

CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIEN DES DROITS DE LA  
PERSONNE

**JOHN WISEMAN**

**Complainant**

**- and -**

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

**- and -**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**DECISION**

MEMBER: J. Grant Sinclair 2009 CHRT 19  
2009/06/26

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**I. INTRODUCTION**

[1] John Wiseman is the complainant in this case. He is the Regional Vice President for the Canadian Association of Correctional Supervisors. He brings this complaint on behalf of the Assistant Team Leader positions in women's penitentiaries.

[2] Mr. Wiseman is employed by the Correctional Service of Canada (CSC). The CSC is the federal government department responsible for the incarceration and management of offenders who have been sentenced to a prison term of two years or more.

[3] CSC manages 58 correctional institutions of various security levels, 16 community correctional centers and 71 parole officers. Of the 58 institutions, five are for women offenders in Canada.

[4] Mr. Wiseman worked as a Correctional Supervisor (CS) in one of the men's facilities. The CS position was a predominantly male position within CSC. Assistant Team Leaders (ATL) work in CSC's women's prisons. It is a predominantly female position. Both are supervisory positions in their respective institutions.

[5] In 2003, both CSs and ATLs were classified at the CX-3 level within the CSC classification standard. CSs reported to a Unit Manager (AS-6) and ATLs to a Team Leader (AS-6).

[6] In 2007, CSC reorganized its management structure which resulted in a new job description and new responsibilities for both CS and ATL. A new position, Correctional Manager (CX-4) was created which subsumed the former CS and ATL positions.

Correctional Managers (CM) now report to the new position of Assistant Warden Operations. The Unit Manager and Team Leader positions were eliminated.

[7] The former ATL and CS job descriptions were enhanced in terms of responsibility and accountability so that CMs now have the duties and responsibilities of the former CSs and ATLs plus some of the responsibilities that the Unit Managers and Team Leaders had for managing at the unit level. When the position of Correctional Manager was created, it was classified as CX-4 because of these added responsibilities.

[8] The complainant, Mr. Wiseman, alleges that the ATL positions are subject to discriminatory treatment resulting in unequal pay for work of equal value. The CX classification standard, the responsibility of the Treasury Board of Canada and applied by CSC, is not consistent with the *Canadian Human Rights Act*; it does not value the ATL work in accordance with the valuation factors of skill, effort, responsibility and working conditions; and it permits no comparison with male dominated occupations in the CX classification.

[9] The work of the predominately female ATL position was therefore not valued in a fair and gender neutral manner, contrary to ss. 7, 10 and 11 of the *CHRA*.

[10] Mr. Wiseman did not appear at the hearing. He was represented by his agent, Elizabeth Millar. She called one witness, Paul Durber, who testified on the first morning of the hearing. After Mr. Durber's evidence was completed, Ms. Millar advised the Tribunal that the complainant lacked the financial resources to participate any further in the hearing. (The complainant had previously sought several adjournments from the Tribunal for a variety of reasons including financial considerations (see 2008 CHRT 37)). Ms. Millar then withdrew from the hearing and no one else appeared or was present on behalf of the complainant for the remainder of the hearing.

[11] The respondent brought a motion for a non-suit asking the Tribunal to dismiss the complaint. The complainant was notified by the Tribunal of this motion but declined to appear. After hearing arguments from the respondent, the Tribunal dismissed the motion and invited the respondent to present evidence on the merits of the complaint.

## II. DECISION

[12] The Tribunal, for the reasons that follow, finds that the complaint has not been substantiated and the complaint is dismissed.

### A. Evidence of Paul Durber

[13] Mr. Durber is a senior consultant with Opus Mundi Canada since 1998. Prior to that time, from 1989 to 1998, he was the Director, Pay Equity for the Canadian Human Rights Commission (CHRC). Mr. Durber has been qualified in a number of pay equity cases before the Tribunal as well as the Federal Court. He has provided advice to a variety of organizations on job evaluation and comparable work from the perspective of equal pay for work of equal value.

[14] When this complaint was filed, Mr. Durber was retained by the CHRC to investigate the facts and prepare a recommendation that the Commission would use to determine whether the complaint should go to conciliation, should be dismissed or should be referred to the Tribunal. In this respect, he performed the same function that a CHRC investigator would for the purposes of ss. 43 and 44 of the *CHRA*.

[15] Mr. Durber was qualified as an expert for the complainant. He did not prepare an expert report for the purpose of this hearing. Rather, he relied in his evidence on the report that he had prepared for the CHRC in 2006.

[16] In his report, Mr. Durber considered four issues:

compliance of the CX standard with the *CHRA*;

whether the jobs cited in the complaint are "occupational groups" for pay equity purposes;

approach to value, i.e. what is required to establish the value of the work to be compared;

indicators of a wage gap.

[17] The job evaluation plan that Mr. Durber examined is the CX Classification Standard for the CSC group. He pointed out that this is not a quantitative plan like other job evaluation plans. Quantitative plans consist of a series of factors to which a percentage weight is assigned and points are given to each job under each of the factors, skill, effort, responsibility and working conditions as referenced under the *CHRA*. A composite value for the job is thereby determined.

[18] In contrast, the CX plan does not do this. As Mr. Durber explained it, this standard has four classification and pay levels and provides only a description of what each of the levels demands in terms of job requirements. These are then illustrated through benchmarks which provide duties but no breakdown of the requirements themselves.

[19] In his analysis, Mr. Durber examined whether the CX standard valued all aspects of work and whether it can produce a composite of value, as required under s. 11 of the *CHRA* and *Equal Wages Guidelines*.

[20] He concluded that the CX standard does not measure the four criteria of skill, effort, responsibility and working conditions required for valuing work under the *CHRA*. The standard misses a number of features of work that should be measured under the *Equal Wages Guidelines*, in particular, physical skill, physical effort and working conditions. The standard does not enable differentiation of features of work particular to women's prisons and may well undervalue them.

[21] Further, the plan is not capable of producing a composite of value as required by the *CHRA*. Thus, Mr. Durber concluded, the CX standard cannot be used to assess the value of the work and evaluate the complaint, i.e. whether the ATL jobs are undervalued and underpaid.

[22] The issue of occupational groups is this: The complainant takes the position that the ATL job warrants value comparisons independent of its classification within the CX group. That is, ATLs are a distinct and an appropriate group that may be examined for pay equity purposes. Otherwise the predominantly female incumbents of positions such as ATLs who are employed within male dominated occupations would be denied the protection of the *CHRA*.

[23] The respondent takes the opposite view. They assert that ATLs are not a distinct group. Their work is virtually the same as that of the CSs and is very similar in nature to that of other members of the Correctional Services Group.

[24] The respondent argues that a comparison of the female dominated ATL to the male dominated CS positions indicates the two positions to be of equal value. They are evaluated against the same CX standard and receive the same pay. Therefore there can be no gender-based discrimination.

[25] Mr. Durber charted a number of the job requirements as set out in the job descriptions for the ATL and CS jobs. He agrees that the large majority of the job requirements are similar. He also noted that Statements of Qualifications are identical except that ATLs must have knowledge of the needs specific to women Aboriginal offenders. There is an analogous Aboriginal knowledge requirement for some CSs.

[26] But he claims that there are 15 features in the job descriptions, seven of which he considers are associated with the CS job and eight associated with the ATL job. The CS features are: knowledge of certain technical procedures, e.g. urinalysis; understands detailed technical processes in supervision; knowledge of penitentiary dynamics and criminal behavior; knowledge of the physical facilities; knowledge of the Situation Manual; knowledge of stress management, e.g. post emergency; effort in maintaining own balance when relating to staff and inmates.

[27] For the eight distinct features of ATL work, Mr. Durber lists: ability to make verbal summaries; knowledge of principles of human behavior; knowledge of federally sentenced women; knowledge of the institution necessary to act as officer in charge; knowledge of priorities and mission of women's prisons; knowledge of child protection and related legislation, mother and child program; and, effort in communicating with staff and inmates, e.g. in giving explanations; and responsible for conducting interactive hearings re minor discipline hearings.

[28] Mr. Durber concludes that because the work of the ATL is distinct in presenting features characteristic of women's work, it should be used as a point of reference in any value comparisons.

[29] The third issue is approach to value. For Mr. Durber, the first question is how to determine the relative value of the jobs involved in the s. 11 comparisons. This is problematic because the employer, CSC, does not maintain a single job valuation plan that would provide a clear understanding. Further, CSC's standard for ATLs and CSs does not comply with s. 11 of the *CHRA*. In his view, the best alternative is to use the current job descriptions. His reason for doing so is that the parties accept the work descriptions and they are reasonably current.

[30] The next question is which job evaluation plan can be used to evaluate the jobs. Mr. Durber considered certain possibilities such as the Hay Plan or the Willis Plan but rejected them for copyright reasons and because it is not clear that these plans reflect current public service values.

[31] He then considers using the Universal Classification Standard but points out that the respondents objected to this, their reason being that the UCS ratings were never validated nor reviewed to ensure their consistency, and thus they should not be used to compare the value of different jobs.

[32] Mr. Durber does a partial review of commentaries about the UCS from various government sources and concludes from this that the UCS as a job evaluation plan is reasonable, though by no means perfect. He recommends that the UCS be used to go to the next issue, indicators of a wage gap.

[33] He does so recognizing that, at the present time, there is no other alternative than UCS. But he imposes a very heavy caveat on its use here, namely, that any values produced by using the UCS should be referenced as an *indicator only* that the complaint may warrant further steps such as conciliation or third-party adjudication.

[34] In terms of the comparison universe as Mr. Durber put it, the complainant urges that the comparators be male predominant jobs in the public service of Canada. The complainant agreed however that, for the purposes of testing whether the allegations in the complaint are well founded, the comparisons would be limited to the CSC. Mr. Durber noted that it is also instructive that most references in the complaint are to the CX group and its standard.

[35] Moving forward then, Mr. Durber listed five male-predominant jobs as potential comparators. They are Unit Manager (AS-6), Corrections Officer (CX-2), Corrections Supervisor (CX-3), Chief Corrections Service (CX-3), and Coordinator Corrections Operations (CX-4).

[36] Mr. Durber then assigned a UCS point value and the current maximum salary to each of these jobs as follows: AS-6, 2800 points and \$73,765; CX-2, 244 points and \$53,137; CX-3, 2480 points and \$57,785; CX-4, 2435 points and \$62,842. The UCS point value for the ATL is 2500 and the salary is \$57,785.

[37] These point values are set out in the February 20, 2006 letter of the Treasury Board Secretariat to the CHRC, responding to the request of the CHRC for UCS data for its investigation.

[38] Mr. Durber determined these to be legitimate comparators by applying a range of plus or minus 15% of the ATL point value of 2500. He considered 15% to be reasonable in

establishing the range. He agreed that there is no authority for using this particular range and noted that other job evaluation plans use a range of plus or minus 7%. In fact, he said, his is a very liberal approach.

[39] Using the ATL point value of 2500 and applying the 15% plus/minus gives a range for comparison of 2125-2875 points. All of the five male-dominated comparators fall within this range.

[40] Mr. Durber calculated the average salary of the five male comparators to be \$61,063. This produces a wage gap of \$3,278 (\$61,063-\$57,785) or more than 6% of the ATL salary.

[41] In order to succeed in a complaint under the *CHRA*, the complainant must establish a *prima facie* case of discrimination. In my opinion, based on the evidence of Mr. Durber, he has done so. It is now for the respondent to provide a reasonable explanation.

[42] There are a number of points of disagreement between the complainant and the respondent. First, as indicated earlier, the complainant argues that the ATL is a distinct occupational group independent of its classification within the CX group and should be treated as such for comparison purposes. The respondent counters that the ATLs are not a distinct group. Their work is essentially the same as that of the CS for which they are paid the same. In this case, in order to determine value, the comparison should be job to job. Doing so indicates that the two jobs are of equal value and are paid the same.

[43] Secondly, the respondent denies that the UCS is an appropriate standard for value. It has never been validated. Even Mr. Durber was hesitant to rely on it. As he said, there was no alternative available other than the UCS. And UCS was to be used only "*as an indicator of comparable value for the purposes of dealing with the complaint at this point in time.*"

[44] The respondent also argues that the AS-6 Unit Manager position should not be included as one of the male comparators. The AS-6 is the supervisor of the CXs and as such cannot be considered as a job of comparative value.

[45] Finally, a plus/minus range of 15% has no basis in theory or practice when determining the value range. If the 15% was reduced to a more acceptable range or if the AS-6 unit manager was not included as a comparator, there would be no wage gap.

#### **B. The Respondent's Answer**

[46] The respondent called three witnesses in support of its position, Pamela Power, Fraser McVie and Nan Weiner.

[47] Ms. Power has been involved in classification duties in the Public Service since 1988. Currently, she is the Special Advisor to the Vice-President responsible for strategic infrastructure, organization and classification at the Canada Public Service Agency. She has been the Acting Director General of Classification Policy and Strategy. In that role, her duties were classification policy, classification standard design, occupational group structure, and alternative classification strategies.

[48] As Director of Classification Policy from 2000-2007, her duties related specifically to the 2002 Treasury Board submission that approved the classification policy that is currently in place and that sets out the program of classification modernization.

[49] Ms. Power said that the CX standard was developed between 1989 and June 1991. It measures skill, effort, and responsibility but not working conditions. This is because the CSC believes that all jobs allocated to this occupational group are similar in nature with respect to working conditions. The definition of the group says that they all work in one type of correctional facility maintained by the federal government.

[50] Ms. Power was asked about the Universal Classification Standard. She explained that there were two attempts at designing a UCS for the public service, in 1990-1992 and in 1995. It was abandoned officially by the federal government in 2002.

[51] The standard was based on the four factors outlined in the *CHRA*, being skill, effort, responsibility and working conditions. These four factors were subdivided into a number of

sub factors, each having a weighting and value points to arrive at a composite value. Ms. Power explained that weighting is the assignment or the allocation of points for every component of the standard that attempts to measure a particular requirement of the work as defined in the job description.

[52] Ms. Power said that the development of UCS was never completed. There were a variety of reasons, the primary one being that the weightings were never finalized. The test data was never reliable enough to conclude that departments were able to evaluate similar work in a consistent fashion.

[53] Ms. Power was referred to the five male comparators that Mr. Durber used in his analysis and the UCS points that he assigned to them. She said that the points data is not reliable. For example, an AS-6 job at CSC may have received 2800 points, whereas similar AS-6 jobs in other departments doing similar work would have had very different point ratings. These ratings were never rationalized; they were never analyzed to understand why there were differences between the departments. Ms. Power concluded that the UCS point values used by Mr. Durber have no validity at all.

[54] Ms. Power said that the central agency spent a good deal of time sponsoring opportunities for departments to compare their results, and develop a common understanding and get consistency in the point values. But the departments were never able to do so. The result was that the data was skewed across wide ranges.

[55] Ms. Power was referred to the February 20, 2006 letter from the Treasury Board Secretariat responding to the CHRC that Mr. Durber relied on in choosing the point values for his comparators. She explained that the data was available to anyone who had a legitimate need to review it for comparison purposes. When the CHRC asked for this data, the Secretariat made the data available to the Commission even though it had no validity. The CHRC was also told that this data was unreliable, and that is noted in the correspondence.

[56] Departments were encouraged to report all of their data for their evaluations to the Treasury Board, which was held in a central repository called the Data Cube. It was simply a listing of jobs and the points for each one of the decision factors across the board and a total of the points. This data was shared among departments so that departments had access to each other's data.

[57] Ms. Power agreed that Mr. Durber could reference the UCS point values when advising the CHRC whether it should take the complaint further. But Ms. Power's evidence is that UCS cannot be relied upon to produce any meaningful results.

[58] Fraser McVie recently retired after 35 years working for CSC in the Ontario and Pacific regions and at the national level. He served in a variety of positions over those years, including Deputy Warden and Assistant Warden. His last position was Acting Assistant Commissioner of Operations and Programs.

[59] Mr. McVie testified that the duties and responsibilities of CSs and ATLs were substantially the same. When CSC created the ATL job, they used the CS job description to write it. The job descriptions differed in the title and in the fact that some mention was made specifically of women's programs within the ATL job description.

[60] In 2003, the Classification Committee concluded that the CS and ATL jobs should be at the CX-3 level. A subsequent CSC Grievance Committee considered this evaluation and agreed that both CS and ATL belong at the CX-3 level, using the 2003 job descriptions.

[61] The unit management concept implemented by CSC was that each unit would operate semi-autonomously and each unit would have a senior manager responsible for both its day to day operation and the long term planning for unit activities.

[62] This senior manager was the AS-6, Unit Manager. In the women's facilities it was the Team Leader position, essentially the same job description and the same classification, AS-6.

The AS-6 was the person accountable for the operations of the unit and the inmates assigned to that unit. They reported to the Deputy Warden.

[63] Nan Weiner has a PhD in Industrial Relations, which is an interdisciplinary field of industrial psychology, industrial sociology and labor economics. In her professional experience she has specialized in pay equity issues. She has provided advice to a number of Government of Canada departments on pay equity and matters relating to their job evaluation systems. She has appeared many times as an expert witness before federal and provincial human rights tribunals in pay equity and job evaluation cases. She has provided advice to the CHRC and has worked with numerous organizations, advising them on compliance with federal and provincial pay equity legislation.

[64] Dr. Weiner teaches courses in compensation and pay equity at the University of Toronto. She has published a number of books and articles on the subject of pay equity and job evaluation. Dr. Weiner is eminently qualified to give expert evidence in this proceeding and was so qualified by the Tribunal.

[65] Dr. Weiner agreed with Mr. Durber that the CX standard does not measure all the factors required under the *CHRA* nor all of the criteria set out in the *Guidelines*. However, for her the ultimate issue is whether the ATLs receive equal pay for equal work, even though the CX standard does not measure all of the requirements of the *CHRA*.

[66] Dr. Weiner first considered the question of whether ATLs and CSs do work of equal value and whether there is a difference in wages. The ATLs and CSs were both classified as CX-3. They were in the same wage band. Thus there was no difference in wages.

[67] As to whether their work is of equal value, Dr. Weiner concluded that it is. In reaching this conclusion, she used three different approaches: a paired comparison of the ATL and CS jobs; a review of the qualifications differences for the two jobs; and a review of the comparison of the two job descriptions made by Mr. Durber. She stressed that the concern here is about the value of the jobs, not the differences in duties. Jobs can differ but still have an equivalent value.

[68] In doing the paired comparison, Dr. Weiner first created a chart setting out everything in the two job descriptions. She then refined and charted from that what she considered to be differences in the jobs (i.e. those duties that were not in both jobs) on each of the factors of skill, effort, responsibility and working conditions. Under each of the factors, she noted the differences in the job descriptions using the sub factors in the *Guidelines*.

[69] Under skill/intellectual skill, in terms of job content, the job descriptions indicated that the ATLs must know and train others on the Creating Choices Program and must know the Mother & Child Program. The CSs must know the Situation Management Model. So both need to know certain programs though the content may be different.

[70] For skill/communications, there was much more in the CS job description. But there isn't anything so unique in working with male prisoners that is not likely to be found in the ATL job. So while there are some differences, there is nothing that indicates the value is different.

[71] For effort, there is a difference in physical effort. The CSs must walk varying distances for 30-45 minutes whereas the ATL job requires 10-15 minutes. Dr. Weiner did not find this to be significant.

[72] Under responsibility, the relevant job description categories related to technical responsibility. Here, Dr. Weiner identified some differences, but found these not to be significant given all other responsibilities.

[73] Finally, for working conditions, although not stated in both job descriptions, Dr. Weiner said that given the core nature of the two jobs, what was written in one job description would be found in the other. For example, the ATL job provides that there may be exposure to inclement weather when visiting security posts and responding to emergency situations.

Though not so specified in the CS job, it would also be a working condition given the nature of the job.

[74] Based on information garnered from the job descriptions, Dr. Weiner concluded that the two jobs are of equal value on each of the four factors, taking into account all of the information in the job descriptions and examining the differences under each factor.

[75] Dr. Weiner also considered the qualifications used for hiring ATLs because, as she said, this would show how the two jobs differ for staffing purposes. She then asked whether the staffing qualifications indicate a difference in the value of the work.

[76] She reviewed two documents with information about staffing differences. One is the October 30, 2003 Statement of Qualifications for the ATL. The second document is the Criteria for Deployment of Correctional Supervisors into ATL Positions dated December of 2003.

[77] She looked at what it takes to become an Assistant Team Leader and noted that there are some differences. For example, candidates are assessed on their knowledge of and sensitivity to women's issues and their ability to work in a women-sensitive environment. And if a CS incumbent wants to move to an ATL job, he/she will be given women-centered training and a reference check is made.

[78] So if the staffing process for the two jobs is different, does this mean that the jobs are of different value? Dr. Weiner concluded that they were not. Her reasoning is that, although working with women offenders may require different skills, approaches and sensitivities, there is no reason to believe that these skills would be more valuable to CSC than the skills needed to work with male offenders found in the CS job. CSs need to know the dynamics of working with male inmates; ATLs need to know the dynamics of working with female inmates. Those differences are of equal value.

[79] Dr. Weiner reviewed in detail Mr. Durber's assessment that there are 15 distinct features between the two jobs. Her analysis indicated that 12 of the 15 are actually found in both the ATL and CS jobs. Of the remaining three features, one "knowledge of priorities and mission of women's prisons" is clearly not part of the CS job. But it is equivalent to what CSs need to know about men's prisons.

[80] Dr. Weiner agrees that the remaining two unique features that Mr. Durber highlights, "knowledge of the Situation Management Model" on the CS side and "knowledge of Child Protection and related legislation in the Mother and Child program" for the ATL, do differ between the two jobs. But she disagrees that this single difference is not sufficient to support the position that the two jobs have different values.

[81] Finally, Dr. Weiner dealt with Mr. Durber's approach to value and indicators of a wage gap. She agreed with Ms. Power that the UCS results were never finalized and are unreliable. But she had three more criticisms of Mr. Durber's conclusions of a wage gap. First, she noted that, even accepting the UCS point values as valid, the ATLs are rated at 2500 points and the CSs at 2480 points. In a point rating system of 5000 points, a difference of 20 points is negligible. It indicates that the two jobs are of equal value.

[82] Secondly, as to the 15% plus/minus range used by Mr. Durber to identify comparators, Dr. Weiner said that this really amounts to a 30% range. Moreover, not only is there no basis for using a 15% range, in her opinion, choosing plus or minus to determine jobs of equal value is not how it is typically done.

[83] Thirdly, if you look at the points assigned to the male comparators used by Mr. Durber, four of the male comparators are clustered around 2400 points. The fifth comparator is significantly higher at 2800 points.

[84] That indicates to Dr. Weiner that the 2800 point comparator job is not in the same grouping as those jobs around the mid-2400 range. The 2800 point value job title is the Unit Manager, an AS-6. This is the person who supervises ATLs and Correction Supervisors. In



her view, it would be most unusual in such a hierarchical organization as CSC for a supervisory job to be of the same value as the jobs it supervises.

[85] Dr. Weiner concludes that there is no justification for using a 15% plus/minus range. Further, that it is most unusual to have a supervisory job in that same grouping. That leads her to question Mr. Durber's averaging approach. There is no need to average at all because the ATL job is of equal value to the CS job. They are in the same salary band. Therefore there is equal pay for equal value. Pay equity is achieved.

### III. CONCLUSION

[86] Both Mr. Durber and Dr. Weiner agree that the large majority of the job requirements for the two jobs are similar. Their point of departure is whether the ATL job is distinct and thus should be compared with other CX jobs (Mr. Durber), or whether there should be a paired comparison (Dr. Weiner) when determining whether the two jobs are of equal value.

[87] I have reviewed those features of the job descriptions cited by Mr. Durber as being unique and considered Dr. Weiner's response and analysis. I accept Dr. Weiner's conclusion that, although there are some differences in the job descriptions, the work of the ATLs and the CSs is of equal value and they are paid the same.

[88] There is another reason for concluding that there is no discrimination. It is this: As pointed out by both Ms. Power and Dr. Weiner, the UCS point values have never been validated and cannot be used to produce any meaningful results.

[89] But even assuming for the moment that they are valid, the difference in the point values of the ATL job (2500 points) and the CS job (2480 points) in a value range of 5000, a percentage difference of 0.02 % is so negligible that one must conclude, as did Dr. Weiner, that they are of equal value.

[90] Nor can I accept Mr. Durber's method of using a 15% plus/minus range to strike the male comparators and then averaging the salaries to thus arrive at a wage gap. The evidence is conclusive from him and from Dr. Weiner that there is no basis for choosing 15%.

[91] Finally, it is clear that the Unit Manager, an AS-6, should not be included as a male comparator. As Dr. Weiner points out, it is highly unusual for a supervisory job to be a comparator with the same job it supervises. If it is excluded as it should be; and the UCS point value cannot be used; and the 15% comparator value range is inappropriate, then Mr. Durber's conclusion of a wage gap cannot be sustained.

[92] By way of postscript, it is not surprising that Mr. Durber's conclusions, while sufficient to establish discrimination on a *prima facie* basis have not been accepted as proven. The evidence that he gave at this hearing was totally derived from the investigation reports that he prepared for the CHRC in 2006.

[93] His mandate from the CHRC was to investigate the complaint and determine whether the complaint may warrant further steps such as conciliation or third party adjudication, i.e. inquiry before the Tribunal. His evidence was not directed to the question of whether, on a balance of probabilities, discriminatory wages were paid to the incumbents of the allegedly undervalued ATL positions, which is the issue before this Tribunal.

[94] For these reasons, I find that the complainant has failed to prove that the ATL job has been undervalued and underpaid. The respondent has provided a reasonable, non-pretexual explanation for the *prima facie* case of discrimination. As the complaint has not been substantiated, it is therefore dismissed.

"Signed by"

J. Grant Sinclair

OTTAWA, Ontario  
June 26, 2009

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No one appearing	For the Canadian Human Rights Commission
Robert MacKinnon	For the Respondent