

Employment Equity Policy in Canada: An Interprovincial Comparison

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- the accuracy, completeness and timeliness of the information presented;
- the extent to which the analysis and recommendations are supported by the methodology used and the data collected;
- the original contribution that the report would make to existing work on this subject, and its usefulness to equality-seeking organizations, advocacy communities, government policy makers, researchers and other target audiences.

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PREFACE

Good public policy depends on good policy research. In recognition of this, Status of Women Canada instituted the Policy Research Fund in 1996. It supports independent policy research on issues linked to the public policy agenda and in need of gender-based analysis. Our objective is to enhance public debate on gender equality issues in order to enable individuals, organizations, policy makers and policy analysts to participate more effectively in the development of policy.

The focus of the research may be on long-term, emerging policy issues or short-term, urgent policy issues that require an analysis of their gender implications. Funding is awarded through an open, competitive call for proposals. A non-governmental, external committee plays a key role in identifying policy research priorities, selecting research proposals for funding and evaluating the final reports.

This policy research paper was proposed and developed under a call for proposals in April 1997 on *the integration of diversity into policy research, development and analysis*. While it is recognized that women as a group share some common issues and policy concerns, women living in Canada are not a homogeneous group. Aboriginal women, women with disabilities, visible minority women and women of colour, linguistic minority women, immigrant women, lesbians, young women, poor women, older women and other groups of women experience specific barriers to equality. Through this call for proposals, researchers were asked to consider these differences in experiences and situations when identifying policy gaps, new questions, trends and emerging issues, as well as alternatives to existing policies or new policy options.

Status of Women Canada funded six research projects on this issue. They examine the integration of diversity as it pertains to issues of globalization, immigration, health and employment equity policies, as well as intersections between gender, culture, education and work. A complete list of the research projects funded under this call for proposals is included at the end of this report.

We thank all the researchers for their contribution to the public policy debate.

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ABOUT THE AUTHORS

Abigail B. Bakan is Professor of Political Studies and Women's Studies at Queen's University, where she has been teaching as a Queen's National Scholar since 1985. She is the co-editor of *Not One of the Family: Foreign Domestic Workers in Canada* (University of Toronto Press, 1997), co-editor of *Imperial Power and Regional Trade: The Caribbean Basin Initiative* (Wilfrid Laurier University Press, 1993) and author of *Ideology and Class Conflict in Jamaica: The Politics of Rebellion* (McGill-Queen's University Press, 1990). She has also published numerous articles on immigrant women in Canada in journals, including *Feminist Review*, *Signs*, *Asian and Pacific Migration Journal* and *Science and Society*.

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The authors are engaged in ongoing research on employment equity, through a study funded by the Canadian Race Relations Foundation on the relationship between the public service and community groups.

Both authors are equally responsible for the work presented here, and take equal responsibility for any errors or omissions. Their names are presented alphabetically.

EXECUTIVE SUMMARY

This research report presents findings from research comparing employment equity policies in Canada's 10 provinces and the federal government. We approach the issue of employment equity from the standpoint of challenging systemic oppression. We have sought to describe, explain and suggest ways to rectify a perceived impasse in the effective implementation of employment equity policy regarding the implications it holds for the advancement of visible minority women within the provincial government sector. We premised our study on a recognizable gap between legislative policy designed to promote greater workplace diversity for groups that have experienced systemic oppression within Canada, and the effective implementation of such policies in the workplace.

This study combined two elements in its methodological approach. The first was based on policy analysis, the second on a series of qualitative interviews with equity policy stakeholders in, or dependent on, provincial governments. We developed such a methodology to provide an overview of the state of employment equity policy as it is currently formulated in the provincial governments of Canada and at the same time, to assess these policy packages in terms of implementation.

This policy study includes a province-by-province general review of the state of employment equity policy across Canada. In Canada's provinces today, the climate of debate on employment equity stands along a spectrum, from extreme commitment to extreme opposition to the principles on which such policy is based. Within each provincial context, further debates concern implementation, accountability, interpretations of past policy outcomes and plans regarding future directions. These are not simply differences in degrees of effectiveness, but a significant expression of the variation in political culture from one province to another.

We conducted a series of interviews of employment equity officers and senior civil servants responsible for employment equity. These interviews revealed a wide range of knowledge of employment equity and a range of commitment, strongly related to the political climate in each province. One of the more disturbing findings is that these respondents have a relatively low level of understanding of the actual circumstances facing visible minority women.

Our findings suggest that the employment equity impasse possesses two extremely difficult aspects.

First, discourse in equity contains conceptual and ideological barriers to identifying, understanding and normalizing employment equity objectives. These barriers are deeply embedded in historic oppressions that affect society in general, but are expressed in subtle ways, even among those most dedicated to overcoming barriers and implementing equity.

Second, contradictions among the objectives of different players within Canada's public services create frustrations, fears and bottlenecks that need to be addressed by political rather than (in any simple sense of the word) policy initiatives. Differences at the provincial level

express regional identities, and indicate a need to develop employment equity strategies for particular populations and circumstances. It is important to develop policy and practices that are context specific, but also to recognize that variation occurs due to unevenness in training, implementation and experience.

On this basis, the report makes 22 recommendations.

1. Recognize what works, given a specific geopolitical context.
2. Employment equity policies should be suited to local demographic characteristics.
3. Develop mechanisms to share and compare employment equity strategies among provinces.
4. Conduct comparative research to analyze which province-specific practices are most effective.
5. Foster exchange of information so commitment is built on common goals and understanding.
6. Develop effective means of communicating employment equity programs and policies to all stakeholders.
7. Policies need to set clear guidelines and targets that cannot easily be ignored, and preferably, are enshrined in legislation.
8. Targets should increase progressively rather than remaining static.
9. Positive reinforcement should be built into the system.
10. Detailed annual reports on employment equity achievements should be mandatory.
11. Create effective educational materials to provide employment equity information.
12. Involve all parties in consultation and collaboration on employment equity programs.
13. Use designated staffing to increase representation in those areas where the most serious lack of representation occurs.
14. Develop strong and effective mechanisms for monitoring employment results and for achieving compliance.
15. Employment equity data should be broken down by gender across the other three designated groups.

16. Provincial officials should work together to standardize statistical measures and reporting.
17. Make equity everyone's responsibility, but specify a clear mandate for the administration of equity.
18. There should be at least one individual in each department whose sole mandate is employment equity administration.
19. Specify clear rewards for those who do, and penalties for those who do not, meet their employment equity targets and responsibilities.
20. Develop national collaboration on employment equity training standards.
21. Training programs need to be tied to the socio-political context.
22. Employment equity training programs need to reach all the work force, at all levels.
23. Employment equity training should cover all aspects of workplace relations, and should be built into all training programs.
24. Provide effective information to counter the backlash effect.
25. Develop specific training programs and workshops to deal with the backlash phenomenon.
26. Develop anti-racism training and policy programs at every level of the public service.
27. Work with local communities, both to develop the specific attributes of employment equity policies and to ensure unimpeded access of the particularly disadvantaged groups into the public service.
28. Develop programs designed to increase the skills and potential of visible minority women.

1. INTRODUCTION: EMPLOYMENT EQUITY, SYSTEMIC OPPRESSION, DIVERSITY

This report presents findings from research comparing employment equity policies in Canada's 10 provinces and the federal government. We approach the issue of employment equity from the standpoint of challenging systemic oppression, which is understood to be structured historically and manifest in a variety of societal structures and ideological constructs, creating patterns of denial of access to equality to designated groups in Canadian society.

More specifically, we have sought to describe, explain and suggest ways to rectify a perceived impasse in effective implementation of employment equity policy regarding the implications it holds for the advancement of visible minority women within the provincial governmental sector. We premised our study on a recognizable gap between legislative policy designed to promote greater workplace diversity for groups that have suffered systemic oppression within Canada, and effective implementation of such policies at the workplace level.

Employment equity policy is based on the principle that to obtain equal access to employment, and equal access to advancement within the workplace, proactive, positive measures must be enacted to redress systemic oppression. In this premise, we rely largely on the research and recommendations originally developed in the Report of the Royal Commission on Equality in Employment. In *Equality in Employment: A Royal Commission Report*, published in 1984, Commissioner Rosalie Abella suggested that “[e]mployment equity is a strategy designed to obliterate the present and residual effects of discrimination and to open equitably the competition for employment opportunities to those arbitrarily excluded” (Abella 1984: v.1: 214). Sixteen years later, it is reasonable to assert that such effects of discrimination continue to be both present and residual, and are still in dire need of obliteration. Our findings based on research at the provincial government level indicate that there is very uneven understanding of the extent of discrimination within society at large. Consequently, in more than a few provinces there is minimal understanding of the proactive policy options that are both available and necessary to achieve employment equity. Further, over the years, policy options have been actively pursued in some provinces and, in turn, actively rejected. The context of debate and challenge regarding employment equity in each province reflects a spectrum of perspectives, ranging from a highly informed and committed base of support for employment equity principles, policy and legislation to, at the other extreme, a backlash opposed to employment equity on the grounds that it is a violation of individual rights and freedoms unfairly favouring “special interests.”

While there are means of measuring policy outcomes, presented below as provincial reviews or case studies, we have concluded that policy issues cannot be considered in a vacuum. Instead, we have attempted to consider such policy issues in the wider context of public debate and discussion regarding the principles of employment equity in general. Our research has certainly supported our original premise regarding the gap between policy and implementation; however, at the same time, we have been compelled to take a wider view of

the context of the employment equity debate than originally anticipated. Our original research design stated:

We suggest that the relative failure to achieve equity in employment for those [visible minority] women stems largely from a need to understand more fully the interplay of various forms of historic oppression. In the absence of such an understanding, the prevalence of generalities at the policy level regarding what are in fact far from generalized experiences among women of colour, tend to blur diversity in experience and to subordinate particular equity concerns. As a result, equity policies themselves are often implemented in ways that are ineffective or insensitive to the goal.

Our research has more than confirmed this suggestion. We have discovered not only that the gap between employment equity policy and implementation is great, but that there is extensive and multi-layered variation among the provinces in this regard. Such variation occurs both in the formulation of employment equity policy, or in its absence, and in the governmental orientation concerning the policy options available and how they should be implemented. There is also a notable expression of what we refer to as systemic frustration among the supporters of employment equity. Though specific concerns vary widely, in no province could we identify a sense of confidence that employment equity policy was appropriately and securely implemented.

The variation among the provinces regarding employment equity policy in general, and in how it relates specifically to visible minority women, occurs along a spectrum of issues and responses that is wider, and different, than previously understood. The notable frustration in employment equity policy implementation has certainly been addressed in the literature. There has been considerable attention by researchers regarding the effectiveness of employment equity policies. Leck and Saunders (1992b) for example find that the inequality gap is closing very slowly. Among the four target groups (women, Aboriginal peoples, persons with disabilities and persons in a visible minority), women generally have seen greater and faster progress in obtaining equitable conditions of employment and promotion than those in other categories. Although available literature is far more sparse and far less definitive regarding diversity as it pertains to those in multiple target groups, work to date suggests the importance of legitimizing values, such as cultural diversity, and of widening the network of human rights provision (Agocs and Burr 1996; McDermott 1994). In Canada, variation among the provinces regarding employment equity policy and diversity is a topic which, to our knowledge, has not been examined in the literature to date.

The parameters of the employment equity debate across the provinces made it more difficult to focus on the particular experiences of visible minority women at the policy level than we had anticipated. For most provinces, the level of discussion regarding employment equity is very broad, along the lines of “for” or “against.” Issues of implementation and delivery tend to follow only after years of application that is, in itself, the exception rather than the rule and continues to be highly contentious even when legislation is enacted.

Moreover, the more convinced we became that the wider context of systemic oppression was crucial in understanding policy outcomes in any given province, the more difficult it became to draw decisive conclusions that applied to all contexts. The limited scope and resources of this study necessarily compelled us to approach this investigation as a pilot study only. We hope to indicate the extent to which further and more in-depth research on employment equity policy development and implementation is needed. It should be stressed, however, that this study is a policy analysis only. We have not attempted to conduct workplace assessments, nor have we examined public opinion regarding employment equity. Further, while our study is theoretically informed by a set of premises committed to the enactment of employment equity principles, this study is largely descriptive rather than theoretical.

Our original aim was to undertake an interprovincial comparative study of employment equity as it related to visible minority women, based on field work that included interviews and analysis of comparative policy data in the 10 Canadian provinces. We recognize that provincial policy takes place in relation to the wider federal context, where the federal *Employment Equity Act* provides a legislative framework. While we have addressed this interconnection in our policy analysis generally, field work focussed more directly on the provincial level.

In the following report, we consider what we described in our research design as the “relative failure to achieve equity in employment for visible minority women” by way of a 10-province policy review. We approach the issue in a multi-dimensional manner reflecting, we believe, the multi-dimensional scope of the policy context. We now address the issue of methodology.

2. METHODOLOGY: EMPLOYMENT EQUITY REALITY CHECK

This study combined two elements in its methodological approach. The first was based on policy analysis, the second on a series of qualitative interviews with equity policy stakeholders in, or dependent on, provincial governments. Such a methodology was developed to provide an overview of the state of employment equity policy as it is currently formulated in the provincial governments of Canada and, at the same time, to assess these policy packages in terms of implementation. The approach is therefore wide, but not deep. It offers a sort of employment equity policy “reality check,” from which future research questions and remedies may be devised. We were able to acquire a glimpse of each of the province’s employment equity profiles as the research proceeded. These profiles are presented in Appendix II. We are aware, however, that this approach opens up as many new questions as it answers.

Our aim is to present a snapshot of employment equity issues in each province, while attempting to avoid the suggestion that the pictures presented are static. Instead, we have attempted to contour the parameters of debate, interprovincially and within the various provinces, to the extent that the limitations of the research agenda allowed. Our hope is that this material will suggest, in broad outline, the elements of an alternative and more effective policy agenda for the future. While such a perspective does not lend itself readily to a single proscriptive alternative formula, it does, we believe, point to the road ahead for the advancement of the principles of employment equity and effective implementation.

A note on the collection of data is in order. The general overview of policy structure and infrastructure regarding employment equity policy in the 10 provinces is presented in Appendix II. This information was based on the compilation of available provincial data through bibliographic research, from material obtained through networking resulting from the on-site interviews with provincial stakeholders and from information obtained directly through the interviews. Given that there is tremendous variation in the structure of employment equity policy among the provincial governments, obtaining comparable sources and comparable data has not been an easy task. We have been able to integrate this variation into our analysis, however, recognizing that the data obtained are in themselves a reflection of governmental priorities, practices and socio-political traditions. In other words, this information is at least, in part, a reflection of what any given provincial government seeks to achieve within its mandate.

Regarding the impact of employment equity policies on those members of designated groups in more than one category, with a focus on visible minority women, the paucity of verifiable data is stark. This is not only an issue of providing criteria for advancement. Self-identification is also very volatile politically, because many people are still uncomfortable with the self-identification process and because those opposed to employment equity view self-identification as a bid for “special status.” In Alberta and Ontario, for example, employment equity data are not collected, apparently as a matter of policy. The most significant data collection issue continues to be the failure of virtually all jurisdictions to provide gender breakdowns for the three designated groups other than

women, and this is a particular drawback for our study. Finally, a series of political and ethical questions arises in reference to how such information could be used by opponents of employment equity.

Obtaining qualitative data based on a limited number of interviews with key employment equity policy stakeholders was crucial to this study. The experience of implementing policy, including addressing the barriers to effective implementation, cannot be gleaned from published statistics and policy papers alone. At the same time, we are aware that the parameters of this study do not allow for a large, quantitative survey, from which statistical norms or averages could be drawn. We therefore selected four to six key persons in each province, roughly comparable in general levels of responsibility, with whom we conducted face-to-face, one-hour on-site interviews. All the interviews were conducted directly by the principal investigators, with the exception of the interviews in Quebec, which were conducted in French, and one telephone interview which could not be arranged on-site.¹ In every province, we have succeeded in completing at least four interviews, usually including two to four policy implementers and at least one person from a non-governmental or labour organization involved in employment equity issues.

The interviews were entirely with public officials, and selection was based only on formal positions of assigned professional responsibilities. We attempted to arrange interviews in each province with at least one high-ranking civil servant whose policy portfolio includes employment equity. We were, by and large, successful in achieving this; exceptions occurred when an employment equity educator was seen by all governmental sources as more appropriate to interview. The manner in which provincial governments present themselves for public access regarding employment equity policy, like the issue of the types of data collected and made available, is in itself suggestive of governmental priorities.

We also attempted to interview those who are employment equity advocates, dependent on the policies of the provincial government, but who are not directly part of the government or directly accountable to it. In each province, we interviewed a representative of the major provincial government employees union and, in some provinces, we also interviewed individuals from departments not directly responsible for but with a strong interest in employment equity, such as departments responsible for the status of women, or human rights commissions.

All interviewees were asked the same series of questions, based on a questionnaire guideline specifically developed for this study (Appendix III). The questionnaire was subject to a review of the Ethics Committee on Human Subjects of the Institute for Women's Studies at Queen's University. The interviewees were fully informed of the nature of the study and assured that anonymity would be protected. Each interview was audio taped, with the permission of the interviewee, and the tapes were then transcribed in full for the purposes of this study only.

The questionnaire was designed to provide both a common set of questions to allow for comparative data analysis and sufficiently open-ended questions to allow the interviewees to adjust the information they wished to convey in a flexible manner. The questionnaire proved

to be extremely useful in accomplishing both these goals. The interviews explored the stakeholders' perceptions of employment equity, its efficacy in the workplace, barriers to achieving employment equity, suggestions for more effective implementation and concerns regarding employment equity policies in general.

A Note on Terminology

One issue that became obvious from this study was not only the variation among and within the provinces regarding employment equity policy, but also the language of the employment equity conversation itself. In most provinces, the term "employment equity" was understood in a manner similar to its application in federal legislation, informed by the use of the term in the Abella Report; however, in Quebec, New Brunswick and Nova Scotia, the term "affirmative action" was more readily understood. It is worth quoting the Abella Report in terms of these definitions:

The achievement of equality in employment depends on a double-edged approach. The first concerns those pre-employment conditions that affect access to employment. The second concerns those conditions in the workplace that militate against equal participation in employment.

Efforts to overcome barriers in employment are what have generally been called in North America affirmative action measures. These include making recruitment, hiring, promotion and earnings more equitable. They concentrate on making adjustments in the workplace to accommodate a more heterogeneous workforce.

The Commission was told again and again that the phrase "affirmative action" was ambiguous and confusing.... The Commission notes this in order to propose that a new term, "employment equity", be adopted to describe programs of positive remedy for discrimination in the Canadian workplace. No great principle is sacrificed in exchanging phrases of disputed definition for new ones that may be more accurate and less destructive to reasonable debate.... Ultimately, it matters little whether in Canada we call this process employment equity or affirmative action, so long as we understand that what we mean by both terms are employment practices designed to eliminate discriminatory barriers to provide in a meaningful way equitable opportunities for employment (Abella 1984: 6-7).

In the following study, we use the term "employment equity" as the reference point. In specific provincial contexts, the term "affirmative action" was used as an equivalent. Where specific distinctions in connotations appeared to arise, we make a point of noting them in the body of the report.

Another term that merits consideration is "diversity." In our research design, we understood diversity to mean increasing the presence of members of the designated groups covered within employment equity policy in particular (though this is not meant to be restrictive to the four

identified groups) through positive measures that redress systemic oppression. Particularly in the case of Ontario, in the aftermath of the repeal of employment equity legislation, the term “diversity” was used to imply a very different meaning: literally everyone, with no consideration for systemic processes of exclusion or positive measures to promote inclusion (see Chapter 5 on the Ontario example). We attempted to avoid confusion by specifically identifying the way in which the term “diversity” has been used by the Ontario government, as distinct from our understanding of the term. We also wish to recognize the extent to which the term has now been co-opted by those who oppose employment equity. In the current political context, therefore, use of the term uncritically may result in subverting the aims of employment equity programs, even for strong advocates.

The body of this report is divided into eight sections:

- a comparative analysis of employment equity policy administration in provincial governments;
- a brief overview of the history and context of employment equity policy in Canada, with an emphasis on the federal context;
- a specific consideration of the rise and fall of employment equity policy in Ontario as a case study;
- consideration of the employment equity policy debate in Canada, constructed on the basis of interview data and describing the “best case” and “worst case” perspectives;
- an assessment of research findings from the perspective of senior governmental administrators and public servants responsible for employment equity policy implementation;
- an assessment of research findings from the perspective of those involved with labour and community employment equity issues, indicating where there are frustrations and perceived bottlenecks in obtaining effective employment equity implementation;
- a set of recommendations for more effective employment equity policy, especially at the provincial level; and
- a concluding section, looking at policy implications and barriers to effective implementation of employment equity policy in Canada.

3. EMPLOYMENT EQUITY: OVERVIEW OF PROVINCIAL POLICY IN CANADA

This study includes a province-by-province general review of the state of employment equity policy across Canada.² Conducting such a comparison is a fascinating but tentative exercise. Variations are so great—in conceptualization, structure, political understanding and implementation—that even the development of a series of common criteria risks obscuring the nuances.

In general, it may be concluded that the climate of debate in the provinces in Canada today regarding employment equity stands along a spectrum from extreme commitment to extreme opposition to the principles on which such policy is based. Within each provincial context, further debates concern implementation, accountability, interpretations of past policy outcomes and plans regarding future directions. The spectrum of policy issues across the provinces is also only a small part of a much wider context, or series of contexts, that indicate ongoing and dynamic debates about employment equity policy in Canada.

Provincial employment equity policy variations present an uneven landscape, like the tips of a row of icebergs. Each province warrants far more detailed study than the current investigation allows. Each province represents a specific history of debate, involving not only governmental policy per se, but also how the various actors in society as a whole have struggled to overcome historic oppression. Employment equity is only one element of the wider issue of addressing systemic inequality. It therefore necessarily affects and is affected by such wider experiences. Because employment equity policy has been developed in Canada specifically in reference to four designated groups, the issues relevant to each of these groups have similarly become manifest in various ways.

To aid in this comparative overview, we prepared a series of provincial tables, included as an appendix to this study.³ These tables are snapshots, freezing in time the manifestation of employment equity policy according to a number of issues that appear, on the surface, to be rather straightforward. This is a valuable but severely limited exercise; available resources have not allowed us to provide a more detailed analysis of each provincial context. Moreover, our interviews only pursued the applicability of employment equity policy in the provincial public service sector. Employment equity policy in the private sector, or the implementation of federal employment equity legislation as experienced at the provincial level, fell beyond the scope of this study. The limited nature of this overview should therefore be taken in such light.

We have also become aware of the extent to which the various provincial officers responsible for employment equity policy, or its absence, pay close attention to the policy debates in other provinces. At present, attention is largely focussed on Ontario where the polarization regarding public debate on employment equity appears to have been most extreme over recent years. Nonetheless, there is very limited communication among officials in different provinces, and virtually no attempt to develop comparative analysis or collaborative programs. In the remainder of this section, we attempt to identify some notable

elements in an interprovincial review of employment equity policy, with all the above caveats taken into account.

Employment Equity Policy and Legislation: To Be or Not to Be?

A distinction needs to be drawn between employment equity policy and employment equity legislation. The former indicates that general governmental priorities and directives favourable to the implementation of employment equity measures are encouraged, though the specific mechanisms for implementation and enforcement vary greatly. Moreover, employment equity policy may be limited to specific programs of the government, or applicable to certain sectors of the government. Policy packages may or may not be subject to detailed systems of reporting and accountability. Also, policy packages are not subject to a process of legislative review, debate and passage into law. Employment equity legislation, on the other hand, necessarily includes or has included a background of policy support, but stands as the law of the land with associated methods of enforcement and sanctions for violation. Seven provinces in Canada today (British Columbia, Manitoba, Saskatchewan, Quebec, Nova Scotia, New Brunswick and Prince Edward Island) have employment equity policy of some sort. Only one, British Columbia, has employment equity legislation. No province, except Quebec, extends its mandate beyond the public service.

The nature of such policies varies greatly. In British Columbia, the policy was introduced in 1991, and was followed by passage of the *Public Service Act Directive on Employment Equity* in 1994. All government ministries are required to develop and implement employment equity action plans and to present progress reports annually regarding implementation. Most important, the program is supported by a full-time senior-level appointment in the Public Service Commission and has been successfully integrated in a number of departments. There are active province-wide associations for each designated group, and additional support for women is provided through the Status of Women office. In 1999, the B.C. government created its Employment Opportunity Secretariat, whose director reports to a senior cabinet minister. The Secretariat is responsible for extending the Employment Equity Policy beyond the ministries to the entire public sector, including Crown corporations, agencies and services such as health care, education, social services, transportation and environmental protection. The new program also includes administration of a \$150,000 fund to work with not-for-profit and non-government groups on projects to identify workplace barriers and increase public access to information on public sector employment and creation of a community advisory board to work with the Secretariat on projects to increase access for persons with disabilities, Aboriginal persons and members of visible minorities.

In Manitoba, the policy has been in place since 1983. Here, the emphasis is at the level of departmental equity co-ordinators and the provision of management training programs, specifically for women and Aboriginal employees. In Saskatchewan, while the policy is not accompanied by legislation, there is a suggestion for such legislation put forward by the Saskatchewan Human Rights Commission. The Human Rights Commission shares responsibility for employment equity policy implementation with the Public Service Commission. These commissions, unlike other provinces, have the mandate to create directives.

In Quebec, the employment equity policy is combined with a program of contract compliance, established in 1987. Any public or private sector employer with more than 100 employees and in receipt of provincial funds of \$100,000 or more has an obligation to implement access to equality programs specified by the provincial government. This is roughly comparable to the Federal Contractors Program, although the lack of infrastructure to support the program ensures that it is not as effective as the federal program.

Nova Scotia has had employment equity policy in place since 1975. In 1997, the new Affirmative Action Program was put into place, in the form of an agreement signed by the Nova Scotia Department of Human Resources and the Nova Scotia Human Rights Commission. The agreement was developed in consultation with the Nova Scotia Government Employees Union. New Brunswick encourages employment equity principles in general, but policy is not associated with specific action plans. Alternatively, subsumed under the Department of Finance, the Labour Relations Services Branch and the Human Resources Division are available to assist departments in reaching employment equity objectives and addressing related equity issues. Prince Edward Island has employment equity policy, but implementation is largely under the auspices of the Human Rights Commission.

Those provinces with no policy or legislation fall into two categories. In Newfoundland, there has been very little discussion, generally limited to a discussion of gender equity. Employment equity has been actively debated, however, in Alberta, where such legislation has never been implemented, and Ontario, where it was implemented and later repealed. In a subsequent chapter, we attempt to look more closely at the Ontario experience, particularly in light of the attention it is attracting in the employment equity policy debate across Canada.

Employment Equity and Pay Equity

Employment equity addresses issues of workplace recruitment, retention and promotion among designated groups that experience systemic oppression in society. Pay equity, however, usually applies specifically to discrimination in earnings among workers already employed. Moreover, it usually addresses discrimination based on gender only. Because statistics on gender are the most commonly available among the designated groups, pay equity, or its absence, is generally more readily subject to statistical review and accountability than employment equity.

This study has specifically focussed on employment equity policy, and has not attempted to address pay equity policies or debates. Among issues that would arise in the study associated with a general climate of equality in the workplace environment, however, pay equity is the most common. It is notable that in the provinces with an employment equity policy, six of the seven also have pay equity legislation. Only Saskatchewan has a policy of employment equity, but does not have legislation associated with the implementation of pay equity. Two provinces which do not have employment equity policy, Alberta and Newfoundland, also do not have pay equity policy. And one province, Ontario, does not have employment equity policy but does have pay equity legislation.

Training and Accountability

We were concerned about the extent to which employment equity issues were recognized as associated with a set of workplace skills. We were interested in determining whether the active intervention to prevent discrimination and to train employees and managers in methods to implement employment equity was actively pursued, rather than treated as accidental.

While most provinces have employment equity policy, few have a proactive strategy for training. In British Columbia, where policy is backed up by legislation, and Manitoba, where it is not, there are specific training programs. In both cases, they are voluntary. Though Nova Scotia does not have employment equity legislation, it is the only province that has a mandatory training program. All government personnel and employees from the level of assistant deputy minister down are required to attend a mandatory two-day training program as a routine part of their workplace training in the provincial government. The Diversity Management Unit of the Client Services Division, subsumed under the Department of Human Resources, is responsible for this training program. A full-time diversity/employment equity consultant is in charge of training and other equity issues. Equity issues associated with racial minorities, people with disabilities, Aboriginal peoples and women are part of the training program. According to our research findings, no provinces other than British Columbia, Manitoba and Nova Scotia have comprehensive employment equity training programs in the public service.

Another focus of inquiry was the degree of success of such programs. Because there are both qualitative and quantitative issues associated with the redress of systemic discrimination, in many provinces it was impossible to assess such progress. One question we were able to address was whether there were mandatory reporting processes or audits in the provinces that had any policy regarding employment equity: mechanisms are in place in only two provinces. These are British Columbia, where the Equity and Diversity Branch of the Public Service Employee Relations Commission assists each ministry in developing regular reports, and Manitoba, where the Public Service Commission conducts audits of practices and requires annual reports although, in the latter case, performance reviews are not conducted.

Does Employment Equity Policy Matter?

Does employment equity legislation or policy applied in provincial public services increase access to employment opportunities for members of the designated groups, especially visible minority women? Our ability to answer this question is very limited. First, our study is based on a policy analysis, not on a workplace survey. The latter would be a vast undertaking, requiring many times the resources that were available to us. Second, we were only able to obtain data on basic numerical representation for four provinces—British Columbia, Saskatchewan, Manitoba and Nova Scotia—presented in Table 10. We are unable, therefore, to provide a comparison of these four provinces with the most advanced employment equity policies with the other six where policies are minimal or non-existent. We make a strong recommendation in Chapter 8 for further research.

If we compare these four provinces with the federal government (Table 10), the results are tentative but interesting. All five jurisdictions show very limited progress, except for general representation of women. British Columbia has made progress in improving the level of persons with disabilities. Manitoba and Saskatchewan show higher representation of Aboriginal persons than any other jurisdiction, and only Nova Scotia has achieved increased representation of persons in a visible minority relative to workplace availability as a result of a program directed specifically at Nova Scotians of African-Canadian background. Although further research is necessary, these figures indicate to us that positive results occur where efforts are specifically directed toward the designated groups. While progress may be slow, there is room for optimism that it is possible.

We believe, therefore, that employment equity does make a difference in affecting the employment profiles of the designated groups. We now turn to the federal context, viewed by many as a positive model for the development of provincial policies.

4. THE FEDERAL CONTEXT

At the federal level, Canada's employment equity policies and programs rank among the most advanced in the world. In contrast to those of most provinces, the federal program is well established, supported by a significant bureaucracy and entrenched in legislation that covers the federal public service, federally regulated employers, Crown corporations and firms that bid on federal contracts. There is extensive information and advice available from several federal departments on policies that are both comprehensive and integrated.

Understanding the federal public service is important, both because it is so comprehensive, and because it provides a standard against which to measure progress within the provincial public services. We have undertaken, therefore, a review of the history of employment equity federally, and a brief assessment of current initiatives. Federal policy has developed particularly rapidly since the revision of the *Employment Equity Act* (1995). The timing is particularly opportune given the significant changes now taking place in Ottawa.

At issue is whether, having invested so heavily in a comprehensive employment equity system, the federal public service will soon show positive results. Over the last decade, there has been very modest progress in achieving the aims of employment equity, especially in the case of members of a visible minority, whose representation is now less than 60 percent of their work force availability. Is this lack of progress because the programs are ineffective or insufficient, because they are limited given the more general social context or because there has been insufficient time in which to expect major changes to occur?

It is beyond the scope of this report to undertake an extensive analysis of the federal public service. Rather, this section provides a brief historical review and overview of the federal program, in order to provide some basis for comparison with the relatively undeveloped programs in most of the provinces.

The Abella Report

Issues surrounding employment equity became prominent in Canadian public policy discussions during the late 1970s and early 1980s, at the same time that affirmative action issues were established in the United States. Canada's official response was the Royal Commission on Equality in Employment, established in 1983 with Judge Rosalie Abella as Commissioner. Her report, *Equality in Employment (1984)* (hereinafter referred to as the Abella Report), represents, for most people in this field, the definitive statement on the principles and practice of employment equity. This report resulted from a major research initiative carried out in 1983. The Commissioner sent letters to nearly 3,000 individuals and organizations, and received 274 written submissions in response. She held 137 meetings attended by more than 1,000 people, including 92 meetings in 17 cities across Canada, as well as meetings with designated group members, government officials, union and business representatives, and employees and officials from 11 Crown corporations. Thirty-nine substantial research reports were commissioned, on topics including education, child care, racism and pay equity.

The Abella Report has influenced subsequent legislation and practice profoundly. It defines equality as “...at the very least, freedom from adverse discrimination” and sets the goal of equality as ensuring that “the vestiges of...arbitrary restrictive assumptions do not continue to play a role in our society” (Abella 1984: 1) based on discriminatory “practices or attitudes that have, whether by design or impact, the effect of limiting an individual’s or a group’s right to the opportunities generally available because of attributed rather than actual characteristics” (Abella 1984: 2). Employment inequity, therefore, is based on historical discrimination and occurs systemically throughout society, including in workplaces.

The principles for achieving employment equity outlined in the report have had a profound impact on employment equity legislation, policy and practice in nearly every Canadian jurisdiction, as well as in other parts of the world. These principles provide a kind of template for the entire field. They are summarized in the following points (adapted from the actual report).

- Inequity is a systemic condition that may or may not be based on intended discrimination.
- Equality involves sometimes treating people the same despite their differences, and sometimes accommodating their differences in order to overcome barriers. To ignore differences or to refuse to accommodate them is to deny equity. Equity cannot be based on the same treatment for all.
- Four designated groups—Native people, visible minorities, persons with disabilities and women—assume disproportionate disadvantage in Canadian society.
- For visible minorities in particular, equity begins by attacking racism.
- Achieving equity requires a doubled-edged approach of addressing pre-employment conditions that affect access to employment, and overcoming barriers in the workplace that prevent equal participation.
- Equity will not be achieved without enforcement, which must be based on government intervention. Political will is fundamental.
- Education and training are key aspects of employment equity.

Based on these principles, the Abella Report addresses issues of implementing employment equity policy and practice, including issues of hiring and promotion (representation), and implementation. The report focusses on three major aspects of implementation: education, child care and the removal of systemic barriers. The first two have received only implicit attention, and the third explicit attention in subsequent employment equity legislation and policy at the federal level.

Federal Legislation

From the mid-1980s, federal government initiatives were developed for three separate jurisdictions, the federal public service, federally regulated employees and federal contractors. The *Employment Equity Act* (1986) applied to approximately 350 federally regulated employers, including Crown corporations, with 100 or more employees. The provisions of the Act were administered by Human Resources Development Canada (and its predecessor, Employment and Immigration Canada) and required employers to submit an annual report and an employment equity plan.

The Federal Contractors Program was initiated at the same time to cover companies of 100 or more employees which bid for federal goods and services contracts of \$200,000 or higher. Companies certified under the program are required to undertake programs to remove discriminatory barriers; increase participation through hiring, training and promotion; develop an employment equity plan; and keep records of employment equity implementation. Since implementation of the recent revisions to the Act, compliance reviews are undertaken by Human Resources Development Canada.

The federal public service was not originally covered under the *Employment Equity Act*. Nonetheless, administrative jurisdiction was lodged with the Treasury Board Secretariat. In 1986, the federal public service adopted an employment equity program mandated under the *Financial Administration Act* and specified in the *Public Service Employment Act*. This policy required departments and agencies to:

- establish an environment that supports the principles of employment equity;
- prepare and analyze statistical data on their work force to identify areas in which persons in the designated groups are underrepresented;
- analyze their employment systems to identify systemic barriers facing designated groups;
- consult with employees and encourage persons belonging to the designated groups to participate in implementing employment equity initiatives;
- develop three-year employment equity plans that include special measures to correct imbalances in the public service work force and contain quantitative and qualitative objectives, activities, schedules and monitoring mechanisms; and
- endeavour to meet numerical objectives for designated group representation and distribution, as defined by the Treasury Board target-setting strategy (Canada 1994: 6).

Just the Numbers

Numerically, progress toward achieving representation of designated groups at the federal level has been modest, but has occurred steadily over the last decade. In this section, we

present a simple account of that numerical representation, independent of other equity issues such as distribution, access or discrimination in the workplace. As documented in Table 2, each designated group has shown some improvement in terms of simple representation within the public service.

Women have closed the representation gap most quickly, at a rate of nearly one percent per year over the last decade. This has occurred during a period of major downsizing, so the actual number of women in the public service has declined by about 10 percent over the last five years. Proportional representation, however, has increased from 46.1 percent in 1993 to 50.5 percent in 1998. Numerically, women are now overrepresented, compared to their availability in the work force, by just under two percent. They also remain overrepresented in administrative support roles and at the bottom of the management scale, so achieving representation must be viewed as only the first step toward achieving equity.

Aboriginal peoples are also somewhat overrepresented in terms of their availability in the work force (2.7 percent representation against 1.7 percent availability in 1998), but those statistics need to be understood in light of several observations. First, the federal public service is a very important source of employment for Aboriginal peoples; many would argue that if more effective steps were taken to recruit, promote and retain Aboriginal employees, the level of representation could, and should, be much higher than work force availability. Second, like the other designated groups, Aboriginal peoples are not equitably distributed within the public service; they are overrepresented in administrative support and operational positions, and underrepresented in executive positions. They are concentrated in particular departments, especially Indian and Northern Affairs, and in particular jobs, especially those in health services (Canada 1998a: 52-59). Finally, they are overwhelmingly concentrated geographically within the Northwest Territories, where they make up 23.1 percent of the public service (Canada 1998a: 60).⁴

Persons with disabilities remain underrepresented in the federal public service as a whole, at 81 percent of their work force availability (Table 2). Men with disabilities have a somewhat higher representation than have women, but they too are also overrepresented in administrative support and operational positions.

Persons in a visible minority have achieved the lowest level of representation of all the designated groups, vis-à-vis their availability in the work force. In 1998, they represented 5.1 percent of the public service (Table 2), compared to 10.4 percent of the work force (Table 1) (PSAC 1998). This figure is explained only partially by the fact that because of immigration patterns, the proportion of visible minorities in Canadian society has increased significantly over the last decade, while that of the other designated groups has remained relatively constant. If current immigration trends continue, their proportion of the Canadian population will continue to rise, while their proportion of the work force will rise at a somewhat higher rate as the population ages and larger numbers enter the work force. Women in a visible minority fall slightly below men in representation (5.0 percent vs. 5.3 percent). Persons in a visible minority are also disadvantaged in terms of their public service distribution, strongly underrepresented in the executive category (2.8 percent), somewhat overrepresented in administrative support (5.3 percent) and operational

(5.1 percent) categories, and strongly overrepresented in the scientific and professional category (10.1 percent). The latter situation resulted in a recent Canadian Human Rights Commission Tribunal finding that persons in a visible minority at Health Canada are not being promoted at a rate that is commensurate with qualifications and experience.

While we do not view numerical representation as an indication of the success of employment equity policies, it is clearly an indication that much more work is needed. Equity is like an onion, consisting of many layers and no core; without numerical representation, the other layers—including redistribution, removal of systemic barriers and changing workplace culture—cannot be supported. The numbers themselves also present significant problems. Except for gender, the data are based on voluntary self-identification. While self-identification is an equitable principle, it avoids the issue of how many fail to self-identify, or for what reason, whether they feel that self-identification will lead to stigma or increased risk of discrimination, or because they feel pressure not to self-identify as part of a general backlash against employment equity policies. The numbers are especially problematic with respect to gender. Although for the last several years, Treasury Board has provided a breakdown of the overall figures according to gender, it is still not possible (at least through published reports) to obtain detailed information on the distribution of women and men within the three minority categories or on how many fall into more than one minority category (e.g., women with disabilities in a visible minority). As a result, it is not possible to ascertain where the most significant pooling or underrepresentation occurs, particularly for visible minority women, or how patterns of hiring and promotion vary by gender across departments.

Geographical variation among the provinces has a significant impact on regional representation. Tables 6 to 9 compare federal public service representation and work force availability by province. All provinces except Newfoundland and Nova Scotia show a slight overrepresentation of women, but the results are quite variable for the three other groups. For Aboriginal peoples, all provinces except British Columbia, Saskatchewan and Manitoba show a slight overrepresentation, but Saskatchewan and Manitoba also have the largest absolute numbers. For persons with a disability, all provinces show a considerable underrepresentation, except Newfoundland, which is even at two percent.

It needs to be stressed that these are data for *federal* public service employees at the provincial level, and they have no necessary connection to representation in the provincial public services. Nonetheless, since comparable provincial data are not available, we present these figures recognizing that it is likely that there is a relationship between social and demographic conditions in the provinces and patterns in the federal public service. To account for such differences, we would need to consider the various provincial histories, differences in political power and political culture, and differences in legislation—all factors that result in geographical variation according to where one lives in Canada.

A fact that stands out clearly in all jurisdictions, however, is that members of visible minorities have the lowest proportional representation compared to work force availability, especially in British Columbia, Manitoba, Ontario and Quebec, all of which show representation at less than 50 percent of availability. At 31 percent, Quebec's figure is

notably low. Only Nova Scotia shows a slight numerical overrepresentation. It should be noted that although both British Columbia and Ontario are slightly below 50 percent in these two provinces the public service employs the largest absolute numbers of members of visible minorities, by a considerable margin. It is in these two provinces, especially in the cities of Toronto and Vancouver where the visible minority population is concentrated, that the issues are felt most acutely.

Finally, numerical representation is strongly influenced by demographic factors that affect the public service as well as Canadian society as a whole. A study undertaken by the Public Service Commission in 1997 (PSC 1998) reveals the following.

- As a result of downsizing, the total public service declined from 236,351 in 1994 to 198,104 in 1997, about 16.2 percent.
- Indeterminate appointments decreased by 17.8 percent with the highest reductions in Newfoundland and the Northwest Territories.
- The proportion of employees in the younger (under 35) and older (55 and over) age cohorts declined.
- Recruitment shifted from indeterminate to term and casual positions; in 1997, there were 1,027 indeterminate hires and 60,217 term and casual hires.

Furthermore, while hiring of women has increased substantially over the last decade, hiring of the other three designated groups has actually declined (Table 4).⁵ These demographic data, especially those indicating a drastic shift away from indeterminate appointments, indicate profound effects on members of the designated groups in both the short and the long term (PSC 1997). On strictly numerical grounds, therefore, the federal public service is a long way from achieving representation, especially for those in a visible minority.

Addressing Systemic Barriers

Addressing systemic barriers was established in the mid-1980s as a major plank of programs initiated by Treasury Board. A secretariat was established to develop and co-ordinate policy, with advice from both the external Advisory Committee to the President of the Treasury Board, and four internal committees made up of designated group members within the public service. Major barriers to access and equality within the federal public service were identified as:

References to religious holidays in collective agreements, the design of qualifying tests for recruitment [the infamous ELOST test], pension provisions that discouraged part-time work and taking child-rearing leave, and provisions for priority entry to the Public Service from the armed forces and the RCMP. The latter practice, known as the “khaki parachute” had long been regarded as unfair both by women and by visible minority groups, because of the dominance of white men in the armed forces (Canada 1994: 7).

Additional workplace-specific measures were taken to provide a more welcome environment for members of designated groups. These included:

- fair communications guidelines to ensure positive terminology, positive portrayal and equitable representation of persons in the designated groups in all oral, visual and written communication materials federal departments and agencies use;
- child care initiatives including day-care centres in the work place, leave provisions for maternity, care and nurturing, and child care allowances for employees on travel and training status in certain circumstances; and
- alternative work arrangements, promoting part-time work and job-sharing flexible work hours, and a variable work week. Employees may take vacation leave or arrange their work schedules for religious observance needs (Canada 1994: 7).

Special Measures: Do They Work?

In co-operation with the Public Service Commission of Canada, which administers employment equity and other human resource programs and policies, Treasury Board implemented the series of Special Measures Programs, beginning in 1983 (Canada 1994: 7).

- The ACCESS Program for persons with disabilities provides funding for on-the-job training in term and indeterminate positions for persons with disabilities who lack job experience....
- The National Indigenous Development Program for Aboriginal peoples south of the 60th parallel provides departments with matching funds for Aboriginal training positions at the officer level....
- The Northern Careers Programs for Aboriginal peoples north of the 60th parallel provides matching funds to departments to establish training positions for northern Aboriginal peoples at both officer and non-officer levels....
- The Women's Career Counselling and Referral Bureau was established to increase the representation of women at the executive level...
- The OPTION program, introduced in 1986, provides training and apprenticeship opportunities to increase the recruitment of women into non-traditional occupations (excluding the Executive Group) and
- The Visible Minority Employment Program established in 1987 assists in recruiting persons in visible minorities by paying for the first year of an appointment to an indeterminate position or for six months of a developmental term position....

The Special Measures Programs were evaluated in 1992 by the Audit and Review Branch of the Public Service Commission. The Report makes 17 recommendations, including recommending that the Special Measures Programs be continued with greater integration and communication among departments, stronger commitment on the part of the Treasury Board and the Public Service Commission, more support for managers, more

decentralization to the departments, improved information and record keeping, and improved training and other career advancement measures.

A month before the above report was published, the Public Service Commission and Treasury Board formed a joint committee, with representatives from six federal departments, to consider options for the Special Measures Programs. This committee was critical of Special Measures, primarily because they tended to emphasize the characteristics that distinguish individual designated group members (gender, “race,” disability, Aboriginal status), rather than the ways designated group members can contribute to the Public Service of Canada, or the ways in which corporate culture, especially as advanced by line managers, needs to change to become more equitable. They found current Special Measures Programs to be “static and no longer compatible with the environmental realities of workforce adjustment, budget constraint, and the evolving needs of designated groups and departments” (Canada 1992b: 4).

The findings of these reports, and others completed around the same time, signal some fundamental changes in thinking about employment equity by the early 1990s. It was more and more widely believed that employment equity could not be achieved by focussing on the designated group members themselves, but needed to be part of a larger project of workplace environment change with equity itself as the objective. And, within the specific context of the federal public service, it was recognized that changes needed to occur more widely, and to be focussed on the departments, rather than within the more narrow confines of those departments with direct responsibility for policy and programs.

The result was the new Special Measures Initiatives Program, implemented after the expiry of the second Special Measures Program mandate on March 31, 1993. During the first year, the Treasury Board extended the initial programs temporarily and created the Job Accommodation Fund with a specific mandate to assist persons with disabilities. It sponsored seven pilot projects in line departments to “test innovative approaches to employment equity and to create an organizational culture receptive to workforce diversity” (Canada 1995: 7). These projects represented a combination of the older model of special measures directed at the designated group members, and the newer model directed at changing the culture of the workplace. In the following year, 66 projects in 27 departments received a total of \$3 million in support, which was matched by \$1.8 million from their own budgets (Canada 1996). The new program also provided an opportunity to promote employment equity through Public Service Commission presentations aimed at gaining the support of managers and human resource specialists.

The New *Employment Equity Act* (1995)

The revised *Employment Equity Act* was proclaimed on December 15, 1995, and came into effect on October 24, 1996. Revision of the Act had been a part of the Liberal Party platform stated in their Red Book, although plans for revision were already well under way before the 1993 election. In May 1992, the Special Committee on the Review of the *Employment Equity Act*, chaired by the Hon. Alan Redway (Canada 1992a) advocated inclusion of the federal public service within the *Employment Equity Act*. After broad consultation within

government and with a range of community organizations, the Special Committee made a total of 31 recommendations aimed at extending the remit of the Act. Further, the new Act was aimed to increase the obligations of employers and to strengthen enforcement mechanisms, as well as to improve monitoring, consultation and reporting functions. These provisions were all within the National Employment Equity Strategy that was to serve as a model for other jurisdictions.

Obligations of all employers under the Act include:

- identifying and eliminating barriers to employment for members of the designated groups;
- developing positive measures;
- ensuring reasonable accommodation;
- conducting analyses of the work force to ascertain representation based on workplace surveys;
- reviewing employment systems, policies and practices and eliminating barriers;
- correcting underrepresentation;
- preparing an employment equity plan, to include both qualitative and numerical goals;
- informing employees of the purposes of employment equity; and
- consulting and collaborating with employees and their representatives.

Reports are to be filed with Human Resources Development Canada for federally regulated employers, and with the Treasury Board for the Public Service. The respective ministers are responsible for filing an annual report to Parliament.⁶ The Canadian Human Rights Commission has the responsibility to ensure that employers comply with the requirements of the Act. This is to be achieved through completion of employment equity audits or, when an audit reveals non-compliance and an employer fails to act or disagrees with a compliance order, through the Employment Equity Review Tribunal. Regarding the latter, orders are final except for judicial review under the *Federal Court Act*.⁷

Since passage of the new Act, the level of activity regarding employment equity at the federal level has increased substantially. The Canadian Human Rights Commission began its formal audits in 1997, with the aim of working together with employers to achieve compliance. To date, only one department, Status of Women Canada, has been found in compliance in terms of representation of members of the designated groups. All departments are involved in the Employment Systems Review process (Treasury Board 1998b), and stronger efforts are being made to develop co-operation among departments, between departments and Treasury Board and the Public Service Commission, and between the

government and the unions representing employees of the Public Service. In January 1999, Treasury Board and the federal public service unions co-sponsored a conference entitled *Time For Action: Employment Systems Review: A Labour-Management Colloquium for the Federal Public Service*,⁸ attended by more than 200 representatives from across Canada. The atmosphere at this conference conveyed a strong sense of commitment on the part of the attendees, as well as considerable commitment to union–management consultation and collaboration, a key factor in the success of employment equity under the new Act.

The Employment Equity Positive Measures Program

The latest employment equity program developed by the Treasury Board Secretariat is the Employment Equity Positive Measures Program (EEPMP), approved October 8, 1998. This four-year program replaces the previous Special Measures Program, whose mandate ended in March 1998. With a budget of up to \$10 million per year, it has three broad objectives.

- The EEPMP will promote greater self-sufficiency of departments and agencies in achieving their employment equity objectives and fulfilling legislated obligations as delegated to them by the employer under the *Employment Equity Act*.
- It will help departments improve the presence of the four designated groups in the federal public service where underrepresentation exists.
- The EEPMP also supports central agencies in discharging their legislated responsibilities for employment equity and providing for leadership in addressing public-service-wide employment equity priorities (Canada 1998b: 1).

The EEPMP is expected to encourage greater integration of the current policies and programs into departmental human resources and to encourage stronger co-operation and alliances among departments. The program will shift resources away from individually funded projects, and develop a stronger regional focus and self-reliance among departments. It provides funding for projects, with preference given to partnership projects, as well as a career counselling office and a resource centre specifically for persons with disabilities.

What's Next?

The Government of Canada has undertaken a large and comprehensive program of employment equity over the last decade and a half, probably unequalled in any other national context. Building on the original insights of the Abella Report, the federal government has created a significant bureaucracy, impressive expertise, a large body of literature and a relatively high degree of interest and commitment. The current mood is fairly optimistic that substantial progress will occur in the relatively near future, especially given the fact that the federal government has now slightly eased up on its cost-cutting measures, and there is opportunity for public service growth for the first time in years.

It is not within the scope of this project to undertake a full policy review of federal employment equity programs and policies, since our major focus is on a provincial

comparison. Such a review would be inappropriate at this time in any case, given the recentness of the new legislation and the fact that the Canadian Human Rights Commission has not yet completed the first round of compliance reviews. Moreover, the employment equity context federally would have to be considered, at least in part, in relation to the pay equity context, which is currently being contested regarding a dispute with the Public Service Alliance of Canada.

The federal employment equity case provides an excellent comparative context, however, against which to understand variation at the provincial level. Based on the federal experience, we can make a number of observations about how employment equity policies seem to work. These observations provide a background for our analysis of the provincial policies. The most important observation is that, judging from modest federal results to date, extensive legislation does not in itself seem to guarantee rapid or extensive results. Lack of progress may have occurred for a number of reasons. It may be unreasonable to expect rapid change within a single jurisdiction, even one as large as that covered by federal employment equity legislation and policies, when systemic barriers remain in the rest of society as a result of deeply rooted historic oppression. It may be that progress is related not to the volume but to the content of employment equity policies. The relative lack of accountability in federal policies has meant that it may not be taken seriously no matter how much is invested in the program. If that is the case, the current issue is whether the accountability structure created with the new legislation will be effective enough to achieve results. It may also be that the employment equity program has failed to reach effectively beyond the confines of the Treasury Board Secretariat, the Public Service Commission and a few other federal departments. If that is so, then the recent strategy of devolving responsibilities to departments and forging partnerships among departments may show effects relatively quickly.

Geographic variation is a considerable factor in a country of Canada's size. Regional or provincial variation in the demographic structure of the work force, in economic conditions that affect job availability and work force needs, and variations in cultural and political practices, all affect how employment equity policies are responded to in different places, even taking into account the homogenizing effect the federal public service has as a central employer. Regional variations may demand some flexibility in employment equity provisions, to ensure that local needs are met with local solutions.

As we return now to a discussion of provincial employment equity policies, the issues of politico-geographic variation become more pronounced. There are significant differences between the federal and provincial jurisdictions, as well as among provincial jurisdictions. Our major concern is whether these differences make a significant difference in terms of the ways designated group members, especially women in a visible minority, experience equity in employment. Using Ontario as a case study, we explore one situation in which the employment equity climate has undergone a complete reversal in recent years.

5. A CASE IN POINT: THE RISE AND FALL OF EMPLOYMENT EQUITY LEGISLATION IN ONTARIO

Across the 10 provinces, there is widespread interest among employment equity advocates, and among its challengers, in the experience of Ontario. In general, in any discussions that arise in the Canadian federal state, and which bear on the population of Canada from coast to coast, Ontario tends to figure highly, for better or for worse. Ontario is the most industrially advanced province, with the largest population and the location of the federal Parliament. The objection that all the other provinces receive short shrift from Ottawa relative to Ontario is not uncommon. In the case of the employment equity debate, however, the attention devoted to the recent experience of Ontario is not merely, we maintain, a repetition of a standard pattern.

Through the 1990s, the Ontario Legislature witnessed a dramatic shift in its ideological orientation to employment equity. The shift was from one end of the spectrum to the other, moving from a position that ranked at the top of the scale in terms of government support for employment equity, only to be reversed to the most unfavourable orientation in a very short period. The ideological shift coincided with the rise and fall of employment equity legislation and policy orientation, with the resulting sweeping impact on the climate for redressing systemic discrimination in the province.

This swing of the pendulum coincided with the electoral transition from a majority government of the Ontario New Democratic Party under the leadership of Premier Bob Rae, elected in 1990, to a majority government of the Ontario Progressive Conservative Party elected in 1995 under the leadership of Premier Mike Harris. While there is clearly a partisan association to the positions, it would be inaccurate to reduce the debate on employment equity in Ontario merely to a partisan debate. The Ontario NDP was elected to govern for the first time in the history of the province. This party had attracted to its senior ranks a number of social activists and feminists who had long held a political commitment to employment equity, in or out of government. Today, the Ontario NDP is low in the polls, and its leadership is notably silent on the employment equity issue in public statements. Alternatively, the Ontario Tories under Mike Harris came to Queen's Park committed to a "common sense revolution" with a leadership particularly intent on removing employment equity legislation. Not all provincial Tory parties across the country, and historically not all Ontario Tory party leaderships, have been as committed to the elimination of employment equity as this particular governing team.

More important than party affiliation, the Ontario experience has crystallized two sets of principles regarding employment equity that exist in various policy-making circles across the country. Moreover, this crystallization has occurred in its purest form, as it were, and in a very short time. Not only have the positions found expression in provincial legislation but, through a challenge under the *Canadian Charter of Rights and Freedoms*, the debate has moved into the domain of the highest courts of the land. Acting as a laboratory of debate, the Ontario case has attracted the interest of employment equity stakeholders who share an interest in the articulation of the positions in a form accessible for public scrutiny, and in the

precedents set or implied by the outcomes of the debate in its various stages of progression. Both advocates and opponents of employment equity policy and legislation have watched with interest as the arguments have moved through the Ontario legislature, into the Ontario courts and, through declined hearing, to the level of the Supreme Court of Canada.

In particular, the arguments that led to the enactment of employment equity legislation in Ontario were informed by a generalized commitment to the need for redress of processes of systemic oppression in employment practices. The legislation was informed by a widespread commitment, already extant in many components of Ontario government practice, to the general notion that equality demanded proactive intervention to facilitate the advance of designated groups who suffered from systemic oppression. Alternatively, the act repealing the employment equity legislation was grounded in the position that equity demanded an end to such special measures. It was argued that where there were cases of discrimination, the *Ontario Human Rights Code* operated as a protection and, therefore, employment equity law was not only unnecessary but also inappropriate and unfair.

The debate is not merely a legal matter. Placed in a wider analytical framework, the two positions which came together and clashed in the halls of Queen's Park, and which continue to echo in the courts, express the essential parameters regarding employment equity that mark the debate across the country. The advocates for employment equity legislation see the existence of systemic oppression as a condition that requires systemic remedy. The opponents of the legislation alternatively approach unfair practices as moments of specific discrimination, or as exceptional violations of the rights of individuals, which can and should be addressed through the complaints-driven process associated with the protection of human rights in the province. In the former view, oppression in society is seen to operate as a condition; in the latter, discrimination rather than oppression is the operative notion, and violations of democratic rights are seen to take place as specific and unconnected events.

The following chapter puts the Ontario case under an analytical microscope. Though the story, as it is presented here, is necessarily abbreviated and simplified, a focus on the Ontario experience is useful in considering the wider comparative context of the employment equity debates at the provincial level. The remainder of this chapter considers the Ontario case under three categories. First, the employment equity legislation brought into law in 1994 is considered, in light of the background to its passage and its specific content. Second, the repeal of the act in 1995 is addressed. Finally, we examine the Charter challenge.

Ontario's Employment Equity Legislation

The Ontario government's *Act to Provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women* passed third reading in December 1993 in a provincial legislature governed by a majority New Democratic Party under the premiership of Bob Rae. It was proclaimed into law in early 1994. This piece of legislation became a focal point of debate, both between supporters and opponents of employment equity policy in general, and among supporters of employment equity regarding the form and nature of its legislative implementation. It is worth devoting some

attention to the background process leading up to the enactment of the legislation, and to the content of the legislation itself.

Though the Act suffered an early death after less than two years on the books, the formal process leading up to its enactment began in November 1990.⁹ In its first Speech from the Throne, the newly elected NDP Government identified employment equity as a provincial priority. By March 1991, Ontario Employment Equity Commissioner, Juanita Westmoreland-Traoré, had been appointed. By the summer of the same year, the Commissioner had established the Consultation Advisory Committee. The Committee comprised representatives of the four designated groups that would ultimately be identified in the title of the legislation, as well as business and labour representatives, and employment equity practitioners already active in the province.

A process of widespread public consultation followed, with the first round taking place between December 1991 and March 1992. Public hearings, visits to community-based organizations and workplaces, and over 100 community meetings were organized by the Office of the Employment Equity Commissioner. Public forums on employment equity were held in cities across the province, including Toronto, Scarborough, Kingston, Ottawa, Timmins, Sudbury, Thunder Bay, Hamilton, London and Windsor. Over 400 briefs were received in writing over this period. In addition to the activities of the Employment Equity Commissioner, Elaine Ziemba, in her capacity as Minister of Citizenship, established the Technical Advisory Group in the spring of 1992. This Group was independent of the Commission, and comprised representatives from the designated groups, business and the trade union movement.

By June 25, 1992, Bill 79, *An Act to Provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women*, was introduced in the Ontario legislature for first reading. At this point, the first report from the consultations conducted by the Office of the Employment Equity Commissioner, *Opening Doors*, was also presented. Between first and second reading (the latter occurring from June 16-19, 1993) of the Bill, another round of public consultations ensued. While this process was under way, the Ministry of Citizenship undertook a modelling and testing program of the draft regulation, involving over 50 employers from the public, broader public and private sectors. On-site testing of sections of the draft regulation also involved both employers and trade unions or other bargaining agents.

After the Bill passed both readings, from August 16 to September 2, 1993, the Standing Committee on the Administration of Justice held a further round of public hearings. More than 100 presentations were made and 184 written submissions were received. This process resulted in a series of amendments, released in a package by the Government on September 7, 1993. The Standing Committee conducted a clause-by-clause review, which was concluded on December 6, 1993. Over the same period, the Office of the Employment Equity Commissioner established the Public Education Advisory Committee. On December 9, 1993, the bill received third reading, and was scheduled to receive final proclamation into law in 1994.

This intensive program of public consultation, debate, discussion and amendment, resulted in a law which, like most major legislative initiatives, was seen as too weak by some advocates, and too interventionist by opponents. In many respects, the law streamlined and rationalized a wide array of legislative measures that had previously implemented aspects of employment equity policy. According to the Ontario Human Rights Commission, such practices were extant in the government in 14 different offices before the enactment of a unified employment equity law.¹⁰

The legislation itself, and its accompanying regulation, was designed to be proactive. It was constructed specifically to ensure that barriers to equal access among the designated groups at the level of the workplace were challenged. Every workplace in the broader public sector (including municipalities, school boards, universities, hospitals and other health-care facilities) with 10 or more employees, the provincial government and all its agencies, private sector employers with 50 employees or more, and police forces covered by the *Police Services Act*, were covered by the Act. These employers and employing agencies were required to demonstrate “positive” and “supportive” measures with respect to “the recruitment, hiring, retention, treatment and promotion of Aboriginal people, people with disabilities, members of racial minorities and women” (Ontario 1995a: 2.4 and 2.5).

Though the legislation was sweeping in its coverage of most employers in the province, it fell short of actually imposing predetermined numbers or quotas. Instead, the legislation required employers to “prepare an employment equity plan in accordance with the regulations.” The plan was required to provide for the elimination of systemic barriers to equity in the workplace, the implementation of positive measures, and the implementation of supportive measures for each of the four designated groups in all the elements of employment from recruitment through promotion (Ontario 1995a: 12(1), (a), (b) and (c)). Flexibility was incorporated into the legislation, with an emphasis on a recognition that:

Because the government recognizes that there are many different types of organizations and corporate cultures, and often different kinds of workplaces and workforces within a single organization, the legislation permits employers to develop more than one employment equity plan. The plans must cover all of an employer’s employees and all of its workforces, and must meet the objectives of employment equity (Ontario 1993c: 4).

The legislation did render the development of employment equity practices in every workplace, resulting in consequences for non-compliance. Moreover, workplace surveys assessing the representation of designated groups, and timetables with specific goals to ensure the elimination of barriers, and the implementation of positive and supportive measures were required. To address the issue of monitoring and enforcement, a separate body from the Employment Equity Commission, made permanent in the Act, was also put into place. This was the Employment Equity Tribunal.

The Tribunal will act as mediator and adjudicator. It will review and enforce orders of the Commission. It will adjudicate disputes about joint responsibility and respond to complaints that an employer has not lived up to

its obligations under the employment equity plan. If an employer fails to comply with an order of the Tribunal, it may be prosecuted in the courts and face a fine of up to \$50,000 (Ontario 1993c: 8).

The passage of the *Act to Provide for Employment Equity* had an impact on the social and political climate in which issues of employment equity were considered in Ontario society, extending considerably beyond the legislative initiative itself. The combined impact of the extensive public involvement in the development of the Act in Ontario, and the enactment of the compulsory legislation which required a transformation of traditional employment practices in both the public and private sector, was twofold. On one side, the policy development process and extensive consultations facilitated a highly educated, and broadly defined, audience in the general public who were attuned and sensitized to the issues of employment equity. This laid the basis for, and also reflected the existence of, a politicized constituency determined to defend the principles on which employment equity policy is based, even after the legislation was repealed. On the other side, a profound backlash against employment equity in any form became louder, and ultimately found expression through the platform of the Ontario Progressive Conservative Government after the next Ontario election.

The Repeal of Employment Equity: What's Old Is New Again?

In contrast to the process of consultation, assessment, review and amendment that characterized the development of the *Act to Provide for Employment Equity* in Ontario, its repeal was a speedy process. In the first sitting of the new Progressive Conservative majority Government, Bill 8, which became *An Act to Repeal Job Quotas and to Restore Merit-based Employment Practices in Ontario*, was tabled, moved through three readings in the legislature and enacted into law. Even on the floor of the legislature, there was heated contestation, but compared to the previous bill, there was little opportunity for debate. First reading was on October 11, 1995; second reading was on November 2, 1995. It was passed through third reading on December 13, 1995, and received royal assent and was proclaimed into law the following day.

Referred to in short form simply as the *Job Quotas Repeal Act*, the title itself expresses its principles and content. Though Bill 79 had not required job quotas for the designated groups, its opponents had continually attempted to present it as “the quota law.” The issue of quotas for employment equity (or affirmative action) policies has been particularly contentious in the United States. Though few see the tendency for systemic barriers to impose unwritten negative “quotas” against members of the designated groups, the issue of requiring employers to meet specific employment targets has been very contentious, even among the advocates of employment equity policy in Canada (e.g., Lawrence and Matsuda 1997; Chavez 1998). The title of the Bill reflected a profound ideological rejection not only to the enactment of employment equity in Ontario, but also to the general assumptions regarding systemic oppression which supports such policies.

Frances Lankin, NDP MPP for Beaches-Woodbine and a former cabinet minister in the defeated Rae Government, attempted to clarify the issue of job quotas on the floor of the

legislature, though her comments did not result in any amendments. Lankin summarized her view of the debate on second reading of Bill 8 as follows.

One of the things I've found a bit frustrating during this debate is that the division of the space between the sides here in the House has really become like an ideological divide as well. I listened to the members opposite and I've come to the conclusion that there is a genuine belief on your part that the legislation contained quotas because of the way the fine was structured. I'm going to have to tell you I really disagree with that. My understanding and my belief and my intent with respect to that bill and the support of the bill was to understand that systemic discrimination exists; that people's attitudes sometimes get in the way of their clear thinking; that sometimes people's off-the-cuff remarks are demonstrative of attitudes that you see in employers, and that those employers sometimes have that influence in their decision-making; that it's not always the person with the greatest merit who gets the job; that sometimes those people, people of colour or people with disabilities or women or aboriginals, who have the merit to do the job are excluded from the opportunity of doing the job because of bias or systemic discrimination.... I really believe that there need to be programs that address the systemic discrimination as well as the overt and blatant discrimination. I think you missed the boat by not having those issues addressed in how you're proceeding on this bill (Ontario 1995b: 682).

The repeal was explicit in its challenge to any notion of historic or systemic oppression. Not only did it withdraw the law, it also reversed all policy directives of the Employment Equity Commission and the Employment Equity Tribunal retroactively. Further, the Government required that:

Every person in possession of information collected and compiled exclusively for the purpose of complying with...the *Employment Equity Act*, 1993 shall destroy the information as soon as reasonably possible after this Act comes into force (Ontario 1995a: 1(5)).

Sections of the *Ontario Human Rights Code* and the *Police Services Act* that had been amended to ensure employment equity implementation were similarly to be repealed (Ontario 1993a: 3(1-3), 4(1-12)). Also, the Ontario *Education Act* and the *Public Services Act* were amended to ensure compliance with the repeal. Once the repeal was enacted, a process of systematic paper shredding was initiated throughout the Ontario public service; according to law, the management offices of the private sector were required to do the same. Interviews conducted by the authors in Ontario indicated that in practice, even verbal use of the term "employment equity" was considered a feature of past practice, neither relevant to, nor acceptable in, the current context.¹¹

In its place, the Government established a policy program committed to advancing "equal opportunity." A project by the same name and a related Web site have been established, under the jurisdiction of the Ministry of Citizenship, Culture and Recreation. The project

specifically deals with the private sector only, and asserts the importance of its insistence on voluntary rather than compulsory co-operation. Regarding the public sector, the Management Board Secretariat was ordered to design an equal opportunity initiatives program emphasizing the merit principle, removal of barriers and zero tolerance of workplace harassment and discrimination.

The Equal Opportunity (EO) Operating Policy was approved by the Conservative Government Cabinet in March 1998. However, the notion of “equal opportunity” is considered by at least some senior representatives to be part of a tradition of practices which pre-date affirmative action policies, identified as going as far back as the 1950s. The EO policy is to work along with other equal treatment government policies, including the Workplace Discrimination and Harassment Prevention Policy and the Employment Accommodation for People with Disabilities Operating Policy (Ontario 1998: 2). The policy of equal opportunity is premised on the notion that all employees are entitled to equal application of merit-based policies. Merit assessment procedures are expected to “be barrier-free, be free of discrimination and harassment; provide appropriate employment accommodation” (Ontario 1998: 5).

In the EO plan, there is no longer any notion of systemic discrimination against specific groups in society. Any mention of the designated groups in interviews with government representatives was identified as inappropriate. Needless to say, the specific oppression of visible minority women was taken to be a non-question in the Ontario context.

In one recent Ontario government book-length publication, *Business Results Through Diversity: A Guidebook* (AMEC and Ontario 1997), specific emphasis is placed on the distinction between the policies of equal opportunity and employment equity. Notably, the idea of diversity is introduced specifically in the context of supporting the policy of EO, as distinct from employment equity. The aim of the publication is to “help your company address diversity and equal opportunity as a business issue.” Support from senior managers, supervisors, employees in general and trade unions is encouraged, referred to as a process of “active involvement and buy-in” (AMEC and Ontario 1997: xi). Specifically, according to this approach:

“Diversity” includes everyone, and the new model aims to develop a positive workplace in which every person can contribute to their full potential... Diversity is not an end in itself, but rather an *enabler* to help improve the performance of your organization” [emphasis in original] (AMEC and Ontario 1997: 1).

Furthermore, in a section entitled: “A New Model - Not Employment Equity or Affirmative Action,” what diversity is and is not is described in some detail.

The integrated business model for diversity...makes it clear that diversity is *not*: quotas; a legislated program with bureaucratic requirements; employment equity or affirmative action; special privileges; merely a human resource program; window dressing. Diversity, as defined here, is different. It

represents a new model, based on strengthening the organization. The diversity model is about creating a productive workplace. Employment opportunities, treatment and practices are based on merit. It is inclusive and voluntary. Diversity as a positive principle of management enhances your organization's edge by supporting employer and employee efforts to fully utilize the many and varied skills of all members of the workplace [emphasis in original] (AMEC and Ontario 1997: 11).

The operative notion in EO is the individual, not the group. Moreover, where discriminatory practices do occur, they are conceived of as events deviating from an otherwise fair and equal norm of operation, rather than as part of systemic conditions. And while, in "the past, equal opportunity issues were approached from a legal or moral standpoint based on fairness," now the emphasis is to be placed on "the business benefits as another driving force" (AMEC and Ontario 1997: 3).

Diversity is the combination of differences and similarities among people: it's more than sex, race, height, education or any other descriptive category. It's about understanding and utilizing the value of different views, ideas, life experiences, skills and knowledge. Valuing diversity means that you recognize and acknowledge the importance of individual differences in maximizing the result of your business (AMEC and Ontario 1997: 10).

The repeal of employment equity law in Ontario was not simply an elimination of the previous policy, which alone would have seen the policy context return to pre-1993 status quo. Instead, the repeal occurred as part of an ideological backlash that transformed public policy. Proactive, positive measures that compelled employers to redress systemic oppression in the workplace were now either frowned upon, or subsumed under a general framework of equal treatment for all. Whereas previously the public sector had been identified as an example of the effectiveness of governmental equity policy, now the priority was shifted to the private sector. Whereas previously the issue of equity was presented as a principle of democratic practice, now workplace equal opportunity was advocated for its contribution to profit maximization. And whereas a general climate in workplace relations previously called for employers to ensure representation among women, Aboriginal peoples, visible minorities and persons with disabilities, now even previously accumulated research records of workplace surveys were to be destroyed. Any attention to or focus on such information is painted as a relic of the old "quota law."

While other outlets for the redress of workplace discrimination continue to be in place, particularly through the Ontario Human Rights Commission and the Ontario Pay Equity Commission, both organizations have experienced severe budgetary restrictions and limited support at the ministerial level. Interviews among advocates of employment equity principles in Ontario suggest accumulated frustration in the ability of the Human Rights Commission in particular, to pursue adequately and support measures of redress. This is a result of both declining infrastructural support and the complaints-driven, and individualized process that underlies the mandate of the *Ontario Human Rights Code* and its Commission.

The passage of Bill 8 into law did not, then, conclude public discussion regarding employment equity policy in Ontario. On the contrary, the new *Job Quotas Repeal Act* was only one contributing factor to an atmosphere of sharply polarized debate that went considerably beyond the legislative realm.

The Charter Challenge: Employment Equity and the Constitution

The debate on employment equity in Ontario moved from the legislature to the courts when a coalition of community, legal and labour organizations prepared a challenge to the *Job Quotas Repeal Act* by seeking a legal injunction to block the law from taking effect. When this initial effort failed in early 1996, the repeal was challenged on the basis that it was in violation of the *Canadian Charter of Rights and Freedoms*.¹² The case involved four individuals, representing respectively each of the designated groups originally covered in the repealed employment equity legislation, and was supported by respected experts prepared to testify regarding the importance of employment equity laws (Alliance 1998a).

Under the umbrella coalition of the Alliance for Employment Equity, supported by the Ontario Federation of Labour, and represented first by lawyer Chile Eboe-Osuji and later joined by lawyer Mark Hart, the Charter challenge was heard in Ontario Court, General Division by Judge Dilks on November 26-29, 1996. When the case was dismissed, the Alliance immediately appealed, and was joined by lawyer Barbara Bedont in the fall of 1997.

Clearly expressing a broadly based sentiment among the Ontario population, the case attracted the involvement of some of the most representative non-governmental organizations advocating for non-discriminatory and democratic practices. The following organizations applied for, and were granted, intervenor status before the Ontario Court of Appeal: African Canadian Legal Clinic, Congress of Black Women of Canada (Toronto Chapter), DisAbled Women's Network, LEAF (Women's Legal Education and Action Fund), and the Ontario Federation of Labour.

The Ontario court rejected the appeal on December 9, 1998. Immediately on hearing this decision, the Alliance for Employment Equity announced its intention to appeal before the Supreme Court of Canada (Alliance 1998b). On December 10, 1999, the Supreme Court of Canada denied leave to appeal.

The broad-based willingness to become involved in a time-consuming and costly legal battle indicates the extent to which a commitment to employment equity principles continued in Ontario society despite the formal repeal of employment equity law. Though the employment equity legislation was only in place for a short time, there are indications that the repeal of the law in Ontario has altered the climate in some workplaces, allowing for an atmosphere of increased discrimination in hiring and promotions.

Antoni Shelton, Executive Director of the Urban Alliance on Race Relations, pointed to the failure of Metro Police to make progress in hiring more racial minorities last year. "They repealed employment equity laws, and principles of fairness in hiring went out the window," said Shelton. "We need

employment equity more than ever. It's important to appeal this decision," said Ethel LaValley, Secretary Treasurer of the Ontario Federation of Labour. "Since the Act was repealed, Ontario workers have reason to worry about less human rights protection. Many workers from equity-seeking groups are seeing doors slammed in their face. Inside workplaces, the climate is less welcoming than before" (Alliance 1998b; Duncanson 1999: C1, 5).

While a detailed assessment of the legal arguments of this case goes beyond the scope of this discussion, the challenge addresses the applicability of several sections of the Charter, including section 15, to the ability of governments to repeal human rights law.¹³ Specifically, the questions at issue are as follows.

Can governments eliminate equality-promoting legislation without consequences? How can equality guarantees under the Charter withstand shifts in government opinion? How can the rights of disadvantaged persons be protected from infringement (Alliance 1998b)?

The arguments presented by the appellants and intervenors maintained that the effect of the repeal was to reverse long-established precedents of government responsibility to ensure that discrimination does not occur in the workplaces of Ontario. Moreover, contrary to the arguments presented on behalf of the government, existing human rights legislation was seen as insufficient to the task. The factum of the Ontario Federation of Labour, for example, citing an extensive series of studies, maintained that:

These studies specifically recognized the fact that human rights legislation such as the Human Rights Code had provided ineffective protection against such systemic discrimination; in Ontario discrimination is against the law, prohibited by the Human Rights Code, 1981. Despite this kind of legislation, who gets hired, promoted, or trained has not changed significantly. In part, this is because barriers to equality are not only the result of direct discrimination. Barriers may be systemic.... Bill 8 was passed after a 1995 provincial election campaign and a subsequent legislative process during which the Progressive Conservative members misleadingly characterized the *Employment Equity Act* as involving quotas and the destruction of the merit principle.¹⁴

LEAF and the DisAbled Women's Network similarly cited "substantial empirical data dating back to the 1970s" which clearly verified the prevalence of systemic discrimination. They further emphasized that human rights legislation had not, to date, been effective in the elimination of systemic discrimination.

Human rights law has changed significantly during the last forty years due in large part to a heightened understanding by lawmakers and the judiciary of the nature of discrimination and the ways it is manifested in Canadian society.... [However], [t]he complaints-based system is ineffective because it is reactive in nature and as such, the responsibility for pursuing a claim of discrimination, which is an onerous burden, rests solely with the complainant. In order for a

complaint to be filed, the complainant must have some indication that discrimination may have occurred and must have the knowledge, resources and initiative to pursue the claim. Those persons who have experienced the most severe inequality are often the least likely to file a complaint. However, absent a complaint being filed, compliance with human rights legislation remains largely unenforceable.... The current human rights enforcement process, no matter how finely tuned, inevitably misses many of the underlying causes of discrimination which may be systemic in nature. For example, an individual complainant who has been rejected for a job may have no idea that the rejection resulted from systemic barriers. In the event a complaint is filed, the investigation usually focuses on the individual and is not sufficiently broad to uncover systemic barriers which go to the root of the discrimination.... Moreover for those persons who do file human rights complaints and have their complaints determined, the remedies awarded for findings of discrimination are inevitably individual in nature. Decision makers in respect of individual complaints rarely attempt to root out and remedy underlying causes of discrimination which may be systemic in nature.¹⁵

The Ontario Supreme Court's rejection of this appeal did not deny the existence of systemic discrimination in employment. The Court maintained, however, that it could not stop governments from repealing laws, even if it is demonstrated that such a repeal reverses or challenges positive steps in human rights protection.

Conclusion

The Ontario story regarding the rise and fall of employment equity remains an open-ended one. Regardless of the Supreme Court's denial of leave to appeal, the climate of determination among a broad section of society, uniting leading representatives among women, Aboriginal peoples, visible minorities and persons with disabilities in a common campaign for legal redress, is notable. Moreover, the implications of the Charter challenge, though arising from Ontario, will inevitably go far beyond that particular province. Though the specific parameters of the employment equity conversation are extremely varied from province to province, and each province has its particular elements, the wider context of the Canadian federation remains relevant to all the provinces. For advocates of employment equity, it is particularly important to note that, even in the context of a legislative backlash, the struggle to achieve employment equity has not diminished but has, in some respects, found more resilience and determination to challenge systemic discrimination, and to ensure full and public governmental accountability.

6. THE EMPLOYMENT EQUITY DEBATE: BEST AND WORST CASES

In previous chapters, we emphasized the varied contexts in which employment equity policies are being discussed and debated. Despite significant setbacks in Ontario, we believe there is room for optimism. This belief is partly based on the results of our interviews across the country, the results of which are presented in the next two chapters. We have chosen not to disaggregate these results by province, in order to protect the identities of our confidential respondents and because our sample size is too small for statistical reliability. There is also substantial variation by individual, across all provinces; some of our most encouraging interviews took place in provinces with no policy and some of the most problematic in provinces with extensive policy. On the whole, in the four provinces with the most developed policies or legislation, we found the most informed and educated respondents. We believe this situation is a result both of the political and ideological climate in which public servants responsible for employment equity work, and of the expertise that develops in a context of positive policy development and implementation based on comprehensive training policies.

In this chapter, we emphasize the role of agency and of leadership, heuristically suspended from such contexts for the purposes of discussion and analysis. Our aim is to indicate the varied positions taken by employment equity stakeholders. This is regardless of their position or situation, involvement in various levels of responsibility for employment equity policy development and implementation or, alternatively, for ensuring that employment equity policy is halted or reversed.

During the course of the interviews conducted by the authors, we encountered a wide spectrum of expertise in the issues relevant to employment equity. We were privileged to have such an opportunity. We were able to learn a great deal from these interviews, many of which were extremely informative and stimulating. Other responses were, however, notable in another way, alarming in the lack of knowledge and understanding that they displayed.

As a means of indicating the polarity of views associated with the employment equity policy debate today, we developed a model questionnaire, based on the actual questions used in the interviews. The only questions included in the actual interviews that are not presented in this format were a quantitative evaluation and an open-ended question regarding additional issues.¹⁶ Below, we provide selected responses to some of these questions, specifically selected to express what we identify as the “best case” and the “worst case” positions on key employment equity issues.

This exercise is not intended to display “objectivity.” As authors firmly committed to the principles of employment equity policy and concerned, in particular, with the implementation of such policy in the interests of visible minority women, the selection of “best” and “worst” is derived from the identifiable spectrum of debate taking place around employment equity issues today. The “best” are those we believe to be the most informed and, therefore, the most favourable for the effective implementation of employment equity policy; the “worst” are the least informed and similarly least favourable. More specifically,

the best cases tend to support the notion that employment equity is a means to redress systemic oppression and thereby attain greater equality in the workplace. The worst cases, alternatively, tend to reflect a notion of equality as equal treatment for all, obfuscating or denying systemic processes of oppression.

The content of the responses below is paraphrased from actual interviews. To maintain anonymity, we have avoided using direct quotes. In a number of cases, we have synthesized more than one response into a single comment. Although this is a constructed model, it is not, we maintain, an inaccurate one. Our hope is to indicate the extreme nature of the polarity of the debate taking place across the provinces today, in the interest of encouraging a constructive movement of employment equity policy toward greater and more complete implementation. Moreover, while the context varies in each province, the general poles of debate identified below exist in various forms and to varying degrees of articulation in each province. The remainder of this chapter allows our respondents, in admittedly highly selected form and situated in an admittedly artificial context, to speak for themselves.

1. Please define the following terms.

a) Employment Equity

Best case: Employment equity is the systematic removal of barriers to the advancement of historically, traditionally disadvantaged groups in the labour market. It refers specifically to the workplace context.

Worst case: Employment equity is associated with affirmative action from the point of view of quotas and special programs and that kind of thing.

b) Human Rights

Best case: Human rights include individual rights, but also social and economic rights: the right to housing, health, the right to ensure justice and equality in society. Human rights also mean recognizing that some groups face more discrimination than others, and in that situation, collective rights must be treated as an important element of human rights. An individual's right can endanger collective rights, but the reverse can also be true. Human rights are more than the sum of individual rights.

Worst case: Human rights mean fairness to everyone.

c) Prejudice

Best case: Prejudice is a preconceived judgment, a judgment that is based on subjective elements, rather than on an analysis of reality. Prejudice refers to pre-established judgments based on elements taken out of context. It involves assigning stereotyped characteristics to individuals based on those pre-established judgments.

Worst case: Prejudice has to do with discrimination. It is normally used against Blacks or Native people but it certainly could be used against women. Usually, prejudice is understood to mean bias against Black or Native people or something like that.

d) Systemic Discrimination

Best case: Systemic discrimination is about general constraints in society that limit access to certain sections of society. It can be conscious or unconscious, but the effect is the same. One example of systemic discrimination that is really obvious is physical access. If buildings are constructed without access ramps, then people who use wheelchairs will be denied access to those buildings, and to all the services offered by accessing those buildings. The denial of access ramps is one example of the practice of systemic discrimination. Other examples include forms of behaviour, or ideas, that are exclusive, but are considered to be “normal,” as if they are just the way things are and always will be.

Worst case: Systemic discrimination is when men think that if they agree to something like affirmative action or equal pay for work of equal value, it means that women are going to take over the world.

2. What do you think are the major considerations in making sure that a hiring or promotion process is equitable?

Best case: There are several steps that can be followed. The first step is to recognize that the existing process is biased because it is established by the dominant culture. Most people are unaware that we tend to hire people that are “just like us.” The second step is to consider the advertisement for the job carefully, ensuring that the only requirements are those that actually are necessary to fulfil the position. Then the position must be advertised to reach the widest possible audience, in writing, not through word of mouth.

The committee involved in hiring and interviewing should also present a diverse culture, to ensure that the processes themselves accommodate differences in the population. There is also a need in the workplace to promote what I would call a workplace culture that accommodates difference. It is insufficient just to level out the assessment process without attention to the workplace. Retention of a new employee or employees requires what I would call almost a second level of awareness. It requires attention to the ongoing accommodation. Too frequently I think we hire people unlike “us,” and then expect them to accommodate to “us.” Actually, no, we have to ensure that the atmosphere in the workplace is changed to accommodate to a variety of different experiences, traditions, cultures, etc.

In terms of promotions, work evaluations and so forth, there needs to be a critical mass of participation of different segments. This is essential to maintaining a balanced culture. This has to be a deliberate and conscious process. It won’t just happen. It won’t happen just by stating on a job advertisement that the position is open to all qualified applicants. There has to be more outreach and consistency in terms of establishing a welcoming culture.

Worst case: Jobs should be advertised and assessed on the basis that there are no “male” or “female” positions. It should be understood that whoever wants to can apply for a position. And when someone is hired or promoted, they should deserve that position objectively, totally based on qualifications and ability, with no consideration for gender.

3. What do you think are the most common practices that make hiring or promotion processes inequitable?

Best case: The most common practices that make hiring and promotion inequitable include the “informal pipeline” system, where recruitment and promotions happen informally. This can sometimes appear objective, but it actually is not. For example, job descriptions are quite often scripted from the dominant culture, limiting in advance the application pool to specific individuals or groups of individuals. Also, interviews and assessment processes are quite often only a formality, rubber-stamping pre-selected applicants.

I think other common practices that make hiring and promotion inequitable result from what I would call a practice of ignorance. This is when those involved in hiring are totally unaware that there may be various different styles of work associated with performing the same set of skills. These include differences in operational styles and leadership styles. Such a lack of understanding creates tendencies which enforce the “chilly climate,” the expectation that every worker will adapt to the dominant style. Those who do adapt will find themselves slightly, or significantly, up on the selection ladder.

Worst case: Inequity is not being paid what you are worth, however you define that. Inequity is not having access to quality jobs that your ability demands. I don't think there are a terrific number of decision makers out there who now firmly believe that a woman or a person of a certain ethnic background is not capable of doing a certain job.

I think the single biggest factor is probably cultural familiarity and comfort. There are all kinds of things that play into that. For example, you will have a job competition and several people apply. A couple of them are from the Indian subcontinent, with excellent qualifications. But let's say one speaks with something of an accent, and you have a little bit of trouble understanding the person. That provides a sense of momentary discomfort. When it comes time to do the evaluation, perhaps it is a close call, and you go with the person you feel comfortable with. In the example I have given you, it may be a lack of personal contact and knowledge of the second candidate that drives you to the decision. It may be the linguistic problems. It is probably not prejudice against people from the Indian subcontinent, but only a lack of familiarity, or a lack of linguistic affinity.

This is somewhat inevitable perhaps. The evaluation process is always going to be conducted by human beings. Either consciously or unconsciously, there is a natural human inclination to have affinity with the person you feel comfortable with. That is probably the biggest conflict for me regarding employment equity programs. There are some legitimate reasons why some people don't get hired, although the paper qualifications may be very good. Personal suitability to a certain office may be extremely important. In every hiring and promotion, there is a need to make an educated guess as to how a person is going to fit in. I firmly believe that compatibility in an office is sometimes more important than the law of merit.

The disadvantages members of minorities encounter will not be broken by ignoring this reality. I don't think these problems apply to women as much, because I think we have overcome the worst part already in this regard. The problems that minorities have in the

workplace are different. They cannot be challenged effectively until there is a kind of critical mass of minority advocates in the workplace.

4. What do you think are the major issues facing each of the designated groups today?

a) Women

Best case: The first issue, and this is fundamental, is education. To have access to the whole range of jobs available in a society, women have to at least find themselves in the relevant educational channels that lead to those jobs. You can't talk about employment equity if you don't invest significantly in supporting women in their career choices, both technical and professional. To achieve employment equity, you have to have a pool to recruit from. Second, a whole range of careers, technical jobs and professions need to be socially considered and valorized for women, which is not the case today. The attainment of pay equity, for example, is necessary to ensuring women will be attracted to these jobs and paid fairly for their work.

The third major challenge is the way work time is organized. Even if women obtain equity in remuneration, and in employment, they won't have equity in treatment in a society that only considers wage labour as labour, and ignores the work performed in the so-called "private" sphere. The entire organization of work time needs to be addressed here. This includes the adjustment of work with the care of children, but it also goes beyond this. Also included here is the capacity to take parental leave spread over a period of time. In France, you can take parental leave in segments, until the child reaches 16 years. For us, it is up to two years and only during infancy.

Worst case: Women are a very important part of the work force, especially in the white collar work force. I don't think they encounter barriers to promotion in terms of assessment. I think that it is hard to tell, not being a woman you know, I don't have that kind of knowledge. However, I think that probably family responsibilities are the biggest problem. This results when a woman takes the dominant role in the family and keeps the house in order. They feel they need to do that. It may be their inclination, or it is just not their husband's inclination, so the burden falls more heavily on them. This includes everything from school, housework, to such things as who is going to organize the family Christmas. This is in addition to the usual problems of childbirth and the period around childbirth where a woman feels that she needs to be at home.

All of these reasons I think, and these are good reasons, make it harder for women to channel the energy they need to drive aggressively to the top. These things limit the aggressive pursuit of job opportunities, which is still necessary for success. I can see why women often would opt out, and decide, "I have too much on my plate, I can't do this."

b) Aboriginal Peoples

Best case: Aboriginal people are at the bottom of the civil service at entry-level positions. They face issues of bias, discrimination and racism in getting into the workplace. If they can gain entry, they face these conditions every day in the workplace. They face issues of cultural and linguistic exclusion.

There is also a lack of access to the jobs because of the way positions are advertised or the way recruitment is structured. Positions are not advertised to reach communities in the north. Also, there is a form of discrimination that blames the victim. There are stereotypes, assuming “Aboriginal people are responsible for where they are.” You hear things like, “they are underqualified” or “they are uneducated,” or “they do not do well on boards,” etc. This is very widespread. There are certain politicians who say that Aboriginal people can never be part of the mainstream until they change.

Worst case: Barriers for Aboriginal people are almost the same as for women. There are simply different names for these barriers, but they are the same.

c) Disabled Persons

Best case: The major issues we face in the public service regarding disabled persons, in my view, is integration. I think the public service management wants a few visible people with disabilities for window dressing, and that is where it stops. So there is limited hiring, but then it stops.

The other issue is that the government is not willing to assess people with disabilities for all jobs, regardless of the job. They are not willing to say “All right. I will give that person who uses a wheelchair the job as a flight controller.” Instead, there are job ghettos. Very few people with disabilities are in non-traditional jobs. Whether they are men or women or English or French, very few people with disabilities are fairly assessed regarding the type of work they are capable of and trained to perform. I think the government does not really believe they can do an honest day’s work.

The expectations on disabled persons who do get hired are, therefore, not really equitable. I have seen several public servants who do two or three times the work a sighted colleague would do just to maintain the status quo. The biggest obstacle for people with disabilities, and I know this very well, is lack of opportunity.

There needs to be accountability on the part of managers for issues such as workplace accessibility and employing people with disabilities. It is not only a matter of maintaining an accessible work environment. There needs to be a welcoming and inclusive atmosphere, even in advance of hiring a person with a disability and not just as a reaction. There needs to be accountability and accessibility.

Worst case: Disabled persons are well off. They have programs and assistance. There are federally funded programs. Also, all new buildings are supposed to be accessible.

d) Visible Minorities

Best case: The figures we have available indicate that the largest gap between availability and representation arises when we look at members of visible minorities. Inadequate recruitment to positions is a major barrier. We are looking at a group that is collectively highly educated, so a lack of education is not the problem. The problem is in the system, in getting people into the system, and then retaining and promoting appropriately. There are well-documented cases of people who are members of visible minorities in the system, but there have been systemic

barriers to advancement. There are cases that testify to the reality of racism. Racism is alive and well in the public service, as well as everywhere else in our society.

Worst case: The issues facing visible minorities regarding employment equity are a series of smaller problems, none of which necessarily dominates any particular person's work life. They can have linguistic problems, or cultural or religious problems. They need to take certain holidays, religious holidays. Actually, by and large that is being accommodated now, because the courts say we have to accommodate it.

But maybe the biggest problem is a cultural one. For example, you may have a co-worker who comes from a culture where male dominance is the rule and women are in subservient positions. These people may not accept equality of women, and they act out in the workplace in a way that makes it clear this is a major issue. That is a clash of cultures between their culture and this culture. Where such a clash of cultural values is strong, they are going to have a great deal of difficulty mixing in the workplace.

5. What are the particular problems faced by visible minority women?

Best case: Visible minority women face a double burden: racism and sexism. I think the question of exclusion is extremely important. Canadian society is a society of exclusion. It is not a society of integration even if efforts are made. The issues include exclusion from housing, being denied a place to live. Also, there is racial and sexual harassment, up to and including violence. Harassment is a big issue. I know that young Black women have an even harder time in education and that affects career choices. So there is a problem there at the social level. To obtain equity, you have to be treated equitably in education.

There are also attitudinal barriers. For visible minority women who attempt to influence decisions, there are barriers to getting their opinions heard. There are also the subtle things that people are not even aware of, like not including visible minority women in workplace social gatherings. Visible minority women face two sets of prejudices, and they enhance one another. It is not just racism and sexism—each one affects the other one.

Worst case: Visible minority women have to face learning a new language. They also need more training. Often, what is observed is that some women can arrive here with no specific skills. We know it is harder for everyone to find a job if they lack adequate training.

Also, you are likely to see more visible minority women than in the Caucasian or European work force who are unwilling or unable to take full-time work, to be absent from home for work duties. Community and cultural pressures make it difficult for them to step outside the mould and offer the same commitment to the job as European men or women.

6. Do you believe gays and lesbians should and will become a fifth designated group in the future?

Best case: Yes, they should be included. But this will be very difficult. The discrimination faced by gays and lesbians in the workplace certainly is one of the more invisible kinds of

discrimination because a lot of it does rely on self-identification. But there are different contexts here. Reliance on self-identification is really only applicable in larger urban centres. In the more rural communities, it is quite often more identifiable than people think. If someone is gay or lesbian, many people will know, and it is often not through self-identification. And it certainly is a great problem. If it is expected that they will not self-identify, on the other hand, that means you are asking someone not to talk about who they are in the workplace.

This has many ramifications. When it comes to accessing paternity or maternity leave, bereavement or pension benefits going to their spouses, or other benefits in the workplace available to heterosexual workers, gays and lesbians face serious discrimination. There is a lot of discrimination in the workplace around these types of issues. Heterosexism is a barrier to equality.

Inclusion of gays and lesbians as a fifth designated group regarding employment equity indicates to all workers that workplace discrimination based on heterosexist attitudes and practices is not okay. It is a mechanism to create a positive work environment. So it should be included as a step in trying to eliminate hostilities in the workplace.

Worst case: Should gays and lesbians be a designated group? This question is like asking me if I believe people with AIDS should be considered as people with disabilities. That is the same question. No, I do not believe people who have AIDS should be considered people with disabilities, not at the expense of others with disabilities. Instead, there should be criteria established, under which they would be dealt with on a case by case basis. Also, you can't ask gays and lesbians to self-identify in the public service today. That is like asking them to commit suicide.

7. Do you perceive a conflict between equity considerations and those of seniority?

Best case: Historically, yes there has been a conflict. But over recent years that has changed a great deal. I do not believe that conflict is absolute. Seniority in the labour movement is meant to protect employees, to allow for a set of rules associated with layoffs, and so forth. Employment equity really does not have to come into conflict with seniority clauses at all, if it is implemented to protect workers. One of the most important aspects of employment equity is about new hires, whereas seniority is about people who are already in the workplace. Certainly, many labour unions are now negotiating employment equity clauses, and it is seen as complementary to the tradition of protection of workers as is seniority.

Worst case: Do I see a conflict? The seniority system has been built up through years of benefiting from the systemic discrimination that has resulted in the need for employment equity in the first place. The underlying system under which those individuals view that seniority is obviously flawed, or we wouldn't need employment equity.

7. THE ACTUAL AND THE COUNTERFACTUAL

In this chapter, we undertake a deeper exploration of some of the ideological positions implied in these interviews. Our research began with the assumption that employment equity policies are fundamentally informed by a recognition, more implicit than explicit in most cases, of long-term historic oppression that operates as a barrier to successful advancement of qualified candidates. Our hypothesis is that historic oppression is so ingrained within normative patterns that even in a context where the principles of employment equity are openly and formally practised, responsible individuals have difficulty overcoming the effects of historic social constructions. Understanding and recognizing how historical oppression works remain opaque in the present. This problem, we suggested, is at least part of the explanation as to why employment equity policies and practices have been less effective than might have been expected a decade ago. It also explains, in part, why it has been difficult to counter the effects of resistance and backlash. These issues need to be at the heart of new forms of training and new strategies for proactive intervention.

A decade ago, Nicole Morgan (1988) published *The Equality Game*, based on interviews with workers and managers in the federal public service. She identifies five arguments, “defended ideologically” and used to impede the progress of employment equity by those who should be expected to advance it:

- “We will not set quotas.”
- “We are not the ones who make the law.”
- “Our law is the merit principle.”
- “Women aren’t the only ones.”
- “We’re in the middle of cutbacks.”

Our interviews confirm that these ideological claims maintain surprising strength a decade later, but they are expressed in new and somewhat more sophisticated forms. These statements are no longer used as readily as arguments against employment equity, but rather as explanations for why equity initiatives have not been faster or more effective. The rationale of the late ’90s has become, “We are in favour of employment equity, but we will not set quotas.” This shift is complicated, moreover, by the fact that many of those using such a rationale are well trained in equity practice and strongly in favour of equity in principle.

The contradiction and irony of this situation sets the tone for what we have come to view as even greater barriers to effective employment equity implementation than we had anticipated. Based on the relatively small number of interviews we conducted, we found a number of key conceptual gaps between the recognition that problems exist and an understanding of what would be required to overcome such problems. In some cases, the gaps are based not only on a lack of understanding but on misconceptions, particularly concerning visible minority women. The following discussion indicates a need for a more comprehensive study that would allow a broad comparison of views among different positions within the public services, and among different provincial and federal jurisdictions.

Certainly, individuals among those we interviewed showed greater or lesser degrees of knowledge, commitment, even ability, with respect to equity issues, and some people express themselves more effectively than do others in an interview situation. We believe there is also a relationship between these individual attributes and the level of employment equity commitment among the provinces. This is, in part, because individuals in those provinces with higher commitments may have more extensive training, but also because more attention may have been paid to their qualifications when they were hired. For the purposes of this study, we are less concerned with providing a quantitative account of how many individuals hold particular views than with establishing the existence of certain concepts that form part of the general discourse regarding employment equity.

Measured Opinions

To obtain an overview of what our informants believe are the most significant factors influencing employment equity progress at present, we asked them to rank a series of statements, outlined in Appendix II, Question 8, and summarized in Table 11. These responses need to be interpreted with extreme caution. The sample size is not sufficient to provide a statistically measurable comparison of groups, either by province or by position within the public service.¹⁷ More important, similar answers may be interpreted in very different ways. The fact that respondents in both Alberta and Saskatchewan do not feel the need to devote additional financial resources to employment equity may indicate that in Alberta they do not see this as a high priority, while in Saskatchewan employment equity already has a high priority and, therefore, does not require more resources.

Each respondent was asked to respond on a scale of one to five, where a high score indicates strong agreement. A breakdown of the results is contained in Table 11. They show that our respondents, as a whole, place strong emphasis on the need for support and commitment from politicians in general, and ministers and deputy ministers in particular, as well as from the unions. They favour special measures and training programs, especially for managers. They do not support ideologically charged contentions that more time is needed for workers and managers to adjust to employment equity, that policies are difficult to implement or that there are insufficient numbers of qualified candidates among the designated groups. On the other hand, most of them agree that work force restructuring and backlash are major setbacks for employment equity. We consider these responses to be strongly influenced by the ideological environment in the provincial public services. These issues are explored in more depth below.

The Backlash Effect

With very few exceptions, those charged with the implementation of employment equity believe that the current political times have produced a backlash against employment equity that is sufficient to stymie co-operation among employees and policy makers. Further, such a backlash is sufficient that they feel a need to curtail their own enthusiasm for employment equity. At its most extreme, this position holds that any move to strengthen employment equity policy, for example, through employment equity legislation such as that introduced and repealed in Ontario, or by adopting quotas, will place in jeopardy what gains have already been made. If the Ontario government had left well enough alone, goes the argument, equity would

be further ahead than it is in the other provinces. Similarly, they point to the example of several of the American states where affirmative action policies have recently been abandoned. If there had never been such stringent policies in the first place, it is reasoned, affirmative action would have achieved far more. The higher one climbs, in other words, the farther the fall.

Only one respondent took a radically different position on backlash, with the view that giving in to the backlash argument is giving in to the agenda of neo-conservatives who were, after all, the inventors of the backlash theory. This official, in fact, held the opposite view: that the more advances taken to strengthen employment equity policy, the more effective the policy becomes. Backlash is lessened, not increased, it is reasoned, in an atmosphere where employment equity measures are strong and effective. The higher one climbs, the higher one climbs.

If we examine the backlash issue in light of the federal situation, it is difficult to sustain the idea that employment equity policies necessarily work against themselves to reduce the effects of employment equity. Recent federal governments have been fairly straightforward in expressing publicly their support for employment equity (regardless of how effective the programs have been or of how effectively they follow through on their commitment). In Ontario, in contrast, the backlash effect seems to have been significant. It is clearly the result, however, and not the cause, of a deliberate ideological campaign to dismantle employment equity policy. For advocates of employment equity, therefore, this is clearly an area where there has been inadequate response to the backlash argument, and where our conversations suggest the anti-equity position has had a very significant effect.

The Carrot and the Stick

Virtually all informants agree that employment equity practices work best in a positive atmosphere: a carrot is more effective than a stick. But this position is articulated in two distinct ways. One group believes that employment equity will never work effectively until it is strongly legislated; the challenge is to create positive ways of fostering support for legislation. We agree strongly with this position, and will take it up again in the conclusions.

Another group, following closely the logic of the backlash theory, believes that placing a strong legislative framework around employment equity will result in negative responses from those who feel that equity is being “jammed down their throats.” Their response is to go slowly or, in some cases, not to move at all, not to “rock the boat.” Some would go so far as to advocate that what the federal government calls “positive measures” create a new form of inequity because they are more fair to some than to others. The problem with this carrot and stick analogy is that it precludes a vision in which employment equity is *both* strong and positive. The issue that does not seem to be well explored or understood is how indeed to induce positive change in more decisive ways; this position very easily slips into the anti-equity stance that we see expressed more and more in the guise of “diversity.”

This position is advocated in a recent, widely read book by Trevor Wilson, who claims that:

The problem with legislated equity was that it frequently created more inequity by totally ignoring one major group—i.e., white able-bodied males.

It was soon clear that legislated equity had very little to do with real equity.... When we talk about equity, we are talking about fairness. The goal of a diversity program is fairness but, unlike the legislated approach, in diversity we are talking about fairness for all (Wilson 1996: 21-22).

Wilson's diversity approach is modelled on recent marketing strategies that use motivational techniques to implement organizational change. This is presented as a feel-good method that will encourage managers and workers alike to get themselves hyped up about creating a diverse work force. While we agree with the general objectives of creating diversity and building positive support, this approach will not be effective in creating fundamental changes in workplace culture and, at its worst, is likely to isolate those in a minority even more while creating smug denial among the majority group. Or, as in the case of Ontario, the concept of "diversity" may become an effective tool in the hands of those who actually oppose employment equity policies.

The Invisible Visible Minorities

Available evidence suggests that visible minority women are remarkably absent from most public service workplaces in Canada. While many employment equity implementers are aware that their absence is a problem, they may also hold a normalized vision of the workplace as dominantly White. This is not to say that they would explicitly wish or strive for a mainly White workplace, but only that it is what they expect. Their expectations have not yet been sufficiently challenged that they are willing to take strongly proactive steps to change the workscape. In some cases, the failure to notice visible minority women is accompanied by a belief that there is not a problem, either for those already within the public service or for those without. The only thing that will change those expectations, in our opinion, is a program that would challenge the dominant notion of what a "normal" workplace looks like.

Perhaps an indication of the extent to which the workplace reflects the dominant "view" is the fact that among our 43 interviewees in government positions there were only two Aboriginal women, one Métis man and two women of colour. In addition, we interviewed one woman of colour who works for a provincial employees union. Many of our respondents were aware of the issue, but as long as those charged with implementing employment equity are predominantly White, it will be very difficult to challenge the norm of colour.

The Culture Club

One of our more disturbing findings is that there is a relatively low level of understanding among employment equity implementers and policy makers of the actual circumstances faced by visible minority women. In response to the question about particular problems these women face, more than to any other question, we received a reply referring not to the workplace or to policies, but to the putative attributes of the women themselves. On several occasions, their cultural background was cited as an impediment to their success in the workplace. Reasons varied: they are believed to have "different" values, because their family backgrounds discourage work, because they are less "liberated" than White women and may face opposition, even violence, from husbands who oppose their participation in the

work force, because they are assumed not to speak English well (conflating visible minority status with immigrant status but ignoring the fact that even most visible minority women immigrants come from former British colonies where English is the norm), or because it is assumed that if they do not speak English well they will not be able to work effectively.

These perceptions about the nature of visible minority women have come up often enough in our interviews with senior government officials to convince us that they are an important part of the employment equity conversation in Canada, in both federal and provincial jurisdictions. We believe this conceptual direction is a major impediment to effective employment equity for these women. At the root of the variety of assumptions about visible minority women is a more fundamental assumption that they are simply different from others in the workplace and that difference easily takes on an immutable character. It will not be changed substantially until the face of the public service work force becomes more diverse, and until effective positive measures are put in place to educate and inform at all levels.

Employment Equity as a Numbers Game

Our first interview question asks for a definition of employment equity. The answers we heard indicate that most of our respondents have thought deeply about what they consider equitable. One theme that emerges strongly, however, is a preoccupation with employment equity as a numbers game, whether with respect to representation or distribution issues. Employment equity in Canadian public services to date has primarily been about getting more of the designated groups into the work force, and ensuring that they are better distributed throughout the employment ranks. Several participants referred to an “employment equity hire” of a designated group member. The implication of this terminology is that employment equity kicks in only at those specific times when a designated group member is hired or promoted; by corollary, employment equity does not apply to non-designated group members or to vast areas of work and policy outside of hiring and promotion. Rather than promoting a fair and equitable work environment, this designation results in the “equity candidate” being stigmatized in the process.

We do not suggest that this is the actual belief of most of those we interviewed. In fact, nearly all, when prompted, will go much further to state that employment equity needs to be a fundamental principle throughout workplace practice, and that it does not stop at the numbers. What is significant here, however, is that such points are made only on secondary reflection. The immediate response is more often one that focusses on numbers. This indicates to us that it is in the numbers area that implementers and policy makers feel most comfortable talking about equity, and that initiatives have been primarily geared to numbers with an emphasis on reporting. Going beyond the numbers involves a stretch into territory that may be recognized in theory, but is still relatively unexplored.

The Equity Conversation

These observations raise some very interesting questions about the reactive, proactive and inactive aspects of employment equity policy and practice. Reactive statements, taken off the cuff, indicate that there is often a gap between equity according to the textbooks and the

unreflective, deep-seated, conceptual understanding of processes of discrimination and of the experiences of members of the designated groups. Our general sense is that the proactive climate across Canada, with some important exceptions, is fairly still at the moment. Silences in the conversation indicate considerable passivity, inactivity or stagnation in terms of policy initiatives and implementation.

But employment equity is a hot topic of conversation in Canada; there are few meeting tables, dinner tables or negotiation tables at which it has not held a fairly significant place in recent years. Our interviews were designed to form part of this larger national conversation, albeit restricted to discussion with those who know most, or should be expected to know most, about the topic. Our objective has been to insert ourselves into the dialogue that we might better understand the contours of the discourse and the parameters of debate through which employment equity policies are formulated and implemented.

The tenor of the conversation suggests that we need to understand the general discourse at two levels. At the first level, we need to analyze the vernacular expression of ideas about employment equity, recognizing that this conceptual context is an important regulator of the impact and effectiveness of employment equity policy and practice. We seek to understand, for example, whether the “backlash theory” represents a well-placed misunderstanding of how to make employment equity programs effective or, rather, an effective code for reluctance or refusal to act in the face of what is seen to be oppositional public opinion. In other words, is the backlash the issue, or is the social construction of backlash a cover for the lack of proactive attempts to achieve employment equity?

We seek to understand the complex of circumstances that lead managers, implementers and policy makers sometimes to act against the grain of their putative objectives. And we seek to understand what kinds of new conversations and practices need to be initiated to challenge those ideological barriers we have identified as antithetical to employment equity. At a much deeper level, we seek also to understand the production of the discourse, by exploring the ways in which employment equity debates are part of the larger process by which national (or provincial) identity is constructed. Normative values regulate human relations of which working relations are one manifestation and are, in turn, shaped by the ways those values emerge in everyday discourse. Ideological imperatives emerge to reflect not only such everyday patterns, but also the more general political and economic environment.

That environment is deeply and fundamentally racialized. Therefore, we cannot understand the employment equity context without also understanding that it reflects notions of racial difference that are deeply imbedded in social constructions. Even many of those who have made it their business to overcome inequality recognize racism and barriers that enforce racism only with a great deal of difficulty. The contexts of “diversity” and “difference” in the implementation of employment equity policy are strongly tied to those structural practices that make discrimination a fact of life for visible minority women.

8. IMPLEMENTING EMPLOYMENT EQUITY: LABOUR AND COMMUNITY ISSUES

In our original research design, we stated:

Setting goals is easy; achieving effective and meaningful change is not. Our research addresses, therefore, the difficult and little understood question of how public policy can work to bring about changes in dominant attitudes and historic practices.

Our research has confirmed and highlighted the difficulties encountered by advocates for employment equity in bringing about “changes in dominant attitudes and historic practices.” Our earlier statement that “setting goals is easy” is in need of amendment. In some provinces, the issue of simply setting effective goals to achieve employment equity is actually a major challenge. In those cases where goals have been set, we commonly encountered a sense of insecurity that past gains may be compromised, or that they have been relegated to paper agreements that lack backing for effective implementation.

In this section, we consider the perspective of non-governmental personnel who are either employees of, or dependent on, provincial governments for their operation. We specifically aimed to discuss employment equity concerns with leading representatives of the major public sector unions in each province, and with representatives of the Status of Women Canada offices or other organizations involved in community employment equity issues.

The Employment Equity Context

The findings based on these interviews can perhaps be summarized as reflecting a condition of systemic frustration. The types of frustrations, and the nature of the specific concerns, vary considerably. Also, though there have been cases of successful change, we were not able to identify a model where there is a singular sense of accomplishment or security that past gains will be protected.

The general assumption of our research, that employment equity policy is at an impasse regarding implementation, therefore has been partially confirmed by these general findings. But this assumption is also in need of amendment in light of research findings. Even in provincial contexts of considerable backlash against employment equity principles, the debate is not at a standstill. There is an impressive continued commitment to the essential goals of employment equity, and a bold sense of determination to keep the agenda for change in the direction of greater equity alive and well.

Based on these findings, it is perhaps more accurate to consider employment equity issues in Canada today as in a dynamic period of debate, controversy and struggle. Even where there is the appearance of an impasse, the situation is not static. It would be inaccurate to presume that there is an absence of continued effort toward the elimination of systemic oppression and the positive development of workplaces open to the recruitment and advancement of

women, persons in a visible minority, Aboriginal peoples and persons with disabilities. There is also considerable support for the rights of gay and lesbian members of the work force, and concern that homophobia be identified as a barrier to workplace equity.

In broad strokes, employment equity supporters face a continuing debate about whether employment equity principles are to be supported politically and socially, and whether they are applicable in a particular provincial government setting. Even where policy or legislative gains have been achieved, however, there continues to be concern, whether overt or covert, regarding effective implementation, assessment of success, applicability and scope.

In general, we have concluded that employment equity can only be achieved in the workplace if there is a commitment at some level, and preferably at a variety of levels, consciously to challenge systemic oppression. Where there is employment equity legislation, as in British Columbia today, there are structures in place which support employment equity advocates. The atmosphere conducive to effective advocacy is thereby greatly improved. But legislation alone does not ensure implementation. In the absence of effective advocacy in any specific workplace, or at any specific time, the experience of attempting to implement existing legislation may be one of frustration or maintenance of the status quo, rather than successful positive redress of patterns of oppression.

Moreover, an absence of legislation or policy does not necessarily translate into an absence of effective employment advocacy at the workplace level. In provinces, such as Ontario, which have a history of employment equity legislation, some workplaces may continue to have a culture of equity practices despite the repeal of the former provincial employment equity law. In other provinces, where there are employment equity policies but an absence of legislation, advocacy for employment equity policy may take place through a variety of other channels, including labour union advocacy in collective agreements. When there is an absence of policy *and* an absence of legislation regarding employment equity, however, and there is little or no history of effective advocacy for employment equity (as in the cases of Alberta and Newfoundland) the sense of isolation and frustration among employment equity advocates appears to be most severe.

Based on these findings, it is clear to us that policy and legislation favouring employment equity usually indicate more than simply the words that appear on paper. Instead, varying degrees of successful advocacy, education, activism and argument regarding the understanding of systemic oppression and its manifestations at the level of the workplace tend to surround effective employment equity policy. This context of debate may prove equally, or in some cases more, important to the achievement of equity principles in any given workplace over the long term. Policy and legislation alone appear to be insufficient to assure effective implementation. At the same time, the absence of effective policy and legislation does not necessarily indicate an absence of advocacy and support for employment equity policy in the province in general. What may be indicated is a current failure to achieve institutional protection and enforcement, even on a minimal level. While this is damaging to the advancement of the designated groups and, therefore, to the employment situation as a whole, and should not be underestimated, it should not be presumed to be a permanent or unchanging condition.

Let us consider what is arguably the most favourable provincial context for employment equity policy from such a perspective. In British Columbia, where employment equity policy is most developed, there has been an interventionist role by the NDP Government regarding the implementation of employment equity. As stated by one advocate, by the time of the NDP's second term in office, the ministers were expecting departments to "show us your numbers." Because of a general hiring freeze within the civil service, however, there are few means to increase the applicant pool among the target groups beyond those already employed and competing internally for advancement. Moreover, frustration was expressed with bottlenecks within the bureaucratic structure, making implementation of agreed upon decisions at times extremely slow.

In Manitoba, where employment equity policy has been in place since 1983, though there is no legislation, advocates describe a passivity that has set in, now that it is perceived that the province is in a "post-equity era." For example, the government is perceived to be hesitant to bring in policy that would provoke resistance from the labour movement or other community activists. Our research indicates that since the early to mid-1980s no significant new proactive initiatives to advance equitable conditions have been implemented.

For those provinces that do not have employment equity policy in place, advocates expressed extreme frustration with some governments. In one case, the "brick wall syndrome" was described, where advocates tire after months or years of trying to implement even small changes in the direction of equity but find no real progress. In another case, changes are only seen to occur where there has been a mass, public, active fight, including lobbying and strike action. Several advocates in provinces where the backlash against employment equity policy has been given either institutional backing from government ministries, or has been allowed to continue unchecked, perceived a continual erosion of support systems for all the designated groups within their province as a whole. In such instances, there were fears that openly discriminatory behaviour including sexual harassment and racist incidents were being given renewed licence as a result.

We encountered in the interview process many individuals who were very committed to the goals of equity in society as a whole, but levels of training and expertise in employment equity specifically varied greatly. This is, in part, a result of the specific contexts in which advocacy for increased rights for a wide constituency of workers occurs, and where there are similarly a wide variety of issues at stake.

It would seem that the existence of official provincial government employment equity policy serves at least, in part, to focus the attention of the advocates in the direction of effective implementation. Where there is effective policy in place, it appears to encourage a level of expertise among the advocates. We were able to identify a rough correlation between higher levels of knowledge, confidence and experience among personnel responsible for employment equity advocacy in the provinces, and the most effective employment equity policies and legislation. This did not only apply to the current policies or legislation in place, but also, in the case of Ontario, to previous policy and legislation that have been repealed.

In the absence of employment equity policy, however, knowledge of employment equity would appear to be almost accidental. In part, this is a reflection of the complaints-driven context in which such issues tend to arise if there is no policy to seek out positive measures to advance employment equity. In other words, in for example Alberta, Prince Edward Island or New Brunswick, where equity issues are largely handled through human rights complaints or labour grievances, advocates may have knowledge of specific issues that had arisen through these routes. In Saskatchewan, though employment equity policy is monitored through the Human Rights Commission, the policy allows for a proactive role that goes beyond the complaints mechanism alone (SHRC 1996).

With the exception of the Saskatchewan example, however, the presumption that employment equity issues can effectively be addressed through the implementation of provincial human rights codes was heard primarily not as a position of advocacy, but as one of opposition to employment equity policy. The claim that there is no need for employment equity policy, or that existing policy does not need to be strengthened by legislation or other enforcement measures, was commonly defended on the grounds that human rights commissions already exist for the same purpose.

Our findings suggest that this assumption is extremely misplaced. The systemic frustration among employment equity advocates described above commonly pointed to the failure of a complaints-driven mechanism to address systemic oppression adequately. This is not to suggest, however, that any employment equity policy is immediately effective. In a number of provinces where there is some form of employment equity policy, there appears to be either little political will or a lack of effective mechanisms for enforcement.

Policy formulations by governments may open the door for greater advocacy toward effective implementation. Advocates in some provinces have taken the opportunity to push the employment equity agenda further, only to find that detailed discussion papers do not move beyond the file drawers. The result is that advocates can be doing the job they are expected to do, and which they are responsible for, concerning advocating for equity in general. Regarding the specific issues and concerns that relate to employment equity policy, however, their effectiveness may, by their own admission, be limited.

Within the broad range of issues covered under employment equity policies in general, two trends seemed to recur in these interviews. First, the understanding of employment equity regarding women who are not members of the three other designated groups was usually significantly greater than for any other single designated category in almost every province. This was true even when the issue of the specific experiences of women who were also members of another designated group was raised. Second, knowledge of the issues relating to visible minority women varied greatly depending on the particular socio-political context of the province. This observation did not indicate a weakness, but on the contrary the importance of the wider context of social, economic and political struggle beyond the realm of policy discussions alone to achieve equity. In Nova Scotia, there was notably strong sensitivity to the interests of Black women as a visible minority. In Manitoba, Prince Edward Island and British Columbia, the interests of Aboriginal women were repeatedly noted. In New Brunswick, though this was not included as a specific question in the

interview process, the interests of Francophone women were repeatedly identified among the respondents under the rubric of “visible minority women,” citing examples of workplace discrimination on the basis of language and culture.

Our research indicates that with or without an explicit policy calling for employment equity, the implementation of such policies requires the attention and persistence of advocates. Policy is necessary, it appears, but not sufficient, for achieving a climate conducive to increased support for employment equity implementation. While statistical profiles are not available, the extensive interviews conducted point to some common patterns.

This is not to suggest that even within existing and varied conditions and contexts, there is not considerable scope for variation in orientation. In some cases, representatives in labour and community organizations were more sensitive to the issues of employment equity than others. More specifically, in some provinces there is significant understanding of the particular implications of employment equity policy in general and for visible minority women in particular, while in other cases, knowledge of the issues appears to be far less advanced or even non-existent.

Employment Equity and Labour Unions

One of the most important issues in terms of employment equity implementation at the workplace level is the role of the labour or trade unions. Employment equity policy at the provincial level and the mandates of provincial labour unions regarding employment equity may, and often do, complement one another. They may also come into conflict. Our findings conclude that there is nothing predetermined or structurally predicated in terms of the policies of labour unions toward employment equity. This is, in part, because employment equity policy and legislation operate differently than the policies of labour unions.

Employment equity policy is essentially structured as a guideline for employment practices. Where there are policy or legislative directives, they are applicable to management in the form of directives relating to recruitment, hiring, promotion, retention and possibly dismissal practices. Whether or not the specific workplace is unionized is not the central issue regarding employment equity policy development. However, employment equity is relevant to all employees and prospective employees when policy issues move to the question of implementation. The most effective implementation of employment equity policy necessitates the co-operation of the entire work force.

Trade unions, however, are defined as organizations that represent their constituencies at the workplace. While many unions today have community-oriented policies, as bargaining agents, they are not structured to represent prospective employees who have not yet been hired. Moreover, collective bargaining involves a process of negotiation, sometimes escalating to a point of conflict—including possibly grievances, workplace actions or strikes. Alternatively, negotiation may also include substantial compromise with employers.

This study has focussed on the public sector as a place of both policy development and employment. Historically, federally and provincially, service sector employment has been an

area of post-World War II expansion, with employment positions filled largely by women workers. Since the 1970s, expansion has stalled, and the 1990s were characterized by a contraction in the service sector. However, women workers still comprise a substantial majority of employees. In this, the pattern in Canada has been similar to other advanced western liberal democracies. Though women workers have been paid less than male workers performing comparable work, and have faced discrimination in promotions, they have been the majority of the work force.¹⁸ Currently, in every province, women workers in the public sector have an established tradition of trade union organization and collective bargaining, including negotiation for greater rights as women workers, specifically over issues such as maternity leave or equal pay.

Unlike employment equity legislation or employment equity policy that is enforced by specific mechanisms, collective agreements are, by definition, temporary and transitional. Rights and obligations are bargained for and can be threatened with elimination, bargained away, eroded or strengthened, in later negotiations. Union leaderships are elected and are subject to change over time; similarly, levels of participation and the involvement of rank and file workers in any given local trade union are variable. Finally, unions are bodies that develop policy positions, and engage in conventions where various positions are debated. The public sector unions considered as part of this study often had considerable histories of internal debate and discussion regarding the relevance and implementation of employment equity for their memberships.

Although we made an effort to consider these questions in this study, some of the provinces were represented by a large number of unions, and the unions themselves often had a variety of relevant collective agreements. A complete overview of trade union policy regarding employment equity at the provincial level goes beyond the scope of our investigations. Our research indicated, nonetheless, that some collective bargaining agreements explicitly include language to implement employment equity. These agreements are binding on both employers and employees over the life of the contract. At least in British Columbia, Manitoba, Nova Scotia, Ontario and Saskatchewan, there is employment equity language in the collective agreements or official union policy statements among the largest representative unions.¹⁹

Some union leaders have had the experience of arriving at the negotiating table armed with a well-articulated mandate and an organizational policy to advocate employment equity for their memberships. There are also employment equity advocates within the labour movement who continue to fight almost as difficult a battle within their own organizations as they do with the public service administration. Similarly, union leaderships have varying types of relations with employment equity implementers in government.

In two provinces, implementers are convinced unions represent one of the major impediments to advancing employment equity. Our interviews in the other provinces, however, indicate that the unions are convinced employment equity is a means of protection of all workers' interests and should be supported in contract negotiations and grievances. It was more difficult to determine how such support was made operational, especially given the variation in levels of resistance or advocacy for employment equity among their various provincial governments in their capacities as employers.

One particular issue that we were concerned to address was the relationship between seniority rights and employment equity. A variety of responses explained this interface. In at least two public sector unions, employment equity within the public service is defined, in part, in terms of certain designated positions where only those in a specific equity target group could compete. Once so defined, seniority serves as a criterion to differentiate one candidate from another within the designated group.

Another union representative saw the issue of seniority as a means to combat a prior history of patronage or favouritism in promotions. With employment equity in place, the criteria for promotions must be very clear and only associated with the requirements of the position itself. Employment equity was seen to be a complement to seniority rights.

Along similar lines, another senior union representative addressed this question in terms of a consideration for various mechanisms to ensure against arbitrary managerial practices, historically and in the present. The principle of workplace seniority, it was stated, was developed and fought for in the labour movement in Canada and internationally to ensure that those with accumulated years of experience could not be arbitrarily victimized or dismissed, particularly if they argued with an employer or advocated for better working conditions. As the work force has changed in modern times, especially with larger numbers of women and immigrants becoming a permanent part of the Canadian work force, one form of protecting workers against arbitrary managerial practices is to ensure a system of employment equity in hiring, retention and promotions. In such a view, employment equity principles were seen to support and augment the principles of workplace seniority.

Another union representative maintained that employment equity principles are central to the union's collective bargaining strategy. In at least Ontario, British Columbia and Nova Scotia, unions have actively lobbied for or participated in government employment equity policy development.

One union representative described a situation where a debate occurred regarding the hiring of a person with a disability for a designated position in a government workplace. Originally challenged by fellow unionists as a violation of seniority, she was called in to investigate. She argued that it was in the best interests of the able-bodied workers to encourage the new employee's participation. The hiring was actually a countermeasure, she maintained, to the historic denial of the opportunity to gain workplace seniority that was carried out by discriminatory management practices. The new employee's lack of seniority, as she put it, "was not his fault. It was systemic." The argument was won, and the resistance was transformed into support for the position and for the employee.

It should not be assumed that all outcomes are inevitably positive ones. In several instances, the achievements of workplace equity have been seen as potentially threatened by major government restructuring. Seniority concerns in such circumstances may be equated with job protection of a given section of employees, who may then perceive any increase in further employment as a potential threat to their own positions. In such instances, one section of workers can become pitted against another, and divisions along lines of race or gender may be fuelled. Equal access to employment is predicated on the existence of jobs

and room for advancement. In an age of cutbacks, downsizing and layoffs, employment equity can be reduced to matters of retention and promotion from among a smaller and smaller pool of employed workers. Issues of recruitment and access become subsumed under concerns for a balanced budget. The risks to the most vulnerable groups of workers in such conditions, not least visible minority women, are quite profound.

9. CHARTING NEW COURSES: THE POLICY AGENDA

Our findings suggest there are two extremely difficult aspects to the employment equity impasse. The first, outlined in Chapter 7, is that the discourse in equity contains conceptual and ideological barriers to identifying, understanding and normalizing employment equity objectives. These barriers are deeply embedded in historic oppressions that affect society in general, but are expressed in subtle ways even among those formally most dedicated to overcoming barriers and implementing equity. The second, outlined in Chapter 8, is that contradictions among the objectives of different players within Canada's public services create frustrations, fears and bottlenecks that need to be addressed by political initiatives that include but also go beyond policy issues. We have also identified a range of areas where shorter term policy initiatives might be undertaken, and where we might begin to break apart the clusters of employment equity implementation barriers faced by visible minority women.

Provincial Variation in Employment Equity Policy and Practice

As indicated in Chapter 3, huge differences exist in the structure and application of employment equity policies across Canada. These are not simply differences in degrees of effectiveness, but are a significant expression of the variation in political culture from one province to another. Provinces have very different political histories, and social and economic priorities. These differences are expressed in a variety of provincial discourses that establish distinctive regional identities, expressed in ideological terms. These differences indicate to us that, on the one hand, it is important to develop policy and practices that are context-specific, with a view to understanding what will work for a particular population and set of circumstances. On the other hand, some of the variation is also due to unevenness in terms of training, implementation and experience. On this basis, the following policy recommendations are indicated.

Recommendation 1: Recognize what works, given a specific geopolitical context.

As recent national political debates show, there are many aspects of Canadian society for which a "one size fits all" policy is not appropriate; employment equity is one of them. At least in the short term, policies need to develop to suit the legislative and public service cultures of Canada's diverse provinces. This is not to suggest that regional identity should be used as an excuse for not implementing change; rather that change can only occur effectively when it is contoured to a specific landscape.

Recommendation 2: Employment equity policies should be suited to local demographic characteristics.

Of course, employment equity policies must be fair to all, and need to be applied for all the designated groups. Special measures programs, however, should be developed with a view to the specific needs of local communities, for example, Aboriginal peoples in the north, communities of Asian background in British Columbia and African-Canadian communities in Nova Scotia. Those places with the largest minority communities, as well as the largest

absolute numbers of visible minority employees, currently have among the lowest rates of representation relative to the size of the work force.

Recommendation 3: Develop mechanisms to share and compare employment equity strategies among provinces.

We were surprised to discover how little discussion of employment equity crosses interprovincial borders, either at the political or at the public service level, or among the provincial employees' unions. At the highest political level, employment equity should be placed on the agenda for discussion at first ministers' meetings. At the level of implementation, communication and collaboration could be facilitated by developing interprovincial networks, joint union conferences, union-management conferences and national co-operative training programs.

Recommendation 4: Conduct comparative research to analyze which province-specific practices are most effective.

There has been virtually no research published comparing provincial employment equity policies and results to our knowledge. While our research provides a very preliminary provincial comparison, there is a strong need for research to undertake deeper and more detailed analysis. Such analysis needs to consider not only the obvious issues of differences in legislation and policy, but also differences in political culture and institutional history that affect the climate for change.

Building Commitment

Building commitment to employment equity is perhaps the most difficult objective, since it involves fundamental ideological shifts, usually not achieved through changes in policy and practice alone. Most of our respondents were not only committed, but passionate in their desire to make employment equity policies more effective; many expressed frustration at the lack of commitment in a variety of other areas of responsibility. Several aspects of policy emerge as conducive to commitment building.

Recommendation 5: Foster exchange of information so commitment is built on common goals and understanding.

We were most impressed with the level of commitment in those jurisdictions with a means of bringing all the equity stakeholders together on a regular basis. Saskatchewan and British Columbia have province-wide consultative committees on employment equity that bring together representatives of government and the unions. At the federal level, there is the Interdepartmental Committee on Employment Equity that includes members from the Treasury Board Secretariat and federal departments and agencies, four consultative committees that represent the designated groups, the National Joint Council/Joint Consultation Committee on Employment Equity that brings government and the unions together, and a joint committee at the deputy ministers level. Such committees, when they work effectively, not only increase information flows but emphasize that achieving equity is a partnership in which various constituencies have a strong stake.

Recommendation 6: Develop effective means of communicating employment equity programs and policies to all stakeholders.

Our preliminary research suggests that the most serious aspect of the backlash against employment equity is fear or, in some cases, scare mongering, about backlash. The most effective way to counter backlash is to ensure that everyone with a stake in employment equity is fully informed about the goals, expectations and rationale for effective measures. Information assists designated group members to use programs more effectively, and increases understanding and acceptance among non-designated group members.

Recommendation 7: Policies need to set clear guidelines and targets that cannot be easily ignored, and preferably, are enshrined in legislation.

Despite an antipathy to legislation on the part of most of our respondents, our work suggests that legislation is the most effective way to advance equity through guidelines that are clear and unambiguous, and that create firm obligations. While a positive environment is also important, the relationship between obligation and commitment needs to be supported by the strongest possible requirements for accountability.

Recommendation 8: Targets should increase progressively rather than remaining static.

Employment equity is a moving target, both because the social context and community values change, and because each achievement creates new needs. Targets, whether expressed in numerical or qualitative terms, need to be reviewed and adjusted on a regular basis to ensure that they are realistic and that they operate as achievable goals.

Recommendation 9: Positive reinforcement should be built in to the system.

Positive reinforcement can be achieved in a range of ways that includes competitions and awards for progress, which occur at the federal level, and a meaningful system of achievement recognition. Public recognition of achievement, through newsletters, annual reports or media coverage, increases both commitment and awareness.

Reporting

The amount of information on provincial employment equity programs and policies varies, but it is generally a significant problem. Whereas at the federal level there is a vast amount of information available, only in the province of Saskatchewan did we obtain extensive and detailed written information.

Recommendation 10: Detailed annual reports on employment equity achievements should be mandatory.

Those provinces with a mandatory reporting system are also the provinces where employment equity is most developed and where there is a higher level of accountability. Reports should be produced and made widely available.

Recommendation 11: Create effective educational materials to provide employment equity information.

Effective informational materials play a major part in informing all concerned of their own obligations and of the needs of others, in reducing fears based on ignorance, and in maintaining

commitment. Saskatchewan has recently produced an excellent publication, *Road to Equity: Hope for Diversity* (1998), as a joint union–management initiative. Not only does such a publication reach a wide range of people, it can be a very effective means of educating and fostering co-operation among those involved in its publication. Similarly, the consultative groups within the federal public service have produced a series of publications that convey more effectively than any other means the conditions faced by members of the respective designated groups.

Making Employment Equity Work

Legislation and policies alone will have limited impact unless they are backed up with specific measures that ensure maximum effect. Various measures have been developed at the federal level in recent years, with varying degrees of success, but we found very little at the provincial level.

Recommendation 12: Involve all parties in consultation and collaboration on employment equity programs.

Unions, employee groups and others have a great deal of information and expertise that can add to the effectiveness of employment equity programs. Their involvement increases their interest and commitment, and facilitates a higher level of education. Consultation and collaboration should be serious and respectful.

Recommendation 13: Use designated staffing to increase representation in those areas where the most serious lack of representation occurs.

Our research shows that designated staffing works very effectively in Saskatchewan and British Columbia, where it is sanctioned by collective agreement. Evidence also suggests that no matter how extensive or effective the other aspects of employment equity programs are, it is important to bring numbers up as a first step, and there is rapid improvement once critical numbers are reached. This is especially the case for those designated groups, such as visible minority women, who are most underrepresented and who face strong residual effects of historic oppression. No method is more effective than designated staffing, but it must be done according to careful guidelines, and in full consultation with bargaining agents.

Recommendation 14: Develop strong and effective mechanisms for monitoring employment equity results and for achieving compliance.

The requirements of the federal *Employment Equity Act* specify that all departments must set targets, conduct employment systems reviews to assess systems and remove barriers to full access, and undergo independent compliance reviews undertaken by the Canadian Human Rights Commission. In our opinion, this process represents the most effective means of ensuring that employment equity policies are taken seriously and that progress will advance according to a reasonable agenda.

Measuring Employment Equity Results

Although we argue throughout this report that employment equity is more than numbers, the numbers are important as a partial measure of success and as a basis for assessing the needs of the designated groups.

Recommendation 15: Employment equity data should be broken down by gender across the other three designated groups.

For many years, employment equity advocates have complained to governments that the method of statistical reporting that fails to disaggregate according to gender fails to recognize gender-based differences that may occur within the other three designated groups. In recent years, some jurisdictions, especially the federal government, have begun to provide representation data for all groups by gender, but they still fail to provide breakdowns across analytical categories for such things as hiring, separations, promotions, occupational breakdowns and regional distributions, possibly masking very significant characteristics of women in these minority categories.

Recommendation 16: Provincial officials should work together to standardize statistical measures and reporting.

One of the greatest difficulties we faced in our attempt to compare provincial employment equity results was the unavailability of data. The information we have for four provinces is based on substantially different criteria. Recognizing that data collection is itself an ideological exercise, standardization of data is a difficult objective, but one that would allow a much better sense of representation issues.

The Employment Equity Portfolio: Whose Responsibility?

The employment equity portfolio is perhaps more variable across provincial public service structures than any other feature. In some provinces, particularly Alberta and Ontario, it is difficult or impossible to identify an office or individuals with direct responsibility; in others, such as British Columbia and Saskatchewan, the lines of responsibility are clear and well publicized. We believe it is of utmost importance that responsibilities be specified as clearly as possible.

Recommendation 17: Make equity everyone's responsibility, but specify a clear mandate for the administration of equity.

The seductive but simplistic claim that equity is everyone's responsibility can easily result in it being no one's. Employment equity requires strong leadership, and effective administration by people with the training and qualifications to develop and implement policies and practices. The responsibility needs to be reinforced equally, but in different ways, for those in the highest positions, and for those responsible for day-to-day implementation.

Recommendation 18: There should be at least one individual in each department whose sole mandate is employment equity administration.

In most departments throughout provincial public services, where dedicated employment equity officers are appointed, they divide their time between employment equity and other

duties, usually in some human resource capacity. Because employment equity is a long-term process compared to some of the urgent needs that arise in the everyday administration of human resources, it often gets pushed to the bottom of the agenda. Furthermore, individuals who cannot devote full time to employment equity tend to spend their time doing the required tasks such as making reports, and have little time for program development, training or creative thinking.

Recommendation 19: Specify clear rewards for those who do, and penalties for those who do not, meet their employment equity targets and responsibilities.

It is too easy to blame others or blame “the system” when targets are not met. This attitude is one that we found especially strong among some of those with the highest responsibility for employment equity. In an atmosphere that is strongly supportive and constructive rather than punitive, it is important to make it very clear that results matter. The strongest way to relay this message is to build responsibility for employment equity into annual performance reviews or other evaluative mechanisms, at every level, including that of deputy ministers.

Training, Training, Training

Aside from the development of effective policies and legislation, training is probably the most crucial key to achieving employment equity. Training programs vary tremendously from province to province, in both content and extent.

Recommendation 20: Develop national collaboration on employment equity training standards.

At present, there is almost no interprovincial collaboration on training standards. Most employment equity training in Canada is done by private consultant firms, which vary tremendously in their approaches and in the quality of their training. Common standards and collaboration, however, would greatly benefit all employment equity advocates. Greater awareness of what others are doing would increase the quality of local training packages.

Recommendation 21: Training programs need to be tied to the socio-political context.

Effective employment equity training goes beyond the immediate concerns of human resource management, to address the wider social processes through which systemic oppression occurs. Racism, sexism, homophobia and discrimination against people with disabilities need to be understood as the foundation of employment inequity.

Recommendation 22: Employment equity training programs need to reach all of the work force, at all levels.

A variety of training programs is needed to involve all members of the public service in ways that are appropriate to their respective positions. Training for the entire public service should be mandatory and ongoing, with built-in progression over time. The concept of training the trainers works very well to increase expertise and to generate greater involvement.

Recommendation 23: Employment equity training should cover all aspects of workplace relations and should be built into all other training programs.

While specific employment equity training is important, it is just as important to recognize that there is an equity component to every aspect of work and training, from technical courses to human resource management and communication courses. It is essential that employment equity not be isolated into a separate jurisdiction. All trainers should receive employment equity training as part of their mandatory qualifications.

Anticipating and Countering Backlash

The spectre of backlash is a serious concern to most of our respondents. As a result of recent developments in Ontario, this concern has been raised to higher than ever proportions, and we believe it is a major factor impeding the progress of employment equity policy development in a number of provinces. Backlash is the bottleneck of the current phase of employment equity implementation.

Recommendation 24: Provide effective information to counter the backlash effect.

Backlash is effective as much for the fear it generates as for the political opposition it musters effectively. That fear can be countered only by providing employees with an effective explanation of how it works, and effective means of countering backlash arguments.

Recommendation 25: Develop specific training programs and workshops to deal with the backlash phenomenon.

Effective public policies are those that have mechanisms for addressing the issues of the day. In the current climate, this means bringing experienced people together to think creatively about how backlash can best be countered in their own jurisdictions.

Employment Equity Policy and Visible Minority Women

Our findings suggest that visible minority women suffer among the most severe consequences of historic oppression in Canadian public services. They are among the least representative numerically, and the employment equity conversation indicates the lowest level of understanding of their circumstances. Their situation requires some very specific policy initiatives.

Recommendation 26: Develop anti-racism training and policy programs at every level of the public service.

Only specific anti-racism programs will address widespread systemic effects of racialized practices, attitudes and beliefs. In today's context, racialized practices are often not the overt racism of the past, but subtle effects of long-established historical trends; they need to be countered with systemic training programs, mandatory for every employee. A training program entitled, Walk a Mile in My Moccasins, developed by Manitoba Employment Equity Co-ordinator, Louise Chippewa, provides an excellent example, which could be applied to a similar program to address the circumstances of visible minority women.

Recommendation 27: Work with local communities, both to develop the specific attributes of employment equity policies and to ensure unimpeded access of the particularly disadvantaged groups into the public service.

Reaching out to communities is a fundamental aspect of virtually every effective employment equity program. Our research suggests that community contacts also should respond to local conditions, to address the specific needs of communities in different parts of the country, and to indicate a respect for their particular circumstances. Nova Scotia, where specific connections have been made with the African-Canadian community, provides an example in principle of such an approach.

This recommendation is particularly important given the major finding from our interviews that those responsible for implementing employment equity policies are often poorly informed about the conditions of visible minority women. It is important that community groups play a major role.

Recommendation 28: Develop programs designed to increase the skills and potential of visible minority women.

Visible minority women need to be “fast-tracked” into more positions and higher levels, through programs that enhance their skills. Such programs need to be based on consultation with current and potential visible minority women employees to target their specific needs. They also need to build in components aimed at career progression and retention.

10. FUTURE DIRECTIONS: WHAT NEXT FOR EFFECTIVE EMPLOYMENT EQUITY IMPLEMENTATION?

Our research has indicated that employment equity policy development and implementation across Canada are highly variable and uneven. In general, there is a need for profound improvement and considerable change both within and beyond existing policy frameworks at the provincial government level. We have been impressed, nonetheless, by the level of expertise, interest and commitment on the part of stakeholders across the country; we have also been humbled by the number of unanswered questions posed by our analysis.

This work has exposed and helped to explain some of the barriers to effective implementation of employment equity policy, and some of the opportunities available. Despite conditions of major political and economic restructuring in virtually every jurisdiction, and despite a degree of backlash against the principles of employment equity, we believe there is both the need and the means for considerable progressive change to extend equity in this period. Policy developers need to investigate critically those arguments that, in the name of equity, may foster inactivity, such as the backlash effect or economic constraints. Concerns that employment equity is too costly for these times need to be treated with deep suspicion. While the public sector has been prone to cut social programs on grounds of financial exigency and political ideology at both the federal and provincial levels, in some industries within the private sector—especially banking—employment equity has not fallen prey to this logic. Rather, it has been embraced as being “good for business.”

Further, employment equity policy has seen considerable advances for the designated category “women,” albeit more in terms of representation than in distribution, and removal of inequitable barriers still remains a serious issue. Nonetheless, generalized understanding of the issues for women is considerably above that for the other three groups. This is an issue of concern especially for women who are Aboriginal, disabled or in a visible minority. The specific needs of these groups need to have a higher priority in virtually every arena, both federally and provincially.

In particular, the needs of visible minority women remain at the very bottom of the employment equity agenda. Misinformed, culturally biased and racialized interpretations of their situations represent the single most problematic feature identified in the interviews we conducted. We can only assume that if so many of those with the greatest commitment and understanding of employment equity are having difficulty breaking with stereotypes regarding minority women in the workplace, then the issue is much deeper and more serious than generally recognized. Virtually all our respondents agreed with this perspective, yet there is a very long way to go in understanding the issues and generating effective policies.

In sum, we are at the tip of a very large iceberg. We see this research as a pilot that, we hope, might become the basis of a much larger study at some point. Within the parameters of this research, however, we believe that we can identify some general problems of definition and clarity regarding the nature of employment equity policy.

Employment equity, in our view, requires a demonstrated and proactive approach. The successful implementation of employment equity policy implies awareness and knowledge of a situation in need of change from an inequitable earlier condition. Employment equity cannot be effectively implemented simply through the development of governmental policy initiatives, or through legislative decree, important as these are. To be effective, it also demands awareness and knowledge of diversity of the population and specificity among the designated groups. The absence of equity in employment practices may appear neutral but, in reality, it is likely to support a status quo which is discriminatory or biased against specific groups or individuals.

The profound structural barriers faced in society at large among visible minority women—including issues of language, immigration rights, educational opportunities, family responsibilities, presence or lack of culturally specific support networks, racism in general and sexually explicit forms of racism, sexism in general and racially explicit forms of sexism—need to be understood to be addressed effectively in an equitable employment context. We need to begin with the fact that racism exists as a deeply embedded and durable aspect of our larger society. Progress from here needs to develop along several fronts addressing those larger societal issues and developing specific programs to counter their effects within a public service environment. Public service policies, like those of the federal government, need to play a significant leadership role in this respect.

Employment equity policy also presumes a demonstrated and proactive approach. While the focus of employment equity policy and practice is, by definition, a given workplace, ministry or industry, to be effective, the commitment to advancing equity must necessarily involve an understanding of discriminatory practices that are cultivated well beyond the immediate workplace. Furthermore, by effectively engaging the larger society, governments are less likely to encourage backlash and more likely to have influence beyond the public service.

Effective implementation of employment equity also involves the promotion of informed interaction, and the development of an environment of collaboration and mutual support, among the diverse and multiple groups that now permanently comprise Canada's demographic mosaic. This is an ambitious goal, and we are not so immodest to suggest that we have identified the means to a remedy. We are confident, however, that the goal is the right one to pursue, and that concrete steps toward its achievement are entirely practicable given sufficient political will.

APPENDIX I: TABLES AND FIGURES

Table 1: Work Force Availability of Designated Group Members

Availability	Designated Group (%)			
	Women	Aboriginal Peoples	Persons with Disabilities	Persons in a Visible Minority
National	45.9	2.0	4.8	10.4
Newfoundland	45.0	2.3	2.0	0.7
Prince Edward Island	46.5	0.7	4.9	1.1
Nova Scotia	45.6	1.0	6.9	3.0
New Brunswick	45.6	1.2	5.7	1.1
Quebec	45.0	0.8	2.9	5.4
National Capital Region	52.2		5.5	
Ontario	46.7	1.1	5.2	14.6
Manitoba	46.0	7.6	5.3	7.1
Saskatchewan	45.5	6.6	6.1	2.7
Alberta	45.5	3.2	6.1	9.2
British Columbia	46.0	3.0	5.3	16.3
Yukon	46.9	16.1	4.7	3.0
Northwest Territories	45.2	46.1	4.4	3.3

Table 2: Representation of Designated Groups in the Federal Public Service

	Year and Percentage Representation											
	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
Women	42.4	42.9	43.6	44.5	45.3		46.1	47.0	47.4	48.2	49.5	50.5
Aboriginal Peoples	1.8	1.7	1.8	1.9	2.0		2.0	2.0	2.2	2.3	2.4	2.7
Female								2.4	2.7	2.8	2.9	3.2
Male								1.6	1.8	1.9	2.0	2.1
Persons with Disabilities	2.6	2.7	2.8	3.1	3.0		3.1	2.9	3.2	3.1	3.3	3.9
Female								2.7	3.0	2.9	3.1	3.7
Male								3.2	3.4	3.3	3.6	4.1
Persons in a Visible Minority	2.7	2.9	3.1	3.5	3.6		3.8	3.8	4.1	4.5	4.7	5.1
Female								3.7	4.0	4.4	4.5	5.0
Male								3.9	4.2	4.6	4.8	5.3

Source:

Annual reports of the Treasury Board Secretariat and the Public Service Commission of Canada. Data cover employees defined for employment equity purposes under the *Financial Administration Act* from 1986, and the *Employment Equity Act* from 1996. They include PSSRA 1-1 indeterminate, terms of three months or more and seasonal employees. Percentages are for total federal public service work force, except when broken down by gender, when they represent percentages of total females and total males respectively.

Table 3: Designated Group Employees in the Federal Public Service by Selected Occupational Category

Year	Women			Aboriginal Peoples		
	Management (%)	Scientific and Professional (%)	Administrative Support (%)	Management (%)	Scientific and Professional (%)	Administrative Support (%)
1989	14.1	25.0	83.1	0.9	1.6	2.1
1993	17.6	28.3	83.8	1.1	1.4	2.3
1994	18.3	28.9	83.6	1.1	1.3	2.4
1995	19.1	29.5	84.1	1.2	1.4	2.7
1996	21.3	30.2	84.6	1.6	1.4	2.9
1997	23.0	31.2	84.0	1.7	1.5	3.0
1998	25.1	32.2	84.0	1.8	1.6	3.3

Year	Persons with a Disability			Persons in a Visible Minority		
	Management (%)	Scientific and Professional (%)	Administrative Support (%)	Management (%)	Scientific and Professional (%)	Administrative Support (%)
1989	1.8	2.0	3.4	1.9	7.6	3.1
1993	1.9	1.9	4.0	2.4	8.3	4.0
1994	2.0	1.8	3.8	2.3	8.3	3.8
1995	2.2	1.9	4.2	2.4	8.6	4.3
1996	2.1	1.9	4.3	2.3	9.1	4.7
1997	2.2	2.0	4.5	2.6	9.0	4.7
1998	2.9	2.3	5.1	2.8	10.1	5.3

Note:

Breakdowns are not available by gender for Aboriginal peoples, persons with a disability or persons in a visible minority.

Source:

Annual reports of the Treasury Board Secretariat and the Public Service Commission of Canada. Data cover employees defined for employment equity purposes under the *Financial Administration Act* from 1986, and the *Employment Equity Act* from 1996. They include PSSRA 1-1 indeterminate, terms of three months or more and seasonal employees.

Table 4: Hirings of Designated Group Members to the Federal Public Service

Year	Women (%)	Aboriginal Peoples (%)	Persons with Disabilities (%)	Persons in a Visible Minority (%)
1988-89	47.8	3.1	2.2	4.0
1992-93	50.6	3.3	2.4	5.2
1993-94	62.3	2.0	1.7	2.7
1994-95	62.2	2.6	1.8	2.9
1996-97	63.4	3.2	1.7	3.4
1997-98	59.9	3.0	1.7	3.9

Note:

Breakdowns are not available by gender for Aboriginal peoples, persons with a disability or persons in a visible minority.

Source:

Annual Reports of the Treasury Board Secretariat and the Public Service Commission of Canada. Data cover employees defined for employment equity purposes under the *Financial Administration Act* from 1986, and the *Employment Equity Act* from 1996. They include PSSRA 1-1 indeterminate, terms of three months or more and seasonal employees.

Table 5: Promotions of Designated Group Members in the Federal Public Service

Year	Women (%)	Aboriginal Peoples (%)	Persons with Disabilities (%)	Persons in a Visible Minority (%)
1988-89	21.8	1.2	1.7	1.2
1992-93	53.7	2.1	2.4	4.0
1993-94	62.3	2.0	1.7	2.7
1994-95	56.1	2.3	2.5	4.1
1996-97	54.6	2.8	2.5	4.7
1997-98	52.3	2.6	3.1	5.8

Table 6: Representation and Work Force Availability of Women in the Federal Public Service by Province

Province	Representation (%)	Availability (%)
Newfoundland	40.8	45.0
Prince Edward Island	56.5	46.5
Nova Scotia	37.0	45.6
New Brunswick	48.0	45.6
Quebec	50.0	45.0
National Capital Region	52.4	
Ontario	52.2	46.7
Manitoba	55.5	46.0
Saskatchewan	49.4	45.5
Alberta	48.9	45.5
British Columbia	47.3	46.1
Total Federal Public Service	50.2	45.9

Table 7: Representation and Work Force Availability of Aboriginal Peoples in the Federal Public Service by Province

Province	Representation (%)	Availability (%)
Newfoundland	3.2	2.3
Prince Edward Island	1.4	0.7
Nova Scotia	1.3	1.0
New Brunswick	1.3	1.2
Quebec	0.9	0.8
National Capital Region	1.8	
Ontario	2.1	1.1
Manitoba	5.6	7.6
Saskatchewan	5.7	6.6
Alberta	4.0	3.2
British Columbia	2.5	3.0
Total Federal Public Service	2.3	2.0

Table 8: Representation and Work Force Availability of Persons with a Disability in the Federal Public Service by Province

Province	Representation (%)	Availability (%)
Newfoundland	2.0	2.0
Prince Edward Island	4.7	4.9
Nova Scotia	3.3	6.9
New Brunswick	3.0	5.7
Quebec	2.1	2.9
National Capital Region	3.2	5.5
Ontario	3.2	5.2
Manitoba	3.4	5.3
Saskatchewan	3.0	6.1
Alberta	3.1	6.1
British Columbia	2.6	5.3
Total Federal Public Service	3.0	4.8

Table 9: Representation and Work Force Availability of Persons in a Visible Minority in the Federal Public Service by Province

Province	Representation (%)	Availability (%)
Newfoundland	0.5	0.7
Prince Edward Island	0.9	1.1
Nova Scotia	3.3	3.0
New Brunswick	0.7	1.1
Quebec	1.7	5.4
National Capital Region	4.4	
Ontario	7.0	14.6
Manitoba	2.8	7.1
Saskatchewan	2.0	2.7
Alberta	5.2	9.2
British Columbia	7.5	16.3
Total Federal Public Service	4.3	10.4

Table 10: Representation and Work Force Availability of Designated Group Members in the British Columbia, Saskatchewan, Manitoba, Nova Scotia and Federal Public Services

	Designated Groups			
	Women (%)	Aboriginal Peoples (%)	Persons with Disabilities (%)	Persons in a Visible Minority (%)
British Columbia				
Representation	53.8	1.7	6.0	5.9
Work force availability	46.1	3.0	5.3	16.3
Saskatchewan				
Representation	54.2	6.8	3.3	2.4
Work force availability	45.5	6.6	6.1	2.7
Manitoba				
Representation	51.0	6.7	2.9	2.9
Work force availability	46.0	7.6	5.3	2.7
Nova Scotia				
Representation	62.1	0.4	7.1	3.2
Work force availability	45.6	1.0	6.9	3.0
Federal Public Service				
Representation	50.5	2.4	3.3	4.7
Work force availability	45.9	2.0	4.8	10.4

Notes:

Representation is based on public service data for 1997, and availability is based on the 1996 Census; *Annual Report of the Treasury Board Secretariat*, 1998.

For persons with disabilities, representation is based on public service data for 1997, and availability is based on the 1991 Census and the post-1991 Census Health and Activity Limitation Survey.

Members of visible minorities for Nova Scotia include “Black persons” and “other racially visible persons.”

Sources:

Research Directorate, Public Service Commission. “Demographic Profile and Issues in the Federal Public Service.” May 29, 1998 (1996 Census).

“British Columbia: workforce profile executive summary for government wide. As at January 1997.”

Government of Saskatchewan. “Employment Equity Report 1997/1998.”

“Province of Manitoba Employment Equity Program, April 1, 1996 – March 31, 1997.” Quantitative indicators.

“Province of Nova Scotia Highlights of January 1996 Workforce Profile.”

Table 11: Analysis of Questionnaire, Section 8

Question	Mean Response	Number	Standard Deviation
1. More financial resources devoted to employment equity	3.61	44	1.37
2. More person years devoted to employment equity	3.6	43	1.35
3. More commitment on the part of politicians	4.23	43	1.17
4. Employees need more time to adjust to change	2.56	43	1.15
5. Managers need time to adjust to change	2.55	43	1.23
4. There are not enough qualified candidates among designated groups	2.13	42	1.23
7. Policies are difficult to implement	2.50	42	1.37
8. There is a lack of infrastructure support for policy implementation	3.64	42	1.39
9. Special program needed for designated groups	3.51	42	1.31
10. Training and education for managers	3.91	44	1.20
11. Training and education for all workers	3.79	43	1.15
12. More support from the unions	3.67	43	1.08
13. More support from the deputy ministers	3.90	41	1.16
14. More support from the ministers	4.05	42	1.17
15. Work force restructuring is a major setback for employment equity	3.79	43	1.25
16. Backlash against employment equity is a major setback	3.45	42	1.33

**APPENDIX II: SUMMARIES OF PROVINCIAL
EMPLOYMENT EQUITY STRUCTURES**

Province	Alberta
Employment equity policy in place	No. There is no policy.
Employment equity legislation in place	No. There is no legislation.
Pay equity legislation in place	No. There is no pay equity legislation.
Current political party in power	Progressive Conservative
Name of public service employees union	Alberta Union of Public Employees
Department in charge of employment equity	There is a public service commissioner in the Personnel Administration Office who would be responsible for any such program if it existed.
Minister or official in charge of employment equity	Public Service Commissioner Jim Dixon
Structure/ major features of the employment equity program	The only government structure is Alberta Community Development, which supports the development and creation of employment equity policies and programs through the Alberta Human Rights and Citizenship Commission, which provides consulting and education services to achieve these goals.
Anomalies in lack of employment equity program	The government accepted submissions on the subject of employment and pay equity, and there were submissions from various sources including the Alberta Union of Public Employees in 1989. Consideration of any such policy has disappeared in the 1990s because it is thought to be too heavy handed.
Employment equity training programs	No training.
Level of success of employment equity program	There seems to be no perception on the government's part about a problem with equity issues.
Mandatory reporting process/ audits	Not applicable.

Province	British Columbia
Employment equity policy in place	Yes. It has been in place since 1991.
Employment equity legislation in place	Yes. The Public Service Act Directive on Employment Equity 1994.
Pay equity legislation in place	There has been legislation since 1988.
Current political party in power	New Democratic Party
Name of public service employees union	British Columbia Government Employees Union (has employment equity policy)
Department in charge of employment equity	Public Service Employee Relations Commission (PSERC)
Minister or official in charge of employment equity	Maureen Nicholls
Structure /major features of the employment equity program	<p>All ministries are required to develop and implement employment equity action plans and to prepare annual progress reports. The Union/Management Steering Committee on Employment Equity is responsible for reporting progress to the Commissioner of the Public Service Employee Relations Commission who, in turn, is responsible for reporting the results to Cabinet.</p> <p>In 1999, the Equal Opportunities Secretariat was created to extend the employment equity policy from the ministries to the entire public sector, for persons with disabilities, members of a visible minority and Aboriginal persons. The Secretariat co-ordinates a community liaison program with the assistance of an advisory committee.</p> <p>The designated groups have active provincial associations that work closely with the ministries.</p>
Anomalies of the employment equity program	This is the only full-scale provincial employment equity program with legislative backing. There are 34 full-time employees committed to employment equity.
Employment equity training programs	There are training programs, but they are not mandatory but are offered to all managers and employees.
Level of success of employment equity programs	The training programs are reported to be successful except in the case of sexual orientation equity. The last progress report on the employment equity action plans stated that the policy was not as successful as hoped and the hiring rates of designated groups have not improved. Reasons for this include ministries not creating the mandatory employment equity plans or audits, not having targets and resisting remedial measures.
Mandatory reporting process/ audits	Yes. The Equity and Diversity Branch of PSERC helps each ministry carry them out.

Province	Manitoba
Employment equity policy in place	Yes. There has been a policy since 1983.
Employment equity legislation in place	No legislation.
Pay equity legislation in place	Yes. There has been legislation since 1982 which was implemented 1982-85.
Current political party in power	New Democratic Party
Name of public service employees union	Manitoba Government Employees Union with employment equity policy in place.
Department in charge of employment equity	Civil Service Commission
Minister or official in charge of employment equity	Civil Service Commissioner Paul Hart
Structure/major features of the employment equity program	The program is co-ordinated by the Public Service Commission, headed by the Public Service Commissioner. There are co-ordinators in the PSC who run programs and do training but the emphasis is on the departments which each have their own equity co-ordinators or, in some cases, share co-ordinators. There are reports from the departments.
Anomalies of the employment equity program	Attempts have been made to have a joint committee of deputy ministers but they have failed.
Employment equity training programs	There are employment equity training programs and management programs for women and Aboriginal employees but not specifically for members of visible minorities or those with a disability.
Level of success of employment equity program	The training courses are poorly attended. Occasionally, mandatory attendance is used to settle complaints. There are audits by the Civil Service Commissioner, but there are no penalties or organized follow through. Therefore, it is difficult to gauge or guarantee success.
Mandatory reporting process/ audits	The Public Service Commission conducts audits of practices and requires annual reports but does not conduct performance reviews.

Province	New Brunswick
Employment equity policy in place	The official policy is to encourage employment equity without action plans. This is referred to as the Equal Employment Opportunity Program. There is a paper under discussion that would set out the qualitative and quantitative goals of employment equity. The paper is a consultation between the Human Resource Division of the Department of Finance and the New Brunswick Human Rights Commission.
Employment equity legislation in place	No.
Pay equity legislation in place	Yes. There has been pay equity legislation since 1989.
Current political party in power	Progressive Conservative
Name of public service employees union	Most government employees are covered by CUPE.
Department in charge of employment equity	Department of Finance
Minister or official in charge of employment equity	Norman Betts
Structure/ major features of the employment equity program	The Labour Relations Services Branch (LBSR) of the Human Resources Management Division of the Department of Finance is ostensibly in charge of employment equity programs. The employment equity section of the LBSR is required to assist departments with strategies to achieve the qualitative and quantitative objectives of the program and to resolve a variety of equity-related issues.
Anomalies of the employment equity program	There seems to be some confusion about the difference between pay and employment equity. The <i>New Brunswick Human Rights Act</i> is cited as an example of employment equity, but this is reactive rather than proactive and requires complaints to enforce equity goals. There seems to be some level of frustration surrounding this.
Employment equity training programs	No training programs.
Level of success of employment equity program	Success is hard to judge because there is not a comprehensive program or check on equity goals of the departments.
Mandatory reporting process/ audits	No.

Province	Newfoundland
Employment equity policy in place	No. There is no employment equity policy
Employment equity legislation in place	No.
Pay equity legislation in place	No.
Current political party in power	Liberal
Name of public service employees union	Newfoundland Association of Public Employees (NAPE)
Department in charge of employment equity	The Human Rights Commission is in charge of equity goals. Employment equity is not an official goal although it is in keeping with the Human Rights Code.
Minister or official in charge of employment equity	Gladys Vivian, Executive Director of the Human Rights Commission
Structure/ major features of the employment equity program	No official employment equity plan.
Anomalies of the employment equity program	No official plan.
Employment equity training programs	There are no training programs.
Level of success of employment equity program	Not applicable.
Mandatory reporting process/ audits	There are no reporting processes or audits.

Province	Nova Scotia
Employment equity policy in place	<p>There has been a policy since 1975. There is a mandatory "Affirmative Action Program" that went into effect in August 1997.</p> <p>This consists of a signed agreement between the Nova Scotia Department of Human Resources and the Nova Scotia Human Rights Commission that was drafted in consultation with the government employees union.</p> <p>There is an appointed co-ordinator of race relations and affirmative action for the Nova Scotia Human Rights Commission.</p>
Employment equity legislation in place	No.
Pay equity legislation in place	There has been legislation since 1988. The Pay Equity Commission is responsible for administering the <i>Pay Equity Act</i> .
Current political party in power	Progressive Conservative
Name of public service employees union	Nova Scotia Government Employees Union with an employment equity policy in place.
Department in charge of employment equity	Human Resources
Minister or official in charge of employment equity	John Chataway
Structure /major features of the employment equity program	The Client Services Division of the Department of Human Resources has a Diversity Management Unit. The Unit has a diversity/employment equity consultant.
Anomalies of the employment equity program	Diversity management is the current focus including women, Aboriginal people and those with a disability. Formerly, it was race equity concerns that dominated.
Employment equity training programs	There are two-day training programs compulsory from the assistant deputy minister level down led by the diversity management consultant.
Level of success of employment equity program	There has been little ability to gauge the success of the training programs because there has been little follow-up and no co-ordination of policy makers/trainers. The new Affirmative Action Program is mandatory and does have many progressive steps but the level of success is difficult to judge.
Mandatory reporting process/ audits	No.

Province	Ontario
Employment equity policy in place	No employment equity policy but many departments include equity as part of their departmental mandate. The official policy is Equal Opportunity.
Employment equity legislation in place	No. The legislation has been repealed.
Pay equity legislation in place	Yes. There has been pay equity legislation since January 1988.
Current political party in power	Progressive Conservative
Name of public service employees union	Ontario Public Service Employees Union
Department in charge of employment equity	Equal Opportunity is under the jurisdiction of the Ministry of Citizenship and Culture. Overseen by Management Board Secretariat that sets out the policy.
Minister or official in charge of employment equity	Chris Hodgson, Management Board Secretariat
Structure/ major features of the employment equity program	The Management Board Secretariat is responsible for human resource policies including the Equal Opportunity Program, which is administered by the Ministry of Citizenship and Culture in its Equal Opportunity Branch. The Branch has created the Equal Opportunity Plan that is of a voluntary nature.
Anomalies of the employment equity program	The program changed substantially after the <i>Employment Equity Act</i> (in effect in 1994) was repealed. The Plan for Equal Opportunity was drafted and tested in partnership with business and trade associations.
Employment equity training programs	There are no formal training programs. However, a booklet on the plan, <i>Business Results through Diversity</i> , is available with a workshop facilitator's guide.
Level of success of employment equity program	Not applicable.
Mandatory reporting process/ audits	There are no reporting processes or audits.

Province	Prince Edward Island
Employment equity policy in place	Yes. There is a policy that encourages employment equity.
Employment equity legislation in place	No.
Pay equity legislation in place	Yes. There has been pay equity legislation in place since 1988.
Current political party in power	Progressive Conservative
Name of public service employees union	PEI Government Employees Union
Department in charge of employment equity	Human Rights Commission
Minister or official in charge of employment equity	Patricia Mella, Provincial Treasurer and Minister Responsible for the Public Service Commission
Structure/ major features of the employment equity program	The Human Rights Commission hears complaints and implements the Human Rights Code. It also seeks to educate those in the government as well as the public.
Anomalies of the employment equity program	The Human Rights Commission has had discussions with the government about the establishment of an employment equity policy.
Employment equity training programs	No.
Level of success of employment equity program	Not applicable.
Mandatory reporting process/ audits	There are no reporting processes or audits.

Province	Quebec
Employment equity policy in place	There is a program of contract compliance, the Programme d'Obligations Contractuelles.
Employment equity legislation in place	No.
Pay equity legislation in place	Yes. There has been pay equity legislation since November 1997. There is now a pay equity commission.
Current political party in power	Parti Québécois
Name of public service employees union	Syndicat des Fonctionnaires Provinciaux du Québec
Department in charge of employment equity	The Ministère du Travail oversees pay equity.
Minister or official in charge of employment equity	Matthias Rioux, Ministre du Travail
Structure/ major features of the employment equity program	A pay equity commission was recently created. The contract compliance program was set up in 1987.
Anomalies of the employment equity program	The province refers to employment equity as affirmative action. It encourages contract compliance of larger businesses and asks them to set up affirmative action programs.
Employment equity training programs	No.
Level of success of employment equity program	Not applicable.
Mandatory reporting process/ audits	There are no reporting processes or audits.

Province	Saskatchewan
Employment equity policy in place	Yes. There is a policy in place that is supported on most levels.
Employment equity legislation in place	No.
Pay equity legislation in place	No.
Current political party in power	New Democratic Party/Liberal coalition government
Name of public service employees union	Saskatchewan Government Employees Union
Department in charge of employment equity	Human Rights Commission and Public Service Commission
Minister or official in charge of employment equity	Lorne Calvert, Public Service Commission and Social Services. The Human Rights Commission reports to the Minister of Justice Hon. John Nilson.
Structure/ major features of the employment equity program	The Public Service Commission and the Human Rights Commission have the mandate to create directives. The Human Rights Commission does the employment equity monitoring and helps create programs.
Anomalies of the employment equity program	The program is voluntary. The co-ordination of the government Employment Equity Program takes place in the Public Service Commission's Employment Equity Branch.
Employment equity training programs	No mandatory programs.
Level of success of employment equity program	The Human Rights Commission reports that the program has resulted in only small changes and gains.
Mandatory reporting process/ audits	Voluntary only.

3. What do you think are the most common practices that make hiring or promotion processes inequitable?

4. What do you think are the major issues facing each of the designated groups today?

a) Women
b) Aboriginal peoples
c) Disabled persons
d) Visible minorities

5. What are the particular problems faced by visible minority women?

6. Do you believe that gays and lesbians should and will become a fifth designated group in the future?

7. Do you perceive a conflict between equity considerations and those of seniority?

8. Please rate each of the following on a scale of 1 to 5 (where 1 means not important and 5 means very important) in terms of achieving employment equity:

	1	2	3	4	5
1. More financial resources devoted to employment equity					
2. More person years devoted to employment equity					
3. More commitment on the part of politicians					
4. Employees need more time to adjust to change					
5. Managers need more time to adjust to change					
5. There are not enough qualified candidates among designated groups					
7. The policies are difficult or cumbersome to implement					
8. There is a lack of infrastructure support for policy implementation					
9. Special programs are needed for the designated groups					
10. Training and education for managers					
11. Training and education for all workers					
12. More support from the union					
13. More support from the deputy ministers					
14. More support from ministers					
15. Work force restructuring is a major setback for employment equity					
16. Backlash against employment equity is a major setback					

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or

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Treasury Board of Canada Secretariat:

<http://www.tbs-sct.gc.ca>

Workplace Equity, Human Resources Development Canada:

<http://www.chrc.ca/ee>

ENDNOTES

- ¹ We wish to acknowledge the expert research assistance and translation of Michelle Robidoux, who conducted, translated and transcribed the interviews in Quebec, and Shanti Fernando, who conducted the telephone interview.
- ² Note that including the northern territories goes beyond the scope of the current study. The authors are exploring the employment equity profile in the new territory of Nunavut in a comparative context, in another research project supported by the Canadian Race Relations Foundation.
- ³ We wish to thank Shanti Fernando for her expert research assistance in the development of these tables.
- ⁴ They also have the highest work force availability, of 46.1 percent in the Territories but, against this figure, they are at only half of their work force representation.
- ⁵ Of course, the other designated groups also include women, but the data are not available by gender. The lack of gender-specific data is itself an equity problem in most jurisdictions.
- ⁶ These reports are available on the Internet at: <http://www.tbs-sct.gc.ca> or <http://labour-travail.hrhc-drhc.gc.ca>
- ⁷ For a detailed overview of the *Employment Equity Act* (1996), see: http://www.tbs-ct.gc.ca/ee.ENG/Pu...publications/Pub_over_act.html#act
- ⁸ Audrey Kobayashi attended this conference as an invited speaker.
- ⁹ The main elements of this chronology are reported in Ontario 1993a.
- ¹⁰ These offices were the Pay Equity Commission; Ontario Women's Directorate; Ontario Anti-Racism Secretariat; Multicultural and Race Relations Strategies (Ministry of Citizenship); Multicultural Workplace Grants (Ministry of Citizenship); Office of Disability Issues; Centre for Disability and Work; Ontario Native Affairs Secretariat; Native Development and Assistance (Ministry of Northern Development and Mines); Ontario Public Service Employment Equity Initiatives; Ontario Public Service (Ministry of Employment Equity Programs); Policing Services-Employment Equity (Ministry of the Solicitor General); Municipal Employment Equity (Ministry of Municipal Affairs); and the Ontario Human Rights Commission. The estimated combined budgets of these offices was over \$90.6 million. See Frazee 1992.
- ¹¹ We were repeatedly informed by administrative aides, senior government officials and employment equity advocates who were now frustrated by the policy that "this government does not allow employment equity"; or "employment equity is not something we can discuss"; or "the question of employment equity is not applicable in this province."
- ¹² See *Ferrel et al. v. Attorney General of Ontario*, April 6-7, 1998. We wish to acknowledge the extensive provision of information regarding this section made available to the authors from the Alliance for Employment Equity in Ontario (122 St. Patrick St., Suite 210, Toronto, Ontario, M5T 2X8; allforee@web.net).

- ¹³ For a detailed, and foundational, discussion of employment equity and the Charter, see Abella 1984: 11-16.
- ¹⁴ *Ferrel et al. v. Attorney General of Ontario*, Respondent on Appeal; Factum of the Intervenor Ontario Federation of Labour, Court File No. C27917.
- ¹⁵ *Ferrel et al. v. Attorney General of Ontario*, Respondent on Appeal; Factum of the Intervenor Women's Legal Education and Action Fund and DisAbled Women's Network Canada, Court File No. C27917.
- ¹⁶ See Appendix III for sample questionnaire, and Appendix II, Table 11 for quantitative responses to Question 8.
- ¹⁷ We did attempt an analysis of responses by province. Although we found some significant differences, the sample size is too small overall for confidence in the results, so we have not presented that analysis here.
- ¹⁸ The literature on this phenomenon is extensive. See for example, Armstrong and Armstrong 1994.
- ¹⁹ See for example, "Collective Agreements with respect to Central Working Conditions and Employee Benefits and Bargaining Units' Working Conditions and Salaries Between Management Board of Cabinet and Ontario Public Service Employees Union" (January 1, 1994 to December 31, 1998); and "Collective Bargaining Agreement between the Government of Saskatchewan and Saskatchewan Government Employees' Union" (October 1, 1994 to September 30, 1997). Also referred to here are the British Columbia Government Employees Union, the Manitoba Government Employees Union and the Nova Scotia Government Employees Union.

**THE INTEGRATION OF DIVERSITY INTO POLICY RESEARCH,
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* Some of these papers are still in progress and not all titles are finalized.