

# Student Public Policy Essays

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## Undergraduate

Pay Equity and Community Based Organizations  
in Saskatchewan: Paradoxes and Challenges

*Charis Kamphuis*  
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## Graduate

The Fragmentation of Citizenship and  
Community: Disability Rights, Economic  
(In)Security, and Social Policy

*Kama Soles*  
*University of Saskatchewan*

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Saskatchewan Institute of Public Policy

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# STUDENT PUBLIC POLICY ESSAYS 2006-2007

In an effort to engage the student population at the University of Regina, University of Saskatchewan, and the First Nations University of Canada and to better utilize the pool of talent that exists in this province, the Saskatchewan Institute of Public Policy (SIPP) developed the annual Student Public Policy Essay Contest. Essays from both graduate and undergraduate levels are judged by an independent group of scholars and policy practitioners. The two winning submissions are made available to the public through this publication.

Essays must address a significant issue of public policy in areas such as social and/or economic public policy, health studies, rural studies, Aboriginal policy, environmental policy, governance, or citizenship and must result from a course assignment.

SIPP is pleased to present the following winning submissions from the 2006-2007 SIPP Student Essay Contest:

## Undergraduate Essay

*Pay Equity and Community Based Organizations in Saskatchewan: Paradoxes and Challenges*

by Charis Kamphuis  
University of Saskatchewan

## Graduate Essay

*The Fragmentation of Citizenship and Community: Disability Rights, Economic (In)Security, and Social Policy*

by Kama Soles  
University of Saskatchewan

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PAY EQUITY AND COMMUNITY BASED ORGANIZATIONS IN SASKATCHEWAN:  
PARADOXES AND CHALLENGES

*By CHARIS KAMPHUIS*

SIPP 2006-2007 UNDERGRADUATE ESSAY CONTEST WINNER



## I. INTRODUCTION

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Gender inequalities continue to pervade the Canadian labour market. The significant difference between the earnings of full-time female and male workers, known as the “wage gap”, is a global problem. In Canada, the wage gap is measured at about 30%; full-time female workers earn 70.8% of what their male counterparts earn.<sup>1</sup> The wage gap is a material manifestation of entrenched gendered inequalities in every sphere of life: cultural, social, political and economic.<sup>2</sup> That portion of the wage gap caused by discrimination in wages<sup>3</sup> has been addressed by two distinct anti-discrimination concepts: equal pay and pay equity. Women began their struggle for equality in the workplace by arguing for “equal pay”, meaning the right to earn the same wages as male employees doing the same job. However, it quickly became apparent that the notion of “equal pay” is limited in that it fails to capture the systemic wage discrimination made possible by the occupational segregation of women.

The concept of “pay equity”, meaning equal pay for work of equal value, was fashioned to address systemic wage disparities between men and women. It pointed to the fact that the more that paid work resembles unpaid work traditionally carried out in the home, the more likely that it is performed by female workers<sup>4</sup> and undervalued in the labour market, regardless of the contribution to the employers’ profits or the health of the economy.<sup>5</sup> Pay equity is an attempt to recognize and value the skills involved in female dominated jobs and address systemic gender-based wage discrimination.

Despite clear evidence of the wage gap and the prevalence of systemic wage discrimination, Saskatchewan does not have provincial pay equity legislation. The analysis put forward in this paper will focus on the inequities experienced by community based organizations in Saskatchewan. This sector provides a salient example of the urgent need for provincial legislation to address pay inequity in Saskatchewan particularly in light of contemporary changes to the provision of social services associated with rise of the “New Economy”. The experiences of community based organizations demonstrate that the current regime for addressing pay inequity in Saskatchewan is inadequate. The institutional and legal framework available is incapable of achieving pay equity in anything more than a token, piecemeal, *ad hoc* fashion. Pay equity is a fundamental human right and pro-active pay equity legislation is essential to its achievement.<sup>6</sup> As such, the Saskatchewan government must take its obligations to promote substantive equality seriously and implement stand-alone, proactive pay equity legislation, covering all workers in every economic sector. As a latecomer to the Canadian pay equity statutory scene, Saskatchewan could benefit from the lessons learned in other jurisdictions in the development of its own provincial pay equity legislation.

In Canada, the wage gap is measured at about 30%; full-time female workers earn 70.8% of what their male counterparts earn. The wage gap is a material manifestation of entrenched gendered inequalities in every sphere of life: cultural, social, political and economic.

## II. PAY EQUITY IN CANADA

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Gender-based occupational segregation is a defining characteristic of the Canadian workforce.<sup>7</sup> The gender concentration of jobs makes it possible to pay men and women differently for work of the same value.<sup>8</sup> To address the systemic undervaluation of female dominated work, pay equity methodologies use gender neutral criteria<sup>9</sup> to compare the skills, effort, and responsibility involved in female and male dominated jobs to determine whether wage disparities are justified. The goal of pay equity is to improve women's wages and challenge the engrained assumption that women's work is less valuable than men's.<sup>10</sup>

Pay equity represents a limited critique of the market in that it challenges the idea that the market assigns value to paid work in a manner that is neutral and natural. Rather, its premise is that the economic and social valuation of work is a profoundly gendered process. As such, addressing the wage gap involves identifying the skill, effort, and responsibilities involved in a particular task, and then assigning economic worth to these tasks.<sup>11</sup> What is identified as skill and therefore valued is a matter of definition and power—definitions are negotiated in the context of unequal power relations between employees and employers, as well as between men and women.<sup>12</sup> Thus, pay equity involves making visible many of the skills that are required in female dominated occupations, but that are made invisible by traditional job evaluation standards based on male dominated work.<sup>13</sup>

The implementation of pay equity legislation in Canada has not been uniform. Four provinces, including Saskatchewan, do not have specific pay equity legislation.<sup>14</sup> Beginning with Manitoba in 1985, proactive pay equity legislation was enacted in the remaining six Canadian provinces. Proactive legislation in Manitoba, Nova Scotia, Prince Edward Island, and New Brunswick is limited to the public sector, while Ontario and Quebec's legislation encompasses all economic sectors.<sup>15</sup> In contrast to these provinces, the federal government has continued to implement the complaint based system created by the *Canadian Human Rights Act*<sup>16</sup> in 1977 and the *Equal Wage Guidelines, 1986*.<sup>17</sup> Section 11 constitutes the pay equity provision of the *Act*:

11(1) It is a discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value.

Widespread discontent with section 11 and the federal pay equity regime prompted the Liberal government to create the Pay Equity Task Force with a broad mandate to develop recommendations to improve the legislative framework. In 2004, the Task Force published a comprehensive report with over 100 recommendations oriented around its ground-breaking proposal: new stand-alone, proactive pay equity legislation, characterized as human rights legislation.<sup>18</sup> The Task Force asserted that pay equity is a fundamental human right that can only be respected if pay equity obligations are positive. In other words, the onus must be on employers to take the initiative to eliminate compensation practices that are discriminatory.<sup>19</sup> According to the Task Force, the complaint based system suffered from numerous flaws, not least of which is the fact that, in practice, it is only available to those with the resources and security needed to challenge their employers.<sup>20</sup>

Two notable themes emerge from the Task Force report. First, the Task Force states that pay equity legislation must be comprehensive, cover as many types of employment relationships as possible, and allow for broad comparisons.<sup>21</sup> This position results in a set of recommendations designed to take into account the systemic nature of pay inequity and the changing character of the economy and employment relationships. Second, the Task Force recommends an expansion of the federal pay equity mandate to address systemic wage discrimination against racialized people, Aboriginal people, and people with disabilities.<sup>22</sup> As a whole, the Task Force report represents a comprehensive survey of best practices regarding technical and methodological issues, and prescribes a complete institutional and legal program for pay equity at the federal level.<sup>23</sup>

The experience of pay equity in Canada over the last 20 years must be understood in the context of the advancement of neo-liberalism and the emergence of the “New Economy.”<sup>24</sup> In terms of economic policy, this entails (*inter alia*) the dismantling of the welfare state, privatization, economic restructuring, and supply-side macro-economic measures.<sup>25</sup> In terms of employment conditions, the result has been the decline of the standard employment relationship and the predominance of flexible forms of employment and contingent work.<sup>26</sup> The decline of the welfare state means that social needs are now met through the caring work<sup>27</sup> performed by community-based organizations (CBOs), which, ironically, are often funded primarily by the state.<sup>28</sup> Most importantly, this female dominated sector operates under chronically precarious employment conditions, such as low wages, lack of job security,<sup>29</sup> and minimal benefits.

The CBO sector has more often than not found itself outside the scope of traditional pay equity legislation. CBOs are often small, exclusively dedicated to caring work, and without male dominated jobs available for comparison.<sup>30</sup> In an effort to address this problem, a 1993 amendment to the *Ontario Pay Equity Act*<sup>31</sup> introduced the proxy method of comparison. This allowed women working in daycare centres, home care agencies, small nursing homes, and women’s shelters to achieve pay equity by comparing themselves to employees in larger workplaces that had already achieved pay equity.<sup>32</sup> Many of the recommendations put forth by the Pay Equity Task Force are designed to remedy the effective exclusion of the CBO sector from federal pay equity legislation.<sup>33</sup> The systemic nature of pay inequity and the occupational segregation of women in caring work, combined with state and market restructuring, necessitates a pay equity regime that can remedy gender-based wage discrimination in the CBO sector. Recent events in Saskatchewan underscore the salience of this issue.

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### III. PAY EQUITY IN SASKATCHEWAN

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#### 1. Saskatchewan Pay Equity Landscape

The Saskatchewan government has yet to enact provincial pay equity legislation in spite of significant pressure from the labour sector and other community groups. A recent gender analysis of the Saskatchewan labour market reveals that, as a whole, Saskatchewan women performing full-time paid work earn 84% of what full-time male workers earn.<sup>34</sup> This overall pay inequity is exacerbated for more vulnerable women.<sup>35</sup> Women make up 64% of employees in the five lowest paid occupational groups.<sup>36</sup> Women with only a grade 12 education earn 77% of what is earned by comparable men, while non-unionized female workers earn 76% of the earnings of non-unionized male workers.<sup>37</sup>

There are three regimes in Saskatchewan that address pay equity to a limited degree. First, section 16 of the *Saskatchewan Human Rights Code*<sup>38</sup> is interpreted to include gender-based wage discrimination.<sup>39</sup> This provision states:

16(1) No employer shall refuse to employ or continue to employ or otherwise discriminate against any person or class of persons with respect to employment, or any term of employment on the basis of a prohibited ground.

Second, section 17 of the *Labour Standards Act*<sup>40</sup> mandates equal pay for “similar work”. Unfortunately, this phrasing amounts to something of an “equal pay” provision and thus fails to capture the full concept of pay equity, namely equal pay for work of equal value. Third, the provincial government initiated a policy framework in 1999 to guide a pay equity analysis of the public sector, including health and Crown corporations.<sup>41</sup>

The Saskatchewan government’s voluntary pay equity framework does not go far enough. First, the framework is exclusive in that its implementation is limited to certain government employees in the public sector.<sup>42</sup> This is problematic because, as discussed above, the non-unionized private sector and broader public sector workers suffer from the greatest pay inequities. Second, compliance with the policy is uncertain in that it is voluntary and likely not enforceable in court. The legal uncertainty of voluntary government commitments to pay equity was made evident in *Newfoundland (Treasury Board) v. Newfoundland and Labrador Assn. of Public and Private Employees (NAPE)*.<sup>43</sup> Similar to the Saskatchewan government, the Newfoundland government had opted to conduct a voluntary analysis of pay equity in the public sector under a Pay Equity Agreement with the major public sector unions. However, when the government realized what it would cost to pay female workers what they were owed, it enacted the *Public Sector Restraint Act*<sup>44</sup> thereby significantly altering and reducing its pay equity obligations. Since the Supreme Court of Canada in *NAPE* found that the *Public Sector Restraint Act* was constitutional, the Saskatchewan government could likewise renege on its pay equity promises under similar circumstances and without legal consequences.

The following analysis will focus on the legal and policy issues that arise from the application of the *Saskatchewan Human Rights Code* to pay equity complaints. A focus on the *Code* is appropriate for two reasons. First, the Pay Equity Task Force recommended characterizing pay equity as human rights legislation, and second, the *Code* is currently the only legal mechanism for enforcing pay equity in all Saskatchewan workplaces. The timely nature of this discussion is underscored by the fact that from April 1, 2004, to March 31, 2005, the Saskatchewan Human Rights Commission received 209 pay equity complaints.<sup>45</sup> These (unprecedented) high numbers almost doubled the number of complaints normally received by the Commission per year.<sup>46</sup> The political and legal issues brought to the fore by this surge of pay equity activity will be considered in the context of two specific complaints: the Community Based Organizations complaints and the Elizabeth Fry complaint.

## 2. *The Community Based Organizations Complaint: An Overview*

In March 2005, the Chief Commissioner of the Saskatchewan Human Rights Commission dismissed a large number of pay equity complaints against the Government of Saskatchewan, Minister of Social Services, known as the Community Based Organizations (CBO) complaints.<sup>47</sup> Of these complaints, 31 individuals, three male and 28 female, appealed their dismissals to the Saskatchewan Human Rights Tribunal.<sup>48</sup> The complaints were almost identical in nature but were dealt with individually, rather than as a class action.<sup>49</sup> All of the Complainants were employed by the Ministry of Social Services as group-home workers in several small Saskatchewan towns, and were remunerated at approximately \$11.11 per hour.<sup>50</sup> The Complainants argued for male dominated comparator groups who also performed work within the Public Service Commission,<sup>51</sup> and were remunerated between \$17.76 and \$20.72 per hour.

The Commission dismissed the CBO complaints without conducting an investigation into their merit.<sup>52</sup> According to the Chief Commissioner, because the *Code* offers no scheme to evaluate positions that are not easily comparable, the Commission's jurisdiction should be limited to pay equity complaints with clear and obvious comparator groups.<sup>53</sup> In *Canada Safeway*, the Saskatchewan Court of Queen's Bench generally affirmed the Commission's jurisdiction to investigate pay equity complaints.<sup>54</sup> Yet, the Chief Commissioner asserted that, unlike *Canada Safeway*, the male and female dominated positions in the CBO complaints were not obviously and clearly comparable. She reasoned that if the legislature had intended the Commission's jurisdiction to extend to facially dissimilar jobs, it would have provided a framework within the *Code* for performing the required complex comparisons, or it would have enacted separate pay equity legislation.<sup>55</sup>

Using the reasonableness *simpliciter* standard of review, Karen Prisciak, Q.C., of the Saskatchewan Human Rights Tribunal held that the Chief Commissioner's dismissal of the CBO complaint was not reasonable.<sup>56</sup> She noted that the objective of section 16 of the *Code* is to prevent discrimination in the workplace, one manifestation of which is paying women less than men for work of equal value. Prisciak further pointed out that the presumption that men and women's jobs are not similar, and therefore merit

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differential pay, is inherent to discriminatory institutions and cultural assumptions. As such, it was not reasonable to assume that the positions involved in the complaint were incomparable without conducting a thorough investigation. In this regard Prisciak stated:

The [Commission's] assumption that the jobs were dissimilar was based solely on the job titles without any investigation as to the accuracy of these assumptions. These assumptions support job stereotypes as opposed to any functional difference between the jobs.<sup>57</sup>

Given its mandate to fulfil the objective of section 16 as well as the overall objectives of the *Code*,<sup>58</sup> Prisciak held that the Commission is required to fully investigate and consider the merits of pay equity complaints.<sup>59</sup> In other words, the Commission cannot disregard a pay equity complaint simply because of its apparent complexity. By way of guidance to future decisions, Prisciak recommended that the Commission look to section 11(2) of the *Canadian Human Rights Act* and the accompanying *Equal Wage Guidelines* for assistance.<sup>60</sup>

### 3. *Paradoxes: The Community Based Organizations Complaint*

The *Community Based Organizations* decision communicates clear and strong support for the right to pay equity. The Tribunal affirmed a liberal interpretation of the *Code* and ensured that complex pay equity complaints in Saskatchewan can seek legal recourse through section 16 of the *Code*. However, the overall impact of the decision reveals a paradoxical result.<sup>61</sup> The following analysis demonstrates that the delegation of jurisdiction over pay equity complaints to the Commission overlooks important institutional constraints and perpetuates an unsatisfactory legal framework.<sup>62</sup>

Understanding the full impact of the *Community Based Organizations* decision requires a legal and institutional analysis of the pay equity regime it proscribes. There should be serious doubt as to whether the Saskatchewan Human Rights Commission can effectively investigate and litigate complex pay equity complaints using section 11 of the *Canadian Human Rights Act* as a guideline. Virtually all stakeholders have recognized the serious problems with section 11; indeed, its inadequacy was the central impetus for the creation of the federal Pay Equity Task Force. As Professor Bilson, former Chair of the Pay Equity Task Force, states “[t]here can be few statutory provisions that have resulted in litigation as protracted or as complicated as that over the application of s. 11.”<sup>63</sup>

Even assuming a well-functioning pay equity regime, the task of analyzing and litigating pay equity complaints is onerous and complex, and it is unworkable to assign the job to the Commission without significant institutional and legislative changes. The technical complexities of assessing pay equity complaints create a heavy financial burden that is exacerbated by the adversarial nature of the process. Yet, the Saskatchewan Human Rights Commission's budget is modest, and in the context of formidable budget cuts, only recently has the Commission been able to reduce the average length of complaint

processing and eliminate the backlog.<sup>64</sup> On a number of occasions, the Commission has affirmed its commitment to pay equity, yet long before the *Community Based Organizations* decision, the Commission asserted that pay equity cannot be achieved under the current regime. In its 1996 review of the *Code*, the Commission recommended that comprehensive, proactive pay equity legislation be enacted in Saskatchewan and administered by a separate, specialized pay equity commission.<sup>65</sup>

Thus, two points are clear: the complaint based system embodied in section 11 of the *Canadian Human Rights Act* cannot provide meaningful guidance to the Saskatchewan Human Rights Commission, and, in any case, the Commission has neither the expertise nor the resources to effectively investigate and litigate complex pay equity complaints. In the context of an unsatisfactory legislative framework and insufficient institutional resources, the *Community Based Organizations* decision unintentionally risks setting up the Commission for failure.<sup>66</sup> Also of concern is the fact that a poorly executed pay equity system risks foddering rhetorical attacks on pay equity policies.<sup>67</sup> Central to the *Community Based Organizations* decision is a liberal, living tree approach to the interpretation of the *Code*.<sup>68</sup> This is an indisputably important element of the analysis of human rights law and pay inequity is unquestionably a form of discrimination in employment as outlined in section 16 of the *Code*. However, the Tribunal should have considered whether or not the legal and institutional framework in the *Code* can support the demands created by the liberal interpretation applied. It is not prudent to use a liberal interpretation to read a significant and complex human rights objective like pay equity into the *Code* when the *Code* lacks the mechanisms necessary to facilitate the realization of this objective. Doing so may trivialize the magnitude of the change that pay equity entails and risks undermining its realization.

The Tribunal was in a difficult position, and it understandably found that denying pay equity Complainants any recourse whatsoever was not acceptable given that the *Code* prohibits discrimination. Yet, an analysis of the broader legislative and institutional context reveals that the outcome of the *Community Based Organizations* decision is paradoxical: it ensures formal access to pay equity, while its substantive effect is to perpetuate the denial of justice to undervalued Saskatchewan women. It is also worth wondering if the maintenance of formal recourse for pay equity complaints indirectly weakens the political pressure for substantive pay equity legislation in Saskatchewan by creating the perception that the pay equity in Saskatchewan is already being addressed. Thus the decision may inadvertently accommodate the provincial government's political apathy to date toward pay equity. The following section considers how the issues at play in the *Community Based Organizations* decision were addressed in the Elizabeth Fry compliant, again with paradoxical results for women, CBOs, and pay equity in Saskatchewan.

#### 4. *The Elizabeth Fry Complaint: An Overview*

The Elizabeth Fry complaint was initiated with the Saskatchewan Human Rights Commission in 2001 by the Women's Community Training Residence (WCTR) workers. The WCTR was operated by the Elizabeth Fry Society of Saskatchewan and

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funded by the Saskatchewan Department of Justice. There are six Community Training Residences (CTRs) in Saskatchewan, five for men and one for women. The Department of Justice directly operated the Men's Community Training Residences (MCTRs) and contracted out the WCTR work to the Elizabeth Fry Society. The residences offered a place for inmates to serve part of their jail sentence in the community and to learn skills to help them re-integrate into society. Before Elizabeth Fry proposed the idea of a women's CTR in the mid-1990s, there were no such facilities for women in Saskatchewan.

Significant inequities existed between the MCTR and the WCTR workers, although they performed almost exactly the same work. The group of predominately male employees working at the MCTRs received between \$20.30 and \$25.44 per hour, whereas the predominately female employees at the WCTR received between \$13.79 and \$20.30 per hour.<sup>69</sup> Thus, the WCTR workers earned between 59 to 68% of what their male counterparts earned and received inferior benefits and seniority.<sup>70</sup> While both groups of workers were members of the Saskatchewan Government Employees Union (SGEU), they belonged to different bargaining units.

The parties to the Elizabeth Fry complaint agreed that the theory of discrimination depended on finding that the Department of Justice, the sole funder of Elizabeth Fry's WCTR programming, was in fact the employer of the WCTR workers. The Commission initially sided with the Complainants and had appointed the case to Tribunal for adjudication. However, before a hearing was held, the recent decision of *Reid v. Vancouver Police Board*<sup>71</sup> compelled the Commission to change its mind, adopt a narrow definition of "employer", and dismiss the complaint at the end of August 2006.

From the perspective of the WCTR workers, the material impact of the Commission's dismissal was limited to preventing them from claiming back wages. By the time the complaint was dismissed, the WCTR employment structure was on the eve of change and the WCTR work would no longer be administered by Elizabeth Fry. Control of the WCTR program was transferred from Elizabeth Fry to the Saskatchewan government on October 1, 2006.<sup>72</sup> After two unsuccessful years negotiating an equal pay contract, the WCTR workers had been on strike since June 2006.<sup>73</sup> When it became clear that the Elizabeth Fry Society, as a non-profit organization, could not match the wages paid by the government at men's residences,<sup>74</sup> the Department of Justice decided to assume complete control of the WCTR services. The union supported the transition as a means of achieving wage parity for the WCTR workers and Elizabeth Fry promised to remain involved in the residences on a volunteer basis and to ensure that a women-centered focus remained.<sup>75</sup>

## *5. Paradoxes: The Elizabeth Fry Complaint*

The Elizabeth Fry Society of Saskatchewan had operated the WCTR program for over 10 years and the transition was a difficult process, emotionally, politically and financially. In the words of the Caroleen Wright, Executive Director of the organization:

The loss of the WCTR has been a tremendous change and at times was a painful process. As with all great change comes great opportunity.... We know that precarious times lay ahead but we remain undaunted by the oppressive views of the day and remain committed to our vision of a community without the destructive response of incarceration to meet social challenges.<sup>76</sup>

Wright's words allude to the fact that the fate of the Elizabeth Fry complaint is another paradoxical victory. While the women workers involved achieved wage parity, the transfer came at a significant political cost. The absorption of the WCTR workers into the Department of Justice meant that a woman-centered, progressive, grassroots organization lost control over the delivery of programming to some of the province's most marginalized women. Further, the dismissal of the complaint significantly narrowed the scope of the pay equity analysis. The Commission's decision to follow *Reid* signalled the effective exclusion of most of the Saskatchewan CBO sector from a pay equity remedy.

There is a clear resemblance between the facts in *Reid* and the Elizabeth Fry complaint. In *Reid*, predominately female dispatchers, working for the Vancouver Police Board, were paid less than predominately male dispatchers, directly employed by the City of Vancouver to assist firefighters. Clearly, the Police Board and the City had a complex and entwined relationship.<sup>77</sup> On one hand, the Police Board had primary control over the collective bargaining and job classification of the female dispatchers.<sup>78</sup> On the other hand, the City completely funded and controlled the Police Board and participated in setting the Board's budget. City staff occasionally sat on the Police Board's bargaining committee and the City ratified the Board's collective agreements. In addition, the City was involved in evaluating rates of pay and administering pay and benefits to the Police dispatchers.<sup>79</sup> Nonetheless the Tribunal found that the Police Board, not the City, was the police dispatchers' employer.<sup>80</sup> The British Columbia Court of Appeal subsequently held that the Tribunal's decision was reasonable.<sup>81</sup> With the employer having been defined narrowly, the female dominated Police Board dispatchers were unable to use the male dominated firefighter dispatchers as a comparator group and their pay equity claim was denied.

The Commission's decision to dismiss the Elizabeth Fry complaint based on *Reid* was an unfortunate narrowing of the definition of "employer" in Saskatchewan. As such, it is worth considering how the precedential weight of *Reid* could be reduced in favour of a more expansive definition of "employer" in the future. First, the British Columbia Court of Appeal decision should not be interpreted as authority for the proposition that, in circumstances similar to *Reid*, the statutory interpretation of "employer" cannot include the government. The Court did not provide a definition of "employer" for the purposes of pay equity. Rather, the precedential value of *Reid* is limited to its status as a *judicial review* case: the Court of Appeal found the Tribunal's decision to be reasonable based on the evidence and the applicable legislation. Notably, the British Columbia Supreme Court and Justice Donald of the Court of Appeal both found the Tribunal's decision unreasonable. *Reid's* borderline status is further made evident by the Tribunal's own acknowledgement that the principles of statutory human rights interpretation could have supported a finding that the City was the employer.<sup>82</sup>

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A second important consideration is that *Reid* was decided in another jurisdiction under a different legislative scheme. The Saskatchewan Human Rights Tribunal is not bound by the Tribunal decisions made in other jurisdictions. Moreover, the *Reid* decision involved the interpretation of section 12 of the British Columbia *Human Rights Code*,<sup>83</sup> which uses the term “employer” in the context of what amounts to an equal pay provision.<sup>84</sup> Recall that the Saskatchewan Human Rights Tribunal suggested that the Commission look to the pay equity provision of the *Canadian Human Rights Act* and *Equal Wage Guidelines* for guidance, where the term “establishment” rather than “employer” is used.<sup>85</sup> Thus, it may be beneficial in the future to focus the pay equity analysis in Saskatchewan on the identification of the “establishment” as opposed to the “employer”.

This point is highlighted by the recent Supreme Court of Canada decision in *Canada (Human Rights Commission) v. Canadian Airlines International Ltd.*,<sup>86</sup> known as the *Air Canada* case, where a broad interpretation of the term “establishment” in section 11 of the *Canadian Human Rights Act* was unanimously adopted:

all employees subject to the same “common set of personnel and compensation policies”, “common corporate policy”, or “common personnel and wage policy” will be in the same establishment, regardless of whether those employees are subject to different collective agreements.<sup>87</sup>

The Court in *Air Canada* was concerned that an overemphasis on the terms of collective agreements and the delineation of bargaining units would undermine the purpose of pay equity: to remedy undervaluation based on systemic discrimination.<sup>88</sup> In *Air Canada* the central legal question was whether or not two different bargaining units employed by the same employer constituted the same establishment for the purposes of the pay equity analysis. While the *Air Canada* decision is not directly analogous to the Elizabeth Fry complaint because the identity of the employer was not in dispute, the reasoning and conclusions given could provide a foundation for the argument that, in certain contexts, CBO workers and government employees are subject to a common set of policies and are thus employed in the same establishment.

While the preceding arguments may reduce the precedential weight of *Reid* in Saskatchewan, it is undeniably difficult to stretch terms like “employer” and “establishment” in order to ensure pay equity recourse for CBO workers. For this reason, the proxy method of comparison was introduced in Ontario.<sup>89</sup> Several of the Pay Equity Task Force recommendations were also designed to facilitate the broad comparisons necessary to ensure equity for CBO workers.<sup>90</sup> Further, the Elizabeth Fry experience suggests that the “government is the employer” legal argument could contribute to unintended negative side-effects. Recall that the WCTR Elizabeth Fry workers were forced to achieve pay equity at the expense of their organization. This paradox carries a significant warning. It signals that the struggle for pay equity in the CBO sector may encourage governments to simply (re)absorb the work done by CBOs, thus eliminating or significantly reducing the important role of these grassroots organizations. Worse yet, it could provoke a further reduction in the government’s commitment to funding caring work or novel attempts to obfuscate the relationship between the government and CBOs through further restructuring.<sup>91</sup>

In light of the difficulties and potential risks associated with the “employer argument”, a proxy system of comparison would be the most effective and strategic pay equity tool for CBO workers in Saskatchewan because it would allow for broad comparisons between workplaces not necessarily governed by the same employer. The struggle for pay equity must emphasize that CBOs play an invaluable role in society, that CBO workers deserve to be paid what they are worth, and that the economic gains of welfare-state restructuring should not be premised on the undervaluation of female dominated labour. Pay equity for CBO workers is an important, yet tricky, issue. Clearly, in order for pay equity legislation in Saskatchewan to effectively redress inequities, it must give CBO workers the opportunity to be compared to suitable comparators.

### III. CONCLUSION

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This paper has considered pay equity issues in Saskatchewan by analyzing the paradoxical results of two recent human rights complaints. The discussion of the Tribunal’s *Community Based Organizations* decision demonstrates that an attempt to squeeze pay equity into section 16 of the *Saskatchewan Human Rights Code* and the Commission’s existing resources will do little to address the gender-based wage gap in Saskatchewan. The analysis of the Elizabeth Fry complaint contributes to this point by crystallizing the problem of pay inequity in the female dominated not-for-profit-sector, which carried out contract work formerly performed by the state.

Taken together, the *Community Based Organizations* decision and the Elizabeth Fry complaint call attention to the urgent need to implement stand-alone proactive pay equity legislation in Saskatchewan that is designed to include community based organizations and the broader public sector. To be effective, pay equity legislation must address the proliferation of female dominated caring work in the not-for-profit sector. The findings of the recent federal Pay Equity Task Force serve as an invaluable guideline for the design of pay equity legislation in Saskatchewan. A proactive regime that facilitates broad comparisons is essential to remedying the systemic undervaluation of “women’s work” and achieving pay equity. The Saskatchewan government must take the on-going violation of women’s fundamental rights seriously, and respond accordingly, by ensuring that Saskatchewan workers in the female dominated sectors are paid fairly for the value of their work.

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## ENDNOTES

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1. Statistics Canada, *2001 Census of Population* Table 1.1 in Pay Equity Task Force Canada, *Pay equity, a new approach to a fundamental right: Pay Equity Task Force final report* (Ottawa: Pay Equity Task Force, 2004) at 13 [Pay Equity Task Force].
2. In addition to gender-based wage discrimination, the gap in earnings can be attributed to, *inter alia*, the prevalence of domestic violence, inequitable distribution of care giving work in the private and public sphere, and the lack of accessible childcare.
3. Political economists do not agree on what portion of the wage gap is specifically caused by discrimination in wages. It is extremely difficult to disaggregate the multiple discriminatory practices and policies that cause the wage gap. See Judy Fudge & Patricia McDermott, “Pay Equity in a Declining Economy: The Challenge Ahead” in Judy Fudge & Patricia McDermott, eds., *Just wages: A Feminist Assessment of Pay Equity* (Toronto: University of Toronto Press, 1991) 281 at 282.
4. Other marginalized groups, particularly racialized and foreign born women and men, are also overrepresented in female dominated occupations. Racialized economic hierarchies, and their relationship to gendered hierarchies, represent important issues that are unfortunately outside the scope of this paper. See Grace-Edward Galabuzi, *Canada’s Economic Apartheid: The Social Exclusion of Racialized Groups in the New Century* (Toronto: Canadian Scholars’ Press, 2006) [Galabuzi].
5. Pat Armstrong, Mary Cornish, & Elizabeth Millar, “Pay Equity: Complexity and Contradiction in Legal Rights and Social Processes” in Wallace Clement & Leah F. Vosko, eds., *Changing Canada: political economy as transformation* (Montreal: McGill-Queen’s University Press, 2003) 161 at 163 [Armstrong, Cornish & Millar].
6. See generally Pay Equity Task Force, *supra* note 1.
7. For example, in 2002 women represented 64.4% of those in the teaching profession, 87.3% of those in nursing and health-related occupations, 75% of clerical and administrative workers, and 58.6% of those in sales and services (Pay Equity Task Force, *supra* note 1 at 15).
8. Judy Fudge, “The paradoxes of pay equity: reflections on the law and the market in Bell Canada and the Public Service Alliance of Canada” in Christopher McCrudden, ed., *Anti-discrimination law* (Burlington: Ashgate/Dartmouth, 2004) 455 [“Paradoxes”].
9. Gender neutral criteria are meant to identify and value the attributes of a job that are traditionally overlooked and undervalued. However, problems can arise with the concept of “neutrality” if evaluation criteria are not understood in the context of the history of the subordination of women. See Armstrong, Cornish & Millar, *supra* note 5 at 168.
10. Fudge, “Paradoxes”, *supra* note 8 at 448.
11. Another interesting element of the pay equity critique considers how the managerial delineation of distinct jobs is itself a gendered process in that what constitutes a coherent set of tasks that together form a “job” is also based on gendered assumptions.
12. Armstrong, Cornish & Millar, *supra* note 5 at 167.
13. *Ibid.* at 168: “Care is a critical example of a work component that has not been either captured or valued in traditional job evaluations schemes.”
14. The provinces without pay equity legislation are British Columbia, Alberta, Saskatchewan, and Newfoundland.
15. Manitoba legislated proactive pay equity in 1985; Prince Edward Island in 1988; New Brunswick, Nova Scotia, and Ontario in 1989; and Quebec in 1998. See generally Pay Equity Task Force, *supra* note 1.
16. R.S.C. 1985, c. H-6 [*Canadian Human Rights Act*].
17. SOR/86-1082.
18. Pay Equity Task Force, *supra* note 1 at 156.
19. *Ibid.* at 153.
20. Armstrong, Cornish & Millar, *supra* note 5 at 168, 177. Experience shows that only unionized women

in female dominated unions have been able to take advantage of complaint based legislation, exacerbating class divisions between unionized and non-unionized women workers.

21. Pay Equity Task Force, *supra* note 1. See the recommendations made in “Chapter 6: Scope of Application” at 175.

22. *Ibid.*, see recommendation 5.10, 6.8, and 6.9. For a discussion of the risks of separating gender discrimination from other types of wage discrimination see Johanna Brenner, “Feminist Political Discourses: Radical versus Liberal Approaches to Feminization of Poverty and Comparable Worth” (1987) 1:4 *Gender and Society* 147. The recommendations relating to wage discrimination against Aboriginal people are particularly relevant in Saskatchewan, the province with the largest composition of Aboriginal people, at about 14 % of the province’s population (Statistics Canada, “Highest concentrations of Aboriginal population in the North and on the Prairies” *Aboriginal People in Canada* (Census, 2001), online: <<http://www12.statcan.ca/english/census01/Products/Analytic/companion/abor/canada.cfm#5>>).

23. On September 20, 2006, the federal government declared that it would not adopt the recommendations of the Pay Equity Task Force and will continue with the nearly 30-year-old s. 11 framework. Since the Task Force report was published in 2004, the National Association of Women and Law (NAWL), the Pay Equity Network and many women’s groups, trade unions and community organizations have requested that the federal government enact stand-alone proactive legislation. In the spring of 2006, the federal Committee on the Status of Women formalized this requested. See Canadian Feminist Alliance for International Action, “The Refusal to Adopt Federal Pay Equity Legislation” *Factsheets: A Series of Bad Decisions for Women’s Equality*, online: <<http://www.fafia-afai.org/en/node/381#pay>>.

24. Fudge advocates for a materialist analysis of the success of pay equity that considers economic restructuring (“Paradoxes”, *supra* note 8 at 449). The importance of this issue is underlined by the fact that, in some cases, the purpose of government and corporate restructuring has been to avoid pay equity compliance (See Armstrong, Cornish & Millar, *supra* note 5 at 179).

25. Guy Standing, “Brave New Words? A Critique of Stiglitz’s World Bank Rethink” (2000) 31 *Development and Change* 737.

26. The gendered and racialized nature of these changes has been well documented by feminist political economists. See generally Leah F. Vosko, ed., *Precarious Employment: Understanding Labour Market Insecurity in Canada* (Montreal & Kingston: McGill-Queen’s University Press, 2006); Judy Fudge & Leah F. Vosko, “Gender Paradoxes and the Rise of Contingent Work: Towards a Transformative Political Economy of the Labour Market” in Wallace Clement & Leah F. Vosko, eds., *Changing Canada: Political Economy as Transformation* (Montreal: McGill-Queen’s University Press, 2003); Galabuzi, *supra* note 4.

27. Carol Baines, Patricia Evans & Sheila Neysmith, *Women’s Caring: Feminist Perspectives on Social Welfare* (Toronto: Oxford University Press, 1998) at 3: “Caring work” is defined as the “physical, mental, and emotional activities and effort involved in looking after, responding to, and supporting others.”

28. *Ibid.* These organizations also rely heavily on volunteer work, also performed predominantly by women.

29. The lack of job security in the CBO sector results in part from the project funding model which provides organizations with very little dependable core funding.

30. The undervaluation of female dominated jobs in the broader public sector was estimated in 1993 by the Ontario Deputy Minister of Labour at 15%. Based on this estimate, the cost of addressing pay equity concerns in this sector would be \$450 million per year. See *Service Employees International Union, Local 204 v. Ontario (Attorney General)* (1997), 35 O.R. (3d) 508; 151 D.L.R. (4th) 273 at para. 18 [*SEIU Local 204*].

31. R.S.O. 1990, c. P. 7 [*Pay Equity*].

32. Armstrong, Cornish & Millar, *supra* note 5 at 179. The Ontario Conservative government repealed the amendment in 1996 with Schedule J of the *Savings and Restructuring Act, 1996*, S. O. 1996, c. 1, Sch. J. but the *Act* failed a *Charter* challenge in *SEIU Local 204*, *supra* note 30.

33. Pay Equity Task Force, *supra* note 1 and see accompanying text in note 21.

34. Sask Trends Monitor, *Women in the Saskatchewan Labour Market: A Comparison of Wage Rates* (Regina, Saskatchewan Status of Women Office & Saskatchewan Labour, 2006 at iv, online:

<[www.labour.gov.sk.ca/Default.aspx?DN=a1a8a5da-164c-4ba0-8cbd-f7ce8ed4dcf5](http://www.labour.gov.sk.ca/Default.aspx?DN=a1a8a5da-164c-4ba0-8cbd-f7ce8ed4dcf5)> [Sask Trends Monitor].

35. This study did not disaggregate earnings for Aboriginal and non-Aboriginal peoples in Saskatchewan. However, in 1996, the wage gap for all Aboriginal workers in Canada was 54.4% for women and 38.5% for men (Statistics Canada, *1996 Census of Population in Pay Equity Task Force*, *supra* note 1 at 41).

36. Sask Trends Monitor, *supra* note 34 at vii. It would be interesting to know what percentage of the remaining 36% male employees in the lowest paying occupations are Aboriginal or people of colour.

37. *Ibid.* at viii.

38. S.S. 1979, c. S-24.1 as amended [Code].

39. *Canada Safeway Ltd. v. Saskatchewan Human Rights Commission* (1999), 178 Sask. R. 296; 14 Admin. L. R. (3d) 16 [Canada Safeway]. It is also likely that s. 9 of the Code could accommodate a pay equity complaint.

40. R.S.S. 1978, c. L-1.

41. Government of Saskatchewan, *Equal Pay for Work of Equal Value and Pay Equity Policy Framework*, March 1999 (Regina: Government of Saskatchewan, 1999), online:

<[www.labour.gov.sk.ca/Default.aspx?DN=8515d37a-9e54-41ab-a7b9-3dc4a441ffc7](http://www.labour.gov.sk.ca/Default.aspx?DN=8515d37a-9e54-41ab-a7b9-3dc4a441ffc7)>.

42. For example, CUPE represents more women than any other Saskatchewan union but the majority of its members working in schools, libraries, municipalities, and community-based organizations are not covered by the government's pay equity policy (Canadian Union of Public Employees, "Tribunal supports CUPE's pay equity complaints" (8 August 2006), online: <[http://cupe.ca/payequity/Tribunal\\_supports\\_CU](http://cupe.ca/payequity/Tribunal_supports_CU)> [CUPE]).

43. [2004] 3 S.C.R. 381; 244 D.L.R. (4th) 294; 2004 SCC 66 [NAPE].

44. S.N. 1991, c. 3.

45. Saskatchewan Human Rights Commission, *Annual Report 2005-2006* at 33, online:

<<http://www.shrc.gov.sk.ca/pdfs/SHRC2005ARnew.pdf>> [SHRC 2005-2006].

46. *Ibid.* In 2004-2005 there were 411 new complaints, while in 2005-2006 there were only 195 new complaints.

47. In 2005 over 100 pay equity complaints against the University of Saskatchewan/Regina and the Ministry of Social Services were dismissed by the Chief Commissioner (CUPE, *supra* note 42).

48. Eleven of the university clerical workers also appealed the dismissal. All of the Tribunal's pay equity decisions for that year can be found at Saskatchewan Human Rights Tribunal, *Decisions*, 2006 online: <<http://www.saskhrt.ca/decissex.htm>>.

49. Since the decisions rendered in the Community Based Organizations appeals were almost identical, for convenience all citations will be made to *Gail Kozak v. Government of Saskatchewan (Ministry of Social Services)* (1 August 2006), S.H.R.T., online:

<<http://www.saskhrt.ca/forms/index/Descisions/010806koz.htm>> [Kozak].

50. The Complainants job titles were Community Integration Worker, Residential Support Worker, Residential Supervisor, Vocational Life Skills Instructor, Group Home Supervisor, Workshop Instructor, Fieldworker, Special Care Worker, Weekend Developmental Programmer, and Nightcare Worker.

51. The comparator group positions were Equipment Operator, Tradesperson, Fire Protection Worker, Engineering Assistant, and Draftsperson.

52. *Kozak*, *supra* note 49 at para. 12.

53. *Ibid.* at para. 13. Also see Saskatchewan Human Rights Commission, *Annual Report 2004-2005* at 5, online: <[http://www.shrc.gov.sk.ca/pdfs/SHR\\_Annual\\_Report\\_Final\\_sm.pdf](http://www.shrc.gov.sk.ca/pdfs/SHR_Annual_Report_Final_sm.pdf)> [SHRC 2004-2005].

54. *Canada Safeway*, *supra* note 39.

55. Lancaster's Bi-Weekly Women/Pay Equity Employment Law E-Bulletin "Pay Equity Complaints Can Be Brought Under Human Rights Legislation, Tribunal Rules" Issue No. 1 (30 November 2006), online:

<<http://www.lancasterhouse.com/services/wpel/wpel-e-bulletin.asp>>. Also see SHRC 2004-2005, *supra* note 53 at 5.

56. *Kozak*, *supra* note 49.

57. *Ibid.* at para. 20.
58. Section 3 of the *Code* states these objectives: (a) to promote recognition of the inherent dignity and the equal inalienable rights of all members of the human family; and (b) to further public policy in Saskatchewan that every person is free and equal in dignity and rights and to discourage and eliminate discrimination.
59. *Kozak, supra*, note 49 at para. 31.
60. *Ibid.* at paras. 22-3.
61. Paradoxical results in the struggle for pay equity have been noted by many authors. See Fudge, “Paradoxes”, *supra* note 8; Armstrong, Cornish, & Millar, *supra* note 5; Sue Hastings, “Negative (Pay) Equity – An Analysis of Some (Side-) Effects of The Equal Pay Act”, in Jeanne Gregory, Rosemary Sales, Ariane Hegewisch, eds., *Women, Work, and Inequality: The Challenge of Equal Pay in a Deregulated Labour Market* (New York: St. Martin’s Press, 1999) 153.
62. Fudge, “Paradoxes”, *supra* note 8 at 448 advocates a multi-dimensional analysis of pay equity successes, namely institutional/instrumental, ideological/symbolic, and structural/ economic. A multi-level approach reveals that a gain at one level can be compatible with a loss at another level.
63. Beth Bilson, “Cabin and Cockpit: Air Canada v. Canadian Human Rights Commission” (2005) 12:2 C.L.E.L.J 239 at 241.
64. SHRC 2005-2006, *supra* note 45 at 1, 3, 7. In 2005 the Commission reduced the average length of complaint processing from 17 to 10 months.
65. SHRC 2004-2005, *supra* note 53 at 5.
66. This is a particularly dangerous state of affairs given that the spectre of reform has been raised over human rights commissions in Canada with questionable results for the protection of marginalized communities. The British Columbia Human Rights Commission was disbanded on March 31, 2003, and the Ontario Human Rights Commission will soon be completely reformed with the passing of Bill 107. There are serious questions about whether or not Ontario reforms will further human rights. See Mary Cornish & Fay Faraday, “Will Ontario human rights reforms achieve reductions in inequalities?” *The Lawyers Weekly* (July 7, 2006) at 15, online: <[http://www.cavalluzzo.com/publications/Reference%20documents/Lawyers %20Weekly-July%207%2006.pdf](http://www.cavalluzzo.com/publications/Reference%20documents/Lawyers%20Weekly-July%207%2006.pdf)>.
67. For examples of discursive attacks on pay equity, see Fudge, “Paradoxes”, *supra* note 8 at 470-71. Also see Randall Morck, “Lies, Damn Lies, and the Pay Equity Shell Game” *National Post* (12 October 2005), online: <<http://www.bus.ualberta.ca/rmorck/Columns/Pay%20Equity.pdf>>.
68. *Kozak, supra* note 49 at para. 27.
69. Saskatchewan Government and General Employees Union, *Report on Bargaining: Elizabeth Fry Society Bargaining Unit*, (May 2006) online: <<http://action.web.ca/home/sgeu/attach/Elizabeth%20Fry%20May%202006.pdf>>.
70. Saskatchewan Government and General Employees Union, *Elizabeth Fry issues 48 hour strike notice* (5 June 2006) online: <<http://www.sgeu.org/unionnews/pressreleases/oldpressreleases/index.html?ap=1&cx=89495>>.
71. (2005), 215 B.C.A.C. 291; 44 B.C.L.R. (4th) 49; 2005 BCCA 418 [*Reid*].
72. Elizabeth Fry Society of Saskatchewan, *Newsletter* (Fall/Winter 2006) at 4, online: <<http://www.elizabethfrysask.org/newsletters/f06.doc>> [Elizabeth Fry, *Newsletter*].
73. National Union of Public and General Employees, “Elizabeth Fry Society staff members strike in Saskatoon” (16 June 2006), online: <[http://www.nupge.ca/news\\_2006/n16jn06a.htm](http://www.nupge.ca/news_2006/n16jn06a.htm)>.
74. Pam Cradock, “Provincial government assumes control of local Elizabeth Fry halfway house” *The StarPhoenix* (23 September 2006) A11.
75. *Ibid.*
76. Elizabeth Fry, *Newsletter, supra* note 72 at 4.
77. *Reid, supra* note 71 at para. 15.

78. *Ibid.* at para. 16.
79. *Ibid.* at para. 35.
80. *Reid v. Vancouver (City) Police Board* [2000] B.C.H.R.T.D. No. 28; 2000 BCHRT 30.
81. The Supreme Court of Canada refused to grant leave to appeal (*Reid v. Vancouver Police Board* [2005] S.C.C.A. No. 463).
82. *Reid*, *supra* note 71 at para. 16.
83. R.S.B.C. 1996, c. 210 [B.C. *Code*].
84. Section 12(1) reads: An employer must not discriminate between employees by employing an employee of one sex for work at a rate of pay that is less than the rate of pay at which an employee of the other sex is employed by that employer for similar or substantially similar work.
85. *Kozak*, *supra* note 49. Also see s. 11 of the *Canadian Human Rights Act*, *supra* note 16.
86. (2006), 263 D.L.R. (4th) 1 [*Air Canada*].
87. *Ibid.* at para. 34.
88. *Ibid.* at para. 40.
89. *Pay Equity*, *supra* note 31.
90. Pay Equity Task Force, *supra* note 1 and accompanying text in note 21.
91. See *supra* note 24 and accompanying text.

## ABOUT THE AUTHOR

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THE FRAGMENTATION OF CITIZENSHIP AND COMMUNITY:  
DISABILITY RIGHTS, ECONOMIC (IN)SECURITY, AND SOCIAL POLICY

*By KAMA SOLES*

SIPP 2006-2007 GRADUATE ESSAY CONTEST WINNER

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## INTRODUCTION

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Over 3.6 million Canadians have a disability (Government of Canada 2002), yet despite this enormous potential of human capital (Furrie 2006), people with disabilities in Canada have been systemically marginalized, denied citizenship rights, and forced into reliance on social policy to relieve their economic insecurity (Gilson et al. 1997; Soles 2003; Peters 2004). The Government of Canada says it is committed to helping people with disabilities participate as fully as possible in Canadian society, but there has been little actual advancement on this issue (Prince 2006; Government of Canada 2006). One reason for this slow change in social policy aimed at benefiting people with disabilities is the exclusion of the disability community from actively participating in policy development (Prince 2004, 2006; Jongbloed 2003). This paper examines how policy fails to meet objectives to ensure full citizenship and inclusion for people with disabilities. It argues that due to the Canadian government's failure to provide sufficient social policy, despite constant promises to do so, the rights of people with disabilities as Canadian citizens are being violated. A socio-political definition of disability, which focuses on the environmental and social barriers faced by people with disabilities needs to be embraced by policy-makers in order to enable full citizenship and to build the capacity of the disability community.

## ON THE AGENDA: SOCIAL VS. MEDICAL MODEL

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All disability policy provides a definition and a conception of what disability *is*, and therefore effects the way governments, policy-makers, and the public, whether they have a disability or not, think about disability (Titchkosky 2006). In Canada, unfortunately, the focus is still on programs and policies aimed at providing people with disabilities the opportunity to participate in society in ways that policy-makers and governments see as satisfying and useful to society as a whole. When most government officials speak on disability issues, they see disability as a social need that threatens personal well-being and security and strains resources (Government of Canada 2005). Disability policy-making is then about formulating programs and providing services for people with disabilities in order to best “control” this problem and minimize its consequences with methods and processes of state intervention (Turnbull and Stowe 2001; Schalock 2004; Titchkosky 2006). Disability policy is then guided by the “risk” of disability to able-bodied, mainstream society rather than being developed by the disability community itself.

In order to successfully engage in and make meaningful contributions to a community, a sense of attachment, equality of opportunity, knowledge of individual rights as citizens, and the recognition of difference is required. This process necessarily involves capacity building, which can be especially difficult for people with disabilities due to many obstacles to participation and inclusion, such as physical and transportation barriers, communication difficulties, societal attitudes and misconceptions, and obstacles created by service providers and government bureaucracies (Soles 2003; Gilson et al. 1997; Peters 2004). Systems such as social assistance, income supports, education, or employment may not allow enough flexibility to meet individual needs (Gilson et al. 1997; Soles 2002; Council of Canadians with Disabilities 2004b). People

**In Canada, unfortunately, the focus is still on programs and policies aimed at providing people with disabilities the opportunity to participate in society in ways that policy-makers and governments see as satisfying and useful to society as a whole.**

with disabilities in Canada tend to have lower levels of education, lower earnings and household incomes, higher rates of unemployment, and face other economic obstacles preventing them from developing their full consumer and human rights (Council of Canadians with Disabilities 2004a). Any of these personal or systemic issues can overwhelm an individual's life and become the focal point, leaving little time or energy to address other social issues, such as policy reform or community development (Prince 2004; Jongbloed 2003; Schalock 2004).

After a long history of being wrongly viewed as inadequate, incapable, and vulnerable members of society, people with disabilities are no longer interested in policies that focus on their physical impairments, but instead look for policies to change the conditions of life in order to overcome the way society is organized to exclude them (Abberley 1987). This view is called the social model of disability, which frames disability as a political creation: it proposes that barriers, prejudice, and exclusion, created by society (purposely or inadvertently), are the ultimate factors defining who has a disability and who does not (Mulcahy 2005). This model promotes the Independent Living (IL) philosophy, which states that persons with disabilities have the ability for personal development and growth, and embody the skills, determination, and creativity to be meaningfully involved in the social, cultural, and political aspects of society (Phillips 2003). IL is about empowering persons with disabilities to dismantle barriers so they have choice, flexibility, and control to gain the means and tools necessary to achieve the dignity, autonomy, equality, and solidarity associated with human rights (Abbas 2005; Walters 2003). IL is also about the idea that people with disabilities should be able to claim rights, exercise responsibilities, participate in political and community life, and identify with and feel connected to the community without question or qualification of any kind:

The Independent Living movement has a compelling vision of a Canada that is able to tap into this incredible resource. We are working to empower people with disabilities and to remove barriers so that responsible, self-reliant people with disabilities can assume risks, make choices and contribute as they wish (Abbas 2005:1).

The ultimate goal of the disability community in Canada is “nothing short of complete inclusion with ‘full citizenship’” (Cameron and Valentine 2001: 23). People with disabilities often experience exclusion and discrimination when they seek to access their formal rights of citizenship, despite the formal protection of these rights in the *Canadian Charter of Rights and Freedoms* (Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11, s.15).

Unfortunately, Canada's disability policy agenda is still based on the medical model of disability, which sees disability as intrinsic to the individual and focuses on the reduced quality of life and the “obvious disadvantage” of having a disability. As a result, curing or managing illness or disability revolves around identifying it, understanding it, and learning to control and alter its course. Therefore, and by extension, a compassionate or just society such as Canada will invest resources in health care and related services in an attempt to cure disabilities medically, expand functionality, and/or improve functioning to allow people with disabilities a more “normal” life (Rioux and Bach 1994; Barnes and Mercer 1997).

As such, the disability policy agenda in Canada consists of piece-meal interventions that may appear progressive and sufficient, but, in reality, fail to adopt a human rights and equality perspective (Government of Canada 2006). Every time the medical model of disability is used to create policy, the disability community moves further from its goal of full citizenship, equalization of opportunity, and empowerment. Disability policy is missing the voice of people with disabilities.

## AN INDEPENDENT VOICE: RISE OF A SOCIO-POLITICAL MOVEMENT

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The philosophy of Independent Living holds that people with disabilities should have options in and control over their own lives. This philosophy and the argument for the rights of people with disabilities began to rise during the 1970s and resulted in the creation of the social model of disability. According to the social model, the true “disability” in society is a failure in the social environment, rather than in individual functional limitations (Turnbull and Stowe 2001; Schalock 2004; Prince 2004). Disability activists and advocates emphasize the goals of respect and equality, and aim to destigmatize particular groups through empowerment (McDonald and Oxford 2006; Peters 2004; Soles 2002). Organizations controlled by consumers with disabilities argue that improvement in the status of persons with disabilities requires alteration in the external environment rather than changes in individual functioning:

We are people with disabilities speaking out about our issues and concerns. Our vision is a community that fosters self-determination and inclusion, and promotes the right to create and make choices, to take risks and to participate in the decisions that effect the well being of the community. Inclusion is the right to participate without discrimination in the social, economic and cultural life of society and have the right to accommodation to ensure participation (Saskatchewan Voice of People with Disabilities 2006: 1).

The rise of the Socio-political Movement prompted the creation of disability consumer organizations and their activity in the policy domain in Canada (McDonald and Oxford 2006; Hutchison et al. 2004; Council of Canadians with Disabilities 1999). The Coalition of Provincial Organizations of the Handicapped, formed in 1977, was the first politically active national coalition of organizations that represented consumers with disabilities. It monitored federal and provincial legislation and emphasized that persons with disabilities should direct and supervise services provided to them. This cross-disability coalition, now known as the Council of Canadians with Disabilities, carries much clout at all levels of government (Brown 1977; Hutchison et al. 2004; Council of Canadians with Disabilities 1999). As a result of their early lobbying, 1981 was declared the International Year of Disabled Persons (UN 1993), and is often cited as the landmark date for tracing the history of disability studies in Canada (Government of Canada 1999).

In recognition of the International Year, the Government of Canada appointed an all-party Special Committee to undertake a comprehensive review of federal legislation pertaining to persons with disabilities. *Obstacles*, a report by this committee, identified

Organizations controlled by consumers with disabilities argue that improvement in the status of persons with disabilities requires alteration in the external environment rather than changes in individual functioning.

three interlocking goals of people with disabilities: to be treated with respect, to have the right to control their fate, and to have opportunities to participate in all aspects of Canadian social life (Government of Canada 1981). This report was unique because the government was consulting people with disabilities about the types of policies and programs that would help them best achieve their own goals, and followed a socio-political model that emphasized enhancing the participation of people with disabilities in their communities by increasing access to buildings, transportation, and employment, thereby encouraging access to full citizenship.

In 1982, section 15 of the *Canadian Charter of Rights and Freedoms* granted persons with mental or physical disabilities the right to equality under the Constitution. In 1983, a Minister Responsible for the Status of Disabled Persons was designated and the Office for Disability Issues was created. In 1987, the Standing Committee on Human Rights and the Status of Disabled Persons was established. In 1991, the *National Strategy for the Integration of Persons with Disabilities*, a five-year initiative mandated with the objective to bring people with disabilities into the social and economic mainstream of Canadian society, was introduced and centered around principles of equal access, economic integration, and effective participation (Government of Canada 2000a, 2004a).

In 1995, the federal government introduced the Canadian Health and Social Transfer and unilaterally cancelled the Canada Assistance Plan and funding for health, post-secondary education, and social services and assistance, thereby limiting its role in the social programs and handing off more authority to provincial and territorial governments (Finkel 2006). At that time, social policy reform proposals identified people with disabilities as one of the most important populations for which reform efforts needed to be undertaken. Agreements were negotiated and signed with each provincial government, with a commitment to provide accountability reporting by fall of 2000 (Jongbloed 2003; Prince 2006). These reports have not yet been released.

In 1996, a group of Members of Parliament and supporting research staff met with people with disabilities from across Canada and presented a report recommending a stronger role for the federal government in disability issues. This group, named the Scott Task Force, made the following specific recommendations: amend the *Canadian Human Rights Act* to obligate employers to accommodate employees with disabilities; develop an access and inclusion lens with respect to federal policy and programs; and expand tax measures to support persons with disabilities (Perrin and Associates 1999; Government of Canada 2000b, 2000c). Based on this, federal and provincial/territorial governments signed the *In Unison Accord* in 1998 to advance the full citizenship, inclusion, and participation of Canadians with disabilities. It identified access to disability supports as a critical building block to enable better income and employment status for Canadians with disabilities (Government of Canada 2000a). As of yet, however, the Government has not established a national legislative framework to put *In Unison* into action (Prince 2004).

Unfortunately, most of the groundbreaking recommendations that were given in *Obstacles*, and repeated again in the *National Strategy for the Integration of Persons with Disabilities* by the Scott Task Force, and in *In Unison*, were routinely ignored or deprioritized as public policy (Prince 2004; Peters 2004). However, the Independent

Living philosophy remains strong in the small number of disability organizations determined to improve the lives of Canadians with disabilities. These organizations navigate through a policy atmosphere that is characterized by gaps in service provision, late referrals and inadequate follow-up programs, insufficient linkages among social programs, and incomplete information systems (Prince 2001, 2004; Peters 2004; Shalock 2004).

From the perspective of the disability community (Saskatchewan Voice of People with Disabilities 2006; Council of Canadians with Disabilities 2004b; Perrin and Associates 1999), disability policy needs to be about addressing results and focusing on reaching potential; its creation must be about empowerment and inclusiveness, and should assess the impact of all programs on the aspirations, capabilities, and capacities of people with disabilities. Public policy has not yet caught up with the social, economic, and demographic realities of disability in Canada nor has it provided the foundations to ensure the full inclusion of Canadians with disabilities and a quality of life equal to other Canadians. More work needs to be done to advance the economic inclusion and social citizenship rights of people with disabilities.

## NOT FULL CITIZENS: THE UNDEREMPLOYED AND THE UNEMPLOYED

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According to the 2001 Participation and Activity Limitation Survey, 3.6 million Canadians, or 12.4% of the population have a disability (Government of Canada 2002). This represents a major portion of the labour force, yet Canadians with disabilities remain a huge untapped resource to Canada's production potential, and are often disproportionately dependent on Social Welfare systems compared to those without disabilities (Furrie 2006). This is due to their physical and/or mental incapability (or societal misconceptions of their ability) to find and maintain opportunities to earn an income above subsistence/poverty. As a result, people with disabilities are one of the largest economically disadvantaged groups in Canada, either being unemployed or underemployed (Hunter and Miazdyck 2004; Elwan 1999; Echenberg 2000), and due to this, are denied basic citizenship rights.

People with disabilities are at risk of persistent poverty, a situation that refers to the existence of multiple barriers to participation in the workforce and where income assistance is absolutely essential yet insufficient to effectively combat poverty (Elwan 1999). A majority of people with disabilities in Canada live in persistent poverty because they are unable to compete in the labour market, and have to rely on social assistance benefits for income (National Council of Welfare 2006a). Almost 60% of working age adults with disabilities are currently unemployed or excluded from the labour market, and are therefore over-represented in provincial welfare systems (Council of Canadians with Disabilities 2004a; Torjman 1988; Saskatchewan Voice of People with Disabilities 2006).

Most provinces and territories distinguish between those who have a disability (the "deserving" poor) and those who are able-bodied within their social assistance systems (Finkel 2006). Most systems for people with disabilities offer social assistance programs that tend to require less on-going policing, fewer job searches, and less contact with

Public policy has not yet caught up with the social, economic, and demographic realities of disability in Canada nor has it provided the foundations to ensure the full inclusion of Canadians with disabilities and a quality of life equal to other Canadians.

community services and/or training, and offer slightly higher benefit rates. Currently, in Saskatchewan, a person with a disability receives only \$8,893 a year in social assistance payments—after receiving a supplementary allowance of \$1,213 a year (National Council of Welfare 2006b). Given the increased medical and equipment costs and the barriers faced by people with disabilities, including access to labour market participation, this supplementary allowance is often far from adequate to empower people with disabilities to pursue their goals like any other Canadian.

The unemployment rate for people with disabilities is almost three times that of non-disabled people; even when people with disabilities are employed, there is a greater tendency for them to be under-employed relative to their levels of education and training (Saskatchewan Voice of People with Disabilities 2006). Many people with disabilities not currently employed are capable of at least some form of work under the right circumstances (Council of Canadians with Disabilities 2004a; Thornton and Lunt 1997; Fawcett 1996). However, despite their ability and willingness to work, people with disabilities experience many external barriers that prevent participation in the labour market (Council of Canadians with Disabilities 2004a, 2004b; Soles 2003; Torjman 1988). For example, many people with disabilities require some accommodation in the workplace in order for them to participate (Fawcett 1996; Lee 2000), and policies are not yet in place to ensure this.

One option for people with disabilities who want to work, but are not capable of fulfilling regular employment, is supported employment, which involves training and employment with a job coach in a regular work environment. A job coach provides support and training to the individual with a disability and is responsible for giving him or her the physical or mental assistance required to get the job done. Supported employment considers what the person with the disability can do without assistance, and then adds the job coach to complete the job requirements. This has allowed many previously excluded people the opportunity to work. A key component to the success of supported employment is the flexibility to provide as much or as little support as the client needs on an ongoing basis. With many individuals the support can be completely or largely withdrawn so that they can eventually work independently. Others, however, require intensive, ongoing support in some form (Thornton and Lunt 1997; Echenberg 2000; Fawcett 1996). Exclusion and a lack of access to disability supports perpetuate the poverty of people with disabilities. The result is isolation, increased vulnerability, and limited opportunity for these Canadians to participate and be valued as full citizens (Council of Canadians with Disabilities 2004a; Torjman 1988; Thornton and Lunt 1997).

### DISABILITY SUPPORTS: A NEW BEGINNING OR THE BEGINNING OF A NEW CYCLE?

People with disabilities are becoming more vocal in expressing their desire to be involved in the delivery of social services, rather than being seen as passive recipients, and in lobbying for social, political, and economic policies and programs that meet their needs and desires. While not denying the reality of physical and mental limitations that arise from impairments, they recognize that attitudinal, economic, legal, and policy barriers are the real reasons that people with disabilities have

difficulties participating as full members of society (Turnbull and Stowe 2001; Council of Canadians with Disabilities 1999; Prince 2006). True inclusion can not be accomplished within the traditional medical model, which sees disability as a threat to well-being and a strain upon resources.

One of the most important policy reforms needed to help Canadians with disabilities achieve full citizenship is the provision of disability supports. This should be a key priority for Canadian governments and policy-makers. Disability supports are any good, service, or environmental adaptation that assists people with disabilities to overcome barriers they face in carrying out daily-living activities and being recognized as full citizens in the social, economic, political, and cultural life of society (Council of Canadians with Disabilities 2004b; Peters 2004; Lee 2000). The lack of these supports results in poverty, unemployment, and exclusion from workplaces, schools, and communities. Also, disability supports are more cost-effective for provinces by allowing people with disabilities to work who would otherwise have to depend on social assistance (Saskatchewan Voice of People with Disabilities 2006; Torjman 1988; Fawcett 1996).

The underlying problem preventing this kind of useful reform is that the disability community itself needs the capacity to frame disability policy using a language that emphasizes empowerment, equality, and fundamental rights. Major changes are required to move toward an inclusive and integrated set of disability policies, which currently seems to be trapped in a circle of studies and recommendations. Fundamental policy reform is essential for stopping the fragmentation of full citizenship and providing a solution for including all people with disabilities (Prince 2004; Council of Canadians with Disabilities 2006).

## CONCLUSION: CITIZENSHIP, ITS LINK TO POLICY, AND FUTURE COLLABORATIVE DIRECTIONS

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The ability of people with disabilities to engage in society and achieve full citizenship is affected by policy. In theory, adults with disabilities should be able to achieve full citizenship at all times, but, due to a number of systemic obstacles, they cannot always do so. People with disabilities rely on social and economic policy to provide them with an equal opportunity to fully engage in the community. When these policies fail or are non-existent, this leads to a decrease in involvement in—and attachment to—the community. This can result in decreased engagement in community life and the exclusion of people with disabilities. Full citizenship and human rights are therefore compromised. It is clear that people with disabilities need the support and investment of governments and communities, which can only be realized through effective policy implementation.

Despite commitments by federal, provincial, and territorial governments to eliminate the seemingly endless cycle of studies and ignored recommendations, there has been little noticeable change (Prince 2004). The majority of people with disabilities still live below the poverty line in Canada. It is still too easy to fall between the eligibility criteria of income support programs, and the provision of services is still not co-ordinated effectively. Employment, social services, and education are areas that do not serve the

Despite commitments by federal, provincial, and territorial governments to eliminate the seemingly endless cycle of studies and ignored recommendations, there has been little noticeable change (Prince 2004). The majority of people with disabilities still live below the poverty line in Canada.

needs of the disability community. A new language for discussing the needs of all people with disabilities that emphasizes the positive, instead of focusing only on deficits or failures, needs to be both developed and, more importantly, adhered to by policy-makers, bringing them in-step with disability organizations and the recommendations from their own extensive consultations.

The problem now is not a shortage of existing disability research, rather, the wrong discourse and language are being used. There is a disconnect between theory and praxis—between language and action—and policy must be more than window dressing to achieve real results and to make investments in disability community capacity building. Policy-makers need to use a social model of disability to see disability policy as an investment in Canadian society, rather than as an expense or cost. More research needs to be conducted using a disability lens in the area of social policy in order to achieve full citizenship for people with disabilities. Only then can policy be framed in a language of empowerment, equality, and inclusion (Government of Canada 2004).

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Kama Soles' Interdisciplinary Studies Master's thesis, "Empowerment through Cooperation: Disability Solidarity in the Social Economy," will investigate the potential that the co-operative model has for empowering people with disabilities. As a person with a disability and an active member in the disability community, Kama has the unique opportunity to present the strengths and challenges faced by disability co-operatives in the social economy.





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