

Copyright is owned by the Author of the thesis. Permission is given for a copy to be downloaded by an individual for the purpose of research and private study only. The thesis may not be reproduced elsewhere without the permission of the Author.

**A Comparative Analysis  
Of Equal Employment Opportunities  
Law and Policy in  
Japan and New Zealand**

A thesis submitted in partial fulfillment  
of the requirements for the degree of  
Masters of Arts in East Asian Studies  
at Massey University

Dani Broadfoot

1999

## ABSTRACT

This thesis is a comparative analysis of Equal Employment Opportunities (EEO) law and policy in Japan and New Zealand. This study was undertaken due to the fact that Japan has had an EEO law since 1986, and New Zealand first gave EEO legislative intent in the 1988 State Sector Act, and even though these laws and policies were enacted, women's position in the workplace has only changed marginally. Thus, my thesis offers extensive sign posting, starting with an analysis of theoretical perspectives of EEO.

In Japan and New Zealand it has been noted that patterns and conditions of work in both the preindustrial and industrial economies have become differentiated by gender. The many reasons for this are and include, ideological, political, economic and social, or more accurately, a complex interaction of all of these factors.

The nature of societies and government's attitudes to EEO in both Japan and New Zealand has been poor, as has been indicated by the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). Unfortunately, not enough is known in both Japan and New Zealand about EEO, for both countries to implement effective EEO laws and policies.

I propose that the long-term outcome for EEO is the elimination of all forms of unfair discrimination in employment. I propose that this will be achieved when three conditions prevail in organisations. Firstly, inclusive, respectful and responsive organisational cultures which enable access to work, equitable career opportunities, and maximum participation for members of designated groups and all employees. Secondly, procedural fairness as a feature of all human resource strategies, systems and practices, and thirdly, employment of EEO groups at all levels in the workplace.

I argue that to have operational equality in employment, it is necessary to have legislation for violators of EEO, to implement solid, strategic initiatives to EEO

and give both the private sector and public sector education in how to deliver effective EEO programmes and policies.

I also suggest that as both Japan and New Zealand have ratified CEDAW, they should both be looking at implementing an Optional Protocol, which will give international backing to EEO initiatives and which has been proposed to provide better enforcement of women's human rights. The Optional Protocol would give women the right to complain to a specialist United Nations (UN) Committee (CEDAW) about violations of CEDAW by their governments. By implementing the Optional Protocol it would enable the UN Committee to conduct inquiries into serious or systematic abuses of women's rights in countries. The Optional Protocol raises many issues about the cultural context of inequalities and the way specific national histories are used to authorise certain workplace issues.

## ACKNOWLEDGEMENTS

First and foremost, I would like to take this opportunity to thank my supervisor, Dr. Lynne Alice, Head of Women's Studies at Massey University. Without her constant support, reassuring ways, and grammar skills, I would not have been able to undertake such research. Lynne took me on as a postgraduate student, even though I wasn't studying in her programme. She taught me 'how to be a postgraduate student', which meant sharing the good times with the bad, providing the tissues when necessary and constantly building my self esteem when I thought I could do no more. For that I am indebted to her.

Thanks to East Asian studies for giving me the base to study in this area.

To Loreen, John, Maureen, Kirsti, Angus, Bart and Keshina, for loving me unconditionally and for supporting me in all my academic endeavours. For giving me the strength, courage and freedom to pursue this kind of research, and for never doubting my ability. For ensuring that I knew right from wrong and for teaching me to ask the question 'WHY'.

To Al, Poppet, Bec, Rach, Trevor, Ang, Nick, Andy, Lizzie, The Macpherson family, Julie Fabish (1st Female president of the Cosmopolitan Club), Elaine, Dianne, Cindy, Iain, my students and The Faculty of Business at UCOL, for providing me with the support and understanding that you did. For making coffee, feeding me, for not disturbing me when I am working and for thoroughly understanding my need to spend copious amounts of time in the library, on the net and in the research room.

I am indebted to you all, and promise to make the most of the future that you have all helped create.

## Contents

ABSTRACT	
ACKNOWLEDGEMENTS	i
INTRODUCTION	1
1. <i>Feminist Analysis of Equity, Equality, Equal Employment Opportunities and Legislation</i>	9
2. <i>Equal Employment Opportunities in Japan</i>	37
3. <i>Equal Employment Opportunities in New Zealand</i>	69
4. <i>A Comparative Study of Equal Employment Opportunities Legislation in Japan and New Zealand</i>	100
5. <i>The Role of CEDAW and Women's Lobby Groups in Japan and New Zealand</i>	132
6. <i>Conclusions</i>	147
7. <i>Postscript</i>	156
References	163

## INTRODUCTION

In Japan and New Zealand, patterns and conditions of work are differentiated by gender. The reasons for this are ideological, political, economic and social, or more accurately, a complex interaction of all of these factors. For much of this century, in both countries, the differentiation was taken for granted. That women invariably earned lower wages than men, had less bargaining power in the labour market and only ventured outside the domestic sphere because of economic necessity, even tended to be taken as axiomatic.

Since the 1960's and 1970's more attention has been paid to contemporary issues of women's work. A partial integration of gender issues into theories of development has followed, substantial empirical social research on employment and the challenge of gender analysis in theoretical studies.

In Japan as well as in New Zealand, women's work has moved away from being considered exclusively as a 'women's issue'. It is now widely recognised that an understanding of the factors influencing female labour force participation and the way in which women's involvement in economic activity has evolved is crucial to understanding the dramatic transformation of the economy and society of both Japan and New Zealand.

When I first began my Masters thesis, I decided to study what was being done in Japan and New Zealand to promote and improve equality in employment. I decided to specifically pursue a comparative study of Equal Employment Opportunities (EEO) law and policy in Japan and New Zealand. I chose to study EEO because it enables us to identify the way in which women's contribution in paid employment has been largely undervalued, despite protective measures under various legislation in both countries.

In this thesis I examine the extent to which Japan and New Zealand governments (through legislation) and companies (public and private sector)

have modified and adopted their employment and personnel management practices to promote a more egalitarian treatment of women in employment.

Arguably, EEO should cover all aspects of the employer/employee relationship, including the policy and practice of recruitment, remuneration, promotion, access to professional, technical and personal training and development, and relations among employees in the workplace. As a strategy for change, EEO is concerned with identifying and eliminating unfair discriminatory practices, creating an environment which encourages and supports the full participation of staff, and attracting and retaining a diverse staff, in a workplace in which everyone is able to participate and compete equitably, to develop to their full potential and be rewarded fairly for this contribution regardless of gender, ethnicity, disability, sexual orientation, age or family circumstances.

The 'collective' characteristic of discrimination is fundamental to understanding EEO, and it underpins the concept of 'EEO groups'. Unfair discrimination<sup>1</sup> refers to the way in which a person or a group of people are treated because of common characteristics that puts them outside the mainstream or dominant group (in terms of numbers or power, or both). Traditionally these characteristics include ethnicity, race, colour, gender and disability.

EEO policies typically concentrate on groups of people who allege they experience unfair discrimination and are excluded from full participation in the workforce. The result is that they may be located at the lower salary levels, and may lack access to decision-making roles and influence. Even early career success may end at a point where the 'glass ceiling' is met.

---

<sup>1</sup> Discrimination is defined in civil rights law as unfavourable or unfair treatment of a person or class of persons in comparison to others who are not members of the protected class because of race, sex, colour, religion, national origin, age, physical/mental handicap, sexual harassment, sexual orientation or reprisal for opposition to discriminatory practices or participation in the EEO process

The long-term outcome for EEO is the elimination of all forms of unfair discrimination in employment. This will be achieved when three conditions prevail in organisations:

- inclusive, respectful and responsive organisational cultures which enable access to work, equitable career opportunities, and maximum participation for members of designated groups and all employees;
- procedural fairness as a feature of all human resource strategies, systems and practices;
- employment of EEO groups at all levels in the workplace.

In order to compare EEO policies, practices and law in Japan and New Zealand and the implications of such policies, practices and law, in the first chapter I offer an overview of the theoretical perspectives of EEO in both Japan and New Zealand. I follow this with a feminist analysis of 'equity', 'equality' and 'EEO'. I define the role of feminism historically and its influence on the implementation of EEO. I discuss the social theory of equality, the radical, liberal and Marxist feminist theories of equality and show the ambiguity in some usage of concepts such as "equal" and "different". I argue that these theories do not work in any straight forward way and that they are routinely confused, however the procedures of the liberal approach, are usually preferred by many theorists and are also linked with outcomes of the radical approach to equality. I then analyse the "Good Employer" and the "Moral Obligation" theories in Human Resource management. The "Good Employer" theory is based on a 'moral' obligation for Chief Executives to put in place an EEO policy and programme within their departments. A "Good Employer" is defined in New Zealand's State Sector Act of 1988, as:

*...a "good employer" is an employer who operates personnel policy-containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment...<sup>2</sup>*

---

<sup>2</sup> (s.56(2))

I demonstrate that there is a great deal of ambiguity in the definition of “good employer” and “moral obligation”. I will show that through a commitment to the integrated practice of EEO at all levels, both in the private and public sector, of business actually ensures that the strategic human resource policy is more likely to be successful. If a strategic human resource process has been developed alongside, and in response to, the business goals of an organisation, it will indeed offer some new opportunities for EEO to increase the breadth and depth of its influence on an organisation.

Finally, in Chapter one I look at the theories and actual practice of EEO in Japan and New Zealand. I identify that to rework issues of identity in EEO is to continue to rewrite EEO language into organisational life, without relying on some conventional meanings of EEO. I show that EEO is directed at creating new possibilities for the full participation of all staff as more organisations take on the challenge of truly engaging their diversity.

In Chapter Two I explore the influence of Japanese history and economic, political and social factors on the role of women in employment. I offer this historical overview in order to present my view of Japan’s need for an effective EEO law. I analyse the EEO law that was enacted in Japan in 1985 and enforced in 1986, and consider its implications. Throughout this thesis I refer to the Japanese EEOL as 1985/1986, because it was enacted in 1985 and was enforced in 1986. I will then look at the impact of the EEO law of 1985/1986, on Japanese companies’ policies and the labour markets movements, in order to examine the demonstrable effects on women’s position in labour markets in contemporary Japan. I conclude that Japan, due to international pressure, hurriedly ratified the United Nations Convention of the Elimination of all forms of Discrimination Against Women (CEDAW) in 1980, and emerged with a ‘dead letter’ EEO law in 1985/1986, because of inexperience and lack of understanding in the concepts of EEO. In chapter two case studies are considered, and they too support the fact that the EEO law of 1985/1986, is inefficient as an anti-discriminatory piece of legislation. Japanese Labour law is

then thoroughly investigated in Chapter Four when it is compared to New Zealand's Employment legislation.

In Chapter Three, I again evaluate in more detail, the economic, social and political history of EEO in New Zealand. I discuss the legal remedies that are currently available to an individual who is subjected to discrimination in employment; and intend to show that in New Zealand's legislation it is not intended to require employers to undertake a systematic review of their employment practices in order to identify and eliminate discriminatory practices. In this chapter I offer a brief overview of the history behind the implementation of EEO policies into our public and private sector.

In Chapter Four, I undertake a comparative analysis of EEO legislation in Japan and New Zealand. To do this, I differentiate both countries by evaluating their current legislation and the effect, or lack of effect, that that legislation has played in the development of equal employment opportunities. In the current Japanese employment legislation I analyse the Japanese Constitution of 1946, which stipulates equal rights for men and women in all factions of society. The Labour Standards Law (LSL) of 1947 outlined Japan's denouncement of war and respect for fundamental human rights and provides that labour conditions must be such as to provide the necessities to allow workers to live in a way befitting human beings. The LSL of 1947 also calls for labour conditions to be decided by workers and management, with both sides on an equal footing. The Working Women's Welfare Law of 1972 aimed to further the welfare and improve the status of working women by taking appropriate actions to help them reconcile their dual responsibilities of work and home or to enable them to develop and make use of their abilities.

I then look at Japan's ratification to the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) in 1980 and the Equal Employment Opportunities Law (EEOL) of 1985/1986, which stipulates that the firm shall "endeavour" to treat women equally to men, regarding recruitment, hiring, job assignment, and promotion; and that the firm

shall not discriminate against women regarding training and education, employees welfare and benefits, retirement, age limit, and dismissal.

I analyse sections of the Japanese EEOL of 1985/1986, and discuss the usage of the word 'endeavour', its ambiguities and the lack of penalty for violators of the EEOL of 1985/1986,. I also argue that the EEOL of 1985/1986, is a hurried piece of legislation and that it is a 'dead letter' or a 'paper tiger' because of the ambiguities that exist within its citations.

Throughout the thesis I discovered that Japan intended to amend the EEOL of 1985/1986, based on its in-discrepancies, and implemented an amended EEOL as of April 1<sup>st</sup> 1999. Unfortunately, there have been no publications from Japan about the newly amended law, since April of 1999, that I have been able to locate. In Chapter Four, I argue that the new EEOL of 1999, is 70% effective of the elimination of discrimination in the workplace, but it is still 30% ineffective in achieving equality amongst the sexes within Japanese management's infrastructure.

In the New Zealand section of employment legislation, I look into the employment legislation that tried to achieve the basic premise of EEO. The Equal Pay Act 1972 in Section 2 and section 4 provides that employers cannot differentiate in pay rates between employees on the basis of their sex. Under the Human Rights Act 1993, which replaced the Human Rights Commission Act 1977 and the Race Relations Act 1971<sup>3</sup>, an employer cannot discriminate in hiring or firing, training or promotion because of their employee' sex, marital status, religious or ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment status, family status or sexual orientation.

In 1984 government employing authorities signed a statement about equal employment opportunities. This statement recognised the need for government employers, then the largest employer group in the country, to take a leading role

in the development of EEO State Owned Enterprises (SOE's) in New Zealand came into existence with the enactment of the State Owned Enterprises Act 1985/1986. The purpose of the legislation was to promote improved performance in respect of government trading activities and control the ownership of the new enterprises. However, it failed to do so and in 1988 the State Sector Act was enacted. The State Sector Act 1988 requires chief executives of Public Service departments to develop and publish EEO programmes for their departments, and ensure that the programmes are complied with. The Act defines an EEO programme as a programme that is aimed at the identification and elimination of all aspects of policies, procedures, and other institutional barriers that cause or perpetuate, or tend to cause or perpetuate, inequality in respect to the employment of any persons or group of persons. The State Services Commission monitors, evaluates, promotes, and develops EEO in the New Zealand Public Service.

I show that the State Sector Act and Commission poorly monitors, and evaluates their own EEO programmes, which is backed with conclusive evidence of varying working groups, employers federation members and CEDAW.

In this subsection I evaluate the Employment Equity Act (EEA) of 1990, and the repealing of this act by the National government in favour of implementing the Employment Contracts Act (ECA) in 1991. I argue that through deregulating the labour market the value of EEO is not being recognised or utilised effectively.

In Chapter Five I analyse the importance of New Zealand's and Japan's international obligations under CEDAW. I investigate whether CEDAW has had any significant influence on both country's anti-discriminatory legislation, with regard to women in employment. I consider how CEDAW influences perceptions of EEO and why Japan and New Zealand are still failing under CEDAW's guidelines, to have preventative measures against discrimination in the workplace.

---

<sup>3</sup> Section 22(1) of the Human Rights Act 1993

I argue that it is important for both countries to support the proposed Optional Protocol to CEDAW, which has been proposed to provide better enforcement of women's human rights. The Optional Protocol would give women the right to complain to a specialist United Nations (UN) Committee (CEDAW) about violations of CEDAW by their governments. I also look at how the Optional Protocol would enable the Committee to conduct inquiries into serious or systematic abuses of women's rights in countries that have become parties to the optional protocol. In this chapter I emphasize the necessity of the optional protocol and the contribution it could make to full implementation of EEO in both countries.

In Chapter Six I conclude this thesis, with a discussion about what EEO is and could be. I look at how it should effectively be implemented and where New Zealand and Japan have failed in their endeavours to provide EEO through legislation, policies and programmes.

The objective of this thesis is not to make any definitive solutions to the dilemmas that have arisen with both countries' inability to implement EEO, but to introduce, compare and analyse EEO in Japan and New Zealand and to highlight, through sign posting the current issues that impair EEO in Japan and New Zealand.