

THE IMPLEMENTATION OF ONTARIO
PAY EQUITY LEGISLATION

BY

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ABSTRACT

This thesis is a case study of the implementation of Ontario's 1987 pay equity legislation. Ontario's pay equity legislation was very progressive and was aimed at eliminating the portion of the wage gap between men and women caused by discrimination. The legislation mandated both public and private sector employers with more than 10 employees to create pay equity plans to eliminate the discriminatory portion of the wage gap. The legislation has met with some success. However, measuring the progress of eliminating wage discrimination is difficult because the Ontario government was unwilling to impose a coercive implementation regime. Consequently, the government has little information to measure either employer compliance or the results of employer pay equity plans. Employers have few incentives to comply with the legislation and the implementing agency has insufficient financial resources to monitor compliance. Clearly this implementation regime was a delicate political balancing of the interests of business and labour and women.

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INTRODUCTION

Pay equity, or equal pay for work of equal value, legislation is a relatively recent phenomenon. During the 1980s six of the ten provinces in Canada enacted new pay equity legislation. However, Ontario was the only province that, in 1987, enacted pay equity legislation that included the private sector as well as the public sector. As a result of the broad scope of the legislation, the Ontario Pay Equity Act was recognized as the most progressive of its kind. The Pay Equity Act has been in effect for close to seven years and consequently information is starting to be available that gives an indication of the Act's success. One of the major factors determining the Act's success is the effectiveness of the Act's implementation.

This thesis will focus on the factors that contributed to, and those that inhibited, the successful implementation of Ontario pay equity. In order to provide an analytical framework for studying pay equity implementation, Chapter One reviews seven important implementation studies spanning a twenty-two year period beginning in 1971. As these studies are all based on American policy implementation, the implications for using this implementation theory in Canada are also considered. Finally, the Mazmanian and Sabatier implementation framework is argued to be the most suitable for analyzing Ontario pay equity implementation.

Chapter Two provides a detailed understanding of how pay equity works in Ontario. Specifically, this chapter covers the historical background of the Act, including some of the factors

causing wage discrimination. In addition, the scope and objectives of the Act are reviewed. A large portion of this chapter is devoted to the steps employers are required to take to ensure they meet the objectives of the Act. Specific issues like how collective bargaining affects the implementation of pay equity and how the Act is enforced are also dealt with. Chapter Two also provides a review of target group compliance and some of the outputs of the implementing agencies.

Chapter Three utilizes the Mazmanian and Sabatier implementation framework to analyze the implementation of Ontario's Pay Equity Act. Factors such as: the clarity of objectives of the Act, the causal theory implied by the Act, the hierarchical integration of the implementing institutions (including employers) outlined in the Act, the decision rules of the implementing agencies prescribed by the Act, the financial resources made available to the implementing agencies, the support of the Act given by the implementing officials, the economic conditions in Ontario since the Act's effective date, and public support offered for the Act, are analyzed to determine their effect on the implementation of pay equity.

CHAPTER ONE

A REVIEW OF POLICY IMPLEMENTATION THEORY

Public policy analysis is a relatively recent field of study within the broader context of political science. As increasing attention is paid to public policy analysis, certain subject gaps in the literature have become apparent. The primary scholarly deficit is in relation to a particular, significant step, of the public policy process. Much of the available literature focuses on the development of public policy and evaluation criteria, but largely ignores policy implementation. The literature ranges from policy analysis heavily dependent on the market model¹ to analysis that concentrates on the political nature of the policy process and its participants.² As insightful as this literature is, it provides little in the way of public policy implementation analysis. The authors do not discount the importance of implementation, but the focus is on policy development. The second gap in the literature on public policy reflects the fact that much of the implementation theory and case studies are grounded in the American system of government. There is very little literature widely available that relates specifically to Canadian public policy. From Martha Derthick's New Towns to Robert Stoker's Reluctant Partners the scholarly studies concentrate on implementation as it relates to American policy initiatives. In each case, much of the learning is applicable to Canada, but it is

¹David L. Weimer and Aidan R. Vining, Policy Analysis Concepts and Practice (New Jersey: Prentice Hall, 1992)

²Deborah A. Stone, Policy Paradox and Political Reason (U.S.A.: Harper Collins Publishers, 1988)

essential to determine if a more decentralized federalism or the Westminster model of government requires special considerations.

This chapter will review some of the important implementation studies from the past twenty-two years in an attempt to identify an implementation model suitable for the analysis of a Canadian case study - specifically, the implementation of Ontario's 1987 pay equity legislation. The literature to be reviewed will include Martha Derthick's 1972 American case study entitled New Towns In-Town. Also included will be the pivotal case study by Jeffrey L. Pressman and Aaron Wildavsky - Implementation, in which they identify several of the implementation problems in the Economic Development Agency's bid to create new jobs for minorities in Oakland. In Eugene Bardach's Implementation Games, he reviews the games played by implementation participants and outlines six conditions or fixers for successful implementation. Richard Elmore takes a bottom up approach to implementation analysis in his article "Backward Mapping: Implementation Research and Policy Decisions." Daniel Mazmanian and Paul Sabatier develop a framework for implementation analysis that pinpoints several different variables that can be used to predict the likelihood of successful implementation. They use their model to outline six conditions for effective policy implementation in Implementation and Public Policy. Malcolm L. Goggin et. al. in Implementation Theory and Practice seek to synthesize the top down and bottom up approaches to policy implementation in a single analytical model. Finally, Robert Stoker's recent work titled Reluctant Partners will be reviewed. Stoker looks specifically at how federalism constrains national policy implementation. This chapter reviews seven major

studies of implementation, giving specific attention to the applicability of each study's conclusions to the Canadian policy environment. Finally, it will be argued that one particular approach, that of Mazmanian and Sabatier, offers the best model for analysing the Ontario Pay Equity case study.

Literature Review

One of the first in-depth case studies of implementation was Martha Derthick's New Towns In-Town. In New Towns, Derthick examines the attempt by the Johnson administration, from 1967 to 1971, to create model, new communities. She looks specifically at seven different projects and from the details of the project failure outlines several conditions for successful implementation.

Many of Derthick's criticisms relate to the weaknesses of a central government executing national policies in a federal system.³ She points out five separate conditions that contributed to the failure of the program: (1) the President's and central executing agency's limited knowledge of local conditions; (2) local governments' insufficient access to federal incentives; (3) the ineffectiveness of available incentives; (4) the inflexibility of central agency executives combined with overly aggressive objectives; (5) the inherent weakness of the federal government as an implementor of local plans.⁴

Derthick's analysis was a harbinger of the implementation analysis to follow. Some of her conclusions are seen over and over

³Martha Derthick, New Towns In-Town (Washington, D.C.: The Urban Institute, 1972), p. 83.

⁴Ibid., pp. 84-94.

again in future case studies. The importance of local conditions and the effective use of incentives are two that reappear in the scholarly literature. However, in the words of Eugene Bardach, her work is clearly 'first generation' implementation research.

Her conclusions are influenced almost too much by her particular case study and consequently the predictive value of her generalizations is limited. Her conclusion that "no federal programs succeed totally"⁵ cannot be argued convincingly within the limited scope of her study. Furthermore, her analysis relies heavily on this inherent weakness of the federal government. There is a certain inevitability here that detracts from what should be the policy analyst's goal - identifying ways to more effectively implement policy or identifying better methods of structuring policy for more effective implementation.

The next book to be reviewed was one of the first seminal pieces of implementation literature. The book Implementation, by Jeffrey L. Pressman and Aaron Wildavsky, also focuses on an implementation case study involving a federal initiative and intergovernmental implementation. Specifically, Pressman and Wildavsky utilize the Economic Development Administration's (EDA) employment effort in Oakland as a case study from which they make several general conclusions regarding implementation.

The EDA was largely unsuccessful in achieving its goals in Oakland despite widespread support. Three years after the enabling

⁵Derthick, p. 97.

Act was passed, only ten jobs had been created⁶ and by 1970 (5 years after the Act had been passed) 1280 jobs had been created with little evidence those jobs had necessarily gone to minorities.⁷ Pressman and Wildavsky conclude that the results should not be surprising. Due to the high number of participants in the project, the chances of completion of the project became increasingly slim. Each of the participants referred to in this study were actually decision makers in the implementation process who exercised a potential veto. Pressman and Wildavsky calculated there were 70 clearance or veto points and at each of these points, the project could be potentially delayed, stalled, adjusted or even vetoed. The authors calculate that even with a 95% chance of agreement at each veto point, the chances of successful completion are still below 1%.⁸

The solution offered for the problem of implementation delay and divorce from the original policy objectives is straight forward. "Since each required clearance point adds to the probability of stoppage or delay, the number of these points should be minimized wherever possible."⁹ Pressman and Wildavsky also suggest policymakers should pay as much attention to implementation organization as they do to the launching of the policy - in short,

⁶Jeffrey L. Pressman and Aaron Wildavsky, Implementation How Great Expectations in Washington are Dashed in Oakland (Berkeley: University of California Press, 1973), p. 54.

⁷Ibid., p. 67.

⁸Ibid., p. 107.

⁹Ibid., p. 143.

follow through is critical.¹⁰

Another critical point raised in this study of the Oakland EDA initiative relates to the validity of the causal theory. The importance of an adequate causal theory is reinforced throughout the implementation literature. In the case of Oakland, "the economic theory was faulty because it aimed at the wrong target - subsidizing the capital of business enterprises rather than their wage bill."¹¹

Pressman and Wildavsky's analysis was one of the first to critically analyze the effect of implementation on achieving policy goals. The conclusions they reached were important and at least a portion of their findings is reflected or considered in each of the subsequent, major works on implementation.

The next book, Implementation Games by Bardach, differs from the previous two in that the author does not deal directly with problems associated with implementation by a central government in a federal system. Instead Bardach focuses more on policy implementation as it relates to any level of government.

In his analysis, Eugene Bardach identifies several different games that can interfere with the successful implementation of a policy. He begins by distinguishing four games that apply specifically to the monetary resources involved in implementation: easy money, the budget game, easy life and pork barrel.¹² These games are played because bureaucrats or private sector implementors

¹⁰Pressman and Wildavsky, pp. 144, 145.

¹¹Ibid., p. 147.

¹²Eugene Bardach, The Implementation Game: What Happens After a Bill Becomes a Law (Cambridge, Massachusetts: The MIT Press, 1977), pp. 71-77.

may have different objectives from those outlined in the policy. They may see the program as a way to secure "easy money", or be looking for flexibility in spending the money; participants may push the limits to see what they can get away with and pork barrel demands may get in the way of executing an efficient program.

Bardach refers to a second set of games under the heading "Deflection of Goals". Three games called piling on, up for grabs and keeping the peace all refer to how implementors, bureaucratic agencies, or interest groups react to what they see as an opportunity to inject their own goals in to a program.¹³

Under "The Dilemmas of Administration", Bardach refers to the problems associated with tokenism, massive resistance, social entropy and the management game. Token contributions to the implementation of a policy only become a real problem when the service being provided is available from only one source.¹⁴ Therefore, to address the problem of monopoly power, Bardach offers strategies that range from designing the policy in a way to avoid the need of the monopoly power to buying the monopoly.¹⁵ In order to counter massive resistance Bardach offers suggestions from the relatively weak 'prescription' to 'enabling' through the provision of necessary resources to the provision of 'incentives' or the installation of a 'deterrence' system.¹⁶

The final set of games Bardach evokes come under the heading

¹³Bardach, pp. 85-93.

¹⁴Ibid., p. 99.

¹⁵Ibid., pp. 103-105.

¹⁶Ibid., pp. 110-124.

"dissipation of energies." Five games called tenacity, territory, not our problem, odd man out and reputation, deal with the natural tendency of participants to protect their turf, avoid blame and maintain their personal reputation.¹⁷

All of the games Bardach refers to offer insight into the many problems that may occur during policy implementation. However, given the plethora of games and combinations that may be played, his lack of a framework identifying specific variables makes his research somewhat limited as an analytic tool. Bardach acknowledges some of the questions his research provokes and indicates as games are played out the role of fixers becomes very important. "Fixing the game is a job for a coalition of political partners with diverse but complementary resources."¹⁸ This role of fixer is a logical one, but it is unfortunate Bardach leaves the fixers' role as such a general one. Furthermore, the fixers' role itself, as a coalition of partners, would be fraught with actors likely to play out some of the destructive implementation games.

Many of the games referred to by Bardach have their roots in the case studies of Derthick and Pressman and Wildavsky. For example, games played by policy implementors are just more indepth explanations of the hazards that can occur when there are several decision points involved in implementation. Bardach often uses examples from the EDA study or Derthick's New Towns to illustrate how games could be played out.¹⁹ In addition, some of the themes

¹⁷Bardach, p. 148-170.

¹⁸Ibid., p. 278.

¹⁹Ibid., p. 48,49,67,170.

Bardach identifies reoccur in subsequent implementation literature.

The biggest limitation to Bardach's work is his inability to tie his conclusions together in a framework. Consequently by his own acknowledgement he leaves the reader with a pessimistic viewpoint. Therefore his contributions have been significant, but more prescriptive analysis is required to utilize his conclusions in a coherent analytical framework.

The fourth contribution to policy implementation study to be examined is by Richard Elmore. Elmore has identified a unique way of looking at policy implementation by turning the traditional hierarchical, top-down approach of implementation on its head. Elmore describes backward mapping as starting

with a statement of the specific behavior at the lowest level of the implementation process that generates the need for a policy. Only after that behavior is described does the analysis presume to state an objective; the objective is first stated as a set of effects, or outcomes, that will result from these operations.²⁰

It is only by starting with the desired behaviour change that policymakers can presume to create successful policies. Elmore argues that policy analysts and policymakers can use public and private organizations effectively when the desired effect is placed ahead of a measured outcome. Only then can specific tasks and resources be effectively distributed to the most suitable organization.²¹

The strength of Elmore's backward mapping is that it focuses

²⁰Richard F. Elmore, "Backward Mapping: Implementation Research and Policy Decisions," in Studying Implementation Methodological and Administrative Issues, ed. Aaron Wildavsky (Chatham, New Jersey: Chatham House Publishers, Inc., 1982), p. 21.

²¹Ibid., p. 23.

on local conditions and the actors who are most likely to affect local behaviour. As a result resources are distributed in a corresponding fashion. "It emphasizes, in other words, that it is not the policy or the policymaker that solves the problem, but someone with immediate proximity."²² The weakness of Elmore's argument is that he concludes an increased focus on the end result will result in increased delegated discretion and a greater "likelihood of affecting the target behaviour."²³ Increased discretion at the delivery level of the policy will also effectively move policy making decisions away from elected officials and the scrutiny of the legislature. In addition, increased discretion increases the chance that implementors will be able to successfully play Bardach's 'implementation games'.

Elmore's backward mapping is somewhat informed by Pressman and Wildavsky's EDA study. The emphasis Elmore places on policy that addresses the desired effect versus a measured outcome is related to Pressman and Wildavsky's emphasis on a correctly identified causal theory. Furthermore, Elmore's emphasis on the importance of local conditions and local actors goes back to Derthick's New Towns analysis.

The fifth work examined takes policy implementation study to a new level. Mazmanian and Sabatier have developed a framework for implementation analysis that recognizes the independent and

²²Elmore, p. 28.

²³Ibid., pp. 28,29.

dependent variables involved. They clearly state "the crucial role of implementation analysis is the identification of the variables which affect the achievement of legal objectives throughout this entire process."²⁴ By separating the variables and building on previous implementation analysis, they are able to provide predictive value within their framework as well.

They begin by noting four factors regarding the tractability of the problem: (1) when technical difficulties complicate the identification of proper causal linkages, the measurability and achievement of goals will be difficult; (2) if the proscribed behaviour is diverse, clear regulations will be difficult; (3) if the target group of the policy is small, political support will be easier to mobilize; (4) if the required change in behaviour is great, the policy will be more difficult to implement.²⁵

Mazmanian and Sabatier also note the importance of both statutory and nonstatutory variables in structuring the implementation. They identify seven important statutory variables: (1) clear objectives, (2) a valid causal theory, (3) an appropriate level of funding, (4) a hierarchical structure where veto points are taken into consideration, (5) a provision of decision rules for implementing agencies, (6) the necessary bureaucratic commitment, and (7) judicial review access for interested parties.²⁶ They also identify five important nonstatutory variables: (1) "socioeconomic conditions and technology," (2) "public support," (3) "attitudes

²⁴Daniel A. Mazmanian and Paul A. Sabatier, Implementation and Public Policy (Cal: Scott Foresman and Company, 1983), p. 21.

²⁵Ibid., pp. 21-24.

²⁶Ibid., pp. 25-29.

and resources of constituency groups," (4) "support from sovereigns," and (5) "commitment and leadership skill of implementing officials."²⁷

The dependent variables fall sequentially under the headings of "policy outputs of implementing agencies", "target group compliance with policy outputs," "actual impacts of policy outputs," "perceived impacts of policy outputs," and "major revision in statute."²⁸

One of the strengths of the Mazmanian and Sabatier model lies with the authors' ability to synthesize a relatively complicated model into six conditions of effective implementation: (1) there must be clear methods of resolving goal conflicts; (2) a valid causal theory should form the basis of the legislation and implementors should have sufficient authority to affect the necessary points of the causal chain; (3) the process should be structured to increase the probability of implementors following the policy plan; (4) adequate skill and expertise must be possessed by those managing the implementation; (5) organized interest groups should support the program; and (6) legislative objectives must not be undermined over time.²⁹ The tractability of the problem is not mentioned under the conditions for effective implementation because placing too much emphasis on this area defies the underlying goal of implementation analysis. If adequate

²⁷Mazmanian and Sabatier, pp. 30-34.

²⁸Ibid., pp. 36-39.

²⁹Ibid., p. 41.

attention is placed on understanding how "statutory and political variables" affect the process of implementation, even difficult problems can be addressed in a way to bring about substantial change.³⁰

It may appear a description of the model is unnecessary when Mazmanian and Sabatier have summarized the effective conditions for implementation. However it is only by examining all of the variables in the model that the overarching scope of their analysis can be seen. Derthick's concern for the influence of local conditions is covered in the independent, nonstatutory variables while Pressman and Wildavsky's consideration of minimizing veto points is covered under the importance of hierarchical integration in the implementing institutions. However, Mazmanian and Sabatier's description of hierarchical integration buries the use of sanctions and inducements in a discussion that focuses on the integration of implementing institutions. Their analysis underemphasizes a very important implementation decision legislators are faced with. The use of regulatory sanctions and inducements is critical for determining the likelihood of target group compliance. In addition, sanctions and inducements are indicative of how coercive an implementation regime legislators are willing to impose.

The influence of Pressman and Wildavsky is also evident in Mazmanian and Sabatier's discussion of the importance of an adequate causal theory. Many of Bardach's implementation games are also addressed within the statutory and nonstatutory independent

³⁰Mazmanian and Sabatier, pp. 24,25.

variables. For example, Mazmanian and Sabatier address games that can potentially deflect program goals by emphasizing the importance of clear goals with accessible indicators for measurement. They also mention the importance of structuring implementation decision rules in a way that increases the likelihood implementing officials will consistently follow them.

Goggin et. al. set out to bring together previous implementation research, including top-down and bottom-up methodology in a single analytical model. Their model is a fluid communications model where the independent variables are "federal-level inducements and constraints", and "state and local level inducements and constraints"; the intervening variables are "state decisional outcome" and "state capacity"; and the dependent variable is "state implementation".³¹

Although Goggin et. al. claim their model falls under the aegis of 'third generation research', the list of indicators and predictor variables they utilize do not seem to provide a new and better approach over the Mazmanian and Sabatier model. Furthermore, their model is unnecessarily complicated and the conclusions they generate regarding the combination of independent variables prove not to be significantly different from those identified in the Mazmanian and Sabatier model.

In Reluctant Partners, Robert Stoker picks up on a theme that

³¹Malcolm L. Goggin, Implementation Theory and Practice Toward a Third Generation (Illinois: Scott, Foresman/Little, Brown Higher Education, 1990), p. 32.

occurs as early as Martha Derthick's New Towns In-Town. "The purpose of this book is to place the problem of implementing national policy within a larger context that concerns the principles of governance in a liberal, federal polity."³² He sees federal policy decisions as very complicated and the involvement of business, state and local governments as more often than not creating 'reluctant partners'.

Stoker critiques much of the implementation literature as belonging to the authority paradigm (including Mazmanian and Sabatier). He sees the authority paradigm as confusing "problems of organization with problems of governance."³³ Instead of focusing on organization Stoker purports to focus on finding a way for independent implementation participants to cooperate. He outlines three conditions that are necessary to promote cooperation: "(1) a history of interaction between the participants, (2) the expectation of future interaction, and (3) the commitment of dedicated resources to a program."³⁴ Stoker's regime framework makes the goal of policymakers and implementors one where they are responsible for creating the conditions necessary for an environment supporting cooperation.

The biggest weakness of Stoker's work is that he does not convincingly argue that the authority paradigm of implementation analysis and cooperation are mutually exclusive. In addition, despite his criticism of analysts concentrating on problems of

³²Robert P. Stoker, Reluctant Partners (Pittsburgh: University of Pittsburgh Press, 1991), p. 4.

³³Ibid., p. 34.

³⁴Ibid., p. 77.

organization Stoker reinforces how "institutional means to induce cooperation" can and should be used.³⁵ The distinction between institutional and organizational focus is vague at best. Stoker emphasizes the importance of all participants having clear expectations of the implications of their cooperation.³⁶ Clear expectations of participants sounds very similar to the importance Mazmanian and Sabatier attach to clear objectives and criteria and clear decision rules for the implementing agencies.

Canadian Implications

In each of the seven implementation studies reviewed, it is important to understand the implications of utilizing conclusions in the Canadian policy setting. In Derthick's New Towns, many of her conclusions are general enough that they are equally applicable to Canada. However, it is worth noting that in terms of the federal cabinet and Prime Minister's knowledge of local conditions, it is far more likely that each province is represented by at least one cabinet minister, than it is likely each state is represented through the President and central executing agency. This should somewhat improve the Canadian federal government's resources for local policy implementation, but the importance of local conditions is still worth emphasizing in the Canadian policy implementation arena.

The lessons learned from the Oakland EDA project are also transferrable to Canadian policy. However the nature of the

³⁵Stoker, p. 186.

³⁶Ibid., p. 79.

Canadian Parliamentary system somewhat favours the chances of successful implementation. Party discipline would minimize notions of uncertain support from the legislative branch of government and the strong central power of the cabinet would minimize some veto points. However coordination with provincial and municipal governments would be no less a factor in Canada and the involvement of private business would prove no less difficult. In fact, some of the specific lessons of the EDA in Oakland will no doubt apply to the involvement of the private sector in the Ontario Pay Equity implementation process.

Bardach's implementation games are clearly not exclusive to American Congressional policymaking. Most of the tendencies he outlines are universal social or political actions. The major difference for Canadian implementation games would be the setting and the actors involved. For example, interest groups have less access to the policy making process and their role would therefore be somewhat diminished.

On the surface, it would seem that Elmore's "Backward Mapping" would be just as applicable in the Canadian policy arena as the American policy arena. However, one of Elmore's criticisms of forward mapping provides insight into this consideration. The problem with forward mapping as Elmore sees it is it assumes that "policy makers control the organizational, political, and technological processes that affect implementation."³⁷ The irony is that in Canada policy makers do exert more control over the "organizational, political, and technological processes that affect

³⁷Elmore, p. 20.

implementation." Ministerial departments are routinely responsible for outlining the regulations of a bill. Therefore, the regulatory decisions affecting implementation are often not exposed to the scrutiny of the legislature. Therefore despite Elmore's insight into the importance of local conditions for implementing policy, his framework is less applicable for the Westminster, cabinet centred, style of government.

Some of the variables mentioned in the Mazmanian and Sabatier model will be of less significance in the Canadian cabinet centred style of government. First, clear statutory objectives should be redefined as clear regulatory objectives in Canada, as the enabling legislation traditionally gives the cabinet minister authority to develop detailed regulations and objectives. In addition to the less significant role played by Canadian legislatures in determining specific objectives and regulations, legislatures in Canada play a smaller role in developing policy because of the immense power of the Cabinet. Therefore implementing agencies in Canada would be inclined to be sensitive to the goals of the minister responsible for the agency rather than to the legislature. As long as the minister or the Cabinet remains committed to an initiative, this separation from the legislature should favor successful implementation in Canada.

A second variable that has a different slant in Canada is judicial access to program constituents. In most cases judicial access for Canadians is not as prevalent as in the United States. However, Ontario Pay Equity has a quasi-judicial agency to rule on complaints that takes the place of formal judicial review in almost all cases.

Conclusions

The seven implementation studies that have been reviewed offer several common themes as well as some glaring differences. The strength of the Mazmanian and Sabatier model lies in its breadth and its coherent, easy to follow, analytical framework. It is also a framework that fits as well in a provincial policy setting as it does within a federal one. In the case study of the implementation of Ontario Pay Equity, the validity of the causal theory, the hierarchical integration among the implementing institutions, the decision rules of implementing agencies and formal access by outsiders will be important statutory (or regulatory) variables. In addition socioeconomic conditions and the support of relevant constituency groups will be important nonregulatory variables.

CHAPTER TWO

ONTARIO PAY EQUITY CASE STUDY

The implementation of Ontario's 1987 pay equity legislation provides an interesting case study for several reasons. First, although the goal of the legislation - correcting the portion of the wage gap between men and women caused by discrimination - is straightforward, the sheer magnitude of the goal complicates the Act's implementation. Second, the legislation is complex and consequently, implementation by employers is correspondingly complex. Third, Ontario's legislation is unique in that at the time of enactment it covered not only the public sector, but the private sector as well. Finally, the Ontario legislation is a proactive model that mandates employers to perform job evaluations and create a pay equity plan to eliminate the portion of the wage gap caused by discrimination. This proactive model requires the employer to initiate pay equity plans as opposed to a strictly complaint based model where the employer is only required to show the basis on which jobs are evaluated after a complaint has been initiated. Together these factors make the Pay Equity Act unique, and as a result legislators and implementing officials have not had the luxury of learning from the mistakes of other jurisdictions with similar legislation. Therefore this legislation is not only interesting, it is forging new territory, and the lessons learned from the implementation of the Ontario Pay Equity Act will no doubt help to structure future similar initiatives.

This chapter provides the background information necessary for analysing the implementation of the Ontario Pay Equity Act. In

order to determine which factors have contributed to successful implementation and which factors have inhibited implementation, it is necessary to have a clear understanding of how the Pay Equity Act structures implementation. First, a review of the history behind the legislation provides a brief outline of the problem and the conditions that facilitated the new public policy.

Second, an explanation of how pay equity works in Ontario gives a necessary understanding of the statutory rules. As the Pay Equity Act offers a great deal of legislative specificity, a rather technical description of the 1987 Ontario Pay Equity Act is necessary. Third, a review of surveys of Ontario employers published by the Ontario Pay Equity Commission provides an indication of target group compliance. Fourth, this chapter offers a summary of the impact of pay equity legislation on women's wages in Ontario. In this section, examples of pay equity adjustments from individual employers will illustrate the impact of the legislation for some Ontario women. In order to try and determine the overall impact of pay equity, 1991 census data is also examined for any evidence of a changing wage gap. Finally, a summary of the Pay Equity Amendment Act (1993 legislation that extends the coverage of the Act to 420,000 additional women) completes the overview of the implementation of Ontario Pay Equity legislation.

Historical Background

In the Green Paper on Pay Equity prepared for the Ontario government, the 1981 wage gap between working men and women in

Ontario was cited at 38%.³⁸ By 1986, the average annual salary for women in Ontario working full time was \$20,710 compared to \$32,120 for men, a difference of 36%.³⁹ Several factors including hours worked, experience, education and discrimination were listed as factors contributing to the wage differential. The authors of the Green Paper concluded that the portion of the wage gap attributable to the undervaluation of work principally done by women could be addressed through pay equity legislation. They also felt that tackling discriminatory wages could decrease the wage gap to somewhere between 20 and 30%.⁴⁰

The Green Paper's analysis of the wage gap is cursory and does not give the reader an indepth understanding of the wage gap. What factors are at work that such a large wage gap can be perpetuated year after year? One author argues, after completing a case study of the California State Civil Service, that the historical wage structure is a powerful force of inertia.⁴¹ Kim's case study showed that wage structures in 1986 were highly correlated with those of 1931. The 1931 wage structure was established when discrimination was legal and once wage structures are established they are difficult to change because some employees always see

³⁸Ontario Ministry Responsible for Women's Issues, Green Paper on Pay Equity (Toronto: Nov., 1985), p. 11.

³⁹Ontario Pay Equity Commission, Annual Report (Toronto: 1990-1991), p. 5.

⁴⁰Green Paper on Pay Equity, p. 12.

⁴¹Marlene Kim, "Gender Bias in Compensation Structures: A Case Study of Its Historical Basis and Persistence," Journal of Social Issues, 45-4 (1989), pp. 47-48.

major changes to the salary structure as being unfair.⁴²

Kim's study demonstrates how discriminatory wage practices can be perpetuated, yet many economists argue that it is the market and laws of supply and demand that set wages. "But, in reality, many factors interfere with market-based wage policies: unionization, government regulations, internal labor markets, worker preferences, employer preferences, etc."⁴³ Furthermore studies show that market forces do not prevail over other more traditional values. "For example, labor shortages in female-dominated jobs do not necessarily lead to pay rate increases as predicted by the theory."⁴⁴ As the market is interfered with in so many different ways, its value as a determinant of the worth of a job is actually very restricted.⁴⁵

The above arguments illustrate how discrimination is at work in the marketplace. Isabella Bakker points out several recent developments in the Canadian workplace that continue to keep women's wages low.⁴⁶ First, Bakker identifies several structural trends that have contributed to a greater reliance on the contingent (part-time, self-employed, contracted) workforce. For example, between 1976 and 1984, 87% of the jobs created in Ontario

⁴²Kim, p. 40.

⁴³Karen A. Hegtvedt, "Fairness Conceptualizations and Comparable Worth," Journal of Social Issues, 45-4 (1989), p. 83.

⁴⁴Susan H. Taylor, "The Case for Comparable Worth," Journal of Social Issues, 45-4 (1989), p. 28.

⁴⁵Ibid.

⁴⁶Isabella Bakker, "Pay Equity and Economic Restructuring: The Polarization of Policy?" in Just Wages A Feminist Assessment of Pay Equity, eds. Judy Fudge and Patricia McDermott (Toronto: University of Toronto Press, 1991), pp. 256-273.

were in firms employing less than 20 people.⁴⁷ Furthermore, females dominate this labour growth and the lack of unions in small firms continues to keep women's level of unionization well below that of men.⁴⁸ In addition, the growth of part-time work is dominated by women. During the period from 1983 to 1987, the number of women working part-time grew by 50.9%, while the number of men working part-time grew by 5.3%.⁴⁹ Finally, the trend towards income polarization, or the "good job/bad job" scenario, disproportionately affects women because of their over-representation in the service sector. All of these factors contribute to the wage gap and will not necessarily be addressed by pay equity legislation. However, they help to provide an explanation of why a legislative initiative that attacks discriminatory practices can only be expected to correct a small portion of the wage gap.

In addition to the presence of a substantial wage gap in Ontario, there were several other factors at work that helped to put pay equity on the government's policy agenda. Egri and Stanbury attribute the emergence of the new legislation to three important factors.⁵⁰ The most important factor they identify is the change in the political landscape of Ontario. When the Liberals found themselves in a minority government situation,

⁴⁷Bakker, p. 263.

⁴⁸In 1981 24% of women were unionized compared to 37% of men. Ibid., p. 264.

⁴⁹Ibid. p. 267.

⁵⁰Carolyn P. Egri and W.T. Stanbury, "How pay equity legislation came to Ontario," Canadian Public Administration, 32-2 (1989), pp. 300,301.

dependent on the NDP for support, they agreed to include pay equity as part of the Liberal-NDP Accord in 1985. A second factor was the increasing number of women participating in the work force. Women's groups mobilized to support pay equity, as did organized labour. Opposition from the business community was split and the solid opposition of small business carried little political clout. Lewis identifies the Ontario Equal Pay Coalition, composed of professional women's groups, labour and business, as a key player in the passage of the legislation.⁵¹ A third factor identified by Egri and Stanbury is one that is critical for the eventual successful implementation of the Act. The economic environment in Ontario during the 80's was one of prosperity. "This fact made it easier for the NDP to press for stronger legislation and harder for business to argue that they could not absorb or pass on the higher payroll costs stemming from the legislation."⁵²

Together, the increased power of the political left, the changing demographics of the Ontario work force, and economic prosperity, created an environment conducive to progressive social policy. The result was that on June 15, 1987 the Ontario legislature gave third and final reading to Bill 154, "An Act to Provide for Pay Equity." The bill was supported by all three political parties and was hailed as "unmatched in scope throughout North America."⁵³

⁵¹Debra J. Lewis, Just Give Us the Money: A Discussion of Wage Discrimination and Pay Equity (Vancouver: Women's Research Centre, 1988), p. 70.

⁵²Egri and Stanbury, p. 301.

⁵³Trish Crawford, "Pay equity in pink-collar ghetto," The Toronto Star, 21 June 1987, p. B1.

The Pay Equity Act

Objectives

The Ontario Pay Equity Act is designed to ensure that females are given equal pay for work of equal value. It is important to make the distinction between the Ontario Pay Equity Act and legislation designed to ensure male and female employees are given equal pay for equal work. Equal pay for equal work legislation was enacted in Ontario as early as 1951 and is well established. The Ontario Pay Equity Act deals specifically with sex-based wage discrimination that is based on the unwarranted undervaluing of work performed by women in female-dominated occupations.

The specific objective of the Ontario Pay Equity Act is to "redress systemic gender discrimination in compensation for work performed by employees in female job classes."⁵⁴ In addition, the Act is not silent regarding the amount of wage adjustments required by private sector employers. If inequity is established within a workplace, the employer must make wage adjustments of at least 1% of the total payroll per year until pay equity is achieved.⁵⁵ The wage adjustment goal for the public sector is not constrained by 1% per year. Instead public sector adjustments must be given in the magnitude required to reach pay equity by 1995.⁵⁶

In terms of criteria designed to measure when pay equity is achieved, there are no Ontario income indicators cited as relevant measures of progress. Instead, the Act places the onus on

⁵⁴Revised Statutes of Ontario, 1990, Pay Equity Act, Ch. P.7, Section 4(1).

⁵⁵Ibid., Section 13(4).

⁵⁶Ibid., Section 13(7).

individual employers to ensure pay equity is achieved. Section 6 states that pay equity is achieved when the pay rate for a female job class within an establishment is equal to that of male job classes where the work performed is of equal value. Therefore, accurate measurement of the Act's success in achieving objectives could only take place by evaluating the progress of each employer. Clearly, the designers of the Act opted for a statute with aggressive goals and weak mechanisms for measuring success (this reluctance to impose a more coercive regime will be discussed in more detail later.)

Scope of the Pay Equity Act

Section 3(1) of the Act outlines the type of employers covered by the Act. All private sector employers with more than ten employees and all public sector employers are bound by the Act. As the Act is a proactive one, or an employer-initiated one, with provision for employee complaints, each employer is legally responsible for the undertaking of a pay equity exercise within their establishment.

The Pay Equity Process

The first step in the pay equity exercise is determining who the employer is, or in broader terms, what constitutes the establishment. Establishment is defined as "all of the employees of an employer employed in a geographic division or in such geographic divisions as are agreed upon under section 14 or decided upon under section 15."⁵⁷ A geographic division is narrowed

⁵⁷Pay Equity Act, Section 1(1).

further to be a county or regional municipality.⁵⁸ Finally, Section 14 and 15 outline that if there is more than one bargaining unit for one employer, each bargaining unit shall prepare a pay equity plan. The Act's provisions for collective bargaining will be dealt with in more detail later.

Once the establishment is defined, employers must classify jobs as either male or female. A job is considered a female job class if 60% or more of the employees in the group are female and is considered a male job class if 70% or more of the employees in the group are male.⁵⁹ Jobs that an employer designates as casual do not have to be included in the pay equity process if the number of hours worked are less than one third of full time.⁶⁰ Once jobs are classified male or female, comparisons must be made that take into account the level of skill and effort required for the job, the working conditions the job entails and the responsibility involved.⁶¹

In order for an employer to perform gender neutral job comparisons effectively, information about the day to day functions of the job must be collected. Each employer should sample a significant number of employees by interview or questionnaire to collect the required information. Table 1 identifies the steps an employer should go through after the data about the job's

⁵⁸Pay Equity Act, Section 1(1).

⁵⁹Each group or class of jobs is composed of employees with similar duties, qualifications, recruiting procedures and salaries. Then female and male job classes are determined by looking at the percentage of male or female employees within that group. Ibid., Section 1.

⁶⁰Ibid., Section 8(3), (4).

⁶¹Ibid., Section 5(1).

effort, working conditions, responsibility and skill is collected.

Table 1 Checklist for Developing a Job Information Statement

1. Review the results of job analysis.
2. Identify the job.
3. State the job's purpose.
4. Check for inaccurate or sexist job titles.
5. Identify the major and minor duties for each job.
6. Rank the duties in frequency and importance.
7. Make sure others understand what the work involves.
8. List the work aids used to perform the work.
9. Include the job requirements/job specifications.

Source: The Ontario Pay Equity Commission, How to Do Pay Equity Job Comparisons (Toronto: 1989), pp. 12-14.

Once the information is organized in a job information statement, it can be utilized to perform a bias free, job class evaluation.⁶²

A job evaluation is necessary because the Act specifies male and female job classes must be compared on a job-to-job basis. The Act does not specify which type of job evaluation must be used, other than that it must be a "gender-neutral comparison system".⁶³ Therefore, each employer must choose the type of job evaluation system that is most appropriate for their establishment. One of the simplest types of job evaluation systems is the ranking system where jobs are ranked in order of their importance to the employer. However this system is usually used to rank one criterion such as skill, and pay equity evaluations must rank four criteria: skill, responsibility, working conditions and effort. The ranking system can be adapted and used for each of these criteria, but it is most

⁶²Ontario Pay Equity Commission, How to Do Pay Equity Job Comparisons (Toronto: 1989), pp. 15-18.

⁶³Pay Equity Act, Section 12.

useful in establishments with fewer employees.⁶⁴

A second type of evaluation system is the classification method. The classification method is based on job families such as clerical, plant, technical and managerial. Once jobs are grouped, classifications or grades are assigned to jobs within each family. However, this type of grouping is often laden with gender bias. Therefore, for the purposes of pay equity, a general grading system should be developed that defines skills in a broader manner. The following example shows how this type of grading system could be constructed. "Grade I Requires skills generally learned in one to three months, either on or off the job. For example typing, driving a car."⁶⁵ When developing the grading system, it is important that gender neutrality be applied to each of the four criteria in a like manner.

A third type of job evaluation system is the point factor method. The point factor method breaks jobs down into several factors such as skill, responsibility, effort and working conditions. Each of these factors is then broken down into subfactors and each subfactor is defined and assigned a certain number of points.⁶⁶ Separate factors can be weighted differently and consequently each subfactor must be assigned a percentage weight and a total possible number of points. An important consideration for the point factor method is to ensure all of the attributes found in all types of jobs are included so that no

⁶⁴How to Do Pay Equity Job Comparisons, p. 22.

⁶⁵*Ibid.*, p. 34.

⁶⁶*Ibid.*, p. 24.

individual job is undervalued.

The last type of job evaluation method is the factor comparison method and it is the most complicated. This method uses current salaries to rank jobs and then "each job is evaluated in terms of the contribution of each factor to its total worth."⁶⁷ As this type of evaluation uses salaries to rank jobs, it is inappropriate for the purposes of pay equity in its traditional form.

When the job evaluation is completed, the employer is left with a hierarchy of jobs within the organization. At this point the employer should be checking to see if female job classes have been undervalued for the work performed. It is acceptable to set male job class and gender neutral job class compensation rates as the market would dictate, but the Act makes it illegal to undervalue female job classes in terms of compensation.⁶⁸ The Act specifically directs female job classes to be compared with male job classes of equal value, and where more than one appropriate male job class is available, pay equity is considered to be achieved when the female wage is brought up to the level of the lowest male wage comparator.⁶⁹ Comparisons must be made between male and female job classes within a bargaining unit or between job classes outside of the bargaining unit.⁷⁰ If the employer is

⁶⁷How to Do Pay Equity Job Comparisons, p. 26.

⁶⁸M.E. Mackenzie, "Planning and Implementing Pay Equity in 100 to 499 Employee Companies," in Employee Relations and Implementing Pay Equity (Mississauga: Insight Press, 1990), p. 9.

⁶⁹Pay Equity Act, Section 6(3).

⁷⁰Ibid., Subsection 6(4)(a), (b).

unable to find male job class comparators within the smaller portion of the establishment, then comparisons can be made throughout the establishment.⁷¹

Once job comparisons have been completed, employers must outline a plan correcting for any female job classes that have been undervalued in terms of compensation. The Act is silent regarding any remedy for male job classes earning less than their female comparators, although the legislation does specify that no pay reductions can be used to achieve pay equity.⁷² Once the plan has been completed, it must be posted in the workplace by a certain date. The Act mandates a series of implementation dates for both the public and the private sector.⁷³ The schedule of implementation is presented in Table 2 with plan posting deadlines ranging from Jan. 1, 1990 for the public sector and large private sector companies to Jan. 1, 1994 for employers in the private sector with less than 50 employees. One of the Act's objectives also applies to the implementation schedule. Private sector employers must, on a yearly basis, allocate 1% of the establishment's total payroll to wage adjustments until pay equity is achieved.⁷⁴ In addition, pay equity must be achieved in the public sector by 1995, even if the adjustments are greater than 1% of the total payroll.⁷⁵

⁷¹Pay Equity Act, Section 6(5).

⁷²Ibid., Section 9(1).

⁷³Ontario Pay Equity Commission, Implementing Pay Equity in the Workplace (Toronto: 1990), p. 7.

⁷⁴Pay Equity Act, Section 13(4).

⁷⁵Ibid., Section 13(7).

Although the Act is not particularly specific about what should be included in a pay equity plan, there are certain things

Table 2 Pay Equity Timetable

Type of Employer	Pay Equity Plan Posting Date	First Pay Equity Adjustment Date
Public Sector	Jan. 1, 1990	Jan. 1, 1990
Private Sector More than 500 employees	Jan. 1, 1990	Jan. 1, 1991
Private Sector 100-499 employees	Jan. 1, 1991	Jan. 1, 1992
Private Sector 50-99 employees	*Jan. 1, 1992	Jan. 1, 1993
Private Sector 10-49 employees	*Jan. 1, 1993	Jan. 1, 1994

* Posting of pay equity plans is optional for employers with less than 100 employees.

that must be part of the posted plan.⁷⁶ All of the job classes which formed part of the comparison must be identified. The type of job evaluation or comparison system used must be named. The reasons for allowing different compensation for job classes of equal value must be explained. The amount and schedule of compensation adjustments for undervalued female job classes must be identified. If the pay equity plan calls for different compensation for male and female job classes of equal value, the difference in compensation can only be justified by "seniority, temporary training assignments, merit pay, red-circling and skills shortages."⁷⁷ Red-circling is defined as a practice

⁷⁶Pay Equity Act, Section 13(1), (2).

⁷⁷Canadian Labour Law Reports, Ontario Pay Equity Legislation for Broader Public and Private Sectors (Canada: CCH Canadian Limited, 1986), p. 7.

where, based on a gender-neutral re-evaluation process, the value of a position has been down-graded and the compensation of the incumbent employee has been frozen or his or her increases in compensation have been curtailed until the compensation for the down-graded position is equivalent to or greater than the compensation payable to the incumbent.⁷⁸

Furthermore, employers are only required to post their plans within the establishment; they are not required to submit their plan to any government agency.⁷⁹ Employees have 90 days after the plan has been posted to submit comments to the employer and once the 90 day period has expired the employer must post a notice stating whether the pay equity plan has been amended.⁸⁰

The Act also specifies other guidelines that must be followed during the Pay Equity process. For example, section 9 of the Act makes it illegal for an employer to achieve pay equity by reducing the compensation of any employees. One ambiguous portion of the Act allows for a group of jobs to be treated as one female job class and the job rate with the most number of employees in the group is used as the group job class value.⁸¹

Collective Bargaining

The Act specifically outlines that for those employees represented by a bargaining agent, the employer and the bargaining agent will in good faith negotiate a pay equity plan. The employer and bargaining agent must agree on the job evaluation system to be used, the female and male job classes and the geographic divisions

⁷⁸The Pay Equity Act, Section 8(d).

⁷⁹*Ibid.*, Section 14(4), (8).

⁸⁰*Ibid.*, Section 15(4), (6).

⁸¹*Ibid.*, Section 6(6), (7), (8).

of the establishment.⁸² As pay equity plans in the union setting are negotiated by the bargaining agent and the employer, they are deemed approved when the plan is posted in the workplace.⁸³ It is also worth mentioning that once pay equity has been achieved within an establishment, differences in compensation rates for male and female job classes are allowable "if the employer is able to show that the difference is the result of differences in bargaining strength."⁸⁴

Administration of the Pay Equity Act

The Pay Equity Act in Ontario is placed under the responsibility of the Ministry of Labour. However most of the implementation responsibilities fall under the auspices of the Pay Equity Commission, provided for by Section 27 of the Act. The Pay Equity Commission is responsible for the administration and enforcement of the Act and is made up of two separate divisions - the Pay Equity Hearings Tribunal and the Pay Equity Office. The Pay Equity Office is divided into three branches: Policy and Research, Information and Education and Review Services. Pursuant to Section 33 of the Act, it is the Pay Equity Office that is responsible for the Administration of the Act and the enforcement of Tribunal decisions.

One of the main functions of the Pay Equity Commission is to

⁸²Pay Equity Act, Section 14(2), (3).

⁸³Ibid., Section 14(5).

⁸⁴Ibid., Section 8(3).

"support those affected by the legislation, with information and education, policy and research and where necessary, with conciliation and appeal."⁸⁵ In terms of information dissemination, the Pay Equity Commission has done a tremendous amount of work. The Commission has published user friendly guides to the Act, a monthly newsletter, and a basic information kit. In addition to developing training courses for Ontario's community colleges, Commission education officers have developed seminars and workshops that have reached close to 50,000 participants.⁸⁶

Enforcement of the Pay Equity Act

The Act also gives The Pay Equity Office the authority to receive and settle complaints. Section 34 of the Act authorizes review officers to reject complaints, settle them or forward unsettled complaints to the Hearings Tribunal. When a review officer undertakes a complaint case, the Act gives the Review officer the authority to offer several remedies. The officer can order an employer to complete a pay equity plan or to take certain steps to implement an already completed plan.⁸⁷ The officer may order a posting date for a pay equity plan that is later than the date outlined in the Act or refer a complaint that cannot be settled to the Hearings Tribunal.⁸⁸

Review officers also have the power to conduct pay equity

⁸⁵Brigid O'Reilly, "Pay Equity: The View from the Commission," in Pay Equity in Ontario: a manager's guide, eds. David W. Conklin and Paul Bergman (Canada: The Institute for Research on Public Policy, 1990), p. 17.

⁸⁶Ibid., p. 17.

⁸⁷Pay Equity Act, Section 24(1), (2).

⁸⁸Ibid., Section 24(4), (5).

audits and employers are required to provide them with the necessary information. However, if an employer is unwilling to provide documents to the review officer, the review officer must obtain a warrant in order to obtain the information.⁸⁹

In terms of penalties, the Hearings Tribunal can issue fines of not more than \$5,000 to an individual and not more than \$50,000 in any other case. Fines can be issued to those guilty of interfering with the bargaining process by using intimidation, coercion or discrimination, or to someone who interferes with a Review Officer carrying out his or her duties.⁹⁰ In other cases dealing with compliance, the Hearings Tribunal has the authority to order an employer to reinstate an employee if the employee was dismissed as a result of claiming their pay equity rights; order adjustments to a pay equity plan; and order adjustments in compensation to achieve pay equity.⁹¹

Target Group Compliance

As the Pay Equity Act does not require employers to submit their pay equity plans, target group compliance is difficult to determine. In order to monitor compliance with some degree of accuracy, the Pay Equity Office has had several surveys completed to determine the progress of employers in completing pay equity plans. One of the first surveys was a telephone survey conducted in 1989. Of the 400 employers polled, about 80% said they would

⁸⁹Pay Equity Act, Section 35(4).

⁹⁰Ibid., Section 26(1).

⁹¹Ibid., Section 25(2)(a), (e), (f).

post pay equity plans by Jan. 31, 1990.⁹²

In the fall of 1992, additional surveys were conducted to determine pay equity compliance. In companies with 10 to 99 employees, approximately 73% indicated having some knowledge of pay equity, while only 30% said they had completed any work on pay equity.⁹³ Given that companies with more than 50 employees were scheduled to make their first pay equity adjustment by Jan. 1st, 1993, target group compliance for companies of this size seems tentative at best. A second survey of 928 companies with 50 to 99 employees was also conducted and 32% reported that they had opted not to post some or all of their plans.⁹⁴ Of the 24% who said they intended to post at least some of their plans, less than half had actually posted their plans before Jan. 1, 1992, the optional date named in the Act.⁹⁵ The remaining 45% of employers reported that they had not decided which option they would follow.⁹⁶

One of the other facts confirmed through the survey was the lack of comparators for at least some of the job classes. Almost one third of the employers surveyed had no comparators for over half of their female job classes and employers reported that 49% of their female job classes were earning the same or more than their

⁹²Peter Gorrie, "Many firms report equity raises," The Toronto Star, 29 Dec. 1989, p. F1.

⁹³It should be noted that the sample size of this survey was small - 30 interviews made from 105 contacts - therefore, the results cannot be considered highly accurate. Ontario Pay Equity Office, Pay Practices of Private Sector Companies with 10 to 99 Employees in Ontario (Toronto: Oct. 1993), pp. 33,35.

⁹⁴Ontario Pay Equity Office, Outcomes of Pay Equity for Organizations Employing 50-99 Employees in Ontario (Toronto: Canadian Facts, March 1993), p. 2.

⁹⁵Ibid.

⁹⁶Outcomes of Pay Equity ... 50-99 Employees, p. 2.

male comparators.⁹⁷

Earlier in 1992, another survey was undertaken to determine the outcomes of pay equity plans in private sector companies employing 100 to 499 employees. Of the 1089 private sector establishments interviewed only 51% had posted all of their pay equity plans.⁹⁸ In addition, the mail-in portion of the survey

Table 3 March 1992 Stage of Implementation

Overall Stage of Implementation	Total Establishments N=1089
No Work Done	6%
Plans Being Developed - Not Posted	22%
Some Plans Posted	15%
All Plans Posted	51%
Not Stated	6%

Source: Outcomes of Pay Equity for Organizations Employing 100 to 499 Employees in Ontario

indicated of those employers who had done some work to develop pay equity plans, 30% would make no pay adjustment, while 43% would make an adjustment of more than 0 but less than 1% of the total payroll.⁹⁹ Any employers making adjustments of less than 1% , although complying with the legislation, would be indicating that the inequity in their organization had been corrected by making an adjustment totalling less than the 1% statutory guideline. If the inequity was not corrected, employers would be required by law to make adjustments of at least 1% of their total payroll until pay

⁹⁷Outcomes of Pay Equity ... 50-99 Employees, p. 5.

⁹⁸Ontario Pay Equity Office, Outcomes of Pay Equity for Organizations Employing 100 to 499 Employees in Ontario (Toronto: Canadian Facts, March 1992), p. 11.

⁹⁹Ibid., p. 44.

Although in Annual Reports and the 1990 Pay Equity Report published by the Commission, positive progress towards pay equity is described, the survey results would generally indicate there is not even 50% compliance. As the surveys were conducted shortly after the initial mandatory posting dates, it is difficult to predict how many companies will complete and post pay equity plans at some later date.

Impact of Pay Equity Act

The real impact of the Pay Equity Act is difficult to evaluate. There can be no doubt that for some women pay equity has meant significant wage adjustments and for other women pay equity has had virtually no effect on their salaries. However, because of the discretionary nature of private sector involvement in Ontario pay equity, much of the evidence is merely anecdotal. Examples of wage adjustments, are often cited as evidence of pay equity's impact. For example, at the University of Toronto, 2,500 of 11,000 university employees will receive an average upward adjustment of 11.7%, while at Campbell Soup Co., the 2200 employees will receive only minor adjustments.¹⁰⁰ Kitchener's 500 city employees will receive a total addition of \$700,000 to the payroll.¹⁰¹ Examples in Kitchener included clerk stenos receiving a 23% upward adjustment and administrative secretaries receiving a total adjustment of 19%. The Great Atlantic and Pacific Company of

¹⁰⁰Peter Gorrie, "Pay equity increases to add 2% to payroll," The Toronto Star, 20 Jan. 1990, pp. C1,C2.

¹⁰¹Peter Gorrie, "Many firms report equity raises," The Toronto Star, 29 Dec. 1989, pp. F1,F2.

adjustment of 19%. The Great Atlantic and Pacific Company of Canada, Ltd. (A & P) made adjustments ranging from \$8.17 per week to \$27.30 per week and Warner Lambert reported there were only minimal adjustments necessary.¹⁰²

In the Ontario public sector, the Pay Equity Commission reported that wage adjustments would be given to 28,500 employees at a cost of \$83.8 million, or 2.7% of the total payroll budget.¹⁰³ The wage adjustments would range from \$.02 per hour to \$6.74 per hour and averaged \$1.45 an hour.¹⁰⁴ An extensive list of pay equity adjustment examples could be constructed but such a list would do little to assemble an accurate picture of the overall impact of pay equity on women's wages.

One of the other methods of determining the impact of pay equity is by examining income statistics from census data. The census data is a useful indicator of how wages have changed since the enactment of pay equity. However, it must be used with caution for two reasons. First, the last available census gives income from 1990 and only the first public sector pay equity adjustments would have been in place during 1990. It is also likely some large private sector employers would have made initial adjustments in anticipation of the 1991 mandatory adjustment date. Second, changing wage gaps cannot be attributed entirely to pay equity. For example, from the 1981 to 1986 census, the wage gap decreased

¹⁰²National Committee on Pay Equity, Legislating Pay Equity to Raise Women's Wages: A Progress Report on the Implementation of the Ontario, Canada PayEquityAct, Dec. 1990, pp. 78-80.

¹⁰³Ibid., p. 69.

¹⁰⁴Ibid.

by 2% in Ontario and no pay equity legislation was in place. However, with these two cautions in mind, income statistics may provide an indication of the effect of pay equity legislation.

Table 4 outlines the 5 year percentage change in men's and women's wages in each of the Canadian provinces as well as the

Table 4 Wage Comparison of Men and Women Working Full Time

Province	Coverage of Pay Equity Legislation before 1990	Women's Wages +/- Change from 1985 to 1990	Men's Wages +/- Change from 1985 to 1990	1985 Wage Gap Between Men and Women	1990 Wage Gap Between Men and Women
		%	%	%	%
Ontario	1988 Public and Private Sector	+8.8	+4.4	35.9	32.9
Manitoba	1985 Civil Service (crown corps, comm. colleges & univ., 23 health care Fac.)	+1.4	(2.2)	32.7	30.2
Sask.	None	(8.3)	(4.8)	27.7	30
Alberta	None	(4.3)	(4.7)	35.1	34.8
B.C.	None	+1.3	(.1)	36.3	35
Newfoundland	1988 Collective Agreement - Public Sector and Broader Public Sector	+3	+3.7	35.1	35.5
Prince Edward Island	1988 Public and Broader Public Sector	+1.4	+9.2	25	29.8
Nova Scotia	1988 Public Sector (crown corps, hosp., school bds, univ., municipalities, correctional serv.)	+2.5	+1.5	33	32.4
New Brunswick	1989 Public Sector (crown corps, 2 Psych Hospitals)	+2.1	+3.4	33.9	34.7
Quebec	1975 Charter of Rights and Freedoms Public and Private Sector	+3.1	+1.4	32.5	31.3

Source: Statistics Canada, Selected Income Statistics (Ottawa: Industry, Science and Technology Canada, 1993), 1991 Census of Canada. Catalogue number 93-331, pp. 68-97.

percentage wage gap between men and women during the same period.

It is interesting to note that Ontario's wage gap decreased by the greatest amount - 3 full percentage points. In addition, women's wages went up in Ontario by a greater percentage than any other province. However, in 1985, Ontario had the second largest wage gap in Canada and some of the wage gap correction may be due to market forces. It is also instructive to note that in Alberta and Saskatchewan, provinces without pay equity legislation, the wage gap actually either increased or stayed at approximately the same level. The wage gap in B.C., a province without pay equity legislation, went down 1.6%, however the 1990 wage gap remains high at 35%. The wage gap change in P.E.I. is difficult to explain. The provincial government enacted pay equity legislation in 1988 and the wage gap increased by almost 5 full percentage points.

The other important fact to note from the income statistics is that by the end of 1990, the only wage adjustments required by the Act were those for the Ontario public sector. Private sector adjustments for employers with over 500 employees were not required until 1991, although a small percentage of the large employers may have made adjustments in anticipation of the Jan. 1st, 1991 deadline. Therefore even though the income statistics reflect only the first mandated pay equity adjustment, the wage gap in Ontario still dropped further than all of the other provinces with pay equity legislation in the public sector. As a preliminary indicator of pay equity success, the income statistics are encouraging, but inconclusive.

There is no way of knowing how much impact most of the market forces have had on closing the wage gap between men and women. However, one market indicator, provincial unemployment statistics,

can be used to check if the wage gap decreased the most in provinces with the lowest rate of unemployment. Table 5 shows the

Table 5 Average Unemployment Rate - Unadjusted Series

	1985		1990	
	Men	Women	Men	Women
Newfoundland	20.9	20.6	17.1	17.0
PEI	13.1	14.0	14.6	15.2
Nova Scotia	13.3	14.0	10.4	10.6
New Brunswick	15.8	14.1	12.0	12.3
Quebec	11.7	12.0	10.1	10.1
Ontario	7.6	8.5	6.3	6.3
Manitoba	7.9	8.5	7.3	6.7
Saskatchewan	7.8	8.5	7.3	6.7
Alberta	9.9	10.1	6.8	7.3
BC	14.2	14.0	8.2	8.4

Source: Statistics Canada, Historical Labour Force Statistics (Ottawa: Minister of Supply and Services Canada, 1991), Catalogue number 71-201, pp. 278-298.

provincial unemployment rates in 1985 and 1990 for men and women. If employment rates as a market force influenced the changing wage gap in Ontario, Ontario's unemployment rates should have decreased the most and or be the lowest rates. Ontario's unemployment rates in 1990 are the lowest in the country, however the change in employment rates from 1985 to 1990 is minimal. B.C. on the other hand exhibited a large drop of almost 6 points in unemployment, but the wage gap dropped by only 1.3 points. Saskatchewan also has low unemployment rates, yet the wage gap increased during the period from 1985 to 1990. Unemployment rates show no correlation to the changing wage gaps in each of the provinces. Therefore this particular market force, employment, does not negate the fact that pay equity may have had some influence on the changing wage gaps.

Pay Equity Amendment Act

The Pay Equity Amendment Act, Bill 102, received final reading in the Ontario Legislature on June 28, 1993, and went into effect on July 1st, 1993. The Act was the culmination of much lobbying by groups like NAC and the Equal Pay Coalition.¹⁰⁵ Women were excluded from the original Pay Equity Act if they worked for an employer with less than ten employees, if they were employed on a temporary part time or contract basis and if they worked for an establishment lacking a male job comparator. The number of women lacking a male comparator under the original legislation was estimated to be 867,000 or approximately 50% of working women in Ontario covered by the Act.¹⁰⁶ As a result of recommendations from the Commission and continued pressure from the Pay Equity Coalition and other organized women's groups, the legislation was amended in 1993 to include more women under the protection of the Act. The Pay Equity Amendment Act only partly extended coverage for women. However, the new Act did include an additional 420,000 women in Ontario.¹⁰⁷ These women were previously excluded from the coverage of the Act because they worked in establishments where there were hardly any men and consequently there were no male job classes for comparison.

The main thrust of the Act was to provide new methods of

¹⁰⁵Duncan McMonagle, "Law excludes half of women from pay equity," The Globe and Mail, 17 Jan. 1989, pp. A1,A2.

¹⁰⁶Ontario Pay Equity Commission, Report to the Minister of Labour on Sectors of the Economy which are Predominantly Female (Toronto: January, 1989), p. 5.

¹⁰⁷Ontario Pay Equity Commission, News Release (Toronto: June 29, 1993), p. 1.

comparison for the pay equity process - proportional value method and the proxy method.

Proportional value is a way of indirectly comparing female and male job classes in the same establishment. It looks at the relationship between the value of the work performed and the pay received by male job classes and applies the same principles and practices to paying female job classes. Proxy comparisons, only to be used in the broader public sector, allow for comparisons with jobs in other broader public sector organizations.¹⁰⁸

Without the new methods of comparison, women working in establishments such as those associated with the garment industry, libraries and child care facilities were left outside the protection of the 1987 Act.

Proportional value differs from job-to-job comparison in that female job classes can be compared to male job classes where the work performed is of similar value. In job-to-job comparison, the work performed must be of equal value to qualify as a valid comparative benchmark. Proportional value comparison begins with the same process as job-to-job comparison. Female and male job classes are identified and valued. At this point the process differs as a representative group of male job classes is graphed with job wages on the y axis and job value on the x axis.¹⁰⁹ Once a line or curve can be established illustrating a wage pattern within an organization, female job classes are graphed the same way and any job classes falling below the wage line are adjusted upward by at least 1% of the total payroll per year until pay equity is achieved.

¹⁰⁸News Release, p. 2.

¹⁰⁹Ontario Pay Equity Commission, Step by Step to Pay Equity: Using the Proportional Value Comparison Method (Toronto: 1993), pp. 10-20.

In addition to adding the two new methods of job comparison, the Pay Equity Amendment Act extended the deadline for public sector organizations to complete their compensation adjustments to Jan. 1, 1998 from Jan. 1, 1995.¹¹⁰ The new Act also made it mandatory for employers with 10-99 employees to "post a notice in their workplaces outlining both their obligation to achieve and maintain pay equity and how employees can make a pay equity complaints or objection."¹¹¹

The Pay Equity Amendment Act provides a great deal of insight into the perceived policy impact, the resources of constituency groups lobbying the government for change and the changing economic conditions in Ontario. First, the Pay Equity Act was not only perceived to, but actually did, omit a large number of women from the protection of pay equity legislation.

Even though more working women are covered by the new legislation, the new pay equity bill was met with disappointment by women's groups, labour and business. The bill was criticized by the Ontario Federation of Labour, the Ontario Nurses Association and the Canadian Manufacturers Association.¹¹² Criticisms ranged from opposition to the delayed wage adjustment deadline, to the continued omission of women working for companies with less than 10 employees, to the fact that the Act was too complex. However, the primary opposition to the Act was elicited by the 3 year postponement of the public sector deadline for achievement of pay

¹¹⁰News Release, p. 2.

¹¹¹Ibid.

¹¹²Kelly Toughill, "Ontario pay equity bill up for intense scrutiny," The Toronto Star, 1 Feb. 1993, p. A-4.

equity from 1995 to 1998.¹¹³ It is interesting to note that these groups did not oppose the lack of coercive measures to ensure that employers comply with the legislation. They did not lobby the government to have employers submit pay equity plans nor did they lobby for the inclusion of more penalties.

Clearly, the Amendment Act reflects the government's desire not to further alienate business by extending the Act's coverage too much or by increasing sanctions for noncompliance. However, constituency groups lobbying for the inclusion of more women under the Act did win some concessions. Furthermore, the delay of the wage adjustment deadline is evidence of fiscally tough times and a relaxed priority on pay equity. Remick, in her case study of pay equity in Washington State, concludes that if a government wants pay equity, money will be made available no matter how scarce resources are.¹¹⁴ Therefore, the Amendment to the Pay Equity Act provides mixed signals regarding the government's commitment to achieving pay equity.

Conclusion

An overview of Ontario's pay equity legislation and its impact to date quickly reveals the difficulty inherent in a piece of legislation covering such a large target group. However, the size of the target group should not in itself detract from successful implementation. In fact, compliance surveys and income data show

¹¹³Katerina Makovec, "Broader Public Sector Pay Equity and Bill 102," Just Wages, 2-4/3-1 (1992-1993), p. 15.

¹¹⁴Helen Remick, "Comparable Worth in Washington State," in Comparable Worth, Pay Equity, and Public Policy, eds. Rita Mae Kelly and Jane Bayes (New York: Greenwood Press, 1988), p. 233.

that already the Act has at least met with some success. This success has been achieved despite a number of obstacles: the Act is not simple and straightforward; the Act seeks to modify very diverse behaviour; the Act is unique in its broad scope; and economic conditions are not as strong as when the legislation was passed.

Pay equity in Ontario, after seven years in effect, is quickly coming to a phase that will be critical. In order to understand what is required to maximize future success, the role of each variable involved in the process is important. The Mazmanian and Sabatier model will be used in Chapter 3 to analyze what factors contributed to or inhibited successful implementation. Are the implementing agencies integrated hierarchically to avoid unnecessary vetoes? How committed are implementing officials and how much flexibility do they have? What role have the relevant constituency groups played? Have socioeconomic conditions changed to influence implementation? These questions will be answered in the analysis of Ontario pay equity implementation in Chapter 3.

CHAPTER THREE

ANALYSIS OF ONTARIO PAY EQUITY IMPLEMENTATION

An analysis of the problem pay equity legislation addresses in Ontario illustrates just how challenging the optimum structuring of the statutory variables will be. An analysis of the tractability of the problem shows that performance indicators for monitoring pay equity are difficult to develop, the diversity of the behaviour being regulated is great, the number of employers affected by the legislation is large and the behavioural change required is also significant. Consequently, pay equity legislation deals with a very difficult, well entrenched problem. In order to successfully implement this legislation the statutory variables need to be structured in such a way as to increase the likelihood of behavioural change.

This chapter will use the Mazmanian and Sabatier implementation model to analyze if each of the independent variables have either contributed to or inhibited successful implementation. The analysis offered will support the hypothesis that even though some of the variables have been structured in such a way as to contribute to the achievement of pay equity goals, a few critical variables have inhibited successful implementation:

- (1) a lack of clear objectives and criteria for measuring performance;
- (2) insufficient financial resources;
- (3) a lack of employer sanctions and inducements;
- (4) declining economic conditions in Ontario;
- (5) the lowering of pay equity on the public agenda.

The Problem

Comparable worth pay equity legislation has only recently come of age as a way to address the problem of wage discrimination between men and women. Ontario's pay equity legislation attacks the problem in both the public and private sector and consequently the problem is defined in a much broader manner than most pay equity initiatives. Using Mazmanian and Sabatier's implementation model, an analysis of the tractability of the problem in Ontario renders a rather bleak prediction of implementation success. Although Mazmanian and Sabatier caution analysts not to place too much emphasis on the tractability of the problem, a review of the difficulties inherent in sweeping pay equity legislation helps to identify the challenges for structuring implementation.

Two of the important issues associated with the problem are developing an accurate causal theory and identifying indicators to measure the success of program goals. The causal theory is important enough to be dealt with separately as one of the independent variables affecting successful implementation. The scope of Ontario's pay equity legislation - public and private sector - makes the development and monitoring of performance indicators a difficult task.

Even when statistics illustrating the changing wage gap between men and women are available, it is almost impossible to determine if the fluctuation of the wage gap is a result of pay equity legislation or other factors. For example, if the wage gap between men and women decreased, it could be a result of women's increased seniority within the workforce; or it could be a result of employers increasing the practice of red-circling. These

situations would not preclude the continued discriminatory undervaluing of work performed by women. If the wage gap stayed the same, several factors could be at work. Some women's wages would have likely been adjusted upward, while other employers could have increased the amount of work contracted out in order to avoid the legislation. Therefore, wage gap indicators would have to be considered together with other information. Specifically, information stating the specific amount of wage adjustments paid to employees is necessary to truly evaluate the success of the program.

The second area of the problem to consider is that the more diverse the behaviour regulated, the more difficult it will be to develop clear regulations and as a result implementing officials will have to be granted more flexibility.¹¹⁵ In the case of pay equity, it is pay structures that are regulated. It is hard to imagine an area of legislation covering more diverse behaviour. Pay structures are based on job evaluation systems (if not, job evaluation systems must be employed to develop a pay equity plan) of which there are a profusion of different types.

If formal job evaluation systems are present, they can generally be placed into one of two categories: analytical schemes which break jobs down into factors, and nonanalytical schemes which compare whole jobs.¹¹⁶ Nonanalytical schemes can be further broken down into ranking or classification schemes while analytical types are known usually as point ratings. Many different

¹¹⁵Mazmanian and Sabatier, p. 23.

¹¹⁶Maeve Quaid, Job Evaluation: The Myth of Equitable Assessment (Toronto: University of Toronto Press, 1993), p. 21.

consultants provide their own version of job evaluation systems which are based on a combination of the above types. Some of the most common include "the Hay-MSL Guide Chart Profile method, the Inbucon direct consensus method, the Urwick Orr and Partners job-profile method and PA International's page system of job evaluation."¹¹⁷ Pay equity plans must be established using one of any number of these job evaluation schemes. One of the purposes of job evaluation schemes is to introduce a gender neutral practice into the evaluation of jobs. However, even when employers utilize consultants there is no guarantee the job evaluation scheme will be gender neutral.¹¹⁸ Further complicating the diversity of behaviour is the fact that many companies use no job evaluation scheme. In the survey of companies with 10 to 99 employees, 50% did not even use job descriptions and 70% did not utilize salary ranges.¹¹⁹

Third, the larger the target group affected by the legislation the more difficult it is to achieve statutory objectives.¹²⁰ In 1990 over 2.6 million women were employed on a full time basis in Ontario.¹²¹ The Act was estimated to provide coverage for 1.7

¹¹⁷Quaid, p. 22.

¹¹⁸Ontario Pay Equity Commission, Annual Report (Toronto: 1989-1990), p. 30.

¹¹⁹Ontario Pay Equity Office, Pay Practices of Private Sector Companies with 10 to 99 Employees in Ontario (Toronto: October, 1993), p. 19.

¹²⁰Mazmanian and Sabatier, p. 23.

¹²¹Statistics Canada, Selected Income Statistics (Ottawa: Industry, Science and Technology Canada, 1993), 1991 Census of Canada, Catalogue number 93-331, p. 89.

million women of which approximately 60,000 are civil servants.¹²² Therefore, the number of employers targeted by the Act can only be estimated to be correspondingly large.

Finally, the most obvious of the hypotheses regarding the tractability of the problem is that the more behavioural change required, the less likely successful implementation will occur.¹²³ Although discriminatory practices are generally condemned, the undervaluation of women's work is the result of longstanding and sometimes deeply held values and norms. Therefore, the behavioural change required by the legislation is large.

A case study of the implementation of pay equity in Minnesota revealed implementation of pay equity for state employees was much easier because "it encompassed only one government, employed an existing technology, required very little behavioral change, and was led by the person who helped to draft the clear and straightforward statute."¹²⁴ Two of the variables named relate directly to the tractability of the problem. Ontario's legislation encompasses far more than just one government and the amount of behavioural change required is great. Therefore the difficulty of successfully implementing pay equity implied by an analysis of the tractability of the problem only reinforces the importance of constructing each of the variables in the implementation regime in a positive manner.

¹²²"Pay equity in pink-collar," p. B1.

¹²³Mazmanian and Sabatier, p. 24.

¹²⁴Sara M. Evans and Barbara J. Nelson, "Comparable Worth for Public Employees: Implementing a New Wage Policy in Minnesota," in Comparable Worth, Pay Equity and Public Policy, eds. Rita Mae Kelly and Jane Bayes (New York: Greenwood Press, 1988), p. 193.

Statutory Variables - Pay Equity Act

Objectives

Clear statutory objectives serve as an important tool for implementing officials. If objectives are straightforward, specific and named in order of importance, officials are more likely to make decisions in keeping with the legislation.¹²⁵ The first objective named in the Act - redressing systemic wage discrimination for women - is clearly the purpose and priority of the Act. All of the implementing officials actions should reflect, and can be checked, against this overarching purpose. In addition, the Act spells out how employers are to measure the value of work performed by men and women. The value of work is determined by examining the effort and skill required to perform the job, the working conditions of the job, and the responsibility of the job. The Act instructs employers to measure these criteria in a formal job evaluation and to assemble pay equity plans that correct any inequity. This type of specificity helps to alleviate questions of clarity that may surround the single broad objective of eliminating wage discrimination.

The second objective mandates private sector employers to allocate 1% of their payroll to pay equity adjustments until pay equity is achieved. This objective is clear and should leave employers with no question about the legal requirements of the statute.

Despite the clarity of objectives, the Act is burdened with dilemmas of measuring the achievement of goals. The percentage of

¹²⁵Mazmanian and Sabatier, p. 25.

the wage gap caused by discrimination is unclear and employers are not required to report the results of their pay equity evaluation. Therefore, not only would it be difficult to determine when pay equity is achieved, but the Act does not require employers to submit information that would indicate what effect pay equity legislation is having on the wage gap.

Causal Theory

In recognizing that pay differentials were partly attributable to "systemic gender discrimination," the authors of the legislation made certain assumptions about the problem.

The legislation was based on the assumption that the problem was pay structures, not people. The solutions were to be collective, not individual. In other words, the legislation moved away from a focus on individual rights in a free market to an emphasis on collective rights in a segregated market.¹²⁶

In assuming that the problem was based on pay structures and long institutionalized practices, legislators took progressive action by interfering with 'market forces'. They recognized systemic discrimination did exist and took action to address the area, pay structures, that reflected that discrimination.

One of the weakness with the causal theory is that legislators had to work within a market environment. As a result, the level of acceptable coercion within the private sector was not very great. Without more coercion the Act tends to leave implementing officials without sufficient authority to affect the causal linkages or to enforce the goals of the legislation. This tension will be discussed under hierarchical integration in more detail.

¹²⁶Pat Armstrong and Hugh Armstrong, "Lessons from Pay Equity," Studies in Political Economy, 32 (summer, 1990), p. 35.

Overall, the causal theory correctly identifies one of the causes of the wage gap, discrimination, and sets out to change discriminatory behaviour. Therefore, the causal theory is correctly identified but in the end has little influence in the successful implementation of pay equity.

Financial Resources

In determining if the availability of financial resources has affected the implementation of pay equity, two different areas of funding must be examined. A sufficient amount of funding is necessary to ensure the Pay Equity Commission can carry out its duties described in the Act. In addition, funding is necessary to bring the employees of the public sector to equitable levels.

The evidence indicates that sufficient funding has been allocated to the Pay Equity Commission for them to achieve many of their responsibilities. However, funding has not been available for the Commission to provide a pay equity clinic for non-unionized women (approximately \$250,000).¹²⁷ This type of clinic would help to educate women of their rights under the Pay Equity Act. In addition, the number of cases left unsettled at the end of a year are far greater than the number closed during the same period.¹²⁸ This situation indicates a backlog of cases due to insufficient staff. Finally, one can logically conclude the major reason the Review Services Branch has not undertaken the monitoring function allowed for in the Act is due to a lack of resources.

¹²⁷Linda Hossie, "NDP underestimated bill for pay equity, commissioner says," The Globe and Mail, 16 Oct. 1990, p. A1,A2.

¹²⁸Ontario Pay Equity Commission, Annual Report (Toronto: 1990-1991), p. 22.

The second area that must be considered is if financial resources have affected the ability of the provincial government to issue pay equity adjustments. One of the financial implications for the public sector has been the determination of who is the employer. With the tribunal rulings broadening the definition of employer, the government is looking at bringing the wages of employees in quasi-public agencies up to the same level as wages of employees in the civil service. A representative from the Ontario Public Sector Employees Union estimated "that it would cost Ontario at least 'half a billion' dollars a year just to bring 10,000 to 15,000 transferagency salaries up to par with workers in the civil service."¹²⁹ In 1993, the Ontario government announced a \$50 million down payment program that would begin to raise the wages of female workers in ten different types of agencies such as women's shelters, homemaking programs, drug treatment programs, public libraries and native friendship centres.¹³⁰ Furthermore, Labour Minister Bob Mackenzie estimated that pay equity would cost the government \$240 million in 1993 and \$1 billion by 1998.¹³¹ Evidence that the bill for pay equity has placed a strain on the government is found in their delay of the pay equity achievement target to 1998.

A lack of financial resources has clearly inhibited the successful achievement of pay equity goals. There is evidence that

¹²⁹Paula Todd, "Pay rulings may cost Ontario billions," The Toronto Star, 24 June, 1991, p. A1,A9.

¹³⁰Kelly Toughill, "40,000 women to receive pay equity advance," The Toronto Star, 19 Mar. 1993, p. A4.

¹³¹"'Down payments' set," p. A10.

insufficient resources have been provided to the Pay Equity Commission to optimize its role and furthermore the provincial government itself has allocated insufficient resources for pay equity adjustments.

Hierarchical Integration

The extent to which hierarchical integration is considered in any statute is a very important variable. If integration has not been well thought out, veto points may exist that allow implementing officials and target group employers to thwart legislative objectives.¹³² In the case of pay equity legislation it is important to examine two different areas of integration: (1) have veto or clearance points been sufficiently considered at the employer level? (2) have veto or clearance points been minimized within the hierarchical integration of the implementing agencies? This variable is particularly important at the employer level as it provides an indication of the government's unwillingness to impose a coercive implementation regime. In fact hierarchical integration does not really capture the essence of the implementation decision government must make. Legislators must decide how much they are willing to interfere with the market and how much success they are willing to forfeit in order to maintain an environment that business considers friendly enough to invest in. The tension that exists between regulatory intrusion and a free market is one that can easily be lost under the rubric of 'hierarchical integration'. Therefore with that caveat in mind, the remaining analysis will use the language of Mazmanian and Sabatier.

¹³²Mazmanian and Sabatier, p. 27.

First, hierarchical integration at the employer level must be considered. As mentioned earlier, legislators in Canada would be unlikely to impose a policy regime on the private sector that was too invasive. Consequently, successful initiatives must be structured to increase the likelihood of behavioural change. Mazmanian and Sabatier identify two important criteria as considerations for structuring implementation: the number of clearance points and the availability of inducements and sanctions to "acquiesce" those with a potential veto.¹³³

When dealing with private sector employers, it is clear there will be a large number of clearance points. Consider the thousands of decision points or veto points created as separate decisions are made by employers or personnel managers, union negotiators and consulting firms. Using Pressman and Wildavsky's scenario, the number of veto points in any large organization could be high enough to effectively limit the probability of systemic wage discrimination actually being redressed. Furthermore, Bardach's implementation games are very likely to be played by managers wishing to protect their 'territory' or to infuse pay equity plans with their own goals. Haignere points out several different objectives managers may have ranging from maintaining a certain wage relationship between management and non-management to maintaining a certain job evaluation system because it has worked for years.¹³⁴

¹³³Mazmanian and Sabatier, p. 27.

¹³⁴Lois Haignere, "Pay Equity Implementation: Experimentation, Negotiation, Mediation, Litigation, and Aggravation," in Just Wages A Feminist Assessment of Pay Equity, eds. Judy Fudge and Patricia McDermott (Toronto: University of Toronto Press, 1991), p. 161.

As the legislation is currently structured, managers or firms who do not support the goals of the legislation have little incentive to comply. The only incentives to comply would be a personal or organizational commitment to pay equity objectives; pressure from a union in a collective bargaining situation; or the threat of an employee complaint being registered with the Commission.

Several other incentives to comply that might normally be a part of an implementation regime are missing from pay equity implementation for the private sector. For example, the Act provides no built in mechanisms for public or legislative scrutiny of compliance (employers are not required to submit their pay equity plans). One of the factors employers consider when making a decision to comply is the likelihood of noncompliance being detected and prosecuted.¹³⁵ At present if an employer does not post a plan and an employee does not complain, there is little chance of the employer's noncompliance being detected. A review officer at the Review Services Branch of the Pay Equity Commission indicated that even though the Act provides the authority for review officers to conduct employer audits, not one employer audit has been conducted up until this time.¹³⁶ The Review Services Branch is only now constructing a pilot program for conducting audits and monitoring employer compliance. Therefore, almost seven years after the Act became law, the only chance employer noncompliance would be detected is if an employee complained. In

¹³⁵Mazmanian and Sabatier, p. 37.

¹³⁶A telephone interview with a Review Officer at the Ontario Pay Equity Commission was conducted on August 12, 1994.

the 1992 survey of employers with 100-499 employees, employers confirmed legal compliance was not a pressing issue as only 26% identified "compliance with legal deadline" as one of the factors influencing the overall stage of implementation.¹³⁷

As outlined in the Mazmanian and Sabatier model, there are other compliance incentives missing from the pay equity implementation regime.¹³⁸ In addition to the fact that noncompliance is unlikely to be detected, the sanctions available for noncompliance are limited. Although the Act makes possible the issuance of fines to employers who interfere with the pay equity process, a review officer at the Pay Equity Office indicated he had no knowledge of any fines ever being issued.¹³⁹ Furthermore, the lobbying that was done before the passage of the Act illustrates that business (especially small business owners) questions the fundamental legitimacy of the principle of pay equity. Finally, the costs of compliance for employers cannot just be measured in terms of wages. In one of the pay equity office surveys, it was reported the average administrative cost of pay equity to employers with 100 to 499 employees was \$35,200 or \$168.40 per employee.¹⁴⁰ Therefore employers may calculate the costs of noncompliance to be less than the costs of compliance.

Critics of constructing a stricter enforcement regime argue that one of the benefits of the current enforcement regime is that

¹³⁷Outcomes of Pay Equity ... 100-499 Employees in Ontario, p. 13.

¹³⁸Mazmanian and Sabatier, p. 37.

¹³⁹Telephone interview, Aug. 12, 1994.

¹⁴⁰Outcomes of Pay Equity ... 100 to 499 Employees in Ontario, p. 46.

all employers are treated equally. These proponents of what would basically be an honor system argue that if stricter deterrence mechanisms were used, with random investigations and increased penalties or fines, it would be difficult to treat all employers fairly.¹⁴¹ The worst offenders may escape investigation and companies with significant resources may calculate that the benefits of noncompliance or partial noncompliance outweigh the costs of compliance. However, this type of argument, or principle of fair treatment, is not broadly invoked in determining policy. If this principle was used, police would not issue traffic violations as they could not possibly fine all offenders. Clearly, the fact that deterrence mechanisms, or audits in this case, are conducted on a random basis makes stricter enforcement fair to all employers.

Therefore, in order for higher compliance rates to be achieved it would be necessary to increase the number of sanctions for noncompliance and to increase the likelihood that noncompliance would be detected. Increasing the monitoring function of the Commission is directly related to increasing the availability of resources to the agency.

In addition, the legislation allows loopholes that provide an opportunity for an employer to circumvent the legislation. The lack of attention to employer integration or providing inducements to acquiesce possible vetoes is a serious weakness of the Act that undermines its successful implementation.

In contrast, the Pay Equity Commission itself is effectively

¹⁴¹Morley Gunderson, "Implementation of Comparable Worth in Canada," Journal of Social Issues 45-5 (1989), p. 219.

integrated with responsibilities for the Pay Equity Office and the Hearings Tribunal clearly delineated in the Act. Vetoes are minimal as the Pay Equity Office is responsible for the administration and enforcement of all decisions by the Tribunal.

Decision rules of Implementing Agencies

The formal decision rules for the Pay Equity Hearings Tribunal are laid out in the Pay Equity Act. Some of the decision rules provide very specific guidance: (1) decisions are made by a panel that must be represented by at least one representative each of employers and employees and a Presiding or Deputy Presiding officer; (2) the decision of the majority is the decision of the Hearings Tribunal and if there is no majority, the decision of the Presiding officer rules; (3) the Tribunal may reconsider or revoke a previous decision; (4) the Tribunal may order adjustments for a female job class in question in order to bring the employees up to an equitable level; (5) the Tribunal may order a review officer to prepare a pay equity plan where the employer pays all costs; (6) the Tribunal may order a party to take such action that is required in the opinion of the Tribunal.¹⁴² Overall, many of the decision rules are specifically outlined and the Tribunal is required to make decisions consistent with the legal objectives of the Act. Consequently, the specificity of the formal decision rules contributes to the successful implementation of pay equity.¹⁴³

¹⁴²Pay Equity Act, Section 29(3), (4), (5), Section 25(2)(a), (e), (g).

¹⁴³Mazmanian and Sabatier, pp. 27, 28.

Commitment of Pay Equity Commission Officials

Implementation of Ontario pay equity has been assisted by the creation of a new implementing agency. The creation of The Pay Equity Commission allowed the Ontario Ministry of Labour to put in place implementing officials who had the necessary skill, background and commitment to achieve pay equity objectives. As the agency was not burdened with the administration of any other statute, the achievement of Pay Equity naturally became the Commission's highest priority.¹⁴⁴

The backgrounds of the key implementing officials appointed by Peterson's Liberal government indicate they have the necessary skills to implement pay equity legislation. Furthermore, their previous experience demonstrates a history of personal goals that would be compatible with the goals of the legislation. The following people were appointed to key positions within the Pay Equity Commission:

¹⁴⁴Mazmanian and Sabatier, p. 28.

Wendy Cuthbertson, former member of the Canadian Auto Workers, activist in the Fleck strike of 1978 and participant in the Equal Pay Coalition, became Director of Information and Education Services at the Commission; Beth Symes, a feminist lawyer and founder of the Women's Legal Education Action Fund (LEAF), became Chair of the Pay Equity Hearings Tribunal; Janis Sarra, a former Ontario Federation of Labour critic of the Ontario Consultation Panel on Pay Equity, became a vice-chair of the Hearings Tribunal after serving a short stint with the Ontario Labour Relations Board; Geri Sheedy, former activist with the Retail Wholesale and Department Store Union in the Eaton's strike of 1984-84 and active member of the Equal Pay Coalition, became a member of the Hearings Tribunal representing employees; Susan George, former member of CUPE and the Ontario Federation of Labour Women's Committee, also became a member of the Hearings Tribunal representing employees; finally, Brigid O'Reilly, former executive board member of the National Action Committee on the Status of Women (NAC) and LEAF member, was appointed in the spring of 1989 to head the Pay Equity Commission, ...¹⁴⁵

It is important to note that most of the key officials are women with strong backgrounds in labour, the law and other organizations concerned with the rights of women. Clearly such backgrounds would be compatible with the objectives of the Pay Equity Act.

A second way of determining the commitment of the Ontario Pay Equity implementing officials is to review some of the written decisions of the Pay Equity Tribunal. After reviewing several Tribunal decisions, there is no evidence of decisions being written that contravene the goals of the legislation. The Tribunal has ruled on areas such as the duty of the employer to bargain in good faith and disclose information, as well as determining who has the right to participate in a hearing.¹⁴⁶ In both of these cases decisions were made that contributed to a workplace environment conducive to achieving pay equity. Employers were held obligated

¹⁴⁵Cuneo, p. 154.

¹⁴⁶Annual Report, 1989-1990, pp. 29-36.

to provide unions with pay structures for job classes outside the collective bargaining environment and only participants with a direct stake in complaints were allowed to participate (job evaluation consultants were ruled not to have a direct stake in the process). In each of these cases, the spirit of the legislation as well as its goals were upheld.

A third decision made by the Hearings Tribunal was an important landmark for furthering the objectives of pay equity legislation. In this decision, the Tribunal wrestled with the interpretation of who the employer is. In the case of the Ontario Nurses Association (ONA) versus the Regional Municipality of Haldimand-Norfolk, the ONA sought to have the Haldimand-Norfolk regional police force included in the "establishment" of the Regional Municipality of Haldimand-Norfolk so that the police could be used as a male job class for comparative purposes. In the Tribunal decision, four criteria were outlined as important factors in determining the question of who is the employer. The questions included determining who has financial accountability, who bears the responsibility for compensation practices, what the nature of the business is, and what is consistent with the goals in the pay equity act.¹⁴⁷ After applying these criteria, the Tribunal held that the Municipality was indeed the employer and therefore the regional police force was also included in the definition of the establishment. This decision was subsequently upheld in the Ontario Supreme Court.¹⁴⁸

¹⁴⁷Pay Equity Reports, Volume 1, Eds. Mary Anne McKellar and Phyllis Gordon (Toronto: 1990), Case 0001-89, Section 51.

¹⁴⁸National Committee on Pay Equity, 1990, p. 75.

The clarification of employer was an important decision that allowed many more working women to be included under the scope of the Act. For example, public libraries were no longer deemed to be employers, rather the municipality within which they were located was deemed to be the employer. This particular case is a good example of how implementing officials have been sympathetic to the goals of pay equity legislation.

One of the other important implementing officials for the Pay Equity Act is the review officer. The review officer is the implementing official in the trenches and on the front line. Section 34 of the Act gives the Pay Equity office the authority to designate one or more employees as review officers and each officer has the power to monitor target group compliance and to receive and investigate or reject complaints forwarded to the Pay Equity Office.¹⁴⁹

The monitoring and investigation of pay equity will no doubt prove to be a complex technical process requiring a broad range of administrative, labour relations, legal, and technical compensation skills to varying degrees in appropriate circumstances. The legislation makes no provision for qualifications of Review Officers ...¹⁵⁰

Information from the Pay Equity Commission annual report indicates that the backgrounds of review officers reflect the broad range of skills required for the job. Backgrounds of the review officers

¹⁴⁹John G. Kelly, Pay Equity Management (Canada: CCH Canadian Limited, 1988), p. 82.

¹⁵⁰Kelly, p. 82.

include experience in "management and union in the public and private sectors, labour relations ..., job evaluation and compensation, employment standards, human rights, ..., workers' compensation, health care and social services, ..." ¹⁵¹ The diversity of experience encompassed by the review officers gives them the necessary skills and the corresponding commitment to pay equity goals.

Therefore three factors demonstrate that the commitment of implementing officials has been a positive factor in achieving pay equity goals. The Pay Equity Commission is a new implementing agency and exists only to achieve pay equity goals. The key officials have qualifications that would indicate a strong commitment to pay equity goals and the decisions or output of the agency has demonstrated their commitment to the legislation's goals.

Formal Access By Outsiders

One of the positive provisions of the Pay Equity Act for successful implementation has been the addition of a complaint mechanism to the Act's proactive model. The provision of the complaint mechanism gives the beneficiaries of the legislation an opportunity to place a formal complaint against their employer. In addition the Act allows a complainant to have a representative appear before the Tribunal so that their complaint can be made anonymously. ¹⁵² As the legislation provides little incentive for employers to comply, the complaint mechanism is particularly

¹⁵¹Annual Report, 1989-1990, p. 11.

¹⁵²Pay Equity Act, Section 32(4).

important.

The number of cases being dealt with at the Pay Equity Commission illustrates that employees are taking advantage of their formal standing as petitioners. At the end of fiscal 90/91, the Review Services Branch of the Pay Equity Office had closed 540 cases, with an additional 1,429 cases in progress at the end of the fiscal year.¹⁵³ Each of these cases were initiated by an employee complaint or the inability of management and union representatives to reach an agreement. The only downside to this scenario is that there is no way of knowing the number of employees who are unaware of their rights as petitioners or what fraction of those who have a justified complaint do in fact complain.

Another interesting trend offered by the type of complaints received is that the majority of complaints are related to employees within the union environment. In the Commission's annual report, six cases settled by review officers are cited and each one of them involved a union setting.¹⁵⁴ This trend is not surprising as union employees would be more likely to be made aware of their rights under the pay equity legislation. Therefore, the complaint process is most important for employees in the union setting and weakest for those employees working for an employer with less than 100 employees where the employees are unlikely to have a clear understanding of their pay equity rights.

¹⁵³Annual Report, 1990-1991, p. 22.

¹⁵⁴Annual Report, 1989-1990, pp. 12,13.

Nonstatutory Variables

Economic Conditions

The economic health of Ontario has played a major role in the implementation of pay equity. As Mazmanian and Sabatier point out, changing socioeconomic conditions can affect the public's, as well as relevant interest groups', perception of the importance of the problem.¹⁵⁵ In Ontario, changing economic conditions have been a negative factor influencing the implementation of pay equity. Just as the boom of the 1980's was a substantial factor in the Liberal government being able to leverage sufficient support for the Pay Equity Act, tougher economic conditions have made resources scarce and employers less likely to comply. Daniel Drache cites a recent Premier's Council of Ontario report that describes a "province fighting for its economic life" where the number of companies going out of business is higher than the number of companies starting a business.¹⁵⁶

Given the costs of achieving pay equity in terms of wages and administrative costs, declining economic conditions will negatively affect the likelihood of employers complying with the legislation. Already the provincial government has backed off from their original objective of achieving pay equity by 1995 and has amended the statute to allow for achievement of the goal in 1998.

The lesson learned in another jurisdiction that successfully implemented pay equity legislation provides insight into why

¹⁵⁵Mazmanian and Sabatier, p. 31.

¹⁵⁶Daniel Drache, "The Way Ahead for Ontario," in Getting on Track Social Democratic Strategies for Ontario, ed. Daniel Drache (Montreal: McGill-Queen's University Press, 1992), p. 225.

economic conditions have remained a large negative factor for Ontario. In the case study of the implementation of a comparable worth policy in San Jose, Janet Flammang describes how a period of fiscal constraint and tough economic conditions could have derailed comparable worth policy. "New social programs like comparable worth are frequently the first casualties with the advent of conservative Republican administrations or in fiscally hard times."¹⁵⁷ The implementors in San Jose were able to overcome fiscal constraints because of several other positive factors. In total, Flammang identifies nine factors contributing to success including strong incentives for all the parties involved to achieve the legislative goals, sufficient agency resources, clear directives, and simple, close proximity for the implementors that minimized the number of veto points.¹⁵⁸ The difference in Ontario is that private sector employers are further removed from the implementing agency and they do not have sufficient incentives or sanctions to ensure a high rate of compliance. Without these incentives, tough economic conditions give employers a reason to delay or forfeit complying with the legislation. Therefore, the economic conditions in Ontario can be counted as a negative factor influencing implementation only because the government was unwilling to enact a more coercive implementation regime.

Public Support

Public support for policy initiatives has been shown to

¹⁵⁷Janet A. Flammang, "The Implementation of Comparable Worth in San Jose," in Comparable Worth, Pay Equity and Public Policy, eds. Rita Mae Kelly and Jane Bayes (New York: Greenwood Press, 1988), p. 164.

¹⁵⁸Ibid., pp. 184,185.

influence legislators in an episodic manner. Downs hypothesizes that after a period of public concern, an awareness of the costs of solving the problem may take the issue off the public agenda.¹⁵⁹ If an issue's salience is measured in terms of its media exposure, Downs theory appears to be born out in the case of pay equity. Table 5 summarizes the newspaper exposure of pay equity in The Toronto Star and The Globe and Mail from 1987 to 1993. The pattern of exposure is quite clear. During the year the legislation was passed, pay equity was a salient and newsworthy issue. In 1989, when implementation of the legislation began to take effect, there were still 26 articles that mentioned pay equity. However, by 1992 and 1993, there were less than 10 articles on pay equity each year. Therefore, if newsprint exposure is used as one indicator of public support, pay equity is falling off the agenda and there is not as much pressure on legislators to extend pay equity or enforce the proactive regime put in place by the legislation.

Table 6 Pay Equity - Media Exposure

Pay Equity Articles in <u>The Toronto Star</u> or <u>The Globe and Mail</u>				
Year	Front Page	Front Page of Section	All Other	Total
1993	0	0	7	7
1992	1	0	8	9
1991	2	0	18	20
1990	4	9	8	21
1989	2	5	19	26
1988	1	2	3	6
1987	3	4	43	50

Source: The Toronto Star, The Globe and Mail, Jan. 1, 1987 - Dec. 31, 1993.

¹⁵⁹Anthony Downs, "Up and down with ecology - the 'issue-attention cycle'," The Public Interest, 28 (1972), p. 43.

One further issue which complicates keeping pay equity on the public agenda is that pay equity is not a simple, straightforward concept. When the legislation was passed in 1987, a Gallup poll "found 87 per cent of Ontarians do not understand the purpose of the legislation."¹⁶⁰ In fact, 38% of the respondents thought pay equity was the same as equal pay for equal work legislation.¹⁶¹ This confusion regarding pay equity legislation, combined with the declining exposure for pay equity in the media, detracts from the successful achievement of pay equity in Ontario. However, too much emphasis on the role of public support would be misleading as several interest groups have played an active role in lobbying the government on pay equity.

Attitudes and Resources of Constituency Groups

In Chapter 2, the Ontario Equal Pay Coalition was referred to as a significant influence in lobbying the Ontario government to enact Pay Equity legislation. The Coalition represents over one million women and men in 35 unions, as well as other professional and women's groups. Although supportive of pay equity in general, the Equal Pay Coalition has criticized the Act because of its lack of universal coverage.¹⁶² In Dec. 1988, the Equal Pay Coalition made several recommendations for amendment to the Act.¹⁶³ These recommendations included extending the Act to employers with less than ten employees, including all casual workers, allowing

¹⁶⁰"Purpose of pay-equity legislation is found confusing by Ontarians," The Toronto Globe and Mail, 3 June, 1987, p. A9.

¹⁶¹Ibid., p. A9.

¹⁶²Cuneo, p. 7.

¹⁶³National Committee on Pay Equity, p. 90.

proportionate comparisons when equal value comparisons are not available, and establishing a provincial pay equity fund to cover the costs of paying women fair wages in the public sector. Clearly the members of the Coalition saw several weaknesses in the Act. In order to extend their full support, substantial changes to the statute would be required.

Other examples can be cited of groups that sought to extend the coverage of the Pay Equity Act. The Ontario Coalition for Better Child Care, comprised of local day care advocacy groups, parents, day care centres, union locals and women's organizations, also sought to extend the legislation to include women who currently lacked male comparators.¹⁶⁴

Although many examples of pay equity supporters can be found within labour and organized women's groups, support for pay equity within the business sector is not easily found. Both the Canadian Federation of Independent Businesses and the Canadian Manufacturers Association opposed pay equity legislation.¹⁶⁵

In terms of how these groups have affected the implementation of pay equity, the groups lobbying for increased coverage for women have won some concessions. However pay equity is not as salient an issue in the media now as it was seven years ago, and the government has been able to walk a political tightrope balancing the interests of business, women and labour.

¹⁶⁴National Committee on Pay Equity, p. 60.

¹⁶⁵Ibid., p. 61.

Conclusion

Pay equity legislation cannot be expected to be a panacea for correcting all the problems of wage discrimination. Even when implementation of pay equity legislation can be characterized as a success, other issues pertaining to fairness must be addressed. As Lowe and Wittig identified, "it is only one of several mechanisms, which include equal pay for equal work, affirmative action and equal employment opportunity, and minimum wage laws."¹⁶⁶ However, pay equity legislation can be an important tool in eliminating at least a portion of wage discrimination. Ontario's pay equity legislation has definitely resulted in some progress towards pay equity for some women. Although there were some strengths in the way the legislation structured the variables for implementation, there were some significant weaknesses that have impeded progress toward redressing wage discrimination.

One of the variables that allowed for pay equity implementation was the identification of discriminatory behaviour as one of the factors causing the wage gap. Obviously, this factor in itself made the legislation progressive and groundbreaking. However, when analyzing the implementation of pay equity, Mazmanian and Sabatier's model underemphasizes the issues involved in the tractability of the problem. Clearly, the fact that the legislation required a large change in behaviour, covered a very diverse and large group, and that performance indicators would be challenging to develop at best, plays a large role in the successful implementation of pay equity. If Ontario legislators

¹⁶⁶Lowe and Wittig, p. 244.

had paid more attention to the issues inherent in the tractability of the problem, some of the implementation problems may have been alleviated. Mazmanian and Sabatier's model would be stronger if the independent variables were more directly linked to some of the problem's tractability issues.

A second variable influencing implementation was the goal of pay equity legislation. The overarching goal was straight forward and all the provisions of the Act contributed directly to the achievement of the goal. However, measurement of the achievement of that goal was not clearly defined or allowed for in the provisions of the Act.

A third variable that strengthened the implementation of pay equity was the strong hierarchical integration of the implementing agency. The accountability of the Pay Equity Office and the Hearings Tribunal was clearly laid out in the Act and the number of veto points were minimized. In addition, the formal decision rules of the Hearings Tribunal ensured the Tribunal would be committed to the legal objectives of the Act. Implementing officials had the necessary skill and commitment to work towards achieving pay equity objectives and as a result of the agency's singular focus, officials had no other priorities. In addition, employees had access as formal petitioners to the implementing agency and could consequently contribute to the achievement of pay equity goals.

Despite these positive factors working towards the achievement of pay equity goals, a few critical variables acted as weak links in the implementation regime. The objectives of the Act were clear, but the Act lacked the necessary coercion to ensure employers complied with the legislation. This lack of incentives

for employers to comply with the legislation reflects the trade-off legislators made. Legislators opted to tackle wage discrimination with aggressive goals and sacrifice some employer compliance by making the legislation somewhat palatable to business. In the case of pay equity, this variable was one of the most important for determining the degree of success of the Act's implementation. Mazmanian and Sabatier's model easily skims over the difficult issues legislators are faced with when determining the degree of coercion they are willing to apply. Under the aegis of hierarchical integration, sanctions, incentives and deterrence mechanisms are too easily lost and underemphasized. Another variable needs to be added to Mazmanian and Sabatier's model to ensure that important issues associated with the level of government coercion or intrusion are not lost under the misleading title of hierarchical integration.

A further negative variable was the insufficient financial resources that were allocated to the Commission for the monitoring of employers. The Act gave the Commission the authority to monitor compliance, but the reality of scarce resources has made that impossible. Fiscal restraint has also affected the delivery of pay equity adjustments by the provincial government. Finally, and directly related to scarce resources, declining economic conditions in Ontario have negatively influenced the government's commitment to pay equity as well as employer's commitment to pay equity.

Recommendations to improve the successful implementation of Ontario's pay equity legislation would centre around the restructuring of two important variables. First, additional financial resources should be allocated to the Commission to allow

the Review Services Branch to carry out their monitoring function. Second, employers require additional incentives to comply with the legislation. Increased monitoring would be one incentive to comply with the legislation, and a requirement to submit proof of pay equity payroll adjustments or a brief explanation of why no adjustments were given would be another. These recommendations would allow the Pay Equity Commission to conduct random audits and the information submitted by employers could be used to measure the success of pay equity. Given the political nature of the decision not to implement a more coercive regime, the most palatable recommendation would be to increase financial resources available to the Commission for the monitoring function.

Appendix A
Summary of the Ontario Pay Equity Act

Bureaucratic Agency Responsible for Implementation	Pay Equity Commission
Implementation Model	Pro-active and complaint
Coverage	All Public Sector and Private sector with 10 or more employees
Job Comparison Approach	Job-to-Job proportional value proxy comparison
Gender Predominance	60% Female 70% Male (historical incumbency/gender stereotypes of work)
Establishment Definition	Geographic, i.e. a county, territorial district or regional municipality
Exemptions	Seniority, Temporary training assignments, merit pay, skills shortage, red-circling
Pay Adjustments	1% of payroll per year
Adjustment Period	Public Sector by 1998 Private sector until pay equity is achieved. Proxy - 1% of payroll per year until pay equity is achieved
Penalty for Noncompliance	\$5,000 for an individual, maximum of \$50,000 for all others

Source: Information in a letter on pay equity in Canadian jurisdictions from Margaret Smiley at the Pay Equity Office on Dec. 22, 1993.
The Pay Equity Act, R.S.O. 1990, c. P.7.

Selected Bibliography

- Armstrong, Pat and Hugh Armstrong. "Lessons from Pay Equity." Studies in Political Economy, 32 (Summer, 1990), 29-54.
- Bakker, Isabella. "Pay Equity and Economic Restructuring: The Polarization of Policy?" in Just Wages A Feminist Assessment of Pay Equity. Eds. Judy Fudge and Patricia McDermott. Toronto: University of Toronto Press, 1991.
- Bardach, Eugene. The Implementation Game: What Happens After a Bill Becomes a Law. Cambridge, Massachusetts: The MIT Press, 1977.
- Canadian Labour Law Reports. Ontario Pay Equity Legislation for Broader Public and Private Sectors. Canada: CCH Canadian Limited, 1986.
- Crawford, Trish. "Pay equity in pink-collar ghetto." The Toronto Star, 21 June 1987, pp. B1,B2.
- Cuneo, Carl J. Pay Equity The Labour-Feminist Challenge. Toronto: Oxford University Press, 1990.
- Derthick, Martha. New Towns In-Town. Washington, D.C.: The Urban Institute, 1972.
- Downs, Anthony. "Up and down with ecology - the 'issue attention cycle'." The Public Interest, 28 (1972).
- Drache, Daniel. "The Way Ahead for Ontario." in Getting on Track Social Democratic Strategies for Ontario. Ed. Daniel Drache. Montreal: McGill-Queen's University Press, 1992.
- Egri, Carolyn P. and W.T. Stanbury. "How Pay Equity Legislation Came to Ontario." Canadian Public Administration, 32-2 (1989), 274-303.
- Elmore, Richard F. "Backward Mapping: Implementation Research and Policy Decisions." in Studying Implementation Methodological and Administrative Issues. ed. Aaron Wildavsky. Chatham, New Jersey: Chatham House Publishers, Inc., 1982.
- Evans, Sara M. and Barbara J. Nelson. "Comparable Worth for Public Employees: Implementing a New Wage Policy in Minnesota." in Comparable Worth, Pay Equity and Public Policy. Eds. Rita Mae Kelly and Jane Bayes. New York: Greenwood Press, 1988.
- Flammang, Janet A. "The Implementation of Comparable Worth in San Jose." in Comparable Worth, Pay Equity and Public Policy. Eds. Rita Mae Kelly and Jane Bayes. New York: Greenwood Press, 1988.

- Fudge, Judy and Patricia McDermott. "Conclusion: Pay Equity in a Declining Economy: The Challenge Ahead." in Just Wages A Feminist Assessment of Pay Equity. Eds. Judy Fudge and Patricia McDermott. Toronto: University of Toronto Press, 1991.
- Goggin, Malcolm L. Implementation Theory and Practice Toward a Third Generation. Illinois: Scott, Foresman/Little, Brown Higher Education, 1990.
- Gorrie, Peter. "Many firms report equity raises." The Toronto Star, 29 Dec. 1989, pp. F1,F2.
- "Pay equity increases to add 2% to payroll." The Toronto Star, 20 Jan. 1990, pp. C1,C2.
- Gunderson, Morley. "Implementation of Comparable Worth in Canada." Journal of Social Issues, 45-4 (1989), 209-222.
- Haignere, Lois. "Pay Equity Implementation: Experimentation, Negotiation, Mediation, Litigation, and Aggravation." in Just Wages A Feminist Assessment of Pay Equity. Eds. Judy Fudge and Patricia McDermott. Toronto: University of Toronto Press, 1991.
- Hegtvædt, Karen A. "Fairness Conceptualizations and Comparable Worth." Journal of Social Issues, 45-4 (1989), 81-98.
- Hossie, Linda. "NDP underestimated bill for pay equity, commissioner says." The Globe and Mail, 16 Oct. 1990, pp. A1,A2.
- Kelly, John G. Pay Equity Management. Canada: CCH Canadian Limited, 1988.
- Kim, Marlene. "Gender Bias in Compensation Structures: A Case Study of Its Historical Basis and Persistence." Journal of Social Issues, 45-4 (1989), 39-50.
- Lerner, Mark. "Pay equity law discriminates for women's jobs." The Toronto Star, 23 Jan. 1989, p. C8.
- Lewis, Debra J. Just Give Us the Money: A Discussion of Wage Discrimination and Pay Equity. Vancouver: Women's Research Centre, 1988.
- Lowe, Rosemary Hays and Michele Andrisin Wittig. "Comparable Worth: Individual, Interpersonal, and Structural Considerations." Journal of Social Issues, 45-4 (1989), 223-246.
- Mackenzie, M.E. "Planning and Implementing Pay Equity in 100 to 499 Employee Companies." in Employee Relations and Implementing Pay Equity. Mississauga: Insight Press, 1990.

McDermott, Patricia. "Pay Equity Challenge to Collective Bargaining in Ontario." in Just Wages A Feminist Assessment of Pay Equity. Eds. Judy Fudge and Patricia McDermott. Toronto: University of Toronto Press, 1991.

McKellar, Mary Anne and Phyllis Gordon, Eds. Pay Equity Reports. Volume 1. Toronto: 1990.

McMonagle, Duncan. "Law excludes half of women from pay equity." The Globe and Mail, 17 Jan. 1989, pp. A1,A2.

Makovec, Katerina. "Broader Public Sector Pay Equity and Bill 102." Just Wages, 2-4/3-1 (1992/1993), 15-16.

Mazmanian, Daniel A. and Paul A. Sabatier. Implementation and Public Policy. Cal: Scott Foresman and Company, 1983.

National Committee on Pay Equity. Legislating Pay Equity to Raise Women's Wages: A Progress Report on the Implementation of the Ontario, Canada Pay Equity Act. Dec. 1990.

Ontario Ministry Responsible for Women's Issues. Green Paper on Pay Equity. Toronto: Nov., 1985.

Ontario Pay Equity Commission. Annual Report. Toronto: 1989-1990.

- Annual Report. Toronto: 1990-1991.

- How to Do Pay Equity Job Comparisons. Toronto: 1989.

- Implementing Pay Equity in the Workplace. Toronto: 1990.

- News Release. Toronto: June 29, 1993.

- Report to the Minister of Labour on Sectors of the Economy which are Predominantly Female. Toronto: January, 1989.

- Step by Step to Pay Equity: Using the Proportional Value Comparison Method. Toronto: 1993.

Ontario Pay Equity Office. Outcomes of Pay Equity for Organizations Employing 100 to 499 Employees in Ontario. Toronto: Canadian Facts, March 1992.

- Outcomes of Pay Equity for Organizations Employing 50-99 Employees in Ontario. Toronto: Canadian Facts, March 1993.

- Pay Practices of Private Sector Companies with 10 to 99 Employees in Ontario. Toronto: October, 1993.

- O'Reilly, Brigid. "Pay Equity: The View from the Commission." in Pay Equity in Ontario: a manager's guide. eds. David W. Conklin and Paul Bergman. Canada: The Institute for Research on Public Policy, 1990.
- "Purpose of pay-equity legislation is found confusing by Ontarians." The Globe and Mail, 3 June 1987, p. A9.
- Pressman, Jeffrey L. and Aaron Wildavsky. Implementation How Great Expectation in Washington are Dashed in Oakland. Berkeley: University of California Press, 1973.
- Quaid, Maeve. Job Evaluation: The Myth of Equitable Assessment. Toronto: University of Toronto Press, 1993.
- Remick, Helen. "Comparable Worth in Washington State." in Comparable Worth, Pay Equity, and Public Policy. Eds. Rita Mae Kelly and Jane Bayes. New York: Greenwood Press, 1988.
- Revised Statutes of Ontario. Pay Equity Act, Ch. P.7, 1990.
- Statistics Canada. Selected Income Statistics. Ottawa: Industry, Science and Technology Canada, 1993, 1991 Census of Canada, Catalogue number 93-331
- Historical Labour Force Statistics. Ottawa: Minister of Supply and Services Canada, 1990, Catalogue 71-201.
- Stoker, Robert P. Reluctant Partners. Pittsburgh: University of Pittsburgh Press, 1991.
- Stone, Deborah A. Policy Paradox and Political Reason. U.S.A.: Harper Collins Publishers, 1988.
- Taylor, Susan H. "The Case for Comparable Worth." Journal of Social Issues, 45-4 (1989), 23-38.
- Todd, Paula. "Pay rulings may cost Ontario billions." The Toronto Star, 19 Mar. 1993, p. A4.
- Toughill, Kelly. "Ontario pay equity bill up for intense scrutiny." The Toronto Star, 1 Feb. 1993, p. A4.
- "40,000 women to receive pay equity advance." The Toronto Star, 19 Mar. 1993, p. A4.
- Weimer, David L. and Aidan R. Vining. Policy Analysis Concepts and Practice. New Jersey: Prentice Hall, 1992.