

# *A Legislative Approach to Pay Equity in New Brunswick*

Discussion Paper

A Legislative Approach to Pay Equity in New Brunswick discussion paper prepared by the  
Women's Equality Branch, Executive Council Office, Government of New Brunswick

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## Discussion Paper

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# Introduction

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The purpose of this discussion paper is to provide information to the public on considerations in establishing proactive, comprehensive pay equity legislation in New Brunswick. The Government believes it is important to legislate pay equity to ensure that the human right of equal pay for work for equal value is fully achieved in New Brunswick. Research indicates that without legislation, few employers voluntarily implement pay equity practices. Proactive pay equity legislation puts the responsibility on employers to implement pay equity processes by having a governing body that regulates and enforces compliance with the legislation, as opposed to complaints-based or human rights legislation, which puts the onus on individual employees to submit a formal complaint and demonstrate that gender-based pay discrimination has occurred. The goal of comprehensive legislation is to increase the number of quasi-public and private-sector businesses that have pay equity within their organizations, thereby increasing the number of employees who have access to pay equity in New Brunswick.

Government believes in the importance of fostering fairness in every facet of our society and aims to ensure that we make New Brunswick a fairer place to live for everyone. The principles of fairness, social justice and equal opportunity inform the actions of the government. As such, the system design for broadened application of pay equity within New Brunswick should respect these principles.

This paper identifies the key issues which will need to be addressed in designing pay equity legislation in New Brunswick for a broader group of employers. These issues have been identified by keeping in mind two fundamental objectives:

- To address pay inequities of jobs traditionally or predominantly done by women that are of equal or comparable value to jobs traditionally or predominantly done by men.
- To ensure that pay equity is established and maintained within public, quasi-public and private sectors in New Brunswick.

It is important to point out that this discussion paper is not government policy: it is a document designed to stimulate public discussion and to seek opinions and input from New Brunswickers. In reviewing this paper, stakeholders, employers and New Brunswickers are being asked to consider an approach to proactive, comprehensive pay equity legislation, and how it should be implemented and maintained within the public, quasi-public and private sectors.

This paper is informed by the current pay equity model within New Brunswick and best practices and research from experts and other jurisdictions in Canada.

## Pay Equity

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Pay equity is a fundamental human right and a compensation practice based on equal pay for work of equal or comparable value. Achieving pay equity is central to improving equality between women and men within an organization. Pay equity is achieved when employers neither establish nor maintain a difference between the compensation paid to female and male employees who are performing work of equal or comparable value. This is not to be confused with pay parity, which is equal pay for equal work (i.e. a woman and a man in the exact same job, working for the same employer).

Historically, women and men tend to work in a narrow range of traditional jobs, which are divided according to their respective gender – this is called “job clustering.” Jobs that typically employ skills women have traditionally used in nurturing their families and managing their homes have been clustered as female-dominated jobs or work typically done by women. These skills are often undervalued and underpaid.

Implementing and maintaining pay equity requires the job evaluation and wage comparison of jobs typically done by women to different jobs typically done by men within an organization. If the female-dominated job and the male-dominated job are found to be of equal or comparable value, then they should be paid equally.



***Example of pay inequity: at a grocery store, the employer may not value the effort of female cashiers who, over the course of a shift, may lift the equivalent amount of produce and groceries as male stockroom attendants who lift and organize produce and groceries in addition to the many other duties of a cashier. As a result of this undervaluation of the effort required, the employer is paying female cashiers less than male stockroom attendants for that particular duty.***

Pay equity requires that compensation practices be based on the value of the work and not on the basis of gender, performance or qualifications of the individual doing the job. Once pay equity is achieved, the employer will benefit by:

- gaining knowledge of the work that is required and how it is valued and paid;
- promoting fairness in a company’s compensation system;
- strengthening employee relations and morale;
- increasing recruitment and retention of employees because of a fair compensation package;
- improving productivity; and
- enhancing competitiveness.

In addition, the process will contribute to a better understanding of the jobs within an organization and identify strengths, weaknesses and ways to improve productivity. It will also assist in identifying other forms of discrimination that are barriers in engaging employees and attracting a more diverse staff.

Workplace policies that support equality are an important tool in attracting and retaining talented employees. Any unfairness or perceived unfairness can affect workplace productivity, employee engagement, morale, access to talent and retention. Incentives that drive employee retention are transparent pay practices, flexible work arrangements, return to work programs, and parental and caregiver leave provisions. All employees are more likely to be engaged, be productive and remain with an organization that values diversity, inclusion and fairness.

## Pay Equity & the Gender Wage Gap

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Although the terms “wage gap” and “pay equity” are often used interchangeably, they are not the same. However, both terms relate to the same concern regarding the gap in earnings between women and men.

**Wage gap** is the difference between the average wages earned by men and the average wages earned by women. For example, the New Brunswick average hourly gender wage gap was 7.4% in 2017. This means that, on average, New Brunswick men made 7.4% more than New Brunswick women, or alternatively, women earned 92.6 cents for every dollar a man earned.

The wage gap is caused by outdated societal attitudes and beliefs about the place and value of women in the workplace. There are three main contributors to the wage gap: family responsibilities, job clustering and the undervaluation of traditionally female occupations. A large part of the wage gap exists because female workers more often work in the kinds of jobs that have been historically undervalued, such as clerical work and childcare. Typically, women have been paid less than men for jobs of equal or comparable value as a result of this undervaluation.

**Pay equity** helps reduce the wage gap by addressing the undervaluation of female-dominated occupations. This undervaluation results in paying lower wages to women and men in female-dominated occupations even when those jobs have the same value as male-dominated occupations performed for the same employer.

Pay equity is important because in New Brunswick:

- Women represent 50% of the overall population and 59% of the labour force.
- Women account for 79% of lone-parent families.
- Women are more likely to work part-time than men and are 2.6 times more likely to leave their jobs for personal or family reasons.
- 63% of all multiple job holders are women.
- Women who work in fields dominated by women earn less than men.
- And even though women attain a higher level of education than men on average, they still earn less than men on average.

By eliminating discrimination when it comes to wages, employers create fairer working environments. Fairness, respect and equality are essential components of building harmonious, cooperative and productive workplaces. Implementing pay equity is a step toward achieving increased economic performance and sustainable growth. Although progress towards pay equity has been made, it is still an issue for many workplaces, and the government remains committed to achieving pay equity in New Brunswick.

## Pay Equity in New Brunswick and Canada

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### New Brunswick

The *Pay Equity Act, 2009* (Act) was proclaimed in April 2010 and applies to Parts I, II, III and IV of the Public Service. The purpose of the Act is to rectify systemic gender-based wage discrimination of employees in female-dominated job classes in the public sector.

The Minister responsible for Women’s Equality is responsible for the administration of the Act, while its compliance is monitored by the Pay Equity Bureau. The Pay Equity Bureau is currently established within the Women’s Equality Branch in the Executive Council Office and is continuously working with all public-sector employers to ensure full compliance with the Act.

### *Public Sector in New Brunswick*

Treasury Board is responsible for completing the necessary job evaluations jointly with the bargaining agents and/or employee representatives in support of the implementation of pay equity in Parts I, II and III of the Public Service. Part IV employers, government agencies, boards and commissions, are individually responsible to meet the obligations of the Act.

To date, government employers and bargaining agents worked collaboratively to implement eight pay equity exercises in Parts I, II and III of the public service for female-dominated groups of employees including CUPE 2745 (educational assistants and school administrative assistants), CUPE 1840 (court stenographers), Medical Science Professionals, Specialized Health Care Professionals, and Professional Support in Schools. In addition, Crown Corporations are working to achieve compliance with the Act.

### *Private Sector in New Brunswick*

While pay equity in the private sector is not currently legislated in New Brunswick, efforts have been undertaken to expand the scope to the private sector by offering best practices and promoting useful tools and resources to employers. The Pay Equity Bureau has dedicated efforts to develop a plan for increased promotion and awareness of pay equity within the private sector.

Additionally, government recently launched a pilot program targeted at private sector employers who currently do business with government. The program components include an online learning module and the completion of a pay equity implementation plan. The government is taking into account any feedback received from employers through this pilot program in continuing to work with the private sector to achieve pay equity and advance women's equality.

### **Canada**

Pay equity is a fundamental human right that has been recognized since 1951 when Convention 100, the Equal Remuneration Convention, 1951, was adopted by the international Labour Organization (ILO). Convention 100 was ratified by Canada in 1972. This convention guaranteed the right to equal remuneration for work of equal value. Pay equity for federally regulated employers is currently legislated under the *Canadian Human Rights Act*, which provides a complaints-based mechanism for employees to access, should they have the resources to take on the responsibility of demonstrating, in court, that their employer has violated their right to pay equity. The federal government tabled new, proactive legislation on October 29, 2018.

In Canada, six jurisdictions have specific pay equity legislation, including: New Brunswick, Nova Scotia, Prince Edward Island, Quebec, Ontario and Manitoba. Quebec and Ontario are the only two Canadian jurisdictions that have proactive, comprehensive pay equity legislation, covering both the public and private sectors (*see Appendix B*).

## **A Proactive Approach to Pay Equity in New Brunswick: Comprehensive Pay Equity Legislation**

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For the purposes of this paper, comprehensive pay equity legislation refers to expanding the scope of the current pay equity legislation in New Brunswick from beyond the public sector to include the quasi-public and private sectors so that all New Brunswickers working in female-dominated jobs would benefit from fair compensation practices. In this context, the quasi-public sector refers to municipalities and universities.

Proactive pay equity legislation puts proactive obligations on employers to review their compensation practices, identify gender-based inequities within them and rectify them by taking specific steps within prescribed timelines. It is a systemic approach to addressing what is widely accepted as a systemic issue: the undervaluation of female-dominated work. New Brunswick currently has proactive legislation in place for the public sector, but it could benefit from including more clear provisions and timelines for employers to follow, which would enhance the proactive nature of it and ensure pay equity is maintained on a regular basis.

Key issues are outlined below which, while not necessarily exhaustive, would be fundamental to attaining comprehensive pay equity legislation in New Brunswick. For each key issue, design considerations are presented which would need to be accounted for in the development of legislation. They are provided to stimulate discussion about the most efficient and effective manner in which to proceed to ensure the successful implementation and maintenance of pay equity for all employers.

### ***Scope of Application***

The Province of New Brunswick currently has proactive pay equity legislation for the public sector, under the *Pay Equity Act, 2009*, that covers employees employed in Parts I, II, III, and IV of the Public Sector, excluding Part IV employers with fewer than 10 employees. This means that those employers have a proactive obligation to implement pay equity by comparing female-dominated work with male-dominated work, comparing their value and their compensation, and rectifying any pay inequities that may exist. To ensure more New Brunswickers benefit from pay equity, additional sectors could be added under the scope of any new proposed legislation. Additional sectors could include municipalities, universities and private-sector employers both for profit and not for profit. The broader the scope of application, the greater the potential to ensure that the fundamental human right of all workers in female-dominated jobs to equal pay for work of equal value in New Brunswick is respected.

### **Areas for consideration**

- A. Which employers should be included?** Comprehensive legislation could apply to all provincially regulated employers in New Brunswick, including contractors and small employers. Only self-employed individuals and independent contractors would naturally be excluded because they do not have any employees. As such, the wages paid to self-employed individuals and independent contractors is self-determined.
- B. Which employees would benefit?** Comprehensive legislation could cover all provincially regulated employees, including part-time, non-unionized, casual, temporary and seasonal employees except for those who have decision-making power over employee salaries, for example, which would be in line with Quebec's legislation. In Quebec and Ontario, some other categories can also be excluded under some circumstances (e.g. some students and temporary agency workers).
- C. Which size of employer should be included?** Recognizing that conducting pay equity within organizations with fewer than 10 employees is complicated, those employers could evaluate their job classes and make wage comparisons in a non-discriminatory manner without having to follow administratively onerous steps and reporting in-depth information to the governing body. Alternatively, a complaints-based mechanism could be built into the legislation for these small employers, similar to other jurisdictions. For example, Quebec and Ontario have pay equity legislation for employers with more than 10 employees, but for those with fewer than 10, employees are still covered under their respective human rights legislation.



## ***Employee Participation & Communications***

Proactive legislation must enable employee participation in pay equity implementation and maintenance. Employers must engage bargaining agents and/or employee representatives in the pay equity processes to reflect the goals of proactive legislation, which include transparent pay practices and respecting all employees' rights to fair compensation practices. In addition, employees are a primary source of information in evaluating their jobs.

It is important that employees are adequately and regularly engaged in all aspects of the implementation and maintenance of pay equity within their organizations through effective communication practices. As a best practice, employers would have the responsibility to ensure all aspects of the implementation and maintenance of pay equity are communicated with all employees affected by the pay equity exercise in an accessible manner. Communications should be regular and focused on the steps taken as well as the outcome (i.e. whether any pay inequities were identified, and if so, how they plan to compensate those job classes).

### **Areas for consideration**

- A. When should formal communications with employees occur?** Legislation could include formal posting requirements, in terms of posting the information about the pay equity processes for a certain period of time, and allowing for employee feedback during that time. This is similar to other jurisdictions, such as Quebec and Ontario. This may be an important area to consider when deciding how to inform employees, and it could also reduce the number of complaints received about pay equity processes undertaken.

## ***Pay Equity Plan: Implementing Pay Equity***

Under a proactive pay equity system, employers are required to implement and maintain pay equity within their organizations following a set of prescribed steps which are typically included in legislation. Currently in New Brunswick, public-sector employers are required to undertake steps outlined in the Act.

When contemplating the expanded scope and application of legislation, the appropriate parameters around the implementation and maintenance of pay equity for a new set of employers would need to be developed.

### **Areas for consideration**

- A. What key steps should be prescribed for a valid pay equity plan?** Employers could establish a pay equity plan in order to implement and maintain pay equity. A pay equity plan could include steps such as:
1. the identification of the predominantly female job classes and of the predominantly male job classes in the enterprise;
  2. the description of the non-discriminatory job evaluation methodology to determine the value of job classes and the development of a value determination procedure;
  3. the determination of the value of the job classes, a comparison between them, the valuation of differences in compensation, and the determination of the required adjustments; and
  4. the terms and conditions of payment of the adjustments in compensation.
- B. What segmentation of employees should be applied for pay equity plans?** Employers could be required to complete one pay equity plan for all their employees. Another option would be one pay equity plan per bargaining unit (where there is more than one), and a separate one for any non-unionized employees. Consideration should be given to such factors as: whether having the same requirements

of all employers, regardless of size, would have any unintended negative impacts; the level of detail required in a pay equity plan; and whether every employer should submit their pay equity plan(s) to the governing body for monitoring purposes. Inclusion of an approach for similar sectors and employers to jointly conduct pay equity could be a viable option for ensuring pay equity. For example, a joint sector-based association; one or more employers' associations and one or more employees' associations; or any other group recognized by the governing body, including a regional group may, with approval, form a sector-based pay equity committee.

- C. What timelines for completion of a pay equity plan are appropriate?** Consideration should also be given to how much time should be allowed for an employer to complete a pay equity plan and to make any pay adjustments required.
- D. When should legislative requirements be applied to various employer groups?** A phased-in, multi-year approach could be considered for employers of different sizes. For example, in year one, municipalities and universities in the quasi-public sector could be obligated to meet the requirements for pay equity; followed by large employers (e.g. employers with more than 300 employees) in the private sector; followed by medium-sized employers (e.g. 50-299 employees); and then smaller employers (e.g. those with fewer than 50 employees), who would benefit from more time to learn and put into practice the methodologies involved in conducting pay equity.

### ***Methodology for Assessing the Value of Jobs***

One key element of determining whether gender-based pay inequities exist is by applying a non-discriminatory tool, or methodology, to assess the value of each job class that is predominantly female or predominantly male. This methodology, commonly referred to as a job evaluation methodology, would have the employer highlight the specific characteristics of predominantly female and male job classes, and then assign values to various aspects of each job class. To be effective in assessing any potential inequities, the job evaluation methodology must take the following factors into account in respect of each job class: the required qualifications, responsibilities, required effort, and the working conditions under which the work is performed. The values of the predominantly female job classes are then compared with the values of the predominantly male job classes based on a point factor system.

### **Areas for consideration**

- A. How to assess the value of a job?** Job evaluation methodologies are varied, but all employ the same objectives of evaluating jobs to determine a point value based on various factors. Under current legislation in New Brunswick, for those subject to the Act, employers and bargaining agents must agree on the methodology being used. Although a standard methodology is not prescribed in the current legislation, principles to which employers must adhere are reflected in the Act. Considering the expanded scope and application of new pay equity legislation, options could be pursued for prescribing a standardized approach to job evaluation where the methodology and tools will be consistent for all employers.

Allowing for some flexibility could also be considered. Legislation could provide the option of a prescribed, standardized methodology, or the employer and bargaining agent and/or employee representative(s) could select their own methodology. If the latter option is chosen, a requirement could be included to obtain approval from the governing body and demonstrate that the methodology chosen does not discriminate on the basis of gender and that all elements are applied in a non-discriminatory manner, along the lines of the current legislation.

**B. What is the benchmark against which a job is measured?** Expanding pay equity into the private sector may involve employers where there are no predominantly male job classes within the same organization to use for comparison purposes. Consideration needs to be given to the process and options for implementing pay equity within these organizations. Both Ontario and Quebec have legislated requirements for organizations with no male comparators, and similar provisions could be introduced in New Brunswick.

### ***Estimating and Correcting Inequities in Pay***

Once the relative value of jobs is established, calculations are undertaken to estimate and redress any inequities in pay if they exist. In conducting a pay equity exercise or analysis, differences in pay between a predominantly female job class and a predominantly male job class under the same employer are calculated using another type of methodology called a wage comparison methodology. Employers use a variety of methodologies to calculate the differences in pay in work of equal or comparable value. The federal Pay Equity Task Force Report of 2004, commonly referred to as the Bilson Report, details many of these wage comparison methodologies, as well as the pros and cons to each of them. The methodologies most commonly referred to are:

- the Job-to-Job methodology, which compares the wages of individual female job classes with the wages of individual male job classes;
- the Job-to-Segment methodology, which compares the wages of an individual female job class with a group of male job classes of equal or similar value;
- the Job-to-Line methodology, which compares an individual female job class with all male job classes in the same organization; and
- the Line-to-Line methodology, which compares the wage line of all female job classes with the wage line of all male job classes within an organization.

There are other variations of these as well, which are further detailed in the Bilson Report and in regression analysis research.

### **Areas for consideration**

**A. How should inequities be calculated?** Careful consultation and research is required to ensure that the methodology used is the most beneficial in terms of achieving the goals of pay equity: rectifying gender-based pay discrimination. Similar to the selection of job evaluation methodology, the manner in which employers identify differences in pay could be standardized for all employers. As with choosing a job evaluation methodology, some flexibility could be considered when choosing a wage comparison methodology.

Legislation could provide the option of the standardized methodology or the employer, and bargaining agents and/or employee representatives could select their own wage comparison methodology from a list of approved, standardized wage comparison methodologies with a requirement to obtain approval from the governing body and demonstrate that the methodology chosen does not discriminate on the basis of gender.

## ***Maintenance of Pay Equity***

Maintaining pay equity is an ongoing process whereby employers must continuously review their pay equity plans. After pay equity is achieved with respect to any job classification, an employer would conduct a non-discriminatory review of its pay equity compensation practices and make any pay adjustments that are required to ensure pay equity is maintained.

A pay equity review exercise would entail:

1. reviewing the female-dominated classifications and the male-dominated classifications;
2. evaluating job classes using the same methodology used during the implementation of pay equity;
3. comparing the value of the work performed by female-dominated classifications to the value of the work performed by the male-dominated classifications;
4. calculating the estimation of the differences in compensation and determine if inequities are present; and
5. making any adjustments required to ensure that female-dominated classifications are assigned a rate of pay equal to the rate of pay of male-dominated classifications performing work of equal or comparable value.

Maintaining pay equity is a similar process to the initial implementation of pay equity. However, if regular reviews are conducted, the process can be simplified and be beneficial to both employers and employees. Maintaining pay equity generally means that wage gaps identified and eliminated under the pay equity plan must not reappear and that any new gaps that do occur be rectified through a pay equity review exercise.

### **Areas for consideration**

- A. When should regular maintenance reviews occur?** The timing for conducting a pay equity review must also be taken into account. As a best practice, the first review of an employer's pay equity compensation practices is conducted immediately after the last pay equity adjustment has been made, if applicable, or no later than 3 to 5 years after the initial pay equity plan implementation has been completed and every 3 to 5 years after that.
- B. What factors, other than regularly scheduled reviews, should trigger a review process?** Once pay equity has been implemented, changes to a job description, a job class or the structure of an organization, for example, may affect the outcomes of the initial pay equity exercise and result in new discriminatory wage gaps between jobs which were determined to be of equal or comparable value during the pay equity implementation process. Consideration needs to be given to what circumstances should warrant a pay equity review in addition to the regular review periods referred to above. In New Brunswick and other Canadian jurisdictions, the following are triggers for a maintenance or review exercise and require that process to be undertaken every time:
- a job class is eliminated;
  - a new job class is created;
  - an existing job class is modified (including any of the four factors used to evaluate a job class such as working conditions);
  - salary or pay scales are impacted by organizational restructuring; or
  - significant organizational change occurs (e.g. merger, takeover, modification of its legal structure, etc.).

- C. Who needs to be involved in maintenance reviews?** Maintenance of pay equity is a direct extension of the pay equity implementation process. Given the continuity that must exist between implementing, achieving and maintaining pay equity, ideally the same people involved in the implementation of the initial pay equity exercise (i.e. the involvement of the same employer, bargaining agent(s) or employee representative(s) representing the job classes in question) would also ensure its maintenance. The results of each maintenance exercise must also be communicated with all affected employees.
- D. What tools should be used for maintenance reviews?** To ensure the principle of continuity inherent to pay equity maintenance, employers should take such action as may be necessary to maintain pay equity within each of its entities for which a pay equity exercise has been conducted. The same methods, tools and processes that were used to develop the plan (i.e. job evaluation methodology and wage comparison methodology) could be used to maintain pay equity during review exercises.

### ***Governance of Pay Equity: Enforcement and Oversight***

As with any legislation, oversight is required to foster understanding of it and to ensure compliance with it. The current *Pay Equity Act*, 2009 is overseen by the Pay Equity Bureau, established in section 29 of the Act. With new legislation introduced that is intended to be more proactive and comprehensive and covering a much larger scope of employers and employees, more oversight, training, enforcement and enhanced dispute resolution mechanisms may be required.

In other jurisdictions that have proactive pay equity requirements, there are different governing bodies: some have had a stand-alone pay equity commission (responsible for oversight, support, enforcement and dispute resolution) and a stand-alone pay equity hearings tribunal (responsible for the handling of appeals and hearings where no dispute resolution is possible). Others have merged the functions of a pay equity commission with other commissions dealing with labour rights and have had court cases sent to labour tribunals.

#### **Areas for consideration**

- A. What is the appropriate structure for an administrative body?** An extension of the scope of pay equity legislation will also increase the responsibilities of the oversight body responsible for the legislation. New roles could include reviewing complaints and disputes, managing case files, offering mediation services, and conducting proactive audits. Other roles would likely include providing research, education/training, and administrative services such as following up with employers on reporting requirements. Whether oversight and enforcement remain with the Pay Equity Bureau or another governance model is chosen, the financial, space and human resource requirements of an expanded scope must be assessed and taken into consideration when developing the oversight model.
- B. What are the roles and responsibilities for an administrative body or bodies?** Whichever format for a governing body is decided, part of any oversight agency's or agencies' role should include enforcement of the new legislation. In prescribing this role, the following potential responsibilities could be taken into consideration:
- investigating complaints alleging contraventions of the legislation;
  - assisting workplace parties in attempting to settle disputes that can arise during the implementation, achievement and maintenance of pay equity;
  - monitoring employers (e.g. conducting audits) to ensure compliance with the legislation, as is done in other jurisdictions;

- processing reports from employers on their pay equity progress; and
- measures for the oversight agency to follow in cases of non-compliance, such as giving the governing body the power to issue orders to an employer or a bargaining agent; offering mediation services to parties involved in a dispute or complaint where at all possible, or assigning them to an arbitrator, etc.

**C. What dispute resolution mechanisms may be required?** For cases that result in disputes, options could include 1) ensuring the oversight agency has dispute resolution powers, 2) establishing a separate pay equity tribunal, in line with other jurisdictions, or 3) sending them to an existing tribunal, such as the Labour and Employment Board. Grounds for complaints and dispute resolution should also be considered for the development of new legislation.

## Conclusion

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Most of the work undertaken on pay equity in New Brunswick has been innovated and designed with the needs of New Brunswickers in mind. As such, various tools and resources have been developed which are unique to New Brunswick. An important task in moving forward with pay equity is to continue with this philosophy of producing policies and programs that serve New Brunswickers. This discussion paper provides a context for expanding the legislated scope of pay equity within New Brunswick.

This discussion paper provides a basis to collaborate with employers and stakeholders to find ways in which to enhance and expand existing pay equity legislation in New Brunswick.

The approach outlined in this paper and the areas for consideration contained in the preceding sections are intended to further stimulate ideas and discussion about how to expand pay equity in New Brunswick.

In the coming weeks, consultations on the issues and areas of consideration outlined in this discussion paper will be held. These consultations will provide all New Brunswickers with an opportunity to present their views and put forth other suggestions. This will be an important step towards ensuring women's equality in New Brunswick

## Appendix A: Pay Equity Glossary of Terms

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The terms below are frequently used interchangeably; however, they all have different meanings.

**Employment equity:** The elimination of barriers to employment for designated groups such as women, people with disabilities, Aboriginal peoples, and visible minorities.

**Pay equality/Pay parity:** Equal pay for identical work regardless of gender (i.e. a man and a woman in the exact same job, working for the same employer).

**Pay equity:** Equal pay for work of equal or comparable value between a female-dominated job and a male-dominated job under the same employer (e.g. cashier compared to stock person, nurse to electrician, etc.). In other words, the jobs are different but the required qualifications, responsibilities, effort required and working conditions are of same or similar value to the employer.

**Market value:** Wages paid according to a market based on the value of skills.

**Wage gap/Pay gap (hourly):** The difference between the average hourly wages earned by men and the average hourly wages earned by women.

**Wage gap/Pay gap (annual):** The difference between men's and women's average annual remuneration.

## Appendix B: Jurisdictional Review – Pay Equity Legislation in Canada

Prepared by the Women’s Equality Branch, Government of New Brunswick

Jurisdiction	Pay Equity Legislation/ Initiatives/ Programs	Application: Public Sector Private Sector	Additional Information
Alberta	No specific pay equity legislation  <i>Alberta Human Rights Act</i>	-Private & public sector	Equal pay for equal work provision
Ontario	<i>Pay Equity Act</i>	-Proactive legislation -Applies to private-sector employers (with 10 or more employees) and public sectors employers. Establishes 3 job evaluation methodologies – 1) The job-to-job comparison method directly compares female job classes with male job classes in the same organization 2) The proportional value comparison method indirectly compares female job classes with a group of representative male job classes in the same organization. 3) Proxy method – used as a last resort and only available to broader public sector. Comparison is done by using a proportional value method.	There has been no change in legislation or any new policy or initiatives to focus policy makers on including a “closing the gender gap impact” analysis in their decision-making.
	<i>Employment Standards Act</i>	-Private & public sectors	Equal pay for equal work provision
	Wage Gap Pilot Program	-n/a	Pay Equity Office launched the Wage Gap Pilot Program, designed to examine current compensation data and assess the likelihood of gender wage gaps for non-unionized employees in private sector workplaces of Ontario. Development of a Gender Wage Gap Strategy to build on the progress made so far.
	Gender Wage Gap Strategy Steering Committee	-n/a	Launched in 2015 with the intent to advance actions to promote equality between women and men that support efforts to close Ontario’s gender wage gap. The Steering Committee produced the following report: <a href="https://www.ontario.ca/page/final-report-and-recommendations">https://www.ontario.ca/page/final-report-and-recommendations</a>
	Gender Wage Gap Grant Program	-n/a	See web page at: <a href="#">Gender Wage Gap Program</a>



Quebec	<p><i>Pay Equity Act</i></p> <p>Charter of Human Rights and Freedoms</p> <p>Contract Compliance Program (1989)</p>	<p>-Proactive legislation</p> <p>-Applies to private and public-sector employers (who employ 10 or more employees – have established methodology and regulation respecting enterprises that do not have male comparators).</p> <p>-Private-sector employers with more than 100 employees; and employers that obtain a contract or grant of \$100,000 or more.</p>	<p>Quebec’s CNESST (Commission des normes, de l’équité, de la santé et de la sécurité du travail) announced that it will be investigating employers who had to perform a pay equity initiative by December 31, 2010 but have yet to comply. Employers failing to comply with the Act’s obligation can be liable to a fine ranging from \$1000 to \$45,000.</p> <p>Must implement an affirmative action program for women, aboriginal peoples, visible minorities and persons with a disability. Employers must report on their report or progress. There is also an employment equity legislation for public bodies “An Act Respecting Equal Access to Employment in Public Bodies”.</p>
Federal	<p><i>Canadian Human Rights Act (CHRA)</i></p> <p><i>Act to Establish a Proactive Pay Equity Regime within the Federal Public and Private Sectors (Pay Equity Act) introduced on October 29, 2018</i></p>	<p>Federally regulated private and public sectors</p>	<p>As the complaints-based provision for pay equity in the federal jurisdiction has fallen under s.11 of the Canadian Human Rights Act since 1977, the federal government committed to tabling new, proactive pay equity legislation, which was introduced on October 29, 2018.</p> <p>For a background on the Act, go to: <a href="#">Backgrounder: An Act to Establish a Proactive Pay Equity Regime within the Federal Public and Private Sectors (Pay Equity Act)</a></p>
New Brunswick	<p><i>Pay Equity Act</i></p> <p>NB Family Plan – Advancing women’s equality</p> <p><i>Human Rights Act</i></p> <p><i>Employment Standards Act</i></p>	<p>-Public sector</p> <p>-Public and private sectors</p> <p>-Private &amp; public sectors</p>	<p>To see plan go to: <a href="#">NB Family Plan - advancing women’s equality</a>. For news release go to: <a href="#">Advancing women’s equality</a></p> <p>Prohibits discrimination</p> <p>Equal pay for equal work provision</p>

Newfoundland and Labrador	No specific pay equity legislation	-n/a	
	Agreement between government and 5 unions to conduct a review of the classification system	-Public sector	
	<i>Human Rights Code</i>	-Public & private sectors	Equal pay for equal or similar work provision
Prince Edward Island	<i>Pay Equity Act</i>	-Public sector	Equal pay for work of equal value provision. The province continues to monitor the wage gap. In 2017, it is the narrowest in Canada @ -1.9%.
	<i>Human Rights Act</i>	-Private & public sectors	Prohibits paying different rates of pay based on any of the grounds of discrimination.
	Human Resource Policy and Procedures Manual	-Public sector	Diversity and Equity Policy - to create a workplace that represents the diversity of the population it serves, and to foster a work environment that recognizes, respects and accommodates the “diversity of individuals”.
Nova Scotia	<i>Pay Equity Act</i>	-Public sector including universities and municipalities	Increase the pay of employees in classes which are predominantly female where it is determined, by the process set out in this Act, that, by reason of sex discrimination, those employees are paid less than they should be based on the principle of equal pay for work of equal value. The process outlined is similar to the one prescribed by NB’s legislation.
	<i>Labour Standards Code</i>	-Private & public (except schools) sectors	-Equal pay for equal work provision
Manitoba	<i>Pay Equity Act</i> (1985);	-Civil service, universities, Crown Corporation and health care facilities.	No complaint provision under the Act.
	<i>Human Rights Code</i>	-Private & public sectors	Equal pay for equal work
	<i>Employment Standards Code</i>	-Private & public sectors	Equal pay for equal work for women and men doing the same or substantially the same work in the same establishment

Saskatchewan	No specific pay equity legislation		
	Government adopted pay equity and internal equity in the public sector through the Equal pay for work of equal value and pay equity policy framework (1997)	-Public Sector	Now governs the introduction of job evaluation plans in the broader public sector and is the basis of all classification and compensation plans.
	<i>Labour Standards Act</i>	-Private & public sectors	Law is used to promote and protect rights and equality in Saskatchewan. Employers shall not discriminate between male & female employees doing similar work
British Columbia	No specific legislation		
	<i>Human Rights Code</i>	-Private & public sectors	Prohibits discrimination based on gender for similar or substantially similar work.
Nunavut	No specific legislation		
	Nunavut Land Claims Agreement	-Public sector	Increase Inuit representation in government employment and develop employment and training programs for Inuit workers.
NWT	No specific legislation		
	<i>Human Rights Act</i>	-Private & public sectors	Prohibited to pay an individual less for work that is the same or substantially similar.
	<i>Public Service Act</i>	-Public sector	There is to be no difference in the rate of pay between male and female employees of the same establishment who perform work of equal value.
Yukon	No specific legislation		
	<i>Yukon Human Rights Act</i>	-Private & public sectors	Equal pay for work of equal value provision

## Appendix C: Pay Equity Act, 2009

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### CHAPTER P-5.05 Pay Equity Act, 2009

Assented to June 19, 2009

Her Majesty, by and with the advice and consent of the Legislative Assembly of New Brunswick, enacts as follows:

#### INTERPRETATION

##### Definitions

1 The following definitions apply in this Act.

“bargaining agent” means a bargaining agent as defined in the *Public Service Labour Relations Act* that represents employees to whom this Act applies and, if no bargaining agent exists, means an employee representative. (*agent négociateur*)

“Bureau” means the Pay Equity Bureau established under subsection 29(1). (*Bureau*)

“Chairperson” means the Chairperson of the Labour and Employment Board appointed under the *Labour and Employment Board Act*. (*président*)

“chief executive” means the deputy head or chief executive officer of any portion of the Public Service, or the person who occupies any other similar position, however called, in any portion of the Public Service. (*premier dirigeant*)

“Director” means the Director of the Bureau appointed under subsection 29(1). (*directrice*)

“employee” means a person who is employed in the Public Service but does not include a chief executive. (*employé*)

“employee representative” means a person appointed under section 11 to represent employees to whom this Act applies who have no bargaining agent to represent them. (*représentant des employés*)

“employer” means, with respect to Parts I, II and III of the Public Service, Her Majesty in the right of the Province as represented by the Treasury Board, and with respect to Part IV of the Public Service, the various bodies corporate listed in that Part. (*employeur*)

“female-dominated classification” means (*classification à prédominance féminine*)

- (a) a job classification in which there are 10 or more incumbents of whom 60% or more are women, or
- (b) a job classification in which there are 10 or more incumbents that the employer and the bargaining agent or bargaining agents affected agree, based on the historical incumbency of the job classification or other similar criteria, to treat as a female-dominated classification.

“job classification” means those positions within each of Parts I, II or III of the Public Service or in the case of a body corporate listed in Part IV of the Public Service, within that organization, that have similar duties and responsibilities, require similar skills and qualifications and have the same compensation schedule and pay rate or range of pay rates. (*classification d’emplois*)

“male-dominated classification” means (*classification à prédominance masculine*)

- (a) a job classification in which there are 10 or more incumbents of whom 60% or more are men, or
- (b) a job classification in which there are 10 or more incumbents that the employer and the bargaining agent or bargaining agents affected agree, based on the historical incumbency of the job classification or other similar criteria, to treat as a male-dominated classification.

“Minister” means the member of the Executive Council assigned responsibility for the administration of this Act. (*ministre*)

“nondiscriminatory job evaluation system” means a system for determining the relative worth or value of jobs within an organization, taking into account both the similarities and differences between the sexes. (*système non discriminatoire d’évaluation des postes*)

“Part I of the Public Service” means those portions of the public service of the Province specified in Part I of the First Schedule of the *Public Service Labour Relations Act*. (*Partie I des services publics*)

“Part II of the Public Service” means those portions of the public service of the Province specified in Part II of the First Schedule of the *Public Service Labour Relations Act*. (*Partie II des services publics*)

“Part III of the Public Service” means those portions of the public service of the Province specified in Part III of the First Schedule of the *Public Service Labour Relations Act*. (*Partie III des services publics*)

“Part IV of the Public Service” means those portions of the public service of the Province specified in Part IV of the First Schedule of the *Public Service Labour Relations Act*. (*Partie IV des services publics*)

“pay” means straight-time wages and salary. (*rémunération*)

“pay equity” means a compensation practice that is based primarily on the relative value of the work performed, irrespective of the gender of employees, and includes the requirement that the employer not establish or maintain a difference between the pay paid to female and male employees who are performing work of equal or comparable value. (*équité salariale*)

“Public Service” means the several portions of the public service of the Province specified from time to time in Part I, Part II, Part III or Part IV of the First Schedule of the *Public Service Labour Relations Act*. (*services publics*)

2016, c.37, s.135

### **Determination of value of work**

In determining the value of work performed for the purposes of this Act, the criterion to be applied is the composite of the skill, effort and responsibility normally required in the performance of the work and the conditions under which the work is performed.

## **PURPOSE AND APPLICATION OF ACT**

### **Purpose of Act**

3The purpose of this Act is to implement pay equity within each of Parts I, II and III of the Public Service and in the case of a body corporate listed in Part IV of the Public Service, within that organization.

### **Application of Act**

4(1)This Act applies to employees employed in the Public Service.

4(2)This Act does not apply to an employer listed in Part IV of the Public Service if the employer has less than 10 employees.

### **Differences in pay**

5This Act does not apply so as to prevent differences in pay between a female-dominated classification and a male-dominated classification if the employer is able to show that the difference is the result of

- (a) a formal seniority system that does not discriminate on the basis of gender,
- (b) a temporary employee training or development assignment that is equally available to female and male employees and that leads to career advancement for those involved in the program,
- (c) a merit pay plan that is based on formal performance ratings and that has been brought to the attention of the employees and that does not discriminate on the basis of gender,
- (d) the personnel practice known as red-circling, where the value of a position has been downgraded and the pay of the incumbent employee has been frozen or the employee’s increases in pay have been curtailed until the pay for the downgraded position is equivalent to or greater than the pay payable to the incumbent, or
- (e) a skills shortage that is causing a temporary inflation in pay because the employer is encountering difficulties in recruiting or retaining employees with the requisite skills for positions in the job classification.

## **Conflict**

6(1) Subject to subsection (2), in the event of a conflict between a provision of this Act or of the regulations made under it and a provision of any other Act or regulation, this Act and the regulations made under it prevail.

6(2) Nothing in this Act limits or abrogates any obligation of the employer or any right to which employees are entitled under section 37.1 of the Employment Standards Act.

## **IMPLEMENTATION OF PAY EQUITY**

### **Duty of employer to implement pay equity**

7 An employer shall take such action as may be necessary to implement pay equity within each of Parts I, II and III of the Public Service or if the employer is a body corporate listed in Part IV of the Public Service, within its organization.

### **Comparisons between female and male dominated classifications**

8(1) To implement pay equity, comparisons between female-dominated classifications and male-dominated classifications within each of Parts I, II or III of the Public Service or within an organization that is a body corporate listed in Part IV of the Public Service in terms of pay and in terms of the value of the work performed shall be undertaken.

8(2) For the purpose of making comparisons between female-dominated classifications and male-dominated classifications in accordance with subsection (1), pay calculated on an hourly basis shall be used.

### **Deemed compliance with obligation to implement pay equity**

9 An employer shall be deemed to have complied with this Act when the employer adjusts its compensation practices so that female-dominated classifications are assigned a rate of pay equal to the average or projected average rate of pay of male-dominated classifications performing work of equal or comparable value.

### **Restrictions on implementation of pay equity**

10(1) Notwithstanding any other provision of this Act, an employer shall not, in order to implement pay equity, (a) reduce, freeze or red-circle the pay of any employee, or (b) place any employee in a lower step of a pay range that has been adjusted upward.

10(2) Notwithstanding any other provision of this Act, pay adjustments under this Act shall not be implemented by an employer except in accordance with the regulations.

## **PROCESS OF IMPLEMENTATION**

### **Appointment of employee representative**

11(1) An employer shall ensure that, with respect to female-dominated classifications that do not belong to a bargaining unit, an employee representative is appointed to represent the interests of one or more such classifications with respect to the implementation of pay equity.

11(2) If the employer does not appoint an employee representative within 30 days after being requested to do so by an employee who is a member of a female-dominated classification referred to in subsection (1), the Director may appoint the employee representative upon request and shall notify the employer of the appointment.

### **Conduct of parties during implementation process**

12(1) Throughout the process of the implementation of pay equity, an employer and bargaining agents who represent affected employees in the Public Service shall

- (a) meet and determine the process to be followed by the parties with respect to the implementation of the pay equity process,
  - (b) disclose to each other information in their possession or control relevant to the implementation of the pay equity process, and
  - (c) bargain in good faith with each other, making every reasonable effort to reach agreement respecting the implementation of the pay equity process.
- 12(2)The process referred to in subsection (1) shall commence within 60 days after the commencement of this Act, or within such longer time as may be allowed by the Director, and shall be conducted in negotiations separate and apart from the negotiations conducted for the purpose of concluding a collective agreement.

### **Agreements on pay equity**

- 13(1)An employer and the bargaining agents affected shall jointly endeavour to reach an agreement, within the period of 12 months after the commencement of this Act, or within such longer time as may be allowed by the Director, respecting
- (a) the selection of a nondiscriminatory job evaluation system,
  - (b) the identification of all female-dominated classifications and male-dominated classifications, and
  - (c) the manner in which the job evaluation system is to be applied to the female-dominated classifications and the male-dominated classifications.
- 13(2)The employer and the bargaining agents shall, in accordance with the agreement and within the period of 24 months after the commencement of this Act, or within such longer time as may be allowed by the Director,
- (a) apply the nondiscriminatory job evaluation system in order to determine and compare the value of the work performed by female-dominated classifications and male-dominated classifications, and
  - (b) endeavour to reach an agreement identifying the inequities between female-dominated classifications and male-dominated classifications performing work of equal or comparable value.
- 13(3)The employer shall then determine the proportionate share of the amount of the pay adjustments to be allocated to the female-dominated classifications and how it is to be allocated among the female-dominated classifications and shall provide the bargaining agent affected with a written notice of its decision.
- 13(4)The pay adjustments implemented by the employer and as reflected in the written notice prevails over the provisions of all relevant collective agreements and shall be deemed part of and be incorporated into and form part of the relevant collective agreements and of all collective agreements entered into during any stage of the implementation of pay equity.

### **Extension of time**

14If either an employer or a bargaining agent has reason to believe that it will not be able to meet a limitation period set out in section 13, the employer or the bargaining agent may apply to the Director to allow an extended period of time within which to comply with the requirement, and the Director may grant an extension, one or more times, but no extension is to exceed 3 months.

### **Report to Bureau**

15An employer shall report to the Bureau as to its progress in implementation of pay equity within 25 months after the commencement of this Act.

### **Communication with affected employees**

16An employer shall ensure that employees affected by pay equity are informed about the implementation of the pay equity process from time to time and of the outcome of the process.

### **Appointment of arbitrator**

17(1)If it is apparent that the employer and the bargaining agents affected will fail to reach the agreement referred to in subsection 13(1) or paragraph 13(2)(b) within the applicable period of time, the employer and the bargaining agents affected may jointly apply, in writing, to the Chairperson for the appointment of an arbitrator to deal with the matter or matters in dispute.

17(2)If the employer and the bargaining agents affected fail to reach the agreement referred to in subsection 13(1) or paragraph 13(2)(b) by the date that is 2 months before the expiry of the applicable period of time, the employer and the bargaining agents affected shall jointly apply, in writing, to the Chairperson for the appointment of an arbitrator to deal with the matter or matters in dispute.

17(3)An application shall be accompanied by a statement of the matter or matters in dispute prepared jointly by the employer and the bargaining agent or bargaining agents affected.

17(4)The Chairperson shall, within 5 days after receipt of an application, appoint an arbitrator to deal with the matter or matters in dispute and shall at the same time send to the arbitrator a copy of the statement referred to in subsection (3).

#### **Duties and powers of arbitrator**

18(1)Subject to this Act and the regulations, an arbitrator appointed under this Act shall determine the procedure for the conduct of proceedings before the arbitrator but shall give full opportunity to the employer and the bargaining agent or bargaining agents affected to present evidence and make representations.

18(2)An arbitrator appointed under this Act, in relation to any hearing under this Act, is vested with all the powers and privileges of commissioners under the Inquiries Act and the regulations under that Act.

#### **Arbitration Act does not apply**

19The Arbitration Act does not apply to arbitrations under this Act.

#### **Award of arbitrator**

20(1)An arbitrator appointed under this Act shall, after affording the employer and the bargaining agent or bargaining agents affected full opportunity to present evidence and make representations, render an award.

20(2)An award referred to in subsection (1) shall

(a) be consistent with the provisions of this Act and the regulations,

(b) deal only with the matter or matters referred to the arbitrator by the Chairperson,

(c) be rendered in writing, signed by the arbitrator, no later than 60 days after the date on which the arbitrator was appointed, and

(d) be binding on the employer, the bargaining agent or bargaining agents affected and the employees to whom this Act applies represented by the bargaining agent or bargaining agents affected and shall not be questioned or reviewed in any court.

20(3)Notwithstanding subsection (2), the employer and the bargaining agent or bargaining agents affected may, within 14 days after the day on which the award is rendered, jointly agree, in writing, to amend, alter or vary any provision of an award referred to in subsection (1) and any such amendment, alteration or variation shall be deemed to be a part of the award effective on and after the day on which the agreement to amend, alter or vary the award is signed.

#### **Reference back to arbitrator**

21If in respect of an award rendered under this Act it appears to the employer or any bargaining agent affected that the arbitrator has failed to deal with any matter in dispute referred to the arbitrator, the employer or the bargaining agent affected may, within 7 days after the day on which the award is rendered, refer the matter back to the arbitrator who shall deal with the matter in the same manner as if the matter had been referred to the arbitrator under section 17.

#### **Replacement of arbitrator**

22An arbitrator appointed under this Act may be replaced by the Chairperson on the application of the employer or any bargaining agent affected at any time before the arbitrator renders an award.

#### **Remuneration of arbitrator**

23(1)Subject to subsections (2) and (3), an employer and a bargaining agent shall pay one-half the remuneration and expenses of an arbitrator appointed under this Act.

23(2)If an employee representative and an employer apply for the appointment of an arbitrator under this Act, the employer shall pay the remuneration and expenses of the arbitrator.

23(3)An arbitrator appointed under this Act shall be paid such remuneration and expenses as may be fixed by the Lieutenant-Governor in Council.



## MAINTENANCE OF PAY EQUITY

### **Duty of employer to maintain pay equity**

24 An employer shall take such action as may be necessary to maintain pay equity within each of Parts I, II and III of the Public Service or if the employer is a body corporate listed in Part IV of the Public Service, within its organization.

### **Maintenance of pay equity**

25(1) After pay equity is achieved with respect to any job classification, whether before or after the commencement of this Act, an employer shall

(a) conduct a nondiscriminatory review of its pay equity compensation practices in accordance with the regulations, and

(b) make any pay adjustments that are required to ensure pay equity is maintained.

25(2) An employer shall provide the results of the review to the Bureau within 30 days after the review is completed.

### **Restrictions on maintenance of pay equity**

26(1) Notwithstanding any other provision of this Act, an employer shall not, in order to maintain pay equity,

(a) reduce, freeze or red-circle the pay of any employee, or

(b) place any employee in a lower step of a pay range that has been adjusted upward.

26(2) Notwithstanding any other provision of this Act, pay adjustments to maintain pay equity shall not be implemented by an employer except in accordance with the regulations.

### **Communication with affected employees**

27 An employer shall ensure that employees affected by the maintenance of pay equity are informed about the maintenance of pay equity from time to time.

## PAY EQUITY PROCESS COMMENCED BEFORE APRIL 1, 2010

### **Determination of compliance**

28(1) An employer who has commenced or completed the pay equity process with an affected bargaining agent before April 1, 2010, shall, at the request of the Director, deliver a report to the Director by the date specified by the Director, describing the process followed by the employer, comparing it to the requirements of this Act that are imposed on the employer with respect to the implementation of pay equity.

28(2) If the Director is satisfied that the employer has complied with the provisions of this Act insofar as they would have applied to the process followed by the employer, had the Act then been in force, the Director shall so advise the employer and the bargaining agent.

28(3) In determining whether there has been compliance, the Director shall consider whether the process followed by the employer included

(a) the selection of a nondiscriminatory job evaluation system,

(b) the identification of all female-dominated and male-dominated classifications,

(c) the determination of the value of the job classifications, a comparison between them, the identification of inequities and the determination of required pay adjustments, if any, and

(d) the terms and conditions of payment of the adjustments in compensation.

28(4) If the Director determines that there has been compliance up to the point in the process reached by the employer by April 1, 2010, the Director shall advise the employer and bargaining agent of that determination, and the employer may then continue with its implementation of the pay equity process.

28(5) If the Director determines that there has not been compliance up to the point in the process reached by the employer by April 1, 2010, the Director may provide advice to the employer with respect to its achieving compliance, and the employer shall ensure that it is in compliance with the requirements of this Act before proceeding further with its implementation of the pay equity process.

## PAY EQUITY BUREAU

### Pay Equity Bureau

29(1)The Minister shall establish the Pay Equity Bureau, which shall be composed of one or more civil servants employed under the Civil Service Act, one of whom shall be appointed by the Minister as Director.

29(2)The Bureau may

- (a) provide information with respect to pay equity to any employee, employer or bargaining agent,
- (b) provide assistance and advice to employers, employees and bargaining agents in implementing or maintaining pay equity,
- (c) request information from employers in order to monitor the progress of implementation and maintenance of pay equity,
- (d) review the process and provide assistance to employers who have completed or who are in the process of completing implementation of pay equity,
- (e) prepare and maintain statistics relating to pay equity,
- (f) prepare and disseminate educational material relating to pay equity,
- (g) provide assistance and oversee the pay equity process required to be undertaken by an employer and affected bargaining agents,
- (h) provide information, assistance and advice to any employer, employees and bargaining agents not covered by the Act, and
- (i) perform such other duties and exercise such other powers as may be prescribed by regulation.

29(3)The Bureau shall submit to the Minister an annual report setting out the progress in the implementation and maintenance of pay equity.

## REGULATIONS

### Regulations

30The Lieutenant-Governor in Council may make regulations

- (a) providing for pay adjustments on the implementation or maintenance of pay equity, including the date on which pay adjustments are effective, restrictions as to the amount of payroll available for pay adjustments, the period of time over which pay adjustments may be made, and other limitations or restrictions;
- (b) respecting the procedure for the conduct of proceedings before an arbitrator appointed under this Act;
- (c) providing for the timing and circumstances under which a review of pay equity maintenance is to occur;
- (d) providing for the maintenance of pay equity, including the process to be followed and the timing and substance of the process;
- (e) respecting forms for the purposes of this Act or the regulations;
- (f) prescribing other duties and powers of the Director or the Bureau.

## REPEAL AND COMMENCEMENT

### Repeal

**31The Pay Equity Act, chapter P-5.01 of the Acts of New Brunswick, 1989, is repealed.**

### Commencement

**32This Act comes into force on April 1, 2010.**

**N.B.** This Act is consolidated to December 16, 2016.

## Appendix D: New Brunswick Regulation 2010-54 under the Pay Equity Act, 2009

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### NEW BRUNSWICK REGULATION 2010-54 under the Pay Equity Act, 2009 (O.C. 2010-167)

Filed March 26, 2010

Under section 30 of the *Pay Equity Act, 2009*, the Lieutenant-Governor in Council makes the following Regulation:

#### **Citation**

1This Regulation may be cited as the General Regulation - *Pay Equity Act, 2009*.

#### **Definition of “Act”**

2In this Regulation, “Act” means the *Pay Equity Act, 2009*.

#### **Beginning of pay adjustments**

3(1)In the case of Parts I, II and III of the Public Service, the employer shall start to make pay adjustments under the Act on April 1, 2012, unless an extension has been granted under section 14 of the Act.

3(2)In the case of a body corporate listed in Part IV of the Public Service, the employer shall start to make pay adjustments under the Act no later than April 1, 2012, unless an extension has been granted under section 14 of the Act.

#### **General restrictions with respect to pay adjustments**

4Pay adjustments shall be made in a fair, equitable and non-discriminatory manner and shall respect the employer’s determinations referred to in subsection 13(3) of the Act.

#### **Restrictions as to the amount of pay adjustment**

5Payment of the adjustments in compensation shall be made annually and shall not exceed the lesser of  
(a) the amount determined by the employer at the implementation of pay equity, and  
(b) one percent of the payroll of the employer for the last 12 months.

#### **Period of time over which pay adjustments may be made**

6(1)Subject to subsection (2), the employer shall make all pay adjustments during the 4 consecutive 12-month periods that follow the end of the 2011 fiscal year.

6(2)If pay adjustments have not been completed before the end of the fourth period referred to in subsection (1), the employer may apply to the Director for one or more extensions, but the combined total of all extensions shall not exceed 6 years.

#### **Review of pay equity compensation practices**

7(1)The first review of an employer’s pay equity compensation practices under section 25 of the Act shall be conducted not later than the date of the expiration of the wage schedule or the pay plan that is in effect after the last pay adjustment.

7(2)Subsequent reviews of an employer’s pay equity compensation practices shall be completed

(a) not later than the date of the expiration of the wage schedule or the pay plan, if the period during which the wage schedule or the pay plan is in effect is less than 5 years, and

(b) five years after the date of the last review, if the period during which the wage schedule or the pay plan is in effect is 5 years or more.

7(3) In addition to the reviews under subsection (2), a review of an employer's pay equity compensation practices shall be conducted every time

- (a) a job classification is eliminated,
- (b) an existing job classification is modified,
- (c) salary or pay scales are impacted by organizational restructuring, or
- (d) significant organizational change occurs.

7(4) A review of an employer's pay equity compensation practices shall

- (a) review the female-dominated classifications and the male-dominated classifications,
- (b) review the job evaluation system used during the implementation of pay equity,
- (c) compare the value of the work performed by female-dominated classifications and the value of the work performed by the male-dominated classifications, and
- (d) recalculate the valuation of the differences in compensation and determine if inequities are present.

### ***Commencement***

***8This Regulation comes into force on April 1, 2010.***

***N.B.*** This Regulation is consolidated to March 26, 2010.