House of Commons
Canada

A MATTER OF FAIRNESS

REPORT OF THE SPECIAL COMMITTEE ON THE REVIEW OF THE EMPLOYMENT EQUITY ACT

HON. ALAN REDWAY, P.C., Q.C., M.P.
Chairman

May 1992

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HON. ALAN REDWAY, P.C., Q.C., M.P.
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HOUSE OF COMMONS

Issue No. 18

Wednesday, April 8, 1992
Thursday, April 9, 1992
Tuesday, April 28, 1992
Wednesday, April 29, 1992
Thursday, May 7, 1992

Chairperson: Alan Redway

CHAMBRE DES COMMUNES

Fascicule nº 18

Le mercredi 8 avril 1992
Le jeudi 9 avril 1992
Le mardi 28 avril 1992
Le mercredi 29 avril 1992
Le jeudi 7 mai 1992

Président: Alan Redway

Minutes of Proceedings and Evidence of the Special Committee on the

Review of the Employment Equity Act

Procès-verbaux et témoignages du Comité spécial chargé de l'

Examen de la Loi sur l'équité en matière d'emploi

RESPECTING:

Comprehensive review of the provisions and operations of the *Employment Equity Act* (Chapter 23, 2nd Supplement, Revised Statutes of Canada, 1985)

INCLUDING:

First and Second Reports to the House

CONCERNANT:

Examen complet des dispositions et de l'application de la *Loi sur l'équité en matière d'emploi* (Chapitre 23, 2e supplément, Lois révisées du Canada, 1985)

Y COMPRIS:

Le Premier et Deuxième rapports à la Chambre

Third Session of the Thirty-fourth Parliament, 1991-92

Troisième session de la trente-quatrième législature, 1991-1992

SPECIAL COMMITTEE ON THE REVIEW OF THE EMPLOYMENT EQUITY ACT

Chairperson: Alan Redway

Vice–Chairmen:
Gabrielle Bertrand
Mary Clancy

Members

Bruce Halliday
Fernand Jourdenais
Charles A. Langlois
John Nunziata
Robert Skelly—(8)

(Quorum 5)

Monique Hamilton

Luc Fortin

Clerks of the Committee

From the Library of Parliament:

June Dewetering
Nancy Holmes
William Young
Research Officers

Membership Changes

In accordance with the Order adopted by the House of Commons on October 30, 1991:

On Wednesday, April 8, 1992:

Charles A. Langlois for Marc Ferland;

Iain Angus for Robert Skelly;

Joy Langan for Iain Angus.

On Thursday, April 9, 1992:

Dan Heap for Joy Langan.

On Tuesday, April 28, 1992:

Robert Skelly for Dan Heap.

On Wednesday, April 29, 1992:

Fernand Jourdenais for Bill Attewell.

COMITÉ SPÉCIAL CHARGÉ DE L'EXAMEN DE LA LOI SUR L'ÉQUITÉ EN MATIÈRE D'EMPLOI

Président: Alan Redway

Vice–présidentes:
Gabrielle Bertrand
Mary Clancy

Membres

Bruce Halliday
Fernand Jourdenais
Charles A. Langlois
John Nunziata
Robert Skelly—(8)

(Quorum 5)

Les greffiers du Comité

Monique Hamilton

Luc Fortin

De la Bibliothèque du Parlement:

June Dewetering
Nancy Holmes
William Young
Attachés de recherche

Changements à la liste des membres

Conformément à l'Ordre adopté par la Chambre des communes le 30 octobre 1991:

Le mercredi 8 avril 1992:

Charles A. Langlois pour Marc Ferland;

Iain Angus pour Robert Skelly;

Joy Langan pour Iain Angus.

Le jeudi 9 avril 1992:

Dan Heap pour Joy Langan.

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OTHER MEMBERS WHO SERVED ON THE COMMITTEE

Warren Allmand
(Notre-Dame-de-Grâce)

Jack Iyerak Anawak
(Nunatsiaq)

Iain Angus
(Thunder Bay—Atikokan)

David Bjornson
(Selkirk—Red River)

Dawn Black
(New Westminster—Burnaby)

Harry Chadwick
(Bramalea—Gore—Malton)

Suzanne Duplessis
(Louis-Hébert)

Marc Ferland
(Portneuf)

Sheila Finestone
(Mount Royal)

Ron Fisher
(Saskatoon—Dundurn)

Dan Heap
(Trinity—Spadina)

Fernand Jourdenais
(La Prairie)

Joy Langan
(Mission—Coquitlam)

Shirley Maheu
(Saint-Laurent—Cartierville)

Brian Tobin
(Humber—St. Barbe—Baie Verte)

Walter Van De Walle
(St. Albert)

Tom Wappel
(Scarborough West)

ACKNOWLEDGEMENTS

From its inception in October 1991, the Special Committee on the Review of the *Employment Equity Act* has received the co-operation and support of many Canadians; each deserves thanks for their specific contribution.

We express deep gratitude to the many witnesses who appeared, to those who provided written submissions, and to those with special interests who have followed our deliberations with care and ongoing comment.

The efforts of the Committee were substantively enhanced through the commitment and tireless support it received from its staff: the Clerk of the Committee, Monique Hamilton, and her colleague, Luc Fortin, who respectively organized the hearings and ensured the Committee objectives were met in a timely and appropriate manner; and the other staff from the Committees Branch for their administrative support: Gilberte Bond, Lynne Chrétien, Micheline Dugas and Nathalie Labelle.

The Committee also thanks the many people on the House of Commons staff who provided services and support, in particular the staff of the translation and interpretation services. Thanks must also be conveyed to the gestural interpreters who were present at each public meeting.

The drafting of this report was the result of many hours of work on the part of the writing team who analyzed and summarized the mass of evidence received. The Committee thanks the three members of the research team, June Dewetering, Nancy Holmes and William Young from the Research Branch, Library of Parliament. Their efforts were greatly appreciated.

The Committee wishes to thank the assistants and researchers in the Members' offices who made an important contribution to the work of the Committee.

Finally, the Chairman wishes to thank his colleagues on the Committee for their perseverance during the lengthy hearings and subsequent deliberations, and their dedication to improving the well being of the target groups outlined in the *Employment Equity Act*.

Orders of Reference

Extract from the Votes & Proceedings of the House of Commons of Wednesday, October 30, 1991:

By unanimous consent, it was ordered,—That, pursuant to Section 13(1) of the Employment Equity Act, Chapter 23 (2nd Supp.), Revised Statutes of Canada, 1985, a Special Committee of the House undertake a comprehensive review of the provisions and operations of this Act and submit a report no later than Friday, May 1, 1992;

That this Special Committee be appointed at the latest five sittings days after the adoption of this motion and that the membership be composed of eight Members;

That changes in membership of the Committee be effective immediately after notification signed by the Member acting as the Chief Whip of any recognized party has been filed with the Clerk of the Committee; and

That the said Committee shall have the power of a Standing Committee as per Standing Order 108(1).

Extract from the Votes and Proceedings of the House of Commons of Wednesday, November 6, 1991:

Mr. Cooper, from the Standing Committee on House Management, presented the Sixteenth Report of the Committee, which was read as follows:

Your Committee recommends that the Special Committee appointed to review the provisions and operations of the Employment Equity Act, as created on October 30, 1991, be composed of the eight Members listed below:

Members

Attewell	Langlois
Bertrand	Redway
Clancy	Skelly (Comox—Alberni)
Halliday	Tobin—(8)

A copy of the relevant *Minutes of Proceedings and Evidence (Issue No. 16 which includes this report*) is tabled.

(*The Minutes of Proceedings and Evidence accompanying the Report are recorded as Appendix No. 38 to the Journals*).

Extract from the Votes and Proceedings of the House of Commons of Wednesday, February 5, 1992:

Mr. Cooper, from the Standing Committee on House Management, presented the Twenty-First Report of the Committee, which was read as follows:

Your Committee recommends the following changes in membership:

Special Committee on the Review of the Employment Equity Act

Nunziata for Tobin

(*The Minutes of Proceedings and Evidence accompanying the Report are recorded as Appendix No. 61 to the Journals*).

ATTEST

ROBERT MARLEAU

The Clerk of the House of Commons

THE SPECIAL COMMITTEE ON THE REVIEW OF THE EMPLOYMENT EQUITY ACT

has the honour to present its

FIRST REPORT

Pursuant to its Order of Reference of Wednesday, October 30, 1991, your Committee has undertaken a comprehensive review of the provisions and operations of the *Employment Equity Act*, Chapter 23, (2nd Supp.), Revised Statutes of Canada, 1985.

The Committee's Order of Reference stipulates that the report should be tabled no later than Friday, May 1, 1992. Due to the large volume of the evidence, complexity of the issues and the magnitude of its mandate, your Committee is at this time not prepared to table the said report and therefore recommends that its present mandate be extended to May 15, 1992.

A copy of the relevant *Minutes of Proceedings and Evidence* of the Special Committee on the Review of the Employment Equity Act (*Issues Nos. 1 to 18 which includes this report*) is tabled.

Respectfully submitted,

Alan Redway, Q.C., P.C., M.P.
Chairman

THE SPECIAL COMMITTEE ON THE REVIEW OF THE EMPLOYMENT EQUITY ACT

has the honour to present its

SECOND REPORT

In accordance with the Order of Reference from the House of Commons dated Wednesday, October 30, 1991, your Committee proceeded to the comprehensive review of the provisions and operations of the *Employment Equity Act*, Chapter 23, (2nd Supp.), Revised Statutes of Canada, 1985, and has agreed to report the following:

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INTRODUCTION

Employment equity is a strategy designed to obliterate the present and the residual effects of discrimination and to open equitably the competition for employment opportunities to those arbitrarily excluded. It requires a special blend of what is necessary, what is fair and what is workable.

Judge Rosalie Silberman Abella,
Commissioner of the Royal Commission
on Equality in Employment, 1984

The right to equal employment opportunity free from discrimination is a fundamental goal in this country. In 1966, Canada made known its commitment to this goal by signing the *International Covenant on Economic, Social and Cultural Rights,* which provides that everyone has the right to employment, the right to favourable working conditions and the right to an adequate standard of living. In 1982, the *Canadian Charter of Rights and Freedoms* constitutionally affirmed the right to equality in employment in this country.

Section 15(1) of the *Charter,* like our federal and provincial human rights statutes, guarantees every individual the right to equal treatment without discrimination. Section 15(2) goes further, however, and encourages a comprehensive, rather than an individualized, approach to the elimination of discriminatory practices within society. It sanctions the creation of laws, programs or activities designed to improve the condition of disadvantaged individuals. Section 15(2) acknowledges the fact that discrimination does not always result from the deliberate acts of individuals, organizations or governments; it also stems from societal or institutional systems and practices which, even when they appear neutral, may adversely affect members of particular groups. This latter form of discrimination is known as "systemic discrimination."

The 1986 *Employment Equity Act* follows the direction of the *Charter* and adopts a comprehensive approach to the elimination of systemic barriers to employment in order to ensure the full participation of disadvantaged groups in the labour force. The Act represents a recognition of the reality that a substantial majority of the labour force are not realizing their potential in the working life of this country.

Much of the legislative rationale for the *Employment Equity Act* was derived from the work of the Royal Commission on Employment, chaired by Judge Rosalie Silberman Abella. The Report of the Commission, *Equality in Employment,* argued that, despite existing anti-discrimination legislation and voluntary affirmative action measures on the part of employers, systemic employment barriers continued to exist for women, Aboriginal peoples, visible minorities and persons with disabilities. These individuals generally experienced restricted employment opportunities, limited access to decision-making processes that critically affected them, and little recognition as contributing Canadians.

The Royal Commission concluded that only systemic remedies can remedy systemic discrimination. The Commission advocated the need to reverse the traditional method of defining equality, a method that treats everyone the same and approaches discrimination from the perspective of the single perpetrator and the single victim. Instead, the Commission advanced a results-oriented approach to accommodate differences that have nothing to do with inherent ability, but that may exclude certain individuals from full participation in employment. To this end, the Commission called

for strong and specific legislation that would require employers to identify and eliminate discriminatory barriers in the work place and to adopt appropriate special measures to ensure that the work environment is both conducive and responsive to the needs of individuals in the four disadvantaged groups.

By adopting the Royal Commission's approach and incorporating its philosophy into the *Employment Equity Act*, the government established a uniquely Canadian model in the area of equality rights. Employment equity benefits everyone. It expands the horizons for all Canadians; it promotes the best use of our human resources and removes systemic barriers that have limited the contribution of women, persons with disabilities, Aboriginal peoples and visible minorities.

THE SPECIAL COMMITTEE'S REVIEW

Section 13(1) of the *Employment Equity Act* requires "a comprehensive review of the provisions and operation of this Act including the effect of those provisions" to be undertaken five years after the Act came into force and at the end of every three-year period thereafter.

The House of Commons struck this Special Committee on the Review of the *Employment Equity Act* ("the Committee") on 30 October 1991 in fulfillment of this five-year requirement.

During its review, the Committee heard from 46 witnesses (Appendix A) from 25 November 1991 to 2 April 1992 and received an additional 58 written submissions (Appendix B) from those who did not appear. The Committee is indebted to all those who made oral or written submissions, and is grateful for their wisdom and thoughtful analysis, which has helped the Committee immeasurably in its deliberations.

The witnesses brought many different perspectives to the Committee on the issue of employment equity and how successful the *Employment Equity Act* has been in achieving a representative work force and in eliminating systemic employment barriers. Their comments focused on several key areas, which have been organized into the following chapters:

1. The Scope of the *Employment Equity Act*

Of critical importance is a consideration of the scope of the application of the legislation. The Committee received arguments about which employers should be subject to the Act's provisions, what threshold should be set for work place size, which disadvantaged groups should be covered by the Act, and how these groups should be defined. Finally, the Committee heard evidence on the question of whether the members of the designated groups should be required to identify themselves.

2. Implementing Employment Equity

Employment equity plans, goals and timetables are imperative to the attainment of a representative work force and the elimination of systemic barriers to employment. One key question, however, is the extent to which employers should develop plans, goals and timetables on their own initiative, without externally-imposed requirements or without having to negotiate with employee representatives. As well, the Committee received various viewpoints on the confidentiality of these plans, goals and timetables.

3. Reporting Requirements

The reports that employers file annually with the Minister of Employment and Immigration provide a means of assessing the level of achievement of employment equity. Nevertheless, a number of questions do arise. The Committee heard comments on the process of data collection and how this

should be done within the work place. Concerns were also raised about the content, and frequency of these reports. The extent to which reporting requirements should be modified for small employers was discussed as was the harmonization of data collection and definitions across jurisdictions.

4. Enforcement of the *Employment Equity Act*

The Committee also received presentations on who should have responsibility for administering, monitoring and enforcing the Act, and the method of enforcement. As well, material was provided on the extent to which sanctions should be applied to employers who fail to comply with the provisions of the Act.

5. A National Employment Equity Strategy

The long-term success of employment equity may be assured if adequate support is provided. The Committee heard evidence on the extent and adequacy of current support systems within the federal government and the community at large. In addition, consideration was given to the means by which all interested parties could work together to promote, support and enhance the principles of employment equity.

The Committee has attempted to integrate all that has been learned since the inception of the *Employment Equity Act*. It has thoughtfully considered all of the recommendations made by those who either appeared or submitted written briefs. The result is balanced recommendations for more effective employment equity legislation, regulation and administration.

CHAPTER 1

The Scope of the *Employment Equity Act*

An examination of the scope of the application of the *Employment Equity Act* raises two key questions: which employers should be covered? and which groups should be designated?

1. EMPLOYERS COVERED UNDER THE *EMPLOYMENT EQUITY ACT*

A. The Present System

Currently, the *Employment Equity Act* applies to approximately 370 federally-regulated employers and Crown corporations that are listed in Schedule C of the *Financial Administration Act* and that have 100 or more employees. With a combined work force of about 660,000 employees, these employers operate primarily in the banking, transportation and communications industries. The Act is administered by the Department of Employment and Immigration (EIC).

EIC also administers the Federal Contractors Program, which is established as a government policy and lacks a legislative basis. The program applies to suppliers of goods and services to the federal government that have at least 100 employees and that want to bid on government contracts of $200,000 or more. As a prerequisite to tendering, a company must sign a certificate stating a commitment to implementing certain employment equity measures. Companies that receive contracts are subject to on-site compliance reviews by officials of the Employment Equity Branch of EIC. Companies that do not comply with their commitment may ultimately face exclusion from future government business. Currently, the Program applies to over 880 companies with a combined work force of about 891,000 employees, primarily in manufacturing and such businesses as engineering services, printing, cleaning services and university research. The Program does not apply to the purchase or lease of real property, or to construction contracts.

B. The Proposed System

Many of the witnesses appearing before the Committee, most notably those representing labour groups and advocacy organizations for designated group members, suggested that the coverage of the *Employment Equity Act* should be extended to more employers. They generally felt that the most glaring omission from the application of the Act is the federal Public Service. Some asked how the government can impose legislation on federally-regulated industries but not on itself. Some witnesses claimed that the Treasury Board has not made great progress with its Employment Equity Policy. They stressed that the federal government must set an example for the implementation of employment equity.

The *Employment Equity Act* of 1986 excluded the federal Public Service because it was already subject to the Treasury Board Affirmative Action Policy introduced in 1983. This Policy was designed "to enable the equitable representation and distribution in the Public Service of women, aboriginal peoples and persons with disabilities." In 1986, the Treasury Board amended its Policy to include visible minorities with the other designated groups.

Currently, the Treasury Board has an Employment Equity Policy designed, like the 1983 policy, to attain the equitable representation and distribution within the Public Service of designated group members. It also requires the identification and removal of barriers in employment systems, policies, procedures, practices, organizational attitudes and established behavioural patterns that hinder the employment or career progression of designated group members.

The Policy also involves the implementation of special measures to correct the effects of employment disadvantage and to promote participation by designated groups in the work force. The Public Service Commission (PSC) assists the Treasury Board in applying the Employment Equity Policy by administering, on the Board's behalf, Special Measures Programs for designated groups. Currently, there are five such programs of recruitment and staff development:

- ACCESS—provides on-the-job training for disabled persons who require additional work experience to compete equitably for positions in the Public Service;
- Visible Minority Employment—provides incentives to federal government departments to recruit members of visible minority groups from outside the Public Service; as well, on-the-job training opportunities are available to applicants who do not meet the requirements of specific positions;
- Northern Careers—in the Yukon and Northwest Territories, is responsible for increasing the representation of Aboriginal peoples in federal government departments and agencies in the Territories, and offers a variety of on-the-job and formal training opportunities in federal departments;
- National Indigenous Development—through regional and district offices, provides Aboriginal peoples with training and career development opportunities in federal departments; and
- OPTION (the Non-Traditional Occupations Program for Women)—offers resource incentives for on-the-job training, work experience and career development opportunities, aimed at increasing the number of women at all levels in non-traditional occupations in the federal Public Service.

In April 1988, these programs were renewed for a five-year period, to 31 March 1993. The effectiveness of these programs is currently being evaluated. In addition to the Special Measures Programs, the PSC may, when extraordinary measures are required, use Exclusion Orders to recruit certain categories of workers.

The Treasury Board also has a policy to ensure that employees with disabilities who have employment-related needs for technical aids, attendant and other specialized services are reasonably accommodated in the Public Service. The PSC is responsible for:

- developing and maintaining expertise in the field of work-related devices to assist employees with disabilities;
- providing advice to federal government departments and agencies on the availability of technical aids;
- acquiring a broad selection of work-related technical aids;
- assuming the costs of servicing, shipping and storing technical aids, as well as the general administration of the PSC's technical aids loan bank; and

- lending technical aids to employees with disabilities primarily appointed on a term or seasonal basis who have demonstrated a need for such assistance, where immediate purchase of the device by the department is not feasible.

Representatives of the Treasury Board and the PSC who appeared before the Committee suggested that the Public Service should not be included under the *Employment Equity Act*. The PSC suggested that "the numbers show that we are doing a little better than employers under the *Employment Equity Act* with respect to representation and recruitment. But we are not doing as well as they are in promoting and keeping target group members." The PSC noted very specific employment equity targets for each department that must be achieved over a period of three years, and indicated that the performance of Deputy Ministers and Agency Heads is assessed on their success in meeting their specific targets and in establishing a positive climate for employment equity. While the PSC suggested that the approach of the Treasury Board Employment Equity Policy is essentially the same as that of the Act, the Treasury Board claimed that the current requirements of its Policy go well beyond either the present requirements of the Act or any additional measures proposed by the witnesses.

Further, the Treasury Board indicated that the employment practices of the federal Public Service are already much more heavily regulated than are those of employers subject to the *Employment Equity Act*. The federal Public Service is also governed by the *Financial Administration Act*, the *Public Service Employment Act*, the *Public Service Staff Relations Act*, the *Privacy Act*, the *Canadian Human Rights Act*, the *Multiculturalism Act*, and the *Canadian Charter of Rights and Freedoms*.

The Committee recognizes the current initiatives of the Treasury Board and the PSC towards attaining a representative work force in the federal Public Service. The Committee is also aware that Bill C-26, the Public Service Reform Act, would make further provision for employment equity within the federal Public Service. It is the Committee's opinion that these measures are in no way inconsistent with the initiatives required by the Act; if they go beyond the Act's minimum requirements, so much the better. The Committee strongly believes that the federal government must be a leader in achieving employment equity.

A significant number of witnesses also suggested that the Federal Contractors Program should be included under the *Employment Equity Act*. One witness, however, questioned whether the Act could be extended to the Program because companies that bid on federal contracts are generally provincially-regulated. This witness further suggested that these companies could be held in compliance only with respect to obtaining federal government business.

Witnesses also proposed changes in the size of the business and the value of the contracts under the Federal Contractors Program. Generally, suggestions focused on making the Program applicable to contractors with annual contracts in excess of $50,000 or $100,000, and/or to those contractors with as few as 15 employees.

The Committee recognizes the problem of attempting to apply the federal *Employment Equity Act* to companies under provincial jurisdiction. Nevertheless, the Committee is of the opinion that when these companies bid on federal contracts, they should be required to adopt employment equity principles as a condition of receiving federal government business.

Other witnesses suggested additional employers for inclusion under the *Employment Equity Act*, such as the Royal Canadian Mounted Police, the Canadian Armed Forces, Parliament, federal agencies, boards and commissions, unions, the federal judiciary, licensees and grant recipients, and

Governor in Council appointments of full- and part-time members to all agencies, boards and commissions under federal jurisdiction. Generally, such suggestions were made by witnesses in the belief that the *Employment Equity Act* should have as wide an application as possible.

The Committee supports the coverage of the Royal Canadian Mounted Police, the Canadian Armed Forces, Parliament, and federal agencies, boards and commissions under the Act.

RECOMMENDATION 1.1

The Special Committee recommends that the scope of the application of the *Employment Equity Act* be broadened. Specifically, the Committee recommends that the following employers be covered under the Act:

a) **the federal Public Service;**

b) **the Royal Canadian Mounted Police;**

c) **the Canadian Armed Forces;**

d) **Parliament, specifically the House of Commons, the Senate, and the Library of Parliament; and**

e) **all federal agencies, boards and commissions.**

The Committee feels, moreover, that certain of the other employers suggested by the witnesses should not be covered under the Act *per se*, but should still be required to subscribe to the principles of employment equity.

The Committee believes that unions, as employers, should implement the principles of employment equity. While some of the labour organizations appearing before the Committee claimed to consider employment equity objectives in their hiring decisions, the practice was not as widespread as might be hoped.

The Committee notes that federal judicial and Governor in Council appointments are made on the basis of the expertise and experience of the appointees. While acknowledging that these factors are of paramount importance, the Committee believes that where designated group members have the required expertise and experience, the principles of employment equity should apply to such appointments.

Grant recipients are often small, or not-for-profit organizations, and are generally under provincial jurisdiction. The Committee, therefore, feels that it would be inappropriate to extend the *Employment Equity Act* to them. It does, however, feel that, as a condition of licence, federal licensees should comply with the principles of employment equity.

RECOMMENDATION 1.2

The Special Committee recommends that suppliers of goods and services currently covered by the Federal Contractors Program, who employ at least 75 persons and who want to bid on government contracts of $200,000 or more be required, as a prerequisite to tendering, to sign a certificate of compliance with the principles of employment equity as specified in the *Employment Equity Act*.

RECOMMENDATION 1.3

The Special Committee recommends that, as a condition of certification, unions certified by the Canada Labour Relations Board, the Public Service Staff Relations Board or any future federal labour tribunal, be required, as employers, to sign a certificate of compliance with the principles of employment equity as specified in the *Employment Equity Act*.

RECOMMENDATION 1.4

The Special Committee recommends that future federal judicial and all Governor in Council appointments be made with regard to the principles of employment equity. The President of the Privy Council must submit an annual report to Parliament on appointments made during the previous year. To the greatest extent possible, this report should resemble those filed by employers under the *Employment Equity Act*.

RECOMMENDATION 1.5

The Special Committee recommends that, as a condition of licence, federal licensees sign a certificate of compliance with the principles of employment equity as specified in the *Employment Equity Act*.

RECOMMENDATION 1.6

The Special Committee recommends that each federal political party be required to report annually to Parliament on the staff of Parliamentarians and staff of the party, including research staff. This report must meet the requirements of employer reports under the *Employment Equity Act*.

RECOMMENDATION 1.7

The Special Committee recommends that the Treasury Board's Special Measures Programs, which are currently being evaluated for effectiveness, be extended.

2. WORK FORCE SIZE

A. The Present System

As noted above, the *Employment Equity Act* currently applies to federally-regulated employers with 100 or more employees.

B. The Proposed System

Witnesses' submissions to the Committee suggested a variety of work force sizes to which the *Employment Equity Act* should apply, ranging from no size restriction at all, to the status quo of 100 employees. Those who proposed that the Act apply to employers with fewer than 100 employees generally adopted the view that the Act's scope should be expanded to encompass as many work places

as possible. This suggestion complements their recommendation that more employers be covered under the Act. Several witnesses argued that such a change would be particularly desirable given the rapid growth of small business in this country. It was also noted that discrimination is no less a problem in small businesses than in larger companies.

Some witnesses, aware of the difficulties that smaller employers might have with reporting, advocated modified reporting requirements for such employers. Alternatively, it was suggested that smaller employers might benefit from a "phase-in" period, though they would eventually have to meet the same reporting requirements as other employers. The possibility of federal funding to help small employers establish their reporting systems was also proposed.

For its part, EIC indicated that expanding the scope to employers in the federal jurisdiction with fewer than 100 employees would have implications for the Department's resources. EIC also suggested that, if smaller companies were to be covered, they might be subject to different reporting requirements. For example, a company might be required simply to post notices announcing it was an employment equity employer, and to write a report "occasionally". Similarly, another witness argued that very small companies could perhaps be exempted from the requirement to collect data, and be required only to assess and eliminate systemic employment barriers.

Nevertheless, other witnesses, generally representatives of employers' organizations, suggested maintaining the current application of the Act to employers with 100 or more employees. One witness felt it would be more beneficial to enhance employment equity for the existing constituents, while others noted that the extension of the Act to smaller employers could mean additional burdens and hardships for them. Additionally, in smaller companies, self-identification could lose its confidential nature and designated group members might be less willing to self-identify.

The Committee believes that the *Employment Equity Act* should be broadened, for example by including other employers in its scope. The Committee also believes that some change should be made to the size of the work force to which the Act should apply.

The Committee notes that the Act currently covers about 5% of the Canadian work force. It is estimated that lowering the threshold to 50 or more employees would increase coverage of the work force to between 5.1% and 5.4%; lowering the threshold further, to employers with 20 or more employees, would increase the Act's coverage to between 5.3% and 5.7% of the work force. While lowering the threshold would lead to somewhat limited increases in the number of employees covered by the Act, there would be relatively significant increases in the number of employers covered.

RECOMMENDATION 1.8

The Special Committee recommends that the *Employment Equity Act* apply to employers who have 75 or more employees. Further, an employer with fewer than 75 employees who voluntarily develops plans and submits an annual report to the Department of Employment and Immigration should be recognized, through a federal designation program, as an Employment Equity Employer.

3. THE DESIGNATED GROUPS UNDER THE *EMPLOYMENT EQUITY ACT*

A. The Present System

The *Employment Equity Act* requires employers to provide information on the representation within their respective companies of designated group members—women, Aboriginal peoples, persons with disabilities and members of visible minorities.

Definitions of these designated groups are provided in the Regulations to the Act. Employers may "count", for purposes of statistical representation, only an individual who identifies himself or herself as belonging to a designated group, or who agrees to be so identified by the employer.

B. The Proposed System

Several witnesses, mostly labour groups and advocacy organizations representing designated group members, proposed that other groups should be designated under the *Employment Equity Act*. One suggestion was that immigrants, who experience language and cultural barriers to employment and problems with foreign accreditation, should be included.

Another suggestion was that older workers constitute a designated group under the Act. It was noted, however, that statistics on the degree of under-representation of this group are unavailable, and that the age at which one becomes an "older" worker is unclear. Further, at this time people in a number of age groups are experiencing employment difficulties; it is not clear that older workers have had a history of systemic discrimination.

Finally, it was proposed that the coverage of the Act be expanded to persons disadvantaged because of national or ethnic origin, religion or sexual orientation.

The Committee recognizes that there are certain groups, beyond those currently specified under the *Employment Equity Act*, that may be experiencing employment difficulties. Nevertheless, the Committee also strongly believes that much remains to be done in attaining employment equity for those groups already covered by the Act.

RECOMMENDATION 1.9

The Special Committee recommends that the current designated groups under the *Employment Equity Act*—women, Aboriginal peoples, persons with disabilities, members of visible minorities—remain unchanged.

Many witnesses raised concerns about the definitions of the designated groups under the Regulations to the Act. Statistics Canada is responsible for collecting, analyzing and publishing economic and social information, as well as providing data on Canada's population, labour force, economic life, education, housing, transportation, and social and cultural life. By virtue of these activities, Statistics Canada is involved in the collection of employment equity statistics.

The definitions currently used for the purposes of employment equity have their origins in the 1986 Census of Canada, which provided information on women, Aboriginal peoples and members of visible minorities, and a post-censal survey, the 1986 Health and Activity Limitation Survey (HALS 1986), which provided information on persons with disabilities. The Census of Canada and the HALS were repeated in 1991.

In the 1986 Census of Canada, visible minorities were identified through a question about ethnic origin, although in some cases other questions, such as place of birth and mother tongue, were also used. Visible minorities are defined in the Regulations to the *Employment Equity Act* in the following manner: persons, other than aboriginal peoples, who are, because of their race or colour, in a visible minority in Canada are considered to be persons who are non-Caucasian in race or non-white in colour and who, for the purposes of section 6 of the Act, identify themselves to an employer, or agree to be identified by an employer, as non-Caucasian in race or non-white in colour.

Several witnesses also expressed dissatisfaction with the term "visible minority"; others suggested that the term should be redefined or subdivided to recognize that not all visible minorities experience the same type or level of disadvantage in employment. Alternatives proposed by witnesses for the term "visible minority" were "racial minority", "cultural minority" and "ethnic minority."

The Regulations under the *Employment Equity Act* consider Aboriginal peoples to be "persons who are Indians, Inuit or Métis and who, for the purposes of section 6 of the Act, identify themselves to an employer, or agree to be identified by an employer, as Indians, Inuit or Métis." While the 1986 Census considered Aboriginal peoples as Census respondents who identified themselves as Inuit, North American Indian or Métis, some Indian reserves and settlements refused to participate in the Census. Although the 1991 Census achieved a higher level of participation, about 25,000 residents of Native reserves were not enumerated, a reduction from an estimated 45,000 in 1986.

The Employment Equity Regulations state that persons with disabilities are "persons who

(i) have any persistent physical, mental, psychiatric, sensory or learning impairment,

(ii) consider themselves to be, or believe that an employer or a potential employer would be likely to consider them to be, disadvantaged in employment by reason of an impairment referred to in subparagraph (i), and

(iii) for the purposes of section 6 of the Act, identify themselves to an employer, or agree to be identified by an employer, as persons with disabilities."

Many of the witnesses—advocacy organizations representing designated group members, labour organizations and employers—expressed concern about the definition of persons with disabilities, although they did not make many suggestions for change. Some felt that the definition's concept of "disadvantaged in employment" was problematic. Others felt that impairment must be persistent.

The definition of "disability" in the HALS 1986 and 1991 was developed in accordance with a World Health Organization framework known as the International Classification of Impairments, Disabilities and Handicaps. The data from the HALS 1986 included persons who reported a functional limitation with respect to one of the activities of daily living or one of the general limitation questions and who indicated a resulting limitation in the kind or amount of work that they could do. Specifically, the definition was: "any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being."

The Committee, like many witnesses, has serious concerns about the definitions in the Regulations to the *Employment Equity Act*, particularly the extent to which they differ from the Statistics Canada definitions. The Committee also recognizes that both of these definitions may differ from those used by employers in their survey forms. Chapter 3 addresses this issue as it relates to employer reports. Concerns are particularly acute with respect to the definition of persons with disabilities.

RECOMMENDATION 1.10

The Special Committee recommends that officials from Statistics Canada consult with the Canadian Labour Force Development Board, which represents those parties with an interest in employment equity, to develop definitions of the designated groups which are acceptable to all parties.

A final issue raised, mostly by representatives of employers' organizations, concerned the self-identification of designated group members. When the *Employment Equity Act* was passed in 1986, there was a recognition of the need to respect the right to privacy of all individuals, including designated group members. At that time, the consensus was that voluntary self-identification was the best way to determine the designated group status of individual employees.

There is, however, some concern that voluntary self-identification may lead to under-counting of designated group members. For example, the Treasury Board indicated to the Committee that a survey undertaken for the Task Force on Barriers to Women in the Public Service found that the federal Public Service has 1.5 times as many visible minority employees, and 2.5 times as many disabled employees, as have identified themselves.

It was suggested to the Committee that effective communication strategies would encourage self-identification. To avoid under-reporting, a number of employers proposed that they be permitted to include in their annual statistics those employees for whom accommodation has been made and those employees receiving disability payments, even where they have not identified themselves as having disabilities. Further, it was suggested that employers should have the option of including those visible minority and Aboriginal employees who are known to be such, but who have not self-identified. Identification by the employer would be done on a confidential basis.

Though the Committee understands employers' frustration when employees who have been accommodated within the work place do not identify themselves, it feels that there is no viable alternative to self-identification. The Committee urges employers to carry out their work place surveys in conjunction with education programs designed to make employees feel at ease with the identification process and to reassure them that the information is both important and confidential.

RECOMMENDATION 1.11

The Special Committee recommends that designated group members continue the practice of voluntary self-identification.

CHAPTER 2

Implementing Employment Equity

1. SUBSTANTIVE MEASURES

A. The Present System

At present, section 4 of the *Employment Equity Act* sets out the mandatory requirements for employers subject to the legislation. The section imposes a two-fold duty: employers must identify and eliminate work place barriers that prevent the employment of persons in designated groups; and, employers must take proactive steps to ensure that the particular circumstances of designated group members are also reasonably accommodated within the work place.

The purpose of section 4 is to recognize that equality is not always achieved by treating everyone in the same way. Sometimes, people must have special treatment in order to ensure that differences that have nothing to do with inherent ability do not become barriers to equal employment opportunities.

Section 5 of the Act specifies the process by which an employer must implement the employment equity program required by section 4. Just as goals and timetables are requisites for doing business, so too must an employer have goals and timetables for achieving employment equity. Section 5 requires that employers prepare a plan setting out the goals to be achieved during the year or subsequent years, and a timetable for their implementation. Employers must retain a copy of their employment equity plan for a period of at least three years after the last year to which the plan applies.

Currently, the *Employment Equity Act* does not set out any way in which the employment equity measures in sections 4 and 5 must be implemented. Employers can develop employment equity plans, goals and timetables on a voluntary and individualized basis. The Minister of Employment and Immigration does issue guidelines pursuant to section 12 of the Act to assist employers in meeting the requirements of sections 4 and 5; however, these guidelines are not binding.

B. The Proposed System

Witnesses generally agreed in principle on the need for employment equity plans, goals and timetables as an important element of any business strategy. Differences naturally began to emerge, however, with respect to the actual content or nature of these plans.

Most employer organizations favoured continuing the present system of allowing the employer to determine and establish the employment equity program best suited to its particular business circumstances. These organizations strongly opposed any external imposition of quotas, targets or guidelines as inflexible and ultimately counterproductive. In their view, because employment equity forms such an integral part of an organization's human resource and strategic planning process, the organization itself is in the best position to determine what form of employment equity program is required.

On the other hand, the most common position of advocacy organizations representing the designated groups was that only mandatory numerical goals and timetables would ensure that employer obligations under the Act are fulfilled. Some groups proposed that the legislation should set out a standard for goals and timetables, while others suggested that the monitoring agency should develop a formula for numerical goals and timetables. Some even proposed that the legislation stipulate the types of analyses that employers would have to conduct for the purposes of plan development.

Some representatives of employers' organizations suggested that any future legislative standards should require employers to formulate and adopt specific plans only where significant under-representation of the designated groups had been shown. Many representatives of employers' organizations pointed out, however, that any legislated standards for performance would have to take into consideration such factors as recessions, which can have a dramatic impact on the operations of any business.

Alternatively, some representatives of employer and labour organizations who appeared before the Committee proposed that EIC set benchmarks for employment equity planning. Some representatives of the designated groups suggested that a monitoring body, such as an employment equity commission, could develop the formula for goals and timetables, as well as establish guidelines for barrier elimination, job accommodation and supportive measures.

Witnesses agreed, however, on the need for greater emphasis on qualitative measures under the Act. Designated group representatives noted that all too often numerical results can be distorted or manipulated. Representatives of employers' organizations also pointed out that it is often difficult to assess real achievements on the basis of numbers alone, without a sense of their context.

Many labour groups and advocacy organizations representing designated group members stressed that the legislation should deal not only with the discriminatory barriers to employment opportunities, but also with the barriers within the work environment itself. The Committee heard a great deal of support for such measures as education and communication programs, racial and sexual harassment policies, outreach programs, child-care and literacy services within the work place.

Members of the disability community also recommended that employer plans include goals and timetables for the reasonable accommodation of persons with disabilities. In most cases, labour groups and advocacy organizations representing designated group members felt that the legislation should stipulate measures to be taken by employers to ensure a supportive work climate for designated group members.

The Committee strongly believes in the need for achievable employment equity plans, goals and timetables as an integral part of business planning. It is through these measures that employers must identify and eliminate systemic barriers to the equal participation of members of the designated groups in the work place. The Committee also recognizes that it is imperative for employers to retain the necessary flexibility to allow them to tailor these plans to their individual circumstances. At the same time, the Committee is concerned about evidence indicating that most employers covered by the Act have made very little progress toward employment equity in the five years since the enactment of the legislation. Further, any successes appeared to vary not only between employers, but also between those designated groups which benefited from employers' efforts and those which did not.

The Committee feels that one reason for the uneven performance under the Act may be that the current legislation fails to identify clearly the type and extent of changes expected of employers. As a consequence, some employers may legitimately believe that as long as they make some effort to redress longstanding discriminatory practices within the work place, they are fulfilling their legal obligations.

Therefore, the Committee feels that expectation levels should be set out in the Regulations to the Act. These benchmarks would not only inform employers of the required level of achievement, but would also serve as a means of assessing employer compliance.

Some research has indicated that the most effective employment equity programs contain formalized plans, goals and timetables that focus on all facets of the employment process, that have demonstrated management commitment, that contain regular monitoring systems and that are communicated throughout the organization as a whole to ensure that all employees have a common understanding of the process. If these basic requirements were set out in the Regulations to the Act, with examples, employers would have concrete guidance about expectations under the legislation. At the same time, employers would retain enough flexibility to implement equity plans consistent with their particular organizational structure.

It is hoped that as a result, employment equity would be achieved more efficiently and effectively. The Committee also proposes that EIC be required to consult with representatives of the designated groups, employers, and employee representatives or bargaining agents to develop these regulations.

Setting out standards in the Regulations would also make it easier for the monitoring agency to advise employers on the development of their employment equity systems. It would enable such an agency to approve an employer's plan as meeting the basic requirements of the legislation. The Committee feels that once approved, the employment equity program should be binding on the employer. This is not to say that there would be no element of flexibility to allow an employer to modify a plan should there be legitimate reasons for doing so; there might well be instances where an employer might be forced to modify a plan because of circumstances beyond its control.

Where changes were required to plans that had already been approved, it might be possible to establish a more informal and expeditious approval process. The employer would be required to notify the monitoring agency of proposed changes, justify their validity and demonstrate a continued commitment to the expectations of the Act.

Therefore, a two-tiered approval system could be established to ensure some accountability by employers with respect to their responsibilities under the Act, and at the same time provide them with the flexibility required for the normal operational requirements of a business.

RECOMMENDATION 2.1

The Special Committee recommends that the *Employment Equity Act* continue to require all employers to adopt an employment equity program designed to identify and eliminate systemic barriers to employment, and institute supportive measures to accommodate members of designated groups in the work place. All employment equity programs must have achievable plans, goals and timetables containing both quantitative and qualitative elements. While the form of these programs would continue to be left to the discretion of the employer, the Regulations to the Act must outline acceptable requirements and standards. The Committee recommends that, at a minimum, these programs be formalized, comprehensive, management-supported and reflect a true commitment to change.

RECOMMENDATION 2.2

The Special Committee recommends that once developed by the employer, employment equity plans be approved by the monitoring agency prior to implementation, and thereafter become binding on the employer. The Committee recommends, however, that

the employer must continue to have some flexibility with respect to plan modification. In cases of changes to plans that have already been approved, it may be necessary to have a less formal and expeditious process of approval.

2. AVAILABILITY DATA

A. The Present System

Section 4 of the *Employment Equity Act* requires employers to implement employment equity by ensuring "that persons in designated groups achieve a degree of representation in the various positions of employment with the employer that is at least proportionate to their representation in the work force, or in those segments of the work force that are identifiable by qualification, eligibility or geography and from which the employer may reasonably be expected to draw or promote employees". From this section stems the need for very detailed information on the availability of members of the designated groups.

To meet this need, Statistics Canada has gathered external labour force information on employment inequity in Canada. The Census of Population conducted every five years provides data on a wide range of demographic and socio-economic characteristics of Canadians and is the main source of data about women, Aboriginal peoples and visible minorities. The Health and Activity Limitation Survey, a post-censal survey of people with disabilities, provides similar information about that group.

Together these two sources of information provide employers with availability data—the detailed occupational, educational and demographic statistics—that provide the numbers and percentages of designated group members and their labour force status and occupations within labour market areas.

B. The Proposed System

Several witnesses who came before the Special Committee suggested that the labour force availability statistics for the designated groups should be updated more often than every five years. They felt that by basing the labour force data on the quinquennial census, employers were being forced to use a benchmark that grew increasingly less reflective of the true position of the designated groups in the labour market.

Statistics Canada itself agrees that, ideally, labour force availability data should be updated more frequently than at present. Nevertheless, through the Census and the post-censal survey, Statistics Canada provides the most comprehensive detailed statistics available for employment equity purposes. The Committee is also aware that the Interdepartmental Working Group on Employment Equity Data is investigating and attempting to develop projection models that would produce reliable inter-censal estimates.

Disabled persons' organizations claimed that the current Statistics Canada availability statistics underestimate the number of persons with disabilities who would work if such facilities as accommodation on the job or transportation were available. Witnesses suggested that Statistics Canada should attempt to expand the labour force availability data to include the total supply of labour offered by the designated groups.

The Committee agrees with the representations on the need for reconciling the external work force availability data and employers' internal statistics by harmonizing the definitions in the Census (including the post-censal surveys) and the Regulations under the *Employment Equity Act*. In this

regard, it is important to note that HALS 1991 attempted to further refine the operationalization of the definition of persons with disabilities and contained an expanded section with questions about the employment of such people. Several questions in the survey attempted to harmonize the definitions and data required for the purposes of the *Employment Equity Act*. Respondents were asked "Do you believe that any prospective employer would be likely to consider you disadvantaged in employment because of your condition or health problem?" Given the earlier high rate of survey response (over 95%), it is hoped that the HALS 1991 will be a better tool in establishing labour force availability data for people with disabilities.

In the Committee's view, federal government agencies involved in the collection, analysis and distribution of statistics related to labour force availability of the designated groups should continue with and, if possible, expand their efforts to produce timely and precise data. Benchmark data about the availability of the designated groups are essential if employment equity plans are to be founded in a realistic understanding of the place of the designated groups in the Canadian labour force. The Committee also believes that Statistics Canada should continue to produce its availability statistics to include people who have been, could be, but are not currently in the labour force. The Committee realizes that this would increase the size of the availability pool but it would also allow the inclusion of persons with experience in a certain occupation who might not be currently employed. The Committee feels that such expanded data would more accurately reflect the idea of an "available" pool of experienced workers in a certain occupation.

RECOMMENDATION 2.3

The Special Committee recommends that Statistics Canada, in conjunction with other federal departments and agencies as well as provincial authorities with responsibility for employment equity monitoring or enforcement, initiate further refinements to the data used to reflect the labour force availability of the four designated groups.

3. THE DUTY TO CONSULT

A. The Present System

Section 4 of the *Employment Equity Act* requires employers to consult with their employees or, where the employees are organized, the bargaining agent, on the implementation of employment equity. "Consultation" is specified in the guidelines to employers issued under section 12 of the Act as supplying "sufficient information and sufficient opportunity to employee representatives or bargaining agents to enable them to ask questions and submit advice on the implementation of employment equity".

B. The Proposed System

Many witnesses, predominantly labour organizations and advocacy organizations representing designated group members, expressed concern about the obligation to "consult." Some labour groups, for example, argued that there is a need for clarification of what is meant by "consultation." Many of these groups went further, and suggested that consultation does not go far enough—there must be negotiation. It was not always clear, however, whether these groups were referring to the need for negotiation of the plan, goals and timetables, or of the implementation of the employer's plan.

Many witnesses disagreed on whether negotiation, either of the plan or of the plan's implementation, should take place during normal rounds of bargaining, or separately, with subsequent integration of the plan into the collective agreement.

Not surprisingly, some representatives of employers' organizations expressed a different view on the negotiation of either employment equity plans or their implementation. These witnesses advanced explanations of why employment equity should not be a bargainable issue. It was suggested, for example, that union participation as an equal shareholder in the development of employment equity plans would erode the right of management to hire, promote, transfer and terminate employees. Some employers did not object to consultation with unions, but they did object to negotiating employment equity with them.

As an alternative to negotiating employment equity plans as part of the collective agreement, some witnesses suggested that employers and unions might jointly develop and implement employment equity plans and include them in a Memorandum of Understanding. This would not have the same effect as inclusion in an actual collective agreement. They stated that employment equity, as a human right, is not negotiable, and that it should not be permitted to be traded-off against wages and other working conditions at the bargaining table.

A number of witnesses also urged the establishment of joint union-management or employee-management committees. Joint committees were considered to be particularly important in non-unionized work places, where they could be a forum for consultation about employment equity plans or their implementation. Many witnesses recommended that these committees include representatives from the designated groups, who could bring particular expertise and experiences to the discussions.

The Committee strongly believes that the participation of all interested parties—employers, unions, employees' representatives, designated group members—is critical to the success of an employment equity plan. Their involvement would serve a useful educational function in the work place and would enhance the acceptability of the plan and its measures. The Committee notes that about 44.1% of employers covered under the *Employment Equity Act* have some degree of union representation within their work place, and that approximately 41.5% of the work force employed by employers under the Act are bargaining unit members. While the Committee is concerned that employment equity not become a "bargaining chip," the Committee feels strongly that consultation is vital. The Committee believes that employers should ultimately retain responsibility for the development of plans, goals and timetables, following the required consultation, but that the implementation of the plan within the work place should occur through negotiation with the bargaining agent or employees' representatives.

The Committee is also concerned about the extent, if any, to which seniority clauses in collective agreements may impose barriers to employment equity. Some witnesses stressed the harmful impact that such seniority clauses can have in situations of downsizing, in cases where the employees most recently hired are designated group members. Many labour organizations adopted the other point of view, and suggested that seniority clauses may provide job protection for designated group members.

The Committee believes that the monitoring agency should help find solutions where employers and employees' representatives are having difficulty in meeting the plan's goals and timetables. If the monitoring agency is unsuccessful in its attempts, the situation should be referred to the enforcement agency.

RECOMMENDATION 2.4

The Special Committee recommends that the *Employment Equity Act* require bargaining agents, and in their absence employees' representatives, to be consulted and have input into the preparation and implementation of employment equity plans. Further, it is recommended that "consultation" be meaningful, and be set out in a definition section of the *Employment Equity Act*.

RECOMMENDATION 2.5

The Special Committee recommends that the enforcement agency under the *Employment Equity Act* have the authority to make an order to modify or remove seniority clauses where they represent a barrier to employment.

4. PLAN AVAILABILITY

A. The Present System

Section 5 of the *Employment Equity Act* requires the employer to prepare a plan establishing the goals for the year or subsequent years, and a timetable for their implementation. Although employers must retain a copy of their employment equity plan for at least three years after the last year to which the plan applies, there is no requirement for the plan to be available either to the public, the employees or a monitoring or enforcement agency.

B. The Proposed System

Witnesses differed considerably on whether the plans should be publicly available. Many representatives of employers' organizations strongly believed that employment equity plans should remain private, arguing that these are genuine business planning documents that may contain information on proposed work force growth or rationalization strategies. If such plans were in the public domain, and therefore available to business competitors, employers' competitiveness could be affected. They also suggested that the public availability of plans would "force" employers to produce ineffectual plans, goals and timetables that were very conservative and with certain results.

While many employers' groups were opposed to their employment equity plans being publicly available, they were amenable to having the plans available for review in an on-site examination process, similar to the current procedure under the Federal Contractors Program. They might make the plans available to the monitoring agency on a confidential basis, provided that this agency did not subsequently become their "prosecutor".

Advocacy organizations and labour organizations representing designated group members generally adopted a somewhat different position. Many witnesses suggested that employers' plans should be made public in order to ensure that the results of employers' efforts can be monitored. They pointed out that without access to the goals and timetables, any analysis of numerical reports is incomplete. Some suggested that employers be required to submit their employment equity plans to an enforcement agency; however, it was not indicated whether or not these plans should be kept confidential by that agency.

The Committee is of the opinion that because an employment equity plan is a *bona fide* business planning document likely to contain proprietary information, it should be kept confidential. Nevertheless, the Committee also believes employers must prepare these plans.

RECOMMENDATION 2.6

The Special Committee recommends that employment equity plans, goals and timetables be prepared in consultation with, and have input from bargaining agents or employees' representatives and should be submitted to the monitoring agency. These plans must remain confidential, but would be available to the monitoring and enforcement agencies under the *Employment Equity Act*.

CHAPTER 3

Reporting Requirements

1. THE PRESENT SYSTEM

Currently, both the *Employment Equity Act* and the Federal Contractors Program require a measurement of changes in the employment situation of women, visible minorities, Aboriginal peoples and persons with disabilities. Such measurement is done by collecting, maintaining and comparing two sets of statistics: external data that establish the number of members of the designated groups in the Canadian labour force as a whole, and internal data that count the members of these groups among the employees of a particular business operation. A comparison of these two sets of figures reveals situations where a designated group is under-represented in employment. This comparison also forms a basis for setting objectives to rectify this situation.

In order to permit a comparison of overall work force availability and the actual work force of employers covered by the Act, section 6 sets out:

> 6. (1) On or before June 1, 1988 and on or before June 1 of each year thereafter, every employer shall file with the Minister a report in respect of the immediately preceding calendar year containing information in accordance with prescribed instructions indicating, in the form and manner prescribed,
>
> (a) the industrial sector in which employees of the employer are employed, the location of the employer and employees, the number of all employees of the employer and the number of persons in designated groups so employed;
>
> (b) the occupational groups of the employer and the degree of representation of persons in designated groups in each occupational group;
>
> (c) the salary ranges of employees and the degree of representation of persons in designated groups in each range and prescribed subdivision thereof; and
>
> (d) the number of employees hired, promoted and terminated and the degree of representation in those numbers of persons in designated groups.

Section 6(2) contains provisions for certification of reports, and section 6(3) requires retention of the employer's records for three years after a report has been filed.

Section 7 of the Act provides that an employer who fails to comply with the reporting requirements is guilty of an offence and is liable upon summary conviction to a fine not exceeding $50,000.

Detailed requirements for employers' annual reports to the Minister of Employment and Immigration are set out in the *Employment Equity Regulations* provided for by section 11 of the Act. These Regulations define "salary", "hired", "promoted", and "terminated" and describe persons who are considered for the purposes of the Act to be members of the four designated groups.

Currently, employers who fall within the scope of the Act are required to complete six forms:

Form 1 — employer identification, summary statistics and the certification of accuracy;

Form 2 — distribution of all employees by designated group, sex, occupational category and salary quartiles;

Form 3 — distribution of all employees by designated group, sex, and salary range;

Form 4 — employees hired by designated group, sex and occupational categories;

Form 5 — employees promoted by designated group, sex and occupational categories; and

Form 6 — employees terminated by designated group, sex and occupational categories.

Several of the forms require separate reporting for full-time, part-time and temporary employees. Under this system, forms for temporary employees are required only when this group constitutes 20% or more of the employer's work force. Employers must also submit forms for each industrial sector of a company with 1,000 or more employees, and for each province and eight designated Census Metropolitan Areas (Calgary, Edmonton, Halifax, Montreal, Regina, Toronto, Vancouver, Winnipeg) in which an employer has a work force of 100 or more employees. Full-time and part-time employee forms only are required for the Census Metropolitan Areas.

Employers covered by the Act filed their first set of reports in June 1988, and the fourth set in June 1991. The detailed reports are distributed to selected public libraries across Canada and to the Canadian Human Rights Commission.

Under section 9 of the Act, the Minister of Employment and Immigration is required to table in Parliament, before 31 December of each year, a report that aggregates and analyzes the data from the employers' reports for the previous year. This Minister's report must also compare the annual position of the designated groups with the statistics for the Canadian labour force according to the Census and the HALS.

There are different data collection requirements for employers who are not covered by the Act but who participate in the Federal Contractors Program. The guidelines, established by the Department of Employment and Immigration (EIC), set out five steps for participation in the Program. The timing for these steps, including data collection, is not based on a pre-determined timetable but is dependent upon individual circumstances.

One requirement for participation in the Federal Contractors Program is that the employer should collect data that will enable the establishment of objectives and priorities for an employment equity program and a means for both the contractor and the government to measure results. The guidelines stipulate that an employer should collect and maintain information on the employment status of designated group employees, by occupation and salary levels and in terms of hirings, promotions and terminations. In addition, contractors are encouraged to collect data on applications for employment, hirings, promotions, training, lay-offs and terminations.

Contractors are not required to use a specific format to compile statistical information, but they are encouraged to use the same format established for employers covered by the *Employment Equity Act*.

2. THE PROPOSED SYSTEM

A. The Nature of Employers' Reports

The Committee reviewed employers' reporting requirements from the perspective that reports must serve two basic purposes. The first of these is to give an employer an internal planning and assessment mechanism. The second is to enable the government and the public to assess changes in the employment situation of the four designated groups.

The Committee agrees with the majority of the witnesses that each employer should continue to prepare a full report according to the current system of reporting. The Committee does not believe that a summarized report would provide adequate information for comparisons to be made.

The Committee is concerned that any reporting requirements imposed by either the *Employment Equity Act* or the Regulations should take into consideration their cost and the administrative burden they would place on an employer. At the same time, the Committee recognizes the need to collect data that will permit effective monitoring and evaluation of an individual employer's achievements. During the hearings, the Committee heard evidence that many employers have complex data collection systems already in place. The Committee believes that employers must receive ample notice of any changes to existing reporting requirements. It would be unfair to ask them to establish a whole new system.

The Employment Equity Branch of EIC also reported that it had taken steps to provide for the ongoing needs of employers. The Branch provides consultation services and labour market information and has developed an employment equity computerized reporting system specifically designed to simplify employers' production of annual reports and to help them keep track of their work force. The Branch provides this service to employers at no charge.

The Committee also considered various options for the length of the reporting period. Some witnesses suggested that a longer reporting period, two years for example, would be better than changing the existing reporting requirements. They based this position on the fear that the annual reporting cycle might raise expectations that significant change in the employment position of members of the designated groups would take place in a single year. Because barriers have taken years to develop, however, such expectations are unrealistic. It was even suggested that there might be a flexible reporting period, based on a company's size, structure, or success in meeting employment equity goals.

A large number of witnesses felt that the annual reporting period ought not to be altered. Generally, they agreed that a change would make comparisons between the reports difficult. The Committee also heard arguments that the Treasury Board and the other government employers should make public an annual report on employment equity containing data on the representation of designated groups in the various departments and agencies at a regional or Census Metropolitan Area level. It was also recommended that the Federal Contractors Program should require all contractors to submit an annual report similar to that currently required from employers under the Act.

One suggestion was that annual reports could be simplified. Employers might, for example, provide a report of flow data (i.e. rates of promotions, etc.) every year and a comprehensive and detailed report every four to five years. Another suggestion was that companies with a high turnover rate could report annually.

On the other hand, some witnesses felt that reports could be more detailed. They argued that employers' reports should include detailed breakdowns of terminations, including retirements, transfers, lay-offs, as well as the reasons for these lay-offs and outright dismissals. Others felt that

reports should identify more precisely whether promotions had been to only slightly higher ranks or pay levels. Several witnesses suggested that employers should report and give flow data on freelance, part-time, and contract employees. This, they believed, would help to identify whether employees generally, as well as employees who are members of the designated groups, are moving from part-time to full-time positions or vice versa. The justification for this position was that large businesses are now frequently contracting out work that was formerly performed by permanent employees. Some employers supported inclusion of information on part-time and temporary employees in their annual reports because it would more accurately reflect their hiring of people from the designated groups.

The Committee concludes that current numerical reporting requirements appear to be satisfactory to many of those who appeared before it or who submitted written briefs. The Committee is also aware that change in reporting requirements for the sake of change could result in costly confusion at a time when the Committee is recommending other significant amendments to the *Employment Equity Act*.

RECOMMENDATION 3.1

The Special Committee recommends that the annual reporting requirement and the current numerical reporting system remain unchanged.

In the earlier discussion on the scope of the legislation in Chapter 1, the Committee recommended that the Act should not cover employers with fewer than 75 employees. At the same time, the Committee believes that all employers not required to report should be encouraged to do so and thus gain recognition as an Employment Equity Employer. The Committee feels that these employers should not be subject to any onerous or complex reporting system in order to gain designation and that a more modest form of reporting should be devised for small business.

RECOMMENDATION 3.2

The Special Committee recommends that an employer with fewer than 75 employees who chooses to seek designation as an Employment Equity Employer should be required to submit an annual report no longer than three pages. This report should include basic information about the employer, the number of full-time, part-time and temporary employees and the degree of representation of the four designated groups.

B. Harmonization of Employers' Reports

The Committee heard from several employers that they are incurring significant costs by having to collect data according to different sets of criteria and definitions in three or four different jurisdictions. As a larger number of provinces and municipalities implement employment equity policies or legislation, this problem is likely to become increasingly severe.

In the view of the Committee, the collection of statistics is already costly and threatens to divert funds that are necessary for effective human resource planning and the establishment of qualitative programs leading to employment for more members of the designated groups.

In its response to the discussion paper on employment equity in Ontario, Statistics Canada recommended that standard collection methods and means of reporting data should be specified in any documentation accompanying the legislation itself. Statistics Canada also commented that comparability among all jurisdictions would minimize the reporting burden on employers and indicated its willingness to consult and to provide other jurisdictions with information available from the federal program.

The Committee recognizes that the federal government is not able to dictate to the provincial governments any policies for standardizing and harmonizing data collected by employers. It strongly believes, however, that everyone would benefit—designated groups, employers, and governments—if the federal government and the provinces did harmonize such data.

RECOMMENDATION 3.3

In order to reduce the burden on employers who must prepare employment equity data for different jurisdictions, the Special Committee recommends that the federal government exercise leadership in ensuring that data collected for the purposes of employment equity, whether for inclusion in employers' reports or for the purposes of availability statistics, be standardized and harmonized. The federal government should initiate discussions with the provinces in order to ensure that this standardization and harmonization is achieved as soon as possible.

This Committee heard a considerable difference of opinion on the need for a standardized survey form to be defined in the Regulations under the *Employment Equity Act.* Such a form would ensure that the reports from one employer were directly comparable with the reports from another.

Although the issue of a lack of standard reporting was raised by many witnesses, including employers, labour organizations, representatives of the designated groups, and government agencies, the Committee was able best to assess its effects with regard to persons with disabilities. Groups representing people with disabilities contend that employers administer to their employees various incompatible surveys that in any case, do not identify persons with severe disabilities. People with mild limitations, such as poor eyesight that can be remedied by eyeglasses, can identify themselves in such surveys as disabled for the purposes of employment equity and can be included as such in the employer's report. Disability organizations maintain that the definition in the Regulations under the Act is clear; they say that employers should report only those employees who identify a persistent impairment that leads them to consider themselves disadvantaged in employment or limited at work, or to believe that an employer or potential employer would likely consider them to be so.

Currently, the definition of "disability" used for purposes of the *Employment Equity Act,* which employers use in surveying their employees for the annual report, is not an official Statistics Canada definition. The Committee is also aware that Statistics Canada has provided, under contract to the Canadian Human Rights Commission, comparative analyses of content and methodology used by specific employers and by the HALS to measure the prevalence of persons with disabilities in their organizations. The objective of these analyses is to determine, to the greatest extent possible, whether the employer surveys and the HALS are identifying similar or different populations of individuals. Statistics Canada, however, is not providing an opinion on either the adequacy of the definition used by employers or on its congruence with the definition provided in the *Employment Equity Regulations.*

In the Committee's view, if the information collected were shown to be unreliable, its use as a prime indicator of an employer's performance in achieving employment equity would be diminished.

RECOMMENDATION 3.4

The Special Committee recommends that employment equity analysis be based upon a standardized survey form to be used by employers in preparing their annual reports as required by the *Employment Equity Act*. This form should be designed to ensure that data are gathered under the Act according to uniform definitions. The survey form should include a means of identifying people who are members of more than one designated group so that their numbers can be identified separately.

C. Qualitative Measures

Many witnesses suggested that qualitative, as well as quantitative, measures ought to be included in the information collected and reported by employers. They believe the collection of pure numbers is useful only as part of a larger analytical strategy. The identification of systemic barriers to the employment of members of the four designated groups requires a full analysis of all policies and procedures that might also be used in devising comprehensive and workable solutions. Accordingly, qualitative measures that might be reported could include: work place training, equal pay for work of equal value, establishment of joint employee–management committees, employment practices, measures to eliminate barriers and other special measures.

Arguments were also made that data reported by employers should include economic factors, such as the growth or decline of a business, as well as the economic climate of an employer's industry, the extent of unionization, and the degree of centralization of an employer's business operation. In this way, it was stated, a rate of annual progress for each employer might be measured in relation to available opportunities rather than by an annual total change in employment statistics.

In the Committee's view, arguments in favour of recognizing qualitative measures by employers to achieve employment equity grow out of an understanding that personnel systems differ from employer to employer according to factors that are unique to a particular business. This is only common sense.

Another concrete suggestion was that the data collected from employers be expanded to include information about applications for employment. This information would indicate the number of qualified and qualifiable applicants and the degree of representation of persons in designated groups within the work place and provide a profile of candidates from job application to testing and training. By filing the dates and locations of advertisements for employment, the employer's report might permit a better evaluation of efforts to broaden the search for employees from designated groups.

In the Committee's view, employers should be asked to supply information on qualitative measures to eliminate systemic barriers to employment, to achieve equal pay, to consult with employees and to provide outreach to the designated groups. This would encourage employers to share effective strategies so that all might benefit from a particular success. The Committee is also concerned that the achievement of employment equity should not be measured solely by numbers. It is important for the government to understand the broader implications of this legislation so that there can be some means of assessing the actions of Canadian employers. Reporting qualitative measures would help to identify areas where problems arise in meeting the objective of employment equity.

RECOMMENDATION 3.5

The Special Committee recommends that, in conjunction with employers, employee representatives and members of the designated groups, the agency responsible for monitoring employers' compliance with the *Employment Equity Act* establish a better means of assessing the qualitative efforts of employers towards achievement of employment equity in the work place.

CHAPTER 4

Enforcement of the *Employment Equity Act*

1. THE PRESENT SYSTEM

The *Employment Equity Act* currently contains one enforcement provision. Section 7 of the Act provides that an employer who fails to comply with the section 6 requirement to file an annual report with the Minister of Employment and Immigration is guilty of an offence and liable on summary conviction to a fine not exceeding $50,000.

The Minister of Employment and Immigration is currently responsible for the *Employment Equity Act*. Through the Employment Equity Branch of the Department of Employment and Immigration (EIC), employers receive technical advice and information to help them develop and implement employment equity programs.

The Branch ensures that employers comply with the requirements of the Act by determining which employers are subject to the legislation and advising them as to their statutory obligations. It provides employers with interpretations of both the provisions of the Act and of the Regulations on an ongoing basis. When it appears to EIC that an employer is not complying with the legislation, the Branch has procedures in place to assist in the fulfillment of statutory obligations.

The Minister of Employment and Immigration is required under section 8 of the *Employment Equity Act* to provide the Canadian Human Rights Commission (CHRC) with copies of employers' annual reports. The Commission believes that this provision indicates that the government intends the Commission to play a role in the enforcement of the *Employment Equity Act*.

In the absence of an express monitoring or enforcement mechanism under the legislation, the CHRC has attempted to use the means available to it under the *Canadian Human Rights Act* to enforce the principles of employment equity. Consequently, it has investigated reasonable complaints from third parties based on an employer's work force data provided under the *Employment Equity Act*. The Commission has also invited employers whose representation figures in their annual reports appear to reveal equity problems to undertake a joint review of their employment systems. Finally, where the circumstances warranted, the Commission has used the powers available to it under its own governing legislation to initiate its own complaints. The Commission's statutory authority to monitor and enforce employers' compliance with the *Employment Equity Act* has, however, been subject to a number of legal challenges by employers.

2. THE PROPOSED SYSTEM

A. The Enforcement Mechanism

Virtually all the witnesses who appeared before the Committee agreed that the legislation should clearly indicate the agency responsible for the implementation, monitoring and enforcement of the *Employment Equity Act*. It was apparent to many that the current jurisdictional ambiguity between

EIC and the CHRC must be resolved. These witnesses also agreed that any body given responsibility for the implementation of the provisions of the Act must have sufficient resources to fulfill its mandate effectively.

Most representatives of employers' organizations recommended that EIC be given the sole responsibility for both monitoring and enforcing the *Employment Equity Act*. Employers' groups stressed that the application of the *Employment Equity Act* requires a specialized knowledge of, and access to, information about the labour market, employment systems, skill needs and shortages, salary distribution and occupational and work force trends. This is expertise that employers felt the Employment Equity Branch of the Department has clearly acquired. Moreover, the proactive and consultative approach taken by the Department in implementing the Act was seen as important to the achievement of employers' commitment to the principles of employment equity.

Employers, therefore, generally opposed granting an enforcement role under the *Employment Equity Act* to the CHRC. They believe that the Commission is already overburdened with the demands on its limited resources and that the whole human rights system is too adversarial, fault-oriented and complaint-driven to make employment equity work.

On the other hand, some advocacy organizations representing designated group members felt that the CHRC should be given responsibility for monitoring and enforcing employers' progress under the *Employment Equity Act*. They saw the Commission as a specialized agency, independent of the government, which can receive, investigate and remedy complaints of non-compliance.

Most members of the designated groups generally opposed the involvement of EIC in the enforcement of the Act. Some were particularly concerned about the potential for a conflict of interest if the Department were to monitor the performance of other government departments or agencies should the scope of the *Employment Equity Act* be expanded.

Many witnesses representing the interests of labour and the designated groups also, however, rejected the CHRC as an enforcement agency. They pointed out the current inability of the Commission to use the resources at its disposal to enforce the *Employment Equity Act*. These groups called for the establishment of an independent employment equity commission, comprising representatives of all parties with an interest in employment equity, which would report directly to Parliament.

Such a commission, according to the witnesses, would be charged with both monitoring and enforcement powers under the Act. It would also deal with promoting equity through public education, creating outreach programs and conducting research on external availability data. This body would set the formula for the establishment of employer goals and timetables as well as analyse work force data. It would receive and initiate its own complaints of non-compliance under the Act, consult with the public and all interested parties, and be responsive to regional needs and concerns.

Most employer, labour and designated group representatives wanted a single agency to have full responsibility for the administration and enforcement of the *Employment Equity Act*; however, a few proposed separating the advisory and monitoring function from that of enforcement, either by assigning the two functions to two separate agencies, or by creating two distinct units within a single agency.

Some witnesses also suggested that the dual role of EIC and the CHRC could be maintained as long as their respective roles were clearly defined by the legislation. Generally, it was felt that the Department would continue to work with employers in the development and implementation of

employment equity programs, while the Commission would serve as an enforcement or prosecutorial body of last resort. The CHRC would retain its basic role of investigating and rendering decisions on complaints of discrimination.

The Committee heard from many employers' representatives that employers would be more comfortable working with a monitoring agency to find the best method of compliance for each employer, as long as that monitoring body did not subsequently become their prosecutor. In their view, the prosecutorial approach to achieving employment equity should be available only as a last resort.

Most members of the designated groups agreed that the enforcement process should contain a monitoring component to verify and evaluate employer progress towards the attainment of a representative work force. However, these groups also stressed the need for a strong and proactive enforcement agency to ensure that non-compliant employers are meeting the requirements of the Act.

The Committee recognizes that both EIC and the CHRC have developed experience and expertise in the area of employment equity. The Committee is also mindful of the potential benefits of separating the advisory and monitoring function from that of enforcement under the *Employment Equity Act*.

The Committee strongly feels that the best approach is a remedial, as opposed to a punitive, method of enforcing the principles of employment equity under the Act. Coercing employers into complying with the legislation would only serve to build resentment and reinforce discriminatory attitudes. The Committee believes that creating positive attitudes is just as important to the process as eliminating institutional barriers. The Committee proposes that monitoring should be a separate function under the Act, which should be carried out by the Employment Equity Branch of EIC.

The Employment Equity Branch would continue to engage in consultation and problem-solving in an effort to aid employers in attaining work place equity based on their operational circumstances. In particular, the Branch would assist employers in ensuring that the plans, goals and timetables of their employment equity programs comply with the standards that the Committee has recommended be set out in the Regulations to the Act. The Branch would also approve employers' plans prior to their implementation and prior to any modification to them. Thereafter, the Branch would work with employers to ensure that they continue to comply with their employment equity commitments.

The Committee believes that there must also be an element of enforcement within the process to ensure that employment equity is taken seriously in this country. It is hoped that the process of consultation and cooperation between the employer and the monitoring agency would achieve desired results; however, where it did not, there would have to be recourse to a separate enforcement body that could adjudicate the matter and that would have the power to order compliance under the legislation. The Committee suggests that the CHRC serve as the enforcement body under the *Employment Equity Act*, since not only does the Commission already have an enforcement structure at its disposal, but it is also an agency that is at arms length from the government.

The Committee sees the CHRC as the final enforcement mechanism under the *Employment Equity Act*. Where the monitoring agency cannot reach an agreement with a particular employer on what is required under the legislation, EIC could refer the matter to the Commission as a complaint for resolution. In these cases, the Commission would have access to all information necessary for resolving the issue, including employer equity plans. Naturally, the Committee expects that the Commission would retain any such information and documentation on a strictly confidential basis.

The Committee also proposes that any individual or group of individuals with an interest in employment equity, such as a bargaining agent or a member of a designated group, could file a complaint with the CHRC with respect to the enforcement of the *Employment Equity Act*.

The Commission would receive and investigate any employment equity complaint and determine whether a formal hearing by a human rights tribunal was warranted in the circumstances. In other words, the Commission would have the legislative authority to use the administrative procedures at its disposal to receive complaints of lack of compliance under the *Employment Equity Act*.

RECOMMENDATION 4.1

The Special Committee recommends that the Department of Employment and Immigration be the monitoring agency and that the Canadian Human Rights Commission be the enforcement agency under the *Employment Equity Act*. These roles must be clearly defined both under the *Employment Equity Act* and the *Canadian Human Rights Act*. The Department would continue to assist employers in the development and implementation of employment equity programs, as well as monitor and analyse their progress in this regard. The Canadian Human Rights Commission would be authorized to receive complaints of non-compliance under the *Employment Equity Act* from the Department, as the monitoring agency under the Act, or from any individual or group of individuals with an interest in employment equity. These complaints would be processed by the Commission on the basis of its existing enforcement structure.

RECOMMENDATION 4.2

The Special Committee recommends that the Canadian Human Rights Commission be given adequate resources to allow it to carry out its responsibilities under the *Employment Equity Act*.

The Committee recognizes the concern of a number of witnesses about having one department, in this case EIC, monitoring the compliance of other departments, notably the Treasury Board. The Committee also recognizes, however, that similar compliance situations currently exist. For example, Part II (Health and Safety) of the *Canada Labour Code*, which is enforced by Labour Canada, applies to all federal government departments as well as to federally-regulated private sector companies and Crown corporations subject to the Code. The *Canadian Environmental Protection Act* is another example of legislation that provides for one department, Environment Canada, to be responsible for enforcing the compliance of other departments under the Act. Departments can enforce the compliance of other departments, and disputes between the departments over the interpretation of an Act's requirements can be resolved by the Attorney General of Canada; this is specifically provided for in the *Canadian Environmental Protection Act*.

One problem is the manner in which the monitoring department ensures its own compliance. This issue, which often arises with respect to independent agencies, may be resolved in a variety of ways. For example, the monitoring department could be audited either by another department or agency or by an independent firm, as is done in the case of the Office of the Auditor General, which is audited by a private firm of chartered accountants.

RECOMMENDATION 4.3

The Special Committee recommends that Labour Canada be the monitoring agency responsible for ensuring the compliance of the Department of Employment and Immigration under the *Employment Equity Act*.

B. Method of Monitoring Compliance

Most employer organizations suggested that the best method of verifying employers' results is by means of audits or on-site reviews. Although they appeared to favour a more investigatory or proactive approach, many representatives of the designated groups also favoured the use of audits to ensure

employer compliance with the Act. These groups tended, however, to want random or selective auditing, whereas employer representatives preferred to see regularly-scheduled audits conducted according to clear criteria in a spirit of collaboration.

Witnesses generally agreed on the need to evaluate employer compliance under the *Employment Equity Act* on the basis of both qualitative and quantitative factors. They felt that any compliance review must take into consideration the whole business context of the employer.

The Committee agrees that on-site audits are an effective mechanism for ensuring employer compliance under the legislation. This is evidenced by the success of the auditing approach used under the Federal Contractors Program. The Committee, therefore, suggests that in addition to its consultative and approval function, the monitoring agency conduct regular audits to ensure that employers are adequately fulfilling their commitment to the principles of employment equity.

RECOMMENDATION 4.4

The Special Committee recommends that the monitoring agency under the *Employment Equity Act* conduct regular on-site reviews of employer progress with respect to their legislative obligations. As a part of the auditing process, the monitoring agency shall have the power to obtain from the employer any documentation or information required for the assessment.

C. Sanctions

Many witnesses who appeared before the Committee felt that there must be some form of mandatory financial penalty for failure to comply with the requirements of the *Employment Equity Act*. Although some witnesses suggested that the present fine of $50,000 be maintained, others wanted the fine to be in proportion with the size of the employer. Finally, a number of witnesses felt that the fine should increase with the number of repeat offences; for example, the fine might be $50,000 for first-time offenders, and $100,000 or more for repeat offenders. In addition, some advocacy organizations representing designated group members suggested that the revenue from the fines be used to assist employers in meeting their employment equity requirements.

The Committee agrees that the legislation should specify some form of sanction for employers who deliberately act in bad faith or who fail to make reasonable efforts to comply with the requirements of the Act. The Committee strongly feels that a financial penalty would make it clear that the goals of employment equity are not to be taken lightly.

RECOMMENDATION 4.5

The Special Committee recommends that the existing maximum fine of $50,000 under the current *Employment Equity Act* be applied to all violations of the legislation. Thus, employers who fail to develop and implement an employment equity program pursuant to the standards set out in the Regulations to the Act, consult with employee representatives or bargaining agents, comply with their employment equity plans, goals and timetables or file an annual report with Employment and Immigration Canada, would be guilty of an offence and liable on summary conviction to a fine not exceeding $50,000.

CHAPTER 5
A National Employment Equity Strategy

1. INTRODUCTION

Section 13(1) of the *Employment Equity Act* provides for a "comprehensive review of the provisions and operation" of the Act "including the effect of those provisions". The Committee has chosen to interpret this section to include a review of measures needed to make employment equity a reality.

In adopting this approach, the Committee acknowledges the valuable contribution of the witnesses who presented their views throughout the course of the hearings. Most of these witnesses did not limit their presentation to the legislation but adopted a broader view of "employment equity" and widened their discussion and recommendations to encompass the context of the Act. They provided the Committee with information on human resource issues, economic questions and labour market or labour force trends and needs.

Some witnesses—people with disabilities in particular—went beyond human resource concerns to place employment equity in its broadest context. They pointed out that achieving equity in employment can mean confronting issues such as disincentives to employment, for example, those taxation or pension plan provisions that discourage people with disabilities from seeking jobs.

2. THE NEED FOR A NATIONAL EMPLOYMENT EQUITY STRATEGY

During the hearings, the Committee frequently heard representatives both from employers' organizations and from the four designated groups argue that the federal government's employment equity initiatives are too focused on collecting and analyzing data and do not pay enough attention to programs to remedy disadvantage in the work place. As noted throughout this report, qualitative strategies are required to meet both quantitative and qualitative goals.

Many employers pointed out that they are not turning away qualified members of the designated groups and that in fact, they cannot find enough qualified group members to fill available positions. Witnesses stated that the gap between available skills and job requirements had grown in the general population, but particularly for members of the designated groups. Action, they felt, is urgent in light of the need to adapt to an evolving economy and to remain internationally competitive. Some employers argued that the bottom line goal of profits can be consistent with employment equity principles.

From their own perspective, representatives of the four designated groups echoed this position. Because supportive measures are lacking, members of the designated groups, especially people with disabilities, have not benefited from the provisions of the *Employment Equity Act*. The absence of action to put supportive measures into place at the federal level, they argued, has provided employers with an excuse for not implementing employment equity in the work place.

It seems to the Committee that employment equity is a fundamental human resource tool for the planning, development and management of any productive work force and economy. Both federally and within each business, employment equity should be combined with labour force development

strategies, training strategies, labour relations and education. Employment equity is a key policy instrument in achieving well-being for all and in shaping a new labour market. Lasting solutions to the employment problems of disadvantaged groups will come only from attacking the root causes of employment inequity.

When she first appeared before the Committee, the Minister of State for Employment and Immigration stated that:

> *I am prepared, as minister responsible for employment equity, to use the full area of employment services, programs and legislation to make employment equity work...*
>
> *I think it is important to be clear about the nature of the employment equity issue. It is not only a social issue. It is not a woman's issue, or a racial issue. Employment equity is first and foremost an employment issue of concern to all Canadians.*

The Committee shares the Minister's view of both the importance of the issue and the range of initiatives required to make employment equity a realizable goal.

A. Partnerships

During its review, the Committee was presented with some impressive examples of how partnerships among various parties had made progress in working toward employment equity. Some Aboriginal groups and employers' organizations spoke of the positive effects of the employers' involvement with the community and the importance of cross-cultural exchanges. Visible minority groups noted successful proactive partnerships that included monitoring and apprenticeship programs. Contacts between employers and persons with disabilities have in some instances led to positive proposals for change.

Generally speaking, representatives of the various interested groups argued that equity in employment would be attained more easily if they were included in the process. Employers commented that they would support a forum where they could share positive ideas with each other and with the designated groups, and meet representatives from the educational system. Visible minority groups stated that they wanted to be part of any discussions about the direction of employment equity. Aboriginal organizations argued that employers could best recruit Aboriginal peoples by working with relevant native service and political organizations. Some groups representing people with disabilities told the Committee that, in their experience, many employers needed to develop associations with them.

The witnesses suggested that the monitoring agency should strive to ensure that partnerships flourish in order to encourage the elimination of systemic barriers and foster the employment of members of the designated groups. The agency responsible for administering the Act should ensure the cooperation of all those with an interest in the issue.

The Committee is aware that the Department of Employment and Immigration (EIC) has done some preliminary work to foster the type of partnerships that are required for successful implementation of employment equity. Many initiatives, however, are pilot programs or address areas that EIC has just begun to explore; nor are these projects centralized in any particular area but are funded from the array of programs and grants that EIC administers. In these circumstances, the Committee wonders whether the systematic fostering of partnerships and coordination has been considered, let alone implemented.

B. Public Awareness

A number of witnesses suggested that the government should establish a coordinated public education program encompassing employers, employee representatives, designated groups and the general public. Many of these witnesses stated that they were not aware of any money currently being allocated to educate the various interested parties on the economic and social imperatives that underlie employment equity.

Those favouring such an educational campaign argued that increased awareness, not quotas, will encourage employers to hire members of the designated groups. Witnesses felt that this campaign should be developed, in the spirit of partnership, with the involvement of all those concerned with employment equity.

The Committee strongly supports the idea of public education about employment equity.

C. Education

Although many witnesses focused their remarks on the need for appropriate training for members of the designated groups, some probed even more deeply into the root causes of employment inequity. The Committee was told that a parallel commitment to equality in employment would be empty without a commitment to education equity. Some witnesses questioned society's overall commitment to employment equity in view of the inequities that are currently perpetuated by the educational systems.

The argument for education equity was made by representatives from all the designated groups. In the case of people with disabilities, the data from HALS 1986 demonstrate that disabled persons enter the work force with significantly lower educational levels than the non-disabled population. Aboriginal organizations pointed out that without enhanced funding for post-secondary education and other educational programs, Aboriginal peoples will continue to be disproportionately represented in low-paying jobs and among the unemployed. Immigrants from the visible minority community pointed out that their opportunities for employment suffered because they could not gain additional educational qualifications.

Some employers gave the Committee another perspective on this issue. They pointed out that there will be fewer qualified people to meet higher demands for skills as Canada moves through the last decade of the century. One way to meet this challenge would be for education authorities and employers jointly to sponsor university programs for members of the designated groups. They recommended an educational strategy to deal with problems such as sex-role stereotyping and racism.

D. Assistance

Various witnesses made a case that employers and members of the designated groups should be assisted to be more effective in locating qualified group members and in accommodating them within the work place. Other witnesses mentioned the desirability of having better technical information to analyse the physical demands of a particular job, to train human resource professionals, to gain information on accommodation and to obtain other technical assistance and computer software suitable for business purposes. Members of the designated groups urged the federal government to provide assistance for them to monitor the progress of employment equity programs.

E. Other Government Measures

The Committee firmly believes that the federal government, in all aspects of its operations and its programs, should demonstrate its full commitment to employment equity by putting its own house in order.

During the hearings, witnesses spoke of barriers retained, initiatives gone by the wayside, good ideas that remain unimplemented, and commitments unfulfilled. The following is a partial list of issues related to employment that were brought to the Committee's attention:

1. Witnesses from visible minority and immigrant groups reported their difficulty in securing Canadian recognition of their foreign credentials and suggested that the federal government take the lead in developing a procedure for establishing equivalences.

2. Some employer organizations and many representatives from the designated groups strongly recommended amendments to other legislation and regulations to support employment equity. Specific mention was made of the failure of the *Canadian Human Rights Act* to include an employer's obligation to accommodate those whose specific religious beliefs or physical or mental handicaps might have an impact on employment.

3. Many representatives from designated groups and employers' organizations pointed out that overall government practices should support employment equity. In particular, witnesses mentioned that the Treasury Board should ensure that agencies with responsibilities for implementing, monitoring and enforcing employment equity in the federal government should have sufficient resources to carry out their mandate. They also urged the Treasury Board to make certain that employment equity performance is introduced and monitored in the personnel appraisal and evaluation systems of all department and agency managers at both the national and the regional levels. A particular irritant, according to members of the designated groups, is the government hiring procedure. They singled out the Entry Level Officer Staffing Test (ELOST), administered by the Public Service Commission as an unacceptable systemic barrier to the employment of members of the designated groups. Other witnesses argued that the promotion system of the federal Public Service has been discriminatory and fails to take into account the circumstances of members of the designated groups.

Some representatives of the designated groups argued that companies owned or operated by their members ought to be given special consideration in bidding for federal government contracts.

Representatives of disabled persons' organizations urged the federal government to examine, to identify and ultimately to alter, current policies and programs containing disincentives to employment for people from the designated groups. Among the measures cited were: the Vocational Rehabilitation of Disabled Persons Program, the Canada Assistance Plan, the Canada Pension Plan, unemployment insurance, allowances and pensions from non-government sources that are regulated by the federal government, and the federal tax system.

Some witnesses argued persuasively that, the long-term (and in some cases, the short-term) achievement of employment equity is being jeopardized by the lack of a coordinated analysis of the impact of government initiatives, policies and programs. Some of the programs mentioned (for example, the Canada Assistance Plan and the Vocational Rehabilitation of Disabled Persons Program), were put in place decades ago and, should obviously be evaluated against current requirements and changes in Canada's economy and society. The Committee does not believe that a piecemeal evaluation of the context of employment equity will work. If equity in employment is crucial to ensure that members of the designated groups can take their rightful place in Canada's economy and society, a comprehensive analysis of all systemic barriers is necessary.

The Committee is further convinced that this analysis should not result in additional expense to the federal government and could be paid for by reallocating existing resources based on current needs.

RECOMMENDATION 5.1

The Special Committee recommends that the federal government establish a National Employment Equity Strategy to be made public no later than 1 November 1993. All elements of this Strategy must be established by a task force that includes federal government representatives from relevant departments and agencies, employers, members of the designated groups, and employee representatives. This task force should establish sub-groups as required with additional representation from interested parties, and prepare reports that include recommendations and plans of action on:

a. specific mechanisms for ensuring partnerships among the various parties interested in employment equity (in conjunction with community organizations and educational institutions);

b. a co-ordinated public education and awareness initiative to begin no later than 1 January 1993 to demonstrate the benefits of employment equity to the various interested parties and the public at large;

c. possible modifications in conjunction with representatives of provincial governments, to ensure that Canada's education systems are equipped to prepare members of the designated groups for the labour force;

d. assistance for employers, particularly small employers, who seek to employ members of the designated groups;

e. assistance for designated groups who seek to make contact with employers;

f. the concerns of designated groups about barriers to their employment in the Public Service of Canada;

g. the elimination of barriers to employment equity in federal legislation and regulations; and

h. the elimination of the barriers to employment equity in federal-provincial programs.

RECOMMENDATION 5.2

The Special Committee recommends that the National Employment Equity Strategy be referred to a parliamentary committee for study on 1 November 1993.

3. EMPLOYMENT EQUITY AND EMPLOYMENT INITIATIVES

The Committee heard from some employers and members of designated groups that the employment programs of EIC have not fully met the requirements of either business or the designated groups. A National Employment Equity Strategy would be a greatly diminished initiative, if it did not change current EIC practices with respect to employment issues.

Employers felt that measures were needed to assist them in making contact with members of the designated groups. Many groups representing organizations linked to disabled persons commented on the inaccessibility of outreach programs that provide pre-employment job search as well as job

search and job placement services for people with disabilities. They should be linked in a network. Others suggested that a national data base of members of designated groups who are available for employment would provide employers with the necessary information on qualified candidates for jobs. The Committee also heard from Aboriginal groups that a better use of native recruitment firms and programs delivered by Aboriginal peoples would match Aboriginal peoples with jobs. The Committee also heard that because of the lack of coordination among various employment programs, people from the designated groups were denied opportunities for employment.

RECOMMENDATION 5.3

The Special Committee recommends, as part of the National Employment Equity Strategy, that the Department of Employment and Immigration, in consultation with employers and members of designated groups, establish a national data base for employers. This data base would identify members of the designated groups who are seeking employment. The Department should also establish a mechanism to link the various outreach organizations that provide job search and job placement services. The data base and the linking mechanism should be operational by 1 November 1993.

In the opinion of many witnesses, the key to achieving employment equity is job training. Their conclusion echoes the recommendations of many previous studies, including that conducted by the Advisory Council on Adjustment and presented to the government in March 1989. This pointed out that "skill training [is] not only a necessity but also a sound investment". The Council argued that a better-prepared work force produces significant savings and benefits to make companies more productive and enhance the quality of working life. The Council concluded that training "represents a tool to maintain employment, ensure quick re-employment, and minimize unemployment."

During the hearings, many employers demonstrated their clear understanding that since they receive economic benefits from training, they should also have to finance some of its costs. Employers should not rely solely on the government to train their work force. This conclusion is only logical, given employers' contention that true employment equity is achieved only when it is integrated with other factors important to an efficient and flexible business operation.

At the same time, members of the designated groups shared employers' concerns about the cost of training. Both argued that employers should not be expected to carry the full financial burden. From the money currently provided for training, some witnesses urged subsidies for employers who develop their own job-training programs for members of the designated groups or who form partnerships with educational or training facilities. At the same time, one witness pointed out that the federal government might also support the non-profit sector, which currently assists both employers and members of the designated groups by providing rehabilitation and training.

Many employers and members of the designated groups stated that the federal government's existing training programs do not meet the skill requirements of the labour market and therefore, do not provide sufficient job opportunities. Moreover, appropriate training would ensure that people from the designated groups are able to move beyond entry level positions. From the Committee's perspective, it makes good sense to direct funding for job training and incentives (to business or to members of designated groups) to occupations where members of the designated groups are under-represented.

The Committee also heard evidence that job training in the Canadian Jobs Strategy is not directed towards the members of the designated groups. For example, in 1988-89, of the 130,743 people who benefited from training in that program, only 2,256 (or 1.7%) were people with disabilities

(compared to the 5.4 % availability figure in the Canadian labour force). Also, many of the people from the designated groups do not meet the entry qualifications (e.g. a high school diploma) for programs funded by the Canadian Jobs Strategy. The Committee suggests that the figures of the representation of members of the designated groups (and the annual targets) for the Canadian Jobs Strategy should be made public so that one year's achievements can be compared with another and with the availability figures for the labour force participation of members of the designated groups.

Several witnesses pointed out that the current focus of federal training dollars and programs on recipients of unemployment insurance makes federal training programs themselves a systemic barrier to employment for members of the designated groups. Because many of these people have not held jobs, they are ineligible for unemployment insurance and consequently are also ineligible for training. These witnesses also urged the federal government to make money available to people seeking to enter the work force through programs such as apprenticeship training.

The Committee is concerned about the availability of adequate funding for training matched to employers' requirements. Some witnesses argued that preparation for employment is in jeopardy as a result of recent cuts to the Canadian Jobs Strategy and the effect of this reduction on the availability of community-based training for members of the designated groups. The Committee believes that adequate and accessible training is critical to the long-term success of any employment equity initiative or legislation. Otherwise, members of the designated groups will not enter the work force, will remain unemployed or will occupy jobs that constitute merely token employment.

RECOMMENDATION 5.4

The Special Committee recommends, as part of the National Employment Equity Strategy, that:

a. the federal government make provision for adequate federally-funded job training programs, particularly those that are community-based, for members of the designated groups;

b. all federally-funded job training programs contain mandatory allocation of funds for training members of the designated groups in proportion to the labour force availability statistics for these groups;

c. statistics on the targets for, and the participation of, members of designated groups in federal job training programs be published as part of all subsequent annual reports on the *Employment Equity Act* beginning with the report to be tabled in Parliament before 31 December 1992; and

d. the Department of Employment and Immigration, in conjunction with the other interested parties in employment training, examine and make recommendations on the eligibility criteria for federally-funded job training programs and the suitability of such programs for employers and for members of the designated groups. A report containing the results of this examination shall be made public no later than 1 November 1993.

LIST OF RECOMMENDATIONS

RECOMMENDATION 1.1

The Special Committee recommends that the scope of the application of the *Employment Equity Act* be broadened. Specifically, the Committee recommends that the following employers be covered under the Act:

a) the federal Public Service;

b) the Royal Canadian Mounted Police;

c) the Canadian Armed Forces;

d) Parliament, specifically the House of Commons, the Senate, and the Library of Parliament; and

e) all federal agencies, boards and commissions. (page 4)

RECOMMENDATION 1.2

The Special Committee recommends that suppliers of goods and services currently covered by the Federal Contractors Program, who employ at least 75 persons and who want to bid on government contracts of $200,000 or more be required, as a prerequisite to tendering, to sign a certificate of compliance with the principles of employment equity as specified in the *Employment Equity Act*. (page 4)

RECOMMENDATION 1.3

The Special Committee recommends that, as a condition of certification, unions certified by the Canada Labour Relations Board, the Public Service Staff Relations Board or any future federal labour tribunal, be required, as employers, to sign a certificate of compliance with the principles of employment equity as specified in the *Employment Equity Act*. (page 5)

RECOMMENDATION 1.4

The Special Committee recommends that future federal judicial and all Governor in Council appointments be made with regard to the principles of employment equity. The President of the Privy Council must submit an annual report to Parliament on appointments made during the previous year. To the greatest extent possible, this report should resemble those filed by employers under the *Employment Equity Act*. (page 5)

RECOMMENDATION 1.5

The Special Committee recommends that, as a condition of licence, federal licensees sign a certificate of compliance with the principles of employment equity as specified in the *Employment Equity Act*. (page 5)

RECOMMENDATION 1.6

The Special Committee recommends that each federal political party be required to report annually to Parliament on the staff of Parliamentarians and staff of the party, including research staff. This report must meet the requirements of employer reports under the *Employment Equity Act*. (page 5)

RECOMMENDATION 1.7

The Special Committee recommends that the Treasury Board's Special Measures Programs, which are currently being evaluated for effectiveness, be extended. (page 5)

RECOMMENDATION 1.8

The Special Committee recommends that the *Employment Equity Act* apply to employers who have 75 or more employees. Further, an employer with fewer than 75 employees who voluntarily develops plans and submits an annual report to the Department of Employment and Immigration should be recognized, through a federal designation program, as an Employment Equity Employer. (page 6)

RECOMMENDATION 1.9

The Special Committee recommends that the current designated groups under the *Employment Equity Act*—women, Aboriginal peoples, persons with disabilities, members of visible minorities—remain unchanged. (page 7)

RECOMMENDATION 1.10

The Special Committee recommends that officials from Statistics Canada consult with the Canadian Labour Force Development Board, which represents those parties with an interest in employment equity, to develop definitions of the designated groups which are acceptable to all parties. (page 8)

RECOMMENDATION 1.11

The Special Committee recommends that designated group members continue the practice of voluntary self-identification. (page 9)

RECOMMENDATION 2.1

The Special Committee recommends that the *Employment Equity Act* continue to require all employers to adopt an employment equity program designed to identify and eliminate systemic barriers to employment, and institute supportive measures to accommodate members of designated groups in the work place. All employment equity programs must have achievable plans, goals and timetables containing both quantitative and qualitative elements. While the form of these programs would continue to be left to the discretion of the employer, the Regulations to the Act must outline acceptable requirements and standards. The Committee recommends that, at a minimum, these programs be formalized, comprehensive, management-supported and reflect a true commitment to change. (page 13)

RECOMMENDATION 2.2

The Special Committee recommends that once developed by the employer, employment equity plans be approved by the monitoring agency prior to implementation, and thereafter become binding on the employer. The Committee recommends, however, that the employer must continue to have some flexibility with respect to plan modification. In cases of changes to plans that have already been approved, it may be necessary to have a less formal and expeditious process of approval. (page 13)

RECOMMENDATION 2.3

The Special Committee recommends that Statistics Canada, in conjunction with other federal departments and agencies as well as provincial authorities with responsibility for employment equity monitoring or enforcement, initiate further refinements to the data used to reflect the labour force availability of the four designated groups. (page 15)

RECOMMENDATION 2.4

The Special Committee recommends that the *Employment Equity Act* require bargaining agents, and in their absence employees' representatives, to be consulted and have input into the preparation and implementation of employment equity plans. Further, it is recommended that "consultation" be meaningful, and be set out in a definition section of the *Employment Equity Act*. (page 16)

RECOMMENDATION 2.5

The Special Committee recommends that the enforcement agency under the *Employment Equity Act* have the authority to make an order to modify or remove seniority clauses where they represent a barrier to employment. (page 17)

RECOMMENDATION 2.6

The Special Committee recommends that employment equity plans, goals and timetables be prepared in consultation with, and have input from bargaining agents or employees' representatives and should be submitted to the monitoring agency. These plans must remain confidential, but would be available to the monitoring and enforcement agencies under the *Employment Equity Act*. (page 17)

RECOMMENDATION 3.1

The Special Committee recommends that the annual reporting requirement and the current numerical reporting system remain unchanged. (page 22)

RECOMMENDATION 3.2

The Special Committee recommends that an employer with fewer than 75 employees who chooses to seek designation as an Employment Equity Employer should be required to submit an annual report no longer than three pages. This report should include basic information about the employer, the number of full-time, part-time and temporary employees and the degree of representation of the four designated groups. (page 22)

RECOMMENDATION 3.3

In order to reduce the burden on employers who must prepare employment equity data for different jurisdictions, the Special Committee recommends that the federal government exercise leadership in ensuring that data collected for the purposes of employment equity, whether for inclusion in employers' reports or for the purposes of availability statistics, be standardized and harmonized. The federal government should initiate discussions with the provinces in order to ensure that this standardization and harmonization is achieved as soon as possible. (page 23)

RECOMMENDATION 3.4

The Special Committee recommends that employment equity analysis be based upon a standardized survey form to be used by employers in preparing their annual reports as required by the *Employment Equity Act*. This form should be designed to ensure that data are gathered under the Act according to uniform definitions. The survey form should include a means of identifying people who are members of more than one designated group so that their numbers can be identified separately. (page 23)

RECOMMENDATION 3.5

The Special Committee recommends that, in conjunction with employers, employee representatives and members of the designated groups, the agency responsible for monitoring employers' compliance with the *Employment Equity Act* establish a better means of assessing the qualitative efforts of employers towards achievement of employment equity in the work place. (page 24)

RECOMMENDATION 4.1

The Special Committee recommends that the Department of Employment and Immigration be the monitoring agency and that the Canadian Human Rights Commission be the enforcement agency under the *Employment Equity Act*. These roles must be clearly defined both under the *Employment Equity Act* and the *Canadian Human Rights Act*. The Department would continue to assist employers in the development and implementation of employment equity programs, as well as monitor and analyse their progress in this regard. The Canadian Human Rights Commission would be authorized to receive complaints of non-compliance under the *Employment Equity Act* from the Department, as the monitoring agency under the Act, or from any individual or group of individuals with an interest in employment equity. These complaints would be processed by the Commission on the basis of its existing enforcement structure. (page 28)

RECOMMENDATION 4.2

The Special Committee recommends that the Canadian Human Rights Commission be given adequate resources to allow it to carry out its responsibilities under the *Employment Equity Act*. (page 28)

RECOMMENDATION 4.3

The Special Committee recommends that Labour Canada be the monitoring agency responsible for ensuring the compliance of the Department of Employment and Immigration under the *Employment Equity Act*. (page 28)

RECOMMENDATION 4.4

The Special Committee recommends that the monitoring agency under the *Employment Equity Act* conduct regular on-site reviews of employer progress with respect to their legislative obligations. As a part of the auditing process, the monitoring agency shall have the power to obtain from the employer any documentation or information required for the assessment. (page 29)

RECOMMENDATION 4.5

The Special Committee recommends that the existing maximum fine of $50,000 under the current *Employment Equity Act* be applied to all violations of the legislation. Thus, employers who fail to develop and implement an employment equity program pursuant to the standards set out in the Regulations to the Act, consult with employee representatives or bargaining agents, comply with their employment equity plans, goals and timetables or file an annual report with Employment and Immigration Canada, would be guilty of an offence and liable on summary conviction to a fine not exceeding $50,000. (page 29)

RECOMMENDATION 5.1

The Special Committee recommends that the federal government establish a National Employment Equity Strategy to be made public no later than 1 November 1993. All elements of this Strategy must be established by a task force that includes federal government representatives from relevant departments and agencies, employers, members of the designated groups, and employee representatives. This task force should establish sub-groups as required with additional representation from interested parties and prepare reports that include recommendations and plans of action on:

a. specific mechanisms for ensuring partnerships among the various parties interested in employment equity (in conjunction with community organizations and educational institutions);

b. a co-ordinated public education and awareness initiative to begin no later than 1 January 1993 to demonstrate the benefits of employment equity to the various interested parties and the public at large;

c. possible modifications, in conjunction with representatives of provincial governments, to ensure that Canada's education systems are better equipped to prepare members of the designated groups for the labour force;

d. assistance for employers, particularly small employers, who seek to employ members of the designated groups;

e. assistance for designated groups who seek to make contact with employers;

f. the concerns of designated groups about barriers to their employment in the Public Service of Canada;

g. the elimination of barriers to employment equity in federal legislation and regulations; and

h. the elimination of the barriers to employment equity in federal-provincial programs. (page 35)

RECOMMENDATION 5.2

The Special Committee recommends that the National Employment Equity Strategy be referred to a parliamentary committee for study on 1 November 1993. (page 35)

RECOMMENDATION 5.3

The Special Committee recommends, as part of the National Employment Equity Strategy, that the Department of Employment and Immigration, in consultation with employers and members of designated groups, establish a national data base for employers. This data base would identify

members of the designated groups who are seeking employment. The Department should also establish a mechanism to link the various outreach organizations that provide job search and job placement services. The data base and the linking mechanism should be operational by 1 November 1993. (page 36)

RECOMMENDATION 5.4

The Special Committee recommends, as part of the National Employment Equity Strategy, that:

a. the federal government make provision for adequate federally-funded job training programs, particularly those that are community-based, for members of the designated groups;

b. all federally-funded job training programs contain mandatory allocation of funds for training members of the designated groups in proportion to the labour force availability statistics for these groups;

c. statistics on the targets for, and the participation of, members of designated groups in federal job training programs be published as part of all subsequent annual reports on the *Employment Equity Act* beginning with the report to be tabled in Parliament before 31 December 1992; and

d. the Department of Employment and Immigration, in conjunction with the other interested parties in employment training, examine and make recommendations on the eligibility criteria for federally-funded job training programs and the suitability of such programs for employers and for members of the designated groups. A report containing the results of this examination shall be made public no later than 1 November 1993. (page 37)

APPENDIX A

List of Witnesses

Associations and Individuals	Issue	Date
Assembly of First Nations Bill Montour Chief of Staff	15	Monday, March 23, 1992
Assembly of Manitoba Chiefs Phil Fontaine Grand Chief Ted Fontaine Executive Director	9	Monday, February 24, 1992
B.C. Coalition of People with Disabilities Joan Meister Member	12	Wednesday, March 11, 1992
Black, William W. Director Human Rights Centre University of Ottawa	5	Monday, February 10, 1992
Canadian Advisory Council on the Status of Women Glenda Simms President Sarah Bélanger Research Analyst	14	Wednesday, March 18, 1992
Canadian Alliance for Visible Minorities Krishan D. Uppal President Sharon Kajack Joint Secretary Paul Winn Director Joe Sanders Director	11	Monday, March 9, 1992

Associations and Individuals	Issue	Date
Canadian Bankers Association William J. Lomax Executive Vice-President Human Resources Bank of Nova Scotia Joanne De Laurentiis Vice-President Domestic Banking and Public Affairs Judy Jaeger Director Employment and Pay Equity	7	Monday, February 17, 1992
Canadian Chamber of Commerce Tim Reid President Jim Lawson Assistant General Manager Employee Relations Toronto-Dominion Bank Mary-Jane Handy Southam Newspapers Linda Cheeseman Bell Canada	12	Wednesday, March 11, 1992
Canadian Construction Association John C. Halliwell President John Ceriko Chairman of the Board of Directors John DeVries Director of Human Resources Jo-Anne Stead Coordinator Employment Equity Program	12	Wednesday, March 11, 1992
Canadian Council on Rehabilitation and Work Lynda White President Rob McInnes Executive Director	11	Monday, March 9, 1992

Associations and Individuals	Issue	Date
Canadian Ethnocultural Council	13	Monday, March 16, 1992
Nizam Siddiqui Co-Chair		
Marianne Agbeko Co-Chair		
George Frajkor President Slovak Canadian National Council		
Sachiko Okuda Chairperson Human Rights Committee National Association of Japanese Canadians		
Shirley Brathwaite President Barbados Ottawa Association		
Ed Lam Director of Research		
Canadian Human Rights Commission	4	Wednesday, February 5, 1992
Maxwell Yalden Chief Commissioner		
Henry K. Pau Director		
Canadian Labour Congress	7	Monday, February 17, 1992
Dick Martin Executive Vice-President		
Nancy Riche Executive Vice-President		
Canadian Manufacturers Association	15	Monday, March 23, 1992
Jan Wade Vice-President Human Resources		
Jo-Ann Ball Director Human Resources		
John Howatson Director Manufacturing Competitiveness		
Canadian Paraplegic Association	13	Monday, March 16, 1992
Gregory Pyc Coordinator of Public Affairs		

Associations and Individuals	Issue	Date
Canadian Radio-television and Telecommunications Commission Keith Spicer Chairman Allan J. Darling Secretary General	13	Monday, March 16, 1992
Center for Research-Action on Race Relations Ronald Béliard Past President Fo Niemi Executive Director	16	Wednesday, March 25, 1992
Coalition of Provincial Organizations of the Handicapped Gerry MacDonald Vice-Chairperson Laurie Beachell National Coordinator	8	Wednesday, February 19, 1992
Committee for the Advancement of Native Employment Charles Hill Spokesperson Claude Aubin Executive	15	Monday, March 23, 1992
Communications and Electrical Workers of Canada Patricia Blackstaffe Assistant to the President	16	Wednesday, March 25, 1992
Confédération des syndicats nationaux Claudette Carbonneau First Vice-President Danielle Hébert Advisor	14	Wednesday, March 18, 1992
Congress of Black Women of Canada Fleurette Y. Osborne Vice-President Akua Benjamin Member	10	Wednesday, February 26, 1992

Associations and Individuals	Issue	Date
Conseil d'intervention pour l'accès des femmes au travail Lise Leduc Director General Lise Lafrance Responsible Officer Access to Equality Program	15	Monday, March 23, 1992
Crown Corporations Marie Tellier Assistant Vice-President Canadian National Frances Trant Manager Canadian Broadcasting Corporation	9	Monday, February 24, 1992
Department of Employment and Immigration		
Marnie Clarke Director General Employment Equity Branch	2, 3, 17	Wednesday, December 11, 1991 Monday, February 3, 1992 Thursday, April 2, 1992
Gay Stinson Director Legislated Employment Equity	1	Monday, November 25, 1991
Neil Carigan Director Federal Contractors Program	3	Monday, February 3, 1992
Pierre-André Laporte Departmental Assistant to the Minister of State (Employment and Immigration)	2	Wednesday, December 11, 1991
Disabled People for Employment Equity Carol McGregor Spokesperson Harry Beatty Acting Director Advocacy Resource Centre for the Handicapped	9	Monday, February 24, 1992
Equal Employment Opportunity Commission Diana Johnston Assistant Legal Counsel	16	Wednesday, March 25, 1992

Associations and Individuals	Issue	Date
Federally Regulated Employers — Transportation and Communication Shirley Boucher Manager Employment Equity Canada Post Marlene Gallant Director General Human Rights and Employment Equity Bell Canada Lorette Glasheen Manager Employment Equity CP Rail Joan Grant Manager British Columbia Telephone Co.	10	Wednesday, February 26, 1992
Fédération des travailleurs et travailleuses du Québec Lauraine Vaillancourt Vice-President Clément Godbout Secretary General Carole Gingras Director Status of Women Division	16	Wednesday, March 25, 1992
Fraser Institute Michael Walker Director	13	Monday, March 16, 1992
Jain, Harish Professor of Human Resources & Labour Relations Michael J. DeGroope School of Business McMaster University	5	Monday, February 10, 1992
Manitoba Telephone System Mona Katawne Director Corporate Equity Department	9	Monday, February 24, 1992
Minister of State (Employment and Immigration) Honourable Monique Vézina	2, 17	Wednesday, December 11, 1991 Thursday, April 2, 1992

Associations and Individuals	Issue	Date
National Action Committee on the Status of Women Akua Benjamin Chair Employment Committee Phebe Poole Member Employment Committee	10	Wednesday, February 26, 1992
National Automobile, Aerospace and Agricultural Implement Workers Union of Canada Peggy Nash Assistant to the President Annie Labaj National Representative (Education)	14	Wednesday, March 18, 1992
National Organization of Immigrant and Visible Minority Women of Canada Teresa Bassaletti-Araneda Sherbrooke, Quebec Patricia Diaz-Reddin Charlottetown, P.E.I.	13	Monday, March 16, 1992
National Visible Minority Council on Labour Force Development Navin Parekh Visible Minority Representative on the Canadian Labour Force Development Board Sylvan Williams Coordinator	11	Monday, March 9, 1992
Native Council of Canada Narda Kathaleen Iulg Senior Advisor Aboriginal Employment Employment Equity	11	Monday, March 9, 1992
O.R.C. Canada Inc. Philip H. McLarren Senior Vice-President	7	Monday, February 17, 1992
Public Service Alliance of Canada Nycole Turmel Executive Vice-President	14	Wednesday, March 18, 1992

Associations and Individuals	Issue	Date
Public Service Commission	6	Wednesday, February 12, 1992
Robert Giroux Chairman		
Jules Oliver Director General Program Development (Employment Equity) Staffing Programs Branch		
Gilbert Scott Commissioner		
Royal Canadian Mounted Police	15	Monday, March 23, 1992
J.P.R. Murray Deputy Commissioner		
Saskatchewan Wheat Pool	15	Monday, March 23, 1992
Michael Roberts Director Human Resources Division		
Helgi Goodman Manager Market Analysis and Co-Chairperson		
Bonnie Pearson Senior Staff Representative and Co-Chairperson		
Denise Barry Employment Equity Coordinator		
Statistics Canada	6	Wednesday, February 12, 1992
Bruce D. Petrie Assistant Chief Statistician Social, Institution and Labour Statistics Field		
Lee Reid Director Personnel Policy Branch		
Adèle Furrie Director Post-Censal Surveys Program		
Wally Boxhill Acting Program Manager Employment Equity Data Program		

Associations and Individuals	Issue	Date
Toronto Women in Film and Television Barbara Barde President Elaine Waisglass Project Coordinator	8	Wednesday, February 19, 1992
Treasury Board Ian D. Clark Secretary David C.G. Brown Assistant Secretary Employment Equity and Policy Planning Development Division	8	Wednesday, February 19, 1992

APPENDIX B

Written Submissions Received

Association des Acadiennes de la Nouvelle–Écosse

Association of Lesbians and Gays of Ottawa

Bell Canada

Ben-Tahir, I.

Boyce, L.E.J.

Brown, Grant A.

Building and Construction Trades Department (AFL–CIO)

Business Council of British Columbia

Calgary Vocational Services

Canadian Association for Community Living

Canadian Association for the Advancement of Women and Sport and Physical Activity

Canadian Association of Broadcasters

Canadian Association of the Deaf

Canadian Association of University Teachers

Canadian Broadcasting Corporation

Canadian Congress for Learning Opportunities for Women

Canadian Federation of Business and Professional Women's Club

Canadian Federation of Independent Business

Canadian Film and Television Production Association

Canadian Jewish Congress

Canadian Nurses Association

Canadian Rehabilitation Council for the Disabled

Cargill Limited

Chinese Canadian National Council

Coalition for Lesbian and Gay Rights in Ontario

Confederacy of Mainland Micmacs

Conference Board of Canada

Coughlan, Mary Ellen

Deacon Ainsaar Consultants Inc.

Doe, Tanis

Down Syndrome Association — National Capital Region

Greater Vernon Chamber of Commerce

Harrington, W.F.

Hunter, Graeme

Immigrant Women of Saskatchewan

Information Technology Association of Canada

Institute of Equality and Employment

National Association of Women and the Law

National Capital Alliance on Race Relations

National Indo-Canadian Council

National Watch on Images of Women in the Media Inc.

Native Women's Association of Canada

Niagara Falls Federal Progressive Conservative Association

Ontario Confederation of University Faculty Associations

Ontario March of Dimes

Parkinson, Wes

Poulantzas, Nicholas

Professional Institute of the Public Service of Canada

Reaching E-Quality Employment Services Inc.

Society for Academic Freedom and Scholarship

Sullivan, Kathleen

Telecommunications Workers Union

Toronto Mayor's Committee on Community and Race Relations

Williams, Jasmine

Women in Trades, Technology and Operations and Blue Collar Work National Network

YMCA de Montréal

YWCA of Canada

Request for a Government Response

Your Committee requests that the Government table a comprehensive response to this Report within 150 days of its tabling, in accordance with the provisions of Standing Order 109.

A copy of the relevant Minutes of Proceedings and Evidence (*Issues Nos. 1 to 18 which includes this report*) is tabled.

Respectfully submitted,

ALAN REDWAY, P.C., Q.C., M.P.,
Chairman.

APPENDIX C

Not Fair Enough

Liberal Minority Report

On the Review of the Employment Equity Act

May, 1992

John Nunziata, M.P.

Mary Clancy, M.P.

John Nunziata and Mary Clancy, on behalf of The Liberal Party, would like to express their sincere thanks and appreciation for the tremendous amount of time and effort invested by the staff of the Special Committee Reviewing The *Employment Equity Act*. We would especially like to acknowledge Monique Hamilton, Luc Fortin, William Young, Nancy Holmes and June Dewetering for all of their guidance and assistance.

We would be remiss if we did not also thank our Assistants, Amy MacLeod and Justine Sider, for their hard work and dedication to the production of this report.

Employment Equity – Liberal Minority Report

INTRODUCTION:

> "Law, in a liberal democracy is the collective expression of the public will. We are a society ruled by law, it is our most positive mechanism for protecting and maintaining what we value. Few matters deserve the attention of law more than the right of every individual to have access to the opportunity of demonstrating full potential." [1]

This statement, taken from the concluding remarks of the 1984 Royal Commission Report studying employment equity, echoes the principles of equality which the Liberal Party of Canada have always advocated. Indeed, it was these principles that lead the Liberal Government to initiate the Royal Commission on Equality in Employment in 1983.

The Liberal Party was pleased to participate in the Special Committee Review of the *Employment Equity Act*. The overwhelming number of individuals and organizations who offered to participate in the Review signified at the outset the enormity of the Committee's task. The Liberal Party would like to thank all of the witnesses and organizations who appeared before the Committee or who made written submissions. Their involvement was essential to the success of the review.

While the Liberal Party worked toward and supports many of the recommendations tabled by the Special Committee, it can not fully endorse their report. We believe that the *Employment Equity Act* should be guided by the premise that anyone employed by, receiving a grant from or doing business with the Federal Government or any of its boards, agencies or commissions, must be subject to the Act. The Liberal Party cannot support a law that excludes the majority of the Canadian workforce from legislation rooted in fundamental principles of social justice and fairness.

Our party believes that the Act should be extended to cover the broadest possible base of Canadians. In our judgement, the power of such an Act should be viewed not as inhibiting, but rather, as Judge Abella stated, as a "positive mechanism for protecting and maintaining what we value."[2] While recognizing that the recommendations of the Committee strive to expand the coverage of the legislation, these recommendations do not go far enough.

The Liberal Party of Canada is cognizant of the politically charged atmosphere in which the Committee's recommendations will be received. The Minister, in her appearance before the Committee, clearly indicated the intentions of the Government and the direction that it will take with respect to amending the *Employment Equity Act*. By stating the Government's intentions prior to the release of the Committee's majority report, it is obvious that the Minister will dismiss the bulk of the Report's recommendations and do nothing more than perpetuate the status quo. We regretfully recognize that the political priorities of the current Government have consistently prevailed over the genuine need to improve the employment situation of disadvantaged Canadians. The current Federal Government has demonstrated its lack of desire in seriously addressing the discriminatory and

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[1] Judge Rosalie Abella, Commissioner, *Equality in Employment* — A Royal Commission Report, *1984, p. 254.*

[2] *Ibid.*, p. 254.

discouraging employment environment endured by a vast portion of the Canadian work force. The Minister's appearance has not convinced us that this unfortunate and inequitable situation is likely to change.

It is in this context that the Liberal Party, while fully supporting the principle of employment equity, is tabling this dissenting report.

COVERAGE

The Liberal Party believes that the issue of coverage is fundamental to the effectiveness of any legislation that deals with basic values of fairness and social justice. These principles must be applied to the broadest possible range of Canadians if the concept of human equality is to be upheld. With respect to this issue, the Committee's report, and the indication by the Minister of the Government's intentions, do not go far enough. Limiting the legislative coverage of the Act has resulted in an exclusionary policy where certain portions of the population are not bound by rudimentary principles of equality and fairness.

Employment Equity Act

The *Employment Equity Act* as it presently exists excludes more employees than it includes. Currently only 5% of the Canadian work force are protected by the Act, while 57% of the labour force are members of designated groups. The Liberal Party believes that if employment equity legislation is to be effective, it must protect the greatest number of employees possible. Only small businesses where an employee's rights to privacy is jeopardized should be excluded from the Act.

Under the current system, only federally-regulated employers with 100 or more employees are bound by the *Employment Equity Act*. The Minister indicated in her appearance before the Committee that she would be happy to maintain the *"status quo."*[3] While maintaining the status quo may be the least disruptive choice, it is also the least effective option.

To maintain the status quo is to neglect one of the most important goals of the *Employment Equity Act*, that of achieving attitudinal change in the work force. The Committee heard that traditionally it has been small business that has been most active in employing members of the designated groups. While these businesses are to be congratulated for their initiative, more small business employers should be encouraged to participate as there is still room for improvement.

The Liberal Party is also concerned about the employment barriers that are created by the current legislation. Maintaining the current threshold of 100 employees, or even reducing the threshold to 75 as recommended by the Special Committee, results in legislation that, in effect, imposes a barrier to designated groups members who prefer to be employed in small business settings. By excluding the small business sector from regulation, the legislation is allowing a large group of employers to perpetuate employment practices that may be inequitable and unfair. It is unacceptable to implement a piece of legislation that constructs the exact barriers it is designed to eliminate.

The Liberal Party recommends that the scope of the *Employment Equity Act* be expanded to include all federally-regulated businesses with fifteen or more employees. To ensure that small businesses are not over-burdened by expensive and complex reporting requirements, the Liberal Party also recommends

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[3] The Honourable Monique Vézina, Minister of State for Employment and Immigration, *Minutes of the Proceedings and Evidence of the Special Committee on the Review of the Employment Equity Act.* Issue No. 17. Ottawa. April 2, 1992, p. 17:16.

that employers with less than 75 employees follow simplified and streamlined reporting regulations to be established by the agency monitoring the Act. This simplified reporting system should be developed in such a way that ensures the employee's rights to privacy will be respected.

Federal Contractors Program

The Federal Contractors Program which regulates employers bidding on Federal Government contracts, must be expanded to encompass a broader base of Canadian employees.

Presently, the Federal Contractors Program applies to businesses with 100 or more employees who bid on Government contracts of $200,000 or more. The Liberal Party recommends that the Federal Contractors Program should be expanded to incorporate any company with 15 or more employees. The contract threshold should also be reduced to include businesses bidding on contracts in excess of $100,000.

The Liberal Party fully supports the recommendation of the Special Committee that the federal contractors comply with the principles of employment equity as specified in the Employment Equity Act. While the Program has been moderately successful, requiring contractors to comply with the conditions of the Act will strengthen and reinforce the Government's commitment to the principle of employment equity.

It is our belief that the Federal Contractors Program presents the Government with an ideal opportunity to demonstrate its commitment to the principal of employment equity. The message should be clear and unequivocal — if you want to do business with the Federal Government, you must implement employment equity in the work place.

Public Service

Five years ago, the Liberal Party urged the Government to include the federal public service in Bill C-62, *An Act Respecting Employment Equity*. It was the belief of the Liberal Party then, as it is now, that if legislation based on the principle of fairness is to be effective, it is crucial that the Federal Government demonstrate its importance by setting the example to be followed.

It is not surprising that the last five years have resulted in only marginal improvements in the employment situation for the designated groups. In a liberal democratic society like Canada, it is unconscionable for the Federal Government, the largest single employer in the country, to impose employment equity legislation on private enterprise while excluding its own employees. This formula will almost certainly result in legislative impotence.

A recently released study by the Canadian Ethnocultural Council stated that "the government deserves a D"[4] for the lack of progress in advancing employment equity within its own household. The report, entitled *Employment Inequity*, recognized the dismal efforts of the Federal Government.

> "Progress is painfully slow, even for departments and agencies that should be taking the lead in coordinating employment equity in the Public Service. Departments such as the Public Service Commission, Treasury Board Secretariat, Employment and Immigration and Privy Council Office are setting poor examples for the rest of the public service."[5]

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[4] Chan, Lewis. *Federal Government Gets a "D" for Visible Minorities Employment Record.* Media Release No. 10.Canadian Ethnocultural Council. Ottawa. April 22, 1992, p.1.

[5] Canadian Ethnocultural Council Employment Equity Committee. *Employment Inequity — The Representation of Visible Minorities in the Federal Government 1988 — 1991.* Ottawa. April, 1992, p. 8.

Out of a total of thirty-two departments included in the study, those listed above ranked 11th, 22nd, 15th, and 31st respectively in departmental representation of visible minorities.[6] These results are testimony to the Federal Government's lack of commitment to achieving employment equity within its own work force. It is the opinion of the Liberal Party that the lack of Government progress sets a poor example, not only to the public service, but to the Canadian public as well.

The Liberal Party holds the Federal Government responsible for allowing, by a demonstrated lack of leadership and commitment to the principal of employment equity, the continued discrimination of designated group members in the work force. By excluding the federal public service, as well as many departments, agencies and commissions, from the Act, and by failing to establish effective internal departmental policies to eliminate employment barriers, the Government has conveyed the message that the achievement of equality in the work place is a principle that it is willing to support on paper only.

The Liberal Party of Canada rejects this philosophy in its entirety and condemns the Government for the continued discrimination of designated group members in the Canadian work force.

Grant Recipients

The Federal Government must be the vanguard for implementing progressive employment practices in Canada. Again, the message must be that if you want to do business with the Government, you must commit to the principle of employment equity. Federal grant recipients represent an appropriate and available vehicle through which the Government can relay this message.

The Liberal Party recommends grant recipients with 15 or more employees be subject to a process similar to the Federal Contractors Program. This would include signing a Certificate of Commitment and establishing a procedure for monitoring and enforcing compliance. Excluding federal grant recipients from the *Employment Equity Act* undermines the goal of achieving the attitudinal change essential for effective employment equity implementation.

Political Parties

Politicians and political parties also play the role of employer. In order to reinforce the significance of the *Employment Equity Act*, it is essential that politicians and political parties show leadership through their own internal employment practices. Many witnesses who appeared before the Committee legitimately criticized the Government for not including the Public Service in the current *Employment Equity Act*. We believe that it is equally hypocritical for federal politicians passing legislation to exclude their own employees.

The Liberal Party is very pleased that the Committee unanimously agreed to adopt our recommendation requiring political parties to submit annual employment equity reports to Parliament. These reports should detail employee statistics according to the specifications of the *Employment Equity Act*. Any party failing to comply with these requirements will be revealed in the Minister's Annual Employment Equity Report, and ultimately held responsible for their deficiencies by their constituents.

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[6] *Ibid.*, table 1.

Law-makers can easily demonstrate the Act's significance by making themselves subject to the principles of employment equity.

THE CANADIAN HUMAN RIGHTS COMMISSION

The Liberal Party believes that the mandate of the Canadian Human Rights Commission must be amended to ensure that it has the legislative authority to initiate investigations with respect to employment equity issues. While we agree with the Committee's recommendation that the Commission be authorized to receive complaints from individuals without referral from the monitoring agency, we do not think that this goes far enough. The Canadian Human Rights Commission must have the authority to investigate and prosecute on their own initiative in order to effectively enforce the *Employment Equity Act*. Circumscribing the authority of the Commission will do little to improve the employment environment for disadvantaged Canadians.

SANCTIONS

The Liberal Party is profoundly concerned with the lack of enforceable sanctions in the current *Employment Equity Act*. In the present Act, only employers failing to comply with the reporting requirements established in section six of the Act are subject to a fine, upon summary conviction, not exceeding $50,000. While we support the Committee's recommendation that this sanction be extended to include all sections of the Act, we believe that the penalty itself must be strengthened to adequately reflect the seriousness of the offence.

The Liberal Party recognizes that the current lack of meaningful sanctions in the Act creates the potential for abuse by employers who would opt to ignore the legislation. While we acknowledge that the majority of Canadian employers are law-abiding, we can not ignore the inevitable exceptions. We believe that in order to ensure compliance with the Act, the cost of not disregarding the law must exceed the cost of program implementation. For this reason, we recommend a three-tiered penalty system.

The Liberal Party recommends that a graduated penalty system be established to prevent the rare circumstances in which employers continually and intentionally fail to comply with the requirements of the Act. We propose that first time offenders be subject to a fine of up to $50,000. For those convicted of a second offence the maximum fine should be increased to $250,000. For third time offenders the maximum fine should be $1,000,000.

Evidence given before the Committee confirmed that, in extreme cases of repeated violation of employment equity legislation, significant financial penalty has been successful in obtaining compliance. While the Liberal Party realizes that such a severe maximum penalty may not often be utilized, we feel that it sends a strong signal about the seriousness in which of employment equity offences will be viewed.

CONCLUSION

Principals of social justice and fairness must always be foremost in the minds of those who draft the laws by which Canadians abide. We look to the law, not only for protection, but for confirmation that values we uphold will be respected. This is the philosophy which has always guided the policy development process of the Liberal Party, and is certainly the situation with regard to our position on employment equity.

We cannot state too strongly that in order for employment equity legislation to be effective it must extend to as many individuals and businesses as possible. There must be mandatory goals and timetables, and significant sanctions where compliance is not forthcoming. Regrettably, the current Employment Equity Act excludes more individuals than it includes.

It is our profound desire that the Minister responsible for responding to the Committee's report do so, not with a partisan predisposition to amending the Act, but with an unaffected ambition to improving the employment situation for disadvantaged Canadians. By ignoring the existing inadequacies of the Act, and bowing to political pressure, the Government will in essence be sentencing designated group members to three more years of employment injustice as a result of legislation that is not fair enough.

APPENDIX D

Minority Report of the New Democratic Party

FIVE YEAR REVIEW OF THE EMPLOYMENT EQUITY ACT

Robert Skelly, M.P.

After five years of voluntary compliance, progress under the Act has not been adequate. It is time to put some teeth into the requirements of the Act, by applying sanctions for failure to fulfil obligations under the Act. It is time to extend the coverage of the Act as widely as possible within the federal jurisdiction. It is time to create the conditions for the success of employment equity initiative, such as adequate training programs, employer support, and the facilitation of partnerships. In short, it is time for the comprehensive human resource policy that this country so desperately needs, as we move into the next century.

The goals and principles behind the *Employment Equity Act* are sound. After five years of very slow progress, it has become clear that the mechanisms in the Act for achieving those goals need to be improved.

INTRODUCTION

- Canada's *Employment Equity Act* was passed in 1986, two years after the Report of Judge Rosalie Abella's Royal Commission Report on Equality in Employment.

- At the time of Judge Abella's Report there were high expectations something would finally be done to eliminate barriers against the hiring and promotion of four designated groups in Canadian society:

- women
- aboriginal people
- visible minorities, and
- the disabled

- In fact, those high expectations were dashed when the government tabled the current Employment Equity legislation in 1986.

- To many people it appeared the current legislation had been crafted from a previous draft, designed to be more comprehensive and more effective. Unfortunately, the sections which would have given "teeth" to the Act had been removed at some stage in the government review process, prior to its introduction in the House of Commons.

- The result has set back progress towards employment equity for at least 5 years.

- Some witnesses representing the four groups called the act "less than useless", and reported that the pace of progress in employment equity under the act was "glacial".

- The Annual Reports required by the Act to be tabled in the House were greeted with angry responses by representatives of the four groups and by the New Democratic Party because of the failure of the Employment Equity Legislation to achieve its stated objective.

As we move toward the 21st Century, 80% of new entrants to the workforce will come from the four designated groups.

It is clear that employment equity is not simply fair social policy; it is also very sound economic policy.

2. The purpose of the Act is to achieve equality in the work place so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfilment of that goal, to correct the conditions of disadvantage in employment experienced by women, aboriginal peoples, persons with disabilities and persons who are, because of their race or colour, in a visible minority in Canada by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences.

S.2, Employment Equity Act, 1986

- In fact it is clear that the current Act was designed to create the illusion of effective employment equity legislation, while leaving in place the voluntary system which had been in place all along — a system that favoured white able-bodied males and left women, aboriginal people, the disabled and visible minorities either condemned to high levels of unemployment or locked into poorly-paid employment ghettos, without opportunity for advancement or job security.

- In spite of its drawbacks, the current legislation has two positive attributes.

1. The Act requires employers to file detailed Annual Reports which document the systemic discrimination that exists in Canada against the four groups.

   The requirements for annual statistical reports supply clear evidence of systemic discrimination in hiring and promotion throughout workplaces under federal jurisdiction.

   They also provide evidence of the ineffectiveness of the current legislation to change this situation without substantial amendment.

2. The Act requires a periodic review of the legislation by the House of Commons.

   Initially the Act was to be reviewed after the first 5 years, and it will be reviewed every 3 years from now on.

NEW DEMOCRATIC PARTY CONCERNS

- As the representative of the New Democratic Party Caucus on the Special Committee on Employment Equity, I participated in the discussions around the Committee's final report.

- The Committee Report doesn't recommend all the changes advanced by trade unions and representatives of the four designated groups, nor does it recommend retention of the "status quo" as advocated by most employer delegations.

- I believe the report and its recommendations would — if accepted by the government — result in substantial improvements to the *Employment Equity Act* and, for the first time, measureable progress in achieving employment equity.

- On the other hand, I also found certain deficiencies in the Committee's Report which would require a minority report.

1. Coverage of the Act

- The proposals made by the Committee, if adopted by the government, would increase the representation in the workforce of the four groups by extending the number of employers covered by the current act.

• For example, the Committee recommends extending application of the Act to the one employer whose exclusion to date is the most glaring deficiency in the Act's coverage — that is, Parliament and the Government of Canada — whose employment equity record is as bad as and often worse than employers who are covered.

• Unfortunately however, government members refused to consider reducing the size of employers covered beyond a reduction from 100 employees to 75.

• Many new jobs are being created in smaller businesses and the American Equal Opportunity legislation, for example, covers employers who employ 15 or more employees.

NDP Recommendation #1:

I recommend that coverage of the act should extend to all employers in the federal jurisdiction who employ 15 or more people.

NDP Recommendation #2:

I also recommend that all contractors bidding on Federal Government contracts of $50,000 or more be required to sign a certificate of compliance with the principles of employment equity, as specified in the *Employment Equity Act*.

2. Consultation with employee representatives

• One of the striking characteristics of the evidence heard by the Committee was the wide divergence in viewpoints on the effectiveness of the current Act and the changes needed.

• With few exceptions, trade unions and organizations representing the four groups considered the Act ineffective and called for detailed changes.

• On the other hand, with very few exceptions, employer groups felt sufficient progress was being made and very few changes were required.

• This dramatic difference in perception highlights a problem in Canadian society: the communication gap between employers and employee organizations, and the lack of a national consensus between these two groups and government on important economic and social issues.

• This was the subject of a recent article in the Quarterly Labour Market and Productivity Review of the Canadian Labour Market and Productivity Centre which stated:

"...our poor economic performance relative to other countries has stimulated a new interest in the potential role of consensus-building as a means to improve economic performance.

It has been observed that countries which have achieved a high degree of social consensus tend to have superior economic performance to those where the social partners agree on little."

• The Committee found that there was a need to encourage partnerships between the groups involved in employment equity: employers, workers, and members of the four groups. Unfortunately, there is little evidence at the present time that the kind of understanding needed for these partnerships exists. In fact, there was only one very encouraging example of trade unions and employers making a joint presentation, and that was from the Saskatchewan Wheat Pool and the Grain Services Union.

• Employees' representatives who appeared before the committee testified that current levels of consultation between employers and trade unions are minimal and ineffective.

They felt that consultation should be established through joint labour-management committees on employment equity and by accommodating the implementation of employment equity into the bargaining of process.

- None of the witnesses questioned the government's right to establish employment equity goals and timetables, which would not be bargainable. However almost all trade union representatives felt that, because of the impact of employment equity plans on the workplace and on clauses of existing collective agreements, implementation of employment equity should be a part of the bargaining process. I support this view.

NDP Recommendation #3:

I recommend that trade unions and employee organizations be considered full partners in employment equity, and that employers under the *Employment Equity Act* be required to consult fully and effectively with their employees in the development and implementation of employment equity plans.

3. Seniority

- There appeared to be a great deal of misunderstanding concerning the possible effect of seniority clauses on employment equity.

- Because employers' traditional hiring practices tend to discriminate against women and designated group members, many of those currently protected by seniority clauses are white able-bodied males. The fault is not with the seniority clauses but with discriminatory hiring practices on the part of employers.

- Nonetheless, because of those discriminatory practices, seniority clauses can result in members of target groups being first laid off or last promoted and therefore, unless modified, seniority clauses could be a barrier to speedy implementation of employment equity.

- A number of witnesses pointed out that trade unions have led the country in negotiating the implementation of employment equity through collective agreements. This has often involved modification of seniority clauses, at the initiative of unions, to provide for greater representation of designated group members in promotions and greater job security.

- Although unions have played a leadership role in achieving employment equity through the bargaining process, they were under-represented among the witnesses who appeared before the Committee. Those who did appear made it quite clear that they would not like to see seniority clauses removed from collective agreements in order to permit senior workers to be removed from their jobs, and members of the designated groups hired in their place. Unions felt that senior workers should not become today's victims of past discriminatory hiring practices by employers. Union representatives were convinced that employment equity could be achieved without jeopardizing the job security of senior workers. I agree with that position.

If you look at collective agreements in Canada, 5% of them have pure seniority clauses.

Employers have been ignoring seniority provisions in collective agreements for as long as there have been unions, and I am sure will continue to do so for many years to come.

So I don't subscribe to the view that seniority provisions are always a barrier.

I think it's possible for the parties to sit down and decide what works in that workplace.

BONNIE PEARSON, CO-CHAIR
SASKATCHEWAN WHEAT POOL EMPLOYMENT EQUITY COMMITTEE

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4. Purpose of the Act

- There is a real misunderstanding about the purpose of employment equity legislation.

- This misunderstanding leads to the belief in the general public that employment equity is a costly measure which seeks to lower standards, in order to create jobs for women, the disabled, aboriginal people and visibile minority goup members who don't have the appropriate skills. In fact exactly the opposite is true.

- There is ample evidence to show that systemic discrimination exists in training programs and educational opportunities for members of the four designated groups. But even those designated group candidates who do have the required skills still don't get the job, because of the numerous barriers in hiring which favour white able-bodied men.

- The objective of employment equity is to give preference in employment to members of the four groups who have the same or superior skills to members of the non-designated group, until designated groups are represented in the work force in the same proportions as they are represented in the population.

NDP Recommendation #4

I recommend that section 2 of the *Employment Equity Act* be amended to include a clear statement that the purpose of the Act is not to reduce standards but to eliminate discriminatory barriers.

5. The Issue of Cost

- It was often brought up that implementing employment equity might be more difficult during a recession because of the "cost", or because fewer people are hired or promoted and more are laid off.

- Evidence submitted to the Committee indicated that both these assumptions are false. Manitoba Telephone pointed out that when the company initiated its employment equity program, some managers insisted the cost be shown as a separate line item in the company's budget. After a few years' experience the costs were so embarrassingly small that management is now considering removing the item from its budget altogether.

It was brought to the table with people saying "what is it going to cost?".

We agreed to an employment equity budget line, and it could be like a "retrospective of disaster" that I was bringing to the corporation.

They could include anything, from the cost of accessibility, to the cost of sick days because they hired a woman somewhere and they didn't think they had to, and she got pregnant or something.

Well, somebody mentioned to me this year that the budget line has all but disappeared, because it was embarrassing.

The various managers found it embarrassing to be adding up the nickels and dimes to make a point, when the point simply wasn't there to be made.

MONA KATAWNE
DIRECTOR OF CORPORATE EQUITY
MANITOBA TELEPHONE SYSTEM

- On the other hand Dr. Harish Jain of the McMaster Business School pointed out, using American Research, that discrimination against blacks, Hispanics and other minority groups in the United States cost the US economy approximately $20 billion annually.

- If the discrimination were removed through effective employment equity legislation, presumably the benefits would be distributed to employers, employees, the government and the economy as a whole.

- Other witnesses made it clear that the economic benefits of implementing employment equity make the elimination of discrimination in employment an appropriate decision at any time in the economic cycle.

- Even during economic downturns, employees quit, retire, become ill and die, or leave their jobs for any number of other reasons. The vacancies thus created can be filled by hiring and promoting workers from the four groups.

- Therefore, recessions should not be an acceptable excuse for delaying the implementation of employment equity.

- Of course anticipating changes in the employer's work force to accommodate employment equity requires greater human resources planning but, as Dr. Jain pointed out, better human resource planning results in better business decision-making, which in turn improves profitability.

There's the idea that it only benefits the four groups, but that's nonsense.

It benefits everyone.

When employers have to do human resource planning for the four groups, they also do it for their other employees.

That's why US employers told Ronald Reagan they didn't want him to dismantle affirmative action.

They realized the benefits of the program.

DR. HARISH JAIN

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6. The Relationship to Pay Equity

- In Canada, women are still earning only 66% of the wages of men. In Australia, government initiatives have moved this figure up to 87%.

- The current *Employment Equity Act* requires employers to report designated group members in salary quartiles. In a well documented brief the National Action Committee on the Status of Women pointed out that in virtually every employment category studied women tended to be concentrated in the lowest salary quartile at every level.

- Even though there is a growing number of women in positions labelled "middle management", women in that job category are still vastly over-represented at the lowest salary levels.

- Employment equity without pay equity is a fiction, when employers can "promote" members of target groups by simply changing the titles on employment categories, without increasing pay or management responsibility.

NDP Recommendation #5:

The Canadian Human Rights Commission should be authorized by the *Employment Equity Act* to use annual statistical reports, relating to employment of designated group members, by salary quartile, as evidence for enforcing the pay equity provisions of the *Canadian Human Rights Act*.

Robert E. Skelly, M.P.
New Democratic Party Member
Special Committee to
Review the *Employment Equity Act*

Minutes of Proceedings

WEDNESDAY, APRIL 8, 1992
(20)

[*Text*]

The Special Committee on the Review of the Employment Equity Act met *in camera* at 1:10 o'clock p.m. this day, in Room 536, Wellington Bldg., the Chairman, Alan Redway, presiding.

Members of the Committee present: Iain Angus, Gabrielle Bertrand, Joy Langan, Charles A. Langlois, John Nunziata and Alan Redway.

In attendance: From the Research Branch of the Library of Parliament: June Dewetering, Nancy Holmes and William Young, Research Officers.

The Committee commenced consideration of its draft report.

At 1:55 o'clock p.m., the meeting was suspended.

At 4:01 o'clock p.m., the meeting resumed.

At 5:27 o'clock p.m., the meeting was suspended.

At 6:01 o'clock p.m., the meeting resumed.

At 9:35 o'clock p.m., the Committee adjourned to the call of the Chair.

THURSDAY, APRIL 9, 1992
(21)

The Special Committee on the Review of the Employment Equity Act met *in camera* at 10:00 o'clock a.m. this day, in Room 701, La Promenade, the Chairman, Alan Redway, presiding.

Members of the Committee present: Dan Heap, Joy Langan, Charles A. Langlois, John Nunziata and Alan Redway.

In attendance: From the Research Branch of the Library of Parliament: June Dewetering, Nancy Holmes and William Young, Research Officers.

The Committee resumed consideration of its draft report.

At 11:23 o'clock a.m., the Committee adjourned to the call of the Chair.

TUESDAY, APRIL 28, 1992
(22)

The Special Committee on the Review of the Employment Equity Act met *in camera* at 9:06 o'clock a.m. this day, in Room 705, La Promenade, the Chairman, Alan Redway, presiding.

Members of the Committee present: Bill Attewell, Gabrielle Bertrand, Mary Clancy, Bruce Halliday, Charles A. Langlois, John Nunziata, Alan Redway and Robert Skelly.

In attendance: From the Research Branch of the Library of Parliament: June Dewetering, Nancy Holmes and William Young, Research Officers.

The Committee resumed consideration of its draft report.

On motion of Gabrielle Bertrand, it was agreed, — That, pursuant to Standing Order 120, the Committee retain the services of Georges Royer as French Editor and Reviser for the Committee's Draft Report on the Review of the Employment Equity Act, for the period of April 28 to May 15, 1992 at a rate of $55/hour, not exceeding $599 per day, for a total amount not exceeding $3,000.

On motion of Charles Langlois, it was agreed, — That, the Committee authorize payment from the Committee's budget for the Committee to hold a working dinner on April 8, April 9 and April 28, 1992.

On motion of Bruce Halliday, it was agreed, — That, the Chairman be authorized to retain the services of a firm for the production of the Committee's report on audio cassettes.

At 12:00 o'clock p.m., the meeting was suspended.

At 3:26 o'clock p.m., the meeting resumed.

On motion of Bruce Halliday, it was agreed, — That, the Chairman report to the House seeking permission to extend the date for the Committee's final report on the Review of the Employment Equity Act to May 15, 1992.

At 6:00 o'clock p.m., the Committee adjourned to the call of the Chair.

WEDNESDAY, APRIL 29, 1992
(23)

The Special Committee on the Review of the Employment Equity Act met *in camera* at 3:36 o'clock p.m. this day, in Room 701, La Promenade, the Chairman, Alan Redway, presiding.

Members of the Committee present: Gabrielle Bertrand, Bruce Halliday, Fernand Jourdenais, Charles A. Langlois, John Nunziata, Alan Redway and Robert Skelly.

In attendance: From the Research Branch of the Library of Parliament: Nancy Holmes and William Young Research Officers.

The Committee resumed consideration of a draft report.

It was agreed, — That the said Report be entitled: "A Matter of Fairness"; "Une question d'équité".

At 5:46 o'clock p.m., the Committee adjourned to the call of the Chair.

THURSDAY, MAY 7, 1992
(24)

The Special Committee on the Review of the Employment Equity Act met *in camera* at 9:37 o'clock a.m. this day, in Room 705, La Promenade, the Chairman, Alan Redway, presiding.

Members of the Committee present: Gabrielle Bertrand, Mary Clancy, Bruce Halliday, Charles A. Langlois, Alan Redway and Robert Skelly.

In attendance: From the Research Branch of the Library of Parliament: June Dewetering, Nancy Holmes and William Young, Research Officers.

The Committee resumed consideration of its draft report.

At 10:00 o'clock a.m., the Vice-Chairman assumed the Chair.

At 10:43 o'clock a.m., the meeting was suspended.

At 11:29 o'clock a.m., the meeting resumed and the Chairman assumed the Chair.

At 11:45 o'clock a.m., the Committee proceeded to sit in public.

Charles Langlois moved, — That recommendation 4.2 be amended by deleting the first sentence and that the word mandate in the second sentence be substituted by the word responsibilities.

The question being put on the motion, it was agreed to, on the following division:

YEAS

Gabrielle Bertrand
Bruce Halliday
Charles A. Langlois
—(3)

NAYS

Mary Clancy
Robert Skelly—(2)

At 11:48 o'clock a.m., the Committee resumed sitting *in camera.*

It was agreed, on division — That the draft report, as amended, be adopted as the Committee's Second Report and that the Chairman present it to the House.

It was agreed, — That, pursuant to Standing Order 109, the Committee request the Government to table a comprehensive response to the Report within 150 days.

It was agreed, — That, in addition to the 550 copies printed by the House, the Committee print 4,450 copies of its Report in tumble format.

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

It was agreed, — That the list of witnesses who appeared before the Committee, the list of individuals who made submissions and the dissenting opinions from the Liberal Party and the New Democratic Party be printed as appendices to the Report.

It was agreed, — That a Press Conference be held after the Report is presented to the House.

It was agreed, — That the Chairman be authorized to retain the services of a firm for the production in braille of the Committee's recommendations in both official languages and that the Committee print 25 copies in English and 25 copies in French.

At 11:57 o'clock a.m., the Committee adjourned to the call of the Chair.

Monique Hamilton
Clerk of the Committee

Luc Fortin
Committee Clerk