

Submission

to the

**House of Commons
Standing Committee on Finance
(*Bill C -10*)**

**by the
Public Service Alliance of Canada**

February 23, 2009

Introduction

1. On behalf of its 166,000 members, the Public Service Alliance of Canada (PSAC) welcomes the opportunity to place on the parliamentary record, its position on Bill C-10, the *Budget Implementation Act, 2009*.
2. Given that it was to be introduced in the context of a crumbling economy at home and abroad, anticipation and expectations were that the January 27, 2009 budget would focus almost single mindedly on economic stimulus and measures designed to protect the incomes, homes and pensions of working Canadians. It did not.
3. In this regard, it needs to be underscored that workers and their families did not cause the credit crisis that has driven the world economy into what is charitably described as a recession. That dishonour falls on Wall Street and to a somewhat lesser extent on the financial community the world over.
4. Working women and men did not cause the crisis, but they are paying for it. In January of this year alone 160,000 workers lost their mostly full-time manufacturing jobs, pushing Canada's unemployment rate to 7.2%.
5. Working men and woman did not cause this crisis, but they are paying for it. Many are working fewer hours at reduced pay to avoid layoffs. 50% more people declared bankruptcy in December 2008 than in December 2007.
6. Canada's manufacturing sector did not cause the crisis, but it is paying for it as well. Manufacturing shipments fell a record 8% in December 2008 from the month before, and this following month-over-month declines dating back to August 2008.

Make Parliament Work

7. All of this and more cried out for early and effective government action that was hoped for and expected in the November 27, 2008 Economic and Fiscal Statement. A hope and expectation dashed by a government that could not at the time bring itself to intervene and help those adversely affected by the credit crisis that so very quickly morphed into an economic crisis of unparalleled proportions in recent memory.
8. In the January 27, 2009 Budget, the government acknowledged the extent of the crisis and moved to provide a stimulus package in what is called *Canada's Economic Action Plan*.

9. On February 6, 2009 the budget rhetoric was transformed into legislation. From our perspective, parliamentary debate to date has been inadequate. This along with the haste with which *the Budget Implementation Act, 2009* (Bill C-10) is being moved through Parliament demonstrates, yet again, that Parliament does not work for Canadians.
10. Three days of debate at Second Reading is insufficient for a Bill that is as far reaching as Bill C-10.
11. Three days of debate at Second Reading is insufficient for a Bill that overrides signed collective agreements.
12. Three days of debate at Second Reading is insufficient for a Bill that falls short of what is needed to help ensure that unemployed workers survive the current economic crisis.
13. Three days of debate at Second Reading is insufficient for a Bill that will fundamentally undermine women's equality.
14. Equally troubling is the fact that Bill C-10 has been referred to the Finance Committee – a place where a budget bill rightly belongs, but not where pay equity legislation should be considered.
15. Canadians, including the 166,000 members of the PSAC, have a right to expect that their Parliament will listen to their concerns when legislation is before the House. Yet the structure of the committee process as it has evolved over the years has served to stifle our voice, along with the voices of many others. The invitation to appear before the Finance Committee during its deliberations on Bill C-10 came with the inevitable caveat that we would form part of a panel and be limited to a five-minute opening statement.
16. Two issues of paramount importance to our members - the *Expenditure Restraint Act* and the *Public Sector Equitable Compensation Act* are long, complicated and fundamentally flawed. Limiting the PSAC to a five-minute opening statement and having our voice heard simultaneously with other equally legitimate groups is an affront to democracy.
17. Our message is clear and precise, and it should be heard directly by the Committee.

The Expenditure Restraint Act

18. The *Expenditure Restraint Act* flies in the face of a June 2007 Supreme Court decision - *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, [2007] 2 S.C.R. 391, 2007 SCC 27IU – that fundamentally altered legal precedent with regard to Freedom of Association and, more specifically, the right to bargain collectively.
19. In what is commonly referred to as the HEU decision, the Supreme Court spelled out a two-part test to determine whether legislation that intervenes in the bargaining process and modifies collective agreements is a violation of s. 2 (d) of the Canadian Charter of Rights and Freedoms. They are:
 - (1) the importance of the matter affected to the process of collective bargaining, and more specifically, the capacity of the union members to come together and pursue collective goals in concert; and
 - (2) the manner in which the measure impacts on the collective right to good faith negotiation and consultation. If the matters affected do not substantially impact on the process of collective bargaining, the measure does not violate s. 2(d) and the employer may be under no duty to discuss and consult. If, on the other hand, the changes substantially touch on collective bargaining, they will still not violate s. 2(d) if they preserve a process of consultation and good faith negotiation. Only where the matter is both important to the process of collective bargaining and has been imposed in violation of the duty of good faith negotiation will s. 2(d) be breached. [93-94] [109]
20. On behalf of its 135,000 members who work for the federal government and its many departments, agencies and corporations covered by the Act, the PSAC submits that the *Expenditure Restraint Act* fails both of these tests and will, if passed into law result in protracted litigation.
21. More importantly, by moving in this direction the government is undermining its relationship with its workforce.
22. In mid November in the context of a rapidly-deteriorating economy and in anticipation of the November 27, 2008 Economic and Fiscal Statement, the PSAC engaged in extensive discussions with Treasury Board with a view to securing collective agreements covering more than 100,000 of our members employed by Treasury Board in the Program and Administration Services (PA), Operational Services (SV), Education and Library Science (EB), Frontière/Border Services (FB) and Technical Services (TC) Groups.

23. Tentative agreements were reached for the PA, SV, EB and FB groups on November 23, 2008. Agreements that include the wage increases outlined in the *Expenditure Restraint Act*. These agreements were subsequently ratified in January 2009 and are not adversely impacted in any way under the Act.
24. Despite the successful negotiation of tentative agreements, the government saw fit, some four days later, to table an Economic and Fiscal Statement that announced the impending introduction of legislated wage increases for other federal workers including PSAC members employed by Treasury Board in the TC group and elsewhere, a ban on the right to strike and roll backs of existing signed collective agreements. While the ban on the right to strike was withdrawn during the perilous political storm of December 2008 and thankfully remains off the table, the government continues to believe that legislating wage increases and rolling back signed collective agreements are appropriate measures. They are not. It is fundamentally unfair, and more to the point, it is illegal in the context of the Supreme Court decision in the HEU case.
25. Voluntarily agreeing to a wage increase is one thing; having a wage increase legislated and rolling back existing signed agreements is an entirely different matter.
26. The 2009 budget resurrected the announced provisions of the 2008 Economic and Fiscal Statement, and has done more to damage labour relations in the federal public sector than any government action over the past decade.
27. The PSAC represents almost 30,000 members who are employed by the Canada Revenue Agency. Like all workers, they understand that when they sign a collective agreement, they have signed a contract that is binding on both parties. When the PSAC and our Union of Taxation Employees Component reached a tentative agreement with the CRA in October 2007, we had every reason to believe that the government would honour its terms. These terms that included a wage increase of 2.5% effective November 1, 2009. Bill C-10, and more specifically Section 19 of the *Expenditure Restraint Act* provisions, will change that and will legislate a wage increase of 1.5% on November 1, 2009. That, quite simply, is unconscionable, and in the context of the Supreme Court HEU decision it is illegal.
28. The amount lost in the case of PSAC and our Union of Taxation Employees (Component) members employed by the Canada Revenue Agency equates to some \$528 per year. That amount is lost forever by virtue of Section 57 of the *Expenditure Restraint Act*. Moreover, reducing the collective income of our 30,000 members employed by the CRA by \$15.8M will do nothing to stimulate the economy at a time when stimulus is so urgently needed.

29. In addition to our members employed by the CRA, PSAC members employed by the National Gallery of Canada, Canada Council of the Arts, the Canadian Museum of Nature and the National Arts Centre will also have negotiated increases rolled back. That is why we are proposing, as our first and second amendments that Sections 19 and 57 of the *Expenditure Restraint Act* be deleted in their entirety.

Arbitration

30. When the PSAC entered into discussions with Treasury Board in November 2008, the objective of both parties was to develop a framework for settlement for the five PSAC groups referenced in paragraph 22 of this submission.

31. During the discussions, it quickly became apparent that there was no common ground with regard to discussions related to the collective agreement for the Technical Services (TC) group. And this, despite the fact that the parties had recognized historic pay anomalies between Technical Services employees within the government and elsewhere in the economy.

32. This recognition led the parties to jointly request the Public Service Labour Relations Board (PSLRB) to conduct an independent pay study. The results of that study were provided to the parties in 2008 and were intended to inform both the negotiation and the arbitration processes. Section 23 of the *Expenditure Restraint Act* renders the results of the pay study for the TC group moot.

33. It needs to be underscored that this legislative provision runs entirely counter to both the spirit and intent of our November 2008 discussions with senior representatives of the Treasury Board, where it was clearly decided that the TC group would be removed from our “umbrella” discussions and allowed to continue on a course that would see the issues in dispute addressed at arbitration.

34. The PSAC is of the opinion that the *Expenditure Restraint Act* is unnecessary from an economic perspective, contrary to the Charter and injurious to labour relations. As a result, we strongly believe that Bill C-10 should be amended by deleting the *Expenditure Restraint* provisions in their entirety. Failing that, it is of paramount importance that negotiated collective agreements or arbitration awards be permitted to address pay studies conducted jointly by the Union and the Treasury Board or under the auspices of the PSLRB.

35. As a result, and should the *Expenditure Restraint Act* remain a part of Bill C-10, we recommend that Section 23 (a) of the *Expenditure Restraint Act* be amended by adding “unless the restructuring of rates of pay is applied on the basis of a joint Union/Treasury Board pay study or a pay study undertaken by the PSLRB”.

The Public Sector Equitable Compensation Act

36. The PSAC takes the firm position that the *Public Sector Equitable Compensation Act* should be withdrawn from Bill C-10. We take this position for a number of reasons.
37. First, equal pay for work of equal value is not a budget measure but a fundamental human right that is protected by the Charter and enforced by the *Canadian Human Rights Act*. The budget is no place to debate or to trade off a human right enshrined in legislation and in international instruments.
38. Second, government officials have affirmed that the *Public Sector Equitable Compensation Act* is not about saving money.
39. Third, the *Public Sector Equitable Compensation Act* has nothing to do with stimulating the economy or with protecting jobs, sectors of the economy and the unemployed.
40. Although we believe that the *Public Sector Equitable Compensation Act* has no place in Bill C-10, we also believe that the federal pay equity legislative framework needs reform.
41. In this regard, we note that the federal Pay Equity Task Force issued a comprehensive report in 2004 on how to improve the current law to make it fairer and more accessible. This report, the culmination of years of consultation with employers (including the federal government), unions, individuals and women's groups, should be the starting point for a legislative agenda on equal pay for work of equal value.
42. In two documents appended to this submission, the PSAC provides an analysis on the *Public Sector Equitable Compensation Act* as well as a document that compares the *Public Sector Equitable Compensation Act* and the Ontario and Manitoba pay equity models.
43. We note that the PSECA bears no resemblance whatsoever to the Ontario and Manitoba pay equity models.
44. The point needs to be made that pay equity legislation is fundamentally important. It is fundamentally important in a society where women earn 70 per cent of what men earn. And, as a human right protected by the Charter, it is fundamentally important to all Canadians.

45. As a union that has championed equal pay for work of equal value for decades, we understand fully well that the current system takes too long and is unnecessarily legalistic.
46. Moreover, pay equity has been costly because of the government's refusal to recognize and compensate for paying discriminatory wages to employees in female-dominated occupations. The PSAC's 1984 pay equity complaint against the federal government resulted in 15 years of protracted court and other actions on the part of the government at taxpayers' expense. These protracted actions resulted in an obligation to pay \$3.2 billion to workers and former workers whose wages were found to be discriminatory all these years.
47. The pay equity model articulated in Bill C-10 is flawed beyond redemption. The PSAC strongly recommends that it be withdrawn, and at the very least introduced as a stand-alone Bill. That said, our preference is that the government go back to the drawing board and draft a new Bill based on the recommendations of the Pay Equity Task Force.

Conclusion

48. Bill C-10 contains two pieces of legislation—the *Expenditure Restraint Act* and the *Public Sector Equitable Compensation Act*—punitive and unnecessary.
49. The PSECA is not budgetary in nature and should be withdrawn from Bill C-10.
50. With regard to the *Expenditure Restraint Act*, the PSAC is addressing the issue in two ways. First, we are proposing that Sections 19 and 57 be deleted, and that Section 23 (a) be amended by adding “unless the restructuring of rates of pay is applied on the basis of a joint Union/Treasury Board pay study or a pay study undertaken by the PSLRB”.
51. Second, we believe that the legislation is unlawful, and will pursue legal avenues to ensure that our members affected by the wage roll back and the limitations placed on arbitrators and Public Interest Commissions are overturned.

The Harper government’s proposed “Equitable Compensation” legislation is NOTHING like proactive provincial legislation

The main focus of the governments’ proposed *Public Service Equitable Compensation Act* for federal public sector workers is to have pay equity bargained between the union and the employer.

The Conservatives are claiming to be following either the Manitoba or Ontario pay equity models, both of which are proactive pay equity laws. This claim is false and it is misleading.

Proactive pay equity legislation requires employers to examine their compensation systems to ensure they are paying equal pay for work of equal value. Where employees are unionized, their unions are involved in the preparation and implementation of pay equity studies. For employers, this means that everyone faces the same legal requirements. For employees, it guarantees that everyone has the same rights at work. The *Public Sector Equitable Compensation Act* includes none of this.

The only similarity to Manitoba’s pay equity law is that the Conservative law applies only to public sector workers. However, in Manitoba, the broader public sector – hospitals, colleges and universities for example – are also included.

It’s hard to see where the similarity to the Ontario law could be in their minds. Perhaps, it is because in both Manitoba and Ontario, unions are involved in the process of developing and implementing pay equity. And, the words “negotiate” or “bargain” are used in descriptions of these laws.

The Ontario and Manitoba pay equity models are polar opposites of the Conservative law. They are very different than the one now being proposed by the Conservative government.

1. In provinces like Ontario and Manitoba, which actually have pro-active pay equity legislation, the union and the employer sit down **together, away from the regular bargaining table**, and examine the employer’s pay practices within a specified time frame to see if there are pay equity problems. In the government’s proposal, there is no requirement for the parties to work together and there is no separate process. These provinces recognize that pay equity is a fundamental human right, which is why it must be separate from regular bargaining and cannot be bargained away.

2. In the provincial legislation, the **employer**, as the one responsible for paying employees, is also the one **responsible for closing any wage gap**. In the Conservative legislation, the employer and the union would be jointly responsible, even though the union has no control over legislated wage rates or wage freezes.
3. All provincial legislation has a **mandated time frame within which pay equity must be implemented**. The Conservative legislation lacks a mandated time frame.
4. Provincial legislation provides for some sort of **Pay Equity Commission, with a body of experts** to assist the parties in achieving pay equity and resolving disputes. The Conservative legislation would refer disputes to existing bodies – the Public Service Labour Relations Board and arbitrators, without providing them with any specialized training.
5. Provincial legislation provides all parties with the **right to access all information** required to assess pay equity. This can include job evaluation plans, complete descriptions of all jobs, organization charts, rates of pay of all jobs including non-unionized or excluded ones, etc. The Conservative legislation requires only the provision of numbers of male and female employees.
6. In provincial legislation and in current practice in the federal sector, **employees who complain about the lack of pay equity have the right to be represented by their union**. The Conservative legislation not only forbids unions from representing their members but would actually fine them for providing any support or representation.
7. Provincial legislation **requires employers to set aside money**, usually one per cent of total payroll per year for a number of years, **to fund pay equity** payments. There is no such requirement in the Conservative legislation.

In summary, the Conservatives' *Public Sector Equitable Compensation Act* bears no resemblance whatsoever to the Ontario and Manitoba pay equity models. Any comparison made between the Conservative bill and provincial ones represents a deliberate manipulation of the facts. Don't be fooled.

The end of pay equity for women in the federal public service

PSAC's comments on the *Public Sector Equitable Compensation Act*

Introduction

The federal government's Economic Statement on November 27, 2008, announced plans to abolish access to the Human Rights Commission for federal public service workers raising pay equity issues. In the *Budget Implementation Act* that was tabled on February 6, 2009, the federal government has included a bill that will radically reform the law on pay equity for the federal public service.

The *Public Sector Equitable Compensation Act* will restrict the substance and the application of pay equity in the public sector. This bill would remove the right of public sector workers to file complaints for pay equity with the Canadian Human Rights Commission. The bill would make it more difficult to claim pay equity by redefining the notion of "female predominant" job group to require that women make up 70 per cent of workers in the group. It also redefines the criteria used to evaluate whether or not jobs are of "equal" value.

Perhaps what concerns us most is that the bill transforms pay equity into an "equitable compensation issue" that must be dealt with at the bargaining table. If pay equity is not achieved through the bargaining process, individual workers would be permitted to file a complaint with the Public Service Labour Relations Board, but without their union's support: in fact, this bill would impose a \$50,000 fine on any union that would encourage or assist their own members in filing a pay equity complaint!

Pay equity is a fundamental human right that has been protected by the *Canadian Human Rights Act* since 1977. The Supreme Court of Canada has recognized that when a government violates women's right to pay equity, this is also an infringement of their constitutional equality rights. Pay equity is recognized by the United Nations *Convention on the Elimination of all Forms of Discrimination Against Women* (CEDAW) and it is protected in *Convention 100* of the International Labour Organization.

In 2004, after extensive consultation, research and analysis, the Pay Equity Task Force concluded that our current pay equity rules are not working well. The Task Force recommended the adoption of a federal pay equity law that would impose an obligation on federally-regulated employers to review their pay practices, identify any pay equity gaps and develop a pay equity plan to remedy

discriminatory gaps in compensation. It recommended the creation of a pay equity commission and a pay equity tribunal, based on the proactive legislation models that exist in Ontario and in Québec. Despite a large consensus in favour of these recommendations, the Harper government has steadfastly refused to implement them.

Pay equity is a fundamental human right that should not be vulnerable to being traded away at a bargaining table. The importance of this principle is particularly underlined when the employer is capable of unilaterally imposing mandatory wage rates as the federal government has done in the *Expenditure Restraint Act*, which forms part of the same omnibus budget bill that contains the pay equity measures.

This bill is one more example of the attacks being waged by the Harper government against women's rights. And it is one more reason for PSAC members to inform themselves, mobilize and organize against these sexist and discriminatory policies.

Here are **4** reasons to oppose the *Public Sector Equitable Compensation Act*:

1. It restricts pay equity in the public service

Section 394 of the *Budget Implementation Act (2009)* provides for the enactment of the *Public Sector Equitable Compensation Act*.¹

➤ ***Only certain employers are targeted by this bill***

This bill applies to the following employers: Treasury Board, separate agencies, and the RCMP (section 2 definition of "employer"). It does not apply to the federally regulated private sector.

➤ ***"Equitable compensation," not pay equity***

This bill never once mentions the words "pay equity." It introduces the new notion of "equitable compensation," which it never defines. This expression will create a lot of uncertainty, since it is new and untested in Canadian and international human rights law.

¹ The numbers that are referenced in this document are the sections of this proposed *Public Sector Equitable Compensation Act*.

This uncertainty will be compounded because the bill also seeks to change the criteria used to evaluate whether or not a female job is of equal value to a male job.

➤ ***Undervaluing women's work***

Under the current system, it is a discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value. 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 (s. 11, *Canadian Human Rights Act*).

The bill would add to these well-known criteria the following factors:

... 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 *market forces* operating in respect of employees with those qualifications (s. 4(2)b – emphasis ours).

➤ ***Market forces***

The reference to “market forces” is not conducive to ensuring pay equity since it is those very market forces that have historically undervalued women's work. Pay equity advocates have often explained to the federal government that the free market will never produce equitable results for women and other disadvantaged workers. Proactive pay equity legislation is precisely what is needed to remedy the effects of sexist and racist biases in the labour market.

At a time when the world economy is in crisis because of the excesses of the “free market,” it is plainly wrong-headed for the Harper government to insist on including a reference to market forces not only in this specific context, but also in the preamble of this bill.²

➤ ***Restricting the comparator groups***

In addition to adding new evaluation criteria, the bill also seems intent on restricting to the same bargaining unit the job groups or job classes that can be compared during an “equitable compensation assessment”:

“Subject to the regulations, an equitable compensation assessment in respect of a job group or job class is to be conducted having regard to (a)...in the case of a job group or job class within a portion of the federal public administration, including a department... only job groups or job

² “Whereas employers in the public sector of Canada operate in a market-driven economy.”

classes, as the case may be, within any of those portions of the federal public administration” (s.4 (3)).

Similarly, job groups³ or job classes within a separate agency, the Canadian Forces and the RCMP can only be compared to job groups or job classes within the separate agency, or the Canadian Forces, or the RCMP (s. 4(3)). This means that instead of being able to compare the value of jobs that are usually held by women within the entire public sector to jobs of comparable worth that are usually held by men in the public sector, the comparison will have to be done on a much smaller scale. In other words, it will be more difficult to find groups to compare to, and consequently more difficult to establish that there is a pay equity problem.

➤ ***Caving in to the employer lobby***

Is it a coincidence that FETCO, the consortium of federally-regulated employers, has been lobbying for years for precisely this kind of approach? We should anticipate that FETCO will lobby very hard for a similar legislative framework in the private sector in the upcoming months.

➤ ***Making women count less***

The bill would redefine a “female predominant” group as a job group or job class that is composed of at least 70 per cent women. This would make it more difficult to raise pay equity issues in most public sector workplaces. Currently the PSAC represents members in 10 public sector job groups that are considered “female predominant.” If this bill is adopted, only five would remain. For example, of the 2,963 “information services” workers currently employed by the federal government, 2,039 of this group – or 68.8 per cent – are women. Under the new rules, these women would not have the right to claim pay equity.

2. The bill allows pay equity to be bargained away

➤ ***New union liability***

The bill would impose on the employer, and now on the union too, a basic obligation to take measures to provide employees with equitable compensation:

³ Job class is defined as “two or more positions in the same job group that have similar duties and responsibilities, require similar qualifications, are part of the same compensation plan and are within the same range of salary rates” (section 2). Job groups will be defined by regulations. The government can, by regulation, “restrict’ the job group or the job class to which an equitable compensation assessment is to have regard (s. 4(5) d)).

“In the case of unionized employees, the employer and the bargaining agent shall take measures to provide employees with equitable compensation in accordance with this Act” (s. 3(1)).

However, it is difficult to see how bargaining agents are meant to “provide” equitable compensation, since they are not the ones who pay workers. In addition, it is the employer – not the union – that decides how different jobs are classified, and this ultimately has a bearing on how a job is evaluated. So, while wages and working conditions are – to a certain extent – subject to collective bargaining, management rights remain and ultimately the obligation to comply with pay equity measures properly remains with the employer.

➤ ***Pay equity on the bargaining table***

Under this bill, the new “equitable compensation” regime is squarely linked to collective bargaining for unionized workers.⁴ The following paragraphs outline the process that would be instituted under this bill.

➤ ***The employer’s “statement”***

Before the expiry of the collective agreement, the employer must provide the bargaining agent with a statement that sets out the number of employees that form part of each job group and the number of males and females in each group. The bargaining agent must then make this information available to all employees (Section 12(1)). Special provisions would apply if there is no collective agreement yet.

➤ ***No obligation to provide union with necessary information***

Under this Bill, the only information that the employer is required to provide to the union is information on the gender composition of the various groups. In our experience, this is totally inadequate for the purposes of assessing pay equity. A proper assessment requires complete job information on all male and female dominated groups. This would also include full job descriptions that provide complete information on all equity factors in addition to all relevant organizational charts.

➤ ***No proactive obligation to review pay practices***

Before collective bargaining begins, the employer and the bargaining agent “shall each conduct preparatory work to enable it, during collective bargaining, to raise or to respond to questions concerning the provision of

⁴ The act creates two sets of procedures for unionized and non-unionized workers. Procedures for non-unionized workers are not summarized here.

equitable compensation to employees in female predominant groups” (s. 13). It does not seem like the bill actually creates an obligation on employers to review pay practices and identify any pay equity gaps. It is thus misleading to call this a “proactive” equitable compensation law, as is stated in the preamble of the bill.

➤ ***No joint compensation assessment***

The legislation appears to contemplate separate equitable compensation assessments by each of the parties. This is very different from other legislation where the parties agree on how to do the assessment and carry it out jointly.

Having two separate assessments, in addition to being a great waste of resources (these types of assessments involve a great deal of time and work), would also lend itself to disputes over whose assessment should be accepted. Unless there is a clear provision for union access to complete information and access to all employees on work time to answer any questions about that work, it would be very difficult for the union to complete a quality assessment.

➤ ***No clear definitions***

Unhelpfully, the bill defines an “equitable compensation matter” with a tautology:

“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)).

➤ ***The equitable compensation report***

If one of the parties “intends to negotiate collectively in respect of the provision of equitable compensation,” it must provide the other party with a notice that identifies the female predominant job groups concerned (s. 14).

It must also “without delay” (and subject to a \$50,000 fine, as provided for in section 41) provide the other party with a report that identifies the group, describes the method used to assess the pay inequity and propose a remedy:

An employer or a bargaining agent that raises any equitable compensation matter in the course of collective bargaining in respect of a female predominant group shall, without delay, provide the other party with a report that

- a) identifies the female predominant group to which the matter relates;
- b) describes how the equitable compensation assessment was conducted in respect of that female predominant job group; and
- c) sets out how the equitable compensation matter should be resolved” (s. 15).

Presumably, the issue is then negotiated between the parties, and an agreement is concluded – or not.

➤ ***Reaching an agreement***

If there is an agreement, the bill states that the bargaining agent must file a joint report with the employer outlining how the equitable compensation assessment was conducted before submitting the collective agreement for ratification. If the employer and the bargaining agent have determined that an equitable compensation matter exists, they must specify “whether that matter is to be resolved during the term of the proposed collective agreement and if not, the reasonable time within which it is to be resolved” (s. 22 b)). The bill states that it is a summary offence to contravene this section, and that a \$50,000 fine may be applied (s. 41).

➤ ***Justice delayed is justice denied***

This process thus clearly allows for delays in the implementation of pay equity and it shows how far the government has moved from viewing pay equity from a human rights perspective. Indeed, any human right – whether it is the right to be free from racial discrimination or harassment or the right to equal pay for work of equal value – these rights must be respected as of the time of the enactment of the human rights law that guaranteed them.

One could not, for example, negotiate a collective agreement that would provide that the employer must not discriminate against workers of colour as of next year – the proscription against employer discrimination takes effect immediately. This is the very essence of human rights protection. It is unconscionable that this bill would allow employers to delay the implementation of pay equity while holding unions liable for those delays, particularly when unions are not the agents responsible for refusing equal pay for work of equal value.

➤ ***The conciliation process***

The bill states that if no agreement has been reached between the parties, the equitable compensation matter may also be the subject of conciliation. A Public Interest Commission would determine whether or not any job group is female predominant, recommend how the equitable

compensation assessment is to be conducted, and include in its report recommendations that would result in the provision of equitable compensation to the employees concerned (s. 21).

➤ ***The arbitration process***

The equitable compensation matter can also be sent to arbitration (as per 103(1) and 136(1) PSLRA):

The arbitration board shall determine whether any job group is female predominant, and how the equitable compensation assessment is to be conducted. It shall make an arbitral award that sets out a plan to resolve those matters “within a reasonable time” (s. 18 and 19).

➤ ***The need for specialized a tribunal***

Equitable compensation assessment is a highly specialized field. That is why legislation usually provides for specially trained separate agencies to adjudicate disputes. Arbitrators, Public Interest Commissions doing conciliation and the Public Service Labour Relations Board do not have the special training and expertise to enable them to conduct these assessments.

3. The bill compels women to file complaints alone – without the support of their union

➤ ***Workers must file a complaint on their own***

There is a complaint mechanism before the Public Service Labour Relations Board provided in the bill, but it is only open to a “unionized employee,” and not to a bargaining agent (s. 23).

➤ ***Unions can be fined for representing their members***

Moreover, not only is the union prevented from filing a complaint against an employer that refuses to honour its pay equity obligations, the bargaining agent (or the employer) is strictly forbidden to “encourage or assist” the complainant in filing a complaint (s. 36). If a union does help a member file a complaint, it could be made to pay a \$50,000 fine (s. 41).

It is astounding that this bill would impose a fine on a union for doing what it is legally obligated to do: represent its members! Without union support, individual workers rarely have the resources or the strength to deal with the delays and legal tactics that are deployed by employers in most cases.

➤ ***The burden of proof is on the worker***

The bill states that a complaint can be filed if the employee has “reasonable grounds” to believe that her employer or bargaining agent has failed to comply with the section 12 obligations.⁵

An employee can also file a complaint if she is bound by a collective agreement and has reasonable grounds to believe that she is a member of a female predominant job class and that an equitable compensation assessment would lead to the identification of an equitable compensation matter. She then has 60 days after the agreement was “entered into” to file her complaint with the Public Service Labour Relations Board.

➤ ***PSLRB’s powers undefined***

While the PSLRB has broad regulatory powers concerning the procedural and other aspects of these complaints, we do not yet know what those regulations might actually look like.

➤ ***A difficult process for unrepresented workers***

The Board may request a copy of the statement identifying the job class, the information regarding female predominance and any equitable compensation assessment. It may make an order requiring the employer and the bargaining agent to file a report indicating how they plan to conduct an equitable compensation assessment. If they have done an equitable compensation assessment and this assessment identified an equitable compensation “matter,” the Board will need to know how they “plan to resolve the matter in the course of the next collective agreement” (s. 33).

➤ ***PSLRB rulings***

If the Board rules that the equitable compensation assessment contains an error that is “manifestly unreasonable,” or if their equitable compensation plan “fails to make reasonable progress” towards resolving an equitable compensation matter, the Board may require the employer and the bargaining agent to take measures to correct the error or alter the plan and file a report describing the measures that have been taken.

The Board may also, if more than two years remain before the termination of the current collective agreement, “alter the collective agreement in such

⁵ This refers to the statement that the employer must provide and that the bargaining agent must share with the employees -- documentation that sets out the number of employees that form part of each job group, and the number of males and females in each group (s. 23).

a way that the termination date is any day specified by the Board that is within the period that begins two days after the day on which the order is made..." (s. 33 (2) (b)).

If the Board rules that the employer and the bargaining agent have "committed an error that is manifestly unreasonable in the fulfillment of their obligations," it can choose to conduct its own equitable compensation assessment, "and may require the employer and the bargaining agent to pay the complainant a lump sum compensation." It may also "alter any collective agreement" that binds the employer and the bargaining agent so that the employees receive equitable compensation (s. 33 (3)).

Finally, the Board may order the employer and the bargaining agent to pay all or part of the costs to the complainant (s.34).

➤ ***Small penalties for reprisals against workers***

Sections 37 and 38 provide for penalties if an employer or a bargaining agent has exacted reprisals against a worker who files a complaint on an equitable compensation matter. The penalty for this, however, is set very low at \$10,000 (s. 40).

➤ ***A reverse onus***

Surprisingly, section 39 provides that if a complaint against reprisals is made in writing, "the written complaint is itself evidence that the contravention actually occurred and, if any party to the complaint proceedings alleges that the contravention did not occur, the burden of proving that it did not is on that party." It is likely that this proposed reverse onus provision will be challenged as unconstitutional.

This system also means the Board will be called to rule on a pay equity complaint filed by an individual, without the benefit of union input or advocacy. Worse, the union will be put in an adversarial position with regard to its member who filed the complaint.

The notion that an unrepresented worker should have to fight her way through this process without the support of her union is patently unfair.

4 . The bill prohibits access to the Human Rights Commission

Section 399 of the *Budget Implementation Act* amends the *Canadian Human Rights Act* (CHRA) by stating that the Canadian Human Rights Commission does

not have jurisdiction to deal with pay equity complaints in the public service. It would add a new section to the CHRA:

40.2 The Commission does not have jurisdiction to deal with complaints made against an employer within the meaning of the Public Service Equitable Compensation Act alleging that

- (a) the employer has engaged in a discriminatory practice referred to in section 7 or 10, if the complaint is in respect of the employer establishing or maintaining differences in wages between male and female employees; or
- (b) the employer has engaged in a discriminatory practice referred to in section 11.

Existing complaints that are before the Canadian Human Rights Commission would, once this bill is adopted and receives Royal Assent, be transferred to the Public Service Labour Relations Board. The bill provides that the Board has the power to interpret and apply section 7, 10 and 11 of the CHRA. The Board would have the same powers as the Canadian Human Rights Tribunal, except that no monetary remedy may be granted except a lump sum payment (s. 396(9)).

Conclusion

The bill is a violation of women's equality rights

In addition to the shortcomings that we have identified in this paper, this bill does not address the many problems that were identified with the current process under the *Canadian Human Rights Act* for federally-regulated sectors other than the public service, such as crown corporations.

This bill will do nothing to address the delays and frustrations experienced by PSAC members at Canada Post. Clerical workers there who filed a pay equity complaint over 25 years ago are still before the courts. Nor will this bill help the Radio-Canada workers who have been before the courts for almost 10 years, demanding equal pay for work of equal value. If the federal government really wanted to improve the Canadian pay equity law, why did it leave these workers out in the cold?

The *Canadian Human Rights Act* is considered "quasi-constitutional" legislation. The obligation of the state to respect workers' fundamental right to pay equity was identified as a constitutional equality right by the Supreme Court of Canada in the *NAPE* decision.

PSAC is convinced that the downgrading of pay equity as proposed in this bill is a violation of the constitutional Charter equality rights of working women.

The federal government should abandon this bill, and implement the 2004 recommendations of the Pay Equity Task Force. This would be a first step toward a proactive pay equity law that would make a real difference in the lives of working women.