

Brief to the Standing Committee on the Status of Women with regard to the “Public Sector Equitable Compensation Act”

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On behalf of the membership of the Canadian Federation of University Women (CFUW) and the National Association of Women and the Law (NAWL) we thank you for the opportunity to present our views. CFUW is a non-partisan, self-funded organization of over 10,000 graduate women and students in 118 Clubs in across Canada that works to further women’s human rights and education globally. NAWL is a national non-profit women’s organization which promotes the equality rights of women through legal education, research and law reform advocacy.

Our concern over the Public Sector Equitable Compensation Act begins with the way it was introduced. By bundling it into the 2009 Budget package, Parliament was unable to evaluate the merits or dangers of the legislation independent of the Budget. Given that the law aims to radically reform existing legislation on pay equity for the federal public service in a manner that is not endorsed by labour unions or women’s groups, this maneuver is particularly alarming.

Below please find a few points of particular concern with the legislation itself:

- 1. The Act suggests that “equitable compensation” replace “pay equity”.** These terms are not equivalent: while pay equity is a fundamental human right enshrined in such documents as *Convention on the Elimination of All Forms of Discrimination against Women*ⁱ and the *International Covenant on Economic, Social and Cultural Rights*ⁱⁱ, “equitable compensation” is not defined in the Actⁱⁱⁱ.

As a legal concept, “equitable compensation” is also untested by domestic and international human rights law. This is further complicated by the fact that the Act seeks to change the generally accepted criteria used to evaluate whether or not a female job is of equal value to a male job by inserting “market forces” into evaluations.^{iv} When it is these same market forces that create wage inequity in the first place, it is ill-advised to include them in legislation purporting to create “equitable compensation”.

- 2. The Act represents a deliberate marginalization of the 2004 Pay Equity Task Force Report.** In 2001 a federal Pay Equity Task Force was established, which, after thorough review and consultation with all stakeholders, made recommendations for a new proactive pay equity system that includes a Pay Equity Commission and Tribunal. These recommendations had widespread support among unions, women’s advocates and employers. It is deeply dismaying to see the work and consensus built up

through that process be pushed aside in favour of the regressive provisions of the Public Sector Equitable Compensation Act.

- 3. The Act leads to confusion between negotiated “equitable compensation” and “pro-active pay equity legislation”.** On February 25, 2009, the Hon. Vic Toews, President of the Treasury Board, responded to a question in the House by stating: *“We are simply following the recommendations of the Liberal task force in 2004 that said proactive pay equity legislation was needed.”*^v This statement is deeply misleading when the new legislation is compared to the actual recommendations of the Task Force.

In contrast to the Task Force Report which explicitly recommended that the process for achieving pay equity be *separated* from the process for negotiating collective agreements^{vi}, this new legislation makes unions and employers jointly responsible for negotiating “equitable compensation”^{vii} despite the fact that unions have no control over whether federal money is spent fairly compensating women working in the public service.

Likewise, Public Sector Equitable Compensation Act sets out “equitable compensation” as one issue to be discussed along with all other collective bargaining issues, rather than something to be treated separately as it is in Manitoba. This means that the right to be free from sex discrimination in pay may be bargained away because other issues are of more importance to the employer or the union.

- 4. The Act contains a clause that removes the right of public sector workers to file complaints for pay equity with the Canadian Human Rights Commission, effectively removing pay equity as a human right for federal government employees.** The Act imposes a \$50,000 fine on any union that would “encourage or assist” a member in filing a complaint, despite the fact that under Canadian labour law unions are legally required to represent *all* of their members, including women. The individualistic approach taken by the Act is also deeply problematic, because by definition pay equity complaints are group complaints reflecting systemic discrimination. Moreover, preventing unions from assisting in complaints means that both non-unionized and unionized women will lack the resources and information about pay rates and job descriptions that are necessary to make a viable complaint to the Public Service Labour Relations Board.
- 5. The Act defines a female dominated group as one in which 70% of the workers are women; only these groups can seek “equitable compensation.”** This is a rigid definition that does nothing for job groups with 51% - 69% women. The legislation also restricts comparisons of male and female job

groups so narrowly that comparisons can only be made within defined segments of the federal public service, or within federal agencies, not across the public service as a whole.

CFUW and NAWL agree that there are problems with the current pay equity regime. It is lengthy, complex and often unresponsive to the needs of women. However, the Public Sector Equitable Compensation Act does not address these problems.

Pay equity is a fundamental human right to be protected, affirmed and championed by Parliament as it was in legislation such as the *Canadian Human Rights Act*, which has recognized pay equity as a right since 1977. The Public Sector Equitable Compensation Act is a dangerous move backwards that effectively removes pay equity from the realm of guaranteed human rights. We urge the Committee to adopt recommendations that reflect the urgency of protecting Canadian women workers from the fundamental injustices contained within this law.

ⁱ Article 11 of the *Convention on the Elimination of All Forms of Discrimination against Women*, which Canada ratified in 1981, guarantees women the right to “equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.”

ⁱⁱ The *International Covenant on Economic, Social and Cultural Rights*, in Article 7(a)(i), guarantees to women “fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.” Canada ratified this Covenant in 1976.

ⁱⁱⁱ “An equitable compensation matter exists in respect of a job group or a job class if an equitable compensation assessment determines ...that equitable compensation is not being provided to employees in a job group or a job class” (s. 4 (4)).

^{iv} Under the Canadian Human Rights Act, in assessing the value of work performed by employees, the criterion to be applied is the composite of the skill, effort and responsibility required in the performance of the work and the conditions under which the work is performed (section 11). The new legislation adds new criteria that changes the definition of equal work: Section 4(2)(b) of *Public Sector Equitable Compensation Act* adds that the value of the work performed is also to be assessed according to “the employer’s recruitment and retention needs in respect of employees in that job group or job class, taking into account the qualifications required to perform the work and the market forces operating in respect of employees with those qualifications.”

(Adapted from FAFIA’s “Open Letter to Prime Minister Harper,” February 26, 2009 (Online) Available http://www.fafia-afai.org/en/withdraw_the_public_sector_equitable_compensation_act_declare_governor_general_award_recipients_and_women_s_rights_experts [May 27, 2009])

^v Toews, Vic. “Pay Equity” In Canada. House of Commons. *Legislative Debates (Hansard)* 40th Parliament, 2nd Session. February 25, 2009 (Online) Available <http://www2.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=40&Ses=2&DocId=3694590> [May 27, 2009]

^{vi} Chapter 16, final report of the Pay Equity Task Force, 2004. “The Task Force recommends that the new federal pay equity legislation provide that the process for achieving pay equity be separated from the process for negotiating collective agreements.”

^{vii} Explanation of the Public Sector Equal Compensation Act distributed by Toews’ office: “The Public Sector Equitable Compensation Act sets out a new, proactive approach to ensure compensation is equitable. The Act makes employers and bargaining agents jointly accountable for ensuring that wages are fair for all employees through the collective bargaining process...” (As quoted in Wherry, Aaron. “Equivalency,” *Macleans.ca*. February 26, 2009 (Online) Available <http://www2.macleans.ca/2009/02/26/equivalency/> [May 27, 2009])