

The Government of New Brunswick's Pay Equity Program for Non-Legislated Sectors: A Just and Equitable Process?

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Abstract

The purpose of this paper is to analyze the results of the Government of New Brunswick's pay equity program for the non-legislated private sector. The analysis was conducted on behalf of the New Brunswick Coalition for Pay Equity in order to determine if the Province's pay equity process for women working in female-dominated employment sectors was just and equitable. Through a review of the relevant documents and literature, the paper highlights major issues with New Brunswick's pay equity exercise. Using case study, the paper draws attention to and raises questions about significant methodological problems that negatively impacted the results of the pay equity exercise for the participating sectors. While research has been conducted on pay equity legislation in other Canadian jurisdictions, there is a paucity of literature that examines the effectiveness of pay equity exercises in New Brunswick. The paper concludes with recommendations for an equitable pay equity exercise for employees working in traditionally female-dominated jobs.

Introduction

The International Labour Organization (ILO), a tripartite agency of the United Nations, adopted the Equal Remuneration Convention (No. 100) in 1951.² This declaration promotes equal pay for work of equal value, or pay equity, as a fundamental right. Despite the fact that it has since been ratified by Canada, as well as a large majority of states worldwide, pay discrimination continues to affect women from all levels of education, age groups, and occupations.³ Researchers have identified a number of causes of continuing pay discrimination,

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² International Labour Organization (ILO). *General Conference*, 34th Session (1951). The text of the Declaration is available online: <http://www.ilo.org/declaration>

³ Martin Oelz, Shauna Olney & Manuela Tomei, *Equal Pay: An Introductory Guide* (Geneva, International Labour Office: ILO, 2013)

including occupational segregation,⁴ undervaluation of women's work⁵, and the limited effectiveness of, and lack of compliance with, pay equity legislation.⁶

Canada adopted the principle of equal remuneration under section 11 of the *Canadian Human Rights Act*, which forbids wage discrimination between women and men doing work of equal value in the same establishment.⁷ This *Act* applies to federal government employees and federally regulated companies. It is complaints-based, meaning that employees are responsible for filing a wage-discrimination complaint against an employer. Ontario⁸ and Québec⁹ introduced pro-active pay equity legislation covering all employers in the public sector, and those in the private sector with more than ten employees, in 1988 and 2006 respectively. A pro-active law requires that employers assume responsibility for ensuring fair pay rather than employees. Instead of responding only to individuals who are able to bring a complaint to a court or tribunal, the employer must take the initiative to determine and rectify instances of unlawful discrimination.¹⁰ Moreover, rather than redressing unlawful discrimination for the benefit of a particular individual, such an approach seeks to find collective solutions that cover all affected individuals. The federal Pay Equity Task Force advocates for stand-alone, pro-active models with comprehensive coverage, adequate institutional support and training, obligations for maintenance, and pay equity oversight agencies equipped to support legislative compliance.¹¹

⁴ Pay Equity Task Force, *Pay Equity: A New Approach to a Fundamental Right*, (Ottawa: Department of Justice, 2004) at 14.

⁵ Marie Drolet, New Evidence on Gender Pay Differentials: Does Measurement Matter? (2002) 28 Canadian Public Policy / Analyse de Politiques 1.

⁶ *Supra* note 3.

⁷ *Canadian Human Rights Act*, RSC 1985, c H-6.

⁸ *Pay Equity Act*, RSO 1990, c P. 7.

⁹ *Pay Equity Act*, RSQ, c E-12.001 [*Québec*].

¹⁰ Sandra Fredman, *Making Equality Effective: The Role of Proactive Measures*, (European Commission Directorate-General for Employment, Social Affairs and Equal Opportunities Unit EMPL/G/2, 2009). Available online: ec.europa.eu/social/BlobServlet?docId=4551&langId=en.

¹¹ *Supra* note 4.

The New Brunswick *Pay Equity Act, 2009* applies to the civil service, health sector employees, the school system, including teachers, bus drivers, and school district employees, and Crown corporations. Although it does not cover the private sector, the provincial government announced, in June 2009, that five groups from the private sector would receive pay equity adjustments: child care, home support, nursing homes, transition houses, and community residences. Reporting on the experience of these five groups has become a focus of the New Brunswick Coalition for Pay Equity (“the Coalition”).¹² The Coalition comprises a group of individuals and organizations who educate and advocate for the adoption and implementation of adequate legislation in order to achieve pay equity for all workers in both the public and private sectors. Members of the Coalition have analyzed the results of the Government of New Brunswick’s pay equity program for the five groups representing the non-legislated sectors to determine if the pay equity process was just and equitable.¹³

Using case study, this paper examines the effectiveness of New Brunswick’s pay equity exercise for women working in female-dominated, non-legislated employment sectors. It first summarizes the Government of New Brunswick’s pay equity program for each of the five sectors, focusing specifically on the results. Second, it highlights procedural issues and raises questions regarding methodological choices made by the Government of New Brunswick in conducting the pay equity exercise for the child care, home support, and transition house sectors. The paper concludes with recommendations to the Government of New Brunswick.

¹² The New Brunswick Coalition for Pay Equity can be found online: <http://www.equite-equity.com/home.cfm>.

¹³ *Comment on the Results of the Government of New Brunswick’s Pay Equity Program for Non-Legislated Sectors* can be found online: [http://www.equite-equity.com/userfiles/file/Brief_2012_pay_equity_3groups_ENG\(1\).pdf](http://www.equite-equity.com/userfiles/file/Brief_2012_pay_equity_3groups_ENG(1).pdf). The Government of New Brunswick’s pay equity program for the four sectors (child care staff, home support workers, transition house sector, and direct caregivers in community residences) and Pay Equity Sector Reports are available online: <http://www.gnb.ca/0012/Womens-Issues/wg-es/payequity-e.asp>.

Job evaluation tools and comparison methods for recognizing the work performed in female-dominated jobs

Pay equity, or equal pay for work of equal value, demands an evaluation of the work performed in female-dominated jobs. It is meant to address the issue of pay discrimination, i.e., discrimination based on the characteristics of female-dominated jobs that have been ignored or devalued, and thus underpaid, in contrast to male-dominated jobs. Pay equity therefore recognizes the value of work performed by women by focusing on the qualifications required for the job, the amount of responsibility the job entails, the effort required to carry out the job, and the conditions under which the work is performed.¹⁴

The goal of a pay equity process is to compare the pay of female-dominated jobs to that of male-dominated jobs. When jobs that are predominantly performed by women are compared to those predominantly performed by men, it is frequently found that female-dominated jobs are underpaid. The following examples illustrate the discrepancy between the value that is often ascribed to work predominantly done by women and work predominantly done by men. The effort required to lift heavy objects that is commonly associated with men's work may be recognized, but not the lifting of residents or patients that women often encounter in caring work, or the shifting of substantial amounts of weight in work stations such as store checkouts. Male responsibility for equipment and finances may be valued, but not women's responsibility to take care of children, the elderly, and vulnerable people. Exposure to weather, dirt, and noise in male-dominated outside work may be recognized, but not exposure to human waste, odours, blood, and other bodily fluids in inside caring jobs, or exposure to the cold, humidity, or heat in food preparation jobs, both of which are predominantly performed by women. In fact, many of the female-dominated occupations, including child care, home support, clerical, food services,

¹⁴ Nan Weiner & Morley Gunderson, *Pay Equity. Issues, Options and Experiences* (Markham: Butterworths, 1990).

and certain factory jobs, remain underpaid because this work is perceived as an extension of women's "natural" unpaid roles in the home rather than work requiring specific education, experience, and training. Such stereotypes and prejudices associated with female-dominated jobs have often reinforced and maintained gender pay disparities.¹⁵

To address pay discrepancies between jobs predominantly performed by women and those predominantly performed by men, pay equity advocates have turned to non-discriminatory job evaluation methods as a tool to recognize the requirements of work that is performed in female-dominated jobs.¹⁶ Job evaluation systems that are recognized as gender neutral, gender sensitive, non-discriminatory, or non-sexist take into account all job characteristics and assign fair points to those often associated with female-dominated jobs. While job evaluations are widely used to establish fairer pay scales, both for internal equity and pay equity purposes, they have different functions depending on their goals and objectives.

In the case of internal equity, job evaluations are used to compare all jobs performed for the same employer, regardless of gender, to ensure that employees performing work of comparable value are compensated equitably across, for example, departmental lines or job classifications. Conversely, pay equity exercises require employers to evaluate and compare the value of jobs predominantly performed by women with the value of jobs predominantly performed by men to ensure that there is no wage discrimination against women.

Once a job description has been developed, the job is assigned a value for each sub factor based on its requisite qualifications, responsibilities, working conditions, and effort. The female-

¹⁵ Marie-Thérèse Chicha, *A Comparative Analysis of Promoting Pay Equity: Models and Impacts*, Declaration/WP/49/2006, Working Paper, (Geneva, International Labour Office, 2006) at 6 [*Chicha*].

¹⁶ *Ibid* at 7.

dominated jobs must then be compared with the male-dominated jobs. Various methodologies have been developed to conduct these comparisons:

Job-to-job comparison: Female-dominated jobs are compared directly with male-dominated jobs that are found to have the same value. If the value is the same, the pay should be the same. If not, the pay of the female-dominated job must be raised to align with that of the male-dominated job. This is the preferred method in the Province of Ontario.¹⁷ This approach works well in large establishments where there are enough job categories that equivalent male-dominated jobs can be found for each female-dominated job, but is less effective when comparators are unevenly distributed or missing.

Proportional value comparison (also known as job-to-line): The job value and job rates of all male-dominated job classes are plotted on a graph and a line is drawn following a regression analysis. Female-dominated jobs are compared to the line. If they fall below the line, they are raised to reach the level on the regression line.¹⁸

Proxy method: In many female-dominated sectors, there are no jobs predominantly performed by men. To address this issue, the Province of Ontario has adopted a proxy method which allows public or broader public sector female jobs to be compared with other public or broader public sector female jobs of the same value that have finalized their own pay equity exercise.¹⁹

Comparison to market wages: Québec's *Regulation respecting pay equity in enterprises where there are no predominantly male job classes* stipulates that employers who do not have male-

¹⁷ Ontario Pay Equity Commission. *A Guide to Interpreting Ontario's Pay Equity Act*, (Toronto: Queen's Printer for Ontario, 2012) at 86. *the Proxy Comparison Method*. (Toronto: 1993), p.1, online: http://www.payequity.gov.on.ca/en/resources/guide/ope/ope_11.php

¹⁸ *Ibid* at 62. Regression analysis is the mathematical way of accurately finding the line which best fits the points on the graph. Regression analysis calculates a line that produces the smallest sum of distances of points to the line. The calculations can be done using a computer program or a calculator with the regression function. Unlike drawing a line freehand, this method does not entail a trial-and-error process.

¹⁹ *Ibid*.

dominated job classes among their employees must compare predominantly female jobs to predominantly male jobs that are outside their workplace using current market wages.²⁰

The New Brunswick pay equity exercise for government-mandated services

In 2006, the Government of New Brunswick promised to start job evaluations to extend pay equity to workers providing contracted services to government. Since then, it has begun pay equity exercises for transition house workers,²¹ child care staff working in provincially licensed child care facilities established under the *Day Care Regulation – Family Services Act*,²² nursing home employees working in licensed facilities established under the *Family Services Act*,²³ home support workers in agencies contracted by government, and direct caregivers working in community residences established under the *Family Services Act*.²⁴ These groups, all from the caring field, are part of the private sector in New Brunswick, but offer services mandated by the provincial government and are largely dependent on government funding. They are not covered by the *Pay Equity Act, 2009*.²⁵

The pay equity process followed for the nursing home workers differed from that which was followed for the other groups identified above. In New Brunswick, most nursing home workers are unionized with the Canadian Union of Public Employees (CUPE). In 2010, they obtained wage parity with CUPE hospital workers who had acquired internal equity within their

²⁰ *Regulation respecting pay equity in enterprises where there are no predominantly male job classes*, RRQ, c E-12.001, r 2.

²¹ See *Standards and Procedures for Adult Residential Facilities 2012*, online: <http://www2.gnb.ca/content/dam/gnb/Departments/sd-ds/pdf/Standards/AdultResidential-e.pdf>

²² See NB Reg 1983-85 under the Family Services Act, SNB 1980, c F2.2.

²³ See *Standards and Procedures for Adult Residential Facilities 2012*, online: New Brunswick Department of Social Development, online: <http://www2.gnb.ca/content/dam/gnb/Departments/sd-ds/pdf/Standards/AdultResidential-e.pdf>

²⁴ See NB Reg 1983-77 s 2 for definition of residence.

²⁵ *Supra* note 8.

bargaining unit.²⁶ The Government considered this pay equity, even though the hospital workers followed an internal equity rather than a pay equity exercise.

Though the Government of New Brunswick promised that the remaining four groups would begin to see adjustments as early as 2010, funds were not announced until the 2012 budget. Pay equity reports were published in June 2012 for three groups: child care, home support, and transition houses.²⁷ At the time this paper was written, the pay equity exercise for community residences was not completed.

The Government of New Brunswick stated that, with respect to the job classes receiving pay equity adjustments, a total of \$13.8 million would be paid over a five-year period (approximately \$3 million per year).²⁸ A summary of the results of the pay equity exercise is presented in Table 1. Note that the hourly wage estimates are based on statistics from March 31, 2011.

TABLE 1. Results of the Pay Equity Programs in the Child Care, Home Support, and Transition House Sectors

	Current Wages, March 31, 2011 (\$)	Inequity (Surplus) (\$)	"Fair Wage" According to Government (\$)
Support Worker (Child Care)	10.00	2.52	12.52
Primary Care (Child Care)	13.32	(0.17)	13.15

²⁶ *New Brunswick Association of Nursing Homes, Inc.*, Press Release, (25 January 2010).

²⁷ For more information see: New Brunswick. (2012). *Child Care Sector: Pay Equity Program 2012* / New Brunswick. (2012). *Home Support Sector: Pay Equity Program 2012* / New Brunswick. (2012). *Transition House Sector: Pay Equity Program 2012*, online: <http://www.gnb.ca/0012/Womens-Issues/wg-es/payequity-e.asp>

²⁸ New Brunswick, Legislative Assembly, *Hansard*. 57th Leg, 2nd Sess, No 40 (5 November 2012) [*Hansard*].

Administrative/Primary Care (Child Care)	16.33	(2.16)	14.17
Home Support Workers	11.00	2.15	13.15
Crisis Intervener (Transition House)	13.37	0.03	13.40
Outreach Workers (Transition House)	19.20	(5.39)	13.81
Support Workers (Transition House)	15.64	(2.21)	13.43
Child Support Workers (Transition House)	13.85	(0.45)	13.40

Child care workers: At the beginning of the pay equity exercise, the child care sector comprised approximately 2600 employees. In this sector, three groups were evaluated. Child care support workers will receive an hourly adjustment of \$2.52, spread over five years. According to the results of the Government of New Brunswick’s pay equity exercise, administrative/primary care and primary care workers already earn above “fair wage.”

Home support workers: There were 3254 home support workers at the beginning of the pay equity exercise. They will receive a \$2.15 increase, spread over five years.

Transition home workers: This sector includes 60 workers divided into four categories, as identified above. Crisis interveners in transition houses will receive a \$0.03 adjustment, to be paid in the first year. As estimated through the Government of New Brunswick’s pay equity exercise, the other three categories - outreach workers, support workers, and child care support workers - already earn above “fair wage.”

Direct caregivers in community residences: There are 72 community residences with approximately 470 long-term care clients living in these facilities. Approximately 700 employees provide care to these residents. As well, there are 39 child care residential centers, open custody homes, and child placement facilities with approximately 178 beds and up to 6 children or youth living in each center. Approximately 500 employees provide care to these residents.²⁹ As previously mentioned, the Government of New Brunswick promised that the community residence workers' evaluation would be completed by the summer of 2012. If the pay equity exercise determined that a wage adjustment was needed, payouts were to begin in the 2013-2014 fiscal year. At the time this paper was written, the pay equity exercise was still incomplete, meaning that the results had not been announced for this sector.

Analysis of New Brunswick's pay equity exercise for government-mandated services

This section provides an analysis of the Government of New Brunswick's pay equity exercise for the child care, home support, and transition home sectors. It does not include the nursing home sector because, as stated above, the methodology applied with respect to this sector differed from the others. Its content is presented according to the chronological steps of a pay equity process: 1) including employee representatives in decision-making bodies; 2) choosing male comparators; 3) selecting a job evaluation instrument; 4) developing job descriptions for job analysis; 5) creating male job classifications; 6) determining the period for paying wage adjustments and taking account of inflation during the payout period; and 7) resolving disputes.

1. Including employee representatives in decision making bodies

Sector employees represented less than half of the individuals who served on Joint Steering Committees that were created to help oversee the pay equity process. Three home

²⁹ Government of New Brunswick Women's Issues Branch, *Pay Equity for Direct Caregivers in Community Residences*, online <http://www.gnb.ca/0012/Womens-Issues/wg-es/pe/communityres-e.asp>.

support workers served on a committee of nine, three child care workers served on a committee of eight, and five transition house employees served on a committee of eleven.³⁰ The additional committee members comprised employer and government representatives. While the employers may have participated in the pay equity exercise in the best interests of their employees, representation still favoured the employers and government. **The vast majority of the participating employees were from the non-unionized sectors and therefore had little support in developing and negotiating important elements of the pay equity exercise** (e.g., selecting male comparators, developing the job descriptions, selecting the evaluation tools, conducting the evaluation, determining the appropriate wage levels of the male comparators, and determining the pay adjustments to be made and the period over which they should be paid). Even the minority of employees who were unionized did not have union representation on the committees.³¹

In Québec, employee representatives must make up at least two-thirds of a pay equity committee and at least half of these must be women.³² The representatives are chosen by either their respective unions or an election among non-unionized workers. Both employer and employee representatives have what amounts to veto power with the possibility of appealing to the pay equity committees and the *Commission de l'équité salariale* ("the Commission") in the case of a deadlock. The employer is responsible for providing adequate training to the employee representatives and for paying their salaries when the committee meets. Employees or unions in establishments with fewer than 50 persons may appeal to the Commission if they are unsatisfied

³⁰ Government of New Brunswick Women's Issues Branch, *Pay Equity Sector Reports* (June 2012), online: <http://www.gnb.ca/0012/Womens-Issues/wg-es/payequity-e.asp>

³¹ Some of the employees in the home support, community residence (group home), and transition house sectors were unionized.

³² *Supra* note 7, sections 17-29.

with the results of a plan or if they feel that the law was not respected.³³ Employees or unions in larger establishments can file a complaint within a fixed time period in cases of bad faith, negligence, arbitrary or discriminatory behaviour on the part of the employer or the pay equity committee, or if the delays for completing the pay equity evaluation are not respected.³⁴

2. Choosing the male comparators

In New Brunswick, there are no male job classes within the sectors participating in the pay equity exercise. To address this issue, the Government considered two methods developed by other provinces where pay equity legislation covers the private and public sectors and where independent pay equity commissions oversee its implementation. Ontario uses the proxy method, as stipulated for the broader public sector workplaces without male comparators in the *Pay Equity Act*. In Québec, when there is no male comparator, enterprises establish their pay equity process in accordance with the *Regulation respecting pay equity in enterprises where there are no predominantly male job classes*.³⁵

To create male job classes (i.e., comparators) the Government of New Brunswick adapted the Province of Québec Regulation.³⁶ According to the 2012 pay equity reports, “In order to conduct a pay equity analysis, New Brunswick opted to follow the Province of Québec’s legislated methodology where a maintenance worker was chosen to be the typical male job class or comparator in situations where none exist.”³⁷ In fact, the Québec Regulation identifies two male comparators: maintenance worker and foreman. Similar job titles for maintenance worker are caretaker, handyman, labourer, and maintenance man. A foreman is comparable to the

³³ *Ibid*, Section 99.

³⁴ *Ibid*, Section 10.

³⁵ *Supra* note 16.

³⁶ Government of New Brunswick, *Backgrounder: Creation of Male Job Classes*, online: <http://www.gnb.ca/0012/Womens-Issues/PDF/BackgrounderMaleComparator-E.pdf> [*Backgrounder*].

³⁷ Government of New Brunswick, *Transition House Sector Pay Equity Program*, (2012), online: <http://www.gnb.ca/0012/womens-issues/PDF/TransitionHouseSectorReport2012.pdf>>, p. 141.

similar job titles of manager, team leader, supervisor, and coordinator.³⁸ To determine the existence of pay equity, the Government of New Brunswick developed job descriptions for both a fictitious maintenance worker and foreman, evaluated them, established the market average wage for the maintenance worker, decided that the foreman would be making 20% more than the maintenance worker, drew a regression line from this data, and compared the female jobs to this line.³⁹

Ontario's proxy method addresses the issue of unmatched female job classes for those organizations unable to find male comparators for certain female job classes through a proxy comparison method.⁴⁰ The proxy method enables workplaces that have mostly female job classes to find comparators (i.e., similar female-dominated job classes) outside of the workplace. Eligible broader public sector employers called "seeking employers" may go outside their own workplace to other broader public sector employers called "proxy employers" and borrow job and salary information about similar female job classes in order to complete job comparisons. Ontario's *Broader Public Sector Accountability Act, 2010*⁴¹ defines "broader public sector organization" as: "(a) a designated broader public sector organization, and (b) a publicly funded organization." The *Guide to Interpreting Ontario's Pay Equity Act* specifies that also included in the public sector are:

...organizations subject to government licensing, such as daycare or childcare agencies licensed under the *Day Nurseries Act*, nursing homes licensed under the *Nursing Act*, legal aid clinics established under the *Legal Aid Services Act*, child welfare services, long-term care facilities, Native friendship centres, community health services, residential care facilities, developmental and rehabilitation services, and sexual assault centres.⁴²

³⁸ *Supra* note 16.

³⁹ *Supra* note 31.

⁴⁰ RRO 2010, Reg 396.

⁴¹ SO 2010, c 25, s 1, para 1.

⁴² *Supra* note 13.

The seeking employer's female job classes are compared to the proxy female job classes using a proportional value method.⁴³ Note that the proxy method applies to all female job classes in the seeking employer's workplace, regardless of whether some female job classes could have been compared using the job-to-job or proportional value comparison methods.⁴⁴

3. Selecting the job evaluation instrument

There is no one job evaluation instrument; however, the report of the federal Pay Equity Task Force maintains "the importance of sensitivity to the possibility of gender bias at all stages of the process."⁴⁵ Thus, it cannot be assumed that any job evaluation instrument is gender neutral. Although job evaluations are subjective, a job evaluation instrument can aid in not only reducing gender bias, but can also provide a reliable means of measuring job value in a workplace.

The Government of New Brunswick chose the analytical point method in which each of the four factors (skill, effort, responsibility, and working conditions) and their sub-factors were identified and assigned points based on job aspects that may differentiate job classes.⁴⁶ While an advantage of the point method is that it can make the process less subjective by systematizing the analysis of the components of the job classes (which also makes it easier to identify gender bias⁴⁷), a problem can arise in the weighting of the various factors and sub-factors, particularly if weighting favours physical rather than mental effort, training, and responsibilities. It is important to remember that gender neutrality does not mean that pay equity exercises fail to take into account how gender impacts issues of weighting. Rather, it indicates a need to be conscious of the systemic nature of gender bias, i.e., that equity does not mean equality or sameness.

⁴³ *Ibid* at 87.

⁴⁴ *Ibid*.

⁴⁵ *Supra* note 4, at 160.

⁴⁶ *Ibid*, at 287.

⁴⁷ *Ibid*.

4. Developing job descriptions

Job analysis questionnaires (“JAQs”) that are completed by each employee in a pay equity exercise are widely used in job evaluation exercises to collect detailed information on the nature of an employee’s work. Employers may also conduct interviews with the employees or their supervisors, or directly observe work being performed.⁴⁸ This information, once approved by the employees’ supervisors, serves as the basis for job descriptions and job evaluations carried out by joint employee-employer committees. Employees in the four predominantly female caring sectors participating in the Government of New Brunswick exercise were asked to complete JAQs, but no information could be gathered directly from the fictitious male comparators.⁴⁹

In job evaluations based on job descriptions, sub-factors are used to assign points for responsibilities, qualifications, work conditions, and effort. These points determine the value, and therefore the pay rate, for the female jobs. The Appendix illustrates that, in the Government of New Brunswick’s pay equity exercise, the foreman job description includes more responsibilities than that which is proposed in the Province of Québec Regulation. The effect is an inflation of the value of the foreman job. For example, since the foreman wage was predetermined (at 20% over that of the maintenance worker), the more points that are given to the job, the lower the dollar value that will be attributed to each point for the predominantly female jobs.

An example from the Child Care Sector Report illustrates how the value of each point was determined by using the following formula:

⁴⁸ Government of Ontario, Pay Equity Commission, *Guide to Collecting Job Information*, online: http://www.payequity.gov.on.ca/en/resources/guide_info.php.

⁴⁹ See, for example, Government of New Brunswick, Women’s Issues Branch, *Home Support Sector, Pay Equity Program 2012 Report*, pp. 29, 58 online: <http://www.gnb.ca/0012/Womens-Issues/wg-es/payequity-e.asp>.

Difference between the valuation of the typical male job classes = 468 points (855-387)

Difference between the rate of remuneration for the typical male job classes = \$2.97

(\$14.83 - \$11.86)

$\$2.97 \div 468 = \0.00635 ⁵⁰

If the value attributed to the foreman had been lower, for example, 687 points, which is a difference of 300 points, each point would have been worth more ($\$2.97 \div 300 = \0.0099). In that case, the child care administrator/primary care's pay equity wage would have been determined to be \$3.60 above that of the maintenance worker instead of \$2.31.

5. Creating male job classifications

Establishing male job classifications raises numerous concerns involving: i) creating the fictitious male comparator; ii) determining the wage level of the male comparator; iii) selecting non-unionized sectors; and iv) assigning the differential rate of pay between the lower skilled and the more highly skilled male comparators.

i. Confining comparisons to two fictitious male comparators

Wage comparisons where no male comparator exists are complex. In the current pay equity exercise, no male comparator existed within the sectors. To address this issue, the Government of New Brunswick created a fictitious maintenance worker and foreman and assigned job descriptions to each. Job descriptions and evaluations are subjective, i.e., they have the effect of assigning value to job classes that could be either inflated or deflated. Maintenance worker and foreman jobs can be found in many workplaces with different responsibilities and

⁵⁰ Government of New Brunswick, Women's Issues Branch, *Child Care Sector: Pay Equity Program*, (2012), online: <http://www.gnb.ca/0012/Womens-Issues/wg-es/pe/childcare-e.asp>.

wide-ranging wage rates of pay. The Government of New Brunswick's solution to these issues thus raises questions about the choice of procedure.

ii. Determining the wage level of the male comparators

The Government of New Brunswick hired MarketQuest Research (MQR) to conduct a survey of 49 New Brunswick employers with non-unionized workforces.⁵¹ Results from the survey show that the maintenance worker earned an hourly wage of \$11.86. These wages are similar to the rates reported to Statistics Canada in 2010 for non-unionized workers.

Table 2 provides average wage data from Statistics Canada's Labour Force Survey (2012)⁵² in the "Janitors, Cleaners, Caretakers and Building Superintendents" category, which corresponds broadly to the maintenance worker job description used by the Government of New Brunswick. Statistics Canada's average wage data for this predominantly male job category⁵³ includes job titles such as custodians, maintenance men, handymen, and building maintenance workers located in New Brunswick.

The Government of New Brunswick announced the results of the pay equity program in June 2012. Given the timing of the announcements, the Government compared the female wage levels for 2011 with the male wage levels for 2010 instead of 2011, when the non-unionized maintenance worker wages had reached \$12.33 per hour. At the time of the announcement the minimum wage rate had increased four times, by 50-cent increments, between April 1, 2010 and April 1, 2012, thus going from \$8.50 per hour to \$10.00 per hour. The Government of New

⁵¹ *Backgrounder*, *supra* note 31.

⁵² Statistics Canada, *Labour Force Survey*, 2012, custom tabulation, National Occupation Classification G93 (Light Duty Cleaners, Specialized Cleaners, Janitors, Caretakers and Building Superintendents); examples of job titles at <http://stds.statcan.gc.ca/soc-cnp/2006/cs-rc-eng.asp?cretaria=G93>. (Page visited September 15, 2012).

⁵³ Men accounted for approximately 60% of the total 9,900 employees in this category in New Brunswick in 2011. Statistics Canada (n.d.). *Labour Force Survey*, 2012, custom tabulation, National Occupation Classification G93. (Light Duty Cleaners, Specialized Cleaners, Janitors, Caretakers and Building Superintendents). Online: <http://stds.statcan.gc.ca/soc-cnp/2006/cs-rc-eng.asp?cretaria=G93>. (Page visited September 15, 2012).

Brunswick ignored these changes which would have had an effect on overall wages. Basing adjustments on information gathered for maintenance workers in 2010 meant that wages were included which would have been below the minimum wage as of April 1, 2012.

TABLE 2. Average Hourly Wage Rates for Janitors, Cleaners, Caretakers and Building Maintenance Workers, New Brunswick, 2010 and 2011⁵⁴

	2010	2011
Total (all employees)	\$13.92	\$14.11
Non-unionized	\$11.89	\$12.33
Unionized	\$17.35	\$17.13

Further, MQR collected data on only the maintenance worker job type, which raises additional questions about how the Government of New Brunswick gathered the wage data for the foreman position. In addition, the foreman job type, includes management duties and high levels of responsibility for which employees in the real world get paid substantially higher salaries. For example, Statistics Canada’s Labour Force Survey wage data for management occupations, excluding senior management jobs, indicates that, in 2011, employees working in middle to low level management-type jobs in New Brunswick earned, on average, \$30.98 per hour.⁵⁵ Included within this average hourly wage rate are positions such as Facility Operation and Maintenance Managers, Human Resources Managers, and Purchasing Managers. These positions encompass job duties found in the Government of New Brunswick’s foreman job description used for comparison purposes in the pay equity exercise.

⁵⁴ *Ibid.*

⁵⁵ Statistics Canada. (n.d.). *CANSIM* Table 282-0070, Labour force survey estimates (LFS), wages of employees by type of work, National Occupational Classification for Statistics (NOC-S), sex and age group, annual (current dollars); average hourly wage rates for 15 years & over, full-time & part-time employees; Excludes “Senior Management” category, covers job categories A1 – A39, online: <<http://stds.statcan.gc.ca/soc-cnp/2006/ts-rt-eng.asp?cretaria=A>>.

All of this raises questions about the Government of New Brunswick's use of wage rate data and the choices it made in selecting the male-dominated job descriptions, as well as the corresponding wage rates, for their pay equity exercise. This point is especially critical given that the wage rate for the maintenance worker is vital to the Government of New Brunswick's entire calculation, and ultimately its results, because it determined both the other male comparator's wage rate and therefore the women's "fair wage."

iii. Selecting non-unionized sectors for pay equity exercise

The Government of New Brunswick decided to exclude the wages of unionized workers from the pay equity exercise. The effect of this decision is a further depression of the wage level of the male comparator and, consequently, of the female-dominated jobs. Yet there is no reason to exclude unionized workers, and the result of using a non-unionized comparator for the private sector job evaluations is that pay equity exercises will benefit unionized and non-unionized women differently. Table 2 also illustrates that, when combining unionized and non-unionized wage data, those working as janitors, cleaners, caretakers, and building maintenance workers in New Brunswick earned, on average, \$14.11 per hour in 2011 (and \$13.92 per hour in 2010).

A similar range of wage rates can be found in unionized jobs in the municipalities (Table 3). The 2011 hourly wage data for unionized (CUPE/SCFP) blue collar workers in both large and small municipalities across New Brunswick reveals the following ranges for the maintenance worker and foreman job classes: from a low hourly wage of \$14.94 for a Maintenance Cleaner in Woodstock to a high of \$28.92 for a Commons Caretaker in Moncton, and from a low of \$21.80 for an Assistant Foreman in Fredericton to a high of \$30.68 for a Building Services General Foreman in Saint John (2010 hourly wage data).

TABLE 3. Average Hourly Wage Rates for Selected Unionized Blue Collar Workers

in New Brunswick Municipalities⁵⁶

Job Title	Region	Hourly Wage
Maintenance Cleaner	Woodstock (2011)	\$14.94
Commons Caretaker	Moncton (2011)	\$28.92
Assistant Foreman	Fredericton (2011)	\$21.80
Building Services General Foreman	Saint John (2010)	\$30.68

The selection of non-unionized male comparators has the effect of keeping wages in this sector low in comparison to unionized male comparators. It creates downward pressure on classifications that are already historically devalued, which translates into normalized lower pay scales for the work of women, and means that predominantly female jobs will continue to attract lower wages than comparable predominantly male jobs. This consequently adds to the risk of maintaining the status quo – a gendered wage gap.

The second problem in selecting male comparators from the non-unionized sector as opposed to unionized sectors is the weakening of trade union structures generally and, hence, in relation to private sector female-dominated jobs which do not benefit from union support and the strength of solidarity. In pay equity exercises and other situations where the terms and conditions of female-dominated jobs are negotiated, women will continue to not have access to the experience and expertise necessary to ensure that their interests are represented.

iv. Assigning the differential

⁵⁶ CUPE New Brunswick Collective Agreements, municipal public works locals in Fredericton, Moncton, SJ, Bathurst, Dieppe, Edmundston, Miramichi, Quispamsis, Campbellton, Caraquet, Dalhousie, Grand Falls, Grand Bay Westfield, Oromocto, Sackville, Shediac, St. Stephen, Tracadie-Sheila, Sussex, Blacks Harbour, Woodstock, Chipman, McAdam, Minto, Nackawic, Petit-Rocher, Shippagan, Sainte-Anne, St-Leonard. See Government of New Brunswick, Department of Postsecondary Education, Training and Labour, Collective Agreement Retrieval System (CARS) online: [http://www2.gnb.ca/content/gnb/en/services/services_renderer.2235.Collective_Agreement_Retrieval_System_\(CARS\).html](http://www2.gnb.ca/content/gnb/en/services/services_renderer.2235.Collective_Agreement_Retrieval_System_(CARS).html).

In the *Regulation respecting pay equity in enterprises where there are no predominantly male job classes*,⁵⁷ the Province of Québec established that the hourly rate of remuneration in the maintenance worker category must be 60% of the hourly rate of remuneration in the foreman category (i.e., a wage differential of 40 percentage points). The differential of 40 points was based on extensive research that determined the average wage difference between the two types of jobs in Québec. As stated by the Commission, “This standard represents the labour market’s average relativity between the remuneration of the ‘maintenance worker’ and that of the ‘foreman’.”⁵⁸

The Québec Regulation speaks to the need to determine the market wage rates for both the foreman and the maintenance worker job classes. Once determined, the wage differential is calculated and, if the ratio is more or less than 60%, the wage rate for either the foreman or the maintenance worker must be adjusted. As the Commission stated, in its 2005 report:

The relativity between hourly rates of remuneration you have just assigned to the typical job classes might differ from the 60% standard if, for instance, your sector of activity is largely female. If such is the case, the remuneration is potentially gender biased. The standard prevents you from perpetuating the systemic discrimination present in your sector of activity.⁵⁹

The Government of New Brunswick did not use the market wage rate for the foreman job type. It instead chose to look at the difference between a public sector supervisor and the individual directly supervised by him or her.⁶⁰ Under the Québec Regulation, the foreman does not necessarily supervise the maintenance worker.⁶¹ Moreover, the Government chose a wage differential of 20 percentage points instead of 40. Minister Margaret-Ann Blaney stated, “The

⁵⁷ *Supra* note 16.

⁵⁸ Commission de l'équité salariale du Québec, *Info-Équité: Pay Equity in Enterprise Where There Are No Predominantly Male Job Classes* (2005), online: Government of Québec. Online: <http://www.ces.gouv.qc.ca/documents/publications/infregl-a1.pdf> [*Info-Équité*].

⁵⁹ *Ibid.*

⁶⁰ *Supra* note 35.

⁶¹ *Supra* note 57.

wage line, which is the basis of comparison for the maintenance worker and the supervisor...was a 20% differential in salary.”⁶² This was confirmed in the pay equity reports:

The hourly rate of remuneration assigned to the Maintenance Worker must be equal to 80% of the hourly rate of remuneration assigned to the Foreman...The 80% standard represents the New Brunswick labour market’s average relativity between the remuneration of the Maintenance Worker and that of a Foreman (i.e.: differential in salary between employee and supervisor).⁶³

The effect of the assignment of a 20% wage differential between the lower skilled and the more highly skilled male comparator was to deflate or lower the wage rate of the foreman. If the Government of New Brunswick had used the 40% differential rate, the salary of the foreman would be \$18.93 instead of \$14.83 and more adjustments would have been made with respect to the female-dominated job classes.

When the Coalition asked the Government of New Brunswick why it departed from the differential used in Québec and instead used a 20% differential, the Government argued that Québec’s 40% differential “is not reflective of New Brunswick’s labour market relativity.”⁶⁴ Research to justify the Government’s use of a 20% differential is not available.

6. Determining payout schedules and accounting for inflation rates

The 2012-2013 pay equity payout amounts are \$6.4 million and cover both the public sector (\$3 million) and the three private sector groups of employees who participated in the pay equity exercise (\$3.4 million). The full pay equity schedule for the three private sector groups that will receive adjustments (Childcare Support Workers, Transition House Crisis Interveners, and Home Support Workers) spans five years. Note that the Transition House Crisis Interveners will receive their full \$0.03 per hour adjustment in 2012-2013.

⁶² *Hansard*, *supra* note 24 at 16.

⁶³ *Child Care*, *supra* note 43 at 89.

⁶⁴ Norma Dubé, personal communication, October 23, 2012.

Yearly inflation rates are not addressed in the payout schedules. Workers are typically concerned with inflation-adjusted earnings, especially when inflation puts pressure on wages. Inflation erodes wages over the life of a contract. When wages are perfectly indexed, real wages remain fixed and rigid from downward pressure. By spreading the adjustments over five years and not taking inflation into account, the Government of New Brunswick is maintaining a downward pressure on women's wages.

7. Resolving disputes

According to the 2004 report of the federal Pay Equity Task Force, if employees are “to participate freely in developing the pay equity plan, present their comments, request revisions or possibly file a complaint...they must not feel threatened by the possibility of retaliatory measures taken against them.”⁶⁵ Yet, in the absence of legislation for the private sector, there is no such protection for the employees of those sectors that participated in the Government of New Brunswick's pay equity exercise. Employees have no legal recourse if a dispute arises over some aspect of the pay equity process and/or the results of a pay equity exercise.

Conclusions

Pay equity demands a re-evaluation of the work that women perform in predominantly female jobs. Pay equity exercises recognize the value of women's work by drawing attention to the qualifications required for the job, the amount of responsibility the job involves, the effort required to carry out the job, and the working conditions of the job that are ignored and undervalued. These exercises aim to correct gender discrimination in the pay for comparable jobs held by women and men. To address these discrepancies, non-sexist job evaluation

⁶⁵ *Supra* note 40 at 240.

processes compare female-dominated jobs with male-dominated jobs using various methodologies, as outlined above.

In 2007, the Government of New Brunswick began a pay equity process which eventually included workers in child care settings, nursing homes, home support settings, transition houses, and community residences. Nursing homes followed an internal equity process, not a pay equity process. For the four other groups, the Government of New Brunswick used a methodology with elements borrowed from Québec's *Regulation respecting pay equity in enterprises where there are no predominantly male job classes*.⁶⁶ The results of the pay equity exercises for the child care, home support, and transition house sectors were publicly available by June 2012. They were based on 2010 wage calculations for the male comparators. At the time this paper was written, the community residences were completing their process and no information was available.

This paper has highlighted the major issues identified by the New Brunswick Coalition for Pay Equity regarding the Government of New Brunswick's pay equity exercise for the child care, home support, and transition house sectors. Specifically, it emphasized and questioned significant methodological problems that negatively impacted the results of the pay equity exercise for the participating employee sectors, including: 1) the underrepresentation of employees in the decision-making process and the lack of support accorded to employee representatives to ensure that their interests would be fairly represented and that they would therefore be able to defend their rights; 2) the process by which the male comparators were selected and the consequent risk that such selection posed in undermining the value of women's jobs; 3) the choice of job evaluation instrument and the possibility of gender bias in weighting factors and sub factors; 4) the creation of job descriptions and the possibility of a lack of

⁶⁶ *Supra* note 16.

recognition based on stereotypes that reinforce gender discrimination, resulting in inflated evaluations of the male comparator and thus the devaluing of women’s work; 5) the assignment of gender-biased wage levels to the male comparators; 6) the imposition of lengthy payout schedules that failed to take into account inflation and general increases in salaries across the Province; and 7) the lack of recourse available to employees should disputes arise.

Table 4 suggests how the results of the pay equity exercise could have been different, not so much with respect to who conducted the exercise, but some of the choices that could have been made, or have been made, regarding the issues identified in this paper. As stated above, there are no male comparators to estimate the wage gap within the female-dominated sectors that participated in the pay equity exercise. The Government of New Brunswick responded by creating two fictitious male job classes: foreman and maintenance worker. They chose a 20% differential in wages between the two job classes and used rates of exclusively non-unionized private sector wages. Though incomplete because it does not have the benefit of an adequately conducted job evaluation or pay equity exercise, the table below indicates how these two choices operate to devalue predominantly female jobs and maintain low wages for women in these sectors.

TABLE 4. Partial Results of the Pay Equity Exercise Addressing the Choices of Pay Differential & Unionized Wages

	Current Wages (\$), March 31, 2011	“Fair wage” (\$ according to government when using 2010 non-unionized workers’ wages (11.86) and a 20% differential (foreman = 14.83)	“Fair wage” (\$) when using 2010 non-unionized maintenance workers’ wages (11.86) and a 40% differential (foreman = 19.77)	“Fair wage” (\$) when using 2011 unionized and non-unionized maintenance workers’ wages (14.11) and a 20% differential (foreman = 17.64)	“Fair wage” (\$) when using 2011 unionized and non-unionized maintenance workers’ wages (14.11) and a 40% differential (foreman = 23.52)
Support worker (Child Care)	10.00	12.52	13.62	14.89	16.20
Primary Care	13.32	13.15	15.29	15.63	18.19

(Child Care)					
Administrative/ Primary Care (Child Care)	16.33	14.17	18.01	16.84	21.43
Home Support Workers	11.00	13.15	15.29	15.63	18.09
Crisis Intervener (Transition House)	13.37	13.40	15.94	15.93	18.97
Outreach Workers (Transition House)	19.20	13.81	17.05	16.43	20.29
Support Workers (Transition House)	15.64	13.43	16.02	15.97	19.06
Child Support Workers (Transition House)	13.85	13.40	15.94	15.93	18.97

Recommendations

The methodology that the Government of New Brunswick employed in the pay equity exercise for the child care, home support, and transition home sectors resulted in surprisingly low, or no, wage adjustments. The Coalition identified a number of major issues with the Government’s methodology that must be reviewed and adopted to ensure real pay equity. We recommend that the Government: 1) review and improve the methodology used for workplaces that do not have male comparators; and 2) obtain the assistance of experts and equality-seeking groups so that it can truly measure pay equity and give valid results.

Further, as it is known that voluntary measures are vulnerable to arbitrary decisions that may not achieve pay equity,⁶⁷ we recommend: 1) that pay equity legislation with clear guidelines be adopted for the private sector; and 2) that an independent body be named within the legislation to promote pay equity, receive complaints, conduct investigations on its own initiative, and make binding rulings regarding the legislation’s application.

⁶⁷ *Supra* note 10 at 17.

Ensuring pay equity for employees offering government-mandated services is complex. These employees are spread among many small workplaces where there are no male comparators. They provide services that are an extension of government programs, yet are paid much less than public employees doing comparable work. These employees work for employers who are dependent on government standards and funding; however, government often does not provide sufficient funding to ensure pay equity. To address this concern we recommend that pay equity legislation specify that government-mandated services be treated as part of the broader public sector.

As mentioned throughout this paper, equal pay for work of equal value is a fundamental human right. The New Brunswick Coalition for Pay Equity maintains that pay equity is unlikely to close the gender wage gap if employees must rely on complaints-based mechanisms. We support a pro-active law that covers both the public and private sectors, as is the case in Ontario and Québec. We also support the recommendations of the federal Pay Equity Task Force regarding comprehensive coverage, employee support, and oversight agencies. The Coalition also requests that the Government of New Brunswick review their methodology and ensuing results for potential discriminatory effect.

Appendix

Foreman - Job Description

QUÉBEC

Guidelines for the foreman’s job description in the Québec Regulation:

The “foreman” is usually in charge of different jobs that are regrouped to form a department, an administrative or production unit or any other form of organization, depending on the practices in your enterprise. He plans activities, coordinates tasks and duties and supervises the personnel occupying positions in such groups. The most part of his job consists in managing. However, during peak periods he can occasionally perform tasks that are related to routine operations. It is important to note that under the Regulation, the “foreman” does not necessarily supervise the “maintenance worker”.⁶⁸

NEW BRUNSWICK

Foreman – Job Description

Foreman is responsible for the day to day operations of Early Learning and Child Care Facility in accordance with Acts, Regulations, Standards, Policies and Procedures. They are responsible to plan, organize, direct, control and evaluate the operations of an Early Learning and Child Care Facility. They are responsible for Financial and Human Resource Management and to ensure the maintenance of the facility. In addition, they coordinate the implementation of quality learning experiences for infants, preschool and school-aged children that stimulate and respond to each child’s intellectual, physical, social and emotional growth. The Foreman is responsible for the health, safety and well-being of staff and children in their care.

Job Duties

A Foreman carries out the following duties:

- Ensure that policies, standards and regulations are adhered to (Child Daycare Facilities Operators Standards, Employment Standards, Public Health Standards, Fire prevention standards)
- Develop, implement and revise, as needed, facility/operational policies and guidelines
- Human resource management (i.e. job evaluation, disciplinary action, guidance and support, recruitment, professional development)
- Financial management (i.e. budgeting and forecasting, revenues and expenditures, payroll management, monitoring petty cash, cost analysis, grant proposals)
- Planning and conducting meetings (staff, resource professional, case conference, parent/staff)
- Monitor implementation of programs and early learning and child care curriculum frameworks
- Record(s) management (i.e. personnel files, child files)

⁶⁸ *Supra* note 51.

- Daily management (i.e. parent complaints, staff complaints, staff/child ratios, replacements, scheduling)
- Crisis management (i.e. power outages, communicable diseases, floods, fires, serious illnesses and/or injuries)
- Purchasing, receiving and inventory control of supplies, materials and equipment
- Registration and enrollment management
- Create and maintain an environment that protects the health, safety and wellbeing of children and staff
- Coordinate the planning of menus that take into account the children's ages, recommended serving sizes and nutritional needs according to Canada's Food Guide, cultural and religious practices, and any allergies and/or medical conditions a child might have (i.e. tube feeding)
- Coordinate cleaning, ice and snow removal and landscaping operations
- Direct the maintenance and repair of a facility's machinery, equipment and heating, cooling, ventilation, plumbing and electrical systems
- Identify potential or actual health hazards in a child day care setting
- Implement and maintain effective procedures and protocols for completing fire and emergency exit drills and handling emergency situations, for example, an injury
- Establish and maintain an open and cooperative relationship with each child's family
- Oversee transportation (driver, vehicle maintenance, gas expenses)
- Fundraising and special events coordination

Qualifications

Work at this level requires a High School diploma or equivalent and successful completion of a college program in Business or equivalent training program and a minimum of five (5) years progressive and/or related experience.

Other

- Demonstrate a sound knowledge of Provincial Acts, Regulations, Standards, Policies and Procedures governing the operation and administration of Early Learning and Child Care Facilities
- Ability to work in a team environment
- Excellent communication, written, problem-solving, decision making and interpersonal skills
- Ability to maintain confidentiality and a high degree of discretion
- Ability to work effectively with others (children, families, employees, government agencies, community partners, and professionals, etc.)
- Ability to remain calm and make timely and effective decisions during emergency situations
- Ability to multitask and prioritize

Working Conditions

A Foreman works in an environment that is demanding, hectic and noisy. They must take precautions to ensure the health and safety of all children, families, staff and themselves. They may be exposed to unpleasant or demanding verbal interactions with children, families and/or staff. They are responsible to ensure that all information gathered within the Early Learning and Child Care Facility is kept confidential.⁶⁹

⁶⁹ *Supra* note 43.