March 5, 1987

Mr. Chairman: May I thank you for your presentation and for responding to the questions on the part of the committee.

Ms. Gold: Thank you.

Mr. Chairman: The next group that we have coming before us, members of the committee, is the Equal Pay Coalition and I would ask the representatives from that organization to get ready to come forward.

I might add that with respect to the Equal Pay Coalition we have provided some additional time for this organization because of their long standing interest in the question of pay equity.

We welcome you to discussions on Bill 154 and I know you have been following with some interest what has been going on in this committee. We look forward to hearing your presentation and I am sure there will be some interesting questions to follow, so if you would perhaps introduce yourselves and then we will get started.

EQUAL PAY COALITION

Ms. Cornish: Thank you, Mr. Chairman, members of the committee. My name is Mary Cornish and with me is Lyn Spink from the Canadian Union of Public Employees local 79. We will be presenting on behalf of the Equal Pay Coalition today. We represent, as can be seen from page one of our brief, over 30 organizations. It is a broad-based coalition of organizations representing over one million Ontario men and women, and nationally, with our member group the National Action Committee on the Status of Women from whom I believe you heard earlier this week, we represent over three million women and men nationally.

I should indicate just in terms of the representation issue that actually the coalition is very unique in representing the diversity of groups including public and private sector management in our business and women's groups that are in the groups, public and private sector unions, immigrant women's groups, the YWCA. All of these types of groups bring to this process a very long expertise with respect to the issue.

We have had a very extensive consultation process with our members over the year but we do not have staff, unlike the Canadian Manufacturers' Association and the Board of Trade of Metropolitan Toronto and many of the management groups. We are a volunteer organization, but as many of you know, we are not amateurs in this field and we have been working together for a long period in order to obtain equal pay for work of equal value.

You will see the brief is fairly long and quite detailed in some provisions. This afternoon what we will attempt to do is to highlight some of the critical issues.

We see it as essential that each of the changes we ultimately looked at, because they are important, be seen together as a means of implementing equal pay for work of equal value.

We have divided our presentation into four sections. First, Ms. Spinks will give us an analysis of some of the arguments you have been hearing against the bill over the past two weeks from the business community.

Second, I will do an explanation of our recommendations regarding the basic implementation of equal value standard as we see it.

Third, Ms. Spinks will summarize our proposals concerning the extension of coverage of the bill.

Finally, I will explain some of the legal mechanisms we are proposing for closing the wage gap, guaranteeing individual protections, guaranteeing and enforcing the collective bargaining process, and improving the administration and enforcement of the bill.

I will call on Ms. Spinks now to start with an analysis of some of the arguments you have been hearing against the bill.

Ms. Spinks: What I would like to do is look at the arguments you have been hearing from some business groups in the context of the studies that were released last week, the studies on small business and pay equity.

There are three myths that many of the business groups are invoking. The first myth is that there is no wage gap; the second is that the market is neutral, that it is governed by the law of supply and demand; the third is that bringing in pay equity means bringing on dire consequences.

The first, that there is no evidence of wage discrimination has been put most stridently to you by David Somerville of the National Citizens' Coalition.

I was pleased to see your committee was quick to point out to Mr. Somerville the contradiction of denying, on the one hand, that there is any wage gap at all and affirming, on the other, that we are going to have economic ruin if Bill 154 goes ahead. We know you are not going to be bullied by Mr. Somerville's kind of rhetoric, but we also hope you are not going to be enticed by some of the more thoughtful presentations from various business organizations that do not like the bill, because although they choose their words more carefully than Mr. Somerville, the assumptions that underlie their presentations are not that much different from those of the National Citizens' Coalition.

The National Citizens' Coalition says there is no such thing as wage discrimination. The Canadian Manufacturers' Association says there is not much of a gap, maybe at most three per cent. The Retail Council of Canada and other organizations question the existence of the gap.

But what do the studies show?

The study done by Blackhurst von Beinum surveyed a cross-section of firms with between one and 99 employees. What they found was that the larger the firm, the larger the gap is likely to be. The study by Hay Management Consultants surveyed the same range of firms. What they found was that women were making between $1 an hour and $4 an hour less than men.

Suddenly, employers are telling you: "Okay, if there is a gap, employment equity, not pay equity, is the answer. The solution is for women to move into men's jobs. Let them drive the trucks. Let them be the neurosurgeons." What they forget is that for women to change jobs, men have to switch jobs too, and we know men are not going to work for women's wages. Affirmative action is not the route to economic equality for the majority of women who are clerks, day care workers, production workers and nurses.

The second myth you have been hearing came first from Mr. Somerville

"Annual wage levels are set by neutral market forces. The single most important determinant of wages," he said, "is the law of supply and demand." The Canadian Manufacturers' Association told you the market is neutral and others echo Mr. Somerville's litany of the law of supply and demand as if they were talking about a natural force that affects everyone equally, like the weather or gravity.

But there is nothing natural or neutral about the market. Historically, the market has discriminated. We know women take home less on payday. This genuflecting at the altar of the market is just that, a gesture, and it is not based on fact. Look at those studies that were released last week.

The Urban Dimensions group surveyed firms with between one and 100 employees. They asked them how they set wages. Respondents could choose several categories. Over half said merit; 35 per cent chose their ability to pay as one of their categories. Only 26 per cent listed supply and demand as one of the factors they took into account when setting wages, and 32 per cent said they paid their employees above the market. The study done by Hay is even more compelling. Of the employers who did not use a formal job evaluation process for setting wages, only 14 per cent said they used the market. The conclusion Hay reached is that the free market is not commonly used by small business to assess jobs.

So what is all the fuss about?

Here we come to the myth of the dire consequences; the threat. You have been told jobs will disappear, that the economy will falter under the strain of equal pay. But what is small business really afraid of?

Look at the studies. Hay asked businesses what the impact of equal pay legislation would mean to them and 55 per cent said pay equity legislation would have a negative impact, but how did business describe that impact? Only 2.5 per cent worried about the cost. Only five per cent were worried about unemployment. Hay says the major complaint related not to the cost of implementation, but to government control. Business is worried about the potential onslaught of paper, not the loss of jobs. The real fuss is that opponents to equal pay have a basic aversion to government regulation of business. Mr. Somerville even told you he was against health and safety and human rights legislation.

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The government has made good use of the studies that were done. They have got the message that small business does not like pay equity, and under Bill 154 firms with fewer than than 100 employees will not have any forms to fill out.

Opponents are also telling you that comparing jobs is impossibly complex. Suddenly the entrepreneurs with verve and imaginination, the people who have been telling you they are the engine of the Ontario economy, are baffled. They cannot cope. They do not know how they are going to compare jobs. I call it the fruit cocktail problem. They say, "What are we are going to do with the apples and oranges?" But if you look at the bill, you will see that job evaluation is not the only route to equal pay, and if you look at the studies you will see that assessing jobs is not something impossibly complex.

The Urban Dimensions group, which was looking at firms with fewer than than 100 employees, found that 33 per cent of those firms had fewer than five job titles in their establishments. They found that 71 per cent of those small businesses had 10 or fewer job titles. You do not need Peat Marwick to figure out a suitable pay scale for these situations. In fact, only four per cent of the firms in that study said, "It cannot be done," when asked about pay equity. We believe it can be done too.

The threat of dire consequences is being used to play upon your sensitivity as politicians because you have to worry about public opinion and the voters and the public's concern about the economy. There is no question that there is public support for equal pay. We have included in the appendix to our brief a 1987 Angus Reid-Southam News poll which found that 67 per cent of Ontario respondents believed women at the same skill levels as men were generally paid less. Of the people who perceived this wage gap, 85 per cent favoured strong legislation to correct the situation. There is no question that there is strong public support for equal pay for work of equal value.

As for the impact on the economy, opponents are talking about equal pay as if the wage adjustments that are going to be given to women are going to be money down the drain, as if women are going to put the money under the mattress or bury it out in the backyard. That is not what is going to happen. Equal pay adjustments for women mean money that is going to go back into the economy, money that is going to buy food, clothes for the kids and furniture.

Ms. Cornish: I will now proceed with the substance of our recommendations concerning the implementation of equal pay for work of equal value. Our basic response to the bill reflects our analysis of how the bill measures up to the International Labour Organization's standard of equal pay for work of equal value. Essentially that labour standard, which has been the foundation of the coalition's position for the past 10 years, involves the following basic principles.

1. The purpose of the legislation is to implement an equal value standard.

2. There must be universal coverage for all women workers. Every woman in Ontario, and all those doing women's work, must have the right to complain where their work is of comparable value to that of a male group or job.

3. The legislation has to have a complaint procedure plus some kind of proactive provisions.

4. The collective-bargaining process should be used where applicable.

5. There has to be realistic but expeditious time frames to complete the adjustments.

If we look at this bill, there are many strengths to the bill that we will note here. The bill recognizes the systematic undervaluation of women's work. It recognizes that there must be some complaint procedure and it recognizes the proactive provisions for some employers. It includes some part-time workers. It respects, to some extent, the collective-bargaining process.

There are some basic strengths that make this bill far superior to the original Bill 105 and one that the Equal Pay Coalition is able to work with as a basic structure. Unfortunately, it still falls far short of meeting the equal value standard. It does that in a variety of ways, which I will go through. Our basic position is that at this point, since we have waited so long for the legislation, it is essential that we not falter in implementing it, but rather implement the full equal value standard.

If you look at the bill, nowhere in it does it say the equal pay for work of equal value standard or the failure to act on that standard is unlawful. That is something that must be included in the bill. It is our position that the failure to implement the full equal value standard is, in fact, a violation of the Charter of Rights and Freedoms. Essentially, without it, workers doing women's work are not equally protected from wage discrimination, as are men doing men's work.

To understand the difference between the approach in the bill and the equal-value standard, it is important to look at the different terms. To some extent, it will assist. The words "pay equity" have been used in the Minnesota, Manitoba and Ontario legislation as essentially a one-shot approach to equal pay for work of equal value. It is an approach that provides for adjustments to women's pay--not to all women's pay--over a limited period.

It is a method of reducing the wage gap caused by the undervaluation of women's work, but it is not a method of eliminating it altogether and in perpetuity. It is a time-limited version. To that extent, that is how we distinguish that we want an equal value standard in the bill which is not time-limited and not a one-shot approach, because pay equity by itself is not enough. Pay equity is a means to achieve equal value. In some ways in the bill, it has a connotation of the proactive measures which is an important means to achieve equal value, but it is not the end.

Accordingly, we ask that the bill be amended to provide specifically for the equal value standard, and as we go through various other amendments, ensuring that standard is there in perpetuity.

One of the other factors in relation to this is the fixed-predominance test. Perhaps I can clarify a little around that issue. One of the difficulties we have with the bill is that while it is better than Bill 105 in that it provides for some discretion concerning the flexible guidelines and Bill 105 did not, it still institutionalizes the notion of fixed guidelines. People who are familiar with labour relations will understand that employers do get their minds around a number and essentially say in negotiations: "This is it. Anything below this is out."

What you are doing by having the initial basic figure and requiring employees and unions to go to the Pay Equity Commission is essentially leaving them with no remedy at the outset. They have to go through a long procedure in order to establish that they should be covered, rather than leaving them with the initial flexible test. In either event, the 60 per cent test is very high.

If you look at Quebec, it has adopted a simple majority test of 50 per cent plus one. In a recent study for the municipality of Metropolitan Toronto, Peat Marwick used a 50 per cent plus one test. It is very important that you see that the issue of 60 per cent and 70 per cent is an arbitrary designation. The work force is 43 per cent women and maybe we should use 43 per cent.

It is one of the problems because 70 per cent was used in Manitoba. It was the same kind of process, where all of a sudden that became institutionalized as gender predominance. Ever since then, we have been trying to fight back against that figure. We have a 60 per cent figure, which is somewhat lower, but it is still very arbitrary considering that various federal settlements all started off with job groupings that were lower than that figure. They would have been required to go to a commission before they could have been in a position to establish anything different.

That is why we have difficulty with it and would ask, in the proactive phase, for flexible guidelines without the mention of numbers, and in the complaint phase, that there be no requirement for establishing gender predominance.

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In terms of the complaint procedure, we would like to distinguish between equal value complaints and proactive complaints. At the moment, the bill provides only that those covered by proactive plans can challenge the propriety of the plan. Once the plan is completed, they can challenge whether there is some change in circumstance, but basically, they do not have an ongoing complaint procedure. That is part of our position as to why it is not equal pay for work of equal value in perpetuity. Accordingly, we think that when the proactive phase ends, they have to be able to complain that they are not receiving equal pay for work of equal value wages.

During the proactive phase, we recognize that there have to be some adjustments to the fact that you have a proactive phase. We have suggested that those covered during the proactive phase have some restriction in that their individual complaints should not hold up the proactive plans, but that a person would have the right to complain that the plan would not achieve equal pay for work of equal value for her. They could take that, initially, to their bargaining committee, and if it could not be resolved, it would then go to the commission.

In terms of those not covered by equal value plans, they have to have a basic right to complain that their wages are not equal value wages. We will be dealing with how we intend to divide those who are covered by proactive and equal value plans. The basic complaint procedure is extremely important and we regard it as the basic safety net of what women require. While it is important to have a proactive system, again, to some extent the whole basic right to complain has been lost in the move to proaction. The coalition has always been strongly in favour of a complaint procedure. We welcome the proactive requirements but the International Labour Organization standard requires a strong complaint procedure. That is the right federal and Quebec workers have, and it is a right Ontario workers should have as well.

In addition, we think you have to look at a shorter implementation period. We see that can be done in varying ways. Essentially, we feel there has to be a collapsing of the divisions of the employers who are there at present as well as a collapsing of the time. At present, the bill creates varying standards of justice depending on the number of employees in your work place. This is a fairly arbitrary distinction and I do not think that arguments based on cost or complexity can really be used to justify the distinctions.

While we are prepared to live with some minimal period of adjustment, we think that the lengthy delays envisaged by the bill are not conscionable. You have to keep in mind that while there are employer concerns here, you do have women every day taking home a paycheck that is discounted by 34 per cent. We are prepared to agree to a two-year adjustment period before employers will be liable for wage adjustments, but we consider that any longer period than that is unacceptable and that the cost of this concession to working women is already considerable. It is important in dealing with all these issues if you calculate it out, essentially, and think of the cost to women of just the two-year time frame we are talking about.

If you would see our position, we would start off, first, two years from the proclamation date when employers would become liable for wage adjustments. At that point, we would suggest that the proactive employers would be those who are unionized and those who have 100 or more employees. We suggest that for two reasons.

First, if you have a unionized work place, it is ideally suited for proactive requirements. According to the ILO standard, collective bargaining should be utilized to identify those processes and it would be in compliance with that standard to make all those work places that are unionized subject to proactive requirements. There is a bargaining agent and a history of bargaining pay practices. A substantial number of women who would fall below the present 100-employee test would still be unionized. Then you would keep the 100 and over as proactive in the present bill.

The employers who would be subject only to complaints would be those who are 100 employees or fewer. Ms. Spink will be dealing with the exemption for 10 and under. Those employees in the 100 employees or fewer and their employers would be able to opt into the proactive requirements if they wished.

At this point we talk about how to minimize the delay in pay adjustments once you get to this two-year period. It appears to us that there is no reason why there should be lengthy delays in the bill in terms of even the proactive phase. We are prepared to agree that the public sector could be the first to make its pay adjustment. It would do that at year 2. However, we are proposing that all the proactive private employers, the unionized employers and those over 100, could have one additional year to identify the pay inequities, but at that point they would make retroactive payments to year 2.

While there is an argument that you may need time to identify pay inequity, there is really no argument that at that point you should not pay back the money, if the only reason for the delay is the time required to implement; in other words, employers could be budgeting now for pay adjustments from year 2, but given an extra year to actually identify the precise pay inequity. Those who would be subject only to the complaint procedure would be liable for wage adjustment as of year 2. They would be subject to a complaint procedure through the Pay Equity Commission.

The bill also provides for an indeterminate number of years in order to achieve pay equity and it depends on how wide the wage gap is in the work place. The wider it is with the restriction of one per cent payroll, the longer it will take for pay equity to be achieved. The one per cent figure does not recognize that the pay gap will vary, sometimes quite extensively, from one work place to another. For example, the public service wage gap is 78 per cent or 22 per cent, whereas the overall wage gap is 34 per cent. Obviously, the reduction of the wage gap at one per cent of payroll would happen much more quickly to the civil service at a one per cent figure than it would in the private sector.

We suggest that there has to be some kind of time period within which workers in the province get pay equity. We are suggesting a five-year time period in the proactive phase. In the first year, we are content that there be this one per cent of payroll, in order that employers can identify it more quickly and as a concession to employers.

After that, it is our position that the balance of the pay adjustment as identified must then be divided into four equal annual instalments with a minimum amount of one per cent to be paid out in each year. In other words, if you had a 10 per cent payroll requirement, you would pay out one per cent in year 2, 2.25 per cent in year 3, 2.25 per cent in year 4 and onwards, until the entire 10 per cent payroll requirement in the work place had been completed in the five years starting from year 2.

However, if only a three per cent payroll wage gap were found, then you would pay out one per cent for three years. That way we think those who suffer the largest pay discrimination will not be required to wait the longest period. The other thing to remember with respect to the one per cent figure--and again this is one of the figures that arrived from Manitoba and Minnesota--is that in the Manitoba civil service the one per cent figure was a calculation based on analysis of the job groupings as to what it would take to reduce the wage gap in four years.

It was a reasonably scientific estimate of that situation, but it has been imported into a situation which is not a public sector situation and applied overall throughout all work places in the province where it does not accurately estimate what the wage gap is. Ultimately, it is a budgeting technique to ensure that employers are not required to pay more than that amount of money. We are saying we will agree to that budgeting technique for one year but, after that, you will phase it in over the four subsequent years.

I am now going to hand the microphone back to Ms. Spink to deal with the issue of coverage.

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Ms. Spink: In the times I have been here listening to the committee in the past two weeks there have been questions about numbers. I think we all agree that it is very difficult to come up with some precise numbers, but before I talk specifically about our recommendations, I would like to take you through some very rough calculations I have done to come up with an idea of how many working women in Ontario would be excluded from the provisions of the bill as it stands now. I will then be making arguments to you that the bill should be amended in order to include a greater number of working women.

I have taken the figure from the Ontario women's directorate of the total female work force as being just under two million. The first thing I looked at was the provision in section 7 excluding certain kinds of casuals. The minimum hourly cutoff was 12.5 hours a week. It seemed to me that was the most difficult concept to come up with a number for.

What I did was to go to the report of the Wallace commission, which was issued by the federal Department of Labour in 1983. That report contains the most comprehensive statistics on part-time work in Canada that I know anywhere. What the commission did was take a snapshot of all the part-time workers in Canada during one week. Much to the astonishment of the commission, it found that 30 per cent of the women who were working part-time were working fewer than 15 hours a week.

That is not 12.5, but I figure there is an hour and a half difference between 14 hours and 12.5 hours. On the basis of the number of part-time female workers in Ontario I calculated the number who would be excluded by that provision.

I then took the number of women who work in establishments of fewer than 10 employees. The next thing I did--and this is very rough--was to figure how many women would be excluded by the 60 per cent gender predominance test. I looked at the Metropolitan Toronto Local 79 bargaining unit and was able to get figures from management staff at Metro about the number of women and men in each job category.

I found that five per cent of the women who work for Metro Toronto would be excluded by the 60 per cent gender predominance guideline. That is a very conservative estimate because 60 per cent of the people who work at Metro are female, and that is greater than the number of women in the work force.

I then took a very conservative figure of the number of women who work in all-female work places. I was not able to come up with the number of people working in nursing homes or libraries, but we do have figures for day care workers and several of the social service agencies. When we add up all those figures, we find that more than 500,000 women in Ontario are going to be excluded from the provisions of the bill as it stands now; 28 per cent of the female work force will not be eligible for equal pay adjustments as the bill stands now.

It is in that context that I want to talk to you about some of the amendments that we are looking for. Many of the employer groups have made submissions to you proposing amendments which would further restrict the number of workers who would be covered by the bill and would also restrict the comparisons that are available to those who are covered.

We do not find this surprising, given that the amendments are proposed in the context of assumptions that are foreign to the very premise of the bill. The Ontario Chamber of Commerce has told you that its amendments are in the context of its position that the central premise on which the bill rests is of dubious reliability. The Canadian Manufacturers' Association has told you that it is opposed to the concept of legislated pay equity.

The amendments from the opponents to the bill are designed to undermine the effectiveness of the bill as a piece of pay equity legislation, and what the amendments are calling for is something less than pay equity legislation. The Retail Council of Canada has suggested to you that you do away with the under 10 guideline but that you replace it with a minimum incumbency rule of perhaps five. We are very pleased that the bill does not include a minimum incumbency rule.

We feel that requiring there to be a particular number of women or men in a job before it can be compared is prejudicial to employees in smaller work places where there are fewer employees. Especially because men's jobs are more finely differentiated than women's jobs, because there are many more job categories for men, this would mean there would be fewer jobs available for women to compare themselves with. We are very pleased there is not a minimum incumbency standard.

There is one clarification we feel is necessary, and that is in the definition of "job class" in subsection 1(1). Because a plural is used, it appears that two employees are required in a position for the act to apply. We would like to see that changed to the singular in order to make it perfectly clear that comparisons can be allowed between jobs with single incumbents.

You heard a very eloquent presentation from the Ontario Coalition for Better Day Care suggesting there should be a provision in the bill to ensure that all female work places are covered. As you know, the bill offers absolutely no coverage for women who are working in all-female work places.

We know that all three parties are sympathetic to the dilemma of women who are in female job ghettos, and we would like to see some legislative amendment to accompany that sympathy. The simplest way to cover such workers would be to give the Pay Equity Commission the explicit power to compare the wages of women in female job ghettos with an appropriate male group and to order the necessary wage adjustments on the same timetable as the workers who are covered by the bill as it stands.

On the question of the exclusion of employers with fewer than 10 employees, almost every number we see in the bill is a loophole or an open invitation for the employers to manipulate their way out of being covered by the legislation.

One of the things I would like to draw to your attention is the study done by Blackhurst van Beinum and Associates, which considered as a hypothesis what it would mean if we were to exclude firms with fewer than 20 employees. When Blackhurst then assessed the weaknesses of that approach, one of the comments made was that companies with fewer than 20 employees may be reluctant to add two or three additional workers and move into a different regulatory level.

A large number of female workers with this significant wage gap would be left to voluntary compliance and may feel concerned, and advocates for pay equity may see it as a cop-out. That points out very well the dangers of exclusions based on a particular number. It is an open invitation to an employer to keep his work force under that level. The fact that firms with fewer than 10 employees are excluded means that 238,800 women in Ontario will not be covered by the bill. That is 12.4 per cent of the female work force.

We believe that this exclusion violates section 15 of the Charter of Rights and Freedoms, and it is a fundamental part of our position that all workers in Ontario must at least have access to the complaint mechanism. We do not believe there is a precedent for the exclusion of workers on the basis of the size of their work place in the Employment Standards Act, for instance.

Some of the employer groups that have appeared before you have suggested that this level be raised from 10 to 50. I think the Canadian Federation of Independent Business was proposing that you change that guideline to 50. If you were to do that, that would exclude another 12.4 per cent of the female work force. On the basis of the studies, it seems that the government is making a political decision in excluding firms of that size, because the firms with fewer than 10 employees make up 84 per cent of the small businesses in Ontario.

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The exclusion will please a large number of people who are owners of small businesses, but we do not think it can be justified. We think this is an arbitrary standard. The Urban Dimensions group concluded, in the study it did, that it might be a good idea to exclude firms with fewer than 10 employees. The reason they gave for that was that the firms would require extensive assistance in preparing pay equity plans, but as the bill stands, our position is that firms of this size are not required to prepare pay equity plans and that at the very least their employees ought to be able to file complaints.

The next area I want to look at is the exclusions in section 7. Because I see that time is moving on and because I know that many groups have made extensive presentations to you about the exclusions, I will simply note that the bill enshrines all the exceptions the green paper put forward for discussion. We find this to be a great disappointment. The only exception we can recognize is seniority applied in a nondiscriminatory manner.

Subsections 7(3) and 7(4) of the bill pertain to casual workers. If you look at subsection 7(4), you will see that the drafters of the bill have, in a very convoluted way, attempted to define what a genuine casual position is and what should be exempted. It is clear that the intention behind that subsection is to discourage employers who may want to turn regular part-time jobs into casual jobs. We admire the attempt but do not think it is successful.

We want to remind you that "casual" is a word that usually defines an employee's status; it is not the definition of a particular position. We feel that in defining a casual worker or part-time worker it is appropriate to turn again to the Wallace commission, the report of which is the definitive report on part-time work. Their definition is one which includes on-call casuals. This is what we are concerned about.

As the Ontario Nurses' Assocation pointed out in its presentation, the on-call casual is in fact excluded from the provisions of the bill as it stands. These provisions are really an incentive for employers to convert regularly scheduled part-time jobs to casual jobs and then, within the casual work force, to keep the number of hours they assign to their casuals below that minimum.

I can briefly give you an example. The local I work with, Canadian Union of Public Employees Local 79, represents the largest bargaining unit of casual workers in Canada. We have a fairly new bargaining unit with 1,300 casual workers. At the rate the employer is converting full-time jobs to casual jobs, we are going to have the largest bargaining unit of casual workers in the universe.

The way in which work is assigned is that senior people get regularly scheduled work and all people are eligible for call-in work. The amount of work available for call-in, which is really the bulk of the work, depends upon the rate of illness of the full-time workers whom the part-time workers are replacing.

In a winter month when you have a flu epidemic, some of these people would be eligible under the bill, probably all of them, because they would be working enough hours, but in other seasons when people are healthier, a good proportion of this bargaining unit would not be eligible under the provisions of the bill, because by definition they work irregular hours. They are working on a continuous but always irregular basis. We urge you very strongly to delete the sections of the bill that exclude casual employees from coverage.

Mr. Chairman: Ms. Cornish and Ms. Spink, I want to remind you that there will be questions. I wonder whether you have some indication of when you might be wrapping up your presentation because we have other groups to follow and I do not want to cut the committee off in any questions it may wish to address to you. Can you perhaps go into high gear and come to a conclusion as quickly as you can?

Ms. Spink: High gear? Fine. I had my foot on the brake.

Mr. Chairman: I do not like to do this, but I must.

Ms. Spink: Ms. Cornish will take over.

Mr. Chairman: All right. If you can come to an appropriate pause in your presentation, I sense there will be questions.

Ms. Cornish: I will highlight some of the legal mechanisms we think are important in implementing the bill. I will note some of the pages for you and that may assist you in referring to this.

The first is that it is essential to have a separate fund where employers will have a separate budget allocation. This is important to ensure that we can make sure workers are not paying the price of equal value from their own normal wage increases. Second, the commission will be able to monitor whether the pay adjustments are being made. This is similar, for example, to how employers set aside money for taxation purposes. In addition, we are making a recommendation that pay equity funds be put into trust in the same way vacation pay is held in trust under the Employment Standards Act. This will also help in the event of any closure of a business. Furthermore, we have provisions, found on page 38, to strengthen the transition protections to make sure employers will not in fact widen the wage gap during the two-year period.

In addition, you will see there are provisions on page 38 to ensure that employees are able to have third-party complaints. The bill currently states an employee can appoint a third party to take over a complaint and appear before the commission, but we think there should be a procedure whereby anybody with reasonable grounds could initially file the complaint and, in addition, that the commission has the power to file a complaint.

This is why we also see that to make sure unorganized workers, those workers who are most in need of it, have protection under the bill, there has to be the access to information that is not currently in the bill. On page 35 we deal with our recommendations as to how both employees and bargaining-unit representatives must have access to information, as in the Manitoba legislation.

We also say that in terms of unorganized employees, there must be the right for third-party complaints. Also, the bill must be amended to ensure that there is a monitoring power of the review officers over not only the proactive plans, as the bill currently states, but also over those employers who are subject only to the complaint procedure, because that is the only way in which those people who are subject only to the complaint procedure will have some assurance that the bill will be implemented for them. We do not want the complaint procedure to be a hollow mechanism.

In addition, we see that there must be resources provided to the nonorganized worker. One mechanism might be pay equity clinics, which would help those employees, some of whom may have proactive plans because they are with an employer who has 100 and more and is not unionized, and those who are not, to file complaints. These kinds of mechanisms are essential in order that they have real rights.

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The next issue is the law and collective bargaining. There has been a long history of collective bargaining in this province and we are concerned in various ways with the way the bill is currently structured.

Section 6 presently provides that both the union and the employer are liable for noncompliance of the act with respect to the implementation of equal pay for work of equal value. It is our position that this type of provision misunderstands the appropriate roles and responsibilities of an employer and a union.

Employers in this province are the ones who are responsible for compensation practices. They are the ones who own the businesses. They have access to the funds and the more detailed access to the information. The unions have an obligation, and a strong obligation, to bargain for pay equity, to bargain in good faith and to represent their employees fairly. Accordingly, we propose deleting the portion of section 6 making them equally liable for compliance with the act, and instead amending it to say that they have a duty to seek the implementaton of gender-biased compensation practices and in the process, to represent their members fairly. We think this more clearly delineates their duty and it would be similar to the types of responsibilities they have under the Labour Relations Act.

In addition, we urge you to delete the exemption for bargaining strength that is included in the bill. You have heard from the unions that they do not want this exemption. Mr. Scott has indicated this exemption was put in to protect unions. I think you have heard the final word on that point, that unions in this province want to see the end of pay discrimination, that historically in the collective-bargaining process there have been more male workers unionized and that what will happen if you have the exemption is that for a brief moment of time in the 1990s, under the present bill, we may have pay equity but it will very quickly be replaced by the reassertion of bargaining strength by male-dominated units.

It may be that the exemption is in there because employers do not wish their employees to be able to get the male-bargaining-unit wages. I think that may be a more accurate indication of what it is there for. From our point of view, we think it defeats the purpose of equal value.

In addition, we want to see an amendment that the provisions in the bill are a mimimum requirement only. This would be similar to the provision in the Employment Standards Act and would allow unions and employees to bargain for a standard that would be in excess of the bill, and indicate that is a possibility. As it is now, it may be that employers will say to unions: "This is it. There is no requirement or obligation at all to bargain with you over this issue on anything in excess of what is in the bill."

Turning to the administration of the act, there are various technical amendments concerning the adjudicative body. We think there should be a separate adjudicative body. This would leave the commission free for a more active role. We think there must be resources given to the commission. There must be enough panels so that the adjudicative body can hear the complaints. I think we are all familiar with adjudicative bodies in this province that essentially do not have enough money to have enough staff to carry our their responsibilities under the act. That is certainly true of the Ontario Human Rights Commission at the moment. We may have had all the fuss over Bill 7, but essentially if you cannot enforce it, it does not matter what the legislative committee members may have done.

In relation to the review officer procedure, we think that the procedure of conciliation should be optional and not mandatory. We think that there should be no power to make an order without a hearing and that there should be a minimum time frame in which the commission would make the order. We would suggest a 90-day time frame.

In conclusion, our basic thrust is that we do not wish to see variable standards of justice based on chance or circumstance, depending on where women are located in this province. We want to see the bill invigorated so that it will be a bill that will live up to the legal commitment to implement equal pay for work of equal value.

As you consider the amendments and go through the committee stage, there is sometimes a tendency in this process to weigh equally the amendments put forward by the business community and by women's groups and the unions. We ask you to recognize that this is not an equal process because for the past eons and centuries women have been paid unfairly. It is not appropriate at this time to split the difference and give the business community part of its amendments and us some of ours.

At this point, you have to remember that for each concession that is made, you are finding working women who cannot even basically get above the poverty line. It is a serious situation. It is not, in our view, the time to take pity on the business community. It has some real concerns but we think we have more than adequately met those concerns in the concessions that are already in the proposal before you.

Mr. Chairman: Thank you for a very comprehensive overview of your position with respect to Bill 154. I am going to move on to questions which I am going to allocate equitably in terms of time, to the extent that I can. I will rotate the questions. I will start with Ms. Gigantes for about five minutes and then move on from there to someone else for about five minutes. We will try to keep it as fair as we possibly can in terms of rotation.

Ms. Gigantes: I would like to thank you for your presentation. Bravo! It was really well done and it is a testament to the years of work that the Equal Pay Coalition has put in on this problem. I would like to indicate that your estimates are the first we have had of any kind, from anybody, that indicate to us how many women are potentially excluded from the benefits of this legislation. That I welcome very much.

May I ask you a tiny bit more about those estimates? It seems to me that when we leave the exemption open for employers to play around with part-time, on-call casual categories of work, we may be opening up an exclusion so that we encourage employers to move to types of part-time work under one third of normal hours of work with a full-time employee, or to on-call casual work that had some benefits for the employer but not the benefit of being able to say, "I don't gotta worry about equal pay because I can exclude these people and then I get my numbers down to the right proportions and I don't have to worry."

Ms. Spink: That is right. You may feel we are being overly ungenerous or sinister about our feelings that employers may do what they can to get themselves outside the law. I do not think that is a sinister view. I think it is simply realistic and I might give an example of the bargaining unit of 1,300 going on 1,400 casuals we have at Metro.

An arbitrator awarded us prorated benefits and the casuals get benefits on the basis of number of hours they have worked. Since we got that award, the employer has increased the number of casuals in the bargaining unit by 40 per cent. So while casuals are eligibile for benefits, because there are more and more casuals getting fewer and fewer hours, the benefit provisions have effectively been neutralized. I see no reason to expect that it would be any different with pay equity legislation.

Ms. Gigantes: In fact, we had it proposed to us this morning by the Board of Trade of Metropolitan Toronto that employers would do that unless we exempted all part-time workers from this bill and its clauses.

Ms. Spink: I think the message is fairly strong that none of them should be exempted.

Ms. Gigantes: Could you say a few more words about merit compensation plans and skills shortages, as they are addressed in the bill.

Ms. Cornish: Essentially, the problem the coalition has had, historically, with the issue of merit exemption is that in the experience of the people in our groups, the merit exemption has always been used as an exemption in a gender-biased way. In other words, because it involves an analysis of somebody's merit, historically, women have been perceived to have less merit than men.

Ms. Gigantes: You have never heard, never seen nor never had demonstrated to you in all your years of working on this issue, a merit compensation plan that was not gender-biased?

Ms. Cornish: We have not seen one.

Ms. Gigantes: You have never heard of one?

Ms. Cornish: We have never seen one put forward by the business community that would be gender biased. On the other hand, what we have seen is frequent employment standards cases where employers have used merit to defeat the present equal pay complaints because it is such a wide-based exemption. Merit is something about which you can have very broad views. To some extent we have had to rush a bit, but I think there is some attempt made in the bill--and I think this is true of all the exceptions--to try to narrow and cut off some of the problems with the exemptions. As a labour lawyer, I have a fair amount of experience in dealing with employers who look at a piece of legislation and try to figure out a way around it. They generally do it and they have more resources to do it.

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In the rush, I did not mention it but we are proposing what is called the bad apple rule, which is essentially that there should be something in the bill to deal with employers who will attempt to restructure their businesses to avoid compliance with the act. While employers may well strictly comply with the act all the way around, in essence there may be a scheme to avoid compliance with the act by setting up the nine-and-fewer-employees establishment or the 49-and-fewer-employees establishment, by rearranging the occupancy of job classifications, by freezing or giving lesser wage increases to the male target group in order to have a lower target by the time you get to making the wage adjustment.

We find it is hard to predict accurately all the ways employers will attempt to avoid the act. I do not think it is sinister or paranoid to think that will not occur with some employers. We think we should have in the bill a section similar to that in the Employment Standards Act now and similar, for example, to that is in the Income Tax Act, where the minister can collapse a tax scheme that, although in all its individual parts it is legal, is in essence to avoid the payment of tax. Similarly, the referee in employment standards can collapse a scheme where the purpose of the scheme is to defeat the purpose of the act.

We are not talking about employer moves that are made for legitimate business purposes, but we think there should be some kind of broad statement and power given to the Pay Equity Commission to deal with this kind of unfair labour practice of employers around pay equity. As it presently stands, there is nothing like that in the bill. Once you have developed a commission that has the expertise, it will be able to identify and see the types of employer mechanisms that are legitimate and those that are not.

Mr. Baetz: I also want to thank you very much for your comprehensive report. Obviously, a lot of background homework has been done on it. You have provided us with statistics, some of which we did not have before. I must say you also enlightened this amateur, finally, as to what it was I sensed was bothering some of the unions about their future role in this whole matter. You have done them a good turn and you have certainly done me one by being specific about that.

You referred to a study--I do not think it was Hay; it was the other firm--that discovered that the larger the firm, the larger the gender-based wage gap. I think that is the way you put it. I must admit I was very surprised to hear you say that. I have not read that study so I would like to have you expand on it a little more.

Last night we had General Motors, one of the biggies in this province, in here. I cannot speak for the rest of the members, but I was very much impressed with its statements indicating that, in fact, there was no great problem at General Motors. I guess I also concluded, maybe improperly, that all the other big ones were just about as squeaky clean as GM, that the real villains were the middle-sized employers and that maybe the worst were the very small ones.

Mr. Charlton: Those guys have been fooling you for years.

Mr. Baetz: He said that; I did not say that.

Ms. Spink: The study I was referring to was the one done by Blackhurst van Beinum Associates. It was a study of firms with fewer than 100 employees. What they did was divide the groups into four or five categories of firms with fewer than 100 employees. What they found was that in firms with between zero and five employees there was less of a wage gap than in firms with between 80 and 100 employees.

If you look closely at the first table in the report--it was one that the government released last week--one of the reasons, I am sorry to say, that the gap seems to be smaller in smaller firms is that they pay less in the first place. As you approach the minimum wage level, there is less likelihood for a large gap. But they did show that there is a gap and, as the number of employees approaches 100, the extent of the gap increases.

I do not have data or the study, because the study did not cover firms the size of General Motors. I am sorry I cannot enlighten you about that.

Mr. Baetz: So you are saying it was really the bigger of the smaller.

Ms. Spink: The bigger of the smaller firms. That is right.

Mr. Baetz: So even though Mr. Charlton does not believe it, maybe GM is squeaky clean. Maybe there is no great problem there.

Ms. Spink: I would not want to be seen as a defender of GM.

Mr. Baetz: Anyway, thank you very much for clarifying that.

Mr. Chairman, I would like to say for the record that reference was made to Mr. Somerville and the National Citizens' Coalition. Again, it was implied that Mr. Somerville and his coalition were speaking for business, or at least there was a very close association. For the record, when Mr. Somerville appeared before us and made statements that, I guess, to quite a few of us around this committee seemed rather outlandish in terms of simply saying there is no problem and there is no injustice, period, I explicitly asked him, "Who are--

Ms. Spink: I was here.

Mr. Baetz: Yes, you were here.

Ms. Spink: It was wonderful. You all demolished him.

Mr. Baetz: But the point was that he, himself, said that he was not speaking for business and he would not want to be its mouthpiece. I frankly think that maybe that point ought to be made, because, sure, there may be a general business bias in all of this--there probably is--but we have heard from quite a few businesses and delegations here and they are prepared to say, "Yes, there is a problem." How to solve it is something else.

Ms. Spink: It is a problem this big that (inaudible).

Mr. Baetz: I do not need to defend business; it can speak for itself. I just think that we should not equate the NCC totally with--

Ms. Spink: No, and I thought I made that clear at the beginning. It is clear that the NCC does not speak for business, but the point I wanted to make was that some of the better, the more intelligent presentations that you have had from business in fact carried with them the same assumptions as Mr. Somerville. It is a difference in style.

Mr. Baetz: Finally, Mr. Chairman, I--

Mr. Chairman: Mr. Baetz, you have used up your time in your defence of--

Mr. Baetz: Can I ask a final question?

Mr. Chairman: No, you cannot, as a matter of fact. Mr. Stevenson is on next. I will rotate back to you if there is more time. After your eloquent explanation of the NCC, you used up all of your time. I will have to move on to your colleague.

Mr. Stevenson: You used the statements of the 36 per cent and 22 per cent--or 34 per cent and 22 per cent; it does not matter, the mid-30s and

20s--discounting of women's paychecks. To what extent will this bill close that gap? Do you have any figures on that?

Ms. Spink: I think that it depends on whose amendments are in it by the time it is finished as to what it will extend. But as I understand it, the government figures were initially 15 per cent to 20 per cent.

Mr. Stevenson: Do you accept those figures?

Ms. Spink: I have not done any detailed analysis of that. That would be in relation only to the people who were covered.

Mr. Stevenson: Yes, so I understand. I understand why you would like to shorten the time to get the payroll adjustments made. I wonder if you have done any work to look at companies--and I am thinking particularly of the ones I am most familiar with, which are manufacturing companies that make components of a bigger gadget.

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Certainly there is one plant I am very familiar with, where I know workers and management quite well. In the plant there are just over 100 employees. Frankly, two large companies come to them and say basically, "We will buy these widgets from you, if you can produce them for that price, and if you cannot, we will get them somewhere else." They certainly are available somewhere else. That plant is working very tightly right now. I think the employees are relatively happy with what they are making, and labour-mangement relations have been excellent. I think the employees and management realize that the company is tight and that there is not much room to manoeuvre.

They think they are paying fairly. Really the only question comes is whether there is a problem with the office staff. They think they are okay. I think the office staff are relatively happy. But the company is over the 100 people and will have to come up with a plan. If indeed there is trouble, and they have to make adjustments, it is my concern that this plant and others like it could be into a problem if forced to make a quick adjustment. I know for a fact that there is not a lot of money in that company to be passed around. The easiest thing is to reduce pay increases across the board to correct for whatever problems exist. If it does not come that way, it is going to come out of money that might have been used for modernizing equipment and so on. Both employees and management are concerned about it.

Ms. Cornish: Let me deal with that this way. I understand it is a unionized work force?

Mr. Stevenson: Yes.

Ms. Cornish: Essentially, although you indicate to me that the employees are happy, the unionized representatives you have heard from--if you have heard from the Ontario Federation of Labour, which likely includes the union you are talking about--are in fact saying that those wage adjustments have to be made. In fact, the union in that plant is in favour of proactive plans over a short time, so I do not think it fair to say those employees are not in favour of it and are happy with the situation as it is.

The other thing you have to consider is that this company has in fact become adjusted, if there is a pay problem in it. You are thinking there may not be one, or that there may only be one with the office, but if there is pay problem, over the years they have become adjusted to having a situation where, in essence, they have been in a better position because their employees have been paid less.

In Ontario, we have had since 1983, I think, a unanimous resolution of the House saying that equal pay for work of equal value is coming. There has been plenty of time to adjust to it. We are saying that your employer has another two years before he has to make any adjustments. All right? We are talking two years down the road. We are not saying to that employer, "Go out there today and make all the adjustments," although we would like employers to do it. I think smart employers will do it, because if there is a problem, you can be assured that the workers are not that happy about it and that employers have a far more productive work force when the employees are being paid fairly. It really ultimately comes down to a choice between employee and employer interests, as do many labour relations matters.

We live in a society where, just as we have strong views about medicine and the Ontario health insurance plan, we believe the government should legislate. Studies have shown that people think the government should legislate in this area as well. If we have decided we are going to end it, how long do we take? We are saying, "We think this is the reasonable compromise of the time frame that is necessary to do it." To say no, we must give what potentially we have calculated as 18 to 20 years for some people to get their final wage adjustments just cannot be acceptable. In other situations, if there were a finding--and there may well be some of this problem--a systematic undervaluation of work, for example, on the basis of race, would we find people saying it can take 20 years to rectify it?

It is just one of those basic standards that the good corporate citizen has to live by. It is like when the oil price goes up. You live and that is a fixed thing. What seems to be different with employees' wages is that they are more flexible. We are saying that in this area they are not flexible. They are flexible to the extent only that you are already being given a period of time to adjust.

Mr. Stevenson: I certainly accept the concept of your answer. Basically I agree with it. Unfortunately, I think in some cases it is a lot easier to say than to carry out. I really think there will be some companies that are going to be hard-pressed, because of the nature of their businesses, to do it without hurting. I am sure they will get it done. I do not doubt that they will. The bill is here and it is going to pass in some form or other and it will happen. To quicken it as you suggest--I think there are some sectors that could really cause some--

Ms. Cornish: It is true in any social policy that there may be some particular people it may affect more. I think it is a matter of who is hurt the most, and we are asking you to opt on our side rather than on their side at this point.

Mr. Chairman: I will have to break in at this point; I am sorry. I appreciate the submissions you have made. With some reluctance, I have to cut it off at this point. Thank you for all the work you have done, your brief and the comments that you have assisted us with, as well as responding to our questions. We appreciate it a great deal. Thank you very much.

I am going to give the committee a quick five-minute break.