigh its costs by far. The implementation of a living wage system requires a policy shift since it puts more of the financial burden on employers and less on the government. This political choice about who should bear the social costs related to employment needs to be publicly discussed. Whether a society eventually makes this choice is beyond the scope of this thesis. Governments and employers both have an interest in keeping wages low, their reasons differ however: for governments low wages tend to provide full employment; for employers low wages normally guarantee low product prices and thus bigger profit margins. And yet the goal of social freedom and security forces governments to subsidize costs for housing, food, or daycare etc. for low wage workers. The administrative costs to maintain this system are considerable. Putting the financial burden on the employer, however, maximizes the personal and individual choices employees can have in

disposing freely of their earned money and provides families the control of their money without governmental interference.

### **2.3.4 A Basic Income**

#### **2.3.4.1 Introduction**

For one out of six Canadian families, income from work is not sufficient to pay for food and shelter. In 2001, 653,300 workers had a low family income, earning an average of \$25,080 per year; 1.9 million Canadians lived in those families.<sup>472</sup> In 2005, five percent of the Canadian population or 1.7 million people relied on welfare; nearly half a million of those on welfare were children.<sup>473</sup> At the same time, the number of people using food banks has increased 6% since 1997, feeding every month over 700,000 hungry Canadians.<sup>474</sup>

The welfare system is certainly not the cause of poverty, but it does not necessarily represent the cure. Welfare incomes continued to decline and are well below the poverty line, making life more difficult for the people forced to rely on it. In 2005, welfare income was less than two-thirds of the poverty line for all households in all jurisdictions, except for the lone parent in Newfoundland and Labrador.<sup>475</sup>

The current Canadian welfare system and its programs aim to move people off social assistance into jobs. But with low wages and poor working conditions, social assistance poverty is often replaced by labour market poverty.

The following section analyzes the idea of a basic income and its impacts on the labour market in general and on women's life especially. Basic income has been viewed

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<sup>472</sup> HungerCount 2008, supra n. 325 at 4, and 7.

<sup>473</sup> 'Welfare Incomes 2005', 2006, supra n. 360 at IX.

<sup>474</sup> HungerCount 2008, supra n. 325 at 4, and 7.

<sup>475</sup> 'Welfare Incomes 2005', 2006, supra n. 360 at 29.

as a crucial remedy for many social ills, including unemployment and poverty. This radical alternative has also been judged to be a crazy, economically flawed, ethically objectionable proposal, which is not worth being taken seriously.<sup>476</sup> There are fears that such a program may be too costly and may destroy work incentives. I start with a brief overview of the history of a basic income in Canada, followed by a discussion of the two major models for implementing and funding a basic income. The core section of the paper is devoted to arguments in favour and against the introduction of a basic income coming from supporters and opponents of a basic income. The last part of this section tries to answer the question whether women might benefit from a basic income. I conclude that a basic income alone is not sufficient to reduce poverty and fails to improve women's equality within the gendered division of their (public) labour work and their (private) work at home. Broader actions are needed to improve women's working lives.

#### **2.3.4.2 History of a Basic Income**

In the United States the basic income was a popular social justice demand in the 1960's and 70's, initially proposed by Martin Luther King Jr., and later promoted by U.S. socio-economist Robert Theobald in response to automation induced changes in production.<sup>477</sup>

In Canada, the concept of a basic income has been debated for more than forty years. Historically, in Canada, the concept has been called a guaranteed annual income

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<sup>476</sup> Philippe Van Parijs, 2004, 'Basic Income: A Simple and Powerful Idea for the Twenty-first Century', *Politics & Society* (32) 1, pp. 7-39, at 8.

<sup>477</sup> Women's Liveable Income Working Group, 2006, '*Women's Economic Justice Project: An Examination of How Women Would Benefit From a Guaranteed Liveable Income*', Victoria: Victoria Status of Women Action Group, at 4. [*Women's Liveable Income Working Group*].

(GAI).<sup>478</sup> In 1970, the Canadian Department of National Health and Welfare emphasized the impact a guaranteed income could have on poverty, but indicated that further studies of the experiments done in the U.S. were required, since results pointed out that lost productivity could be a significant concern.<sup>479</sup> In the same year, the Royal Commission on the Status of Women of Canada proposed the federal government to pay a guaranteed annual income to the head of all one-parent families as a solution to persistent women's poverty.<sup>480</sup> The idea of basic income was put to a test in the Canadian experiment called the "Manitoba Mincome" in 1974-77. The results of that experiment showed that the disincentive effects were minimal; participants generally did not reduce their labour participation.<sup>481</sup> By the mid-1980's, the idea of a basic income was abandoned and thereafter demanding jobs, good wages and daycare was regarded as the primary solution to poverty by social justice groups.<sup>482</sup> This shift in demands can be explained with the appearance of neo-conservative movements in the 1980s and 1990s which proclaimed the welfare state to be a failure. At the same time the public opinion about welfare recipients changed and the latter were made responsible for abusing the welfare system and thereby causing the social misery.

In recent years the idea of guaranteed income has been revived by such politically disparate groups as the Canadian Association of Sexual Assault Centres, the Toronto Dominion Bank and Senator Hugh Segal, a member of the Conservative Party.<sup>483</sup> In 2004, a group of scholars and activists released the 'Pictou Statement', a short manifesto

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<sup>478</sup> Chandra, 2008, supra n. 320 at 2.

<sup>479</sup> Derek Hum, and Wayne Simpson, 2001, 'A Guaranteed Annual Income? From Mincome to the Millennium', *Policy Options*, January-February 2001, at 79.

<sup>480</sup> Royal Commission on the Status of Women in Canada, Report, (Ottawa, Information Canada 1970), at 325.

<sup>481</sup> Hum and Simpson, 2001, supra n. 479 at 78.

<sup>482</sup> *Women's Liveable Income Working Group*, 2006, supra n. 477 at 4.

<sup>483</sup> *Ibid*, at 4.



stating, among other things, that: ‘Women demand an indexed guaranteed living income for all individual residents set at a level to enable comfortable living’.<sup>484</sup>

### **2.3.4.3 Definition of a Basic Income**

A basic income, as it is used in this paper, is a universal and unconditional income, administered by federal governments and granted to all members of society on a continuing and regular basis to ensure that no person’s income falls below what is necessary for health, life and dignity.<sup>485</sup>

The key difference of basic income from any other system is that the cash transfer is universal and unconditional, i.e. the income would be equally available to every individual adult member of society.<sup>486</sup> The benefit could also be extended to children (probably at a lower level). Unconditional means that the benefit is paid without any means test, i.e. the income would be given to the beneficiary regardless of their income sources, regardless of cohabitation patterns or, for example, programme attendance.<sup>487</sup>

### **2.3.4.4 Basic Models for a Basic Income**

There are two basic models, the ‘Negative Income Tax’ (NIT) model and the ‘Universal Demogrant’ (UD) model.

The notion of a negative income tax first appears in 1838 in the writings of the French economist Augustin Cournot and was proposed again in 1962 by Milton Friedman

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<sup>484</sup> Lee Lakeman, Angela Miles, and Linda Christiansen-Ruffman, 2004, ‘Feminist Statement on Guaranteed Living Income’, *Canadian Women Studies Journal*, 204-206, at 205.

<sup>485</sup> This definition is covered by the definition used by the ‘Women’s Liveable Income Group’, supra n. 474 at 4; and by the ‘Basic Income Earth Network’, [www.basicincome.org](http://www.basicincome.org).

<sup>486</sup> Ailsa McKay, 2001, ‘Rethinking Work and Income Maintenance Policy: Promoting Gender Equality through a Citizen’s Basic Income’, *Feminist Economics* 7(1), 2001, 97-118, at 99.

<sup>487</sup> Margot Young, 2009, ‘Guaranteed Annual Income: A Feminist Approach’, in Marjorie Griffin Cohen, and Jane Pulkingham (eds.), *Public Policy for Women: The State, Income Security, and Labour Market Issues* (Toronto, University of Toronto Press), at 209.

as a tool for trimming down the welfare state. Finally James Tobin pursued the idea in more depth as a way of fighting poverty while preserving work incentives.<sup>488</sup> The Negative Income Tax is a payment by governments to persons or households below a certain income level as opposed to positive income taxes which are paid to governments by persons with income above a certain level. This system would be handled through the tax system. It consists of three basic elements: the guarantee or benefit level, the reduction rate, and the break-even income level. The benefit level is the maximum benefit that any person or economic unit can receive and varies with family size and configuration. The reduction rate is the amount by which the benefit is reduced for additional income either above the benefit rate or a maximal allowable level. Finally the break-even level is the income level at which the reduction rate is 100%, i.e. those above the break-even level receive no benefit.<sup>489</sup>

The negative income tax model is a targeted model because only those below a certain income level receive benefits. Thus the costs for a government remain within limits. Second, since people can keep the full amount of the basic income, whether working or not, the negative income tax model is considered to preserve work incentives because additional income is only partially and finally fully eliminated when a reasonably high amount of additional income is achieved.<sup>490</sup> However, unless the benefit is set at or

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<sup>488</sup> Philippe Van Parijs, 2004, supra n. 476 at 14.

<sup>489</sup> Human Resources Development Canada, 1994, '*Social Security Reform. Improving Social Security in Canada. Guaranteed Annual Income: A Supplementary Paper*', Government of Canada, 1994, at 4. [*'Social Security Reform. Improving Social Security in Canada. Guaranteed Annual Income: A Supplementary Paper*'].

<sup>490</sup> Chandra, 2008, supra n. 320 at 4; To illustrate: Negative Income Elements for a family of four: Guarantee \$15,000; Reduction Rate 27%; Break Even Income Level \$55,555: Under this system, it is possible to identify three groups: those receiving full benefits, those receiving partial benefits and those receiving no benefits. Families with no sources of income other than the NIT receive the full benefit of \$15,000 (i.e., the guarantee). At the other extreme, families with non-NIT income over \$55,555 receive no benefit. In between those extremes, families with non-NIT income between \$1 and \$55,554 receive a

above the poverty line, the negative tax income model would not eliminate poverty. Supporters of this model tend to favour benefit levels below the poverty threshold in order to maintain an incentive to obtain other income. The negative tax income system, however, would reduce the poverty rate and the depth of poverty if the basic guarantee were above the minimum level of current last-resort social assistance programs.<sup>491</sup>

The Basic Income (BI) model, also called the Universal Demogrant (UD) model, consists of a regular payment made to every citizen regardless of income. The payment is non-taxable. All other income however is taxable at a higher rate than current income tax rates.<sup>492</sup> Higher income citizens thus end up paying the benefit amount back through their taxes.<sup>493</sup>

The Universal Demogrant model is usually favoured by those people who consider the basic income a right of citizenship and whose purpose is to eliminate poverty and lead to more equal sharing of the economic benefits in society.<sup>494</sup> This system emphasizes the removal of the social stigma of a welfare benefit receiver by making the benefit universal. Some argue that this universality will ensure social cohesion. The costs for the governmental budget would be much greater than with a negative income tax system since all households would receive benefits.<sup>495</sup>

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benefit equal to the guarantee reduced by 27 cents for each dollar of non-NIT income. (The formula is: benefits equals guarantee minus (non-NIT income multiplied by reduction rate). Data from: 'Social Security Reform. Improving Social Security in Canada. Guaranteed Annual Income: A Supplementary Paper', supra n. 489.

<sup>491</sup> 'Social Security Reform. Improving Social Security in Canada. Guaranteed Annual Income: A Supplementary Paper', supra n. 489 at 4.

<sup>492</sup> *Ibid.*, at 5.

<sup>493</sup> Chandra, 2008, supra n. 320 at 5.

<sup>494</sup> 'Social Security Reform. Improving Social Security in Canada. Guaranteed Annual Income: A Supplementary Paper', supra n. 489 at 4.

<sup>495</sup> Chandra, 2008, supra n. 320 at 5.

### 2.3.4.5 Implementation of a Basic Income in Canada and Other Countries

Canada offers a modest basic income for those 65 and older through the old age security program (OAS). This is a universal program with enhanced benefits for those with low incomes (Guaranteed Income Supplement). An applicant's employment history is not a factor in determining eligibility, nor does the applicant need to be retired. Age (65 and over) and Canadian citizenship or 10 years of residency however are eligibility requirements for the Old Age Security pension.<sup>496</sup>

During the 1960s and 1970s the idea of a basic income became popular in other industrialized countries like Great Britain, New Zealand and Norway. But none of these countries implemented such a program. Since then and with support from the Basic Income Earth Network (BIEN)<sup>497</sup> the discussions continued at variable intensity. Until today, the principle of basic income has been only applied in Alaska and Brazil.<sup>498</sup>

Since the implementation of Alaska's Permanent Fund Dividend Program in 1982 everyone who has been officially resident in Alaska for at least six months – currently around 650,000 people – has received a uniform dividend every year.<sup>499</sup> The program is a method for returning a portion of the revenues from petroleum development to the citizens of Alaska as a direct cash payment.<sup>500</sup> In the early years the dividend stood at around \$300 per person per year and reached a high in 2008 with \$2069 per person and per year. The fund therefore works quite differently than most basic income ideas would, as there is no fiscal requirement from citizens and the revenues are derived solely from

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<sup>496</sup> Old Age Security Act (R.S., 1985, c. O-9).

<sup>497</sup> BIEN is a network of academics, activists and politicians that advocate for basic income, supra n. 485.

<sup>498</sup> Chandra, 2008, supra n. 320 at 10.

<sup>499</sup> BIEN, supra n. 485.

<sup>500</sup> Scott Goldsmith, 2001, 'The Alaska Permanent Fund Dividend Program', Paper presented at the Conference o Alberta: Government Policies in a Surplus Economy, University of Alaska Anchorage, Alaska.

oil royalties. However, the fund demonstrates that political will can be developed for non-targeted distribution of revenue.<sup>501</sup>

Brazil introduced a guaranteed minimum income through a negative income tax, which was implemented gradually from 1995 to 2002, starting with those most in need and on a local level. In the pioneer scheme families with monthly family income below half the minimum wage per capita (at the time the minimum wage was around US\$70 per month) had the right to receive a complement of income as long as the family had children in school age, attending at least 90 per cent of the classes in school. In 2003, an effort started to unify all income transfer programs from local, state and federal level: the family Scholarship Program was founded and a new Federal Law authorized the federal government to establish agreements with all Brazilian municipalities to adopt the minimum income programme related to education. According to this law, municipalities are responsible for the administration of the programme, and the Federal Government is responsible for the direct monetary benefit transfer to each family enrolled in the programme.<sup>502</sup> They receive the benefit on condition that the children attend school for at least 85 per cent of the time the schools are operating.<sup>503</sup>

#### **2.3.4.6 Arguments in Favour of a Basic Income**

Today a basic income has supporters from across the political spectrum because, depending on how it is structured, it can be useful to achieve a variety of goals. It has been promoted as a means of putting money back in people's pockets and thus reducing

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<sup>501</sup> Chandra, 2008, supra n. 320 at 10.

<sup>502</sup> All families with income below R\$90.00, or half the monthly minimum wage (R\$180.00 in April 2001), and with children from six to 15 years of age, have the right to a modest benefit that is of R\$15.00, R\$30.00 or a maximum of R\$45.00, depending of the number of children a family has.

<sup>503</sup> Eduardo Matarazzo Suplicy, 2002, *'Developing Countries: Brazil. Or The Answer Is Blown In The Wind'*, Paper presented at the 9<sup>th</sup> International BIEN-Congress in Geneva, September 2002.

government spending in favour of a small handout since a basic income is seen by right-wing economists as a replacement for the entire social and welfare system, including employment insurance and maternity and parental benefits. Poverty activists on the other side appreciate its redistributive impact on income and its potential power to reduce poverty.<sup>504</sup>

#### **2.3.4.6.1 Economic Arguments**

By signing the Universal Declaration of Human Rights in 1948 Canada recognized that an adequate income, together with social provision of the necessary means for well-being, is a human right. This assumes the right to a sufficient minimum income either through guaranteed employment, guaranteed income or a combination of these.<sup>505</sup> Therefore basic income represents a form of economic democracy that creates genuine economic opportunity because economic decisions can be made without coercion, e.g. people can turn down undesired jobs, live at the guaranteed minimum or go after more money and take a job.<sup>506</sup> As an unconditional grant it breaks the long-standing link between income and employment, making an individual's economic well-being independent of involvement in the paid labour force<sup>507</sup>, and, some argue, it would render the work force more flexible and more adaptable to structural change.<sup>508</sup> Since refusal to work would no longer constitute an obstacle for benefit eligibility the current goal to

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<sup>504</sup> Chandra, 2008, supra n. 320 at 6.

<sup>505</sup> Sally Lerner, C.M.A. Clark, and W.R. Needham, 1999, 'Basic Income. Economic Security For All Canadians, Toronto: Between the Lines, 1999, at 39.

<sup>506</sup> *Ibid.*, at 39; Chandra, 2008, supra n. 320 at 6.

<sup>507</sup> Carole Pateman, 2004, 'Democratizing Citizenship: Some Advantages of a Basic Income', *Politics & Society* (32) 1, March 2004, pp. 89-105, at 90; Young, 2009, supra n. 487 at 211; Janet Mosher et al, 2004, *Walking on Eggshells: Abused Women's Experiences of Ontario's Welfare System* (Ontario: Women and Abuse Welfare Research Project 2004).

<sup>508</sup> Philippe Van Parijs, 1996, 'Basic Income and the two Dilemmas of the Welfare State', *The Political Quarterly* (1996) 67, at 65.

encourage work at almost any cost, even for those for whom paid work is unrealistic, could be abandoned.<sup>509</sup>

#### **2.3.4.6.2 Social Arguments**

A basic income, set at an adequate level, might significantly reduce poverty. It promises more equal sharing of society's resources by redistributing resources to those who are less well-off.<sup>510</sup> A basic income offers simplicity and transparency compared to the current complicated and opaque social welfare systems. With a basic income the stigma of the recipient would be eliminated since everyone would receive an equal benefit. Furthermore the reach of the basic income would be extended to those who are currently not covered or poorly covered by social assistance programs.<sup>511</sup>

#### **2.3.4.7 Arguments Against a Basic Income**

Arguments against a basic income primarily focus on the claimed prohibitive costs and on the adverse effects such a scheme may have on work incentives. The tax rates required to finance an 'adequate' level of income to all citizens are assumed to be both economically devastating and politically unacceptable.<sup>512</sup>

##### **2.3.4.7.1 A Basic Income and Negative Work Incentives**

The prime critique of basic income is that it creates negative work incentives. The findings of the 'Manitoba Mincome' experiments, in which selected families from Manitoba were assigned to different guaranteed annual income plans for three years showed that the reduction in work effort under Mincome was modest: men worked about

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<sup>509</sup>Young, 2009, supra n. 487 at 211.

<sup>510</sup>Robert Theobald, 1965, *Free Men and Free Markets*, New York: Anchor Books, at 146 et seqq.

<sup>511</sup>Young, 2009, supra n. 487 at 209, 211; Janet Mosher et al, 2004, supra n. 507 at ix.

<sup>512</sup>McKay, 2001, supra n. 486 at 100.

one percent less, women three percent and unmarried women five percent less.<sup>513</sup> These effects are slightly smaller than the effects observed in similar U.S. experiments.

According to Hum and Wayne<sup>514</sup> this confirms that results from the US can not be simply applied to the Canadian context, with its different labour market institutions, practices, attitudes and social support programs.<sup>515</sup>

Van Parijs,<sup>516</sup> a proponent and main defender of the basic income concept, draws an even more positive picture of guaranteed income. According to him a guaranteed income might even enhance labour market involvement. He argues that a guaranteed income can be viewed as an employment subsidy given to the potential worker, which allows him or her to freely select or even create a new job since it is given irrespective of employment status. And in contrast to today's situation, work would always result in a positive income differential since the amount of the basic income benefit is not taxed nor is it withdrawn when additional money is earned. Third, a basic income encourages job-sharing, making it for many people more affordable to work part-time or even take a longer break from work.<sup>517</sup>

Others draw a grim picture of what might happen on the labour force market after introducing a basic income. They point to the risk that a basic income might result in exploitative working conditions. According to Van Der Veen,<sup>518</sup> another defender of a basic income, a basic income would put a floor under all earnings and thus enable employers to pay less than a living wage, which in turn enables continued participation of

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<sup>513</sup> Hum and Simpson, 2001, *supra* n. 479 at 80.

<sup>514</sup> *Ibid.*

<sup>515</sup> *Ibid.*, at 80.

<sup>516</sup> Van Parijs, 1996, *supra* n. 508 at 63.

<sup>517</sup> *Ibid.*, at 65.

<sup>518</sup> RJ Van der Veen, 1998, 'Real Freedom versus Reciprocity: Competing views on the Justice of Unconditional Basic Income', 46 *Political Studies* 140-163.



low earners in the paid workforce.<sup>519</sup> In this scenario the society would compensate the costs that employers are able to save in paying lower wages. Thus accompanying measures, like a minimum wage system, are needed to make sure that employers cannot profit from a basic income in this way.

#### **2.3.4.7.2 Is a Basic Income Affordable?**

The level of the basic income is not defined and the concept of basic income does not by definition replace all other cash benefits.<sup>520</sup> Some proponents suggest replacing all or most social services into a universal basic income; others want to keep all benefits and supplement them with an equal benefit for all citizens high enough to live a decent life. Both suggestions are extreme and the feasible solution lies somewhere in between.<sup>521</sup> The necessary funding would come from, for example, higher income tax rates on additional income, property tax, taxes on use of natural resources, consumption, wealth, capital transfers, information transfers, electronic transactions, or through a Tobin<sup>522</sup> tax or an ecotax reform.<sup>523</sup> Whether a basic income is affordable depends much on the details of how it would be implemented. These questions are matter of an intense debate and go beyond the scope of this paper. Many people, however, do believe that such a concept would be affordable.

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<sup>519</sup> *Ibid.*, at 140.

<sup>520</sup> Van Parijs, 2004, *supra* n. 476 at 18.

<sup>521</sup> *Ibid.*

<sup>522</sup> A Tobin tax is a tax on currency trading.

<sup>523</sup> An ecotax reform is a shift of taxation away from employment, incomes and savings, on to resource-depleting and environmentally damaging activities. Data From: Lerner et al, *supra* n. 505 at 42, and 94.

#### 2.3.4.8 Is a Basic Income Beneficial for Women?

Formal social policies have always advantaged men more than women. This is in part due to the direct relationship between insurance-based benefits and the labour market, but it is an indirect consequence of policies that fail to recognize the diverse roles of women as wives, mothers, workers, and caregivers and thus fail to recognize their different working patterns from men due to family responsibilities.<sup>524</sup> Basic income discussions have always been controversial among feminists. Some feminists expect that basic income will finally deliver recognition for unpaid work and caregiving, work that is primarily performed by women. Other feminists have worried that women would be content with a basic income, preventing them from going further and striving for more far-reaching gender equality.<sup>525</sup>

There are many potential benefits for women from the implementation of a basic income. As the benefit is payable to the individual rather than to the entire family unit it allows women to leave abusive relationships with men without fear of a financial loss.<sup>526</sup> And, since benefits would also be paid to children, single parent mothers are no longer threatened by poverty if benefit levels are sufficiently high.<sup>527</sup>

It is questionable however, whether the introduction of basic income has the power to transform today's labour market into one that is more compatible with being a primary caregiver of children since a basic income cannot resolve the issue of the conflict

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<sup>524</sup> McKay, 2001, supra n. 486 at 102-103.

<sup>525</sup> Ingrid Robeyns, 2008, 'Introduction: Revisiting the Feminism and Basic Income Debate', *Basic Income Studies* 3 (3), Article 3, pp. 1-6, at 1.

<sup>526</sup> Kathleen Piovesan, Vancouver Rape Relief, 'Fighting for a Guaranteed Livable Income', Part of the 'Memorial Montreal Massacre', talks held at the Vancouver Public Library, December 2, 2006.

<sup>527</sup> Julieta Elgarte, 2008, 'Basic Income and the Gendered Division of Labour', *Basic Income Studies* 3 (3), Article 4, pp. 1-8, at 2.

between paid and unpaid work and the associated problems.<sup>528</sup> According to Pateman the availability of a guaranteed income may simply reinforce the tradition that women stay at home to raise the children, because there is no financial constraint that forces them out of this role.<sup>529</sup> That is why Elgarte proposes a set of measures that should accompany the introduction of a basic income, such as high-quality childcare services, adaptable school schedules, flexible work arrangements for both caregivers, and a variety of parental leaves.<sup>530</sup>

#### **2.3.4.9 Conclusion**

The concept of a basic income has been controversially debated for decades. The discussion is largely theoretical, with almost no empirical evidence to support arguments for or against the introduction of a basic income.

Supporters of a basic income claim that the provision of a basic income security would enhance individuals' opportunities to make free choices with regard to economic and noneconomic activities throughout all stages of their lives. A basic income would promote equal treatment between the sexes, has the power to strengthen women's autonomy within the family, recognizes the value of unpaid work and thereby strengthens women's bargaining position within the household, and provides income security outside the traditional labour market. Furthermore a basic income might reduce or eliminate poverty among the most vulnerable groups in the society – single mothers and their children.

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<sup>528</sup> Young, 2009, *supra* n. 487 at 216.

<sup>529</sup> *Ibid.*, at ; Pateman, 2004, *supra* n. 507 at 99-102.

<sup>530</sup> Elgarte, 2008, *supra* n. 527 at 3.

Opponents to basic income however claim that basic income would impose a strong negative work incentive, leading to a reduced workload and thus reduced revenues, which eventually obstructs the financing of such a system. Moreover basic income would foster gendered division of the labour market and consolidate the traditional unequal distribution of paid and unpaid work.

By the given definition only residents or citizens are eligible for a basic income. Today much low income work is the product of migrant or temporary foreign workers who may only remain in the country during a harvest season or who immigrated recently. A basic income would lead to a sharp segregation in the labour market, so that the most demanding, hard, dirty, dangerous and badly paid work would be exclusively done by workers who are not eligible for a basic income. This would lead to a class of those who do have basic income and have the freedom to choose the work they like and enjoy and with all the remaining jobs done by non basic income covered workers.

In summary, despite years of discussion, the impact of an introduction of a basic income is largely unpredictable. There is a possibility that this might work and might create the beneficial effects that were intended, including promoting gender equality. But the consequences are too complex to be grasped theoretically. Further reaching empirical data are required to advance the discussion on this issue. The current theoretical basis does not allow drawing conclusive suggestions for or against its introduction.

## **Chapter 3**

### **Making Women's Work Pay**

#### **3.1 Aim of Thesis and Today's Situation**

The aim of this thesis was to analyse whether women have equal opportunities to men in the labour market and to examine the existing and proposed systems for their potential to abolish gender differences in income. The most prominent example of this inequality is sex-based wage differentials, in that women still earn less than men even when they do equal work or work of equal value. But altered opportunities may also originate from occupational segregation of the labour market, where women enter into specific job categories which usually are accompanied by lower wages than comparable male dominated professions. Women are also disadvantaged by limited access to benefits such as employment insurance for maternity leave. Or, women may find themselves excluded from the labour market altogether for reasons that are also gender related. Eventually the sum of these shortcomings results in a systematically higher risk for women of being poor.

#### **3.2 Existing and Proposed Systems Addressing Equal Opportunities**

The systems reviewed in this thesis are all directly (pay equity) or indirectly (maternity and parental leave, minimum and living wage, and basic income) designed to improve women's opportunities in the labour market. Some of these systems do have a positive impact on women's equality rights. One such example is the proactive pay equity legislation. Other systems, however, can reinforce the gendered division of paid and unpaid work and the traditional role of the mother as caregiver, depending on the

incentives they offer women for suspending their attachment to the labour market. Examples of such systems are the maternity and parental benefit system or a basic income. None of the mentioned and analysed systems is by itself sufficient to completely fulfill women's economic equality rights, but even in their sum they have failed to produce equality.

### **3.3 Policies and their Limits**

In the following section I review some of the possible causes for why social policies have failed to provide equal opportunities for women in the labour market.

One reason for why Canadian social policies have failed in the past may be that they fail to recognize fully the diverse roles of women as wives, mothers, workers, and caregivers and thus fail to recognize their distinct working patterns, which are often shaped by family responsibilities.<sup>531</sup> Part-time attachment to the labour market because of lack of full-time employment, affordable childcare services or because of personal and/or familial choices and absences from the labour market due to childbearing and –rearing leads to economic inequalities for women.

One system aiming at reducing conflicts originating from competing demands of the 'public' working sphere and the 'private' family sphere is the provision of maternity and parental benefits within the employment insurance system. This system, however, is designed for the needs of a 'full-time/full-year' worker and does not recognize that women's working patterns often differ from the classic male working pattern. As a consequence women are covered insufficiently by the system and some receive reduced benefits or no benefits at all.

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<sup>531</sup> Ailsa McKay, 2001, *supra* n. 486 at 102-103.

Proactive pay equity legislation, as another example, also disregards women's different working patterns and their part-time attachment to the labour market. The current proactive pay equity laws in Ontario, for example, are limited to establishments with 100 or more employees. This ignores the fact that the majority of working women work in small, low wage establishments, where the implementation and enforcement of the law is difficult and male comparators are lacking. The narrow scope of the law has resulted in a stagnation of the gender wage gap in Ontario at 29%. A further reduction of this gap is unlikely to happen since the potential of the law is exhausted.

Although the majority of minimum wage workers are female, the concept of the minimum wage is based on a full-time/full-year worker, which again is not the typical female working pattern. As minimum wage is not even sufficient to support a family for a full-time/full-year worker, it is even less sufficient for part time working women. The situation is similar for the concept of a living wage system: The calculation of the amount of living wage is based on a hypothetical family of four (two parents with two young children) working a combined total of 70 hours per week and assumes that most worker on the labour market work full-time and thus disregards women's part-time attachment to the labour market.

The basic income is the only revised system which does consider women's absences from and part-time attachment to the labour market. It improves women's economic position while recognizing their different working patterns. A basic income cushions the negative consequences of part time work. Having a fixed amount of money at their disposal deliberates women from the pressure to work full-time. A basic income, however, could also lead to a reinforcement of the current working patterns, i.e. promote

part-time attachment to the labour market and thereby lead to a stronger erosion of women's position on the labour market. This is because a basic income guarantees a decent standard of living without full-time attachment to the labour market.

### **3.3.1 Unequal Pay for Work of Equal Value**

Of the systems I reviewed in this thesis, pay equity is the only one directly targeting sex-based wage disparities on the labour market. Even though the implementation of proactive pay equity legislation in Canada has led to an improvement of women's incomes compared to those of men, the achievements of this system are modest and women's economic equality is far from being realized: in fact, unequal pay for work of equal value persists at all social levels and regardless of the education background.

All the other systems have at most an indirect effect on women's position in the labour market. The minimum wage system for example is aiming to improve workers' wages to a decent or a liveable standard. Since a majority of minimum wage workers are women, a raise in the minimum wage would disproportionately improve women's wages. Sex based wage disparities, however, would remain. The concept of a living wage follows the same goal, namely to provide working people with a decent or liveable wage. It differs from a minimum wage, however, in that the level of living wages takes into account what a worker needs to support his or her family and to participate in the social and civic life of his or her community. While living wages have some positive effects for women, there is always a danger that raising the cost of labour substantially may contribute to unemployment and the permanent loss of jobs to other jurisdictions. Another aspect is that the current living wage is not suited for single mothers taking care



of more than one child because with the higher income the mother would not qualify anymore for the child care subsidy and would therefore require a higher living wage.<sup>532</sup>

### 3.3.2 Occupational Segregation

All these systems are also insufficient to address the problem of occupational segregation in the labour market. Pay equity, for example, does not move female workers into different professions. Instead, pay equity is redressing underpayment of women's work while accepting occupational segregation.<sup>533</sup> Maternity and parental benefit provisions may even reinforce occupational segregation. Due to relatively rigorous eligibility criteria women might not be able to take a maternity leave at all or, if they do, they are forced into low-wage positions after their return because the lack of affordable childcare forces them to accept part-time, precarious work. Also the minimum wage system does not help to reduce or eliminate occupational segregation. Even if women do earn more from an increased minimum wage, a low-wage job remains a low-wage job. This means that it remains associated with limited on the job training and career opportunities. It is also doubtful whether a living wage or a basic income would have any positive impact on occupational segregation. A living wage does not include self-employed working women and is not designed for part time work. Women in such working conditions either do not benefit at all (as self-employed) or not enough to keep a family at or above the poverty line. A basic income, on the other hand, offers women a choice whether they want to work but it does not influence women's predominance in certain sectors and their near-absence from others. The gender segregation in the labour market would probably persist with both systems. However, the associated lower wage

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<sup>532</sup> Richards et al. '*Working for a Living Wage*', supra n. 346 at 25.

<sup>533</sup> Armstrong and Cornish, 1997, supra n. 51 at 71.

would probably be increased and since women are overrepresented in low wage occupations, a general improvement of wages in such jobs indirectly benefits women more than men.

Whether the introduction of an increase of a minimum wage is a simpler policy tool than the implementation of a basic income is based on theoretical considerations. If in today's economically strong times even a 10% increase in the minimum wage is politically not feasible, the introduction of a basic income appears an impossible task. Despite these limitations, a basic income at or above the poverty line has the potential to defeat poverty of those who receive it. How the concept of a basic income would incorporate non-citizens or recently immigrated people represents a major impediment. It presumably will lead to the situation that migrant workers would fill jobs where citizens covered by basic income are not willing to work. This might entail new kinds of labour market segregation. To prevent this from happening, other measures, like a minimum wage system is needed to accompany the introduction of basic income.

### **3.3.3 Summary**

In summary, today's legislation, despite some well-meant attempts, does not guarantee equal opportunities for women on the labour market. From the current stage of knowledge, which is rather limited, alternative models such as a living wage or a basic income are also not likely to guarantee equal access for women in the labour market. The main driving force for this persistent discrimination of women in the labour market lies in their role as mothers. Being a mother keeps women away from the labour market and thereby contributes to the erosion of their labour market position, impairs their career, reduces their eligibility for benefits, and shifts them into unfavourable working

conditions (part time, female dominated jobs). In its most unfavourable consequence this leads to greater poverty among women. Evidence supporting this view can be found in the fact that women without children have lifetime earnings more than 50% higher than mothers.<sup>534</sup>

And why do women make this sacrifice? The main reason is that the positive aspects of motherhood seem to clearly outweigh the negative sides. The fundamental importance of motherhood is not contested, and yet it is barely financially recognized. A second important aspect of why women continue to pay the high price of motherhood is because there is little incentive to use childcare instead of parenting full time. In fact the use of childcare has a double negative incentive today. On one hand childcare is excessively costly, so that only women with a high salary or women in a relationship with partners who bring in the most of the family income can afford to take advantage of the childcare system as it is currently structured in Canada. And secondly, the use of childcare has a negative social stigma. Women who are bringing their children full time to daycare are exposed to the accusation that they sacrifice their children's well being for their careers.

### **3.4 The Future Role of Women in Society and Possible Solutions to the Erosion of the Labour Market Due to Motherhood**

What is the future role of women in society? Is the aim of society to protect and foster women's role as a primary caregiver and thus support women in their role as housewives? Or is the aim of society to have as many women as possible in the paid workforce? Or does the solution lie somewhere in between, with society financially

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<sup>534</sup> Turnbull, 2001, *supra* n. 26 at 15-16.

supporting women with childrearing activities for certain duration and thereafter encourages their return to the paid labour force?

The problem with the latter solution is that the labour market does not appreciate long-term absences. Women who return to work after a maternity leave have less work experience compared to men and this in turn results in lower positions, lower salaries, and lower promotion possibilities. As the modern labour market evolves rapidly, women may even find themselves completely excluded from the labour market since their knowledge is out-dated and younger, better educated workers are filling in. That maternity leaves can deteriorate women's economic situation is even evident with today's one year absence. Longer leaves would probably be even more devastating.

In the following section the future role of women in society will be discussed together with possible solutions to the problem of women's economic inequality in the labour market induced by motherhood. There are three possible solutions to the problem of the erosion of the labour market position by motherhood. The first is simply to accept the current situation by agreeing that bearing and raising children is almost always associated with a loss of job opportunities and in consequence financial disadvantage. The second possible solution, recognizing that most spousal pairs are heterosexual, lies in a change of the traditional gender roles resulting in an equal share of childrearing and elder care responsibilities between the genders. A third possible solution would be to encourage women to engage maximally in the labour market as early after giving birth as possible. This might be promoted with a governmentally funded and regulated childcare service which is free of charge or low cost for everybody who is working.

### **3.4.1 Living with Today's Situation**

Today women may choose to take care of their children while giving up their job opportunities and accept the current situation by agreeing that bearing and raising children is almost always associated with a loss of job opportunities and in consequence financial disadvantage. In the last fifty years women's labour market participation has enormously increased and women today have equal access to the labour market as men. Unfortunately the share of childrearing responsibilities (and taking care of the elderly) has not evolved simultaneously and women still carry the main burden of this unpaid work. Much effort is made to change today's situation and give women the same opportunities on the labour market as men. One option, however would be not to change today's situation and accept that being a mother goes along with a sacrifice on the labour market. While this option might be unacceptable for some women, particularly those who have spent time and effort for an education, this might very well be a good solution for many women. Another question, which goes beyond the scope of this thesis, is how the financial situation of the stay-at-home mom can be secured. Options like income splitting or wages for housework through public programs or through mandatory reallocation of a part of the other earner's wages have been proposed by feminists decades ago.<sup>535</sup>

### **3.4.2 Social Change of Gender Roles**

The second possible solution lies in a more fundamental and far reaching social change to gender roles that rejects the idea that mothers are the primary parent. According to this view, men have to increase their participation as caregivers so that

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<sup>535</sup> For example a feminist group called the Power of Women Collective which started campaigning for wages for housework in the early 1970s.

eventually women and men contribute equally to childrearing (and elder care) responsibilities. This in turn would distribute the negative financial consequences of raising children more equally between men and women and may lead to an equal sharing of paid and unpaid work between the genders. Such a drastic social change in men's behaviour is unlikely to occur spontaneously without a strong incentive (financial or legal) and is rather utopian and certainly unlikely to happen in the near future. One possibility to encourage men to increase their childrearing activities, however, lies within the maternity and parental benefits system: if half of maternity and parental benefits are exclusively reserved for the father (or the non-biological mother in the case of lesbian families) with no transfer possibility to the birth mother, this would be a driving force for men to take advantage of the leave. Northern European countries (such as Sweden) are practicing some version of this idea. On the other hand, this may simply lead to a system in which men decline to take leave to which they are entitled because they do not want to be the caregiver of a baby, or fear career repercussions, and the woman's leave is so short that she drops out of the labour force entirely to stay home with her infant.

### **3.4.3 Governmentally Funded and Regulated Childcare**

Instead of supporting women staying at home while taking care of their children, women could also be supported in their re-entering the labour market as quickly as possible after giving birth, for example after a six month leave.<sup>536</sup> Possibly a labour

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<sup>536</sup> The suggested six months maternity leave is a compromise between the current one year maternity leave in Canada and shorter leaves, like a 6 weeks maternity leave, currently present in many U.S. states. The idea of a six month leave is that it is not long enough to impair women's career and respects those women who want to, for example, breastfeed their children for the first months after giving birth. A six months maternity leave also leads less to an erosion of women's labour market situation when a mother decides to have a second child and therefore stays at home for a second maternity leave (total absences of one year compared to two years with the current Canadian model).

market re-entry could be facilitated by a graduated re-entry by slowly increasing the workload over weeks to months.

There are many possible reasons for a society to do that. First and obviously (systemic) discrimination is prohibited under human rights legislation and women's economic opportunities and hence their equal participation in the labour market should be encouraged and promoted. Second, the expenses for the education of women represent a socio-economic loss if these women do not participate in the workforce and thus produce tax returns. This is particularly costly for women with university education. According to Harvey,<sup>537</sup> under-employment of women and visible minorities may cost the Canadian economy as much as \$40 billion, or 4% of the GDP annually. Canada and other modern countries are increasingly depending on a knowledge-based economy and human capital. Not using well trained human resources would entail enormous costs.<sup>538</sup> Finally, there are social aspects which push mothers back into the paid labour force. The notion of gender equality and its sensitization starts at home. Growing up in a family with a traditional male breadwinner/ female housewife pattern reinforces the gendered division of paid and unpaid work at home and in the labour market and thus reinforces the current negative aspects working women are facing. In terms of equal opportunities and in order to foster gender neutrality society should have an interest in deregulating these prevailing patterns.

The most important measure for achieving this is to weaken the main force that pulls women away from the labour market by providing free childcare services to all

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<sup>537</sup> Harvey Edward B. and John H. Blakely, 2001, 'The Costs of Discrimination: Women, Visible Minorities and the Canadian Economy', an Executive Summary prepared for HRDC, at 2, cited in the 'Employment Equity Act Review, A Report to the Standing Committee on Human Resources Development and the Status of persons with Disabilities', online available at <http://www.hrsdc.gc.ca/eng/lp/lo/lsw/we/review/report/toc.shtml>. [ 'Employment Equity Act Review' ].

<sup>538</sup> *Ibid.*

working women. This should be a governmentally funded and regulated childcare service which is free of charge for everybody who is working.

#### **3.4.3.1 The Concept and Possible Benefits of a Free Childcare Program**

A Free childcare service reverses the negative financial incentive of childcare, leads to a strong incentive to take advantage of the free offer, and to maintain ties to the labour market. Staying at home and taking care of children, on the other hand, would be associated with a negative incentive leading to *de facto* financial loss. This reversal of the incentives would also reverse the order of the beneficiaries from free childcare. Whereas today only women with high wages or women in a relationship with partners who bring in most of the family income can afford to follow their own professional career, free childcare would disproportionately benefit women at the lower end of the wage scale. It is possible that this reversal of financial driving forces will eventually be followed by an according change in public opinion about the role of women and mothers. With a governmentally funded childcare service, women would have a true opportunity to work full-time. Full-time jobs are associated with more social security, more benefits and better career opportunities. Since employers are more likely to offer on the job training within full-time employment, women working full-time could strengthen their labour force position. They have the possibility to advance their career despite having children; they could avoid part-time employment and low-wage jobs in their core working years while accumulating benefits and consequently prevent poverty post-retirement.

I suggest combining free childcare services with a reduction of the maternity and parental benefits provision. To cushion the financial shortage due to women's income loss around the time of giving birth, financial support for the, for example, first six



months after giving birth should be provided either through the government or through the employer without any eligibility threshold. The paid six month may be freely shared between parents, adoptive parents and homosexual couples. Single mothers are allowed to take the full six month leave. This will prevent an erosion of women's labour market position from long absences and might reduce the gender specific division of labour at home and in the labour market. This could lead to a more equal sharing of paid and unpaid work between the genders and probably to a better balance of work and family life since both parents are more equally engaged in the labour force which may result in an equal sharing of the unpaid family responsibilities.

#### **3.4.3.2 Proof of Principle: Quebec's \$5-A-Day-Child Care System**

Quebec is the only Canadian province to provide quality child care services at a low cost.<sup>539</sup> Quebec's \$5-a-day child care system started in 1998. There are no eligibility criteria for the access to regulated child care service and children from low-income families may attend child care for two and a half days a week at no charge.<sup>540</sup> Since the introduction of the program, the percentage of mothers working is the highest in Canada, says Parti Quebecois Leader Pauline Marois in an interview.<sup>541</sup> This statement is supported by Pierre Lefebvre and Philip Merrigan,<sup>542</sup> who studied the impact of Quebec's \$5-a-day child care reforms on the employment of married and single mothers with

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<sup>539</sup> Règlement sur la contribution réduite, Loi sur les services de garde éducatifs à l'enfance (L.R.Q., S-4.1.1, a. 106, par. 25 à 30), sec. 7.

<sup>540</sup> *Ibid*, sec. 11 and 12; Jocelyne Tougas, no date, 'Child Care in Quebec: Where There's a Will, There's a Way', A paper of the Child Care Advocacy Association of Canada, at 3.

<sup>541</sup> Laurie Monsebraaten, 2008, 'Copy Quebec Daycare, PQ Leader says', Interview with Parti Quebecois Leader Pauline Marois, online available at [www.parentcentral.ca](http://www.parentcentral.ca).

<sup>542</sup> Pierre Lefebvre, and Philip Merrigan, 2005, 'Low-fee (\$5/day,child) Regulated Childcare Policy and the Labour Supply of Mothers with Young Children: A Natural Experiment from Canada', CIRPÉE, Centre interuniversitaire sur le risqué, les politiques économiques et l'employ, Cahier de recherché, Working Paper 05-08.

children at ages from 0 to 5 years old. According to them the reforms lead to a significantly stronger labour force attachment and to higher incomes amongst mothers.<sup>543</sup> Of particular importance is their finding that the effects on employment and income were bigger or at least equal for mothers with lower education as compared to mothers with higher education.<sup>544</sup> The \$5-a-day policy has moved Quebec from having lower employment rates than the rest of Canada amongst mothers with young children, to now having consistently the highest employment rates.<sup>545</sup> The program costs 1.8 billion annually and serves 209,000 children or about 70% of Quebec children under the age of five. Of note here is that Quebec was in a difficult political and financial situation when the program was introduced. Initially Quebec used funds from its universal family allowance program to pay for the new services. But child care proved to be so popular with parents, that the government was forced to find new funding and eventually raised the fees from \$5 to \$7 a day.<sup>546</sup> Baker et al<sup>547</sup>, who studied the efficacy of public financed child care services and its impact on the female labour supply and the effects on child well-being, confirm the employment and income findings of Lefebvre and Merrigan. The introduction of universal childcare in Quebec led to a very large increase in the use of care. The proportion of 0-4 year olds in care rose by 14% in Quebec relative to the rest of the country. This rise in childcare was associated with a sizeable increase in the labour force participation of married women: the participation rose by 7.7% in Quebec.<sup>548</sup> These higher employment rates lead to higher incomes and higher tax revenues for the

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<sup>543</sup> *Ibid*, at 3.

<sup>544</sup> *Ibid*, at 20.

<sup>545</sup> Laurie Monsebraaten, 2008, *supra* n. 541.

<sup>546</sup> *Ibid*.

<sup>547</sup> Michael Baker, Jonathan Gruber, and Kevin Milligan, 2005, 'Universal Childcare, Maternal Labour Supply and Family Well-Being'. *Journal of Political Economy*, 2008, vol. 116, no. 4.

<sup>548</sup> *Ibid*, at 7.

government. The authors calculate that the increased government revenues are sufficient to cover 40% of the costs providing the child care services. This suggests that the net cost for such a child care program is less than half of its gross costs.<sup>549</sup>

Today, Quebecers view child care as an essential service alongside health, education, road infrastructure and the environment. Another positive aspect from the introduction of the program is that Quebec's child poverty rates have dropped by 50% and school test scores have gone from among the lowest to the highest in Canada.<sup>550</sup> The publicly funded child care service also boosted the province's birth rate, an important consideration given the demographics of Canada's society.<sup>551</sup>

There are some problems, however, with Quebec's child care system and some authors describe its achievements less optimistically than Marois, the architect of the popular program. According to some critics there are long waiting lists of up to two years for subsidized places, because the low price led to an increased demand and thereby in a shortage of available places. While being on the waitlist, many parents are forced to pay the market price. According to Muller,<sup>552</sup> this has effectively created a system where access to a subsidized space depends neither on parents' financial circumstances nor on the need of children, but on their rank on a waiting list.

On the whole, however, the experience of low cost daycare in Quebec is overwhelmingly positive. It shows that such a system has the intended effect of moving women back into the labour work force. The shortcomings of the system are mainly of an

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<sup>549</sup> *Ibid*, at 30.

<sup>550</sup> Laurie Monsebraaten, 2008, *supra* n 541.

<sup>551</sup> Kenzie Love, 2007, 'Day Care in Quebec: Strengths and shortcomings', *Newmedia Journalism*, December 3, 2007, online available at <http://www.fims.uwo.ca/NewMedia2008/payingtoplay.aspx>.

<sup>552</sup> Paul Daniel Muller, 2006, 'Don't let Quebec's daycare system serve as a model for all of Canada', in *The Province* (Vancouver), p. A-20, January 13, 2006.

administrative nature and there is no reason to believe that these cannot be solved. The positive findings of the strongly subsidized child care services in Quebec support the idea proposed in this thesis, namely that women's economic inequality cannot be overcome without increasing their participation in all sectors of the labour market.

### **3.4.4 Conclusion**

Free childcare services could reverse the incentives for following a professional career and might lead to more equal opportunities for women on the labour market. It represents a relatively affordable solution for a pressing social problem. If successful a great number of well educated women will be available on the labour market, without the need for investing one dollar more into education. The socioeconomic benefits of such improvements of women's possibilities on the labour market may be tremendous.

Free childcare services in association with a drastic reduction or even an abolishment of all other systems seems to be the only feasible solution to abolish or at least significantly reduce women's discrimination on the labour market. I am aware that this proposal sharply contrasts the current tendency to further and maximize choices by a variety of programs in order to give women as many options as possible. After my analysis of the different governmental systems, i.e. pay equity, maternity and parental benefits within the employment insurance, and minimum wages system, and the two most promising grassroots systems, i.e. living wage and basic income, which all are aiming at reducing women's inequality on the labour market, I came to the conclusion that specifically the *variety* of programs is intrinsically conservative: By giving women a free choice they are forced into accepting what they, or society, are used to and thereby the

traditional gender roles are promoted. I believe that vital incentives need to change in order to provoke a social change.

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