



FIRST REPORT
OF THE
STANDING COMMITTEE ON LAW AMENDMENTS

Third Session
Fifty-fifth Legislative Assembly
of the
Province of New Brunswick

December 22, 2005

MEMBERS OF THE COMMITTEE

Mr. Carr, Chairman
Mr. Betts, Vice-Chairman
Hon. Mr. Green
Mr. C. LeBlanc
Mr. Stiles
Mr. Sherwood

Mr. MacDonald
Mr. R. Boudreau
Mr. McGinley
Mr. Murphy
Mr. Burke

December 22, 2005

To The Honourable
The Legislative Assembly of
The Province of New Brunswick

Mr. Speaker:

I have the pleasure to present herewith the First Report of the Standing Committee on Law Amendments for the Session.

The Report is the result of your Committee's deliberations on Bill 77, *Pay Equity Act*, which was introduced in the Legislative Assembly during the First Session of the Legislature and referred to your Committee for its consideration.

The Report outlines your Committee's recommendations with respect to the issue of legislating pay equity between men and women in predominantly female work occupations.

On behalf of the Committee, I wish to thank the many presenters who appeared at the public hearings and those individuals and groups who submitted written briefs.

In addition, I would like to express my sincere appreciation to the members of the Committee for their contribution in carrying out our mandate.

And your Committee begs leave to make a further report.

Respectfully submitted,

Jody Carr, M.L.A.
Chairman

December 22, 2005

To The Honourable
The Legislative Assembly of
The Province of New Brunswick

Mr. Speaker:

Your Standing Committee on Law Amendments begs leave to submit this, their First Report of the Session.

On June 25, 2004, during the First Session of the Fifty-fifth Legislature, Bill 77, *Pay Equity Act*, was introduced in the Legislative Assembly by Ms. Elizabeth Weir, the Member for Saint John Harbour at the time. The proposed legislation sets out a framework for resolving the differences in the payment of wages to men and women in predominantly female work occupations. The Bill applies to both private and public sector employees and requires that employers take proactive measures to achieve pay equity in the work place. As well, the Bill establishes a Pay Equity Commission to help promote and achieve pay equity in the province.

On June 29, 2004, by Resolution of the House, consideration of Bill 77 was referred to the Standing Committee on Law Amendments. This resolution is the order of reference and forms the basis of the Standing Committee on Law Amendments' First Report to the Third Session of the Fifty-fifth Legislature.

On September 17, 2004, your Committee met and determined that members of the public should be invited to provide input and advice to the Committee with respect to the issues raised by Bill 77. Public hearings were held on November 18, 19 and 26, 2004, in the Legislative Assembly Chamber and a total of 49 written submissions were received by your Committee. Your Committee also met with representatives from the Womens' Issues Branch of the Executive Council Office, and private sector experts in wage gap and job evaluation analysis.

Your Committee wishes to note that Bill 77 has since died on the Order and Notice Paper as the First Session of the Fifty-fifth Legislature came to an end when the Legislative Assembly was prorogued on December 2, 2004. Nonetheless, the mandate of your Committee to review the subject matter of the Bill remains in effect. Your Committee is pleased to offer its recommendations.

Your Committee expresses appreciation to the presenters who appeared at the public hearings and to those individuals and organizations who submitted written briefs.

EXECUTIVE SUMMARY

Based on the input and advice received during the public consultation process, your Committee very strongly believes in the principle of equal pay for work of equal value. Your Committee acknowledges that a wage gap exists in New Brunswick between male and female workers and that pay equity is a solution to one of the contributors to the wage gap, that being the under-valuation of predominantly female work occupations. Your Committee agrees the elimination of the wage gap will allow women to enjoy their guaranteed human rights, will result in greater overall economic productivity for our province, and will improve the quality of life for all New Brunswickers.

Your Committee supports in principle the intent of Bill 77, *Pay Equity Act*, which is the reduction of the wage gap in New Brunswick between men and women in predominantly female work occupations. Your Committee wishes to acknowledge the time and effort of those who have prepared the Bill and commend them for their contribution. Your Committee supports initiatives designed to reduce the wage gap and promote pay equity in the workforce and your Committee is in agreement that Bill 77 contains several sound and beneficial concepts that may assist in the accomplishment of this goal, particularly the proactive nature of the Bill. However, your Committee does not recommend the enactment of Bill 77. Your Committee is in agreement that Bill 77, in its current form, does not adequately accomplish all of its objectives and requires certain revisions. In addition, your Committee is of the opinion that the Five Year Wage Gap Action Plan, which outlines voluntary measures in the public and private sector to address the wage gap issue, recommended by the New Brunswick Wage Gap Roundtable, is the course of action, at this time, to address the wage gap in New Brunswick. However, your Committee is also of the opinion that all potential solutions to eliminating the wage gap should continue to be explored. Therefore, your Committee recommends the government undertake and release an annual status report of the progress of the Five Year Wage Gap Action Plan. Your Committee further recommends that the government consider the advisability of enacting proactive legislation designed to reduce the wage gap and promote pay equity should the voluntary measures in the Five Year Wage Gap Action Plan only result in limited progress.

SUMMARY OF FINDINGS

Your Committee has reviewed the provisions of the *Pay Equity Act* and considered the written submissions received and the presentations made at the public hearings. As a result of its review, your Committee has determined that the following issues should be addressed: Defining the Wage Gap; Benefits of *Pay Equity Act*; Concerns with *Pay Equity Act*; and Voluntary Measures.

Defining the Wage Gap

The wage gap is the difference between the average wages earned by men and those earned by women. Respondents submitted different values for the wage gap, ranging from 15% to 19%, meaning women earn anywhere from 81% to 85% of what men earn. However, Respondents agreed that regardless of the true value of the wage gap today, any discrepancy between the average earnings of men and women is an issue that needs to be addressed.

Respondents submitted there is one predominant cause of the wage gap, that being society's attitude regarding the place and value of women in the workforce, and three main contributors to the wage gap. Firstly, family responsibilities of women. In New Brunswick women have lower labour force participation rates, higher part time work participation rates, and move in and out of the labour force more often than men, which, it was submitted, results in lower wages and lower life time earnings for women compared to men. Respondents submitted that family responsibility is the cause of these factors, since women may be more likely to place family above career, as they often find work that is close to home, that has flexible hours, and that does not require strong commitment beyond scheduled hours, nor relocation.

Secondly, job clustering, meaning women tend to work in particular occupations which are not traditionally high paying positions. Respondents submitted that approximately half the women in the work force in New Brunswick are employed in only ten different occupations.

Thirdly, the under-valuation of predominantly female work occupations. This contributor refers to paying low wages to women based on gender. In other words, systematic discrimination. If women tend to only work in a limited number of occupations, it was submitted that these occupations are under-valued and, accordingly, under-paid. Respondents submitted that this factor significantly contributes to the wage gap. Respondents also submitted that pay equity legislation could correct this factor as it requires employers to introduce gender-neutral job classifications and pay systems.

Your Committee acknowledges that a wage gap exists in New Brunswick between male and female workers and is of the opinion that the three factors outlined above contribute to the wage gap. Your Committee strongly believes in the principle of pay equity, meaning equal pay for work of equal value regardless of gender, which has been internationally recognized as a human right. Therefore, your Committee supports initiatives designed to reduce, and eventually eliminate, the wage gap between male and female workers in New Brunswick.

Benefits of Pay Equity Act

Respondents were overwhelmingly in favour of Bill 77, as it requires an employer to identify predominantly female work occupations in an organization, assess the value of these jobs and all other jobs in the organization using a gender-neutral scale, compare the value and salary of these jobs with predominantly male work occupations, and adjust the wages accordingly. Thus, the fundamental purpose of the Bill is to require employers to implement and maintain a pay equity

program and to take proactive measures to achieve pay equity. This, Respondents submitted, ensures the long term maintenance of pay equity programs and should lead to the elimination of wage gaps in the work place. Respondents were also of the opinion that the specific provision prohibiting employers from lowering wages to achieve pay equity was a necessary safe guard.

Respondents were in favour of the Bill applying to all public and private sector employees, thus enabling all full time, part time, permanent or casual employees in both sectors to exercise their right to equal pay for work of equal value. Respondents also noted that the current *Pay Equity Act*, enacted in 1989, only applies to Part I of the public sector, which consists of employees directly employed by a government department. Respondents submitted that this excludes school and hospital workers, occupations which are predominantly female.

Respondents supported the proactive, rather than reactive, nature of the Bill, in that it requires employers to establish pay equity in their businesses and organizations as opposed to being dependant on complaints from employees who are of the belief that they are not receiving pay equity. Respondents submitted that a reactive process would not be favourable, given the apprehension an employee may have towards filing a complaint against an employer. A proactive model, it was suggested, is cooperative instead of confrontational, and allows for the avoidance of long and expensive litigation.

Respondents were in favour of the employee involvement in the pay equity committees established by the Bill. The pay equity committees deal with job evaluations and assist in the implementation and maintenance of pay equity programs. Each employer is required to establish a pay equity committee, on which employees must be represented. In addition, Respondents were in favour of the provision that requires at least half of the employee representatives on the committee to be women.

Respondents supported the creation by the Bill of the Pay Equity Commission of New Brunswick. Respondents were in favour of its independence and its mandate to provide information on the objective and provisions of the Bill once enacted, to provide assistance and develop tools to facilitate the organization and implementation of pay equity programs, to evaluate pay equity programs annually, and to provide assistance with the establishment of pay equity committees. Respondents were of the opinion that the Commission would keep employers and pay equity committees accountable for planning and implementing pay equity. Respondents also noted that the Commission is accountable to the Legislature through annual reports.

Respondents were in favour of the provision which requires that adjustments in compensation must be determined, or a pay equity plan must be completed, within four years of the Bill coming into force, or within two years for newly created employment. Respondents felt it was necessary to provide an adequate implementation period for the employer. Respondents also appreciated the interest penalties for non-compliance.

Respondents submitted that the underpayment of traditionally female dominated occupations has a direct effect on the poverty of women. Respondents submitted that proactive legislation for pay equity could help eliminate poverty and ensure the present and future financial security of women. In addition, Respondents suggested that poor families are often less healthy and more reliant on the health care system. Respondents were of the opinion that Bill 77 would reduce the wage gap, thus increasing wages for women, decreasing the number of women and children living in poverty, and facilitating better health care and education for women and children. These beneficial results from the implementation of pay equity legislation, it was submitted, would improve the overall economic productivity of our province and the quality of life for New Brunswickers.

Your Committee is in agreement with the Respondents that Bill 77 contains several quality initiatives and sound and beneficial concepts. Your Committee is also of the opinion that if pay equity legislation of this nature is required and enacted in New Brunswick, it should contain several of the characteristics noted above, particularly the proactive aspects of the Bill. Your Committee agrees the elimination of the wage gap will allow women to enjoy their guaranteed human rights, will enhance the economic productivity of our province, and will improve the quality of life for all New Brunswickers.

Concerns with *Pay Equity Act*

Respondents who supported the enactment of Bill 77 acknowledged that it would only combat one of the factors contributing to the wage gap, that being the under-valuation of predominantly female work occupations. Respondents acknowledged that the other two factors, family responsibilities of women and job clustering, as well as the predominant cause of the wage gap, society's attitude regarding the place and value of women in the workforce, would be relatively unaffected. Respondents agreed that a lasting change requires a cultural shift in society's attitudes concerning women in the work force.

Respondents also had a few concerns with respect to the provisions contained in Bill 77. Respondents noted the universal application of the Bill, in that it applies to all employers, even those, for example, with less than ten employees, which is not the case in certain other jurisdictions with pay equity legislation. Some Respondents submitted that the implementation of pay equity programs in small businesses would be too onerous on an employer and in some circumstances impossible.

Respondents recognized the limitations of the Bill, as it does not apply to women employed in a business or organization without any predominantly male work occupations. While this may be understandable, Respondents suggested that those businesses and organizations that can not offer a comparison between predominantly female and male work occupations would continue to under-value and under-pay the contributions of their female employees.

Some Respondents felt the powers of the Pay Equity Commission are too broad, and could conflict with the responsibilities and rights of employers. Respondents also submitted that it may be inappropriate for the Bill to classify the minutes of a pay equity committee meeting as public. Respondents suggested the minutes of such meetings should remain confidential. In addition, some Respondents were of the opinion the requirement that two-thirds of the members of a pay equity committee must be employee representatives was unfair to an employer.

Respondents submitted that the Bill should contain a clause to reward or exempt those employers who have already implemented a pay equity program. Respondents also submitted that an exemption from pay equity may be necessary if there is an established and significant skill shortage in a particular occupation within a business or organization. Other Respondents questioned whether the Bill contained an adequate evaluation mechanism to gauge the success of an organization's existing pay equity program.

Some Respondents suggested that the costs of implementing and administering a new pay equity act and the individual pay equity programs should be calculated prior to the Bill becoming law. Other Respondents suggested that the implementation of pay equity programs may be too onerous and costly on an employer. However, your Committee also heard from experts in wage gap and job evaluation analysis, who disputed this claim and suggested that once an employer is educated on the implementation of a pay equity program, the process is cost effective and not overly time consuming.

Other areas of concern noted by Respondents included the lack of specific methodology and criteria for comparing categories of jobs, as well as the power of the Commission to approve pay equity programs without a mechanism to ensure stakeholder contribution in the process. In addition, some Respondents felt the time periods for implementation after the Bill is adopted were unrealistic. Finally, some Respondents noted that the Premier is responsible for the administration of the Bill once enacted, but felt this responsibility was not adequately clarified.

Voluntary Measures

As noted by some Respondents and already stated in this Report, Bill 77 only addresses one of the factors contributing to the wage gap, that being the under-valuation of predominantly female work occupations. The other two factors, and society's attitude regarding the place and value of women in the workforce, are not specifically or adequately addressed. Some Respondents suggested that legislation in general is not the solution to address the wage gap problem, which appears to be the same conclusion reached by the New Brunswick Wage Gap Roundtable in their report entitled "*Closing New Brunswick's Wage Gap: An Economic Imperative*". This report recommended a Five Year Wage Gap Action Plan, which outlines voluntary measures to address the wage gap. In addition, this report stated that if only limited progress had been achieved towards eliminating the wage gap, appropriate wage gap reduction legislation should be developed. Several of the recommendations in this report were recently implemented by the Government of New Brunswick

in a report entitled “*Facing the Economic Imperative, New Brunswick’s Five Year Wage Gap Action Plan, 2005-2010*”. This latter report identifies strategies and voluntary measures to address all of the factors which contribute to the wage gap, and contains indicators of success to ensure whether the objectives have been attained.

Your Committee has reviewed Bill 77, the written submissions of the Respondents, and the two reports noted above recommending and implementing a Five Year Wage Gap Action Plan. Your Committee supports initiatives designed to reduce the wage gap and promote pay equity in the workforce and your Committee is in agreement that Bill 77 contains several sound and beneficial concepts that may assist in the accomplishment of this goal. However, your Committee does not recommend the enactment of Bill 77 at this time. Your Committee acknowledges the concerns that some Respondents had with the Bill, and agrees that the Bill may require certain revision to address these issues in order for the Bill to meet its desired objective.

Your Committee is of the opinion that the Five Year Wage Gap Action Plan, which outlines voluntary measures in the public and private sectors to address the wage gap issue, recommended by the New Brunswick Wage Gap Roundtable and implemented by the Government of New Brunswick, is the course of action, at this time, to address the wage gap in New Brunswick. In addition, your Committee is of the opinion there should be an annual accounting of the progress attained through the Five Year Wage Gap Action Plan. While your Committee supports and recommends voluntary measures to reduce the wage gap, your Committee is also of the opinion that all potential solutions to eliminating the wage gap, including pay equity legislation, should be explored.

RECOMMENDATIONS

Your Committee therefore recommends that Bill 77, *Pay Equity Act*, not be proceeded with at this time.

Your Committee further recommends that the Legislative Assembly urge the government to undertake and release an annual status report of the progress of the Five Year Wage Gap Action Plan.

Your Committee further recommends that the Legislative Assembly urge the government to consider the advisability of enacting proactive legislation designed to reduce the wage gap and promote pay equity should the voluntary measures in the Five Year Wage Gap Action Plan only result in limited progress.

CONCLUSION

Your Committee gave serious consideration to the advice and input received through the public consultation process. Your Committee believes that any legislation developed to reduce, and hopefully eliminate, the wage gap should address all of the contributing factors associated with the wage gap and be proactive in nature. In addition, your Committee, at this time, agrees that the voluntary measures implemented by the government should be given an opportunity to succeed, however, should these measures only result in limited progress, your Committee acknowledges that pay equity legislation for both the public and private sector may be the necessary solution to eliminating the wage gap in order to allow women to enjoy their guaranteed human rights, to bring about greater economic productivity for our province, and to improve the quality of life for all New Brunswickers.