

Repurposing Equal Pay Legislation: The Landmark New Zealand Case

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Introduction

Various mechanisms attempting to achieve pay equity for women have been instituted and reversed in the New Zealand jurisdiction over the last half century. The Equal Pay Act 1972 (EPA) survived major institutional changes to the industrial relations framework in the 1990s but was widely considered to apply only to issues of equal pay and not to other gender-based pay inequities, especially those arising from the historic ghettoising of work traditionally performed by women.

Research question

Why was a litigation strategy, pursued by an aged care worker and her predominantly female union, successful in “repurposing” the EPA as the basis for an historic pay equity settlement 40 years after the statute was first enacted.

Method

Legal analysis of the ground-breaking court decisions and the reasoning which supported an apparent reversal of previous precedent as to the application of the legislation. Explanatory case study investigation into the factors which supported the decision to pursue a litigation-based strategy and created the context in which it was successful. The explanatory case study methodology comprises both documentary analysis and semi-structured interviews with the intention of understanding this unique phenomenon and providing an informed basis for future legal mobilisation strategic decisions in New Zealand and internationally.

Contribution to literature

Our analysis is informed by the pay equity policy categorisations extrapolated by Smith *et al* (Smith, 2017) from a typology developed by Squires (Squires, 1999, 2005). Work on the application of these typologies to the New Zealand jurisdiction is found in the work of Parker and Donnelly (Parker, 2019). The three typologies defined by Squires are “[...]inclusion, reversal, and displacement” (Smith, 2017, p. 214). Broadly, *Inclusion* is equal pay for equal work, gender neutrality and is not concerned with systemic discrimination. *Reversal* is more closely aligned to pay equity concepts of equal remuneration for work of equal or similar value. *Displacement* does not utilise gender comparisons and recognises “the confluence of gender with a number of other factors.” (Smith, 2017, p. 239). These typologies allow us to situate the outcomes of this litigation strategy in the context of international institutional frameworks.

Findings

Initial outcomes suggest that a confluence of factors, including the development and advocacy of social movements, political impasse in achieving legislative change and conscious union policy in seeking new mechanisms to alter institutional frameworks all contributed to the successful result. Analysis of our data will be further advanced before the end of May.