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## **Standing Committee on the Status of Women**

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**EVIDENCE**

**Thursday, June 4, 2009**

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**Chair**

**The Honourable Hedy Fry**

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Thursday, June 4, 2009

•(1110)

[English]

**The Vice-Chair (Mrs. Patricia Davidson (Sarnia—Lambton, CPC)):** I will now call this meeting to order.

We do have some witnesses appearing on video conference today and we have some who are with us in person. I welcome Susan Russell from the Canadian Federation of University Women; Margot Young, who will be joining us by video, from the University of British Columbia; and Joanna Birenbaum from the Women's Legal Education and Action Fund.

Ms. Russell, you're representing the National Association of Women and the Law as well.

Thank you very much.

We will begin our presentations with Ms. Russell, please.

**Ms. Susan Russell (Executive Director, Canadian Federation of University Women):** Thank you.

On behalf of the membership of the Canadian Federation of University Women and the National Association of Women and the Law, we thank you for this opportunity to present today.

CFUW is a non-partisan, self-funded organization with over 10,000 women graduates and students in 118 clubs in across Canada. We work to further women's human rights and education globally. The National Association of Women and the Law is a national non-profit women's organization that promotes the equality rights of women through legal education, research, and law reform advocacy.

Our concern today over the Public Sector Equitable Compensation Act begins with its introduction as part of the 2009 budget package. Parliament was not able to evaluate the legislation independently of the budget. Given that the law aims to change 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 is cause for alarm.

I will list some points of particular concern with regard to the legislation itself.

First, the act suggests that "equitable compensation" should replace "pay equity". These are not equivalent terms. Pay equity is a fundamental human right enshrined in such things as the Convention on the Elimination of All Forms of Discrimination against Women and the International Covenant on Economic, Social and Cultural Rights. Equitable compensation is not defined in the act. As a legal

concept, equitable compensation is also untested by domestic and international human rights law.

Further, 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 the words "market forces" into evaluations. When it is these same market forces that create wage inequity in the first place, it is ill-advised to include them in legislation claiming to create equitable compensation.

The act represents a deliberate marginalization of the 2004 pay equity task force report. In 2001 a federal pay equity task force was established. After thorough review and consultation with the stakeholders, this task force made recommendations for a new proactive pay equity system that included a pay equity commission and tribunal. These recommendations were widely supported by unions, women's advocates, and employers. It is dismaying to see the work and consensus built up through that process being pushed aside in favour of the regressive provisions of the Public Sector Equitable Compensation Act.

This act leads to confusion between negotiated equitable compensation and proactive pay equity legislation. For example, on February 25, 2009, the Honourable 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." This is a misleading statement.

The new legislation was compared to the actual recommendations in the task force itself. The 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.

Likewise, the 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 could be bargained away, because other issues are of more importance to the employer or to the union.

The act contains a clause that removes the right of public sector workers to file complaints on pay equity with the Canadian Human Rights Commission, thereby effectively removing pay equity as a human right of 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 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 needed to make a viable complaint to the Public Service Labour Relations Board.

The act defines a female-dominated group as one in which 70% of the workers are women. Only those groups can seek equitable compensation. This is a rigid definition that does nothing for job groups whose membership is 51% to 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, and not across the public service as a whole.

CFUW and NAWL agree there are problems with the current pay equity regime. It is long, complex, and often unresponsive to the needs of women. However, this act does not address these problems.

Pay equity is a fundamental human right to be protected, affirmed, and championed by Parliament, as it is 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 backward 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 enshrined within this law.

Thank you very much for this opportunity.

•(1115)

**The Vice-Chair (Mrs. Patricia Davidson):** Thank you very much, Ms. Russell.

We will now move to our second presenter, Ms. Birenbaum, please.

**Ms. Joanna Birenbaum (Director of Litigation, Women's Legal Education and Action Fund):** Good morning. Thank you very much for this opportunity.

The Women's Legal Education and Action Fund, LEAF, is a national, not-for-profit organization dedicated to promoting substantive equality for women and girls in Canada through legal action, research, and public education. LEAF has intervened in over 150 cases on substantive equality at the Supreme Court and at other levels and is recognized for its expertise on the inequality experienced by women in Canada.

Central to LEAF's commitment to substantive equality is addressing the inequalities suffered by women who experience discrimination on multiple and intersecting grounds, such as on the

basis of aboriginal identity, race, poverty, disability, sexual orientation, and religion.

LEAF is very concerned by the Public Sector Equitable Compensation Act, or PSECA. The act constitutes regressive legislation that substantially erodes the fundamental human right of women who work in the federal public sector to equal pay for work of equal value.

Before discussing LEAF's concerns with the legislation, I wish briefly to emphasize the significance of pay equity for women in terms of achieving substantive equality for women in Canada.

The gender pay gap remains a pervasive reality for women across Canada. On average, women working full time earn 71% of what men earn. Women of colour earn 68% and aboriginal women earn a startling 46% of what men are paid. Sex-based wage discrimination devalues women and their work and is integrally related to other forms of employment discrimination against women, including occupational segregation, barriers to advancement, sexual harassment, and involuntary part-time employment, such that women's participation in the labour force is characterized by inequality.

Pay inequity also exacerbates women's vulnerability in ways that include increasing their financial dependence on men, even in situations where they are at risk of abuse or violence.

Discriminatory wages result in discriminatory pensions and discriminatory disability benefits. Pay equity is important for aboriginal women, younger and older women, immigrant women, women with disabilities, and women who experience racialized gender discrimination, because they are often segregated into the lowest-paid jobs, where wages are most affected by stereotyping.

As Susan Russell has already said, the right of women to pay equity has been enshrined in the Canadian Human Rights Act for 32 years. The Supreme Court of Canada has repeatedly confirmed that statutory human rights have quasi-constitutional status in Canada. The rights of women to be free from wage discrimination in the workplace and to equal pay for work of equal value are also guaranteed by section 15 of the charter, the equality rights guarantee.

In the NAPE case in 2004, the Supreme Court of Canada ruled that the cancellation of pay equity adjustments to government employees violated their section 15 equality rights, but in the specific circumstances of that case upheld the violation. Numerous international instruments ratified by Canada also recognize pay equity—and we emphasize “pay equity”, for the words “equitable compensation” are new—as a fundamental human right. These include the Convention on the Elimination of All Forms of Discrimination Against Women, the International Covenant on Economic, Social and Cultural Rights, and Conventions 100 on equal remuneration and 111 on non-discrimination of the International Labour Organization. These ILO conventions were ratified by Canada in 1951 and 1958 respectively.

In LEAF'S view, the PSECA is not consistent with Canada's statutory, constitutional, and international commitments and obligations to women's substantive equality. Prior to today, and also today, this committee has heard numerous submissions from unions and experts who have detailed the ways in which the PSECA takes away, rather than advances, the right of equality, the right of pay equity for federal public sector workers.

LEAF also refers the committee to the February 26, 2009, open letter to Stephen Harper by, among others, twelve recipients of the Governor General's Award in Commemoration of the Persons Case. That letter was also signed by the witness Margot Young. I provided copies to the clerk, although not translated, so you don't have them in front of you today.

● (1120)

LEAF supports the analyses submitted to this committee to date indicating that the act is inconsistent with women's statutory and constitutional equality rights for reasons that include: one, the act makes pay equity a matter of labour relations in collective bargaining, as opposed to an independent human right; two, the act makes the assessment of equitable compensation contingent on market forces, which are deeply influenced by the very gender biases and undervaluing of women's work that pay equity legislation is designed to challenge and overcome; three, the act narrows the right of pay equity, by limiting the scope of the right and by restricting comparisons of male and female job groups; and four, by making pay equity a joint responsibility of the union and employer, the act ignores the government's ultimate control over the purse strings in setting wage rates and it relieves the government of independent and ultimate responsibility for creating a workplace free from wage and other discrimination.

The act also ignores the systemic, relative powerlessness of women-dominated job groups in the collective bargaining process. While some unions have effectively achieved pay equity gains for their members, women's pay equity rights are highly susceptible to being traded away at the bargaining table.

LEAF wishes to use the remainder of its time to focus on three further issues.

First, LEAF is very concerned by the act's removal of any effective mechanism to enforce pay equity rights. If pay equity is not achieved through the collective bargaining process, women workers are left only with the option of making an individual complaint to the Public Service Labour Relations Board, which is not a specialized pay equity body. Claims that categories of jobs are subject to pay inequity are complex and technical and require significant information on job descriptions and pay rates. Yet under the act complainants receive no institutional or other support to investigate and advance such claims. Unions are fined \$50,000 for assisting or encouraging their members. Accordingly, for public sector workers, pay equity is for all practical purposes a radically diminished right without a remedy.

Second, LEAF is concerned about the broader implications of the legislation. The federal government should be taking a leadership role in advancing women's human rights. Instead, 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.

Third, the PSECA applies to the approximately 278,000 workers in the federal public service. It does not cover the approximately 840,000 workers in the federal private service, who remain under the Canadian Human Rights Act complaints-based regime. While the CHRA regime is preferable to the PSECA, in that it accords pay equity its proper status as an independent and enforceable right, the problems of the complaints-based regime are well known to this committee.

Since 2004, equality advocates, including LEAF, have pushed for the implementation of the recommendations of the pay equity task force for a proactive pay equity regime. With the PSECA legislation, we now have two federal regimes, neither of which is proactive and neither of which is designed to efficiently and effectively achieve pay equity for women. The federal government has stated that it is committed to achieving pay equity. If this is in fact the intention—and we very much assume that it is—the way to do so is to adopt a single, proactive federal pay equity regime in accordance with the recommendations of the pay equity task force.

We similarly request this committee to make recommendations that are consistent with that.

Thank you very much.

● (1125)

**The Vice-Chair (Mrs. Patricia Davidson):** Thank you very much for your presentation.

We will now go to the third presenter, Margot Young, appearing as an individual.

**Professor Margot Young (Associate Professor of Law, University of British Columbia, As an Individual):** Thanks.

I'm an associate professor at the Faculty of Law at the University of British Columbia, where I teach in research, primarily in the area of constitutional law, with a focus on women's equality issues, social justice, and law and poverty.

I want to begin today by providing what I think is an unavoidable conclusion about this new statute; namely, that at a practical level, the statute is contradictory. It doesn't set out to accomplish what the government has used in its promotion and characterization of it. It is not an improvement on the existing, already flawed system of pay equity enforcement. Rather, it is a step backward, and not a step forward, in terms of proactivity or more effective enforcement.

I do also think that the act is ideologically very clear. It 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. It is also clearly an enshrinement of a marketization of the issues. This comes at a time when we know already very clearly that the neo-liberal market capitalism that this kind of policy and statutory change represents has indisputably been profoundly problematic for economic and social governance issues and for economic and social justice.

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. I would note as well the key importance of equality in the labour market to women's general economic and social and civil equality in Canadian society.

With those introductory comments, I want to begin by talking about some more specific issues that the statute raises, but I want to do so against a backdrop of three broad observations.

The first observation pertains to women's ongoing and persistent economic inequality and marginalization, particularly the marginalization of key groups of women, as the other witnesses have spoken about—racialized women, women with disabilities, aboriginal women—in Canadian society. The role the government ought to play in addressing that inequality is also an important backdrop to consideration of the specifics of the federal government's legislation on pay equity in the public sector.

The second observation I want to have function as a backdrop to my more precise comments consists of reference to Canada's international and domestic obligations to women's equality, and in particular the importance of pay equity to substantive equality for women as various legal and quasi-legal documents at the international and domestic levels establish that equality.

The last broad point I wish to make is that pay equity has long and uncontroversially been recognized as a right. Recognizing a claim or an issue as a right means that certain characteristics require specific legislative and governmental responses. Indeed, as I go through my specific issues, I hope to point out the way in which the formal characterization of pay equity as a right is belied by the practical details of this new piece of legislation.

Let me begin, then, just by situating this moment in the history of pay equity or in the history of equality in employment in Canada specifically. I want to begin my comments by reminding us all of the 1984 Rosalie Abella report, the equality in employment royal commission. The terms of reference for this report required the commission to explore the most efficient, effective, and equitable means of promoting equality in employment for four groups: women, native peoples, disabled persons, and visible minorities.

In this report, Abella observes early on that equality in employment for women means a number of things. On page 4 of this report, she notes that it means taking women “seriously as workers and not assuming that their primary interests lie away from the workplace”. She goes on to say that “this means the active recruitment of women into the fullest range of employment opportunities”, including equal pay for work of equal value, fair consideration for promotions, participation in policy-making, accessible child care, paid parental leaves, and equal pension and benefits. You'll see that in this list that Abella generates, pay equity occupies a central place.

• (1130)

I want to remind us that an important piece of what's required for equality employment is the guarantee of pay equity for women. I also want to say that pay equity, of course, is not the only element that's required and that we should situate our concern about pay equity in the broader context of other issues that are also important to

women in achieving equality in employment. I would emphasize the child care issue, which I know your committee has looked at already.

When Abella wrote her report, she noted that at the time of writing, the situation with respect to pay equity was distressing and that “a massive policy response” to achieve equal pay for work of equal value was required. She noted that the federal Human Rights Act applies to only 11% of the Canadian workforce and that provincial coverage and also coverage for the private sector at the federal level were limited.

When we fast-forward to today, we see that the situation with respect to equal pay for work of equal value is not that different from the one described by Abella in her report. Across both federal and provincial governments, we see a distressing lack of proactive government attention to meeting this important requirement for women's equality in the labour market.

That brings me, of course, to the most recent development at the federal level, the Equitable Compensation Act. I have several observations that I want to make in relation to it, specific features of the legislative changes that are particularly disturbing and that cast a shadow over the status of pay equity as a right for Canadian women.

I want to begin by noting what the two other witnesses have also noted, that the changed legislative criteria for equitable compensation adopt the criteria set out in section 11 of the Canadian Human Rights Act, but importantly add to it the fact that market conditions will also be looked to in terms of establishing whether or not there is pay equity. The adoption of criteria of employers, recruitment needs, and other sorts of market considerations completely, I think, undermine the commitment to equal pay for work of equal value. As other witnesses today—and I am sure throughout your hearings—have pointed out, taking into the evaluation precisely the features that resulted in the discriminatory situation that needs to be remedied in the first place is so obviously problematic as to indicate a really clear intention to undermine the achievement of pay equity for women. The individuals who occupy job groups with pay inequity are among the more vulnerable in the market and the most vulnerable to the market forces. Indeed, reference to the market in this manner will serve simply to entrench sex discrimination, not to correct it.

I would just point out to the committee an interesting parallel development in human rights law in British Columbia—

• (1135)

**The Vice-Chair (Mrs. Patricia Davidson):** I'm going to interrupt you for just a second, please. I just want to remind you that your time is almost up. You have less than one minute left.

Thank you.

**Prof. Margot Young:** Okay, thanks.

There is a situation in the building of the new Olympic subway. Workers who came from Latin America on temporary visas were paid less than workers who came on temporary visas from Europe. That's another illustration of differential pay rates based not on gender discrimination but on forms of discrimination that are endemic to the market.

To conclude, I will simply note some of the other factors that you've had people speak about already: the restriction of what job group will count as female-dominated; the assignment of joint responsibility to both employers and unions, which really doesn't fit a model of rights; the reliance on the collective bargaining process, and the fact that rights are not something that are put in a situation in which they've been traded away or compromised; the denial of assistance and the contradiction that presents in terms of other international obligations Canada has specifically under the declaration on the rights of human rights defenders to provide assistance for defending human rights; and again the broader—

**The Vice-Chair (Mrs. Patricia Davidson):** Sorry, but I am going to have to cut you off there to be fair to everyone.

**Prof. Margot Young:** That's totally fine. I was just going to point out the broader backdrop of international rights, and I'll finish.

**The Vice-Chair (Mrs. Patricia Davidson):** Perhaps your points will be brought out in questioning.

**Prof. Margot Young:** That's fine.

**The Vice-Chair (Mrs. Patricia Davidson):** We'll go to our first round of questioning for seven minutes.

Ms. Zarac, please.

[*Translation*]

**Mrs. Lise Zarac (LaSalle—Émard, Lib.):** Welcome to our witnesses. Thank you for your comments.

I have so many questions that I almost do not know where to begin. You all stated that work on pay equity for women has been going on for decades. According to the statistics, even after decades of work in this area, women still earn between 48% and 71% of what men earn. That is cause for some concern.

Ms. Young talked about our international responsibility. Canada is often viewed as a model to emulate in light of its Constitution which is studied around the world. We should continue to set an example.

However, Ms. Young, you did observe that Canada was in fact not setting an example, given the changes to the Public Sector Equitable Compensation Act. You were also wondering if, based in Ms. Abella's 1984 report, women are taken seriously in the workforce.

I'd like you to elaborate on that statement. Do you seriously believe that women are considered to be men's equals in the workforce?

[*English*]

I heard you say they're not taken as serious workers.

**Prof. Margot Young:** I think that's a really important question.

One of the remarkable things about the change in the workforce pattern over the 20th century is the dramatic increase in women's involvement in the labour force, which is not to say there haven't always been women working outside the home in the paid labour force, but that we have seen large numbers of women entering the labour force and those numbers growing throughout the 20th century.

Pay equity is a critical condition of women receiving equal treatment and achieving equity in the labour market. So when you

ask if women are treated equitably, I think the statistics are clear that we have a pay inequity problem. We have many other problems as well with respect to women's involvement in the labour force, such as the placement of women overwhelmingly in precarious labour situations, inadequate child care, and lots of employment standards issues.

So I do think there's a huge constellation of issues around women's equality in the employment market that still persists and that is still deeply troubling and problematic.

Have I answered your question?

• (1140)

**Mrs. Lise Zarac:** Yes, thank you, Ms. Young.

[*Translation*]

My question is for all three of you. Who is responsible for pay equity? Who has the authority and the responsibility to ensure equity? Is it the employer, the union, or the government? In your opinion, who is responsible for ensuring equity?

[*English*]

**Prof. Margot Young:** Who wants to go first?

**Ms. Joanna Birenbaum:** I'll start, and I'm sure, Margot, you'll have additional comments.

In some ways it's a difficult question, because what do we mean by responsibility and power? At the broadest level, we all have some role and responsibility. Unions have a role, the government has a role, employers have a role, but the question is, how does that role get shaped and framed?

The government's role is to enact appropriately rights-based legislation with, in LEAF's view, a specialized pay equity body that would be appropriately resourced with the powers to both investigate complaints or issues, and to assist in the resolution of issues and the development of pay equity plans, and so on.

The employer and employees, whether it's the employees or the union, have a role and responsibility to work in good faith and collaboratively to create pay equity plans, but within the legislative framework similar to the pay equity regime—

[*Translation*]

**Mrs. Lise Zarac:** ...and not as part of the collective bargaining process. Is that what you are saying?

[*English*]

**Ms. Joanna Birenbaum:** That's correct. It is inappropriate for the current legislation to allocate legislative responsibility to unions over matters that they don't ultimately have any control over.

Margot or Susan Russell may have some additional comments.

**Prof. Margot Young:** I'm happy to jump in, but go ahead, Susan.

**Ms. Susan Russell:** In my view, the government has several responsibilities, the first of which is to enact good laws that abide by the human rights conventions to which we are signatory. I think this is absolutely crucial.

I suspect that this law was formulated without full consideration to those human rights commitments. I don't think it was enacted in bad faith, but I think full consideration to obligations to which we were already a state party was not given. This is why CFUW and NAWL had a problem with it being bundled into the budget. It effectively takes away a right that has been enshrined in the Constitution.

That is where I see the government's responsibility, to make sure that the laws are good and do not infringe on or take away any current human rights, and indeed to advance human rights wherever possible.

[Translation]

**Mrs. Lise Zarac:** Would you care to add to that, Ms. Young?

[English]

**The Vice-Chair (Mrs. Patricia Davidson):** Just very briefly, please.

**Prof. Margot Young :** Very clearly the responsibility lies with the government. In this specific context, it lies with the government both as government per se and also as employer.

It would be odd to say that you would place on an individual whose rights have been infringed the responsibility to enforce and to ensure those rights. We turn to the perpetrator of discrimination to take responsibility for that discrimination, not to the individuals who are discriminated against, who typically are more vulnerable and don't have either control over the situation or power, economically or socially.

First off, then, very clearly responsibility lies with the government. I would also say that there is a clear recognition...although it's one that's been under challenge for the last 30 years, and under challenge in a way that has shown to be fundamentally wrong, with what's happened in terms of unregulated markets. But we—

• (1145)

**The Vice-Chair (Mrs. Patricia Davidson):** Ms. Young, I'm sorry; your time is up once again.

We'll now go to Madam Demers, for seven minutes, please.

[Translation]

**Ms. Nicole Demers (Laval, BQ):** Thank you, Madam Chair.

Thank you very much for coming here today.

Ms. Russell, you are still with the National Association of Women and the Law, even though this association had to shut down its operations further to the cuts to Status of Women Canada. Congratulations on continuing your work on a volunteer basis. That is a remarkable accomplishment. We need women like you to defend women's rights.

Ms. Birenbaum, is LEAF, the Women's Legal Education and Action Fund, funded by Status of Women Canada?

You spoke of the erosion of the right to equal pay for work of equal value. One thing concerns me greatly, Ms. Birenbaum, and that is the \$50,000 fine that unions will have to pay if they want to defend an employee who challenges the current legislation. That employee has no recourse to assert her rights. Because of the demise of the Court Challenges Program, that individual is all alone and

without help if she wants to assert her rights. What is the point of collective bargaining if the union cannot defend the individuals on whose behalf it is bargaining?

One other thing also concerns me a great deal. The Canadian Human Rights Tribunal used the same language and the same policies in its recent decision. For example, I read in today's Ottawa Citizen that for the past 30 years, the government has been discriminating against a group of women nurses who were in fact more like medical advisers than nurses. Eighteen months after the federal government was found guilty of discriminating against these women, the Canadian Human Rights Tribunal informed this group of women that while it believed them and knew they were right, it would have to ask the government to create a nurses subgroup, a medical advisors group, within 60 days, with the salaries to be determined through collective bargaining.

I was completely floored by this. How is it that the Canadian Human Rights Tribunal is using the same language as the government with regard to the new legislation?

In all, 840,000 people do not fall within the scope of this act and their cases will also have to be reviewed by the Canadian Human Rights Tribunal. How long will that process take? I find the situation quite worrisome.

What is your take on everything that is happening—and not just on recent events? We are seeing an erosion, not only from the standpoint of salary, but in every respect. I'd like to hear your thoughts on this matter.

[English]

**The Vice-Chair (Mrs. Patricia Davidson):** Ms. Birenbaum, go ahead quickly, or we'll be running out of time again.

**Ms. Joanna Birenbaum:** I agree. There's a significant concern, as you identified; it's a foundational, constitutional principle that a right must have a remedy. Under the current PSECA regime, there is no remedy for women, particularly the most vulnerable and most marginalized women. There's no right to pay equity under this regime following that line of reasoning. One of the reasons you've identified there is no remedy is that marginalized women are simply going to be unable to bring large systemic cases before an expert body. It's simply impossible. I agree it's a significant concern, and there's a larger pattern currently in terms of women's access to justice, whether it's through cuts to legal aid or the elimination of the court challenges program. These are all very significant issues, I agree.

• (1150)

**The Vice-Chair (Mrs. Patricia Davidson):** Thank you.

Ms. Young.



**Prof. Margot Young:** I would add to that as well the broader context of cuts that implicate women's access to justice generally. This is a specific concern. It's a concern as well because the complaint process is an individual one. Complaints about pay equity by definition are group complaints. That's the best frame to get the most accurate and informed picture of the pay equity issues. That is simply no longer permitted under this new legislation.

The broader concern you raise about the contamination more widely of the recasting of pay equity is a very reasonable and important one to raise. Although we still talk about pay equity as a right, and the government does, I think it's clear from the deterrents of this legislation that it's no longer being treated as a right. Rights are not enforceable, identified, and remedied in the way that equitable compensation purports to be by this statute.

**The Vice-Chair (Mrs. Patricia Davidson):** Ms. Russell.

**Ms. Susan Russell:** From the perspective of CFUW, I would say no. We just think this legislation takes away the access to pay equity because it takes away the ability to challenge, and it takes away the ability to get the kind of help that people need. There are no court challenges. Unions can't help. If people are on their own, they can't challenge the big guys. There's just no way. I don't have a lot to say, but I say it from the bottom of my heart: this really places women in a very unequal and unenviable position. They cannot access the right to pay equity.

**The Vice-Chair (Mrs. Patricia Davidson):** Madame Demers, you have about 30 seconds, if you want a very quick question.

[Translation]

**Ms. Nicole Demers:** I'd just like to know if, in your opinion, the pay equity legislation recently updated by the Quebec government would be the ideal answer to the problems that we are currently experiencing.

[English]

**Ms. Joanna Birenbaum:** The legislation in Quebec is certainly far better than the PSECA, and the task force recommendations build upon the best of the Quebec and Ontario models, and that, in our submission, is the direction the federal government should go.

**The Vice-Chair (Mrs. Patricia Davidson):** Okay. Thank you very much for your questions, Madame Demers.

We'll now go to Ms. Hoepfner for seven minutes, please.

**Ms. Candice Hoepfner (Portage—Lisgar, CPC):** Thank you very much, Madam Chair. Thank you to the witnesses for being here.

Before I ask you a question, I do think it's important that we just clarify a few things that you mentioned. This government has in fact increased funding to Status of Women by approximately 42%. We have redirected it somewhat. We want to make sure that it has a direct impact on women.

I'll give you an example that we just learned of. We just completed a study on EI benefits, and we found out that back in 2000 there was some research done on whether women would benefit from having self-employed individuals be able to receive paternity and maternity benefits. That study and that research were done in 2000, but absolutely nothing was done under the then government. We were elected in 2006. We immediately looked at this issue, brought a task force together, and we are going to be addressing the issue.

The other area that we have really acted on is matrimonial real property rights for aboriginal women. I think it needs to be clarified that we have increased funding, but we don't want to see it tied up in a lot of studies. As much as we respect and admire academic groups, our purpose and our goal are not to fund or make sure that jobs are created in academic groups. Our goal is to make sure that funding gets directly to women and to helping women on the ground. I think it's important that issue be clarified.

My question is for you, Ms. Birenbaum. Under the court challenges program, we were told by some of the groups that it actually took 18 years. We had some women sitting in court for years and years and years, being asked questions and going through really tremendous hardships. Can you just tell me as a lawyer, how much time legal counsel would be able to bill? How many hours would legal counsel be able to bill if under the court challenges program something dragged on for 18 years?

• (1155)

**Ms. Joanna Birenbaum:** I think what your question is directed at is this larger justification for the PSECA, which is that it's more efficient because there won't be any more complaints brought under the PSECA because no one's actually going to be able to bring these complaints. One of the difficulties with that justification for the legislation is that it doesn't look at why cases drag on for years and years. The reason, frequently, is that there is resistance by the respondent to the rights claim, and that's very true in the case of the pay equity claims that have dragged on.

**Ms. Candice Hoepfner:** I think you would agree that, obviously, there are a lot of lawyers making a lot of money on the backs of this program.

**Prof. Margot Young:** I'm going to jump in here because I very strongly disagree with that. I would link it back to your comment about the court challenges program. I see the court challenges program as critical to making the section 15 equality guarantees of the charter available and accessible to the most marginalized groups in our society.

I want to give you an example of a case that would not have proceeded but for the availability of both the court challenges program's funding and the willingness of the lawyer who took that case to do significant pro bono work on that case, because of course the court challenges funding was never fulsome and never covered costs completely. It always relied upon lawyers contributing their own time without the range of pay that lawyers in other circumstances would receive.

I'm referring to the case of Sharon McIvor. That started in British Columbia, and recently there was a decision in McIvor's favour in B. C.'s Court of Appeal. That was the case that dealt with discrimination against women under the Indian Act, an issue that has plagued this country for decades. That case would not have proceeded but for the court challenges program. Other Sharon McIvors out there suffering under discrimination won't get their day in court without the court challenges program.

**Ms. Candice Hoepfner:** I appreciate that. We actually had a couple of witnesses, Gisèle Pageau and Barb Byers. They are both women who don't necessarily agree with our position, but they stated that many lawyers are making a lot of money on the backs of women. I think it's important, even though we might not agree on everything, that we do agree that we don't want to see women suffering. They are suffering under the current program. It's not working. We are seeing the legal community making a lot of money.

My other question is that we know that unions are the primary groups that help determine wages. We know that. Do you believe that unions play a role at all in ensuring that equitable compensation is achieved?

That's open to anybody.

**The Vice-Chair (Mrs. Patricia Davidson):** You're asking....

Ms. Young.

**Prof. Margot Young:** Yes, of course. They're the workers' representatives. They have an obligation as the workers' representatives to take those pay equity concerns to the bargaining table. That does not mean, however, that the discrimination that results in an employment context is the union's fault in the same way that it's the employer's responsibility.

To say that unions stand in the same position as the employers is not sensible.

**Ms. Candice Hoepfner:** If I'm understanding you correctly, you're agreeing that unions play a role, but you're saying that once that agreement is reached, then maybe a year in, if they decide they're not happy with it, the union should not have to assume any responsibility for that agreement already having been reached. Is that correct?

They play a role—

**Prof. Margot Young:** No, that's not correct. I hear someone else trying to get into this conversation.

**The Vice-Chair (Mrs. Patricia Davidson):** Go ahead, Ms. Young.

**Ms. Candice Hoepfner:** That means they play a role, and they can help women achieve the equitable compensation. If they do play a role, they play a role, and they should be part of the process.

**Prof. Margot Young:** They already are part of the process. I guess what I would argue—and many others would argue—is that the assertion of a pay equity right ought not simply to be part of the collective bargaining process. It ought not to be thrown into the mix of all the other things that are collectively bargained for. I think that's an initial point that is part of the answer to your question.

The second point is that—

**The Vice-Chair (Mrs. Patricia Davidson):** Once again, we're going to have to....

I'm sorry, but your time is up again. Thank you, Ms. Hoepfner.

We'll now move to Ms. Mathysen for seven minutes, please.

• (1200)

**Ms. Irene Mathysen (London—Fanshawe, NDP):** Thank you very much. Thank you all for being here.

I have a couple of quick questions, but I would like to begin by stating, in addition to Ms. Hoepfner's point, that quite some time ago I tried to get information in regard to just how much the Government of Canada had spent over the years in challenging pay equity settlements. It wasn't available. I was not able to get that information, but I had a profound sense that the taxpayer had been billed a considerable amount of money.

I quite agree that in challenging pay equity, very often it's the lawyers who get rich and it's women who are disadvantaged.

I have some quick questions. The first is whether any of you were consulted when the government brought forward the PSECA. Were you part of the consultation process at all?

**Ms. Joanna Birenbaum:** No.

**Ms. Irene Mathysen:** Did you regard that as an oversight by government, or would it have been better had they consulted with you?

**Ms. Joanna Birenbaum:** I think what that question points to is the overall process, which Susan referred to in her comments. There was a huge public investment in the pay equity task force, with hundreds and hundreds of hours, submissions, and government investment in that process. This legislation was rushed through without apparent consultations or discussions about whether this current legislation would better achieve the ends than the recommendations in the pay equity task force. There's certainly no evidence that this legislation is in any way superior, and as we've submitted today, all of the evidence is that it is not.

**Ms. Irene Mathysen:** I'd like to come back to this question of collective bargaining. One of the things that's been established quite clearly in international law and in our discussions here is that pay equity is a human right.

Quite simply, it is a human right, and in the collective bargaining process there are a lot of things on the table—wages, benefits, and working hours. The risk is that in that process of negotiation, the employer could quite easily say, "All right, I'll raise wages a bit, and I'll give you benefits in terms of dental care, but pay equity is strictly off the table." Can that happen? Is that a real possibility?

**Ms. Susan Russell:** I believe—

**Prof. Margot Young:** It can absolutely happen. That's the concern. The notion of rights encodes an idea of trumps: an entitlement that you don't trade away and that you get regardless simply by virtue of your status as a human person deserving of dignity and equal respect. To put it as another item with other items on a bargaining table is really to say that it's not a right.

**Ms. Irene Mathysen:** Ms. Russell, did you have a comment?

**Ms. Susan Russell:** Yes. I believe that pay equity is a fundamental right, and it's very easy to get it bargained away. A lot of the discourse around this table about court challenges, unions, and so on and so forth is all about democracy, and I have to tell you that democracy is not efficient, but it's what we have and it's what we aspire to.

The court challenges may not be the best way, but it's been a shining international example of what Canada could do to speak for the less fortunate and to bring issues forward before the government. I fear that when people lose rights, when they lose protections, democratic principles are at risk.

**Ms. Irene Mathysen:** Thank you.

We're talking about human rights here. I know there has been a challenge against this piece of legislation. I'm wondering about the legal implications, therefore, of the PSECA. Does it indeed violate the Canadian Charter of Rights and Freedoms?

**A voice:** Yes, it does.

**Ms. Irene Mathysen:** How so?

**Ms. Joanna Birenbaum:** Well, on a number of grounds, but LEAF's focus would be on the equality rights provision: that the legislation perpetuates and entrenches sex-based wage discrimination, and as a result, it falls afoul of the equality rights guarantee.

•(1205)

**Ms. Irene Mathysen:** Okay.

Professor Young, there was a reference made to the letter to the Prime Minister that you and a significant number of other quite noteworthy Canadians signed in February. Have you received a response to that letter? It's quite some time ago now that it was sent. If not, does that concern you? What does that say?

**Prof. Margot Young:** Well, no, I haven't received a response as a signatory, and to my knowledge, none of the other signatories has either. That distresses me, to tell you the truth.

To send a letter off to my Prime Minister, and in particular a letter that had so many signatures on it of so many women who have been significant—and I'm not including myself—in key sectors of Canadian society and the struggle for women's equality.... I think it's shameful to not get a response. I think this letter was an important and powerful statement of concern by leaders with expertise on women's equality and pay equity in particular. To have it fall with no response is really shocking.

**Ms. Irene Mathysen:** I want to get back to the act itself. What stipulations within the PSECA would encourage employers to ensure the equal wages of their employees? What types of penalties, for example, would the Public Service Labour Relations Board impose on employers who fail in their pay equity obligations?

**The Vice-Chair (Mrs. Patricia Davidson):** We have time for a very short answer.

You have about 20 seconds, please.

**Ms. Joanna Birenbaum:** It's not clear if it will ever get to the board, particularly if it has to get there by way of individual complaints.

**Ms. Irene Mathysen:** Are there penalties for employers? Is that in the act at all? Did you see that in the act?

**Ms. Joanna Birenbaum:** My understanding is that it's not specified.

**Ms. Irene Mathysen:** So employers are not compelled.

**The Vice-Chair (Mrs. Patricia Davidson):** Thank you very much, Ms. Mathysen.

We'll now move to our second round of questioning.

Ms. Neville, you have five minutes.

**Hon. Anita Neville (Winnipeg South Centre, Lib.):** Thank you. I think I'm sharing my time with my colleague, Mr. Volpe.

I want to take a different approach—somewhat following up on Ms. Mathysen's line of questioning—that I was thinking of particularly as Ms. Birenbaum was making her presentation.

At least two of you are lawyers, and I guess I'm asking for some legal input. What I am struck by increasingly is the vulnerability of this legislation to appeals in the courts.

Is that a fair comment?

**Prof. Margot Young:** I'm sorry, could you repeat that?

**Hon. Anita Neville:** I'm struck by the vulnerability of this legislation to legal appeals, legal remedies, or challenges. I'm hearing that it is not constitutional, that it is not in line with our international commitments, that it is not in line with previous commitments.

How vulnerable is this legislation?

**Ms. Joanna Birenbaum:** As you know, two constitutional challenges to the legislation have already been filed.

**Hon. Anita Neville:** I didn't know that.

**Ms. Joanna Birenbaum:** Oh, sorry. One was by the Public Service Alliance of Canada and one was by the Professional Institute of the Public Service of Canada.

So that litigation is already under way. I agree with you; if there isn't legislative change, those cases will wend their way through the courts.

**Hon. Anita Neville:** Without the assistance of the court challenges program.

**Ms. Joanna Birenbaum:** That's correct.

**Prof. Margot Young:** I'd like to add something to this discussion that I think is an important consideration.

I think it is critical that there be a challenge—under particularly section 15 of the charter—to this legislation that raises some really significant issues about women's equality. But I would also say that there are broad equality aspirations in our Constitution, aspirations of substantive equality, that the government should take to heart and implement, regardless of whether or not they think they have a piece of legislation that they can charter-proof. Section 15 of the charter is an important tool, but it's not the last word on whether we have legislation that is fair and equitable towards women.

**Hon. Anita Neville:** Thank you.

**The Vice-Chair (Mrs. Patricia Davidson):** Mr. Volpe.

**Hon. Joseph Volpe (Eglinton—Lawrence, Lib.):** I'm delighted to join in this debate; I guess it's more than just questions and answers.

You'll forgive me if I insinuate a quasi-ideological question inasmuch as it follows up on what one of the members of the government side asked with respect to the role of unions.

As my colleague Ms. Neville indicated, of course, if there is already a challenge before the courts on the legislation, it would appear that we are moving away from holding responsible the unions and other public and private organizations for any shortcomings in parity, in equality, whether it's in conditions or whether it's in salary or just, generally speaking, in law.

But can this be achieved? Can we work towards a system of remuneration that takes into consideration the entire package of disbursements for the public—in this case, not only women but also those who truly do believe in equality—without having a federal role through a court challenges program that sustains any challenges in the courts through legislation that would violate those principles, irrespective of the origin of the violation?

I'm asking that of Madam Birenbaum first, I guess, and then either Ms. Young or Ms. Russell, whichever of the two.

● (1210)

**The Vice-Chair (Mrs. Patricia Davidson):** You have about 40 seconds to reply.

Ms. Birenbaum, please.

**Hon. Joseph Volpe:** It's an important issue. I think they should be given more time.

**Ms. Joanna Birenbaum:** I would just note that the suggestion that the court challenges program has benefited only lawyers is extremely controversial, and perhaps even outrageous. The court challenges program is separate from the pay equity issue in the sense that if a proactive pay equity regime, consistent with the task force recommendations, is enacted, then you have a system whereby the rights-holders have supports through either their union or their workplace, in conjunction with a well-funded, specialized pay equity body. That's why the court challenges program is a somewhat different issue.

**Hon. Joseph Volpe:** Professor Young.

**The Vice-Chair (Mrs. Patricia Davidson):** Thank you very much.

I'm sorry, but we've already gone over your time, Mr. Volpe.

We'll now move on to Ms. McLeod for five minutes, please.

**Mrs. Cathy McLeod (Kamloops—Thompson—Cariboo, CPC):** Thank you, Madam Chair.

I think I need to start, as I probably have in each hearing we've had on this particular issue, with the very sincere comment that I think everyone is trying to achieve the same goal. We perhaps have a different world lens, in terms of how we can achieve it. I would really like to put on the table that this is the sincere interest of the government.

I know that democracy is not always efficient, but I also believe in a pragmatic approach to getting things done. I also believe that to truly embed equity, we have to start to make it widespread and embed it everywhere. We can't count on the expertise of a panel that has to spend years. We have to develop skills and expertise throughout Canada, in terms of doing the job and in terms of the pay equity issues. I actually believe that we can develop skills and expertise throughout.

I want to focus in on two particular issues, and I have one quick question to Ms. Birenbaum.

You mentioned aboriginal women as compared to men. I know aboriginals, period, have real challenges with employment. Do you have the statistics for aboriginal women compared to aboriginal men, in terms of that statistic that you talked about earlier? If not, that would really be appreciated.

**Ms. Joanna Birenbaum:** I don't have them available, but I'm not sure why the comparator would be aboriginal women to aboriginal men when aboriginal men are also subject to discrimination on the basis of race.

**Mrs. Cathy McLeod:** No, no, but it would just be of interest.

I've worked at the coal face with aboriginal communities in health care, etc., so I'm going to use an example, in terms of market forces, and perhaps you could share with me why you think this is wrong.

The nursing profession is typically female-dominated. We have nurses in our federal government system. Perhaps we're doing a classification process. Let's say they decide they will go through the whole process, and physiotherapists, who, let's say, are 50-50 male to female, end up in the same category—this is a little bit hypothetical—so here you have physiotherapists and nurses in the same category. But the nurses are in short supply. Nurses are being drained off to the United States or are being drained off throughout the world, and physiotherapists are not in such short supply. In this case, you look at women and a predominantly female profession. Are they not going to be unduly harmed by not taking into account market forces?

Market forces make some sense to me, and again I'll use that example of nurses. In this case, nurses who would actually be putting market forces into the formula would perhaps benefit from it. I open that up for some comments.

● (1215)

**Prof. Margot Young:** I can start off.

I'm not sure that your hypothetical actually captures what's at play here—and I understand hypotheticals are always hard to draw—with the concern with respect to market forces. The issue that led to the recognition of pay equity in the first place was the recognition that women enter the labour force with a vulnerability to gender discrimination, and the characterization of jobs as being considered typically female results in a devaluing of them. The bargaining power that women and groups of other vulnerable individuals have in entering into an employment relationship reflects discriminatory attitudes and presuppositions, and in fact is such that it's not a situation in which we can say that the market forces operate neutrally and without gender discrimination. The statistics we see about pay inequity between men and women are products of that process, so why would we go back to that process thinking it would remedy itself?

**Mrs. Cathy McLeod:** Thank you, but again I would go back, perhaps, to my example.

**The Vice-Chair (Mrs. Patricia Davidson):** You have about 15 seconds, Ms. McLeod.

**Mrs. Cathy McLeod:** My final comment, given the fact that we're trying to create the same results, is that it would be wonderful to have, sometime down the road, some comparative analysis with the Quebec system to see who's actually achieving the results they're trying to achieve. I would really look forward to that kind of review.

Thank you.

**The Vice-Chair (Mrs. Patricia Davidson):** Thank you.

Now, for five minutes, could we have Monsieur Desnoyers, please?

[Translation]

**Mr. Luc Desnoyers (Rivière-des-Mille-Îles, BQ):** Thank you, Madam Chair.

When I first set eyes on this bill, my jaw dropped. It is unquestionably a major step backward for women who have fought for decades to build a Canadian and Quebec culture in which women's basic rights are respected.

I negotiated collective agreements for over 27 years, at a time when there was no pay equity legislation and where a power relationship prevailed during the negotiation of wages for plant workers. Often, there were gaps and injustices. When the legislation was enacted in Quebec and at the federal level, it meant employers, employees and unions could truly work to implement the legislation's provisions and reduce any inequities. Hundreds of collective agreements were successfully negotiated and the provisions of the Pay Equity Act implemented without having to pay lawyers. This was a major accomplishment and a radical shift in culture.

In your opinion, what impact will this legislation have on women? The right to equality is threatened, along with other rights. You mentioned employment insurance. If the gaps widen, women will have less than men.

Do you anticipate that the legislation will have any kind of impact on pension plans? I'd like to know if you think the legislation will have a negative impact on women in many areas of society.

[English]

**The Vice-Chair (Mrs. Patricia Davidson):** Who would you like to answer that?

**Prof. Margot Young:** I don't want to jump in first again. Would someone else like to?

• (1220)

**The Vice-Chair (Mrs. Patricia Davidson):** Go ahead.

**Prof. Margot Young:** Okay.

I'll just say very briefly, so as to give others a chance as well, that I think we'll see a halt to pay equity progress in this sector, straightforwardly. And of course, as you noted, this has implications for the full economic lifespan of these women. I think, as well, an important message is being sent that this is not a government that prioritizes women's equality, and that it's willing to give only lip service to these important key measures.

**The Vice-Chair (Mrs. Patricia Davidson):** Ms. Birenbaum.

**Ms. Joanna Birenbaum:** I would add to that, as I indicated in my initial statement, that when you have a marginalized group of workers, whether they're immigrant workers or aboriginal workers, and you don't have a regime that's actively working to address the discrimination they experience in the workplace—in this case, in terms of wages—that has fallout in other areas. As you've indicated, that can be in areas of benefits—so pensions and so on—but also in how these workers are viewed within the workplace, which can impact on sexual harassment and other indicia of discrimination arising from their being devalued as people and as workers.

**The Vice-Chair (Mrs. Patricia Davidson):** Ms. Russell.

**Ms. Susan Russell:** I would agree with that statement.

I feel that it's very important to have the right to pay equity enshrined. I feel that it's difficult for people to bargain. I feel that it affects long-term poverty, because people are not as well able to put away money for old age. This is something that is really echoing with senior citizens today, because they lived under inequitable pay conditions during their working lives.

I would suggest that pay equity is actually one of the key factors in getting off the poverty treadmill and getting women to economic independence. They should not have to be dependent on another person in the household in order to be rich in their old age. They should not have to be dependent on another person in the household in order to be able to afford child care, and so on and so forth. It's a kind of spillover effect.

It's really important for women to get the same money as men do in the same job and be recognized as being equal with men. If their talents are equal, I don't see why their pay should not be equal. It seems to me that is only fair.

**The Vice-Chair (Mrs. Patricia Davidson):** Thank you very much.

We'll move now to Ms. Mathysen for five minutes.

**Ms. Irene Mathysen:** The PSECA doesn't explicitly set out how complaints of discriminatory practices should proceed that don't involve predominantly female job groups but do involve issues pertaining to women's wages or other kinds of remuneration.

However, if a female employee is not being promoted to a senior level and is therefore receiving less overall wages, there's nothing there. Is the process, therefore, less efficient than was outlined by the pay equity task force report of 2004? Are there things here that we need to be concerned about?

That's for anyone who cares to answer.

**The Vice-Chair (Mrs. Patricia Davidson):** Who would like to go first?

**Prof. Margot Young:** Should we hear from LEAF first, because that was an explicit part of their original submission or...?

**Ms. Joanna Birenbaum:** [*Inaudible—Editor*]...the question. Is this process less efficient than the pay equity task force—

**Ms. Irene Mathysen:** Or less fair.

**Ms. Joanna Birenbaum:** —and less fair? Yes, it is, in so many respects, in the respects identified in the various statements today. Yes, it is less fair, but it's hard to know where to even begin with the question, because fundamentally the PSECA is not about addressing or redressing discrimination against women in the workplace.

•(1225)

**Prof. Margot Young:** I would say there are three features that generally are sort of problematic, although with specific details. The first is its coverage. The second is the process. Thirdly, there's the content. What we might anticipate will actually be recognized as a situation where there is inequitable compensation, I think, is more narrowly defined as well. Those are all matters of concern, not just of efficiency but also of fairness.

**Ms. Irene Mathysen:** Okay. We've talked a bit about the complaint mechanism within the act that is compelling employees to go to the Public Service Labour Relations Board. This, of course, is open only to unionized employees, and the burden of proof is on the worker. It's my understanding that it's a complex process and that the individual may not have access to all of the information.

I know specifically that in defining what is equal pay for work of equal value, a great many things go into it, and some of that has been mentioned today: skill, background, and the level of difficulty the job entails. In determining what is equal, it's a very complicated process. I went through it in Ontario back in 1990-91 and it took a great deal of effort.

With that in mind, how on earth does an individual without any support make her way through this process? Is this an imbalance of power? What are the implications of this kind of imbalance?

**Ms. Joanna Birenbaum:** Absolutely. You've identified many of the key concerns about the individual complaints process—or some of the key concerns. 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 and is systemic.

So the information the individual would require is systemic information, and our submission is that this information cannot and will not be available to individuals, which will make it impossible for them to advance complaints. As you say, the inequality between the government and one individual, one immigrant woman who wants to bring a complaint against the federal government, which is the employer, is immeasurable.

**Ms. Irene Mathysen:** And this information—

**Prof. Margot Young:** The short answer is that effectively she probably doesn't make her way through the process. You can compare this to the process in place for other workers under the Canadian Human Rights Act, whereby the Human Rights Commission would be available to some extent, at least in the initial investigation, to give some aid to the framing of the complaint and the informing of it. That's not available. Under this legislation, the woman has neither the assistance of her union nor the assistance of an agency or a body like the commission.

**Ms. Irene Mathysen:** Certainly, the—

**The Vice-Chair (Mrs. Patricia Davidson):** Ms. Mathysen, you have five seconds.

**Ms. Irene Mathysen:** Thank you very much. I appreciate the expertise.

**The Vice-Chair (Mrs. Patricia Davidson):** Thank you.

We will now move to our last questioner, Ms. Tilly O'Neill-Gordon, please.

**Mrs. Tilly O'Neill-Gordon (Miramichi, CPC):** Thank you, Madam Chair.

I want to congratulate you on how smoothly you keep things rolling. Everything just seems to be going right along.

I want to welcome the visitors here this afternoon.

First of all, my question is this. When you look at negotiations and unions—I was in a union all the time—do you agree, each one of you, with unions negotiating our salary and our health benefits, and why?

**Ms. Joanna Birenbaum:** That's an extremely broad question.

It sounds like Margot wanted to jump in.

**Prof. Margot Young:** I just want to say that if you're asking whether I support a collective bargaining regime, I do absolutely. I think it's a key feature of workplace justice in many circumstances, so I think unions have been important and continue to be important in terms of workers having fair, equitable, adequate employment contracts. But that is a very broad question you're asking, and if it leads to—

**Mrs. Tilly O'Neill-Gordon:** I'm just looking for a yes or no—it's not that broad—and why.

**Prof. Margot Young:** I think my answer was a yes.

**Mrs. Tilly O'Neill-Gordon:** (*Inaudible—Editor*)...justice in that area, is what you're saying.

And what about you, Joanna?

**Ms. Joanna Birenbaum:** I don't think there's any question that unions have played a very important role in protecting and advancing the rights of workers, but unions have been somewhat less successful in dealing with the inequities within the.... Unions are made up of people, and if you have the vast majority of a union made up of men in various positions, and then you have less powerful voices within the union, that comes into play in the collective bargaining process.

•(1230)

**Mrs. Tilly O'Neill-Gordon:** It does with our salary and with our health benefits.

Susan, what do you think?

**Ms. Susan Russell:** As someone who's actually never had a union, there are times when I have wished that I had a union to help me out. I did not have the information. I did not have the backing. I did not know where to turn. So I am personally very much in favour of unions, and I would have them negotiate for me any day.

**Mrs. Tilly O'Neill-Gordon:** I think that's what I was trying to say: we feel that if we have a union negotiating, then we can be pretty sure of our salary and our health.

My next question is why you feel pay equity does not belong in a union. When we are the first to say that our salary and our health benefits are very assured and we can be guaranteed the justice of these things, why then are we so hesitant to put pay equity in there and consider that an important part of what we are asking to have? Why do we not feel that we're going to get the justice and the...? I feel that when I sign a contract, my contract includes all that is beneficial to me, and I would feel that pay equity would be one of those things. So I feel that by taking pay equity out of our union and out of our negotiations, we are saying it is something that is not as important as the other things; therefore, I don't see it the same way as you do. By taking pay equity out, we have to fight, then, and we seem to be wanting to have this fight, whereas if we put it in our negotiations and left it there, the same way as we have all our other benefits, we could be guaranteed that they're there. So I don't understand why we're taking them out just to make an issue. We could put it in our negotiations and leave it there, and only fight when it comes about that we're not getting it. That's what I see.

**Ms. Joanna Birenbaum:** It's a good question. There are a number of answers to that, and I'll give you two.

First of all, the model you're suggesting proposes a false dichotomy. You're suggesting that unless pay equity is constrained and confined to the collective bargaining process, the union isn't involved in pay equity. That's simply not the case, and that's not what is being suggested by, for example, the pay equity task force. What is being suggested is that in a separate process—which can possibly inform the collective bargaining process, but in a separate process—the union engages with the employer with respect to pay equity.

That's one response. The second concern, as various members of employers groups have represented to this committee—whether or not this is an accurate characteristic of collective bargaining, or for all workplaces—is that when they come to the table, they ultimately have a certain amount of money that they are able to devote to the collective bargaining process, and they see the union as playing a role in distributing those benefits.

That necessarily suggests, then, that the union has to make a decision between allocating zero funds to pay equity, or maybe 5% of what women are entitled to. It necessarily puts the union as having to make compromises in the process, or to trade off fundamental human rights. It also potentially pits workers within the bargaining units against each other in a way that's not respectful of human rights.

**Mrs. Tilly O'Neill-Gordon:** But that's when we fight. That's when we stand up and fight.

**The Vice-Chair (Mrs. Patricia Davidson):** Thank you, Ms. O'Neill-Gordon, for your question.

I'd like to take this opportunity to thank our three witnesses today. We very much appreciate the fact that you've been with us, two of you in person and one by video conference.

Actually, Ms. Young, we must tell you, you've been frozen in position for about the past half-hour or so. But we have heard your voice very clearly.

**Prof. Margot Young:** I hope it's a good position.

**The Vice-Chair (Mrs. Patricia Davidson):** Again, thank you very much on behalf of the committee. We have certainly appreciated your testimony today.

At this time, we do have some further business that the committee needs to attend to. The first thing will be the motion presented by Ms. Hoepfner. Everybody has a copy of that motion. Once we have dealt with the motion, we'll be going in camera.

Ms. Hoepfner, would you like to present your motion and speak to it, please?

•(1235)

**Ms. Candice Hoepfner:** Thank you very much, Madam Chair.

Madam Chair, I've presented this motion because I do believe that this committee has an obligation—

**The Vice-Chair (Mrs. Patricia Davidson):** Would you read it into the record first, please?

**Ms. Candice Hoepfner:** Sure.

I so move the following:

That the Standing Committee on the Status of Women call on Parliament to support aboriginal women living on reserves. That in the event of a marriage or common law relationship breakdown, women living on reserve be afforded the same rights and protections as all other Canadian women currently enjoy.

I feel it's important that we as a committee bring this to Parliament so that we send a strong signal that we want to see this resolved, and we want to see this resolved quickly. I think it has to be done quickly.

I can tell you from personal experience about the cases of women in my riding who are living on reserves. We don't want to hear this, but the fact is that a woman who has a disagreement with an ex-partner who may have a relative in leadership is, at times, punished because they are not related to the right people.

I find it just atrocious that these women do not have the same rights as all other Canadian women enjoy. I think we have an obligation to speak up for these women, because they really have no voice.

I think it's important to recognize that not all official organizations speak for all women. When we have aboriginal women who are suffering under an absence of protection, we obviously know that they're not being protected. To use an analogy, it would be like making it legal to hit a woman on first nations reserves; we'd say that's preposterous and we have to stop it.

Yes, we want aboriginal people to find their solutions and to find culturally appropriate solutions, but at the base of it, we need to establish some clear rules that it's not right that women and men living on reserves do not have the same property rights when it comes to a relationship breakdown.

If we can move this motion forward, I think we will at least send a strong signal to Parliament that we want to see women have the same rights as the rest of Canadians. I think we will also send a message to Canadian women. A lot of Canadian women have other situations in which they're vulnerable, and I think we need to say that we're listening to them. The different groups and organizations are important, but we also have to listen to those who are maybe not represented by the groups and organizations.

Again, I'm hearing from the women who come to see me that they really feel they have no voice. They feel there's nobody they can go to. It is, unfortunately, the way that some of the systems are set up.

That is why I have brought this motion forward. I think it's important that we pass this motion and bring it forward.

Thank you.

**The Vice-Chair (Mrs. Patricia Davidson):** Are there questions or comments?

Ms. Neville.

**Hon. Anita Neville:** Thank you, Madam Chair.

I don't think there is anybody on this committee who doesn't agree that it's important for first nations women living on reserve to have recourse to matrimonial real property rights.

I have significant concerns about this motion coming forward in this committee. I think it's an effort to do through the back door what can't be done through the front door.

I know the women in your riding who have had the problem. I've had them in my living room. I've bought them diapers. I've bought them a number of amenities that they needed, so I know their situation well.

But I can't support this motion. I don't believe it's incumbent upon us, as non-aboriginal people, to tell aboriginal communities how they should resolve their issues. Accordingly, Madam Chair, I am proposing an amendment, and I have copies of it here, and I will read it into the record:

That the Standing Committee on the Status of Women call on the government to support First Nations women living on reserve by conducting consultations as per its legal duty to consult with those affected by marital breakdown. This should include First Nations women and families, First Nations communities, Regional

Aboriginal Associations, and National Aboriginal Organizations. The consultations should ensure that an appropriate resolution to the issue of matrimonial real property is found that meets the needs of all those who are affected.

And I will speak to it, Madam Chair—

• (1240)

**The Vice-Chair (Mrs. Patricia Davidson):** First of all, I'm not sure that the amendment is in order. It sounds like a different motion. It's changing the intent, I think, of what this motion—

**Hon. Anita Neville:** We checked it out and were advised that it did not. If you want to read it—

**The Vice-Chair (Mrs. Patricia Davidson):** I just heard it when you read it, and as I have—

**Hon. Anita Neville:** Okay, do you want to read it?

**The Vice-Chair (Mrs. Patricia Davidson):** I do, because as I've heard it, I don't think I can accept it as an amendment.

**Hon. Anita Neville:** Okay. That's fine.

**Hon. Joseph Volpe:** It was a subamendment.

**Hon. Anita Neville:** No, it's an amendment.

**The Vice-Chair (Mrs. Patricia Davidson):** Yes, it's the first amendment.

**Ms. Candice Hoepfner:** May I speak to that? I think the very first sentence completely changes the intent of my motion. I want to call on Parliament. I don't know about you, but I hear from my constituents all the time, "You need to work together". My call is Parliament. We need to address this and take responsibility for this together. Yes, the government wants to bring things forward. Obviously you disagree because you didn't support it, but that's fine.

**The Vice-Chair (Mrs. Patricia Davidson):** Before we get into a big debate on this, as chair I think it changes the intent of the original motion. I know it speaks to the same basic premise, but it also goes much further and asks for a set of actions that are different from those of the original motion. So I'm saying I can't accept it as an amendment. Certainly the chair can be ruled out of order. The chair can definitely be challenged on this. But I think it's a separate motion, which of course we could deal with as well.

**Hon. Anita Neville:** I am going to challenge the ruling of the chair.

**The Vice-Chair (Mrs. Patricia Davidson):** Okay, and that's fine.

**Hon. Anita Neville:** Madam Chair, as I said, the advice we had was that while it extended the process, it didn't change the intent of the motion.

**The Vice-Chair (Mrs. Patricia Davidson):** Okay. I think the mover of the original motion is definitely making a good point when she's talking about government and when she's talking about Parliament. Those are two different things.

The clerk is showing me something here. We need to ask what the will of the committee is.

(Ruling of the chair negated)

**The Vice-Chair (Mrs. Patricia Davidson):** Carry on, Ms. Neville.

**Hon. Anita Neville:** I come back to my basic premise, Madam Chair.



**The Vice-Chair (Mrs. Patricia Davidson):** You're now speaking to the amendment?

**Hon. Anita Neville:** I'm speaking to the amendment and I'm speaking to the legal obligation to consult with first nations communities. I'm speaking to the importance of not determining for others what their laws and lifestyle should be. I'm speaking to the importance of the collective in aboriginal communities.

First and foremost, I support the concept of matrimonial real property reform for aboriginal or first nations women. That's non-negotiable, but it has to be done appropriately.

This government in fact hired an eminent, well-regarded member of the aboriginal community, Chief Wendy Grant-John. She provided a report, which I was going to bring, but it's literally inches thick. I didn't bring it with me because I didn't want to carry it. She made recommendations about the importance of consultation and about the importance of the collective. The government chose to totally disregard it in the legislation that they introduced and that was referred to the aboriginal affairs committee. I'm repeating myself, but I see this as an effort to do through the back door what they couldn't do through the front door.

When we have any discussions or make any decisions that affect the rights of aboriginal peoples in this country, I think it's incumbent on us to understand the responsibility of the duty to consult. Therefore, I'm putting forward this motion.

• (1245)

**The Vice-Chair (Mrs. Patricia Davidson):** Madame Demers, would you comment on the amendment?

[Translation]

**Ms. Nicole Demers:** Thank you very much, Madam Chair.

I agree with Ms. Neville. I'm sorry people opposite are uncomfortable with this, because we have the same goal, the same objective in mind, but hope to achieve it through a broader consultative process. We have seen the effects of a lack of consultation on pay equity. Perhaps if we bothered to consult before deciding what is best for someone, we would make fewer mistakes.

I tend to agree with Ms. Neville's comments. Nevertheless, I would like to propose a subamendment. I would simply like to add something to her amendment.

[English]

**The Vice-Chair (Mrs. Patricia Davidson):** Yes.

[Translation]

**Ms. Nicole Demers:** The amendment would read as follows:

That the Standing Committee on the Status of Women calls on the government to support First Nations women living on reserve by conducting consultations, as per its legal duty to consult as stipulated in the United Nations Declaration on the Rights of Indigenous Peoples, with those affected by marital breakdown. This should include First Nations women and families, First Nations communities, Regional Aboriginal Associations and National Aboriginal Organizations. The consultations should ensure that an appropriate resolution to the issue of matrimonial real property is found that meets the needs of all those who are affected.

[English]

**The Vice-Chair (Mrs. Patricia Davidson):** It would be "as stipulated in the UN Declaration on the Rights of Indigenous Peoples".

Do you want to accept that as a friendly amendment, or do you wish that to go as a...?

**Hon. Anita Neville:** I would accept it as a friendly amendment.

[Translation]

**Ms. Nicole Demers:** Madam Chair, for too long now we have unilaterally decided what is good for First Nations. They are mature and they have been around much longer than we have and are capable of deciding for themselves what is truly important to their communities and which rights and laws must be brought in to address their real needs, not perceived ones.

We are talking about the same rights for all women. These may not necessarily be the same rights than aboriginal women need. They need similar, but not necessarily the same rights. They need rights that are applied differently because the reality they experience as members of First Nations communities is different.

Thank you.

[English]

**The Vice-Chair (Mrs. Patricia Davidson):** Go ahead, Ms. McLeod.

**Mrs. Cathy McLeod:** Thank you, Madam Chair.

I'd like to say perhaps a few things. In response to Ms. Neville's comments about in through the back door what's not through the front door, I have a more general observation. I feel that in this committee that's solely what we've been looking at, instead of many of the very incredibly important areas that we could be looking at. To date, we have been doing front door and back door types of things, instead of looking at the aboriginal women who are dying, technology, and media. I truly would suggest that this is something we need to think about in the future in terms of how we look at what we're going to do in this committee.

My understanding is that there was a comprehensive consultation process—and we're not into debating this specific bill—and that within this bill there are very solid mechanisms for community-level decision-making about how they would actually implement it. So what we would be doing is creating immediate protection for women and then respecting the ability of communities to come up with their own systems. I would go back to really preferring to support the original motion.

Thank you.

• (1250)

**The Vice-Chair (Mrs. Patricia Davidson):** Ms. Mathysen.

**Ms. Irene Mathysen:** Thank you, Madam Chair.

I'd like to say that I think part of the problem here is that the current members from the government party, except for yourself, Madam Chair, were not here when the committee had an extensive investigation into matrimonial real property rights. We invited in first nations groups and individuals and actually came up with quite a thorough report.

What was very clear from that report, from those consultations, was that first nations women and men were asking that the model not be based on provincial legislation, the provincial model that is currently part of the legislation that we see in front of the House of Commons. By virtue of the fact that we've heard—I know that a number of us have heard—from the AFN, the Chiefs of Ontario, and the Native Women's Association of Canada, we know they are very concerned by what is currently in front of the House. We should be supporting them and respecting what they said in regard to the kind of process they want.

The process that was presented to first nations people was rushed. Unfortunately, Chief Grant-John only had about three months to consult with 643 communities. There is a rhythm to consultations, and if they are to be respectful, they have to take time and they have to be done on the basis of respect for how a community functions.

In that light, I would support the amended motion from Ms. Neville, because I think it does indeed attempt to do precisely what should be done, and that is to meet first nations on their ground in a respectful way.

**The Vice-Chair (Mrs. Patricia Davidson):** Ms. Hooppner.

**Ms. Candice Hooppner:** I have to be careful that I don't get too emotional on this one, because I am meeting and dealing with women daily. I'm sorry, but if this is not an example of playing politics on the backs of women, I don't know what is.

Ms. Demers, maybe I missed it, or maybe it was lost in translation, but when you say that aboriginal women don't need the same rights that we do, I disagree, and I think we're playing politics on the backs of aboriginal women. There's a reason that maybe some of the chiefs don't like this: it's absolutely taking the power out of their hands and putting it into the hands of grassroots women.

And you know what, folks—friends—you can say the government has an obligation to do this.... It's Parliament; we all have an obligation to take care of this issue.

Anita, you see it as well. You said that you see the women who are suffering. At a minimum, I know what our legislation.... We don't want to debate the actual legislation. But what we need to do is support this so that then aboriginals can develop some programs that work within and that are culturally appropriate. I absolutely agree with that.

I lived on a first nations reserve for over three years. My kids went to school on a first nations reserve. I went to church with women living on first nations reserves. They're still my friends. They are suffering, and if you think these groups are speaking on their behalf, you are wrong.

We are here to stand up for those who don't have a voice, so if at a minimum we put through something just so there's some basic law so that they can have real property rights, we need to do that. Is it a perfect solution? No, because we want to make sure it's culturally appropriate, but we need to put something in place. That's why my motion said that I'm calling on Parliament, because I'm looking to all of us to work together. I will leave it at that.

Thank you.

**The Vice-Chair (Mrs. Patricia Davidson):** Ms. O'Neill-Gordon.

**Mrs. Tilly O'Neill-Gordon:** I just want to reiterate Ms. Hooppner's motion and her words. I myself am coming from having taught on the Burnt Church reserve, a native reserve in New Brunswick, and I certainly saw first-hand how much we need to stand up for these women.

**The Vice-Chair (Mrs. Patricia Davidson):** Ms. Zarac.

**Mrs. Lise Zarac:** I think we're on the same wavelength. I think we know the needs are there. I don't understand Ms. Hooppner's reaction, though, because for me the intent is the same, because both motions support first nations women living on reserve. That's the intent—to support them. Mrs. Neville's motion actually brings a concrete action for how we can support them. So I don't understand.

● (1255)

**The Vice-Chair (Mrs. Patricia Davidson):** Ms. Hooppner.

**Ms. Candice Hooppner:** I'm very glad you asked that, because that is exactly the problem. What your government tried to do was actually hoist the bill that we want to try to get through as soon as possible. The attempt was to hoist it, which means that it would not be dealt with. In fact, Ms. Neville's motion calls for more of the same consultation and “let's talk”, which is great, but let's get this law in place first so that women will immediately have some protection. Unfortunately, Ms. Zarac, your government tried to hoist this so that women were not protected, under the guise of “let's have more consultation and more talking”. Let's get this fundamental protection in place immediately. This bill even makes provisions so that aboriginal groups can apply it to their specific situation and their conditions. That's why mine is different. Mine is calling on all of Parliament, because we have to work together to get it done. We can't just do it on our own.

**The Vice-Chair (Mrs. Patricia Davidson):** Madame Demers.

[*Translation*]

**Ms. Nicole Demers:** Madam Chair, I think everyone should take a deep breath.

Last week, when it came time to vote and when the matter was debated in the House, I also agreed that the issue should be referred to a committee for further consideration.

I subsequently received a telephone call from Ms. Beverley Jacobs and another one from Ms. Gabriel. They could not understand why we would support legislation like this when they had not even been consulted. These women speak for thousands of aboriginal women. It's incorrect to say that they do not represent thousands of aboriginal women, because they represents groups of...

I attend their meeting or their general assembly every year. The women in attendance represent many different aboriginal peoples and together they talk about their needs.

If they are here today telling us that they want to be consulted and that it's not enough for them to have a botched piece of legislation, then it has to mean that this bill fails to take their specific needs into account. Therein lies the problem. It is not that we do not want aboriginal women to have rights. We want these rights to take into account their specific needs.

The bill as drafted failed to do that. That was the biggest stumbling block, namely the fact that it did not take into account their specific needs.

We were supposed to have a briefing with the minister, Mr. Strahl, and twice that briefing was cancelled. I also think that there is a lack of good will somewhere.

[*English*]

**The Vice-Chair (Mrs. Patricia Davidson):** Mr. Volpe.

**Hon. Joseph Volpe:** Madam Chair, I want to compliment all the members around the table. It's evident to anybody who's new that there's a passion about the issue.

For Ms. Hoepfner to make an impassioned plea to get support for this is commendable, but you'll forgive me if I say that this is really a procedural question that someone is proposing. In the House, the government proposes and Parliament disposes. Parliament has considered a proposal of the government and said no.

I think in terms of committees, and perhaps you will get the clerk to research this position, what happens is that a committee can make a recommendation in its report, but I'm not sure it can, with a motion, compel Parliament, the House, to do anything.

So while it's a commendable expression of position and viewpoint, I think you will find that it is procedurally impossible to do. Unless someone wants to say that we want to have this as a recommendation as part of a report—that's not what this says—and the report in its entirety will be recommended to the House for the House to respond to within the usual 120 days, I don't think the committee procedurally can usurp the authority of the government by going to Parliament to impose, on itself, a decision that the government will then have to effect.

As I said, while I commend the principle behind the concept, it really might have great difficulty, procedurally, in passing anything. It eventually, I think, would be ruled out of order in the House itself.

It's better to accomplish the passing of an amendment—however it is subamended—to the motion that still conveys the principle and tells government and the House to come up with a different solution, or at least to address the procedural impediments that the debate in the House has put forward on the initial legislation.

That's my view.

• (1300)

**The Vice-Chair (Mrs. Patricia Davidson):** Ms. Neville.

**Hon. Anita Neville:** I don't want to prolong this, but I do take exception to the comment that we're playing politics with the lives of women.

Madam Chair, anybody who knows me will know my position as it relates to aboriginal women on a whole host of issues. I want to be respectful of aboriginal women. I could make the allegation that this is politics of a different sort, but I'm not doing that.

I think one has to do it right, do it with respect, for aboriginal women. One could attach a timeline to this motion and say report back in *x* number of months, but any process going to Parliament, going on whatever, will be time-consuming.

You know, if we really cared about aboriginal women, we'd be providing houses for them. We'd be providing clean water for them. We'd be ensuring that their children had adequate education and a whole host of other issues. I'm not playing politics with this issue; I'm trying to show respect for aboriginal women—their concerns, their traditions—and being inclusive in it.

**The Vice-Chair (Mrs. Patricia Davidson):** Our committee time is up, folks.

**Hon. Anita Neville:** I'll call the question.

**The Vice-Chair (Mrs. Patricia Davidson):** The time is past.

**Hon. Anita Neville:** Okay.

**The Vice-Chair (Mrs. Patricia Davidson):** We still have some in camera business that has not been dealt with.

This will be placed at the beginning of the agenda for the next meeting. We don't want to run out of time for it again.

The meeting is adjourned.





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