



HOUSE OF COMMONS  
CANADA

**PROMOTING EQUALITY IN THE FEDERAL  
JURISDICTION: REVIEW OF THE  
*EMPLOYMENT EQUITY ACT***

**Report of the Standing Committee on  
Human Resources Development and the Status  
of Persons with Disabilities**

**Judi Longfield, M.P.  
Chair**

**June 2002**

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# **STANDING COMMITTEE ON HUMAN RESOURCES DEVELOPMENT AND THE STATUS OF PERSONS WITH DISABILITIES**

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# **THE STANDING COMMITTEE ON HUMAN RESOURCES DEVELOPMENT AND THE STATUS OF PERSONS WITH DISABILITIES**

has the honour to present its

## **NINTH REPORT**

In accordance with its Order of Reference from the House of Commons dated Monday, December 3, 2001, and pursuant to Section 44 of the *Employment Equity Act* your Committee was empowered to undertake a comprehensive review of this Act and to submit a report to the House.

After hearing evidence, the Committee has agreed to report to the House as follows:





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# INTRODUCTION

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Federal legislation governing the elimination of barriers to employment has existed for more than 15 years. Like the original *Employment Equity Act* of 1986, the current law requires a quinquennial parliamentary review. On 3 December 2001, the House of Commons adopted the motion that, pursuant to section 44(1) of the *Employment Equity Act*, the Standing Committee on Human Resources Development and the Status of Persons with Disabilities be designated to conduct this review. This marked the beginning of the third Parliamentary review that has been undertaken since the inception of the original *Employment Equity Act* and the first review pertaining to the current law, which came into force on 24 October 1996.

The Committee commenced its hearings on the review of the *Employment Equity Act* in early December 2001 and held its last public meeting on this issue at the end of April 2002. During this period, the Committee canvassed the views of almost 100 witnesses who represented designated groups and employers covered under the Act, federal contractors, experts, employment equity practitioners, labour representatives, as well as departments and agencies involved in the administration of the Act.

Almost every witness who appeared before the Committee during its review of the *Employment Equity Act* expressed the opinion that there is a continuing need for this legislation. In addition to enhancing fairness in the Canadian workplace, employment equity was also touted as good for business and crucial in helping employers prepare to meet their future skill needs as the workforce ages and a growing proportion of visible minority and Aboriginal workers contribute to labour force growth.

Given the reality of changing economic conditions, deeply rooted employment practices in the Canadian workplace and the absence of skills among many disadvantaged workers, most members of Committee are encouraged by the progress in making federal workplaces more equitable. The majority of those who appeared before us also indicated that the *Employment Equity Act* has exerted a positive influence on workplaces covered by the Act and perhaps other segments of the Canadian labour market. Admittedly, progress has been slow and uneven. The job of building a more equitable workplace has just begun and much work remains to be done.

Our report does not call for a significant departure from the current Act at this time; a position expressed by most of the witnesses who generously shared with us their considered views, expertise and experience on this very important matter. The recommendations in our report are best characterized as directions for fine-tuning administrative processes, clarifying legislative ambiguity, enhancing awareness and supporting the labour market development needs of disadvantaged workers. We recognize that there is a need to focus more resources in specific areas, particularly in terms of facilitating greater access to employment for persons with disabilities and

Aboriginal people. We recognize that there is a need for more employment equity promotion and education as well as guidance and advice. We believe that there is some scope for administrative improvements and clarification of statutory requirements under the Act. In our opinion, the success of employment equity requires a policy perspective that addresses both sides of the labour market and, in this context, we maintain that greater emphasis must be afforded to skill acquisition initiatives, an area within the constitutional jurisdiction of the provinces, for members of designated groups.

Our report begins with a brief overview of the progress made to date in achieving a more representative workplace in those sectors covered under the Act. This is followed by several sections dealing with key issues raised during our hearings including, among others, the need to enhance public understanding of employment equity goals and best practices, coverage under the Act, employers' obligations and technical support, data collection, enforcement and enhancing the skills of equity group members in the workplace.

The pursuit of fairness in workplaces in the federal jurisdiction garnered impetus following the release of the report of the Royal Commission on Equality in Employment in November 1984. The Royal Commission's recommendations led to the *Employment Equity Act* in 1986, which covered federally regulated employers with 100 or more employees. In the same year, employment equity provisions were extended to federal contractors who employed 100 or more workers and received federal government goods and services contracts worth \$200,000 or more. Six years later, a legislated mandate for employment equity was given to the federal public service. In conjunction with the second parliamentary review of the original *Employment Equity Act*, the Standing Committee on Human Rights and the Status of Disabled Persons also reviewed Bill C-64 (An Act respecting employment equity) between November 1994 and June 1995. This legislative proposal, which underlies the current *Employment Equity Act*, received Royal Assent in December 1995 and came into force in October of the following year. The *Employment Equity Act* of 1996 extended coverage to federal departments and agencies and provided a mandate to the Canadian Human Rights Commission (CHRC) to verify and monitor employer compliance, and where needed, to provide for the establishment of an Employment Equity Tribunal to enforce a CHRC direction. Although not directly covered under the law, the reporting requirements of federal contractors are supposed to be equivalent to employers covered under the Act. Human Resources Development Canada (HRDC) is currently responsible for monitoring employment equity compliance among federal contractors.

## 1. Gains in Workplace Representation

Since the inception of the *Employment Equity Act* in 1986, workplace representation (i.e. share of employment) among the four groups designated under the Act — Aboriginal people, persons with disabilities, visible minorities and women — has undeniably improved. This fact was widely recognized by an overwhelming majority of our witnesses. And, while most acknowledged that the Act did not require major revisions, many expressed the view that the rate of progress in some areas — especially with respect to persons with disabilities and Aboriginal people — has been too slow and, as evidenced below, markedly uneven.

During the period 1987 to 2000, the most recent year for which data<sup>1</sup> are available, the proportion of women employed in federally regulated private sector workplaces

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<sup>1</sup> The data presented in this section of the report do not include 15 employers — called “separate” employers — as there is no analysis or consolidation of information reported by this group of employers. The data provided here were taken from the Canadian Human Rights Commission, *Employment Equity Report, 2001, 2002*; Human Resources Development Canada, *Annual Report of the Employment Equity Act, 2001*; and the President of the Treasury Board, *Employment Equity in the Federal Public Service, 2000-01, 2002*.

(including some Crown corporations) covered under the *Employment Equity Act* increased from 40.9% in 1987 to 43.8% in 2000. In terms of the latter period, women's share of employment was highest (71.4%) in the banking sector and lowest (22.9%) in transportation industries. Compared to the federally regulated private sector, the relative level of female employment in the federal public service registered a larger increase during this period, rising from 42.3% of total public service employment in 1987 to 52.1% in 2000. Moreover, women's share of executive positions in federal departments and agencies has been rising steadily and reached 30% in 2000. However, we must recognize that there is room for improving women's representation in executive positions. Despite the employment gains made by women covered under the Act, some witnesses identified a continuing need to assess the problems facing women who experience a multiple disadvantage in the workplace.

One weakness in the *Employment Equity Act* ... is the way it defines equity groups as visible minorities, women, aboriginal persons, and persons with disabilities. The failure to recognize that gender cuts across all equity groups suppresses recognition of the multiple disadvantages women from first nations communities, racialized groups, and disability groups face. **(Ms. Rita Warner, Chair, Cape Breton Region, Nova Scotia Advisory Council on the Status of Women)<sup>2</sup>**

In 1987, Aboriginal people accounted for 0.7% of employment among federally regulated private sector employers covered under the Act. By 2000, their share of total employment in this sector more than doubled to 1.5%. Growth of a similar magnitude also occurred in federal departments and agencies covered under the Act; Aboriginal peoples' share of employment increased from 1.8% in 1987 to 3.6% in 2000. The Department of Indian and Northern Affairs is by far the largest employer of Aboriginal people in the federal public service and accounts for almost 20% of all Aboriginal workers employed in federal departments and agencies.

I'm proud to say that in the banking industry we are achieving results. Although there is certainly more work to be done, we have been able to reach and surpass the government's benchmark for representation of women in senior management and middle management, and we have exceeded the benchmark for members of visible minorities in overall employment and at the middle management and professional levels. But I also want to say that we are not yet where we want to be. More work is needed, for instance, in achieving progress with aboriginal people and people with disabilities. **(Ms. Elisabetta Bigsby, Senior Executive Vice-President, Human Resources and Public Affairs, RBC Financial Group, Canadian Bankers Association)<sup>3</sup>**

In 2000, persons with disabilities accounted for 2.3% of total employment in that portion of the private sector covered under the Act. This is 0.7 of a percentage point

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<sup>2</sup> House of Commons Standing Committee on Human Resources Development and the Status of Persons with Disabilities (hereafter referred to as HRDP), *Evidence* (12:45), Meeting No. 50, 21 February 2002.

<sup>3</sup> HRDP, *Evidence* (11:05), Meeting No. 56, 21 March 2002.

above this group's share of employment in 1987. Growth in employment among persons with disabilities has been much more favourable in federal departments and agencies since the Act's inception, as the share of employment among persons with disabilities almost doubled from 2.6% in 1987 to 5.1% in 2000. The CHRC attributes some of this improvement to growth in the number of persons with disabilities who self-identify rather than the number who are hired.<sup>4</sup>

We know the progress of people with disabilities has been absolutely abysmal, everyone recognizes that, but I wanted to say that even where employers have hired and have made efforts, based on their obligations as federal employers perhaps, it's extremely difficult for people with disabilities, because of the lack of support services that are available to them. We found numbers of individuals who can't get to the work place, because of the cutbacks in transportation. That's only one example. There are those who can't sustain their work, because of the lack of affordability of other medical needs they have. It's quite profound. **(Ms. Penni Richmond, National Director, Women's and Human Rights Department, Canadian Labour Congress)**<sup>5</sup>

Representation in employment among members of visible minorities in the federally regulated private sector has steadily improved since 1987. In 2000, visible minorities accounted for 10.7% of total employment in this sector, more than twice their share of employment in 1987. Banks are by far the largest employer of visible minority workers in the federally regulated private sector; in 2000 the banking industry accounted for 45% of total employment among visible minority employees in this sector as a whole. In 1987, visible minority workers accounted for some 2.7% of total employment in federal departments and agencies, roughly one-half the level of this group's representation in the federally regulated private sector. Impressive employment growth among visible minorities also occurred in the public sector between 1987 and 2000, when this group's share of employment reached 6.1% by the end of this 13-year period. The CHRC reports that most of the new hiring of members in this group continues to be largely confined to the 'Scientific and Professional' category. Continued improvements in the overall representation of visible minority workers in the federal public service are expected, as departments pursue their hiring and promotion goals as set out in the *Embracing Change* action plan.

## **2. Gains Relative to Labour Force Availability**

While the aforementioned employment trends clearly depict an improvement in employment among workers in designated groups since the onset of employment equity law, progress vis-à-vis the *Employment Equity Act* must be assessed in relation to the availability of these groups in the labour market. It is only on this basis that employers are judged whether their workplaces are "representative." A representative workplace is one

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<sup>4</sup> Canadian Human Rights Commission, *Employment Equity Report, 2001, 2002*, p. 32.

<sup>5</sup> HRDP, *Evidence* (11:35), Meeting No. 49, 19 February 2002.

in which the proportion of employed members of a designated group is equal to, or greater than, that group's share of the labour force from which of the employer recruits, commonly referred to as "availability." The ratio of workplace representation to availability (i.e. the representational ratio) provides a handy measure for assessing employment equity progress in workplaces covered under the Act. A representational ratio that is less than one implies under-representation. Chart 1 provides a graphic illustration of representational ratios for each designated group in the federally regulated private sector, and federal departments and agencies for the years 1987 and 2000. This graphic illustration shows that employment equity progress has occurred in both of these sectors between 1987 and 2000, as the representational ratio for each designated group in 2000 was higher than in 1987. Despite this progress, the situation for Aboriginal people and persons with disabilities in the federally regulated private sector and members of visible minorities in the federal public service remains, in our opinion and the opinion of most of our witnesses, quite unsatisfactory.

According to the data presented in Chart 1, women were slightly under-represented in the federally regulated private sector in 1987. And despite a marginal improvement in representation among women relative to their availability between 1987 and 2000, women remained slightly under-represented by the end of the latter period. Compared to the private sector, women were more equitably represented in federal departments and agencies in 1987 and since then have reached a position of slight over-representation. While many witnesses who appeared before the Committee acknowledged that women have achieved greater equality in the workplace since the inception of the *Employment Equity Act*, most were quick to point out that overall equality has not been reached and there is a continued need for this legislation to help women gain greater representation in some occupational categories, especially in terms of managerial and professional occupations.

We have had an excellent representation of women in the highest ranks of our organizations. We're very proud of this. They have been recruiting from outside, but there has been a very strong promotion from the inside as well. Women may have had a larger role in the past in the lower level jobs, in the clerical jobs, but we have seen many women promoted from those lowest levels to the very highest levels, and we're very happy to see that. **(Ms. Lesya Balych-Cooper, Vice-President, Diversity and Workplace Equity/EAP, Bank of Montreal, Canadian Bankers Association)**<sup>6</sup>

Despite some improvement since 1987, Aboriginal people remain substantially under-represented in the federally regulated private sector. In 2000, this group's representation in employment was about three-quarters of their workforce availability. The federal public service made significant gains in achieving a representative Aboriginal workforce during this period; Aboriginal people went from a situation of under-representation in 1987 to over-representation in 2000. In terms of the latter period, representation in employment among Aboriginal people in federal departments and

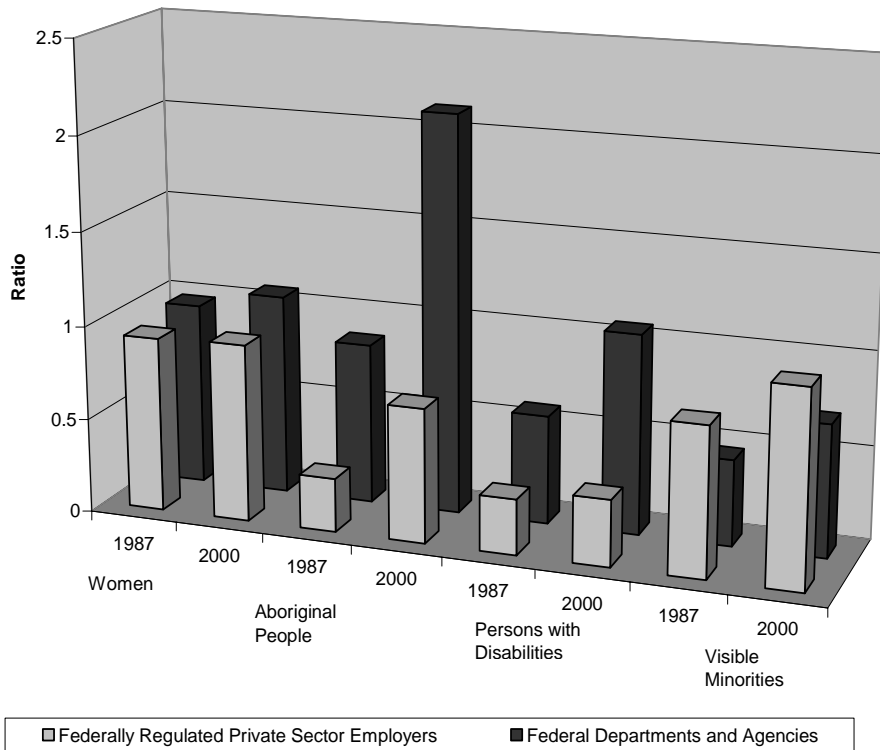
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<sup>6</sup> HRDP, *Evidence* (11:50), Meeting No. 56, 21 March 2002.



agencies was more than twice their availability in the labour force. While the Department of Indian and Northern Affairs has been a major contributor to the increase in representation among Aboriginal people in the federal public service, it is worth noting that substantial progress in the employment of Aboriginal people has also occurred in other federal departments and agencies.

**CHART 1 - Employment Equity Representational Ratios for Designated Groups, 1987 and 2000**



In short, the study concluded that in spite of some of the gains that had been acquired under the *Employment Equity Act* for aboriginal women, aboriginal women continued to face barriers to fair and equitable treatment in the workforce. When the study examined the effectiveness of employment equity programs, it concluded that “the difficulties faced in a non-aboriginal environment by the vast majority of women interviewed are so daunting that none of the existing programs appears suited to meet this need effectively.” (Ms. Manon Lamontagne, Consultant, Femmes Autochtones du Québec)<sup>7</sup>

Although marginal progress was made between 1987 and 2000, the gap between representation and availability for persons with disabilities in the federally regulated

<sup>7</sup> HRDP, *Evidence* (11:20), Meeting No. 50, 21 February 2002.

private sector remains significant. Representation in employment for persons with disabilities was roughly one-third of this group's availability in 2000, a situation that the Committee finds unacceptable and worthy of special action. The federal public service enjoyed better success achieving a representative workforce among persons with disabilities during this period, when the representational ratio in that sector almost doubled between 1987 and 2000. For the first time, overall representation of persons with disabilities in employment in federal departments and agencies is comparable to Treasury Board's availability benchmark of 4.8%, a level of availability that is significantly less than the 6.5% benchmark applied to federally regulated private sector employers.

At present, the track record for ensuring equity for persons with disabilities, much less those with psychiatric disabilities, is far from shining. According to the 2001 *Employment Equity Annual Report*, persons with disabilities represent 2.4% of the workforce, drastically below the labour market availability of 6.5%. The representation of persons with disabilities fell this year continuing a declining trend that started in 1996. This group has experienced the least progress under the Act. The rate at which employees with disabilities are leaving the workforce is alarming. In 2000, the number of employees with disabilities terminated was higher than that hired. **(Ms. Wendy Steinberg, Policy Analyst, Canadian Mental Health Association)**<sup>8</sup>

Since the inception of employment equity, federally regulated private sector employers have traditionally employed a higher proportion of visible minorities than their counterparts in the federal public service. While the extent of representation among visible minorities in both sectors improved between 1987 and 2000, visible minorities in the federally regulated private sector were slightly over-represented by the year 2000. Significant under-representation of visible minorities persists in federal departments and agencies, despite the fact that the availability benchmark applied to the federal public service is significantly lower than that applied to the private sector.<sup>9</sup> The Committee is hopeful that the relative employment position of visible minorities will improve significantly in the federal public service in the near term, as the positive measures contained in the *Embracing Change* action plan begin to bear fruit.

Unfortunately, we are not yet as representative with respect to visible minorities. The Secretariat's *Embracing Change* program was implemented to respond to this challenge by setting benchmarks for the recruitment, promotion and training of visible minority employees and focusing on ways to change the corporate culture in our institutions. **(Mr. James Lahey, Associate Secretary, Treasury Board of Canada Secretariat)**<sup>10</sup>

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<sup>8</sup> HRDP, *Evidence* (11:25), Meeting No. 58, 16 April 2002.

<sup>9</sup> One of the reasons that the availability benchmark for the federal public service is lower than the private sector is because the benchmark used in the federal public service only includes Canadian citizens, a situation which arises from the preference citizens receive pursuant to the *Public Service Employment Act*.

<sup>10</sup> HRDP, *Evidence* (11:10), Meeting No. 45, 29 January 2002.

### 3. Additional Action

Like the approach adopted in the federal public service to better address the equity needs of visible minority workers, the Committee believes that specific workplace strategies should be developed to advance employment equity among persons with disabilities and Aboriginal people. These strategies should also incorporate special initiatives like those delivered under the now defunct Employment Equity Positive Measures Program (EEPMP) and the Enabling Resource Centre (ERC), a longstanding program designed to help public service managers provide the technology and means to accommodate persons with disabilities. According to correspondence from the Presidents of the Treasury Board and Public Service Commission to the Committee, EEPMP and ERC are no longer needed as they have helped individual departments become self-sufficient in achieving employment equity objectives in the federal public service. We were also told that this decision is in keeping with government's approach to modernizing human resource management in the federal public service. Members of the Committee are displeased by the fact that the Treasury Board and the Public Service Commission terminated the EEPMP and the ERC as we were in the middle of reviewing the *Employment Equity Act*. Furthermore, the CHRC recommended that the Committee examine the possibility of extending funding for these programs with the Treasury Board. Because most members of the Committee are not convinced that individual departments and agencies have become self-sufficient in delivering these measures, we do not support the termination of these programs at this time.

The workplace strategies for persons with disabilities and Aboriginal people should be developed in partnership with employers covered under the *Employment Equity Act*, disability organizations, Aboriginal organizations and other stakeholders in the community. Funding should be secured to create entry-level employment opportunities, partnering arrangements with voluntary sector organizations that support the hiring and development of Aboriginal people and persons with disabilities, and the development of supports to facilitate physical and cultural accommodations in the workplace, respecting the constitutional jurisdiction of the provinces and in harmony with programs existing in certain provinces.

While many programs have met with limited success, a few have made noteworthy progress. Concerns are not about the Act per se, but rather improvements that could be made with the Act. Most of the necessary initiatives are already in place. What remains is to work at making them more effective. The high turnover of aboriginal employees due to unfriendly or culturally insensitive work environments could be addressed by mentorship, cultural accommodations, as well as development of various other support systems in the workplace. **(Ms. Marie Frawley-Henry, Director of International Affairs, Assembly of First Nations)**<sup>11</sup>

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<sup>11</sup> HRDP, *Evidence* (11:10), Meeting No. 55, 19 March 2002.

Disability organizations have not been recognized for the knowledge, support, linkage and expertise they can bring to make this work. Linkages are needed between the individual community, training and education providers, the labour market and the workplace and disability voluntary sector organizations can make this happen. They play roles in identifying individual goals and support needs, they broker access to support and labour market resources, they provide peer support and motivation, they provide employer education and awareness, they provide on-the-job training, accommodation, and facilitate co-worker relationships and they assist employers in meeting labour market demand by linking to supply ... The federal government could take leadership in the federally regulated sector. They could take leadership within the labour market to demonstrate and create a proactive equity strategy, establishing a partnership through the workplace equity programs. They could invest resources for workplace development as in the public service, and they could fund disability voluntary-sector organizations to play linkage roles. **(Mr. Michael Bach, Vice-President, Canadian Association for Community Living)**<sup>12</sup>

### **Recommendation 1**

**The Committee recommends that:**

- **The Minister of Labour, in collaboration with the Minister of Human Resources Development Canada, develop workplace strategies that identify specific resources and targets to help all employers covered under the *Employment Equity Act*, especially federally regulated employers, to hire, accommodate and train persons with disabilities and Aboriginal people. These workplace strategies should be developed in partnership with employers covered under the Act, disability organizations, Aboriginal organizations and other interested community groups. In addition, workplace strategies must respect the constitutional jurisdiction of the provinces.**
- **The government re-instate the Employment Equity Positive Measures Program and the Enabling Resource Centre, and fund these initiatives until such time that the government can verify that the capacity exists within individual departments and agencies to deliver this support. This verification should be provided in a report and presented to the House of Commons Standing Committee on Human Resources Development and the Status of Persons with Disabilities.**

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<sup>12</sup> HRDP, *Evidence* (12:50), Meeting No. 58, 16 April 2002.

## CHAPTER II PROMOTING SUCCESS: INFORMATION, EDUCATION, TRAINING AND OUTREACH

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Almost all of our witnesses pointed out that success in achieving employment equity depends on many activities that fall outside the legislation. This is as true in achieving an understanding of equity in the general population as it is in the workplace. Chief among these activities are education and promotion that will support the goals expressed in the Act itself.

The purpose of this Act is to achieve equality in the workplace so that no persons shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfilment of that goal, to correct the conditions of disadvantage in employment experienced by women, aboriginal peoples, persons with disabilities and members of visible minorities...<sup>13</sup>

The Act recognizes the importance of education in achieving this purpose and gives Human Resources Development Canada (HRDC) responsibility for developing and conducting information programs that foster public understanding of employment equity and that promote the program (Section 42 (1)). Representatives of the four designated groups, employers and unions reiterated that HRDC has an important role in marketing and promoting employment equity among the general public.

Creation of employment equity is not enough. Educating the general public and the workforce on the need for, and importance of, employment equity is as important as its implementation. Education will assist in alleviating myths and misconceptions that are synonymous with employment equity. **(Mr. Raj Dhaliwal, Director, Human Rights Department, Canadian Auto Workers Union)**<sup>14</sup>

Changing mindsets is probably the most essential step required to open the workplace to people with disabilities. Constantly challenging existing mindsets will help this to happen. **(McLarren Consulting Group, Brief)**<sup>15</sup>

We encourage the Labour Program [HRDC] to become more active in fostering broader public understanding and recognition of the principles and objectives of employment equity. We still believe that more information about employment equity is needed in the public forum and in schools and that the Labour Program has an educational role to play to that end. All Canadians should understand the goals of equity. When individuals arrive in employment, they should already be

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<sup>13</sup> *Employment Equity Act*, 1995, Section 2.

<sup>14</sup> HRDP, *Evidence*, (12:55), Meeting No. 49, 19 February 2002.

<sup>15</sup> McLarren Consulting Group, "Submission Respecting the *Employment Equity Act* Review by McLarren Consulting Group Inc. for consideration by the Standing Committee on Human Resources Development and the Status of Persons with Disabilities," 9 April 2002, p. 10.

familiar with concepts of diversity and inclusiveness. Members of designated groups still need to be reassured... **(Canadian Bankers Association, Brief)**<sup>16</sup>

Throughout our review of the Act, we often felt that the education and promotion activities were being obscured by the need for administrative measures, data collection, employer obligations, and compliance reviews. When the question did come up for discussion, designated groups pointed the finger at management and labour; labour blamed management and everyone blamed the Department. Obviously, this is an area where all parties bear some responsibility for the lack of effective action.

In respect of public education, we are extremely disappointed that the federal government did not provide the resources necessary for information programs to foster public understanding of this act and to foster public recognition of the purpose of this act, as provided in the Act. It is our opinion that this is an indispensable role for government. The government should also have public education and awareness campaigns on a regular basis to deal with employment equity-related backlash. **(Mr. Harminder Singh Magon, Anti-Racism Co-ordinator, Union of Public Employees)**<sup>17</sup>

Employers also put forward a very convincing case that a continuing dialogue among those with a stake in success would be particularly helpful. They suggested:

- sharing knowledge, success stories and best practices;
- training sessions and seminars to help all participants understand the issues;
- research to promote better policy development; and,
- an internet site that would highlight the successes in the area of employment equity.

We believe we need to spend more time exchanging results, not in the statistical sense, but rather letting others know that, for example, a co-op program tested at one particular location was quite successful and could prove useful to other employers who may not have had an opportunity to do the same things. **(Ms. Elisabetta Bigsby, Senior Executive Vice-President, Human Resources and Public Affairs, RBC Financial Group, Canadian Bankers Association)**<sup>18</sup>

There were, of course, several caveats. Among them was a warning that strategies need to be adapted to community needs as well as designated group requirements. For example, an outreach program that works in Toronto might not work in Saskatchewan.

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<sup>16</sup> Canadian Bankers Association, *Employment Equity Act Review: Submission to the House of Commons Standing Committee on Human Resources Development and the Status of Persons with Disabilities*, 21 March 2002.

<sup>17</sup> HRDP, *Evidence* (11:10), Meeting No. 49, 19 February 2002.

<sup>18</sup> HRDP, *Evidence* (12:10), Meeting No. 56, 21 March 2002.

In our first years of looking at our workforce from an employment equity perspective, we had four taskforces that looked at all the four different designated groups, identified stereotypes and myths, and then looked at our population, found the evidence that supported or rebutted those myths and communicated the results to not only our employees but also to the communities in which we do business. This is putting aside stereotypes and showing the reality that these people from the designated groups are available, they are skilled, they have the opportunity to come to work and we welcome them and have an equitable and supportive environment. **(Ms. Lesya Balych-Cooper, Vice-President, Diversity and Workplace Equity/EAP, Bank of Montreal, Canadian Bankers Association)**<sup>19</sup>

The Committee's evidence provided back-up to our view that some of the specific issues that we discuss later in this report could be at least partly resolved through greater understanding. The Federal Employers in Transportation and Communication (FETCO), for example, identified a proactive campaign to create broader public awareness and understanding of employment equity as one means of overcoming the reluctance of some of the designated groups to self-identify.<sup>20</sup>

Again, HRDC was identified as having a specific role within the employment equity 'system' that it could play more successfully. HRDC could assist employers and help them to bridge the gaps with designated groups. HRDC should also provide more advice and technical support to employers and members of designated groups (e.g. guidelines to the Act; workforce gap analysis; clustering analysis; numerical goal setting; and, regular updates on relevant case law, best practices and innovative approaches).

Some witnesses put forward another perspective on promotion and education in their argument that employers themselves should take a more active role in education in the workplace. The success of any employment equity program depends on the type of education initiatives in support of these programs. The Act does not specifically mandate employers to provide workplace education on employment equity and labour representatives argued that where there is a union, the provision of education and information should be a joint obligation. Employers should develop effective means of communicating employment equity programs and policies and develop effective educational materials. Some employment equity practitioners took essentially the same position.

Right now, there isn't a lot of employment equity training per se. There's the compliance book that says here are some of the things you can implement with the new organizations. But what happens on a company level is that the companies put an individual in the position who may have the competencies and skills required around human resources, but not necessarily around how to deliver these types of directives.

A lot of times what happens is the employment equity person becomes the in-house expert. You're considered to know it all; however, you're not given any of

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<sup>19</sup> Ibid.

<sup>20</sup> HRDP, *Evidence* (11:20), Meeting No. 56, 21 March 2002.

the training to know it all. So it's really put upon you to educate yourself a lot of the time. Some companies will say you can go to a conference in Toronto, if there's a diversity conference or an employment equity conference, and they'll pay for stuff like that, but there isn't really any in-house training provided for most individuals. **(Ms. Crystal Laborero, Council Member, Manitoba Women's Advisory Council)**<sup>21</sup>

There are people who, because of their work responsibilities, should receive training on employment equity in addition to education and awareness sessions which should be provided at all levels to everyone in workplaces covered by the act. This type of training should cover all aspects of workplace relations and should be built into all training programs, providing effective information to counter the backlash effect. **(Mr. Harminder Singh Magon, Anti-Racism Co-ordinator, Canadian Union of Public Employees)**<sup>22</sup>

Many of the designated groups reiterated the need for training programs for both employers and unions. These witnesses believe that education should be a required component of all barrier identification, removal and prevention plans. They also believe the education of employers could assist in creating a workplace where some individuals with intermittent health problems, including those with mental illnesses would not be afraid to self-identify. In this case, the witnesses pointed out that the Canadian Human Rights Commission could provide information that would assist employers.

We would therefore ask that the attitudes of employers and unions be examined, that awareness and training programs for employers, employees and unions be offered.... **(Ms. Chloé Serradoni, Executive Director, Confédération des organismes de personnes handicapées du Québec)**<sup>23</sup>

Education and training are key aspects of employment equity. There is a need to improve the overall understanding of the Act through better education and training of employers, managers, workers and the general public to eliminate misperceptions about employment equity and prejudice. Again the role of the federal government, particularly HRDC's Labour Branch was highlighted — not just in dealing more narrowly with employment equity but more broadly in looking at the place of some of the designated groups in the workplace and implementing policies apart from employment equity that would support its goals.

Research carried out around the world has consistently shown that organizations with programs designed to manage disabilities are much more open and generally recruit people with disabilities at a much higher rate. **(Mr. Viateur Camire, Director and Vice-President, Human Resources, Abitibi Consolidated Inc., National Institute of Disability Management and Research)**<sup>24</sup>

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<sup>21</sup> HRDP, *Evidence* (12:40), Meeting No. 50, 21 February 2002.

<sup>22</sup> HRDP, *Evidence* (11:10), Meeting No. 49, 19 February 2002.

<sup>23</sup> HRDP, *Evidence* (11:10), Meeting No. 58, 16 April 2002.

<sup>24</sup> HRDP, *Evidence*, (13:05), Meeting No. 58, 16 April 2002.



According to the National Institute of Disability Management, the federal government should promote and support the adoption and implementation of the International Labour Organization's *Code of Practice on Managing Disability in the Workplace*. The Institute also recommended increasing the resources of HRDC's Labour Branch to allow it to carry out research on disability management in the workplace and encouraging cooperation between workers and employers.

Obviously, what is needed is a more systematic and comprehensive strategy to deal with education, promotion, and training for employment equity.

... what an opportunity to have a marketing and a communications plan in both these areas [legislation employment equity and the federal contractors program] that would sell employment equity in this whole country, even if we don't fall under the legislation. **(Ms. Mary Margaret Dauphinee, University Advisor on Employment Equity, Queen's University)**<sup>25</sup>

Meeting this need would not require any amendments to the Act, but it would require a commitment and resources on the part of all the stakeholders to translate some of their words about achieving the purposes of employment equity into action.

## **Recommendation 2**

**The Committee recommends that the Minister of Labour develop a more focused and better-resourced employment equity research, promotion, education, and technical support strategy. As a basic premise, such a strategy should also aim to create, and to build on partnerships between business, labour, the community and designated groups. This strategy should entail the development of:**

- (i) a communications strategy to increase public awareness of the benefits of employment equity and employers' requirements under the Act;**
- (ii) an education strategy that brings together employers, designated groups, advocacy organizations, unions etc. to identify issues, solutions and best practices; and**
- (iii) a technical support strategy to develop better tools and data to assist employers to meet their employment equity obligations.**

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<sup>25</sup> HRDP, *Evidence*, (12:10), Meeting No. 46, 31 January 2002.

### **Recommendation 3**

**The Committee recommends that the Labour Branch of Human Resources Development Canada be the sole source of technical support for both public (including Separate Employers) and private sector employers.**

# CHAPTER III THE SUPPLY SIDE OF EMPLOYMENT EQUITY: SKILL ACQUISITION AND FOREIGN CREDENTIAL RECOGNITION

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The *Employment Equity Act* essentially assumes that inequality in the workplace originates exclusively from the behaviour of employers or, in other words, the demand side of the labour market. This is clearly not the case, an observation made by a vast majority of witnesses during our deliberations. They spoke in favour of more skill acquisition initiatives for members of designated groups. The importance of the supply-side of the labour market in terms of employment equity is evident in the role that education and job skills play in influencing the labour market outcomes of members of designated groups. According to the findings of a recent study, visible minority workers (except for black men) who are born in Canada have comparable earnings as similarly skilled and educated white Canadian workers. This was not found to be the case for similarly educated foreign-born visible minority workers, especially men, who suffer a wage disadvantage, compared to their white Canadian-born counterparts.<sup>26</sup> To economists, this earnings gap is attributed to differences in the market value of human capital (i.e. education, training, work experience, etc.) and not to discrimination. A number of issues related to differences in economic status within the visible minority community also surfaced during the pre-review consultations conducted by HRDC's Labour Branch.<sup>27</sup>

## 1. Human Resource Development and Disadvantaged Workers

As mentioned elsewhere in this report, the Canadian labour force is rapidly ageing and many are concerned about the potential labour shortages this demographic phenomenon may have in the future. While some of our witnesses maintained that the employment prospects of members of designated groups (including those who are not covered directly under the Act) will improve dramatically without public sector investments in human capital, others expressed the view that the federal government's involvement in providing skill acquisition opportunities to disadvantaged workers is as necessary today as it was when the *Employment Equity Act* came into force in 1986.

Employer surveys, including one survey that included many of our members, show that attracting and retaining talent remains an absolute top-of-the-mind issue in building businesses. In combination with aging, this suggests that employers will be falling all over themselves doing outreach in the next couple of decades, they will be looking everywhere to find, develop, and retain human

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<sup>26</sup> D. Hum and W. Simpson, "Not all Visible Minorities Face Labour Market Discrimination", *Policy Options*, December 2000, p. 47.

<sup>27</sup> Human Resources Development Canada (Labour Branch) (December 2001), pp. 49 to 51.

capital, and they won't need much outside encouragement to do so. This will benefit all covered groups, but most particularly the disabled, because, for example, workplace changes that are aimed at accommodating the mobility problems associated with the elderly will also improve the workplace environment for those whose mobility is limited for reasons other than age. **(Mr. Finn Poschmann, Senior Policy Analyst, C.D. Howe Institute)**<sup>28</sup>

The Committee was reminded on more than one occasion that the recent retrenchment in federal spending has had an adverse impact on programs supporting human resource development among members of designated groups. Part of the reason for this is the way these programs are now delivered and funded, and part is due to program structural changes that have had a direct impact on clients' access to support. Today, much of this support is delivered under Labour Market Development Agreements (LMDAs). Prior to the LMDA model, HRDC had more control over the allocation of employment and training support and the clientele served under its programs. At one time, target levels of participation for each designated group were set annually. Today, no such arrangement exists under the LMDAs, although provincial and territorial governments have agreed to provide the federal government with client-based information on gender, disability, visible minority and aboriginal status, where clients have willingly provided this information.

There are no target programs for women and visible minorities, but the flexibility and targeting of EBSM [Employment Benefits and Support Measures] at the local level help adapt projects to certain groups when they are considered a priority on the labour market. **(Mr. Phil Jensen, Assistant Deputy Minister, Employment Programs Branch, Department of Human Resources Development)**<sup>29</sup>

In addition to program delivery changes, participation in what is now called Employment Benefits and Support Measures (EBSM) under Part II of the *Employment Insurance Act* requires individuals to be eligible for Employment Benefits. Because members of designated groups are seen to be disadvantaged in employment, including insurable employment, it follows that this disadvantage extends to eligibility for Employment Benefits.<sup>30</sup>

If you have not been in the labour market, if you have not had a job, you are not now eligible for training because the accountability mechanism for those labour market agreements is the number of people provincial governments move from employment assistance into the labour market. So frankly, not only has the employment equity legislation not been effective for our community, but the federal government's turning over responsibility of labour market agreements to the provinces, without any guarantee that the needs of those who are not eligible will also be addressed has meant you have abandoned the whole area. Frankly, we see this leading to a continued patchwork of programs at the provincial level

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<sup>28</sup> HRDP, *Evidence* (11:30), Meeting No. 48, 7 February 2002.

<sup>29</sup> HRDP, *Evidence* (10:45), Meeting No. 59, 23 April 2002.

<sup>30</sup> To qualify for Employment Benefits, an individual must be an "insured participant." Insured participants include those who have established a benefit period, those whose benefit period has ended within the past 36 months and those who have received maternity/parental benefits in the past 60 months (see section 58 of the *Employment Insurance Act*).

that have no equity across this country. (Mr. Laurie Beachell, National Coordinator, Council of Canadians with Disabilities)<sup>31</sup>

According to the data presented in Table 1, some 44.2% of EBSM clients were women in 1999-2000. A somewhat smaller proportion, 38.5%, of women participated in long-term interventions, a category of labour market programming that includes training. EBSM participation rates among persons with disabilities, aboriginal people and visible minorities in the same year were 2%, 4.3% and 3.8% respectively. Except for aboriginal people, participation rates for these designated groups were also lower in long-term interventions. These participation rates, irrespective of the duration of the intervention, are also below the overall availability benchmarks applied to each designated group, except Aboriginal Peoples, in the federally regulated private sector.

Between 1997-1998 and 1999-2000, progress in terms of raising the EBSM participation rates among members of designated groups has been, at best, modest in the case of women and Aboriginal people, and, regrettably, participation rates have declined in the case of persons with disabilities and members of visible minorities. According to our testimony, HRDC maintains that incomplete data capture continues to contribute to the problem of under-reporting by designated groups. We only note, in this regard, that employers covered under the *Employment Equity Act* are also exposed to the same, or perhaps even more serious, data problems attributed to under-reporting.

**TABLE 1**  
**Participation of Designated Groups in Employment**  
**Benefits and Support Measures**

Measure	Women		Persons with Disabilities		Aboriginal People		Visible Minority	
	1997-1998	1999-2000	1997-1998	1999-2000	1997-1998	1999-2000	1997-1998	1999-2000
Short-term Intervention	49.6%	47.9%	3.5%	2.3%	3.0%	3.9%	7.1%	4.4%
Long-term Intervention	37.4%	38.5%	3.7%	1.6%	4.8%	4.0%	3.3%	2.7%
Total	41.7%	44.2%	3.6%	2.0%	4.2%	4.3%	4.6%	3.8%

**Source:** Human Resources Development Canada, 1998 Employment Insurance Monitoring and Assessment Report, Annex 3; and Employment Insurance 2000 Monitoring and Assessment Report, December 2000, Annex 3.

Despite differences in assumptions underlying future population and labour force growth in Canada, two things are virtually certain: Canada's workforce will become older and it will become more diverse in the medium-term. Aboriginal peoples make up one of the fastest growing components of the Canadian population, increasing at a rate that is about twice the national average. By the year 2011, immigration is expected to account for all net labour force growth in Canada.<sup>32</sup> In other words, Aboriginal peoples

<sup>31</sup> HRDP, *Evidence* (12:55), Meeting No. 58, 16 April 2002.

<sup>32</sup> Government of Canada, *Knowledge Matters: Skills and Learning for Canadians*, 2002, p. 8.

and immigrants, many of whom are members of visible minority groups, will comprise a growing share of the Canadian labour force in the years to come. The Committee acknowledges the efforts of the federal government to address the labour market needs of immigrants and Aboriginal people (e.g. Aboriginal Human Resources Development Strategy, Immigrant Settlement and Adaptation Program and Language Instruction for Newcomers to Canada). Nevertheless, the fact remains that Aboriginal people continue to experience much higher rates of unemployment and acquire significantly less schooling than the general population. Many newly-arrived immigrants also continue to face serious difficulties entering the Canadian labour market because they lack adequate language skills and/or are unable to have their educational or occupational credentials recognized fully, an issue that is further discussed below.

The Committee heard from many groups representing persons with disabilities and virtually all expressed some dissatisfaction with current human resource development programming for persons with disabilities. Some also criticized the delay in establishing a labour force development strategy for persons with disabilities, an initiative that was announced in the latest Speech from the Throne. The Committee was told that Employability Assistance for People with Disabilities (EAPD is delivered under agreements with the provinces and territories) has resulted in reduced access to funding compared to its predecessor, Vocational Rehabilitation of Disabled Persons. Like the LMDAs, we were told that the assistance under EAPD has also assumed a bias in favour of short-term interventions. As a result, clients have limited access to the skill acquisition initiatives that can generate meaningful long-term results.

... as of July 1, 2000 the government announced the federal government would no longer be responsible for training programs. This created chaos in the community because you suddenly had to redraft all of your projects and programs so that it didn't reflect training because, we were told, training was now the exclusive responsibility of provinces based on the labour market agreements ... To block funding of programs on the basis of the federal government no longer is involved in training, to me demonstrates, perhaps, a lack of diligence in terms of really understanding what the tools and mechanisms require or dictate. **(Ms. Joan Westland, Former Executive Director, Canadian Council on Rehabilitation and Work)**<sup>33</sup>

The Committee is fully aware of the fact that the *Employment Equity Act* applies to a relatively small proportion of Canada's labour force. But we also know that the Act's objectives will not succeed unless these aims are integrated into a broader base of HRDC programs and labour market initiatives generally. We are also cognizant of the vital human resource development needs of members of designated groups throughout the entire Canadian labour market. While the need for public support in this area may wane in the years ahead, as private sector employers devote more resources to training to avert labour shortages, we are clearly not yet there.

In our opinion, enhanced federal support for human resource development is critical in terms of making more progress on the employment equity front as well as

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<sup>33</sup> HRDP, *Evidence* (12:00), Meeting No. 59, 23 April 2002.

ensuring that Canada has the knowledge and skills to drive the economy in the years to come. As evidenced by the work being done on the National Skills and Learning Agenda, part of the Innovation Strategy, the government realizes that knowledge and skills do matter. It is vital to ensure that the support that does become available to individuals under this strategy to make the required investments in learning be allocated fairly and be accessible to all members of designated groups. It is for this reason that most members of the Committee believe that we need more equity-based human resource development support and input at the federal level.

#### **Recommendation 4**

**The Committee recommends that:**

- **The government ensure that sufficient resources are allocated to enhance human resource development among members of designated groups. New funding mechanisms and eligibility criteria should be incorporated in the next generation of Labour Market Development Agreements to ensure that members of designated groups have a greater opportunity to access Employment Benefits and Support Measures.**
- **The government fast track discussions with provincial and territorial governments in order to implement a labour force development strategy for persons with disabilities at the earliest date possible.**
- **HRDC report annually in its Departmental Performance Report on program expenditures for designated groups and the proportion of designated groups who are served under these programs.**
- **Citizenship and Immigration Canada review its budget for Language Instruction for Newcomers to Canada and the Immigrant Settlement and Adaptation Program to ensure that sufficient funding is available to serve the labour market transition needs of newly arrived immigrants, particularly in view of the recent upward trend in actual annual landings.**
- **All the measures set out above respect the constitutional jurisdiction of the provinces.**

## **2. Foreign Credential Recognition**

The absence of a national system for recognizing foreign credentials was an issue that surfaced frequently during our hearings. It was also raised in the pre-review consultations held by HRDC's Labour Branch. Given our historical heavy reliance on

immigration as a source of skilled labour, the successful integration of immigrants into the Canadian labour market has been a long-standing policy objective of the government. One aspect of this policy that has received the government's attention for quite some time is our inability to assess adequately foreign educational and trade certification credentials that accompany many immigrants to Canada. The Committee is well aware that this is an area of provincial/territorial jurisdiction. Nevertheless, it is critical that we make progress in this area, a point that is also recognized in the government's Innovation Strategy.

While the *Employment Equity Act* has achieved major gains and progress in the representation of women and visible minorities, certain barriers still exist that prevent them from achieving their full potential. As an immigrant woman myself, and also a member of Immigrant Women of Saskatchewan, I have experienced and have heard many of the experiences of other immigrants and visible minority women and how the system works against them. Many of us feel that progress in the labour market is inhibited by the underutilization of our skills. It is not very easy to integrate into the workforce, because most often we come to Canada with foreign education credentials that are sometimes not recognized by Canadian institutions and organizations. We end up accepting jobs that are far below the qualifications and skills we already have. The need to get a better job forces us to go back to school and to retrain, but we still face the issue of not having the Canadian experience to get us hired. **(Ms. Martha Mettle, Vice-President, Immigrant Women of Saskatchewan, Regina Chapter)**<sup>34</sup>

According to a recent study, it is estimated that some 540,000 individuals in the Canadian labour market forego an average of \$8,000 to \$12,000 annually because some portion of their human capital (formal and informal learning) is not recognized, but could be recognized and rewarded if a better system for learning recognition were in place in this country.<sup>35</sup> Of these, an estimated 340,000 individuals possessed unrecognized foreign credentials. According to the study, individuals with unrecognized foreign credentials are most likely to come from China, India, Philippines and Guyana.<sup>36</sup>

Recently, the government proposed changes to the selection criteria used for assessing skilled workers who want to immigrate to Canada. In relation to this proposal, points will be awarded on the basis of the number of years of schooling required to obtain a diploma, trade certificate, formal apprenticeship or university degree. Compared to the current approach, the proposed selection system affords more points to education and tries to provide a better balance between formal schooling and technical training. However, like the current system, the proposed system makes no distinction between foreign educational and technical training credentials that are similar or equivalent to Canadian credentials and those that are not. And in the absence of a policy that requires applicants to acquire credential assessment prior to applying to immigrate to this country, like the approach adopted in Australia, the current and

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<sup>34</sup> HRDP, *Evidence* (12:34), Meeting No. 50, 21 February 2002.

<sup>35</sup> M. Bloom and M. Grant, *Brain Gain: The Economic Benefits of Recognizing Learning and Learning Credentials in Canada*, Conference Board of Canada, 2001, p. 29.

<sup>36</sup> *Ibid.*, p. 19.



proposed selection systems seem to contribute to the problem. Some, but not all of our posts abroad, provide information to successful immigration applicants regarding credential evaluation services in this country. This should be a common practice in all posts and provisions should also be made to provide this information to successful applicants when an interview is waived.

### **Recommendation 5**

**The Committee recommends that:**

- **The government vigorously pursue discussions with provincial and territorial governments and professional associations to develop a system for recognizing foreign credentials, while recognizing provincial jurisdiction in this matter. The importance of this issue needs to be better reflected in federal-provincial/territorial agreements relating to immigration and labour market development to ensure a barrier-free labour market.**
- **Citizenship and Immigration Canada ensure that all visa officers inform applicants of the potential problem that may arise with respect to the recognition of an applicant's formal education and/or technical training credentials. Visa officers should encourage all successful applicants to contact the relevant certification organizations in Canada prior to immigrating to this country.**



## CHAPTER IV EMPLOYMENT EQUITY COVERAGE

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Many of the witnesses who appeared before the Committee voiced some concern about the scope of the Act. In this regard, some witnesses expressed the view that Parliament and federal contractors should be covered under the Act. Others suggested that coverage should be broadened to include employers who obtain contracts or receive grants and contributions, regardless of the number of workers employed in these organizations. Although there was a great deal of support for maintaining the status quo, some witnesses thought that the number of groups designated under the Act should be increased.

### 1. Private and Public Sector Employers

Section 4 of the *Employment Equity Act* specifies those employers covered under the Act. The largest group of employers covered under this section of the Act includes federally regulated private sector employers and Crown corporations that employ 100 or more employees. According to the most recent available data, there were 394 federally regulated private sector companies covered under the Act in 2000 with a combined workforce of some 612,000 employees.<sup>37</sup>

The Act also applies directly to all federal departments, agencies and commissions, irrespective of the number of employees, as set out in Part I of the *Public Service Staff Relations Act*. As of 31 March 2001, there were 65 federal departments, agencies and commissions for which the Treasury Board is the employer with a combined employee population of 149,339 individuals.<sup>38</sup>

Special operating agencies or corporations set out in Part II of the *Public Service Staff Relations Act* with 100 or more employees are also covered directly under the *Employment Equity Act*. These employers are outside the traditional federal public service and, as such, are commonly referred to as “separate” employers. Currently, there are 15 separate employers who employ more than 100 employees.<sup>39</sup> Combined, their workforces include somewhere between 60,000 and 70,000 workers.<sup>40</sup>

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<sup>37</sup> Human Resources Development Canada, *Annual Report of the Employment Equity Act, 2001*, 2001, p. 2.

<sup>38</sup> President of the Treasury Board, *Employment Equity in the Federal Public Service, 2000-01, 2002*, Table 5, p. 40.

<sup>39</sup> The 15 separate employers currently covered under the Act are: Auditor General of Canada, Canada Customs and Revenue Agency, Canadian Food Inspection Agency, Canadian Forces Personnel Support Agency, Canadian Nuclear Safety Commission, Canadian Security Intelligence Service, Communication Security Establishment, National Energy Board, National Film Board of Canada, National Research Council of Canada, Natural Sciences and Engineering Research Council, Office of the Superintendent of Financial Institutions, Parks Canada, Statistical Survey Operations and the Social Sciences and Humanities Research Council.

<sup>40</sup> Based on information provided by Human Resources Development Canada and the Canadian Human Rights Commission.

For security and operational reasons, the *Employment Equity Act* of 1996 contained special provisions for bringing the non-civilian workforces of the Canadian Armed Forces, the Royal Canadian Mounted Police and the Canadian Security Intelligence Service under the purview of the Act. Six years have passed and these federal organizations are still not effectively covered under the Act. Of the witnesses who addressed this issue, all agreed that it has taken much too long to develop the necessary regulations for extending the Act to non-civilian workers in these organizations. As far as the Committee can ascertain, the regulatory framework for extending coverage to these organizations is now in place; these regulations only need to be promulgated. The Committee is in total agreement that this matter has taken far too long and absolutely no reason exists for continued delays.

We also want to draw your attention to the need to proclaim the Act's application to non-civilian staff of the RCMP, the Canadian Security Intelligence Service and the Canadian Armed Forces. It is quite abnormal that, after nearly six years, this provision has not yet been implemented. **(Mr. Fo Niemi, Executive Director, Centre for Research-Action on Race Relations)**<sup>41</sup>

Some of the witnesses who appeared before the Committee expressed concern about the fact that Parliament is not covered under the *Employment Equity Act*. In their view, Parliament should fall under Act, since it created the Act and, as a consequence, should play an exemplary role in the pursuit of fairness in the workplace.

For Parliament, it is ironic that in the very body whose staff support this, the guardians of the Act are not covered by the provisions of the Act. It is strongly recommended that the House of Commons, the Senate, the Speakers, the staff, and the Library of Parliament also be covered by it. **(Mr. Baljinder Gill, President, National Association of Canadians of Origins in India)**<sup>42</sup>

The Committee is aware of the fact that Parliament and the Library of Parliament have adopted employment equity policies as part of their overall approach to human resource management. However, members of the Committee are unsure about the extent to which these policies meet the requirements of the *Employment Equity Act* itself. We were told that data does not exist on the number and proportion of designated group members employed by the House of Commons. In addition, we know that the Parliamentary campus is not completely accessible to persons with disabilities, although we were assured that work is continuing in this area.

Like many of our witnesses, we support the view that Parliament should fall under the purview of the *Employment Equity Act*. However, a problem does arise if the Act were to be extended fully to Parliament, although not to the Library of Parliament. This problem of parliamentary privilege is not restricted to the *Employment Equity Act*, but applies to all legislation passed by Parliament. We were told that the House of Commons can serve the objectives of the Act, provided the operational independence and constitutional

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<sup>41</sup> HRDP, *Evidence* (11:35), Meeting No. 53, 12 March 2002.

<sup>42</sup> HRDP, *Evidence* (11:43), Meeting No. 53, 12 March 2002.

position of the House of Commons is upheld. In other words, parliamentary privilege must prevail.

The Committee supports including the Library of Parliament under section 4 the *Employment Equity Act*. Most members also believe that the employer obligations under the Act should apply to Parliament, provided that the tradition of parliamentary privilege remains intact.

Right now, we are not dealing with employment equity, but with parliamentary privilege. Parliamentary privilege is Parliament's right to run its own affairs and to organize its relations between employees and the employer as it sees fit. That right is protected under the Constitution. The underlying principle is that the House is sovereign and must not be accountable to one of its creations, in this case the Canadian Human Rights Tribunal. (Mr. William Corbett, Clerk of the House of Commons)<sup>43</sup>

### **Recommendation 6**

**The Committee recommends that:**

- **The Library of Parliament be included in section 4 of the *Employment Equity Act*.**
- **Employees (excluding Members' and Senators' staff) of the Senate and the House of Commons be included under the *Employment Equity Act* for the purposes of annual reporting and compliance audits.**
- **The regulatory framework required to extend the Act to non-civilian employees in the Canadian Armed Forces, the Royal Canadian Mounted Police and the Canadian Security Intelligence Service be adopted without further delay.**

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<sup>43</sup> HRDP, *Evidence* (11:25), Meeting No. 57, 11 April 2002.

## 2. The Federal Contractors Program

The *Employment Equity Act* does not apply directly to federal contractors. Instead, section 42(2) of the *Employment Equity Act* requires the Minister of Labour to ensure that the requirements of the Federal Contractors Program (FCP) with respect to the implementation of employment equity are equivalent to the employment equity implementation requirements of employers covered under section 4 of the Act.

As noted elsewhere in our report, the FCP was initiated in 1986. The FCP applies to provincially regulated employers with a national workforce of more than 100 employees, provided they receive federal government goods and services contracts worth \$200,000 or more. In order to bid on these large contracts, potential contractors are required to certify in writing their commitment to employment equity. Today, there are roughly 845 federal contractors employing some 1.1 million workers.<sup>44</sup> Human Resources Development Canada conducts periodic onsite compliance reviews to ensure that FCP employers are meeting their employment equity obligations.

According to several witnesses, including the CHRC which conducted its own consultations on the *Employment Equity Act*, the lack of a legislative basis for the FCP, no requirement to report annually, inadequate program support and guidance, and the absence of a meaningful monitoring mechanism, have all created the impression that employment equity in workplace covered under the FCP is in a state of disarray. In fact one witness indicated that despite being covered under the FCP since 1987, there was still confusion as to what constituted non-compliance and how compliance is measured. The Committee is totally convinced that this program needs to be strengthened.

Compliance reviews are sporadic and unplanned. From the perspective of the University of Saskatchewan and other employers they consulted, the process and expectations are not defined and therefore are confusing. There is a lack of direction in what the review is intended to accomplish, and virtually no follow-up on completion of the review. There is no ongoing communication with representatives of the federal contractors program. **(Ms. Kathy Gray, Director of Employee Services, University of Saskatchewan)**<sup>45</sup>

With regard to the private sector and the federal contractors compliance program, the department has done a study, and there has been some leaked stuff in the newspapers about the study. I think the federal contractors program is an important tool in ensuring that the private sector plays its rightful part in promoting meaningful employment equity. It simply cannot be that all you are obligated to do is report where you're at. It has to be that if you want to get government contracts, you have to show some progress, and they need to be told that upfront. I think some of these employers are doing some good things, and there are some of them who have not made any changes in areas of employment. So looking at

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<sup>44</sup> Human Resources Development Canada, *The Employment Equity Act Review: A Report to the Standing Committee on Human Resources Development and the Status of Persons with Disabilities*, December 2001, p. 13.

<sup>45</sup> HRDP, *Evidence* (11:50), Meeting No. 51, 26 February 2002.

what needs to be tightened up, there needs to be more than simply saying, if you don't file the report on time, you might get yourself in trouble. **(Mr. Hassan Yussuff, Executive Vice-President, Canadian Labour Congress)**<sup>46</sup>

### **Recommendation 7**

**The Committee recommends that the Minister of Labour examine the Federal Contractors Program with a view to re-structuring this program to ensure that the employment equity obligations of federal contractors are the same as the obligations of employers covered under section 4 of the Act.\***

### **3. Small Employers**

Finally, a few witnesses expressed the view that coverage should be broadened to include smaller workforces in sectors already covered under the Act and organizations that receive government contracts or grants, irrespective of the level of employment in these organizations. Some members of the Committee are prepared to suggest that the employment threshold governing coverage be reduced from 100 to 50 workers. However, most of us are hesitant to recommend a change in the employment threshold at this time. Rather, we believe that the government should examine this issue further. According to one witness, we were told that, based on analysis conducted for the last legislative review, if the employment threshold was reduced to 20 employees the number of employers covered under the federally regulated private sector and the FCP would increase by 500% to 530%, while the number of employees covered would only increase by 20% to 25%.<sup>47</sup> Moreover, some of us are concerned about the administrative burden that a lower employment threshold would impose on small employers and the cost associated with this must certainly be considered before contemplating any change.

### **Recommendation 8**

**The Minister of Labour examine the feasibility of covering employers with fewer than 100 employees, federal contractors with contracts worth less than \$200,000 and recipients of federal grants and contributions.**

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<sup>46</sup> HRDP, *Evidence* (12:00), Meeting No. 49, 19 February 2002.

\* The NDP supports including a provision that Federal Contractors be subject to compliance audits as part of a re-structured program.

<sup>47</sup> HRDP, *Evidence* (12:30), Meeting No. 61, 30 April 2002.

#### 4. Designated Groups

For the most part, witnesses generally supported the current list of groups designated under the *Employment Equity Act* and did not ask for the list to be modified. However, some witnesses identified what they considered to be gaps in terms of the Act's current coverage of disadvantaged workers. In this context, several categories of workers were mentioned as needing the Act's protection including old workers, young workers, gay and lesbian workers, and workers facing official language barriers in the workplace.

The Committee was told that the Royal Commission on Equality in Employment used four criteria — the unemployment rate, the participation rate, earnings and occupational concentration — as indicators of workplace disadvantage. Based on these criteria, we were told that older workers were clearly not a disadvantaged group in the labour market. While some older workers do experience long spells of unemployment and hence have low earnings, as a whole this group tends to exhibit below average rates of unemployment and above average earnings compared to other age groups in the labour market. Moreover, any worker who believes that he or she is subjected to age discrimination has recourse under the *Canadian Human Rights Act*. The Committee is mindful of the fact that the labour force is ageing and encourages the Labour Branch at Human Resources Development Canada to monitor this situation closely.

In terms of youths, the Committee notes that the perceived labour market disadvantage in this case is largely attributed to problems encountered by youths as they make the transition from school to work. Eventually, young workers become adult workers and in so doing realize higher earnings and greater job stability.

Unfortunately, the Committee is unable to discuss the labour market situation facing other potential designated workers because there is very little information collected on these workers. Nevertheless, the Committee supports the collection and analysis of information on all potentially disadvantaged groups of workers in the Canadian labour market.



### 1. Reporting

Under the *Employment Equity Act* (Section 18), federally regulated private sector employers are required to file reports with Human Resources Development Canada (HRDC) on or before 1 June each year on the nature of their workforce for the previous year. They are to include information on the total number of employees, as well as the number of employees from designated groups by industrial sector, geographic location, employment status, occupational category, salary range, hirings, promotions and terminations. HRDC then consolidates this data and uses it to prepare an annual report that is to be tabled in Parliament before 31 December. This report compares the representation of the designated groups with their labour force availability. Private sector employers who fail to file their annual report are liable to a fine of up to \$50,000.

According to Section 21 of the Act, the President of the Treasury Board is required to prepare a similar annual report on the state of employment equity in the public service (those included in Part I of Schedule I to the *Public Service Staff Relations Act*) for each fiscal year.

In addition to the aforementioned employers, there is a group of 15 separate employers that is also required to report under the Act. According to section 4(c) of the Act, these employers are portions of the public service of Canada set out in Part II of Schedule I of the *Public Service Staff Relations Act*, that employ 100 or more employees. This includes, among others, the Canada Customs and Revenue Agency, the Canadian Security and Intelligence Service, Parks Canada, and the Office of the Auditor General. Although these separate employers submit their annual reports to the Treasury Board Secretariat, these reports are tabled in Parliament without any analysis or consolidation.

#### **(a) Equality and Comparability**

The Committee heard evidence that all employers should be required to report on the same basis. The Canadian Human Rights Commission and other witnesses recommended that federal departments and agencies should report on the same occupational basis (i.e. 14 occupational groups) as private sector employers. Currently, separate employers that are also federal agencies are required to submit their reports according to the 14 occupational groups. Federal departments and agencies report on the basis of six occupational categories. The Committee supports standardizing all reports because we are aware that it is difficult to compare progress and performance between some public sector employers and others as well as between the public and private sectors when the basis for comparison is not uniform.

Apart from this, we are aware that no agency has the responsibility for monitoring, vetting or ensuring consistency of the reports from separate employers in the federal public sector. There is no annual report on their progress. The Committee supports the position of the Canadian Human Rights Commission that it is appropriate that the reporting status of separate employers should be clarified and that they should be treated in the same way as other federal employers and private sector employers.

In the interests of consistency and fairness, the Committee believes that comparative information should be available from all those who are required to file reports under the Act.

### **Recommendation 9**

**The Committee recommends that all employers, including individual federal departments and agencies (those set out in Parts I and II of Schedule I of the *Public Service Employment Act*) as well as Parliament and the Library of Parliament, file their employment equity reports with the Minister of Labour. The Minister of Labour should be responsible for tabling in Parliament a consolidation of these reports, including a comparison of the public and private sectors. For greater clarity, all reports filed with the Minister should contain information in accordance with the prescribed instructions.**

### **Recommendation 10**

**The Committee recommends that all federal departments and agencies report on the same occupational basis as private sector employers. Following the review of the reporting requirements due on 1 January 2004 (see Recommendation 11), if the government modifies the basis on which occupational data are reported, the modified approach should apply equally to all employers.**

While employers did not ask for the requirement for an annual report to be changed, some employers believed that the reporting requirements of the Act imposed a considerable burden without any appreciable benefit in terms of their operations. They recommended that the reporting requirements be closely examined with a view to redirecting resources toward results.

... our members and the department have made it known that they want to spend less time on a report which essentially ends up being shelved. **(Ms. Hélène Gendron, Chair Employment Equity Sub-committee and Senior Manager, Employment Equity and Official Languages, CBC/Radio Canada, Federally Regulated Employers, Transport and Communications)**<sup>48</sup>

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<sup>48</sup> HRDP, *Evidence* (12: 05), Meeting No. 56, 21 March 2002.

On the other hand, many of our witnesses recommended that the annual reporting system should remain in place. Some employers reported to the Committee that they had put the systems in place and that these reporting tools had become part of their ongoing work methods although they did not want the preparation of statistical reports to become more complex. Still other witnesses, including the Canadian Human Rights Commission (CHRC) and some representatives of designated groups, want employers to report more data and analysis than is currently required under the Act.

The Committee agrees that reporting requirements impose a delicate balancing act with two sides to it: ensuring accountability through reporting and, at the same time, limiting the burden of reporting and audit requirements. We are also aware that most employers have invested resources in putting a reporting system into place and that changes could result in additional costs to them as well as to taxpayers.

Limited corporate resources need to spend time implementing change, rather than spending time responding to government information requests. **(Mr. John Crockett, Consultant)**<sup>49</sup>

We recommend amending section 18 of the Act to provide for private sector employers to file reports every second year rather than every year, at their option. Then a task force of stakeholders should be set up to determine how reporting could be changed to reduce its dominance. The whole issue of the reporting requirements is fraught with a lot of hidden issues and a lot of stakeholder considerations. **(Mr. Phillip McLarren, President, McLarren Consulting Group Inc.)**<sup>50</sup>

As far as reporting is concerned, there are areas that the Committee believes are worth exploring. There does, for example, seem to be a recognized need for more information about those who are members of more than one designated group but until the stage is properly set, the Committee is not prepared to recommend that employers report on this type of representation. We have dealt with this elsewhere in this report.

In addition, the Committee heard the employers who appeared before us speak about the success of various initiatives and interventions that they have undertaken to increase their representation of designated groups (e.g. outreach programs, apprenticeships, recruitment activities, training, etc.).

The effect of the reporting requirement is to put too much emphasis on numbers and not enough on developing systems, procedures and practices that will cause those numbers to change dramatically. Throughout the Act, pre-eminence of corrective action is emphasized, beginning with the purpose statement. It is time to balance numerical reporting with encouragement and direction on how to

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<sup>49</sup> HRDP, *Evidence* (11:05), Meeting No. 48, 7 February 2002.

<sup>50</sup> HRDP, *Evidence* (11:45), Meeting No. 57, 11 April 2002.

change practices to make employment equity effective. (Mr. Phillip McLaren, McLaren Consulting Group, Inc.)<sup>51</sup>

Many of our witnesses told us that employment equity should be much more than collecting and analysing statistical data. In fact, Section 5 of the Act sets this out very clearly:

Every employer shall implement employment equity by:

- (a) identifying and eliminating employment barriers...
- (b) instituting such positive policies and practices and making such reasonable accommodations as will ensure... a degree of representation... that reflects [designated group] representation.<sup>52</sup>

Statistics are the means not the end. In light of our view that increased emphasis should be placed on qualitative measures, we feel that increased reporting of these measures would be beneficial. In fact, many employers already include their qualitative initiatives in the information that they submit annually. But the Committee believes that this is not utilized as effectively as it could be. One way of proceeding, for example, might be to allow employers to alternate their reporting: one year employers could report on their representational statistics and the following year report on their qualitative measures and programming. The Committee believes that this solution might, in fact, provide a more complete picture of progress and achievements than annual reports devoted solely to statistics.

### **Recommendation 11**

**The Committee recommends that the Labour Branch of Human Resources Development Canada, in consultation with the Canadian Human Rights Commission, conduct a study of reporting requirements under the *Employment Equity Act*. This study should involve all stakeholders, government departments and agencies (including separate employers), designated groups, unions and employee representatives, and federally regulated private sector employers. It should specifically address the reporting obligation under the Act as well as the feasibility of biennial statistical reports, and the possibility of biennial reports on qualitative measures. This report should be tabled with the House of Commons Standing Committee on Human**

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<sup>51</sup> HRDP, *Evidence* (11:45), Meeting No. 57, 11 April 2002.

<sup>52</sup> *Employment Equity Act*, 1995, Section 5.

## Resources Development and the Status of Persons with Disabilities no later than 1 January 2004.\*

### 2. Clarifying Statutory Requirements

Several witnesses, including the CHRC, indicated that some employers are confused as to the scope of certain requirements outlined in Part I of the *Employment Equity Act* and there is a need for greater operational clarity.

#### (a) Special Measures

Pursuant to section 2 of the *Employment Equity Act*, employment equity means more than treating people in the same way. It also requires “special measures” and the accommodation of differences. Since the term “special measures” is found in the purpose section of the Act, it is arguable that its meaning would apply to an interpretation of the word “measures” found elsewhere in the Act. Section 10 of the Act specifies the content of an employer’s employment equity plan and requires that the plan specify “positive policies and practices” that employers are to use in the short-term to provide opportunities to under-represented designated groups with respect to hiring, training, promotion and retention; and “measures” to be taken by employers in the short term to eliminate employment barriers. The Committee is hard-pressed to view short-term positive policies and practices, and measures or special measures as mutually exclusive. Nevertheless, we recognize that the limited reference to “special measures” in the Act and the reference to “measures” in paragraph 10(1)(b) of the Act, coupled with the CHRC’s interpretation of this section as being a reference to special measures are causing some consternation and we agree that clarification of this matter would be helpful.

The key message that I'd like to leave you with today is that for employment equity legislation to work effectively, there must be mechanisms built in so that significant and highly specialized supports can be in place for both the employers and the employees with disabilities. In fact, as it states in section 2 of the act, by giving effect to the principle that employment equity means more than treating persons in the same way, it also requires special measures and the accommodation of differences. I believe you need to invest much more in these special measures and accommodations. **(Mr. Gary Birch, Executive Director, Neil Squire Foundation)**<sup>53</sup>

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The NDP does not support a study to specifically address the reporting requirements under the Act and the feasibility of biennial statistical reports. We feel that such a study could potentially lead to a weakening of the Act and the current requirement for annual reporting.

<sup>53</sup> HRDP, *Evidence* (13:15), Meeting No. 58, 16 April 2002.

## **Recommendation 12**

**The Committee recommends that the Act be amended to clarify the term, “special measures” and articulate the requirement for these special measures in an employer’s employment equity plan.**

### **(b) Accommodation**

The *Employment Equity Act* (i.e. sections 5 and 10) requires employers to specify policies and practices for accommodating designated persons who are under-represented in their respective workplaces. However, the law does not indicate specifically what employers must do to comply with this legislative requirement.

The current act requires employers to make “reasonable accommodations” to the designated groups. This section is vague and unclear in its interpretation and does not provide adequate protection to persons with disabilities requiring accommodations related to their disabilities in the workplace ... AMC recommends that the Employment Equity Act be amended to provide maximum protection for persons with disabilities by making changes to the provisions from “reasonable accommodations” to that of the “duty to accommodate to the point of undue hardship” **(Ms. Joanne Green, Director of Human Resources, Assembly of Manitoba Chiefs).**<sup>54</sup>

Several witnesses recommended that the term “reasonable accommodation” be replaced by “duty to accommodate up to the point of undue hardship.” The latter is similar to the wording used in section 15 of the *Canadian Human Rights Act*. The *Canadian Human Rights Act* incorporates the duty to accommodate up to the point of undue hardship into the *bona fide* occupational and justification defences available to employers and it limits the factors for assessing undue hardship to health, safety and cost.

While the accommodation phraseology in the *Employment Equity Act* may not exactly mirror that found in the *Canadian Human Rights Act*, it is important to note that section 6 of the *Employment Equity Act* does clarify that employers are not required to undergo “undue hardship” while taking measures to implement employment equity.

Some of our witnesses thought that term “reasonable accommodation” was too vague and needed to be defined. This may not be necessary, however, in view of the evolving case law in this area. In the recent decision *British Columbia v. British Columbia Government and Service Employees’ Union*, [1999] 3 S.C.R. 3 (commonly known as the Grismer decision) the Supreme Court of Canada addressed the issue of employers’ duties to accommodate employees in the process of eliminating barriers to employment. The Court clearly stated that employers designing workplace standards owe an obligation to be aware of both the differences between individuals, and differences that characterize

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<sup>54</sup> HRDP, *Evidence* (12:15), Meeting No. 55, 19 March 2002.

groups of individuals. In other words, they must build conceptions of equality into workplace standards. The Court recognized that a number of factors may be considered when assessing an employer's duty to accommodate an employee to the point of undue hardship (i.e. financial cost, relative interchangeability of the workforce and facilities, and the prospective substantial interference with the rights of other employees). The Court also noted that none of these factors are carved in stone, except to the extent that they are expressly included or excluded by statute. Finally, the Court stressed that in all cases, such considerations must be applied with common sense and flexibility in the context of the factual situation presented in each case.

According to the CHRC's report to the Committee, it recommends that employers be required to have a written accommodation policy for each group designated under the Act. We were told that a precedent for such a requirement does exist under the *Canada Labour Code* with respect to harassment policy. Moreover, the CHRC has provided interested employers with a generic accommodation policy that is consistent with the standards set out by the Supreme Court of Canada in its decisions in *British Columbia v. British Columbia Government and Service Employees' Union*, [1999] 3 S.C.R. 3 and *British Columbia v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868 (referred to respectively as the Meorin and Grismer cases). The Committee commends the initiatives pursued by the CHRC to educate and support employers who are interested in developing accommodation policies. In particular, we acknowledge its publication entitled *A Place for All: A Guide To Creating An Inclusive Workplace*, which provides employers with clear guidelines for developing and implementing their own accommodation policy and procedures.

### **Recommendation 13**

**The Committee recommends that the government amend the *Employment Equity Act* to replace the term "reasonable accommodation" with the term "duty to accommodate up to the point of undue hardship", and that the Minister of Labour explore legislative measures to require employers to have an accommodation policy and to amend the *Employment Equity Act* accordingly.**

### **(c) Employment Systems Review**

Currently, section 9 of the *Employment Equity Act* requires employers to conduct a review of employment systems, policies and practices in accordance with the regulations in order to identify employment barriers against persons in designated groups. The CHRC requires that the results of this review be documented. This requirement has been challenged, but the challenges filed by employers have been withdrawn prior to a Tribunal decision. Some witnesses identified the employment system review as a key element in successfully implementing employment equity in the workplace.

Perhaps the most essential element of the planning process is the employment systems review. It identifies what needs to change in order to remove barriers to designated group members and to enable employment equity to be realized. Employers are expected to know how to identify activities that are barriers causing under-representation and what interventions should apply. In fact, many employers are not clear as to what are possible systemic causes of under-representation, much less how to eliminate the causes. We recommend the audit review process should incorporate as a guideline a list of interventions proven successful in enabling dramatic change and suggest respondents use the guideline to indicate those interventions that have been applied, other interventions attempted, and results achieved — both positive and negative — by each intervention. **(Mr. Phillip H. McLaren, President, McLaren Consulting Group Inc.)**<sup>55</sup>

During the consultations held by the CHRC, some employer groups expressed concern that the employment systems review is not an exact science and any legislative requirement that mandates that all barriers be identified might result in an impossible standard.<sup>56</sup> The Commission was also told that the development of additional guides would be useful to employers in helping them meet their employment systems review obligations under the Act, a view that was also expressed during our hearings. The Committee supports the position that this review be documented and that the Commission provide more guidance to employers to help them fulfill this important reporting obligation.

#### **Recommendation 14**

**The Committee recommends that the *Employment Equity Regulations* be amended to require employers to document their employment systems review and that the Canadian Human Rights Commission provide a clear set of standards to help employers conduct this review.**

#### **(d) Hiring and Promotion Goals**

According to section 10 of the *Employment Equity Act*, employers with an under-represented workforce must prepare an employment equity plan that contains, among other things, short-term numerical goals for hiring and promoting under-represented persons in designated groups. The CHRC would like to see these goals established at a level no less than labour force availability. The Committee is not opposed to this benchmark, but as a practical matter questions whether it is reasonable to expect employers to meet these hiring and promotion goals in the short term, particularly in cases of significant under-representation. Furthermore, the Committee wonders if it is reasonable for the CHRC to expect employers to establish goals in excess of labour force

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<sup>55</sup> HRDP, *Evidence* (11:45), Meeting No. 57, 11 April 2002.

<sup>56</sup> Canadian Human Rights Commission, *Legislative Review of the Employment Equity Act: Report and Recommendations to the House of Commons Standing Committee on Human Resources Development and the Status of Persons with Disabilities*, 2002, p. 23.



availability, given that these benchmarks are supposed to refer to the total supply of workers with specific human capital characteristics in a given labour market. And, it is quite possible that a significant proportion of the supply of a particular group of designated workers in a given occupation and region of the country is already employed, since availability benchmarks include both employed and unemployed individuals. In any event, the Committee is uncertain about the significance of a minimum benchmark for short-term numerical goals, since any numerical goal that produces long-term under-representation would cause the CHRC to require an employer to continue to strive for a representative workforce. In spite of these observations, the Committee acknowledges that there is some disagreement with respect to this issue, since the matter is before a few Tribunals and decisions are pending.

The CHRC has adopted a minimum standard that says employers must set goals at least equal to census data availability percentages for designated groupings. This standard is impractical in many cases. Census data are quite appropriate as benchmarks, but not as standards — especially minimum standards. Examples of this issue are included in our written presentation. When census data are treated as minimum standards rather than as benchmarks, employers are inclined to view them as maximum goals or quotas. Without the psychology of minimum standards, employers may be more inclined to set targets above the census data benchmarks, and more importantly, make realistic plans to achieve them. **(Mr. Phillip H. McLarren, President, McLarren Consulting Group Inc.)**<sup>57</sup>

### **Recommendation 15**

**The Committee recommends that the Minister of Labour examine the *Employment Equity Act* to determine if it is necessary to clarify the magnitude of hiring and promotion goals required for the purposes of paragraph 10(1)(d) of the Act.\***

## **3. Union Participation**

The Committee has no doubt that the establishment of employment equity processes in the workplace are more complete and effective when employee representatives are closely involved in the development and implementation of an employment equity plan. This is why section 15 of *Employment Equity Act* requires employers to consult and to collaborate with employee representatives regarding the preparation, implementation and revision of the employment equity plan, and the communication of this plan to employees.

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<sup>57</sup> HRDP, *Evidence* (11:45), Meeting No. 57, 11 April 2002.

\* The NDP does not support examining the *Employment Equity Act* to determine if it is necessary to clarify the magnitude of hiring and promoting goals required for the purposes of the Act. This has the potential to lead to an erosion of the current requirement that employment equity goals be established at a level no less than labour force availability.

Several witnesses, mainly unions, recommended that the *Employment Equity Act* be amended to require employers to participate jointly with employee representatives in developing and implementing an employment equity plan. In addition, some witnesses suggested that when workers are represented by a bargaining agent, employers should be required to negotiate employment equity as part of a collective agreement. Several union representatives stated that employers interpreted “consultation” as seeking information from the bargaining agents and that “collaboration” did not exist. Many recommended either co-managed agreements or the formation of joint workplace committees on employment equity or both of these.

The Act gives employee representatives the right to be integrally involved at every stage of the employment equity process, by requiring employers to engage in consultations and to collaborate with employee representatives. However, our experience has shown us that most employers did not consult. Employers should be obligated to develop and implement employment equity jointly with unions. **(Canadian Labour Congress, Brief)**<sup>58</sup>

Some members of the designated groups expressed concern about giving labour unions a greater role in achieving employment equity by changing the *Employment Equity Act*. Some Aboriginal organizations, including the Métis National Council told the Committee that the unions “haven’t really gone to bat for the aboriginal people or for our issues.” They cited instances where unions blocked the hiring of qualified Métis people to protect existing job-holders.<sup>59</sup> These sentiments were echoed by some witnesses from other designated groups who believe that the seniority provisions in collective agreements (protected in Sub-Sections 8 (1) and (2) of the Act) operate to the detriment of the members of designated groups. The Confédération des organismes de personnes handicapées du Québec put forward a recommendation that the word “seniority” be replaced by “measures negotiated with respect to seniority” in sections 8 (1), (2) and (3). Others expressed the view that unions needed to move proactively to educate their members on employment equity.

The Federally Regulated Employers in Transportation and Communications (FETCO) supported the need for consultation and collaboration with unions and employee representatives. They did not believe, however, that legal or legislative measures should specify how to carry this out. They argued that as employers with ultimate responsibility for results, they were in the best position to determine the appropriate type and level of consultation and sharing of information. In addition, employers need flexibility to put in place consultation measures that are appropriate to their organizational structure and requirements.

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<sup>58</sup> Canadian Labour Congress, “Brief”, 19 February 2002, p.8.

<sup>59</sup> HRDP, *Evidence* (13:00), Meeting No. 55, 19 March 2002.

In its report and recommendations to us, the Canadian Human Rights Commission made the argument that the more the unions are involved in the employment equity process, the better the results for the workforce.

In terms of consultations, where these are done properly, they have the potential to harness the broad experience of the employer's diverse workforce, substantially improve the information base on which decisions are made, tap into a valuable source of creative solutions, and significantly increase the changes for support of the resulting [employment equity] plan. **(Canadian Human Rights Commission, "Legislative Review of the Employment Equity Act")<sup>60</sup>**

While the Committee supports a stronger requirement for employers to consult and collaborate with employee representatives, it does not believe that employee representatives should co-manage employment equity or that employers should be forced to negotiate employment equity in a collective agreement. In the former case, employee representatives are not subject to the enforcement provisions of the Act, nor should they be. And in the latter case, the Committee does not believe that it is in a position to impose on the negotiating parties what should, or should not, be in their collective agreements. It should be up to employers and employees whether employment equity is negotiated as part of a collective agreement.

At the same time, the Committee was extremely impressed by the commitment of our witnesses who represented the labour movement to make employment equity work better. Representatives came up with many suggestions that the Committee believes would be worthwhile to pursue. Much of this collaboration could take the form of better information and education of employees, as many of the unions pointed out in their briefs to us. We also think that unions have an important role to play in informing workers about the importance of responding to the workforce survey. This is dealt with in another section of this report.

### **Recommendation 16**

**The Committee recommends that, in consultation with employers, employees and employee representatives, the Minister of Labour examine ways to strengthen the requirement for employers to consult with employee representatives, including unions. This examination should include specifically looking at whether the existing statutory requirement for "consultation" and "collaboration" between employers and employees' representatives required in Section 15(3) of the Act should be included as part of the functions of the Canadian Human Rights Commission in assessing an employer's compliance.**

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<sup>60</sup> Canadian Human Rights Commission, (12 April 2002), p. 35.



Definitions of the groups designated in the *Employment Equity Act* and regulations have remained essentially the same since the first Act was passed in 1986. “Aboriginal peoples” are “persons who are Indian, Inuit or Métis.” “Visible minorities” are those persons “other than aboriginal peoples, who are non-Caucasian in race or non-white in colour.” “Persons with disabilities” are defined as those persons:

who have a long-term or recurring physical, mental, sensory, psychiatric or learning impairment and who

- (a) consider themselves to be disadvantaged in employment by reason of that impairment, or
- (b) believe that an employer or potential employer is likely to consider them to be disadvantaged in employment by reason of that impairment.

For persons with disabilities, the current *Employment Equity Act* of 1996 added the following qualification that the definition:

includes persons whose functional limitations owing to their impairment have been accommodated in their current job or workplace.<sup>61</sup>

### 1. Proposals for Change

During the Committee’s hearings, some witnesses expressed concern about various elements of the definition for three of the four designated groups. Regarding visible minorities, for example, the Committee heard conflicting views. Some witnesses from visible minority groups argued in favour of breaking down the definition of visible minorities into various sub-groups. Others supported retaining the definition in the Act and opposed any statutory breakdown, division or specification that would create additional hierarchies of disadvantage or discrimination. This latter argument is based on the view that existing regional or local flexibility in the development and implementation of employment equity measures allows employers, unions and other stakeholders to take sub-group labour market availability into account.<sup>62</sup>

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<sup>61</sup> *Employment Equity Act*, 1995, Section 3, “Interpretation”.

<sup>62</sup> Centre for Research-Action on Race Relations, “For an *Employment Equity Act* that Works for Racialized Minorities: Brief to the Standing Committee on Human Resources Development and the Status of Persons with Disabilities,” pp 6-7.

Some Aboriginal and Métis organizations also raised issues with regard to how the definition works. They believed that a more specific definition that identified sub-groups of Aboriginal people would allow the Act to serve its purposes better.

Right now, we're all clumped in. We don't know where the barriers lie in terms of First Nation Aboriginal people. **(Joanne Green, Manager of Human Resources, Assembly of Manitoba Chiefs)**<sup>63</sup>

In its presentation, the Métis National Council identified what it considered as a problem that links definition and identification of a person who is Métis. The Council told the Committee that currently, there is no means of validating people who claim to be Métis. In consequence, individuals could claim Métis status for employment equity purposes, particularly in seeking employment in the public service and no possibility of verifying this exists. As a result, some people would be qualifying for employment equity related measures without qualifying as Métis in the eyes of the organizations of Métis people. In their view, the number of Métis in the public service might, therefore, be inflated.

You talk about a certain number of aboriginal people having been employed pursuant to the *Employment Equity Act*. What percentage of that aboriginal component is actually Métis? We just don't know simply because there's no way of identifying from the federal government's perspective who [are] the Métis.... Those kinds of statistics could be kept, and we could ensure that when it came to our people, there was employment equity. **(Mr. Gérald Morin, President, Métis National Council)**<sup>64</sup>

The Committee acknowledges that the definitions of the various designated groups take a broad brush approach that may not easily accommodate the distinctions that some of the groups would like to see. The Committee, however, does not believe that a redefinition of various groups and splitting them into sub-groups for the purposes of the *Employment Equity Act* would be useful. At the same time, we do believe that better data collection and analysis of the sub-groups could provide a better basis for identifying barriers and enabling the Act to work in the interests of all the designated groups (See Recommendations 18 and 20 below).

## 2. Persons with Disabilities

While the Committee does not believe that changes to the definitions of three of the four designated groups are required, we have taken another view for persons with disabilities. The Committee is aware that the definition of disability remains an issue that stretches far beyond the confines of the *Employment Equity Act*. In fact, last June in our report prepared jointly by the Sub-Committee on the Status of Persons with Disabilities and the Sub-Committee on Children and Youth at Risk, *A Common Vision*, we recommended that a taskforce study the harmonization of definitions of disability and

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<sup>63</sup> HRDP, *Evidence* (12:30), Meeting No. 55, 19 March 2002.

<sup>64</sup> HRDP, *Evidence* (12:35), Meeting No. 55, 19 March 2002.

report back in June 2002.<sup>65</sup> In its response, the government accepted this recommendation.

Although we are waiting for Human Resources Development Canada's progress report with anticipation, the Committee was also made aware during the review of the *Employment Equity Act*, that there are specific concerns with the definition of disability in the Act that need to be addressed immediately.<sup>66</sup> Employer representatives, notably the Canadian Bankers Association and Federally-Regulated Employers in Transportation and Communications (FETCO), put forward a case that the definition in the Act inappropriately links 'disability' and 'disadvantage' given that many working people with disabilities do not consider themselves disadvantaged in employment and, therefore, do not self-identify on workforce surveys. As a result, they claim that employer statistics under-represent the number of people with disabilities.

Many working people with disabilities do not consider themselves to be disadvantaged. This results in a reduction in the number of people who self-identify on workforce surveys and contributes to under-reporting of industry data and a less than clear and fully-developed picture of how employment equity is progressing in the marketplace. **(Ms. Elisabetta Bigsby, Senior Executive Vice-President, Human Resources and public Affairs, RBC Financial Group, Canadian Bankers Association)**<sup>67</sup>

Both groups of employers pointed to the existing definition of disability as contributing to a lack of clarity and causing problems for employers in collecting their data regarding representation of persons with disabilities. The reason, they argued, is because it combines into a long statement issues about having a disability, the perception of disadvantage and accommodation. Several employers, therefore, argued in favour of "decoupling" the definition so that people could identify themselves as having a disability without having to state that they feel themselves disadvantaged in the workplace.

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<sup>65</sup> *A Common Vision: Interim Report*, Ottawa, June 2001, p. 20. The recommendation states that "The Sub-Committee on the Status of Persons with Disabilities recommends that the Government of Canada convene a taskforce of relevant departments and agencies as well as representatives from the disability community to study the harmonization of definitions of "disability" in place in federally-administered, disability programs and services. This taskforce should provide this Sub-Committee with a progress report in June 2002 and the results of its work should be included in the Report on Plans and Priorities and in its Departmental Performance Report in 2002 and annually thereafter."

<sup>66</sup> There is some concern that the English version of the definition of persons with disabilities in the workforce survey questionnaire is slightly different from the definition in the Act. If so, this should be corrected as soon as possible. All subsequent material related to this definition should be verified to ensure complete consistency in the English and French texts.

<sup>67</sup> HRDP, *Evidence* (11:10), Meeting No. 56, 21 March 2002.

[H]ow can one ensure that the questions being asked identify the population with disabilities, as defined in the act or the program or the service, if those data are going to be used to assess the impact of those programs and services?  
**(Ms. Adèle Furrie, Consultant)<sup>68</sup>**

The Committee received other evidence that the definition in fact is unclear — even to expert witnesses — because of the way that workplace accommodation is incorporated. The Committee believes that an individual with a disability should be able to respond accurately to the employer’s questionnaire.

We were also told that clarifying the definition of disability could be done in such a way that it would be consistent with the way that the availability data were produced in the Health and Activity Limitation Survey (HALS) of 1991 and, we understand, have been assembled for the Participation and Activity Limitation Survey (PALS) of 2001. This would increase the comparability between the representational data and the availability data and help to rectify a long-standing problem.

So if this change is made to the employer questionnaire, then at least there would be a consistent approach between the availability data and the employer data, but — and it’s a big but — the employer still has to convince the employee that there is anonymity in the responses to the questionnaire being filled in and handed back to the employer. The proposed change to the questionnaire might accommodate this to some extent. **(Ms. Adele Furrie, Consultant)<sup>69</sup>**

### **Recommendation 17**

**The Committee recommends that the Government of Canada amend section 3 “Interpretation” of the *Employment Equity Act* and all related regulations or guidelines pertaining to the definition of persons with disabilities.**

**A definition that received a considerable amount of support and that the Committee believes merits serious consideration is:**

- (a) persons who have a long-term or recurring physical, mental, sensory, psychiatric or learning impairment, or**
- (b) persons who consider themselves to be disadvantaged in employment by reason of a physical, mental, sensory, psychiatric or learning impairment, or**
- (c) persons who believe that an employer or potential employer is likely to consider them to be disadvantaged in employment by**

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<sup>68</sup> HRDP, *Evidence* (11:10), Meeting No. 61, 30 April 2002.

<sup>69</sup> HRDP, *Evidence*, (11:20) Meeting No. 61, 30 April 2002.



reason of a physical, mental, sensory, psychiatric or learning impairment, or

- (d) persons whose functional limitations owing to a physical, mental, sensory, psychiatric or learning impairment have been accommodated in their current job or workplace.

For greater clarity, in responding to any questionnaire prepared by an employer for employment equity purposes, any person who indicates that one of (a), (b), (c) or (d) applies to him/her will be considered as a person with a disability.

### 3. Double And Triple Jeopardy

While the Committee supports retaining the current definitions with the exception of modifications to the definition of persons with disabilities, we also heard evidence in favour of some statistical sub-divisions of the currently-existing designated groups. This particularly concerns individuals who are members of more than one disadvantaged group where additional information about these sub-groups would further the purposes of the Act.

The Centre for Research Action on Race Relations (CRARR) put forward the case that it might be of some value to collect statistics on visible minorities who are also members of official language minorities (English-speaking and French-speaking). In this regard, CRARR also suggested that it might be important to gauge the representation of visible minorities to make all data on representation available on a regional basis to allow for more effective tracking of progress particularly in Ontario, British Columbia and Quebec.

While CRARR was the only witness to put forward this suggestion, many others, however, addressed the question of the need for more information about what has come to be known as “double or triple jeopardy.” This is a term used for an individual who is a member of more than one designated group, for example, a woman who is Aboriginal, or a person with a disability who is a member of a visible minority group. In particular, many people mentioned that there is no publicly available data regarding many of these groups especially in terms of their labour force availability. In its presentation, the Assembly of First Nations (AFN) pointed to this as a problem for Aboriginal people with disabilities generally and for Aboriginal women with disabilities in particular.

There is no data provided specifically with reference to First Nations People with disabilities or aboriginal peoples with disabilities, and their corresponding rate of employment within either the public or private sector. This data is categorized under either “people with disabilities” or “aboriginal people” and does not provide a clear enough picture. **(Ms. Marie Frawley-Henry, Director, International Affairs, Assembly of First Nations)**<sup>70</sup>

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<sup>70</sup> HRPD, *Evidence* (11:10), Meeting No. 55, 19 March 2002.

In its report, *A Commitment to Merit*, the Committee that reviewed the *Employment Equity Act* in 1995 recognized the need to deal with the issue of double counting or double jeopardy. We share that Committee's view that this should be addressed. In employment equity reports and in external availability data, aggregating information about individuals who belong to more than one designated group creates an incomplete or misleading picture of the level of representation/availability and nature of the disadvantages for certain groups of individuals.

The Committee heard that the data has been collected to allow the study of the impact on the employment situation of an individual who belongs to more than one designated group. In addition, more information on multiple disadvantages will be available for more detailed study when the results of the 2001 census and the 2001 PALS become available next year.

Unfortunately, the recommendation made in 1996 has not been implemented and therefore we have incorporated it in this report with the expectation that this reiteration will result in action.

### **Recommendation 18**

**The Committee recommends that the Labour Branch of Human Resources Development Canada, in conjunction with Statistics Canada, develop a means to separately identify individuals who are members of more than one designated group and to provide a comparative analysis of the disadvantages in employment that may result from belonging to more than one designated group.\***

## **4. Determining Progress**

The *Employment Equity Act* in section 9.1 requires an employer to conduct a workforce analysis to determine the nature of representation of designated groups. This means that an employer must compare the internal representation of designated groups to the external availability of these groups in the labour force. This comparison is made for each occupational group and geographical location from which an employer recruits. Given these factors, progress or success is determined by the extent to which workplace representation mirrors labour force availability.

### **(a) Representation in the Workforce**

Since it was first brought into effect 15 years ago, the *Employment Equity Act* and its predecessor legislation have contained requirements for employers covered by the Act

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The NDP recommends that an analysis be conducted to determine if there are other groups of workers that are disadvantaged to the same extent as groups currently designated under the Act and whether these groups should be included under the Act.

to achieve a ‘representative’ workforce — that is to employ a proportion of designated group members in each occupation equal to their proportionate representation in the labour force from which employers recruit. The present Act (Section 9) requires employers to collect information and to analyse the composition of their workforce to determine the extent to which each designated group is represented in each occupational group. Employees who are members of the four designated groups are asked voluntarily to self-identify and an employer is allowed to count only those who do so for the purpose of calculating the representativeness of the employer’s workforce.

Employers who appeared before the Committee told us that since the implementation of the first *Employment Equity Act* 15 years ago, they had invested significant resources in a range of initiatives including the development and implementation of systems to collect analyse and report data in order to fulfil their obligations under the Act. In this context, some members of the Committee would like to see employers report employment data by temporary, permanent, part-time and full-time status to enable us to see the real picture.

### **(b) Representational Data**

Some employers expressed concerns about the process by which representation is determined. FETCO, for example, argued that self-identification should not remain the sole basis for the collection of representational information. The Canadian Bankers Association pointed out that representation for a particular employer was calculated as a percentage of the total number of employees in the enterprise rather than as a percentage of those who complete the self-identification questionnaire.

As long as the self-identification process remains the sole basis of statistical data and results, under-reporting of designated group representation in our respective workforces will persist. Self-identification therefore remains an issue for all FETCO members, large and small, and an impediment to gaining accurate workforce representation data. **(Ms. H  l  ne Gendron, Chair, Employment Equity Subcommittee and Senior Manager, Employment Equity and Official Languages, CBC/Radio Canada, Federally Regulated Employers, Transport and Communications)**<sup>71</sup>

FETCO believes that there is still some unwillingness by employees to complete a self-identification questionnaire as well as to self-identify. In part, employers stated that this resulted from employees not wanting to be looked upon as owing their situation to membership in a designated group but to be recognized as achieving success as a result of talent and performance.

The Committee believes that the rationale that led to the provision in the Act for voluntary self-identification remains as valid today as when the original Act was passed 15 years ago. For some individuals, fear of discrimination in the workplace has not diminished — for example, people who believe that they would be stigmatized by virtue of

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<sup>71</sup> HRDP, *Evidence* (11:20), Meeting No. 56, 21 March 2002.

having a mental illness. We believe that the need to maintain individual privacy continues to be important and that the rights of individual members of designated groups should be respected. In addition, the Committee is aware that census and the post-censal survey (Participation and Activity Limitations Survey) both use voluntary self-identification to establish overall labour force availability for the four designated groups. To change the method for identifying designated group members in workplaces, therefore, would cause serious difficulties in making comparisons and setting benchmarks. The Committee also notes that Section 25 (1.1) (b) of the Act allows an employer to pass on doubts about under-representation due to unwillingness to self-identify to a compliance officer who is supposed to take this into account while conducting an audit.

### **(c) New Indicators and Employment Equity**

The Committee believes that establishing outcomes and providing indicators to allow Canadians to measure the success in achieving these outcomes is essential in dealing with employment equity. Obviously, statistical measures of representation are one of the important ways that this can be done. We are also fully aware that the use of voluntary self-identification as a means of gathering data about the representation of designated groups is imperfect. Although we are not prepared to suggest an immediate alternative, we believe that it is time that work began to supplement a strictly numerically-based approach to measuring progress and success in achieving equity in the workplace. Qualitative measures need to be considered that reflect the true nature of employment equity as something that exists apart from legislation such as the type and level of employer-sponsored training or the nature and amount of consultation between employers and employees.

The issues are much deeper and broader than can be addressed entirely in legislation or by the efforts of employers, important though those aspects are. Indeed achieving continuous progress in employment equity involves fundamental, on-going societal change. **(Ms. Elisabetta Bigsby, Senior Executive Vice-President, Human Resources and Public Affairs, RBC Financial Group, Canadian Bankers Association)**<sup>72</sup>

Members of the Committee were impressed by the comments of some employers who spoke about the need for additional qualitative measures. Other employers, such as the Federally Regulated Employers in Transportation and Communications put forward the case that numerical data should not be the only manner of determining an employer's effectiveness and success in managing employment equity.

We look very closely at both quantitative and qualitative goals for employment equity efforts within our industry, and it has been very important to the achievement of those qualitative and quantitative goals to have a robust discussion about the business case for employment equity. **(Ms. Lesya**

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<sup>72</sup> HRDP, *Evidence* (11:05), Meeting No. 56, 21 March 2002.

**Balych-Cooper. Vice-President, Diversity and Workplace Equity/EAP, Bank of Montreal, Canadian Bankers Association)**<sup>73</sup>

Many of these, naturally, are internal to the functioning of an enterprise: supportive workplaces, managerial competency, association with the community and customers, as well as corporate image among them. Others may be related to the changing nature of work and societal expectations of what is appropriate treatment of workers. There are also qualitative differences that are specific to, and different from, the designated groups or society as a whole.

There are issues facing the employment of women that are very, very different from the issues facing employment of persons with disabilities, Aboriginal people and visible minorities and within the visible minority population there are different issues for some of the sub-groups....I think you should look at these four groups, look at what the issues are that face them in the workplace and consider different strategies for the different groups. **(Ms. Adèle Furrrie, Consultant)**<sup>74</sup>

The Committee is aware of work to develop qualitative indicators that can measure the success of other social and employment initiatives such as the various components of the Social Union Framework Agreement, the Early Childhood Development Initiative, and the social integration of persons with disabilities. Treasury Board Secretariat and the Auditor General of Canada are exploring ways of reporting on progress throughout the federal government in ways that reflect the reality of how the government's activities impact on society. Employment equity measures should not be held captive solely to statistics that we know do not tell the whole story. It is time that the federal departments and agencies that administer employment equity measures and compliance move forward in how they perceive and measure success.

### **Recommendation 19**

**The Committee recommends that the Minister of Labour consult with employers, employee representatives, members of designated groups, the Canadian Human Rights Commission and other stakeholders to identify and put in place a set of qualitative societal and employment indicators that will assist in the measurement of the success of employers in achieving equity in the workplace.**

During our hearings, the Committee was told that Statistics Canada's Employment Equity Data Program unfortunately no longer exists. This program conducted research into the issues beyond the labour force availability data to other sources and other types of indicators of success. The Committee believes that in order to find other qualitative and quantitative ways of measuring success, such research must be ongoing. This type of measurement would also be useful, in conjunction with statistical information about the various sub-groups of Aboriginal people or visible minorities (mentioned above).

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<sup>73</sup> HRDP, *Evidence* (11:25), Meeting No. 56, 21 March 2002.

<sup>74</sup> HRDP, *Evidence* (11:50), Meeting No. 61, 30 April 2002.

## **Recommendation 20**

**The Committee recommends that the Minister of Labour establish a research program involving Human Resources Development Canada and Statistics Canada to conduct work into the development of alternative data sources and societal indicators that measure the progress in achieving employment equity. As a priority, this research program should address issues related to those that are members of more than one of the designated groups and sub-groups of existing designated groups.**

### **(d) Labour Force Availability**

Currently, availability for Aboriginal people, women, and visible minorities is measured by data collected in the census of population conducted every five years by Statistics Canada. The questions in the 2001 census are essentially the same as those used in 1996. For persons with disabilities, availability data is currently derived from Statistics Canada's Health and Activity Limitation Survey (HALS), a post-censal survey of people with disabilities first carried out in 1986 and then in 1991. Because this survey was not conducted in 1996, these out-of-date statistics will be in use until the Participation and Activity Limitation Survey (PALS) data is ready sometime in December 2002. Dr. Douglas Norris from Statistics Canada told the Committee that by about June of 2003, the data would be available both from the PALS and the census so that the labour force availability data could be produced according to the specifications from HRDC and the Interdepartmental Working Group on Employment Equity Data. All availability data is based on voluntary self-identification as people fill out their census-related forms.

Methods and questions for the census and post-censal surveys used to collect the statistics on the availability of the four designated groups are developed by the federal departments with employment equity-related mandates. The Interdepartmental Working Group on Employment Equity Data is chaired by a representative from Human Resources Development and consists of other representatives from Statistics Canada, Treasury Board Secretariat and the Canadian Human Rights Commission. Labour market information is provided to enable an employer to assess availability for any job or occupation in a region in Canada. Information on various geographic areas is provided to employers by province and territory as well as the 25 census metropolitan areas. These statistics are broken down by working age population, workforce occupation and education.

Many of our witnesses expressed their frustration that statistics about the labour force availability for persons with disabilities are not up to date. This situation has an impact far beyond calculating the labour force availability for the purposes of the *Employment Equity Act*. It also means, for example, that all federal and provincial governments are using outdated sources of information about people with disabilities in devising their policies and programs. The Committee that conducted the previous review of the *Employment Equity Act* recommended that a post-censal survey should take place

in 1996. Our witnesses have pointed out that the decision not to proceed has had negative consequences. Employers who are trying to fulfil their obligations under the Act, and those who are trying to assess the progress of employment for people with disabilities are now feeling the effect of the failure to implement this recommendation.

One expert witness pointed to another problem with the labour force availability data for persons with disabilities. The PALS does not provide the same detail for geographic regions and selected large urban centres as the data for women, Aboriginal peoples and members of visible minorities. This means that people with disabilities will be at a disadvantage compared to other designated groups because employers will not have the same amount of detailed information for them as for the others.

### **Recommendation 21**

**The Committee recommends that:**

- **As a priority, the Interdepartmental Working Group on Employment Equity Statistics study and find a way to ensure that the labour force availability statistics for persons with disabilities are equivalent to the labour force availability statistics for the other three designated groups.**
- **That the 2006 census contain questions that will ensure that adequate availability data regarding persons with disabilities are collected for employment equity purposes or, if this is not possible, that a separate survey of persons with disabilities be conducted in 2006 and in conjunction with every census thereafter.**

The Committee notes, as did several witnesses, that the overall labour force availability benchmarks used to assess progress for federally regulated employers are different from those applied to federal departments and agencies. As indicated elsewhere in this report, some of this difference is attributed to the fact that the labour force availability benchmarks used in the federal public service only include Canadian citizens, a situation which arises from the preference citizens receive pursuant to the *Public Service Employment Act*. The Committee does not support the use of different criteria to construct labour force availability benchmarks for the public sector, since this practice makes it more difficult to compare employment equity progress in the public and private sectors. In addition, we do not believe that the current preference afforded Canadians will be practical in meeting federal public service labour needs in the years ahead, given the prospect of labour force ageing and labour shortages. Hence, the Committee believes strongly that the labour force availability benchmarks applied to the federally regulated private sector be applied to all employers covered under the Act.

**Recommendation 22**

**The Committee recommends that the labour force availability benchmarks applied to the federally regulated private sector be applied equally to all employers, including federal departments and agencies, covered under the *Employment Equity Act*.**



The *Employment Equity Act* encourages employers to co-operate and work with the CHRC in fulfilling their employment equity obligations. The approach adopted is largely a non-adversarial one, involving persuasion and, wherever possible, negotiation. The Committee supports the continuation of this approach and would like the CHRC to assume a more supportive role to help employers achieve compliance.

Most members of the Committee believe that the non-adversarial approach to enforcement pursued under the *Employment Equity Act* is the most appropriate and effective way of encouraging employers to comply with their obligations under the Act. We are resistant to the idea of establishing a more court-oriented enforcement approach like that pursued in the United States for several reasons, not the least of which is the high cost and lengthy litigation associated with many of these cases. In fact, we were informed that the Equal Employment Opportunity Commission in the United States is now trying to utilize mediation rather than the courts to settle affirmative action disputes.

... I believe that as we've gained more experience and as the EEO laws have evolved, we have introduced new management practices that have helped us steer many of these disputes out of the court system into more practical administrative actions. We have a very strong mediation program. The mediation program we have takes on average about 84 days to process the dispute, as compared to 180-some days of investigating a complaint and all that **(Ms. Cari Dominguez, Chair, U.S. Equal Employment Opportunity Commission)**.<sup>75</sup>

Most members of the Committee do not support, at this time, the CHRC's proposals to develop a more expeditious process for establishing legal proceedings once a case has been referred to Tribunal and to eliminate the last part of sub-section 22(2) of the *Employment Equity Act* which requires that directions be issued and cases referred to Tribunal only "as a last resort." Members of the Committee do not share the CHRC's view that these words send the wrong message.<sup>76</sup>

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<sup>75</sup> HRDP, *Evidence* (11:40), Meeting No. 60, 25 April 2002.

<sup>76</sup> Canadian Human Rights Commission (2002), p. 6.

## 1. Compliance Audits

The CHRC is responsible for conducting audits to ensure that federally regulated private sector employers, Crown corporations, federal departments and agencies, and separate employers comply with the Act.<sup>77</sup> The Commission has identified 12 statutory requirements<sup>78</sup> for the purposes of enforcing compliance under the Act.

To date, the CHRC has initiated or completed audits in 41 out of 65 federal departments and agencies accounting for more than 97% of employees in this category of employers covered under the Act; 8 out of 15 separate employers covering about 94% of workers employed in these organizations; and 166 of the 397 federally regulated private sector employers accounting for roughly 77% of the covered workforce in the private sector. In most of these audits, at least one follow-up audit was necessary before employers could be declared in compliance with the Act. Of the 215 employers for which the CHRC has initiated or completed an audit, 73 (or one-third) were in compliance with the Act as of 2001.<sup>79</sup>

Since conducting its first audit, only 20 directions<sup>80</sup> have been issued by the CHRC and about 80% of employers have complied or continue to work toward compliance. While some witnesses complained that only one-third of the employers who have been audited thus far have been found to be in compliance with the Act, most members of the Committee are heartened by the fact that the CHRC has had to issue so few directions since 1998. We believe that most employers genuinely want to comply with the Act, but many need help to do so. We also believe that the CHRC may need additional resources to provide this guidance as well as complete its first audit cycle. In terms of the latter, we were told that the Commission has 15 auditors and it takes on average 10 to 12 months to complete an audit. In view of the fact that the CHRC must still initiate audits for more than one-half of the audit population (i.e. 261 employers), we are concerned that it may

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<sup>77</sup> The Commission does not audit employers covered under the Federal Contractors Program. Rather, the Minister of Labour is responsible for administering the Federal Contractors Program and ensuring that the employment equity requirements of employers covered under this program are equivalent to those facing employers under the *Employment Equity Act*.

<sup>78</sup> These are: (1) collecting workforce data via a voluntary self-identification questionnaire; (2) undertaking workforce analysis to determine the extent of under-representation; (3) reviewing employment systems to identify barriers to employment; (4) specifying and implementing short-term measures to eliminate employment barriers; (5) establishing provisions for accommodating the needs of job applicants and employees who are members of designated groups; (6) specifying short-term policies and practices to provide opportunities to under-represented designated workers with respect to hiring, promoting, retaining and training; (7) establishing one to three-year goals for hiring and promoting under-represented designated workers; (8) establishing longer-term goals for increasing representation of each designated group in the employer's workforce; (9) monitoring and reviewing employment equity policies and goals; (10) informing the workforce of measures taken to implement employment equity; (11) consulting with employee representatives on employee equity; and, (12) maintaining employment equity records.

<sup>79</sup> Canadian Human Rights Commission, *Employment Equity Report, 2001, 2002*, pp. 17-18.

<sup>80</sup> When an employer refuses to comply with or has not completed the work required to comply with one or more of the 12 statutory requirements under the Act, the CHRC may issue a "direction" to the employer that stipulates the work that needs to be done and the time limit to complete this work. An employer may request a Tribunal to review a direction and a Tribunal may order an employer to comply with a direction. A Tribunal order may be registered with the Federal Court, thus giving it the force of a Court order.

take too long to initiate these audits as well as conduct follow-up audits and commence monitoring for reasonable progress among employers who have complied with the Act.

It's not that the Act doesn't have problems or that we're all perfect, it's more that since it was changed in 1995 and the enforcement mechanisms were set up, we haven't had a chance to find how it best operates. We've heard from the Commission about the resource problem they have. Could it not be that it takes so long because they are running into that kind of problem, much more than the fact that people don't want to comply? This is a question we are asking ourselves at this point. We think it may be an aspect, because some of our members who have been audited have had to go through two auditors, sometimes three. So it's not so much that we think it's not working, it's just that it needs some time. We are learning, the Commission is learning. This enforcement mechanism is rather new. I don't think that there is a whole lot of expertise out there, and we should give it some time to build the expertise. Then we can reflect and find out the lessons we can draw from that, so that we can be more efficient and maybe take less time. That is basically what we feel at this time. Let it run at least one full course **(Ms. Hélène Gendron, Chair, Employment Equity Subcommittee, and Senior Manager, Employment Equity and Official Languages, CBC/Radio Canada, Federally Regulated Employers, Transport and Communications)**.<sup>81</sup>

### **Recommendation 23**

**The Committee recommends that the Canadian Human Rights Commission be provided with sufficient resources to conduct compliance audits and follow-up audits more quickly and to facilitate employers in fulfilling their obligations under the Act.\***

## **2. Monetary Penalty for Non-reporting (Part III)**

According to section 36 of the *Employment Equity Act*, the Minister of Labour has the authority to impose a fine on an employer who fails to file an employment equity report or who knowingly files a report containing false or misleading information. The monetary penalty cannot exceed \$10,000 for a single violation or \$50,000 for subsequent violations. Although the subject of monetary penalties did not receive a great deal of attention during our hearings, the Committee observes that this provision of the Act only applies to private sector employers. And, like our predecessors who conducted the last review of the *Employment Equity Act*, we believe that both public and private sector employers should be subject to the same monetary penalties under the Act.

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<sup>81</sup> HRDP, *Evidence* (12:05), Meeting No. 56, 21 March 2002.

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The NDP supports the Canadian Human Rights Commission's proposal to develop a more expeditious process for establishing legal proceedings once a case has been referred to tribunal and to eliminate the requirement that directions be issued and cases referred to the tribunal only "as a last resort".

## **Recommendation 24**

**The Committee recommends that the monetary penalty for not reporting or for false reporting be applied uniformly to all employers covered under the Act.**

### **3. Complaints Based on Patterns of Discrimination**

According to the CHRC, consequential amendments that were passed along with the current *Employment Equity Act* limit the ability of the Commission and Tribunals to respond effectively to complaints alleging patterns of discrimination under section 10 of the *Canadian Human Rights Act*. Specifically, the Commission recommends that section 50 of the *Employment Equity Act* be repealed. This section prohibits a Canadian Human Rights Tribunal from ordering an employer that is subject to the *Employment Equity Act* to adopt a special program, plan or arrangement containing positive policies and practices or goals and timetables to increase representation. While the Committee did not receive a great deal of testimony on this issue, most members of the Committee are reluctant to support the CHRC's proposal. One of the reasons for this is that we feel that only tribunals established to deal with employment equity cases should be responsible for issuing employment equity orders (the orders can be broader than just the employment equity plan). As expressed in the report entitled *Employment Equity: A Commitment to Merit*, we echo the view that the current structure minimizes the potential for an employer to be subject to two employment equity orders from two different tribunals under different pieces of legislation.

Several witnesses suggested that the *Canadian Human Rights Act* be amended to permit section 10 complaints based solely on data provided in employment equity reports. Others absolutely rejected such a proposal. While the CHRC acknowledges that the current statistical limitation restricts the rights of Canadians to pursue section 10 complaints, it recognizes that section 48 of the *Employment Equity Act* is necessary to ensure full and open co-operation of employers during a compliance audit.<sup>82</sup> Most of us still concur with the view held at the time these amendments were made to the *Canadian Human Rights Act*, that is, that the *Employment Equity Act* provides a better method of addressing situations where numerical under-representation is the only indication of a potential case of systemic discrimination. We would also add that the current statistical limitation is prudent in view of the fact that the data collected under the *Employment Equity Act* is not always reliable.

Numerical employment equity data and reports represent only one tangible measure by which to ascertain employment equity issues and progress. However, FETCO firmly believes numerical data should not be the only or primary focus for determining an employer's effectiveness and success in managing employment equity. That's why FETCO would not support a recommendation to have

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<sup>82</sup> Section 48 of the *Employment Equity Act* amended the *Canadian Human Rights Act* so as to prohibit complaints of discrimination in employment where the complaint is based solely on statistical information that purports to show that members of one or more of the designated groups are under-represented in the workforce of an employer covered under the *Employment Equity Act*.

complaints submitted strictly on the basis of statistical information (**Ms. Hélène Gendron, Chair, Employment Equity Subcommittee, and Senior Manager, Employment Equity and Official Languages, CBC/Radio Canada, Federally Regulated Employers, Transport and Communications**).<sup>83</sup>

#### **4. Public Access to Compliance Reports**

Currently, the *Employment Equity Act* protects the information collected during an audit. A few witnesses expressed the need for more openness and suggested that the information contained in employers' reports and CHRC audit reports should be publicly available. While employers' co-operation with CHRC auditors is enhanced through confidentiality, the Committee recognizes that this competes directly with the public's right to know who is complying and who is not complying under the Act. The Committee believes that the successful implementation of employment equity requires more co-operation among employment equity partners. Employers have an interest in establishing stronger partnerships as do labour and other employment equity advocacy groups. These partnerships can best succeed in a more open environment, including the sharing of information.

##### **Recommendation 25**

**The Committee recommends that the government examine the merits of allowing the Canadian Human Rights Commission to make public executive summaries of each compliance report, summarizing the extent of compliance with the statutory requirements (including an employer's employment equity plan) in a manner that is consistent with the *Access to Information Act*.**\*

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<sup>83</sup> Ibid., (11:20).

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The NDP supports the Canadian Human Rights Commission's recommendation that the Act be amended to repeal the consequential amendment that prohibits a tribunal or court from issuing a full remedy when it believes a complaint related to patterns of discrimination under the Canadian Human Rights Act is founded.



Throughout the review, we heard many different perspectives on the administration of the *Employment Equity Act*. Essentially, these considerations can be boiled down to three different questions:

- Which department or agency should serve as the focus of responsibility for the administration and enforcement of the Act?
- What division of responsibility should there be among the various existing authorities that play a role in achieving employment equity?
- What resources are required to administer the federal employment equity system?

Some of the answers to these questions have appeared throughout the text and recommendations of this report. Others will be more fully addressed in this section.

### 1. Human Resources Development Canada

As it now stands, the *Employment Equity Act* gives the Minister of Labour the responsibility for research, promoting public education and understanding of the Act, and providing labour market information regarding the representation of designated groups. In addition, the Minister can issue guidelines and provide advice to private sector employers and employee representatives. The Minister also tables an annual report in Parliament that analyses and consolidates all the reports from federally regulated private sector employers and assesses progress.

Throughout our hearings, many witnesses mentioned that they believed that Human Resources Development Canada (HRDC), and in particular its Labour Branch, required adequate resources to carry out the functions that have been assigned to them.<sup>84</sup> In addition, some of the recommendations in this report will require additional resources.

#### **Recommendation 26**

**The Committee recommends that the government allocate adequate resources to the Labour Branch of Human Resources Development Canada in order to ensure that the Branch fulfils its obligations under the *Employment Equity Act*.**

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<sup>84</sup> According to a draft report on an evaluation of the Legislated Employment Equity Program (LEEP) prepared by Price Waterhouse Coopers Consulting, personnel for delivering the LEEP is now about one-third of what it once was.

The Minister of Labour is also responsible for the administration of the Federal Contractors Program (FCP) with the mandate to ensure that it is implemented in an equivalent manner to the *Employment Equity Act*. Currently, the department estimates that there are approximately 845 employers with approximately 1.1 million employees who are federal contractors for the purposes of employment equity. These employers are required to certify their commitment to implement employment equity initiatives in order to bid on a contract and are subject to a review by HRDC once a contract has been awarded.

Many of our witnesses have pointed out that there is a discrepancy between the employment equity requirements of federally regulated private sector employers and those with federal contracts. There seems to be no firm basis for judging the latter's performance under the Act. Anecdotally, some of our witnesses believe that they are not performing well, but the Committee has no evidence to make a judgement one way or another. Some witnesses felt that HRDC's reviews have been conducted sporadically by HRDC employees who have left employers confused and uncertain. Some employers told us that they do not know what is expected in terms of compliance and that they need greater confidence in the program.

Reporting to the FCP is sporadic and appears unplanned. The expectations are vague and the process is generally disorganized. ... The reviews by the FCP, on the other hand, are totally focused on numbers with little regard to the other non-quantitative initiatives taken by employers.... There is general agreement that it would be too onerous to expect employers to report annually. A review every three or four years would be sufficient, but it must be a planned review.... Additionally, what does it mean to be in compliance or not? How is this measured? I've raised this latter question several times with representatives of the FCP and nobody seems to know what would constitute non-compliance. This leads to the conclusion that the reviewers and the colleagues in FCP are as confused as the employers they review.<sup>85</sup>

At the outset of our review, officials from the Labour Branch of HRDC told us that the Minister of Labour promised that the Committee would receive the evaluation of the federal contractors program. At a later date, the former Deputy Minister of HRDC was requested to provide the Committee with this information. Because it has not been received prior to the preparation of this report, the Committee has been unable to fully assess the operations of this program apart from our witnesses' testimony.

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<sup>85</sup> Ms. Kathy Gray, Director of Employee Services, University of Saskatchewan, HRDP, *Evidence*, Meeting No. 51, February 26, 2002 (11:45).



The Committee would remind the Minister of Labour that the Act states:

The Minister is responsible for the administration of the Federal Contractors Program for Employment Equity and shall, in discharging that responsibility, ensure that the requirements of the Program with respect to the implementation of employment equity by contractors to whom the Program applies are equivalent to the requirements with respect to the implementation of employment equity by an employer under this Act.<sup>86</sup>

We are not certain that this part of the Act has been properly implemented.

### **Recommendation 27**

**The Committee recommends that:**

- **The Minister of Labour should table an annual report to Parliament on the operations of the Federal Contractors Program similar to the annual report that is tabled for federally regulated employers.**
- **The Labour Branch should prepare and submit to this Committee by April 1, 2003 an action plan outlining measures to ensure that the administration of the Federal Contractors Program conforms to the purpose and provisions of the *Employment Equity Act*.**

## **2. Treasury Board Secretariat**

Since 1996, the *Employment Equity Act* has applied to the public service and as the federal public service employer, the President of the Treasury Board has also certain responsibilities under the Act. Treasury Board has been responsible for many of the same tasks within the public service as the Minister of Labour, but, as the employer, these have also included identifying and eliminating barriers, instituting positive policies and accommodation, and preparing employment equity plans (delegated to departments). The *Employment Equity Act* states that:

The Treasury Board and the Public Service Commission, each acting within the scope of its powers...are responsible for carrying out the obligations ***of an employer*** [italics added] under this Act in relation to employees ...<sup>87</sup>

As the role of the Treasury Board has evolved vis-à-vis the departments, however, its place in the administration of the *Employment Equity Act* has become increasingly unclear. Prior to the current Act, the Treasury Board had an employment equity policy in place and began reporting on the representation of designated groups in the public service workforce.

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<sup>86</sup> *Employment Equity Act*, 1995, section 42(2).

<sup>87</sup> *Employment Equity Act*, 1995, section 4(4).

The fate of policies and programs that have supported the achievement of employment equity is now in doubt. Chief among them are the Employment Equity Positive Measures Program which provided support to build institutional capacity and the Embracing Change Program that was designed to address the representation of visible minorities. The recent cancellation of the Employment Equity Positive Measures Program has eliminated what Treasury Board itself calls a “significant part of Treasury Board’s overall employment equity program for the federal public service.” The nature of the replacement of this program is uncertain because Treasury Board and the Public Service Commission (PSC) have delegated the functions of this program to all departments. The Public Service Commission, which operated the program components of this program, told the Committee that “under the EEA [*Employment Equity Act*] and current government policy on the duty to accommodate, departments are responsible for removing employment barriers and for accommodating their employees....”<sup>88</sup> The President of the Public Service Commission informed the Committee in a letter that the PSC and the Treasury Board Secretariat are “continuing discussions with interested departments” to get departments “to consider serving as a centre of expertise....” The Commission and Treasury Board are working on a new policy to spell out the duty to accommodate.

Through its Chair, this Committee has already expressed its concern in letters to both the President of the Treasury Board and the President of the Public Service Commission. We believe that in the absence of a centralized inventory of assistive devices and best practices, public service managers will now be tasked with seeking, through information networks the supports and services that should be equally available to all public service managers and employees.

The Committee firmly believes that the federal government, as the initiator of the *Employment Equity Act*, and Treasury Board Secretariat, as the public service employer, have an obligation to provide leadership and to set an example. It is as an employer that Treasury Board negotiates collective agreements on behalf of all departments and obviously would retain some responsibility under the Act. In addition, neither the delegation of management to the departments nor their assumption of increased responsibility for employment equity diminishes our belief that, like private sector employers, the “head office” of the public service should retain responsibility for ensuring compliance with the law. Despite the provision for delegation and sub-delegation of powers to departments, the Committee believes that Treasury Board should not have it both ways.

One of the underlying principles of this report has been the achievement of equity in its broadest sense — the application of the law equally to all employers. The federal public service should be no exception. In order to clarify the roles and responsibilities of the Treasury Board Secretariat, we have recommended elsewhere that the Minister of Labour assume responsibility for the compilation, analysis and reporting on progress that were formerly carried out by Treasury Board. In addition, we have recommended that the

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<sup>88</sup> Scott Serson, President of the Public Service Commission of Canada, letter dated April 10, 2002.

Minister of Labour assume the same function for the separate employers that also form part of the Government of Canada.

### **Recommendation 28**

**The Committee recommends that:**

- **As the public service employer, Treasury Board remain accountable for all policies programs and actions within federal departments and agencies with regard to the *Employment Equity Act*.**
- **Where it has delegated authority under the *Employment Equity Act* to departments and agencies (such as the provision of positive measures for people with disabilities), Treasury Board should put in place effective measures to ensure that employment equity policies and programs are in place in the departments. Treasury Board should submit to this Committee an action plan by April 1, 2003 outlining the measures that have been put in place and the ways that these will be monitored.**

### **3. The Canadian Human Rights Commission**

The Canadian Human Rights Commission has been given the mandate to monitor and ensure compliance through on-site audits. In 1995, the Act created an Employment Equity Review Tribunal to ensure final enforcement of the Act where necessary. The work of the Commission in conducting its activities has been discussed throughout this report. We have, for example, recommended that the Commission be provided with greater resources to carry out its audit and compliance functions.

Throughout our hearings, we heard from several witnesses that many of the functions assigned to the Commission and to HRDC should be consolidated in a new office of an employment equity commissioner. They argued that this could achieve greater uniformity in the administration of the employment equity program across the public and private sectors. Some members of the Committee support this position. Most members, however, believe that the employment equity delivery structure, as it exists with the changes that we have recommended in this report, could become more closely integrated and better co-ordinated.

### **Recommendation 29**

**The Committee recommends that the Department of Human Resources Development Canada's Labour Branch, the Treasury Board Secretariat and the Canadian Human Rights Commission collaborate more closely to ensure that employment equity is delivered consistently across the public and private sectors and that HRDC's Labour Branch assume primary responsibility for program administration, policy development,**

**workforce analyses of designated groups, and the production of consolidated employment equity reports.**

Not all members of the Committee believe that this recommendation is sufficient to achieve greater uniformity in the administration of employment equity. Consequently, some of us propose that consideration be given to establishing an employment equity commissioner or an employment equity commission, whose mission, terms of reference and operation should be studied by the Standing Committee on Human Resources Development and the Status of Persons with Disabilities.

## CONCLUSION

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The Committee is optimistic about the prospect of greater equality in tomorrow's workplace and encourages employers, employees, employees' representatives, and representatives of designated groups to continue to build on the progress made to date. In the Committee's opinion, as well as the opinions of many of those who presented their views to us, special action is needed to improve the employment situation of persons with disabilities and Aboriginal peoples. We propose the development of workplace strategies to help achieve this objective. We also believe that the pursuit of a representative workplace requires the government to focus more attention on the supply side of the labour market. Moreover, this focus should be incorporated in the development of the government's National Skills and Learning Agenda, respecting, of course, provincial constitutional jurisdiction in this area.

As we noted at the outset of this report, the job of building a more equitable workplace has just begun and there is a great deal of work to be done to enhance fairness in the workplace. It is the Committee's hope that the recommendations contained in this report help to serve this cause and contribute to even more success in the years to come.

Members of the Committee appreciate and thank all the individuals and organizations who shared their time, experience and views with us during our review of the *Employment Equity Act*. We also express our gratitude to the Minister of Labour, Ms. Claudette Bradshaw, and the Chief Commissioner of the Canadian Human Rights Commission, Ms. Michelle Falardeau-Ramsay, for their reports and contributions to the Committee's work. Without all of this input and support, especially from our witnesses, we would not have been able to prepare this report.



# LIST OF RECOMMENDATIONS

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## Recommendation 1

The Committee recommends that:

- The Minister of Labour, in collaboration with the Minister of Human Resources Development Canada, develop workplace strategies that identify specific resources and targets to help all employers covered under the *Employment Equity Act*, especially federally regulated employers, to hire, accommodate and train persons with disabilities and Aboriginal people. These workplace strategies should be developed in partnership with employers covered under the Act, disability organizations, Aboriginal organizations and other interested community groups. In addition, workplace strategies must respect the constitutional jurisdiction of the provinces.
- The government re-instate the Employment Equity Positive Measures Program and the Enabling Resource Centre, and fund these initiatives until such time that the government can verify that the capacity exists within individual departments and agencies to deliver this support. This verification should be provided in a report and presented to the House of Commons Standing Committee on Human Resources Development and the Status of Persons with Disabilities.

## Recommendation 2

The Committee recommends that the Minister of Labour develop a more focused and better-resourced employment equity research, promotion, education, and technical support strategy. As a basic premise, such a strategy should also aim to create, and to build on partnerships between business, labour, the community and designated groups. This strategy should entail the development of:

- i. a communications strategy to increase public awareness of the benefits of employment equity and employers' requirements under the Act;
- ii. an education strategy that brings together employers, designated groups, advocacy organizations, unions etc. to identify issues, solutions and best practices; and

- iii. a technical support strategy to develop better tools and data to assist employers to meet their employment equity obligations.

### **Recommendation 3**

The Committee recommends that the Labour Branch of Human Resources Development Canada be the sole source of technical support for both public (including Separate Employers) and private sector employers.

### **Recommendation 4**

The Committee recommends that:

- The government ensure that sufficient resources are allocated to enhance human resource development among members of designated groups. New funding mechanisms and eligibility criteria should be incorporated in the next generation of Labour Market Development Agreements to ensure that members of designated groups have a greater opportunity to access Employment Benefits and Support Measures.
- The government fast track discussions with provincial and territorial governments in order to implement a labour force development strategy for persons with disabilities at the earliest date possible.
- HRDC report annually in its Departmental Performance Report on program expenditures for designated groups and the proportion of designated groups who are served under these programs.
- Citizenship and Immigration Canada review its budget for Language Instruction for Newcomers to Canada and the Immigrant Settlement and Adaptation Program to ensure that sufficient funding is available to serve the labour market transition needs of newly arrived immigrants, particularly in view of the recent upward trend in actual annual landings.
- All the measures set out above respect the constitutional jurisdiction of the provinces.



### **Recommendation 5**

The Committee recommends that:

- The government vigorously pursue discussions with provincial and territorial governments and professional associations to develop a system for recognizing foreign credentials, while recognizing provincial jurisdiction in this matter. The importance of this issue needs to be better reflected in federal-provincial/territorial agreements relating to immigration and labour market development to ensure a barrier-free labour market.
- Citizenship and Immigration Canada ensure that all visa officers inform applicants of the potential problem that may arise with respect to the recognition of an applicant's formal education and/or technical training credentials. Visa officers should encourage all successful applicants to contact the relevant certification organizations in Canada prior to immigrating to this country.

### **Recommendation 6**

The Committee recommends that:

- The Library of Parliament be included in section 4 of the *Employment Equity Act*.
- Employees (excluding Members' and Senators' staff) of the Senate and the House of Commons be included under the *Employment Equity Act* for the purposes of annual reporting and compliance audits.
- The regulatory framework required to extend the Act to non-civilian employees in the Canadian Armed Forces, the Royal Canadian Mounted Police and the Canadian Security Intelligence Service be adopted without further delay.

### **Recommendation 7**

The Committee recommends that the Minister of Labour examine the Federal Contractors Program with a view to re-structuring this program to ensure that the employment equity obligations of federal

contractors are the same as the obligations of employers covered under section 4 of the Act.\*

#### **Recommendation 8**

The Minister of Labour examine the feasibility of covering employers with fewer than 100 employees, federal contractors with contracts worth less than \$200,000 and recipients of federal grants and contributions.

#### **Recommendation 9**

The Committee recommends that all employers, including individual federal departments and agencies (those set out in Parts I and II of Schedule I of the *Public Service Employment Act*) as well as Parliament and the Library of Parliament, file their employment equity reports with the Minister of Labour. The Minister of Labour should be responsible for tabling in Parliament a consolidation of these reports, including a comparison of the public and private sectors. For greater clarity, all reports filed with the Minister should contain information in accordance with the prescribed instructions.

#### **Recommendation 10**

The Committee recommends that all federal departments and agencies report on the same occupational basis as private sector employers. Following the review of the reporting requirements due on 1 January 2004 (see Recommendation 11), if the government modifies the basis on which occupational data are reported, the modified approach should apply equally to all employers.

#### **Recommendation 11**

The Committee recommends that the Labour Branch of Human Resources Development Canada, in consultation with the Canadian Human Rights Commission, conduct a study of reporting requirements under the *Employment Equity Act*. This study should involve all stakeholders, government departments and agencies (including separate employers), designated groups, unions and employee

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\* The NDP supports including a provision that Federal Contractors be subject to compliance audits as part of a re-structured program.

representatives, and federally regulated private sector employers. It should specifically address the reporting obligation under the Act as well as the feasibility of biennial statistical reports, and the possibility of biennial reports on qualitative measures. This report should be tabled with the House of Commons Standing Committee on Human Resources Development and the Status of Persons with Disabilities no later than 1 January 2004.\*

### **Recommendation 12**

The Committee recommends that the Act be amended to clarify the term, “special measures” and articulate the requirement for these special measures in an employer’s employment equity plan.

### **Recommendation 13**

The Committee recommends that the government amend the *Employment Equity Act* to replace the term “reasonable accommodation” with the term “duty to accommodate up to the point of undue hardship”, and that the Minister of Labour explore legislative measures to require employers to have an accommodation policy and to amend the *Employment Equity Act* accordingly.

### **Recommendation 14**

The Committee recommends that the *Employment Equity Regulations* be amended to require employers to document their employment systems review and that the Canadian Human Rights Commission provide a clear set of standards to help employers conduct this review.

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\* The NDP does not support a study to specifically address the reporting requirements under the Act and the feasibility of biennial statistical reports. We feel that such a study could potentially lead to a weakening of the Act and the current requirement for annual reporting.

### **Recommendation 15**

The Committee recommends that the Minister of Labour examine the *Employment Equity Act* to determine if it is necessary to clarify the magnitude of hiring and promotion goals required for the purposes of paragraph 10(1)(d) of the Act.\*

### **Recommendation 16**

The Committee recommends that, in consultation with employers, employees and employee representatives, the Minister of Labour examine ways to strengthen the requirement for employers to consult with employee representatives, including unions. This examination should include specifically looking at whether the existing statutory requirement for “consultation” and “collaboration” between employers and employees’ representatives required in Section 15(3) of the Act should be included as part of the functions of the Canadian Human Rights Commission in assessing an employer’s compliance.

### **Recommendation 17**

The Committee recommends that the Government of Canada amend section 3 “Interpretation” of the *Employment Equity Act* and all related regulations or guidelines pertaining to the definition of persons with disabilities.

A definition that received a considerable amount of support and that the Committee believes merits serious consideration is:

- (a) persons who have a long-term or recurring physical, mental, sensory, psychiatric or learning impairment, or
- (b) persons who consider themselves to be disadvantaged in employment by reason of a physical, mental, sensory, psychiatric or learning impairment, or
- (c) persons who believe that an employer or potential employer is likely to consider them to be disadvantaged in employment by

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\* The NDP does not support examining the *Employment Equity Act* to determine if it is necessary to clarify the magnitude of hiring and promoting goals required for the purposes of the Act. This has the potential to lead to an erosion of the current requirement that employment equity goals be established at a level no less than labour force availability.

reason of a physical, mental, sensory, psychiatric or learning impairment, or

- (d) persons whose functional limitations owing to a physical, mental, sensory, psychiatric or learning impairment have been accommodated in their current job or workplace.

For greater clarity, in responding to any questionnaire prepared by an employer for employment equity purposes, any person who indicates that one of (a), (b), (c) or (d) applies to him/her will be considered as a person with a disability.

### **Recommendation 18**

The Committee recommends that the Labour Branch of Human Resources Development Canada, in conjunction with Statistics Canada, develop a means to separately identify individuals who are members of more than one designated group and to provide a comparative analysis of the disadvantages in employment that may result from belonging to more than one designated group.\*

### **Recommendation 19**

The Committee recommends that the Minister of Labour consult with employers, employee representatives, members of designated groups, the Canadian Human Rights Commission and other stakeholders to identify and put in place a set of qualitative societal and employment indicators that will assist in the measurement of the success of employers in achieving equity in the workplace.

### **Recommendation 20**

The Committee recommends that the Minister of Labour establish a research program involving Human Resources Development Canada and Statistics Canada to conduct work into the development of alternative data sources and societal indicators that measure the progress in achieving employment equity. As a priority, this research program should address issues related to those that are members of

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\* The NDP recommends that an analysis be conducted to determine if there are other groups of workers that are disadvantaged to the same extent as groups currently designated under the Act and whether these groups should be included under the Act.

more than one of the designated groups and sub-groups of existing designated groups.

#### **Recommendation 21**

The Committee recommends that:

- As a priority, the Interdepartmental Working Group on Employment Equity Statistics study and find a way to ensure that the labour force availability statistics for persons with disabilities are equivalent to the labour force availability statistics for the other three designated groups.
- That the 2006 census contain questions that will ensure that adequate availability data regarding persons with disabilities are collected for employment equity purposes or, if this is not possible, that a separate survey of persons with disabilities be conducted in 2006 and in conjunction with every census thereafter.

#### **Recommendation 22**

The Committee recommends that the labour force availability benchmarks applied to the federally regulated private sector be applied equally to all employers, including federal departments and agencies, covered under the *Employment Equity Act*.

#### **Recommendation 23**

The Committee recommends that the Canadian Human Rights Commission be provided with sufficient resources to conduct compliance audits and follow-up audits more quickly and to facilitate employers in fulfilling their obligations under the Act.\*

#### **Recommendation 24**

The Committee recommends that the monetary penalty for not reporting or for false reporting be applied uniformly to all employers covered under the Act.

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\* The NDP supports the Canadian Human Rights Commission's proposal to develop a more expeditious process for establishing legal proceedings once a case has been referred to tribunal and to eliminate the requirement that directions be issued and cases referred to the tribunal only "as a last resort".

### **Recommendation 25**

The Committee recommends that the government examine the merits of allowing the Canadian Human Rights Commission to make public executive summaries of each compliance report, summarizing the extent of compliance with the statutory requirements (including an employer's employment equity plan) in a manner that is consistent with the *Access to Information Act*.\*

### **Recommendation 26**

The Committee recommends that the government allocate adequate resources to the Labour Branch of Human Resources Development Canada in order to ensure that the Branch fulfils its obligations under the *Employment Equity Act*.

### **Recommendation 27**

The Committee recommends that:

- The Minister of Labour should table an annual report to Parliament on the operations of the Federal Contractors Program similar to the annual report that is tabled for federally regulated employers.
- The Labour Branch should prepare and submit to this Committee by April 1, 2003 an action plan outlining measures to ensure that the administration of the Federal Contractors Program conforms to the purpose and provisions of the *Employment Equity Act*.

### **Recommendation 28**

The Committee recommends that:

- As the public service employer, Treasury Board remain accountable for all policies programs and actions within federal departments and agencies with regard to the *Employment Equity Act*.
- Where it has delegated authority under the *Employment Equity Act* to departments and agencies (such as the provision of positive

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\* The NDP supports the Canadian Human Rights Commission's recommendation that the Act be amended to repeal the consequential amendment that prohibits a tribunal or court from issuing a full remedy when it believes a complaint related to patterns of discrimination under the Canadian Human Rights Act is founded.

measures for people with disabilities), Treasury Board should put in place effective measures to ensure that employment equity policies and programs are in place in the departments. Treasury Board should submit to this Committee an action plan by April 1, 2003 outlining the measures that have been put in place and the ways that these will be monitored.

#### **Recommendation 29**

The Committee recommends that the Department of Human Resources Development Canada's Labour Branch, the Treasury Board Secretariat and the Canadian Human Rights Commission collaborate more closely to ensure that employment equity is delivered consistently across the public and private sectors and that HRDC's Labour Branch assume primary responsibility for program administration, policy development, workforce analyses of designated groups, and the production of consolidated employment equity reports.



## APPENDIX A LIST OF WITNESSES

Associations and Individuals	Date	Meeting
<p><b>Department of Human Resources Development</b></p> <p>Gerry Blanchard, Director General, Labour Operations</p> <p>Neil Gavigan, Director, Labour Standards and Workplace Equity, Labour Branch</p>	11/12/2001	44
<p><b>House of Commons</b></p> <p>Claudette Bradshaw, Minister of Labour</p>		
<p><b>Public Service Commission of Canada</b></p> <p>Amelita Armit, Vice-President</p> <p>Nurjehan Mawani, Commissioner</p> <p>Douglas Rimmer, Vice-President</p> <p>Scott Serson, President</p>	29/01/2002	45
<p><b>Treasury Board of Canada Secretariat</b></p> <p>Cynthia Binnington, Assistant Secretary, Human Resources Branch, Employment Equity</p> <p>Wally Boxhill, Director, Employment Equity Division</p> <p>James Lahey, Associate Secretary</p>		
<p><b>Queen's University</b></p> <p>Mary Margaret Dauphinee, Professor</p>	31/01/2002	46
<p><b>University of British Columbia</b></p> <p>William Black, Professor</p>		
<p><b>University of Western Ontario (The)</b></p> <p>Carol Agocs, Professor</p>		

<b>Associations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<p><b>Canadian Human Rights Commission</b></p> <p>Joan Bishop, Director, Statistical Analysis Unit, Employment Equity Branch</p> <p>Nicole Chénier-Cullen, Director General, Employment Equity Branch</p> <p>Rhys Phillips, Director, Policy and Legislation, Employment Equity Branch</p> <p>Andrea Wright, Legal Advisor, Legal Services Branch</p>	05/02/2002	47
<p><b>Atlantic Institute of Market Studies</b></p> <p>Robin Neill, Chair</p>	07/02/2002	48
<p><b>C.D. Howe Institute</b></p> <p>Finn Poschmann, Senior Policy Analyst</p>		
<p><b>Hara Associates Inc.</b></p> <p>Dan Hara, President</p>		
<p><b>Toronto Employment Equity Practitioners Association</b></p> <p>Lauri Sue Robertson, Vice-President of Operations</p>		
<p><b>As Individuals</b></p> <p>John Crockett</p> <p>Martin Loney</p>		
<p><b>Canadian Auto Workers Union</b></p> <p>Raj Dhaliwal, Director</p>	19/02/2002	49
<p><b>Canadian Labour Congress</b></p> <p>David Onyalo, National Director</p> <p>Penni Richmond, National Director</p> <p>Hassan Yussuff, Executive Vice-President</p>		
<p><b>Canadian Union of Public Employees</b></p> <p>Harminder Magon, Anti-Racism Coordinator</p>		

<b>Associations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<b>“Confédération des syndicats nationaux”</b> Claudette Carbonneau, Vice-President Raymonde Leblanc, Union Advisor	19/02/2002	49
<b>Public Service Alliance of Canada</b> Johanne Labine, Programs Officer		
<b>Disabled Women’s Network of Canada</b> Doreen Demas, Chair	21/02/2002	50
<b>“Femmes Autochtones du Québec”</b> Manon Lamontagne, Consultant		
<b>Immigrant Women of Saskatchewan, Regina Chapter</b> Martha Mettle, Vice-President		
<b>Manitoba Women's Advisory Council</b> Crystal Laborero, Council Member		
<b>Nova Scotia Advisory Council on the Status of Women</b> Rita Warner, Chair		
<b>Canada's Association for the Fifty-Plus</b> Rolf Calhoun, Ottawa Representative William Gleberzon, Associate Executive Director	26/02/2002	51
<b>University of Saskatchewan</b> Kathy Gray, Director of Employee Services		
<b>“Fédération des travailleurs et travailleuses du Québec (FTQ)”</b> René Roy, General Secretary Émile Vallée, Political Advisor	28/02/2002	52
<b>National Action Committee on the Status of Women</b> Sandra Carnegie-Douglas, Executive Coordinator		

<b>Associations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<b>Centre for Research-Action on Race Relations</b> Fo Niemi, Executive Director	12/03/2002	53
<b>National Association of Canadians of Origins in India</b> Baljinder Gill, President, Affirmative Action Program		
<b>National Council of Citizens of Haitian Origin</b> Keder Hyppolite, President Jean-Gilles Joseph, President, Affirmative Action Program		
<b>Canada Customs and Revenue Agency</b> Paul Burkholder, Director General	14/03/2002	54
<b>Department of Fisheries and Oceans</b> George Da Pont, Assistant Deputy Minister, Human Resources Sector Yves Dupuis, Acting Director General, Strategies Directorate		
<b>Assembly of First Nations</b> Marie Frawley-Henry, Director, International Affairs	19/03/2002	55
<b>Assembly of Manitoba Chiefs</b> Joanne Green, Manager of Human Resources		
<b>Metis National Council</b> David Chartrand, Manitoba Metis Federation Gerald Morin, President		
<b>Canadian Bankers Association</b> Lesya Balych-Cooper, Vice-President Elisabetta Bigsby, Senior Executive Vice-President Terry Campbell, Vice-President	21/03/2002	56

<b>Associations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<p><b>Federal Employers in Transportation and Communications</b></p> <p>Shirley Boucher, Manager, Employment Equity, Canada Post</p> <p>Hélène Gendron, Chair, Employment Equity Sub-Committee and Senior Manager, Employment Equity and Official Languages, CBC/Radio-Canada</p> <p>Barbara Mittleman, Director, Employee Relation, Canadian Pacific Railway Company</p>	21/03/2002	56
<p><b>Canadian Police Association</b></p> <p>Dale Kinnear, Director</p>	11/04/2002	57
<p><b>Department of National Defence</b></p> <p>Elsbeth Naismith, Director, Military Gender Integration and Employment Equity 3-5/ Staff Officer for Persons with Disabilities</p> <p>Mary Romanow, Acting Director, Military Gender Integration and Employment Equity</p>		
<p><b>House of Commons</b></p> <p>William Corbett, Clerk</p> <p>Luc Desroches, Director General, Corporate Services</p> <p>Rob Walsh, Law Clerk and Parliamentary Counsel</p>		
<p><b>McLaren Consulting Group Inc.</b></p> <p>Phillip McLaren, President</p>		
<p><b>Royal Canadian Mounted Police</b></p> <p>Jim Ewanovich, Assistant Commissioner, Chief Human Resources Officer</p>		
<p><b>Canadian Association of Community Living</b></p> <p>Michael Bach, Vice-President</p> <p>Jean-Claude Jalbert, Board Member</p> <p>Parteepan Rasaratnam, Self Advocate</p>	16/04/2002	58
<p><b>Canadian Hearing Society (The)</b></p> <p>Gary Malkowski, Director</p>		

<b>Associations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<p><b>Canadian Mental Health Association</b>  Elisabeth Ostiguy, Director, Public Issues  Wendy Steinberg, Policy Analyst</p> <p><b>Canadian National Institute for the Blind</b>  Fran Cutler, National Chair  Myriam Girard, Researcher and Writer</p> <p><b>“Confédération des organismes de personnes handicapées du Québec”</b>  Mercedes Benegbi, Vice-President  Chloé Serradori, Executive Director</p> <p><b>Council of Canadians with Disabilities</b>  Laurie Beachell, National Coordinator</p> <p><b>National Institute of Disability Management and Research</b>  Viateur Camire, Board Member and Vice-President, Human Resources, Abitibi-Consolidated Inc.  Brian Payne, Labour Co-Chair and President, Communication, Energy and Paperworkers Union of Canada</p> <p><b>Neil Squire Foundation</b>  Gary Birch, Executive Director</p>	16/04/2002	58
<p><b>Canadian Association of University Teachers</b>  Rosemary Morgan, Legal Counsel</p> <p><b>Canadian Council on Rehabilitation and Work</b>  Joan Westland, Former Executive Director</p> <p><b>Canadian Media Guild</b>  Barbara Saxberg, Vice-President</p> <p><b>“Comité d'adaptation de la main-d'oeuvre pour personnes handicapées”</b>  Jérôme Di Giovanni, Executive Director</p>	23/04/2002	59

<b>Associations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<p><b>“Comité d'adaptation de la main-d'oeuvre (CAMO) pour personnes immigrantes”</b></p> <p>Mamadou Diop, Regions Development Officer</p> <p><b>Department of Human Resources Development</b></p> <p>Jane Clinckett, Special Advisor, Office of Disability Issues</p> <p>Phil Jensen, Assistant Deputy Minister, Employment Programs Branch</p> <p>Mike Saucier, Director General, Labour Market Directorate</p> <p><b>Women in Trades and Technology National Network</b></p> <p>Kim Leslie, Past National Coordinator</p> <p>Kathryn Running, Employment Equity Contract Consultant</p>	23/04/2002	59
<p><b>U.S. Equal Employment Opportunity Commission</b></p> <p>Corbett Anderson, Senior Attorney</p> <p>Cari Dominguez, Chair</p>	25/04/2002	60
<p><b>Department of Human Resources Development</b></p> <p>Syed Naseem, Chief, Data Development and Research</p> <p><b>Statistics Canada</b></p> <p>Doug Norris, Director General, Census and Demographic Statistics</p> <p><b>As Individual</b></p> <p>Adèle Furrie, Consultant</p>	30/04/2002	61





## APPENDIX B LIST OF BRIEFS

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Assembly of First Nations

Assembly of Manitoba Chiefs

Canada's Association for the Fifty-Plus

Canadian Association of Community Living

Canadian Association of University Teachers

Canadian Auto Workers Union

Canadian Broadcasting Corporation

Canadian Council on Rehabilitation and Work

Canadian Hearing Society (The)

Canadian Human Rights Commission

Canadian Labour Congress

Canadian Media Guild

Canadian Mental Health Association

Canadian National Institute for the Blind

Canadian Paraplegic Association

Canadian Police Association

Canadian Security Intelligence Service

Centre for Research-Action on Race Relations

“Comité d'adaptation de la main-d'oeuvre pour personnes handicapées”

Communications, Energy and Paperworkers Union of Canada

“Confédération des organismes de personnes handicapées du Québec”

“Confédération des syndicats nationaux”

Council of Canadians with Disabilities  
Federal Employers in Transportation and Communications  
“Fédération des travailleurs et travailleuses du Québec (FTQ)”  
“Femmes Autochtones du Québec”  
Hara Associates Inc.  
Jain Harish  
Immigrant Women of Saskatchewan, Regina Chapter  
Manitoba Women’s Advisory Council  
McLaren Consulting Group Inc.  
Metis National Council  
National Association of Women and the Law  
National Council of Citizens of Haitian Origin  
Robin Neill  
Nova Scotia Advisory Council on the Status of Women  
Professional Institute of the Public Service of Canada (The)  
Public Service Alliance of Canada  
Public Service Commission of Canada  
Secretariat of the Assembly of the First Nations of Quebec and Labrador  
Syncrude  
“Syndicat des communications de Radio-Canada”  
Toronto Employment Equity Practitioners Association  
University of Saskatchewan  
Women in Trades and Technology National Network

## REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to the report within one hundred and fifty (150) days.

A copy of the relevant Minutes of Proceedings of the Standing Committee on Human Resources Development and the Status of Persons with Disabilities (*Meetings No. 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 65, 66 and 68 which includes this report*) is tabled.

Respectfully submitted,

Judi Longfield, M.P.  
*Chair*



## Canadian Alliance Dissenting Opinion Employment Equity

June 2002

The Canadian Alliance wishes to thank all of the witnesses for their thorough and thoughtful presentations.

As an underlying principle of employment, the Canadian Alliance believes that there is no room for discrimination or prejudice in the workforce. We believe that the Charter of Rights and Freedoms and the Courts provide adequate protection to the individual in this regard. The Canadian Alliance strongly believes that the use of the merit system is in the best interest of all employees and employers when filling an employment vacancy, as outlined in the following policy statement:

***Canadian Alliance Policy Statement #2: “We will encourage the entrepreneurial sector by eliminating unnecessary regulations and minimizing government interference in the labour market, including the elimination of discriminatory hiring and promotion policies for federally regulated employees. Every job shall go to the most qualified applicant without the use of affirmative action or any other type of discriminatory quota system. We are committed to voluntary, free and fair collective bargaining.”***

Based on the Canadian Alliance principles of lower taxation and better use of existing revenues, we wish to emphasize under Recommendations 4, 23 and 26 that any funds the Government allocates to Employment Equity must be a reallocation and efficient use of existing funds. At a time when fiscal restraint is required, this program must make the most efficient use of the current funding allocations. The inclusion of the term “provided with sufficient resources” to the Canadian Human Rights Commission is too open ended.

Recommendation 5 recognizes Canada’s changing demographics and the importance immigration will play the future of our country. A concerted effort must be made to solve the ongoing problem of the recognition, transfer and acceptance of foreign credentials and the Canadian Alliance wants to emphasize the need to address this concern.

Recommendation 6 suggesting that employees of the Library of Parliament and House of Commons be covered by the Act, is contrary to the opinion of the Clerk of the House of Commons who stated that “the House is sovereign and must not be accountable to one of its creations, in this case the Canadian Human Rights Tribunal.” Since the House, under the direction of the Board of Internal Economy, ensures that the current standards are not only being met, but in most cases exceeded, this recommendation is not applicable.

Extending the Act to the Canadian Armed Forces, the Royal Canadian Mounted Police and the Canadian Security Intelligence Service is also unwarranted and unwanted.

Witnesses representing these agencies clearly enunciated that they did not feel that additional regulatory obligations were necessary.

The Canadian Alliance believes the solution to ensuring that employment equity exists in the private sector is not through regulation and legislation, but rather through education and knowledge. In keeping with this, we disagree with the views expressed in recommendations 7,8 and 27. Parliament and the Library of Parliament should also be removed from Recommendation 9.

***Canadian Alliance Policy Statement #8: “We support a smaller and more efficient federal government that will fund its expenditures from current revenues and not by putting a debt on the shoulders of the next generation. We will pass legislation requiring the government to balance its budget every year, except in cases of true national emergency.”***

Implementation of Recommendation 15 would result in the imposition of “quotas”. In the opinion of the Canadian Alliance, the adoption of such a quota system is diametrically opposed to the merit principle, which ensures that the best-qualified person is hired for a position.

The Canadian Alliance supports the Committee’s view expressed on page 41 that “It should be up to employers and employees whether employment equity is negotiated as part of a collective agreement.” However, Recommendation 16 encourages the interference of government into the area of employer/employee contract negotiations, which is untenable.

In supporting Recommendations 20 and 21, the Canadian Alliance wishes to emphasize the need to minimize the paper burden. Many of the witnesses who appeared before the Standing Committee indicated that the reporting structure was too complex and a bureaucratic nightmare. Several of these organizations encouraged the Standing Committee to consider biennial reporting for those with a history of compliance. This should be given immediate attention and favourable consideration.

The Canadian Alliance believes that the status quo remains appropriate for any monetary penalties for non-compliance under the Act. The current Act allows the Minister to review the situation and conditions of any monetary penalties so changes as per Recommendation 24 are not necessary. (Sections 35 — 40 of the Employment Equity Act)

The Canadian Alliance is concerned that Recommendation 25, regarding the public disclosure of executive summaries of compliance reports and the “summarizing the extent of compliance with the statutory requirements”, may be open to abuse. If the government adopts this Recommendation, clear legal interpretation of this disclosure and the right to privacy must be included.

***Canadian Alliance Policy Statement #18: “We are proud of our heritage of individual freedom and believe government must refrain from interfering in the lives of Canadians without demonstrating a clear and compelling reason to do so.”***

The Canadian Alliance believes that the less government interference in the day-to-day operation of Canadian business the better. Where disproportionate representation is apparent in the labour force, additional legislation, bureaucracy or regulations will not ensure long-term solutions. Rather, better understanding and education will ensure that market forces react positively in all labour forces. The Canadian Alliance believes that the principles of the merit system offer all employers and employees the most stable work environment.





# MINUTES OF PROCEEDINGS

Tuesday, June 11, 2002  
(Meeting No. 68)

The Standing Committee on Human Resources Development and the Status of Persons with Disabilities met *in camera* at 11:09 a.m. this day, in Room 208, West Block, the Chair, Judi Longfield, presiding.

*Member(s) of the Committee present:* Libby Davies, Reed Elley, Raymonde Folco, Monique Guay, Judi Longfield, Gurbax Malhi, Joe McGuire, Anita Neville, Diane St-Jacques.

*Acting Member(s) present:* Joe Peschisolido for Alan Tonks.

*In attendance: From the Library of Parliament:* Lyne Casavant, Kevin Kerr and Bill Young, Research Officers.

The Committee resumed consideration of its draft report on the Review of the Employment Equity Act.

It was agreed, — That the final report (as amended) on “Promoting Equality in the Federal Jurisdiction: Review of the Employment Equity Act” be adopted as the Ninth Report of the Standing Committee on Human Resources Development and the Status of Persons with Disabilities.

It was agreed, — That the Clerk be authorized to make such editorial and typographical changes as necessary without changing the substance of the Report.

It was agreed, — That the Chair be authorised to table the Report in the House.

It was agreed, — That the Committee print up to 550 copies of its Report in a tumble bilingual format.

It was agreed, — That, pursuant to Standing Order 109, the Committee request that the Government provide a comprehensive response to this Report.

It was agreed, — That, pursuant to Standing Order 108 (1)(a), the Committee authorizes the printing of the dissenting opinion of the Canadian Alliance as an appendix to this report immediately after the signature of the Chair; that the dissenting opinion be limited to not more than two pages; (font = 12; line spacing = 1.5) and that the dissenting opinion be delivered in electronic format in both official languages to the Clerk of the Committee not later than noon Wednesday, June 12<sup>th</sup>, 2002.

It was agreed, — That the draft report “Building on Success” of the Sub-Committee on Children and Youth at Risk be adopted as the Eight Report of the Standing Committee on Human Resources Development and the Status of Persons with Disabilities.

It was agreed, — That the Clerk be authorized to make such editorial and typographical changes as necessary without changing the substance of the Report.

It was agreed, — That the Chair be authorised to present the Report to the House.

It was agreed, — That the Committee print up to 550 copies of its Report in a tumble bilingual format.

It was agreed, — That, pursuant to Standing Order 109, the Committee request that the Government provide a comprehensive response to this Report.

It was agreed, — That the Clerk of the Sub-Committee on the Status of Persons with Disabilities make the necessary arrangements for a reception, (not exceeding \$500.00), at 4:00 p.m. on Wednesday, June 12 to celebrate the launch of the Sub-Committee’s Canada Pension Plan Disability informational website.

At 11:31 a.m., the Committee adjourned to the call of the Chair.

Danielle Belisle  
Clerk of the Committee