Employment Equity Act Review

Task Force Submission

Remarks from CPHR Canada

April 2022

Background

A Task Force set up in 2021 by the Ministry of Labour of the Government of Canada has been mandated to undertake a comprehensive review of the Employment Equity Act (EEA) and its supporting programs to develop views for the government to lean on in the review of this Act.

The Task Force is seeking input from both partners and the public on the following issues:

- Defining equity groups
- Better supporting equity groups
- Improving accountability, compliance and enforcement
- Improving public reporting

Thanks to the expertise of its members, CPHR Canada would like to contribute to the Task Force's reflections with this brief.

About CPHR Canada

CPHR Canada represents 27,000 members in the Human Resources Profession across nine provinces and three territories in Canada. Established in 1994, CPHR Canada is the national voice on the enhancement and promotion of the HR Profession. Our members work in organizations of all sizes and in all sectors across the country. We are thus well placed to bring the Profession's views to developing public policy that impacts Canadian employers and workers.

We constantly strive to maintain a balance between the organization's performance and employee well-being with a view to contributing to the Canadian economy's success.

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1. Introduction

The CPHR (Chartered Professionals in Human Resources) often initiate and facilitate initiatives in equity, diversity and inclusion (EDI) with or within organizations. Most of the time, they are the ones applying the Employment Equity Act.

In the past several years, they have noted the importance of building on EDI in all its forms, both out of a collective duty to equity and the need to end discrimination, and for the business advantages and learning and innovation opportunities that will result.

A 2018 survey of HR professionals in Quebec revealed that:[1]
- 87% of HR professionals feel that the importance of diversity will grow across the country over the next five years.
- 42% of HR professionals say they have already implemented EDI practices, and 8% intend to begin in the short term.

The government of Canada was a forerunner when it passed the Employment Equity Act in 1986. Encouraged by the movement of openness in the face of current challenges and a better understanding of the subject, CPHR Canada welcomes the government's commitment to review this legislation with a view to seeing it evolve along with social change—and to ensure its returns and relevance over time. Historically, our society has created deep divisions between groups. To turn the tide, we need to be ambitious. This type of law will be necessary as long as unjustified underrepresentation exists at all levels of diversity groups and discriminatory barriers persist.

CPHR Canada compiled the comments in this brief following a consultation with many of its members. Our objective is to contribute to the fight against discrimination, firmly convinced of the advantages we will collectively enjoy in inclusive workplaces, as well as the importance of raising awareness and helping organizations in this process.

2. Social change

In recent years, society has grown increasingly aware of the barriers encountered by members of diversity groups, and commitment to equity and inclusion is growing, but there is still a lot of work to do. Indeed, several studies indicate that inequality is most intensely

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[1] Gestion de la diversité, de l'équité et de l'inclusion (GÉDI) : Remettre les pendules à l'heure – Tania Saba, CPHR

experienced in employment discrimination and at the workplace.[2] For example, in Canada, university-educated Canadian-born members of a visible minority earn, on average, 87.4 cents for every dollar earned by their Caucasian peers.[3] This striking statistic reflects a current reality that should be combatted decisively.

The worrisome problem of the nationwide labour shortage has certainly contributed to organizations becoming more open to diversity. Furthermore, shocking events in the media and recent social movements remind us of the need promote more inclusive workplaces—and a more inclusive society.

The concrete commitment of workplaces to this new reality is evidenced by the rapidly growing number of job offers for EDI specialists, who were not in high demand a short while ago. It should be noted, however, that these positions are mainly available in very large organizations. We have also noted growing interest on the part of human resources professionals, such as employers, in EDI content and training.

On the other hand, increased social awareness does not guarantee concrete results. Indeed, while organizations claim to be more engaged, their efforts are at times inconsistent or ineffective.[4]

The pandemic also seems to have made workplace inequity worse. For example, many women found themselves being the main caregivers for aging parents and/or young children, in addition to having a job.

Therefore, the current context is propitious for change, but for real change to happen, words must be followed by actions, and the legislative foundations need to have teeth.

3. The EEA's strengths

Purpose

The very existence of this legislation is an acknowledgement of the existence of systemic barriers, and consequent problems, for certain groups. This objective is noble, necessary and current. The EEA and the government's commitment to reviewing it demonstrate an engagement toward the creation of more equitable, diversified and inclusive spaces, and this is very welcome.

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[2] [Pour réduire les inégalités, quel rôle pour les entreprises? | L'état du Québec 2020 - Institut du Nouveau Monde](#)
[3] [Racial Wage Gap – The Conference Board of Canada](#)
[4] [Ineffectiveness of diversity management: lack of knowledge, lack of interest or resistance? – Tania Saba, CPHR, Mustafa Ozbilgin, Eddy Ng, Gaëlle Cachat-Rosset](#)

This legislation seems to contribute concretely to narrowing the representation gaps experienced by certain diversity groups in the workplace as noted in annual reports published by the government of Canada[5].

By forcing employers to think about and report on this subject, the legislation prods companies to paint a picture of the diversity within their teams as compared with the public in terms of representation. They can then see if there is underrepresentation and intervene where necessary. The legislation introduces important reflections on measures and provides a basis for action.

As awareness of equity and inclusion issues grows, some organizations not subject to the EEA are more inclined to do something similar. This law has the potential to inspire and provide guidelines for these companies, even if they are not subject to it.

Relative simplicity and positive perceptions

Feedback has indicated that the EEA obligations are generally relatively simple. While the program essentially targets organizations of a certain size, once it's understood and mastered these organizations are often able to easily fulfill their obligations using their internal resources or an outside consultant.

The program is generally well received by these organizations because it takes a positive approach rather than a punitive one. It allows them much-appreciated leeway and the right to manage their targets and the measures they need to take.

Miscellaneous

More specifically, here is a short list of other positive points that were raised:

- The collaboration between the employer and employee representatives required by the Act in the development, implementation and review of the employment equity plan is welcome. The involvement and commitment of both parties in acknowledging issues and possible solutions guarantee success as they favour a common vision and understanding.
- The representation profile presented in the report can be audited and there are consequences for non-compliance. This ensures that organizations comply with this requirement, although the audit and follow-up process may later be firmed up.
- Resources, tools and training are provided by the government, which help explain these obligations to company management, making compliance more likely.
- Statistics Canada data provides a unique comparison basis for all organizations, which helps deliver a reliable picture across the country.

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[5] Reports: Employment equity in federally regulated workplaces – Government of Canada

- The recent inclusion of required information regarding pay scales and wage gaps is a welcome step forward. There will necessarily be an adjustment period for organizations, but the change will eventually be fully integrated.

4. EEA shortcomings and avenues for improvement

Scope

It's important to remember that only a small minority of Canadian organizations are covered by this Act, mainly big organizations that are sometimes already considering EDI issues. And yet vulnerable populations can be found in all types of organizations, indeed perhaps more so in smaller organizations with geometrically variable management practices. Ideally, the program should be broader in scope, but the capacity of small organizations needs to be taken into consideration.

One of the avenues would be to extend coverage to employers under provincial jurisdiction that deal with the government. Currently, only organizations with 100 employees or more with a contract of $1,000,000 or more with the federal government are covered. These thresholds could be lowered.

In addition, the program has the potential of inspiring those not covered, like the other organizations under provincial jurisdiction, and this could be encouraged. The legislation may entice these organizations to voluntarily do something similar internally. We've had anecdotal reports of some that are already doing this.

Visibility

The existence of this legislation seems little known by the public, and even within the organizations covered, outside of those responsible for applying it. It's also often confused with the Wage Equity Act.

It would be to the government's advantage to put much more effort into making the legislation widely known to maximize its potential with the organizations that are covered, inspire those that are not, and make it visible to the designated groups.

Awareness and engagement

A poor understanding of the foundations and principles of equity has been noted in the public and in organizations in general. There are still too many who are uncertain of the possible benefits of EDI policies or who simply do not feel personally impacted. [6]

With the EEA specifically, those responsible for the obligations under the Act are for the most part aware of the importance of doing so. Yet the added value of this legislation and the measures aiming to ensure an equitable, inclusive and diverse workplace is not well understood at all levels of organizations. Upper management, supervisors and employees need to be more aware of its value and reason for being. Some scepticism remains as to whether it really can help improve things.

In addition to the tools and resources that the government is offering to help those responsible for meeting their obligations, a statement could be made and relayed internally to raise awareness among all those involved to the foundations and benefits of this program and its objectives. To ensure that there is real change and less resistance and that we all pull together, everyone must be invested.

The legislation should come with robust training requirements, particularly for upper management and directors. Furthermore, special attention should be given to supervisors in the field who make day-to-day decisions based on action plans. Any potential scepticism, misunderstanding, missteps or disagreements may unfortunately discredit the measures put in place.

To incite the various actors to action, the history needs to be explained; over the years the gaps that were generated mean that today, they need to be countered with ambitious public policies and organizational measures. Managers who do well and assume leadership in this area could be spotlighted. Their message could certainly help to positively influence their colleagues.

Emphasizing action plans

The current legislation focuses largely on the compilation of data from reports. It is certainly essential to paint a picture of diversity representation since this allows us to collectively appreciate the evolution of employment equity, and to pinpoint the nature of any gaps and thereby know where to focus our efforts. However, this is only the first step, and measures must then be developed so that the findings first translate into action, then results.

More effort should be given to measures aiming to narrow the gaps that have been observed. In other words, the program and the audit mechanisms focus mainly on the data, whereas attention should be concentrated on the actions to be implemented.

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[6] Ineffectiveness of diversity management: lack of knowledge, lack of interest or resistance? – Tania Saba, CPHR, Mustafa Ozbilgin, Eddy Ng, Gaëlle Cachat-Rosset

This is why it seems particularly important to us to focus on supporting organizations in implementing healthy practices to eliminate barriers and favour inclusion. Several resources already exist; the government has subsidized many of these. They now need to be publicized. And investments are needed in direct support. Indeed, access to experts could be facilitated, for example, by subsidizing access to outside skilled professionals and by training government auditors to provide advice in addition to inspections.

Legislation with teeth

Many groups might be tempted to advocate for simpler requirements due to the administrative burden that employers deal with from all directions. When you look at all of their obligations, their administrative burden is certainly considerable. Organizational capacity to meet these obligations should be taken into account, as well as the value of the benefits over the effort and investment required. This ratio should obviously make sense.

Having said that, for the legislation to yield the expected effects, it must be clear and specific. Some believe that the EEA is lacking in tools with teeth and could have the potential to go further.

Quebec's Wage Equity Act is an example of legislation that can provide inspiration, as it has produced notable positive results over time. It is certainly demanding and it does have its flaws, but at least it has brought about lasting change in equity. It has a broad scope, as many organizations are subject to it; its audit mechanisms are rigorous, and a variety of resources are available to support organizations in complying with the Act's requirements.

EDI skills and expertise

In order to deploy concretely impactful, effective measures, organizations need to lean on experts on the matter. An adequate pool of professionals with the right training and skills to meet the challenges needs to be maintained.

Given the growing number of job offers, anyone could call themselves an EDI expert and there is a chance that some may take positions they are unqualified for. This has in fact been observed in harassment management following the #metoo movement and wage parity management when the Act was passed.

5. Definition of designated groups

Definitions

As the Task Force has already mentioned, designated group definitions are obsolete and need to be modernized. The terms put forth by the legislation are no longer used by the

individuals that are expected to identify with them. It is essential that people recognize themselves with terminology that speaks to them. Out of respect for the individuals concerned and to encourage identification, it's important to review the terminology. CPHR Canada will not formulate specific recommendations on this subject because we believe that the organizations that represent these groups and the individuals themselves are best placed to select the exact terms, they consider fair and accurate.

Also, according to the feedback we've received, still too many people fear self-identification. Some out of fear that this information may be used nefariously, because they're not convinced of the benefits of the EEA, or because they don't want to feed into the perception that their success is due to positive discrimination criteria, for example. As requiring identification does not appear to be a desirable solution, there is necessarily work to be done with individuals in these groups to strengthen their faith in these mechanisms so that we can obtain a more accurate picture.

And to favour identification, adding response choices such as "I prefer not to answer" would allow those who do not want to self-identify with these groups specifically to do so in some other manner.

Other groups

It's also necessary to consider whether other groups should be covered. While we have not done an exhaustive analysis, it appears obvious to us that the LGBTQ+ community, experienced workers, and the Francophone community should be considered. There should be discussions with the representatives of the various underrepresented groups in order to better understand their perception and the ways discrimination may be experienced.

Having said that, the decision to add or remove groups must be made according to documented, analyzed data only and not current trends or outside pressures. CPHR Canada invites the government to conduct rigorous studies to determine whether other underrepresented groups exist and whether they should be covered by the program.

Continuity of the law

Recent years have shown that the vocabulary used to identify diversity groups is evolving. Population trends too.

Precise group definitions within the law helps focus the attention where the gaps are widest. However, the terminology might evolve poorly over time, not to mention that the law excludes groups of people that merit particular attention.

Ideally, a mechanism should be introduced to review the terminology and the identity of designated groups on a regular basis.

5. Best practices to eliminate barriers to employment

There is no silver bullet to make our workplaces equitable, diversified and inclusive, with no employment barriers at all. However, we can focus on the foundations that are particularly successful, and this is what CPHR Canada will discuss here.

True, lasting change requires a change in culture, which takes time and sustained effort. Outstanding organizations integrate EDI into all their activities.

To ensure integrated, coherent action, organizations should develop an action plan outlining their organizational commitment to EDI; upper management, including boards of directors if applicable, need to demonstrate their commitment often. For good results, upper management must be held accountable as to whether or not the objectives are being met. In the absence of clear direction from upper management, EDI is harder to achieve, whether inspired by ethics, a deep conviction of the wealth that diversity brings, or the advantage over business competitors.

To avoid scattering the measures, an integrated plan needs to specify the objectives, the methods to be used, the accountability of the various actors, and the mechanisms of the measures. Here are some examples of concrete best practices that can be integrated into an action plan:[7]

- Provide EDI training to employees.
- Provide EDI training to HR professionals, recruiters and managers to counter the biases.
- Review job descriptions to make sure they are written in an unbiased, inclusive manner, and that job requirements match up with actual responsibilities.
- Actively recruit diversity candidates:
    - Partner with internal or external networks, associations or community organizations in diversity employment.
- Assess perceptions of diversity in the industry and under the company brand with designated groups.
- Evaluate and use screening or promotion tools, tests and interviews to avoid any bias, including unconscious bias.
- Establish targets for the company along with quantitative and qualitative measures to assess progress:

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[7] Gestion de la diversité, de l'équité et de l'inclusion (GÉDI) : Remettre les pendules à l'heure – Tania Saba, CPHR

- o Determine key positions to start the approach to diversity, such as manager and recruiter positions.
- o Establish targets for ambitious but realistic progress based on staff representation on the job market.
- Implement a career management or leadership development program for underrepresented groups throughout the levels of the organization.
- Perform work climate assessments though the lens of equity, diversity and inclusion.

Beyond the representation statistics that companies covered by the EEA must compile to create their report, surveying and involving the team is a good way to bring up deep insights, understand perceptions, see what works and what doesn't, and collaboratively generate avenues to actions to be implemented.

7. Better support for organizations in meeting their obligations

CPHR Canada believes the priority is supporting organizations in getting all the information they need to meet their obligations and producing real, positive benefits. Much more effort needs to be deployed in awareness-raising, training and support. This brief contains many recommendations.

Complying with obligations must be convenient enough to keep companies on board with the legislation's objectives. For the experience of compliance to be positive—and ensure it produces the desired effects—we believe it's preferable to lean on demanding legislation while providing all the support needed to comply, rather than lower the bar by simplifying the process and thereby, perhaps, missing the target.

Organizations not covered by the EEA should also be encouraged to study EDI and they should receive support in this area. The government recently launched Challenge 50-30 which suggests representativity targets which might be considered ambitious in some sectors within governance. This additional initiative is completely voluntary. It's very interesting—on the one hand, it attacks the infamous glass ceiling and on the other, by taking part, organizations gain access to resources to help them meet their objectives.

Having said that, it mainly affects organizations that are already on board and active in EDI. It also remains poorly known, according to our findings. CPHR Canada encourages the government to push this strategic initiative even further; it contains incentives to convince the reticent and should be better publicized.

7. Conclusion

The new awareness and growing openness that the public as well as organizations are demonstrating is an opportunity for our society to prioritize equity, diversity and inclusion.

Despite the current enthusiasm and goodwill, concrete results are long in coming, and far too many diversity individuals are unfairly represented in our workplaces. Let's move from words to action with legal foundations with teeth and with awareness-raising among all parties of these obligations and their reason for being and more broadly, the benefits that come with promoting EDI.

CPHR Canada believes that effort should be focused more on learning and the actions to be deployed based on the findings, not only on data and deliverables. Organizations need support and expertise to be successful in their actions.

CPHR Canada welcomes the government's commitment to review the Employment Equity Program and the work the Task Force is doing.