

Reviewing the Federal

The 1986 Employment Equity Act (Bill C-62) applies to employers under federal jurisdiction and Crown corporations with 100 or more employees. These employers operate primarily in the banking, transportation and communications industries. Government departments are excluded from the legislation. In 1991, Employment and Immigration Canada gathered views from employers, employer and labour organizations, and designated group representatives and their associations in a consultation process aimed at reviewing the Act. The message from designated groups was loud and clear: employment equity programs are not working because improvements in the representation of such groups have been

inadequate. Although one benefit of the Act has been the growth of data on the representation of designated group members in workforces, problems with the gathering of solid quantitative data persist. Qualitative measures—such as proactive recruitment strategies on the part of employers—have not been widely implemented, due to a reliance on the good will of employers instead of an effective enforcement plan. Here CWS/cf publishes excerpts from several presentations made to the Special Committee on the Employment Equity Act. (Source: *Consultations: in preparation for the review of the Employment Equity Act*, Employment and Immigration Canada, 1991.)

Canadian Labour Congress

Since the Canadian Labour Congress (CLC) last appeared before the Special Committee on Review of the Employment Equity Act in December 1985, we have been working in a number of jurisdictions with employers, developing employment equity programs and educating our members in both the private and public sectors. Where employment equity has been jointly negotiated by Employment Equity Committees with equal representation on the committee, programs have been successful. While we have met with some success, much more could be accomplished if stronger, more enforceable and more inclusive legislation was in place.

The following are just some of the amendments to the Act we are proposing:

Employer: The exclusion of federal government departments under the Act is inexplicable. It is only logical and consistent that Parliament should place the same employment equity demands on public service managers as is expected from federally regulated industries. To demand less of public service managers raises the question of the government's

commitment to the employment equity principle.

Announcements that Treasury Board will develop employment equity policies do not limit the need for their legal enforcement through law. Treasury Board policies with respect to affirmative action have existed for several years and have been notable for their lack of success.

The present employment equity program of the federal public service operates only by Cabinet Order and has proven to be operating ineffectively. Policies are totally management controlled and thereby do not reflect any of the views or needs of the employees. Many important aspects of employment equity are not subject to collective bargaining under the Public Service Staff Relations Act. It should be noted that, at present, a union presence on existing employment equity committees is by invitation only. There is no requirement for consistent and bona fide consultation with legitimate union representatives.

There have been no incentives to identify and eliminate systemic discrimina-

tion at all levels of public service employment and there would appear to be little in place to promote persons from the designated groups into higher levels. These shortcomings exist because there is no enforcement or commitment required by legislation.

The Act must therefore be amended to:

- include all federal departments and agencies;
- ensure that the Treasury Board be mandated to provide the necessary resources and incentives to managers to implement the plans; and
- ensure that managers be held accountable in their annual evaluations regarding their record on employment equity.

Plans of goals to be prepared: Every employer must develop an employment equity plan and submit it to the enforcement agency. In unionized workplaces, the plan must be negotiated with the union. In non-unionized workplaces, the employer should be required to consult with a committee of employees before developing the plan.

The Act should list the employment practices that must be examined by the plan, including:

- recruitment (including advertising practices)
- determination of job qualifications (including accreditation of foreign degrees);
- hiring and selection criteria;
- training programs;
- transfer and promotion;
- hours of work and schedules;
- compensation;
- workplace design and physical access;
- organization of work;
- technology and processes;
- impact of seniority provisions (including consideration of lateral entry);
- provision of child care services;
- provision of English/French as a second language courses and literacy courses;
- provision for leaves of absence;
- physical needs analysis; and
- termination policy.

Employment Equity Act

Seniority: There has been discussion regarding the question of seniority and how it might be used as a blockade against the implementation of employment equity. We of the trade union movement are not of that view. Seniority cannot take effect until a person is hired and the hiring of the workforce is the responsibility—except in the case of hiring halls—of management. The labour movement's view is that strengthening seniority provisions will benefit the target groups after they are in the workplace. We faced that challenge when we fought to eliminate the inequalities that confronted, and still confront, women. We are expanding that challenge to meet the needs of the four target groups involved in employment equity.

As the main form of equity that a worker can build into a job, seniority remains as one of the key principles of trade unions. It helps alleviate discrimination that could occur if decisions about transfer, promotion or layoff were left to the sole discretion of management.

We stand by the right of membership to make adjustments toward the strengthening and broadening of seniority provisions that will allow the full impact of a complete employment equity program. On the basis of our experiences, effective employment equity programs can work without endangering our seniority protection. Improvements can be made to existing clauses that will mean more protection for the four target groups.

In dealing with seniority, one example of meeting the new challenges is where the Grain Services Union produced a Special Edition of *GSU News* which dealt specifically with the question of employment equity. It stated: "It may be necessary to agree to the appointments of designated group members out of seniority: a posting could state 'Designated group members will be given preference' if the posted position is one in which there is under-representation... We should consider granting designated group members 'extra' seniority upon completion of the probation period; i.e. all designated group

members would be credited with years seniority equal to the average seniority within the classification which could be used for the purpose of bidding, promotion, layoff, or recall." This was put to a membership vote and adopted as union policy.

The foregoing is a clear indication from the trade union movement that seniority should not be raised as a "scapegoat" by those who would stand in the way of the implementation of employment equity.

Canadian Federation of Business and Professional Women's Clubs

The Canadian Federation of Business and Professional Women's Clubs (C.F.B.P.W.C.) is the only national organization in Canada whose primary concern is the education, employment and economic status of women employed outside the home. We have supported legislated equity (affirmative action) for more than a decade.

Despite the fact that the Employment Equity Act has been in effect for five years, we are disappointed to find it has been relatively ineffective. Women in the Canadian Labour Force continue to be under-represented in key occupational groups, continue to be clustered in lower-paying occupational groups and perpetually continue to earn on average less than their male counterparts. For these reasons, a great deal of change is needed for the original purpose of the Act, i.e., equality in the workplace, to be realized. We believe that the changes to the Act proposed in this brief, and supported by the business and professional Canadian women who are members of our organization, will be more effective in leading us to the reality of equality in the workplace.

The following represent some of our recommendations for changes to the Act:

Coverage

- should be expanded to cover all federally-regulated employers and Crown

corporations and the Federal public service

- the specified number of employees should be reduced to 50 or lower, or the threshold eliminated altogether
- smaller employers should be allowed a phase-in period
- incentive funding should be made available to assist smaller employers in setting up their reporting systems (for purposes such as purchase of software, hardware or to hire someone on a short-term basis to collect data and/or develop reporting systems)
- reporting requirement should not be graduated to employee size, nor should smaller employers to be exempt from reporting or be required to submit only summary reports
- on-site reviews should be conducted for all organizations (both large and small)

Federal Contractor's Program

- should be specified as part of The Employment Equity Act
- should be expanded to lower value of contracts to \$50,000
- should include all employers on all bids, not just repeat or frequent contractors
- coverage should include employers where accumulated value of contracts would amount to \$50,000 in one year
- the "number of employee" threshold should be eliminated, i.e. coverage should continue even if the employer's workforce falls below the threshold number of employees (should there be a threshold in the revised Act)

Plans, Goals and Timetables

The Act should require that employment equity plans:

- include an Employment Systems Review
- are results-oriented action plans with implementation dates
- include qualitative measures as well as quantitative
- be intertwined with pay equity or equal pay for work of equal value
- include mandatory goals and timetables for achievement

- be enforced via on-site reviews
- include an education component and methods of positive organizational climate support
- are established by the employer based on guidelines but relevant to individual employer's unique situations

Role of Unions and Employee Representation

- joint employee and management committees should be required for the development, implementation and monitoring of achievement of employment equity plans for non-unionized employees
- joint union-management committees should be mandatory for development and implementation of plans
- sensitivity and support training should be mandatory for all employees, managers and union representatives

Reporting Requirements

- data should be reported on training and development activities
- data showing movement between occupational categories by designated group should be required
- data for more Census Metropolitan Areas should be available showing labour force availability
- reporting should be required on an annual basis

Monitoring and Enforcement

- should be stronger and more clearly defined
- achievement of employment equity plan goals within identified time lines should be monitored through on-site review, either once every three years or in response to anonymous complaints
- sanctions and remedies could include exclusion from the bidding process, fines and court-imposed quotas with time frames

Administration of the Act

- an Office of Employment Equity should be established within EIC to receive employer reports as well as employer plans complete with goals and timetables for monitoring and assessment
- if the Canadian Human Rights Commission is to function as the designated agency, then sufficient resources should be made available to accomplish the assigned responsibilities effectively and in a timely way
- model companies should be used as an example to others and publicly recog-

nized for their achievements

- information, advice and counselling needs to be readily available for employers, unions and non-union workers
- the public must have access to results being achieved (or not being achieved)
- emphasis should be placed on employers being monitored, placing the onus on the employers rather than relying on compliance through complaints
- standardized approaches to training and outreach recruitment should be developed for use by employers and unions.

The reasons why women work are as varied as the reasons why men work. However, the prime motivators for both sexes, we believe, are the same—i.e. economic survival and satisfaction of basic needs. The cost of housing, automobiles, transportation, food, gasoline, child care, clothing and so on are the same for both men and women. It is, therefore, imperative that the full scope of occupations are available and accessible to women, with corresponding varying levels of pay, and that all employment systems (such as recruitment and selection, promotion, training and development, performance reviews, wage and salary administration, employee benefits) are barrier-free and accessible.

Saskatchewan Wheat Pool and Grain Services Union

Saskatchewan Wheat Pool is Canada's largest cooperative involved in agricultural marketing.

Our workforce consists of 2,859 full-time employees across Canada with 65% of our employees involved in work that is considered non-traditional for women.¹

Saskatchewan Wheat Pool and Grain Services Union have been involved with Employment Equity prior to the legislation (1984), through the collective bargaining process. We are one of the few organizations across Canada that have a signed letter of understanding with respect to our employment equity program.

The Grain Services Union has been

very active in the development of our program and proactive in addressing issues related to its collective agreements. This has included the development of an employment equity proposal addressing several issues including the seniority system.

To date our initiatives have included: establishment of a joint management/union committee, joint presentation and participation in awareness sessions to the total employee body, establishment of a full time Employment Equity position, accessibility studies and improvements, progressions in representation in all four designated groups, successful return rates on self-identification surveys, improvements to our recruitment procedures including the development of a computerized system, employment equity related training included in our internal workshops, development of brochures ("Women's Work" and "Employment Equity—Questions and Answers"), personal contacts with many of the organizations representing the designated groups (including personal visits to Indian Bands), and conducting a joint management/union internal systems review on our policies and practices.

Both the Saskatchewan Wheat Pool and the Grain Services Union agree that legislation is necessary to promote and correct past disadvantaged groups in employment and that further improvements to the legislation will enhance the goals of government equity programs. We feel that the following changes are necessary:

Employer Coverage: Existing legislation requires federally regulated employers with 100 or more employees to file annual reports. We recommend discussions with small business and changes be made to the legislation to reflect inclusion of this group. This adjustment is supported by the following reasons:

- small businesses are currently progressing in the employment of disadvantaged groups and are not being recognized for their work;
- advocacy groups report a higher success rate with small businesses due to their flexibility;
- existing governments are endorsing privatization and small businesses;
- based on national statistics, the majority of workers are employed by small

businesses, specifically in the prairies;

- typically disadvantaged groups gain experience with small businesses before acquiring employment with larger employers.

Employers' Duty: We strongly recommend that the section of the Act requiring employers to consult with bargaining agents or employee representatives be worded to accurately reflect the importance of union participation in employment equity programs. It should state that plans must be jointly developed and implemented.

Plans, Goals and Timetables: Existing legislation should be changed to reflect qualitative issues and the importance of advocacy group participation. Employers' goals and timetables should be made accessible to advocacy group monitoring. Without such access, analysis of numerical reports is incomplete. Qualitative planning, in conjunction with advocacy groups, will facilitate better understanding—especially during current economic conditions of downsizing and layoffs.

Reports: Reports should continue to be filed on an annual basis; however, there should be some flexibility allowed for compatible main frame software which includes the required data. A considerable amount of time and money is spent on the downloading of information, time which could be better utilized in training and development.

Monitoring and Enforcement: Existing legislation does not contain sufficient monitoring and enforcement mechanisms. No monitoring mechanism, aside from the provision of copies of the Annual Employment Equity Reports to the Canadian Human Rights Commission, exists. We recommend the legislation be amended to include:

- development of a comprehensive review process which is standardized and administered to all employers at regular intervals;
- establishment of an enforcement agency responsible for monitoring and enforcing implementation of plans;
- establishment of terms of reference for the enforcement agency with appropriate funding provided in order to fulfil its obligations.

Views on Federal Departments: Current legislation does not cover Federal Departments. We believe that the current legislation should be amended to include

all Federal Departments and Crown Corporations. It is our belief that the Government of Canada should lead this change by setting an example through its own employment equity programs.

¹ 1990 employment equity figures.

Communications and Electrical Workers of Canada

Since The Communications and Electrical Workers of Canada (CWC) began representing telephone operators at Bell Canada, New Brunswick Telephones, Prince Edward Island Telephones, and telephone operators and clerical workers at the Newfoundland Telephone Company, we have been working to negotiate improved conditions for our women members.

Policies have been adopted and initiatives taken in the area of pay equity, sexual harassment, access for women into traditionally male jobs and parental rights.

The following are some of our recommendations for amendments to the legislation, based on our concrete experiences of attempting to negotiate employment equity gains:

Role of Unions: Without the requirement for employers to *negotiate* employment equity initiatives with unions there is very little reason why the employer should do anything more than a little window dressing. And this is what we have found.

A typical experience of consultation is where one of our employers gave the union 24 hours to respond to something they were planning on doing. We took a few days to research and respond to their request. On hearing our concerns, they answered almost immediately that they would not make any changes and would proceed as planned.

At other negotiating tables, employers have tried to use the legislation to undercut legally negotiated collective agreements by proposing contract language saying "In the interests of obtaining Employment Equity, the employer and the union agree to *deviate* from the collective agreement."

Our experience leads us to believe that it is only in strengthening the collective agreement that the rights of those who might otherwise be discriminated against are strengthened. We have found that the collective bargaining process is the only way employers have agreed to change their *modus operandi*.

Enforcement: In order to ensure that employers introduce employment equity in their workplaces, the last five years have proven that a tougher enforcement mechanism is required.

- Before all else, the roles of the department of Employment and Immigration and the Canadian Human Rights Commission must be clarified.
- The body responsible for enforcement should be required to approve plans, assess programs regularly and monitor results. It must be provided with adequate resources to play this role, in addition to providing consultation and educative services to both unions and employers.

When the legislation was introduced, the government stated that they believed employers would comply because their employment figures would be made public. The intent was that companies with "bad" figures would be so embarrassed that they would act to implement employment equity immediately. This has proven not to be the case.

- In spite of the fact that the Canadian Human Rights Commission established an Employment Equity department and has received a number of complaints, few real gains have been made. Although the Commission's mandate is to investigate complaints without undue delay, it has done very little except try and persuade employers to do something.

A complaint was laid against Bell Canada (and eight other employers) by a disabled people's organization in 1988. To date no investigation of the complaint has taken place at Bell. The company has taken the Canadian Human Rights Commission to court challenging its right to investigate. The legal process has stretched out over a couple of years and the complaint has been put on hold.

- Companies pay no penalty for not implementing employment equity but they do pay a penalty if they do not file employment figures annually. It goes

without saying that CWC believes that companies should be penalized for not implementing employment equity.

Manitoba Telephone System

Employment equity legislation must seek to balance the legitimate demands of citizens to participate in the economy with legitimate needs of the business environment. Everyone deserves a full opportunity to choose a career and to have their labour valued without regard to sex, race, disability or ethnic origin. Business, in providing jobs to effect this exchange, is motivated to invest resources to ensure skill needs are identified and trained for, and match both short- and long-term goals of industry.

More so than ever, the changing demographics in the Canadian work force present designated group members as our growth in tomorrow's labour force. Workers who come from a variety of cultures have not always had the full benefit of education, work opportunities, or social safety nets, often find today's corporations limiting, isolating and frustrating. Employers are challenged to examine their pay and benefit systems, job requirements, and role in education or training. This is necessary to ensure the development of employees capable of contributing to the overall productivity of business, and the economy.

Data analysis can be highly useful as part of an analytical strategy and as part of a benchmark for measuring progress. But data alone neither pin-points systemic discrimination in policies and procedures, nor does it aptly describe the existence of equality.

Barrier identification requires a systemic audit of all policies and procedures. Criteria for assessing disparity include validity, consistency, geography, information, job relatedness, legal compliance, cultural, social, physical and credentialing factors.

Once the problem has been fully identified, solutions in the form of remedial and support measures need to be designed. Initiatives designed to expand recruitment, provide training, and change

the work environment are the real measures of an employer's commitment to equality, and are harmonious with the direction of human resource management in the next decade.

What constitutes success? Laws and agencies designed to influence the behaviour of large corporate enterprises must develop a sensitivity to the multiple business factors which employment equity touches upon.

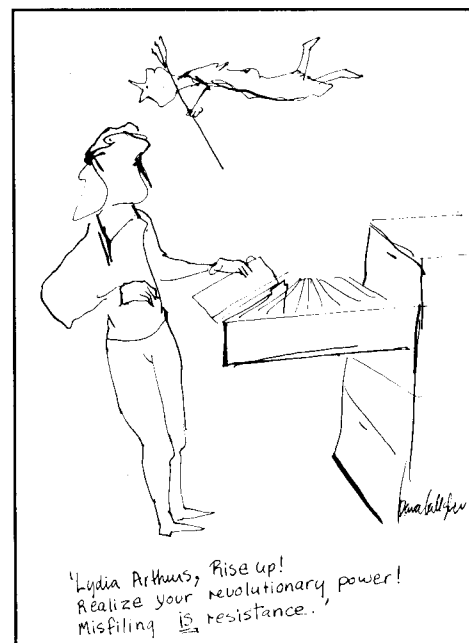
Government, in evaluating success, must remain cognizant of the time needed to effect change, and be prepared to view qualitative changes separately from quantitative changes. Recruitment, training, promotional and benefit changes may be expected to occur earlier than numerical changes and deserve recognition in our progress towards employment equity.

Recommendations: It is recommended that the Federal government support the vision of the Employment Equity Act by the following:

- 1) Providing current job training, funding or incentives, to workers who are members of a designated group and who seek training in occupational categories in which they are under-represented;
- 2) Provide subsidized training and re-training funding or incentives to employers who: a) develop training programs for designated group members which lead directly to jobs, and b) form employer/education equity partnerships with educational institutions to develop job-specific training which results in employment in occupational growth areas;
- 3) Develop a high profile information campaign which illustrates the value of employment equity.
- 4) Provide, through regional Employment Equity consultants, technical support in the form of software and consulting expertise. Equity Consultants to business should have direct experience in a business environment.
- 5) Promote and fund education equity in the public school system, universities and colleges.
- 6) Streamline the data reporting require-

ments to provide benchmark measurement criteria to describe change, and acknowledge that numerical data is expected in the long haul.

- 7) Establish industrial catalogues of ideas, annual reports of corporate successes, hot-lines of accommodation ideas, and a placement roster of designated group members and their qualifications.
- 8) Amend Bill C-62 to provide protection to employers who comply with the planning, implementation and monitoring guidelines of employment equity. Employers responding to the Act should not be penalized for producing data which shows disparity or for developing programs which preferentially provide opportunities to designated group members.



Dawna Gallagher