BRIEF BY THE ONTARIO FEDERATION OF LABOUR

ON

BILL 154: PAY EQUITY LEGISLATION

FOR

BROADER PUBLIC AND PRIVATE SECTORS

Presented to:

The Standing Committee on the

Administration of Justice

at Queen's Park

February 23, 1987

Presented by: Gordon F. Wilson
President, OFL

Sean O'Flynn
Secretary-Treasurer, OFL

Julie Griffin
Executive Vice-President,
OFL

The Ontario Federation of Labour represents 800,000 working men and women and their families in the province. Aproximately 300,000 are women. We appreciate the opportunity to once again present our views on pay equity to this committee.

Before we enter into a detailed discussion of the specific provisions of the pay equity bill before you, Bill 154, it seems worthwhile to recapitulate the ground on which we take the position that the time for fair legislation is long overdue. The basic question of the underlying demand for justice which provides the ground for these discussion is well known to members of this committee.

Women in this society continue to subsidize the economy and their employers through sub-standard wages. In this regard, the data speak for themselves, since women continue to earn less than two-thirds of the wages of men. The work which women perform in our economy has been traditionally undervalued. Even occupations dominated by women tend to offer higher salaries to the few men active in them.

Over the last decade, as the popular demand for pay equity legislation has increased, the OFL and large numbers of other groups have travelled the province to seek the opinions of individuals and organizations. In extensive rounds of submissions to public bodies, in forums, in educational sessions and a vast range of meetings we sought the opinions of people in Ontario. The message was almost universally the same:

Working women in Ontario have a clear view of the absolute need for action on the pay equity front. They have also told us, and members of this legislature, that the time for half-hearted and inadequate measures is past. The objective is to achieve equity and to do so over a short period of time.

Working women all over Ontario, in virtually all occupations were given the hope that this new government would finally enact a law which is fair and which works. Promises made during the 1985 Ontario election and the terms of the NDP-Liberal accord which has kept this government in power held out the hope that government would finally respond to the very strong public demand for equity and justice.

It has now been nearly two years since the establishment of the government. Yet, we are still engaged in what seems to many an un-ending process of discussion and investigation. As this process drags on, none of us should be surprised at a growing sense of frustration and even cynicism among many women and their organizations across Ontario. Every further period of delay simply compounds the injustice of the current situation, and every year more women retire, unable to benefit from potential efforts to right the balance and also unable to benefit from improvements in pension rights which might have come from the

successful passage of this legislation.

While we recognize that the legislation now before you is a broader attempt at legislating pay equity than has been attempted anywhere in North America, we still see serious flaws in the proposed law. In addition, it is to be reasonably expected by the people of this province that Ontario should lead the way in preparing progressive legislation and in preparing the ground on which people can live decent and prosperous lives.

We live in the wealthiest part of Canada, and we have long had a tradition here of moving forward and demonstrating to people elsewhere the potential of government action in the improvement of people's lives. Women in Ontario expect to see leadership on the part of this government. Some extensive changes in the proposed legislation can deliver on the promises of the last election and the general promise of a good life in Ontario.

The Ontario Federation of Labour is an active member of the Equal Pay Coalition. We strongly support the process of consensus building which the Coalition undertook and we support the detailed analysis and recommendations which the Coalition will bring to this committee. Among other things, that presentation reinforces our long standing position that all workers in Ontario should be covered by a single piece of legislation on pay equity.

We have made clear our support for one equal pay law for all, as is the case in minimum wage, human rights and health and

safety legislation. In the context of a debate aboout justice and equity it makes no sense at all to segregate people into groups. To do so, as the legislation proposes is to tell people who happen to work for one kind of employer that they somehow have a greater or lesser right to equity and justice than those who work for someone else. The point of establishing rights for people is to make them available and to make them real for all people regardless of where they happen to have found employment.

The failure to include smaller businesses, for example, further victimizes those who are already severely disadvantaged. Most women who work for smaller businesses have no access to the protection and negotiating power which unionization brings with it. Many are immigrant women and women of colour who are victims of discrimination at a number of levels which go beyond the question of pay equity. The failure to cover such employees deepens and broadens the injustices under which they already work. It limits their rights, when in many ways their rights should be most dramatically expanded.

COVERAGE

Our initial recommendation for amendments. therefore, deals with the question of coverage. Both Bill 154 and 105 must be amended to make it clear that the stated objective of the legislation is to achieve equal pay for work of equal value.

A1) First of all, the preamble to Bill 154 should be amended to more accurately reflect the intent of the law. Its wording should be as follows: Whereas it is desirable that affirmative action be taken to close the wage gaps between male and female workers in Ontario . . .

The point of changing the preamble is obvious--it will make an explicit statement about the intent of this law and the nature of the project that we are engaged in. In making this change we put the emphasis on the notion of affirmative action and point our society in a direction which sees a mandate for action rather than a more 'permissive' mode.

The powers advocated in the next recommendation for the Pay Equity Commission are essential if we are to avoid further widening the wage gap for women in those firms and industries which largely employ women.

A2) Second, the legislation must give specific powers to the Pay Equity Commission to ensure that women in all female work places who have no male comparison group receive wage adjustments on the same timetable as other workers who are not under this 'comparison' constraint. The same principle must apply among establishments where there are too few male comparable job classes to allow for comparisons which

redress the wage rates of all the female dominated jobs in the firm.

In fact, without this change workers who work in all-female workplaces such as childcare centres, libraries, nursing homes, and social service agencies will continue to have the socially important work they do, seriously undervalued and underpaid. Surely any pay equity legislation must address this inequity.

The elimination of exemptions is critical if we are to avoid situations in which employers and individuals will seek to avoid the effect of pay equity legislation by placing large numbers of positions into exempt categories. Such efforts would significantly undermine the principles of universal rights, equity and justice on which this whole process must be based.

A3) Bill 154 should also be amended to eliminate exemptions and exceptions from equal pay provisions such as casual employees, the existence of merit pay systems, red-circling of jobs and arguments about particular skills shortages.

To entrench legislation methods that employers have histori-

cally used to undervalue womens' work is unacceptable.

We believe all women workers must be included in this legislation. Casuals are part-time workers who work regular jobs at irregular hours and have the right to be paid fairly. It would be indeed tragic if after making pay equity a reality, casuals who are predominantly women, suffered economic loss by being excluded from this legislation.

Merit pay systems are one of the most common methods employers use to underpay women. Throughout the hearings on the Green Paper and Bill 105 working women told this government that there would be no reason to justify this exception.

Red-circling of jobs must not be allowed under Bill 154. We are already hearing reports of employers who are freezing men's wages as a method to fund pay equity. The problem in the workplace is not the over-evaluation of men's work, but the under-evaluation of women's work. Employers have profited from this state of affairs not their male workers. Employers must not be permitted to correct historical inequities by emptying the pockets of male workers. It would be totally unjust if money which otherwise would have gone to improve the standard of living of the workers were redirected to achieve pay equity. This loophole must not remain in the proposed legislation.

Arguments that skills shortages should be exceptions to Bill 154 are indefensible. One has only to consider the shortages of nurses in this province. Hospitals are recruiting nurses from

other provinces and not, in fact, raising nurses wages.

As well - when there is a surplus of male workers in a particular job class - there is rarely a reduction in wages for those male workers.

In our view and the view of the majority of presentors to the Green Paper Hearings, seniority must be the only allowable exception under the law. This would be permitted only so long as it was shown that there was no gender bias in its application.

The process of expanding the coverage of Bill 154 to recognize the principle of equal rights must seek to make specific arrangements for different groups of workers.

Employers with fewer than ten workers are excluded all together from the Bill. We have not been convinced that some workers in some jobs should be denied the right to equal pay. The Government's Green Paper on Pay Equity reported that a full 30 percent of Ontario working women are in workplaces of less than 20 employees. Most are not unionized and have few, if any, wage protections and job security. Without laws, this group is the most exploited in terms of remuneration.

To quote Evelyn Myrie from the Immigrant Women's Information Centre:

"In (these) non-unionized establishments you will find a disproportionate number of immigrant women and visible minority women, whom by the very nature of their origins/racial background

are faced with the relentlessness of low wages and often racial discrimination. Since many of these women are employed in small business environments, it is necessary that the small business employer not be exempted from implementing pay equity legislation."

No organization exists in such work-places through which women could lay a complaint and advance their cause. As such, the Pay Equity Commission is the appropriate forum for them to use. Without the right to such direct access even an expanded law would have little meaning for women working in such a situa tion.

Therefore as an <u>absolute</u> <u>minimum</u> the Bill should be amended as follows:

A4) Workers in unorganized workplaces which employ up to 99 people must be guaranteed access to a complaint based system.

A5) Workplaces with 100 or more employees should be covered by law so as to require employeres to engage in pro-active behaviour with respect to pay equity where there is no union.

A6) All cases where the workplace is unionized. It must be mandatory for pay equity plans to be negotiated between the union and the employer.

The point of recommendations A4 through A6 is to recognize that differing situations will demand approaches and solutions which recognize the differences in power among various groups of workers. The objective of equity for all can only be achieved through the establishment of procedures which take account of diversity in the kinds of workplaces staffed by women.

The next recommendation provides for a test of success in the pay equity process in the sense that it requires employers to show that the disparity in wages which was the result of past wage discrimination has been eliminated.

A7)In this section on coverage we would recommend the amendment of Section 5.1 of Bill 154 to provide that <u>for the purposes of this Act, Pay Equity is achieved when the wage differential between female and male job classes is reduced by an amount attributable to systematic wage discrimination.</u>

Such a test appears to us to be essential on the road to achieving equity as envisioned under the I.L.O. standard for equal value.

TIMING

The Federation also has specific concerns about the timing proposed in the legislation before the committee. The time lines are simply too long in the face of all of the overwhelming evidence of past discrimination and in the face of the very real costs which will be faced by older women workers for the rest of their lives. A number of presentations on the need for firm time limits on implementation were reflected in briefs to the Green Paper Hearings. As Graham Dart and Heather Ferris from the Ontario Council of Hospital Unions said in their presentation:

> "Hospital workers are all too familiar with value issues getting caught in the system and dragging along for months or even years while those unfortunate employees directly affected continue to suffer from inequities."

Hence, we recommend amendments which would provide for:

B1) Pay equity wage adjustments to begin no later than two years from the effective date of the legislation.

B2) Further, the law should provide for faster payouts for key target groups such as women close to retirement and women of particularly low income.

B3) The law must provide for the completion of all pay equity adjustments within five years of the effective date of the legislation for both the public sector and the extended public and private sectors.

B4) Finally, all pay equity wage adjustments must be made retroactive to the effective date of the legislation.

We believe its only reasonable that the pay equity adjustments be made in a timely fashion and be retroactive to the effective date of the legislation. This will ensure that employers will not prolong the process unecessarily and will have the effect of shortening the time period during which the province achieves a measure of equity.

FUNDING

In this section we will deal with the question of costs. It is abundantly clear that pay equity cannot be readily achieved in the broader public sector unless the government recognizes the

need for specific increases in transfers to pay for the costs of pay equity adjustments in this sector. Therefore, we would recommend that:

C1) there must be increased transfer payments to the broader public sector which will cover not only the cost of wage adjustments but also any related administrative costs associated with the implementation of pay equity plans in broader public sector workplaces.

Years of public sector restraint policies have left many of the institutions which make up the broader public sector under severely constrained financial circumstances.

It is also important to ensure schools, municipalities and health care institutions are not trading off the health and welfare of the sick or our youth in order to achieve pay equity. Payments must be incorporated into the more progressive income tax base at the provincial level, and directed to the implementation of this law. It is clear that specific transfers will have to be made, and it is further essential that

C2) pay equity transfer payments must clearly be in addition to, and separate from, regular transfer payments.

There will also be a tendency in many workplaces to seek to

divert funds which might have gone to wage increases for all employees into the pay equity area. If the pay equity law is to gain the support of the majority of working people in the province, it must be clear that costs associated with it will not be paid directly by those who have not suffered wage discrimination since they were not the beneficiaries of the discrimination in the first place.

Consequently, the legislation must be amended to ensure that

C3) first, separate funds are established to ensure that pay equity payments are not simply a transfer of funds from general wage increases;

C4) second, legislation must prohibit employers from reducing or restraining compensation payable to any employee or from reducing or restraining compensation in order to achieve equal pay for work of equal value;

C5) and third, extensive amendments are needed to clarify and tighten the methods used for wage comparisons.

Wage comparisons in workplaces with many classifications and even rates of pay within classifications can obviously be made either to improve the position of women or to maintain discrimination. As such, the law must require comparisons which set

a woman's wage against that of the highest comparable rate within a job classification rather than the lowest. To do otherwise would simply work to maintain discrimination.

ROLE OF UNIONS

The Federation has particular concerns about the role of unions in the process of negotiating pay equity provisions. As the democratically chosen representatives of working people unions are already extensively involved in negotiations with employers. The need to provide for pay equity and to negotiate fair plans for adjustment requires an expansion of the traditional parameters.

Rooting out discrimination requires a greater opening of the books than is usually the case in negotiations and it requires a much more open atmosphere in which the creation of a plan to end wage discrimination can be discussed. Therefore, pay equity legislation must provide first

D1) that unions and individual complainants be given access to all information necessary in dealing with the consequences of the pay equity law.

For example, it is critical that the question of negotiations for pay equity be carried out independently of the

regular rounds of negotiation for compensation, benefits and working conditions. The law must provide for rules

D2) which require that bargaining for pay equity plans takes place separately and apart from the regular collective bargaining process if either party, the union or the employers, should find this desirable.

Pay equity is not a new issue for the bargaining table, unions and employers must have the right to request that the discussions take place independently of the regular processes. This may be necessary in order to ensure that pay equity does not become merely another bargaining chip which could be traded off against another item on the table. We shouldn't have to sell people's standard of living in order to resolve social injustice.

In order to ensure that traditional parameters do not interfere on the road to equity, we would strongly recommmend the deletion of the section

D3) which provides for exceptions to the equity process on the basis of the historical bargaining strength of male dominated groups of employees.

Leaving room for such exceptions simply allows the process to avoid addressing the fundamental issue of wage discrimination and it elimination through pay equity laws.

In the private sector of this province plant workers, predominantly men, are organized in greater numbers than office workers, predominantly women. This Federation is strongly opposed to this major weakness which would be used by employers to quickly erode any gains achieved by women under this legislation.

Ontario's unions have an immense fund of experience at bargaining with employers concerning the question of classification and appropriate compensation for classification. The legislation should recognize the depth of this experience and allow unions the right to seek to negotiate means other than job evaluation for determining appropriate comparison groups. While job evaluation may prove to be the most common method used, there is a host of other potential alternatives which may prove to be more fair in particular situations. Therefore, we strongly recommend that the proposed legislation be amended to

D4) allow unions the right to negotiate methods other than job evaluation for achieving pay equity.

These methods could include such alternatives as integrating pay lines between predominantly male and female classifications.

With this approach the parties would determine the base, mid-point and high end wage rate for predominantly male and female classifications. A formula for adjustment would raise the wage rates for the female classifications to the three male comparison rates. Another approach could be equalization of base pay and entry level pay rates for clerical and plant positions.

A final area of concern in this section revolves around the duty of unions to bargain in good faith. We would recommend that the section of the legislation which set out the terms of liability against unions

D5) be changed to conform with existing labour legislation which mandates unions to bargain in good faith and to represent workers fairly.

D6) Further, Bill 154 should be amended in order to provide the union with protection against complaints concerning a negotiated pay equity plan where that plan has been ratified and approved by the membership of the union.

D7) At the same time, individual complainants would retain their right to complain if they feel that they have not been represented fairly.

The effect of these amendments would be to ensure that the union has the right to negotiate a pay equity settlement and then to implement that settlement once the membership of the union has approved of the plan. Individuals who feel that the negotiated plan has not represented them fairly would the right to challenge the union if they see a failure to represent them fairly. The effect of such an amendment would be to provide protections both for the union and for the individual. The individual should be granted rights similar to those now contained in the 'Duty of Fair Representation sections of existing labour law.

We realize that today's committee hearings are on the proposed Bill 154 but we wish to point out to this committee two further amendments that strike us as necessary in Bill 105. This bill must provide explicitly for

E1) the duty to bargain in good faith for both parties and;

E2) protection from reprisals for those making complaints under the legislation.

The purpose of these final suggestions is clear. Individuals exercising their rights under the law must be protected. Experience with existing labour relations law has shown that this clause needs to put the onus on the employer to establish that a dismissal or change in working conditions is not a reprisal due

to efforts to enforce the law. This will help to ensure that there are no reprisals due to efforts by an individual or group seeking pay equity. As well, the whole process will be merely a sham if either party to a set of negotiations for a pay equity plan fails to bargain in good faith.

CONCLUSION:

We believe that the changes proposed in the brief will have the effect of producing pay equity legislation which will serve this province and its people well. Over a defined period of time it will eliminate the wage disparities between men and women which have been shown to be a direct result of discrimination. Its effect will be to achieve equity and justice.

We in Ontario are at a crossroads - Bill 154 should be a blueprint to lay the groundwork for economic justice for Ontario working women. The proposed legislation requires substantial admendments to make it a truly effective tool to achieve equal pay for work of equal value. Bill 154 must not build in large loopholes that would exclude thousands of women. We must not have a bill that creates "have" and "have not" women workers. This legislation must build in protection to ensure women, and their unions, have the right to negotiate strong pay equity programs.

The best concluding remarks are those of Times Change

Employment Centre to the Green Paper Hearings:

"There is a very simple way to test how valuable the work of women is. Imagine away all those 2.1 million Ontario women in the labour force. Imagine an ordinary day. You go to drop your child off at the day care centre, but it is closed because day care workers are not there. So you take your child with you to the office. When you get there the phone is ringing because the receptionist is not there. You draft a letter but there is no one to type it. You want to call a meeting but there is no answer when you call the offices of those with whom you want to meet. In frustration you head out for lunch but the restaurants are closed because there are no waitresses....

In actual fact, you cannot wish away 2.1 million women in the Ontario labour force. The work these women do is valuable, essential, necessary to the economy. It is often skilled work, it is usually demanding work, and it is seriously underpaid ... it is time for the government of Ontario to keep its promise and ensure that women are paid equal value for the important work they do."

We call on this committee to move as quickly as possible to

amend both Bill 154 and similarly where necessary Bill 105 to reflect the needs of women in this province. These bills will set the standard for other jurisdictions. Let's make them something we can all be proud of.

NOTE: For the Reference of Committee Members:

Ontario Federation of Labour calls to your attention the report we tabled during Bill 105 hearings. The OFL's report of the **Ontario Government's Public Hearings on Pay Equity** contains information and case examples relevant to the current hearings.