



Public Service Commission
of Canada

Commission de la fonction publique
du Canada

History of Employment Equity in the Public Service and the Public Service Commission of Canada

October 2011

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Prepared by the Equity and Diversity Directorate

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Foreword

“Equality in employment will not happen unless we make it happen.”
- Justice Rosalie Abella, 1984

The above concluding remark made by Justice Rosalie Abella in her landmark 1984 report *Equality in Employment*¹ is a reminder that employment equity is everybody's business and that a concerted effort is necessary to ensure that all Canadians have equitable access to employment opportunities in the public service of Canada.

The Public Service Commission (PSC) is an independent agency reporting to Parliament, mandated to safeguard the integrity of public service staffing and the non-partisanship of the public service. In addition, it recruits qualified Canadians from across the country and living abroad. As part of its mandate, the PSC is responsible for safeguarding and building a public service that reflects the diversity of Canadian society. As such, employment equity has been and continues to be a key part of the PSC's business.

This paper documents and analyzes the evolution of employment equity in the federal public service and the role played by the PSC throughout the last five decades in ensuring equality of job opportunities for the four designated groups under the *Employment Equity Act* – women, Aboriginal peoples, persons with disabilities and visible minorities. Reflecting on the lessons learned from the past and implications for the future, this paper highlights some of the complex issues that remain to be addressed.

When I became President of the PSC in 2003, my main focus was on managing the transition to the new *Public Service Employment Act* (PSEA). My priority was to put in place a new policy, delegation and monitoring frameworks to ensure the integrity of the staffing system and a new regime to manage the political activities of public servants. I was also mindful that it is equally important to be able to build a public service that strives for excellence and represents the diversity of Canadian society within the same framework.

My predecessors have shown great leadership and commitment to building a representative public service and I am very proud of their contributions. With a values-based enabling policy, delegation and accountability frameworks that this Commission was able to introduce under the PSEA 2003, we have seen significant progress made by departments and agencies in the recruitment of three of the four designated groups, women, Aboriginal peoples and visible minorities, in the last few years.

I hope that this paper will assist the future PSC President and Commissioners, PSC employees, human resources practitioners, employment equity advisors, public servants and stakeholders in their collective efforts towards achieving a truly representative public service.

Maria Barrados, PhD
President

Executive Summary

This paper documents and analyzes the role of the Public Service Commission of Canada (PSC) from the 1960s to 2010 in helping to achieve a representative Canadian public service by providing equitable opportunities for employment to qualified Canadians historically disadvantaged in this area.

The role of the PSC has been to make appointments to and within the public service on the basis of merit. Over the last five decades, in response to the evolving environmental context and consistent with its mandate and respecting merit, the PSC has demonstrated leadership and ongoing commitment to the development and implementation of various policy frameworks and special initiatives in recruitment, staffing, training and development to achieve a representative public service.

The *Public Service Employment Act* (PSEA) of 1967 gave the PSC the responsibility for ensuring, either directly or through delegation, that public service staffing was carried out according to merit. Various equal opportunity programs and initiatives were implemented by the PSC, from the 1970s to 2000s, for women, Aboriginal peoples, persons with disabilities and visible minorities. There has been a gradual shift over the last decade from temporarily funded central programs to managing diversity and cultural change through integrated organizational business, human resources and employment equity planning.

In the 1990s, the *Public Service Reform Act* and subsequent modifications to the PSEA and *Public Service Employment Regulations*, as well as amendments to the *Employment Equity Act* shaped the legal framework for employment equity and positive measures to achieve representativeness. The PSEA 2003 has provided further flexibilities for achieving employment equity objectives in the current staffing system.

The leadership and personal commitment of PSC Presidents and Commissioners were key to helping to build a representative public service. The current Commission has set a clear direction and corporate approach for employment equity in ensuring that it is integrated into all PSC business lines: policy, oversight and services, beginning with our plans and priorities.

By providing an account of the progress to date, the results achieved and an analysis of the issues of interest and concern to the PSC, this paper provides insight into the development of effective employment equity approaches and strategies for the future.

1. Introduction

Purpose

In a well-functioning democracy, the public service should be representative of the people it serves. The Public Service Commission (PSC) has a long history of giving concrete expression to the Canadian institutional value of representativeness by providing equality of opportunity for public service employment to Canadians. In fact, ensuring equitable access to employment and participation for under-represented groups has been a major preoccupation of the Commission throughout the last five decades.

This research paper was first conceived to close the gap in the awareness of the role of the PSC and its key contributions regarding employment equity and to identify what lessons learned can be applied to the future. The findings may be useful to the review of the *Public Service Employment Act* (PSEA) that came into force in December 2005. In addition, the paper is expected to serve as a tool to facilitate knowledge transfer and retention of corporate memory in face of retirements and demographic shifts in the public service workforce.

Approach and scope

The concept of employment equity had existed before the legislation that bears its name became law in Canada. Enacted in 1986, the aim of the *Employment Equity Act* (EEA) was to bring about positive labour market outcomes for four designated groups disadvantaged in employment and to remove barriers. But the initial Act did not apply to the federal public service. Instead, the public service was subject to the Treasury Board *Policy on Employment Equity*. In essence, the public service was excluded from the statutory requirements of the legislation.

In 1995, amendments to the EEA brought the public sector and the private sector under a comprehensive piece of legislation, which also named the Treasury Board and the PSC as co-employers for the federal public service for the purposes of the Act, each within its respective mandate. The Commission, in its role of protecting merit, has for over fifty years taken gradual, then increasingly more proactive steps to provide equal employment opportunities to groups that were, in the Commission's view, excluded as a result of the narrow application of the merit system in the past.² These steps were taken at times in response to societal pressures and political realities as Canadians expected the public service to be representative of the changing Canadian society so as to be better able to respond to their particular needs.

For example, in *Biography of an Institution: The Civil Service Commission of Canada, 1908-1967*, Hodgetts et al described how the PSEA of 1967 added sex to the grounds of prohibited discrimination to respect the conditions of an International Labour Organization Convention, ratified by Canada in 1964.³

In his literature review of 2008, Kernaghan has noted that the issue of representativeness has remained a prominent theme in discussions of merit since the

1960s and 1970s because it is at the heart of distinguishing between the merit principle and the merit system.⁴ He has also observed that, since 1967, no authors had taken up the mantle of Hodgetts and his colleagues by providing a detailed examination of the evolution of merit.

Juillet and Rasmussen then picked up the mantle in 2008 with *Defending a Contested Ideal: Merit and the PSC of Canada 1908-2008*, celebrating the PSC's centenary. Issues of merit and representativeness featured prominently throughout this book. The authors traced the beginning of the modern notion of employment equity to the preferential treatment of veterans following both World Wars and then to French-speaking Canadians whose representation in the public service was low. They further described how the notion of merit has evolved, taking characteristics such as gender, race, language and disability hiring into consideration.⁵

A review of the literature shows that while there is research on affirmative action, employment equity and diversity as well as research on the PSC and the merit system, these themes are most often addressed separately. The convergence of the two – merit and representativeness as an area of central focus is comparatively rare, although the PSC has long taken the position that the concepts of merit and representativeness go hand in hand.

The work of Hodgetts et al and that of Juillet and Rasmussen has provided a point of departure for this paper, which describes the history of employment equity in the past five decades, from the 1960s to 2010, with a focus on the four groups under the EEA: women, Aboriginal peoples, persons with disabilities and members of visible minority groups. Besides a review of the literature, published reports and other pertinent internal documents, interviews were conducted with the current and former PSC Presidents and Commissioners to obtain their insights and reflections.

The PSC's journey on the path to a representative public service has been long, sometimes circuitous and with good and not-so-good turns, often bumpy and not yet complete. This paper, which is both retrospective and prospective, demonstrates how the strategies and thrust of the PSC's efforts to create a representative public service have changed over time. It highlights the significant events along the way, the critical issues and lessons learned from pivotal points in the PSC's leadership in order to assess the implications and outlook for the PSC's role in the future.

2. Employment Equity – 1960s to 2005

By virtue of the *Civil Service Amendment Act* 1908, the Public Service Commission of Canada (PSC) came into formal existence as the Civil Service Commission, an independent and politically neutral organization to vet appointments to and promotions within the public service. The *Civil Service Act* of 1918 further prohibited patronage appointments through a distinction in law between political and non-political or professional civil servants.⁶ By the second half of the 1960s, sweeping staffing reforms and the enactment of the *Public Service Employment Act* (PSEA) of 1967 led to questions about the evolution of the concept and application of merit in relation to employment equity and representativeness in the federal public service.

This section explores in detail the PSC's role from the mid 1960s to 2005 in achieving a representative Canadian public service by providing equitable public service job opportunities to qualified Canadians who have been historically disadvantaged in employment. It essentially covers the period prior to the coming into full force of the PSEA of 2003.

Consistent with the prevailing legislative framework and its mandate, the PSC has demonstrated leadership and ongoing commitment in the development and implementation of various policy frameworks and special initiatives in recruitment, staffing, training and development to achieve a representative public service. The environmental context, the various programs and initiatives, the results achieved and lessons learned are discussed with a view of providing a better understanding and insights into strategies for the future.

The 1960s

One of the major objectives of the PSEA of 1967 was the reaffirmation of the merit principle, as embodied in the previous legislation, and its extension to certain groups who had remained exempt from the *Civil Service Act* of 1961. When Parliament revised the PSEA in 1967, the PSC was given the responsibility for ensuring, either directly or through delegation, that the public service was staffed according to merit and without discrimination. Since 1967, the PSC has worked to prevent discriminatory practice in the treatment of internal and external candidates for positions in the public service.

Chairman John Carson's (1965-1976) leadership during the pivotal reform of human resource (HR) management is well documented, as was his focussed approach in implementing measures to develop a bilingual public service in which French-speaking Canadians participated fully.

Bergqvist and Findlay described how, in the late 1960s, pressure from domestic, foreign and international organizations such as the United Nations and the International Labour Organization exerted pressure on the Canadian government "to align its employment practices with its commitment to democratic and representative institutions."⁷ Women, who as a class of citizens were discriminated against in employment, were increasingly vocal about their situation. In 1969, the Royal Commission on the Status of Women was established to look into this issue in Canada.

At the request of the Government, Chairman Carson commissioned a study to investigate the under-representation of women in the public service. The PSC then used the study: *Sex and the Public Service*⁸ by Kathleen Archibald in 1969, to brief the Commission on the Status of Women. It ended up having a far-reaching impact, including that of raising the consciousness about under-represented groups.

If the first impact of the study was to shatter some long-held assumptions about women, their capacity in the world of work and their role in the public service, its long-term impact has been to create a new awareness of the problem of achieving equal opportunity, not only for women, but for all peoples.⁹

With “sex” added to the grounds of prohibited discrimination in relation to the PSC’s right to prescribe selection standards under PSEA 1967, in 1969 the Commission issued a statement to deputy heads and a set of policy guidelines to heighten awareness. Each individual was to be considered on the basis of their own merit and not on the supposed characteristics of their sex.

Not surprisingly, when the PSC turned its attention to the employment disparities for women, it adopted a different approach to the one it was successfully using to improve the representation of francophones that was based on recommendations from the 1963 Royal Commission on Bilingualism and Biculturalism and the 1969 *Official Languages Act*.

As Juillet and Rasmussen point out, the PSC wanted to avoid the experience with the French language, in which the establishment of quotas had led to criticisms of “reverse discrimination.”¹⁰ The PSC opted to actively promote equal opportunity, one of the first concepts to have emerged in the 1960s and was commonly used to define equality in employment for all Canadians. It was based on the notion that if discrimination in employment ended, all Canadians would have equal access to job opportunities.¹¹ In the case of women, at that time the PSC was clear that it did not see itself as having a mandate from Parliament to extend preferential treatment. Instead, it adopted a strategy of actively promoting equal opportunity.

There were also special programs in place to promote equal opportunities to other groups who were historically discriminated against. For example, since the mid-sixties, the PSC had been working to increase the number of persons with disabilities in the public service. One such program resulted from the PSC’s policy of hiring persons with disabilities whenever possible. After the PSC announced a pilot project to make it easier for persons with mental disabilities to join the public service, an Exclusion Approval Order was enacted in 1967 that excluded the initial appointment only of persons “who because of mental retardation cannot participate in a competitive situation on an equitable basis with persons not so handicapped” from merit (section 10).¹² The special program was implemented and the PSC extended the program throughout Canada.

The 1970s

The 1970s was a decade of tremendous growth in the public service, followed by severe cutbacks. During the first half of the 1970s, the public service increased by some 74 000 employees. The fact that the public service was not representative was a growing concern of the Commission. One of the challenges was how to prevent discriminatory practices in the treatment of public servants and candidates for positions in an environment of more hiring and increased delegation by the PSC of the selection and appointment authorities to departments and agencies.¹³

In its 1971 Annual Report, the Commission, under Chairman John Carson, chose its words judiciously as it grappled with the lack of representativeness in the public service:

The existing application of the merit system has failed in one respect. It has not given us a representative public service. In the past, the service has been dominated by English-speaking males. There are indications that this dominance exercises a subtle if unintended discrimination against other groups competing for jobs and careers in Canada's public service.¹⁴

The Commission sensed that the merit system, i.e., the collection of rules, regulations, policies and procedures in the past had been applied too narrowly and that equality of opportunity was lacking, as evidenced by the under-representation of French-speaking Canadians, the virtual absence of women in the higher ranks and the limited number of programs in place to encourage Aboriginal peoples to participate in the public service. The questions that the Commission was asking itself about the merit concept were, in its own words, new because they did not focus on patronage and unsettling because they centred instead on the sensitive issue of discrimination.

Recognizing increasing equity and justice-seeking activism, changing societal values and demographics in Canada at the time, the Commission suggested that the true equality of opportunity in the appointment process might be found in a dynamic concept of merit, one which could be adapted to emerging conditions and values. Based on the predicate that equal opportunity would strengthen merit, the Commission explained how it applied that philosophy in undertaking programs and initiatives for French-speaking Canadians, women and Aboriginal peoples. Concluding the review on a prophetic note, the Commission informed Parliament and the public at large that, "It is a preoccupation we will be increasingly facing in the future."¹⁵ The PSC was right.

In the latter part of 1972, the government assigned the PSC the responsibility for investigating complaints of alleged discrimination with respect to the application or operation of the PSEA. As a result, Chairman John Carson created the Anti-Discrimination Branch in 1972 to deal with complaints. Its mandate was both educational and investigative. There were 211 complaints in the first year.¹⁶

The appeals system was also evolving to reflect the national policy that Canadians were eligible for employment in the public service, regardless of language, national origin, colour, religion, age, marital status or sex. Only "merit" was to be taken into consideration in the appointment processes. Significant decisions through the appeals process helped to shape the merit system.

There was also increased use of equal opportunity programs to strengthen merit. Some of the best known programs started in the early 1970s: the Office of Equal Opportunity for Women (1971); the Office of Native Employment (1973); the Northern Careers Program for indigenous people (1974) and the Black Employment Program launched in Halifax in May 1973. The following highlights programs the PSC established and/or administered in the 1970s.

Office of Equal Opportunity for Women

Based on the recommendations of the Royal Commission on the Status of Women as well as those of its own study, *Sex and the Public Service*, the PSC established the Office of Equal Opportunity for Women in 1971. It coordinated equal opportunity programs for women in the public service while emphasizing that all public service careers were equally accessible to men and women. In April 1972, Cabinet issued a directive calling upon all deputy heads to take steps to encourage the assignment and advancement of more women to middle and senior echelon positions, giving impetus to the drive for equal opportunities for women.¹⁷ In June 1972, the slogan “this competition is open to both men and women” was displayed on job advertisements issued by the PSC.¹⁸ There was also a push for equal chances for promotion and career development. By 1973, the number of women in the senior Executive category had tripled from 3 to 9, minimal considering there were 868 employees in this category.¹⁹

The PSC intensified its efforts to increase the number of women participating in the Career Assignment Program (CAP), a program jointly initiated by the PSC and the Treasury Board of Canada Secretariat (TBS) in 1968 to develop a greater number of effective senior managers for the public service.²⁰ New training programs were developed to help women in the support categories advance their careers and a directive was issued to staffing officers throughout the public service stating that, in the assessment of applicants for the positions, volunteer experience was to be rated in the same manner as other relevant experience.²¹

Research was increasingly becoming an important element of the programs underway for women. Data collection and environmental scanning contributed to a better understanding of the direction the program would need to take. However, by 1975, notably the start of the Decade of Women, women in the federal public service had made only modest gains. It was clear that a more robust approach involving greater commitment and effective planning would be necessary.

In October 1975, the Minister responsible for the Status of Women provided the impetus by calling for a more aggressive approach. The Government would ensure, within a reasonable period, the equitable representation of male and female employees in proportion to the availabilities of qualified persons of both sexes, by organization, occupational group and level. All organizations had to make an active commitment to ending sex discrimination in the public service, to set targets and to establish specific plans for meeting policy goals and submit plans to the TBS. The PSC’s Office of Equal Opportunity for Women assisted in the reviews of the plans and made recommendations.

By 1979, women held 19.8% of officer level positions, 50 women were in the senior Executive category and 43.5% of promotions went to women. However, that year a very high separation rate of 47% for women was of concern. This led to a study of the issue by the Commission. It found that women resigned voluntarily, including at senior levels, at a higher rate than men. This finding had a major impact on the development of policies, led by TBS, regarding family-related issues, including part-time employment, leave for raising children and for the relocation of a spouse.

Office of Native Employment and the Northern Careers Program

In November 1971, the PSC announced a special program to help address challenges relating to the employment of Aboriginal peoples. In 1973, the PSC established the Office of Native Employment to promote job opportunities throughout the public service for Aboriginal peoples. The PSC made it clear to organizations representing Aboriginal peoples that they were welcome to serve on selection boards. By 1973, 178 (0.2%) Aboriginal persons held officer or Executive level positions, out of 80 562 employees. They were employed in five organizations: Department of Indian Affairs and Northern Development (DIAND), Secretary of State, National Health and Welfare, Manpower and Immigration and the PSC. A similar pattern of concentration of Aboriginal employees in a few organizations still exists today. In 1979, there were 1 500 Aboriginal applicants in the inventories of the PSC's regional operations and 262 appointments were made to the public service.²²

In 1971, the federal government developed its northern development policy, recognizing the need for employment programs for Aboriginals living in the Yukon and Northwest Territories. The Northern Careers Program was established by DIAND which was responsible for ensuring that the government's northern development policy was carried out. In 1975, the PSC began administering the Program on behalf of DIAND. The PSC provided Aboriginal peoples with training and career development opportunities in order to increase their participation in departments and agencies operating in the northern parts of Canada.

By September 30, 1979, a total of 199 Aboriginal peoples were recruited under the Program; of these, 58 participants successfully completed their assignments and began a career in the north; 35 were transferred to positions higher than or equivalent to their entry positions in the federal government or to equivalent positions outside it; 38 participants withdrew for various reasons and the remaining 68 were actively involved with their assignments.²³

Black Employment Program in Halifax

The Black Employment Program (BEP) was launched in Halifax in May 1973. It is a good example of collaboration and partnership with the community. In this instance, the leadership of the Nova Scotia Black community, the initiative of the PSC staff and the commitment of the PSC leadership under Chairman John Carson led to the establishment of the Program, using the Native Employment Program as a model.

The BEP built on the modest progress that the PSC staff had already made to augment the presence of Black Nova Scotians in federal government organizations. They did this

by planning, developing and coordinating the implementation of programs and activities, maintaining effective liaison with Black organizations and community leaders as well as with government departments and agencies. Collecting information on Black people in the public service and their educational trends in high schools, universities and other institutions was the key. They also disseminated information and promotional material on equal opportunities for Black people in the public service.

As seen earlier, the PSC had espoused a dynamic concept of merit which, together with the equal opportunity programs, was expected to lead to true equality of results - a representative public service. The thinking was that the PSC's mandate, coupled with a broader application of merit, would enable it to address the institutional and attitudinal barriers that had persisted for decades and which were having a negative impact on the recruitment and advancement of Black people in the public service. By the end of the decade, 292 Black people were appointed to positions in the public service as a result of this program.

The BEP is important because it was the first program for members of a group that would eventually come under the *Employment Equity Act* (EEA) 1986 as part of the visible minorities group.

Initiatives for persons with disabilities

The PSC had been working for several years to facilitate equality of opportunity for persons with disabilities who were seeking employment in the public service. Lack of adequate data and knowledge about the barriers to their employment hindered the development of a comprehensive program. For two years prior to 1976, the PSC collaborated with the Department of Manpower and Immigration (DMI) in a joint project to gather and analyze information that would better position them to increase the opportunities for the participation of persons with disabilities.

In 1976, pilot hiring projects were run in four regions, in conjunction with ten participating departments and agencies. The PSC also reviewed the existing literature on the subject and examined other countries' legislation for assistance to persons with disabilities. The PSC and the DMI gathered data from employees with disabilities by means of a questionnaire and from pertinent associations through a series of informal consultations. This set the stage for the creation of programs to enable more persons with disabilities to find employment in the public service.

The PSC and the DMI also commissioned a study on the obstacles that candidates with disabilities faced. The study report, completed in August 1977, identified barriers to the staffing process, architectural barriers to buildings and a lack of technical aids and transportation. Following consultation with the PSC, in 1978 the Treasury Board issued a policy to increase the participation of persons with disabilities in the public service, while the PSC issued a related staffing policy in 1980.

In an important step toward barrier removal, the PSC's Personnel Psychology Centre developed more flexible procedures to assess the abilities of persons with disabilities to perform the job duties. The PSC developed and distributed training packages and courses to sensitize senior officers and managers. It also revised the Application for

Employment Form to provide for the collection of data on disabilities. The role of the PSC regional offices in decentralized staffing activities and outreach to communities was a key contributing factor.

By 1979, 180 persons with disabilities were included in the PSC's pool of qualified candidates. During that same year, the PSC made 268 referrals and 161 appointments to the Administrative Support Category.

Canadian Human Rights Act

The *Canadian Human Rights Act* (CHRA) was enacted by Parliament in 1977. It applied to federal and federally-regulated bodies and aimed at accommodating the needs of Canadians and protecting them from discrimination based on any of the 10 grounds: race, national or ethnic origin, colour, religion, age, sex, marital status, family status, disability and conviction for an offence for which a pardon has been granted. Sexual orientation was added to the list of prohibited grounds of discrimination in 1996.²⁴

The CHRA also established the Canadian Human Rights Commission (CHRC), with a mandate to promote the core principle of equal opportunity and to protect individuals from discrimination in employment and in the provision of services. The CHRA and, in time, the *Charter of Rights and Freedoms* 1982, both permit special measures or programs to prevent, reduce or eliminate barriers for disadvantaged groups. See Annex 1 for relevant excerpts from the Charter and other legislation.

Merit principle: quotas versus equal opportunities

Since 1970, the PSC had undertaken measures that would, in both the short and long term, promote and strengthen equal opportunity in the areas of recruitment, selection, training and promotion which it considered an important aspect of the merit principle. The merit principle, as explained by Hodgetts et al., included two major propositions: that Canadian citizens should have a reasonable opportunity to be considered for appointment and that selection should be based exclusively on the candidate's fitness for the job.²⁵ In interpreting the merit principle, the PSC at the time had taken the position that all Canadians should have access to jobs in the public service. Further, it had adopted the stand that the public service must represent all sectors of the Canadian community if it was to respond to the needs of the people it served.²⁶

One of the debates during the 1970s was over equality of results through the use of quotas versus equal opportunities. Although staffing according to merit is the key principle guiding the PSC in its activities,²⁷ policies and practices to address discrimination in employment were and continue to be "hot button" issues, particularly during times of fiscal restraint, as evidenced in the later decades.

By 1976, when Chairman Edgar Gallant (1976-1985) took office, the painful cutbacks in the public service had started. At that time, there were major discrepancies in the composition of the public service in comparison to the public it was serving. Anglophone males were over-represented, while females, francophones, Aboriginal peoples and persons with disabilities were under-represented.

The Commission weighed in on the debate over quotas versus equal opportunity in the first Annual Report²⁸ under Chairman Edgar Gallant. It posed the question "Quotas or Equal Opportunity?" It rejected quotas as undesirable and impractical. An approach based on giving all Canadians equality of opportunity to compete for positions in the public service was preferred. The PSC worked with departments and agencies to remove institutional and attitudinal barriers to effective equality of opportunity and to continue with special efforts towards under-represented groups to ensure that they were aware of federal job opportunities and could compete for positions in the public service. Chairman Gallant underscored that equality of access was integral to the merit principle.

Steps taken in the United States to address discrimination in employment have had an impact on how Canada has approached the issue. Quotas are often established to implement affirmative action in the United States to ensure the achievement of results. Affirmative action generally refers to the positive steps taken to increase the representation of women and minorities in areas of employment, education and business from which they have been historically excluded on the basis of race, sex, ethnic origin, religion, disability and age. These steps can involve preferential selection, that is, selection based on race, gender or ethnicity.

The ruling of the Supreme Court of the United States in 1978 - *Regents of the University of California v. Bakke* has placed important limitations on affirmative action programs. Since then, there have been several subsequent Supreme Court decisions and rulings confirming the rejection of "quotas" but allowing race to be one "factor" in the selection criteria to meet the compelling interest of diversity. The reaction to the *Bakke* case had an impact in shaping some decisions that went into shaping the Canadian legislation.²⁹

Communicating the message

A striking feature of the 1970s was how the PSC communicated its message about a representative public service. The removal of sex-typing references from recruitment and advertising material published by the PSC was a first step. The PSC also relied on optics to produce a strong and inspirational image of the face of the public service. Starting in 1972, photographs of women in leadership and non-traditional roles, persons with disabilities as active participants in the workforce, visible minorities in a range of occupations and Aboriginal peoples in offices across the North frequently leapt off the pages of the PSC's Annual Reports during the decade. PSC brochures and promotional material also used these images to convey an inclusive and welcoming public service.

Conclusion

The prevailing view of the 1970s was that promoting equality of opportunity within the public service through special programs for women, Aboriginal peoples, persons with disabilities and visible minorities was a way to strengthen the important aspect of representativeness in the merit principle.

The PSC used a phased-in approach from the creation to the administration of these programs. The top priority was providing opportunities for women and creating a public service with equality for both men and women. The initiatives for women demonstrated the typical stages of progression through which such programs tend to evolve: raising

awareness, elimination of discrimination, concrete action plans and measures and development of policies. More emphasis was placed on collecting information and data on the targeted groups, setting goals and developing plans and accountability measures to achieve progress towards a representative workforce.

Increasing the mobility of women was also an important focus of the programs. Practices such as preparing candidates for positions at all levels, including women on selection boards, providing opportunities for training through the CAP and senior management development programs were eventually applied more systematically to other groups. By the late 1970s, policies such as recognition of volunteer work in the selection process were designed primarily with women in mind.

The cutbacks of the latter half of the 1970s led to a decrease of 1 300 employees by 1977. However, it was accompanied by the accelerated growth in the officer categories. A high priority was for the senior levels to reflect the mosaic of Canadian society.³⁰

The initial thinking was that fairness meant treating men and women the same. It later became evident in the next decade that employment equity meant more than treating people in the same way; it also required special measures and the accommodation of differences. The equal opportunity programs of the 1970s did not result in any significant redistribution in the employment of disadvantaged group members in the public service workforce and they later evolved into voluntary affirmative action programs.

The 1980s

The PSC's commitment to Canadians remained unchanged, that is they must be served by a competent public service reflecting the Canadian mosaic. In 1980, a pilot Affirmative Action Program was established in three federal organizations: Canada Employment and Immigration Commission, Secretary of State and TBS. In 1983, this initiative was extended to all federal departments and agencies to improve the representation and distribution of women, Aboriginal peoples and persons with disabilities at all levels of the workforce. In describing this public service-wide program, the PSC noted that: "The government has placed new emphasis on the development and implementation of equal opportunity measures and on strengthening the infrastructure in which these activities function."³¹

A shared responsibility

By 1981, the PSC was messaging equality of opportunity as a common sense approach to strengthen representativeness. Where it proved necessary, the PSC undertook specific measures on a restrictive basis to accelerate the appointment of qualified members of under-represented groups. In 1981, one such measure was the Exclusion Approval Order to reserve certain developmental positions at Indian and Northern Affairs Canada exclusively for Aboriginal peoples. A second was the extension of an Exclusion Approval Order passed in 1979 whereby recruitment was limited solely to women for some specific jobs at selected male penitentiaries.³²

By the mid-eighties, the PSC began to place more emphasis on integrating equality of opportunity into regular staffing. The focus was on areas such as training, development, consulting and assistance and special measures programs. This shift in policy led to the Government's Affirmative Action Program in the public service.

There were also administrative rearrangements involving such special programs. For example, the 1971 Cabinet directive with regard to women first delegated responsibility for implementation to the PSC, then to the Treasury Board. Scholars including Juillet and Rasmussen have noted the priority placed on these programs.

The PSC came up with individual programs aimed at French Canadians, women and aboriginals in its first major efforts to improve democratic responsibility through representation. While the PSC took the lead in the development of these programs, by the 1980s, the issue moved up the agenda and the Treasury Board Secretariat began to challenge the PSC's leadership in this area.³³

In the 1980s, the government developed a pragmatic approach for managing HR in a changing environment. An accord reached between the TBS and the PSC clarified the broad allocation of central responsibilities for HR management with regard to exclusive, delegated and shared responsibilities. Equal opportunity was a shared responsibility. The employer set government policies and objectives for the participation of under-represented groups.

The PSC, for its part, was responsible for ensuring that its recruitment and selection policies were not discriminatory and were consistent with the application of merit. The Commission was obliged to assist the Government in meeting its overall equal opportunity objectives; deputy heads, in turn, were accountable for achieving the objectives for their respective organizations and for the effectiveness of the recruitment and selection methods used to attain them.³⁴

Affirmative action programs and the merit principle

The government's announcement of a voluntary Affirmative Action Program, a more proactive policy initiative than the one then in place, was a pivotal moment for the PSC. Going the affirmative action route could signal a shift to the United States approach involving quotas and mandatory compliance. The PSC assisted the pilot program steering committee in crafting what was described as a "distinctly Canadian approach to the identification and elimination of discriminatory practices in the workplace".³⁵ This approach emphasized the integration of employment equity planning with the HR planning process. The PSC contributed to the development of techniques that were subsequently implemented throughout the public service.

In 1983, with the public service-wide expansion of affirmative action, the Commission prepared and distributed a number of tools essential to the program's success, including: availability estimates (statistical studies designed to estimate the supply of qualified candidates), vacancy rates and their impact on the representation of target group members, data reports and analytical tools to help organizations implement and monitor their affirmative action programs.³⁶

In October 1983, the Government announced the following numerical objectives for the participation of women in the management category: from 217 in 1983 to 475 by March 1988. A special recruitment program was implemented to identify women occupying Executive level positions outside the federal public service who might be interested in the public service.

One of the questions the PSC had to answer was whether affirmative action contravened merit. It was emphatic that the Affirmative Action Program implemented in 1983 did not conflict with merit, which required that only qualified persons be appointed. A key message was that the merit principle left no room for quota systems and general preferences. The PSC further pointed out that the numerical objectives for increasing the representation of women in the management category and the numerical objectives to be developed as part of organizational HR plans were only tools to be used for establishing employment strategies for under-represented groups and they must be implemented in full respect of the merit principle.³⁷

Programs for Aboriginal peoples, persons with disabilities, women and visible minorities

The PSC, in cooperation with TBS, and in support of the Affirmative Action Program, developed a series of special measures to encourage the recruitment and advancement of Aboriginal peoples, persons with disabilities and women.

The PSC launched the National Indigenous Development Program on behalf of the Treasury Board. It was administered by the PSC's regional and district offices to provide training and career development opportunities for Aboriginal employees in the public service.

The Access Program for Disabled People was established to provide on-the-job training for persons with disabilities who lacked work experience. The PSC continued its Program of Services to Disabled People and, in 1984, held a display of technical aids and devices to assist persons with disabilities which were loaned out without charge to those trained through the Access Program. The PSC also offered a consultation service to departments and agencies on the use and modification of PSC and organizational tests for candidates with disabilities. In addition, it produced tests in alternate formats for visually impaired candidates.

The Women's Programs Centre was established in 1984 by integrating the former Office of Equal Opportunities for Women into the operating branches of the PSC to make affirmative action everyone's business. It was envisaged that this restructuring would permit greater influence on operational processes such as recruitment, referral, counselling and training. The new Centre would provide a central contact point for information on all programs and services for women, offered by the PSC, without duplicating the activities of other areas. The PSC also established the Women's Career Counselling and Referral Bureau to increase women's participation in the management category and the "OPTIONS" program for women with resource incentives for on-the-job training and career development opportunities for non-traditional work in the federal public service.

In September 1985, the Treasury Board asked the PSC to implement a number of special measures for visible minorities. Some have resonance today and they included:

- Revision of the public service application-for-employment form to allow members of visible minority groups to identify themselves as such;
- Revision of the PSC's automated data systems to allow members of visible minority groups to be monitored throughout the recruitment and referral processes;
- Development of estimates of availability of members of visible minority groups in the labour market to assist public service managers in establishing hiring targets for members of these groups; and
- Contribution of funds, in cooperation with the department of the Secretary of State, for a study by the Association of Universities and Colleges of Canada to update the Canadian educational equivalencies of certain foreign degrees for which equivalencies have been difficult to establish.

The PSC acted as an observer at the newly-established External Advisory Committee on Visible Minorities, a body that provided advice to the President of the Treasury Board.

In 1986, the PSC added visible minorities to its affirmative action recruitment programs with a developmental component by using its authority to put in place exclusion approval orders.³⁸ The Visible Minority Employment Program provided incentives for organizations to recruit visible minorities from outside the public service. On-the-job training opportunities were also available for applicants who did not have government experience.

Results from the programs

The programs the PSC administered on behalf of the Treasury Board, as well as its own Women's Career Counselling and Referral Bureau, had made the following progress by the end of the decade:

- *Visible Minority Employment Program*: Of the 283 participants since 1986, 205 (72.4%) were appointed to indeterminate positions, of which 86.8% were at the officer level;
- *Non-Traditional Occupations Program for Women (OPTIONS)*: In 1989, 89 women were appointed in 16 organizations: 68 from outside the public service and 21 from within;
- *Access Program for Disabled People*: By 1989, of the 1 070 who participated in the program, 913 completed the training and 651 remained in the public service;
- *National Indigenous Development Program*: A six-year total of 375 completed the program;
- *Northern Careers Program*: From 1975 to 1989, 300 persons participated in the program; and
- *Women's Career Counselling and Referral Bureau*: In 1989, 68 of the Bureau's clients were appointed to the management category, representing 58.6% of the total number of women appointed.

Royal Commission on Equality in Employment

Voluntary affirmative action programs did not produce the expected results. On July 27, 1983, the government established the Royal Commission on Equality in Employment, chaired by Justice Rosalie Abella to “inquire into the most efficient, effective, and equitable means of promoting employment opportunities, eliminating systemic discrimination and assisting all individuals to compete for employment opportunities on an equal basis...”³⁹

Aspects of the Canadian approach, including the name, were shaped in part in response to the backlash against the American policies. The term “employment equity” was coined by Justice Abella with the aim of avoiding the contentious type of debate that characterized the discourse on affirmative action in the United States. The sticking points were the notion of quotas and preferential hiring.

With 1984 as the point of departure, Justice Abella pointed out that 100 years ago, the role for women was almost exclusively domestic; 50 years ago, some visible minorities did not have the right to vote; 25 years ago, Aboriginal peoples did not have a policy voice and persons with disabilities were largely expected to be dependent on others.⁴⁰

Those four groups comprised 60% of the Canadian workforce at that time. The labour force profiles for the first three groups were derived from four statistical indicators of possible systemic discrimination: participation rates, unemployment rates, income levels and occupational segregation. The findings showed that they were disadvantaged in the workplace. Data were not available for persons with disabilities. But together with the others, they all had experienced disparities in labour market access, compared to the dominant groups.

It is important to note that in Canada, the Crown has a fiduciary relationship and ensuing obligations toward Aboriginal peoples that have implications for the development and conduct of government policy that engage Aboriginal interests.⁴¹

Equality in Employment: A Royal Commission Report, also known as the Abella Report, was released in 1984 in the midst of a recession, when the outlook for employment was not promising. Justice Abella cautioned that a weak economy would not justify a listless response.⁴²

The Parliamentary Special Committee on the Participation of Visible Minorities in the Public Service also published its report “*Equality Now!*” and by 1985, visible minorities were included as a designated group in the public service and a service-wide survey was carried out to collect statistical information.

The *Employment Equity Act*

The report of the Royal Commission on Equality in Employment entitled: *Equality in Employment* stated that what was happening in Canada to women, native people, disabled persons and visible minorities was not fair. The Report included recommendations to ensure that the vestiges of the past would not continue to have a negative impact on their labour market outcomes. It argued that systemic discrimination

in the workplace required a systemic response to remedy past discrimination in employment and to prevent future barriers.

The Report led to the enactment of the *Employment Equity Act* in 1986 to ensure that no one is denied employment opportunities and benefits for reasons unrelated to ability and systemic barriers faced by designated groups are identified and eliminated. The federal public service was covered by a Treasury Board employment equity policy because it was not covered by the Act at that time.

Approaches to staffing following enactment of the *Employment Equity Act* in 1986

The Commission, chaired by Huguette Labelle (1985-1990), was committed to ensuring that every Canadian was given fair, just and impartial consideration for employment in the public service. The Commission considered this to be not only consistent with the requirements of merit, but that it would ensure that the public service was in touch with the public it serves.⁴³

In 1987, the PSC conducted a review of employment equity programs. One of the findings was that greater progress could be made if the programs were better integrated into regular staffing. The Treasury Board approved the modifications and continuation of the affirmative action programs for the four designated groups. The modifications ensured that the programs would be delivered in a uniform way. The PSC administered the modified programs until 1993.

The PSC's 1987 Annual Report was clear in its messages about special programs in relation to regular staffing, namely that the PSC-administered employment equity programs were other mechanisms to be used to ensure a truly representative public service. They were short-term programs designed to supplement the recruitment of target group members through the regular staffing process. By 1988, there was a shift, with special measures viewed as complementary and playing a key role in addressing the inequitable employment situation.

Besides identifying and eliminating systemic barriers through research, analysis and implementation of specific actions, other approaches used by the PSC to achieve employment equity objectives included: providing advice and assistance through the network of regional coordinators to organizational managers; providing departments and agencies with the flexibility to determine an area of competition policy and the use of selection boards with membership drawn from the designated groups. In addition, the PSC planned to adapt other best practices and strategies acquired from the successful initiatives in boosting women's representation in the management ranks for other designated groups.

At the end of the 1980's, the PSC was studying problems related to hiring and retention of Aboriginal peoples. It had implemented cross-cultural awareness sessions as well as training and orientation for visible minority employees. The PSC Technical Aids Loan Bank for persons with disabilities continued to expand and serve greater numbers of clients and provide more comprehensive advisory services. Overall, there was greater integration into regular staffing and HR practices. For example, target groups were

informed of vacancies, inventories reflected the workforce availability for visible minorities and organizations considered employment equity-group applicants in filling vacancies.

The Public Service Commission and the Beneath the Veneer Report

By 1989, there was a better balance of women in the officer categories, from 20.1% in 1979 to 30.7% in 1989. Similarly, increased representation of women was found in the senior Executive category (from 3.8% to 14.1%) and the Administrative and Foreign Service category (from 25.2% to 40.9%). The 1979 rate of departure for women was 11.9% for indeterminate employees. By 1989, the departure rate for women was 5.0%, compared to 5.1% for men. In 1979, women comprised 39% of the public service and by the end of 1989, they were at 43.6%. Women represented 58% of the support categories. Women also represented 41.9% of indeterminate positions but were over-represented in term employment: 62.3% short-term and 60% long-term employment.

Nevertheless, the representation of women in the public service continued to be a preoccupation. The Task Force on Barriers to Women in the Public Service released its report *Beneath the Veneer* on April 23, 1990. The report pointed out that significant progress had been made in terms of overall participation across occupational groups, including in management positions; however, barriers to career progression for women still existed.

The PSC has a database containing statistical information on women and important insight and analysis was derived from it. The accuracy and use of employment equity data continues to be important to the PSC.

Public Service Commission leadership and accountability

During her tenure, Chairman Huguette Labelle assisted the Clerk of the Privy Council, along with the Secretary of the Treasury Board, in leading the Public Service 2000 (PS2000) initiative. The initial focus of PS2000 was on HR management, resulting in changes to the PSEA and other legislation. Launched in 1989, PS2000 was designed to reduce rules and promote a results-oriented culture in the public service. This was a time of restraint that created challenges in achieving employment equity hiring objectives. The marked increase in the appointment of women to the management category also helped to change the corporate culture of the public service. Chairman Labelle's role in tackling the issue of women in the public service during a period of downsizing, reduced promotion opportunities and possible backlash was praised.⁴⁴

Chairman Labelle also shared PSC employment equity data with the Committee of Senior Officials for its annual performance review of deputy heads. This emphasized that employment equity was a shared responsibility and, as such, the "ownership" of deputy heads and the buy-in of their managers to take action were critical. This is just as important today under the current governance and accountability structure for HR management in the public service.

Conclusion

In the 1980s, equal opportunity programs for Aboriginal peoples, persons with disabilities and women evolved into the voluntary Affirmative Action Program and new initiatives for visible minorities. The Treasury Board and, hence, TBS, began to play a more prominent role in the creation and funding for these programs that were administered by the PSC. The PSC developed several Exclusion Approval Orders to facilitate the hiring of target group members by excluding their appointments from outside the public service from certain provisions in the former PSEA, such as relative merit and the selection standards. The availability estimates, reports and tools developed by the PSC helped departments and agencies implement and monitor the results and successes of their Affirmative Action Programs.

The EEA became law. The Treasury Board issued a *Policy on Employment Equity* that applied to the federal public service and the PSC began to integrate employment equity into its regular staffing, training and development activities.

The research and data analysis on women and other designated groups, conducted by the PSC, contributed to a better understanding of the challenges and barriers faced by members of employment equity groups.

The 1990s

The decade began with a growing awareness that employment equity was a basic component of HR management and, as such, a management responsibility and challenge. In view of this broader approach to employment equity, the PSC began to focus on initiatives to assist managers in achieving an equitable workplace. The PSC placed more emphasis on collecting best practices from other jurisdictions, the private sector and non-government organizations, learning about innovations in diversity, training and cultural awareness, marketing, dissemination and outreach initiatives. The goal was to change the workplace culture, thereby leading to improved recruitment, retention and promotion of target group members.⁴⁵

This was a time of change. Radical restructuring of the workplace, nation-wide strikes, wage and hiring freezes and the largest reductions in the history of the Canadian public service took place. This, recalled by Commissioner Ginette Stewart (1990-2000) as she ended her ten-year term, was the turbulent nineties.⁴⁶

Public Service Reform Act and amending the Employment Equity Act

In the early 1990s, there were changes to legislation making it easier to achieve a representative public service. First, the *Public Service Reform Act* (PSRA) and then subsequent modifications to the PSEA and Regulations, the first in almost 25 years, took place. President Robert Giroux (1990-1994) described the significance:

For the Canadian federal Public Service as a whole and the Public Service Commission in particular, 1992, not unlike 1967, will go down in the annals of public administration as a pivotal year – the year that saw the institutionalization of a new set of reforms to better

equip the Public Service to meet the human resources management challenges now and in the years ahead.⁴⁷

The PSRA had a major impact on employment equity. It enabled the PSEA to better reflect the underlying principles of the *Charter of Rights and Freedoms* with respect to the establishment of programs and special measures to improve conditions of disadvantage for individuals or groups. It transformed employment equity policies in the public service into legislative requirements under the *Financial Administration Act* (section 7) and the PSEA. These were similar to the provisions in the EEA 1986, an Act which would also soon be amended. It also made the TBS responsible for designating employment equity groups in the Federal Public Service and for reporting annually to Parliament on progress made. Statistical data on employment equity were to be collected collaboratively by the PSC and TBS.

In preparation for the first five-year review of the EEA in the House of Commons, Employment and Immigration Canada prepared a discussion paper that reflected the views of stakeholders across the country and the 68 written briefs received. In May 1992, based on the views presented by witnesses and those contained in the briefs, the Parliamentary review committee tabled its report entitled *A Matter of Fairness*. The Committee recommended that the Federal Public Service, the Royal Canadian Mounted Police (RCMP), the Canadian Forces, Parliament and all federal agencies, boards and commissions which were not covered by the 1986 Act, be brought under an amended EEA.

On December 12, 1994, Bill C-64, *An Act Respecting Employment Equity* was introduced into the House of Commons to bring the public service, commissions and agencies and federally-regulated employers under the jurisdiction of a single Act.

The tabling of the Bill to amend the EEA of 1986 fuelled debate and controversy around fairness and merit, central values in staffing the public service. The Bill was leaked before tabling and put issues pertaining to the PSC's mandate in the spotlight: staffing, recruiting, promoting and retaining qualified employees, employment equity programs; a representative public service and how downsizing (priority placement) would affect representation and the merit principle.

The press coverage was largely negative and positioned as affecting "employment transfers, promotions and who gets downsized". An article in the December 7, 1994 *Ottawa Citizen* used terms such as: "unfairness"; "could erode the merit principle"; "employment as a form of reverse discrimination"; "targeting special groups could breed resentment" and "hiring more women and minorities".

When the Bill was, in fact, tabled on December 12, 1994, the media focus was that federal departments and agencies would be forced to hire and promote more women, minorities and persons with disabilities (*Canadian Press*, *Ottawa Citizen*, *La Presse*, and *The Montreal Gazette*).

The PSC, as an independent agency of Parliament, was called on to defend the interests of diversity and merit in the public service in the proposed legislation. For the PSC, there were three core messages:

- Merit is, and remains, the basis of staffing in the public service;
- The federal government's employment equity program is designed to address inequities so we can recruit, promote and retain qualified employees on the basis of merit while striving to achieve a representative workforce; and
- Contrary to some beliefs, employment equity does not mean hiring unqualified designated group members or disadvantaging current employees in the context of downsizing government operations.

This provides an example of the discourse that can surround employment equity and efforts to widen the application of merit in the public service, especially during times of fiscal restraint.

The amended *Employment Equity Act* came into force

The new EEA and Regulations came into force in October 1996. The federal public service became subject to the Act and the CHRC was given the mandate to ensure that employers comply with their obligations. The Act has identified four groups as disadvantaged in employment: women, Aboriginal peoples, persons with disabilities and visible minorities.

Today, the EEA covers private sector employers and Crown corporations with 100 or more employees in the federally-regulated sectors, primarily in the transportation, banking and communications sectors as well as a fourth group of varied employers in areas such as uranium mining, nuclear power generation and grains; the core public administration for which the Treasury Board is the employer, no matter the number of employees; separate agencies and other public sector employers including the Canadian Forces, the RCMP and the Canadian Security Intelligence Service. With respect to the core public administration, the PSC shares employer obligations under the EEA with the Treasury Board, within its mandate and functions under the PSEA.

To implement the EEA, the PSC had to develop the mechanisms to carry out its new responsibilities. Accordingly, the PSC worked jointly with TBS on developing an Employment Systems Review Guide and other tools to help departments and agencies in identifying and removing systemic barriers in employment policies and practices. The PSC also reviewed its own systems, selection and assessment tools to help departments and agencies implement EEA requirements.

In 1996, the report of the Federal Task Force on Disability Issues: *Equal Citizenship for Canadians with Disabilities* made significant recommendations for improvements for persons with disabilities. Although it did not touch on the PSC's mandate, the PSC was able to situate its leading role in technology-assisted devices and Internet accessibility in context. That same year, the Royal Commission on Aboriginal Peoples published its report: *People to People, Nation to Nation*.

In February 1997, the CHRC released its report *Visible Minorities and the Public Service of Canada*, authored by John Samuels and Associates.⁴⁸ The report showed that whereas visible minorities comprised 4.5% of the public service, they comprised 8.8% of the workforce of federally-regulated companies. The report identified systemic discrimination in the hiring of visible minorities and glass ceiling barriers as contributing

to the persistent under-representation and unacceptably slow progress for visible minorities in the public service. Criticisms pertaining to the staffing system included findings of relative inflexibility of public service hiring practices, manipulation of hiring and promotion processes in favour of pre-selected candidates, lack of leadership from upper management and reluctance to recognize foreign credentials.

Tribunal decisions

On March 19, 1997, the Canadian Human Rights Tribunal rendered its decision in the case of the National Capital Alliance on Race Relations and the CHRC versus Her Majesty the Queen, as represented by Health and Welfare Canada, the PSC and the Treasury Board. It was a landmark decision, the first successful human rights case of systemic discrimination in Canada. The Tribunal ordered remedies in the form of permanent and temporary corrective measures to eliminate discriminatory barriers to the full participation of visible minorities in the Executive, senior management and the Administrative and Foreign Service categories in the areas of staffing, assessment, promotion, training and career development.

On June 26, 1998, the Tribunal decision found that Nancy Green, a federal public servant, was discriminated against for promotion because of a learning disability. As part of the remedy, the PSC and TBS were ordered to take measures to ensure that their staff followed federal policies aimed at preventing discrimination and received training on the Duty to Accommodate and non-discriminatory employment practices.⁴⁹

In its 1997-1998 Annual Report, the PSC acknowledged that despite a long-standing commitment to employment equity, there was a striking difference between the labour market availability and the representation of visible minorities and persons with disabilities in the federal public service. Referring to the operational context of legal challenges on employment equity, the PSC stated, "Significant legal judgements contributed to our better understanding of the issues and obligations surrounding the proper advancement of members of visible minorities and the rightful accommodation of persons with disabilities."⁵⁰

The former PSEA (section 5.1) provided the PSC the discretion to approve employment equity programs with special appointment authorities at the request of the Treasury Board or a deputy head. The amended EEA, which came into full force in October 1997, obligated employers, including the PSC, to institute special measures to accelerate the closing of under-representation gaps for employment equity groups.

In 1998, the PSC approved an employment equity program for Health Canada, under the Tribunal Order, so as to facilitate the implementation of corrective measures for visible minorities. At the request of the Treasury Board, an *ad hoc* employment equity program for recruitment was also approved as a transitional measure until the *Public Service Employment Regulations* (PSER) section 4(1) was in effect.

From 1998 to the coming into full force of the PSEA 2003 in 2005, the PSC had approved employment equity programs for over twenty departments and agencies. This requirement for PSC approval of employment equity programs was not retained in the PSEA 2003, giving more flexibility to deputy heads in achieving a representative

workforce. See Annex 1 for relevant excerpts of the former and current PSEA and PSER.

A values-based approach to staffing

The Commission, under President Ruth Hubbard (1994-1999), introduced the values-based approach to staffing that brought a new dimension to achieving employment equity objectives.

In 1996, *A New Framework for Resourcing the Workforce: Report of the Consultative Review of Staffing* proposed a new vision for resourcing public service jobs. Similar to earlier reports, it recommended that the staffing system focus more on judgment, values and ethics and less on prescriptive controls and rules. This led to the establishment of the Values-based Merit Framework and the eventual inclusion of representativeness as a value. In 1997, the values-based *Staffing Reform* provided further impetus for modernizing HR management in the public service, with greater emphasis on maximizing flexibilities within the existing legislative framework.

La Relève

The Clerk of the Privy Council Office sets the corporate priorities for the federal public service. When then-Clerk Jocelyne Bourgon (1994-1999) launched *La Relève* in 1997 to renew and rejuvenate the public service in the wake of years of staff reductions and downsizing, she emphasized that the public service must reflect and embrace different backgrounds, cultures, experiences, interests and styles. Deputy heads endorsed *La Relève* with an action plan that included three pillars: recruitment, employment equity and retention. The objective was to replenish and retain a competent and representative public service with diversity as an overarching priority.

In addition to monitoring the implementation and compliance with the new EEA, the PSC committed to make diversity an integral part of all activities and strategic projects, including *La Relève* and the PSC's Matching People with Work initiative. It viewed employment equity and diversity as key strategic levers and underscored that "true representativeness" meant equitable representation at all levels in the public service, not just overall representation. This meant working to create representative pools from which candidates could be drawn during a selection process.

Special Measures Initiative Program and Special Measures Innovation Fund

Special programs also evolved to reflect the diversity focus. In 1994, the Treasury Board implemented the Special Measures Initiative Program (SMIP) replacing the Special Measures Program (SMP). Greater emphasis was placed on innovation, flexibilities and corporate culture change. This represented a significant shift from the previous SMP by going beyond the idea of simply increasing representation of designated group members through recruitment. The PSC administered the SMIP on behalf of the Treasury Board.

The aim of the four-year program was to collaborate with federal departments and agencies to find new ways to increase the representation of designated group members

in the areas of development, advancement, retention and recruitment. It faced the challenge of creating new ways to change corporate culture in organizations that were not completely receptive to full inclusion of designated group members. Some of the significant achievements of the SMIP were in four areas: partnerships, Internet technology, accessibility and career counselling.

The Special Measures Innovation Fund, one of the major components of the SMIP, provided funding for new and creative organizational initiatives to improve the recruitment, development and retention of designated group members; management of diversity; testing the feasibility and effectiveness of employment equity interventions and diversity training projects in areas such as cross-cultural awareness, race relations and accommodation of differences.

Employment Equity Positive Measures Program

In October 1998, Treasury Board Ministers approved a four-year Employment Equity Positive Measures Program (EEPMP) with an annual budget of up to \$10 million to assist departments and agencies in meeting their legislative obligations and to achieve their employment equity objectives. With the end of the SMIP, the PSC started to implement elements of the new EEPMP on behalf of the Treasury Board. The EEPMP ended on March 31, 2002.

The EEPMP was an important program for building institutional capacity and three of the four program components were implemented by the PSC:

1. The Partnership Fund, supporting projects with a strong regional focus on partnerships between federal and/or non-federal institutions;
2. The Career Development Office, providing advice and services to managers and professionals involved in developing and delivering career counselling services to employment equity group members; and
3. The Enabling Resource Centre for persons with disabilities, providing operational support, equipment loans and accommodation advice to managers, HR practitioners and informatics personnel.

Positioning the Public Service Commission for equity and diversity

Another significant development of the 1990s was the growing recognition of the importance of diversity in the public service in addition to the legislative changes to the PSEA and the EEA. The PSC was optimistic that a workforce where diversity was the accepted norm could be achieved through an approach that entailed the following key elements: fostering a culture that valued diversity, managers who are skilled at managing a diverse workforce and the use of objective assessment tools leading to increased availability of qualified candidates. In the PSC's view, the arguments for the acceptance and appreciation of diversity in the workplace had never been stronger.⁵¹

In 1998, the PSC merged the former Diversity Management Directorate and the Learning and Diversity Directorate to form the Equity and Diversity Directorate. This was important in view of the "horizontal" nature of equity and diversity issues which necessitated the creation of an organizational unit with both the capacity to develop analytical

perspectives on a breadth of interrelated issues and to "drill" these down to operational strategies. The Directorate acted as the centre of expertise in matters concerning equity and diversity at headquarters, supporting both corporate initiatives and discrete activities carried out by headquarters directorates and PSC regions.

Besides the management and delivery of elements of the Treasury Board positive measures programs, the Directorate was also responsible for:

- Policy research, analysis and development on current and emerging issues resulting from shifts in government policy drivers and workforce trends;
- Management of relationships with clients and key stakeholders;
- Policy direction to assist in framing and interpreting employment equity and diversity-related data issues;
- Development of innovative programs, services, instruments and practices; and
- Organizational learning for the PSC and departments/agencies by acting as a repository of best practices in employment equity and diversity within the federal public service, other public service jurisdictions and the private sector.

Conclusion

In the 1990s, the federal public service was brought under the coverage of the amended EEA. The PSC and the Treasury Board were named co-employers in the Act. The temporary programs for targeted employment equity groups and special measures continued with project funding from the Treasury Board. At the same time, the PSC, in conjunction with TBS, had to address the new challenges presented by the Tribunal decisions on the advancement of visible minorities and the accommodation of persons with disabilities in the federal public service.

Canada's employment equity framework has a solid international reputation. Several countries have used it as a model. One of the interesting developments during the tenure of President Robert Giroux was the global reach of the PSC's experience with employment equity in the public service. David J. Holdsworth, in *Sharing the Merit Principle: The Public Service Commission of Canada Abroad*,⁵² describes the role of Robert Giroux in the genesis of the South Africa Civil Service Policy project, part of an initiative to build capacity in South Africa. In defining the elements of a good public service, South African experts included developing a broadly representative public service as one of their six action plans. The South Africans were particularly interested in Canada's experience with a merit-based public service and in its approaches to employment equity and diversity.

The PSC also led by example in demonstrating its commitment to diversity in the leadership ranks of the public service. The Commissioners who served during the tenure of Robert Giroux and Scott Serson (1999-2003) reflected the increasing diversity of the Canadian population.

Looking to the new millennium

The Speech from the Throne sets out the government's commitment and priorities at the opening of Parliament. Setting the stage for the 21st century, the 1999 Speech from the Throne reflected the government's commitment to focus on recruitment, retention and continuous learning to ensure the public service of Canada remained a strong, representative, professional and non-partisan national institution providing Canadians with the highest possible quality service in the new millennium.

In March 1999, as part of the overall effort to address issues related to a representative public service, the President of the Treasury Board announced the creation of a task force on the participation of visible minorities in the federal public service. A new Commission, under President Scott Serson, was poised to implement the Values-based Merit Framework, which included representativeness as a value.

The 2000s

A new era dawned with a new focus on globalization and a growing awareness of the importance of diversity as a strategic lever. There is no question that the dominant issue with regard to achieving a representative public service was reducing or closing the gap in the under-representation of visible minorities in the public service, one that had widened as the population became more diverse. Values became increasingly prominent as a mode of balancing increased delegated staffing and accountability.

In 2000, the Commission approved the implementation of an employment equity component to the CAP. The first campaign was aimed at Aboriginal peoples. In 2001, approval to expand the employment equity component to include members of visible minorities (selection process held in 2001-2002) and persons with disabilities (process launched in 2003-2004).

Embracing Change Action Plan

The Task Force on the Participation of Visible Minorities in the Federal Public Service, chaired by Lewis Perinbam, released its report *Embracing Change* in March 2000, signalling an "urgent imperative to shape a federal public service that is representative of its citizenry."⁵³

The Embracing Change Action Plan contained in the Report was adopted by the Government of Canada in 2000, together with three-year funding for its implementation. One-in-five benchmarks for external recruitment, entry into the Executive category and feeder groups and development programs were set up to address the under-representation of visible minorities in the public service. The Report also called for a sharing of experience, changes to the corporate culture of the public service and accountability for results. The PSC had assisted the task force in the development of their action plan by providing forecasting and demographic research services.

In his Eighth Annual Report to the Prime Minister on the public service, the Clerk of the Privy Council, Mel Cappe (1999-2002), encouraged managers to act on the

recommendations of the Task Force on the Participation of Visible Minorities in the Federal Public Service and of the Smith Task Force on an Inclusive Public Service.⁵⁴ This meant that managers had to meet or exceed the benchmarks on hiring visible minorities into the public service.

By the end of 2003-2004, the PSC had contributed to the recruitment of more than 3 000 visible minorities, although the one-in-five benchmarks had not been met. At that time, 10.5% of indeterminate appointments and specified period appointments greater than three months were members of visible minorities. Progress toward the achievement of this benchmark was slow, ranging from an appointment rate of 5.7% to 7.3% yearly. In 2003-2004, the TBS reported that the number of visible minority Executives more than doubled from 103 in 2000 to 208 in 2004.

In the CAP, visible minority participation surpassed 30% and in the Advanced Executive Development Program for high potential Executives, the participation of visible minorities was over 20%.

In a report commissioned by TBS on an independent three-year review of the implementation of the Embracing Change Action Plan, it was found that there was limited flexibility of the PSEA for targeting recruitment to visible minorities, an area that was expected to be rectified with the new flexibilities in the PSEA 2003, including the new definition of merit. The report recommended that the focus be on the recruitment of visible minorities into the Executive cadre.

Task Force on Modernizing Human Resources Management

On April 3, 2001, the Prime Minister appointed Deputy Minister Ranald A. Quail to head the Task Force on Modernizing Human Resources Management, which was established to develop recommendations for modern policy, legislative and institutional frameworks to enable the public service to attract, retain and develop the talent needed to serve Canadians.

Bill C-25, *Public Service Modernization Act* (PSMA), with proposals for modernizing the legislative framework for public service HR management, was passed in the House and the Senate and subsequently received Royal Assent on November 7, 2003. The PSMA has changed the way staffing and recruitment was carried out in the public service and re-defined the role of the PSC. This is discussed in detail in Section 3 of the paper.

Merit and representativeness – a Public Service Commission statement

A major focus of the PSC under President Scott Serson was values-based staffing and the creation of the Values-based Merit Framework as a foundation for strengthening merit. Representativeness was identified as one of the values.

Merit and representativeness are key values underpinning both the PSEA and the EEA. When the PSC adopted a values-based approach to staffing, a key assumption was that if people understood the values they would hold a powerful tool to make decisions appropriate to the circumstances and could achieve results.

Managers were in the situation of having flexibility placed in their hands so they could achieve business results, but at the same time had to respect the values. Focus groups conducted in 2000 revealed that managers wanted to master what the values meant so they that they and their HR advisors could learn from them.⁵⁵

Moreover, there has always been an underlying misconception that employment equity and representativeness did not equate to merit. Given the growing importance of a diverse workforce and the challenges associated with achieving the objectives, in 2002, the PSC issued a statement: *Merit - A Competent, Non-partisan and Representative Public Service*⁵⁶ to clarify the concept of merit and how it was to be applied to achieve representativeness.

Duty to Accommodate

In 2002, the Treasury Board and the PSC issued a joint policy on the *Duty to Accommodate Persons with Disabilities in the Federal Public Service*⁵⁷ with the objective of eliminating barriers that prevent the full participation of potential recruits and existing employees in the Federal Public Service and to ensure that the needs of persons with disabilities are taken into consideration when designing new programs, technological applications or physical environments.

In 2002, the PSC published *Guidelines for Fair Assessment in a Diverse Workplace: Removing Barriers to Members of Visible Minorities and Aboriginal Peoples*⁵⁸ and *Guide for Assessing Persons with Disabilities in the Appointment Process*⁵⁹ with the principles for fair assessment of candidates and information on how these principles could be implemented to create barrier-free practices.

Employment Equity Mainstreaming Initiative

In April 2002, the PSC received two-year funding for the Employment Equity Mainstreaming Initiative (EEMI) so that it could: (a) integrate employment equity more fully into its own staffing and recruitment practices and (b) help departments and agencies achieve representativeness. The primary focus of EEMI was on recruitment, with an emphasis on helping organizations become more representative of the population they serve and raising awareness of merit, diversity and employment equity in the public service.

In the two-year period, the PSC was able to show that employment equity activities could be planned, mainstreamed and integrated into its staffing and recruitment business operations by implementing barrier removal strategies and positive measures in accordance with the PSEA and the EEA.

Framework for employment equity programs

The former PSEA provided the PSC with the discretion to approve employment equity programs at the request of the Treasury Board or a deputy head and to carry out its own activities, including the implementation of programs to reduce or eliminate under-representation gaps of employment equity groups in the public service.

In preparation for increased delegation of appointment authorities and changes to the PSEA, the PSC developed tools to support organizations' transition to a new regime. In May 2004, the PSC implemented the Framework for Employment Equity Programs. Under the PSEA 2003, organizations are not required to have their employment equity recruitment or staffing programs approved by the PSC.

Organizations could use the PSC employment equity Framework as a model for designing and establishing their own employment equity plans, policies and programs to reduce their under-representation gaps and contribute to the government's commitment to achieving a non-partisan, competent and representative public service. Designed to increase flexibility for employment equity while encouraging good HR planning, the Framework was built on a set of guiding principles and methodologies for determining under-representation gaps which are still relevant today within the context of "special programs" under the *Canadian Human Rights Act* or "positive policies and practices" under the EEA.

External Advisory Group on Embracing Change

The PSC, along with the Government, established the External Advisory Group on Embracing Change, whose members represented various professions and were from diverse backgrounds. The group provided advice on strategies to foster a representative and inclusive workplace and on the effectiveness of strategies to increase the numbers of visible minorities recruited. This group presented deputy ministers with their collective views on the importance of an overarching vision for diversity in the public service and better service to Canadians. They also put forth an overall diversity framework for implementation in departments and central agencies. The key areas of focus were organizational culture, leadership, accountability, employment systems, performance measures and communication support.

Renewed focus on diversity

In tandem with the Embracing Change initiative, the government articulated a position on diversity as a driver of a twenty-first century globalized economy. Through a series of Speeches from the Throne in the 2000s, the importance of a public service distinguished by excellence and reflective of the diversity of the country was underscored. The role of a representative public service was part of the equation and competence, non-partisanship and representativeness were seen as hallmarks of Canada's public service.

Beyond that, the aim was to establish Canada's unique advantage in a globalized world where being a magnet for immigrants from every corner of the globe was one of its greatest assets. To leverage the immigration advantage, the government committed to work with its partners to break down barriers with the expectation that skilled workers and talented foreign students would choose to participate in the envisioned Canada. The importance of diversity as a government priority was further underscored, first in 2003 and again in 2005, with the appointment of Senior Advisors on Diversity to advise the Clerk of the Privy Council on this increasingly significant file. In 2005-2006, the PSC collaborated with the Senior Advisor on a pilot project on a national mentoring initiative for visible minorities and Aboriginal peoples by matching mentees with mentors.

Conclusion: Lessons learned from the past

From the 1960s to 2005, the PSC has continued to adapt to a changing environment and attitudes. It has played a lead role in improving access to federal public service jobs for all Canadians. It did so within an increasingly enabling legislative framework and a government agenda that situated representativeness and diversity as priorities as highlighted in the Speeches from the Throne and direction from the Clerks of the Privy Council.

Temporary special recruitment and training programs for each employment equity group continued in various forms and under different names, from equal opportunity (1960s and 1970s), voluntary affirmative action (1980s) and employment equity (1990s) to broader programs funded by the Treasury Board (late 1990s and early 2000s). These programs often resulted in short-term successes that did not go beyond the funding for the initiative. It also became clear to the Government that stronger legislative measures (amended EEA 1996) were needed to ensure equitable employment opportunities to historically excluded groups. In the 2000s, mainstreaming or integration of employment equity into the HR management functions was considered a more sustainable approach. The current PSEA 2003 provides for greater flexibility in achieving employment equity objectives through recruitment and staffing (for details, see section 3). As well, employment equity programs or plans are now largely associated with integrated business and HR planning in individual departments and agencies.

From what we have learned in the past decades, it is evident that leadership and personal commitment at the top level were key ingredients in moving the representativeness agenda forward. With the high bar for personal commitment set by Chairman John Carson, his successors continued under their personal leadership, for example, as demonstrated by: Edgar Gallant during the United Nations Decade for Women (1975 -1986); Huguette Labelle's efforts in helping women break through the glass ceiling; Ruth Hubbard in the implementation of the EEA and Scott Serson in establishing representativeness as a value under the values-based merit framework. The efforts made under current President Maria Barrados in the implementation of the PSEA 2003 with integrated policy, delegation and accountability frameworks are discussed in the next section.

Some of the former Presidents and Commissioners who were interviewed also pointed out the importance of having a representative Commission to demonstrate leadership and exemplify behaviours expected of others.

The importance of setting goals to reduce the gaps in under-representation of designated groups and the setting of benchmarks for recruitment and promotion of visible minorities was recognized by the Government. This approach continues today with the targets for the recruitment and promotion of employment equity groups as part of the action plan under the Public Service Renewal initiative led by the Clerk of the Privy Council. The achievement of results is also linked to the annual performance assessment of deputy heads by the Committee of Senior Officials.

Throughout the decades, the PSC's approach to employment equity has evolved from implementing temporary special and affirmative action programs to integrating

employment equity objectives and strategies into its regular recruitment and staffing activities. Although the concept of merit has evolved over time, what has remained unchanged is the merit principle that the person to be appointed must be qualified, regardless of whether the individual belongs to an employment equity group or not.

Working with partners and stakeholders

Another important lesson learned is that the PSC has to work in partnership or collaboration with all players in public service HR management: departments and agencies, central agencies, employee representatives, employment equity groups and public service employees to build a representative public service. Over the past decades, the PSC has renewed its efforts to engage in a robust dialogue with Parliamentarians. Committee appearances and face-to-face meetings provided opportunities to address issues of interests and concern, including employment equity.

The PSC has been called upon on many occasions to appear before the Senate Standing Committee on Human Rights and the House of Commons Standing Committee on Government Operations and Estimates to provide evidence on how it has managed its responsibility for employment equity.

Mechanisms have been put in place to ensure that interested stakeholders can come together as partners in achieving employment equity objectives. The Federal Public Service, including the PSC, has been supporting the National Council of Visible Minorities, the National Council of Federal Employees with Disabilities and the National Council of Aboriginal Federal Employees. The Councils play a role in identifying issues that affect their constituents and in providing advice to the federal government on the development and implementation of employment equity programs and policies. The Councils advocate for and provide advice on the resolution of employment equity issues, both at the departmental or agency level and government-wide. The governance model for the employee councils is under review by the Office of the Chief Human Resources Officer (OCHRO) at TBS.

The Interdepartmental Network (formerly Forum) on Employment Equity is a community of HR professionals and key stakeholders working in employment equity. It provides a venue for the exchange of ideas and practices as well as networking opportunities to enable the achievement of employment equity goals and an inclusive public service. The PSC regularly consults with its members, shares information and discusses issues with them.

The Joint Employment Equity Committee, under the National Joint Council, has been serving as a forum for OCHRO, PSC, departments/agencies and bargaining agents to consult and collaborate on the development, implementation and revision of public service-wide policies and practices affecting the designated groups.

Although the governance structure and membership on the various committees, councils and networks have changed over time, the PSC has continued to maintain a positive working relationship with the key stakeholder groups on employment equity.

3. The *Public Service Employment Act* 2003 and Employment Equity

The Public Service Commission (PSC), led by President Maria Barrados (2003 -2011) and Commissioners David Zussman (2004 -2011) and Manon Vennat (2004 -2011), was instrumental in putting in place a new staffing regime under the new *Public Service Employment Act* (PSEA) of 2003.

President Barrados, setting the stage for equity and diversity and reflecting on the application of Porter's *Vertical Mosaic* in everyday life, asked during her address at the Annual John Porter Memorial Lecture in March 2004:

Obviously, in its protection of merit in public service hiring and promotion, the PSC faces many of the same theoretical debates and questions that John explored in his research. How, for example, do you move toward real social equality and make government systems truly open? How do you make the federal public service fair and representative in light of various pressures?⁶⁰

The following section describes some of the initiatives the PSC has put in place as it prepared to support deputy heads and line managers in discharging their responsibilities under the PSEA 2003. Under the new regime, the ownership and responsibility for employment equity in departments and agencies in fulfilling the obligations of the *Employment Equity Act* (EEA) and related government objectives are delegated to deputy heads and their sub-delegated managers.

New legislation and changes in the Public Service Commission's role

In November of 2003, Parliament adopted the *Public Service Modernization Act* (PSMA) which is designed to: facilitate hiring the right people when and where they are needed, promote more collaborative labour-management relations, focus on learning and training for public service employees at all levels and clarify roles and accountabilities.

Incorporated in the PSMA is the PSEA 2003 which divested the PSC of its responsibilities for professional training and some aspects of recourse. As a result, Training and Development Canada and Language Training Canada were moved from the PSC to the Canada School of Public Service. As well, development programs, including the Management Trainee Program, Career Assignment Program, Accelerated Economist Training Program, Accelerated Executive Development Program, Assistant Deputy Minister Pre-qualified Pool and Interchange Canada were transferred to the former Public Service Human Resources Management Agency of Canada, which was replaced in 2009 by the Office of the Chief Human Resources Officer (OCHRO) at the Treasury Board of Canada Secretariat (TBS).

With the creation of the new Public Service Staffing Tribunal to receive and decide on complaints arising from an organization's internal staffing processes, the PSC is no longer responsible for the appeals function but retains its investigation function, as specified in the PSEA 2003.

Although the PSEA 2003 has provided a new legislative framework and instruments, like the old PSEA, its objective is to ensure that Canadians are served by a professional, competent, non-partisan and representative public service, able to serve the public in the official language of their choice. Appointments will continue to be based on merit and non-partisanship, as well as the values of fairness, equity of access, transparency and representativeness. Managers are expected to have a timely, efficient and flexible staffing system to better meet their business objectives. Employees' competencies will be strengthened through continuous learning and development.

Under the PSEA 2003, the PSC:

- Continues to have exclusive authority to make appointments to and within the public service;
- Is encouraged to delegate to deputy/agency heads who are accountable for the exercise of their delegated appointment authorities; and
- Remains accountable to Parliament for the overall integrity of appointments in the public service.

Public Service Employment Act 2003 and employment equity

The PSEA 2003 identifies representativeness and diversity as being integral to the composition of the public service. In its preamble, it refers to Canada gaining from a public service that is representative of Canada's diversity, whose members are drawn from across the country, reflecting a myriad of backgrounds, skills and professions.

Area of selection

The PSEA 2003 provides deputy heads with new flexibilities to promote employment equity. It enables the establishment of areas of selection that are open only to members of one or more designated groups under the EEA. This is an improvement over the previous system which required PSC approval for the business case before an area of selection for an appointment process could be limited to one or more employment equity groups. In accordance with the PSC's *Policy on Employment Equity in the Appointment Process*, use of this provision must be consistent with the organization's employment equity or human resources (HR) plan.

The PSEA 2003 also enables members of an employment equity group to be added to an area of selection. This means that geographic, organizational or occupational criteria can be expanded to provide for greater participation of employment equity group members in an appointment process.

Merit criteria - organizational need

The PSEA 2003 also provides new opportunities to promote employment equity through the definition of merit, a new feature in the Act. It allows the deputy head or sub-delegated hiring manager to establish and apply any organizational need, currently or in the future, in the screening and selection of candidates. The deputy or sub-delegated manager may also apply the current and future needs of the public service as a whole,

as identified by the employer. This means that deputy heads can identify, as an organizational need, employment equity objectives in their employment equity or HR plans and then apply this organizational need at any stage of the appointment process.

Consistent with the integrated approach adopted by the PSC, employment equity has been built into the policy development process, from the planning to the promulgation of the new appointment framework.

To guide deputy heads in building their own staffing systems adapted to their needs and in ensuring that they respect legislative requirements and the core values, the PSC has developed an appointment framework⁶¹ with three components: appointment policies, delegation and accountability.

Furthermore, with the strengthened oversight role, employment equity issues and questions, as appropriate, are built into the audit plan as the PSC assesses the effectiveness of approaches and activities in staffing that could impact on the representativeness of the public service.

The Public Service Commission's integrated approach to employment equity

The PSEA 2003 does not change the employer's accountability for achieving representativeness in the public service, nor the PSC's accountability for making continued progress towards a bias-free and barrier-free staffing regime. The EEA continues to provide primary legislative direction and authority to the PSC, the Treasury Board and departments and agencies on their respective obligations regarding employment equity.

The PSC carries out its mandate for oversight of merit by administering the PSEA and certain provisions of the EEA. The changes to the PSEA also brought a renewed direction on an integrated approach to employment equity, as articulated by President Maria Barrados:

My approach to employment equity is that it must be integrated into our everyday business, starting with our plans and priorities. It cannot be treated as an add-on or an after-thought.⁶²

The PSC's integrated approach to employment equity, outlined below, was accordingly adopted by the Commission in 2004 and remains in effect today:

- Put employment equity at the front end of the process, through planning and integration;
- Take employment equity into consideration in all business lines and functions;
- Develop and review the policy framework for appointments, including policies related to employment equity;
- Build employment equity issues and questions into the PSC Audit Plan, as appropriate; and

- Collaborate closely with OCHRO, the Canadian Human Rights Commission, departments, agencies and stakeholders.

Review of the *Employment Equity Act*

Section 44(1) of the EEA requires a comprehensive review of the Act every five years. In December 2006, the House of Commons passed a motion asking the Standing Committee on Human Resources, Social Development and the Status of Persons with Disabilities to conduct such a review. In response to a request from the Deputy Minister of Labour, the PSC provided a status report on its achievements in the implementation of employment equity in the federal public service since the last EEA review, and how employment equity was incorporated in the implementation of the PSEA 2003.

In February 2007, the PSC highlighted its views and concerns on a number of issues having an impact on the operations and effectiveness of the EEA in a Consultation Document which served as the basis for discussions with key stakeholders on employment equity in the public service appointment system.⁶³

The PSC believes that the EEA, as structured, provides a reasonable framework for the Commission to carry out its mandate under the PSEA. Should any changes be required, they may be examined or addressed within the scope of the next five-year review of the EEA.

Support to departments and agencies on employment equity

The following provides a summary of employment equity policy guidance and support provided by the PSC to departments and agencies under the PSEA 2003.

Policies and guidance

With the PSEA 2003 coming into full force on December 31, 2005, the PSC developed and established an appointment framework which included a Staffing Management Accountability Framework, an Appointment Delegation and Accountability Instrument and a suite of policies to help departments and agencies to apply the new provisions in the PSEA. An overarching policy on employment equity⁶⁴ and a guide⁶⁵ on how to integrate employment equity into the appointment process were also released to assist departments and agencies.

The Duty to Accommodate requirements pertaining to staffing was integrated into the PSC Appointment Framework, policies, guides and tools under the PSEA 2003. The *PSC Guidelines for Assessing Persons with Disabilities*⁶⁶ were also revised.

In March 2008, to provide additional support to organizations, the PSC released the statement: *Merit - Achieving Representativeness*⁶⁷ to reaffirm the link between merit and representativeness under the PSEA 2003 and the EEA, together with a new tool: *Increasing Representativeness in the Public Service*⁶⁸ to provide practical advice for deputy heads, managers and HR professionals to assist them in achieving a representative workforce.

In January 2010, to address the concerns raised by federal Aboriginal employees, the PSC implemented a government-wide approach to affirm Aboriginal affiliation⁶⁹ as a means of deterring false Aboriginal declaration, which included the mandatory use of the Affirmation of Aboriginal Affiliation Form for appointment processes targeted to Aboriginal peoples.

In May 2010, the PSC and OCHRO issued a joint Letter to Heads of Human Resources on: *Using Self-declaration Information for Self-identification*⁷⁰ in order to obtain more accurate employment equity data and reduce reporting burdens. To address the needs of departments and agencies, further guidance was provided in the *Explanatory Notes on Employment Equity Self-declaration in the Appointment Process*.⁷¹

In November 2010, the President of the PSC issued a Statement on employment equity⁷² to clarify and confirm that the PSEA sets the framework for staffing in the Federal Public Service. It specifically provides for limiting the area of selection to employment equity groups where there are identified current and future under-representation gaps.

Research and studies

In December 2006, the PSC released a report entitled *Drop-off Rates for Employment Equity Groups: Automated Screening Reports & Appointments 2000-2005*⁷³ which showed that there was a significant drop-off based on applications for members of visible minorities but no drop-off was observed for the other employment equity groups.

In 2009, the PSC published the report: *Drop-off of employment equity groups in recruitment*⁷⁴ which concluded that drop-off was observed under the PSEA 2003 for visible minorities mainly at two stages in the recruitment process: when organizations determined who should be retained for further processing, based on their review of applications, and when determining which applicants were to be interviewed after the testing stage.

Visible minority Executive pre-qualified pools

The Executive (EX) cadre provides the leadership and role models that are important to effect the necessary changes in corporate culture in departments and agencies. In 2007, the PSC led a government-wide effort to increase the representation of visible minorities in the EX Group by conducting an external recruitment process which established a pool of 41 pre-qualified candidates at the EX-1 level and resulted in 27 appointments. A second external process was conducted in 2008, resulting in a pool of 30 pre-qualified candidates, with 17 appointments by departments and agencies.

Aboriginal Centre of Excellence

The PSC created in 2007 an Aboriginal Centre of Excellence in Winnipeg which offers advice and specialized services to departments and agencies in recruiting Aboriginal persons into the public service.

Public Service Renewal Action Plan

Since 2007-2008, the PSC has been supporting departments and agencies in implementing the Clerk of the Privy Council's Public Service Renewal Action Plan. The Action Plans have identified recruitment as a priority and the need for deputy heads to ensure that the public service can hire its share of the most qualified graduates in all fields, reflecting Canada's diversity.

The PSC supported departments and agencies in implementing the 2008-2009 Public Service Renewal Action Plan⁷⁵ which called on deputy heads to make offers to at least 4 000 post-secondary graduates for indeterminate positions and to accelerate closing the representation gap of visible minority Canadians in the public service.

In 2009, the PSC reported on the recruitment rates for three employment equity groups (except women) using self-declared employment equity information from its e-recruitment system, while continuing to collaborate with OCHRO to arrive at a common methodology on measuring and reporting on employment equity appointment and workforce representation rates. The annual recruitment rates for the employment equity groups, as reported by the PSC, have been used by the Clerk of the Privy Council in his *Annual Reports to the Prime Minister on the Public Service of Canada*.⁷⁶ The PSC results show that the recruitment of visible minorities into the public service has been above their workforce availability and steadily increasing since 2006-2007 (see Table 1 in Section 4 for details).

Conclusion

Building on the groundwork of previous Commissions, the PSC has been successful in developing and implementing a new appointment framework under PSEA 2003 that has integrated the requirements of the EEA. As shown in the past decades, leadership and commitment from the top were key ingredients to success.

The merit principle that the person to be appointed must be qualified, whether or not the individual belongs to an employment equity group, has remained unchanged. The area of selection and the definition and application of merit under PSEA 2003 provide new flexibilities to departments and agencies for achieving a representative public service.

The PSC's use of an evidence-based research and analysis approach has generated new information and insight into complex issues such as the drop-off of visible minorities in recruitment and the appointment rates of employment equity groups in external advertised processes. The recruitment objectives for employment equity groups in the Clerk's annual Public Service Renewal Action Plans have also contributed to the progress made towards a representative public service.

The integrated approach to employment equity is a work in progress and there are opportunities for continuous improvement. Implementation of this approach requires conscious effort and periodic reviews to ensure that employment equity is taken into consideration in the planning and implementation of all PSC business lines.

4. Progress made and the way forward

This section examines the progress made in the recruitment of the four employment equity (employment equity) groups: Aboriginal peoples, persons with disabilities, visible minorities and women into the public service under the *Public Service Employment Act* (PSEA) of 2003. The key issues on employment equity that the Public Service Commission (PSC) is currently dealing with are discussed, together with proposed directions for the future.

An assessment of the progress made

New method for calculating recruitment rates

The PSC has historically calculated employment equity appointment rates by reconciling the appointment information with data from the Employment Equity Data Bank (EEDB) provided by the office of the Chief Human Resources Officer (OCHRO), Treasury Board of Canada Secretariat (TBS).

The EEDB is based on data collected by federal organizations through the voluntary employee self-identification process and is submitted at least annually to OCHRO.

In its 2007-2008 Annual Report, the PSC reported that “changes to the PSC’s database of applicant information have provided further information that suggests that the appointments of visible minorities to the public service may have been underestimated”.⁷⁷ As a result, the number and percentage of visible minority group members appointed in 2007-2008 were not included in the report.

Since then, the PSC has been working with the former Canada Public Service Agency, now OCHRO, the Privy Council Office, the Canadian Human Rights Commission, Human Resources and Skill Development Canada – Labour and Statistics Canada to address this important issue.

With the launch and full implementation of its electronic recruitment system in 2006, the PSC was able to use a new methodology to calculate the recruitment rates of Aboriginal peoples, persons with disabilities and visible minorities to the federal public service based on the “self-declaration”⁷⁸ by applicants rather than the historical method of “self-identification”⁷⁹ by employees.

The methodology involves the matching of self-declaration data obtained from the PSC Public Service Resourcing System⁸⁰ with the appointment data in the Job-based Analytical Information System⁸¹ in order to calculate the recruitment rates from advertised processes for the three designated groups. The recruitment rates for women are obtained from the pay system, as before.

Table 1 shows that the recruitment rates for three of the employment equity groups: Aboriginal peoples, visible minorities and women, have been above their respective

workforce availability (WFA) for the last four fiscal years. However, for persons with disabilities, their recruitment rates have been below the WFA during the same period.

Table 1: Percentage of appointments to indeterminate positions and specified terms of three months and over in the public service by employment equity group and fiscal year, compared to the 2006 WFA

Employment Equity Group	2006-2007 %	2007-2008 %	2008-2009 %	2009-2010 %	2006 WFA %
Aboriginal peoples	4.2	4.4	4.2	4.6	3.0
Persons with disabilities	3.9	3.3	3.3	3.1	4.0
Visible minorities	15.6	17.3	18.8	21.2	12.4
Women (from pay system)	55.6	58.0	57.1	55.5	52.3

Source: *PSC 2008-2009 and 2009-2010 Annual Report*

Aboriginal peoples

The recruitment of Aboriginal peoples in the public service over the last few years (Table 1) surpasses their WFA. About 41.7% of them work in three organizations: Indian and Northern Affairs Canada (INAC), Correctional Service Canada and Human Resources and Skills Development Canada.⁸² INAC has a 50% Aboriginal Hiring Policy⁸³ associated with its unique mandate and an agreement with the Assembly of Manitoba Chiefs.

According to a 2008 Statistics Canada report entitled: *Aboriginal peoples in Canada: Inuit, Métis and First Nations, 2006 Census*, the trend is towards a younger Aboriginal population, with the working-age group continuing to increase over the next decade. Hence, their WFA which has been on the rise since 1996. Eight out of every ten Aboriginal peoples live in Ontario or the western provinces, where there will be the largest increase in the Aboriginal population over the next decade.

Persons with disabilities

The recruitment rates of persons with disabilities into the public service have decreased from 3.9% to 3.1% in the last four fiscal years (Table 1). Similarly, their applicant rates have been around 3%,⁸⁴ both of which are under their WFA of 4.0%. Fifty-one percent of this group is over 50 years of age and their separation rate is at 7.7%.⁸⁵

The PSC is concerned that their low recruitment rate, age and high separation rates in the public service could lead to an under-representation situation over time. We are currently examining how we can attract more persons with disabilities to apply for public service jobs and working with departments and agencies to identify and implement more effective outreach and recruitment strategies.

Visible minorities

The recruitment rates of visible minorities have been increasing steadily from 15.6% in 2006-2007 to 21.2% in 2009-2010, above their WFA of 12.4% (Table 1).

Statistics Canada projects that visible minorities will be about one-third of the Canadian population in 2031, nearly doubling the proportion reported by the 2006 Census.⁸⁶ Keeping the momentum going on the recruitment and retention of visible minorities and providing equal opportunities for career advancement are important in order to achieve a representative public service.

Women

Women have been recruited into the public service at rates above their WFA for the last four fiscal years (Table 1).

Key issues and future direction

Employment equity statistical data

Quantitative and qualitative data are essential to measuring progress in employment equity. While the Treasury Board is responsible for reporting on the representation of the designated groups in the public service, the PSC is responsible for their rates of appointment to and within the public service.

Starting in 2008-2009, in its Annual Reports to Parliament, the PSC has published both the applicant and recruitment rates for Aboriginal peoples, persons with disabilities and visible minorities to the public service using the new methodology. It was noted that there were significant differences in external appointment rates for visible minorities between the new method using the Public Service Resourcing System and the traditional method of using the EEDB.

This led to a review of organizational systems, approaches and practices for gathering employment equity self-identification data in 2009 to determine the causes for the discrepancy. Based on the results of the review, the PSC and OCHRO issued a joint Letter to Heads of Human Resources in May 2010 clarifying that departments and agencies can use applicant self-declaration information as self-identification information by persons who are their employees, provided that the applicants' prior consent has been obtained. In November 2010, to respond to enquiries received from organizations, the PSC issued additional explanatory notes on employment equity self-declaration in the appointment process.

The PSC and OCHRO will continue to monitor the results and work towards a common long-term methodology for calculating and reporting employment equity appointment and representation rates.

Understanding merit and representativeness

Merit and representativeness are cornerstones of the PSEA and the EEA. One of the continuing challenges for the PSC is to ensure that public servants, as well as stakeholders and the wider public, understand the relationship between both of these values.

PSEA 2003 defines merit for the first time and includes provisions to assist departments and agencies to increase the representativeness of the federal public service. Merit requires that the person to be appointed meets the essential qualifications of the position, including official language proficiency, and can take into account:

- Qualifications that are considered an asset for the work, currently or in the future;
- Current and future operational requirements; and
- Current and future needs of the organization or of the public service as a whole, which could include employment equity objectives.

Although there appears to be a widespread acceptance of the goal of achieving a representative public service, the concept of merit and how it is applied to achieve representativeness is not always understood, particularly among hiring managers, employees and designated group members. In March 2008, to provide additional support to organizations, the PSC updated and released the renamed 2002 Statement: *Merit - Achieving Representativeness* to reaffirm the link between merit and representativeness under the PSEA 2003 and the EEA. A new tool: *Increasing Representativeness in the Public Service* was released at the same time to provide practical advice for deputy heads, managers and HR professionals to assist them in achieving a representative workforce.

In 2010, the media attention given to an advertised process restricted to one or more employment equity groups has again sparked up a public debate on fair hiring practices in the public service. To clarify the issue, President Maria Barrados consequently issued a statement to reiterate the PSC's position on employment equity hiring.

The PSC will continue to work on clarifying merit and representativeness to ensure that all departments and agencies do their part to achieve representativeness and that the public has a better understanding of the interrelationship of merit, representativeness and the other appointment values.

Drop-off of designated groups in recruitment

The term "drop-off" is used to explain the decline between the share of applicants or applications and the share of appointments for a particular employment equity group. A high drop-off for employment equity groups is an important issue as it impacts on the federal government's ability to achieve a public service that reflects the diversity of the Canadian society.

In 2006, the PSC released a study on the drop-off of employment equity groups through the PSC General Recruitment Process from fiscal years 2000-2001 to 2004-2005.

Among all applicants, visible minorities were the most educated. The study, which used a methodology based on applications, confirmed that under the former PSEA, the drop-off for visible minorities was significant (25.7% applications versus 10.5% appointments, that is, a drop-off of 15.2% points) and observed in various degrees across occupational groups, regions and organizations. It also found that there was no overall drop-off for Aboriginal peoples, women and persons with disabilities.

In 2009, the PSC released the final report on a study to determine, if under the PSEA 2003, applicants who voluntarily provided their self-declaration employment equity information were eliminated at a greater rate than other applicants and, if so, at what stages of the recruitment process. The study, which used a methodology based on unique applicants, found that persons with disabilities and visible minorities reported applying to more advertisements per person (13 and 14 applications per applicant, respectively) compared to the reference group (8 applications per applicant). The drop-off observed for visible minorities, based on applicants, was about 4% points (much less than the 15% points based on applications from the previous study) and found mainly at two stages of the recruitment process: following the review of applications and following testing. Again, there was no drop-off observed for persons with disabilities and Aboriginal peoples.

The PSC also conducted qualitative research in the form of case studies and in-depth analysis of what happened at the different stages of the appointment process. Collective hiring processes for the Personnel Administration group and the Computer Science group were examined. The case studies found that while top management commitment is important, in order for hiring processes to meet employment equity objectives, an intensive and flexible approach is required. Both case studies found that the use of multiple assessment tools and approaches, such as establishing employment equity benchmarks and using employment equity as an organizational need for screening and selection, yielded positive results for members of designated groups.

In 2010, the PSC analyzed the applicant and recruitment rates of employment equity groups by organization and by occupational group with a view to identifying any barriers and to develop appropriate strategies for improving employment equity group representation across all levels of the public service. The PSC will discuss the results with departments and agencies and engage them in collaborative efforts to achieve representativeness in the public service.

Affirmation of Aboriginal Affiliation

Self-declaration is employment equity voluntary information provided by applicants in an appointment process. Unlike self-identification, self-declaration information can be verified to ensure that the screening or selection requirements of an appointment process are met.

Over the years, there have been a few instances of hiring managers concerned about false self-declaration by applicants to obtain employment opportunities reserved for designated groups, but the issue has not been raised by the visible minority or persons with disabilities communities.

Aboriginal employees raised this issue first through the PSC's Aboriginal Consultation Group. In 2000, in response to those concerns, as a deterrent, the PSC, TBS and Indian and Northern Affairs Canada developed an Aboriginal Self-declaration Form with input from external Aboriginal groups. The first Aboriginal Self-declaration form was piloted, for external processes only, across the public service in 2000-2001. However, use of the form was not mandatory and there were no guidelines for its use. As the form was not used uniformly across the public service, it was discontinued in 2002. INAC continued using the form, primarily due to its 50% *Aboriginal Hiring Policy*.

The issue of Aboriginal false self-declaration was raised again in 2006 by the INAC Committee for the Advancement of Native Employment and the National Council of Aboriginal Federal Employees. After extensive consultations with internal and external stakeholder groups, on January 1, 2010, the PSC introduced, for government-wide implementation, the following three-point approach to deter false Aboriginal declaration:

1. All organizations under the PSEA are required to use the Affirmation of Aboriginal Affiliation Form for internal and external, advertised and non-advertised appointment processes targeted to Aboriginal peoples.
2. The PSC encourages departments and agencies to include, in the Statement of Merit Criteria, requirements or competencies that are linked to the job as essential or asset qualifications, such as knowledge of an Aboriginal language, culture, values or customs, if they are relevant.
3. The PSC provides information, tools and guidelines to organizations and candidates to ensure consistency in implementation and understanding of this approach.

The PSC is monitoring the first year of implementation with a view to assessing the merits and impacts of this approach and to determine whether any changes should be made. The PSC has shared a summary of the first three quarterly reports received from departments and agencies with internal and external stakeholders and invited them to provide feedback as part of the assessment of the implementation. Several complaints regarding Aboriginal false declaration have been received and they are being examined to determine whether an investigation is warranted by the PSC.

With this initiative, the PSC is playing its role in ensuring the integrity of the staffing system and, at the same time, addressing the concerns of the Aboriginal community.

Effectiveness of employment equity recruitment methods

Under the PSEA, the PSC has a mandate to ensure that the public service is competent, non-partisan and representative of Canada's diversity and able to serve the public in the official language of their choice. The PSC reports annually to Parliament on its activities, including progress on employment equity in recruitment and staffing.

Under the EEA, the PSC shares employer's responsibilities with the Treasury Board. The PSC is responsible for identifying and eliminating barriers in recruitment and staffing and for developing positive policies and practices that promote a more representative public service.

Under section 16 of the *Canadian Human Rights Act*, it is not a discriminatory practice to adopt a special program to prevent, reduce or eliminate disadvantages. As well, the collection of information relating to a prohibited ground of discrimination can be made if the information is intended to be used in adopting or carrying out a special program, plan or arrangement. Special programs include positive policies or practices under the EEA and section 34 of the PSEA 2003 with respect to an area of selection for an appointment process.

To determine the effectiveness of employment equity recruitment methods for designated groups, the PSC is reviewing the appointments made under the following two types of advertisements where a) the area of selection is restricted to one or more designated groups; and b) employment equity is identified as an organizational need in the merit criteria.

In addition, a literature review of the effective recruitment strategies for persons with disabilities has been completed and released.⁸⁷ As one of the next steps, discussions will be held with hiring departments and agencies on piloting some of the outreach and recruitment strategies identified in the review.

Looking forward

Canada's public service is a national institution that is to be representative of the people it serves. The relevance and legitimacy of the institution is enhanced when it draws from qualified employees who reflect the diverse ethnic, linguistic, cultural and experiential backgrounds of the Canadian public. This diversity leads to better outcomes in developing policies and designing and delivering services and programs to Canadians.

We have seen in earlier sections of this paper the leadership role and efforts of the PSC in improving the representativeness of the public service at times of expansion and fiscal restraint, government restructuring, downsizing or reform. It will be important to stay the course and continue our collective efforts to actively promote the value of representativeness. In this way, the gains already made over time will be sustained.

The Clerk's Public Service Renewal objectives, which included employment equity priorities and goals for recruitment of visible minorities, have yielded positive results. Leadership and attention to improving the recruitment rate of persons with disabilities and career development for employment equity group members in the public service can advance these areas.

Departments and agencies can continue to improve their integrated business, HR and employment equity planning and to use the flexibilities in PSEA 2003 to fill not only vacant positions, but also current and future under-representation gaps.

For its part, the PSC has put in place its integrated approach to employment equity in all business lines; conducts research and analysis on the issues identified in this paper and other emerging issues and communicates the results and findings to Parliament and other stakeholders. Employment equity is a complex policy and the PSC continues its engagement and work in concert with the stakeholders inside and outside the federal public service to achieve results.

Annex 1: Excerpts from key legislation relating to employment equity

Please note that this is not an exhaustive list of all legal references.

CURRENT LEGISLATION

Canadian Charter of Rights and Freedoms 1982

It proclaims the fact that Canada is a free and democratic society; provides for equality rights without discrimination also allows for special programs to improve conditions of disadvantaged groups.

Subsection 15(1) prohibits discriminatory practices on grounds of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability; and

Subsection 15(2) allows special programs to address disadvantages.

Canadian Human Rights Act 1985

It states that all individuals should have an opportunity equal with other individuals and have their needs accommodated without being hindered by discriminatory practices. It provides for special programs or plans designed to prevent, reduce or eliminate disadvantages suffered by any individual or group on specific grounds stated in Section 3.

Section 3 states that prohibited grounds of discrimination are: race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted.

Paragraph 15(1)(a) states that occupational requirements must be bona fide.

Subsection 15(2) stipulates that accommodation of the needs of an individual or a class of individuals must be provided up to the points of undue hardship.

Subsection 16(1) states that special programs designed to prevent, reduce or eliminate disadvantages based on prohibited grounds of discrimination are not discriminatory.

Subsection 16(2) states that the Canadian Human Rights Commission may make recommendations concerning desirable objectives for special programs and provide advice and assistance.

Subsection 16(3) states that it is not discriminatory to collect information relating to a prohibited ground of discrimination if the information is to be used in adopting or carrying out a special program, plan or arrangement designed to prevent disadvantages.

Employment Equity Act 1995

The *Employment Equity Act* (EEA) sets out the employer's obligations to identify and remove barriers and make accommodation for differences for persons in four employment equity groups and institutes positive policies and practices that will hasten progress in closing the representation gaps where under-representation is present. It also sets out obligations to have an employment equity plan to specify the positive measures and practices to be instituted, including numerical goals to address under representation where present. It is important to note that Section 6 of the EEA states that the employer is not required to “hire or promote persons without basing the hiring or promotion in selection according to merit.”

Section 3 provides the definition for the four designated groups (Aboriginal peoples, women, persons with disabilities, persons in a visible minority group).

Section 4(4) states that the Treasury Board and the PSC are the co-employers for the public service.

Subsection 5(a) sets out the obligations to implement employment equity by identifying and eliminating barriers in employment systems, policies and practices.

Subsection 5(b) sets out the obligations to institute positive employment policies and practices and make accommodation to ensure the representation of designated groups.

Paragraphs 6(b) and (c) state that selection is to be made according to merit.

Section 9 sets the obligation to conduct employment systems reviews.

Subsection 9(2) states that only employees who identify themselves as belonging to an employment equity group are to be counted as members of those groups for the purpose of implementing employment equity.

Section 10 sets out the obligations to prepare an employment equity plan where the workforce analysis has determined that there is under-representation.

Employment Equity Regulations (SOR/96-470)

Section 6 allows for the collection of employment equity data from various sources.

Financial Administration Act 1985

It provides for the financial administration of the Government of Canada.

Paragraph 11.1(1)(e) allows the Treasury Board (subject to the EEA) to establish policies and programs with respect to employment equity in the public service.

Public Service Employment Act 2003

It establishes the principles and conditions governing appointments to and within the public service. The preamble speaks to diversity and representativeness.

Paragraph 22(2)(d) states that the PSC has the authority to make regulations to facilitate the implementation of employment equity programs.

Subsection 30(1) states that appointments shall be made on the basis of merit and must be free from political influence.

Clause 30(2)(b)(i) defines asset qualifications.

Clause 30(2)(b)(ii) defines merit as including current or future needs of the organization.

Subsection 30(3) states that current and future needs of the organization may include current and future needs of the public service.

Subsection 30(4) states that merit does not require the consideration of more than one person.

Subsections 34(1) and 34(2) provide the authority to expand and limit areas of selection to designated group members under the EEA.

Public Service Employment Regulations 2005

Section 3 states that a member of a designated group may be appointed, in accordance with an employment equity program, without regard to any entitlement to appointment in priority, unless the person who is entitled to appointment in priority is also a member of a designated group to which the employment equity program applies.

PREVIOUS LEGISLATION

Public Service Employment Act 1985

Subsection 5(1) states that the Treasury Board or a deputy head may request the Commission to implement an employment equity program.

Subsection 10(1) states that appointments to or from within the public service shall be based on selection according to merit, and shall be made by competition or by such other process that the Commission considers is in the best interests of the public service.

Subsection 10(2) states that selection according to merit may be based on the competence of a person, as established by the Commission, rather than as measured against the competence of other persons.

Subsection 12(3) states that the Commission, in establishing or applying standard of selection shall not discriminate against any person by reason of race, national or ethnic origin, colour, religion, age, sex, marital status, family status, disability or conviction for an offence for which a pardon has been granted.

Subsection 13(1) states that the Commission may establish geographic, organizational and occupational criteria that prospective candidates must meet in order to be eligible for appointment.

Subsection 13(2) states that the Commission may establish different criteria for groups of persons that are disadvantaged, including women, Aboriginal peoples, persons with disabilities and persons who are, because of their race or colour, in a visible minority in Canada.

Public Service Employment Regulations (former)

Section 4 which states that the appointment of a member of a disadvantaged group in accordance with an employment equity program is excluded from various sections and subsections of the act with regard to priority and acting appointments.

Public Service Employment Regulations 1993

Section 44 states that appointments made under an employment equity program pursuant to ss. 5.1 of the PSEA are exempted from the PSEA sections on merit, discrimination, geographic, organizational and occupational eligibility criteria as well as appeals.

End Notes

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- ³⁷ *Ibid.*, 16.
- ³⁸ An Exclusion Approval Order (EAO) for Aboriginal appointments from outside the public service to be excluded from the ban on discrimination, that is, this was needed for an Aboriginal program to

discriminate in favour of Aboriginal peoples. An EAO for visible minorities which excluded appointments from outside the public service from merit and selection standards, although the associated regulations required that those appointed must meet the qualifications established. In effect, the EAO was from the “relative” aspect of merit as it existed under the PSEA in 1986.

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<http://www.clerk.gc.ca/eng/feature.asp?featureid=19&pageid=231>.

⁷⁷ Public Service Commission of Canada, *Annual Report, 2007-2008*, Ottawa: 2009, 78. <http://www.psc-cfp.gc.ca/arp-rpa/2008/index-eng.htm>.

⁷⁸ "Self-declaration" refers to voluntary information provided by applicants in appointment processes for statistical purposes related to appointments and in the case of processes targeted to employment equity groups, to determine eligibility. Self-declaration information is stored in the Public Service Commission Applicant Inventories and Referrals Data Bank and organizations' Personal Information Banks such as the Staffing Data Bank.

⁷⁹ "Self-identification" is the collection of employment equity information voluntarily provided by employees, for statistical purposes in analyzing and monitoring the progress of employment equity groups in the federal public service and for reporting workforce representation. Self-identification information is stored in the Employment Equity Data Bank maintained by the Treasury Board Secretariat.

⁸⁰ The Public Service Resourcing System (PSRS) is a Web-based recruitment tool that was launched nationally in 2006 to advertise external employment opportunities, and to provide screening and referral of applications to departments and agencies. The PSRS has an online application form which includes a link to an online self-declaration form for designated groups.

⁸¹ The Job-based Analytical Information System (JAIS) is a Public Service Commission maintained database that has appointment files derived from the pay system. It is used as an oversight tool in analyzing government-wide recruitment trends and staffing activities within the public service. It is a database of more than two million records spanning a 20-year period (from 1990 to today).

⁸² Treasury Board of Canada Secretariat, *Employment Equity in the Public Service of Canada – Annual Report to Parliament 2008-2009*, 2010, 17. <http://www.tbs-sct.gc.ca/reports-rapports/ee/2008-2009/eetb-eng.asp>.

⁸³ Indian and Northern Affairs Canada, *50% Aboriginal Hiring Policy*. <http://www.aic-inac.gc.ca/emp/ae/hir-eng.asp>.

⁸⁴ Public Service Commission of Canada, *Annual Report*, 2009-2010, 53-54. <http://www.psc-cfp.gc.ca/arp-rpa/2010/index-eng.htm>.

⁸⁵ Treasury Board of Canada Secretariat: *Employment Equity in the Public Service of Canada – Annual Report to Parliament 2008-2009*, 2010, 20-22. <http://www.tbs-sct.gc.ca/reports-rapports/ee/2008-2009/eetb-eng.asp>.

⁸⁶ Statistics Canada, *Projections of the Diversity of the Canadian Population, 2006 to 2031*, *The Daily*, Tuesday, March 9, 2010. <http://www.statcan.gc.ca/daily-quotidien/100309/dq100309a-eng.htm> (accessed October 23, 2010).

⁸⁷ Public Service Commission of Canada, *Recruitment of Persons with Disabilities: A Literature Review*, May 2011. <http://www.psc-cfp.gc.ca/plcy-pltq/eead-eeed/rprt/pwd-ph/index-eng.htm>.