



HOUSE OF COMMONS
CANADA

**AN ANALYSIS OF THE EFFECTS OF THE
*PUBLIC SECTOR EQUITABLE
COMPENSATION ACT***

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

**Hon. Hedy Fry, MP
Chair**

JUNE 2009

40th PARLIAMENT, 2nd SESSION



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THE STANDING COMMITTEE ON THE STATUS OF WOMEN

has the honour to present its

SEVENTH REPORT

Pursuant to its mandate under Standing Order 108(2), the Committee has studied the effects of the *Public Sector Equitable Compensation Act* and has agreed to report the following:

On 6 February 2009 the federal government introduced *The Public Sector Equitable Compensation Act*¹ as part of an omnibus bill: Bill C-10, An Act to implement certain provisions of the budget tabled in Parliament on 27 January 2009 and related fiscal measures. The *Public Sector Equitable Compensation Act* was included as an individual provision of Bill C-10. Other provisions of Bill C-10 created consequential amendments to legislation affected by the *Public Sector Equitable Compensation Act*, while others created a transitional period to prepare for the eventual coming into force of the *Public Sector Equitable Compensation Act*.

Bill C-10 received royal assent on 12 March 2009, thereby becoming the *Budget Implementation Act, 2009*.² The transitional provisions mentioned above came into effect on this date, though the *Public Sector Equitable Compensation Act* itself and the consequential amendments will come into force on a date to be fixed by order of the Governor in Council.³

The Standing Committee on the Status of Women passed a motion to study the *Public Sector Equitable Compensation Act* on March 31, 2009. Over six meetings, the committee met with witnesses including officials from the Treasury Board Secretariat, academic experts in the area of pay equity, non-governmental organizations, employers' organizations and labour organizations representing over 200 000 employees in the federal public service and in the private sector under federal jurisdiction.

The PSECA applies to the Treasury Board of Canada as employer of departments and agencies in Schedules I and IV of the *Financial Administration Act*, R.S.C. 1985, c. F-11, separate agencies as employers for departments and agencies listed in Schedule V of the *Financial Administration Act*, the Royal Canadian Mounted Police and the Canadian Forces. Federally regulated employers not covered by the PSECA will remain under the jurisdiction of the *Canadian Human Rights Act* (CHRA) for the purposes of pay equity complaints.

With the exception of the Federally Regulated Employers- Transportation and Communication (FETCO) and officials from the Treasury Board Secretariat, witnesses were consistent in their criticisms of both the previous and newly enacted regimes of pay equity in Canada. This report provides a brief description of pay equity, followed by an overview of what the Committee heard from witnesses regarding the *Public Sector Equitable Compensation Act*.

1 *Public Sector Equitable Compensation Act*, S.C. 2009, c.2, s. 394.

2 *Budget Implementation Act, 2009*, S.C. 2009, c. 2.

3 Section 394 of the *Budget Implementation Act, 2009* is the *Public Sector Equitable Compensation Act* set out in its entirety. Sections 395 to 398 create a framework to govern the transitional period and the transfer of jurisdiction from the Canadian Human Rights Commission and the Canadian Human Rights Tribunal to the Public Sector Labour Relations Board for matters covered by the *Public Sector Equitable Compensation Act*. Sections 399 to 405 contain consequential amendments to *Canadian Human Rights Act*, R.S.C. 1985, c. H-6., and the *Public Service Labour Relations Act*, S.C. 2003, c. 22, s. 2.

What is pay equity?

“Equal pay for equal work” is a commonly used phrase relating to the achievement of equality in pay between women and men in the Canadian labour force. Persons performing identical jobs in a particular workplace must be paid the same salary, regardless of their gender. Equal pay for equal work rules seek to address overt or direct forms of gender discrimination in the payment of wages.

Pay equity or “equal pay for work of equal value” is more complex. Those advancing the concept of pay equity argue that pay inequities are a form of systemic discrimination whereby the undervaluation and segregation of women’s work have become integrated into employer pay systems. Under pay equity the intrinsic *value* of different jobs, or different classes of jobs, is compared, rather than the individual jobs themselves. Jobs are determined to be of “equal value” if the composite of skill, effort, responsibility and working conditions that apply are the same, even if the jobs themselves are dissimilar. If a “traditionally male job” is of equal or comparable value for an organization to that of a “traditionally female job”, then the two jobs must be compensated equally.

The *Public Sector Equitable Compensation Act* uses the term “equitable compensation”. The choice of this term was explained by Ms. Hélène Laurendeau Assistant Secretary, Labour Relations and Compensation Operations, Treasury Board Secretariat:

The reason why we went with equitable compensation was to actually align better to the root documents of which Canada is signatory, and it's the international convention on equitable remuneration. We kept it to compensation because compensation, in our vocabulary, is more encompassing than remuneration. We went with equitable because we wanted to go back to what was at the root of the obligation that we took internationally.⁴

Historically, the jobs undertaken by women have been financially under-valued compared to those undertaken by men. While men have moved into women-dominated fields, and women into fields dominated by men, pay inequalities persist to this day. Ms. Marie-Thérèse Chicha (Professor, School of Industrial Relations, University of Montreal, as an Individual) told the committee that “there still exists a significant wage gap between men and women at this time. The 2006 census showed that the wage gap between men and women ranged from 72 per cent to 85 per cent, depending on age, and that this percentage is changing very slowly.”⁵

4 Ms. Hélène Laurendeau (Assistant Secretary, Labour Relations and Compensation Operations, Treasury Board Secretariat) *FEWO Blues*, June 16, 2009. (1205)

5 Marie-Thérèse Chicha (Professor, School of Industrial Relations, University of Montreal, as an individual) *FEWO Evidence*, May 14, 2009. (1125)

Statistics Canada presented evidence that women are gaining grounds in certain areas. For example, a slightly higher proportion of women have university degrees and college certificates than men. In certain industries, the wage gap between women and men has decreased. In the health-related occupations, for example, women's wages were recently 4% higher than those of men, whereas women had earned 91% of what men earned in 1997. In the natural and applied science occupations, women's average hourly earnings were 88% of those of their male counterparts in 2008, up from 85% in 1997. In business, finance, and administrative occupations, women's average hourly wages were 85% of those of men, up from 83% in 1997. Statistics Canada reported that "the largest difference in hourly wages between women and men was in occupations related to primary industries, manufacturing, and processing, where women's average hourly wages were about 70% of those of men in 2008."⁶

Some of this wage gap can be attributed to explainable differences in the labour force participation of women and men, yet Statistics Canada reported that half of the wage gap cannot be explained, as Figure 1 indicates:

Figure 1

**Accounting for male-female differences in hourly earnings
in the Canadian labour force**

Factor	Fraction of gap explained by
Experience	11%
Field of study	4%
Job tenure	2%
Part-time status	2%
Union status	1%
Firm size	1%
Industry	15%
Occupation	7%
Job responsibilities	6%
Marital status	1%
Age of youngest child	1%
TOTAL EXPLAINED	51%
TOTAL UNEXPLAINED	49%

Source: Statistics Canada, Survey of Labour and Income Dynamics, 1997.

Some of this unexplained gap can be attributed to pay inequity.

6 Ms. Jane Badets (Director, Social and Aboriginal Statistics Division, Statistics Canada) *FEWO Evidence*, May 26, 2009. (1210)

The federal role in pay equity

In Canada, most work places are regulated by legislation at the provincial level. The federal government is responsible for legislation which regulates certain employers, including federal public sector employers and federally regulated private sector employers.

Prior to *The Public Sector Equitable Compensation Act* (PSECA) the federal government addressed pay equity for all employees under its jurisdiction through a complaint-based system contained in the *Canadian Human Rights Act* (CHRA)⁷. The CHRA prohibited discriminatory practices in employment by federal public and federally regulated private sector employers. Section 11 of the Act provides: “It is a discriminatory practice to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value.”

What the Committee has heard about the *Public Sector Equitable Compensation Act*

All witnesses agreed that the complaints-based approach to pay equity under the *Canadian Human Rights Act* was not an effective approach to pay equity. They pointed to the high costs and long delays involved in settling pay equity disputes through the *Canadian Human Rights Act*. While they agreed that there was a need for a change, the vast majority of witnesses were highly critical of *The Public Sector Equitable Compensation Act*. Ms. Gisèle Pageau (Human Rights Director, Communications, Energy and Paperworkers Union of Canada) told the Committee:

The government claims that “the current pay equity system in the federal public service is broken”. We agree, but we would argue that the federal pay equity law needs to be fixed by adopting pay equity legislation on the Ontario or Quebec models. The equitable compensation act is nothing like the other pay equity laws in this country.⁸

The witnesses representing the major employers in the private sector under federal jurisdiction (FETCO) and the Treasury Board Secretariat presented a positive review of the PSECA. Mr. John Farrell (Executive Director, Federally Regulated Employers - Transportation and Communications (FETCO)) noted that:

The Public Sector Equitable Compensation Act is supported by FETCO because it is a proactive rather than a complaints-based solution that makes both the Treasury Board, as the employer, and the unions representing federal public sector employees equally responsible for achieving equitable compensation by developing and implementing a plan to develop, achieve, and maintain this important human rights and employment objective.⁹

7 *Canadian Human Rights Act* (CHRA), R.S.C. 1985, c. H-6.

8 Ms. Gisèle Pageau (Human Rights Director, Communications, Energy and Paperworkers Union of Canada) *FEWO Evidence*, May 14, 2009. (1115)

9 Mr. John Farrell (Executive Director, Federally Regulated Employers - Transportation and Communications (FETCO)) *FEWO Evidence*, May 28, 2009. (1110)

All witnesses agreed with the government's view that there was a need for a proactive approach to pay equity, as had been proposed by the Pay Equity Task Force in its 2004 report *Pay Equity: A New Approach to a Fundamental Right*. Most witnesses did not feel, however, that the PSECA contained the necessary features to result in effective pay equity. Their main concerns were that the legislation contravened the Charter as well as Canada's international human rights obligations; that pay equity must remain a human rights issue and not form part of a collective bargaining scheme, as set out in the new legislation; that the PSECA compels women to file complaints alone, without the support of their union; and that the PSECA will restrict the substance and application of pay equity to the public sector.

The majority of witnesses emphasized that pay equity is a human right, not a labour issue. Ms. Gisèle Pageau (Human Rights Director, Communications, Energy and Paperworkers Union of Canada) told the Committee:

Sex and gender-based pay inequity is a human rights issue. It is the result of systemic discrimination and societal perception of the value of work traditionally performed by women. Consequently, to consider pay equity a labour issue to be dealt with at the bargaining table is not only detrimental; it's also an inaccurate characterization of the nature of pay inequity. Pay equity must remain a human rights issue and must not form part of a collective bargaining scheme.¹⁰

They suggested that by moving toward a model where pay equity is negotiated between a bargaining agent and employer, the PSECA moves pay equity away from a rights-based regime.

On the other hand, the Federally Regulated Employers - Transportation and Communications (FETCO) and the Treasury Board Secretariat maintain that pay equity is both a human rights matter and an employment matter. In his presentation to the Committee, Mr. David Olson of FETCO noted that:

Like equal pay, the charter freedom of association for employees and the right to a form of collective bargaining is accorded the status of a fundamental human right. Just because both are considered to be sacrosanct does not, in our view, mean they cannot be addressed together. If anything, they must be addressed together in order for both to be balanced and achieved. I've heard it said that pay equity is not negotiable. We agree, but what we have to recognize is that the best way, many academics say¹¹, of achieving pay equity is through the collective bargaining process. That's the forum where wages and

10 Ms. Gisèle Pageau (Human Rights Director, Communications, Energy and Paperworkers Union of Canada) *FEWO Evidence*, May 14, 2009. (1110)

11 For example the brief submitted by FETCO included a presentation by Professor Paul Weiler, Harvard Law School.

benefits are set between a union and management, and in our view, that's the forum in which pay equity must be addressed.¹²

In its brief, FETCO noted that labour arbitrators regularly deal with complex human rights accommodation issues, and expressed confidence that the redress option through the *Public Service Labour Relations Board* is sound.

Some witnesses also suggested that the threshold for defining a “female predominant group” under the new legislation is too high. Under the CHRA, different thresholds for different sizes of enterprises are used to define job groups as either “female” or “male” (70% for occupational groups with fewer than 100 members; 60% 100-500 members, 55% 500+ members). Ms. Patty Ducharme of the Public Service Alliance of Canada suggested “that the legislation will make it more difficult to claim pay equity by redefining the notion of female-predominant job groups to require that women make up 70% of workers in a particular group.”¹³

Witnesses from the Treasury Board Secretariat noted that the majority of complaints filed under the *Canadian Human Rights Act* over the past 30 years were generated by groups that were over 70% gender-predominance. They also explained that the 70% threshold aligned with current practice in New Zealand and Manitoba.

Several witnesses criticized the fact that the Act will compel women to file complaints alone, without the support of their union. Section 41 of the PSECA reads:

41. (1) Every employer or bargaining agent who contravenes section 15, 22 or 36 or an order of the Board made under this Act is guilty of an offence and liable on summary conviction to a fine not exceeding \$50,000.

(2) Every employer who contravenes section 44 is guilty of an offence and liable on summary conviction to a fine not exceeding \$25,000.

(3) A prosecution for an offence under subsection (1) or (2) may be instituted only with the consent of the Board.¹⁴

Ms. Isabelle Roy, Legal Counsel, National Office, Professional Institute of the Public Service of Canada told the Committee:

an employee wishing to initiate a pay equity complaint, a very costly, complex process closely associated with bargaining groups in general, must now proceed without the support of his union and without the support of a specialized commission like the Canadian Human Rights Commission... the PSECA prohibits unions from assisting their members in preparing or processing pay equity complaints. This prohibition, which is

12 Mr. David Olsen (Assistant General Counsel, Legal Affairs, Canada Post Corporation, Federally Regulated Employers - Transportation and Communications (FETCO)) *FEWO Evidence*, May 28, 2009. (1115)

13 Ms. Patty Ducharme (National Executive Vice-President, Executive Office, Public Service Alliance of Canada) *FEWO Evidence*, May 12, 2009 (1235)

14 *Public Sector Equitable Compensation Act*, S.C. 2009

backed in the act by criminal sanction, clearly violates both the freedom of expression and the freedom of association that are guaranteed under the charter.¹⁵

FETCO, on the other hand, felt that allowing unsatisfied employees to file an independent complaint under the Public Service Labour Relations Act creates a risk “that the matter of equitable compensation may not be finally addressed as part of the collective bargaining process.”¹⁶

The table in Figure 2 outlines the similarities and differences between the views raised in the testimony of the majority of the witnesses and those of the witnesses from Treasury Board Secretariat and the Federally Regulated Employers - Transportation and Communications (FETCO):

Figure 2

Concerns raised about the *Public Sector Equitable Compensation Act* and responses to those concerns

Concern raised by the majority of witnesses	Response by the Treasury Board Secretariat and/or the Federally Regulated Employers - Transportation and Communications (FETCO)
Pay equity is a human right, not a labour issue.	Pay equity is both a human rights matter and an employment matter.
The threshold for defining a “female predominant group” under the new legislation is too high.	The 70% threshold is used in other jurisdictions, and would cover the majority of cases brought under the <i>Canadian Human Rights Act</i> over the past 30 years.
Women to file pay equity complaints without the support of their union.	FETCO is concerned that it may be difficult to prove that employees had been coached by unions.

15 Ms. Isabelle Roy, Legal Counsel, National Office, Professional Institute of the Public Service of Canada *FEWO Evidence*, May 12, 2009. (1230)

16 Federally Regulated Employers- Transportation and Communication. Brief- “Appearance at the Standing Committee on the Status of Women in Regards to Bill C-10, Part 11, Section 394, the Public Sector Equitable Compensation Act”.

Given the concerns enumerated by the majority of witnesses, it is recommended:

RECOMMENDATION

That the government repeal *The Public Sector Equitable Compensation Act* and replace it with a proactive federal pay equity law, as recommended by the Pay Equity Task Force in its report, *Pay Equity: A New Approach to a Fundamental Right*.

APPENDIX A LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
<p>Professional Institute of the Public Service of Canada</p> <p>Geoffrey Grenville-Wood, General Counsel, National Office, Legal Department</p> <p>Isabelle Roy, Legal Counsel, National Office</p>	2009/05/12	20
<p>Public Service Alliance of Canada</p> <p>Andrée Côté, Women's and Human Rights Officer, Membership Programs Branch</p> <p>Patty Ducharme, National Executive Vice-President, Executive Office</p>		
<p>As an individual</p> <p>Marie-Thérèse Chicha, Professor, School of Industrial Relations, University of Montreal</p>	2009/05/14	21
<p>Canadian Labour Congress</p> <p>Barbara Byers, Executive Vice-President</p> <p>Teresa Healy, Senior Researcher, Social and Economic Policy Department</p>		
<p>Communications, Energy and Paperworkers Union of Canada</p> <p>Gisèle Pageau, Human Rights Director</p>		
<p>Statistics Canada</p> <p>Jane Badets, Director, Social and Aboriginal Statistics Division</p> <p>Rosemary Bender, Director General, Census Subject Matter, Social and Demographic Statistics</p> <p>Cara Williams, Chief, Social Analysis and Research, Social and Aboriginal Statistics Division</p>	2009/05/26	22
<p>Confédération des syndicats nationaux (CSN)</p> <p>Claudette Carbonneau, President</p>	2009/05/28	23
<p>Federally Regulated Employers - Transportation and Communications (FETCO)</p> <p>John Farrell, Executive Director</p> <p>David Olsen, Assistant General Counsel, Legal Affairs, Canada Post Corporation</p>		
<p>Syndicat des employés de la Banque Laurentienne</p>		

Organizations and Individuals	Date	Meeting
Danielle Casara, Vice-President		
As an individual	2009/06/04	25
Margot E. Young, Associate Professor of Law, University of British Columbia		
Canadian Federation of University Women		
Susan Russell, Executive Director		
National Association of Women and the Law		
Susan Russell, Member of the National Steering Committee		
Women's Legal Education and Action Fund		
Joanna Birenbaum, Director of Litigation		
Treasury Board Secretariat	2009/06/16	28
Hélène Laurendeau, Assistant Secretary, Labour Relations and Compensation Operations		
Dan Danagher, Executive Director, Labour Relations and Compensation Operations		

APPENDIX B LIST OF BRIEFS

Organizations and Individuals

Canadian Federation of University Women

Canadian Labour Congress

Chicha, Marie-Thérèse

Federally Regulated Employers - Transportation and Communications (FETCO)

Professional Institute of the Public Service of Canada

Public Service Alliance of Canada

Women's Legal Education and Action Fund

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant Minutes of Proceedings ([Meetings Nos. 20, 21, 22, 23, 25, 28 and 29](#)) is tabled.

Respectfully submitted,

Hon. Hedy Fry, MP

Chair

Conservative Party Dissenting Opinion on a report entitled: An Analysis of the Effect of the *Public Sector Equitable Compensation Act*

The Conservative members of this Committee have many reservations about the recommendation put forward in this report. As well, the Conservative members are gravely concerned that the draft report was written and discussed before the Committee had the opportunity to hear from all witnesses. The Conservative members believe in the importance of having a fulsome discussion on this important issue and were dismayed to see a draft report submitted to the Committee before all witnesses had the opportunity to testify before the Committee.

This Conservative Government respects the principle of equal pay for work of equal value. Our commitment to this fundamental human right is why the Government introduced the *Public Sector Equitable Compensation Act* which, with the support of the Liberal Party, received Royal Assent on March 12, 2009.

The Standing Committee on the Status of Women has repeatedly heard from many credible witnesses that the previous pay equity system was broken and ignored the interests of women; the old, complaint-based system was lengthy, costly and adversarial. It was a system that forced women to wait decades before having their complaints resolved before human rights commissions and courts.

Conservative members of the Standing Committee believe that pay equity is a fundamental human right and women should not have to wait to receive fair pay. Further, both unions and employers should be required to ensure fair pay for women proactively during the bargaining process, which is something the new *Public Sector Equitable Compensation Act* demands.

The Conservative members feel it is important to strongly clarify that the *Public Sector Equitable Compensation Act* has not changed the right to equal pay, rather it has changed the system so that women no longer have to wait decades before receiving their right to equal pay for work of equal value.

Conservative members would like to highlight the following testimony:

“Collective bargaining has a rich history of achievement in matters such as fair wages, hours of work, working conditions including parental leave, and occupation health and safety. It is not surprising then that several Canadian studies including ones done for the International Labour Organization and one for the Canadian Labour Congress' Women's Symposium have included recommendations to achieve pay equity through collective bargaining.” - Ms. H  l  ne Laurendeau, Meeting 28

“Ontario, Manitoba, and Quebec have regimes that require a form of proactively, a feature that is supported by most experts in this field. However, these regimes do not oblige employers and unions to actually address pay equity considerations every time wages are set. The Public Sector Equitable Compensation Act tackles this head-on by requiring employers and unions to do exactly that. The legislation sets out robust requirements for transparency, information-sharing, recourse, and for the regular conduct of equitable compensation assessments. The act will not allow parties to bargain away this human right, but rather it details parties' obligations for regularly determining how to attain and maintain that right. In so doing, the act recognizes the long and positive history of the achievement and protection of human rights through collective bargaining, which is itself a fundamental right.” - Ms. H  l  ne Laurendeau, Meeting 28

“Achieving equitable compensation is a human rights matter and an employment matter that requires a human rights and employment-based solution.” – Mr. John Farrell, Meeting 22

“...we believe this act contains important principles and sound provisions that will improve the ability of employers and unions in the federal public sector to implement equitable compensation for women that is pragmatic and fair.” – Mr. David Olsen, Meeting 22

Conservative members support the Government as it continues to work for the right of federally employed women across the country to achieve equitable compensation and look forward to the Government Response to this report.