'Approve to Decline': A feminist critique of 'Fairness' and 'Discrimination' in a case study of EEO in the New Zealand Public Sector

RACHEL SIMON-KUMAR

Abstract

The present paper aims to look at the contexts of meanings that surround Equal Employment Opportunities (EEO) in practice, particularly for issues of gender justice. At the heart of the paper is a critical appraisal of one EEO event; an example drawn from the New Zealand public sector where claims to 'gender disadvantage' is made by an employee and responded to by the agency to which the claim is made. The event is representative of an instance where all parties are equally claiming the need to further EEO and fairness. By deconstructing the language and context of EEO in practice, the paper argues the point that EEO policy is not implemented in discursively uncontested contexts. At a substantive level, the paper builds on feminist theoretical perspectives of social justice, and questions if the contemporary frameworks of meaning in the public sector can support transformations of relationships of disadvantage. More pertinently, it asks if the "removal of unfair disadvantage", on which EEO strategies are based, constitutes the promotion of social and gender justice.

Introduction

Equal Employment Opportunity (EEO) policies are mandated in organisations as a means to introduce justice for workers of socially marginalised groups by removing 'unfair' disadvantage in the workplace.[1] Gender, ethnicity, race, colour, sexual orientation and disability are the common axes of marginalisation and form the basis for identifying target EEO groups. In New Zealand, EEO policies are mandatory in central and local government, but are adopted voluntarily by the private sector. By and large, progress towards fairness for EEO groups are recorded in terms of tangible outcomes – the conventional set of outcomes tend to be, among others, numerical representation in the organisation particularly in higher managerial positions, and pay parities. Fairness is at times gauged in terms of perceptions of employees about feeling valued. Although not strictly EEO strategies, the availability of allowances such as various types of leave and adaptable work arrangements – commonly called work-life balance initiatives – are seen as part of a suite of supportive policies that help disadvantaged groups of workers (particularly, women).

Academic scholarship in the past decade and recent accountability documents in the New Zealand context indicate that despite the presence of EEO policies in the various sectors since the mid-1980s, the actual realisation of EEO outcomes have been limited.[2] There has been some progress for *some* of the target EEO groups (mostly women) but these have not been realised in all work sectors. Even in the public service, where since 1997, there have been stronger practices aimed at integrating EEO into organisational cultures, a recent States Services Commission review noted that there was 'unevenness across departments in relation to progress'.[3] The attempt to understand the low spread of EEO practices has drawn attention, not so much

to the availability or lack of EEO strategies and initiatives, but rather to the contexts in which they are being implemented. At one level, context reflects the organisational structures, norms and practices that encourage these strategies. For example, central government reviews point to the lack of understanding by organisations about the benefits underpinning diversity in the public service, the failure of leadership to assume responsibility and the need for a rights-based context that empowers employees to access these initiatives.[4] Mintrom and True note the need for organisational commitment as a requisite if EEO practices are to be more successfully implemented.[5]

There is, however, another level at which 'contexts' determine the outcomes in EEO practices. Increasingly, critique points to the context of competing discourses that shape the meanings of unfairness and disadvantage within workplaces; these have strong implications for the language of social justice embodied in EEO policy. In New Zealand, the emergent language of managerialism and its correlate practice of diversity management – derived from new public management discourses – are seen as dominant challenges to defining how employees and employers understand claims to rights under EEO processes.[6] There is, as Brooks et al. (2000: 18) suggest, a 'collision between democratic values of EEO and the elitist values of managerialism'[7] – a contestation that has bearing on what constitutes social justice and disadvantage for particular groups.

What are the meanings that inform the public sector's interpretation of 'fairness', 'equity' and 'justice', and in what ways are they influential? The present paper looks at the contexts of meanings that surround EEO in practice, particularly for issues of gender justice. At the heart of the paper is a critical appraisal of one EEO event – an example drawn from the New Zealand public sector where a claim to 'gender disadvantage' is made by an employee and responded to by the agency to which the claim is made. The event is representative of an instance where all parties equally claim the need to further EEO and fairness. By deconstructing the language and context of EEO in practice, the paper argues the point that EEO policy is not implemented in discursively uncontested contexts. Further, at a substantive level, the paper builds on feminist theoretical perspectives of social justice, and questions if the contemporary frameworks of meaning in the public sector can support transformations of relationships of disadvantage. More pertinently, it asks if the removal of 'unfair disadvantage' constitutes promotion of social and gender justice.

In what follows, the first section examines feminist political theory around justice and fairness, and the problematique of 'special rights' for marginalised groups. Following this, the paper appraises the EEO programme in the New Zealand context, focusing on the perspectives of critical change that it seeks to advance. The next section describes the case under study – it provides an overview of EEO in the agency under review; the particulars of the instance where a claim under EEO was made and the agency's response; and a discourse analysis of the key documents relevant to understanding the frameworks of meanings in this case. This is followed by a discussion that draws together the key arguments and implications of the analysis, bringing together a critique of EEO discourse in contemporary New Zealand public sector. Finally, the paper ends with a set of summarising and concluding remarks.

Feminist Perspectives on Fairness and Justice:

The basis for justice in western liberal democracies in the twentieth century and early twenty-first century draws heavily on notions of redistribution – drawing on the works of Keynesian social welfare, Rawls and his principles of fairness in justice, and Sen's notion of justice as enhancement of capabilities for human functioning. Underlying these propositions are strong

moorings in concepts of equity, and the provisions of positive discriminations (whether it is resource allocations or 'social rights') to achieve conditions of equality among diverse and disadvantaged groups.

Feminist scholarship has both drawn on and critiqued these notions of justice and fairness, arguing that the redistributive approach to social justice masks the distinctive problematique of women in society. Iris Marion Young (1990) identifies two shortcomings of the redistribution approach or what she calls the 'distributive paradigm' – first, this approach tends to focus thinking about social justice 'either on the allocation of material goods such as things, resources, income, and wealth or on the distribution of social positions, especially jobs' rather than the social structure and institutional context that determine distributive patterns.[8] Consequently, it can ignore decision-making power and procedures, institutional rules and relations, and the culture which determines distributive patterns. Second, even when non-material goods are considered, they are not seen as the outcome of deliberative social relations and processes. In this regard, the impact of contextual/cultural 'symbols, images, meanings, habitual comportments, stories' that underpin material disadvantage is often ignored. As Young points out, '[t]he symbolic meanings that people attach to other kinds of people and to action, gestures, or institutions often significantly affect the social standing of persons and their opportunities'.[9] Young's argument shifts the focus of fairness from material redistribution to cultural understandings of redistribution – and what particular contexts admit as disadvantage and redress of disadvantage. For this reason, the starting point for an understanding of social justice should, according to Young, be oppression and domination.[10] Distributive injustices, Young argues, derive from oppression, but all injustices cannot be reduced to distribution. Rather, the role of social structures and relations beyond the immediate distributive unfairness needs to be examined.

Young's argument is echoed in the work of Nancy Fraser.[11] In Fraser's view, there are two kinds of disadvantages in society – those that are issues of redistribution, and those that are issues of recognition. Whilst the former signal material differences, the latter arise despite the lack of any material disadvantage and from differences based on identities. Fraser considers the disadvantages faced by homosexuals as an example. Although homosexuals may not necessarily face material disadvantage, they can be discriminated against on social and cultural grounds. Women in contemporary society, according to Fraser, also, face both the injustices of recognition and redistribution – that of subordinate status in the political economy (which emphasises the redistributive dimension of justice) as well as cultural stigma. These may be experienced independently or as convergent biases. According to Fraser, in contemporary society, group identity rather than class exploitation is emerging as a fundamental injustice. Still, 'redistribution' issues dominate the justice paradigm whereas 'recognition' and the various ways in which group *difference* (be it nationality, ethnicity, race, gender or sexuality) frame disadvantage, is not adequately acknowledged.

The focus on recognition of identity is not without problem. To mark women as women in political debates has advantages but also comes with liabilities. True, at one level, the distinctive focus on women identifies women's issues as distinct from those of men's – and in order to achieve a sense of justice that is distinctive, especially in areas of childbearing, rearing and mothering, difference must be recognised. However, in emphasising women's difference, their claims to equality or being the same as men must therefore be compromised if not abandoned altogether. Equality, therefore, is a contested concept – scholars subscribe to notions of equality as 'same treatment for all' or as the recognition of men's and women's 'differences'. On the one hand, feminist scholars agree that existing notions of equality are biased towards men, and restrict what women can claim as rights or justice. On the other hand, there is no clear resolu-

tion about what it would mean practically to incorporate women's difference into democratic thinking.

It is against this background that Young (1990) cautions against universal notions; universally formulated policies, even those that specify equality as sameness, risk the possibility of being blind to embedded gender, sexuality, and race difference. If the goal of social justice is social equality, Young argues, it is important to move out of the realm of mere distribution of goods – material, economic and even formal political – to the goods or capacities themselves, to ensure that they enhance people's choices. Given that, the only way to erase oppressive structures is to favour what she calls 'group-conscious' policies. For Young, groups are constructed by disadvantage – colour, disability, sexuality – rather than merely by virtue of their embodiment. For instance, blindness can bring together women, men, black, white, homosexual, heterosexual, and so on. She agrees that group conscious policies can reinstate stigma and exclusion – but it can also surface groups from invisibility. Young is in favour of highlighting difference as a group because this will help transform needs and interests from an 'I want' to an 'I am entitled to' position.

Fraser develops the problem of identity and redistribution even further in her explanation of the 'redistribution-recognition' dilemma.[12] She posits that, in principle, in order to remove injustices based on redistribution (such as class exploitative structures), the only means is to eradicate difference, that is, remove the groupings that allow for socio-economic injustices. However, where the basis of disadvantage is cultural oppression, (as, for example, discrimination towards homosexuals) to erase group specificities and identities would be counter productive. It is precisely in reiterating difference that issues of injustice can be debated and, eventually, addressed.

Fraser couples her concepts of redistribution and recognition with two kinds of remedies found in social policy: affirmative action and transformative action. She defines affirmative remedies as those 'aimed at correcting inequitable outcomes of social arrangements without disturbing the underlying framework that generates them'.[13] Transformative remedies are those that correct inequitable outcomes precisely by restructuring the underlying generative framework. According to Fraser, affirmative action for gender addresses redistribution issues such as equality of jobs and education but operates on the 'equality as sameness' principle; it does not really question the deep structures of injustice or the fundamental assumptions about how society is organised and how codes of gender expectations and roles develop. Affirmative action proposes surface level changes; consequently, it can seem to be asking for special privileges. It inadvertently marks disadvantaged groups either as deficient or insatiable. Their stake in affirmative action will be seen as special treatment and undeserved. Thus, an approach aimed at redressing injustices of distribution can end up fuelling backlash against injustices of recognition. On the contrary, transformative action seeks to change both distributive patterns as well as the underlying political-economic structures of disadvantage. In policy form, transformative action would focus on redistributive strategies (such as social-welfare programmes, progressive taxation, and so on) but these would be coupled with democratic decision-making about basic socioeconomic priorities. That is to say, they would focus on challenging underlying structures of disadvantage by recognising difference and destabilising existing identities and relations of marginality. In Fraser's framework, the politics of the economic cannot be analysed outside of the politics of the social and cultural.

To summarise this section the following points are reiterated. Contemporary feminist political theorisations stress the importance of understanding gender injustice as both a socio-economic and cultural issue – and support the view that redress must be at the level of both redistribution and recognition. At the minimum, they call for a justice that goes beyond the

paradigm of material disadvantage alone as the basis for redressing disadvantage. For social policy to successfully address social inequality, identity differences of groups/collectives must be recognised, and their distinctive disadvantages vis-à-vis advantage of other groups must be analysed in context. For a clear purpose to engender fairness, special rights must be claimed – not as a treatment of privilege but as an entitlement of difference.

These theoretical considerations have a direct relevance for the subject at hand. Do EEO policies in New Zealand function in a distributive paradigm? What assumptions of 'equality' do they subscribe to? And importantly, what implications would these have if claims are not grounded solely in a material framework of disadvantage? These are some of the questions that will be looked at below; the next section examines the various perspectives that frame the EEO discourses in the NZ public sector.

Social justice and EEO policies in the NZ public sector

EEO policies are practices aimed at fostering fairness in the workplace. In the New Zealand public sector, the goal of EEO is to create a workplace in which 'everyone is able to participate and compete equitably, to develop to their full potential and be rewarded fairly for this contribution regardless of gender, ethnicity, disability, sexual orientation, age or family circumstances'.[14] EEO is based on social justice and anti-discrimination agendas; underlying the policy, in principle at least, are strong drivers to promote a human rights framework, that is, it inherently pursues a rationale that centres the intrinsic worth of the individual in society.[15]

In addition, there are justifiably other contextually-relevant and pragmatic reasons for organisations to adopt EEO policies. In New Zealand these include: to move along with international human rights legislative framework; to uphold the Treaty of Waitangi; to accommodate social change and diversity in New Zealand; to respond positively to the changing diversity of New Zealand society; to recognise the economic advantages of a diverse workforce for workplace quality; to reduce the risk of action under anti-discrimination and employment legislation; the contribution to national income in raising employment among all groups of working age; and the universal benefits for creating conditions for an enabling, rather than discriminatory or disabling, workforce and society.[16]

EEO discourses in policy have been evolving over time. Both philosophically and in practice, the concept of EEO is not fixed – it is, as Mintrom and True point out, 'a moving target'.[17] When debates of equality were first introduced within employment issues in New Zealand in 1960,[18] legislative changes were focused on pay parity between men and women. Over time, EEO debates have extended to expand the coverage of target groups claiming disadvantage (i.e., moving to encompass Maori and Pacifika groups, and further, an emphasis on new migrant groups).[19] In addition, strategies and expected EEO outcomes have broadened from pay equity to representation and promotions in the workplace to flexibility in work arrangements.[20] In a 2007 report, the State Services Commission states that its goal for the coming year is to reposition equal employment opportunities within the broader context of 'diversity'.[21]

The EEO framework in the public sector is undoubtedly a critical voice within mainstream organisational values and practices. It acknowledges that workplaces are not fair to all and that merit alone is not enough to ensure that individuals perform successfully in organisations. It supports strategies (both positive and negative) in order to achieve equality. EEO policies are, in principle, an empowering set of initiatives in the fight against the disadvantages experienced by individuals of specific collective groups. The EEO framework in the public sector recognises discrimination as being direct (overt), indirect (strategies of 'equality' that have differing implications for advantaged and disadvantaged groups) and structural (or systemic

biases, when an entire network of rules and practices have differential implications for various groups).[22] Despite this, there is ambiguity about how individual's rights and fairness are constituted vis-à-vis organisations.

During the development of EEO policy in New Zealand, there were two strong positions on how social justice should be framed.[23] The first was the liberal model, grounded in classical liberalism. The liberal model was informed by tenets of free and competitive labour markets, and consequently, EEO strategies such as appointments and promotions were based on merit. Fairness, in this model, is based on merit and an individual's ability to display 'meritorious' attributes, the criteria for which are determined by human resource personnel within organisations. A second position for social justice was proposed by a radical model. This model questioned the possibility of defining merit objectively, and pointed out that merit is socially constructed by powerful groups for whom the aim of defining criteria was to be *exclusive* rather than *inclusive*; criteria, therefore, was likely to be neither value-free nor fair. The radical position called for a focus on disadvantaged *groups* as a target category rather than individuals, dismissed fairness based on human resource criteria, and promoted an understanding of disadvantage as an inherent and historical bias. The radical approach saw EEO policy as a tool to politicise disadvantage and favoured positive discrimination as part of government legislation. It was argued that equality within a programme for EEO merely aimed at access to paid employment is insufficient to promote social justice; programmes must also simultaneously address societal gender power-relations.[24]

The current framework for EEO as stated in the State Services Commission's *EEO Policy to 2010: Future Directions of EEO in the New Zealand Public Service* appears to fall within a framework of a liberal approach.[25] The State Services Commission, for instance, states that EEO is based on the application of 'merit principle' which is concerned with 'removing unfair discriminatory practices and building inclusive systems and structures which promote equal opportunities in the workplace'.[26] It further states that affirmative action is only one aspect of its (three-fold) EEO approach. Affirmative action, the Commission emphasises, is not preferential treatment; the goal of EEO strategies is to address barriers to employment opportunities and employment needs such as skills and career aspirations of EEO groups 'so that individuals can compete on equal footing with those from "mainstream" groups'.[27] In other words, the aim of EEO policies is to allow people of disadvantage to enhance efficiencies as *workers*, not to draw light to their particular group disadvantages. Claims for rights are, in this view, largely framed as denial of access and opportunity to be efficient workers, and legitimised within a 'right to be equal' paradigm.

More recently, critiques of EEO in New Zealand have identified another discourse that acts as a mitigating ideological/philosophical framework for interpretations about how justice and fairness are conceptualised. The framework of New Public Management (NPM) became the dominant discourse within the public sector with the reforms of the late 1980s.[28] Widely referred to as 'managerialism' or the 'worldwide movement to upgrade public administration by using management concepts, tools and techniques, many of which were originally developed in business',[29] the NPM ideology emphasises principles of accountability and efficiency, and the need for organisations to create a 'business case' for all activities, including EEO activities. The dominance of managerialism as an ideological framework has particular implications from a gender perspective.[30] Davies and Thomas argue that managerialism promotes particular forms of masculinities; traits such as being rational, calculative, ruthless, hard-nosed and target-oriented are championed along with a positive bias towards 'competitive presenteeism' or being committed to the organisation at the extent of diminishing the private and the personal.[31] Hopton, writing in the context of the British public sector, argues that managerialism replaces

militarism as a paradigm for socially constructed ideals of masculinity. The discourses of managerialism and militarism have commonalities in the ethos of competitiveness, risk taking, and expanding product markets (metaphorically, reflecting territorial conquest and domination), as well as commonalities in language such as 'mission statement', 'strategic planning', 'team briefing' and so on.[32] As managerialism creates the normative standard for organisational practice, Hopton argues, 'they also subtly neutralise some of the political impact of feminism'.[33] Subscribing to a managerial discourse, therefore, serves to create particular interpretations of fairness and discrimination, who can claim them, and what constitutes a claim for rights.

An extension of the NPM/managerial paradigm is the discourse of 'managing diversity'.[34] The discourse of managing diversity emerged in the United States, and has been implemented in the local New Zealand context with some tension given the multiple meanings culture and gender-differentiated groups attribute to the term.[35] Humphries and Grice point to the appeal of the diversity paradigm – it actively recognises 'difference' and, if anything, seeks to employ social difference as leverage for business advantage.[36] For example, women's 'intrinsic' attributes for friendliness and people skills are used in positions that require interactions with the public. However, herein also lies the fallibility of diversity management – difference deployed for business advantage frames it instrumentally. These attributes are being valued and used in order to further organisational goals of competitiveness and individualism. Difference becomes less equated to disadvantage (on the contrary, it does just the opposite!), and in the long run, tends to encourage assimilation into the norms of dominant economic/business organisational paradigms. Jones' interviews with New Zealand public servants and trade unionists found that the concept of diversity was framed in alternative discourses.[37] As in the Humphries and Grice (1995) study, some of the interviewees expressed diversity as a new means of exploitation. However, in addition, there were also positive perceptions of diversity as offering a possibility to express difference, and as a replacement to the politically loaded language of EEO.

This section sought to show the complex frameworks of meaning within which EEO policies are developed and implemented in New Zealand. Far from being a series of strategies applied in an ideological vacuum, EEO policies are being constituted within competing contexts of meanings – each of which has its own understanding of notions of justice and fairness. The following section moves on to the case study analysis; using critical discourse analysis, the case study provides greater insight into how these wider ideological frameworks influence the claims for fair treatment between employer and organisation.

The Case Study[38]

I will now present in some detail the 'case study' that informed the analysis of the context and meanings of EEO; the example is of an exchange between a female employee (the Claimant), on the one hand, a full-time employee in a senior non-managerial position who is also a single parent, and on the other, a public sector agency (the Agency). The exchange concerns a request for flexible working arrangements that will accommodate the employee's particular childcare situation, and the Agency's response, both in the form of official memos. This section will be both descriptive and analytical: the three subsections will successively, (1) describe the EEO policy arrangements in this particular agency, (2) describe the particular request made by the Claimant, and the response of the Agency, and (3) present the results of the critical analysis of the discourses of the memos that contained the request and the response. It is to be noted that for confidentiality purposes, the names of the agency and the claimant will be kept anonymous, as will any information that can identify either party.

a. Key EEO policies in the agency[39]

At the time of the incident in 2006, the Agency was governed by its *EEO Strategy to 2005*. The Agency's Strategy, which was informed by the State Sector's EEO Policy to 2010, identified the following key EEO groups – Maori, Pacific peoples, ethnic minorities, women, people with disabilities, and gays and lesbians – and aimed to focus on a three-fold EEO goal in the workplace:

- To eliminate unfair discrimination
- To increase the representation of EEO groups, and
- To develop an inclusive, respectful and responsive culture.

The *EEO Strategy to 2005* was developed following a State Services Commission review in 1999, which identified that the agency needed to take more positive/affirmative action to recruit Maori and other EEO groups. The agency therefore saw the need to 'build the necessary "stretch" to move [the agency] from its current position where EEO is mainstreamed into the business of [the agency] to a leading edge position where EEO is actively promoted and communicated resulting in more visible and measureable achievements.' The agency identified key areas of focus during the five-year period of the Strategy:

- **Leadership**: where General Managers are fully accountable for delivering EEO outcomes, and EEO is promoted within and outside the agency by modelling its policies and practices;
- **Organisational culture and strategic human resource management**: where the agency provides an inclusive and supportive environment for all EEO groups, develops an agency-wide harassment policy, provides EEO groups with programmes to enhance career development, rewards them for their diverse contributions in a manner that accurately measures and rewards their performance, and that '*staff are provided with the maximum choice of work practice options and other information, and a review of work and family initiatives ensures the work and family policy is being implemented effectively*' (italics added);
- **Employment of EEO groups**: where increase in the representation of Maori and EEO groups across the organisation will be ensured through managerial, policy and service delivery capability;
- **Monitoring and Evaluation**: where systems are capable of gathering robust information and providing measureable outcome and quality reporting on areas such as managers' performance, diversity training, harassment complaints and training, career development, performance management, and work and family initiatives.

In addition to the *EEO Strategy to 2005*, the agency also has a *Work & Family/Whanau Guidelines*. The *Guidelines* are supported by a Message from the Chief Executive who notes that 'the guidelines are based on the belief that people who feel valued, and are able to balance, work, family/whanau responsibilities and outside interests are likely to be more productive workers'. The *Guidelines* recognise that there are various kinds of families and household arrangements (with/without children, one and two-parent families, blended families, etc) with diverse cultures, values, beliefs and actions, economic and employment status, and level of support from families and friends. Consequently, the aim of the *Guidelines* is to support people to balance work and family/whanau responsibilities; furthermore, the agency acknowledges that these responsibilities can be unpredictable, periodic or ongoing.

Several strategies are available under the *Guidelines*: flexible working hours,[40] compressed working hours,[41] part-time work,[42] job-sharing,[43] job split,[44] part-year employment,[45] flexible working locations,[46] and to have children at work for short periods. Further, there are also a range of leave options that support work and family/whanau responsibilities such as, parental leave, dependent care leave,[47] bereavement/tangihanga leave and special purpose leave with or without pay.

The EEO and the *Work & Family/Whanau Guidelines* are positioned as being integral to the work and values of the agency. According to the Chief Executive of the agency, the EEO policy provides the blueprint for 'fair and equitable management practices. They recognise that superb people management needs to be planned for, consciously elected and monitored

…EEO is not seen as an additional thing that we do. In fact, EEO is <u>how</u> we do things around here.'(italics added, underlined word in the original agency documents).

b. The Request and Response

As noted above, the request of the female Claimant was around childcare, given her circumstances of sole parenting. The memo addressed to her manager stated the situation as follows:

The Claimant's Request document:

I am writing to enquire about the possibility of working additional hours in order to accrue time in lieu that may be taken as leave at a later time.

I understand that the current policy [of the Agency] is not to permit staff at my scale to take time-in-lieu. However, I am requesting a reconsideration of [the Agency's] policy given the exceptional circumstances of my personal situation and in keeping with [the Agency] commitment to supporting EEO goals for its staff.

I am a sole parent with custodial arrangement for my daughter where she spends [some months with her father in another country]. It suits me to work some weekends during the time that she is away so that I may be able to take time off to be with her when she is in New Zealand.

The Agency's Response document:

The memo was forwarded by the Claimant's manager to the Human Resources department which responded to the request. The overall decision was conveyed to the Claimant in a copy of a memo sent from the business group manager to the Human Resources Department. The memo gave the Claimant's manager 'approval to decline' the request of the claimant.

The memo highlighted three main reasons for the denial of the Claimant's request. These are as follows:

- Work-life balance or family friendly initiatives, in terms of individual requests of this nature, need to be balanced with fair and equitable treatment of all staff, meeting [the Agency's] business requirements, and being consistent with the Agency's other HR policies;
- The [business group that the Claimant was working in] is not suitable for time banking;
- Positions of the scale [that the Claimant is in] do not attract either overtime or time-in-lieu for any additional hours worked.

The memo goes on to provide some detailed explanation about why the request was denied. Three key policies areas were highlighted to support the Agency's decision: EEO Policy, Work & Family Guidelines, and the agency's Overtime Policy.[48] The memo also points out the following key assumptions in the request which – in the end – were not tenable enough to approve the Claimant's request.

The first of these assumptions relate to the Claimant's assumption about the *work* she undertakes. The memo points out that the Claimant's request assumes that (a) work is available currently to enable her to work longer than 40 hours per week; (b) that there are regular and manageable peaks and troughs in the work of the team she is in; and (c) that flexibility exists within the team to accommodate both additional work from current and reduced outputs at a later point in time. According to the Agency, these assumptions were ill-grounded, thereby justifying a denial of the request.

The second assumption, according to the memo, is the one about *impact on other staff*. The memo notes that in order to accommodate the Claimant's request, there could be the possibility of 'existing staff having to work additional hours to accommodate [the Claimant's] subsequent absence without receiving overtime or time-in-lieu raising issues of *fairness and equity*.' Being mindful of the need for fair and equitable treatment of all staff, the approval to decline was justified.

The third assumption, according to the memo, is the one about *impact on other policies*. The memo notes that if approved, the request may require other staff to have to work longer. This would 'create a precedent for time in lieu within the environment or result in disparate treatment'. As a time in lieu culture did not exist, this request was likely to create a precedent where other staff could also request similar time in lieu arrangements; clearly, this was something the Agency did not want to create. Therefore, in order to maintain fairness to all staff without impacting on other existing polices, the approval to decline was justified.

c. Discourse Analysis: Deconstructing 'Fairness' and 'Discrimination'

This part of the paper undertakes a discourse analysis of the request and response of the Claimant and the Agency respectively. It is important to note that both parties either imply or directly refer to fairness and discrimination as the basis of their understanding of their rights to claim particular consideration, and to deny those claims. The rationale for the deconstruction is to clarify the discourses underlying the similar language.

The framework for deconstructing the texts is adapted from Fairclough's[49] and Widdowson's[50] conception of critical discourse analysis. Methodologically, the framework for the discourse analysis of the two memos is drawn from Fairclough's proposition that discourses constitute or construct social structures at three levels: the construction of self or identity (or the *identity function*), the construction of social relationships between people (*relational function*), and the construction of systems of knowledge and beliefs (*ideational function*). Using this conceptual approach, the present analysis used the following key questions to guide the analysis of the request and response:

i. How do both documents construct the key subject – in this case, the Claimant for special consideration?
ii. What are the key relationships identified in both documents, and how are they constructed?
iii. What are the 'value and belief' systems upon which both the request and the response rest – particularly in their understanding of fairness and discrimination?

Each of these will be considered in turn. A diagrammatic representation of this analysis is presented in Table 1.

i. Constructing the key subject:

Both documents implicitly center the Claimant (for special consideration) as the key subject of the event. However, the manner in which the Claimant is described is different in both documents. The request identifies the Claimant as a 'sole parent' – an identity that aims to position her as an EEO group member, a term intended to indicate recognition of difference and disadvantage. In defining herself as a sole parent, the Claimant simultaneously individualises herself and her situation (by highlighting that the request falls outside normal policies for employees of the Agency), and also aligns with disadvantage and an EEO group.

The response, in turn, refers to the Claimant in the following ways:

a) as belonging to a particular level of the organisation ('The Claimant is in grade XX'),
b) as belonging to a specialised unit (where normal peaks and troughs of work cannot be gauged in advance), and
c) as a member of an organisational team.

These constructions are significant for several reasons. First, although the Agency's response situates the Claimant within a collective, it is as a *worker* or *employee* in the organisation. Second, it is also that aspect of the Claimant's identity that erases recognition of difference and distances the Claimant from being a member of an EEO group. Third, once the Claimant is cast as a non-EEO subject, the Claimant's request is isolated as an individual request and not typical of systemic societal disadvantage of a group (e.g., the memo calls the request an 'individual

request of this nature'). Thus, the Agency's response also individualises the Claimant – however, this act of individualising isolates the request as a special privilege.

ii. Constructing Key Relationships

The request document highlights several relationships – both personal and professional – that are central to the Claimant's claim. These include:

a) At a personal level, the request document refers to the Claimant's relationship with her daughter (in terms of wanting to spend time with her) and to the legal constraints of her 'custodial' arrangement. The references to the personal relationships support the claims of disadvantage; in fact, they seek to deepen an understanding of the Claimant's personal difficulties.

b) The request document also indicates a relationship between the Claimant and her professional commitments – first, to her immediate work (expressed as part of the negotiations for flexible time), and second, to the hierarchy she is working under (for example, she states that any work or time-in-lieu taken would be agreed with the manager). The reference to the professional relationships seeks to reposition the Claimant as a worker, a conscientious employee, still committed to the organisation. In this way, the Claimant seeks to bridge the personal and the professional, and legitimise the personal in light of the professional.

c) The Claimant, by identifying with an EEO group, also taps into a set of social relationships – those of disadvantage – that will lend to the recognition of the legitimacy of her request.

The Agency's response document, in a similar way, also highlights certain relationships, which pertain to and are central for the Claimant. These include relationships:

a) with her own and the team's work programme (for example, the Claimant 'makes the assumption that flexibility exists within the team's work programme').

b) with the other members of her team (statements that note the impact of the Claimant's request on other members).

c) with clients/customers (the Agency's document states that the unit's work is 'driven by customer demands and many external and environmental factors' implying an obligation for the Claimant towards the clients/customers of the unit).

d) with institutional policy (indicated in statements that the Claimant's request will set precedents, and therefore needed to be curbed).

The choice of key relationships that the Agency uses to frame the Claimant is relevant as it constructs its arguments to deny the request. All the relationships identified by the response document are drawn from within the organisation and within the ambit of the Claimant's professional identity. The Claimant's relationships outside of her work environment – namely, those of her personal context, and her group affiliations – are not touched upon in justifying the denial of the request.

iii. Systems of values and beliefs

The Claimant's request reveals a system of values and beliefs about her rights and disadvantage that is useful in this context.

a) First, despite locating herself as a member of an EEO group, the Claimant clearly notes that her request is a special right. She does not see an inherent entitlement to EEO or Work-Life balance, nor for the Agency to have to grant it. The Claimant acknowledges that the request is out of the ordinary organisational policies of the agency ('I am requesting a reconsideration of the policy') and that her request is made based on her 'exceptional circumstances'. The seeming contradiction in identifying a location of disadvantage could stem from the possibility that the category 'sole parent' is not a traditional EEO grouping.

b) Second, the Claimant reveals that it is in her personal life that she is disadvantaged. The disadvantage does not affect her as a *worker* (she does not claim discrimination in the workplace, for example), but rather, that work does affect her capability to fulfil her *maternal* role. Consequently, she understands the EEO policies of the agency to be able to help her maintain her personal commitments as much as her professional one.

c) Finally, while her request is based on special consideration, it is not based on unmerited privilege (a-something-for-nothing-request), but in terms of a consensual reciprocal exchange between Claimant and the Agency. This is indicated in her attempt to negotiate with the manager when and how much she can work. The Claimant's request therefore assumes that the employee-Agency relationship permits negotiation on individual grounds. This relationship is assumed given both parties' commitment to EEO and Work-Life doctrines.

Table 1: Discourse Analysis Based on Fairclough's Three Levels of Constructive Effect

Constructive Effect	Claimant	Agency
Identity Function or 'Construction of the Subject' of the claim	Sole Parent	• Employee of a particular grade • Employee of a particular specialized team • A team member
Relational Function or 'Construction of the Key Relationships' in claim	Personal: • Parental obligations • Legal/Custodial Obligations Professional: • Work • Hierarchy – Management Social: • With other disadvantaged groups	• With work programme • With other team members • With customers • With institutional policy
Ideational Function or 'Systems of knowledge and belief' on which claim rests	• Exceptional circumstances (special rights) • Reciprocity • EEO is for efficiencies in maternal role	About work-life balance: • Work-Life can be accommodated within business priorities • Work-Life serve business not vice versa • Work-Life not about 'extra' entitlements • Individual claim outside business arguments • Contractual relationships persist, not reciprocity • EEO about efficiencies in employment role

In summary, for the Claimant, discrimination as an EEO member entailed claims of disadvantage within the personal/domestic sphere. Her notion of fairness was embedded in recognising difference, particularly, difference that registered (systemic societal) disadvantage. 'Fairness' as used by the Claimant embraced strategies of equity to address that disadvantage emerging from and impacting on the personal. Implicit in the Claimant's structure of beliefs is the argument that justice is about redress for individual/s that are disadvantaged irrespective of the collective.

The Agency's response, in turn, builds a picture of how it constructs its main belief structure. Some of the implied or explicit values of the organisation include:

a) Work-life balance/EEO can be accommodated only within the limits of business priorities. In the event of a conflict between the two, business priorities prevail ('work-life balance or family friendly initiatives, in terms of individual requests of this nature, need to be balanced with … business requirements').

b) Work-life balance/EEO is permissible only within the boundaries of general policies for staff; the latter cannot be made flexible to accommodate EEO needs. For instance, as noted above, the Agency advanced two

general policies for declining the request ('the team environment is not suitable for time banking' and 'the scale does not attract overtime or time-in-lieu'). The Agency also uses the Overtime Policy to justify the denial of the Claimant's request.

c) Work-life balance/EEO serves the business, not vice versa. Thus, EEO/Work-life strategies are about encouraging efficiencies in the workplace, not at home. If the latter were to happen, it is incidental, not intrinsic to the policy's intent. The separation between work and non-work life is sharp in this view. This value is explicit in the *absence* of any reference to the Claimant's personal concerns in justifying why the request was denied. Further, the Agency is less concerned about the implications of the Claimant's present work circumstances on her personal life (that she cannot spend time with her daughter, for instance), than the implications for the Agency and her team should the Claimant's request be permitted.

d) Work-life balance is not an entitlement or right of the Claimant, even when they identify with an EEO group. The main entitlements permitted to the Claimant are those of any other employee in the organisation.

Overall, from the perspective of the agency, fairness is interpreted as a condition that refers to equal and same treatment for all. That is, fairness is what is applied to equalise the workplace, and that which can be equally applied to all. The agency's key responsibilities were to its work programme, to the consistency of HR policy, and to the collective workforce in the agency. The agency's idea of fairness was tied to the collective; that for an initiative to be just, the collective should benefit equally or at the very minimum, should not be adversely affected by applying it to a few. In order to maintain this emphasis on the collective, the agency's understanding of disadvantage was limited. It did not encompass anything outside the organisation or the parameters of employment – an issue in the personal sphere was not admitted as legitimate for EEO disadvantage. In the discourse employed by the Agency, it is doubtful if they recognised the Claimant's request as an EEO need.

Discriminating Justice in NZ's EEO policies

Although only one example (and the paper makes no claim that this is a typical example), the case study presented raises questions about the discursive contexts that EEO initiatives are embedded in and whether these provide the possibility to further gender/social justice that is transformatory within New Zealand society. In drawing together a critique, the important point to note is that both parties (the Claimant and the Agency) cannot be faulted for the logic they used to further a claim or deny it. Given the key tenets they subscribed to, they acted 'logically'. It is the key tenets themselves or the 'symbols, images, meaning, habitual comportments, stories' that Young (1990) refers to that are relevant here.

There are some straightforward enough observations that can be made on the basis of the case study. The exchange between the Claimant and the Agency reveal the several underlying discourse frameworks for EEO in the public sector. In this instance, at least, the agency based its response on two understandings of what constituted EEO: (a) that equality was about treating everyone the same; and (b) the aim of EEO was the removal of unfairness. In addition, both the above principles were applicable to the workplace and within the sphere of employment. Since none of these conditions were met, the Claimant's request was denied. No alternative framework of disadvantage was entertained. Further, there is the dominance of HR personnel and their criteria to determine what constitutes unfairness and an EEO need. At a fundamental level, these elements reflect the persistence of the liberal framework.

Superimposed on this liberal framework, there was also a strong context of managerialism evident in the Agency's response – the language of economic rationalism and business logic permeates the text and content of the document. The centring of 'business priorities', the implications for the work programme and other HR policies as the referential point for decisions about what constitutes an EEO appears to be important framework for interpretation. Consequently, EEO is an affirmative action within a very specific sphere of activities. It is not

intended as an instrument for fostering radical social change or for even bridging the disadvantages in the productive-reproductive sphere – a sphere where gender-based disadvantages are often dominant and pressing.[51] The managerial discourse, therefore, is not gender neutral; it is administered within exclusive 'masculinist' assumptions of 'unfairness' and 'disadvantage'. Masculinism is embedded in the business logic and the use of discourses of 'work'/business priorities to evaluate a need that is in the 'personal' sphere.

The masculinist managerialism also sets limits on who can make claims on the basis of an EEO defined need, and what counts as an EEO need. For example, in the case study, the Claimant resorts to repositioning herself simultaneously as a generic 'worker' and specific 'disadvantaged' group – as if the latter on its own is not a legitimate EEO identity. Equally, the Agency did not pursue a rhetoric that granted legitimacy to the category 'sole parent' as one of disadvantage. Instead the Agency's response legitimised the Claimant solely within criteria of employment. There are limitations when the normative is defined by work – for the Claimant, to be valid, her request for fairness and redress from disadvantage must be justified as the employment and material disadvantage. Non-material disadvantage, or those outside the distributive paradigm, can be disregarded as valid EEO claims.

The case study at the same time is illustrative of pertinent questions that need to be asked about the public sector, and its role in promoting social justice. How viable are policies of affirmative action that do not recognise identity, and the needs of the particular positions of social disadvantage? For a New Zealand public sector in the 21st century, with its diverse workforce, and multicultural needs, the goal of 'removing unfair advantage' – or a policy focused merely on material redistribution – may be insufficient to create a just society. Take a hypothetical situation of a Muslim requesting Fridays as a day of leave to pray rather than a Sunday (Christian day of prayer). There may be no material disadvantage to report but therein alone does not lie unfairness. How will the public sector respond? As Fraser (1997) pointed out, the current discourse leads to the dangers of such claims as being seen as 'individual requests', and of minority groups always wanting more and more of what they have no entitlement to. More than the insufficiency of the current discourse, there is also the added danger that in its current form, it can actually reiterate positions of disadvantage, and in fact, efface any political ground that can be claimed by disadvantaged groups. To this extent, as Young (1990) notes, the EEO policy can become – by its 'humane' practices – an instrument for furthering oppression and domination.

Conclusion

The present paper was an analysis of an exchange between an employee in the New Zealand public sector and the agency she works for regarding claims for EEO consideration. In the case study, both the Agency and the Claimant make their case on the basis that they are, respectively, furthering fairness and reducing discrimination. The paper sought to analyse the discourses that framed both the Agency and the Claimant's arguments. The analysis reveals, in the main, that the agency's understanding of EEO is framed by a liberal-managerial discourse; its fundamental assumptions legitimise only certain claims as a valid EEO need. If the Agency's discursive framework represents the dominant discourse in the public sector, the exclusions have implications for individuals and groups who make claims not on the basis of material and redistributive disadvantage but non-material, cultural or socially-derived disadvantages. The current form of EEO policy that focuses on removal of unfairness is unlikely to address the emerging forms of oppressions that require transformatory intervention.

Finally, the study opens the possibility for further research using critical discourse analytical

methodologies in micro-analysis of organisational discourses. Similar analyses can be undertaken of key real-life moments where EEO issues reveal multiple meanings of the main actors: examples include similar memo exchanges between employer/employee but for 'other EEO' reasons (say, for instance for culturally related reasons) or even in other contexts, such as, legal cases or mediation reports.

Acknowledgements

RACHEL SIMON-KUMAR is a Senior Lecturer at the Department of Societies and Cultures, the University of Waikato, Hamilton, New Zealand. She is the author of Marketing Reproduction? Ideology and Population Policy in India *(2006), Zubaan Books: New Delhi.*

Notes

1 State Services Commission, *EEO Policy to 2010: Future Directions of EEO in the New Zealand Public Service*, 1997, Wellington.
2 State Services Commission, *Review of EEO Policy to 2010,* 2006, found on http://ssc.govt.nz, accessed 14th June 2007; State Services Commission *EEO Progress in the Public Service 2000-2004: The Data Stories,* 2005, found on http://ssc.govt.nz, accessed 18th August 2007; Michael Mintrom and Jacqui True *Framework for the Future: Equal Employment Opportunities in New Zealand*, Report for the EEO Commission, 2004, Wellington; Ian Brooks, Toby Harfield and Graham Fenwick 'EEO and Managerialism in New Zealand Local Government: Empirical Results of a Collision Course?', *Electronic Journal of Radical Organisation Theory*, 6:2 (2000), available at http://www.mngt.waikato.ac.nz/ejrot/Vol6_2/Vol6_2articles/ accessed 15th June 2007.
3 State Services Commission, *Review of EEO Policy to 2010,* 2006.
4 Department of Labour, *Quality Flexible Work: Increasing Availability and Take-up in New Zealand – Consultation Results*, 2007, Wellington.
5 Mintrom and True (2004).
6 Maria Humphries and Shayne Grice, 'Equal Employment Opportunity and the Management of Diversity: A Global Discourse of Assimilation?', *Journal of Organisational Change Management,* 8:5 (1995), pp.17-33.
7 Brooks et. al. (2000: 18).
8 Iris Marion Young, 'Social Movements and the Politics of Difference' in *Justice and the Politics of Difference*, (Princeton University Press, New Jersey, 1990), pp. 156-191.
9 Young (1990: 23).
10 Young (1990: 41) defines oppression as structural or 'the vast and deep injustices some groups suffer as a consequence of often unconscious assumptions and reactions of well-meaning people in ordinary interactions, media and cultural stereotypes, and structural features of bureaucratic hierarchies and market mechanisms-in short, the normal process of every day life'. In looking at oppression in this manner, there is an implication that an oppressed group need not have a correlate oppressing group. And in the vein of the work of Foucault, it draws attention to a model of power where oppression is the result of liberal and humane practices.
11 Nancy Fraser, 'From Redistribution to Recognition: Dilemmas of Justice in a "Post Socialist" Age' in *Justice Interruptus*, (Routledge, New York and London, 1997) pp. 11-39.
12 Fraser (1997).
13 Fraser (1997: 23).
14 State Services Commission (1997: 10). EEO was introduced into public service practice in 1984 and was given legislative intent in 1988 in Sections 56 and 58 of the State Sector Act (1988); Rae Torrie and Deborah Jones 'Making the Difference: Equal Employment Opportunities (EEO) in Public Service Organisations', in Rosemary du Plessis and Lynne Alice (eds) *Feminist Thought in Aotearoa/New Zealand*, (Oxford University Press, Oxford, New York, Melbourne, 1998) pp. 229-237. EEO issues of pay equity are also found in other pieces of legislation such as the Human Rights Act (1993), the Employment Relations Act (2000), and the Crown Entities Act (2004). See http://www.dol.govt.nz/_services/_PayAndEmploymentEquity/peeu/history.asp

15 Mintrom and True (2004).

16 Mintrom and True (2004).

17 Mintrom and True (2004: 7).

18 See Department of Labour website, http://www.dol.govt.nz/services/PayAndEmployment_Equity/resources/fact-sheets/fact-sheet-4.asp.

19 The State Sector Act 1988 identifies specific groups of employees who may be disadvantaged: Maori, women, ethnic and other minority groups, and people with disability. Even further qualifications within these groups are being identified, such as, 'breast feeding mothers', 'Kiwi fathers', and particular ethnicities such as Sri Lankan employees.

20 Work-life balance initiatives are increasingly being offered as part of the employee-friendly/EEO packages available in organisations. There is, however, an irony in pitching the two together; work-life balance removes focus from the conventional axes of marginalisation of particular socio-cultural 'oppressed' groups to a generic disadvantage shared by all people that is based on material disadvantage. Torrie and Jones (1998) make similar remarks about 'PWFR' (people with family responsibilities) arguing that there are questions about what constitutes inequality – is it who you are (being) or what you do (doing)?

21 State Services Commission, *The New Zealand Public Services Equal Employment Opportunity Policy*, 2007, at http://www.ssc.govt.nz/display/document.asp?docid=5983&PageType=content&NavI, accessed 13th July 2007.

22 State Services Commission (1997) in endnote 1.

23 John Deeks, Jane Parker and Rose Ryan, *Labour and Employment Relations in New Zealand*, 2nd edition, (Longman Paul, Auckland, New Zealand, 1994); Brooks et al. (2000).

24 See Deeks, Parker and Ryan (1994) and Brooks et al. (2000).

25 Although this document is the current operating document, there have been reviews and adaptations. See http://www.ssc.govt.nz/display/document.asp?NavID=127&DocID=5827. For an overview of recent changes to EEO policies in the public sector, see http://www.ssc.govt.nz/display/ document.asp?NavID=127&DocID=6337

26 State Services Commission (1997: i).

27 State Services Commission (1997: i).

28 Deborah Jones, 'Setting up the Targets: The Construction of Equal Employment Opportunity (EEO) "Target Groups" in the New Zealand Public Service', *Women's Studies Journal*, 11:1-2 (1995), pp. 95-111; see also Humphries and Grice (1995); Brooks et al. (2000).

29 Metcalfe, 1993, cited in Brooks et al. (2000: 11).

30 Annette Davies and Robyn Thomas, 'Gendering and Gender in Public Service Organisations: Changing Professional Identities under new Public Management', *Public Management Review*, 4:4 (2002), pp. 461-484; John Hopton, 'Militarism, Masculinism and Managerialisation in the British Public Sector', *Journal of Gender Studies* 8:1 (1999), pp. 71-82.

31 Davies and Thomas (2002).

32 Hopton (1999: 74).

33 Hopton (1999: 80).

34 Deborah Jones, Judith Pringle and Deborah Shepherd, '"Managing Diversity" meets Aotearoa/New Zealand', *Personnel Review*, 29:3 (2000), pp. 364-380; Deborah Jones, 'Screwing Diversity out of the Workers? Reading Diversity", *Journal of Organizational Change Management*, 17:3 (2004), pp. 281-291.

35 See Humphries and Grice (1995); Jones (1995, 2004); Jones et al. (2000).

36 Humphries and Grice (1995).

37 Jones (2004).

38 The quotations referred to in this section come from agency documents available on its intranet. Page numbers have not been quoted as these are web resources.

39 Key agency documents referred to here include *Work & Family/Whanau Guidelines*; *Additional Hours – Overtime*; *EEO Strategy to 2005*.

40 Flexibility is to be provided in the start and finish times of staff.

41 Compressed hours refers to an arrangement that staff may have to work longer hours on specified days during a week or fortnight in order to reduce the number of days worked or the number of hours on a particular day.

42 Part-time work is the term that applies to any arrangement in which an employee works fewer than full-time hours. Part-time work can be part of employees' permanent contract, where they are entitled to the same benefits (on a pro-rata basis) as their full-time colleagues.

43 Job-sharing is a system of work where two people take the responsibility for one full-time position. The work, pay, holidays and other benefits are divided amongst them depending on the time they work.

44 Job-split occurs when two people are contracted on an individual basis to do a full-time job.

45 Part-year employment offers employees a number of weeks of unpaid leave per year.

46 Flexible working locations allow people to work from home at times.

47 Leave is deducted from a person's sick leave in order to care for dependants.

48 The Overtime Policy states that [the agency] expects full time employees to work 40 hours per week or 2080 hours per annum including leave and public holidays. From time to time employees may be required to do work beyond 40 hours per week. Employees in positions [above a certain scale] are expected to do these hours without any additional compensation on the basis that their remuneration fully compensates them for any hours worked.

49 Norman Fairclough, *Discourse and Social Change*, (Policy Press, Camb., Massachusetts, 1992).

50 Henry G. Widdowson, *Text, Context, Pretext: Critical Issues in Discourse Analysis* (Blackwell Publishing, United Kingdom, 2004). Widdowson defines critical discourse analysis as 'a type of discourse analytical research that primarily studies the way social power abuse, dominance, and inequality are enacted, reproduced and resisted by text and talk in the social and political context' (Widdowson, 2004:89).

51 It must be highlighted that the broad field of EEO in New Zealand does recognise the need for people to bridge the work-personal aspects of their lives. For example, the EEO Trust's research on Kiwi fathers indicated that 80% want more time with their children (see EEO Trust *Fathers and Paid Work*, EEO Trust: Auckland, 2003). Whether these are being applied in practice is another question.