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Article abstract

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There has been an increasing consciousness of race relations in Canada since the early 1970's. The Daudlin (1984) and the Abella (1984) Commission reports have had a significant impact on public policy in Canada. At the federal level, visible minorities have been added (since 1985) to a list of target groups that are considered to be disadvantaged in the two reports above and several other studies of employment discrimination (Jain, 1987).

The purpose of this article is: (a) to highlight the disadvantaged status of visible minorities (VMs) in public and private sector organizations and the need for affirmative action/employment equity programs to ameliorate their disadvantaged status; (b) describe and analyze public policy on employment equity (EE) at the federal and provincial levels; (c) to evaluate the effectiveness of the federal EE initiatives; and (d) to provide policy implications and recommendations for strengthening public policy initiatives.

Canada has become a multiracial, multireligious and multicultural society (Jain, 1987). The growing ethnic diversity of Canadians[1] includes a large number of non-white Canadians, called visible minorities[2] (VMs). They consist of several non-white groups including Chinese, Black, Indo-Pakistani, West Asian or Arab, Filippino, Japanese, South East Asian,

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Korean and Oceanic, (*Availability,* 1986), and Latin Americans. VMs comprised 6,3 percent of the population in 1986 and 6,3 percent of the labour force[3] in the same year. It is estimated that VM Canadians will constitute almost 10 percent of the population by the year 2000 (Samuel, February, 1988).

VMs are not well represented in public and private sector organizations in proportion to their representation in the population and the labour force. They are absent in key public positions and from the senior management of the public service and Crown corporations. They are being denied full participation in almost all Canadian institutions (Daudlin, 1984). For instance, the studies by Jain (1986; 1988) found that the proportions of VM police officers ranged from zero to 3,4 percent in 14 police forces across in 1987 in Canada; similarly, the Treasury Board survey (1985) found that only 1,7 percent of all federal civil servants in 1985 were VMs compared to 4,3 percent in the country's labour force (*Availability,* 1986); a two-year study of affirmative action programs across Canada by Jain and Hackett (1989a) found that VMs were not employed in significant numbers in the 190 organizations consisting of both public and private sector organizations surveyed in 1985, confirming the results of the Abella Commission's study of eleven federal Crown corporations. The Jain and Hackett study (1989a) found that 30,8 percent (N = 16) of those employers who claimed to have affirmative action programs identified VMs as a target group whereas 94,2 percent (49 of 52) had females as a target group; a study by Mayers (1986) of twenty English language daily newspapers (including the largest ten which account for one-third of Canada's daily circulation and 85% of Ontario's) across Ontario found that VMs were virtually non-existent in newsrooms. Of the 1 731 full-time newsroom employees, only 30 or 1,7 percent were either VMs, native or disabled; although women were 31 percent of newsroom employees, they accounted for only 19 percent of managers. There were no managers from any of the other minority groups. With the exception of one newspaper, not one paper believed that the lack of minority representation in their newsrooms was an issue.

Several commissions (Daudlin, 1984; Abella, 1984; Boyer, 1985) have noted the absence of VMs as role models in key public positions and recommended increasing VM participation through Governor-in-Council appointments, as well as in the senior management of the public service and Crown corporations (see recommendation no. 21 in *Equality Now;* no. 73 in Boyer; Abella, page 51). The federal government's response (*Toward Equality,* March 1986) has been that it is committed to increasing the appointment of women and members of ethnic groups to federal government boards, agencies and Crown corporations (page 59). In fact, the Prime Minister has (*Globe and Mail,* March 19, 1987, page A4) stated that his

government is responsible for increasing the percentage of positions on federal boards, etc. filled by women to 27 percent from 15 percent since taking office in 1984, or just shy of the 30 percent target he set for his government's first term in office. However, there are no explicit figures available concerning VMs since their appointments are subsumed under the rubric of ethnic appointments.

Affirmative action programs are explicitly designed to ameliorate the systemic discrimination and labour market disadvantages experienced by VMs. The term «affirmative action» is subject to widely varying interpretations (Jain and Sloane, 1981, p. 101).

The most prevalent definition of affirmative action in the Canadian literature comes from the *Affirmative Action Directorate* of the Canadian Employment and Immigration Commission (CEIC, 1982). Here affirmative action is described as a comprehensive planning process adopted by an employer to: identify and remove discrimination in employment policies and practices; remedy effects of past discrimination through special measures; and ensure appropriate representation of target groups throughout the organization.

The term, affirmative action, often sparks a negative emotional reaction as it is equated with reverse discrimination, or hiring and promotion based on target group membership, rather than merit. Judge Abella (1984), has recommended that «measures to eliminate discriminatory employment barriers and practices should be referred to as employment equity, rather than as affirmative action»[4] (p. 255). This new label, according to Judge Abella, should help defuse the emotional reaction to affirmative action, and will be used frequently throughout this paper.

EMPLOYMENT EQUITY IN CANADA: AN OVERVIEW

Canadian employers are largely protected from the charge of reverse discrimination (Tarnopolsky, 1980, p. 94). Legislation in most jurisdictions allows for the development of special programs to reduce the disadvantages experienced by women, native people, visible minorities and the handicapped. The *Canadian Human Rights Act,* Section 15(1), explicitly permits the implementation of special programs that will prevent or reduce disadvantages to designated minority groups or remedy the effects of past discrimination against those groups. Section 41(2) of the Act allows a Canadian Human Rights Tribunal to order a special program where such an action is deemed necessary to prevent discriminatory practices from occurring in the future. This authority was underscored in the Supreme Court ruling

(8-0) that the Canadian Human Rights Tribunal did have the power to order the Canadian National Railway Company in 1984 to increase to 13 per cent the proportion of women working in non-traditional occupations in its St. Lawrence region (Rauhala, 1987); this case is detailed later in the paper. Canada further confirmed its commitment to the principle of employment equity in passing the *Constitution Act of 1982.* As of April, 1985, under Section 15(2) of the *Canadian Charter of Rights and Freedoms,* special programs or affirmative action programs are considered legal.

With such legal protection, coupled with *the costs of discriminating* against minorities[5] (Agarwal, 1986; Dunnette and Motowidlo, 1982; Milkovich and Glucek, 1985, p. 245), one might expect widespread adoption of employment equity programs. However, of 1 400 employers offered assistance by the CEIC Directorate in 1984, only 71 agreed to develop an employment equity plan (Abella, 1984). Since 1984, recent legislative developments at the federal, provincial, and municipal levels have increasingly put pressure on both private and public sector organizations to adopt employment equity programs.

Employment Equity Act

At the federal level, the *Employment Equity Act* became law in August of 1986 and applies to Crown corporations and federally-regulated employers with 100 or more employees. The legislation requires these employers to file an annual report with the Canada Employment and Immigration Commission (CEIC) beginning June 1988. The CEIC has already received responses from 377 (of 380) of the employers covered by this program (*Annual Report to Parliament,* December, 1988). The report provides information on the representation of all employees and members of designated groups[6] by occupational group and salary range and on those hired, promoted or terminated for a full year. Failure to comply with this requirement can result in a fine of a maximum of fifty thousand dollars[7]. All records used in the compilation of the report must be retained by the employer for three years following the submission of the report. The annual reports are publicly available and have been provided to the Canadian Human Rights Commission which has the authority to initiate an investigation if it has reasonable grounds to believe that systemic discrimination[8] is indicated by the data in the reports[9]. In addition to the annual report, the employers are also required to prepare an annual employment equity plan with goals and timetables, and to retain such a plan for a period of at least three years. Unlike the annual report, however, employers are not required to submit this equity plan to the government and no penalty is provided for failure to prepare and implement this plan.

Employers under the Act are legally obliged to consult with designated employee representatives, or, in unionized settings, with bargaining agents. The purpose of such consultation, in implementing employment equity, is to identify and eliminate barriers against persons in the designated groups and to institute positive policies and practices, that is, to implement special measures and apply the concept of reasonable accommodation.

The Act provides for a comprehensive review of the provisions and operation of the legislation in five years and every three years thereafter.

Federal Contractors Program

Effective October 1, 1986, the Federal Contractors Program affects organizations with 100 or more employees which bid on federal government contracts for goods and services worth $200 000 or more. Contractors will be required to sign a certificate of commitment to design and carry out an employment equity program which will identify and remove artificial barriers to the selection, hiring, promotion and training of women, aboriginal peoples, persons with disabilities and visible minorities. The program should have eleven criteria (see Table 1). These include:

(a) Communication by the chief executive officer to employees and unions of the commitment to achieve equality in employment and assignment of responsibility for implementing employment equity to senior personnel.

(b) Collection and maintenance of information on the employment status of designated groups by occupation and salary levels and terms of hiring, promotion and termination in relation to all other employees.

(c) Analysis of designated group representation within the organization in relation to their representation in the qualified external work force.

(d) Elimination or modification of policies, practices and systems, whether formal or informal, which have or may have, an unfavourable effect on the employment status of designated groups.

(e) Establishment of goals for the hiring and promotion of designated group employees.

(f) Adoption of special measures where necessary to ensure that goals are achieved, including the provision of reasonable accommodation as required.

(g) Adoption of procedures to review the progress and results achieved in implementing employment equity.

(h) Authorization to allow representatives of the Canada Employment and Immigration Commission access to records in order to conduct on-site compliance reviews for the purpose of measuring the progress achieved in implementing employment equity.

Table 1

Canada Employment and Immigration Commission
Employment Equity Criteria

1) Degree of commitment communicated throughout the organization by senior management, union, or employee associations;
2) Assignment of senior personnel with responsibility for employment equity;
3) Collection and maintenance of information on the employment status of designated group employees by occupation and salary levels in terms of hiring, promotion, and termination in relation to all other employees;
4) Analysis of designated group representation within the organization in relation to their representation in the supply of qualified workers;
5) Elimination or modification of those human resource policies, practices, and systems shown to have or likely to have an unfavourable effect on the employment status of designated group employees;
6) Establishment of goals and timetables;
7) Establishment of a plan for reaching these goals;
8) Adoption of special measures where necessary to ensure achievement of goals, including the provision of reasonable accommodation as required;
9) Establishment of a climate favourable to the successful integration of designated group members within the organization;
10) Adoption of procedures to monitor the progress and results achieved in implementing employment equity.

Source: Employment Equity, CEIC, undated (adapted).

The Contractors Program applies to more than 1 100 large provincially regulated firms whose business with the government has a projected dollar value of some $6 billion; both the employment equity legislation and the Contractors Program will include in excess of 1 million Canadian workers (MacDonald, June 12, 1986). Failure to implement equity can result in the exclusion of the contractor(s) from future government business. Recently, two paper companies' bids worth more than $5 million were rejected by the government because neither company had complied with the requirements

on employment equity. The bidding period was extended to give the companies a chance to resubmit their bids; one of the two companies has already complied. To date (January, 1989) 572 contractors (with 100 or more employees) have signed the certificate of commitment since the program became law in October 1986. These contractors employ 689 270 employees (*CEIC Status Report,* February, 1989).

It is important to note that under the Contractors Program, the government's compliance policy does not require a contractor to file an employment equity plan, only a commitment to have a plan. CEIC is currently reviewing 108 contractors. Twenty-five reviews have been completed thus far (*CEIC Status Report,* February, 1989).

Affirmative Action at the Federal Public Service

The federal government, through the Treasury Board, has also undertaken employment equity measures for the target groups in the Public Service of Canada. VMs were added to the list of these target groups in July 1985. Since that time, the Treasury Board has announced several measures for VMs. These include: a special employment program costing $10,5 million for 300 person-years until March 1989, a visible minority employment office at the Public Service Commission in Ottawa, regional visible minority co-ordinators, special training for public service managers, a monitoring program for the recruitment, referral and appointment process of visible minorities in the public service, and Canadian educational equivalences of certain foreign university degrees (*News Release 86/22,* Treasury Board of Canada, 1986). Most of these measures have been implemented by now.

In addition, numerical targets for VMs were established by federal government departments in April 1988 by occupational category for a three-year period, 1988-1991; overall, the targets were set at 3,1 percent of VM representation in the Public Service of Canada by March 31, 1991[10]. Between 1985 to August 1988, the VM employment in Public Service increased from 1,7 percent to 2,6 percent. Having achieved such progress, new and higher numerical targets are expected to be set for 1991. In November 1987, the Treasury Board extended special measures for an additional five-year period, 1988-1993. This included expenditures of 90 million dollars and 2 115 person-years for all four target groups. The VM share is set at $15 million and 400 person-years.

Affirmative Action Programs Across Canada

As illustrated in Table 2, voluntary affirmative action programs are legal in all jurisdictions in Canada. In Alberta, the cabinet can approve such a program. Such programs are also legal under Section 15(2) of the *Canadian Charter of Rights and Freedoms,* as noted earlier. In Québec, as of September 1986, the Québec Human Rights Commission can recommend an affirmative action program, if an investigation by the Commission shows a group is being discriminated against. If the Commission's recommendations are not followed, it can apply to a court of law and obtain an order to draw up and to enforce implementation of an affirmative action program. The Québec regulations cover the same four target groups as in the federal legislation as well as other groups who may be victims of discrimination. In Saskatchewan and at the Federal level, boards of inquiry can order affirmative action programs, if discrimination is found.

Table 2

Special Program/Affirmative Action Provisions of Human Rights Legislation in Canada

Jurisdiction	*Section*	*Type of Program*	*Power of Human Rights Commission, Tribunal or Council*
Alberta	--	---	- -
B.C.	s.19(2)	that has as its object the amelioration of conditions of disadvantaged individuals or groups	Council has power to approve
Manitoba	s.9	designed to promote the socio-economic welfare and equality in status of a disadvantaged class of persons.	Commission has power to approve, supervise or order variation
	s.11	notwithstanding any other provision of this Code it is not discrimination, a contravention of this Code, or an offense under this Code a) to make reasonable accommodation for the special needs of an individual or group. If those special needs are based upon any characteristic referred to in subsection 9(2); or b) to plan, advertise, adopt or implement an affirmative action program or other special program that (i) has as its object the amelioration of conditions of disadvantaged individuals or groups, including those who are disadvantaged because of any characteristic referred to in subsection 9(2), and (ii) achieves or is reasonably likely to achieve that object	

New Brunswick	s.13	designed to promote the welfare of any class of persons	Commission has power to approve, vary, impose conditions
Newfoundland	s.15(1)	designed to prevent, reduce or eliminate disadvantages respecting services, facilities, accommodation or employment that may be or are suffered by any group of individuals	Commission has power to approve, vary, impose conditions
Ontario	s.13	designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of [the right to be free from discrimination]	Commission has power to inquire into the program, and whether it does or does not satisfy the requirements
P.E.I.	s.19	designed to promote the welfare of any class of individuals	Commission has power to approve
Saskatchewan	s.47(1)	designed to prevent disadvantages that are likely to be suffered by, or to eliminate or reduce disadvantages that are suffered by any group of individuals [...] by improving opportunities respecting services, facilities, accommodation, employment or education in relation to that group	Commission has power to approve, on the application of any person or on its own initiative
Federal	s.15	designed to prevent disadvantages that are likely to be suffered by, or to eliminate or reduce disadvantages that are suffered by any group of individuals [...] by improving opportunities respecting goods, services, facilities, accommodation or employment in relation to that group	Commission has power to make recommendations as to desirable objectives and to give advice as to adoption of programs (s.15) A tribunal may order the adoption of special program against any person found to be engaging in a discriminatory practice following an inquiry into a complaint of discrimination (s.41)
North West Territories (Fair Practices Ordinance)	s.14	designed to promote the welfare of any class of individuals	Commissioner has power to approve
Yukon (Human Rights Act)	s.12(1) s.12(2)	special programs and affirmative action programs are not discrimination programs designed to prevent disadvantages that are likely to be suffered by any group identified by reference to a prohibited ground of discrimination	Commission has power to approve
Québec	s.86	to remedy the situation of persons belonging to groups discriminated against in employment, or in the sector of education or health services and other services generally available to the public	Commission may, among other things, recommend the implementation of, and approve a program
Nova Scotia	s.19	designed to promote the welfare of any class of individuals	Commission has power to approve

Source: Adapted & updated, from T. Cohen, *Race Relations and the Law,* Canadian Jewish Congress (undated) and the *Canadian Human Rights Reporter, Legislation and Regulations,* 1988.

A tribunal under the federal human rights legislation ordered (1984) the Canadian National Railways Company (CN) to undertake a mandatory affirmative action program. The tribunal, after three years of hearings and deliberations, found that the company had discriminated against women in its hiring practices in the St. Lawrence region. In a landmark decision, the tribunal ruled that the company was required to hire women for one in four non-traditional (blue collar) jobs in the region until they hold 13 percent of such jobs. The CN was also required to implement a series of other measures, ranging from abandoning certain mechanical aptitude tests to modifying the way it publicizes available jobs.

It was an important decision in several respects. It arose from a complaint laid against CN in 1979 by a Montréal women's lobby group, Action travail des femmes (ATF). It was the first time that goals were specified; the goal of 13 percent roughly corresponded to the proportion of women in blue-collar work in industry generally. The CN appealed the tribunal ruling to the federal Court of Appeal. The Court set aside the affirmative action part of the tribunal order but found that the CN had discriminated against women in its hiring practices and upheld the ban against tests, etc. The Supreme Court of Canada (Rauhala, June 26, 1987), as noted earlier, unanimously endorsed the power of tribunals to impose affirmative action plans on employers to remedy systemic discrimination, thereby upholding the 1984 tribunal decision.

Affirmative action programs have also been ordered by boards of inquiry in other jurisdictions in previous years. For instance, in 1980, in *Betty Hendry* vs. *Liquor Control Board of Ontario* (LCBO), a similar program was ordered by an Ontario board in a ruling against the LCBO. However, no goals were specified. The LCBO was required to collaborate with the provincial women's bureau to design a program which could reduce imbalance in employment opportunities for women. In *Shirley Naugler* vs *The New Brunswick Liquor Corporation,* in 1976, the New Brunswick board's order on affirmative-action was appealed to the New Brunswick Supreme Court where it was not upheld. The Hendry ruling was not appealed by the LCBO. Recently (January, 1989), an Ontario employer, Majestic Electronics, agreed in a settlement with the Ontario Human Rights Commission (OHRC), to hire qualified women and visible minorities in direct proportion to the percentage of applicants from these groups to the total received; to place ads in newspapers serving minority communities; hire an EE coordinator for at least 3 years; and provide statistics to OHRC on a regular basis (*Advocate,* January, 1989).

The Québec and the Saskatchewan Human Rights Commissions have a set of regulations in order to approve affirmative action plans. The Saskat-

chewan regulations entail: (1) a systematic analysis of an employer's current workforce, (2) a comparison of the make-up of that workforce with that of the larger surrounding community, (3) establishment of management policies which will move in the direction of overcoming those imbalances which have been identified, within a certain time frame, and (4) a monitoring system to ensure that goals and timetables are being adhered to.

Affirmative action as part of contract compliance has also taken place in a number of specific resource mega projects and through contract leverage of surface lease agreements to include Native hiring on major projects in Saskatchewan and Manitoba. In addition, as Tarnopolsky (1980) has pointed out, «[...] for at least the last decade we have witnessed in Canada the greatest affirmative action program of all, and that is the recruitment of Francophone Canadians into the federal public service [...]» (p. 95). *Charter of the French Language* in Québec, a language based mandatory affirmative action program, is another example of a massive program to improve the representation of Francophones in the public and private sector organizations in Québec. Similarly, the War Veterans have received preference in employment in the federal government over the years.

Affirmative action programs have been adopted by some public (such as Crown corporations) and private sector employers in Nova Scotia, Saskatchewan and Ontario as well as in the Ontario and Manitoba public service; several municipal governments such as Toronto, Winnipeg, Saskatoon, Regina, and Vancouver; several police agencies; and a number of large Canadian businesses. However, a majority of organizations in Canada do not have such programs.

DISCUSSION

Effectiveness of the Employment Equity Legislation

The employment equity legislation is likely to be beneficial to minorities in that it will require employers under federal jurisdiction to prepare an annual employment equity plan with goals and timetables and to retain it for three years. It may not be very effective, however, since employers are not required to submit this plan to the government. There is no mechanism to guard against plans which may be poorly devised with no meaningful goals and timetables; for instance, much of the wording in the employment equity law is ill defined and somewhat loose in that positive policies and practices and reasonable accommodation do not lend themselves to precise interpretation. There is only a vague process of con-

sultation between employers and designated group employee representatives to formulate the plan; meaningful consultation between the union or employee representatives is not possible if the employee representatives do not have a right to see the plan. What is more, there is no penalty for non-compliance with the action plan to prepare goals and timetables. The Act leaves it to employers to establish and pursue their own goals and targets. As Stasiulis has noted, «no matter how appalling the reports reveal a company's performance to be, nothing in the legislation obliges it to improve» (1987, p. 10). However, the Canadian Human Rights Commission can initiate an investigation if systemic discrimination is indicated by the data in the annual reports, as noted earlier.

The positive side of the Act is that the reporting requirements on the representation of VMs and other target groups are standardized and that the annual reports are made public so that comparisons with subsequent years from 1988 onwards, will become possible. In addition, as MacDonald suggested, comparisons between employers in the same industrial sector will be possible (MacDonald, June 12, 1986). Thus, employers could possibly be ranked, for instance, by industrial sector, region and size, by a comparison of employment equity reports[11].

The Federal Contractors Program (FCP), unlike the *Employment Equity Act,* does not require employers to collect data in a standardized form or to report data annually, although employers are required to collect data concerning the composition of their workforce[12], as noted earlier. The monitoring mechanism is the signed agreement by the employer to permit a compliance review officer from Canada Employment Immigration (CEIC) to conduct an on-site (company premises) review and to examine data on minorities by occupation and salary levels and concerning hiring, promotion and termination with a view to measure the progress achieved in implementing employment equity[13].

In our view, the program should be enforced vigorously by reviewing the goals and timetables for VMs and others. The CEIC compliance officers will have to guard against contractor plans which may be poorly devised and inadequate to meet the needs of the target groups. In addition, failure to comply with the requirements of the contractors program does not result in the loss of a contract but only means that such a firm will be removed from the bidding process in the future. This penalty is too weak and needs to be strengthened. Similarly, the program should have a wider coverage and not be restricted to contractors with 100 employees or more and a contract of $200 000 or more. In the United States, the federal contractors' program includes contractors with 50 employees or more and a contract of $50 000 or more. The executive orders also include sub-contractors, unlike

the Canada program. In our view, it will be easier to strengthen the Federal Contractors Program since it can be done by the Order-in-Council or some other «in-house» procedure rather than amend the employment equity legislation.

We agree with Stasiulis (1987) that the federal employment equity policy will remain de facto voluntary making modest demands on business to show good intentions, since it lacks specific goals and timetables, systematic monitoring mechanisms or effective sanctions for non-compliance, unless the changes suggested above are implemented.

Policy Implications and Recommendations

As noted earlier, the federal *Employment Equity Act* and the Federal Contractors Programs have come into effect as of 1986. However, both of these measures need to be strengthened in order to be effective. For instance, the *Employment Equity Act* does not include an effective enforcement component. Research (Jain and Hackett, 1989a) has demonstrated that few Canadian organizations are likely in initiate an employment equity program in the absence of government or public pressure and that the data reporting requirements of the Act are certainly needed since few organizations in the study were collecting these data. However, a majority of the organizations in the survey who claimed to have an EE program did in fact meet the EE effectiveness index criteria set up by this author. Moreover, employers with EE programs had undertaken positive and proactive measures compared to those who did not have an EE program (Jain and Hackett, 1989b).

It is essential that the *Employment Equity Act* be amended to require employers to:

(a) make public their employment equity plans along with numerical goals and timetables;

(b) keep and to make public both the stock and the flow data by minority and non-minority status. Flow data provides information on the movement of minorities into and through the organization, including numbers of applicants, hires, promotions, terminations and so forth. Stock data provides a «snap-shot» of the current workforce make-up by minority and non-minority status across all occupational levels within an organization. These data will help identify entry and post-entry job barriers.

The Federal Contractors Program also needs to the strengthened and enforced vigorously. Unlike the *Employment Equity Act,* the federal government need only to pass new regulations — without having to go through the Parliament and the Senate — through Order-in-Council. These regulations can then be enforced by Canada Employment and Immigration Commission (CEIC) officials.

Under the Federal Contractors Program (FCP), while the data concerning the composition of the work force by minority and non-minority status must be collected by individual contractors, the form in which the data must be collected is not specified and there are no reporting requirements. Moreover, the only penalty is that employers in violation of employment equity may lose the right to do business with the federal government in the future. The CEIC needs to strengthen the FCP regulations in order to make the program more effective. The program should:

(a) specify numerical goals and timetables to be achieved by the contractors;

(b) require public reporting of stock and flow data in a standardized form to be prescribed by the CEIC;

(c) levy penalties on contractors for failure to comply with the requirements of the program. There should be a range of penalties including cancellation or loss of contract, etc.;

(d) include sub-contractors; and

(e) broaden coverage from 100 employees and $200 000 contract at present to include contractors with 20 or more employees and a contract of $50 000 or more.

As noted earlier, the employment equity legislation applies to employers under federal jurisdiction while the federal government's affirmative action program applies to the federal public service. The Royal Canadian Mounted Police (RCMP) and the Armed Forces are not covered either by the federal affirmative action program or the employment equity legislation. Evidence indicates that visible minorities constitute less than one percent of police officers in the RCMP; in addition data supplied by the RCMP indicate that very few RCMP officers are fluent in languages spoken in third world countries. It is ironical that government is requiring employers in the private sector to collect and to report data on the representation of designated groups in their workforce while an important government agency like the RCMP does not come under the federal government's affirmative action program and thereby has no requirement to collect and report data on VMs and other minorities and to undertake an affirmative

action program. For this reason, the federal government needs to issue regulations to bring the RCMP and the Armed Forces under the federal affirmative action program.

At present, as noted earlier, all provincial jurisdictions allow voluntary affirmative action plans by employers. However, this has not resulted in very many employment equity programs. Similarly, there are very few contract compliance programs at the provincial level. Therefore, provincial and territorial governments should introduce mandatory employment equity and contract compliance programs forthwith.

NOTES

1 From 1967 to 1986 significant changes have taken place in the demographic composition of Canadian society. For instance, the proportions of Anglophones has declined from 60 percent of the population in 1867 to 40 percent in 1981, while that of the Francophones from 33 to 27 percent during the same period. On the other hand, the proportion of other ethnocultural groups has gone up from 7 percent in 1967 to 33 percent in 1981, and almost 40 percent in 1986. In 1986 VMs were 1 577 710 of the population and 872 695 of the labour force who worked (See *Annual Report,* table 8, page B-8, December, 1988).

2 The concept of a visible minority group is ambiguous and complex which makes it difficult to ascribe a precise meaning to the term «visible minority». There is no concensus as yet as to the meaning of the term or which groups should be included. The federal *Employment Equity Act* defines members of visible minority groups as «persons who are, because of their race or colour, in a visible minority in Canada».

3 The method used in the *Availability* (1986) report to estimate the number of visible minorities was based on a cross-match of the data on ethnic origin, birthplace, religion and mother tongue from the 1981 Census. This is because the 1981 Census questionnaire asked the population surveyed to report: «To which ethnic or cultural group did you or your ancestors belong on first coming to this country?» Because respondents could report two or more ethnic origins in 1981 for the first time, it is impossible to compare the 1981 data with that collected by the 1971 Census, which stipulated that a single ethnic ancestry on the paternal side was to be reported (Abella, 1984, pp. 79-80). Therefore in the 1981 Census it was not possible to obtain data dealing specifically with respondents race or colour. The 1986 Census had the following question:

Question: 17

To which ethnic or cultural group(s) do you or did your ancestors belong? (See Guide)

Mark or specify as many as applicable

☐ French	☐ Italian	☐ Polish
☐ English	☐ Ukrainian	☐ Black
☐ Irish	☐ Dutch (Netherlands)	☐ Inuit
☐ Scottish	☐ Chinese	☐ North American Indian
☐ German	☐ Jewish	☐ Metis

Other ethnic or cultural group(s). For example, Portuguese, Greek, Indian (India), Pakistani, Filipino, Japanese, Vietnamese. (specify below)

□□□ _____ □□□ _____ □□□ _____

Other (specify) Other (specify) Other (specify)

As is obvious from the above question, it is both structured and open-ended. Some VM groups have suggested that the structured part of the question requiring checking of boxes is perceived as preferred ethnic groups while the open-ended part as non-preferred groups.

The *Availability* report (1986) includes nine VM groups. More visible minority groups have been included since 1986, however. At present, the Treasury Board includes West Asians and North Africans. Visible minority Latin Americans became an additional group of primary focus in April, 1988. Thus, there is still no consensus on a precise definition of the term «visibility minority groups». This information is based on discussions with the officials at the Treasury Board, and the CEIC.

4 Judge Abella, in her *Royal Commission Report* (1984) devised a new, uniquely Canadian term called «employment equity» to describe programs of positive remedy against employment discrimination, in place of «affirmative action». She suggested that affirmative action has rightly or wrongly (in our view wrongly) become associated with the imposition of quotas, which may not be true of the Canadian scene (Abella, 1984, p. 7). The term employment equity was adopted in the *Employment Equity Act* and is being used widely throughout Canada since 1986. In this paper, both employment equity and affirmative action will be used interchangeably.

5 At least three empirical studies of economic costs of employment discrimination are available (Agarwal, 1986). Two studies focus on racial minorities in the United States (*Economic Report of the President,* 1965; Bergmann, 1971). The third study, deals with female workers in the British labour market (Tzannatos, 1983). According to the first study, discrimination against blacks, Puerto Ricans, Spanish Americans, Indians and others can cost the economy an estimated loss of up to $20 billion per year of potential production. This loss is due to employment discrimination and poor educational opportunities for non-white (*Economic Report of the President,* 1965, p. 167). It must be noted, however, that the latter (poor educational opportunities) occur outside the labour market. The second study by Bergmann (1971) focused on black workers and attempted to estimate what the national income in the U.S. would have been in 1967 if occupations were desegregated and workers employed according to their qualifications. The author estimated an increase in the national income as high as 1,41 percent or about 9 billion dollars in 1967 if occupations were desegregated. The third study focuses on female workers, who constituted about one-third of employed labour force in Britain relative to 10 percent blacks in the U.S. labour force. Tzannatos (1983) using the same conceptual framework, methodology and assumptions as Bergmann, found that occupational desegregation could have resulted in an increase of national income by as much as 8,3 percent in 1976 in Britain. As Agarwal (1986) has noted, underutilization of minority workers can entail significant economic costs in terms of lower national output, labour market inefficiency, higher inflation, and excessive welfare and penal system costs. Given the rising visible minority and female share of labour force (Jain, 1985) these costs are likely to escalate in the future. Hence, development of employment equity and pay equity policies is justified both on equity as well as economic grounds (Agarwal, 1986).

6 The federal government and several provincial governments such as Québec, Manitoba and Ontario have designated minorities as visible minorities, disabled and aboriginal peoples. These minorities and women are interchangeably called designated groups and target groups.

7 As noted earlier, 377 of the 380 employers under the *Employer Equity Act* have submitted reports to the CEIC. One employer (Execaire Inc.) has failed to file the first year (1988) report. This employer is before a federal court in Montréal to defend against charges, filed by

the CEIC, that it failed to submit employment figures as required by the Act. Two other employers (Bow Valley Offshore Drilling Ltd. and Bronco Rentals and Leasing Ltd.) are awaiting legal resolution on whether or not they come under the jurisdiction of the Act. The 1988 *Annual Report to the Parliament* by the Minister of State for Employment and Immigration provides an analysis of 373 of the 377 employer reports. The 373 employers reported a total of 594 531 employees, (*Employment Equity Act: Annual Report to Parliament,* December 1988; *Human Rights Advocate,* January, 1989).

8 Systemic discrimination involves adverse or disproportionate effect of personnel policies, such as height and weight requirements on women relative to men, and other minorities when such requirements are unrelated to successful job performance.

9 The Canadian Human Rights Commission (CHRC) is reviewing the staffing policies of 19 employers. Nine of these employers face discrimination charges filed by a coalition of disabled persons because of underrepresentation of the disabled employees in the employers workforces. The nine are: Bell Canada, Canada Post, Canadian Broadcasting Corporation, Canadian National Railway, Bank of Montréal, Bank of Nova Scotia, Canadian Imperial Bank of Commerce, Royal Bank and the Toronto Dominion Bank. In addition, the CHRC in reviewing 11 other employers (CNR is on both lists, the list of the Coalition and that of the Commission). Instead of initiating complaints, the CHRC is making an initial offer of cooperative approach. These employers have received letters from the CHRC telling them that they have been underutilizing one or more of the four designated groups and calling for meetings with the Commission in order to sign a legal memorandum of understanding. This memorandum allows the CHRC to require the employer to complete two parts of a fact-finding questionnaire and to implement an EE program. The time frame for the CHRC review is one year.

Among the 11 employers, the Commission is also meeting 5 federal government departments, even though the government departments are not covered by the Act. The CHRC decided that if the private sector was compelled to reduce discrimination in employment, it was only fair to examine the federal government's own record. The governement departments and companies were chosen by the CHRC because they form a cross-section of the industries within the jurisdiction of the Commission as well as a cross-section of the regions, according to the CHRC chief Commissioner Yalden. (*Globe and Mail,* December 20, 1988, Al-2, and information provided by the CHRC officials).

10 The March 31, 1991 targets for VMs are as follows:

	No.	%
Management Category	83	1,9
Scientific & Professional	1 104	5,0
Administrative & Foreign Service	1 699	3,2
Technical	484	1,9
Operational	589	1,6
Administrative Support	**2 367**	**3,8**
Total Public Service	**6 326**	**3,1**

Source: *News Release,* 88/16, Treasury Board, May 19, 1988.

11 As Bevan (1987) points out, however, any company with a workforce profile significantly 'below the norm' may not be in deviance due to, for example, downsizing. Therefore, the Canadian Human Rights Commission may not be able to conclude that this company has practised systemic discrimination.

12 There are several distinctions between the *Employment Equity Act* (ACT) and the Federal Contractors Program. First, the Act applies to federally regulated employers and Crown corporations with 100 or more employees. These 380 employers cover approximately ten percent of the Canadian labour force. The Contractors Program applies to mainly provincially regulated large employers (around 1 100) who supply goods and services to the federal

government worth $200 000 or more and employ 100 or more employees. Second, the Act requires employers to file annual reports as of June 1988 with the CEIC, providing information on the representation of all employees and the four designated groups by occupational group and salary range and on those hired, promoted or terminated for a full year. Failure to comply with this requirement can result in a fine of a maximum of fifty thousand dollars. The Contractors Program requires contractors to sign a certificate of commitment to design and carry out an employment equity program. However, the contractor is not required to file the employment equity plan, only a commitment to have one. In place of filing a report, the CEIC might conduct an on-site compliance review for the purpose of measuring the progress achieved in implementing employment equity. Failure to provide evidence of «good faith effort» in an employment equity plan, which meet the criteria set out by the CEIC, could result in the exclusion of the contractor(s) from future government business. Contractors who are randomly selected for the review have 12 months from the time of the first on-site visit to complete all work required by criteria for implementation. Third, the Act requires employers to prepare an annual equity plan with goals and timetables, and to retain such a plan for a period of at least three years. Unlike the annual report, however, employers are not required to submit this plan to the government and no penalty is provided for failure to have and to implement such a plan. Under the Contractor's Program, contractors are to follow the criteria specified by the CEIC in adopting and implementing an EE plan, as noted earlier.

For the number of employers covered by the Act, see *Globe & Mail,* August 19, 1988, page A5. For the Contractors Program, the figures were obtained from CEIC officials.

13 In the case of a negative compliance review, the contractor has the right to appeal to the Minister of Employment and Immigration. The Minister, on appeal, appoints an independent assessor to consider the appeal. Of the 103 contractors reviewed since June 1987, two have been found by the CEIC Compliance Review Officer to be in non-compliance. Both have appealed and assessments are currently underway. These companies are Freed of Freed International Ltd., of Winnipeg, and Northern Alberta Dairy Pool Ltd., of Edmonton (*CEIC Status Report,* February, 1989).

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Les minorités raciales et l'action positive la législation sur l'équité dans l'emploi

Le Canada est devenu une société multiraciale, multireligieuse et multiculturelle. La diversité ethnique croissante des Canadiens comprend un nombre considérable de non-blancs qu'on désigne sous le nom de minorités visibles. Ces minorités ne sont pas assez présentes dans les organisations des secteurs public et privé, compte tenu du pourcentage de la population et de la main-d'oeuvre qu'elles forment. On leur dénie le droit à une représentation complète dans presque toutes les institutions canadiennes. Plusieurs commissions royales et autres formes d'enquête ont recommandé l'application de programmes d'action positive de façon à compenser les désavantages que les minorités subissent sur le marché du travail. La Commission royale Abella a demandé que l'on recoure à des mesures d'équité dans

l'emploi pour éliminer les barrières et les pratiques discriminatoires plutôt qu'à l'action positive puisque l'expression 'action positive' est de nature à susciter une réaction émotive négative, raison pour laquelle il serait préférable de parler d'équité dans l'emploi.

Au Canada, la législation de presque tous les gouvernements, tant fédéral que provinciaux, permet la mise en oeuvre de mesures d'action positive ou d'équité dans l'emploi. La Cour suprême du Canada a tout récemment maintenu le droit du Tribunal canadien des droits de la personne d'imposer au Canadien National une action positive obligatoire. La *Charte canadienne des droits et libertés* contient aussi une disposition sur l'action positive qui garantit la légalité de pareils programmes.

Le gouvernement fédéral a pris trois initiatives en matière d'action positive: la *Loi sur l'équité dans l'emploi,* le programme relatif aux soumissionnaires et le programme de la Fonction publique. La Loi exige que tous les employeurs régis par les lois fédérales (comptant 100 travailleurs ou plus) remplissent un rapport annuel (à partir de 1988) contenant différents renseignements sur le degré de représentation de quatre minorités (femmes, handicapés, minorités visibles et Amérindiens) par catégorie professionnelle, secteur industriel, lieu de résidence et niveau de traitement, de toutes les personnes appartenant à ces groupes qui sont embauchées, promues ou licenciées pendant l'année. Le programme concernant les soumissionnaires s'étend aux entreprises employant 100 personnes et plus qui présentent des soumissions pour la fourniture de biens ou de services d'une valeur de 200 000$ ou plus. Enfin, le programme d'action positive de la Fonction publique fédérale s'applique également aux quatre catégories désignées ci-dessus.

Dans sa dernière partie, l'article traite de l'efficacité des mesures instituées par le gouvernement fédéral et formule un certain nombre de suggestions en vue de les renforcer.