



NEWCOMER SKILLS AT WORK: AN EMPLOYMENT EQUITY PROPOSAL

The Mennonite New Life Centre works to support the settlement and integration of newcomers through holistic services and community engagement. In 2008, the New Life Centre launched an employment advocacy project entitled “Newcomer Skills at Work: Refusing to Settle for Less.” This project combines civic engagement and mentoring strategies to promote fair and meaningful work for newcomers.

In 2009, the Newcomer Skills initiative launched a participatory action research project designed to engage newcomers in collective analysis on employment barriers and in formulating policy recommendations to improve labour market integration. Forty-five newcomers from a variety of cultural and professional backgrounds participated in seven in-depth focus groups. These focus groups echoed the now familiar story of immigrant underemployment and broken dreams. Of 45 research participants, 37% were unemployed and 60% were not working in their field of study. 53% of participants had an annual income below \$20,000 and 55% believed that their situation had deteriorated since arrival in Canada.

Newcomers spoke at length of the barriers and discrimination they faced during the hiring process. In particular, they spoke of facing a double bind: they can’t get a job because they do not yet have Canadian experience, but they can’t get Canadian experience because no one will give them a job. In effect, they have no opportunity to demonstrate competency. To address this widespread and systemic barrier, research participants proposed a combination of employer incentives and legislative imperatives. Ultimately, they felt that employment practices would not change significantly without some form of legislation requiring employers to hire newcomers. They agreed that it was the role of government to regulate hiring policy and practice in order to ensure fair and transparent decision making.

The purpose of this brief is to make the case for employment equity as a legislative strategy to ensure fair hiring practices and equitable representation of diverse groups in the workplace. Employment equity seeks to redress historic inequities by mandating fair employment process and outcomes for systemically marginalized groups, including but not limited to refugees and immigrants.

EXISTING LEGISLATION

At present, there are a number of federal and provincial laws and statutes that address issues of discrimination in the labour market. They are summarized as follows:

Charter of Rights and Freedoms (Federal)

The Charter of Rights and Freedoms applies at the federal level, governing all provinces and territories. In Section 15, the Charter explicitly addresses the issue of discrimination, prohibiting discrimination on grounds of race; national or ethnic origin; colour; religion; gender; age; and mental or physical disability.

Employment Equity Act 1985 (Federal)

The federal government enacted the *Employment Equity Act* in 1985, and further amended the *Act* in 1995. Employment equity goes beyond mere non-discrimination in requiring proactive treatment of historically marginalized groups: women, persons with disabilities, aboriginal peoples, and visible minorities. As federal legislation, the Employment Equity Act applies only to certain industries that are federally regulated under the Canadian constitution, namely banks, broadcasters, telecommunication companies, inter-provincial or international transportation companies, federal crown corporations and corporations controlled by two or more provincial governments. The vast majority of employers, including nearly all retailers and manufacturing companies, fall outside its jurisdiction.

Human Rights Code (Provincial – Ontario)

Ontario's Human Rights Code stands above any other provincial statutes. The Human Rights Code provides every Ontarian with the "right to equal treatment without discrimination due to race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or handicap." The Human Rights Code also allows for the implementation of programs specifically designed to ensure equal opportunity for disadvantaged groups.

Labour Relations Act (Provincial – Ontario)

Section 54 of Ontario Labour Relations Act protects persons who are protected under the Charter of Rights and Freedoms and the Human Rights Code from being discriminated against in collective bargaining agreements.

SHORTCOMINGS OF EXISTING LEGISLATION

As described above, the principles of non-discrimination and employment equity are already embraced in a variety of federal and provincial legislation. However, existing legislation is not very effective in protecting newcomers from discriminatory hiring practices or promoting their equitable representation in the workplace.

Human rights legislation has limited impact on labour market outcomes for newcomers. While it provides legal recourse to members of a visible minority who have experienced discrimination, the standard of proof is quite high, and the complexity of the process deters many who have legitimate concerns about employment related discrimination.

Federal employment equity legislation has achieved some successes in opening doors for newcomers and racialized groups. For example, the official 2008 Employment Equity Act Annual Report demonstrates that visible minority representation exceeded labour market availability for the federally regulated private sector in 2007. However, federal employment equity legislation is quite limited in scope, with the vast majority of employers falling outside of its jurisdiction.

Employment equity has always provoked controversy. Advocates maintain that proactive measures are needed to address historic marginalization, while opponents argue that employment equity legislation contravenes fairness and the merit principal. Perhaps as a result, employment equity has taken a middle road to implementation, one that relies on voluntary cooperation. Employers are required to develop and implement employment equity plans and programs, and to report annually. However, there is not strict enforcement of numeric targets.

ONTARIO'S EXPERIENCE WITH EMPLOYMENT EQUITY

Ontario's *Employment Equity Act 1993* was celebrated as the grand achievement of much dialogue and debate between policy makers and equity seeking groups – a province-wide legislation designed to promote employment equity. However, shortly after it came to effect on September 1, 1994, the *Employment Equity Act* was repealed under a new Conservative government in 1995 through new legislation entitled “Job Quotas Repeal Act.” The new government cited reverse discrimination as a main reason for the repeal of employment equity.

In its place, the Conservative government pursued an *Equal Opportunity Plan*, which was a voluntary, non-legislated, and inclusive plan to create “fair, barrier-free, and merit-based” employment opportunity for Ontarians. As a voluntary measure, the Equal Opportunity Plan neither binds nor obliges employers to be fair during the hiring process. Instead this act uses the merit principle as the cornerstone of fair employment practices. What is ignored is the way in which traditional merit-based hiring practices ultimately disregard the merit, skills and experience offered by newcomers and other historically disadvantaged groups.

PROPOSAL FOR AN ONTARIO EMPLOYMENT EQUITY ACT

Voluntary measures are clearly insufficient. Report after report shows that new immigrants struggle to integrate into the labour market, despite having higher levels of education than native born Canadians. They are underrepresented in professional and leadership positions, and overrepresented in precarious and low-paid jobs. Our research shows that newcomers are looking to the Ontario government to establish clear legislative imperatives for employers. We therefore join other equity seeking groups in calling on the provincial government to restore employment equity legislation. We also call on the government to proactively include newcomer communities in public consultations regarding the form to be given to the employment equity legislation.

While calling for new consultations, we would also like to affirm the continuing relevance of the essential principles of the Employment Equity Act 1993. These principles would be foundational to the design of effective legislation:

- Members of designated groups have the right to be considered for jobs, hired, retained, treated, and promoted without having to face discriminatory barriers
- Every employer's workforce, at each level and in each job category, should reflect the representation of designated groups in the community
- Every employer shall make sure that its employment policies and practices are free of systemic and deliberate barriers which discriminate against members of designated groups
- Every employer shall put in place positive measures to help recruit, hire, retain, treat fairly and promote members of the designated groups, recognizing that these measures will also benefit the workforce as a whole
- Employers are obliged to inform employees about employment equity; conduct a workforce survey; review employment policies and practices; and develop, review and revise an employment equity plan

In addition, we call for recognition of the specific and unique challenges faced by newcomers to Ontario. In particular, our research participants expressed a need for policy directives to ensure clear and transparent assessment of international education, experience and credentials. We believe that

employment equity plans should be explicitly required to outline how human resources processes for resume assessment, interviews and reference checks would ensure fair and transparent assessment of international expertise.

Moreover, further development would be needed in order to ensure that employers are abiding by the employment equity act. While the employment equity act would set out clear standards and regulations for employers, it would be of little benefit if it did not determine enforcement or evaluation methods. For example, there should be an evaluation of employers by an outside third party in order to determine the nature of that workforce in an unbiased manner.

We recognize that employment equity continues to provoke controversy, particularly in the aftermath of an economic recession, when many are concerned about their own employment security. As we move into a period of economic recovery, it is crucial to recognize that the proverbial rising tide does not lift all boats equally. Employment equity legislation is particularly important and relevant in this context. However, successful implementation relies heavily on effective education and public knowledge, to mitigate fears of so-called “reverse discrimination” and promote understanding of the benefits of employment equity legislation for society as a whole.

ADVANTAGES OF EMPLOYMENT EQUITY ACT

Canada applies a rigorous points system to the selection of skilled workers for immigration, screening for high levels of education and work experience. Newcomers of all immigration categories bring a wealth of skills and knowledge essential to a globalized economy – technical skills and professional expertise; international work experience under a broad range of socio-economic and geo-climactic conditions; cross-cultural communication abilities and contacts. In return, newcomers ask only for the opportunity to put these skills to work – for themselves and for Canada. When their skills are underutilized, it is to the detriment of all parties.

While Canada is a nation that prides in itself on multiculturalism, there is a lack of commitment to this multicultural ideal in labour market processes. The enactment and implementation of provincial employment equity legislation will provide newcomers with the needed support to overcome hiring barriers, while benefiting employers and society as a whole.

The anticipated benefits of employment equity legislation touch many groups and many realms of life. Here, we focus specifically on the benefits for newcomers, and resulting benefits for society as a whole:

- For newcomers, employment equity legislation would increase the prospects of finding stable and fairly paid employment, increasing household income and improving individual/family well-being. Financial security and self-reliance has further implications for the psychological health of newcomer families and their successful integration into the wider community.
- The Ontario work force would benefit from the human capital, skills and experience of newcomers. Employment equity measures would maximize productivity and economic viability by making full use of these skills while simultaneously diversifying the workforce.
- Parental employment success increases the opportunities for future generations to be successful. Systemic discrimination in the hiring process can contribute to a cycle of poverty and marginalization for newcomer families, together with a forced reliance on social services. Increasing opportunities for employment success results in expanded horizons for youth and decreased costs for social services.

- Increased income means that newcomers will contribute more to the economy and increase the tax base for essential government functions. Furthermore, they will be able to contribute to pension plans in a way that guarantees their long term well-being and self-reliance, rather than being forced to turn to government assistance in their old age.
- Employment equity legislation would promote public awareness of the skills and experience of newcomers, reducing cultural stereotyping with regards to the types of employment believed to “best fit” newcomers. It would thus contribute to the broader goals of multiculturalism and social integration.

In sum, employment legislation offers short and long term economic benefits to newcomers, as well as corollary benefits for emotional health and social integration. The province as a whole stands to benefit from a diverse and dynamic workforce, strong and healthy communities, and increased multicultural understanding and social cohesion. Thus, the final rationale for employment equity is social cohesion. While social inequality is a recipe for division and conflict, overcoming inequity offers the promise of channelling our collective energy in more creative and productive directions, to the benefit of all.

CONCLUSION

Our research suggests the need for new legislation to address systemic hiring barriers faced by newcomers in this province. Newcomer research participants join other equity seeking groups in calling for the return of employment equity legislation to Ontario. The anticipated benefits of such legislation, both short and long term, are extensive and far reaching, both for newcomers themselves, and for the province as a whole. While the full promise of the *Employment Equity Act 1993* was never realized, its framework remains strong and relevant to the challenges of today. We believe that now is the time to return to this framework, and to proactively include newcomer communities and other disadvantaged groups in public consultations to address a variety of concerns and give shape an effective implementation and public education strategy.

References

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