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A Transformative Framework to Achieve and Sustain Employment Equity

Executive Summary

Report of the Employment equity Act Review Task Force

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Canada

A Transformative Framework to Achieve and Sustain Employment Equity – Executive Summary

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Introduction

A Proactive Approach

Employment equity is a proactive approach to achieving and sustaining substantive equality in the workplace. It takes all of us.

It has been almost 4 decades since the sole commissioner of the *Royal Commission on Equality in Employment*, then judge, now former Supreme Court of Canada Justice, the Hon. Rosalie Silberman Abella, explained the urgency of her proactive, distinctively Canadian approach.

This is the first time since the *Employment Equity Act* came into force in 1986, and was significantly revised in 1995 that an independent, arms-length task force has been established to offer a comprehensive review of the entire employment equity framework.

The federal *Employment Equity Act* framework is a combination of the *Employment Equity Act* and covered programs, including:

- the Legislated Employment Equity Program;
- the Federal Contractors Program; and
- the Workplace Opportunities: Removing Barriers to Equity (WORBE) program.

Amendments introducing pay transparency reporting came into force on January 1, 2021.

The *Employment Equity Act* framework covers four "designated" groups, referred to in this report as "employment equity" groups:

- women;
- Aboriginal peoples;
- persons with disabilities; and
- members of visible minorities.

The report is the culmination of significant research and engagement with a broad cross-section of stakeholders, primarily from February through October 2022 and included:

- over 100 roundtable discussions and meetings with more than 300 attendees;
- over 400 written submissions and 350 expressions of views via electronic correspondence;
- enhanced engagement through grants and contributions or contracts with key organizations and experts; and
- discussions with commissioners leading independent offices or units.

What happened?

Our task force heard one message loud and clear: Not only is there widespread commitment to employment equity in Canada. There is also a firm recognition that employment equity is not optional.

For a society that is as deeply diverse as ours to flourish, we must prioritize achieving and sustaining employment equity in the workplace.

Yet along the way, something happened. For some, employment equity just got outdated. The terminology did not keep up with the times and was not inclusive enough. The data collection challenges began to weigh down the process with outdated, less than reliable information. Processes became bureaucratized. Boxes got checked, but were things really getting better?

It is, however, startling to see how unrepresentative some employment remains across Canada. Thirty-seven years since the *Employment Equity Act* was passed, it is hard to consider that a framework has remained truly proactive if its objectives have not yet been substantially achieved in the workplaces it covers.

As a country we may have forgotten our history of discrimination and segregation in our society that for some employment equity groups extended well into the 1960s. By adopting legislation on employment equity federally, Canada set out to transform our workplaces.

Employment equity was an early model of reflexive regulation, designed to encourage employers to take a close look at their workplace and identify the practices necessary to transform their workplace. But it was never assumed that they could do this alone. The conditions necessary to make employment equity effective must extend beyond employers acting alone.

Based on the law, extensive research, and consultations, this report cautions vigilance to ensure that the proliferation of equity, diversity and inclusion (EDI) practices actually supports rather than supplants the *Employment Equity Act* framework. Voluntary measures alone will not work to bring equity to Canadian workplaces. Similarly, employment equity must not be allowed to be reduced to a numbers-crunching exercise that loses track of individual workers and in particular equity changemakers. Employment equity requires us to pay close attention in particular to retention, promotion and other practices that ensure the well-being and progress into higher ranks. The preponderant focus on numbers crunching in employment equity has displaced a focus on making equitable inclusion the norm. And the *Employment Equity Act* framework must not be reduced to a mere checklist or a series of forms to fill out.

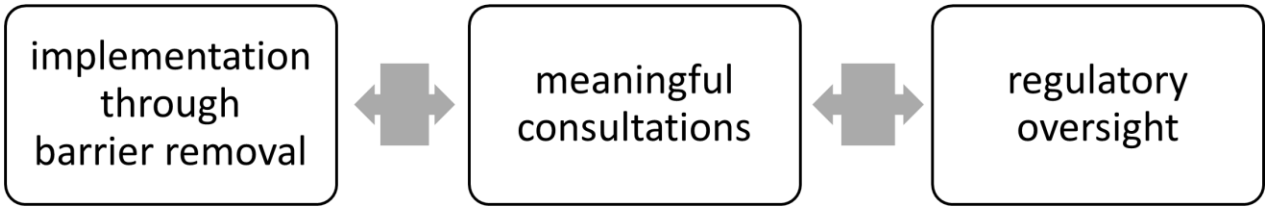
It is often said that diversity is a fact, and inclusion is a choice. But in Canada there is more, and it is crucial: equity is the law. We have worked hard to build a vision of substantive equality through our Constitution that allows us to reckon with our history and to build inclusive spaces for us all. Employment equity was a significant advance when it was first proposed, even before Section 15 of the *Charter* had entered into force. But we need to stop exceptionalizing employment equity. Employment equity is substantive equality in action in the workplace. It implements Canada's international commitments to effectively advance equality and reflects Canadian constitutional and human rights case law.

Recent federal equity legislation – the *Accessible Canada Act* and the *Pay Equity Act* – breaks through the inertia with firm commitments and timelines to achieve a barrier free Canada and achieve and maintain pay equity. This report seeks to do the same, that is, to refocus our attention on what is needed to make achieving and sustaining employment equity a reality.

In Canada, we have an opportunity, indeed a responsibility, to lead by cultivating social justice through equitable inclusion. Equitable inclusion means all of us have a place in Canadian workplaces. Equitable inclusion is about capturing a vision of our country that is greater than any one of us but very much about all of us. Employment equity is about making workplaces better and more inclusive for all of us.

A transformative framework

This report proposes a transformative framework: three pillars are necessary to achieve and sustain employment equity in the workplace:



1. Implementation through barrier removal
2. Meaningful consultations
3. Regulatory oversight

The *first pillar* is the requirement on workplaces to examine their practices, proactively, to **implement** employment equity, including by **identifying and eliminating workplace barriers**. Representation numbers are a pivotal part of the evidence-based exercise. Employers **implement through barrier identification and removal** including taking special measures to eliminate underrepresentation, with regular reporting. Although special measures through representation goals have received considerable attention, they are far from the whole exercise. Over the decades, we have largely forgotten how important barrier removal is to employment equity's successful implementation. If the focus is not broadened to cover the fundamental work of barrier removal through comprehensive employment systems reviews, improvements will plateau or worse, be lost. In particular, substantive equality in the context of employment equity is an invitation to rethink the place of individual accommodations in the context of proactive legislation designed for equitable inclusion. This report seeks to reclaim barrier removal's centrality to the implementation of employment equity.

The *second pillar* is **meaningful consultations** of employers and workers throughout the process of identifying barriers, eliminating them including through the implementation of special measures, and reporting. Over the decades, this second pillar has been weakened, and today is too often overlooked or addressed in a cursory manner. Yet it is crucial. Meaningful participation provides both an opportunity to understand quantitative data more effectively, and to build a richer set of data that incorporates qualitative features. Without this pillar, a heavily bureaucratized employment equity approach that forgets about the workers themselves can be harmful. Relationships matter, especially for employment equity groups who have faced disadvantage and trauma. Canada's reckoning with truth and reconciliation underscores that self-determination by First Nations, Métis and Inuit peoples must be part of the human rights-based framework through which equitable inclusion is understood. Employment equity is part of a process of deliberately undoing systemic discrimination, while building respectful relationships within inclusive workplaces. Meaningful participation is grounded in the

principle of "nothing about us without us". We recommend the establishment of Joint Employment Equity Committees.

The *third pillar* is active support for compliance, accountability and enforcement through sustainably resourced **regulatory oversight**. Workplaces should be supported through guidance and oversight by state regulatory actors who understand the workplace context and are sufficiently well resourced to give real-time advice. They should be able to provide independent, transparent external auditing to ensure that equitable representation is both achieved and sustained. The structures that are in place leave the *Employment Equity Act* framework largely to achieve implementation on its own. Someone needs to be making sure that reasonable progress is actually occurring, with a view to achieving and sustaining employment equity, that is properly resourced and effectively structured to avoid incentivizing non-compliance. Employment equity must not be sacrificed to wishful thinking. On regulatory oversight we must put our money where our principles are. The regulatory oversight needs to be rethought. Central to our recommendations is the establishment of an Employment Equity Commissioner.

Chapters 4 – 6 provide a detailed discussion of each of the three pillars and are outlined below. But before addressing how to strengthen each pillar, the report presents three cross-cutting chapters:

- *Equitable inclusion in a changing world of work: Toward supportive & sustainable coverage* (Chapter 1), which explains the changing coverage of employment equity, which is an important part of a broad, comprehensive law of work seeking to secure social justice.
- *Data justice* (Chapter 2), which explains that data collection is rooted in the human rights purpose of employment equity: of achieving and sustaining substantive equality in the workplace. We recommend establishing an Employment Equity Data Steering Committee and no longer using the Workforce Availability (WFA) Benchmark in the federal public service.
- *Rethinking equity groups* (Chapter 3). We show that history matters, and provide an evidence-based explanation for proposing to expand the coverage of employment equity and the redefinition of some employment equity groups.

Chapter 7 returns to the theme of equitable inclusion, to explore some of the more technical regulatory implications of supportive and sustainable employment equity coverage. This includes broadening the coverage of the Federal Contractors Program.

Chapter 1: Equitable Inclusion in the Changing World of Work: Toward Supportive and Sustainable Coverage

A clear message came through our broad consultations, study of the law, statistics and expert reports: employment equity is central to labour law in Canada and a crucial component of what makes work fair.

Chapter 1 reports that the world of work has changed significantly since the *Employment Equity Act* was first introduced. It looks to federal public service and federal private sector coverage and considers demographic differences across urban and rural contexts. The report addresses the rise in various

forms of precarious work in fissured workplaces, retains yet nuances employment equity's focus on employment.

First, the *Employment Equity Act* framework cannot stand alone. It needs to be understood as an important part of a broader, comprehensive law of work. Employment equity requires strong surrounding labour and employment laws upholding decent work in the changing workplace. Attempts to reduce the prevalence of precarious work complement attempts to achieve substantive equality at work. In this regard, employment equity coverage is not quite about broad coverage the way much other labour and human rights law imagines coverage.

In other words, and second, the purpose of the *Employment Equity Act* is to secure social justice through equitable representation of workers, but not just in any jobs. Employment equity is unabashedly about making sure that all workers have an equal opportunity to be represented in good, stable occupations – what internationally, including in the UN Sustainable Development Goal No. 8, entails "promot[ing] sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all." While employment equity was never meant to be a complete response, it can be part of the response, by correcting a distinct set of problems. Alongside and in relation to the other workplace measures that foster substantive equality, namely pay equity, accessibility, and human rights protection, employment equity creates opportunities for equitable inclusion, including, indeed especially, for those who have been excluded and relegated to precarious, non-standard occupations. There is a focus on achieving and sustaining employment equity through the removal of barriers to equal opportunity for all: equitable inclusion of employment equity groups, as a matter of social justice, into good, stable jobs alongside all other workers.

It follows that third, we still need to know what is happening around jobs where the conditions are more precarious, and who is occupying precarious occupations if we are going to be able to foster employment equity. Employment equity group members are disproportionately represented in precarious work. They earn disproportionately low wages. They are disproportionately underemployed or unemployed. Despite their education, despite their skills, they are overrepresented in precarious work. Employment equity seeks to correct that inequity. But it is one piece of the puzzle. We need a holistic approach to labour and employment law, and an understanding of employment equity's "why".

Equitable inclusion is a challenge to the overrepresentation of employment equity groups in precarious work. We must therefore go back to first principles and ask: what categories of employment *should* be covered under the *Employment Equity Act* framework to ensure that employment equity group members are equitably included in the workplace?

Finally, Chapter 1 takes a hard look at discouraged workers and workers who are overqualified for the work in which they are employed. Moreover, we address the concern that the benchmarks used to calculate availability reproduce the occupational segregation. In other words, if workers with doctorates who drive taxis are simply being captured as taxi drivers, we have a problem. We need the data that allow us to capture this overrepresentation and to remove the barriers that prevent those workers from getting the job opportunities for which they are qualified. We need to rethink the data collection, to foster data justice.

Chapter 1 contains only two recommendations. First, it recommends recasting the *Employment Equity Act*'s purpose to achieve and sustain substantive equality in the workplace through the three pillar

framework, that is, implementation through barrier removal, meaningful consultations and regulatory oversight. Second, it recommends ensuring that employment equity data collection and benchmarks are systematically rethought to eliminate barriers and foster data justice.

Chapter 2: Data justice

There is tremendous, understandable fatigue with superficial data collection. Across the board, stakeholders called the data collection system broken, filled with data lags, lack of follow up, and lacking in the quality necessary to ensure the right mix of data on statistical disparities alongside information about employment equity group members' situation. Our task force finds that the federal bureaucracy has lost sight of the purpose of employment equity to redress systemic discrimination and gotten caught up in a numbers-crunching exercise. Current data methodologies are overly complicated, not transparent and inaccurately represent the experiences of employment equity groups. There is also a lack of trust and support among stakeholders for reporting data benchmarks and methodologies.

Chapter 2 calls for us to move away from a disproportionate focus on number-crunching and toward data justice. Data justice is a call to focus on the "why" of employment equity: we collect data in employment equity to promote and protect the human right to equality. Data collection should not be approached as an end in itself. If data collection is not understood to be undertaken in alignment with its human rights purpose, it can cause harm.

Data justice involves building trust with employment equity groups, ensuring public transparency on data methodologies and collection, as well as keeping reporting simple. Moreover, there is a need to work with Statistics Canada to collect and release more useful, timely and informative labour-wide employment and equity data. Put simply, data justice needs to focus on building sustained progress over time.

The data justice approach to employment equity data collection forces us to examine and fundamentally revisit how data have been understood, to ensure that research and analytical approaches do not embed systems of discrimination. Data justice facilitates the identification of barriers to equitable inclusion at work. It enables workplace actors to work together to ensure that employment equity is implemented. It provides accountability, ensuring that reasonable progress can be made and monitored, so that employment equity will be achieved and sustained. Data justice is the backbone of substantive equality.

Chapter 2 includes several recommendations for the Government of Canada to revisit how data are developed, analyzed and reported publicly, and to do so in a timely manner, and in a way that can be communicated clearly and easily. In this way, the report recommends strengthening public accountability by democratizing access to employment equity data and systematically rethinking employment equity data collection and benchmarks to eliminate barriers and foster data justice.

To address historical discrimination and a lack of trust among many equity-seeking communities, we propose that the *Employment Equity Act* specifically clarify that the purpose of data collection is to support achieving and sustaining substantive equality in the workplace by building trust in all three pillars of the revised framework.

Central to the recommendations is the creation of an Employment Equity Data Steering Committee as part of the *Employment Equity Act* framework, to support implementation, meaningful consultations and regulatory oversight to achieve and sustain employment equity. The Steering Committee should consist of senior government officials under a revised *Employment Equity Act*. It would provide advice regarding employment equity data and undertake research.

Specifically, the production of the current benchmark used in the federal public service, WFA is now understood to be a distraction, taking time and energy away from the fundamental work of barrier removal. Government should be the site for experimentation and creativity for sustainable change. Our task force was persuaded that the federal government, assuming its dual responsibility as a symbolically important federal employer as well as regulator, can do better. We recommend that WFA no longer be used. Rather, we recommend mandating the proposed Employment Equity Data Steering Committee to consider how best to draw on existing and emerging projections capabilities, to redress the time lag in the calculation of LMA alone, and move toward a benchmark that supports a focus on removing barriers, meaningful consultations and regulatory oversight. Our aspiration should be that our workplaces reflect our populations. The benchmarks help us to get there. They should not be hindrances. They should not get in the way of the real work of equity. So long as representation is lower than Census population levels, employers should be permitted to continue to work to correct underrepresentation.

Data collection is an ongoing, interactive process and requires an all of society approach. It should be integrated into the Canadian government's adherence to the United Nations' Sustainable Development Goals, including on gender equality and decent work, and tackled holistically.

In turn, the report also recommends that legislation intersecting with the *Employment Equity Act* (i.e., *Privacy Act* and *Personal Information Protection and Electronic Documents Act*) be reviewed and as appropriate amended to clarify that data collection frameworks are intended to be interpreted through a human rights approach.

Chapter 2 engages closely with the issue of self-identification, recommending that it should remain voluntary under the *Employment Equity Act* framework. It identifies measures to enhance confidentiality while streamlining and centralizing the practices within the federal public service.

Disaggregated data should be connected to its human rights purposes:

- The purpose is achieving substantive equality in the workplace, that is, employment equity. The purpose of disaggregated data is not individual or group stigmatization, or reinforcing deficit narratives. Rather, the focus is on redressing systemic workplace exclusion.
- The process must foster respectful relationships with members of equity groups in the workplace context. Employers, unions and other workplace actors are integral to the process of achieving employment equity.
- An important tool to achieve this purpose is data collection, and in particular disaggregated data collection.

Intersectionality should remain centred on its human rights purpose. Its "why" is to gain deep insight into how systemic discrimination is experienced by people who have been historically marginalized and continue to face exclusion. Its "why" is to ensure that context matters, in all its complexity. Its "why" is to bring lived experiences to the centre of policy and action for substantive equality.

Listening to employment equity groups drove home how critical it is for data collection to be conducted in full respect of privacy rights as a human right. Privacy protection is also critical to addressing self-identification. Privacy rights should not be understood as a shield preventing the proper functioning of the *Employment Equity Act* framework. Rather, privacy protections are part of the proactive character of employment equity law and should be understood to offer crucial support to achieving and sustaining employment equity.

Acknowledging as well that collecting intersectional, disaggregated data is consistent with Canada's international human rights treaty obligations, our task force recommends clarifying that disaggregated data collection and reporting is permitted and guidance is available in support of promising practices, including on how to prioritize employment equity initiatives on those employment equity groups and subgroups that are the most underrepresented in the workplace, while retaining responsibility for achieving and sustaining employment equity for all employment equity groups.

Chapter 3: Rethinking Equity Groups under the *Employment Equity Act* Framework

Chapter 3 emphasizes the importance of deepening the understanding of the barriers faced by employment equity groups. There is a need to modernize terminology and broaden the employment equity group categories. It was heartening to hear employers, governmental actors, workers and a range of concerned communities make the case for broad *Employment Equity Act* inclusion.

History matters. It helps to explain the choice of employment equity groups and guide decisions on groups that should be added. This report is anchored in the specific histories of all employment equity groups. The historical discussion is particularly pronounced for three:

- **First Nations, Métis and Inuit peoples** because of the significant change in understanding of Canada's nation-to-nation or government-to-government relationship with Indigenous peoples and the responsibility for truth and reconciliation;
- **Black workers** because of the specific request in our mandate to consider whether this sub-group of the current 'visible minority' category should be considered a separate employment equity group; and
- **2SLGBTQI+ workers**, because of the specific request in our mandate to consider whether to include them within the *Employment Equity Act* framework.

Our task force recommends creating a separate employment equity group representing Black workers. We also recommend adding 2SLGBTQI+ workers as an employment equity group.

Names matter and virtually everyone who came before our task force agreed that much of the terminology in the *Employment Equity Act* needed to be modernized. To reflect a holistic understanding of what it means to be a worker, we recommend that members of employment equity groups should be referred to as "workers," aligning with the International Labour Organization's *Violence and Harassment Convention, 2019 (No. 190)*. We recommend that the term "designated groups" should become "employment equity groups." We propose to replace the term "Aboriginal" with "Indigenous worker" through a distinctions-based approach of First Nations, Inuit and Métis. We propose replacing "visible minority" with "racialized worker". We have deliberately used the language of Black

workers and workers of African descent interchangeably in this report, out of respect for the ways in which Black communities in Canada have self-identified and organized. It is in a similar spirit that the task force report alternates between a person-first language of "persons with disabilities" that is internationally recognized, and the contemporary, identity-based approach of "disabled workers," which was strongly encouraged by some of the concerned communities who met with us and task force members with relevant lived experience. We were challenged to "say the word disability", embrace it, and normalize it.

As concerned *First Nations, Métis and Inuit: Redefining Relationships in the Wake of Truth and Reconciliation,* a cardinal concern is Indigenous self-determination, which flows from Canada's commitment to truth and reconciliation and is central to the *United Nations Declaration on the Rights of Indigenous Peoples*. First Nations, Métis and Inuit nations do not only comprise an employment equity group for the purpose of the *Employment Equity Act* framework. They have collective rights under Section 35 of the *Constitution Act, 1982*. The Crown has obligations to both collectives and individuals under Section 91(24) of the *Constitution Act, 1867*.

The Task Force addressed the particular challenge that arises in the context of self-identification for Indigenous peoples, considering that self-identification under the *Employment Equity Act* framework needs to be understood in the context of the Government of Canada's responsibility for dismantling internal colonization through an evolving process of reconciliation. The task force acknowledges the gravity with which we currently witness the combination of instances of identity fraud by non-Indigenous individuals who claim preferential treatment, alongside First Nations, Métis or Inuit workers who hesitate to self-identify for fear of facing further discrimination. Our report offers a detailed discussion of the issues, drawing notably on the individual and collective rights recognized under the *United Nations Declaration on the Rights of Indigenous Peoples* as well as the approach adopted by the Canadian Human Rights Tribunal to determine eligibility for services under Jordan's Principles without purporting to determine citizenship in a First Nations. It also raises potential risks of some alternative approaches: notably, the scope of the *Employment Equity Act* framework, including with the proposed enlargement to cover more workplaces with smaller size and lowered federal contractors program coverage, creates the risk of a multiplicity of employers having the ability to make determinations on Indigenous inclusion.

Whatever the approach, our task force urges that we not repeat the colonial harms of the past. To determine the most appropriate approach to avoid fraudulent claims and address Indigenous status under the *Employment Equity Act* framework, there is no circumventing meaningful consultations with First Nations, Métis and Inuit peoples. It is hoped that the discussion in the report will offer modest support to the meaningful consultations.

Recognizing that is about time for the *Employment Equity Act* framework to be drawn upon to support this more transformative thinking about changing the relationships, the task force report recognizes that Section 7 of the current *Employment Equity Act* does not come close to the necessary government-to-government constitutional relationship. The report recommends that Section 7 of the *Employment Equity Act* be supplemented by a framework fostering Indigenous self-determination that is constructed with First Nations, Métis and Inuit peoples through meaningful consultations. The transformative framework should include special measures that ensure continuing improvement of First Nations, Métis and Inuit peoples' economic and social conditions.

Our task force addresses disabled workers and accessibility in the wake of the *International Convention on the Rights of Persons with Disabilities*. We conclude that a significant part of the challenge of achieving employment equity lies in transforming how we understand disability. Progress is long overdue. The employment equity group for persons with disabilities needs to be redefined. The current definition adopts a medical model, which looks at disability as impairment, and does not link disability to societal barriers.

Self-definition is important. The challenge is that currently under the *Employment Equity Act* framework, self-definition concerns whether the worker considers themselves to be "disadvantaged in employment by reason of that impairment" or whether they believe an employer will consider them to be disadvantaged. We heard repeatedly that these were the wrong questions. Instead, self-definition should be based on a definition that persons with disabilities recognize as affirming them, in the terms of the Committee on the Rights of Persons with Disabilities (CRPD), as "a valued aspect of human diversity and dignity"and their disability. Laws and policies are expected to take into account the diversity of persons with disabilities. In light of the value of harmonization, the recent extensive consultations on the definition under the *Accessible Canada Act,* its embrace of a social model of disabilities, its important focus on barrier removal that is consistent with the focus of the *Employment Equity Act* framework, our task force recommends that the *Accessible Canada Act* definition of disability be adopted in the *Employment Equity Act*, replacing the current definition. With special attention to ensure that psychosocial and intellectual disabilities are considered in a disaggregated and intersectional manner, we recommend that the *Employment Equity Act* framework should also draw inspiration from the *Accessible Canada Act* and the Canadian Survey on Disability to identify appropriate subgroups.

We recommend that the Employment Equity Data Steering Committee prioritize developing quantitative and qualitative data on persons with disabilities that are disaggregated and intersectional, including through commissioned research, and in meaningful consultation with employers' and workers' representatives and representative organizations of disabled workers.

Gender Equality is UN Global Sustainable Development Goal 5, which Canada has committed to attaining by 2030, yet our task force concludes that there is still *A Long Way to Go: Persisting Challenges for Women Workers*. The challenges are intersectional and require close attention to providing disaggregated data. Substantive equality has not been achieved. The gains that have been made over time, moreover, have been shown to be all too fragile during the pandemic.

Early employment equity implementation has tended to focus on including women as a category without paying sufficient attention to diversity within the category of women. Aggregate data on women tell an incomplete story about substantive equality in employment on the basis of gender. The need to approach the category of women in a disaggregated and intersectional manner was stated poignantly by many of the stakeholders who appeared before our task force. An intersectional approach to gender is also consistent with Canada's international obligations and has been underscored by several UN Committees. Our task force concludes that women workers should remain an employment equity group in Canada, and that we should intensify efforts to achieve substantive equality for all women.

For *Black Workers in the Wake of the International Decade for People of African Descent*, history matters. Many Canadians may only recently have learned that slavery existed in Canada. The case for a distinct *Employment Equity Act* category specifically for people of African descent is rooted in part in the

legacies of slavery. The history of segregation – in service provision, housing, schooling and employment – is also not well known in Canada, despite the fact that segregation was legally upheld by our Supreme Court of Canada in 1939. Slavery and segregation are at the root of often unstated and unchallenged assumptions about Black peoples' 'proper place' in the labour market.

The pandemic revealed for Canadian society a portrait of Black workers that was rarely portrayed in the media, and that countered anti-Black stereotypes – Black health care workers, cleaning personnel, grocery store workers, bus drivers and other workers who made immense personal sacrifices through the depth of the pandemic to enable the majority of the population to shelter in place. The portrait cemented the importance of statistical data on the differential impact of COVID-19 on Black populations. The overrepresentation of Black workers in jobs that literally put their lives and health at risk was a palpable reminder of what employment inequity can look like.

According to the most recent, 2021 Census data, Black workers with a bachelor's degree or higher from a Canadian institution have the highest overqualification rate of any Canadian-educated racialized group. Recent data provided about Black representation in the federal public service was equally revelatory. In rarely released sub-group data published on the occasion of an audit by the Public Service Commission of Canada, it was found that Black applicants, who formed the largest sub-group, experienced the overall largest drop in representation of all visible minority sub-groups.

The United Nations Decade on People of African Descent began in 2014 and was formally recognized by the Government of Canada in 2018. The United Nation's Committee on the Elimination of Racial Discrimination had formulated a set of recommendations that call for special measures to be adopted as part of a comprehensive national strategy and with the participation of people of African descent, to eliminate discrimination including in employment.

Considering both the distinct history of slavery and segregation in Canada, and the statistical data showing persisting differential treatment and underrepresentation, our task force recommends that Black workers should become a separate category under the *Employment Equity Act* framework.

The importance of history – including disturbingly recent history – is described in detail in a section entitled *Emerging from the PURGE – Full Inclusion of 2SLGBTQI+ workers,* comprising an estimated 1 million people representing 4% of the overall Canadian population aged 15 years and older.

The Government of Canada has acknowledged and apologized for the fact that throughout the Cold War Era, from the 1950s through to the early 1990s in Canada, federal government employees faced a systematic campaign literally to purge them from the federal public service. Many stakeholders focused on aspects of the history of exclusion and the slow but decided movement toward removing legal barriers to full representation of 2SLGBTQI+ communities in Canadian society.

What remains, is fear. Consider that Statistics Canada has reported that members of 2SLGBTQI+ communities were "more likely to report being violently victimized in their lifetime and to have experienced inappropriate behaviours in person and online than non-sexual" minorities in Canada. Researchers have chronicled the extent of the backlash faced over the recognition of trans human rights protections, and the importance of legal recognition to building an inclusive climate. While Canada has been a leader on a number of initiatives on 2SLGBTQI+ inclusion, several other countries have led on employment equity inclusion.

The International Convention on Economic, Cultural and Social Rights specifically requires states, as a minimum core obligation, to "[g]uarantee through law the exercise of the right [to work] without discrimination of any kind as to ... sexual orientation, gender identity, intersex status."

Our task force closely considered the history and available data on systemic workplace discrimination faced by members of 2SLGBTQI+ communities in Canada. We listened carefully to the many stakeholders who came before us, from the communities themselves and across employer and worker groups. We studied what has already been done, in Canada and in other countries. And we asked what would be necessary to advance knowledge on the employment situation of 2SLGBTQI+ communities' employment experiences.

Taken together, we conclude that there is a strong basis to recommend inclusion of 2SLGBTQI+ people as an employment equity group in the *Employment Equity Act* framework and recommend inclusion.

We also recommend more comprehensive data collection, guided by meaningful consultations with 2SLGBTQI+ workers and the proposed Data Equity Steering Committee, and transitional measures. Good data are pivotal for effective policy implementation. We have witnessed what happens when data are not available: groups get ignored. Qualitative analyses will also remain crucial, notably to understand some of the barriers and biases that may affect the ability to achieve employment equity.

As concerns *Racialized Workers Beyond "Visible Minorities": Disaggregation and Group Cohesion,* our task force recognizes that when the category "visible minorities" was introduced into the new *Employment Equity Act*, it was considered to be progress. It is a composite group, which has comprised 11 sub-groups, namely:

- Black;
- Chinese;
- Filipino;
- Japanese;
- Korean;
- South Asian-East Indian (including Indian from India; Bangladeshi; Pakistani; East Indian from Guyana, Trinidad, East Africa; etc.);
- Southeast Asian (including Burmese; Cambodian; Laotian; Thai; Vietnamese; etc.)
- non-white West Asian, North African or Arab (including Egyptian; Libyan; Lebanese; etc.);
- non-white Latin American (including indigenous persons from Central and South America, etc.);
- person of mixed origin (with one parent in one of the visible minority groups listed above); and
- other visible minority group.

Members of this employment equity group want to be acknowledged for their past and ongoing contributions to Canadian society. For example, the task force was reminded that the Chinese Canadian community is predominantly an immigrant community for a reason – the 70th anniversary of the repeal of the *Chinese Exclusion Act* is a reminder of the history of legal exclusion of Chinese

people from Canada. The Canadian Race Relations Foundations reminded our task force that it was created as a Crown Corporation in 1996 as part of the Japanese Canadian Redress Agreement for the internment by Canada of Japanese Canadians during the Second World War. Racialized groups were concerned to dispel misperceptions, and in particular called attention to the myth that racialized groups are newcomers to Canada. Racialized groups' contributions to Canada are longstanding, and have helped to make Canada the deeply cosmopolitan, pluralist society that it is today.

The existing data confirm persisting disadvantage. For example, unemployment rates of visible minorities who earned a degree within Canada or abroad were significantly higher than non-visible minorities. On incomes data, while there were differences between subgroup members, no subgroup earned averages as high as the full time, full year employment income of nonvisible minorities.

Overall, our task force's recommended approach is to rely on disaggregating sub-groups within this employment equity category. We conclude, however, that the term visible minority should be replaced with the term racialized workers.

To foster *inclusion in the Employment Equity Act framework, broadly understood*, our task force explained the relationship with the broader focus of the *Canadian Human Rights Act*. Our report has taken great care to define the scope of employment equity, and to identify employment equity groups. We want our justifications for inclusion to be robust, and our approach to the future to be fluid. In other words, we want employment equity to be supportive and sustainable. As a complement, we adopt an approach to barrier removal that acknowledges that barriers are often common across equity groups, and across protected grounds of discrimination under the *Canadian Human Rights Act*. Barrier removal recognizes that someday, any one of us might find ourselves in a workplace needing it to be as inclusive as possible, and that we are all better off in a workplace that allows us to be our authentic selves at work. It fosters equitable inclusion.

Chapter 4: Strengthening Implementation: The Barrier Removal Pillar

The first pillar is the proactive requirement on workplaces to examine their practices to implement employment equity, including by identifying and eliminating workplace barriers.

Representation numbers are a pivotal part of the exercise of barrier removal. Employers implement employment equity through barrier identification and removal including taking special measures to eliminate underrepresentation, with regular reporting. Although special measures through representation goals have received considerable attention, they are far from the whole exercise. Decades of experience have shown that if the focus is not broadened to cover the fundamental work of barrier removal through comprehensive employment systems reviews, improvements will plateau or worse, be lost.

Section 5 of the *Employment Equity Act* sets out employers' duty to "implement employment equity." This includes barrier removal. If a practice is affecting certain groups in a disproportionately negative way, it is a signal that the practices that lead to this adverse impact may be discriminatory. Barriers are assessed in context. There is no pre-defined list. Barrier identification and elimination requires a careful process of assessing workplace practices through the analysis required by Section 5 of the *Employment Equity Act*.

But nothing in Section 5 requires an employer to demonstrate that they have implemented their plans, or at least that they have made reasonable progress on plan implementation. Section 11 of the *Employment Equity Act* is read as focusing only on building a plan that "if" implemented, would constitute reasonable progress toward implementing employment equity. Our consultations suggest that the French version of the law, which is equally authoritative, does not contain the words "if implemented", and specifies that "*l'employeur est tenu de veiller à ce que la mise en œuvre de son plan d'équité en matière d'emploi se traduise par des progrès raisonnables*" ("the employer is required to ensure that reasonable progress is made in implementing its employment equity plan") has not guided the interpretation. Instead, those responsible for regulatory oversight stressed that the law does not clarify that reasonable progress actually needs to be made.

This is understandably exasperating. Many stakeholders – employers themselves, government actors responsible for oversight, and workers and unions - argued that this needs to change, or employment equity will not be achieved. Our task force agrees. Employers and their workplaces should be supported to achieve this reasonable progress, and this report turns attention to the nature and quality of support – including, crucially, financial support.

Within the workplace, barriers may be found in organizational structures and organizational culture. Organizational structures include job classification, recruitment, remuneration and other working conditions, retention, training and promotion policies, and termination of employment policies. Organizational culture relates to the range of formal and informal norms and practices surrounding the workplace, and include management approaches, communications, and social interaction. One of the most recent, thorough examples of what barrier identification looks like emerges from the *2022 Report of the Independent External Comprehensive Review of the Department of National Defence and the Canadian Armed Forces* (the Arbour Report). It offers a close and careful assessment of the systemic challenges that prevent employment equity from being achieved.

We recommend that the *Employment Equity Act* be revised to define barriers as practices that affect equity groups in a disproportionately negative way, specify that barrier removal applies across each stage of the employment lifecycle, and provide for the *Employment Equity Regulations* or guidelines prepared under them to support comprehensive barrier removal and reporting.

Some requests for individual accommodation will always be a necessary part of sustaining workplace equality. Barrier removal can even support the individual accommodation process, by removing excessive delays or duplication and streamlining responses so that similar requests are handled in an expeditious and equitable manner.

The key is that a proactive approach to barrier removal means individual workers may not need to seek individual accommodations for those structural barriers that workplaces can identify and remove in advance. The distinctions are important and affect how notions like undue hardship are understood. We recommend reporting on individual accommodations, and clarity on the notion of undue hardship, while underscoring that employment equity's transformative potential is to build accessibility into the workplace's design, or redesign. Employment equity shifts the norm.

A holistic view of employment systems is also proposed through recommendations that integrate, for example, workplace benefits and harassment complaints in the employment systems review and reporting. Moreover, we find that merit is often invoked but rarely defined. This is a mistake. Employment equity has been criticized for its perceived narrow focus on redistributing representation,

that is, the numbers. It has led to the mistaken and invariably offensive perception that employment equity means promoting people who are not qualified. This perception is harmful to equity deserving groups, as has been repeatedly expressed, including in the federal public service. The report calls for close scrutiny into merit, drawing on insights from the Bastarache report into sexual harassment in the RCMP entitled *Broken Dreams, Broken Lives: The Devastating Effects of Sexual Harassment on Women in the RCMP, Final Report on the Implementation of the Merlo Davidson Settlement Agreement* (11 November 2020, Independent Assessor: The Hon. Michel Bastarache). It urges that merit should be closely scrutinized in context and not assumed to be neutral or objective. A close look at merit can lead to more rigorous but also more relevant requirements to redress inequality. Mostly, it is important to stop labelling those who face barriers to inclusion as unmeritorious. Similarly, they should not be made to feel that they have to work twice as hard as others to receive respect in the workplace. Part of what is happening with discussions about employment equity and redressing underrepresentation is that we are moving beyond deficit thinking to identifying and cultivating talent.

Although it contains some recommendations, notably in relation to the *Public Service Employment Act,* the overriding spirit of this chapter is that of guidance. The chapter focuses on framing potential barriers along the work lifecycle, throughout recruitment, hiring and retention, while recognizing that barrier removal is context specific. The barrier-removal approach is designed to help employment equity's numerical goals to be achieved and sustained. Barrier removal to foster truly inclusive workplaces starts a process of awareness, mutual learning, and change. Undertaken in a collaborative manner, through meaningful consultations to produce workplace employment systems reviews and action plans, it draws workplace actors into making the workplace better for all of us.

To better support employers to undertake this more comprehensive barrier removal, however, one recommendation is that the reporting be reduced from annual reporting to every three years.

Chapter 4 also considers the use of non-disclosure agreements and confidentiality agreements, offering an analysis of the evolving law and practice in a number of jurisdictions across Canada, the United States and abroad. The indiscriminate use of non-disclosure agreements and confidentiality agreements runs the risk of entrenching rather than removing barriers to achieving substantive equality at work. Our task force recommends that workplaces be required to report on the number of harassment and discrimination complaints, identified by category, by whether complainants or respondents or perpetrators are members of one or more employment equity groups and if so which ones, and by the number of non-disclosure agreements that were concluded by the workplace as part of the mandated workplace climate scan. The list must be anonymized. We acknowledge that some data suppression may be required to respect privacy.

Chapter 4 surveys barriers that intersect with the workplace, such as childcare, transportation and education. Chapter 4 also offers a discussion of barriers in select federally-regulated employers, and calls in particular for the Canadian Armed Forces to calculate availability and set goals for all employment equity groups covered under the *Employment Equity Act*. Our study of the federal transportation sector leads us to conclude that some employers are putting a lot of effort into doing diversity work and even reporting on it. But they need support to tailor their employment equity initiatives in a manner that actually helps to achieve and sustain results.

Our task force was struck to see that at this stage in the life of the *Employment Equity Act* framework we were still raising these concerns about longstanding problems. Thirty-seven years into employment

equity, we should have covered more mileage. In addition to comprehensive barrier removal, we need meaningful consultations and regulatory oversight to achieve and sustain employment equity.

Chapter 5: Reactivating the Meaningful Consultation Pillar

The second pillar is meaningful consultations with employers and workers throughout the process of identifying, eliminating, and reporting on barriers. Meaningful consultations have, in practice, been the weak pillar in the process of sustaining employment equity in workplaces in Canada. This must change. The active, structured participation of those most concerned with the outcomes need to be part of workplace transformations. Otherwise, we can expect no transformation.

Throughout our engagements, task force members heard two things that might seem contradictory.

- First, we heard that workers and employment equity groups felt a certain survey and interview fatigue.
- Second, we heard that workers and equity groups should be consulted more.

The focus, of course, was on the nature of the consultations: consultations needed to be meaningful, with a view to enabling change. We heard that formal consultations with workers, including concerned equity groups, are foundational.

Employment equity should not be thought of as a top-down form of workplace control. Relationships matter, especially for employment equity groups who have faced disadvantage and trauma. Canada's reckoning with truth and reconciliation underscores that self-determination by First Nations, Métis and Inuit peoples must be part of the human rights-based framework through which equitable inclusion is understood. Employment equity is part of a process of deliberately undoing systemic discrimination, while building respectful relationships within inclusive workplaces.

Meaningful consultations also strengthen attempts to correct the reliance on purely quantitative data. Workers' participation is necessary to be able to identify and remove barriers. Studies also underscore the importance of unions to promoting and fostering compliance with employment law, including by multinational enterprises located in Canada. Mechanisms that enable meaningful consultation should therefore be at the heart of employment equity.

We came away with a clear insight: employment equity will not be achieved unless we pay attention to supporting and sustaining the quality of the workplace relationships. Equity groups need to be heard through fair and equitably inclusive processes. Meaningful participation is grounded in the principle of "nothing about us without us".

Our task force recommends that Joint Employment Equity Committees be incorporated into the *Employment Equity Act* framework. They should be mandatory for the largest employers and voluntary for others. Wherever practicable, they should be harmonized with existing models for pay equity and occupational safety and health. Our recommendations seek to ensure that the joint employment equity committees' mandate is clearly defined, and that they play a key role in reporting obligations and ensuring accountability. We recommend ongoing training, and for the proposed Employment Equity Commissioner to study the effectiveness of training initiatives.

Employers in particular have been calling for less numbers-crunching and more training and support for decades. It is not enough simply to legislate. It is crucial to ensure that regulatory oversight agencies of government have the human resources, financial resources and administrative latitude to be able to act creatively, immediately and effectively in support of full implementation of employment equity. This could hardly be more important if we recognize that workplace inclusion is pivotal to building and sustaining a robust Canadian democracy and offering a distinctive and meaningful reflection of Canada in and to the world. The Task Force is persuaded that this cannot be more crucial. We also recommend the establishment of an advice line under the jurisdiction of the Employment Equity Commissioner to provide effective, efficient support to workplaces – employers and Joint Employment Equity Committees - on employment equity implementation.

Finding that learning was not shared broadly with those most concerned or interested in a comprehensive, readily accessible manner in the Workplace Opportunities: Removing Barriers to Equity (WORBE) program, we recommend that the program be significantly reformed with oversight to incentivize ongoing learning from emerging workplace issues, including on artificial intelligence, with a more significant and integrated role for researchers. Its projects and learning outcomes should be made publicly available.

Chapter 6: Fundamentally Rethinking the Regulatory Oversight Pillar

The third pillar is active support for compliance, accountability and enforcement through sustainably resourced regulatory oversight.

Workplaces should have significant latitude to promote equitable inclusion, reasonable latitude on how to implement employment equity, and no latitude to drag their feet on achieving and sustaining employment equity.

The current *Employment Equity Act* framework might be incentivizing foot dragging, not providing enough guidance to implement, and putting a brake on the creativity necessary to exceed unduly rigid indicators and achieve a barrier free workplace for all.

Without sufficiently robust regulatory oversight, workplaces lose the three key reasons why they might seek to comply with the *Employment Equity Act*, namely:

- economic—it costs less to comply than to risk fines and penalties;
- social—they do not want to be unfavorably compared to others in their industry; and
- normative—they believe it is the right thing to do.

Our current approach to regulatory oversight misses all three reasons. The *Employment Equity Act* framework offers:

- very little by way of economic incentive,
- limited visibility to employers who are doing well in the industry and little objective basis for comparison, and
- insufficient guidance to employers who want to do the right thing by fostering equitable inclusion on how to do so.

Our task force was informed that only 4 employers have ever received a notice of assessment of a monetary penalty. We learned that the last penalty was issued in 1991, which is also when the largest penalty was issued - $3,000.00. Under the Federal Contractors Program, no contractor has been found to be in non-compliance since the 2013 redesign. If we knew that employment equity was actually being achieved and sustained, the limited assessments of penalties would be something to celebrate. But that is far from the reality.

Remarkably, too, both the Labour Program and the Canadian Human Rights Commission told our task force that the audits conducted by the Canadian Human Rights Commission are not shared with the Labour Program that subsequently advises employers. Regrettably, the current practice seems to reflect the institutional silos that have developed over time. So many years into a process that should be helping us to achieve employment equity, our task force came away concerned. The bifurcation of responsibilities seems to be a big part of the problem facing regulatory oversight of the *Employment Equity Act* framework.

We accorded the utmost seriousness to the call by the Public Service Commission for accountability to be increased by focusing on outcomes rather than simply monitoring efforts, that is, for an oversight body to ensure that progress is actually made to close gaps.

Currently, the Canadian Human Rights Commission monitors compliance by conducting compliance audits for both the federal public service and federally regulated private sector employers. The Canadian Human Rights Commission may also apply to the Chairperson of the Canadian Human Rights Tribunal to request that an Employment Equity Review Tribunal be appointed, with power to issue decisions enforceable as court orders. This application is made when an employer requests a review of a decision issued by the Canadian Human Rights Commission or the Canadian Human Rights Commission requests the confirmation of its decision. The Employment Equity Review Tribunal itself has barely ever been used.

There is no use putting a gloss on this challenge: the Canadian Human Rights Commission's tiny Employment Equity Division does not have anywhere near the capacity necessary to undertake their crucial oversight work. Not surprisingly, we learned that some employers tend to *react* to the audits, rather than undertaking proactive measures in advance. Given the small number of audits conducted, there is little incentive to do otherwise. The close review of the limited number of audits made available to the task force chair tended to confirm the reactive character, and the limited guidance on implementation.

Employment equity is the federal government's commitment to substantive equality at work. The federal government is accountable for ensuring that there is proper public oversight. If we persist in assuming that all we need is more training, the legislative framework that seeks to support one of Canada's fundamental values, substantive equality, risks being undermined.

We recommend that an Employment Equity Commissioner be established, replacing the bifurcated division of labour between the Labour Program and the Canadian Human Rights Commission. The Employment Equity Commissioner should be independent and should report directly to Parliament, should have a broad range of legislative responsibility to ensure responsibility for regulatory oversight including workplace auditing.

Professional auditing requires appropriate resource allocation. Funding levels ultimately tell us what commitments we mean to keep. Our task force unfortunately heard a fair bit of cynicism on this point. Attention must be paid to the institutional autonomy of the Employment Equity Commissioner and the ability to meet the magnitude of the task available. Law does indeed convey commitment. And a lack of funding undermines law's commitments.

It is time to break out of the idea that equity work should be done on a nickel and a dime. If we are committed to championing employment equity in this global moment of rising intolerance, if we understand how critical substantive equality is to our workplaces, our economy as a whole, and our identity as Canadians, we must show it.

Among other more granular recommendations, our task force recommends that the staffing and funding envelope for the Employment Equity Commissioner be commensurate with the magnitude of the responsibility, including the auditing responsibilities, and reviewed periodically to provide the regulatory oversight necessary to achieve and sustain employment equity across federally regulated employers. In addition, the Employment Equity Commissioner should be legislatively guaranteed a separate budgetary envelope sufficient to ensure that the purposes of the *Employment Equity Act* can be fulfilled through appropriate staffing and mobility, and guided by the funding available to other independent commissioners that report directly to Parliament, including the Auditor-General of Canada. In particular,

- the auditing responsibility of the Employment Equity Commissioner should be funded at a level commensurate with the volume of covered employers in the federally regulated sector for which it assumes responsibility; and
- the responsibility for statistical analysis should be increased to meet the needs of an expanded Employment Equity Act and to ensure that the Office of the Employment Equity Commissioner can participate meaningfully in the Employment Equity Data Steering Committee.

The Employment Equity Commissioner should be able to recommend special programs if an investigation establishes underrepresentation of an equity group represented by a ground of discrimination in the *Canadian Human Rights Act* that warrants a special program to remedy it. If the recommendation is not followed, it may take the matter to the Employment Equity Tribunal.

We recommend that an advisory and review panel be established to inform the work of the Employment Equity Commissioner. The panel should comprise experts in employment equity and related human rights and labour and employment relations issues. Members should broadly reflect a composite of Canadian society as a whole, and ensure intersectional representation of each of the employment equity groups. The panel should be convened at least twice per year. It should have the responsibility to conduct the reviews that are to be submitted to Parliament by the Employment Equity Commissioner and rendered public. The advisory and review panel's budget should include the resources to undertake the reviews no less than once every 10 years.

As to the institutional architecture, our task force seeks to ensure that the Employment Equity Commissioner is able to assure the level of regulatory oversight necessary to meet the purpose of the *Employment Equity Act*. We canvas three options:

- Option 1. House an Employment Equity Commissioner within the CHRC, through a buttressed proactive compliance branch
- Option 2. Create a stand-alone Office of the Employment Equity Commissioner
- Option 3. Build an Office of Equity Commissioners

The Task Force canvassed a number of Commissioners' offices within the federal system, to gain a closer understanding of the different structures within and beyond the Canadian Human Rights Commission that might inform the decision about the appropriate options for an Employment Equity Commissioner. The Office of the Auditor General of Canada, the Official Languages Commissioner and the Privacy Commissioner offer particular insights, including on funding levels. There are also important examples of institutional experimentation with the appropriate mix of human rights and labour rights bodies across Canada. We also considered the serious concerns expressed by equity groups about the Canadian Human Rights Commission, and weighed heavily the recent findings of systemic racism. We also pondered the risks of a stand-alone model and the importance of fostering harmonization.

Our consultations point toward the value in establishing an Office of Equity Commissioners, through which the Employment Equity Commissioner, the Pay Equity Commissioner and the Accessibility Commissioner could be jointly housed. It would be our expectation that like the Office of the Official Languages Commissioner and the Office of the Privacy Commissioner, a recommended Office of Equity Commissioners should report directly to Parliament. The Office of the Equity Commissioner's relationship to the Canadian Human Rights Commission should be a horizontal dotted line, with initiatives to ensure that there is collaboration with the Chief Human Rights Commissioner including in its role as Canada's National Human Rights Institution.

The Office of Equity Commissioners should receive a staff and budgetary envelope that are on par with the significance of the responsibility that they face. A separate budgetary envelope for the Office of Equity Commissioners is key; the task force has understood the challenge of holding resources constant for employment equity when there are competing demands and employment equity is not clearly prioritized.

The Office of Equity Commissioners should have a dedicated team of auditors, and significantly increased in number, on par with the extensive responsibility, who are conversant with all three covered mandates, representative of employment equity groups and highly qualified in understanding and addressing substantive equality.

The relationship of the Office of Equity Commissioners to the Canadian Human Rights Tribunal, through which the Employment Equity Review Tribunal is linked, should be similar to the relationship between the Canadian Human Rights Commission and the Canadian Human Rights Tribunal.

The establishment of an Office of Equity Commissioners will not be a panacea. The Office of Equity Commissioners must be fully supported, and there must be support around the Commissioners to ensure sustainability.

In addition, our report takes the call to foster harmonization to heart. If employment equity is truly an all of society matter, it must help to lead rather than lag behind the newer equity schemes for pay equity and accessibility. Both employers and unions told us that they want to foster workplace equity but they want to do it in a coherent, comprehensive manner. Five areas would make a big difference

to the effectiveness of regulatory oversight under the *Employment Equity Act* framework and across proactive equity mandates:

- **harmonize timelines for implementation**: The principle is simple: when commitments are made, they should be respected. In keeping with Canada's acceptance of the UN Sustainable Development goals, and commitments in the *Pay Equity Act* and the *Accessible Canada Act*, the *Employment Equity Act* should be revised to clarify that the Minister is responsible for achieving employment equity by 1 January 2040.
- **harmonize reporting**: We recommend that legislative amendments should permit the Accessibility Commissioner and the Employment Equity Commissioner to streamline reporting as it relates to barrier removal related to accessibility in employment. They should have the power to specify and appropriately adapt the requirements through regulations or guidelines.
- **harmonize and update complaints procedures:** We have a somewhat opaque process channeled through a dysfunctional bifurcation between the Labour Program and the Canadian Human Rights Commission that may mask rather than remove barriers to representation. However, a complaints-based process should not be allowed to take over an approach that stimulates compliance through persuasion and incentives and regulatory support and oversight. What is proposed is a dynamic process that incentivizes agreement rather than litigation. We recommend that any worker in an employer's covered workplace be able to bring a complaint to the Employment Equity Commissioner on the grounds that an employer's implementation obligations under the *Employment Equity Act* are not being respected. The Employment Equity Commissioner shall dismiss a complaint unless the presumption that the internal mechanisms to implement employment equity are functioning appropriately has been dislodged. Should the Employment Equity Commissioner decide that there is sufficient evidence, an audit by the Employment Equity Commissioner would be the remedy. With a view to respecting and sustaining the existing structure of the *Employment Equity Act*, we further recommend that the Employment Equity Commissioner have the capacity to attempt to negotiate a written undertaking from the employer to take specified measures to remedy the failure to make reasonable progress on achieving employment equity. If unsuccessful, the Employment Equity Commissioner should be required to issue directions including special measures to remedy the non-compliance. We provide a number of specific recommendations to ensure that the role, powers and responsibilities of the former Employment Equity Review Tribunal, to be renamed the Employment Equity Tribunal, are fully in keeping with the recommendation to implement an Employment Equity Commissioner.
- **harmonize and repurpose penalties**: Regulatory oversight needs to be taken seriously to avoid undermining the objectives of the *Employment Equity Act* framework. It includes adapting measures to apply to the Federal Contractors Programs. Stakeholders who came before our task force recognized that penalties were a last resort. They understood that a focus on penalties would detract from the collective work needed to build inclusive practices in the workforce. What bothered many was the sense that the *Employment Equity Act* could essentially be ignored, and that employers could start their processes if and when they were audited by the CHRC. Our task force recommends that to ensure reasonable progress in the implementation of employment equity, penalties should be updated and harmonized with comparable penalties under the *Pay Equity Act* and the *Accessible Canada Act,* scaled to the size and nature of the employer and to the level of non-compliance.

- **harmonize sustainable support for employment equity groups**: Our task force wanted to pay careful attention to the request by several employment equity groups to have someone with regulatory oversight available to foster understanding and support in a transversal manner. We did not simply want to multiply responsibilities. To foster integration and harmonization, we would recommend that in addition to vesting transversal responsibility for women workers in the Pay Equity Commissioner and transversal responsibility for disabled workers in the Accessibility Commissioner, four newly created deputy commissioners, or ombudspersons should be created, with transversal responsibilities for Indigenous reconciliation (First Nations, Métis and Inuit workers), Black workers, racialized workers and 2SLGBTQI+ workers.

Finally, it is an important principle that employment equity goals should apply internally to the public oversight bodies that apply the *Employment Equity Act* framework. Our task force heard particular concern to sustain leadership on equity within the federal public service. We sought to clarify in particular that while the role of Deputy Minister Champion is crucial, it should not supplant the second pillar, meaningful consultations with employees themselves, through their chosen representatives. While members of equity groups may benefit from the appropriate support, they also require autonomy. Champions are part of the third pillar, accountability, and along with other deputy ministers, they need to be assessed on the results that they achieve. Public monitoring agencies should meet their goals, including those under the *Employment Equity Act*. We therefore call for deputy heads in the federal public service to be held directly accountable through their own performance evaluations for ensuring reasonable progress to achieve employment equity, and to sustain employment equity once it has been achieved. Other employers covered under the *Employment Equity Act* framework should report on how their senior leadership is held accountable in their performance evaluations for ensuring reasonable progress to achieve employment equity, and to sustain employment equity once it has been achieved.

Chapter 7: Technical Regulatory Implications of Employment Equity Coverage

This chapter recognizes that while the broad principle of equitable inclusion is clear, details really matter. It covers three implications:

- The first is that we need to know what is happening in federal workplaces. Labour law and human rights, including the *Employment Equity Act* framework, is intended to apply broadly and to foster equitable inclusion and sustainable economic growth, full and productive employment, and decent work for all.
- The second is that covered employers should report on their entire workforce including dependent contractors for the purpose of employment equity, consistent with the *Pay Equity Act* and the *Canada Labour Code*.
- The third is that coverage, notably for the Legislated Employment Equity Program, federal employers abroad and the Federal Contractors Program should be optimized.

We recommend that the *Employment Equity Act* framework should apply to workplaces with 10 or more employees. Employers with between 10 and 49 employees should be required to achieve reasonable progress on attaining representation of employment equity groups consistent with labour market availability. They should be provided with meaningful access to training and support.

Employers with 50 or more employees and all covered employers in the federal public service should also be required to assume the existing employer obligations under the current *Employment Equity Act,* with an appropriate transition window for reporting. They should be provided with meaningful access to training and support. We pay special attention to reporting on public sector workers abroad. Parliamentary employees should be covered by the *Employment Equity Act* framework.

For the Federal Contractors Program, we recommend equivalency with employer implementation under the *Employment Equity Act* and a change to the threshold consistent with the threshold in Québec, at $100,000. We also recommend a distinct approach to include all colleges and universities whose researchers apply for federal research grants under the Federal Contractors Program. Finally, we recommend that some existing exclusions of legal service contracts, grants and contributions, international cooperation and construction contracts should be rethought.

On a related note, we recommend that the federal government use its policy space to include set-backs on behalf of employment equity groups under the *Employment Equity Act* in awarding procurement contracts to promote the equitable inclusion of entrepreneurs from employment equity groups in the award of federal contracts, with prior government-to-government consultations to take place as concerns First Nations, Métis and Inuit peoples.

While this report could not consider everything, we have tried to consider and respond carefully to quite a lot. There is necessary detail, but we have kept the focus on the big picture – strengthening the three pillars of implementation through barrier removal, meaningful consultations and regulatory oversight. Coverage is not for its own sake, but into a supportive and sustainable framework to foster equitable inclusion for all.

Mostly, we were buoyed by the fact that stakeholders who came before us were not just viewing employment equity as a constraint but as a competitive advantage, for individual employers, for economic growth, and for Canadian society as a whole. This includes how we represent ourselves in the world.

The recommendations offered in this chapter seek to respect those broader societal aspirations. This report identifies the areas where coverage should and can quite logically be extended. We pay attention to thresholds and seek to promote communities of learning.

Employment equity is not and cannot be everything to everyone. But it can be true to its own objectives and must be understood as an important part of the holistic approach to labour law and human rights law.

Conclusion:

We heard repeatedly that Canada has an opportunity to lead by example. On employment equity, as we acknowledge our past with humility and work toward an equitably inclusive future, we continue to show the world that a deeply pluralist, open, democratic and equitable society is possible.

The report contains 187 recommendations, compiled as a comprehensive list in the conclusion. They are meant to complement each other to build a comprehensive response to achieving and sustaining employment equity.

Throughout the report, we say it, and say it again: we must go beyond the symbolic, to focus on supportive and sustainable approaches that strengthen all three pillars, enabling us to achieve employment equity.

This report has engaged with the law and legal frameworks, out of the firm conviction that law reform really matters. But law is not enough. And substantive equality must be understood in context; it is meant to be lived.

People most need to internalize substantive equality norms. There needs to be deep listening through meaningful consultations, timely support, sufficient resources, alongside commitment, knowledge and leadership from the top within workplaces, and from the governmental institutions charged with oversight. It takes all of us.

Time and time again we were reminded: the failure to achieve employment equity in Canadian workplaces is a lost opportunity for Canada. We also heard the more positive side: in the Canada of 2023, if we are intentional about achieving employment equity, it can be achieved, and it will enrich our workplaces, our society, and our world.

Comprehensive list of report recommendations

Chapter 1: Equitable inclusion in the changing world of work: Toward supportive and sustainable coverage

Recommendation 1.1: The purpose of the *Employment Equity Act* should be updated as follows: "The purpose of this Act is to achieve and sustain substantive equality in the workplace through effective employer implementation, meaningful consultations and regulatory oversight of employment equity and, in the fulfilment of that goal, to:

- correct the conditions of disadvantage in employment experienced by employment equity group members;
- give effect to the principle that employment equity means more than treating persons in the same way but also requires barrier removal including special measures;
- support the implementation of Canada's international human rights commitments to substantive equality and meaningful consultations in the world of work, including in the United Nations Declaration on the Rights of Indigenous Peoples; and
- foster equitable inclusion and sustainable economic growth, full and productive employment and decent work for all."

Recommendation 1.2: Employment equity data collection and benchmarks should be systematically rethought to eliminate barriers and foster data justice.

Chapter 2: Data justice

Recommendation 2.1: An Employment Equity Data Steering Committee should be established under the Employment Equity Act to support implementation, meaningful consultations, and regulatory oversight to achieve and sustain employment equity.

Recommendation 2.2: The Employment Equity Data Steering Committee should have as a clear mandate to adopt a human rights-based, data justice approach.

Recommendation 2.3: The Employment Equity Data Steering Committee should comprise high level representation that includes as titular members Statistics Canada, the Employment Equity Commissioner, ESDC's Chief Data Officer, the Canadian Human Rights Commission, the Labour Program, the Public Service Commission and TBS-OCHRO.

Recommendation 2.4: The Employment Equity Data Steering Committee should include sub-committees with appropriate technical specialists within the federal government that are meaningfully representative of employment equity group members.

Recommendation 2.5: The mandate of the Employment Equity Data Steering Committee should include:

- recommending appropriate expansions or merging of databases, sources and surveys that affect the ability of federally regulated employers and employers subject to the Federal Contractors Program to report on the representation of employment equity groups and subgroups;
- prioritizing the identification and removal of barriers in data benchmarks that affect discouraged and overqualified workers; and
- undertaking research in collaboration with academics and broader communities that are meaningfully representative of employment equity groups.

Recommendation 2.6: Labour market surveys conducted by Statistics Canada should include a question, developed in consultation with the Employment Equity Data Steering Committee, asking how long workers looked for employment in their field of study.

Recommendation 2.7: The Employment Equity Data Steering Committee should be considered part of the *Employment Equity Act* framework.

Recommendation 2.8: The *Employment Equity Act* should specify that the collection of distinctions-based, disaggregated and intersectional data is authorized to meet the purpose of achieving and sustaining substantive equality for members of employment equity groups.

Recommendation 2.9: Distinctions-based, disaggregated and intersectional data should be collected whenever reasonably possible and with due regard to privacy protections, with the purpose of ameliorating the conditions of all equity groups and with special attention to members of the most underrepresented employment equity groups.

Recommendation 2.10: The *Employment Equity Regulations* or guidelines prepared under them should offer sustainable support to workplaces on how to prioritize employment equity initiatives on those employment equity groups and subgroups that are the most underrepresented in the workplace, while retaining responsibility for achieving employment equity for all employment equity groups.

Recommendation 2.11: The *Employment Equity Act* should specifically clarify that the purpose of data collection is to support achieving and sustaining employment equity in the workplace, by building trust in support of implementation, meaningful consultations and regulatory oversight.

Recommendation 2.12: The *Privacy Act* and *PIPEDA* should be reviewed and as appropriate amended to clarify expressly that the data collection frameworks are to be interpreted to support the human rights purpose of the *Employment Equity Act*, including in implementation, meaningful consultations and regulatory oversight.

Recommendation 2.13: Self-identification should remain voluntary under the *Employment Equity Act* framework.

Recommendation 2.14: Employers should be required under the *Employment Equity Act* framework to ask all workers to complete a self-identification survey on initial hiring, on an annual basis, and on separation from the employer.

Recommendation 2.15: Completing the self-identification survey should be mandatory, but the survey should include the option not to self-identify under each question related to membership in an employment equity group or sub-group.

Recommendation 2.16: The self-identification survey should be available in accessible formats, include all of the employment equity groups and disaggregated sub-groups, and clarify that a worker may self-identify as being a member of as many of the employment equity groups and disaggregated sub-groups as apply.

Recommendation 2.17: Within the federal public service, self-declaration on appointment should be streamlined with self-identification for the purposes of the *Employment Equity Act*.

Recommendation 2.18: Within the federal public service, self-identification survey data should be centralized and streamlined, making the Treasury Board Secretariat the central record recipient and recorder to facilitate appropriate employment equity data sharing between units.

Recommendation 2.19: The self-identification survey should be available for workers to update at any moment in their work lifecycle and resubmitted to employees on an annual basis for any updates.

Recommendation 2.20: Employers should be permitted to remind workers to complete the separate, confidential and voluntary self-identification survey at the end of the accommodation process, so long as self-identification for the purpose of employment equity is understood to remain voluntary, confidentiality can be assured, and the datasets are understood to remain separate.

Recommendation 2.21: The *Employment Equity Act* should expressly clarify that data collection and reporting on sub-group members are permitted and permit special measures to be taken to improve the hiring, promotion and retention of those sub-group members that are relatively less well represented in the employer's workplace.

Recommendation 2.22: The *Employment Equity Regulations* or guidelines prepared under them should provide detailed guidance on how to collect disaggregated data and report it in a meaningful manner to understand underrepresentation and where to prioritize.

Recommendation 2.23: The *Employment Equity Regulations* or guidelines prepared under them should provide directives to avoid misleading reporting if persons are counted multiple times across a number of disaggregated or intersecting groups.

Recommendation 2.24: The Employment Equity Data Steering Committee should be mandated to consider how best to draw on existing and emerging projections capabilities to redress the time lag in the calculation of labour market availability.

Recommendation 2.25: The federal public service should cease producing and relying on workforce availability to meet its responsibilities under the *Employment Equity Act* framework.

Recommendation 2.26: The "Canadian workforce" under Section 5(b)(i) of the *Employment Equity Act* should be the default benchmark in the *Employment Equity Regulations*.

Recommendation 2.27: Requests for derogations from the default benchmark should be addressed to the Employment Equity Commissioner on a case-by-case basis for a defined time period.

Recommendation 2.28: So long as representation is lower than Census population levels appropriate to the geographic context, employers should be permitted to continue to work to correct underrepresentation of employment equity groups, focusing on obtaining critical mass.

Recommendation 2.29: The Employment Equity Commissioner should develop tools that foster appropriate, accessible public sharing of employer reports. Protocols should be developed to ensure that proprietary information can be excepted from the information that is shared consistent with the *Employment Equity Act* and privacy laws.

Recommendation 2.30: An open government site for employment equity reports should be created to make all reports filed under the *Employment Equity Act* framework available through the accessible, searchable database.

Recommendation 2.31: the Employment Equity Commissioner should be provided with all reasonable latitude to ensure that employment equity data are made available for employment equity implementation and oversight as soon as possible after it is prepared.

Chapter 3: Rethinking equity groups under the *Employment Equity Act* framework

Recommendation 3.1: The term "designated groups" in the *Employment Equity Act* should be replaced by the term "employment equity groups".

Recommendation 3.2: Employment equity group members should be referred to as "workers" in the *Employment Equity Act* framework.

Recommendation 3.3: The *Employment Equity Act* framework should adopt the term "Indigenous workers" with a distinctions-based approach to First Nations, Métis and Inuit peoples.

Recommendation 3.4: The *Employment Equity Act* should clarify that its use of "Indigenous workers" with a distinctions-based approach to First Nations, Métis and Inuit peoples is intended to be consistent with Section 35 of the *Constitution Act, 1982* and Section 91(24) of the *Constitution Act, 1867*.

Recommendation 3.5: The federal government should prioritize meaningful consultations consistent with First Nations, Métis and Inuit peoples' right to self-determination to seek to resolve data sovereignty issues and redress data gaps in labour market information on reserves.

Recommendation 3.6: The issue of Indigenous self-identification for the purposes of the *Employment Equity Act* framework should be made the subject of an urgent process of meaningful consultation within the meaning of the Canadian constitution and the *United Nations Declaration on the Rights of Indigenous Peoples Act.*

Recommendation 3.7: Section 7 of the *Employment Equity Act* should be supplemented by a framework fostering Indigenous self-determination that is co-constructed through meaningful consultations with a view to free, prior and informed consent with Section 35 of the *Constitution Act, 1982* and Articles 18 -21 and 26-32 of the *United Nations Declaration on the Rights of Indigenous Peoples.*

Recommendation 3.8: The transformative framework should include special measures that ensure continuing improvement of First Nations, Métis and Inuit peoples' economic and social conditions.

Recommendation 3.9: The definition of disability in the *Accessible Canada Act* should replace the current definition of persons with disabilities in the *Employment Equity Act*.

Recommendation 3.10: The Employment Equity Data Steering Committee should prioritize developing quantitative and qualitative data on persons with disabilities that are disaggregated and intersectional, including through commissioned research, and in meaningful consultation with employers' and workers' representatives and representative organizations of disabled workers.

Recommendation 3.11: Psychosocial or intellectual disabilities should be considered from a disaggregated and intersectional manner to ensure that the implementation, meaningful consultation and regulatory oversight in employment equity effectively responds to the specific needs of those with invisible disabilities.

Recommendation 3.12: The *Employment Equity Act* framework should draw inspiration from the *Accessible Canada Act* and the Canadian Survey on Disability to identify appropriate subgroups.

Recommendation 3.13: The Treasury Board of Canada and the Public Service Commission should work closely and on a priority basis with the Employment Equity Commissioner to establish targeted hiring initiatives for persons with disabilities to achieve and sustain the established 2025 hiring goal in the federal public service.

Recommendation 3.14: Women should remain an employment equity group.

Recommendation 3.15: Employment equity implementation, meaningful consultation, and regulatory oversight should be approached in a disaggregated and intersectional manner.

Recommendation 3.16: The Employment Equity Data Steering Committee should study how best to obtain a suitably representative, disaggregated, and intersectional characterization of the Black population in Canada, in meaningful consultation with representative organizations of people of African descent.

Recommendation 3.17: Black workers should constitute a separate employment equity group for the purposes of the *Employment Equity Act* framework.

Recommendation 3.18: 2SLGBTQI+ workers should comprise a new employment equity group under the *Employment Equity Act* framework.

Recommendation 3.19: The *Employment Equity Act* and accompanying regulations should provide for the language of 2SLGBTQI+ to be updated as appropriate, in meaningful consultation with 2SLGBTQI+ communities concerned.

Recommendation 3.20: In consultation with the Employment Equity Data Steering Committee and concerned representatives of 2SLGBTQI+ workers, Statistics Canada should develop appropriate questions for the Census or other suitable surveys to support the implementation of an employment equity group for 2SLGBTQI+ workers.

Recommendation 3.21: Transitional measures should be adopted under the *Employment Equity Act* or accompanying regulations to ensure that employers can commence coverage of 2SLGBTQI+ employment equity group members by conducting employment systems reviews and preparing action plans drawing on general population data before Labour Market Availability benchmarks become available.

Recommendation 3.22: The term "visible minority" in the *Employment Equity Act* framework should be replaced by the term "racialized workers".

Recommendation 3.23: The *Employment Equity Act* framework should continue to cover racialized workers.

Recommendation 3.24: The federal government should consider ratifying the Global Convention on the Recognition of Qualifications concerning Higher Education.

Recommendation 3.25: A principled approach to the issues of exclusion should come from a comprehensive, proactive approach to barrier removal across protected grounds under the *Canadian Human Rights Act*.

Recommendation 3.26: The Employment Equity Commissioner should have the ability to investigate and recommend special employment equity programs (special temporary measures) for defined equity groups based on evidence of disadvantage that has resulted in underrepresentation in employment.

Recommendation 3.27: The Employment Equity Data Steering Committee should be mandated to advise on whether a question on religion should be present in each Census rather than every 10 years.

Recommendation 3.28: The inclusion of religious minorities under the *Employment Equity Act* should be considered for comprehensive study by the newly re-established Law Commission of Canada.

Chapter 4: Strengthening implementation: The barrier removal pillar

Recommendation 4.1: The *Employment Equity Act* should be clarified to ensure that employers are understood to have an obligation to make reasonable progress to achieve employment equity, and to sustain employment equity once it has been achieved.

Recommendation 4.2: The *Employment Equity Act* should

- define barriers as practices that affect equity groups in a disproportionately negative way;
- specify that barrier removal applies across each stage of the employment lifecycle, and should be reported upon in the employment systems review; and
- provide for the *Employment Equity Regulations* or guidelines prepared under them to support comprehensive barrier removal and reporting.

Recommendation 4.3: Reporting by employers, including employment systems reviews should be required by all covered employers on a 3-year reporting cycle.

Recommendation 4.4: A transitional process should be implemented to ensure that report submission dates by employers are staggered.

Recommendation 4.5: The *Employment Equity Regulations* should contain schedules to support employers in preparing an employment equity plan.

Recommendation 4.6: Guidelines should be developed that include promising practices for identifying and eliminating barriers in the workplace, including how to conduct employment systems reviews that identify and eliminate barriers across the work lifecycle and incorporate climate surveys.

Recommendation 4.7: The *Employment Equity Regulations* or guidelines prepared under them should provide for reporting on individual reasonable accommodations requested and provided in the workplace to be included in employment systems reviews.

Recommendation 4.8: The notion of "undue hardship" in Section 6(a) of the *Employment Equity Act* should be defined to mean that it would be impossible to take the reasonably necessary measure without "undue hardship".

Recommendation 4.9: The *Employment Equity Act* should be amended to clarify that once employment equity has been achieved for any employment equity group, employers have an ongoing responsibility to sustain employment equity.

Recommendation 4.10: Sections 34(1) of the *Public Service Employment Act* should be drawn upon proactively to support targeted hiring competitions to redress the underrepresentation of employment equity groups in a proactive and equitable manner.

Recommendation 4.11: Section 31(1) of the *Public Service Employment Act* should be changed from permissive to a requirement.

Recommendation 4.12: The qualification standards should be established through meaningful consultations with the Joint Employment Equity Committee.

Recommendation 4.13: The interpretation of merit in Section 30(4) of the *Public Service Employment Act* should be tightened, notably through attentive use of the Public Service Commission's general regulatory powers in Section 22(1), to ensure that appointments based on merit occur through competitions assessed by committees composed in consultation with the relevant Joint Employment Equity Committee(s).

Recommendation 4.14: The language of "right fit" should be abandoned in the Public Service of Canada in favour of a concept that communicates an equitably inclusive approach to appointments.

Recommendation 4.15: Section 6(c) of the *Employment Equity Act* should be abrogated.

Recommendation 4.16: The *Employment Equity Regulations* or guidelines prepared under them should ensure that employers report on workplace harassment and violence policies and their preventative actions.

Recommendation 4.17: The *Employment Equity Regulations* or guidelines prepared under them should provide for workplace benefit packages to be considered in the employment systems review process.

Recommendation 4.18: Urgent policy attention should be devoted to assessing the distribution of official language training opportunities to ensure that they are made available to employment equity group members in the federal public service, without discrimination.

Recommendation 4.19: Meaningful consultations should be undertaken between the federal government and First Nations, Métis and Inuit peoples with a view to establishing a national Indigenous languages allowance within the federal public service to acknowledge and compensate Indigenous language users in positions where Indigenous language capacity is required, recommended or relied upon.

Recommendation 4.20: The *Employment Equity Regulations* should provide for the use of artificial intelligence in recruitment or other forms of worker evaluation or assessment to be reported upon in employers' employment systems reviews.

Recommendation 4.21: Guidelines and training should be developed and updated by the Employment Equity Commissioner, including on artificial intelligence use across the employment lifecycle with particular attention to recruitment and hiring.

Recommendation 4.22: The federal government should enter into consultations with employers' and workers' representatives and concerned communities with a view to amending the *Canada Labour Code* to enable religious minorities to avail themselves of one or more annual paid leave days reasonably available to them to observe religious high holidays.

Recommendation 4.23: The federal government should, in consultations with concerned groups, consider amending the *Canadian Human Rights Act* and the *Canada Labour Code* to ensure that NDAs are not misused for the purpose of silencing human rights complainants or whistleblowers.

Recommendation 4.24: The *Employment Equity Regulations* should be amended to require employers to report on the number of NDAs signed with categories regarding the broad subject matter and potential barriers that they covered. The reporting should include non-nominative information about the designated employment equity group(s) to which the complainant(s) and the alleged perpetrator(s) may belong.

Recommendation 4.25: A study should be undertaken of the use of NDAs to resolve employment matters within federal jurisdiction and its impact on respecting human rights and achieving employment equity in the workplace.

Recommendation 4.26: The Government of Canada is encouraged to ratify the ILO Domestic Workers Convention, 2011 (No.189).

Recommendation 4.27: Studies of the feasibility of basic income policies should be encouraged. They should pay particular attention to the effect of basic income strategies on redressing barriers to equitable workplace inclusion faced by employment equity groups.

Recommendation 4.28: The Canadian Armed Forces should be required to calculate availability and set goals for all employment equity groups covered under the *Employment Equity Act*.

Recommendation 4.29: Dedicated assistance should be provided to the CAF by the Employment Equity Commissioner to support and enable it to sustain reasonable progress to achieve employment equity for all employment equity groups.

Recommendation 4.30: The call in the Bastarache report for an independent external review and genuinely independent and adequately resourced oversight body for the RCMP should be implemented.

Chapter 5: Reactivating the meaningful consultations pillar

Recommendation 5.1: The *Employment Equity Act* should clarify that the obligation to make reasonable progress to achieve employment equity, and to sustain employment equity once it has been achieved

- is incorporated into collective agreements governing employees of covered employers; and
- encourages, rather than limits, collective bargaining that deepens equitable inclusion, notably on staffing or classification.

Recommendation 5.2: All covered public service employers, alongside federally regulated private sector employers with 100+ workers and FCP employers with 100+ workers should be required to establish a joint employment equity committee, as appropriate with sub-committees notably for departments or specific trades.

Recommendation 5.3: For federally regulated private sector employers (LEEP and FCP) with 50 – 99 workers, the *Employment Equity Act* framework should support the voluntary establishment of joint employment equity committees. If the covered employers with 50 – 99 workers have at least one bargaining agent, then the joint employment equity committees are required.

Recommendation 5.4: Covered employers should benefit from a reasonable transition window to establish the joint employment equity committees.

Recommendation 5.5: Wherever practicable, terms of service should be harmonized with terms of service of workplace health and safety committees.

Recommendation 5.6: The Joint Employment Equity Committee should comprise a minimum of 5 members, at least half of the members should be employees who do not exercise managerial functions.

Recommendation 5.7: The Joint Employment Equity Committee should strive to represent each of the employment equity groups.

Recommendation 5.8: The Joint Employment Equity Committee should strive to represent workers from across the work life cycle.

Recommendation 5.9: In unionized workplaces, representation should be proportional to the number of bargaining agents in the workplace, with sub-committees as appropriate.

Recommendation 5.10: In non-unionized workplaces, elections of worker representatives should be preferred.

Recommendation 5.11: If a workplace is unable to establish a Joint Employment Equity Committee, the employer should apply to the Employment Equity Commissioner to resolve the matter using ADR techniques. The Employment Equity Commissioner should also have the power to authorize modifications to the legislative requirements.

Recommendation 5.12: Time spent on a Joint Employment Equity Committee should be considered work time and compensated accordingly.

Recommendation 5.13: Joint Employment Equity Committee members should be provided with training in order to be able to carry out their responsibilities.

Recommendation 5.14: The Joint Employment Equity Committee should be permitted to collect, analyze and review relevant data to assist the employer in the implementation of employment equity. The Joint Employment Equity Committee should have full access to all of the government and employer reports, studies and tests relating to employment equity or parts of those reports, studies and tests that relate to employment equity but shall not have access to the medical records of any person except with the person's consent.

Recommendation 5.15: Joint Employment Equity Committee s should be permitted to conduct exit interviews with departing staff to identify workplace barriers that might be addressed in subsequent employment equity plans.

Recommendation 5.16: Joint Employment Equity Committee members' liability should be limited to provide protection for good faith acts or omissions under the authority of the *Employment Equity Act*.

Recommendation 5.17: The *Employment Equity Act* should be revised to include comprehensive, detailed protection for Joint Employment Equity Committee members and others exercising their rights under the *Employment Equity Act* against reprisals by the employer or any person acting on behalf of the employer, or by the bargaining agent or any person acting on behalf of the bargaining agent.

Recommendation 5.18: The relevant privacy legislation should be revised following meaningful consultations with representative trade unions to ensure effective trade union participation in the implementation of employment equity.

Recommendation 5.19: Employment equity training should prioritize Truth and Reconciliation Commission calls to action on education and support learning about positive initiatives to promote Indigenous economic prosperity.

Recommendation 5.20: Leadership training in the federal public service should include training on systemic discrimination including systemic racism, substantive equality and equitable workplace inclusion.

Recommendation 5.21: An advice line under the jurisdiction of the Employment Equity Commissioner should be established to provide effective, efficient support to workplaces – employers and Joint Employment Equity Committees - on employment equity implementation.

Recommendation 5.22: Training support should be geared to different organizational levels in the covered employers and should be attentive to the needs and expertise of middle managers and first line supervisors, as well as members of the Joint Employment Equity Committee.

Recommendation 5.23: WORBE projects should be selected with the input of the Employment Equity Advisory and Review Panel.

Recommendation 5.24: WORBE should be repurposed to

1. support sectors in greatest need of closing the representation gap;
2. integrate researchers in initiatives to assess the impact of workplace policies to achieve equity, including through links with the federal tri-agency funding councils;
3. build and share practical knowledge on emerging workplace issues that may pose barriers and how to address them; and
4. ensure that employment equity groups are at the centre of the knowledge development and sharing.

Recommendation 5.25: WORBE-funded projects and learning outcomes should be made publicly available and readily accessible online.

Chapter 6: Fundamentally rethinking the regulatory oversight pillar

Recommendation 6.1: An Employment Equity Commissioner should be established.

Recommendation 6.2: The Employment Equity Commissioner should be independent and should report directly to Parliament.

Recommendation 6.3: The Employment Equity Commissioner should have legislative responsibility and powers that include the powers in Section 42 of the *Employment Equity Act*.

Recommendation 6.4: The Employment Equity Commissioner should have the legislative authority to collect information on the employment practices and policies of all covered employers in the federal public service and private sector, as well as under the Federal Contractors Program, for the purpose of ensuring that employment equity is implemented in their workplaces.

Recommendation 6.5: The Employment Equity Commissioner, like other federal commissioners including the Privacy Commissioner of Canada, the Commissioner of Official Languages, the Information Commissioner of Canada, the Public Sector Integrity Commissioner of Canada and the Commissioner of Lobbying, should be considered a contracting authority exempted from Section 4 of the *Government Contracts Regulations*.

Recommendation 6.6: The Employment Equity Commissioner should be responsible for regulatory oversight including workplace auditing.

Recommendation 6.7: An Employment Equity Advisory and Review Panel should be established under the *Employment Equity Act* to inform the work of the Employment Equity Commissioner.

Recommendation 6.8: The Employment Equity Advisory and Review Panel should have the responsibility to conduct reviews no less frequently than once every 10 years, to be submitted to Parliament by the Employment Equity Commissioner and rendered public.

Recommendation 6.9: The staffing and funding envelope for the Employment Equity Commissioner should be commensurate with the magnitude of the responsibility, including the auditing responsibilities, and reviewed periodically to provide the regulatory oversight necessary to enable employment equity to achieve and sustain employment equity across federally regulated employers.

Recommendation 6.10: The Employment Equity Commissioner should be legislatively guaranteed a separate budgetary envelope sufficient to ensure that the purposes of the *Employment Equity Act* can be fulfilled through appropriate staffing and mobility, and guided by the funding available to other independent commissioners that report directly to Parliament, including the Auditor-General of Canada. In particular,

- the auditing responsibility of the Employment Equity Commissioner should be funded at a level commensurate with the volume of covered employers in the federally regulated sector for which it assumes responsibility, and
- the responsibility for statistical analysis should be increased to meet the needs of an expanded *Employment Equity Act* and to ensure that the Office of the Employment Equity Commissioner can participate meaningfully in the Employment Equity Data Steering Committee

Recommendation 6.11: The *Employment Equity Act* should provide that the Employment Equity Commissioner enjoys sufficient remedial and enforcement powers to ensure that the purposes of the legislation can be fulfilled.

Recommendation 6.12: The *Public Service Employment Act and* the *Canada Labour Code* should be amended to require them to notify the Employment Equity Commissioner when a matter relates to the *Employment Equity Act* and provide the power to refer a matter to the Employment Equity Commissioner.

Recommendation 6.13: Notice should be given to the Employment Equity Commissioner when a policy grievance has been referred to adjudication and a party to the grievance raises an issue involving the interpretation or application of the *Employment Equity Act*, in accordance with the regulations. The Employment Equity Commissioner should have standing in order to make submissions on the issues in the policy grievance.

Recommendation 6.14: The Employment Equity Commissioner should enjoy immunity and be precluded from giving evidence in civil suits in a manner analogous with Sections 178 & 179 of the *Pay Equity Act*.

Recommendation 6.15: Establishing an Office of Equity Commissioners should be closely considered with a view to harmonizing and appropriately funding and ensuring effective equity oversight and parliamentary reporting in the federal jurisdiction with consideration given to the structures and funding of the Office of Auditor General of Canada, the Office of the Privacy Commissioner of Canada, and the Office of Official Languages.

Recommendation 6.16: The Employment Equity Commissioner should be able to recommend special programs if an investigation establishes underrepresentation of an equity group represented by a ground of discrimination in the *Canadian Human Rights Act* that warrants a special program to remedy it.

Recommendation 6.17: The *Employment Equity Act* should be revised to clarify that the Minister is responsible for achieving employment equity by 1 January 2040, and sustaining it.

Recommendation 6.18: Legislative amendments should permit the Accessibility Commissioner and the Employment Equity Commissioner to streamline reporting as it relates to barrier removal related to accessibility in employment. They should have the power to specify and appropriately adapt the requirements through regulations or guidelines.

Recommendation 6.19: The *Employment Equity Act* should be amended to permit the Employment Equity Commissioner to

- attempt to negotiate a written undertaking from the employer to take specified measures to remedy the failure to make reasonable progress on achieving employment equity, in keeping with Section 25(1) of the *Employment Equity Act*; and if unsuccessful; and
- issue directions including special measures to remedy the non-compliance.

Recommendation 6.20: Sections 40(3.1), 40.1(2) and 54.1 *Canadian Human Rights Act*, which cumulatively prevent employment equity decisions from being rendered by the Canadian Human Rights Tribunal, should be repealed.

Recommendation 6.21: The *Employment Equity Act* should be amended to permit cases arising in the circumstances currently anticipated under Sections 40(3.1), 40.1(2) and 54.1 *Canadian Human Rights Act* to be submitted in the form of a complaint to the Employment Equity Commissioner.

Recommendation 6.22: The discretion in Section 41(2) *Canadian Human Rights Act* for the Canadian Human Rights Commission should be transferred to the Employment Equity Commissioner.

Recommendation 6.23: The *Employment Equity Act* should be amended to enable a complaint to be brought by any worker in an employer's covered workplace, on the grounds that an employer's implementation obligations under the *Employment Equity Act* are not being respected.

Recommendation 6.24: The complaints should be brought to the Employment Equity Commissioner.

Recommendation 6.25: The Employment Equity Commissioner shall dismiss a complaint unless the Commissioner considers there to be sufficient evidence, brought by the complainant, to dislodge the presumption that the internal mechanisms to implement employment equity are functioning appropriately.

Recommendation 6.26: Should the Employment Equity Commissioner decide that there is sufficient evidence, an audit by the Employment Equity Commissioner would be the remedy.

Recommendation 6.27: The Employment Equity Commissioner should have the legislative authority and necessary powers to investigate the covered complaints.

Recommendation 6.28: The Employment Equity Commissioner should be legislatively encouraged to use alternative dispute resolution techniques to resolve disputes.

Recommendation 6.29: The English-language title of the Employment Equity Review Tribunal should be renamed the Employment Equity Tribunal.

Recommendation 6.30: The Employment Equity Tribunal should have the staff and resources necessary to be able to hear and decide matters in an expeditious manner.

Recommendation 6.31: The Employment Equity Commissioner should be able to refer to the Employment Equity Tribunal an important question of law that the Employment Equity Commissioner might consider to be more appropriate for the Tribunal to determine.

Recommendation 6.32: The role of the Employment Equity Tribunal should be revised to:

1. Provide that it is responsible for responding to an inquiry into a question of law or jurisdiction referred to the Chairperson of the Tribunal by the Employment Equity Commissioner by rendering a determination;
2. Clarify that it is responsible for rendering a decision on appeal from a decision of the Employment Equity Commissioner referred to it by an employer, bargaining agent or other member of the mandated employment equity committee; and
3. Include a strong privative clause consistent with the case law including and subsequent to *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 SCR 653; 2019 SCC 65.

Recommendation 6.33: Section 48.1(2) of the *Canadian Human Rights Act* should be amended to ensure that appointments of members of the Canadian Human Rights Tribunal must be made having regard to the need for adequate knowledge and experience in employment equity matters among the members of the Tribunal.

Recommendation 6.34: Section 29(3) *Employment Equity Act* should be replaced with the equivalent of Section 166 (1) & (2) of the *Pay Equity Act*, to clarify that a hearing must be conducted in public, but the member or panel conducting the inquiry may, on application, take any measures and make any order that the member or panel considers necessary to ensure the confidentiality of the hearing under the conditions provided in Section 166 (1)(a) – (d) and Section 166(2).

Recommendation 6.35: The *Employment Equity Act* should expressly enable the Employment Equity Tribunal to use methods of alternative dispute resolution, including mediation where appropriate, to conduct hearings virtually, to provide for contemporary open court principles that include posting decisions on the appropriate website(s), and to include contemporary approaches of sending a request to appear before the Employment Equity Tribunal beyond registered mail.

Recommendation 6.36: Orders made under the *Employment Equity Act* by the Employment Equity Commissioner or the Employment Equity Tribunal should be made enforceable by the Court.

Recommendation 6.37: The *Employment Equity Act* should clarify the relationship between the powers of the Tribunal under the *Canadian Human Rights Act*, and the powers set out in the *Employment Equity Act*, with particular attention to the relationship between Section 29(1)(c) of the *Employment Equity Act* and the limitation in relation to privileged evidence under Section 50(1)(4) of the *Canadian Human Rights Act*.

Recommendation 6.38: To ensure reasonable progress in the implementation of employment equity, penalties should be updated and harmonized with comparable penalties under the *Pay Equity Act* and the *Accessible Canada Act,* scaled to the size and nature of the employer and to the level of non-compliance.

Recommendation 6.39: In addition to vesting transversal responsibility for women workers in the Pay Equity Commissioner and transversal responsibility for disabled workers in the Accessibility Commissioner, four newly created deputy commissioners, or ombudspersons should be created, with transversal responsibilities for Indigenous reconciliation (First Nations, Métis and Inuit workers), Black workers, racialized workers and 2SLGBTQI+ workers.

Recommendation 6.40: Deputy heads in the federal public service should be held directly accountable through their own performance evaluations for ensuring reasonable progress to achieve employment equity, and to sustain employment equity once it has been achieved.

Recommendation 6.41: Other employers covered under the *Employment Equity Act* framework should report on how their senior leadership is held accountable in their performance evaluations for ensuring reasonable progress to achieve employment equity, and to sustain employment equity once it has been achieved.

Chapter 7: Technical regulatory implications of employment equity coverage

Recommendation 7.1: Reporting under the *Employment Equity Act* should include dependent contractors, consistent with the *Pay Equity Act* and the *Canada Labour Code*.

Recommendation 7.2: The *Employment Equity Act* should apply to separate employer organizations in the federal public sector with 10 or more employees, listed in Schedule V of the *Financial Administration Act* (separate agencies), and other public-sector employer organizations with 10 or more employees, including the Canadian Forces (officers and non-commissioned members in the Regular and Reserve Forces) and the Royal Canadian Mounted Police (regular and civilian members, excluding federal public service employees).

Recommendation 7.3: The *Employment Equity Act* should apply to employers with 10 or more employees in the federally regulated private sector.

Recommendation 7.4: Employers with between 10 and 49 employees should be required to achieve reasonable progress on attaining representation of employment equity groups consistent with labour market availability. They should be provided with meaningful access to training and support.

Recommendation 7.5: Employers with 50 or more employees and all covered employers in the federal public service should be required to achieve reasonable progress on attaining representation of employment equity groups consistent with labour market availability. They should also be required to assume the existing employer obligations under the current *Employment Equity Act*, with an appropriate transition window for reporting. They should be provided with meaningful access to training and support.

Recommendation 7.6: The *Employment Equity Regulations* should carefully specify the transition periods for when an employer is considered to become subject to the *Employment Equity Act* in a manner that harmonizes them with the *Pay Equity Act*, and facilitates training and reporting by employers.

Recommendation 7.7: All covered public service employers and federally regulated private sector employers should be required to include Canadians or permanent residents of Canada working abroad in their workplace implementation and reporting responsibilities under the *Employment Equity Act* framework.

Recommendation 7.8: Specific *Employment Equity Regulations* should be adopted as necessary to ensure the effective inclusion of Canadians or permanent residents of Canada working abroad, with due regard to operational effectiveness.

Recommendation 7.9: Specific guidance and training should be developed by the Employment Equity Commissioner to support the effective implementation of the recommendations to covered workers abroad.

Recommendation 7.10: The implementation requirements for employment equity by contractors to whom the Federal Contractors Program applies should be equivalent to the implementation requirements for employers covered under the *Employment Equity Act.*

Recommendation 7.11: The monetary threshold for the inclusion of contractors under the Federal Contractors Program should be established at close to pre-2013 levels, and with a view to broader harmonization with existing contractors programs across Canada, at $100,000.

Recommendation 7.12: The monetary threshold should be assessed in terms of the cumulative contract value. No contractor should be able to cumulate contracts that total more than $200,000 without subscribing to the Federal Contractors Program.

Recommendation 7.13: The threshold for the number of workers should be equivalent to the threshold established for employers under the *Employment Equity Act.*

Recommendation 7.14: Colleges and universities should be required to agree to participate in the Federal Contractors Program to be eligible to apply for federal research grants and other federal research funding and to participate in federal research granting councils, including the proposed Canadian Knowledge and Science Foundation.

Recommendation 7.15: Legal services providers eligible to be included in the Open Government Canada online directory with individual contracts of $100,000 or cumulative contracts that total more than $200,000 in any given fiscal year should be included in the Federal Contractors Program.

Recommendation 7.16: An analysis should be undertaken of the aspects of the grants and contributions program that could appropriately be made subject to the *Employment Equity Act* framework, with a threshold comparable to the thresholds proposed for Federal Contractors Program employers.

Recommendation 7.17: Canada's international cooperation sector should be expressly included within the ambit of the Federal Contractors Program.

Recommendation 7.18: Workers in international cooperation organizations recruited in Canada, whether based in Canada or posted abroad, should be included in the calculation of the applicable numerical threshold under the *Employment Equity Act* framework, alongside the total amount of the contributions agreements with the Government of Canada.

Recommendation 7.19: Construction industry contractors who meet the threshold requirements should be included under the Federal Contractors Program.

Recommendation 7.20: The threshold number of employees should be assessed by combining the total number of workers across the main bidding contractor and its subcontractors, with due regard for anticipated variations over the lifecycle of the contract.

Recommendation 7.21: Specific provisions should be made in future negotiations to ensure policy space for setbacks on behalf of employment equity groups under the *Employment Equity Act*.

Recommendation 7.22: The federal government should use its policy space to include setbacks on behalf of employment equity groups under the *Employment Equity Act* in awarding procurement contracts to promote the equitable inclusion of entrepreneurs from employment equity groups in the award of federal contracts. Prior government-to-government consultations should take place as concerns First Nations, Métis and Inuit peoples.

Recommendation 7.23: International agreements on procurements negotiated by the Government of Canada should explicitly clarify that Canada retains the ability to adopt or maintain its commitment to substantive equality, including through the *Employment Equity Act* framework.

Recommendation 7.24: Parliamentary employees should be included within the scope of the *Employment Equity Act*. This may be accomplished in a manner analogous to the inclusion of Parliamentary employees under the *Pay Equity Act* framework, through amendments to the *Parliamentary Employment and Staff Relations Act*.

Recommendation 7.25: The *Employment Equity Act* should be amended to provide that successorship provisions should apply to businesses that move from provincial to federal jurisdiction alongside transitional provisions in the *Employment Equity Regulations* to address reporting requirements.

Conclusion and recommendations

Recommendation C.1: An all of government approach should be adopted, recognizing that employment equity is transversal and affects us all.

Recommendation C.2: The *Employment Equity Act* should be revised to confirm that it is considered quasi-constitutional human rights legislation.

Recommendation C.3: International human rights treaties ratified or acceded to by Canada that inform a proactive, systemic approach to the employment equity framework should be specifically referenced in the revised *Employment Equity Act*.

Recommendation C.4: The federal government should encourage the harmonization of employment equity frameworks across jurisdictions in Canada, in keeping with Canada's international human rights and international labour standards commitments.

Recommendation C.5: The Government of Canada should encourage the International Labour Organization to undertake a general survey on special measures, to ensure comprehensive comparative experiences can effectively be shared.