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Thursday, May 28, 2009

Chair

The Honourable Hedy Fry

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● (1110)

[*English*]

The Chair (Hon. Hedy Fry (Vancouver Centre, Lib.)): Order, please.

We have today two sets of witnesses with us. From the Federally Regulated Employers - Transportation and Communications, FETCO, we have Mr. John Farrell, executive director; and David Olsen, assistant general counsel, legal affairs for Canada Post Corporation.

We also have Syndicat des employés de la Banque laurentienne and Confédération des syndicats nationaux, CSN, and they are on video. Danielle Casara is from Syndicat des employés de la Banque laurentienne and Claudette Charbonneau is from Confédération des syndicats nationaux.

With that, I will begin. I just want to let witnesses know that you each have 10 minutes per group to present and then we will open up for questions from the committee. We will time everyone when we begin.

We will start with Mr. Farrell. Are you and Mr. Olsen going to share your 10 minutes?

Mr. John Farrell (Executive Director, Federally Regulated Employers - Transportation and Communications (FETCO)): That's correct.

The Chair: Good.

So we will begin with Mr. Farrell. Welcome.

Mr. John Farrell: It's a pleasure for both of us to be here.

FETCO represents the majority of employers in the private sector under federal jurisdiction, covering railroads, trucking companies, broadcasters, telephone companies, the operation of the ports, the airlines, among others. There are approximately 586,000 employees employed by FETCO member companies, and in our brief, at appendix A, you will find the names of the companies that are members of FETCO.

We recommend that you read our brief as well as the paper written by Professor Paul Weiler that was prepared in June 2002 in support of FETCO's submission to the Bilson task force. This is an integral part of our submission.

First and foremost, federally regulated employers, the members of FETCO, fully support equal pay for work of equal value.

Professor Weiler's paper examines the interplay between equal pay for work of equal value provisions under the Canadian Human Rights Act and the provisions of the Canada Labour Code. It predicted, in 2002, the practical problems employers would face in achieving equal pay for work of equal value in a unionized environment where employers are compelled, by the provisions of the Canada Labour Code, to negotiate compensation provisions bilaterally with the unions representing employees. At the same time, the employers are unilaterally responsible for achieving equal pay for work of equal value for men and women under the provisions of the Canadian Human Rights Act.

The Public Sector Equitable Compensation Act is supported by FETCO because it is a proactive rather than a complaints-based solution that makes both the Treasury Board, as the employer, and the unions representing federal public sector employees equally responsible for achieving equitable compensation by developing and implementing a plan to develop, achieve, and maintain this important human rights and employment objective. It will eliminate the union strategy of double-dipping by negotiating compensation provisions bilaterally and then seeking additional compensation through a complaint to the Canadian Human Rights Commission. This is really the primary reason the FETCO members are in support of this legislation.

Achieving equitable compensation is a human rights matter and an employment matter that requires a human rights and employment-based solution. The Public Service Labour Relations Board, we believe, is well equipped to resolve equitable compensation matters in the workplace. They routinely deal with the parties on an ongoing basis on matters of a similar nature, and the Supreme Court has made it clear that the courts and arbitrators have jurisdiction to address human rights issues. This case is no different.

Those are our introductory remarks. I'll now turn to David Olsen, who has been involved for quite some time in dealing with numerous disputes and proceedings with respect to issues involving both collective bargaining under the Canada Labour Code and the application of the Canadian Human Rights Act in the public sector.

David.

● (1115)

Mr. David Olsen (Assistant General Counsel, Legal Affairs, Canada Post Corporation, Federally Regulated Employers - Transportation and Communications (FETCO)): Thank you very much, John.

I will repeat, just so there's no misunderstanding, that our organization unequivocally supports the principle of equal pay for work of equal value. Our members have extensive experience with the current regime under section 11 of the Canadian Human Rights Act. We've been deeply involved in these cases for decades. I've personally been involved for over 25 years in a case involving my client, Canada Post Corporation.

There are certain flaws in the current legislation—that is, section 11 of the Canadian Human Rights Act—that have been largely addressed in the Public Sector Equitable Compensation Act. This act, of course, does not apply to the federally regulated sector, so our members are not affected by this legislation. We remain under section 11 of the Canadian Human Rights Act. However, we believe this act contains important principles and sound provisions that will improve the ability of employers and unions in the federal public sector to implement equitable compensation for women that is pragmatic and fair.

This legislation makes sense to FETCO because it integrates equitable compensation, or pay equity, into the collective bargaining process. Secondly, it requires that both employers and unions share responsibility for achieving equitable compensation. Thirdly, the proactive regime provides a more efficient, effective, and equitable problem-solving and dispute resolution process over that in the current Canadian Human Rights Act, which is complaint based and leads to interminable litigation.

The heart of the issue for FETCO has always been the fact that equal pay for work of equal value must be integrated with the collective bargaining process. Like equal pay, the charter freedom of association for employees and the right to a form of collective bargaining is accorded the status of a fundamental human right. Just because both are considered to be sacrosanct does not, in our view, mean they cannot be addressed together. If anything, they must be addressed together in order for both to be balanced and achieved.

I've heard it said that pay equity is not negotiable. We agree, but what we have to recognize is that the best way, many academics say, of achieving pay equity is through the collective bargaining process. That's the forum where wages and benefits are set between a union and management, and in our view, that's the forum in which pay equity must be addressed.

That is the whole thesis of Professor Paul Weiler, who appeared as a witness before the Bilson task force, and we commend his paper to you. Professor Weiler, as you may know, was a famous Canadian academic. He was chair of the British Columbia Labour Relations Board and an expert on comparable worth in the United States while he was at Harvard University, and we do commend his thesis to you.

Section 11 of the Canadian Human Rights Act is poorly drafted. It articulates the general principle that it's discriminatory to pay different wages to men and women performing work of equal value. It has routinely and strategically been leveraged by trade unions as a means by which to effectively reopen collective agreements that they themselves have entered into with employers, in order to then seek additional payment on behalf of female-dominated groups in their union, a second kick at the can, if you like, that flies in the face of the fundamental sanctity of collective bargaining.

● (1120)

Unlike in the non-unionized environment, where it is the employer that makes the unilateral decision about terms and conditions of employment and compensation, in the unionized environment it's the bilateral decision between the union and the employer that sets the terms and conditions of employment. As the Supreme Court of Canada has said, there is no room left for individual bargaining between the employer and the individual employee. It must be done through the trade union as the bargaining agent. It's the two together who decide what compensation is to be paid. If you read Weiler—and I believe this to be true—in most circumstances it is the union that plays the major role in terms of the allocation of wages and benefits that the employer agrees to. It's mostly the union that decides how that money is going to be allocated under the collective agreement.

This is the reality that, in our view, the Canadian Human Rights Act does not recognize. Both pay equity and collective bargaining cover the same activity: the level, structure, nature, and amount of compensation. In the unionized environment, these activities have to be integrated. In Weiler's view, the alternative is to destabilize collective bargaining and to allow pay equity to be used to leverage the gains reached at the bargaining table. As I say, it is elaborated more extensively in our brief and in Weiler's paper.

In Weiler's paper, he states in his conclusions that “my first conclusion is that where disputes arise in employment relationships governed by both the [Canadian Human Rights Act] and the [Canada Labour Code], the bodies responsible for applying the law must read the two statutes together in a fashion that best accommodates these two important federal legal policies”. We say this conclusion applies with equal force to the Public Sector Equitable Compensation Act.

Thank you.

The Chair: Now we're going to hear from Madam Casara, who is the vice-president of the Syndicat des employés de la Banque Laurentienne.

You have 10 minutes.

[*Translation*]

Ms. Danielle Casara (Vice-President, Syndicat des employés de la Banque laurentienne): I'd like to begin by thanking the committee for giving us the opportunity to express our opinion and clarify our position, and to give the reasons behind them. Our arguments will not be based on research or legal opinions, but rather on our experience as members of a union and as female workers in the banking sector, which is under federal jurisdiction.

First of all, I'd like to sketch a quick portrait of Local 434 of the Syndicat des employées et employés professionnels-les et de bureau, which has represented the employees of the Banque Laurentienne du Canada since 1967, or for 42 years. We currently represent 2,300 employees who work in a branch, a telephone-banking call centre, the administrative centre or head office. Positions range from branch teller to mortgage arranger, financial adviser and financial planner. Eighty-five percent of our members are women. La Banque Laurentienne is the only unionized bank in Canada. As I said, we are a local of SEBP-Québec, the Syndicat des employées et employés professionnels-les et de bureau du Québec. We are affiliated with the Fédération des travailleurs et travailleuses du Québec (the FTQ), and the CLC.

Just to refresh your memory and provide you with some context, the Canadian banking sector is the largest employer of labour under federal jurisdiction working in the private sector, employing 30% of such labour. Of these employees, 72% are women, compared to 31% in the other sectors of activity under federal jurisdiction. In addition, 48% of female workers under federal jurisdiction are bank personnel, and only 1% of them are unionized. I imagine that this means mainly us.

The wage gap in the banking sector is 36%, one third of which may be attributed to the lack of corrective measures to deal with the systemic pay inequity suffered by women for years.

In our opinion, the impacts of adopting the Public Sector Equitable Compensation Act by the Harper government show the lack of consideration the latter has for the rights of women in general and female workers in particular since pay equity, in our opinion, cannot be equated with a pay increase that can be negotiated within a collective agreement, but is rather a fundamental human right. However, the complaint regime was not really ideal either, since it gave rise to some legal sagas—we need only recall those of Canada Post and Bell Canada—which were hugely expensive for both sides.

To us, the Public Sector Equitable Compensation Act seems retrograde, at a time when the Government of Quebec has just—yesterday—not only kept its Pay Equity Act, but also reinforced it, thus demonstrating that the changes that this law has brought to Quebec are beneficial for society in general and are within the reach of businesses of all sizes, in all sectors, in both the public and private sectors.

The Public Sector Equitable Compensation Act also seems to us to be an expression of contempt for the fundamental rights of women. Furthermore, this led to the filing by women's groups and numerous unions of a complaint with the UN Commission on the Status of Women in March 2009. In 2003, the UN also asked Canada to remedy the pay inequity suffered by female workers under federal jurisdiction. The message sent to employers in the private sector is clear and reinforces their inaction in this area.

As early as April 2002, our Local 434 joined the action, sharing its comments with the Pay Equity Task Force set up in 2001. We related how the Banque Laurentienne had managed to exempt from the Quebec Pay Equity Act the employees of its subsidiary Trust La Laurentienne, who came under provincial jurisdiction. By means of a simple transfer of employees, they succeeded in being exempted from the law that had just been passed.

The report presented in November 2002 by the Canadian Bankers Association to the task force shared the same opinion: pay equity is a recognized value, but it is already achieved in the sector, and no action, legislation or obligation needs to be added.

This episode, from which the bank emerged the winner, caused a lot of bitterness and reinforced our conviction to the effect that only a proactive pay equity act at the federal level would force employers to comply with the principle so that finally our female workers would stop being second-class workers in their own province.

In 2004, after a lot of awareness campaigns, countless resolutions at numerous conventions of the FTQ and the CLC, the task force report finally revealed to us the light at the end of the tunnel: a law that was to be proactive, mandatory, general in scope and offering extensive protection, involving the participation of female workers and unions, providing for maintenance rules, and so on.

● (1125)

In our opinion, the report recommendations, despite the support of the Bloc-québécois, the NDP, the Liberal Women's Caucus and the House of Commons Standing Committee on the Status of Women at the time, took too long to be applied and the arrival of the Harper government spoiled the momentum. Now, it is hammering the last nails into the coffin and disregarding the incredible energies put in on this file over the years, both in human resources and public funds.

In Quebec, if we want to compare businesses in the financial sector, we have the example of Desjardins, the largest private employer in Quebec, which, in spite of Quebec law, refuses to comply with the Pay Equity Act and is prepared to use all the means and all the resources at its disposal to get out of it, as the Banque Laurentienne did in 2002.

Desjardins minimizes the existence of possible gaps by using special evaluation curves, and 388 complaints and disputes were filed by the SEPB with the Commission de l'équité salariale on May 12.

In conclusion, SEPB-434 and its members therefore firmly denounce the adoption of Bill C-10, a real historical setback for the rights of women and workers, and they demand that it be repealed.

We support the struggle that our public sector sisters and their union have undertaken, realizing that the outcome of this struggle will have an impact on all workers in sectors under federal jurisdiction, including our own. This is also why we will continue, with our partners and through our own bodies and our affiliations, to call on all political parties and demand that the government apply the recommendations contained in the report by the federal government's Pay Equity Task Force.

● (1130)

The Chair: Thank you, Ms. Casara.

Ms. Carbonneau, you have the floor.

Mrs. Claudette Charbonneau (President, Confédération des syndicats nationaux (CSN)): Madam Chair, I am very happy that you have invited us today to hear our point of view on a social debate that is of extreme importance, namely that of achieving pay equity.

The CSN represents some 300,000 workers across Canada, who are in very large part concentrated in Quebec. However, some 15,000 of our members are under federal jurisdiction, particularly in the communications, interprovincial transportation, grain elevator and prison sectors.

Bill C-10, in our point of view, is a major affront to the fundamental right of women to recognition of the value of their work, and women have more than one reason to feel offended.

First of all, the government is redefining the very notion of job category so that it can limit the concept of predominantly female job category to jobs that have over 70% women in them. It thus subordinates the right of women to equal pay for work of equal value to the simple wish of their employers.

The bill actually adds to the job evaluation criteria recognized throughout the literature and in all proactive legislation respecting pay equity criteria that reflect the needs of employers pertaining to recruitment and retention of labour. This of course has nothing to do with the imperatives of pay equity—quite the contrary. Pay discrimination is thus allowed if it is justified by market conditions. This is totally unacceptable.

Not satisfied, the government is returning this right to the area of the negotiable, instead of forcing the establishment of actual pay equity programs and ensuring they are maintained. This is therefore no longer a right to have respected, but a working condition to be negotiated. Finally, the responsibility for results will be up to not only employers but also union organizations. Indeed, the bill confers on the Public Service Commission, an agency that has no specific expertise on these issues, the power to determine a compensatory amount to anyone who has been adversely affected. It could force a union to pay part of this amount. So organizations would become responsible for the payment of wages. Clearly this is nonsensical, and we must denounce it and continue to challenge it.

Equally obnoxious is the government's prohibiting union organizations from encouraging women to file complaints and from representing them to obtain justice. But how can the government, in the preamble of the act, state that Parliament feels that women in the federal public sector should receive equal pay for performing work of equal value, and also state that it recognizes that it is desirable to achieve this objective proactively, while proposing such a legislative framework?

Consequently, we are going to ask the government to withdraw these particular provisions on pay equity for the federal public service and to subscribe to the development of a real proactive law on pay equity that will benefit all employees governed by the Canada Labour Code.

Thank you.

● (1135)

The Chair: Thank you.

[*English*]

Now we will begin with the questions.

Madam Zarac, you have seven minutes.

I would like to suggest to the witnesses that the seven minutes include the question and the answer.

[*Translation*]

Mrs. Lise Zarac (LaSalle—Émard, Lib.): Thank you, Madam Chair.

I wish to thank the witnesses for being here with us today. The two women representing many thousands of workers are against the announcements made about the budget, while the two men present are in favour of them. I wonder if this is a coincidence.

Mr. Olsen, you said in your presentation that equity is not negotiable. At the same time, you say that pay equity will be settled in negotiations between employers and unions. Wouldn't it thus become one option among so many others in the collective agreement? We're not talking about negotiating pay, but about ensuring pay equity. Equal pay for equal work.

[*English*]

Mr. David Olsen: As a point of clarification, I'm here as a representative of FETCO and not as counsel to Canada Post Corporation. However, I will draw on the Canada Post example.

In all Canada Post's bargaining units—I should say with the exception of the Canadian Union of Postal Workers, but with the Public Service Alliance, which represents our white-collar workers; the Association of Postal Officials of Canada, which represents our supervisors; and the Canadian Postmasters and Assistants Association, which represents our rural postmasters—what we have done is agree in advance of bargaining on a job evaluation plan, looking at the same criteria that are set out under section 11 of the Canadian Human Rights Act and that are also set out in the equitable compensation act, using skill, effort, responsibility, and working conditions. We've agreed on a gender-neutral plan, pre-bargaining, and we've worked out the relative values of the jobs in the bargaining unit.

That is then brought to the bargaining table, where the parties hopefully agree on wages and benefits for those employed. I believe it's worked fairly well.

So basically, the achievement of equal pay for work of equal value is done through the collective bargaining process. That's how it works. That's how it worked in our environment anyway.

[*Translation*]

Mrs. Lise Zarac: The exercise takes place within negotiations, but don't you think it would be appropriate to do it outside the agreement?

[*English*]

Mr. David Olsen: At the bargaining table, that is where.... Again, as I said earlier, picking up on a theme from Professor Weiler, it's the union and management, the employer, at the bargaining table—I'm not talking about the non-unionized sector. That's where the terms and conditions and all the issues you look at in equal pay are all determined, at that bargaining table.

[*Translation*]

Mrs. Lise Zarac: You don't think that responsibility for pay equity is the employer's responsibility.

[*English*]

Mr. David Olsen: Most certainly. I think it's both parties, because as Weiler—and I think anyone who's familiar with collective bargaining—says, for the most part, at least in my environment, it is the trade union.... The employer has a budget. It has a mandate of how much money it can afford.

● (1140)

Mrs. Lise Zarac: Should they give less to the—

Mr. David Olsen: Let me finish, please. There's so much money it can devote to a round of bargaining and to reach a collective agreement, hopefully without a strike, and then you can forget about the economic sanctions. It's usually the union that decides where that money is going to be spent.

Mrs. Lise Zarac: I understand that, that you're talking about the salary. I'm not talking about the salary. Well, the negotiation is about salary. I think it's—

Mr. David Olsen: No, no, I'm talking about salary and benefits. I mean, it's the union that makes—

[*Translation*]

Mrs. Lise Zarac: We shouldn't confuse the two. Thank you, Mr. Olsen.

Do I still have time, Madam Chair? I'd like to ask Ms. Casara or Ms. Carbonneau a question.

The Government of Quebec has revised its Pay Equity Act. I'd like to hear your comments on this new law.

Mrs. Claudette Carbonneau: The Quebec act, originally, was one of the most encompassing laws in Canada. It covered the public and private sectors. But it contained a number of ambiguities. In fact, a few years after it was passed, about 50% of businesses still had not implemented the equity process. These businesses were given a second chance. Now, however, should they not fulfil their obligations, the bill provides for penalties. So it's an improvement.

In my opinion, one of the good things about the bill was that it clarified the concept of maintaining pay equity. It's one thing to establish a right, but we have to make sure, given that it's a fundamental right, that it's maintained over the years. Accordingly, a certain number of guidelines made available to the parties was completely appropriate. This is really a very short summary of the advances made, but concerning the question you asked the previous speaker, I can tell you that the Quebec bill never brought equity back to the level of something negotiable.

Where there is a union, we want the development of pay equity to be a participatory process. There's no doubt about that. It's not an exact science. We want the development of evaluation programs to be devoid of sexist biases, but the parties' assessments have to be taken into account. However, there's a fundamental difference: if the parties are not in agreement that women's rights are fully respected, it's always possible to refer the matter to a third party. We don't let the power relationship or strictly financial considerations determine the issue.

Ms. Danielle Casara: From the moment a market value is attached to a fundamental right, it won't work. As far as the Quebec law is concerned, the FTQ was very satisfied. Most of the arrangements are included in it.

[*English*]

The Chair: Can we wrap it up, please. I'm sorry, we have gone a full minute over time.

Madame Demers.

[*Translation*]

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

Ladies, gentlemen, thank you for being here today.

Mr. Olsen, listening to you and then listening to Ms. Casara and Ms. Carbonneau, I could not help noting how divergent your respective points of view are. Still, Ms. Casara works in the banking community. It's also an area that you cover, if I'm not mistaken, since some 30% of the employees to whom you are connected come from banks. But Ms. Casara perceives the provisions on pay equity, as they are specified in Bill C-10, in a totally different way from you.

I'd like to point out to you that, at Canada Post, women workers have been struggling for 26 years to get pay equity, actually because, since this question is not negotiated, the issues is never settled. Ms. Casara says that the unions should not be responsible for the success or failure of negotiations dealing with this issue, because it's a right. It is indeed a right. Ms. Casara and Ms. Carbonneau are unionists.

How do you explain that your statements diverge so far from theirs? In my opinion, it's not because you're a man, but rather that you're an employer.

● (1145)

[*English*]

Mr. David Olsen: Let me try to address your question this way.

First of all, FETCO, our organization, does not include the bankers, boys of the banks. When you say Canada Post has been involved in litigation...we had a complaint by the Public Service Alliance in 1982. That was a long time ago, and yes, that complaint is still in litigation. Let me address it this way, simply by saying that the current status of the case is that the Federal Court trial division last year, after hearing the case, directed that it be returned to the tribunal with instructions that the tribunal dismiss the case because of lack of evidence.

It is important, because misconceptions get circulated in the media. This is what Mr. Justice Kelen said about the length of time: "Within the first year of the hearing before the tribunal, the evidence upon which—"

[*Translation*]

Ms. Nicole Demers: Excuse me, Mr. Olsen, I'll read it myself because we don't have much time. I prefer to ask some other questions.

[*English*]

Mr. David Olsen: Perhaps I could just summarize.

[*Translation*]

Ms. Nicole Demers: We really don't have the time to read entire texts.

[*English*]

Mr. David Olsen: You have suggested to me, in fairness, that Canada Post is somehow responsible for a case that has lasted 25 years. The courts have found that the case should have been dismissed within the first year of hearing for lack of evidence.

Thank you.

[*Translation*]

Ms. Nicole Demers: Mr. Olsen, I'm not saying that Canada Post is responsible for the fact that there's a case before the court at present. All I claim is that all the lawyers who were paid for 26 years might have helped to bring about the pay equity that women deserve.

[*English*]

Mr. David Olsen: Could I answer your other question with respect to—

[*Translation*]

Ms. Nicole Demers: Completely.

[*English*]

Mr. David Olsen: Thank you.

The other question, which I think I already addressed...but both parties gave up on the process, both the Public Service Alliance and Canada Post. And in the year 2000, using the methodology that's in this act, we sat down with the Public Service Alliance of Canada, agreed on a job evaluation plan, and then implemented it in collective bargaining. This complaint is retroactive only, it's not perspective. There is no complaint outstanding at Canada Post from 2000 on, because we solved our problems in collective bargaining.

[*Translation*]

Ms. Nicole Demers: Thank you very much, Mr. Olsen.

[*English*]

Mr. David Olsen: Thank you.

[*Translation*]

Ms. Nicole Demers: Ms. Carbonneau, Statistics Canada told us this week that the regulation of pay equity by the Government of Quebec had transformed women's living conditions significantly. Can you give us an idea of the effect this regulation had on the living conditions of women?

Mrs. Claudette Charbonneau: I can tell you about the most visible group that has benefited from it in Quebec, namely the 300,000 or so women working in Quebec's public sector. We often hear that, in the public sector, there have been negotiations for years and that there isn't any more discrimination. But the evening of the regulation, it was noted that 97% of the categories with a predominance of women were subject to adjustments, some of them very significant. Overall, $2 billion was redistributed to the women of Quebec–which is not nothing. The impact was such that it had an impact on government statistics, the economy and the gross domestic product.

We know that the public sector employs a lot of staff in precarious situations. For some, this regulation has made the difference between living in poverty and more living more decently. Beyond the results in monetary terms, one of the great sources of satisfaction is feeling that one's work is being recognized at its fair value. This is a fundamental matter of dignity and respect. These results were not exclusive to the public sector. Many workplaces in the private sector also had good results and the same level of satisfaction among women.

The area where the results have not been so good, where the enforcement of equity is always harder, is that of non-unionized workplaces. It is a complex process and they need to be able to rely on...

● (1150)

[*English*]

The Vice-Chair (Mrs. Patricia Davidson (Sarnia—Lambton, CPC)): Madame Carbonneau, we're going to have to cut you off there. The time is up.

Now we are going to Ms. O'Neill-Gordon, please, for seven minutes.

Mrs. Tilly O'Neill-Gordon (Miramichi, CPC): Welcome to every one of you, and thank you for being with us this morning.

I have to say that for 34 years I have experienced the means of obtaining benefits, with our union negotiating and getting our contract containing all benefits, including pay equity. I felt secure with that system set up. I feel that a lot of people in Canada wouldn't want it any other way. They have confidence in our union and in the negotiating team, which they believe has our benefits at heart. I feel good about that.

I understand that FETCO has moved to a model similar to the one found in the Public Sector Equitable Compensation Act. I believe that your union now incorporates pay equity into the collective bargaining process. I feel women should be able to obtain their pay equity in this process. In your experience, how has this collaborative approach affected achieving pay equity?

Mr. David Olsen: I'll speak from Canada Post's experience. We had a long-standing complaint that went on for over 25 years. The Federal Court sent it back to the tribunal, made critical comments about the process, and said the tribunal should have dismissed the case in the first year. But we went on for 15 years of litigation before the tribunal. All our unions except for CUPW used a collaborative approach. In advance of bargaining, the parties worked together to agree on a job evaluation plan, the weightings. They looked at skill, effort, responsibility, and working conditions. We agreed to plans, and we did surveys of the employees. When you have the hierarchy of values, then you go to the bargaining table and agree on wages and all the other benefits that go with it, bearing in mind the table of values.

We did that in 2000 with this complaint with the Public Service Alliance. There was an earlier complaint by our rural postmasters in 1982, but the litigation fizzled and never went forward. We've done the same thing in resolving other disputes. I can't speak about any other organization—all I know is how it has been done at Canada Post. With our largest bargaining agent, the Canadian Union of Postal Workers, which is a very militant, successful trade union, value doesn't enter into their equation. They seek to have all persons who perform work in their bargaining unit paid roughly the same. That's their bargaining agenda.

● (1155)

Mrs. Tilly O'Neill-Gordon: There are more and more women getting into work. Working at the post office, we see that all the time. I have family working in the post office under that union, and they seem happy with the quality of this bargaining.

Can you compare the current process with the former litigation-based process?

Mr. David Olsen: The process under section 11 of the Canadian Human Rights Act is not a proactive regime, it is a complaint-based regime. I understand generally it is trade unions that have used that complaint process. Certainly in the big FETCO employers, it has been the trade unions that have filed complaints, claiming that their members or some of the female-dominated group, when compared with a male-dominated group either in their own union or in another bargaining unit in the same organization, are doing work of equal value and there's a pay discrepancy.

Usually the Human Rights Commission will come in and do an investigation of the situation. They try to encourage the parties to agree on a job evaluation plan, and one that the commission could use as well. We fell apart in the early years on that. We couldn't agree on an appropriate job evaluation plan to measure the work, because for example, under that act, you're supposed to look at skill, effort, responsibility, and working conditions. Clearly, a lot of the plans that came off the shelves in the early years, such as the Hay plan, had no criteria for working conditions. Then, under the Canadian Human Rights Act, the guidelines were drafted in such a way as to minimize working conditions, which would lead to a downward evaluation of men's jobs—first of all, men working in plants, and so on.

So we could never agree. It's a very subjective thing to try to evaluate someone working in a plant, on shift work, 24 hours a day, and compare that to someone working in an office, if you can appreciate that. The criteria usually have to be negotiated. It sounds scientific, but it's not scientific, if you can just imagine trying to evaluate those two things. The person who's representing the white collar clerical worker wants the value of working conditions to be discounted because that would give too much value to the man or woman working on the shop floor 24 hours a day. It's not a pretty process, but in any event, you try to get consensus among the parties on the criteria, and then you have to do a survey. How big a survey do you do of all the employees, and do you have the right groups to be compared? That is another huge problem. Do you do a census of everybody in the organization? Can the union cherry-pick?

The Vice-Chair (Mrs. Patricia Davidson): Mr. Olsen, could we ask you to wrap up?

Mr. David Olsen: On the other hand, a proactive regime will require the federal Treasury Board to come together with the trade unions in advance. With the proactive regime, it forces them to address these problems in advance of collective bargaining.

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

We will now move to Ms. Mathyssen, please, for seven minutes.

Ms. Irene Mathyssen (London—Fanshawe, NDP): Thank you, Madam Chair.

Thank you to all who have come here. I appreciate your presenting your information to this committee.

I have many, many questions, so I will try to be brief and I would appreciate it if your responses were brief.

I'm going to begin by addressing my first question to Mr. Olsen and Mr. Farrell, but certainly Madame Carbonneau and Madame Casara, if you want to add to the responses, I'd be very pleased about that.

One of the things that are concerning me at this point is the understanding about how collective bargaining works. We keep hearing that pay equity should be part of collective bargaining, yet trade unions have been very clear that pay equity is a human right, as defined by the United Nations. It's a human right according to CIDA. A human right cannot be bargained away.

If we make pay equity part of collective bargaining, would it not do precisely that? In collective bargaining, you're looking at pay, benefits, pensions, all kind of things. How can you possibly lump a human right in with those things?

● (1200)

Mr. John Farrell: Perhaps I could respond.

The rights to collective bargaining and freedom of association are also human rights, as is the right to equal pay for work of equal value. We value, as employers, both of those rights, and we're compelled to deal with both of those rights simultaneously.

I should read to you something that was been prepared in 1998 by the CLC's Women's Symposium. It's from *Restructuring Work and Labour in the New Economy, Equity Bargaining/Bargaining Equity.* It says, and I quote:

> The labour movement in Canada has come to realize that we cannot rely on legislation to achieve and protect equity equality issues. Collective bargaining is a much more effective mechanism for ensuring that these rights exist. Bargaining equity measures also means the resolution for complaints can be addressed to the grievance procedure, a quicker and less costly process. It is essential that equality issues become central to the collective bargaining objectives.

This is a position that has been adopted by the Canada Labour Congress, the Women's Symposium, November 1 to 3, 1998.

Ms. Irene Mathyssen: Thank you.

I'd like to ask you a question in relation to that, then, going back to 1998.

Since then, we've had the 2004 pay equity task force. That's far different. Back in 1998, we had a complaints-based system, which you have pointed out was simply inadequate. It prolonged things, and it gave the federal government the ability to keep on challenging and going back so that the situation was protracted and certainly not beneficial to women. We all say that system is not good, and so since 2004 we have had something better. Would that not be the route to go, as opposed to what we have here? What's wrong with the proactive pay equity legislation as outlined by the 2004 task force?

Mr. John Farrell: The fundamental problem that we think this equitable compensation act resolves, which was not resolved in 2004, is that today we're saying that the real solution to a pay equity gap in a unionized environment is to make both employers and unions equally responsible for defining the problem, developing a plan, and finding a solution over time to eliminate the wage gap between men and women where a wage gap has been identified.

So the objective here is to say we don't want to create a situation where the wage gap continues for ever and ever, because there's only side to the equation that has responsibility for reducing the wage gap. The unions have the ability to determine how the wages are determined in their bargaining units, and unless they are made equally responsible with the employer for solving the problem, the wage gaps will continue forever, the unions will continue to use this wage gap as another means to advance more and more pay for one group over another, never really addressing the gap between men and women.

It's a perpetual problem that has existed. It hasn't gone away since the equal pay for equal value was put into place. The objective here is to find a way to make both parties, through collective bargaining, responsible for the solution, not just one party. With both parties being responsible, we believe the wage gap will be eliminated over time, and the equal pay for equal value problem will go away.

Ms. Irene Mathyssen: Did Madame Casara or Madame Carbonneau wish to jump in?

[*Translation*]

Mrs. Claudette Charbonneau: I'd like to try and clarify the debate by talking about the Quebec experience.

On the one hand, union organizations never maintained that the complaint process was adequate. We have struggled not to head towards negotiation, but to demand a proactive law. In Quebec, we've had both regimes. I come back to the public sector. As long as there was not a proactive law, we did what we could with negotiations. The proactive law accounted for a difference of $2 billion for women. It shows that negotiations can sometimes correct certain aspects, but it's not true that the right to pay equity is fully achieved.

On the other hand, regarding the responsibility of unions, a proactive law forces both parties to assume their responsibilities. People can submit complaints to their unions, which may refuse to act, or act in bad faith, or don't fulfil their responsibilities. But what we have now in the federal law is something else. It makes the union responsible for the payment of wages. This is a far cry from condemning a union that doesn't do its job properly, from imposing a fine on it, from compelling it comply, and getting it to think it must pay wages.

● (1205)

[*English*]

Ms. Irene Mathyssen: Thank you very much.

How much time do I have?

The Chair: I'll give you 10 seconds. That's all you have left.

Ms. Irene Mathyssen: I'll have to come back to my next series of questions on my next turn.

The Chair: Ms. Neville.

We're now into the five-minutes segments.

Hon. Anita Neville (Winnipeg South Centre, Lib.): Thank you very much.

And I want to thank all of you who are presenting here this morning.

My first question is to Mr. Farrell and to Mr. Olsen. You are obviously supportive of the current legislation that has been passed. Were you,or anybody in your organizations consulted on the drafting of this legislation?

Mr. John Farrell: We submitted papers to the Bilson task force. They are on the public record. We did that in 2004. As far as I know, we were not consulted directly in respect to the drafting of this legislation.

Hon. Anita Neville: So you had no input into the drafting of this legislation?

Mr. John Farrell: No.

Hon. Anita Neville: Thank you. I just wanted some clarity on that.

I guess my line of questioning—

Mr. David Olsen: Just for clarification, I do know that one of the Treasury Board witnesses, who made an earlier appearance, did say they found support for their position in the FETCO brief before the Bilson task force and presumably in Paul Weiler's testimony, which I referred to here this morning. I've read that in the committee proceedings.

Hon. Anita Neville: I missed it, but thank you.

Mr. David Olsen: Thank you.

Hon. Anita Neville: I think it was you, Mr. Olsen, who made reference to section 11 of the Canadian Human Rights Act and said that it was problematic or troubling. I wonder if you could tell us a little bit more about what your concerns are, briefly, because I have other questions.

Mr. David Olsen: Certainly. I do have a problem with what's going on.

I think the public record discloses that section 11 was introduced—and I think it was in 1970 or 1977—to articulate the principle that there should not be discrimination between men and women, and that when persons were performing work of equal value they should be compensated at the same pay.

The principle was articulated, but it was left to the community to fill in the gaps. There was no distinction between a unionized and a non-unionized environment. And it has led to a lot of litigation about what exactly the principle involves. That's all.

Hon. Anita Neville: Thank you.

I guess my line of questioning is not dissimilar to Ms. Mathyssen's. I am profoundly concerned with the bargaining away of a human right.

You identify the right to collective bargaining as a human right as well. I guess I have a problem with putting this under the collective bargaining process. I have problems with the fact that an individual who has a concern is forbidden by this legislation to use the support of the union; otherwise, one or the other of them is likely to get a $50,000 fine. Can you comment on that aspect of it?

● (1210)

Mr. David Olsen: I think FETCO would agree. There's no debate. No one is challenging that, as Weiler says, both these principles are sacrosanct: freedom of association or collective bargaining and equal pay for work of equal value.

Hon. Anita Neville: They're really not going to be reconciled in this legislation.

Mr. David Olsen: I think they can be reconciled. That's what Weiler's thesis is. They have to be reconciled.

With the articulation of the principle in the statute, then the means by which one achieves it.... It makes sense to be in a unionized environment, through the collective bargaining process. That's the process by which to achieve it. That's the process by which all terms and conditions of employment are established.

Hon. Anita Neville: But under this legislation, a person with a concern doesn't.... There's a heavy penalty.

I'd like to hear comments from our other two witnesses, please.

The Chair: You have 20 seconds left, Madam Neville.

Hon. Anita Neville: I'm sorry.

The Chair: Madame Carbonneau, you have 30 seconds in which to respond.

[*Translation*]

Ms. Danielle Casara: It's irreconcilable.

Mrs. Claudette Carbonneau: It's incomplete. I don't know whether it's irreconcilable, but if I had to summarize in one word I'd say it's incomplete. I don't doubt that in negotiations people can try to improve things for women. There are countless examples in our standard practice where we do so. But there are limits to being able to do so. We can't submit a fundamental right to an exercise that has limits and refuse an employee who has a complaint or doubts their right to the support and expertise of their union. It's nonsensical, you're quite right.

Ms. Danielle Casara: Yes, you're perfectly right. Even with the help of their union, a person doesn't have the financial means to see this sort of action through. How can we imagine a someone being able to deal with this on their own? The problem is [*Technical difficulty—Editor*]

[*English*]

The Chair: Thank you very much.

We'll go to Madame Boucher.

[*Translation*]

Mrs. Sylvie Boucher (Beauport—Limoilou, CPC): Hello, everyone. Thank you for taking the trouble to appear before this committee.

I'd like to go back to what Ms. Zarac said earlier, which I found a bit jarring, about men versus women. If a man had made that sort of remark, he would have been called a sexist. Men are just as able to defend women.

This bill talks a lot about proactive law and says that, instead of waiting for employees to file a complaint, the law ensures that employers and unions cooperate right from the beginning to ensure that women receive the compensation they deserve.

In your experience, Mr. Farrell, how has integrating pay equity in the bargaining process made it possible to speed up the settlement of pay equity disputes?

[*English*]

Mr. John Farrell: The employer is compelled to bargain with its unions to resolve all compensation matters and all terms and conditions of employment. This act is proactive, because it requires both the union and the employer to talk about the pay equity issues in advance of bargaining so that the issues are understood well in advance of bargaining. The gaps are defined so that we know where the gaps exist. Then, when the parties go to the bargaining table, they can do their very best to eliminate those gaps that exist between men and women in jobs who do work of equal value.

It may take some time, but it is a proactive approach, because they can jointly develop a game plan. They can agree on the principles they wish to carry forward. They can put that plan in place and eventually, over time, reduce the gap that exists between men and women. That's the form in which wages and benefits are determined in a unionized environment. So let's give both parties responsibility for managing that process.

Currently the employer has a bilateral responsibility, and it exercises that to negotiate in good faith with the unions, and we do that. But when that process ends and the compensation is distributed, the union has a stake in that, and they influence the way in which wages are distributed.

Collective bargaining is a very complex process, and sometimes the terms and conditions of a settlement are affected by the leverage or the threat of a strike that is advanced by a union over an employer. Then the union ends up distributing those gains to its members. In distributing those gains, we're saying that the unions have a responsibility to ensure that the gains derived from collective bargaining are supposed to be used to address pay inequities, among other things.

We hope that this particular act will give joint responsibility to both unions and employers to define the problem, work out a plan, and solve the problem. That's essentially why employers are supportive of this legislation, because it sets out a real proactive mechanism wherein the two parties that set wages and conditions have responsibility for results, not just the employer.

Thank you.

● (1215)

The Chair: Ms. Hoeppner, please.

Ms. Candice Hoeppner (Portage—Lisgar, CPC): Thank you very much.

Are working conditions part of the bargaining process?

Mr. John Farrell: Absolutely. Well, working conditions exist in an environment, but ways to cope with working conditions are—

Ms. Candice Hoeppner: Well, right now we all have a basic right to personal safety. Tell me if I'm wrong. I don't think we would insinuate that because working conditions are sometimes part of the bargaining process, it isn't a safe environment or there isn't enough equipment to keep our employees safe. We would not say that human right is being bargained away at the union table and we should make it long process where people have a right to human and public safety and go to a human rights commission.

Is that a correct train of thought?

Mr. John Farrell: Well, it—

The Chair: You have 10 seconds to answer that.

Mr. John Farrell: Actually, the health and safety provisions in the federal jurisdiction are dealt with in parts of the Canada Labour Code, part II, which deals with health and safety. There's a mechanism to address those issues in the current legislation. But health and safety is a fundamental right, and employers take that 100% seriously.

Ms. Candice Hoeppner: And unions.

Mr. John Farrell: And unions.

The Chair: Madame Guay.

[*Translation*]

Ms. Monique Guay (Rivière-du-Nord, BQ): Thank you, Madam Chair. My comments are for Ms. Carbonneau.

Hello, Ms. Carbonneau. I think you'll recognize me. We've worked together on anti-strikebreaking legislation for a long time, and we continue to support you. We have such a law in Quebec, but it's time we also had one at the federal level. Clearly we evolve more quickly in Quebec than elsewhere.

The minister is always telling us that his law is based on the Quebec law. He says that it's similar and that the government based itself on the Quebec law to produce its own. I'm going to give you the time allotted to me so that you can do a real comparison for us between what happens in Quebec, the Quebec statute, and what has been prepared for us here, in Ottawa.

So, take your time, you have the floor.

Mrs. Claudette Carbonneau: In both cases, it's a participatory process. However, as far as the Quebec law is concerned, the unions do actually have a proactive approach to take with employers. At the same time, it's fundamental, from the time there is a difference of opinion, a doubt about the fact it's a fundamental right of women, we can always call on a third party and ask for a decision that goes beyond the simple laws of the market. Let's put it like that. In my opinion, this is the most fundamental aspect.

Next, the Quebec law defines a certain number of guidelines that conform with international documentation. For example, to determine which jobs are female jobs, the Quebec law stipulates that, as soon as a profession has over 40% women in it, there is a strong possibility of discrimination based on sex. The federal law talks about 70%, thus excluding a very large number of women to start with.

In addition, the federal law is such that the unions will have to pay part of the wages, and this does not exist at all in the Quebec law. In the Quebec law, there are duties and responsibilities that belong to the pay equity committee, consisting of representatives of employers, women, workers and unions. Legal action can be taken against these people if they don't perform their responsibilities properly, but at no time will they be asked to pay missing wages. I'd say that this is a pretty fundamental difference.

● (1220)

Ms. Danielle Casara: Finally, the guidelines imposed by the Quebec statute come much closer to the recommendations of the task force. In fact, the task force recommendations described a sort of improved Quebec law, something much closer to the Quebec statute that was improved yesterday.

[*English*]

The Chair: You have a minute and a half.

[*Translation*]

Ms. Monique Guay: Were you consulted before this bill was tabled in the House? I sincerely think that pay equity is a fundamental right and that it should not be a negotiable right. It's unacceptable!

Were you consulted? Were other unions or groups in Quebec consulted?

Mrs. Claudette Carbonneau: Absolutely not. Insult was added to injury. The first announcement caused an unprecedented angry outcry. Then, during the political debate surrounding the creation or not of a coalition, we saw the federal government back down, but never consult. This bill was tabled completely arbitrarily, without the slightest consultation.

Ms. Danielle Casara: The way in which this came about has been denounced as vigorously as the bill itself. We really get the impression that doctrine is riding roughshod over women here...

Mrs. Claudette Charbonneau: I would add that, because pay equity is a fundamental right, there is no reason to deal with women in a sector of activity—in this case, the federal public service—differently from other Canadian women. Even though we are very critical of the complaint process, there is no evidence that, with this bill, women in the federal public service will be treated better than other Canadian women, whatever shortcomings may be noted in the legislative framework that prevails for other Canadian women under federal jurisdiction.

[*English*]

The Chair: Good. Thank you.

Irene.

Ms. Irene Mathyssen: Thank you, Madam Chair.

I want to come back to this notion of market forces. The PSECA talks about using market forces in order to evaluate compensation.

Mr. Farrell, Mr. Olsen, in your brief you suggest that market forces are integral to the determination of equitable compensation. Yet we've heard from the trade unions and other experts that market forces are not conducive to ensuring pay equity because the market forces in place have historically undervalued women's work. And I'm thinking about nurses, ESL teachers, telephone operators, secretaries, bank tellers, child care workers, and retail workers who traditionally have lower levels of pay.

With that in mind, how on earth could you consider market forces being a positive? Are they not harmful in determining women's compensation?

Mr. John Farrell: In certain situations where there are severe shortages of workers in particular jobs, regardless of the equity of the situation, employers are compelled, from time to time, to pay higher wages than a normal job evaluation process would deliver.

We don't disagree with you that work that women have done has been historically undervalued. You've mentioned many of the types and classifications of employees who have traditionally had undervalued work relative to certain male-dominated jobs. And the name of the game is to try to correct those inequities. But the section of the act that is dealing with market forces is really dealing with a market force exception to the general rule, as far as we can tell, where you're compelled, in order to manage your business and manage your workforce, to pay, for example, highly specialized people, where there may be a significant shortage, a lot more than you might otherwise pay them.

● (1225)

Ms. Irene Mathyssen: Right now, because of the reality of our economy, just in the last few months 500,000 people have lost their jobs. If we look at that, doesn't that mean market forces are going to push down wages now that there are so many people who are desperate for work?

Mr. John Farrell: I think that is true. Take a look at what happened to General Motors just the other day. Market forces are affecting the wages and working conditions of many employees across the country. As there's more and more unemployment, there's going to be a lot more pressure on a downward level of compensation. And it should be fairly applied on the way down, just as it should be fairly applied on the way up.

Ms. Irene Mathyssen: Somehow that doesn't give me cause for hope. I feel rather concerned about that.

I want to come back to the statement about the union and the employer being jointly responsible in terms of achieving pay equity. The problem is that the PSECA forbids unions from acting on behalf of their employees, as it does employers. For employers it's a $10,000 fine; for unions it's a $50,000 fine. How is that balanced? How is that equitable?

Mr. John Farrell: In fairness, we didn't have any input into the amounts of the fine.

Ms. Irene Mathyssen: You are endorsing this legislation.

Mr. David Olsen: We're endorsing the concept that both the employer and the trade union, for all the reasons we've given, are jointly responsible for achieving and implementing equal pay for work of equal value.

Ms. Irene Mathyssen: But we know in collective bargaining, which is the only tool that unions have, first of all, there are a whole host of other issues on the table that may preclude pay equity; and secondly, as we keep hearing over and over again, unions are not responsible for pay.

Mr. David Olsen: The legislation requires that both parties address that issue.

Ms. Irene Mathyssen: There is still that imbalance of $10,000 versus $50,000.

Mr. David Olsen: As to the difference in the fine, basically if the two parties are responsible for the outcome, then if complaints are brought, they are to be brought against both parties, right?

Ms. Irene Mathyssen: Is that to the labour board, which doesn't have the expertise to evaluate this, not like the Human Rights Commission does?

Mr. David Olsen: That's a whole other debate, but the Public Service Labour Relations Board has a lot of expertise—

Ms. Irene Mathyssen: But not in pay equity.

The Chair: Could you wrap up your answer, please, quickly?

Mr. David Olsen: That board has a lot of expertise. The tribunals under the Human Rights Act are usually ad hoc tribunals with no particular expertise, at least in modern experience.

Ms. Irene Mathyssen: They have been dealing with this for 25 years and the labour board has not. So can you say that?

Mr. David Olsen: What I'm saying is they're ad hoc—

The Chair: I'm sorry. This is becoming a debate and we are well over time on it now.

I will let Ms. Hoeppner end this round. This will be the last round, because we have some work to do.

Ms. Candice Hoeppner: Thank you very much, Madam Chair.

I just want to state for the record that it is important that witnesses not be judged on their gender, whether they're male or female. It is important that what witnesses say is what we take into account.

It is important as well that this does not become a political argument, because then credibility is lost. When we hear things such as "women are being bulldozed by the government" or "the government has little regard for women", I can tell you that I find that more of a political agenda. I'm a Conservative; I represent the government, and this government and I stand for women who believe in equal treatment for women.

I wonder if Mr. Olsen can continue to speak on something he began to talk about, which was some of the things the union typically negotiates. You talked about the pool of resources they have. Out of those resources, what are some of the things that are negotiated that both the employer and the union have a responsibility to make sure are met?

● (1230)

Mr. David Olsen: I think you started to ask questions about health and safety.

Ms. Candice Hoeppner: Right.

Mr. David Olsen: Part II of the Canada Labour Code deals with occupational health and safety. It applies to both the federal private sector and the federal public sector. Canada Post's unions usually negotiate to incorporate all those provisions into the collective agreement so that they can have them enforced at rights arbitrations through the grievance process. Usually, for example, the Canadian Union of Postal Workers has been successful in negotiating additional guarantees over and above the standards in part II of the Canada Labour Code.

I see the analogy.

Ms. Candice Hoeppner: You see the analogy. That's where I'm going.

Mr. David Olsen: We have the minimum standards in part II of the Canada Labour Code. In the fact that they seek to add additional guarantees in the collective bargaining process, would one say that therefore occupational health and safety is negotiable?

Ms. Candice Hoeppner: Exactly. That's my analogy. Is that a valid analogy, in your experience?

Mr. David Olsen: I think so. All we're saying is, in achieving pay equity, does the fact that you achieve it through the collective bargaining process diminish somehow the principle of pay equity?

Ms. Candice Hoeppner: Absolutely not, and again, it is achieved at the beginning of the process, not midway through the process and then dragged on for several years.

I have more questions, but my colleague wants to share my time, so I am going to share it with Ms. McLeod.

Thank you.

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

Again, I think we've all clearly stated that our goals are the same, and we just have a different view of how we would get to the objective. To me, it seems eminently sensible. I'm familiar with job classifications and all the things you've talked about, but I think in terms of addressing the concerns that some of our colleagues have had, we have some legislation moving forward and I think it will be important to monitor things to see if this creates the effects we intend to create. I would like a few comments, as we move forward with this pay equity legislation, on how we can ensure it's achieving the goals we have.

The Chair: Mr. Olsen.

Mr. David Olsen: I'm not certain there's any mechanism in the act itself to monitor progress, but you may want to consider making recommendations or finding some way of monitoring progress once this bill is implemented to ensure it's meeting the objectives generally. Whether the Public Service Labour Relations Board would be publishing statistics or something like that to ensure it's meeting Parliament's objectives...that's the only thing I can think of. I just don't know the draft legislation well enough for that, but I'm sure something like that could be done.

Mr. John Farrell: We are hopeful that this new approach will be much better than the current approach, which is mired in litigation and long cases that have never gone away, and there has been no satisfactory resolution. We believe that if the unions and the employers are both responsible for finding solutions, they will be found. Five years from now, when we take a retrospective look at where we've gone, we will certainly, I think, be better off than we are today, under a new regime.

The Chair: Thank you very much.

Before I thank the witnesses, I would like to ask a couple of questions of Mr. Olsen and Mr. Farrell, and possibly if Mesdames Casara and Carbonneau feel they would like to answer, feel free to do so. I am giving myself the same amount of time as everyone else here.

Who hires the employee?

● (1235)

Mr. John Farrell: The employer does.

The Chair: Absolutely. Does the employer also designate the pay scales and levels for the work done and what that work must entail? Do you set the criteria for the work you expect to be done as employers?

Mr. John Farrell: In a non-union environment, most employers who are genuinely interested in creating equity within their organization completely—that's pay equity throughout their organization—will typically engage in some form of job evaluation process whereby the jobs are evaluated against one another, and then they try to apply some scientific process to make sure pay is established at various levels of the organization, which recognizes the skill, responsibility, and working conditions of the job.

The Chair: In a union organization?

Mr. John Farrell: In a union organization, it's a little bit more difficult than that, because the unions participate in the bargaining process and they have a say in where wages and benefits are allocated to the employees for whom they are negotiating. We are compelled to negotiate with them; they present bargaining demands; we engage in collective bargaining; there's a give and take and there's a back and forth. One side or the other generally has more influence in one set of negotiations or another on where the wages and benefits and working conditions actually fall out. That's the reality of the situation.

Collective bargaining is not a scientific game where everything falls into nice little packages. It's fundamentally an economic struggle. When you're engaged in those kinds of—

The Chair: I understand that, Mr. Farrell. What I would like you to explain to me is simply this.

When you have work to be done in your business in a union shop, you set clear criteria for the work that is to be done, so you are looking for someone to enter at a level of, let's suggest, a stenographer, or a crank operator, or whatever the job description is. Who sets that job description of what that person would do and how that work is valued initially, when that job description is set up? The employer, yes?

Mr. John Farrell: Generally speaking, there are job descriptions for all manner of jobs that exist in an organization.

The Chair: Yes, but the employers set that. Or do the unions set the job description?

Mr. John Farrell: Sometimes the way in which work is performed is part of the negotiation process.

The Chair: That's a totally different thing. When you hire someone, you know what you want them to do, and they are offered a pay scale for doing that. Isn't that clear? Isn't that what happens?

Therefore, if the employer is setting the criteria for the work and the pay scales for the work, when the unions negotiate agreements they then decide where the collective agreement would be distributed into different sectors. But the criteria are already set for the work to be done and how it is to be remunerated by the employer.

My question is simply this. Is it not up to the employer, in setting those criteria and in setting those levels of jobs, to ensure that this is the point at which pay equity is incorporated?

Mr. John Farrell: I think your question does not face the reality of what happens in the real world, with respect.

The Chair: Mr. Farrell, I am an employer. I have been an employer. I actually negotiated for a very large group of doctors with the Government of British Columbia, so I also know about union work.

My question is fairly simple. I believe that when collective bargaining occurs, it occurs with regard to the conditions of the job, to occupational health and safety, to wages and benefits, all of those things. Clearly, when you speak of a human right.... This is not a Canada Labour Code right or agreement; we're speaking of a human right. I think what we're all trying to get at here is, how is a human right negotiable?

Mr. John Farrell: I think this notion of negotiating away a human right is really sloganism. We hear it come up regularly. This is not what is intended at all.

We believe that in order to resolve this problem in a bilateral process, both parties have to come to the table to resolve the problem and have to be responsible for resolving it. That doesn't mean we're not interested and we don't believe in the fundamental value of equal pay for work of equal value. We do. But the mechanism that we're required to live within comes under the provisions of the labour laws of Canada and we have to abide by them. We have to negotiate with the unions, we have to effect a collective agreement with them, and they have a say in the way work and pay are allocated; therefore, they have a responsibility, as we do, to ensure that the principles of equal pay for work of equal value, equitable compensation, are achieved in the workplace.

The Chair: Thank you, Mr. Farrell.

I'd like to thank all of the witnesses for taking the time to come and present to us and discuss your opinions.

I would like to end this portion of the meeting.

Yes, Nicole.

● (1240)

[*Translation*]

Ms. Nicole Demers: Madam Chair, before ending this part of the meeting, I'd like to say that I found it very interesting to hear the employers' testimony and to hear a different opinion.

What I'd have found more interesting, however, would have been to hear some employees of these employers. We have the list of the various sectors of these employees. I'd like these people to be invited, not to testify, but to file memorandums, so that we could see whether they have the same understanding of the effectiveness of their employers' negotiations.

[*English*]

The Chair: Thank you very much.

Ms. Demers made a statement on what she'd like to see us do in the future. I don't think it was debate. We can discuss this afterwards.

I thank everyone very much for coming.

We'll now adjourn.

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