

# Race and Sex Discrimination in Employment in Canada. Theories, Evidence and Policies

## Race et sexe en tant qu'objet de discrimination dans l'emploi au Canada

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Résumé de l'article

La discrimination dans l'emploi contre les groupes minoritaires a été une question d'intérêt politique et social au Canada depuis la décennie 1950. De nombreuses études, incluant une commission royale d'enquête sur le statut de la femme, ont démontré l'existence de la discrimination au travail contre les femmes et les minorités en général. La politique du gouvernement fédéral et des provinces tente de l'éliminer.

Dans le présent article, l'aspect le plus important et le plus intrigant de la discrimination fondée sur la race et le sexe, c'est que son existence et les remèdes que l'on propose ont été surtout définis en fonction des marchés du travail intérieur et extérieur.

On en traite généralement selon trois approches différentes. En premier lieu, on trouve d'abord l'approche fondée sur le marché du travail interne qui correspond à celui d'une entreprise à l'intérieur de laquelle la rémunération et l'allocation du travail repose sur un ensemble de procédures et de règlements administratifs. Dans cette situation, les employés qui sont déjà au service de l'entreprise sont naturellement susceptibles d'obtenir un traitement préférentiel par rapport à ceux qui sont à l'extérieur, ne serait-ce que parce qu'ils ont l'avantage de posséder les connaissances et la compétence exigées par l'entreprise et que les candidats de l'extérieur ne sont pas au courant des occasions possibles d'emploi, même s'ils sont compétents. Même parmi le personnel de l'entreprise, il y a possibilité de discrimination dans les cas de promotion, de mutation et de rétrogradation qui peuvent se présenter de temps à autre ainsi que dans les cas d'avancement dans la hiérarchie de l'organisation.

La deuxième approche se rapporte à ce qu'on peut appeler le marché du travail qui serait divisé en deux secteurs: le secteur primaire et le secteur secondaire. Le premier est caractérisé par les salaires élevés et les avantages sociaux, les emplois spécialisés, les occasions d'avancement, la stabilité de l'emploi et un haut degré de syndicalisation tandis que, pour le deuxième secteur, c'est tout le contraire qui se produit. On trouve une forte concentration d'adultes « blancs » dans le premier secteur et un nombre disproportionné de femmes et autres minorités dans le deuxième secteur. Des barrières difficilement franchissables s'établissent entre l'un et l'autre d'où il résulte que certains travailleurs se trouvent ainsi discriminés et demeurent dans des postes qui sont inférieurs à leur compétence à cause de leur race, de leur sexe ou de leur nationalité.

Une troisième façon de considérer le problème, c'est l'approche dite de capital humain. Selon celle-ci, les travailleurs minoritaires et les femmes manqueraient souvent d'éducation, de formation et d'expérience pratique pour accéder à de meilleurs postes. Ce n'est pas seulement la structure de l'environnement économique dans lequel les groupes minoritaires travaillent, mais aussi les caractéristiques des individus eux-mêmes qui les maintiennent dans des emplois peu rémunérés. Selon cette approche, une meilleure formation des personnes appartenant à des groupes, une connaissance plus approfondie et plus généralisée des marchés du travail s'imposeraient si l'on veut que les catégories de travailleurs améliorent leur sort.

L'article traite ensuite de la législation actuelle contre la discrimination dans l'emploi qui a été adoptée, non seulement par le gouvernement fédéral, mais par l'ensemble des provinces, législation qui vise à la fois les employeurs, les syndicats et les agences de placement. Dans l'étude des plaintes, on procède partout par cas individuels et quand c'est possible, l'affaire est réglée par conciliation et par persuasion. Lorsque la conciliation échoue, on nomme une commission d'enquête. L'article analyse 74 cas dont les commissions d'enquête et les Tribunaux ont disposé de 1975 à 1980. Il ne s'agit là assurément que un nombre assez réduit de plaintes qui ne représente que la pointe de l'iceberg.

Pour restreindre la discrimination dans l'emploi d'une façon marquée, il faut surtout travailler à rendre les marchés du travail plus efficaces en assurant aux femmes et autres minorités une plus grande connaissance des besoins des marchés; il faut faciliter la mobilité de la main-d'oeuvre, en leur permettant d'acquérir la formation nécessaire à leur entrée et à leur avancement dans les milieux de travail.

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# Race and Sex Discrimination in Employment in Canada

## Theories, Evidence and Policies

**Harish C. Jain**

*After having examined three theoretical approaches, the author presents public policy relating to race and sex discrimination in employment and analyzes 74 cases decided by the boards of enquiry and courts.*

Employment discrimination against minority groups and women has been matter of considerable social and political concern in Canada since the mid-fifties. Numerous studies including the Royal Commission on the Status of Women have found the prevalence of discrimination in the workplace against minorities and women.<sup>1</sup> Public policy in all jurisdictions in Canada attempts to eliminate discrimination in the workplace on the basis of race, colour, nationality, creed, sex and numerous other grounds. Employment barriers based on homosexuality are increasingly being called into question;<sup>2</sup> at least one Province (i.e. the Province of Quebec) has already outlawed such discrimination.

For the purpose of this paper, the most important and intriguing aspect of discrimination based on race and sex is that both the existence and proposed remedies for it have been defined to a considerable extent in terms of the internal and external labour markets.<sup>3</sup> This is not only because the legislation applies at the level of the individual organization but also because the legislation appears to have certain features which are consistent with a dualist interpretation of the labour market,<sup>4</sup> and, the emphasis on equality and promotion opportunities is most appropriate and significant in the context of a well developed internal labour market.<sup>5</sup>

This paper is divided into several parts. In the first part, three theoretical approaches are examined. In the second part, public policy relating to race and sex discrimination in employment is analyzed. In the third part, 74 cases decided by the boards of inquiry and courts are analyzed

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for trends in the incidence of pre and post employment discrimination as well as the remedies ordered in cases where discrimination was found. Finally, conclusions and policy implications are discussed.

## **THEORIES OF EMPLOYMENT DISCRIMINATION**

There are at least three approaches in the literature that deal with employment discrimination. These are (1) the internal labour market (ILM) approach, (2) the dual labour market (DLM) approach, and (3) the human capital approach.

### **The Internal Labour Market Approach**

The internal labour market is defined as an enterprise within which the pricing and allocation of labour is governed by a set of administrative rules and procedures.<sup>6</sup> This is distinguished from the external labour market (ELM) where wages and jobs are determined by market forces. Thus, in the ELM, competitive theory depicts all jobs and all workers arrayed in the labour market, with the interactions between them establishing wage rates and levels of employment.<sup>7</sup> The two markets are, however, linked at various job levels which constitute ports of entry and exit to and from the ILM, while other job levels are reached by transfer and promotion of existing employees. This distinction is crucial as far as the minority worker is concerned because current employees are likely to be given preferential treatment over outside job applicants because of factors such as possession of specific skills and knowledge that are specific to the enterprise. Workers in the ELM may not be aware of the existence of job opportunities in the ILM, even if they possessed the requisite skills. Furthermore, were they to succeed in gaining entry to the ILM, such workers may remain disadvantaged because of their lack of seniority.

The extent to which discrimination manifests itself is a consequence of the operation of the ILM. This involves two main aspects (a) the extent to which enterprises with well developed ILMs fail to hire workers of equal ability as a consequence of cheap screening devices or "excessive" use of credentials and (b) the extent to which workers in certain disadvantaged groups fail to advance through the organizational hierarchy.

Barriers to entry into the internal labour market include screening devices,<sup>8</sup> credentialism,<sup>9</sup> employment tests<sup>10</sup> and interviews,<sup>11</sup> narrow channels of recruitment,<sup>12</sup> misconception and job stereotypes,<sup>13</sup> employee organizations and trade unions policies.<sup>14</sup>

At the post-entry level, the ILM is concerned with the numerous transactions that occur inside an organization affecting employees in such matters as promotion, demotion, or transfer. Discrimination may occur with respect of each of these factors including the level at which an individual is hired, the rate of wage increase once hired and the rate at which he or she moves up through the organizational hierarchy.<sup>15</sup>

Minority group workers and women, for instance, may be denied promotion by restrictive promotion criteria, by limitations upon the posting and bidding arrangements for internal recruitment, by restricting both minorities and women to the lower-paying job classifications and by discriminatory seniority systems.<sup>16</sup>

### **The Dual Labour Market Approach**

The dual labour market approach divides the labour market into two sectors: the primary and the secondary sectors. The former is characterized by high wages and fringe benefits, skilled jobs with opportunities for further training and promotion, employment stability and high levels of unionization while the latter is characterized by just the opposite.<sup>17</sup> A high concentration of white adult males is to be found in the primary market, while there is a disproportionate number of females and other minorities in the secondary sector. Mobility barriers prevent the movement of workers from the secondary to the primary labour market.<sup>18</sup>

While some empirical studies in the U.S. have found strong or partial support for the DLM theory, several other studies have found virtually no support for the dichotomous model. All in all, while there is clear evidence that certain workers are discriminated against and restricted to jobs beneath their capabilities because of their race, sex or nationality, there is little documentation of the existence of totally separate labour markets. Empirical evidence seems to be more consistent with a labour market segmentation approach which stresses lack of mobility between a variety of different markets rather than simply from the secondary to the primary market.<sup>19</sup> However, even though the empirical evidence of a dichotomous labour market is lacking, there is no doubt that the dual labour market hypothesis has a certain appeal in terms of policy formulation,<sup>20</sup> as explained later.

### **The Human Capital Approach**

While the ILM and the DLM theories emphasize the structure of labour demand as reflected in the characteristics of the industry, occupation, region and firm in which workers are employed, the human capital ap-

proach emphasizes the structure of labour supply. According to the advocates of the human capital approach, many minority workers and women lack «human capital» such as education, training, experience etc. Thus, it is not only the structure of economic environment in which individuals and minority groups work as suggested by dual labour market theory but also the characteristics of individuals which keep them in low-income low-level jobs.

In this approach, improved education, training, mobility and labour market information are emphasized and it is generally assumed that the individual worker is free (and sufficiently well informed) to invest in the acquisition of skills where the rate of return is greatest. In general, studies at establishment level by the Malkiels, Gunderson, Cassell *et al.*, Gordon and Morton, Ferber, Smith, Osterman, Rosenbaum, Chiplin and Sloane, and Siebert and Sloane, have been able to explain between approximately 50 and 90 percent of the variance in earnings for the various sex and marital status employment groups.<sup>21</sup> Education and experience are highly significant in most but not all equations, while age is sometimes significant.

The critics of the human capital approach point out, however, that earnings and occupational differences should be viewed only as tentative indices of the extent of employment discrimination against minorities and women. This is because the human capital studies have generally excluded direct measures of male-female differences in performance, turnover, and absenteeism. Moreover, adjusting for personal characteristics such as education, training, skills etc. neglect the feedback effects of labour market discrimination; that is, minorities and women might have less incentive in acquiring human capital attributes if they expect post-entry discrimination in labour markets.<sup>22</sup> Thus, to adjust for occupational differences in male-female earnings differentials is to mask the effects of employment discrimination, according to the critics of the human capital approach.<sup>23</sup>

Regardless of the controversy over the accuracy of the estimates of discrimination, even the most conservative estimates do indicate considerable employment discrimination against minorities and women.

In the second part of the paper public policy - designed to combat employment discrimination - is examined. Based on the available cases (board of inquiry and court cases), an attempt is made to analyze (a) the incidence of pre-employment and post-employment discrimination, (b) direct and/or indirect or systemic nature of employment discrimination, (c) the industrial and occupational breakdown of discrimination cases, (d) and the remedies ordered in those cases where discrimination was found.

## PUBLIC POLICY

Every legislature in Canada has enacted human rights legislation. All the statutes prohibit discrimination in employment on the basis of race, national origin, colour, religion or creed, sex, marital status and age; the age groups protected vary among jurisdictions, with the most common being between the ages of 40 or 45 to 65. Physical disability is proscribed in seven jurisdictions.<sup>24</sup> Other prohibited grounds include sexual orientation in Quebec and pardoned offence in the federal jurisdiction.<sup>25</sup>

These statutes apply to employers, employment agencies and trade unions. Discrimination is prohibited with respect to advertising, terms and conditions of employment including promotion, transfer and training. *Indirect or systemic discrimination*: Both direct<sup>26</sup> and indirect employment discrimination is prohibited. The *Canadian Human Rights Act* as well as numerous decisions by boards of inquiry in several provinces have borrowed the concept of indirect discrimination from the U.S. case law and the relevant British legislation (i.e. *Race Relations Act* and the *Sex Discrimination Act*).

In the U.S., the concept of indirect or systemic discrimination was articulated by the Supreme Court in *Griggs v. Duke Power Co.* case in 1971. The Court unanimously endorsed a results-oriented definition of what constitutes employment discrimination. The Court indicated that intent does not matter; it is the consequences of an employer's actions that determine whether it may have discriminated under Title VII of the *Civil Right Act*. In this case, the Court struck down educational requirements and employment tests on two grounds. (a) These requirements could not be justified on the grounds of business necessity since they were not valid or related to job performance. Moreover, (b) they had adverse impact since they screened out a greater proportion of blacks than whites. However, if business necessity could be proved i.e. if the educational and testing requirements that had disproportionate or adverse impact on minorities were in fact related to job performance, than the practice was not prohibited. Thus, disproportionate impact is not sufficient to outlaw credentialism, tests and other hiring standards. Business necessity is the prime criterion in hiring and promotion decisions.<sup>27</sup>

### Enforcement

In equal employment legislation, enforcement in all Canadian jurisdictions relies primarily upon the processing of individual complaints. However, in some jurisdictions, Human Rights Commissions may file a complaint or commence an investigation on their own initiative.<sup>28</sup>

All the Acts provide for the settlement of complaints, if possible, by conciliation and persuasion. They provide for an initial informal investigation into a complaint by an officer who is directed to endeavour to affect a settlement. If conciliation fails, a board of inquiry may be appointed in most jurisdictions.<sup>29</sup> Such a board may issue orders for compliance, compensation etc. This order may be appealed to the Supreme Court of the Province on questions of law or fact or both. The federal jurisdiction allows an appeal by either the complainant or person complained against, to a Review Tribunal, where the original Tribunal had fewer than three members.

## METHODOLOGY

In order to study, as previously stated, the incidence of pre and post employment discrimination, direct and indirect discrimination, the industrial and occupational breakdown of discrimination cases, and the remedies ordered, 74 board of inquiry and court cases were analyzed. These cases were obtained from the relevant Human Rights Commissions. All the Commissions were contacted by mail. A selected number of Commissions were also contacted by phone and/or personal visits. In addition, the relevant literature was searched for leading cases and experts in government, business, trade unions and academic community were contacted in order to obtain information on the cases.

Based on the information from the Human Rights Commissions and other sources referred to above, these (N = 74) are *all* the cases that were adjudicated by boards of inquiry and in some cases courts from 1975 to 1980 in selected jurisdictions in Canada. These jurisdictions included Alberta (N = 9), British Columbia (N = 15), New Brunswick (N = 4), Nova Scotia (N = 5), Ontario (N = 30), and Saskatchewan (N = 11). As of December 31, 1980 no race and sex employment discrimination cases had been decided by a tribunal in the federal jurisdiction. No relevant cases referred to a board of inquiry in Newfoundland for the period under review. There have been no boards of inquiry in Prince Edward Island since the introduction of the Human rights legislation. No cases were received from Manitoba. In Quebec, where decisions are made by an appropriate court, no relevant cases were decided by courts during the period under review.

Although the bulk of a typical Human Rights Commission's workload consists of cases that do not go to a board of inquiry, the data on conciliated cases or cases under investigation etc. are confidential. For this reason, these cases are not analyzed. *Pre-employment discrimination deci-*

*sions rendered by boards of inquiry, courts and (in private settlements) by Commissions:* As table 1 indicates, pre-employment discrimination cases decided by selected boards of inquiry include allegations regarding male/female job stereotypes, height and weight restrictions, refusal to consider racial and ethnic minorities and women for jobs by not granting an interview to the applicants, sex being not a bona-fide occupational requirement (B.F.O.Q.), discriminatory job interviews, discriminatory items in an application blank, and discriminatory job advertisement in a newspaper.

Decisions of boards of inquiry have prohibited such pre-employment barriers as (a) height and weight requirements for a police constable's job,<sup>30</sup> and for labouring jobs;<sup>31</sup> (b) discriminatory items such as the applicant's place of birth and the place of birth of his spouse in an application form;<sup>32</sup> (c) discriminatory or sex stereotyped questions in job interviews;<sup>33</sup> (d) employers misconceptions and stereotypes about male or female jobs such as (i) not considering a female for the job of a cost accountant trainee,<sup>34</sup> (ii) a male for the position of a copywriter,<sup>35</sup> (iii) a female as a rental clerk for a rental truck agency,<sup>36</sup> and (iv) a female for a heavy duty janitorial work.<sup>37</sup>

A bona-fide occupational qualification exemption in respect of sex discrimination has been very narrowly construed by the boards. Employers' arguments such as (i) work being too strenuous for a female,<sup>38</sup> (ii) customer preference for service from one or the other sex,<sup>39</sup> (iii) a desire to create a restaurant atmosphere by having all female waitresses,<sup>40</sup> (iv) lack of washroom facilities for women,<sup>41</sup> (v) male dominated and remote worksite,<sup>42</sup> have been rejected by boards of inquiry in several jurisdictions.

In addition, the B.C. Supreme Court<sup>43</sup> recently held that failure to renew the plaintiff's contract because she married in civil ceremony a divorced member of a methodist church is discriminatory; religion and marital status are not bonafide occupational qualifications in employment. The case is on appeal to the B.C. Court of Appeal.<sup>44</sup>

### **Post-Employment Discrimination Cases**

Table 1 also includes cases on post-employment discrimination which could not be resolved by the relevant Human Rights Commission in private negotiations. These cases, therefore, had to be taken to a board of inquiry. The cases deal with employee organizations and trade unions, equal pay, casual workers denied full-time regular jobs, promotion, dismissal, re-employment, pregnancy, sexual harassment, separate facilities for women, layoffs/seniority, and reprisal.



Several boards of inquiry as well as a court in Quebec have decided that dismissal or refusal to employ or continue to employ on prohibited grounds is illegal. It is illegal to (a) refuse to re-employ on the basis of "nationality" or "place of origin";<sup>45</sup> (b) dismiss a worker because of racism;<sup>46</sup> (c) refuse to promote a worker on account of race or colour;<sup>47</sup> (d) refuse to permit women from gaining permanent positions because of sex discrimination.<sup>48</sup>

In British Columbia, the «reasonable cause» provision of the *Human Rights Code* has had a major impact in broadening the scope of prohibited grounds of discrimination that otherwise would have been excluded.<sup>49</sup> For example, a decision in a pregnancy case by a board of inquiry allowed sick leave benefits to teachers absent from employment for sickness caused by or aggravated by pregnancy, under the "reasonable cause" provision.<sup>50</sup> Similarly, refusal of employment due to physical disability was considered by a board to constitute discrimination without "reasonable cause", even though this was not a prohibited ground in the Code.<sup>51</sup>

It is clear that the "reasonable cause" in the B.C. *Human Rights Code* has had a major impact in advancing the cause of pregnant women. It is far from clear whether the B.C. decisions in this area will set a precedent for other jurisdictions since the "reasonable cause" prohibition is not present in other statutes, except in Manitoba.<sup>52</sup>

### **Sexual Harassment**

In a precedent setting decision, an Ontario board of inquiry declared in August 1980 that sexual harassment is discrimination based on sex, according to section 4(1) of the *Human Rights Code*. In this case, *Anna Korczak and Cherie Bell v. Ernest Lada and the Flaming Steer Steak House Tavern Inc.* the complainants had alleged that they had been sexually harassed by their employer, the owner of the restaurant. Although the complainants lost the case, Board chairman Owen Shime declared that "...there is no reason why the law, which reaches into the work place so as to protect the work environment from physical or chemical pollution or extremes of temperature, ought not to protect employees from negative, psychological and mental effects where adverse gender-directed conduct emanating from a management hierarchy may reasonably be construed to be a condition of employment." Thus, sex as a prohibited ground of discrimination includes sexual harassment where because of a worker's sex, some term or condition of employment is modified by the sexual harassment.<sup>53</sup>

### Indirect or Systemic Discrimination

Table 2 shows that discrimination was found in 73 percent or every seven out of ten cases that went before a board of inquiry. A majority of cases in which discrimination was found pertained to sex discrimination. In nine cases, systemic discrimination was also found. As will become clear, systemic or indirect discrimination is becoming the prevailing view throughout Canada.

An analysis of the systemic cases reveals that the approach adopted in the *Griggs* case has now been widely emulated in Canada; malice or intent to discriminate is no longer a relevant factor. One of the leading cases, though not related to race or sex, which changed the intent to discriminate situation involved a member of the Sikh faith. He complained to the Ontario Human Rights Commission, after he was refused a job as a security guard. The dress and grooming regulations of the firm to which he had applied required employees to be clean shaven and to have their hair trimmed. The Sikh applicant wore a turban and had a beard as required by his religion and therefore unable to comply with the firm's regulation. In this case, *Ishar Singh v. Security and Investigation* 1977, the Ontario board of inquiry found that the «employer bore no ill will towards Sikh people... had no intention to insult or act with malice...and did not have the intention or motive of discrimination.<sup>54</sup> The board, however, found that the effect of the employer's policy which required that their security guards be clean-shaven and wear caps, was to deny employment to Sikhs. It ruled that intention was not necessary to establish a contravention of human rights legislation.

The decision signalled a change, away from a concern with bigotry, and toward a concern with providing equality of opportunity.

A similar concern is reflected in a January 1979 board of inquiry case.<sup>55</sup> In the case of Ann Colfer against Ottawa Police Commission the board decided that the Commission's minimum height requirement of 5 feet, 10 inches "virtually eliminates women as police constables", as only 5 percent of females in Canada are that height or taller. This height and weight (160 pound) requirement, the board declared, had a disproportionate effect upon female gender relative to the male gender.

These cases are not restricted to Ontario. For example, the systemic approach is also evident in a variety of other jurisdictions involving such diverse organizations as the B.C. College of Physicians,<sup>56</sup> a branch of Royal Canadian Legion in New Brunswick<sup>57</sup> and a variety of organizations in Ontario including a taxi-cab co.,<sup>58</sup> the Liquor Control Board of Ontario,<sup>59</sup> Hamilton Tiger Cats<sup>60</sup> and an investigation security company.<sup>61</sup>

### **Industrial and Occupational Breakdown of Cases**

As Table 3 reveals, a majority (40 percent) of the cases analyzed pertained to employers in the community, business and personal services industrial sector including such enterprises as hospitals, universities, school boards etc. Thus, service industries head the list (N = 28) of the employment discrimination cases. Other industries in the order of frequency are trade (N = 15), manufacturing (N = 13), and public administration. Cases in other industries range from 2 to 3. It is clear from the table that except for the primary industries, almost all industrial sectors are covered by the discrimination cases analyzed in the study.

Table 4 shows that the complainants were predominantly white-collar worker, (in more than seven out of every ten cases). Among the white-collar workers, almost half belonged to secretarial and service workers category followed by professional (one-quarter) and technical (one-fifth) workers; there were some (6 percent) women in the administrative and managerial category as well.

Among the blue-collar complainants, who comprised more than one-fifth of all 74 cases, almost nine out of ten were in unskilled worker category.

An analysis of the data in tables 3 and 4 indicates that employment discrimination cases involved a cross-section of industries and institutions and were not confined to blue-collar or lower level white-collar workers; professional, technical, and to some extent administrative and managerial workers were also involved.

### **Remedies Ordered**

As table 5 indicates, in most cases that went before a board of inquiry, in which discrimination was found, more than one remedy was ordered. The most frequent remedy was compensation for lost wages. The other remedies in order of frequency were an order to employers to (a) display the relevant Human Rights Code in predominant places in employer premises, (b) stop their unlawful conduct, (c) compensate for general damages, (d) compensate for expenses incurred by the complainant, (e) compensate for pain and humiliation suffered by the complainant, (f) reinstate the complainant, (g) write a letter of apology to the complainant, (h) offer employment or opportunity for employment or interview etc. at the next available job opening, (i) allow the relevant Human Rights Commission to conduct human rights workshop for company executives, (j) amend application form and/or other selection tools, (k) write a letter of apology to the rele-

vant Human Rights Commission, and (l) to provide separate facilities for women.

## CONCLUSIONS AND POLICY IMPLICATIONS

In this paper, three approaches to labour market discrimination against minority groups and women have been examined. These are the ILM, DLM and the human capital approaches. In the ILM approach, the barriers-to-entry and to advancement within the organization were discussed. The role of such job barriers may have strengthened as a result of the development of internal labour markets in line with the growth in firm size and rising capital intensity. As noted earlier, internal labour markets pose problems for minority groups because they imply that preferential treatment would be given to incumbents with regard to promoted posts, and acquired seniority rights may be limited to majority workers. Added to this, minority workers may be relegated to the secondary sector of dual labour markets, where they may develop poor work habits, making them less desirable employees, and to some extent exclude themselves from applying for primary jobs through a process of self selection. As far as barriers-to-entry are concerned, employers may use sex or race as a cheap screen which may be discriminatory for certain members of minority groups who would turn out to be desirable employees if only they were offered a job. Similarly, excessive use of credentialism (job selection based on educational qualifications) may imply that hiring standards are set in excess of job requirements and minority workers are excluded from certain occupations to a disproportionate extent. Similar problems may arise with respect to employment tests and interviews in so far as they are not properly validated against actual job performance and with respect to channels of recruitment where they are sufficiently narrow to arbitrarily exclude minorities. Employers should also guard against the possibility that they hold misguided or stereotyped views of the relative performance or value of the various groups. For example, misconceptions may be important in relation to barriers to advancement, where there is no experience of minority workers being employed in senior positions. Married women in particular will be adversely affected through discontinuous work experience in obtaining job advancement, so that it is important to assess accurately the significance of experience for determining the actual performance of workers in particular jobs.

Thus, both pre-employment and post-employment discrimination cases presented in table 1 and discussed earlier would seem to indicate that entry and training requirements should be carefully established and maintained only if they are truly necessary employment and promotion prerequisites.

It would therefore seem sensible for employers to develop clear equal opportunities policies in order to ensure that they are not discriminating by default of appropriate action and to give themselves some safeguard in the event of their policies being challenged. For instance, organizations must issue clear instructions regarding the employment interview through their personnel departments. Interviews should be structured as much as possible, and only questions of direct relevance to the job should be asked.

Organizations should keep in mind that over the years, substantial validity evidence has accumulated for many of the predictors. Generally, in employment tests, ability tests and work sample tests — relative to personality and interests tests — have the most favourable validity evidence. References and recommendations, and interviews generally have been found to be less valid as predictors of job success. Choices of predictors to be used in staffing systems should be governed by the nature of the job, and the validity of the predictors. Staffing systems can be improved considerably by standardization, to obtain reliable information, and by the validation process. Emerging research evidence seems to indicate that validity of tests need not be situation specific and it may be possible to generalize it across different settings<sup>62</sup>.

There would appear to be three broad types of human resource policies which might be utilized to assist minority workers. Firstly, taking labour supply and demand as given, one might attempt to make the labour market operate more efficiently by means of placement activities, worker counselling and labour mobility or related measures, which would be appropriate regardless of the structure of labour markets. Secondly, one might attempt, consistent with the human capital approach to upgrade the labour supply of minority workers by means of greater investment in education and training. Thirdly, following the labour market segmentation approach, one might recommend solutions lying on the demand rather than the supply side, with a requirement for government employment and expenditure policy to favour those in the secondary sector. This would include equal opportunity and affirmative action programs.

If equal opportunities and affirmative programs are to work, they have to be effective. However, the empirical evidence that does exist points to only a limited impact of such legislation; the 74 cases discussed are probably just the tip of the iceberg. These and other cases however, do have an educational effect and may have served to enhance the awareness of the need to provide equality of opportunity than existed before.

Another indication of the limited impact is the small number of complaints filed. Ignorance of the legislation, lack of resources and fear of em-

ployer reprisals have apparently kept the number of complaints down to artificially low levels<sup>63</sup>.

Critics have suggested changes in both the scope and enforcement of such legislation in Canada in order to improve its effectiveness. Instead of the case-by-case approach by most Human Rights Commissions, class action suits, routine investigation of firms<sup>64</sup>, and contract compliance have been advocated.

Given the multiplicity of factors operating in the ILM, equal opportunity legislation may be a necessary but not sufficient condition for the elimination of inequality between majority and minority groups within the labour force. Legal approaches are limited because they operate only on the demand side of the problem (i.e. employer side) and do little to change supply, (i.e. education and training of minorities).

Education and training of minorities and women for professional and managerial jobs require lead time. Thus, the lowering of racial and sex barriers does not in itself ensure a supply of qualified people to take advantage of new opportunities. While employers, unions and other institutions can be compelled to stop discrimination against minorities and women, they cannot be compelled to recruit them actively or train them. This suggests the need for supportive policies such as improvements in education and training, the achievement of sustained levels of employment, and a more equal division of labour in the household.

#### FOOTNOTES

1 B. UBALE, *Equal Opportunity and Public Policy*, Toronto, Indian Immigrant Aid Services, Oct. 30, 1977. Also see G.S. SAUNDERS, "The Labour Market Adaptation of Third World Immigrants", paper delivered at a conference on multi-culturalism and third world immigrants in Canada, University of Alberta, September 5, 1975. *Life Together: A Report on Human Rights in Ontario*, Toronto Ontario Human Rights Commission, July 1977. "Study Shows Job, Real Estate Agencies are Willing to Screen out Non-whites", *The Globe and Mail*, January 11, 1977, p. 4. *Equality of Opportunity: The Emerging Challenge in Employment*, Ottawa, Conference Board in Canada, March 1978. *Annual Report, Canadian Human Rights Commission, 1979*, Ottawa: Minister of Supply & Services Canada, 1980. *Race and Sex Equality in the Workplace, Proceedings*, Harish C. Jain & Diane Carroll, editors, Ottawa: Minister of Supply & Services Canada, 1980.

2 See, Harish C. JAIN, "Testimony on Bill 7 -- The Human Rights Code, 1981 -- to the Standing Committee on Resources Development", Queen's Park, Toronto, June 17, 1981 and *Ontario Debates*, selected issues in May 1981. Also see, Canadian Human Rights Commission's recommendation to the Parliament in this respect. *Annual Report 1979, Canadian Human Rights Commission*, Ottawa Minister of Supply & Services, 1980, p. xiv.

3 Neil W. CHAMBERLAIN, Donald E. CULLEN, and David LEWIN, *The Labor Sector*, Third edition, New York: McGraw-Hill, 1980, p. 366.

4 The two concepts are related because dualism implies that minority groups are denied access to internal labour markets as well as primary labour markets, the distinction between the two being discussed more fully later in the paper.

5 See, Harish C. JAIN and Peter J. SLOANE, *Equal Employment Issues: Race and Sex Discrimination in the U.S.A., Canada and Britain* (in press).

6 P.B. DOERINGER and M. J. PIORE, *Internal Labor Markets and Manpower Analysis*, Lexington, Mass., D. C. Heath & Co., 1971.

7 The competitive labour-market theory implies free mobility of workers between jobs, information about jobs (workers being sufficiently well informed), and continuous demand and supply schedules that generate optimum combinations of prices and quantities (wages and employment) of the labour factor of production. See, Neil W. CHAMBERLAIN *et al.*, *op. cit.* in 3 above, p. 336.

8 Screening devices refer to readily ascertainable characteristics (such as race/or sex) which are used to distinguish between job applicants without evaluating other characteristics or attributes of the individual applicant.

9 H. C. JAIN, "Is Education Related to Job Performance?", *Contemporary Issues in Canadian Personnel Administration*, Scarborough, Ontario, Prentice-Hall, 1974.

10 A recent (July 1980) *Report of the Task Force on the Racial and Ethnic Implications of Police Hiring, Training, Promotion and Career Development* in Ontario indicates that "psychological tests, and in particular, intelligence tests, are not entirely free from cultural and language backgrounds that are different from individuals from the dominant culture on whom the psychological tests were standardized and validated tend to do poorly on some of these tests. This does not necessarily mean that they are inferior to other groups who do better on these tests..." See, *Policing in Ontario for the Eighties: Perceptions and Reflections*, Toronto, Solicitor General of Ontario, July 1980.

In a study for the Department of Employment and Immigration, Michel ALAIN interviewed both counsellors and native people in order to evaluate their perceptions for cultural biases found in a number of Canada Employment Centers in Canada. He found that despite the fact that both counsellors and native people agreed that the tests were inadequate, and unreliable, the counsellors continued to use them. See, *A study of the Testing and Counselling Services Offered to the Canadian Native Population by Canada Manpower Centres*, Ottawa, Department of Manpower and Immigration, February 1976.

Another study confirms that some of the psychological tests used by federal government departments and agencies during the hiring process fall short of professional standards and that no policy exists to protect employees from psychological test abuses. Marla BENSON, *Pre-hiring Psychological Testing under Federal Jurisdiction*, Ottawa, Canadian Human Rights Commission, December 1980, p. 77.

11 Richard D. ARVEY, *Fairness in Selecting Employees*, Reading Mass. Addison-Wensley, 1979.

12 *Women in the CBC: Report of the Task Force on the Status of Women*, Toronto, CBC, 1975, pp. 56, 59-69.

13 *Ibid.*

14 Some of the job barriers by trade unions (in craft markets, for example) and licensing by professional associations might include nepotism, high levels of education and training, tests of ability on entry and entry fees. See, D. A. DOGE, "Occupational Wage Differentials, Occupational Licensing and Returns to Investment in Education: An Exploratory Analysis", in S. OSTRY (ed.), *Canadian Higher Education in the Seventies*, Ottawa, Economic Council of Canada, May 1972. *Training for Ontario's Future*, Toronto, Ontario Ministry of Colleges

and Universities, 1973. *Canadian Industrial Relations*, Ottawa, Queen's Printer, 1969. *Interim Report on Competition Policy*, Ottawa, Queen's Printer, 1969. *Royal Commission Inquiry Into Civil Rights*, Vol. 3, Toronto, Queen's Park, 1978.

15 B. G. MALKIEL and J. A. MALKIEL, "Male and Female Pay Differentials in Professional Employment", *American Economic Review*, Vol. 63, No. 4, September 1973. B. CHIPLIN and P. J. SLOANE, "Personal Characteristics and Sex Differentials in Professional Employment", *Economic Journal*, Vol. 86, No. 344, December 1976. F. H. CASSELL, S. M. DIRECTOR and S. I. DOCTORS, "Discrimination Within Internal Labour Markets", *Industrial Relations*, Vol. 14, October 1975.

16 Seniority systems in unionized companies for example, may discriminate against women in this way. If males acquire more seniority than females, they will obtain higher earnings, large fringe benefits, easier access to overtime, preferred jobs and promotable jobs, and a lower possibility of lay-off through the operation of "last-in-first-out" systems. Seniority systems, therefore, have the serious disadvantage of perpetuating existing unfavourable minority employment patterns. If women are the last to be hired during the recovery phase of the business cycle, they will be the first to be laid off in the recession phase.

17 P. B. DOERINGER and M. J. PIORE, *op.cit.* in 6 above.

18 Reasons for this duality of labour markets are difficult to discern since cause and effect are unclear. Workers are trapped in the secondary market in part because of their poor work habits; their poor work habits in turn result in part from their being employed in the secondary labour market. This is what creates mobility barriers which become self-perpetuating. See Morley GUNDERSON, *Labour Market Economics: Theory, Evidence and Policy in Canada*, Toronto, McGraw-Hill Ryerson Ltd., 1980, p. 189.

19 For instance, Piore has identified upper and lower jobs tiers within the primary labour market noting that this is as important as the distinction between the primary and secondary sectors. See, Michael J. PIORE, *Notes for a Theory of Labor Market Stratification*, Working Paper No. 95, Cambridge, Mass. M.I.T. Dept. of Economics, p. 3-4. Also see, Paul OSTERMAN, "An Empirical Study of Labor Market Segmentation," *Industrial and Labor Relations Review*, Vol. 18, 1973, 508-523.

20 Harish C. JAIN, *Disadvantaged Groups on the Labour Market and Measures to Assist Them*, Paris, France, O.E.C.D., 1979.

21 B. G. MALKIEL and J. A. MALKIEL, *op.cit.* in 15 above. Morley GUNDERSON, "Male-female Wage Differentials and the Impact of Equal Pay Legislation", *Review of Economics & Statistics*, Vol. 57, Nov. 1975, 462-470. F. H. CASSELL et al. *op.cit.* in 15 above. M. GORDON, and T. E. MORTON, "The Staff Salary Structure of a Large Urban University", *The Journal of Human Resources*, Vol. 11, No. 3, 1976. M. A. FERBER, "Sex and Race Differences in Non-academic Wages in a University". *The Journal of Human Resources*, Vol. 11, No. 3, 1976. SMITH, "Government Wage Differentials by Sex", *The Journal of Human Resources*, Vol. 11, No. 2, Spring 1976. P. OSTERMAN, "Sex Discrimination in Professional Employment: A Case Study", *Industrial and Labor Relations Review*, Vol. 32, No. 41, July 1979. James E. ROSENBAUM, "Hierarchical and Individual Effects on Earnings", *Industrial Relations*, Vol. 19, No. 1, Winter 1980. For CHIPLIN and SLOANE, see 16 above, *op.cit.* W. S. SIEBERT and P. J. SLOANE, "The Measurement of Sex and Marital Status Discrimination at the Workplace", *Economica*, Vol. 48, 1980.

22 R. N. OAXACA, "Theory and Measurement in the Economics of Discrimination", in L. J. HAUSMAN, O. ASHENFELTER, B. RUSTIN, R. SCHUBERT, and D. SLAIMAN (eds.), *Equal Rights and Industrial Relations*, Madison, Wis., IRR, 1977.

23 B. R. BERGMAN, "Occupational Segregation, Wages and Profits when Employers Discriminate by Race and Sex", *Eastern Economic Journal*, Vol. 1, April/July 1974, 103-110.



24 These jurisdictions are: Federal, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Quebec, and Saskatchewan.

25 Several jurisdictions also proscribe political belief. In B.C., the Code contains a specific list of prohibited grounds and a general prohibition against discrimination "unless reasonable cause exists" for the conduct. This has led to a much larger range of practices that have been prohibited such as spousal occupation, appearance (long hair), homosexuality, and physical stature (people below 5'-6"). See, H.D. ARTHURS, DD. CARTER and H.J. GLASKBEEK, *Labour Law and Industrial Relations in Canada*, Toronto, Butterworths, 1981, 184-185.

26 Direct discrimination refers to malice or intent to discriminate. Until 1960s, it was assumed that intent to discriminate must be proved. See, William BLACK, "From Intent to Effect: New Standards in Human Rights," *Canadian Human Rights Reporter*, Vol. 1, February 1980, c/2.

27 For a detailed discussion, see Harish C. JAIN, and Peter J. SLOANE, *Equal Employment Issues...* in 5 above.

28 In some cases a person other than the complainant (who alleges to have suffered discrimination) can file a complaint with the relevant Human Rights Commission. This is true in the case of the federal, Alberta, B.C., Manitoba, Ontario, Quebec and the Saskatchewan Statutes. However, in the federal, Manitoba, Ontario and Saskatchewan legislation, the Human Rights Commission may not take action unless the person filing the complaint gets permission from the complainant. In seven provinces, the Human Rights Commissions can initiate a complaint or an investigation on their own initiative; these are the federal, B.C., Manitoba, Nova Scotia, Quebec, and the Saskatchewan Commissions.

29 In Quebec it is the appropriate court. In Manitoba, it is a board of adjudicators. In federal jurisdiction, it is a human rights tribunal.

30 *Ann Colfer v. Ottawa Board of Commissioners of Police*, (1978), an Ontario board of inquiry decision.

31 *Kathleen Grafe v. Sechelt Building Supplies (1971) Ltd.*, (1979), a B.C. board of inquiry.

32 *Kathleen Ruff v. A.A.A. Rentagard Canada Ltd.*, (1979), a B.C. board of inquiry decision.

33 *Kerry Segrave v. Zeller's Ltd.*, (1975), an Ontario board of inquiry decision.

34 *Stairs v. Maritime Cooperative Services Ltd.*, (1975), a New Brunswick board of inquiry decision.

35 *Francis Perry v. Robert Simpsons Ltd.* (1976), a Nova Scotia board of inquiry decision.

36 *Betty-Ann Shack v. London Drive-Ur-Self Ltd.*, (1974), an Ontario board of inquiry decision.

37 *E. Garnett v. Kompleat Industries Ltd.*, (1979), a B.C. board of inquiry decision.

38 *Betty-Ann Shack* in 36 above. Similarly, in the *David J. Foreman et al. v. Via Rail Canada Inc.*, (1980), a federal case, the tribunal held that Via's acuity standards were not based on a bona-fide occupational requirement since Via had failed to justify the standards. This was not a race or sex discrimination case; however, it is an important BFOQ case.

39 *Donald J. Berry v. The Manor Inn*, (1980), a Nova Scotia of inquiry decision.

40 *Kesterton v. Spinning Whell Restaurant*, (1975), a B.C. board of inquiry decision.

41 *Jean Tharp v. Lornex Mining*, (1975), a B.C. board of inquiry decision.

42 *Ibid.*

43 *Labour Research Bulletin*, Vol. 8, October, 1980.

44 *Ibid.* Some of the cases discussed in the BFOQ area include post-employment discrimination.

45 *Dr. M.A. Rajput v. Dr. Donald Watkins and Algoma University College and its Agents*, (1976), an Ontario board of inquiry decision.

46 Quebec Superior Court decision in the case of *Thomas v. Robin Hood Multifoods Ltd.*, as reported in the *Globe & Mail*, February 13, 1981, 9.

47 *William Turner v. Prince Albert Pulp Co. Ltd.*, (1974), a Saskatchewan Human Rights Commission formal inquiry decision.

48 For three different cases on this issue, see *Gail Oliver v. Her Majesty the Queen in right of Saskatchewan as represented by the Minister of Highways and transportation of Saskatchewan*, (1976), a Saskatchewan Human Rights Commission formal inquiry decision. *Shirley Naugler v. The New Brunswick Liquour Corporation*, (1976), a N.B. board of inquiry decision, and *Hetty Hendry v. L.C.B.O.*, (1980), an Ontario board of inquiry decision.

49 Bill BLACK, "'Reasonable Cause' in Human Rights Legislation," *Labour Research Bulletin*, Vol. 9, February 1981 and 25 above.

50 *Kerrance Gibbs and Surrey Teachers Association v. Board of School Trustees School District no. 36 (Surrey)*, (1979), a B.C. board of inquiry decision.

51 S. DAY, "Recent Developments in Human Rights," *Labour Research Bulletin*, Vol. 5, June 1977, 21.

52 Bill BLACK, "'Reasonable Cause' in Human Rights Legislation", *op.cit* in 49 above.

53 *Anna Korchzak and Cherie Bell v. Ernest Lada and the Flaming Steer Steak House Tavern Inc.*, (1980), an Ontario board of inquiry decision

54 *Ishar Singh v. Security and Investigation*, (1977), an Ontario board of inquiry decision.

55 *Ann Colfer v. Ottawa Board of Commissioners of Police*, (1978), an Ontario board of inquiry decision.

56 *Human Rights Commission of British Columbia v. The College of Physicians and Surgeons of British Columbia*, (1976).

57 *Joan Bulger v. Branch No. 4, Royal Canadian Legion*, (1978).

58 *Gurufatha Khalsa v. Associated Taxi-Cab Cooperative Ltd.*, (1980).

59 *Hetty Hendry v. L.C.B.O.*, (1980).

60 *David James Bones v. Hamilton Tiger Cats*, (1979).

61 *Robertson v. Metro Investigation and Security*, (1979).

62 F.L. SCHMIDT and J.E. HUNTER, "Development of a General Solution to the Problem of Validity Generalization," *Journal of Applied Psychology*, Vol. 62, 1977, 529-540. Also see, Marvin D. DUNNETTE and Walter C. BORMAN, "Personnel Selection and Classification Systems," *Annual Review of Psychology*, Vol. 30, 1979, 477-525. Frank L. SCHMIDT, John E. HUNTER, Robert C. MCKENZIE and Tressie W. MULDROW, "Impact of Valid Selection Procedures on Work-force Productivity," *Journal of Applied Psychology*, Vol. 64, 1979, 609-626. Mary L. TENOPYR, "Trifling he Stands," *Personnel Psychology*, Vol. 34, 1-17.

63 *The Status of Women in Canada*, Ottawa, Information Canada, 1970.

64 Apparently, routine investigation of firms does bring increased back pay settlements. For instance, 157 investigations and routine audits under Ontario's equal pay regulations resulted in \$284,000.00 of salary increases and back pay settlements for women employees over a 10-month period, April 1980 to January 1981. Thirty-six employers were found to be in violation of the law in cases involving 134 women. The beefed-up inspection procedures by the Ministry of Labour were made possible by the hiring of 11 new officials who were added to the Ministry's equal pay monitoring team in Spring 1980. See, *Globe and Mail*, February 27, 1981, B-8. A comparison of previous statistics highlights the role of routine audits in increasing back pay settlements. In 1979/80, nine employers were found in violation of the law involving 44

employees and \$56,212.00 in settlement; in 1978/79, eight employers involving 29 employees were found to be in violation and the settlement was \$8,311.00; in 1977/78, nine employers involving 20 employees were found to be in violation and the settlement was \$6,672.67. The exception to the rule was the year 1976/77 when 29 employers and 452 employees were involved and the settlement was \$535,966.02. In 1975/76 however, the settlement sum of \$31,248.88 was in line with other years and involved 17 employers and 76 employees. These figures were provided by the Women's Bureau in the Ontario Ministry of Labour.

## Race et sexe en tant qu'objet de discrimination dans l'emploi au Canada

La discrimination dans l'emploi contre les groupes minoritaires a été une question d'intérêt politique et social au Canada depuis la décennie 1950. De nombreuses études, incluant une commission royale d'enquête sur le statut de la femme, ont démontré l'existence de la discrimination au travail contre les femmes et les minorités en général. La politique du gouvernement fédéral et des provinces tente de l'éliminer.

Dans le présent article, l'aspect le plus important et le plus intrigant de la discrimination fondée sur la race et le sexe, c'est que son existence et les remèdes que l'on propose ont été surtout définis en fonction des marchés du travail intérieur et extérieur.

On en traite généralement selon trois approches différentes. En premier lieu, on trouve d'abord l'approche fondée sur le marché du travail interne qui correspond à celui d'une entreprise à l'intérieur de laquelle la rémunération et l'allocation du travail repose sur un ensemble de procédures et de règlements administratifs. Dans cette situation, les employés qui sont déjà au service de l'entreprise sont naturellement susceptibles d'obtenir un traitement préférentiel par rapport à ceux qui sont à l'extérieur, ne serait-ce que parce qu'ils ont l'avantage de posséder les connaissances et la compétence exigées par l'entreprise et que les candidats de l'extérieur ne sont pas au courant des occasions possibles d'emploi, même s'ils sont compétents. Même parmi le personnel de l'entreprise, il y a possibilité de discrimination dans les cas de promotion, de mutation et de rétrogradation qui peuvent se présenter de temps à autre ainsi que dans les cas d'avancement dans la hiérarchie de l'organisation.

La deuxième approche se rapporte à ce qu'on peut appeler le marché du travail qui serait divisé en deux secteurs: le secteur primaire et le secteur secondaire. Le premier est caractérisé par les salaires élevés et les avantages sociaux, les emplois spécialisés, les occasions d'avancement, la stabilité de l'emploi et un haut degré de syndicalisation tandis que, pour le deuxième secteur, c'est tout le contraire qui se produit. On trouve une forte concentration d'adultes «blancs» dans le premier secteur et un nombre disproportionné de femmes et autres minorités dans le deuxième secteur. Des barrières difficilement franchissables s'établissent entre l'un et l'autre d'où il résulte que certains travailleurs se trouvent ainsi discriminés et demeurent dans des postes qui sont inférieurs à leur compétence à cause de leur race, de leur sexe ou de leur nationalité.

Une troisième façon de considérer le problème, c'est l'approche dite de capital humain. Selon celle-ci, les travailleurs minoritaires et les femmes manqueraient souvent d'éducation, de formation et d'expérience pratique pour accéder à de meilleurs postes. Ce n'est pas seulement la structure de l'environnement économique dans lequel les groupes minoritaires travaillent, mais aussi les caractéristiques des individus eux-mêmes qui les maintiennent dans des emplois peu rémunérés. Selon cette approche, une meilleure formation des personnes appartenant à des groupes, une connaissance plus approfondie et plus généralisée des marchés du travail s'imposeraient si l'on veut que les catégories de travailleurs améliorent leur sort.

L'article traite ensuite de la législation actuelle contre la discrimination dans l'emploi qui a été adoptée, non seulement par le gouvernement fédéral, mais par l'ensemble des provinces, législation qui vise à la fois les employeurs, les syndicats et les agences de placement. Dans l'étude des plaintes, on procède partout par cas individuels et quand c'est possible, l'affaire est réglée par conciliation et par persuasion. Lorsque la conciliation échoue, on nomme une commission d'enquête. L'article analyse 74 cas dont les commissions d'enquête et les Tribunaux ont disposé de 1975 à 1980. Il ne s'agit là assurément que un nombre assez réduit de plaintes qui ne représente que la pointe de l'iceberg.

Pour restreindre la discrimination dans l'emploi d'une façon marquée, il faut surtout travailler à rendre les marchés du travail plus efficaces en assurant aux femmes et autres minorités une plus grande connaissance des besoins des marchés; il faut faciliter la mobilité de la main-d'oeuvre, en leur permettant d'acquérir la formation nécessaire à leur entrée et à leur avancement dans les milieux de travail.

**TABLE 1**  
**Classification of Selected Provincial Boards of Inquiry**  
**and Court Cases on Race<sup>a</sup> and Sex<sup>b</sup> Discrimination in Employment (N = 74)<sup>c</sup>**

<i>Subject</i>	<i>Race</i>		<i>Sex</i>		<i>Total<sup>d</sup></i>	
	<i>No.</i>	<i>%</i>	<i>No.</i>	<i>%</i>	<i>No.</i>	<i>%</i>
<i>I Pre-employment</i>						
1. Male-female job stereotypes	1	1	14	19	14	19
2. Height and weight restrictions	—	—	5	7	5	7
3. Job interview not granted	3	4	2	3	5	7
4. Discriminatory newspaper advertisement	—	—	1	1	1	1
5. Discriminatory job interview	—	—	2	3	2	3
6. B.F.O.Q. claimed <sup>e</sup>	1	1	6	8	7	9
7. Discriminatory items on an application form	1	1	—	—	1	1
<i>II Post-employment</i>						
8. Employee organizations and trade unions	2	3	—	—	2	3
9. Equal pay	—	—	7	9	7	9
10. Full-time permanent position denied to casual workers	—	—	5	7	5	7
11. Promotion	—	—	5	7	5	7
12. Dismissal	9	12	5	7	14	19
13. Demotion	—	—	2	3	2	3
14. Re-employment refused	4	—	—	—	4	5
15. Pregnancy	—	—	2	3	2	3
16. Sexual harassment	—	—	2	3	2	3
17. Separate facilities for women	—	—	2	3	2	3
18. Layoffs/Seniority	—	—	1	1	1	1
19. Reprisal	—	—	1	1	1	1

a. Race includes colour, ethnic origin and nationality.

b. Sex includes sexual harassment.

c. Totals may not add up because of multiple entries.

d. In one case, *Berry v. Manor Inn* (1980) in Yarmouth, Nova Scotia, discrimination was found on the basis of both race and sex.

e. Some cases include both pre and post-employment discrimination.

TABLE 2

**Classification of Decisions Ordered by Selected Provincial Boards  
of Inquiry and Courts in Race<sup>a</sup> and Sex<sup>b</sup> Discrimination in Employment (N = 74)**

	<i>Race</i>		<i>Sex</i>		<i>Total (N = 74)</i>	
	<i>No.</i>	<i>%</i>	<i>No.</i>	<i>%</i>	<i>No.</i>	<i>%</i>
Discrimination found	13	18	41	55	54 <sup>c</sup>	73
Discrimination not found	9	12	12	16	21	28
					(N = 74)	
<i>Systemic Discrimination</i>						
Adverse impact found	2	3	7	9	9	12
<i>Appeals to courts</i>						
Direct appeal to court, plaintiff appeal allowed	1	100	—	—	5	7
Appeal of board decision allowed	—	—	3	4		
Appeal of board decision dismissed	—	—	1	1		

a. Race includes colour, ethnic origin and nationality.

b. Sex includes sexual harassment.

c. The total does not add up to 74 because in one case, discrimination was found on the basis of both race and sex.

**TABLE 3**

**Industrial Distribution of Race and Sex Employment Discrimination Cases by Selected Provincial Boards of Inquiry and Courts (N = 74)**

<i>Manufacturing</i>			<i>Construction</i>			<i>Transportation and Communications and other utilities</i>			<i>Trade</i>			<i>Finance, Insurance &amp; real estate</i>			<i>Community business and personal services</i>			<i>Public Administration</i>			<i>Mines, quarries, and oil wells</i>																										
<i>Race</i>	<i>Sex</i>	<i>Total</i>	<i>Race</i>	<i>Sex</i>	<i>Total</i>	<i>Race</i>	<i>Sex</i>	<i>Total</i>	<i>Race</i>	<i>Sex</i>	<i>Total</i>	<i>Race</i>	<i>Sex</i>	<i>Total</i>	<i>Race</i>	<i>Sex</i>	<i>Total</i>	<i>Race</i>	<i>Sex</i>	<i>Total</i>	<i>Race</i>	<i>Sex</i>	<i>Total</i>																								
<i>no</i>	<i>%</i>	<i>no</i>	<i>no</i>	<i>%</i>	<i>no</i>	<i>no</i>	<i>%</i>	<i>no</i>	<i>no</i>	<i>%</i>	<i>no</i>	<i>no</i>	<i>%</i>	<i>no</i>	<i>no</i>	<i>%</i>	<i>no</i>	<i>no</i>	<i>%</i>	<i>no</i>	<i>no</i>	<i>%</i>	<i>no</i>																								
6	8	7	9	13	18	—	—	3	4	3	4	—	—	2	3	2	3	4	—	5	11	15	15	20	—	3	4	3	4	10	14	18	24	28	38	2	3	6	8	11	—	—	2	3	2	3	3

- a. Race includes colour, ethnic origin and nationality.
- b. Sex includes sexual harassment.

**TABLE 4**

**Occupational Distribution of Race<sup>a</sup> and Sex<sup>b</sup> Employment Discrimination Cases by Selected Provincial Boards of Inquiry and Courts (N = 74)**

<i>White Collar</i>										<i>Blue Collar</i>										<i>Total</i>											
<i>Managerial &amp; Administrative</i>		<i>Professional</i>		<i>Technical</i>		<i>Secretarial Service</i>		<i>Total</i>		<i>Other</i>		<i>Skilled</i>		<i>Unskilled</i>		<i>Total</i>															
<i>Race</i>	<i>Sex</i>	<i>Race</i>	<i>Sex</i>	<i>Race</i>	<i>Sex</i>	<i>Race</i>	<i>Sex</i>	<i>Race</i>	<i>Sex</i>	<i>Race</i>	<i>Sex</i>	<i>Race</i>	<i>Sex</i>	<i>Race</i>	<i>Sex</i>	<i>Race</i>	<i>Sex</i>														
<i>no</i>	<i>%</i>	<i>no</i>	<i>%</i>	<i>no</i>	<i>%</i>	<i>no</i>	<i>%</i>	<i>no</i>	<i>%</i>	<i>no</i>	<i>%</i>	<i>no</i>	<i>%</i>	<i>no</i>	<i>%</i>	<i>no</i>	<i>%</i>														
—	—	3	4	8	11	5	7	2	3	9	12	6	8	20	27	53	72	3	4	2	3	—	—	2	3	3	4	11	15	16	22

- a. Race includes colour, ethnic origin and nationality.
- b. Sex includes sexual harassment.

**TABLE 5**  
**Classification of Remedies Ordered by Selected Provincial Boards**  
**of Inquiry in Race<sup>a</sup> and Sex<sup>b</sup> Discrimination in Employment (N = 54)<sup>c</sup>**

<i>Remedies</i>	<i>Race</i>		<i>Sex</i>		<i>Totals</i>		<i>Range in Dollars</i>	<i>Rank</i>
	<i>No</i>	<i>%</i>	<i>No</i>	<i>%</i>	<i>No</i>	<i>%</i>		
1. Monetary compensation for pain and humiliation	3	6	9	17	12	22	75-3,000 <sup>d</sup>	6
2. Compensation for lost wages/salary	8	15	23	42	31	57	40-72,518	1
3. General damages payment	4	7	10	19	14	26	100-27,200	4
4. Displaying of the Human Rights Code in prominent places on company premises	1	2	18	33	19	35		2
5. Reinstatement of the complainant	2	4	7	13	9	17		7*
6. Offer of employment and/or opportunity of employment, interview etc. at the next available job opening	1	2	6	11	7	13		8
7. Employer assurances of continued communication with the Human Rights Commission and compliance with the legislation	1	2	8	15	9	7		7*
8. Letter of apology to the complainant	—	—	9	17	9	17		7*
9. Human Rights workshop or seminar for company executives	—	—	5	9	5	9		9
10. Award of payment of expenses incurred by complainant	2	4	11	20	13	24	1925	5
11. Amendment of application forms and/or other selection tools	—	—	2	4	2	4		10*
12. Separate facilities for women	—	—	1	—	1	2		11
13. Letter of apology to the Commission	—	—	2	—	2	4		10*
14. Respondent to stop unlawful conduct	3	6	15	28	18	33		3
15. Affirmative-action program	—	—	1	2	1	2		11

a. Race includes colour, ethnic origin and nationality.

b. Sex includes sexual harassment.

c. Totals may not add up because of multiple entries.

d. In Ontario, there seems to be a trend towards awarding more compensation for pain and humiliation, for example, from \$75 in 1975 to \$1,700 in 1977 to \$3,000 in 1979 and 1980.