

# WOMEN'S RIGHTS ARE NOT NEGOTIABLE FIGHT FOR PAY EQUITY !

*"I think this shows the true sentiment behind the government that wrote this piece of legislation. This isn't about improving pay equity, access to pay equity, or speeding up the pay equity process. It's about stifling the rights of women who work for the federal public sector – their human rights, their ability to access equal pay for work of equal value. It targets unions that have had success in fighting the Government of Canada on behalf of their members."*

– Patty Ducharme,  
PSAC National Executive Vice-President

## Resisting the attack Defending our rights

The Harper government has been systematically chipping away at women's rights since taking power in 2006. It cancelled the agreements with the provinces to fund childcare, it abolished funding for the Court Challenges Program, it shut down 12 of 16 regional offices of Status of Women Canada and it stopped the Women's Program from funding research or advocacy on women's rights.

More recently, it has capped wage increases and stripped federal public sector workers of their fundamental right to pay equity. *The Public Sector Equitable Compensation Act (PSECA)* was rammed through Parliament by the Conservative government this winter, and adopted on March 12, 2009. It was passed as part of Bill C-10, the *Budget Implementation Act*: however, pay equity is a human right, and it should never have been addressed in a budget bill.

The provisions in the PSECA radically transform the law on pay equity for the federal public sector. PSAC members, 62% of whom are women, will be very hard hit by this new law. The government's callous disregard for human rights is an outrage and we are fighting back!

## PSECA spells the end of pay equity in the federal public sector

### ***The Public Sector Equitable Compensation Act restricts the substance and the application of pay equity in the public sector***

The legislation makes it more difficult to claim pay equity by increasing to 70% the number of women workers who must be in a job group for it to be considered "female predominant".

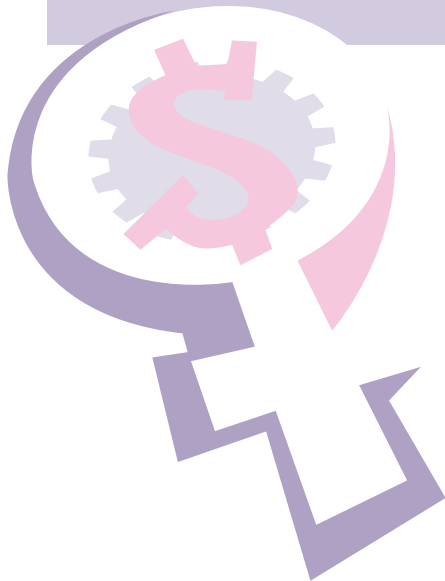
It also redefines the criteria used to evaluate whether or not jobs are of "equal" value, by adding a reference to "market forces".

*"The [2004] task force report explicitly recommended that the process for achieving pay equity be separated from the process for negotiating collective agreements. The new legislation makes unions and employers jointly responsible for negotiating equitable compensation despite the fact that unions have no control over whether federal money is spent fairly on compensating women working in the public service."*

– Susan Russell, Executive Director,  
Canadian Federation of University Women

*“Under the current PSECA regime, there is no remedy for women, particularly the most vulnerable and most marginalized women. The information that is required to advance a pay equity claim is very complex, requires expert assistance, and is also generally not available to workers. It’s exclusively within the hands of the employer...”*

– Joanna Birenbaum,  
Women’s Legal Education and Action Fund



## ***Pay equity can be bargained away***

The new law transforms pay equity into an “equitable compensation issue” that must be dealt with at the bargaining table. Pay equity is a fundamental human right that should not be vulnerable to being traded away at a bargaining table.

In addition, the process is stacked against women ever achieving pay equity. There is:

- no obligation on the employer to proactively review its pay practices and to provide the union with the relevant information;
- no obligation to proceed with a joint pay equity assessment;
- no clear definition of the new terms and expressions that are introduced with this Act, such as “equitable compensation”;
- no time limit to provide equitable compensation.

## ***Women are compelled to file complaints alone, without the support of their union***

Under this new legislation, if pay equity is not achieved through the bargaining process, individual workers are permitted to file a complaint with the Public Service Labour Relations Board, but without their union’s support.

In fact, this law imposes a \$50,000 fine on any union that would encourage or assist their own members in filing a pay equity complaint!

## ***Access to the Canadian Human Rights Commission is prohibited***

This new law removes the right of public sector workers to claim protection under sections 7, 10 and 11 of the Canadian Human Rights Act.

It prohibits public sector workers from filing complaints for pay equity violations with the Canadian Human Rights Commission.

It has specifically targeted public sector workers, since other federally-regulated workers are not covered by these provisions.

*“...the inequality between the government and one individual...who wants to bring a complaint against the federal government, which is the employer, is immeasurable.”*

– Joanna Birenbaum

*“Quite frankly, I think this law is mean-spirited... It’s penalizing women through their pay cheques.”*

– Barb Byers,  
Executive Vice-President,  
Canadian Labour Congress

(Quotations are taken from presentations made to the House of Commons Committee on the Status of Women in May and June, 2009.)

# PSECA violates PSAC members' constitutional rights

The downgrading of pay equity as outlined in this new law is a violation of the constitutional Charter equality rights of working women that are guaranteed in section 15 of the *Canadian Charter of Rights and Freedoms*.

*"In LEAF'S view, the PSECA is not consistent with Canada's statutory, constitutional, and international commitments and obligations to women's substantive equality. ...this legislation would seem to be one in a series of regressive measures that have included funding cuts to Status of Women Canada and the elimination of the Court Challenges Program. These measures all detrimentally affect women's access to justice and the ability to advocate for and enforce their statutory and constitutional equality rights."*

– Joanna Birenbaum

## ***It violates women's equality rights***

The Act introduces a new mechanism to address "equitable compensation" in the public sector that will actually restrict the capacity of women to claim and to obtain pay equity.

For example, the introduction of the "market forces" criteria to evaluate whether work is of equal value undermines the ability of women to receive pay equity, because "market forces" have historically and consistently undervalued women's work!

Some workers will be entirely excluded from accessing the new equitable compensation mechanism, since workers who belong to a job group comprised of between 55-69% women are no longer considered to be members of a "female-predominant group". These women will be denied the right to participate in any process to address the issue of wage discrimination.

By requiring unions and employers to negotiate pay equity

at the bargaining table, the Act undermines the established principle that human rights cannot be traded against other terms and conditions of employment or waived by agreement. This effectively eviscerates the right to pay equity.

In addition, the PSECA goes against the rights of all women to pay equity as required by international human rights law, including the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the International Labour Organization's Convention 100 on equal remuneration for work of equal value.

## ***It violates the rights of freedom of association and freedom of expression***

The prohibitions contained in the new law against union assistance or encouragement in filing a pay equity complaint, constitute a violation of the right to freedom of association that is guaranteed in section 2 of the Charter.



*"... pay equity is actually one of the key factors in getting off the poverty treadmill and getting women to economic independence."*

– Susan Russell

This prohibition completely restricts the ability of unions and their members to take collective action, and it violates the right of workers to be represented by their unions in important matters that relate to their working conditions.

It precludes the unions from accomplishing their most basic duties, that is: fully representing their members on issues relating to their working conditions, such as wage discrimination.

The prohibition also prevents the unions from expressing any views and advising the workers on anything that might assist or encourage them to file complaints regarding pay equity. This undermines the constitutional right of unions to express opinions and give advice to their members on matters that bear on their members' rights as workers.

*It [PSECA] is clearly about a minimization of a key equality right for women, a right that is internationally recognized and that decades have been spent trying to advance. This statute individualizes a problem that is systemic in origin. The result is that it quite clearly mocks and denies decades of hard work done to achieve labour market equality for women.*

— Margot Young,  
Associate Professor of Law,  
University of British Columbia

*“When I chaired the commission that developed the Quebec Pay Equity Act, the President of the Conseil du patronat du Québec came to meet us during our hearings. He told me that, as long as he had anything to do with it, this legislation would not pass. But the legislation did pass... When I give training sessions to corporate managers of human resources—I have given them in 300 or 400 different firms—they tell me that, thanks to this legislation, their compensation system is more coherent, their business is better managed and has a better reputation, and is thus better able to attract talented people with the right skills... So, the impact is extremely positive in terms of their competitiveness.”*

— Marie-Thérèse Chicha,  
Professeure titulaire, Faculté des arts et de sciences - École de relations industrielles,  
Université de Montréal and member of the  
Federal Pay Equity Task Force



Public Service Alliance of Canada  
Alliance de la Fonction publique du Canada

[www.psac-afpc.com](http://www.psac-afpc.com)

## PSAC and our members are fighting back

The PSAC considers that the *Public Sector Equitable Compensation Act* imposes limits on working women's constitutional rights that are simply not justifiable in a free and democratic society.

We have initiated legal procedures to challenge this discriminatory and unfair legislation in court.

We have also filed a “Communication with the United Nations Commission on the Status of Women against the federal government. The PSAC received the support of 40 important trade unions, women's groups and human rights groups across Canada and in Québec in March 2009, when we initiated our communication with the UNCSW.

We have appeared before the House of Commons Standing Committee on the Status of Women, as well as the Senate Standing Committee on Human Rights. We asked these MPs and Senators to strongly condemn the *Public Sector Equitable Compensation Act* and to recommend its repeal. We have

asked that it be replaced with a truly proactive federal pay equity law, as proposed by the Pay Equity Task Force in its report released in 2004, entitled *Pay Equity: A Fundamental Human Right*. In May, 2009 the Commons Standing Committee on the Status of Women agreed with our recommendations, and the government must now respond and explain why it refuses to implement a truly proactive federal pay equity law.

PSAC members are sending e-mail, phoning or writing to and meeting with their MPs, asking them to pledge to repeal the *Public Sector Equitable Compensation Act* and replace it with a real proactive pay equity law, based on the recommendations of the federal Pay Equity Task Force.

Members are engaged in ongoing work in our regions to elect progressive MPs in future federal elections who are prepared to take these actions and to respect human, women's and workers' rights.

