

Thank you very much for this opportunity to address the House of Commons Committee on the Status of Women.

The Women's Legal Education and Action Fund (LEAF) is a national not-for-profit organization dedicated to promoting substantive equality for women through legal action, research and public education. LEAF has intervened in over 150 cases on substantive equality since it was founded in 1985, and is recognized for its expertise in the inequality and discrimination 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, poverty, disability, race, sexual orientation and religion.

LEAF is very concerned by the *Public Sector Equitable Compensation Act*.

The Act constitutes regressive legislation which 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 to briefly emphasize the significance of pay equity in terms of achieving substantive equality for women in Canada. The gendered 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 exacerbates women's vulnerability, including by increasing women's 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.

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 Canadian law. The rights of women to be free from wage discrimination in the workplace and to equal pay for work of equal value is

also guaranteed by s.15 of the Charter. In the *NAPE*¹ case in 2004 the Supreme Court of Canada ruled that the cancellation of pay equity adjustments to government employees violated their s.15 equality rights (but upheld the legislation saying that it could be justified in the specific circumstances of that case). Numerous international instruments ratified by Canada also recognize pay equity as a fundamental human right including the Convention on the Elimination of All Forms of Discrimination Against Women, the International Covenant on Economic, Social and Cultural Rights, and Conventions 100 (Equal Remuneration) and 111 (Non-discrimination) of the International Labour Organisation. These ILO Conventions were ratified by Canada in 1951 and 1958 respectively.

The PSECA is not consistent with Canada's statutory, constitutional and international commitments and obligations to women's substantive equality.

Prior to today, this Committee has heard numerous submissions from unions² and experts who have detailed the ways in which the PSECA takes away, rather than advances, 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 Person's Case. In view of the limited time, LEAF will not repeat these submissions and

¹ Newfoundland (Treasury Board) v. N.A.P.E., [2004] 3 S.C.R. 381

² Public Service Alliance of Canada, Professional Institute of the Public Service of Canada, Communications, Energy and Paperworkers Union of Canada

supports the analyses submitted to this Committee that the Act is inconsistent with women's statutory and constitutional equality rights, for reasons which include:

- 1 The Act makes makes pay equity a matter of labour relations and collective bargaining, as opposed to an independent human right;
- 2 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 which pay equity legislation is designed to challenge and overcome.
- 3 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
- 4 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 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 uses the remainder of its time to focus on three further issues.

First, LEAF is 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, requiring 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 for assisting 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 take a leadership role in advancing women's human rights. Instead, this legislation would seem to be one of a series of regressive measures, which have included funding cuts to Status of Women Canada and the elimination of the Court Challenges Program. These measures all detrimentally impact women's access to justice and 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 human right, the problems with 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 pro-active pay equity regime. With the PSECA legislation, we now have two federal regimes, neither of which are pro-active and neither of which are 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 their intention, the way to do so is to adopt a single pro-active federal pay equity regime, in accordance with the recommendations of the Pay Equity Task Force.