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# Achieving pay equity: Strategic mobilization for substantive equality in Aotearoa New Zealand

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In an unprecedented move the New Zealand Government in 2017 announced a \$2 billion pay equity settlement for 55,000 healthcare workers in aged and disability residential care and home and community support services. The settlement reversed the Government's previous austerity stance that pay equity for carers was too expensive, and that pay parity in the sector was out of the question. The political concession followed five years of intensive equal pay feminist activism. While pay equity settlements overseas have generally used either legal opportunity structures or government intervention, this article argues it was the combination of complementary and intersecting elements of mobilization that led to the negotiated settlement. These elements include a statutory human rights inquiry; legal opportunity; civil society coalition building; increased women's voice; and a government-led negotiated settlement. The novel theoretical contribution of this article is its empirical support for the concept of substantive equality.

## KEYWORDS

legal opportunity, mobilization, pay equity, substantive equality, women's voice

## 1 | INTRODUCTION

Pay equity is a key measure of women's progress internationally and a priority in some countries for state action on gender equality (Charlesworth & MacDonald, 2015; Fuchs, 2013; McGregor, 2014). An area where women's economic progress lags is in the field of care work. Much recent equal pay research has explored the systemic labour market undervaluation of care work resulting from structural conditions and gendered norms (England, 2005; Grimshaw & Rubery, 2007; Hill, 2013; Hyman, 2017). Care work internationally is low paid (New Zealand Human Rights Commission [NZHRC], 2012; Palmer & Eveline, 2012), predominantly feminized (Ravenswood & Harris, 2016) and constitutes women's bodywork, closely tied to the needs of the body (Twigg, 2000).

While NZ's overall gender pay gap at 9.4 per cent is at the positive end of OECD (Organisation for Economic Co-operation and Development) international comparisons (Statistics NZ, 2017), it disguises considerable difference by ethnicity and age, with Māori and Pacific women particularly disadvantaged. A large number of the lowest paid Māori, Pacific and migrant women comprise the carer workforce in NZ (NZHRC, 2012). Hill (2013) states that NZ equal pay legislation has not yet achieved one of its stated purposes: preventing discriminatory pay for work typically performed by women.

The article analyses the complementary and intersecting elements of mobilization that led to the historic negotiated pay equity settlement between employers, unions and the Government for care workers in 2017. The outcome represented a significant and dramatic political concession on gendered pay. After an introduction, there are sections on theoretical framework, methods and background, which includes the human rights inquiry. The article then discusses the pay equity case itself and examines each of the elements that were essential to achieving the pay equity settlement: legal opportunity; civil society coalition building; women's voice; and government intervention. Civil society coalition building and women's voice in particular provide rewarding insights into pay equity mobilization. The discussion section suggests that explanations of strategy choice in progressing equal pay need to accommodate broader considerations than access and resources, important as these are. The article uses empirical data to affirm support for the utility of the concept of substantive equality (Fredman, 2011) in analysing the progress of pay equity.

## 2 | SUBSTANTIVE EQUALITY: A THEORETICAL FRAMEWORK

Formal equality is the idea that everyone be treated alike. In respect to pay, formal equality means receiving the same pay for the same work. The problem with formal equality, though, is that women working in low-paid jobs are receiving low pay precisely because the job is undervalued. The idea of substantive equality is useful in thinking about the gender pay gap. Substantive equality acknowledges that certain policies and practices may appear non-discriminatory but in reality they are reinforcing difference. The idea of redressing disadvantage through a proper valuing of women's work is central to achieving substantive equality and particularly appropriate in the care sector.

One of the most influential proponents of the concept of substantive equality and how it can be operationalized is Sandra Fredman (2011). To achieve substantive equality she proposes a four-dimensional approach including redressing disadvantage; addressing stigma, stereotyping, prejudice and violence; enhancing voice and participation; and accommodating difference and achieving structural change. The first dimension of substantive equality relates to remedying disadvantage, which may have a redistributive element, rather than achieving gender neutrality. The paid workforce is a specifically gendered context and the lack of pay equity is a direct expression of workplace discrimination in terms of status, pay and representation. The second dimension of substantive equality relates to stereotyping and stigma or what Nancy Fraser (2003) has called 'recognition' wrongs, which consist of inequality in the mutual respect and concern that people feel for one another in society. The traditional stereotype of aged care work is that it is undervalued 'women's work' undertaken by low-skilled and marginalized workers. The third dimension of substantive equality entails a recognition of ways structures of society entrench women's disadvantage (Fredman, 2011; Fredman & Goldblatt, 2015). Aged care has been traditionally located at the blurred interface of the public and private sphere (Martin-Matthews & Phillips, 2008), reinforcing the idea of no, or low, monetized women's work.

The participative and fourth dimension of substantive equality has specific application in this article because it attaches importance to women's agency and voice. Empirical data shows that increased women's voice was critical to pay equity mobilization in NZ. Not only is the participative dimension better fulfilled when the least vocal are heard, but substantive equality requires decision-makers to hear and respond to the voices of women (Fredman & Goldblatt, 2015). A previously invisible group of women workers, aged carers, began to speak up on low pay both individually and collectively in the NZ context. This women's agency reverberated in the news media and influenced public discourse about the need for political will and new policy on pay equity.

The article addresses the interplay between the four dimensions of substantive equality in the fight over carers' pay. It builds on studies such as those focused on the British Equal Pay Act that suggest the path to pay equity is not a straightforward story of one form of regulation substituting for another (Deakin, Butlin, McLaughlin, & Polanska, 2015). The analysis also provides support for the idea that political commitment rather than just a reliance on technical solutions will achieve redistribution to minimize gender pay inequity (Rubery & Grimshaw, 2015). The article also contributes to the growing scholarly and activist body of work around the choice of strategies by actors mobilizing on equal pay issues.

### 3 | METHODS

Data for this article were collected in two ways. First, a socio-legal textual analysis was made of a variety of documents concerning pay equity between 1972 and 2017. These documents included material from government agencies, political speeches and press releases, academic literature, submissions from non-governmental organizations (NGOs) to a variety of inquiries and investigations into equal pay, and case law analysis from both the employment court and NZ's higher courts as the pay equity case by carers unfolded between 2013 and 2017. One of the most valuable textual sources was the NZHRC's (2012) *Caring Counts: Report of the Inquiry into the Aged Care Workforce*, which was the catalyst for the union-led court action and pivotal in prompting change.

The second source of data comes from a series of focus group discussions and interviews held with a total of 36 women and four men working in the care industry. These focus groups were conducted in 2014 and 2015. The call for participants was made through the Service and Food Workers' Union (now E Tu) and four focus groups, varying between 8 and 11 participants in each, were held in two major NZ cities, Auckland and Hamilton. Questions related to work roles, work experiences and perceptions of pay. Care workers were asked directly about their hourly rate which provoked heated discussion about equal pay and pay equity. All interviews were recorded and transcribed. Data was analysed using a descriptive content analysis, which enabled the development of codes and creation of categories of shared meaning. The data were collected against differing understandings by participants of the equal pay story in NZ which is important to put into context because it illuminates the historical choices made about strategy and the application of elements of substantive equality.

### 4 | BACKGROUND

NZ's Equal Pay Act 1972 had its genesis in a 1971 Commission of Inquiry that noted while around 25 per cent of the public sector workforce had been covered by government public sector legislation since 1960, there was no legal requirement for equal pay in the private sector (Commission of Inquiry into Equal Pay, 1971). In contrast to the public sector, the private sector was highly centralized and reliant on compulsory conciliated bargaining for blanket coverage awards that set minimum terms and conditions of employment (Foster & McAndrew, 2003). Prior to the Equal Pay Act 1972, then, awards often expressly provided separate rates for female and male workers (Commission of Inquiry into Equal Pay, 1971). Five years after the introduction of the Equal Pay Act 1972, separate rates in awards and other types of employment agreements had been largely eliminated and the ratio of female to male hourly earnings had closed to 78.5 per cent. However, a Minister of Labour appointed review committee in 1979 noted that despite progress, the equal pay rate for work traditionally undertaken by women was too low to attract males and therefore remained women's work at a female rate. The review recommended further analysis to determine if sex discrimination still prevailed in predominantly female occupations, which was not undertaken (Ministry of Labour, 1979).

In the following years, the gender wage gap persisted and only one case was taken under the Equal Pay Act 1972. In 1986, the Arbitration Court rejected this case that tested both the applicability of the legislation and whether it covered pay equity, while noting the Act was still alive (Arbitration Court, 1986; *New Zealand Clerical*

*Administration IAOW v. Farmers Trading Company Ltd ACJ*, 1986). The decision has been criticized (Hill, 1993) because the Court did not interpret the criteria for work exclusively or predominantly performed by female employees or compare female clerical work pay with pay for predominantly male occupations as requested by the union. The failure of the case dampened the appetite for legal strategies on equal pay.

It was largely left to female unionists and women's civil society groups to raise the profile of pay equity during this time (Wilson, 1992). A Labour-led Parliament responded by enacting the Employment Equity Act (1990) which included pay equity, equal pay and equal opportunity provisions. However, within three months of its introduction the legislation was repealed by an incoming National-led government (Wilson, 1993).

During this period, NZ swiftly and emphatically embraced labour market de-regulation (Kelsey, 2015), enacting the Employment Contracts Act 1991. This Act radically altered wage fixing structures, decimated union membership and particularly disadvantaged women (New Zealand Council of Trade Unions, 2013). While the Employment Contracts Act was eventually replaced by legislation which placed more emphasis on collective bargaining, the award system was not restored and a culture of individualism in employment relationships is currently prevalent in NZ. In 2009, the Government also dismantled equal pay mechanisms and discontinued public service pay equity reviews by closing the Pay and Employment Equity Unit in the Department of Labour. This removal was a direct expression of the State's retreat from equal pay interventions (McGregor, Davies, Giddings, & Pringle, 2016).

The withdrawal of State interest in women's economic rights was accompanied by a fracturing of feminism and a demoralized women's movement from the late 1990s. A backlash against women's political power under Helen Clark's Labour-led government (1999–2008) fuelled a climate in which women were inhibited from pressing rights-based claims. More recently, too, austerity rationales have been used to contest equal pay expectations. For instance, in 2013 the Associate Health Minister Jo Goodhew responded that 'we are in tight financial times' in relation to the low pay for carers (Collins, 2013). The Government also habitually sidestepped accountability for pay equity as it related to the use of public funds for contracted-out services in the healthcare sector. For example, in 2014 then Health Minister Jonathan Coleman said:

*The sector already gets a billion dollars a year. It would be great to pay workers more, but at the end of the day providers get to make those decisions about where they allocate their money.* (Radio New Zealand, 2014)

While there has been equal pay legislation for many decades in NZ, progress on women's economic rights has been punctuated by the ebb and flow of political will, different policy initiatives, infrequent and low use of legal strategies, and variable commitment from trade unionists and women's groups.

## 4.1 | The human rights inquiry

Partially in response to the lack of political will, the NZHRC (2012) led a statutory inquiry into employment conditions in the aged care sector. The inquiry was described by the Court of Appeal as the catalyst for litigation to achieve pay equity for care workers (*Terranova Homes & Care Limited v. Service and Food Workers Union Nga Ringa Tota Inc (SFWU)*, 2014). The inquiry stimulated the union-led case in the Employment Court, the Court of Appeal and the Supreme Court between 2013 and 2015 and sparked the reactivation of the Equal Pay Act 1972, which had remained 'largely mute' for over 40 years (*Service and Food Workers Union Nga Ringa Tota Inc (SFWU) v. Terranova Homes and Care Ltd*, 2013).

Conducted under the auspices of the Human Rights Act (HRA) 1993, the inquiry included wide-ranging terms of reference into employment conditions that covered regulatory frameworks, workforce supply, migrant carers, professionalization and training issues. Importantly, the terms of reference required specific investigation of equal pay, pay parity and pay equity of nurses, healthcare assistants and others employed in the aged care sector (NZHRC, 2012). Its primary focus was to identify and redress disadvantage, the first element of substantive equality (Fredman, 2011).

Led by the Equal Employment Opportunities (EEO) Commissioner, the inquiry was framed against relevant international human rights treaties relating to pay, including Article 12 of CEDAW and International Labour Organization instruments. National human rights inquiries are generally regarded exceptional activities to highlight and address systemic human rights issues (McGregor, 2013). As von Doussa (2006) notes, human rights inquiries have been successful in influencing public debate and increasing community understanding about human rights. Additionally, such inquiries influence political responses to anti-discrimination policy.

The deliberate use of carers' stories in the inquiry emphasized the narrative of unfairness and discrimination based on caring being 'women's work'. The use of engaged research methods, such as storytelling, to interrogate a systemic human rights issue captured the lived experience of care workers (McGregor, 2013). Research into these 'lived subjective realities — conducted with empathy and respect, ethical concern and personal accountability — has both legitimacy and academic value' (Mander, 2010, p. 252). *Caring Counts* (NZHRC, 2012), the inquiry report, was unequivocal about the equal pay and pay equity issues uncovered. It said that, 'the fact that thousands of (mainly women) are caring for vulnerable older people for barely the minimum wage is an injustice grounded in historical undervaluation of the role' (p. 60). It concluded that carers were one of the lowest paid groups in NZ despite caring being physically, mentally and emotionally demanding work, and that the low value placed on care work and the consequent low remuneration was 'undoubtedly gendered' because 'care work is predominantly done by women, is seen as women's work and has traditionally been unpaid work' (p. 50). *Caring Counts* addressed the issue of stigma, another element of substantive equality, attached to the value of carer's work by calling for a revaluation of the skills, knowledge and role.

While several reports on the status of carers had been produced previously and largely ignored with restrained media coverage, the *Caring Counts* report prompted saturation media coverage provoking political response and public debate. Media interest was heightened by the EEO Commissioner working undercover as a carer during the inquiry process. Going undercover was partly a response to challenges by leading sector groups representing both providers and workers that decision-makers should directly experience care work and the low pay before they talked about it (McGregor, 2013). The Commissioner's diary of her subterfuge experience controversially described the work as a 'form of modern day slavery' (McGregor, 2013, p. 132). The use of undercover activity, a journalistic strategy, heightened the newsworthiness of the inquiry report. Fuchs (2013) identifies the role of the news media as an influence in legal mobilization and states that mass media coverage will essentially contribute to problem diagnosis and prognosis of equal pay. The inquiry report and the public's response increased receptivity of senior trade unionists for strategic litigation on pay equity involving caregivers. A leading trade unionist said:

*The significance of the Caring Counts report was that it concluded that gender pay inequity in the care and support sector was 'systemic and entrenched', that this was a breach of human rights and that the Government could not absolve itself of responsibility for those breaches by arguing that they were not the employers. (Ryall, 2017)*

*Caring Counts* and the media's reverberation of the unfairness of carers' pay was a significant motivation for legal mobilization on pay equity for care workers given the statutory nature of the inquiry, its references to international and domestic law on discrimination and substantive equality, which could be used in litigation, and its politicization of the public.

## 5 | CASE ANALYSIS

### 5.1 | Legal opportunity

Motivated by the *Caring Counts* report, trade unionists turned back to legal opportunity in 2013. As Hilson (2002) notes, the choice and success of a strategy to combat unequal pay may be influenced by strong or weak political

and legal opportunities. Legal opportunity structures include institutional access to courts, procedural requirements and receptivity (Vanhala, 2009). In the NZ case there was low political will but heightened women's support influencing legal opportunity. Hilson (2002) makes a claim for use of broader terms such as political opportunity and legal opportunity uncoupled from structures. We use this broader understanding of legal opportunity (LO) here.

Writing about the use of the law in strategic mobilization, Fuchs (2013) states that in the field of gender equality most processes initiated by trade unions are brought forward either by individuals or on the behalf of individuals. The carers' pay equity litigation in NZ was indeed in the name of a major trade union, the Service and Food Workers Union, as the plaintiff on behalf of an individually named carer, Kristine Bartlett.

The use of LO is facilitated by having independent institutions in the background that can launch investigations on their own (Fuchs, 2013), as was the case with the Human Rights Commission's inquiry. These two factors – the inquiry and LO – worked together to facilitate mobilization on pay. Vanhala (2009) points out that a single focus on LO to examine strategic mobilization has limitations. Like Hilson (2002), Vanhala suggests that existing theoretical explanations may be insufficient to explain why some organizations successfully turn to the courts and others do not. Identity politics frameworks and framing approaches need to complement existing explanations about strategy choice. For instance, groups are more likely to adopt a litigation strategy when their framing processes define the membership primarily as rights holders and the courts as an appropriate venue within which to pursue policy (Vanhala, 2009). Analysis of trade union decision-making about litigation should also usefully scrutinize timing and 'why now'. The NZ case reveals a dynamism about strategy choice with various elements of LO intersecting with renewed trade union interest, a human rights inquiry, women's activity and stakeholder agency. While LO is important in redressing discrimination as a primary element of substantive equality (Fredman, 2011), addressing societal stereotypes about carers through the media and the rise of carer voice and agency were also significant. The recognition by trade unions that it was opportune to push again in the courts is similar to equal pay cases in other jurisdictions where individual influential unionists undertook proactive strategies of raising women's consciousness (Guillaume, 2015).

## 5.2 | Pay equity in the courts

In 2013, a senior NZ aged care worker, Kristine Bartlett and her union, the Service and Food Workers Union, brought a pay equity case against her employer, Terranova Homes (*SFWU v. Terranova Homes and Care Ltd*, 2013). It was an important test of NZ law. The only previous rejected test case decades ago was not appealed (Hill, 2013), contributing to the perception that NZ's equal pay legislation did not provide for pay equity. The litigation was about substantive equality of care work, testing whether the law covered the value of women's work and the discriminatory impact of systemic undervaluation.

The economic and social significance of the proactive litigation (Harlow & Rawlings, 1992) attracted a large number of interveners, including the NZHRC, the Council of Trade Unions, several pay equity coalitions, the New Zealand Aged Care Association and Business New Zealand (BusinessNZ) representing the sector and employers generally. The role of the interveners was to assist the Court with further information. Vanhala (2009) notes that submitting intervener briefs is generally a cost- and time-effective way of influencing the Court. The Ministry of Health, the public funder of health care in NZ, declined to participate.

In essence, the claim was that the 106 female caregivers employed by the defendant were being paid a lower rate of pay than would be the case if caregiving was male dominated. It was not disputed that the four male caregivers employed by Terranova also received low pay, between \$13.75 (then the NZ minimum wage) and \$15.00 per hour. The key issue for determination at the preliminary stage was the scope of the requirement for pay equity for female employees for work exclusively or predominantly performed by them, and how compliance with this requirement was to be assessed. This assessment involved considering the scope of section 3 of the Equal Pay Act (*SFWU v. Terranova Homes and Care Ltd*, 2013, para. 7). The Court asked what approach was required by section



3(1)(b) in determining whether there was an element of differentiation in the rate of remuneration paid to a female employee for her work based on her sex.

The union argued that the fact Terranova paid its four male caregivers the same as female caregivers was not a complete defence because it did not meet criteria for work performed predominantly by women. They also argued that statutory interpretation of the Equal Pay Act should be based on the text and purpose of the legislation. Interpretation should be consistent with domestic human rights law and international human rights treaties ratified by NZ.

In response, the employer urged the Court to adopt a narrow approach and said that the appropriate comparator must be identified within the workplace itself having regard to the rate paid to others in the workplace taking into account the skills, responsibilities and effort required for those roles. An assessment then needed to be made to ensure applicable pay rates were not influenced by the fact that the work was exclusively or predominantly performed by women. The employer argued that the four male caregivers provided a useful point of reference and then submitted that the rate of remuneration paid to a male gardener within the workplace might be relevant to determining whether an unlawful element of differentiation existed (*SFWU v. Terranova Homes and Care Ltd*, 2013, para. 18). The Court was dismissive of gardeners as an appropriate comparator and said:

*First, it is unclear to us how a gardener can be said to have the same or substantially similar skills, responsibility, and service as the plaintiff female employees of the defendant. In any event, and somewhat ironically, it appears that gardeners (who tend to be male) are generally remunerated at a higher rate (around \$15.65 per hour) than the plaintiff employees. (SFWU v. Terranova Homes and Care Ltd, 2013, para. 20)*

It is noteworthy that the submission from BusinessNZ, a powerful pro-employer lobby group, was far more extreme than that of Terranova, the aged care employer concerned. Hyman (2017) notes BusinessNZ was completely hostile to the case, emphasizing market primacy and claiming that a 'Pandora's box' would be opened if the pay equity case succeeded. Such interventionism was contrary to the current employment relations landscape.

The Employment Court rejected the employers' positions. It said that section 3(1)(b) required that equal pay for women for work predominantly or exclusively performed by women was to be determined by what men would be paid to do the same work abstracting from skills, responsibility, conditions and degrees of effort as well as from any systemic undervaluation of the work derived from current, historical or structural gender discrimination. It was not a complete defence to the claim that four men were also paid depressed rates of pay. The Court said it was entitled to have regard to wider comparators and males paid in other industries if other employees of the same employer or similar enterprises were an inappropriate comparator group (*SFWU v. Terranova Homes and Care Ltd*, 2013, para. 118). In doing so, the Court referred to objections to pay equity on fiscal grounds stating that history was redolent with examples of strongly voiced opposition to anti-discrimination initiatives on the basis that they spelt financial and social ruin, which had eventually been accepted as the short-term price of a longer-term social good: 'The abolition of slavery is an old example, and the prohibition on discrimination in employment based on sex is both a recent and particularly apposite example' (*SFWU v. Terranova Homes and Care Ltd*, 2013, para. 110).

Hill (2013) states that the Employment Court's judgment was a clear and strong ruling that claims for equal pay for work of equal value could indeed be made under the Equal Pay Act. The judgment also allowed women and men to make comparisons with men's job tasks and pay rates in other occupations and industries. This judgment left the way open for Kristine Bartlett and her union to move to the next stage of evaluating the job and negotiating comparators. However, the employer appealed.

The Court of Appeal dismissed the appeal and stated that their decision was driven by the language and purpose of the Equal Pay Act 1972 (*Terranova Homes and Care Ltd v. SFWU*, 2014). The Court of Appeal said the purpose of the Act was to remove sex-based discrimination in the rates of remuneration of males and females in paid employment. The definition of equal pay was a rate where there is 'no element' of sex differentiation. This phrase made it difficult to argue, as the employers had done, that Parliament did not intend the Act's purpose to be implemented to the fullest extent possible.

The Court of Appeal also said that once it was accepted that Parliament intended the inquiry to extend beyond the particular workplace and employer 'it is very difficult to justify excluding evidence of male rates in other sectors' (Terranova Homes and Care Ltd v. SFWU, 2014, para. 110). Despite the Court of Appeal suggesting that the best way forward would be for the Employment Court to be asked to state principles under section 9 before embarking on the hearing of Bartlett's substantive claim, the employer appealed to the Supreme Court. NZ's highest court then dismissed the application for leave to appeal.

While litigation took four years, the eventual victory for Kristine Bartlett and her union through eventual government intervention in 2017 was decisive. In a snowball effect numerous additional legal claims on behalf of other care workers, education support workers, other public service employees and education support workers were filed as unions leveraged LO to redress women's disadvantage. But LO did not occur in isolation from other factors in strategic mobilization on progressing pay equity. It both stimulated and was engendered by rising interest from women, individually and collectively, in the injustice of the gender pay gap. This interest was evident in the re-vitalization of women's groups focused on equal pay as an area of discontent about substantive equality.

### 5.3 | Civil society coalition building

The backlash and resistance to gender equality, and the abandonment of equal pay mechanisms in NZ, highlighted pre-existing feminist grievances. As Buechler (1993) states, grievances can be at least as important as access to resources in explaining the emergence of social movements. The gender pay gap had been a long-standing systemic grievance for all women in NZ but activism had been intermittent. In 2010, the UN Committee on the Elimination of Discrimination Against Women made explicit and relatively directive recommendations to NZ about addressing the gender pay gap after NZ presented its seventh periodic report on the status of women. The Committee recommended new legislation in line with Article 11 of CEDAW: specific measures and time frames to redress inequalities in different sectors; policies to eliminate occupational segregation including the use of temporary special measures; and the establishment of a monitoring institution to replace the Pay and Employment Equity Unit closed by the Government (Committee on the Elimination of Discrimination Against Women, 2012).

The prescriptive nature of the recommendations was a catalyst for the women's movement to regroup around pre-existing grievances. A coalition of 22 women's organizations was formed which represented a wide variety of interests from the union movement, Pacific and Māori women, faith-based groups, migrant and ethnic women, and Violence Against Women groups, in addition to the traditional NGOs such as the National Council of Women, New Zealand Federation of Business and Professional Women and the Federation of Graduate Women.

The CEDAW Coalition of NGOs, as it was called, said that one of the motivations for its formation included:

*growing frustration at the pace of implementation of treaty body recommendations, specifically CEDAW, in relation to women's rights and a perceived slippage of both political will and accountability of successive New Zealand governments to issues such as equal pay ...*

The CEDAW Coalition became the Pay Equity Coalition (Auckland) in 2014, keeping many of the same members and with heightened involvement by trade unionists.

There were several unique features of the coalition-building process. First, the coalition's formation transcended rivalries between several 'heavy hitter' women's groups about which civil society organization 'spoke' for women. An uncomfortable contest between an Auckland NGO and a nationwide women's organization about representation was defused within a coalition structure. The coalition's rationale was cooperative not competitive and it engaged in the deliberative development of solutions to the problem of equal pay. The important feature in the coalition's deliberation was that participants found reasons they could accept collective actions, even if they did not completely endorse the action (cf. Fung & Wright, 2001).

Second, the use of the Internet for collective action increased both the speed of deliberation and interactivity. To ask representatives of 22 women's groups to regularly meet face-to-face demands organizational resources, time,



travel and meeting spaces. Internet-based communication about equal pay and pay equity arguments became the norm for coalition members with the electronic circulation of policy positions, minutes, press releases and submissions for revision, addition, endorsement and sign-off. Women's efficacy in utilizing the Internet enhanced coalition building and improved communication. Reliance on the Internet is a characteristic of the contemporary feminist movement as it seeks to accommodate distance and diversity of purpose. Indeed, civil society coalition building reinforces scholarship about the Internet's potential for women's empowerment (Loiseau & Nowacka, 2015). Coalition building enhanced by the Internet is now a pronounced feature of equal pay activism in NZ. Seven regional hubs have been established with an eighth in development (New Zealand Council of Trade Unions, 2017).

Women's collective agency, such as that developed in NZ, explicitly addresses the participative dimension of Fredman's (2011) concept of substantive equality. It also heightened the receptivity of union-led litigation as a strategy choice. The decision by the SFWU to put resources and energy into a pay equity case can be credited also to the influence of several men such as the union's national secretary who was a long-time equal pay campaigner and the union's legal counsel. This support endorses research demonstrating the crucial role played by individual trade unionists in the development of equal pay litigation in other jurisdictions (Guillaume, 2015).

## 5.4 | Women's voice

Collective participation by women was enhanced by a singular feature of the pay equity settlement in NZ – the rise of the carer's voice, a previously invisible feature in strategic mobilization around equal pay. Women's voice has been identified as an important dimension of achieving equity (Fredman & Goldblatt, 2015). The contribution of women's voice as individuals acting autonomously within women's civil society organizations in the fight for equal pay has not been researched as exhaustively as the impact of other actors such as trade unions, employers and public state agencies (Guillaume, 2015).

The traditional low visibility of care workers in policy discourse was in part a consequence of their casualization, marginalization, lack of regulation as a workforce and their relatively low rates of unionization (Wild, Szczepura, & Nelson, 2010). NZ care workers also lacked role models or public champions to promote their fight for higher pay and better working conditions, until Kristine Bartlett became the face of the case. Moreover, rural carers work in isolation, travelling long distances between clients living at home, while those who work in privately operated residential facilities often do so in geographically separate institutional settings (McGregor, 2013). It was difficult for carers to meet and work together on achieving pay equity. Moreover, many women felt they did not deserve more. For instance, a common refrain during the NZHRC inquiry was the sentiment 'I'm just a carer' as if their voice was devalued because of their perceived status (NZHRC, 2012). Also, there was a near universally expressed scepticism by carers that their voices would be regarded as credible.

A number of factors combined to enable women's voices to be heard. First, the *Caring Counts* report, which used stories and direct quotes, encouraged and politicized carers to advocate on their own behalf rather than rely on expert, other voices talking for them. This encouragement of women to speak was formalized by a series of *Caring Counts* stakeholder summits held in 2012 and 2014 to build consensus and develop cooperative working relationships between employer, union and civil society sector representatives, despite the ongoing pay equity court cases. Organized by the NZHRC, the summits broke with the tradition of non-communication, deep-rooted antagonism and division between employers and unions. The process of dialogue laid the foundation for the possibility of the eventual negotiated settlement.

Second, the union promoted women's voice. The carer involved in litigation, Kristine Bartlett, had little previous experience of media exposure. However, with union encouragement she demonstrated an astute and intuitive understanding that personalizing her story as a senior caregiver with over 20 years of experience, living on the minimum wage despite her skills and experience, was a way that the public through the media could readily understand the abstraction of undervalued women's work and pay equity. As litigation proceeded, storytelling by Kristine Bartlett and others also helped build increased solidarity between carers and other stakeholders such as the age lobby, Grey

Power, as well as older people in care. Union membership also benefitted from this higher profile with a further 2000 carers joining the SFUW by 2017.

Third, as part of the research for this article, the focus groups, outlined in the methods section, provided women with a sense of empowerment to tell their story. The carers spoke of their battles for recognition, decent pay and conditions and the need for greater societal respect for the job they undertook. They described negative public attitudes, increasing job 'creep' and acuity with a growing number of older people requiring care, their own ageing as a workforce and the gendered implications of their work. They also spoke of autonomous and personal development as agents in redressing grievances about low pay. Two quotes demonstrate different points about the taking of a public voice by previously unheard female workers. An older Pacific caregiver spoke of her own need to 'speak up':

*The reason why management does this (poor pay) to caregivers as staff is because caregivers don't speak up. It's our fault for not speaking up. I fight with management for what I can, and what happens is occasionally another caregiver will support me about pay. Management says to those who raise the pay issue, okay, we'll pay you for two days. But others who haven't raised it won't get it. But we caregivers don't really have unity, the unity is not there ...*

Another younger NZ-European woman working for a faith-based organization had attended public meetings held by her union and had spoken up about the need for employers to pay caregivers a Living Wage, a union and community-based campaign that coincided with revival of interest in equal pay in NZ. She described her own growing politicization:

*I've spoken about this with my partner, quite a lot. Right now I see myself being committed to the cause of helping caregivers and being a leader in that way, because I don't see a lot of caregivers actually having a voice or being as confident as what I am right now.... I'm committed to the cause and I'm committed to getting caregivers equal rights and equal pay.*

Whether the rise of the public voices of carers and their increasing use by the media in its coverage of the pay battle of carers represents what Mander (2010) calls a 'democratization of knowledge' requires more analysis. However, there is clear evidence that the carers' use of voice and storytelling in media coverage, union advocacy and public spaces, moved them from 'victims' to 'victim/actors' in closing the gender pay gap. They became their own agents of change and have increased capability in articulating and politicizing their perspectives on women's economic rights. This rise in voice explicitly addresses Fredman's (2011) participative dimension of substantive equality.

The combination of four complementary and intersecting factors outlined above — a human rights inquiry as a catalyst; use of the courts as a strategic choice; civil society coalition building; and women's voice that engaged media and public discourse in favour of pay equity — provided enough momentum to force the Government to begin negotiations.

## 5.5 | Government intervention

The Government began a process of negotiated settlement in 2015 by establishing a Joint Working Group (JWG) on Pay Equity Principles comprising trade unions, employers and the State which agreed to work to a tight time frame and place further court proceedings on hold. In parallel, Cabinet agreed to a negotiation process to address care and support workers' pay. The JWG's proposals revolved around the criteria for raising a pay equity claim, the rules and principles for pay equity bargaining, and the dispute resolutions process envisaged (Office of the Minister of State Services, 2017). The Cabinet then reported that the JWG was unable to reach agreement on comparators in terms of industry or sectoral proximity to the employees in the pay equity claim and that the issue remained outstanding.

After 18 months of negotiation, the pay equity deal was announced by the Government in April 2017. The Minister of Health revealed that the predominately female workforce in aged and disability residential care, and home

and community support services, would receive pay rises between about 15 and 50 per cent depending on their qualifications and experience over a five-year period. The Minister also noted that:

Home and community support, disability and aged residential care workers are widely seen as amongst the most deserving of recognition as a pay equity case. It is a historic moment for the Government to address this undervaluing ... (Coleman, 2017)

Empowering legislation for the settlement, the Care and Support Workers (Pay Equity) Settlement Act 2017, was passed by Parliament in June 2017. The Prime Minister Bill English indicated that its timing, prior to a national election, had been possible now the Government was in financial surplus (Trevett, 2017). The negotiated settlement represented a dramatic shift in the Government's previous austerity-based position on addressing the gender pay gap. But political commentary suggested that the National government, the party of employers, wanted to ensure the pre-eminence of parliamentary sovereignty and could not risk further judicial decision-making. Letting the courts determine the final law on such an important issue would have been an 'abrogation of a Government's responsibility' and that legislating to override the union's moral victory would have looked immoral (Young, 2017a).

The Government arrived at a negotiated settlement largely because it did not want to yield to the courts with political will trumping LO at this point. The settlement's proximity to a national election six months away from the announcement was also significant. The National government was at pains to demonstrate a more caring image (Young, 2017b) in order to appeal to an intersection of communities associated with aged care including female carers and their families, women voters and older people, a significant and traditional voting demographic. The JWG principles were used to develop new equal pay and pay equity legislation, the Employment (Pay Equity and Equal Pay) Bill. Due to a narrow definition of comparators, the proposed legislation has become a new site of contest for trade unions and equal pay campaigners. However, the actions of the Government in negotiating a settlement signalled some success for a social movement made up of various constituencies working for pay equity and substantive equality in NZ. The timing of strategic choices such as the human rights inquiry and LO and the degree each leveraged off each other is instructive in analysing how to progress equal pay. But history and scholarship require that optimism about progressing equal pay should be tempered.

## 6 | DISCUSSION

Mobilization of the women's movement on equal pay in NZ has waxed and waned since the Equal Pay Act 1972. That it has taken so long to establish the broad scope of the legislation is proof of Rubery and Grimshaw's (2015) concept of pay equity as constantly moving goalposts. Following the legislative repeal of pay equity legislation and the dismantling of mechanisms such as the Pay and Employment Equity Unit, progress on pay equity faltered and regressed. National contexts differ considerably but NZ lacks equality legislation (Hepple, 2014) and after early union failure with the Equal Pay Act 1972, it relied on the limited anti-discrimination framework of the HRA 1993. Like Australia, the HRA has been rarely used for equal pay or pay equity complaints (Charlesworth & MacDonald, 2015). NZ had no recent history of mass equal pay litigation, unlike the UK (Fredman, 2011).

While the negotiated settlements were in the shadow of the law, the National government had previously repealed pay equity legislation when it was deemed inconvenient to dominant market ideology. Whether there would have been such a generous negotiated settlement without the impetus of a looming election in September 2017 is a moot point. The unions, women's civil society, as well as those directly concerned like Kristine Bartlett initially welcomed the carer's settlement and the Government's role in it (Ryall, 2017). But the difficulties in securing long-term progress in other sectors should not be underestimated. The pay equity goalposts have already shifted. Political commitment may be brief. In 2017, former Prime Minister Bill English warned that it would be difficult for other groups to achieve similar settlements. He said he expected some other sectors to lodge similar pay equity claims but, 'the hurdles will be pretty high. This is a fairly unique set of circumstances. It's not readily or easily applicable outside of

government' (Trevett, 2017). Mental health support workers, excluded from the settlement, subsequently lodged a pay equity claim with the Employment Relations Authority (Jones, 2017). Former Health minister Jonathan Coleman said the parties to the carers' settlement agreed it will not be used as a precedent for other occupational groups so the unions will be forced to continue to use the courts as leverage. Education support workers and school support staff, such as teacher aides and social workers, have cases in the pipeline (New Zealand Council of Trade Unions, 2017).

This article utilized the multidimensional framework of substantive equality to analyse a unique pay equity settlement. In exploring how pay equity was achieved for care workers in NZ it makes two important and novel contributions to knowledge. First, it contributes to empirical data by unpacking the strategic choices made in mobilizing on achieving pay equity, arguing that it was a complex social movement approach comprising overlapping social, legal and organizational elements. These elements included a human rights inquiry; legal opportunity; civil society coalition building; women's voice; and finally, government intervention. Second, the article provides empirical data on the utility of operationalizing the multifaceted theoretical approach of substantive equality (Fredman, 2011). The dimensions of substantive equality addressed were redressing disadvantage through court action; addressing stigma and stereotyping through the media's attention to the human rights inquiry; enhancing voice and participation of women both collectively through civil society coalitions and individual carer's voice; and accommodating difference and achieving structural change, largely through a negotiated settlement.

In conclusion, gains associated with a human rights inquiry, litigation, negotiated settlement, and renewed if tenuous political commitment, as well as the autonomous behaviour of women themselves as carers and as civil society actors, should be celebrated. But NZ's equal pay history is a cautionary tale. As others note, closing the gender pay gap 'will not be easy, will require a collective effort of various actors, and will not be quick' (O'Reilly, Smith, Deakin, & Burchell, 2015, p. 314). In addition to collective effort driving equal pay activism, closing the pay gap will require sustained and determined political will. As Palmer and Eveline (2012) note, the payment of care is critically dependent on political will. In its absence other female workforces will utilize strategic litigation to mobilize activism. The prospect of further legal mobilization could also depend on whether new equal pay litigation has a broad or a narrow scope. Other determinative factors include the role of the media, whether the women's movement sustains its activism, and whether the national human rights institution continues to proactively promote women's economic and social rights.

Analysing the messy, iterative, ebb and flow nature of social movements such as NZ's pay equity struggle challenges the reductive, categorizing and often ahistorical limitations of traditional scholarship approaches. The article shows that research into equal pay mobilization would benefit from a greater integration of theoretical perspectives about substantive equality and its application in practice. In particular, the role of women themselves as intermediaries and actors, in addition to the role of lawyers, agencies, the media and state parties, warrants greater scrutiny in equal pay research.

## DECLARATION OF CONFLICTING INTEREST

The authors declared no potential conflicts of interest with respect to the authorship and/or publication of this article.

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