

Union Consultation by Employers and Employment Equity

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Union Consultation and Employment Equity

EXECUTIVE SUMMARY

This research analyzes the extent of employment equity consultation and collaboration between employers and unions. Information was collected through: a review of the literature; a questionnaire, completed by unions, regarding consultation and collaboration with employers via telephone and field interviews; a review of narrative reports filed by 18 employers in the Banking, Transportation and Communications industrial sectors, regarding joint consultation and collaboration with unions as required by the *Employment Equity Act*; telephone interviews and focus-group meetings with the employment equity auditors of the Canadian Human Rights Commission (CHRC); and the progress of the four designated groups – women, Aboriginal Peoples, Persons with Disabilities and Members of Visible Minority Groups – in these three industrial sectors since 1997.

Findings

The results presented here clearly indicate the unions' awareness of their role in consultation, as outlined in the 1995 *Employment Equity Act*, and their preparedness to take on this role, is not as developed or high as would be expected. There are many reasons for this lack of participation and preparation. Unions are membership-driven organizations: if they do not have high percentages of the four designated groups, they are unlikely to press for a strong role in employment equity. Further, most large unions are structured in a way that inhibits participation in employment equity processes: while there may be, at a central or national level, one representative responsible for employment equity, most such plans are formed and enacted at a local level. Most local

union affiliates are not large enough to allocate sufficient personnel or resources solely for employment equity goals.

A number of administrative steps could be taken to increase awareness within unions of their right to consultation under the *Employment Equity Act*.

1. **Conduct a series of workshops for unions and employers** on progress under the Act. Research could be presented, followed by sharing of experience from leading-edge unions and employers on what they do within their organizations to increase representation of designated groups. Word-of-mouth would enable the diffusion of this information within unions and organizations.

2. **Prepare an information kit for unions** on their employment equity issues and their consultation and collaboration rights. These materials could include case studies and legislative and guideline material.

3. **Encourage unions and employers to determine any adverse impact of seniority** on designated group members. Some unions and employers have achieved some success in this direction. Workshops can illustrate the experience of these employers and unions who have negotiated special plans to accommodate the designated groups within the framework of seniority.

In addition, workshops could deal with employment equity planning, implementation, and related issues, and could be used to relate the experience of some of these employers in conducting successful consultations and collaboration with their unions.

4. **CHRC's role in union consultation:** CHRC auditors felt that they needed specific authority to enforce section 15 of the *Employment Equity Act*. The Standing Committee on Human Resources Development and the Status of Persons with Disabilities Report on Promoting Equality (2002) recommended (recommendation 16, page 41) to the Minister of Labour to examine ways to strengthen the requirement that employers consult with employee representatives or unions, including the possibility of having the CHRC assess employer compliance with consultation and collaboration between employee representatives or unions. Education is key, the auditors also suggested, to successful collaboration and consultation between employers and unions.

5. **Employer Narrative Reports:** A review of the narrative reports portion of employers' annual employment equity reports indicates several concerns, of relevance to this study. The employer narrative reports were not consistent: for example, a company may report consultation within the organization and with its human resource management people, but not with employee representatives. The difficulty lies in determining whether proper consultation, as defined in the *Employment Equity Act*, is taking place in these circumstances. The second concern is the fact that where the employers report joint consultation and collaboration with unions, the substance or results of these interactions were missing or unclear in most of the reports reviewed.

A standardized reporting form would, in this respect, assist immeasurably, and would ensure uniform reporting and analysis, as well as eliminate any ambiguities or uncertainties regarding consultations.

6. **Record-keeping** of employment equity, Human Rights and Diversity Committees, where they exist, should be made a joint management-union responsibility, as is the case

for Health and Safety Committees under section 135.1 (9) of the *Canada Labour Code*. The minutes, thus required, could then be examined by the CHRC auditors.

Methodology

A. Unions and Employment Equity

The federal *Employment Equity Act* aims to achieve equality in the workplace so that qualified persons belonging to the designated groups will not face barriers to jobs or to equality in employment. The federal employment equity initiatives cover about 13.3% of the Canadian labour force, or over 2 million workers, and over 1500 employers employing at least 100 workers.

A survey conducted by the Conference Board of Canada found that only 20% of respondents reported having joint employee-management committees that play a role in the development and implementation of employment equity programs. In general, larger organizations and public sector organizations are more likely to have the resources to devote to employment equity efforts. As an example, the employment equity program in Ontario Hydro began in 1989 as a joint union-management committee, comprising equal numbers of union and management representatives. The mandate of the committee was to hold quarterly meetings and to assist wherever possible in the promotion of good employee practices, and to study, develop and make recommendations for revisions and/or additions to policy directives and the collective agreement, in order to promote employment equity principles. Public sector organizations like hospitals and universities are also more likely to have employment equity plans or programs in place. However, formal forms of consultation or collaboration with unions are rare. In the private sector, various joint employment equity committees have been set up between the Canadian

Automobile Workers Union and the Big Three automotive companies, General Motors, Ford and Chrysler.

The seniority principle in unions is believed to hinder employment equity. There are, however, ways in which seniority rules can be modified to remove employment barriers for designated groups, including some that attempt to compensate for past discrimination and historic differences, and others that attempt to ensure that disadvantaged groups will not fall farther behind.

Section 15 of the federal *Employment Equity Act* requires employers to consult and collaborate with employees' representatives on issues relating to the preparation, implementation and revision of their employment equity plan. Although employers' obligations and reporting requirements are explicitly outlined, the Act is silent on what form the process and substance of employers' consultation and collaboration with unions should take. Most union representatives have advocated for a higher level of union involvement at all stages of the employment equity process. To ensure the success of any employment equity program, the role and accountability of unions need to be made clear in the Act. Both unions and management should be held accountable for the achievement of employment equity. Guidelines need to be established to gauge the collaborative efforts between unions and management in achieving employment equity.

B. Union Responses Regarding Employer Consultation and Collaboration:

An analysis was conducted of union responses to our questionnaire, based on interviews with 13 major unions representing some of the largest employers in Canada; (See Appendix A - List of Unions Interviewed, and Appendix B for Questionnaire Results), regarding their perceptions of employers' consultation and collaboration.

Overall, unions seem to be well positioned to take part in consultation and collaboration with their employer counterparts. Over 85% of the unions in our sample indicated that they have a dedicated department and personnel to consult with employers. Over 71% have a full-time person in such a role. All (100%) unions in our sample have committees within the unions (from national to local levels) on employment equity and human rights issues, and these committees meet one to three times a year.

Unions indicated that employers do not initiate any contact with them on employment equity matters 57% of the time, and 64% of the unions thought that employers do not place a high value on consultation with them. Fifty-eight percent said that the level of consultation had not improved. Forty-three percent of the unions were involved with the employers at the self-identification stage of the employment equity process. A majority (64%) indicated that they had not been consulted by employers on employment systems review such as uncovering job barriers, or in the development of an employment equity plan, and they were not certain if the employment equity plan includes a specific timetable for implementing employment equity. Communication from the employer was non-existent 57% of the time to the union and 64% of the time to workers; unions

indicated that they have not been asked by the employers to disseminate employment equity information to employees 64% of the time. Over 78% of the unions said that their companies did not revise the employment equity plans, and 64% of the unions said managers were not being held accountable for meeting goals and timetables. Over 85% of the unions thought that there was lack of funding for employment equity in their firms.

C. Ranking Employers:

We assigned five rankings to the level of employer consultations with their unions (on a scale of 1 to 5 for specific joint consultation) in the narrative reports filed by the employers with the HRSDC. Only 5 of the 18 companies reviewed (28%) specifically held joint consultations with their unions: Air Canada, Bell Canada (and Telus), Canada Post, Canadian Pacific and Hudson General Aviation.

Another 2 employers (11%) implied consultation in their narrative reports. Thus, about 39% of the companies reviewed are taking part in joint consultation with their unions, and about 61% do not state any discussion with their unions. This is consistent with the unions' perceptions of consultation and collaboration with their employers, as discussed above.

D. Interviews with the Employment Equity Auditors

Telephone interviews and focus group meetings were held with four employment equity CHRC auditors. The purpose was to ascertain from them their perceptions of the consultation and collaboration process between employers and unions. The auditors were of the view that there was employer reluctance not only to consult with their unions but

also unwillingness to develop and implement an employment equity plan. Because the Act does not outline penalties for non-collaboration with unions, the auditors found that many employers avoided or put off consultations as long as possible. The auditors were frustrated because they were not granted any power to enforce the Act. While the unions might be consulted, this only occurred at the end of the employment equity process, prior to the audit. At least one CHRC auditor and one union said that employers only consulted when it was time for the audit.

There were also times when unions were un-cooperative. One auditor suggested that a feared loss of job security and a resistance to change made dealing with long-term employees difficult. Similarly, during strike activity, negotiation for a new collective agreement, or unrest within the union, unions were not always ready for joint consultations with their employers. However, the auditors cautioned that this was not the norm.

Finally, the auditors commented that education of employers and workers on the merits of employment equity, as a way to get the message out, was very important. However, this required funding, which was not available.

E. Representation Levels of Designated Groups from 1997 to 2000

We examined representation figures for 18 firms where employees were organized by the unions in the transportation, communications and banking sectors over 1997-2000. The overall trend is one of gradual improvement in representation of all the four designated

groups. While this is good news, the bad news is that within several occupational categories, especially among Senior and Middle Managers, these groups remain not only underrepresented but are also progressing too slowly.

It is important to note that at the Professional, Semi-Professional, Clerical and Semi-Skilled levels, women and visible minorities have made better progress compared to persons with disabilities or Aboriginal Peoples. Our benchmarks are taken from the 1996 census within each occupation.

Union Consultation by Employers and Employment Equity: Final Report

By

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The goal of this research is to determine the level of consultation and collaboration as pertains to the employment equity process, between the employer and the union. To achieve this goal, information was sought from the literature and select individuals, using a variety of methods.

This study has several parts:

1. A review of literature
2. Analysis of the questionnaires completed by unions regarding consultation and collaboration with employers by telephone/field interviews (with 13 major unions representing the largest employers in Canada¹; See Appendix A - List of Unions interviewed, and Appendix B for Questionnaire Results)
3. A review of narrative reports filed by 18 employers² in three industries regarding joint consultation and collaboration with unions as required by the EE Act (See Appendix C)
4. Telephone interviews and focus group meeting with the employment equity auditors of the Canadian Human Rights Commission (CHRC) (Appendix D - Themes)

¹ The data indicate 14; 13 were originally received but one questionnaire was incomplete; one union reported on 2 additional unions, therefore there are 14 responses)

² For example, CBC, Telus, CP Rail

5. The progress, in terms of representation, by the 4 designated groups since 1997 in the three industrial sectors represented by the 18 employers covered in this study

PART I : UNION INVOLVEMENT IN EMPLOYMENT EQUITY

COVERAGE UNDER THE FEDERAL *EMPLOYMENT EQUITY ACT*

The first federal *Employment Equity Act* in Canada was proclaimed on August 13, 1986. In 1996, the federal government strengthened the legislation by extending the coverage to the federal Public Service and by giving the Canadian Human Rights Commission the authority to audit workplaces covered by the Act to ensure compliance. The subsequent federal *Employment Equity Act*, which received royal assent on December 15, 1995, currently applies to federally regulated private sector employers and federal crown corporations, as well as most federal government departments and agencies with 100 or more employees. Approximately 650,000 workers are covered under the legislated employment equity programs (LEEP), 1.15 million under the federal Contractors Program (FCP), and a further 230,000 in the federal Public Sector. The three components cover about 13.3% of the Canadian labour force.

EMPLOYERS' OBLIGATIONS UNDER THE ACT

The purpose of the *Employment Equity Act* is to achieve equality in the workplace so that qualified persons will not be denied employment opportunities. More importantly, the Act also requires employers to identify and remove any barriers to employment experienced by the four designated groups. Although employers are required to report on

only five areas (i.e. representation, salaries, promotions, hiring and termination), barriers to employment equity can exist in a wide variety of employment systems. These include all aspects of the total compensation package, opportunities for training and development, conditions of employment and rules and procedures that govern layoffs, recall and disciplinary action, in addition to recruitment and selection policies, advancement and development opportunities, and circumstances for termination.

Union involvement and cooperation is necessary in meeting the requirements of the Act and in achieving equality of employment in the workplace. The extent of union involvement, however, varies widely, and in the majority of cases, falls short of expectation or capability.

UNION INVOLVEMENT IN EMPLOYMENT EQUITY ISSUES

Many employers, especially those in the public sector or of large size, have various forms of employment equity plans or programs in place. However, there is scarce documented evidence of union involvement in consultation, collaboration, or in joint employment equity committees, for many reasons. First, the requirement to consult with employees' representatives or bargaining agents on issues related to employment equity does not specify the level of consultation or how and when such consultations should be carried out. As the Act is silent on what constitutes consultation with the bargaining agents, this requirement is difficult to enforce.

Second, obligations under the Act seem to be imposed only on the employer, giving the impression of a diminished role for unions in setting up and implementing such plans. Employers are tasked with a list of obligations and the onus of compliance rests solely on them, leaving unions free to avoid responsibility or reporting duties.

Third, as unions usually do not play a role in the hiring process, this can be an excuse for unions to justify their non-participation in the achievement of employment equity.

Moreover, promotions and terminations in unionized workplaces are usually governed by the “seniority principle,” which can potentially preclude an equitable workplace .

According to the Act, employee seniority rights related to layoffs and recalls or any established practices of an employer are not considered employment barriers within the meaning of the Act [Section 8(1)]. However, employers are required to investigate the implications of seniority on the designated groups and to work voluntarily with their unions to identify ways of reducing any adverse impact [Section 8(3)].

Normally, employment equity efforts begin with the setting up of an employment equity advisory committee and the appointment of an employment equity coordinator. The roles of unions, however, are often unclear or nonexistent in firms’ employment equity policies.

LARGE FIRMS ARE MORE LIKELY TO HAVE EMPLOYMENT EQUITY

In general, larger organizations, such as Ontario Hydro or the major banks, are more likely to have the resources to devote to employment equity efforts. For example, Ontario

Hydro formed a joint union-management employment equity committee in December 1990, comprised of ten members shared equally between the union (of which the president of the union local is also a member) and management. The mandate of the committee was to hold quarterly meetings and to assist wherever possible in the promotion of good employee practices, and to study, develop and make recommendations for revisions or additions to policy directives and the collective agreement to promote employment equity principles. The Employment Equity Program of Ontario Hydro began in 1989 (Wharton 1992).

The Conference Board of Canada conducted a survey of 100 federally regulated organizations covered by the *Employment Equity Act*. The companies ranged in size from 100 to over 60,000 employees. The average company had 4,000 employees. The questionnaire found that an overwhelming majority of respondents reported little or no involvement of employees, special committees or unions. Only 20% of respondents reported having joint employee-management committees that played a role in the development and implementation of employment equity programs (Conference Board of Canada, *Implementing Employment Equity*, p. 15). The results also showed that management usually sees union officials as hostile to employment equity. And 22 out of 50 respondents said collective agreements actually hindered employment equity initiatives.

Since the inception of the Act, few examples of joint union-management employment equity committees have emerged. In the auto industry, for example, various joint

employment equity committees have been set up between the CAW and the “Big Three.” These committees have had considerable success in educating workers on employment equity and in outreach programs in local communities. Earlier joint employment equity programs between the CAW and General Motors focused mainly on increasing women's representation in auto production and trades (Sugiman 1989). In recent years, the CAW-Daimler-Chrysler collective agreement established an employment equity committee in each workplace, with a main employment equity committee consisting of four union representatives and four employer representatives. The committee has joint responsibility for developing and implementing an employment equity plan, including developing a communication strategy to educate and update employees on equity issues and outreach programs. However, there is no empirical evidence of the effectiveness of these guidelines, or even of the degree to which these are being followed. Daimler-Chrysler Canada Inc. and the CAW received a Certificate of Merit award in 2001 from the Department of Labour-HRSDC that recognized their exceptional performance in employment equity.

The Canadian Labour Congress and the Canadian Union of Public Employees (CUPE) have also advocated for mandatory equal opportunity. A number of unions such as the Ontario Public Service Employees Union (OPSEU), National Union of Provincial Government Employees (NUPGE), Canadian Automobile Workers (CAW) and the United Steelworkers of America (USWA), have employment equity policy and advocacy positions (Agocs, Burr & Somerset 1992).

THE PUBLIC SECTOR

The 1995 federal *Employment Equity Act* extended coverage to the federal public Sector. The Public Service has set up an Employment Equity Committee under the National Joint Council of the Public Service of Canada. The Employment Equity Division of the Public Service Human Resources Management Agency (PSHRMA) has published a detailed guide on how consultation and collaboration on employment equity issues in the Public Service should be carried out. For example, committee meetings should be held regularly, and proceedings at these meetings should be documented to indicate that bargaining agents are consulted about any employment equity initiatives as they arise. PSHRMA has asserted that it is committed to consulting and collaborating with both bargaining agents at the national level on Public Service-wide issues through this employment equity committee.

Quasi-public sector organizations, like hospitals and universities, are more likely to have employment equity policies or plans, as they are more susceptible to public scrutiny. Involvement of unions, however, is either not documented, not formalized, or is inexistent.

Universities

- **York University:** Committees have been established to meet employment equity commitments, including a senior policy committee and a number of working committees with unions and employee groups. The senior management committee on employment equity policy, chaired by the Vice-President of Administration,

- reports to the University president via the University Executive Committee. The committee members include senior managers and a management representative from each employment equity sub-committee. [York website]
- **University of Saskatchewan:** The University Equity Plan is developed and monitored by the university-wide Employment Equity Advisory Committee. In addition, there are 29 employment equity committees in the colleges and administrative units. (Echevarria & Huq 2001)
 - **University of Toronto:** Joint employment equity committees consisting of union management and union representatives were formed during 1993-1994. These joint committees provide a venue for proposing goals and strategies for the development of a work plan appropriate to each union. The first employment equity policy was approved by Governing Council in March 1986, followed by the release or issuance of the employment equity plan in 1988. According to university documents, the committee is to be composed of one representative of the employer and one representative of each of the bargaining agents. It was also stated that if an action to be undertaken conflicts with a collective agreement, the collective agreement shall be amended to resolve the conflict.

Hospitals

While the following hospitals are not covered under the federal *Employment Equity Act*, either as a legislated employer or under the Federal Contractors Program, their employment equity initiatives were part of the preparation for the *Ontario Employment Equity Act* implementation in 1993. We cite them here because they provide good

examples of how employment equity could work with union involvement in other sectors.

- **Ottawa Civic Hospital** has an Employment Equity Committee, a group of 12 staff members that includes equal representation of union and management or non-union representatives. The original, main focus was to improve the economic status of women and allow better access to career opportunities. However, the committee only had an advisory role that included a review of all hospital policies and formulating recommendations (Sept 1988).
- At **Kingston General Hospital**, the employment equity committee has 8 members, including one union representative (Kingston General Hospital, p.6). In terms of communication, union representatives were involved in informing their member at union meetings of the distribution of Employment Equity/Affirmative Action Needs Assessment surveys (Kingston General Hospital, p. 12).

At the Canada Customs and Revenue Agency, management works with the public service unions. Unions are involved in the development of strategic goals and directions. Unions are consulted on changes to policies, procedure and processes. There are conferences and regular meetings on the subject of employment equity (Paul Burkholder, Director General, Strategy, Policy and Planning Directorate, Canada Customs and Revenue Agency, March 14, 2002).

In the early 1990s, there was a joint employment equity committee at the Canadian Broadcasting Corporation (CBC), but it was eliminated during the downsizing in 1996. It was only at the insistence of the Canadian Media Guild that the committee was re-established in June 2001 (Saxberg 2002).

SECTION 15 IMPLEMENTATION AND COMPLIANCE

Although Section 15 of the Act states that every employer shall consult with its employees' representatives about issues relating to the implementation and maintenance of employment equity, there are no prescribed guidelines as to how and when the consultations should take place. The ultimate responsibility for employment equity lies with the employers who are tasked with the reporting requirement to Labour-HRSDC every year. Consequently, many unions, such as the Canadian Auto Workers Union, find that employers view the duty to consult with employee representatives as no more than the solicitation of information, and not a joint effort. Annual consultations frequently become mere opportunities for management to share the results of the reporting process (Bradshaw 2001).

The Act does not specifically require the active involvement of unions or employee representatives beyond informing employees as to the company's actions. Unions are not being consulted in any meaningful way and consultation with the union is seen as a courtesy more than anything else (Saxberg 2002).

UNION CONTRIBUTION TO EMPLOYMENT EQUITY

Unions' contribution to the achievement of employment equity to date is ambiguous. Most unions are in favour of the legislation as it promotes and furthers the cause of workers' rights. Evidence on how unions have helped each of the four designated groups is minimal and is probably dependent on the membership pattern in different regions or industries.

WHAT ARE THE PROBLEMS, OBSTACLES, AND BARRIERS?

Employment equity is based on the concept that in order to achieve equality in employment, special measures for the disadvantaged groups are needed in order to counteract systemic discrimination. This is often considered to be in conflict with collective values in unionized workplaces.

Unions, and in particular their seniority principle, can be major obstacles in the achievement of employment equity. However, if unions are convinced that employment equity protects the rights of workers, resistance will diminish, and unions will begin to become partners in successful employment equity processes.

The seniority principle, then, makes it all the more important for the necessity of union involvement in order to facilitate the success of employment equity plans. Efficiency gains could be had if employers, who are more likely to have the expertise in the area of employment equity, work with unions to ensure collective agreements are rid of discriminating barriers.

SENIORITY AND EMPLOYMENT EQUITY

Seniority touches on all aspects of employment for workers in unionized workplaces. The seniority principle in union settings has been commonly regarded as a factor that hinders the employment equity process. However, simple modifications to the seniority principle can mitigate the disadvantages suffered by the designated groups.

Unions have proposed various ways to give designated group members average levels of seniority. Dulude (1995) describes a number of ways in which seniority rules can be modified to remove employment barriers for women. Most of the suggestions can be applied to the other disadvantaged groups. These are “corrective measures” which attempt to compensate for past discrimination and historic differences, and “stop-gap measures” that try to ensure disadvantaged groups will not fall further behind. Corrective measures include general and selective suspension and prospective adjustment, whereas constructive seniority and special adjustments are examples of stop-gap measures.

Dulude (1995) contains descriptions of these and other suggestions.

Dulude (1995) also discusses various instances in Canada where these innovations have been used in past collective agreements. General suspension and exemption of designated groups from seniority rules were used in a collective agreement between the United Steelworkers of America and Placer Dome Inc. in 1991. Constructive seniority, the seniority attributed on the basis of a defined formula, was used in an agreement between the Saskatchewan Wheat Pool and the Grain Services Union in 1993. The collective agreement between the Communications and Electrical Workers of Canada (now known

as the Communications, Energy and Paper workers Union of Canada-CEP) and Bell Canada in 1987 is an example that specifically targets the area of promotion and transfers. The Employment Equity Moves program at Bell Canada in 1987 adopted plant-wide seniority calculations in determining promotions and transfers in order to integrate women into male-dominated occupations. Unions had also participated in various work sharing programs to avoid layoffs, where designated groups are more likely to be affected due to their lower level of seniority.

The Public Service Alliance of Canada (PSAC) has a preference for an equity designation staffing process where only candidates from underrepresented equity groups can be considered, with a bias-free assessment of merit (PSAC 2000).

In order to eliminate systemic discrimination, the *Confederation des organismes de personnes handicapées du Québec* put forth a recommendation that the word “seniority” be replaced by “measures negotiated with respect to seniority” in Sections 8(1), (2) and (3) of the Act. According to Chloe Serradori (Executive Director), the Confederation believes an equal access to employment programs should include negotiated procedures with respect to the application of seniority to ensure fair representation.

The seniority principle will become a tool to remove managers’ favouritism or any arbitrary managerial practices, if and when “equality of employment” is attained.

Unions can play a significant role in the identification and removal of barriers to ensure the achievement of employment equity. Not only is union involvement crucial to the

success of employment equity, but it also benefits unions by maintaining or increasing their membership in a workforce that is increasingly made up of women and racial minorities. This applies equally to the structural move away from manufacturing to services. In this respect, major unions like the CAW and the CEP have submitted briefs recently on the review of the *Employment Equity Act*. However, the current setup of the *Employment Equity Act* is not clear on the roles of unions and is silent on the role of unions toward the achievement of employment equity. Under the current reporting requirements of the Act, the onus lies only with the employers and unions are not being assessed (rewarded or penalized) for achieving or not achieving the goal of equal opportunity. Finally, once employment equity is included in the collective agreement, any complaints could then be dealt with through the grievance procedure, which will speed up the resolution of inequities.

VIEWS FROM STAKEHOLDERS PRESENTED TO THE PARLIAMENTARY REVIEW

In submissions made in 2001 to the House Standing Committee on reviewing the *Employment Equity Act*, most unions, private and public sector organizations, and other interest groups supported the Act and expressed the need for better enforcement.

Highlights of presentations by unions and public organizations can be found in the Appendix.

In general, employer umbrellas are of the opinion that the Act, as it currently stands, has been quite effective and does not warrant any extensive changes. Most union representatives advocate for a higher level of union involvement at all stages of the

employment equity process, and for meaningful consultation and collaboration between employers and unions. Almost all labour organizations express the need to be involved in the establishment, implementation and monitoring of the employment equity plans. Some groups representing visible minorities also agreed with a higher level of union involvement in employment equity initiatives or activities. Further, these groups believe that unions should be held accountable for the success or failure of any employment equity initiatives or activities. In contrast, the Métis National Council, the Manitoba Métis Federation and the Canadian Association of University Teachers appear to consider union organizations as barriers in achieving employment equity goals. Irrespective of the potential contribution of unions in the employment equity process, most parties recommend the establishment of an objective administrative board or commission that would ensure the ongoing commitment to employment equity and its consistent implementation. Finally, they felt that the ability of third parties to lodge complaints with the Commission would further enhance the effectiveness of the Act in achieving the goal of equality in employment.

CONCLUSION

The *Employment Equity Act* in its present form needs more "teeth": some employers pay "lip-service" and establish an image to appear to be complying with the *Employment Equity Act*. The Act must specify the role of unions in collaborating with employers, and have more specific powers of enforcement. Most employers who are serious about the achievement of employment equity will strive to cooperate with their unions. Again, many gains could be had if management and union would work together. Co-signing on

employment equity plans, as an assurance of mutual co-operation and contribution, may be one way to ensure this co-collaboration.

Section 15 of the *Employment Equity Act*, as noted above, needs to be more specific and add details to the guidelines to ensure the inclusion of unions in the employment equity process. What does consultation mean? Is consultation the same as participation? The role of unions has to be made clear in section 15 of the Act in terms of union and employer obligations and the consequences that might follow non-compliance by both parties. Guidelines need to be established to ensure the unions' proposals and recommendations are being taken seriously.

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Part II

Union Responses Regarding Employer Consultation

Questionnaires were completed by telephone and field interviews with 13 major unions representing some of the largest employers in Canada³ (See Appendix B - List of Union Participants, Appendix C - Questionnaire Results, tabular responses to each union's response to our questions, Appendix D).

The first set of data on union responses was used to determine if employers were engaged in consultation with the union as required by the *Employment Equity Act*. Section 15 of the Act stipulates consultation and collaboration between employers and employee representatives or unions in the preparation, implementation and revision of the employment equity plan. Two other sets of data, narrative reports filed by employers with Human Resources and Skills Development Canada (HRSDC), and telephone interviews and focus group comments from the Canadian Human Rights Commission (CHRC) auditors, were used to supplement the findings from the questionnaires.

Both the unions and the CHRC auditors were able to describe the employment equity consultation process based on their experience.

The telephone and some field interviews with the union representatives (hereinafter referred to as “the union”, see Appendix C) focused on two types of information. In the

³ The data indicate 14; 13 were originally received but one questionnaire was incomplete; one union reported on 2 additional unions, therefore there are 14 responses)

first case, questions (numbers 1 – 11) were asked regarding the union as an organization with respect to employment equity (hereinafter referred to as employment equity). The remainder of the questionnaire pertained to their perceptions of how much and the extent to which employers are including them in the employment equity process, from consultation, through to the revision of the plan.

Overall, the results indicated that unions seem to be well-positioned to take part in consultation and collaboration with employers. They were supportive in that they had staff dedicated to the employment equity process and met regularly to discuss employment-equity-related issues. They also stated their willingness to work with the employer to develop employment equity programs that are meaningful to all parties. Some of the employers, according to the unions in our sample, appeared to be doing little to include them in most of the employment equity process. Our results indicated that consultation between the two parties had been fairly limited, and much more meaningful consultation needed to take place between the employers and unions during the development and implementation processes of the employment equity plan.

Union Organization

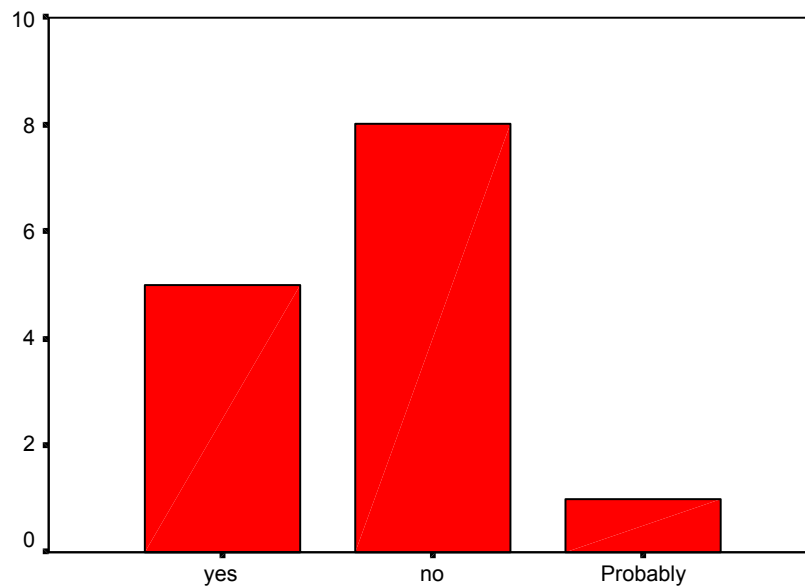
In order for unions to participate effectively in the consultation process, they must be well-positioned and invested in employment equity. We wanted to know how serious the unions were regarding employment equity and the consultation-collaboration process. We asked the unions in our sample if they had a dedicated department with an individual to consult with employers. Over 85% of the respondents indicated that they did have a

dedicated person in such a role, mostly at the national level. Additionally, 71% had a full-time person in such a role. All union respondents had committees within the unions to discuss employment equity and human rights issues. According to the respondents, these committees were well represented at various levels of the union (i.e. from national to local). These committees ranged from 4 to 75 in size. These committees managed to meet at least 1 to 3 times per year. In addition to employment equity and human rights issues, these committees discussed other issues as well, such as violence in the workplace, equality rights, AIDS, gay and lesbian rights, immigration issues, hate crimes and transgender issues. One union also said that they were brainstorming ways to negotiate employment equity clauses in the collective agreement. The unions in our sample seemed to be well-positioned, with the proper structure in place, to take part in consultation and collaboration with the employer.

Perceptions of Employer-Initiated Contact

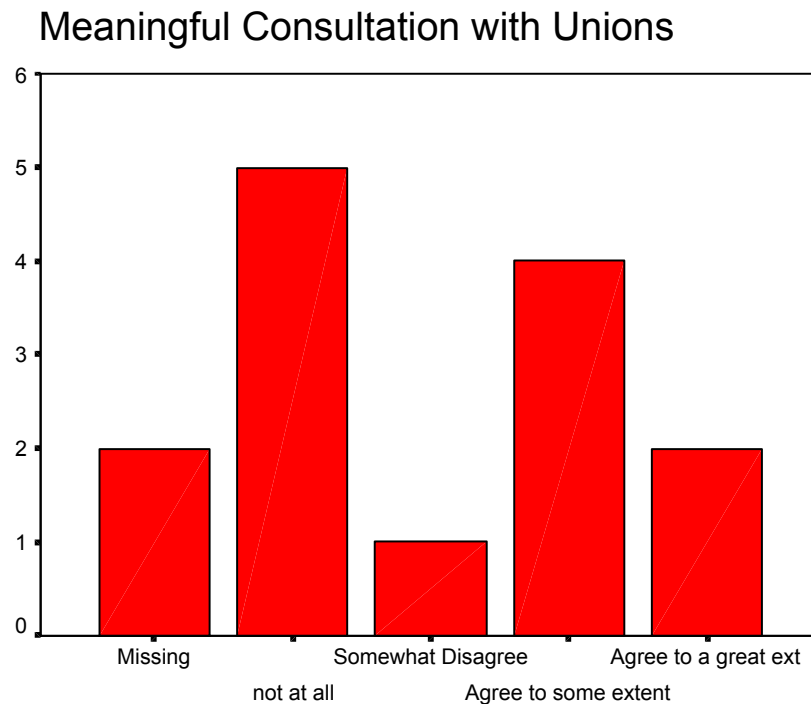
As required by the *Employment Equity Act*, employers are obligated to engage in consultation and collaboration with their bargaining agents or employee representatives within their workplaces. Respondents were asked if their employers had initiated contact in compliance with *Employment Equity Act* provisions in 2001 and 2000. The results indicated that employers did not initiate contact 57% of the time. The bar chart below shows this activity on the part of employers. In two cases, unions indicated that they had contacted employers trying to get them either to restart or begin the consultation process, but to no avail.

Company Initiated Consultation with Unions

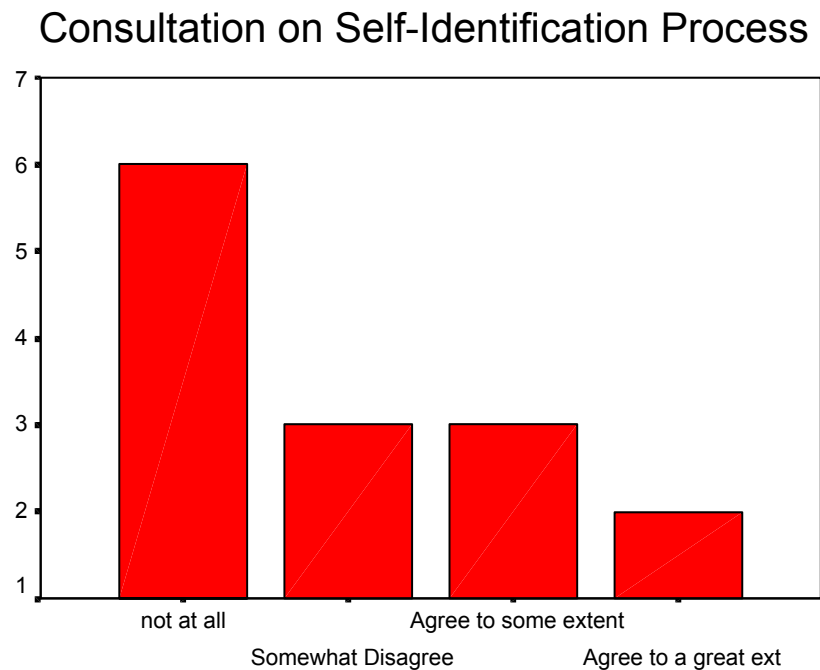


Sixty-four percent of respondents felt that employers did not place a high value on consultation in employment equity matters. As to whether the extent of consultation had improved in terms of meeting and topics discussed from 1997 to 2001, the results were mixed. It appears that eight unions were not consulted, accounting for 58% of the responses. Five indicated that consultation had dropped, and three said it was the same. But “the same” meant that no consultation had ever taken place. One respondent indicated that employers don’t worry about it until an audit comes up. For those who responded with “more” had additional comments to make. “More” was attributed it to the fact that the Human Rights Commission is encouraging more consultation. Another union said that there was more consultation because they took the initiative with the employer.

Consultation proved difficult between unions and company representatives. When asked if the unions were consulted about reviews of employment equity policy and procedure, 43% responded that they were not at all consulted, while the remainder indicated varying levels of agreement to this statement. We then asked if employers took their input into account before implementing policies; the unions' responses were similar. Only 10 responded to this question, with 36% saying not at all. One respondent said, "The company alone developed the plan and consultation was limited. When union was asked for their opinion, their ideas were not often used." Furthermore, "Consultation was seen as a 'joke.' The employer very rarely really asked for input, and just went through the motions by informing. When any amount of consultation was done, the advice was never taken and used." In conjunction with the previous question, it would appear that there was some consideration by companies to take comments into account; however, it was rather low. Again, the bar chart below illustrates this result.



Based on the results concerning lack of consultation at the beginning, it would be expected that there would be little involvement in the rest of the process. At the self-identification stage, the results were mixed, with only 43% indicating no involvement. One union stated that they were not consulted on this process, but were provided with the results. Two unions agreed that they were consulted and that there was involvement to some extent. The following bar chart shows the extent to which unions have been consulted on the self-identification process.



At the next stage, respondents were asked to indicate their involvement in the employment equity process from the initial employee surveys, including self-identification, to involvement in the development of employment equity plan, (including

employment systems review) to implementation and communication with workers, through to the final stages of revision.

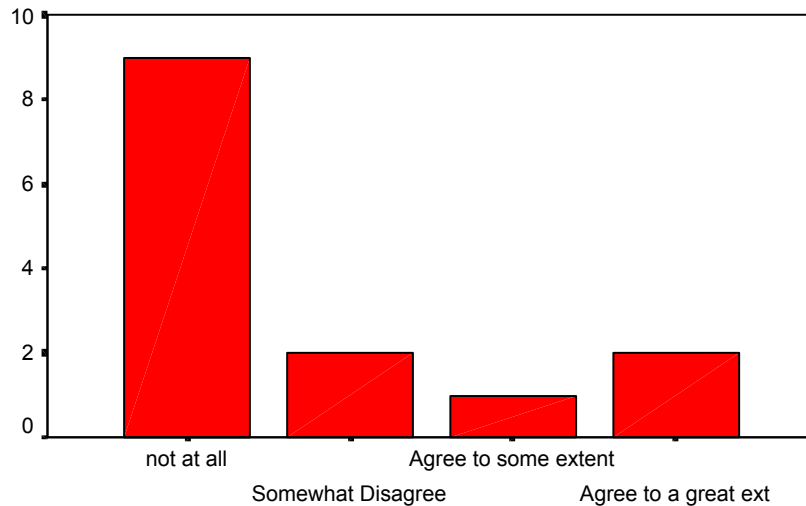
In the employment systems review, the amount of consultation is quite low. For example, when asked if the union had been consulted on matters concerning policies and practices to uncover job barriers, review of policies (equity, harassment, accommodation measures), and measures to improve corporate culture, 64% said that they had not been consulted at all.

At the development stage, there was also a lack of consultation and collaboration with the unions. As previously indicated, unions were not asked to help in the development of employment equity policies. In fact, 64% indicated that they had not been asked to assist in the development of an employment equity plan at all. Over 64% of respondents are not even certain if the employment equity plan included a specific timetable for implementation of the necessary stages.

Consultation and collaboration with the unions at the implementation stage was also lacking. Respondents were asked if they had ever been requested to provide assistance to the employer in special proactive recruitment drives for visible minorities or other designated groups, or in special proactive training programs for these groups. Only one union appeared to have been involved in such a process. Over 92% indicated that they had not been asked to assist at this stage of the employment equity process.

Throughout this process, communication with workers is important. Communication of the employment equity plan to unions was non-existent 57% of the time, and non-existent to workers in 64% of cases. Seventy-nine percent of union respondents thought that the companies did not have a written employment equity plan. One union had actually conducted a survey and it showed that 74% of union members haven't seen the employment equity plan. When asked if the union had ever been asked to assist the company in communicating employment equity policies to workers or to disseminate information, 64% indicated that they had not been asked. The bar chart below shows the tendency towards lack of communication.

Union Assistance with Communication to Employees



Respondents were asked if companies monitored employment equity plans for progress towards meeting specific goals and timetables, and if there was any subsequent corrective action. Over 78% stated that this was not taking place.

The results indicated that companies were not fulfilling their obligation to consult and collaborate with the bargaining agents associated with their workers. In addition to lack of union involvement, poor communication and lack of policies relating to employment equity, there were other prevalent problems. When asked if they felt that managers were held accountable for meeting goals and implementing employment equity, 64% said not at all.

Inadequate funding and support of employment equity plans was another consequence of poor practices. Over 85% of the respondents indicated that enough funds were not being allocated. On a positive note, however, 71% of the respondents said that the companies had policies on harassment. Such policies were primarily negotiated into the collective agreement, and employers have no choice in these case. The unions' position is perhaps best summed up thus: employers do not "invite" the union to do anything or provide more information than they have to. Consultation is at a very poor level.

Part III: Analysis of Annual Narrative Reports Filed by Employers

Narrative reports describing the progress made by 18 major companies on employment equity were reviewed to determine the extent of their consultation with the unions. A summary of these narrative reports for each of the companies is attached in Appendix B, as are our ratings of consultations. The reports were rated according to the following scale:

Level of Union/Employee Representative Consultation (N=18)

1.	None
2.	Hardly any consultation.
3.	Consultation discussed with HR and senior staff, but not with unions
4.	Consultation implied through programs in place. For example, certain programs would have union members participate, thereby implying joint consultation.
5.	Joint consultation specifically discussed.

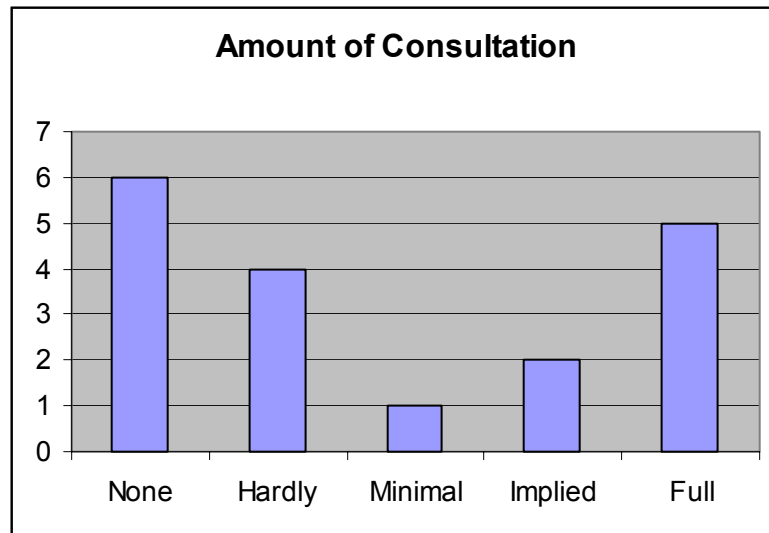
The information secured from the narrative reports was helpful in assessing union views regarding employer consultation, or lack of it, as prescribed under the *Employment Equity Act*. Elsewhere in this study, we have listed the names of the unions who responded to our questionnaire on union-employer consultation. Many of the reports used in this part of the analysis are from companies who are represented by these unions.

Joint Consultation and Collaboration

As indicated above, there were five categories assigned to the amount of consultation that was documented in the narrative reports ranging from (1) “none,” to (5) “joint consultation discussed”.

Air Canada Regional, Bell Canada (and Telus), Canada Post, Canadian Pacific, and Hudson General Aviation (see the highlighted areas of these employers narrative reports, attached to this study in Appendix D) indicate full joint consultation with their respective unions.

Level of Consultation & Collaboration	Frequency	Percent
(1) None	6	33.3
(2) Hardly any consultation	4	22.2
(3) Consultation discussed, but not specific to joint consultation process. For example, may be consultation with HR and senior staff, but no consultation with union discussed	1	5.6
(4) Consultation implied through the programs in place. For example, certain programs would have unionized members participate, thereby implying joint consultation	2	11.1
(5) Joint consultation specifically discussed	5	27.8



About 39 percent of the companies reviewed are taking part in specified or implied consultation and collaboration as indicated by the employers' reports, while over 61% percent of the companies do not state anything about consultation with their unions in the narrative reports. This seems to be consistent with union responses analyzed above.

Company	Consultation
Air Canada	4
Air Canada Regional	5
Air Transat	2
Bell Canada	5
British Airways	1
Canada Post Corporation	5
CBC	2
Canadian National Railway	3
Canadian Pacific Railway	5
Canpar Transport Ltd.	2
Cathay Pacific Airways Limited	1
Citizens Bank of Canada	1
Dynamex Canada Inc.	1
Hudson General Aviation Services	1
Laurentian Bank of Canada	1
Marine Atlantic Inc.	2
Telus Inc.	5
United Parcel Service Canada	4

Conclusion

The quality of employers' narrative reports had an impact on the overall analysis in this study. First, these narratives were not consistent. One company reported consultation in terms of its non-consultative group (HR management), thereby completing the section of the report to be submitted to HRSDC in compliance with section 18 of the Act, whether it was correct or not. Therefore, it was difficult to determine if consultation was taking place. The second, and possibly more important concern, is the fact that where joint consultation and collaboration with unions was reported by the employers, the substance

was not present in most of the reports reviewed. Since legislation requires joint consultation and collaboration, it would appear that this issue is missing from most of the reports.

Perhaps reports should follow some sort of quality control check at HRDC to ensure compliance in reporting. If a report is not completed correctly, the employer should be asked to provide the correct information, as is the case with the quantitative part of the report. In addition, the effort of reporting may include a consultative element, whereby an employer may include a union/employee representative, as in the case of health and safety reports under the occupational health and safety provisions of the Canada Labour Code.

The Standing Committee on Human Resources Development and the status of Persons with Disabilities Report on Promoting Equality (2002) recommended (in recommendation 16, page 41) to the Minister of Labour to examine ways to strengthen the requirement that employers consult with employee representatives or unions, including the possibility of having the Canadian Human Rights Commission assess employer compliance with consultation and collaboration between employee representatives or unions.

This would probably require an amendment to section 8 so that the CHRC is authorized to assess collaboration between an employer and a union.

HRSDC should consider regulations that specify the nature of employer consultation that is to be reported, since these concepts (consultation and collaboration) are fairly vague. Some of the selected employers in our study (Dynamex Canada, Laurentian Bank of Canada, Cathay Pacific, and Citizens Bank of Canada) do not even report on consultation, and vague indications of consultation were reported by CBC, Marine Atlantic, Air Transat, British Airways and Canpar Transport. Some companies simply indicate that the report was sent to the union or allude to consultation with their unions regarding collective agreement without referring specifically to employment equity.

Part IV: Analysis of Discussions with the CHRC Auditors

Telephone interviews and focus group meetings were held with four employment equity auditors. The interviews and focus groups were taped with the promise of confidentiality. The purpose was to ascertain perceptions of the consultation process between the union and the employers. The information obtained from them provided clarification of the comments made in the questionnaires. A number of issues were discussed with them, with common themes arising from this dialogue, such as legislation, power, employer reluctance, meaningful union consultation, lack of resources, and the audit process (see Appendix E). Employer reluctance and meaningful union consultation are two themes that are of particular interest, as they may provide further evidence of the unions' claims, particularly with regards to employer reluctance.

The auditors confirmed that there was employer reluctance not only to consult with the unions, but to develop and implement an employment equity plan as legislated. They

indicated that the unions seemed to have a genuine interest in getting involved, but that employers were not as interested. The *Employment Equity Act* does not provide for financial penalties for non-compliance. The auditors are not granted any power to enforce the Act. The Act does not allow the union to share any responsibility for the employment equity plan. The union must be consulted, but this can actually occur at the end of the process before the actual audit if the company so desired. That then can be deemed to be “consultation”. As one auditor mentioned, as did the union, that the employer only consulted when it was time for the audit. The union had no voice, except if they negotiated it into their collective agreements. Although it was acknowledged by the auditors that the unions had to be involved in order to make the process work smoothly, they had no way of making that happen in the spirit of “meaningful consultation”. There were issues such as salary and working conditions that were tied closely to the collective agreement and so it was important that the two parties consult. Without “meaningful consultation”, the implementation of policies without union consultation could be problematic. These were the same sentiments expressed by the union.

The size of the union or the industry from which it operated seemed to have little impact on who is willing to embark on union consultation of an employment equity plan. It was acknowledged that an employer with 50,000 employees could take a long time to go through the employment equity process, but that smaller employers ought be able to complete them much quicker. Small employers could take up to four years to complete

the process. Initiatives are now in place to provide particular tools to small employers as a means to speed up the time to get to audit.

There were instances where the unions were not cooperative either. One auditor mentioned that long-term employees were not always ready for such change. There were also times when there was union unrest, such as negotiation of a new contract or even strike activity, and the union was not always ready to start or complete employment equity consultation when these events occurred. However, this does not appear to be the norm. The unions did not comment on the reluctance of their members to get involved. It would not be unreasonable to expect that some members would be reluctant, as they may fear loss of job security.

Another common theme that emerged was related to communication and education. The auditors firmly believe that educating employers as well as workers is the way to get the message out about the merits of employment equity. Unfortunately, this would require a lot of funding, which is not available.

Conclusion

This analysis comprised three sets of data. One set of data, the union questionnaires, expressed the employer's lack of concern for "meaningful consultation." In fact, they were not concerned about consultation in any form, let alone meaningful, except when imposed by law. Two additional sets of data were used to confirm the perceptions of the union regarding employer reluctance to engage in "meaningful consultation". First,

summarized narrative reports were reviewed to determine if the perceptions of the union were closely associated with the results indicated in the reports. For example, if a union made certain claims, they could be confirmed by reviewing information documented by some of the companies they represented. The second set of data is the auditors' interviews. The claims made by the unions appeared to be corroborated by the two sets of data used in the analysis. Employers were reluctant to work with the unions, and they were not interested in the employment equity process.

According to the auditors, legislation is the tool that can help remedy the issues surrounding non-compliance and the lack of "meaningful consultation". For the unions it seemed to be through the political process and through their collective agreements. In any case, it appears that drastic measures are required in order for employers to respond and cooperate. Employment equity makes good business sense.

Trends in Representation of Designated Groups Across Selected Firms: 1997-2000

To obtain an overview of the trends in representation since 1997, we analyzed the representation of the four designated groups in a sample of firms within the federal jurisdiction. In all 18 firms were selected from the Transportation, Banking and Communication sectors. A complete list of these firms is given at the bottom of Table 1, Appendix G.

Although representation figures are reported across fourteen occupational categories under the *Employment Equity Act*, we collapsed them into six categories for the purpose

of this report. The main reason for doing so is that some categories have very few numbers. This in turn makes the percentages fluctuate by large amounts. Hence, we combined several categories near the lower part of the skill/wage spectrum. Some categories remain ungrouped: namely, Senior Managers, Middle Managers, and Professionals.

Results in Transport, Banking & Communications

Table 1(appendix G) shows the level of representation in 1997 and 2000 for each of the four designated groups and for men for comparative purposes. The ‘Change’ column shows the difference in percentage for 2000 and 1997. Generally, the proportion of men declined in all the six occupational categories over this period. The proportion of women went up by the same amount. The largest increase was in the Semi-Skilled category where women increased from 4.34% to 8.3%, an increase of nearly four percentage points. The proportion of women in the Senior Manager category also went up by a similar amount. The annual rate of growth stands at slightly greater than 1% per annum. However, the situation among Professionals was just the opposite: the representation of women decreased from 40.9% to nearly 39% over 1997-2000. This may be due to the growth in information technology, where women tend to be in a minority.

The representation of women among Middle Managers and Semi-Professionals, including Clerical occupations, rose by a more modest amount: 1.78 and 1.37 percentage points, respectively. Among Trades Supervisors and Workers there was a very small increase

from 2.47% to 2.75%. In these occupations women represent a very small minority to begin with, and these data suggest that the progress towards better representation is very slow.

The representation of visible minorities also rose across all occupational categories. It rose by the highest amount, 2.88 percentage points, from 5.33% to 8.22%, in the Semi-Skilled group. This increase is just under 1% of the total employment per annum over this period. Visible minority representation rose by moderate amounts among Professionals and in the Crafts and Trades group. The increases were small among Senior Managers and Middle Managers (0.87 and 0.22 percentage points).

The level of visible minority representation in 2000 was the highest among Semi-Professionals (9.93%) and the lowest among Senior Managers (3.06%). When compared to visible minority representation in the population as a whole (from the 1996 census), these levels at each occupational category are lower. The gap is the widest at the Senior Management level (3.06% vs. 7.3%). It is less so at the lower skill levels.

The representation of persons with disabilities also increased in all occupational categories over this period. The increase among Middle Managers, Professionals, and Semi-Professionals was very small, from 0.03 to 0.07 percentage points. Among Senior Managers, representation of disabled persons increased from 0.63% to 1.6%, a rather large increase, although the absolute level of representation remains quite small. In terms of the number of persons, the increase was from 4 to 11 persons. Modest increases were

observed among Supervisors of Crafts and Trades and Semi-Skilled workers (1.53 and 1.06 percentage points, respectively). The level of representation at each occupational level is lower than the representation of disabled persons in the population according to the 1996 census.

The representation of Aboriginal persons also increased by a modest amount across all occupational groups. The increase was low among Senior Managers, Middle Managers, Professionals and Semi-Professionals ranging from 0.12 to 0.24 percentage points. The highest increases were among Supervisors and workers in Crafts and Trades and among Semi-Professionals: increases of 0.78 and 0.89 percentage points, respectively. The absolute level of their representation remains quite low (0.44% among Senior Managers and 2.49% among Semi-Skilled workers). The level of representation of persons of Aboriginal ancestry, at each occupational level, is lower than the representation of such persons in the population, according to the 1996 census. This suggests that there is room for increase in the representation of Aboriginals in these firms.

Sectoral Analysis:

For women, the largest increase in representation at the top level was observed in the Communications sector (Table 3, Appendix G). Women constituted 19.21 % of Senior Managers in 2000, an increase of 5.34 percentage points. In Banking, even though the increase was small (0.7 percentage points), women constituted 21.33% of senior managers (Table 4, Appendix G). The Transportation sector has a lower level of

representation of women among Senior Managers (10.82% in 2000) and the increase was very modest: 1.05 percentage points (Table 2, Appendix G).

At the Middle Management level, Communications and Banking now have nearly 50% representation of women. It may be argued that these sectors have achieved full levels of representation for women, compared to market availability. In the Transportation sector the level remains low by comparison (17.42%), but increased by 3.87 percentage points over the period.

At the Professional level, women's representation increased in Transportation (from 26.33% to 29.12%) but fell in both Communication, from 43.18% to 40.29%, and Banking, from 64.0% to 57.25%. Although women continue to make gains at this level, some of these data suggest that it is not the time to be complacent about making progress on this front.

Among Semi-Professionals, women made solid gains in Transportation (from 36.84% to 41.93%), a small gain in Communications (45.83% to 46.75%) and a reduction in Banking, from 86.65% to 83.82%. All these trends are in line with the policy goals of the Act.

Among Supervisors of Crafts, Crafts and Trades, and Semi-Skilled Workers, women remain highly underrepresented. The increase in representation over 1997-2000 is also

very modest. The only exception to this generalization is the Communications sector, where women's ranks increased from 24.86% to 26.7%.

For visible minorities, gains were the best seen in the Transportation sector. Although gaps exist in representation (relative to census figures) at the Senior and Middle Management levels, the gap is either small or zero among Professionals, Clerical and Semi-Skilled occupations. In Communications and Banking the increases were modest with declines in three sector-occupation categories. There is room for improvement in representation in these two sectors.

For persons with disabilities, representation increased the most in the Transportation sector, followed by the Communications sector, with the banks making only very small gains. Relative to their representation in the population as a whole (as per the 1996 census), the representation levels within these firms are lower at each occupational level.

For persons of Aboriginal origin, both Transportation and Communications made modest gains, although representation falls short of census benchmarks. Banking reported very little progress over this period. In many occupational categories there was either no progress or a decrease in representation. Overall, Aboriginal representation remains well below expected levels.

