





PROACTIVE PAY EQUITY LEGISLATION IN NEWFOUNDLAND AND LABRADOR

Put money back in the pockets of
women and marginalized people

St. John's Status of Women Council
St. John's, Newfoundland and Labrador, Canada
August, 2022



 ST. JOHN'S WOMEN'S CENTRE
 MARGUERITE'S PLACE

 SAFE HARBOUR OUTREACH PROJECT
 MANAGED ALCOHOL PROGRAM

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Provincial Action Network on the Status of Women
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Newfoundland and Labrador Federation of Labour

Workers' Action Network of Newfoundland and Labrador



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References

Introduction

The St. John's Status of Women Council/Women's Centre is a feminist organization that since 1972 is continually working to achieve equality and justice through political activism, community collaboration and the creation of a safe and inclusive space for all women and non-binary people in the St. John's area. The St. John's Status of Women Council operates the Managed Alcohol Program, Marguerite's Place Supportive Housing Program, the St. John's Women's Centre, and Safe Harbour Outreach Project.

Our work is guided by a commitment to feminism, community, trauma informed holistic support and programs, knowledge and understanding and nonpartisanship.

“**Rooted in our guiding principles, our advocacy work aims to build social and economic equity for marginalized people in St. John's and across Newfoundland and Labrador. This includes a nuanced understanding of pay equity and the role of proactive pay equity legislation at a provincial level.**”

Pay equity has been on the political agenda of the government of Newfoundland and Labrador since 1988 when they negotiated a pay equity agreement for healthcare workers with Newfoundland and Labrador Association of Public and Private Employees (NAPE). Newfoundland and Labrador is one of four provinces and territories across Canada without legislated pay equity. Many provinces enacted their own legislation in the 1980s and 1990s. In 2004 Canada's federal task force recognized pay equity as a fundamental human right. In 2017 on International Women's Day, the House of Assembly in Newfoundland and Labrador saw a motion to introduce pay equity legislation, which was supported by a unanimous vote. Since then, it has not been enacted or prioritized. This year in 2022, pay equity legislation is being discussed repeatedly in the House of Assembly and in local media.

As part of our work towards social and economic justice for women and marginalized people, we are digging deeper into pay equity in the form of this report as a case for wide-reaching proactive pay equity legislation in Newfoundland and Labrador.

Marginalization

In this report, when we use the term 'marginalized', we mean people who are: living with disabilities, Black, Indigenous, racialized, newcomers and immigrants, 2SLGBTQIA+, youth, sex workers, criminalized, in poverty, and living in homelessness. When we say 'marginalized genders', we mean people who are: transgender and cisgender women, transgender men, non-binary, Two-Spirit, genderqueer, gender diverse, agender, gender non-conforming, gender fluid and intersex.

We use the term marginalized not because of weakness, but because of the very real and compounding layers of discrimination, stigma, criminalization and lack of access to resources people live with. Marginalization refers to the experiences of people living through systemic oppression.

Limitations

People who are not doing paid work are not often reflected or included in conversations around pay equity. People who are not doing paid work deserve access to all the resources to meet their basic needs as a bare minimum. Folks who may also be left out of legislation towards socioeconomic equity are working people who are doing gig work, who are self-employed and those in industries that remain criminalized like sex work, or otherwise not defined as an employee in relevant legislation.

Looking at socioeconomic well being and equity overall, a decent income is critical. With that said, there are many other factors that matter. Such as:

- working conditions above and beyond pay
- access to safe and affordable housing
- rates of poverty
- gender-based violence and incarceration
- access to adequate public healthcare including mental health services
- treatment and reproductive healthcare
- high quality affordable and accessible childcare
- public transit, and more.

Often work and conversations around pay equity are limited to gender. This is because there are substantial differences in pay between jobs that are traditionally considered "men's" work compared to "women's" work as roles and industries have been gendered throughout colonial history. While a gender lens in pay equity is important, there are a few problems with this approach being the only one. Firstly, this focus reinforces the gender binary between men and women which leaves out people of diverse gender identities. This includes people who are Two-Spirit, non-binary, gender fluid, genderqueer, gender non-conforming, agender and intersex. Secondly, by

narrowing our focus to only gender, we are missing many people who experience disproportionate levels of discrimination, violence and harassment and who do the most unpaid or underpaid work. This includes people who are Black, Indigenous, racialized, migrants and newcomers, people living with disabilities and 2SLGBTQIA+.

Section 1:

Pay equity and the wage gap

What is pay equity?

Pay equity is the principle of paying workers equal pay for work of equal value with any given employer. In other words, it is a practice within a workplace of paying people equally and consistently across roles for work that is valued equally, no matter who is doing the work or who has done it over time. Pay equity is important because it addresses how some jobs have been traditionally viewed, treated and paid as being less valuable than others. In short, pay equity legislation works to counteract the way work has been gendered and undervalued. The undervaluation of what we know to be women's work through colonial history widens the wage gap and contributes to pay inequity.

Pay equity is related to but different from equal pay for equal work, which means people being paid the same for doing more or less the same job. Looking at federal and provincial/territorial legislation, pay equity involves classifying different roles that offer similar value or contribution to a workplace to ensure that workers are paid fairly. As it stands, proactive pay equity legislation functions to balance the compensation for work of equal value by looking at and classifying roles that have been traditionally gendered.

Our approach to understanding pay equity centres gender as a critical part of our work towards social and economic equality. We also recognize that people who face multiple layers of oppression have always and will continue to live with higher rates of poverty, violence and discrimination if we only think about gender. While a gendered lens cannot be the only solution towards social and economic equality, we know that in Canada women who are Black, racialized and immigrant are overrepresented in gendered work; including early childhood education, home support work, postal work and other care work. In other words, proactive pay equity legislation that covers both public and private sectors can impact marginalized people, especially people of colour, who are doing gendered work as a result of systemic racism, sexism and discriminatory immigration policies. Overall, our work towards equality and justice must be intersectional, and it must both include and go beyond proactive pay equity legislation.

What is the wage gap?

The wage gap refers to the difference in average incomes between groups of people. The gender wage gap looks at the vast and varying difference between average earnings between women and men. While the gender wage gap is one reliable marker of where we stand in terms of economic equality, it too reinforces the binary between men and women, inherently missing so many people who exist beyond and between the gender binary, while not taking into account other important factors like race, ability and sexual identity.

Across Canada, women working both full and part time are earning 32% less than men on average. For women who are Indigenous, immigrants and living with disabilities, the gender wage gap is staggering - as much as 55%. Women across Canada, including those in Newfoundland and Labrador, have more formal education compared to men but continue to earn significantly less.

There are different ways of measuring the wage gap, but no matter how it's calculated, the gap exists and is consistently wider for people of colour, who are 2SLGBTQIA+ and living with disabilities. The wage gap has multiple contributing factors, including that marginalized people are:

- over-represented in part-time work
- over-represented in minimum and low wage work
- over-represented in lowest paying sectors and roles
- underrepresented in senior and leadership positions
- experiencing disproportionate violence, harassment and discrimination at work
- doing the most volunteer, unpaid and care work.

The UN's Human Rights Committee in 2015 raised red flags about Canada's high wage gap, particularly how it disproportionately affects women living on low-incomes who are Indigenous and racialized. There's a consistent trend across provinces and territories in Canada showing where there is pay equity legislation there are lower gender wage gaps. In fact, studies show that there is a smaller wage gap in the public sector than the private sector in Canada. This is attributed to proactive pay equity legislation and is an indicator of how well it can work.

Because of how many factors impact our wage gap, we recognize that proactive pay equity legislation will not close the wage gap single-handedly. It's important to note, though, that our struggles are not isolated. To discredit any one piece of work that chips away at the wage gap denies a collective approach towards gender and social equity.

Section 2:

An overview of federal and provincial/territorial legislation

Pay Equity Act in Canada

In December of 2018, the government of Canada passed the Pay Equity Act, which came into effect in August 2021. This new act introduces proactive pay equity standards, ensuring equal pay for equal value of work for all federally regulated workplaces with at least ten workers. Federal public and private sectors include workers in: air and road transportation, banks, First Nations band councils, Indigenous self-governments, crown corporations, postal and courier services, radio and television broadcasting, telecommunications, as well as the federal public service and all of parliament.

Under this Act, federally regulated employers are held accountable for fair and consistent pay across roles of equal value through classifying steps and oversight processes. In other words, this proactive approach is built to fix pay inequity where it exists and prevent it from happening again. Most importantly, the responsibility here falls on employers rather than individual workers. The federal Pay Equity Act is upheld and enforced by, and federal employers are responsible to, the Pay Equity Commissioner with the Canadian Human Rights Commission.

Canadian Human Rights Act

All workers in Canada have human rights legislation which restricts employment discrimination generally. For people working outside of federally regulated workspaces, there is protection against pay discrimination based on gender. Under the Canadian Human Rights Act, it is a discriminatory practice for employers to pay men and women differently for work of similar value (Section 11).

While the Act is wide reaching in how it applies to any worker in Canada, it is a complaints-based process. What this means is the onus falls on individual workers to identify and fight for pay equity within their workplace by filing a human rights complaint. Often people do not even know if they are being paid fairly or consistently for work of equal value.

What is Proactive Pay Equity Legislation?

Proactive pay equity legislation builds processes to ensure people in a workplace are being paid fairly and consistently for work of the same value, no matter who is doing it or who has done it over time. Decent provincial proactive legislation covers both public and private sector employees. Our current federal legislation covers federally regulated sectors and contractors, including workers in public service and government staff. The important distinction between our human rights legislation in Canada and proactive pay equity legislation is where the burden falls to fix and prevent pay inequity. Where there is proactive pay equity legislation and well-funded regulatory bodies, employers can be held accountable adjust and prevent pay inequity.

How does legislation like this work?

These processes and measurements vary between provinces and territories based on how their legislation is written and upheld. For example, in Ontario pay equity legislation has more specific protections, like ensuring that casual or part-time workers who are doing essentially the same work as their full-time coworkers are paid at the same rate. Most proactive pay equity legislation can be summarized and achieved through a version of the following six processes:

- **Job classification;** this determines if jobs have similar duties, responsibilities, require similar qualifications, and can then be considered part of the same classification for pay.
- **Gender predominance;** this determines if the majority (in some legislation this means at least 60%) of workers in this job are women, have historically been held by women, or have been gendered due to stereotypes or other factors.
- **Value;** this looks at the skills, effort, responsibility required for a job, as well as the conditions through which work is done.
- **Planning;** pay equity plans created by employers follows their region's legislation, which is informed by classification, gender predominance and value.
- **Adjustments;** this is the process of employers adjusting their employees compensation based on the previous four steps, in compliance with regional legislation.
- **Maintenance and enforcement;** this step is about documenting adjustments and reevaluating them based on a schedule in compliance with their legislation. In provinces and territories with Pay Equity Commissions or other oversight bodies, employers would work with them on this.

Overall, these steps have been thoroughly researched and well documented. There has been ample opportunity over the last four decades for our provincial government to analyze, evaluate and replicate steps to make our proactive pay equity legislation the best it can be.

The gender wage gap & pay equity legislation

Across Canada, Newfoundland and Labrador has one of the widest gender pay gaps.

Based on provinces where data is available, those with the largest gender wage gaps are British Columbia and Alberta, followed closely by Newfoundland and Labrador, and then Saskatchewan. Again, it's worth noting here that when we look at the gender wage gap at face value, it does not always take into account how women who are racialized, living with disabilities and who are 2SLGBTQIA+ live with an even wider gap.

There's a consistent trend across provinces and territories in Canada showing that where there is proactive legislation there are lower gender wage gaps. As mentioned, these four provinces without provincial pay equity legislation are also those with the biggest gender wage gaps. In fact, studies show that there is a smaller wage gap in the public sector than the private sector in Canada. This is attributed to proactive pay equity legislation.

What about pay transparency legislation?

Pay transparency is the practice of employers making the pay range for any position publicly available at the time of posting a job. The principle of pay transparency legislation is to increase current workers or new applicants' knowledge around how much they and their coworkers are being paid. This legislation and practice can function as a measure of pay equity, and is rooted in transparency of pay, rather than classification of the value of work or adjustments to increase equity. Prince Edward Island's new pay transparency legislation also protects workers from being penalized for asking questions about their pay, asking their employers to comply with pay transparency, or informing inspectors if their employers are not complying with pay transparency.

In 2021 we saw amendments to the federal Employment Equity Act and Employment Equity Regulations to include a version of pay transparency in federally regulated jobs in the private sector with more than 100 employees. This is described as "pay gap reporting measures", to indicate where pay gaps exist. Ultimately, these federal amendments, like pay transparency legislation at a provincial level, are an important function to inform employers and workers about pay inequity, but lack oversight processes to address and fix pay inequity. Where pay transparency legislation brings access to information about pay, proactive pay equity legislation can bring measures to adjust and oversight to enforce pay equity. International experts in economic development recognize that without legislative measures like proactive pay equity legislation, pay transparency falls short.

Who supports proactive pay equity legislation?

Last year the [Canadian Human Rights Commission](#) stated that the introduction of the federal Pay Equity Act (which applies to federally regulated public and private workers) will work towards closing the wage gap. In line with that announcement, [the Pay Equity Commissioner](#) said *"The Pay Equity Act is essential to closing the gender wage gap, advancing gender equality and promoting workplaces where every employee is valued and engaged."*

Women's Legal Education and Action Fund (LEAF) recognizes that proactive pay equity legislation is one of the few effective ways employers can be held accountable for paying people fairly for jobs that have been traditionally done by women and marginalized groups. This is part of the resistance to the [feminization of poverty](#).

Oxfam Canada produced their [Feminist Scorecard](#) to measure how government is upholding gender equality. Pay equity was one of their ten indicators, alongside living wages and violence and harassment-free work being strong measures of economic well being for marginalized people. They say: *"Equal pay initiatives must address the fact that women and men continue to be concentrated in different jobs, given that jobs in which women are overrepresented tend to offer lower pay."*

The [Parkland Institute](#) takes a close look at effective design of pay equity legislation in Alberta. Their findings state: *"Pay equity legislation is one of the first and most fundamental steps in reducing this gender income gap, and bringing women and men closer to income parity."*

The [Canadian Women's Foundation](#) cites that the pay equity is part of closing the wage gap, but that more work to address representational gaps (like age, race, ethnicity, sexual orientation, etc.) is required. Again, this speaks to the need for all work towards economic equity to be holistic, intersectional, and wide reaching.

The [Canadian Labour Congress](#) has been calling on governments to uphold nation-wide pay equity legislation with obligatory pay equity plans, along with pay transparency measures, and adequate funds for the Pay Equity Commissioner and other oversight bodies to be able to hold employers accountable.

In October of 2017, the [Supreme Court of Canada](#) made strong statements in the decision around appeals of pay discrimination. These challenges were made by women working in childcare centres and doing language interpretive services, with support from Women's Legal Education Action Fund and the New Brunswick Coalition for Pay Equity. In the decision, the Supreme Court said that allowing pay inequity to persist by reducing

employer's accountability allows for women and marginalized people to remain *"the economy's ordained shock absorbers"*, and to operate without pay equity legislation *"sends the message to female workers that it is they who must bear the financial burdens of employer reluctance."*

Our last federal Minister of Employment, Workforce Development and Labour Patty Hajdu said in 2019: *"Proactive pay equity isn't just the right thing to do - it's the smart thing to do, because when people are treated fairly and given an equal opportunity to succeed, we all win."*

What's the cost of pay equity?

Pay equity is a human right in Canada. Weighing the costs and benefits of whether or not human rights are upheld is a destructive practice, but one that we have seen from government time and again - most recently in briefings on the "cost, complexities and non-meaningful impacts" of provincial pay equity legislation in Newfoundland and Labrador. With that in mind, let's take a closer look at the cost of pay equity.

The Ontario Pay Equity Commission estimates to ensure rigorous oversight of employers under proactive legislation, a healthy budget for our country's biggest province is \$6.8 million. For context when thinking about monitoring employer accountability, Ontario has at least six million employers, while Newfoundland and Labrador is home to just over two hundred thousand. While a price tag of nearly 7 million dollars may sound expensive, it can be useful to have other budget lines to consider the scale. In comparison, this year the government of Newfoundland and Labrador spent \$148 million on policing services and more than \$180 million on business development support for the oil and gas industry.

Across provinces and territories in Canada where pay equity has been legislated, there is a consistent trend showing the average income of women saw the largest increase over the past twenty years during the year following legislation. This observation is in line with both local and international experts who deem pay equity legislation as one tool of many to increase equitable working conditions and economic growth. In Canada, experts deem that no jurisdiction can eliminate economic inequality without pay equity legislation. The Organisation for Economic Co-operation and Development continues to produce detailed findings on how equity in employment is required for economic growth. From both a social justice lens and an economic perspective, we can't afford not to legislate pay equity in Newfoundland and Labrador.

Section 3:

The pay equity landscape in Newfoundland and Labrador and where we stand

What's the current status of pay equity legislation in Newfoundland and Labrador?

The government of Newfoundland and Labrador has been talking about pay equity since 1988, when they negotiated a pay equity agreement for healthcare workers with Newfoundland and Labrador Association of Public and Private Employees (NAPE). Newfoundland and Labrador is one of four provinces and territories across Canada without legislated pay equity. Many provinces enacted and have held their own proactive legislation since the 1980s and 1990s.

On March 8, 2017, a motion to introduce pay equity legislation by Gerry Rogers was unanimously passed in the House of Assembly. Since then, it has not been enacted or prioritized. In 2022 we have seen pay equity legislation come up repeatedly in the House of Assembly and in local media coverage following.

Newfoundland and Labrador is home to one of Canada's largest gender pay gaps. This gap is wider still for women who are Black, Indigenous, racialized, and/or immigrants. Workers in our province earning minimum wage and those in part-time and precarious jobs are also mostly women. As one of four provinces and territories across Canada and the only province in Atlantic Canada without pay equity legislation, women and marginalized people working in Newfoundland and Labrador are left without legislated accountability of their employers for equitable compensation.

What has been the approach of our provincial government?

An Interdepartmental Committee on Pay Equity was established by the provincial government in 2018. This committee includes the Office for Women and Gender Equality, the Treasury Board, the labour division of the Department of Environment and Climate Change, and the Department of Justice, and most recently representation from the departments of Immigration, Population Growth and Skills, and Industry, Energy and Technology. Recently, an Access to Information and Protection of Privacy (ATIPP) request discovered that this Interdepartmental Committee did not meet for almost three years.

Much of the public discourse from our provincial government has been that while proactive pay equity legislation remains on the table for consideration, it may not do enough or reach enough people to be worthwhile, and even if it does it might be too expensive a cost for government to bear. We wholeheartedly reject this narrative. Proactive pay equity legislation is a critical piece of our work towards social and economic justice and wellbeing for women and people of marginalized genders. Any one piece of work or legislation will not affect everyone the same way or eliminate the need for others. That does not make it unworthy of doing or without impactful outcomes. Ultimately, proactive pay equity legislation is one of many functions of social equity, justice and well-being for marginalized people.

Where do we stand?

The St. John's Status of Women Council calls on the government of Newfoundland and Labrador to implement proactive pay equity legislation in both public and private sectors with funding for well-resourced oversight bodies to ensure consistent employer accountability under legislation. This is part of the work to address our enormous wage gap, and to protect workers who are racialized, Indigenous, 2SLGBTQIA+ and living with disabilities who have been historically overrepresented in work that is both undervalued and underpaid. Above all, it sets the legislative precedent for employers in Newfoundland and Labrador that pay equity is a basic workplace standard in line with worker's human rights.

Alongside proactive pay equity legislation, there are a number of other meaningful ways to increase the wellbeing, participation in the workforce and equity of marginalized people in Newfoundland and Labrador. Especially in recognizing that people's intersectional identities impact the pay gap and other inequities they experience in the workforce and beyond. These include but are not limited to:

- Meaningful action and resources to end gender-based violence.
- Paid domestic violence policies leave across all sectors.
- Pay transparency legislation across all sectors and industries.
- Mandating a minimum of ten employer-paid sick days for all workers.
- Affordable and accessible childcare in more regulated spaces, with decent wages and conditions for childcare workers.
- Increased access to unionization and collective bargaining for workers across all sectors and industries.
- Increasing the provincial minimum wage to a living wage, with cost of living calculations based locally rather than federally.
- Social supports be reviewed to ensure that low income earners don't lose access to vital resources.

Sustainable implementation of any one of these actions does not eliminate the need for another. Our struggles are not isolated. The work towards gender and social equality must be holistic and wide reaching.

Each year that passes without proactive legislation our province keeps money out of the pockets of working people who are not being paid fairly for work of equal value.



Women and marginalized people cannot keep paying the cost of government's reluctance to take meaningful steps towards equity.

In line with the 2004 federal task force, and both national and international experts, the St. John's Status of Women Council recognizes that pay equity is a fundamental human right. To further deny or delay proactive pay equity legislation is to infringe on the human rights of many women and marginalized workers in Newfoundland and Labrador.

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