

SUBMISSION
to
THE STANDING COMMITTEE
ON
ADMINISTRATION OF JUSTICE

on behalf of



FREEDOM PARTY OF ONTARIO

by

Robert Metz
Ontario President

and

Lloyd Walker
Vice-president, Ontario

Subject:

BILL 154

An Act to provide for Pay Equity
in the Broader Public Sector
and
in the Private Sector

February 23, 1987

INTRODUCTION:

As chief representative of one of Ontario's NEWER officially-registered political parties, the FREEDOM PARTY OF ONTARIO, please allow me to begin by thanking all those responsible for creating this opportunity for various groups and individuals to speak on issues of public concern. An opportunity like this is particularly valuable to those of us in society who hold FUNDAMENTALLY DIFFERENT VIEWPOINTS from those that happen to be politically popular, or that come under political scrutiny, at some particular point in time.

FREEDOM PARTY believes that the PURPOSE OF GOVERNMENT is to PROTECT our freedom of choice, NOT to restrict it.

The function and effect of BILL 154, on the other hand, is to RESTRICT our freedom of choice, NOT to protect it.

For that reason, I come before you today to CONDEMN Bill 154, and NOT to praise it.

Part One

UNJUST PREMISE; UNJUST OBJECTIVES

From its outset, Bill 154 begins with an unsupportable premise. The PREAMBLE reads: "Whereas it is DESIRABLE that affirmative action be taken to redress gender discrimination..." and proceeds as if that statement alone is justification to create new laws designed to prohibit the voluntary conduct of free individuals in labour relations.

That's literally what Bill 154 is designed to do: It expressly prohibits all those falling under its self-proclaimed jurisdiction from entering into a VOLUNTARY LABOUR AGREEMENT that contradicts the goals of Bill 154 (Sec 6 (2)). And these goals, as the PREAMBLE confirms, are the consequence of nothing more than a "DESIRE".

The questions begging to be asked are "Desirable" by WHOM? "Discrimination" by whom --- toward whom, and with what unjust effects --- and supported by what OBJECTIVE EVIDENCE? Since when has simple "DESIRE" become justification for violating individual rights and denying individual freedom of choice? And how is it that the mere existence of ECONOMIC INEQUALITY proves "gender discrimination"?

Apart from its utter failure to even attempt to offer any OBJECTIVE REASONS for its existence, Bill 154, EVEN IF IT WERE ABLE TO BE PROPERLY ENFORCED, WHICH IS HIGHLY DOUBTFUL, would see to it that the two parties most affected by it --- the employer and employee --- will have little or no recourse in how the Bill will affect their personal freedom of choice, their freedom of association, and their economic freedom.

THAT is precisely why the legislated implementation of "equal pay for work of equal value" is such a highly contentious political issue.

ALL POLITICAL "ISSUES" RELATE TO FREEDOM OF CHOICE. In fact, if an issue does NOT affect someone's freedom of choice, then it's simply NOT a political issue. And rarely, if ever, does any political issue deal with WHAT choice is being made. It is always a matter of WHO has the right to make a given choice.

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Today, the reality in Ontario is that there is a large surplus of workers, both male and female, of all skills and talents, available for work. Simply stated, the supply of workers is high and the demand for them is low.

In the free market any resource or good that was in such oversupply would naturally drop in value. When ever supply exceeds demand, all else being equal, prices decrease. This is a reality which the writers of Bill 154 have evaded, ignored, or, somehow, failed to recognize.

With Bill 154 the government expects (how? I don't know) that the market will not try to even out the imbalance caused by government meddling.

When we speak of the market, what we are really talking about is the sum of the individual choices made by the people of Ontario. It is people dealing with one another, to mutual benefit, in a free environment. And just as people build shelters from any storm they will attempt to shield themselves from the costs and consequences of Bill 154. The market (the people of this province) will not sit back and watch their choices be dictated to them by government. They will continue to make individual choices that are beneficial to their business, their customers, their families, or themselves.

A balance will, once again, be achieved in the market (distorted as that market may be). The balance achieved will be contrary to the government's intention as it attempts to create, or more accurately legislate, economic equality.

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When the government took the negotiation of value away from tenants and landlords with the "good intention" of providing a supply of low cost housing, their rent control scheme succeeded in keeping rents low, but created a much larger problem --- no housing for tenants. Why? You need only look at the market --- builders no longer had an incentive to build apartments (profit). Also, tenants who could afford to buy houses had a supply of artificially low cost housing which made it sensible to remain in rental accomodations. Those effects were as predictable when rent controls were initiated as the effects of pay equity are today. People, predictably, will make choices. They will find alternatives.

Another example. World oil prices exceeded their market value a few years ago. In this case a lowering of demand caused by more fuel efficient cars, lower temperatures set in homes, and a switch to alternate fuels led to a drop in the price of oil. When the price of oil rose too high the market, that is the people, responded. They made other choices. They found alternatives.

For some unknown reason the government places it's will above basic economics --- above the law of supply and demand --- above the will of the people --- and then compounds its error by expecting that it's wishes will not be subject to any market pressures.

This is not the case. It never has been and it never will be. It wasn't the case with rent controls or price controls or wage controls and it will not work with today's topic of folly, pay equity, which, honestly, must be identified as sexually biased wage controls.

The only fair and equitable method of negotiating wages is between employer and employee. The government's attempt at interfering in this relationship will fail, just as any other price fixing scheme fails, people will make different choices. They will find alternatives.

And there are alternatives.

The reduction of competition in the workforce will increase costs, and therefore prices, damaging all businesses' competitive positions. Businesspeople and employees alike, who recognize the need for competitive pricing in today's world, may turn to the easiest alternative. Become a criminal. No, not a criminal in the minds of most people: a thief, a murderer or a thug, but a criminal, only in the eyes of the government. Employees who see their livelihood in danger and businesspeople who see their business costs making their livelihoods (and those of their employees) no longer feasible will become criminals: for working under mutually agreed conditions, for keeping a business in business, for keeping people working, for keeping Ontario businesses competitive in the world market, and, most horribly, for earning their own living on their own terms. Such are the criminals that will be made by Bill 154.

Their crimes will be: creating 'new' job names or categories to avoid or confuse pay equity rulings, or agreements to accept lower than government dictated pay levels, or creative bookkeeping. Corruption and politics will replace ability as a basis of pay.

Is this the aim of Bill 154? It certainly will be a consequence of it!

Bill 154 will ensure the growth of that economic anomaly, present only in controlled economies, called the underground economy. People will continue to deal honestly with one another and lead their lives as normally as possible. They will have only one thing to fear. Their government! A government that will punish them for their desire to be productive rather than unemployed, that will punish them for their initiative rather than submission to government edict, that will punish them for qualities that most would consider virtuous but that government has declared a crime.

LEGISLATED EQUAL PAY

VS
JUSTICE

I strongly urge Committee members to consider the serious social and legal consequences that accrue with the passage of social and economic legislation like Bill 154. These consequences invariably extend far beyond the immediate goals or objectives of the legislation itself, and do far more damage to the fabric of our justice system than they do towards the attainment of any so-called goals of "equality."

Particularly disturbing is the realization that the Act relates to its assumed discrimination, prejudices, and stereotypes in a most bizarre manner: In determining what "job classes" are "male" or "female", it must first legally create and define the very prejudices it seeks to abolish!

This obvious contradiction of intent forces an evasion of any objective DEFINITION of what is meant by "gender discrimination." So instead of offering us a DEFINITION, we are given a DESCRIPTION OF A PROCESS that must be used in the IDENTIFICATION of such "discrimination."

Simplistic in principle, but complex, costly, and wasteful in its bureaucratic administration, the government-prescribed process of identifying DISCRIMINATION is one of "undertaking comparisons" between the wages of pre-selected and pre-defined labour groups. STRICTLY ON THE BASIS OF SUCH COMPARISONS, an employer will be deemed to be guilty of practicing "gender discrimination," and will be legally forced to bear the consequences of that "discrimination."

To call BILL 154 TOTALITARIAN in nature would be a gross understatement. It has no place in a free and democratic society.

EVEN GIVEN THE ASSUMPTION, as we have been, that economic discrimination on the basis of sex is a matter that must be addressed by LAW, how then, could such laws possibly be guided by any principles of justice?

Principles of fundamental justice would demand, that before concluding some wage discrepancy exists because of "gender discrimination," that those being accused of such discrimination be given a fair hearing before having their guilt declared.

JUSTICE would demand that RELEVANT witness be brought forth --- witness who ARE witnesses precisely because it is THEIR wage agreement that is under investigation --- not because they happen to be members of lobby groups looking for political favours. EVIDENCE should be presented in a court of OBJECTIVE law that convinces a judge or jury, beyond any reasonable doubt, that a specific wage agreement is a direct consequence of gender discrimination. ONLY THEN, AND NOT UNTIL THEN, would any JUST

legal system be in a position to force a consequence upon those found guilty.

But this is NOT the process under which Bill 154 operates:

Instead, it establishes its own definitions (Sec 1), sets its own criteria for evaluation and judgement (Sec 4 & 5), claims an ARBITRARY AND UNSUBSTANTIATED PURPOSE (Preamble & Sec 3), creates legal CLASSES of employees based on SEX (Sec 1), assigns to itself powers that are well beyond those in accordance with the principles of a FREE and DEMOCRATIC society (Sec 33), claims for itself the right to determine the very nature of any disputes and issues that come before the Commission (Sec 24 (2)), and uses the threat of fines and intimidation to deal with those who would choose to associate on terms not in accordance with purposes set out by the Act (Sec 25).

Then, as if to add INSULT TO INJURY, Bill 154 hypocritically forbids the use of intimidation, coercion, or penalty (Sec 8 (2)) between employer and employee that may be the consequence of Bill 154's effects on their relationship. And how does it accomplish this? By engaging in the very action it forbids others: by using the law to intimidate, coerce, and penalize those who would negotiate their labour relationship on terms contrary to those prescribed by its objectives.

It is clear that the OBJECTIVE PURPOSE of Bill 154 is to REMOVE ALL ELEMENTS OF CHOICE from those DIRECTLY involved in labour relations (employers and employees), and to place the privilege of exercising such choice into the hands of GOVERNMENT.

Bill 154 represents a complete abrogation of justice, and should never be given the serious consideration of our legislators --- IF JUSTICE IS INDEED AMONG THEIR PRIORITIES!

Whether we like to admit it to ourselves or not, it's a fact that our system of collecting taxes, enforcing regulations, and even maintaining basic law and order works to whatever degree it does largely as a consequence of the GOOD FAITH AND GOOD WILL of the average citizen.

INDIRECT CONSEQUENCES:

Legislation like Bill 154 undermines that good faith, and ultimately creates a disrespect for ALL laws.

What happens when the average citizen comes to realize that his government will treat him the same whether he commits a serious crime like theft, rape, or robbery, or whether he opens his store to the public on Sundays, or whether he agrees to pay or charge rent not approved by the government, or whether he charges a patient in his care what he believes

his value to be --- or for that matter, if two people come to a voluntary labour agreement that does not conform with the values legislated by government?

Answer: the very thing that governments and politicians fear most: legal chaos and disorder and an utter disrespect for ALL laws.

Our current political parties are the architects of their own eventual political downfall, and of the downfall of OUR legal system on which we depend for our basic law and order.

Increasingly, there are more and more citizens becoming not only DISSATISFIED with their governments, but actually ANGRY with their governments.

And when, in turn, these governments react to citizen anger, the first thing they do is blame the victims of their legislation for society's upheavals along with those who, like myself, speak out against state intervention and control of individual's lives. These governments and politicians seldom look to themselves as the cause of the problem.

If any of us in this room are truly concerned with JUSTICE and with the benefits that accrue to those who happen to be fortunate enough to live in a free society, then it's time we re-examined the principles underlying such a society, and discovered for ourselves what separates us from the consequences of tyrannical and dictatorial societies.

If I were to focus on but a SINGLE identifiable principle among the many principles of freedom I could choose from, then the principle I would like to see my government(s) uphold is the principle of VOLUNTARISM.

VOLUNTARISM, by its nature, demands an absence of FORCE or COERCION. And unless force or coercion exist in certain relationships, GOVERNMENTS of free nations have no business interfering in the personal lives of their citizens.

If you want to see the results of FORCED ASSOCIATION, you don't have to look far or long: the strife and conflicts caused in most places in the world are a direct consequence of philosophies of forced association --- or prohibited association.

Let's help keep Ontario free. We can start by throwing Bill 154 on the garbage heap of state control where it belongs.

Free, prosperous nations are VOLUNTARY societies.

Part Two

PAY EQUITY ACT, 1986 --- THEORY VERSUS PRACTICE

Government controls, like the road to hell, are paved with good intentions. But, good intentions are not enough. They do not justify any action and, no matter what good is intended, a law must be judged on it's treatment of all citizens and the results of that treatment.

We have often heard the phrase "good in theory, bad in practice" but few of us have ever stopped to say that the old bromide is wrong. Anything bad in practice was bad in theory as well. Pay Equity, as defined in Bill 154, will not be good in practice. It will hurt the very people it claims to help and that result is obvious and easily predicted.

Government controls placed on market forces always have had interesting effects; effects which are not always pleasant or intended.

Rent controls are a case in point. They are wonderful if you already have an apartment and wish to remain in it (your rent remains low). They are terrible if you are looking for an apartment due to an unpleasant side effect. There are no apartments available to rent.

Any limit in supply or increase in the cost of an item will benefit only those who already possess that item. Those individuals who are presently seeking that same item will only know how much they are hurt by the change in market conditions.

Pay equity will follow the same rules. Pay equity will benefit women with a secure job, while it will harm women presently looking to break into the labour market or to change their position within it.

Government's previous interference in the labour market has already had terrible consequences on the unemployed and has, in fact, contributed to the problem.

Look at some of the present aberrations in the labour market:

We have over-protected and thus, overly powerful unions which freeze competitive workers out of the market --- with government assistance.

We have minimum wage laws which keep the unskilled and unexperienced from being given an opportunity to prove themselves to many employers --- by government edict.

In the same manner as a minimum wage set too high, equal pay will freeze women out of the labour market by raising the cost of hiring female employees --- by government edict.

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Will women's pay increase? Some will, some won't, and some will decrease to zero.

I would hope that no-one expects that a company's wage budget will suddenly increase to take up a larger share of its total expenses. It is, however, reasonable to expect that fewer women will share a larger piece of the pie. Some women, who are not in secure jobs, will find themselves unemployed as their artificial wage increase makes them too expensive to keep on the payroll. One can only assume that the government's reasoning is that no pay is better than low pay.

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Or is it more realistic to believe that employers will reduce pay increases to other employees even though they may deserve a substantial raise? The beneficiaries of Bill 154 may well be taking money, unearned, from those who earned and deserve it.

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Will women be more fairly treated in the labour market? No. Highly qualified or talented women will find work, just as they do now. No difference.

But, unskilled women just entering or re-entering the workforce will face a totally different world; one that would not have been possible without Bill 154.

Which would you choose?

Would you buy a new untried cleanser for \$5 when you also had available a known brand at exactly the same price? You know as well as I do that the known brand would outsell the new market entry by a mile.

Using the same logic would you hire an unskilled woman or an unskilled man if the man had never left the workforce and thus had some kind of a track record.

To make the choice easier let's assume that they are equal in every way including ability, qualifications and, of course, the rate of pay they will receive.

With that in mind we'll ignore the idea that the man may ask for a wage lower than the going rate within your business. After all, you couldn't accept a woman offering the same low rate because you might be

violating pay equity laws.

Also, let's ignore the biological and physical differences between the two, although I doubt that many employers do.

Let's ignore the idea that the woman may get pregnant and leave your employ (if only for 17 weeks), although I doubt many employers do.

Let's ignore the fact that women are less likely to work overtime, or to accept transfers, or to accept promotions, but, again, I doubt that many employers do.

Let's look at the simple fear that sometime that woman, if you hire her, might invoke Bill 154 and have your business visited by a review officer who will question you, question your staff, disrupt normal business function, seize personnel records and have you hauled before the Pay Equity Commission and tried (without benefit of judge or jury) for an alleged pay equity crime.

With just that one fact in mind how many here today wouldn't hire the man?

Is this the aim of Bill 154? It certainly will be a consequence of it.

I may be accused of being hard on women in these examples, but, truth be known, it is Bill 154 that will be hard on women. The previous observations were made on the basis of what would be best for any business confronted with Pay Equity legislation. The market, that is: peoples choices, will follow that same line. People will choose what is best for them.

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Can these consequences be avoided? Of course, and there are two alternatives that the government can choose from.

The least desirable method (which I hope offends you as much as it does me) would be to prevent the market from reacting to imbalances caused by government programs. This could only be done by removing the market from the picture entirely. That is to say: the government would have to take over every aspect of employee-employer relationships. And I do mean every aspect: hiring, firing, wages, promotions, etc., all must be controlled by government or people in the process of living their lives will make their own choices and that is what the government, in order to control anything, must take away.

It's only in the last few years that more and more women have entered the work force with the purpose of supporting themselves. In those years many have proven their value, under our semi-free market system, and

progressed well past the position and salary that would have been expected years ago. Their achievements are to be applauded and used as an example to all people, not just women, to show that ability and determination make a difference.

But now, thanks to government interference in the workplace, women will be frozen out of the work force before they even get started and pull and connections will be rewarded rather than ability or accomplishments.

To use the words of our CANADIAN CHARTER OF RIGHTS AND FREEDOMS: this is not justifiable in a free and democratic society and neither is implementing controls piecemeal with bits of legislation like Bill 154.

The only method of setting wages acceptable in a democratic country is to allow the free market to operate. If any person, male or female, negotiates a wage suitable to their individual requirements, whose business is it but theirs? Who has the right to say that the agreement is unfair when both employee and employer are satisfied? The only equality that matters is that all people, regardless of gender, have the same freedom to negotiate for wages that they personally find acceptable. Their choices, about what to accept or whether to accept, will be as individual as the people themselves.

Bill 154 cannot accomplish it's own goals, let alone recognize the hopes, aspirations, and economic realities of every individual in Ontario. Only a free market can accomplish this with equality and opportunity for all.

FREEDOM PARTY believes that the purpose of government is to protect our freedom of choice, not to restrict it.

Bill 154 serves only to restrict the choices available to everyone in Ontario and as such is bad in theory and worse in practice. With that in mind this commission should recommend that Bill 154 be dropped and that the government return to it's proper function and protect the freedom of choice of all of us.

And that, is the equitable thing to do.

