Indexed as:

Ontario Nurses' Assn. (ONA) v. Women's College Hospital

Between
Ontario Nurses' Association, Applicant, and
Women's College Hospital, Respondent,
And Between
Women's College Hospital, Applicant, and
Ontario Nurses' Association, Respondent,
And Between
Ontario Nurses' Association, Applicant, and
Sunnybrook Health Sciences Centre, Respondent,
And Between
Ontario Nurses' Association, Applicant, and
North York Hospital, Respondent,
And Between
Sunnybrook Health Sciences Centre, Applicant, and
Ontario Nurses' Association, Respondent,
And Between
North York General Hospital, Applicant, and
Ontario Nurses' Association, Respondent

Ontario Pay Equity Decisions: [1992] O.P.E.D. No. 20

File Nos. 0008-89, 0011-89, 0018-89, 0029-89,

0034-89 and 0036-89

Ontario
Pay Equity Hearings Tribunal

Before: R. Palumbo, Vice-Chair,
and S. Genge and S. Laing, Members

August 4, 1992

Appearances:

Janice Baker, for Women's College Hospital, Sunnybrook Health Sciences Centre and North York General Hospital.
Mary Cornish, Lori Newton and Felicity Briggs, for the Ontario Nurses' Association.

DECISION OF THE VICE-CHAIR, R. PALUMBO AND S. GENGE, TRIBUNAL MEMBER:--

1 These matters have had a long and uneven history, and their completion, we are certain, is a source of joy and relief to the parties, their counsel and, to be sure, this panel. These matters were heard together pursuant to a Ruling dated December 19, 1989, "for reasons of efficiency, to expedite the hearing process and to avoid a multiplicity of proceedings". The Concise Oxford Dictionary, Seventh Edition, defines "efficiency" as the "ratio of useful work done to total energy expended". The Oxford Dictionary also tells us that to "expedite" is to "accomplish quickly". One wonders about the applicability of these notions to these proceedings.

2 There are two issues in these proceedings:

1. Are the proposals for a gender neutral comparison system put forward by the parties gender neutral in the circumstances of these workplaces?
2. Do the comparison systems proposed by the parties accurately capture and appropriately value:

> the skill, effort, and responsibility normally required in the performance of nursing work and that of their potential male comparators, and the conditions under which that work is normally performed?

3 The Ontario Nurses' Association ("ONA") filed three applications pursuant to sub-section 22(1) of the Pay Equity Act, 1987 R.S.O. 1990, c. P. 7 (the "Act") which provides:

> 22(1) Any employer, employee or group of employees, or the bargaining agent, if any, representing the employee or group of employees, may file a complaint with the Commission complaining that there has been a contravention of this Act, the regulations or an order of the Commission.

4 ONA alleges that the proposal put forward by Women's College Hospital ("Women's College"), Sunnybrook Health Sciences Centre ("Sunnybrook") and North York General Hospital ("North York") (together to be referred to as the "Hospitals") is gender biased in favour of management positions, does not comply with subsections 4(1) and (2), 5, 6(1), 7(1) and (2), and 14(1) and (2) of the Act, and should not be the basis of negotiating a pay equity plan in the circumstances of these

workplaces. The complaint by ONA is essentially that the Hospitals' proposal fails to capture and appropriately value nursing skills, effort, responsibility and working conditions. ONA's position is that a designed, a priori system is the appropriate gender neutral comparison system to comply with the Act in the circumstances of these workplaces.

5 The Hospitals proposed the use of the Stevenson, Kellogg, Ernst and Whinney ("SKEW") Job Evaluation System as the basis of its gender neutral comparison system. They dispute ONA's contention and argue that their proposal is gender neutral, complies with the Act and is appropriate to the workplace. The Hospitals filed Responses and cross-Applications pursuant to subsection 22(1) of the Act which denied the union's allegations, asserted the gender neutrality of the proposed SKEW plan, and alleged that ONA's proposal to design a gender neutral comparison system does not comply with, and goes beyond, the requirements of the Act, and is not appropriate for these workplaces.

6 ONA requests that the Tribunal grant the following relief:

(a) declare that the comparison system adopted and proposed by the Hospitals is gender-biased and unlawful;
(b) order that the parties should be directed to continue to negotiate a pay equity plan using a designed a priori comparison system utilizing the services of the Centre for Women in Government ("SUNY") or Hubbard Revo-Cohen ("HRC") as a consultant, such services to be at the expense of the employer; or as a further alternative
(c) order the parties to design an a priori system utilizing the services of Dr. Ronnie Steinberg, an expert on pay equity.

7 In addition, ONA requests that the Tribunal remain seized of the issues and resolve any dispute relating to the preparation or adoption of a gender neutral comparison system and pay equity plan; and, prepare a pay equity plan should the parties be unable to agree on such a plan.

8 The Hospitals request that the Tribunal:

(a) declare that the SKEW system, whether as in the September, 1988 version, the Service Employees International Union ("SEIU") version or as otherwise modified to address the specific concerns of the parties, is gender neutral, complies with the Act, and is appropriate to the workplace;
(b) declare that the union's proposal does not comply with the Act, goes beyond the requirements of the Act, and is not appropriate for this workplace;
(c) order that the parties continue negotiations for a gender neutral comparison system and a pay equity plan using SKEW as the basis for their negotiations.

Bargaining History

9 The employer Hospitals are large public hospitals governed by the Public Hospitals Act, R.S.O. 1990, c. P. 40 as amended. ONA is the certified bargaining agent for the full-time and part-time bargaining units composed of registered nurses and graduate nurses working at each of the hospitals. All job classes within these units are female dominated. As a result, subsection 6(5) of the Act requires that these female job classes must be compared to male job classes throughout the establishment.

10 Subsection 14(2) of the Act requires that the employer and the bargaining agent shall negotiate in good faith and endeavour to agree on the gender neutral comparison system and a pay equity plan for the bargaining unit.

Women's College and North York

11 The parties in each hospital met to bargain pay equity. The employers had previously purchased the SKEW system through the Ontario Hospital Association ("OHA") as the basis for their proposed gender neutral comparison system. In both workplaces ONA proposed that the parties use a gender neutral comparison system utilizing the services of either the SUNY policy capturing approach or the HRC designed a priori approach. In each case the parties could not agree and sought assistance from the Review Services Branch of the Pay Equity Commission. No settlement was reached, nor did the Review Officer make an Order. The matters then proceeded to the Tribunal.

Sunnybrook

12 On February 28, 1989 the employer and the union met to begin bargaining. At that time the employer indicated that it wished to use the SKEW system as the basis for the gender neutral comparison system. On April 21, 1989, the employer informed ONA that it had purchased the SKEW system (as modified for SEIU) through the OHA for its non-union and SEIU employees. The Hospital's preference was to have one system for all its employees. ONA proposed the SUNY policy capturing approach. The parties failed to agree. This resulted in an application to Review Services where no settlement was reached.

Proposals for a Gender Neutral Comparison System

13 The Applications filed in these proceedings necessitate a review of the various proposals presented by the parties, with a view to determining whether they meet the standards established by the Act and the Tribunal in the Haldimand-Norfolk decision.

14 We heard evidence from a number of witnesses. ONA called three expert witnesses. Dr. Josephine Flaherty is an expert on nursing. Dr. Pat Armstrong is an expert on the nature of women's work in the labour force, and in particular, women's work in the health care sector, including nursing work in hospitals. She also has an expertise in critiquing the ability of methodologies to capture and analyze the job content of women's work, including nursing work. Dr. Steinberg is an

expert in sociology, and in particular, women's work in the labour force. Furthermore, she has an expertise in job evaluation and the design and implementation of gender neutral comparison systems which identify and rectify pay inequalities, and in the evaluation of methodologies which attempt to capture, analyze and evaluate women's work and the work of potential male comparators. The Hospitals called one expert witness, Dr. Donald P. Schwab. Dr. Schwab's major focus in teaching and research has been on personnel and human resources issues, with particular emphasis on how recruitment and compensation systems, including job evaluation systems, operate in the workplace. His research includes studies on the effects of gender manipulation on job evaluation processes.

15 We also heard evidence from: Althea Williams, Elizabeth Jones and Joan Dolson, registered nurses employed by Women's College, Sunnybrook and North York respectively; Ann Odorico, the Vice-President of Human Resources, Alison Walton, the Director of Personnel and Gail Ouelette, the Director of Employment Services at North York; William Wilson, the Associate Head of Pharmacy Administration at Sunnybrook; and Patrick Kelly, the Director of Human Resources at Women's College.

Sociological Evidence

16 The sociological evidence we heard disclosed that gender is a factor in the value placed on activities and work performed by women and men, and therefore in the setting of wages. Wage discrimination in the setting of women's wages is pervasive.

Shepela and Viviano report that:

> There are considerable anthropological and sociological data to indicate that the value of an activity or characteristic can be lowered simply through its association with women. [NOTE 1: Sharon Toffey Shepela and Ann T. Viviano, "Some Psychological Factors Affecting Job Segregation and Wages", Comparable Worth and Wage Discrimination: Technical Possibilities and Political Realities, Helen Remick, ed. (Philadelphia: Temple University Press), 1984, at p. 47.]

Treiman and Hartman state that:

> ... it is possible that the process of describing and evaluating jobs reflects pervasive cultural stereotypes regarding the relative worth of work traditionally done by men and work traditionally done by women. [NOTE 2: Donald J. Treiman and Heida Hartman, eds., Women, Work and Wages: Equal Pay for Jobs of Equal Value (Washington, D.C.: National Academy Press), 1981, at p. 81.]

17 Sex stereotyping pervades the evaluation of work performed by women and men and thus

affects the wages paid. As Treiman notes:

> In sum, the data are very clear. In a variety of contexts the mere fact of identifying a performance as done by a woman results in a lower evaluation and a lower likelihood of reward -- hiring, promotion, etc. -- than when the identical performance is attributed to a man. The only exception is when the performer is certified as competent on independent grounds; in such cases there is no significant tendency to evaluate women more poorly than men.
>
> While most of the studies cited above refer to the evaluation of people rather than jobs, the evidence for sex stereotyping in job related contexts is certainly strong enough to suggest the likelihood that sex stereotyping will pervade the evaluation of jobs strongly identified with one sex or the other. That is, it is likely that predominantly female jobs will be undervalued relative to predominantly male jobs in the same way that women are undervalued relative to men. [NOTE 3: Donald J. Treiman, Job Evaluation: An Analytical Review (Washington, D.C.: National Academy of Sciences), 1979, at p. 45.]

Shepela and Viviano have suggested that:

> Women are paid less because they are in women's jobs, and women's jobs are paid less because they are done by women. The reason is that women's work -- in fact, virtually anything done by women -- is characterized as less valuable. In addition, the characteristics attributed to women are those our society values less. In the workplace, the reward (wage) is based on the characteristics the worker is perceived as bringing to the task as well as on the "pure" value of the task to the employer. The lower the value of those characteristics, the lower the associated wage. [NOTE 4: Sharon Toffey Shepela and Ann T. Viviano, "Some Psychological Factors Affecting Job Segregation and Wages", Comparable Worth and Wage Discrimination: Technical Possibilities and Political Realities, Helen Remick, ed. (Philadelphia: Temple University Press), 1984, at p. 47.]

18 We are not left to wonder whether these findings can be generalized to the Ontario experience; that is, whether discrimination in compensation exists for employees in female job classes in Ontario. The Act explicitly recognizes the existence of such discrimination and is designed to remedy it.

> Whereas it is desirable that affirmative action be taken to redress gender discrimination in the compensation of employees employed in female job classes in Ontario; [NOTE 5: Pay Equity Act, R.S.O. 1990, c. P. 7, Preamble.]

> The purpose of this Act is to redress systemic gender discrimination in compensation for work performed by employees in female job classes. [NOTE 6: Ibid., s. 4(1).]

19 In order to identify systemic gender discrimination in compensation, comparisons are to be undertaken between female and male job classes in the establishment in terms of compensation and in terms of the value of the work performed. [NOTE 7: Ibid., s. 4(2).] The means chosen by the Legislature to determine if a particular female job class has been subjected to discrimination in compensation is a gender neutral comparison system. Section 12 of the Act provides:

> Before the mandatory posting date, every employer to whom this Part applies shall, using a gender-neutral comparison system, compare the female job classes in each establishment of the employer with the male job classes in the same establishment to determine whether pay equity exists for each female job class.

Clearly, the gender neutral comparison system lies at the heart of the identification and redress of the discrimination recognized by the Act.

20 In order for a comparison system to assist in the achievement of the goals of the Act, it must make visible the job content of the female job classes. One of the factors that has been identified as a cause of the under-evaluation of the work performed by women has been the failure to recognize and capture aspects of that work. If job characteristics are not visible, they are not valued and consequently they are not compensated.

21 Drs. Steinberg and Haignere found that "job content analysis frequently ignores or overlooks compensable job content characteristics of female-dominated and significantly minority jobs". [NOTE 8: Ronnie Steinberg and Lois Haignere, "Equitable Compensation: Methodological Criteria for Comparable Worth", Ingredients for Women's Employment Policy, Christine Bose and Glenna Spitze, eds. (Albany: State University of New York Press), 1987, at p. 165.] One reason the job content of women's work is not recognized is that many of the skills, effort, responsibilities and working conditions in women's work have been associated for so long with women, and so often done without pay in places like the home, that they have been rendered invisible, and have become identified with being a woman, rather than with the work. [NOTE 9: Ibid. Evidence of Dr. Pat Armstrong.]

22 Frequently overlooked aspects of women's work include:

> ... skill characteristics in the areas of communication, co-ordination, emotional work in crisis situations, fine motor movement, operating and calibrating technical equipment, establishing and maintaining record-keeping systems, and writing and editing others' correspondence and reports; effort characteristics such as concentration, stress from inflexible deadlines, lifting people, listening for long periods of time, sitting for long periods of time, getting work accomplished

> without resort to formal sources of control and authority, and performing multiple tasks simultaneously; responsibility characteristics such as protecting confidentiality, caring for patients, clients and inmates, representing the organization through communications with the public, preventing damage to technical equipment and instruments, and actual or proximate (as opposed to formal or ultimate) responsibility; and working conditions characteristics such as exposure to disease and human waste, emotional overload, stress from communication with difficult and angry clients, working in open office spaces, and stress from multiple role demands. [NOTE 10: Ronnie Steinberg, "Social Construction of Skill: Gender, Power, and Comparable Worth", Work and Occupations, May 1990, at p. 14.]

23 In the context of nursing work Helen Remick has found:

> Nursing, like most other areas in the health care field, has changed drastically over time. Nursing specialties, for example, can make extensive use of electronic monitors, involve significant amounts of teaching, and/or require sophisticated diagnostic work. Unfortunately, the work of nurses is not always visible to the patient, in part because of stereotypes about nurses and women in general. In a well-publicized example, after the attempted assassination of President Reagan, he recalled the nurse who had been so comforting to him while he was in the intensive care unit and conducted a search to thank her. Giving comfort was one of her least important duties in terms of his survival; she was constantly monitoring his vital signs for change and was fully competent to initiate emergency procedures should the situation have called for it. Responsibility for the well-being and survival of the president of the United States would hardly have been turned over to a nurse if all she could do was offer comfort. But since many people expect only comforting from nurses, that is all they see. They are also likely to think that a low salary for nurses is justified if they perceive the job as requiring only nurturance, which they may believe to be innate to women and therefore requiring no learning. [NOTE 11: Helen Remick, "Dilemmas of Implementation: The Case of Nursing", Comparable Worth and Wage Discrimination, supra, at p. 91.]

24 In the Haldimand Norfolk decision, the Tribunal held that "the requirement to make women's work visible is a vitally important part of the requirements to accurately capture the work performed". [NOTE 12: Haldimand-Norfolk (No. 6) (1991), 2 P.E.R. 105 at para. 28.] The Tribunal further held that:

> Given that most women and men perform different jobs, with different skills and job content characteristics, one of the initial and key requirements of a gender neutral comparison system is to make visible those job characteristics, using the

> statutory criteria, that were previously not visible and thus not valued. [NOTE 13: Ibid.]

We concur. If a gender neutral comparison system does not make the invisible visible, the under-evaluation of women's work will continue.

Overview of the Hospitals' Workforce

25 A review of the hospital workforce discloses that men and women do different work. In her book A Working Majority, Dr. Pat Armstrong demonstrated that in Canada between 1975 and 1980 approximately 12 per cent of all working women worked in hospitals. In other words, more than one in ten women in Canada, who have a paid job, work in a hospital. Approximately 80 to 85 per cent of the hospital workforce is made up of women. Clearly, hospitals are female dominated workforces.

26 Health care is one of the top ten female occupations. [NOTE 14: Pat Armstrong and Hugh Armstrong, A Working Majority: What Women Must Do for Pay (Ottawa: Supply and Services Canada for the Canadian Advisory Council on the Status of Women), 1983, at Tables 5 and 10, pp. 252 and 257. Evidence of Dr. Pat Armstrong.] In particular, nursing has been, and remains, a female-dominated occupation. In 1961, 96.2 per cent of nurses were women and 3.4 per cent of all women workers were nurses. In 1981, approximately 95 per cent of the nurses were women and that accounted for 4 per cent of all women who work. [NOTE 15: Ibid.] As of 1987, 105,356 nurses were registered in Ontario. Seventy per cent of them were working in hospitals and 73 per cent of all employed registered nurses were classified as general duty/staff nurses. Since 98.4 per cent of these nurses were women, the most common female job class in health care is that of general duty nurse. [NOTE 16: Pay Equity Commission (Ontario), Report to the Minister of Labour, Research Report 1, Pay Equity in Predominantly Female Establishments: Health Care Sector, September 1988, at p. 37 and Table 6.]

27 Nursing work is women's work in the sense that the overwhelming majority of those who do the work are women, and in the sense that the job content involved is that which is most characteristic of women's work. It is the best example of the kind of work that has traditionally been associated with being female. [NOTE 17: Evidence of Dr. Pat Armstrong.]

> Like much of women's work, nursing involves complex overlapping and multilevel skills that are frequently invisible to those not doing the work. Nurses are always doing caring work, whatever the other specific tasks the job of the moment requires. They are frequently called on to employ a number of skills simultaneously and they often have to switch back and forth between complex and simple tasks, between communicating with highly educated personnel to convincing a very young or mentally handicapped patient. They usually have to cooperate with a team but they are also expected to take orders from above and to give orders to those below them on the hierarchy. They have a great deal of

> responsibility, but little authority ... [NOTE 18: Pat Armstrong, Vital Signs: Nursing Work in Transition (unpublished), at pp. 30-31.]

These elements of nursing work are associated with women's work and not with men's work. The kind of caring, comforting, and nurturing that is central to nursing work and to other kinds of work that women do, for instance, child care, is not in general typical of men's work. [NOTE 19: Evidence of Dr. Pat Armstrong.]

Nature and Goals of the Workplace

28 In order to appreciate the nature of nursing work, it must be viewed in the appropriate context; that is, in the context of the hospital workplace and of the nature and goals of this type of organization. To determine whether a comparison system is appropriate to a particular workplace it is necessary to examine that workplace, both in terms of the objectives of the organization and the range of work that is performed within that workplace. As we have noted, the Act requires that the value of work performed must be determined in order that appropriate comparisons between female and male job classes can be made. The value to be attached to work performed in any organization must result from an assessment of what the organization is in existence to perform or provide. The skill, effort, and responsibility that an organization requires of its employees, and the conditions under which they are expected to perform their functions must be viewed in the context of what the organization wishes to accomplish.

29 Essentially, if one is to determine the value of work, one must ask, "value to whom"? It must be the value of the work performed to the employer. The nature and goals of the three hospitals must be reviewed in an effort to determine what it is that they value. Ms. Baker submitted that in reviewing the SKEW system we must ask ourselves: "Do the values in the SKEW system reflect the values that are found within the hospital institution?" This is a useful approach.

Women's College Hospital

30 Women's College Hospital is an acute care clinical research and teaching hospital. It is a multi-disciplinary health centre which employs both female and male care givers, and which cares for both female and male patients. There is, however, a special focus in providing quality health care for women.

31 The Women's College Hospital Mission Statement provides:

> Values of the Hospital
>
> The operation of Women's College Hospital is firmly based on a set of fundamental values that will be promoted.

* Exemplary Care

The Hospital seeks to provide care that is of high quality, technically proficient and safe. High priority is assigned to health promotion, disease prevention and ambulatory care.

* Focus on the Individual and Family

The Hospital treats each patient as an individual, with unique feelings and needs, while recognizing that he or she is a member of a family or other social unit ... [NOTE 20: Women's College Hospital, "Mission Statement".]

32 In a publication entitled "Nursing at Women's College Hospital" the hospital expressed its recognition of the role of nurses and their expanding role in the provision of health care:

> The professional image and status of today's nurse is changing. As an integral member of the health care team, sound management, organisational and decision-making skills and a working knowledge of rapidly-changing technologies are required. But, in answering the demands of our health care system, perhaps the greater challenge of all is in providing warm, personalized patient care ... [NOTE 21: Women's College Hospital, "Nursing Work at Women's College Hospital".]

33 There are approximately 1600 employees at the hospital and 350 beds; approximately 650 nurses are employed, accounting for 41 per cent of the total workforce. Nurses represent the largest single occupational group in the hospital.

Sunnybrook Health Sciences Centre

34 Sunnybrook Health Sciences Centre is an acute care hospital with major teaching and research responsibilities. Five major programme areas have been declared by Sunnybrook: diseases of ageing and care of the elderly; cardiovascular disease, including stroke; mental health; oncology (cancer); and trauma. All of the hospital's major programmes include patient care, teaching and research components.

35 The hospital's Statement of Philosophy provides that the primary focus of the hospital's care is "the patient as a person". Support is also extended to the patient's family. Care is to be provided in "an atmosphere of courtesy, respect, and consideration, and planned to minimise disruption in the patient's life".

36 The hospital also believes:

> ... That individualized care is important, and arises from the patient's needs, unique perceptions, expectations, and responses ...
>
> That care is best provided by a multi-disciplinary health care team which makes the best use of each team member ...
>
> That educational programs and active involvement in research contribute to the best possible patient care ... [NOTE 22: Sunnybrook Medical Centre, "Statement of Philosophy", 1989/90 Sunnybrook Medical Centre Annual Report, at p. 2.]

37 Sunnybrook has also adopted the motto that "Caring is Part of our Cure", and it believes that:

> The housekeeper, the cook, the intensive care nurse, the out-patient receptionist, the business office clerk, and the surgeon, along with all other employees, medical-dental staff members, and community volunteers play an important role in caring for our patients. Their special attention makes the difference between routine care and excellent care ...
>
> This team effort provides comprehensive care by bringing together groups of experts to guide patient progress. Team care requires the co-operation and dedication of physicians, surgeons, nurses and support staff including nutritionists, physiotherapists, occupational therapists, pharmacists, social workers, chaplains and many others ... [NOTE 23: Sunnybrook Medical Centre, "Sunnybrook: Where Caring is Part of Our Cure", at pp. 3 and 9.]

38 The hospital has 1200 beds and provides multi-disciplinary care for over 2000 in-patients and out-patients each day. Out-patient visits number more than 300,000 per year; 15,000 patients are admitted annually; and an average of 100 emergency patients are treated daily.

39 Sunnybrook employs approximately 3600 employees, of which approximately 1000 are nurses. Nurses account for 28 per cent of the workforce. The nursing jobs in issue in the hospital are full-time registered nurses, registered nurse pending, charge nurses, infection control nurses, and part-time registered nurses.

North York General Hospital

40 North York is a community oriented, general hospital with approximately 500 beds for active medical, surgical, obstetrical, paediatric and mental health care, and a fully operational nursing

home with 120 beds. The hospital cares for 20,000 in-patients each year.

41 The hospital states that it has established a reputation of providing high quality personalised health care to individuals and families. A broad range of medical and surgical sub-specialties have been developed and are provided, including general surgery, urology, orthopaedics, gynaecology, and plastic surgery.

42 North York states that it is committed "to providing high quality, personalised health care to individuals and families". [NOTE 24: North York General Hospital, "A Very Special Place".] The hospital "encourage(s) team work, initiative and excellence" in all its efforts. [NOTE 25: Ibid.]

43 The hospital further states that:

> In the midst of tight financial constraints, changes in methods of health care delivery and periodic shortages of trained professionals, our staff has adjusted and met the challenge of upholding our standards of care. Our nurses are here 24 hours a day and are dedicated to the provision of excellent patient care. [NOTE 26: Ibid.]

This emphasis on patient care was reiterated by Alison Walton, when she stated that "our organisation's product is ... efficient patient care".

44 North York employs approximately 2000 employees. Nurses comprise approximately 34 per cent of the workforce. The nursing jobs at issue are: assistant unit administrators and theatre charge nurses, as well as full and part-time graduate and registered nurses.

45 The values of the three institutions revolve around the provision of health care to individuals who utilize hospital services. While recognizing that there is more to operating a hospital than direct patient care, the work relating to direct patient care must be valued in accordance with the stated goals of the three hospitals. Given that nursing work is integral to the provision of health care, its place in the health care structure must be recognized and valued accordingly. Our task, therefore is to assess the SKEW system in light of the values of the three hospitals and to determine whether the system does reasonably reflect those values.

What is the range of nursing work in the hospital establishments?

46 After hearing the evidence, we find it instructive to review the nature and range of nursing work with a view to assessing whether the proposed comparison systems will appropriately capture and value nursing work. During the course of this review we have examined both those tasks which are performed by all nurses and those which are performed only in specialized units. It is clear that not every nurse performs every duty every day. Nevertheless it is important to identify the full range of work normally performed by members of these job classes.

47 For a person to practice nursing in the Province of Ontario she must be registered with the College of Nurses of Ontario. To obtain registration a graduate nurse must apply for admission to the registration examination and complete it successfully.

48 There are a variety of ways in which a person can become a graduate nurse and thus be eligible for admission to the registration examination. At the present time, nurses practising in Ontario will either have a diploma from a hospital, nursing school or community college programme, or a Bachelor of Science Degree in Nursing from a university. Hospital programmes have been phased out and at the present time nursing diplomas are obtained at the community college level.

49 In the university degree programme nursing students must meet not only the specialized nursing courses but also the university's general course requirements. The degree programme is four years in length. For both the diploma and university programmes, academic studies and clinical experience are integrated throughout the school year.

50 In order to determine the work that nurses do, it is instructive to begin with the Standards of Nursing Practice for Registered Nurses and Registered Nursing Assistant (the "Standards"), established by the College of Nurses of Ontario. Nurses are required to maintain these standards in their practice and employers can expect that nurses will do so. In fact, section 21(aa) of the Regulations made pursuant to the Health Disciplines Act, R.S.O. 1990 c. H.4, provides that it is professional misconduct for a nurse to fail to maintain the Standards of Nursing Practice.

51 The Standards outline the process through which nurses are to provide nursing care. They also list the various skills and skill levels required in the practice of nursing. The Standards place a legal responsibility on the nurse for the assessment of the patient's health needs, the planning of the care to be provided, the implementation of the health care that has been prescribed and the evaluation of the nursing care being provided. In this process the nurse is accountable for her actions. If she fails to carry out her responsibilities appropriately, she can be disciplined by the College of Nurses, lose her licence and/or be subject to a lawsuit by the patient and family.

52 What is clear is that the Standards set a minimum level of practice to be met by nurses. They provide guidance to nurses, employers, educators and the public regarding the basic expectations to be met by nurses. The Standards do not explain explicitly how these expectations are to be met. There is discretion in applying the general principles outlined in the Standards to a particular situation.

53 The Guidelines for Ethical Behaviour in Nursing (the "Guidelines") outline the desirable ethical behaviour expected of nurses in particular situations. Under the Standards, nurses are required to function in accordance with the Guidelines. The Guidelines are a recognition that nursing work involves an "intervention in the lives of others" and as such, has an ethical component.

54 The Guidelines are not all-inclusive. They state that:

> No set of guidelines can resolve all the ethical dilemmas that a registrant may face ... The actual resolution of the continuing ethical problems presented to each individual registrant remains a continuing personal challenge. [NOTE 27: College of Nurses of Ontario, Guidelines for Ethical Behaviour in Nursing, April 1988, at p. 5.]

As with the Standards, the Guidelines are "sign posts", not definitive answers for each and every situation. They assist nurses in decision-making by outlining the expectations for nurses that have been agreed upon by the nursing profession.

55 Nurses are also aided in the performance of their work by established hospital policies and procedures. Nurses are required to know these policies and procedures and to implement them. They assist nurses by providing a framework within which they carry out their work; they do not provide step-by-step direction. Elizabeth Jones, a registered nurse on the trauma floor at Sunnybrook testified as to whether the policies and procedures in her hospital assisted her in her daily work:

> Not on a day-to-day functioning level, no. The policies are there to give everyone guidelines for what they do, but every situation is so different that a lot of it is your own judgment at the time how you carry out your job. You know that you have standards and the hospital policies to follow, but in an emergency situation you have to do the best you can, you know, as it's going. You have got very little time to make judgments, and you have to make the best judgment given the circumstances.

56 In carrying out their work, nurses are also required to carry out the nursing portion of the prescribed medical regime (Standard I, C 2(d)), which is the treatment ordered by a physician. However, there is a great deal of discretion in how these orders are to be implemented.

In her text entitled From Novice to Expert Dr. Patricia Benner states:

> While medical orders provide the guidelines for many of the nurse's activities, nurses must use discretion in carrying them out. They are expected to assess what they should do to provide the best possible care for the patient rather than simply carry out by rote medical orders, even though this may involve risks for them. [NOTE 28: Patricia Benner, From Novice to Expert (Menlo Park, California: Addison-Wesley Publishing Company Inc.), 1984, at pp. 139-40.]

57 There are certain skills outlined in the Standards which must be learned following a nurse's formal education. These are designated as the "Basic Nursing Skills", "Added Nursing Skills" and "Sanctioned Medical Acts".

58 Basic Nursing Skills are divided into "A" and "B" level skills. The "B" level skills are those

skills for which the student in the diploma or university programme acquires both theoretical and practical experience. An employer can expect any nurse to be able to perform the "B" level skills without any further training.

59 The "A" level skills are different, however. These are skills for which the student receives theoretical instruction during the nursing programme but not necessarily practical experience. In order for an employer to expect a nurse to perform these skills, training must be provided.

60 Added Nursing Skills are acts in the nursing process for which the basic nursing programmes provide no specific theory or clinical practice. These skills are not part of the formal education curriculum as they are specialized skills not routinely required. The health care agency establishes a certification programme through which nurses receive instruction on how to perform these skills and opportunities to practise them. Participating nurses are then evaluated, and a nurse who is competent to perform an added nursing skill is "certified" in that skill. The ability to perform these skills is continually monitored. If a nurse is in a specialty area, certifications are mandatory.

61 Sanctioned Medical Acts are acts in the practice of medicine that registered nurses, registered nursing assistants and others may perform in some circumstances. These skills are not taught or learned in the course of formal educational programmes, but are taught on-the-job. If patients require these skills, then the medical, nursing, and administrative authorities select the skills to be delegated within the agency and approve the special instruction required. The skills are then delegated to certain individuals within the nursing department.

62 Both the Standards and the Guidelines require that the nurse maintain competence relative to current practice. This entails continuing education following the nurse's formal education and registration with the College of Nurses. This is necessary because health care is an ever-changing environment. Technological advances, advances in treatments and medications, and changes in the types of illnesses that nurses must treat all create a need for constant up-grading in both knowledge and skills. Not only is it a necessity for both new nurses and those who remain in a particular area over a long period of time, but it is also essential for those nurses who move from one area of a hospital to another.

63 In addition to post registration certificate and diploma programmes in specialized areas of nursing, continuing education also proceeds on an informal basis through workshops and seminars sponsored by universities, colleges, hospitals and other health care agencies. Nurses also keep current by reviewing nursing and medical journals, videotapes and through the informal exchange of information between colleagues.

64 Nursing care is provided through the application of the nursing process which has four components: assessment, planning, implementation, and evaluation. The nurse is required to use her skills in assessing the health status and needs of the patient. She must then develop and modify a nursing care plan to meet both the assessed needs of the patient and the treatment a physician has ordered. The nursing care plan must then be implemented. Finally, the nurse must continuously

evaluate the extent to which the patient's health needs are being met, and amend the nursing care plan accordingly.

65 Dr. Flaherty described the nursing process as follows:

> Basically, it is a systematic approach. We believe that it is a scientific approach in the sense that it is systematic by which nurses gather information about people and the situation, analyze that information and make assessments or judgments about the health status of the people ... In the light of that assessment, the nurse will identify needs of the patients and try to figure out what might be done to meet those needs. Basically, nurses assist people to meet their own needs if they can; and if they cannot meet them at that time, nurses formulate a plan of action through which those needs can be met. Then nurses implement that plan and evaluate the effects of it; and in light of that evaluation, either continue implementing the plan or modify it. That process ... is ongoing, concurrent, and so it's continuous, and the reason of course is because of the dynamic dimension. Things are always changing therefore things need to be updated constantly.

66 Before a nurse can assess the patient's health needs, she must gather information about the patient. There are a variety of sources for this information, including the patient, her family, medical records, and other health care team members. The nurse must be aware of both verbal and non-verbal cues regarding the patient's condition.

67 We are struck by the necessity to provide patient care in circumstances that are anything but static. Patients are ill, their conditions can and do change at any given moment and to varying degrees. Nurses often provide care to the patient, while at the same time dealing or interacting with her family and members of the health care team including physicians, physiotherapists and registered nursing assistants. Most importantly, this occurs in an environment in which unanticipated events occur. As Dr. Flaherty indicated:

> ... the nurse adjusts constantly. Nursing is a kind of movable feast because it seems to me that rarely, if ever, do the best laid plans get carried out the way you think they are going to because things change. There are all kinds of unanticipated events that can be relatively simple events, the arrival of other people to do things or interruptions or telephone calls and things. Or very complex unanticipated events, like something happening to the patient. The patient may have some physical or emotional difficulty, the one you are working with or somebody else. So you can have some very complex unanticipated events that require an adjustment of the thing you are doing right now as well as a modification of all the other stuff that you had planned.

68 Communication skills are essential to the performance of nursing care. Nurses must be able to give and receive both verbal and non-verbal communications, and be good listeners. Different

languages of patients and families must be taken into account. The ability of the nurse to give and receive information is complicated by the fact that patients are ill and often distressed. As an extreme example, Ms. Jones testified as to the difficulties she had communicating with a quadriplegic patient who had lost his ability to speak. The nurses on the unit must lip read in order to deal with him.

69 Nurses must also be able to communicate with other health care team members. For example, the nurse must be able to describe a patient's symptoms and condition to a physician who is not with the patient. At times, nurses must translate complicated medical information to patients and their families in language they will understand; at other times, they must provide straightforward information.

70 The various demands on a nurse's communication skills require the ability to adjust the level of communication. For example, where a nurse is communicating with someone over whom she has some authority, that is a less sophisticated skill than when she is dealing with other health care professionals over whom she has no authority. As another example, families of patients may have a level of understanding which requires the nurse to explain in simple terms.

71 Part of providing for the safety and well being of the patient includes acting as the patient advocate. The nurse is required to represent the patient's interests to doctors and the patient's family, as well as ensuring that the patient has sufficient information to make appropriate health care choices. As Dr. Flaherty states, a nurse must be alert:

> ... to signs that the patient does not understand clearly what is involved and bring this to the attention of appropriate persons. ... Moreover, if the patient withdraws consent, even verbally, the nurse is responsible for reporting this and seeing that the patient is not treated. This is her responsibility not only to the patient but to the hospital, which can be held liable...
>
> Although the "patient advocate" role of nurses does not appear often in job descriptions of nurses, the nurse does have an obligation to play that role and her colleagues in other professions should share it. All nurses, whether they be leaders or followers, must decide how they will behave when patients need advocates. [NOTE 29: Josephine Flaherty, "Perspectives in Nursing -- This Nurse is a Patient Advocate", Nursing Management, Vol. 12, No. 9, September 1981, at p. 13.]

72 Ms. Althea Williams testified that in the delivery suite at Women's College patients look to the nurse to give them medication throughout labour. She described an episode in which a doctor did not want to give pain relieving drugs to a 16-year-old woman who was experiencing terrible pain.

> It was decided that -- the parents of the girl were friends of the physician, and it was decided that we would have to talk to the doctor, the parents, and the patient. I was sent to speak to the patient, someone else spoke to the parents, and another nurse spoke to the doctor. And at the same time we took these people in separate directions and said to them, this is not justifiable.
>
> And I spoke to the girl, the patient, and I said to her, "What do you want?" I said, "There is relief out there. I know you are only 16. What do you want to have done? Would you like an epidural, would you like relief?" And she desperately wanted the relief. It was decided then, at that time, that the girl would have an epidural because the patient herself wanted it; and the doctor was spoken to, and the parents were spoken to, and so we put an epidural into the patient, and everything went along smoothly, and everything was fine.

73 For a nursing care plan to be implemented, and carried out successfully, the nurse must both obtain from and give information to the patient. Essential to this goal is the establishment of a nurse-client relationship based on trust. Ms. Williams indicated that the most important thing she does in her job is to foster the relationship between herself and her patient.

74 The Ethical Guidelines require that the nurse respect the role of truthfulness in health care. Trust is essential to the nurse-client relationship. The nurse must answer the patient's questions regarding her condition. Nevertheless, judgment is required on the part of the nurse in deciding how much to tell a patient given the circumstances. The Guidelines at pages 12 and 13 provide that:

> It may be necessary to choose a time and place to prepare the client to receive distressing news, or to point out unpleasant implications to the client. A direct question must be answered directly. In other areas, however, a balance between helpful and harmful truth-telling should be sought in maintaining the trusting relationship between registrant and client. [NOTE 30: College of Nurses of Ontario, Guidelines for Ethical Behaviour in Nursing, April 1988, at pp. 12-13.]

The trust relationship extends to the patient's family as well. Explanations must be made to the patient's family simply and in a non-judgmental way. The nurse must instil hope without raising a family's hopes too high.

75 A hospital is about patient care, and nursing work involves caring, comforting, and nurturing. Caring is a learned skill, which is acquired through the nurse's background and formal education. It is also acquired through work experience. Dr. Flaherty testified about a nurse who picked a dying child up into her arms after overhearing the child's mother say: "Dying is like God picking you up in his arms." Dr. Flaherty indicated that the nurse learned a new way of caring and applied it to her work. She indicated that this quality of comforting is a learned skill.

76 The Standards require that a nursing care plan provide for the involvement of the family, and in carrying out that plan, a nurse provides care, comfort, teaching and learning for the patient and family. Dr. Flaherty testified that:

> Nurses attempt to assist the patients with whom they are working directly to deal with their situations but they also see an obligation to assist families and significant others, who may or may not be blood relations, in the patients' environment to deal with things as well.

77 The nurses who testified indicated that comforting bereaved families is an emotionally difficult and regular part of nursing work. Ms. Williams indicated that:

> In cases of a stillbirth we take pictures of these babies, of all these babies regardless of the gestation and sometimes it's not a pretty sight. You are trying to put this together and wrap it up like a baby. We usually encourage the parents to see this child. You have got to put this together in order for them to look at this in the most inoffensive way that you can give that baby to the parents.

78 The caring skill touches all the tasks performed by nurses. One of the features of nursing is that caring is combined with more technical skills. As Dr. Armstrong noted this alters the nature of the skill and makes it more complex:

> It makes it a more complex skill. That is not easy to compare to performing an operation on a drainpipe ... Because you have to be thinking about more than the technical skill involved in altering that pipe. You have to be constantly interacting and reassuring, taking into account the particularities of this individual, and often co-ordinating that work with other health care professionals and thinking of it in terms of these various kinds of responsibilities you have to the doctor, to the institution, to the Nursing Standards.

79 Nurses are required to teach patients and their families how to gain and maintain their health. They also assist patients to prepare for their discharge from hospital and create individualized discharge plans. The teaching role includes recognizing when a person is ready to receive information and being able to deliver information at a level at which it which will be understood.

80 Nurses also teach other members of the health care team. Ms. Jones testified about the "walk-arounds" and "sit-down rounds" which occur weekly. These sessions include such members of the health care team as doctors, social workers, physiotherapists, occupational therapists, speech therapists, and nurses. The nurse leads the discussion regarding the patients' conditions because the nursing staff are with the patients 24 hours a day and know what is happening.

81 Nurses also have a teaching role with agency and part-time nurses who float from unit to unit or are unfamiliar with the hospital. Agency nurses must be oriented and helped through the day

since they are unfamiliar with the patients, equipment and hospital procedures. The teaching role also extends to interns, and clerks (fourth year medical students) who may not be as familiar as the nurse regarding practices and procedures in a particular area.

82 In implementing the nursing care plan, nurses must possess certain technical knowledge, including the ability to operate and maintain a variety of technical machinery and equipment. The nurse must also know which equipment is appropriate in any given set of circumstances, why the equipment is being used, and how to monitor its effects on the patient.

83 In the administration of medication nurses must possess pharmaceutical knowledge of dosages, frequency and possible side effects. Nursing work requires an ability to work with numbers, together with reading and writing skills. The nurse requires accuracy, manual dexterity, co-ordination and speed. She must be able to administer medications by injection, intravenously, orally and through various routes including ear, eye, rectum, throat and vagina. The nurse must administer the drug, monitor the safety of the patient and assess the therapeutic response to the medication.

84 In certain situations, the nurse must take a more pro-active role in drug administration. Often, physicians will leave medication orders which state that the medication is to be administered "as necessary", or "as tolerated". The nurse must exercise her discretion in deciding whether and when to actually administer the medication.

85 Nurses must also be able to read and interpret numerical and other written data. These skills are used to calibrate machinery or equipment, monitor or read the data, interpret it and then use it to decide on the appropriate course of action. Nurses must be able to read and interpret medical and nursing documents and information relating to patients, and on the basis of that data, plan the appropriate nursing care.

86 In implementing the nursing care plan, the nurse must plan and organize the day's assignments, set priorities based on the needs of her patients, and complete her assignments. The latter may require that the day's schedule of activities be adjusted because of unanticipated events or emergencies.

87 Nurses exercise discretion in their work, even when they carry out specific orders. Ms. Williams testified:

> Usually when the order is written, well actually more often than not, most of the work is done before the orders get written because it is done before the doctor appears. If he phones ahead to say that this particular problem is coming then he'll say do this, this and this and we do it and we don't have anything written ... Sometimes we will see things when the patient arrives that he may have neglected to order or just never bothered. Well, it isn't a case of not bothering, it's a case where it never crossed his mind that this might be an issue. So, we would

> go ahead and carry that out. And for instance, I am thinking in terms of, particularly with blood work. We draw our own bloods.

88 One of the most important aspects of the implementation of the nursing care plan is the ability of the nurse to anticipate problems which may arise with the patient. Nurses use their experiences with former patients to anticipate what may be required. As Benner states:

> The expert nurse functions with an eye to the future. Many have learned the hard way that they must be ready for likely possibilities. Furthermore, expert nurses have multiple patient examples to call on that allow them to anticipate the course of a particular patient, based on that patient's particular history and current status. They are also able to translate current information into specific and detailed practical considerations they may have to face. [NOTE 31: Patricia Benner, From Novice to Expert (Menlo Park, California: Addison-Wesley Publishing Company Inc.), 1984, at p. 104.]

89 Nurses must also be able to discern when it is necessary to contact a physician. The decision is made, and the discretion is exercised, on the basis that a patient's condition requires it. Dr. Steinberg explained:

> ... difficult sets of decisions underlie all of these more focused judgments involving the assessment of patient condition and provision of care. First is the decision about when to call a physician. As one RN I interviewed put it, "Can you cope or should you call?" A lot of technical knowledge is brought into play in determining the point at which other medical professionals are called. [NOTE 32: Ronnie Steinberg, Report Concerning the Proposed Testimony of Dr. Ronnie Steinberg, PhD. Concerning The Appropriateness of the Respondent Hospitals' Proposed Comparison System, April 1990, at pp. 50-51.]

90 Nurses are often required to carry out a variety of tasks simultaneously. For example, in the course of carrying out a treatment or administering a medication, a nurse will observe and assess the patient's condition. As Ms. Jones stated:

> Often you've got a certain number of very important things going on all at once, and even some that are not that important but you are trying to co-ordinate your care, and often it can be fairly disjointed in a way because you are trying to do a lot at once. For example, you are trying to feed this patient, the C2 quadriplegic that I talked about earlier. We have to feed him every meal, so you are trying to feed him and feed another person at the same time because there are only two RNs on the floor that can do it, and then try and give the medications often to these two patients at the same time, so you are doing quite a few things. And it's even worse when you are team leader because you have got all these people coming up to you, and you have to continually explain what you need to -- there

> may be three different doctors in the nursing station at any one time, and they're all from different services, and you are trying to tell them all exactly what's happening with the patient all at the same time, and it can be very confusing.

91 The nursing process involves evaluating and assessing whether the nursing care plan is effective in meeting the health needs of the patient. If it is, then the nurse continues to implement it. If it is not, then the nursing care plan must be adjusted. This includes adjusting the priorities, the nursing care being provided and the involvement of other health care team members.

92 Nursing care must be performed in the context of a health care team which requires co-ordination and collaboration with other team members. Nursing care must be organized so that it is co-ordinated with plans of care developed by other health care team members, and must be appropriate given the time, staff and resources available. The nurse must co-ordinate patient care with other health care team members so that not every team member is with the patient at the same time.

93 The nurse does not have any formal authority over other health care team members and therefore must rely on her ability to convince others with respect to a particular plan of action. On occasion this requires sophisticated communication skills.

94 The nurse is responsible for co-ordinating nursing care with other aspects of the patient's health care. Ms. Williams described the nurse as being the "hub", the person who people speak to if they want to know about a patient. Nurses, who are on duty 24 hours per day are closest to the patient, and therefore they co-ordinate both the health care team and the patient's care, from the medical staff to the cleaning of the floor.

95 In the trauma unit at Sunnybrook, it is the nurse who co-ordinates social worker referrals. As well, since, trauma patients have injuries to three major systems, three different medical services would be involved with these patients. The nurses would ensure that the various physicians ordered medications and treatments, and that each of the physicians knew what the others were doing.

96 Dr. Flaherty testified that the co-ordination activities of the nurses in liasing with all the members of the health care team and ensuring that their functions are carried out is done without supervision from either the nursing supervisor or from physicians. They are expected to know how to co-ordinate these activities and are responsible for doing it.

97 The nurse must not only co-ordinate the patient care plan but also ensure that it is carried out. She will organize other people to carry out certain aspects of the patient care plan. However, if other members of the health care team do not carry out assignments, she must do it herself. Ms. Jones indicated that because the nurses are with patients 24 hours per day, if something does not get done by other hospital staff, the nurses do it.

98 In providing care to patients, nurses have many contacts. These contacts include other nurses,

unit aides, secretaries and clerks, social workers, physiotherapists, occupational therapists, speech therapists, physicians, housekeeping and dietary staff, the media, insurance agents, fire, police and security staff, registered nursing assistants, nursing aides, central dispatch (supplies), X-ray and laboratory staff, and patients' families and friends. Often a nurse will have contacts with many of these people over the course of a single shift.

99 Ms. Williams testified that she also deals with the bereavement team who require information regarding a patient's medical history, because that knowledge enhances their ability to counsel and assist patients and their families.

100 Other members of the health care team also seek advice from nurses. For example, in the labour and delivery suite, the neonatologist may need to know whether the patient is going to deliver, how imminent the delivery is, the medical history and what the nurse expects the outcome of the particular patient to be. Ms. Williams concluded that almost anyone who works in a hospital has something to do with nurses at some time.

101 In carrying out nursing care, ethical dilemmas often arise. Dr. Flaherty described an ethical nursing decision-making dilemma:

> It's an issue for which there probably is not a clear right or wrong answer. It is an issue that may deal with the concepts of rightness or wrongness in the moral sense; that is, what is right or appropriate for this situation given all the kinds of things involved. It's an issue that relates to what ought to be done in this situation, all things considered. So, usually an ethical issue is not one for which there is a quick and easy answer that you look up...
>
> ... nurses deal with human beings at every age and stage of their development through a variety of crises that human beings experience, and nursing as a discipline involves interventions in the lives of others, significant interventions. And when one enters somebody's life and takes actions that affect the life and life-style of the people, this necessarily involves a variety of approaches, an individualization of approaches as we mentioned in the Standards, and it involves nurses having an understanding and an appreciation of differing values, attitudes, patterns of behaviour, cultures, and so forth, and the adaptation of nursing behaviours to those differences. If nurses really believe that they are promoting the wellbeing of their patients, they need to adapt their activities such that they will promote the well-being and that involves bio- psycho-social- spiritual interventions.

In the end, nurses are accountable for the ethical decisions they make.

102 In performing nursing acts, treatments and procedures, nurses are accountable and

responsible to the College of Nurses of Ontario, the health care institution, and to the patient. They are responsible for any acts of their own that would result in injury to their patient. Nurses must indicate if they no longer feel that they can perform certain acts; if ordered to perform these acts, they must refuse.

103 Nurses must question a doctor's order if they believe that it would be detrimental to their patient's health. They must evaluate a doctor's order and refuse to act on it if they feel there might be a problem. As well, nurses are responsible for reporting any incompetent activity by other members of the health care team.

104 The nurse is responsible for ensuring that all work required to meet the patient's needs is performed. In this regard the nurse is responsible for determining what can be delegated and to whom and then for reviewing the work done by that delegated person. The Standards refer to the delegation of work to registered nursing assistants. The registered nurse must decide whether the registered nursing assistant is capable of performing the delegated activity. The nurse must also provide specific directives or guidance. The nurse is fully accountable for tasks she delegates to the registered nursing assistants, nurses' aides, orderlies, and sitters. The evidence also disclosed that on the Sunnybrook trauma unit, nurses delegate assignments to, and review the work of unit aides and students.

105 Many registered nurses also have responsibilities for being "in charge" or being team leader. The team leader is responsible for assigning work and ensuring that the work is performed. As well, any complaints from physicians would be directed to the team leader. The nursing team leader at Sunnybrook, a bargaining unit member, is also responsible for dividing up the patient assignments for each nurse. She determines which assignments are given to registered nursing assistants and which to agency nurses who may not be familiar with the patients or the unit. Furthermore, the delegation and review of work assignments is performed in an environment in which the nurse does not have any responsibility or authority for hiring, firing or disciplining and within a team approach to health care.

106 Nursing care often goes on without direct supervision. Often nurses cannot wait for supervision, especially at night when there is a significant reduction in the number of supervisory and ancillary personnel. Nurses often have to take responsibility for doing what is formally a supervisory function.

107 The provision of nursing care is carried out in an environment in which policies may vary and treatments and approaches to nursing care may change. For example, at North York, the Henderson approach to nursing introduced a different method of developing patient records and the nursing staff had to be taught the new process. Nurses must also adapt to the different policies, practices and patient records which exist on different wards. This is especially important for part-time nurses who work in various areas in hospitals.

108 Technology changes and nurses must be able to adapt to these changes. The provision of

nursing care is not static and nurses must adapt to the changes which occur. For example, at Sunnybrook the method of dispensing and administering medications was changed from a "ward stock" method to a "unit dose" system. North York is also in the process of changing from a "ward stock" process to a "unit dose" system.

109 Nursing work involves a tremendous amount of concentration. This is certainly true for tasks such as preparing and dispensing medication. The nurse must ensure that the patient receives the correct medication. In some instances, the pharmacy provides incorrect medication, or the correct medication but in the wrong form. Receiving telephone orders from doctors requires concentration since these are often taken at the nurses' station in the midst of noise and activity.

110 Nurses continually watch patients and make observations about their conditions. This form of visual concentration is constant and necessary to be able to assess and re-evaluate the care being given to the patient. In nursing, this form of concentration has an added dimension in that not only are nurses observing what is occurring to a patient or on a monitor, but they are also interpreting what they observe.

111 The nurse maintains nursing records. The nurse records information respecting patients which will be used for assessing the patient's condition and for planning and assessing patient care. The information must be recorded accurately. The types of information nurses record include the patient's diet, vital signs, weight, treatment, past medical history, discharge planning, blood work, medications, nursing notes, diagnosis and medication orders. There are many forms and charts which must be completed in the process of recording information and which may differ from unit to unit.

112 At the same time that the nurse is responsible for recording information, she is also responsible for maintaining confidentiality respecting records and information about the patient. At North York, all employees are required to sign a document requiring them to maintain confidentiality. However, the nurse has access to much more confidential information than the housekeeping or maintenance staff. As well, nurses are subject to discipline by the College of Nurses of Ontario if they fail to maintain confidentiality with respect to patient information. Under the Health Disciplines Act, it is professional misconduct for a nurse to fail to maintain patient confidentiality.

113 Emotional demands and work related pressures make nursing work stressful. In carrying out her tasks the nurse must cope with pain and a range of emotions, such as grief, sadness, anger, or hostility from patients and their families. Furthermore, nurses care for patients with conditions that elicit strong emotional responses: for example, young patients in the late stages of cancer, patients with Alzheimer's disease or babies born with serious disabilities.

114 Multiple demands on nurses also result in stress. Dr. Steinberg noted that nurses have daily exposure to chronically ill, mentally troubled or dying patients. They must provide nursing care, maintain patient records, administer medications, co-ordinate patient care with other members of

the health care team, and co-ordinate the work of registered nursing assistants, aides and orderlies. This takes place under serious time constraints.

115 Nurses are regularly called upon to lift and turn patients. Patients are frequently limp or have delicate equipment attached to critical organs. Therefore, a great deal of care is required. There is a qualitative difference between lifting patients and lifting inanimate objects. A box will not put up a struggle. A patient may.

116 These features of nursing work do not occur in isolation. A critical feature of nursing work is the combination of all these aspects of the job. Dr. Armstrong stated that a nurse must:

> ... bend and lift and push and pull and carry under emotional stress and under the observation of people all the time, the patient, other nurses, doctors, other people that are around, relatives; that doing it around people, around equipment that is very delicate, making sure you don't knock the IV out when you are lifting the patient, that you don't hurt the patient when you are lifting them; ... those kinds of physical demands are particularly strenuous.

117 Nursing work involves shift-work. The evidence was that this produces both physical and psychological difficulties. The nurses who testified indicated that the first night on a shift is especially difficult because the nurse is required to concentrate and function on very little sleep.

118 During the course of their work, nurses are exposed to infection and disease, including AIDS, venereal disease, hepatitis B and chicken pox. Hospital patients are more vulnerable to disease because of their conditions, and their diseases are communicable to hospital staff and other patients. Ms. Jones noted that one virus, Methicillin Resistant Staph Aureus (MRSA), was transmitted from one patient to another patient in the Surgical Intensive Care Unit. She indicated that MRSA is:

> ... very, very communicable. It can run rampant through the whole hospital very quickly. It attacks -- well, it attacks people that are debilitated, so I'm at no risk to get it myself but I can be a carrier. So dealing with that patient we have to gown, glove, mask, put little caps on our heads and booties on the feet every time we walk into the room... We do have to maintain very good procedures when we do our care. The unit is not really set up for large infections. For example, the MRSA infection. We do not have a proper isolation room on our unit with -- like, most of them have an anteroom before you go in, and we do not have that, and also the air system in an isolation room is its own, it's not circulated throughout the rest of the ward, which it is on this unit, and that makes it even more difficult to contain the infections.

119 In many specialty areas, nurses are exposed to potentially hazardous substances such as radiation, iodine 131, iridium, the entire process of chemotherapy, and anaesthetic gases used in the

delivery suites.

120 Physical and mental abuse by patients and their families can be a common occurrence for nurses in some clinical areas. Some patients swear and hit nurses. Patients' families do not always behave kindly towards nurses.

121 Nurses suffer a variety of injuries from moving, lifting and positioning equipment and patients. Back injury and back strain are common; foot and circulatory problems can occur. Sources of injuries include wet floors, faulty electrical cords, and low hanging equipment.

122 An important responsibility is to keep both patients and the hospital environment clean. This means that nurses must deal with unpleasant substances: for example, dressings may ooze discharges, or an incontinent patient might soil a dressing. Nurses are also exposed to blood and mucous. Exposure to a variety of odours from both medications and from patients is a regular part of nursing work.

123 Nurses are exposed to a variety of noises. Visitors tend to congregate outside the nurses' station, talking or asking questions about patients, and this can be very distracting. Noises are produced by alarms, patients, rolling carts, and IV poles being rolled down the floor. Ms. Jones testified that patients with head injuries in the trauma unit often lose control and yell for an entire twelve hour shift. Nurses must listen from the nurses' station for patient monitors and they must respond. Therefore, they must be sensitive to these types of noises.

124 Nurses generally experience undesirable working conditions in combination. Some nurses work in surgical intensive wards, where life-threatened patients are connected to a variety of machines, where alarms are sounding off, and where upset relatives are present. This kind of experience through the combination of these factors is "not simply a degree difference" from the kinds of unpleasant circumstances found on a shop floor or in a car manufacturing plant. The plant may have some noise, heat and odours, but that is qualitatively different from people who face life and death situations in the context of a difficult and unpleasant physical working environment.

125 We have now set out our findings with respect to the range of work normally performed by nurses. This work is of value to the Hospitals to these proceedings. We must now assess whether the range of work will be accurately captured and appropriately valued by the comparison systems proposed by these parties.

Haldimand-Norfolk Tests

126 In the Haldimand-Norfolk decision, the Tribunal established the four component parts of a gender neutral comparison system: the accurate collection of job information; deciding on the mechanism or tool to determine how the value will attach to the job information; applying the mechanism to determine the value of the work performed; and making the comparisons. The Tribunal found that the parties must negotiate and endeavour to agree upon these elements in order

to satisfy the obligation to describe the system as required by section 13 of the Act. The Tribunal further found that parties must ensure that each component which forms part of the comparison system is gender neutral. It held that bias in one part means that the system as a whole is not gender neutral. Ultimately, the parties are required to eliminate gender bias from all parts of the comparison system.

Collection of Job Information

127 The Act requires that job content information be accurate. At paragraph 24, in the Haldimand-Norfolk decision the Tribunal held:

> ... that the parties have an obligation to ensure the collection of job content information meets the requirements of the Act to accurately identify skill, effort, responsibility and working conditions normally required in the work of both the female job classes in the establishment and the male job classes to be compared. Not only is this a necessary condition of a gender neutral comparison system but we also find that section 5 of the Act requires a standard of correctness, that is, the skills, effort, responsibility and working conditions must be accurately and completely recorded and valued.

128 Unlike the cases before us, the panel in the Haldimand-Norfolk case had the benefit of evidence arising out of the pilot testing of the comparison system on some ONA nurses in the establishment. On the basis of the evidence, the Tribunal in that case outlined which considerations it found helpful in assessing the gender neutrality of the collection of the job information component of the comparison system:

* What is the range of work performed in the establishment?

* Does the system make work, particularly women's work, visible in this workplace?

* Does the information being collected accurately capture the skill, effort, responsibility normally required in the performance of the work and the conditions under which it is normally performed for both the female job classes in the plan and the male job classes to be used for comparison?

* Is job information being collected accurately and consistently, the same way for each job class to be compared?

We adopt this analysis with some modification to suit the circumstances in these proceedings.

129 The parties before us acknowledged that a comparison system must collect and value the normal job requirements of both the nurse and the male comparator job classes. However, in this case, most of the evidence centred on the work performed by nurses in these ONA bargaining units, although the evidence of Dr. Josephine Flaherty touched on nursing work in general. Evidence respecting other types of work within the hospital establishments was sparse. There was evidence generally concerning "managerial work", but no specific managerial jobs in the hospitals were examined. We cannot, therefore, determine the entire range of work in the three hospital establishments. Rather, we review the nature and goals of the hospital organizations before us, as well as the range of work performed by nurses.

130 We also agree with the second and third criteria established by the Haldimand-Norfolk decision. Again, because we only heard evidence respecting nursing work, we must determine whether the systems proposed by the parties will make nursing work visible, and will accurately capture the skill, effort, responsibility normally required and the normal working conditions of the nurse job classes.

131 Finally we agree that consideration must be given to whether job information is being collected accurately and consistently across all job classes to be compared. In the context of the cases before us, we must determine whether the structure and language of the job collection instrument will elicit accurate and consistent responses from nurses.

132 The importance of an appropriate job content collection instrument cannot be underestimated. It is this instrument which determines whether the range of skill, effort, responsibility and the working conditions found in a job are captured. It allows you make visible what is often invisible. In order to make work content visible, the questions and how they are asked is critical. This includes the wording used, the extent and range of the questions asked, how much they take into account the specific aspects of women's work and the fact that these aspects have often been undervalued or invisible.

133 In this case, the job collection instrument must be comprehensible to both nurses and potential male comparators. In the case of nurses, the job collection instrument should be sensitive to the particular meaning that some words have for nurses that may be different from the more general understanding of those terms. It must be able to capture the skill, responsibility, effort and working conditions in nursing work which may be invisible. As well, consideration should be given to the required skills and responsibilities which are imposed on nurses from outside the hospital structure, such as the Standards.

The Hospitals' Proposal: The SKEW Job Evaluation System

134 A gender neutral comparison system must make those job characteristics differentially associated with women's work visible so that they can be captured. What must be sought out are not only those job characteristics in women and men's work which are common, but also those which are distinct to each type of work. SKEW's plan is based on two premises:

1. Certain identifiable elements or factors are present in all jobs but to varying degrees.
2. These identifiable factors can be objectively measured.

While these are important and practical considerations, if a comparison system identifies and measures only those factors which are present in all jobs, it will miss those which are unique to some, to nursing for example.

Will the system make nursing work visible in this workplace? Will the information collected accurately capture the skill, effort, responsibility and working conditions of nursing work?

SKEW Job Fact Sheet

135 There is no question that the job fact sheet is part of the SKEW job comparison system. The document entitled "Job Evaluation Training Under Pay Equity" clearly outlines that the collection of job facts is one of the main steps of the SKEW job evaluation programme. The document also includes instructions for completing the job fact sheet, as well as a sample job fact sheet.

136 The Tribunal received in evidence four versions of the SKEW manual and job fact sheet. While all four versions were reviewed, we will follow the wording used in the SEIU version in the following analysis. The SEIU job fact sheet is attached to this decision as Appendix "A".

137 The first question in all versions asked basic information about the employee.

Question 2:

Job Description

138 Our first concern is that the difference between an "activity" and a "responsibility" is not made clear. "Activities" suggests tasks, while "responsibilities" implies something for which a person is accountable, must cause to happen or is charged to complete. Since the object of the exercise is to elicit accurate and complete job content information, the question must begin with a definition of what the employee is to consider.

139 Even though the question directs the employee to list "activities" or "responsibilities", the emphasis is on activities. The question directs the employee to "describe each activity" and then the question is divided into boxes under the heading of "Activity A", "Activity B", and so on. Incumbents might focus exclusively on activities or tasks rather than on responsibilities. As well, focusing on activities would not capture the nurturing and caring skills, nor the skill required to perform tasks simultaneously.

140 Further, there is a clear implication that employees are limited to listing three to six major activities or responsibilities. Nursing work however, involves more than six major activities or

responsibilities, and limiting the description would preclude the accurate collection of the work that nurses do. Job information not provided will not be captured and therefore will not be valued. As well, no direction is provided as to what combination of activities and responsibilities is required. Does an employee list three of each, or four activities and two responsibilities? This ambiguity should be resolved.

141 The question emphasizes the "major" activities or responsibilities without any assistance as to what is to be considered "major". For example, checking medications may not be a major activity but it may nevertheless be a significant responsibility. Decisions about these types of questions should not be left to individual discretion; direction in the job fact sheet is required.

142 The instruction to describe activities and responsibilities "by a phrase" is problematic. Nurses use phrases or maxims such as the "nursing process" or "patient assessment" to describe a complex range of activities. Using a phrase or maxim will not convey the range of activities and responsibilities, nor the skills required. Further, non-nurses on a job evaluation committee may have little comprehension of meaning of the term "nursing process". This is a potential problem for the SKEW system where job evaluation is performed by a committee of employees.

143 The question does direct the employee to describe the activity listed. However, this may be difficult to do. For example, "evaluating patient care": Dr. Flaherty indicated that this is a complex procedure. It requires knowledge of the objective of the case and the specific goals to be achieved at particular times. These would have to be listed. The nurse completing the question would have to describe how she would be able to work toward the achievement of that goal. This activity is very complex and difficult to describe. If one cannot describe it, then for the purposes of the job fact sheet, it does not exist. If it does not exist, it does not get captured and ultimately valued.

144 The question asks about the frequency of activities, which is useful. Those procedures which are ongoing must also be captured, as must those which are only necessary infrequently.

145 The "frequency" aspect of the question ignores the critical nature of the activities or procedures carried out. In the SKEW document entitled "Job Evaluation Training Under Pay Equity" emphasis is placed on what the job incumbent does 95 per cent of the time. Yet, what is essential to an understanding of nursing work is that it is often what a nurse may do infrequently that is critical to patient care. For example, undertaking CPR or providing oxygen may be performed infrequently but may be absolutely essential to the care of a patient.

146 Finally, under "Activity F: Occasional Duties", the employee is directed to list the duties performed "on occasion". A potential problem is that this part of the question imports new language. Specifically, it directs the employee to list "duties" without any indication as to how duties are different than "activities" or "responsibilities". If the language is not clear, collection of job content information may be impaired.

147 We are concerned that this portion of the job fact sheet does not adequately allow the skills

involved in nursing work to be captured. Since the skill element appears to be the most heavily rated factor in the SKEW system, this is problematic. The skills required to perform nursing work must be captured. Specific questions asking incumbents to describe the skills required in the work must be asked. We believe that these questions ought to be fairly structured with checklists to focus the incumbents on the information required to best capture the skills involved.

148 We do note that question three respecting "education and specific training" also asks about "special skills or training required to perform the job or operate equipment". However, this is part of a question dealing with formal education and training required to enter a job. It is unclear how the ongoing skills required to perform nursing work would be captured there.

Question 3:

Education and Training

Education and Specific Training

149 This question asks about the "minimum schooling or formal training" required for a person entering the job. Currently there are nurses in Ontario who graduated and received diplomas from nursing schools and hospital nursing programmes, as well as from community college and university programmes. This leads to two difficulties with the question: the parties will have to clarify what the minimum education for nursing is and the question will have to include a category for nursing schools and hospital nursing programmes.

150 Given this variation, it is especially important that the question explicitly state that the information being requested is the minimum education or formal training required for the job and is not a reflection of the employee's own education.

151 This question will not capture the continuous, formal and informal education and training that nurses are required to undergo to keep current respecting treatments, technology and medications. This is an important aspect of the work which must be captured.

Apprenticeship/Internship

152 It is not clear how the kinds of "clinical experience" required of nurses to learn the "A" level Basic Nursing Skills, Added Nursing Skills or Sanctioned Medical Acts could be captured under the phrase "apprenticeship/internship required". Given that all nurses must learn the "A" level Skills and that many are required to perform the Added Nursing Skills and Sanctioned Medical Acts, clinical experience must be added as a category in this question.

Special Skills or Training to Perform the Job or Operate Equipment

153 This question is adequate so long as the types of skills mentioned above, and the training

required to learn them, are captured. The reference to "frequency" is ambiguous since it is not clear whether what is being asked is how often the special skills are being used or how often the training is required. This ambiguity must be resolved.

Recertification Requirements

154 This question asks the employee to note any recertification requirements. The question does not ask for information respecting original certification requirements. That should be specifically asked. We would suggest that the question be re-worded as follows:

(i) Note any certification requirements.
(ii) Do you need to recertify?
(iii) How often is recertification required?

Equipment Operated on the Job

155 This question will capture useful information. More space is required for nurses to list all of the equipment they operate on the job.

156 However, using equipment in a nursing context requires more than the technical knowledge required to operate it; it also involves interpreting information gathered from that equipment. As well, nurses are often required to maintain and calibrate some of the equipment they use. A question must be designed to capture these requirements.

Question 4:
Experience

157 The information the question seeks to elicit is very appropriate, especially for jobs which do not require formal education. It is especially helpful in that it directs employees to include time spent in all related work such as volunteer work, work in the home and on-the-job learning.

158 The evidence indicated it would be difficult in the nursing context to estimate the amount of prior and on-the-job experience required to become competent. It is especially difficult to quantify learning time since it is a continuous process. We suspect that there may be very different responses given to this question. Therefore, the parties must negotiate a method of objectifying the divergent responses to accurately capture the amount of experience required to become fully competent on the job.

159 The phrase "fully competent" is not defined. Legally, nurses are competent to practice at the time of registration with the College of Nurses and are fully accountable for their work from the moment they begin their practice. Therefore, a clarification of what is meant by "fully competent" and a review of how it would apply to nursing work would be helpful.

Question 5:

Initiative (Independence of Action)

160 This question asks about supervised relationships. The focus is on actions taken by an employee within a formal relationship with a supervisor. This is an appropriate question and will yield information necessary to understanding job content.

161 Colleague consultation will not be captured by this question. This is the type of initiative in which a nurse consults with other health care professionals who are not her superiors to develop a plan of action for patient care. Often, it is the nurse who initiates such consultations.

162 Initiative is also involved in anticipating problems that might arise in a patient's care, fulfilling the patient advocacy role, dealing with medication orders which are on an "as necessary" basis, and questioning a medication order if the dosage is believed to be improper. Initiatives such as these are important requirements of nursing and will not be captured in a question which emphasizes decisions made in a supervisor-employee relationship.

163 Finally, simply listing examples will not ensure that major or significant aspects of nursing initiative will be included. Furthermore, the question of frequency of supervision is not dealt with: are decisions constantly being made with reference to a supervisor or does that seldom occur?

164 Nursing involves not only independent action but also interdependent and dependent actions. Some nursing initiatives are interdependent in that they require the participation of other members of the health care team. This interdependent action must be caught. As well, the combination of all three types of initiative is important. In some cases a nurse will act alone, in some she will require assistance, in some she will require a supervisor. The initiative required in these circumstances is important and will not be captured here.

165 Question 5(c) asks: "What guidelines, standard practices, procedures, manuals, etc. govern your decision-making and actions?" Since the entire question measures independence of action, this is a useful question. However, it does not capture how independent the employee is while working within those guidelines and standards. It is likely that nurses would list the Standards of Nursing Practice and Ethical Guidelines. While some manuals, guidelines and standards may give specific guidance on how to perform the task, the nursing Standards and Guidelines do not. This distinction must be made, otherwise the level of responsibility, accountability and independence of nursing work will be missed. The types of questions that might be considered include: "do the guidelines, standards, manuals, etc. tell you how to do your job?" and "how often do you consult them?"

166 It is important to capture any financial initiatives involved in work. However, question 5(d) asks about financial "responsibility". If the parties want to capture such initiatives, they should redesign the question. Furthermore, given that the nature and goal of the hospitals is to provide patient care, questions about initiatives relating to patient care must be specifically asked.

Question 6:

Impact of Errors

167 This question will capture the most important information about the consequences of error in a hospital context. Many specific examples are provided that pertain to nursing work. The reference back to the question respecting activities and responsibilities will assist employees in focusing on the types of errors and their impact arising out of the work they perform.

Question 7:

Contacts

168 This question lists many examples from a hospital context and therefore it is likely that the question will capture the types of contacts that take place in a hospital.

169 While the question asks the purpose, what will likely not be captured is the nature and the difficulty of the contacts. For example, while contact with patients is listed as an example, what is missed is the difficulty and complexity of communicating with a patient who is ill or who is unable to communicate at all. There is also a degree of judgment involved respecting what the nurse says, how much she says and to whom. These aspects must also be captured, otherwise an important element of nursing will not be able to be valued.

170 Finally, no distinction is made between oral and written communication. Nor would non-verbal communication between a nurse and a patient such as the type testified to by Ms. Jones be captured. Questions should be designed to elicit this information.

Question 8:

Supervision or Direction Exercised

171 It is essential that responsibility involved in direct and formal supervision of people be captured. This question will do that. However, it is difficult to see how the informal supervision required of nurses will be captured by this question. Nurses may not have formal supervisory duties in the sense that they do not have full accountability for staff, nor can they hire, discipline and replace personnel. However, they do guide the work of other staff such as orderlies and registered nursing assistants. The Standards clearly state that the registered nursing assistant functions under the direct or indirect supervision of the registered nurse. The Standards indicate that the registered nurse is responsible for delegating appropriate activities to the registered nursing assistants, and to others who contribute to the provision of nursing care and must provide effective supervision. This type of informal supervision must be captured.

172 The emphasis on formal supervision or direction exercised may obscure the type of guidance

or training which nurses provide to their colleagues. As we have noted earlier, nurses provide and receive assistance and training from nurse colleagues respecting the use of new equipment and better treatment methods. This type of co-operative teamwork approach should be captured.

173 We would also caution the parties to ensure that supervisory aspects of work being captured are not captured twice. For example, it is conceivable that the "supervision or direction" aspects of supervisory or managerial work could be listed in question 2 which captures "activities and responsibilities". This would inappropriately advantage the supervisory and managerial job classes and would amount to "double-counting". The parties should decide whether to capture formal supervisory responsibility through a separate question or as part of a general question. If in fact they intend to capture formal supervision in question 2, then that should be stated clearly in the questions and examples.

Question 9:

Employees Supervised

174 This question will capture how many people a particular job is fully and formally responsible for. This is an element of work that needs to be captured. The number of staff such as registered nursing assistants and orderlies to whom nurses give informal direction should also be captured.

Question 10:

Physical, Mental and Visual Demands

175 The information which will be collected in the "exertion" section of this question will be helpful in capturing the physical, mental and visual demands will not be captured however. For example, handling an emergency, or an altercation between members of a patient's family surrounding the removal of life support systems, may be much more physically and mentally demanding than other challenges which occur more frequently. It is necessary to collect both quantitative and qualitative information about the demands of the job.

176 There is also a qualitative difference between the demands imposed by lifting inanimate objects such as boxes and crates as opposed to lifting patients who are limp or who suffer from spinal injury. The demands on the nurse are different in that the risk of injuring a patient is a physical and mental demand which is not present when lifting inanimate objects. However, the question respecting "heavy physical effort (other than lifting)" is a good one.

177 We have seen that interruptions are part of nursing work. As well, nurses are required to perform a number of tasks simultaneously over the course of a shift. Both of these requirements of the work can place enormous mental demands on nurses as they attempt to complete their daily assignments. Questions must be designed to capture the effort required by these demands.

178 The questions respecting "intense visual concentration" and "intense listening concentration" are both good questions. More examples from a nursing context would be helpful. These questions count the quantity of time involved in concentration. In addition, a qualitative measure should be taken. For example, it is not only that a nurse must watch a monitor, but a loss of concentration may have severe consequences for a patient. Therefore, a mental demand exists which is different from loss of concentration on a computer terminal. For clarity, the parties should agree on a definition of "intense" for these two questions.

179 The questions respecting "intense mental concentration" and "repetitive movements such as keyboarding" are fine. Examples from a nursing context should be provided to ensure that the repetitive and cumulative effect of the light physical effort involved in daily nursing tasks is captured.

Question 11:

Working Conditions

180 The question asks employees to indicate the frequency of the working conditions listed. It asks employees to record "minor disadvantages" and "major unpleasant aspects". It is difficult to distinguish between a "disadvantage" and an "unpleasant aspect" in working conditions. Both of these terms should be defined to ensure consistency and accuracy of responses.

181 It is especially important that the "unpleasant aspects" of the hospital environment are not overlooked because of the need to keep that environment clean and sterile. Discussing the environment in which work is carried out Helen Remick describes the reaction of tree trimmers to having their work compared to the work of nurses:

> They, and many others, do not see the difficulty of work in intensive care units, the danger of dealing with disease and psychotic patients, or the dirt of vomit. I find their use of "dirty" especially interesting. Apparently, to most men and women alike, dirty jobs are those where no attempt is made to keep the work environment clean, and the dirt shows, under your fingernails, after work hours; axle grease is dirty. Many nurses I have talked to see their job as clean, in part because of the constant effort to make the environment sterile, in spite of their exposure to vomit, urine, feces, blood, pus, dead people, disease, and so on. Garbage collectors do dirty work, while food service workers, producing the garbage, do clean work. "Clean" environments are seen as more pleasant and therefore deserving of lower rates of compensation. [NOTE 33: Helen Remick, "Major Issues in A Priori Applications", Comparable Worth and Wage Discrimination: Technical Possibilities and Political Realities, Helen Remick, ed. (Philadelphia: Temple University Press), 1984, at p. 114.]

182 Certainly the examples identify a variety of working conditions applicable to the nursing

context. This will assist nurses in focusing on their working conditions. What will not be captured by the question, however, is the combination of working conditions to which nurses are subjected. For example, on some units, nurses are subjected to various odours, noise, heat, exposure to infection, blood and human waste all at once. This combination of conditions increases the hazards faced by nurses and should be captured. There is also no question concerning shift work.

183 It would be helpful to employees completing the job fact sheet to have a checklist here. The question could ask "under what conditions is work normally performed" and then a list of working conditions could be provided which the employee could check off. Accuracy and consistency would be enhanced.

Question 12:

Have we missed anything?

184 This type of general question is most useful in that it allows employees to provide information about their work which might not have been elicited by the other questions.

Summary

185 Aspects of nursing work which would not be captured by the job fact sheet include the stress or emotional demands inherent in nursing work; responsibility for keeping information confidential, including the exercise of discretion concerning what information can be provided, to whom, and in what manner; the direction the nurse provides to patients and their families in her role as teacher and patient advocate; and the necessity of, and skill involved in, adjusting levels of communications to the relative sophistication of the nurse's various contacts.

186 If the parties agree that stress cannot be accurately captured and measured because it is too subjective, then the emotional demands of nursing work should be captured. These emotional demands include dealing with sick or dying patients and their families, or the death of a small child.

187 What must also be captured is the manual dexterity involved in nursing work. This involves performing fine motor movements skilfully so that treatment is provided efficiently and accurately. These include administering injections, or connecting patients to equipment, often in sensitive and vital organs where the placement and ongoing stability of the attachment is critical.

188 In sum, the parties to these proceedings have an obligation to ensure that the job content information respecting nursing work is accurate. The standard here is one of correctness. In our view, the job fact sheet, in its present form, does not meet that standard as it will not accurately and completely capture the skills, effort, responsibility and working conditions normally associated with nursing work.

Will the information be collected accurately and consistently?

189 The job fact sheet directs the employee to give the completed questionnaire to her immediate supervisor, who will then review it with the employee. The employee and the supervisor are to identify themselves on the front page and to sign the questionnaire after the phrase "Approval Signatures".

190 We have several concerns about this procedure. Supervisory review of the employees' job fact sheets might intimidate employees and discourage them from relaying information about the work they actually perform where that is different from the formal job description. The evidence of both Dr. Armstrong and Dr. Steinberg was that supervisory review of employees' job fact sheets would inhibit responses and that more accurate results would be obtained if employees completed the questionnaires anonymously. We are also concerned about the requirement for supervisory "approval". This may inhibit the employee and result in her listing only that information which she feels her supervisor will agree with.

191 The evidence disclosed that job incumbents, rather than their supervisors, are the best source of information respecting job content. [NOTE 34: Lois Haignere and Brian Fisher, Report on the Suffolk County Supervisor Incumbent Analysis (Albany: Centre for Women in Government, State University of New York), 1987, at pp. 3 and 5.] As the Tribunal noted in Haldimand-Norfolk, "the incumbents are the people most familiar with the skills and requirements of their work, including both the detail and complexity required. The greatest accuracy is achieved using information gathered from those doing the work". However, there was also some evidence that at times job content information might be required beyond what is contained in the incumbents' job fact sheets. At North York, Gail Ouelette indicated that the job fact sheets she received from the employees she supervised were incomplete. Therefore, she added job content information for the registered nursing assistant, the non-registered nursing assistant and the orderly job classes.

192 Mrs. Walton's evidence was similar for the non-union jobs for which she was responsible. However, Mrs. Walton also indicated that many job fact sheets were returned by the job evaluation committee to hospital department heads for completion by their staff even after they had received supervisory approval.

193 Clearly, there is no guarantee that incumbents will always complete the job fact sheet accurately and completely. The evidence disclosed that the process of supervisory review at North York resulted in the addition of job content information. This would lead to more accurate and complete information. Yet, it is also clear, that even supervisory review of the job fact sheets does not always catch the omissions of job incumbents.

194 Where the object of the pay equity process is to gather accurate, complete and reliable information, every reasonable effort must be made to eliminate impediments to the achievement of that goal. We are satisfied that anonymous responses to would yield more accurate job content information from incumbents. Yet we are mindful of the contribution made by several supervisors at North York.

195 The parties must devise a method of data collection which ensures incumbent anonymity. A system of numbering responses is one possibility. The job fact sheet of each incumbent would contain the employee's name, and be numbered for identification purposes; the actual response of the incumbent would be held in confidence. If the job evaluation committee required more information, it could contact the incumbent through the reference number. The job evaluation committee could also contact supervisors for additional information.

Job Information Questionnaire

196 The SKEW job fact sheet combines open-ended questions with questions that are more structured. An open-ended question is one which asks a general question about an aspect of the work that is to be captured: for example, the job fact sheet question about major activities and responsibilities. Other examples of this type of question are impact of errors, initiative and working conditions. More structured questions in the job fact sheet such as those respecting education, supervision exercised and employees supervised are specific in the range of information from which an incumbent may choose.

197 Dr. Steinberg was of the view that "when there is no checklist indicating the type of responses being sought, the responses are as much a function of an incumbent's ability to answer open-ended questions as a function of job content". With open-ended questions responses vary. Whether the responses are accurate or whether they simply reflect variations in the ability of people to answer is unknown.

198 We have seen that major aspects of female work are invisible, both to men and to the women who perform the work. Dr. Steinberg conducted focus group interviews with 13 nurses drawn from 12 different units at the Hospitals. She found that the registered nurses who completed the SKEW job fact sheets after the group interview identified lack of privacy, working with bodily fluids, constant interruptions, and exposure to violent and confused patients as aspects of their working conditions. Those who completed the questionnaire before the interview were likely to mention only noise, shift work, and exposure to infection and disease.

199 Research Dr. Steinberg conducted with Dr. Lois Haignere at the Centre for Women in Government found that a checklist assisted incumbents in capturing the work they performed. In her report Dr. Steinberg noted the assistance a checklist would provide to nurses:

> Since, as Benner (1984) suggests, much of the knowledge and skill associated with nursing work can be taken-for-granted and therefore treated as invisible unless brought to consciousness -- even by nurses -- it is essential to develop a data collection procedure that maximizes the likelihood that information about the full range of job content and context will be gathered. Checklists, like closed-ended questionnaires, increase the reliability of the survey instrument. [NOTE 35: Ronnie Steinberg, Report Concerning the Proposed Testimony of Dr. Ronnie Steinberg, PhD. Concerning The Appropriateness of the Respondent

Hospitals' Proposed Comparison System, April 1990, at p. 94.]

200 In documents prepared by the OHA for use in pay equity workshops for hospitals, the OHA stated:

> The use of interviews or open-ended questionnaires may also systemically discriminate against women because of gender differences in the way language is used. An open ended questionnaire might ask, "describe the equipment you operate in your job". By contrast, a closed ended questionnaire might list various equipment and ask respondents to check the ones they operate. Psychologists and linguists have found that there is a tendency for women to under-describe and men to over-describe their jobs. Even when describing identical work, women may tend to choose "weaker" verbs than those used by men, for example "supervise" vs. "manage". It has been suggested that it may be necessary to translate some female job descriptions into "male" language. At least, training sessions should be held with interviewers, interviewees and questionnaire designers and respondents to ensure that this problem is recognized and dealt with as fairly as possible. [NOTE 36: Ontario Hospital Association, "Pay Equity Workshops for Hospitals", 1988, at p. 62.]

201 As well as a recommending a checklist, Dr. Steinberg was of the view that if open-ended questions were to be asked, then training of incumbents respecting what a job is and how their work is to be described, is required in order to minimize differences in the responses among incumbents of a particular job class. Training will provide guidance as to what elements of their work incumbents should be thinking about when filling out their questionnaires. We agree.

202 The parties are directed to make the questionnaire as structured as possible. Closed-ended questions should be used wherever possible. If the parties decide to use open-ended questions appropriate training must be provided to the job incumbents. As well, examples should be given to serve as guidelines for open-ended questions.

The Mechanism or Tool to Determine How Value Will Attach to the Information

203 To value the job information collected, a mechanism or tool must be agreed upon by the parties, and used to value the female and male jobs in an establishment. This tool is part of the gender neutral comparison system to be negotiated by the parties pursuant to subsection 14(2) of the Act. The tool must be able to value the work based on the subsection 5(1) composite of skill, effort, responsibility and working conditions, and do so in a way that is gender neutral.

204 In the Haldimand-Norfolk case, the parties negotiated, but did not complete bargaining, for a mechanism to determine the value of work. The Tribunal determined that the following considerations were helpful in assessing the mechanism or tool which determines work value:

* Can the tool determine the value of the work performed using the statutory criteria of skill, effort, responsibility and working conditions?

* Is the choice of sub-factors, if used, undertaken free of gender bias?

* Are levels or equivalencies, if used, free of gender bias?

* Is the composite required by section 5(1) decided in such a way that gives value to all the statutory criteria and is point weighting free of gender bias?

205 In the cases before us, the parties did not agree upon the valuing tool. The Hospitals proposed using the "SKEW Job Evaluation Manual", or some amended version thereof, to value nursing work and the potential male comparators. We had before us various versions of the "SKEW Manual", including the "Treasury Board 'Aiken' Job Evaluation Manual", the "SKEW Proposed Manual to OHA, February 11, 1988", the "SKEW OHA Manual of September 1, 1988" and the SKEW Manual which was modified by negotiation between SEIU and the OHA. We will review the SKEW valuing tool to determine whether an appropriate measure of nursing work can be made. The criteria established in the Haldimand-Norfolk decision have been re-formulated to suit the circumstances of these cases.

Can the mechanism or tool determine the value of nursing work using the subsection 5(1) criterion of skill, effort, responsibility and working conditions, and does it give value to all these statutory criteria?

206 The SKEW manual recognizes the four primary elements of job value: knowledge and skill, effort, responsibilities, and working conditions. Nine factors are used: complexity judgment, education, experience, initiative, result of errors, contacts, supervision -- character and scope, physical demands, working conditions. The manual defines these factors and the levels or grades within each. It also provides guidelines and explanations. Each grade or level within a factor has a numerical point value. Points allocated vary from factor to factor. Within a factor, points systematically increase up the levels or grades.

207 The nine factors are grouped under the criterion identified in subsection 5(1) of the Act:

1. Skill: Complexity - Judgment
Education

Experience

2. Effort: Physical demands
Initiative

3. Responsibility: Results of Errors

Contacts Supervision: Character of Supervision

Scope of Supervision

4. Working Conditions

Complexity Judgment

This factor deals with the decision-making aspects of the position.

Complexity refers to the variety and relative difficulty of the material or information upon which decisions are based.

Judgment refers to the use of knowledge and experience in making the decisions.

Grade levels increase in relation to the variety of issues and activities, and to the difficulty of the problems and decisions dealt with.

208 In any organization there will be a hierarchy in terms of the complexity-judgment of work. This hierarchy will be based not only on the nature of the work itself, but also on the nature of the organization and its objectives. The work of those at all levels of the hierarchy must be valued. However, one must ensure that if elements of work are common to both managerial work and nursing work for example, then those elements must be valued in both. That does not appear to be possible in this factor.

209 Levels 6, 7 and 8 are defined as follows:

6.

Grade definition: Work requires analysis, planning or co-ordination of major inter-related activities

7. Grade definition: Work involves decision-making with long-term implications

8. Grade Definition: Work is policy formation

These three levels will measure managerial work. However, nursing work also involves analysis, planning, co-ordination and decision-making with long-term implications. These aspects of nursing work cannot be measured, since it is clear from the guidelines and explanations that they are to be considered in relation, not to patients, but to the hospital organization itself. For example, levels 6 and 7 are reserved for work with long-term implications to at least two major divisions in the organization. The type of analysis, planning, co-ordination and decision-making which nurses regularly perform in relation to people will not be evaluated. There is no explicit level dealing with these types of skills.

210 The results of Dr. Steinberg's focus groups illustrate the difficulty nurses had with using this factor to measure the value of their work. The nurses were asked to evaluate their work on the basis of the grade definitions. They all evaluated themselves at grades 6 or 7 since the language of those grades approximated the language of the nursing process. They indicated that their work involved "analysis, planning or co-ordination of major inter-related activities" (grade 6) and "decision making with long-term implications" (grade 7).

211 Using the guidelines and explanations, resulted in a grade 4 or 5 rating. However, these nurses felt that while level 5 was inappropriate they were constrained by the definition: they were not responsible for two or more major units. Some nurses felt that their level of complexity would be placed at level 4 because they thought the reference to standards in the guidelines would be interpreted to refer to the Standards.

212 We are by no means deciding that nursing work should be placed in levels 7 or 8 in this factor. We are simply stating our concern that while managerial work is explicitly evaluated on the basis of planning, analysis, co-ordination and decision-making with long-term implications, these same elements of nursing work may not be evaluated and they ought to be. There is no way of knowing how these aspects of work could be evaluated under the language in any of the other grades.

213 The complexity-judgment factor is designed to be a skill measure. Yet grades 6, 7, and 8 deal with responsibility for planning, analysis, decision-making and co-ordination of major functions normally associated with managerial work. Equivalent responsibilities pertaining to patient care do not appear to be included in this factor. The measuring tool must evaluate both skill and responsibility and should differentiate between the two.

214 The factor does not differentiate between different types of standards and precedents used in different types of work. The nature and complexity of the Standards of Nursing Practice would be

lost without an appropriate differentiation. Since Question 5 of the job fact sheet explicitly asks about standard practices which govern decision-making and actions, the response may simply result in nursing work being reduced to following standard practices. The Standards, far from limiting the scope of the work, are merely minimums which the nurse must meet. As well, they do not prescribe the manner in which the work must be performed. Unless appropriate definitions are provided, the complexity and multidimensional nature of the knowledge that is used in carrying out the nursing process would not be evaluated.

215 Another major difficulty, as set out in the various versions of SKEW before us, is that it does not appear to translate job content information about nursing skills and recognize it in a way that it can be measured or valued. Among the skills required of nurses which would not get valued here are:

* record keeping,
* communications,
* assessment,

* problem-solving in circumstances of uncertainty, decisions respecting if and when to contact a physician, the independent, dependent and interdependent roles,

* the decision to refuse to carry out physician's orders, ethical decision-making,

* techniques necessary in administering and monitoring nursing and drug interventions,

* the helping, teaching and coaching roles with respect to patients and their families,

* requirement to extensively co-ordinate with the health care team and manage her own work,

* complexity and judgment necessary to establish and implement a nursing care plan,

* the ability of a nurse to judge that a problem is about to occur,

* and the ability to handle emergencies that are unforeseen.

The parties will have to formulate a factor or factors which can measure these skills.

Education

216 The September 1, 1988 version of SKEW defines the education factor as:

> Education refers to the training necessary to prepare an individual to satisfactorily fill a position. It reflects the level of formalized knowledge necessary to fulfil the requirements of the position. It does not mean that a designated amount of formal education is an absolute necessity. Such knowledge is most commonly acquired as the result of time in schools, colleges, universities or other formal instruction programs.
>
> Application of this factor should not be confused with either the basic education of a particular incumbent or with employment standards established to ensure adequate background for advancement within the organization.
>
> Today's educational levels and standards should be used.
>
> This factor is closely associated with the following one for "experience". Rating under the experience factor should reflect the educational level assigned in this factor.

The SEIU version of this factor adds:

> All apprenticeship/internship time should be measured under this factor. Also, if recertifying or upgrading is a mandatory job requirement, it should be measured under this factor.

217 Clearly, what this factor measures is the formal educational training required to fill a position. What it does not appear to value is the knowledge acquired by nurses once they have commenced their work. New technology, medications, and treatments require that nurses continue to upgrade their knowledge and skills. The emphasis on formal education means that the type of ongoing training nurses receive, which does not result in a degree, diploma certification or recertification, will not be valued. For example, the educational process of learning the "A" Basic Nursing Skills, Added Nursing Skills, and Sanctioned Medical Acts can only be commenced by nurses after they have completed their formal educational training and have obtained their

certificate of competence. We are not certain that the reference to "upgrading" in the SEIU version will measure the ongoing education required of nurses.

218 The SEIU version of the education factor differentiates between different levels of community college, equivalent to college education, and the university graduation level. As we have noted, nurses have taken different routes to nursing. There is no indication as to how these different educational paths will be measured for nurses. The parties will have to negotiate a common rating for formal educational requirements for nurses and equivalency standards to other job classes which may not have such different formal educational routes.

219 The education and skills question on the job fact sheet asks about provincial, professional or vocational certifications required, about special skills or training needed to perform the job or operate equipment, about recertification requirements, and about equipment, tools, devices and instruments the incumbents operate on the job. This job content information should be measured in the corresponding education factor in the evaluating tool, but it is not.

Experience

> Work experience measures the length of time (in months or years) required to learn, under instruction or guidance, the essential techniques and skills called for by the job. The experience will be gained on the job under consideration, as well as on prior jobs where the same or more elementary principles and techniques are used, and also on related jobs where one can build up a body of knowledge essential to the proper performance of the job. When evaluating this factor, include the time needed to learn special skills required for the job (but not normally taught during formal education). For example, count the time required to learn how to drive specialized vehicles such as fork lift trucks, or to operate specialized word processing equipment or computer hardware and software.
>
> The amount of work experience represents the fastest structured on-the-job learning time with all non-learning periods removed. Thus, it is always an artificially compressed time period. It is not the same as "years of experience" often used for promotion or hiring purposes.
>
> Assume that the incumbent starts with the educational level specified in the Education factor.

220 Work experience for the purposes of this factor is the actual on-the-job learning time. Non-learning times are removed. The SKEW training video indicates that one third of the time is spent in learning the job once a person commences it. Therefore, the total work experience captured by the job fact sheet is to be divided by three to give a measure of work experience.

221 This process is problematic for nursing in that on-the-job training and informal, experientially based learning is almost continuous. No differentiation appears to be made between those kinds of jobs which require continuous learning and those which require learning only in the early stages. If a job requires continuous on-the-job training, then the time spent on learning should not be divided by three.

222 The experience factor takes into account both on-the-job and prior job experience. Nurses however, are rarely on a career ladder where one begins in an entry level position and proceeds upward to the position of registered nurse. Therefore, if one is going to measure experience, it ought to be done in a manner which allows equivalencies to be drawn between those job classes which require continuous learning and those which require prior job experience.

223 The experience factor contains no reference to what it is that must be learned in a job that is tied to a certain amount of time. It is a time-based, not job-content based measure. And as Dr. Benner notes at page 36, in relation to nursing work:

> Experience, as the word is used here, does not refer to the mere passage of time or longevity. Rather, it is the refinement of preconceived notions and theory through encounters with many actual practical situations that add nuances or shades of differences to theory... Theory offers what can be made explicit and formalized, but clinical practice is always more complex and presents many more realities than can be captured by theory alone. [NOTE 37: Patricia Benner, From Novice to Expert (Menlo Park, California: Addison-Wesley Publishing Company Inc.), 1984, at pp. 139-40.]

224 The difficulty with the three "skill" factors generally, is that there is very little discussion of skill in any of the factors, yet they account for almost one-half of the points in the entire comparison system. We have already noted that the complexity-judgment factor does not measure many of the skills involved in nursing work. The education factor measures formal educational requirements, yet does not measure the education required, following formal academic training, to learn the types of skills essential to nursing practice. The experience factor simply measures how long it takes to learn the job without reference to what it is that must be learned in that time. The tool negotiated must include factors which are designed to allow the skills involved in the work to be evaluated.

Initiative

> Initiative refers to the degree of independent action required. It also considers ingenuity, creative imagination, and original thought which may be needed on the job.
>
> It is limited by the amount of direction and control received from either personal supervision or standard practices and precedents. The rating level for this factor

> will increase as the amount of supervision and control decreases.

225 The initiative factor refers to "the degree of independent action required". The introduction indicates that this factor "also considers ingenuity, creative imagination and original thought which may be needed on the job". However, all of the grade definitions refer to the degree of supervision or independence under which the work is undertaken. It does not appear that the language of either the grade definitions or the guidelines and explanations allow for a measure of the creativity, ingenuity and originality involved in nursing work: for instance in co-ordinating patient care and those who are to provide it or handling emergency situations. The language of this factor appears to deal with how closely supervised the work is. A factor should be developed which will actually allow the initiative required to be valued independently of the issue of the degree of supervision of the work.

226 The initiative factor does not purport to measure the dependent and interdependent aspects of nursing care. It simply measures those aspects of work which appear to be carried out independently. Yet, even the dependent aspects of nursing work, for example, following doctors' orders, involve more than simply following a set of guidelines. A measure must be developed to evaluate dependent and interdependent aspects of work.

227 We are concerned that the types of independence of action carried out by nurses would be missed if nursing work were simply seen as the implementation of standards or guidelines. The Standards must not be interpreted so as to deny the ingenuity, creative imagination and original thought involved in nursing work. Independence of action can also be seen by what occurs in the identification and management of a patient crisis until a physician is available:

> Nurses are often confronted with medical crises that require immediate medical attention; for example, it is most frequently a nurse who initiates a resuscitation effort. Considerable knowledge and skill are called for to determine the gravity of the situation and the necessity of rapid intervention -- what can and should be started while waiting for a physician response. In these situations, the nurse walks a fine line between not jeopardizing the patient's life by withholding necessary life support measures and at the same time working within the bounds of safe nursing practice. [NOTE 38: Patricia Benner, From Novice to Expert (Menlo Park, California: Addison-Wesley Publishing Company Inc.), 1984, at p. 116.]

This example reflects considerable initiative, imagination, creativity and independence of action. Yet, it does not appear to us that the language in levels 1 through 4 would measure this type of independent action nor is it captured by the phrase "standard practice and established procedures".

228 As with the complexity-judgment factor there is a conflict between the grade definitions and the guidelines and explanations which would make it difficult to locate nursing work in one of the grades. The difficulty in finding an appropriate level within the initiative factor was evidenced again

in the focus group discussions led by Dr. Steinberg. When referring only to the grade definitions, the nurses rated themselves at level 5; yet when they rated themselves on the basis of the guidelines and explanations, they were constrained by the language to rate themselves lower than grade 5 and felt that this was inappropriate.

229 Another concern is that while the initiative and complexity-judgment factors are meant to be different, the two factors themselves are quite similar. Complexity-judgment is designed to measure decision-making aspects of work, while initiative is supposed to measure the independence of action required in the job. Yet, the language of the two factors is quite similar so that in effect, one dimension of work, not two, is actually being measured. Since we have found that neither of these factors will adequately measure nursing work, the problem of double counting is more serious. Since the Act requires the evaluation of work on four factors, the parties must ensure that the evaluation tool does not double count certain aspects of work.

Contacts

> Contacts refers to the relative importance to the organization of necessary working relationships of the position holder with other people. The contacts can be internal or external to the organization.
>
> Contacts are of a personal nature: talking face-to-face, on the telephone or public appearances.

230 We note with approval that in the SEIU version of SKEW, this factor measures the difficult nature of patient and family contacts. At grade 4.5, the contacts factor measures "ongoing difficult contacts required to deal with disturbed or terminally ill patients and/or relatives on a frequent basis". We leave to the parties to negotiate whether this factor measures patient contacts at an appropriate level.

231 Care must also be taken to ensure that at each level appropriate equivalencies are established between contacts with patients and other types of contacts.

> ...the addition of contact with patients at the levels specified needs to be assessed in terms of equivalencies to other types of contacts at each level. The factor includes three levels of contact (levels 6 through 8) in which there is no mention of patient contact. There is no justification for treating high-level organizational contacts as more significant and complex than the patient contact typical of hospitals. Given the organizational mission of hospitals, poor counselling or poor provision of health care certainly could lead to "important losses or serious damage". The Contacts factor remains biased in the direction of loss of money and physical objects, rather than towards human life. [NOTE 39: Ronnie Steinberg, Report Concerning the Proposed Testimony of Dr. Ronnie Steinberg,

> PhD. Concerning The Appropriateness of the Respondent Hospitals' Proposed Comparison System, April 1990, at p. 107.]

Given that the workplaces in question are health care institutions, this is essential. In establishing an appropriate measure of patient contacts and equivalencies, consideration must be given not only to the fact that nurses care for patients: it must also consider the complexity and nature of the contact as well.

232 We also note that in the September 1, 1988 version of SKEW, grades 3 and 4 include references to the supervisory aspect of work. In the SEIU version, these references are deleted and we believe that is appropriate. Supervision is in a separate factor and it is therefore unnecessary and inappropriate to measure it again. Measuring supervision again would penalize certain jobs which do not supervise but nonetheless require difficult contacts.

233 Nurses must often communicate with patients who do not speak English, cannot communicate at all, who have disabilities or who do not take instruction well. This may be done through non-verbal communication. We are not certain that this factor measures this type of contact. If it does not, it should.

234 This factor only deals with personal contacts. Yet much of what nurses do is through written communication. Nurses are required to keep records respecting patient care, and other members of the health care team rely on these records. Record-keeping is both a skill and a responsibility. If it is not measured in the contacts factor then it ought to be measured in another factor.

235 We are also concerned that the types of contacts nurses have with other health care professionals in the hospital are measured, and measured at an appropriate level.

236 What also appears to be left out with respect to the nature and complexity of the contacts is the emotional work involved with dealing with patients and their families. A measure of the types of skill brought to bear in the contact, such as the comforting and nurturing skills, must be made.

237 Health care is carried out in a health care team approach, in which co-operation among all caregivers is required. The nature and complexity of this form of contact in which nurses attempt to co-ordinate and secure co-operation of the team without formal authority must be taken into account when measuring contacts.

Scope of Supervision

> Scope of Supervision appraises the size of the direct line responsibilities measured in total number of people within the organizational unit supervised.
>
> Apply zero points if there are no subordinates.

238 This factor measures the number of people supervised and assumes that the more people a job supervises, the more complex the supervision. This factor measures direct line supervision in terms of the numbers supervised. This is an appropriate measure.

239 The factor deals only with formal authority or formal supervision. We have seen that while nurses do not supervise in the formal sense, they nevertheless direct or guide the activities of others. In fact, the Standards make it clear that registered nurses "supervise" work performed by the registered nursing assistants and others to whom she delegates work. There is no equivalent measure for the numbers of staff for whom this type of direction or guidance is provided. Both the formal authority and supervision, which is important in any organization, and the numbers actually supervised must be counted: this actual "supervision" is essential to a health care team in a hospital. If this is not done, the factor will not recognize or value the type of "supervision" nurses are required to perform.

Character of Supervision

> Character of Supervision considers the degree, kind and intricacies of line supervisory responsibility or the nature of functional supervision, technical direction or advice involved in staff relationships.

240 It is important and appropriate to measure the nature of formal supervisory responsibilities which this factor will do.

241 The language used in this factor is unclear. The guidelines and explanations use terms such as "provides functional 'staff' guidance", and "for staff' positions". The introduction speaks of "line supervisory responsibility" and "functional supervision, technical direction, or advice involved in staff relationships". The terms and phases should be explicitly defined, either in the factor itself, or in the course of training people who will ultimately evaluate positions in the hospitals. For example, nurses give advice to interns respecting patient care. Would this fall into "technical direction or advice involved in staff relationships"? Unless this phrase is understood, that type of advice may be missed and not measured.

242 Another equivalent measure that ought to be explicitly included in this factor, is the direction or guidance nurses provide to registered nursing assistants orderlies, volunteers, or others to whom they delegate aspects of patient care. This is not formal supervision, but does reflect the fact that there is actual supervision going on. In addition, this factor will not measure the type of "supervision", direction, or guidance nurses provide to patients.

243 Another aspect of nursing responsibility that would not be measured is the responsibility for the co-ordination of patient care and for the integration of the health care team. As Dr. Steinberg notes:

> The Registered Nurse is responsible for coordinating the primary care to patients.

> This involves a wide array of service provision and health care personnel, including registered nurse assistants, orderlies, respiratory therapists, nutritionists, physiotherapists, psychologists, and social workers. It also involves delegation of responsibilities to other service providers best able to carry out an activity given an assessment of the needs of the patients. [NOTE 40: Ronnie Steinberg, Report Concerning the Proposed Testimony of Dr. Ronnie Steinberg, PhD. Concerning The Appropriateness of the Respondent Hospitals' Proposed Comparison System, April 1990, at pp. 76-77.]

If the parties do not wish to measure supervision of patients and co-ordination of patient care in this factor, they can design another factor to do so or, alternatively, they can develop a measure of these requirements in another factor.

Physical Demands

> Physical Demands considers the degree and severity of exertion associated with the position. Consider the intensity and severity of the physical effort, visual attention or concentration required by the job as well as the continuity and frequency of that effort.

244 The issue of stress or of emotional demands, that are part of nursing work, is not dealt with in this factor. Nor is it dealt with in other factors. There are many different aspects to the stress associated with nursing work: abuse from patients and their families, stress associated with co-ordinating activities without formal authority, or the emotional loss after the death of a long-term patient, for example.

245 The SKEW video indicates that stress is not explicitly included as a factor to be measured because it has less to do with objective conditions in the job than with individual differences among people. The SKEW video also indicated that rather than measure stress directly, it is measured indirectly through its impact on other factors. There was no direct evidence of how stress was interwoven into each factor. While stress may be individualized, there are nevertheless certain emotional demands that are integral to nursing work and these must be measured.

246 While versions 2 and 3 of SKEW do not include "listening attention" as part of mental concentration, the SEIU version does, and this is appropriate given that many jobs, including nursing work, require it. However, mental concentration required in writing or recording information about patient care does not seem to be measured here. The guidelines and explanations do not allow for the inclusion of mental effort. A measure of the mental concentration must be developed.

247 The physical demands factor does not distinguish between lifting or moving objects as opposed to people. Lifting human beings is a more complex physical demand because, not only is the nurse making the physical effort, but she is also trying not to injure the patient. This dimension

of physical demands is not measured here and it should be.

248 The combination of physical demands is not measured here. That is, often physical demands, such as lifting or pushing, are carried out under conditions of emotional stress and under the observation of many people. This interrelation among demands makes the demand more onerous and this qualitative difference should be measured.

Result of Errors

> This factor appraises the likelihood and the probable effect of errors on the job. Consider the extent of losses to the organization which may result from mistakes occasioned by insufficiently considered decisions or judgments. Consider a typical instance, not a rare or extreme one. (Only in lower level positions is consideration given to carelessness). Result of Errors is also used to evaluate responsibility for the safety and welfare of others.

249 This factor focuses on "typical" errors. However, it is usually a rare instance or error which leads to an injury or fatality and this must be measured as well. This factor measures responsibility: if a mistake is made, how serious are the consequences. The greater the consequences the more responsible the work. In that sense, it is appropriate to focus on the consequences of typical errors, as well.

250 All versions of this factor mention errors which have as their consequences injury to patients or even fatalities. This is appropriate. However, what must be negotiated are appropriate equivalencies between errors in the provision of medical care and other types of consequences resulting from errors in a non-medical context. These equivalencies are part of a comparison system which is to be applied to a hospital setting where the function of the organization is to provide quality patient care. In our view, given that the workplace is a hospital, an appropriate amount of emphasis must be given to those errors which have consequences for human health and life. The parties have not yet negotiated any aspect of the comparison system. They will have to do so. We would ask them to carefully develop equivalencies which are appropriate, between administrative or mechanical errors and those which have consequences for human life.

251 Versions 3 and 4 contain references to breaches of confidentiality which have consequences for both the "work unit" (level 2) and the organization as a whole (levels 3 and 4). Maintaining confidentiality of patient records is an extremely important nursing responsibility; so important in fact that nurses can be disciplined by the College of Nurses for breaching confidentiality. We are uncertain as to whether the reference to "breach of confidentiality relating to the whole unit" refers to patient records or not. In any event, there must be a measure of the nurse's responsibility in the area of confidential information.

252 At North York, every employee is required to sign a document that they are to maintain confidentiality. For that reason, issues respecting confidentiality were not dealt with in the other

applications of SKEW. In our view, this would be inappropriate in the case of nurses. Nurses have a legal and professional responsibility to maintain confidentiality with respect to patient records. It is part of the nurse's job content and therefore must be valued.

253 It is interesting to note that breaches of confidentiality in relation to the organization are at grade levels 3 and 4. That is, breaches of confidentiality which relate to the whole organization or which result in damage to the reputation of the organization are rated as more serious than breaches of confidentiality which presumably relate to a patient. Again, given that the function of hospitals is to provide patient care, it will be necessary for the parties to establish appropriate equivalencies.

254 An essential component of nursing work is the prevention of errors. For example, the nurse is the backup person for the physician. Her presence and technical and clinical responsibilities serve to prevent errors. This is not measured. The responsibility inherent in work should not only be measured in terms of the consequences of errors, but also in terms of the prevention of errors. Whether it ought to be measured here or elsewhere, this is part of nursing work and ought to be valued.

Working Conditions

> Working Conditions evaluates the disagreeableness of the job environment from the employee's standpoint. It also includes the degree of health hazard and any aspects of necessary travel or unusual hours occasioned by the job.

255 The factor does include exposure to noise, fumes, odours, heat, cold, exposure to serious injury, frequent interruptions, and infection or disease. The guidelines and definitions in level 6 of version 3 of SKEW mention "distinct possibility of total disability or death". These are all appropriate for a working conditions factor. What the parties must negotiate are the appropriate equivalencies between working conditions experienced by different job classes.

256 What is missing in terms of undesirable working conditions is shift work, exposure to abusive or aggressive patients, staff and family, lack of privacy, cleaning up feces, vomit and bodily fluids, such as blood. There is also no measure of the cumulative effect of the combination of working conditions associated with nursing work: for example, the combination of conditions such as noise, exposure to human waste or blood, shift work, and frequent interruptions. The factor must be able to measure these aspects of the work.

257 We are also concerned about the language used in both the grade definitions and the guidelines and explanations. For example, the terms "minimum and minor disadvantages", "noticeably disagreeable", and "disagreeable" are not explained; nor is the difference between "some exposure", "moderate exposure" and "extensive exposure" to infection and/or disease made clear. If these terms are not precise, it will be difficult to understand equivalencies within the factor across dissimilar types of undesirable working conditions.

258 It is also of concern that level 1 gives points to "pleasant surroundings, no excessive heat, cold, noise, etc., infrequent interruptions". It appears that points are being given for working conditions which are not undesirable.

259 In conclusion, the valuing tool will certainly determine a value of nursing work using the criterion of skill, effort, responsibility and working conditions outlined in subsection 5(1) of the Act. It will also give point values to all these statutory criteria. However, the tool will not value nursing work appropriately. Not only will the tool not allow many elements of nursing work to be valued, but even those aspects of nursing work that are valued cannot receive their true measure. Further, while the values of the hospitals revolve around the provision of patient care, the valuing tool will not reflect these values as they relate to the nurse's role in the provision of nursing care.

Is the choice of factors undertaken free of gender bias?

260 We are cognizant of the findings in the Haldimand-Norfolk decision with respect to this issue and we concur. When the parties commence their negotiations, care will have to be taken to select factors which balance, in a fair and gender neutral manner, elements of both nursing and potential male comparator work. At the same time, they will have to ensure that one job class is not advantaged at the expense of the other. Factors will have to be developed which allow a true value of the work to be determined. Given the stage of negotiations between these parties and the lack of evidence concerning potential male comparator job classes it is not possible to say more about this issue.

Are the equivalencies in each factor level free of gender bias?

261 In Haldimand-Norfolk, the Tribunal held that "when the job requirements are collected and made visible, they must also ... be placed at the appropriate levels to value their work in a gender neutral manner". [NOTE 41: Haldimand-Norfolk (No. 6) (1991), 2 P.E.R. 105 at para. 79.] "The parties must negotiate these equivalencies to remove as much gender bias as possible." [NOTE 42: Ibid., at para. 80.] We concur. Based on the evidence, we cannot determine whether the proposed equivalencies between nursing work and potential male comparator work are appropriate. We cannot comment further because there was little evidence respecting male comparator work, and the parties did not reach the point of negotiating equivalencies.

Does the mechanism or tool translate the range of nursing job content into a value?

262 As we have noted earlier, the SKEW valuing tool can translate job content into a value. In the Halidmand-Norfolk decision, the Tribunal held: "The composite of the criteria as required by section 5(1) must correctly measure and value the skill, effort, responsibility and working conditions, and weigh them in such a way as to not unfairly advantage either female or male job classes." [NOTE 43: Haldimand-Norfolk (No. 6) (1991), 2 P.E.R. 105 at para. 81.] In that case, the Tribunal declined to make a finding respecting the composite weighting of the Mercer sub-factors since the parties had not negotiated a point value hierarchy. Similarly, since the parties in these

cases have not yet bargained any aspect of the gender neutral comparison system, including point weighting, it is not possible to decide this issue.

Applying the tool or mechanism to determine the value of the work and making the comparisons

263 The third and fourth components recognized by the Tribunal in the Haldimand-Norfolk decision as being part of a gender neutral comparison system are: applying the tool or mechanism to determine the value of the work, and making the comparisons. The parties before us have not yet agreed upon a comparison system, nor have they applied any system to nursing jobs and to potential male comparator jobs. Therefore, there is nothing for us to review in this regard.

264 We heard a great deal of evidence respecting the application of the SKEW system to the non-union jobs and to jobs in different bargaining units in the three hospital establishments and the comparisons that were made. This was informative, instructive and might prove to be helpful when these parties commence the evaluation process. Nevertheless we cannot not make any findings respecting SKEW's ability to capture and value nursing work on the basis of SKEW's application in other circumstances. The job evaluation committees which applied the SKEW system in the three hospitals made their evaluations on the basis of the particular job content and versions of the job fact sheet and the valuing tool before them. The evaluations they made were constrained by the decisions already taken regarding the scope, content and limits of the job fact sheet and valuing tool, and on the basis of job content which is different than nursing work. We fail to see how evidence respecting how SKEW was applied to non-nursing jobs will assist us in determining whether nursing work will be appropriately captured and valued.

265 We also did not find the evidence of Dr. Schwab helpful in determining the ability of the SKEW system to capture and value nursing work. He reviewed numerous studies, including his own, and generally focused on the process of evaluating jobs and the determination of whether there was gender bias in that process.

266 In his research, Dr. Schwab was interested in determining whether jobs performed by women were undervalued relative to jobs held predominantly by men (direct bias). He found little evidence that gender composition of a job had a statistically significant effect on the setting of wages for jobs performed predominantly by women. [NOTE 44: Robert Grams and Donald P. Schwab, "An investigation of Systematic Gender-Related Error in Job Evaluation", (1985) 28 Academy of Management Journal, 279 at page 287.] He further found that current pay levels of jobs influenced job evaluation scores. That is, job evaluation judgments were influenced by current or market wages; that "perceptions of job worth may be influenced by the current pay levels associated with the jobs evaluated" (indirect bias). [NOTE 45: Donald P. Schwab and Robert Grams, "Sex-Related Errors in Job Evaluation: A 'Real-World' Test", Journal of Applied Psychology, Vol. 70, 533, 1985, at p. 534.] Dr. Schwab further found that the gender of the evaluator does not influence job evaluations, and that "whatever biases are or are not present regarding sex in job evaluation, the evidence to date suggests they generalize across the sexes of those making the judgments". [NOTE

46: Ibid., at p. 538.]

267 Interestingly, Dr. Schwab's research focused on the process of evaluating jobs found in the banking industry which were not associated with a gender. Yet, the very focus of the Act is on redressing systemic gender discrimination in compensation for work performed by employees in female job classes. Further, systemic discrimination is to be identified by making comparisons between female and male job classes in an establishment. The nature of the pay equity process envisioned by the Act is to focus on job classes that are clearly gendered, not on those which are not associated with a gender.

268 Dr. Schwab's evidence relating to the process of job evaluation might be of assistance to these parties when they eventually proceed to evaluate nursing jobs. At that point, issues of direct or indirect bias relating to the application of the comparison system must be recognized and addressed. In these proceedings, however, the issue is not the process of applying a comparison system and what influences evaluators in deciding on job worth. Rather, it is a much more preliminary issue: will the comparison systems proposed by the parties accurately capture and make visible nursing work, and value it appropriately. In this regard, Dr. Schwab's evidence, while appropriate for the third part of the gender neutral comparison system, does not assist us at this stage.

269 Dr. Schwab was not asked to, nor did he, analyze the range of nursing work or the nature and goals of the three hospitals. He did not analyze the SKEW job fact sheet or the factors in the valuing tool to determine whether they would accurately capture and appropriately value the range of nursing work in these hospitals.

270 In his research, Dr. Schwab utilized the education, experience and complexity factors found in the Midwest Industrial Management Association ("MIMA") job evaluation system. He compared the education, experience and complexity factors in the MIMA system with the corresponding factors in the SKEW job evaluation system. He concluded that if his studies had utilized the SKEW education, experience and complexity factors and factor definitions instead of the MIMA factors, the conclusions reached would have been the same. In other words, had the Schwab and Grams studies used the three SKEW factors instead of the three MIMA factors, they would have reached the same statistical conclusions. Unfortunately, we were given no credible explanation as to why this would be so.

271 We are not certain that Dr. Schwab's analysis of the SKEW and MIMA systems assists us. As we have noted, the issues examined by Dr. Schwab are different than those which we are assessing in these proceedings. Therefore, whether SKEW and MIMA are similar is not helpful to what we must ultimately determine. Secondly, we received no opinion or evidence from Dr. Schwab regarding whether MIMA could accurately capture and appropriately measure nursing work and whether, by analogy SKEW could. Thirdly, the conclusions that Dr. Schwab did reach respecting SKEW were based solely on a review of three factors and not on the entire valuing tool.

The Parties' Proposed Remedies

272 ONA's proposal is that the parties in each hospital design a pay equity job comparison system based on the standards established by the Tribunal, and utilizing the services of SUNY, HRC, or Dr. Ronnie Steinberg as a consultant. Dr. Steinberg testified that a designed system was necessary in order that gender bias in job evaluation be eliminated:

> The goal of pay equity is to achieve non-discriminatory wage rates. The tool that has been used to achieve these goals is job evaluation. But, given the time period and orientation of most systems of job evaluation, it has proven necessary to design new systems or where appropriate cleanse these existing systems of those gender biases that our state-of-the-art knowledge has enabled us to identify. To achieve this goal requires a recognition that systems of job evaluation have been socially constructed and that they must be socially reconstructed to achieve gender neutrality. Specifically, this goal requires the design or redesign, where appropriate, of systems of job evaluation to reflect and value positively the range of content found in both male-dominated and female-dominated jobs. [NOTE 47: Ronnie Steinberg, Report Concerning the Proposed Testimony of Dr. Ronnie Steinberg, PhD. Concerning The Appropriateness of the Respondent Hospitals' Proposed Comparison System, April 1990, at p. 11.]

273 Given that ONA's proposal involves the design of a comparison system for pay equity purposes, it is not possible to review a specific proposal for use in these hospitals. At the present time, there is no job collection instrument or valuing tool to review as we have done with the SKEW system. Rather, what is proposed is a process whereby first, job content in the three hospitals is reviewed. A comparison system would then be designed which would capture that job content. Once job content is known, then factors would be chosen to value the work in the three workplaces.

274 We did hear evidence regarding the appropriateness of utilizing either SUNY or HRC as a consultant to assist the parties in the design of a comparison system. Dr. Steinberg, who has had a close working relationship with both organizations, was of the view that both the Centre for Women in Government and HRC would be appropriate choices in the development of a new and customized job evaluation system geared to the diverse range of work performed in hospitals or health care contexts. She cited their technical competence, their knowledge of survey research data analysis and of job evaluation committee processes.

275 Evidence was also tendered of various proposals made by SUNY and HRC to other organizations which illustrate the approaches they have used as the basis for designing pay equity job comparison systems.

276 The Hospitals proposed that the SKEW system, as modified to meet the requirements of the parties or as directed by the Tribunal, be used as the basis for negotiations between the parties.

Remedies

277 The remedies flowing from this decision must afford the parties an opportunity to meet the objectives and requirements of the Act. Since the Act is designed to redress systemic gender discrimination in compensation for work performed by employees in female job classes, any remedy ordered must have as its primary objective the ability to identify whether such discrimination exists in the compensation paid to the nursing job classes in these hospitals. Gender discrimination in compensation is to be identified through the use of a gender neutral comparison system. The system must be able to accurately capture the range of nursing work and determine its value as a composite of the skill, effort and responsibility normally required in the performance of the work and the conditions under which it is normally performed. The remedies must also allow the parties to meet these objectives and requirements in manner that is reasonable, effective and is particularly appropriate to these hospital establishments.

278 We find that the proposal put forward by the Hospitals does not meet the requirements of sections 4, 5 and 14 of the Act. The job fact sheet will not make nursing work visible and will not accurately capture the skill, effort, responsibility and working conditions normally required of nursing work. Nor will the valuing tool value the range of nursing work appropriately. Many elements of nursing work will not be measured and those that are measured will not receive their true value. In short, the Hospitals' proposal does not meet the standards of gender neutrality required by the Act.

279 We do not know whether it is possible to amend the Hospitals' proposal to meet the deficiencies we have identified. The Hospitals did not suggest to what degree any particular Hospital would be prepared to modify the SKEW system. Nor was there any evidence on this point. The fact that the SKEW system was used to evaluate other job classes in these hospitals does not necessarily make it appropriate for capturing and valuing the range of nursing work. In fact, we have found that in its present form that system would not be appropriate.

280 In the circumstances of these hospitals and the particular nursing job classes before us, we are of the view that the parties must, through negotiation, design a comparison system which will accurately collect and appropriately value nursing work and potential male comparator work. Job information collection and evaluation of work must commence with an accurate understanding of the job content found in the nurse job classes and their potential male comparators. The job collection instrument and valuing tool negotiated must be developed based on that specific job content.

281 We must emphasize that a designed comparison system is not required in every circumstance. Indeed, in requiring employers and bargaining agents to negotiate the gender neutral comparison system the Act contemplates that different systems may be used even within the same establishment. For example, during the course of these proceedings we heard evidence that North York and SEIU agreed upon and utilized an amended version of the SKEW system for evaluating job classes in the SEIU bargaining units. Those parties were apparently satisfied that the comparison system utilized met the requirements of the Act.

282 Nevertheless, our findings on nursing job content in relation to the values of the hospital establishments, and the requirements of the Act that a gender neutral comparison system be used to accurately capture and value the work of job classes such as these nursing job classes, lead to the conclusion that these parties must design a system through negotiations. As we have noted, we do not know to what degree it is possible to amend the Hospitals' proposal to meet the deficiencies identified. Neither do we know whether any of the consultants proposed by ONA is available to design a system; indeed, since these systems have not yet been designed in relation to the specific job classes under consideration, we are unable to comment on their appropriateness in these circumstances. Therefore, we have concluded that the parties through negotiations, using whatever expertise is available to them, must design a gender neutral comparison system which follows the directions provided in this decision for use in these hospital establishments. The parties of course, are also free to negotiate the use of a common consultant to assist them in the design of such a system.

Order of the Tribunal

283 We order the parties to negotiate in good faith and endeavour to agree upon a gender neutral comparison system and a pay equity plan for the nurse job classes in these hospitals.

284 We order the parties to negotiate a comparison system designed to accurately capture and appropriately value the job content of the nurse job classes and their potential male comparators in the three hospitals. The comparison system to be negotiated must be designed on the basis of the job content found in the nursing and male comparator job classes in the three hospitals.

285 We order that the systems proposed by the parties are to take into account our findings on nursing job content and the directions provided in this decision for accurately collecting and appropriately valuing that job content.

286 We order that within 90 days of receipt of this decision each Hospital table its proposed comparison system with ONA and commence negotiations.

287 We order that within 90 days of receipt of this decision ONA table its proposed comparison system with each Hospital and commence negotiations.

288 We further order that when the parties table their proposed systems, they at the same time disclose to each other details of the comparison systems proposed including, but not limited to, details of the proposed factors, levels, equivalencies and weightings.

DECISION OF S. LAING, TRIBUNAL MEMBER:--

1 I dissent from the majority decision. The decision is entirely speculative and without factual foundation. It will wreak havoc and mischief throughout the Hospital sector.

2 Before turning to the primary focus of my disagreement, it is important to set a framework for my reasoning. I adopt the persuasive submissions of the Employer counsel.

3 The Tribunal is charged with the responsibility of deciding the issues before it. It must weigh the evidence judiciously and interpret the Act fairly. It must look to the purpose and structure of the Act particularly when interpreting a section of the statute that lacks detail or definition.

4 The Pay Equity Act neither assumes nor prescribes that every workplace is afflicted with gender discrimination in compensation or that every female job class in a workplace is underpaid or undervalued. Instead, the statute establishes a mechanism for determining which particular female job classes are affected by gender discrimination in compensation and for redressing that situation if it is found to exist.

5 The Legislature deliberately relies on existing workplace structures to frame the achievement and maintenance of pay equity. The parties are neither required to submit a comparison system to the Pay Equity Commission for approval nor do they have any mechanism for obtaining binding prior approval. The Act clearly contemplates a "self-managed" process, allowing the parties to determine their best route to achieving pay equity.

6 In negotiating a comparison system or drafting a pay equity plan, the parties are not embarking on an academic research project or supplying material for a doctoral thesis. They are grappling with an employment issue which must be decided and resolved in the workplace. The standards, then, for assessing the gender-neutrality of a system, must be standards which can be reasonably understood and achieved by employers and unions through the bargaining process. The parties themselves must have the capability of determining whether or not they have achieved pay equity. It is beyond all expectation that only experts, academic texts and a 90 day hearing process can lead the parties to that determination.

7 The Tribunal, if it is to be effective, must look for and facilitate reasonable and practical ways of achieving pay equity. In its deliberations it must ask the following.

1) What does the Pay Equity Act direct the parties to do?

8 In this case, the parties are obliged to collect accurate information of the work normally required in the workplace; evaluate that information in a gender neutral fashion; and make the required comparisons between female and male job classes. The Act gives no further direction in this regard. It anticipates and accepts that there are a number of ways to meet these obligations. It further contemplates the task as achievable and manageable by the parties.

2) Who are the parties, what is their level of expertise?

9 In this case, the parties are partners to a bargaining process that is yet to begin. They are practioners. They are not theoreticians. As practioners, the parties may draw on specialist resources,

however, the achievement of pay equity must remain a practical and manageable exercise for all parties.

3) What is the "state of the art" with respect to gender neutral comparison systems?

10 At this time there is little validated research on what a gender neutral system is. There is one Tribunal decision on this issue and a lot of controversy. In fact, there are no final answers to the question of what makes a system gender neutral. We do have knowledge of what improves job data collection and what improves the evaluation process. We do not know what makes a system of comparison gender neutral nor have we seen a proven gender neutral comparison system.

11 It is against this backdrop that I turn now to a consideration of the majority decision.

Overview of the Hospitals' Workforce

Nature and Goals of the Workplace

12 In the majority's discussion of the hospital workforce in general and the nature and goals of these three hospitals in particular, the selective focus is that of nursing. If the intent is to give a flavour to the workforce in general and then particularize the nature and goals of these three hospitals, the majority decision is much too narrow in scope and inappropriate in this context. Clearly, the hospital workforce includes many occupations, of which nursing is one. What can be extrapolated from the goals of these particular institutions is that the patient is the focus of every hospital employee. To the extent that the majority has selected only those values that touch on the nurse, their analysis that follows can speak only to that one occupational group.

The range of nursing work in these establishments

13 In the majority's review of the range of nursing work they have made three fundamental errors.

14 First, the majority attaches a great deal of value to an 1984 American text entitled From Novice to Expert authored by Dr. Patricia Benner. The text, which clearly only speaks to the American experience, is of questionable value to these establishments when describing the normal requirements of their particular nursing job classes. The evidence of Dr. Josephine Flaherty, Dr. Patricia Armstrong and Dr. Ronnie Steinberg is also considered as relevant. None of these experts are employed as nurses in these establishments.

15 The Tribunal has recognized that the incumbents are the best source of job information. In Haldimand Norfolk (No. 6) (1991) 2 P.E.R. 105 at paragraph 34 the Tribunal held that:

> The incumbents are the people most familiar with the skills and requirements of their work, including both the detail and complexity required. The greatest accuracy is achieved using information gathered from those doing the work.

> Since section 5 imposes a standard of accuracy, correctness and completeness, job information which is not accurately collected, is not valid for purposes of the Act.

16 In addition, the scope of the issues in this case were discussed in an earlier decision. In Women's College Hospital (No.2) 1 P.E.R. 178 the majority held that the proper inquiry was one which was restricted to the individual workplace. At paragraph 21 the majority held that:

> Our decision on the merits in this case will focus on the particular workplace and any remedy given to any party will be restricted to the particular circumstances found at Women's College Hospital.

17 In this decision, the majority has abandoned its earlier focus. If the values and the job content within these hospitals are the stated focus of the inquiry, then evidence respecting nursing in general cannot be of primary assistance. In any event, it is the parties who are best suited to determine the work within their establishments. The majority has relied on controversial theoretical research in place of compelling workplace evidence.

18 Second, by detailing every aspect of the outer parameters of nursing work, the majority has increased the likelihood of bias against other jobs which must be measured with the same ruler. Such excruciating detail perverts the principle of consistent data collection enunciated in Haldimand Norfolk (No.6). Presumably, the parties will endeavour to use the same amount of detail and gain the same level of understanding of the jobs to be compared. Practically, when the standard is that which the majority has used, the task becomes inconceivable.

19 In the majority's description, the essence of what is unique to nursing is distorted by the limitless use of extremes. It is impossible to distil out the normal requirements of the job. One can, if forced, imagine that any hospital worker might experience the circumstances described in paragraphs 119-122. For example, if we are to speculate as to what might occur in the most remote circumstances when floors are left wet, and faulty electrical cords are not fixed, then any employee in the hospital may suffer a variety of injuries. Is it legitimate to consider such "potential" and "extreme" circumstances as part of normal working conditions, given the obligations under Occupational Health and Safety legislation?

20 This approach to the description of work is neither accurate nor does it facilitate a practical approach. The majority has not captured the normal requirements of the work.

21 The third error is the most alarming. The majority has fallen prey to what has been severely criticized in the literature as inappropriate in a pay equity process. They have made several value judgements and drawn many conclusions while purporting to provide an objective description of the range of nursing work.

22 I quote only a few for illustration.

> Paragraph 70 "The various demands on a nurse's communication skills require the ability to adjust the level of communication. For example, where a nurse is communicating with someone over whom she has some authority, that is a less sophisticated skill than when she is dealing with other health care professional over whom she has no authority."
>
> Paragraph 78 "The caring skill touches all the tasks performed by nurses. One of the features of nursing is that caring is combined with more technical skills. As Dr. Armstrong noted this alters the nature of the skill and makes it more complex."
>
> Paragraph 81 "Agency nurses must be oriented and helped through the day since they are unfamiliar with the patients, equipment and hospital procedures."
>
> Paragraph 112 "However, the nurse has access to much more confidential information than the housekeeping or maintenance staff."
>
> Paragraph 115 "there is a qualitative difference between lifting patients and inanimate objects."
>
> Paragraph 124 "This kind of experience through the combination of these factors is" not simply a degree difference" from the kinds of unpleasant circumstances found on a shop floor or in a car manufacturing plant. The plant may have some noise, heat and odours, but that is qualitatively different from people who face life and death situations in the context of a difficult and unpleasant physical working environment."

23 The majority has applied its own subjective values in setting out these comparisons. There is no foundation for this premature assessment. The process of describing the work must be separate from the process of determining its value.

The SKEW Job Evaluation System

24 I strongly disagree with the majority's analysis of the Job Fact Sheet and the Job Evaluation Manual. I will focus on that which I consider to be the most detrimental.

25 The purpose of the Job Fact Sheet is to collect consistent and accurate information regarding the skill, effort, responsibility, and working conditions normally required in the work. The majority

has looked at the instrument, identified some deficiencies and suggested modifications. However, by importing their own value judgements, which in effect answer the questions, rather than pose them, the majority have again been unable to provide a useful analysis. The purpose is to draw the information required. It is not meant to be evaluative or interpretive, that is the role of the evaluation process.

26 The majority's determinations on the Job Evaluation Manual are made without regard to who will apply the tool and how it will be applied. The SKEW system is to be utilized as a whole. I disagree that the manual must on its face, detail each aspect of the work to be valued. The manual is a translation tool. Using the job information collected through the Job Fact Sheet and any other means that add clarity and accuracy, it translates that work into a relative value. It does so through the use of a trained, knowledgeable committee comprised of employees who are representative of the range of the work to be evaluated. The evidence clearly disclosed that the committees worked through processes which were fair and equitable, and continually strived towards consensus decisions. The compelling evidence of the committees' probative role, ensuring that the received information was accurate and complete is dismissed as irrelevant to the majority's inquiry. What is relied on is the unsupported theoretical notions of how this system would operate if applied to the range of nursing work. In my view, the evidence of how the SKEW system was applied successfully to other health care workers, including the Registered Nursing Assistant, in these very establishments, is of the utmost relevance to this inquiry.

27 In concluding, the majority finds it is not possible to make any determinations with respect to the system beyond the Job Fact Sheet and the Job Evaluation Manual, since the parties have neither negotiated nor applied any comparison system.

28 There is a logical fallacy in having the capability of deciding gender neutrality issues respecting the collection instrument and the evaluation manual, in the absence of cogent evidence regarding the application to the nurses, while at the same time claiming insufficient evidence to deal with the gender neutrality of the other parts of the system.

Remedies

29 The most extraordinary finding this majority has made lies in the remedy ordered.

30 At paragraph 280 the majority finds that in the circumstances of this case it is appropriate to direct the parties, through negotiation, to design a comparison system. On what basis is that remedy justified?

31 The impact of the majority's remedy is overwhelming. Three years after negotiations have broken down the parties are directed to use a non-existent, untried and unproven method for meeting their obligations to achieve pay equity, with no assurance that the product of their effort will be a gender neutral comparison system. Without any evidentiary basis to support their order, the majority has made a significant error in law.

32 In a leading case dealing with remedies, the Ontario Labour Relations Board wrote in Radio Shack, [1979] OLRB Rep. Dec. 1220:

> ... An important strength of administrative tribunals is their sensitivity to the real forces at play beneath the legal issues brought before them and there is no greater challenge to the application of this expertise than in the area of developing remedies. To be effective, remedies should be equitable, they should take account of the economics and psychology permeating the situation at issue; and they should attempt to take into account the reasons for the statutory violation. Remedies should also be sensitive to the interests of innocent bystanders. ... the Board cannot get too far ahead of the expectations of the parties it regulates. It must be concerned that its decisions are perceived, in the main, as reasonable and fair to attract as much self-compliance as possible. (emphasis added)

33 There exists no relationship between the majority's analysis of the SKEW system and the remedy they have ordered. In fact, having made many recommendations for improvement with respect to perceived deficiencies in the SKEW system, it is misleading and inconsistent to order the parties to design a system through negotiation. Logically, the appropriate remedy in this case is to direct the parties to adapt the SKEW system as a basis for their gender neutral comparison system.

34 The imposition of this unsubstantiated remedy ignores the time frames established by the Act for the achievement of pay equity.

35 At the end of the day the parties are no further ahead in their efforts to achieve pay equity. The question of whether a modified SKEW system can meet the requirements of the Act remains unanswered. The guidance required with respect to what constitutes a gender neutral comparison is absent. The majority has failed in its duty to resolve the issues before it.

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APPENDIX "A"

See hard copy for Appendix A, JOB FACT SHEET FOR USE BY OHA MEMBER HOSPITALS.