



Canadian Association of University Teachers  
Association canadienne des professeures et professeurs d'université

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March 6, 2009

The Honourable James Cowen, Senator  
Leader of the Opposition in the Senate  
The Senate  
Ottawa, Ontario  
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Dear Senator Cowen:

On behalf of the Canadian Association of University Teachers representing more than 65,000 academic and general staff at 121 universities and colleges across Canada, we are writing to express our grave concern about Bill C-10, *The Budget Implementation Act*, and the introduction of “equitable compensation” through *The Public Sector Equitable Compensation Act* embedded in this legislation. The enactment of “equitable compensation” will effectively legislate and maintain systemic gender-based wage discrimination and wage inequity among federal employees. To support Bill C-10 is to approve of a federal plan that profits from the discrimination against women working in the federal public sector.

Pay equity is equal pay for work of equal value. The purpose of pay equity provisions are to identify and eliminate systemic gender-based wage discrimination found in the labour market. Yet the proposed legislation attempts to link “compensation” to market forces – the same forces which have created systemic gender-based wage discrimination and inequity. *The Public Sector Equitable Compensation Act* will legislate wage discrimination. This should be unacceptable to you and all Canadians.

Since the 1950s, pay equity has been recognized internationally as a human right. All developed countries, including Canada, are signatories to international conventions that require pay equity. The introduction of “equitable compensation” transforms pay equity into a bargaining proposal to be brought to negotiations between union and management. Such a requirement ignores the fact that pay equity is a human right. Human rights should never be negotiable.

Further, as part of the normal bargaining process between union and management, wage inequity can potentially be traded off or abandoned for other issues at the negotiating table. “Equitable compensation” also eliminates the complaints-based system modeled in the *Canadian Human Rights Act*. Under the proposed legislation, if negotiations at the bargaining table fail to resolve pay equity concerns fairly, employees have no real recourse. If an individual seeks to pursue a wage complaint outside the bargaining process, unions are explicitly prohibited from providing assistance to their member.

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The Conservative government claims that it has introduced proactive legislation to eliminate discriminatory wages. This is simply not true. It cites Manitoba and Quebec legislation as models. The *Public Sector Equitable Compensation Act* lacks several fundamental features of a proactive model, including the following:

- a. There are no set obligations between union and management to engage in a pay equity analysis and plan development to remove discriminatory wages. While the legislation calls for a review of wage practices, there are difficult conditions that must first be met. One party must raise the issue at the table, and if one of the parties can establish that there are gender predominant groups that fit the strict 70% rule defined in the legislation, and if one of the parties can establish a reasonable claim of inequitable compensation between the groups, then a negotiation process may lead to redress. Such an outcome is unlikely if, for example, an economically beleaguered union or an individual employee without significant resources cannot rally the evidence to meet the yet-to-be-defined reasonableness standard. In other words, in the absence of an obligation on employers to proactively engage in a process to remedy wage inequities, nothing is likely to happen.
- b. If unionized employees feel that their employer or bargaining agent has not met the terms of the legislation, a complaint can be brought to the Public Service Labour Relations Board. However, they must first gather sufficient evidence without the aid of their bargaining agent (who are prohibited from assisting), to convince the Board that there is a failure to comply with the legislation. If the legislation was proactive in that it required the joint-development of a pay equity review and plan as found in various provincial models, it would not fall to an individual employee to ensure just, fair and equitable compensations by federal employers.
- c. There is no obligation that a pay equity plan be established in a reasonable time period. While the legislation speaks to engaging in the process during the life of the collective agreement, the Board is not obligated to impose cost sanctions or other financial penalties on employers who fail to act in a timely manner. There is no accountability or enforcement mechanism built into the legislation.

Besides the regressive and exploitative nature of the proposed legislation, there are four other fundamental flaws:

### **1. Breach of Canada's commitment to International Conventions**

Several decades ago, Canada committed itself to both the *United Nations Convention on the Elimination of All Forms of Discrimination Against Women* and the International Labour Organization's *Convention 100 and Recommendation 90*. These led to the establishment of the *Canadian Human Rights Act* of 1978 which included provisions to address both direct and systemic wage discrimination against women and other groups. The Bill before Parliament falls outside the human rights framework of both domestic legislation and international commitments.

Under this proposed legislation, unionized public sector employees will have less protection than employees in other sectors losing the following rights specified in international conventions:

a. Representation (or any other form of assistance) by their union

Not only are unions precluded from assisting their members in filing complaints of wage discrimination under this proposed legislation, they will be fined if they are found to have promoted or provided assistance in any way before or during the complaint process.

b. Security of vested human and other fundamental legal rights

Any complaints filed by public sector employees or their bargaining agents with the Canadian Human Rights Commission under section 11 of the *Canadian Human Rights Act* (or s. 7 or s. 10 if concerning wage discrimination) before the coming into force of this new legislation will be transferred to the Public Service Labour Relations Board. The legislation is thus retroactive and effectively removes vested rights. The practical (and legal) consequence is that public employees, in contrast to non-public sector employees, lose their vested rights to recover wage losses arising from the date of the filing of their complaints (or earlier). The Board, unlike the Commission, has no power to make an order for wage loss compensation going back to the date of those complaints.

The legislation further breaches Canada's international obligations by taking away a fundamental human right – pay equity! Doing so via a budget document clearly indicates the government's view that pay equity is a matter of budget allocation and not a human right.

In 1977, the Canadian government created the Canadian Human Rights Commission, an expert body to be a watchdog to ensure compliance with Canada's international human rights obligations. Now, without consultation with the Commission nor consultation with the public, the government is eliminating recourse to the Commission by public servants and eliminating the Commission's watchdog powers.

**2. Breach of section fifteen (s. 15) equality provisions of the *Canadian Charter of Rights and Freedoms***

The differential treatment of public-sector employees and the failure to ensure prevention and elimination of the historic effects of wage discrimination constitute a significant breach of the right to equality protected under the *Charter*. Women in the public sector will remain without meaningful recourse to wage equity and without any opportunity to remedy the continuing effects (such as pension inequities) of historic discrimination. The elimination of their vested rights under the *Canadian Human Rights Act* further aggravates this breach of the *Charter*.

**3. Breach of constitutionally protected labour rights**

The Supreme Court of Canada recently confirmed the historic nature of labour rights and concluded that these are deserving of constitutional protection. Yet by eliminating a worker's right to representation by their bargaining agent in complaints of pay discrimination, the proposed legislation denies a basic and longstanding pillar of labour rights in Canada.

#### 4. Breach of principles of democracy

The enactment of the *Canadian Human Rights Act*, including section 11 (equal pay for work of equal value) of the Act, was preceded by years of study, advocacy and lively public and parliamentary debate. The proposed *Public Sector Equitable Compensation Act*, which seeks to eliminate vested rights found in the quasi-constitutional legislation of the *Canadian Human Rights Act*, is embedded in a piece of legislation concerning budgetary matters and is a matter of a vote of confidence. Effectively, the Conservative government has prevented any full and meaningful democratic debate on these fundamental rights and pending losses. The elimination of rights currently guaranteed to public sector employees was done in back rooms and without genuine opportunity for discussion, debate or study.

We urge you in the strongest terms not to allow *Bill C-10, The Budget Implementation Act*, to be passed by Senate until the section on “equitable compensation” is removed or fundamentally changed so as to provide for real, proactive pay equity. Anything less would be giving your support to systemic gender-based wage discrimination. We encourage you to consult the Report of the 2004 Task Force on Pay Equity and to implement the recommendations found in that Report.

There has been much talk of recession, debt and economic stimulus. The government’s budget undoubtedly fails women on many fronts. However, to deny employees in the federal public sector equal pay for work of equal value is to endorse economic inequality. Not only will “equitable compensation” eliminate existing rights, it denies fairness as well as economic security for federal employees and their families. We urge you to act quickly and decisively.

Yours sincerely,



Penni Stewart  
President



James L. Turk  
Executive Director

cc: Members of the Liberal caucus in Senate  
Independent Senators  
Senator Anne C. Cools