

# Modernizing the Employment Equity Act

## Remarks from CPHR Canada

Submitted to Employment and Social Development Canada  
as part of the targeted consultations on the  
Employment Equity Act Review Task Force's Report

**August 2024**

## About CPHR Canada

CPHR Canada represents 31,000 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.

## Table of Contents

1. Updating the purpose, designated groups and collection of survey data	4
2. Supporting employees and employers	8
3. Strengthening accountability, compliance and enforcement	9
4. Improving public reporting	10
Annex: How can EDI self-identification questionnaires be used to maintain public confidence and trust?	11

# Modernizing the Employment Equity Act

## Remarks from CPHR Canada

### 1. Updating the purpose, designated groups and collection of survey data

#### 1.1. Purpose of the Act

CPHR Canada believes that the new wording of the Act's purpose covers the essential components and does not have any suggestions to make in terms of additions or changes. Nevertheless, it thinks that lawmakers should:

1. come up with a definition for the concept of equitable inclusion that is precise, more clear-cut and aligned with the Act's purpose, rather than a broad value statement.
2. include specific indicators or criteria among the goals for its implementation to assess whether the disadvantages experienced by the groups contemplated are actually corrected, along with suitable measures and resources to ensure effectiveness.
3. establish specific mechanisms to ensure that international commitments are not only supported and regularly evaluated, but also updated according to international developments.

#### **Providing government support and quality guidance**

The purpose of the Act is to achieve and sustain equality in the workplace through effective employer implementation. To that end, it will be essential for the government to provide organizations with a greater abundance of guidance resources than it has since the Act was implemented. As an example, the implementation of the *Pay Equity Act* could serve as a guide to providing clear information, effective tools and readily accessible training.

This guidance will need to be provided to organizations on a continuous basis, as equity and inclusive practices continue to evolve, and expertise is being developed across the country. The introduction or modernization of legislation often creates opportunities for consultation. However, we find that the guidance provided is not always of good quality or consistent. To help with this problem, the government could create a certification for individuals charged with implementing the Act, whether they work at the organizations themselves or as their consultants, to ensure that the advice provided is of good quality. CPHR Canada would gladly assist with such a project, in the interest of protecting the public, by drawing on its national network of human resources professionals.

## **Strengthening all organizations' data collection capabilities**

Over the last few years, we have observed that organizations are trying harder and harder to make their workplaces more inclusive. It is essential for organizations to collect information on the employees who belong to underrepresented equity-seeking groups if they hope to develop more inclusive practices.

Organizations subject to the *Employment Equity Act* may collect information on initial hiring and during employment. However, outside the framework of this Act or of enabling statutes at the provincial level, the rules on using self-identification questionnaires for diversity purposes are rather ambiguous, because there is no case law to confirm how the applicable laws should be correctly interpreted.

To guide CPHRs on how to properly use these types of questionnaires, we suggested that they take a series of precautions to maintain the confidence and trust of members of the public and vulnerable groups and reduce their risk of not complying with the legal framework. The main thrusts of that document, which was prepared by the *Ordre des conseillers en ressources humaines agréés du Québec*, are presented in the annex.

In their deliberations over employment equity, we suggest that lawmakers establish a mechanism that helps organizations carry out the data collection process, as part of an equity, diversity and inclusion strategy, without fearing rejection on grounds of a discriminatory practice or having to avoid the *Employment Equity Act* if they do not already have to meet this requirement due to their status or the contracts they have been awarded. Lacking clarity is partially to blame for the stagnating efforts of organizations that are struggling to make progress and measure the impact of their equity, diversity and inclusion efforts because they cannot obtain disaggregated data.

## **1.2. Definitions and terminology**

### **Two new groups created**

The two new groups created for Black people and the 2SLGBTQI+ community is a positive move that recognizes the specificities and the unique challenges of these groups.

In our opinion, the government should educate the public and organizations that might initially question the reasoning behind creating a separate category for Black people from the "visible minorities" category. Indeed, this category is too broad to fully cover the specific disparities experienced by Black people, who are often underrepresented in recruitment processes and overrepresented in menial jobs. The historical roots of these types of discrimination and the still unfavourable statistical data for this group make it even more necessary to create a separate category. This addition in employment equity policies may lead to fairer and more equitable representation in positions of power and leadership and contribute to a better understanding of the barriers encountered by this group in the labour market.

## **Racialized people rather than visible minorities**

CPHR Canada agrees with the suggestion of replacing the term "visible minorities" with "racialized people"; the term is more inclusive and thus better reflects the real inequities and discrimination suffered by these groups. Unlike the term "visible minorities," which tends to homogenize the diverse realities of the different groups, "racialized workers" recognizes the socially constructed character of race and the power dynamics that result from it. With a more precise term, recruitment and inclusion strategies can be adapted to better meet the needs of racialized workers.

Furthermore, replacing the term "visible minorities" with "racialized workers" can improve data collection and the assessment of employment equity policies. By disaggregating data into racialized sub-groups, decision-makers can better evaluate the effectiveness of current policies and adjust measures to fill in gaps in representation and working conditions.

## **Definition of the term disability**

In our view, using the definition of the term "disabled" from the *Accessible Canada Act* is a positive development. It creates consistency.

## **Definition of women as a group**

Women should continue to be a group that benefits from employment equity efforts. After all, despite the progress made, there are still gaps in various economic sectors and at different levels within organizations when it comes to the presence of women.

## **Definition of the term Indigenous**

We welcome the replacement of the term "Aboriginal Peoples" with "Indigenous Peoples" in the Act and the updated definition, which now includes First Nations, Metis and Inuit.

## **Other groups to consider**

We view the recommendation to mandate the newly established Law Commission of Canada to conduct an independent comprehensive study of the inclusion of religious minorities in the Act as a wise step before considering the inclusion of new groups, whether they are religious minorities or people with criminal records. According to our observations, the latter group is struggling to find its way back into workplaces, even when the individuals concerned have served their sentence and repaid their debt to society. They are underrepresented as a group, compared to other groups that can assert their rights thanks to the support of influential people. We have a duty to give this often-denigrated group the same due consideration. A comprehensive study would make it possible to better identify, understand and illustrate the issues they experience.

## **Flexibility and group evolution**

CPHR Canada recommends that lawmakers keep the categories in the Act, but include definitions in the Regulations, to allow for a bit more flexibility given their evolving nature. In

the Regulations, this flexibility would apply strictly to the definitions, while the groups still need to be identified in the Act to ensure the maintenance of consultation mechanisms and rigour.

### **The important issue of data access**

Even though CPHR Canada supports lawmakers' desire to create new categories, one of the major issues in developing a workforce profile and measuring progress is the availability of data on the market. It is already quite difficult and sometimes impossible to obtain data on the availability rate of these groups in the market, which is why a lot of work will need to be done to ensure that organizations have data they can use to draw comparisons and see where corrections need to be made. To create a true benchmark, this data will need to be available by occupation (and not by job type), by region and by sector for each group.

### **1.3. Collection of survey data**

The Act stipulates the employers' obligations, but we feel it is overly prescriptive when it comes to the means and especially the frequency. Employers with more refined systems do not need to report annually or when employees leave the organization, because the data can be tracked with just one report, realistically on hiring. Employers without these types of systems can opt for more frequent reporting, including when employees leave the organization. Employees do not perceive repeated reporting as ideal.

After all, an individual's situation can change (e.g. they develop a disability), which is why employers could encourage employees to report any change freely or periodically. Still, we feel that requiring this frequency, on top of the requiring reporting, will create an administrative burden that some organizations will not be able to bear. Again, the Act should stipulate high-level requirements but give each employer some leeway in deciding how it will meet them.

We agree with the idea that the self-identification survey should be voluntary and available in accessible formats. Organizations could choose to use a version identified as being from the federal government, which might create some confidence and trust among the employees who must fill it out.

The key will be to make these surveys and the rules as clear as possible, such as whether it is possible for employees to self-identify as belonging to more than one group or sub-group. The definitions for each group and sub-group will be critical if they are to be properly understood.

Aside from the questions, many organizations would benefit from a tool that explains the process to their employees and helps them provide their self-identification information. At the same time, employers will need to specify who is authorized to access their data. Naturally, we recommend that data access be limited to a very small number of people in the organization. This is essential for building trust and keeping the data confidential.

When reading the recommendations, we found that they seemed biased toward large organizations. Keep in mind that some smaller employers will also have to comply with the Act. That is why we think it would be wise to take a sample of small employers and find out

from them how realistic they think it will be to enforce the Act, especially in terms of maintaining confidentiality, which will be harder for small organizations to do, because people can be more easily identified when there are too many subgroups. The model surveys will need to provide proper guidance to organizations on the level of information they may request.

We think that requiring employees to answer the survey, and self-identify by extension, is unnecessary, and expecting a 100% participation rate every time, despite the requisite "I prefer not to answer" option, seems ambitious even if it is ideal. In the event that lawmakers wish to keep this requirement, we think it will be all the more important to heed our recommendation of not prescribing a frequency, in the interest of not creating an administrative burden.

The degree of detail in the information collected must be proportionate to the organization's size and actual needs to ensure that its equity, diversity and inclusion strategies are effectively carried out.

## **2. Supporting employees and employers**

### **2.1. Meaningful consultations**

The joint committee is an interesting proposal for organizations with over 50 employees and it is essential for these employees to be trained. Their training could include modules on the concepts of unconscious bias and privilege as well as on the challenges of managing diversity. The committee could also help recommend topical training activities for all of the organization's employees. CPHR Canada believes that given their role, joint committee members should be required to complete training.

Committee members should also be required to sign a confidentiality agreement before gaining access to the compiled data in order to maintain confidentiality and build employee trust in the process. Their protection against reprisals should include a simple, free recourse, regardless of whether their working environment is unionized or not.

Joint committee composition should be proportional to the number of employees at the organization. Yet even though organizations should encourage the formation of committees where each group is represented, smaller organizations may not be able to achieve this.

The term of committee members should be at least 2 years so that they have an opportunity to learn and contribute. A certain amount of stability needs to be promoted because this committee will have access to confidential information, which makes a high turnover rate undesirable. As for the frequency of meetings, organizations should be given some flexibility. A minimum number of meetings per year could be established.

As an alternative or complementary tool to the joint committee, an annual survey of an organization's employees could be carried out to find out their perceptions of employment barriers and their suggestions for eliminating them. The government could provide a model survey to support organizations, and ideally, a platform for conducting the survey.



## **2.2. Supports**

The examples of supports offered by the Labour Program are relevant. We suggest that the government make sure that these supports are suitable for large and small organizations, employees and managers, and committee members and that the tools are simple and practical, available in multiple formats, and accessible in one single location. The training should be provided online, in asynchronous mode, in both languages, and free of charge to ensure accessibility and consistent messages. Employees and managers should be recommended but not required to take the training.

## **3. Strengthening accountability, compliance and enforcement**

### **3.1. Barrier removal and reasonable progress**

Generally speaking, CPHR Canada agrees with the task force's recommendations, but would like to point out a few nuances: The concept of reasonable progress should be clearly explained or subject to guidelines with a view to providing organizations with better guidance. The same goes for the stages in the employment lifecycle, which should be made much clearer so that organizations know what they refer to.

### **3.2. The Data Benchmark**

We agree with the recommendation that all employers should use the same data and wish to reiterate that access to that data should be one of the priorities for implementation. Otherwise, employers will not have the benchmarks they need to obtain a workforce profile and act on any gaps.

### **3.3 Regulatory oversight, penalties and complaints**

We are convinced that lawmakers will choose the most efficient option for their regulatory oversight model. Nevertheless, the idea of forming an entity with three commissioners that is separate from the Human Rights Commission could create consistency in the approach taken with organizations and supports. Furthermore, it may be challenging for one government entity to both guide and penalize employers when necessary. One potential approach might be to successfully position the commission as a source of guidance for employers so that they develop the habit of consulting it. After all, the better equipped and supported employers are, the more we will likely see practices change.

## **4. Improving public reporting**

### **4.1. Reporting frequency and data transparency**

We have no specific recommendation to make on reporting frequency and data transparency, except to confirm that this is painstaking work for smaller organizations. We think that a concise quantitative model annual report would suffice and that a more detailed report every three years might be an avenue worth exploring. In terms of pay equity, this model seems to work in some provinces and helps incite action while reducing the administrative burden.

## ANNEX

### Guide to the Risks of Using EDI Self-Identification Questionnaires, developed by the Ordre des conseillers en ressources humaines agréés du Québec<sup>1</sup>

#### How can EDI self-identification questionnaires be used to maintain public confidence and trust?

Organizations have been trying harder and harder to make their workplaces more inclusive. It is essential for organizations to collect information on the employees who belong to underrepresented equity-seeking groups if they hope to develop more inclusive practices.

Organizations that subscribe to an Equal Access Employment Program (EAEP)<sup>2</sup> may collect EAEP-related information on hiring and during employment.<sup>3</sup> However, when there is no EAEP, the rules on using EDI self-identification questionnaires are rather ambiguous, because there is no case law to confirm how to correctly interpret the applicable laws. To guide CPHRs on how to correctly use of these types of questionnaires, the Order suggests that they take a series of precautions to maintain the confidence and trust of members of the public and vulnerable groups and reduce the risk of not complying with the legal framework.

Below are the precautions that should be taken when collecting personal information subject to grounds for discrimination stipulated in the Quebec Charter of Human Rights and Freedoms.

#### **Precaution 1: Submit the questionnaires voluntarily and anonymously, while keeping the respondents' identity confidential**

However, it should be noted that:

- The "voluntary" character of the questionnaire may be questioned because the employer is requesting employees to fill it out and employees may feel pressure to answer the questionnaire even though they might be uncomfortable doing so. In this case, it is important to provide employees with clear explanations about the purpose of the questionnaire, how their data will be collected and used, and who will have access to it. Employees should never be directly or indirectly forced to fill out questionnaires.

---

<sup>1</sup> Source: <https://carrefourrh.org/ressources/revue-rh/risques-questionnaire-autodeclaration-edi>

<sup>2</sup> Under the Quebec Charter of Human Rights and Freedoms, some entities are required to have a EAEP, including:

- public bodies;
- private enterprises with more than 100 employees that:
  - bid for public contracts worth \$100,000 or more; or
  - receive a grant worth \$100,000 or more;
- private enterprises that are subject to this type of requirement as a result of a decision to that effect rendered by the CDPDJ following an inquiry or by a court.

<sup>3</sup> In other words, limited to underrepresented groups concerned by the EAEP, i.e. women, Indigenous People, disabled persons, ethnic minorities and visible minorities.

- Except in the context of a very large corporation, the “confidential” aspect may also be questioned if the data analyzed is divided by job type, position grade level, department, etc., because it may be possible to recognize a person through their answers on the basis of already known characteristics (e.g. a female executive in the \$200,000 + salary range, while most other individuals at her grade level are men). In this case, it is important to have clear rules in place concerning the criteria that will be used to analyze the data and report the results.

### **Precaution 2: Protect the personal information collected**

The collected personal information can be protected by:

- obtaining consent from the person concerned to disclose the information collected from them in the data collection process. This section should be precise. Examples:
  - An individual may authorize their questionnaire answers to be disclosed exclusively to a designated person at the organization;
  - An individual may authorize their questionnaire answers to be disclosed to the organization only for statistical purposes (“collective” disclosure);
  - An individual may authorize their questionnaire answers to be disclosed only to a group composed of a specific number of individuals;
  - An individual may authorize their questionnaire answers to be disclosed on an individual basis.
- specifying the purposes for collecting the data;
- using the collected information only for the specified purposes, such as for implementing concrete measures to ensure diversity and inclusion in the organization or for statistical purposes;
- keeping this information outside of the employee’s file and in accordance with the applicable personal information protection policy;
- limiting access to the collected information. Access should be limited to one or two designated people within the organization; ideally, they should not be the same people as those who are responsible for making administrative and disciplinary decisions concerning employees.

### **Precaution 3: Draw a direct link between the requested information and specific real and effective needs of the employer, through its EDI strategies and other measures**

We strongly recommend that an EDI strategy or organizational policy be set up before self-identification questionnaires are submitted. This strategy may then serve as a reference to justify the need for the questionnaire. Organizations may first need to obtain a profile of their workforce composition before they can implement a formal EDI strategy and set tangible objectives based on real data, which is why the initial organizational policy may be a high-level policy at first. As an example, the policy should include at least the following information:

- the organization’s values as regards EDI;
- the importance of having an EDI strategy in place;
- the resources and tools that will be used to support the EDI strategy, including the use of a self-identification questionnaire;
- the equity-seeking groups concerned by the EDI strategy;
- the individuals who are responsible for data administration.